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International Bureau of Fiscal Documentation
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Muiderpoort, 124 Sarphatistraat
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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 cooperation with the I.F.A., and with the aid of expert correspondents throughout the world, the Bureau acquires as much information as possible in the field of international and comparative law. The Bureau is thus able to supply data (but not advice) on specific tax problems. A fee, necessary for the maintenance and extension of the Bureau, is charged on a time/cost basis. The Bureau has published two series of monographs: "Publications of the International Bureau of Fiscal Documentation" and "Studies on Taxation and Economic Development".

The Bureau also publishes *European Taxation,* now a monthly journal on the tax systems of Europe. *Tax News Service,* published twice per month, provides rapid information on worldwide tax developments. *Supplementary Service to European Taxation* is a loose-leaf reference work.

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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.

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* * * ARTICLES * * *

PHILIP T. KAPLAN *:

BUYING A U.S. COMPANY

Few observers would deny that there are fads in international business. At any given moment, many companies seem to be trying to do the same thing. Not long ago, British property companies seemed intent on acquiring, with borrowed funds, most of the real estate underlying many of the principal cities of Europe. In recent months, many European firms seemed intent on buying U.S. companies.

There probably is a large measure of conscious imitation in this, but there are other reasons why such purchases recently have come to look attractive:

— The low state of the dollar (lowest in mid-1973, but since recovered in part) and the low state of the U.S. stock Market (very low at this writing — early September 1974) in many instances make prices attractive.

— The supposed ability of the U.S. economy to function despite energy shortages and raw material shortages that would be debilitating to Europe can make a U.S. investment seem an anchor to windward.

— The importance of the U.S. market and the periodic threats that imports will be restricted in response to trade union pressure suggest to some European companies the importance of a direct U.S. installation.

Although the United States presently does not require a governmental consent as an automatic pre-condition to acquisition of an American company by a foreign purchaser,[1] the regulatory climate is sophisticated and complex. It poses many pitfalls and affords some opportunities. Prior planning is essential. Tax planning, in particular, can be rewarding.

In many cases, several choices may be available to the prospective purchaser. It may offer to buy shares from the existing shareholders or assets from the target company itself. It may offer to pay in cash, in shares of its own stock or both. It may wish to pay the entire purchase price at once or to pay in installments — using the target company's own earnings to fund later payments. It may buy directly or through the intermediary of a company formed in a third country. All of these choices involve different tax consequences to the purchaser, to the seller or, in most instances, to both.

At this point, the reader should be warned that the discussion that follows necessarily is general. The complexity of U.S. law — tax law, securities law, corporate law — makes it impossible to write a survey article that does not omit more than it says or that does not risk being misleading when the statements made are applied to a particular set of facts. Moreover, the form of acquisition that seems best to the foreign ac-

* Partner of Weil, Gotshal & Manges, a New York city law firm. The portion of this article discussing securities act considerations was written by the author's partner — Gerald S. Backman. The article does not reflect changes in the law after 31 August 1974.

1. Legislation has been proposed, but not enacted, that would have imposed general restrictions on foreign takeovers. However, a bill to authorize a $ 3 million study of foreign investment in the U.S. was enacted in August 1974 and is expected to be signed by President Ford. At present, prohibitions or required consents may be involved in special cases.

quiring company from the technical standpoint may not be one that the sellers will accept in negotiation.

PURCHASES FOR CASH

(A) *Purchase of shares or purchase of assets*

(i) *General*

Where the prospective purchaser offers cash, 100% payable at the closing, for all or most of the shares or all of the assets of a U.S. business, the seller's normal expectation is to be taxed at long-term capital gains rates — i.e., to pay Federal tax at a maximum rate of 35%.[2] The normal expectation of a foreign buyer would be to inherit the tax attributes of the target company — particularly the target company's basis in its assets for purposes of depreciation — in the case of a purchase of shares but not in the case of a purchase of assets. In general, the expectations of the sellers will be fulfilled. Even where the transaction takes the form of a sale of corporate assets followed by the liquidation of the selling company a double tax (tax at the corporate level followed by a second tax at the shareholder level) can be avoided by adopting a plan of liquidation of the target company before the sale of its assets and liquidating it within twelve months thereafter — a so-called "section 337 liquidation".[3]

With certain important exceptions and limitations, the result is to avoid tax at the corporate level and to substitute a single tax at the shareholder level. From the standpoint of the sellers, the transaction thus resembles, but is by no means identical to[4] a sale of shares.

The expectation of the foreign buyer — that it will inherit the tax characteristics of the target company if it purchases shares but not if it purchases assets — is not necessarily correct. In some cases tax characteristics may disappear in a purchase of shares as well. Just as the sellers are given the section 337 election described above, under which a sale of assets can produce a tax result similar to a sale of shares, an election is available to the purchaser under which a purchase of shares can produce a tax result similar to a purchase of assets.[5] A purchase of at least 80% of the shares of the target company followed by adoption of a plan of liquidation and completion of the liquidation into the new parent company can, if requisite formalities and time limits are observed, result in a step-up in the tax basis of the assets purchased (assuming that the target company has been purchased for more than the tax basis of its assets) that resembles — but is not necessarily identical to — the tax basis had the purchase been an asset purchase rather than a stock purchase. Moreover, many of the other tax attributes of the target company — such as net operating loss carryovers — will disappear as would have been the case in an assets purchase.

(ii) *Making the choice*

From the foregoing discussion, it may appear that few differences exist between

2. In some cases the effective rate of Federal tax could be increased to 36.5% by the imposition of a "minimum tax for tax preferences". Also, depending upon the shareholder's place of residence, more or less significant state and city income taxes could be imposed on the gain.

3. Section 337. All citations to "Sections" in this article are to the United States Internal Revenue Code of 1954, as amended, unless otherwise stated.

4. For example, "recapture" of depreciation may cause taxes to be imposed in a Section 337 transaction that would have been avoided on a sale of shares.

5. Section 334 (b) (2).

purchases of assets for cash and purchases of shares for cash — with sellers given an election to assimilate a sale of assets to a sale of shares and buyers given an election to assimilate a purchase of shares to a purchase of assets. Such is not the case. A purchase of assets for cash does not produce a carryover of tax attributes. Even where comparable results can be achieved — such as between a purchase of assets on the one hand and a purchase of shares followed by a liquidation on the other hand — in practice there are important differences.

While the "Grand Lines" of each of these elections may be similar to the other form of acquisition, the details — and they may be expensive details — often differ. For example, "recapture" of depreciation and investment credit is a burden borne by the selling company in the case of a purchase of assets but by the purchasing company in the case of a purchase of shares followed by a liquidation.[6] Moreover, non-tax considerations often are determinative. A purchase of shares may involve a tender offer to a large number of shareholders of the target company with a near certainty that acceptance will be less than 100%,[7] whereas a purchase of assets can be negotiated with one party — the target company — and typically will require the ratification of between a majority and two-thirds of the target company's shareholders.[8] A purchase of shares results in a continuation of the non-tax attributes, such as contingent or presently unknown liabilities, whereas this normally can be avoided in the case of a purchase of assets.[9] (Assuming that as a matter of negotiation the selling company agrees that the buyer need not assume such liabilities.)

The foregoing discussion illustrates why purchasers in the United States often prefer an assets-purchase to a share-purchase, where the choice is available. It may not be available if the management of the target company is hostile to the proposed purchase. In such case, an assets acquisition may be impossible and the only choice may be a tender offer for the target company's shares — a form of take-over that can be forced upon an unwilling management, albeit often at considerable expense to the purchaser. In some cases even where a choice does exist, a share purchase may be preferred. For example, if S.E.C. rules concerning tender offers are not applicable (e.g., because the transaction involves a small number of selling shareholders, a situation that might occur if the target company is closely-held or if the foreign company is seeking to acquire only one block of its shares) a purchase of shares usually will be a simpler and quicker transaction than a purchase of assets.

(B) *Purchases for installments payable over a period of time*

Payment of only a portion of the purchase price at the time of purchase with the

6. Sections 47, 1245, 1250. "Recapture" refers to a possible recovery by the government, at the time of disposal of an asset, of tax advantages previously afforded — such as an investment credit or depreciation deductions.

7. In some cases the acquiring company will be able to remedy this defect — the near certainty that acceptance will be less than 100% — at a later date by arranging that, as a second step, the target company be merged into a second company, formed by the acquiring company for the purpose, with minority shareholders entitled only to cash on the merger. After this transaction, the acquiring company would own 100% of the target company.

8. See, e.g., General Corporation of Delaware, sec. 251 (c); New York Business Corporation Law, sec. 903 (2).

9. Even in a purchase of assets, compliance with the relevant "bulk sale law" may be necessary to avoid inheriting unwanted liabilities.

balance payable in one or more installments is a classic means of reducing the present cash needs of the purchaser as well as of preserving some leverage for renegotiating the purchase price should it later prove that the sellers' warranties were not accurate. It also can afford a means to pay a contingent purchase price — the amount of which is dependent upon events occurring after the purchase. For example, payments of later installments may be dependent upon the target company achieving a certain level of earnings or upon no significant additional liabilities — not disclosed at the time of the original purchase — coming to light.

In such a transaction, it of course is important that the sellers be entitled to defer their payments of tax on later installments until these actually have been received. Such deferral is not automatic under U.S. law. In general, it may be achieved by one of two means, *viz:*

(i) By casting the transaction in a form that will qualify for the statutory installment reporting election. The principal requirement for this is that not more than 30% of the purchase price (*not* including certain debt instruments of the purchaser) be paid during the year of sale.[10]

(ii) Casting the transaction in a form that will qualify for non-statutory deferred reporting treatment. This may be available if the sellers report for tax purposes on the cash basis (as to most physical persons) and receive only an unsecured contractual promise, not represented by negotiable debt instruments, as to the later payments [11] or if the amount of the later payments is contingent on later events and it is not possible to ascertain the present value of such payments.[12]

These two approaches produce similar, but not identical, tax results to the sellers. Where both are available, the statutory installment election normally will be preferred because, being afforded by a specific statute, it can achieve the desired deferral with reasonable certainty, whereas the non-statutory approach may involve a risk of attack by the Internal Revenue Service.[13]

The fact that the statutory installment election permits the purchasing company immediately to issue its negotiable bonds or debentures for the entire unpaid portion of the purchase price can represent a considerable advantage where the European buyer is attempting to structure an offer that will be attractive to the U.S. sellers, even though such securities must not be in a form designed to render them readily tradable on a securities market, since a negotiable bond or debenture typically offers greater safety and more flexibility (the ability to sell or borrow upon the instrument before the payment date) than does a non-negotiable promise to pay.

A disadvantage of the statutory installment election is that it usually will not be available where the transaction takes the form of a purchase of assets rather than of a

10. Section 453. Bonds, or other debt instruments, that are payable on demand, have interest coupons attached or otherwise are in a form (such as, generally, in registered form) designed to render them readily tradable on a securities market and are treated as the purchaser's debt instruments — i.e., do count against the 30% limit.

11. See, e.g., *Nina J. Ennis,* 17 T.C. 465 (1951). Additional safety can be assured by providing also that the buyer's obligation not be transferable or assignable. *Revenue Ruling 68-606,* 1968-2 Cum. Bull. 42.

12. See, e.g., *Burnet v. Logan,* 283 U.S. 404 (1931).

13. See, *Revenue Ruling 58-402,* 1958-2 Cum. Bull. 15.

purchase of shares. The tax deferral will be available to the selling corporation itself, but will not survive a liquidation and distribution of the purchaser's obligations to the shareholders of the selling corporation. In other words, the shareholders will be liable to tax for the year in which the liquidation takes place even though the purchaser's obligations have not yet been paid off.[14] Where instead the transaction seeks to achieve tax deferral on the non-statutory grounds that the future payments are contingent, it may be possible to distribute the buyer's obligations in liquidation without thereby subjecting the shareholders to an immediate tax.[15]

(B) *"Bootstrapping" the transaction — paying a portion of the purchase price out of the target company's own income or assets*

U.S. taxpayers over many years have developed a variety of methods, some of them ingenious, to permit the target company's own assets or later earnings to be employed to pay a portion of the purchase price for that company's shares.

Use of existing cash, as a part of a takeover transaction, can afford a means for the selling shareholders to withdraw excess cash at capital gains rates instead of at the higher ordinary income rates that normally would be applicable if the owners of the company simply withdrew the cash as dividends or in *pro rata* redemption of a portion of their shares.

Alternatively, use of the target company's own future earnings can have the effect of lowering the worldwide tax burden of the acquiring company. This can occur where the structure chosen permits direct application of the target company's earnings to the payment of the purchase price without the necessity first to pay such earnings to the foreign parent in the form of a dividend. Elimination of the need for a dividend avoids U.S. withholding taxes at 5% —30% and also may avoid an extra slice of corporation tax imposed by the foreign parent company's home jurisdiction.[16]

Some of the methods of "bootstrapping" an acquisition have become sufficiently well accepted that it may, in a particular case, be possible to secure an advance ruling from the Internal Revenue Service as to the U.S. tax consequences. Others involve a willingness to assume a measure of risk. The variety and complexity of available "bootstrapping" techniques is such as to permit only brief descriptions of two classic approaches:

(a) When the target company has cash in excess of its business needs, the foreign purchaser may offer to purchase only a portion of the outstanding shares with the balance of the shares to be repurchased by the target company itself at the same time. Properly carried out, this approach results in the purchasing company acquiring 100% of the equity of the target company while entitling the selling shareholders to capital gains treatment, both on the block of stock sold to the purchasing company and on the block sold back to the target company itself.[17]

(b) Where the form of acquisition chosen involves deferred payment of a portion of the purchase price, it may be advantageous for the acquiring company to make the purchase of shares through the interme-

14. See, *Freeman v. Commissioner,* 303 F.2d 580 (8th Cir. 1962).

15. See, *Burnet v. Logan, supra; Commissioner v. Carter,* 170 F.2d 911 (1948).

16. Such as the 2.5% tax imposed by France in these circumstances.

17. See, e.g., *Zenz v. Quinlivan,* 213 F.2d 914 (6th Cir. 1954).

diary of a newly-created 100%-owned U.S. subsidiary corporation. As distinguished from a direct purchase of shares by the foreign company itself, this format is designed to allow the target company's own future earnings — after U.S. corporation taxes but without U.S. withholding taxes or taxes imposed by the acquiring company's home jurisdiction — to be used to pay the purchase price.[18] Following such a purchase, the foreign parent company may:

(i) keep both U.S. corporations in existence and cause them to file consolidated Federal income tax returns (thus eliminating inter-company Federal dividend taxes.) This will avoid recaptures of depreciation and investment credit and may, subject to certain disallowance rules,[19] preserve favorable tax characteristics — such as a net operating loss carryover — of the target company; or

(ii) merge the target company "upstream" into its immediate parent company. As is noted above, where the purchase price paid for the target company exceeds the tax basis (generally the book cost) of its assets, this technique will result in a "step-up" in the tax basis of the assets and can result in greater depreciation deductions in future years and in lower U.S. taxes, should some of the assets later be sold.[20] On the other hand, following this procedure can result in a "recapture" of depreciation and investment credit previously claimed by the target company and results in the elimination of most of the target company's tax attributes. Non-tax attributes, such as presently unknown liabilities to third parties, will survive the transaction.

(iii) merge the U.S. holding company "downstream" into the target company. This will avoid "recaptures" and will preserve the target company's tax attributes.[21] However, it will not afford a step-up in the tax basis of the target company's assets. Further, the downstream merger will involve an exchange of shares by the foreign parent company (surrender of shares of the U.S. holding company and receipt of shares of the target company itself), which may have tax or other consequences under the laws of the foreign parent company's home jurisdiction.

(D) *Purchasing through an offshore holding company*

Subject to tax and exchange control restrictions imposed by its home jurisdiction,[22] in some instances the foreign parent company may wish to purchase the U.S. target company through the intermediary of a subsidiary formed in a low-tax jurisdiction. In this manner, earnings of the target company can be withdrawn for use elsewhere in the world hopefully without exposing them to the tax system or exchange control rules of the home country. In addition, later gain realized on a resale of the target company's shares may escape tax completely.

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18. See, e.g., *Arthur J. Kobacher,* 37 T.C. 882 (1962) *(Acq.).*

19. Sections 269, 382 (a). Section 269 operates to permit the Commissioner of Internal Revenue to disallow deductions, credits or other allowances where "control" of a corporation is acquired for the "principal purpose" of securing such tax benefits.

20. Section 334 (b) (2); as to a danger in this form of acquisition see *Plantation Patterns, Inc.,* 29 T.C.M. 817 (1970), *Aff'd,* 462 F.2d 712 (5th Cir. 1972).

21. See, *Revenue Ruling 70-223,* 1970-1 Cum. Bull. 79.

22. For a discussion of tax considerations in West Germany, See Killius, *A New German Stature Regulating International Tax Aspects — Its Implications For Multinational Companies,* Tax Management International (Dec. 1973).

A careful choice of jurisdiction for the offshore company is most important. Most tax-haven jurisdictions do not have double-taxation conventions with the United States so that dividends paid to a holding company in such a jurisdiction will bear U.S. withholding taxes at the full 30% rate. Jurisdictions affording tax benefits to holding companies but having such treaties may differ as to suitability in other respects. For example, Switzerland requires, under rules adopted in 1962,[23] that such holding companies, taking advantage of Swiss treaties, redistribute a substantial portion of the dividends received (generally 25%). Such redistributions typically are subject to Swiss withholding taxes. The Netherlands do not require current redistributions but do require holding companies to comply with a number of administrative formalities that foreign interests often find to be onerous.[24] The Netherlands Antilles tax dividends received from wholly-owned U.S. subsidiaries at 15% of the net dividends received which results in an aggregate tax burden (U.S. withholding taxes + Netherlands Antilles taxes) of 27.5% (unless the Antillean corporation's shares are owned by Dutch residents in which case a lower rate applies). The tax burden on interest is 24—30% consisting entirely of Antillean profits tax. However, the Antilles do not impose withholding taxes on redistributions by the holding company.

PURCHASES FOR SHARES OF THE ACQUIRING COMPANY

In most instances, when one U.S. company acquires another in exchange for the acquiring company's shares, instead of for cash, a major goal is to qualify the transaction as a "reorganization" and thus cause it to be "tax-free" [25] to the shareholders of the selling company. However, where the acquiring company is a foreign company, the transaction never will be tax-free to the U.S. shareholders of the target company *UNLESS* a prior ruling is secured from the Internal Revenue Service to the effect that avoidance of U.S. Federal income taxes is not one of the "principal purposes" of the transaction.[26] Under guidelines that have been published by the Service, it ordinarily should be possible to secure such a ruling where the situation is one of acquisition of a U.S. company, engaged in an active business, by an unrelated foreign company.[27]

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23. *Swiss Measures Against Abuse Of Tax Conventions,* International Bureau of Fiscal Documentation, Amsterdam 1963.

24. A recent decision by the Supreme Court of the Netherlands may have thrown some doubt on the proposition that the Dutch holding-company privilege — freedom from corporation taxes on dividends received from subsidiaries — generally is available in the case of such companies formed, for tax reasons, by non-Dutch interests to hold shares of subsidiaries formed outside of Holland. However, some Dutch tax advisors have stated that the decision is not of general applicability. For a discussion of the decision, see Van Raad, *Netherlands Holding Companies — A Recent Case,* Tax Management International (April 1974).

25. The various types of reorganizations are defined in Section 368. The term "tax-free", while commonly employed, is misleading since, in most cases, taxes simply are deferred to a later date.

26. Section 367. A current proposal would, if enacted into law, eliminate this requirement.

27. *Revenue Procedure 68-23,* 1968-1 Cum. Bull. 821. These guidelines do not deal specifically with all forms of reorganizations — notably with triangular reorganizations. In certain cases, which seem unlikely often to arise in practice in the context of transactions discussed in this article, the Internal Revenue Service may exact as the price of an otherwise favorable ruling the inclusion of specified amounts in the income of the target company (the so-called "toll gate" charge).

(A) *Types of reorganizations*

Regardless of whether the acquiring company is U.S. or foreign, not all acquisitions for shares qualify as "reorganizations". The principal categories of interest to a non-U.S. purchaser are the following:

(i) *"A" reorganizations.* This is accomplished by a statutory merger (or statutory consolidation) of the target company and the acquiring company. Once the requisite formalities have been accomplished (including a shareholders' vote — at least a majority and in some states two-thirds being required — of the company that will disappear in the merger) and the filing of certificates with the appropriate state authorities, the two corporations are combined into one by operation of law. Outstanding shares of the disappearing corporation are converted by operation of the merger laws of the states involved into shares of the surviving company (or into money or other property) in accordance with the terms of the agreement between the parties. The surviving corporation inherits the non-tax attributes of the two constituant corporations (pre-existing liabilities, debts, contractual obligations, book value for assets etc.) and, with some exceptions, also inherits their tax attributes.[28] The use of an "A" reorganization in preference to other types of "reorganizations" often is attractive because:

(a) The procedures are relatively simple and avoid the need to transfer assets one-by-one or group-by-group to the acquiring company.

(b) The acquiring company achieves 100% ownership of the target company. Dissenting minority shareholders of the target company — those who disapprove of the merger — can be "frozen out", subject to their right to be paid cash for their shares at a rate fixed by an appraiser (a procedure that normally is not regarded as an advantage but as a necessary evil).

(c) Under Internal Revenue Service practice, up to 50% of the consideration paid by the acquiring company can be assets other than its own shares (such as cash or debt instruments) without thereby depriving the shareholders of the acquiring company of non-recognition treatment as to the other 50% paid in the form of shares.[29] (However, depending upon the facts the taxable 50% may be taxed at the higher rates applicable to dividends rather than at the lower rates applicable to capital gains.) Under Internal Revenue Service practice, statutory mergers qualify as "A" reorganizations only if they occur between U.S. companies.[30] However, a number of states permit "triangular" statutory mergers under which a parent company can transfer its own shares to its subsidiary corporation and the subsidiary then can be the merger partner. Notwithstanding that the merger is between the target company and the *subsidiary,* shareholders of the target company receive shares of the European *parent* company in the exchange. Where home country corporate laws permit the transfer (or, possibly, the sale) of the shares of a

28. Tax attributes would not, for example, be inherited where the predominant consideration was money or other property, as distinguished from shares of the acquiring company. The statutory provisions affording carryover treatment are in Section 381. See Note 19. for mention of provisions under which carryovers of favorable tax attributes can be denied.

29. *Revenue Ruling 66-224,* 1966-2 Cum. Bull. 114.

30. *U.S. Treasury Regulations,* Section 1.368-2 (b).

local company to its own U.S. subsidiary,[31] a triangular merger of this type, employing a newly-formed U.S. subsidiary holding shares of its parent company, can be a useful technique in acquiring a U.S. target company.[32]

(ii) *"B" reorganizations.* A "B" reorganization occurs when the acquiring company exchanges *"solely"* [33] shares of its own *voting* stock for shares of the target company's stock and, after the transaction, owns stock possessing at least 80% of the voting power of the target company and at least 80% of the outstanding shares of each class of non-voting stock A "B" reorganization thus is accomplished by a specialized tender offer — usually called an exchange offer — requiring an exchange negotiated by the acquiring company with each shareholder of the target company. As is the case in a "A" reorganization (merger), U.S. tax law permits a "B" reorganization to be accomplished in a triangular fashion by the transfer of the acquiring company's shares to a controlled subsidiary corporation and the use by the subsidiary of the parent company's shares to make the exchange.[34] A "B" reorganization may be the preferred technique where the management of the target company is hostile to the transaction. Dealings are directly between the acquiring company and the shareholders of the target company and it sometimes is possible to achieve control of a target company in this fashion despite management resistance. A "B" reorganization may also be preferred:

(a) where the target company's shares are held by a small group of persons, all of whom are willing to exchange their shares for shares of the acquiring company; (In such case, a simple exchange of shares for shares may be the quickest and easiest form of "reorganization" available.)

(b) where the target company has assets that are not transferable (such as contracts that could not be transferred as a part of an assets transfer without the consent of the other contracting party or where loan agreements restrict the transfer of the target company's assets) since the target company continues unchanged and continues to own its assets, or

(c) where the parties negotiate for a down payment in shares of the acquiring company followed by one or more later payments the size of which is to be contingent — for example upon earnings of the target company or upon the later market value of the shares of the acquiring company (a means of payment that is most easily accomplished in a "B" reorganization).

(iii) *"C" reorganizations.* A "C" reorganization is accomplished when the acquiring corporation acquires "substantially all" of the properties of the target company "solely" [35] in exchange for its own voting

31. France, for example, restricts the ability of a subsidiary to acquire share in its own parent, but it appears that the restrictions would not be applicable where the subsidiary had its "siège social" in the United States. See Lefebvre, Memento Pratique des Sociétés Commerciales (Editions Juridiques Lefebvre 1972) Section 3355.

32. See, *Revenue Ruling 74-297,* 1974-25 I.R.B. 16.

33. The word "solely" is strictly construed in the case of "B" reorganizations and the payment of even a small percentage of the consideration in a form other than voting stock of the acquiring corporation can cause disqualification.

34. Section 368 (a) (1) (B).

35. The requirement that the acquisition be "solely" for voting shares is less rigid than in the case of a "B" reorganization — some outside consideration is permitted. Section 368 (a) (2) (B).

shares. The acquisition typically is followed by a liquidation of the target company and a distribution to the target company's shareholders of the acquiring company's shares received in exchange for its assets. Thus, a "C" reorganization resembles an "A" reorganization in that the transaction is between the acquiring company and the target company itself (rather than with that company's shareholders). It differs from an "A" reorganization in a number of respects, such as:

— It does not necessarily involve the acquisition of 100% of the assets of the target company.

— It *may* (this by no means is certain) deny dissenting shareholders of the target company the right to have their shares paid out in cash at a price fixed by an appraiser. In other words, under applicable state corporate laws, depending upon the state involved and upon the facts of the transaction, dissenting shareholders may be compelled to accept stock of the acquiring company in exchange for their stock of the target company whereas in an "A" reorganization such shareholders typically would have a right to demand cash.

— It *may* permit the acquiring company to assume (i.e., become liable for) only selected liabilities of the target company — i.e., for liabilities specifically assumed by it — and not contingent or unknown liabilities not specifically assumed by it. (Since an "A" reorganization — merger — is a combination of two corporations by operation of law, the acquiring company automatically assumes all liabilities of the target company, whether or not revealed to it).

(B) *Some effects of reorganizations*

In general, in an "A" or "C" reorganization the acquiring company takes over the target company's tax basis of the acquired assets for purposes of depreciation and of computation of gains or losses on later sales. In the case of a "B" reorganization, the target company is the surviving company so that its tax basis for its assets remain with it. Depending upon the facts involved in the reorganization in question, certain favorable tax characteristics of the target company — such as a net operating loss carryover — may or may not survive the transaction to the benefit of the acquiring corporation.[36]

The shareholders of the target company are considered to have the same tax basis for the shares of the acquiring company they receive in the transaction as they had for their shares of the target company.[37] Thus, taxation of the target company's shareholders merely is deferred. A later sale of their shares in the acquiring company will produce the same amount of taxable gain as would have a sale at the same price of their target company shares.

SECURITIES LAW CONSIDERATIONS IN SELECTING THE TYPE OF ACQUISITION

(A) *Background*

To borrow a phrase from the Deputy-Director of the International Bureau of Fiscal Documentation, "life does not consist of taxes only". However regrettable this fact may be to tax specialists, it is true that for-

36. Sections 269 (discussed in Note 19., *supra)*, 382.

37. If the reorganization involves the payment of some cash, or property other than the acquiring company's shares, certain adjustments may be made in the tax basis at which the shareholders of the target company hold their shares in the acquiring company. Section 358 (a).

eign companies seeking to purchase U.S. companies will find it necessary to consider also the non-tax aspects of the transaction. Where securities of the acquiring company (whether capital shares, promissory notes or other instruments defined as "securities") are to be used in an acquisition, or where securities of the target company are widely (i.e., publicly) owned, Federal and state securities law considerations often will be of primary concern.

Techniques for protecting investors or potential investors in securities are particularly well developed in the United States. For the most part they consist of detailed and often complicated rules and regulations designed to protect (1) purchasers of securities from the issuing company, by requiring the issuer to reveal comprehensive information as to the true nature of both the security being offered and the issuer's business, management and financial condition, and (2) existing security holders of a company and potential purchasers of its securities in the trading markets, by requiring the regular filing of reports disclosing changes in the company's business, management and affairs, including information as to its officers, directors and principal shareholders. However, in many instances the regulatory system goes beyond mere disclosure and requires compliance with standards directed toward the merits and value of the security offering. Moreover, in addition to the securities laws, there are a number of Federal and state statutes and regulations which may be applicable where the target company is engaged in activities within the regulatory jurisdiction of certain governmental agencies, thereby requiring agency approval before a change of control can be effected (e.g., airlines, communications companies, public utilities and insurance companies).

United States securities laws encompass a wide spectrum but break down into three principal, and largely interacting, regulatory schemes, all of which can come into play in a given situation:

(a) *The Federal Securities Laws* which are administered by the Securities and Exchange Commission ("SEC") and consist (for purposes of the subject matter of this discussion) mainly of detailed requirements for full and fair disclosure contained in the Securities Act of 1933 ("1933 Act") and the Securities Exchange Act of 1934 ("1934 Act").

(b) *The State Securities (or "Blue Sky") Laws* consisting of separate laws administered by agencies of the fifty states, covering much of the same ground as the Federal securities laws but often requiring substantive changes in the terms of a security offering to residents of a state, in addition to full and fair disclosure.

(c) *National Securities Exchanges* which are empowered to adopt rules and regulations affecting the activities of companies whose securities are listed on such an exchange.

The following outline will attempt to highlight those aspects of the securities laws that would have to be taken into consideration by an acquiring company, depending upon the proposed structure of the acquisition.

(B) *Purchases for shares or other securities of the acquiring company*

Virtually every acquisition in which securities of the acquiring company are to be issued in exchange for stock or assets of the target company will be required to comply with the Federal and State securities laws of the United States. Unless an exemption is available under each of the

securities laws governing the transaction, registration of one kind or another generally will be required.

(a) Federal

The exemption most frequently sought under the 1933 Act is the so-called "private placement" exemption, which is based upon the underlying policy of the Act to regulate only "public" as distinguished from "private" offerings of securities. In order to qualify for this exemption, however, it is necessary (as a practical matter) not only to limit the number of purchasers (generally not more than 35) but also to make certain that the purchasers have the requisite knowledge and experience to evaluate the merits and risk of their investment and, in many cases, are able to bear the economic risk involved.

If an exemption is not available to the offering in question, the issuer will be required to register the securities with the SEC and deliver to prospective purchasers a special, detailed "Prospectus" describing the securities being offered, the business and affairs of the issuing company, the transaction in which the securities will be issued and, in the context of an acquisition, the business and affairs of the target company whose shares or assets are being acquired. Under the 1933 Act, essentially the same registration requirements will apply to mergers ("A" reorganizations), exchange offers ("B" reorganizations) and asset acquisitions ("C" reorganizations). To further complicate matters, where the *target company* has securities registered under the 1934 Act, each of the foregoing forms of acquisition will require compliance by the target company and/or the acquiring company with rules affecting the procedures employed in pursuing the acquisition (discussed under "(c) Cash Purchases" below).

The Registration Statement and Prospectus required under the 1933 Act must be reviewed in advance by the SEC and must contain, among other things, financial statements certified by independent accountants and prepared in accordance with SEC rules. The requirement that financial statements of the foreign company be prepared in accordance with SEC standards — which often are very different from the standards employed by the foreign company — can act as a powerful deterrent to the use of the foreign company's shares or other securities (such as promissory notes or debentures, whether or not convertible into capital shares) as the consideration for the acquisition of the target company.

Moreover, in cases where considerations of the laws or commercial practices of the country in which the acquiring company is located make it desirable to employ American Depository Receipts (instead of issuing the acquiring company's own shares in the U.S.), these will be subject to certain registration requirements in addition to those applicable to the underlying securities.

Not only will the use of the acquiring company's securities in an acquisition result in an initial registration under the 1933 Act (when an exemption it not available), but the SEC automatically will impose additional obligations upon the acquiring company thereafter to file 1934 Act periodic reports concerning its business, management and financial condition. Even where the initial acquisition may be exempt from the registration requirements of the 1933 Act, the resale of the securities in the United States may require such registration; and, invariably, the establishment of an active trading market for the securities in the United States probably would subject the company to compliance with the

registration (different from a 1933 Act registration) and/or periodic reporting requirements of the 1934 Act. Although certain exemptions from 1934 Act registration requirements and variations in the reporting requirements may minimize the effects of the 1934 Act on foreign (as distinguished from United States) companies, depending upon their size and the extent of the holdings of their securities by United States residents, the basic disclosure policy of the Federal securities law nevertheless would apply.

(b) State

Assuming that the acquiring company has been able to comply with the Federal securities laws in connection with the issuance of its securities, it must then determine the extent to which the Blue Sky laws of the applicable state jurisdictions will affect the transaction. Compliance with the registration provisions of the Federal securities laws, or structuring the transaction in such a manner that it is exempt from such registration, will not necessarily guarantee that the transaction will avoid registration and review by the Blue Sky authorities. Moreover, while the SEC rarely attempts to regulate the "fairness" of the transaction in terms of its effect on investors, the Blue Sky authorities often can and do refuse to approve a transaction because the terms are not considered to be fair to the prospective investors; and, in the case of exchange offers, a number of states have adopted legislation designed to protect companies located in those states from being taken over by outside interests.

(c) National Securities Exchanges

The principal impact of stock exchange regulations arises in connection with acquisitions of less than all the outstanding shares of a target company whose shares are listed on a national securities exchange, such as the New York or American Stock Exchange. The exchanges require delisting of the shares of a company where there is insufficient public distribution, in terms of both the number of shares in the hands of the public and the number of public shareholders. Thus, a foreign company considering an exchange offer (or a cash tender offer) for less than 100% of the shares of a company listed on an exchange must consider the possible market effects of such a delisting. Moreover, the New York Stock Exchange informally has been reported to have made known a policy against the control by a single company of more than 30% of the outstanding shares of a listed company, although express sanctions have not yet been imposed. Naturally, if the acquiring company has securities listed on an exchange, it will be subject to the full panoply of such exchange's rules and regulations (a subject that goes beyond the scope of this discussion).

(C) *Cash Purchases*

Where the consideration for the stock or assets of the target company is to be cash, the nature and scope of the obligations imposed upon the acquiring company under both Federal and State securities laws will be far less burdensome. Since these securities laws are directed primarily toward the protection of investors in securities, cash transactions generally will avoid most of the more stringent requirements of the securities laws.

(a) Federal

The registration and reporting requirements of the 1934 Act are designed primarily to protect investors who already are

shareholders of a publicly-held company or who purchase shares from existing shareholders in the securities markets. Thus, while the anti-fraud provisions of the 1934 Act (imposing liabilities for material misrepresentations or omissions of fact in connection with the purchase or sale of securities) apply to any transactions in securities subject to Federal jurisdiction (public or private), the registration and reporting requirements of that Act apply only to public corporations. If a United States company has a sufficient number of shareholders and sufficient assets (more than 500 shareholders of record and more than $ 1,000,000 in gross assets), or if a company has elected to list its shares on a stock exchange, the company is required to register under the 1934 Act. Companies whose shares are registered under the 1934 Act are subject to a variety of regulations (in addition to the periodic reporting requirements that may apply regardless of 1934 Act registration) governing, among other things, the manner in which the company solicits votes from its shareholders (proxy rules) and the manner in which officers, directors and 10% shareholders purchase and sell the company's shares (insider trading). Thus, when a vote of approval from shareholders of a target company is required lawfully to consummate a proposed transaction, such as a merger or a sale of substantially all the assets, the SEC regulates the manner in which the shareholders' votes are solicited. Just as an offering of securities to new investors must be accompanied by a particular form of disclosure (the Prospectus), the solicitation of a shareholder's vote must be accompanied by another form of disclosure document (a "Proxy Statement"). In a sale-of-assets-for-cash transaction, the disclosure in the Proxy Statement would relate primarily to the business of the target company in order to enable each shareholder to determine whether the price to be paid is adequate in relation to the value of the target company. In an acquisition involving the issuance of securities of the acquiring company, where a vote of shareholders of the target company is required, the Prospectus required to be filed by the acquiring company under the 1933 Act will be virtually identical to the Proxy Statement required to be filed by the target company under the 1934 Act; and a combined document satisfying both Acts is delivered to the shareholders of the target company.

In those instances where *corporate* action by shareholders is not required, such as a cash tender offer to the shareholders of a target company whose shares are registered under the 1934 Act, the acquiring company nevertheless will be required to file certain disclosure documents with the SEC and to comply with rules regulating the mechanics of the tender offer (such as rights of withdrawal of shares and procedures for *pro rata* purchases). Any public tender offer for 5% or more of the number of outstanding securities registered under the 1934 Act, or the acquisition (whether or not by way of a public tender offer) of 5% or more of such outstanding securities, will require the filing of certain information with the SEC concerning the acquiring company, with copies being furnished to the target company and any national stock exchange upon which the security is traded. The purpose of these requirements is to put the target company and its shareholders on notice that there is a potential change of control of the target company. Similarly, where an acquiring company is, by agreement, to take control of the Board of Directors of a target company whose shares are registered under the 1934 Act, ten

days' notice to all shareholders of the target company (including the disclosure of information of the type included in the SEC filing) is required before the directors can take office. The disclosure requirements in the context of a cash tender offer are far less detailed than those for *registration* of securities under the 1933 Act (as would be the case in a registered exchange offer). The disclosure relates primarily to the identity and background of the acquiring company and its management, their ownership of securities of a target company and the source of funds and purpose for the acquisition. The SEC rules do not require the same type of description of business or presentation of financial statements as would exist where securities of the acquiring company are being issued (although some financial information may be required to be disclosed to the shareholders of the target company, especially if the tender offers covers less than 100% of the outstanding target company stock). Moreover, while the rules by their terms apply only to target companies whose securities are registered under the 1934 Act, comparable disclosure to the shareholders of the target company may be required under the general anti-fraud provisions of the 1934 Act (without the necessity of SEC filings), whether or not the target company is of sufficient size to have its securities registered.

(b) State

As in the case of acquisitions involving the issuance of securities by the acquiring company, a cash acquisition may also be subject to the Blue Sky laws of the states in which the target company is incorporated or engages in business, or in which shareholders of the target company reside. While only a relative handful of states have attempted to regulate cash acquisitions (although the number is larger where insurance company take-overs are concerned), a number of states have imposed substantial limitations upon the ability of an acquiring company to make cash tender offers within their jurisdictions. These include certain disclosure and waiting period requirements, as well as provisions for registration by the acquiring company as a licensed securities dealer, or the use of a licensed securities dealer in making tender offers in the particular state.

CONCLUSIONS

To an outsider thinking of acquiring a U.S. company, the regulatory climate often must seem to be formidable deterrent. In a given case, the foreign concern may be informed during its first meeting with its U.S. attorneys that the proposed transaction may be illegal under U.S. anti-trust laws, will require it henceforth to keep its books and publish information to its shareholders in a very different fashion than theretofore to satisfy S.E.C. requirements and risks adverse U.S. tax consequences. Some transactions do fail to get off the drawing board for these reasons. Many others succeed, whether through perseverance, ingenuity or good luck.

I would guess that few proposed acquisitions of U.S. companies by foreign companies fail because of the predicted adverse tax consequences. The complexity of U.S. tax law — resulting from over sixty years of tinkering and attempted loophole closing — often both creates the problem and provides a means to solve it. Where the acquiring company is foreign, both the complexity and the changes of finding a satisfactory solution may be increased. On the

one hand, the complexities of the home-country tax laws, and of tax treaties, must be taken into consideration along with the complexities of U.S. tax laws. By way of compensation, differing concepts employed by the two countries, or the protection of a tax treaty, may afford an opportunity to the foreign acquiring company to achieve a favorable tax result that would not be available to its U.S. counterpart.

J. S. MACLEOD, C.A., F.T.I.I. *:

TAX CHANGES IN THE U.K.

The U.K. Finance Act 1974 introduces a number of important tax changes to the U.K. fiscal system. The Chancellor's financial statement, on which the legislation is based, came only a few weeks after a Labour administration had been elected to power in February 1974, and is aimed at implementing the Labour party's programme for taxation reform.

Capital Taxation

The present system of death duties in the U.K. was introduced in 1894 and replaced earlier death duties which had operated since the end of the 17th Century. The tax applies to the distribution of an individual's assets on his death, as well as to gifts made by him in the seven years ending with death. However, the U.K. has never operated a comprehensive gift tax, although since 1965, the gift of an asset could give rise to a liability to U.K. capital gains tax. The Government sees the absence of a gift tax as a major defect in the capital tax system of the U.K., and intends to remedy this by introducing with effect from 26th March 1974 a comprehensive tax on transfers of capital from one individual to another. So far, a brief outline of the Government's intentions have been published and this will be followed by legislation to be published later this year.

In addition to a comprehensive tax on transfers of assets made by an individual during his life time and on his death, the Government intends to introduce an annual tax on wealth. So far, only a consultative document has been published, and after discussions with interested parties, it is expected that the legislation will be published in 1976 so that the tax will come into effect in that year or in 1977.

It is hoped to deal with these taxes in a later article.

Taxation of individuals

There are a number of changes affecting the taxation of individuals, but two of these are of particular importance. Firstly, there has been a general increase in the rates of personal income tax. The basic rate of income tax has been increased from 30% to 33% while for incomes in excess of £4,500 the higher rates of income tax have also been increased to give a maximum rate of 83% on income, and 98% on investment income. Secondly, the Finance Act contains restrictions on the amount of interest paid which can be deducted from an individual's taxable income. The restrictions do not apply to an interest payment which is a business expense. In such a case, the interest paid will continue to be a deduction from trading income as before. In future, however, where an individual pays interest which is not a business expense, he will only be entitled to tax relief if the interest is paid on a loan which was incurred for a "qualifying purpose". The purposes which qualify for interest relief are:—

1. The purchase or improvement of a house, caravan, or houseboat, which is the owner's principal private residence. In this case, however, only interest on the first £25,000 of total loans raised qualifies for relief.

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2. The purchase of other real property which during any period of 52 weeks is let at a commercial rent for at least 26 weeks, and when not so let, is either available for letting, or cannot be let because it is under repair. Where interest is incurred, relief is given only against income from the property.
3. The purchase of shares in certain closely controlled companies, where the purchaser owns more than 5% of the ordinary share capital, and devotes the greater part of his time to working in the business.
4. The acquisition of an interest in a partnership in which the individual is actively engaged.
5. Lending money to a company or partnership as in (3) and (4) above.
6. The purchase of machinery or plant used for business purposes by an employee or a partner.
7. There are a number of other situations of limited importance where interest relief may also be available.

The one general restriction applicable to all loans is that interest relief is only available if the loan is a fixed loan. If the loan is obtained from overdrawing an account with a bank, interest relief is never granted.

Where money is borrowed after 26th March 1974, the new rules will apply at the outset. However, where money was borrowed prior to 26th March, tax relief will be given for interest payments made in the tax year to 5th April 1975 in the case of all loans, and in the case of fixed loans, until the tax year ending 5th April 1980.

Taxation of Foreign Earnings

New rules are introduced which change the basis on which U.K. resident individuals are charged to tax on earnings from overseas employment, overseas pensions, and the profits of overseas trading activities. These rules apply from 6th April 1974, and are as follows:—

(a) *Persons resident and ordinarily (i.e. habitually) resident in the U.K., but domiciled abroad*

Such an individual will be liable to U.K. tax if he carries out any part of the duties of his employment in the U.K. If he is employed by a foreign employer, he will be taxed in the U.K. on 50% of his assessable earnings, whether remitted to the U.K. or not. However, from the tax year 1976/77, he will be taxed on 75% of his earnings, if he has resided in the U.K. for nine out of the ten preceding tax years. The individual's assessable earnings consist of total remuneration, less pension contributions, loan interest, etc paid abroad, which would have been deductible for U.K. tax if paid in the U.K. If the individual has two employments, one for duties performed in the U.K. and one for duties performed outside the U.K., he will not be liable to tax on his overseas earnings unless they are remitted to the U.K.

(b) *Persons not domiciled and not ordinarily (i.e. habitually) resident in the U.K.*

In such a case, 50% of the earnings from a foreign employer for work done in the U.K. are subject to U.K. tax. All earnings from a U.K. employer for work done in the U.K. are taxable. Work done outside the U.K. for a U.K. or a foreign employer will only be assessed to tax if the income is remitted to the U.K. in a year in which the taxpayer is resident in the U.K.

(c) *Overseas earnings of persons domiciled, resident, and ordinarily resident in the U.K.*

If an individual with a foreign employment is "continuously absent" from the U.K. for 365 days or more, his earnings from the foreign employment are exempt from U.K. tax, whether remitted or not. If the period of 365 days spans two tax years, an apportionment of earnings between each year will be made.

If the period of continuous absence is less than 365 days, 75% of foreign earnings will be assessable to U.K. tax whether remitted to the U.K. or not. An individual will be regarded as "continuously absent" from the U.K. notwithstanding that he pays visits to the U.K., provided that the visits do not exceed 63 consecutive days during the period of foreign employment, and do not exceed in total one sixth of the total number of days in the period of foreign employment. An individual is treated as being in the U.K. on the day of arrival, but as absent from the U.K. on the day of departure.

These rules also apply where a non-domiciled individual is employed by a U.K. employer.

Foreign Pensions

Where an individual domiciled and resident in the U.K. receives a foreign pension, he will be liable to tax on 90% of that pension whether remitted to the U.K. or not. If the individual is not domiciled in the U.K., or is not ordinarily resident in the U.K., he will only be taxed on the amount of the foreign pension remitted here.

Earnings from Foreign Business Activities

An individual who is domiciled and resident in the U.K., will be taxed on 75% of his earnings from foreign business activities, whether remitted to the U.K. or not. If he sustains a loss in his business activities, he will be entitled to set 75% of the loss against future profits from his foreign trade. An individual resident in the U.K. but not domiciled there will continue to be assessed to tax on income from foreign business activities only on the amount of income remitted to the U.K.

It should be noted that these rules may be affected by a Double Taxation Treaty.

Company Taxation

The rate of Corporation Tax for the year ended 31st March 1974 is fixed at 52%. This is 2% greater than the rate which was originally expected, which means that companies may have under-provided for the amount of Corporation Tax due on profits. Where a company's total taxable profits does not exceed £ 25,000, it will pay corporation tax, for the year ended 31st March 1974, at 42%, and where the profits are between £ 25,000 and £ 40,000, the rate of corporation tax will gradually increase until the full 52% rate is reached. A capital gain made by a company will suffer corporation tax at an effective rate of 30%.

Under the imputation system of company taxation, which was introduced in the U.K. with effect from 1st April 1973, part of a company's corporation tax liability on its income is available to the company's shareholders to reduce personal income tax payable by them on dividends received from the company. When a U.K. resident company pays a dividend to its shareholders, it must pay an amount to the Inland Revenue equal to $^{33}/_{67}$ths of the dividend paid to shareholders. Thus if a company makes a dividend payment of 67 to a shareholder, it must pay to the Inland Revenue an addi-

tional amount of 33 i.e. $^{33}/_{67}$ths of 67. Put another way, the company has paid out 100, of which 33 has been paid to the Inland Revenue, and 67 to the shareholder. The payment to the Inland Revenue satisfies the shareholder's basic rate income tax liability on the gross equivalent of the dividend paid. In other words, the shareholder is regarded as having received a dividend of 100, on which basic rate income tax at 33%, i.e. 33, has already been paid. The shareholders has no further liability to basic rate income tax, although he may be liable to higher rate tax on the "gross" dividend of 100. The payment of 33 by the company is also regarded as an advance payment of the company's ultimate corporation tax liability on its income (advance corporation tax). Thus the company's total corporation tax liability on its income may be reduced by amounts of advance corporation tax paid on dividends distributed during the company's accounting period.

Advance corporation tax on dividends paid is collected by the Inland Revenue on a quarterly basis, and the effect is that the Inland Revenue collects part of the total corporation tax liability of the company well before the end of the company's accounting period. The quarterly collection procedure frequently puts a strain on the cash flow position of companies, but during the year ended 31st March 1974, it is likely that the cash flow problems of companies due to advance corporation tax will be greatly increased. The reason is that during the year ended 31st March 1974, and for that year only, where a company is liable to pay advance corporation tax on a dividend, it must pay a surcharge equal to 50% of the amount of advance corporation tax due. The position of the shareholder is not affected. The shareholders is still regarded as having received a gross dividend of 100, on which basic rate income tax of 33 has been paid. However, the company is obliged to pay, not $^{33}/_{67}$ths of the total dividend payments, but an amount equal to $^{49.5}/_{67}$ths of the dividend on account of its Corporation Tax liability, the effect of which is that a large part of a company's corporation tax liability will be paid well in advance of the end of its accounting period.

Taxation of Development Gains

In the past, where a disposal of land in the U.K. has given rise to a capital gain, the gain has been subject to capital gains tax at a maximum rate of 30%. There is an exception whether the individual is trading in land, or land has been purchased with a view to realising it at a gain. Over the past few years, it has been possible for very large gains to be made on the disposal of land, if the value of the land reflects the possibility that it might be developed for industrial or residential purposes. Very often, such a gain was subject only to Capital Gains Tax at 30%. Under the new rules, that part of a capital gain on the disposal of land which reflects its "development" value will be treated as income, subject to income tax in the normal way. For an individual, the maximum rate of tax suffered on the gain will be 83%, while for a company the maximum rate will be 52%.

It is important to note that a development gain will only arise on the disposal of land giving rise to a capital gain. This means that a non-resident will not be chargeable to development gains tax on the sale of land in the U.K. unless he is carrying on a business through a branch or agency in the U.K. and the land is an asset used by the branch or agency. The tax applies to all

disposals of land reflecting development value which take place on or after 18th December 1973, although there are exceptions for arrangements for sale made before that date. In addition to an outright disposal of land, the development tax applies to disposals of shares in a closely controlled company, where land reflecting development value amounts to 75% or more of the company's assets, to the disposal of an interest in a trust which holds land with development value, and to the first letting of property which has been developed. Since the publication of the Finance Act, the Government has announced further rules covering land with development value, the effect of which will be to take such land into public ownership.

BUNDESREPUBLIK DEUTSCHLAND

Deutsch-französisches Doppelbesteuerungsabkommen
Behandlung deutscher „Arbeitsgemeinschaften" und französischer „Groupements d'intérêt économique" *

Unter Bezugnahme auf die Besprechung mit den obersten Finanzbehörden der Länder gilt bei der Anwendung des deutsch-französischen Doppelbesteuerungsabkommens das Folgende.

Der Bundesminister der Finanzen und das französische Finanzministerium haben sich auf Grund von Artikel 25 Abs. 3 des deutsch-französischen Doppelbesteuerungsabkommens vom 21. Juli 1959 / 9. Juni 1970 (BGBl 1961 Teil II Seite 398 und 1970 Teil II Seite 719) über die Anwendung des Abkommens bei deutschen „Arbeitsgemeinschaften" und französischen „Groupements d'intérêt économique" wie folgt verständigt:

I.

Zur Zeit bestehen in den beiden Staaten folgende Rechtsformen für eine unmittelbare wirtschaftliche Ko-operation von deutschen und französischen Unternehmen:

a) In der Bundesrepublik Deutschland die „Arbeitsgemeinschaft" (ARGE):
Bei dieser gelten für die Beziehungen der beteiligten Unternehmen untereinander und zu Dritten die Regeln des deutschen Bürgerlichen Gesetzbuches über die Gesellschaft.
Die in der ARGE erwirtschafteten Gewinne unterliegen wie bei anderen Personengesellschaften (Mitunternehmerschaften) anteilig bei den Gesellschaftern der Einkommen- bzw. Körperschaftsteuer.
Die ARGE ist jedoch als solche gewerbesteuerpflichtig; von der Gewerbesteuerpflicht ausgenommen sind allerdings solche ARGE, deren alleiniger Zweck sich auf die Erfüllung eines einzigen Werkvertrages oder Werklieferungsvertrags beschränkt, wenn nicht bei Abschluss des Vertrages anzunehmen ist, dass er nicht innerhalb von drei Jahren erfüllt wird.

b) In Frankreich das „Groupement d'intérêt économique" (GIE):
Bei diesem gilt für die Verhältnisse der beteiligten Unternehmen untereinander und zu Dritten die Verordnung Nr. 67-821 vom 23. September 1967. Die im GIE erwirtschafteten Gewinne unterliegen bei den Beteiligten anteilig den Steuern vom Einkommen natürlicher Personen oder der Gesellschaftsteuer.

An einer ARGE können sich auch französische, an einem GIE auch deutsche Unternehmen beteiligen.

II.

Die ARGE und das GIE sind für die Anwendung des deutsch-französischen Abkommens zur Vermeidung der Doppelbesteuerung vom 21. Juli 1959 / 9. Juni 1969 als Mitunternehmerschaften zu behandeln, auf die Artikel 4 Abs. 3 dieses Abkommens anzuwenden ist.

Hieraus ergibt sich nach Artikel 4 Abs. 1 des Abkommens folgendes:

* Bundessteuerblatt I Nr 18, 14. August 1974, S. 510.

a) Ist eine in Frankreich ansässige Person an einer ARGE beteiligt, so sind die auf sie entfallenden, in den deutschen Betriebstätten der ARGE erwirtschafteten Gewinne in der Bundesrepublik Deutschland steuerpflichtig. Diese Gewinne werden von den französischen Steuern freigestellt.
Besitzt die ARGE eine in Frankreich gelegene Betriebstätte, so unterliegen die hier zuzurechnenden Gewinne der französischen Besteuerung. Der auf in der Bundesrepublik Deutschland ansässige Beteiligte entfällende Teil dieser Gewinne ist von den deutschen Steuern freigestellt.

b) Ist eine in der Bundesrepublik Deutschland ansässige Person an einem GIE beteiligt, so sind auf sie entfallende, in französischen Betriebstätten des GIE erwirtschaftete Gewinne in Frankreich steuerpflichtig. Diese Gewinne werden von den deutschen Steuern freigestellt.
Besitzt das GIE in der Bundesrepublik Deutschland eine Betriebstätte, so unterliegen die dieser zuzurechnenden Gewinne der deutschen Besteuerung. Der auf in Frankreich ansässige Beteiligte entfallende Teil dieser Gewinne ist von den französischen Steuern freigestellt.

III.

Die Aufteilung des Gewinns einer ARGE oder eines GIE auf deren deutsche und französische Betriebstätten, richtet sich nach den Grundsätzen des Artikels 4 des Abkommens.

Soweit die Gewinne von Betriebstätten von der deutschen bzw. französischen Steuer freizustellen sind, ist Artikel 20 des Abkommens zu beachten (Progressionsvorbehalt).

Unter dem Begriff der Betriebstätte sind nur Geschäftseinrichtungen oder ständige Vertreter zu verstehen, die Betriebstätten im Sinne des Artikels 2 Abs. 1 Nr. 7 des Abkommens sind.

Die zuständigen deutschen und französischen Behörden werden sich zur Beseitigung von Schwierigkeiten und Zweifeln, die bei Anwendung dieser Grundsätze auftreten, verständigen, um eine Doppelbesteuerung zu vermeiden (Art. 25 Abs. 3 des Abkommens).

Im Auftrag
Menck

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM

White Paper on Capital Transfer Tax * (Cmnd. 5705)

INTRODUCTION

1. The Chancellor of the Exchequer announced in his Budget speech on 26 March that he would introduce in the second Finance Bill this year a tax on all gratuitous transfers of capital both by way of lifetime gift and on death and that the new tax would take effect as from 26 March.

2. This White Paper ** provides a broad outline of the new tax (Capital Transfer Tax) so that the Green Paper on the Wealth Tax may be considered in the light of what is proposed for the Capital Transfer Tax. It is also intended to enable, so far as possible, those who may have already incurred liability to the Capital Transfer Tax to determine what their maximum liability may be in straightforward cases. It does not set out to explain the precise boundaries of liability under the legislation to be introduced in the autumn, nor does it deal with rules which will be necessary to cover such special cases as, for example, partial gifts by way of transfer for inadequate consideration or the provisions which will be necessary to prevent avoidance. The indications of the general nature of the new tax given with this paper thus have no binding force, and the public should bear this in mind in determining any course of action. However, as is explained in paragraphs 6 and 10, the Estate Duty in its present form will apply in respect of deaths occurring up to the autumn Budget day.

PART I: INFORMATION ALREADY GIVEN

3. The Chief Secretary to the Treasury has already given certain indications about the proposed changes in the law in two announcements.

4. In the course of the Budget debate he explained that the new tax on capital transfers would apply, subject to certain exemptions for small amounts, to all transmissions of wealth, whether made by way of gift during a person's lifetime or by way of property passing on his death (with a reservation about the treatment of transfers between husband and wife). He reserved for the future the question of the rates and basic exemptions limits but said that for immediate purposes it might be taken, for gifts made in the period from Budget day to a date to be fixed in the second Finance Bill, that such exemptions as are now provided for Estate Duty would apply. Any gift made in that period which would not be chargeable to that duty if the donor died on the day after the gift was made would be exempted from the new charge.

5. He went on to say that the charge would be at progressive rates charged on the cumulative total of gifts made during a person's lifetime with the further final cumulation of property passing on his death. The tax would be the primary liability of the donor or, after his death, his personal representatives and would, of course, apply

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** Presented to Parliament by the Chancellor of the Exchequer by command of Her Majesty, August, 1974.

to gifts made in settlement as well as other gifts. Moreover there would, in general, be a charge on all capital taken out of a settlement and on any change of beneficial interest in possession in a settlement, not only, as now, where linked to a death. The Government would consider the possibility of imposing a periodic charge to tax on the capital of discretionary and accumulation trusts. The liability to pay the tax in respect of settlements would fall on the trustees in that capacity.

6. In a Written Answer on 30 April he said that the existing Estate Duty law would continue to apply as regards deaths in the period between 25 March and a date which would be fixed in the second Finance Bill and which would be not earlier than its publication. As a general principle there would be no question of charging both lifetime tax and death duty in respect of the same event. Accordingly, the second Finance Bill would exempt from the lifetime charge any gifts which were taken into account in determining Estate Duty liabilities on a death occurring within the period. Exemption from the new charges would also extend to the interest in possession under a settlement of a person whose death in that period brought the settled property within the scope of the Estate Duty. It would further extend to payments by trustees of pension and superannuation funds consequent on deaths before the date to be fixed in the second Finance Bill.

PART II: GENERAL DESCRIPTION OF THE TAX

Rates

7. Under Capital Transfer Tax the rates of tax on the successive slices of the cumulative total of chargeable transfers will not exceed the following (the present Estate Duty rates are also given for comparison):

Capital Transfer Tax		*Estate Duty*	
Slice of chargeable transfers £'000s	*Rate %*	*Slice of estate £'000s*	*Rate %*
0–15	0	0–15	0
15–20	10	15–20	25
20–25	15	20–30	30
25–30	20		
30–40	25	30–40	35
40–50	30	40–50	40
50–60	35	50–60	45
60–80	40	60–80	50
80–100	45	80–100	55
100–120	50	100–150	60
120–150	55	150–200	65
150–500	60	200–500	70
500–1,000	65		
1,000–2,000	70	Over 500	75
Over 2,000	75		

Withdrawal of certain Estate Duty reliefs

8. The Government do not consider it appropriate to continue in its present form the special 45% reduction for Estate Duty now accorded to agricultural land and certain business assets nor to continue the specially favourable treatment accorded to woodlands. They have, however, taken account of this in fixing the rates of Capital Transfer Tax, particularly in the lower ranges, at levels substantially below the existing Estate Duty rates. Furthermore, they are considering the possibility of continuing some relief for full-time working farmers and businessmen in respect of agricultural land and business assets.

Husband and wife

9. A husband and wife will be chargeable to tax as separate individuals. Gifts between them while they are both alive and

property left by one to the other on death will be exempted from the new tax (except where the recipient is not domiciled in the United Kingdom at the time of the gift or death). As a corollary the existing exemption on the death of a surviving spouse of property left in trust to him or her will be withdrawn for property to which the new rules apply on the occasion of the first death.

Demise of Estate Duty

10. The Capital Transfer Tax chargeable on the cumulative total of transfers made in a person's lifetime and on his death will, from a date to be fixed in the autumn Finance Bill, replace the existing Estate Duty. For the period between 25 March and that date ('the interim period') the new Capital Transfer Tax will apply only to lifetime gifts; as announced by the Chief Secretary to the Treasury in his Written Answer, the existing Estate Duty will run instead of the new tax in respect of deaths occurring in the interim period, but the existing Estate Duty will be amended in its application to deaths after the autumn Budget day by the introduction of the new scale of rates and of the new regime for husband and wife and by the withdrawal of the reliefs mentioned in paragraph 8.

Basis of liability

11. The new tax will follow the Estate Duty in applying to all transfers by persons domiciled within the United Kingdom and to all assets situated here (irrespective of the domicile of the donor or testator). The Government is considering whether the charge on persons domiciled here should be extended to those who, though legally their domicile is elsewhere, have lived in the United Kingdom for a substantial number of years.

Exemptions for small gifts etc

12. When the new tax comes fully into effect gifts within the following descriptions will be left out of account in arriving at the cumulative total on which a person is chargeable:—

The first £ 1,000 of gifts made by one donor in a year;

Gifts made out of income which form part of the donor's normal expenditure and leave sufficient income to maintain the donor's usual standard of living. (The measure of income for this purpose will be the donor's taxable income after tax); and

Wedding gifts up to £ 1,000 by each donor for any one marriage—up to £ 2,500 if the donor is an ancestor of either party to the marriage.

But for the interim period a taxpayer will get the benefit of the exemptions mentioned by the Chief Secretary in the Budget debate, where these are more favourable. These exemptions will extend to gifts in settlement as well as absolute gifts, but not to gifts out of settled property.

Lifetime gifts

13. Subject to these exemptions the tax will be chargeable on the scales set out above on all gifts, including gifts in settlement (other than gifts to charities) made after 25 March 1974, including arrangements which have the same effect as direct gifts. The amount to be brought into charge will, in general, be measured by the consequential loss to the donor and will include the tax chargeable. Thus the amount to be brought into charge will be calculated on the footing that the appropriate tax on a gift will be paid to the Revenue and only the balance handed to the donee.

Example 1

Gifts out of income are left out of account. The gifts are expressed as gross amounts: *i.e.* as the amount before deduction of tax.

July 1974

Gifts of £ 400 to each of three people to whom no other gifts have ever been made. These gifts are exempt as they are within the existing Estate Duty exemption which applies for the interim period.

July 1976

Gift of £ 10,000.

£ 1,000 is covered by the annual exemption. £ 9,000 is chargeable but no tax is payable on the lowest slice of the scale of rates.

July 1977

Gifts of £ 600 to each of three people.

£ 1,000 is covered by the annual exemption. £ 800 is chargeable. The cumulative total of chargeable gifts is increased to £ 9,800.

August 1978

Gift of £ 20,000 to the donor's wife.

This gift is exempt.

September 1978

Gift of £ 8,200.

The computation proceeds in stages:—

£ 1,000—covered by the annual exemption.

£ 5,200—added to the total of previous chargeable gifts (£ 9,800) to bring the cumulative total up to £ 15,000 above which tax is payable.

£ 2,000—chargeable to tax in the 10% band, *i.e.* the tax is £ 200 leaving £ 8,000* to be handed over to the donee. The cumulative total of chargeable transfers becomes £ 17,000.

£ 8,200

November 1979

Gift of £ 5,000.

Again the computation proceeds in stages:—

£ 1,000—covered by the annual exemption. £ 17,000 is the cumulative total of prior chargeable gifts. The 10% band extends to £ 20,000.

£ 3,000—is chargeable at 10%, *i.e.* the tax is *£ 300.*

£ 1,000—is chargeable in the 15% band, *i.e.* the tax is *£ 150.*

£ 5,000

Thus tax payable is £ 300 + £ 150 = *£ 450,* leaving £ 4,550* (£ 5,000—£ 450) to be handed to the donee.

The cumulative total of chargeable transfers becomes £ 21,000.

June 1981

Death—estate valued at £ 75,000. £ 45,000 is bequeathed to the deceased's widow and £ 5,000 to charity, the residue going to other relatives.

The computation runs:

Value of estate	£ 75,000
Deduct bequests to widow and charity	£ 50,000
Taxable on death	£ 25,000

This amount is chargeable on the scale of rates applicable to amounts above the cu-

* If the gift of £ 8,200 in 1978 or of £ 5,000 in 1979 had been expressed as net amounts to be handed to the donee, leaving the donor to bear the tax, the amounts chargeable on each occasion would have to increase to such sums as after deducting tax thereon would leave the net amounts.

mulative total of chargeable lifetime transfers (£ 21,000), *i.e.:*

£ 4,000 × 15%	£ 600
£ 5,000 × 20%	£ 1,000
£ 10,000 × 25%	£ 2,500
£ 6,000 × 30%	£ 1,800
£ 25,000	£ 5,900

Summary of chargeable transfers

		Tax
1976	£ 9,000	
1977	£ 800	
1978	£ 7,200	£ 200
1979	£ 4,000	£ 450
1981	£ 25,000	£ 5,900
	£ 46,000	£ 6,550

Example 2

If the estate on death were a larger one (but the lifetime gifts were the same as in Example 1) the computation might run as follows:—

Estate valued at £ 200,000. £ 80,000 is bequeathed to the deceased's widow and £ 10,000 to charity.

Computation:

Value of estate	£ 200,000
Deduct bequests to widow and charity	£ 80,000
	£ 10,000
	£ 90,000
Taxable on death	£ 110,000

This amount, as in Example 1, is chargeable on the scale of rates applicable to amounts above the cumulative total of chargeable lifetime transfers (£ 21,000), *i.e.:*

£ 4,000 × 15%	£ 600
£ 5,000 × 20%	£ 1,000
£ 10,000 × 25%	£ 2,500
£ 10,000 × 30%	£ 3,000
£ 10,000 × 35%	£ 3,500
£ 20,000 × 40%	£ 8,000
£ 20,000 × 45%	£ 9,000
£ 20,000 × 50%	£ 10,000
£ 11,000 × 55%	£ 6,050
£ 110,000	£ 43,650

Summary of chargeable transfers

		Tax
1976	£ 9,000	
1977	£ 800	
1978	£ 7,200	£ 200
1979	£ 4,000	£ 450
1981	£ 110,000	£ 43,650
	£ 131,000	£ 44,300

Payment of tax

14. The tax on a lifetime gift will, in general, be payable by the donor, with a right of recovery from a donor's spouse (as a corollary of the exemption described in paragraph 9); rights of recovery from donees will also be provided. The requirements for payment are under consideration. One possibility is that the tax will become due and payable six months after the date of a gift with interest running from the due and payable date. This will give donors time to make a return to the Inland Revenue of their gifts and to establish liabilities before the due date. Adequate time will be allowed for the payment of tax on gifts made in the interim period. There may also have to be annual returns of all substantial gifts made in the previous year.

Gifts to charities

15. Outright gifts to charities are exempt from Estate Duty up to a limit of £ 50,000 on the death of an individual. The Government are considering the treatment of gifts and bequests to charities under Capital Transfer Tax but in any event the scale of exemption under the new tax will not be less generous than it is at present for Estate Duty purposes.

The National Heritage and Works of Art

16. The arrangements for exemption without limit provided for gifts to National Heritage bodies listed in Schedule 25, Finance Act 1972, will be continued, and consideration is being given to the possibility of relief based broadly on existing Estate Duty provisions in respect of works of art etc, including appropriate conditions relating to their availability for public display.

Settled property

17. The broad principle to be applied to settled property is that in general the charge to tax should be neither greater nor smaller than the charge on property held absolutely. Accordingly the Government intend to bring settled property within the scope of the Capital Transfer Tax to the extent that the settled funds were provided directly or indirectly by a person who at the time the funds were provided was domiciled in the United Kingdom (or had been brought within the scope of the tax by reason of a long-standing connection with this country). Where this test is satisfied there will, subject to the exemptions mentioned below, be a potential liability on any distribution of capital out of a trust and on the termination or transfer of the whole or part of an interest in possession under such a trust (*i.e.* the right to the income, if any, from or the enjoyment of the settled property). The charge will normally relate to the full value of the property in which the terminated or transferred interest in possession subsisted. Any distribution of trust capital which necessarily follows from the termination of an interest will not be a separate occasion of charge.

18. Where Estate Duty is chargeable on a death in the interim period (see paragraphs 6 and 10), or earlier, and the property ceases to be settled on the death, then no further liability to the transfer tax will arise on the formal transfer of the property to the person(s) who then become absolutely entitled to it.

19. Trustees will be liable for any tax chargeable, but there will also be rights of recovery from beneficiaries and, if the trustees are resident outside the United Kingdom, from settlors.

20. The tax payable by trustees in respect of a termination of, or change in, an interest in possession will be calculated as if the amount chargeable were a gift by the former beneficiary entering into his cumulative total of chargeable transfers. The amount chargeable will also be taken into account in determining *subsequent* liabilities of the former beneficiary (including liabilities on his death).

21. The tax on a distribution of capital out of settled property where there is no interest in possession (*e.g.* a discretionary trust) will be calculated by rules which will be different for property settled on or after 26 March 1974 and for property settled before that date. For 'pre-26 March trusts' the liability will be that which would be due from an individual who had made chargeable transfers equal to the capital distributed by the trust after 25

March (whether on one or more occasions). For property settled after 25 March, distributions will be taxed at a rate which takes into account, inter alia, the settlor's liability to the Capital Transfer Tax at the time of his gift in settlement. There will also be a periodic charge on the capital of discretionary and accumulation trusts, but this will not be imposed from a date before the autumn Budget day.

22. There will be certain situations in which the distribution of trust capital will be treated as no more than the completion of the settlor's original gift and so exempted from charge. This treatment will usually be appropriate should a life tenant who has the right to the income from settled property become absolutely entitled to that property; in particular, exemption from tax will be provided where trust funds settled for the benefit of an infant or infants are transferred to these former infants on the expiration of the trust. This exemption will extend to funds which provide for discretion to accumulate or provide for maintenance not extending beyond the age of 25.

23. It would be outside the scope of this White Paper to give a detailed account of the provisions which the Government propose to introduce to govern the liabilities of trustees in respect of settled property. The Government recognise, however, that there are a number of cases where, under the terms of trust deeds executed before the Chancellor of the Exchequer's announcement on 26 March, distributions of capital to beneficiaries have already become due, and that in such cases trustees are put in difficulty by the need to await publication of the legislation before the likely tax liability can be ascertained. To ease this situation they will introduce a provision which for property settled before 26 March 1974 will set a maximum liability in respect of chargeable events during the period between 25 March and a future date which will be fixed later—whatever the character of the trust. The tax will be no more than that which would be due if the trust were an individual who had made chargeable gifts equal to the capital of the trust becoming chargeable, whether on a distribution or on the termination of, or change in, an interest in possession. But this overriding limitation on liability in the interim period will not extend to cases where the chargeable event arises because of a death (to which the existing Estate Duty will apply). Nor will it in any way affect the subsequent liabilities of former beneficiaries (see paragraph 20).

Example

Under a settlement set up before 26 March 1974 A is life tenant of the trust investments which have a capital value of £ 25,000. On his death his son B will become entitled to the capital. In July 1974, *i.e.* before the date to be prescribed, A gives up his life interest so that B can enjoy the capital at once.

Under the special arrangement set out in this paragraph, Capital Transfer Tax will not exceed a charge calculated as follows:

On first £ 15,000		Nil
On next £ 5,000	at 10%	£ 500
On next £ 5,000	at 15%	£ 750
Total Tax		£ 1,250

If however A were to die during the interim period, the trust fund would be liable to Estate Duty under the existing law and the Capital Transfer Tax would not be charged.

IRELAND

White Paper Proposals for Corporation Tax

[CHAPTER 2]

GENERAL SCHEME OF THE PROPOSED CORPORATION TAX

SCOPE OF THE TAX

30. Corporation tax would be chargeable on company profits, including all forms of income which are treated as income for the purposes of the income tax. A company means a body corporate but would not include a local authority. The proposed treatment of building societies, co-operative societies and certain other bodies is referred to in Chapter 11.

31. With the introduction of a single corporation tax an inconsistency relating to the charge to income tax and to corporation profits tax would be removed. At present, a company which is managed and controlled in Ireland is chargeable to income tax on all its profits and income wherever arising. On the other hand, the test for chargeability to corporation profits tax is the place of incorporation and not the place of management and control. Thus a company is chargeable to that tax on all its profits and income, wherever arising, if it is incorporated in Ireland.

32. Under the new system the income tax test of residence, namely, the place of management and control, would determine chargeability and not the place of incorporation.

Companies resident in Ireland

33. Companies resident in Ireland would be liable to corporation tax on the whole of the profits of an accounting period. There would be a single charge to tax on all the profits from every source. The same rate of charge would apply to distributed and undistributed profits.

34. Income tax would no longer be deducted by Irish companies from dividends paid to shareholders. Dividends would be paid out of profits which would have borne corporation tax and so dividends received by an Irish resident company from another Irish resident company would not be chargeable to corporation tax in the hands of the former. Where the recipient of a dividend from a company resident in Ireland is an Irish resident individual he would receive a dividend of a stated amount which would carry a tax credit. The credit together with the amount of the dividend would be included in his income for tax purposes but he would have no further income tax to pay in respect of the dividend. If, however, he were liable for sur-tax, that tax would be payable at the appropriate rate on the amount of the dividend plus the tax credit. If he were not liable to any tax he could claim payment of the tax credit from the Revenue.

35. Assuming a rate of corporation tax of 50% and a standard income tax rate of 35%, the tax credit to which a shareholder would be entitled would be $^{7}/_{13}$ths of the dividend. This corresponds to 35% of the total of the dividend and the tax credit. Thus if the profits before tax out of which a dividend is paid are £100, the corporation tax would be £50. If the dividend paid were £50, the tax credit would be

£ 27 approximately, that is, $^{7}/_{13}$ths of the £ 50 dividend. Thus the shareholder's income would be £ 77 and against his income tax liability on that income he would be entitled to a tax credit of £ 27.

Non-resident companies

36. Companies not managed and controlled in Ireland would be charged to the new corporation tax only if they carried on a trade in Ireland through a branch or agency. If they were so chargeable to corporation tax, the charge would apply to all trading income arising directly or indirectly through or from the branch or agency. It would also apply to any income from property or assets used by or held by or for the branch or agency, no matter where it arose. The rate of charge to corporation tax in the case of non-resident companies would be the same as for resident companies. Income from sources in Ireland not attributable to a branch or agency in Ireland such as interest on a deposit made by the head office of the company in a bank in Ireland or rents from Irish properties held specifically by the head office would not be liable to corporation tax but would remain liable to income tax. The treatment of non-resident companies is dealt with in greater detail in Chapter 9.

COMMENCEMENT OF TAX

37. Where income tax is chargeable on any source of income the present charge to income tax would apply up to and including the year 1974-75. The income tax charge on companies would then cease except in the special circumstances of non-resident companies mentioned in the preceding paragraph. Corporation profits tax would cease in respect of income from a source when income from that source would come within the charge to corporation tax. The new corporation tax would thus be chargeable on the profits from any source held on April 5, 1975, which arose after the end of the period which formed the basis of assessment to income tax for the year 1974-75. Accordingly, where a company has a continuing trade, it would come within the charge to corporation tax in respect of trading income arising after the end of the company's accounting period which formed the basis period for the income tax assessment for 1974-75, that is the accounting period which ended in the year to April 5, 1974.

Example 1

A. Ltd. has been carrying on a trade for many years. Its income consists solely of trading profits. It makes up its accounts to September 30 each year. The income tax assessment for the year 1974-75 would be based on the trading profits for the year to September 30, 1973. The profits would come within the charge to corporation tax from October 1, 1973.

38. Where a company commences to trade during the year to April 5, 1975, the basis period for income tax for 1974-75 would be the period from commencement of trading to April 5, 1975. In these circumstances the profits would come within the charge to corporation tax from April 6, 1975. If the company commenced trading during the year 1973-74 and on due claim the assessment to income tax for the year 1974-75 is made on the profits for the year to April 5, 1975, the charge to corporation tax would likewise commence on April 6, 1975.

39. Where a company has non-trading in-

come such as investment income assessable under Case III of Schedule D, which is chargeable to income tax for the year 1974-75 on the basis of the income of the preceding year to April 5, 1974, income from that source would come within the charge to corporation tax from April 6, 1974. Where, however, the non-trading income is interest taxed by deduction so that the basis of the income tax charge for the year 1974-75 is the income of the year to April 5, 1975, the charge to corporation tax would commence on April 6, 1975.

Example 2

B. Ltd. has *(a)* trading income, *(b)* investment income chargeable under Case III of Schedule D and *(c)* taxed interest. It makes up its accounts to September 30. The last charge to income tax will be for 1974-75 and the basis periods for the charge will be as follows:—

(a) Trading income—year to September 30, 1973,

(b) Case III income—year to April 5, 1974,

(c) Taxed interest—year to April 5, 1975.

The income would come within the charge to corporation tax—

(a) Trading income—on October 1, 1973,

(b) Case III income—on April 6, 1974,

(c) Taxed interest—on April 6, 1975.

The first chargeable accounting period for corporation tax would be the twelve months to September 30, 1974, and the income included would be as follows:—

(a) Trading income—year to September 30, 1974,

(b) Case III income—period from April 6, 1974 to September 30, 1974,

(c) Taxed interest—Nil.

The income to be included in the charge to corporation tax for the accounting period of twelve months to September 30, 1975, would be—

(a) Trading income—year to September 30, 1975,

(b) Case III income—year to September 30, 1975,

(c) Taxed interest—period from April 6, 1975 to September 30, 1975.

COMPUTATION OF INCOME

40. Income for corporation tax purposes would in general be computed according to income tax principles. The amount of income from each source would be computed under the relevant income tax schedules and cases and in accordance with the rules laid down in those schedules and cases. Accordingly, the existing income tax rules would be adopted in relation to the following matters:—

(a) receipts which are to be regarded as income and taxable or capital and not taxable; and

(b) amounts which are or are not to be allowed as deductions in computing income. For example, capital expenditure and expenditure not wholly and exclusively incurred for the purposes of the trade would not be allowed.

41. The legislation would provide for deductions, in computing the corporation tax assessment, in respect of—

(a) management expenses of investment companies;

(b) interest, including interest on permanent loans, which is not allowable as a deduction in computing income from the several sources; and

(c) royalties or annual payments which are not deductible in computing income from the several sources.

As regards *(b)*, the allowance of interest would be subject to any restrictions intro-

duced following the recent announcement by the Minister for Finance.

42. The existing scheme of capital allowances and balancing charges would be carried into the corporation tax system so that capital allowances would be allowed as deductions in computing trading profits and balancing charges would be treated as trading receipts. Trading losses would, as now, be carried forward and set off against the company's subsequent profits of the same trade. If the company so required, the loss would be set off against income of any kind of the accounting period in which the loss was sustained or of the immediately preceding accounting period. These matters are dealt with in more detail in Chapter 3.

43. The income for the accounting period from the various sources would be aggregated and, where appropriate, charges and management expenses deducted to give the amount on which the single corporation tax assessment would be made.

Example 3

A company's trading profits for a chargeable accounting year computed on income tax principles amount to	£ 50,000
A holding of £ 10,000 9¼% Exchequer Stock is acquired on which a half-year's interest amounting to £ 462 is received during the year	*f* 462
	£ 50,462
The company pays debenture interest and royalties	£ 5,000
The corporation tax assessment for the accounting year would be made in one sum of	£ 45,462

44. No deduction would be allowed for dividends paid by the company or for distributions in the nature of dividends. Interest at a rate in excess of a reasonable commercial rate payable by a company to a person with a substantial interest in the company would not be allowed.

45. Corporation tax would not be charged on dividends, or distributions in the nature of dividends, received from a resident company. Annual interest, royalties or other annual payments received by a company under deduction of income tax would be included in the total income on which the company would be assessed to corporation tax. However, credit would be given against the amount of the corporation tax charged for the income tax borne by deduction to the extent to which it is not utilised to satisfy the income tax for which the company is itself accountable in respect of its own annual payments.

BASIS OF ASSESSMENT

46. As indicated in paragraph 27, assessments in respect of the profits and income of companies would be made not for years of assessment but for accounting periods. The term "accounting period" would have the same meaning for the purposes of corporation tax as for the existing corporation profits tax. In the normal case of a company in existence at the time the new tax would commence and which makes up its accounts annually, the accounting period would be a period of twelve months ending on the date on which the company's financial year ends. As under the present system an accounting period, for the purposes of the tax, could not be longer than a year. Accordingly, if a company made up its accounts for a period longer than a year that

period would be divided into two (or more) accounting periods. The first twelve months would constitute a separate accounting period for the purposes of the corporation tax and the balance, if less than twelve months, would constitute another accounting period. If accounts were made up for a period of less than twelve months, that period would be an accounting period.

47. The first accounting period for corporation tax purposes would begin when the company would come within the charge to corporation tax in respect of a source of income. A new accounting period would normally commence as from the end of the previous accounting period. It would run for a maximum of twelve months but it would end earlier if the company's accounting date fell within the twelve months.

48. An accounting period would also end on the happening of any of the following events:—

(a) the company having been chargeable only on non-trading income begins to carry on any trade;

(b) the company ceases to carry on any trade;

(c) the company ceases to be within the charge to corporation tax in respect of a trade;

(d) the company begins or ceases to be resident in the State;

(e) the company ceases altogether to be within the charge to corporation tax.

49. A special case is that of a company such as an investment company whose income is wholly derived from dividends from Irish companies. The company's income would not come within the charge to corporation tax and the normal rules for determining the commencement of an accounting period would not therefore apply. As the company would be entitled to claim relief for management expenses it would be necessary to provide it with an accounting period for the purposes of the claim. A rule would be provided that such a company would be treated as coming within the charge to corporation tax on April 6, 1975, or when it commenced to carry on business, whichever was the later.

50. Special provision would also be needed for the case of a company which carried on more than one trade and had different accounting dates for each trade. The accounting period for the purposes of the charge to corporation tax would end on the accounting date for such one of the trades as would be determined by the Revenue Commissioners.

51. An anti-avoidance measure would be needed to meet the case where a company does not disclose its accounting date and so could prevent the Inspector from making an assessment to corporation tax on the company. The Inspector would be empowered to make an assessment for whatever period seemed appropriate and that period would be treated as the accounting period. The burden would be on the company to establish the true accounting period and when this had been done the assessment would have effect as an assessment for the true accounting period.

52. In the event of the winding up of a company an accounting period would end and a new accounting period begin with the commencement of the winding up. Thereafter there would be accounting periods of twelve months until the company had been wound up.

RATE OF CORPORATION TAX

53. As set out in Example 2 in paragraph 39, the charge to corporation tax in such a case would commence on October 1, 1973 (i.e., during the financial year 1973-74) in respect of trading income and on April 6, 1974 (i.e., during the financial year 1974-75) in respect of investment income which had not suffered income tax by deduction. It would therefore be necessary to fix the rate of corporation tax for the two financial years 1973-74 and 1974-75 in the Finance Act, 1975. Tax would be chargeable for financial years ending March 31* and the initial rate would remain in force unless altered by a subsequent Finance Act. In the event of an alteration in the rate of charge and where a company's accounting period straddled March 31, so that part of it fell into one financial year and the remaining part into another, the profits of the accounting period would be apportioned on a time basis between the two financial years. The rate of charge for each financial year would then be applied to the proportion of the profits falling within that year and the two amounts would be added together to make up the full corporation tax charge for the whole accounting period.

Example 4

A company's profits as computed for corporation tax for its accounting year to September 30, 1977, amounted to	£ 50,000
It is assumed that the rate of corporation tax for the financial year 1976-77 is 50% and for 1977-78 is 45%.	
The corporation tax payable would be computed as follows:—	
Proportion of profits for period October 1, 1976, to March 31, 1977 ($^6/_{12}$ths)—	
£ 25,000 @ 50%	£ 12,500
Proportion of profits for period April 1, 1977, to September 30, 1977 ($^6/_{12}$ths)—	
£ 25,000 @ 45%	£ 11,250
Total tax payable	£ 23,750

The corporation tax assessment for the accounting period to September 30, 1977, would be made in one sum of £ 50,000 and the tax payable thereon would be shown in one sum of £ 23,750.

PAYMENT OF TAX

54. Under the present dual system of company tax a company receives two separate notices of assessment, one for income tax and the other for corporation profits tax. The charge for income tax is for a year of assessment and the basis of the charge is normally the income of the accounting year ended in the year preceding the year of assessment. The income tax charged is payable on January 1 in the year of assessment. Thus if a company makes up its accounts to September 30, the assessment to income tax for the year 1972-73 on its trading profits would be based on the profits of the accounting year to September 30, 1971, and the income tax charged would be payable on January 1, 1973.

* If the financial year were changed to the calendar year, a corresponding change would be made for corporation tax.

55. The charge to corporation profits tax on the other hand is made on the profits of the actual accounting period. The tax is payable two months after the issue of the notice of assessment. In practice the tax is payable approximately nine months after the end of the accounting period. Thus the corporation profits tax of a company for the year to September 30, 1971, would be payable on July 1, 1972, while as mentioned in the preceding paragraph, the income tax charged in respect of the same profits would be payable on January 1, 1973.

56. In general, companies under the present system pay their tax in two approximately equal moieties, namely, corporation profits tax at a maximum rate of 23% and income tax at an effective rate of almost 27% (since the corporation profits tax at 23% is deductible in computing profits chargeable to income tax at 35%). In general, the first moiety is payable nine months after the end of the accounting period and the second on the following January 1. This general pattern of payment in two instalments would be maintained in the new system of corporation tax. In the case of existing companies the present dates of payment would be preserved for cash flow reasons. For new companies the dates of payment would be nine months and fifteen months after the end of the accounting period. As indicated in paragraph 17, these arrangements would be subject to re-consideration with a view to bringing in at a later date, on a phased basis, a uniform system of payment for all companies.

57. Where there is a change of accounting date the tax would continue to be payable in two instalments and the intervals between the end of the new accounting period and the dates of payment of the two instalments of tax would be the same as heretofore. Generally, companies do not change the date to which accounts are made up except for special business reasons but power would be taken in the legislation dealing with payment of the corporation tax to prevent any company gaining an undue advantage by making such a change.

58. Where an additional assessment to corporation tax would have to be made, the tax, as at present in the case of corporation profits tax, would become payable in full within two months from the date of making the assessment. However, should it be more favourable to the company to do so, it would be entitled to pay the tax in two instalments on the dates on which the tax would have become due if the assessment had been made at the normal time.

NOTIFICATION OF COMMENCEMENT OF TRADING

59. A provision to counter a particular abuse connected with the assessment and collection of taxes imposed on new companies would be included in the proposed legislation. The provision is designed to deal with difficulties which have arisen in tax offices in obtaining such information about some newly established companies as would enable assessments to be made and payment of tax secured in due time. Companies to an increasing extent have been taking advantage of this situation to obtain the use of moneys which should have been paid over to the Revenue. The abuse has at times been extended to PAYE and VAT by the omission to register for these taxes. There have been cases where companies, having for a time made profits in business, used the moneys which should have been paid in taxes in ventures which have been unsuccessful so that the compa-

nies have been forced into liquidation and recovery of the taxes has proved impossible.

Particulars to be supplied

60. New companies would be required to supply to the Revenue Commissioners within thirty days from the date of commencement of business the following particulars:—

(i) the name of the company;
(ii) the full address of its registered office in the State;
(iii) the name of the secretary;
(iv) the date of commencement of business;
(v) the nature of the business;
(vi) the date to which the first accounts will be made up;
(vii) the name and address of the auditors.

With this information tax offices would be able to ensure that newly established companies are assessed to tax and the necessary action taken to secure payment in due time.

Penalties for non-compliance

61. Penalties would be prescribed for non-compliance with the proposed requirement. If there is failure to supply the particulars sought within the prescribed period of thirty days the company and the secretary would become liable for substantial penalties. The penalty on the company would be £ 100, and in the event of continuing failure to supply the information £ 100 per day as long as non-compliance continued. The penalty on the secretary would be £ 100.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning a book should include the reference number listed.

ASIA

ASIAN TAXATION 1973,

ed. by Hideyasu Iwasaki. Published by Japan Tax Association, Tokyo, 1974. 255 pp., Y 3,000. The tenth edition of an annual publication which updates the taxation material as of the end of 1973 of thirteen Asian countries. In this edition the tax system of Laos has been reintroduced after being omitted since 1965. Other countries covered are: Republic of China (Taiwan), India, Indonesia, Japan, Khmère (Cambodia), Republic of Korea (South), Malaysia, Pakistan, Philippines, Singapore, Sri Lanka (Ceylon), and Thailand. (B 8469)

DENMARK

DIRECT TAXATION IN DENMARK; A BRIEF SUMMARY.

Published by Inland Revenue Department, Copenhagen, 1974. 56 pp.

Booklet written as an introduction to the principal provisions governing various kinds of direct taxation of individuals and companies for the year 1973. (B 8439/40)

GERMAN FEDERAL REPUBLIC

STEUER-KONGRESS REPORT 1974; DEUTSCHER STEUERKONGRESS 1974 DER BUNDESKAMMER DER STEUERBEVOLLMÄCHTIGTEN.

Published by C. H. Beck, Munich, 1974. 28 + 493 pp., DM. 52.—.

Annual tax congress report 1974, containing the text of the proceedings, lectures, and debates of topics such as the tax system in the United States, relevant changes in the turnover tax law, actual death duty, and problems arising in the taxation of petroleum in the European Communities. (B 8470)

ITALY

CORSO DI DIRITTO TRIBUTARIO;

2a ed., by G. A. Micheli. Published by Unione Tipografico-editrice Torinese, Turin, 1974. 15 + 551 pp., L. 9,500. Collana di teoria e pratica tributaria.

Second edition of a handbook on the Italian tax system. The recent tax reform made a completely revised edition necessary. (B 8466)

JAPAN

AN OUTLINE OF JAPANESE TAXES 1974.

Published by Tax Bureau, Ministry of Finance, Tokyo, 1974. 14 + 289 pp.

Annual publication explaining the tax laws of Japan. This edition incorporated the 1974 tax changes. (B 8448)

REPUBLIC OF KOREA (SOUTH)

GUIDE TO INVESTMENT IN KOREA 1974.

Published by Economic Planning Board Centre, Seoul, 1974. 121 pp.

Informative guide designed for prospective foreign investors who contemplate investment in Korea. Official texts of relevant laws are appended. (B 8397).

NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1973-74;

34th ed., by C. A. Staples. Published by Sweet & Maxwell, Wellington, 1974. 749 pp.

Revised ready reference guide to New Zealand Land and Income Tax Act 1954 as amended by the Land and Income Tax Amendment Act 1973, including comment in connection with the newly introduced property speculation tax. (B 8445)

LAND AND INCOME TAX; REPRINTED AS ON 1 APRIL 1974.

Published by New Zealand Government Printer, Wellington, 1974. 823 pp., $ 5.15.

Bound volume containing consolidated text of the Land and Income Tax Act 1954 as amended. The material is updated as of the Land and Income Tax Amendment Act 1973. (B 8446)

PAKISTAN

A GUIDE TO INCOME TAX LAW;

7th ed., by R. Naqvi. Published by Taxation House, Lahore, 1973. 16 + 504 pp., Rs. 30/—. Revised edition containing exhaustive notes with illustrations on provisions of the income tax law and the rules as amended up to 30 June 1973 and other useful information. Designed as a textbook on income tax law in Pakistan. Appended are questions and answers and solved problems. (B 8432)

COMPANY LAW AND PRACTICE IN PAKISTAN,

by Khawaja Amjad Saeed. Published by Accountancy and Taxation Services Institute, Lahore, 1972. 24 + 424 pp., Rs. 20/—. Company Law Series, I.
Monograph on company law in Pakistan to be read with Volume II in the Company Law Series, entitled Companies, Rules and Procedures. (B 8434)

COMPANIES, RULES AND PROCEDURES,

by Khawaja Amjad Saeed, with a foreword by S. A. Salam. Published by Accountancy and Taxation Services Institute, Lahore, 1972. 12 + 388 pp., Rs. 20/—. Company Law Series, II.
Monograph dealing with the rules affecting commerce and business administration in Pakistan. Salient features of several laws affecting companies are presented in an understandable manner followed by the text of the laws. The material encompasses the Companies Rules, 1941, through the Presidential Order No. 1 of 1972, by which the Government acquired control over 31 companies. (B 8433)

CORPORATE FINANCIAL REPORTS,

by Khawaja Amjad Saeed. Published by Accountancy and Taxation Services Institute, Lahore, 1974. 16 + 336 pp., Rs. 20/—.
Monograph explaining the legal requirements governing the preparation of corporate financial reports under various statutes in Pakistan. (B 8435)

SWEDEN

SKATTER OCH KAPITALFLYKT,

by G. Lindencrona. Published by Jurist- och Samhällsvetareförbundets Förlags AB, Stockholm, 1972. 470 pp. Rätts- och Samhällsvetenskapliga Bibliotheket, 4.
Thesis entitled "Taxes and Capital Flight" aims to explore the influence of taxation on the international mobility of financial capital and its owners to and from Sweden. The study deals only with capital in the form of portfolio shares, owned by natural persons directly or collectively through some financial intermediary. The process of economic integration in Western Europe and effects of double taxation treaties are dealt with. A summary in English is appended. (B 8410)

SWITZERLAND

DIE ST.GALLISCHE BETEILIGUNGSGEWINNSTEUER,

by E. David. Published by Paul Haupt, Bern, 1974. 20 + 235 pp., DM. 38.—. Schriftenreihe "Finanzwirtschaft und Finanzrecht" Band 14.
Study of the tax on profits derived from the alienation of a substantial interest participation in a corporation, the capital of which is divided into shares by an individual, as affected by the law in force in the canton of St. Gallen. (B 8444)

UNITED KINGDOM

TAXATION,

2nd edition, by C. T. Sandford. Published by Longman Group, London, 1970. 32 pp., £ 0.30. Key Discussion Books, 4.
Introductory textbook on taxation for first year university students and their teachers. (B 8364)

UNITED STATES OF AMERICA

ESSAYS ON TAXATION,

contributed in memory of Colin F. Stam. Published by Tax Foundation, New York, 1974. 8 + 231 pp., $ 3.00.
The present volume contains essays on taxation in honor of the late C. F. Stam. Although the essays were contributed over a period of years, all were brought up to date by the authors as of late 1973. The following contributions are of international taxation interest: "Taxation of International Income", by D. Throop Smith; "Income Allocation Among Related Taxpayers", by L. Mills and M. Burge; "U.S. Income Tax Trea-

ties and Developing Countries", by N. N. Gordon. (B 8411)

FEDERAL TAX GUIDE 1975, Volume I.

Published by Commerce Clearing House, Inc., Chicago, 1974. ± 2700 pp. loose-leaf.
Volume I 1975 replaces the 1974 Volume I. This book is part of a series of four loose-leaf volumes containing explanations of income, estate and gift taxes with illustrative examples, tax planning schemes, tax tables, check lists, indexes, and quick reference lists. (B 8467)

INTERNAL REVENUE CUMULATIVE BULLETIN 1973- Part 2, July-December.

Published by U.S. Government Printing Office, Washington, D.C., 1974. 544 pp., $ 8.30.
This volume contains a consolidation of all items of a permanent nature published in the weekly Bulletins 1973-27 through 1973-53 for the period of July 1 through December 31, 1973. (B 8438)

PENSION REFORM ACT OF 1974— LAW AND EXPLANATION.

Published by Commerce Clearing House, Inc., Chicago, 1974. 399 pp.. $ 4.50.
Explanation of the Pension Reform Act of 1974. Text of the Act and Committee Reports on the Act are reproduced. (B 8450)

REPORTS OF THE UNITED STATES TAX COURT,

April 1, 1973, to September 30, 1973, reported by E. C. Thomas. Published by U.S. Government Printing Office, Washington, D.C., 1973. 8 + 1175 pp., $ 10.95. Volume 60.
Compilation of reported U.S. Tax Court cases. (B 8345)

LOOSE-LEAF SERVICES

Received between November 1 and November 30, 1974

AUSTRALIA

AUSTRALIAN CURRENT TAXATION:
— Cases
releases 49-55 and 61-63
Butterworth & Co., Sydney

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Teil III, release 4
Wirtschaftsverlag Dr. Anton Orac, Vienna

STEUERRECHTLICHE TABELLENSAMMLUNG
releases 26-29
Wirtschaftsverlag Dr. Anton Orac, Vienna

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release 58
Editions Service, Brussels

FISCALE DOCUMENTATIE VANDEWINCKELE, BOEK DER BAREMA'S
Tome I, release 4
Tome III, release 25
Tome IV, release 30
Tome VIII, release 132
C. E. D. Samsom, Brussels

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BRITISH COLUMBIA TAXATION SERVICE
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Richard de Boo, Ltd., Toronto

ONTARIO TAXATION SERVICE
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Richard de Boo, Ltd., Toronto

QUEBEC TAXATION SERVICE
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Richard de Boo, Ltd., Toronto

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release 151
— Europees mededingings- en kartelrecht,
release 41
Kluwer, Deventer

GERMAN FEDERAL REPUBLIC

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT
release 178
Forkel Verlag, Stuttgart-Degerloch

UMSATZSTEUERGESETZ (MEHRWERTSTEUER).
Hartmann und Metzenmacher
releases 29 and 30
Erich Schmidt Verlag, Bielefeld

INTERNATIONAL

INTERNATIONAL TAX AGREEMENTS
Volume IX, release 25
U.N. Palais de Nations, Geneva

THE NETHERLANDS

DE BELASTINGGIDS
release 12
S. Gouda Quint, D. Brouwer & Zn., Arnhem

BELASTINGBERICHTEN:
— Omzetbelasting BTW
releases 129 and 130
— Vennootschapsbelasting
releases 52 and 53
— Inkomstenbelasting
releases 300 and 302-303
— Personele belasting, enz.
release 134
— Internationale zaken
release 115
— Algemene wet, enz.
releases 165 and 166
— Vermogensbelasting
release 24
Samsom, Alphen aan den Rijn

BTW EN BEDRIJF
release 64
Samsom, Alphen aan den Rijn

BELASTING WETGEVINGSERIE:
— Vennootschapsbelasting 1969
release 10
J. Noorduyn & Zn., Arnhem

FED'S FISCAAL REGISTER
release 63
FED, Deventer

FED'S LOSBLADIG FISCAAL WEEKBLAD
releases 1481-1485
FED, Deventer

DE GEMEENTELIJKE BELASTINGEN,
A. M. Dijk, J. C. Schroot, A. Zadel, enz.
releases 166 and 167
Vuga Boekerij, Den Haag

HANDBOEK VOOR IN- EN UITVOER:
— A: Belastingheffing bij invoer
releases 174 and 175
Kluwer-Samsom, Deventer-Alphen aan den Rijn

KLUWER'S FISCAAL ZAKBOEK
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Kluwer, Deventer

KLUWER'S TARIEVENBOEK
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Kluwer, Deventer

LEIDRAAD BIJ DE BELASTINGSTUDIE
Mr. C. van Soest en A. Meering
release 31
S. Gouda Quint, D. Brouwer & Zn., Arnhem

UNITED KINGDOM

BRITISH TAX GUIDE
release 148
Commerce Clearing House, Inc., Chicago

VALUE ADDED TAX
release 27
Butterworth & Co., Ltd., London

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BIBLIOGRAPHY

82 *Books:* Algeria, Belgium, Channel Islands/Isle of Man, EEC, France, German Federal Republic, India, International, Ireland, Italy, Latin America, the Netherlands, New Zealand, Peru, Spain, Switzerland, Taiwan, United Kingdom, United States of America.

85 *Loose-leaf Services:* Australia, Belgium, Benelux, EEC, France, German Federal Republic, Luxembourg, the Netherlands, New Zealand, Norway, South Africa, Switzerland, United Kingdom, United States of America.

88 *Cumulative Index*
Supplement to this issue (Supplement A 1975): Abkommen zwischen der Republik Österreich und der Volksrepublik Polen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen.

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The Netherlands Chamber of Commerce for Belgium and Luxembourg and the Federation for Dutch Export (Fenedex) announce a tax conference for Dutch enterprises doing business in Belgium. Speakers include:

Professor Dr. A. Tiberghien,
Chairman of the European Confederation of Tax Counsel and Professor at the Tax Academy in Brussels.

Mr. M. Porré,
Senior Officer at the Ministry of Finance in Brussels.

Date and time:
Thursday, February 27, 1975, 13.30-17.30.

Place:
ROTTERDAM.

Conference fee:
Dfl. 55 for members of the above organizations and Dfl. 70 for non-members.

Language:
Dutch.

Registration and information:
Netherlands Chamber of Commerce for Belgium and Luxembourg, Koningsstraat 93, 1000 Brussels, phone: 2/219.11.74 or at their Dutch office, Nassauplein 24, The Hague, phone 070/65.18.58.
Federation for Dutch Export (Fenedex), Bezuidenhoutseweg 76A, The Hague, phone: 070/83.81.08.

A HIGH ITALIAN AWARD

granted to the

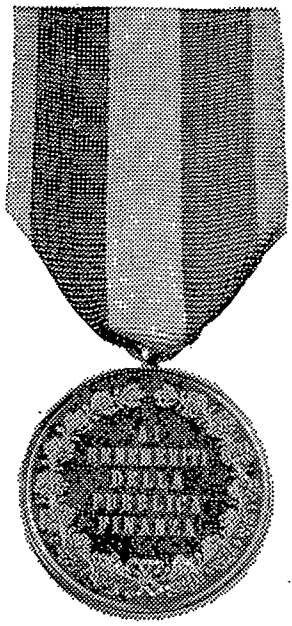
International Bureau of Fiscal Documentation

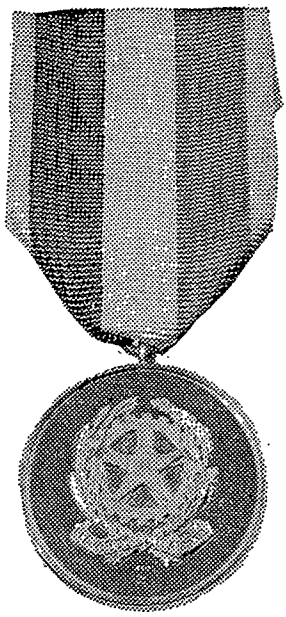
On 20th November, 1974, during a special ceremony at the Academy of the "Guardia di Finanza" in Rome, the director of the International Bureau of Fiscal Documentation received from the hands of the Italian Under Secretary of Finance the gold medal and diploma of merit in public finance, first class which had been granted by the Italian President Giovanni Leone.

It was the first time that this diploma was awarded to a foreign institute, and the Bureau received it for its research activities over a period of more than 35 years in the area of international and comparative taxation.

Below and on the following pages are shown photographs of both sides of the gold medal, a facsimile of the diploma, an English translation thereof, as well as the text of the address of thanks by the director, together with an English translation.

In this issue of the Bulletin — started in 1946 and now the Bureau's oldest publication — we would thank the President of Italy for the honour bestowed upon the Bureau and its dedicated staff, and the advisory committee for having proposed the Bureau for this distinction. It is most gratifying that the activities of an institute created on the initiative of the late Professor Adriani have been recognised by the granting of such a high award.





IL PRESIDENTE DELLA REPUBBLICA

In considerazione di particolari benemerenze;
Udito il parere della Commissione di cui all'art. 4 della legge 3 maggio 1955, n. 405;
Sulla proposta del Ministro per le Finanze;
con Decreto in data 18 dicembre 1975;

HA CONFERITO

il diploma di 1ª classe per i Benemeriti della Pubblica Finanza al-

l'International Bureau of Fiscal Documentation

con facoltà di fregiarsi della medaglia d'oro stabilita per tale classe.

Il Ministro proponente è incaricato dell'esecuzione del presente Decreto.

FIRMATO Leone CONTROFIRMATO Colombo

MINISTERO DELLE FINANZE
DIREZIONE GENERALE DEGLI AFFARI GENERALI
E DEL PERSONALE

Si dichiara che in esecuzione delle Presidenziali disposizioni
l'International Bureau of Fiscal Documentation
è stato iscritto nel Registro dei benemeriti della Pubblica Finanza (Classe 1ª)
al N° 2 Serie II-A

IL DIRETTORE GENERALE
G. Simone

THE PRESIDENT OF THE REPUBLIC

In consideration of its special merit;
Having heard the opinion of the Committee set up under Article 4 of Law No. 405 of May 3, 1955;
On the proposal of the Minister of Finance;
By Decree of December 18, 1973;

has conferred

the Diploma of Merit in Public Finance, First Class, on the

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

with the right to the gold medal belonging to that class.

The Minister who made the proposal and who is charged with implementing this Decree

Signed: *Leone* Countersigned: *Colombo*

MINISTRY OF FINANCE
DIRECTORATE GENERAL FOR GENERAL AFFAIRS AND PERSONNEL

It is hereby declared that, in implementation of the Presidential measures, the International Bureau of Fiscal Documentation has been entered in the Register of Merit in Public Finance (First Class) under No. 2 Series II-A.

The Director General
signed: *G. Sindone*

Address of thanks delivered by Mr. J. van Hoorn Jr.

Signor Sottosegretario, Signore e Signori,

Il conferimento del diploma di benemerenza della Pubblica Finanza costituisce per il mio Istituto e per me personalmente un onore particolare sotto diversi punti di vista.
Prima di tutto perchè la Commissione consultiva ha ritenuto un istituto straniero degno di questa onorificenza.
In secondo luogo, conoscendo l'importanza degli studi italiani nel campo delle scienze finanziarie — penso ai nomi ben noti di tanti Italiani che hanno contribuito allo sviluppo della nostra disciplina: il Griziotti, il Vanoni per esempio e tanti altri — sono grato, fiero e felice di ricevere proprio nel loro paese un diploma che é segno di riconoscimento per lavori scientifici compiuti nel campo dei loro studi.
Infine — ed è un fatto non meno importante — vorrei rilevare, che il secondo presidente della Repubblica, Luigi Einaudi, fu uno dei quattro eminenti economisti che elaborarono per la Società delle Nazioni i principi del diritto tributario internazionale. Ricordo ancora la magnifica accoglienza fatta nel 1948, nel palazzo del Quirinale, dal Presidente Einaudi al terzo con resso dell' International Fiscal Association (I.F.A.).
Molte cose sono cambiate nel mondo, soprattutto rispetto all'importanza delle imposte nella vita economica e sociale dei paesi. Adesso il diritto tributario internazionale ha acquistato una grandissima importanza nelle relazioni tra paesi, specialmente nelle relazioni con i paesi in via di sviluppo.
Il poter contribuire allo studio dei problemi particolari che si presentano in materia di diritto tributario internazionale moderno dà ai miei collaboratori e a me un'immensa sodisfazione. Il riconoscimento manifestatoci con questo diploma costituisce uno stimolo per continuare e migliorare il nostro lavoro. Prometto, Signore e Signori, di fare del mio meglio per mostrare che il mio Istituto è degno dell'onore conferitogli.

Mr. Undersecretary, Ladies and Gentlemen,

The granting of the Public Finance Merit Award, first class with gold medal, constitutes for my institute as well as for me personally a great honour for various reasons.
First of all, because the Jury deemed, for the first time, a non-Italian institute worthy of this distinction.
Secondly, knowing the significance of Italian research studies in the area of public finance — I think of the well-known names of so many Italian scholars who have contributed to the development of our discipline, such as Griziotti, Vanoni, as well as many others — I am grateful, proud and happy to receive in their own country an award which is a recognition of the scientific activities carried out in the very field of their studies.
Last, but not least, I would like to remind you that the second President of the Italian Republic, Luigi Einaudi, was one of the four eminent economists who, on behalf of the League of Nations, worked out the principles of international tax law. I still remember the magnificent welcome which President Einaudi accorded the International Fiscal Association in the Quirinale Palace at its third congress in 1948.
Many things have changed in this world, above all the crucial role of taxation in the economic and social life of countries.
At present, international tax law is acquiring an enormous importance in relations among different countries and especially in relations with developing countries.
To have the opportunity to contribute to the study of particular problems which occur in the field of modern international tax law gives my collaborators and myself an immense satisfaction. The recognition given us in the form of this award is for us a stimulus and a challenge to continue and improve our work. I promise, Ladies and Gentlemen, that we shall do our utmost to prove that our institute is worth the honour bestowed upon it.

* * * ARTICLES * * *

ENRIQUE PIEDRABUENA:

THE MODEL CONVENTION TO AVOID DOUBLE INCOME TAXATION IN THE ANDEAN PACT*

GENERAL ASPECTS

The old discussion still continues concerning the exclusive application of income tax in the country of the source of income or the simultaneous application between the former country and the one of domicile, residence or nationality of the income recipient. This discussion may be compared — in some way — to what has occurred concerning the application of principles known as "jus solis" and "jus sanguinis" attributing nationality to the children of foreigners born in the territory of a country in demographic development.

It is well-known that the latter countries applied the "jus solis" from the beginning declaring the children of foreigners born within their territory as nationals. On the other hand, the countries of origin continued applying the "jus sanguinis", in other words, granting the nationality of their parents up to a certain generation or indefinitely.

Nevertheless, individuals have never suffered any damage caused by this conflict of legal principles, either because they were able to maintain a double nationality without prejudice or because they were able to opt for the nationality that suited them best. The situation differs in tax matters in which the taxpayers suffer damage when faced with a double tax jurisdiction that can lead totally or partially to double taxation. Even supposing that in a given case double taxation does not occur, there will be double jurisdiction each time that two tax sovereignties simultaneously claim the application of their legal provisions relating to the same income. These provisions vary anywhere from the qualification of income subject to a present or deferred tax burden, not subject or exempt according to each legislation, up to recognized expenses and the types of burden applicable, creditable taxes and set-off of losses.

The difficulties created are evident as much to the interested States as to the investing companies. In the case of multinational companies, the capital invested outside the country of original residence may be greater than the domestic investment; in such a case, the capital formed by local profits withheld or redistributed outside the territory of the country of residence is greater than the capital exported from the latter country.

The developing countries proclaim their best right, if not their exclusive one, for the taxation of the income produced within their territory, either for conceptual or economic reasons. The conceptual reasons are in the case of enterprises that, being productive organized units, they develop their activity within a determined country and take advantage of all the existent factors of this country. (It may be added that they are doing so also knowing all the limitations and vicissitudes of the source country.)

If we analyze the productive classic factors, that is capital, labor and management, it is concluded that the imported capital may be less than the amount of the profits withheld, that the labor provided is 100 percent

* This paper was submitted to the Andean Pact Seminar, Mexico City, September 1974.

local and that management is also local except for technical assistance which is often paid separately.

In discussion more reference is made to foreign capital than to foreign companies. Meanwhile the companies controlling the enterprises do not have a nationality, nor can they have one, because a nationality or citizenship is generally attributed to individuals and not to legal entities. However one may be attributed to the latter in relation to the place of incorporation (Anglo-Saxon doctrine) or in relation to the place of management (French doctrine). The surrounding local factors which form the atmosphere in which the enterprise carries on, are the existence of a legal establishment, the supply of raw materials, local consumers, local credit, means of communication, etc., in other words infrastructure, market, authority and psychological factors which give or should give support and control to the investment.

It is not possible to extend the doctrine of the individual's personal statute which is applied in a foreign territory in certain cases (for example, in the matter of family rights and obligations) to enterprises.

The place of original domicile or residence of the enterprise has long ago been overcome by the domiciles or residences established in each of the countries in which the enterprise's activity is carried on, even by companies incorporated in each country in accordance with the local legislation.

The economic conveniences also support or may support the thesis of the developing countries in the application of the source principle.

In effect, a country may consider it good policy to offer tax incentives to promote investment in certain regions or in given activities. This policy will be frustrated if it is interfered with by the legislation of other tax jurisdictions, as when a country lowers its income tax in certain cases and the reduction goes to the Treasury of the original resident country of the enterprise due to a credit limited to the taxes already paid.

I understand that the reduction of taxes in a developing country is a very controversial matter (due to various reasons which are not of concern in this comment) but it is even more controversial if this reduction does not benefit the foreign investor but the foreign Treasury.

I do not agree with generalized exemptions, but I may agree with exemptions when they are given for a transitory period and conditioned to the fulfillment of certain economic and social goals. These goals may be also obtained through fiscal subsidies with the following alternative advantages:

(i) The amount of financial support is known exactly, by year and by enterprise.

(ii) The budget fulfills the principle of universality because it comprises all the revenue and all the expenditures.

(iii) The community is fully informed concerning the support given and what is expected as a compensation.

(iv) Double taxation problems are avoided or diminished.

In effect, the subsidies increase the taxable income of the recipient and consequently the income tax payable on this increased income, which is creditable against the tax determined by the resident country.

Whilst companies find ways of alleviating their situation when two or more countries come into conflict on taxation of their income, individuals may be faced with unsolvable problems when:

(a) the country of origin taxes the income of its citizens regardless of where it is

obtained (the individuals will change their domicile and residence but normally will not change their citizenship);

(b) the country of origin has a tax structure based almost exclusively on income tax whereas commodity taxes are insignificant; and

(c) the source country, on the contrary, has a tax structure based substantially on commodity taxes, which happens not only in developing countries but in developed ones as well, such as Italy and France. In this case the citizen abroad pays a high income tax in the country of origin and also a high tax on the commodities in the source country and he cannot credit the latter in his country.

In these situations the non-exclusive taxation in the source country prevents the possibility of reducing the excessive taxation imposed.

GENERAL PRINCIPLES WITHIN THE ANDEAN PACT

The principle of exclusive taxation at the source or territorial principle, is adopted emphatically in Article 4 of the Agreement for the avoidance of double taxation against the member countries in Article 4 of the Model Convention, between these and other states outside the Andean Subregion[1], which states:

"Article 4 — *Tributary Jurisdiction*
Regardless of nationality or domicile of the taxpayer, income of any nature obtained shall be taxed only in the Contracting State in which the source of such income production exists, except for those cases mentioned in this Convention."

The source of production is defined as "the activity, right or asset which generates or may generate an income" (Article 2, e).

I can only regret here the absence of certain rules, such as those that permit the country of residence to consider the foreign income for the purpose of applying the tax progressivity scale to the domestic income and those that define the source of income in certain cases.

Going over the different articles of the Model Convention, one can observe two exceptions to this principle; Article 8 relies on the principle of residence and only alternatively on the source principle when taxing the transportation enterprises' profits, and Article 13 relies on the source principle when taxing the income of governmental employees of a Contracting State and the crew members of international transport vehicles.

BUSINESS PROFITS

This matter is covered by Article 7 which rules must be read jointly with the definitions of Article 2 for a better understanding.

(a) The source principle is exclusively applied. I agree provided that the tax is indeed applied to this income.

In this respect paragraph 1 of Article 7 states: "Profits arising from the enterprise's activities shall be taxed only by the Contracting State where these have been effected".

(b) The theory of the permanent establishment is avoided for the taxation of these profits and in its place the beginning of paragraph 2 of Article 7 says:

1. From now on I will refer only to the Model Convention between the member countries and other states outside the Subregion, in spite of both being almost identical. See for the texts of these treaties the August 1974 issue of the Bulletin, Supplement D.

"It is considered, inter alia, that an enterprise carrying on business in the territory of a Contracting State when it has in this territory ..." (a list of circumstances follows which is not related to these cases only).

I am in agreement with this avoidance because if the problem is to tax the income of local sources, it is irrelevant to know through which organization, if any, the income is obtained.

(c) The sources of income are not defined and only a general rule is provided in Article 2e, on "source of production" already quoted.

This definition is not sufficient as it is considered that the enterprises' activities generate or may generate income in more than one territory. If the term "generate" is obviously taken in the sense of "cause" or "produce", an enterprise of a Contracting State may generate, cause, or produce profits in the territory of this State, in the territory of another Contracting State, or in the territory of a third State. Sometimes the income may also be of a mixed source and one must bear in mind certain general rules to distinguish and qualify these cases.

It is true that certain specific rules are given concerning real estate income (Article 5) depending on where they are located; regarding royalties (Art. 9) depending on the place of utilization of the corresponding rights; regarding capital gains (Art. 12) depending on where the assets are located at the time of the sale; concerning services (Art. 13 and 14) depending on where they are rendered, etc.

This would help to define certain marginal revenues of the enterprise's activity but it does not clarify the bulk of the commercial profits generated by its activities.

We can take the case of commercial sales, the seller being a manufacturing enterprise of one of the Contracting States and the buyer an enterprise of the other Contracting State, whose purpose it is to resell the products. Where is the source of income? Both enterprises are generating income. The selling enterprise probably generates an income up to the level of the manufacturing price and the buyer from there on, but the borderline may be moved towards one side or the other, depending on where the title passes.

These rules on source of income may be defined or not in the Agreements or in the internal legislation of each country or the latter may solve the arising problems by applying the international doctrine on the matter, supplemented by its jurisprudence.

I prefer that these rules be established specifically in the Agreements, especially when we have the definitions already mentioned on "source of production" (Art. 2, e) or on the enterprises' profits (Article 7, paragraph 1).

(d) Rules for the determination of income or expenses of branches are missing in the Model Convention, such as exist in paragraphs 3, 4 and 6 of Article 7 of the O.E.C.D. Model, for example whether it would allow an indirect method for the determination of income, how would the general administrative head office expenses be treated, etc.

(e) The final paragraph of Article 7 must be taken into consideration which provides:

"Where an enterprise carries on activities in the two Contracting States, each of them may tax the income generated in its territory. If the activities were carried out through an agent or through the use of facilities as already mentioned in the former paragraph, the profits which would be ob-

tained if they were completely independent of the head office, would be attributed to said agent or facilities."
This rule would be applicable to the branches as well as affiliates or subsidiaries of the other Contracting State enterprises.

(f) In the case of a purchasing establishment (Art. 7, f), it is not deemed that its mere existence will produce profits in the source country where it is located, but this possibility is admitted.
As the mere purchase of products or merchandise for its export can not generate local income, in my opinion, it would have been preferable not to make this rule and perhaps start from the opposite principle, for example taking into consideration paragraph 5 of Article 7 of the O.E.C.D. Model which states:
"No profits shall be attributed to a permanent establishment by reason of a mere purchase by that permanent establishment of goods or merchandise for the enterprise."

(g) Any agent or representative of an enterprise of a Contracting State may be considered as belonging to this enterprise and qualify as doing business of such enterprise in the territory of the other Contracting State (Art. 7, i).
Therefore, there is no distinction between the real representative of an enterprise and the independent agent who performs activities as such, whether for a few or many companies, i.e., a broker or a commission agent.
I suppose that such a distinction will be made in practice.

INCOME FROM IMMOVABLE PROPERTY

Article 5 states:
"Income from immovable property shall be taxable only by the Contracting State in which such property is situated."
Normally, this provision will not cause any problems.
Some of my comments are as follows:

(a) I would have preferred the terms "shall be taxed" instead of "shall be taxable" which is very general. In effect the provision may affect income with either a lot or very little tax and it can even exempt it. The term taxable is more general and could result in the "non subjection" or exclusion of the tax matter.

(b) Sometimes the immovable income is mixed, e.g. it may come from the rental of movables and immovables, as occurs with the rental of "universalities" such as commercial establishments, theatres, hotels, etc. The qualification will depend on the legislation of each country whether separating the corresponding income or taking it as a whole, as income of a movable nature.

(c) In many countries mining claims are considered as immovable. Their rental should be included in Article 5, but their exploitation under Article 7 (see Article 7, d).

(d) The rental of intangibles is taxed under Article 9 but the rental of tangibles such as trucks, automobiles, planes, furniture, etc. not effected by enterprises, is not especially provided for.

In some treaties there are some general provisions for income not specifically mentioned. This would have been useful in the Model Convention (see Article 21 of the O.E.C.D. Model).

TRANSPORT COMPANIES PROFITS

Article 8 provides:
"Profits obtained by a transport enterprise (air, land, sea, waterways) shall be taxed

only in the Contracting State of which such enterprise is a resident."[2]

My comments only cover this provision and not the alternative one as follows:

(a) The domicile principle is applied instead of the general rule of the source of production.

(b) Which would be the tax country in the case of an enterprise having domicile in both Contracting States or in neither of them, is not mentioned. In the former case the main domicile (where the central management or direction of the enterprise's business is located) should be considered. The second one is indifferent as far as this Model is concerned because it would be the case of enterprise branches of third countries operating in the territory of both Contracting States.

(c) Transport of merchandise or products as well as passenger transport is included.

CAPITAL GAINS

Article 12 provides:

"Capital gains shall be taxable only by the Contracting State in which territory the property is situated at the time of the sale, except those derived from the alienation of:

(a) Ships, aircraft, buses, and other transport vehicles which shall be taxable only by the Contracting State in which they are registered at the time of the transfer, and

(b) Negotiable instruments, shares of stock and other securities, shall be taxable only by the Contracting State in which territory they have been issued."

The following comments are made on this provision:

(i) The principle of the exclusive taxation at the source is followed; that is, in the territory in which the assets are located at the moment of sale. This normally does not create any difficulties.

(ii) One must interpret the term "sale" to mean any contract which is valid for passing of title, e.g. exchanges, contributions to a company, etc.

(iii) Only the place where the assets are located at the moment of the contract and not necessarily at the moment the title is passed is taken into consideration.

(iv) The exceptions mentioned at the end of the paragraph and developed under (a) and (b) of Article 12 in the case of ships, aircraft, buses and other transport vehicles on the one hand and securities, stocks, etc. on the other, are not really exceptions. They are applications of the source principle to specific cases. In other words, it is considered that assets which are basically movables such as ships, etc. are located in the place of registration at the moment of sale. In the same way, in the case of shares of stock, etc., it is considered that they are located in the place of issuance at the moment of sale. Perhaps it would have been preferable, in the latter case, to consider the place of domicile, and if there exist several, the one of the main domicile.

(v) Rules for the qualification of capital gains arising from the sale of intangibles such as trademarks, patents, unpatented technical knowledge mentioned in Article 9, are missing. Where is the source of income? It could have been established that their source would be in the country in which the intangible had been originally registered

2. Article 8 Alternative:
"Profits obtained by a transport enterprise (air, land, sea, waterways) in any of the Contracting States shall be taxed only by such Contracting State."

and if not, in the country of the owner's main domicile.

All this without prejudice as to the necessary distinction between the transfer of the use of the intangible and the sale of the property itself, which is not included in these comments.

COMPENSATION FOR PERSONAL SERVICES

Article 13 provides:

"Remunerations, fees, salaries, wages, benefits and similar compensation obtained by employees, professionals, technicians and others as payment for services rendered, shall be taxed only in the territory where such services are performed, except for salaries, wages, remuneration or simular compensation obtained by:

(a) Individuals rendering services to a Contracting State in public functions duly recognized, shall be taxed only by this State, even though the services are rendered within the territory of the other Contracting State.

(b) The crew of ships, aircraft, buses and other transport vehicles engaged in international traffic shall be taxed only by the Contracting State in which the employer is resident."

My comments on this Article are as follows:

(i) As a general rule, the exclusive taxation at the source is applied in relation to dependent personal services (employees), as well as independent ones (professional and independent technicians, etc.).

(ii) The provision does not define what is understood under personal services but it must be assumed that the services rendered by individuals on their own are taken into consideration. On the other hand, Article 14 gives separate and similar rules for the services performed by enterprises; therefore, difficulties cannot occur in applying these terms.

(iii) Could Articles 13 and 9 or Articles 14 and 9 conflict? I think not because if the technical services are already incorporated into an intangible, for example know-how, its use will be governed by Article 9; on the contrary, if the technical services are not incorporated into an intangible and are going to be rendered in the future, they will be governed by either Article 13 or Article 14. Nevertheless there are a number of mixed cases in which the use of intangible assets is agreed upon, and then services are provided for the better utilization of these assets. As long as both provisions rely on the exclusive taxation at the source, there will be no problems of distinction.

(iv) Exceptions of the exclusive taxation at the source are completely justified. In the first place, we talk about individuals rendering official services to a Contracting State in the territory of the other State. The expression "even though they are rendered in the territory of the other Contracting State," is not very adequate if it is considered that services rendered in its own territory and for its own State, are not questioned; if this expression were omitted, nothing would happen.

(v) Secondly, the crew of ships, aircraft, buses and other vehicles engaged in international traffic that are taxed in the territory where the employer is domiciled, are excluded from the general rule. Normally this territory will be the same as the one where the transport enterprise is domiciled (Article 8). It would have been much clearer to speak directly of the domicile of the transport enterprise.

SUMMARY

In summing up, I would like to point out the following:

(1) I agree with the general application of exclusive taxation at the source, with two restrictions:

(a) Sometimes its application is not practical or convenient, as occurs with the income of transport enterprises and the earnings of public officials of a Contracting State who render services in the territory of the other Contracting State.

(b) The country of original residence should receive the option to take the foreign income into account for purposes of calculating the rate of tax applicable to domestic source income.

(2) Some of my criticism is directed to the fact that the definite provisions of the Model Convention are still susceptible to debate as to whether they will be accepted in the final approval of the conventions or in their interpretation. Including those terms which have not been mentioned in the conventions (for example, rules on sources of income) can be the subject of a supplementary protocol. In any case, this criticism does not represent, in my opinion, insurmountable obstacles for the application of the previously mentioned conventions.

ERRATUM

SUPPLEMENT F 1974

(Vol. XXVIII, No. 12, December/décembre 1974)

Abkommen zwischen der Bundesrepublik Deutschland und der Volksrepublik Polen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen.

Statement appearing in italics in box above the text of the Treaty should read as follows:

A double taxation treaty was signed between the German Federal Republic and Poland on December 18, 1972. The treaty which is subject to ratification will generally be effective as of January 1, 1972.

FRANÇOIS GENDRE*:

THE TREATMENT OF INVESTMENT INCOME UNDER THE ANDEAN PACT MODEL CONVENTION**

1. INTRODUCTION

The long lasting and apparently never ending controversy on the respective merits of both the source and the residence principles in the taxation of income from movable capital crossing the frontiers has reached a culminating point in the Andean Pact Model Convention, adopted by the Commission of the Cartagena Agreement in November 1971 (decision no. 40).[1] Its Article 4 provides that "irrespective of the nationality or country of residence of a person, income of whatever nature received by such person shall be taxable only by the Member country wherein the source of such income is situated, except for the cases specified in this convention". There are two exceptions to this highly proclaimed principle of the best taxing right of the source country; they relate to the taxation of the profits of transportation enterprises (Article 8) and of the income of governmental employees (Article 13).

2. EXCLUSIVITY OR PRIORITY

To our knowledge, the supporters of the opposite principle, that is to say the supporters of the residence principle, never went to set out model rules which would express such an irreducible standpoint. Experience shows that any tax treaty is the offspring of mutual concessions of the contracting parties. Therefore, if a country claims at the very outset an exclusive right to tax by reference to one conceptual view or another, or rather to no conceptual view but to its aim at highest possible tax revenues, it is hard to conceive that a tax treaty will ever be concluded on such a base. And if nevertheless it is concluded, it is hard to imagine that it will ever work in practice, as soon as the mutual economic relations are getting closer and from the moment when the investment flow is increasing.

The *exclusive* taxing right of the source country, as it is proclaimed in Article 4 of the Andean Model Convention should rather well be taken as a strong declaration of principle than as a practicable rule for settling international tax conflicts.

Another question is whether one of the contracting states should have a *priority* right to tax investment and other income crossing the frontiers. This is mainly a political question and a very important one in a world where most countries are in search for more and more tax resources. Its settlement will depend on each contracting country's own economic and political situation. Recent economic developments show that the dividing line might well be less between industrialised and developing countries than between capital importing and capital exporting countries.

3. RESIDENCE OR SOURCE

From a theoretical point of view, both the source and the residence principles may be

* Head of division, Swiss Federal Tax Administration, Berne.

** This paper was submitted to the Andean Pact Seminar, Mexico City, September 1974.

1. See the August 1974 issue of the Bulletin, Supplement D.

adopted as a starting point — as a religion! — on the base of which tax treaty rules may be developed. But this effort should not confine itself in a — certainly fascinating — intellectual exercise but lead to solutions which will cope with the objectives of tax treaties: furthering of international investment and imposing tax according to each taxpayer's economic situation.

One of the tax treaty objectives is to pave the way for foreign capital and thus to further the flow of international investment. This will certainly be the case if the investor can estimate the net return for his capital invested abroad. The tax cost of an investment is thus one of the factors which determines the investor's decision. Whereas an investor knows exactly which are the conditions — and particularly the tax conditions — of his investment at home, he naturally wants to have the same safety for his investment abroad and the best way to achieve this certainty in tax matters would be — in the absence of an exclusive taxing right of his residence country — for him to know which income categories will be taxable in the investment country and at which rates. In other words, this is the only way for him — if this somewhat trivial expression may be used — to know "at which sauce he is going to be eaten".

On the other hand, under modern personal income tax systems, all income from whatever source, foreign or inland, is generally subject to tax in the taxpayer's residence country. The taxpayer's worldwide income expresses his "ability to pay tax", which in turn justifies the application of adequate progressive rates. This is an important principle of tax equity which should be leading in settling cases of international taxation. It cannot be denied that the taxpayer's residence country is best equipped to appreciate each taxpayer's situation.

4. DIVIDENDS

Under the Andean Pact Model Convention, "dividends and shares of profit shall be taxable only by the Member country of which the business enterprise paying them is a resident". This is the consequential application of the principle of exclusive taxation in the source country stated in Article 4.

At first sight, the entire exclusion of any taxing right of the investor's home country would appear to be an easy way of avoiding the very intricate problems arising when sharing the taxing rights of dividends crossing the frontiers under the various systems of corporate taxation as well as the problems of intercompany dividends. Leaving aside the diverging tax revenue interest of both countries involved which, though being important, is not at stake here, it seems appropriate to point at some difficulties which may arise by strictly applying the abovementioned source rule.

First of all, it is at least questionable whether the State of which the company paying the dividend is a resident is actually the source State of these dividends. First of all, the foreign geographical origin of the capital investment would more naturally lead to recognize a preferential taxing right of this investment's income to the shareholder's residence country. Furthermore, though not denying the importance of other production factors like labour, it is a factual evidence that without any initial capital investment in the country wherefrom the dividend is distributed, there would not be any productive activity altogether; this is a good reason to contend that, economically as well, dividends originate in the investor's residence country.

Moreover the extreme extension of the concept of source could apparently lead the supporters of this concept to the extreme

pretention to tax also dividends distributed to non-residents by a non-resident corporation to the extent that these dividends derive from profits earned in the source country.

On the other hand, the investor's home country, while assumedly assessing its income tax on the taxpayer's worldwide income and at progressive rates, will hardly see any reason to treat income from foreign investment differently than income from inland sources. If tax neutrality is to be understood in terms of non discrimination between domestic and foreign investment, it is understandable that the investor's home country will not be willing to give up its right to tax investment income. It will be supported in its efforts to tax dividends from abroad by stating that the investment country already taxes the local corporate profits.

Striking is also the fact that Article 10 of the Andean Model Convention does not provide for any preferential tax treatment in respect of dividends paid by subsidiaries. In such cases of affiliation, dividends distributed by the subsidiary to the foreign parent company should be taxed less heavily, if promotion of international investment and avoidance of excessive taxation is really to be aimed at.

5. INTEREST

Concerning interest, the Andean Pact Model Convention contains the following provision (Article 10):

> "Interest derived from loans shall be taxable only by the Member country in the territory of which the loan has been used.
>
> Subject to rebuttal, it is presumed that the loan has been used in the country from which the interest payment has been made."

Here again the so called "source principle" is in the first sentence affirmed absolutely. This in contradiction with the more nuanced solution of the OECD Draft Convention, which assigns the primary right to tax interest to the country of the investor's residence, generally coupled with a limited withholding tax of no more than 10 per cent for the source country. The considerations made on pretended taxation of dividends in the source country are also valid for the taxation of interest. Whether the investment takes the form of a capital or of a debt investment, to a large extent it originates economically in the investor's home country. Therefore a primary taxing right should be recognised to the investor's home country.

Agreedly an extensive discussion could take place on the proper source of interest income, as it actually did within the Latin American countries themselves; this led them to presume that the loan is being used in the country from which the interest payment has been made (Article 10, 2nd sentence). This solution may respond to practical administrative needs, but it shows in the mean-time that the fanatically proclaimed principle of source cannot be applied thoroughly and consistently.

Leaving aside conceptual as well as tax revenue considerations, emphasis should be set on the need of capital in the capital importing country. If any international tax problem arises in this matter, this is obviously due to the lack of adequate borrowing facilities in the country in which the investment is made and to the practical necessity of borrowing abroad. In this respect it cannot be stressed enough that, under the existing economic system, capital cannot be drawn into a particular country, but it must

be attracted. This will be possible not only through an overall favourable political and economical attitude towards foreign investments, but also through an adequate and reasonable tax treatment. All other things being equal, nothing will hamper a particular taxpayer from investing at the lowest possible tax cost. Whereas a taxpayer is aware of the tax cost of his investments in his home country, any additional local tax in the source country will lead him — though admittedly tax rates are only one of the factors determining the investment decision — either to shift this additional burden to the borrower or just to give up a particular foreign investment because of the too heavy tax cost involved.

These very practical obstacles are even increased by the difficulty for the source country to asses its tax — even when it is of a moderate level — on interest paid abroad on a proper basis. This difficulty is due to the fact that the source country can hardly assess its tax in another way than by a withholding tax on the gross interest, disregarding the cost and expenses incurred by the lender. This situation will most probably result in a rather high tax cost, which will work as a deterrent, particularly for institutional lenders. Not to underrate are also the difficulties raised by deferred interest on credit sales.

Finally, it is not easy from the administrative point of view to determine the accurate net basis of interest, which may vary considerably from one situation to the other.

All these reasons plead, when not for an exclusive taxation right of the investor's home country which is actually best equipped to consider the characteristics of a given taxpayer, at least for an appropriate sharing of tax revenue on interest between the investor's and the investment's country, which can be practically achieved only in cases where the source country keeps its withholding tax on interest at a relatively low level.

6. ROYALTIES

Under Article 9 of the Andean Pact Model Convention,

> "Royalties derived from the use of patents, trade marks, non-patented technical knowledge, or other similar tangible property, within the territory of one of the Member countries, shall be taxable only by such Member country."

For this category of income, there exists an entire divergence with the solution retained in Article 12 of the OECD Draft Convention, which generally assigns the taxation of royalty income to the country of residence of the royalties.

In their process of industrialization, developing countries are particularly dependent on the use of patents and more generally on the communication of advanced technology. The tax problems raised by royalties crossing the frontiers should therefore be viewed less in terms of tax revenue for the countries involved than in terms of the necessary facilitation of these transfers of technology. Considered that way, the tax problems of royalties would not be as acute as they may be when excessive tax is claimed by either country.

From a conceptual standpoint it may be questioned whether it is correct to recognise the exclusive right of taxation to the licensee's country. Through the use of patents and knowhow, firms of the licensee's country are in a position to make higher profits, which will turn into corresponding higher corporate tax for the licensee's country, and thus fulfil its claim for additional tax revenue.

With regard to the scope of royalties,

Article 9 of the Andean Pact Model Convention is much more restrictive than Article 12 of the OECD Draft Convention, excluding rendering of services and technical assistance, which are taxable only by the country wherein such services or assistance are rendered (Article 14). As they are often rendered from abroad, taxation would not be possible in the "licensee's" country in many cases. A more realistic definition will have to be aimed at.

Apart from that, assuming that the exclusive rights to tax were recognised to the source country, the question would remain of the proper tax base, whether royalties should be taxed on a net basis or on a gross basis and of the appropriate rate in either case. The determination of the expenses allowable as deductions — other than those directly incurred in the licensee's country — is a task which in cases of royalties is even more difficult than in cases of interest. Distinction is to be made between true development costs incurred over long years and not only for successful patents and excessive royalty claims by licensors in search of devices proper to minimize their overall tax burden and/or to avoid foreign exchange problems. Reasonableness on the part of licensors would certainly be helpful and lead the capital importing countries to agree on moderate withholding tax rates on royalty payments.

On the other hand it cannot be denied that research and development costs are becoming higher and higher and that it is not possible to attribute them to any specific patent, while only a fraction of research and development costs ever leads to a successful and salable patent. These expenses being generally deductible costs in the investor's home country, it cannot be expected that this country simply gives up its taxing right. That being agreed on and leaving aside cases of abuse, tax at the source on royalties whether calculated on the gross or on an estimated net amount, must be moderate, because even a moderate tax so levied could reach an amount in excess of the normal tax applicable in the licensor's home country on the true remaining net income.

It should be noted here also that excessive tax claims will probably be passed on to the licensee, by being included in the royalty cost; this would not be favourable to the desired obtention of skills and technology.

In conclusion, considering the high costs involved and the necessity of promoting the transfer of technology, the solution adopted by the OECD Draft Convention does not appear so unappropriate that it should be set aside in future treaty negotiations.

7. FINAL REMARKS

There is no field in international taxation where the necessary promotion of investment flow and the tax revenue problems are more evidently conflicting than with respect to investment income. The Andean Pact Model Convention appears to be more inspired by the latter objectives than by considerations of long term economic planning. Its solutions concerning the tax treatment of dividends, interests and royalties will hardly be acceptable in future tax treaty negotiations without amendments. It remains to be demonstrated that, on the technical level, satisfactory solutions implementing the source principle can be elaborated. It would not be surprising if the required refinements would ultimately lead to solutions along the lines adopted by the OECD Draft Convention. The remaining question would then concern the extent to which a sharing of revenue has to take

place. This would probably best be left to treaty negotiations. The criticisms expressed sometimes against the selection of the OECD Draft Convention as a basis for the studies of ECOSOC are insofar unjustified that they ignore that they are much more the offspring of extensive technical studies over a long period of years than the expression of an extensive priority of the residence principle.

No treaty can be concluded without mutual concessions. The only question is to know how far each party has to walk on the road before meeting the other party. This largely depends on the appropriate recognition of double tax treaty objectives. These objectives may vary not only from country to country but also under the influence of admittedly changing economic and political conditions.

ALAN H. SMITH*:

INCOME TAX INCENTIVES FOR NEW INDUSTRIES IN DEVELOPING COUNTRIES

I. GENERAL

1. In recent years, particularly since World War II, many countries have introduced into their income tax laws certain forms of relief for newly established industries. While such relief has been used by some of the industrially developed countries as a tool for regional development, it is mainly found in the developing countries where a reduction in income tax receipts (or perhaps in many cases a foregoing of income tax on profits that would not have arisen without this incentive) is regarded as a small price to pay for essential development.

2. The largest number of forms of relief is found in the British Commonwealth, starting in the West Indian countries that copied the successful relief given in Puerto Rico. Many forms of relief are to be found elsewhere, but illustrations in this article will be drawn mainly from the laws of Commonwealth countries, with which the writer is most familiar.

3. There is a remarkable degree of variety in the forms of relief, the qualifying conditions that must be met, the time and amount of the relief, and so on. The topic is thus highly suited for a comparative study, since it may be doubted whether those countries that have enacted and now administer this relief are aware of the possible ways in which the relief might be improved. However, a thorough comparative study of all relief laws would be a monumental task, complicated by the fact that the reliefs operate as partial exceptions to very divergent tax laws. Apparently similar types of relief in different countries may affect in different ways such matters as depreciation allowances or the taxability of dividends, even after the relief period has ended. Of necessity, this article will have to be confined to broad differences in forms of relief and to their relationships with basic principles of tax laws, the latter again being mainly instanced from Commonwealth countries.

Economic Considerations

4. It is not intended here to treat in detail of the economic desirability or otherwise of income tax relief for new industries, since this has already been discussed in depth in many books and articles. But since a yardstick is needed to judge the efficacy of the variant conditions of relief, a brief presentation will be made here of the economic reasons and justifications for the relief.

5. The purpose of the relief is to provide an incentive for a business firm, especially one from outside the country in question, to set up a new industry there. It must therefore offer that firm something that would be weighted substantially in its decision making methods. It is generally agreed that the principal determinant of an investment is the expected rate of return on that investment. Exemption of profits from income tax — even a limited exemption — will increase the net return and thus increase the probability of a decision to invest. The fact that tax relief will not help

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if there are to be no profits is irrelevant, for in that case there will be no private investment and the public sector alone can be responsible for it. But it is relevant to the way in which the period of the relief is calculated, for if this period is one in which there are no profits or even losses, then the relief is ineffective. As will be shown later, the treatment of depreciation allowances is relevant also.

6. But return on investment is not the only decision making test. Many financial managers use the test of the "payback period". They ask themselves: "when will our initial investment be paid back? When will the profits that we can foresee equal in total that investment?" This question is an appropriate one to ask when the future is particularly uncertain, as it must be in investment in developing countries. There must be a time horizon beyond which any firm projection would be unrealistic. Would this tax relief result in a payback within that predictable period?

7. It is also necessary to stress that uncertainty of outcome must tend to deter an investment. The relief may overcome that deterrence by increasing the return to rate commensurate with the risk. But it is important that the relief should not increase the uncertainty, as may be done where the relief law is poorly expressed or is subject to withdrawal or amendment at the discretion of the government or where for any other reason the ultimate amount of the effective relief can be confidently gauged before the investment is made.

II. THE QUALIFYING BUSINESS: (A) "INDUSTRY"

8. Very many forms of relief are confined to an "industry." This word is derived from the Latin *industria,* diligence, and thus has a common etymological origin with "business", both words indicating some degree of purposeful activity. It may be noted that where laws, as in many Commonwealth countries, charge the profits of a "trade or business" and where they exempt in part the profits of an "industry", there must be some reason for the difference in language. It seems likely that the reference must be to come concept such as the "industrial revolution", which can only refer to large-scale economic activity attained through the use of powerdriven machinery. Such interpretation of the word "industry" would seem to be consistent with the purpose of these relief laws, that of attracting to the less developed countries that type of "industrialized" development that they are seeking. But it might be dangerous to base the interpretation of an important law on the semantic evaluation of one solitary word.

9. However, in most cases it is not necessary to interpret the word "industry" by itself; for this word is normally accompanied by the use of some other words, notably "manufacture", "product" or "factory" or some other combination of them. The use of all four in British West Indian countries is virtually universal, but elsewhere in the British Commonwealth the three additional words are less common and in particular a restriction to "manufacture" is rare. If this word is used, what does it mean?

10. "Manufacture" means, literally, "making by hand". Yet this literal and original meaning has changed with changing technology, and the meaning in this modern age is that of large scale production which can only be carried out through the use of machinery. It is therefore not surprising

that the requirement of "manufacture" is very commonly linked to other concepts, especially that of "factory" or "product" as where an applicant for relief must be a person

> "... who is desirous of establishing a pioneer factory in the territory for the purpose of manufacturing any pioneer product" (Trinidad 1950 law).

11. The word "product" would seem to mean simply a result of an industry's operation, but it has been held to denote a tangible product, so as to exclude the so-called "service" industries such as hotels and meat and vegetable freezing plants in the former Ghanian law. (J. Harvey Perry, *Taxation and Development in Ghana,* U.N. Dept. of Economic and Social Affairs, 1959, p. 39).

12. In addition, the requirement of a "factory" is very common. In most cases a specific definition is given, and this is tied in with the definition of manufacturing so as to involve the use of power-driven machinery. This requirement would not seem to add much to the definition of the business qualifying for the relief, but, as will be shown later (paragraph 35), it is often used to determine the beginning of the period of the relief.

13. In short, then, the general definition of a business qualifying for this relief seems to be that of "industry" in the sense of heavy industry operating through power-driven machinery. But the vagueness of some ill-defined laws may leave in the minds of potential investors considerable doubt as to what sort of investment a country wishes to encourage.

The Qualifying Business: (B) Special Businesses

14. It will not be surprising, in view of what has been said above about the dubious meaning of "industry" and related terms, that some countries have seen fit to give relief to specifically enumerated types of businesses whose development is thought to be of particular advantage to them. Such forms of relief are found most commonly in the West Indies.

(i) Hotels

15. The business of running hotels may not be considered an "industry" in the narrow sense, and yet their existence is vital to international trade and investment. While relief in respect of hotels could have been given by simply extending the definition of industry, there appear to be two main reasons why relief has sometimes been given by special laws:

(1) these laws give exemption from duties on material imported to build a hotel, an important factor in cost (and hence return on investment), and

(2) in some cases, particularly the earlier laws, the income tax relief consists of what would now be called accelerated depreciation, allowing the hotel owner to write off his capital expenditure over a fairly small number of years, frequently five.

The laws granting this relief contain a number of restrictive conditions, such as a minimum number of bedrooms, certain qualitative restrictions such as the provision of adequate dining, kitchen, etc. accommodations and excluding private clubs.

(ii) Non-hotel Industries

16. In addition, relief is provided again especially in the West Indies, for certain non-hotel industries, for example:

(a) In Barbados, concession holders engaged in petroleum mining operations are relieved from income tax, the relief

not starting until the concession holders' regular exports average 10,000 barrels per day or until five years have elapsed after regular export started, whichever is earlier. (See paragraph 35 below).

(b) In Guyana, gold and diamond mines, if they are "of a developmental and risk bearing nature and instrumental to resource development" were subject to a lower rate of tax, 20 per cent, instead of the then normal rate of 45 per cent.

(c) Jamaica has a variety of relief laws for such industries as button manufacture, cement, motion pictures, petroleum refining, textiles, etc., some of which are from import duties and some of which are from income tax for varying periods.

III. CONDITIONS OF RELIEF

17. *(a) Governmental approval.* Before a business can quality for relief from income tax under these laws, it must, in all cases, not only show that it is of the business type specified in the law but also satisfy certain conditions, usually to the satisfaction of some governmental authority. In nearly all laws there is a condition that relief may be granted only if the appropriate governmental authority "is satisfied that it is expedient in the public interest so to do" (e.g., Trinidad, 1950 law). There is frequently also a requirement for a governmental authority to certify a particular business firm as qualified for tax exemption within the particular industry. In most countries, therefore, the exemption must be governmentally adjudged to be in the public interest, either on the basis of a type of industry or of a particular firm, or both.

18. *(b) Newness.* Sometimes the requirement is added that the industry be a "new" one and sometimes it is explained that this refers to an industry not already being carried on in the country "on a commercial scale". This may be similar to the requirement in the Guyana law (referred to in paragraph 16 above) that the trade sought to be exempted be "wholly of a developmental and risk-bearing nature". In Belize, on the other hand, the requirement is that the enterprise sought to be exempted be "either a new enterprise, or the expansion of an existing enterprise". Sometimes the restriction is to types of business not being carried on in the country, or not being carried on "on a commercial scale" (Trinidad) or "on a scale similar to the economic requirements of" the country (Nigeria and many other countries). Despite the bewildering diversity of language, all clearly amount to a declaration that relief will ony be given for enterprises that will lead to desirable economic development. This might have been presumed as an obvious guide to the use of the governmental authority referred to in the previous paragraph, but in many cases it may have the unfortunate effect of introducing an undesirable element of uncertainty into the relief system. What, for example, does "on a commercial scale" mean? Can any business be carried on otherwise?

19. *(c) Effect on existing businesses.* What of the effect of granting relief on firms engaged in the same line of business activity? What of a firm that later wants to participate in the same line? To deny relief to the second firm would be to give the first firm something not far from a tax-sheltered monopoly, while to allow a second firm tax privileges might undermine the financial planning of the first firm. The heroic solution is that adopted in Puerto Rico where, once an industry is declared

eligible for relief, firms *already engaged* in that industry are automatically relieved from income tax. It has been estimated that one-half of relieved firms were engaged in the business before relief was declared, so that one-half of the loss of tax revenue was in excess of that needed to attract new industrial development. The result is said to have been a certain unwillingness to stimulate development of existing industries. A similar provision is found in Mexico because of the constitutional prohibition there of special privileges. Elsewhere, however, it is common to find only a requirement that regard be had to the effect of granting the relief on existing firms.

20. *(d) Future prospects of the industry.* It is frequently provided that the approving authority must consider the economic prospects of the industry and in some cases to the prospect that the undertaking can ultimately be carried on without further aid. The difficulty here is that the applicant may be asked to prove that he really needs the relief now — else why give him the relief to induce him to start? — but that he really will not need it a few years hence. The evidence that will prove one may tend to disprove the other. Indeed, in connection with the Mexican provision that an applicant must demonstrate "the economic feasibility of the enterprise", an investor has been quoted as saying that "the worst thing you can do in your application is to show or infer that you really need the exemption." This is an example of the law saying too much, since here again such restriction may add to that uncertainty of investment and even raise in the investor's mind a fundamental question as to whether the country welcomes his investment or not.

21. *(e) Locality.* Those laws that require a "factory" (paragraph 12 above) normally require a statement of the location of the factory, thus permitting the approving authority to consider whether development should be specially encouraged in a particular region. This would seem a relevant consideration in the granting of relief and it is surprising that it is found as almost a by-product of the requirement of a factory, and not elsewhere in relief laws.

22. *(f) Managerial soundness.* In several forms of relief the applicant must give evidence that the business will be managed effectively and in some cases (e.g., Mauritius and Nigeria) supply detailed information on the directors and others promoting and managing the new firm.

23. *(g) Capital expenditure.* It will be shown below (paragraph 34) that the period of relief in some few cases depends upon the amount of capital expenditure undertaken. Apart from this, it is quite common to find a requirement that information be supplied on the amount of capital expenditure to be undertaken, so that the approving authority shall know the amount of physical development that is likely to result if the relief is approved.

24. *(h) Use of local resources.* New development normally will have the effect of importing some foreign resources, both foreign machinery and other material and also foreign labor and management skills, at least until local personnel can be recruited and trained. This is an inevitable condition of foreign investment and it is only rarely that any condition is laid down as to use of local labor and raw materials. Some few West Indian laws, however, require that the granting of the relief should have regard to the effect on local employment and to the use of local raw materials. Apart from these, and the law of Sarawak, which is generally based on West Indian models,

no regard is had to this point. The matter is thus left to administrative discretion rather than to a specific legal restriction of the relief.

25. *(i) Continuing conditions.* Many of the West Indian laws as well as that of Malta permit the relief to be subject to the imposition of such conditions on the operation of the new enterprise as the approving authority thinks fit. What these conditions might be is not stipulated and is thus left for administrative discretion or agreement. It is interesting to note that the more recent laws of Ghana and Sierra Leone specifically adopt a contractual basis, thus allowing the government to agree with the applicant as to conditions of operation.

IV. AMOUNT AND PERIOD OF RELIEF

26. Once it has been determined that a firm is entitled to relief, it is necessary to determine both the amount and the duration of that relief. This relief is normally exemption of income from tax but in some cases (especially that of the earlier laws) it consists merely of special allowances for capital expenditure. These latter forms of relief will be considered in Part V (see para. 32 below). But capital expenditure also enters into the question of normal income tax relief, since the effective amount of that relief will vary according to whether normal or accelerated capital expenditure allowances are made against the exempted income or postponed until after the relief period.

27. *The income relieved from tax.* The income exempted from income tax should clearly be that arising from the business in respect of which the relief is granted. This may seem obvious on the face of it, but what if a firm carried on more than one type of business? The two businesses may not be generically different, yet only one may be thought desirable of encouragement. The laws of Guyana and Malta confine relief to that part of the joint business that is specifically relieved from income tax. There appear to be no provisions regulating the apportionment of profits between exempt and non-exempt businesses carried on by the same firm, apart from standard anti-evasion provisions found in most tax laws. Some countries have therefore taken the drastic step of prohibiting a firm receiving relief for a particular business from carrying on any other kind of business, as in Nigeria, Sabah, Sierra Leone and Singapore.

28. The Nigerian law effects an apparently similar power by regulating the "permissible by-products" that may be produced in addition to the main products of the exempt business, limitations being permitted by reference to quantity or value or both. There is a similar law in Mauritius. In fact, these provisions are more permissive in that the scope of the relieved business is extended to include the production of "by products" so that the problem of accounting allocation does not exist.

29. *Amount of relief.* Relief is normally given on the profits declared to be exempt during a specified period. To this there are four sorts of exception.

30. (i) *Declining rate.* Some laws, especially in the West Indies, provide for a declining rate of relief, sometimes at the option of the taxpayer, for example, in Barbados and Jamaica, either to have seven years' relief or income after deducting normal depreciation allowance, or six years' relief with a declining rate of relief without any such allowance.

31. (ii) *Partial relief.* Provisions are sometimes found (Gambia, Malta and the original Ghana law) for partial relief, in that the approving authority is given discretion to give an applicant less than the maximum relief he might otherwise have obtained. Presumably the thought behind this provision is that some firms may need less inducement than others, but it may be surmised that most firms will seek the maximum relief even to the extent of refusing to set up business unless they get that maximum.

32. (iii) *Relation to capital.* In some cases the relief is limited by reference to the capital employed in the undertaking. In India, for example, the relief may not exceed 6 per cent on the capital employed. Taking a typical tax rate of 55 percent, the relief would add 3.3 per cent to the return on capital. There must be many risky investments where relief so limited would be an inadequate inducement.

33. (iv) *Relation to capital expenditure.* In Fiji the relief each year is to be equal on a sum equal to 10 per cent of the capital expenditure incurred during the whole relief period, with a minimum relief on five thousand pounds each year.

34. *Period of relief.* Relief from income tax is normally given for a fixed number of years. Five years is most common, with very few allowing a shorter period and many allowing a longer. Relief for other than a fixed number of years is sometimes found, and the following are the more important examples of varying periods:
(i) Some laws allow for a period which can be fixed at discretion up to a stated maximum. The laws mentioned in paragraph 31 above as giving discretion for partial relief also give discretion for shortening the period from a maximum. Other examples are found in the St. Vincent hotels law, in the Trinidad law for hotel projects relating to other than new hotels, in the Sierra Leone law and a Fiji law relating to gold and silver mines. As with the provision for partial relief, it seems likely that applicant firms will show unwillingness to accept an offer of relief for less than the maximum period.
(ii) In some cases (Trinidad and St. Kitts) the discretion is to extend a *minimum* period for a further number of years.
(iii) In three cases (Malaya, Nigeria and Sabah) the period of relief is on a sliding scale, lengthening as the amount of capital expenditure increases, thus providing additional inducement to firms with bigger capital expenditure.

35. *Date of Commencement of relief.* The period of relief normally starts to run from the "production day", the day on which the relieved firm starts to produce its product "in marketable quantities". This latter phrase, originating in Trinidad and widely copied in other laws, is clearly liable to great varieties of interpretation and it may introduce an undesirable element of uncertainty. Alternatives to the production day are:

(i) the date of commencement of the trade (St. Kitts),
(ii) the date of completion of the necessary construction work (Antigua Hotels Law),
(iii) the date of granting a license to import materials and equipment for a hotel (Dominica, Grenada and St. Vincent),
(iv) the delayed dates in the Barbados petroleum law (paragraph 16 above),

(v) the date of granting relief (Belize and Guyana), and
(vi) the date of commencing the building of the factory (Trinidad).

These alternatives, while more certain than that of the production day, can only operate to reduce the effective relief, since there must be a gap — sometimes considerable — between the alternative dates and the date on which profits start to be earned.

36. *Apportionment of profits.* The actual year of relief may not coincide with the accounting year by reference to which financial statements are prepared. Many laws require an apportionment of a financial year's profits to the tax relief period and such provisions are sometimes tied in with provisions against evasion, by incorrect allocation of post-relief profits to the relief period (see paragraph 45 below). In Nigeria there is a notional cessation of the trade at the end of the relief period, so that separate financial statements have to be prepared for the part of a financial year falling within the relief period.

V. RELIEF BY WAY OF CAPITAL EXPENDITURE ALLOWANCES

37. The earliest types of income tax incentives for new industries in developing countries consisted of the granting of special deductions for capital expenditure. A common version in the earlier British West Indian laws was to authorize the deduction of one-fifth of capital expenditure in each of fixe years selected by the applicant from among the first eight years of his new business. Such a provision is first found in Jamaica and was copied widely in the British West Indies, mainly for hotels. In other countries of the British Commonwealth it is only found in Fiji for hotels and in Sarawak for industries. In the years since World War II the need for encouraging capital investment has come to be widely recognized in tax laws and these earlier forms of relief may be regarded as outmoded in that accelerated depreciation is normally given to all businesses and is thus no longer available as a special inducement to invest in developing countries.

VI. DEPRECIATION AND INCOME TAX RELIEF

38. Far more important is the effect of depreciation allowances on the relief discussed here, for the treatment of depreciation will, to a large extent, determine the effective relief. A few countries make the allowance for depreciation optional and vary the length of the relief period according to the option taken. Thus the Jamaican Industrial Incentive Law of 1956 allowed either —

(a) seven years' relief from income tax from profits against which depreciation allowances are made, or
(b) six years' relief at a declining rate (full relief for two years, two-thirds' relief for another two years and one-third relief for the last two years) with no depreciation allowances being made for the first four years.

A broadly similar provision was introduced in Barbados. In Mauritius a firm could obtain three years' additional relief by foregoing its "initial allowance", the large additional depreciation allowance given in the first year of an asset's life. It is very hard to evaluate such provisions, especially the latter one. If a firm foregoes one form of accelerated depreciation, that will simply increase the depreciation to be allowed in later years, including the later years of the relief period and the extension thereof by three years.

39. The need for some special provision is obvious, for without it the widespread practice of accelerated depreciation would reduce substantially the profits relieved from tax. This would make the business firm wish to reduce the annual amount of its allowances so as to maximize deductions against taxable profits after the relief had expired. It would be a nice point under some laws whether a taxpayer could appeal against being given excessive depreciation allowances during the period of exemption.

40. It is therefore understandable that some countries have taken the generous step of postponing all allowances until after the relief period. The first clear example of this was in the Guyana law providing that capital expenditure incurred up to the end of the relief period should be deemed to be incurred immediately afterwards, so that allowances would be given in full against taxable profits. An exception was, however, made in respect of any capital assets "realised" before the end of the relief period. If "realised" includes not only assets sold for cash but also those scrapped or abandoned, then the exception is objectionable in that it creates an undesirable inducement to retain obsolete or obsolescent assets beyond the relief period. Nigeria has a similar provision in that post-relief allowances are conditional upon the allowances being "used" in the post-relief period. Several other countries, such as Malaya, Sabah and Singapore have similar provisions. The deferment, in whole or in part, of depreciation allowances beyond the relief period will, in any event, have widely varying results depending mainly on the relationship between depreciable fixed assets and income, and it may be doubted whether such variation was present to the minds of those who drafted the laws. Again, uncertainty is produced in laws that should aim at promoting certainty. Insofar as it is desirable to encourage capital-intensive industries, the maximum postponement of depreciation allowances would seem to be justified.

VII. LOSSES

41. The arbitrary division of business profits among accounting periods makes it necessary to have an accounting loss in one period deductible from the profit in another period, since otherwise tax would be paid on more than the true net profit for the aggregate periods. Further, within one accounting period the question arises whether taxable profits from one source of income should be reduced by losses from another source. Provisions to this effect have a particular relevance to the granting of the relief discussed here.

42. In the Jamaican relief discussed in paragraph 38, losses had first to be absorbed against profits exempt during the relief period, but when Barbados adopted a similar relief it provided that any losses in that period should not be allowed against profits therein but carried forward and deducted from subsequent taxable profits. Arguments may be put forward for both provisions. It is apparently logical to allow relief for the net profits — profits less losses — of the relief period as a whole. On the other hand, since losses are a not uncommon feature of a new business, especially in a less developed country, might not it be argued that the existence of losses should suggest that normal relief is inadequate? Recognition of the position of businesses incurring losses was made in the Ghana law of 1960, where it was provided that the normal relief period of five years was to be extended by a further period of up to five years to make sufficient net earnings *after*

deducting losses of up to the smaller of either the share capital or one-half the capital expenditure. This provision, which ceased to have effect in 1963, appears to be the only instance of a concession increasing relief by reference to losses. Elsewhere, the strictly logical viewpoint has prevailed and an exempt firm may only carry forward its net balance of losses from the relief period.

VIII. DIVIDENDS

43. The countries whose laws are reviewed here follow in the main the former provisions in the United Kingdom whereby a dividend is merely that part of corporate profits that become the property of the shareholder and ceases to be corporate property, so that the tax paid by the corporation is, to the extent of the dividend, simply a provisional payment on account of the ultimate liability of the shareholder. It is thus a logically rigorous application of the principle of imputation. What, then, if the corporate profits are exempt as being from a tax-relieved new industry? Does this mean that the shareholder will simply pay tax in full on his dividend, since there will be no corporate tax to be deducted? If so, the corporate investor that provides the money for desirable new investments in less developed countries is deprived of relief and thus of the inducement to invest.

44. In most cases, dividends paid out of exempt profits are themselves exempt from tax (the exceptions being mainly in earlier laws before, presumably, the importance of this point was realised). There are, however, some important restrictions on the exemption:

(i) *Time limit.* Generally the exemption applies only to dividends paid during the relief period, or quite commonly, up to two years thereafter. It is understandable that there might be some doubt when dividends are paid "out of" exempt profits since by most laws dividends may be paid out any time out of the accumulated balance of profits less losses and former dividends, so that some time limit seems reasonable.

(ii) *Amount.* When relief is only partial (as on a fractional basis in Jamaica and Barbados or on a per cent of capital as in India), the dividend exemption is in some way restricted by reference to that proportion of the income exempted.

(iii) *Extension to Interest.* It must be mentioned that certain countries (such as Barbados and Trinidad) exempt interest on debentures or loans. This is an additional relief, since interest is in no sense paid "out of" profits but is an expense deductible in arriving at profits.

(iv) *By reference to foreign tax.* Some laws raise a fundamental point on the effectiveness of this relief. Most firms obtaining this relief will be financed by foreign capital and those who provide this capital will pay tax in their country of residence and receive a credit for the tax paid in the country where the firm carries on its business. Any exemption of dividend in the latter country will thus only increase the tax in the country of residence. The exemption of dividends would then have no incentive effect and some relief laws have therefore withdrawn it in such case. As early as 1956 the Jamaican law restricted exemption to a resident or to a non-resident who would not be liable on the dividend in his country of residence. This provision was later amended to limit the exemption to that part of the tax that exceeded the liability in the country of residence. These provisions have been widely copied. They bear an obvious similarity to "tax sparing" provisions in double taxation conventions.

(v) *General provisions on undistributed profits.* Most income tax laws have provisions designed to prevent individual taxpayers liable to tax at high personal rates from avoiding those rates by putting income-producing assets into controlled companies that do not distribute adequate or any dividends so that tax is paid out at the lower companies' rate. Such provisions might well apply to firms relieved from tax under the laws discussed here. Yet although the very purpose of this relief is the "avoidance or reduction of tax" (a common phrase in such provisions), the need to utilise all money invested in a firm starting a new business in a developing country, for the purpose of continuing its business on a profitable basis might normally make it difficult to say that its profits could have been distributed without detriment to the business, a normal condition for the application of these provisions. In most cases, therefore, it may be assumed that exempt businesses would not be caught by these provisions.

IX. EXEMPT AND NON-EXEMPT PERIOD

45. Since some periods are exempt from tax and some are not, there is a clear incentive to arrange matters in a business firm so that profits are shifted to exempt periods. The laws of most countries contain provisions authorising the tax authorities to nullify tax evasion, which is frequently defined to include transactions that are "artificial or fictitious". In some countries the transactions which may be nullified are those whose "main purpose" is that of tax reduction. This involves the difficult task of ascertaining the real purpose of a transaction and, where there are several "purposes", which is the "main" one. Since in many countries the determination is left to administrative discretion unfettered by any right of appeal to a court of law, there may be an unreasonable administrative interference in the running of a new business. To that extent it can only be regarded as a disincentive to invest by positively increasing uncertainty.

46. But a general anti-avoidance provision is not the only or the best way of dealing with the adjustment of profits between exempt and non-exempt periods. Since inter-period manipulation of profits is very probable where profits are temporarily exempt, specific provision to counter this would seem reasonable. The first example appears to occur in the Ghana and Nigerian laws of 1952, where the Commissioner of Income Tax is given power to direct that expenses incurred either in the exempt period or the later taxable period may be transferred forward or back if the period to which they are transferred is that in which the expenses would have been incurred in the normal course of business. These provisions are thus not merely directed against the avoidance, since the Commissioner can order expenses ostensibly incurred in the exempt period to be allocated forward and so reduce taxable profits in the future, although one may suspect that it will only be rarely that the Commissioner will see fit to use his discretion in a way that will reduce tax. It should be noted that a reference back of expenses may be made only when they are incurred not more than one year after the end of the relief period.

47. The principal weakness of the Ghana provisions described in the previous paragraph is that it covers expenses only, and not income. The Nigerian law also permits allocation forward of sums receivable during the exempt period that might in the

normal course of business have been expected to be received during the later taxable period and this provision has been widely copied.

48. The case for power to nullify transactions which artificially shift profits from taxable to non-taxable periods would seem to be obvious and unanswerable. The only difficulty is one of method. It is notoriously difficult to decide on the "purpose" of a business firm's action and the real issue may well be how far this should be left to administrative discretion and how far these should be specific tests adjudicable in courts of law. The issue again goes to the root of certainty in business investment.

X. ADMINISTRATION: (A) GRANTING AND REVOCATION OF RELIEF

49. From what has been said above it is clear that there are fundamental questions of doubt or difficulty on the meaning of many basic legal provisions. How are these questions to be resolved? Will this be done by an impartial judicial process or will the government of the country in question have the legal power to interpret the law as it thinks fit? On the answer to this question may in large measure depend the confidence with which a business investment may be made. Quite apart from the substantive provisions of the relief laws, the procedural provisions may play a major part in determining that certainty that must form the basis of business investment.

50. The granting of tax relief for new industries is in almost all cases discretionary. The governmental authority normally "may" grant relief if it is satisfied that the qualifying conditions are fulfilled, and this granting is frequently said to be exercisable at the granting authority's "absolute discretion". This, in most cases, applies both to the declaration of a particular type of business as qualifying exemption and for a specific business firm as qualifying for tax relief. The same absolute discretion normally applies as to whether the qualifying business is an "industry" or whether it is being carried on on a "commercial scale", etc.

51. It must also be noted that the granting of relief must normally be preceded by adequate publicity, such as publication of a draft order in a local newspaper or the special government gazette. This puts the light of publicity on the exercise of governmental discretion but does not legally limit it.

52. The laws also contain far more serious provisions for the revocation of relief already granted. The main cause for revocation is failure to start the business within the time stipulated in the application. This seems reasonable in that a firm should not be allowed to retain indefinitely its entitlement to tax relief and so stop another firm from starting up on exempt terms. However, there are other conditions whose breach might lead to revocation (see, for example, paragraph 25 above) and such revocation should be decided in a court of law, since otherwise an investment would be subject to an unreasonable and indeterminate political uncertainty.

53. — *(B) Miscellaneous.* Other matters are also subject to regulation by criminal law provisions:

(a) General. Some laws, especially in the West Indies, require the use of the exempt "factory" for purposes only as prescribed in the tax exemption order and impose criminal penalties for non-conforming use, especially without governmental permission. These provisions seem to be connected with

the duty-free importation of material used for the construction of such factory.

(b) Employment of local residents. Certain laws, especially in the West Indies, make the relief dependent upon the employment of a certain number of local residents and in three cases (the hotel relief laws of Antigua, Montserrat and the Virgin Island) failure to conform with this provision is criminally punishable.

(c) Refusal of hotel accommodation. In four hotel laws of the West Indies it is made a criminal offence to refuse accommodation to any member of the public without lawful excuse, the proof of which shall lie on the hotel operator.

(d) Failure to keep records. This is in some cases made a criminal offense.

XI. CONCLUSION

54. When legislation is of so novel a kind and has spread so rapidly to so many countries before there has been adequate experience of its working, it is natural that there should be obscurities of expression, unforeseen repercussions of legal provisions, uncertainty as to the means by which the ultimate goal may be attained and even a failure at times to see that goal clearly. How are the laws reviewed here deficient as to their apparent objective?

55. The primary decision in enacting and administering these laws is as to the type of investment to be encouraged. This depends entirely on the need of the country in question and arguments about "industry", "factory", and the like may well obscure the main issue.

56. The point of recovery of capital investment is fundamental, since investors will be mainly encouraged by the speed at which they can recover their initial investment. Generous depreciation allowances are no doubt necessary — indeed these may be a case for allowing capital expenditure immediately, as in the Barbados Hotel Act of 1956, but the important point is that some form of accelerated depreciation is normal and that something extra must be given to induce investment in developing countries.

57. The period of relief is normally five years on full profits. The adequacy of this relief depends on its relation to depreciation allowances. It would appear that there should be some relationship between the period of the relief and the amount of capital investment. Yet even this is not adequate. Extension of the period of relief will only be fully effective if profits are high enough to enable the cost of the investment to be recovered within the extended period.

58. There is thus disclosed a fundamental limitation to this relief, in that it cannot guarantee those high profits of which the expectation is initial to investment in the uncertain condition of less developed countries, but only increase net profit where those profits are actually made.

59. It therefore seems to follow that laws giving tax relief to new industries in the developing countries must be more contractual in nature, recognizing the vital role of economic development and offering such inducement as may be necessary in the light of the particular stage of development of the country in question. Detailed restrictions in a general law may prevent the necessary inducement to investment.

BELGIQUE

Nouvelles directives concernant le régime d'imposition des dirigeants, des employés et des chercheurs étrangers.*

Généralités

1. Il a été décidé d'apporter deux modifications importantes au régime d'imposition dérogatoire des dirigeants, des employés et des chercheurs étrangers, visés aux nos 139/6 à 139/9.1 et 142/2 à 142/5.1, Com.I.R.
Ces modifications ont trait:
1° au rétablissement d'un terme de 5 ans pendant lequel le régime d'imposition dérogatoire peut être accordé (en ce qui concerne une prolongation éventuelle, voir ci-après la rubrique «régime d'exception»);
2° au mode de calcul uniforme du forfait complémentaire de 30 p.c. pour dépenses professionnelles applicable sur le montant cumulé des rémunérations proprement dites et des remboursements de frais exceptionnels propres à l'employé.

Période pendant laquelle le régime d'imposition dérogatoire peut être octroyé

Régime normal

2. Le régime d'imposition dérogatoire ne peut être accordé que pendant une période de *cinq ans* à compter du début de l'activité en Belgique.
Cependant, lorsque l'activité n'a pas commencé au début d'une année, le régime d'imposition dérogatoire est, pour des raisons pratiques, accordé pour toute la période imposable pendant laquelle le terme de 5 ans vient à expiration (p. ex. activité en Belgique à partir du 1.8.1970; expiration du terme: 31.12.1975).

Régime d'exception

Lorsque des dirigeants, des employés ou des chercheurs étrangers sont engagés en Belgique, pour y installer une nouvelle usine, une nouvelle division d'exploitation ou un nouveau bureau de contrôle ou de coordination d'un groupe ou pour procéder à leur mise en train et qu'en raison de circonstances exceptionnelles imputables à l'importance de la mission, celle-ci n'a pas encore pu être exécutée complètement, une prolongation du régime dérogatoire peut, à titre tout à fait exceptionnel, être accordée pour un maximum de trois ans.
Dans un tel cas, il appartient aux intéressés de demander au fonctionnaire taxateur une prolongation du délai initial de 5 ans et de produire tous les éléments probants permettant à l'administration de se prononcer en toute clarté et en toute objectivité sur la nécessité et la durée du délai complémentaire.
C'est l'Insp. A qui décide après avoir recueilli l'avis de son collègue des sociétés. Si la durée de la prolongation ne peut pas être fixée avec certitude, la demande sera renouvelée chaque année [1].

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* Circ. 27.9.1974, n° Ci.RH.624/264.889, Bulletin des contributions N° 523, novembre 1974.
1. Le texte du n° 2 de la présente circulaire figurera dans le Com.I.R. sous un nouveau n° 139/8.1.

Calcul du forfait complémentaire de 30 p.c. pour dépenses professionnelles

Règle

3. Afin d'établir un mode de calcul uniforme pour le forfait complémentaire, d'éviter que son montant varie selon la présentation des rémunérations et des indemnités allouées unilatéralement adoptée par l'employeur et, enfin, pour mieux l'intégrer dans le cadre de l'art. 26, C.I.R., ledit forfait complémentaire de 30 p.c. est dorénavant calculé, dans tous les cas, en partant du total des rémunérations proprement dites et des indemnités de toute nature qui ne constituent pas un remboursement de frais propres à l'employeur (p. ex. frais de déménagement et autres charges similaires qui sont propres à l'employeur [2]).

Exemple 1.

4. Traitement brut (après déduction des cotisations sociales):		1.200.000
Indemnités en remboursement de frais exceptionnels propres à l'employé:		400.000
Rémunération brute imposable:		1.600.000
Forfait ordinaire art. 51, C.I.R. (maximum):	60.000	
Forfait spécial de 30 p.c. (maximum):	450.000	
		510.000
Montant net imposable:		1.090.000

Exemple 2.

5. Traitement brut (après déduction des cotisations sociales):		1.000.000
Indemnités en remboursement de frais exceptionnels propres à l'employé:		400.000
Remboursement de frais de déménagement (50.000)		—
Rémunération brute imposable:		1.400.000
Forfait ordinaire art. 51, C.I.R. (maximum):	60.000	
Forfait spécial: 1.400.000 × 30 p.c. =	420.000	
		480.000
Montant net imposable:		920.000

Entrée en vigueur des nouvelles instructions

6. Les directives qui précèdent sont applicables, d'une manière générale, à partir de l'ex d'imp. 1975.

7. En ce qui concerne les cotisations restant à établir et les litiges en cours pour les ex. d'imp. 1974 et antérieurs, il sera procédé comme suit:

Applicabilité du régime dérogatoire

Lorsque l'intéressé a bénéficié antérieurement et *à bon droit*, du régime dérogatoire, il peut encore en bénéficier jusques et y compris l'ex. d'imp. 1974, pour autant que sa situation n'ait pas été modifiée entretemps.

Quand il s'agit d'un séjour exceptionnellement long, il faut examiner spécialement si

2. Le texte du 142/2, Com.I.R., dont disparaîtra le dernier alinéa, sera adapté en conséquence.

les conditions essentielles d'octroi du régime dérogatoire (activité à caractère temporaire) en Belgique et circonstances qui justifient le statut de non-habitant du royaume sont toujours réunies (cf. 139/6 et 7, Com.I.R.). Si, après un séjour en Belgique d'une durée supérieure à 5 ans, un dirigeant, un employé ou un chercheur étranger demande pour la première fois le régime dérogatoire en ce qui concerne une période imposable subséquente, cette demande ne peut plus être accueillie.

Calcul du forfait complémentaire

Le mode de calcul exposé au n° 3 peut également être appliqué rétroactivement.

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BOOKS

Any inquiries concerning a book should include the reference number listed.

ALGERIA

GUIDE PRATIQUE DES IMPOTS 1974.

Published by Etudes & Documentation Fiscales, Alger, 1974. Tome I: Impôt sur les bénéfices industriels et commerciaux.

Volume I of this annual taxation guide series explains the tax on industrial and commercial profits. The text of the French-Algerian tax treaty is appended. (B 10574)

Tome II: Taxe sur l'activité industrielle et commerciale. Impôt sur les bénéfices agricoles.

Volume II contains explanations of the various taxes levied in Algeria other than the tax on industrial and commercial income dealt with in Volume I. (B 10585)

Tome III: Taxes sur le chiffre d'affaires; droits indirects.

Volume III contains a survey of the turnover tax and other indirect taxes levied in Algeria. (B 10583)

BELGIUM

BURGERLIJK WETBOEK,

met bijzondere wetten en besluiten. Met medew. van G. Baert, A. Heyvaert, J. C. de Preter en J. P. Quintyn. Published by Story, Ghent, 1970. ± 605 pp. (Loose-leaf).

Loose-leaf publication containing authentic Dutch and French text of the Civil Code, special laws, and case law. Annotations are appended thereto. (B 8495)

CHANNEL ISLANDS/ ISLE OF MAN

TOLLEY'S INCOME TAXES IN THE CHANNEL ISLANDS AND ISLE OF MAN,

by L. J. P. Livens. Published by Tolley Publishing Co., Ltd., Croydon, 1974. 61 pp.

A comprehensive, detailed guide to taxation in Jersey, Guernsey, and the Isle of Man, completely revised and up-to-date as of June, 1974. (B 8490)

EEC

INLEIDING TOT HET RECHT VAN DE EUROPESE GEMEENSCHAPPEN,

2e, geheel herz. dr., by P. J. G. Kapteyn en P. Verloren van Themaat. Published by Kluwer, Deventer, 1974. 463 pp., Dfl. 33.50. Handboek voor de Europese Gemeenschappen, Dl. 1A.

Second revised edition of introduction to the European Community Law, bringing the work up-to-date as of the beginning of May, 1974. References to official sources and literature are appended. (B 8496)

FRANCE

FRENCH COMPANY LAW,

by J. Le Gall; general ed.: R. R. Pennington. Published by Oyez Publishing, Ltd., London, 1974. 285 pp., £ 3.40. European Commercial Law Library, No. 1.

This introductory textbook to the series describes the French company law in practical terms for businessmen. Only fundamental aspects of French law governing companies and partnerships are emphasized. (B 8561)

GERMAN FEDERAL REPUBLIC

DIE STEUERREFORM,

mit den amtlichen Steuertarifen 1975. Published by Stollfuss Verlag, Bonn, 1974. 128 pp., DM. 12.80.

Exposition of the tax reform governed by the Individual Income Tax Reform Law of August 5, 1974. The consolidated text of the Law as amended as well as rates of individual income taxes are appended. (B 8449, 8471)

INDIA

ENCYCLOPAEDIA OF CURRENT TAXATION LAWS 1972-73;

2nd. ed., by S. C. Machanda and J. Lal. Published by Delhi Law House, Allahabad, 1972. 1,282 pp., Rs. 55.00.

Compilation of consolidated texts of the Central Tax Laws with annotations and by-laws appended thereto, as amended 1972/73. The contents are income tax, companies' profits surtax, wealth tax, gift tax, estate duty, and central sales tax laws and the rules and by-laws thereto. (B 8550)

INTERNATIONAL

DIE STEUERSYSTEME IN EWG-STAATEN, EFTA-STAATEN, UND DER U.S.A.;

2e erneuerte Aufl., by A. Mennel. Published by Neue Wirtschafts-Briefe, Herne/Berlin, 1974. 248 pp., DM. 52.00.
Second revised and extended edition, designed to provide a comparative study of the tax systems in Austria, Belgium, Denmark, France, German Federal Republic, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, United Kingdom, and the United States of America. Short description is given of the basic provisions of the individual income tax, corporate income tax, net worth tax, death duties, and tax on value added, followed by a summary of indirect taxes such as motor vehicle tax and excise duties. (B 8531)

LA FRAUDE FISCALE,

by B. Taddei; avec un préface de R. Houin. Published by Libraires Techniques, Paris, 1974. 176 pp,. Fr.Frs. 44.00.
Study of fiscal fraud describing the reason and impact of tax fraud; classification of tax fraud with references to literature in the French language. (B 8499)

THEORETICAL AND EMPIRICAL ASPECTS OF CORPORATE TAXATION,

by J. Wiseman and M. Davenport. Published by OECD Publications, Paris, 1974. 76 pp.
Monograph concerning the effects of different systems of company taxation on the domestic economy. (B 8478)

LEXIQUE UEC (Union Européenne des experts comptables economiques et financiers);

2e ed. Published by IdW-Verlag, Düsseldorf, 1974. 271+879 pp., DM. 165.00.
Revised and extended second edition of multilingual lexicon of terms used in the professional fields of public accountancy, management and finance, fiscal legislation, banking, stock exchange, cost accounting, etc. The languages are Danish, Dutch, English, French, German, Italian, Portuguese, Spanish, and related languages (as spoken in the U.S.A., Latin America, etc.). (B 8472)

TAX CONSEQUENCES OF DOMESTIC AND FOREIGN INTERESTS ESTABLISHING CORPORATIONS AS VEHICLES FOR JOINT VENTURES.

Published by International Bureau of Fiscal Documentation, Amsterdam, 1974. 365 pp., $ 18.00. Cahiers de droit fiscal international, LIXa.
Report of Congress convened by the International Fiscal Association held in Mexico City, 1974, containing national contributions on the title subject, structured in accordance with a given directive for purposes of comparison. A summary of each contribution in the English, French, German, and Spanish languages is appended. The contribution by the general reporter mr. A. Cortina is also in four languages. The following countries have national reports: Austria, Belgium, Brazil, Canada, Finland, France, German Federal Republic, Guatemala, Israel, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland, United Kingdom, and United States of America. (B 8474)

TAX PROBLEMS RESULTING FROM THE TEMPORARY ACTIVITY ABROAD OF EMPLOYEES OF ENTERPRISES WITH INTERNATIONAL OPERATIONS.

Published by International Bureau of Fiscal Documentation, Amsterdam, 1974. 503 pp., $ 18.00. Cahiers de droit fiscal international, LIXb.
Report of the Congres convened by the International Fiscal Association held in Mexico City, 1974, containing national contributions on the title subject, structured in accordance with a given directive for purposes of comparison. A summary of each contribution in the English, French, German, and Spanish languages is appended. The contribution by the general reporter, Pierre Kerlan is also in four languages. The following countries have national reports: Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, German Federal Republic, Israel, Italy, Luxembourg, Mexico, the Netherlands, Portugal, Spain, Switzerland, United Kingdom, United States of America, and Uruguay. (B 8475)

IRELAND

PROPOSALS FOR CORPORATION TAX.

Published by Stationery Office, Dublin, March, 1974. 75 pp., 2½ p.
Second White Paper on company taxation, presenting some detailed advance information on the legislation proposed, based on the imputation system. (B 8482)

ITALY

DIE REFORM DER DIREKTEN STEUERN IN ITALIEN,

by W. Ryser. Published by Allgemeine Treuhand, Basel, 1974. 28 pp.
German version of French edition of brochure outlining the reform of direct taxes in Italy, effective as of January 1, 1974. (B 8479)

IMPOSTA SUL REDDITO DELLE PERSONE FISICHE.

Published by the Banco di Roma, Rome, 1974. 114 pp.
Outline explaining the present individual income tax. (B 8563)

DIE ITALIENISCHEN EINKOMMENSTEUER-GESETZE,

in deutscher Übersetzung von E. Wilcke. Published by Deutsch-italienische Handelskammer, Milan, 1973. 113 pp.
Loose-leaf publication containing German translation of the Italian income tax for individuals, income tax for corporations, and the local income taxes. Additional supplements will complete this publication. (B 8476)

LATIN AMERICA

TAXES IN BRAZIL AND MEXICO AS SEEN BY A CORPORATE COUNSEL.

Report of the AMA International Tax Conference, April 24-25, 1974. 23 pp. (B 15414)

THE NETHERLANDS

FISCALE MYTHOLOGIE,

Belastingconsulentendag '74, by D. Brüll. Published by FED, Deventer, 1974. 70 pp. Nederlandse Federatie van Belastingconsulenten.
Text of speech and the following debate on fiscal mythology with emphasis on taxation in the Netherlands arising from theory and practice, from conference held by the Dutch Federation of Tax Consultants. (B 8492)

SCHEMATISCH OVERZICHT VAN DE SOCIALE VERZEKERINGSWETTEN;

27e dr., by G. F. Fortanier en J. J. M. Veraart. Published by Kluwer, Deventer, 1974. 12 pp.
Comparative survey of the social insurance laws of the Netherlands for 1974. (B 8481)

ELEMENTAIR BELASTINGRECHT VOOR ECONOMISTEN;

3e herz. dr., by B. Schendstok en A. L. Brok. Published by Kluwer, Deventer, 1974. 210 pp.
Third revised edition of introductory textbook on tax law for economists. (B 8494)

FISCALE PROBLEMEN RONDOM FUSIES (2),

Bespreking van het rapport van de commissie voor de bestudering van de fiscale problemen rondom fusies. Published by Kluwer, Deventer, 1974. 37 pp. Geschriften van de Vereniging voor Belastingwetenschap. No. 137.
Second part of report by the Committee for the Study of Tax Problems Arising from Mergers. (B 8493)

NEW ZEALAND

TAXATION TABLES 1974-75;

31st. ed. Published by Sweet & Maxwell, Wellington, 1974. 271 pp.
Compilation of income tax tables for individuals and for companies, depreciation allowances, estate and gift duties, land tax tables, social security benefits, and review of 1974 budget taxation proposals. (B 8557)

PERU

CODIGO TRIBUTARIO PRINCIPIOS GENERALES.

Ley No. 16043. Decreto Supremo No. 263-H. 7 pp.
Articles 106-144 of Tax Code, administrative review procedures. (B 15413)

DECRETO LEY No. 19535,

September 19, 1972. 12 pp.
Law implementing the draft treaty for the avoidance of double taxation set forth in Decision 40 of the Andean Group. (B 15412)

SPAIN

FIRMENNIEDERLASSUNG IN SPANIEN;

3. neubearbeitete Auflage. Published by Deutsche Handelskammer für Spanien, Madrid, 1974. 28 pp.
Third revised edition of booklet explaning the establishment of a business in Spain and its legal and economic consequences to foreigners. (B 8477)

SWITZERLAND

BEITRÄGE ZU AKTUELLEN FRAGEN DES STEUER- UND GESELLSCHAFTSRECHTES.

Published by Allgemeine Treuhand, Basel, 1973. 44 pp.

Articles on a few important tax problems, e.g., the taxation of liquidation distributions by Swiss companies, and the unilateral Swiss measures against abuse of tax treaties. (B 8480)

TAIWAN

TAXATION: REPUBLIC OF CHINA — 1974.

Published by the Ministry of Finance, Taipei, 1974. 134 pp.

Guidebook explaning the general tax system covering national, provincial and municipal taxes, including customs duties, assessment of taxes, and incentives for economic development through tax policy. The material is updated to December 31, 1973. (B 8489)

UNITED KINGDOM

THE FISCAL IMPLICATIONS OF INFLATION ACCOUNTING,

by M. F. Morley. Published by The Institute for Fiscal Studies, London, 1974. 158 pp.

Study of alternative techniques which attempt to take account of changes in the price level as they affect the financial accounts of companies. (B 8497)

THE HAMBRO TAX GUIDE 1974-75,

by A. S. Silke and W. I. Sinclair; consulting ed. G. S. A. Wheatcroft. Published by Robert Yeatman, Ltd., London, 1974. 251 pp., £ 3.00.

Reference tax guide on individual and company taxation with tax saving hints. Revised and updated to take into account the tax law contained in the 1974 Finance Act. (B 8491)

TAXATION: KEY TO CAPITAL GAINS TAXATION,

Finance Act 1974 Edition; 8th. ed., by K. R. Tingley and P. F. Hughes. Taxation Publishing Company, London, 1974. 349 pp., £ 2.75.

Monograph on capital gains taxation as amended by Finance Act 1974, stating the law as in force on September 1, 1974. (B 8504)

INCOME TAX: INCLUDING CORPORATION TAX AND CAPITAL GAINS TAX;

7th. ed., by H. Toch. Published by MacDonald & Evans, Ltd., London, 1974. 200 pp., £ 1.25.

Textbook on individual income tax for examination candidates. Examples and questions are appended. This edition incorporates the changes made by the Finance Act 1973 and the budget proposals of 1974. (B 8545)

CORPORATION TAX;

2nd. ed., by E. S. Topple. Published by MacDonald & Evans, Ltd., London, 1974. 191 pp., £ 1.50.

Textbook on corporate income tax for examination candidates. Examples and questions are appended. (B 8539)

UNITED STATES OF AMERICA

STATE TAX HANDBOOK.

Published by Commerce Clearing House, Inc., Chicago, 1974. 240 pp., $ 8.50.

Annual publication containing a description of each state's and the District of Columbia's tax system as of October 1, 1974. (B 8540)

LOOSE-LEAF SERVICES

Received between December 1 and December 31, 1974

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September 9, 16, and 23 releases
Butterworth & Co., Sydney

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releases 56-60
Butterworth & Co., Sydney

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Editions Service, Brussels

HANDLEIDING DER INKOMSTENBELASTING
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C. E. D. Samsom, Brussels

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BENELUX PUBLICATIEBLAD
release 10
Staatsuitgeverij, The Hague

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— Commentaires "Impôts Directs"
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Editions Techniques, Paris

MOMENTO LAMY:
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release Q
— Social
release N
Services Lamy, Paris

GERMAN FEDERAL REPUBLIC

DEUTSCHE GESETZE
Schönfelder
August release
Verlag C. H. Beck, Munich

HANDBUCH DER EINFUHRNEBENABGABEN
release 5
v. d. Linnepe Verlagsgesellschaft K.G., Hagen

KOMMENTAR ZUM MEHRWERTSTEUERGESETZ
Schomberg-Kuhr
release 54
Hermann Luchterhand, Neuwied

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT
release 179
Forkel Verlag, Stuttgart-Degerloch

WORLD TAX SERIES — GERMANY REPORTS
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Commerce Clearing House, Inc., Chicago

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FED, Deventer

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Kluwer, Deventer

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S. Gouda Quint, enz., Arnhem

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Samsom, Alphen aan den Rijn

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NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW

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Butterworth & Co., Wellington

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Norsk Skattebetalerforening Huitfeldts, Oslo

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Verlag für Recht und Gesellschaft, Basel

UNITED KINGDOM

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releases 149 and 150
Commerce Clearing House, Inc., Chicago

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Commerce Clearing House, Inc., Chicago

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Prentice Hall, Inc., Englewood Cliffs

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Volume VIII, release 4
Prentice Hall, Inc., Englewood Cliffs

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Commerce Clearing House, Inc., Chicago

TAX IDEAS — REPORT BULLETIN

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Prentice Hall, Inc., Englewood Cliffs

TAX TREATIES

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Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS

releases 19-21
Prentice Hall, Inc., Englewood Cliffs

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DR. RAMÓN VALDÉS COSTA:

THE TREATMENT OF INVESTMENT INCOME UNDER THE ANDEAN PACT MODEL CONVENTION — THE ANDEAN VIEW*

1. INTRODUCTION

The Andean Pact Agreements for avoiding double taxation [1], naturally follow the traditional trend of the developing countries and especially that of the Latin American countries, but with characteristics which may be summarized as follows:

a) They constitute the most outspoken exponent of the source principle, without containing the concessions that usually other models have [2] and even the agreements signed by Latin American countries not belonging to the Subregion, for example, Argentina and Brazil. They follow in this aspect the tendency of the most prestigious Latin American doctrine [3].

b) They are closely connected with the economic policy on foreign investments established by the Decision No. 24 of the same Committee, oriented towards the progressive nationalization of foreign enterprises and a strict economic and fiscal control of them. Thus, it differs from the recent legislation of other Latin American countries. Argentina, for instance, is limited to this second characteristic and the

* This paper was submitted to the Andean Pact Seminar, Mexico City, September, 1974.

1. By the Decision No. 40 of the Cartagena Agreement, adopted in the Seventh Period of Ordinary Sessions, Lima, November 8-16, 1971, an agreement was approved "for avoiding double taxation between the member countries" (art. 1, Annex 1) and a "Model Convention for Avoiding Double Taxation between the Member Countries and other States Foreign to the Subregion" (art. 20., Annex 2). Both refer to income and capital taxes. With regard to the problems which are the subject of this report, those agreements contain the same solutions (arts. 9 to 14). Therefore, the quotations referred in general to "the Agreements". For the text of these agreements, see *Andean Pact: Double Taxation Conventions*, 28 BULL. INT. FISCAL DOC., Supp. D, D1 (1974).

2. The Agreements contain even more radical solutions than the Mexican Model of 1943 does, which has been considered up to the present the most favourable document to the source principle and consequently is frequently quoted by the developing countries of Latin America. As a significant example of the conciliating tendency in Latin America we can mention PROF. MANUEL DE JUANO, DRAFT OF TAX TREATY which introduces the suggestions made by the ex-President of IFA Mitchell B. Carroll in his presentation to the Conference of the Inter-American Bar Association, held in Caracas in 1969.

3. The Latin America doctrine is "in extenso" described in: Annals of the First Tax Law Seminar, INSTITUTO URUGUAYO DE DERECHO TRIBUTARIO (1956); and Annals of the Sixth Tax Law Seminar, INSTITUTO URUGUAYO DE DERECHO TRIBUTARIO (1970). Also, important presentations have been made to the Conferences of the Inter-American Bar Association.

Among the most authoritative individual opinions can be cited C. M. GIULIANI FONROUGE, DERECHO FINANCIERO (2nd. ed., Buenos Aires, 1970), and HUGO B. MARGAIN, TESIS PARA EVITAR LA DOBLE TRIBUTACIÓN EN EL CAMPO INTERNACIONAL EN MATERIA DE IMPUESTO SOBRE LA RENTA, BASADA EN LA TEORÍA DE LA FUENTE DEL INGRESO GRAVABLE (México, 1956).

Brazilian and the Uruguayan legislations tend to attract foreign capital [4].

The approval of these agreements has brought the problem into focus in the Latin American area. LAFTA is paying special attention to it through meetings of official experts of the member countries [5]. In these meetings, without any doubt, the radical tendency favoring the source principle prevails, partly influenced by the Andean countries' position which was officially taken in the first meeting as a basis for analyzing the different problems. But, as it happens with the U.N. Ad Hoc Group, the composition of the delegations including officers of the tax administration also lends great authority and a particular relevance to the decisions.

An aspect to be mentioned is the notable lack of communication between both groups of experts, which considering the similar subjects they study and how the groups are integrated should coordinate their efforts to their mutual benefit.

2. GENERAL PROBLEMS

Following the traditional doctrine, the agreements develop the source principle on the basis that the source is situated in the countries wherein the tangible or intangible properties are located or are used and where the services are performed.

On this starting point practically a unanimous agreement has been reached. The discrepancies arise when the situation or effective use of certain goods or services has to be determined, particularly investment capital and activities connected with technical assistance.

The solutions of the Andean Agreements fall completely within the radical tendency already mentioned. On the contrary, in LAFTA meetings discordances emerge in connection with interests, royalties and technical assistance.

In addition to the precedent problems of location of the source other ones exist, also of general character, such as the problems related to the international aspects of the tax policy with reference to the economic incentives and the difficulties for determining the net income by the Administration in the countries wherein loans and royalties are used.

It has to be pointed out that the Andean Agreements are not very explicit ones with respect to the second group of problems, in spite of the special analysis made by the experts in the preliminary studies and in spite of the fact that they were considered at a high level in the previous stages of the approval of the agreements. The solutions implicitly arise or simply they do not exist, creating big problems in their application.

3. THE SOLUTION OF THE AGREEMENTS

We will analyse in this order the treatment of dividends, interests and royalties distinguishing between the real royalties, that is to say, the payment for the use of in-

4. About this characteristic of the economic and tax legislation, see Wurgaft Barr, *Dividends, Interest and Royalties in Treaties to Avoid Double Taxation between Developed and Developing Contries,* PAPERS AND REPORTS OF SEVENTH CIAT GENERAL ASSEMBLY 245 (1973).

5. The first meeting was held in Montevideo, April 9-13, 1973 and the second, also in Montevideo, in May 13-17, 1974. Distinguished representatives of the eleven LAFTA member countries attended the second meeting, all of them connected with governmental and administrative organizations. Due to the representativeness of these experts and the special attention given in these meetings to the Andean Agreements, we consider it to be very useful to make reference in this report to the presentations and reports of these meetings.

tangible property (patent, trademarks, copyrights and similar ones) from the payment of the rent of goods and services of technical assistance, since such a distinction is made not only in the agreements we are considering but also in the doctrine and legislation of the Latin American countries [6].

3.1. *Dividends*

On this point there is no hesitation in Latin America. Article 11 of the Agreement on Dividends and Participations states that "they will be taxed only by the country of which the business enterprise paying them is a resident". This solution essentially coincides with that of the Mexican Model of 1943 according to which "income from investment capital will only be taxed by the contracting country wherein the capital is invested".

From the first moment in the LAFTA meetings the solution of the Andean Agreements prevailed. As it says in the Final Reports of the first meeting "it was understood that taking into account the fact that the source that produces dividends and participations is the same enterprise paying them, the Government of the residence of that enterprise is the one that has the exclusive right to tax that income". In the second meeting there was not any specific statement but it was remarked that concerning this point a position had been adopted in the first meeting.

3.2. *Interest. Source principle*

This is the most controversial principle and also the most difficult to apply, which is not strange because it occurs in every situation where this principle is analyzed [7].

According to the source principle the interest "originally must be taxed in the country wherein the capital is effectively used" as it is expressed in the official Comments to Article 9 of Mexican Model Convention. There it was added that this country is the one "where part of the gross income produced is destined to pay the interest". Further on the concept is clarified in the statement that the interest "must be taxed in the country where the enterprise producing the benefits from which the interest is due is situated".

This general concept about that principle is being firmly supported up to the present by the Latin American countries and certainly it is sustained in the Andean Agreements. Wurgaft Barr in the previously mentioned comments summarizes this concept of the source principle stating that this is situated "where the credit has been used, where the resources for paying this income have been generated".

However, it has to be pointed out that doubts and difficulties emerged in the development and application of the principle. The first one is the exact determination of the country where the capital is used. The "interpretation" previously reproduced from Article 9 of the Mexican Model, creates objections as far as it equates the place "where the capital is invested" with the place "where the capital is effectively used".

This objection does not exist in the Andean

6. In this sense, see Valdés Costa, *Abuses in Deduction of Expenses Incurred Abroad,* PAPERS AND REPORTS OF FIFTH CIAT GENERAL ASSEMBLY (1971); Abusos en los gastos incurridos en el exterior, 21 REVISTA DERECHO FISCAL 1, Buenos Aires (1971).

7. For example:

(a) *Official Comments to the Mexican Model,* LEAGUE OF NATIONS, Geneva (1945), 60, 61.

(b) *Comments to Article 11, OECD Model Convention,* REPORTS OF THE FISCAL COMMITTEE AND DISCUSSIONS OF THE U.N. COMMITTEE OF EXPERTS.

Treaties as there it is expressed that "interest derived from loans shall be taxable only by the member country where the loan has been used". (art. 10(1)).

As it was shown in the LAFTA meetings, the criterion of the place where the capital is used is continually being strengthened, but with the very important characteristic that the lack of precision of the concept is recognized which may create difficulties in many cases. These difficulties become insuperable in some extreme situations of remittances of credits to third parties or to branches or subsidiaries residing in other countries.

The difficulty had been foreseen by the reporters of the Mexican Treaty who understood that when the country of use could not be determined then the country of the tax residence of the debtor is considered to be the country of use.

The Andean Agreements specifically foresaw this difficulty in their texts and therefore posed certain presumptions. For example, the second paragraph of the above-mentioned Article 10 states that "subject to rebuttal, it is presumed that the loan has been used in the country from which the interest payment has been made".

The preceding solution is the most concrete and logical one concerning the source principle. However, it did not obtain a unanimous agreement in the LAFTA meetings. Just as in the first one, objections and discrepancies arose not only about acceptance in principle of the place of use, but also with regard to its vagueness. Contrary to the concept of *place of use* (which was identified in the reports and discussions as *place of allocation* as interpreted in the Mexican Model) the Brazilian representatives proposed – as a principle – the criterion of *the place from which payments are made*. This original position differs not only from the traditional source principle in the Latin American countries but also from the solutions of the Andean Agreements since in the latter the concept "place where payments are made" is only applied when the place of the effective use cannot be determined. The fundamentals for this new position are mainly practical ones, and they are exclusively meant to further the fiscal interest. It was pointed out that the new position "does not involve risks of loosing revenue" ... as it "entirely preserves the tax rights of the country applying it". On the other hand it was remarked that "the paying source principle offers the taxing power a greater jurisdiction than that derived from the economic use or allocation criterion, also since the location of the producing source is defined according to objective facts, payment is a simpler administration principle than the previously mentioned one" [8].

Despite the criticism which might arise from consideration of the "place of payment" concept as the principle for determining the source instead of using it as a mere assumption, as an observer of this Second Meeting, I should affirm that this innovation did not meet any support in the other delegations. This fact was not shown in the Final Report of the Meeting.

3:3. *Interest. Difficulties of application*

As it was previously said, the agreements only determine the source principle without establishing any concessions or solutions for the difficulties in its application. This characteristic which obviously will be an obstacle for the unamended adoption of the Model in the treaties to be concluded with third countries also affects the application of the principle itself. Although the

8. *Final Report of the LAFTA Second Meeting*, LAFTA/DTI/II (May 17, 1974), 12, 13.

source countries may withhold tax on the entire amounts of income transferred abroad, it is certain that this procedure transfers the tax burden to the debtor enterprise. It is well-known that the foreign lender will shift the tax to the borrower in order to avoid double taxation of his wealth.

Consequently, it is incongruous to withhold tax on gross income instead of on net income and to assess tax at rates applicable to estimated income so that the amount to be transferred is relatively small [9]. Therefore, the tax created by the developing country for imposing on the foreign lender, becomes a tax on the domestic enterprises burdened by the taxation of the gross income and an abusive assessment of the tax on an estimated income higher than the actual interest.

These inequitable consequences were raised in the LAFTA Second Meeting by the representatives of the countries of the Andean Pact. Chile and Peru pointed out both circumstances, expressed their concern and outlined some solutions especially for the case in which the country where the capital was invested differs from the country where the investments are effectively used. Implicitly, this concern was in general shared by all the participants.

The Final Report briefly refers to these problems and states that an agreement was reached recommending that the Secretariat prepare a document in which the applied criteria will be analyzed so as to avoid the above-mentioned effects . . ." [10].

3.4. *Royalties*

The position is exactly the same with respect to the formulation of the principle, including difficulties similar to those encountered with respect to the application of tax on the gross and the estimated income from interest.

According to a generally held opinion in Latin America the concept of royalties is a strict one. Only those "derived from the use of trademarks, patents, technical knowledge without patent or other intangible properties of a similar nature" (art. 9) are considered as royalties. The rents corresponding "to the use of industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience" are excluded thus differing from Article 12 of the OECD Draft Double Taxation Convention.

The Andean Agreements subject those rentals to the general regime, without any specific solution in the text. Income obtained by enterprises of professional services and technical assistance are especially considered in Article 14, which we will comment upon in paragraph 3.5.

Naturally, the solution of the Agreements is an unusual one in the sense that the royalties corresponding to the operations foreseen in the law "will only be taxed" in the country where the intangible properties were used.

This is the traditional solution in Latin

9. A withholding tax at source of 40% (which is normal in Latin America) corresponds to an estimated amount of $ 66.66 in case the net interest agreed upon is $ 100, i.e. the Government then collects $ 66.66 instead of $ 40. This tax burden will exclusively be shifted to the domestic enterprise, as the creditor claims the total amount of the stipulated interests, which is gross income for him, subject to income tax in his country.

10. *Final Report of the LAFTA Second Meeting*, LAFTA/DTI/II, (May 17, 1974), 14. The suggested solutions were to apply a low rate on the gross income and to tax only the difference between the interest in the lender's country market and the interest in the borrower's market, which means a recognition of the tax right of the lender's country.

America and was contained in the Mexican Model of 1943. In its Commentaries it is recognized that this income is of a complex nature and may be differentiated according to the conditions in which it is acquired, since it can be classified as income of a profession, enterprise or capital. In the Commentaries it is pointed out that "following the principles of the immediate economic origin [the Model] applies a single rule according to which they [royalties] are taxed in the country where the patent or other similar right is exploited". In the LAFTA Meetings there was no doubt that the taxing power belongs to the source country. However, as was the case with interest, a discrepancy arose between the criterion of the economic use or allocation of the investment (supported by the majority of delegates), and the criterion of the country from which the payments are made.

3.5. *Technical assistance*

True to the source principle, the Andean Agreements establish in their Article 14 that "the income obtained by professional services and technical assistance enterprises will only be taxed in the member country in which those services were performed".

This solution was shared by the Latin American doctrine up to the present [11]. But in the LAFTA Second Meeting a fundamental review was discussed which is interesting to analyze.

To the traditional dilemma between the criterion of the country in which *the activities are performed* and the one of the country in which *the services are rendered,* a new position was added, that of the place from which the payments are made or *source of payment* as it is called in LAFTA meetings. There were diverging opinions generally with respect to fiscal revenues. The Final Report states that "with regard to the source criterion which recognizes the taxing power according to the place in which the activities are performed", it was pointed out that the principal inconvenience of the source criterion is specifically that the payments effected for technical assistance and other services rendered from abroad may not be taxed. Owing to the increasing use of those services by a part of LAFTA countries, it was agreed that emphasis must be given to the case of technical assistance, to the amounts paid for such assistance and to the possibility offered to the related enterprises to shift profits. The diverging opinions prevented the presentation of a recommendation to the Secretariat for the "elaboration of a report about technical assistance, that would determine the amounts to be paid for those services by the LAFTA countries".

4. CRITICISM OF THE SOLUTIONS

For us who support the source principle, the solutions of the Andean Agreements do not deserve serious criticism since the general solutions follow those of the most authoritative doctrine.

The only objection that could be made relates to the imprecision of the term "use of the loan" for determining the location of the source with respect to interest. The difficulties of applying the principle in some cases is generally recognized. Thus,

11. See Valdés Costa, *Abuses in Deduction of Expenses Incurred Abroad,* PAPERS AND REPORTS OF FIFTH CIAT GENERAL ASSEMBLY (1971), which supported the opinions of Rubenz Gomes de Sousa of Argentina.
The Uruguayan legislation had accepted it up to 1974 and now it is considered taxable, according to a tax reform which may be considered to be somewhat inconsistent, since it does not tax interest.

assumptions concerning the debtor's domicile and the place from which payments are made have been adopted.

But in addition to this difficulty of finding the location of the source, we believe that there is a certain confusion between the place of investment, (according to the terminology of the Mexican Model) or (according to the terminoloy used in LAFTA Meetings) the place of allocation by the lender; and the place of the *effective use* of the loan by the borrower.

In the Mexican official commentaries as well as in the LAFTA meetings, both concepts are — erroneously, we might say, considered synonymous.

Frequently, the place of investment or allocation and the place of effective use coincide; but it is undeniable that in some cases they cannot coincide. In these cases it seems to us very clear that the country of investment or allocation by the lender must prevail, owing to the fact that the lender is the person subject to tax under the law since he is the owner of the income. It cannot be the country in which the product of the loan is used by the borrower because he is here only a withholding agent. Thus, the applicable legislation must be based on the principle of investment or allocation and not on the effective use principle.

Major criticisms can be levelled at the omission of the solution of problems of recognized importance, especially those concerning the assessment of tax on interest and royalties. These technical problems are intensified by the prevailing practice of the Latin American countries which compute their taxes on a gross and estimated income. It has to be taken into account that these points, which, as we have seen, are of concern to the Andean Pact countries, will be specially considered in the very near future. Nor do the agreements deal with the problem of interest arising from loans used to finance purchases made abroad, which because of its complexity deserves special regulation. In the LAFTA Second Meeting the prevalent opinion was that such interest should be taxable in the source country.

5. FINAL COMMENTS

As we have said on other occasions, the Andean Agreements constitute the most important and radical expression of the source principle as it has been expressed in Latin America. Thus, the Andean Agreements have had a wide influence.

However their possibilities of application are limited because of their radical approach to the formulation of the source principle so as to exclude variations and because of their failure to provide solutions for the problems of practical application especially with reference to interest and royalties.

We should say that the Model Convention is more than just a model convention. It is rather a declaration of principles which the countries supporting the domicile or nationality criteria will not simply and easily accept. The model convention will be useful only as a starting point for the reciprocal negotiations and concessions inherent to any treaty.

The evaluation of these agreements has to be supplemented by the study which is being conducted within the wider frame of LAFTA. In these Meetings, interpretations and supplementary solutions are being worked out which will change the effects of the agreements. In general, from the results of the two first meetings of the Latin American governments it can be foreseen that the radical approach will increase particularly concerning technical assistance

and interest on deferred payments for purchases.

On the other hand, the Second Meeting demonstrated the concern with the way the tax on interest is assessed.

The radical approach of these agreements and of the prevailing position in LAFTA falls into two categories.

a) First, there is an interest in increasing the revenue which is undoubtedly an objective which is repeatedly mentioned in the considered reports and in the discussions as it can be easily verified in the two Final Reports. Since the delegations are exclusively composed of government officials, this concern should not seem strange.

b) Second, there is the fear — undoubtedly well-based — of the Latin American tax administrations that large enterprises which operate in the continent through branches and subsidiaries will attempt to evade or avoid taxes. A typical example of this was the subject selected for the V CIAT Assembly held in Rio de Janeiro in 1971 and the presentation formulated on that occasion by the Mexican delegation [12]. Also, especially notable is the lack of interest shown in the Agreements and the LAFTA Meetings in the negative economic effects which a wide application of the source principle creates. Those negative economic effects are a consequence of the double taxation which unavoidably occurs in certain cases of payments of interest and royalties and which will be increased with financing aid from abroad, if the ideas expounded by the Second Meeting grow in influence. Accepting that the transfer of capital and technology is indispensable for economic development, it seems necessary to search for tax instruments to promote such development and not to impede it by increasing the cost to the developing countries.

This less than flexible characteristic of the Agreements and of the LAFTA experts clashes with the position of many developed countries which appear to be obstinate concerning certain problems which from the Latin American viewpoint should be resolved without restrictions in favor of the developed countries. Such problems exist with respect to dividends and royalties derived from business operations carried out in their countries, and with respect to the application of the tax sparing clauses which in Latin America is considered necessary for implementing a policy of economic incentives [13].

This conflict of fiscal interests will have to yield to the greater international interest of promoting the development of the less developed countries, since this was the basic premise ECOSOC used in the creation of the Group of Experts in 1967. The studies conducted by disinterested international scientific organizations will be of prime importance to the promotion of this international interest. In that sense, a great responsibility rests on IFA and other institutions such as the Latin American Tax Law Institute, to rationally and objectively analyze these problems as any scientific institution should.

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12. A typical example of the defensive attitude of the Latin American Fiscal Administration is given in Hoyo, *Fiscal Evasion in Payments Abroad: Mexican Case,* PAPERS AND REPORTS OF FIFTH CIAT GENERAL ASSEMBLY (1971).

13. The defense of the Latin American position on these specific points can be found in Round Table Discussions, *The Tax Sparing Clause as an Instrument to Promote Foreign Investment in Latin America,* XXII IFA CONGRESS (1970); and in Valdés Costa, *Latin American Position on the Problem of Tax Agreements between Developed and Developing Countries,* 25 BULL. INT. FISCAL DOC. 283, Amsterdam, (1971).

JAMES S. HAUSMAN:

THE ANDEAN PACT MODEL CONVENTION AS VIEWED BY THE CAPITAL EXPORTING NATIONS*

I have been asked to review the Andean model tax convention from the point of view of the capital exporting nations and, in particular, with a view to discussing both its acceptability to the capital exporting nations and the difficulties that may be encountered by individuals and corporations resident in those countries deriving income from the Andean Pact countries.

The most striking feature of the proposed convention is the fact that it purports to allocate exclusive jurisdiction to tax on the basis of source. Undoubtedly this will cause the capital exporting nations to ask themselves some fundamental questions. They will be concerned whether they can justify agreeing to such a broad limitation on their power to tax when the limitation runs counter to their own principles of taxation and international norms. My own conclusion is that the capital exporting nations will be most reluctant to do so.

One must recognize that for the capital exporting nations the taxation of world income has important and fundamental policy roots. It is often stated as an axiom of British justice that "equality is equity". Translated into tax terms, equity requires that all taxpayers be treated on an equal basis without regard to the source from which the income is derived. This is particularly true where progressivity is an essential element in the tax system.

We must also consider neutrality as an aspect of tax equity. The capital exporting nations are concerned lest their tax system serve to encourage the export of capital that might otherwise be allocated to the advancement of their domestic economies. Put another way, the capital exporting countries wish to ensure that the export of capital and expertise is done for economic and not tax reasons.

This notion of neutrality has taken on new significance in recent times as governments everywhere seek to maintain favourable balance of payments flows and to generate employment and development within their domestic economies. Observers will be aware that some industrialized countries are adopting some fairly stringent policy measures short of the imposition of foreign exchange controls to encourage repatriation of profits and to prevent the use of foreign corporations as a means to avoid domestic tax. If examples are necessary, I need go no further than to point to the policy of the Canadian government as reflected in its rules regarding the taxation of foreign accrual property income of foreign affiliates and the rules contained in sub-part f of the Internal Revenue Code of the United States.

The concept of tax neutrality also necessarily implies that investment abroad must not be penalized by the domestic tax system. Consequently, in order to put foreign investment on an equal footing with domestic investment, relief must be given within the domestic law for foreign taxes paid. This relief can take many forms, ranging from a direct credit for the taxes paid abroad, to

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a deduction for such taxes, to a reduction in the rate of tax applicable to the foreign income and in rare cases, to a complete exemption for the foreign source income. Thus, it is fair to say that, generally speaking, under their domestic laws the capital exporting countries recognize the prior right of the developing countries to impose taxes on income arising there.

The developing countries have their own concerns and seem not to be content with a situation whereby the industrialized nations yield to them only the primary right to tax. The obtaining of development capital and expertise from abroad on acceptable terms has a high priority in the developing nations. The Andean Pact countries obviously wish to have full control over the terms of investment in projects in their countries including the fiscal incidents thereof. In this way any tax that they may forgive under incentive schemes they initiate will not turn out, in effect, to be transfers to a foreign treasury of the amount forgiven. In their view, their policies can only be effective if the capital exporting nations not only yield the prior right to tax but also the exclusive right to tax profits arising in their jurisdictions.

If "tax sparing" (as it is generally called) is to be accepted by the capital exporting nations, it will have to be accepted as an exception to the neutrality concept. There is, I believe, a growing awareness in the industrialized world that national objectives must include the promotion of investment in the developing world. Coupled with this awareness is a recognition that a country has an interest in maintaining the competitive position of its international enterprises in relation to those based in jurisdictions permitting tax sparing.

This policy is reflected, for example, in recent amendments to the Canadian taxation laws. Under Canadian law dividends paid by foreign affiliates out of business profits earned in a jurisdiction with which Canada has concluded a tax convention will be free from Canadian tax. Even in circumstances where Canada has not concluded a tax convention with the foreign jurisdiction, there is relief from the ordinary "gross-up and credit" rules for projects undertaken before 1976 where profits earned by the foreign affiliate were subject to tax at a concessionary rate. In determining the Canadian foreign tax credit applicable to the profits remitted as a dividend, the foreign affiliate will be "assumed" to have paid the normal rate of corporate tax prevailing in the jurisdiction of source.

However, the concept of tax sparing does represent a radical departure from the ordinary rules and one can expect that many capital exporting countries will be very reluctant to yield on this issue. For example, many jurisdictions now defer the imposition of domestic tax on business income earned abroad through foreign subsidiaries until those profits are repatriated as dividends. Many of these are bound to contend that indefinite deferral of tax represents sufficient recognition of local incentives. Moreover, it is unlikely that they would be willing to permit all forms of income to be sheltered from taxation in the home country. To do so would in effect permit the developing country to go into the tax haven business at the expense of the home country's fisc.

Accordingly, if tax sparing is to be recognized in treaty negotiations it will probably only be done on a selective basis even by those countries that give some recognition to tax sparing domestically. I think it unlikely that the developed countries would be willing to grant full exclusion of all forms of income derived from the other

contracting state in the manner contemplated in the Andean model convention. They will probably maintain that such a broad limitation on the power to tax is just too imprecise a means to achieve the goal of tax sparing.

The Andean Pact countries will also wish to be selective in their treaty negotiations to ensure that the effect of the treaty is to grant full tax sparing for local incentives. For example, it will be recognized that where under the law of the foreign contracting state the corporate tax is integrated with tax imposed on shareholders, full "tax sparing" can only be achieved if a notional credit is given for the tax that is foregone in the country of source. Otherwise the tax forgiven by the host country and protected from tax abroad by the Andean tax convention will only result in a deferral of tax abroad until the time when dividends are paid to shareholders.

The concept of taxing income exclusively on the basis of source also has been defended on the basis that it provides a practical and effective means for the avoidance of tax conflicts. This is probably true where the contracting nations are closely associated economically and the transactions between them are numerous and taxed by each jurisdiction in more or less the same way.

However, for the most part, the Andean Pact members will not have close reciprocal economic ties with the capital exporting nations. Virtually all investment capital will flow only in one direction and the nature of the goods and services exchanged will differ substantially in their quantity and character. How then will the proposed tax convention operate to reduce the areas of tax conflict at the practical level? This is the question that persons dealing in the Andean Pact countries will certainly ask, and are perfectly justified in asking, of both contracting nations.

Article 4th of the proposed Andean Tax Convention states as a general rule that the tax jurisdiction of each of the parties to the agreement is to be limited to the income arising in the contracting state "wherein the source of such income is situated". The draft convention goes on to provide that profits from business activities will only be taxable by states "wherein such business activities have been undertaken" and then a list is provided of circumstances which will deem a business enterprise to have been carried on within the territory.

Let us consider a simple, but very common, example of an enterprise undertaken in one of the Andean Pact countries. After discovery of a mineral deposit within its territory, the government determines that it should be put into commercial production with the aid of a corporation from a capital exporting country. The arrangement calls for the provision of "know-how" by the foreign corporation and it is hoped that when the mine is in production it will add significantly to the exports of the Andean Pact country.

In providing the necessary "know-how" the foreign corporation will use technical material that it has developed in the home country, make certain on-site inspections, provide instruction at the site and encourage visits by the representatives of the local enterprise to the corporation's facilities abroad. When fees are ultimately paid for the services provided, there is an immediate problem as to what is the source of the income under the treaty. Article 14th states that income of a business enterprise engaged in rendering technical assistance shall be taxable only by the contracting state wherein such services or assistance are rendered.

Are the services considered to be rendered solely in the host country since the benefit of the assistance is to be enjoyed there? This was obviously not intended since the language of the article is clear to differentiate the place of use (as is the case in Articles 9th and 10th) from the place where the services are rendered. The somewhat ambiguous language employed in the concluding paragraph of Article 7th does not seem to be of assistance if the services are performed by persons who are not independent of the foreign corporation. Is it contemplated that the foreign corporation is to keep a log setting out the time spent on the project and allocating that time geographically? If so, how can a reasonable judgment be made of the value of the particular services rendered in each country when attributing the income to each of the contracting states?

It is evident that in these circumstances the possibilities for double taxation are considerable. The avoidance of double taxation could only be achieved if the treaty contained clear rules to determine the place where services are deemed to be rendered and how costs of rendering these services are to be allocated in determining the profit to be taxed by each jurisdiction.

In considering the impact of the proposed treaty on the taxation of technical services rendered one cannot ignore the position of the employees from the foreign contracting state who deliver the service. Under Article 13th they will be taxable in the Andean Pact country for remuneration received in respect of services rendered there without regard to how much they receive in respect thereof or how long the employee is in the jurisdiction. It is easy to imagine the hardship that such a rule will cause where the foreign corporation we have been discussing sends one employee to the mine site for two or three days to assist with a technical problem. It is easy to characterize such a situation as de minimis, but it occurs with such frequency that it should be taken into account to avoid having the need for local tax compliance prove to be an impediment to the effective delivery of services.

One would have thought that the Andean Pact countries would wish to encourage the provision of technical expertise. If such be the case, is it in their interest to assert such broad taxing powers in respect of those activities? Would it not be more in their interest to yield somewhat on the question of taxation in order to facilitate the free flow of needed expertise? This could be accomplished by clarifying the rules as to where the services are considered rendered as well as an amendment to Article 13th to exempt from local tax employees who are in the country for only short periods of time somewhat along the same lines as the exemption granted to employees of transportation companies engaged in international traffic.

Consider also the position of the foreign seller of the heavy equipment to be used in the resource facility. If the seller should send a representative or agent to review the requirements at the mine site or oversee installation of the equipment, then according to Article 7th the foreign seller will be considered to have carried on activities in the Andean Pact country. The seller would likely therefore be considered to have undertaken activities in both contracting states for the purpose of the treaty. Accordingly, under the concluding words of Article 7th of the treaty "the profits earned shall be attributed to such persons (i.e. the representative), provided that said persons ... are totally independent from the business enterprise."

It is not clear what profit is to be attributed to the representative. Is the total profit on the sale so attributable or merely the profit reasonably allocable to the function performed by the representative in the local country? What is the effect of the proviso? Is it to exclude the possibility of attribution if the representative is not "totally independent" with the result that the entire profit is taxable in the host country? What are the criteria that determine whether a representative is to be considered "totally independent"?

It seems that the rules dealing with the attribution of business income will require significant clarification. Again consideration should also be given to the advisability of seeking to tax the business profits of foreign enterprises with only casual connection with the jurisdiction. Not only will such a policy cause dislocation as persons seek to avoid the rigours of the rules, but can only turn out to be an administrative headache to the host country in its attempts to determine the nature and extent of each person's economic activity when visiting the country.

This leads to the question why the Andean Pact countries considered it advisable to deviate so widely from the concept of "permanent establishment" in the OECD model. Firstly, on the purely pragmatic level, the permanent establishment requirement has been widely accepted and as a result corporations have established patterns of operation which conform with these known rules. More importantly, the concept of a permanent establishment is not necessarily inconsistent with the taxation of business profits on the basis of source, but merely limits the right to tax those profits where contact with a jurisdiction is tenuous or fleeting. The question whether the definition of "permanent establishment" contained in the OECD model is appropriate for dealings between the capital exporting and capital importing nations is certainly open for debate. However it will probably be generally agreed that the right to tax should be based on a substantial economic nexus with the jurisdiction. This nexus is not only desirable on grounds of administrative convenience and basic fairness, but it provides a readily discernible point of reference for determining what profit is properly allocable to the activity carried on in the host country.

Those activities that will be considered to give rise to income having a source in the Andean Pact countries are set out in Article 7th of the model convention and some amendments could be introduced (particularly to subparagraph (i) and the concluding words of the Article) to make it clear that the connection contemplated thereunder is to be of a more stable nature. But doing so only solves the problem of identification. Some clear rules will also have to be included to determine how the profit attributed to the host country is to be measured. These could be contained in some provision in the Andean model similar in purpose to Article 7 of the OECD model. Presumably such a provision would make some attempt to define what portion of the revenues and expenses resulting from the business activity undertaken in the host country is allocable in determining the profits taxable there.

These rules, of course, would have reciprocal application and would not only operate for the benefit of enterprises of contracting states outside the Andean Pact area but would also assist in determining what portion of the profit earned by enterprises of the Andean Pact countries in the other contracting state is taxable there. Consider, for example, the resource facility that we

have been discussing. Assume that when operations are under way, the corporation operating the mine despatches a sales representative to the other contracting state to sell the product of the mine. The Andean Pact country would feel quite justifiably aggrieved if all or a substantial part of the profits of the mining operations were taxed abroad because under the terms of the tax convention those profits were to be attributed to the sales representative.

In conclusion and in summary, I think it fair to say that many of the capital exporting nations recognize that something more than a foreign tax credit in respect of foreign income is required to permit the Andean Pact countries to have adequate control over the fiscal incidents of investment in their region. Nevertheless, the capital exporting countries will be very reluctant to agree to allocate to the host country the exclusive right to tax income from sources therein since doing so could have adverse effects on the integrity of their own tax systems.

The Andean model convention in its present form almost certainly will cause problems for persons doing business in the Andean Pact countries. These problems will result essentially from the difficulties that will be encountered in identifying the source of income from a particular business activity and the failure of the model convention to exempt from taxation the income derived from the host country as a result of only casual connection with the jurisdiction. These problems of course, can be alleviated by appropriate amendments to the model convention.

However, in addition, a policy will have to be formulated for determining how the profit attributed to a contracting state is to be measured. This is an important and fundamental issue. However, this issue and others arising from the Andean model have been the subject of intensive study by such groups as the OECD and the United Nations and their work could prove to be a helpful source for those charged with the responsibility of resolving these matters.

ROGER E. BERG AND JEAN-MICHEL TRON*:

FRANCE: THE TAXE CONJONCTURELLE

In an effort to fight the continuing inflationary spiral in France, the Government had proposed a bill instituting a new anti-inflationary tax, the *taxe conjoncturelle*, which has now been enacted in modified form by the parliament. Officially titled a "prélèvement conjoncturel" (which can be roughly translated as an "extraordinary levy") this tax is designed to induce business enterprises voluntarily to follow non-inflationary policies.

The following discussion is based on the text of the law as enacted. Further implementing decrees are envisioned which may clarify ambiguous points or matters of administration.

I. BRIEF SUMMARY OF THE TAX

The tax is designed to penalize those companies whose increases in prices exceed current rates of inflation — which, in other words, lead rather than follow the inflationary cycle. The central concept of the tax is the "Margin". This is not, in fact a profit margin but is akin to the "value added" by the company, as that concept is used (with certain variations) in French tax law (*i.e.* for the value added tax, or TVA): the difference between gross revenues and the cost of goods and services (excluding salaries), corrected for fluctuations in inventory. From this Margin the company would be expected to cover salary expense and depreciation on capital assets, and to realize profits, pay dividends, etc. By penalizing increases in Margin in successive years (by a 33⅓% tax on the adjusted Margin increase) it is hoped to control simultaneously inflationary rises in wages and in profits which reflect themselves in excessive price increases.

Because the Margin includes labor costs and return on capital, an adjustment to the Margin was provided for in order to correct for variations in labor and capital assets between the years being compared. If this were not done, a company, for example, whose receipts increased due to an increase in sales and hence production (with an accompanying increase in employment of labor) would be penalized as inflationary due solely to its increase in gross receipts, even if its prices remained stable. Similarly adjustments are permitted to allow for productivity gains and normal price and wage increases (some of which are government-sponsored) which are not within, or entirely within, the company's control. As uniform percentages fixed in advance by law are used for both median productivity and most wage/price increases (combined into a single percentage of either 14.30% or 16% for 1975), the company is theoretically discouraged from granting inflationary wage increases and attempting to pass these on as price increases. Wage increases due to escalations in the minimum wage (SMIC) are, however, reflected in a separate adjustment. The Margin is also adjusted for operating losses in the preceding year, which are felt to distort any comparison with a later, more profitable year, for variations in the amount of bad

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debt write-offs, for new payroll or parafiscal charges and for fluctuations in reserves established against increases in inventory prices. In addition, but for different reasons, a rough correction is made to exclude all export results from the Margin (both of the current and reference year), since the tax is directed only at domestic inflationary behavior.

Once these adjustments have been made, any remaining increase in Margin between the reference year (which may be either of the two prior years) and the tax year is taxed at the rate of 33⅓%. The tax, however, is paid currently in unequal quarterly installments (of 10%, 15%, 25% and 30%, respectively) based on an estimate of the tax due for that year or on the tax paid in the prior year, at the option of the company, with a special system for calculating installments during 1975 if the prior year's tax is chosen as a basis.

The tax is to continue in effect until the rate of inflation, as measured by the consumer price index for manufactured products, has been reduced to an annual rate below 6% over a period of three consecutive months. At such time as the tax is abolished (or authorization to collect it is not renewed by the parliament), all taxes previously paid are to be reimbursed in full, but such reimbursed amounts must be reinvested within two years of their receipt.

A special tax commission is also to be established to provide relief in special cases. The returns to be filed in connection with the tax are to be made available to the price control authorities, but the *taxe conjoncturelle* is to be administered by the tax authorities.

The tax is not deductible against corporate or commercial income taxes.

II. DETAILED REVIEW

(1) Duration: The tax went into effect on January 1, 1975, with respect to fiscal years or portions thereof beginning on such date. It will be abolished by decree *(arrêté)* of the Minister of the Economy and Finance on the first day of the month following three consecutive months during which the aggregate increase in the consumer price index for "manufactured products" has not exceeded 1.5%. However, authorization to collect the tax must be renewed each year by budget authorization.

(2) Payment of Tax; Reimbursement: The tax is to be paid into a special account at the Bank of France, and will, upon abolition or nonrenewal of the tax, be fully reimbursed. However, the amounts reimbursed must, within two years of their receipt by the company, be applied to the financing of investments.

(3) Companies Subject to the Tax: The law proceeds on the theory that the economy is primarily influenced by the larger enterprises. Accordingly, and in order to simplify administration, only the larger enterprises (some 15,000) are subject to the tax. These are the companies (a) whose principal activity is the sale of goods or the furnishing of lodging, whose gross revenues or annual receipts exclusive of TVA and equivalent taxes exceed 30 million francs (if they have 150 or fewer employees) or 10 million francs (if they have more than 150 employees), and (b) all other companies (*e.g.* service industries and professionals) whose gross revenues or annual receipts exclusive of TVA and equivalent taxes exceed 8 million francs (if they have 150 or fewer employees) or 3 million francs (if they have more than 150 employees). If an enterprise falls with-

in both categories (a) and (b), it is subject to the tax only if it meets the 30/10 million franc test, unless its non-sales and non-lodging activities alone meet the 8/3 million franc test. In the case of corporate groups, each majority-owned subsidiary will be subject to the tax if the parent company is subject to the tax, provided that such subsidiary itself has a number of employees or revenues or receipts in excess of half of those otherwise specified (i.e. 75 employees, 15/5 or 4/1.5 million francs).[1]

The revenues or receipts involved are those of the "tax year", *i.e.* the fiscal year with respect to which the tax is imposed; but for companies with fiscal years of other than 12 months, gross revenues and annual receipts must be restated on a 12-month basis. The rules for determining the number of employees are to be the same as those fixed with respect to the mandatory professional training program. If a company subject to the tax in any tax year should fall below the qualifying floors (either as to gross revenues or number of employees) during the following fiscal year, it will nonetheless remain subject to the tax during the fiscal year in which such decrease in revenues or employees occurs.

(4) Taxable Margin: The tax is imposed on the excess of the Margin for each fiscal year (the "tax year Margin") over the adjusted Margin for the prior fiscal year or, if the company so elects during the first three months of any fiscal year, over the adjusted Margin for the second prior fiscal year (in either case referred to as the "reference Margin"). Where the tax and reference fiscal years differ in length, the reference year's results must be restated to achieve equivalency.

(a) Definition: The Margin is defined as the difference between the sums entered under the following sets of headings on the company's general operating and profit and loss accounts attached to its income tax return for the fiscal year:

(i) sales and other income; inventory at the close of the year; rebates, allowances and discounts obtained *(ristournes, rabais et remises obtenus);* and "financial income" *(produits financiers, i.e.* investment income, finance charges, etc.) excluding, but only if the distributing entity is itself subject to the *taxe conjoncturelle* or does not operate in France, that part of dividends received from subsidiaries which is deductible from taxable profits under the French parent-subsidiary regime, income received from joint ventures or partnerships (i.e. from entities whose participants are directly taxed on their share of profits), and income received from entities exempt from corporate income tax (the most important one being the SICOMI, or real estate investment company); less

(ii) inventory at the beginning of the year; purchases of material and goods; and the following, to the extent deductible from taxable income: taxes and duties; outside labor, material and services; transportation and travelling; miscellaneous administrative expenses, excluding travel and entertainment expenses; "financial ex-

1. This last requirement was added in order to exclude small and medium-sized subsidiaries from application of the tax. Strictly read, only one of the tests must be met (*i.e.* 75 employees *or* 5 or 1.5 million francs turnover). However, in practice it can be expected that the ambiguous text will be read as simply a cross-reference and that, accordingly, a subsidiary would be subject to the tax only if it had a turnover of the applicable of 15 or 4 million francs or, with more than 75 employees, of the applicable of 5 or 1.5 million francs.

penses" *(frais financiers);* and amounts contributed to mandatory employee profit-sharing plans.

Inventory must of course be valued by the same method at the opening and close of the year.

The Margin, which represents, as noted above, the "value added" by an enterprise, is thus essentially the difference between gross revenues and the cost of goods and services, adjusted for changes in inventory. From a somewhat different viewpoint, it can be seen to be a company's cash flow to which salary expense has been added back. It is from the amount labelled as "Margin" that the company will have to make provisions for salary expenses and depreciation, and should realize profits to be reinvested, retained or distributed. Accordingly, by focusing on variations in the Margin, the tax is designed to limit simultaneously inflationary increases in wages and profits.

(b) Export Reduction: The tax is applicable only to the domestic market. Accordingly, the Margin as determined above is to be reduced by an amount equal to the percentage of the taxpayer's gross revenues, exclusive of TVA and indirect taxes, realized from exports (including transactions treated as exports for TVA purposes) and sales intended for export. This adjustment is, however, discretionary with each company.

(5) Special Rules for Banks and Insurance Companies: Because the accounts of financial and credit institutions and of insurance companies are maintained in a fashion different from those of industrial and commercial companies, special provisions have been included for computing their gross revenues (for purposes of determining applicability of the tax), Margins and business devoted to export. See Part III below. For companies following yet other types of accounting systems for tax purposes, a further law to this effect is envisioned. In all other respects, the provisions of the law are fully applicable to such enterprises.

(6) Corrections and Adjustments: Because the Margin includes provisions for wages, depreciation and investment, it will, if not corrected, penalize an enterprise whose increased revenue covers an increase in employment (and hence salaries) or investment (and hence depreciation charges) during the tax year, even though such action is clearly not by itself inflationary. In addition, other special circumstances both of general impact (such as increases in the minimum wage or the institution of new payroll charges) and peculiar to each company (such as operating losses in the reference year, above-average productivity increases or increases of reserves) may affect the variations in Margin without evidencing inflationary behavior on the part of the company. Hence, certain corrections and adjustments are necessary before the tax base is determined. These include corrections for alterations in means of production (in plant or labor), for anticipated median productivity and price increases, for reserves for price fluctuations, for changes in domestic bad debt loss experience, a separate correction for salary and related expenses resulting from minimum wage increases, and corrections for the prior year's operating losses and the amount of new payroll or parafiscal charges imposed subsequent to the reference year. The first three of these (means of production, median productivity and price increases) are calculated as successive percentage corrections of the domestic reference Margin. The remaining adjustments

are absolute figures added to or subtracted from the resulting adjusted reference Margin. In each case, however, the effect is to exclude permissible increases from the tax base. Only if these permissible increases are exceeded does a *taxe conjoncturelle* become payable.

(i) Change in Means of Production: This correction takes into account changes in investment in plant and equipment and in total effective hours worked by the labor force. It consists of weighted percentage changes from the reference year to the tax year in plant and equipment and in effective hours worked. In order to render the "hours worked" comparable as to skill and function, the number of hours worked is itself to be weighted by a factor, as yet unspecified, taking into account the evolution of qualifications within the company. The correction is calculated as: (percentage change in gross, *i.e.* undepreciated, book value of depreciable capital assets at the close of each fiscal year) × (ratio, for tax year, of depreciation to depreciation plus personnel costs) *plus* (percentage change in effective aggregate hours worked during such fiscal years) × (ratio, for tax year, of personnel costs to depreciation plus personnel costs). Each of these percentage changes can be positive or negative. The algebraic sum of these weighted percentages may also be either positive or negative. The domestic reference Margin is increased or decreased, as the case may be, by this resulting aggregate percentage adjustment for variations in plant and labor. See example below.

(ii) Anticipated Increases in Prices and Productivity: These adjustments take into account anticipated median gains in productivity and anticipated general price and wage increases, in order that a company required or expected to increase its salaries, for example to reflect both cost-of-living increases and productivity gains, will not be thereby penalized. In effect, companies are penalized only for leading inflation, not for following it. These adjustments, rather than taking into account the variations in each company, are fixed percentages to be established by law each year. (However, companies with greater-than-median productivity gains will be entitled to special relief from the Commission du Prélèvement described below). In principle, the reference Margin, as adjusted for changes in means of production, is increased by the productivity percentage established by law and the resulting adjusted Margin is further increased by the price/wage percentage established by law. However, these two percentages have been combined for 1975 into a single percentage of 14.3% if fiscal 1974 is taken as a reference year or 16% if fiscal 1973 is used.[2]

2. This seemingly anomalous two-year figure only 1.7% above that for a single year requires some explanation. The option to choose between the two prior years as a reference year was included as a concession to companies (such as the automobile manufacturers in 1974) who experience one very bad year.
If the following year shows marked improvement, the increase in Margin could be disproportionately large, although there is no inflationary factor at work. For example, if the 1973 Margin is 100, that for 1974 (a bad year) is only 90, and in 1975 it rises to 110, the difference of 20 between 1974 and 1975 is misleading and, it was felt, should not be fully taxed. Hence the option to use 1973 as a reference year instead. However, the Government argued, in effect, that a company in such a situation could not have a normal three-year margin increase. Rather, if the company deserved special treatment, it would be because the intervening year (1974) was abnormal and growth was not experienced.
Accordingly, the two-year price/productivity index was fixed at only 16%, rather than the approximately 30% which might be expected.

(iii) Reserves for Price Fluctuations: The reference Margin, as adjusted pursuant to (i) and (ii) above, is to be increased or decreased, as the case may be, by any increase or decrease, respectively, of such a reserve on the company's balance sheet as at the end of the tax year over that at the end of the reference year. This prevents the tax from depleting reserves established to maintain purchasing power for inventory in the face of inflation in the following year.

(iv) Bad Debt Losses: The reference Margin is to be increased or decreased by any increase or decrease from the reference year to the tax year in non-export bad debt losses written off by the company.

(v) Minimum Wage Increases: This adjustment, to be added to the reference Margin, is designed to avoid penalizing companies for salary increases resulting from compliance with the minimum wage law (SMIC), which is cost-of-living indexed. The adjustment, for ease of computation, is fixed at a uniform 5% of the aggregate of all salaries below 120% of the minimum wage, along with related charges. In effect, a yearly 5% increase in the minimum wage is assumed, while it is recognized that increases in the SMIC will necessarily result in corresponding wage increases for employees paid at a level just above the minimum.

(vi) Prior Year's Operating Losses: This adjustment is intended to avoid penalizing a company for attempting to recoup losses incurred in the reference year or adjusting its prices (and hence its Margin) to avoid such losses in the tax year. In order to eliminate the effect of such losses, the amount of operating losses incurred in the reference year (but not in excess of deductible losses for that year and exclusive of prior year's loss carry-forwards) are added to the reference Margin. However, in order to avoid a form of double counting, any reserves for bad debts established in the reference year which are written off in the tax year (and hence reflected in the bad debt loss adjustment) are to be subtracted from the operating losses taken into account here.

(vii) New Payroll or Parafiscal Charges: This final adjustment is designed to take into account wholly new payroll charges, such as the proposed new fund for collective dismissals, or parafiscal charges (*charges parafiscales, i.e.,* quasi- or non-statutory taxes) imposed on the companies by the Government. The reference Margin may be increased by the amount of new social or parafiscal charges imposed on the employer during the tax year but not the reference year. This adjustment refers only to wholly new charges, not to an increase in existing rates.

(7) Calculation of Tax Base — Example: Assume a company subject to the tax with a total Margin (including exports) of F.8,500,000 in 1975 as against F.6,000,000 in 1974. This company has chosen 1974 as its reference year rather than electing to use 1973. In 1975, 11% of its gross revenues were from export, as against 10% in 1974. Therefore the *domestic* Margins, which are the "Margins" for purposes of all subsequent corrections, are:

1975:

F. 8,500,000 — 11% (F. 8,500,000)
= F. 7,565,000

1974:

F. 6,000,000 — 10% (F. 6,000,000)
= F. 5,400,000

(Note that if the percentage of the company's revenues derived from exports had

significantly decreased between 1974 and 1975, the company could elect not to make the export reduction. In that case, the total Margins (including exports) would be used in all subsequent calculations. *E.g.* If exports represented 5% of gross revenues in 1975 as against 10% in 1974, the export-corrected Margins would be F. 8,075,000 and F. 5,400,000, respectively, for a difference (before other adjustments and corrections) of F. 2,675,000. Without the export correction, the difference was only F. 2,500,000, so that it would not be worthwhile to adjust for exports.)

Further assume the following with respect to the company: In 1974, it recorded 200,000 hours worked and showed gross depreciable capital assets of F. 10 million on its balance sheet. In 1975, it recorded only 180,000 hours worked, but had increased its gross depreciable capital assets to F. 15 million. In 1975 its personnel costs were F. 4 million and depreciation was F. 2.5 million. Further, its wage and related charges in 1974 for its employees paid less than 120% of the SMIC amounted to F. 1,850,000. Although its social charges increased in 1975 (both as to rate and absolute amount), it paid no new social or parafiscal charges not also assessed in 1974. In expectation of further inflation, it increased its reserves for inventory price increases in 1975 by F. 200,000 over 1974. In addition, its 1974 deductible operating losses totalled F. 100,000; however, F. 20,000 of this loss consisted of a portion of a bad debt reserve set up in 1974 and finally written off in 1975. In general, non-export bad debt write-offs totalled F. 45,000 in 1975 as against F. 65,000 in 1974.

(i) Change in Means of Production:

Percentage increase in capital with respect to 1974 =

$$\frac{15{,}000{,}000 - 10{,}000{,}000}{10{,}000{,}000} = +50\%$$

Relative weight of capital to labor in 1975 =

$$\frac{2.5 \text{ million}}{2.5 \text{ million} + 4 \text{ million}} = \frac{2.5}{6.5}$$

Percentage increase in aggregate hours with respect to 1974 (disregarding the weighting factor for the quality of such hours, the operation of which has not as yet been specified) =

$$\frac{180{,}000 - 200{,}000}{200{,}000} = -10\%$$

Relative weight of labor to capital in 1975 =

$$\frac{4 \text{ million}}{2.5 \text{ million} + 4 \text{ million}} = \frac{4}{6.5}$$

Weighted algebraic sum of changes in capital and labor =

$$(+50\%)\left(\frac{2.5}{6.5}\right) + (-10\%)\left(\frac{4}{6.5}\right) =$$

$$\frac{125\% - 40\%}{6.5} = \frac{+85\%}{6.5} = +13.07\%$$

The reference Margin of F. 5,400,000 is therefore to be increased by 13.07%, or F. 705,780 = F. 6,105,780.

(ii) Anticipated Increases in Prices and Productivity = Fixed for 1975 at + 14.30% with respect to 1974. This percentage is to be applied to further increase the 1974 Margin as already increased by the adjustment for means of production, *i.e.* by 14.30% × F. 6,105,780, or F. 873,126.

The second adjusted reference Margin is therefore F. 6,978,906.

(iii) Adjustment for Reserves for Price Fluctuations = + F. 200,000.

(iv) Adjustment for Minimum Wage (SMIC) =

5% × F. 1,850,000 = F. 92,500.

(v) Adjustment for Bad Debt Write-Offs = — F. 20,000.

(Note that, because these losses decreased, this adjustment is negative and therefore decreases the reference Margin).

(vi) Adjustment for Prior Year's Operating Losses = F. 100,000 *less* the F. 20,000 reserve established in 1974 and written off in 1975 (and hence reflected in (v) above) = F. 80,000.

(vii) New Payroll or Parafiscal Charges: None.

(viii) Adjusted 1974 (reference) Margin is therefore: (i & ii) F. 6,978,906 + (iii) F. 200,000 + (iv) F. 92,500 — (v) F. 20,000 + (vi) F. 80,000 + (vii) 0 = F. 7,331,406.

(ix) The tax base for the *taxe conjoncturelle* is the 1975 domestic Margin less the adjusted 1974 domestic Margin, to wit:

F. 7,565,000 — F. 7,331,406 = F. 153,594.

(8) Rate of Tax: The rate is 33⅓% of the tax base (*i.e.* domestic tax year Margin less adjusted reference Margin), and is fully reimbursable as discussed in (2) above.

(9) Special Cases: If a company can establish that the excess Margin resulted directly, in whole or in part, from special economic or legal circumstances, with no inflationary character of its doing, it may obtain total or partial relief from the tax. Requests for relief are to be addressed to the *Commission du Prélèvement,* which may also permit a delay in payment under exceptional circumstances. Companies whose increases in productivity exceed the norm may also obtain relief on an individual basis from the *Commission.*

(10) Administration: The tax is to be administered by a *Commission du Prélèvement* under the Minister of the Economy and Finance, on which business is to be represented. Petitions with respect to a tax year should be presented to the *Commission* within two months following the close of that fiscal year. The *Commission* must render its decision within two months, failing which payment of the tax and installments due subsequent to the date of the petition will be stayed without penalty until the decision is rendered. (If a petition is filed later than two months after the close of the tax year, it will still be heard, but the company will not be entitled to any stay.) Decisions are to be supported by reasons. Appeal of decisions for exceeding the power of the *Commission* may be taken to the *Conseil d'Etat.*

(11) Payment of Tax; Returns: The tax is to be paid at the tax office to which the company pays its income taxes. The tax must be settled before the end of the fourth month following the end of each fiscal year. Within such time, every company subject to the tax (whether or not any tax is due from it) must file a return with its tax office on a form to be prepared by the Ministry of the Economy and Finance.

Companies subject to the tax must pay, within the month following the end of such calendar quarter, quarterly installments on the tax. Such installments are to be calculated either on the basis of the tax estimated to be due for that tax year or on the basis of the prior year's tax. Whichever basis is chosen must be continued for the entire fiscal year and, unless notice of

change of election is given, for subsequent fiscal years. Under either election, the first quarter installment is to be 10% of such base amount, the second quarter 15%, the third quarter 25% and the fourth quarter 30%. (If the fiscal year exceeds 12 months, additional equal quarterly installments aggregating the remaining 20% would be payable.) At the time of final settlement of the tax (following the close of the fiscal year), any amounts remaining due must be paid and any overpayments will be reimbursed to the company. Any installments which prove to have been underpaid will be subject to a penalty assessed at the rate of 15% of the short-fall. With respect to fiscal years commencing or in progress on January 1, 1975, companies electing to calculate installments on the basis of the prior year's tax are to calculate such tax as if the tax had been put into effect on January 1, 1974 (*i.e.* on the increase in Margin between 1973 and 1974), using a percentage for anticipated price and productivity increases of 16%.

(12) General Procedures: The tax will be treated as a tax on gross revenues for matters of procedure, recovery, penalty, etc.

(13) New and Dissolved Companies; Changes in Existing Companies: New companies, having no prior reference Margin, will be subject to the tax only after 12 months of operation. If a company is dissolved, the tax will become immediately payable for the period up to dissolution. In the case of corporate reorganizations (split-ups, mergers, etc.) or sales, the law basically attempts to maintain a continuity of responsibility by the simplest means. The newly formed (*i.e.* split-off, spun-off, acquiring, etc.) company or companies will be subject to the tax from the first fiscal year following the reorganization or sale, provided (i) they meet the tests of the act (*i.e.* 30/10 million or 8/3 million francs), or (ii) even if those tests are not met, if one or more of the parent (*i.e.* selling. splitting, acquired, etc.) companies surpassed the applicable employee or gross revenue floors during the fiscal year preceding the reorganization. In such case, in order to eliminate the effects of basis adjustments upon reorganization or sale on the Margin correction for variations in capital assets, for the first fiscal year capital assets transferred shall (for purposes of comparison with the prior year) be valued at their gross pre-transfer value. Where the newly formed company has no reference Margin, its reference Margin for the first fiscal year is to be deemed that, or the sum of those, attributable to the acquired operations, of the parent or selling company or companies, weighted in proportion to the gross value of the depreciable assets transferred or retained by each parent. Similarly, for purposes of computing the variation in hours worked, the reference hours are to be calculated as the weighted sum of the total hours worked at each parent company, weighted in proportion to the percentage of the total assets transferred from each. For example, where two parents transfer respectively 20% and 70% of their assets to the new company, the new company's first reference Margin will be equal to the sum of 20% of the first parent's Margin and 70% of the second parent's Margin. Similarly, its reference year's hours worked will be deemed to be 20% of the hours worked at the first parent plus 70% of the hours worked at the second. For the two parents or a transferee company already in existence, the decrease or increase in personnel and equipment will automatically be taken into account by the adjustment for means of production.

(14) Miscellaneous: The *taxe conjoncturelle* is not itself deductible against corporate or commercial income taxes. Information on the amounts of tax due from each company are to be communicated by the tax authorities to the price control authorities. Further implementing decrees will be forthcoming from the Government.

III. SPECIAL CASES: FINANCIAL INSTITUTIONS AND INSURANCE COMPANIES

A. *Financial Institutions:* For banks, other financial establishments, credit institutions operating under special regulations and deferred credit enterprises, separate rules for determining gross revenues, Margins and the export reduction, as well as two special adjustments to the Margin, are set out.

(1) Gross Revenues: Gross revenues (as used in determining applicability of the tax) is defined as including all receipts from clients, members and subscribers, revenues from portfolio investments, income collected under lease-purchase arrangements, interest collected and other income.

(2) Taxable Margin: The Margin is defined as the difference between the sums entered under the following sets of headings on the accounts:

(a) banking income; net receipts, in the case of deferred credit enterprises; revenues from portfolio investments, excluding, but only if the distributing entity is itself subject to the *taxe conjoncturelle* or does not operate in France, that part of dividends received from subsidiaries which is deductible from taxable profits under the French parent-subsidiary regime, income received from joint ventures or partnerships (i.e. from entities whose participants are directly taxed on their share of profits), and income received from entities exempt from corporate income tax (the most important one being the SICOMI, or real estate investment company); interest collected; income from lease-purchase arrangements; other income; and charges paid by members, in the case of deferred credit enterprises; less

(b) banking expenses, commissions and interest paid; and the following, to the extent deductible from taxable income: taxes and duties; outside labor, material and services; transportation and travelling; commissions paid to finders of new accounts, in the case of deferred credit enterprises; miscellaneous administration expenses, excluding travel and entertainment expenses; interest on mandatory loans; interest on partners' or shareholders' current accounts; and amounts contributed to mandatory employee profit-sharing plans.

(3) Exports: In place of the export reduction for commercial and industrial enterprises, financial institutions are permitted to exclude from their Margins only the proportionate part of their income attributable to export financing (as opposed to their income derived from foreign business). The Margin is to be reduced by an amount equal to the percentage of average outstanding export credits as against all average outstanding credits over the fiscal year. This adjustment is also discretionary with the enterprise.

(4) Special Adjustments: Two special obligatory adjustments are provided for financial institutions:

(i) The first adjustment is designed to compensate for distortions in the Margin resulting from variations in inter-bank financing rates (*i.e.* for short-term borrowings by the institution to meet its own deficits or short-term placements by it of sur-

plus funds). The tax year Margin is increased or decreased, as the case may be, by an amount equal to the product of (a) the average balance during the tax year of such financings effected on the money market, and (b) the difference between the average interest rates on the market during the tax year and the reference year. If the enterprise is a net borrower (*i.e.* the average balance is a debit), the amount so calculated is added to the tax year Margin if interest rates have increased, deducted if interest rates have decreased. If the enterprise is a net lender, the tax year Margin is increased in the case of falling interest rates and decreased in the case of rising interest rates. It should be noted that this adjustment is not intended to compensate financial institutions for borrowings made on a rising market, for the Margin already reflects commissions and interest paid. To the contrary, it is intended to neutralize the effect of variations in interest rates for inter-bank transactions, which would otherwise "distort" the Margin reflecting normal loan and deposit transactions.

(ii) The second adjustment is designed to compensate for variations in penalty reserve requirements with the Bank of France, pursuant to the credit restrictions enacted by Decree No. 70-109 of February 5, 1970, as supplemented. As these reserves must be placed interest-free with the Bank of France while the bank continues to bear the costs of financing such funds (costs reflected as deductions from the Margin), any increase in reserves will lower the Margin; correspondingly, release of the reserves will increase the Margin by permitting the bank to place such funds and thereby generate income. The Government felt that fluctuations in such reserves do not reflect, and may mask, the inflationary behavior at which the *taxe conjoncturelle* is directed. Accordingly, the tax year Margin is to be decreased or increased, as the case may be, by an amount equal to the product of (a) the difference between such supplementary reserves maintained during the reference and tax year, and (b) the average interest rates on the money market during the monthly periods for which such difference is determined.

(5) Additional Matters: Additional implementing decrees are required to define the inter-bank transactions and interest rates referred to above, as well as, if necessary, special rules for institutions operating under special regulations engaged primarily in relending demand or short-term deposits over long terms.

B. *Insurance Companies:* For all insurance, capital insurance and reinsurance companies, additional separate provisions have been included for determining gross revenues, Margins and the export reduction and for valuing capital assets.

(1) Gross Revenues: Gross revenues or receipts (as used in determining applicability of the tax) are defined as including the amount of premiums charged or accepted for reinsurance.

(2) Taxable Margin: The Margin is defined as the difference between the sums entered under the following sets of headings on the accounts:

(a) premiums for the year, net of all premiums paid for reinsurance, or, in the case of life and capital insurance companies, premiums and related income net of cancellations and all premiums paid for reinsurance; in the case of life and capital insurance companies, mathematical reserves at the opening of the year and deferred dividends to insureds *(participation aux excédents des exercices antérieurs)* carried forward into the fiscal year; financial in-

come, excluding, but only if the distributing entity is itself subject to the *taxe conjoncturelle* or does not operate in France, that part of dividends received from subsidiaries which is deductible from taxable profits under the French parent-subsidiary regime, income received from joint ventures or partnerships (*i.e.* from entities whose participants are directly taxed on their share of profits), and income received from entities exempt from corporate income tax (the most important one being the SICOMI, or real estate investment company); and other income; less

(b) services, expenses and losses for the year, net of all reinsurance; or, in the case of life and capital insurance companies, losses and capital losses, net of all reinsurance; mathematical reserves at the close of the year, in the case of life and capital insurance companies; as well as the following, to the extent deductible from taxable income: taxes and duties; outside labor, material and services; transportation and travelling; commissions paid to brokers; reinsurance brokerage and commissions; miscellaneous administrative expenses, excluding travel and entertainment expenses; investment charges and "financial expenses" *(frais financiers);* interest credited on the reserve for deferred dividends to insureds; and amounts contributed to mandatory employee profit-sharing plans.

(3) Exports: In place of the export reduction for industrial and commercial companies, in the case of insurance companies the Margin is to be reduced in proportion to the foreign risks or risks connected with international commerce insured by the company. This adjustment is discretionary. These export risks are defined differently for different types of insurance; the amount of business associated with such risks is defined as:

(i) in the case of transportation insurance:

(x) for hull insurance and public liability insurance, the total amount of premiums collected, net of reinsurance, pertaining to coverage of aircraft, ships hulls, riverboats and commercial land vehicles used in international transport;

(y) for cargo insurance, the total amount of premiums collected, net of reinsurance, reduced by a percentage to be established yearly by decree of the Ministry of the Economy and Finance designed to account for the volume of business devoted to internal transportation.

(ii) in the case of all other types of insurance, the total amount of premiums collected, net of reinsurance, for coverage of risks located outside of France.

(iii) in the case of reinsurance, all reinsurance premiums deriving from foreign insurers, reduced by the amount of further reinsurance passed off to foreign companies.

(4) Capital Assets: The value of capital assets to be used in computing the adjustment for changes in means of production, as well as in corporate reorganizations, is to be the gross depreciable asset value, exclusive of real estate investments. The purpose of this provision is to exclude assets held by insurers as investments of premiums (technical reserves), which in reality constitute reserves against losses payable rather than a "means of production".

CANADA

Highlights of the Budget Speech of November 18, 1974

THE OBJECTIVES

The Canadian Finance Minister indicated seven essential objectives:

1. To sustain economic demand;
2. To provide a fiscal stimulus by a further reduction of taxes rather than by an increase in Government expenditure;
3. To restrict the growth of Government expenditure, particularly that which does not contribute directly to the production of goods and services or that which does not help the weaker taxpayers or directly moderate price increases;
4. To apply selective measures to support weak points in the economy and to hold back on certain government projects;
5. To ensure that private capital investment remains strong;
6. To mitigate the effect of inflation on the weaker members of society;
7. To consult with all sectors of the economy to develop a co-operative national effort to slow down increases in cost and prices.

CHANGES IN THE MAY 6, 1974 PROPOSALS

The Finance Minister said in this connection:

. . . I have reviewed the May 6 proposals and concluded, in a spirit of accommodation, that I should propose some changes which would be helpful to both industry and to the provinces.

Before discussing them, I would like to outline those proposals which I made last May that I believe should *not* be changed.

First, I proposed that the national rate of tax on resource production profits should be set at 50 per cent.

Second, I proposed that the special abatement of 15 points of federal tax in respect of mining production profits, which had been scheduled to come into effect in 1977, be applied immediately. The result of this special abatement was to reduce the federal rate of tax on mineral production profits to 25 per cent.

Third, I proposed that automatic depletion be terminated immediately and be replaced by the new system whereby depletion had to be earned. Furthermore, I proposed that depletion be permitted only up to 25 per cent of production profits as a deduction from taxable income; the previous limit was 33⅓ per cent.

Fourth, I proposed that royalties, taxes and other like payments to governments should no longer be recognized as a deduction in computing income for tax purposes. My reasons for this action were described in the May 6 budget and I have elaborated upon them since. I am satisfied that this is a necessary step in order to avoid the erosion of the federal tax base.

I have considered carefully permitting deductibility of royalties and I have concluded that this approach does not offer a practical solution.

I acknowledge that royalties in respect of property rights have traditionally been deductible as a business expense. However, in tax reform, we began the process of disallowing certain income royalties in the mineral field and substituting federal tax

abatements. Today, it is evident that a royalty is no longer a royalty in the traditional meaning of the word. There have emerged various provincial charges which are thinly disguised income taxes.

Today provincial charges take many forms. They are no longer limited to flat charges against a unit of production. Now there are provincial charges that are determined by price, profit and volume. In addition, there are provincial claims exercised through joint ventures and marketing boards. In fact, there are so many kinds of provincial charges and claims that it would be virtually impossible to draft workable legislation which could distinguish between bona fide royalties, traditionally deductible, and other taxes and charges.

That being so, we have chosen to disallow the deduction of all these levies and to make room for the provinces by giving additional tax abatement. In this way, the provincial taxes and charges and the federal taxes will each be discrete and visible decisions, which each can take in the light of what they know the other is doing, giving full recognition to the needs of the industries.

Surely the goal is to find a compromise which gives reasonable results in financial terms to the provinces, to the industries and to the federal government. This is what my proposals aim to do.

I would like now to take up the May proposals in which I am making major changes.

First, in respect of oil and gas production profits, I proposed in May a new abatement of 10 points of federal tax, resulting in a federal rate of 30 per cent. I believe that a 30-per-cent rate of federal tax is reasonable for the year 1974, given the current strong profitability and the healthy cash flow of the petroleum industry.

. . . Clearly, if industry is to do the job that must be done, it will need adequate financial resources and a prospect of a reasonable return on its investment. For these compelling reasons, I propose that the federal rate of tax on petroleum production profits be reduced from 30 per cent in 1974 to 28 per cent in 1975 and to 25 per cent in 1976 and subsequent years. By 1976, the federal rate on oil and gas production profits will be 25 per cent, the same as on mineral production profits.

Second, Mr. Speaker, in the May 6 budget, I proposed that the rate of write-off for expenditures on exploration and development for both petroleum and minerals be reduced from 100 per cent to 30 per cent. At that time, I felt that such a lower rate was more appropriate in the light of the existing circumstances of the natural resource industries. However, I have been persuaded by the arguments presented to me over the past several months by both large and small companies that exploration in Canada is becoming ever more expensive and risky. It is difficult, particularly for smaller companies, to borrow exploration capital and, therefore, there is a heavy reliance on internally-generated funds. On the other hand, expenditures on development are more similar to the capital expenditures incurred by other industries. Hence, for both petroleum and minerals, I am proposing to restore 100 per cent write-off for exploration expenditures, but to retain the proposed 30 per cent rate of write-off for development outlays.

RESIDENTIAL CONSTRUCTION

Mr. Speaker, for reasons already discussed, I am particularly anxious to provide a quick and strong incentive to the construction of new rental housing units. I therefore propose to relax for a period the rule whereby

capital cost allowances on rental construction could not be charged against income from other sources.

Specifically, in respect of new, multiple-unit residential buildings for rent, started between tonight and December 31, 1975, the capital cost allowance rule will not apply. This means that an owner of an eligible rental unit will be permitted to deduct capital cost allowance against any source of income at any time. I am confident that this measure will attract a significant amount of private equity capital into the construction of new rental housing.

The government is determined not to let housing construction drop to unduly low levels. Measures proposed in the May budget should make an effective contribution to this end, and will be reintroduced. Additional programs by the Central Mortgage and Housing Corporation have recently been announced. This budget contains further major new initiatives.

Before I turn to a discussion of new responses, let me recall to Members the measures announced last May. First, I proposed that the carrying costs on land awaiting development would not be chargeable against other income, but could be taken into account only when the land was sold. My colleague, the Minister of State for Urban Affairs, and I have both listened carefully to the debate on the merits of this proposal. We are both persuaded that this measure will indeed assist in bringing more land onto the market more quickly. Hence, I propose to reintroduce this measure as originally announced.

Second, in my last budget I proposed to eliminate the sales tax on construction equipment and on materials used in municipal water distribution systems. These sales tax reductions will become effective tonight.

Finally, in order to assist young people in accumulating the capital required for a down payment on a house, I announced last May, and I want to reaffirm tonight, the introduction of a new savings vehicle to be known as the Registered Home Ownerships Savings Plan. I hope and expect that the bulk of the savings flowing into this plan will provide an important source of mortgage funds to finance the construction of new housing we require in this country.

Mr. Speaker, I believe that the foregoing is of itself a formidable and effective range of program, but I am not content to rest there. Still more thrust is needed.

The issue of the sales tax on building materials has long been the subject matter of debate in this House. Up to now I have resisted reduction of this tax for two principal reasons. First, it is a costly step and governments are always confronted with hard choices among competing priorities. Second, I was concerned that such a step would overstimulate an already strong demand. The housing picture, however, has altered significantly in the last few months. As a result of these changed prospects, I propose that, effective tonight, the rate of sales tax on building and construction materials be more than cut in half to 5 per cent. This measure will cost the federal government in a full year $450 million. I am confident that this measure will add stimulus to the industry and will, at the same time, contribute to a moderation of prices for housing.

CAPITAL INVESTMENT

. . . The reduction in the sales tax on building materials will help to sustain investment in non-residential structures and to exercise a similar moderating influence on prices in this sector. In a longer perspec-

tive, the economy should benefit from an enlarged industrial capacity and lower overhead costs.

The transportation industry is a vital part of the infrastructure with which our economy must operate. But it is being exposed to cost pressures which are both weakening its vitality and forcing it to translate these cost pressures into price increases. These increases in turn pyramid into cost increases throughout the economy. In an effort to bring some relief to this situation, I am proposing to eliminate the federal sales tax on transportation equipment effective tonight. The equipment covered by this reduction includes railway cars, large trucks and buses and commercial aircraft. It has an estimated annual market value of approximately $1 billion and the cost of the tax reduction to the federal government for a full year will be about $100 million.

Finally, in the area of business investment, I wish to announce the extension of a measure which has made a major contribution to the strong investment performance, which is improving our productivity, enhancing supply, creating new jobs and helping to sustain the Canadian economy at a time when the economies of many other nations are faltering. This measure is the two-year write-off of expenditure on new machinery and equipment for manufacturing and processing in Canada, which is scheduled to expire at the end of the year. I am now proposing that it be extended without a terminal date.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning a book should include the reference number listed.

ARGENTINA

STRUKTURVERÄNDERUNGEN IM ARGENTINISCHEN AUSSENHANDEL UNTER DEM EINFLUSS DER EUROPÄISCHEN HANDELSPOLITIK,

by H. Sautter. Ernst Klett Verlag, Stuttgart, 1973. 94 pp.
Study of the basic changes of Argentina's foreign trade as affected by European trade policies. (B 15422)

AUSTRIA

STEUERFREI? ABZUGSFÄHIG? BEGÜNSTIGT?

Das Buch der Einkommensteuer- und Lohnsteuerbegünstigungen unter Berücksichtigung der Einkommensteuergesetznovelle 1974, Mietengesetznovelle, Stadterneuerungsgesetz usw.; 5. neubearb. Aufl., by F. Weiler. Peter Linde, Vienna, 1974. 122 pp., AS 120.—. Schriftenreihe der Österreichischen Steuer- und Wirtschaftskartei, Bnd. 11.
Fifth edition of monograph on the individual income tax and wage tax with emphasis on exemptions, deductions, and relief provisions arranged in alphabetical order. The individual income tax reform of 1974 has been included. (B 8602)

BELGIUM

L'INFLUENCE DE L'INTEGRATION ET DE LA COOPERATION ECONOMIQUES INTERNATIONALES DANS LE DOMAINE DE LA TAXATION,

by C. Scailteur. Published in Chronique de politique étrangère, Vol. XXVII, No. 4, juillet, 1974, Brussels.
Treatise on the impact of integration and of international economic cooperation with respect to indirect taxation in the European Economic Community with particular emphasis on the tax on value added. (B 8612)

BRAZIL

AUSLANDSINVESTITIONEN IN BRASILIEN; RECHTSGRUNDLAGEN UND ERFAHRUNGEN,

by H. Jolowicz. Ernst Klett Verlag, Stuttgart, 1974. 358 pp.
Study on private investments in Brazil, written for prospective investors. (B 15419)

DIE BESTEUERUNG VON TOCHTERUNTERNEHMEN IN BRASILIEN NACH DEUTSCHEM UND BRASILIANISCHEM RECHT,

by E. Metzger. Ernst Klett Verlag, Stuttgart, 1974. 182 pp.
Study describing the taxation of German subsidiaries in Brazil viewed from both the German and Brazilian tax systems with consideration of problems arising from a possible double taxation treaty between Brazil and Germany. (B 15418)

CANADA

PROPERTY ASSESSMENT IN CANADA,

by F. H. Finnis. Canadian Tax Foundation, Toronto, 1970. 124 pp., $2.50.
Study designed to provide description of property assessment legislation, practices, and procedures in all provinces of Canada. (B 8530)

CORPORATE MANAGEMENT TAX CONFERENCE 1974:

Tax Aspects of Corporate Financing.
Canadian Tax Foundation, Toronto, 1974. 175 pp., $4.00.
Texts of all papers and case studies on the subject of Tax Aspects of Corporate Financing presented at the one-day Canadian Tax Foundation conference. (B 8505)

EEC

TABLEAUX FISCAUX EUROPEENS: Tome III,

by P. Fontaneau. Les Cahiers Fiscaux Europeens, Nice, 1974.
Loose-leaf publication providing comparative tax tables with respect to the provisions of the tax on value added system in seven members of the EEC (i.e., Belgium, France, Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom). (B 8679)

FRANCE

FRENCH BUSINESS TAXATION,

by R. Roblot, ed. by R. R. Pennington. Oyez Publishing, Ltd., London, 1974. 290 pp. European Commercial Law Library, No. 2.
General outline of the French tax system divided into the following five main parts: taxation of the income of commercial undertakings; taxation of commercial transactions; taxation of capital transactions; taxation incidental to the conduct of a business and business undertakings; and administration of the tax system. (B 8560)

GERMAN FEDERAL REPUBLIC

DIE LEISTUNGEN DER LÄNDER FÜR DEN GEMEINDLICHEN FINANZAUSGLEICH,

by W. Heckt. Bonner Universitäts-Buchdruckerei, Bonn, 1974. 74 pp. Institut Finanzen und Steuern, Heft 105.
Study on the financial assistance given by the German states to the municipalities. (B 8588)

VERZEICHNIS DER VERÖFFENTLICHUNGEN 1945-1974:

Abgeschlossen am 1. Juli 1974. Carl Heymanns Verlag, Cologne, 1974. 559 pp.
Register of publications arranged in two parts: by subject matter and in alphabetical order. (B 8596)

INDIA

STEUERN IN INDIEN:

ein Leitfaden für deutsche Investoren, Lizenzgeber und deutsches Personal in Indien. Indo-German Chamber of Commerce, Bombay, 1974. 61 pp., DM. 25.—.
This publication is designed to explain the tax system in India to German investors and German personnel in India. (B 8526)

INTERNATIONAL

TAX HAVENS OF THE WORLD,

by W. H. Diamond and D. B. Diamond. Matthew Bender and Company, New York, 1974.
Loose-leaf publication designed to provide a "comparison shopping guide" to tax havens. The introduction summarizes the key factors for selecting tax havens and is followed by a description of each tax haven. (B 8615)

GRUNDY'S TAX HAVENS: A WORLD SURVEY

3rd. ed., by M. Grundy. The Bodley Head, Ltd., London, 1974. 164 pp.
Third revised edition of publication containing basic information on tax havens of the world. A final chapter on the quasi-havens is appended dealing with Barbados, Monaco, the Netherlands, Nauru, the Republic of Ireland, and the United Kingdom. (B 8613)

REPUBLIC OF KOREA

POTENTIAL INVESTMENT FIELDS IN KOREA.

Economic Planning Board, Seoul, March 15, 1974. 23 pp.
Annotated charts of potential investment projects. (B 8501)

STATISTICAL HANDBOOK OF KOREA, 1973.

Economic Planning Board, Seoul, 1973. 144 pp.
Informative guide to aid in understanding developments in Korea through descriptive articles, statistical tables, charts, and pictures. (B 8502)

TAX GUIDE FOR FOREIGN INVESTORS.

Economic Planning Board. Office of National Tax Administrators, Seoul, 1973. 155 pp.
Guidebook explaining the general tax system covering national and local taxes and the assessment of taxes. Included are questions and answers on foreign investment activities. (B 8503)

LATIN AMERICA

DIE ENTWICKLUNGSHILFE DER BRD FÜR LATEINAMERIKA;

Organisation, Ziele, Leistungen, by G. Kratochwil. Ernst Klett Verlag, Stuttgart, 1973. 132 pp.
Study of the German Federal Republic's development aid to Latin America. (B 15423)

LATEINAMERIKA IN DER PRESSE,

by M. Wöhlcke. Ernst Klett Verlag, Stuttgart, 1973. 159 pp.
Study of information on Latin America appearing in the German language press in Europe. (B 15424)

MOROCCO

MAROKKO,

2. Beilage; Stellung der Frau in Ehe und Öffentlichkeit — Recht des nichtehelichen Kindes — Erbrecht. Stand: Juni 1974. Bundesverwaltungsamt, Cologne, 1974. 16 pp.
Annex II to Morocco pamphlet in a series designed to provide information for expatriates engaged in business activities and for immigrants in Morocco. This annex deals with the position of women, children of illegitimate birth, and the law of inheritance. (B 10580)

THE NETHERLANDS

ALGEMENE ASPECTEN VAN INKOMSTEN UIT VERMOGEN,

by J. Rensema. FED, Deventer, 1974. 54 pp. FED's Fiscale Brochures.
Study analyzing the concept of income from capital. (B 8607)

BEGROTINGSRUIMTE EN BEGROTINGSTEKORT:

door de studiegroep begrotingsruimte. Van Gorcum & Comp., Assen, 1974. 133 pp.
Publication containing five reports prepared by the special Study Group on principles and methods for applying a prospective budget policy. (B 8564)

PERU

STEUERN IN PERU:

ein Überblick über die Steuergesetzgebung in Peru, mit einem Anhang über die Anrechnung der ausländischen Steuern in der Bundesrepublik von K. Mohr, by M. Belaunde. Deutsch-Peruanische Industrie- und Handelskammer, Lima, 1974. 168 pp.
Introductory study explaining the tax system in Peru and the system to promote investments in the industry sector. (B 15420, 15437)

ROMANIA

RUMÄNIEN,

2. Beilage (Kurzfassung); Eheschliessung-Niederlassung-Staatsangehörigkeit-Namensänderung. Stand: Mai, 1974. Bundesverwaltungsamt, Cologne, 1974. 10 pp.
Second annex to pamphlet in a series designed to provide information to expatriates engaged in business activities and to immigrants in Romania. This annex deals with wedding contract, domicile, nationality, and change of name in Romania. (B 8533)

SRI LANKA

SRI LANKA,

Merkblätter für Auslandtätige und Auswanderer. Stand: Juni, 1974. Bundesverwaltungsamt, Cologne, 1974. 42 pp.
One pamphlet in a series designed to provide information for expatriates engaged in business activities and for immigrants in Sri Lanka. (B 8532)

SWITZERLAND

RELATIONS ENTRE L'IMPOT SUR LE REVENU ET L'IMPOT SPECIAL FRAPPANT LES GAINS IMMOBILIERS:

étude de droit suisse, by O. Courvoisier. Imprimerie des Remparts, Yverdon, 1974. 291 pp.
Thesis on the relation between income tax and capital gains tax on gains derived from immovables under Swiss tax law. (B 8598)

USSR

SOWJETISCHES PATENT- UND LIZENZRECHT:

Niederschrift der Referate und Vorträge auf dem Internationalen Fachsymposium vom 19-22 September 1972 in Köln. Bundesstelle für Aussenhandelsinformation, Cologne, 1973. 50 pp. Bundesstelle für Aussenhandelsinformation, Bnd. 47.
Brochure containing text of lectures held at international symposium September 19-22, 1972, in Cologne, on patent law in the Soviet Union. (B 8225).

UNITED KINGDOM

TAXATION AND MULTINATIONAL ENTERPRISE,

by J. F. Chown. Longman Group, Ltd., London, 1974. 290 pp.

This book is designed for the international businessman illustrating tax factors important in maximizing after tax profits. Special attention is given to acquisitions across frontiers and international financing. (B 8597)

TAXATION: KEY TO INCOME TAX 1974-75;

78th ed., by J. M. Cooper and P. F. Hughes. Taxation Publishing Company, London, 1974. 247 pp.
Annual quick-reference guide to income tax as amended by Finance Act 1974. (B 8586/7)

TOLLEY'S CORPORATION TAX 1974-75,

by D. E. Cox. Tolley Publishing Co., Ltd., Croydon, 1974. 79 pp.
Annual quick reference guide to corporation tax, updated to include the Finance Act 1974 and relevant case law as of July 31, 1974. (B 8582)

TOLLEY'S INCOME TAX 1974-75;

59th ed., by D. E. Cox and E. L. Harvey. Tolley Publishing Co., Ltd., Croydon, 1974. 231 pp.
Annual quick-reference guide to income tax, capital gains tax and the development gains tax, updated to include the Finance Act 1974 and relevant case law as of July 31, 1974. (B 8581)

TAXATION: KEY TO DEVELOPMENT GAINS AND FIRST LETTINGS;

Finance Act 1974 Edition, by K. R. Tingley and P. F. Hughes. Taxation Publishing Co., Ltd., London, 1974. 166 pp., £2.75.
Quick reference guide explaining the taxation of capital gains arising from land transactions as introduced by the Finance Act 1974. (B 8529)

BUTTERWORTHS TAX HANDBOOK:

Income Tax, Corporation Tax. Capital Gains Tax 1974-75; 13th ed., ed. by D. Roberts. Butterworth Co., Ltd., London, 1974.
Annual manual containing the texts of the tax acts operating in 1974-75 with respect to income, corporation, and capital gains tax enactments. Provisions which do not relate to the year 1974-75 are omitted. (B 8606)

GROSSBRITANNIEN,

1. Beilage; 5. Aufl. Stand: April, 1974. Bundesverwaltungsamt, Cologne, 1974. 11 pp.
Annex I, fifth edition, of pamphlet in a series designed to provide information to expatriates engaged in business activities and to immigrants in the United Kingdom. (B 8536)

UNITED STATES OF AMERICA

VESCO:

The Story of the Biggest Securities Fraud of Modern Times — The Looting of IOS, by R. A. Hutchison. Praeger Publishers, New York, 1974. 376 pp., $9.95. (B 8595)

CASES AND MATERIALS ON FEDERAL INCOME TAXATION:

2nd ed., by A. A. Kragen and J. K. McNulty. West Publishing Co., St. Paul, 1974. 1191 pp.
Second edition of introductory textbook for law students on federal income taxation, using case law and problems. This book is intended to be used with statutory provisions close at hand. (B 8590)

AMERICAN FEDERAL TAX REPORTS:

second series, Vol. 33. Prentice Hall, Inc., Englewood Cliffs, 1974. 1654 pp.
Unabridged federal and state court decisions arising under the federal tax laws and reported in P-H Federal Taxes Reports during the first half of 1974. (B 8537))

1974 GUIDEBOOK TO LABOR RELATIONS.

Commerce Clearing House, Inc., Chicago, 1974. 392 pp.
Guidebook containing an explanation and summary of the general principles of labor relations law and the major rules developed under the statetes and decisions. (B 8589)

1975 MASTER TAX GUIDE.

Commerce Clearing House, Inc., Chicago, 1974. 543 pp.
Annual guide providing explanations for preparation of 1974 Federal income tax returns. (B 8603)

LOOSE-LEAF SERVICES

Received between January 1 and January 31, 1975

AUSTRALIA

AUSTRALIAN CURRENT TAXATION & SERVICE
releases: October 21, November 4 and 18
Butterworth & Co., Sydney

AUSTRALIAN CURRENT TAXATION:
— Cases
releases 64-75
Butterworth & Co., Sydney

BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE
releases: 1974: 73; 1975: 1
C. E. D. Samsom, Brussels

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W./LE DOSSIER PERMANENT DE LA T.V.A.
releases 59 and 60
Editions Service, Brussels

FISCALE DOCUMENTATIE VANDEWINCKELE, BOEK DER BAREMA'S
Tome I, release 5
Tome II, release 20
Tome III, release 26
Tome IV, release 31
Tome VII, release 21
Tome VIII, release 133
Tome XII, release 23
C. E. D. Samsom, Brussels

GUIDE FISCAL PERMANENT
release 358
Editions Service, Brussels

HANDLEIDING DER INKOMSTENBELASTING
release 57
C. E. D. Samsom, Brussels

IMPOTS ET TAXES
release 244
C. E. D. Samsom, Brussels

TRAITES DES IMPOTS SUR LES REVENUS
releases 56-58
C. E. D. Samsom, Brussels

CANADA

BRITISH COLUMBIA TAXATION SERVICE
releases 31 and 32
Richard de Boo, Ltd., Toronto

CANADIAN INCOME TAX
by Martin L. O'Brien
release 19
Butterworth & Co., Toronto

CANADIAN CURRENT TAX
releases: 1974: 50-52; 1975: 2
Butterworth & Co., Toronto

ONTARIO TAXATION SERVICE
release 33
Richard de Boo, Ltd., Toronto

CANADIAN INCOME TAX: TAX PLANNING AND MANAGEMENT
releases 1-6
Butterworth & Co., Toronto

DENMARK

SKATTEBESTEMMELSER:
— Skattebestemmelser
release 81

— MOMS
release 35
A. S. Skattekartoteket Informationskontor, Copenhagen

EEC

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN
release 79
Edition Jupiter, Paris

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN
— Kommentaar op het E.E.G., Euratom en Egkos verdrag, Verdragsteksten en aanverwante stukken
release 153
— Tarieflijsten
release 131
Kluwer, Deventer

FRANCE

BULLETIN DE DOCUMENTATION PRATIQUE DES IMPOTS DIRECTS ET DES DROITS D'ENREGISTREMENT

releases 8-11
Editions F. Lefebvre, Paris

DICTIONNAIRE FISCAL PERMANENT

release 101
Editions Législatives et Administratives, Paris

DOCUMENTATION PRATIQUE DE SECURITE SOCIALE ET DE LEGISLATION DU TRAVAIL

releases 8 and 9
Editions F. Lefebvre, Paris

DROITS DES AFFAIRES

release 46
Editions Législatives et Administratives, Paris

JURIS CLASSEUR: DROIT FISCAL;

— Commentaries "Impôts Directs"
release 1100
Editions Techniques, Paris

MEMENTO LAMY:

— Fiscal
releases S, T, and U
— Social
releases O, P, and Q
Services Lamy, Paris

GERMAN FEDERAL REPUBLIC

DOPPELBESTEUERUNG

release 28
Verlag C. H. Beck, Munich

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT

release 180
Forkel Verlag, Stuttgart-Degerloch

STEUERGESETZ

August release
Verlag C. H. Beck, Munich

WORLD TAX SERIES — GERMANY REPORTS

releases 66 and 67
Commerce Clearing House, Inc., Chicago

THE NETHERLANDS

BELASTINGBERICHTEN:

— Omzetbelasting BTW
releases 132 and 133
— Loonbelasting
releases: supplements; 140 and 141
— Inkomstenbelasting
releases 307 and 309
— Personele belasting, enz.
release 136
— Internationale zaken
releases 116 and 117
— Algemene wet, enz.
release 169
Samsom, Alphen aan den Rijn

BTW EN BEDRIJF

release 65
Samsom, Alphen aan den Rijn

BELASTING WETGEVINGSERIE:

— Inkomstenbelasting
release 34
J. Noorduijn en Zn., Arnhem

BELASTINGWETTEN

release 53
D. Brouwer en Zn., Arnhem

FED'S LOSBLADIG FISCAAL WEEKBLAD

releases 1490-1493
FED, Deventer

FISCALE WETTEN

release 63
FED, Deventer

DE GEMEENTELIJKE BELASTINGEN

A. M. Dijk, J. C. Schroot, A. Zadel, enz.
releases 172-174
Vuga Boekerij, The Hague

HANDBOEK VOOR IN- EN UITVOER

— Belastingheffing bij invoer
releases 177 and 178
— Tarief van Invoerrechten
releases 126 and 127
Kluwer/Samsom, Deventer/Alphen aan den Rijn

KLUWER'S FISCAAL ZAKBOEK

releases 81 and 82
Kluwer, Deventer

KLUWER'S TARIEVENBOEK
releases 140-143
Kluwer, Deventer

MODELLEN VOOR DE RECHTSPRAKTIJK
release 48
Kluwer, Deventer

NEDERLANDSE BELASTINGWETTEN
W. E. G. de Groot
release 114
Samsom, Alphen aan den Rijn

DE PARLEMENTAIRE BEHANDELING VAN DE NIEUWE BELASTINGONTWERPEN
release 42
Samsom, Alphen aan den Rijn

DE SOCIALE VERZEKERINGSWETTEN
release 83
Kluwer, Deventer

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN
release 133
Kluwer, Deventer

VADEMECUM VOOR IN- EN UITVOER
releases 474 and 475
Samsom, Alphen aan den Rijn

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE
— Inkomstenbelastingen
release 157
— Loonbelastingen 1964
release 109
— Zegelwet
release 53
Kluwer, Deventer

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN
— Algemeen Deel
release 26
Kluwer, Deventer

NEW ZEALAND

NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW
releases 39-46
Butterworth & Co., Wellington

NORWAY

SKATTE-NYTT
releases 11 and 12
Norsk Skattebetalerforening Huitfeldts, Oslo

SWITZERLAND

DIE PRAXIS DER BUNDESSTEUERN
von K. Locher
release 28
Verlag für Recht und Gesellschaft, Basel

RECHTSBUCH DER SCHWEIZ: BUNDESSTEUERN
release 56
Verlag für Recht und Gesellschaft, Basel

UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA
Volume I, release 51
Volume II, release 51
Volume III, release 51
Volume IV, release 51
Volume V, release 51
Sweet & Maxwell, Ltd., London

BRITISH TAX GUIDE
release 151
Commerce Clearing House, Inc., Chicago

UNITED STATES OF AMERICA

FEDERAL TAXES REPORT BULLETIN — TREATIES
releases: 1974: 51 and 52; 1975: 1-4 and 6
Prentice Hall, Inc., Englewood Cliffs

STATE TAX GUIDE
releases 574-577
Commerce Clearing House, Inc., Chicago

TAX IDEAS — REPORT BULLETIN
releases 7 and 8
Prentice Hall, Inc., Englewood Cliffs

TAX TREATIES
release 276
Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS
releases 22 and 23
Prentice Hall, Inc., Englewood Cliffs

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* * * ARTICLES * * *

PROF. DR. K. V. ANTAL *:

PROCEDURAL ASPECTS OF TAX CASES IN THE NETHERLANDS**

The following survey deals only with the most important taxes being those which are fairly frequently the subject of legal proceedings, i.e. income tax (including wage tax and dividend tax), net wealth tax and corporate income tax. Criminal law aspects of tax cases will not be discussed here nor will recovery by distress nor appeals against such recovery.

Main stages in the procedure:

— one quasi-judicial instance (objection lodged with the tax inspector);
— two judicial instances: complaint to the Court of Appeal (Gerechtshof); appeal in cassation to the Supreme Court (Hoge Raad).

A few figures

Note: these figures which are for 1967, only give a rough indication of the situation and are not very exact; they do, however, give an idea of the various ratios. The year 1967 is the last year for which information is available.

1.	final assessments to income tax	2,296,235
2.	objections against assessment (12.1% of 1.)	277,866
3.	complaints to the Court of Appeal (0.78% of 2.)	2,185
4.	appeals in cassation (4% of 3.)	88

During the years 1968-1972 the Supreme Court dealt with, on the average, 215 cases per year.

No obligation to be legally represented; virtually no court dues

Any taxpayer who so wishes can himself lodge a written objection to his assessment and explain his objection in person to the inspector. The same applies to complaints to the Court of Appeal. He may also lodge an appeal in cassation with the Supreme Court. For this, representation by a lawyer or tax consultant is not necessary. However, in oral argument before the Supreme Court, the taxpayer must be represented by a lawyer. He will not be liable to pay any court dues ("griffierechten" etc.) unless he goes into appeal in cassation when he will be liable to pay the small sum of Dfl. 10. A taxpayer can never be ordered to pay the costs of the proceedings if he loses his case.

Objections made to the inspector against assessment

Before an appeal is made to the court, an objection to an assessment (to income tax, for instance) made by the inspector will, in general, be made in "quasi-judicial instance". The same inspector who made the assessment — and not a higher authority — deals with the objection. There are virtually no formal requirements as to the form of the objection. It must be lodged within two months from the date of the notice of assessment and it must be in writing. In

* President of the Board of Trustees of the International Bureau of Fiscal Documentation.
** Paper submitted at the IFA Benelux tax seminar on May 3 and 4, 1974.

practice, it is usually in the form of a letter. The inspector will examine the whole assessment — not merely those points to which objection has been made — and will then give his written decision. He may not increase the assessment. It is often the case that the inspector and the taxpayer have prior to this discussed the matter on the telephone or at a meeting. Either party can take the initiative in this. If the parties have discussed the matter before the assessment is made and both parties therefore understand each other's point of view, then this stage in the proceedings may be dispensed with and an appeal against the assessment can be made directly to the Court of Appeal. The written consent of the inspector is required for this.

In a great many cases objections to assessments are made by tax consultants. In the Netherlands, entry to the profession is in no way restricted by law. The main reasons for the existence of the first stage in the proceedings, viz. objection to the inspector, are the prevention of complaints being made to the Court of Appeal which are unfounded or where it is unclear what the point at issue is.

Complaint to the Court of Appeal

There are five such courts in the Netherlands. In civil and criminal cases they generally act as the appeal court in appeals against decisions of the District Courts. The taxation division of the Court of Appeal is, however, the court of first instance in tax questions; it is also the last instance as far as questions of fact are concerned.

The taxpayer himself can lodge his appeal with the Court of Appeal and he can also conduct his own pleadings before the court. There are more requirements as to the form of the complaint — which must be in writing — than the form of the objection to the inspector; the procedure in the Court of Appeal is, however, not very formal. It was the intention of the legislature that the taxpayer himself could be able to defend his interests before the court.

If the appeal does not meet the required (and fairly simple) formalities the judge will put the plaintiff right. He will point out to the plaintiff (or his tax consultant) what is missing and give him the chance to remedy this.

Unlike the inspector when examining the objections to this assessment, the Court of Appeal will not look at the whole assessment but only at those points in it which are disputed. The court may not "deal with matters which are not the subject of litigation".

The inspector and the plaintiff, are not obliged to stick to the points of views which they put forward during the previous quasi-judicial instance of the proceedings. In general, the only papers before the court are the taxpayer's complaint initiating the proceedings and the inspector's defense. These are also in the possession of the opposing party.

After the complaint has been lodged and answers thereto have been made then the case will be heard by a judge sitting alone or three judges sitting together. Usually, there is only one session to which the public are not admitted.

There are very few legal provisions as to on whom the burden of proof lies. In general, it can be said that each person involved must make all reasonable contribution to the proof.

The court will decide on whom it is reasonable that the burden of proof should fall. To be more concrete, the court is not bound by rules of evidence i.e., it is up to the court to choose what kind of proof it wants, to decide what weight shall be attached to

the evidence presented and whether to accept it or not.

The Court of Appeal delivers a reasoned, written decision. The taxpayer must be able, on the basis of the facts determined therein and the legal decision based thereon, to decide whether to appeal in cassation while the Supreme Court must be able to check whether, on the basis of those facts, the law has been correctly applied.

Appeal in cassation

Either the taxpayer or the Minister (Secretary of State) of Finance (but not the inspector) can lodge an appeal in cassation; in the case of the taxpayer court dues of Dfl. 10 whill be payable. The fact that an appeal in cassation is possible serves to promote unity of law and certainty as to its application. Appeal can be on the basis of breach of legal provisions (with the exception of foreign law) or on the basis of a procedural error.

There are rather more formal requirements for an appeal in cassation than for an action in the Court of Appeal. Furthermore, it is not possible, as it is in the case of a complaint to the Court of Appeal, for errors in the appeal in cassation to be amended at the instance of the judge.

Only lawyers may plead before the Supreme Court. Since not many lawyers in the Netherlands are specialists in tax law and since only a few tax consultants are also lawyers, few cases are pleaded before the Supreme Court.

Length of proceedings in tax cases

Quite a long time can elapse between the lodging of a tax return and the receipt of a final assessment. In general, a final assessment must be made within three years from the end of the tax year. It is difficult to be precise about the length of time which elapses between the lodging of an objection to the assessment and the decision by the inspector. In practice, this is generally between a month and a year.

It is even more difficult to be precise about the time which elapses between the lodging of a complaint with the Court of Appeal and that court's decision. One of the reasons for this is that in some courts the backlog of work is bigger than in others. Besides, in one case a detailed examination of the facts may be necessary while in another only problems of a legal nature will be under discussion. Proceedings before the Supreme Court are generally not so lengthy. In principle, the facts have already been determined and only questions of law have to be decided. There is usually no oral argument in cases before the Supreme Court. A period of 4 to 5 months is a reasonable estimate of the time taken for an appeal in cassation to be decided.

It appeared from a brief examination of a limited number of decisions of the Supreme Court that the period which elapsed between the end of the tax year and the date of a decision by the court varies between one and nine years; and a reasonable estimate of the average would seem to be between 3½ and 4 years.

On the basis of the figures available for the years 1968 to 1972, the following statistics can be given. In that period the Supreme Court made a total of 1079 decisions. The Minister (Secretary of State) won 54% of the appeals brought by him, while taxpayers had success in only 11% of the appeals which they brought.

Interpretation by the Supreme Court

The issue of the way in which the Supreme Court interprets the law is complicated and comprehensive. Reference is made to the national report prepared by the author of

this paper for the IFA Conference in London in 1965.[1]

Accordingly, only a few points will be touched on here.

The decisions of the Supreme Court are of great importance for practising lawyers. They are discussed critically in about 6 or 8 different periodicals. This constant stream of critical appreciation forces the Supreme Court to maintain its high standards. Dissenting opinions are never published and the opinion of the court is reached in secret. Occasionally, the Supreme Court makes decisions, which are at variance with previous decisions which they have made on the same point and this can cause problems for the legal profession. There is no rule of *stare decisis*.

Although the main rule of interpretation is that the court must look at the text of the law they do not have to stick to it slavishly. The parliamentary discussions on the law are frequently looked at as an aid to interpretation and also what is fair and reasonable.

In general, the law may be interpreted fairly freely. Even exemptions from and exceptions to general rules will be freely and not literally interpreted. There is no example to be found in case law of the application of the rule that in cases of doubt the taxpayer should win.

The practical importance of being able easily to bring a case before a tax court

The fact that a tax case can easily be brought and this is the case since, *inter alia,* procedural law is not complicated and there are no court dues, the speed with which it is dealt and the fact that the court tries to be fair and reasonable both towards the tax authorities and the taxpayer are factors of importance for the legislature, the tax authorities and the taxpayer.

The importance for the legislature. Case law develops alongside the development of society

In a number of cases the legislature has refrained from making too detailed provisions or has used rather wide terms. As a result, in those cases the tax law has developed through case law. Tax law has thus remained up to date without statutory amendments being necessary. This can be seen from the following concrete example taken from case law.

In the Netherlands a land tax is levied under a law of 1870. Article 25, 1(f) contains an exemption for "buildings used exclusively ... for the benefit of the general public". In a decision of April 1, 1959 (BNB 1959/179) the Supreme Court ruled on the question of whether this exemption must be given for buildings belonging to the provincial electricity and water supply company. In 1870 legal opinion was that the company could not qualify for the exemption since profits were produced from the use of the buildings. In 1959 the Supreme Court gave the exemption and stated that "little importance should be attached to what the legislature had in mind in 1870 since the concept "the benefit of the general public does not mean the same at every point in time and the scope of the exemption contained in that legal provision should be determined in the light of current opinion at the time when it is applied".

Development of the term "good business practice" in case law

An area that the legislature has to a great extent left to be developed through case

1. Cahiers de droit fiscal international, Vol. 50a, pp. 192-207.

law is the determining of the profit which is attributable to an enterprise in any particular year. The statutory norm "good business practice" is applied in determining this. (Art. 9 of the Income Tax Act).

In its decision of May 8, 1957 (BNB 1957/208) the Supreme Court stated that: "it can be taken as a general rule that a system of calculation of annual profits will be accepted by the tax authorities as being in accordance with good business practice if that system is based on what business economics regards as the correct way of calculating profits; however, exceptions are made to this rule not only when it would be in conflict with provisions of tax law but also when the application of such rule would conflict with the general framework or principles of tax law whose application is in question."

The term "good business practice" has been of particular importance in the development of a body of case law on the subject of valuation of inventory. While certain parts of these decisions are open to criticism, on the whole they are deserving of our admiration. Our admiration must be even greater when we realise that this is one of the most difficult subjects in the field of business economics and that it is being dealt with not by a group of economists but by lawyers.

Development of procedural law by the Supreme Court

Another completely different field which has been developed by the Supreme Court — since there were no detailed, statutory rules on the subject — is procedural law. Rules regarding the question of on whom the burden of proof should lie and the conduct of proceedings before the Court of Appeal are to a great extent based on rules created by the Supreme Court and which are unanimously held in high regard.

The importance for the tax authorities and the taxpayer

It is of great importance for both the tax authorities and the taxpayer that there is such easy access to the tax courts — this being, of course, in the first place the Court of Appeal. The taxpayer knows that he can appeal to experts who are unbiased and therefore objective. The tax authorities know that their decisions and opinions are at all times subject to supervision from a higher authority.

G. THIMMAIAH *:

UNIFORM INCOME TAX ARRANGEMENT IN AUSTRALIA

In Australia, the state governments have only concurrent taxing powers whereas the Commonwealth government has both exclusive and concurrent taxing powers. This constitutional arrangement in regard to the revenue raising powers of the Commonwealth and the states is at the root of the presently operating uniform income tax arrangement in Australia. It is an extra-constitutional arrangement under which the state governments have rented out their concurrent power to tax incomes arising or accruing within their respective boundaries, to the Commonwealth government in return for some form of compensatory grants to begin with, (tax-reimbursement grants), which have now assumed equalization grants, (financial assistance grants).

1. BACKGROUND OF THE PRESENT TAX RENTAL ARRANGEMENT:

Until the second World War both Commonwealth and state governments were levying income tax of their own as they enjoyed concurrent powers. During the second World War the Commonwealth government, being responsible for defence, was hard pressed for more revenue to meet the defence needs. At the same time income tax was not uniformly tapped by all the state governments. Therefore, Sir Robert Menzies, then Prime Minister, realised that the Commonwealth government could raise substantial additional revenue through uniform income tax rates if the states vacated it in return for compensatory payments. But the states turned down this proposal and meanwhile Sir Robert Menzies lost power in the federal election.

The Labour party which succeeded formed the government with Mr. Curtin as the Prime Minister. He took up Menzies' proposal and appointed a Committee on uniform taxation to examine the proposal and to recommend future course of action. This Committee found that the proposal was well conceived and recommended that the Commonwealth government should assume full power to levy income tax exclusively during the period of war and a year thereafter. The Commonwealth government placed these recommendations before the states in the 1942 Premiers' Conference and promised to vacate it after one year after war. These proposals were turned down by the states. Notwithstanding this failure, the Commonwealth government passed legislation to transfer state income tax departments along with their relevant records to the Commonwealth government's jurisdiction, and to make payment of Commonwealth income tax a priority over that of state income tax for the period of the duration of the war and a year thereafter. This legislation also provided for compensatory grants to reimburse to the states the average amount of revenue collected by each of them during the two years of

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1939-40 and 1940-41. However, if some states were in need of additional revenue over and above these reimbursement grants, they were asked to apply for them to the Commonwealth Grants Commission. Further, the legislation disqualified those states which continued to levy their income tax for reimbursement grants and also that the Commonwealth government would continue to collect its own income tax from even such states. This legislation was challenged by South Australia, Victoria, Queensland and Western Australia in the High Court. The High Court justified[1] the Commonwealth legislation, but interpreted that the Commonwealth government could not take away the states' power to tax income by compulsion but may tempt them to transfer it in exchange for compensatory grants. Accordingly, the tax rental arrangement was implemented through disguised coercion by the Commonwealth government between 1942 and 1946. During this period most of the states except Victoria received reimbursement grants equivalent to and in some cases more than what they would have otherwise raised from their respective taxable capacities. Tasmania, New South Wales and South Australia received roughly equivalent amounts whereas Queensland and Western Australia received more than what they would have raised. However, Victoria received relatively less on the basis of the revenue it was raising in 1939-40 and 1940-41 mainly because its rates were lower in relation to a high taxable capacity.[2]

After the war, Prime Minister Mr. Chiefly proposed to the states to continue this tax rental arrangement indefinitely on the ground that "displacement effect" after the war necessitated more expenditure on nation-wide welfare programmes. Besides, the advantages flowing from a nationally administered income tax such as lower costs of administration, lower costs of tax payers' compliance, minimum distortions in the allocation of resources and movement of trade and commerce, were also advanced to justify the continuation of uniform income tax. But the states were reluctant to agree for its continuation partly because some affluent and politically powerful states like New South Wales and Victoria were unfavourably affected by tax reimbursement grants and partly because other states feared losing their concurrent power of income tax for ever. However, in order to satisfy Victoria, the then Prime Minister proposed to increase the grant by taking into account growth of population from July 1947 and half of the percentage increase in the level of average wages per annum over the level in 1946-47. Ultimately the state Under Treasurers were asked to propose a formula of distribution. Accordingly, they developed an ingenious formula to satisfy all the states in the following way: The amount of grant for a state was to be equivalent to the product of:

$$\frac{(p + 4a)\ (p + l + \tfrac{1}{2}m + \tfrac{1}{2}n)}{p}$$

where p = estimated population of that state at the beginning of the year.

a = number of children in the age group 5-15 years (inclusive).

l = persons living in areas with density of less than one person per square mile.

m = persons living in areas with density of between one and two persons per square mile.

1. See Geoffrey Sawer, *Cases on the Constitution of the Commonwealth of Australia.*

2. James A. Maxwell, *Commonwealth-State Financial Relations in Australia,* Melbourne University Press, (Melbourne: 1967), p. 6.

n = persons living in areas with density of between two and three persons per square mile, and

4 = four times the number of school children (a) above, was added to the total population on the assumption that the cost of education per school child in a year was equivalent to four times the cost of providing social services for an adult.[3]

It is necessary to emphasize here the arbitrariness of this formula. As Prof. James A. Maxwell has put it, "The whole awkward formula was the pragmatic result of hasty negotiations to devise something acceptable to all the states." [4] The abrupt switch over to such an ingenious formula was unacceptable to the states which were favoured by previous war-time distribution arrangement.

Hence, another transitory formula was devised under which in the initial two years of 1946-47 and 1947-48 the basis of distribution was agreed annually in terms of some acceptable percentage of war-time reimbursement grants and from 1948-49 the weight of adjusted population in the share of each state was to grow by one-tenth each year so that by 1957-58 the distribution would be wholly on the basis of adjusted population of each state. But in actual practice, the amount of reimbursement grant received by each state exceeded what it would have received under the combined formula. Yet, the change (on paper) in the formula was made only once in 1948 when the full percentage increase in wage rate was taken into account for determining the total amount of reimbursement grants. This change was made only on paper because, "While holding firmly to the formula, Commonwealth government made *ad hoc* annual additions to the reimbursements on a hotch-potch basis, and also frequently altered the basis of distribution of these additions." [5] This was evident from the fact that the "Under Treasurers brought forward a table showing five bases of distribution which in some form, had been in usage for the supplements".[6] On top of this, the name "tax reimbursement implied that each state should receive, on a uniform basis, the relevant revenues collected within borders. And yet these revenues were, through the formula, distributed according to a crude measure of need".[7]

Ultimately, all these *ad hoc* arrangements based on political expediency made the continuation of uniform income tax after the war an election issue. And the Labour Party which was responsible for this arrangement was defeated in 1949 federal election and the Liberal-Country Party coalition assumed power under the Prime Ministership of Sir Robert Menzies. He realised the political value of the uniform income tax arrangement and tried to appease the state governments to win their goodwill. In keeping with democratic process of decision making, a committee consisting of the Secretary of the Commonwealth Treasury and Under Treasurers of the states was constituted in 1950 to prepare a technical report on all aspects of the issue for future policy formulation.

The Committee submitted many interim reports and its final report was submitted in 1953. The recommendations of the Committee represented mainly the views of the Commonwealth Treasury, and those of the

3. *Ibid.*, p. 7.
4. *Ibid.*
5. *Ibid.*, p. 9.
6. *Ibid.*
7. *Ibid.*

states were couched in doubts and questions.[8]

In any case, the technical report supported the continuation of the scheme on the grounds of administrative efficiency, economy in collection and compliance, and putting an effective fiscal policy tool in the hands of the Commonwealth government for managing the national economy. Though these arguments were convincing, some states like Victoria were keen on getting their income tax power back. Hence Victoria challenged the uniform income tax legislation in the High Court on the grounds that: (i) the power of the Commonwealth government to make tax reimbursement grants conditional upon the states not levying income tax was unconstitutional and (ii) the Commonwealth government's power to provide an absolute priority for payment of Commonwealth government's income tax over income taxes levied by the states was also unconstitutional. In November 1956, the High Court ruled unanimously that the condition attaching to the tax reimbursement grants that the states should not levy income tax was constitutionally valid as it was an act of only tempting and not compulsion, and by a majority of four to three ruled that the provision of Commonwealth legislation making priority of payment of Commonwealth government's tax over states was invalid.[9]

2. LATER DEVELOPMENTS IN UNIFORM INCOME TAX:

By the time this second judicial episode was over in 1959, the old arrangement of uniform income tax came up for renewal. In that year Queensland and Victoria staged a drama enacting the theme of financial disability as a result of inadequate reimbursement grants, and threatened to apply for special grants. The Commonwealth government which was thinking of gradually liquidating special grants and hence the Commonwealth Grants Commission, was alarmed by this move which meant expansion of special grants and extension of the life of the Commonwealth Grants Commission. In an attempt to halt this trend and also to appease the aggrieved state of Victoria, the total amount of reimbursement grant was increased. Since these grants came to be distributed on the basis which favoured poorer and sparsely populated states, the name of the grants was changed to financial assistance grants.

Besides, the 1959 agreement included certain fundamental changes too. The arrangement was aimed at (i) merging the large grants which were then being made to supplement the tax reimbursement grants and to devise a more liberal formula which would avoid the necessity for supplementary grants, (ii) reducing the number of states applying for special grants in future to two, and (iii) arriving at a more generally acceptable basis of distributing the financial assistance grants among the states. These aims were achieved by increasing the amount of financial assistance grants made to each state in 1959-60 by the sum of the percentage annual increase in each state's population and the percentage annual increase in the average wages for Australia as a whole. In addition to these "growth

8. See for details *Report on Commonwealth-State Financial Relations, Commonwealth and State Treasury Officers,* (14th August 1951), and *Resumptions of Income Tax by the States: Report by Commonwealth and State Treasury Officers,* (19th January 1953).

9. See for details *Commonwealth Payments to or for the states,* 1967-68, Commonwealth of Australia, (Canberra: 1967), p. 69.

factors", with a view to assisting the states to improve the standard and range of services provided by them, it was proposed to introduce a "betterment factor" equal to ten per cent of the increase in the average wage in the year. In view of the embarrassment which it had to face while renewing the agreement, the Commonwealth government made the 1959 agreement to continue for six years till 1965. These proposals were accepted by the states as they provided additional amounts of grants for each state.

But by 1965 when the 1959 agreement came up for review and renewal, Victoria had publicised its desire to levy a marginal income tax. This proposal was rejected not only by the Commonwealth government but also by other states. However, a new agreement for a period of five years was concluded. This new agreement increased the number of betterment factors to two by including percentage increases in both wages and in population in the year. And the distribution formula was made to provide for 20 per cent increase in each of these two betterment factors. Besides, some additional adjustments were made for Queensland and Victoria which had suffered on account of their decision to abstain from applying for special grants. This agreement lasted for five years till 1970.

In the 1970 Premiers' Conference, the Premiers of the six states presented a united memorandum placing their views on the whole system of Commonwealth-State fiscal arrangements in a right perspective, and suggested some alternatives which were obviously advantageous to the states. In regard to the uniform income tax arrangement they proposed a long-term as well as a transitional scheme in the following words:

"The Premiers adhere unanimously and firmly to the view that the general purpose Commonwealth payments to the states are income tax reimbursement payments and that the nexus between the payments and the income tax revenue yields must be restored.

We are convinced that the present financial problems of the states stem from the loss of access to income tax as their major source of revenue and from the parallel loss of the nexus between the yield of income tax and the Commonwealth reimbursement payments.

"Not only do we believe that the states must have an access to revenues with the flexibility and growth features of income tax, but we accept that the states must take direct responsibility for raising a substantial proportion of their revenue requirements by means of Income tax.

"It is proposed ... that the process of restoring the nexus between state revenues and income tax yields should be developed in two steps:

(1) First, as a transitional measure operative from 1st July 1970 the present tax reimbursement grants should be amended adequately increasing their base and by adopting a new system of increases upon that base to conform with the rate of growth in the yield of income taxation assessed upon a constant rate schedule.
(2) Second, the Commonwealth and state Treasury Officers be instructed to devise a scheme whereby the states shall have access to income tax broadly along the lines of the system presently operating in Canada, for implementation as soon as practicable and preferably from 1st July 1971. Such a scheme would have to be one adapted to Australian circumstances

and to the recognised needs of the less populous states." [10]

These schemes, apart from their supposed advantages, indicated two other characteristics. One, they indicated the unity of all the state governments in their financial bargaining process with the Commonwealth government which was absent in 1965 when other states opposed Victoria's marginal income tax proposal. Their unity in 1970 strengthened their bargaining capacity. Two, they indicated their resourcefulness in suggesting some alternatives while expressing their common dissatisfaction with the existing scheme. However, even in 1970 Premiers' Conference all the Premiers were not sincerely interested in getting their income tax power back. For instance, I was told by many Under Treasurers who in fact wrote the 1970 Premiers' memorandum, that only Victoria was sincere in getting income tax power back and New South Wales was indifferent. Other states particularly South Australia and Tasmania did not want it back as they would not realise, with their relatively lower taxable capacity, as much revenue as they have been getting under the financial assistance grants. Furthermore, the Deputy Under Treasurer of a relatively sparsely populated state told me that income tax should be entirely with the Commonwealth government to financially enable it to provide grants to needy states. Another Deputy Under Treasurer of the poorer and less populous state told me that the present position of income tax in Australia is for all practical purposes permanent.

But the Premiers of all the six states had agreed on the memorandum on the implicit assumption that the Commonwealth government will not agree on giving back their income tax power and instead will increase the amount of grants and other financial assistance. In fact these happened exactly as were predicted. The Prime Minister Mr. John Gorton agreed, after all the rituals of political bargaining, to increase the betterment factor to 1.8 per cent from the previous one per cent, and announced an additional grant of $ 40 million in grants as determined by the old formula. Besides, he held out general capital grants. He committed the Commonwealth government to provide (i) a new capital grant of $ 200 million for 1970-71 which was to grow annually in proportion to the increase in the Loan Council borrowings, and (ii) a new grant to meet debt charges on $ 200 million of existing state debt in 1970-71, with a further addition of $ 200 million in each of the subsequent four years from 1970 to 1975, which meant a total assumption of Commonwealth responsibility for servicing $ 1000 million of state debt. These additional inducements satisfied the state Premiers to agree for the continuation of uniform income tax. Their memorandum, therefore, was as usual pigeonholed. But the former Prime Minister, Mr. John Gorton, while offering additional capital grants, made a very wise proposal for the determination and distribution of financial assistance grants in the future. In his own words,

"While we believe that the present distribution of the grants is a fair one, we do not believe that it is necessarily correct in precise terms ... I strongly feel that it would be desirable to have independent investigation and advice on this question

10. *The Financial Relationships of the Commonwealth and the States: A Statement by the Premiers of all the States,* 19th January 1970, p. 27.

for the purpose of the next review of the arrangements. I believe that if the Premiers were disposed to accept this the best approach might be for the Commonwealth Grants Commission to be given this task ... but in any case the Commission could be given the task of recommending on the distribution of the grants between all the states, not necessarily annually but mainly for the purposes of the regular reviews of the revenue grants arrangements. But the success of any scheme along these lines would obviously depend on full cooperation being given by the states. I, therefore, ask the Premiers to consider that suggestion and at a later stage to let us have their opinions.

"We would also be prepared to consider the possibility of giving the Commission the task of examining the share of the grants paid to a particular state between reviews of the grants arrangements ... If we were to implement these proposals there would, of course, be a number of matters to decide as to the way the Commission would work and we would obviously have to give close thought to them ... I think that the proposals outlined constitute a significant contribution towards an improvement in Commonwealth-state financial relationships".[11]

This suggestion was not very well received by the states, particularly the status seeking populous richer states of New South Wales and Victoria, whose liberal party politicians were mainly responsible for the exit of Mr. John Gorton as the Liberal Party leader and the Prime Minister. The main reason for this action appears to be that "New South Wales and Victoria in particular, have no desire to have their financial transactions subjected to scrutiny and comment by an agency of the Australian government although they might have most to gain".[12]

3. AN EVALUATION OF THE AUSTRALIAN UNIFORM INCOME TAX ARRANGEMENT:

The uniform income tax arrangement which is operating at the moment in Australia has no doubt avoided vertical as well as horizontal federal tax overlappings. It has given an effective tool of fiscal policy to the Commonwealth government. It has also given an elastic source of revenue to the Commonwealth government to raise funds nationally and distribute them among the states in the form of various grants to promote national objectives. But it has certainly not created either vertical or horizontal federal fiscal imbalance. Because, all the states have been receiving more than what they would have actually raised in the form of income tax revenue in competition with the Commonwealth government. And there is no valid justification for saying that financial assistance grants by themselves have made all the states financially irresponsible. Financial irresponsibility of the grant receiving government depends upon the methods on the basis of which the grant is made and not on the grant or even on the amount of grant itself.

On the other hand, the present tax rental arrangement has improved the economic and administrative efficiencies of income tax in Australia by reducing the costs of collection and of tax payers' compliance. It has minimised distortions in allocation of resources which would have resulted from states income tax operating side by side with Commonwealth income tax. And by enabling the Commonwealth government

11. *Minute of the Proceedings of 1970 Premiers' Conference*, (Canberra: 1970), pp. 16-18.
12. R. J. May's book: *Financing the Small States in Australian Federalism, The Economic Record*, (June 1974), p. 312.

to exploit the taxable capacity of the country through this effective uniform taxation, it has enabled it to raise more revenue and to feedback a portion of it to the states in the form of various grants, particularly the fast growing specific purpose grants.

But what is wrong with the present scheme is the method through which the financial assistance grants are made to the states. As it is clear from the foregoing section, the uniform income tax arrangement has brought too much of political bargaining process into the federal fiscal operations of Australia. In this connection, while reviewing the Australian federal fiscal arrangements, Mr. Robert Jay has observed that "It would be wrong to infer that no sort of rational assessment is made. But the influence of bargaining, the constraints imposed by political considerations and the ad hoc nature of many of the decisions combine to fortify the doubts of those who find it difficult to credit the soundness of the present per capita distribution of financial assistance grants among the states. May commented in his foreword written in March 1970, that "Australia seemed to be regressing to a system of federal finance based on open bargaining between politicians, with few generally accepted rules of the game".[13] Since 1959 tax reimbursement grants have been provided in the form of financial assistance grants. As the former Prime Minister Mr. John Gorton admitted, they have come to be provided to enable each state ... "to provide government services of a standard broadly comparable with those of each other state without imposing higher taxation or other charges".[14] But this is the basis of special grants recommended by the Commonwealth Grants Commission since 1933. If so, where is the justification for distributing a part of the unconditional grants, (former tax reimbursement grants which have become financial assistance grants), through political bargaining process and another part of them, (which are called special grants), on the recommendation of the Commonwealth Grants Commission. I stress the fact that financial assistance grants have come to be distributed through political bargaining process by referring to the awkward formula developed to satisfy all the states in 1946 and to the arbitrary selection of betterment factors in 1965. It appears from the reference made by the state Premiers in their memorandum submitted at the 1970 Premiers' Conference that they have been guided by the Canadian example of tax rental arrangements periodically agreed to by the Provinces and the Dominion Government mainly through political bargaining process. Messrs. A. Milton Moore and J. Harry Perry have defended such Canadian method in the following way:

"Political judgement and negotiation in a federal system is of the essence of the solution to the problem of federal provincial financial relations, and no scheme will transcend the limitations of the men who govern us. Nor does this mean that politicians will produce inferior schemes; in an area in which so much hinges on judgement, they are more likely to find the best workable solution than are the experts. Indeed, the only occasions on which matters have progressed has been when politician were in charge." [15]

Whether it is true of Canada or not is outside the purview of this study. But it is not true of Australia as is evident from the foregoing discussion. The progress, if there

13. *Ibid.*
14. *Op. cit.*, p. 16.
15. *Financing Canadian Federation*, Canadian Tax Foundation, (Toronto: March 1953), p. 74.

has been any, in the field of uniform income tax arrangement achieved by the politicians has been in the wrong direction. This can be further substantiated by referring to the impressive and long lasting achievements of an expert body like the Commonwealth Grants Commission both in terms of political stability and fiscal equalization of the claimant states. In Australia, the states have not lost their concurrent income tax power. But they have been induced by the Commonwealth government through unconditional grants to rent it out voluntarily. This implies that the grants which the states receive in turn for this tax-power renting should be related to the yield from income tax in each state. This fact was stressed by the Premiers in their memorandum to which I have already referred. But they were not sincere in pressing that point mainly because, in effect they got more than what they would have raised or more than the states' income tax yield in each state. Therefore, both rich and poor states have not been sincere except perhaps Victoria, in demanding the grant on the basis of derivation principle. The rich states mainly — New South Wales and Victoria — which are politically strong do not press it too far because they have been receiving adequate financial assistance grants and generous specific purpose grants. The poorer states — notably Tasmania — have not been demanding adoption of derivation principles mainly because, that will fetch them far less grant than they are getting now, owing to their relatively lower taxable capacity. Also they have been equally kept satisfied by providing special grants over and above specific purpose grants. All this leads me to the conclusion that it was the Commonwealth government which in fact encouraged the use of political bargaining process for distributing financial assistance grants. However, a wise Liberal Party leader realised it and suggested the transfer of these grants to the purview of the Commonwealth Grants Commission at least by 1975. But he is not in power at present to prepare the ground for its acceptance by the states particularly New South Wales and Victoria by 1975. If the present leadership adopts measures just for the sake of political expediency, the present arrangement may continue even after 1975, which will be to the detriment of the long-run Commonwealth-state financial relations in Australia.

4. AN ALTERNATIVE PROPOSAL:

The tax rental arrangement in Australia is inefficient as is evident from the foregoing discussion. The present method of distributing the yield from the rented tax on general financial need basis is unjust as the states have a right to have their share of the yield from income tax on derivation principle. This is because, they still retain the power to levy income tax if they are prepared to forego the present grants *in lieu* of the transfer of their right to tax and face tax competition from the Commonwealth government. Further, the theoretical justification for tax rental arrangement makes it only fair to transfer the states' share of the yield from the rented tax to the states on derivation principle. If the duration of the tax rental arrangement is only for a short period of time, the share of the states in the yield from the rented tax may be distributed on compensation principle which is administratively convenient. If on the other hand, it is arranged for a long period, derivation principle is justified with a view to transferring the growing revenue to the right party, viz., to the states. Therefore, in Australia the pre-

sent financial assistance grants should be replaced by transfer of a portion of income tax yield to each state on the basis of derivation. Since income tax is a concurrent subject over which Commonwealth has also got equal right to tax, both Commonwealth and states must share the net yield from uniform income derived in each state. The best method would be to share 50 : 50 per cent each which is sound because it recognises equal taxing rights of the Commonwealth government and the state governments to the taxable capacity of each state. This is also consistent with the spirit underlying the concurrent power of income tax which has not given precedence to any one party in Australia.

Once this equal claim to the net yield from income tax raised in each state by the Commonwealth government is recognised, it is easy to allocate the share of each state on the basis of derivation principle. The responsibility of determining this share should, however, be entrusted to the Commonwealth Grants Commission. As I have proposed earlier, each state may be given 50 per cent of the net yield collected within each state from income tax levied by the Commonwealth government. However, the Commonwealth Grants Commission may recommend larger share of the yield to the states taking into account the surplus revenue available with the Commonwealth government and its special needs. Then the Commonwealth Grants Commission may recommend special grants to those states which do not receive sufficient revenue required for meeting their fiscal needs as determined by the Commission. Though the former Prime Minister Mr. John Gorton suggested the transfer of financial assistance grants to the purview of the Commonwealth Grants Commission, there was no reference to the status of the uniform income tax arrangement and to any justifiable basis of distribution of financial assistance grants. Probably he felt that it was premature, or that it should be left to the Commonwealth Grants Commission. In any case, the determination of special grants for any needy state by the Commonwealth Grants Commission, after distributing income tax reimbursement payments on derivation basis, makes federal fiscal transfers more rational in Australia. This procedure will also give an opportunity for the Commission to scrutinise the finances of New South Wales and Victoria whether they apply for special grants or not.

Thus the present Grants Commission should be asked to determine and recommend from 1975 all unconditional grants which include both financial assistance grants (which should become tax reimbursement grants), and special grants. This is because, at present both of them are unconditional grants (though not constitutionally), and therefore, should be related in their totality to the relative net fiscal needs of the states. However, since special grants are recommended now to only a few states on the basis of the fiscal standard of richer states, the present method will be inadequate for distributing both financial assistance grants (which should be reverted to become the former tax reimbursement grants), and special grants among all the states. Because, the determination of a "standard fiscal level" becomes difficult. The national average standard will be lower and an alternative standard will be either arbitrary or impossible. Therefore, first the Commission should distribute the present financial assistance grants in the form of tax reimbursement grants on the basis of derivation or "origin of income tax collection" among all the states as I have already explained in the earlier section. This would

also reduce opposition to the proposal from the richer states as they will get larger amounts of grants on the basis of derivation. This basis might appear putting the clock back as these grants are tending to be distributed partly on equalization basis. But it was done with a view to eliminating the special grants. Since the special grants are going to stay as long as horizontal federal fiscal imbalance persists in the Australian federation, the element of equalization lost in distributing the present financial assistance grants in the form of tax reimbursement grants on "origin of collection" or derivation basis may be offset by distributing the special grants more on equalization basis. Once the financial assistance grants are distributed on the basis of origin of collection, a few rich states will get more funds and their average fiscal standard after distributing financial assistance (or tax reimbursement) grants may be adopted for determining special grants for other states. By adopting uniformly a "balanced budget standard", the surplus revenue of some richer states may be determined. The Commonwealth government may take into account such surpluses of the richer states while making specific purpose grants. In other words, the surplus revenue which these richer states would experience as a result of the distribution of financial assistance, (or tax reimbursement), grants on the basis of origin of collection of income tax, must be deducted from specific purpose capital grants made to these states for health and education purposes. The revenue so saved should be given to the poorer states, whose share in the financial assistance, (or tax reimbursement), grants and in the loan money raised by the Loan Council will be reduced under my suggested alternative proposals, in the form of special grants.[16] Once the present Grants Commission is entrusted with the task of recommending both financial assistance, (or tax reimbursement), and special grants, its present composition becomes unacceptable to the states. Therefore, with its widened scope its composition should also be broad based. Such a proposal has been suggested elsewhere.[17]

16. For details about this proposal, see G. Thimmaiah, "Allocation of Loan Funds by the Loan Council: A Suggested Approach", *Economic Activity,* (Perth), October 1972.

17. See G. Thimmaiah, "The Changing role of the Australian Commonwealth Grants Commission: A Reexamination", *Public Finance,* Nos. 3-4, 1973.

F. AKIN OLALOKU *:

THE BUDGET WITH A DIFFERENCE: SOME REFLECTIONS ON THE 1974/75 NIGERIAN FEDERAL GOVERNMENT BUDGET

I

The Nigerian Federal Government budget for the fiscal year 1974/75 is unique and quite different from previous budgets in some important respects. First, of particular significance is its mere size which has been described as the biggest ever, with government expenditures at a record level of Naira 2,625 million and government revenue at an equally record level of N3,122 million.

These figures in relation to those for previous budgets are rather staggering.[1] Secondly the budget represents, at least from the point of view of the philosophy behind it, a very bold and decisive step towards curbing the inflationary pressures that have plagued the economy since the civil war. From the estimates, the cost to the Government of this fight against inflation in terms of revenue lost as a result of cuts and removal in some cases of a wide variety of indirect taxes, will amount to N140 million. Finally, the budget is the first to carry an official policy statement on the already widely discussed need to reform the country's personal income tax system.

II

The measures to cut, and in some cases remove the major indirect taxes in order to contain inflationary pressures apply to a wide variety of goods with particular emphasis on those which carry substantial weight in the cost-of-living index. These include inputs for housing production as well as a host of food items. Specifically, excise duties on cement, enamel ware, cereal flour, household utensils, meat and meat preparations, medicaments, ball point pens, plastic ware, roofing sheets, soap and soap products, metal structures, tabs and rags, thread, towels, bicycle tyres and tubes were completely abolished. But the duties on socks and stockings, cosmetics, perfumery and toilet preparations, matches, paints, textile fabrics, record players radio receiving and television sets and steel products were reduced to a uniform rate of five per cent. These cuts as well as the complete abolition of some excise duties are intended as a cost-relieving measure for producers so as to encourage domestic production thereby making more goods available at lower prices to consumers.

Other tax cuts include a general reduction in import duties on building tiles, slabs, blocks, panels of various materials and glass mosaics from 66⅔ to 50 per cent, and from 100 and 50 per cent to 50 and 30 per cent on record players and tape recorders and imported component for domestic assembly respectively. In addition, import duties on the following items were reduced from 15, 25, 33⅓, 50 and 66⅔ per cent to 5, 10, 25; 30 and 50 per cent respectively: (i) flat bars, (ii) hollow mining drill, (iii) tubes pipes, fitting of iron and steel (iv) iron and steel structures for the building in-

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1. The corresponding figures for 1973/74 fiscal year are N1,128 million and N1,410 million respectively.

dustry and (v) drums, casks and other packing containers of iron and steel. Duties on imported cars were also scaled down from 33⅓, 50, 100 and 150 per cent to 25, 40, 75 and 100 per cent respectively depending on the horse power, while those on fresh fish, rods and baby carriages were completely abolished. A total ban was placed on the importation of the following items:

(i) live animals like fowls, ducks, turkey and guinea fowls;
(ii) some items of food such as bread and biscuits;
(iii) office equipments including box files, letter trays, storage boxes and similar articles of paper;
(iv) clothing materials of furskins, raw, tanned or dressed;
(v) stones, sand gravels excluding refactory bricks and industrial grinding stone, corned beef and eggs in the shell other than for hatching.

Essentially the total ban on the importation of the foregoing items is aimed at protecting the respective domestic industries.

The tax reform measure announced in the budget is the proposal to make the personal income tax uniform all over the country. At present the personal income tax is under the jurisdiction of state governments and although its administration and procedures are uniform throughout the country, the effective rates of the tax vary from state to state. It is this diversity in rates which the budget seeks to remove.

III

From the point of view of what is intended, it will appear that the important keynote message of the 1974/75 Federal Government budget is its anti-inflationary orientation, yet on a further reflection the Government's intentions appear to be contradictory. A type of fiscal policy which is anti-inflationary in its intentions but expansionary in its measures is indeed based on peculiar economics. It does not require sophisticated economics to realise that tax cuts are expansionary in their effects and that increased government spending would exert similar effects. One therefore wonders how the Government's measures of substantial cuts and complete removal in certain cases of major indirect taxes coupled with a considerable increase in government spending will help to mitigate the inflationary pressures in the economy.

According to the Government, the important element in the current inflation in the economy is the rising prices of essential consumer goods such as food and housing. It has therefore sought to remove this element by cutting down, and in some cases abolishing import and excise duties on a wide range of goods. But one would like to ask the criteria for the selectivity of the goods involved. If the objective is to bring down the cost of living, it sounds reasonable that items of food and housing which bulk large in consumer expenditures should be the ones whose duties should be cut or abolished. In this respect, the reduction and outright abolition in certain cases of excise and import duties on food items and building materials makes a lot of economic sense. But tax reductions on all other items (gramophones, record players, tape recorders, radio and television sets, cars, etc.) which are luxuries by the standard of this country is not at all tenable. These tax reductions are likely to trigger off a buying spree that may lead not only to an increased pressure of demand but also to a worsening of the balance of payments. Thus the inflationary pressures in the economy would be aggravated rather than eliminated or at least slowed down. This is one respect in

which the fiscal measures announced in the budget appear to be contradictory to the intentions of the Government.

Furthermore, reduction or removal of excise duties on certain selected goods may well reduce production costs in the industries concerned, but there is no guarantee that the reduction will be passed on to consumers in the form of lower prices as is intended. In that case, the Government's measures would amount to sheltering and subsidizing inefficiency in the industries concerned at the expense of the consumers. This is particularly true when the excises are demand-absorbing as is the case with the essential goods selected by the Government. Cost-reducing fiscal incentives already given to these industries by way of tax concessions on imported materials should be sufficient to make additional cost-reducing measures unjustifiable. What one would like to see are measures to improve the supply of essential goods by removing the bottle-necks in their production process. Some of the industries in question are already at full capacity, while some others like the cement industry operate at low capacity which can be raised substantially with the application of appropriate fiscal incentives. For example, in the former case an investment credit could be used to encourage the expansion of production capacity, while in the latter case, a capacity-utilization allowance could be employed to increase the level of output.

One other respect in which the intentions of the Government are contradictory has to do with the increased public expenditure announced in the budget. With such a big increase in government spending, the bid to curb inflation is bound to prove futile given the fact that government spending is an important source of inflation in any economy experiencing a pressure of demand as ours. It is a well-known fact that if the pressure of demand in any economy is to be eased, any form of expenditure undertaken must be directly productive in the form of increased output of goods and services. But it is also a known fact that most government expenditures are by their nature not productive, or at best only productive indirectly. Given these economic facts, it is easy to predict that the Government's intended battle against inflation will be very difficult to win. This observation is strongly reinforced when it is realized that the largest component of public spending in the Government's recurrent budget (N336.0 million out of a total of N995.0 million, or about one-third) is allocated to defence alone — an activity which is known to be a most unproductive one in the government sector. The relatively huge expenditure earmarked for defence (at the expense of other more desirable and less unproductive activities like agriculture, health and education), on a closer look comes close to one million Naira a day. An expenditure of this size resulting practically in no concrete output is likely to create further inflationary pressures in the economy.

Quite apart from the problem of inflation which it will aggravate, the relatively big size of the defence budget is difficult to justify in terms of the priorities of the nation. When one looks at the situation from the point of view of revenue sources available to the Government, the frequently-heard charge against the Government that the country's rapidly growing revenue from oil is not being used to benefit the more important and basic sectors of the economy appears to be vindicated. For example, in a situation where the revenue from oil now constitutes a very large proportion of the Government's total revenue,

a defence budget of the present size would have been impossible to sustain in the absence of oil.[2] In other words, the growing revenue from oil is without doubt the important permissive factor in the escalation of the Government's expenditure generally and that of defence in particular.

The foregoing shortcomings notwithstanding, there are one or two aspects of the 1974/75 Federal Government budget which need to be commended. One of these is the tax reform measure announced in respect of the personal income tax. The move towards a uniformity of the personal income tax structure throughout the country is an important and desirable policy of tax reform in a rapidly changing and growing economy like ours. However, while it is possible for this reform to facilitate greater "social and economic integration", one is not certain whether the objective of the mobility of high-level manpower which is also intended will be served. From the empirical evidence of other countries, the personal income tax is not such a variable that can influence inter-regional labour migration to any desirable extent. But I think that one important and decisive advantage of the reform when carried through, will be the greater scope for the use of the personal income tax as a fiscal weapon for stabilization purposes. Although the personal income tax is still relatively unimportant in the country's overall tax structure, it has great potentialities for future years as a valuable stabilization tool. As the economy becomes more developed, the personal income tax will certainly be called upon to perform its more important role of economic management and income redistribution as we have it in the more developed countries.

One further commendable aspect of the budget is the government's decision to increase substantially the producer prices for agricultural products especially those for exports. This is a right step in the move towards income redistribution in favour of the poor farmers whose major export products have been underpriced for quite some time now. This measure will not only increase farmers' incomes but will also provide a source of incentive for greater agricultural production at a time when the agricultural sector needs all the incentives that are necessary to enable it to catch up with the other sectors of the economy.

IV

On the whole, it will appear from the above that despite their strong anti-inflationary orientation, the measures announced in the Nigerian Federal Government budget for fiscal 1974/75 are unlikely to yield the desired effects. The main reason for this lies in the fact that the expansionary expenditure policy being pursued by the government in the same budget is likely to counteract any positive effects of the anti-inflationary measures. This claim is reinforced by the fact that government expenditures in the last few years have constituted the strongest single source of inflationary pressures in the economy. However, the policy to liberalize imports through substantial cuts in import duties is likely to benefit the E.E.C. countries of Western Europe from where the bulk of the country's imports come. While this development would normally affect the country's balance of payments adversely, the net adverse effect is likely to be strongly moderated by the rapidly growing earnings from crude oil exports.

2. The revenue from oil is now about four-fifths of total government revenue.

* * * CASE NOTE * * *

BUNDESREPUBLIK DEUTSCHLAND:

Urteil vom 31. Juli 1974 I R 27/73 *

Das Besteuerungsrecht der Bundesrepublik Deutschland für in den Vereinigten Staaten nicht steuerbefreite Einkünfte aus Quellen innerhalb der Vereinigten Staaten wird nicht dadurch begründet, dass der Steuerpflichtige in den Vereinigten Staaten keine Steuererklärung abgegeben hat und deshalb dort nicht besteuert wurde.
EStG § 3 Nr. 41, § 49; EStDV § 68 b; DBA—USA i. d. F. des Protokolls vom 17. September 1965 Art. II, X, XV, XVI.

Die Kläger und Revisionsbeklagten (Kläger) sind Eheleute. Der Kläger ist bei einem inländischen Unternehmen als Arbeitnehmer beschäftigt. Vom 20. Januar bis 23. Juli 1969 war er im Auftrag seines Arbeitgebers zu Montagearbeiten in den USA, behielt aber seinen Wohnsitz in der Bundesrepublik Deutschland bei. Der Arbeitgeber zahlte dem Kläger für diese Auslandstätigkeit aufgrund einer Lohnsteuerbefreiungsbescheinigung des zuständigen FA Bezüge von insgesamt 12 757,20 DM steuerfrei aus und unterwarf lediglich die Vergütungen für die vom Kläger 1969 im Inland geleistete Arbeit der Lohnsteuer.
Der Kläger zahlte für seine Auslandsbezüge in den USA keine Steuer. Er gibt an, von einer Steuerpflicht in den USA nichts gewusst zu haben. Er sei dort nicht zur Abgabe einer Steuererklärung aufgefordert worden. Auch hätten bei seiner Ausreise die Kontrollorgane eine steuerliche Entlastungsbescheinigung nicht verlangt.
Bei der Einkommensteuerveranlagung der Kläger unterwarf der Beklagte und Revisionskläger (FA) — abweichend von der Freistellungsbescheinigung — auch die für die Auslandstätigkeit gezahlten Bezüge der Einkommensteuer. Das FA vertrat die Ansicht, dass in den Fällen, in denen zwischen der Bundesrepublik und anderen Staaten Abkommen zur Vermeidung der Doppelbesteuerung — DBA — abgeschlossen seien, das Welteinkommen der betroffenen Person auch tatsächlich steuerlich voll erfasst werden müsse. Das FA stützte sich dabei auf einen Erlass des Finanzministeriums des Landes Nordrhein-Westfalen vom 24. Januar 1969 — S 1301-39-VB 1 (abgedruckt in Einkommensteuerkartei Nordrhein-Westfalen, Anh. DBA Nr. 53). Wenn ein Steuerpflichtiger für einen bestimmten Sachverhalt unter Berufung auf das massgebliche DBA Befreiung von der deutschen Steuer begehre, so setze dies nach Treu und Glauben voraus, dass er der im Abkommen zugelassenen Besteuerung in dem anderen Vertragsstaat nicht mit einer anderen Sachverhaltsdarstellung begegne. Diesen Fällen einer ausdrücklichen anderen Sachverhaltsdarstellung in dem anderen Vertragsstaat seien nach dem Sinn des in Bezug genommenen Erlasses solche Fälle gleichzustellen, in denen der Steuerpflichtige den in dem anderen Vertragsstaat gesetzlich auferlegten Steuererklärungspflichten nicht nachkomme.
Die nach erfolglosem Einspruch erhobene Klage hatte zum Teil Erfolg. Das FG vertrat die Auffassung, dass die streitigen Einkünfte in der Bundesrepublik gemäss § 3

* Bundessteuerblatt II No. 3, 7. Feb. 1975, S. 61, 62.

Nr. 41 EStG in Verbindung mit den Bestimmungen des Abkommens zwischen der Bundesrepublik Deutschland und den Vereinigten Staaten von Amerika zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und einiger anderer Steuern vom 22. Juli 1954 in der Fassung des Protokolls vom 17. September 1965 — BGBl II 1969, 746, BStBl I 1966, 865 — (DBA-USA) von der Einkommensteuer befreit seien. Das FG setzte die Einkommensteuer der Kläger nach diesen Grundsätzen unter Berücksichtigung des Progressionsvorbehalts neu fest.

Mit seiner Revision beantragt das FA, das Urteil des FG aufzuheben und die Klage abzuweisen. Es wiederholt im wesentlichen seine schon im Verfahren vor dem FG vertretene Rechtsauffassung.

Die Kläger beantragen, die Revision des FA als unbegründet zurückzuweisen.

Die Revision ist nicht begründet.

1. Das FG hat zu Recht angenommen, dass die streitigen Einkünfte des Klägers nach § 3 Nr. 41 EStG in Verbindung mit den Bestimmungen des DBA-USA von der Besteuerung in der Bundesrepublik Deutschland ausgenommen sind.

a) Bei einer natürlichen Person mit Wohnsitz in der Bundesrepublik Deutschland werden Einkünfte aus Quellen innerhalb der Vereinigten Staaten ausgenommen, die nach dem Abkommen in den Vereinigten Staaten nicht steuerbefreit sind (Art. XV Abs. 1 b Nr. 1 aa) DBA-USA). Gleiches würde gelten, wenn der Kläger — was hier offen bleiben kann — zugleich nach dem Recht der Vereinigten Staaten dort einen Wohnsitz innegehabt hätte (Art. XV Abs. 1 b Nr. 2 DBA-USA).

aa) Der streitige Arbeitslohn ist den Einkünften aus Quellen innerhalb der Vereinigten Staaten zuzurechnen. Nach welchen Merkmalen diese Zurechnung zu bestimmen ist, regelt das Abkommen nicht unmittelbar. Es kommt daher Art. II Abs. 2 DBA-USA zum Zuge. Danach wird bei Anwendung der Vorschriften des Abkommens jeder Vertragsstaat, sofern sich aus dem Zusammenhang nichts anderes ergibt, jedem nicht anders bestimmten Begriff den Sinn beilegen, der ihm nach den eigenen massgebenden Gesetzen zukommt.

Da die Frage, welchen Quellen Einkünfte zuzurechnen sind, im DBA-USA nicht ausdrücklich geregelt ist, sind die Vorschriften des § 49 EStG über die beschränkte Steuerpflicht und die zu § 34 c EStG ergangene Bestimmung des § 68 b EStDV über ausländische Einkünfte sinngemäss anzuwenden (Korn-Dietz-Debatin, Doppelbesteuerung, DBA-USA, Art. XV Anm. 2 b, bb). Da der Kläger die nichtselbständige Arbeit, aus der die hier streitigen Einkünfte herrühren, in den Vereinigten Staaten „ausgeübt" hat (§ 49 Abs. 1 Nr. 4 EStG und § 68 b Nr. 5 EStDV), handelt es sich um Einkünfte aus Quellen innerhalb der Vereinigten Staaten (vgl. zum DBA-USA 1954 Urteil des BFH vom 2. Mai 1969 I R 176/66, BFHE 96, 163, BStBl II 1969, 579).

bb) Vergütungen für Arbeit und persönliche Dienste, die eine natürliche Person mit Wohnsitz in der Bundesrepublik Deutschland in den Vereinigten Staaten leistet, sind dort neben anderen Voraussetzungen dann steuerbefreit, wenn sich die natürliche Person in den Vereinigten Staaten insgesamt nicht länger als 183 Tage während eines Steuerjahres aufgehalten hat (Art. X Abs. 2 DBA-USA). Im Streitfall betrug der Aufenthalt des Klägers in den

Vereinigten Staaten — wie das FG in tatsächlicher Hinsicht für das Revisionsgericht bindend festgestellt hat (§ 118 Abs. 2 FGO) — insgesamt 185 Tage. Die Steuerbefreiung in den Vereinigten Staaten kommt mithin nicht zum Zuge.

b) Das FG hat schliesslich auch zutreffend dargelegt, dass der Bundesrepublik Deutschland im Streitfall das Besteuerungsrecht nicht etwa deshalb zusteht, weil die Vereinigten Staaten — aus welchem Grunde auch immer — von ihrem Besteuerungsrecht keinen Gebrauch gemacht haben. Der Verzicht eines Vertragsstaates auf das Besteuerungsrecht gilt — soweit in einem Abkommen nichts Gegenteiliges bestimmt ist — zwingend und ausnahmslos. Dies folgt aus dem Verbot der virtuellen Doppelbesteuerung (BFH-Urteil vom 7. Juli 1967 III 210/61, BFHE 89, 138, BStBl III 1967, 588 — I am Ende — unter Bezugnahme auf das Urteil des RFH vom 29. Februar 1940 III 206/39, RStBl 1940, 532).

2. Die Folgerungen, die das FA im Streitfall aus dem Grundsatz von Treu und Glauben ziehen will, gehen fehl. Es ist im Streitfall nicht festgestellt und auch nicht behauptet worden, dass sich der Kläger gegenüber den Behörden der Vereinigten Staaten in Widerspruch zu seinem Verhalten vor den deutschen Steuerbehörden gesetzt habe. Der erkennende Senat hat daher im Streitfall keine Veranlassung, näher zu der Frage Stellung zu nehmen, ob der Erlass des Finanzministeriums des Landes Nordrhein-Westfalen vom 24. Januar 1969, a.a.O., der eine widersprüchliche Sachverhaltsdarstellung eines Steuerpflichtigen in beiden Vertragsstaaten voraussetzt, mit dem geltenden Recht im Einklang steht. Jedenfalls wird das Besteuerungsrecht der Bundesrepublik Deutschland für in den Vereinigten Staaten nicht steuerbefreite Einkünfte aus Quellen innerhalb der Vereinigten Staaten nicht dadurch begründet, dass der Steuerpflichtige in den Vereinigten Staaten keine Steuererklärung abgegeben hat und deshalb dort nicht besteuert wurde. Denn der inländische Steuergläubiger kann aus der Verletzung von Steuererklärungspflichten gegenüber einem ausländischen Steuergläubiger keine Rechtsfolgen zu seinen Gunsten herleiten.

3. Das FA kann sich schliesslich auch nicht auf Art. XVI Abs. 2 DBA-USA berufen. Danach darf jeder der beiden Vertragsstaaten Steuern des anderen Staates wie seine eigenen Steuern insoweit einziehen, als damit verhindert wird, dass etwaige Steuerbefreiungen oder Ermässigungen des Steuersatzes, die der andere Staat nach dem Abkommen gewährt, Personen zugute kommen, die auf diese Begünstigungen keinen Anspruch haben. Das Wort „einziehen" kann aber nur so gedeutet werden, dass damit eine Vollstreckungshilfe des einen Vertragsstaats für den anderen begründet werden sollte (vgl. Korn-Dietz-Debatin, a.a.O., Anm. zu XVI). Das Recht, anstelle des anderen Staates selbst das Besteuerungsrecht auszuüben, folgt aus dieser Bestimmung des DBA nicht.

UNITED KINGDOM

Excerpts from Green Paper on Wealth Tax *
(Cmnd. 5704)

FOREWORD BY THE CHANCELLOR OF THE EXCHEQUER

One of the main purposes of personal direct taxation is to share out the burden of taxation fairly in accordance with ability to pay. In this country we have come to think of income as the main yardstick of taxable capacity and have sought to promote a greater equality through a progressive income tax. However, income by itself is not an adequate measure of taxable capacity. The ownership of wealth, whether it produces income or not, adds to the economic resources of a taxpayer so that the person who has wealth as well as income of a given size necessarily has a greater taxable capacity than one who has only income of that size. Because our present tax system takes no account of this fact, although we have a highly progressive system of income tax, the bulk of privately owned wealth is still concentrated in relatively few hands. Once the additional taxable capacity represented by ownership of wealth is adequately brought into charge, excessive inequalities of wealth will in time be eroded, and it will be possible to reduce the high rates of tax on earned income.

There are areas where the issues may not be altogether clear-cut or where the situation may seem capable of more than one reasonable solution — examples are the treatment of the wealth of husbands and wives or of capital held in trust — while questions such as the effect of the tax on businessmen and farmers and its impact on owners of wealth which forms part of our national heritage have to be weighed with particular care. But in the end we must be guided by what is fair and administratively possible and this is why public discussion of the new tax is of vital importance. The wider intention is to make Britain a fairer place to live in. To achieve this the wealth tax should itself operate fairly.

DENIS HEALEY

CHAPTER 2
THOSE CHARGEABLE

General scope of charge

7. A person will be liable to tax on all his chargeable assets to the extent that their total value after deducting his liabilities exceeds the exemption limit [1]. The

* Presented to Parliament by the Chancellor of the Exchequer by Command of Her Majesty, August, 1974. This paper is British Crown copyright and is reproduced with the permission of the Controller of Her Britannic Majesty's Stationery Office.

We are reprinting only portions of this Green Paper in this issue of the BULLETIN. Additional portions will appear in later issue(s).

1. Two possible scales of rates of tax on net wealth have been assumed in this Paper:

Tax A	
£100,000— £500,000	1%
£500,000—£2,000,000	1½%
£2,000,000—£5,000,000	2%
Over £5,000,000	2½%
Tax B	
£100,000— £300,000	1%
£300,000— £500,000	2%
£500,000—£2,000,000	3%
£2,000,000—£5,000,000	4%
Over £5,000,000	5%

The hypothetical starting point and rates have been taken merely for illustrative purposes: they are not intended as an indication of the exemption limit or the rates at which the tax might be introduced.

only exceptions from the charge will be such assets as may be exempted in the light of the considerations set out in the next chapter. The territorial basis of the charge is discussed in paragraphs 12 to 15.

Individuals

Husband and wife

8. It may be argued that from the social point of view the unit of taxation for the purposes of wealth tax should be the family. The family is the basic social unit in private life; and the long-standing rule for the aggregation of the incomes of husband and wife for income tax purposes, although now subject to certain exceptions, still has wide application and normally reflects the realities of the matrimonial situation. Aggregation of wealth would not necessarily therefore be inappropriate in the circumstances of today. The difference in taxable capacity between single people and married couples would, of course, need to be recognised by means of a higher threshold and a less steeply progressive schedule of rates. On the other hand it can be argued that it would be unfair for the wealth of two individuals to be eroded faster because they had married than if they had stayed single. It might therefore be preferable to treat each spouse separately and this has in fact always been the case for estate duty. Husband and wife would each be assessed and charged to the tax on his or her own wealth and each would qualify for the same exemption limit and scale. The total of their wealth tax burden would depend on the way in which their assets were spread between them, the liability being at its lowest if they shared their assets equally.

9. This is an issue of some social importance on which the Government hope that there will be the widest public discussion. It is not only a question of the relative taxable capacities of the single and married; it also involves the issue of the financial independence of husband and wife.

Minor children

10. Different considerations apply in relation to minor children. The way in which a child's wealth is spent may be influenced or determined by its parents, whose own wealth is to that extent free of claims against it. The Chancellor of the Exchequer announced in his Budget speech (*Hansard*, 26 March 1974, col. 318) that he would be reintroducing the provisions whereby a child's investment income is aggregated with that of his parents and it follows that its wealth should also be aggregated. Furthermore the scope for reducing liability to wealth tax by splitting wealth would otherwise be very considerable.

If in the light of the considerations discussed in paragraph 8 it is decided that husband and wife should be assessed separately, the normal rule might be that the child's wealth would be aggregated with that of the parent from whose side of the family the wealth derived.

United Kingdom companies and unincorporated associations

11. It is not in general proposed to tax companies or unincorporated associations. Although some European countries do so, the Government take the view that the reasons for which a wealth tax is being introduced in this country do not make it necessary to extend the charge to companies. The wealth comprised in companies will be taxed indirectly when their shares are held by shareholders who themselves fall within the scope of the charge. A charge might arise on interests in unincorporated associations where the members

are in a position to realise the value of their assets.

Residence

Test of residence for wealth tax purposes

12. The Government propose that the imposition of the charge to wealth tax should turn on an individual's domicile and residence in the United Kingdom in any fiscal year. For this purpose the tests for determining whether someone is resident for wealth tax purposes will be the same as those used for income tax purposes [2]. Normally a person is either resident or not resident for a whole year; but where by concession he is regarded as resident for income tax purposes for only part of a year, he might be regarded as resident for wealth tax purposes for that year if the valuation day (see paragraph 66) falls in that part of the year for which he is resident for income tax purposes.

13. A person who is resident in the United Kingdom in any fiscal year and who is domiciled here will be liable to wealth tax on his worldwide assets; someone with an overseas domicile who has lived here for a considerable period might also be within the charge. It would not however be reasonable to charge a person to the same extent if his ties here are less permanent and someone who is resident and ordinarily resident and who has not lived here for a considerable period might be made liable to the charge only on the total value of his assets here. A person who, although resident, is neither ordinarily resident nor domiciled in the United Kingdom will be treated as if he were non-resident.

Non-residents

14. It is not generally the Government's purpose to charge non-residents to wealth tax. They will not of course be liable on assets of any description held outside the United Kingdom, nor will they be liable on assets held in the United Kingdom such as portfolio investments which are not connected with a permanent establishment. However it might be thought unreasonable if non-resident individuals were able to hold certain types of assets in this country on terms which were more favourable than those available to residents. If it were thought right to give some effect to the latter view, non-resident individuals might be charged on the value of land in the United Kingdom, including assets held in connection with agriculture or forestry and rights relating to land, and on the value of assets held in connection with a permanent establishment in the United Kingdom (eg a branch, office or factory). This basis of liability would be broadly in line with the article on capital taxes in the model double taxation agreement drawn up by the OECD Fiscal Committee. Although on the Continent it is common to give non-residents a lower threshold than residents and they are not always charged at the same rate, assets of non-resident individuals falling within the charge here might be taxed on the same basis as the assets of residents.

15. Arrangements along these lines would not bring within the scope of the charge

2. The meanings of the terms "residence" and "ordinary residence" for income tax purposes and, more briefly, of the term "domicile" are given in the booklet "Residents and Non-residents: Liability to Tax in the United Kingdom" (IR 20) which is available free of charge from the Board of Inland Revenue at Somerset House or from the office of any Inspector of Taxes. The booklet also gives a summary of the income tax and capital gains tax treatment of residents and non-residents as at January 1973, but it has not yet been amended to take account of the changes in the Finance Act, 1974.

assets of any nature owned by widely held companies which are not controlled by five or fewer persons within the usual definitions. However rules wil be devised to ensure that non-resident individuals cannot escape the charge by holding chargeable assets indirectly in corporate form, whether the company is resident or not. Likewise the tax will extend to chargeable assets owned by non-resident partnerships.

Trusts

United Kingdom trusts — general principles

16. So far as possible, no tax advantage or disadvantage should follow from holding assets in trust rather than absolutely. Hence there can be no question of treating each trust as if it were a separate individual and allowing it the same exemption limit and rate bands, for if this were done substantial tax advantages could be obtained by fragmenting wealth between a number of trusts.

17. The Government therefore consider that all property held in trust should be prima facie liable to wealth tax at the top rate or perhaps, if the top rate applied only to a small number of people, at the next highest rate. However, there will be provision for trusts to have their liability abated. The following paragraphs set out rules for abatement for the main types of trust. Their practical effect will be that many small trusts will from the outset clearly have no liability to the tax. Trusts for wholly charitable purposes will in general be exempt from tax as will pension funds and certain trusts for employees. The assets of a trust which is subject to revocation by the settlor will be treated as belonging to the settlor.

Straightforward trusts

18. For straightforward trusts with one or more life tenants and remaindermen a possible approach might be to attribute the trust capital to the various beneficiaries of the trust according to the actuarial values of their respective interests in it; and then to tax the various amounts of capital at the rate they would bear if they formed the top slices of the beneficiaries' own wealth. However there would be two difficulties in this: first the values of the interests of the various beneficiaries in a trust generally add up to less than 100 per cent of the value of the trust funds and rules would have to be made for attributing the balance; second it may not be possible, even with a non-discretionary trust, to identify all the reversionary interests (which may, for example, include children yet unborn). The best practical solution may therefore be to ignore the reversionary interests and to attribute the whole of the value of the trust funds to the life tenant: the trustees would then be relieved from the full charge to tax insofar as that charge exceeded the liability which would have been due if the trust assets (together with the assets of any other trust of which he was life tenant) formed the top slice of the life tenant's wealth. The examples in Appendix 1 show how this rule might work. Similarly, where the trustees of a trust are required to accumulate the income for an identified beneficiary contingent on his reaching a stated age with power to make payments to him at their discretion, the assets could be attributed to the beneficiary so that the rate would be found, if he was a minor, by aggregating them with his parents' wealth (as explained in paragraph 10).

Discretionary trusts

19. The approach to straightforward trusts cannot apply to the wholly discretionary trust in which the trustees have unfettered discretion as to the application

of income and capital between what may be a very large number of discretionary objects. In such a case there are no beneficiaries by reference to whose circumstances the charge at the top rate of tax might be abated. The Government consider that while the settlor remains alive the charge should be calculated primarily by reference to his circumstances, as if the trust and any other discretionary trust he had set up had never been made. This will usually be close to the realities of the situation in which the trustees may be expected to follow the settlor's wishes. It may however be possible to give a measure of relief by reference to the payments of income actually made to the discretionary objects of a trust, although it would be necessary to assume for this purpose that the capital used to produce the distributed income was no more than what was required to produce the income from investments yielding a reasonable rate of return. Indeed if the settlor were dead such a method might provide the only basis whereby relief could be given as the years passed: it would however need to be carefully drawn bearing in mind the possibilities of abuse.

Intermediate trusts

20. There are many types of trust falling between the extremes of the straightforward trust with indefeasible life interests in possession and reversionary interests on the one hand and the out and out discretionary trust on the other. These will require consideration according to their circumstances on the general lines set out above. The rules for trusts will apply to other arrangements having similar effect.

Payment of the tax on settled property

21. The normal rule will be that the trustees should pay the wealth tax out of the capital of the trust fund: the burden will thus effectively be borne by the life tenant as well as by the remainderman since it will erode the amount of the trust capital and, therefore, the income that it can produce. Some life tenants may be unwilling to reveal to the trustees the amount of their wealth in order that the latter may calculate the relief due, or even to allow the Revenue to calculate the relief and inform the trustees. In such a case the trustees would have to pay tax at the top rate, but it could be provided that the payment would then so far as possible be made out of income and that the life tenant could claim direct from the Revenue an appropriate repayment of the tax paid by the trustees.

Overseas trusts

22. Trusts where the trustees are not resident in the United Kingdom and the administration of the trust is ordinarily carried on outside this country fall into two broad categories.

"Genuine" overseas trusts

23. The first category includes all those trusts set up with non-resident trustees by settlors who have little or no connection with this country. In such a case even if there are one or more beneficiaries or discretionary objects resident in this country there are no grounds on which it would be right to bring the trustees or the whole of the trust assets within the charge to the tax. But a United Kingdom resident individual with an interest in such a trust, whether in possession or reversion, has a realisable asset which should be included in his personal wealth at its actuarial value. If such a trust is discretionary however its objects generally have no interests in the trust assets on which they should be assessed.

"Artificial" overseas trusts

24. The second category includes those

trusts where a United Kingdom settlor arranges for the trustees to be non-resident or where the administration of an existing resident trust passes overseas. The legal ownership of the settled property is thus vested in persons outside United Kingdom jurisdiction and the arrangement is very frequently prompted by tax avoidance considerations. Accordingly, where settled funds were provided directly or indirectly by a person who at the time the funds were provided was domiciled or ordinarily resident in the United Kingdom, the trustees will be liable to the same extent as if the trust had been resident. This will apply whenever the trust was set up. While the settlor remains alive there will be power to recover the tax from him if the trustees do not pay it; alternatively it will be recoverable out of any assets of the trust which are within the United Kingdom or from any residents to the extent that after 8 August 1974 they receive benefits from the settlement, whether directly or indirectly or whether of capital or income.

Estates in administration

25. Special rules will be needed to deal with property passing under a deceased's will (or an intestacy) for the period while the estate is in course of administration. The eventual recipient of such property will be liable in respect of the total amount he receives as if it had formed part of his wealth at each valuation day (see paragraph 66) between the date of death and the date of receipt. Trustees will similarly be liable on the lines set out in paragraphs 16 to 24. Neither beneficiaries nor trustees will be required to pay tax until the property in question has been transferred to them, but interest at a commercial rate will run on deferred payments perhaps from a date 12 months after the date of death. As an alternative the Government will consider allowing a 12-month period from the date of death before the wealth tax liabilities begin to accrue. To deal with the possibility of very long delays in completing the administration of an estate it will also be necessary to have power to require personal representatives to make provisional payments of wealth tax on behalf of absolute beneficiaries or trustees.

CHAPTER 3
THE BASIS OF THE CHARGE AND ITS INTERACTION WITH OTHER TAXES

General principles

26. In principle wealth tax should be levied equally on the value of all assets with a realisable value held by an individual or by the trustees of a trust, whatever the assets may be and howsoever they may be held. Difficulties will arise if this principle is not accepted: those who hold their assets in chargeable form will feel a sense of grievance that others equally wealthy are escaping the charge; and economic distortions will be introduced which will benefit those who at the time the tax is introduced own assets which are exempt or assessed at less than their full value. Future purchasers of such assets will not necessarily benefit fully from any exemption or undervaluation because the price of the assets may tend to increase in order to take into account their favourable wealth tax treatment.

27. The next two chapters discuss how the practical difficulties of valuing certain types of assets might be mitigated. This chapter considers the principle of charging assets of various types.

Owner-occupied houses

28. Owner-occupied houses should fall

within the scope of the charge. They are clearly realisable assets and their exemption would be unfair to those wealthy people who live in rented accommodation.

Household and personal goods

29. It would not be practicable to require a valuation of all normal household and personal assets for this is an area in which the problems of valuation by the taxpayer himself would be particularly acute (see paragraphs 61 to 65). Indeed, while a case can be made for charging antique furniture and similar valuable items which may be held as an investment as much as for their practical usefulness, it is arguable that domestic and household goods for personal use should be exempted irrespective of their total value. This is broadly the rule in Sweden, for example. The Government will consider as a possible solution providing in addition to the general exemption limit, a separate exemption up to a certain value for all personal and domestic property held primarily for current use and enjoyment and not, except incidentally, with a view to resale. This secondary exemption limit would be fixed at a level sufficient to cover normal household contents: the exact figure would depend in part on whether or not the wealth of husband and wife is aggregated (paragraphs 8 and 9). This exemption might also cover cars used primarily for private purposes; alternatively one car per person might be exempt.

Interaction with other taxes

The general exemption limit

30. As is clear from Appendix 3, wealth tax on the continent of Europe starts at far lower figures than that of £100,000 which is assumed in the illustrative rates set out in paragraph 3; the limits for a single person vary from about £3,000 in Finland to about £30,000 in Denmark. However in these countries there is no equivalent to the investment income surcharge: indeed historically the differential rate of tax for earned income was introduced in the United Kingdom in 1907 at very much the same time and for very much the same reasons as the wealth tax was generally introduced on the Continent. One logical possibility therefore would be to substitute for the investment income surcharge a wealth tax with a low threshold; but the administrative difficulties, both for taxpayers and for the Inland Revenue, rule this out in the foreseeable future. It will therefore be necessary to retain the surcharge as a means of collecting tax in addition to that due at the basic and higher rate of income tax from those with moderate amounts of wealth.

Interaction with the investment income surcharge

31. Generally the investment income surcharge, like earned income relief before it, recognises that capital which gives rise to unearned income puts its owner in a stronger economic position, so that he has a higher taxable capacity, than a person who has only income. To this extent the surcharge performs the same function as the wealth tax. The Government see the considerable force in the proposition that a rentier or landowner whose wealth is held in a form which gives rise to income which is treated for income tax purposes as investment income should not be required to pay both wealth tax and the surcharge. Accordingly they will consider limiting his liability to whichever of them is the higher.

A ceiling provision

32. Even such relief from the combined burden of wealth tax and income tax would not go far enough in some circumstances.

One possibility is that there should be some ceiling on a taxpayer's total tax liability along the lines of that to be found in the tax system in Sweden [3] and in some other European countries. However such a ceiling would benefit most those whose assets produce a low income yield and it might be preferable to give relief on total liabilities so as to benefit most of those who receive a high taxable return on their assets.

Productive assets

33. Businessmen would benefit from the limitation of the combined burden of the investment income surcharge and wealth tax only to the extent that their businesses were incorporated and they received dividends from them. On the other hand they could benefit from a ceiling provision depending on the exact form that it took. It would be right here to take account of the fact that the businessman's profits from his business represent a reward for his own personal efforts in the business as well as a return on his capital. This fact however is not wholly reflected in his income tax treatment since his remuneration as a director (if his business is incorporated) or his Schedule D Case I or II profits (if his business is unincorporated) are now treated wholly as earned income. It is also relevant that a rentier, faced with a combined income tax and wealth tax bill which (after allowing a margin for living expenses) exceeds his net income, can sell investments to meet his tax liabilities; but a businessman (whether or not his business is incorporated) may not be able to do so. The amount of the business which would have to be sold in order that the tax liability could be met would not necessarily be marketable; a sale large enough to attract purchasers might jeopardise his interest in the enterprise.

34. The tenant farmer's position is little different from that of the businessman generally, but for the farmer who owns his farm and the agricultural landlord an additional consideration arises at the present time from the current high price of agricultural land and the abnormally low rate of return currently obtainable thereon. The Government recognise that the possible consequences of this consideration for agricultural efficiency and investment, particularly in the case of the full-time working farmer, will need to be examined carefully in consultation with the industry.

35. In the Government's view it would be wrong to exempt business assets or farms from the tax or to calculate liabilities on such assets on specially favourable terms. The wealth tax would lose much of its desired social effect if a substantial proportion of those who are among the wealthiest in the country were not to come within its scope. Moreover it is a matter for argument whether the sale of a business, or of part of a business, would lead to a loss of efficiency from a national point of view or the opposite. Nevertheless the Government recognise that the owners of assets which it is difficult or undesirable

3. In Sweden a taxpayer's total liability to national and communal income tax and to wealth tax cannot, except as mentioned below, exceed 80 per cent of his taxable income up to Kr 200,000 (about £19,000) plus 85 per cent of his taxable income over that figure. Where it would exceed that ceiling, the national income tax (which has a top rate of 54 per cent) is reduced or eliminated, and then the wealth tax. However the wealth tax due cannot be reduced below that payable on half the taxpayer's wealth and communal income tax (the rates of which vary, but average about 24 per cent) can never be reduced.

to sell would sometimes face special problems in finding the money to pay an annual wealth tax. From this point of view a ceiling provision would be of considerable help to businessmen and farmers; and where a taxpayer had no assets out of which he could reasonably pay the wealth tax he might also be allowed to defer payment of the tax attributable to productive assets, subject to interest (which might also be deferred) at a commercial rate, until the owner sells the assets, retires or dies — any provision for deferment on these lines would be extended as far as appropriate to cover shares in unquoted trading companies. This would ensure that the founder of a business, or the entrepreneur who built it up, would not himself have to pay the tax while he was running it.

The national heritage

36. The treatment of works of art and of collections of books, manuscripts or other objects of national, scientific, historic or artistic importance also requires consideration. For someone who holds a large part of his wealth in this form the only means of raising the necessary money may be by selling some of these objects and it has been suggested that they should therefore be exempt from wealth tax. This would be in line with the current exemption from estate duty of works of art and other objects of national importance when an undertaking is given to keep them in this country.

37. The Government are sympathetic to the purpose behind the proposal and are not averse to easing the difficulties. Although there are forcible arguments against outright exemption they recognise that, in deciding how far the general principle set out in paragraph 26 should be applied to works of art etc., there are a number of different categories. First there are those works which are on more or less permanent loan to public collections; second there are those which are on display in historic houses to which the owners admit the public; and third there are those to which the public has no access except by appointment in special cases. Each category might well call for different treatment.

38. It has also been suggested that historic houses should be exempt. But it would be difficult to single out a house which happened to be historic for treatment different from owner-occupied houses generally or, in the case of those where a business is being carried on on a commercial basis with a view to the realisation of profits, for treatment different from businesses generally. On the other hand the Government are well aware of the value of the contribution made by the historic houses.

39. The Government recognise the danger that the wealth tax could lead to the dispersal of the national heritage: they intend to ensure that this does not happen and that instead our heritage becomes more readily available to the public generally. Accordingly any special arrangements which are made for historic houses or works of art etc. should be conditional on the house being open to the public or the work of art etc. being on public display, whether in the owner's house or on loan to a public collection, with such modifications as might be appropriate for delicate objects or research material. One possible solution which the Government will wish to consider in the light of discussions with the appropriate bodies will be the deferment of tax, either on the lines suggested in paragraph 35 or while the appropriate conditions are being satisfied. For some categories of works of art there

might perhaps be exemption from the interest accruing on deferment (though not from the charge itself). This could be combined with arrangements to take the works into public ownership in satisfaction of accrued wealth tax liabilities.

Other assets

Copyrights and patent rights

40. The sale of a copyright or a patent right by an author or inventor, in whole or in part, does not normally rank as a capital transaction and the proceeds are subject to income tax in his hands. It may therefore be argued that these assets should not fall within the scope of the wealth tax. On the other hand the fact that an asset has been created by a taxpayer in the course of exercising his trade or profession, so that any proceeds arising from its exploitation are subject to income tax, does not conflict with the principle that, insofar as he has not disposed of it, he has possession of an asset which adds to his net wealth. Hence on this view such assets should be within the scope of a tax on wealth, but where a right on which wealth tax has been paid is subsequently sold, the wealth tax paid should be allowed as an offset against the income tax falling due.

Pension rights

41. It may be argued that pension rights should be within the charge to the tax, because if one contrasts two men with assets of the same value, one of whom also has rights to a pension and the other has not, then the former is in a stronger economic position. Even though those rights are not marketable, he need feel less circumspect in his use of his assets because he has the cushion of his pension rights to fall back on if things go wrong.

42. On the other hand there are strong arguments in favour of exempting pension rights. First the tax is in general to be limited to realisable assets. Second pension rights may be regarded as a form of deferred pay. Finally on social grounds fiscal encouragement has long been given to savings which can clearly be identified as savings for retirement, as opposed to savings generally which produce free capital in the owner's hands, and it seems reasonable that comparable treatment should be given under the wealth tax. The Government have decided to accept the case for exemption within broad limits. Accordingly pension rights under the national superannuation scheme, any statutory scheme or an occupational pension scheme approved for income and corporation tax purposes will be exempt.

43. Similar considerations arise in the case of retirement annuity contracts which provide the equivalent of a pension for self-employed and employed people in non-pensionable jobs. These contracts will be exempt for wealth tax purposes to the extent that, and under the same conditions as, they are eligible for income tax reliefs.

Life assurance policies

44. The foregoing arguments do not apply to savings by means of life assurance. Life assurance policies can be readily assigned or used as security and cannot therefore be distinguished from savings generally; they should therefore be within the scope of the wealth tax charge despite their privileged treatment for income tax. If a life assurance policy is taken out under the Married Women's Property Acts or is on the life of someone other than the beneficiary, the policy will be regarded as part of the wealth of the person with an interest in it.

Deductions

45. The tax will be charged on net wealth, so that liabilities and mortgages will be deductible from a taxpayer's gross wealth in order to establish the net amount on which he will be liable. Insofar however as a debt relates to an exempt asset, eg a car, it will not be allowed as a deduction. If the arrangements for deferment of tax in certain circumstances suggested in paragraph 35 were adopted, the deferred wealth tax liability would be allowed as a deduction in computing the taxpayer's net wealth.

Abkommen zwischen der Bundesrepublik Deutschland und Rumänien: Denkschrift (auszugsweise) [1]

Das Abkommen zur Vermeidung der Doppelbesteuerung zwischen der Bundesrepublik Deutschland und der Sozialistischen Republik Rumänien, das am 29. Juni 1973 in Bonn unterzeichnet wurde, ist nach dem am 18. Dezember 1972 unterzeichneten Abkommen mit Polen der zweite Steuervertrag, der mit einem sozialistischen Staat abgeschlossen wurde.

Die Initiative zu den Verhandlungen ging ursprünglich von der rumänischen Seite aus, ausgelöst durch die steigende Betätigung rumänischer Unternehmen bei Bauausführungen und Montagen in der Bundesrepublik und die damit verbundene deutsche Besteuerung. Ersten Expertengesprächen im Juni 1971 in Bonn schlossen sich weitere Verhandlungen bereits im September 1971 in Bukarest und dann im November 1972 in Bonn an, die dann im Juni 1973 mit der Paraphierung erfolgreich abgeschlossen werden konnten.

Das deutsch-rumänische Abkommen ähnelt weitgehend dem Abkommen mit der Volksrepublik Polen (vgl. BR-Drucksache Nr. 313/74), d.h. es lehnt sich zwar systematisch sehr stark an das von der OECD empfohlene Musterabkommen und damit an das Schema der meisten anderen von der Bundesrepublik bereits abgeschlossenen Abkommen an, weicht hiervon jedoch ab, wo dies auf Grund der Verschiedenartigkeit der beiderseitigen Wirtschaftssysteme angebracht erschien.

Aus deutscher Sicht verdient vor allem die Bedeutung der Regelung für die Besteuerung von Gewinnrückflüssen aus deutschen Beteiligungen an rumänischen Unternehmen (sog. joint ventures) in den Artikeln 2 und 9 hervorgehoben zu werden, da Rumänien bereits Rahmenvorschriften für derartige gemischte Gesellschaften erlassen hat und schon erste Kooperationsverträge zwischen deutschen und rumänischen Firmen abgeschlossen wurden. Hier dürfte das Abkommen schon in naher Zukunft seine Funktion als Wegbereiter für eine Intensivierung der Wirtschaftsbeziehungen zwischen beiden Staaten erfüllen können.

Im übrigen galt auch in diesem Abkommen der Frage der Besteuerung von Bauausführungen und Montagen bzw. des dort beschäftigten Personals ein ganz besonderes Augenmerk.

Die hierfür gefundene Regelung, wonach die Frist, bei der eine Baustelle und Montage noch nicht als Betriebstätte angesehen wird, und die Frist, nach deren Ablauf dem Tätigkeitsstaat das Besteuerungsrecht für die Gehälter des Baustellenpersonals zusteht, vorübergehend, d.h. 5 Jahre lang, von 12 auf 18 Monate verlängert wird, stellt einen Kompromiss zwischen den sehr verschieden gelagerten beiderseitigen Interessen in dieser Frage dar, der sich sowohl wettbewerbspolitisch als auch den anderen Vertragspartnern der Bundesrepublik gegenüber vertreten lässt.

Schliesslich wurde auch in der Frage der Abgrenzung der Besteuerungsrechte bei Dividenden, Zinsen und Lizenzgebühren zwischen Quellenstaat und Wohnsitzstaat durch eine spürbare Einschränkung bei der Besteuerung im Quellenstaat eine Lösung

1. Siehe text Supplement B, 1975.

gefunden, die nicht zuletzt sicherlich auch das Investitionsklima günstig beeinflussen dürfte.
In seinem Mechanismus lehnt sich der Steuervertrag voll und ganz an die von der Bundesrepublik bereits mit anderen Staaten abgeschlossenen Abkommen an, d.h. die Doppelbesteuerung wird im Wohnsitzstaat — allerdings unter Anwendung des Progressionsvorbehalts — grundsätzlich durch Freistellung und nur in Ausnahmefällen durch Anrechnung vermieden.

Anlage 2

STELLUNGNAHME DES BUNDESRATES
Gegen das Doppelbesteuerungs-Abkommen mit der Sozialistischen Republik Rumänien bestehen erhebliche Bedenken. Dieses Abkommen räumt den Bauunternehmen aus Rumänien weitergehende Präferenzen ein als in dem Musterabkommen der OECD vorgesehen (Protokollnotiz zu Artikel 5 des Abkommens). Für eine solche abweichende Behandlung ist kein Grund ersichtlich.
Die deutsche Bauwirtschaft steht in hartem Konkurrenzkampf und wird, wie die Vergangenheit gezeigt hat, von den osteuropäischen Bauunternehmen immer wieder unterboten. Solange dies wettbewerbsneutral geschieht, ist dagegen nichts einzuwenden. Die vorgesehene steuerliche Begünstigung kann jedoch eine Wettbewerbsverzerrung darstellen, weil nicht auszuschliessen ist, dass den rumänischen Unternehmen seitens ihres Staates besondere steuerliche Erleichterungen gewährt werden.

Anlage 3

GEGENÄUSSERUNG DER BUNDESREGIERUNG ZUR STELLUNGNAHME DES BUNDESRATES
Das Doppelbesteuerungsabkommen mit Rumänien gehört zu den ersten Steuerverträgen der Bundesrepublik mit Staatshandelsländern. Es zeigt, dass es möglich ist, auch mit einem Staat völlig anderer Gesellschaftsordnung auf der Grundlage der üblichen deutschen Vertragspraxis (OECD-Musterabkommen) zu steuerlichen Vereinbarungen zu kommen.
Die Besteuerung von Bau- und Montagestellen weicht insofern von der herkömmlichen Abkommenskonzeption ab, als für eine Übergangszeit von fünf Jahren der Staat, in dem sich die Bau- oder Montagestelle befindet, nicht bereits bei 12monatiger, sondern erst bei 18monatiger Dauer der Bau- oder Montagestelle ein Besteuerungsrecht hat. Die gleiche Frist gilt für das Baustellenpersonal. Diese Regelung soll die in der ersten Phase des Aufbaus und der Entwicklung der gegenseitigen wirtschaftlichen Beziehungen im Vordergrund stehenden Bau- und Montagetätigkeiten von Steuerhemmnissen entlasten. Dabei darf nicht übersehen werden, dass die Abkommensregel zweiseitig wirkt. Sie gilt also auch für deutsche Unternehmen, die in Rumänien, z.B. auf dem Sektor des Anlagenbaus, tätig werden. Die Zielsetzung, bei den in Frage kommenden Unternehmen vor allem die Anfängsschwierigkeiten im

anderen Staat zu mildern, wird dadurch unterstrichen, dass die Regelung auf fünf Jahre befristet ist. Durch die vereinbarte rückwirkende Anwendung des Abkommens ab 1972 endet die Übergangsfrist bereits 1976. Von dann ab gilt die Normallösung, wie sie sich in allen vergleichbaren Abkommen findet.

Die Übergangslösung für die Bau- und Montagestellen will einer Interessenlage gerecht werden, die nur vorübergehend besteht. Sie bedeutet keine auf Dauer zu sehende Umorientierung der deutschen Abkommenspolitik. So ist z.B. in dem paraphierten Abkommen mit Jugoslawien eine derartige Sonderregelung nicht enthalten.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning a book should include the reference number listed.

ALGERIA

GUIDE PRATIQUE DES IMPOTS 1974,

Tome IV, Etudes & Documentation Fiscales, Alger, 1974.
Volume IV of this series explains the taxes levied on dividends and interest, stamp and registration duties, motor vehicle tax, and local direct taxes. (B 10584)

AUSTRALIA

INCOME TAX ASSESSMENT ACT 1936-1973

with tables of provisions and index to act and regulations. Government Printer of Australia, 1974. xv + 578 pp.
Consolidated text of the Income Tax Assessment Act 1936-1973, as amended, including tables of provisions and regulations. (B 8670)

AUSTRIA

KURZKOMMENTAR ZUM LOHNSTEUERRECHT; GESETZESTEXT LOHNSTEUERERLÄUTERUNGEN 1974; KURZKOMMENTAR.

Industrieverlag Peter Linde, Vienna, 1974. 202 pp., AS 135.—. Schriftenreihe der Österreichischen Steuer- und Wirtschaftskartei, No. 35.
Annotated text of the wage tax law and implementary provisions; the material is updated to January 1, 1975. (B 8676)

DAS EINKOMMENSTEUERGESETZ; GESETZETEXT UNTER BERÜCKSICHTIGUNG DER NOVELLIERUNGEN 1974 MIT ERLÄUTERUNGEN UND ANMERKUNGEN,

by F. Weiler. Industrieverlag Peter Linde, Vienna, 1974. 131 pp., AS 87.—. Schriftenreihe der Österreichischen Steuer- und Wirtschaftskartei, No. 34.
Annotated text of the individual income tax law as amended by 1974 amendments. (B 8677)

BRAZIL

DIE SUDENE: FINANZ- UND ENTWICKLUNGSPOLITIK IN NORDOST BRASILIEN,

by M. Janson. Ernst Klett Verlag, Stuttgart, 1974. 162 pp., DM 19.50.
Study of the fiscal policy for the regional development of Northeast Brazil, in which tax measures were granted to stimulate private investment. (B 15417)

DEVELOPING COUNTRIES

GUIDELINES FOR TAX TREATIES BETWEEN DEVELOPED AND DEVELOPING COUNTRIES.

United Nations, New York, 1974. 64 pp.
This publication contains guidelines consolidated from the previous reports prepared by the Group of Experts on Tax Treaties between Developed and Developing Countries, and it is designed as a handbook to assist in the negotiation and to facilitate the conclusion of tax treaties. (B 8673)

EEC

AMORTISSEMENT FISCAL ET CROISSANCE DES ENTREPRISES DANS LA CEE,

by R. Teller. Maison Ferdinand Larcier, Brussels, 1974. 289 pp.
Thesis encompassing comparative study of the impact of depreciation allowances on the development of enterprises in the countries of the EEC. (B 8641)

EEC/EFTA

URSPRUNGSREGELUNG DER FREIHANDELSABKOMMEN EWG-EFTA-STAATEN;

2. neubearbeitete und erweiterte Auflage, by H. Schulz. Purschke & Hensel, Berlin, 1974. 165 pp.
Second revised edition of monograph dealing with the source regulation concept, governed by the Free Trade Agreement between EEC and EFTA member states. Examples illustrate text. (B 8593)

FRANCE

MEMENTO PRATIQUE DES SOCIETES COMMERCIALES, 1974,

by M. B. Mercadal and M. P. Janin. Editions Juridiques Lefebvre, Paris, 1974. 1190 pp.

Fifth edition of handbook explaning business entity forms under French legislation and in practice. The material is updated as of September 1, 1974. (B 8703)

LES PROBLEMES FISCAUX DE L'ENTREPRISE; INITIATION A LA GESTION,

by E. Sage. Editions Economie et Humanisme les Editions Ouvrières, Paris, 1974. 225 pp.
This book describes the tax problems of an enterprise from the time of the establishment of the enterprise to liquidation. (B 8657)

GERMAN FEDERAL REPUBLIC

GEMEINNÜTZIGKEITSVERORDNUNG MIT ERGÄNZUNGSBESTIMMUNGEN;

Kommentar; 2. neubearbeitete Auflage, by Boettcher-Leibrecht. Verlag C. H. Beck, Munich, 1971. 194 pp.
Second revised edition of monograph explaining the tax treatment of non-profit organizations under German legislation. (B 8661)

DIE BESTEUERUNG DER GESELLSCHAFTEN, DES GESELLSCHAFTERWECHSELS UND DER UMWANDLUNGEN,

by H. Brönner; 13. neubearbeitete Auflage von H. P. Bareis, H. J. Rux, und H. Brönner. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Stuttgart, 1974. xxxii + 1384 pp.
Revised and extended 13th edition of the authoritative monograph dealing with the tax aspects of partnerships, corporations, and other entities including merger and take-over aspects. References to case law. (B 8634)

GRUNDLAGEN DER INTERNATIONALEN BETRIEBSWIRTSCHAFTLICHEN STEUERLEHRE,

by L. Fischer und P. Warneke. Erich Schmidt Verlag, Berlin, 1974. 257 pp., DM 49.—.
This study is the outgrowth of an interest in broadening the scope of corporate tax administration from national to international business transactions, to encompass foreign tax systems and double taxation treaties which necessarily arise in international business operations. (B 8565)

ZUR VERBESSERUNG DES KONJUNKTURPOLITISCHEN INSTRUMENTARIUMS,

by H. Hoppe. Institut „Finanzen und Steuern", Bonn am Rhein, 1974. 86 pp. Institut „Finanzen und Steuern", Heft 106.
Study of the economic instruments available for regulation of the business cycle under the Law for the Promotion of Stability and Economic Growth of June 8, 1967. (B 8601)

DIE BESTEUERUNG AUSSERORDENTLICHER EINKÜNFTE NACH § 34 EStG,

dritte, veränderte Auflage, by R. Kapp und H. Brockhoff. Verlag C. H. Beck, Munich, 1971. 128 pp.
Third revised edition of monograph dealing with the taxation of special incomes specified in Article 34 of the Income Tax Act which arise from activities performed during several tax years. (B 8662)

KAPITALVERKEHRSTEUERGESETZ;

4. Auflage, by F. Kinnebrock. Verlag C. H. Beck, Munich, 1974. 272 pp. Beck'sche Steuerkommentare.
Fourth revised, extended, and updated monograph on the capital transactions tax law (tax on acquisition of corporate rights and stock exchange turnover tax) including the full consolidated text and comment on the capital transactions taxes, with reference to case law and the EEC Directive on Capital Movement. (B 8664)

DIE NEUE ERBSCHAFTSTEUER

(ErbStG 1974), by G. Klein. Luchterhand Verlag, Neuwied am Rhein, 1974. 131 pp., DM 16.80.
Text and comment on the law of April 17, 1974, on death and gift taxes. (B 8659)

ERBSCHAFTSTEUER- UND SCHENKUNGSTEUERGESETZ;

6., völlig neu bearbeitete und erweiterte Auflage, by H. Megow und T. Michel. Verlag C. H. Beck, Munich, 1974. xiv + 722 pp., DM 98.—.
Sixth revised and extended edition of handbook containing text and comment on the new death and gift tax law as of January 1, 1974. (B 8633)

AUFSTELLUNGSMÖGLICHKEITEN KONSOLIDIERTER BILANZEN INTERNATIONALER UNTERNEHMUNGEN,

by E. Müller. IdW-Verlag, Düsseldorf, 1974. 232 pp.
Study of the principles and problems arising from the consolidation of balance sheets of international concerns. (B 8642)

EINKOMMENSTEUERGESETZ 1975; KOMMENTAR ZUR EINKOMMENSTEUERREFORM,

by J. Pelka und M. Weber. Deubner Verlag, Cologne, 1974. 261 pp., DM 40.—.
Full text of the Individual Income Tax Law 1975 and implementing ordinance. Each Article provision is followed by comment regarding the changes effected by the Individual Income Tax Reform Law of August 5, 1974. (B 8672)

DIE UMSATZBESTEUERUNG DER BANK- UND GELDGESCHÄFTE,

by R. Philipowski. Otto Schmidt Verlag, Cologne, 1973. xxiv + 240 pp., DM 44.—.
Monograph on the value added tax with emphasis on banking and money transactions. (B 8686)

BEWERTUNG UND BESTEUERUNG DES GRUNDBESITZES;

Handbuch von F. Scholz, W. Boyens, und W. Steinbring, 2. Auflage. Otto Schmidt Verlag, Cologne, 1974.
Second revised handbook by various authors who illustrate and discuss the taxation aspects of real estate, including any taxes in connection with real estate, such as land purchase tax, net wealth tax, turnover tax, individual income tax, corporation tax, death duties, etc. (B 8654)

BETRIEBSANALYSE ALS INSTRUMENT DER STEUERLICHEN BETRIEBSPRÜFUNG UND WIRTSCHAFTSPRÜFUNG; INDIREKTE PRÜFUNGSMETHODEN,

by W. Schröder. Erich Schmidt Verlag, Berlin, 1974. 354 pp.
Study of operations analysis as an instrument for auditing. (B 8614)

UNTERNEHMENSVERTRÄGE UND EINGLIEDERUNG ALS AKTIENRECHTLICHE INSTRUMENTE DER UNTERNEHMENSVERBINDUNG,

by K. R. Veit. IdW-Verlag, Düsseldorf, 1974. 242 pp.
Thesis encompassing the legal aspects under company law and the taxation aspects under tax law of associated enterprises. (B 8643)

HANDBUCH ZUR HAUPTFESTSTELLUNG DER EINHEITSWERTE DES GRUNDVERMÖGENS 1964;

5. neubearbeitete Auflage. Verlag C. H. Beck, Munich, 1974. xvi + 432 pp.
Revised annual handbook containing information and statutes for filing tax return for real estate. (B 8628).

INTERNATIONAL

FACTORS AND CONDITIONS OF LONG-TERM GROWTH.

United Nations, New York, 1974. 229 pp., $10.00.
Seminar on factors and conditions of long-term growth, held in Stockholm, Sweden, December 3-7, 1973. (B 8644)

FINAL REPORT OF THE THIRD TAXATION AND CUSTOMS COOPERATION CONFERENCE;

held in Saigon, October 29-November 3, 1974.
Publication of proceedings and papers prepared by the delegations from the participant countries: Republic of China, Republic of Korea, Republic of the Philippines, and Republic of Vietnam. (B 50043)

INTERNATIONAL BUSINESS DICTIONARY IN 9 LANGUAGES;

planned, compiled and edited by F. Munniksma. Kluwer, Deventer, 1975. 535 pp.
This dictionary contains specific terms relating to the organization and practice of commerce, economics, and social economics in nine languages: Dutch, English, Esperanto, Franch, German, Italian, Portuguese, Spanish, Swedish. (B 8710)

MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT.

Praeger Publishers, New York, 1974. 200 pp.
Study prepared by the Department of Economic and Social Affairs of the United Nations Secretariat with emphasis on the role of multinational corporations and their impact on the development of developing countries. (B 8669)

IRELAND/EEC

CAPITAL TAXATION IN THE EEC; A COMPARATIVE STUDY,

by N. E. Judge. Institute of Chartered Accountants in Ireland, Dublin, 1974. Supplement to Accountancy Ireland; June, 1974. 60 pp.
Study on the introduction of capital taxes in Ireland in comparison with the existing net wealth taxes and similar taxes levied in the EEC member countries. (Br. 8631)

ITALY

I.V.A., TESTO INTEGRATO E COORDINATO CON LE LEGGI No. 354 DEL 14-8-1974 E No. 383 DEL 17-8-1974.

Instituto Poligrafico Dello Stato, Rome, 1974. 95 pp.
Consolidated text of the Tax on Value Added Law of 1972 as amended by 1974 statutes. (B 8681)

LATIN AMERICA

ECONOMIC SURVEY OF LATIN AMERICA, 1972;

Outstanding Aspects of the Evolution of the Latin American Economy in 1972. United Nations, New York, 1974. 241 pp.
Trends by countries and special studies of various aspects of Latin American economies. (B 8684)

THE NETHERLANDS

VOORKOMING VAN DUBBELE BELASTING;

4th ed., by J. Bouwsma. FED, Deventer, 1974. 129 pp., *f* 24.—. Fiscale studieserie No. 3.
Entitled "Avoidance of Double Taxation", this fourth revised edition deals with international double taxation of income and capital under the Netherlands national tax law and its double taxation conventions. (B 8604)

VERVANGING VAN INKOMSTEN

(Artikelen 27, 31, 32 en 59a van de wet op de Inkomstenbelasting); 1e dr., by J. E. A. M. van Dijck. FED, Deventer, 1974. 106 pp., *f* 15.—. FED's Fiscale Brochures, IB: 5.6.
Monograph which illustrates and discusses Articles 27, 31, 32 and 59a of the Individual Income Tax Law, the tax aspects of which are best conveyed in the title "substitution of income". (B 8663)

DE BELASTING-ALMANAK 1975 VAN ELSEVIERS WEEKBLAD;

20th ed., by J. Viersen en E. N. Jonker. Annoventura, Amsterdam, 1975. xvi + 256 pp., *f* 8.90.
Guide containing information for filing the 1973 individual income tax return, the 1974 net wealth return, and related information. (B 8792)

PANAMA

CODIGO FISCAL DE PANAMA;

con notas, concordancias y leyes que lo reforman o adicionan, by E. Fabrega F. Ramón and José Campodónico Córdova. Panama, 1974. 702 pp.
Consolidated text of the Fiscal Code of Panama, annotated, amended, and revised as of 1974. (B 15442)

PHILIPPINES

ASSESSMENT OF TAX REFORMS IN THE PHILIPPINES

(September 21, 1972 to December 31, 1973). National Tax Research Center, Manila, January, 1974. 177 pp.
Survey and assessment of tax changes from September 21, 1972, to December 31, 1973, divided into direct taxes, indirect taxes, local finance, special tax incentives, etc. (B 50005)

ASSESSMENT OF TAX REFORMS IN THE PHILIPPINES

(Supplement I — January 1, 1974 to May 15, 1974). National Tax Research Center, Manila, May, 1974. 45 pp.
Survey and assessment of tax changes from January 1, 1974, to May 15, 1974; supplement to above work. (B 50006)

PORTUGAL

MANUAL DE DIREITO FISCAL I,

by A. Xavier. Manuais da Faculdade de direito de Lisboa, Lisbon, 1974. 435 pp.
First volume of handbook of the basic principles of taxation both within and without Portugal. (B 8682/3)

SWEDEN

THE SWEDISH BUDGET 1975/76;

a Summary published by the Ministry of Finance. Stockholm, 1975. 133 pp.
The thirteenth edition of the Swedish Budget contains a summary of the Draft Budget for the fiscal year 1975/76. For the information of foreign readers, short descriptions of the constitution, the budget system, the tax system, and the civil service are presented. (B 8705/6)

SWITZERLAND

DIE EIDGENÖSSISCHE WEHRSTEUER ERGÄNZUNGSBAND,

by E. Känzig. Verlag für Recht und Gesellschaft, Basel, 1972. 342 pp., Sfrs. 60.40. Die Eidgenössischen Steuern, Zölle und Abgaben, Handbücher zum Fiskalrecht des Bundes. Bnd. 4a (2. überarbeitete Auflage).

Supplementary volume updating the original work of 1962 dealing with the national income tax. (B 8594)

DIE STEUERLICHEN AUSWIRKUNGEN DER VORÜBERGEHENDEN BESCHÄFTIGUNG IM AUSLAND VON ARBEITSKRÄFTEN DER UNTERNEHMEN MIT INTERNATIONALER TÄTIGKEIT.

I.F.A. congress, 1974. 24 pp.

National report of Switzerland by W. Wallinger on the subject "Tax Problems Resulting from the Temporary Activity Abroad of Employees of Enterprises with International Operations", presented in the form of questions and answers. This version, December 19, 1973, replaces all previous ones. (Br. 8629)

DOPPELBESTEUERUNGSABKOMMEN SCHWEIZ-DEUTSCHLAND 1971:

Steuern vom Einkommen und Vermögen Textausgabe und Praxis. Bnd. I, by K. Locher, W. Meier, und R. von Siebenthal. Verlag für Recht und Gesellschaft, Basel, 1974.

First volume of loose-leaf publication entitled "Double Taxation Treaty Switzerland-Germany 1971: Taxes on Income and Capital, Text and Practice". This volume contains text of the 1971 tax treaty and relevant texts in connection thereto from Swiss and German official sources. (B 8653)

DOPPELBESTEUERUNGSABKOMMEN DEUTSCHLAND-SCHWEIZ;

Texte und Kommentar nebst Zusätzen und Aussensteuergesetz, by H. J. Meyer-Marsilius und D. Hangarter. Handelskammer Deutschland-Schweiz, Zurich, 1974.

Loose-leaf publication designed to provide an updated work in which text and comment of the 1971 double taxation treaty in respect to income and capital is arranged by treaty article. The basic work contains 1000 pages. The material will be supplemented with material containing explanatory notes, relevant statutes, case law rulings, and literature. (B 8652)

UNITED KINGDOM

THE PROPERTY TAXATION PROVISIONS OF THE FINANCE ACT 1974:

Covering the Taxation of Development Gains and the Charge to Tax on the First Letting of a Building After Material Development, by R. W. Maas. Tolley Publishing Co. Ltd., London, 1974. 115 pp., £3.00.

Outline of the taxation of development gains and the tax on first lettings; references to Finance Act 1974. (B 8500)

REVENUE LAW,

8th ed., by B. Pinson. Sweet & Maxwell, London, 1974. 668 pp.

Revised annual edition which states the revenue law as of August 1, 1974. Book covers income tax, capital gains tax, corporation tax, estate duty, stamp duties, and tax and estate planning, and includes a section on value added tax written by John Gardiner. (B 8632)

UNITED STATES OF AMERICA

PARTNERSHIP INCOME TAXES;

1974 ed., by A. J. B. Aronsohn. Practising Law Institute, New York, 1974. 324 pp. Tax Law and Practice Handbook Series, No. 6.

Monograph dealing with the taxation of partnership income under the Internal Revenue Code. (B 8612)

TAXATION AND WELFARE,

by A. C. Harberger. Little, Brown and Co., Boston, 1974. x + 304 pp., $3.85.

Studies of the analysis of the resource allocation effects of tax and other policies. (B 8591)

FEDERAL TAXES 1975.

Prentice Hall, Inc., Englewood Cliffs, 1974. Volume I.

Volume I, 1975, of the P-H loose-leaf service Federal Taxes, containing updated comprehensive indexes to be used with the 1975 volumes (I-V). Points of entry may be chosen by tax rule, taxpayer, or item subject to tax. (B 8638)

PRENTICE HALL FEDERAL TAX HANDBOOK 1975.

Prentice Hall, Inc., Englewood Cliffs, 1975. 623 pp.

Annual guide containing information for filing company and personal income tax returns for the 1974 tax year. (B 8637)

LOOSE-LEAF SERVICES

Received between February 1 and February 28, 1975

AUSTRALIA

AUSTRALIA CURRENT TAXATION & SERVICE
releases: December 2 and 16
Butterworth & Co., Sydney

AUSTRALIAN CURRENT TAXATION — CASES
releases 76-82
Butterworth & Co., Sydney

SALES TAX EXEMPTION AND CLASSIFICATIONS
release 17
Commissioner of Taxation, Canberra

BELGIUM

FISCALE DOCUMENTATIE VANDEWINCKELE, BOEK DER BAREMA'S
Tome VI, release 24
Tome X, release 32
C. E. D. Samsom, Brussels

GUIDE FISCAL PERMANENT
release 359
Editions Service, Brussels

HANDLEIDING DER INKOMSTENBELASTING
release 58
C. E. D. Samsom, Brussels

CANADA

BRITISH COLUMBIA TAXATION SERVICE
release 33
Richard de Boo, Ltd., Toronto

CANADA TAX SERVICE — LETTER
releases 231-235
Richard de Boo, Ltd., Toronto

CANADIAN CURRENT TAX
releases 4-7
Butterworth & Co., Toronto

ONTARIO TAXATION SERVICE
release 34
Richard de Boo, Ltd., Toronto

EEC

QUEBEC TAXATION SERVICE
release 6
Richard de Boo, Ltd., Toronto

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN
release 80
Edition Jupiter, Paris

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN
— Kommentar op het E.E.G, Euratom en Egkos verdrag, Verdragsteksten en aanverwante stukken
release 154
Kluwer, Deventer

FRANCE

BULLETIN DE DOCUMENTATION PRATIQUE DES IMPOTS DIRECTS ET DES DROITS D'ENREGISTREMENT
release 12
Editions F. Lefebvre, Paris

BULLETIN DE DOCUMENTATION PRATIQUE DE TAXES SUR LE CHIFFRE D'AFFAIRES ET CONTRIBUTIONS INDIRECTES
releases 11 and 12
Editions F. Lefebvre, Paris

DOCUMENTATION PRATIQUE DE SECURITE SOCIALE ET DE LEGISLATION DU TRAVAIL
release 12
Editions F. Lefebvre, Paris

JURIS CLASSEUR: DROIT FISCAL:
— Code fiscal „Chiffre d'Affaires"
releases 5177 and 5178
— Code Fiscal „Impôts Directs"
release 179
Editions Techniques, Paris

GERMAN FEDERAL REPUBLIC

ABC FÜHRER LOHNSTEUER
release 85
Fachverlag für Wirtschafts- und Steuerrecht, Schäffer und Co., Stuttgart

LOOSE-LEAF SERVICES

ABC FÜHRER SOZIALVERSICHERUNG

release 11
Fachverlag für Wirtschafts- und Steuerrecht, Schäffer und Co., Stuttgart

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT

release 181
Forkel Verlag, Stuttgart-Degerloch

STEUERRECHTSPRECHUNG IN KARTEIFORM

releases 273-277
Verlag Dr. Otto Schmidt, Cologne-Marienburg

THE NETHERLANDS

BELASTINGBERICHTEN:

— Omzetbelasting BTW
releases 134 and 135
— Loonbelasting
releases 142 and 143
— Inkomstenbelasting
releases 305, 310, and 311
— Personele belasting, enz.
release 137
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— Algemene wet, enz.
releases 170 and 171
— Vermogenbelasting
releases 25 and 26
Samsom, Alphen aan den Rijn

BELASTING WETGEVINGSERIE:

— Loonbelasting
release 35
J. Noorduijn en Zn., Arnhem

FED'S LOSBLADIG FISCAAL WEEKBLAD

releases 1494-1498
FED, Deventer

DE GEMEENTELIJKE BELASTINGEN

A. M. Dijk, J. C. Schroot, A. Zadel, enz.
releases 175-177
Vuga Boekerij, The Hague

HANDBOEK VOOR IN- EN UITVOER

— Belastingheffing bij invoer
release 179
— Tarief van Invoerrechten
releases I-207; II-128
Kluwer/Samsom, Deventer/Alphen aan den Rijn

KLUWER'S FISCAAL ZAKBOEK

releases 83 and 83A
Kluwer, Deventer

KLUWER'S TARIEVENBOEK

releases 144 and 145
Kluwer, Deventer

NEDERLANDSE BELASTINGWETTEN

W. E. G. de Groot
release 115
Samsom, Alphen aan den Rijn

NEDERLANDSE REGELINGEN VAN INTERNATIONAAL BELASTINGRECHT

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Kluwer, Deventer

OMZETBELASTING (BTW) IN BEROEP EN BEDRIJF

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S. Gouda Quint, enz., Arnhem

DE SOCIALE VERZEKERINGSWETTEN

release 84
Kluwer, Deventer

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN

release 134
Kluwer, Deventer

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE

— Inkomstenbelastingen
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release 23
— Wet op de omzetbelasting
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releases 53 and 54
Kluwer, Deventer

VAKSTUDIE BELASTINGWETGEVING

— Belastingen van rechtsverkeer en Registratiewet
release 18
— Gemeentelijke Belastingen e.a.
release 18
Kluwer, Deventer

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN

— Algemeen Deel
release 27
Kluwer, Deventer

NORWAY

SKATTELOVSAMLINGEN

release 41
Jacob Jaroy, Skien

SKATTE-NYTT

release: 1975-1
Norsk Skattebetalerforening Huitfeldts, Oslo

SOUTH AFRICA

LEGISLATION SERVICE OF JUTA'S SOUTH AFRICAN INCOME TAX SERVICE

Dr. A. Silke
release 11
Juta & Co., Capetown

SWITZERLAND

DIE STEUERN DER SCHWEIZ — LES IMPOTS DE LA SUISSE

Tome IV, release 34
Verlag für Recht und Gesellschaft, Basel

UNITED STATES OF AMERICA

FEDERAL TAXES REPORT BULLETIN

Volume LV (1974), releases 51 and 52
Volume LVI (1975), releases 1-4 and 6-7
Prentice Hall, Inc., Englewood Cliffs

FEDERAL TAXES REPORT BULLETIN — TREATIES

Volume VIII, releases 5 and 6
Prentice Hall, Inc., Englewood Cliffs

STATE TAX GUIDE

releases 578 and 579
Commerce Clearing House, Inc., Chicago

TAX IDEAS — REPORT BULLETIN

releases 9 and 10
Prentice Hall, Inc., Englewood Cliffs

TAX TREATIES

release 277
Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS

releases: 1974-24; 1975-1 and 2
Prentice Hall, Inc., Englewood Cliffs

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Point de vue des pays en voie de développement

INTRODUCTION

1. — Il est souhaité que le Séminaire présente un exposé des principes et des règles développés dans la Convention fiscale des pays du Pacte Andin autour du concept de l'imposition exclusive selon la source, ainsi qu'un examen de l'utilité et des difficultés qu'une telle étude peut présenter dans le monde fiscal international.

Ce bref rapport a pour objet d'examiner ces problèmes du point de vue d'autres pays en voie de développement.

Alors que les relations fiscales entre la plupart des pays industrialisés sont régies par des conventions s'inspirant généralement de la Convention-Modèle O.C.D.E., le réseau et les conventions fiscales des pays en voie de développement ne paraissent pas répondre aux besoins de ces pays. Ceux-ci sont à la recherche, pour leurs relations avec les pays développés, de principes qui rencontrent davantage la spécificité de leurs relations.

Les réunions du Groupe d'experts institué par l'ECOSOC ont permis de rencontrer plus concrètement les préoccupations des pays en voie de développement.

2. — De 1958 à 1968, les pays de l'O.C.D.E. ont conclu de nombreuses conventions avec les pays non membres (environ 80), non compris les accords conclus par la France, les Pays-Bas et le Royaume-Uni avec leurs anciennes colonies.

Les conventions signées par la France avec ses anciennes colonies d'Afrique reposent sur les principes suivants:

a) droit de taxation largement attribué à l'Etat de la source des revenus;
b) droit illimité de taxation des dividendes et intérêts dans l'Etat de la source;
c) notion extensive de l'établissement stable.

En ce qui concerne le Royaume-Uni, qui a conclu une cinquantaine de conventions avec ses territoires d'Outre-Mer et a établi une Convention-Modèle pour les Etats du Commonwealth, on retient que le pouvoir de taxation attribué aux pays en voie de développement est

— tantôt plus large (définition de l'établissement stable, retenue à la source sur intérêts, full credit, tax sparing);
— tantôt plus limité (retenue source sur dividendes et redevances) que ce que prévoit la Convention-Modèle de l'O.C.D.E.

3. — Bien entendu, les conventions sont toujours sujettes à revision. Il est souhaitable que les conventions existantes puissent s'inspirer des travaux de l'ECOSOC.

Mais ce serait une erreur de croire que les mêmes principes valent pour tous les pays en voie de développement indistinctement. Sans doute ceux-ci ont-ils généralement des caractères communs, notamment

a) l'absence de réciprocité réelle et effec-

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tive entre les pays en voie de développement et les pays développés. Les échanges et surtout les investissements se réalisent le plus souvent à sens unique.

C'est la raison pour laquelle, la Convention des pays du Pacte Andin ne me paraît pas être un exemple à prendre en considération car cette Convention a fixé des règles fiscales pour les relations économiques et financières entre des pays à économie faible et relativement semblable. Il ne peut être davantage question d'appliquer aux relations avec les pays développés la Convention-Modèle annexée, dont le texte est le même, prévue pour les relations entre un Etat du Pacte Andin et un Etat non membre du Pacte Andin.

A ce point de vue on peut dire la même chose de la Convention conclue entre les pays de l'O.C.A.M. (dont question ci-après) encore que le principe de la source n'y soit pas aussi rigoureux.

b) leurs besoins budgétaires croissants qui ne permettent pas, ou à peine, d'accorder des réductions ou des exemptions fiscales.

A cela s'ajoutent les problèmes de la balance des paiements et des devises: en effet, transférer à l'étranger des dividendes, des intérêts, des redevances, des rémunérations, cela représente souvent pour les pays en voie, de développement une amputation extrêmement difficile de leurs disponibilités en devises.

c) leur système fiscal, axé essentiellement sur la fiscalité indirecte, et, quant aux impôts sur les revenus, sur le régime cédulaire. Ce système incite à la rigueur fiscale du principe de la source. Il atteint objectivement le revenu à sa source. L'absence presque généralisée de l'impôt sur le revenu mondial ne peut que renforcer l'idée de protéger des techniques de prélèvement basées sur la source.

Le régime cédulaire est souvent assorti (exemple Zaïre, Burundi et Rwanda) d'un système rigoureux de territorialité stricte, excluant, pour l'imposition des résidents, la taxation des revenus étrangers (revenus mobiliers perçus par des résidents, personnes physiques ou sociétés, bénéfices des établissements étrangers de sociétés nationales, etc).

Toutefois les divergences sont loin d'être négligeables.

Les besoins mêmes des pays en voie de développement sont variables: certains d'entre eux sont riches en capitaux mais pauvres en technologie. D'autres, les plus nombreux, ne disposent ni de capitaux ni de technologie, ils doivent tout importer: capitaux, matériel, équipement, outillage, assistance technique, etc; d'autres enfin déjà en progrès dans le processus de développement, disposent, mais dans une trop faible mesure, de capitaux et de dirigeants.

La variété dans les situations dépend également des richesses naturelles, de la situation géographique, de la stabilité politique, du climat psychologique en matière d'investissements, de l'efficacité des dirigeants locaux, de la préexistance d'investissements, de la sécurité juridique, etc.

Elle dépend aussi d'une politique d'aide que certains pays développés pratiquent avec leurs anciennes colonies.

4. — Il ne paraît guère indiqué de fournir une définition de la notion de la source, comme le fait la Convention des pays du Pacte Andin, à l'art. 2, e: «le mot „source" signifie l'activité, le droit, ou la propriété qui produit ou est apte à produire le

revenu». Cette définition, outre qu'elle n'ajoute rien à l'ensemble des dispositions qui se réfèrent chaque fois à la notion de la source, ne peut valoir qu'en tant qu'affirmation de principe, à l'occasion de chaque élément de revenu passé en revue.

Si les notions de résidence et de domicile fiscal sont déjà complexes, la difficulté est inextricable quand il s'agit de définir le lieu où un revenu est «fiscalement» réalisé. Pensions aux produits des exportations, aux recettes et aux revenus des établissements stables, aux rémunérations et pensions des agents de sociétés multinationales.

Dans la dite Convention, ce principe subit déjà deux exceptions: les bénéfices de navires et aéronefs et les rémunérations des fonctionnaires publics. Il est donc préférable de définir la source à mesure que la Convention traite des différents éléments de revenu considérés.

QUELLE EST LA POSITION DES PAYS EN VOIE DE DEVELOPPEMENT AU REGARD DU PRINCIPE DE LA SOURCE

En général, les pays en voie de développement préconisent le principe du pays de la source comme critère principal pour l'imposition: les revenus ayant leur source dans les pays en voie de développement devraient être imposés uniquement, sinon principalement, par ces pays.

Ceux-ci reconnaissent toutefois qu'il est important pour un investisseur étranger de savoir que son investissement ne donnera pas lieu à une charge supérieure à la charge qu'il supporterait dans son propre pays.

Cette charge ne résulte pas seulement des taux applicables mais aussi de la structure même de l'impôt des sociétés dans les pays hôtes de l'investissement.

Les positions des pays en voie de développement sont amplement exposées dans les excellents rapports du groupe ad hoc (Nations-Unies — Ecosoc) auxquels nous ne pouvons que nous référer. Il ne paraît pas inutile cependant d'examiner préalablement quelle application a été faite du critère de la source par un autre groupe de pays en voie de développement.

I. — *Le critère de la source dans la convention conclue entre les Etats membres de l'O.C.A.M.*

Une Convention générale de coopération fiscale a été conclue le 29 janvier 1971 entre les pays membres de l'organisation commune africaine, Malgache et Mauricienne groupant la plupart des anciennes colonies françaises d'Afrique noire, et, en outre le Zaïre, le Rwanda et l'Ille Maurice. S'inspirant, dans sa structure et ses principes, de la Convention-Modèle de l'O.C.D.E., cette convention attribue un pouvoir de taxation plus large (art. 3) mais non exclusif aux pays de la source.

1. — La notion de l'établissement stable est élargie en ce sens que là où la Convention de l'.O.C.D.E. fixe un délai minimum de 12 mois pour qu'un chantier soit retenu comme établissement stable, la Convention de l'O.C.A.M. ne fixe aucun délai; et que sont constitutives d'établissement stable des circonstances qui ne sont pas retenues comme déterminantes par la Convention de l'O.C.D.E.: tels que le simple dépôt de marchandises appartenant à l'entreprise, une installation fixe aux fins de publicité ou de réunir des informations pour l'entreprise.

Les méthodes de répartition du bénéfice entre plusieurs établissements sont précisées, de même que les corrections à effectuer à l'occasion de transferts abusifs entre sociétés apparentées.

2. — Le revenu des valeurs mobilières (securities) sont en principe imposables

dans le pays de la source. Il s'agit des titres négociables (art. 12). Mais les revenus de prêts, comptes de dépôts et de créances non négociables sont imposés dans le pays du créancier, sous réserve du droit de retenir à la source, pour l'Etat du débiteur des revenus. Les redevances, les droits d'auteur et tous autres droit similaires sont imposés uniquement dans le pays du domicile du bénéficiaire («shall be taxable only»), à moins que ces droits ne se rattachent à un établissement stable du bénéficiaire localisé dans le pays des redevances à payer.

3. — Le pays du domicile du bénéficiaire a également compétence fiscale en ce qui concerne les pensions et rentes viagères (art. 20); les rémunérations et salaires suivent le régime instauré par la Convention-type de l'O.C.D.E. (art. 15) de même que les revenus des professions indépendantes (art. 22) moyennant la réserve d'une «base fixe» visée également par l'art. 24 de la Convention-type de l'O.C.D.E.

4. — Pour les revenus non visés par la Convention, le principe de la taxation par l'Etat du domicile est affirmé (art. 24) sauf existence d'un établissement stable.

Il est assez étranger de relever que les bénéfices des entreprises maritimes et aériennes ne sont pas visés dans cette Convention; la raison en est sans doute qu'un accord distinct a été conclu dans ce domaine dans le cadre d'Air Afrique.

Les Conventions que la France a conclues avec le Sénégal (3 mai 1965) et le Togo (24 novembre 1971) reprennent pratiquement les mêmes principes.

II. — *Le critère de la source et les travaux du groupe d'experts de l'O.N.U. (groupe ad hoc)*

Des réunions tenues par le groupe ad hoc (1968, 1970, 1971, 1972) — dont les travaux font l'objet de rapports très circonstanciés publiés par les Nations-Unies, en vue de la préparation des conventions entre les pays développés et les pays en voie de développement, on peut définir comme suit la position des pays en voie de développement:

a) les pays en voie de développement se déclarent favorables à une taxation illimitée — voire même exclusive — des revenus dans l'Etat de la source, notamment pour les dividendes et les intérêts et les redevances industrielles.
   En ce qui concerne les bénéfices industriels et commerciaux, ils souhaitent une définition extensive de l'établissement stable, notamment pour bureaux d'achat, chantiers, agents, entreprises de navigation maritime.
b) d'autre part ils sont disposés à accorder des avantages fiscaux aux entreprises à la faveur de codes d'investissements et d'exonérations fiscales (tax holidays).
   Mais ces avantages ne doivent pas être compromis ou neutralisés par le régime fiscal de l'Etat de l'investisseur, à la faveur des systèmes d'imputation ou de crédit qui ne fonctionneraient que dans le cas d'une imposition effective de l'Etat de la source. Aussi les avantages accordés par celui-ci doivent-ils être liés, dans le pays de l'investisseur, à un système d'imputation réelle ou fictive (tax sparing).

Nous ne pouvons entrer dans le détail et nous nous limiterons à trois éléments de revenus: les dividendes, les intérêts et les redevances.

A. — *Les dividendes*

Les conventions conclues entre pays développés et pays en voie de développement font apparaître une grande variété dans les mesures adoptées pour éliminer ou alléger les doubles impositions des dividendes. En

principe, le nombre des méthodes d'allégement est limité — réduction de la retenue à la source ou exemption, dans le pays de la source; réduction de taux ou crédit d'impôt (le plus souvent combiné avec un tax-sparing credit) dans le pays de l'actionnaire.

Cependant, ces seuls mécanismes peuvent conduire à des combinaisons nombreuses et variées; en outre, il existe souvent des différences entre le régime des dividendes de sociétés liées et les autres distributions.

Les deux situations extrêmes sont: d'une part, la taxation intégrale du dividende dans le pays de la source, et l'exemption dans le pays de résidence de l'actionnaire, et, d'autre part, l'imposition intégrale de l'actionnaire combinée avec l'exemption dans le pays de la source. Ces deux méthodes ont été appliquées dans un certain nombre de Conventions. Aucune cependant ne permet de dégager une règle pratique.

On peut citer, parmi les cas de taxation exclusive dans le pays de la source et d'exemption dans le pays du domicile: les traités Inde/Autriche, Inde/Danemark, Suède/Argentine, Suède/Pérou, Suède/Thailande.

Certains de ces traités contiennent la clause dite de «progressivité».

D'autre part les conventions prévoyant l'exemption dans le pays de la source et l'imposition intégrale dans le pays du domicile: Royaume-Uni/Birmanie, Royaume-Uni/Jamaique, Royaume-Uni/Singapour, Danemark/Ceylan, Danemark/Singapour, Japon/Zambie, Ceylan/Norvège.

La majorité des Conventions appliquent la répartition c'est-à-dire la réduction par le pays de la source et l'imposition limitée de l'actionnaire par l'Etat de la résidence. Mais ces réductions ou exemptions partielles varient selon les cas.

Beaucoup de conventions prévoient le système de l'imputation par le pays du domicile (foreign tax credit), même si le pays de la source, en raison de sa politique de stimulants fiscaux, accorde l'exemption du revenu (imputation d'un crédit fictif ou tax sparing credit).

B. — *Les intérêts*

L'art. 11 de la Convention de l'O.C.D.E. reconnaît le droit d'imposer les intérêts avant tout au pays de l'investisseur. Le pays de la source peut opérer une retenue de 10% au plus, sauf le cas où la créance se rattache à un établissement stable.

Certaines conventions entre pays industrialisés et pays en voie de développement permettent à ces derniers d'imposer intégralement les intérêts dont la source se trouve sur leur territoire et les pays industrialisés accordent soit l'exemption, soit une imputation ordinaire de l'impôt étranger, soit une imputation spéciale pour dégrèvement d'impôt à concurrence du dégrèvement accordé par le pays en voie de développement en vertu de sa législation ou de la convention.

De nombreuses discussions ont porté sur le droit des pays créanciers ou du débiteur de revendiquer le monopole de la taxation. Les pays en voie de développement soutiennent que c'est à leurs pays que doit revenir le droit exclusif où, tout au moins, le droit prioritaire, d'imposer les intérêts. Ils ajoutent qu'il incombe aux pays développés de prévenir la double imposition au moyen de l'exonération, du crédit, ou d'autres mesures d'allégement. Ils estiment que les intérêts doivent être imposés là où ils sont produits, c'est-à-dire là où le capital est utilisé. Enfin, selon eux, l'imposition doit avoir une répercussion importante sur les économies des pays en voie de développement car elle réduit les sorties de devises.

A l'opposé, les pays développés sont d'avis

que le pays d'origine de l'investisseur doit avoir le droit exclusif d'imposer les intérêts, à la fois pour que la mobilité du capital soit assurée et pour que le droit d'imposition revienne au pays qui est le mieux placé pour prendre en considération les caractéristiques du contribuable.

D'autre part on a évoqué la question des frais supportés par le créancier — le cas des banques par exemple, ou d'autres établissements de crédit — pour obtenir que le pays de la source n'impose que le revenu net. A quoi les pays en voie de développement répondent que le décompte des frais entraînerait des charges et des complications administratives. Mais il a été souhaité que les pays de la source fassent preuve de modération dans la fixation du taux de la retenue à la source au cas où le prêteur ne pourrait se voir imposé sur une base nette. Il ne convient pas que les prélèvements excessifs à la source soient incompatibles avec le but recherché parce qu'ils annulent les avantages qui s'offrent aux prêteurs des capitaux.

Le groupe d'experts ad hoc a marqué son accord sur quelques principes directeurs pour la détermination des règles d'imposition des intérêts:

1°) en l'absence de convention, le pays de la source et le pays du prêteur sont tous deux habilités à imposer les intérêts, sous réserve des mesures d'allégement destinées à pallier la double imposition, qui sont unilatéralement appliqués par le pays du prêteur. Lors de négociations bilatérales, il sera normalement tenu compte de ce double titre à imposer et les Etats pourront convenir d'un commun accord dans quelles mesures ils considéreront leurs prétentions.

2°) le pays de la source, s'il prévoit dans les dispositions d'un convention fiscale de prélever une retenue à la source sur le montant brut des intérêts, cherchera probablement, pour tenir compte de l'incidence des frais, à établir un taux qui donne soit en moyenne pour tous les types d'intérêts soit selon les diverses catégories de prêts un résultat comparable à celui que donneraient des taux d'imposition normaux qui seraient applicables aux montants nets des intérêts.

3°) en cas de prise en considération d'un certain coefficient pour frais pour la fixation du taux brut, l'imputation dans le pays du prêteur tiendrait compte de ce coefficient pour base du calcul de son crédit d'impôt.

4°) en cas de retenues à la source plus élevées que le crédit d'impôt accordé dans ce système, il est suggéré d'entamer des négociations.

5°) le pays du prêteur n'est pas obligé de limiter son crédit d'impôt au taux normal du revenu net du pays de la source. Un autre taux peut être convenu par convention.

C. — *Les redevances*

Dans la pratique conventionnelle habituelle, les redevances sont exonérées dans le pays de la source (voir Convention O.C.D.E. art. 12).

La Convention des pays du Pacte Andin prévoit l'exclusivité de la taxe au pays de la source (art. 9).

Au cours des travaux du groupe d'experts ad hoc, notamment en 1971 et 1972, la question s'est même posée de savoir s'il y avait lieu de considérer les redevances industrielles comme telles ou comme des bénéfices industriels et commerciaux. On s'est accordé sur le caractère de redevances. En ce qui concerne ces *redevances industrielles* (brevets, know how), on estime que les deux pays, celui de la source et celui du bénéficiaire de la redevance sont habilités à imposer la redevance sous réserve de

mesures d'allégement de la double imposition à appliquer unilatéralement par le pays du bénéficiaire en l'absence de conventions.

Mais le pays de la source devrait tenir compte de frais déductibles: frais courants imputables à la redevance et frais de mise en valeur du bien générateur du revenu.

On a également reconnu, quant aux droits de *location de films cinématographiques,* qu'ils devraient être traités come des redevances.

De plus, reconnaissant le fait que les autres droits en question renferment un élément de coût important, un certain nombre de pays appliquent des retenues à la source moins élevées qu'à d'autres types de revenus de non-résidents (Australie, Brésil, Israël, Malaisie, Mexique, Nouvelle Zélande, Philippines, Turquie, Venezuela).

Par contre aucun accord ne s'est dessiné quant au traitement des *droits d'auteur,* les pays de la source estimant ne pouvoir accorder l'exemption de la retenue à la source, tout en reconnaissant la nécessité d'un taux peu élevé, pour favoriser les échanges intellectuels internationaux.

CONCLUSION

1. — La notion de la source n'a jamais pu être clairement définie. Trop d'intérêts entrent en jeu lorsqu'elle se trouve au centre de négociations pour la conclusion de traités de double imposition.

2. — En raison de leur situation particulière, les pays en voie de développement doivent pouvoir, dans leurs négociations avec les pays développés, faire admettre une interprétation plus large de la notion de la source, ainsi qu'une extension des circonstances constitutives d'établissement stable.

3. — Les pays en voie de développement en général ne pourraient cependant s'aligner sur le critère de la source tel qu'il est introduit dans la Convention des pays du Pacte Andin. Les investissements en capitaux et en technologie dont ils ont un si grand besoin doivent être traités globalement, en fonction des situations des deux parties. Compromettre la neutralité fiscale que les parties ont pour devoir d'assurer, c'est, à brève échéance, compromettre les investissements eux-mêmes.

4. — La notion source, en ce qui regarde les dividendes, doit être liée à l'examen des structures de l'impôt des sociétés des pays en cause.

5. — Les conventions actuellement existantes doivent être revues constamment en fonction de la situation économique, financière et monétaire en perpétuel changement dans chaque pays et de l'évolution des besoins en capitaux et en technologie des pays en voie de développement.

Cette double évolution peut amener les parties à rendre moins rigide sinon le principe, du moins les règles d'application du critère de la source, ainsi que le montrent un certain nombre de conventions déjà conclues.

FUAT M. ANDIC AND ARTHUR J. MANN *:

REDESIGNING PUERTO RICO'S TAX SYSTEM: AN OVERVIEW

I. INTRODUCTION

Created on January 30, 1973, by Joint Resolution 2 of the Puerto Rican Legislature, the Puerto Rican Tax Reform Commission (Comisión sobre Reforma Contributiva) was assigned the task of carrying out an overall reform of the Commonwealth's tax structure. Such a reform was to follow the general lines of thought set forth in the mentioned legislation:

(1) Provide a just and equitable distribution of the tax burden among taxpayers at different income levels and in different occupational categories, so that each taxpayer is burdened according to his "economic ability."
(2) Provide a sufficient amount of income to the public treasury so that, in addition to income and resources from other sources, the fundamental aspirations of the Puerto Rican people may be funded within a reasonably brief time span.
(3) Maintain the incentives for vigorous private sector economic activity, especially in those sectors of particular benefit to the country, but with care taken to inhibit preferential tax treatment that is not socially justified.
(4) Improve tax and collection efficiency and facilitate tax payments by the taxpayers.

As of February, 1975, the Commission had completed and made public its final report. The purpose of this article is to summarize the principal recommendations of the Commission, while at the same time offering some brief speculatory comments regarding the future of the reform and possible tendencies of the Puerto Rican tax structure. Before doing so, however, a glance into the socio-economic backdrop of the reform is in order.

II. ORIGINS OF THE REFORM

Since the early 1950s Puerto Rico has undergone fundamental political and socio-economic changes. In the political sphere there was established a unique set of relationships between Puerto Rico and the United States through the applicability of various U.S. constitutional provisions and laws as well as the approval of the Commonwealth Constitution of 1952. These gave the island the status of a self-governing territory free from control or interference by the U.S. Congress with respect to internal government and administration, subject to provisions of the Federal Constitution, the Puerto Rican Federal Relations Act, and the acts of Congress authorizing or approving the constitution as may be interpreted by judicial decision.

The significance of the relationship emerging from such a legal basis for economic and fiscal affairs lies in the blend of economic integration and economic autonomy implied in present ties between the two

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areas. The unique features relate to a common market, currency, citizenship, and defense combined with flows of federal funds to the Commonwealth, preferential treatment with respect to minimum wage laws, partial inapplicability of federal tax statutes, and a high degree of fiscal autonomy. Thus, Puerto Rico began its Commonwealth experience with all the elements of a modern tax system: a progressive personal income tax, a corporation income tax, excise taxes, and property taxes, all levied and administered internally, with jurisdiction for customs duties and major social security taxes ceded to the U.S. government. Combined with these various levies was a system of tax exemption from the payment of corporate, personal, and property taxes offered to enterprises which qualified under the Industrial Tax Exemption Act of 1948. In this fashion Commonwealth status provided the necessary impetus toward devising a development program with heavy emphasis on industrialization through foreign capital inputs.

The origins of the desire to reform the tax system are found in the economic history of Puerto Rico's past two decades. The story of rapid economic growth at an average real annual rate of 6 to 7 percent, of improved living standards, and of government-promoted industrial incentives is well known. Changes in economic structure have been dramatic. Agriculture, which in 1950 generated around one-fourth of national income, today comprises less than 5 percent of aggregate domestic income. On the other hand, the share of the manufacturing/construction sector jumped from less than one-fifth to over one-third in the same time span. The tax structure, not surprisingly, has also been subject to significant compositional alterations. While income taxes (personal, corporate, and non-resident) comprised around one-third of total internal tax revenues in 1950, they currently provide slightly over one-half of the total (see appendix Table 1); excise taxes consistently dropped in relative importance, and as of fiscal year 1974 contributed 37 percent of the aggregate. However, these changes in tax structure composition left virtually unaffected total internal tax revenues as a proportion of national income.

Despite the very real economic and social gains made during the 1950s and 1960s many problem areas remained. Chronic unemployment of a magnitude of at least 12 to 14 percent persisted, very poor use of scarce land continued and worsened as people abandoned the countryside and as land came more and more to be viewed as a speculative asset, and a large portion of the population remained below acceptable minimum standards of living. Furthermore, increasing urbanization of the population, changed attitudes, and higher real income levels augmented the demand for public goods and services. Thus, more public revenues and/or greater efficiency in the area of public spending were viewed as essential. More specifically, in the field of taxation it became evident that the legal and administrative character of the tax system was inefficient and inequitable. Adding to this sense of discontent was the feeling that tax capacity was probably well above tax effort; what is more, almost two decades had passed since the system as a whole had been evaluated.

In retrospect, the carrying out of a general tax reform could not have come at a more propitious and crucial time. "Stagflation" has hit Puerto Rico with even more force than the United States, and the resulting drops in government real tax incomes have taken on alarming proportions. As a result

general tax reform objective (2) — that of providing sufficient public incomes to meet social needs — has been given increasing precedence. This does not at all imply that the other objectives have been slighted, but does hint at the direction choices necessarily had to take in the case of trade-offs.

III. THE RECOMMENDATIONS OF THE COMMISSION

A. *Consumption Taxation*

The Commission's recommendations regarding the present excise tax system are based primarily on equity criteria. Interestingly, it was found that the overall excise tax structure demonstrated a progressive rate pattern until family income levels of $10,000 (in 1970), an income level which then covered almost 90 percent of Puerto Rican families. Other aspects of excise taxation which lead to recommending continued reliance on them are the apparently relatively low level of evasion (in relation to the personal income tax), the relative ease of administration, and the lack of restrictive production effects due to the importation of most of the excise-subjected goods.

The following recommendations have been proposed:

1. That the tax base for cigarettes, gasoline, alcoholic beverages, tires, tubes, and cement be changed from one of physical units to one of value per unit; i.e., that the excises relating to these goods be converted from specific excises to *ad valorem* excises. This proposal should have the effect of increasing collections automatically as price increases occur (ignoring price elasticity of demand effects).
2. That the exemption currently given to electric and gas appliances be reduced from present levels to $100 for refrigerators and television sets, $65 for stoves or ovens, and $35 for radio receivers.
3. That the excise tax rate on automobiles be raised to 90 percent on the taxable price over $3,000, and that those automobiles with a taxable price less than $2,000 be taxed at a uniform 20 percent (instead of the present $250 per unit tax).
4. That the gasoline excise be raised from 16 cents to 26 cents per gallon. Assuming demand is price inelastic revenues would substantially rise.
5. That better and greater checks be made on shipments arriving in ports in order to reduce evasion.
6. That a sales tax with a rate not higher than 5 percent be instituted; many items important to the budgets of low-income families would be exempted. This last recommendation is obviously the most significant of those pertinent to consumption taxation, and merits further elaboration.

Increased revenues represent the principal attraction of this proposal, which exhibits many possible alternative variations. The alternative accepted by the Commission was to exempt food, medicine, services, clothing, and all articles already subject to excises; at 1973 consumption levels a 5 percent tax would have brought in around $40 million in revenue.

The equity implications of a sales tax with exemptions are not as grave as one might believe. Under the proposed alternative the effective rate pattern will be progressive until family income levels of about $15,000; one qualification to this statement is that the very lowest income class (less than $1,000) has been ignored, although recommendation (2) might serve to slightly reduce the burden on persons in this income category. Moreover, recommendation (3) might increase the tax burden on upper income families, under the assumption of a

high correlation between income levels and prices of cars purchased. The Commission strongly recommended that this tax not be implemented until such time at which the economy recovers from the current recession.

B. *Personal Income Taxation*

The Commission is of the opinion that continued and increasing reliance should be placed on the personal income tax. In order to eliminate some of the present limitations and inconsistencies which impede its more optimum use the following recommendations have been put forth:

With regard to the *tax base,* the following major items should be eliminated or excluded in the computation of gross income:

1. Interest income from life insurance policies; such income should be included as part of the estate of the deceased.
2. Preferential treatment given to annuities and pensions with the exception of those from Federal Social Security.
3. All exemptions for interest income received, with the exception of that interest income exempt under federal statutes.
4. Exemptions conceded to rental income from buildings rented to the government for uses related to education and public health and rental income from restored buildings in historic zones.
5. Exemptions conceded to income from other socially desirable activities. These recommendations, as well as other minor ones not mentioned here, are aimed at broadening the tax base, which would in turn permit increased tax revenues to be collected. Moreover, by eliminating the enumerated exemptions, equity and efficiency objectives are enhanced.

With regard to the computation of adjusted gross income:

1. Treat capital losses in the same fashion as capital gains, and permit adjustments of both to compensate for inflation.
2. Concede a special deduction to wage and salary income alone at declining rates relative to income levels.
3. Concede a special deduction to the income of the working wife (work outside the home) at rates similar to those applicable under the preceding recommendation.

Recommendations (2) and (3) would narrow the tax base and consequently reduce tax revenues, but could enhance the equity and efficiency goals, as does recommendation (1), which yields equal treatment to incomes of equal nature under capital gains taxation. Recommendation (2) gives preferential treatment to earned income, for a given level of taxable wage income is not equivalent to the same level of taxable property income since the latter may be obtained net of depreciation and maintenance costs. Recommendation (3) also works in the direction of restoring horizontal equity, for the housewife's imputed income is not included in the tax base.

With respect to the computation of net taxable income:

1. The fixed or standard deduction and all the current special deductions (with the exception of the deduction for medical expenses) are to be eliminated.
2. Personal exemptions and dependent credits are to be increased, but the special presently conceded credit to university students is to be dropped. The eliminations will serve to broaden the tax base, whereas the increased credits will narrow it; all these changes are made for reasons of equity and efficiency. In raising personal exemptions and credits over their 1973 levels estimated poverty levels were taken into account, the rationale being to approximate as closely as possible discretionary income alone. The last recommendation

serves the purpose of abolishing a system of double subsidy in a public university almost entirely funded by public monies.

With regard to the effects of inflation, the Commission recommends that as of tax year 1975 adjustment be made in the limits of the income brackets and in the amounts allowed for personal exemptions and dependent credits to take into account consumer goods price rises. Such a procedure would undoubtedly narrow the tax base, resulting in revenue losses to the government. Nevertheless, the maintenance of horizontal and vertical equity demands such an adjustment, for no adjustment at all would lead to a less progressive and/or more regressive tax pattern; i.e., the lower the constant adjusted gross income level the faster is the tax burden increase as inflation occurs.

With regard to the definition of the taxpayer, elimination is recommended of the current clause that allows separation from family income of income earned outside the home by minors; such income should be included together with all other family income for tax purposes.

With respect to the rate structure of the personal income tax the Commission recommends a reduction in all marginal rates for all adjusted gross income classes; the proposed marginal rates will fall between an 11 percent minimum and a 68 percent maximum (in contrast to the current 12.6 percent to 82.95 percent), and the rate schedule alters all the existing adjusted gross income brackets with the exception of the highest ($200,000 and over), thereby decreasing the marginal and effective tax burden in every bracket. Taken together with the recommended tax base changes, the progressivity as well as the average tax burden of the levy are increased for incomes over $15,000. By reducing the marginal rates economic efficiency may well be enhanced, for the tax disincentive to work and to invest is lowered.

Regarding administrative efficiency, it is proposed that clear, precise, and specific guidelines be established concerning which expenses are to be permitted as deductions from gross income to determine adjusted gross income.

To summarize the Commission's recommendations pertinent to the personal income tax, the proposals would broaden the tax base while at the same time reducing the marginal tax rates. This appears to introduce greater rationality into the definition of net taxable income in addition to increasing the progressivity of the tax. Periodic adjustments in rates, personal exemptions, credits for dependents, and other deductions would seem to move the system toward greater neutrality in the sense of leaving invariable the private-public sectorial shares in GNP.

C. *Capital Gains Taxation*

The Commission recommends two basic changes:

1. That capital gains realized from the sales of real and personal property, with the exception of land, be taxed following the same pattern established by the United States Internal Revenue Code, sections 1221-1223, 1231-1238, and 1241.
2. That capital gains realized on the sale of land be taxed 100 percent, but advantage may be taken of the income averaging clauses of the current law.

The first proposal is based on the feeling that, in view of the close relationship between the economies of Puerto Rico and the U.S., Commonwealth capital gains taxation (especially as it affects the corporation) should not differ essentially from that on the continent. Moreover, since the

island's system is so highly complicated, the adoption of federal legislation would inject simplicity, and therefore is likely to lower administrative costs. The second proposal complements the taxation of unused land (to be discussed below) in that it reflects the Commission's preoccupation with land scarcity; it aims at the prevention of land speculation and at its withdrawal from production, especially in the case of agricultural land. Both recommendations may slightly reduce revenue collections.

D. *Corporation and Partnership Taxation*

The Commission recommends no changes in the rates or in the fundamental structure of this form of taxation, but merely proposes slight modifications in the treatment of some items that enter into the determination of net taxable income. Some of these modifications recognize the need to index certain deductible expenses for inflation correction and to provide flexibility in depreciation and inventory accounting, which may result in a narrower tax base and possibly less tax revenue. However, such a decline may be canceled out due to simplification of the law effectuated by the new codification presently being undertaken; this should reduce administrative costs, avoidance, and evasion.

E. *Commercial Bank Taxation*

The Commission has treated the taxation of commercial banks as a separate issue due to characteristics peculiar only to these institutions; such peculiarities arise because of two principal reasons. In the first place, given the nature of its activities and the composition of its assets, a bank is able to take advantage of certain clauses in the present tax laws which concede exemptions to interest income received from specific financial assets. Such activities are completely legal, but their relative magnitude is far greater in the case of commercial banks than in the case of other business enterprises. In the second place, and again by legal disposition, the personal property tax and the municipal gross receipts tax are imposed on the bank in a fashion dissimilar to other enterprises. As a consequence, the following measures have been proposed by the Commission:

1. Impose the bank personal property tax on tangible personal property instead of its present capital stock base.
2. Amend Gross Receipts Law 113 of July 10, 1974, to levy this tax on banks and other financial institutions at the same rate as paid by other business enterprises. The current rate to which the banks are subjected is 1.0 percent, whereas other businesses pay only 0.3 percent. At the time of enactment of Law 113 this higher rate was probably justified, for banks were able to hold tax-free interest yielding securities in their portfolios, thereby reducing their net taxable income. However, considering recommendation (3) immediately below, the principle of equal treatment of equals demands the rate reduction. The decreased municipal revenues implied by this recommendation are amply compensated for by the property tax reform proposals.
3. Exempt all banks and other financial institutions from income taxation and substitute a franchise tax for the privilege of doing business in Puerto Rico. The base to be employed to calculate the tax will be total net income. However, given the current scarcity of credit and the fact that this recommendation might procedure a marked rise in the interest rate charged on public short-run debt, it is recommended that interest income accruing to banks on their short-run loans to the Commonwealth government, its instrumentalities, and the

municipal governments be exempt from the tax; the Commission's judgment that short-term interest rates charged to the public sector could rise is founded upon the assumption that the Commonwealth government has easier access to long-term than to short-term funds in the United States. Therefore, the Puerto Rican government could continue to increase its long-run bond issues, leaving long-term interest rates unaffected by the measure.

Recommendation (3) is made for several reasons. By taxing incomes of institutions which are legally exempt from income taxation, it reduces the inequity existing between different types of enterprises as well as between different types of banks. It eliminates the incentive toward investment in Federal and Commonwealth obligations, and may cause banks to buy more obligations of domestic enterprises which do not have easy access to external money markets. This measure is expected to have a substantial effect on tax revenues; if in 1973 banks had been taxed under the new proposal, public revenues would have increased by almost $13 million.

F. *Industrial Tax Exemption*

The Commission's recommendations in this area are founded on the premise of maintaining the economic development strategy Puerto Rico has followed for almost three decades. Any future change in development strategy will necessitate reexamination of the entire tax exemption issue, but until such time the Commission feels that the present structure of tax exemption corresponds well to government development policy. Moreover, present world economic instability made it imperative not to tamper with existing statutory provisions, for Puerto Rico will continue to depend upon external investment funds and is meeting increasing competition from other areas. As a result, the Commission's proposals, of a marginal nature, deal with rather technical matters which merely aim at reducing administrative complexities and time lags between application and approval.

G. *Property Taxation*

The Commission envisages an expanded future role for the property tax. Reform of this tax is of the utmost urgency due to grossly underassessed property values and other multiple inequities. Moreover, enlargement of the tax base will substantially aid the municipal fiscs, which receive more than two-thirds of "owned" funds from this impost.

With regard to the tax base the Commission recommends:

1. A general reassessment of real property values and the establishment of a continuing assessment program to maintain assessed values in some constant ratio to market values.
2. That in the case of owner-owned and occupied dwellings whose value exceeds $50,000 the present $15,000 exoneration be reduced, subtracting 30 percent of the taxable value over $50,000.
3. That each year the exoneration conceded to owner-owned and inhabited residences be raised in a proportion equal to the preceding year's average increase in residential property values. Recommendations (1) and (2) will tend to increase long-run property tax collections, with (1) providing the bulk due simply to the fact that real property values were last reassessed in 1958; recommendation (3) would partially counteract these increases, but undoubtedly the net effect on revenues would be upward.

With regard to the type of property subject to tax, the Commission recommends that many minor exemptions currently being

offered be reduced to a minimum. While individually unimportant with respect to revenue yield, the sum total of income expected to be generated by these changes will be substantial.

With regard to property tax rates the Commission proposes that:

1. In the first fiscal year the reassessed property values are in effect the tax rates should be reduced to a level that maintains revenues at the same level of the preceding year.
2. In the case of owner-owned and occupied residences a property surtax of one percent and two percent should be imposed on residences with an assessed value of $100,000 and $140,000 respectively. The revenue implication of proposal (1) is initial stagnation followed by revenue increases due to continuous updating of property values, even at constant rates.

H. *Taxation of Urban Unused Land*

This represents a new levy in Puerto Rico's tax structure. The Commission feels that given the critical disequilibrium existent between the supply and demand for land there simply is no scope for inefficient use of such a scarce resource. The problem is especially acute in urban areas where population growth has been much faster than in rural zones. Therefore, the Commission recommends that:

1. The new tax on urban unused or underused land take effect as soon as the Planning Board develops new regulations concerning the utilization of urban lots.
2. The tax base be the assessed value of the land; a lot is defined as unused if it does not meet the minimum utilization requirements established by the Planning Board in its urban zoning regulations; if the Board does not specify the meaning of "minimum utilization requirements" the law promulgating the tax will define the "unused" concept.
3. The tax take effect in the third year after the law is passed at progressive rates varying from 3 percent in the third year to 20 percent in the seventh year. Once the general reassessment of real property has been completed these rates will be halved. Since the objective of the tax is to eliminate unused urban land its revenue impact should decrease toward zero over the years. Thus, it cannot be conceived as an additional revenue source.

I. *Estate and Gift Taxation*

The Commission proposes that:

1. The increase in value of the goods included in an estate between the date of acquisition and transfer due to death be subject to the personal income tax at rates applicable to capital gains. This tax should be taken as a credit against the tax on the estate, and the first $60,000 of increment will be exempt from the surtax; averaging provisions for up to ten years should be permitted. Equal treatment should be given to the increased value of donations, with the distinction that the minimum base be $2,000 and that a 25 percent differential be maintained between the statutory rate on donations and that applicable to an estate.
2. The tax rates be revised in order to reduce their progressivity at the lower ends of the scale.

There are a total of fourteen more recommendations made by the Commission regarding estate and gift taxation. Since this type of taxation is not of great fiscal import the additional proposals will not be listed here. Suffice it to state that the Commission has opted for closing legal loopholes in an attempt to promote more efficient collection. Such changes will not have a notable effect on revenues, but are made

mainly for equity purposes. As an addendum, it was found that these taxes do not greatly affect capital formation in Puerto Rico despite their apparently liberal exemptions.

J. *Municipal Incomes*

Even in highly centralized Puerto Rico, where municipal governments have quite limited functions, the municipalities are strapped for funds. This situation is due to their apparent inability to put forth greater tax effort, to their unwillingness to efficiently use the funds to which they do have access, and to the fact that their tax and/or fiscal capacity is severely restricted by the central government's fiscal impositions. Perhaps federal government revenue sharing will help to remedy shortages in the near future.

With the purpose of proportioning greater financial resources to the municipalities and to improve collection efficiencies the Commission recommends the following measures:

1. The adoption of a new municipal gross receipts tax, which is expected to be easier to administer over a broader range of economic activities; it is estimated that the new tax will boost revenues by at least 50 percent. (The legislature, following Commission guideliness, converted this recommendation into law in July of 1974).
2. The study of the possibility of establishing a system of additional municipal participation in central government revenues.
3. The adoption of the necessary measures to put the municipal budgetary processes on a program basis.
4. The consolidation of central government advisory services (to the municipalities) through the creation of a new agency, which will additionally foment intermunicipal and interlevel cooperation.
5. The restructuring of the property tax, the principal recurrent income source for the municipalities. As previously stated, property tax reform will certainly increase municipal incomes over the long-run.

K. *Tax Administration*

The Commission feels that the design of a program to improve tax administration falls outside its strict mandate. However, no system can be better than its implementation, and the Commission is only too well aware of the present failure in this area, especially in the administration of the personal income tax and the excises taxes; it has been estimated that personal income tax evasion costs the public treasury approximately $50 million or more, while excise tax evasion amounts to at least $25 million. With this in view the following rather general recommendations have been made:

1. Within a period no longer than three years an overall action plan to restructure and strengthen tax administration should be formulated by the Treasury Department; it should also include measures to increase the citizenry's tax consciousness and to improve *esprit de corps* among tax administration personnel. If necessary, special budgetary provisions should be made to finance the program.
2. Immediate implementation of the internal work plan proposed by the Treasury Department in October of 1973.
3. Immediate up-dating of taxpayer lists, a valuable instrument to identify tax evaders.
4. Expansion of investigative efforts directed toward those groups of taxpayers most prone to evasion; a special investigative unit should be established to work on the most difficult cases.
5. Strengthening the continuous and systematic obtainment of supplementary information and data to use in those cases in-

vestigated; computers should be employed more efficiently, including cross-tabulation with tapes of the United States Internal Revenue Service.

All the above recommendations (and others not mentioned here) aim at improving tax collection efficiency and reducing tax evasion. In addition, many of the Commission's proposals pertinent to other taxes have either administrative implications or specifically refer to administrative aspects. These are especially prominent in the case of the personal income tax, the property tax, and the excises. Immediate implementation of administrative reform measures will not only boost revenue collections (at constant rates) but will enhance equity.

L. *Other Recommendations*

Two rather broad recommendations not specifically dealing with tax administration were formulated by the Commission. It proposes that a special commission be established to analyze *public expenditures* in Puerto Rico with respect to efficiency, equity, and the attainment of society's economic and social objectives. Although the development of public expenditure criteria is extremely difficult it is recognized that tax reform does not occur in a vacuum. To take measures to increase public revenues and to refer to revenue productivity obviously imply expenditures of said revenues. Secondly, it is recommended that a small group of highly qualified experts be formed, preferably at the Treasury Department, to act as permanent overseers of the continuity of tax reform.

IV. SHORT AND LONG-TERM REVENUE IMPLICATIONS OF THE RECOMMENDATIONS

At the risk of simplification the revenue tendencies described in this section represent no more than rather crude estimates based on results garnered from a gamut of calculations, ranging from mere arithmetic to computer computations.

It appears fairly safe to state that the entire package of changes proposed for the personal income tax will leave collections essentially unchanged in the short term, assuming real personal income levels are not drastically affected by worsening world economic conditions. Lower rate schedules, indexing, and higher personal exemptions would reduce the tax yield, but this reduction would be compensated for by the remaining recommendations, including a minimal effort toward clamping down on evasion. Over the next decade the relative significance of this levy in Puerto Rico's tax structure is not expected to increase at as fast a rate as in the past, since indexing will probably have the effect of reducing its elasticity. Naturally, if the indexing proposal is not accepted a faster relative increase can be expected.

Because the recording on tapes of information pertinent to capital gains is quite deficient for the purpose at hand, no estimates have been made of the revenue implications of shifting to the federal pattern of capital gains taxation (land excluded). For similar reasons estimates of corporate tax yields were not made. However, it is the belief of the Commission that both impacts will be negligible.

The largest revenue gains are to be expected from consumption taxation. The combined yield of a 5 percent sales tax (with exemptions) and a ten cent per gallon hike in gasoline excises is estimated to be between $90 to $120 million. These two proposals alone (not to mention the proposed change to an *ad valorem* basis for specific excises) will certainly reverse the long-run downtrend in the relative contribution of consumption taxes to total tax

revenues, at least temporarily. Over the longer term the use of an *ad valorem* base may serve to buoy the elasticity of excises, and the fact that the sales tax exempts necessities such as food and clothing may further enhance the long-run buoyancy of consumption taxes.

It is estimated that with the adoption of the proposed changes in municipal gross receipts tax rates and in the base of intangible property taxation, financial institutions will pay around $4 million less. But the new franchise tax on their net income will bring in about $13 million, yielding a net gain to the public fisc of $9 million.

Under the provisions of the new municipal gross receipts tax collections will probably double. With increased municipal sources of revenue central government transfers to the municipalities might be reduced, thereby positively affecting the Commonwealth budget. However, with so many unknowns involved no effort has been made to quantify this effect.

The property tax over the short-run will definitely yield greater revenues due to the rate jump on real property from 1.03 percent to 4.03 percent, put into effect in fiscal 1975 by the Treasury Department. It should be pointed out that this rate increase had nothing to do with the work of the Commission, but was a measure principally designed to augment public income. Official estimates reveal that for fiscal 1975 a $60 million increase in property taxes is projected. Any changes in the relative role of the property tax that flow from the Commission's recommendations will take at least three years to be felt, for they would be generated by reassessment. Nevertheless, it is not expected that Commission proposals will significantly enhance the relative importance of the property tax, although continued reassessment should act to make its revenue yield more elastic and/or less inelastic.

A most vital area from which increased revenues are expected to flow is that of tax administration and collection. Due to the prospect of continued economic recession this may very well represent the crux of the effort to increase tax revenues. In the areas of the personal income tax and the excise taxes alone it is conservatively estimated that administrative improvements can gross around $55 million; with far greater effort this figure might top $100 million.

To reiterate, the above revenue estimates must be used with caution, especially in the context of present economic difficulties. But taken at face value, they comprise from 19 percent to 30 percent of total 1974 internal tax collections.

V. THE FUTURE OF THE REFORM

The reform package recommended by the Commission is quite comprehensive and in many respects quite radical. For very obvious reasons an all-encompassing reform cannot be designed and repeated frequently, and it is perhaps at exactly this point where the major danger of its rejection and/or poor implementation lies. The Commission sees its work as one complete package. It may sacrifice revenue objectives in some taxes in order to achieve greater equity or developmental impetus (or vice-versa). If the package is not considered in its entirety but rather is legislated in piecemeal fashion, in all likelihood the legislature, given the economic conditions of the day, will be reluctant to raise taxes. On the other hand, given the dire need for public revenues the administration would be unwilling to encourage the legislature to approve only those measures which imply relief for taxpayers but a net reduction for the fisc. The degree of success probably

hinges upon two factors: the extent to which the administration will be able to grasp the importance of the "package deal" and the extent to which it will be able to exert pressure on legislators. It is not an unknown fact that the Governor's office has considerable leverage in the legislature, but it would be naive to think that it can unconditionally impose its will.

The case of the municipal gross receipts tax is sometimes used as an example of swift action on the part of the legislative branch. This levy was the first Commission project submitted to the executive and legislative branches, and in a relatively short time it was converted into law. To expect that the remaining proposals will enjoy the same good fortune would be over-optimistic. With the upcoming elections in 1976 proposals such as the property reassessment and the sales tax will rapidly lose their fiscal/economic characteristics and will become political issues. Moreover, as is most of the world, Puerto Rico is struggling through difficult times, and the government feels increasing pressure to find solutions to short-term problems. In view of this situation it might be reasonable to expect that policy-makers would be unwilling or unable to confront long-run issues, preferring instead to concentrate all their efforts on the more immediate and critical problem areas. In fact, as this article is being written (February, 1975) the legislature has just passed a 5 percent consumption tax to be applied at the producer-importer level. This goes counter to the Commission recommendation that such a tax not be implemented until the economy recovers from its present recessionary state.

It is extremely difficult to predict the rapidity with which the recommendations of the Commission will be implemented. Suffice it to state that similar reforms in Venezuela and Colombia took about six years to fully implement, and Canada's reform is still proceeding slowly after a decade. However, in the opinion of the authors of this paper immediate action can be expected with a high degree of certainty in the field of tax administration. In close collaboration with the Commission, the Secretary of Treasury has been taking measures which require no special legislation to improve tax administration, close loopholes, and crack down on evasion. The 5 percent consumption tax is already law, and may soon be followed by the gasoline tax unless there occurs a drastic change in the federal government's energy policy.

The next measure the administration is likely to push is the tax on commercial banks. In doing so it will, in all likelihood, accept only a variation on the Commission's recommendations. The principal reasons for supporting this tax are its revenue yield and its political implications; action can most likely be expected in 1975. The tax on unused urban land is not likely to be adopted; opinion in both executive and legislative circles is that there are better ways to improve land usage than through the tax process. It is expected that there will be a long lag in implementing the Commission's recommendations on the tax on personal incomes and capital gains; probably 1977 will be the earliest anything can be expected here. For the present property tax reassessment will not be implemented; its cost ($7—$10 million) is simply too high to be absorbed given the short-run fiscal dilemma; 1977 is the earliest possible date for action.

In conclusion, at present it is impossible for the authors and for those who were interviewed by the authors to inject any further note of optimism regarding future implementation of the reform.

TABLE 1

Puerto Rican Central Government Tax Revenues
Selected Years 1956-1974
(Millions of dollars)

Tax	1956		1964		1970		1972		1973		1974	
	Abso-lutes	% Dist.	Abso-lutes	% Dist.	Abso-lutes	% Dist.	Abso-lutes	% Dist.	Abso-lutes	% Dist.	Abso-lutes	% Dist.
Personal Income	22.8	17.6	60.7	21.6	148.5	25.7	213.6	27.1	244.1	28.0	275.2	30.9
Corporate Income	16.1	12.4	42.4	15.1	86.7	15.0	146.7	18.6	151.2	17.4	165.2	18.5
Nonresident Income	1.9	1.4	5.3	1.9	14.5	2.5	18.7	2.4	19.0	2.2	19.3	2.2
Customs Duties*	4.4	3.4	12.3	4.5	39.0	6.8	44.9	5.7	42.7	4.9	32.0	3.6
Property	9.0	7.0	16.5	5.9	24.8	4.3	30.7	3.9	31.0	3.6	34.6	3.9
Estate & Gift	1.2	0.9	3.3	1.2	6.2	1.1	8.5	1.1	13.6	1.6	14.4	1.6
Licenses	5.2	4.0	12.8	4.6	17.3	3.0	20.3	2.6	22.7	2.6	21.6	2.4
Excises, Total	62.2	53.3	127.0	45.3	239.7	41.6	306.3	38.8	346.1	39.8	329.0	36.9
a) Alcoholic Beverages	21.3	16.4	35.9	12.8	62.3	10.8	83.6	10.6	91.1	10.5	89.9	10.1
b) Petroleum Products	10.8	8.3	21.0	7.5	48.3	8.4	63.8	8.1	71.7	8.2	73.5	8.2
c) Tobacco Products	17.7	13.6	29.6	10.6	37.6	6.5	48.2	6.1	51.5	5.9	50.4	5.7
d) Motor Vehicles & Acc.	8.0	6.2	22.6	8.1	56.7	9.8	65.4	8.3	83.2	9.6	62.5	7.0
e) Electric & Gas Appliances	4.3	3.3	6.8	2.4	14.2	2.5	15.9	2.0	19.8	2.3	21.5	2.4
f) Others	7.1	5.5	10.9	3.9	20.6	3.6	29.3	3.7	28.8	3.3	31.2	3.5
Total	129.7	100.0	280.6	100.0	576.7	100.0	789.6	100.0	870.4	100.0	891.3	100.0

Note: The parts may not sum to the whole due to rounding.

* Although customs duties are not properly Puerto Rican government collections, federal authorities do return net receipts to the Commonwealth treasury. Conceptually, therefore, they may be treated as Commonwealth tax revenues.

References

In this paper no bibliographical footnotes have been included. The article is based on the *Informe Final* as well as the various *Informes Parciales* made public by the Commission. In addition, the studies listed below, prepared especially for the Commission, were also consulted:

1. Andic, F., Andic, S., and Cao, R. *Tributación del Ingreso de la Familia.*
2. Ason, A. *Tributación de los Bancos.*
3. Bhatia, M. *Evaluación de la Exención Contributiva Industrial.*
4. Clapp & Mayne, Inc. *Tributación de la Propiedad.*
5. Escobar, M. *Tributación de las Ganancias de Capital.*
6. Freyre, J. *Tributación del Consumo.*
7. Hacienda, Departamento de. *Fallas en la Administración de las Contribuciones.*
8. Mann, A. *La Carga de las Contribuciones y los Beneficios de los Gastos Públicos.*
9. Morán, R. *Tributación de Herencias.*
10. Suarez, M. *Tributación de los Terrenos Baldíos.*
11. Torruellas, L. *Ingresos Municipales.*

The above mentioned studies, as well as the *Informes,* are available from:

Comisión sobre Reforma Contributiva
P.O. Box 4515
San Juan, Puerto Rico 00905

Readers who are interested in the historical background of the reform may consult: Fuat Andic, "Phases of Fiscal Reform: The Case of Puerto Rico," *Finanzarchiv,* Band 31, Heft 2 (1972); Jaime Santiago, *Reforma Fiscal en Puerto Rico, 1940-1971* (San Juan: Editorial Cordillera, 1974).

ELIZABETH A. DE BRAUW-HAY *:

INVESTMENT IN NIGERIA AND THE NIGERIAN ENTERPRISES PROMOTION DECREE, 1972

The desire for an increase in indigenous participation in Nigerian business life and the need for foreign enterprise to move out of the less sophisticated areas of business, which could well be left to less experienced Nigerian businessmen, and into areas where their experience and expertise are required led in February 1972 to the promulgation of the Nigerian Enterprises Promotion Decree.[1]

Article 4(1) of the Decree provides that after April 1, 1974, the day on which the Decree came into force, certain kinds of enterprises will be reserved exclusively for Nigerian citizens or associations.

This means that, after that day, no person other than a Nigerian citizen or association may be the owner or part owner of such enterprises [2] and also that no alien enterprise [3] may be established in Nigeria in these sectors [4]. The enterprises affected are specified in the First Schedule to the Decree [5].

Besides this, a number of other types of enterprises, listed in Schedule II [6], are also, from the same date, barred to aliens unless the paid up share capital of the business exceeds 400,000 Naira or the turnover exceeds N1,000,000 [7] — whichever criterion is considered appropriate in relation to that particular enterprise will be applied — and the equity participation of Nigerian citizens or associations in the enterprise is at least 40% [8]. In order to ensure compliance with the provisions of the Decree the Nigerian Enterprises Promotion Board has been set up [9]. The Board is assisted in its work by Nigerian Enterprises Promotion Committees one for each of the twelve States of Nigeria [10] and a number of inspectors of enterprises [11] whose powers will include entering premises and examining books.

The Board has also played an active role, since the promulgation of the Decree, in educating the general public on the implications of that piece of legislation. In this it has been assisted by the Universities and Chambers of Commerce which have organised training programmes and seminars aimed at improving and developing the skills of Nigerian businessmen.

Provision is also made in the Decree for exceptions and exemptions [12] but it is not specified what criteria will be applied in the granting of such exceptions and exemptions.

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1. Decree No. 4 of 1972.
2. Article 4(1)(a) of the Nigerian Enterprises Promotion Decree 1972 (hereinafter referred to as "the Decree").
3. Article 4(2) of the Decree defines an alien enterprise as follows: "an enterprise shall be deemed to be an "alien enterprise", unless the capital or proprietary interest, whether financial or otherwise, in the enterprise ... is also owned and controlled by Nigerian citizens or associations".
4. Article 4(1)(b) of the Decree.
5. For the list of enterprises contained in Schedule I (as amended) see Appendix.
6. For the list of enterprises contained in Schedule II (as amended) see Appendix.
7. Article 5(1)(a)(i) and (ii) of the Decree.
8. Article 5(1)(b) of the Decree.
9. Article 1(1) and (2) of the Decree.
10. Article 2 of the Decree.
11. Article 6 of the Decree.
12. Article 5(3) and (4) and Article 9 of the Decree.

From the indigenous business community's point of view the implementation of the Decree's provisions has caused few problems and, despite fears, adequate funds have proved to be available for the take-over of Schedule I [13] businesses and the purchase of shares in those listed in Schedule II [14]. However, not unnaturally the promulgation of the Decree at first caused a fair degree of uncertainty among foreign investors. It has, however, since become apparent that foreign investment is indeed still welcome in Nigeria, a fact which has been frequently stressed by the government; in his Budget Speech on April 11, 1973 [15], the Head of the Military Government, General Yakubu Gowon, assured "all foreign private investors of continued generous treatment where they bring in their capital and technical know-how. Even in the context of our indigenisation policy foreign private investment will continue to be welcome in the areas where Nigerians cannot go it alone."

More recently, Dr. Okoi Arikpo, the Nigerian Minister of Foreign Affairs, during a visit to Paris in November of last year, emphasised the varied possibilities which existed for foreign technical co-operation and investment in Nigeria under the new Five Year Plan (1975-1980). Some of the projects proposed under this Plan include the erection of two new oil refineries, the laying of oil pipelines, the construction of a plant to liquefy natural gas and three new cement works, the electrification of rural areas and the development of telecommunications and transport. And in a recent speech to the Lagos Chamber of Commerce [16] Dr. Adebayo Adedeji, the Federal Commissioner for Economic Development and Reconstruction also stressed the fact that tremendous opportunities for private investment still existed in Nigeria. The Federal Government was, he said, interested in such investment not only from the point of view of the capital and foreign exchange which it brought into the country but also because it would be the means of bringing new and badly needed production techniques, technological know-how, administrative and managerial skills into Nigeria.

On a more concrete level, too, the 1974/75 Budget [17] contained measures which would tend to encourage, inter alia, foreign investment.

For instance, as a result of an improvement in the foreign exchange position profits and dividends may now be remitted as soon as they are declared — provided that the proper taxes have been paid on them — instead of being subject to delays as has been the case in the last few years. Various fiscal measures were also announced to encourage investment in agriculture. These include the abolition of the produce sales taxes and the export and sales duty on rubber. Besides this, the Budget reduced import duties by up to 60 per cent and removed excise duties in respect of locally produced materials used in building construction.

Import duties on raw materials imported for use in local industry have also in general, been reduced to a maximum of 10 per cent *ad valorem* and excise duties thereon have

13. See note 5.
14. See note 6.
15. See Recurrent and Capital Estimates of the Government of the Republic of Nigeria 1973-74 published by the Federal Ministry of Information, Lagos.
16. See Trade and Industry, January 23, 1975, p. 173.
17. See Recurrent and Capital Estimates of the Government of the Republic of Nigeria 1974-75, published by the Federal Ministry of Information, Lagos.

been reduced to a maximum of 5 per cent. The import duty on motor vehicles has also been reduced.

Tax incentives are also available in certain cases under the Industrial Development (Income Tax Relief) Decree of 1971 [18]. "If an industry is not being carried on ... on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects for further development in Nigeria of any industry" or if "it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria ..." then such industry may be declared a pioneer industry and any company operating or proposing to operate in these sectors may apply for pioneer status [19]. An application may only be made, however, if, in the case of an indigenous — controlled company, the estimated cost of qualifying capital expenditure on or before commencement of business is not less than N50,000, or, in the case of any other company, is N150,000 [20]. A company with pioneer status will be exempt from tax for a period of three years from commencement of business and an extension of this period may be given either for one period of two years or two periods of a year each provided that the company fulfills certain conditions. Among these are the requirements that it is efficient and expanding, that it uses local raw materials in its production processes, that it trains Nigerian personnel and that its products are of importance to the economy of the country.[21] If a loss is incurred in the tax holiday period then it will be extended and relief will be given in respect of profits made after the holiday has expired.

Allowances for capital expenditure are also deferred until after the end of the period.[22] Up to the present time approximately thirty industries have been awarded pioneer status.

No special rates of company tax apply to foreign companies in Nigeria. All companies, whether foreign or indigenous, will be subject to tax at the rate of 40% on profits not exceeding N10,000 and at 45% on profits in excess of that amount [23]. In calculating taxable income all outgoings and expenses incurred exclusively in production of profits may be deducted. Losses may be carried forward indefinitely [24]. Various capital expenditure allowances are given on, for instance, industrial buildings or structures and plant and machinery.[25] Provision is made for balancing allowances and charges where an asset is disposed of [26].

Tax is withheld at source on interest, management fees and royalties paid to other companies at the rate of 40% on the first N10,000 and at 45% on the excess [27], but is no longer withheld on dividends paid by a company to its shareholders.[28]

Interest on foreign loans of at least N150,000 granted in foreign currency for

18. Decree No. 22 of 1971.
19. Article 1 of Decree No. 22.
20. Article 1(4) of Decree No. 22.
21. Article 10 of Decree No. 22.
22. Article 14 of Decree No. 22.
23. Article 1(b) of the Finance (Miscellaneous Taxation Provisions) Decree 1972 (No. 47 of 1972).
24. Article 31(2) of the Companies Income Tax Act, 1961 (No. 22 of 1961) as amended.
25. Companies Income Tax Act, 1961, Income Tax (Amendment) Decree, 1966 (No. 65 of 1966), Companies Income Tax (Amendment) Decree, 1971 (No. 10 of 1971).
26. Article 9 and 10 of the Third Schedule of the Companies Income Tax Act, 1961.
27. Article 9 of the Income Tax (Amendment) Decree, 1966.
28. Article 1(c)(i) of the Finance (Miscellaneous Taxation Provisions) Decree, 1972.

the purpose of a trade, business, profession or vocation in Nigeria shall, if repayable later than 10 years from the date they were granted, be exempt from tax and, if repayable later than 5 years but earlier than 10 years from that date be liable to tax at half the normal rate.[29] Companies throughout the Federation are also liable to tax on capital gains at the rate of 20% [30]. Companies engaged in petroleum operations will be subject to the Petroleum Profits Tax. This tax is charged at the rate of 55% [31] but companies which are subject to this tax are exempt from the income tax on companies.[32]

It would certainly seem from the amount of interest which countries previously with few interests in Nigeria have recently been showing in investment there that the Nigerian Enterprises Promotion Decree has not had the effect of discouraging investment or at least that any negative effects which it might have had have been counterbalanced by the present boom in Nigeria's economy. France has shown itself especially interested and sent a trade delegation to Nigeria in January 1973; in November of 1974 Australia, too, sent delegates to study the possibilities of investment, particularly in the fields of energy and agriculture. Japan, also has shown strong interest in investment, especially in the field of oil.

However, problems undoubtedly remain for the foreign investor. In a developing country such as a Nigeria there are always such problems as lack of skilled labour and inadequate road and telecommunications systems. The problem of double taxation also remains for many investors. Nigeria has concluded few double taxation treaties [33] and apart from relief afforded under treaty the only other possibility of relief from Nigerian tax is that contained in the Income Tax Management Act, 1961.[34] This relief only applies, however, in respect of individuals who are chargeable to tax in a Commonwealth country or the Republic of Ireland on income which is also chargeable to tax in Nigeria and that only if the country concerned grants reciprocal relief.

Finally, the major problem of guaranteeing investments remains; with such a degree of indigenisation already having taken place the possibility of Nigeria completely nationalising certain industries — as has happened in other African countries e.g. Libya and Dahomey — must always remain a factor to be reckoned with.

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29. Article 2 of the Companies Income Tax (Amendment) (No. 3) Decree, 1971 (No. 51 of 1971).
30. Capital Gains Tax Decree, 1967 (No. 44 of 1967) as amended.
31. Petroleum Profits Tax Ordinance, 1959 (No. 15 of 1959) as amended.
32. Article 20 of the Income Tax (Amendment) Decree, 1966.
33. With Denmark, the Gambia, Ghana, Norway, Sierra Leone, Sweden, United Kingdom, United States.
34. Article 23 of the Income Tax Management Act, 1961 (No. 21 of 1961).

APPENDIX

SCHEDULE I

Advertising agencies and public relations businesses.
All aspects of pool betting busines and lotteries.
Assembly of radios, radiograms, record changers, television sets, tape recorders and other electric domestic appliances not combined with the manufacture of components.

Blending and bottling of alcoholic drinks.
Blocks, bricks, and ordinary tiles manufactured for building and construction works.
Bread and cake making.

Candle manufacture.
Casinos and gaming centres.
Cinemas and other places of entertainment.

Hairdressing.
Haulage of goods by road other than petroleum products.

Laundry and dry-cleaning.

Manufacture of jewellery and related articles.
Municipal bus services and taxis.

Newspaper publishing and printing.

Ordinary garment manufacture not combined with the production of textile materials.

Radio and television broadcasting.
Retail trade (except by or within the departmental stores and supermarkets).
Rice milling.

Singlet manufacture.
Stevedoring and shore handling.

Type retreading.

SCHEDULE II

Beer brewing.
Boat building.
Bicycle and motorcycle type manufacture.
Bottling soft drinks.

Clearing and forwarding agencies.
Coastal and inland waterways shipping.
Construction industries.
Cosmetics and perfumery manufacture.

Departmental stores and supermarkets.
Distribution agencies for machines and technical equipment.
Distribution and servicing of motor vehicles, tractors and spare parts thereof or other similar objects.

Estate agency.

Fish and shrimp trawling and processing.
Furniture making.

Haulage by road of petroleum products.

Insecticides, pesticides and fungicides.
International air transport (scheduled and charter services).

Manufacture of bicycles.
Manufacture of cement.
Manufacture of matches.
Manufacture of metal containers.
Manufacture of paints, varnishes or other similar articles.
Manufacture of soaps and detergents.
Manufacture of suitcases, briefcases, handbags, purses, wallets, portfolios and shopping bags.
Manufacture of wire, nails, washers, bolts, nuts, rivets and other similar articles.

Paper conversion industries.
Passenger bus services (inter state).
Poultry farming.
Printing of books.
Production of sawn timber, plywood, veneers and other wood conversion industries.

Screen printing on cloth, dyeing.
Slaughtering, storage, distribution and processing of meat.
Shipping.

Travel agencies.

Wholesale distribution.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM

Excerpts from Green Paper on Wealth Tax* (Cmnd. 5704)

CHAPTER 4

THE BASIS OF VALUATION

46. In principle property will be valued on an open market basis, that is to say at the price which the property would fetch if it were sold by a willing seller to a willing buyer on the open market on the day on which it is to be valued. No reduction in value will be made to take into account any reduction which would be due if the hypothetical market were flooded by the sale nor will it be assumed that all other property is in the market at the time the valuation is being made. The valuation will be made on the basis that the asset is sold in the most advantageous way, whether in parts or as a whole.

47. The sum of the values of a number of interests in an asset held by different people is normally less than the value of that asset as an unencumbered whole. The wealth tax must recognise this and valuations will normally be based on the acceptance of the situation as it exists. This factor could however provide scope for making substantial reductions in the value of assets within the charge to tax if the interests were spread among the members of a family to avoid or reduce liability. Holdings in property will therefore be aggregated for the purpose of valuation if they are owned by connected persons, ie husband, wife, brothers, sisters, ancestors or lineal descendants, or the trustees of a trust set up by any of them or in which any of them has an interest in possession. Where holdings are aggregated for valuation purposes in this way, it does not follow that they will also be aggregated for the purpose of charging tax on that aggregated value.

48. These general rules will cover the majority of cases including the valuation of interests in land and buildings. They may however need supplementing for certain types of assets of which the most important are set out in the paragraphs which follow.

Owner-occupied houses

49. In principle owner-occupied houses will be valued at their market value. However, even though capital and rental values do not bear a constant proportion to each other, it might be possible, in order to ease valuation difficulties, to provide that houses (except perhaps very expensive ones) should be valued at a multiple of their annual value for rating purposes if they were held freehold or on a very long lease. A different multiplier would be needed for Scotland and for Northern Ireland than for England and Wales.

Quoted securities

50. The value of quoted securities will be found by reference to the same rules as are applicable for capital gains tax (section

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We are reprinting only parts of this Green Paper in his issue of the BULLETIN. Portions appeared in the April, 1975, BULLETIN, Vol. XXIX, No. 4.

44(3) of the Finance Act 1965), ie normally the lower of one quarter way up between the lower and higher of the quotations shown in the Stock Exchange Daily Official List for the valuation day or the nearest dealing day thereto, or halfway between the highest and lowest prices at which bargains (other than bargains at special prices) were recorded on that day. The Government will ask the Inland Revenue to discuss with the Stock Exchange Council how to ensure that the prices of securities are not artificially held down on that day. The rules for valuing unit trust holdings will also be as for capital gains tax (section 44(4)).

Unquoted securities

51. Unquoted securities will be valued on the basis set out in paragraphs 46 and 47. It may not be necessary to adopt an assets valuation to arrive at a fair value for a majority holding.

Sole proprietors

52. Businesses owned by sole proprietors will be valued on the net value of the business as a going concern, computed in accordance with normal open market principles. The balance sheet will be the basis but the figures in it will not be conclusive, for example land and investments are often shown at less than their market value. It may follow that trading stock should be valued at the lower of cost or net realisable value. Work in progress will also be valued on normal commercial principles, ie manufacturing work in progress will be valued in much the same way as trading stock but professional work in progress will be valued at cost.

53. Goodwill will generally be valued according to the custom of the business with which it is associated—for example, when it is generally treated as inherent in the business premises, eg in the case of a petrol filling station, it will normally be taken into account in the valuation of those premises. When it is treated as a separate asset it will be valued according to the custom of the trade, such as at a multiple of recent annual earnings.

Partnerships

54. Partnerships will be valued in the first place in the same way as businesses owned by sole proprietors. The whole of the value thus arising including goodwill will be split between the various partners according to the terms of the partnership agreement: where that agreement states only the amount of each partner's capital contribution the share of each partner in the total partnership as could be measured in proportion to his share of the total capital contribution. It might be argued that work in progress, goodwill and debts, for example, should be apportioned in accordance with profit-sharing ratios, but except where the partnership agreement provides for such apportionment, there is everything to be said for applying a consistent basis of apportionment to all the partnership assets.

Life insurance policies

55. Life insurance policies will be valued at their realisable value: this will normally be the surrender value: but special rules will be required where there is no such value or where it does not adequately reflect the premiums paid and the subsequent growth of the underlying investments.

Annuities

56. Rights to annuities which are in the nature of pensions will, within limits, be excluded from the charge to wealth tax for the reasons outlined in paragraph 41. Rights to annuities acquired by purchase

will be charged at their market value. Annuities paid under personal covenants will be excluded from the charge, but no deduction will be allowed to the payer except for amounts accrued up to valuation day. Where an annuity is paid under a trust deed, the appropriate portion of the trust capital will be taxed as if the annuitant were a life tenant.

Debts

57. In valuing debts an allowance will be made for bad or doubtful debts along the lines of the treatment of trading debts for income tax purposes.

CHAPTER 5
ADMINISTRATION

General

58. The wealth tax will be administered under the Commissioners of Inland Revenue by a regional organisation. In order to achieve the maximum economy of administration this organisation will have very close links with existing Inland Revenue offices. The Inland Revenue will be able to use the information which a taxpayer gives one of their offices for the purposes of one tax as a check on the information given to another of their offices for another purpose.

Returns

59. The arrangements for returns might run as follows. Any individual who estimated that his wealth (including the value of any assets he has settled on a foreign trust for the tax on which he may become liable) exceeded a prescribed fraction of the exemption limit would be required so to notify the Inland Revenue: so would the trustees of every trust other than those that would be exempt (paragraph 17). Returns would be issued on which the taxpayer would be required to give details of his assets (including the cost where appropriate) and of the current value of each. Trustees would also have to identify those who have benefited under the trust.

60. A taxpayer would also be required to give details on his return form of any assets he had settled on a foreign trust and of any United Kingdom trusts where he had reason to believe that the trustees were outside the United Kingdom. On the first occasion on which he completed such a return the question would apply to any funds which he might ever have settled, but thereafter it would relate only to the period since his last return. He would also have to give details of any payments he had received, whether by way of income or capital, from the trustees of a foreign trust.

Assessment

Self-assessment

61. The Government propose a system of self-assessment with sample checks by the Inland Revenue. It is clearly important that the Inland Revenue should be in a position to check that the tax has been based on a realistic valuation of the taxpayer's property. At the same time however, it is inevitable that some types of asset may be difficult to value precisely, and it is important that the taxpayer who has done his best to make a realistic valuation should not be penalised if later events suggest that his valuation was too high or too low.

62. A self-assessment system might work as follows. Taxpayers themselves would be expected to estimate to the best of their knowledge the open market value of the assets shown in their returns in accordance with rules which will be based on the principles outlined in the previous chapter.

They would have to include sufficient information for each asset to be identified, together with the amount for which it is insured (although the insured value will not necessarily approximate to the assessable value). They would have to total their gross wealth, subtract any allowable deductions and calculate and pay over the tax due. The Inland Revenue would normally accept the valuations when the return was made but a proportion of the returns would be checked at a later date. Once the value of any asset had been determined for any one year it might be practicable to estimate its value over the following few years by reference to market trends for assets of its type generally.

63. When an asset is sold on the open market the price obtained will provide the best evidence of its value on the day of the sale. It may also provide some evidence of the value of the asset in earlier years and may suggest that the earlier valuations had been insufficient or excessive. Likewise a professional valuation of an asset which the taxpayer had previously valued according to the best of his own ability, although not providing such authoritative evidence of value as a sale, might suggest that earlier valuations had been excessive or insufficient. In such cases either the taxpayer or the wealth tax office should have the right to reopen previous values which had been accepted; this right should probably be made subject to a time limit.

64. If any such adjustment were made, whether or not for the benefit of the taxpayer, interest would be due at normal commercial rates. Penalties might be imposed, but only where it was shown that a taxpayer had deliberately and wilfully understated the value of an asset; there would be no question of imposing a penalty on a taxpayer who had understated the value of his assets provided he had valued them according to the best of his knowledge and judgment.

65. Different considerations apply if a taxpayer omits assets from his return. In such cases penalties for negligence, fraud or wilful default would be appropriate on a similar basis to that applicable for income tax purposes.

Annual cycle of the tax

66. Because holdings of assets interlock and there will be some assets in which more than one taxpayer is interested, it seems inevitable that all valuations in any year will have to be made on the basis of the value on a given day. It may therefore be necessary for businesses to draw up a balance sheet on that day. The day chosen should be that which caused the minimum of disturbance to those who wished to make their accounting year end on the valuation day. This would probably be either 31 December or 31 March.

67. Many taxpayers who fall within the scope of the tax will have a wide variety of assets which will not be easily valued and it would be unreasonable to allow too short a period for the completion of returns and for valuation. At the same time it would be equally unreasonable to extend the period before payment is required to enable valuations to be made in every case however complex. A suitable interval might well be six months with an additional three months in the year in which the tax is introduced. Thus if on the basis suggested in paragraph 66 the most convenient valuation day were to be 31 December, wealth tax would then normally be due to be paid by the following 1 July, interest running from that date on amounts not paid until later. In the year in which the tax was

introduced the due date of payment might be set back to 1 October. If on the other hand it would be more convenient if the valuation day were 31 March the timetable would be put back by three months throughout, with payment generally on 1 October, but not until the following 1 January in respect of wealth held in the year of introduction of the tax.

Other matters

Collection

68. Interest at a commercial rate will be chargeable on wealth tax from the day that it is due. Since a taxpayer, be he an individual or a trustee of a trust, will normally be required to assess himself, it will be most convenient if he attaches to his return form a cheque for the tax shown to be due by virtue of his assessment together with any interest up to the date of payment. Trustees will not however always know the rate of tax attributable to the assets of the trust and may not find this procedure practicable. If the tax is not paid at the time the return is made, or if further tax becomes due following an adjustment, the tax together with interest will be collected in the normal way: interest will be due to a taxpayer who has overpaid. It may be desirable to empower the Inland Revenue to attach assets, or at least to put a charge on them, where wealth tax remains unpaid.

Powers to obtain information

69. Paragraphs 59 and 60 outlined the information taxpayers should show on their return forms. In addition however the Inland Revenue will need powers to obtain from other people such information as is necessary to establish whether or not there is any liability and, if there is, in what amounts. These powers will also need to cover anyone who has been concerned with the setting up of a foreign trust or with the appointment of non-resident trustees to a previously resident trust.

Appeals

70. Taxpayers will have the right of appeal to the Special Commissioners of Income Tax on any matter relating to the charge to wealth tax or to the valuation of any asset for wealth tax purposes except for questions relating to the valuation of interests in land or buildings where the right of appeal will lie to the Lands Tribunals. Where more than one taxpayer has an interest in a property and they do not accept the valuation placed on it by the wealth tax office it will be desirable to hear their appeals together even if their interests are of a different nature or size and not necessarily proportional in value. There will be a right of appeal to the Courts in the normal way on a point of law.

CHAPTER 6
THE DECISION

71. The fundamental purpose of the wealth tax is to make the distribution of the tax burden accord more closely with taxable capacities and thereby contribute to the creation of a more equitable society in which social divisions characterised by differences of wealth are reduced and in which social and economic power created by the possession of wealth is less concentrated than at present. In this Green Paper the Government have set out their proposals for the main framework of the tax so that the public discussion of it for which they are looking can take place against an informed background. They hope that this discussion will not only be concerned with the details of the framework of the tax

outlined above and the administrative problems to which it will give rise, but that it will also be concerned with the wider issues which arise from it such as the rate at which the tax should be levied and its interaction with other taxes.

72. Because of the importance of these issues, the Government have decided that they should recommend the setting up of a Select Committee of the House of Commons which would have the task of examining them. The Government will then be able to take their decisions about the exact shape of the tax, and the rate at which it should be introduced, in the light of the Committee's recommendations. They hope that the Committee would report in time to enable the necessary legislative provisions to be introduced in the 1976 Finance Bill, in which case the first valuation date would be on 31 December of that year or on 31 March 1977.

73. It will of course be for the Select Committee to decide whether it wishes to receive representations from the public and, if so, on what basis. In the meantime interested individuals and organisations who wish to make their views on the tax known to the Government should in the first instance send them in writing to the Board of Inland Revenue at Somerset House, London WC2R 1LB. Arrangements may then be made in suitable cases for their written representations to be discussed either with Treasury Ministers, or with the Board, as seems most likely to be helpful.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning a book should include the reference number listed.

ALGERIA

GUIDE PRATIQUE DES IMPOTS 1974,

Tome V (régimes spéciaux entreprises étrangères), Etudes & Documentation Fiscales, Alger, 1974.
Volume V of this series surveys the special regime for foreign enterprises engaged in business or activities in Algeria. Texts of relevant statutes, such as the Investment Code, and official notes and connected by-laws are appended. (B 10597)

ARGENTINA

LA EXTRAFISCALIDAD EN LA POLITICA FISCAL,

by F. Castellanos. Revista de la Cámera Argentina de Comercio.
Text of speech entitled "the extrafiscality of the fiscal policy" delivered at a conference. (B 15449)

ASIA

A COMPARISON OF THE INDIVIDUAL AND CORPORATE INCOME TAX SYSTEM IN SOME ASIAN COUNTRIES.

National Tax Research Center, Manila, 1974.
Study which presents comparisons of the individual and corporate income tax systems in 13 Asian countries. The material is current as of 1972. This preliminary paper is subject to review by the countries included in the study. (B 50033)

AUSTRIA

DIE ÖSTERREICHISCHE UMSATZSTEUER AB 1973,

by W. Doralt and P. B. Hassler (dem vorliegenden Band liegt die deutsche Ausgabe von H. Sauerland zugrunde). Erich Fleischer Verlag, Bremen, 1973. 360 pp.
Textbook explaining the Austrian tax on value added as of 1973. Text of statutes are appended. This work is based on the textbook on German VAT by H. Sauerland. As the Austrian system is based on the German one, references to German case law are mentioned where appropriate. (B 8711)

ABC DER LOHNVERRECHNUNG

mit vielen ausarbeiteten Beispielen und zahlreichen Tabellen; 9. nach dem neuesten Stand ergänzte Auflage. Industrieverlag Peter Linde, Vienna, 1975. 96 pp., S 120.—.
Ninth revised and supplemented guide for calculating the wage and payroll tax. (B 8785)

CANADA

INFLATION AND PROFIT CONTROL:

how to account for inflation in business,
by P. Bakker. Methuen Publications, Toronto, 1974. 148 pp.
The author outlines a comprehensive accounting procedure as a practical solution to the problem of how to account for inflation and to revitalize accounting as a tool for management and profit control. (B 8718)

BILL C-49: AN ACT TO AMEND THE STATUTE LAW RELATING TO INCOME TAX;

First reading December 29, 1974. Richard de Boo, Ltd., Toronto, 1974.
Text of Bill, with explanatory notes, to amend the income tax laws. In English and French languages. (B 8724)

COMECON

INTEGRATIONSPROBLEME IM RAT FÜR GEGENSEITIGE WIRTSCHAFTSHILFE (RGW),

by R. Steffens. Verlag Weltarchiv, Hamburg, 1974. 295 pp., DM 34.—.
Study on the integration policy and problems arising in planned economies of the CMEA (East European Common Market) member countries. (B 8640).

DENMARK

SKATTETABELLER 1975;

31. udgave., by V. Spang-Thomsen. Forlag Arnold Busck, Copenhagen, 1974. 117 pp.
Income and net wealth tax tables for 1975, with annotations. (B 8761)

EAST AFRICA

TAXING A PEASANT SOCIETY:
THE EXAMPLE OF GRADUATED TAXES IN EAST AFRICA,

by K. Davey. Charles Knight & Co. Ltd., London, 1974. 226 pp., £2.50.
Study which examines the graduated tax imposed in Uganda, followed by comparison with similar attempts at personal taxation in the rest of East Africa (Kenya and Tanzania). (B 10598)

EASTERN ASIA

FINAL REPORT OF PROCEEDINGS OF THE SECOND TAXATION AND CUSTOMS COOPERATION CONFERENCE OF THE REPUBLIC OF CHINA, REPUBLIC OF KOREA, REPUBLIC OF VIETNAM, REPUBLIC OF THE PHILIPPINES.

Held June 25—July 3, 1973, Manila. 292 pp.
Extensive final report of proceedings of second Taxation and Customs Cooperation Conference (TCCC). Working papers and discussions thereof are included. (B 8635)

REPORT OF TAXATION AND CUSTOMS COOPERATION CONFERENCE OF THE REPUBLIC OF KOREA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF VIETNAM, AND THE REPUBLIC OF CHINA.

Held May 30—June 2, 1972, Taipei. 143 pp.
Final report of proceedings of the first Taxation and Customs Cooperation Conference (TCCC) of four Eastern Asian republics. Working papers are appended. (B 50028)

EUROPE

INDUSTRIAL DEMOCRACY IN EUROPE:
THE CHALLENGE AND MANAGEMENT RESPONSES,

by D. Jenkins. Business International, Geneva, 1974. 170 pp., Sfr. 350.00.
Research report which gives an overview of the growing desire of employees to gain increased influence in their companies as reflected in ten Western European countries. Case studies dealing with management responses are included. (B 8747)

FRANCE

20 ETUDES DE CAS DE FISCALITE AVEC LES CORRIGES;

deuxième édition, by M. Cozian and M. Lhuguenot. Libraire de la Cour de cassation, Paris, 1975. 158 pp., 60F.
Second revised edition of 20 practical exercises in tax problems. Solutions are appended. (B 8685)

FRANCE.

OECD Monetary Series.
Organization for Economic Cooperation and Development, Paris, 1974. 106 pp., £2.10.
This study examines the part played by monetary policy in France in achieving its main economic goals since 1960. The study analyses the development of the financial structures of the French economy, the monetary policy instruments employed and the way in which they have been combined, and the influence exerted by monetary policy during the various phases of restriction and stimulation. (B 8708)

GERMAN FEDERAL REPUBLIC

ERFAHRUNG AUS DER OST-WEST-KOOPERATION,

by K. Bolz and P. Plötz. Verlag Weltarchiv, Hamburg, 1974. 252 pp., DM 34.—.
Entitled "Experience from the East-West-Cooperation", this study, based on questionnaires, describes the developments in the establishment of agreements between West German enterprises and COMECON member countries (Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, and the U.S.S.R.) with respect to business engagements. Appended are the texts of the questionnaire and agreements between the German Federal Republic and the COMECON member countries, as well as statutes of those countries in connection with cooperative agreements. (B 8640)

STAATSBÜRGERSTEUER; VORSCHLAG ZUR REFORM DER DIREKTEN STEUERN UND PERSÖNLICHEN SUBVENTIONEN DURCH EIN INTEGRIERTES PERSONALSTEUER- UND SUBVENTIONSYSTEM,

by W. Engels, J. Mitschke, and B. Starkloff. Karl-Bräuer-Institut des Bundes der Steuerzahler, Wiesbaden, 1974.
Karl-Bräuer-Institut, Heft 26.
The authors recommend the introduction of an integrated personal income tax and subvention system which they call "citizen tax". The citizen tax aims at integrating the direct taxes, like individual income tax, wage tax, withholding taxes, corporate income tax, net wealth tax, inheritance tax and gift tax; the personal subvention payments, like child allowance payments and disability payments; and a built-in negative income tax. The citizen tax is based on an expenditure tax levied during the life of the taxpayer, while at his death a capital increment tax would be levied. (B 8473)

FUNDHEFT FÜR STEUERRECHT:

Leitsätze der Entscheidungen-Literaturübersicht-Nachweis der Verwaltungsvorschriften — Bnd. XXI: 1973,
by H. Ziemer, H. Kalbhenn, and G. Felix. Verlag C. H. Beck, Munich, 1974. xix + 517 pp., DM 118.—.
Comprehensive annual bibliography for 1973 tax publications, case law, administrative regulations, theses, etc., dealing mainly with German taxation. (B 8667)

ENTWURF EINES GESETZES ZUR VERBESSERUNG DER BETRIEBLICHEN ALTERSVERSORGUNG.

Bundestag Drucksache 7/1281 vom 26.11.73. 34 pp.
Reprint of text of Bill to improve the old age care of employees through tax provisions. (B 8510)

SCHÄFFER LOHNSTEUER TABELLE:

Gültig ab 1-1-75, für höhere Monatslöhne von DM 4000—14000; Gültig für das Gebiet der Bundesrepublik Deutschland, jedoch nicht für Arbeitnehmer in Berlin-West.
Fachverlag Schäffer & Co., Stuttgart, 1974. 168 pp., DM 24.80.
Wage tax tables as of January 1, 1975, including church tax, for monthly wages of DM 4,000—14,000 for employees in the German Federal Republic except West Berlin. (B 8599)

SCHÄFFER LOHNSTEUER TABELLE:

Gültig ab 1-1-75, für Monatslohn; Gültig für das Gebiet der Bundesrepublik Deutschland, jedoch nicht für Arbeitnehmer in Berlin-West.
Fachverlag Schäffer & Co., Stuttgart, 1974. 82 pp., DM 18.80.
Wage tax tables as of January 1, 1975, including church tax, for employees in the German Federal Republic except West Berlin. (B 8600)

INDIA

TAXING FOR DEVELOPMENT:

Incentives Affecting Foreign Investment in India, by H. K. Singhal. Reprint from the Harvard International Law Journal, Vol. 14, 1973.
Study describing the Indian tax incentives designed to promote foreign investment in India. (B 50046)

INTERNATIONAL

THE IMPACT OF MULTINATIONAL CORPORATIONS ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS.

United Nations Publications, New York, 1974. 162 pp.
Report prepared by group of eminent persons requested by the Secretary General of the United Nations to study the role of multinational corporations and their impact on the process of development, especially that of the developing countries. (B 8727)

TAX TREATIES BETWEEN DEVELOPED AND DEVELOPING COUNTRIES,

fifth report. United Nations Publications, New York, 1975. 205 pp., $9.00.
Report on the fifth meeting of the group of experts on tax treaties between developed and developing countries held in Geneva, December 3—14, 1973. (B 8784)

TREATY SERIES:

Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations.
Vol. 736-1970. United Nations Publications, New York, 1974. 434 pp., $7.50.
This volume contains the text of the convention between Japan and United Arab Republic (Egypt) for the avoidance of double taxation of income which was signed September 3, 1968. (B 8751)

WORLDWIDE EXECUTIVE COMPENSATION:

New Problems and Solutions.
Business International Corp., New York, 1974. 163 pp., $130.00.
This research report studies the problem and the various options and alternatives of international compensation to be granted to expatriate executives of international business which arise in today's rapidly changing international environment. (B 8760)

IRAN

INVESTIONEN IN IRAN:

Zulassung, Schutz, Förderung, Gesellschaftsgründung, Besteuerung.
Bundesstelle für Aussenhandelsinformation, Cologne, 1974. 54 pp., DM 5.—. Ausländisches Wirtschafts- und Steuerrecht, Bnd. 49.
Informative guide for prospective investors in Iran, with emphasis on German enterprises. Taxation in Iran is considered. (B 8194)

LUXEMBOURG

PERSONAL TAXATION IN LUXEMBOURG,

by G. H. Urbin. Hoogewerf, Luxembourg, 1974. 50 pp.
Broad outline of practical and technical concepts of personal taxation in Luxembourg. (B 8519)

THE NETHERLANDS

DE BELASTINGKRANT 1975:

Inkomstenbelasting 1974, Loonbelasting 1975, de werkende gehuwde vrouw.
Annoventura, Amsterdam, 1975. 63 pp., *f* 3.—.
Guide booklet containing information for filing 1974 individual income tax returns and possibilities of reductions of the wage tax for 1975. (B 8715)

PERIODIEK WOORDENBOEK:

van administratieve en gerechtelijke beslissingen inzake: Burgerlijk recht, Inkomstenbelasting, Vermogensbelasting, Belastingen rechtsverkeer, Registratie, Successie, Grondbelasting, Kadaster, Hypotheken, Notariaat, enz.; eerste gedeelte 1974, Artt. 18287—18327. FED, Deventer, 1974. 144 pp., *f* 17.50.
Compilation of cases dealing with civil law, individual income tax, transfer tax, and death duties, through the first part of 1974. (B 8765)

ZWISCHENSTAATLICHE BELASTUNGS- UND STRUKTURVERGLEICHE;

Quantifizierung der Last- und Strukturunterschiede in der niederländischen gewerblichen Wirtschaft im Vergleich zu der deutschen und französischen gewerblichen Wirtschaft,
by J. Esser. Wilhelm Stollfuss Verlag, Bonn, 1974. 125 pp. Institut „Finanzen und Steuern", Heft 96, Bnd. 3.
Third part of a series analyzing and comparing the tax structure of different industries in Germany, the Netherlands, and France. (B 8556)

NORWAY

NORWAY.

OECD Economic Surveys.
Organization for Economic Cooperation and Development, Paris, 1975. 72 pp.
This survey reviews the major economic developments during the past twelve months and attempts to answer the question of why Norway, in a period of world-wide recessionary tendencies, has experienced an acceleration of growth; analyzes the role of economic policy in maintaining full employment and in containing the danger of excessive price-wage increases; and examines the outlook for 1975. (B 8760)

PHILIPPINES

COMPARISON OF TAX AND OTHER INCENTIVES BEFORE AND DURING MARTIAL LAW.

National Tax Research Center, Manila, 1974.
Comparison of tax exemption laws and other incentives granted by the Philippine government before and during the martial law administration. The material is current to June 30, 1974. (B 50035)

A COMPREHENSIVE INDEX ON TAXATION IN THE PHILIPPINES.

National Tax Research Center, Manila, 1974.
Report which comprises a listing on all types of taxes in three major classifications: direct, indirect, and local taxes. Presented in detail are changes introduced over the last two decades on different aspects of each type of tax, e.g., subject of tax, tax base, and tax rates. (B 50034)

THE PHILIPPINES: OPERATING FOR PROFIT IN THE NEW SOCIETY

A Business International Asian Report.
Business International Asia/Pacific Ltd., Hong Kong, 1974. 178 pp.
This research report is designed for executives who are considering investment or other business operations in the Philippines. The following are among the chapters included: Prospects and Problems of the New Society, Government and Politics, Infrastructure and Resources, the Economy, Labor and the Workforce, Investing and Operating a Business, Taxation, the Financial System, Marketing, and Foreign Trade. (B 50047)

SHARING IN DEVELOPMENT — A PROGRAMME OF EMPLOYMENT, EQUITY, AND GROWTH FOR THE PHILIPPINES;

Report of an Interagency team financed by the United Nations Development Programme and organized by the International Labour Office; Philippine Edition. International Labour Office, Geneva, 1974. xxvii + 685 pp., 25 Pesos.
This report was prepared by an international team of experts in different fields of economic planning and emphasizes the importance of the major social problem currently facing the Philippines: the need to provide simultaneously more employment, better distribution of income, and enhanced economic growth in a mutually reinforcing fashion. (B 50026)

SPAIN

BUSINESS IN SPAIN.

Lloyds Bank International, London, October, 1974.
This work consists of 7 booklets each conveying the general outlines of Spanish legislation governing business activities. The subjects dealt with are foreign investment and industrial property, foreign exchange and trade, forms of business organization, taxation, development incentives, labor legislation, banking and credit. (B 8761)

SRI LANKA

REPORTS OF SRI LANKA TAX CASES,

Vol. III, a continuation of Reports of Ceylon Tax Cases (1947-1971); edited by O. M. da Silva. Government Printer, Sri Lanka, 1974. 480 pp.

Volume three contains cases decided by the Supreme Court of Sri Lanka (Ceylon), and Her Majesty the Queen in Her Privy Council on appeal from the Supreme Court of Sri Lanka (on income tax, excess profits duty, profits tax, personal tax, business turnover tax, surcharge on income tax, estate duty, and stamp duty). (B 50048)

SWEDEN

BESKATTNING VID UTLANDS-VISTELSE: SVENSKA SKATTE- OCH VALUATABESTÄMMELSER M M VID UTFLYTTNING OCH VISTELSE UTOMLANDS.

P. A. Norstedt & Söners Förlag, Stockholm, 1974. 335 pp.
Monograph explaining the Swedish tax laws (income tax, net wealth tax, death duties) and the double taxation treaties concluded by Sweden with other countries with emphasis on Swedish persons going abroad or entering Sweden. Material is updated as of the laws published in the Swedish Gazette, No. 704, 1974. Foreign exchange regulations in connection with emigration and foreign sojourns are discussed. (B 8716)

SWITZERLAND

DIX LEÇONS INTRODUCTIVES AU DROIT FISCAL IMPOTS DIRECTS,

by W. Ryser. Editions Staempfli, Bern, 1974. 227 pp., Sfr. 39.—.
Ten introductory lessons on tax law — direct taxes. The author illustrates the fundamental aspects of the direct taxation system in Switzerland. (B 8558)

ÖFFENTLICHE FINANZEN DER SCHWEIZ/ FINANCES PUBLIQUES EN SUISSE 1972;

bearbeitet von der Eidgenössischen Finanzverwaltung/élaboré par l'Administration fédérale des Finances. Eidgenössisches Statistisches Amt, Bern, 1974. 95 pp., Sfr. 12.—. Statistische Quellenwerke der Schweiz, Heft 546.
Public Finance of Switzerland. This work contains statistical data on revenue and expenditures of the Confederation, the cantons, and municipalities. It is a continuation of the previous publications entitled "Finanzen und Steuern von Bund, Kantonen und Gemeinden". (B 8726)

SWITZERLAND/GERMANY

COMMENTAIRES DES CAS PARTICULIERS EXISTANTS SOUS L'EMPIRE DE LA CONVENTION GERMANO-SUISSE DE DOUBLE IMPOSITION.

Administration fédérale des contributions, Division DBA.
Explanation of special cases provided under the Swiss-German double taxation treaty of 1971, with emphasis on the taxation aspects in Switzerland. German version of this French text is available. (B 8552)

UNITED KINGDOM

TAXATION OF COMPANIES;

Second Cumulative Supplement, up to date to October 1, 1974, by R. Bramwell. Sweet & Maxwell, London, 1974. British Tax Encyclopedia.
Second supplement updating Corporation Tax by John E. Talbot and G. S. A. Wheatcroft. (B 8722)

WHY WE NEED A WEALTH TAX

by J. S. Flemming and I. M. D. Little. Expression Printer, London, 1974. 33 pp.
Essay on proposed annual wealth tax in the United Kingdom. (B 8555)

TOLLEY'S ESTATE DUTY 1974;

Completely revised, including an appendix with the relevant provisions of the Second Finance Bill, 1974.
by L. J. P. Livens. Tolley Publishing Company, Croydon, 1974. vi + 78 pp., £1.75.
Quick-reference guide to the estate duty legislation as it applies to deaths on or before November 12, 1974. The Second Finance Bill 1974 proposed the introduction of the capital transfer tax which will replace the estate duty. (B 8752)

IFS CONFERENCE ON FISCAL POLICY AND THE ENVIRONMENT.

Institute for Fiscal Studies, London, 1974. 108 pp. Institute for Fiscal Studies, Publication No. 11, November, 1974.
Compilation of papers and discussions from conference on Fiscal Policy and the Environment convened by the Institute for Fiscal Studies on May 3, 1974. The papers reproduced deal with the fiscal aspects of pollution control and resource use and were contributed by Judith Marquand, Norman Lee, J. R. C. Lecomber, Richard Scorer, and David Pearce. (B 8658)

SIMON'S TAX CASES 1974,

R. N. G. Harrison and J. Jeffrey-Cook, consulting editors; R. Krishnan, editor. Butterworths, London, 1975. 579 pp.
Compilation of 1974 tax cases. (B 8759)

UNITED STATES OF AMERICA

TAX LOOPHOLES: THE LEGEND AND THE REALITY;

2nd edition, by R. A. Freeman. American Enterprise Institute for Public Policy Research, Washington, D.C., 1973. 91 pp.
Hoover Institution Studies, No. 40.
Study which reviews the exemptions, exclusions, deductions, and credits in the federal income tax that allow about half of all personal income in the U.S.A. to remain untaxed. (B 8592)

1975 EDITION — FEDERAL ESTATE AND GIFT TAXES EXPLAINED

including Estate Planning;
1975 edition. Commerce Clearing House, Inc., Chicago, 1975. 328 pp., $7.00.
This annual publication covers transfers subject to federal estate and gift tax laws and explains how to report such transfers on official forms. (B 8779)

VIETNAM

RISKS AND REWARDS IN VIETNAM'S MARKETS:

Business approaches to North and South Vietnam. Busines International Asia/Pacific Ltd., 1974. iii + 226 pp.
Business International's research on Vietnam (North and South) examines existing and future trade and business opportunities against the background of both nations' rich potential. As a practical guide, it brings to focus an array of business options in the light of the two governments' policies, plans and objectives. (B 50031)

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V. J. GANGADIN *:

FISCAL INCENTIVES IN GUYANA

INTRODUCTION

Guyana is a developing economy potentially rich in minerals and forest products. With an area of 89,000 square miles, less than 20% of it is economically exploited. Its main exports are sugar including by-products, rice, bauxite and alumina, and timber. Within the past year, two large European Corporations have been engaged in off-shore search for oil.

As a member of the Third World Group, Guyana's economic policy, as expressed by the Minister of Finance in his 1975 Budget Speech on 9th December, 1974, is "ownership and control by the people through their Government." This, he added, is becoming more and more the factor that would determine the economic future of Guyana.

A few years ago an old established mining undertaking was nationalised while a more recently established mining company was nationalised at the beginning of 1975. The Government of Guyana has recently announced that it intends to nationalise an old established sugar company controlled in the United Kingdom and arrangements are being made for early negotiations.

Guyana is also a member of the Caribbean Common Market (CARICOM) with Jamaica, Trinidad and Tobago, and Barbados and other smaller Caribbean Islands through which members have adopted a common external tariff.

Fiscal incentives at the present time are not uniform throughout the CARICOM area but plans are being prepared to unify the system of incentives that are to obtain in the future among member countries. This, it is anticipated, is likely to assume a more liberal policy toward the grant of fiscal incentives because of a greater number of less developed countries (LDC) that would be involved in the community than the number of the more developed countries (MDC).

In the meantime foreign investors willing to invest capital in the CARICOM area must have regard to the economic policy of each country separately to ensure that their investments enjoy some measure of security and stability for the future, having regard to current yield of profits on their investments. The Guyana Government, so far as is known, is willing to enter into consortiums with foreign undertakings willing to invest in certain enterprises in Guyana provided the Government holds controlling interest.

Fiscal incentives in Guyana are offered principally in four ways, i.e. (A) Tax Holiday; (B) Accelerated Depreciation Allowances; (C) Certain Special Provisions affecting certain types of Undertaking; (D) Duty Free imports of Machinery and Equipment and Building Materials for use in enterprises established for the promotion of new industries or for the expansion of existing industries.

A. TAX HOLIDAY

1. *General Scheme*

Tax holiday is granted under the Income Tax (In Aid of Industry) Act. The purposes of this Act are to encourage the establishment or development of industries in Guyana and to make provision for relief

* Of Barcellos, Gangadin & Co., Certified Accountants, Georgetown, Guyana.

from income tax to corporations establishing or developing industries and for purposes incidental to or connected with those purposes. Tax holiday is not granted to individuals or partnerships, but relief is granted to them by way of accelerated depreciation allowances in the years in which investments are made in the construction of industrial buildings or the acquisition of equipment and plant and machinery.

Where in the opinion of the Minister of Finance the trade or business of a corporation, (other than a gold or diamond mining corporation) is wholly of a developmental or risk-bearing nature and is likely to be instrumental to the development of the resources of Guyana and beneficial to the country, the Minister may grant to the corporation a tax holiday for a period not exceeding five years commencing from a date when normal commercial production begins.

A corporation may also be granted a tax holiday in respect of a specific business which falls within the purview of "developmental or risk-bearing nature", although it carries on other businesses which are outside of that purview. In this event a corporation is required to account separately for its tax-holiday profits and to keep records for this purpose satisfactory to the Commissioner of Inland Revenue.

2. *Depreciation Allowances*

In ascertaining the tax-holiday profits of a corporation during the period of exemption, no account is taken of depreciation allowances. This principle gives an added advantage to a corporation since by deducting these allowances the quantum of the tax-exempt profits would have been less than if these were to be deducted for tax purposes.

A corporation is allowed to claim in the years immediately following the end of the tax-holiday period full depreciation allowances on all machinery and equipment and industrial buildings which were actively in use at the end of the tax holiday period. The profits which become taxable in the years following the tax holiday period are therefore reduced by the amount of the depreciation allowances claimed annually on the equipment and building which were in use during the tax-holiday period and which were actively in use on the day the tax-holiday period ended.

Depreciation allowance on Industrial Buildings and Plant and Machinery is divided into two categories namely: "Initial Allowance" and "Annual Allowance." In the year of *construction* of an industrial building or in the year of *acquisition* of any plant or machinery an "Initial Allowance" is granted in respect of each item in addition to a year's "Annual Allowance." In subsequent years until write-off, disposal or scrapping, an annual allowance may be claimed. The rates are as follows:

	Initial Allowance %	*Annual Allowance* %
Buildings	10 on Cost	2 on Cost
Plant & Machinery	40 on Cost	*10 on Cost (1st year) *10 on Cost reducing value after
Motor Vehicles	40 on Cost	*25 on Cost (1st year) *25 on Cost reducing value after

* 10% average rate. This may be more or less depending on type of equipment and industry in which it is used.

The abovementioned rates of depreciation are claimable on items in active use at the end of a tax holiday period in the years

following. Initial allowance and first year annual allowance are claimable in the year immediately following the end of the tax holiday period and annual allowances yearly thereafter.

3. *Balancing Allowances and Balancing Charges*

Where any of the abovementioned items on which Initial and Annual Allowances are claimable are disposed of, or scrapped any resulting loss may be claimed as a balancing allowance deductible from taxable profits. On the other hand if a profit results on disposal it is added to taxable profits as a balancing charge in computing tax payable. The difference between the amount recovered on disposal (or scrapping of a unit) and the written down value immediately before its disposal is deemed to be a balancing allowance or a balancing charge.

Where a unit is disposed of at an amount in excess of its cost the balancing charge is limited to the total amount of initial and annual allowances already granted. The surplus realised above cost of the unit is taxable as a capital gain.

Example

	Unit A $	*Unit B* $	*Unit C* $
Cost	100	100	100
Initial & Annual Allowance	60	60	60
Written down value	40	40	40
Sold for	20	99	120
Balancing Allowance	20	—	—
Balancing Charge	—	59	60
Capital Gain	—	—	20

4. *Dividends paid out of Tax-Holiday Profits*

A corporation may within the tax-holiday period and within two years of its expiration distribute to its shareholders all of its tax-holiday profits free of tax. Shareholders are not taxable on such dividends received if distributed by the corporation within the time stipulated.

The corporation, however, must be one which is incorporated under the Companies Act of Guyana notwithstanding the fact that its shareholders are not resident in Guyana.

As a rule, the Government of Guyana does not grant tax-holiday status to a corporation incorporated or controlled outside of Guyana. And if it does grant such a corporation tax holiday status, the corporation, under the Companies Act may not distribute Guyana dividend since it would be deemed to distribute dividends from the country of its incorporation or control.

5. *Corporation Tax and Income Tax*

Before 1970, corporations other than insurance companies were assessed to income tax at a flat rate of 45% on their chargeable income and whenever dividends were distributed out of profits charged to income tax, shareholders who received dividends were given prorated credits for the company tax as a tax suffered at source, that is, after the dividends received were aggregated with all other income of shareholders for computing their tax payable. Since 1970 corporations have been subject to tax on their chargeable income as follows:

	Corporation Tax %	*Income Tax* %	*Total* %
Commercial Companies	35	20	55
Non-Commercial Companies *	25	20	45
Life Insurance Companies	—	45	45

* include all manufacturing or industrial corporations.

Since the introduction of corporation tax in 1970, credits are only given to shareholders upon receipt of dividends, of the income tax portion of the total tax paid by a corporation. Provision is however made in the Corporation Tax Act to exempt a corporation from paying corporation tax during a tax holiday period. And it follows that dividends paid out of tax-holiday profits would be wholly exempt from income tax in the hands of shareholders.

B. ACCELERATED DEPRECIATION ALLOWANCES

As pointed out before, tax holiday is not granted to individuals and partnerships. But they are granted relief in the same way as corporations which are granted relief in the form of accelerated depreciation allowances under the provisions of the Income Tax (In Aid of Industry) Act, when they carry on certain specified types of business. Initial and Annual Allowances with their concomitants, "Balancing Allowances and Balancing Charges", which are explained in Part A of this paper are granted to all tax-payers regardless of their status, provided they carry on any of the following types of business:

(i) Sugar Manufacturing and Refining;
(ii) Rum Distilling;
(iii) The working of any mine (other than gold or diamond mining) oil well, or other mineral deposits and the manufacture, refining and processing of oil and other minerals and their derivatives;
(iv) The manufacture of —
glass, paper, nails, screws, bolts and metallic fastners of all kinds, plastic goods, hosiery, textiles, hats, leather, leather goods and footwear, cement, fertilizers, bricks, tiles and concrete blocks for building purposes, packages and crates, ice, edible oils, fats, soaps and allied products, spirit compounds, bay rum and perfumed spirits, methylated spirits, furniture matches, fibre, gas and flavouring extracts, tobacco, cigarettes, tobacco snuff, cans, radios, condiments, preserves, ply-wood, veneers, wood-pulp, bags, twine, bread, biscuits, drugs, candies, confectionery, aerated waters, wine, cordials, corn-meal, flour, hollow-ware, utensils, and other hardware of metal and clothing, pigments, paints, varnishes, painters' fillings, and painting products, radio transmitters and television sets;
(v) Breweries;
(vi) Sawmilling;
(vii) Logging;
(viii) Hotel providing mainly for the accommodation of tourists;
(ix) Dairy Husbandry;
(x) Ricemilling;
(xi) Canning Industry;
(xii) Production of Electric Power;
(xiii) Shipbuilding and repairing of ships;
(xiv) Foundries, Machine Shops and Woodworking;
(xv) Transport Undertakings;
(xvi) Dock Undertakings;
(xvii) Kiln-drying and processing of lumber.

The effects of the grant of Initial Allowances and Balancing Allowances are to relieve tax-payers in years of heavy capital commitments from the obligation to meet heavy taxes and to grant relief of the write-off of fixed assets up to 100% of cost upon their premature retirement or disposal. Normally, this is not the case in other respects. A tax-payer who does not

carry on one of the types of business listed above must pay his normal tax on profits after the grant of an annual wear and tear allowance even though he may be heavily committed in a year because of the acquisition of additional capital assets. He correspondingly does not enjoy the allowance of a deduction from profits of the whole cost of fixed assets which are retired or disposed of before a full write-off is given.

C. SPECIAL PROVISIONS RELATING TO:

(a) Mines, Oil Wells, etc.
(b) Patents
(c) Scientific Research
(d) Approved Mortgage Finance Company
(e) Gold or Diamond Mining Company

(a) *Mines, Oil Wells, etc.*

Exploiters of natural resources which are subject to exhaustion or depletion from working, and which involve large initial capital outlay for the acquisition of concessions and for search, survey and testing, etc. prior to commercial exploitation are entitled to the following allowances:

1. *Under the Income Tax Act*

An annual allowance, as the Commissioner of Inland Revenue may think just and reasonable, as representing the amount by which the value of any mine, oil well or forest grant has been diminished by reason of exhaustion or by way of depletion.

In practice the method of computing the allowance may be agreed with the Commissioner of Inland Revenue by a taxpayer prior to the commencement of actual commercial exploitation. While the Income Tax Act states no express method of computation, there is provision of a specified method of calculating an annual allowance on capital expenditure under the provisions of the Income Tax (In Aid of Industry) Act which no doubt would normally be adopted by the Commissioner of Inland Revenue in the absence of a method agreed to initially. The method is explained under (2) hereunder.

2. *Under the Income Tax (In Aid of Industry) Act*

By the provisions of the Income Tax (In Aid of Industry) Act, an initial allowance at the rate of 10% is granted in any year in which capital expenditure is incurred by any person in connection with the working of a mine, oil well or other source of mineral deposits of a wasting nature. Such capital expenditure includes expenditure —

(i) on searching for or on discovering and testing deposits or winning access thereto; or
(ii) on the construction of any works which are likely to be of little or no value when the source is no longer worked;

but excludes any expenditure —

(i) on the acquisition of the site of the source or of the site of any such works or of rights over any such site, or on the acquisition of deposits or rights over such deposits;
(ii) on the acquisition of plant or machinery; or on works constructed wholly or mainly for processing the raw product.

The exclusion is obvious since in the case of exclusion (i) above a depletion or exhaustion allowance is granted under the Income Tax Act and in the case of (ii), Initial and Annual Allowances are granted at the rates previously specified for Industrial Buildings and Plant & Machinery. In addition to the 10% Initial Allowance an "Annual Allowance" is granted in respect of each year of working in respect

of such capital expenditure calculated as follows:

$$\frac{\text{actual output for year}}{\text{actual output for year + potential future output of the source estimated at end of year}} \times \frac{\text{Residue of Expenditure}}{1}$$

or 1/20 of Residue of Expenditure whichever is the greater.

Where the source ceased to be worked the person carrying on the business may elect to revise his claim for Annual Allowances for the five years immediately preceding the year in which work ceases on a revision of "potential future output" based on the total actual output covering the year of cessation and the five years which immediately preceded it. Refunds of tax will be made for the relevant years if the taxpayer's revised claims for annual allowances result in decreased taxable profits.

Upon sale or disposal of the source of the mine or oil well the principle of balancing allowance and balancing charge, already explained, would apply.

Where a person incurs such capital expenditure and subsequently sells the source of mineral deposit before actually working the same, the buyer shall be deemed to have incurred the same amount of the capital expenditure or the amount he paid the seller, whichever is the lower. The buyer will then be entitled to all the allowances hitherto enjoyed by the seller. The seller, of course, will be balance-charged for any gains arising from the disposal of the mine or be granted a balancing allowance on any loss incurred.

(b) *Patents*

Where a person incurs capital expenditure on the acquisition of patent rights which are to be used in his trade or business, he is entitled to an annual allowance of one-fourteenth of the capital expenditure provided that where the period of user of such rights is for a specified period, the annual allowance to which he is entitled is to spread equally over that period.

The principle of balancing allowance and balancing charge previously explained applies on the disposal of patent rights. If the sale price exceeds the unallowed balance of the capital expenditure a balancing charge will be made to the seller or if the sale price is less than the unallowed balance, a balancing allowance will be granted.

Where only a part of patent rights acquired is sold, the amount of the sale price is deductible from the written down balance of the capital expenditure immediately before the sale for the purpose of determining the amount on which future annual allowance is to be computed. The amount thus ascertained is allowable equally over the unexpired period of the patents rights acquired.

Any profits accruing to a *resident* person from the sale of patent rights, having regard to any balancing charge which may have already been made, are subject to income tax and corporation tax. Such profits are taxable in equal proportion over a period of six years counting the year of sale as one, unless the taxpayer elects to be charged on the whole of the profits in the year of sale. Where such profits accrue to a non-resident person, however, the position is exactly the reverse. That is to say, the whole of the profits arising from the sale of patent rights are taxable in the year of sale unless the non-resident person elects to be taxed over a period of six years. It should be noted that but for these special provisions, such profits would have been chargeable to Capital Gains Tax and not Income Tax or Corporation Tax.

Where a person receives a lump sum payment as royalty or for hire of patent rights and other such like receipts, he may elect to be assessed proportionately over a period of six years on the amount received where the hire period extends for a period over six years. Where the hire period is for two years or more, but not exceeding six years, he may elect to be assessed over the actual period proportionately on the amount received.

(c) *Scientific Research*

In Guyana expenses incurred in scientific research are not normally an admissible deduction in arriving at taxable profits. Only those expenses which are wholly incurred in production of income in each year are admissible deductions. Under the provisions of the Income Tax (In Aid of Industry) Act, however, special provisions are made for allowances to be granted in respect of expenditures incurred in scientific research.

Revenue expenditure incurred in scientific research including contributions to scientific research associations and institutes, or scientific colleges or universities as approved by the Minister is allowable as deductions provided the expenditure is related to the trade or business of the taxpayer.

In the case of capital expenditure a deduction of sixty per cent is allowed in respect of the year in which the expenditure is incurred and an annual allowance of ten per cent of the expenditure for the following four years is granted provided the expenditure is related to the taxpayer's trade or business.

(d) *Approved Mortgage Finance Company*

With the view of encouraging the development of housing projects, the Government of Guyana has passed legislation to exempt from income tax and corporation tax the profits of any mortgage finance company which is approved by the Minister of Finance.

There are no guiding regulations explaining the terms and conditions precedent to the grant of approval but in practice the rate of interest at which the company may lend is limited and must not be exorbitant and loans made to individual householders must be long term.

The Company is required, if tentatively approved, to enter into an agreement with the Government of Guyana, which agreement would be laid before the National Assembly for formal approval. The agreement would provide in accordance with the provisions of the Income Tax Act, inter alia, the exemption from tax of the following:

(i) the income of the company
(ii) dividends paid by the company to shareholders
(iii) the interest paid by the company on any loan raised for the purpose of its operations.

(e) *Gold or Diamond Mining Companies*

In the ascertainment of the taxable income of a Gold or Diamond Mining Company in any year, the whole of the expenditure incurred in any mine on work of a developmental nature is allowable as a deduction. But such an expenditure does not include expenditure on shafts, main tunnels and haulage ways or other such work of a capital nature.

A write off of twenty per cent per annum is granted on exploration expenditure and expenditure incurred on shafts, main tunnels and haulage ways or other such work of a capital nature until it is completely written off. In addition to this, a write off of twenty per cent per annum is granted on any expenditure incurred for the acquisition

of land in which the mine is situated or for the acquisition of any right by way of lease or concession over such land. A company may, however, elect to claim write off at a rate less than twenty per cent per annum or to use another method of write off as agreed by the Commissioner of Inland Revenue.

Any profit or loss on disposal of any land, concession or lease or any other asset of the company is deemed a *revenue* profit or loss as the case may be.

Losses incurred in any year are fully allowed as set off against the profits of future years until completely recouped. In the case of companies other than gold or Diamond Mining Companies while previous losses may be carried forward and set off against subsequent profits until fully recouped, only a proportion of the losses is allowed as a set off from year to year of profits.

D. DUTY FREE IMPORTS

Under the Industries Aid and Encouragement Act, the Minister of Finance is permitted to grant to any person a licence to import or clear from a bonded warehouse free of any customs import duties and taxes certain specified items, where the Minister is satisfied that it is desirable so to do for the purpose of establishing a new industry or for the purpose of developing an existing industry.

The following items may be imported free of customs import duties and taxes if a licence is granted by the Minister of Finance:

(i) Machinery & Appliances
(ii) Launches, tugs, barges & pontoons (where similar suitable vessels cannot be obtained in Guyana)
(iii) Building Materials for the erection of mills or factories
(iv) Building Materials for the erection of store houses for items imported duty free
(v) Building Materials for hotels providing mainly for the accommodation of tourists and such items of furniture and equipment as may be approved.

In the case of a mining undertaking the period of exemption may extend to ten years while in other cases it may extend up to five years.

No item which has been imported duty free may be sold without the payment by the importer of the full import duties and taxes that would have been payable at the time of importation. The Comptroller of Customs & Excise may, however, exempt the importer from the payment of duties where he is satisfied that the item was sold to a person who holds a duty free licence or it was sold after three years from the date on which such item entered for use in Guyana.

DR. ERWIN SPIRO:

THE 1975 INCOME TAX CHANGES IN SOUTH AFRICA

The former Minister of Finance, Dr. Diederichs, has meanwhile been elevated to the high office of State President. The first Budget of his successor, Senator O. P. F. Horwood, does not bring any revolutionary changes, but should, in the Senator's own words, be moderately stimulating, notwithstanding the prevailing rate of inflation. There are the usual allowances and further allowances. Except for the loan levy in the case of certain companies, there are no increases in tax. The Minister referred to the Standing Commission on Taxation the problems connected with the effects of inflation on business accounts and the taxation of the income of married women. He also announced that the Department was at present engaged in an in-depth study of company taxation which would, however, not be completed for some time.

EXEMPTIONS

A lump sum payment by an employer to an employee on the latter's retirement is on certain conditions exempt from income tax up to an amount of R9 000 which is to be raised to R12 000. Likewise the maximum tax exempt lump sum benefit paid for a pension, provident or retirement annuity fund will be raised from R30 000 to R40 000.

ALLOWABLE DEDUCTIONS

Contributions to pension and retirement annuity funds. In view of the need to make adequate provision for old age and in order to encourage saving, the maximum deductions of R1 250 and R2 500 respectively in favour of taxpayers contributing to pension and retirement annuity funds are raised to R1 500 and R3 000.

Married woman's earnings. This being the year of the woman and also in view of the rise in prices, the deduction of presently R600 from the earnings of a married woman for the purposes of determining the husband's taxable income in which the wife's income is included will be increased to R750.

Housing of employees. The maximum deduction of R1 000 in respect of expenditure incurred by an employer on the erection of dwellings for his employees will be increased to R2 500 per dwelling.

Investment allowances. The existing investment allowances amount to 15 per cent on factory buildings and 25 per cent on machinery in the metropolitan areas and may be increased to 40 per cent and 60 per cent respectively in the economic development areas. It is now proposed that all these allowances be increased by five per cent. A manufacturer will thus be in a position to write off, over the lifetime of the asset, 120 per cent of the cost of a factory building and 130 per cent of the cost of machinery while in the economic development areas these percentages may be increased to 145 per cent and 165 per cent respectively. The increased allowances will apply to buildings the erection of which is commenced and to machinery and plant taken into use on or after March 27, 1975. The allowances will expire on June 30, 1979 (instead of on June 30, 1978).

Benefication of minerals. Accepting suggestions of the Economic Advisory Council

the Minister proposed the following incentives, to be granted selectively on the recommendation, in each individual case, of an interdepartmental committee:

(a) an investment allowance up to a maximum of 20 per cent of the cost of machinery and 15 per cent of the cost of buildings in a beneficiation plant not connected with a mining company, additional to the general investment allowance granted to all manufacturers;

(b) a similar investment allowance in respect of the beneficiation plant of a mining company where the company undertakes advanced beneficiation, additional to the 100 per cent write-off of capital expenditure already granted to such mining companies.

These allowances are over and above any tax concessions which may be accorded under the decentralization scheme. The allowances will apply to new machinery taken into use and to buildings the erection of which is commenced on or after March 27, 1975.

Bonuses for national servicemen. The bonus from R750 to R3 600 which a national serviceman may receive at the end of 18 or 24 months training will be spread over the whole period of training and taxed accordingly.

Purchase under the Bantu Trust and Land Act. An abnormal accrual of income arising from the sale of a farm under the Bantu Trust and Land Act of 1936 is not to be included in the ordinary taxable income of the farmer which would have the effect of increasing his rate of tax, but will be taxed separately at a reduced rate.

ABATEMENTS

The present abatement of R400 for persons over 60 years of age will be increased to R600. A person over 60 years will thus only become liable for income tax when his income exceeds R1 800 per annum for married and R1 300 for unmarried persons, and the benefit will only disappear — when reduced by R2 for every R10 by which the taxpayer's income exceeds R5 000 — as soon as a taxpayer's income reaches R14 000 for a married person or R13 000 for a single person.

LOAN LEVIES

It is good news that the 1969 loan levy will be repaid during the financial year 1975/1976. But it is not so good news that the loan levy on companies which are subject to a loan levy will now in all instances be 5 per cent. The Minister thought that the increase involved was justified as the rate of the South African company tax was lower than that in most comparable countries.

UNDISTRIBUTED PROFITS TAX

While not seeing his way clear to accepting requests for the abolition of the Undistributed Profits Tax, the Minister thought that there was a case for assisting companies in making adequate provision for the replacement of capital assets and for further capital developments. The plough-back allowance on profits other than dividends will, therefore, be increased from 45 per cent to 55 per cent while for public companies only the plough-back on dividend receipts will be increased from 25 per cent to 35 per cent. In the view of the Minister, the first concession will practically relieve operating companies from the tax, and the second will give greater flexibility to public financial companies in re-investing dividend income. Because of

the danger of the use of private companies for tax avoidance the Minister refused to grant them a similar concession.

RATES

Apart from the loan levy increases in the case of companies referred to, the rates have not changed and are as follows:

INCOME TAX

Persons other than Companies. Persons other than companies are, in respect of the year of assessment ending February 29, 1976 or June 30, 1976, subject to the tax at the rates contained in the two tables annexed hereto. Provided the basic tax is R150 or more, there is added a *surcharge* of 5 per cent. In the case of a natural person who is over 60 years of age on the last day of the year of assessment and whose taxable income for that year is R5 000 or less the surcharge is not payable at all. The basic tax is calculated on the taxable amount, that is the amount remaining after deducting from taxable income the abatements applicable. There is no *loan levy.* Due regard being had to the *surcharge* of 5 per cent, the maximum marginal rate is now sixty-three per cent.

Companies. The rates for companies in respect of taxable income derived in the Republic and taxable income derived in South-West Africa for the year of assessment, that is the financial year ending during the twelve-month period from April 1, 1975, to March 31, 1976, are as follows:

(i) *taxable income derived otherwise than from mining:* if derived in South-West Africa 35 cents per R1 and if derived elsewhere than in South-West Africa — that is in the Republic — 40 cents per R1. To the tax so determined is added a *surcharge* of 2½ per cent of such tax and a *loan portion* of 5 per cent of such tax. The effective rate is thus 37.625 cents and 43 cents in the rand respectively.

(ii) *taxable income derived from gold mining:* on any mine other than a post-1966 gold mine an amount determined in accordance with one of the formulae provided for plus a *surcharge* (which is not payable in the case of certain assisted gold mines) equal to 5 per cent of the said amount and a *loan portion* equal to 5 per cent of the said amount; on a post-1966 gold mine an amount determined in accordance with one of the formulae provided for plus a *surcharge* of 5 per cent of the said amount and a *loan portion* of 5 per cent.

(iii) *taxable income in the form of recoupments of capital expenditure accruing to companies which are or have been gold mining companies:* the average rate of tax as determined in accordance with the Act or 35 cents per R1 whichever is higher.

(iv) *taxable income from mining operations (other than mining for gold, diamonds or natural oil):* where derived in South-West Africa 35 cents per R1 and where derived elsewhere than in South-West Africa — that is in the Republic — 40 cents per R1. To the tax so determined is added a *surcharge* of 2½ per cent of such tax and a *loan portion* of 5 per cent of such tax.

(v) *taxable income from mining for diamonds:* 45 cents per R1 plus a *surcharge* of 10 per cent of such amount and a *loan portion* of 5 per cent of such tax.

NON-RESIDENT SHAREHOLDERS' TAX

The non-resident shareholders' tax is 15 per cent of the amount of the dividend or interim dividend in question.

UNDISTRIBUTED PROFITS TAX

The undistributed profits tax is 25 cents on every rand of the amount by which the distributable income as defined exceeds the amount of dividends distributed during the specified period as defined.

NON-RESIDENTS TAX ON INTEREST

The non-residents tax on interest is 10 per cent on the amount of the interest in question.

ANNEXURES

TABLE I

Taxable Amount	*Rates of tax in respect of married persons*
Where the taxable amount—	
does not exceed R1 000	9 per cent of each R1 of the taxable amount;
exceeds R1 000 but does not exceed R2 000	R90 plus 10 per cent of the amount by which the taxable amount exceeds R1 000;
„ R2 000 „ „ R3 000	R190 plus 10 per cent of the amount by which the taxable amount exceeds R2 000;
„ R3 000 „ „ R4 000	R290 plus 11 per cent of the amount by which the taxable amount exceeds R3 000;
„ R4 000 „ „ R5 000	R400 plus 12 per cent of the amount by which the taxable amount exceeds R4 000;
„ R5 000 „ „ R6 000	R520 plus 14 per cent of the amount by which the taxable amount exceeds R5 000;
„ R6 000 „ „ R7 000	R660 plus 16 per cent of the amount by which the taxable amount exceeds R6 000;
„ R7 000 „ „ R8 000	R820 plus 18 per cent of the amount by which the taxable amount exceeds R7 000;
„ R8 000 „ „ R9 000	R1 000 plus 20 per cent of the amount by which the taxable amount exceeds R8 000;
„ R9 000 „ „ R10 000	R1 200 plus 22 per cent of the amount by which the taxable amount exceeds R9 000;
„ R10 000 „ „ R11 000	R1 420 plus 24 per cent of the amount by which the taxable amount exceeds R10 000;
„ R11 000 „ „ R12 000	R1 660 plus 26 per cent of the amount by which the taxable amount exceeds R11 000;
„ R12 000 „ „ R13 000	R1 920 plus 28 per cent of the amount by which the taxable amount exceeds R12 000;
„ R13 000 „ „ R14 000	R2 200 plus 30 per cent of the amount by which the taxable amount exceeds R13 000;
„ R14 000 „ „ R15 000	R2 500 plus 32 per cent of the amount by which the taxable amount exceeds R14 000;
„ R15 000 „ „ R16 000	R2 820 plus 34 per cent of the amount by which the taxable amount exceeds R15 000;
„ R16 000 „ „ R17 000	R3 160 plus 36 per cent of the amount by which the taxable amount exceeds R16 000;

Taxable Amount	*Rates of tax in respect of married persons*
„ R17 000 „ „ R18 000	R3 520 plus 38 per cent of the amount by which the taxable amount exceeds R17 000;
„ R18 000 „ „ R19 000	R3 900 plus 40 per cent of the amount by which the taxable amount exceeds R18 000;
„ R19 000 „ „ R20 000	R4 300 plus 42 per cent of the amount by which the taxable amount exceeds R19 000;
„ R20 000 „ „ R21 000	R4 720 plus 44 per cent of the amount by which the taxable amount exceeds R20 000;
„ R21 000 „ „ R22 000	R5 160 plus 46 per cent of the amount by which the taxable amount exceeds R21 000;
„ R22 000 „ „ R23 000	R5 620 plus 48 per cent of the amount by which the taxable amount exceeds R22 000;
„ R23 000 „ „ R24 000	R6 100 plus 50 per cent of the amount by which the taxable amount exceeds R23 000;
„ R24 000 „ „ R25 000	R6 600 plus 52 per cent of the amount by which the taxable amount exceeds R24 000;
„ R25 000 „ „ R26 000	R7 120 plus 54 per cent of the amount by which the taxable amount exceeds R25 000;
„ R26 000 „ „ R27 000	R7 660 plus 56 per cent of the amount by which the taxable amount exceeds R26 000;
„ R27 000 „ „ R28 000	R8 220 plus 58 per cent of the amount by which the taxable amount exceeds R27 000;
„ R28 000	R8 800 plus 60 per cent of the amount by which the taxable amount exceeds R28 000.

TABLE II

Taxable Amount	*Rates of tax in respect of persons who are not married persons*
Where the taxable amount—	
does not exceed R1 000	12 per cent of each R1 of the taxable amount;
exceeds R1 000 but does not exceed R2 000	R120 plus 12 per cent of the amount by which the taxable amount exceeds R1 000;
„ R2 000 „ „ R3 000	R240 plus 13 per cent of the amount by which the taxable amount exceeds R2 000;
„ R3 000 „ „ R4 000	R370 plus 14 per cent of the amount by which the taxable amount exceeds R3 000;
„ R4 000 „ „ R5 000	R510 plus 17 per cent of the amount by which the taxable amount exceeds R4 000;
„ R5 000 „ „ R6 000	R680 plus 20 per cent of the amount by which the taxable amount exceeds R5 000;
„ R6 000 „ „ R7 000	R880 plus 23 per cent of the amount by which the taxable amount exceeds R6 000;
„ R7 000 „ „ R8 000	R1 110 plus 26 per cent of the amount by which the taxable amount exceeds R7 000;
„ R8 000 „ „ R9 000	R1 370 plus 28 per cent of the amount by which the taxable amount exceeds R8 000;

Taxable Amount					*Rates of tax in respect of persons who are not married persons*
„	R9 000	„	„	R10 000	R1 650 plus 30 per cent of the amount by which the taxable amount exceeds R9 000;
„	R10 000	„	„	R11 000	R1 950 plus 32 per cent of the amount by which the taxable amount exceeds R10 000;
„	R11 000	„	„	R12 000	R2 270 plus 34 per cent of the amount by which the taxable amount exceeds R11 000;
„	R12 000	„	„	R13 000	R2 610 plus 36 per cent of the amount by which the taxable amount exceeds R12 000;
„	R13 000	„	„	R14 000	R2 970 plus 38 per cent of the amount by which the taxable amount exceeds R13 000;
„	R14 000	„	„	R15 000	R3 350 plus 40 per cent of the amount by which the taxable amount exceeds R14 000;
„	R15 000	„	„	R16 000	R3 750 plus 42 per cent of the amount by which the taxable amount exceeds R15 000;
„	R16 000	„	„	R17 000	R4 170 plus 44 per cent of the amount by which the taxable amount exceeds R16 000;
„	R17 000	„	„	R18 000	R4 610 plus 46 per cent of the amount by which the taxable amount exceeds R17 000;
„	R18 000	„	„	R19 000	R5 070 plus 48 per cent of the amount by which the taxable amount exceeds R18 000;
„	R19 000	„	„	R20 000	R5 550 plus 50 per cent of the amount by which the taxable amount exceeds R19 000;
„	R20 000	„	„	R21 000	R6 050 plus 52 per cent of the amount by which the taxable amount exceeds R20 000;
„	R21 000	„	„	R22 000	R6 570 plus 54 per cent of the amount by which the taxable amount exceeds R21 000;
„	R22 000	„	„	R23 000	R7 110 plus 56 per cent of the amount by which the taxable amount exceeds R22 000;
„	R23 000	„	„	R24 000	R7 670 plus 58 per cent of the amount by which the taxable amount exceeds R23 000;
„	R 24 000	. . . . .			R8 250 plus 60 per cent of the amount by which the taxable amount exceeds R24 000.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

EGYPT

The 1974 Investment Law*

In the last few years Egypt has greatly liberalised its attitude towards foreign investment. Throughout the sixties foreign investment in Egypt was discouraged but recently the government's policy has turned full circle and now conscious efforts are being made to attract foreign investment. The government's changing attitude was witnessed by the introduction in 1971 of Law No. 65 regulating Arab and foreign investment and duty-free zones; this Law has now been replaced by Law No. 43 of 1974 on the System of Investing Arab and Foreign Capital and the Duty-Free Zones, the provisions of which are discussed below.

Fields open to Arab and foreign investors in Egypt (Articles 3 and 4)

Arab and foreign investment in Egypt will be welcomed in those fields which relate to the economic and social development of the country, provided that such investment is in projects which require the latest international expertise or call for foreign capital in the following areas:

1. industry, mining, energy, tourism, transport;
2. reclamation of barren and desert land, livestock breeding and water conservation;
3. housing and urban expansion;
4. certain activities of investment companies, banks and re-insurance companies.

Special priority will be given to investment in re-exportation projects, projects aimed at re-activating tourism, projects which reduce the need for import of essential commodities and projects requiring advanced technical expertise.

In general, investment must be in association with Egyptian public or private capital. However, Arab and foreign capital may be invested independently in investment and business banks whose operations are carried out in free currencies and which are branches of organisations with headquarters abroad and independent investment of Arab and foreign capital will also be allowed in the other areas mentioned above if the Board of the Authority for Investment of Arab and Foreign Capital and the Duty-Free Zones (which is the body charged with implementing the Law) has given its approval to such investment. Besides this, Arab capital may be invested independently in housing projects erected for investment purposes.

Protection of investments (Article 7)

The law gives express protection against nationalisation or confiscation of investment projects and states that the seizure or freezing of funds invested in such projects may only be effected through normal legal channels.

Exemptions (Articles 10, 13, 16, 17, 18)

Profits from investment projects will be exempted from the taxes on industrial and commercial profits and shares in projects and dividends on profits reinvested in such projects from the proportional tax and the tax on income from movable property for a period of five years from the first fiscal year following the commencement of activi-

* This note was submitted by Mrs. Elizabeth A. de Brauw-Hay, LL.B., Senior Associate at the International Bureau of Fiscal Documentation.

ties or production. This period may be extended to eight years if the investment project concerned is regarded as of particular importance to the country.

Further, profits distributed by an investment project shall be exempt from the general income tax up to a maximum of 5 per cent of the value of the investor's share in the total capital invested and interest on foreign loans to investment projects will also be free from any taxes.

Exemption from customs duties will also be given in respect of machinery, equipment and means of transport required for the setting up of investment projects.

Exchange control provisions will not apply to investment and business banks and reinsurance companies set up under the Law, neither will investment projects under the Law be obliged to conform to the provisions of the Egyptian law on workers' participation in the management of the enterprise.

Transfer of income, capital and profits (Articles 20, 21, 22)

Foreign experts and other personnel may transfer abroad up to fifty percent of remuneration received for their work on investment projects in Egypt.

Capital invested in investment projects may also be re-exported; in general, however, a period of five years must have elapsed since it was brought into Egypt and it must be re-exported in the same currency in which it was introduced. The Law also guarantees the transfer abroad of profits from funds invested in investment projects.

Easing of exchange control provisions and import restrictions (Articles 14 and 15)

Investment projects may open convertible currency accounts with banks in Egypt. The balance of paid-in capital in foreign currency, foreign loans and other funds of an investment project may be paid into such an account along with the proceeds from the visible and invisible exports of such projects. Such accounts may be used to pay for commodity and investment imports required for the running of the project, to meet invisible costs connected with such imports and to pay instalments of foreign loans, interest thereon and other necessary expenses of the project.

Various import restrictions will also be lifted for investment projects so that they may freely import into the country everything that is required for the setting up and operation of the project concerned.

Duty-free zones (Articles 30—57)

The Law authorises the creation of duty free zones in which various kinds of investment projects can be set up. Projects established in duty-free zones will benefit from additional privileges. They will be exempt from all taxes and instead will, in general, pay a nominal one per cent unified annual duty on the value of goods brought into or withdrawn from the zone on the account of the project. The Board of the Authority will determine what rate of unified rate should be paid by projects whose main activities do not relate to entry or withdrawal of goods; this may not, however, exceed three per cent of the value added annually by the project.

Remuneration paid by projects located in duty-free zones to foreign workers which has been subject to the tax on wages and salaries will be exempt from the general income tax.

The provisions of the exchange control laws will not apply to the activities of projects in duty-free zones nor will such projects be subject to customs duties.

Projects operating in duty-free zones must employ mainly Egyptian workers and provide possibilities for them to become skilled workers.

Investment disputes (Article 8)

Various ways are specified for the settlement of disputes arising under the Law. Apart from the possibilities of settlement afforded under conventions between Egypt and the country of the investor or the Convention on the Settlement of Investment Disputes, to which Egypt is a party, the law provides for the dispute being taken to arbitration. The Arbitration Committee would be composed of one representative of each of the parties to the dispute plus a third person to be agreed upon jointly by those two representatives. A majority decision of the Committee will be final and binding on the parties and enforceable against them.

Of course, it is also always open to the parties to the dispute to agree among themselves on another method of settling the dispute in question.

NIGERIA
ADDENDUM

Investment in Nigeria and the Nigerian Enterprises Promotion Decree, 1972 at p. 202, Bulletin XXIX, May No. 5, 1975.

Since the above article was written the 1975/76 Budget proposals have been announced. Among these proposals is one to lower the rate of company tax to 40% and to exempt the first 6,000 Naira of profits from the tax.

INDIA

The Finance Bill 1975 *

INCOME-TAX
PROPOSED CHANGES IN REGARD TO INCOME-TAX ON COMPANIES

1. *Rate of Income-tax*

No major change is proposed except that in the case of closely-held industrial companies whose annual income exceeds. Rs. 2 lakhs, the entire income will be charged to tax at the rate of 60 per cent. At present, the first Rs. 2 lakhs of taxable income suffers tax at 55 per cent and the balance at 60 per cent. (w.e.f. assessment year 1966/67).

2. *Depreciation*

No depreciation shall be allowed in respect of any motor car manufactured outside India and acquired by the taxpayer after 28th February, 1975, unless such motor car is used in the business of running it on hire for tourists. The limitation on the value of indigenous motor cars for depreciation purposes will be removed. Initial depreciation at 20 per cent of the cost of machinery and plant is proposed to be allowed also in respect of the pesticides industry. (w.e.f. assessment year 1976/77).

3. *Provision for Gratuity*

No deduction shall be allowed from taxable income in respect of any reserve or provision set up for the payment of retiring/leaving gratuities to the employees. However, any provision for payment of contribution towards an approved gratuity fund or for payment of gratuity that has become payable during the relevant year shall be allowed. The proposed amendment will be retrospective with effect from the assessment year 1973/74. (w.e.f. assessment year 1973/74).

4. *Interest on Deposits*

15 per cent of any expenditure by way of interest in respect of deposits received by a company (other than a banking or financial company) shall not be allowed as a deduction from taxable income. Deposits shall exclude amounts received from the Central or State Governments or loans from a banking company or financial institution, or any other company. In addition, security deposits received from employees, purchase or sales agents or advances against orders, or by way of subscription to any shares, stocks or debentures, etc. will be excluded. (w.e.f. assessment year 1976/77).

5. *Capital Gains*

Specific provision is being made retrospectively with effect from 1st April, 1974, to provide that sub-section (2) of Section 52 of the Income Tax Act, 1961, which taxes notional capital gains, shall not apply in any case where the full value of the consideration for the transfer of the capital asset is determined or approved by the Central Government or the Reserve Bank of India. (w.e.f. assessment year 1974/75).

6. *Tax Holiday — New Industrial Undertaking/Hotel*

The tax holiday is proposed to be extended

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* This summary has been prepared by Kailash C. Khanna, Chartered Accountant, Calcutta, India.

for a further period of five years, until 31st March, 1981.
The quantum of tax holiday profits in the case of companies is proposed to be raised from 6 per cent to 7.5 per cent per annum of the capital employed during the extended period. Simultaneously, it is proposed to withdraw the exemption from income-tax granted to shareholders in respect of dividends paid by companies out of their tax holiday profits attributable to the extended period. (w.e.f. assessment year 1976/77).

7. *Inter-corporate Dividends*
No income-tax will be charged on inter-corporate dividends received by domestic companies from new companies formed and registered after 28th February, 1975, and engaged almost exclusively in the manufacture or production of fertilisers, pesticides, paper pulp, newsprint and cement. (w.e.f. assessment year 1976/77).

8. *Deduction of Tax at Source*
It is proposed that income-tax on interest would be deductible at source under Section 194A if the aggregate amount of the interest credited or paid or likely to be credited or paid during the financial year exceeds Rs. 400. At present, no deduction of income-tax is made if the interest payable at any one time does not exceed Rs. 400. (w.e.f. assessment year 1975/76).
Deduction of income-tax on capital gains payable to a non-resident company shall be made on the basis of the provision of Section 115 of the Income Tax Act, 1961, and not at the rate of 73.5 per cent laid down in the Finance Act. (w.e.f. assessment year 1975/76).

9. *Wealth-tax*
(a) No wealth-tax is proposed to be charged for a period of five years on investment in equity shares of new companies engaged in priority industries listed in the Ninth Schedule of the Income Tax Act, 1961, provided such shares form part of the initial issue of capital made by the company after 28th February, 1975.
(b) No wealth-tax shall be payable by foreign companies which have no place of business in India, effective retrospectively from the year 1957. (retrospectively w.e.f. assessment year 1957/58).

10. *Gift-tax*
An amendment is proposed whereby the provisions of section 4(1)(a) of the Gift-tax Act, 1958, relating to taxation of deemed gifts, shall not apply to transfers of property if the consideration for the transfer is determined or approved by the Central Government or the Reserve Bank of India. (w.e.f. assessment year 1974/75).

PERSONAL TAXATION

1. It is proposed to increase the tax-free limit of rent allowance from Rs. 300 per month to Rs. 400 per month. (w.e.f. assessment year 1975/76).
2. Leave travel concession — It is proposed to extend the leave travel concession to cover expenses not only for the individual and his spouse and children but also for the individual's dependent parents, brothers and sisters.
It is also proposed to empower the Central Board of Direct Taxes to prescribe exceptions to the existing rule which states that the leave travel assistance should be restricted to the fares payable upto the employee's home district only. (w.e.f. assessment year 1975/76).
3. Higher relief is proposed in respect of

life insurance premia, provident fund contributions etc. on the following basis

100 per cent of the first Rs. 4,000 plus

50 per cent of the next Rs. 6,000 plus

40 per cent of the balance of the qualifying amount will be allowed as a deduction from total income, subject to other existing limits. (w.e.f. assessment year 1976/77).

4. Resident Indians will be entitled to a 50 per cent deduction in respect of remuneration received from a foreign Government or a foreign enterprise for services rendered abroad, subject to certain conditions. For example, in the case of Central or State Government employees, the services outside India must be sponsored by the Government concerned; in the case of others, the tax concession will be available only to "technicians", provided the contract of service has been approved by the Central Government. The tax relief will be available up to a maximum continuous service abroad of 36 months. (w.e.f. assessment year 1975/76).

5. Retrenchment compensation received by a workman under the Industrial Disputes Act, 1947, as also retrenchment compensation received under any award, contract of service or otherwise is proposed to be exempt from income-tax. The exemption will be limited to the amount calculated in accordance with the provisions of Section 25F(b) of the Industrial Disputes Act, 1947, or Rs. 20,000/— whichever is less. (w.e.f. assessment year 1976/77).

6. Expenses on higher education — Indian citizens whose gross total income for the relevant assessment year does not exceed Rs. 12,000/— will be allowed a deduction in respect of expenditure on higher education of their dependent children, varying from Rs. 500 to Rs. 1,000 per child, subject to a maximum of two children.

THE SUDAN

The 1974 Development and Encouragement of Industrial Investment Act — how it differs from the 1972 Investment Act *

The 1974 Development and Encouragement of Industrial Investment Act repeals the previous investment law, the Development and Promotion of Industrial Investment Act, 1972. The provisions contained in that latter Act are, however, to a large extent incorporated in the 1974 legislation; [1] consequently, only the major changes made by the 1974 Act are discussed here.

The 1972 Act encouraged investment which satisfied "all or some" of seven different conditions.[2] The 1974 Act, on the other hand, reduces the number of these to six — the condition providing that enterprises must establish in rural areas prescribed by the Minister of Industry and Mining being eliminated — and provides that an enterprise which satisfies "any" of these will be eligible to benefit from the concessions available under the Act.[3]

Changes in tax concessions under the 1974 Act (Article 10)

The new Act makes some changes in the provisions relating to exemption from the business profits tax. Under the 1972 Act a total exemption from business profits tax was allowed for a period of five years; a further total exemption for five years was also allowed if profits did not exceed 10 per cent of the capital employed by the enterprise and a 50 per cent exemption from the tax was given if the profits were between 10 and 20 per cent of the capital employed. These provisions have been incorporated in the new Act but with the difference that now any profits over 10 per cent of capital will be subject to business profits tax at the full rate. A new concession has, however, been introduced by the new Act. This provides that an enterprise which has increased its capital in the first ten years of operations will be exempt for a further period (i.e. a third period) of five years from business profits tax; this exemption will be at the same percentage by which the capital has been increased in such period and if the percentage of profits is below ten percent of the total capital after such increase then the exemption will be a complete one.

The provisions relating to depreciation in the 1972 Act are taken over by the 1974 law but with the addition of a further incentive, namely, an enterprise may now make appropriations to a reserve to cover any increases in the price of fixed assets wich need replacement; such reserve may not, however, exceed 75 per cent of the value of the instalments of depreciation. Finally, under the new law exemption is given from excise duties on local raw materials used in an enterprise's introduction.

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* This note was submitted by Mrs. Elizabeth A. de Brauw-Hay, Senior Associate at the International Bureau of Fiscal Documentation.

1. For a study of the provisions of the 1972 Act see Bulletin for International Fiscal Documentation, August 1973 no. 8 pp. 315-324.
2. Ibid. p. 316.
3. 1974 Act, Article 5.

Changes in non-tax incentives under the 1974 Act (Article 18)

The provisions contained in the 1974 Act on transfers of capital abroad are more restrictive than those contained in the 1972 Act. The latter Act authorised the remittance abroad of the net value of the enterprise as at the date of liquidation while the 1974 Act only allows re-transfer abroad of the net capital originally imported from outside the Sudan and registered with the Bank of Sudan; besides this such transfer may only be made in the currency in which it was imported.

ZAMBIA

Budget, 1975

(The information given here is taken from the Budget Address of the Minister of Planning and Finance to the National Assembly on January 31, 1975)

The 1975 Zambian Budget was presented to the National Assembly on January 31 by the Minister of Planning and Finance, the Hon. A. B. Chikwanda. Before outlining any specific measures, the Minister summarised the considerations which had weighed with him in making the proposals contained in his address. These were:

(a) the current recession in the copper consuming countries which would very likely cause the price of copper — a product to which in the Minister's own words (Zambia's) "economy is almost irrevocably tied" — to remain low in 1975; as a consequence a drastic fall in the country's copper revenues and an increase in the balance of payments deficit (also contributed to by the high price of oil) was to be expected;
(b) rapidly rising prices resulting from international inflation;
(c) insufficient economic growth and problems of liquidity;
(d) unsatisfactory implementation of development programmes.

Therefore — the Minister went on to say — his duty had been to frame this year's budget in such a way as to enable the Government to raise more revenue from non-copper sources while at the same time keeping the burden on the taxpayer as light as possible.

The specific measures which he proposed to introduce in the light of the above included the following:

Sales tax

(a) the present 10% import surcharge will be turned into a 10% sales tax and the present sales tax of 10% on locally produced goods will be extended to a larger range of commodities.
(b) certain locally made items will attract specific rates of sales tax e.g. perfumery, cosmetics and toilet preparations at 20%, locally assembled vehicles at between 4 and 17 per cent.
(c) the present 10% sales tax on locally manufactured soaps and detergents will be abolished.

Excise duties

Increases are proposed in excise duties on locally manufactured ale, beer, stout and soft drinks. Part of the increase in duty will go back to the producer for further investment.

Increases are also proposed in duty on potable spirits, cigarettes and petrol.

Customs duties

(a) The duty on imported motor vehicles will be reduced substantially. This is in line with lowered rates of sales tax on locally assembled vehicles.
(b) The duty on imports whose locally manufactured counterparts have been affected in the budget by changes in excise duty or sales tax will be increased.

Incentives for farmers

(a) Expatriate farmers may now remit an-

* This note was prepared by Mrs. Elizabeth A. de Brauw-Hay, LL.B., Senior Associate at the International Bureau of Fiscal Documentation.

nually 10 per cent of their profits as well as accumulate a further 10 per cent for remission at the time of their retirement.
(b) Fertiliser will be subsidised, the government has set high producer prices for most farm produce and favourable loans will be given to farmers wishing to engage in wheat production in order to encourage more domestic production.

Selective employment tax
The introduction of a selective employment tax of 5 per cent on the salary bills of all employers of non-Zambians is proposed as a means of encouraging Zambianisation. The tax will be payable by the employer and will be related to the taxable income of non-Zambian staff.
Certain persons will, however be exempt from the tax and these include foreign employees on technical aid agreements and foreigners whose skills are essential to the development of the country.

Taxation of mining companies
(a) Extension of the mineral tax to nickel and uranium is proposed. The tax on these minerals will be levied at the rate of 10%.
(b) It is proposed that in respect of new mines opened after April 1, 1975 expenditure on prospecting, exploration, development and other initial capital expenditure, plus 10 per cent, will be allowed as a deduction from taxable income until it is all written off.
(c) In order to encourage exploitation of mineral deposits in rural areas new mines opened outside the Copperbelt Province will be exempt from mineral tax for 5 years from commencement of operations.
This exemption will be limited to new and separate companies using equity as opposed to loan capital. New mines opened in the Copperbelt will only be given this exemption if the gross profit of the company concerned does not exceed K 250,000 per year.

Income Tax
(a) The rates of personal income tax will remain unchanged.
(b) The child allowance will go up from K 180 tot K 200 per child (with a maximum of six) and the blind and handicapped person's allowance is to be raised from K 400 to K 500.
(c) It is proposed to close various loopholes in the legislation which grants tax benefits relating to commencement, leave, educational and terminal passages.
(d) Annuities will be exempt from tax in order to encourage saving.

MULTINATIONAL ENTERPRISES: INTERNATIONAL TAX CONSEQUENCES OF INTERNAL PRICING POLICIES*

1. Current governmental and public concern about the economic and social consequences of multinational company activities has focussed particular attention on whether national laws and regulations adequately monitor the way in which taxable income is finally distributed between countries. The present study is uniquely concerned with this question.

2. There are other taxation aspects of multinational activity arising out of investigations sponsored by the United Nations, OECD and the EEC on which the Commission has reported in the past, or may report in the future. On the one hand, there is the problem of double or excessive taxation of international income flows which places the multinational company at a distinct disadvantage compared with a purely national company. On the other hand, there are choices of business structure and the form of transactions which may materially affect the place and the manner in which income is taxed, e.g. high-geared subsidiary v low-geared subsidiary; growth by profit retention v new capital injection; subsidiary v branch; place in which contracts are concluded, etc. Whilst such choices exist, it is neither legally nor morally wrong for any company to adopt the structure or the course of action involving the lowest tax burden.

3. The way in which taxable income comes to be distributed between units of a multinational group is, in the view of critics, distorted by the group's unilateral decisions in the fields of: 1) internal transfer pricing of goods; 2) internal royalties and service fees; and 3) internal interest changes. The belief is that the amount of the charges made between controlled units is not determined or seriously influenced by open market, competitive forces. It is then concluded that the predominant influence must be net advantage to the multinational company, and further that such net advantage is an improper one.

4. The Commission has no desire to indulge in pious protestations of good intent on behalf of multinationals or to pretend that the problem does not exist. It is however necessary to refute the more irresponsible accusations made against multinational companies generally by some spokesmen of governments and intergovernmental organisations. Illegal tax evasion and sham transactions are not characteristic of multinational trading and investment. In particular:

a) In a substantial area of the multinational investment field, there are no transactions in goods and services between controlled units, or their incidence is trivial.

b) In a further substantial area, there are clear indications of parallel uncontrolled prices which are followed in transactions between controlled units.

* Draft Report of the Commission of Taxation of the International Chamber of Commerce adopted for submission to the 103rd Session of the Executive Committee of the International Chamber of Commerce. Document No. 180/148.

c) When a multinational company has made a serious attempt to determine transfer prices or charges consistent with a reasonable view of how independent enterprises would settle the matter and the tax authorities take a different view, any imputation of tax evasion or even tax avoidance is misplaced.

5. The ICC is not suggesting that in the residual areas there is no need for governments to take action to strengthen their controls. It is concerned that additional controls be of a kind appropriate to the mischief which they seek to remedy. It is concerned that the controls avoid interference with the development of international trade and investment in all those situations where transfer prices and intergroup charges are demonstrably not based on any intention to serve tax minimisation objectives.

6. The ICC approves the principle that the basis of controls in all countries should be "arm's-length" pricing, but it should be clearly understood that prices established in dealings between independent parties are only a guide. In checking a transfer price charged by one MNC unit to another, account must be taken of any differences in ancillary factors such as the allocation of marketing and technical functions, terms of settlement, scope and permanence of the trade, compared with conditions applicable to the "arm's-length" transactions employed as a standard.

7. Two basic requirements should however be observed at all times:

a) Interference with transfer prices charged within a MNC should not take place unless there is some indication that the MNC was motivated by other than sound business principles consistent with Paras. 6 and 13 of this paper. When the same pricing basis is used for transactions with affiliates in many countries regardless of relative levels of taxation, or when pricing policy remains unchanged despite the variation of relative tax burdens from time to time, there is a prima facie defence against isolated price adjustments.

b) The whole basis of "arm's-length" prices as a standard is related to the fact that they are prices at which buying and selling actually takes place in given quantities. It follows therefore that the essential basis of any monitoring rules for prices and charges should be to ensure that the determined price is one at which buying and selling in the given quantities could be expected to thrive if the parties were independent.

8. In situations where reasonably closely parallel arm's-length dealings are not available as a guide, the belief that various alternative techniques can be evolved which will indicate precisely the right price or charge in a given situation is largely illusory. An arm's-length price between two genuinely independent parties can be rationalised after the event by a number of derived formulae. The same arm's-length price between two different independent parties would only by accident respond to exactly the same formulae.

9. A study of the relationship between profits and turnover, profits and costs, profits and capital employed, etc. in a variety of different manufacturing, trading, investment and servicing situations may be useful as a guide, but multinational enterprises should not be required to conform to formulae determined by a statistical average.

10. In the end the only satisfactory answer to the problem is for the Revenue

authorities to examine the method employed to arrive at transfer prices and charges, to check that the method is consistent with the considerations which would influence independent enterprises, and taking into account all other factors relevant to the particular trade to assess whether the price or charge is *within the range* of comparative arm's-length experience. If the enterprise fails these tests, the price or charge should be resolved by agreement between the two or more authorities concerned with a clear right to the taxpayer to be heard.

11. A prime concern of the ICC is that international trade and investment should not be inhibited by double taxation. It is also important that the competitive position of MNC's should not be damaged by arbitrary interference with their entitlement to the same tax treatment in each country as other enterprises with which they are in competition.

12. The ICC believes that maintenance of these basic principles need not be inconsistent with a concerted international effort by national tax authorities to monitor the allocation of taxable income and make appropriate adjustments wherever there is a clear indication that a MNC is taking improper advantage of the absence of market forces in the determination of internal prices and charges, but each State should recognize that its right to do so must be accompanied by an obligation to make corresponding corrections when other States take the initiative.

13. The fact that no two tax authorities working in isolation can be expected to reach the same answers means that great emphasis must be placed on international cooperation. Unilateral action by one State without regard for the proper claims of another State almost inevitably leads via double taxation or excessive taxation to distortion of trade and investment which is no lesser evil than the distortions occasioned by unreasonable pricing procedures. National governments have a responsibility to co-ordinate assessment activities so as to avoid subjecting taxpayers to inconsistent tax claims.

14. The ICC strongly recommends:

a) A Government which lays down rules for determining transfer pricing and which re-allocates taxable income should be bound by appropriate consultation procedures so that corresponding adjustments can be made in the other jurisdiction. Provisions for such procedures should be made in the OECD Model Agreement so that the matter can be incorporated into existing Double Tax Agreements.

b) There should be no requirement that the enterprise involved should be a resident in the countries which are contracting parties to a Double Tax Convention. This would enable enterprises with permanent establishments outside their home country to claim protection.

c) There should be some right of recourse by a taxpayer to an independent arbitrator or other judicial body having international status. This would protect an enterprise where although two governments are agreed on a transfer price the enterprise itself is aggrieved by a governmental decision.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning books should include the reference numbers listed.

ASIA

REPORT OF THE PROCEEDINGS OF THE FOURTH MEETING OF THE STUDY GROUP ON ASIAN TAX ADMINISTRATION AND RESEARCH.

The Secretariat, Kuala Lumpur, Malaysia, 1974. 336 pp.
Curtailed texts of speeches and papers of the 4th meeting of SGATAR, held at Kuala Lumpur, July 22-27, 1974, on various tax topics (B 50044)

AUSTRALIA

AUSTRALIAN TAX PLANNING, WITH PRECEDENTS;

3rd edition, by P. R. Adams. Butterworths, Sydney, 1973. 197 pp.
Third revised edition of guide designed to minimize income tax and federal and state death duties. The law is updated as of the end of August, 1973. (B 8753)

CAPITAL GAINS TAX IN AUSTRALIA:

a commentary upon the proposals for an Australian capital gains tax announced by the Federal Treasurer on 17 September 1974, by E. F. Mannix. Butterworths, Sydney, 1975. 24 pp.
Survey of the Australian capital gains tax which will apply to disposals made on or after September 17, 1974. The survey is based on the Treasurer's proposals, which will be set out in a forthcoming bill. (BR 8730)

AUSTRIA

ARBEITSTABELLEN FÜR DEN STEUERPRAKTIKER:

3. Auflage. Industrieverlag Peter Linde, Vienna, 1975. 90 pp., Sch. 150.
Third edition of the working tables for use by tax practitioners, which outline rates of tax deductions and other tax facilities for the years 1969 to 1975 (without wage tax) as of November 1, 1974, and includes changes of the 1972 and 1974 tax reforms. (B 8777)

BELGIUM

DE VENNOOTSCHAPSBELASTING.

Kredietbank, Brussels, 1974. 72 pp. Bedrijfseconomische bibliotheek, No. 3.
Brochure which explains the performance of the corporate income tax with emphasis on commercial enterprises. (BR 8773)

BRAZIL

NORMA JURIDICA TRIBUTARIA,

by M. A. Greco. São Paulo, 1974. xii + 132 pp.
Consideration on the classification of the legal concept of taxation. (B 15438)

COLOMBIA

BUSINESS OPERATIONS IN COLOMBIA,

by D. A. Perezin. Tax Management, Inc., Washington, D.C., 1974. 70 pp.
Description (in English) of the tax system and forms of business organizations, including a review of the Andean Pact Agreement of Subregional Integration. Supplements will keep material current. Translations of tax return forms and forms used to apply for governmental approval of investment are appended. (B 15450)

DEVELOPING COUNTRIES

WIRTSCHAFTSINTEGRATIONSRECHT UND INVESTITIONSGESETZGEBUNG DER ENTWICKLUNGSLÄNDER,

by E. U. Petermann. Nomos Verlagsgesellschaft, Baden-Baden, 1974. 253 pp., DM 56. Schriften zur Entwicklungspolitik, Band 1.
Monograph which examines the legal problems that arise from economic integration between developing countries. (B 8786)

LE ROLE DE L'IMPOT DANS LES PAYS EN VOIE DE DEVELOPPEMENT;

préface de P. M. Gaudemet, by Pheuiphanh Ngasyvathn. Librairie Générale de Droit et de Juris-

prudence, Paris, 1974. 316 pp., Ffr. 75. Bibliothèque de science financière, Tome XIII.
Study analyzing the role of tax in developing countries. (B 8680)

EUROPE

TAXATION IN WESTERN EUROPE: A GUIDE FOR INDUSTRIALISTS;

11th edition. Confederation of British Industry, London, 1974. 240 pp., £ 7.50.
This eleventh, extended edition is intended only as a simple guide to the taxation systems of 23 European countries. The information describes taxes on income and profits, death duties, sales taxes, payroll taxes, net worth taxes, and local taxes. The material is current as of the year 1973; addenda covers major changes up to mid-1974. The countries covered are Austria, Belgium, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Iceland, Ireland, Isle of Man, Italy, Jersey, Luxembourg, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. (B 8755)

EUROPEAN COMMUNITIES

REPORT ON THE TAX ARRANGEMENTS APPLYING TO HOLDING COMPANIES.

Brussels, June 18, 1973. 10 pp.
In English language. Also available in Danish, Dutch, French, German, and Italian. (BR 8740)

FINLAND

VEROSOPIMUKSET SKATTEAVTALEN, 1974;

redigerage av Hillel Skurnik. Suomen Lakimiesliitto, Helsinki, 1974. 460 pp.
Double Taxation Treaties, 1974, edited by H. Skurnik. This work contains official texts of double taxation treaties concluded by Finland with other countries with respect to income tax, death duties, and mutual assistance, as published in the Finnish Official Gazette up to and including No. 26 of 1974. Additional material (up to and including No. 42 of 1974) is appended. The text of the OECD Draft Convention of 1963 in the official (English and French) texts and in unofficial Swedish and Finnish translations is also appended. (B 8795)

FRANCE

LES IMPOTS EN FRANCE:

Traité pratique de la fiscalité française, et plus particulièrement des impôts dus par les entreprises; 6e édition. Editions Francis Lefebvre, Paris, 1974. 458 pp., F. 64.
Sixth annual edition of taxation in France, with emphasis on the taxation of enterprises. Material is current to September 1, 1974. (B 8729)

GERMAN FEDERAL REPUBLIC

DIE BEWERTUNG VON ANTEILEN AN KAPITALGESELLSCHAFTEN FÜR ZWECKE DER VERMÖGENSTEUER, INSBESONDERE VON AN DER BÖRSE NICHTNOTIERTEN WERTEN MIT HINWEISEN AUF DAS ÖSTERREICHISCHE UND SCHWEIZERISCHE RECHT,

by K. Barth. Handelsblatt GmbH, Düsseldorf, 1974. 352 pp., DM 34.—.
Study on the valuation of shares in corporations for purposes of net wealth tax with emphasis on shares not quoted on the stock exchange. Reference to related views on the subject in the Austrian and Swiss law. The author recommends a new approach to valuation. (B 8774)

ZUR GEWINNERMITTLUNG INTERNATIONALER UNTERNEHMEN (§ 1 AUSSENSTEUERGESETZ),

by H. Becker. Verlag Dr. Otto Schmidt, Cologne, 1974. xii + 254 pp.
Monograph dealing with section 1 of the Foreign Tax Law which regulates the adjustment of income between associated enterprises not dealing at arm's length. Appended are the U.S. Regulations and the French Regulations on the same subject. (B 8719)

GESTALTUNGSFREIHEIT IM STEUERRECHT UND IHRE GRENZEN:

Annäherung des Steuerrechts an das Zivilrecht. Erlaubtes und Nichterlaubtes, by H. Blencke. Verlag Neue Wirtschafts-Briefe, Herne, 1974. 260 pp., DM 42.
The third revised edition clarifies the limits of allowable constructions in the field of tax law. Emphasis on case law. (B 8771)

HANDBUCH DES EINKOMMENSTEUERRECHTS:

Auskunftswerk über das gesamte Einkommen- und Lohnsteuerrecht mit Nebenbestimmungen, by F. Klein, P. G. Flockermann, and C. Kühr.

Hermann Luchterhand Verlag, Neuwied, 1975.
Loose-leaf publication containing text and comments on the individual income tax law and related provisions including wage tax. The first supplement, January 29, 1975, is included. (B 8746)

DAS EINKOMMENSTEUERRECHT:

Kommentar zum Einkommensteuergesetz mit Erläuterungen zum Einkommensteuergesetz, 1975; 11. erneuerte und erweiterte Auflage.
by E. Littmann. Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co., Stuttgart, 1974. xiv + 2367 pp., DM 198.—.
Eleventh revised and extended edition of textbook providing comment on the Individual Income Tax Law as of January 1, 1975, with references to case law and literature up to mid-1974. Two other important laws, the Berlin Improvement Law and the Foreign Tax Law, are appended with comments by Heinz George and Peter Hellwig. (B 8769)

KOMMENTAR ZUM STEUERGEHEIMNIS,

by P. Pfaff. Duncker & Humblot, Berlin, 1974. xi + 246 pp., DM 48.
Monograph providing comment on secrecy in taxation with reference to case law and literature. (B 8780)

FORMULARBUCH DER STEUER- UND WIRTSCHAFTSPRAXIS;

2. neubearbeitete und erweiterte Auflage,
by F. A. Schmitt und F. Schmitt. Erich Schmidt Verlag, Berlin, 1964/65.
Loose-leaf handbook designed to explain the German taxation system, company law, and civil law with examples for practical purposes. The material is updated by supplements. The supplement of December, 1973, completely revised the text, and the supplement of August, 1974, revised the material on net wealth tax and succession duties. (B 8796)

DER WEG ZU WIRTSCHAFTLICHTER DATENVERARBEITUNG,

by H. Wehrig. IdW-Verlag, Düsseldorf, 1975. 221 pp., DM 45.
Description of one method of automated data processing. (B 8728)

BERICHT ÜBER DIE FACHTAGUNG 1974 DES INSTITUTS DER WIRTSCHAFTSPRÜFER IN DEUTSCHLAND

e.V. am 3. und 4. Oktober 1974 in Hamburg (15. Tagung seit 1945); Generalthema: Aufgaben und Verantwortung des Wirtschaftsprüfers in Zeiten wirtschaftlicher Anspannung. IdW-Verlag, Düsseldorf, 1975. 276 pp., DM 38.
Final report and proceedings of symposium convened by the Institute of Accountants in Germany, held in Hamburg on October 3-4, 1974. The subject was the duties and responsibility of accountants in periods of economic strain. (B 8787)

BEWERTUNG DES GRUNDVERMÖGENS MIT FORTSCHREIBUNGSRICHTLINIEN AUF DEN 1.1.1974 UND NEUE GRUNDSTEUERVORSCHRIFTEN.

IdW-Verlag, Düsseldorf, 1975. 363 pp., DM 30.
Text of statutes for evaluating real property for purposes of the new tax on real property. (B 8798)

GERMANY/SWITZERLAND

ERLÄUTERUNGEN ZU SONDERFÄLLEN UNTER DEM SCHWEIZERISCH-DEUTSCHEN DOPPELBESTEUERUNGSABKOMMEN.

Eidg. Steuerverwaltung, Berne, 1973. 26 pp.
Explanation of special cases provided under the Swiss-German double taxation treaty of 1971, with emphasis on the taxation aspects in Switzerland. French edition of this German text is available. (BR 8552)

INDIA

THE COMPULSORY DEPOSIT (SCHEMES) ACTS FOR ASSESSMENT YEARS 1975-76 & 1976-77.

by V. G. Metha. Shri Kuber Publishing House, Bombay, 1975. 40 pp., Rs 5.
Guide to the compulsory deposit (schemes) acts, with texts, comments, explanations, tables and examples under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974. (BR 50067)

INCOME-TAX READY RECKONER: ASSESSMENT YEAR 1974-75,

by V. G. Metha. Shri Kuber Publishing House, Bombay, 1974. 290 pp., Rs 24.
Income tax quick-reference guide for assessment year 1974-75 containing rates, tables, and examples for wealth tax, estate duty, gift tax, and companies surtax, computation of "advance tax" during the financial year 1974-75, and deduction of tax from salaries for assessment year 1975-76. (B 50066)

INTERNATIONAL

INTERNATIONAL TAX CONFERENCE.

Singapore, 1974.
Text of papers discussed at the third Associated Business Programmes' International Tax Conference held in Singapore, January 28—February 1, 1974. The topics emphasized Southeast Asia and included: tax and exchange control problems of international financial institutions operating in Southeast Asia, taxation problems of the natural resource industries operating in Australia and Southeast Asia, outline of the tax systems of Singapore and Malaysia. (B 50036)

PUBLIC FINANCE AND STABILIZATION POLICY:

Essays in Honor of Richard A. Musgrave; edited by Warren L. Smith and John M. Culbertson. North-Holland Publishing Company, Amsterdam, 1974. 368 pp., *f* 100.
Compilation of essays dealing with such topics as redistribution effects of government expenditures; user fees as a means of maintaining environmental quality; integration among income taxes, time lags and conflicts of goals in stabilization policy; econometric analysis of the policy, monetary, and fiscal policies for the 1970's. Each essay is written by a leading economist. Contributors include: F. Neumark, E. Cary Brown, R. Sato and R. F. Hoffman, L. Johansen, P. A. Samuelson. A bibliography of Professor Musgrave's works is appended. (B 8793)

INTERNATIONAL/OECD

DOUBLE IMPOSITION DU REVENU/DOUBLE TAXATION OF INCOME AND CAPITAL.

OECD, Paris, 1974. 165 pp., F 25 or $2.50.
Revised texts of certain articles of the 1963 OECD Draft Convention and of the commentary thereon. Available in English or in French. (B 8772/3)

OECD ECONOMIC OUTLOOK.

No. 16, December, 1974.
Organization for Economic Cooperation and Development, Paris, 1974. 120 pp.
This Outlook provides a periodic assessment of economic trends and prospects in OECD countries, developments which largely determine the course of the world economy. It appears twice a year in July and December. (B 8646)

LIBERIA

ANNUAL REPORT 1974:

covering operations of the Ministry of Finance, January 1-December 31, 1974. Ministry of Finance, Monrovia. 130 pp.
Survey of the principal financial and economic achievements of the Ministry of Finance. (B 10623)

LIBYA

LIBYEN.

Stand: Mai, 1974, No. 102. Amt für Auswanderung, Cologne, 1974. 25 pp.
A pamphlet designed to provide information for expatriates engaged in business activities and for emigrants to Libya. (BR 10581)

THE NETHERLANDS

KLUWERS BELASTINGGIDS, 1975,

by C. Boersma and J. C. Maters. Uitgeverij Kluwer, Deventer. 192 pp., *f* 8.50.
Guide providing information for filing the 1974 individual income tax return and the 1975 net wealth tax return. (B 8671)

RÜCKERSTATTUNG DER NIEDERLÄNDISCHEN UMSATZSTEUER AN AUSLÄNDISCHE UNTERNEHMER.

Deutsch-Niederländische Handelskammer, The Hague, 1975. 5 pp.
Conditions and procedure for refund of Dutch turnover tax to foreign entrepreneurs. (BR 8782)

NEW ZEALAND

TAXATION — PRINCIPLES, PURPOSE AND INCIDENCE,

by L. N. Ross. New Zealand Society of Accountants, Wellington, 1973. 28 pp.
Reprint of a paper presented to the First Summer School conducted by the New Zealand Society of Accountants at the University of Otago Dunedin in February, 1964. (BR 8799)

OECD

MERGERS AND COMPETITION POLICY.

OECD, Paris, 1974. 70 pp., $ 5 or £ 2 or F 20.
This report of the Committee of Experts on Restrictive Business Practices describes the different systems of merger control in existence as

of June, 1974, in the OECD member countries and considers the special problems raised by international mergers. (B 8725)

PHILIPPINES

THE INVESTMENT AND EXPORT INCENTIVES ACTS.

Government Printing Office, Manilla, November, 1974. 120 pp.
Consolidated text of the Investment Incentives Act and Export Incentives Act with corresponding amendments and implementations appended thereto. (BR 50003)

SAUDI ARABIA

INVESTIEREN IN SAUDI-ARABIEN.

Deutsche Bank, Frankfurt, October, 1974. 31 pp.
Booklet containing information for prospective investors in Saudi Arabia. Investment procedure and taxation are clarified. (BR 50065)

SINGAPORE

SINGAPORE INCOME TAX;

2nd revised edition, by S. L. Dhawn. Criterion Publishers, Singapore, July, 1974. 590 pp.
Textbook on principles and practice of Singapore income tax law illustrated by examples and questions and answers. Appended are the texts of the Income Tax Act and the Economic Expansion Incentives (Relief From Income Tax) Act as amended to 1974. (B 50049)

SOUTH AFRICA

1974/75 CUMULATIVE SUPPLEMENT TO SILKE ON SOUTH AFRICAN INCOME TAX (7th ed.),

by A. S. Silke. Juta & Co., Ltd., Cape Town, 1975. 550 pp., R 12.50.
This cumulative supplement brings the material of the main work up to date as of the Income Tax Act No. 85 of 1974. The full consolidated text of the Income Tax Act, 1962, as amended, is appended. (B 10626, 10633)

THE OLD MUTUAL INCOME TAX GUIDE 1974-75;

ed. by A. S. Silke. Old Mutual Pensions Service, Cape Town, 1974. 130 pp.
Annual revised guide which illustrates the working of income tax, undistributed profits tax, donations tax and estate duty for 1974-75. (B 10632)

SPAIN

IMPUESTO GENERAL SOBRE LA RENTA DE LAS PERSONAS FISICAS,

by L. Aspichueta. Banco de Vizcaya, Bilbao, 1974. 187 pp.
Guide providing information for filing individual income tax returns for 1974. Texts of statutes are appended. (B 8678)

STEUERRECHT IN SPANIEN;

2. geänderte Auflage, by G. Frühbeck. Verlag Neue Wirtschafts-Briefe, Herne, 1974. 116 pp., DM 23.
Second revised edition of monograph providing a general outline of taxes in Spain. (B 8675)

FIRMENNIEDERLASSUNG IN SPANIEN;

3. neubearbeitete Auflage, Stand: August, 1974. Deutsche Handelskammer für Spanien, Barcelona, 1974. 28 pp.
Informative guide describing the establishment of a business in Spain and connected relevant data as of August, 1974. (BR 8618)

KAPITALINVESTITIONEN IN SPANIEN;

11. revidierte Auflage, Stand: Februar, 1975. Deutsche Handelskammer für Spanien, Barcelona, 1975. 39 pp.
Eleventh revised edition of brochure explaining capital investment procedure in Spain. The material is updated as of February, 1975, with emphasis on German investors. (BR 8764)

SUDAN

SUDAN;

1. Beilage, Stand: April, 1974, No. 31. Amt für Auswanderung, Cologne, 1974. 25 pp.
Annex I to pamphlet of a series designed to provide information for expatriates engaged in business activities and for immigrants in Sudan. (BR 10579)

SWITZERLAND

THE SWISS TAX SYSTEM,

by C. Higy. Federal Tax Administration, Berne, 1973. 40 pp.
Study which describes the Swiss system of taxation and the structure of the different taxes levied by the federation, cantons, and municipalities of Switzerland. French edition is also available. (B 8554)

STEUERBELASTUNG IN DER SCHWEIZ/CHARGE FISCALE EN SUISSE 1973.

Eidgenössisches Statistisches Amt, Berne, 1974. 99 pp., Sfr 12. Statistische Quellenwerke der Schweiz, Heft 542.
Statistical survey of the taxes levied by the various cantons with respect to taxes on income and capital of individuals and corporations. (B 8551)

STEUERHARMONISIERUNG:

Bericht der Nationalrätlichen Kommission. FDK-Informationen No. 28, March, 1974. Sekretariat Finanzdirektion des Kantons Zug, Zug, 1974. 30 pp.
Report of the Commission of the National Council describing the developments toward tax harmonization in Switzerland. (BR 8553)

TAIWAN (REPUBLIC OF CHINA)

STATUTE FOR ENCOURAGEMENT OF INVESTMENT.

Industrial Development & Investment Center, Taipei, February, 1975. 44 pp.
Consolidated text of the 1960 Statute for Encouragement of Investment as amended December 30, 1974. (BR 50050)

UNITED KINGDOM

DEVELOPMENT GAINS TAX,

by G. Dobry, W. R. Stewart-Smith, and M. Barnes. Butterworth & Co., London, 1975. 169 pp., £ 4.60.
Explanation of the principles of existing tax laws of taxation of development gains on sale or on first letting of land as affected by the Finance Act 1974. (B 8704)

MODERN ECONOMICS:

An Introduction for Business and Professional Students; 2nd ed., by J. Harvey. Macmillan, London, 1974. 557 pp., £ 2.50 paperback; £ 5.00 hardcover.
Second revised edition of textbook designed to present economics as a method of thought to be applied to the problems of everyday life. The role of taxation is examined; there is a new chapter on the European Economic Community. (B 8720)

THE 1974 DEVELOPMENT GAINS TAX,

by P. Lawton and D. Goy, with accountancy examples by Nick Kelsey. Sweet & Maxwell, London, 1974. 164 pp., £ 3.20.
Monograph on the Development Gains Tax, introduced by the Finance Act 1974, levied on the disposal on an interest in land in the U.K. which takes place after December 17, 1973. (B 8583, 8839)

THE MODERN LAW OF TRUSTS;

3rd ed., by D. B. Parker and A. R. Mellows. Sweet & Maxwell, London, 1975. 422 pp.
Revised edition of monograph on the concept "trust", including the impact of taxation on a trust. The law is stated as of January 1, 1974. (B 8770)

TAXATION OF OVERSEAS INCOME AND GAINS;

2nd ed., by A. Sumption. Butterworth & Co., London, 1975. 199 pp., £ 4.
Second revised edition. Material is current to the changes made by the Finance Act 1974. (B 8775)

THE SECOND FINANCE BILL, 1974.

Ford Hudson (Publishers) Ltd., Surrey. 40 pp., £ 1.25.
Booklet, for Tax Notes subscribers, which reproduces the Treasury and Inland Revenue explanatory notes released on December 10, 1974, to coincide with the publication of the Second Finance Bill. (BR 8714)

VALUE ADDED TAX: SCOPE AND COVERAGE;

Revised February, 1975. H. M. Customs & Excise, London, 1975. 94 pp. H. M. Customs & Excise Notice No. 701. (BR 8803)

VALUE ADDED TAX: Special Schemes for Retailers.

H. M. Customs & Excise, London, 1975. 30 pp. H. M. Customs & Excise Notice No. 727.
Official explanation of the value added tax for retailers. (BR 8766)

UNITED STATES OF AMERICA

THE ECONOMIC AND POLITICAL CONSEQUENCES OF MULTINATIONAL ENTERPRISES:

An Anthology by R. Vernon. Harvard University, Boston, 1972. 236 pp., $ 3.
Republication of series of articles, which have appeared in various publications, designed as anthology for those not having access to original publications. Based mainly on multinational en-

terprises whose parents are located in the USA. (B 8903)

CURRENT DEVELOPMENTS IN TAXATION OF INTERNATIONAL BUSINESS AND BANKING TRANSACTIONS.; Vol. IX.

International Tax Institute, Inc., New York, 1974. 457 pp.
Selected papers and outlines of panelists from 1974 Public Technical Meetings in New York and Los Angeles covering the significance of the Treasury's 1973 proposed rules for the allocation and apportionment of expenses to be deducted in determining foreign source income and the effect on foreign tax credit and DISC income, and analyses and suggestions regarding tax problems arising from foreign currency exchange transactions, international financial transactions, etc. (B 8875)

INTERNAL REVENUE CODE:

Income, Estate and Gift Tax Provisions, Including 1974 Amendments. Commerce Clearing House, Inc., Chicago, 1975. ± 2600 pp., $ 8.50.
Current text of the Internal Revenue Code, reflecting changes through December 20, 1974, with notes on the history of each Code section. The non-income tax provisions of the Code are not included in this printing. Topical index is provided. (B 8881)

YOUR 1974 PERSONAL TAX RETURN:

Individual Federal Income Tax, Specimen Returns Completely Worked Out for Filing in 1975. Prentice-Hall, Inc., Englewood Cliffs, 1975. 55 pp., $ 3.
Brochure containing information for filing 1974 individual federal income tax return. (BR 8732)

LOOSE-LEAF SERVICES

Received between March 1 and April 30, 1975

AUSTRALIA

AUSTRALIA CURRENT TAXATION & SERVICE
releases: January 13 and 27; February 10
Butterworths Pty, Ltd., Chatswood

AUSTRALIAN CURRENT TAXATION — CASES
releases 31-170
Butterworths Pty, Ltd., Chatswood

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C.E.D. Samsom, Brussels

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Editions Service, Brussels

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C.E.D. Samsom, Brussels

TRAITES DES IMPOTS SUR LES REVENUS
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C.E.D. Samsom, Brussels

BENELUX

BENELUX PUBLICATIEBLAD
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Staatsuitgeverij, The Hague

CANADA

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Richard de Boo, Ltd., Toronto

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Richard de Boo, Ltd., Toronto

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LOOSE-LEAF SERVICES

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Kluwer, Deventer

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DROITS DES AFFAIRES

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Ed. Législatives et Administratives, Paris

JURIS CLASSEUR: DROIT FISCAL:

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— Commentaires „Chiffre d'Affaires"
release 6084
— Code Fiscal „Impôts Directs"
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Editions Techniques, Paris

GERMAN FEDERAL REPUBLIC

DEUTSCHE STEUERPRAXIS-NACHSCHLAGWERK PRAKTISCHER STEUERFÄLLE

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Verlag Dr. Otto Schmidt, Cologne

HANDBUCH DER EINFUHRNEBENABGABEN

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RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT

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STEUERGESETZ

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Verlag Dr. Otto Schmidt, Cologne

UMSATZSTEUERGESETZ
(Mehrwertsteuer)
Hartmann/Metzenmacher
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Erich Schmidt Verlag, Bielefeld

WORLD TAX SERIES — GERMANY REPORTS
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Commerce Clearing House, Inc., Chicago

INTERNATIONAL

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— Inkomstenbelasting
releases 35 and 36
J. Noorduijn en Zn., Arnhem

BELASTINGWETTEN
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D. Brouwer en Zn., Arnhem

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FED, Deventer

FISCALE WETTEN
releases 64-66
FED, Deventer

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Kluwer, Deventer

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NEDERLANDSE WETBOEKEN
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DE PARLEMENTAIRE BEHANDELING VAN DE NIEUWE BELASTINGONDERWERPEN
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Kluwer, Deventer

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releases 110-113
Kluwer, Deventer

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Kluwer, Deventer

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN
— Band B
release 24
Kluwer, Deventer

NEW ZEALAND

NEW ZEALAND TAXATION BOARD OF DECISIONS REVIEW
releases 47-52
Butterworths of New Zealand, Wellington

NORWAY

SKATTE-NYTT
releases 2-4
Norsk Skattebetalerforening, Oslo

SOUTH AFRICA

LAW AND PRACTICE OF SOUTH AFRICAN INCOME TAX
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Butterworth & Co., Durban

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release 5
The Taxpayer Pty., Ltd., Capetown

SPAIN

GABINETTE DE ESTUDIOS
February and March releases
T.A.L.E., Madrid

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Tome II: release 48
Tome III: release 49
Verlag für Recht und Gesellschaft, Basel

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Commerce Clearing House, Inc., Chicago

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Butterworth & Co., London

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Butterworth & Co., London

SIMON'S TAXES
releases 15 and 16
Butterworth & Co., London

VALUE ADDED TAX
releases 32 and 33
Butterworth & Co., London

UNITED STATES OF AMERICA

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Commerce Clearing House, Inc., Chicago

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Prentice Hall, Inc., Englewood Cliffs

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Commerce Clearing House, Inc., Chicago

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Prentice Hall, Inc., Englewood Cliffs

TAX TREATIES

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Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS

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JEROME B. LIBIN *:

SIGNIFICANT CHANGES IN UNITED STATES TAXATION OF FOREIGN INCOME

The recently enacted Tax Reduction Act of 1975 (hereinafter "the 1975 Act") contains a number of provisions designed to alter the manner in which certain types of foreign source income are subjected to United States taxation. Some of the provisions were anticipated, while others came as something of a surprise. Their net effect unquestionably will be to increase sharply the amount of foreign income that will become subject to United States taxation on a current basis.

CHANGES AFFECTING SUBPART F INCOME OF CONTROLLED FOREIGN CORPORATIONS

Insofar as the taxability of United States multinational corporations is concerned, the changes made in the treatment of "Subpart F income" realized by "controlled foreign corporations"[1] are most significant. These changes, added to the final version of the 1975 Act in conference, represented a compromise between the House bill, which contained no provisions affecting foreign income, and the Senate bill, which would have eliminated the benefits of tax deferral for all more-than-50%-owned foreign subsidiaries.

Specifically, the 1975 Act provides for the repeal or modification of certain very important relief provisions contained in Subpart F. As stated by the Conference Committee:

> "The conference substitute provides for a number of specific measures which substantially expand the extent to which foreign subsidiaries of U.S. corporations are subject to current U.S. taxation on tax haven types of income under the so-called subpart F rules of the Code."[2]

Repeal of Minimum Distribution Rules

Possibly the most significant change in the Subpart F area involves the repeal of I.R.C. § 963, the so-called "minimum distribution" provision, for taxable years beginning after December 31, 1975.[3] Under § 963, a U.S. parent corporation may enjoy a deferral of U.S. tax on the Subpart F income of its foreign subsidiary in any case where the overall foreign and domestic tax rate applied to the subsidiary's income approximates 90% of the U.S. tax rate (presently 48%). Thus, if the foreign tax rate is less than 43%, deferral could be enjoyed by having the subsidiary make a specified minimum dividend distribution to its U.S. parent sufficient to increase the overall for-

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1. A "controlled foreign corporation" is defined in I.R.C. § 957(a) as any foreign corporation more than 50% of the voting power of which is owned by United States shareholders, each of which owns a minimum of 10% of the corporation's voting power. "Subpart F income" is defined in I.R.C. § 952(a) and § 954(a) as including certain types of investment income, base company sales or service income, and insurance income.
2. Joint Explanatory Statement of the Committee of Conference, H.Rep. 94-120, 94th Cong., 1st Sess., p. 70 (1975).
3. 1975 Act, § 602(a)(1) and (f).

eign and U.S. rate of tax on its income to approximately the target level. Absent such a distribution, the subsidiary's Subpart F income would be passed through and taxed currently to its U.S. parent.

With the repeal of the minimum distribution provision, the sheltering opportunity provided by means of a minimum dividend payment will cease to exist. In effect, the repeal of § 963 makes the full sweep of Subpart F potentially applicable to a foreign subsidiary, irrespective of the foreign tax imposed on it or the amount of dividends it actually pays to its U.S. parent. As a result, U.S. multinationals that have been relying on the minimum distribution provisions to defer some portion of the Subpart F income of their foreign subsidiaries can anticipate a significant increase in their current U.S. tax liability with respect to such income.

Reduction of 30% - 70% Safe Harbor Rule to 10% - 70%

Another opportunity for sheltering a certain amount of Subpart F income of a foreign subsidiary is contained in the so-called "safe harbor" rule of I.R.C. § 954(b)(3). Under that rule, the pass-through treatment provided by Subpart F would not begin to apply to the so-called tax-haven income of a foreign subsidiary unless such income equalled at least 30% of the subsidiary's total gross income for the year. By virtue of this provision, it was possible to combine a substantial amount of Subpart F income with non-Subpart F income without fear of immediate taxability of the Subpart F income to the U.S. parent.

In its effort to increase the extent to which Subpart F income will be subject to U.S. tax on a current basis, Congress has now reduced the 30% safe harbor rule to 10% of gross income.[4] As a result of this reduction, the opportunity to combine Subpart F income with non-Subpart F income in order to preserve the benefits of deferral will obviously be sharply reduced. This new rule also takes effect for taxable years beginning after December 31, 1975.[5]

Repeal of the Less Developed Country Exception

A third area of relief from the sweep of Subpart F is contained in the provisions permitting the deferral of dividends, interest, and capital gains derived by a foreign subsidiary from qualified investments in less developed countries, provided such income is properly reinvested in less developed countries on a timely basis.[6] A U.S. parent investing in a less developed country was actually encouraged to organize a less developed country corporation holding company in a low- or no-tax country, to hold its investment, receive dividend and interest income thereon, and reinvest such income either in the same project or in other projects in the same or different less developed countries, without fear that such income would be subjected to an immediate U.S. tax.

In what is clearly a surprising departure from its long-established policy of encouraging U.S. investment in less developed countries, Congress has now determined that the less developed country exception contained in Subpart F should be eliminated for taxable years beginning after December 31, 1975.[7] No longer will U.S. corporations enjoy the opportunity of withdrawing earnings from a less developed

4. 1975 Act, § 602(e).
5. 1975 Act, § 602(f).
6. I.R.C. § 954(b)(1) and (f).
7. 1975 Act, § 602(c) and (f).

country investment, even on a temporary basis, without the imposition of a current U.S. tax.

Interestingly, however, no change was effectuated with respect to the favorable computation of foreign tax credits allowed in connection with dividends received from less developed country corporations,[8] or with respect to the possible enjoyment of capital gain (as distinguished from ordinary income) treatment on the disposition of stock of a less developed country corporation after a 10-year holding period.[9] Whether these additional benefits provided with respect to less developed country investments will also be repealed in future legislation remains to be seen.[10]

Shipping Income

Foreign shipping income was previously excluded completely from Subpart F treatment.[11] For years beginning after December 31, 1975, however, income derived from foreign shipping operations will be treated in essentially the manner that income from less developed country investments had been treated prior to the repeal of the less developed country corporation exception.[12] In other words, income derived from foreign shipping operations will now be subject to current U.S. taxation when realized by a controlled foreign corporation, unless such income is reinvested on a timely basis in foreign shipping operations. Foreign shipping income is income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or from certain services or dispositions related thereto.[13]

Definition of "Foreign Base Company Sales Income"

One minor amendment of a liberalizing nature contained in the 1975 Act affects the definition of "foreign base company sales income," one of the categories of Subpart F income.[14]

Under the amendment, foreign base company sales income will no longer include income derived from the sale of agricultural commodities not grown in the United States in commercially marketable quantities.[15] This amendment, of extremely limited significance, is substantially narrower than a proposal contained in the 1974 tax reform bill reported out by the House Ways and Means Committee. The 1974 proposal would have excluded from the definition of foreign base company sales income any income derived from the sale of goods manufactured, produced, grown, or extracted outside of the United States, thereby permitting U.S. corporations to manufacture abroad and sell through base companies without the loss of deferral.

CHANGES AFFECTING FOREIGN OIL AND GAS INCOME

The oil and gas industry was the subject of special treatment in a number of provisions contained in the 1975 Act. With respect to foreign income derived from oil and gas operations, Congress focused principally on the application of the foreign tax credit

8. I.R.C. § 902(a)(2).
9. I.R.C. § 1248(d)(3).
10. The tax reform bill reported by the House Ways and Means Committee at the end of 1974 contained provisions eliminating both of the above-described benefits.
11. I.R.C. § 954(b)(2).
12. 1975 Act, § 602(d) and (f).
13. 1975 Act, § 602(d)(1)(G), adding new I.R.C. § 954(f).
14. I.R.C. § 954(d).
15. 1975 Act, § 602(b).

provisions to such income, and severely reduced the benefits of those provisions.

Two new categories of income were established to implement this purpose: "foreign oil and gas extraction income," and "foreign oil related income." "Foreign oil and gas extraction income" includes income derived from the extraction of oil and gas, and income derived from the sale or exchange of assets used for extraction purposes.[16] "Foreign oil related income," a broader category, includes "foreign oil and gas extraction income," as well as income from the processing, transporting or distribution of foreign oil and gas and their primary products, and income from the sale or exchange of assets used in such activities.[17]

Limitation on Amount of Foreign Taxes Eligible for Credit

Beginning with taxable years ending after December 31, 1974, foreign taxes paid by a U.S. taxpayer on foreign oil and gas extraction income are eligible for foreign tax credit treatment only up to certain specified limits.[18] For 1975, the limit is 52.8% of taxable income from such activity; for 1976, the limit is 50.4%; and for 1977 and thereafter, the limit is 50%. Any excess foreign taxes paid on such income would not be creditable either currently or in subsequent years. Moreover, if credits are claimed for foreign taxes paid on extraction income, amounts paid in excess of the then applicable credit percentage limitation would not be deductible either, and thus would be wasted for U.S. tax purposes.[19] In appropriate cases, this result will require a redetermination of whether high foreign taxes paid on extraction income should be credited in part, or deducted in full.

Foreign taxes on extraction income which are creditable (i.e., are within the allowable percentage limitations) but which exceed the general limitation on foreign tax credits in a given year, may be carried over and applied in subsequent years, but only as credits against foreign oil related income realized in such later years.[20]

Limitation on Types of Payments Eligible for Foreign Tax Credit

The new provisions specifically preclude from the category of creditworthy "tax" payments to a foreign country any taxes paid in connection with the purchase or sale of oil or gas extracted in such country, if the taxpayer does not have an "economic interest" in the oil or gas of a type which would be subject to a depletion allowance (i.e., generally speaking, an ownership or equity interest), and the oil or gas is purchased or sold at a price other than its fair market price at the time of such purchase or sale (e.g., at a posted price).[21] (The fair market price of the oil or gas in question is to be determined without regard to any tax liabilities to the country of extraction to which the oil or gas is subject upon purchase.) Payments which are precluded from foreign tax credit treatment under this pro-

16. 1975 Act, § 601(a), adding new I.R.C. § 907 (c)(1). Special rules contained in new I.R.C. § 907(c)(4) and (d) apply in computing such income.

17. 1975 Act, § 601(a), adding new I.R.C. § 907 (c)(2).

18. 1975 Act, § 601(a), adding new I.R.C. § 907(a).

19. See I.R.C. § 275(a)(4). See also the Joint Explanatory Statement of the Committee of Conference, H. Rep. 94-120, 94th Cong., 1st Sess., p. 69 (1975).

20. 1975 Act, § 601(a), adding new I.R.C. § 907(b).

21. 1975 Act, § 601(b), adding new I.R.C. § 901(f).

vision may be claimed as deductions, however.[22]

Isolation of Oil Related Credits and Repeal of Per-Country Limitation

In computing the limitations on foreign tax credits under I.R.C. § 904 for taxable years ending after December 31, 1974, separate computations must be made for (1) foreign oil related income and (2) all other taxable income from foreign sources.[23] This will have the effect of preventing the use of high taxes paid with respect to foreign oil related income as credits against the U.S. tax due on other types of foreign source income.

In addition, for taxable years ending after December 31, 1975, the amount of creditable foreign taxes with respect to foreign oil related income must be determined solely by use of the overall limitation.[24] The alternative per-country limitation will no longer be available with respect to such income.[25] The effect of this change will be to prevent taxpayers from offsetting foreign oil related losses in certain countries against U.S. source income, while obtaining full credit benefits for foreign taxes paid in other countries where oil related operations are profitable. Under the overall method, foreign oil related losses will have to be offset against foreign oil related profits, with only the net amount of foreign oil related income then taken into account for purposes of determining the amount of eligible foreign tax credits relating to such income. (Under the overall method, the total allowable foreign tax credit bears the same proportion to total U.S. tax liability that taxable foreign source income in the aggregate bears to total taxable income from all sources. Under the per-country method, the allowable credit for taxes paid to each country is determined by reference to the proportion which taxable income from such country bears to total taxable income from all sources.)

Recognizing that the repeal of the per-country limitation could sharply increase the tax liabilities of U.S. corporations generating both foreign oil related income and foreign oil related losses in different countries, where the losses are realized by U.S. subsidiaries which join in the filing of a consolidated return with their U.S. parent, the Joint Explanatory Statement issued by the Conference Committee expressly states that "this change should be considered significant in judging requests to revoke consolidated return elections."[26] This statement is undoubtedly intended to encourage the Internal Revenue Service to consider favorably any requests for permission to discontinue filing consolidated returns based upon the adverse effect of the repeal of the per-country limitation.

Carryover of Excess Foreign Tax Credits

For purposes of computing the carryover of unused foreign tax credits from prior years, the new provisions require that carryovers to years ending after December 31, 1974 be determined as if the new percentage limitations on taxes paid with respect

22. New I.R.C. § 901(f) expressly provides that such payments are not to be considered as "tax" payments for purposes of I.R.C. § 275(a), the provision which disallows a deduction for certain types of taxes under certain circumstances. See also the Joint Explanatory Statement of the Committee of Conference, H. Rep. 94-120, 94th Cong., 1st Sess., p. 69 (1975).

23. 1975 Act, § 601(a), adding new I.R.C. § 907(b) and (d).

24. Id. See I.R.C. § 904(a)(2).

25. See I.R.C. § 904(a)(1).

26. Joint Explanatory Statement of the Committee of Conference, H. Rep. 94-120, 94th Cong., 1st Sess., p. 69 (1975).

to "foreign oil and gas extraction income" had been in effect for the prior years in which the excess credits arose.[27] In addition, credit carryovers must be divided into two components — a "foreign oil related carryover" and "another carryover" — based on the proportion of foreign oil related income and other taxable income to total taxable income in the years from which the credits are carried.[28]

Finally, for years ending after December 31, 1975, a taxpayer using the per-country limitation in prior years may effectively continue to avail itself of that limitation with respect to carryovers to subsequent years, even though use of the per-country limitation is repealed with respect to taxes paid on foreign oil related income in such later years.[29] However, the taxpayer may not claim a greater carryover in such later years than that which would be allowed if the per-country limitation continued to apply.[30]

Recapture of Foreign Oil Related Losses

A U.S. taxpayer sustaining a foreign oil related loss (i.e., and excess of properly allocable deductions over gross income from foreign oil related activities) in any taxable year after December 31, 1975, will continue to be allowed the benefit of such a loss as an offset against other income on a current basis, but will be subject to a new series of "recapture" rules in subsequent years. Foreign oil related income realized in subsequent years will be treated as income derived from U.S. sources, rather than foreign sources, to the extent of such prior loss or 50% of such income, whichever is the lesser, and foreign taxes paid with respect to such income will be reduced by a correspondingly proportionate amount.[31] The effect of this treatment will be to deny the taxpayer the opportunity to claim a foreign tax credit with respect to taxes paid on a portion of its foreign oil related income in later years, until its prior foreign oil related loss has been fully absorbed by such income.

The recapture rule has the same general objective as the repeal of the per-country limitation, in that it requires an offsetting of foreign oil related losses against foreign oil related income before foreign tax credit benefits can be enjoyed with respect to such income. The new amendments specifically provide that foreign taxes not eligible for crediting by reason of the recapture rules shall not be allowed as deductions either.[32] Such payments will, therefore, be effectively wasted for U.S. tax purposes.

CHANGES AFFECTING DISC

In addition to the foregoing, the 1975 Act made selective changes in the DISC rules[33] which will have a material impact on U.S. corporations engaged in certain types of export activity. Specifically, the benefits of the DISC provisions are now denied with respect to the export of any primary product derived from oil, gas, coal, or uranium.[34] In addition, DISC benefits are denied to any other product of a character

27. 1975 Act, § 601(a), adding new I.R.C. § 907(e)(1).
28. Id.
29. 1975 Act, § 601(a), adding new I.R.C. § 907(e)(2).
30. Id.
31. 1975 Act, § 601(a), adding new I.R.C. § 907(f).
32. Id.
33. A DISC, or "domestic international sales corporation," enjoys a tax deferral with respect to 50% of its income derived from qualified export activity. See I.R.C. §§ 991 et seq.
34. 1975 Act, § 603(a), adding new I.R.C. § 993(c)(2)(C).

with respect to which a depletion deduction is allowable (e.g., hard minerals), unless at least 50% of the fair market value of such product is attributable to manufacturing or processing activity.[35] (For purposes of applying the 50% test to such products, the term "processing" does not include extracting or handling, packing, packaging, grading, storing, or transporting.)[36] Finally, the benefits of the DISC rules are denied to any products the export of which has been prohibited or curtailed by the President.[37] The DISC amendments apply to any sales, exchanges, or other dispositions made after March 18, 1975.[38]

CONCLUSION

U.S. corporations with foreign operations are watching closely for signs of the direction which future legislative activity might take. It could well be that the amendments to Subpart F are but the precursor to further changes aimed at the complete elimination of U.S. tax deferral for income derived by foreign subsidiaries. On the other hand, it may well be that Congress will go no further than it has in ending deferral, for fear of completely undermining the ability of U.S. corporations to compete effectively in overseas markets. It should be kept in mind, however, that the pattern set by the amendments to the foreign tax credit provisions as they apply to foreign oil and gas operations could readily be extended to other types of business activity if Congress were of a mind to do so.

About all that is clear at this writing is that the subject will receive closer attention later this year. As was stated by the Conference Committee:

> "The conferees expressed their belief that the foreign tax provisions of present law relating to the deferral of foreign income should be further reviewed at the earliest possible date. The conferees indicated that this review should include an examination of the adequacy of existing provisions dealing with the disclosure and reporting of income (and related deductions) of foreign subsidiaries of U.S. corporations."[39]

It goes without saying that the contemplated "further review" is awaited by U.S. multinationals and others with much anticipation.

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35. Id.
36. Id.
37. 1975 Act, § 603(a), adding new I.R.C. § 993(c)(2)(D).
38. 1975 Act, § 603(b).
39. Joint Explanatory Statement of the Committee of Conference, H. Rep. 94-120, 94th Cong., 1st Sess., p. 70 (1975).

H. W. T. PEPPER:

TRANSPORTATION TAXES

(Part One)

Introduction

A few lucky states manage to obtain adequate revenue simply from the ownership or taxation of rich mineral resources. The vast majority, however, usually spread the fiscal net as widely as possible and tax everything which can feasibly be taxed, which includes various aspects of transportation.

Where factors of production as well as products are taxed an element of duplication is involved since the product is being taxed twice, once directly and once indirectly.

Transport is not always accorded the full status of a factor of production but it is an important accessory since only by transport can raw materials be made available, labour deployed, and land brought fully into use. Transport incorporates vectors as disparate as the bulkcarrier, fuel- or ore-ship, the freight-train, and the oil pipeline, and "commuter" or mass-passenger services on rail or road at one extreme, and at the other the private yacht, the invalid chair, the bicycle, the golf-cart, the perambulator or baby-carriage which conveys the infant from home to clinic, and the hearse which conveys the dead to the grave.

Under a V.A.T. system transport in the widest sense may be taxed without too much sophistication, with the assurance that any element of double-taxation of goods and services will be eliminated by the offset provisions which are a basic feature of the tax, leaving transport effectively tax-free as far as (internal) indirect taxation is concerned.

Types of Taxation in Practice

In non-V.A.T. countries taxes on transport may be imposed on the following elements —

Installations connected with transport
Vehicles, vessels, and aircraft
Fuels
Highways, canals, tracks, pipe-lines, and cables
Security measures
Fares & Freight charges
Parking facilities

and even in V.A.T. countries there may be taxes and charges outside the V.A.T. format which are an effective burden on the cost of transport.

In a developing country, transport taxes may be a tax on "development" which is the last thing such a country really wants. The question of what elements of taxation can reasonably be imposed upon transport without doing economic damage is one of the factors considered in the following paragraphs.

Residual consumption tax in a V.A.T. system

Under a V.A.T. system the tax remains a charge upon such transport as is not an accessory factor of production. For example, the owner of a private motor car or yacht, as well as the business of running a bus service, or of a household furniture remover would be subject to the full tax in the absence of specific exemption or abatement.

Complications follow if one wants to exempt from tax the transport of workmen

to work or children to school but to tax, say, recreational transport. Accordingly it is quite common for taxes not to be levied at all on the actual fares and freight charges for transport although, as we shall see, the elements in the cost of transport are frequently subject to taxation.

State Enterprise

The situation is also complicated where some transport is run by the State. In theory a transport undertaking efficiently run by the State and making profits in fair competition with other forms of private sector transport beyond the bare need to provide for replacement, modernisation and expansion is ideal since the profit is a painless form of taxation. In practice it is not very usual for the State to achieve a large "profit" (or "tax") from the operations of, say, a railway and in fact, in present conditions, most state railways at least have difficulty in breaking even, and when run at a loss represent, of course, a form of negative taxation or subsidy. Once Governments take over the running of a facility, there is usually some "political" hesitation to increase rates, even when this is vitally necessary, because of the desire not to lose popularity and votes.

Offset where no V.A.T.

It is perhaps worth mentioning in passing that even when there is no V.A.T. system the cost of transport, including any tax element in that cost, at least is deductible in computing the profits of traders who incur transport expenses so that there is an "expensed" offset, in a way, against income tax.

In the quest for revenue, and on the principle of taxing everything possible so that the fiscal net is widely spread, and no one tax is too heavy a burden, (though the *total* taxation may be onerous indeed) developing countries have in general imposed taxes which bear upon transport and in doing so have often been advised by advisers from more developed countries.

Negative Taxation: Historical examples

To keep the matter in perspective, it is worth pausing to reflect that when the U.S.A. was transforming itself in the 19th Century from a developing to a developed country, the railways when pushing out into new territory were granted free land to the extent of 1 mile on each side of the track. There was no income tax on their profits and no taxes on fuel, and they were able to feed their workers fresh meat at virtually no cost from the buffalo herds that roamed the prairies. When air transport began in the 20th Century the pioneers were subsidised by lucrative mail-carrying contracts.[1]

Moreover, developed countries have often encouraged the development of road, sea, and air transport by other types of "negative taxation" in the form of lucrative mail contracts, and sometimes by straight subsidies (particularly on ships) which, however, may be linked to a right to requisition the facilities in time of War or other crisis. It is true that nowadays new roads, railways, canals etc. are most likely to be provided by governments and, in the case of the smaller developing countries the capital cost is sometimes borne wholly or partly from external aid. Nevertheless, once roads have been built, the need for maintenance,

1. The result was a matter of history — the U.S. built a 3,000 mile trans-Continental railroad through wilderness and mountain ranges linking the east and west coasts within 4 years of the end of its Civil War and the U.S. has also led the world in civil aviation.

resurfacing etc. soon arises and the cost has to be met locally.

Although a "development" case can be made out for exempting transport completely from tax, on the footing that this measure would encourage development, it is difficult to hold to such a strategy when this means resisting the temptation, inter alia, to tax the vehicles which cause the damage to road surfaces which constantly need repair. In the realm of taxation the ideal is seldom attainable and the need for revenue to run the government often means taxing a number of things which ideally would be left untaxed.

Consideration of the impact of taxes on transport in practice follows under the respective headings.

Installations

The installations of transport concerns are normally subject to property tax or local rates in the same way as other buildings. Such installations consist of stations, runways, terminal buildings, harbours and deep water channels, docks and wharves, garages and sheds for vehicles, hangars for aircraft, cargo warehouses and passenger accommodation.

Formerly charges for the use of such accommodation by passengers was included in the price of the ticket but the present tendency, particularly in developing countries, is to make a separate charge for using an airport passenger terminal, and there is a growing tendency to charge similarly for the use of seaport passenger terminal facilities where these exist. Since the terminals are commonly owned by governments, and shipping and airlines by the private sector, there is obviously a case for such charges or "head taxes", to recover some of the cost to governments of providing the facility. The commonest air service charge upon passengers at air terminals now seems to be around U.S.$ 2.50 although there are a few examples of higher or of lower charges.

It is usual to provide some exemption from airport charges, e.g. for small children and others who are conveyed free by airlines, but difficulties are soon encountered as to where to draw the line if exemptions are given too freely. Such charges are usually collected individually from the passenger upon embarkation and this is unavoidable when there is a proliferation of exemptions and abatements. The latter may include having a lower charge for passengers travelling to nearby destinations or those within the area of countries in the same political or economic grouping as the departure country. Of course this differentiation is illogical if one regards the charge, or "tax", as a fee for using the facilities.

It is better administrative practice to make a periodical charge upon the airline etc. in respect of the number of their passengers who have used the airport during the period, perhaps giving them discretion as to whether to bill passengers separately or adjust the ticket price. This indeed is the method adopted in charging landing and other fees in respect of aircraft.

Vehicles, Vessels, and Aircraft

Customs duties and consumption taxes are commonly levied on the cost of vehicles and pleasure sea- and air-craft used within a country. It is not so usual to make such levies on vessels and aircraft used in international trade partly because the craft spend a good deal of time out of the country and partly because of a need not to handicap one's own carriers by taxation in competition with foreign rivals.

In view of the rapidly increasing cost of capital goods of all kinds and the difficulty

of finding money for re-equipping with up-to-date vehicles and craft it is probably better, where it is necessary to raise revenue from this source, to have an annual tax than one based on initial cost. An annual tax can more readily be met out of the annual earnings from employing the assets and can be adjusted annually to accord with the changing value of money.

Where an initial tax on the cost of the vehicle etc. is imposed it may have the effect of "artificially" enhancing the value of depreciation allowances, especially where a non-accountable "investment" allowance is granted, such that total gross deduction for tax purposes exceed the actual cost. Apart from that, the income tax allowance will in any event reduce the gross yield from taxes on vehicles etc., whether these are levied on cost or as an annual charge (which is deductible in computing taxable profits).

Where an annual charge is made in substitution for an initial levy it should strictly be kept separate from other levies made for use of highways; for the exclusive use of certain routes (in the case, e.g., of buses) and so on. These levies are discussed under the heading "Highways, canals etc." Differential taxation on vehicles according to the type of fuel used is discussed under the heading "Fuels".

Fuels

Hydrocarbon fuels

Of all the fuels that motivate transport petrol, gasoline or motor spirit, as it is variously called, has traditionally been the most heavily taxed no doubt because it has also been usually comparatively cheap. Since the price of the raw material quadrupled during the winter of 1973/74 the scope for taxation of hydrocarbon fuels has somewhat decreased although there has been little inclination yet by revenue-hungry governments to reduce the absolute tax burden on the fuel. The tax has usually been a specific levy and where it remains so the rate of the tax expressed as a percentage of cost has of course fallen sharply though the tax revenue yield has remained surprisingly buoyant in consuming countries.

The difficulty with fuel taxes is usually that of ensuring that they fall only upon certain *uses*. For example it is not usually desired to tax diesel fuel used to propel the plant in a factory, mine, or power-station, but it generally *is* desired to tax fuel in private car with a diesel engine. Where a V.A.T. system exists there is no problem of incidence but it is administratively clumsy to make a product taxable when the tax is only intended to bear ultimately on a tiny fraction of the total amount in use.

Accordingly some countries impose no tax, or merely a nominal levy, on diesel fuel, but instead levy a heavy annual registration tax on diesel vehicles used for private purposes, and sometimes on those used for business also.

Coal

It has never been very usual to tax coal and electricity but the tendency to do so may somewhat increase in countries which have multi-rated V.A.T. systems. Coal, of course, now has very little importance as a *propellant* fuel but electricity although largely out-dated as a fuel for tramways, streetcars, and trolley buses because of the decline in use of those vehicles, is making a comeback in the fairly rapid spread in the world's major cities of underground railway systems, and the electrification of ordinary surface railways. No doubt there will be an interim use for coal as a source of oil by

using long-established catalytic "cracking" processes after oil reserves have run out while coal reserves are still extant.

Electricity

The future will undoubtedly see an increase in the use of electricity as the motive power in surface vehicles running in towns and cities, particularly those using batteries which are regularly re-charged from electricity mains. Should the "White Car" system recently introduced in Amsterdam, where people jointly own and use electric road vehicles which are parked at battery-charging points when out of use, prove successful there will soon be imitators. Meantime many large manufacturers are experimenting to perfect a viable electric road vehicle.

In the very long run it seems evident that with the exhaustion of fossil fuels, vehicles which can be propelled by electricity generated in atomic power stations will dominate the transport scene in the roads and streets in urban areas.

It is probably too early to speculate on methods of taxing electricity used for private motoring in succession to highly-taxed motor-spirit but no doubt some form of metering in the actual vehicles will be used. It is likely to be impossible to have differential rates for mains electricity and also ensure that electricity supplied at a cheap rate is not somehow converted for a use which should be taxed at a higher rate. At present, as far as is known, no country has attempted to make any form of extra levy on electricity used to charge the batteries which power electric private motor cars, but if a sizeable proportion of road vehicles switched to electricity, it might be necessary, and equitable, to devise some special tax to restore the erosion of the hydrocarbon fuel tax revenue.

Aircraft fuels

Fuel used by aircraft is free of taxes in most countries for the reason that aircraft flying internationally have some flexibility in choosing where to take on fuel and a country does not wish to discourage airlines from bunkering within its own borders. Moreover, bunkering for international flight amounts to an export of the fuel involved, and it is not appropriate in principle to apply customs duties and consumption taxes to exports.

Transport Levies as a tax on Affluence

All taxes on passenger vehicles and their fuels are an impost on comparative affluence, i.e., a tax on those who ride, rather than walk or pedal a bicycle, to the extent to which the vehicles are not used on business purposes.

To a degree also such taxation is automatically heavier on the rich than on those of moderate incomes assuming that the rich man drives, or is chauffered in, a large expensive car upon which ad valorem duties will naturally be higher, because the price is higher, and fuel taxes heavier because a larger vehicle uses more fuel.

The assumption is not always a safe one. For example in the small islands of St. Kitts-Nevis-Anguilla and others within easy distance of the U.S. Virgin islands in the East Caribbean it is more usual to find large second-hand American cars being used by persons in the lower income groups while many middleclass drivers have cars in the 1000 - 2000 cc. range of cylinder capacity. The special circumstances are that the large cars are available cheaply on the second-hand market with only modest freight charges whereas smaller cars are imported new from much greater distances at a much higher initial price but are then operated with more economical running costs. (See

also notes under "Yachts and Private Aircraft".)

Taxes to Pay for Roads

Nevertheless since taxation is usually related to cost as well as to actual usage, and to engine size and laden weight, there is usually an element of "affluence" tax automatically embodied in taxes the main purposes of which is to pay for road maintenance.

:Initial Taxes

Some countries levy duties or initial registration taxes on new vehicles, which are progressive i.e., they are charged at a higher percentage rate usually on vehicles with greater cylinder capacity. There are clearly imperfections in such a system apart from the fact, mentioned above, that large second-hand cars may be imported cheaply because of rapid built-in "fashion" obsolescence in the exporting country, and, economically, such imports may make very good sense indeed. A registration tax graded by engine-size would, therefore, fail in equity, compared with an ordinary ad valorem tax. In addition some cars of modest engine-size but with luxurious appurtenances and high performance may be the playthings of the rich and yet qualify for the lower tax rate. On the other hand a progressively-rated ad valorem tax brings its own problems of valuation and distortion, since cars will tend to be priced or valued just below the point, or points, at which the rate of tax increases and "optional extras" added later. In a small or poor country where comparatively few citizens can in any event afford expensive cars, attempts to put especially heavy taxes on a few expensive vehicles often encounter unexpectedly severe administrative difficulties and in any event are unlikely to yield sizeable extra revenue so that a more moderate tax policy is often more productive in the long run.

:Local Vehicle Assembly: Initial Registration Tax

A distorting factor in the fiscal treatment of transportation is not uncommonly presented by the existence of a local vehicle assembly plant especially in a small country. Such plants may not really be economically viable, but are normally "subsidised" by allowing duty-free, or duty-abated, importation of parts, materials, or K.D.U.s (Knocked-down units) for assembly.

In addition the entrepreneur may also have been given, say, a 10-year income tax holiday on the profits that have probably been made secure for him by tariff and consumption tax concessions. The greater the (possibly artificial) success of the venture, the greater will be the hole in the revenue made by the tax and duty concessions and the consequential loss of duty etc. caused by the reduction of other imports.

Accordingly some countries which have guaranteed long-term customs exemptions but find the local infant industry can in fact bear some consumption tax on its output have introduced an Initial Registration Tax upon the first registration of all vehicles whether imported complete or assembled locally. The tax does not alter the degree of tariff protection of the locally-assembled vehicles but enables the Government to stop up the hole in its revenue caused by the new industry.

:Annual Taxes on Vehicles

In the case of annual taxes on vehicles, which are intended wholly or partly, to contribute to the cost of road maintenance, there seems, however, no logical alternative to grading the tax to engine size or overall

laden or unladen weight of vehicles regardless of ownership.

:Freight Vehicles

Since it is heavy freight vehicles which do most damage to roads one can hardly do other than levy licence fees proportionate to their size and laden weight and the proportion has in practice to be a progressive one. A truck twice the weight of the largest passenger car will do more than twice the damage or wear to the road surface that the car will cause. A truck four times the weight of the car (i.e. twice the weight of the smaller truck) will cause far more than four times the wear. This progressivity must be reflected in the level of tax. In fact a small country with narrow and winding roads may have to impose much lower maximum weight limits than are common in larger countries, and ban the behemoth altogether.

It is not sound to raise too much revenue with the registration tax alone, since the actual mileage travelled on the roads is a factor in the amount of wear and this factor cannot be readily taken into account in licence fees but *is* automatically taken into account in fuel taxes since greater mileage and weight both involve greater fuel consumption and greater fuel tax.

:Public Vehicles

Where passenger buses and other public service vehicles are Government-owned or where the bus services are partly publicly-owned and partly privately-owned it is best to allow the ordinary licence fees, fuel taxes etc. apply in full to all equally so that proper costings of the service may be made and the proper amount of revenue allocated to road maintenance etc.

Overloading

It is not exactly unknown for maximum load limits to be exceeded illegally in practice and there is a temptation for the administrator to turn a blind eye.

(a) to avoid the unpopularity that law (and particularly tax law) enforcement commonly brings,

(b) in the belief that it represents an economic saving (e.g., in time and wage costs) if a vehicle is allowed to overload and thus make one journey instead of two suffice for a particular job.

Both assumptions are often false, because a firm (as distinct from a fanatical) administrator gains more respect in the long run. If overloading (which means loading beyond the limits of safety, and of the capacity of the road surface) is permitted, the apparent short-term gain may be far outweighed by the vastly greater cost to Government of ultimately re-structuring roads that would have lasted several more years with careful and legal use.

(to be continued)

IRELAND

White Paper Proposals for Corporation Tax

[CHAPTER 3]*

CAPITAL ALLOWANCES, LOSSES AND COMPANY RECONSTRUCTIONS

CAPITAL ALLOWANCES

Nature of capital allowances

62. Capital allowances are allowances provided in the income tax code for the depreciation of certain business assets. These assets are mainly machinery and plant and industrial buildings. The allowances fall into three broad categories as follows: —

(a) Initial allowances in the nature of accelerated depreciation which are given at the following rates in respect of capital expenditure on —

the provision of new machinery and plant (other than road vehicles) and ships, whether new or secondhand	100%
the construction of industrial buildings	20%
the construction of hotels, holiday camps, market garden buildings and registered holiday cottages	10%

(b) Annual allowances in the nature of depreciation on machinery and plant, industrial buildings and hotels, holiday camps, etc., which are granted while the assets are in use for the purposes of the business. The rates are —

new machinery and plant (other than road vehicles) acquired on or after April 1, 1968	10%, 12½% or 25% depending on the life of the asset
other machinery and plant (excluding road vehicles)	no fixed rates. Allowances based on life of asset.
road vehicles	20%
industrial buildings	2%
hotels, holiday camps, etc.	10%

(c) Balancing allowances which are given when the assets are put out of use and there is a deficiency in the amount of the capital allowances granted after account is taken of any proceeds arising on the disposal of the assets. (On the other hand, a balancing charge is made when the capital allowances granted exceed the cost of the assets when account is taken of any proceeds from their disposal.)

63. A form of "free depreciation", that is, such increase in the annual allowances mentioned at *(b)* in the preceding paragraph as the company may claim, is allowable in respect of new machinery and plant (other than road vehicles).

64. The general rule is that the total capital allowances are limited to the difference between the capital expenditure on the asset and the amount received when it is sold or otherwise put out of use. An exception to this rule is the investment allowance in

* We are reprinting only part of the White Paper Proposals in this issue of the Bulletin. Chapter 2 — General Scheme of the Proposed Corporation Tax appeared in the January, 1975, Bulletin, Vol. XXIX, No. 1, pages 33-40.

respect of expenditure on new machinery and plant (other than road vehicles) provided for use in designated areas which, broadly speaking, are located in the western part of the State. The allowance is at the rate of 20% of the expenditure and, as it is not treated as diminishing the cost of the machinery or plant for purposes of the initial and annual allowances, the total capital allowances may amount to 120% of the expenditure.

Present treatment of capital allowances

65. The present scheme of capital allowances is part of the income tax code and was designed primarily for the purposes of that tax. A separate scheme was not designed for corporation profits tax and capital allowances for the purposes of that tax are based on amounts which have been calculated for income tax purposes.

66. For income tax purposes, an initial allowance for a year of assessment in respect of an asset is calculated on the amount of the capital expenditure incurred during the basis period for that year of assessment. An annual allowance for a year of assessment is generally made if the asset is in use at the end of the basis period for the year of assessment. However, in the case of machinery and plant an annual allowance can be claimed in respect of an asset brought into use during a year of assessment even though it was not acquired until after the end of the basis period for the year of assessment.

Example 5

The annual accounts of an established trading company are made up to September 30. During the year to September 30, 1973, it acquired new machinery costing £10,000 which was brought into use on July 1, 1973. The company decides not to claim initial allowance. In the normal course the capital allowances for income tax purposes would be as follows: —

Year of assessment 1974-75 — annual allowance at, say, 10% of £10,000 . . . . . £1,000

However, the company may claim for the year of assessment 1973-74 either

(a) an annual allowance at 10% of £10,000 for the period from July 1, 1973, to April 5, 1974, that is 3/4ths of £1,000 (or £750). In that event the annual allowance for the year 1974-75 would be 10% of £9,250 (or £925); or

(b) free depreciation up to £10,000. If the full £10,000 is claimed, there would be no capital allowance for 1974-75 or subsequent years.

67. For purposes of corporation profits tax the deductions by way of capital allowances are based on amounts which have been calculated for years of assessment for income tax purposes and it is usually necessary to apportion these allowances on a time basis to arrive at the amounts appropriate to the accounting period.

Example 6

The annual accounts of an established trading company are made up to September 30. Assuming the following total capital allowances for income tax purposes —

	£
Year of assessment 1972-73 (based on annual accounts to September 30, 1971)	6,000
Year of assessment 1973-74 (based on annual accounts to September 30, 1972)	10,000
Year of assessment 1974-75 (based on annual accounts to September 30, 1973)	15,000

the deduction for capital allowances in computing the corporation profits tax liability

for the twelve months to September 30, 1973, would be 6/12ths of £6,000 plus 6/12ths of £10,000, namely, a total of £8,000. On the other hand, the capital allowances for income tax purposes for the year 1974-75 based on the same accounting period would be £15,000.
This anomaly would disappear under the proposed new system of corporation tax.

Proposed treatment of capital allowances under new system

68. The general scheme of capital allowances and balancing charges embodied in the existing income tax code would be incorporated with suitable adaptations in the new system of corporation tax. This would be done in such a way that there would be continuity between the basis on which allowances are now given for income tax and the basis on which they would be given for the proposed corporation tax. The problems in this field which would arise on the transition from corporation profits tax to corporation tax are dealt with in Chapter 12. For the purpose of corporation tax capital allowances would be deducted in computing profits and balancing charges would be treated as receipts. In computing the profits of an accounting period deductions in respect of initial allowances would be given by reference to the capital expenditure incurred in the accounting period. Similarly, balancing allowances and balancing charges would be computed for an accounting period by reference to any sums received on the disposal of assets during the accounting period. Deductions by way of annual allowances would be made for an accounting period in respect of assets in use at the end of the accounting period. If an asset purchased during the accounting period is disposed of before the end of the accounting period, a balancing allowance or charge may be required to adjust the initial allowance granted in respect of the expenditure.

Example 7

The annual accounts of an established trading company are made up to September 30. During the year to September 30, 1976, it acquires new machinery costing £10,000 which is brought into use on July 1, 1976. In the ordinary course the capital allowances to be deducted in computing the profits for purposes of corporation tax for the accounting period to September 30, 1976, would be —

	£
Initial allowance at an assumed rate of 60% of £10,000	6,000
Annual allowance at an assumed rate of 10% of £10,000	1,000
Total deduction	7,000

If, however, the machinery proved unsuitable and was sold on August 31, 1976, for £8,000 the deduction for capital allowances would be —

	£
Initial allowance	6,000
Annual allowance	Nil
Total deduction	6,000

The written-down value of the machinery at the date of sale would accordingly be £4,000 (£10,000 minus £6,000). As the machinery was sold for £8,000 there would be a balancing charge of £4,000 which would be included as a trading receipt of the accounting period. The net deduction for the accounting period would therefore be £2,000, that is, the initial allowance of £6,000 less the balancing charge of £4,000.

69. As capital allowances would be deducted in computing trading profits or

losses, the new system would not require the complex provisions of the income tax code under which capital allowances are separately carried forward to subsequent years or utilised to create or augment a loss.

LOSSES

Present treatment of losses

70. For income tax purposes a trading loss may be carried forward and set against subsequent profits of the same trade. Alternatively, a trading loss may be set against the statutory income (normally the income of the preceding year) of the year in which the loss is incurred and repayment claimed accordingly. Any unallowed balance of the loss may be carried forward and set against subsequent profits of the same trade. Where two or more trades are carried on, a loss sustained in one trade may be set against the profits of the other trades. Where a trade ceases and a loss ("terminal loss") is sustained in the last twelve months of trading, the unallowed portion of the loss may be carried back and set against the profits of the trade for the previous three years.

71. For corporation profits tax purposes, the profit or loss of an accounting period is computed as one amount without regard to the several sources of income. If the result is a loss, it is carried forward and deducted from the profits of succeeding accounting periods.

Proposed treatment of losses under new system

72. For corporation tax purposes losses would be computed in the same way as profits. A loss sustained in an accounting period would be carried forward and set against income from the same source for subsequent accounting periods. At the option of the company, a trading loss would be set against other income of the accounting period in which the loss was sustained and, so as not to deprive a company of a form of relief now available, against any income of the immediately preceding accounting period. Any unallowed balance of the loss would, as now, be carried forward against subsequent profits of the trade in which the loss was sustained. Where a loss was sustained in the final twelve months of a trade, any portion of the loss which had not been allowed would be carried back and set against profits of the trade for the previous three years.

Losses created by charges

73. For income tax purposes, certain charges on income such as patent royalties and annuities are not deductible in computing income but the payer secures relief by deducting income tax on making payment of the charges. Where the charges exceed the payer's total income, the excess up to the amount wholly and exclusively paid for the purposes of a trade, may be treated as a loss and carried forward against subsequent profits of the trade.

74. Under the new system, charges on income would not be deducted in computing income from the several sources but would, as explained in paragraph 41, be allowed as deductions in computing the corporation tax assessment for the accounting period in which the charges were paid. Where the charges exceeded the aggregate income from the several sources, the excess up to the amount paid wholly and exclusively for the purposes of the company's trade would be treated as a loss and set against subsequent profits of the trade. If the excess occurred in the final year of a trade, it would be available for the terminal loss relief mentioned in paragraph 72.

CONTINUITY OF CERTAIN ALLOWANCES ON COMPANY RECONSTRUCTIONS

Existing practice

75. Capital allowances and unrelieved losses cannot under the existing tax law be carried over from a company which has ceased to carry on a trade to another company which takes over the trade. In practice, however, the carry-over of capital allowances and relief for losses is allowed by concession where there is substantial identity in the ownership of the trade before and after the transfer.

Proposed treatment

76. Under the new system it would be provided that where a trade, or part of a trade, was transferred from one company to another without a significant change in the underlying ownership, the company succeeding to the trade (or part of the trade) would acquire the rights of the predecessor to the carry forward of losses and capital allowances and would assume the same obligations for balancing charges. The transfer of the trade would not give rise to any balancing allowance or balancing charge.

77. This continuity treatment where there is a succession to a trade without a change of ownership would be limited to losses and capital allowances and in all other respects the existing tax law would apply to the computation of the profits or losses of each of the companies.

[CHAPTER 8]*

TAXATION RELIEFS AS INCENTIVES TO ENCOURAGE INDUSTRIAL DEVELOPMENT

NATURE OF TAX INCENTIVE RELIEFS

113. The special tax measures adopted to encourage industrial development in Ireland were described in Chapter 4 of the first White Paper. The practical application of these measures under the existing law and as proposed under the new corporation tax are set out in this chapter.

114. The principal reliefs are

(a) export sales relief;

(b) "Shannon" relief;

(c) mining relief (at present being amended)

(d) the 20% relief given to shareholders in certain manufacturing and other companies.

The reliefs mentioned at *(a)*, *(b)* and *(c)* are given only to companies, and they are obliged to pass on the relief to shareholders when paying dividends out of relieved profits. The relief under head *(d)* is given, not to companies, but to shareholders who are individuals.

115. The following paragraphs indicate briefly how these reliefs operate:

(a) Export sales relief

The profits of a company from new or increased exports of goods manufactured in the State are exempted from income tax and corporation profits tax for a period of up to fifteen consecutive years, and thereafter on a gradually reducing basis for a further period of up to five years. The reduced rates are 80% for the first of these five

years and 65%, 50%, 35% and 15% for the second, third, fourth and fifth years respectively. Increased exports are increases in export sales compared with export sales in a standard period. As these provisions will not expire until April 5, 1990, the full relief will be available for the entire fifteen year period to a company which commences exporting on or before April 5, 1975.

The expression "manufactured goods" includes such products as cultivated mushrooms, fish produced on a fish farm, and books and greeting cards exported by a publisher (even though not printed by him). The relief also applies to the construction and repair of ships on home or foreign account, certain design and planning services in connection with engineering works executed abroad and to the processing of materials belonging to a non-resident and exported after processing. The exemption consists of a reduction of the company's tax liability by an amount which bears the same proportion to the total tax on its trading profits as the company's qualified export sales bears to its total sales.

(b) Shannon relief

Profits earned by companies from certain export trading and servicing operations carried on within the customs-free area of Shannon Airport are completely exempt from income tax and corporation profits tax up to April 5, 1990.

These two reliefs are broadly similar in character in that they have been provided for the purpose of encouraging industrial development through the growth of exports. The Shannon relief was designed to promote the use of Shannon Airport as an industrial and service centre and to increase traffic through the airport. It differs from the export sales relief in that it affords complete exemption from tax up to April 5, 1990, for all export profits and places greater emphasis on the development of export-oriented service industries.

(c) Mining relief

The Government announced on September 25, 1973, that it had been decided that the twenty-year tax exemption which had been provided in relation to the mining of non-bedded minerals would be withdrawn and be replaced by an alternative system of taxation allowances. Details of the alternative system of allowances were announced on October 19, 1973. The new system would provide for:

(i) deductions for prospecting, exploration and development expenditure as it is incurred;
(ii) special deductions for depreciation of machinery and plant;
(iii) special provision for companies already in production.

There would be special relief for marginal mines.

The new system of allowances would come into operation from April, 1974 — from which date the twenty-year tax exemption would be withdrawn. The new system would be carried into the proposed corporation tax. Shareholders' dividends would carry the normal tax credit.

DEDUCTION OF INCOME TAX FROM DIVIDENDS OF A COMPANY QUALIFYING FOR THE INCENTIVE RELIEFS

Export sales relief

116. The general provisions governing the deduction of income tax from dividends described in paragraph 7 are modified in the case of dividends which are paid by companies out of profits qualifying in whole or in part for export sales relief. In the case of dividends which are paid by a

company out of profits which have enjoyed total or partial income tax exemption by reason of this relief the company may not deduct any income tax if the profits have been wholly exempted, and where the profits out of which the dividends are paid are partially relieved, income tax may be deducted only at a proportionately reduced rate. Accordingly, the benefit of the relief is passed on to the shareholders when dividends are paid. The company retains the benefit of the part of the relief referable to undistributed profits. (There is no corresponding provision for a deduction from dividends in respect of corporation profits tax, and the full benefit of the relief from that tax remains with the company.) For sur-tax purposes the relief is given to an individual by including in his total income only the gross dividend reduced in proportion to the rate of relief granted to the company as shown in Example 10 in paragraph 123.

Shannon relief

117. In the case of Shannon relief a somewhat different position applies. Where, as is normally the case, the whole of the profits are exempt under that relief, the company does not bear any tax and accordingly may not make any deduction from the dividend which is disregarded for all the purposes of the Income Tax Acts. This means that the dividend is not included in calculating total income, and is exempt from sur-tax in the hands of an individual recipient. Where a dividend is paid partly out of profits exempted under Shannon relief and partly out of other profits liable to tax, the dividend is treated as two separate dividends paid respectively out of the exempt and non-exempt profits as shown by Example 11 in paragraph 124. The separate dividend which is paid out of the exempt profits is not deemed to be income for tax purposes. The other separate dividend, paid out of taxed profits, is treated in the same way as a "taxed dividend", in the manner described in paragraph 7.

Dividends paid to companies

118. The principle of deducting income tax at a reduced rate (as in the case of export sales relief) or of making no deduction (as usually happens for Shannon relief) applies also where the dividend is paid to a company. The recipient company must itself deduct income tax at a proportionately reduced rate when it pays a dividend out of income which includes dividends paid to it out of relieved export profits. A company which pays a dividend out of income which includes dividends from relieved Shannon profits may not deduct income tax from that portion of the dividend which is paid out of such exempted dividends.

TREATMENT OF DIVIDENDS UNDER PROPOSED CORPORATION TAX

119. Under the proposed corporation tax, when a dividend is paid out of profits charged to that tax, an element of the tax would be imputed to the shareholder, on a basis which would produce the same result as at present. As indicated in paragraph 7, at present a dividend payment of £65 is treated for tax purposes as a gross dividend of £100, from which income tax £35 (@ 35%) has been deducted. In this way 35% of the gross dividend of £100, or 7/13ths of the actual dividend of £65, is credited to the shareholder. Under the proposed corporation tax and assuming a tax credit equivalent to the present standard rate of income tax of 35%, a shareholder receiving a dividend of £65 out of profits charged to corporation tax, would be entitled to a "tax

credit" of £35 or 7/13ths of the amount of the dividend. Thus the tax position of the shareholder would be unchanged.

120. Where, however, a company's corporation tax liability would be reduced by reason of export sales relief, the amount of the tax credit referable to a dividend paid out of relieved profits would be reduced in proportion to the rate of the relief producing the same result as at present — see Example 10 in paragraph 123.

121. Under the proposed corporation tax, dividends paid out of profits from exempted trading operations at Shannon Airport would not carry a tax credit and would not be regarded as income of the recipient for income tax, sur-tax or corporation tax purposes. A dividend paid out of profits which would be partly exempt and partly liable to corporation tax would, as heretofore, be treated as two dividends paid out of the non-exempt and exempt profits respectively. The portion of the dividend treated as paid out of the exempt profits would not carry a tax credit and would not be regarded as income in the hands of the recipient. The portion of the dividend treated as paid out of non-exempt profits would carry the normal tax credit, and the aggregate of that portion of the dividend and the relevant tax credit would be the amount of the shareholder's income for income tax and sur-tax purposes.

EXAMPLES ILLUSTRATING THAT THE AMOUNT OF INCENTIVE RELIEFS WOULD BE UNAFFECTED BY THE CHANGEOVER

122. Paragraphs 123 and 124 illustrate, with examples, that the treatment of dividends to which the incentive reliefs apply would be imported into the proposed corporation tax so as to achieve the same results.

Export Sales Relief

Example 10

Present position

123. A trading company with no other income has qualifying export sales amounting to 25% of its total sales. Accordingly on the basis of a standard rate of income tax of 35% it is entitled to deduct tax at a rate of 26·25% (i.e. 75% of 35%) from a dividend. A dividend of £65 paid by the company out of profits is therefore equivalent to a gross dividend of £88·14 from which income tax at 26·25% amounting to £23·14 has been deducted. For sur-tax purposes only 75% of the dividend of £88·14, that is, £66·10, is included in the total income.

Position under proposed corporation tax

Under the new system the shareholder's income for income tax purposes in this example would be £88·14, that is, the sum of the dividend of £65 and the tax credit of £23·14. The amount of the tax credit would be calculated as follows: —

$$£65 \times \frac{26{\cdot}25}{73{\cdot}75}$$

where £65 is the amount of the dividend, 26·25 (the numerator) is the standard rate of income tax reduced in the same proportion as the company's liability to corporation tax is reduced by the allowance of export sales relief and 73·75 (the denominator) is the excess of 100 over the numerator. If the shareholder were not liable to income tax on his total income he would be entitled to payment of the tax credit of £23·14. If the shareholder were liable to income tax but not to sur-tax, he would not be liable for any further tax on the dividend. If, however, the shareholder were liable to sur-tax his income from the

dividend would be calculated as follows:

Aggregate of dividend (£65) and tax credit (£23·14)	£88·14
Standard rate of income tax (say 35%) as reduced by reference to export sales relief	26·25%
Income for sur-tax purposes $£88{\cdot}14 \times \frac{26{\cdot}25}{35}$	£66·10

Shannon Relief

Example 11

Present position

124. A company's income for the accounting period to September 30, 1973, is: —

	£	£
Exempt Income		
Profits from exempted trading operations at Shannon Airport . .		60,000
Taxed Income	£	£
Rents, etc.	40,000	
Less income tax and corporation profits tax . .	19,728	20,272
Income available for distribution .		80,272

On January 1, 1974, the company pays a net dividend of, say, £40,000 out of this income.

This dividend is treated as two separate dividends, namely,

Paid out of exempt income —	£
$£40{,}000 \times \frac{60{,}000}{80{,}272}$	29,898
Paid out of taxed income —	
$£40{,}000 \times \frac{20{,}272}{80{,}272}$	10,102
Total dividend	40,000

The net dividend of £40,000 consists of £29,898 paid out of exempt income which is disregarded for tax purposes in the hands of the shareholders, and £10,102 paid out of taxed income which in their hands is equivalent to a gross dividend of £15,542 less income tax at 35%, £5,440. Accordingly a shareholder who receives a net dividend of £100 will be regarded as having received a gross amount of $£\frac{15{,}542}{40{,}000} \times 100$ or £38·85 less income tax at 35%, £13·60 which equals £25·25 net.

Position under proposed corporation tax

A company's income for the accounting period to September 30, 1975, is: —

	£	£
Exempt income		
Profits from exempted trading operations at Shannon Airport . . .		60,000
Taxed income	£	
Rents, etc.	40,000	
Less corporation tax, say, at 50%	20,000	20,000
Income available for distribution		80,000

On January 1, 1976, the company pays a dividend of, say £40,000 out of this income.

This dividend would be treated as two separate dividends, namely,

Paid out of exempt income —	£
$£40{,}000 \times \frac{60{,}000}{80{,}000}$	30,000
Paid out of taxed income —	
$£40{,}000 \times \frac{20{,}000}{80{,}000}$	10,000
Total dividend	40,000

The amount of £30,000 which would not be regarded as income in the hands of the shareholders would not carry a tax credit. The amount of £10,000 which would be regarded as income in the hands of the

shareholders would carry a tax credit. The amount of the tax credit on a basis assumed to be equivalent to the present standard rate of income tax of 35% would be 7/13ths of £10,000 equal to £5,385. Accordingly a shareholder who receives a dividend of £100 would for tax purposes be regarded as having received a dividend of £$\frac{10,000}{40,000} \times 100$ or £25 which would carry a tax credit of £13·46. It will be seen that the tax position of a shareholder would be approximately the same as under the present system as set out in this example. The slight discrepancy between the figures is attributable to the fact that at present the maximum combined rate of income tax and corporation profits tax is marginally less than the corporation tax rate of 50% assumed in the example.

DURATION OF THE INCENTIVE RELIEFS

125. The period of entitlement to the tax incentive reliefs under the existing two-tiered system would in no way be shortened by the changeover to a single corporation tax, so that an eligible company would not lose any relief as a result of the change.

TAX RELIEF FOR IRISH INVESTORS IN IRISH COMPANIES

126. An individual who is resident in the State and who is the beneficial owner of shares or securities in a resident Irish company which complies with certain conditions is entitled to claim, for income tax and sur-tax purposes, to have the dividends and interest from the shares or securities abated by 20%. The relief applies mainly to manufacturing companies. It was introduced in 1932 to encourage private investors to support the industrial development programme by subscribing to new capital issues made by public companies. The relief was subsequently extended to apply to the pre-1932 securities of manufacturing companies and to "bonus" and "rights" issues of shares. The following example shows how the relief operates: —

Example 12

Present position

Income tax

The total income of an individual taxpayer includes a dividend of £65 net after deduction of income tax. At a standard rate of income tax of 35% this represents a gross dividend of £100, from which £35 income tax has been deducted. If the dividend qualifies for the 20% relief, the taxpayer is entitled to a repayment of £7, that is, 20% of the tax applicable, or if he so wishes, it may be set off against his liability to tax on other income.

Sur-tax

For sur-tax purposes only 80% of the gross dividend of £100, that is, £80, is included in his total income.

Proposed treatment under corporation tax

Under the proposed corporation tax system, the shareholder's relief would be given in the case of income tax by way of a repayment or set-off equivalent to 20% of the tax credit attributable to the dividend, and in the case of sur-tax by including in the total income only 80% of the aggregate of the dividend and the tax credit thereby achieving the same result as under the present system.

CANADA

Permanent Establishment of a Corporation in a Province and of a Foreign Enterprise in Canada*

1. Regulation 402 gives the rules under which a corporation is entitled to the federal tax credit provided by section 124 of the Act. To qualify for the credit the corporation must have a permanent establishment in a province. This bulletin outlines the main criteria for a "permanent establishment" as defined in Regulation 400(2).

2. The principles set out below concerning a permanent establishment in a province are applicable to a foreign enterprise in Canada, subject to any special provisions where a tax treaty exists.

3. An establishment in a province is not a "permanent establishment" as contemplated in the Regulations unless a business is connected with it. Ownership by the corporation of a farm, timberland, factory, or a workshop does not constitute a permanent establishment unless it is used in the corporation's business. The term "permanent establishment" is not limited to the examples in the Regulations. Despite the use of the word "permanent", the length of time that a fixed place of business or substantial equipment is used is not the major consideration in establishing permanency. "Fixed" in the term "fixed place of business" does not necessarily mean existing for a long time or in a durable building. A temporary field office on a construction site could be a fixed place of business. Apart from the traditional concept of a fixed place of business (the place of management, deliberation, negotiation, transaction) a permanent establishment can be the place of production, processing, storage, distribution, or any other facility used in a business.

4. An employee or agent of a corporation who is established in a province, and not merely passing through as a travelling salesman or buyer, could constitute a permanent establishment if:

(a) he is a duly accredited agent who has, and habitually exercises, authority to act on behalf of the corporation and conclude contracts binding the corporation;

(b) he is bound by an employment contract, works under the direction and control of the corporation and receives a salary for his services. An employment contract is presumed if the administrative expenses of an agent, in particular the rent of premises, are paid by the corporation; or

(c) he is in possession for sale purposes of a depot or stock of goods belonging to the corporation. The orders may be received directly from the corporation or may come from the customers themselves. These orders must be "regularly" filled from the stock of goods, meaning that they must be filled repeatedly according to an established pattern rather than occasionally in unusual circumstances.

5. A corporation does not have a permanent establishment in a province where it merely:

* Interpretation Bulletin, Sept. 16, 1974.

(a) conducts its business through an independent agent such as a commission agent or a broker, who acts on his own, serves one or more corporations, maintains his own office under his own control at his own expense and receives a normal rate of commission for his services;

(b) maintains an office solely for the purchase of merchandise, although a plant maintained, where necessary, to process to some extent the goods or merchandise purchased (eg, to prevent deterioration) is a permanent establishment;

(c) maintains a stock of goods in a public warehouse, since "warehouse" in Regulation 400(2) implies some control or ownership and is not a permanent establishment if it belongs to another person subject only to directions from the corporation;

(d) places on consignment to, or has sold to, an independent agent, a stock of goods which he uses to fill orders he has accepted on his own or the corporation's behalf;

(e) places on consignment to a customer a stock of goods for purchase as he himself needs them or to fill orders for his own customers; or

(f) transacts all its business in a province through mail order and catalogue sales.

6. A corporation's use of substantial equipment or machinery in a particular place in a province constitutes a permanent establishment. The corporation need not own the equipment. "Use" here means the use for the purpose for which it was created. The display or demonstration of equipment by an agent is not a use as contemplated in the Regulations. The expression "substantial equipment or machinery" must be considered within the context of the corporation's business and is not restricted to a size criterion.

7. A corporation's subsidiary in a province or a subsidiary engaged in trade or business in a province is not in itself a permanent establishment. A subsidiary is a form of business organization but not a fixed place of business as contemplated by the Regulations. However, a subsidiary which acts as a dependent agent, as already described in paragraph 4, is viewed as a permanent establishment of the corporation in respect of those activities.

8. A foreign enterprise is taxable on the revenue attributable to its permanent establishment in Canada even though it may all be received and disposed of outside Canada.

FRANCE

Imposition des quartiers généraux européens des sociétés étrangères*

Les grandes entreprises à vocation internationale implantées dans de nombreux pays, notamment européens, sont amenées à coordonner les activités des différents établissements qu'elles contrôlent et à installer un quartier général couvrant chacun diverses régions du globe.
Des difficultés d'ordre pratique étant apparues dans les règles d'imposition de ces quartiers généraux, il a paru nécessaire de prévoir une certaine harmonisation des conditions pratiques de ces règles.

1. DEFINITION DU QUARTIER GENERAL

Un quartier général est une installation fixe appartenant à une entreprise ou un groupe international dont le siège est situé à l'étranger, et exerçant au seul profit du groupe des fonctions de direction, de gestion, de coordination ou de contrôle, dans un secteur géographique déterminé.
Il résulte de cette définition que:
a. Le quartier général est directement dépendant d'une entreprise ou d'un groupe d'entreprises. Juridiquement, les rapports existant entre le quartier général et l'entreprise dont il dépend peuvent revêtir divers aspects; c'est ainsi que le quartier général peut être constitué sous la forme d'une entité juridique autonome (société de droit français ou groupement d'intérêt économique, par exemple) ou au contraire, sous la forme d'un simple établissement stable, sans personnalité juridique dictincte;
b. Le quartier général agit exclusivement pour le compte des entreprises du groupe. En conséquence, si un quartier général fournit ses services à des entreprises tierces, les bénéfices qu'il pourrait en retirer doivent être soumis à l'impôt dans les conditions de droit commun;
c. L'activité du quartier général consiste en la fourniture de prestations de service, correspondant à des fonctions de direction, de gestion, de coordination ou de contrôle.
Sa mission est donc fondamentalement différente de celle des unités de production, d'achat ou d'exploitation, qui n'ont aucun pouvoir d'impulsion ou de coordination sur les autres unités du groupe.
Les quartiers généraux se distinguent également des « bureaux de liaison » établis par des sociétés étrangères dans certains pays. Ces bureaux, dont l'objet exclusif est de recueillir des informations, fournir des renseignements, faire de la publicité ou de la recherche scientifique pour le compte de sociétés étrangères, n'ont, en effet, qu'une activité « auxiliaire ou préparatoire » au sens des différentes conventions internationales.
d. La compétence du quartier général est limitée à un secteur géographique déterminé (l'Europe de l'Ouest, par exemple). Ils ne peuvent donc prendre de décisions à l'échelle du groupe tout entier. Ils constituent en réalité un démembrement du siège social du groupe, pour une région du monde.

2. SERVICES COMPETENTS POUR L'IMPOSITION DES QUARTIERS GENERAUX ETABLIS EN FRANCE

Afin de remédier aux inconvénients pouvant résulter de la dispersion des services assurant l'imposition de ces quartiers

* Note de l'administration fiscale du 13 février 1975 (B.O. 13 G-3-75).

généraux, et dans un souci d'harmonisation, il a été décidé de confier à un seul service créé à compter de la publication de la présente instruction, le soin de déterminer le régime fiscal applicable à chaque quartier général européen de société étrangère.

Cette cellule administrative — dénommée « Département des sociétés étrangères » — sera rattachée aux services de la direction des Vérification nationales, 9, place Saint-Sulpice à Paris (6e).

Elle sera chargée en premier lieu de l'accueil, de l'information et de l'orientation des dirigeants étrangers intéressés par l'installation en France du quartier général européen de leur entreprise.

Il lui incombera également, après examen des dossiers des sociétés désirant s'implanter[1] de fixer, pour chacune d'elle, le régime fiscal qui sera applicable, et d'en assurer ultérieurement le contrôle en liaison avec la direction territoriale intéressée.

En revanche, la tenue proprement dite des dossiers continuera à être assumée dans les conditions normales par les directions territoriales, tant en ce qui concerne l'établissement de l'assiette, que le dépôt des déclarations et le paiement de l'impôt.

Dans ces conditions, pour assurer l'application de ces mesures, Messieurs les directeurs voudront bien, lorsqu'ils seront saisis de problèmes tenant à la fixation du régime fiscal applicable à un quartier général, se mettre en relation avec le département des sociétés étrangères. Les dossiers en cause leur seront renvoyés, après exploitation, accompagnés de toutes explications utiles, pour suite à donner.

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1. En ce qui concerne les quartiers généraux déjà installés, ils continueront à relever du service territorial compétent, à moins que l'entreprise intéressée ou l'Administration fiscale demandent à ce que leur régime fiscal soit reconsidéré.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning books on this list should include the references numbers listed.

BRAZIL

VESTIGING ALS BEDRIJF IN BRAZILIË,

by R. Voogd. Fenedex, The Hague, 1974. 28 pp. Booklet designed to provide information on the legal, taxation, and financial aspects of business operations in Brazil. (B 15455)

CANADA

CANADIAN INCOME TAX REVISED.

Butterworth & Co., Toronto, 1975.
Loose-leaf publication consisting of several binders and containing material on income tax and related provisions, including double taxation treaties. Volume 5 (to be issued in 1975): consolidated index and case table; Volume 6 (to be issued in 1975): Income Tax Act, rules and regulations; Volume 7: interpretation bulletins and advanced rulings; Volume 8: information circulars, forms, tax treaties, and OECD draft agreement.

CENTRAL AMERICA

ALGUNAS CONSIDERACIONES SOBRE LA PROPUESTA DE LA SIECA EN MATERIA DE ARMONIZACION TRIBUTARIA DENTRE DEL NUEVO ESQUEMA QUE CREARA LA COMUNIDAD ECONOMICA Y SOCIAL CENTROAMERICANA,

by O. Buesco. Facultad Internacional para la Ensenanza del Derecho Comparado, Guatemala, 1975. 14 pp.
Some considerations of the present harmonization of customs duties and taxes in the Central American Common Market. (BR. 15452)

CONSIDERACIONES SOBRE EL ESTADO ACTUAL DE LA ARMONIZACION TRIBUTARIA EN CENTROAMERICA,

by S. G. Granados. Facultad Internacional para la Ensenanza del Derecho Comparado, Guatemala, 1975. 25 pp.
Paper considering the present situation with respect to the harmonization of taxes in Central American Common Market: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. (BR. 15453)

EEC

ZUR FINANZPOLITIK DER EUROPÄISCHEN GEMEINSCHAFTEN: DARSTELLUNG, KRITIK UND REFORMVORSCHLÄGE,

by H. G. Fabritius. Karl-Bräuer-Institut des Bundes der Steuerzahler e.V., Wiesbaden, 1975. 93 pp. Heft 30.
Study which outlines the financial policies of the European communities and some recommendations for reform. (B 8872)

EGYPT

INVESTITIONEN IN DER ARABISCHEN REPUBLIK ÄGYPTEN.

Bundesstelle für Aussenhandelsinformation, Cologne, 1975. 55 pp. No. 67, February, 1975.
Special brochure outlining the investment opportunities in Egypt and containing English texts of relevant laws, such as Law No. 43 for 1974 on the system of Investing Arab and Foreign and the Duty-Free Zones. (BR. 10625)

EUROPE

COMPANY TAXATION IN WESTERN EUROPE;

8th ed., Bank Mees & Hope, Amsterdam, 1975. 150 pp.
Description of various tax systems as they relate to corporate profits. The 8th edition covers Belgium, France, German Federal Republic, Ireland, Italy, Luxembourg, the Netherlands, the Netherlands Antilles, Portugal, Spain, Switzerland, and the United Kingdom. The law is stated as of November 1, 1974. (B 8864/5)

FRANCE

VESTIGING VAN EEN BEDRIJF IN FRANKRIJK; RECHTSVORMEN,

by D. den Hertog. Fenedex, The Hague 1973. 30 pp.
Booklet explaining legal entities for the purposes of establishing a business in France. (B 8874)

LAMY FISCAL

Tome I: Taxes sur le chiffre d'affaires, enregistrement et timbre, fiscalité immobilière. Tome II: Impôts directs, taxes diverses, impôts locaux, contrôle, contentieux, pénalités.
Services Lamy, Paris, 1975. 2 vols.
Annual publications of Services Lamy containing explanations of the French tax legislation. Supplements are issued regularly to keep these two volumes up to date. The basic work states the law and case law as of February, 1975. (B 8866/7)

LAMY SOCIAL.

Service Lamy, Paris, 1975. 1036 pp.
Annual volume of Lamy Social dealing with the labor and social legislation. Material current to January 1, 1975. (B 8878)

MEHRWERTSTEUER IN FRANKREICH.

Verlag W. Sachon, Mindelheim, 1974. 88 pp.
Explanation of the value added tax in France with emphasis on foreign enterprises. Text of the statute (in French) is appended. (B 8844)

GERMAN FEDERAL REPUBLIC

ABC FÜHRER LOHNSTEUER;

3. Auflage, Lieferung 85, December, 1974, by W. Hartz, J. Meessen, and N. G. Wolf. Verlag für Wirtschaft und Steuerrecht Schäffer, Stuttgart, 1974. DM 22.50.
Supplement 85 (111 pages) to the third edition of ABC Guide to Wage Tax (1200 pages) updates the material to 1975.

BUSINESS OPERATIONS IN WEST GERMANY,

by J. Killius. Tax Management, Inc., Washington, D.C., 1975. 125 pp.
Descriptions of the income, net worth, trade, value added, inheritance, and transaction taxes. Included are specimens of tax returns, texts of relevant double taxation treaties, and other related material. (B 8821)

COMPUTER-GESTÜTZTE PRÜFUNGSMETHODEN,

by H. Köster. IdW Verlag, Düsseldorf, 1974. 240 pp., DM 45. Band 10.
Treaties on the audit responsibility and the utilization of automatic data processing. (B 8885)

ABKOMMEN DEUTSCHLAND/SPANIEN ÜBER NIEDERLASSUNG UND DOPPELBESTEUERUNG: ZWEISPRACHIGE TEXTAUSGABE MIT HINWEISEN,

by B. Löber. Verlag Immobilien und Kapitalanlagen, Frankfurt, 1975. 65 pp.
German and Spanish texts of treaties between Germany and Spain concerning establishments, the taking up of residence, and double taxation with annotations. (B 8876/8939)

KOOPERATIONSERFAHRUNGEN DER BUNDESREPUBLIK DEUTSCHLAND MIT JUGOSLAWIEN; UNTER BESONDERER BERÜCKSICHTIGUNG DEUTSCHER KAPITALBETEILIGUNGEN,

by P. Plotz. Verlag Weltarchiv, Hamburg, 1974. 262 pp., DM 34.
Study of the cooperation agreements between the German Federal Republic and Yugoslavia with emphasis on German experiences. (B 8861)

HAUS- UND GRUNDEIGENTUM NACH DER GRUNDSTEUERREFORM,

by H. Ruck. Stollfuss Verlag, Bonn, 1974. 48 pp., DM 12.80.
Guide providing relevant information on the tax on real estate governed by the new Land Tax Reform Law and related statutes. (B 8608)

DIE ANWENDUNG DES AUSSENSTEUERGESETZES; EIN LEITFADEN FÜR DIE PRAXIS MIT GESETZESTEXT UND EINFÜHRUNGSSCHREIBEN DES BUNDESMINISTERS DER FINANZEN,

by B. Runge, K. Ebling, K-H. Baranowski. Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1974. 91 pp., DM 32.
Explanation of the Foreign Tax Law, followed by the official explanatory note thereto and the text of the Foreign Tax Law 1972, as amended. (B 8847)

INVESTITIONSZULAGEN ZUR KONJUNKTURBELEBUNG,

by H. Schaumburg. Dr. Peter Deubner Verlag, Cologne, 1975. 36 pp., DM 16.50.
Explanation and text of the statute concerning investment premiums to promote economic revival. (BR. 8886)

DIE ÜBERPRÜFBARKEIT VON WIEDERBESCHAFFUNGSWERTEN IM JAHRESABSCHLUSS, 1974,

by M. Schlappig. IdW Verlag, Düsseldorf, 1974. 90 pp., DM 26. Band 9.
Examination of accounting on replacement cost basis, in view of the EEC Commission directive. (B 8884)

ERBSCHAFTSTEUER- UND SCHENKUNGSTEUER-GESETZ KOMMENTAR;

2nd ed., by M. Troll. Verlag Franz Vahlen, Munich, 1975. 1246 pp., DM 158.
Second revised edition providing comment on the death duties and gift tax law. The text of the statute and official explanation thereto are appended. (B 8802)

GESCHENKAUFWENDUNGEN — BEWIRTUNGS-KOSTEN ABC-DARSTELLUNG,

Dr. Peter Deubner Verlag, Cologne, 1975. 36 pp., DM 16.50.
Discussions on the expenditures allowed for deduction in the computation of taxable income. (BR. 8887)

STEUERBERATER-JAHRBUCH 1974/75;

zugleich Bericht über den 26. Fachkongress der Steuerberater der Bundesrepublik Deutschland. Köln, 4. bis 6. November 1974. Verlag Dr. Otto Schmidt, Cologne, 1975. 452 pp., DM 68.
Tax Consultant Yearbook 1974/75, contains the proceedings and final report of the 26th Congress of Tax Consultants in Germany, held in Cologne, November 4-6, 1974. Text of papers and discussions are presented and include: "Aktuelle Fragen des Steuerrechts und der Steuerpolitik" by Hans Apel; "Grenz der verdeckten Gewinnausschüttung" by R. W. Fasold; "Rückstellungen im Handels- und Steuerrecht nach gegenwärtigem Recht" by U. Niemann. (B 8843)

HUNGARY

THE COMPARISON OF LAW:

Selected Essays for the 9th International Congress of Comparative Law, ed. by Zoltán Péteri. Akadémiai Kiadó, Budapest. 1974. 323 pp. (French/English)
Compilation of essays by various Hungarian authors dealing with comparative law and reflecting the development of the science of comparative law in Hungary. The subject international tax law is dealt with by Tibor Nagy: "The Socialist Variant of the Multinational Fiscal Law — The Hungarian Case." (B 8776)

BUSINESS GUIDE.

Trade Promotion Secretariat and the Press and Information Department of the Hungarian Chamber of Commerce, Budapest, 1973. 115 pp.
Guide designed to offer information to tourists and businessmen from abroad about Hungary's economic situation, development, and external economic relations. (B 8870)

UNGARN AUSSENHANDELSRECHT.

Bundesstelle für Aussenhandelsinformation, Cologne, 1974. 42 pp., No. 64, November, 1974.
Introductory explanation and German Translation of the Hungarian Trade Law No. 111/74 and in implementing provisions providing such foreign activities in Hungary. (BR. 8856)

INTERNATIONAL

LES SYSTEMES FISCAUX,

by P. Beltrame. Presses Universitaires de France, Paris, 1975. 126 pp.
This monograph describes the basic principles governing the different tax systems of the world (i.e., the tax systems of industrialist, developing, and socialist countries). (B 8840)

INTERNATIONAL TAX STRATEGY,

by M. Edwardes-Ker. In-depth Publishing Ltd., Dublin, 1974. 675 pp., $300.
Loose-leaf publication designed as guide to international tax planning for corporations using the practical opportunities for avoiding taxes. The aim of avoidance is to maximize after tax profits. The author emphasizes that the methods discussed include only those which are quite legal and, accordingly, illegal methods employed in tax evasion are not included. Written in a readable and pleasant style, it includes the following subjects: overseas trading activities, anti-avoidance measures, intercompany pricing, fiscal export incentives, interfinancial national financing strategy, management services, lease holding, international mergers, shipping and aircraft operations, administrative head office, tax strategy for individuals, North Sea oil, off-shore companies, etc. Eight chapters deal with tax havens. The book, which will be updated twice a year, contains much information and is especially geared to the needs of those persons who do not yet have knowledge in this field. (B 8860)

BUILDING REGULATIONS IN ECE COUNTRIES.

United Nations, New York, 1974. 168 pp., $6.
Report which provides information from 22 Economic Commission for Europe countries on their systems of building regulations; the official building authorities and other bodies concerned with the legislative framework of construction;

the means of control and procedures for approval of buildings and building products. (B 8926)

THE FINANCIAL TIMES INTERNATIONAL BUSINESS YEARBOOK, 1975;

4th ed. The Financial Times, Ltd., London, 1975. 695 pp., £11.00.
The main aims of this annual reference book are to provide businessmen throughout the world with key information on more than 50 major trading countries and to collect in one volume essential facts on a representative selection of the world's largest companies.
New features are the increased attention paid to the Middle East in view of the oil crisis and related developments, and a section surveying the leading markets of the world. The Companies index has also been expanded to facilitate access to information.

IFS CONFERENCE ON FISCAL POLICY AND THE ENVIRONMENT.

Institute for Fiscal Studies, London, 1974. 108 pp., £3.50. No. 11, November, 1974.
Text of contributions of a conference on Fiscal Policy and the Environment arranged by the Institute for Fiscal Studies on May 3, 1974. The following topics are reprinted: "Some problems of Pollution-Charging and Fiscal Policy" by Judith Marquand; "The Scope for Pollution Charges" by Norman Lee; "Growth, Resources, and Taxation" by J. R. C. Lecomber; "The Need for a Large Tax on Energy Consumption" by R. S. Scorer; "Fiscal Incentives and the Economics of Waste Recycling: Problems and Limitations" by David Pearce. (B 8933)

MULTINATIONAL ENTERPRISES: FINANCIAL AND MONETARY ASPECTS;

ed. by J. S. C. Wilson and C. F. Scheffer. A. W. Sijthof International Publishing Co., Leiden, 1974. 241 pp., *f* 44.00.
Text of papers presented to the Colloquium held at the University of Nottingham in England, April, 1973, convened by the Société Universitaire Européenne de Recherches Financières, including opening address and the general report. (B 8882)

IRELAND

TOLLEY'S REPUBLIC OF IRELAND TAXATION 1974-75,

by E. L. Harvey. Tolley Publishing Co., Ltd., Croydon, 1975. 43 pp., £1.25.
A detailed guide to income taxation in Ireland updated as of the Finance Act 1974 and includes a summary of the proposed capital gains tax. (B 8906)

ITALY

IVA: IMPRESA E PROFESSIONISTA,

by G. Gallo-Orsi and L. J. Celesia. Unione Tipografico-Editrice Torinese, Turin, 1974. 459 pp.
Handbook on the value added tax. Texts of the laws and ministerial instructions are appended. The material is current to February, 1974. (B 8820)

LA RIFORMA DELLA IMPOSIZIONE DIRETTA: SINTESI COORDINATA DELLE NUOVE NORME DE MAGGIOR INTERESE.

Price Waterhouse & Co., Milan, 1974. 113 pp.
Reform of the major direct taxes. (B 8767)

LUXEMBOURG

CORPORATE TAXATION IN LUXEMBOURG,

by G. H. Urbin. Comptoir de l'Edition Krippler & Cie, Luxembourg, 1975. 42 pp. Vol. 1.
Broad outline of practical and technical concepts of corporate taxation in Luxembourg. Material is current to January 1, 1975. This booklet is in English; translation will be made into French and German and supplemented by further editions if necessary. (B 8883)

THE NETHERLANDS

SCHEMATISCH OVERZICHT VAN DE NEDERLANDSE BELASTINGEN;

9th ed., by H. J. Doedens. Kluwer, Deventer, 1975. 4 pp., *f* 5.50.
Survey of Dutch taxes, providing most of the relevant facts of Dutch taxation as of January 1, 1975. (BR. 8869, 8902)

SCHEMATISCH OVERZICHT VAN DE SOCIALE VERZEKERINGSWETTEN;

28th ed., by G. F. Fortanier and J. J. M. Veraart. Kluwer, Deventer, 1975. 15 pp.
Comparative survey of the social security laws as of January 1, 1975. (BR. 8850)

GREPEN UIT DE HISTORIE VAN DE NEDERLANDSE SUCCESSIEBELASTING,

by D. C. Smit. Kluwer, Deventer, 1975. 15 pp., *f* 7.00.
Text of speech given March 21, 1975, at the

occasion of acceptance of the function of lecturer in tax law at the Catholic University in Nijmegen. The speech deals with some aspects of the history of the Dutch interitance tax. (BR. 8916)

BELASTINGVLUCHT.

Lustrumcongres Tilburgse Fiscalistenvereniging „De Smeetskring", Tilburg, November, 1974. 32 pp.
Texts of papers by Prof. A. J. Rädler and Prof. R. Anthoine prepared for a one-day conference on international tax evasion, held November 28, 1974, in Tilburg. (BR. 8905)

FISCAL MEMO.

Kluwer, Deventer, 1975. 60 pp., *f* 8.50.
Revised issue of Fiscal Memo which provides practical information concerning tax provisions and related subjects as of January, 1975. (B 8863)

1001 RECHTSVRAGEN VERZAMELD UIT DE JAARGANGEN VAN HET W.P.N.R. 1920 TOT EN MET 1973,

door W. E. Haak, F. H. J. Mijnssen, C. C. J. van Rietschoten, A. H. M. Santen, J. M. van Vloten. H. D. Tjeenk Willink, Groningen, 1975. 341 pp.
Entitled 1001 Law Questions, this publication contains reprints from the magazine W.P.N.R. from 1920 to 1973, inclusive, to commemorate the one hundred years' existence of Het Amsterdams Juridisch Genootschap „Notariële Vereniging" te Amsterdam. (B 8797)

NORWAY

NØKKELEN TIL SELVANGIVELSEN FOR 1974: SKATTENØKKELEN, DEN PALITELIGE VEILEDER MED ORIENTERING OM AKTUELLE SKATTEREGLER;

No. 8, 1974, by Olav Saastad. Norsk Skattebetalerforening, Oslo, 1974/75. 105 pp.
Practical guide for filing 1974 tax returns. (B 8851)

POLAND

POLEN: LIZENZVERTRÄGE MIT DEM AUSLAND; BETEILIGUNG AN AUSLANDSGESELLSCHAFTEN; GENEHMIGUNG AUSLÄNDISCHER FIRMENBÜROS.

Bundesstelle für Aussenhandelsinformation, Cologne, 1974. 29 pp. No. 63, November, 1974.
Introductory explanation and German translation of statutes governing foreign royalty agreements, Polish participation in companies abroad, and permission of foreign offices operating in Poland. (BR. 8855)

ROMANIA

RUMÄNIEN: AUSSCHREIBUNGEN ZUR EINFUHR NACH RUMÄNIEN.

Bundesstelle für Aussenhandelsinformation, Cologne, 1974. 12 pp. No. 65, December, 1974.
Introductory notes and German translation of the Law No. 152/1974 concerning the import of machines, fixtures, and plants, as well as the construction of projects by tender. (BR. 8854)

SPAIN

DER SPANISCHE BUCHHALTUNGSPLAN.

Bufete Soler Padro, Barcelona, 1973. 18 pp.
Explanation of the Spanish accounting plan (Plan General de Contabilidad). (B 8379)

VESTIGING ALS BEDRIJF IN SPANJE;

vierde uitgave, by P. E. Hollander and A. Tj. Muller. Fenedex, The Hague, 1974. 51 pp.
Fourth edition of booklet designed to provide information on the legal, taxation, and financial aspects of business operations in Spain. (B 8873)

WOHNUNGSEIGENTUM IN SPANIEN,

by B. Löber and A. Pérez Martin. Verlag der Zeitschrift Immobilien und Kapitalanlagen, Frankfurt, 1974. 100 pp.
Explanation of the Spanish law of ownership of dwellings with emphasis on foreign owners. The relevant law and forms are appended in the German and Spanish languages. (B 8877/8938)

MEMORIA DE LA ASOCIACION ESPAÑOLA DE DERECHO FINANCIERO 1972:

Tomo I and II. S. A. Serrano, Madrid, 1974. 515 pp.
Annual report for 1972 of the activities of the Spanish Association of Fiscal Law, containing proceedings, reports, and resolutions of congresses and meetings, as well as contributions by various authors on aspects of fiscal law. (B 8908/9)

SWEDEN

SKATTE- OCH TAXERINGSFÖRFATTNINGARNA 1975: SÅDANA DE LYDER DEN 1 JANUARI 1975.

Liber Förlag, Stockholm, 1975. 533 pp.
Text of Swedish tax laws as of January 1, 1975. (B 8852/3)

SWITZERLAND

LE SYSTEME FISCAL SUISSE,

by C. Higy. Administration fédérale des contributions, Berne, 1973. 40 pp.
Study which describes the Swiss system of taxation and the structure of the different taxes levied by the federation, cantons, and municipalities of Switzerland. English version of this publication is available. (B 8554)

VORSCHLÄGE ZUR GESTALTUNG EINER SCHWEIZERISCHEN UMSATZSTEUER NACH DEM MEHRWERTSTEUER AN DAS EIDGENÖSSISCHE FINANZ- UND ZOLLDEPARTMENT VOM 15. AUGUST 1974.

Eidg. Drucksachen- und Materialzentrale, Berne, 1974. 110 pp., S.Fr. 10.00.
Report of the special committee which contains recommendations for the introduction of a new turnover tax in Switzerland based on the value added tax system. (B 8804)

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REPORT ON BANKRUPTCY.

Stevens & Sons, London, 1975. 40 pp., £ 1.25.
Report by committee of experts which presents the operation of the law of bankruptcy in England and Wales and makes recommendations for its improvement. (B 8849)

TAXATION KEY TO CORPORATION TAX:

Finance Act 1974 edition, 6th ed., ed. by T. L. A. Graham and P. F. Hughes. Taxation Publishing Company, Ltd., London, 1974. 333 pp., £ 2.75.
Annual guide to corporation tax law in effect as of the amendments made by the Finance Act 1974, including the imputation system. (B 8868/8879)

UNITED STATES OF AMERICA

UNITED STATES TAX LAW AND PRACTICE,

by Sidney I. Roberts and Walter F. O'Connor. Published by The Taxation Institute of Australia in association with the International Bureau of Fiscal Documentation, Sydney and Amsterdam, 1975. 155 pp., $A 7.00 or Dfl. 25.00.
A perceptive study by two well-known New York tax practitioners, originally presented at the 3rd National Convention of The Taxation Institute of Australia during April, 1975. This paper is a lucidly written source of reference which is likely to be of interest to those tax practitioners throughout the world who wish to keep up to date with the U.S. tax scene.

FEDERAL ESTATE AND GIFT TAXES;

Code and Regulations as of February 15, 1975. Commerce Clearing House, Inc., Chicago, 1975. 384 pp., $ 5.50.
Full texts of the estate and gift tax provisions of the Internal Revenue Code and corresponding official Regulations. (B 8858)

INDIVIDUAL RETIREMENT PLANS; INDIVIDUAL RETIREMENT ACCOUNTS; INDIVIDUAL RETIREMENT ANNUITIES; GOVERNMENT RETIREMENT BONDS.

Commerce Clearing House, Inc., Chicago, 1975. 24 pp., $ 1.50.
(BR. 8859)

INTERNAL REVENUE:

Cumulative Bulletin 1974-1, January-June. U.S. Government Printing Office, Washington, D.C., 1974. 525 pp., $ 9.75.
This volume contains a consolidation of all items of a permanent nature published in the weekly Internal Revenue Bulletin, 1974, issues 1 through 25 for the period January 1 through June 30, 1975. (B 8838)

REPORTS OF THE UNITED STATES TAX COURT;

reporter E. C. Thomas. U.S. Government Printing Office, Washington, D.C., 1974. 891 pp., $ 10.85. Vol. 61: October 1, 1973, to March 31, 1974.
Bound volume containing relevant U.S. Tax Court decisions as reported by E. C. Thomas. (B 8823)

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Study of the benefits assured by income tax conventions concluded by the United States of America with the nine members of the European Economic Community, with emphasis on corporate aspects. (B 8930)

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Abkommen zwischen der Bundesrepublik Deutschland und der Sozialistischen Republik Rumänien zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen.

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* * * ARTICLES * * *

H. W. T. PEPPER:

TRANSPORTATION TAXES

(Part Two)*

Yachts and Private Aircraft

An urge to obtain substantial revenue from yachts, as representing rich men's playthings, is best kept under control until attention has been paid to just what is possible.

Ideally every country with coasts bordering suitable waters for yachting would like —

(a) to have as many yachts as possible registered under its flag;

(b) to collect sizeable registration fees therefrom;

(c) to supply all possible repair, re-fitting and chandling services to the yachts;

(d) to generate tourist revenue from yachtsmen coming ashore for land excursions; and

(e) to derive a healthy revenue from berthing, mooring or anchorage charges.

Some of these desiderata are mutually incompatible or exclusive. For example, yachts will only be attracted to register at a place where registration fees are light and where registration does not attract any other particular penalties such as liability to income tax or other levies.

Since it almost goes without saying that countries in general welcome the arrival of yachts and yachtsmen regardless of the place of flag registration, it is clear that there will be no incentive for yachts to be registered where fees are heavy since it can be equally mobile if registered under a more economical flag.

Similarly, excessive berthing or mooring fees may be self-defeating in driving away yachts to other less expensive havens.

Oddly enough, revenue from all the sources enumerated is more likely to be maximised if the charges (or such of those as are within Government's control) are kept to a moderate level.

To a large extent what has been said above regarding yachts applies equally to private aircraft although the latter are not quite so free to roam the world, being dependent on a chain of landing grounds at not-too-distant intervals.

Inter-coastal, Inter-Island, and International Shipping and Air Services

Although shipping may carry both freight and passengers either on a regular, or "line" service, or an irregular or "tramp" basis, the points made above regarding yachts are more or less equally applicable to shipping.

Pipe-lines and Cables

It is becoming increasingly commonplace to convey oil and gas considerable distances by pipe-line. Sometimes the pipe-line may cross the territory of another state on the way from the producing well to the consuming country.

Even where the land over which the pipe-line passes, and the pipes, pumps, reservoirs etc. are all privately-owned, there is a case for levying a moderate tax on the oil, gas, or other product that flows through the pipe-line. The principle involved is the

* Part One of this article appeared in the July, 1975, BULLETIN, Vol. XXIX, No. 7, pages 274—280.

modern one of taxing as widely as possible all goods and services provided in a country, and it is not unreasonable to levy a charge on the service of conveying products by pipe-line.

The other "commodity" commonly conveyed across a country's territory although it has its origin and destination in other countries, is the messages transmitted by electric impulses along cables and telephone wires. In order to keep communications as open and free as possible, however, it is usual to put only nominal charges upon the transmission of messages.

Port Dues etc.

It may be thought that, in contrast to the pleasure yacht, a freight ship has to earn its keep and therefore must call with its cargo more or less regardless of local conditions. This, however, is not quite accurate. There have been various instances where shipping companies, experiencing unloading and loading delays and excessive charges for using a particular port have set up a partial boycott, or consented to call only upon the payment of a substantial extra premium. On the other hand, even where harbour and port dues are inherently reasonable, because they are usually expressed in terms of money, it is up to a Government to make at least annual reviews of its charges so as to adjust them in such a way that at any rate they do not *decline* in real terms.

Income Tax

Ships and aircraft carrying cargo and passengers *within* a country, which may sometimes be coastal or inter-island trade when all the places involved are in the same State, should be liable to income tax on the profits even when the company concerned has its headquarters outside the State. As will be seen below, the calculation of such profits is not without difficulty, but at least the principle is clear and such traffic is routinely excluded from the operation of Double Taxation treaties dealing with shipping and aircraft profits.

:Double Taxation Treaties

The profits of international shipping and airline concerns are commonly referred to in Double Taxation Treaties. In the earliest treaties it was usual for the country of residence of a company whose ships or aircraft plied between the ports and airports of the two contracting states to be given the sole right to tax the profits.

Such treatment works well where both States have shipping and airlines and various troublesome administrative problems are avoided such as —

(a) how much of the profit occurs in territorial waters (as to the extent of which there is no complete international consensus), and how much in international waters and how should the latter be apportioned;

(b) what principles could be adopted for apportionment where a ship calls at half a dozen countries taking cargo and passengers to and from each;

(c) shipping profits may be calculated on the basis of a completed "round-trip" from the home port, but certain sectors of the voyage may be unprofitable — e.g., because the ship is largely in ballast at those stages, or because, owing to intense competition, freight rates and fares on those sectors produce no profit even if the ship is fully laden. Difficulties of allocating round-trip profits in circumstances of uneven profitability will obviously be immense. Where a ship does not have a particular base-port for commencing its voyages and merely operates anywhere where there is a demand for carrying a cargo and there is no definable "beginning" or "end" of a "round"

voyage, the apportionment problem is almost insuperable.

:Flat rate levies

Some countries have tried to circumvent administration problems by levying a flat percentage tax on the amount paid by local exporters for freight. If this tax is merely a provisional payment pending determination of actual taxable profit nothing much is gained, since the calculation problems remain.

Where as has happened in some cases, the percentage levy is not related to actual profits, or is merely "deemed" to be the profit and is not accepted by the country of origin of the shipping or air line as a genuine income tax ,the levy will be classed as a sales or turnover tax on freight (and passenger) charges and merely passed on by the shipping or airline to its customers, i.e., the exporters. At this point the levy has no real fiscal value and the exporting State might as well replace it by some form of levy on the exports themselves if it considers they can bear some taxation.

:Relief for Double Tax: Problems of Tax Haven Shipping

Where administrative difficulties are overcome and an exporting country contrives an agreed basis for taxing a proportion of the profits of a foreign shipping or air-line company by means of a normal income tax, there should be no net burden upon the company since it ought to be able to obtain a full offset for the tax against the income tax on its world operations in its country of origin.

The above is the case where a shipping or air-line is resident in a country where ordinary tax rules apply. Ships flying "flags of convenience", however, usually reside in a country where there is no income tax, though there may be substantial annual registration fees. Accordingly any kind of tax on such ships is likely to be added, one way or another to freight charges. Shipping companies in fact circulate amongst each other information regarding the tax climate in customer countries, so that reaction to new levies is often prompt, and unfavourable to the country imposing them.

There is little doubt that the existence of "flag of convenience" tax havens has meant that there is more shipping available to the world than would otherwise be likely and the effect of this is that freight rates are accordingly lower than might otherwise be the case. Nevertheless it is unsatisfactory that a small number of "flag" countries can contrive to monopolise the tax revenue from a large proportion of the world's shipping to the detriment not only of developed countries but to developing countries which may have greater need of such "windfall" revenue.

Inter Regional and Inter-State Transport

:Rivers, Canals and Straits

In some parts of the world rivers flow across frontiers and occasionally canals have their banks in more than one State. Apart from such matters as the mutual rights of ships and barges of one State to operate in the other States' sectors, there is the question of the sharing of licence fees and of charges for such matters as maintenance of banks and locks, deepening of channels and removing hazardous mudbanks or sandbars or obstacles such as wrecks or rock falls. All these matters are commonly dealt with by mutual agreements among the riparian States.

Some waterways, or straits, between countries are comparatively narrow (examples are the English Channel and the Straits of Malacca) and the production of bulk car-

riers (V.L.C.C.s etc.) and the increase in traffic generally is now posing problems, e.g., of traffic management, to avert danger to life as well as the pollution that may arise from a collision involving a tanker.

In the English Channel there are recognised "traffic rules" but these are not always followed, particularly by the under-qualified crews of some tax haven ships. It seems likely that eventually some actual policing operation, with international backing, will have to be set up and that some system of dues will then have to be introduced to pay for the policing.

Something similar is also likely to occur in the narrow straits between Malaysia, Singapore and Indonesia where there is increasing usage of the waterways by V.L.C.C.s and actual deep water channels are much narrower than the straits themselve.

In both cases the timing of the introduction of dues and physical controls may be accelerated should any major human or ecological disaster occur demonstrably because of congestion in the waterways.

:Railways and Roads

Where a continuous length of railways or road crosses frontiers, there is a greater economic benefit in allowing trains and road vehicles to use the whole length of track whatever their national origin, rather than requiring cargoes and passengers to be unloaded and re-loaded into fresh vehicles at each frontier. As in the case of rivers and canals the whole matter is normally settled by agreement between the States concerned, revenue and traffic rights being apportioned by mutual consent.

Urban Congestion Taxes

There are various methods of restricting, controlling, and taxing the entry of vehicles to urban centres. These vary from the outright ban on entry to certain areas, which may be pedestrian-shopping precincts, or artistic, cultural or historic enclaves where the entry of vehicles would be dangerous in causing vibration-damage, pollution nuisance (or actual chemical damage by fumes), or physical danger to pedestrians in areas not originally designed for motor traffic, to differential tax systems.

"Congestion taxing" is in its infancy as yet. Sophisticated schemes have been suggested for metering vehicles which wish to use busy urban streets. The meters would be fixed in the vehicles and would respond to electronic signals from wiring embedded in the road surface so as to record mileage covered in the "taxable" streets. While many schemes are proposed, however, few are adopted.

In fact it is difficult to find examples of schemes actually operating. A pioneer in this field is, however, the island of Malta which has for years charged an additional £ 5 per annum vehicle licence fee for vehicles wishing to enter the walled capital of Valletta, in addition to the ordinary licence fee which covers the rest of the territory of the State. The tax has worked well in restricting vehicular entry to the city to those who really need to take cars, delivery trucks etc. inside, and has collected extra revenue to help defray the extra cost of policing the flow of and providing parking space for vehicles in the narrow, historic streets.

Singapore is proposing to introduce a scheme whereby motorists will be required to buy supplementary licences costing £ 120 per annum in order to enter the city centre. Drivers are to be exempted from the additional licence, however, if they bring in at least 3 other "commuting" passengers on the daily trip to work in the city, a sensible method, if (and it is rather a large

"if") it can be smoothly administered, of economising the use of scarce fuels and of restricting vehicular congestion in the city, providing an incidental economic benefit to the commuting employee who participates in pooling arrangements.

A very recent proposal (6 March 1975) was that by the Greater London Authority that motorists should be charged £ 1.25 per day for bringing a vehicle into London. In addition a charge of £ 5 per week would be made on parking facilities provided by firms for their own vehicles in London. Many such proposals are made, often involving extreme measures. Some would obviously be unadministrable, many would create inequities and few indeed get further than the proposal stage.

Where an outright ban on traffic is enforced, it is often modified by allowing trade vehicles into the forbidden areas early in the morning for delivery of supplies to shops and restaurants.

Differential Tax on Parking Facilities

As a kind of indirect tax-cum-discouragement, parking is often severely restricted in city centres and substantial charges made for short-term parking, either in official car parks or kerb-spaces, or in private, multi-storeyed, or underground car-parks. Although car park charges are often included in taxable services in comprehensive V.A.T. schemes, there does not seem to be any example so far of an *additional* or differential sales tax being levied on private car parks, access to which is through the streets of the congested city centre. Even though such car parks provide a public service (for private profit) there is a good case for some additional taxation of the parking charges so as to add moderately to the cost of using the central streets. Such a differential would be distinct from the ordinary income tax on the entrepreneur's profits and the property tax or rates payable on the real property which provides the parking facility.

Ticket Taxes

Taxes directly levied on the cost of travel are generally charged only on internal journeys and not on travel to other countries. The reason is obvious, since if it costs more (through tax) to make a long international journey from his own country a traveller will tend to take a short journey across his own frontier and do his long-distance booking while abroad.

Comprehensive consumption taxation on services, such as V.A.T., may include the cost of internal travel. In the case of V.A.T. the automatic offset arrangements and the exemption of services performed abroad normally serve to —

(a) remove the element of double taxation where the entrepreneur making or distributing taxable goods and services is able to offset the V.A.T. element on the transportation element in his costs; and

(b) eliminate all V.A.T. in the "export" (i.e., foreign transport) element in the total charge for a journey wholly or partly undertaken in foreign countries.

Examples of ticket taxes include the federal exice levy of 10% on journeys made within the U.S.A. from which the foreigner, e.g. a tourist, could be exempted, but only if he bought the ticket outside the U.S.A.

The Bahamas has a modest tax of $ 1.50 on all tickets bought there for a sea or air journey, and obviously no-one is going to any lengths to avoid a tax of that size. On the other hand the actual yield is likely to be small. The tax is, however, an example of levy which must largely fall on the cost of *international* travel.

Canada has recently (November 1974) introduced a tax of $ 2.50 on air tickets, but

it has to be borne in mind that the more developed countries (including the U.S. and Canada) do not normally make airport passenger charges.

The most noteworthy tax in the international field is a fairly recent (1974) levy by Israel who charge I£ 600 (roughly £U.K. 60) plus 10% of the ticket value upon all Israeli citizens travelling from Israel and upon foreigners only if they pay for the ticket in Israeli currency. The levy no doubt springs from Israel's stringent financial situation and has a much greater likelihood of success than a similar levy made in another country because Israeli citizens are subject to entry restrictions in certain neighbouring countries and cannot, therefore readily avoid the tax. Avoidance by making an initial short journey is limited also by the imposition of the basic I£ 600 charge for even the shortest journey abroad. Obviously, however, this is a levy which other countries would find it administratively difficult to imitate.

Ticket taxes in the form of airport service charges or departure taxes are dealt with under a separate heading (see "Installations").

Security "Taxes"

A new element in air travel, and to some extent sea-travel, has been the need for security measures to counteract air piracy and "hi-jacking". Extra costs are involved for air and shipping lines, and many airlines have instituted routine searches of persons and their hand-baggage while some send security personnel in plain clothes or uniform on commercial flights thereby increasing costs and slightly reducing seat-capacity. One way or another the extra costs have to be paid by the passengers who are being afforded a measure of protection and while in many cases the costs are absorbed in the ticket price some airlines, particularly in the U.S. where an extra charge of $ 3.00 per ticket is made, impose a separate charge to cover this expense.

PROF. DR. SC. HANS SPILLER *:

FINANZRECHTLICHE GRUNDREGELUNGEN DES STAATSHAUSHALTES DER DDR

1. GENERELLE AUFGABEN DES STAATSHAUSHALTES DER DDR

Innerhalb des einheitlichen sozialistischen Finanzsystems ist der Staatshaushalt die Hauptform der planmässigen Bildung und Verwendung gesellschaftlicher Geldfonds, mittels der der sozialistische Staat die gesellschaftliche Produktion intensiviert und die immer bessere Befriedigung der Bedürfnisse der Bevölkerung anstrebt. Die Aufgabenstellung des Staatshaushaltes ist dem Verfassungsauftrag untergeordnet, wonach der Mensch im Mittelpunkt aller Bemühungen der sozialistischen Gesellschaft und ihres Staates steht und die weitere Erhöhung der materiellen und kulturellen Lebensniveaus des Volkes auf der Grundlage eines hohen Entwicklungstempos der sozialistischen Produktion, der Erhöhung der Effektivität, des wissenschaftlich-technischen Fortschritts und des Wachstums der Arbeitsproduktivität die entscheidende Aufgabe der entwickelten sozialistischen Gesellschaft ist.[1]

Der Staatshaushalt ist damit, wie das sozialistische Finanzsystem überhaupt, Instrument zur Verwirklichung der Klasseninteressen der Arbeiterklasse und der mit ihr verbundenen Klasse der Genossenschaftsbauern und aller werktätigen Schichten. Seine Aufgaben sind folglich nicht nur aus den quantitativen Aspekten der Einnahmen und Ausgaben abzuleiten, sondern vielmehr aus seinen politischen, klassenmässigen Zielen, die auf die Erreichung gesellschaftlicher einschliesslich volkswirtschaftlicher Effekte orientiert sind.[2] Dazu gehören unter anderem die klassenmässige Differenzierung der Einkommen, die zweigliche und territoriale Umverteilung des Nationaleinkommens, die Sicherung planmässiger Proportionen zwischen den volkswirtschaftlichen Bereichen entsprechend dem im Sozialismus wirkenden Gesetz der planmässigen proportionalen Entwicklung sowie der Proportionen zwischen Akkumulation und Konsumtion, die Finanzierung der nichtproduktiven Bereiche, die Einordnung der nationalen Wirtschaft in die internationalen Wirtschaftsbeziehungen einschliesslich der zielstrebigen Förderung der sozialistischen ökonomischen Integration.

Der Staatshaushalt hat vor allem drei eng miteinander verbundene Funktionen zu erfüllen, die als die Verteilungsfunktion, die Stimulierungsfunktion und die Kontrollfunktion charakterisiert werden können.[3]

Diese bedeutenden ökonomischen Funktionen sind auch Gegenstand der haushaltsrechtlichen Grundsatzregelung durch die Staatshaushaltsordnung der DDR.[4]

In ihr wird der Staatshaushalt als Instrument des sozialistischen Staates zur Leitung und Planung der gesellschaftlichen Entwicklung rechtlich charakterisiert.

Daraus ergibt sich zunächst die notwendige Aufgabe des Staatshaushaltes, auf den

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1. Artikel 2 Abs. 1 der Verfassung der DDR vom 7.10.1974.
2. Siegfried Böhm, Aktive Finanzpolitik verwirklichen, Sozialistische Finanzwirtschaft 1974, H. 18, S. 3.
3. G. Gebhardt, Sozialistische Finanzen, Sozialistische Finanzwirtschaft 1974, Heft 11, S. 41.
4. Gesetz über die Staatshaushaltsordnung der DDR vom 13.12.1968, Gesetzblatt der DDR Teil I, S. 383.

produktiven Bereich aktivierend einzuwirken. Im Vordergrund steht hier die Finanzierung des wissenschaftlich-technischen Fortschrittes und solcher Investitionsobjekte, die von gesamtgesellschaftlicher Bedeutung sind und deren Umfang die Finanzkraft einzelner Betriebe oder Industriezweige übersteigt. Das erfordert eine wirkungsvolle Koordinierung der Ausgaben des Staatshaushaltes mit dem für die gleichen Aufgaben einsetzbaren Kreditvolumen und der Heranziehung derjenigen volkswirtschaftlichen Mittel, die den Betrieben planmässig im Rahmen der wirtschaftlichen Rechnungsführung aus selbstbewirtschafteten Fonds zur Verfügung stehen.

Damit wird zugleich die Notwendigkeit der einheitlichen Leitung aller Finanzinstrumente auf der Grundlage des demokratischen Zentralismus verdeutlicht. Ein wichtiges Leitungsinstrument zur Herbeiführung der gesamtstaatlichen Abstimmung ist die dafür in der DDR jährlich durch das Ministerium der Finanzen zu erarbeitende Finanzbilanz des Staates. Darüber hinaus werden die Einnahmen und Ausgaben des Staatshaushaltes und die planmässige Bildung und Verwendung der Fonds der volkseigenen Wirtschaft rechtlich in den jährlichen Staatshaushaltsgesetzen fixiert. Diese Haushaltsgesetze erfassen demzufolge nicht nur die Einnahmen und Ausgaben des Staatshaushaltes, sondern auch die Gesamtbeträge der Einnahmen und Ausgaben der in der volkseigenen Wirtschaft auf Grund der wirtschaftlichen Rechnungsführung selbsterwirtschafteten Fonds. Die staatliche Dispositionsbefugnis sowohl über die Mittel des Staatshaushaltes wie auch über die Fonds der volkseigenen Wirtschaft wird haushaltsrechtlich dadurch ausgewiesen, dass in den jährlichen Staatshaushaltsgesetzen die „Einnahmen und Ausgaben des Staates" als Festlegung des Volumens beider Bereiche summarisch erfasst, in ihrer Verteilungs-, Stimulierungs- und Kontrollfunktion von der Volkskammer bestätigt und damit den jeweils zuständigen Haushaltsorganisationen und Organisationen der volkseigenen Wirtschaft zur planmässigen Verwendung zur Verfügung gestellt werden.[5]

Der Staatshaushalt ist wesentlichstes Instrument zur Finanzierung prinzipieller gesamtstaatlicher Aufgaben auf der Grundlage der planmässigen Gestaltung des Gesellschaftlichen Reproduktionsprozesses. Umfangreiche Mittel werden zur Erweiterung und Effektivitätserhöhung der volkseigenen Wirtschaft eingesetzt. Ein anderer wesentlicher Teil des Staatshaushaltes dient der direkten Verbesserung der Arbeits- und Lebensbedingungen der Bevölkerung. Bei einem Haushaltsvolumen von 106,4 Milliarden Mark im Jahre 1975 betragen die Ausgaben für den Bereich der gesellschaftlichen Konsumtion rund 37,1 Milliarden Mark (= 34,8% der Gesamtausgaben).

Dabei werden in bedeutendem Umfange Mittel für die Befriedigung geistig-kultureller und sozialer Bedürfnisse zur Verfügung gestellt. Das bezieht sich vor allem auf die Sicherung stabiler Verbraucherpreise, die Realisierung des Wohnungsbauprogrammes, die materielle und finanzielle Sicherung des sozialistischen Bildungssystems, den weiteren Ausbau des Gesundheitswesens, die Förderung der sozialistischen Kultur und Kunst und den Umweltschutz.

Gemäss der prinzipiellen politischen Ein-

5. Vergleiche für das Haushaltsjahr 1975 § 1 des Gesetzes über den Staatshaushaltsplan 1975 vom 19.12.1974, Gesetzblatt der DDR Teil I, S. 574.

schätzung, dass sich die Rolle der Staatsmacht als Hauptinstrument bei der Entwicklung der sozialistischen Gesellschaft weiterhin erhöht, vergrössern sich damit auch Rolle und Bedeutung der zur Ausübung der staatlichen Macht notwendigen Leitungsinstrumente, deren integrierender Bestandteil der Staatshaushalt ist. Da der Staatshaushalt zur unmittelbaren Disposition der Staatsorgane zur Verfügung steht, können mit seiner Hilfe direkte Einwirkungen zur Erreichung staatlicher Zielstellungen erzielt werden. Die Mittel des Staatshaushaltes sind deshalb von erhöhter Disponibilität, weil sie endgültig in der Verfügungsbefugnis der Staatsmacht konzentriert sind und ihnen darüber hinaus — zum Unterschied von Kredit- und Versicherungsfonds — keine Gegenansprüche gegenüberstehen, so dass die Umverteilung endgültig auf der Grundlage der vorhandenen Rechtsnormen erfolgen kann.

2. DER AUFBAU DES STAATSHAUSHALTES DER DDR

Der über mehrere Entwicklungsetappen erreichte gegenwärtige Aufbau des Haushaltes der DDR hat die Aufgabe, ein auf der Grundlage des demokratischen Zentralismus beruhendes, effektives Haushaltssystem zu verwirklichen. Das erforderte vor allem die Schaffung eines einheitlichen Staatshaushaltes in Übereinstimmung mit dem Staatsaufbau und der Volkswirtschaft. Seine einheitliche Struktur ermöglicht eine einheitliche Disposition auf der Grundlage des für alle Haushaltsorganisationen gültigen einheitlichen Haushaltsrechtes.

Der Staatshaushalt der DDR besteht aus dem zentralen Haushalt und den örtlichen Haushalten (§ 2 der Staatshaushaltsordnung). Teile des zentralen Haushaltes sind die Haushalte der zentralen Staatsorgane (Volkskammer, Staatsrat, Ministerrat, Ministerien und andere zentrale Organe einschliesslich der ihnen unterstellten Betriebe und Einrichtungen) und als relativ selbständiger Bestandteil der Haushalt der Sozialversicherung. In den Haushalt der zentralen Staatsorgane sind die finanziellen Ergebnisse der zentralgeleiteten volkseigenen Wirtschaft einbezogen. Vor allem mittels des zentralen Haushaltes werden Massnahmen von gesamtgesellschaftlichem Interesse finanziert. Das gilt beispielsweise für strukturbestimmende Investitionen, für wesentliche Aufgaben des wissenschaftlich-technischen Fortschritts, für die sozialistische Intensivierung der Landwirtschaft einschliesslich ihres schrittweisen Überganges zu industriemässigen Produktionsmethoden, die Finanzierung grundsätzlicher kultureller und sozialer Massnahmen sowie die Finanzierung der Verteidigungs- und Sicherheitsaufgaben.

Die örtlichen Haushalte gliedern sich entsprechend dem Staatsaufbau der DDR in die Haushalte der Bezirke, Kreise, Städte und Gemeinden, wobei die Gesamtheit der nachgeordneten Haushalte Bestandteil des jeweils übergeordneten Haushaltes ist. Infolgedessen umfasst zum Beispiel der Haushalt eines Bezirkes die unmittelbar für die Lösung bezirklicher Aufgaben erforderlichen Mittel. Darüber hinaus sind auch die Haushalte der zu diesem Bezirk gehörenden Kreise und kreisfreien Städte im Bezirkshaushalt enthalten. In Übereinstimmung mit dem jeweiligen Unterstellungsverhältnis fliessen die finanziellen Ergebnisse der örtlichen volkseigenen Wirtschaft in den jeweiligen örtlichen Haushalt ein. Damit wird zugleich die Einwirkung der örtlichen Staatsorgane auf die Erhöhung der Effektivität der örtlichen Wirtschaft mobilisiert. Die Mittel der ört-

lichen Haushalte dienen vorrangig folgenden Bereichen: Bildungswesen und Einrichtungen der Kinderbetreuung, Gesunderhaltung, Erholung und sportlicher Betätigung der Bürger, Nahverkehr, Dienstleistungen, Wohnungswirtschaft, Entfaltung des geistig-kulturellen Lebens im örtlichen Bereich.

Eine gewisse Sonderstellung nimmt der Haushalt der Sozialversicherung als Teil des zentralen Haushaltes ein. Dei Leitung und Verwaltung der Sozialversicherung obliegt den Gewerkschaften. Die finanziellen Fonds der Sozialversicherung sind Bestandteil des zentralen Haushaltes als Ausdruck der Verantwortung des sozialistischen Staates für die soziale Sicherung der Bürger im Alter, bei Krankheit und für den vorbeugenden Gesundheitsschutz. Entsprechend seinem Verfassungsauftrag übernimmt der Staat die Ansammlung der Mittel für die soziale Betreuung der Bürger aus dem Sozialversicherungsfonds im Rahmen seiner Haushaltswirtschaft und stellt sie den Gewerkschaftsorganen zur selbständigen Verwendung zur Verfügung. Das bedeutet vor allem, dass der Staatshaushalt auch diejenigen Mittel deckt, die über das Gesamtvolumen der Einnahmen aus Sozialversicherungsbeiträgen hinaus erforderlich werden, um das grössere Gesamtvolumen der Ausgaben der Sozialversicherung zu dekken.

3. DIE WESENTLICHEN RECHTSGRUNDSÄTZE DER HAUSHALTSWIRTSCHAFT NACH DER STAATSHAUSHALTSORDNUNG DER DDR

a) *Demokratischer Zentralismus*

Als tragendes Leitungs- und Organisationsprinzip des sozialistischen Staates bestimmt der demokratische Zentralismus auch die Grundbeziehungen in der Haushaltswirtschaft der DDR. Sichtbarer Ausdruck dafür ist der bereits dargestellte Aufbau des Haushaltssystems und die daraus resultierende Einheitlichkeit des Staatshaushaltes. Die konsequente Verwirklichung des demokratischen Zentralismus gewährleistet einheitliche Umverteilungsprozesse entsprechend der zentralen Grundsatzentscheidungen in Übereinstimmung mit der Planung im materiellen Bereich. Damit wird die Durchsetzung zentraler Leitlinien im gesamten Bereich der DDR auf dem Haushaltsgebiet gesichert. Andererseits bietet das Prinzip des demokratischen Zentralismus alle Voraussetzungen, dass die örtlichen Organe auch in der Haushaltswirtschaft ihrer Verantwortung entsprechend den gesetzlichen Bestimmungen [6] in vollem Umfange nachkommen und darüber hinaus ihre eigene Initiative entfalten können.

So sichert zum Beispiel das einheitliche Haushaltssystem, dass den örtlichen Organen immer die erforderlichen Mittel zur Erfüllung der planmässigen Aufgaben zur Verfügung stehen. Soweit die erforderlichen Ausgaben der örtlichen Organe durch die örtlichen Einnahmen nicht gedeckt werden, erfolgt ein Ausgleich aus dem zentralen Haushalt und schliesst damit Verschuldungen insbesondere von Städten und Gemeinden aus. Die Einheitlichkeit des Haushaltes bedeutet auch, dass alle Einnahmen und Ausgaben nach den gleichen Rechtsgrundsätzen in allen zentralen und örtlichen Haushaltsorganen verwendet werden und in einer einheitlichen Haushaltssystematik erfasst sind. Damit werden die erforderlichen Voraussetzungen geschaffen, um die staatliche Leitungstätigkeit zur Qualifizierung der Planung, der

6. Gesetz über die örtlichen Volksvertretungen und ihre Organe in der DDR vom 12.7.1973, Gesetzblatt der DDR Teil I, S. 313.

Analysentätigkeit und zur umfassenden Information zu nutzen.

b) *Planung des Staatshaushaltes*

Das generelle Prinzip des Artikels 9 Abs. 3 der Verfassung der DDR, wonach für die Volkswirtschaft wie für alle anderen gesellschaftlichen Bereiche der Grundsatz der Leitung und Planung gilt, ist auch verbindlich für die Aufstellung und Durchführung des Haushaltes. Nach § 13 der Staatshaushaltsordnung ist für jedes Kalenderjahr ein Staatshaushaltsplan aufzustellen, wobei besonders die kleineren Städte und Gemeinden das Recht nutzen können, im Interesse rationeller Leitungstätigkeit zur Mehrjahresplanung überzugehen.

Die Ausarbeitung des Staatshaushaltesplanes in seiner Gesamtheit und der Haushaltspläne der örtlichen Staatsorgane erfolgt in Übereinstimmung mit der Planung der materiellen Entwicklung der Volkswirtschaft. Die Haushaltspläne werden auf der Grundlage und in Wechselwirkung insbesondere mit der Bilanz des gesellschaftlichen Gesamtprodukts und des Nationaleinkommens, der Bilanz der Geldeinnahmen und -ausgaben der Bevölkerung, der Finanzbilanz des Staates, der Kreditbilanz und der Zweigbilanzen der volkseigenen Wirtschaft vom Ministerium der Finanzen bzw. den Abteilungen Finanzen der örtlichen Räte in Zusammenarbeit mit der Staatlichen Plankommission, den örtlichen Fachorganen und den anderen Finanz- und Bankorganen erarbeitet. Die Planerarbeitung orientiert sich auf die Aufgaben des Volkswirtschaftsplanes und bedient sich der analytischen Einschätzung der vorangegangenen Planperiode. Auf dieser Grundlage übergibt der Ministerrat den Fachministern und den Leitern anderer zentraler Staatsorgane sowie den Vorsitzenden der Räte der Bezirke staatliche Planaufgaben und Berechnungskennziffern, die differenziert auf die nachgeordneten staatlichen Einrichtungen sowie die Räte der Kreise, der Städte und Gemeinden aufgeschlüsselt werden. In den jeweiligen Bereichen erfolgt dann die Bearbeitung der Planentwürfe und deren Beratung in den zuständigen staatlichen Gremien. Letztlich werden die fertiggestellten Entwürfe zum Staatshaushaltsplan-Entwurf zusammengefasst. Im Plenum der Volkskammer erfolgt dann die Diskussion und Beschlussfassung über den Gesamtentwurf des Staatshaushaltes. Nach der Verabschiedung des jährlichen Staatshaushaltsgesetzes durch die Volkskammer werden auf seiner Grundlage auf örtlicher Ebene die Beratungen über die weitere Aufgliederung der Haushaltsfonds entsprechend den materiellen Aufgabenstellungen geführt und die für das jeweilige Territorium verbindlichen Haushaltsbeschlüsse durch die örtlichen Volksvertretungen in eigener Zuständigkeit gefasst.

In engem Zusammenhang mit der Planung des Staatshaushaltes, die auf der Grundlage des demokratischen Zentralismus erfolgt, steht das Prinzip der Vollständigkeit. Es verbietet, haushaltswirksame Einnahmen und Ausgaben sowie finanzielle Fonds ausserhalb des Haushaltes und der Haushaltsplanung zu führen. Durch die vollständige Einbeziehung aller Einnahmen und Ausgaben ohne wechselseitige Aufrechnung wird der Möglichkeit entgegengewirkt, leitungsmässig nicht erkennbare gesellschaftliche Entwicklungstendenzen entstehen zu lassen.

c) *Einheit von materieller und finanzieller Planung*

Volkswirtschaftsplan und Staatshaushaltsplan bilden die Grundlage der staatlichen

Planung, beide Pläne ergänzen sich als Teile der volkswirtschaftlichen Gesamtplanung. Ausgehend vom Primat der materiellen Seite, erfasst und beeinflusst der Staatshaushaltsplan in Abstimmung mit den anderen Bereichen des einheitlichen Finanzsystems die gesellschaftlichen Prozesse. Die Funktionen der Finanzen werden als vermittelndes stimulierendes und kontrollierendes Glied des gesellschaftlichen Reproduktionsprozesses genutzt, um auf die Strukturierung der materiellen Produktion und die Effektivitätserhöhung sowohl bei der Durchführung der staatlichen Massnahmen in der Volkswirtschaft wie auch in allen anderen Bereichen aktiv einzuwirken.[7]

Mittels der Einnahmen und Ausgaben des Staatshaushaltes ist eine unmittelbare Information, Analyse und Lenkung einer Vielzahl staatlicher und wirtschaftlicher Entwicklungsprozesse möglich, die sich durch Erschliessung aller betrieblichen und territorialen Reserven als wesentliches Mittel zur Erreichung hoher Effektivitäts- und Leitungsziele erweisen.

Bei der Aufstellung des Staatshaushaltsplanes finden alle wesentlichen staatlichen Bilanzen Berücksichtigung und ermöglichen, in Abstimmung mit den materiellen Plänen im zentralen und örtlichen Bereich, die Übereinstimmung der materiellen mit der finanziellen Seite der Entwicklung zu gewährleisten. In Konkretisierung des Grundsatzes der Einheit von materieller und finanzieller Planung hat der Minister der Finanzen das Recht, beim Vorsitzenden der Staatlichen Plankommission bzw. bei den Leitern der verantwortlichen zentralen Staatsorgane Einspruch einzulegen, wenn die in den materiellen Plänen vorgesehenen Massnahmen entweder die volkswirtschaftlich notwendige Akkumulation nicht gewährleisten, die proportionale Entwicklung der Volkswirtschaft nicht zu sichern vermögen oder gegen das Prinzip der Sparsamkeit verstossen.

d) *Ausgeglichenheit und Reservebildung*

Die Stabilität der Staatsfinanzen und der Währung der DDR hat ihre wichtigste Grundlage in der planmässigen volkswirtschaftlichen Entwicklung unseres Staates. Die Haushaltswirtschaft unterstützt und fördert diese Stabilität durch ein ökonomisch begründetes, den materiellen Bedingungen entsprechendes Verhältnis der Ausgaben zu den Einnahmen. Verbindlicher haushaltsrechtlicher Grundsatz ist in diesem Zusammenhang das Prinzip der Ausgeglichenheit, wonach die Ausgaben nicht über den Einnahmen liegen dürfen. Die strikte Einhaltung dieses Grundsatzes ist für die Stabilität der Haushaltswirtschaft von hoher Bedeutung, da so unter anderem Entstellungen der Geldzirkulation, Entstellungen des Verhältnisses zwischen materiellen und finanziellen Fonds und damit Gefährdungen der Währungsstabilität ausgeschlossen werden können.

Für die Sicherung der Liquidität des Staatshaushaltes ist der Minister der Finanzen gegenüber dem Ministerrat verantwortlich und rechenschaftspflichtig. Entsprechend seiner Gesamtverantwortung ist die Ausarbeitung, Durchführung, Abrechnung und Kontrolle des Staatshaushaltsplanes mit der Erreichung eines im Staatshaushaltsplan vorgesehenen Überschusses zu verbinden. Dieser Haushaltsüberschuss ermöglicht die Überbrückung von Schwankungen zwischen Einnahmen und Ausgaben und in gewissem Umfange die Finanzierung unvorhergesehener Aufgaben. In der örtlichen Haushaltswirtschaft wird diese Aufgabe durch den planmässigen Kassenbe-

7. G. Gebhardt, a.a.O. S. 42.

stand erfüllt. Die Erreichung des planmässigen Kassenbestandes ist wichtiges Kriterium für die Haushaltsplanerfüllung. Deshalb dürfen Fondszuführungen erst nach Erreichung des geplanten Kassenbestandes vorgenommen werden. Sie gelten solange als vorläufig, bis die Staatliche Finanzrevision die Jahreshaushaltsrechnung bestätigt hat.

e) *Grundsatz der Wirtschaftlichkeit und Sparsamkeit*

Das Prinzip der Wirtschaftlichkeit und Sparsamkeit beinhaltet, im gesamtgesellschaftlichen Interesse in allen Staatsorganen und Betrieben der volkseigenen Wirtschaft, die vorhandenen Mittel mit optimalem Effekt und höchster Sparsamkeit einzusetzen. Ausdruck dieses Prinzips ist auch die restlose Ausschöpfung der dem Haushalt zur Verfügung stehenden Einnahmequellen. Den verantwortlichen Leitern ist damit die Verantwortung übertragen, in ihrem Bereich die aktive Rolle der Finanzen zu verwirklichen. Diese Verantwortung muss mit Festlegungen verbunden sein, die bei Verletzung des Sparsamkeitsprinzips zu Sanktionen führen und die staatliche Ordnung wieder herstellen.

Der Finanzminister hat nach § 5 der Staatshaushaltsordnung das Recht, bei Verstössen gegen die Haushaltsdisziplin Rechenschaftslegungen zu verlangen und wirksame Massnahmen zur Beseitigung des Disziplinwidrigkeiten zu treffen. So kann er Ausgaben zeitweilig oder endgültig sperren, Konten sperren und die Haushaltsfinanzierung zeitweilig einstellen. Ausserdem besteht die Möglichkeit, gegen die Verantwortlichen bei Verletzung ihrer Dienstpflichten die materielle Verantwortlichkeit des Arbeitsrechtes (Schadenersatzleistungen) sowie Disziplinar- oder Ordnungsstrafen geltend zu machen.

4 GRUNDZÜGE DER EINNAHMEN- UND AUSGABENSTRUKTUR DES STAATSHAUSHALTES DER DDR

a) *Haushaltseinnahmen*

Entscheidende Quelle der Einnahmen des Staatshaushaltes sind die Pflichtabführungen (Abgaben) der volkseigenen Wirtschaft. Infolge des staatlich-sozialistischen Eigentums an den Grund- und Umlaufmitteln der volkseigenen Wirtschaft obliegt es der unmittelbaren Dispositionsbefugnis des Staates als Eigentümer, einen Teil der von der volkseigenen Wirtschaft erwirtschafteten Mittel als Reineinkommen des Staates im Haushalt zu konzentrieren.

In Bezug auf die genossenschaftliche Wirtschaft und die Bevölkerung stehen dem Staat dagegen Steuererhebungsrechte zu, die aus Artikel 9 Abs. 4 der Verfassung der DDR resultieren. Nach dieser Verfassungsvorschrift ist dem Staat mit dem Recht auf Festlegung des Währungs- und Finanzsystems zugleich das Recht zur Erhebung von Steuern und Abgaben auf der Grundlage von Gesetzen übertragen (Steuerhoheit).

In qualitativer Hinsicht stellen die Pflichtabführungen der volkseigenen Wirtschaft die grösste und stabilste Einnahmegruppe des Staatshaushaltes der DDR dar, deren Bedeutung mit wachsender Wirtschaftskraft zunimmt. Während zum Beispiel der Anteil der Einnahmen des Staatshaushaltes aus den Pflichtabführungen der volkseigenen Betriebe, Kombinate und der Vereinigungen volkseigener Betriebe im Jahre 1971 50,1% der Gesamteinnahmen betrugen, war bis 1973 eine Steigerung auf 55% möglich. Für das Jahr 1975 sind Pflichtabführungen aus der volkseigenen Wirtschaft in Höhe von 64,89 Milliarden Mark vorgesehen, was bei einer geplanten Gesamteinnahme von 106,46 Milliarden

Mark etwa 61% der Gesamteinnahmen des Haushaltes entspricht.[8]

Bei den Abführungen der volkseigenen Wirtschaft sind die Produktionsfondsabgabe, die Nettogewinnabführung, die produktgebundenen (umsatzabhängigen) Abgaben zu unterscheiden.

Die Produktionsfondsabgabe der volkseigenen Betriebe ist auf die produktiven Grund- und Umlaufmittelfonds zu entrichten. Sie erfüllt neben ihrer Finanzierungs- vor allem eine Stimulierungsfunktion, die zur Minimierung des Aufwandes an Grund- und Umlaufmitteln führen soll. Die Höhe der Produktionsfondsabgabe beträgt in der Regel 6% der Grund- und Umlaufmittelfonds. Ihre finanzielle Quelle ist der Bruttogewinn. Die Produktionsfondsabgabe sichert dem Staatshaushalt stabile Einnahmen und dient mit ihrer Orientierung auf einen optimalen Fondseinsatz der Qualifizierung der wirtschaftlichen Rechnungsführung sowie der kollektiven und persönlichen materiellen Interessierung der Werktätigen.

Die Nettogewinnabführung wird für jeden Betrieb pro Jahr in quantitativer Höhe gesondert festgelegt. Sie ist abhängig vom gesamtgesellschaftlichen Finanzbedarf, vom Finanzbedarf des Betriebes und anderen Kennziffern. Die Nettogewinnabführung verdeutlicht das Zusammenwirken verschiedener Teilbereiche des Finanzsystems auf der Grundlage der staatlichen Leitung und Planung.

Die produktgebundenen Abgaben werden im wesentlichen von den Betrieben der Konsumgüterproduktion erhoben. Sie bilden einen Bestandteil der Preise und erfüllen daher neben ihrer Finanzierungsfunktion gleichzeitig eine preispolitische Funktion. Sie sind nach Absatz der Produkte an den Staatshaushalt abzuführen.

Die im Staatshaushalt vereinnahmten Steuern sind insbesondere von den sozialistischen Produktionsgenossenschaften (etwa 3,5% Anteil an den Staatseinnahmen), von den privaten Handwerkern und Gewerbetreibenden (etwa 2,6% Anteil an den Staatseinnahmen) und den Bürgern zu entrichten, wobei insbesondere die Lohnsteuer mit 4,8% Anteil an den Gesamteinnahmen des Staatshaushaltes im gegenwärtigen Zeitabschnitt beteiligt ist. Neben den Pflichtabführungen und Steuern zählen auch Gebühren und Beiträge auf Grund gewährter oder im Bedarfsfalle in Anspruch zu nehmender Leistungen zu den Einnahmen des Haushaltes. Typisch sind hier die Einnahmen der Sozialversicherung, deren Haushalt Bestandteil des Staatshaushaltes ist. Für das Jahr 1975 sind 11,37 Milliarden Mark Einnahmen aus Beiträgen zur Sozialversicherung geplant, was einem Anteil von rund 10,8% an den Gesamteinnahmen entspricht.

b) *Haushaltsausgaben*

Die steigende Wirtschaftskraft, die in zunehmenden Einnahmen des Staatshaushaltes aus den Bereichen der volkseigenen Wirtschaft ihren Niederschlag findet, ermöglicht zunehmende Aufwendungen für die Erhöhung der Effektivität der Wirtschaft durch Investitionen, Forschung, Verbesserung der Technologie sowie für soziale, gesundheitliche und kulturelle Betreuung der Bevölkerung. Die Zuwendungen des Staates für die unmittelbare Verbesserung des Lebensniveaus der Bevölkerung, die als gesellschaftliche Fonds charakterisiert werden, weisen — wie schon ausgeführt — für 1975 den Betrag von insgesamt 37,1 Milliarden Mark aus.

8. Vergleiche § 1 und 4 des Staatshaushaltsgesetzes 1975 vom 19.12.1974, Gesetzblatt der DDR Teil I, S. 574.

Die Mittel der gesellschaftlichen Fonds dienen insbesondere der Finanzierung.

— kulturell-sozialer Massnahmen, einschliesslich Körperkultur und Sport sowie Erholungswesen. Beachtlich sind hier die Mittel, die zum Ausgleich des Haushaltes der Sozialversicherung aufgewendet werden, um die Differenz der Sozialversicherungseinnahmen aus Beiträgen und den weit darüber liegenden Ausgaben zu decken. So stehen im Jahre 1975 den geplanten Einnahmen aus Pflichtbeiträgen der Versicherten und der Betriebe in Höhe von 11,38 Milliarden Mark Gesamtausgaben von 20,42 Milliarden Mark gegenüber. Der Zuschuss aus dem Staatshaushalt beläuft sich damit auf 9,04 Milliarden Mark (44,2% der Ausgaben der Sozialversicherung).

  Über die Mittel zur Sicherung der gesetzlich festgelegten Leistungen der Sozialversicherung hinaus stellt der Haushalt noch erhebliche Beiträge für das Gesundheits- und Sozialwesen, z.B. für stationäre und ambulante Versorgung, für Feierabend- und Pflegeheime älterer Bürger, für Kinderkrippen und Kinderheime, für Unterstützungen für Mutter und Kind bereit, die zum Beispiel nach der Haushaltsabrechnung des Jahres 1973 rund 6,9 Milliarden Mark = 7,4% der Gesamtausgaben ausmachten.

— für bildungspolitische Massnahmen wie Volksbildung, Berufsausbildung, Hoch- und Fachschulstudium sowie Erwachsenenqualifizierung.

— für den staatlichen und genossenschaftlichen Wohnungsbau. Hier handelt es sich um die gegenwärtig wesentlichste Investition zur Erfüllung eines entscheidenden Grundbedürfnisses der Bürger. Zugleich werden hier im wesentlichen Umfange Kreditmittel eingesetzt. Für die Jahre 1976 bis 1980 sind Pläne ausgearbeitet worden, die den Bau von 750.000 Wohnungen umfassen und dazu die erforderlichen Finanzierungen erfordern.

— für die Sicherung der gesetzlich festgelegten stabilen Verbraucherpreise insbesondere für die Grundnahrungsmittel, für Kinderbekleidung, für Dienstleistungen, für niedrige Verkehrstarife und Wohnungsmieten.

  Die Sicherung stabiler Verbraucherpreise seit vielen Jahren gehört zu den grössten politischen und ökonomischen Leistungen des Staates. Sie ist auch in der gegenwärtigen Periode trotz steigender Roh- und Brennstoffpreise bei Importen gesichert worden. Das erfordert vor allem die Mobilisierung aller Ressourcen der volkseigenen und genossenschaftlichen Wirtschaft zur Intensivierung der Produktion, zur Erhöhung ihrer Effektivität, um die Preissteigerungen auf den internationalen Märkten in der Ebene der volkseigenen Wirtschaft weitgehend abzufangen und schon hier einer Erhöhung der Endverbraucherpreise entgegenzuwirken. Aus dem Staatshaushalt wurden in den vergangenen Jahren die Verbraucherpreise als Ausdruck der prinzipiellen Wirtschafts- und Sozialpolitik der DDR in erheblichem Umfange aus dem Staatshaushalt subventioniert. Die Subventionen betrugen 1974 10,5 Milliarden Mark.[9]

Die Vorteile der Bevölkerung aus dieser Subventionierung der Verbraucherpreise

9. Zahlenangaben nach K. Hunger, Sozialpolitik und Verbraucherpreise, Sozialistische Finanzwirtschaft 1974, Heft 20, S. 27 und Statistisches Jahrbuch der DDR 1974.

sind beträchtlich. Zum Beispiel sind Grundnahrungsmittel, deren Preise seit vielen Jahren unverändert stabil sind, bei einem Einkaufsvolumen von 100,— Mark mit rund 25,— Mark aus dem Staatshaushalt subventioniert.

Die dargestellten Beispiele bestätigen die Feststellung des Finanzministers in der Begründung des Staatshaushaltes 1975, dass „die gesellschaftlichen Fonds den bedeutendsten Teil der Ausgaben des Haushaltes unseres Staates ausmachen." [10]

Dabei ist zu beachten, dass neben den Ausgaben des Staatshaushaltes für die genannten Zwecke auch Ausgaben in der volkseigenen Wirtschaft vorrangig aus dem Kultur- und Sozialfonds, den Leistungsfonds und den Prämienfonds allen Werktätigen in der einen oder anderen Weise zugute kommen.

Dieser gemeinsame Fondseinsatz wird auch hinsichtlich anderer Haushaltsausgaben praktiziert. So werden z.B. Massnahmen des wissenschaftlich-technischen Fortschrittes und der naturwissenschaftlich-technischen Forschung im Jahre 1975 mit rund 1,6 Milliarden Mark im Haushaltsplan vorgesehen, darüber hinaus aber noch 4,2 Milliarden Mark aus den Fonds für Wissenschaft und Technik, die in den Betrieben der volkseigenen Wirtschaft gebildet worden sind.[11]

In ähnlicher Weise erfolgt die Förderung der Landwirtschaft. Dort sind neben den Eigenmitteln der volkseigenen Güter und der landwirtschaftlichen Produktionsgenossenschaften nach § 5 des Staatshaushaltsgesetzes des Jahres 1975 zur Förderung der sozialistischen Intensivierung der Produktion und des schrittweisen Überganges zu industriemässigen Produktionsmethoden rund 2,1 Milliarden Mark Haushaltsmittel für Meliorationen, Investitionszuschüsse und produktionsfördernde Massnahmen vorgesehen.

Weitere wichtige Positionen sind die Haushaltsausgaben für die Finanzierung zentral beschlossener Investitionen der volkseigenen Wirtschaft, für die Investitionen staatlicher Organe und Einrichtungen, für den Staatsapparat, für das Verkehrswesen und für die Nationale Verteidigung und Sicherheit.

Insgesamt sichert der Staatshaushalt die Durchsetzung der materiellen Ziele des Volkswirtschaftsplanes und stimuliert eine höhere Effektivität sowie die Senkung der Kosten bei umfassender Durchsetzung des sozialistischen Sparsamkeitsprinzips als Grundbedingung für die Erfüllung der gestellten Aufgaben.

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10. S. Böhm, Sparsamkeit — in Prinzip unserer Wirtschaftspolitik, Neues Deutschland vom 20.2.1974, S. 4.

11. Dazu H. Keller, Der Staatshaushalt in unserer Volkswirtschaft, Einheit 1975, Heft 2, S. 212 ff.

DR. AHMAD IMAM *:

A NEW SOLUTION FOR SOLVING THE PROBLEM OF DOUBLE TAXATION OF DIVIDENDS

I. INTRODUCTION

Taxation of capital investments in the form of permanent establishments does not raise problems because, in general, the principle is recognized whereby the country of the source can tax income acquired from a permanent establishment in its territory. Despite the divergence of delimitations with regard to investments, this criterion is accepted by most countries either in their internal legislation or in bilateral tax conventions.

As far as taxation of movable capital is concerned, an analysis of the relevant internal laws and tax conventions indicates that the most difficult problem centers on the taxation of dividend distributions. The ideal solution would be the renunciation by the State where the capital is employed of its right of imposition to be stated in bilateral conventions. Taxes would be then exclusively imposed by the State in which the investor resides on his wealth and the income resulting from it, regardless of the origin of that income.

This solution is a practical one between industrial states: the reciprocal investments made by the investors of capital normally compensate each other so that there is no considerable net budgetary loss caused by the flow of exported and imported capital. However, the developing countries, because of their financial and economic situation, would normally not be in a position to completely renounce their right of imposition. The interests of developing countries demand a different solution in this respect. What would be the method and forms of taxation that developing countries could employ, without creating negative effects on their pattern of growth, which would supply substantial income and at the same time provide a solution to the problem of double taxation at the time?

A solution to the problem of the taxation of dividends in connection with developing and developed countries will simultaneously solve the problem of foreign investment in developing countries. Of course, the problem of knowing what should be the basis of a good and just right of taxation is of a rather arbitrary nature. The definitive solution has not yet been found and particularly in the fields of dividends, interest and royalties it is very difficult to find. If one could find a clear distinction between the different factors that give rise to an appropriate taxation, nobody could ever object to sharing of the right of imposition among various states.

Generally, such a solution has to consider the whole of the material advantages gathered by the foreign companies, i.e., the benefit shown by their profits and objectives of development. It could be of interest to the developing countries, especially as a group, to find a common agreement on an arrangement of fiscal concessions and at the same time to arrive at a certain under-

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standing on methods of taxing profits, in such a way that companies functioning in their territories contribute in an adequate way to the revenues of the States.

II. THE IMPORTANCE OF A SOLUTION ON DIVIDENDS

Among the economic and judicial reasons for finding a solution concerning the problems of dividends of companies situated in developing countries, the most important would be:

1) A solution involving a mutual limitation of the rights of taxation of the contracting countries creating a good fiscal base for international capital investments would give the taxpayer a base on which he could make his financial decisions.

2) The methods of avoiding double taxation in the conventions between developing and developed countries are very different. The cost of production and the income on capital invested should not be influenced in completely different ways from one country to another because of fiscal laws.

3) The competition between developing countries to attract foreign capital must disappear in their common interest. Capital movement and the localization of investments must not be determined by purely fiscal considerations, but should be answerable to essential economic or social needs, ensuring the optimum utilisation of financial and natural resources.

4) A well balanced fiscal solution would be more effective in attracting foreign capital. If the developing countries want to obtain foreign capital, they should not overtax the income from investments.

5) It is also in the interest of capital exporting countries not to use fiscal measures to restrain international movements of capital to developing countries.

III. THE CONDITIONS OF SUCH A SOLUTION

A solution has to be able to combine the interests of developing countries, developed countries, and the investors. In order to find such a solution, the realities of the situation should always be borne in mind.

1) Foreign investors will not agree to invest in a developing country if the net return from their capital is more favorable in their own countries or in another developed country.

2) At the same time, it becomes clear that the continuation of growth of the developing State and the financial necessities of a program of economic development constitutes a major problem in forming acceptable solutions. Public funds are required first of all for financing a certain number of activities not directly profitable, such as education services (which will lead to the development of the human potential), transport services, etc.

3) The interests of the industrial countries and their own financial needs should also not be forgotten.

So, in order to formulate a solution:

a) developing countries should adopt a moderate rate of taxation of industrial and commercial income; and

b) replace all indirect fiscal incentives to attract foreign capital and to encourage reinvestments with this new solution because the incentives that now apply in these countries hardly serve these countries' interests. Indeed, they constitute an obstacle to the application of technical procedures to avoid double taxation in the situation of sharing taxable income.

IV. THE SUGGESTED SOLUTION

A. *Factors to be considered*

1) Of course, the cause of the failure to share the income of stocks and shares be-

tween the countries of the residence and of the source of the income, either in tax treaties or in national legislations, has always been the arbitrary values. Why choose a percentage of withholding tax of 20%, 10% or 5%? What is the basis of such a monetary proportion? The determination of a minimum rate of tax by the countries where the investment originated is an arbitrary system open to criticism. A system based on a method of economic analysis of dividends would be more reasonable.

2) On the other hand, it is necessary to limit the sovereignty of the State of the source of income by fixing a maximum limit. A maximum limit contributes to a stabilization of situations and gives the investor the possibility of computing his income on a long-term basis.

3) We estimate that this solution would be more reasonable and the sharing easier, if we could directly move towards an economic analysis of the income of investment. So, if dividend income is analyzed from the viewpoint of economics, one could say that it is the result of cooperation between

— capital,
— management (of the administration of the company), and
— work (effort of the developing country's Government — infra-structure).

B. *Allocation of income*

How can the income of the investments be allocated among these three different factors?

1) Concerning the part to be allocated to capital, the developing countries as well as the industrialized countries should assure the capital a compensation which is equivalent to the rate of interest that a bank would offer. This is a guarantee that the developing countries should offer investors. This rate of interest may then be exempted from taxation in the developed country and also in the developing country.

This exemption from tax on the part of the developed countries would be an encouragement for corporate and private investors from the developed countries. This is an aid that the developed countries could offer for investments.

Consequently, this rate of interest must be considered as a minimum of the income to be realized. If this interest rate is not realized during a given year the difference must be considered as a loss to be compensated during the five following years. This stipulation is very important in the case of new enterprises because it often happens that a company cannot realize the minimum of profit, particularly during the first years of a venture.

2) Concerning management and work: these two factors are of equal importance, working together with the capital to produce income from investments. One cannot say that one of the two is more important. Consequently, it is important indeed to create a system that permits new enterprises to reach quickly a balanced and even profitable situation and not less important that the conditions are prepared for a reasonable distribution of profit and the compensation of management on one side and of the efforts of the developing State on the other side. The best ways to divide the income of the investments (after the deduction of the minimum return equal to the rate of the interest) between these two elements, is that the government of a developing country could take 50% and the investor 50%.

3) Concerning the rights of the governments of the developed countries:

a) The governments should exempt the minimum return on capital from all taxes, as a means of encouraging private investment in developing countries;

b) Concerning income that is allocated to the management: the developed countries should have the right to tax this income. That is to say, that they should be entitled to tax this income at a reduced rate which does not exceed 10% before the distribution to individuals or legal entities and on condition that this income must be treated as if it were realized in the developing country.
That means that the income could benefit from the international measures for avoiding double taxation where such measures exist, like "crédit d'impôt" or "l'avoir fiscal", etc.

C. *An example in figures*

The proposed solution is illustrated by the following detailed example.

1) Assume that a company established in a developed country invests in a developing country through a subsidiary company [1] a sum of 1 million units. At the end of the year the enterprise has realized a net income of 300,000 units (after deduction of local income tax) which is available for distribution. It is also assumed that the rate of the interest is 7%. In this case, how can we divide this sum?

The calculation concerning the invested capital would be:

$$\frac{1{,}000{,}000 \times 7}{100} = 70{,}000 \text{ units.}$$

In this case, the part attributable to the capital would be 70,000 units. This sum must be exempted from all taxes in the developing countries as well as developed countries. This arrangement could be considered either as a reduced rate of taxation for the company or as a subvention for the investments or as a permanent credit for the investments. The remainder: 300,000 — 70,000 = 230,000 units.

The part concerning the work be one-half of the remainder (115,000 units).

This amount would be kept like a tax by the developing countries.

The part relating to the management (the other half of the remainder or 115,000 units) would be for the investor.

This part would be exempted from all taxes in the developing countries. The governments of the countries of residence could tax this sum at a reduced rate not to exceed 10%.

The government of the developed countries would receive the following amount of tax:

$$\frac{115{,}000 \times 10}{100} = 11{,}500 \text{ units.}$$

The balance would be considered as income already taxed, i.e., 115,000 — 11,500 = 103,500 units, and would be paid to the investor.

Summary. The following amounts would be received by each of the factors:

The government of the developing country	115,000 units
The government of the developed country	11,500 units
The investor	173,500 units
Net income	300,000 units

2) Let us suppose now that the company

1. The example would not be different if the foreign company invested 1 million units through the creation of a permanent establishment in the developing country.

realized only 70,000 units. In this case, this sum would be exempted in both the developing countries and the developed countries, that is to say, there would be no tax to be paid by the company.

3) Let us suppose that the company has realized only 50,000 units, i.e., 20,000 units less than the minimum limit of the rate of interest.

The company would be deemed to have incurred a loss for purposes of the tax legislation of both the developing and the developed countries. This loss would probably be recouped within the next 5 years. This situation often exists for new investments.

If this solution is compared with a situation in which an O.E.C.D. type of tax treaty exists between the developing country and the developed country, we find that

a) If the subsidiary company in the developing country has a net income which is 300,000 units, and if it is assumed that the parent corporation (in the developed country) owns a participation of 25% or more in its subsidiary company, the tax which the developing country would be entitled to deduct at source from the dividend distributed by the subsidiary company would be:

$$\frac{300{,}000 \times 5}{100} = 15{,}000 \text{ units.}$$

b) If the participation were less than 25%, the tax withheld at source would be:

$$\frac{300{,}000 \times 15}{100} = 45{,}000 \text{ units.}$$

In the solution proposed here the developing countries would, in any case, receive revenue of 115,000 units. This would be more favorable for them.

V. THE APPLICATION OF THE PROPOSED SOLUTION

The basis of application is twofold:

— The determining of invested capital.
— The determining of the rate of the interest applicable.

A. *The determination of capital invested in the company*

A method must be fixed for determining the capital invested through a subsidiary company.[2]

1) This, of course, supposes first of all that a real balance sheet of the original investor must be established. However, the figures of the commercial balance sheet cannot be considered as a real expression of the capital of the enterprise, because certain items that reflect the total of credits and debits have been eliminated. For example:

a) The value of participations in other companies;
b) The debits and credits considered as a method of adjusting capital;
c) Other adjustment items: depreciation, as well as certain reserves and/or provisions,[3] items deemed to be fixed assets, etc.

Consequently, based on the principle of economic accounting the capital invested in the enterprise must be evaluated exactly. This balance sheet should be presented every year.

2) Therefore, three conditions are necessary so that assets can be considered as invested in the enterprise:

2. This would, of course, also apply in those cases where a direct investment is made in a permanent establishment in a developing country.
3. "Provision" is a term borrowed from French tax terminology, which denotes reserves which are intended to meet a specific purpose.

a) They must have been employed in commercial, industrial, or agricultural use;
b) The enterprise must be the owner of these assets; and
c) The capital must be liable to commercial risk.

3) By this method the following factors do not enter into the consideration of invested capital:
a) Depreciation;
b) Loans;
c) Participations in other companies;
d) Certain reserves and/or provisions;
e) Other (facultative) reserves.

4) On the other side, however, the enterprises have the responsibility of arranging their investments as efficiently as is dictated by their purposes. The importance of this condition can be summarized by the following:

a) The management of a company should try to reach satisfactory results with a minimum of expenses, i.e., it should attempt to reduce the latter in order to maximize its income from investments. This is a means of reducing wastage in operations in the developing countries.
b) The management will aim at renewing equipment to increase its general productivity according to the policies of its investment. When this system is applied, it often happens that the manager of an enterprise cannot benefit fully from depreciation deductions for income tax purposes (although he may be able to take full depreciation on his commercial balance).
   The dependance of the factor of capital to determine income exempted from taxation stimulates companies to invest a big part of their capital instead of putting in into provisions on the balance sheet. This is a method of encouraging investment and reinvestment of capital in developing countries.
c) The use of a uniform method of asset evaluation using net values obliges a company to weigh carefully the location of its capital. The management must be sure that the capital will realize a suitable profit. Consequently this method will reduce tax avoidance by parent and subsidiary companies.

B. *The determination of the rate of interest*

It is clear that capital movement can affect the rate of interest. But the success of this technique depends on the elasticity of capital and the psychological instinct of the investor. In all cases the rate of interest remains a considerable element in directing the economy.

1) This rate of interest could be determined by the international rate of interest which the World Bank could set every year, or by the rate which the developed or underdeveloped countries could apply on their national investment.

We would prefer a uniform rate which could be applied on all investments to avoid competition between underdeveloped countries and also as an attraction for foreign capital. It would be preferable, however, to have an annual rate of at least between 6% and 9% so that developing countries could be allowed freedom to move within this limit for using the rate of interest to attract foreign investment according to the difficulties and the risk which the investment could face.

2) It is clear that the rate of interest must be changed every year according to general and world economic changes. This solution is directly attached to investment and can be precisely determined. It reacts to the amount of capital engaged in the real investment of the enterprise. If the

fiscal advantage is clear and sure, the company or any investor who would like to operate in developing countries can, from the beginning, depend on a fixed taxation to be paid in the developing countries. Let us add that a solution of this nature is to the advantage of the investors in the short run and of the developing countries in the long run. In addition, such a solution will contribute to the political climate diminishing the competition between exporting and importing countries.

VI. CONCLUSION

In conclusion we would say that:

1) It is very easy to apply this solution. The technical method for avoidance of double taxation depends on the sharing of the basis of taxation.

2) It protects the interest of the contracting parties: developing countries, developed countries and the investors.

3) The exemption from all taxation of a special sum of profit could be a useful method for attracting foreign capital and would provide a guarantee for foreign investors. This method increases the collaboration among the three parties to ensure the success of the arrangement, and it will also be useful in reducing tax avoidance.

4) At the same time, this new solution represents a uniform tax incentive to the foreign investor.

5) The developed countries will not be obliged to make sacrifices in order to encourage their national enterprises to invest in developing countries.

6) This method can be applied to conventions or unilateral provisions.

7) This solution can readily encourage reinvestment in the developing countries.

We hope finally, that by this suggestion we could participate in solving one of the most difficult long-term problems of stagnation and in finding a different solution than the classic one of model conventions and internal legislations.

Whatever technique is utilized for treating this problem of double taxation by developed and developing countries, it is not necessary to disregard budgetary considerations in order to promote the investment growth of a country. Also, within its own country the government should always try to reconcile its own interest with that of the investor. Every developing country must reserve a sufficient part of the realized income to ensure the needs of its economy and to encourage the private sector to invest and to reinvest according to that country's possibilities of income and development.

By this way, we can conclude that the interest of foreign capital and the budgetary financing of developing countries can participate in finding a new solution of taxing investment income.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED STATES

Additional tax reform legislation

The U.S. Congress is planning to enact additional tax reform legislation later in 1975. Hearings before the Ways & Means Committee of the House of Representatives have already begun, and will continue through July.

The following subjects in the area of U.S. taxation of foreign income will be considered:

1. Per-country limitation in computing foreign tax credit.
2. Grossing up dividends from less developed country corporations for purposes of determining U.S. income and foreign tax credit.
3. Application of the foreign tax credit in the case of capital gains income.
4. Treatment of foreign income subsequently earned where foreign losses are offset against U.S.-source income.
5. Deferral of income of controlled foreign subsidiaries.
6. Exclusion for income earned abroad by U.S. citizens living or residing abroad.
7. Tax treatment of foreign trusts.
8. Excise tax on transfers to a foreign business.
9. Treatment of earnings of less developed country corporations.
10. Western Hemisphere trade corporations.
11. Tax treatment of U.S. possession corporations.
12. Tax deferral under DISC provisions (including export trade corporations).
13. China Trade Act Corporations.
14. Application of the 30-percent withholding tax to dividend and interest income received from the U.S. by foreign persons.
15. Dividend treatment of U.S. shareholders where funds are invested in the United States by foreign corporations.
16. Advance IRS rulings for tax-free exchanges involving foreign corporations related to U.S. taxpayers.
17. Tax treatment of married couples where one spouse is a nonresident alien.
18. Minimum tax on foreign source income.

* * * DOCUMENTS * * *

CONSEIL DES COMMUNAUTES EUROPEENNES

Résolution du 10 février 1975 relative au mesures à prendre par la Communauté dans le domaine de la lutte contre la fraude et l'évasion fiscales internationales.[1]

LE CONSEIL DES COMMUNAUTES EUROPEENNES,

vu la communication de la Commission, du 22 novembre 1974, sur les problèmes de la fraude et de l'évasion fiscales internationales,

considérant que la pratique de la fraude et de l'évasion fiscales par-delà les frontières des Etats membres conduit à des pertes budgétaires et à des entorses au principe de la justice fiscale et qu'elle est susceptible de conduire à des distorsions dans les mouvements de capitaux et dans les conditions de concurrence;

considérant que, en raison du caractère international de ce problème, les mesures nationales, dont les effets ne s'étendent pas au-delà des frontières d'un Etat sont insuffisantes;

considérant que, dès à présent, plusieurs administrations fiscales nationales collaborent dans ce domaine sur la base d'accords bilatéraux et qu'il convient de renforcer cette collaboration à l'intérieur de la Communauté ainsi qu'avec les pays tiers et de l'adapter aux formes nouvelles d'évasion et de fraude fiscales;

considérant, toutefois, qu'il convient d'assurer que les renseignements transmis dans le cadre d'une telle collaboration ne soient pas divulgués à des personnes non autorisées: qu'il convient également de respecter les droits fondamentaux et les garanties de procédure des citoyens et des entreprises dans les Etats membres et de tenir compte des nécessités de ces Etats de préserver le secret dans certains domaines; qu'il est dès lors nécessaire que les Etats membres qui reçoivent ces renseignements s'engagent à ne les utiliser que dans le but de procéder à une détermination correcte des impôts sur le revenu ou sur les bénéfices, ou dans le but de soutenir les poursuites en justice qui seraient engagées à l'encontre des personnes qui ne se conformeraient pas à la législation fiscale de l'Etat qui reçoit ces renseignements; qu'il est également nécessaire que cet Etat entoure ces renseignements du même caractère confidentiel qu'ils avaient dans l'Etat dont ils proviennent,

considère qu'il est souhaitable d'engager une première action concernant les points suivants:

a) l'échange mutuel entre les Etats membres, sur demande ou non, de toute information qui paraît être utile pour une détermination correcte des impôts sur le revenu ou sur les bénéfices et, en particulier, de renseignements dans les cas ou apparaît un transfert fictif de bénéfices entre des entreprises situées dans des Etats différents, ou lorsque de telles transactions entre des entreprises situées dans deux Etats sont effectuées par l'intermédiaire d'un troisième pays en vue de bénéficier d'avantages fiscaux, ou encore lorsque l'impôt a été ou peut être éludé pour une raison ou l'autre;

b) la nécessité, pour assurer l'efficacité de cet échange de renseignements, d'étudier les possibilités d'harmoniser les

1. Journal Officiel des Communautés européennes No. C 35 du 14 février 1975.

moyens juridiques et administratifs des administrations fiscales pour recueillir des renseignements et pour exercer leurs droits de contrôle;

c) le recours à des enquêtes, pour la détermination correcte des impôts sur le revenu ou sur les bénéfices par un Etat, en respectant les dispositions législatives nationales, dans l'intérêt d'un autre Etat lorsque ce dernier le demande;

d) étudier s'il est possible de faciliter aux fonctionnaires d'un Etat l'assistance dans un autre Etat aux travaux visant à rechercher et à exploiter les faits utiles à une détermination correcte des impôts sur le revenu ou sur les bénéfices dus dans le premier Etat;

e) la collaboration nécessaire avec la Commission pour étudier, de manière permanente, les procédures de coopération et les échanges d'expériences dans les domaines considérés, et notamment dans celui du transfert fictif de bénéfices à l'intérieur de groupes d'entreprises, et ce dans le but de les améliorer et d'élaborer aussi une réglementation appropriée à la Communauté;

prend acte de ce que la Commission prendra, dans la limite de ses compétences, les initiatives appropriées dans ce domaine.

CONFERENCE PERMANENTE DES CHAMBRES DE COMMERCE ET D'INDUSTRIE DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE

(Taormina, le 31 mai 1975)

A. RESOLUTION SUR L'ASSISTANCE MULTILATERALE DES ADMINISTRATIONS FISCALES DES PAYS DE LA COMMUNAUTE EUROPEENNE

Comme l'atteste sa résolution du 2 juin 1972, la Conférence Permanente des Chambres de Commerce et d'Industrie a toujours condamné la fraude fiscale internationale qui aggrave le poids de l'impôt des contribuables honnêtes et fausse les conditions de la concurrence. Elle ne peut donc qu'approuver l'objectif inscrit dans la résolution du Conseil des Communautés du 10 février 1975. Toutefois, ce texte qui fixe les bases d'une coopération administrative et juridique multilatérale entre les administrations fiscales nationales appelle des observations que l'on peut regrouper sous trois rubriques principales:

I. *L'approche du problème*

Fondant ses propositions sur une présomption de fraudes des entreprises, le Conseil ne fait pas le partage entre les comportements répréhensifs et les actes de gestion tendant à minimiser dans le respect du droit fiscal la charge d'impôt. Cet amalgame confère à la résolution une plus grande portée que ne laisserait supposer son intitulé.

Les défaillances et les inadaptations des législation nationales et l'absence d'harmonisation sont très largement responsables des évasions apparentes de matière imposable. Ainsi, les souverainetés nationales devraient être mieux délimitées et les règles de territorialité plus précises.

Mais surtout la Conférence Permanente tient à appeler l'attention du Conseil sur la nécessité de supprimer les phénomènes de double imposition géographiques qui frappent certaines opérations de coopération internationale entre entreprises liées. Le problème des prix de facturation est moins un chapitre de l'évasion fiscale qu' une conséquence d'une surcharge d'impôt contre laquelle les firmes s'efforcent de se prémunir. A cet égard, la Commission voudra bien se reporter à la résultation de la Conférence Permanente ci annexée [1] du 2 juin 1972 relative aux prix de facturation entre entreprises liées dans laquelle des propositions précises étaient formulées pour éviter les phénomènes de double imposition imputables à des redressements unilatéraux des administrations nationales.

II. *Les garanties des contribuables*

Sous peine de provoquer des décisions arbitraires ou d'entraîner des suggestions administratives disproportionnées avec les objectifs, le renforcement du contrôle fiscal doit avoir pour contrepartie celui des garanties des assujettis. Il est en effet essentiel que le contribuable ne soit pas considéré comme un simple objet d'obligation mais également comme un sujet disposant de droit.

Dans cette perspective,

a) la protection des contribuables dont les règles sont énoncées dans l'accord-type de l'OCDE ne doit en aucune manière être diminuée par la future législation.

En particulier:

1. Document non réproduit ici.

1. les informations ne devraient être transmises qu'à la suite de requêtes formelles. Les communications automatiques et spontanées à des fins de contrôle se sont révélées inefficaces sur le plan national comme sur le plan international (p.ex. les imprimés informatisés adressés par les Etats-Unis aux pays tiers);

2. lors de la communication d'informations à l'autre Etat signataire, aucun Etat membre ne doit pouvoir aller au-delà de sa législation nationale et de sa jurisprudence administrative. L'Etat sollicité ne doit pas non plus exécuter des mesures administratives qui ne seraient pas conformes aux lois ou à la pratique administrative de l'Etat requérant. Ainsi il ne devrait pas être permis de transmettre des indications qui ne seraient pas obtenues en vertu des lois ou des pratiques administratives des deux Etats membres;

3. il faut tenir compte non seulement des exigences de secret des gouvernements mais aussi des contribuables. Les informations qui trahiraient des secrets commerciaux, industriels, professionnels, bancaires ou d'affaires en général ou portant sur des procédés commerciales ne doivent pas être communiquées tant dans l'intérêt des entreprises que dans celui des économies nationales concernées.

Ces règles doivent être complétées par le principe suivant:

pour préserver les voies de recours il convient de veiller à ce que les contribuables du pays requérant soient informés préalablement et en temps utile de l'intention d'introduire une procédure en information (droit de premier avis). La même règle doit s'appliquer aux contribuables de l'Etat sollicité. Dans l'énoncé de la question comme de la réponse le problème du secret peut en effet se poser.

III. *Les précautions d'élaboration des mesures d'application*

1. En premier lieu, il ne faut pas sousestimer les difficultés d'application. Le Conseil entend greffer sur des structures administratives très différentes des procédures uniformes d'assistance administrative multilatérales. Les obligations de coopération des assujettis dans les divers Etats membres diffèrent dans une mesure tout aussi importante que les pouvoirs en matière d'enquête dont disposent les diverses administrations nationales. De même, les règles en matière de secret fiscal de divulgation des informations confidentielles et de sanctions accusent des différences tres sensibles.

On rappelle en particulier que
— le Royaume Uni et le Danemark n'utilisent pas en règle générale la procédure de vérification sur place des comptabilités;
— le secret bancaire est réglementé de manière différente dans les Etats membres;
— la coopération des autorités fiscales avec les administrations chargées du contrôle des prix, du contrôle des changes ainsi qu'avec les autorités douanières varie sensiblement d'un pays à l'autre.

Une telle hetérogénité rend difficile la mise en œuvre de l'assistance administrative prévue et le respect des dispositions de protection des contribuables. Ces différences, aggravées par les écarts très marqués que l'on constate dans l'efficacité des administrations fiscales nationales, peuvent conduire à des distorsions importantes de concurrence.

C'est pourquoi l'élaboration des mesures d'application prévue dans la résolution du Conseil devrait être précédée d'une analyse approfondie des diverses réglementations nationales.

De même, l'intervention d'un fonction-

naire d'un Etat membre sur le territoire d'un autre Etat membre soulèverait des problèmes d'une telle ampleur, en raison même des législations différentes en matière de procédure et de secret, que cette éventualité doit être écartée.

2. Sur le plan méthodologique il importe que préalablement à toute mise en place de nouvelles réglementations la Commission des Communautés tire soigneusement la leçon des expériences que les Etats membres ont réunies grâce à leur réseau très ramifié de convention bilatérale d'assistance juridique et administrative.

En définitive compte tenue de la complexité de la matière il convient de se garder de toute précipitation ou improvisation dans la mise en œuvre de la résolution du Conseil des Communautés. En particulier, il devra être procédé à une large consultation préalable des milieux intéressés et notamment de la Conference Permanente.

B. LETTRE DU 21 AVRIL 1975 A MONSIEUR FRANÇOIS XAVIER ORTOLI, PRESIDENT DE LA COMMISSION DES COMMUNAUTES EUROPEENNES

Monsieur le Président,

En l'absence d'orientations communautaires suffisamment définies, les politiques financière et fiscale des Gouvernements ont emprunté depuis quelque temps des voies de plus en plus divergentes sous l'impulsion d'intérêts particuliers. Au moment où la Commission des Communautés européennes se livre à de nouvelles réflexions sur l'harmonisation des législations fiscales à mettre en œuvre d'ici l'échéance d'achèvement de l'Union économique et monétaire, la Conférence permanente des Chambres de commerce et d'industrie de la Communauté se permet de vous présenter quelques observations générales.

Les travaux de la Commission des Communautés européennes devraient s'inspirer des préoccupations suivantes:

— développer les échanges commerciaux intra-communautaires en établissant des conditions concurrentielles équitables par une plus grande neutralité des régimes d'imposition et la suppression à terme des frontières fiscales;

— accroître la rentabilité des entreprises installées dans la Communauté et renforcer leur competitivité à l'égard des pays tiers en limitant la pression fiscale mise à leur charge et en allégeant leurs sujétions administratives de collecteurs d'impôt et de contribuables;

— ne pas entraver les efforts de coopération et d'intégration des entreprises européennes.

Dans cette perspective, la conception globale de la Communauté en matière fiscale devrait se fonder en premier lieu sur le fait que l'ensemble des prélèvements obligatoires que supportent les entreprises est devenu trop lourd. Cette situation résulte en particulier de l'aggravation des impôts locaux et du développement de la parafiscalité. Ce thème est développé dans une lettre que nous adressons ce même jour à M. Simonet et dont vous voudrez bien trouver copie ci-jointe.

Nous souhaitons appeler votre attention sur deux autres considérations complémentaires:

a) Une structure fiscale moderne doit faire la plus large place aux impôts sur le revenu et aux taxes sur le chiffre d'affaires conférant par là même aux taxations indiciaires ou sur les valeurs patrimoniales un rôle marginal.

Les impositions à dominante indiciaire ne permettent pas en effet, en raison de la rigidité des bases d'imposition, d'ajuster la charge fiscale à l'évolution de la faculté contributive réelle des assujettis. Elles s'accommodent donc mal d'une économie en rapide mutation et soumise à de sensibles fluctuations conjoncturelles.

De même, la taxation des patrimoines et de leurs mutations doit être très modérée au risque d'entraîner de véritables spoliations, de susciter des évasions de matière imposable et d'entraver la mobilité des actifs et partant, la fluidité des structures de production et de commercialisation.

b) La plupart des propositions de la Commission des Communautés européennes en matière fiscale n'ont pas encore été adoptées par le Conseil. Ce retard explicable en grande partie par l'entrée de nouveaux adhérents dans le Marché commun, doit être aujourd'hui comblé. Ces „acquis" constituent en effet une base indispensable pour poursuivre l'œuvre d'harmonisation.

De toute évidence, quels que soient les impôts concernés, l'harmonisation ne peut s'opérer qu'en deux étapes: unifier les règles d'assiette et de champ d'application avant de procéder au rapprochement progressif des taux. Cette méthodologie est justifiée par la nécessité de ne modifier qu'avec prudence la composition des recettes budgétaires des Etats membres. La structure des prélèvements obligatoires ne peut en effet évoluer que lentement en fonction de données démographiques, socio-économiques et psychologiques. En particulier, l'harmonisation fiscale ne peut être conduite efficacement que si l'adhésion des citoyens à leur système fiscal est maintenue et renforcée.

Je vous prie d'agréer, Monsieur le Président, l'expression de ma haute considération.

Le Président,
(Sir Robin Brook)

C. LETTRE DU 21 AVRIL 1975 A MONSIEUR LE PROFESSEUR HENRI SIMONET, VICE-PRESIDENT DES COMMUNAUTES EUROPEENNES

Monsieur le Ministre,

La Conférence permanente des Chambres de commerce et d'industrie de la Communauté européenne vient de faire connaître à Monsieur le Président Ortoli quelques observations générales sur l'harmonisation fiscale européenne dans une lettre dont vous voudrez bien trouver la copie ci-jointe.

Nous nous permettons d'attirer plus particulièrement votre attention sur le point suivant:

Ainsi que nous l'avons indiqué à Monsieur le Président Ortoli, la conception globale de la Communauté en matière fiscale devrait se fonder sur le fait que l'ensemble des prélèvements obligatoires que supportent les entreprises est devenu trop lourd. Cette situation résulte in particulier de l'aggravation des impôts locaux et du développement de la parafiscalité.

a) En premier lieu, la Conférence permanente des Chambres de commerce et d'industrie de la C.E.E. déplore l'évolution désordonnée de la fiscalité des collectivités locales des pays membres. En particulier, la patente allemande et luxembourgeoise (Gewerbesteuer) sert paradoxalement de modèle aux législateurs, alors qu'elle fait l'objet depuis de nombreuses années de très vives critiques. Notamment, dans le cadre de la réforme fiscale et financière

allemande de 1970, cet impôt devait être sensiblement allégé ou même supprimé, conformément au vœu, maintes fois exprimé, des milieux économiques et des experts fiscaux.

Par ailleurs, elle présente des inconvénients imputables au choix des éléments constitutifs de la base d'imposition. Il en est ainsi des salaires, du capital d'exploitation ou des valeurs locatives qui entraînent une imposition indépendante de la rentabilité effective de la firme. En outre, la place donnée à la masse salariale dans l'assiette pénalise les entreprises de main d'œuvre et, d'une façon générale, alourdit — surtout en période d'inflation — une des composantes principales des prix de revient, déjà fortement gonflée de charges annexes à caractère social ou fiscal.

Il apparaît enfin que le problème des impôts directs locaux ne peut être dissocié d'une réflexion d'ensemble sur les finances des collectivités locales. Sans cette précaution, il est à craindre que, quelles que soient les améliorations apportées aux modalités de taxation, la patente pèse de plus en plus, au fil des années, sur l'économie productive. A cet égard, il est nécessaire de réviser la répartition des charges et des ressources financières entre l'Etat et les collectivités locales et notamment, d'affecter à ces dernières, une fraction du produit des grands impôts nationaux à fort rendement.

b) En second lieu, on assiste à un développement anarchique de la parafiscalité qui s'ajoute au poids déjà très lourd des cotisations sociales. De nature très variable selon leur objet, ces taxes et redevances n'ont de commun que leur caractère obligatoire. L'émiettement de l'impôt complique singulièrement et dénature les systèmes fiscaux. La perception de ces taxes est souvent couteuse tant pour l'administration que pour les contribuables. Mais surtout, elle traduit fréquemment un phenomène de débudgétisation qui aboutit à accroître insidieusement le poids des prélèvements obligatoires sur l'économie productive.

Il importe donc que la réflexion de la Commission des Communautés européennes en matière d'harmonisation fiscale ne se limite pas aux grands impôts d'Etat mais prenne également en compte la fiscalité locale et la parafiscalité.

Je vous prie d'agréer, Monsieur le Ministre, l'expression de ma haute considération.

Le Président,
(Sir Robin Brook)

FRANCE

Exposé des motifs
Convention fiscale franco-roumaine du 27 septembre 1974

(Projet de Loi No. 1635. Assemblée Nationale 1974—1975)
(Official explanation to the French-Romanian Tax Treaty of September 27, 1974. See also Supplement D 1975)

Mesdames, Messieurs,

Des négociations engagées avec la Roumanie en juin 1973 ont abouti à la signature, à Bucarest, le 27 septembre 1974, d'une Convention fiscale.

Avant d'examiner les dispositions de cette Convention il semble opportun de donner quelques indications sur l'importance des relations économiques entre la France et la Roumanie dans le contexte desquelles cet accord est appelé à s'insérer.

Les échanges commerciaux franco-roumains ont connu ces dernières années un développement constant, ainsi qu'en témoignent les chiffres ci-après:

1965	358 millions de francs.
1970	751 millions de francs.
1973	1 297 millions de francs.

La France, qui est actuellement le septième partenaire commercial de la Roumanie, fournit à ce pays des équipements industriels, des machines-outils, des produits pharmaceutiques et des biens de consommation divers. Quant aux exportations roumaines vers la France, elles comprennent des matières premières, mais aussi des produits industriels et de consommation.

Si la balance commerciale est excédentaire au profit de la France, la balance des paiements l'est aussi:

	Recettes	*Dépenses*	*Soldes* (En millions de francs.)
1965	188	103	+ 85
1970	471	199	+ 272
1973	635	416	+ 219

Enfin, il convient de signaler qu'au 1er janvier 1974, 331 personnes physiques françaises étaient établies en Roumanie, tandis que 4 110 Roumains étaient établis en France.

Ces quelques données sur l'importance et les perspectives de développement des relations franco-roumaines montrent l'intérêt que présente pour les deux pays la Convention fiscale qui vous est soumise.

Bien que la Roumanie ne soit pas membre de l'O.C.D.E. et que le texte du projet de convention type établi par cette organisation n'ait pas été officiellement retenu comme document de travail par les négociateurs, le texte de la Convention s'inspire largement, tant dans sa structure générale que dans nombre de ses dispositions, du modèle de l'O.C.D.E. La plupart des clauses de ce texte sont suffisamment connues et il ne paraît pas nécessaire d'en faire à nouveau une analyse détaillée. Aussi s'attachera-t-on surtout, dans le présent exposé, à commenter les dispositions qui ont un caractère particulier ou un intérêt essentiel et qui donnent au projet de Convention entre la France et la Roumanie ses traits originaux.

Les articles 1 et 2 définissent le champ d'application de la Convention quant aux personnes et aux impôts. Sont mentionnés comme impôts roumains: les impôts sur les salaires, sur les revenus d'œuvres intellectuelles ou expertises, sur les bénéfices des sociétés mixtes, sur les revenus des person-

nes non-résidentes, sur les locations de bâtiments et terrains, sur les revenus des entreprises privées, artisanales ou des professions libérales, sur les revenus des activités agricoles.

Par ailleurs, les expressions «subdivision administrative territoriale» et «collectivité territoriale» ont été substituées aux expressions habituelles «subdivision politique» et «collectivité locale». Ces substitutions ont été faites à la demande de la délégation roumaine, la première compte tenu de l'organisation territoriale de la République socialiste de Roumanie, la seconde parce que l'expression «collectivité territoriale» est celle employée dans la Constitution française de 1958. Les mêmes expressions sont naturellement employées aux articles 11, 12, 18 et 19.

L'article 3 reprend les définitions habituelles d'un certain nombre de termes ou d'expressions. Par ailleurs, l'article 29 fixe le champ d'application territorial de la Convention, en le limitant, en ce qui concerne la France, aux seuls départements de la République française.

L'article 4 fixe les règles permettant de déterminer l'Etat de résidence d'un contribuable. L'article 5, celles de l'existence d'un établissement stable d'une entreprise d'un Etat contractant dans l'autre Etat. Sur ce dernier point, la durée habituelle de douze mois a été retenue en ce qui concerne les chantiers de montage, mais elle a été portée à dix-huit mois en ce qui concerne les chantiers de construction. Il y a donc établissement stable au sens de la Convention lorsque la durée d'un chantier dépasse douze ou dix-huit mois, selon les cas. Cette disposition est de nature à faciliter la participation d'entreprises françaises à des opérations d'équipement en Roumanie, mais également celle d'entreprises roumaines à des projets français. Par ailleurs, l'article 5 prévoit que la vente, par une entreprise d'un Etat, de marchandises exposées au cours d'une foire se déroulant dans l'autre Etat ne constitue pas un établissement stable de l'entreprise dans cet Etat.

Les dispositions de l'article 6 relatif aux revenus immobiliers reprennent les dispositions habituelles.

L'article 7 reprend les règles habituelles d'imposition des entreprises. Il a été seulement précisé que la part des dépenses de direction et des frais généraux d'administration, imputée à un établissement stable, sera déterminée «selon les usages et d'une manière juste et raisonnable». Les entreprises françaises qui participent à des sociétés mixtes de droit roumain seront soumises à l'impôt sur les bénéfices, dont le taux est 30% (décret n° 425, *Bulletin officiel* 2 novembre 1972).

L'article 8 reprend, pour les bénéfices retirés du trafic international par les entreprises de transport, la règle habituelle de l'imposition dans l'Etat du siège de la direction effective de l'entreprise. Cette règle concerne la navigation aérienne et maritime, mais également les transports ferroviaires et routiers internationaux.

Il est à noter que cette disposition trouvera également à s'appliquer aux bateaux français naviguant sur le Danube.

L'article 9, relatif aux entreprises associées, n'appelle pas de commentaires.

En ce qui concerne les dividendes, l'article 10 reprend tout d'abord une disposition habituelle qui prévoit que les dividendes sont imposables dans l'Etat de résidence du bénéficiaire. L'autre disposition, complémentaire de la première, prévoit que l'Etat contractant d'où proviennent les dividendes peut prélever un impôt retenu à la source, limité à 10% de leur montant. Cette disposition s'applique du côté rou-

main à l'impôt perçu sur les transferts à l'étranger de la part des associés des sociétés mixtes, en application de l'article 13 du décret n° 425 précité.

Le remboursement éventuel du précompte, pour les dividendes de source française, est prévu, ainsi que la possibilité, pour un Etat contractant, de prélever un impôt retenu à la source sur les bénéfices nets d'un établissement stable qu'une société résidente de l'autre Etat a dans le premier Etat, au taux maximum de 10%.

L'article 11 relatif aux intérêts prévoit également l'imposition dans l'Etat de résidence du bénéficiaire et la possibilité pour l'Etat d'où ils proviennent d'imposer une retenue à la source limitée à 10% (au lieu de 15% dans la législation interne roumaine). Par ailleurs, il a été convenu que par dérogation à la règle précédente, les intérêts perçus en vertu de prêts garantis, assurés ou financés directement ou indirectement par un Etat ou un de ses organismes publics seraient exonérés de tout impôt retenu à la source.

L'article 12 relatif aux redevances reprend la règle d'imposition dans l'Etat de résidence du bénéficiaire et la possibilité pour l'Etat d'où elles proviennent d'imposer une retenue à la source limitée à 10%. En réduisant de 20 à 10% la retenue sur les redevances de brevets et de 25 à 10% l'impôt perçu sur les droits d'auteur, les Roumains ont entendu faciliter la cession ou la concession de brevets par les entreprises françaises et, dans le domaine culturel, encourager la culture française en Roumanie.

L'article 13 reprend la définition, habituelle dans les Conventions signées par la France, des biens immobiliers qui inclut les parts ou droits dans les sociétés immobilières de copropriété ou dans les sociétés dont l'actif est constitué principalement de biens immobiliers.

Les articles 14 et 15 règlent l'imposition des revenus provenant d'activités indépendantes ou salariées. Les revenus provenant de l'exercice d'activités indépendantes ne sont imposables que dans l'Etat de résidence, sauf si la personne qui exerce ces activités dispose dans l'autre Etat d'une base fixe; dans ce cas, les revenus imputables à cette base fixe sont imposables dans cet autre Etat.

Les revenus au titre d'un emploi salarié ne sont imposables que dans l'Etat de résidence du bénéficiaire, sauf si l'emploi est exercé dans l'autre Etat. Dans ce cas, les rémunérations reçues sont imposables dans cet autre Etat, à moins que l'emploi n'y soit exercé de façon temporaire; la durée retenue comme limite au-delà de laquelle une activité salariée ne peut plus être considerée comme exercée de façon temporaire est de dix-huit mois, au cours d'une période de trois ans. Cette règle peut être de nature à faciliter, par exemple, des missions d'assistance technique.

L'article 16, relatif aux tantièmes et revenus assimilés, n'appelle pas de commentaires.

L'article 17 prévoit l'imposition des revenus des artistes et des sportifs dans l'Etat où ils exercent leurs activités en cette qualité, ainsi que l'application de la règle, qui tend à entrer dans la pratique internationale et qui est destinée à combattre un procédé d'évasion fiscale, selon laquelle l'artiste ou le sportif peut être imposé dans l'Etat où il exerce son activité, même si ses services sont fournis par une tierce personne.

L'article 18 relatif aux pensions versées à un résident d'un Etat, prévoit leur imposition exclusive dans cet Etat, sauf en ce qui concerne les pensions publiques, versées au titre de services antérieurs rendus dans l'exercice de fonctions de caractère public,

qui ne sont imposables que dans l'Etat d'où elles proviennent.

L'article 19 prévoit l'imposition exclusive des rémunérations versées par un Etat, ou par l'une de ses subdivisions, collectivités, ou l'un de leurs établissements publics, au titre de fonctions de caractère public, dans l'Etat d'où elles proviennent. Cette disposition ne s'applique pas aux rémunérations versées au titre de services rendus dans le cadre d'une activité industrielle ou commerciale.

Les articles 20 et 21 traduisent le souci de faciliter les séjours dans un Etat des étudiants, stagiaires, professeurs et chercheurs résidents de l'autre Etat. A cet effet, l'article 20 prévoit l'exonération, dans l'Etat où ils séjournent, des étudiants stagiaires et autres personnes en cours de formation professionnelle, pour les sommes qu'ils reçoivent de l'extérieur pour leur formation ou leur entretien, les rémunérations qu'ils peuvent recevoir au titre d'une formation pratique et les rémunérations accessoires dont ils peuvent disposer en vue de compléter leurs ressources. L'article 21 prévoit une exonération limitée à deux ans pour les rémunérations reçues dans un Etat par un professeur ou un chercheur y séjournant à ce titre et auparavant résident de l'autre Etat.

L'article 22 prévoit l'imposition des revenus non expressément mentionnés dans l'Etat de résidence.

L'article 23 reprend les dispositions habituelles concernant la fortune. La mention qui est faite des véhicules ferroviaires ou routiers correspond au contenu de l'article 8.

L'article 24 fixe les règles éliminant les doubles impositions. La Roumanie impute l'impôt français, payé par un résident de Roumanie sur des revenus de source française imposables en France conformément à la Convention, sur l'impôt roumain exigible au titre de ces revenus. La France applique la même règle en ce qui concerne les revenus visés aux articles 10, 11, 12, 16 et 17, et exonère de l'impôt français, les autres revenus lorsqu'ils sont imposables en Roumanie, conformément à la Convention; par ailleurs, la possibilité d'appliquer le système du taux effectif est prévue.

Les articles 25 (non discrimination), 26 (procédure amiable), 27 (échange de renseignements) reprennent les dispositions habituelles.

Enfin, les articles 30 et 31 relatifs à l'entrée en vigueur et à la dénonciation de la Convention, n'appellent pas de remarques.

S'ajoutant aux conventions signées avec la Tchécoslovaquie et la Yougoslavie, la Convention avec la Roumanie s'inscrit dans le cadre général de la politique française à l'égard des pays d'Europe orientale. Elle facilitera l'activité des entreprises françaises dans un pays désireux d'intéresser les capitaux étrangers à son développement économique et qui a récemment adopté des mesures fiscales concernant les investissements étrangers. Nos entreprises jouiront ainsi d'un régime équivalent à celui des entreprises des autres pays industriels, comme les Etats-Unis ou la République fédérale d'Allemagne, ayant déjà signé un accord de même nature avec la Roumanie.

Enfin, par la suppression des obstables d'ordre fiscal, l'entrée en vigueur de cet accord est de nature à faciliter le développement des échanges culturels avec la Roumanie.

Telles sont les principales dispositions du texte qui vous est aujourd'hui soumis en vertu de l'article 53 de la Constitution.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning books on this list should include the reference numbers listed.

AUSTRALIA

THE GUIDE TO AUSTRALIAN INCOME TAX:

20th ed. of Gunn's Guide to Commonwealth Income Tax, by E. F. Mannix and D. W. Harris. Butterworths, Sydney, 1975. 749 pp.
Commentary on the income tax law as of December 31, 1974. (B 8978)

AUSTRALIAN TAX REPORTS,

edited by F. C. Bock and E. F. Mannix, Sydney, Butterworths, 1975. 737 pp.
Bound volume containing tax cases of Australia and New Zealand. (B 8979)

AUSTRIA

UMGRÜNDUNGEN AUF DER GRUNDLAGE DES STRUKTURVERBESSERUNGSGESETZES;

3. erweiterte Auflage, by F. Helbich and F. Eckert. Vienna, Wirtschaftsverlag Dr. Anton Orac, 1975. 618 pp., AS 840. Band 1.
Third revised edition of monograph discussing the Austrian company law and the tax law on mergers, contributions of assets, and form transformation under the Structural Improvement Law 1969. References to literature are included. The texts of the related statutes and decrees and a bibliography are appended. (B 8977)

DAS ÖSTERREICHISCHE GRUNDSTEUERRECHT,

by R. Langer. Grenz-Verlag, Vienna, 1975. 259 pp., AS 275. Band 6.
Comment on the tax on real property. Texts of statutes are appended. The material is updated to January 1, 1975. (B 8928)

BELGIUM

DE BELGISCHE BELASTINGEN,

by A. Tiberghien. Kluwer, Deventer, 1975. 77 pp., Dfl. 17.50.
Description in a nutshell of the tax system in Belgium, effective as of April 1, 1975. (B 8952)

CANADA

PREPARING YOUR INCOME TAX RETURNS: CANADA AND PROVINCES; 1974 edition,

by R. A. Lachance and G. D. Eriks. CCH Canadian, Ltd., Don Mills, Ontario. 268 pp., $ 3.95.
Annual guide for individuals for filing their own 1973 tax returns. (B 8961)

THE NATIONAL FINANCES:

An Analysis of the Revenues and Expenditures of the Government of Canada, 1974-75. Canadian Tax Foundation, Toronto, 1975. 285 pp., $ 3.50.
Brief presentation of the revenue and expenditure structure of the national government. (B 8949)

CHILE

CHILE AFTER ALLENDE:

Prospects for Business in a Changing Market. Business International Corp., New York, 1975. 125 pp.
Research report on business prospects in present day Chile for investment purposes of multinationals. Texts of statutes for foreign investment are appended. (B 15462)

DEVELOPING COUNTRIES

FISCAL POLICY AND DEVELOPMENT STRATEGY,

by D. J. Wolfson. Universiteits Bibliotheek, Amsterdam, 1975. 266 pp.
Thesis analyzing a fiscal policy as a development strategy for developing countries. (B 8960)

EUROPE

AN ANNUAL WEALTH TAX,

by C. T. Sandford, J. R. M. Willis, and D. J. Ironside. Heinemann Educational Books, London, 1975. 353 pp.
Study on an annual wealth tax prepared by an economist, an administrator, and an accountant

and financed jointly by The Leverhulme Trust Fund and The Institute for Fiscal Studies. It provides a full analysis of the various arguments for and against an annual wealth tax and compares the wealth taxes of Denmark, Germany, the Netherlands, Norway, and Sweden with each other and with the proposals for the United Kingdom and the Republic of Ireland. The study offers, in addition, a thorough assessment of the Green Paper proposals for a wealth tax in the United Kingdom and of the particular problems associated with a wealth tax. (B 8950)

EUROPEAN ECONOMIC COMMUNITY

TAX STATISTICS 1968—1973.

Centre Européen, Luxembourg, 1974. 120 pp.
This yearbook presents 1968—1973 data on tax receipts and actual social contributions for the member countries of the European Economic Community. The figures are given in summary tables by country according to the concepts and definitions of the European System of Integrated Economic Accounts (ESA) and are explained in English, French, German, and Italian. (B 8969)

FRANCE

FISCALE ASPECTEN VAN ONROEREND GOED IN FRANKRIJK,

by R. Boon, F. van Brunschot, and A. Leemreis. Fenedex, The Hague, 1975. 24 pp.
Monograph explaining tax aspects of real property in France. (B 8931)

REGLEMENTATION DES INVESTISSEMENTS FRANÇAIS A L'ETRANGER ET DES INVESTISSEMENTS ETRANGERS EN FRANCE.

Chambre de Commerce et d'Industrie, Paris, 1974. 90 pp.
Monograph outlining the rules for French investments abroad and for foreign investments in France. Relevant French documents are appended. (B 8954)

GERMAN FEDERAL REPUBLIC

ZUR VERKOPPELUNG UND BEGRENZUNG DER REALSTEUERHEBESÄTZE,

by W. Heckt. Wilhelm Stollfuss Verlag, Bonn, 1975. 88 pp. Heft 107.
Report and recommendation with respect to the performance of tax revenue sharing between state and municipalities determined by multiples (Hebesatz). (B 8907)

EINKOMMENSTEUER UND SPARFÖRDERUNG AB 1975,

by H. Laux. Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1974. 208 pp., DM 19.80.
Monograph on the individual income tax reform and the incentives to save as of 1975. (B 8941)

ZUR THEORIE DES STEUEREXPORTS,

by R. Peffekoven. J. C. B. Mohr (Paul Siebeck), Tübingen, 1975. 279 pp., DM 93.
Revised thesis of study on export of taxes (shift of tax incidence abroad). (B 8943)

DER BUNDESHAUSHALT 1975,

by F. W. Wissmann. Wilhelm Stollfuss Verlag, Bonn, 1975. 70 pp. Institut "Finanzen und Steuern", Heft 108.
The Federal Budget 1975 analyzed. (B 8942)

INDIA

THE FACTORIES ACT 1948,

by D. S. Chopra. Eastern Law House, Calcutta, 1975. 789 pp.
Monograph on the law regulating labor conditions in factories. Exhaustive comment has been given to the statutory provisions with all the relevant case law on the subject and rules made by the States. (B 50089)

INDUSTRIAL AND LABOUR REFERENCE,

D. S. Chopra. Eastern Law House, Calcutta, 1975. 578 pp., Rs. 40.
Encyclopedia of case law on industrial and labor law in India. (B 50090)

DATA ON ESTATE DUTY:

A Commentary on the Estate Duty Act (34 of 1953), With Related Acts, Rules, Notifications, and Directives, by C. R. Datta. Eastern Law House, Calcutta, 1974. 294 pp., Rs. 60.
Monograph explaining the legal implications of the Estate Duty Act 1953 supported by case law. Texts of statutes are appended. The discussion refers to gift, wealth, and capital gains taxes in connection with estate tax planning and legal devices for minimizing estate duty. (B 50106)

UNION AND STATE RELATIONS UNDER THE INDIAN CONSTITUTION,

by M. C. Setalvad. Eastern Law House, Calcutta, 1974. 247 pp., RS. 30.

Texts of a Series of Tagore Law Lectures on Union and State relations with emphasis on two basic principles underlying the Constitution: the Supremacy of the Centre and the need for co-operation between the Centre and the States and among the States themselves. (B 50107)

EXCHANGE CONTROL.

Indian Investment Centre, New Delhi, 1975. 72 pp., Rs. 7.
Foreign Exchange Regulation Act 1973: Explanation with emphasis on foreign investment and personnel and Indian citizens abroad. (B 50093)

INDUSTRIAL LICENSING AND FOREIGN COLLABORATION:

Policies and Procedures. Indian Investment Centre, New Delhi, 1974. 72 pp., Rs. 7.
Salient features of current policy and procedures with regard to industrial licensing, foreign investment and joint venture operations, importation of capital goods and raw materials, and foreign exchange. (B 50092)

INDUSTRIAL WAGES IN INDIA.

Eastern Law House, Calcutta, 1974. 233 pp., Rs. 20.
Handbook for management and workers describing industrial wages in India. (B 50110)

ITALY

DONAZIONI E SUCCESSIONI NELLA LEGGE CIVILE.

Banco di Roma, Rome, 1975. 170 pp. No. 1-1975.
Monograph containing text of statute relating to transfer of property by gift and at death under civil law, with relevant official notes and annotations appended. (B 8981)

IMPOSTA SULLE SUCCESSIONI E DONAZIONI.

Banco di Roma, Rome, 1975. 344 pp. No. 4-1975.
Monograph containing texts of statutes relating to death and gift duties including annotations, circulars and other relevant publications. Texts of taxation treaties for the avoidance of double death duties concluded by Italy with other countries are appended. (B 8980)

MEXICO/U.S.A.

BUSINESS OPERATIONS IN MEXICO,

by E. Alberto Rosas. Tax Management, Inc., Washington, D.C., 1973. 99 pp.

Description of business operations and taxation in Mexico. English translations of Mexican statutes and the text of the Relief from Double Taxation on Earnings from Operation of Ships and Aircraft agreement between Mexico and the United States of America, signed August 7, 1964, are appended. (B 15461)

THE NETHERLANDS

STATUTEN VAN DE GROTE N.V. EN B.V.,

P. W. H. M. Francissen and J. M. Jansen. Kluwer, Deventer, 1975. 115 pp., Dfl. 19.50.
Study on the revision of Memorandum of Associations of Dutch Corporations to comply with the introduced requirements for the establishment of big corporations. (B 8936)

ELSEVIERS VENNOOTSCHAPSBELASTING 1975 BESTEMD VOOR DE AANGIFTE OVER 1974; 5de jaarlijkse editie,

by E. N. Jonker, H. W. Buitendijk, and A. C. de Groot. Annoventura, Amsterdam, 1975. 208 pp., Dfl. 27.50.
Guide for filing corporate income tax returns for the year 1974 (fifth annual edition). Texts of relevant statutes are appended. (B 8963)

ADVIES OUDEDAGSRESERVE/BEROEPSPENSIOENFONDSEN.

Raad voor het Midden- en Kleinbedrijf, The Hague, 1975. 54 pp. No. 1.
Report prepared by the Committee established by the Raad voor het Midden- en Kleinbedrijf to examine the old age pension reserve and similar old age funds for free professions under Dutch tax legislation. (B 8940)

NETHERLANDS ANTILLES

BELASTINGWETGEVING IN DE NEDERLANDSE ANTILLEN:

een Samenstelling van Belastingteksten voor Praktijk en Studie, by F. Metry. De Curaçaosche Courant, Curaçao, 1974. 434 pp.
Compilation of texts of major tax laws in the Netherlands Antilles. The material of the basic volume is updated as of the amendment published in the Official Gazette No. 41 of 1974. The taxes do not cover import and excise duties or surcharges on income tax, but do cover individual income tax, corporate income tax, tax incentive measures, death duties, stamp duties, and the double taxation treaty with the United States of America and the Double Taxation Re-

gulation concluded between the three autonomous parts of the Kingdom of the Netherlands (the Netherlands, Surinam, and the Netherlands Antilles). The material will continue to be updated by supplements. (B 15460)

NORWAY

LOV OM MERVERDIAVGIFT OG LOV OM AVGIFT PÅ INVESTERINGER M.V.

Fellestrykk A/S, Oslo, 1974. 31 pp.
Texts of Norway's Value Added Tax Act and the act concerning the investment tax, both as of December 20, 1974. (B 8984)

PANAMA

MANUAL DEL IMPUESTO SOBRE LA RENTA,

by J. T. Campodonico Cordova. Editora Reproset, Panama City, 1973. 330 pp.
A practical, problem-oriented study of Panamanian income tax by one of Panama's most distinguished professors. (B 15382)

SAUDI ARABIA

INVESTITIONEN IN SAUDI-ARABIEN.

Bundesstelle für Aussenhandelsinformation, Cologne, 1975. 34 pp. Rechtsinformation No. 66.
Brochure outlining the investment opportunities in Saudi Arabia and containing the English texts of relevant laws, such as the Foreign Capital Investment Code of February 25, 1964. (B 50064)

SPAIN

LIZENZ- UND KNOW-HOW VERTRÄGE MIT SPANISCHEN FIRMEN:

nebst Musterverträgen in deutsch und spanisch; 8. aktualisierte Auflage. Deutsche Handelskammer für Spanien, Madrid, 1975. 24 pp., DM 35.
Updated eighth edition of monograph dealing with royalty and know-how agreements with Spanish firms, with model forms in German and Spanish. (B 8989)

PLAN DE CONTABILIDAD PARA LAS PEQUEÑAS Y MEDIANAS EMPRESAS.

T.A.L.E., Madrid, 1974. 63 pp.
Instructive explanation of the Plan of Accounting for small and medium sized enterprises. (B 8990)

SRI LANKA

BUDGET SPEECH 1975,

by N. M. Perera. Government Printer, Colombo, 1974. 45 pp., Rs. 2.
Printed text of the Budget Speech 1975, delivered on November 6, 1974. (B 50103)

THAILAND

INVESTING IN THE DYNAMIC GROWTH OF THAILAND:

Private Enterprise Investment Opportunities in Thailand. Board of Investment, Bangkok, 1974. 93 pp.
Fourth edition of brochure describing private enterprise investment opportunities in Thailand. (B 50077)

TRADING WITH THAILAND:

A Businessman's Guide, prepared by The Chartered Bank, Bangkok. The Tieng Saenh Press, Bangkok, 1973. 61 pp. (B 50080)

UNITED KINGDOM

CAPITAL GAINS TAX,

by K. S. Carmichael. HFL (Publishers) Ltd., London, 1974. 500 pp., £ 4.50.
Second revised and extended edition of monograph explaining the capital gains tax. The material has been updated to July 31, 1974. (B 8934)

TOLLEY'S INCOME TAX AND CORPORATION TAX:

1974-75 Supplement, by E. L. Harvey. Tolley Publishing Company, Ltd., Croydon, 1975. 8 pp.
A supplement to Tolley's Income Tax 1974-75 and Tolley's Corporation Tax 1974-75, covering the provisions of the Finance Act 1975. (B 8948)

TOLLEY'S TAX TABLES 1975-76.

Press at Coombelands, Ltd., Addlestone, 1975. 20 pp.
Summary of taxation rates and allowances as introduced in April, 1975, Budget. (B 8951)

UNITED STATES OF AMERICA

AMERICAN FEDERAL TAX REPORTS;

Second Series, Vol. 34. Prentice-Hall, Inc., Englewood Cliffs, 1975. 1428 pp.
Unabridged federal and state court decisions

arising under the federal tax laws and reported in Prentice-Hall's Federal Taxes Reports during the second half of 1974. (B 8964)

HAWAII — INCOME TAX PATTERNS 1972: INDIVIDUALS.

Tax Research and Planning Office, Department of Taxation, Honolulu, 1975. 113 pp.
Annual report on income patterns of individuals in Hawaii, derived from data reported on individual income tax returns for the year 1972. (B 8967)

NEW 1975 FEDERAL GRADUATED WITHHOLDING TAX TABLES;

effective May 1, 1975. Commerce Clearing House, Inc., New York, 1975. 36 pp., $ 3.
1975 federal withholding tax tables effective May 1, 1975, brought about by the Tax Reduction Act of March 29, 1975. (B 8947)

THE PERSONAL DISTRIBUTION OF INCOME AND WEALTH,

ed. by James D. Smith. National Bureau of Economic Research, Inc., New York, 1975. 568 pp., $ 17.50.
This volume contains the papers presented at the Conference on Personal Distribution of Income and Wealth, held on October 3 and 4, 1972, at Pennsylvania State University. With respect to taxation the text of Benjamin A. Okner's paper, "Individual Taxes and the Distribution of Income", is included. (B 8966)

1975 U.S. EXCISE TAX GUIDE.

Commerce Clearing House, Inc., Chicago, 1975. 456 pp., $ 6.
Annual monograph explaining excise tax law provisions, with references to important rulings and court decisions. (B 8955)

LOOSE-LEAF SERVICES

Received between June 1 and June 30, 1975

AUSTRALIA

AUSTRALIA CURRENT TAXATION & SERVICE

April 7 release
Butterworths Pty, Ltd., Chatswood

AUSTRALIAN CURRENT TAXATION — CASES

releases 206—262
Butterworths Pty, Ltd., Chatswood

BELGIUM

FISCALE DOCUMENTATIE VANDEWINCKELE, BOEK DER BAREMA'S

Tome IV, release 34
Tome VIII, release 137
Tome IXa, releases 68 and 69
Tome X, release 33
C.E.D., Samsom, Brussels

CANADA

CANADA TAX SERVICE — LETTER

release 243
Richard de Boo, Ltd., Toronto

CANADIAN CURRENT TAX

releases 23 and 24
Butterworth & Co., Toronto

ONTARIO TAXATION SERVICE

release 38
Richard de Boo, Ltd., Toronto

CANADIAN INCOME TAX — TAX PLANNING AND MANAGEMENT

releases 11 and 12
Butterworth & Co., Toronto

EUROPEAN ECONOMIC COMMUNITY

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN

release 82
Edition Jupiter, Paris

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN:

— Kommentaar op het E.E.G., Euratom en Egkos verdrag, Verdragsteksten en aanverwante stukken
release 160
— Tarieflijsten
release 134
Kluwer, Deventer

FRANCE

BULLETIN DE DOCUMENTATION PRATIQUE DES IMPOTS DIRECTS ET DES DROITS D'ENREGISTREMENT

release 4
Editions F. Lefebvre, Paris

JURIS CLASSEUR: DROIT FISCAL:

— Commentaires "Chiffre d'Affaires"
release 6085
Editions Techniques, Paris

GERMAN FEDERAL REPUBLIC

ABC FÜHRER LOHNSTEUER

release 86
Fachverlag für Wirtschafts- und Steuerrecht, Schäffer und Co., Stuttgart

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT

releases 183—185
Forkel Verlag, Stuttgart

STEUERERLASSE IN KARTEIFORM

release 165
Verlag Dr. Otto Schmidt, Cologne

UMSATZSTEUERGESETZ (MEHRWERTSTEUER)

Hartmann und Metzenmacher
release 32
Erich Schmidt Verlag, Bielefeld

THE NETHERLANDS

BELASTINGBERICHTEN:

— Omzetbelasting BTW
release 139
— Inkomstenbelasting
release 320
— Persönele belasting, enz.
release 140
Samsom, Alphen aan den Rijn

BELASTING WETGEVINGSERIE:

— Loonbelasting
release 39
J. Noorduijn en Zn., Arnhem

FED'S LOSBLADIG FISCAAL WEEKBLAD

releases 1512 and 1513
FED, Deventer

DE GEMEENTELIJKE BELASTINGEN

A. M. Dijk, J. C. Schroot, A. Zadel, enz.
releases 184 and 185
Vuga Boekerij, The Hague

HANDBOEK VOOR IN- EN UITVOER:

— Belastingheffing bij invoer
release 185
— Tarief van Invoerrechten
release I-209; II-131
Kluwer/Samsom, Deventer/Alphen aan den Rijn

KLUWER'S TARIEVENBOEK

release 150
Kluwer, Deventer

LEIDRAAD BIJ DE BELASTINGSTUDIE

C. van Soest en A. Meering
release 32
S. Gouda Quint - D. Brouwer & Zn., Arnhem

OMZETBELASTING (BTW) IN BEROEP EN BEDRIJF

release 28
S. Gouda Quint - D. Brouwer & Zn., Arnhem

VADEMECUM VOOR IN- EN UITVOER

release 478
Kluwer/Samsom, Deventer/Alphen aan den Rijn

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE:

— Vennootschapsbelastingen 1969
releases 26 and 27
— Successiewet
release 49
— Algemeen Deel
release 55
Kluwer, Deventer

NORWAY

SKATTE-NYTT

release A-6
Norsk Skattebetalerforening, Oslo

SWITZERLAND

RECHTSBUCH DER SCHWEIZER. BUNDESSTEUERN

release 57
Verlag für Recht und Gesellschaft, Basel

DIE STEUERN DER SCHWEIZ — LES IMPOTS DE LA SUISSE

release 1974: IV-35
Verlag für Recht und Gesellschaft, Basel

UNITED KINGDOM

SIMON'S TAX CASES

releases 17 and 18
Butterworth & Co., London

SIMON'S TAX INTELLIGENCE

releases 20 and 21
Butterworth & Co., London

UNITED STATES OF AMERICA

FEDERAL TAX GUIDE REPORTS

releases 35-37
Commerce Clearing House, Inc., Chicago

FEDERAL TAXES REPORT BULLETIN

releases 23—25
Prentice Hall, Inc., Englewood Cliffs

FEDERAL TAXES REPORT BULLETIN — TREATIES

release 10
Prentice Hall, Inc., Englewood Cliffs

STATE TAX GUIDE

release 586
Commerce Clearing House, Inc., Chicago

TAX IDEAS — REPORT BULLETIN

release 18
Prentice Hall, Inc., Englewood Cliffs

TAX TREATIES

release 280
Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS

releases 9 and 10
Prentice Hall, Inc., Englewood Cliffs

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DR. J. PICK *:

TAX REFORM IN ISRAEL

Farreaching changes proposed in the report of the Tax Reform Committee headed by Professor Ben-Shahar

When the Ben Shahar Tax Reform Committee had been appointed, a lot of people in Israel had the impression that income tax rates were approaching or even exceeding 100%. Actually, the only instance where income tax and compulsory loans may sometimes have exceeded 100% appears to be the case of self-employed taxpayers spending on wages and salaries amounts far in excess of their net income. A compulsory loan of 4.75% is levied on wages and salaries and considered by the taxpayer as an additional charge on his income.

The highest marginal tax rate reached at a fairly low income level amounts to	65 %
and the top rate of compulsory war loan to	22.25%
together	87.25%

Thus, a self-employed taxpayer who pays wages and salaries amounting to four times his taxable income would have to pay compulsory employer's loan in an amount equal to about 19% of his income and by adding this to income tax and war loan charged on this income he would calculate his tax and compulsory loans as amounting to 106% of his income.

Though the compulsory loans are not money lost because they are linked to the cost of living index, not all self-employed taxpayers can forego the use of that money during the 5 to 15 years until the repayment of these non-negotiable loans.

The main problem in taxation in Israel, however, have been the high marginal tax rates paid by skilled workers, clerks and professionals of the middle income level making those taxpayers feel they were working mainly for the tax department. Marginal rates of income tax, including compulsory loans, of 72% at a monthly income of IL 4,000 ($ 670) and 82% at a monthly income of IL 6,000 ($ 1,000) have been used as an excuse for tax evasion, for lack of interest in working harder and for seeking untaxed fringe benefits rather than increases of regular pay.

Under the pressure of circumstances, especially the need to secure working hands despite conditions of overfull employment, employers, including public and semi-public institutions, displayed an extraordinary inventiveness in finding ways of paying untaxed fringe benefits of different description in addition to relatively low wages and salaries.

Due to these developments the tax system

* From Pick, Cohn & Co., Certified Public Accountants in Tel Aviv.

was being more and more considered as going gradually out of operation and thereby undermining working moral and the proper operation of the economy.
Under these circumstances conditions were favourable for the execution of a general tax reform when the Minister of Finance in December 1974 appointed Professor Ben Shahar of Tel-Aviv University as the head of a 5 men committee composed of 3 professors of economics, an advocate and a public accountant to submit to the Government detailed proposals for a tax system aiming at a fair distribution of income in the economy and to avoid distortions and adverse effects on efficiency of production and tax moral. The proposals should lead to a broadening of the tax basis, to a simplification of the tax system and to more efficient tax collection.
The requirements of the Government Budget were to be taken into account by the committee. The 150 pages report of the Ben Shahar Committee contains 11 parts. This review will deal mainly with 3 of them which appear to be of most general interest, the reform of the system of personal taxation, corporate taxation and the taxation of capital gains with some brief reference also to tax collection.
The following appear to be the main trends of the proposals compared with the present tax system in Israel:

a. Greater uniformity, i.e. less exceptions and preferential rates.

b. Greater simplicity of a tax system that in many respects had become too complicated.

c. A considerable reduction of marginal tax rates without affecting too much the average tax rates and thereby government income.

d. Stable "real rates" of taxes i.e. as far as possible a reflection of inflation in the tax system.

The Report has been accepted by the Government and at the time of writing this review the changes of the Law required by implementing the report are being debated in Parliament. There are a number of points in the draft law which are not exactly in agreement with the proposals. On the whole, there are only minor deviations. This review is based on the committee report and not on the draft law.

TAXATION OF PERSONAL INCOME

Calculation of the tax on personal income has been extremely difficult in Israel and almost impossible without tax tables. The tax payable according to the proposals by the committee can be calculated by more than 90% of the taxpayers in less than 5 minutes without any reckoning aid.
So far, there have been 15 tax brackets ranging from 23% for the first IL 2,000 per annum to 65% on the part of the taxable annual income which exceeds IL 57,000 ($ 9,500).
There have been deductions from the taxable income in respect of personal allowances (resident taxpayer, spouse, children, dependents, old age, and others) at different amounts changed at irregular intervals, mostly not all allowances at the same time and not all of them to the same extent.
There has been a tax free cost of living allowance built into the tax system, rather difficult to calculate and not understood by most taxpayers. The tax free C.o.L. al-

lowance has been calculated on the basis of global wage agreements for employees in industry and government. Because at first C.o.L. allowances were paid only on the first IL 500 of monthly basic salary or wage, later on IL 700 and later on IL 1,000, there are so to say 3 C.o.L. allowance brackets receiving tax free cost of living allowances at different percentages. Altogether those amounts granted to workers as C.o.L. allowance in the general wage agreements have been fully exempt of income tax and equal amounts of tax free C.o.L. were taken into account in every tax return whether the taxpayer expressly received a C.o.L. allowance or not. Certain allowances are also granted, partly by way of tax credit, partly by way of deductions from taxable income in respect of payments for pension schemes and provident funds, for life insurance and for donations to charity. On top of the tax itself compulsory loans have been collected with two years interruption during the last 15 years. In the tax year 1974 individual taxpayers had to pay war loan at a graduated scale composed of four brackets, completely different from the 15 income tax brackets, ranging from 12.25% to 22.5%.

A description of the background of the Ben Shahar tax reform committee proposals concerning personal taxation would be incomplete or even misleading without mentioning that at the outbreak of the Yom Kippur war a process of a gradual reduction of marginal income tax rates from 72% to 62½% (in addition to 7—8% compulsory loans) was going on. This process has been suddenly interrupted in the war by the needs of the moment which led to the introduction of compulsory loans at very high rates collected with the income tax.

The following are the main proposals of the committee concerning taxation of personal income.

1. To replace the 15 brackets by 5 brackets ranging from 25% to 60%. The standard rate of income tax is to be 35% applicable to annual income up to IL 66,000 and also applicable to all income tax deductions at source (dividend, interest, temporary employment). The first IL 36,000 if derived from work enjoy a 10% earned income allowance. Therefore, the effective tax rate earned income up to IL 36,000 per annum ($ 6,000) is 25%. About 90% of the tax-payers earn less than IL 66,000, i.e. they belong to the two first tax brackets.
The following IL 12,000 are to be taxed at 45%, additional IL 24,000 at 50%.
Annual income over IL 102,000 ($ 17,000) is to be taxed at the top rate of 60%.

2. Compulsory loans are to be abolished. The report stresses that being index-linked (though the interest is unlinked) these loans create a very heavy burden for future budgets and are also somewhat regressive. Runing 15 years and not being negotiable these loans mean for the lower income groups a sort of additional tax while for high income groups, except for the loss of interest, they often mean a shift between different types of saving.

3. Tax deductions will be replaced by tax credit. There will be tax credit units of IL 1,200 ($ 200) a year. A single taxpayer will get 2 tax credit units, a married one 3 units. For each of the first 2 children 1 unit will be added, for additional children 2. The tax credit for children shall replace income tax deductions for children as well as children allowances presently paid by social security system for children of employees. While the tax credit for the tax-

payer and his spouse is to be only a deduction from tax payments the tax credit for children is to be paid as children allowance in as far as it exceeds the income tax due.

4. The cost of living allowance is to become part of the taxable income, i.e. the tax exemption of the C.o.L. allowance is to be abolished. On the other hand, the committee proposes the periodical indexing (once or twice a year) of tax credits and tax brackets.

The automatic C.o.L. allowance added in the past to the pay of the employee in Israel, usually twice a year, has been an important factor in keeping up the inflationary pressure. That pressure has been more forceful due to the exemption of the allowance from income tax.

If a person earning IL 2,000 monthly paid IL 300 income tax and he gets a 20% rise to compensate him for price increases he would be better off (in real terms) than before, if he gets the rise tax free. By indexing tax credits and tax brackets the increase of his tax payment would in this case be restricted to 20% but the artificial reduction in the "real" rate of taxes would be avoided.

5. Tax free fringe benefits are to be discontinued. They crept into the labour contracts without a legal basis but have become well established permanent practice. The committee proposes to cut down drastically all allowances to employees and self-employed taxpayers which presently are frequently granted in global amounts without any relation to the amounts actually spent and without proof being required that they are actually spent and used for the purpose of the work or business. These allowances were granted for home telephones, professional literature (frequently including employees who never buy or use such literature), clothing, travelling to and from work, travelling abroad, car upkeep and under many other headings. According to the recommendations expense allowances are to be severly restricted to very limited amounts subject to definite proof of having been spent for the work or business concerned.

In a similar way all sorts of special arrangements made in different forms for various groups of taxpayers including the automatic deduction of a percentage of the income in respect of expenses or for a different method of calculating the tax (e.g. calculation of the foreign income of aircrew and seamen at a rate of exchange far below the official rate) are to be discontinued. These arrangements which were condoned if not confirmed by the tax authorities were sharply critized by the Courts when brought before them. Nevertheless, most of these exceptional arrangements continue to exist.

The reduced tax rates granted under the present law for certain cases of overtime work and efficiency payments will also become unnecessary owing to the reduction of the tax rates for the lower and middle income groups.

While it appears unnecessary to add to the above explanations concerning the simplification and unification of the tax system proposed by the committee, the problem of the reduction of marginal tax rates without a corresponding reduction in average tax rates may require an illustration which is given below:

	Monthly tax of employees (married and 2 children)			
	Monthly income of IL 3,000		Monthly income of IL 5,000	
	Present law	Committee proposals	Present law	Committee proposals
	IL	IL	IL	IL
Amount of tax	486	250	1,613	950
Compulsory loan	190	—	400	—
Tax on expected addition in July 1975, to Cost of Living allowance (IL 240 or IL 400)	tax free	84	tax free	140
Tax on estimated expense allowances presently not taxed (IL 480 or IL 1,350)	no tax paid	168	no tax paid	610
Tax on income plus July increase of Cost of Living allowance and expense allowances	486	502	1,613	1,700
Marginal tax rate	48%	35%	60%	50%
Marginal rate of compulsory loan	12.25%	—	14.25%	—

In both examples the amount of tax payable on the June 1975 taxable income under the proposals would be only 50% to 60% of the present tax rates. When the expected cost of living allowance for July 1975 is added (which under present practice would be tax free) and those expenses which at present are not subject to tax but are taxable under the proposed law the amount of tax will be higher than now though by much less than the amount now charged for the compulsory loan. At the same time, a person earning IL 3,700 will retain from each additional 100 pounds earned IL 65 instead of IL 38 plus IL 12 in compulsory loans, a person earning IL 6,750 will retain IL 50 instead of IL 26 plus IL 14 in compulsory loans, payable after 15 years and not negotiable.

By these reductions in marginal tax rates in the middle income brackets (or higher middle brackets) the Government expects to remove a disincentive to more efficiency and greater effort, one of the main objectives of the tax reform.

TAXATION OF CORPORATE INCOME

The proposals of the committee recommend a continuation of the split tax rate levied on corporate income. The proposed rate is 40% company tax on all company income and 35% income tax on the retained income after company tax. Income distributed as dividend will be subject to personal income tax limited to a maximum of 45%.

These rates differ only slightly from present rates, — 42% company tax, 30% in-

come tax on retained income, personal income tax up to 50% on dividends.
But there are three important changes compared with the present situation.

1) The compulsory war loan presently payable by companies at a rate of 12% of their income is to be abolished. That, of course, much more than outweighs the small increases in total tax on undistributed corporate income from 59.4% to 61%.

2) Tax rates on payment of dividends are no longer prohibitive. While the difference between the rate of tax on retained profits and that on distributed profits has been cut from 20% to 10% the main improvement for the recipient of dividends is the abolishment of the compulsory loans, presently payable at a rate of 12% on company income and up to 22.25% on the dividend. The combined burden of tax and compulsory loans on the company and on the dividend recipient amounted to 95% of the amount earned by the company and led to an almost complete absence of dividend distribution by companies enjoying no tax preference. The proposed maximum tax of 67% (40% plus 27%) to be borne by companies and shareholders together should in most cases remove the obstacle to dividend distribution in view of the relatively small difference compared with the rate of 61% payable on undistributed corporate profits.

3) The new rates are to be applicable universally and the preferential tax rates now in force for undistributed income from manufacturing industry under the Law for the Encouragement of Capital Investment (in the following "Investment Law") are proposed to be gradually abolished. The report recommends to grant manufacturing industry for an interim period until March 1977 an income tax rebate on undistributed profits of 20% (28% to be paid instead of 35%) compared with 50% at present (15% instead of 30%).
An "approved enterprise" presently pays under the "investment law" during the period of benefits only 33% company tax and no income tax whether profits are distributed or not, though it has to pay 19% compulsory loan. According to the proposal of the committee the "approved enterprise" pays full company tax (40%) and 20% income tax on undistributed, 25% on distributed profits.
The committee suggests that as from April 1977 other incentives outside the field of taxation for encouraging manufacturing industries and other economic activities should be worked out and that then preferential treatment like that under the 2 above mentioned laws can be discontinued.
The committee proposes to continue the exemption of dividends paid on shares quoted at the Tel-Aviv Stock Exchange from tax over 35% deducted at source. It also suggests to deduct from dividend paid to Non-Residents only 25% instead of 35%. Though that is not said clearly in the report it is apparently intended to restrict the final rate of tax on dividends paid to Non-Residents to that amount.

CAPITAL GAINS TAX

The most farreaching change of system is proposed in the taxation of capital gains. Presently there are three methods of taxing capital gains simultaneously in operation:

1. Capital gains on real estate are taxed under the Land Betterment Tax according to a graduated schedule of tax rates from 20% to 40% of the gain. After

a holding period of 2 years a tax rebate is given at a fixed percentage of reduction of the amount of tax growing with the period the property was held.

Lately 3% compulsory loan have also been levied on the gains.

2. Other capital gains are subject to capital gains tax. There is a difference between assets on which depreciation is allowed and other assets.

Assets on which depreciation is allowed do not enjoy the tax rebate for the period the asset has been held which is granted in case of other assets. When capital gains tax was for the first time fully put into operation in 1965 the tax rate has been 25% and the rebate 5% of the amount of tax for each year the property has been held. That was a relatively moderate level with a strong incentive for long term investment. Meanwhile the rate of capital gains tax has gradually been increased to 50% for individuals and 40% for corporations with compulsory loans of up to 22¼% (12% for companies) while the rebates on the tax (there is no rebate on the loan) has been reduced to 3% per year.

The Ben Shahar committee proposes the following system of taxation of capital gains:

1. Real estate and other assets are to be taxed according to the same system.

2. Every capital gain should be analysed between the mere paper profit commensurate with inflation and the real profit, if any.

3. For the calculation of the proper profit the cost of the asset is increased in proportion with the rise to the Cost of Living index from the date of purchase to the date of sale.

In case of assets on which depreciation is granted depreciation is deducted from the adjusted (increased) cost price at the rates originally charged increased in proportion with the rise of the C.o.L. index from the middle of the period the asset has been held to the date of the sale.

4. Out of each capital gain the mere paper profit is taxed at a rate of 10% and the real profit is taxed at regular income tax rates, but total tax should not exceed 50% of the total capital gain.

5. The reduced rate of capital gains tax will only apply if the asset has been held at least 2 years (in case of real estate 3 years) subject to marginal relief for sales within a year from the end of that period. The 10% rate shall apply only in case the full capital gains tax on the sale is paid within 30 days from the date of sale. The taxpayer is entitled to demand spreading tax on the real profit over 5 tax years backward for calculating the rate of personal income tax.

6. The tax exemption of capital gains derived from the sale of securities quoted at the Tel-Aviv Stock Exchange should continue.

7. Various changes are proposed concerning the taxation of linkage differences (increments to the principal of a loan or a security linked to the C.o.L. or to a foreign currency).

a. holders of linked securities which enjoy tax exemptions on linkage differences are not entitled to deduct for tax purpose interest costs if at the same time they incurred interest cost on loans or advances received.

b. except for certain statutory exemptions and the tax exemption on capital profits on securities quoted at the Tel-Aviv Stock Exchange linking differences should for tax purposes be regarded as ordinary income or expense in the same

way as interest. In this connection the report explains that loans which are not linked carry a higher rate of interest than linked loans and that there cannot be different tax treatment on interest at high nominal rates and on linking differences because the first has the same economic nature as the latter.

c. The change in taxation of linking differences should not apply to amounts accrued before the change of the law comes into force.

The proposed taxation of linking differences appears as some sort of turnabout in tax policy. The general tax exemption of linking differences on loans is almost the only provision reflecting inflation in our present tax law. The discontinuation of this reflection of inflation is proposed simultaneously with the proposal to introduce a wide range of measures reflecting inflation in the Israeli tax system such as the index linking of tax brackets and tax credits and the low-rate taxation of inflationary capital gains.

TAX COLLECTION

Interest and penalties are being charged under the present system on overdue amounts of income tax. Nevertheless, many taxpayers, mainly among the self-employed, enjoyed a considerable discount on the real rate of taxes by paying late and not being charged with interest or in many cases being charged at a rate much below the current rate of inflation.

No interest was due on tax paid with the submission of the return five months after the end of the tax year and thereafter interest was charged at 15% p.a. a rate about half the average rate of inflation of the last 3 years. In order to remove incentives to delay tax payments the committee proposes the following:

Interest has to be added to the amount of tax due from the end of the tax year up to the end of 6 months thereafter. After the end of those 6 months (up to a maximum period of 30 months) 4% interest and linking differences according to the C.o.L. index are payable.

Taxpayers who keep books of account are entitled to deduct those payments of interest and linking differences from their taxable income in the year of payment. This is one of many provisions encouraging and enforcing the keeping of proper books of account by as wide as possible a range of taxpayers recommended by the committee but not covered by this review.

The refund of overpayment of tax, unless made within 30 days from filing the return claiming the refund, also carries linking differences and 4% interest.

Where linking applies to tax collection or tax refund the currend rate of interest may be demanded instead of linking plus 4% interest.

The provision making the 10% tax rate on the inflation element in capital gains dependent on payment of the total tax within 30 days should also be mentioned again in this section as an efficient device for speeding up tax collection.

GENERAL APPRECIATION OF THE REPORT — ACHIEVEMENTS AND UNSOLVED PROBLEMS

In its report published within less than 3 months from its appointment the tax reform committee has offered almost full answers to the main aims specified in the letter of appointment of the Minister of Finance.

By cutting down the number of tax brackets, reducing marginal tax rates much more than average tax rates, by abolishing tax free fringe benefits and the tax exemption of the cost of living allowance and by various devices to speed-up tax collection and by other proposals the committee has dealt efficiently with the request to propose a tax system which tends to stimulate efficicency and to improve tax moral; offers a broadening of the tax basis, simplifies its general structure and improves tax collection. The aim to do all that without at least in the first stage causing a decline of tax income could only partly be achieved.

Mainly due to the very sound proposal to discontinue the imposition of compulsory loans the new system is expected to reduce state revenue by IL 1 tot 1½ billion in the first year (more exactly in the first nine months from July 1975 to March 1976). The gap can probably be closed later by the introduction of the Value Added Tax but meanwhile an income gap is being created which the Israeli Treasury can hardly afford. For this reason the requirement to avoid distortions and another important requirement referred to below could not be fulfilled because that could have been done only by way of increasing the gap in the State Budget.

Possibly the main contribution made by the committee in exploring and clarifying problems of taxation has been its dealing with inflation. The proposals to reflect inflation by indexing tax brackets, tax credits and tax debts and by a reduced capital gains tax on the inflationary element of the capital gains as well as those parts in the report dealing with other tax problems created by inflation, including business profit taxation, on which the committee has at this stage refrained from giving recommendations are valuable for clarifying principles and for gaining practical experience in the taxation problems created by inflation.

The proposed method of dealing with the mere paper profit in capital gains appears most reasonable. To exempt the paper profit elements from tax would not appear justified at a time when similar profits are taxed in most of the developed countries but their full rate taxation would be unbearable under present inflationary conditions in Israel. The quick payment as precondition for the low rate considerably reduces the current loss of state revenue.

The proposals remove some distortions but create others. That is unavoidable as long as no definite choice has been made between a tax system fully reflecting inflation and one not reflecting it at all. Anyhow, a system fully reflecting inflation would have been ruled out owing to its high cost in tax income.

Before the tax reform the tax exemption of linkage differences has been the only major breakthrough in reflecting inflation in the tax system.

The change which removes that general exemption — though it retains it for index linked Government bonds — corrects the distortion between lenders at high interest rates and those with a linkage clause and conversely between the two types of borrowers. But it creates distortions between them and other recipients of capital gains which under the new system shall pay only a low tax rate on the inflation element in their capital gain while lenders with linkage clause have to pay full income tax on the linkage differences i.e. on capital gains which only and exclusively cover that inflation element.

There is also a certain incongruousness in the taxation of capital gains on sales of

equipment at a low rate for the inflation element at a time when depreciation is restricted to historical cost. This provision will tend to induce business men in Israel to overinvest in equipment in order to get the benefit of the higher depreciation a trend not desirable for the economy of Israel which lacks foreign currency and according to recent investigations underemploys its existing equipment.

The apparent intention to restrict the tax on dividends paid to a foreign shareholder to 25% also appears to contain an element of distortion. At that rate corporate profits distributed to foreigners will bear an overall tax of 55% only (company and shareholders together) while undistributed profits bear tax at 61% in the company. As explained in the following there will probably be a need for incentives to investments and certainly to foreign investment but that should not be given by actively encouraging the distribution of profits.

There appears to be one major weakness in the tax system proposed by the Ben Shahar committee which has been difficult to avoid because of the needs of the Government budget but which nevertheless does not seem to have received the attention it would require despite the difficulties of solving it. That is the lack of incentives for risk taking and for the formation of productive capital.

The need for tax reform arose when it was found that the increases of personal taxation required by the conditions in the country following the Yom Kippur war were detrimental and ineffective owing to their adverse influence on tax moral and willingness to work. On the whole, in its proposals the tax reform committee suggests to go back to pre-1973 rates and rather closer to the lower rater of 1964. The committee expects that the improvements in collection and the removal of disincentives to work will in the end more than compensate for the tax loss and avoid the damage created by the excessive rates of personal taxation of 1974. To the same extent as willingness to work Israel needs the willingness of enterprising people to take risks and to invest. Until October 1973, these have been encouraged in two ways:

1) by the benefits of the investment law, including 5 years of reduced corporate taxes which were given to the majority of important enterprises in Israel especially in manufacturing industry (until 1970 28% tax, thereafter 33% without any tax on dividends distributed).
2) By rates of corporate taxation which even for corporations not enjoying the benefits of the investment law were not higher than in most of the industrialized countries, at least for undistributed profits and for profits distributed to foreign shareholders. In the 1960's the rate of corporate taxation did not exceed 50% and has sometimes been well below that figure and until 1974 it never exceeded 53½%. As far as compulsory loans were added to the tax these were indexed and until 1967 even negotiable and quoted at the Stock Exchange (no compulsory loans were collected in 1968 and 1969).

While the tax reform committee proposes to go back in personal taxation to the lowest level of the 1960's in corporate taxation it proposes to go rather beyond the emergency rates of 1974.

It would exceed the scope of this review to try to analyse the problem of tax rates on undistributed corporate profits in Israel and their interrelation with rates of personal taxation and investment incentives.

It only should be stressed that the rates of

corporate taxation proposed by the committee are likely to mean a disincentive to productive investment in Israel in a similar way as the present rates of personal taxation are a disincentive to work. This is the more important because general conditions are presently less propitious for investment in Israel than they were before 1973.

The point of risk-taking can well be illustrated by reference to the rate of the capital gains tax. An investor in index linked bonds receives the index linkage tax-free, a modest rate of index linked interest (3% tax free) and all that at practically no risk. An investor in a productive enterprise runs the risk to earn very much less than the linkage, or even may lose his money. But in case he is successfull and realises his investment at a capital profit which is more than he would have got on linked bonds — and that is the case he expected when he made the investment otherwise he would have bought bonds — he pays 10% tax on the inflation element and 60% tax on the "real" gain. It is doubtful whether this prospect to fare in the best of cases only marginally better than an investor in linked government bonds will appear to many investors a sufficient reward for risk-taking.

As low-tax capital gains are among the fruits usually expected from manufacturing and other investment projects the question should be asked whether it would not have been preferable to use the standard rate of income tax (35%) for "real" long term capital gains of individuals and corporations, say, gains made after at least 10 years.

Furthermore, together with the high rate of corporate taxes and high taxes on long term capital gains goes the non-reflection of inflation in the taxation of business incomes. At the almost threefold rise of the general price level which Israel experienced in the last 3 years that means that "real" profits in many cases may be only a fraction of the 39% left after tax and sometimes negative amounts. That holds good especially as long as historical cost and FIFO valuation principles have to be applied.

It is appreciated that to try a full solution of both problems, personal and corporation taxation, would have been a sort of "mission impossible" in view of the requirements of the budget of the State of Israel. It seems, however, appropriate to emphasize that the impressive proposals of the Ben Shahar committee for a way out of the impass in the field of taxation of personal income may not be the end of the road as long as in the field of corporate taxation strong disincentives exist to risk-taking and productive investments.

PHILIP J. HARMELINK AND WALTER KRAUSE *:

TAX TREATMENT OF HOUSEHOLD UNITS: COMPARATIVE PROCEDURES AND ALTERNATIVES

A common problem for countries having programs of personal income taxation involves the treatment of single individuals separately from married couples. Practice relative to this matter customarily varies widely among countries, with varying results and reactions. In the present article, the authors compare the tax treatment of singles as against marrieds in ten countries,[1] indicating major patterns of current treatment; examine these patterns for degrees of overall equity, citing argumentation critical of disparate tax treatment premised solely on marital status; and conclude with the framework of a general approach potentially remedial of bases for oft-alleged discriminatory impact(s) related to marital status.

COMPARISON OF TAX TREATMENT

Countries surveyed in this study include the United States, West Germany, France, Norway, Spain, Switzerland, Belgium, the Netherlands, England, and Canada. Their respective forms of tax treatment relative to household status suggest delineation into two major categories with further subdivision of the second: (1) countries having large differences in rates, and treatment generally, between marrieds and singles; and (2) countries having lesser differences in tax treatment, but with variation in the form of (a) small differences in rates between marrieds and singles and/or (b) no differences in rates, though with larger exemptions determined *not* on the basis of number of dependents but on marital status.

Characterization of the ten countries, along with brief description of the nature of the tax treatment in each country, follows below.

(1) *Large differences in rates, etc.*

Among the countries surveyed, the United States, West Germany, and France appear most illustrative of large differences in tax rates and treatment relative to marital status. These countries either permit income-splitting in some form or maintain separate tax-rate schedules for marrieds and singles, providing higher tax liabilities for singles.

The United States, pursuant to Congressional action dating from 1948, permits income-splitting by marrieds. Presence of this privilege proves discriminatorily advantageous for marrieds in that a couple's income can be "split" and then, with progressivity in the income-tax structure (widespread among countries), be taxed at lesser applicable rates. Thus, in the United States, a single at US$ 20,000 income level

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1. Given the general complexity of and frequency of tax change within the multi-country context here at issue, the authors wish to indicate their informational dependence — for countries other than the United States —, upon the most current *Tax and Trade Guides* published by Arthur Andersen & Co., an international accounting firm, and upon recent releases in *Supplementary Service to European Taxation* published by the International Bureau of Fiscal Documentation.

customarily pays, exclusive of any deductions for personal exemptions, roughly US$ 1,000 more in income tax than does a married couple of equivalent income.[2]

West Germany similarly uses separate tax-rate tables for individual and joint tax-return filers, and goes on to allow generous deductions for children — in fact, successive deductions are increased as numbers of children increase. Illustrative of impact, the tax liability under 1972 rates of approximately DM 21,800 for a German single at DM 60,000 income level contrasts with a tax liability, for someone of equivalent income filing a joint return, of but DM 16,500 (not counting possible further diminution through personal deductions for dependents).

Among countries in this general category, France appears to have the greatest tax disparity between marrieds and singles. There, the income-splitting privilege applies not only to married couples but extends to dependent children as well. Income for a couple is divided into 2 taxable components; income for a couple with one dependent child, or for a widow or widower with one dependent child, is divided into 2½ taxable components; and, for each additional dependent child, division into separate taxable components is increased by an additional ½. The process of multi-splitting of income, coupled with the highly progressive tax-rate structure applicable thereto, lends itself to considerable difference in tax liability on identical income. To illustrate, computations with 1970 rates yield a tax liability of approximately F 23,000 on a F 60,000 income received by a single, as opposed to a tax liability of about F 8,700 on identical income received by a couple and a tax liability of roughly F 4,400 when the same income is received by a couple with two children.

(2) *Lesser differences*

This second category covers countries — like Norway, Spain, Switzerland, Belgium, the Netherlands, England, and Canada — where magnitude of tax differences resulting from particular marital status is less pronounced than typical of countries in the preceding section. However, the nature of tax treatment varies within this category. Basically, two major subdivisions are distinguishable. Norway and Spain have differences (small) in rate schedules *and* also differences in exemptions based on marital status (rather than solely on number of dependents). Switzerland, Belgium, the Netherlands, England, and Canada have uniform tax-rate schedules, but with some differences in personal allowances in terms of particular marital status.

(a) Turning to countries in each of the two sub-categories, we first address ourselves to the case of Norway and Spain.

Norway has income taxation at both national and municipal levels. The national tax involves separate tax schedules, and rates, for singles and for persons with dependents. The national tax is progressive, and does not incorporate provisions for personal deductions. At NKr 100,000 income level, tax liability for a single approximates NKr 18,000, as compared with about Nkr 13,800 for a person with dependents. The municipal tax rates are proportional (a 24% rate on taxable income as of 1972), with provision for personal deductions from income: NKr 3,400 if single and NKr 6,800 for married couples with or without children (1972). With

2. Monetary units are expressed in national terms here and subsequently, but with absolute magnitudes chosen to reflect, to the extent possible, approximate inter-country equivalence.

both a difference in rates (under the national income tax) and a difference in exemptions (in terms of allowable deductions under the municipal income tax), discriminatory tax impact between singles and marrieds is difficult to ascertain in exact terms — though, in general terms, such appears not as pronounced as in countries surveyed in the preceding category.

Spain has separate rates for singles and marrieds, though the differences are rather small. At approximately Ptas 880,000 income level, the tax differences between singles and marrieds is less than Ptas 11,800. Some credits, based on a portion of earned income and on number of family dependents, are allowed against the initial tax liability.

(b) Turning next to countries in the second sub-category, some commentary can be offered on Switzerland, Belgium, the Netherlands, England, and Canada.

Switzerland, like Norway, has both a federal income tax and a municipal income tax, but in addition, has a cantonal tax. The federal tax is relatively modest (a maximum rate of slightly over 10% [3] in 1975), while the cantonal tax varies by canton of residency and level of income. The municipal tax is typically closely integrated in the cantonal tax so that for all practical purposes, taxation occurs at but two levels, federal and cantonal. Discrimination in Swiss tax treatment, insofar as present, rests on exemptions rather than on differential tax-rate schedules. Under the federal tax, single persons are accorded no personal exemptions, but married couples are permitted an overall exemption of SwF 2,500 plus an additional allowance of SwF 1,200 for each dependent or child. Similar, but larger, deductions are allowed couples and for dependents under the cantonal tax. Discriminatory impact from Swiss income taxation, being the composite of essentially two taxes wherein one is variable by canton (and municipality), is difficult of exact assessment — though, in general terms, appears somewhat short of the exceptional and, as indicated, derives not from differential schedules but from an exemptions framework.

Belgium similarly employs an exemptions framework to achieve differential tax impact, using such discriminatorily as respects singles. For example, newly-married taxpayers are accorded a special tax concession, limited to the first BF 125,000 of income, for each of the first two years of marriage.

The Netherlands, beginning with 1973, revised its personal income tax system to treat all taxpayers in terms of the same rate-schedule, regardless of marital status. However, an accompanying procedure is to permit an allowance based on marital status and number of dependents. Additionally, married women are taxed separately on earned income, avoiding discriminatory tax impact against family income as a result of marriage.

England, like the Netherlands, has no distinctive penalty-rate schedule applicable separately to singles; and, since initiation with the 1972-73 tax year,[4] permits also that marrieds (husbands and wives) are eligible to elect taxation as if not married.

Similarly, Canada has one rate schedule and requires that if both spouses have income above a nominal amount (Can$ 1,700 in 1973), each spouse is required to file separate returns. Thus, in Canada as well as England and the Netherlands in ad-

3. Comprised of 9.5% plus a 10% surcharge computed on the tax amount.

4. England's tax year ends April 5 rather than the customary December 31.

dition to no discrimination against singles (other than through exemptions), there is no discrimination against married couples where both husband and wife are working.[5]

The second feature (no discrimination against couples where both persons are working) holds special relevance for a situation common to many countries. Ordinarily, with both husband and wife working, the couple may incur higher tax liability by filing jointly (because of elevation into a higher bracket under a progressive tax-rate structure) than if taxed separately as two individuals. The particular impact comprises, in reality, a second type of tax discrimination related to marital status. The cited countries, by permitting election by marrieds of particular mode of income reporting, avoid this form of tax discrimination — while also avoiding the overt tax discrimination commonly confronting singles when subject to a separate, higher rate schedule.

ARGUMENTATION

Invoking some background reasoning coming from a United States context, Supreme Court decisions there traditionally approve categorization of persons for particularized treatment, provided only that associated classification be "reasonable". The foregoing appears as a crucial consideration (within the United States, and more generally also); very simply, the legal (and *economic*) question is whether marital status provides a reasonable basis for differential tax treatment. The answer, in the view of critics of distinctive tax treatment for singles (as practised), is that the procedure is not reasonable; that it is, in fact, both unfair and premised on faulty logic — as certain argumentation purports to show.

In this vein, challenge is offered the contention of some that separate (higher) tax treatment for singles is warranted as help in bearing the cost of raising children. The obvious argumentative flaw here, in terms of the present context, is that childless couples generally receive the same benefits as do couples with children. It follows therefrom that singles are being treated differently not because of no claims to children, but because they are single. Indeed, were differences in size of family (and in attendant costs of raising children) the real issue, appropriate recognition of the fact might better come through personal exemptions[6] than via disparate rate structures.

Supplementary to this, others point out that singles, too, frequently are supporting others. Singles often have a parent, sister, or brother whom they are supporting; and the widowed and divorced also may have dependents. Logic suggests concessional tax treatment in their case(s) resting on the fact of support, not on whether single or married.

Discriminatory tax treatment is sometimes defended also along lines of singles having fewer needs — or, as commonly phrased, "Two cannot live as cheaply as one". A standard counterargument, of course, is that marriage yields certain economies or savings not accruing to singles — e.g., certain efficiencies in household contexts.

5. The term "working" is used here and elsewhere to describe source of income. For those who would prefer, the term "income recipient(s)" can be substituted (so at to convey the idea from multiple possible sources).

6. That is, "personal exemptions" should be based on number of dependents rather than on marital status.

Closely related to implications of the assertion that two cannot live as cheaply as one, further question with discriminatory tax procedure stems from its virtual exclusion of lower-income couples from the benefits of income-splitting. Because of commonly-prevailing lower tax rates at lower income levels, benefits from income-splitting are essentially nonexistent for persons within lower ranges. The fact that benefits of income-splitting accrue disproportionately to higher-income couples in reality undermines the principle of progressivity, widely favored otherwise. Alternatively, an available course is to eliminate the difference of treatment between singles and marrieds and then to adjust tax rates in ways however desired.

One sometimes hears the argument that marrieds merit income-splitting because they share an income. Were this a creditable argument, one might then, of course, further argue for extension of the income-splitting principle to cover all members of the household, including children.[7] Carried to its logical limits, income-splitting is readily susceptible to a fundamental flaw. Beyond matters of tax inequity pertaining to singles, inequity is a consideration also under select circumstances for persons of married status — as when, for example, there is denial to particular couples of the option of reporting income as separate persons. As noted earlier, a working man and a working woman may incur greater tax liability following marriage (despite an income-splitting privilege) than owing before marriage (while reporting income separately) because of combined income then placing them within a higher tax bracket (given progressivity of rate structure). To recall also, some countries — for example, the United States — do not permit marrieds, where both persons are working, to file as individuals at singles' rates. Under such circumstances, the effect(s) can be regarded as tax discrimination relating to marital status, just as with the disparate treatment of singles as compared to marrieds.

In the light of factual situations and attendant argumentation along foregoing lines, one can conclude — as many do — that the case for discriminatory tax treatment based on marital status is of questionable quality at best. All the while, it is apparent that "degrees" of equity, or of inequity, are the rule within the prevailing "real world" context — a fact evidenced in country situations, described and viewed in comparative terms earlier.

AN ALTERNATIVE

The core contention advanced here is that there should be no tax discrimination on marital status. The problem, however, is how to structure an income-tax system capable of assuring the desired equivalency of result. To such end, two minimal tests appear requisite: (1) a single income recipient should not, on equivalent income, bear a greater tax burden than does a married income recipient, (2) nor should a married income recipient, as a consequence of marriage and entry into a possible two-income-recipient situation, bear a greater tax burden than does a single.

Assuming non-discriminatory treatment along the foregoing lines as a goal, interest logically turns to a simple, generally-applicable procedure that might be viewed as a working model. In this vein, attention is

7. Tax treatment in this form is in effect in France, as indicated earlier. The assessment offered at that point suggests operational vulnerability to greater, not lesser, tax inequity.

brought here to a particular proposal and to suggested refinement thereon, the environmental setting in each case being that of the United States.

Pechman [8] has suggested the use of two rate schedules — one for single persons and one for married couples, the second distinguished by brackets one-half as wide for each married person as the brackets for single persons. As has been shown,[9] however, this procedure measures up to the first test, cited above, but not necessarily to the second test.

With *both* of two considerations at issue (the tax for a single as compared to the tax for a married with only one spouse working; and the tax for a single working man and a single working woman as compared to the tax liability incurred upon marriage to each other, assuming both continuing at work), the refinement being suggested here is in the nature of a modification in the Pechman procedure — specifically, a relabeling of his "single" column to read "single and *'each married if both are working'*." The reader is referred to the accompanying Table 1, incorporating the suggested modification.

Proceeding in terms of Table 1, a simple example can serve to illustrate resultant operational equity.[10] First, assume a taxable income of US$ 10,000 for a single and of US$ 10,000 for a married couple where only one spouse is working. Tax liability for the single, from column 1, amounts to US$ 2,100 ($ 1,000 × 21%). Tax liability for the married couple, from column 2, also totals US$ 2,100 —($ 5,000 × 21%) + ($ 5,000 × 21%). Thus, there is no discrimination against singles.[11]

Next, assume taxable income at US$ 5,000 for a single working man and at US$ 5,000 for a single working woman, and then assume their marriage to each other and their subsequent continuation of working. Tax liability as singles, from column 1, amounts to US$ 850 each ($ 5,000 × 17%). Tax liability as a married couple, from column 1, totals US$ 1,700 or US$ 850 each since both are working — ($ 5,000 × 17%) + ($ 5,000 × 17%). Thus, no higher liability is incurred with marriage. In short, the tax structure under the outlined approach is *neutral* as to marital status, per se.

CONCLUSION

The foregoing presentation has compared the tax treatment of singles versus marrieds in 10 countries; then, has offered argumentation on equity grounds against use of marital status, per se, for differential tax treatment; and, finally, has outlined an alternative procedure purportedly capable of equalization of tax treatent. Presented in guideline fashion, the cited alternative suggestedly has the major merit of wide area (country) relevance, couple with high ease of application.

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8. Joseph A. Pechman, "Income Splitting", *1 Tax Revision Compendium,* (Washington: U.S. Government Printing Office, 1959), pp. 473—486. For related material, see also Philip M. Stern, *The Rape of the Taxpayer,* (New York: Random House, 1973), pp. 128—130.

9. Philip J. Harmelink and Walter Krause, "Disparate Tax Treatment: The Case of Singles", *TAXES - The Tax Magazine,* August 1973, pp. 494—497.

10. It should be recognized that the application of "singles" rates to individual marrieds where both are working must proceed on the basis of each spouse's individual income. Otherwise, a situation could still occur in which a taxpayer would gain or lose tax-wise from a change in marital status, thereby violating the central theme being suggested here that no one should be penalized or favored tax-wise because of his or her marital status.

11. No preclusion of personal exemptions based on number of dependents is assumed in any case.

TABLE I
Illustrative tax rate schedules

Taxable Income (in U.S.$)		
Single (a) (and each married if both are working) (b)	*Each married* (a) (if only one spouse is working) (b)	*Illustrative tax rate* (in percentages)
(1)	(2)	(3)
0— 1,999	0— 999	16
2,000— 3,999	1,000—1,999	16
4,000— 5,999	2,000—2,999	17
6,000— 7,999	3,000—3,999	17
8,000— 9,999	4,000—4,999	21
10,000—11,999	5,000—5,999	21
12,000—13,999	6,000—6,999	24
14,000—15,999	7,000—7,999	24
16,000—17,999	8,000—8,999	25
18,000—19,999	9,000—9,999	25
.....		

Source: Adapted from Joseph A. Pechman, "Income Splitting", *1 Tax Revision Compendium,* (Washington: U.S. Government Printing Office, 1959), p. 486, Table 5.

(a) Headings conform with Pechman usage.

(b) Total heading attributable to authors. Note, in column 1, that application to 'married if both are working' must proceed on the basis of his or her individual income.

IRELAND

White Paper Proposals for Corporation Tax *

[CHAPTER 4]

INCOME TAX ON ANNUAL AND OTHER PAYMENTS MADE BY A COMPANY

81. Under the new system, a company would still be required to deduct income tax from certain payments after April 5, 1975, and it would as a separate matter be obliged to account to the Revenue for the tax so deducted. Broadly, these payments would be annuities and other annual payments, annual interest (other than bank interest) and certain rents and royalties. The company would be given relief from corporation tax in respect of these payments, including annual interest in so far as it is not restricted under the proposals recently announced by the Minister for Finance, by setting them against its total profits chargeable to that tax. As indicated in paragraph 41, interest on permanent loans would, subject to the same conditions, fall within the category of payments to be set against total profits and in this respect the new system would remove a source of complaint under the existing law which does not permit interest on permanent loans to be allowed as a deduction in computing profits for purposes of corporation profits tax.

82. The new legislation would contain machinery provisions for the collection on a yearly basis of income tax on the annual and other payments made after April 5, 1975. A company would be required to make to the Collector-General, not later than six months after the end of an accounting period, a return showing the payments made during that period and the income tax in respect of those payments for which the company would be accountable. The income tax in respect of payments included in a return would have to be paid to the Collector-General at the same time as the return is due.

83. Where in any accounting period a company received any payments from which income tax had been deducted, it could claim on the return to have that tax set against the income tax which it would itself be liable to pay on its own payments in that accounting period. Alternatively, on due claim, the income tax could be set off against the company's liability to corporation tax.

84. In accordance with the proposals in Chapter 5, inter-group charges such as loan interest and royalties paid to an associated company would be allowed to be paid without deduction of income tax.

* We are reprinting only part of the White Paper Proposals in this issue of the Bulletin. Chapter 2 of the White Paper appeared in the January 1975 Bulletin and chapters 3 and 8 appeared in the July 1975 Bulletin.

[CHAPTER 5]

GROUPS AND CONSORTIA

GROUP RELIEF

85. There are no provisions in the existing income tax code whereby trading losses, unused capital allowances, unrelieved expenses of management or an excess of charges over profits arising in the case of one member of a group of Irish companies may be allowed against the profits of another member of the group. A group would, broadly speaking, consist of a principal company and all its subsidiaries. Another form of relationship is a "consortium", that is, where a trading company is owned (either directly or through a holding company) by five or fewer companies which are not related to each other. In such circumstances a case could be made to have the trading or holding company's loss, etc., allowed to any of the joint owners in proportion to their shares in the company's ordinary share capital.

86. There have been many representations for the introduction in this country of group relief and of relief to consortia, but the existence of two systems of taxation on companies with different basis of computation for each tax has made it difficult to formulate a suitable and practicable scheme. It was indicated in the first White Paper on Company Taxation in Ireland that the suggested restructuring of the company tax system which would provide for a single tax on companies would enable consideration to be given to the question of allowing relief for losses, etc., incurred by a member of a group or by a company owned by a consortium as a set-off against the profits of other companies in the group or members of the consortium.

87. The legislation for according group relief would inevitably be complex. That would be unavoidable if the relief were to be given only in genuine cases and were not to be capable of being used for tax avoidance purposes. Complicated anti-avoidance provisions would therefore be necessary. The revenue authorities are not aware of any current case where the absence of group or consortium relief has adversely affected a company. On full consideration, therefore, it is proposed to leave over the position of group relief for attention in connection with the Finance Bill, 1975, to take effect from April 6, 1975, as in the case of the general provisions affecting company taxation. Interested parties would thus be afforded an opportunity of suggesting, against the background of the new single tax system, the form of group relief which might be required. The following is a broad outline of what might be regarded as appropriate.

MAIN PROVISIONS

Qualification for group relief

88. Group relief would apply to resident companies only. For the purposes of the relief, two companies would be treated as members of the same group if one were a subsidiary of the other or both were subsidiaries of a third company, the parent-subsidiary relationship being determined according to the test of not less than 75% ownership of the ordinary share capital.

Qualification for consortium relief

89. A company would be regarded as owned by a consortium if all the ordinary share capital of that company were owned by five or fewer companies. These companies would be members of the consortium

and relief would be available to each member company in respect of its share of the losses, etc., of the jointly owned company. Similar relief would be available where five or fewer companies owned all the ordinary share capital of a holding company, namely, a company whose business consisted wholly or mainly of holding shares or securities in trading companies which are its 90% subsidiaries, that is, companies in which 90% of their ordinary share capital is owned directly by the holding company. In such a case the relief would be available in respect of the losses, etc., either of the trading companies concerned or the holding company.

Scope of relief

90. The relief would permit a trading loss of one company (the surrendering company) in an accounting period to be set against the profits of the claimant company for a corresponding accounting period. Relief would also be allowed for—

(a) any excess of current capital allowances available to lessors of assets over associated current income of the period;

(b) any excess of current management expenses of an investment company, but not of a life assurance company, over current profits of the period; and

(c) any excess of charge on income (excluding interest not qualifying for relief as explained in paragraph 41) over current profits of the period.

Claims for relief would have to be made within two years after the end of the surrendering company's accounting period and the set-off of a surrendered loss, etc., would have effect for all corporation tax purposes of both the claimant and the surrendering company.

Payment of dividends

91. Dividends paid within a group or consortium, like other intercorporate dividends, would not be chargeable to corporation tax in the hands of the recipient company.

Payment of charges

92. Under the new system of corporation tax, the general position would be that charges such as loan interest (other than loan interest not qualifying for relief) and royalties would be allowable as deductions for corporation tax and would be chargeable to that tax in the hands of a recipient company. Income tax deductible from the charges would as a separate matter be accounted for to the Revenue as explained in Chapter 4. The income tax so deducted would be credited against the recipient company's liability for corporation tax or set against its own liability on charges as explained in paragraph 83. However, for qualifying groups of companies a departure from that procedure would be permitted and such inter group charges would be allowed, on due claim, to be paid in full without deduction of tax.

[CHAPTER 9]

NON-RESIDENT COMPANIES

127. A non-resident company, that is, a company managed and controlled outside the State, would be chargeable to corporation tax only if it carried on a trade in the State through a branch or agency. Where a non-resident company would be

so chargeable, the charge would apply to any trading income arising directly or indirectly through or from the branch or agency. It would extend also to any income, wherever arising, from property or rights used or held by, or on behalf of, the branch or agency. The rate of corporation tax would be the same for non-resident as for resident companies.

128. A non-resident company which carries on a trade in the State through a branch or agency would not be chargeable to corporation tax on income arising within the State where such income is not attributable to the branch or agency. The company would, however, as now be chargeable to income tax in respect of that income. Similarly a non-resident company which does not carry on a trade through a branch or agency in the State would as now be chargeable to income tax in respect of income arising from sources within the State.

129. A non-resident company would not be entitled to a tax credit in respect of a dividend received from a company resident in the State unless the giving of the tax credit were provided for in a double taxation agreement.

130. Annual payments such as annual interest or royalties from which income tax is deducted which are received by a non-resident company from sources within the State would be chargeable to corporation tax if they were attributable to a branch or agency of the company carrying on a trade in the State. In that event the company would be allowed a set-off against its corporation tax liability for the income tax deducted. Broadly, a non-resident company would be entitled to a deduction in computing its profits for corporation tax purposes in respect of any annual interest (other than interest not qualifying for relief) or other annual payment which is paid out of its profits brought into charge to corporation tax.

[CHAPTER 10]

INTERNATIONAL ASPECTS

AVOIDANCE OF DOUBLE TAXATION BETWEEN IRELAND AND OTHER COUNTRIES

131. Ireland has concluded comprehensive agreements with nineteen countries for the avoidance of double taxation on income and profits. Four of these have not yet been ratified.

Agreements between Ireland and the United Kingdom

132. The double taxation agreement with the United Kingdom relating to income tax and sur-tax is on a residence basis, that is to say there is reciprocal exemption by each country of income and profits arising in that country to residents of the other country. This agreement was concluded in 1926 and there were amendments in 1928, 1947, 1959 and 1960 which did not, however, affect the basic principles of the original agreement. A further amendment was made in 1973 the period of operation of which is limited to the two years ending on April 5, 1975. This matter is referred to in more detail in paragraph 135.

133. There is also an agreement with the United Kingdom in relation to corporation

profits tax and United Kingdom corporation tax. This agreement, which was made in 1949 and subsequently adapted on the introduction of corporation tax in the United Kingdom in 1965, deals with relief from double taxation in respect of profits of branches and dividends from subsidiary companies. It is based on the principle of credit in the country of residence for tax charged in the country where the profits or dividends arise.

DEVELOPMENTS IN RELATION TO AGREEMENTS BETWEEN IRELAND AND THE UNITED KINGDOM

How agreements were affected by the adoption of the separate system in the United Kingdom in 1965

134. Until 1965 the company taxation systems in Ireland and in the United Kingdom were basically the same. The corporation profits tax which has been retained in Ireland was terminated in the United Kingdom in 1924 and was reintroduced there, in a somewhat different form, in 1937. There were, however, no significant differences in the structures of the income tax systems in the two countries. Thus, immediately prior to 1965 the company tax system in the United Kingdom was basically the same as the taxation system in Ireland. In 1965, however, a major change was made in the United Kingdom with the introduction of the separate system of company taxation. Under that system companies paid corporation tax on all their profits while income tax applied separately to the full amount of dividends received by shareholders out of the company's taxed profits. The Residence Agreement of 1926 and the 1949 Agreement relating to corporation profits tax continued in effect subject to minor changes which did not alter the main principles of those agreements.

How agreements were affected by change to imputation system in the United Kingdom in 1973

135. With effect from April 1, 1973, an imputation system of company taxation was introduced in the United Kingdom and this required certain modifications of the double taxation agreements. Under the imputation system of taxation of company profits now in operation in the United Kingdom dividends are not paid under deduction of income tax. The Residence Agreement was, therefore, regarded by the United Kingdom as inappropriate to the altered conditions and new arrangements were required. A temporary arrangement, having effect from April 6, 1973, was negotiated recently whereby the Residence Agreement was modified as respects dividends paid by United Kingdom companies to Irish shareholders and dividends paid by Irish companies to United Kingdom resident shareholders. This new arrangement continues the broad effect of the Residence Agreement for a further period of two years, that is up to April 5, 1975, at which time a new agreement must be negotiated. The introduction of the imputation system in Ireland would have the advantage that this new agreement would be negotiated in the context of similar company tax systems in the two countries.

Modification of 1949 corporation profits tax agreement

136. Under the agreement made with the United Kingdom in 1949 relating to corporation profits tax Irish companies which received dividends from subsidiaries in the United Kingdom in which they held not less than 75% of the ordinary share capital were granted relief against Irish tax for the underlying United Kingdom corporation tax charged on the profits out of

which the dividends were paid. In response to representations a modifying agreement made with the United Kingdom in May, 1973, provided that the relief would be given where the Irish company held not less than 10% of the voting power in the United Kingdom company from which the dividends were received. Reciprocally relief is given against United Kingdom tax for the underlying corporation profits tax charged in Ireland on profits out of which dividends are paid by subsidiary Irish companies to United Kingdom companies holding not less than 10% of the voting power in the paying company.

AGREEMENTS WITH COUNTRIES OTHER THAN THE UNITED KINGDOM

137. The double taxation agreements with countries other than the United Kingdom are based on the principle of exemption or credit in the country of residence. Under these agreements the country in which the income arises has, in general, the prior right to tax that income, and double taxation relief is given in the country of residence in respect of the tax so levied in the country of source. The double taxation relief may take the form either of exemption of the income in the country of residence, or of the allowance in that country of a credit for the tax of the country of source. These principles are embodied in the OECD Model Convention for the avoidance of double taxation which provides the frame work for double taxation agreements between member countries.

Treatment of parent/subsidiary dividends — "matching credit"

138. A number of countries have provisions in their domestic law to exclude from the charge to tax, mainly in the case of parent and subsidiary companies, dividends received from foreign companies. The existing double taxation agreements between Ireland and certain other countries, while having as their main objective the avoidance of double taxation of Irish income, also recognise the special position of dividends paid by Irish companies out of profits which have been relieved from Irish tax for a limited period through the operation of the incentive tax reliefs. In those cases the partner countries have agreed to the inclusion of provisions which ensure that the relief provided by their domestic law or, as the case may be, by double taxation agreements, is given in respect of dividends paid out of tax-relieved profits of Irish subsidiary companies in the same way as if those profits had not been relieved from tax ("matching credit"). The preservation of these provisions in any new agreements with such countries would, of course, be a matter to be negotiated with each of the countries concerned.

COMPANY TAX SYSTEMS IN RELATION TO INTERNATIONAL DOUBLE TAXATION

General considerations of company tax systems

139. The existing dual system of Irish company tax has given rise to much difficulty in the international field because its implications for other countries whose residents might be affected were not readily understood by them. Many countries have found difficulty in determining the incidence of Irish taxation suffered by their residents, whether companies or individuals, who receive dividends from Irish companies. Differing views as to whether the Irish income tax was a tax paid by the Irish company on its profits or a dividend tax

borne by the shareholders gave rise to serious problems in the negotiation of agreements for the relief of double taxation. This is a matter which has an important bearing on foreign investment in Irish industry. It is particularly important in relation to investment in Irish companies which may benefit from the incentive reliefs designed to encourage such investment. Thus the system of taxation of company profits, and of dividends paid out of those profits, is relevant for the purpose of attracting foreign industrial investment and in the conclusion of international tax agreements. Ideally the system should be one which is readily understandable and the implications of which are clear for other countries whose residents it may affect.

Adoption of imputation system in Ireland in relation to double taxation agreements

140. The imputation system which separates the taxation of the profits of a company from the taxation of the dividends which its shareholders receive out of those profits, is widely used and internationally understood. Its adoption should largely resolve the difficulties heretofore experienced in the negotiation of double taxation agreements with other countries but its introduction would necessitate renegotiation of the existing agreements. In any event certain member states of the EEC are in process of modifying their corporate tax systems and this together with the recent decision of the Commission to recommend that harmonisation of the systems of corporate taxation within the EEC should be on the basis of the imputation system will, it appears, make necessary the renegotiation of many of the present agreements. Ireland's position in any such renegotiation would not be worsened by the introduction of the imputation system.

141. For a capital importing country like Ireland the treatment of profits of branches and subsidiaries of foreign companies, of dividends paid to non-resident shareholders, and the avoidance of double taxation of profits and dividends is of great importance in attracting foreign investment. The following paragraphs indicate how it would be proposed to deal with these questions under the imputation system and in renegotiating existing double taxation agreements and concluding new agreements.

Irish branches of United Kingdom companies

142. The existing double taxation agreements with the United Kingdom provide that the profits of Irish branches of United Kingdom companies are exempt from Irish income tax but liable to corporation profits tax. The profits are also liable to United Kingdom corporation tax but credit for the Irish corporation profits tax is given against the United Kingdom tax. If an imputation system were introduced in Ireland and if each country charged the branch profits arising within its territory it would be feasible to eliminate double taxation by the granting of credit in the country of residence of the company in respect of the charged in the other country on the branch profits. Such treatment would be in line with the provisions of the OECD Model Convention for the avoidance of double taxation.

Irish branches of foreign (other than United Kingdom) companies

143. At present the profits of Irish branches of foreign companies are chargeable to Irish income tax and corporation profits tax. It is provided in double taxation agreements either that such profits are to be exempted from taxation in the

other country or that credit is to be given for the Irish taxes against the tax liability in that other country in respect of those profits. Double taxation of the profits is thus effectively avoided. In new double taxation agreements provisions would be sought which would ensure that the profits of these branches would be liable to the Irish corporation tax and to secure either that the profits would be exempted in the partner country or that credit for the Irish tax would be given in that country against any taxation imposed there on the profits. Such provisions would be fully in accord with the OECD Model Convention.

Dividends paid to non-resident shareholders

144. Non-resident shareholders would not be automatically entitled to a tax credit in respect of a dividend received from an Irish company but there would be provision to enable the right to the tax credit to be extended to residents of other countries under double taxation agreements. The extent to which a shareholder resident in another country would be entitled to credit would depend on the terms of each particular double taxation agreeent. The terms would in each case be a matter for negotiation. Guide lines for such agreements are laid down in the OECD Model Convention for the avoidance of double taxation. Where tax credit would be given in respect of a dividend paid out of profits have not borne full tax because of relief under the tax incentive measures, the amount of credit would have regard to the tax actually borne on the profits out of which the dividend is paid. In renegotiating double taxation agreements it would be sought to secure, where feasible, matching credit on the basis that the double taxation relief to be given by the partner country in respect of Irish tax would be of an amount equal to what it would be if the profits had been fully taxed.

145. On the assumption that double taxation agreements could be concluded on basis no less favourable than those at present in existence the introduction of the imputation system would not give rise to difficulties in the international field. Indeed by replacing the present two-tier system by a single system of corporation tax the conclusion of satisfactory agreements which would avoid double taxation and would provide for the preservation of the value of the tax reliefs for Irish industry would be facilitated.

[CHAPTER 11]

SPECIAL CLASSES OF COMPANIES

146. Certain bodies which have special features for tax purposes are referred to in this chapter. A broad outline is given setting out the manner in which these bodies are dealt with at present and the proposed treatment under the new system of corporation tax. The bodies concerned are building societies, industrial and provident societies, investment companies, insurance companies, especially those carrying on life business, companies engaged in farming and companies which are wholly or partly exempt from tax.

BUILDING SOCIETIES

Present position

147. Building societies in Ireland have been exempted on a temporary basis from

corporation profits tax since the introduction of that tax in 1920.

148. As regards income tax, the profits of a building society are liable in law in the same way as the profits of any other trade and it is open to the society to exercise its legal right to deduct tax on payment of dividends and interest leaving the recipient to claim any relief to which he may be entitled.

140. A society may, however, enter into an administrative arrangement with the Revenue Commissioners under which its liability is computed on a special basis. Under the arrangement the society pays income tax at the standard rate on its undistributed profits and on interest and dividends paid to companies and to individuals with large investments or deposits, and at a composite rate on other interest and dividends. The composite rate is so calculated that the total amount of income tax payable to the Revenue is, as nearly as may be, the same as if the societies were charged on their full profits and the depositors and shareholders were charged according to their individual tax circumstances.

Proposed treatment under new system

150. On the changeover to corporation tax, it is proposed that the present administrative arrangement would be given statutory sanction as recommended in the Seventh Report (Pr. 6581) of the Commission on Income Taxation and in accordance with the Government's decision to implement that body's recommendation. Societies which entered into the statutory arrangement would be liable to income tax in the same manner as at present under the administrative arrangement. They would not be liable to corporation tax. Socieities which did not enter into the statutory arrangement would be liable to corporation tax on all their profits and in addition would be required to deduct income tax at the standard rate from all amounts of annual interest paid to investors and depositors and to account to the Revenue for the income tax so deducted.

INDUSTRIAL AND PROVIDENT SOCIETIES

Present position

151. These societies, generally called co-operative societies, are registered under the Industrial and Provident Societies Acts, 1893 to 1971, and, subject to exemptions in favour of certain trading profits and to special provisions regarding share and loan interest paid, are liable to income tax and corporation profits tax in the same way as companies in general. The exemption of trading profits is confined to a society which is either an agricultural society or a fishery society.

152. An agricultural society is one with fifty or more members the majority of whom derive the principal part of their income from farming. The trading profits of such a society, in so far as they arise from the selling by wholesale of farm produce, the selling by retail of such commodities as seeds and fertilisers and the provision of certain services associated with agricultural production are exempt from tax.

153. A fishery society is one with twenty or more members the majority of whom derive the principal part of their income from fishing. The trading profits of such a socieity in so far as they arise from the selling by wholesale of fish, the auctioning and transportation of fish and the selling of commodities or articles used in catching fish are exempt from tax.

154. Share and loan interest payable by an

industrial and provident society is generally payable without deduction of tax and the amounts so paid are deducted in computing the society's liability to tax. Such interest is assessable to tax in the hands of a recipient.

Proposed treatment under new system

155. Industrial and provident societies would be liable to corporation tax in the same way as companies generally but the trading profits of agricultural and fishery societies in so far as they are exempt from income tax and corporation profits tax would also be exempt from corporation tax. Share and loan interest paid by a society would be deducted in computing its profits and the interest would be assessable to tax as at present in the hands of a recipient.

INVESTMENT COMPANIES

Present position

156. An investment company (sometimes called an investment trust company) is defined as a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom. The income of such a company is at present liable to income tax but it is entitled to claim repayment of tax on the amount of its expenses of management. If the management expenses exceed the total income for any year the excess cannot be carried forward to subsequent years. An investment company is also chargeable to corporation profits tax on its profits and in computing these profits a deduction is made in respect of the expenses of management. Where the management expenses exceed the income the excess can be carried forward against the profits of subsequent accounting periods.

Proposed treatment under new system

157. An investment company would be entitled to deduct its expenses of management in computing its income for corporation tax purposes. Where the management expenses of an accounting period exceeded the income of that accounting period which was chargeable to corporation tax, the company would be entitled to carry forward the excess against the income of subsequent accounting periods. Alternatively it could claim that such excess should be set against any dividends received in the accounting period from resident companies and obtain payment of the tax credit relating to the dividends.

INSURANCE COMPANIES

Present position

158. Life assurance business and other insurance business such as fire, accident and motor are required to be dealt with separately for income tax but not for corporation profits tax purposes. Insurance business other than life assurance does not present any special problems in the field of income taxation. It is dealt with in the same way as any other trade. The provisions dealing with the taxation of life assurance business are, however, complex and specialised and need not be set out in any detail here. Broadly, in the case of a life assurance company incorporated and resident in the State, the provisions have the effect of making the policyholders' share of the profits liable to income tax and making the company's share of the profits liable to income tax and corporation profits tax. In the application of the provisions the industrial branch is generally separated from the ordinary branch and there are special rules concerning the determination of profits from the general annuity busi-

ness, the pension annuity business and the foreign life assurance fund. There are further special rules in connection with the determination of liability to income tax and corporation profits tax in the case of a foreign company carrying on life assurance business in the State.

Proposed treatment under new system

159. Under the new system insurance business other than life assurance would be dealt with in the same way as any other trade. As regards life assurance, however, the present special provisions regarding the computation of profits would substantially be carried into the corporation tax so that the portion of profits allocated to policyholders would be charged to corporation tax at a rate equal to the standard rate of income tax and the residue of the profits would be charged to corporation tax at normal rates.

COMPANIES ENGAGED IN FARMING

160. Profits derived by a company from farming land within the State are at present liable to corporation profits tax but are exempt from income tax. On September 20, 1973, an official announcement was made to the effect that the entire system of direct taxation including the taxation of farming profits was under general review. The new system of corporation tax would take into account the tax treatment to be accorded to farming profits generally.

COMPANIES WHICH ARE WHOLLY OR PARTLY EXEMPT FROM TAX

161. The charge to corporation profits tax does not now apply to the profits of certain corporate bodies, such as public utility companies, credit unions and friendly societies. Some of these bodies are liable to income tax on the full amount of their income; others are either liable to income tax on only part of their income or are fully exempt from that tax.

162. Corporate bodies which now receive more favourable tax treatment than companies in general would be accorded comparable treatment under the new system.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning books should include the reference numbers listed.

AUSTRALIA

THE GUIDE TO AUSTRALIAN INCOME TAXES,

20th edition of Gunn's Guide to Commonwealth Income Tax, by E. F. Mannix and D. W. Harris. Butterworths, Sydney, 1975. 749 pp.
Revised edition of guide which explains the income tax law as of December 31, 1974 as interpreted by the various Tribunals. (9075)

BELGIUM

GIDS VOOR DE AANGIFTE VAN DE PERSONEN- EN VENNOOTSCHAPSBELASTING,

onder redactie van A. Bailleux, T. Bourgoignie, M. Ceyssens, M. Porré, H. Siebens. CED Samsom, Brussels, 1974. ± 500 pp.
Loose-leaf publication of a guide for filing individual and corporate income tax returns. (B 9091)

CANADA

CANADIAN FOREIGN INVESTMENT CONTROLS, by J. A. Langford. CCH Canadian Limited, Don Mills, Ont., 1974. 106 pp., $ 7.00.
An overview of the Canadian Foreign Investment Review Act. Text of the Act, Regulations and outline of Provincial Legislation is appended. (B 9035)

EXPLANATION OF CANADIAN TAX REFORM,

CCH Canadian Limited, Don Mills, Ont., 1972. 372 pp., $ 8.00.
Comprehensive explanation of the Income Tax Reform which came into effect on January 1, 1972. (B 9030)

INTERNATIONAL TAXATION AND CANADIAN TAX REFORM,

by H. J. Stitt and S. R. Baker. CCH Canadian Limited, Don Mills, Ont., 1972. 120 pp., $ 4.00.
Study of the basic tax considerations relevant to the international implications of the Canadian Tax Reform Act of 1972. (B 9028)

ONTARIO AND QUEBEC SALES TAX WITH RELATED TAXES,

8th edition. 1973-74. CCH Canadian Limited, Don Mills, Ont., 1974. 336 pp.
Consolidated text of the Ontario and Quebec Sales Tax Act and related taxes including regulations and rulings thereto as of April 20, 1974. (B 9036)

PREPARATION OF FEDERAL CORPORATE TAX RETURN (TR RETURN AND SUPPORTING SCHEDULES),

4th edition. CCH Canadian Limited, Don Mills, Ont., 1974. 57 pp., $ 4.00.
Guide to preparation of federal corporate income tax return for 1974. (B 9032)

SALES TAX GUIDE - CANADA,

25th edition 1974-75. CCH Canadian Limited, Don Mills, Ont., 1974. 968 pp.
Annual publication of monograph on sales and excise tax as revised to September 15, 1974. (B 9034)

SPECIAL LAND LEGISLATION IN ONTARIO,

CCH Canadian Limited, Don Mills, Ont., 1975. 70 pp., $ 5.00.
Full texts of the Land Transfer Tax Act 1974 and the Land Speculation Tax Act 1974, as amended. Also included are the texts of regulations, interpretation and rulings (Bulletins) thereto. (B 9031)

TAXATION OF CAPITAL GAINS UNDER THE CANADIAN TAX REFORM,

by W. M. Carlyle. CCH Canadian Limited, Don Mills, Ont., 1971. 40 pp., $.00. (B 9029)

CHINA

LAND TAXATION IN IMPERIAL CHINA 1750-1911,

by Y. C. Wang. Harvard University Press, Cambridge, Mass., 1973. 171 pp., $ 4.50.
Study which explores the principal source of revenue of the Ch'ing dynasty, the land tax. This study is being published in two parts. This

volume contains the analysis of the relationship between the land tax and China's economy and government administration. The second volume published separately as a Harvard East Asia Monograph, contains the sources and calculations of the land tax estimate figures based on numerous primary sources. (B 50121)

DENMARK

BESKATNING AF DANSKE SELSKABERS UDLANRSINDKOMST,

by P. Borum. Foreningen af Yngre Revisorer, Copenhagen, 1974. 32 pp.
Monograph explaining taxation of Danish corporate income derived from foreign sources under national and double taxation treaties of Denmark. (B 9007)

EAST EUROPE

AKTUELLE FRAGEN DES SOZIALISTISCHEN FINANZRECHTS,

Budapest, 1975. 2 volumes. 230 pp.
Text of proceedings and papers contributed at the first symposium held from October 2 to 5, 1973 in Visegrad convened by scholars on finance law from East European countries, including taxation, banking and foreign exchange in socialistic countries. The papers are either in Russian or in German and edited by Professor Tibor Nagy. (B 8987)

EUROPEAN COMMUNITIES

EEC: YOUR QUESTIONS ANSWERED,

EEC Information Unit, Department of Industry, London, 1974. 87 pp.
Information guide to help the businessman wanting facts about the European Economic Community and the way its policy, procedure and legislation could affect his business operations and decisions. (B 8975)

EEC/NORDIC COUNTRIES

SKATTEHARMONISERINGEN I EG,

Göteborgs Offsettryckeri AB, Stockholm, 1974. 128 pp.
Opening address and translated text in Norwegian and Swedish of lectures and panel discussions of seminar held in Helsingör September 27-28, 1973 convened by Nordiska skattevetenskapliga forskningrådet (the Nordic Tax Research Committee) with tax experts from the European Communities on tax harmonization in the E.E.C. (B 9062)

FRANCE

MEMENTO PRATIQUE DU CONTRIBUABLE; TOUTE LA FISCALITE 1975,

Editions Francis Lefebvre, Paris, 1975. 959 pp.
Practical guide to the French tax system and social security and labor legislation. The material is up to date as of April 15, 1975. (B 9074)

MULTINATIONALS IN SEARCH OF TAX FORMULAE, THE PROBLEM OF INTRA-GROUP TRANSACTIONS: CONFERENCE IN AMSTERDAM, APRIL 7-9, 1975,

by J-C Samaran. Associated Business Program, London, 1975. 270 pp.
The topic viewed from the French tax angle. (B 8925)

YOUR EUROPEAN HEADQUARTERS IN FRANCE,

DATAR, Paris, 1975. 93 pp.
Guide designed to provide general information on the establishment of European headquarters in France. The places covered are Paris, Lyons, Nice and Strassbourg. (B 9044a)

GERMAN FEDERAL REPUBLIC

HANDBUCH ZUR EINKOMMENSTEUERVERANLAGUNG 1974,

Verlag C. H. Beck, Munich, 1975. 953 pp., DM 33.80.
Annual guide containing information for filing 1974 individual income tax return. Relevant text of statutes is reproduced. (B 9024)

HANDBUCH ZUR GEWERBESTEUERVERANLAGUNG 1974,

Verlag C. H. Beck, Munich, 1975. 227 pp., DM 18.50.
Annual guide containing information for filing 1974 trade tax return. Relevant text of statutes is reproduced. (B 9021)

HANDBUCH ZUR KÖRPERSCHAFTSTEUERVERANLAGUNG 1974,

Verlag C. H. Beck, Munich, 1975. 324 pp., DM 23.00.
Annual guide containing information on the 1974 corporate income tax return. Relevant text of statutes is reprinted. (B 9023)

HANDBUCH ZUR UMSATZSTEUERVERANLAGUNG 1974,

Verlag C. H. Beck, Munich, 1975. 835 pp., DM 35.80.
Annual guide containing information for filing 1974 turnover tax return. Relevant text of statutes is reproduced. (B 9025)

HANDBUCH ZUR VERMÖGENSTEUER-HAUPTVERANLAGUNG 1974,

Verlag C. H. Beck, Munich, 1975. 424 pp., DM 27.50.
Annual guide containing information on the 1974 basic net worth tax. Relevant text of statutes is appended. (B 9022)

HANDBUCH DER STEUERVERANLAGUNGEN EINKOMMENSTEUER, KÖRPERSCHAFTSTEUER, GEWERBESTEUER, UMSATZSTEUER, 1974,

Verlag C. H. Beck, Munich, 1975. 835 pp., DM 89.00.
Annual guide containing information for filing 1974 return with respect to individual income tax, corporate income tax, trade tax and turnover tax. Relevant text of statutes is reproduced. (B 9026)

DIE NEUE VERMÖGENSTEUER VStG 1974,

by G. Klein. Hermann Luchterhand Verlag, Neuwied am Rhein, 1974. 107 pp., DM 14.80.
In this book the complete text of the Net Wealth Tax Law of April 17, 1974 has been published, including brief and practical explanation of all separate paragraphs. (B 8660)

REFORM DER KÖRPERSCHAFTSTEUER DOKUMENTATION,

by F. Klein and H. Schöberle. Verlag Peter Deubner GmbH, Cologne, 1975. 198 pp., DM 56.00.
Compilation of official documents concerning the proposed introduction of an imputation system of corporation tax in Germany, as of the end of April 1975. (B 9092)

DIE THEORIE DER KÖRPERSCHAFTSTEUER,

by C. A. F. Rasenack. Schriften zum Öffentlichen Recht, Band 233. Duncker & Humblot, Berlin, 1974. 328 pp., DM 68.00.
Thesis entitled "The theory of the Corporation tax" which analyzes the implication status and performance of the corporate income tax in the present tax system of West Germany. (B 9019)

WIRKUNGEN DER ZONENRANDFÖRDERUNG,

by H. Nuppau. Verlag Weltarchiv GmbH., Hamburg, 1974. 347 pp., DM 42.00.
Study of the German activities to further the development of border areas and the results obtained through these efforts. (B 8953)

HONG KONG

SYNOPSIS OF TAXES ADMINISTRATED BY THE INLAND REVENUE DEPARTMENT OF HONG KONG,

7th edition. Government Printer, Hong Kong, 1975. 11 pp.
Overview of the taxes levied in Hong Kong, i.e. profits tax, salaries tax, property tax, interest tax, estate duty, stamp duty, entertainment tax, betting duty and registration fee of businesses. (B 50122)

INDONESIA

COMMERCIEEL OPEREREN IN INDONESIË,

by W. J. Aalders and R. Boon. FENEDEX, The Hague, 1975. 72 pp.
Information guide designed for prospective entrepreneurs who plan to operate in Indonesia with reference on taxation. (B 50123)

INTERNATIONAL

BOLAGSBESKATTNINGEN I NORDEN,

Göteborgs Offsettryckeri AB, Stockholm, 1974. 217 pp.
Text of reports presented at seminar held in Helsingfors in October 1974 convened by the Nordiska skatteventskapliga forskningsrådet (the Nordic Tax Research Committee) on the subject company taxation in Denmark, Finland, Norway and Sweden. Text of the reports is either in Swedish, Norwegian or Swedish. (B 9063)

INSTITUTIONALIZING THE PROCESS OF TAX REFORM,

by M. J. McIntyre and O. Oldman.
Reprinted from The Harvard International Law Journal, Volume 15, No. 3, Cambridge, Mass., 1974. (B 9086)

MANAGING MULTINATIONAL CORPORATIONS,

by A. V. Phatak. Praeger Publishers, New York, 1974. 337 pp., $ 7.95.
The nature of the strategic decisions and the basic managerial functions of planning, organiz-

ing, staffing and controlling, which serve as the framework for making decisions. (B 9051)

NUEVOS IMPUESTOS,

Instituto de Estudios Fiscales, Ministerio de Hacienda, Madrid, 1972. 526 pp.
Essays by various Spanish and foreign authors on new types of taxes, e.g. the U.S. Interest Equalization Tax, the Selective Employment Tax, the Anti-pollution Tax. (B 9001)

TAXATION OF BRANCHES AND SUBSIDIARIES IN WESTERN EUROPE, CANADA AND THE U.S.A.,

by S. N. Frommel. Kluwer, Deventer, 1975. 121 pp.
Originally a report prepared for the Committee on Taxes of the Section on Business Law of the International Bar Association, presented at the I.B.A. Congress held in Vancouver, B.C. from July 28 to August 2, 1974. The material has been updated to state the law as of November 30, 1974 and covers double taxation agreements, conflict of laws, tax deferral, close and base companies, residence, abuse of legal forms, holding companies, group taxation, and the financing of foreign corporations, explained in the light of the different legal systems applied in Western Europe, Canada and the, U.S.A. (B 9085)

ISRAEL

ISRAEL INCOME TAX LAW; INCLUDING RELATED LAWS,

Israel Business Books Ltd., Haifa, 1975. 164 pp., IL 50.00.
English version of consolidated text of the Israel Income Tax Ordinance 1947, and the following related laws: employers' tax, services tax, compulsory loans, encouragement of investments law (tax provisions only), encouragement of industries (taxes) law, depreciation rules, (finance (def.) regl. (as of April 1, 1975) translated by Gabriel Alon. (B 9083)

ITALY

IMPOSTA SUL REDDITO DELLE PERSONE FISICHE,

by E. Baiano. S.E.P., Rome, 1975. 191 pp., Lire 2.500.
Outline explaining the present individual income tax. (B 9039)

ITALIAN INCOME TAXATION/LE IMPOSTE DIRETTE IN ITALIA,

by P. C. Alegi. Vittorio Ferri, Rome, 1974. 509 pp.
Original Italian and English translation of text of the decrees of the Italian income tax reform. (B 8995)

IL TRATTAMENTO TRIBUTARIO DELLE SOCIETÀ DI CAPITALI,

by A. Ghini, L. di G. Pirola, Milan, 1974. 350 pp., Lire 6.500.
Monograph dealing with the treatment of corporations under the Italian tax system (B 9041).

IVORY COAST

CODE GENERAL DES IMPOTS,

Fiduciaire France Afrique - Côte d'Ivoire. Ministry of Finance, Abidjan, 1975. 370 pp.
Loose-leaf containing consolidated text of the General Tax Code with annotations and integrated text in connection thereto. The material will be updated by supplements from time to time. (B 10624)

MALTA

INCOME TAX ACT, 1948 (ACT NO. LIV OF 1948).

From: Bentissebh, Commissioner of Inland Revenue, Malta, 1973. ± 180 pp.
Loose-leaf volume containing consolidated text of the Malta Income Tax Act 1948 as amended by Act LVIII of 1974. (B 9089)

MIDDLE EAST

BUSINESS PROSPECTS IN THE MIDDLE EAST; OPPORTUNITIES FOR FINANCING, TRADE AND INVESTMENT,

Business International, New York, 1975. 215 pp.
Research report designed to give international corporate executives a practical introduction to the markets in Iran, Egypt, Syria, Saudi Arabia, Lebanon, United Arab Emirates, Kuwait and Iraq. English translation of relevant statutes in connection thereto is appended. (B 50099/B 50104)

NETHERLANDS

BELASTINGHEFFING VAN DE GEHUWDE VROUW,

by J. E. A. M. van Dijck. Geschriften van de Vereniging voor Belastingwetenschap, No. 138.

Kluwer, Deventer, 1975. 51 pp.
Text of introductory speech and following debate on the topic "taxation of working wives" with emphasis on the Netherlands tax law and the economic and social environment at the annual symposium convened by the Association for Tax Sciences. (B 8971)

DE FISCALE GEVOLGEN VAN DE VERVREEMDING VAN GENOTSRECHTEN,

by J. W. Zwemmer. FED, Deventer, 1975. 217 pp.
Thesis on the tax implication of the alienation of beneficial property under Dutch tax law. The situation under the German tax law is dealt with in a separate chapter. (B 9087)

FOREIGN INVESTMENT IN THE NETHERLANDS.

FENEDEX, The Hague, 1975. 40 pp.
Booklet designed to provide introductory information to persons who contemplate business activities in the Netherlands. The major tax laws are briefly described. (B 9079)

GEWAARDEERD ONDERNEMERSLOON.

Raad voor het Midden- en Kleinbedrijf, The Hague, 1975. 25 pp.
Report of commission which recommends a concept of wage valuation as a cost basis for entrepreneurs. (B 9050)

PERIODIEK WOORDENBOEK VAN ADMINISTRATIEVE EN GERECHTELIJKE BESLISSINGEN INZAKE BURGERLIJK RECHT, INKOMSTENBELASTING, VERMOGENSBELASTING, BELASTINGEN RECHTSVERKEER, REGISTRATIE, SUCCESSIE, GRONDBELASTING, KADASTER, HYPOTHEKEN, NOTARIAAT, ENZ.

Tweede gedeelte 1974, Artt. 18328-18360. FED, Deventer, 1975. 290 pp.
Compilation of cases dealing with civil law, individual income tax, transfer tax and death duties, through the second part of 1974. (B 8999)

NETHERLANDS ANTILLES

DE NEDERLANDSE ANTILLEN ALS VESTIGINGSPLAATS VOOR BEDRIJVEN.

by G. Kuimer and P. van Wijngaarden. FENEDEX, The Hague, 1975. 24 pp.
Brochure intended to present introductory information for those contemplating business activities in the Netherlands Antilles. An outline of the tax system is included. (B 9080)

SPAIN

ALLGEMEINE HINWEISE FÜR GESCHÄFTE MIT SPANISCHEN HANDELSPARTNERN.

(8. erweiterte Auflage). Deutsche Handelskammer für Spanien, Barcelona, 1975. 40 pp.
Eigth extended edition of brochure providing important information on Spanish business law. (B 9088)

LEY DEL IMPUESTO SOBRE LAS RENTAS DEL CAPITAL.

Ministerio de Hacienda, Madrid, 1968. 155 pp., Ptas 50.
Text of and commentary on the law on the taxation of income from capital. (B 9000)

TEXTO REFUNDIDO DEL IMPUESTO SOBRE EL LUJO.

Ministerio de Hacienda, Madrid, 1967. 283 pp., Ptas 100.
The text of and commentary on the turnover tax law on luxury goods. (B 9003)

TRAFICO DE EMPRESAS.

2nd edition. Ministerio de Hacienda, Madrid, 1973. 445 pp., Ptas 150.
Systematical commentary on the general turnover tax. (B 9002)

SURINAM

DIREKTE BELASTINGEN IN SURINAME.

by H. W. J. Brand Flu. Belastingbureau H. W. J. Brand Flu, Paramaribo, 1974. 262 pp.
Consolidated text of the direct taxes with a short introductory explanation thereto. The following major tax laws are reproduced: income tax ordinance (individual and corporate income tax), dividend tax, net wealth tax. Tax rate tables are appended. (B 9076)

SWITZERLAND

ÖFFENTLICHE FINANZEN DER SCHWEIZ/FINANCES PUBLIQUES EN SUISSE 1973.

Statistische Quellenwerke der Schweiz/Heft 560. Eidgenössisches Statistisches Amt, Bern, 1975. 95 pp., Fr. 12.00.
Entitled "Public Finance of Switzerland 1973", this publication contains statistical data on revenue and expenditures of the Confederation, cantons and municipalities. It is a continuation of the previous publications entitled "Finanzen und Steuern von Bund, Kantonen und Gemeinden". (B 9070)

STEUERPLANUNG IN DER UNTERNEHMUNG; REFERATE EINES SEMINARS DER WEITERBILDUNGSSTUFE DER HOCHSCHULE ST. GALLEN,

by E. Höhn, B. Lutz and A. Zünd. Schriftenreihe "Finanzwirtschaft und Finanzrecht", Band 17. Verlag Paul Haupt, Bern, 1975. 188 pp., Sfr./DM 58.00.

Study originated from tax seminars on the strategy of tax planning in businesses in connection with both the Swiss Tax Reform (tax harmonization, tax on value added, etc.) and the international business engagements. (B 9055)

UNITED KINGDOM

CORPORATION TAX AS AMENDED BY THE FINANCE ACTS 1970 TO 1974.

Certified Accountants Educational Trust, Benfleet, Essex, 1975. 70 pp; 24 pp; 18 pp; 19 pp.

Four booklets explaining the corporation tax with marginal references to the basic statutory provisions, updated as of Finance Act 1974. The following sub-titles are covered:

I - General Provisions of the Income and Corporation Taxes Act 1970;
II - Close Companies;
III - Double Taxation Relief;
IV - Transitional Provisions.
(B 9056-B 9059)

SIMON'S TAXES: FINANCE (NO. 2) BILL 1975.

Butterworths, London, 1975. 117 pp.

Reprint of text and explanatory notes to Finance (No. 2) Bill 1975 as presented to Parliament. (B 9047)

A GUIDE TO CAPITAL TRANSFER TAX,

by J. Chown. Kogan Page Limited, London, 1975. 214 pp., £ 5.50.

Guide to the Capital Transfer Tax which replaced the estate duty, with emphasis on aspects for owners of private businesses and directors and shareholders of private companies. (B 9090)

UNITED STATES OF AMERICA

ESTATE PLANNING: QUICK REFERENCE OUTLINE;

22nd edition by William R. Spinney. Commerce Clearing House, Inc., New York, 1975. 152 pp., $ 3.00.

Quick reference outline taking into consideration all pertinent estate, gift and income tax provisions of the Internal Revenue Code and applicable new regulations, rulings and case law. (B 9005)

HAWAII INCOME PATTERNS 1972 (CORPORATION),

Tax Research and Planning Office Department of Taxation, Honolulu, 1975. 62 pp.

Report on detailed statistics on the income and expense characteristics of corporations doing business in Hawaii extracted from income tax returns for the 1972 calendar year. (B 9066)

MODERN PUBLIC FINANCE: THE STUDY OF PUBLIC SECTOR ECONOMICS,

3rd edition by B. P. Herber. Richard D. Irwin, Inc., Homewood, Illinois, 1975. 683 pp.

Work which aims to provide a comprehensive framework for analyzing the influence of governmental revenue gathering and expenditure activities in all functional areas of economic activity in the mixed American economy. (B 8976)

PERSPECTIVE ON TAX REFORM: DEATH TAXES, TAX LOOPHOLES AND THE VALUE ADDED TAX,

by R. E. Wagner, R. A. Freeman, C. E. McLure Jr., N. B. Ture and E. Schiff. Praeger Publishers, New York, 1974. 322 pp., $ 14.00.

Case studies on the place of transfer taxation in the U.S. revenue system, the loopholes in the federal income tax arising from exemptions, exclusions, deductions and credits, and the effects of an introduction of value added tax and a description of the actual working of the value added tax in 12 European countries. (B 9053)

SECURITIES REFORM ACT OF 1975.

Commerce Clearing House, Inc., New York, 1975. 288 pp. $ 9.50.

Reproduction of the Securities Exchange Act as amended by 1975 Act with explanations as well as significant portions of the Congressional Committees reports. (B 9046)

TAXES, EXPENDITURES AND THE ECONOMIC BASE: A CASE STUDY OF NEW YORK CITY,

by R. W. Bahl, A. K. Campbell and D. Greytak. Praeger Publishers, New York, 1974. 351 pp., $ 21.50. (B 9054)

UNITED STATES TAX LAW AND PRACTICE,

by S. I. Roberts and W. F. O'Connor. The Taxation Institute of Australia, Sydney, 1975. 155 pp.

Text of paper presented at the Third National Convention of The Taxation Institute of Australia at Hobart on April 15, 1975 to provide an overview of the U.S. federal and state tax systems. Appended is a discussion of some particular aspects of the U.S. taw law as it relates to investments in Australia. (B 8970)

URBAN INCENTIVE TAX CREDITS: A SELF-CORRECTING STRATEGY TO REBUILD CENTRAL CITIES,

by E. M. Meyers and J. J. Musial. Praeger Publishers, New York, 1974. 140 pp., $ 15.00. Proposed tax strategy for encouraging individuals and businesses to remain in, or move back into, central cities, by granting an urban incentive tax credit (similar to the business investment tax credit) against annual federal taxes. (B 9052)

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DR. AHMAD IMAM *:

APERÇU GENERAL SUR LE REGIME FISCAL DES IMPOTS DIRECTS EN EGYPTE

HISTOIRE

L'origine du système actuel des impôts directs en Egypte

Pour bien saisir le système fiscal actuel, nous allons présenter un exposé rapide de l'histoire des impôts en Egypte, qui nous permettra de mieux faire comprendre la portée réelle et les répercussions financières des problèmes économiques et sociaux du pays.

En effet, le développement du régime fiscal en Egypte est un phénomène qui a été rattaché principalement aux changements de la politique extérieure du pays, plutôt qu'aux changements de structure économique. Pour expliquer cette idée, on peut diviser l'histoire de l'Egypte en cinq phases. Dans chaque phase, on rencontre des impôts spécifiques qui ont été abrogés avec le changement de régime politique, ou du moins de nouveaux impôts ont été créés avec l'arrivée d'une nouvelle phase politique.

Il convient donc d'introduire l'étude du système fiscal de l'Egypte moderne par un aperçu sommaire des grands époques au cours desquelles l'Egypte jouait un rôle économique et politique.

1) *L'antiquité:* L'Egypte pharaonique. C'est l'époque à laquelle l'Egypte a constitué sa civilisation. Il n'y avait pas de système fiscal, excepté dans les périodes de crise ou de guerre, où le roi pouvait obliger par la force chaque citoyen à participer dans les frais des guerres ou des secours.

2) *La période gréco-romaine:* Dans ce temps aussi, la richesse était concentrée dans les produits de la terre. Au moment de la récolte, les soldats pouvaient prendre une partie indéterminée de celle-ci ou des animaux, d'après ce que le chef de l'armée ou de la maison de finance décidait.

3) *L'Egypte musulmane:* Avec l'arrivée de la vision islamique, les gouverneurs islamiques ont commencé à appliquer un système d'impôts comme ils se trouve dans la religion, comme par exemple „El Zakat", „El Charage", impôt sur la viande, „El Gaafir" (c'est-à-dire pour le soldat qui garde sa maison pendant la nuit) etc....

4) *L'Egypte moderne:* Cette époque commence par la faillite financière de 1881. Elle s'est traduite par l'instauration d'un contrôle international sur les finances publiques du pays, par la dispersion fâcheuse des organes généralement chargés de la mission de l'Etat, par l'occupation anglaise et par le renforcement des capitulations. Elle s'est aussi traduite par une réorganisation complète de l'administration financière, la refonte de l'ancienne fiscalité islamique, l'aménagement subséquent de la fiscalité indirecte.

L'origine du système actuel des impôts directs en Egypte se situe en août 1936, après la conclusion du traité d'alliance et d'amitié avec la Grande Bretagne.

Durant l'année suivante, en mai 1937, une conférence réunie à Montreux aboutit à la suppression du régime séculaire des capitulations.

Ces capitulations une fois abrogées, l'Egyp-

* Chargé de cours à l'Université du Caire.

te a obtenu une autonomie fiscale complète. En effet, les capitulations entravaient l'application d'un système général d'impôts, car les revenus des résidents étrangers ne pouvaient être taxés sans l'accord des gouvernements intéressés. Une discrimination entre les revenus des résidents étrangers et ceux des égyptiens aurait suscité des protestations de la part de ces derniers. Du même coup, le gouvernement égyptien s'assurait la possibilité de modifier le régime fiscal du pays à la fois en surface et en profondeur. En surface, en l'étendant à un nombre beaucoup plus grand de contribuables, en profondeur, en lui demandant de nouvelles et importantes ressources. Cette modification fiscale a deux raisons principales:

1) La nécessité de créer de nouvelles ressources pour l'Etat, pour lui permettre de faire face aux nouvelles charges financières considérables, nécessaires au développement de tous les domaines de son activité, développement que lui imposait la renaissance du pays.

2) La nécessité d'assurer une bone répartition des charges fiscales afin que chaque Egyptien et chaque habitant du pays supporte sa part dans ces charges.

En effet, la méthode qui était suivie par l'Egypte pour préparer son budget et se créer des ressources n'assurait pas une répartition équitable des impôts entre les propriétaires fonciers et les propriétaires de biens mobiliers.

D'autre part, l'Egypte était tenue, contrairement à la méthode employée dans la préparation des budgets des autres pays, de commencer par établir ses recettes et de régler ensuite ses dépenses par le chiffre de ces recettes, alors que normalement, il faut tout d'abord évaluer les besoins du pays, fixer ses dépenses en tenant compte de sa capacité financière, puis procéder à une estimation des recettes de manière à les équilibrer avec les dépenses.

Pour réaliser ce but, divers projets furent étudiés, notamment un impôt sur le revenu, un droit de timbre et un droit sur les dévolutions de successions, par une Commission nommée par le Ministère de finances. Ces trois projets furent distribués, afin de donner au public l'occasion de les examiner et de formuler toutes observations utiles. Une commission comprenant des financiers et économistes égyptiens et étrangers les étudia attentivement et fit un certain nombre de suggestions. Elle soumit ensuite son rapport au Conseil économique qui approuva les points de vue de la commission. Dans ces conditions, le Ministère des finances a soumis les trois projets de loi en vue de leur présentation au parlement.

Ces trois projets de loi sont les suivants:

a) Projet de loi établissant un impôt sur les revenus des capitaux mobiliers, sur les bénéfices commerciaux et industriels et sur le revenu du travail.
b) Projet de loi établissant un droit de timbre.
c) Projet de loi établissant un droit de dévolution sur les successions.

Le premier projet de loi constitue le projet de réforme fiscale. Quant aux deux autres, ils ont pour but de fournir des ressources à l'Etat. Dans sa séance du 20 juillet 1938, la Chambre des députés fut saisie d'un projet de loi autorisant le gouvernement à promulguer des décrets-lois à ce sujet. La commision des finances de la Chambre approuvra l'octroi de ces pleins pouvoirs au gouvernement, sous réserve que les décrets-lois promulgués soient soumis à la Chambre au début de la session suivante, aux fins de ratification. Elle ne vit dans cette procédure aucune dérogation à la constitution. Le 26 janvier 1939. Le Gouvernement égyptien publia la loi n° 14 de 1939 éta-

blissant un impôt sur les revenus des capitaux mobiliers, sur les revenus du travail et sur les bénéfices commerciaux et industriels. C'était la première fois que le Trésor égyptien pouvait compter sur des ressources autres que celles qui l'avaient généralement alimenté pendant de très longues années, mais qui ne répondaient plus aux nouveaux besoins du pays depuis la réalisation de son indépendance. Jusqu'alors le budget de l'Etat reposait sur deux assises fondamentales, l'impôt foncier et les droits de douane.

On ne pouvait songer à augmenter l'impôt foncier puisqu'il était généralement admis qu'il avait atteint un niveau au-delà duquel il serait insupportable pour le fellah. On ne pouvait songer non plus à établir des impôts directs dans d'autres domaines que le commerce, l'industrie, les valeurs mobilières, les revenus du travail. En ce qui concerne les contributions indirectes, le Gouvernement égyptien commença par modifier le régime des droits de douane. Jusqu'en 1920, il s'en était tenu à un droit de 8% ad valorem. Il substituta à ce système, que les Etats européens avaient abandonné depuis longtemps, un système de droit spécifique, beaucoup plus souple et qui a eu le mérite d'accroître très sensiblement les revenus des douanes, de frapper davantage les articles de luxe et d'assurer une protection efficace à la jeune industrie nationale.

D'autre part, des droits d'accises furent établis sur l'alcool, les allumettes et le sucre.

Depuis ce temps, le gouvernement, comme d'ailleurs ceux d'autres pays en voie de développement, s'est occupé de procurer au Trésor les sommes nécessaires en vue d'obtenir un équilibre aisé du budget, c'est-à-dire de le fixer à un niveau tel que les dépenses de l'Etat puissent être couvertes par le montant des impôts indirects. Ceux-ci portent sur les produits de grande consommation et constituent un instrument commode d'imposition. Evidemment, toute politique d'emprunt était exclue. Cette nouvelle politique fiscale était une réaction à la faiblesse des autres moyens de financement, spécialement, si nous notons que l'épargne est presque inexistante à cause de la faiblesse du revenu national et de la forte propension à consommer.

L'épargne est formée par une minorité jouissant d'un revenu élevé, qui thésaurise, investit en bien mobiliers placés à l'étranger ou consacrés à l'achat de produits de luxe, c'est-à-dire ne se transforme pas en épargne créatrice. Aussi le rôle de l'Etat a-t-il été primordial dans le financement du développement, d'autant plus que les capitaux étrangers, pour des raisons politiques et économiques à la fois, sont peu attirés et ne jouent plus le rôle important qui a été le leur en Egypte jusqu'à dernière guerre mondiale.

Au cours des années suivantes, c'est-à-dire après l'application de la loi n° 14 de 1939, les autorités publiques ons essayé d'accroître la part des impôts directs dans les recettes fiscales.

En 1949, les impôts sur les revenus ont été complétés par un impôt général progressif. D'autres impôts sur le capital et sur la fortune ont été institués en 1945 et 1951 sous forme de droits de succession progressifs.

Ces nouveaux impôts sont venus compléter les impôts directs existants, tels que l'impôt foncier et l'impôt sur la propriété bâtie qui formaient jusqu'alors la base principale de la taxation directe.

5) *L'Egypte de la révolution:* Cette époque a commencée depuis la révolution de 1952. Evidemment, après cette révolution, on rencontre des renversements et change-

ments de toute la politique sociale, économique, politique et fiscale aussi. En effet la révolution a affecté le système fiscal sur deux points:

1) On rencontre une tendance continuelle à utiliser le taux des impôts comme politique sociale sans changement radical des assiettes ou des régimes des impôts qui étaient applicables avant la révolution. Le taux des impôts a presque doublé par rapport à celui d'avant la révolution.

2) Le commencement du régime de la sur-imposition, c'est-à-dire la création de nouveaux impôts basés sur l'assiette d'autres impôts, comme par exemple l'impôt de la sécurité et les taxes communales qui sont basés sur l'assiette d'impôts cédulaires de revenus mobiliers, commerciaux, industriels et du travail.

Nous essayerons ci-après d'expliquer brièvement chaque impôt pour les comparer à ceux des pays développés.

I. L'IMPOT SUR LES REVENUS DE CAPITAUX MOBILIERS

Il frappe les revenus suivants:

A) *Les revenus de capitaux mobiliers*

L'on vise par là, les dividendes des actions et obligations, y compris les bénéfices que les sociétés anonymes distribuent aux membres de leur conseil d'administration. Sont exceptées les sommes que touchent les administrateurs-délégués et les directeurs de ces sociétés pour leur travail de direction et d'administration dans les conditions fixées par la loi.

Cet impôt est caractérisé par:

I) Le recouvrement qui est opéré par voie de retenue à la source.

II) Cet impôt est réel, c'est-à-dire qu'il est perçu sans tenir compte de la situation générale du contribuable.

L'application de l'impôt en ce qui concerne les sociétés

a) *Sociétés égyptiennes*

L'imposition de cette première catégorie de valeurs n'offre pas de difficultés ni en ce qui concerne la détermination du montant imposable ni en ce qui concerne le mode de perception.

Les sociétés et collectivités qui servent les dividendes et intérêts seront tenues de retenir sur les sommes à payer aux propriétaires de valeurs et titres le montant de l'impôt et le verser directement au Trésor. C'est le système de la retenue à la source.

b) *Sociétés étrangères opérant en Egypte*

En ce qui concerne les sociétés étrangères opérant en Egypte, la loi les considère comme égyptiennes dans la mesure de leurs opérations en Egypte. Bien entendu, aucune difficulté ne surgit si la société étrangère a pour but exclusif une entreprise exploitée uniquement en Egypte. La société aura à verser au Trésor égyptien le montant de l'impôt sur les dividendes et intérêts attachés à toutes ses actions, obligations et titres d'emprunt, à le retenir sur les paiements à faire à ses actionnaires, obligataires et prêteurs. Ici, le problème de la détermination de l'activité imposable ne se pose pas. Mais si la société étrangère étend son activité à l'Egypte et à d'autres pays, il y aurait lieu de procéder à une sorte de partage pour déterminer la part de ce capital qui doit être considérée comme affectée aux entreprises exploitées en territoire égyptien. La loi a chargé les sociétés elles-mêmes de faire cette estimation par une déclaration qu'elles auront à faire dans les formes et délais qu'elle détermine.

Naturellement le fisc aura la faculté de contester cette estimation. Une fois l'estimation établie, la perception n'offrira plus

de difficultés. Si la part du capital considérée comme étant affectée à l'entreprise ou aux entreprises d'Egypte a été fixée, par exemple, au quart du capital social, la sosociété sera tenue de verser au Trésor égyptien l'impôt sur le quart des dividendes et intérêts attachés au capital social.

En effet, l'impôt sur les bénéfices commerciaux et industriels est établi sur toutes entreprises exploitées en Egypte. Donc, toutes les sociétés établies en Egypte auront à payer cet impôt.

Pour expliquer cette situation qui conduit incontestablement au problème de la double imposition, le président de la commission fiscale de l'époque a dit qu'en réalité les dividendes et intérêts distribués aux actionnaires ne sont en somme que les bénéfices de l'entreprise. Pourtant, l'incidence n'est pas la même. C'est la société qui paie cet impôt sur les bénéfices par elle réalisés, mais lorsque ces bénéfices sont, dans la suite et sous les déductions précitées y compris l'impôt payé, répartis sous forme d'intérêts et de dividendes, les sommes ainsi réparties rentrent dans le patrimoine personnel de l'actionnaire et constituent son revenu ou une partie de ses revenus. Comme chaque contribuable est tenu de payer l'impôt sur ses divers revenus, il n'est pas dispensé de cette obligation sur les revenus attachés à l'action pour la raison que déjà la société à acquitté l'impôt sur les propres bénéfices.

c) *Titres étrangers possédés par des Egyptiens ou des étrangers résidant en Egypte*

Conformément à l'art. 4, les dividendes, intérêts, arrérages, etc. payés par des sociétés ou entreprises étrangères, ainsi que tous intérêts et ventes de toutes natures, d'obligations étrangères, de titres ou de fonds publics étrangers, sont passibles de l'impôt, si les bénéficiaires sont des Egyptiens ou des étrangers domiciliés ou résidant habituellement en Egypte, qu'il s'agisse de personnes physiques ou de personnes morales.

Dans son rapport, la commission des finances du Sénat a observé que cette disposition a des équivalents dans les lois européennes. Aux termes de l'art. 2 de la loi belge No. 429 du 12 septembre 1936, sont assujettis à l'impôt:

1) Les revenus de tous les biens immobiliers ou mobiliers, produits ou recueillis en Belgique, alors même que le bénéficiaire n'y aurait pas son domicile ou sa résidence.

2) Les revenus des personnes domiciliées ou résidant en Belgique, alors même que les revenus seraient produits ou recueillis à l'étranger.

La commission rappela que la raison pour laquelle les résidents ont été assimilés aux domiciliés, c'est le désir d'éviter toute équivoque et de prévenir toute fraude.

Ajoutons que le président de la Commission fiscale a mentionnée qu'une telle taxe serait profitable à l'intérêt général du pays parce qu'elle serait de nature à détourner les capitalistes demeurant en Egypte, en vue d'éviter la double imposition, de placer leur capitaux à l'étranger.

B) *Les revenus provenant du placement de fonds ou des intérêts sur les créances et les dépôts*

La loi établit également l'impôt sur les intérêts de toutes sortes de créances privilégiées, hypothécaires et tous dépôts de sommes d'argent ou de cautionnement en numéraire.

La sphère d'application de l'impôt est la suivante:

1) *Créanciers égyptiens ou domiciliés en Egypte*

Cet impôt est toujours dû si les créanciers

sont des Egyptiens ou des étrangers domiciliés en Egypte, même si les intérêts frappés par l'impôt proviennent de capitaux placés à l'étranger.

2) *Créances étrangères, placées en Egypte*

D'un autre côté, la loi assujettit à l'impôt les intérêts de tous capitaux placés en Egypte, même si les créanciers sont des étrangers non domiciliés en Egypte (art. 17). Cette disposition est de toute justice: les capitaux placés en Egypte ne pourraient pas en effet être traités autrement que tous autres capitaux engagés dans des entreprises quelconques exploitées en Egypte. Si nous consultons le rapport de la commission des finances du Sénat, on observe que l'esprit de ces textes a été inspiré par les lois fiscales belge et française en ce qui concerne la détermination du domicile. Ainsi, l'art. 37 de la loi belge dispose:

„Est réputé habitant du royaume celui qui y a établi son domicile ou le siège de sa fortune".

Par ailleurs, aux termes de l'art 41 de la loi française, sont considérées comme ayant en France une résidence habituelle:

1) Les personnes qui possèdent une habitation à leur disposition à titre de propriétaires, d'usufruitiers ou de locataires, lorsque, dans ce dernier cas, la location est conclue soit par convention unique, soit par conventions successives pour une période continue d'au moins une année.

2) Les personnes qui, sans disposer en France d'une habitation dans les conditions définies à l'alinéa précédent, ont néanmoins en France le lieu de leur séjour principal.

C) *Le taux de l'impôt sur les valeurs mobilières*

La détermination du taux de l'impôt n'était pas facile à faire; la loi, tout en fixant le taux à 10% des revenus imposables, dispose que dans les deux premières années l'impôt sera perçu à un taux réduit de 5%. Passé ces deux années, le gouvernement est autorisé à majorer par décret ce taux réduit au fur et à mesure de ses besoins, jusqu'à ce qu'il atteigne le chiffre de 10%. Dans l'exposé des motifs on dit „on a estimé qu'il serait sage de se montrer prudent au début, car nous sommes en présence d'une situation nouvelle à laquelle nous n'avons pas encore pu être habitués et dont nous ne pourrons connaître les effets exacts qu'après l'application de la loi".

Au commencement de l'application de la loi, le taux de l'impôt fut fixé à 7% en 1938 et 1939, à 8% en 1940, à 9% en 1941, à 10% à partir de 1942, à 13% en 1950, à 17% à partir de 1955. Cette augmentation des taux des impôts sur les valeurs mobilières ne cesse pas de continuer. En 1956, on a introduit un nouvel impôt qui s'appelle „l'impôt de défense" d'un taux qui arrive de 10,5%. Aussi il y a l'impôt „de sécurité national", créé par la loi No 32 de 1968 d'un taux de 8%, et l'impôt de combat créé par la loi No. 13 de 1973 d'un taux de 2,5%.

Ces trois impôts sont basés sur l'assiette des revenus de valeurs mobilières. Il s'y ajoute un autre impôt calculé de 15%, basé sur les revenus de l'impôt des valeurs mobilières; ça fait 2,55% de l'assiette de revenus de valeurs mobilières. Alors le taux de l'impôt global serait 17% + 2,55% + 10,5% + 8% + 2,5% = 40,55% de l'assiette des revenus mobilières.

Evidemment, ce taux est plus haut de taux qui se trouvent dans les pays les plus développés qui ne dépassent pas 25% comme par exemple en Allemagne, en Belgique ou en France. Le résultat est que le fardeau fiscal sur les revenus mobiliers, si l'on

ajoute le fardeau des revenus industriels et commerciaux n'encourage guère les bailleurs de fonds d'investir en Egypte.

II. L'IMPOT SUR LES BENEFICES COMMERCIAUX ET INDUSTRIELS

C'est un impôt réel atteignant les bénéfices des professions et des exploitations commerciales et industrielles en général sans autres exceptions que celles prévues par la loi (art. 31). L'impôt est calculé sur le bénéfice, c'est-à-dire après la déduction de tous les frais et charges.

Territorialité de l'impôt

L'impôt repose sur le principe de la territorialité de la loi. Seules les exploitations opérant en Egypte sont soumises à cet impôt. Si une exploitation opère à l'étranger, elle n'y est pas assujettie (art. 33 du code). Pour bien comprendre cette situation, voici des observations de la commission des finances du Sénat:

1) L'impôt relatif aux bénéfices commerciaux et industriels est basé sur le principe de la territorialité de la loi, en ce sens qu'un Egyptien n'a pas à payer d'impôts sur les profits d'une entreprise commerciale ou industrielle qu'il possèderait à l'étranger.

2) L'impôt en question s'applique aux bénéfices de toutes les sociétés par actions, quel que soit leur objet. Ainsi, l'impôt est dû par les sociétés par actions s'occupant d'exploitations agricoles, bien qu'aucun impôt n'ait été établi sur l'exploitation agricole. Ce cas est la seule exception de la loi dans ce domaine. La raison en est que la personne qui place des fonds dans les sociétés agricoles n'est pas considérée comme un agriculteur, elle est assimiliée à tout autre particulier qui place ses fonds dans une société quelconque, agricole, commerciale ou industrielle.

La détermination des bénéfices

Les bénéfices à prendre comme base pour la fixation de l'impôt sont, pour les exploitations qui tiennent une comptabilité régulière, ceux qui figurent dans les livres et documents à présenter à l'agent du fisc. En ce qui concerne les exploitations qui ne tiennent pas de comptabilité ou dont les comptes ne convaincront pas l'administration fiscale, l'impôt sera établi par voie d'estimation. En effet, le législateur a assuré au contribuable toutes les garanties administratives et juridiques pouvant sauvegarder son intérêt et le protéger contre l'arbitraire.

Avec le temps, tous les commerçants ont été poussés à organiser leur comptabilité, ce qui a constitué un des principaux facteurs de développement du commerce.

Taux de l'impôt

Le législateur ne fait aucune différence de taux entre les impôts sur les valeurs mobilières, et l'impôt sur les revenus industriels et commerciaux. Il est égal à celui établi sur le revenu des capitaux mobiliers, c'est-à-dire qu'il était au commencement de 10%. Et, au départ, il avait été fixé à 5% avec faculté de le majorer progressivement jusqu'à 10%. Mais contrairement aux impôts sur les valeurs mobilières, il y a des exonérations d'impôt pour toute personne dont le bénéfice net ne dépasse pas 100 L.E. par an. Cette exemption est importante et favorise les petites exploitations commerciales et industrielles, et même un nombre appréciable d'exploitations moyennes. Maintenant, l'impôt atteint 17%, il y a aussi les surimpositions qui sont basés sur l'assiette de revenus industrielles et commerciaux suivant:

1) Taxe communale de 10% basée sur les revenus de l'impôt de revenus industriels et commerciaux par la loi N° 155 de 1950, ça fait 1,7%.
2) L'impôt de défense de 10,5% par la loi N° 51 de 1965.
3) L'impôt de sécurité nationale d'un taux de 8% par la loi N° 32 de 1968.
4) L'impôt de combat de 2,5% par la loi N° 113 de 1973. Ces trois derniers impôts sont basés sur l'assiette des revenus industriels et commerciaux, le taux final est donc 17% + 1,7% + 10,5% + 8% + 2,5% = 39,7%.

Mesures prises pour éviter la double imposition interne

Le législateur égyptien n'accorde aucune attention aux problèmes de la double imposition internationale, convaincu que la solution de ce problème est dans les conventions internationales.

Il consacre ses efforts à alléger la double imposition interne. Les dispositions prévues pour l'éviter sont les suivantes:

a) Sont défalqués du bénéfice des entreprises assujetties à l'impôt sur les bénéfices industriels et commerciaux, les revenus de biens immobiliers et ceux de capitaux mobiliers (après déduction de 10% du montant des revenus précités représentant la quote-part dans les frais d'établissement).

b) Les sociétés anonymes bénéficieront d'une réduction de l'impôt sur les bénéfices égale au total des impôts payés sur les dividendes. Cette disposition n'a pas d'équivalent dans presque aucun autre pays, car il est généralement admis que le gouvernement perçoit un impôt sur les bénéfices des sociétés en tant que personnes morales indépendantes des actionnaires et un autre impôt sur les dividendes payés à ces derniers.

Bien que les textes qui précèdent l'aient évité, dans la mesure du possible, cette multiplicité existe encore dans plusieurs cas. Ainsi, en ce qui concerne les sociétés anonymes dont les activités comprennent des biens mobiliers ou immobiliers, la loi déduit de leur bénéfice, dans le calcul de l'impôt, les revenus desdits biens, c'est-à-dire les revenus sur lesquels l'impôt a déjà été perçu. Pourtant en vertu de la loi, l'impôt est perçu entièrement à charge des actionnaires.

III. L'IMPOT SUR LES REVENUS DU TRAVAIL

On peut distinguer deux sortes de revenus du travail:

a) Les traitements et les salaires et autres revenus similaires du travail.
b) Les revenus des professions libérales.
c) *L'impôt sur les traitements et les salaires et autres revenus similaires tels que les pensions et les rentes viagères.*

Il est perçu sur:

1) Tous les traitements, salaires et pensions payés par l'Etat ou les administrations publiques, que les bénéficiaires en soient égyptiens ou étrangers, qu'ils résident en Egypte ou hors d'Egypte. N'en sont exemptés que les cas prévus par des accords diplomatiques.

2) Les paiements effectués par les sociétés ou les particuliérs à toute personne résidant en Egypte ou à l'étranger pour des services rendus en Egypte. Dans ces conditions ne sont pas imposables les paiements effectués par les gouvernements ou les institutions publiques étrangères à des personnes résidant en Egypte pour des services rendus dans le pays.

Taux de l'impôt

1) L'impôt est progressif de 2% jusqu'à

22% sur les revenus annuels dépassant 2.000. L.E. par an.
2) Il y a des exemptions pour les traitements et les personnes qui ne dépassent pas un chiffre considéré comme minimum nécessaire pour la subsistance, et une autre exemption concernant les charges familiales.
3) Il y a un nouvel impôt progressif de la défense a partir du 1 juillet 1962, calculé sur l'assiette brute de ces revenus et dont le taux varie de 1,5% jusqu'à 6% sur les revenus qui dépassent 800 L.E. par an. En 1967 on a crée un autre impôt progressif basé sur l'assiette brute de ces revenus d'un taux progressif de 1% jusqu'à 4% sur les revenus qui dépassent 1200 L.E.

b) *L'impôt sur les professions libérales*

Les professions libérales assujetties à cet impôt sont celles d'avocat, de médecin, d'ingénieur, d'architecte, comptable et expert. Cette énumération n'est pas limitative et le défaut de mention d'une profession n'exempte pas de l'impôt. Le taux de cet impôt est progressif, il commence de 11% sur le revenu qui ne dépasse 1.500 L.E. jusqu'à 22% sur le revenu qui dépasse 4.000 L.E.
Il y a aussi l'impôt de défense et l'impôt de sécurité nationale et l'impôt de combat avec de taux progressif basé sur l'assiette brut de revenu. Ajoutons qu'il y a des exonérations des impôts professionnels pour les premiers cinq ans, calculées après l'obtention de la licence qui permet de travailler dans la profession, et également des exonérations concernant les charges familiales. Ce sont les sortes d'impôts que la loi de 14 juillet de 1939 a promulgués, comme commencement du régime fiscal moderne en Egypte. Ce système s'est développé pour deux raisons:
1) La nécessité de créer de nouvelles ressources pour couvrir les dépenses publiques.
2) La tendance à imiter le système fiscal des pays développés pour établir la justice fiscale entre les citoyens.

Après la promulgation de cette loi, le gouvernement a essayé de créer de nouveaux impôts par des lois séparées, mais ils sont rattachés au Code des impôts directs.

IV. L'IMPOT GENERAL SUR LES REVENUS

Bien que l'impôt général sur les revenus ait été envisagé dans le projet de loi présenté par la commission fiscale à l'époque, le Parlement n'a pas adopté cet impôt. La commission des impôts a été d'avis que la situation économique du pays ne permettait pas de l'appliquer, d'autant que sa nécessité ne se faisait pas sentir à ce moment.
En effet, l'établissement d'un tel impôt ne tend pas seulement à créer des ressources pour l'Etat, mais aussi à assurer une certaine équité entre les contribuables. En effet, les autres impôts directs sont le plus souvent proportionnels et sont appliqués abstraction faite de la situation financière du contribuable et des charges qu'il supporte. Au contraire, on tient compte de cette considération en ce qui concerne l'impôt sur le revenu global. On peut assurer une répartition équitable de l'impôt entre le riche et le pauvre.
Ainsi, la loi n° 99 de 1949 a appliqué dix ans plus tard le système de l'impôt général sur les revenus. La cause de ce retard n'était pas seulement la situation économique du pays, mais aussi les circonstances sociales et politiques. Pour bien expliquer cette situation, on peut noter que les membres du Parlement étaient en général les gens les plus riches d'Egypte. De plus, beaucoup d'étrangers habitaient en Egypte et leur intérêt était d'éviter un tel impôt.

Ils ont donc utilisé leur influence politique par l'intermédiaire du Roi, ou sur le gouvernement.

La territorialité de cet impôt
C'est le seul impôt pour lequel le législateur égyptien n'a accordé aucune attention au problème de la double imposition. Il est applicable aux:

1) Egyptiens, qu'ils soient domiciliés à l'intérieur ou à l'exterieur du pays, sur tous leurs revenus réalisés dans le pays ou à l'extérieur;
2) Etrangers non résidents, sur leurs revenus de source égyptienne.

Cet impôt ne s'applique qu'aux personnes physiques. Il y a des exonérations pour les revenus globaux ne dépassant pas 1.000 L.E.
Il y a d'autres exonérations sur les revenus des diplomates par réciprocité. Evidemment, l'assiette de cet impôt est l'assiette nette de tous les impôts cédulaires, c'est-à-dire après la déduction des impôts cédulaires de chaque revenu.

Les droits de succession
Il y a deux lois qui règlent cet impôt.

L'impôt général sur la succession
Par décret No. 159 de l'année 1952, l'impôt général sur la succession a été promulgué. Il s'applique sur la succession comme universalité avant la distribution aux héritiers. Son taux a été augmenté par la loi No. 202 de 1960, il est d'un taux progressif par tranche. Le taux varie de 5% sur la première tranche de 5.000 L.E. jusqu'à 40% sur la tranche qui dépasse 63.000 L.E.

L'impôt sur la partie de chaque héritier
Il a été promulgué par la loi No. 142 de 1944, il atteint la part de chaque héritier après la division de la succession. Il y a des exonérations de cet impôt sur la partie qui ne dépasse pas 500 L.E. Le taux est progressif par degré et par tranche, il varie de 5% sur la première tranche jusqu'à 22% pour la tranche qui dépasse 65.000 L.E. Il y a aussi des exonérations de l'assiette de cet impôt concernant l'habitation, les livres et les collections de timbres et de monnaies anciennes du défunt.
Ces nouveaux impôts, c'est-à-dire les impôts cédulaires, l'impôt général sur les revenus et les droits de succession sont venus compléter les impôts direct existants, tels que l'impôt foncier et l'impôt sur la propriété bâtie qui formaient jusqu'alors la base principale de la taxation directe.

Dans l'ensemble, la taxation directe reste encore trop rigide du fait que les taux progressifs ne sont appliqués que dans les deux derniers impôts. De plus, l'impôt progressif sur le revenu n'a pas donné les résultats escomptés en raison du nombre trop faible des assujettis. Il existe une autre lacune dans le système fiscal égyptien, les bénéfices provenant de l'agriculture ne sont pas soumis à l'impôt industriel ou commercial, sauf s'il sont encaissés par des sociétés anonymes. L'agriculture, richesse principale du pays, ne contribue donc pas en proportion de son importance aux recettes fiscales.

Le président de la commission fiscale a essayé d'expliquer cette situation en disant „L'expérience de ces dix dernières années a démontré que l'exploitation agricole était plutôt déficiente ou du moins très aléatoire, à tel point que les pouvoirs publics ont dû prendre des mesures souvent onéreuses pour le trésor en vue d'atténuer l'ampleur de la crise".
D'un autre côté, le rendement de pareil impôt serait très médiocre. Ajoutons qu'un tel impôt serait impopulaire, tous ces arguments ont paru suffisants pour ne pas l'établir.

En ce qui concerne les redevances comme les droits d'auteurs ou les brevets ou le „know how", on a estimé à l'époque que le moment n'était pas encore venu de les soumettre à une charge quelconque qui pourrait en entraver le développement. Ce sera également l'œuvre de l'avenir.

NOTRE CONCLUSION

A notre avis, trois principes doivent être réunis dans un système fiscal:

1) La justice fiscale
2) Le rendement flexible des impôts
3) L'aptitude des impôts comme instrument d'une politique de développement économique

Cette triple orientation du droit fiscal doit être considérée par les gouvernements des pays en voie de développement. Si nous sommes d'accord sur ces principes, essayons de déterminer si le système fiscal égyptien a atteint ces buts ou non.

1) *En ce qui concerne la justice fiscale*

On trouve dans le système égyptien une tendance à réaliser cette justice, par exemple, l'exonération des revenus médiocres, les exonérations pour les charges familiales vont dans ce sens. Pourtant, comme la fiscalité est basée presqu'entièrement sur les impôts indirects, on peut donc voir des entraves à cette justice. D'autre part, les montants d'exonérations qui sont applicables maintenant restent sans changement depuis 1939, date de la promulgation de la loi, bien que le coût de la vie ait augmenté et que les revenus moyens ne se soient pas élevés. Il serait préférable de développer ce système général par l'adoption d'un impôt unique sur les personnes physiques et sur les personnes morales, ou au moins de créer de nouvelles assiettes comme par exemple la taxe agricole ou l'impôt sur les redevances qui ont échappé à tous impôts jusqu'à maintenant. Pourtant, l'impôt sur les revenus des personnes physiques ou morales suppose, pour son application appropriée, toute une série de conditions dont l'existence se présente rarement dans le pays, comme les revenus ou le niveau de l'administration fiscale. Ajoutons que la réalisation de la justice fiscale complète pourrait affecter le rendement final des recettes fiscales. Partant, le gouvernement doit essayer:

a) d'étendre l'assiette des impôts pour trouver d'autres ressources qui sont jusqu'à présent exonérées de tous impôts, pour la justice et la flexibilité des recettes fiscales;
b) si les circonstances économiques et sociales n'encouragent pas l'application d'un système d'impôt unique sur les personnes physiques, ce n'est pas le cas pour les personnes morales. Un impôt unique sur les activités des sociétés basé sur un régime de revenus mondiaux et qui peut être différent dans son taux et dans ses moyens de perception de celui des personnes physiques est souhaitable dans ce cas.

2) *En ce qui concerne le rendement des impôts*

Le montant des impôts à payer augmente chaque année, c'est vrai, et c'est normal puisque la production, les prix et les revenus augmentent. Pourtant, toutes ces circonstances n'aboutissent pas à un résultat satisfaisant. Les dépenses publiques en Egypte augmentent en général d'un pourcentage plus rapide que les recettes publiques. Le législateur égyptien, au lieu de trouver une solution radicale de ce problème, en créant par exemple, de nouvelles assiettes ou en améliorant les moyens de recouvrements, a essayé d'augmenter cha-

que année le taux des impôts applicables. Alors, on peut constater que:

a) En ce qui concerne l'élévation continuelle du taux d'impôt, dans le pays, elle constitue un simple transfert des recettes pour les attirer du secteur privé vers le secteur public. Une telle politique affecte l'investissement privé, elle forme une épargne forcée au profit du secteur public et diminue l'initiative privée. Affectée à la thésaurisation, elle constitue pour l'Etat des ressources budgétaires en vue de la couverture de déficits budgétaires ultérieurs, c'est-à-dire une épargne liquide.
Pour la réussite d'une telle politique, il est très important d'avoir par ailleurs une politique d'encouragement fiscal. Ces considérations sont utiles à une politique fiscale qui entende non seulement influencer le montant de la dépense globale de l'économie nationale, mais aussi pousser celle-ci vers l'investissement selon les vœux de la politique conjoncturelle.

b) En effet, on note que la technique moderne de la fiscalité, c'est-à-dire l'utilisation du levier de la fiscalité comme méthode de développement, ne se rencontre pas en Egypte. La création d'un secteur public ne doit pas empêcher d'utiliser la fiscalité comme un des moyens de politique financière pour approcher les buts suivants:
1) Stimuler la formation d'épargne privée
2) Orienter cette épargne vers les investissements productifs
3) Ajouter à cette épargne publique
En d'autres termes, le rendement flexible des impôts ne se réalise pas à moins, qu'on ne parvienne à créer de nouvelles activités, à encourager les entreprises actuelles, à étendre leurs activités et à créer un système de collaboration entre les secteurs publics et privés.

Evidemment pour un pays comme l'Egypte, c'est plutôt le développement économique lui même qui doit constituer l'objectif essentiel, la stabilité financière et l'équilibre de la balance des paiements devant être dans cette perspective un objectif secondaire.

3) *En ce qui concerne l'aptitude des impôts comme instrument d'une politique de développement*

On peut constater que la tendance moderne est d'utiliser les impôts comme moyen de diriger l'économie. Ces observations valent pour tous les régimes économiques, capitalistes ou socialistes. L'entreprise est axée sur la production, l'amélioration du bien être, le profit. Tout ou partie de ce bénéfice va à l'Etat, mais celui-ci doit toujours l'aider et peut se servir d'elle pour donner à l'économie telle direction qu'il estime utile.
Si nous essayons d'analyser la situation en Egypte, on constate qu'au contraire de la plupart de pays en voie de développement, les impôts ne jouent pas principalement un rôle économique, de stimulant fiscal pour attirer les capitaux privés dans les pays, ou diriger l'épargne vers les investissements. La raison provient de la tendance sociale qui a été donnée à la politique du développement.
En effet, le gouvernement a essayé de prendre toutes les initiatives dans tous les programmes économiques du pays. Un secteur public qui englobe presque 75% de toutes les activités économiques a été créé depuis 1957. Les 25% du secteur privé se concentrent dans les petits commerces et la propriété foncière.
Dans un tel système, la politique fiscal est donc appellée à remplir les buts suivants:
1) Le financement des dépenses publiques destinées au développement économi-

que du pays par un transfert des moyens écnomiques du secteur privé vers le secteur public.
2) L'influence et l'orientation de la valeur des investissement privés par l'utilisation du taux des impôts.
3) La formation de l'épargne par des moyens appropriés et obligatoires.

Dans cette politique, le seul moyen extérieur était l'emprunt public. Depuis 1954, le Gouvernement s'est dirigé vers ce moyen, soit dans les marchés intérieurs pour collecter les épargnes dans les mains de petits épargnants, ou extérieurs, vers les institutions internationales ou les gouvernements étrangers.

Evidemment, une telle politique financière est très dangereuse pour le pays si nous considérons que l'intérêt de la dette publique absorbe pour le moment plus de ⅔ de notre commerce extérieur.

On peut donc constater que la politique fiscale en Egypte a un but essentiel, c'est de combler le déficit budgétaire de l'Etat, ce qui explique l'augmentation rapide de ses taux. Les finances publiques ont perdu avec l'orientation de la politique économique, leur caractère sain, elles ne sont pas encore en état de remédier à l'insuffisance de l'investissement privé et des prêts étrangers pour financer les plans de développement.

Il semble, en résumé, que la politique économique actuelle dans le domaine du développement ait évolué dans une direction assez précise, qui peut être définie de la manière suivante:

a) Vers le renforcement de l'entreprise de l'Etat sur l'industrie
b) Vers le remplacement de l'initiative privée par des décisions gouvernementales

Sans doute, il faut reconnaître que même un secteur public rationnel, et plus capable ne peut assurer, à lui seul, un développement rapide; le secteur privé doit logiquement prendre sa place dans le programme de réforme économique qui est souhaitable. Si nous voulons améliorer notre situation économique pour un développement rapide, il faut changer notre système fiscal et planifier une politique fiscale appropriée.

Et ce qui nous encourage à présenter de telles propositions, ce sont:

1) Les changements sociaux, économiques et politiques des vingt dernières années.
2) L'Egypte ne souffre pas d'un manque de capacité de l'administration fiscale, comme les autres pays en voie de développement.
3) Les pays les plus socialistes comme l'URSS ont changé leur attitude idéologique. Ils font appel aux capitaux étrangers, comme les capitaux américains, français, allemands, pour participer dans leur processus de développement économique rapide.

Un pays comme l'Egypte ne doit donc pas rester isolé et dépendre des moyens financiers intérieurs ou des moyens les plus dangereux, c'est-à-dire le prêt extérieur, qu'il devrait considérer comme un moyen extrême auquel il ne faudrait penser que si nous ne sommes pas à même de faire face à nos besoins par nos ressources normales. Nous croyons que la politique financière et fiscale de l'Egypte est bien l'image de sa structure économique et politique actuelle. Espérons qu'il y aura un jour dans le pays un mouvement économique vers un développement qui puisse provoquer sûrement le besoin d'une réforme fiscale globale.

BIBLIOGRAPHIE

Jacques BERQUE
L'Egypte, impérialisme et révolution, édition Gallimard, 1967, Paris

Statistical Handbook, Cairo, June 1967 et 1969

Davis S. LANDES
Bankers and Pashas
International finance and economic imperialism in Egypt
Heinemann, London, Melbourne, Toronto, 1958

George K. KARDOUCHE
The U.A.R. in development
A study in expansionary finance
Praeger special studies in international economics and development, 1969

Jacques AUSTRUY
Structure économique et civilisation
L'Egypte et le destin économique de l'Islam, 1960, Paris
Collection publiée sous la direction d'André PIATIER

N.U.
L'évolution de l'industrie manufacturière en Egypte, en Israël et en Turquie
No. de vente 5811 B 4

1896—1897
Report on the finances, administration and conditions of Egypt and the progress of reforms. Presented to both Houses of Parliament. 1896 and 1897, London, Droch, No. 11 and 2.

Keith WHEELOCK
1960, Nasser's new Egypt. A critical analysis, London, Atlantic Books
Stevens, sous 1960

Hassan RIAD
L'Egypte nassérienne, France, 1964

Magdi M. El-KAMMASH
Economic development and planning in Egypt
Frederik A. Praeger, Publishers, 1968

Anour ABDEL-MALEK
La révolution nationale égyptienne et le problème de la terre, 1952—1967, dans „terre paysanne et politique", tome 1, futuribles, Paris 14, 1970

Mohamed Youself El-SARKI
La monoculture du coton en Egypte et le développement économique

Mohamed Helmi MOURADE
Les impôts directs en Egypte 1959 (en arabe)

Hassan Kaläf
Le régime des impôts directs en Egypte 1962 (en arabe)

Labibe CHOUCAIR
Les impôts directs en Egypte 1960 (en arabe)

ROGER DAGON *:

SWISS TREATY PROVISIONS ON DISCLOSURE OF PROFESSIONAL AND BANK SECRETS

I. DISCLOSURE IN TAX MATTERS NATIONALLY AND INTERNATIONALLY

1. The Swiss procedure of assessing taxes rests preponderantly on disclosure provided by the taxpayer himself (bank statements, wage certificates, etc.). However, the laws also extend the duty to provide information and statements to the Tax Authorities, to third persons (creditors, debtors, depositaries, etc.).[1] It has been ruled by the Swiss Federal Tribunal that a third person is not entitled to any secrecy towards the Tax Authorities, even though he is under a contractual duty not to disclose assets or income belonging to the taxpayer. A financial company which is not entitled to the benefits of the Swiss Federal Law on the banks and savings banks of 1934, as amended on March 11, 1971, may not withhold a list of its creditors from the Tax Authorities even though it must keep back secret loan agreements with creditors.[2] Refusal to produce a list of creditors to the Tax Authorities is held against the taxpayer and no deduction is allowed for interest payable to such creditors.[3]

2. The problem is of fundamental importance when the financial institution or any other person requested by the Tax Authorities to answer an inquiry about a taxpayer, is bound to professional (attorney-at-law, notary public, auditor, etc.) or banking secrecy. If an inquiry is made into a taxpayer's assets or income held by a bank, the conflict situation is obvious since the violation of professional or banking secrecy is punishable with heavy fines or even imprisonment.[4] In parentheses it may

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1. e.g. Art. 90 Arrêté du Conseil fédéral concernant la perception d'un impôt pour la défense nationale of Dec. 9, 1940 as amended (Federal Defense Tax Act: the obligation of assurance companies to reveal the surrender value of life insurance; of companies to provide statements regarding director fees, etc. at the taxpayer's request; similar provisions may be found in Cantonal Tax Laws.

2. Decision by the Swiss Federal Tribunal in A.G. für Industriefinancierungen vs. Wehrsteuer. Rekurskommission des Kantons Zürich in Arrêts du Tribunal fédéral suisse (ATF 92 I 393 ff.).

3. Archiv für schweizerisches Abgaberecht - Archives de droit fiscal suisse, (hereafter Archiv) 36 (1966/67), p. 192; Heinz Masshardt, Kommentar zur eidgenössischen Wehrsteuer 1971—1982, Art. 89/6 - 8.

4. Section 47 of the Law on the banks and savings banks, as amended on March 11, 1971 reads:

1. Whoever, in his capacity as member of an executive body, as employee, as agent, as liquidator or as commissioner of a bank, as observer of the Banking Commission, or even as member of an executive body or as employee of a recognized auditing institution, will have revealed a secret entrusted to him or of which he has had knowledge because of his duty or of his employment,
   or, whoever will have induced another to violate the professional secrecy,
   will be punished by imprisonment up to six months or by a fine in amount up to Sfrs. 50,000.—.
2. If the delinquent has acted by negligence, the penalty will be a fine in amount up to Sfr. 30,000.—.
3. The violation of the secrecy remains punishable even though the duty or the employment has ceased or the holder of the secret no longer exercises his profession.
4. There will be reserved the provisions of the federal and cantonal legislation setting forth the obligation to inform the authority and to testify in court.

See also Article 321 of the Swiss Penal Code as regards lawyers, auditors, notaries and their auxiliaries.

be remembered that the provision on banking secrecy was enacted in 1934 when a foreign State attempted to confiscate assets of a certain category of its citizens and when the Swiss banks feared that representatives of the said State could infiltrate the community and spy out the existence of foreign deposits in Switzerland.

3. It is therefore of vital importance to note that the case law and the dominant opinion of legal authors in Switzerland consider that professional and banking secrecy must in principle always have precedence over inquiries in tax matters.[5] The principle applies first in the circle of national tax affairs when the Swiss (Federal or Cantonal Tax Authorities) request information about a taxpayer from a banking institution. In international tax matters, the rules of comity among nations require that the Foreign Tax Authorities communicate with the Swiss Tax Authorities about any matter involving a resident or a citizen of Switzerland. Legal assistance is not provided by the Swiss Authorities in political or in tax affairs or in the application of foreign exchange control regulations or in military matters.[6]

4. Six bilateral tax conventions provide for the exchange of information between the Tax Authorities of the contracting States to the extent that the information is necessary for carrying out the provisions of the convention, e.g. to prove the legitimacy of a claim for relief from foreign withholding taxes on dividends, interest or royalties (or a refund as the case may be).[7] Information is only provided to the foreign tax authorities to the extent that such information is available under the laws and the administrative practice of either country. Information needed by the foreign tax authorities to enforce their tax laws (e.g. the German foreign tax law or "Aussensteuergesetz") or to investigate into a deficiency in income reporting by one of their taxpayers is not available from the Swiss authorities.[8] Any information made available by the Swiss tax authorities must not be disclosed to any authority (judiciary, prosecutor etc.) other than the requesting foreign tax authority.[9] Disclosure of any trade, business, industrial or professional secret or trade process is outruled.[10]

5. The convention for the avoidance of double taxation between Switzerland and the United States of America of May 24, 1951 takes a step further beyond the rules embodied in the other five bilateral tax conventions,

5. See Ernst Blumenstein, in "Bankgeheimnis": Handbuch des Bank-, Geld- und Börsenwesens der Schweiz, Thun 1964, p. 97.

6. Robert Hauser, Das Bankgeheimnis im internationalen Rechtshilfeverkehr in Strafsachen, Schweizerische Zeitschrift für Strafrecht vol. 87, 1971, pp. 151 ff.

7. Conventions for the avoidance of double taxation on income with the Federal Republic of Germany of August 11, 1971, Article 27 (1); with France of September 9, 1966 as amended on December 3, 1969, Art. 28 (1); with the United Kingdom of September 30, 1954 as amended on August 2, 1974, Art. XX (1), with the United States of America of May 24, 1951, Art. XVI (1), with Austria of January 30, 1974, Art. 26 and with Denmark of November 23, 1973, Art. 27. Switzerland was always very reluctant to concede the exchange of information see Ernst Höhn, Doppelbesteuerungsrecht (Verlag Haupt Bern 4. Stuttgart 1973) p. 397 ff. It did not subscribe to the recommendations according to Article 26 of the OECD Draft Model on Tax Conventions on Income Taxes.

8. See III. A.T.F. 96 (1970) I p. 743 explained on I. p. 5 ff. hereafter; e.g. Botschaft des Bundesrates an die Bundesversammlung of 10/20/1971 (convention with the Federal Republic of Germany BBl 1971 Nr. 49 p. 1446.

9. See 7.

10. See 7.

Section XVI of which reads as follows:
"The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like 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 shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process".

For many years it has not been clear how this provision would be interpreted in practice as far as it referred to the prevention of fraud. The definition of the term "fraud" is particularly important since wilful tax evasion is a crime in the United States, whereas a deficiency in income reporting in Switzerland is not a crime at the very outset. It may be a crime whenever a taxpayer has attempted to defraud (e.g. by false statements) the Tax Authorities as will be explained hereafter; (in the latter case it is equivalent to a common law fraud).

For obvious reasons disclosure in international tax matters may never go beyond disclosure requirements under Swiss (Federal or Cantonal) Tax Law. At the request of the US Internal Revenue Service, the Swiss Tax Authorities will only provide such information about the taxpayer which is unquestionably available under Swiss law. However, the determination of information available under Swiss law to the Tax Authorities is a particularly intricate problem answered differently under the various Cantonal Tax Laws and the Federal Defence Tax Act.

In a decision rendered on December 23, 1970,[11] the Federal Tribunal has encountered an inquiry made by the US Internal Revenue Service addressed to the Federal Tax Administration about a case of tax fraud. It was its task to draw a line between "available information under Swiss Law" and "classified information" as regards papers and documents which come under the banking secrecy.

The Internal Revenue Service requested the Federal Tax Administration to investigate a matter where X (US citizen or US resident) had defrauded the US Government under the shield of a Swiss bank account. Since the Swiss bank complied with the Swiss Administration's request, the question under debate before the Federal Tribunal was whether the Internal Revenue Service may have access to the bank's information about its client. Under the convention information is only given to the Internal Revenue Service to the extent that such information is available under the laws of Switzerland. The test before the judges of the Federal Tribunal was therefore whether the banking secrecy does not preclude the disclosure of information to the Internal Revenue Service. The Federal Defence Tax Act does not give a clear answer whether an investigation by the Federal Authorities may do away with the banking secrecy. In some Cantons a provision is missing, whereas in other Cantons the banker is compelled to inform the prosecutor in case of tax fraud. In Zurich, Basle and Geneva the banking secrecy does not preclude an investigation by the pro-

11. X vs. Federal Tax Administration, decision rendered on December 23, 1970: A.T.F. 96 I 737 ff. European Taxation 1971 II/13.

secutor for tax fraud and the prosecutor is authorized to act under the Canton Criminal Procedure Code. The Federal Tribunal held that the United States, when its delegation was negotiating the convention, could reasonably expect that the question of disclosure for the prevention of fraud was answered by a rule identical to that which was in force in the principal banking and financial centers (Zurich, Basle and Geneva). Hence the common law rule established by the Federal Tribunal is that a request by the Internal Revenue Service for information to prevent a fraudulent operation by a US citizen or resident can override the banking secrecy. Tax fraud must be construed under Swiss law and occurs when a taxpayer used deceptive devices (false, forged or inaccurate statements), to defraud the Tax Authorities in order to get an unjustified tax advantage. Under this definition, tax fraud is equivalent to a common law offense which does not warrant the maintenance of the banking secrecy.

Before providing legal assistance to the Internal Revenue Service, the Swiss Tax Authorities have to test the request made by the Internal Revenue Service whether it does establish with enough evidence that a tax fraud did occur or if the US Tax Authorities had every reason to believe that a fraud was committed or at least planned. Obviously this test is of a particularly delicate nature.

The Tribunal's decision [12] shows evidence of the willingness of the Swiss Judicial Authorities to cooperate with foreign States within the framework of Swiss law. This needs to be emphasized since the US House Committee on Banking and Currency has in recent years violently attacked foreign secrecy jurisdiction and mentioned particularly Swiss banking secrecy as a shield for unlawful practices.

II. DISCLOSURE IN THE PROCESS OF TAX TREATMENT

a) *Assessment and collection of taxes from the banker*

6. In the process of the assessment and collection of taxes from the banker himself (or an attorney, auditor, etc.) he can not be requested to name creditors, debtors or any third person being a client of the bank under an agreement or a fiduciary relationship. It has always been firmly held and case law of the Federal Tribunal is not contrary (see footnote 2), that a banker must refuse to divulge a client's name or any documents, statement of income or a statement of the client's portfolio to the Tax Authorities. However the refusal to name a client, debtor, creditor or any person for whom the banker is acting as a fiduciary, or to produce any relevant document to the Tax Authorities, may be held against the banker. In principle, no allowance is given by the Tax Authorities for debt interests if the creditor's name and residence is not disclosed.[13] Assets held in a fiduciary capacity are not allowed as a deduction and taxed to the fiduciary who has to pay additional taxes on fiduciary assets and income, unless the fiduciary agreement is produced to the Tax Authorities.[14] There is an obvious dilemma in the banker's position toward the Tax Authorities. Under the Federal law on banks and savings banks he must not talk or provide any information about his clients. The Tax Authorities have no legal remedy to "pierce"

12. See 11.

13. A.T.F. 64 I 194; Archiv 26 p. 138; 11, p. 421; 12, p. 127; 14 p. 73; M. Pichon, Le Secret professionnel, Steuer-Revue 1956 p. 139 ff.

14. Roger Dagon, Besteuerung im Falle von Treuhandverhältnissen und verwandten Tatbeständen, Schweizerische Juristen-Zeitung 1965, p. 101 ff.; p. 120 ff.

the banking secrecy, but they may tax him without regard to the actual situation and not allow a deduction for debt interests or assets only held in a fiduciary capacity.

7. An escape to the dilemma is to ask the bank's auditors to certify the bona fide existence of debt interests or assets or income held only in a fiduciary capacity. Usually the Tax Authorities did recognize such indirect evidence without asking further disclosure of the content of agreements or any other particulars. In some instances, the Tax Authorities were compelled by Swiss Courts to accept such indirect evidence of bona fide debts. Indirect evidence was provided by a notary public requested by the Tax Authorities to state a creditor of a loan, who asked the Chamber of Notaries in his Canton to certify the bona fide existence of the loan. The Federal Tribunal decided that the offer to produce indirect evidence (e.g. the statement by the Chamber of Notaries which itself, was under supervision by the Cantonal Justice Department) should be heard.[15] An attorney was also heard who could bring evidence without disclosing the name of the beneficiary under a fiduciary agreement.[16]

8. A certification by the bank's auditors should also be recognized by the Tax Authorities since they have semi-official functions being under supervision of the Banking Commission. Never a banker or attorney should give way under the pressure of the Tax Authorities.

b) *Assessment and collection of taxes from a bank's client*

9. France has the "bordereau de coupons" system under which interest on bonds cashed in France are automatically reported by the bank to the Tax Authorities (more than NF 300). A tax of 25% on interest is withheld, which the creditor who does not want to report the income, may abandon ("impôt libératoire"). A like system in Switzerland would clash with fundamental opposition since the banks must disregard absolutely any assessment against their clients, unless they have a proxy to file the tax return for the client. The Swiss Tax Authorities do not even attempt to inquire into a client's account since the bank or attorney would categorically veto their request. It should be remembered that any disclosure of client's accounts toward the Tax Authorities would be a punishable offence (see footnote 4). Therefore a banker or attorney will not talk or inform anybody without his own client's formal (written) consent.

10. Only the criminal prosecutor has the right to search files at the bank. If it is a search visit without previous notice, the bank must see to it that the search is only carried out to the extent that first the culprit is indeed a bank's client and that the search is strictly limited to documents of interest for the prosecutor.

11. If a search is announced sufficiently in advance, the banker should attempt to have his client's consent and consult with his attorney.
In any case the banker must insure that other clients' interests are not jeopardized and that the crime has not come under the statute of limitations. The statute of limitation is a particularly important point since often crimes are only discovered after a considerable number of years.

15. Archiv 26 p. 340.
16. See 14.

III. TAX AVOIDANCE, TAX EVASION AND TAX FRAUD

12. Tax avoidance may be considered as the legitimate use of legal institutions to reduce or avoid taxes. A trust with foreign trustees might have considerable tax advantages for UK or US citizens or for other beneficiaries having assets with a situs in the UK or USA.[17]

13. However, tax evasion is considered as a crime under the US Internal Revenue Code (section 7201: "Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, ... and, upon conviction thereof, be fined not more than $ 10,000, or imprisoned not more than five years, or both, together with the costs of prosecution").

14. While deliberate deficient reporting of income or assets by a taxpayer is a crime under the US Internal Revenue Code, the deliberate omission of reporting is also punishable with fines in Switzerland but is not considered as a crime (soustraction simple, einfache Steuerhinterziehung).[18]
A typical case of tax evasion occurs when a foreign taxpayer has transferred undisclosed income or assets abroad to be held under the cover of a foreign legal institution (company, trust, fiduciary). If the said taxpayer were to be a US citizen the operation would be considered as a tax crime and cooperation with him would be equivalent. However, under Swiss practice legal assistance to foreign countries is not given in tax matters, it is restricted to common law crimes. Therefore deficient reporting of income and assets by a foreign taxpayer (a non resident) does not affect Swiss jurisdiction or the banking secrecy (see however IV. hereafter).

15. Tax fraud goes beyond a deliberate omission of reporting income or assets to the Tax Authorities. It is by definition the use of false, forged or inaccurate statements by a taxpayer to deceive the Tax Authorities in order to secure an unjustified tax advantage.[19]

16. The question arises whether the Swiss Authorities would give legal assistance to a foreign country where a tax fraud was committed by one of its residents or citizens?
In the light of the above quoted decision (note 19) and of general Swiss practice in tax matters, it may be held that legal assistance to a foreign country would only be given if Switzerland has assumed the duty under a bilateral treaty to cooperate with the Foreign Authorities for the prevention of tax fraud.

17. Only under the Swiss-American double taxation treaty, Switzerland has exceptionally assumed the duty to cooperate with the US Tax Authorities for the prevention of fraud, (Section XVI as quoted above).

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17. See Foreign Trusts in Multinational Fiscal Incentives, p. 377 published by International Council for Fiscal Research, Inc. Princeton, New Jersey USA, 1971.
18. The Federal Defense Tax Act and all Cantonal Tax Acts with the exception of Basel-Land and St. Gallen collect the taxes in case of a deficiency in income reporting according to the ordinary collection proceeding provided in the tax legislation. There is no duty to testify and to service documents for a third party with the exception of Basel-Land and St. Gallen where also a banker must testify in such cases: Martin Lüscher, Das schweizerische Bankgeheimnis in strafrechtlicher Sicht p. 32 (Zürich 1972).
19. A.T.F. 96 I 737 ff., see ... I 5 above.

IV. TREATY ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

18. A treaty between Switzerland and the United States of America on mutual assistance in criminal matters was signed on May 25, 1973.[20]

Generally it is held that legal assistance should be strictly confined to common law crimes, being defined as such common law crimes in both contracting countries. The reluctance by the Swiss Authorities to extend any legal assistance to tax evasion (merely deficient reporting of income and assets etc. (see III above)) is sensible since the latter is not considered as a common law crime in Switzerland. Cooperation by the Swiss Judicial Authorities in common law crimes is not limited. In a recent case,[21] the US Government sought redress and charged its Justice Department with an investigation against a US citizen and a Swiss bank for fraudulent operations in armament contracts (fictitious invoices to deceive the US Government). Since the fictitious documents were made out in Switzerland, the US Justice Department requested the Zurich Prosecutor's Office to open an investigation and to grant the US representative the right to inspect the bank's statements as an injured party. The Federal Tribunal held that the United States was indeed an injured party in a transaction of civil law (armament contract between the Swiss bank's client and US Government). Therefore the US representative had a right to have access to the bank's files not as a representative of public authority but as a partner in a private agreement, subject to the condition that the US Justice Department would never use the information for tax purposes.

For a reader unfamiliar with the details of the case it seems academic to request the US Justice Department not to disclose information for tax purposes. However, it clearly shows that the Swiss Judicial Authorities attempt to erect a tight wall to prevent any diffusion of tax information outside of Switzerland.

19. The treaty on mutual assistance with the U.S.A. contains a similar restraint. The information made available by the requested Swiss Authorities for a specific offense must not be used or produced in another, e.g. a tax proceeding (Article 5: principle of speciality) (see 20).

20. As far as the prosecution of tax fraud is concerned, a treaty on mutual assistance with the USA was not needed and it does not even apply since generally, mutual assistance is not accorded for the prosecution of political, military or fiscal offenses (taxes, custom duties or violation of antitrust laws) (Article 2 (1) litt. c) 1-5).

21. Under the prevention-of-fraud clause of the double taxation convention with the U.S.A. as interpreted by the Swiss Federal Tribunal,[22] the Internal Revenue Service has access to the bank's information about its client, if and only *if* the Swiss Tax Authorities have substantial grounds to assume that a tax fraud which would also be punishable under Swiss law was committed by an U.S. tax offender which will lead to

20. Int. Legal Materials, vol. XII Nr. 4 July 1973, pp. 916 ff. (The American Society of Int. Law, Washington D.C.); Feuille fédérale 1974 II No. 39 p. 582 Message du Conseil fédéral à l'Assemblée fédérale concernant le Traité d'entraide judiciaire en matière pénale conclu avec les Etats-Unis d'Amérique. It is expected that the treaty will become effective in 1976.

21. A.T.F. 95 I 439 and 451; Int. Legal Materials, the Am. Soc. Int. Law, May 1970, p. 567 ff.

22. See I. 5 above.

a trial in the U.S.A. In spite of these obvious limitations as regards tax offenses, the treaty on mutual assistance will be probably of great importance, even as regards tax offences since it provides a chapter on mutual assistance in the fight against organized crime which extends mutual assistance even to cases of tax evasion committed by members of an organized-crime group.[23]

22. The "revolutionary" progress by the treaty is therefor in the field of the prosecution of the "organized crime".

The US Authorities estimated that hundreds of millions of dollars of revenue were lost by undisclosed transfer of money to foreign bank accounts including monies collected illegally in the United States through criminal practices (organized crime). The US Government sought legal assistance from the Swiss Authorities through the negotiation of a mutual assistance treaty which would extend cooperation of the Swiss Authorities to the disclosure of accounts opened with Swiss banks by members of crime-organizations (Cosa Nostra, Mafia). A US delegation held the view that the Swiss Authorities should give mutual assistance in case of any inquiry made by the US Tax Authorities if they have a legitimate reason to believe that a member of a crime-organization maintains a Swiss bank account.

23. Whenever mutual assistance is solicited in the criminal prosecution against a person belonging to an "organized-crime-group" the principle of non-assistance in fiscal crimes (taxes, custom duties) and anti-trust offenses is exceptionally abandoned. One of the most important exceptions applicable in cases of assistance in the prosecution of organized crime concerns the investigations or proceedings involving violations of provisions on (U.S.) income taxes. The experience in the United States proved that the chiefs of organized-crime groups are never directly involved in common law offenses, using for that their stooges, while their questionable affluence stemming from illegal practices did not correspond to their tax returns and revealed deficiencies in income reporting (Al Capone was convicted for tax evasion).

24. Switzerland provides mutual assistance exceptionally in such cases to the U.S. Authorities, if their request shows that there are substantial grounds to believe that the tax offender is connected with an organized-crime group.
The requesting State (U.S.A.) must document and show that:

i) the investigation concerns a person belonging to the upper echelon of an organized criminal group or, as such a po-

23. Articles 6—8 of the treaty:
Art. 6/3: For the purposes of this Chapter the term "organized criminal group" refers to an association or group of persons combined together for a substantial or indefinite period for the purposes of obtaining monetary or commercial gains or profits for itself or for others, wholly or in part by illegal means, and for protecting its illegal activities against criminal prosecution and which, in carrying out its purposes, in a methodical and systematic manner:

a. at least in part of its activities, commits or threatens to commit acts of violence or other acts which are likely to intimidate and are punishable in both States; and
b. either:
   (1) strives to obtain influence in politics or commerce, especially in political bodies or organizations, public administrations, the judiciary, in commercial enterprises, employers' associations or trade unions or other employees' associations; or
   (2) associates itself formally or informally with one or more similar associations or groups, at least one of which engages in the activities described under subparagraph b (1).

sition is not easy to prove, a person having participated in any important activity of such a group;

ii) it is only by disclosure of a violation of the laws on income taxes, as mentioned in Article I of the US/Swiss double taxation convention, that a link of such a person to an organized criminal group can be established, and

iii) the assistance provided by the requested State (Switzerland) is likely to lead to the imprisonment of such a person and thereby might have a significant adverse effect on the entire organized criminal group.[24]

The requesting State (USA) must show that the securing of the information or evidence is not possible without the cooperation of the authorities in the requested State or that it would place an unreasonable burden on the requesting State (Article 7 (3)).

25. A letter of understanding exchanged between both governments indicates that the treaty does away with the bank secrecy with the banker obligated to testify and to service documents, if the requirements of paragraph 2 of Article 10 are met:

a. the request concerns the investigation or prosecution of a serious offense (as outlined in a schedule to the treaty);
b. the disclosure is of importance for obtaining or proving facts which are of substantial significance for the investigation or proceeding; and
c. reasonable but unsuccessful efforts have been made in the United States to obtain the evidence or information in other ways.

Acts of violence or other serious offenses committed by the criminal group are taken into consideration.[25]

26. When the U.S. authorities present a request for information about hidden revenue which would need the lifting of a bank secret, the Division de la police of the Federal Justice Department determines whether the request is based on sufficient grounds to come within the definition of organized crime.[26] If it comes to a negative result, it will reject the request. Its decision may be submitted to an arbitral court (Article 39). The treaty allows also to reject a request contrary to the sovereignty, security or other important interests of the requested State (Article 3).

CONCLUSIONS

Case law of the Swiss Federal Tribunal and leading Swiss authors emphasize that the professional and bank secrecy must always have precedence over the Cantonal or Federal tax enquiries except crimes. In international relations, mutual assistance is only accorded by Switzerland to the extent of being explicitly assumed by Switzerland under a bilateral treaty.

The exchange of information which is stated in six bilateral tax conventions (with the U.S.A., U.K., Western Germany, France, Denmark and Austria) does not extend beyond any information needed to verify e.g. the legitimacy of a taxpayer's claim for relief from foreign withholding taxes etc.

Switzerland did *not* assume the duty to extend its assistance to a request brought by a treaty partner claiming a deficiency of income reporting (tax evasion) by a non resident taxpayer (soustraction simple, einfache Steuerhinterziehung).

There are only two exceptions to this ada-

24. Art. 7 (2) a—c.
25. Int. Legal Materials cit. (note 20) p. 967.
26. See 23.

mant principle of non-assistance in case of tax offenses: i) the treaty on mutual assistance with the U.S.A. in criminal matters (not in force as yet) provides assistance if it is established by the requesting State (U.S.A.) with sufficient grounds that a person with connections with the organized "underground world" is involved in a case of evasion of U.S. income taxes. ii) The prevention-of-fraud-clause in the Swiss/US double taxation treaty (Art. XVI) as interpreted by the Swiss Federal Tribunal does away with bank secrets if the State requesting information (U.S.A.) has established with sufficient grounds that a U.S. taxpayer is involved in a case of tax fraud which will lead to a trial.

These exceptions concerning the *Swiss banker* do not apply generally to the professional secrecy of attorneys, notaries, auditors and their auxiliaries who have the right to refuse testimony according to the Swiss Penal Code (Article 321 (3)) and the relating Cantonal Penal Procedure Laws (e.g. Zurich and Geneva).

CANADIAN AND U.S. IFA MEMBERS DISCUSS E.C. TAXES

The IFA branches in Canada and the U.S.A. contributed most of the speakers at the International Tax Conference held by The American Management Association at the Ritz-Carlton Hotel, Montreal, May 7 and 8, 1975. The subject was tax advantages offered by those countries to corporations operating in the European Industrial Free Trade Area and the Mid East. Dr. Mitchell B. Carroll, Honorary President of IFA, was invited by Mr. Patrick Daly, Program Manager of the AMA to organize the two-day session. He asked Mr. Philip F. Vineberg, O.C., Q.C. of Phillips and Vineberg and Past President of IFA's Canadian Branch to serve as Co-Chairman. Mr. H. Howard Stikeman, Q.C., of Stikeman, Elliott, Tamaki, Mercer & Robb was also asked to collaborate and he invited as luncheon speaker for the first day Dr. J. S. Hodgson, Deputy Minister Revenue Canada, Taxation, who gave an enlightening description of the Canadian Administration of International Tax Treaties. The Honorable John P. Robarts, Q.C., LL.D. of Stikeman, Elliot, Robarts and Bowman, presided the second day.

The guest of honor and speaker at luncheon the second day, Mr. Frederick W. Hickman, the U.S. Assistant Secretary for Tax Policy, Treasury Department, discussed vividly contemplated amendments to the income tax treaty between the two governments. Mr. Vineberg, Co-Chairman outlined the amendments to the once liberal regime in Canadian law for investments abroad.

The dean of Canadian tax accountants, Mr. Arthur W. Gilmour, Partner, Clarkson, Gordon and Company, described graphically tax obstacles to using Canada as a base for operations in Europe and the Mid East. Other aspects of Canadian law were enunciated by Dr. James S. Peterson, Barrister and Solicitor with McMillan Binch and Mr. Stikeman cast light on the problems in treaty negotiations that were taking place in Washington.

U.S.A. Speakers

In his opening remarks, Dr. Carroll noted the felicitous coincidence that the tax conference was being held in the French speaking province of Quebec because a Frenchman had been responsible for the introduction of income tax in the United Kingdom as a *temporary* measure to raise revenue to carry on the war against Napoleon. The Frenchman to whom allusion was made was Napoleon. It is said that he favored the introduction of the new and presumably unpopular tax in England because he thought it would arose the British to revolt. But they did not, and the tax is still there!

Mr. John L. Noble, Manager, International Taxes, The Coca Cola Export Corporation, told of the advantages of using Ireland as as base for manufacturing and exporting to the UK and other Common Market Countries.

Mr. Charles Torem, Attorney, Partner of Coudert Brothers in Paris, described the attractions that are being offered by France to encourage American and other non-French enterprises to use France as a base for operations in the European Free Trade Area.

Germany's tax inducements for manufacturing and exporting were discussed by

Mr. David S. Poston, Tax Counsel, E. I. du Pont de Nemours Corporation.

Dr. Paul Gmuer, Attorney and President of IFA outlined Switzerland's advantages as a center for International Business. He was followed by Mr. John Fleuti, Counsel and Secretary General of the ITT Corporation Standard Telephone and Radio Corporation, Zurich, who discussed the tax aspects of manufacturing and exporting from there.

Walter H. Beaman, European Counsel, General Electric Company, Brussels, discussed Belgium's tax inducements, and the proposed EEC Regulation of Transnational Corporations and pricing between affiliates.

A trio of outstanding U.S. accountants presented an illuminating panel discussion of basic international tax problems such as planning for maxium utilization for foreign tax credits in the U.S., the effect of foreign incentives, grants and allowances on the foreign and effective rate, elections and adjustments available and required in computing U.S. earnings and profits, and the allocation of expenses to foreign source income. These speakers were Henry I. Sonnabend, Partner, Arthur Young & Company, Richard M. Hammer, Partner, Price Waterhouse & Company, and Francis C. Oatway, Partner, Haskins & Sells.

Novel and interesting talks were given on Tax Problems in Egypt and Saudi Arabia by Mr. Henry T. King, Chief Corporate International Counsel, TRW, Inc., and in Iran by James Q. Gord, International Tax Counsel, Bristol Myers Company.

Their presentations rounded out a very informative program by IFA members who, if directly requested, would be glad to supply copies of their very readable papers.

ACTIVITES DU GROUPEMENT FRANÇAIS DE L'IFA

Le Groupement Français s'est réuni le 27 mai 1975 pour une Soirée d'Etudes.

Le sujet retenu étant d'actualité „Le Prélèvement Conjoncturel", nouvelle taxe adoptée par la Loi du 30 décembre 1974.

La réunion était présidée par M. LAXAN, Président du Groupement Français de l'I.F.A., et animée par Monsieur le Doyen Georges VEDEL, Président d'Honneur du Groupement Français.

Deux Rapporteurs ont exposé leur point de vue,

— M. WEYDERT Directeur de la Législation au Ministère de l'Economie et des Finances;
— M. COURTAIGNE Président Directeur Général du Groupe Delalande.

Les débats ont été particulièrement animés entrecoupés par un Lunch servi sur place. Près de 100 personnes y ont participé.

Une Soirée d'Etudes est prévue le 26 novembre 1975 pour discuter des rapports français des deux sujets retenus pour le Congrès d'Israël.

* * * BIBLIOGRAPHY * * *

BOOKS

Any inquiries concerning books on this list should include the references numbers listed

ALGERIA

GUIDE PRATIQUE DES IMPOTS 1975

Tome I: Impôt sur les Bénéfices Industriels et Commerciaux Alger, Etudes & Documentation Fiscales, 1975. 120 pp.
Volume one of the series of Guide Pratique des Impôts containing explanation of the tax on industrial and commercial profits. The text of the French-Algerian tax treaty is appended. (B 10.654)

AUSTRIA

DER NEGATIVE KAPITALANTEIL DES KOMMANDITISTEN,

Handelsrechtliche und einkommensteuerrechtliche Grundsätze, by H. G. Ruppe and W. Jud. Schriften zum österreichischen Abgabenrecht, Vienna, Wirtschaftsverlag Dr. Anton Orac, 1975 72 pp., S 144.
Monograph on the negative participation in the capital of a commercial partnership by a limited partner with emphasis on the commercial and income tax law in Austria. (B 9116)

STEUER-INDEX ÜBER RECHTSMITTELENTSCHEIDUNGEN,

Erlasse und Schrifttum des Jahres 1974, by K. Neuner and O. Zechmeister. Vienna, Wirtschaftsverlag Dr. Anton Orac, 1975. 218 pp., S 495.
List of case law, regulations, books, double taxation treaties and essays on Austrian tax matters published in 1974. (B 9123)

CANADA

CANADIAN INCOME TAX ACT WITH INCOME TAX REGULATIONS,

46th edition 1974-75. Don Mills, Ont., CCH Canadian Limited, 1975. 744 pp., $ 11.95.
Consolidated text of the Canadian Income Tax Act and Income Tax Regulations with references to Information Bulletins, Circulars and Official forms as of March 15, 1975. (B 9038)

CANADIAN MASTER TAX GUIDE.

A guide to Canadian income tax; 30th edition, 1975. Don Mills, Ont. CCH Canadian Limited, 1975. 672 pp., £ 8.95.
Annual guide to present a complete, accurate and updated explanation to the Canadian federal income taxation designed for use in connection with the preparation of 1974 income tax returns. (B 9033)

THE TAXATION OF CANADIAN CO-OPERATIVES

Canadian Tax Papers, No. 57, April 1975, by D. Ish. Toronto, Canadian Tax Foundation, 1975. 49 pp., $ 3.
Explanation to the status of co-operatives under the new tax regime in Canada. (B 9027)

QUEBEC SUCCESSION DUTY AND GIFT TAX LEGISLATION.

Third edition 1975, Don Mills, Ont., CCH Canadian Limited, 1975. 61 pp. £ 4.
Consolidated text of the succession duty and gift tax legislation in Quebec is reproduced. (B 9037)

CANADIAN TAX REPORTER,

Second edition. Don Mills, Ont., CCH Canadian Limited, 1973.
Second edition of Canadian Tax Reporter's Loose-leaf publication in four volumes which provides complete explanation on the federal income tax law. Reproduced are the text of the federal Income Tax Act, income tax regulations, tax review cases, interpretation bulletins, information circulars, memoranda and rulings. The material is organized by sections of the Income Tax Act and is thoroughly indexed. In addition the compilations contain reproduction of the texts of tax agreements and forms. (B 9102)

DOMINION TAX CASES.

Don Mills, Ont., CCH Canadian Ltd., 1975.
Loose-leaf publication which reports in full the text of all federal tax cases heard by the Tax Review Board, the Supreme and Federal Courts

of Canada and the higher courts of the provinces. New cases are reported as they are released by the Board or the courts. A monthly service will report on new developments. All decisions are cumulatively indexed by subject in the Topical Index, by section number of the Acts in the Citator, and by Case name in the Case Table. (B 9103)

CANADA INCOME TAX GUIDE.

Don Mills, Ont., CCH Canadian Limited, 1974. Second edition of loose-leaf publication to reflect the Canadian Income Tax Act as revised under the federal income tax reform effective January 1, 1972. The compilation contains an explanation of income tax law based on the Income Tax Act, Income Tax Regulations, decisions of the Tax Review Board and the courts, and administrative rulings with reference to the law and is illustrated by examples. Where appropriate texts of rulings are reproduced. (B 9104)

CANADIAN SALES TAX REPORTER.

Don Mills, Ont., CCH Canadian Ltd., 1974.
Loose-leaf publication in one binder which deals with the taxes imposed under the federal Excise Tax Act, i.e. the sales tax, the excise tax and the tax on certain insurance premiums. The work explains the provisions of the Excise Tax Act and Memoranda. The full text of the statute and where appropriate departmental circulars or memoranda are reproduced in full text. The material will be updated by supplements at least once a month. New Court decisions and other current developments are reported in the new matters division. (B 9105).

FOREIGN INVESTMENT IN CANADA.

A guide to the law. By P. R. Hayden and J. H. Burns. Scarborough, Ont., Prentice-Hall of Canada Ltd., 1975.
Loose-leaf publication on foreign investment in Canada. It contains a commentary on the Foreign Investment Review Act and other statutes that bear on foreign investment in Canada (Provincial and Federal). In addition the complete text of the Foreign Investment Review Act, the regulations and guidelines are reproduced. The material will be updated by the types of periodic issues namely current matter, New Ideas and Report Bulletins effective from July 1, 1975. The Report Bulletin and New Ideas will be published every month, effective from July 1, 1975. The price is $ 105 for one year's subscription. (B 9108)

REPORT

of proceedings of the Twenty-Sixth Tax Conference convened by the Canadian Tax Foundation at the Royal York Hotel in Toronto from 11-12-13 November 1974. Toronto, Canadian Tax Foundation, 1975. 757 pp. $ 8.
Published texts of address of welcome speeches and panel discussions on various tax matters in Canada. The topics covered include inter alia Tax and Royalty treatment of the Extractive Industries, Federal-Provincial Fiscal Relations, Taxation of Mining Industry, Intercompany non-arm's length transactions, Income tax consequences, International Taxation and the 1974 Budget, Taxation of the Petroleum Industry, Ontario Land Transfer Tax, Estate Planning. (B 9127)

FRANCE

MEMENTO PRATIQUE SOCIAL,

Securité sociale droit du travail. Paris, Editions Francis Lefebvre, 1975. 707 pp.
Monograph designed as a guide to inform about the French labour and Social legislation as of April 15, 1975. (B 9096)

GERMANY

STEUERLICHE UND JURISTISCHE PROBLEME BEIM WARENVERTRIEB IN DER BUNDESREPUBLIK DEUTSCHLAND.

By W. Gettler and L. Kulmsee. The Hague, Fenedex, 1975. 34 pp.
Tax and legal implications arising from delivery of goods in West Germany are considered with emphasis on foreign enterprises. (B 9081)

GRUNDSÄTZE ORDNUNGSMÄSSIGER BILANZIERUNG FÜR SCHWEBENDE GESCHÄFTE.

Beiträge zu den Grundsätzen ordnungsmässiger Bilanzierung, Schriften der Schmalenbach Gesellschaft, Band 4. By H. Friederich. Düsseldorf, Idw Verlag GmbH., 1975. 118 pp.
Study on the basic principles of drafting a balance sheet with emphasis on floating business contracts. (B 9084)

BILANZEN UND ERGÄNZUNGSBILANZEN BEI PERSONENGESELLSCHAFTEN.

5. Auflage 1975. By E. Kobs, Herne/Berlin, Verlag Neue Wirtschafts Briefe, 1975. 216 pp. DM. 37.
Fifth revised edition of the monograph dealing with balance sheets and supplementary balance sheets necessary for partnerships. (B 9113)

DAS NEUE ENTWICKLUNGSLÄNDER-STEUERGESETZ.

By H. Flick and E. Husmann. Cologne, Verlag Dr. Otto Schmidt KG., 1975. 134 pp. DM. 38.
Monograph explaining the Developing Countries Tax Law, as amended. Full text of statute and related laws is reproduced. (B 9111)

DIE ANGEMESSENHEIT DER BEZÜGE GESCHÄFTS-FÜHRENDER GESELLSCHAFTER EINER GmbH.

4. Auflage. By A. Spitaler and U. Niemann. Cologne, Verlag Otto Schmidt KG., 1975. 112 pp. DM 26.
Fourth edition of the monograph on the appropriate remunerations for managing directors and shareholders of a limited liability company (German GmbH) with reference to case law, statute and literature. The material is up-dated as of the end of 1974. (B 9117)

ZWISCHENSTAATLICHE BELASTUNG UND STRUKTURVERGLEICHE,

Band 4: Quantifizierung der Last und Strukturunterschiede in der italienischen gewerblichen Wirtschaft im vergleich zu der deutschen, französischen und niederländischen gewerblichen Wirtschaft. By J. Esser. Bonn a. Rh., Wilhelm Stollfuss Verlag, 1975. 86 pp. Institut "Finanzen und Steuern", Heft 96, Band 4.
Fourth part of a series analysing and comparing the tax structure of different industries in Italy, Germany, France and the Netherlands (see previous publications nos. 4775, 5715 and 6781 resp. B 5938, B 7208 and B 8556). (B 9114)

AUFBAU UND ABLAUF DER KOMMUNIKATION IM ARBEITSBEREICH DES FINANZPLANUNGSRATES.

Opladen, Westdeutscher Verlag GmbH, 1975. 382 pp. By D. Hosse.
Special research study on the possible method of communication in order to try to co-ordinate the public finances of the federal state, states and municipalities. (B 9045)

REFORM DER ABGABENORDNUNG.

Cologne, Verlag Peter Deubner GmbH, 1975. 40 pp. DM. 16.50. By Mosbauer.
Description of the proposals contained in the new Fiscal Code Bill. The text of the Bill is appended. (B 9093)

DEUTSCHE GESETZE.

Begründet von Heinrich Schonfelder, Textsammlung, 50. Auflage. Munich, Verlag C. H. Beck, 1975. 3,300 pp. DM. 49.50.
The 50th jubilee edition of the compilation of consolidated text of German laws originally prepared by Heinrich Schonfelder presents the revised text of the civil code, company law, commercial code, company law, procedural law and related statutes. As a loose-leaf publication the material will be updated by supplements. (B 9020)

GUYANA

THE LAWS OF GUYANA.

Revised edition, chapter 81: 01 Income Tax. Georgetown, Government Printer, 1973. 196 pp.
Guyanan Income Tax Code; text and subsidiary legislation as of 1973. (B 15.478)

INTERNATIONAL

UN PROPOSALS FOR THE REGULATION OF TRANS-NATIONAL CORPORATIONS.

Special Study No. 59. New York, The Presidents Association of the American Management Associations, 1975. 48 pp. $ 20.
This is a special research study on the U.N. proposals for the regulation of multinationals. (B 9061)

HET VERDRAG VAN LOME.

The Hague, Europese Gemeenschappen, 1975, 18 pp.
Booklet disseminating information on the agreement of Lomé between the 9 EEC countries and 46 countries in Africa, Caribbean and Pacific with respect to mutual development strategy. (B 9072)

TAX HAVENS ENCYCLOPAEDIA.

By B. Spitz and others. London, Butterworths, 1975.
Loose-leaf publication which sets out the law and practice of certain major countries with regard to tax haven operations. The basic text deals with the United Kingdom, U.S.A. and France. Additional countries will be included in future service issues. In addition various local authors have made contributions including material on taxation in tax haven countries. It includes also an introduction by Barry Spitz. In the course of time other countries may be included or the reported countries may be omitted as circumstances dictate. The basic text deals with the following tax havens: the Bahamas, Bermuda, Cayman Islands, Gibraltar, Hong kong, Isle of Man, Jersey, Liberia, Luxembourg, Nauru, The

Netherlands Antilles, New Hebrides and Panama. The following are in preparation: Guernsey, Liechtenstein and Switzerland. (B 9107)

INTERNATIONAL TAXATION AND LIVING COSTS 1975.

Amsterdam, Inbucon BV., 1975. 42 pp.
Comparative information covering individual income tax and social charges as well as facts concerning general levels of prices and earnings in major industrial countries. (B 9160)

CONFERENCE MULTI-NATIONALS IN SEARCH OF TAX-FORMULAE:

The problem of intra-group transactions. London, Associated Business Programmes Limited, 1975. 150 pp.
Papers read at a two and a half day conference held in Amsterdam at RAI Congress Centre, April 7-9, 1975.
Speakers: J. van Hoorn Jr.: "General Overview"; A. G. Davies: "Overview of the problems of transfer prices as shown by discussions within international organisations"; J. G. White: "How US, UK and other Revenue Authorities Control Multi-Nationals' Intra-Group Transactions"; "Headquarters offices in the United States of America"; J. Strobl: "Tax treatment in the Federal Republic of Germany of international transactions between affiliated companies"; J. Killius: "A new German statute regulating international tax aspects - its implications for multinational companies"; S. Ambalavaner: "Developing countries of the ESCAP region mainly India, Malaysia, Pakistan, Singapore and Sri Lanka"; H. Becker: "Tax deductibility and allocation of intercompany service charges". J. C. Samaran; P. den Boer, J. M. Goldsmith. (B 50.095)

ITALY

ITALIAN INCOME TAXATION.

Le imposte dirette in Italia; aggiornamento 1975 supplement: including all laws until February 1, 1975. By P. C. Alegi. Milan, Credito Italiano Banca d'Interesse Nazionale, 1975. 139 pp.
Italian original and English translation of text of amendment laws relating to the Italian income tax reform. (B 8996)

IMPOSTA VALORE AGGIUNTO.

By E. Baiano.
Rome, S.E.P., 1975. 162 pp. Lire 4200.
Consolidated text of the law on value added tax of 1974 as amended until December 31, 1974 and annotations thereto. (B 9040)

I.V.A. IMPOSTA SUL VALORE AGGIUNTO.

Parte seconda. Milan, L. di G. Pirola, 1974. 360 pp. By Gallina.
Second volume of treatise or value added tax as of December 1973 with practical cases described. (B 9042)

I.V.A. IMPOSTA SUL VALORE AGGIUNTO.

Parte seconda. By Gallina. Milan, L. di G. Pirola, 1974. 360 pp.
Second volume of the treatise on value added tax as of December 1973 with practical cases described. (B 9042)

KOREA (SOUTH)

CORPORATION TAX LAW AND ENFORCEMENT DECREE 1975.

Seoul, The American Chamber of Commerce in Korea, 1975. 188 pp.
English version of the consolidated Korean text of the corporation tax law and the enforcement decree thereto as effective January 1, 1975. (B 50.124)

BUSINESS TAX LAW AND ENFORCEMENT DECREE 1975.

Seoul, The American Chamber of Commerce in Korea, 1975. 110 pp.
English version of the consolidated Korean text of the business tax law and the enforcement decree thereto as effective January 1, 1975. (B 50.126)

TAX EXEMPTION & REDUCTION CONTROL LAW AND ENFORCEMENT DECREE, AND ASSET REVALUATION LAW AND ENFORCEMENT DECREE 1975.

Seoul, The American Chamber of Commerce in Korea, 1975. 95 pp.
Consolidated text in English of the Korean text of the Tax Exemption and Reduction Control Law, Asset Revaluation Law and the enforcement decrees thereto. (B 50.125)

INCOME TAX LAW AND ENFORCEMENT DECREE 1975.

Seoul, The American Chamber of Commerce in Korea, 1975. 291 p.
English translation of Korean text of the income tax law and its enforcement decree as of January 1, 1975 (B 50.127)

NETHERLANDS

DE VERVANGINGSWAARDE.

Theorie en toepassing in de jaarrekening. By J. Klaassen. Alphen aan den Rijn, Samsom Uitgeverij, 1975. 225 pp.
Thesis on the application in Dutch enterprises of the Replacement Value Theory. (B 9048)

FISCAL MEMO.

Deventer, Kluwer, July 1975. 61 pp. Dfl. 10.00.
Revised edition of Fiscal Memo providing practical information concerning tax provisions and related subjects as of July, 1975. (B 9109)

RECHTSPERSONEN.

Deventer, Kluwer, 1975.
First binder of loose-leaf publication entitled Legal Persons which will deal with Book Two of the Civil Code. It contains the recodified text of entity forms. Book Two will probably enter into force as of 1976. The work aims to contain the plain text of the law and comment thereto by various authors. Apart from the Company Law the work will also cover tax aspects in connection thereto. The first supplement contains the text of Book Two and survey table comparing old and new provisions. This work will supplement the present work on Company Law. (B 9106)

BELASTINGWETTEN.

6e druk. Deventer, Kluwer, 1975. 410 pp.
Sixth edition of consolidated text of tax laws of the Netherlands as amended by Official Gazettes in 1975, 63 and Official Journal 1975, 49, as applicable for the 1975 tax year. Introduction by Ch. P. A. Geppaart is appended. (B 9095)

NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1974-75 (35TH EDITION).

By C. A. Staples. Wellington, Sweet & Maxwell Ltd., 1975. 689 pp.
This edition incorporates the changes in the law made by the Land and Income Tax (No. 2) 1974. This work explains the tax terms arranged in alphabetic order with examples and reference to statutes. (B 9124)

PERU

CODIGO TRIBUTARIO.

Concordado y comentado. By M. B. Guinassi. Lima, Editorial Desarrollo S.A., 1970. 742 pp.
Peruvian tax code effective 1970, as updated with legal texts and commentary by the author. (B 15.476)

PUERTO RICO

WHAT YOU SHOULD KNOW ABOUT TAXES IN PUERTO RICO.

San Juan, Department of the Treasury, 1975 edition. 101 pp.
Booklet presenting basic facts about the major aspects of the tax system of the Commonwealth of Puerto Rico and its tax relations with the United States. (B 15.477)

SWITZERLAND

MERKBLATT ÜBER DIE STEUERENTLASTUNGEN FÜR EINKÜNFTE AUS BRITISCHEN QUELLEN.

Bern, Eidgenössische Steuerverwaltung, 1975. 10 pp.
Notification regarding tax relief of income from United Kingdom source for residents of Switzerland under the double taxation treaty Switzerland-United Kingdom as amended by supplementary protocol of August 2, 1974. (B 9014)

UNITED KINGDOM

CAPITAL TRANSFER TAX

By G. S. A. Wheatcroft and G. D. Hewson. London, Sweet & Maxwell, 1975. 250 pp. £ 4.50.
Monograph designed to explain the new capital transfer tax which replaces the estate duty. Text of the statute and worked examples of capital transfer tax are appended. The law is stated as of May 1, 1975. (B 9122)

TAXATION KEY TO CAPITAL TRANSFER TAX.

By K. R. Tingley and P. F. Hughes. Finance Act 1975 Edition, London Taxation Publishing Company Ltd., 1975. 230 pp. £ 3.25.
Quick reference guide explaining the newly introduced capital transfer tax on gifts and the passing of property upon death to replace the estate duty. (B 9016/B 9017)

TOLLEY'S FINANCE BILL MEMORANDUM,

April 1975. Croydon, Tolley publishing Co. Ltd., 1975. 9 pp., 50 p.
Memorandum survey of Finance Bill tax proposals. (B 9013)

CAPITAL TRANSFER TAX.

By A. L. Chapman. Croydon, Tolley Publishing Company Ltd., 1975. 225 pp.
Monograph designed to explain the new capital transfer tax which replaces the estate duty. (B 9112)

TAXATION KEY TO INCOME TAX 1975/76.

Budget 1975 Edition, 79th edition. By J. M. Cooper and P. F. Hughes. London, Taxation Publishing Company Ltd., 1975. 247 pp. £ 3.25.
Annual quick reference guide to income tax as amended by 1975 budget. (B 9115)

UNITED STATES OF AMERICA

THE PUBLIC FINANCES.

An introductory text book, 4th edition 1975. By J. M. Buchanan and M. R. Flowers. Homewood, Illinois, Richard D. Irwin, Inc., 1975. 506 pp.
Introductory text book on public finance with emphasis on American fiscal institutions. (B 9006).

INTERNAL REVENUE.

Cumulative Bulletin 1974-3. Washington, U.S. Government Printing Office, 1975. 553 pp. $ 10.25.
This volume solely covers Public Law 93-406 The Employment Retirement Income Security Act of 1974 and related reports which were not published in the weekly bulletin. (B 9078)

TAX INCENTIVES FOR U.S. EXPORTS.

By Feinschreiber. New York, Oceana Publications Inc., 1975. 385 pp. $ 22.50.
Description of U.S. tax benefits for exports through the Western Hemisphere Trade Corporation and Domestic International Sales Corporation are compared and explained. Regulations, rulings and new statutes thereto as of October 3, 1974 are appended. (B 9043)

INTERNAL REVENUE:

Cumulative bulletin 1974-2 July-December. Washington, U.S. Government Printing Office, 1975. 531 pp. $ 9.95.
This volume contains a consolidation of all decisions of a permanent nature published in the weekly Bulletins 1974-26 through 1974-52 for the period of July 1 to December 31, 1974. (B 9077)

STOCK VALUES AND DIVIDENDS FOR 1975 TAX PURPOSES.

Market values, par values and dividends of listed or regularly quoted stocks for 1975 federal, state and local tax purposes. New York, Commerce Clearing House, Inc., 1975. 168 pp. $ 5.00. (B 9004)

REPORTS OF THE UNITED STATES TAX COURT.

Reporter E. C. Thomas. Vol. 62, April 1, 1974 to September 30, 1974. Washington, U.S. Government Printing Office, 1974. 903 pp. $ 10.90.
Bound volume containing relevant US Tax Court decisions as reported by E. C. Thomas. (B 9110)

LOOSE-LEAF SERVICES

Received between August 1 and August 31, 1975

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Editions Législatives et Administratives, Paris

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(T.A.L.E.), Madrid

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Tome II:
release 1975: I 54, II 49, III 50
Verlag für Recht und Wirtschaft, Basel

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Commerce Clearing House, Inc., Chicago

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Prentice Hall, Inc., Englewood Cliffs

U.S. TAXATION OF INTERNATIONAL OPERATIONS
release 13
Prentice Hall, Inc., Englewood Cliffs

ERRATUM

A number of words has been omitted in the article of Mr. J. F. Pick, "Tax Reform in Israel" (September 1975 issue).

On page 364, section 3 of "Taxation of Corporate Income" should start as follows: "The new rates are to be applicable universally and the preferential tax rates now in force for undistributed income from manufacturing industry under the Law for the Encouragement of Industry and on the whole income of "approved enterprises" under the Law for the Encouragement of Capital Investment are to be gradually abolished."

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28TH CONGRESS OF THE INTERNATIONAL FISCAL ASSOCIATION MEXICO CITY 1974

The 28th Congress of IFA, which was held from September 23—27, 1974 in Mexico City dealt with the following two subjects:

1. *Tax consequences of domestic and foreign interests establishing corporations as vehicles for joint ventures, and*
2. *Tax problems resulting from the temporary activity abroad of employees of enterprises with international operations.*

Both subjects, which are highly topical, attracted much interest and resulted in lively discussions. The resolutions in which the conclusions of the Congress were laid down, may be found in IFA News in the December issue.
Two national reports on Australia and Ghana with respect to the first subject were submitted during the Congress. There was, therefore, no opportunity to include these reports in Volume LIXa of the CAHIERS DE DROIT FISCAL INTERNATIONAL (Studies on International Fiscal Law) which was sent this summer to IFA Members, and which contains 14 country reports on the same subject. Unfortunately, it was also impossible to have these reports duplicated and distributed at the Congress. However, since the Bureau feels that they are much too valuable to let them go to waste, it offered to publish them in the November issue of the BULLETIN. Both IFA and the authors approved of this suggestion, so that our readers may find these reports in the current issue. Similar reports were prepared on Austria, Brazil, Canada, Finland, France, Germany, Mexico, Luxembourg, Netherlands, Portugal, Spain, Switzerland, the United Kingdom and the United States and these were published in the above Volume LIXa, which can be ordered through our Bureau (see enclosed leaflet). The Bureau also envisages publishing early next year the papers submitted for the Seminar of the Andean Pact which was also held during the Congress.

The Editors

* * * ARTICLES * * *

P. ANTHONY BROWNE AND JOHN MCD. MCAULEY:

AUSTRALIA: TAX CONSEQUENCES OF DOMESTIC AND FOREIGN INTERESTS ESTABLISHING CORPORATIONS AS JOINT VENTURES*

1. DEFINITIONAL CONCEPTS

The Australian legal system is based on the English system of mixed legislative statutes and common law, similar to the United Kingdom and United States and most British Commonwealth countries. Commercial practice and political structure are also along similar lines to these other places.

The Australian constitutional system takes the form of a federation, with the federal government having specific powers under a written constitution, and the constituent state governments having the residue of powers.

Generally speaking, the states have power in relation to the formation and conduct of corporations, although the federal government has recently been moving into the area of economic control of corporations in relation to such matters as the issue of securities and price control and foreign takeovers etc.

The federal government also has power in most areas concerning the national economy, including exchange controls and foreign investment, whether in corporations or land or assets or otherwise. Many areas of the federal government's involvement in corporate and business affairs are of comparatively recent origin, and as such have been and are likely to continue to be for some time the subject of constitutional challenge before federal powers on these matters are more clearly defined.

As for the nature of business corporations formed within Australia, these acquire their legal status under the appropriate companies legislation of the particular state or federal territory where they are formed. The various states and federal territories have each adopted a more or less uniform code of corporate or company law.

Corporations so formed are of the more or less traditional type, being regarded as separate legal entities having their own legal personality and status in the eyes of the law. They are controlled by shareholders according to the votes given by the constituent documents of the corporation to the shares or classes of shares, and are managed by a board of directors.

2. TAX INCENTIVES

2.1 There are no Australian laws relating specifically to foreign investment as such, although there are some stated federal government policies intended to be implemented within the framework of existing laws on related subjects.

Generally, all forms of foreign investment in Australia require exchange control approval at the outset. The federal laws on the subject of exchange control are very

* Report submitted to the 28th Congress of the International Fiscal Association, Mexico City, 1974.

general in scope, giving to the central bank, namely the Reserve Bank of Australia, very wide general discretions under the Banking (Foreign Exchange) Regulations, which in turn derive their authority from the federal Banking Act. In present economic conditions, the policies of the federal government and the Reserve Bank have been subject to fairly rapid change. For example, there is at present a policy against allowing borrowings from sources outside of Australia for terms of less than two years. In addition, there was until recently a requirement for up to one-third of all borrowings from sources outside of Australia to be lodged in a type of blocked account with the Reserve Bank, thus effectively increasing the interest cost of such borrowings, but this deposit requirement has recently been reduced to five percent of the overseas loan as from mid 1974. This last mentioned change is itself a good overt indicator of the recent easing of what had been for some time a somewhat restrictive policy towards foreign investment. At the present time, there are still in force certain policies of constraint against investment in Australian land for speculative purposes, and against the takeover by foreign interests of existing Australian businesses and assets.

The above exchange control policies form part of a general policy on foreign investment in Australia which was announced by the federal government in late 1972. Part of that general policy involved the introduction of new legislative machinery for the control of foreign takeovers of existing Australian business corporations and of Australian property and assets and the entering into of mining joint ventures with foreign participants.

As a result, the federal Companies (Foreign Takeovers) Act was introduced in early 1973. Subject to certain limitations and conditions expressed in this legislation, the takeover of existing Australian business corporations by foreign interests now requires prior approval from the federal Committee on Foreign Takeovers. As with most legislation of this type, there are probably technical ways by which it can be legally circumvented — for example, through the interposition of offshore companies controlled by voting debentures rather than shares — but it is not within the scope of the present discussion to analyse these matters.

As for foreign takeovers of assets as distinct from shares in companies, no specific legislation has been introduced as yet. However, it is the practice of the Reserve Bank to refer cases of this nature to the federal Committee on Foreign Takeovers, which applies principles similar to those applicable under the Companies (Foreign Takeovers) Act when advising the Reserve Bank whether or not to grant exchange control approval for the transaction in question. These principles seem to be largely ad hoc at this stage, and no clear guidelines have emerged as yet, except such general guidelines as can be gleaned from the policy statements of the federal government from time to time.

Another area of federal government intervention in foreign investment in Australia which is gaining momentum at the present time is the establishment of a federal Australian Industries Development Corporation and a federal Petroleum and Minerals Authority. The Australian Industries Development Corporation will act somewhat like an industrial development bank, and one of its likely functions in relation to foreign investment in Australia will be the borrowing from overseas sources of funds intended for investment in Austra-

lia and the channelling of these funds into the investments concerned in such a way as to maintain a greater degree of Australian equity than might otherwise have been the case. It seems likely that the proposed new Petroleum and Minerals Authority would also include among its functions a somewhat similar function in relation to foreign investment in Australian mining joint ventures.

Of course, there are many areas of governmental influence over foreign investment outside of the strictly legal or fiscal controls. For example, especially in the case of large scale projects, governments have considerable practical influence when negotiating infrastructure arrangements etc.

It will be noted than none of the abovementioned matters is strictly in the fiscal area, in the sense of being a taxation control or incentive, but nevertheless the incidental effects of taxation provisions can often be of vital importance in determining the particular form which a foreign joint venture investment will take.

Except to the limited extent implied above, there is no different legal treatment in Australia of foreign joint venture investments when compared with other forms of foreign equity investment, and there is also no relationship in this regard between the strict legal treatment of such investment and the percentage of local as compared with foreign participation which it accommodates, except perhaps to the extent that the degree of local participation may be a factor taken into account by the Reserve Bank of Australia and the Committee on Foreign Takeovers in implementing government policies from time to time.

2.2 There are no special tax incentives in Australia which directly encourage or discourage foreign investment as such, and certainly there are none which directly favour such investment where the degree of local participation is either more or less than a specified percentage.

Naturally, there are aspects of the tax laws which may favour the establishment of some particular structure rather than another in given cases, but it is probably safe to say that the tax laws have not been framed with the object of encouraging any particular form or forms of foreign investment or joint ventures and that their operation is largely fortuitous in this regard.

With regard to the constitutional framework on this subject:

2.2.1 there are no constitutional rules specifically referring to any different tax or other treatment of different types of foreign investment, and what general principles of constitutional law there are as to the prevention of discrimination as between tax payers would probably militate against such a situation; and

2.2.2 because of the foregoing, the question of offending against tax treaty provisions for the prevention of discrimination as between local and foreign based tax payers does not really arise, or has not so far arisen, as an issue in its own right.

2.3 Because there are no Australian tax incentives specifically designed to favour foreign investment as such, the question of tax sparing devices to preserve the benefit of such incentives in relation to the tax imposed by the foreign investor's country of residence does not really arise.

There are such tax sparing provisions in the tax agreement between Australia and Singapore, but in that case, they are designed to preserve the benefit of certain Singapore tax incentives, and not vice

versa.
There are, of course, reciprocal tax limiting provisions in the various tax treaties — for example, in relation to dividends and interest payments — but these generally have the effect of limiting the amount of tax imposed by the country of source and thus favouring the revenue of whichever happens to be the capital exporting country.
The domestic Australian tax laws do not contain any tax sparing provisions protecting the benefit of what might happen to be a relatively low rate of Australian tax in certain cases against the inroads of higher taxes in the investor's country of residence.

2.4 The Australian income tax laws do contain incentives in favour of certain industries — for example, mining, afforestation and rural development etc. — although none of these incentives is specifically designed to either encourage or discourage foreign investment or participation as such. To a more limited extent, some incentives of the same general type are also contained in other tax laws, such as death duty and succession taxes and sales taxes.
In terms of tax revenue in Australia, income taxes, which are imposed solely by the federal government, far outweigh any of the other forms of taxation, such as customs and sales taxes, which are also imposed by the federal government, and stamp and death duties and land taxes, which are imposed generally at the state level. Because of this, it is felt desirable to restrict special tax incentives to the area of income tax law so far as economically feasible, thus enabling the other less significant types of tax to be kept simple and relatively inexpensive to collect.

3. TAX TREATMENT OF INCOME EARNED BY THE JOINT VENTURE OR PAID BY IT TO THE FOREIGN PARTICIPANTS

3.1 *Income earned by the joint venture*

3.1.1 The main types of Australian tax which would be relevant to an Australian incorporated joint venture corporation operating in Australia as envisaged would include federal income tax, sales tax and customs tariffs or import duties and also state stamp duties and land tax and local government land rates.

3.1.2 Federal income tax is imposed on the yearly "taxable income" as computed under the Income Tax Assessment Act. For this purpose, the "assessable income" is first calculated; this represents the gross receipts of an income as distinct from a capital nature. Next, "allowable deductions" are calculated; these include all outgoings of a revenue nature incurred in earning the "assessable income", plus certain concessional or incentive type deductions. The "taxable income" is then calculated as being the "assessable income" minus "allowable deductions".
Prima facie, a resident of Australia is taxed on income from all sources, whether in or out of Australia. However, there is an exemption in favour of foreign income which has been taxed in its country of source, unless that country of source happens to be a country with which Australia has a tax treaty, in which case tax credit provisions normally operate instead. A non-resident of Australia is subject to Australian income tax only on income derived from sources in Australia.
A joint venture corporation of the description presently under consideration would be regarded as a resident of Austra-

lia, even if for no other reason than the fact that it is incorporated in Australia.

At the present time (mid 1974), Australian income tax is imposed on the taxable income or profits of corporations at the rate of 47½ percent in the generality of cases.

Australia has a two-tiered income tax system in the case of corporate profits. First, there is tax imposed on the corporation itself, and then the shareholders are separately taxed on the dividends distributed to them, because such dividends must be included by a resident shareholder as part of his normal assessable income for tax purposes. This double taxation is, however, alleviated by a system of tax rebates in the case of inter-company dividends passing from one corporation to another resident corporation.

In the case of dividend and interest payments from an Australian corporation to a non-resident shareholder, a flat withholding tax is imposed, at the rate of 10 percent on interest payments and at the rate of 15 percent on dividends to countries with which Australia has a tax treaty and 30 percent to all other countries.

In the case of a "public" company, which concept includes a subsidiary of a "public" company whether the parent company is an Australian company or an overseas company, there is no obligation for tax purposes requiring profits to be distributed. However, in the case of a "private" company, an additional penal rate of tax is imposed on the company unless in effect a specified proportion, usually about one-half, of the company's profits remaining after primary company tax is distributed through to the ultimate natural person shareholders.

The foregoing is only a brief outline of the income tax system in Australia, and cannot be regarded as necessarily accurate in any particular case. Naturally, the domestic legislation and the provisions of various tax treaties contain numerous and varied qualifications on the foregoing — for example, as to the deemed source of certain types of income, the existence or non-existence of a permanent establishment, and the special treatment of royalties and mining, insurance, international transport and other types of businesses.

Federal sales tax is imposed, in effect at the wholesale level, on a wide range of goods sold within Australia. Federal customs tariffs or import duties are imposed on a wide range of goods imported into Australia. The rates of tax vary considerably, especially in the case of customs tariffs, depending on the type of goods concerned.

State stamp duties are imposed at relatively low rates on a wide range of legal and commercial documents, varying from one state to another. State land tax and local government rates are imposed at relatively low rates on the ownership of land.

3.1.3 The tax treatment of the type of joint venture corporation presently under consideration would not vary from the tax treatment of other domestic corporations, except to the extent implicit in the above description of the income tax system. For example, the income tax on dividend and interest payments to overseas residents differs from the treatment of such payments to Australian resident recipients, but that is so whether the overseas parties represent a controlling interest or an equal interest or only an isolated minority interest in the particular company.

3.1.4 If the foreign equity participation is contributed to the joint venture company by way of capital assets, then such assets

become the property of the joint venture company itself, and as such are not treated for tax depreciation purposes in any different way from any other assets acquired by the joint venture company through whatever means. Obviously, the depreciation treatment of assets can be affected by their method of acquisition, but the fact that they may be contributed by a foreign participant in the company does not per se have any significance for this purpose.

3.1.5 An Australian equity participant in an ex-Australian joint venture corporation corresponding to the type of joint venture corporation under consideration would not be subject to any special tax treatment in Australia by reason of such investment. Such an investor is treated in the same way for tax purposes as any other Australian investor in any other type of overseas corporation.

3.1.6 Although there is no special tax treatment of an Australian investor in an overseas joint venture corporation, the Australian tax incidents of such an investment may nevertheless vary from the tax treatment of an investment in a foreign subsidiary company. This is because a foreign subsidiary company will usually be treated as coming within the definition of "resident of Australia" in the Income Tax Assessment Act which would not normally be the case with a foreign joint venture corporation. Comparable consequences are also likely to arise under the provisions of the various tax treaties. The important point for present purposes, however, is that none of these possible differences in treatment is specifically directed towards the situation of a foreign joint venture corporation as such.

3.2 *Dividends distributed by the joint venture*

3.2.1 Dividends distributed by the type of joint venture corporation presently under consideration to its foreign participants would normally be subject to tax in Australia, in addition to the tax imposed on the joint venture corporation itself. Such tax takes the form of a flat withholding tax on the amount of the dividend, at the rate of 15 percent when the dividend is paid to a resident of a country with which Australia has a tax treaty and at the rate of 30 percent in the case of a dividend paid to a resident of a country with which Australia does not have a tax treaty. The foregoing is subject to certain special exceptions under the domestic income tax law and the provisions of certain tax treaties. The main such exceptions relate to situations where the foreign resident also happens to come within the definition of "resident of Australia" in the Income Tax Assessment Act or "Australian resident" in certain tax treaties, or where the foreign resident happens to have a permanent establishment in Australia and the dividends are effectively connected with that permanent establishment. Where such exceptional situations occur, the general rule is that the particular recipient of the dividend is treated for tax purposes in the same way as a normal Australian resident recipient of the dividend would be treated, subject of course to the effect of the permanent establishment provisions in the various tax treaties.
The foregoing is necessarily a general statement only, as the position on this subject can in fact become quite complicated in particular cases.

3.2.2 The tax treatment of dividends as described above does not vary in any way from the tax treatment of dividends paid

to non-residents by any other types of Australian domestic corporations.

3.2.3 The tax treatment of the joint venture corporation's dividends in the foreign participant's country of residence will of course depend on the tax laws of that particular country. It may also be affected by the provisions of a tax treaty which Australia may have with that particular country, especially if the existence of a permanent establishment is relevant. Except once again for the possible effect of tax treaty provisions in a particular case, the Australian tax treatment of dividends paid by an Australian corporation to a non-resident of Australia is not affected in any way be the fact that those same dividends may also be subject to tax in the recipient's country of residence, whether the recipient is a natural person, a corporation or a parent company etc.

3.2.4 In a case where a dividend distributed by an Australian company to a non-resident of Australia may be taxable in the recipient's country of residence as well as in Australia, there is no unilateral provision in the Australian domestic income tax law to avoid the imposition of such double taxation.

However, in the case where an Australian resident receives a dividend from an ex-Australian corporation, there is provision in the Australian tax law for the Australian recipient to be granted a credit against Australian tax for the amount of tax paid on the dividend in the other country, provided that the Australian recipient was personally liable for that tax under the law of the other country. This last mentioned condition has the effect of denying the tax credit in many cases where the tax in the other country concerned takes the form of a withholding type of tax.

As for tax treaty provisions applicable in the above situations, the general pattern under Australia's international tax agreements is that the tax in the country where the company concerned is a resident is limited to 15 percent of the amount of the dividends, and the recipient's country of residence is obliged to give a tax credit for the amount of that tax. This is, of course, subject to exceptions in special cases, such as where dual residents are involved or where the recipient of the dividend maintains in the other country a permanent establishment with which the dividend is effectively connected. At present, Australia has six comprehensive international tax agreements in force — with the United Kingdom, the United States, Canada, New Zealand, Singapore and Japan — and two limited agreements — with France and Italy, dealing solely with international air transport operations. A comprehensive agreement has also been entered into with West Germany, but has not as yet been given the force of law in Australia. Naturally, the detailed provisions relating to dividends do vary from one agreement to another, but the general effect for present purposes is the same in all of the six comprehensive agreements. It should be noted that, in the case of some of these tax agreements, there are provisions for the allowance of a credit not only in respect of the amount of tax on the dividend itself, but also in respect of a proportionate party of the tax imposed on the underlying profits out of which the dividend is paid.

It should also be noted that, in many cases, an Australian resident corporation which receives a dividend from an overseas corporation will in effect not be liable for Australian tax on that dividend in any event, because of the rebate provisions applicable to inter-company dividends as

briefly referred to in item 3.1.2 above.
There are no provisions relating specifically to dividends paid by or received from a joint venture corporation as distinct from any other type of corporation.

3.2.5 The Australian domestic tax laws do not contain any tax sparing provisions designed to preserve the benefit of special tax incentives which may be available in some other country. Tax sparing provisions of this nature are contained in one only of Australia's international tax treaties — that with Singapore. However, in that case, the provisions do not relate to dividends, but only to interest and royalties.

3.3 *Interest and similar fixed amounts payable by the joint venture*

3.3.1 Interest payable on borrowings by the type of joint venture corporation presently under consideration would, in almost all cases, be treated as an allowable deduction in computing the taxable income of the joint venture corporation for Australian tax purposes. The main prerequisite to be satisfied for such deduction is in section 51 of the Income Tax Assessment Act, which lays down the general rule for deduction of all types of business expenses, and which states that "... All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.".

3.3.2 The tax deductibility of interest is not affected by the proportion of equity and loan capital in the particular corporation.
There are no Australian provisions relating to the tax deductibility of interest as such under which interest paid by a wholly owned subsidiary of a foreign corporation could be treated differently from interest paid by any other local corporation. There is, however, a general provision relating to Australian businesses controlled abroad, under which the income tax authorities have a discretion to assess income tax without strict regard to the individual transactions of the Australian business if they feel that these transactions are being manipulated in such a way as to avoid Australian tax. These provisions are somewhat similar in principle to corresponding provisions commonly found in international tax agreements, they do not relate specifically to interest payments as such nor to the deductibility or assessability of any other specific type of transaction, and they are probably not very frequently invoked.

3.3.3 Interest paid by the type of joint venture corporation presently under consideration is normally subject to Australian income tax. If the interest is received by another resident of Australia, then it generally has to be included by that resident in his assessable income for Australian tax purposes.
If the interest is paid to a non-resident of Australia, then in the usual case, it will be subjected to Australian withholding tax. This withholding tax on interest operates in a similar way to the withholding tax on dividends, except that the rate of withholding tax on interest is 10 percent of the amount of the interest. Once again, there are exceptions to the general rule, particularly where the overseas recipient also happens to fall within the definition of a

"resident of Australia", or where the non-resident recipient has a permanent establishment in Australia and the interest receipt is effectively connected with that permanent establishment.

One class of exceptions to the general rule is perhaps worth special mention. These are exemptions available from the liability for interest withholding tax broadly in cases where the overseas borrowing is used to support Australian ownership of or substantial participation in Australian enterprises. These exemptions are available subject to the obtaining of an appropriate certificate of exemption from the Australian tax authorities, who must have regard to certain guidelines contained in the income tax legislation when granting such certificates.

In broad substance, the main such guidelines for exemption require that the borrower and user of the funds concerned must be an Australian entity as defined, the loan must not exceed an amount appropriate to the degree of Australian participation in the enterprise, and the loan funds must be used for a "qualifying use", which means in effect, for the purposes of an enterprise which is either wholly or substantially owned by an Australian entity as defined. The degree of substantial Australian participation required in connection with the above guidelines varies between 20 percent and 40 percent depending on the number of entities owning or participating in the enterprise in question. The tax regime in the case of bearer debentures issued outside of Australia for funding activities in Australia is somewhat different again, but there is provision for a type of withholding tax and for exemptions broadly corresponding to those mentioned above.

Obviously, these exemption provisions can be of primary importance in the context of joint ventures, and careful consideration of the details of the provisions is required in designing any joint venture vehicle to operate in Australia. The provisions themselves are lengthy and complex, and it is beyond the scope of the present study to explain them in detail.

3.3.4 Whether or not the interest payable in the above type of situation will be taxable in the foreign recipient's country of residence will of course depend upon the tax laws of that particular country.

3.3.5 If the interest is taxed in the foreign recipient's country of residence as well as being subjected to withholding tax in Australia in the type of situation under consideration, then there is no unilateral provision in the Australian domestic tax law to avoid this double taxation. If the situation is reversed, and a resident of Australia is receiving interest from a comparable foreign source in a country with which Australia does not have a tax treaty, then the interest will normally be completely exempt from Australian tax if tax has been paid on it in the foreign country of source; compare this system with dividends, where a rather restrictive tax credit system is used instead of exemption — see item 3.2.4 above.

Reverting to the original situation, where there could be tax on the interest in the foreign recipient's country of residence as well as Australian withholding tax on the interest, it should be noted that, even where the foreign recipient's country of residence has a system of tax credits generally for such situations, the tax credit may not always be available to the foreign recipient. This is because such tax credits are normally allowed only in respect of tax

imposed by the country of source of the interest, and the situations in which Australian withholding tax on interest can be applicable are not always cases in which another country will treat the interest in question as having an Australian source. For example, the general rule is that Australia imposes withholding tax on interest derived by non-residents which is paid either by a resident of Australia to a non-resident or by one non-resident to another — in the former case to the extent that the interest is not an outgoing incurred by the resident in carrying on business outside of Australia through a permanent establishment there, and in the latter case, to the extent that the interest is an outgoing incurred by the non-resident in carrying on business in Australia through a permanent establishment in Australia. This rule does not necessarily, of course, correspond with the general rules for determining the source of interest payments, under which factors such as the place of documentation of the loan and the place and currency of repayment of principal and payment of interest are taken into account.

Australia's various comprehensive tax treaties do contain provisions against double taxation, including double taxation of interest payments. In the case of the four modern style agreements — those with United Kingdom, New Zealand, Singapore and Japan — these provisions are similar in general principle to the provisions relating to dividends. In other words, there are reciprocal provisions under which the tax imposed in the country of source in respect of interest paid to a resident of the other country is limited to a rate of 10 percent of the amount of the interest, and there are then provisions for a tax credit to be given in the country of residence of the recipient. Once again, of course, there can be exceptions in the case of dual residents and income receipts effectively connected with permanent establishments etc. In the case of Australia's two older style tax agreements — those with the United States and Canada — there are no reciprocal tax limiting provisions applicable to the country of source of the interest, but there are reciprocal tax credit provisions. However, it should be noted that the abovementioned problem of double taxation which can arise where there is conflict between the laws of Australia and the laws of the other country concerned as to the source of interest payments is not really solved by the credit provisions in Australia's two older style tax agreements, although it is effectively solved for most purposes by the tax credit provisions in the four modern style agreements.

It should also be noted that, under the general rule contained in the Income Tax Assessment Act as already referred to above, interest payments received by a resident of Australia from sources outside of Australia which have been subjected to tax in the country of source are exempt from further tax in Australia. This general exemption rule continues to have effect in cases where the United States and Canadian tax treaties may be applicable. However, in cases where the provisions of the four modern style tax agreements limiting the amount of tax in the country of source of the interest are applicable, this general exemption rule in Australia is superseded by section 12 of Australia's federal Income Tax (International Agreements) Act, and a tax credit is allowed instead.

There are no special provisions applicable in Australia to interest payments received from a foreign joint venture corporation as distinct from any other type of foreign source.

3.3.6 The only example of a tax sparing provision applicable to preserve the benefits of a special tax incentive available in some other country is, as already mentioned above, under Australia's tax treaty with Singapore. Under article 18 of that treaty, there are tax sparing provisions to preserve the benefit of certain Singapore tax incentives granted in respect of interest and royalties under Singapore's Economic Expansion Incentives (Relief from Income Tax) Act.

3.4 *Royalties and similar payments mady by the joint venture*

3.4.1 The tax treatment of royalties can vary according to the three broad categories of royalties — namely, industrial royalties, mining royalties and cultural royalties. Under Australian domestic tax law, there are quite complicated provisions for determining the source or deemed source of royalties, but it is not possible to examine these rules in detail in the present context. It should be noted, however, that these special source rules can lead to double taxation in certain cases where the particular royalty might be treated as having a source in both Australia and in some other country concerned under the respective tax laws, and this situation can arise even where a tax treaty is involved.

As a general rule, royalties of all kinds paid by a joint venture corporation in the type of situation presently under consideration would be treated as allowable deductions in computing its taxable income for Australian tax purposes, subject mainly to such royalties constituting an outgoing of a revenue nature, as distinct from a capital nature, in accordance with the provisions of section 51 of the Income Tax Assessment Act as quoted in item 3.3.1 above.

3.4.2 The provisions governing the tax deductibility of royalty payments are not affected merely by the fact that the payer of the royalty may be a wholly owned subsidiary of a foreign corporation as distinct from a joint venture company or any other type of payer, unless of course the general provisions relating to Australian businesses controlled abroad, as referred to in item 3.3.2 above, come into force in a particular case.

3.4.3 Under Australian domestic tax law, royalty payments by the type of joint venture corporation under consideration to a non-resident of Australia would normally be subject to Australian tax. Moreover, this tax is not a withholding type of tax as in the case of dividends and interest, but the royalty is treated more or less like any other type of income derived from sources in Australia. The taxability of the royalty would be dependent on its having a source or deemed source in Australia, but the domestic rules as to source of royalties are such as to give a deemed Australian source even to some types of royalties which might not normally be regarded as having an Australian source.

The position can vary somewhat from the above where a tax treaty is applicable. For example, under Australia's four modern style tax agreements, there are reciprocal provisions limiting the amount of tax in the country of source of the royalty to 10 percent of the amount of the royalty, except in the case of the agreement with New Zealand where the limit is 15 percent of the amount of the royalty. The foregoing treaty provisions apply to most types of royalties, except for mining type royalties, although the scope is somewhat narrower in the agreement with Singapore than in the other three modern agreements. These

tax limiting provisions generally do not apply in cases where, for example, the royalty is effectively connected with a permanent establishment in the country of source.

The royalty provisions in the older style tax agreements with the United States and Canada are much narrower than the above, and they have the general effect of requiring taxation only in the country of residence of the recipient in cases of most types of cultural royalties. In cases not covered by the above special royalty provisions, the particular royalty may come within the definition of "industrial or commercial profits" — for example, as in the agreement with United Kingdom, in which case it will be subject to Australian tax if it is also effectively connected with a permanent establishment of the non-resident in Australia, but generally not otherwise. The Japanese agreement is similar in this respect to the United Kingdom agreement. In the older agreements with the United States and Canada, royalties are specifically excluded from the definition of "industrial or commercial profits", and thus, apart from the special provisions mentioned above in relation to certain cultural royalties, their taxation falls to be determined normally under the domestic laws of each country concerned.

As can be seen from the above, the position regarding royalties is nowhere near as uniform as it is in relation to dividends and interest, and it would be fair to say that there are many anomalies and some instances of double taxation inherent in the existing provisions. Because of this, it is not possible in the present context to give an accurate detailed description of the position, and in practice it is necessary to look closely at each particular case.

3.4.4 The question of taxability of the royalty receipts in the foreign participant's country of residence will of course depend upon the domestic tax laws of that particular country.

3.4.5 In a case where the royalty payment in the type of joint venture situation presently under consideration may be subject to tax in the foreign participant's country of residence as well as in Australia, there are no provisions in the domestic tax laws of Australia to alleviate such double taxation.

However, where one of Australia's comprehensive tax treaties is applicable, the general tax credit provisions in those treaties will normally avoid the incidence of double taxation, but there are nevertheless significant examples where this relief from double taxation is not available, particularly in the case of the older style treaties with United States and Canada, where there is some lack of effective provisions for resolving conflicts as to the proper source of royalties.

There are no special measures applicable in relation to foreign joint venture corporations as such when compared with royalties received from any other type of foreign source, although perhaps this should be qualified by mentioning that there are "special relationship" provisions applicable in relation to royalties under some of Australia's tax treaties, whereby the actual amount of a royalty can be adjusted to a reasonable arm's length basis for tax purposes where there is some special relationship between the payer and the payee of the royalty.

3.4.6 As mentioned above, there are no special tax sparing provisions in the Australian domestic tax law to preserve the

benefit of special tax incentives which may be available in some other country. However, as also mentioned above, there is one specific example of such a tax sparing provision in Australia's tax treaty with Singapore — namely, a provision applicable in relation to interest and royalties to preserve the benefit of certain tax incentives under Singapore's Economic Expansion Incentives (Relief from Income Tax) Act.

SUMMARY

1. *Definitional concepts*

The Australian legal system and commercial practice are along similar lines to the United Kingdom and United States.

The Australian constitutional system is a federation, with the federal government having powers relating to national economic management, but with the constituent states having powers relating to the formation and conduct of business corporations.

Business corporations are of the traditional type, having separate legal personality etc. They are controlled by shareholders and managed by a board of directors.

2. *Tax incentives*

Foreign investment in Australia tends to be controlled by federal government policies from time to time, rather than by specific laws. These policies are implemented through the application of wide discretionary powers given to various federal government agencies, particularly in the areas of exchange controls and control of foreign takeovers of existing Australian businesses.

Australia does not have a system of special tax incentives or disincentives relating to foreign investment as such, and certainly no such tax provisions specifically directed towards the degrees of local and foreign participation in Australian joint ventures.

Because of this, there are also no specific tax sparing provisions designed to preserve the benefit of local incentives. The only instance of special tax sparing provisions is in the Australia/Singapore tax treaty, there designed to preserve the benefit of certain Singapore tax incentives in respect of royalties and interest payments.

There are tax incentive provisions, relating to mining, afforestation and rural development etc., but these are not reserved exclusively for either foreign or local investment. For most practical purposes, these incentives are confined to the area of income taxes, which constitute the most significant form of taxation in Australia.

3. *Tax treatment of income earned by the joint venture or paid by it to the foreign participants*

3.1 Income earned by the joint venture

The main types of Australian taxes for present purposes are federal income tax, sales tax and customs tariffs and state stamp duty, land tax and local government land rates.

Federal income tax is generally imposed on the yearly taxable income, which is in effect gross revenue receipts minus gross revenue outgoings. Prima facie, a resident of Australia is taxed on worldwide income, but has a tax exemption for most types of foreign income which has been taxed in the country of source. A non-resident is taxed basically only on Australian source income. In the case of corporations, the tax is imposed on dividends paid to shareholders as well as on the profits of the corporation itself, but there are rebates in respect of inter-company dividends received by a resident company. In the case of non-resident recipients, a flat withholding tax is generally imposed on dividend and interest payments.

There is no special income tax treatment of a joint venture corporation as distinct from any other type of corporation, nor of an investor in such a corporation as distinct from any other type of investor.

3.2 Dividends distributed by the joint venture

Dividends distributed by the Australian joint venture corporation to a foreign participant would normally be subject to a withholding tax, at the rate of 15% for tax treaty countries and 30% for other countries. There are exceptions relating to dual residents and permanent establishment situations etc.

The tax treatment does not vary in any way merely because a joint venture corporation may be involved.

In a case of double taxation, there are no relief provisions in the Australian domestic tax law, but in the reverse case, there are tax credit provisions for an Australian resident receiving dividends from a foreign source. However, where a tax treaty is involved, the general pattern is for there to be a tax limiting provision applicable to the country of source of the dividend, with the country of residence being required to give a tax credit.

At present, Australia has six comprehensive tax treaties, comprising modern style treaties with the United Kingdom, New Zealand, Singapore and Japan, and older style treaties with the United States and Canada.

3.3 Interest and similar fixed amounts payable by the joint venture

Interest payable on borrowings by the joint venture corporation would normally be allowable deductions for Australian income tax purposes, and this is not affected in any way by the relative proportions of equity and loan capital. There is no differentiation for this purpose between joint venture corporations and wholly owned subsidiaries, except possibly under general discretionary tax adjustment provisions relating to Australian businesses controlled abroad.

Interest paid by the joint venture corporation to a non-resident participant would normally be subject to Australian withholding tax at the rate of 10%. Once again, there are exceptions relating to permanent establishment situations etc. Cases of double taxation can occur, particularly because Australian withholding tax is applied in some situations where another country might not regard the interest as having a source in Australia. The Australian domestic tax law does not contain any unilateral relief provisions for these cases, although in the reverse situation, an Australian resident receiving interest payments from a foreign source will normally be exempt from tax on those payments in Australia provided they have suffered tax in the country of source.

Australia's four modern style tax treaties contain tax limiting and tax credit provisions relating to interest similar in principle to those relating to dividends as described above. The two older style tax treaties do not contain the same type of tax limiting provisions, but they do contain relevant tax credit provisions. Nevertheless, these tax credit provisions do not solve all the conflicts as to source of interest.

Australia's only specific tax sparing provision is in the Australia/Singapore tax treaty, where it is designed to preserve the benefit of certain Singapore tax incentives in respect of interest and royalty payments.

3.4 Royalties and similar payments made by the joint venture

The tax treatment of royalties can vary according to whether they are of the industrial or mining or cultural type.

Australia has special provisions as to the source or deemed source of royalties, which can sometimes lead to cases of double taxation where there is conflict with the tax laws of another country as to the proper source.

As a general rule, royalties of all kinds payable by the Australian joint venture corporation would be allowable deductions for Australian tax purposes, provided they are of a revenue and not a capital nature. There is generally no distinction for this purpose between joint venture corporations and wholly owned subsidiaries etc., except possibly under the provisions relating to Australian businesses controlled abroad as mentioned above.

Royalties paid by the joint venture corporation to a foreign participant would normally be subject to ordinary Australian tax as distinct from a withholding type tax.

Under Australia's four modern style tax agreements, there are reciprocal tax limiting and tax credit provisions applicable in respect of most types of royalties except mining royalties. There are exceptions in the case of permanent establishment situations etc. The two older style tax treaties have much narrower provisions relating to royalties.

Even where tax treaty provisions are applicable, instances of double taxation can still occur, because of gaps in the rules for resolving source conflicts.

Royalties paid by a joint venture corporation are not treated differently from royalties paid from any other source, except that some of the tax treaties contain "special relationship" provisions which could be applicable in a joint venture situation.

As already mentioned, there are no tax sparing provisions, except for those in the Australia/Singapore tax treaty designed to preserve the benefit of certain Singapore incentives in relation to royalties and interest payments.

ADDENDUM

Since initial preparation of this report, the Australian federal government's budget for 1974-1975 has been announced. It contains proposals which are relevant to some matters dealt with in this report.

Perhaps the most significant such proposal is the introduction of a capital gains tax very similar in character to the Canadian capital gains tax system. There are also proposals for amendment of some of the existing tax incentives applicable to such areas as the mining industry, mainly by way of reduction of these incentives.

B. H. BLANKSON: *

GHANA: TAX CONSEQUENCES OF DOMESTIC AND FOREIGN INTERESTS ESTABLISHING CORPORATIONS AS VEHICLES FOR JOINT VENTURES**

I. INTRODUCTION

In a developing country it is necessary to encourage investment from both domestic and foreign sources. The form of encouragement used to attract investment will primarily depend upon the natural resources or raw materials available and the economic infrastructure of the developing country in question.

The present trend of developing economies in both industrial and less developed countries has been geared towards the interdependence of the advances being made in the technological and scientific fields. The tendency of "go-it-alone" is giving way to a meaningful dialogue between the advanced and semi-advanced countries, for instance, the advanced countries give the benefit of a rich experience acquired over the years in applying scientific methods to the management of agriculture, and the primarily agriculturally oriented countries of the third world supply the basic tools which are necessary for research and development. This situation lends itself to domestic and foreign interests establishing joint ventures.

Although there may exist a favourable investment climate in many developing countries there are factors which may militate against the establishment of joint ventures.

Constant changes in the tax laws, exchange control restrictions and an unstable political atmosphere are a few of the disturbing factors for prospective investors.

Nevertheless, international co-operation and the various groupings on the international scene, and free exchange of information amongst states tend to eliminate the fears which once prevailed.

The independence achieved by many previously dependent states and the desire of their governments to achieve international recognition and to openly volunteer information about the natural resources to be tapped for the benefit of mankind tend to encourage domestic and foreign interest to establish joint ventures. Attempts have been made by various governments to reduce the fiscal obstacles which stand in the way of the establishment of such ventures. In Ghana, for example, there are various incentives and inducements to foreign investors to invest in Ghana in joint ventures or otherwise. As will be spelled out in more detail in the following, these take the form of tax measures such as

1. Tax holidays
2. Capital allowances
3. Employment tax credits
4. Indirect tax benefits; and
5. Double taxation relief.

There are non-tax measures as well, such as guarantees for the repatriation of ori-

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ginal capital and for the transfer of dividends.
The encouragement, by tax measures and otherwise, of domestic and foreign interests to engage in joint ventures is subject to influences of both a positive and a negative kind.

Positive ones may be listed as follows:
1. There is a growing awareness that the survival of mankind requires people and countries to move together in accordance with a common policy and with unity of purpose on the basis of equal rights for all.
2. Regional, continental and international associations have emerged all with the common aim of harmonising tax systems and disseminating information among member states.
3. In many countries obnoxious and discriminatory national tax laws are being eliminated.
4. Steps are being taken on the international level to eliminate over/under invoicing of cost of raw materials, semi-processed goods, and finished commodities.
5. The knowledge of tax-experts is being utilised by governments and international organisations for the benefit of both domestic and foreign interests.
6. As various governments use tax policies to regulate economic activity the effectiveness of such policies can be measured by the economic growth generated by tax induced active participation of domestic and foreign investors.

The negative influences may be listed as follows:
1. The diversity and complexity of non-tax policies pursued by various national and international authorities, sometimes act as a barrier to any meaningful negotiation to achieve development goals by the use of tax measures.
2. Certain states take an indifferent attitude to the use of more advanced technology to promote local or national interests.
3. There is genuine fear that groupings with common ties or loyalties may usurp the supra-national powers given to international organisations; language and cultural barriers also impede communications.
4. Some governments are reluctant to accept such supra-national controls and procedures necessary to implement common and harmonised tax policies adopted by such international bodies.

It would seem that the positive factors, working in favour of using tax measures to generate investment from both domestic and foreign sources outweigh the negative ones. An abundance of national resources, viz. raw materials, technical know-how, administrative expertise, and monetary reserves may sometimes tend to cloud the thinking of certain governments and lead to a narrow approach to international issues. The present economic trend however, supports the view that no single nation can be self-sufficient and complacent about its achievements and successes, they all must look to the future and involve themselves with the international community. In this respect, it can be said that Ghana has not lagged behind in the search for positive partnership. In the field of agriculture, manufacturing and industrial organisations, Ghana has made use of tax incentives to encourage both domestic and foreign resources to establish enterprises, among them joint ventures. The policy of the Government is realistic as far as granting tax concessions and incentives is concern-

ed. Typical examples of joint ventures established withing this framework, usually on the basis of special agreements, are the mighty Volta dam at Akosombo, the oil refinery at Tema, and the bauxite mine at Kibi, just to mention three important ones.

II. TREATMENT OF TAX ON INCOME FROM JOINT VENTURES

Tax is imposed on all profits after the deduction of allowable items. In so far joint ventures are not corporations, the tax regime will be the one applicable to partnerships, the partners being separately taxable each on his share of the partnership profits. Individual partners will thus pay tax at rates of between 5% and 70% of assessable income. However, a non-resident's contribution shall not be less than 30% of the taxable income.

Corporate partners pay at the company tax rate. For corporations licensed under the Customs and Excise Decree, 1972, (mining, manufacturing or agricultural companies) the rate of tax is 50%, whilst all other corporations attract a tax rate of 55%. A special, lower rate is applied to small Ghanaian owned companies (see below).

If a non-resident person carries on a trade, business, profession or vocation in Ghana, part of the operations of which are carried on outside Ghana, the full gains or profits of that trade, business, profession or vacation shall be deemed to be derived from Ghana. Provided that:

(a) a person shall not be deemed to be carrying on a trade, business, profession or vocation in Ghana by reason of a mere supply of goods or services to Ghana if his activities are carried on entirely outside Ghana;

(b) in the case of a company operating in Ghana which is a branch or subsidiary or associated company of a non-resident company, the profits shall not be less than the proportion to the total consolidated profit of the whole group of the associated companies which the turnover of that company bears to the total consolidated turnover of the group of associated companies.

Income from farms becomes liable to tax after five years. In other words, farms are exempt from the payment of income tax during a five year period from the date of their establishment. Furthermore, any losses incurred in the first five years can be carried forward.

There are certain sectors of the economy reserved for Ghanaians under the Ghanaian Business (Promotion) Act, 1970. Paragraphs 12 and 13 provide that no person other than a Ghanaian shall on or after the 30th day of June, 1971 own or be part owner of any enterprise engaged in any of the following:

(a) overseas business representation,
(b) taxi services,
(c) the sale under hire-purchase contract of taxis or vehicles intended to be used in the operation of a taxi service,
(d) commercial transportation by land,
(e) bakery,
(f) printing other than printing textiles,
(g) beauty culture,
(h) produce brokerage,
(i) advertising and publicity, and
(j) manufacture of cement blocks for sale.

The income of companies wholly owned by Ghanaians whose turnover does not exceed ¢ 200,000 will during the first five years from the date of their establishment be liable to tax as follows:

Income		
First ¢ 5,000		30%
Next ¢ 5,000		35%
Next ¢ 10,000		45%
Next ¢ 20,000	(licensed under Excise) (Ordinance 1953 No. 31)	50%
Next ¢ 20,000	(Ordinance 1953 No. 31)	55%
Over ¢ 60,000	(depending on category)	50 or 55%

If actual profits are lower than 2½% of the turnover of a corporation or 2% of the turnover of a sole trader or a partnership, a minimum income of 2½% or 2% of turnover is assessed as taxable. Manufacturing and industrial corporations established under the Capital Investments Decree, 1973 are exempt from this provision.

III. TAX ON DIVIDENDS

The rule applied to dividends distributed by Ghanaian companies provides for an imputation of tax paid by the company against the income tax on the grossed up dividends accruing to the shareholders, i.e. basically the pre-1965 U.K. system. For corporate shareholders this implies that no additional tax falls due on the distribution of a dividend, nor will there be a refund.

IV. TAX ON INTEREST, RENTS, ROYALTIES ETC.

The Income Tax Decree, 1966 provides for the deduction of tax at source from certain specified income namely, interest, rent, royalties, etc. paid to non-residents. Such income may be wholly or partially exempt from tax by reason of double taxation agreements or special arrangements affording relief from double taxation.

The payment of interest, rent, royalties, etc. is allowed in full as a charge against taxable business profits.

V. TAX INCENTIVES

(a) *Tax holiday for certain new businesses*

The Capital Investment Decree, 1973 was enacted to encourage investment of foreign capital in new businesses in Ghana. Among the benefits provided in that Act is a "Tax Holiday" for a period of between one and five years. The length of the period of the "Tax Holiday" is determined at the time approval is granted by the Capital Investments Board set up under the Decree. With respect to losses during the tax holiday period, only those referring to capital allowances may be carried forward.

(b) *Investment allowance*

Where the Commissioner is satisfied that any industrial establishment has in its basis period incurred any capital expenditure in the acquisition of any plant or machinery wholly and exclusively for the purposes of the industry carried on by such establishment, the Commissioner shall, in addition to any other capital allowances granted, grant to such establishment an investment allowance equal to five per cent of the expenditure so incurred.

(c) *Sinking Fund Allowance*

The Sinking Fund Allowance is additional to other capital allowances and, in the official view, is not to be deducted in determining the residual basis on which subsequent annual and balancing allowances are to be computed. Like the investment allowance, therefore, it is given in addition to the net cost of the asset which is

allowed in full as initial, annual and balancing allowances.
This allowance is given only to companies and consists of 10% of the qualifying expenditure. It is allowed each year provided the Commissioner is satisfied that the following conditions are satisfied:
(a) An amount of money has been set aside by the company to form a sinking fund for the replacement of plant, machinery or fixtures, buildings, structures or works of a permanent nature or the assets of mines, oil wells or mineral deposits;
(b) A separate bank account in Ghana has been opened by the company for the sinking fund; and
(c) A sum of money has been paid into that account in the year of assessment amounting to not less than the total of the capital allowances for that year and the sinking fund allowance.

(d) *Employment tax credit*
Notwithstanding the provisions of any other enactment the Board may, in order to stimulate investment in labour-intensive industries, grant to a company approved under the Decree, an employment tax credit for a period not exceeding ten years from such date as the Board may determine.

(e) *Deduction for scientific research*
In determining the chargeable income of a person who has incurred capital expenditure on scientific research for the purposes of the development or advancement of an approved project, there shall be deducted from that income, if the Board so decides, every year for four years, beginning with the year in which he incurred the said expenditure, an amount equal to twenty-five percent of such expenditure, this is *not* in addition to the capital allowances granted under the Decree (provided that no deductions shall be made for expenditure invested in property in respect of which capital allowances are granted).

(f) *Exemption from indirect taxes and charges*
(1) An approved project may be granted any or all of the following benefits, namely,
(a) up to one hundred percent exemption from import and customs duties under the Customs and Excise Decree, 1972 (N.R.C.D. 114) and purchase tax under the Purchase Tax Act, 1961 (Act 67), for imported goods which are essential for the implementation and operation of the project and which cannot within a reasonable period be produced in sufficient quantities in Ghana: in any such case the exempted goods shall not be sold unless the corresponding duties are previously paid;
(b) up to one hundred percent exemption from export or excise duties under the Customs and Excise Decree, 1972 (N.R.C.D. 114) and sales tax under the Sales Tax Act, 1965 (Act 257), on goods produced by the approved project (provided that the goods exempted from export or excise duties are cleared through Customs).
(2) Any exemption granted shall be for a period not exceeding ten years.
(3) An exemption under (a) above shall only be granted after guarantees have been given to the satisfaction of the Comptroller of Customs and Excise that the exempted goods shall be used for purposes of the approved project.

(g) *Double taxation reliefs*
With the present high rates of tax in most countries, double taxation can be a cause of hardship to the individual and a severe

deterrent to international investment. Ghana has agreements for the avoidance of double taxation with the United Kingdom, the Gambia, Nigeria, Sierra Leone, Sweden and Denmark.

CONCLUSION

In conclusion, while evidently interested in developing domestic enterprises, Ghana encourages the fruitful participation of foreign investors in its economic development, and welcomes joint ventures at the moment. Ghana is actively involved in renegotiating the existing Double Taxation Agreements. The outcome may further favour investment. The prime intention is to encourage foreign participation in domestic enterprises.

L. P. DICKS *:

INQUIRY INTO PERSONAL INCOME TAX STRUCTURE IN PAPUA NEW GUINEA

SYNOPSIS

The Papua New Guinea Government is committed to economic growth through Government spending, to the achievement of a more equitable distribution of income, and to "the maximum practical progress towards financial self-reliance". 1 *It has recognised the necessity for using tax changes to meet these commitments by the appointment of the Committee of Inquiry on Taxable Capacity and Taxation Measures (Port Moresby, 1971).*

It will be argued here that the present system of direct taxation which may have been suited to pre-independence conditions and objectives is now outdated given the growth and equity objectives of the present Government. An analysis of the present system of personal income taxation shows it to be regressive over certain income ranges and geared in terms of progressivity to income levels many times higher than those generally prevailing in the indigenous sector of the Papua New Guinea economy.

The existing tax structure could be modified to allow the Government to raise much more revenue from the taxation of personal incomes and at the same time move towards a greater equality of incomes. Such modifications would be likely to have little adverse effect on the supply of effort or investible funds, while at the same time adding little to the costs of collection.

I. BROAD VIEW OF PERSONAL INCOME TAX STRUCTURE IN PAPUA NEW GUINEA

The present structure of personal income taxation has evolved in an ad hoc manner from an income tax/surtax system based on the British/Australian system and designed to tax only those with very high incomes, together with a tax on "chargeable income" (the so-called "mini tax") designed to raise revenue from a lower range of income groups. At present every individual with a chargeable income in excess of $ 416 is liable to pay the mini tax and every individual with a taxable income in excess of $ 208 is liable to pay ordinary tax. The existing tax structure is regressive over certain crucial income ranges and a higher percentage of income is taken from those at the lower and upper income levels. A regressive tax is here interpreted as one where the rate of tax decreases as the size of the tax base increases. The peculair incidence of the tax system can be seen by examining closely Table 1.

Apart from the income ranges to which they apply, the income tax and mini tax systems differ from each other in two major areas. Firstly, the mini tax is a function of income only whereas the income tax is primarily a function of income, marital status and familiy size. Income tax is also a function of the size of life insurance

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1. The Development Programme Reviewed. Port Moresby. P.N.G., 1971, p. 3.

payments, leave fares, medical and education expenses, all of which can be written off against the tax liability. As it is the higher income groups who tend to incur such expenses, these allowances have a regressive effect on the incidence of the income tax system.

When the combined impact to the uncoordinated growth of the two interdependent tax systems is examined, the illogical nature of the present taxation of personal incomes in Papua New Guinea is apparent. Table 1 shows for Papua New Guinea the percentage of personal income taken in tax at income levels up to $ 5000; similar figures for Australia are shown for purposes of comparison of principles involved. Total tax assessments in both Papua New Guinea and Australia are a function not only of income but also of family size. The percentages are presented for both a single man and a married man with one, two, three and four children. From the table it can be seen that in Papua New Guinea taxation of income is regressive:

1) for a married man with one child over the income range of $ 1200—$ 1800
2) for a married man with two children over the income range of $ 1200—$ 2200
3) for a married man with three children over the income range of $ 1200—$ 2400
4) for a married man with four children over the income range of $ 1200—$ 2800

The married man with four children would pay 2% of his income in direct tax if he earned $ 450 per annum, but only 0.9% if his income were $ 2200. This may be compared with the smoothly progressive taxation of a married man with four children in Australia. The main reason for the difference is that in Papua New Guinea the progressive income tax is linked with the mini tax which is not progressive over its range and which is simply paid at a flat rate of $ 20 after an income of $ 1000.

It can be seen from Table 1 that taxation in Papua New Guinea does eventually become progressive at different and higher income levels. However, in Papua New Guinea these high income ranges are of little importance compared with the lower income ranges into which the vast majority of the population fall. The regressive nature of the tax over the lower income ranges is therefore a dominant feature of the existing tax structure, and is inconsistent with stated Government policy.

Although it would seem irrational in itself to link an income tax system which grants allowances against tax liability with a mini tax system which does not, the irrationality is emphasised by the very large allowances granted. These allowances which are listed in Table 2 are, after many years of paternalistic administration, still remarkably similar to the Australian allowances on which they were first based. The effect of using allowances of similar magnitude in Australia and Papua New Guinea can be seen from the two countries' tax collection statistics. In Papua New Guinea in 1970 [2] only 66,306 individuals were subject to income tax. This may be compared with a total wage employment in the monetary sector of the economy in 1970 of 128,585 of which 74,988 were classified as being in the non-primary sector, and with a total population of 2,461,768. The number of individuals paying income tax was therefore only 2.7%

2. 1970 is the last year for which the necessary figures are available.
(a) Compendium of Statistics for Papua New Guinea, Department of External Territories, Canberra, A.C.T., June 1972.
(b) Eleventh Annual Report of the Chief Collector of Taxes, Port Moresby.

of the total population. In Australia under allowances of the same magnitude 41.8% of the population paid income tax in 1969.[3]

The term individuals refers to individual tax assessments which often relate to a family rather than a single person. For both Australia and Papua New Guinea, the percentage of the population caught in the income tax net will therefore be greater than the above individual/total population percentages. The comparisons between Australia and Papua New Guinea will be distorted to the extent that family size of those paying income tax differs between them.

It is not maintained that a similar percentage of the total population should pay income tax in Australia and Papua New Guinea. However, the two percentages do indicate the very different impact which results from a developing country blindly applying a system designed for a developed economy.

Thus, what I have suggested so far is that personal incomes in Papua New Guinea are taxed under two separate and uncoordinated systems, only one of which grants personal allowances which are based on family size. The result is that over the income ranges which are of most relevance to Papua New Guinea there is little progression and some regression in the system. The use, in the income tax system, of allowances based on Australian rather than Papua New Guinea income levels, excludes the bulk of the population (97.3%) from paying any income tax. Thus the potential of personal income taxation for income redistribution is neglected. At the same time a large source of potential Government revenue is only partly exploited.

Before looking at possible improvements in the overall system of personal income taxation, the rationale behind the rates of its component parts will be examined.

II. INCOME TAX ALLOWANCES

In most countries allowances vary over time with economic conditions and the prevailing Government's philosophy on income distribution. This is because there is no rational and clear-cut way of determining allowances.

In a high income economy with no tax similar to the Papua New Guinea mini tax, allowances have the effect of increasing the progressivity of the tax. This is because the lower a taxpayer's income, the greater the percentage reduction in his taxable income brought about by allowance. In Papua New Guinea, where income is also taxed under the mini tax system (which levies increasing absolute amounts of tax up to incomes of $1000 and levies a constant amount in absolute terms thereafter) the allowances have the reverse effect and make the overall income tax structure less progressive by raising the starting point at which the richer section of the community begin paying income tax. The result in Papua New Guinea, as already shown, is an overall system of personal income taxation which is regressive over several income ranges.

If the allowances cannot be justified on grounds of increased progression the only other possible economic grounds are that it is only reasonable to tax an individual once his income has risen above a certain subsistence level. This subsistence level is interpreted in developed countries as something more than simply a level at which

3. 1969 is the last year for which the necessary figures are available. Year Book, Australia, 1971.

an individual can physically survive. Allowances in Papua New Guinea cannot be justified on these grounds as individuals are taxed at income of over $ 416 per annum under the mini tax system and $ 208 per annum under the taxable income system, whereas the allowance for a spouse alone for income tax is $ 460. The argument often used to defend high allowances, that income tax is only designed to catch the income of the rich, could also be used for a highly progressive income tax with low allowances. But high allowances simply imply that high income individuals deserve an income well above that of the average individual *before* they pay any extra tax and before any redistribution of income takes place. In Papua New Guinea's case, this allowance alone is almost six times the country's average per capita income of $ 83.66 [4].

As with personal allowances, there is no single accepted method of allowing for wives and children in arriving at taxable income. The methods which have been adopted vary between the extremes of giving fixed marriage and child allowances and of splitting taxable income among the individuals who comprise a family. Papua New Guinea has adopted the Australian system which is at the former extreme. Marital and child allowances are very similar to those in Australia. Again, it is difficult to see the rationale of giving a child allowance which is three times the average per capita income in Papua New Guinea and an allowance for a spouse which is almost six times the average per capita income. It could possibly be defended on the grounds that it mitigates education costs, but this implies that the tax burden of high groups should be reduced for this purpose while low income groups receive no such concession.

Given the Papua New Guinea environment of extended family arrangements, formal allowances for legal direct dependents lose much of their relevance. If no tax is to be levied in Papua New Guinea on chargeable incomes below $ 416 per annum, it might be most appropriate for no specific allowances (apart from the implicit $ 416 allowance) to be given in Papua New Guinea. One effect of no allowance for families would be that single individuals (who normally save a larger percentage of their income than families) would have a comparatively reduced tax burden. This should lead to an overall increase in saving (voluntary plus forced) in the country.

In this context, it is interesting to note the comments contained in the recent Report on Development Strategies for Papua New Guinea compiled by a team of economic consultants from the Universities of East Anglia, Manchester and Cambridge.

"Regarding rates of tax, the report (Committee of Inquiry) proposed that the present exemption level of $ 416 should be retained but that, allowing for normal phasing-in provisions, the minimum rate that should be applied — even after the wife and children's allowances — should be five percent. We endorse the latter recommendation. Regarding the exemption

4. 1970 is the last year for which the necessary figures are available. Compendium of Statistics for Papua New Guinea. Dept. of External Territories. Canberra. A.C.T. June 1972. The income portion of this statistic is comprised solely of wages, salaries and marketed primary production. It excludes subsistence sector income, non-marketed primary production and any form of business income as it is attempting to arrive at a figure approximating *cash* income per head to be compared with allowances granted. Average per capita income for the *whole* economy is approximately $ 220.

level, we consider there may be strong administrative arguments for raising this *once the commodity withholding taxes and the general consumption tax are in operation*". [5]

However, later in the Report, the consultants express grave reservations concerning the administrative problems of introducing the highly sophisticated VAT at this early stage in Papua New Guinea's development. Thus, it would appear that the consultants, by rejecting the current practicality of the VAT, are in support of a policy of not increasing the present exemption level of $ 416 but advocate raising the minimum tax rate, even after the wife and children's allowance, to five percent. I would fully support any Government action taken to implement this policy and also suggest that a higher rate of progressivity be introduced into the tax rates for both single persons and married persons with dependents and that the former class of taxpayer be given a lower exemption level than the latter. Consideration should also be given to raising the existing differential between the tax rates imposed on single persons and married persons with dependents and to making tax rates totally progressive beyond the proposed minimum rate of five percent by abandoning the two separate and unco-ordinated tax systems. These recommendations are based on the preceding discussion, the information contained in Table 1 and the oft-stated Government objective of achieving the maximum practical progress towards financial self-reliance.

III. INCOME TAX RATES

At present there is a very low progression of tax rates over the income ranges which are of most relevance to the indigenous sector of the Papua New Guinea economy. Over the first $ 1000 of taxable income the rate of tax does not rise above 2.8%. This trend continues over the remaining income ranges for both single and married persons. For example, the tax rate for a single person increases by 1.9% between $ 1000 and $ 2000; by 2.1% between $ 2000 and $ 3000; by 1.9% between $ 3000 and $ 4000; 2.1% between $ 4000 and $ 5000.

This low rate of progression is inconsistent with the Government's objective of income redistribution. However, taking also its growth objectives, it would be defended on the grounds that the extra development resulting from the increased Government expenditure made possible by the greater revenue derived from a more progressive tax rate might be outweighed by the negative effects on growth caused by a reduction in incentives to work and invest. This aspect of the problem will now be briefly discussed.

IV. PROGRESSIVE INCOME TAXATION AND DISINCENTIVES

As income tax is levied not only on the income of employees, but also on the profits of unincorporated businesses, the effect of income tax on the supply of capital and the supply of effort must be examined.

A. *The supply of effort*

The direction of the effect of an increase in taxation on the supply of effort depends on the relative magnitudes of the

5. A Report on Development Strategies for Papua New Guinea. February 1973. p. 35.

income and substitution effects. For the increase to have an adverse effect on the supply of effort the substitution effect must outweigh the income effect. It is argued here that there is little likelihood of either effect being very strong.

Taking first the incentive to work for those already residing in Papua New Guinea, it is the marginal rate of taxation which is the relevant factor. As the real rate of progression and the corresponding marginal rates are low, it is likely that only a very small percentage of employees will have incomes sufficiently high for the tax to have a significant effect in either direction on the supply of effort. Most employees with incomes high enough to subject them to heavier marginal rates of taxation are likely to be in positions where the supply of effort is determined by factors other than income.

For potential employees outside the country who are considering employment in Papua New Guinea, it is the average rather than the marginal rates of tax which are relevant. At present, up to incomes of around $ 10,000 per annum, average Papua New Guinea rates of income tax compare favourably with those in most developed countries. If rates in Papua New Guinea do rise, it is comparatively easy for a company to reduce the tax burden of its expatriate employees by paying low salaries in Papua New Guinea and a large gratuity on the completion of the contract. This latter policy is already operative in certain areas of the public and private sectors of the Papua New Guinea economy. Expatriates working on Government or allied business can always have specific arrangements regarding taxation. In addition it is likely that very few expatriates have more than a vague idea of tax levels until after taking up their position, and even then the impact of the *method* of payment often distorts their usually subjective assessment of the income tax burden.

It is considered that expatriates are unlikely to choose between different developing countries on the grounds that they have different levels of income taxation, but that they are tempted to travel to a country by the vague idea that a country has low tax rates. It is normally very difficult to determine the exact incidence of direct taxation in a country of potential development. The situation is further complicated by indirect tax levels and their effect on the cost of living. Again the potential employee is unlikely to have little more than a vague idea of the cost of living or an outdated list of the cost of a few essential commodities.

B. *The supply of capital*

Even when the possibility of tax shifting is ignored, incentives to invest can never ultimately be a function of high personal income tax rates, as a privately owned firm can always incorporate itself thus ensuring that it never pays more than the ruling rate of company tax. It is unlikely that average income tax rates up to the company tax rate will be sufficient to deter the domestic investment of domestic funds. Most investment from external sources comes via large companies whose investment levels will be affected by the company tax rate rather than the personal rates. *It is therefore likely that personal income tax rates in Papua New Guinea could be made more progressive than at present with little effect on the supply of effort or capital.*

In the context, it is interesting to note the views of the Committee of Inquiry:

"... the development of the country must

provide adequate domestic revenue, *although care must obviously be taken not to make the tax burden so heavy that it discourages the initiative and enterprise on which economic development is based or proves too hard on salary and wage earners*". 6

Later in the report:

"The Committee came to the considered judgement that there is scope to reduce the margin of advantage, by *increasing the effective personal income tax rates over the next few years by an average of about 15 percent without having a significant impact on the recruitment and retention of expatriates.* (This means, for example, that a taxpayer who now pays 10 percent might eventually pay 11.5 percent)". 7

However, the recent Report on Development Strategies for Papua New Guinea states that:

"Despite their own argument, the Committee's report judges that there is scope for increasing effective personal income tax rates by an average of about 15 percent. Given what — by international standards — are the exceptionally low rates of personal income tax on higher incomes, *the Mission believes that this is the least that should be aimed for.* The Mission does not endorse the report's recommendation that 'the rate of tax in the highest bracket of individual income should be limited to about 40 percent' ". 8

The preceding analysis of the likely effect on the supply of effort and capital of raising the progressivity of personal income tax rates in Papua New Guinea would fully support the recommendations of the more recent Report.

A major determinant of the Committee's overcautious approach to raising the progressivity of personal tax rates appears to be its heavy reliance on the proposed value-added tax as a major source of internal revenue.

"The Committee thought that taxes of this kind (value-added taxes) although they sound complicated, are really quite simple to operate. They are in force in a number of European countries. One big advantage is that large amounts of revenue can be raised from a small percentage tax. The tax is fairly easy to police, it does not need complicated bookkeeping, and it does not discriminate against particular forms of production as is usually the case with taxes of a less general characteristic. *The Committee thought that it could be easily adopted for use in Papua New Guinea*". 9

The preceding analysis would again fully support the criticism made in the more recent (East Anglia) Report of these views.

V. CONCLUSIONS

Taxation of personal income in Papua New Guinea takes place under two different systems as a person may be able to pay income tax on either taxable income or chargeable income. The systems are therefore two parts of a single personal income tax structure.

The mini tax is assessed without any allowances being taken into account and reaches a maximum of $ 20 at an income of $ 1000 after which no additional mini

6. Report of Committee of Inquiry on Taxation. September 1971 p. 1.
7. Ibid. p. 26.
8. A Report on Development Strategies for Papua New Guinea. February 1973. p. 35.
9. Report of Committee of Inquiry on Taxation. September 1971. p. 4.

tax is levied. The income tax system grants large allowances based on family size which are deducted in arriving at taxable income. The combined effect of these two unco-ordinated taxes is that personal income taxation is regressive over several income ranges which are, and will continue to be, crucial to the indigenous sector of the Papua New Guinea economy. In other words, the existing tax structure takes a higher percentage of income from those at the lower and upper income levels and a lower percentage of income from those at the middle income levels.

Comments made by Dr. John Guise on the role of indigenous middle classes in helping to build a nation raise the question of whether such a tax structure is in fact a matter of deliberate Government policy.

"Sooner or later this country must learn to look after itself financially.

The importance of a middle class is that people of this type are very careful and thoughtful about political matters. Because they have valuable possessions which they do not wish to lose, they respect law and order and will strongly support a government which is able to keep law and order. Australia has a very strong middle class which has led to one of the most stable governments in the world. Political revolutions just do not happen there. One important result is that people in other countries are happy to invest their money in Australia and this foreign investment has helped greatly to develop the country.

In other countries, which are usually called 'developing' countries, there have been serious political troubles, dictatorships and military takeovers. In most cases there was little, if any, indigenous middle class to act as a steadying influence on the governing powers. Such countries are not attractive places for foreign investment and it is not easy for them to get help in solving their problems". [10]

It is likely that personal income tax rates (for both single persons and married persons with dependents) could be made more progressive and tax allowances significantly reduced or abolished with little effect on the supply of effort or capital. The result would simultaneously be a more equitable distribution of income and a higher level of Government revenue available for development expenditure.

It is also suggested that, given the current impracticality of the VAT, there are sound economic grounds for maintaining the present exemption level of $ 416 but raising the minimum tax rate, even after any wife and children's allowances, to five percent. Further, single persons should begin to pay tax at lower income levels than married persons with dependents. At present in Papua New Guinea, both classes of taxpayer begin to pay tax above $ 416.

Consideration should also be given to raising the existing differential between the tax rates imposed on single persons and married persons with dependents. The current situation in Papua New Guinea is that both classes of taxpayer are subject to a constant rate of two percent over the $ 416—$ 700 income range and the rate differential over the $ 700—$ 5000 range is very marginal.

Finally, it is recommended that Government action be taken to make tax rates totally progressive beyond the proposed minimum rate of five percent by abandoning the two separate and unco-ordinated tax systems in favour of a single unified tax structure.

10. "Co-operatives Help to Build a Nation". Dr. J. Guise. Co-operative Federation of Queensland. Supplement to "Co-ops in the Pacific".

TABLE 1

The percentage of personal income taken in tax at income levels up to $ 5000

	Percentage taken in tax						
	Papua New Guinea					*Australia*	
Income Level $	Single	Married/ 1 child	Married/ 2 children	Married/ 3 children	Married/ 4 children	Single	Married 4 children
0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
50	0.0	0.0	0.0	0.0	0.0	0.0	0.0
100	0.0	0.0	0.0	0.0	0.0	0.0	0.0
150	0.0	0.0	0.0	0.0	0.0	0.0	0.0
200	0.0	0.0	0.0	0.0	0.0	0.0	0.0
250	0.0	0.0	0.0	0.0	0.0	0.0	0.0
300	0.0	0.0	0.0	0.0	0.0	0.0	0.0
350	0.0	0.0	0.0	0.0	0.0	0.0	0.0
400	0.0	0.0	0.0	0.0	0.0	0.0	0.0
450	2.0	2.0	2.0	2.0	2.0	0.0	0.0
500	2.0	2.0	2.0	2.0	2.0	0.0	0.0
550	2.0	2.0	2.0	2.0	2.0	0.0	0.0
600	2.0	2.0	2.0	2.0	2.0	0.0	0.0
650	2.0	2.0	2.0	2.0	2.0	0.0	0.0
700	2.0	2.0	2.0	2.0	2.0	0.0	0.0
750	2.1	2.0	2.0	2.0	2.0	0.0	0.0
800	2.3	2.0	2.0	2.0	2.0	0.0	0.0
850	2.4	2.0	2.0	2.0	2.0	0.0	0.0
900	2.6	2.0	2.0	2.0	2.0	0.0	0.0
950	2.7	2.0	2.0	2.0	2.0	0.0	0.0
1000	2.8	2.0	2.0	2.0	2.0	0.0	0.0

TABLE 1 (continued)

Income Level $	*Papua New Guinea* Single	Married/ 1 child	Married/ 2 children	Married/ 3 children	Married/ 4 children	*Australia* Single	Married 4 children
1200	3.5	1.7	1.7	1.7	1.7	5.0	0.0
1400	4.1	1.4	1.4	1.4	1.4	6.0	0.0
1600	4.5	1.4	1.3	1.3	1.3	6.8	0.0
1800	5.2	1.9	1.1	1.1	1.1	7.5	0.0
2000	5.7	2.4	1.5	1.0	1.0	8.5	0.0
2200	6.1	2.9	1.9	1.2	0.9	9.1	0.0
2400	6.5	3.4	2.4	1.6	1.0	9.8	2.3
2600	7.0	3.9	2.9	2.1	1.3	10.6	3.0
2800	7.4	4.4	3.4	2.5	1.8	11.3	3.6
3000	7.8	4.8	3.9	3.0	2.2	11.9	4.3
3200	8.1	5.2	4.3	3.4	2.6	12.7	5.0
3400	8.6	5.7	4.7	3.8	3.1	12.8	5.7
3600	8.9	6.1	5.1	4.2	3.5	13.0	6.3
3800	9.3	6.4	5.5	4.6	3.8	13.4	7.0
4000	9.7	6.8	5.9	5.1	4.2	13.9	7.6
4200	10.1	7.2	6.3	5.4	4.6	14.3	8.2
4400	10.6	7.6	6.7	5.7	5.0	15.0	8.9
4600	11.0	8.0	7.1	6.2	5.4	15.5	9.3
4800	11.3	8.4	7.4	6.6	5.7	16.1	9.6
5000	11.8	8.8	7.8	6.9	6.1	16.8	10.0

The table ignores all considerations other than marital status and number of children.

TABLE 2

Income tax allowances in Papua New Guinea and Australia

	Papua New Guinea	*Australia*
Single	Nil	Nil
Married	$ 460	$ 364
Child 1	$ 260	$ 260
Child 2	$ 260	$ 208
Child 3	$ 260	$ 208
Child 4	$ 260	$ 208

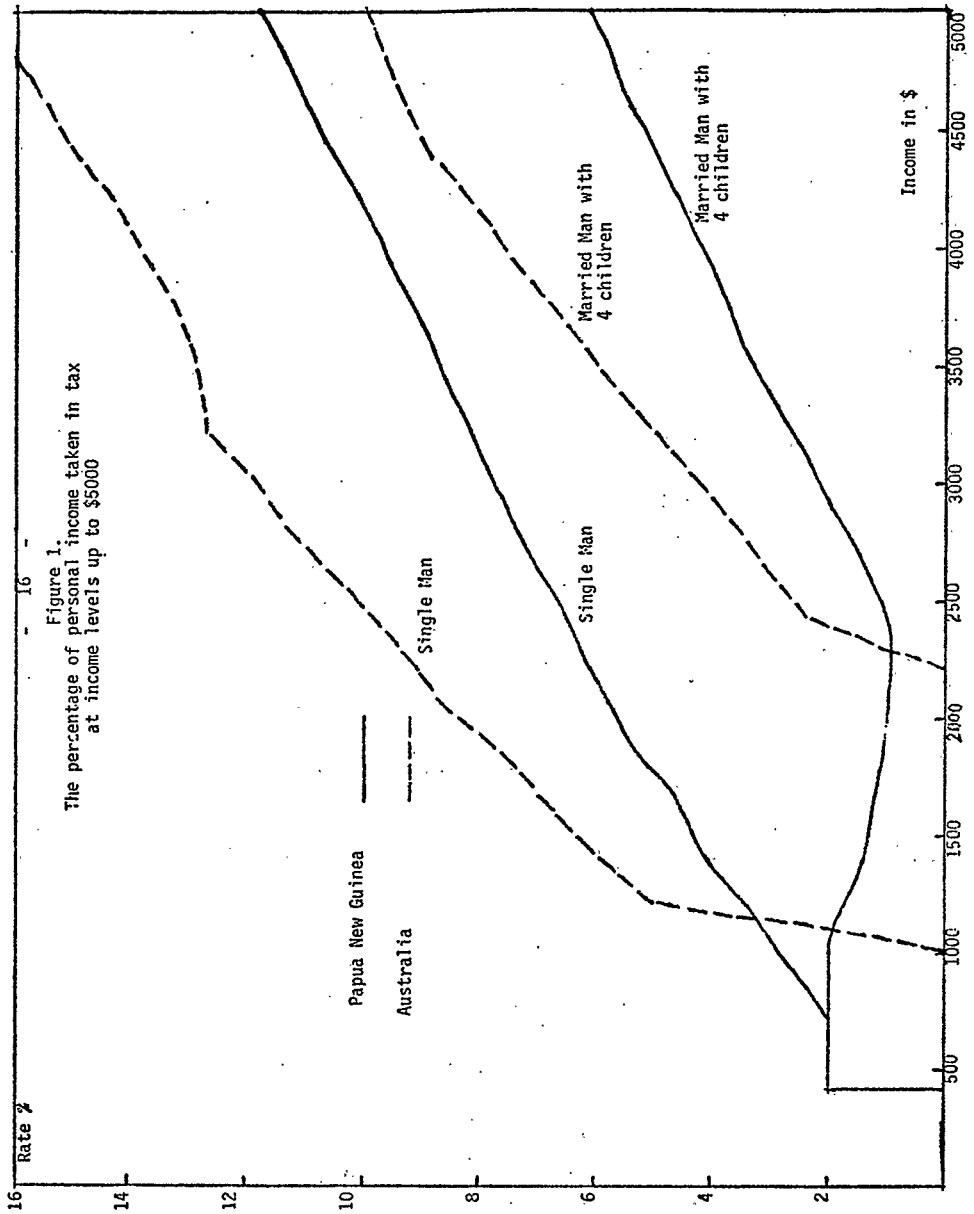

Figure 1.
The percentage of personal income taken in tax at income levels up to $5000

* * * BIBLIOGRAPHY * * *

BOOKS

AUSTRALIA

AUSTRALIAN INCOME TAX ASSESSMENT ACT 1936-1973 WITH INCOME TAX REGULATIONS, INCOME TAX ACT, INCOME TAX (NON-RESIDENT DIVIDENDS AND INTEREST) ACT, INCOME TAX (DROUGHT BONDS) ACT, INCOME TAX (INTERNATIONAL AGREEMENTS) ACT, IN FORCE AS AT 1 JANUARY 1974; 6TH ED.,

by CCH Australia Ltd., Milsons Point, 1974. 32 + 907 pp.
Compilation of consolidated text of the Income tax assessment act as in force on January 1, 1974 and related acts thereto including double taxation treaties.

B 8220

THE GUIDE TO AUSTRALIAN INCOME TAX; 19TH ED. OF GUNN'S GUIDE TO COMMONWEALTH INCOME TAX,

by E. F. Mannix, D. W. Harris. Published by Butterworths, Chatswood, 1974. 40 + 728 pp.
Commentary on the income tax law as of December 31, 1973.

B 8219

AUSTRALASIAN TAX REPORTS,

by F. C. Bock and E. F. Mannix. Published by Butterworths, Chatswood, 1974. 24 + 739 pp. Vol. 3.
Bound volume containing tax cases of Australia, New Zealand and Papua New Guinea.

B 8246

AUSTRIA

DIE ÖSTERREICHISCHEN ABGABENGESETZE; TEXTAUSGABE; BAND II: DURCHFÜHRUNGSERLÄSSE,

by P. B. Hassler. Published by Anton Orac, Vienna, 1974. ± 400 pp., S 455.—.
Loose-leaf containing text of implementing regulations to tax laws (corporate and individual income tax, wage tax, turnover tax, net worth tax and other levies).

B 8285

DER HAUSBESITZ UND SEINE STEUERLICHE BELASTUNG, MIETWOHNHAUS — EIGENHEIM — WOHNUNGSEIGENTUM; 2. AUF GRUND DES EINKOMMENSTEUERGESETZES 1972 UND DES UMSATZSTEUERGESETZES 1972 WESENTLICH UMGEARB. AUFL.

by B. Schimetschek. Published by Grenz-Verlag, Vienna, 1974. 158 pp., S 98.—.
Steuerfragen des täglichen Lebens, 3.
Revised edition of monograph on the taxation of houses.

B 8278

BELGIUM

LA REFORME DU CODE DES IMPOTS SUR LES REVENUS; COMMENTAIRE DE LA LOI DU 25 JUIN 1973 SUIVI DE LA COORDINATION OFFICIEUSE DU CODE DES IMPOTS SUR LES REVENUS;

by B. Verstraete. Published by Ferdinand Larcier etc., Brussels etc., 1974. 288 pp. Bfr. 1000.—.
Travaux de la faculté de droit de Namur, 11.
Comment on the law of June 25, 1973 which refounded the income tax code. The text of consolidated income tax code is appended.

B 8266/8303

EEC

LE REGIME DES FRAIS GENERAUX DANS LA C.E.E.

Nice, Les cahiers fiscaux européens, 1973. 41 pp., F 150.—. Etudes Jurif.
Comparative study on the regime pertaining to general expenses in the first six European Economic Community countries.

B 7789

LE REGIME FISCAL DES PROVISIONS DANS LA C.E.E.

Nice, Les cahiers fiscaux européens, 1973. 78 pp., F 150.—. Etudes Jurif.
Comparative study on taxation of provisions in the first six European Economic Community countries.

B 7787

LE REGIME FISCAL DES STOCKS DANS LA C.E.E.

Nice, Les cahiers fiscaux européens, 1973. 65 pp., F 150.—. Etudes Jurif.
Comparative study on the tax regime of inventories in the first six European Economic Community countries.

B 7788

LE REGIME FISCAL DES AMORTISSEMENTS DANS LA C.E.E.

Nice, Les cahiers fiscaux européens 1973. 64 pp., F 150.—. Etudes Jurif.
Comparative study on the tax regime of depreciable assets in the first six countries of the European Economic Community.

B 7786

LES SYSTEMES COMPAREES DE T.V.A. DANS LA C.E.E.

Nice, Les cahiers fiscaux européens, 1973. 2 vols., F 150.—. Etudes Jurif.
Study providing general comparative information on the value added tax systems in the first six European Economic Community countries.

B 7790/1

DIE STEUERLICHE ERFASSUNG REALISIERTER STILLER RESERVEN DES ANLAGEVERMÖGENS IN DEN EWG-STAATEN BELGIEN, BUNDESREPUBLIK DEUTSCHLAND, FRANKREICH, GROSSBRITANNIEN UND NIEDERLANDE; EIN RECHTSVERGLEICHENDER BEITRAG ZUR FRAGE DER BEGÜNSTIGUNG GEWERBLICHER KAPITALGEWINNE IN DER BUNDESREPUBLIK,

by G. Lutz. Published by Herbert Lang etc., Bern etc., 1973. 22 + 232 pp., Sfr. 36.—. Europäische Hochschulschriften, series V, 69.
Thesis on capital gains taxation under the corporate income tax and individual income tax in Belgium, the Federal Republic of Germany, France, United Kingdom and the Netherlands.

B 8265

MULTINATIONAL UNDERTAKINGS AND COMMUNITY REGULATIONS; COMMISSION COMMUNICATION TO THE COUNCIL.

Published by Commission of the European Communities, Brussels, 1974. 50 pp. Document 1048/III/73-E.
English unrevised translation of the Commission report with respect to study of Community regulations for multinational undertakings.

B 8258

EUROPE

IL REDDITO D'IMPRESA; CONVEGNO DI STUDI, ROMA 10/12 DICEMBRE 1973.

Published by Banco di Roma, Roma, 1974. 2 vols. Incontri con il Banco di Roma, III.
Text of proceedings and lectures of a conference held in Rome from 10-12 December 1973 on the subject of corporate taxation, convened by the Banco di Roma.

B 8281

FRANCE

BUSINESS IN FRANCE.

Published by Lloyds & Bolsa International Bank Ltd., London, 1973. 40 pp., 7 vols.
Brochure providing information on doing business in France. The subjects dealt with are foreign exchange, investment and trade, forms of business organization, taxation, regional development policy, labour legislation, protection of industrial property, leasing banking and credit.

B 8275

GERMAN FEDERAL REPUBLIC

REICHSVERSICHERUNGSORDNUNG MIT NEBENGESETZEN, AUSFÜHRUNGS- UND VERFAHRENSVORSCHRIFTEN; TEXTAUSGABE MIT ANMERKUNGEN UND SACHVERZEICHNIS; 35th, 36th ed.

By F. Aichberger. Published by C. H. Beck, Munich, 1973. ± 2300 pp., DM 29.80.
Loose-leaf publication dealing with the social security law in Germany. The material is updated as of August 20, 1973. The full consolidated text of laws, by-laws, implementations and procedures is annotated.

B 8183

ERBSCHAFT- UND SCHENKUNGSTEUER; MIT HINWEISEN AUF STEUER-BEFREIUNGEN UND -ERMÄSSIGUNGEN BEI VERMÖGENSÜBERTRAGUNGEN.

Published by Stollfuss Verlag, Bonn, 1973. 80 pp., DM 11.80. Der Steuersparer, 19.
Explanation of the inheritance tax. The reform of inheritance and gift taxes as of January 1, 1974 is appended.

B 8247

BASISGESELLSCHAFTEN IM INTERNATIONALEN STEUERRECHT.

By B. Grossfeld. Published by J. C. B. Mohr, Tübingen, 1974. 12 + 459 pp., DM 82.—.
Study on base companies in international tax law with emphasis on individual and corporate income taxation aspects and illustrated by the background of the German foreign tax law and double taxation treaty between Germany and Switzerland of 1971. Appended are the text of the official documents in connection to the above subject and list of literature.

B 8227

GRUNDSTEUERGESETZ UND II. WOHNUNGBAUGESETZ (SS 92 ff.) MIT NEBENGESETZEN, RICHTLINIEN UND VERWALTUNGSANWEISUNGEN; KOMMENTAR; 3rd REV. EXT. Ed.

By M. Troll. Published by Franz Vahlen, Munich, 1974. 16 + 519 pp., DM 98.—.
Third edition revising previous work providing comment on the tax on real estate.

B 8228

INDIA

THE INCOME TAX DIGEST (SUPPLEMENT) BEING A DIGEST OF CASES ON INCOME-TAX, WEALTH-TAX, GIFT-TAX, EXCESS PROFITS TAX & ESTATE DUTY AND OTHER DIRECT TAXES DECIDED BY THE HOUSE OF LORDS, PRIVY COUNCIL THE SUPREME COURT AND THE HIGH COURTS OF INDIA, AND REPORTED IN THE INCOME TAX REPORTS VOLS. 55 TO 86 (1965-1972).

By A. N. Aiyar, A. Venkataraman. Published by Company law institute of India, Madras, 1974. 96 + 1516 + 74 pp., Rs 75/,-.
Compilation of relevant case law published in Income Tax Reports from 1965 through 1972.

B 8277

AUSLANDSBETEILIGUNG UND GEMEINSCHAFTSUNTERNEHMEN;

By R. S. Bhatt. Published by Indian investment centre, New Delhi, 1973. 24 pp.
Consideration of foreign participation and joint venture procedure under Indian investment policy.

B 8255

FACILITIES FOR NON-RESIDENTS OF INDIAN ORIGIN.

Published by Indian investment centre, New Delhi, 1973. 6 + 57 pp., Rs 5.—.
Revised edition of brochure to provide guidelines of facilities granted to non-residents of Indian origin regarding the operation and use of non-resident accounts in India.

B 8249

INDIEN; INDUSTRIELLE LIZENZIERUNG, AUSLANDSINVESTITIONEN UND -BETEILIGUNG, POLITIK UND HANDHABUNG.

Published by Indian investment centre, New Delhi, 24 pp.
Considerations of Indian investment and joint venture policy.

B 8252

INVESTMENT OPPORTUNITIES IN BOMBAY FOR ELECTRONICS EXPORT.

Published by Development commissioner SEEPZ, Bombay, 1974. 18 + 33 pp.
Brochure and documents providing information of the Santa Cruz Electronics Export Processing Zone in Bombay for prospective investors.

B 8251

INVEST IN YOURSELF.

Published by Indian investment centre, New Delhi, 1972. 62 pp.
Brochure to provide guidelines to promote small scale industries in India.

B 8256

JOINT VENTURES ABROAD

Published by Indian investment centre, New Delhi, 1974. 39 pp., Rs 5.—.
Brochure to provide guidelines for the establishment of joint ventures abroad by Indian enterprises.

B 8253

SPECIALISED FINANCIAL INSTITUTIONS; rev. ed.

Published by Indian investment centre, New Delhi, 1972. 10 + 68 pp., Rs 5.
Information guide to financial institutions in India which provide medium and long-term finance to industry.

B 8249

TAXES AND INCENTIVES; A GUIDE FOR INVESTORS.

Published by Indian investment centre, New Delhi, 1973. 127 pp., Rs 5.—.

Revised edition of brochure to provide guidance on taxation of foreign investors in India.

B 8254

INTERNATIONAL

TAXATION OF BUSINESS ORGANIZATIONS; CHAPTER 11 OF BUSINESS AND PRIVATE ORGANIZATIONS,

by J. van Hoorn Jr. and edited by A. Conard. Published by J. C. B. Mohr etc., Tübingen etc., 1974. 106 pp. International Encyclopedia of comparative law, XIII.
Comparative study of the taxation of business organizations from the establishment of a business entity through its liquidation with reference to taxation positions in various countries. Although the work was completed in December 1971, later developments have been taken into account.

B 8267

THE DEVELOPMENT OF MULTINATIONAL COMPANIES; ITS ADVANTAGES AND DISADVANTAGES; ECONOMIC, SOCIAL AND POLITICAL MEASURES AND ADJUSTMENTS CALLED FOR,

by G. Kraijenhoff, F. Simoncini, L. Duquesne de la Vinelle. Published by Commission of the European communities, Brussels, 1972. 165 pp., Reports no. 9.
Text of papers read at the Conference entitled INDUSTRY AND SOCIETY IN THE EUROPEAN COMMUNITY, held in Venice, 1972.

B 8257

INVESTING, LICENSING AND TRADING CONDITIONS ABROAD.

Published by Business International Corp., New York, 1974. 3 vols.
Loose-leaf work containing information designed for foreign enterprises contemplating operations or investment in specified countries. The survey per country covers subjects from rules of competition, price control, licensing, remittability of funds, taxes, labor and foreign trade. Vol. I contains countries in Africa, the Middle East and Europe; Vol. II Asia, Australia and New Zealand; Vol. III covers North and Latin America.

B 8288

NETHERLANDS

DE ZELFSTANDIGE ONDERNEMER EN DE FISCALE OUDEDAGSRESERVE. 2ND. REV. ED.,

by J. L. van Hedel. Published by Kluwer, Deventer, 1974. 10 + 92 pp., H *f* 12.50.
Second revised edition of monograph dealing with the establishment of an old age reserve for purpose of liberal professions and other independent business with examples. Text of the relevant statute is appended.

B 8238

DE NIEUWE BELASTINGEN OP ONROERENDE GOED.

Published by Vereniging van Nederlandse gemeenten, The Hague, 1974. 20 pp., H *f* 3.50. Groene reeks 8.
Brochure to provide information concerning the new tax on realty to be levied by the municipalities in lieu of present local taxes.

B 8280

DE BESLISSING OVER DE RIJKSBEGROTING; 2nd ed.

By L. Koopmans. Published by Kluwer, Deventer, 1970. 167 pp., H *f* 19.50.
Thesis dealing with the drafting of the national budget procedure.

B 8263

BEGROTING EN BELASTING; EEN STUDIE OVER OVERHEIDSFINANCIEN.

By T. L. Thurlings. Published by Kluwer, Deventer, 1974. 157 pp., H *f* 22.50.
Study on public finance in the Netherlands.

B 8264

NIGERIA

INCOME-TAX LAW AND PRACTICE IN NIGERIA.

By G. S. Ola. Published by Ibadan, Heinemann Educational Books, 1974. 10 + 309 pp. Heinemann studies in Nigerian law.
This work aims to portray the Nigerian tax system by offering an accounting and legal approach to the subject of income taxation. The book states the law as of March 31, 1973.

B 10.556

PAKISTAN

CAPACITY TAXATION: THE PAKISTAN EXPERIMENT.

By S. Cnossen. Published by International Monetary Fund, Washington, 1974. P. 127-169, $ 0.25.-.
Reprint from: International Monetary Fund Staff Papers, vol. XXI, no. 1 March 1974.

B 8245

SPAIN

LIZENZ- UND KNOW-HOW VERTRÄGE MIT SPANISCHEN FIRMEN; NEBST MUSTERVERTRÄGEN IN DEUTSCH UND SPANISCH; 7th rev. ed.

Published by Deutsche Handelskammer für Spanien, Barcelona, 1974. 26 pp., DM 25.—.
Brochure dealing with patent and know how agreements to be concluded with Spanish enterprises. Contract examples are appended. Taxation aspects are dealt with.

B 8224

MANUAL DE CONTABILIDAD POR LA EMPRESA ESPANOLA, 2nd. ed.

By A. Cienfuegos Castaño, G. Leon Garcia, C. Borges Oliva. Published by T-A-L-E, Madrid, 1974. 579 pp.
Second edition of a manual on bookkeeping for Spanish enterprises.

B 8271

ERLÄUTERUNGEN ZUM SPANISCHEN ARBEITSRECHT; 2nd. rev. ed.

Published by Deutsche Handelskammer für Spanien, Barcelona, 1974. 30 pp., DM 30.—.
Comment on the labour law in Spain.

B 8284

SWITZERLAND

DIE WEHRSTEUER; FORTGEFÜHRT VON A. PESTALOZZI, W. STUDER UND E. NOHER.

By J. Henggeler, E. Henggeler. Published by Verlag für Recht und Gesellschaft, Basel, 1973. 2 Vols. Die Praxis der Bundessteuern, I.
Loose-leaf textbook containing text and commentary on the federal defence tax which governed the corporate income tax, net worth tax and individual income tax. This textbook now includes 24 supplements (August 1973).

B 8289

STEMPELABGABEN UND VERRECHNUNGSSTEUER; FORTGEFÜHRT VON W. R. PFUND.

By E. Wyss. Published by Verlag für Recht und Gesellschaft, Basel, 1973. 3 Vols. Die Praxis der Bundessteuern, II.
Loose-leaf textbook containing text and commentary on stamp duties and anticipatory tax (federal withholding tax) on dividends and interest. This textbook now includes 27 supplements (1973).

B 8289

UNITED KINGDOM

FISCALITE EUROPEENNE; TOME III: GRANDE-BRETAGNE.

By P. Fontaneau. Published by Les cahiers fiscaux européens, Nice, 1974. ± 240 pp., F 125.—.
Loose-leaf volume containing the chapter on United Kingdom tax system in the series FISCALITE EUROPEENNE providing short explanations of taxation in the member countries of the European Communities.

B 8286

U. S. A.

THE EASY CASE FOR PROGRESSIVE INCOME TAXATION IN MICHIGAN.

By M. Taylor, D. Peppard, R. Willits. Published by Michigan State University, East Lansing, 1973. 6 + 54 pp.
Study for a progressive income tax in Michigan.

B 8239

PATHWAYS TO TAX REFORM; THE CONCEPT OF TAX EXPENDITURES.

By S. S. Surrey. Published by Harvard university press, Cambridge (Mass.), 1973. 14 + 418 pp., $ 12.
Study of tax expenditures which involve governmental financial assistance given through the tax system rather than through direct methods of the regular budget, i.e. direct aid as a new vehicle for providing for tax reform.

B 7894

LOOSE-LEAF SERVICES

AUSTRALIA

AUSTRALIAN CURRENT TAXATION & SERVICE
July release
Butterworth & Co., Sydney

AUSTRALIAN CURRENT TAXATION-SERVICE,
releases 194-195 and 196-198
Butterworth & Co., Sydney

AUSTRALIAN CURRENT TAXATION-CASES,
releases of September the 15th. and the 29th.
Butterworth & Co., Sydney

BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE,
release 70
C.E.D. Samsom, Brussels

DOORLOPENDE DOCUMENTATIE INZAKE B.T.W./LE DOSSIER PERMANENT DE LA T.V.A.,
release 56
Editions Service, Brussels

FISCALE DOCUMENTATIE VANDEWINCKELE, BOEK DER BAREMA'S,
Tome II, release 19,
Tome III, release 24,
Tome V, release 23,
Tome VIII, release 131,
Tome IX, releases 63, 64 and 65
C.E.D. Samsom, Brussels

GUIDE FISCAL PERMANENT,
release 354 and 355
Editions Service, Brussels

HANDLEIDING DER INKOMSTENBELASTING,
release 53
C.E.D. Samsom, Brussels

IMPOTS ET TAXES
releases 238 and 239
C.E.D. Samsom, Brussels

TRAITES DES IMPOTS SUR LES REVENUS,
release 53
C.E.D. Samsom, Brussels

BENELUX

BENELUX PUBLICATIEBLAD,
releases 6, 7 and 8
Staatsuitgeverij, The Hague

CANADA

BRITISH COLUMBIA TAXATION SERVICE,
release 29
Richard de Boo Ltd., Toronto

CANADA TAX LETTER,
releases 225, 226, 227 and 228
Richard de Boo Ltd., Toronto

CANADIAN CURRENT TAX,
releases 33, 34, 35, 36, 37, 38 and 39
Butterworth & Co., Toronto

ONTARIO TAXATION SERVICE RELEASE,
releases 29 and 30
Richard de Boo Ltd., Toronto

QUEBEC TAXATION SERVICE,
release 4
Richard de Boo Ltd., Toronto

E. E. C.

DROITS DES AFFAIRES DANS LES PAYS DU MARCHE COMMUN,
release 77
Edition Jupiter, Paris

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN,
— Kommentaar op het E.E.G., Euratom en Egkos verdrag
release 149
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

FRANCE

MEMENTO LAMY,
— Fiscal
releases L, M and N
— Social
releases J, K and L

GERMAN FEDERAL REPUBLIC

ABC FÜHRER LOHNSTEUER,
release 84
Fachverlag für Wirtschafts- und Steuerrecht, Schaffer und Co., Stuttgart

DEUTSCHE STEUERPRAXIS. NACHSCHLAGWERK PRAKTISCHER STEUERFÄLLE,
releases 36, 37 and 38
Verlag Dr. Otto Schmidt K.G., Köln

HANDBUCH DER EINFUHRNEBENABGABEN,
release 4
v. d. Linnepe Verlagsgesellschaft K.G., Hagen

KOMMENTAR BEWERTUNGSGESETZ-VERMÖGENSSTEUERGESETZ,
release 40
Verlag Dr. Otto Schmidt K.G., Köln

KOMMENTAR ZUR EINKOMMENSTEUER EINSCHL. LOHNSTEUER UND KÖRPERSCHAFTSTEUER,
releases 108 and 109
Verlag Dr. Otto Schmidt K.G., Köln

KOMMENTAR ZUM EINKOMMENSTEUERGESETZ,
release 25
Richard Boorberg Verlag, Stuttgart

RWP RECHTS UND WIRTSCHAFTS PRAXIS STEUERRECHT,
releases 175 and 176
Forkel Verlag, Stuttgart-Degerloch

SCHNELLKARTEI DES DEUTSCHEN RECHTS,
releases 163-170
Verlag Dr. Otto Schmidt, Köln-Marienburg

STEUERRECHTSPRECHUNG IN KARTEIFORM,
releases 267-272
Verlag Dr. Otto Schmidt, Köln-Marienburg

UMSATZSTEUERGESETZ (MEHRWERTSTEUER),
releases 18 and 19
Verlag Dr. Otto Schmidt, Köln-Marienburg

WORLD TAX SERIES - GERMANY REPORTS,
releases 62 and 63
C.C.H., Inc., Chicago

LUXEMBOURG

CODE FISCAL LUXEMBOURGEOIS,
release 9 (1971)
releases 10 and 11 (1972)
Edition de l'Imprimerie, St. Paul

NETHERLANDS

DE BELASTINGGIDS,
release 9
S. Gouda Quint, D. Brouwer & Zn., Arnhem

BELASTINGBERICHTEN,
— Omzetbelasting BTW
releases 124 and 125
— Loonbelasting
release 137
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Samsom N.V., Alphen aan de Rijn

BTW EN BEDRIJF
release 63
Samsom N.V., Alphen aan de Rijn

BELASTING WETGEVINGSERIE,
— Omzetbelasting I, II, III
release 18
J. Noorduyn & Zn. N.V., Arnhem

FED'S FISCAAL REGISTER,
release 61
Fed, Amsterdam

SWITZERLAND

DIE PRAXIS DER BUNDESSTEUERN
K. Locher
release 25
Verlag für Recht und Gesellschaft AG, Basel

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SUPPLEMENT TO No. 2 (A 1974)

Convention entre le Gouvernement de la République française et le Gouvernement de la République socialiste tchécoslovaque tendant à éviter les doubles impositions en matière d'impôts sur les revenus.

SUPPLEMENT TO No. 4 (B 1974)

Convention tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative en matière fiscale entre le Gouvernement de la République française et le Gouvernement de la République tunisienne.

SUPPLEMENT TO No. 6 (C 1974)

Convention between the Republic of Singapore and the State of Israel for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

SUPPLEMENT TO No. 8 (D 1974)

Andean Pact: Double Taxation Conventions.

SUPPLEMENT TO No. 10 (E 1974)

Convention entre le Royaume de la Norvège et le Royaume du Maroc tendant à éviter les doubles impositions et à établir des règles d'assistance administrative réciproque en matière d'impôts sur le revenu et sur la fortune.

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BIBLIOGRAPHY

519 *Books:* Africa, Argentina, Asia, Australia, Austria, Barbados, Belgium, Bulgaria, Canada, Channel Islands, E.E.C., East African Community, Europe, France, Germany (Fed. Rep.), Hong Kong, Iceland, Ireland, Korea (South), Netherlands, O.E.C.D., Philippines, Puerto Rico, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom, U.S.A.

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Supplement to this issue (Supplement F 1975): Convention entre le Gouvernement de la République française et le Gouvernement de la République socialiste fédérative de Yougoslavie tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune

* * * ARTICLES * * *

SIDNEY I. ROBERTS:

FUNDAMENTAL AND LONG-TERM PROSPECTS FOR THE U.S. TAX SYSTEM*

Walter O'Connor and I are enjoying your Tax Institute through the courtesy of the Australian Branch of the International Fiscal Association, a world wide international tax organization with over 4,000 members in over 70 countries and with organized branches in 25. Its membership includes, by profession: accountants, lawyers and economists; and by occupation: government tax officials, professors, private practitioners and corporate tax officers.

The Association focuses primarily on two aspects of international tax law: (1) transnational tax law, the taxation of international transactions; (2) comparative tax law, the comparison of the tax law of two or more countries. This second aspect is what we have been discussing at this morning's session.

When, a long time ago, I first came upon comparative tax law, I thought it would yield a treasure of new ideas. One country, in my case the United States, in yours Australia, could gain new insights from the study of the tax law of other countries. We could profit from methods that worked well in other countries.

But as I learned more about comparative tax law, I also discovered that the importation of foreign tax methods is a risky business:

The most important risk is rather obvious: People (and taxpayers are people too) in different countries are different. Moreover, the basic concepts of the tax laws of different countries are often different enough to require, at least, a high degree of caution in importing another country's tax ideas. Unless this caution is exercised, importation of tax ideas may yield more minuses than pluses. But this is elementary.

A more serious and less obvious problem is that Country A will adopt a tax method in force in Country B without adequate consideration of how the method operates in practice.

This suggests the story of the Australian accountant. Having achieved a measure of success, and spurred by his socially ambitious wife, he decided to afford his son the advantage of foreign "culture" by sending him to study abroad: to England, to acquire English reserve and good manners; to the United States to acquire American know-how and efficiency; and to France, to learn about French cuisine, the art of good cooking and eating.

After several years abroad, the son returned to Australia well-versed in French know-how, English cooking and American manners.

The relevant parable for today is the country which, after an exhaustive study of the tax laws of various countries, produces its own tax law, which combines Italian compliance, German flexibility and American complexity.

* Remarks before the National Convention of the Taxation Institute of Australia at Hobart, April 14-20, 1975.

"TAX HAVEN" LEGISLATION

A current illustration is the history of tax legislation directed against tax avoidance by the use of foreign or "tax haven" corporations. In our survey of the U.S. tax law prepared for this Institute, we described the complex legislation directed toward that objective.

The U.S. provisions were enacted in 1962. By 1970, when Canada was enacting its anti-tax haven legislation, the United States had had eight years of experience in the administration of those provisions.

In 1970 a Presidential Task Force in the United States reviewed the provisions of this legislation. The Task Force was an eminent group experienced in tax matters, including two former Secretaries of the Treasury (corresponding to your Treasurer) and leading economists, lawyers, accountants and corporate officials.

Let me read a short excerpt from its report on our tax haven provisions [deletions not indicated]:

> "The multiplicity of complex tax concepts and techniques makes it difficult for taxpayers to comply with the law and for the Internal Revenue Service to enforce compliance.
>
> Much executive and professional talent is expended in planning for business operations abroad so as to avoid the pitfalls that are ever present. Even the largest corporations, with their staff of experts find it exceedingly burdensome to comply with the requirements of the statute and the regulations. The smaller company, without experience in operating abroad and with no staff of experts, runs a serious risk of being subjected to unanticipated and harsh penalties which could have been avoided by proper but costly tax planning."

This statement appeared in 1970.

In 1972, Canada adopted anti-tax haven legislation similar in concept and complexity to that of the United States. Although not yet in effect, Canada has had to introduce numerous amendments to cure defects in its initial legislation, discovered merely by review of that legislation, even before the legislation was tested by practical applications.

And Germany has followed the same tortuous path.

This illustrates the concern expressed about comparative tax law: that a country will import bad tax legislation of another country because it does not fully learn how the tax operates in practice and fails to heed the warnings of unbiased and experienced observers in the exporting country.

LONG-TERM PROSPECTS

This leads to the title of my remarks today: Fundamental and Long-term Prospects for the U.S. Tax System. This is a rather presumptuous undertaking for a mere tax lawyer. So I shall focus on the tax law itself, drawing primarily on my experience with the development of our U.S. tax law over a period of almost 40 years.

I should enter some caveats: First, our political system is as susceptible to change as yours, even though our propensity for misleading political labels and the differences in our governmental machinery makes our political fluidity more difficult to discern. Second, as I often need to advise my clients: On *legal* issues of taxation, they may properly anticipate that my opinion — my prediction of how the tax law will be applied — should more often be right than wrong; at least I hope so. On the other hand, on *political* issues, I expressly warn them — as I am warning you — they are not entitled to the same degree of comfort, such as it is. I should add, however, that my experience with politicians on political issues does not suggest to me that they

have, to any marked degree, a greater insight into the future.

In the area of U.S. taxation, long-term prospects means really long-term. Twenty, thirty years or more is the mere wink of an eye. Moreover, the timing of a change is highly unpredictable; amendments often require a grass-roots wave of public opinion that is more emotional than rational.

In part this is attributable to our system of tax legislation. Our 500 members of Congress participate in tax legislation. The Ways and Means Committee of the U.S. Congress, which under our Constitution initiates tax legislation, now consists of 35 members. Parochial interests, that is, the interests of particular States of the U.S., loom large.

DELAYS IN REFORM

A topical illustration of the lag in enactment of tax reform is oil depletion, discussed in our paper in connection with tax shelters. Its repeal was a likely candidate for tax reform; uniquely, it allowed a deduction substantially in excess of the taxpayer's expenditure.

As long ago as 1937 President Roosevelt took a firm stand urging its repeal. Since then it has consistently been a target of tax reform proponents. Yet oil depletion remained a part of this law for another 38 years until last month, when it was repealed, but only for large companies. For these many years it withstood attack, largely through the efforts of legislators from States which produce substantial quantities of oil and gas. Even its repeal was incomplete; the depletion deduction is still available to small producers.

Moreover, an important element of the oil and gas tax shelter still persists. The deduction for intangible drilling costs allows a full deduction in the year of expenditure for nontangible costs of drilling the well. This deduction is not affected by the 1975 tax law, so that it does not sound the death knell for oil and gas tax shelters.

Another tax shelter, as significant from a revenue standpoint, and to some as indefensible as oil depletion is the exemption from Federal tax of the interest on obligations issued by State and local governments.

As in the case of the oil depletion deduction, President Roosevelt, in the Thirties, made a very substantial effort to remove this exemption and completely failed, in this instance largely through the resistance of State Governments, which were concerned with the increased cost of borrowing that would result.

More recently, a new proposal was made in an effort to eliminate the exemption of interest on State obligations: If the States would issue taxable obligations, the Federal Government would directly subsidize the States in an amount equivalent to the increased interest cost that the States would incur because their obligations were taxable rather than as now, exempt from tax. The rationale of the proposal was that the cost of the Federal subsidy would be less than the Federal Government's loss of tax revenues from the exemption of interest. To date this proposal has found no significant affirmative response from the States. History suggests that the States are not likely to change their position.

DEVELOPMENTS IN COMPUTER TECHNOLOGY

In projecting fundamental and long-term prospects, it is not advisable to overlook administrative aspects. One of these is the developing use of the computer. Now,

with respect to each taxpayer the computer stores, in readily accessible form, his tax return information and the tax payments.

Another feature of computer utilization presently in effect, is the discovery of telltale signs in tax returns that suggest underpayment of the tax due. This is accomplished through a thorough, painstaking audit of tax returns chosen purely by random. The results of these random audits are then fed into the computer to determine what relationship of items and what other elements of the return are likely to indicate that the tax due has been understated.

The purpose is to have the computer make an initial selection of suspicious returns. Those fewer returns selected can then be manually reviewed by experienced auditors, who make the final selection of returns that should be audited. While the factors used in the computer selection are a closely guarded secret, this kind of computer analysis is surely productive and will be developed further.

A further use of the computer, scheduled to be implemented shortly, is the matching of information supplied by one taxpayer with the income tax returns of another. For example, an employer is required to file annually with the Internal Revenue Service an information return disclosing the amount of wages paid to each of his employees. Without a computer it is difficult to trace this information to the employee's return, to check whether the employee filed a correct return or, worse, whether he prepared a fictitious form reflecting that the tax withheld was in excess of the true amount. The Internal Revenue Service is gearing up the computer to accomplish this matching.

Similarly, each client of a lawyer or an accountant is now required to file an information return reflecting the amount of fees paid to each firm. A similar matching process by computer may enable the tax administration to ascertain whether the lawyer filed a return and whether he included all the fees reported by his clients.

Certainly a significant long-term prospect is the improved use of the computer; and these are likely to be as important to the viability of the tax system as substantive changes in the law.

THE TAX EXPENDITURE BUDGET

Another procedural change of significance is the development of a so-called Tax Expenditure Budget. Although introduced recently, it has become an important method of analyzing tax incentives. (Tax incentive, as you know, is the term used by those who favour a tax advantage granted by the tax law, while tax shelter or loophole is the term used by its opponents.)

Along with the direct subsidies granted by the Federal Government to particular industries or social activities or groups of taxpayers, the Tax Expenditure Budget includes the cost representing tax revenues lost by the grant of tax incentives. For example, our paper dealt with tax shelters in real estate. Some of these shelters are defensible as a tax incentive to achieve necessary housing. In the Tax Expenditure Budget, the loss of revenue from tax incentives granted to residential construction is added to the subsidies granted directly for this purpose, and the total is considered the subsidy for housing. The total dollar amount of subsidy for each purpose may then be compared with what it achieves — for example, how many new homes are built; and also may be compared with the total expenditure, similarly computed, for other socially worthy purposes. Its effect is to emphasize that a tax incentive

costs money and how much that cost is. Moreover, the Tax Expenditure Budget has become an important tool to focus on the cost and the effectiveness of a tax incentive, a tool that is proving useful in the hands of those who oppose a particular tax incentive.

Let's turn now to substantive developments. Here some significant long-term trends can also be discerned.

While I can recall theoretical discussions that income and estate taxation are based purely on ability to pay, it should be clear now that the effect, if not the purpose, of those taxes, includes a redistribution of wealth from the wealthy to the less fortunate.

NEGATIVE INCOME TAX

In that direction, there has been considerable serious discussion about a so-called negative income tax. This scheme calls for a payment of money to those who earn an insufficient amount of income. Our 1975 *Act* includes a very small beginning of this scheme. However, there are many interrelated aspects of such a programme, for example its relationship to welfare or the dole, the shift to the Federal Government of welfare-type payments, now borne by the States. Because negative income tax is really unrelated to income taxation, I hesitate to venture an opinion as to whether it will ever be adopted in the U.S., at least as a tax measure.

ESTATE AND GIFT TAX REVISION

On the other hand, there is one revision relevant to the redistribution of wealth that is a likely prospect for enactment, perhaps even in the near future: a major revision of our estate and gift tax system. The ability of the existing estate tax law to break up concentrations of wealth has been thwarted to a considerable extent, by several methods of estate planning. First, so called "generation-skipping": The Will of the father creates a trust for the lifetime of his children, with some powers to invade principal for the children's benefit, and upon their death to the grandchildren. This form of testamentary disposition is effective under present law to avoid estate tax on the death of the children and is in common use even for moderate-sized estates.

A second method of reducing estate taxes, is by gifts during lifetime. Under present law, only gifts made during the three years preceding the date of the death, are subject to estate tax. And the gift tax rates are only three-quarters of the estate tax rates. But more significantly, the graduated rates of estate and gift tax are separate schedules, independent of each other, so that, for example, a taxpayer's first gift during his lifetime removes the amount of the gift from the *highest* marginal estate tax rate and subjects it to the lowest gift tax rates. Methods of barring generation-skipping and unifying the estate and gift tax brackets into a single set of rates with the marginal estate tax rates increasing by virtue of gifts made during the deceased's lifetime (what Graeme Samuel today called "grossing up") have been studied and discussed for many years. Such a major revision of our estate and gift tax structure has seemed ripe for enactment for several years, awaiting only the appropriate political moment.

DOUBLE TAXATION OF CORPORATE INCOME

The so-called double taxation of corporate

earnings has been discussed at length, more perhaps by economists than by politicians. The United States tax system (like Australia's) is the so-called "classical system" of taxation of corporate income subjecting corporate income to tax in the hands of the corporation and again to the shareholders when the income after corporate tax is distributed as a dividend.

This double taxation of corporate earnings has been severely criticized on the ground that it imposes too heavy a tax burden on investments in corporate stock as compared to other forms of investment. And the trend in European countries is markedly toward some form of amelioration of this burden, generally by adoption of the so-called "imputation system". Under this system a portion of the corporate tax is treated as an advance payment of the shareholder's tax, so that when a dividend is distributed to its shareholders, the cash distributed plus the applicable portion of the corporate tax is included in the shareholder's income, but the applicable corporate tax is allowed as a deduction from the amount of the tax owing by him. As a result, if the shareholder's tax rate is less than the corporate tax rate, the shareholder is entitled to a refund.

As we discussed in our paper, for small business the United States has enacted restricted provisions reducing the burden of double taxation of corporate earnings. For large corporations, the United States made a small approach in the Sixties to reduce the burden and then retreated almost entirely. So, despite the European tendency towards the imputation system, I foresee no change in the United States.

TAX SHELTERS

With respect to tax shelters generally, the mood of our country is for further restrictions. This is in part derived from this axiom: The impact of the tax systems consistently moves in a direction that is adverse to high bracket taxpayers. In short, disregarding short-term swings, from such a taxpayer's viewpoint, the situation tomorrow will be worse than it is today. In the long run, political shifts in power affect only the degree of acceleration in that trend.

So it is for tax shelters. Those without a strong defense based upon a desirable social purpose and without defenders with political strength will be sharply curtailed or eliminated. Some of the cattle and farming tax shelters are likely candidates for this treatment.

A second class of shelters, those with some social tax incentive basis and with strong defenders will be limited in scope but not eliminated. The real estate tax shelter, particularly in residential housing, is likely to fall in this second class, because at this time, when the relevant legislation is likely to come under Congressional scrutiny, the real estate industry in the United States is in a deep recession. One possible limitation is to curtail real estate tax shelters that are sold *publicly*, in much the same manner as securities, provided some practical legislative scheme can be worked out. But also other real estate tax shelters, as well as other shelters in the second class, are likely to be curtailed either by a more severe minimum tax on so-called "preference" income, described in our paper, or by limiting the amount of income that can be sheltered, for example, allowing tax shelters to reduce not more than one half of the taxpayer's other income.

A third class of tax shelters is likely to remain inviolate. This includes, as I have already said, the tax exemption for interest

on obligations of State and local governments. There are others we have not discussed, for example, charitable contributions of appreciated property.

COMPLEXITY AND UNCERTAINTY

The *most* fundamental and long-term trend in the U.S. tax system, however, should be evident from our paper. This trend is, to my mind, also the most significant for the tax practitioner.

Certainly, you must have reached the conclusion that our tax law is exceedingly complex, and that it is difficult in many cases and impossible in some, to know what the law is.

In our paper we quoted two sentences from a 1972 report of a Committee of the New York State Bar Association entitled Complexity and the Income Tax:

> "[T]he present course of development of the tax law, if not reversed, may well result in a breakdown of the self-assessment system. Indeed some members of the Committee believe that the breakdown has already occurred."

Such a statement should have shaken those concerned with the viability of our tax system. While it might have been dismissed as a jeremiad of a few tax lawyers, the sense of the report was approved by the American Institute of Certified Public Accountants, the national organization of certified or chartered accountants.

Perhaps more significantly, a Secretary of the Treasury, in a statement to the Congress of the United States, quoted the two sentences of the report I read to you and added:

"We share that view".

Despite the eminent support for the dismal prediction of the Report, I must advise that, rather than the trend toward complexity being reversed, the trend toward complexity has continued unabated. A current illustration, among many others that could be cited, is the *Tax Reduction Act* of 1975; although a minor law in scope, it abounds in increased complexity. Nor do I see any signs that hold out any hope for the future.

EXAMINATION OF TAX RETURNS

A significant aspect of the trend toward complexity and uncertainty is the relatively small number of returns that are actually audited, that is, examined in some detail by an official of the Internal Revenue Service.

As Walter O'Connor mentioned this morning, for fiscal 1973 the Internal Revenue Service audited less than 2% of the individual tax returns and only 6.3% of corporate income tax returns. And this was higher than in several previous years.

IMPACT ON THE TAX PROFESSION

The combination of a complex and uncertain law and an inadequate audit of returns filed will certainly lead, in the long run, to a deterioration in the quality of the tax profession. I do not suggest that the behaviour of professionals now in practice will decline. Rather the tax profession will tend to attract less qualified, less skilled and even less ethical practitioners. Perhaps accountants and lawyers will be forced to yield the practice of tax law to a "non-professional" group because they cannot or are not willing to compete with them on the level that the tax system will demand.

I gain some comfort from the likelihood that this decline in the standards of the tax profession, should it occur, will not take place until long after I have left the profession. Nevertheless, the urgency is valid because the decline will imperceptibly oc-

cur and may become impossible to reverse at the distant date when it becomes evident to everyone.

The minimum need for a tax advisor is his ability to predict, with a high degree of accuracy, the application of the tax law by the Internal Revenue Service or by the courts. But your brief contact with the U.S. tax law must reveal to you that in many cases we cannot do that. My brief contact at this Institute with your tax law suggests that you may, or will soon, have the same problem.

I must quote to you a statement from a leading treatise on the U.S. income taxation, a statement that has often been quoted by the courts. The issue involved is discussed in our paper, whether gain from the sale of real estate is entitled to the lower rate accorded to capital gains or is taxable as ordinary income:

"If a client asks in any but an extreme case whether, in your opinion, his sale will result in capital gain, your answer should probably be,

'I don't know, and no one else in town can tell you'."

This must be the honest answer in too many situations now and, as I have said, the trend toward uncertainty is increasing, even accelerating.

In these cases can tax professionals justify a fee for the expenditure of time, where the final conclusion is no assurance to the client that the result will be favourable; worse still, no assurance that the result will be adverse?

With such uncertainty will not the client turn to someone who will advise him largely on the basis of these considerations: Whether his return will be examined; whether the adviser can stretch his conscience to suggest that the return be prepared reflecting the doubtful transaction in its most favourable light; whether, if the return is examined, the examining officer will see the doubtful issue of law or fact; whether, if the examining official recognizes the doubtful issue, the case can be settled for some fraction of the tax that might be due; whether, if that cannot be accomplished, the case will be properly handled by the Government's trial attorney. Compared to these considerations, the question of whether the court will reach a result favourable to the client becomes less significant.

Tax administrators sometimes fail to appreciate that a sound tax system needs a highly professional body of ethical tax practictioners, to regulate client's action even where the client might, so to speak, get away with a transaction that is not consistent with the law, even though not criminal. Many clients, perhaps most, will not consummate a transaction or will not report a transaction in a favourable manner if their tax adviser tells them that a favourable result is contrary to the law. But when the tax professional must tell him that the result is not clearly adverse or "I don't know and no one else in town can tell you", the tax professional has no weapon to enforce the law in the interest of his Government, by regulating the conduct of his client through his advice.

CONCLUSION

So I can conclude by returning to the beginning of these remarks. The study of comparative tax law can be fruitful. But that study must encompass not only what measures are useful in your country but also what developments should be avoided. Such a study may also reveal the elements

that were lacking in the development of a sound tax system, so that other countries will see the need for these in their own tax system. While there are several such elements in the U.S. I shall note only one: The achievement of a sound tax system must rest with the professionals, since they have the talent, the experience and the self-interest in its integrity. The professionals include those within the tax administration as well as those representing taxpayers. They must work together in an atmosphere of mutual confidence and trust. While they are often opponents in the practice of taxation, each of these two groups of professionals must learn to lay aside their role as advocates to join together in the pursuit of the larger public interest in the continuance of a sound tax system.

Perhaps our most distinguished tax lawyer of this era, the late Randolph Paul stated in 1954:

"I know tax advisors who accomplish the double job of ably representing their client and faithfully working for the tax system taxpayers deserve."

What is certainly true of some tax advisors should be true of more and certainly of such organizations as your Tax Institute.

ELIZABETH A. DE BRAUW-HAY *:

GHANA'S NEW INVESTMENT DECREES

In common with many other African countries Ghana is at present pursuing an investment policy which will result in a considerable degree of indigenisation of its industry and commerce. The legislation implementing this policy is contained in two decrees, the Investment Policy Decree, 1975 (N.R.C.D. 329) and the Ghanaian Enterprises Development Decree, 1975 (N.R.C.D. 330). Although both these measures were originally timed to come into force on December 31, 1975, it has now been decided that the entry into force of at least some of the provisions contained in the Decrees will be delayed until June 30, 1976.

The preamble to the former Decree gives as reasons for this legislation, the commitment of the nation to the principle of national development by self-reliance, the need for sustained economic growth and the equitable distribution of the resources of the land and the wealth accruing therefrom.

The policy provides that certain areas of enterprise will be reserved exclusively for Ghanaians, whilst in other areas there must be a certain percentage of Ghanaian participation and in yet others a certain degree of State participation is required.

These various areas are set out in detail in the Investment Policy Decree, the provisions of which are outlined below.

Enterprises wholly reserved for Ghanaians

Under the Decree all smaller retail and wholesale enterprises are reserved exclusively for Ghanaians; only retail and wholesale enterprises whose trade is carried on by or within a departmental store or supermarket with an employed capital of at least ₵ 500,000 or an annual turnover of ₵ 1,000,000 or more will be exempt from this provision.[1]

The Decree also lists in the First Schedule a number of commercial and industrial enterprises which may not be owned or partly owned by any person other than a Ghanaian.[2] These are shown in Annex I to this note. Exemption from this provision may be granted, however, in respect of nationals of member countries of the Organisation of African Unity who continue to reside and carry on business in Ghana if the country of which such person is a national grants reciprocal treatment to nationals of Ghana.[3]

Aliens are also prohibited from selling in markets [4] and from petty trading, hawking or selling from a kiosk.[5]

Enterprises partly reserved for Ghanaians

Aliens may participate in the larger retail and wholesale enterprises — that is departmental stores and supermarkets with an employed capital of at least ₵ 500,000 or an annual turnover of ₵ 1,000,000 or more — provided that at least fifty per cent of the capital of such enterprises is owned by

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* LL.B. Senior associate at the International Bureau of Fiscal Documentation.

1. N.R.C.D. 329, Article 1.
2. Ibid., Article 2.
3. Ibid., Article 33 (2).
4. Ibid., Article 3 (1).
5. Ibid., Article 4.

Ghanaians.[6] There must also be a fifty per cent minimum Ghanaian participation in the smaller industrial and commercial enterprises — i.e. those with an employed capital of less than ₵ 500,000 or an annual turnover of less than ₵ 1,000,000 — listed in the Second Schedule to the Decree.[7] For such enterprises whose capital or turnover exceeds this level Ghanaian participation must be at least forty per cent.[8] The enterprises concerned are shown in Annex II to this note.

A forty per cent minimum Ghanaian participation is also required in banking enterprises,[9] and in timber [10] and mineral [11] enterprises with an employed capital of less than ₵ 500,000 or an annual turnover not exceeding ₵ 1,000,000. Enterprises engaged in the production of certain basic necessities and with an employed capital of less than ₵ 500,000 or an annual turnover of less than ₵ 1,000,000 must also have a Ghanaian participation of at least fifty per cent.[12]

State participation

The Decree also provides for the State taking a majority participation, i.e. at least 55 per cent, in certain enterprises. These are most mineral enterprises, timber enterprises and enterprises engaged in the production of certain basic necessities whose employed capital exceeds ₵ 500,000 or whose annual turnover is at least ₵ 1,000,000.[13] In the latter two cases, however, if Ghanaians already hold at least 55 per cent of the capital these provisions will not apply.[14] As far as certain mineral enterprises are concerned, however, a lesser degree of State participation is provided for up to 30 per cent in the case of bauxite extracting enterprises and enterprises concerned with the processing of bauxite or alumina or both and up to 20 per cent in the case of enterprises engaged in the production of mineral oil.[15]

Implementation

Two bodies are provided for the implementation of the investment policy. The first of these, set up under the Ghanaian Enterprises Development Decree, is the Ghanaian Enterprises Development Commission. The functions of this body are to ensure the smooth takeover by Ghanaians of the industrial and commercial enterprises listed in Annex I to this note and generally to "ensure assumption of the control of the economy by Ghanaians within the shortest possible time". Besides this the Commission is charged with the creation of "an effective institution providing technical and financial assistance, as well as a general advisory service to Ghanaian businessmen" and will also be responsible for examining and reporting to the Government on questions concerning commerce or industry affecting Ghanaian business.[16]

The other is the Investment Policy Implementation Committee set up under the Investment Policy Decree. Its task is to implement the provisions of that Decree [17] and in this task it will be assisted by business inspectors who will have power to inspect any premises which they reasonably

6. Ibid., Article 5.
7. Ibid., Article 6 (1).
8. Ibid., Article 6 (2).
9. Ibid., Article 7.
10. Ibid., Article 8.
11. Ibid., Article 9.
12. Ibid., Article 10.
13. Ibid., Articles 12, 11 (1), 14.
14. Ibid., Articles 11 (2), 14 (1).
15. Ibid., Article 13.
16. N.R.C.D. 330, Articles 1 and 3.
17. N.R.C.D. 329, Article 15.

suspect are being used for any purpose under the Decree.[18]

One of the moct important aspects of this Committee's functions is the following: where in accordance with the provisions of that Decree any part of the capital of any existing enterprise is required to be sold to Ghanaians the capital to be sold will be deemed to vest in the Committee, its value will be determined by the Committee and any subsequent sale will be carried out by the Committee.

The Committee is also required to provide every assistance, including financial assistance to private Ghanaians required to hold capital under the Decree.[19]

One final aspect of implementation of the new investment policy — aliens operating enterprises affected by the Decree must start training schemes for their Ghanaian employees in order "to equip them with all the skills required for the operation of the enterprise and for the assumption of supervisory and managerial positions in the enterprise." [20]

Government attitude to foreign investment

Notwithstanding the above, the Ghanaian Government is keen to attract foreign investors to its country. In July 1975, the Head of State, Colonel Acheampong, assured foreign investors that they would always be welcome in Ghana and at the same time announced a number of investment incentives which would be available to potential investors — among others a five year exemption from company registration duty, stamp duty and property tax, and a ten year exemption from import duty and customs duty on certain essential commodities.

The Investment Policy Decree also contains a specific assurance that foreign investors will be allowed to repatriate capital profits and dividends, subject, however, to any restriction which may be imposed to safeguard the external payments position of Ghana.[21]

Annex I

FULL GHANAIAN OWNERSHIP

A. *Commercial Projects*

1. Overseas business representation
2. Operation of taxi service
3. The sale under hire-purchase contract of motor vehicles including taxis or vehicles intended to be used in the operation of taxi servie.
4. Produce brokerage
5. Advertising agencies and public relations business
6. All aspects of pool betting business and lotteries
7. Retail trade (except by or within a departmental store)
8. Estate agency
9. Travel agency
10. Lighterage services
11. Commercial transportation by land.

B. *Industrial Projects (Including Service Industries)*

1. Bakery
2. Printing of books and stationery (including publishing)

18. Ibid., Article 24.
19. Ibid., Article 19.
20. Ibid., Article 18.
21. Ibid., Article 37.

3. Operation of beauty saloons
4. Manufacture of cement blocks for sale
5. Ordinary manufacture/tailoring of garments such as joromi, shirts, blouses, ladies dresses, children's wear.
6. Textile screen hand printing (including tie and dye)
7. Tyre retreading
8. Manufacture of suitcases, briefcases, portfolios, handbags, shopping bags, purses, wallets.

Annex II

GHANAIANS AND FOREIGNERS

A. *Commercial Projects*

1. Departmental stores and supermarkets being enterprises exempted administratively or by executive instrument from the provisions of section 11 of the Ghanaian Business (Promotion) Act, 1970 (Act 334) or exempted under this Decree from the minimum requirements of capital or turnover prescribed by section 1 or the minimum Ghanaian participation required by section 5 of this Decree.
2. Distribution agencies for machines and technical equipment.
3. Distribution and servicing of motor vehicles and tractors, and spare parts thereof or other similar objects.
4. Wholesale distribution
5. Shipping
6. Distribution of petroleum products and lubricants
7. Casinos
8. Clearing and forwarding agencies.

B. *Industrial Projects (Including Service Industries)*

1. Laundry and dry cleaning
2. Charcoal manufacture (other than activated charcoal)
3. Manufacture of furniture (including knock-down furniture for export).
4. Terrazzo work
5. Manufacture of confectionery
6. Slaugthering of animals for human consumption and the storage, processing and distribution of meat.
7. Operation of cinemas
8. Motor workshops
9. Beer brewing
10. Manufacture of pharmaceuticals, cosmetics and perfumery.
11. Sawmilling
12. Manufacture of insecticides, pesticides and fungicides
13. Assembly of motor vehicles and cycles
14. Manufacture of cement
15. Manufacture of matches
16. Manufacture of plastic, metal and paper containers
17. Manufacture of paints, varnishes or other similar products.
18. Manufacture of packaging materials
19. Manufacture of wire, nails, washers, bolts, nuts, rivets and other similar articles.
20. Paper conversion
21. Assembly of household electrical equipment and appliances.
22. Manufacture of jewellery and related articles
23. Textiles:
    (*a*) Knitting (including manufacture of garments therefrom);

(*b*) Weaving, embroidery and knitting (with or without manufacture of garment therefrom);
(*c*) Textile complex (i.e. a combination of any two or more of spinning, bleaching, dyeing, weaving, printing).
24. Manufacture of candles
25. Fish processing
26. Manufacture of footwear
27. Blending and bottling of alcoholic drinks
28. Manufacture of plastic products
29. Estate development (including building contracting work).
30. Manufacture of ball point pens, lead pencils and coloured pencils.
31. Manufacture of mosquito coils
32. Manufacture of gramophone records
33. Manufacture of chalk and writing ink
34. Manufacture of rubber products
35. Manufacture of tobacco
36. Manufacture of biscuits.

C. *Agricultural Projects*
1. Fish and shrimp trawling
2. Poultry farming.

ELIZABETH A. DE BRAUW-HAY *:

THE GHANA BUDGET 1975-1976

The Budget proposals for the 1975-1976 fiscal year, which were presented on July 15, 1975 by Colonel J. K. Acheampong, Head of State and Chairman of the National Redemption Council, are geared largely to combatting the inflation which Ghana, like many other countries, is at present experiencing. Fiscal measures will play an important part in this fight against inflation and the most significant of the tax changes and innovations which have been proposed are outlined below.

I. TAX CHANGES

A. *Direct Taxes*

1. *Personal income tax*

The rates of personal income tax have been raised so that persons whose income exceeds ₵ 3,600 [1] per annum will now be liable to higher rates of tax. The following table shows both the old and new tax rates:

Chargeable income	previous rate	new rate
For every cedi of the first ₵ 300	Nil	Nil
For every cedi of the next ₵ 240	5	5
For every cedi of the next ₵ 480	7½	7½
For every cedi of the next ₵ 480	10	10
For every cedi of the next ₵ 960	12½	12½
For every cedi of the next ₵ 960	15	15
For every cedi of the next ₵ 960	20	25
For every cedi of the next ₵ 1,200	25	35
For every cedi of the next ₵ 2,400	35	45
For every cedi of the next ₵ 2,400	45	60
For every cedi of the next ₵ 4,020	60	70
For every cedi of the next ₵ 14,400	70	75

In order to encourage Ghanaians to buy shares in foreign companies which, under the new Investment Policy Decree (No. 329 of 1975), are obliged to offer equity participation to Ghanaians before the end of 1975, the government has decided that the after tax profits of companies declared

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1. It will be seen, however, that there is a discrepancy between this amount and the amount shown in the new table of rates as being the level at which higher rates of tax will be payable. According to the table it would appear that only incomes in excess of ₵ 4380 will be subject to the higher rates of tax.

as dividends will be free of income tax and will not be included in an individual's total income for tax purposes. It is not, however, clear from the Budget whether this exemption also applies to companies.

2. *Company income tax*

The rates of company income tax have been raised in all cases except that of agricultural enterprises. As an incentive for the Operation Feed Yourself and Operation Feed Your Industry programmes companies engaged in agriculture for food or for industrial raw materials will continue to pay tax on their profits at the rate of 50 per cent after the statutory five-year exemption period. The rate of tax on commercial companies, however, has been raised from 55 per cent to 65 per cent and on industrial companies from 50 per cent to 55 per cent. Company income tax rates on companies wholly owned by Ghanaians whose annual turnover does not exceed ₵ 200,000 will also be changed. The following table shows both the old and new rates of tax applicable to such companies.

Chargeable income	Previous rate of tax	New rate of tax
	p	p
For every cedi in respect of the first ₵ 5,000 of the chargeable income of such company	30	35
For every cedi in respect of the next ₵ 5,000 of the chargeable income of such company	35	45
For every cedi in respect of the next ₵ 10,000 of the chargeable income of such company	45	50
For every cedi in excess of ₵ 20,000 of the chargeable income of such company, where the company is licensed under the Customs and Excise Decree, 1972 (N.R.C.D. 114)	50	55
For every cedi in excess of ₵ 20,000 of the chargeable income of such company where the company is not licensed under the Customs and Excise Decree, 1972 (N.R.C.D. 114)	55	65

B. *Indirect taxes*

1. *Customs duty and customs levy*

The customs duty has been raised by between 10 and 30 per cent on a small number of goods e.g. passenger cars and certain electrical goods such as radios and refrigerators. Increases in the import licence levy have been almost universal, however; the increases generally range between 5 and 30 per cent but in a few cases are considerably higher.

2. *Excise duties*

Excise duties have been increased on a large number of goods, e.g. cigarettes, cosmetics, certain electrical goods, clothing and petroleum products. The majority of the increases are in the region of 5 to 10 per cent, but since the government felt that the consuming public should be made to bear the full effect of the upsurge in oil prices the increases in the rates of excise duty on petrol have been considerable.

The special tax on beer has also more than doubled.

3. *Stamp duty*

The rates of stamp duty have in almost all cases been at least doubled.

II. NEW TAXES

1. *Gift tax*

The Budget proposes the introduction of a gift tax on certain classes of gifts (except those acquired by inheritance) whose value exceeds ₵ 2,000. As far as this ₵ 2,000 exemption limit is concerned, however, it should be pointed out that the value of all gifts which an individual receives in any one period of five consecutive assessment years will be aggregated for purposes of the tax and if the total value thereof exceeds ₵ 2,000 then tax will be imposed accordingly.

The classes of gifts which will be subject to the tax are as follows:

(a) buildings;
(b) securities-stocks, bonds, shares, etc.;
(c) land;
(d) cash.

The tax will in all cases by payable by the recipient and will be charged at the following rates:

Value of gift	Tax Rate
₵ 2,001 — ₵ 4,000	5 %
₵ 4,001 — ₵ 10,000	7½%
₵ 10,001 — ₵ 20,000	10 %
₵ 20,001 — ₵ 50,000	12½%
Exceeding ₵ 50,000	15 %

There are, however, a number of exemptions from the tax; these are:

a. gifts of property, etc. given by one spouse to the other and by parents to children and vice versa;
b. gifts given for charitable purposes;
c. gifts given to religious bodies, provided that they are used for public benefit;
d. gifts given for educational purposes.

2. *Capital gains tax*

This is not strictly speaking a new tax but rather the re-introduction of a previously existing tax.

The tax will be charged on profits from the sale of chargeable assets, chargeable assets being defined as:

(a) buildings of a permanent or temporary nature;
(b) business and business assets, including goodwill;

(c) land;
(d) any right or interest in, to or over any stocks and shares.

The rates of tax vere according to the length of time the asset in question has been held before realisation. Where realisation of the chargeable asset in question occurs:

a) within 5 years of its acquisition tax will be charged at 55%
b) more than 5 years but less than 10 years after its acquisition tax will be charged at 45%
c) more than 10 years but less than 15 years after its acquisition tax will be charged at 35%
d) more than 15 years but less than 20 years after its acquisition tax will be charged at 25%
e) more than 20 years after its acquisition tax will be charged at 15%

ÖSTERREICH

Mehrwertsteuer: Leistungen ausländischer Unternehmer *

Mit Verordnung des Bundesministers für Finanzen vom 11. Dezember 1974, BGBl. Nr. 800,[1] wurde mit Wirkung ab 1. Jänner 1975 eine Regelung getroffen, wonach Leistungen ausländischer Unternehmer im Inland unter bestimmten Voraussetzungen unecht von der Umsatzsteuer befreit sind und bei Werklieferungen die eingeführten Bestandteile des herzustellenden Werkes als für den inländischen Leistungsempfänger eingeführt gelten. Durch diese Nichtbesteuerung gewisser Leistungen ausländischer Unternehmer und durch die Übertragung des Rechtes auf Vorsteuerabzug für die eingeführten Bestandteile an den inländischen Leistungsempfänger tritt vor allem eine Verwaltungsvereinfachung ein, da sie die Erfassung zahlreicher ausländischer Unternehmer entbehrlich macht und überdies in diesen Fällen eine Haftung der inländischen Leistungsempfänger gemäss § 25 Abs. 4 UStG 1972[2] nicht entstehen lässt. Im Hinblick darauf, dass die Umsatzsteuer wegen des dem inländischen Leistungsempfänger grundsätzlich zustehenden Rechtes auf den Vorsteuerabzug lediglich einen durchlaufenden Posten darstellt, kann durch die Regelung weder ein Steuerausfall eintreten noch eine Wettbewerbsverzerrung zwischen in- und ausländischen Unternehmern gegeben sein.

Zur Herbeiführung einer einheitlichen Verwaltungsübung bei Auslegung der gegenständlichen Verordnung wird eröffnet:

1. Die Steuerbefreiung gemäss § 1 der Verordnung ist mit dem Verlust des Rechtes auf Vorsteuerabzug verbunden. Der ausländische Unternehmer muss jedoch von der Möglichkeit der Steuerbefreiung keinen Gebrauch machen. Werden an den leistenden ausländischen Unternehmer im Inland Lieferungen oder sonstige Leistungen ausgeführt und will er die ihm für diese Vorleistungen in einer Rechnung gesondert ausgewiesenen Steuerbeträge als Vorsteuer geltend machen, so steht es ihm frei, für seine Leistung auf die Steuerbefreiung gemäss § 1 der Verordnung zu verzichten und dem inländischen Leistungsempfänger eine Rechnung mit gesondertem Steuerausweis (§ 11 UStG 1972) auszustellen.
2. Die Regelung gemäss § 2 der Verordnung gewährleistet, dass bei Werklieferungen (§ 3 Abs. 4 UStG 1972) durch einen im § 1 der Verordnung genannten ausländischen Unternehmer der inländische Leistungsempfänger bei Zutreffen der übrigen Voraussetzungen des § 12 UStG 1972 hinsichtlich der für die eingeführten Bestandteile des herzustellenden Werkes entrichteten Einfuhrumsatzsteuer zum Vorsteuerabzug berechtigt ist, da die eingeführten Gegenstände in diesem Falle als im Ausland geliefert und für das Unternehmen des inländischen Leistungsempfängers eingeführt gelten. Voraussetzung dafür ist jedoch, dass der ausländische Unternehmer über diese Bestandteile eine gesonderte Rechnung erteilt, in der keine Umsatzsteuer ausgewiesen ist, und dass die Einfuhrumsatzsteuer vom Leistungsempfänger oder für dessen Rechnung entrichtet wurde.

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* Erl. d. BM. f. Fin. vom 21. April 1975, Z. 251.555-IV/9/75, Amtsblatt der Österreichischen Finanzverwaltung 4. Juni 1975

1. AÖFV Nr. 21/1975.
2. AÖFV Nr. 188/1972.

Ob der ausländische Unternehmer die Steuerfreiheit gemäss § 1 der Verordnung in Anspruch nimmt oder nicht, hat auf die Berechtigung des inländischen Leistungsempfängers zum Vorsteuerabzug hinsichtlich der nach Massgabe des § 2 der Verordnung eingeführten Bestandteile keinen Einfluss. Weist daher der ausländische Unternehmer für seine im Inland erbrachte Leistung in der Rechnung die Umsatzsteuer gesondert aus (z.B. für die Montageleistung und für die im eigenen Namen und für eigene Rechnung im Inland beschafften Hauptstoffe, Zutaten oder sonstigen Nebensachen), so steht dem inländischen Leistungsempfänger bei Zutreffen der übrigen Voraussetzungen des § 12 UStG 1972 neben dem Vorsteuerabzug für die fiktiv für sein Unternehmen eingeführten Bestandteile (§ 2 der Verordnung) auch der Vorsteuerabzug für die vom ausländischen Unternehmer in der Rechnung über die im Inland erbrachte Leistung — welche die eingeführten Bestandteile des hergestellten Werkes nicht mit umfasst — ausgewiesene Umsatzsteuer zu.

3. Die Verordnung ist auf steuerbare Lieferungen und sonstige Leistungen anzuwenden, die nach dem 31. Dezember 1974 bewirkt werden (§ 4 der Verordnung). Wurde eine Werklieferung erst nach diesem Stichtag ausgeführt oder eine vor diesem Zeitpunkt begonnene Leistung erst nach diesem Stichtag abgeschlossen, so steht dem inländischen Leistungsempfänger für die nach Massgabe des § 2 der Verordnung für sein Unternehmen eingeführten Gegenstände bei Erfüllung der übrigen Voraussetzungen des § 12 UStG 1972 das Recht des Vorsteuerabzuges hinsichtlich der Einfuhrumsatzsteuer auch dann zu, wenn die Gegenstände bereits vor dem 1. Jänner 1975 in das Inland eingeführt wurden bzw. die Einfuhrumsatzsteuer für diese Gegenstände bereits vor diesem Zeitpunkt entrichtet worden ist.

Wurde für vor dem 1. Jänner 1975 eingeführte Bestandteile eines herzustellenden Werkes, dessen Fertigstellung erst nach dem 31. Dezember 1974 erfolgt, die entrichtete Einfuhrumsatzsteuer vom ausländischen Unternehmer geltend gemacht (z.B. auf Grund eines Ersatzbeleges) und soll dieser Vorsteuerabzug im Hinblick auf die unechte Befreiung nach § 1 der Verordnung nicht verlorengehen, so steht es dem ausländischen Unternehmer frei, durch gesonderte Ausweisung der Steuer von der Steuerbefreiung keinen Gebrauch zu machen.

Nach ho. Ansicht bestehen auch keine Bedenken, wenn in einem solchen Falle für den Teil der ingeführten Bestandteile des herzustellenden Werkes, für den der ausländische Unternehmer vor dem 1. Jänner 1975 den Abzug der Einfuhrumsatzsteuer als Vorsteuer geltend gemacht hat, in einer gesonderten Rechnung die Steuer an den inländischen Leistungsempfänger ausgewiesen und im übrigen für die Leistung die Steuerbefreiung gemäss § 1 der Verordnung in Anspruch genommen wird. Für die nach dem 31. Dezember 1974 eingeführten Bestandteile kann der Vorsteuerabzug unter den im § 2 der Verordnung geregelten Voraussetzungen vom inländischen Leistungsempfänger geltend gemacht werden.

4. Werklieferungen, die vor dem 1. Jänner 1975 bewirkt wurden, sind steuerpflichtig. Die in das Inland eingeführten Bestandteile, die bei der Herstellung des Werkes verwendet wurden, gelten als für das Unternehmen des ausländischen Werklieferers eingeführt. Der Abzug der Einfuhrumsatzsteuer für die eingeführten Gegenstände steht daher bei Zutreffen der übrigen Voraussetzungen des § 12 UStG

1972 grundsätzlich nur dem ausländischen Werklieferer zu.

Wurde eine Werklieferung vor dem 1. Jänner 1975 bewirkt und hat der inländische Leistungsempfänger für die eingeführten Gegenstände die Einfuhrumsatzsteuer als Vorsteuer abgezogen (z.B. weil keine Werklieferung angenommen wurde oder bezüglich der Verrechnung mit dem ausländischen Unternehmer keine Einigung erzielt werden konnte), so bestehen zwecks Vermeidung unbilliger Härten und administrativer Schwierigkeiten bei Zutreffen der Voraussetzungen des § 2 der Verordnung keine Bedenken, wenn von einer Berichtigung des Vorsteuerabzuges hinsichtlich der entrichteten Einfuhrumsatzsteuer beim Leistungsempfänger und von der nachträglichen Versteuerung der aus dem Ausland eingeführten Bestandteile durch den ausländischen Werklieferer Abstand genommen wird. Voraussetzung dafür ist jedoch, dass der inländische Leistungsempfänger für die eingeführten Bestandteile die Einfuhrumsatzsteuer entrichtet und der ausländische Werklieferer über die eingeführten Bestandteile eine gesonderte Rechnung ohne Steuerausweis gelegt hat.

Hat der ausländische Unternehmer jedoch für die eingeführten Bestandteile eine Rechnung mit gesondertem Steuerausweis ausgestellt, so müssen die eingeführten Bestandteile als für sein Unternehmen eingeführt behandelt werden. Nur der ausländische Werklieferer ist in einem solchen Falle zum Abzug der Einfuhrumsatzsteuer als Vorsteuer berechtigt. Ein allenfalls vorgenommener Vorsteuerabzug durch den inländischen Leistungsempfänger müsste berichtigt werden. Eine nachträgliche Berichtigung der Rechnung durch den ausländischen Werklieferer dahingehend, dass er für die eingeführten Bestandteile keine Steuer ausweist, um dem Leistungsempfänger den zu Unrecht in Anspruch genommenen Vorsteuerabzug zu erhalten, ist nicht zulässig.

BELGIQUE

Etablissement stable: commentaire de l'administration (II) *

Installations de stockage - dépôts de marchandises

5/223 Par installations de stockage et dépôts, on vise l'entrepôt, le magasin, le hangar, le lieu de déchargement etc., dont l'entreprise étrangère a la disposition continue et exclusive, à titre onéreux ou gratuit, par propriété, location, ou autre convention. De telles installations sont en principe considérées comme des établissements stables si elles continuent en fait, sinon en droit, à appartenir à l'entreprise étrangère et si elles sont soumises à des règles de gestion ou de garantie telles qu'il en résulte que l'entreprise y exerce une partie de ses activités (voir définition générale, section 1). C'est notamment le cas:

a) si l'entreprise dispose de façon continue d'un lieu où elle entreprose des marchandises;

b) si l'entreprise dispose d'un stock de marchandises géré par un préposé ou un agent et sur lequel celui-ci prélève pour expédier les marchandises qui sont commandées directement au siège étranger et sont facturées par ce dernier; en pareil cas, le stock est géré pour le compte et au nom de l'entreprise étrangère.

5/224 On ne vise cependant pas ici l'opération juridique du dépôt. Dès lors n'est pas considérée comme possédant un établissement stable l'entreprise étrangère:

a) qui constitue en Belgique un dépôt au sens juridique du terme, c.-à-d. qui confie ses produits à un tiers établi en Belgique aux fins de les garder, les manutentionner et les expédier suivant ses directives à ses clients; c'est notamment le cas des commissionnaires en douane;

b) qui confie ses produits à un commissionnaire belge en vue de les livrer aux clients belges après les avoir vendus.

Hors le cas de fraude, on ne retiendra pas l'existence d'un établissement stable lorsqu'une entreprise étrangère — sans disposer elle-même en Belgique d'un magasin ou d'un autre installation servant au dépôt de ses marchandises — expédie celles-ci en consignation (en vue de la vente) à un industriel, un commerçant, un courtier, un commissionnaire ou un autre agent vraiment autonome, qui entrepose ces marchandises dans ses propres magasins pour compte de l'entreprise étrangère et qui, au fur et à mesure de ses besoins propres ou de ceux de sa clientèle, prélève sur ce stock, effectue les livraisons et facture en son nom aux clients, l'entreprise étrangère lui facturant périodiquement les marchandise ainsi prélevées.

Il n'y a pas non plus, dans les cas précités, d'établissement belge au sens de l'art. 140, § 3, C.I.R.

5/225 La plupart des conventions prévoient aussi qu'il n'y a pas d'établissement stable lorsque des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison ou lorsqu'il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise. Cette exception est commentée dans la section 3.

Biens immobiliers

5/226 En vertu des conventions, les revenus des biens immobiliers d'une entre-

* Bulletin des contributions, janvier 1975 (extrait). La première partie a été publiée dans le Bulletin no. 11 (novembre 1975) p. 460.

prise sont imposables dans l'Etat où ces biens sont situés; la dévolution du pouvoir d'imposition est donc indépendante du fait que les biens immobiliers constituent ou non des établissements stables au sens des conventions (voir chap. 6). Par ailleurs, un bien immobilier dans lequel une entreprise exerce une partie de ses activités constitue par excellence un établissement stable et tombe le plus souvent dans l'une des catégories d'établissements dont il est question aux 5/202 à 5/207.

L'existence ou non d'un établissement stable peut présenter de l'intérêt dans la mesure où les conventions contiennent certaines règles pour la détermination du montant des revenus à attribuer à un établissement stable, notamment pour la déduction des frais de direction et d'administration générales (voir chap. 7). En ce qui concerne les mesures de non-discrimination figurant dans les conventions en faveur des sociétés étrangères (limitation du taux de l'I.N.R./Soc.), voir chap. 24.

Terrains agricoles

5/227 Les principes généraux mentionnés au 5/226 sont applicables en l'espèce. On notera cependant que, dans la conv. avec la *Suède,* art. 5, § 2, f, un lieu d'exploitation forestière ou agricole est expressément mentionné comme un établissement stable.

Agences de voyages et entreprises de transports

5/228 En l'espèce, sont notamment considérées comme ayant un établissement stable en Belgique:

— des agences de voyages étrangères ayant en Belgique un bureau qui facilite le séjour des touristes étrangers et organise les voyages;
— une société *française* exploitant la ligne d'autobus Lille-La Panne et ayant un bureau de location (vente de billets) au littoral belge (Gand, 27.5.1964, Société de contrôle et d'exploitation de transports auxiliaires, B.411, page 1.811);
— une société étrangère de chemins de fer qui vend en Belgique des coupons, des carnets d'abonnements et des billets circulaires pour des voyages sur le réseau ferré de cette société.

Par contre, la société *allemande* qui, sans avoir de bureau dans le pays, exploite des restaurants dans des trains circulant sur le territoire belge, n'est pas considérée comme ayant un établissement stable.

On notera que, par dérogation au droit commun (Com. I.R., 140/22), le fait qu'un transporteur étranger a fait agréer un représentant responsable pour garantir au besoin le recouvrement des impôts et amendes dont il serait redevable ne suffit pas *en lui-même* pour considérer qu'il existe un établissement stable.

5/229 Les conventions prévoient un régime spécial pour les entreprises de navigation maritime et aérienne; ce régime est étendu dans quelques conventions aux entreprises de navigation intérieure et même aux exploitations ferroviaires (*Allemagne*). Voir chap. 8.

Associés des sociétés de personnes

5/230 Voir chap. 7.

Associations en participation, associations momentanées et autres associations analogues

5/231 Des dispositions expresses concernant les associés des sociétés civiles et des associations non dotées de la personnalité juridique figurent dans la conv. avec la *France,* art. 4, § 2, Voir chap. 7.

5/232 Même en l'absence de dispositions particulières à ce sujet, une entreprise étrangère, qui exerce son activité en Belgique dans une association en participation, une association momentanée ou toute autre association non dotée de la personnalité juridique, doit être considérée comme ayant un établissement stable si l'association a elle-même un tel établissement dans le pays. Cet établissement peut exister au siège de l'association — siège qui, en l'absence de personnalité juridique, doit être considéré comme appartenant directement aux membres de l'association — ou en une autre installation d'affaires constituant au sens de la convention en cause un établissement stable.

En pratique, on rencontre parfois, entre une entreprise belge et une entreprise étrangère, une association en vertu de laquelle chaque entreprise répond des activités de l'association sur le territoire de l'Etat où elle est établie et suivant laquelle les bénéfices totaux — ou les pertes — résultant des activités sont partagés entre les deux entreprises. En pareil cas, l'entreprise étrangère possède un établissement stable en Belgique, soit au siège belge de l'association s'il existe un tel siège distinct, soit au siège de l'entreprise belge (voir, par analogie, Cass. 18.1.1957, cité au 140/22, Com.I.R.).

On doit considérer qu'il existe une association momentanée ou une association en participation lorsque des activités sont exercées dans le pays sous le couvert d'un contrat dit de courtage ou de commission, s'il est établi qu'en fait les activités industrielles ou commerciales sont réparties entre les deux entreprises, lesquelles se partagent les bénéfices et généralement aussi les pertes suivant une certaine proportion.

5/233 En l'espèce, il a été décidé ce qui suit:

— dans le cas d'une s.a. de droit néerlandais, qui avait conclu avec une s.a. belge une convention en vertu de laquelle la société belge était désignée comme vendeur du matériel fabriqué par la société néerlandaise et par laquelle cette dernière participait à tous les résultats de la vente en Belgique, y compris les opérations déficitaires, il a été jugé que ces sociétés avaient créé une association en participation dont le siège en Belgique constituait un établissement stable de la société néerlandaise (au sens de l'art. 4, § 3, de la convention belgo-néerlandaise de 1933 actuellement abrogée — Bruxelles 17.1.1963, s.a. de droit néerlandais «Fabriek van Electrische Apparaten», précédemment F. Hazemeyer et Co, R.S.J. XVI, n° 1319);

— une société belge, qui a conclu avec une société étrangère une association momentanée ou une association en participation, a un établissement stable au siège de l'association à l'étranger et à l'endroit où sont situées les installations servant à l'exercice des activités.

SECTION 3

Cas négatifs

Généralités

5/301 Les conventions énumèrent les cas dans lesquels, non-obstant la définition générale (section 1) on ne considère pas qu'il y a établissement stable parce que l'entreprise exerce exclusivement dans l'installation en cause des activités de caractère strictement limité. Il s'agit d'installations d'affaires dont les activités consistent à fournir à l'entreprise-mère étrangère certains services qui précèdent de trop loin la réalisation effective des bénéfices par cette

entreprise-mère pour qu'on puisse leur attribuer à juste titre des bénéfices. Cette dérogation ne s'applique que si les installations satisfont complètement aux conditions requises.

A ce sujet, la conv. avec la *France,* art. 4, § 5, 2ème alinéa, dispose que lorsqu'il est constaté qu'une même entreprise se livre à différentes activités de l'espèce, les autorités compétentes des Etats contractants se concertent pour déterminer si cette situation ne caractérise pas l'existence d'un établissement stable de l'entreprise.

En vertu de la conv. avec les *Etats-Unis,* on considère aussi qu'il n'y a pas de d'établissement stable lorsqu'une installation d'affaires se livre à différentes activités, qui satisfont chacune séparément aux conditions requises, pour qu'on puisse admettre qu'il n'y a pas établissement stable. Il résulte cependant de l'art. 5 (4), conv., que si un résident des Etats-Unis possède en Belgique une installation fixe d'affaires et si (en dehors de cette installation) des marchandises sont transformées en Belgique, ou si des marchandises sont achetées en Belgique et ne sont pas transformées en dehors de la Belgique, ce résident a un établissement stable en Belgique si tout ou partie de ces marchandises sont vendues par lui ou pour son compte aux fins d'usage, de consommation ou d'aliénation en Belgique.

Les autres conventions ne contiennent pas de règles précises en la matière et ne prévoient pas non plus expressément la concertation. Néanmoins, une telle concertation peut avoir lieu dans le cadre général de la procédure amiable qui est prévue dans les conventions (voir chap. 25); ceci peut être nécessaire lorsqu'il est établi p. ex. qu'une entreprise étrangère possède en Belgique une installation d'affaires dans laquelle, elle exerce différentes activités qui satisfont chacune séparément aux conditions requises mais qui forment ensemble un cycle quasi complet d'opérations. En pareil cas, le dossier doit être soumis à l'Administration conformément aux directives tracées au 5/03.

5/302 On notera que le fait, pour une entreprise étrangère, de faire agréer en Belgique un réprésentant responsable pour garantir le recouvrement des impôts et taxes éventuellement dus (p. ex., la T.V.A.), ne donne pas naissance *par lui-même* à un établissement stable.

5/303 Une installation d'affaires, qui ne constitue pas suivant la présente section 3 un établissement stable, doit néanmoins généralement être considérée comme un établissement belge au sens de l'art. 140, § 3, C.I.R., en sorte que les dispositions de la législation interne qui se réfèrent expressément à l'existence d'un établissement belge (voir 5/04 et 5/05) restent intégralement d'application, sauf si ceci est prohibé par une autre disposition de la convention en cause,

Installations aux fins de stockage, d'exposition ou de livraison

5/304 Ne tombent sous cette disposition que les installations dont l'entreprise a la disposition exclusive en propriété, en location ou en vertu d'un autre arrangement et qu'elle utilise *exclusivement* pour le stockage, l'exposition ou la livraison de marchandises lui appartenant personnellement. Cependant, si ces installations sont utilisées comme lieu de stockage pour les marchandises d'une autre entreprise ou si elles sont mises à la disposition d'un tiers par location ou tout autre arrangement, la disposition négative n'est pas applicable et le caractère d'établissement stable doit être apprécié cas par cas conformément aux sections 1 et 2 qui précèdent.

Marchandises entreposées aux fins de stockage, d'exposition ou de livraison

5/305 Alors qu'au 5/304, on traite du local utilisé aux fins de stockage, d'exposition ou de livraison, on vise ici corrélativement l'entreposage même de marchandises aux fins de stockage, d'exposition ou de livraison dans les locaux d'un tiers. Le seul fait que des marchandises soient entreposées à de telles fins ne donne pas naissance à un établissement stable pour autant que ces marchandises appartiennent à l'entreprise elle-même. En fait, cette disposition confirme dans les grandes lignes la législation interne relative à la notion d'établissement belge; elle s'applique aussi aux marchandises en consignation (voir 5/224).

5/306 En vertu de quelques conventions, l'entreposage de marchandises donne toutefois naissance à un établissement stable si le stock de marchandises est géré par un agent non autonome de l'entreprise et aux conditions mentionnées dans les conventions en cause. Voir section 4.

Marchandises entreposées aux fins de transformation

5/307 Cette dérogation s'applique aux marchandises entreposées qui appartiennent à l'entreprise étrangère et qui, dans l'Etat où elles sont en dépôt, sont détenues *exclusivement* pour être transformées par une autre entreprise; elle correspond dans les grandes lignes à la législation interne relative à la notion d'établissement belge. Il existe cependant un établissement stable si les marchandises sont transformées par l'entreprise elle-même ou si le tiers qui transforme les marchandises de l'entreprise doit en fait être considéré comme un agent non autonome de ladite entreprise (voir section 4) ou s'il effectue un cycle complet d'opérations pour le compte de l'entreprise (voir 5/503, 1°).

Bureaux d'achats

5/308 On ne considère pas qu'il y a établissement stable si une installation d'affaires est utilisée *exclusivement* pour acheter des marchandises pour l'entreprise, même si les achats sont effectués à l'intervention d'un agent non autonome qui possède à cet effet les pouvoirs nécessaires (voir section 4). Cette disposition ne vise que le cas où les marchandises sont achetées par l'installation d'affaires de l'entreprise pour l'entreprise elle-même, qui ce soit pour le siège situé dans l'Etat contractant où elle a son domicile fiscal ou pour un autre établissement situé en Belgique ou dans un Etat tiers (qu'il s'agisse ou non d'un établissement stable au sens de la convention).

5/309 Corrélativement, les conventions stipulent que, si le bureau effectue des opérations autres que l'achat de marchandises pour l'entreprise, aucun bénéfice ne doit lui être attribué en raison des opérations d'achats au profit de l'entreprise elle-même. Tel peut être le cas lorsque l'établissement, outre les opérations d'achats pour l'entreprise elle-même, s'occupe d'expédier à la clientèle de l'entreprise les marchandises qu'il a achetées, de transformer ces marchandises avec le personnel ou les machines de l'entreprise concernée, etc.

5/310 Les directives tracées aux 5/308 et 5/309 sont applicables mutatis mutandis aux installations qui servent uniquement à réunir des informations pour l'entreprise; on vise ici, par extension de la notion d'«achats», les bureaux ou les agences de presse dont la tâche consiste exclusivement à rassembler des informations pour l'entreprise étrangère, (entreprise exploitant un journal, etc.) dont le bureau dépend.

Bureaux utilisés pour la publicité, la fourniture d'informations, la recherche scientifique ou pour des activités analogues ayant un caractère préparatoire ou auxiliaire

5/311 On ne considère pas comme établissement stable une installation fixe d'affaires qui est utilisée, pour l'entreprise, *exclusivement* à des fins de publicité, de fourniture d'informations, de recherche scientifique ou d'activités analogues qui ont un caractère préparatoire ou auxiliaire. L'application de cette dérogation est subordonnée à certaines conditions:

a) L'installation doit être utilisée exclusivement pour les activités mentionnées ci-avant; cette condition est notamment remplie lorsque l'activité d'un bureau de publicité ou d'informations se limite à fournir au public des renseignements d'ordre général sur les produits vendus ou fabriqués par l'entreprise dont il relève. L'installation ne peut dès lors intervenir en aucune manière dans l'obtention, la réalisation, l'acceptation ou l'exécution des commandes; il n'est à priori pas satisfait à cette exigence lorsque l'activité d'un bureau ne se limite pas à une étude de marché mais comporte en réalité la prospection de la clientèle en vue de la préparation de contrats soumis à l'agrément du siège central de l'entreprise.

b) L'activité de l'installation (publicité, fourniture d'informations, recherche scientifique ou activités analogues) doit avoir un caractère préparatoire ou auxiliaire par rapport à l'activité de l'entreprise. On doit donc considérer qu'il existe un établissement stable lorsque, p.ex., le bureau belge d'une entreprise étrangère se livre à la recherche scientifique, à des études de marché, etc., alors que ces activités constituent l'objet essentiel de l'entreprise.

c) L'activité de l'installation doit s'exercer exclusivement au profit de l'entreprise elle-même. Un bureau utilisé pour la recherche scientifique ne satisfait pas à cette condition si les résultats des recherches sont vendus à une autre entreprise.

5/312 Au cas où des doutes surgiraient quant à la question de savoir si un bureau ou une autre installation d'affaires doit ou non être considéré comme un établissement stable, et pour autant qu'il existe un litige à ce sujet, un rapport circonstancié sera soumis à l'Administration, conformément aux directives tracées au 5/03.

Location sans intervention d'un établissement stable

5/314 Les conv. avec la *Grèce,* art. 5, § 3, f, et avec l'*Italie,* art. 5, § 3, 6°, stipulent qu'on ne considère pas qu'il y a établissement stable lorsqu'une entreprise, qui ne tombe pas sous l'application des paragraphes 2 et 4 (voir sections 2 et 4), se borne à donner en location, affermer ou concéder l'usage des biens ou droits mobiliers ci-après:

— un droit d'auteur sur une œuvre littéraire, artistique ou scientifique, en ce compris les films;
— un brevet, une marque de fabrique ou de commerce, un dessin, un modèle, un plan, une formule ou un procédé secrets;
— un équipement industriel, commercial ou scientifique qui ne constitue pas un bien immobilier conformément au chap. 6;
— des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

Cette disposition tend à empêcher que le produit de la location des biens ou droits mobiliers précités soit imposé dans le chef de l'entreprise — ainsi qu'il est d'usage dans certains pays —, sauf si l'entreprise

concédante a, dans l'Etat contractant en cause, une installation matérielle d'affaires au sens de la section 2 (élément matériel de l'établissement stable) ou un agent non autonome disposant de pouvoirs, au sens de la section 4 (facteur humain de l'établissement stable) et que le produit de la location peut être attribué à cette installation ou à cet agent conformément au chap. 7.
La disposition précitée constitue en fait une mesure de protection pour les entreprises belges qui donnent en location dans les pays susvisés des biens ou droits mobiliers cités dans la disposition, sans intervention d'un établissement stable situé dans ces pays. Du côté belge, elle ne fait que confirmer la pratique courante résultant du droit commun.

SECTION 4

Agents non autonomes

Généralités

5/401 Conformément à la pratique internationale suivie en la matière, les conventions attribuent à certaines catégories de personnes la qualité d'établissement stable en raison de la nature de leur activité, même lorsque l'entreprise ne dispose pas elle-même d'une installation matérielle d'affaires. On ne peut donc considérer comme établissement stable que les personnes qui dépendent, tant du point de vue juridique qu'économique, de l'entreprise pour le compte de laquelle elles effectuent des opérations.
On doit en l'occurrence apprécier la nature réelle des relations existant entre l'entreprise et l'agent, compte tenu des circonstances de fait et non de la qualification que les parties ont donnée au contrat régissant ces relations, (contrat de dépôt, de commission, de consignation, etc.).

Agents non autonomes disposant de pouvoirs

5/402 En vertu des conventions, à l'exception de celle avec la *Finlande* (voir 5/403), on considère qu'il y a établissement stable dans le chef d'un agent non autonome — facteur humain de l'établissement stable — lorsque cet agent possède, dans l'Etat où il a son activité, le pouvoir qu'il exerce habituellement de conclure des contrts au nom de l'entreprise, à moins que son activité ne soit limitée à l'achat de marchandises pour l'entreprise.
Par dérogation à la législation interne, l'agent non autonome doit donc en premier lieu posséder le pouvoir de conclure des contrats au nom de l'entreprise. Ce pouvoir ne doit pas être général; il suffit que l'agent puisse engager l'entreprise d'une manière ou de l'autre, fût-ce même dans une mesure limitée. Tel est le cas, p. ex., lorsque l'agent est tenu d'effectuer les livraisons aux prix et aux conditions fixés par l'entreprise qu'il représente, pourvu qu'il soit habilité à signer le contrat de vente au nom de l'entreprise. Si l'agent ne possède pas un tel pouvoir, et sous réserve des exceptions expressément prévues (voir 5/405), il n'est pas considéré comme un établissement stable et l'entreprise se trouve dans une situation analogue à celle visée à l'art. 141, 5°, C.I.R. (opérations traitées à l'intervention d'un collecteur de commandes qui se borne à rassembler les commandes de la clientèle et à les transmettre à l'entreprise sans engager celle-ci).
En outre, il est requis:
— que dans l'Etat où il exerce son activité, l'agent fasse usage régulièrement de ses pouvoirs, c.-à-d. de façon répétée et pas seulement occasionnelle;
— que l'activité de l'agent ne soit pas limitée à l'achat de marchandises pour l'entreprise. Cette dernière condition

est liée à la disposition négative (voir section 3) qui exclut, sous certaines conditions, les bureaux d'achats de la notion d'établissement stable. Les instructions données au 5/308 relativement aux bureaux d'achats sont applicables en l'occurrence.

5/403 La conv. avec la *Finlande,* art. 6, § 2, contient une disposition qui déroge quelque peu à la règle susvisée:

— il y est question d'un pouvoir général dont il est fait usage habituellement pour engager l'entreprise par la négociation et la souscription ou l'acceptation de contrats; la question de savoir s'il existe ou non un pouvoir général doit être résolue en ayant égard aux circonstances de fait qui se rencontrent dans chaque cas;

— aucune exception n'est prévue pour le cas où l'activité de l'agent se limite à des achats; en pareille circonstance, il existe bien un établissement stable mais on peut, aux conditions prévues par la convention, s'abstenir d'attribuer à cet établissement un bénéfice en raison de l'achat de marchandises pour l'entreprise (art. 5, § 4 - voir chap 7).

5/404 La plupart des conventions contiennent une disposition spéciale relativement aux agents des entreprises d'assurances. Voir à ce sujet 5/505 et suiv.

Agents disposant d'un stock de marchandises

5/405 Les conv. avec la *Finlande* et la *France* contiennent une disposition particulière en vertu de laquelle l'agent qui dispose d'un stock de marchandises est considéré, sous certaines conditions, comme un établissement stable, au même titre que l'agent disposant de pouvoirs.

5/406 A l'égard des entreprises de la *Finlande,* il faut considérer qu'il y a un établissement stable si l'agent recueille des commandes et les exécute au moyen d'un stock régulièrement affecté à cette exécution (art. 6, § 2).

En vertu de la conv. avec la *France,* art. 4, § 6, l'exécution de telles opérations est une preuve de l'existence de pouvoirs; ceci présente spécialement de l'intérêt en l'absence d'un contrat écrit.

Il suffit dans ce contexte, et pour autant qu'il dispose d'un stock pour effectuer les ventes, que l'agent agisse comme intermédiaire dans les opérations de ventes, même si celles-ci s'effectuent à des prix et conditions imposés par l'entreprise et si le contrat de vente doit être approuvé et signé par cette entreprise. Par conséquent, un collecteur de commandes doit être considéré comme un établissement stable s'il exécute les commandes en prélevant les marchandises commandées sur un stock dont il dispose; ceci confirme en fait la position habituelle suivant le droit commun à l'égard du collecteur de commandes qui ne se borne pas à transmettre les commandes à l'entreprise.

SECTION 5

Agents indépendants

Généralités

5/501 Suivant les conventions, un courtier, un commissionnaire général ou tout autre agent indépendant n'est pas considéré en lui-même comme un établissement stable *à la condition* que ces personnes agissent dans le cadre normal de leur activité. Dans la conv. la *Finlande,* art. 6, § 3, 1°, cette idée est rendue par l'expression «courtier ou commissionnaire bona fide et agissant comme tel dans le cadre de son activité normale».

5/502 Les conventions confirment ainsi en fait la position adoptée sur base du droit commun: bien qu'ils ne soient pas formellement exclus par la définition de l'art. 140, § 3, C.I.R., les intermédiaires de commerce indépendants (c.-à-d. ceux qui traitent avec les clients, en leur propre nom et sans intervention de l'entreprise étrangère, comme les courtiers, les commissionnaires, les commissionnaires en douane, etc.) ne constituent normalement pas un établissement belge de l'entreprise étrangère s'ils agissent dans le cadre normal de leur activité, même si, sans perdre leur indépendance, ils détiennent chez eux un stock de marchandises de l'entreprise à l'effet de vendre en leur propre nom ces marchandises pour l'entreprise étrangère. La loi ne requiert pas en effet la présence d'un mandataire capable d'engager l'entreprise étrangère mais elle exige l'existence d'une représentation, c.-à-d. d'un agent, d'un préposé ou d'un mandataire agissant réellement, même avec des pouvoirs limités, au nom et pour compte de l'entreprise étrangère.

5/503 Il est requis que l'intermédiaire de commerce, qui vend pour le compte de l'entreprise et qui se présente comme agent autonome de cette dernière, agisse dans le cadre normal de son activité; on peut mentionner comme opérations tombant en dehors du cadre normal de son activité et donnant dès lors naissance à un établissement stable notamment.

1) l'exécution d'un cycle complet d'opérations pour compte de l'entreprise (achat de matières premières, fabrication, vente de produits fabriqués);

2) l'exécution d'opérations telles que la transformation, la conversion en produits commerçables, le parachèvement, pour le compte de l'entreprise, à l'exception du simple conditionnement pour l'expédition;

3) le fait de se révéler comme l'agent de l'entreprise par le papier à lettres, une plaque apposée sur la porte, la publicité ou une inscription dans les répertoires d'adresses, l'annuaire du téléphone, etc.;

4) le fait d'être lié par un contrat d'emploi et rémunéré par un traitement fixe, d'être sous contrôle (interdiction de vendre les produits des entreprises concurrentes, vérification approfondie de la comptabilité, obligation de consacrer toute son activité aux opérations pour compte de l'entreprise étrangère, etc.).

5/504 Ainsi, dans un cas déterminé, on a considéré qu'il y avait un établissement stable en Belgique en la personne d'une entreprise belge qui se présentait comme concessionnaire de l'entreprise étrangère, mais qui, strictement tenue par des règles édictées par l'entreprise étrangère et sous le contrôle permanent de celle-ci, agissait en réalité comme son agent d'exécution, en achetant pour son compte des matières premières et en transformant celles-ci en produits finis qu'elle livrait et facturait à la clientèle; elle débitait l'entreprise étrangère du prix d'achat des matières premières, de la location, de l'entretien, de l'assurance et de l'amortissement du matériel de fabrication ainsi que d'un montant, par produit facturé et livré, destiné à couvrir les autres frais de fabrication et de vente et à rémunérer ses activités au profit de l'entreprise étrangère.

Cas particulier: agents des entreprises d'assurances (indépendants ou non)

Dispositions générales

5/505 Il faut noter tout d'abord que les agents d'assurances (dépendants ou indépendants) tombent sous le coup des dispositions générales des sections 4 et 5, même

si la convention en cause contient une disposition spéciale à leur égard.

S'il apparaît par conséquent qu'un agent d'assurances, dépendant ou indépendant, possède le pouvoir d'engager l'entreprise étrangère (même s'il ne possède ce pouvoir qu'en fait, p. ex. s'il dispose de polices en blanc qu'il délivre aux clients) et qu'il exerce habituellement ce pouvoir en concluant des contrats au nom et pour le compte de l'entreprise d'assurances sans devoir pour chaque contrat obtenir préalablement l'accord de cette entreprise, cet agent doit être censé constituer un établissement stable de l'entreprise. S'il s'agit d'un agent indépendant, son indépendance reste sans effet puisqu'il agit en dehors du cadre normal de son activité d'agent indépendant et que, ce faisant, il tombe sous le coup de la disposition relative aux agents non autonomes (section 4).

Doit par conséquent être considéré comme établissement stable, un courtier belge d'assurances — personne physique ou société — qui est désigné par une société d'assurances étrangère comme son représentant mandaté en Belgique et qui a compétence pour effectuer en son nom et pour son compte des opérations comprenant notamment l'acceptation, la signature et la délivrance de contrats d'assurances.

5/506 Dans de nombreuses conventions conclues par la Belgique figure une disposition spéciale qui, soit confirme clairement le principe énoncé au 5/505, soit introduit des critères complémentaires pour caractériser l'existence d'un établissement stable dans le chef des agents d'assurances. Ces conventions peuvent, à cet égard, être rangées dans les trois catégories dont question ci-après.

Précision quant à la notion d'«agent indépendant»

5/507 Les conv. avec l'*Allemagne*, l'*Espagne*, art. 5, § 5, 2ème alinéa, les *Etats-Unis*, art. 5 (6), 2ème phrase, le *Luxembourg* et la *Norvège* précisent que la définition négative concernant les agents indépendants (voir 5/501) ne s'applique pas à l'agent qui agit pour le compte d'une entreprise d'assurances et qui a et exerce habituellement le pouvoir de conclure des contrats au nom de cette entreprise. Un tel agent constitue donc un établissement stable suivant ces conventions.

En vertu de la conv. avec les *Pays-Bas*, art. 5 § 5, 2ème phrase, ce n'est que lorsque l'agent disposant de pouvoirs agit exclusivement pour le compte d'une ou, au maximum, de deux entreprises d'assurances que la définition négative susvisée ne s'applique pas. Par contre, si l'agent agit pour plus de deux entreprises d'assurances, la règle générale relative aux agents indépendants est d'application (voir 5/501).

Agents percevant des primes ou assurant des risques

5/508 Ensuite des précisions contenues dans les conv. avec l'*Autriche*, art. 5, § 6, le *Brésil*, art. 5, § 4, 2ème alinéa, le *Danemark*, art. 5, § 6, la *France*, art. 4, § 7, la *Grande-Bretagne*, art. 5, § 6, l'*Irlande*, art. 5, § 4, 2ème alinéa et la *Suède*, art. 5, § 6, une entreprise d'assurances possède un établissement stable en Belgique si elle perçoit des primes dans le pays (*pas* dans la convention avec l'*Irlande*, où il n'est question que d'assurer des risques) ou assure des risques y situés par l'entremise d'un intermédiaire ou agent établi dans le pays et qui n'est pas réellement indépendant.

Il faut inférer de ces précisions qu'un agent n'est pas considéré comme indépendant lorsqu'il possède le pouvoir qu'il exerce ha-

bituellement de conclure des contrats au nom de l'entreprise. Ceci confirme en fait le principe général du 5/505 et correspond aux dispositions formulées autrement dans les conventions citées au 5/507, 1er alinéa.

5/509 Les dispositions spéciales figurant dans les conventions énumérées au 5/508, 1er alinéa, élargissent aussi la notion d'«établissement stable» par rapport à la définition générale du modèle O.C.D.E., §§ 4 et 5, en ce qu'elles considèrent comme établissement stable un agent non autonome qui perçoit des primes ou assure des risques, même si l'intéressé n'a pas le pouvoir de conclure des contrats au nom de l'entreprise.

Agents (disposant ou non de pouvoirs) exerçant une activité commerciale d'une certaine importance

5/510 En vertu de la conv. avec la *France,* art. 4, § 7, un agent non autonome qui perçoit des primes ou assure des risques constitue un établissement stable, sans que cet agent doive avoir le pouvoir d'engager l'entreprise (5/509).

Les lettres annexées à la convention précisent que la présence d'un représentant agréé par les autorités de l'autre Etat n'est pas constitutive d'un établissement stable si ce représentant se borne à remplir une fonction administrative; pour qu'il y ait établissement stable, il faut que ce représentant se livre à une activité suffisante — compte tenu de sa nature et de son importance — pour qu'on puisse considérer que l'entreprise exerce par son entremise une activité commerciale normale et habituelle dans l'autre Etat. On exige donc que l'agent non autonome intervienne réellement dans les contrats d'assurances.

La convention ne contient pas de disposition spéciale en ce qui concerne les agents indépendants; on se référera donc en l'occurrence aux principes généraux du 5/505 et au commentaire du 5/508.

5/511 La règle du 5/510, 2ème alinéa, est aussi d'application pour la conv. avec la *Finlande,* art. 6, § 2, 2ème alinéa, mais indépendamment du fait qu'il s'agisse d'un agent non autonome ou au contraire d'un agent indépendant.

SECTION 6

Sociétés ou entreprises associées

5/601 Les conventions contiennent une disposition suivant laquelle le fait qu'une société belge contrôle ou est contrôlée par une société étrangère (rapports mère-filiale) ne donne pas naissance, par lui-même, à un établissement stable. La même règle s'applique lorsque la société-mère ou la société filiale a son domicile fiscal dans un Etat tiers et exerce son activité en Belgique ou dans l'Etat cocontractant (que ce soit par l'intermédiaire d'un établissement stable ou non) ainsi que dans le cas de deux ou de plusieurs filiales d'une même société-mère.

Les conv. avec l'*Allemagne,* le *Luxembourg,* et la *Norvège* contiennent une variante en vertu de laquelle la disposition précitée est rendue applicable aux *entreprises* en général, qu'elles soient exploitées par des sociétés ou par d'autres personnes; ceci concerne donc aussi les entreprises, d'une personne autre qu'une société, qui contrôlent ou sont contrôlées par une entreprise, en raison de liens familiaux, financiers ou autres. En vertu de la conv. avec les *Etats-Unis,* cette disposition est applicable aux «personnes liées» et concerne ainsi les entreprises des personnes physiques et autres personnes, qui sont liées entre elles au sens de l'art. 9 (voir chap. 9).

Ces dispositions confirment en fait la pratique suivie dans le cadre de la législation interne (voir Com. I.R., 140/19, et aussi Cass. 22.10.1963, s.a. de droit français Dollfus, Mieg & Cie, Pas. 1964, I, 193; R.S.J. XVII, n° 1.405).

5/602 Les dispositions mentionnées ci-avant ne dérogent cependant pas aux autres dispositions (voir sections 1 à 5) sur la base desquelles on considère qu'il existe un établissement stable. Par conséquen,t une filiale peut p. ex., constituer un établissement stable de sa société-mère si elle agit comme agent de cette dernière et engage la société-mère en concluant des contrats en son nom; en pareil cas, la société-mère est censée posséder un établissement stable en raison de ces contrats. C'est ainsi qu'une filiale belge d'une s.a. néerlandaise a été considérée comme un établissement stable de cette dernière, avec l'accord de l'Administration néerlandaise: les relations commerciales en Belgique avaient été établies par la s.a. néerlandaise à ses propres frais et elle supportait également toutes les dépenses et risques inhérents aux marchandises vendues en Belgique; la société belge recevait uniquement une commission allouée par contrat.

* * * BIBLIOGRAPHY * * *

BOOKS

AFRICA

SURVEY OF AFRICAN ECONOMIES. Volume 6.
Washington, International Monetary Fund, 1975. 480 pp.
This volume covers five English-speaking countries i.e. the Gambia, Ghana, Liberia, Nigeria and Sierra Leone. Like the previous five volumes in the series, the present volume covers economic data relating to the period 1969-73. Reference to taxation is made as far as the structure of revenue is dealt with. (B 10.656)

ARGENTINA

IMPUESTO AL VALOR AGREGADO.
Papeles de trabajo facturación y registración del I.V.A. By Horacio E. Gorka and Norberto A. Antunez. Buenos Aires, Editorial Cangallo S.A.C.I., 1975. 52 pp.
Working papers with respect to the value added tax with emphasis on invoicing and registration of V.A.T. (B 15.489)

ASIA

A COMPARISON OF THE INDIVIDUAL AND CORPORATE INCOME TAX SYSTEMS IN SOME COUNTRIES IN THE ASIA-PACIFIC REGION.
Manila, National Tax Research Center, 1975. 143 pp.
Study prepared by the National Tax Research Center in Manila which describes the individual and corporate income tax systems in the following countries: Australia, Republic of China, India, Indonesia, Japan, Khmer Republic, Republic of Korea, Malaysia, New Zealand, Pakistan, Philippines, Singapore, Sri Lanka, Thailand and Vietnam. (B 50.149)

AUSTRALIA

COMMONWEALTH TAXATION BOARD OF REVIEW DECISIONS.
New series, edited by F. C. Bock, E. F. Mannix. Volume 19. Melbourne, Butterworths, 1975. 864 pp.
Compilation of Australian tax cases concerning estate duty, income tax, international agreements, payroll tax and sales tax. (B 9248)

PAPERS PRESENTED AT THE THIRD NATIONAL CONVENTION ARRANGED BY THE TAXATION INSTITUTE OF AUSTRALIA, APRIL 1975.
Sydney, Taxation Institute of Australia, 1975. 188 pp.
Text of papers on various topics i.e., Taxation of short term and capital gains by J. Daryl Davies and G. J. Samuel; Taxation reform by M. F. O'Loughlin; Current tax planning by R. J. Bainton and W. H. Bratby; Tax problems for primary industry by D. G. Neilson; Superannuation to-day by R. E. Ledger and R. M. B. Reynolds; Individual v. community - aspects of tax justice by P. M. Roach and additional commentary by various persons. (B 9260)

AUSTRIA

ABC DES ÖSTERREICHISCHEN STEUERRECHTS. Eine gemeinverständliche Darstellung aller Steuern. Mit zahlreichen Berechnungsbeispielen, Tabellen und einem Lexikon steuerlicher Fachausdrücke. 6. erweiterte Auflage, 1975. By H. Westermayer. Vienna, Industrieverlag Peter Linde, 1975. 243 pp.
Sixth revised edition of general tax guide explaining the tax laws as at September 1, 1975. The book is illustrated with examples and includes a tax glossary. (B 9268)

BARBADOS

ESTATE AND SUCCESSION DUTIES (AMENDMENT) ACT, 1975-7.
Supplement to Extraordinary Gazette dated 21st March, 1975. London, S.W.1., Overseas Development Administration, Eland House, Stag Place, 1975. 5 pp. (B 15.484)

INCOME TAX (AMENDMENT) ACT, 1975-8.
An Act to amend the Income Tax Act, 1968. Supplement to Extraordinary Gazette dated 21st March, 1975. London, S.W.1., Overseas Development Administration, Eland House, Stag Place, 1975. 21 pp. (B 15.485)

BELGIUM

HANDELS- EN NIJVERHEIDSONDERNEMINGEN IN BELGIË.
In acht te nemen formaliteiten; fiscaal en sociaal stelsel; hulpverlening bij oprichting en expansie.

Brussels, Ministerie van Economische Zaken, Algemene Directie voor Studiën en Documentatie, 1975. 236 pp.
Official information guide for persons contemplating doing business in Belgium. Fiscal aspects are dealt with. Assistance with establishment and expansion. (B 9245)

LIBER AMICORUM PROFESSOR BARON JEAN VAN HOUTTE.
Brussels, Elsevier-Sequoia, 1975. 595 pp.
Liber Amicorum in two volumes presented to Professor Baron Jean van Houtte on April 18, 1975. This work contains the consolidated text of the speeches given on that day followed by essays contributed by various authoritative scholars in the field of law including tax law. List of Van Houtte's publications is appended. (B 9284)

BULGARIA

LAW ON FOREIGN TRADE DECREE NO. 1196 OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF BULGARIA ON ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION WITH FOREIGN JURIDICAL AND PHYSICAL PERSONS. REGULATIONS FOR THE APPLICATION OF THE DECREE ON ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION WITH FOREIGN JURIDICAL AND PHYSICAL PERSONS.
Sofia, Bulgarian Chamber of Commerce and Industry, 1974. 15 pp.
English version of the law and regulations on foreign trade. (B 9249)

CANADA

PROVINCIAL AND MUNICIPAL FINANCES 1975.
Toronto, Canadian Tax Foundation, 1975. 249 pp., $ 4.00.
Seventh edition of review of provincial and municipal revenue and expenditure. Chapter 5 describes the sources of revenue as far as taxation is concerned. The staff members responsible for the preparation of this edition were David Perry and Mary Gurney, assisted by Millie Goodman and Marie Bélanger. (B 9246)

CHANNEL ISLANDS

TAXATION IN THE CHANNEL ISLANDS AND ISLE OF MAN 1975.
By L. J. P. Livens. Croydon, Tolley Publishing Company Ltd., 1975. 87 pp., £ 2.00.
This edition states the tax laws as at August 11, 1975 for each of the territories of Jersey, Guernsey and the Isle of Man. (B 9270)

COMMON MARKET (E.E.C.)

LE REGIME FISCAL DES FONDATIONS CULTURELLES ET DU MECENAT DANS LES ETATS DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE.
By C. Bouuaert. Ghent, I. C. Bouuaert, University of Ghent, 1975. 177 pp.
Study of the taxation of cultural institutions in the broadest sense of the term in the nine countries of the European Communities. (B 9273)

TAXES ON DIRECT INVESTMENT INCOME IN THE E.E.C.
A legal and economic analysis. By B. Snoy. New York, Praeger Publishers, Inc., 1975. 349 pp., $ 21.50.
Based on a thesis, this study deals with the taxation of direct investment income in the nine E.E.C. countries with reference to U.S.A. connections. (B 9261)

EAST AFRICAN COMMUNITY

FISCAL HARMONIZATION IN THE EAST AFRICAN COMMUNITY.
By R. C. Hammond. Amsterdam, International Bureau of Fiscal Documentation, 1975. 137 pp. International Fiscal Harmonization - No. 2.
Monograph study of the history, problems and future of fiscal harmonization within the East African Community. (10.660)

EUROPE

EUROPÄISCHE WIRTSCHAFTSKOMMISSION DER VEREINTEN NATIONEN (ECE).
III. Ost-West-Marketing-Seminar zum Lizenzverkehr. Cologne, Bundesstelle für Aussenhandelsinformation, 1975. No. 72, July 1975. 97 pp.
Conference papers of the Third Seminar on East-West Trade Promotion, Marketing and Business Contracts in Geneva, 13-15 May, 1975 by the Economic Commission for Europe, United Nations. (B 9226)

FRANCE

L'ENTREPRISE INTERNATIONALE FACE A L'IMPOT EVASION FISCALE OU SURIMPOSITION?
By E. Garlatti. Brussels, Ferdinand Larcier, 1974. 275 pp., Bfr. 1007.
Study of the French national law and interna-

tional law relating to the avoidance of double taxation on income. Income tax treaties and agreements pertaining to income from shipping and aircraft transportation in international traffic concluded by France considered. Comparison with the provisions of the OECD draft convention for the avoidance of double taxation on income. (B 8139)

GERMANY (FEDERAL REPUBLIC)

ENTWICKLUNGSPOLITISCHE ORIENTIERUNG DES ENTWICKLUNGSHILFESTEUERGESETZES - EIN PRAKTIKABLER VORSCHLAG.

By J. P. Agarwal. Kiel, Institut für Weltwirtschaft, 1972. 8 pp.

The author's view of the tax policy contained in the Development Aid Tax Law. (B 9274)

STEUERENTLASTUNGEN ODER TRANSFERZAHLUNGEN.

Eine Untersuchung anhand geltender Steuerentlastungsnormen. By R. Büsch. Kölner Wirtschafts- und Sozialwissenschaftliche Abhandlungen, Band 13. Cologne, Peter Hanstein Verlag GmbH., 1975. 248 pp.

Study of the use of either exemptions from tax or subsidies to companies and individuals. (B 9232)

BERLINER STEUERPRÄFERENZEN.

By H. George. Berlinförderungsgesetz; 5. völlig neu bearbeitete Auflage. Forkel-Reihe Recht und Steuern. Stuttgart-Wiesbaden, Forkel-Verlag, 1975. 475 pp.

Fifth revised edition of monograph on tax privileges for Berlin. This work explains the preferential tax arrangements granted in the field of individual income tax, corporate income tax and value added tax and other incentives contained in the Berlin Promotion Law as of December 23, 1974. Text of the basic law, related statutes and case law is included. (B 9309)

HANDBUCH DES UMSATZSTEUERRECHTS.

Auskunftswerk über das gesamte Umsatzsteuerrecht. Gesetze Richtlinien Kommentare. Neuwied, Hermann Luchterhand Verlag GmbH., 1975.

Loose-leaf service in two volumes containing text of the turnover tax law, related statutes and comment thereon as of beginning 1975. This work replaces the handbook on the same subject which states the material as of the end of 1974. (B 9240)

HERRMANN-HEUER, KOMMENTAR ZUR EINKOMMENSTEUER UND KÖRPERSCHAFTSTEUER EINSCHL. NEBENGESETZE.

17th Edition. By C. Herrmann, G. Heuer, A. Raupach, with cooperation of A. Heining and O. von Schilling. Doppellieferung 113, July 1975. Cologne-Marienburg, Verlag Dr. O. Schmidt, 1975. 780 pp., DM 82.50.

Supplement 113 to the 17th edition of Herrmann-Heuer, Commentary on Individual and Corporate Income Tax including subsidiary legislation; contains extensive comment on the amendments made by the Individual Income Tax Reform Law and later amending laws, particularly in the field of:

— profit computation, including fiscal incentives;
— company old age pension plans;
— wage tax withholding procedure;
— investment allowances.

A clear distinction is made between pre-1975 legislation and legislation applicable to the time thereafter by the use of green pages for the supplements on tax reform. (B 9254)

GRUNDLAGEN UND MODELLE ZU STEUERBELASTUNGSANALYSEN UND -VERGLEICHEN MIT HILFE DER AUTOMATISCHEN DATENVERARBEITUNG.

By W. Kaefer. Kölner Wirtschafts- und Sozialwissenschaftliche Abhandlungen, Band 7. Cologne, Verlag Peter Hanstein GmbH., 1974. 385 pp.

Study of the incidence of tax on corporations by the use of computers. (B 9230)

DIE BESTEUERUNG DER UNTERNEHMUNG IN DEUTSCHLAND UND IM VEREINIGTEN KÖNIGREICH VON GROSSBRITANNIEN UND NORDIRLAND.

By B-H. Kossow. Kölner Wirtschafts- und Sozialwissenschaftliche Abhandlungen, Band 12. Cologne, Verlag Peter Handstein GmbH., 1975. 577 + 370 pp.

Comparison of the corporate tax incidence under the tax systems of Germany and the U.K. by using the model measurement proposed by Prof. Rose. (B 9231)

HONG KONG

COMPANIES.

Chapter 32 of the revised edition 1964 (Ordinance No. 39 of 1932). Ordinance and Subsidiary Legislation. Hong Kong, Government Printer, 1964. ± 400 pp.

Consolidated text of the Companies Ordinance No. 39 of 1932 as amended by No. 30 of 1964. Appended is the text of subsidiary legislation to the companies ordinance. (B 50.161)

ICELAND

TAXES IN ICELAND 1975.
Short description of the taxation of individuals and companies in Iceland (Assessment year 1975; Tax year (Income year) 1974). Prepared by Director of Internal Revenue, August 1975. 15 pp. (B 9272)

IRELAND

BRIEF NOTE ON CERTAIN TAXES AND DUTIES PAYABLE IN IRELAND IN 1975-76.
Legislation is at present before the Oireachtas providing for capital gains tax, capital acquisitions tax, and wealth tax. Dublin, The Revenue Commissioners, July 1975. 7 pp. Leaflet No. 3. (B 9300)

OUTLINE OF THE PRINCIPAL INCOME TAX AND CORPORATION PROFITS TAX RELIEFS FOR YEAR 1975-76 HAVING SPECIAL IMPORTANCE IN RELATION TO INDUSTRIAL PRODUCTION.
Dublin, The Revenue Commissioners, July 1975, 5 pp. Leaflet No. 4. (B 9301)

KOREA (SOUTH)

FOREIGN CAPITAL INDUCEMENT ACT.
Seoul, Economic Planning Board, 1973. 63 pp.
English version of text of the Foreign Capital Inducement Act and Enforcement Decree thereto and the rules for the implementation of that Act. (B 50.154)

KOREAN TAXATION 1975.
Seoul, Ministry of Finance, 1975. 201 pp.
This work explains briefly Korean tax structure and administration for purposes of foreigners engaged in business activities in Korea; and to furnish information on the Korean tax system to foreign countries, particularly with which Korea negotiates tax conventions. (B 50.148)

TAX GUIDE FOR FOREIGN INVESTORS 1975.
Seoul, Economic Planning Board, 1975. 63 pp.
Revised tax guide. (B 50.155)

NETHERLANDS

DE JAARREKENING.
Bedrijfseconomische, juridische en fiscale aspecten. By H. Beckman and C. A. Buningh. Leyden, H. E. Stenfert Kroese, 1975. 220 pp.
Monograph on the annual balance sheet viewed from business administration, legal and taxation point of views. (B 9296)

BELASTINGVLUCHT.
Lustrumcongres Tilburgse Fiscalistenvereniging "De Smeetskring". Deventer, Kluwer, 1975. 57 pp., Dfl. 10.00.
Text of lectures and subsequent debate of special congress held on November 29, 1974 by the tax association "De Smeetskring" in Tilburg on the topic "tax flight". (B 9244)

DEELNEMINGSVRIJSTELLING EN HOLDINGS.
By J. H. Christiaanse. Deventer, FED, 1975. 51 pp.
Introductory speech and subsequent debate on the topic "tax exemption of intercorporate dividends and holdings" at seminar held on May 3, 1975 by the Nederlandse Federatie van Belastingconsulenten (Netherlands Federation of Tax Consultants). (B 9247)

INKOMSTENBELASTING.
By H. J. Hofstra. Fiscale Hand- en Studieboeken, No. 2. Deventer, Kluwer, 1975. 343 pp., Dfl. 59.00.
Monograph on the Netherlands individual income tax law designed to clarify technical features, statutes, structure and background information of the provisions adopted in the law rather than to provide a section-by-section explanation of the individual income tax law. Case law and literature are reckoned with. The material is stated as of July 1, 1975. (B 9243)

DE INKOMSTENELASTICITEIT VAN HET NEDERLANDSE BELASTINGSTELSEL.
By A. H. E. M. Wellink. Leyden, H. E. Stenfert Kroese, 1975. 336 pp.
Study of the income elasticity of the Netherlands tax system. It aims to analyse the increase of tax revenue of an unchanged tax system in the light of changes brought about in net national income computed against market prices in a 4 to 5 year period. (B 9295)

O. E. C. D.

OECD ECONOMIC SURVEYS.
B.L.E.U.
Paris, O.E.C.D., July 1975. 80 pp. (B 9229)

THE ROLE OF MONETARY POLICY IN DEMAND MANAGEMENT.
The experience of six major countries.
Paris, O.E.C.D., 1975. 147 pp. (B 9258)

DIE REVISION DES MUSTERABKOMMENS DER OECD ZUR VERMEIDUNG DER DOPPELBESTEUERUNG BEIM EINKOMMEN UND VERMÖGEN.
By M. Widmer. Separatdruck aus dem Archiv für Schweizerisches Abgaberecht, 43. Band, Heft 10, April 1975. Paris, O.E.C.D., 1975. P. 481-508.
Reprint of essays outlining the proposals for revision of the 1963 draft double taxation convention on income and capital. (B 9288)

PHILIPPINES

PHILIPPINE PUBLIC FINANCE.
By E. Z. Romualdez Sr., A. Q. Yoingco and A. O. Casem Jr. Manila, GIC Enterprises & Co., 1973. 608 pp.
This book aims to explain public finance in the Philippines. It treats comprehensively public finance literature and will be of help to researchers, civil servants, businessmen, university professors and students of economics and business who are interested in the working of government finance in a developing country in Asia. (B 50.151)

PHILIPPINE TAX SYSTEM.
By E. Z. Romualdez Sr., A. Q. Yoingco and A. O. Casem Jr. Manila, GIC Enterprises & Co., 1970-1971. 400 pp.
This book provides historical information on taxation in the Philippines. It describes the taxes levied in the Philippines and deals with tax incentives for development as well as with planning and administration of tax policy. The book would be useful to students and professors, researchers, practitioners, and businessmen who are interested in knowing the tax treatment of investment, income and wealth, production and sale. (B 50.152)

PUERTO RICO

ECONOMY AND FINANCES PUERTO RICO 1974.
San Juan, Commonwealth of Puerto Rico, Department of the Treasury, 1974. 36 pp. (B 15.491)

SINGAPORE

INVESTOR'S GUIDE.
Singapore, International Chamber of Commerce, 1975. 81 pp.
Third revised edition up to July 1975. The guide describes the investment climate and the facilities, requirements and opportunities for investors in Singapore. Taxation is dealth with. (B 50.158)

SOUTH AFRICA

SOUTH AFRICAN INCOME TAX.
Being an exposition of the law, practice and incidence of income tax in South Africa. 8th edition. By A. S. Silke. Cape Town, Juta & Company Ltd., 1975. ± 1500 pp.
This work contains an explanation of the income tax law, and a consolidated text of the Income Tax Act, 1962 as amended up to and including Act No. 69 of 1975. Case law and departmental practice up to August 1975 are dealt with. This volume will be updated by the publication of annual supplements after the promulgation of each year's amending Act. Texts of comprehensive income tax treaties as well as agreements restricted to income derived from shipping and aircraft transportations are appended. (B 10.661)

SPAIN

BUSINESS IN SPAIN.
London, Lloyds Bank International Ltd. and Bank of London & South America Ltd., 1974. 14 pp. (B 8760)

MEMORIA DE LA ASOCIACION ESPAÑOLA DE DERECHO FINANCIERO, 1973.
Madrid, Editorial de Derecho Financiero, 1975. 511 pp., Ptas. 700.
Annual report of 1973 of the activities of the Spanish Association of Fiscal Law, with special emphasis on the Lausanne Congress. (B 9276)

SWEDEN

AN INTRODUCTION TO SWEDISH VALUE ADDED TAX.
The National Tax Board, Solna, Riksskatteverket, 1975. 59 pp.
Booklet to give a general impression of the Swedish tax on value added system in English.

The English version of the instructions concerning foreign entrepreneurs is appended. (B 9255)

SOME DATA ABOUT SWEDEN 1975-76.
Stockholm, Skandinaviska Enskilda Banken, 1975. 96 pp. (B 9239)

TAX ADMINISTRATION IN SWEDEN.
An introduction published by the National Tax Board. Solna, Riksskatteverket, 1975. 22 pp. (B 9256)

SWITZERLAND

DOPPELBESTEUERUNG/DOUBLE IMPOSITION.
Separatdruck Die Steuern der Schweiz bearbeitet von der Eidgenössischen Steuerverwaltung. Basel, Verlag für Recht und Gesellschaft AG, 1975. 61 pp.
Reprint of chapter from the book entitled Taxes in Switzerland prepared by the Federal Tax Administration concerning Double Taxation under national Swiss tax laws and double tax treaties concluded by Switzerland with other countries. Text in German and French is appended. (B 9286/B 9287)

UNITED KINGDOM

GREEN'S DEATH DUTIES.
Third (cumulative) supplement to seventh edition. By A. G. Nield and P. D. Freshney. London, Butterworths, 1975. 119 pp. £ 3.50
This supplement supersedes the previous supplements to the basic work. This third supplement states the law as at March 13, 1975. (B 9293)

THE HAMBRO TAX GUIDE 1975/76 WITH TAX SAVING HINTS.
By A. S. Silke and W. I. Sinclair. London, Robert Yeatman Limited, 1975. 245 pp., £ 3.95.
Completely updated general tax guide incorporating the 1975 Finance Act and bringing together in a single volume information on new taxes: capital transfer tax, unified income tax, the imputation system of corporation tax and value added tax. (B 9271)

TOLLEY'S CORPORATION TAX 1975-76.
A comprehensive detailed guide on corporation tax, completely revised and up-to-date to include both the 1975 Finance Acts and relevant case law to 31 July 1975. Edited by Eric L. Harvey FCA. Croydon, Tolley Publishing Company Ltd., 1975. 79 pp., £ 2.00. (B 9306)

TOLLEY'S INCOME TAX 1975-76.
60th Edition. A comprehensive detailed guide on income tax and capital gains tax, completely revised and up-to-date to include both the 1975 Finance Acts and relevant case law to 31 July 1975. Edited by Eric L. Harvey FCA. Croydon, Tolley Publishing Company Ltd., 1975. 241 pp., £ 4.25. (B 9307)

U. S. A.

FEDERAL TAX GUIDE 1976.
Volume 1. Chicago, Commerce Clearing House, Inc., 1975.
Loose-leaf publication of Volume 1 of the new 1976 edition of the Federal Tax Guide; it replaces the 1975 edition. (B 9294)

REAL PROPERTY TAXATION IN NEW YORK CITY.
By P. Finkelstein. New York, Praeger Publishers, Inc., 1975. 122 pp. (B 9297)

1975 GUIDEBOOK TO LABOR RELATIONS.
Chicago, Commerce Clearing House, Inc., 1975. 392 pp., $ 8.50.
Guidebook designed to meet the need for a simple explanation and summary of the general principles of labor relations law and the important rules developed by statute and case law. (B 9289)

HAWAII INCOME PATTERNS 1973.
Honolulu, Tax Research and Planning Office, Department of Taxation, 1975. 87 pp.
Report with detailed statistics of corporations doing business in Hawaii taken from income tax returns for the 1973 calendar year. (B 50.153)

INHERITANCE AND ESTATE TAXES.
Estates settled January 1, 1970 through October 31, 1974. Honolulu, Department of Taxation, State of Hawaii, 1975. 70 pp.
Study of the impact of Hawaii's inheritance and estate tax law on the beneficiaries of a decedent's estate. This report is a compilation of data taken from all inheritance and estate tax returns filed for persons who died between January 1, 1970 and October 31, 1974 and whose estates were settled during that period. (B 50.157)

LOOSE-LEAF SERVICES

Received between October 1 and October 31, 1975

BELGIUM

FISCALE DOCUMENTATIE VANDEWINCKELE. BOEK DER BAREMA'S,
Tome V, release 25
Tome IXa, release 75
Tome XIV, release 80
C.E.D. Samsom N.V., Brussels

CANADA

BRITISH COLUMBIA TAXATION SERVICE,
release 38
Richard de Boo, Ltd., Toronto

CANADIAN CURRENT TAX,
releases 39, 40 and 41
Butterworth & Co., Toronto

ONTARIO TAXATION SERVICE RELEASE,
release 42
Richard de Boo, Ltd., Toronto

E. E. C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN:
— Europees mededingings- en kartelrecht,
release 44
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

FRANCE

JURIS CLASSEUR: DROIT FISCAL: COMMENTAIRES „CHIFFRE D'AFFAIRES",
release 6086
Editions Techniques, Paris

GERMANY (FED. REP.)

BECKSCHE STEUERKOMMENTARE,
release 12
Verlag C. H. Beck, Munich

RWP. RECHTS- UND WIRTSCHAFTS. PRAXIS STEUERRECHT,
release 189
Forkel Verlag, Stuttgart-Degerloch

STEUERERLASSE IN KARTEIFORM,
release 169
Verlag Dr. Otto Schmidt, Cologne-Marienburg

UMSATZSTEUERGESETZ (MEHRWERTSTEUER)
Hartmann, Metzenmacher,
release 34
Erich Schmidt Verlag, Bielefeld

WORLD TAX SERIES - GERMANY REPORTS,
release 76
Commerce Clearing House, Inc., Chicago

INTERNATIONAL

INTERNATIONAL TAX AGREEMENTS,
release 27
U.N. Palais de Nations, Génève

NETHERLANDS

BELASTINGBERICHTEN:
— Loonbelasting,
release 149
— Vennootschapsbelasting,
release 59
— Inkomstenbelasting,
releases 326 and 327
— Personele belasting, enz.,
release 143
— Internationale Zaken,
release 122
— Algemene wet, enz.
releases 180 and 181
N. Samsom N.V., Alphen a. d. Rijn

BELASTING WETGEVINGSERIE:
— Omzetbelasting I, II, III,
release 21
— Loonbelasting,
release 40
J. Noorduyn en Zn. N.V., Arnhem

FED'S FISCAAL REGISTER,
release 65
N.V. Uitgeverij Fed, Deventer

FED'S LOSBLADIG FISCAAL WEEKBLAD,
releases 1529-1533
N.V. Uitgeverij Fed, Deventer

DE GEMEENTELIJKE BELASTINGEN -
A. M. Dijk, J. C. Schroot, A. Zadel enz.,
releases 191-194
Vuga-Boekerij, The Hague

HANDBOEK VOOR IN- EN UITVOER:
— Belastingheffing bij invoer,
releases 189-191

— Tarief van Invoerrechten (II),
release 134
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer/
N. Samsom N.V., Alphen a. d. Rijn

KLUWER'S FISCAAL ZAKBOEK,
release 89
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

NEDERLANDSE REGELINGEN VAN INTERNATIONAAL BELASTINGRECHT,
release 46
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

DE PARLEMENTAIRE BEHANDELING VAN DE NIEUWE BELASTINGONTWERPEN
release 44
N. Samsom N.V., Alphen a. d. Rijn

DE SOCIALE VERZEKERINGSWETTEN,
release 91
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN,
release 138
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

VADEMECUM VOOR IN- EN UITVOER,
releases 482 and 483
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer/
N. Samsom N.V., Alphen a. d. Rijn

DE VAKSTUDIE: FISCALE ENCYCLOPEDIE:
— Vermogensbelastingen,
release 33
— Personeelsvoorschriften,
releases 57 and 58
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

VAKSTUDIE BELASTINGWETGEVING:
— Alcohol- Wijnaccijns,
release 12
— Bieraccijns,
release 8
— Belastingen van Rechtsverkeer en Registratiewet,
release 20
— Gemeentelijke Belastingen e.a.,
release 20
N.V. Uitgeversmij. Æ. E. Kluwer, Deventer

SOUTH AFRICA

LAW AND PRACTICE OF SOUTH AFRICAN INCOME TAX,
release 26
Butterworth & Co., Durban

SWITZERLAND

DIE STEUERN DER SCHWEIZ - LES IMPOTS DE LA SUISSE,
— Teil I,
release 55
— Teil IV,
release 37
Verlag für Recht und Gesellschaft, Basel

UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA,
release 54
Sweet & Maxwell, London

BRITISH TAX GUIDE,
releases 159 and 160
Commerce Clearing House, Inc., Chicago

SIMON'S TAX CASES,
releases 22 and 23
Butterworth & Co., London

SIMON'S TAX INTELLIGENCE,
releases 35-39
Butterworth & Co., London

VALUE ADDED TAX,
releases 38 and 39
Butterworth & Co., London

U. S. A.

FEDERAL TAXES REPORT BULLETIN,
releases 40-44 and 46
Prentice Hall, Inc., Englewood Cliffs

FEDERAL TAXES REPORT BULLETIN - TREATIES,
release 15
Prentice Hall, Inc., Englewood Cliffs

STATE TAX GUIDE,
release 596
Commerce Clearing House, Inc., Chicago

TAX IDEAS - REPORT BULLETIN,
releases 26 and 27
Prentice Hall Inc., Englewood Cliffs

TAX TREATIES,
release 284
Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS,
releases 18 and 19
Prentice Hall Inc., Englewood Cliffs

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SUPPLEMENT TO No. 2 (A 1975)

Abkommen zwischen der Republik Österreich und der Volksrepublik Polen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen.

SUPPLEMENT TO No. 4 (B 1975)

Abkommen zwischen der Bundesrepublik Deutschland und der Sozialistischen Republik Rumänien zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen.

SUPPLEMENT TO No. 6 (C 1975)

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu entre la République française et l'Empire de l'Iran.

SUPPLEMENT TO No. 8 (D 1975)

Convention entre le Gouvernement de la République française et le Gouvernement de la République socialiste de Roumanie tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune.

SUPPLEMENT TO No. 10 (E 1975)

Commission de communautés européennes: Proposition de directive du conseil concernant l'harmonisation des systèmes d'impôts des sociétés et des régimes de retenue à la source sur les dividendes.

SUPPLEMENT TO No. 12 (F 1975)

Convention entre le Gouvernement de la République française et le Gouvernement de la République socialiste fédérative de Yougoslavie tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune.

ABKOMMEN
Zwischen der Republik Österreich und der Volksrepublik Polen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIX, No. 2, February/février 1975

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty was signed between Austria and Poland on October 2, 1974. It is subject to ratification before entering into force. It will be effective for taxes levied as of January 1, 1974.

TEXT

Der Bundespräsident der Republik Österreich

und

der Staatsrat der Volksrepublik Polen

sind, von dem Wunsche geleitet, zwecks Entwicklung und Erleichterung der wirtschaftlichen Beziehungen der beiden Staaten die Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen zu vermeiden, übereingekommen, ein Abkommen abzuschliessen, und haben zu diesem Zweck zu ihren Bevollmächtigten ernannt:

Der Bundespräsident der Republik Österreich:

Herrn Dr. Alfred Twaroch,
Sektionschef im Bundesministerium für Finanzen

Der Staatsrat der Volksrepublik Polen:

Herrn Josef Czyrek,
Vizeminister für Aussenangelegenheiten.

Diese Bevollmächtigten haben, nachdem sie ihre Vollmachten ausgetauscht und diese in guter und gehöriger Form befunden haben, folgendes vereinbart:

Artikel 1
Persönlicher Geltungsbereich

Dieses Abkommen gilt für Personen, die in einem Vertragstaat oder in beiden Vertragstaaten ansässig sind.

Artikel 2
Unter das Abkommen fallende Steuern

(1) Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen und vom Vermögen, die

in einem der Vertragstaaten erhoben werden.

(2) Als Steuern vom Einkommen und vom Vermögen gelten alle Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschliesslich der Steuern vom Gewinn aus der Veräusserung beweglichen oder unbeweglichen Vermögens sowie der Steuern vom Vermögenszuwachs.

(3) Zu den zur Zeit bestehenden Steuern, für die dieses Abkommen gilt, gehören insbesondere

a) in der Volksrepublik Polen:
   1. podatek dochodowy (die Einkommensteuer);
   2. podatek od wynagrodzeń (die Lohnsteuer);
   3. podatek wyrównawczy (podatek wyrównawczy do podatku dochodowego albo do podatku od wynagrodzeń) (die Ergänzungsteuer zur Einkommensteuer oder Lohnsteuer).

b) in der Republik Österreich:
   1. die Einkommensteuer;
   2. die Körperschaftsteuer;
   3. die Aufsichtsratsabgabe;
   4. die Vermögensteuer;
   5. die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind;
   6. die Gewerbesteuer einschliesslich der Lohnsummensteuer;
   7. die Grundsteuer;
   8. die Abgabe von land- und forstwirtschaftlichen Betrieben;
   9. die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen;
   10. die Abgabe vom Bodenwert bei unbebauten Grundstücken.

(4) Dieses Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den zurzeit bestehenden Steuern oder an deren Stelle erhoben werden.

(5) Die Bestimmungen dieses Abkommens über die Besteuerung des Einkommens oder des Vermögens gelten entsprechend für die nicht nach dem Einkommen oder dem Vermögen berechnete Gewerbesteuer.

Artikel 3
Allgemeine Definitionen

(1) Im Sinne dieses Abkommens, wenn der Zusammenhang nichts anderes erfordert:

a) bedeuten die Ausdrücke „ein Vertragstaat" und „der andere Vertragstaat", je nach dem Zusammenhang, die Volksrepublik Polen oder die Republik Österreich,

b) bedeutet der Ausdruck „Person" natürliche Personen und Gesellschaften,

c) bedeutet der Ausdruck „Gesellschaft" juristische Personen oder Rechtsträger, die für die Besteuerung wie juristische Personen behandelt werden,

d) bedeuten die Ausdrücke „Unternehmen eines Vertragstaates" und „Unternehmen des anderen Vertragstaates", je nachdem, ein Unternehmen, das von einer in einem Vertragstaat ansässigen Person betrieben wird, oder ein Unternehmen, das von einer in dem anderen Vertragstaat ansässigen Person betrieben wird,

e) bedeutet der Ausdruck „zuständige Behörde" in der Volksrepublik Polen den Minister der Finanzen und in der Republik Österreich den Bundesminister für Finanzen.

(2) Bei Anwendung dieses Abkommens durch einen Vertragstaat hat, wenn der Zusammenhang nichts anderes erfordert, jeder nicht anders definierte Ausdruck die Bedeutung, die ihm nach dem Recht dieses Staates über die Steuern zukommt, welche Gegenstand dieses Abkommens sind.

Artikel 4
Steuerlicher Wohnsitz

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „eine in einem Vertragstaat ansässige Person" eine Person, die nach dem Recht dieses Staates dort auf Grund ihres Wohnsitzes, ihres ständigen Aufenthaltes, des Ortes ihrer Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist.

(2) Ist nach Absatz 1 eine natürliche Person in beiden Vertragstaaten ansässig, so gilt folgendes:

a) die Person gilt als in dem Vertragstaat ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat;
b) kann nicht bestimmt werden, in welchem Vertragstaat die Person die engeren persönlichen und wirtschaftlichen Beziehungen hat, oder verfügt sie in keinem der Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat;
c) hat die Person ihren gewöhnlichen Aufenthalt in beiden Vertragstaaten oder in keinem der Vertragstaaten, so gilt sie als in dem Vertragstaat ansässig, dessen Staatsangehörigkeit sie besitzt.

(3) Ist nach Absatz 1 eine andere als eine natürliche Person in beiden Vertragstaaten ansässig, so gilt sie als in dem Vertragstaat ansässig, in dem sich der Ort ihrer tatsächlichen Geschäftsleitung befindet.

Artikel 5
Betriebstätte

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „Betriebstätte" eine feste Geschäftseinrichtung, in der die Tätigkeit des Unternehmens ganz oder teilweise ausgeübt wird.

(2) Der Ausdruck „Betriebstätte" umfasst insbesondere:

a) einen Ort der Leitung,
b) eine Zweigniederlassung,
c) eine Geschäftstelle,
d) eine Fabrikationsstätte,
e) eine Werkstätte,
f) ein Bergwerk, einen Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
g) eine Bauausführung oder Montage, deren Dauer vierundzwanzig Monate überschreitet.

(3) Als Betriebstätten gelten nicht:

a) Einrichtungen, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung von Gütern oder Waren des Unternehmens benutzt werden,
b) Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung unterhalten werden,
c) Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zu dem Zwecke unterhalten werden, durch ein anderes Unternehmen bearbeitet oder verarbeitet zu werden,
d) feste Geschäftseinrichtungen, die aus-

schliesslich zu dem Zwecke unterhalten werden, für das Unternehmen Güter oder Waren einzukaufen oder Informationen zu beschaffen,

e) eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen zu werben, Informationen zu erteilen, wissenschaftliche Forschung zu betreiben oder ähnliche Tätigkeiten auszuüben, die vorbereitender Art sind oder eine Hilfstätigkeit darstellen.

(4) Ist eine Person, mit Ausnahme eines unabhängigen Vertreters im Sinne des Absatzes 5, in einem Vertragstaat für ein Unternehmen des anderen Vertragstaates tätig, so gilt eine in dem erstgenannten Staat gelegene Betriebstätte als gegeben, wenn die Person eine Vollmacht besitzt, im Namen des Unternehmens Verträge abzuschliessen, und die Vollmacht in diesem Staat gewöhnlich ausübt, es sei denn, dass sich ihre Tätigkeit auf den Einkauf von Gütern oder Waren für das Unternehmen beschränkt.

(5) Ein Unternehmen eines Vertragstaates wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Vertragstaat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.

(6) Allein dadurch, dass eine in einem Vertragstaat ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Vertragstaat ansässig ist oder dort (entweder durch eine Betriebstätte oder in anderer Weise) ihre Tätigkeit ausübt, wird eine der beiden Gesellschaften nicht zur Betriebstätte der anderen.

Artikel 6
Einkünfte aus unbeweglichem Vermögen

(1) Einkünfte aus unbeweglichem Vermögen dürfen in dem Staat besteuert werden, in dem dieses Vermögen liegt.

(2) Der Ausdruck „unbewegliches Vermögen" bestimmt sich nach dem Recht des Vertragstaates, in dem das Vermögen liegt. Der Ausdruck umfasst in jedem Fall das Zubehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Betriebe, die Rechte, auf die die Vorschriften des Privatrechtes über Grundstücke Anwendung finden, die Nutzungsrechte an unbeweglichem Vermögen sowie die Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung von Mineralvorkommen, Quellen und anderen Bodenschätzen.
Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.

(3) Absatz 1 gilt für die Einkünfte aus der unmittelbaren Nutzung, der Vermietung oder Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens.

(4) Die Absätze 1 und 3 gelten auch für Einkünfte aus unbeweglichem Vermögen eines Unternehmens und für Einkünfte aus unbeweglichem Vermögen, das der Ausübung eines freien Berufes dient.

Artikel 7
Unternehmensgewinne

(1) Gewinne eines Unternehmens eines Vertragstaates dürfen nur in diesem Staat besteuert werden, es sei denn, dass das Unternehmen seine Tätigkeit im anderen Vertragstaat durch eine dort gelegene Be-

triebstätte ausübt. Übt das Unternehmen seine Tätigkeit auf diese Weise aus, so dürfen die Gewinne des Unternehmens in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser Betriebstätte zugerechnet werden können.

(2) Übt ein Unternehmen eines Vertragstaates seine Tätigkeit in dem anderen Vertragstaat durch eine dort gelegene Betriebstätte aus, so sind in jedem Vertragstaat dieser Betriebstätte die Gewinne zuzurechnen, die sie hätte erzielen können, wenn sie eine gleiche oder ähnliche Tätigkeit unter gleichen oder ähnlichen Bedingungen als selbständiges Unternehmen ausgeübt hätte und im Verkehr mit dem Unternehmen, dessen Betriebstätte sie ist, völlig unabhängig gewesen wäre.

(3) Bei der Ermittlung der Gewinne einer Betriebstätte werden die für diese Betriebstätte entstandenen Aufwendungen, einschliesslich der Geschäftsführungs- und allgemeinen Verwaltungskosten, zum Abzug zugelassen, gleichgültig, ob sie in dem Staat, in dem die Betriebstätte liegt, oder anderswo entstanden sind.

(4) Soweit es in einem Vertragstaat üblich ist, die einer Betriebstätte zuzurechnenden Gewinne durch Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile zu ermitteln, schliesst Absatz 2 nicht aus, dass dieser Vertragstaat die zu besteuernden Gewinne nach der üblichen Aufteilung ermittelt; die Art der angewendeten Gewinnaufteilung muss jedoch so sein, dass das Ergebnis mit den Grundsätzen dieses Artikels übereinstimmt.

(5) Auf Grund des blossen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebstätte kein Gewinn zugerechnet.

(6) Bei Anwendung der vorstehenden Absätze sind die der Betriebstätte zuzurechnenden Gewinne jedes Jahr auf dieselbe Art zu ermitteln, es sei denn, dass ausreichende Gründe dafür bestehen, anders zu verfahren.

(7) Gehören zu den Gewinnen Einkünfte, die in anderen Artikeln dieses Abkommens behandelt werden, so werden die Bestimmungen jener Artikel durch die Bestimmungen dieses Artikels nicht berührt.

(8) Die Bestimmungen dieses Artikels sind auch auf Gewinnanteile aus einer Beteiligung als stiller Gesellschafter an einem Unternehmen anzuwenden.

Artikel 8
Schiffahrt und Luftfahrt

(1) Eine in einem Vertragstaat ansässige Person darf mit Gewinnen aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr nur in diesem Vertragstaat besteuert werden.

(2) Eine in einem Vertragstaat ansässige Person darf mit Gewinnen aus dem Betrieb von Binnenschiffen im internationalen Verkehr nur in diesem Vertragstaat besteuert werden.

(3) Die Absätze 1 und 2 gelten auch, wenn das Unternehmen im Gebiet des anderen Staates eine Agentur für die Beförderung von Personen oder Waren betreibt oder wenn der Betrieb mit gecharterten Fahrzeugen, Containern oder mit im LASH-System betriebenen Barken durchgeführt wird. Dies gilt jedoch nur für Tätigkeiten, die unmittelbar mit der Luftfahrt und Schiffahrt, einschliesslich des Zubringerdienstes zusammenhängen.

(4) Die Bestimmungen dieses Artikels gelten auch für Beteiligungen von Unter-

nehmen der Luftfahrt an einer Betriebsgemeinschaft, unabhängig davon, ob der Verkehr mit eigenen oder gecharterten Fahrzeugen durchgeführt wird.

Artikel 9
Verbundene Unternehmen

Wenn

a) ein Unternehmen eines Vertragstaates unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens des anderen Vertragstaates beteiligt ist, oder

b) dieselben Personen unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens eines Vertragstaates und eines Unternehmens des anderen Vertragstaates beteiligt sind,

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

Artikel 10
Dividenden

(1) Dividenden, die eine in einem Vertragstaat ansässige Gesellschaft an eine in dem anderen Vertragstaat ansässige Person zahlt, dürfen in dem anderen Staat besteuert werden.

(2) Diese Dividenden dürfen jedoch in dem Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 10 vom Hundert des Bruttobetrages der Dividenden nicht übersteigen.

(3) Der in diesem Artikel verwendete Ausdruck „Dividenden" bedeutet Einkünfte aus Aktien 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 gleichgestellt sind.

(4) Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Dividenden in dem anderen Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine Betriebstätte hat und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

(5) Bezieht eine in einem Vertragstaat ansässige Gesellschaft Gewinne oder Einkünfte aus dem anderen Vertragstaat, so darf dieser andere Staat weder die Dividenden besteuern, die die Gesellschaft an nicht in diesem Staat ansässige Personen zahlt, noch Gewinne der Gesellschaft einer Steuer für nicht ausgeschüttete Gewinne unterwerfen, selbst wenn die gezahlten Dividenden oder die nicht ausgeschütteten Gewinne ganz oder teilweise aus in dem anderen Staat erzielten Gewinnen oder Einkünften bestehen.

Artikel 11
Zinsen

(1) Zinsen, die aus einem Vertragstaat stammen und an eine in dem anderen Ver-

trägstaat ansässige Person gezahlt werden, dürfen nur in dem anderen Staat besteuert werden.

(2) Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus öffentlichen Anleihen, aus Schuldverschreibungen, auch wenn sie durch Pfandbriefe an Grundstücken gesichert oder mit einer Gewinnbeteiligung ausgestattet sind, und aus Forderungen jeder Art sowie alle anderen Einkünfte, die nach dem Steuerrecht des Staates, aus dem sie stammen, den Einkünften aus Darlehen gleichgesteilt sind.

(3) Absatz 1 ist nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Zinsen in dem anderen Vertragstaat, aus dem die Zinsen stammen, eine Betriebstätte hat und die Forderung, für die die Zinsen gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

(4) Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Zinsen, gemessen an der zugrundeliegenden Forderung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 12
Lizenzgebühren

(1) Lizenzgebühren, die aus einem Vertragstaat stammen und an eine in dem anderen Vertragstaat ansässige Person gezahlt werden, dürfen nur in dem anderen Staat besteuert werden.

(2) Der in diesem Artikel verwendete Ausdruck „Lizenzgebühren" bedeutet Vergütungen jeder Art, die für die Benutzung oder für das Recht auf Benutzung von Urheberrechten, Patenten, Warenzeichen (trade mark oder trade name), Mustern oder Modellen, Plänen, geheimen Formeln und Produktionsverfahren oder für die Benutzung oder das Recht auf Benutzung gewerblicher, kaufmännischer oder wissenschaftlicher Ausrüstungen oder für die Mitteilung gewerblicher, kaufmännischer oder wissenschaftlicher Erfahrungen oder für die Benutzung oder das Recht auf Benutzung von kinematographischen Filmen oder Filmbandaufnahmen oder Magnetbandaufnahmen für Fernsehen oder Rundfunk gezahlt werden.

(3) Absatz 1 ist nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Lizenzgebühren in dem anderen Vertragstaat, aus dem die Lizenzgebühren stammen, eine Betriebstätte hat und die Rechte oder Vermögenswerte, für die die Lizenzgebühren gezahlt werden, tatsächlich zu dieser Betriebstätte gehören. In diesem Fall ist Artikel 7 anzuwenden.

(4) Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Lizenzgebühren, gemessen an der zugrundeliegenden Leistung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall darf der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 13
Veräusserungsgewinne

(1) Gewinne aus der Veräusserung unbeweglichen Vermögens im Sinne des Artikels 6 Absatz 2 dürfen in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

(2) Gewinne aus der Veräusserung beweglichen Vermögens, das Betriebsvermögen einer Betriebstätte darstellt, die ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat hat, oder das zu einer festen Einrichtung gehört, über die eine in einem Vertragstaat ansässige Person für die Ausübung eines freien Berufes in dem anderen Vertragstaat verfügt, einschliesslich derartiger Gewinne, die bei der Veräusserung einer solchen Betriebstätte (allein oder zusammen mit dem übrigen Unternehmen) oder einer solchen festen Einrichtung erzielt werden, dürfen in dem anderen Staat besteuert werden. Jedoch dürfen Gewinne aus der Veräusserung des in Artikel 22 Absatz 3 genannten beweglichen Vermögens nur in dem Vertragstaat besteuert werden, in dem dieses bewegliche Vermögen nach dem angeführten Artikel besteuert werden kann.

(3) Gewinne aus der Veräusserung des in den Absätzen 1 und 2 nicht genannten Vermögens dürfen nur in dem Vertragstaat besteuert werden, in dem der Veräusserer ansässig ist.

Artikel 14
Freie Berufe

(1) Einkünfte, die eine in einem Vertragstaat ansässige Person aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art bezieht, dürfen nur in diesem Staat besteuert werden, es sei denn, dass die Person für die Ausübung ihrer Tätigkeit in dem anderen Vertragstaat regelmässig über eine feste Einrichtung verfügt. Verfügt sie aber über eine solche feste Einrichtung, so dürfen die Einkünfte in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser festen Einrichtung zugerechnet werden können.

(2) Der Ausdruck „freier Beruf" umfasst insbesondere die selbständig ausgeübte wissenschaftliche, literarische, künstlerische, erzieherische oder unterrichtende Tätigkeit sowie die selbständige Tätigkeit der Rechtsanwälte, Architekten, Ingenieure, Ärzte und Zahnärzte.

Artikel 15
Unselbständige Arbeit

(1) Vorbehaltlich der Artikel 16, 18 und 19 dürfen Gehälter, Löhne und ähnliche Vergütungen, die eine in einem Vertragstaat ansässige natürliche Person aus unselbständiger Arbeit bezieht, nur in diesem Staat besteuert werden, es sei denn, dass die Arbeit in dem anderen Vertragstaat ausgeübt wird. Wird die Arbeit dort ausgeübt, so dürfen die dafür bezogenen Vergütungen in diesem anderen Staat besteuert werden.

(2) Ungeachtet des Absatzes 1 dürfen Vergütungen, die eine in einem Vertragstaat ansässige Person für eine in dem anderen Vertragstaat ausgeübte unselbständige Arbeit bezieht, nur in dem erstgenannten Staat besteuert werden, wenn

a) die Vergütungen von einem Arbeitgeber oder für einen Arbeitgeber gezahlt werden, der nicht in dem anderen Staat ansässig ist, und
b) die Vergütungen nicht von einer Betriebstätte oder einer festen Einrichtung

getragen werden, die der Arbeitgeber in dem anderen Staat hat, und

c) der Empfänger sich in dem anderen Staat nicht länger als ein Jahr aufhält.

(3) Ungeachtet der vorstehenden Bestimmungen dieses Artikels dürfen Vergütungen für unselbständige Arbeit, die an Bord eines Seeschiffes, Luftfahrzeuges oder eines Binnenschiffes, im internationalen Verkehr ausgeübt wird, nur in dem Vertragstaat besteuert werden, in dem die Person ansässig ist, die die Gewinne aus dem Betrieb des Schiffes oder Luftfahrzeuges erzielt.

Artikel 16
Aufsichtsrats- oder Verwaltungsratsvergütungen

Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die eine in einem Vertragstaat ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrates einer Gesellschaft bezieht, die in dem anderen Vertragstaat ansässig ist, dürfen in dem anderen Staat besteuert werden.

Artikel 17
Künstler und Sportler

(1) Ungeachtet der Artikel 14 and 15 dürfen Einkünfte aus Tätigkeiten, die berufsmässige Künstler, wie z. B. Bühnen-, Film-, Rundfunk- oder Fernsehkünstler, sowie Musiker und Sportler aus ihrer in dieser Eigenschaft persönlich ausgeübten Tätigkeit beziehen, in dem Vertragstaat besteuert werden, in dem sie diese Tätigkeit ausüben.

(2) Abweichend vom Absatz 1 dürfen Einkünfte aus Tätigkeiten der in Absatz 1 genannten Art bei Personen, die im Rahmen des vom Entsendestaat gebilligten Kulturaustausches auftreten, nur in dem Staat besteuert werden, in dem sie ansässig sind.

Artikel 18
Ruhegehälter

Vorbehaltlich des Artikels 19 Absatz 1 dürfen Ruhegehälter und ähnliche Vergütungen, die einer in einem Vertragstaat ansässigen Person für frühere unselbständige Arbeit gezahlt werden, nur in diesem Staat besteuert werden.

Artikel 19
Öffentliche Funktionen

(1) Vergütungen, einschliesslich Ruhegehälter, die von einem Vertragstaat oder einer seiner Gebietskörperschaften unmittelbar oder aus einem von diesem Staat oder der Gebietskörperschaft errichteten Sondervermögen an eine natürliche Person für die diesem Staat oder der Gebietskörperschaft in Ausübung öffentlicher Funktionen erbrachten Dienste gewährt werden, dürfen in diesem Staat besteuert werden.

(2) Auf Vergütungen für Dienstleistungen, die im Zusammenhang mit einer kaufmännischen oder gewerblichen Tätigkeit eines der Vertragstaaten oder einer seiner Gebietskörperschaften erbracht werden, finden die Artikel 15, 16 und 18 Anwendung.

Artikel 20
Lehrer und Studenten

(1) Die Vergütungen von Hochschullehrern und anderen Lehrern, die in einem

Vertragstaat ansässig sind und während eines vorübergehenden Aufenthaltes von höchstens zwei Jahren in dem anderen Vertragstaat an einer Universität oder anderen nicht Erwerbszwecken dienenden Lehr- oder Forschungsanstalt eine Lehrtätigkeit ausführen oder wissenschaftliche Forschung betreiben, dürfen nur in dem erstgenannten Staat besteuert werden.

(2) Zahlungen, die ein Stipendiat, Student, Praktikant oder Lehrling, der in einem Vertragstaat ansässig ist oder vorher dort ansässig war und der sich in dem anderen Vertragstaat ausschliesslich zum Studium oder zur Ausbildung aufhält, für seinen Unterhalt, sein Studium oder seine Ausbildung erhält, werden in dem anderen Staat nicht besteuert, sofern ihm diese Zahlungen aus Quellen ausserhalb des anderen Staates zufliessen.

Artikel 21
Nicht ausdrücklich erwähnte Einkünfte

Die in den vorstehenden Artikeln nicht ausdrücklich erwähnten Einkünfte einer in einem Vertragstaat ansässigen Person dürfen nur in diesem Staat besteuert werden.

Artikel 22
Besteuerung des Vermögens

(1) Unbewegliches Vermögen im Sinne des Artikels 6 Absatz 2 darf in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

(2) Bewegliches Vermögen, das Betriebsvermögen einer Betriebstätte eines Unternehmens darstellt oder das zu einer der Ausübung eines freien Berufes dienenden festen Einrichtung gehört, darf in dem Vertragstaat besteuert werden, in dem sich die Betriebstätte oder die feste Einrichtung befindet.

(3) Schiffe und Luftfahrzeuge im internationalen Verkehr sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, dürfen nur in dem Vertragstaat besteuert werden, in dem die Person ansässig ist, die die Gewinne aus dem Betrieb des Schiffes oder Luftfahrzeuges erzielt.

(4) Alle anderen Vermögensteile einer in einem Vertragstaat ansässigen Person dürfen nur in diesem Staat besteuert werden.

Artikel 23
Methode zur Vermeidung der Doppelbesteuerung

(1) Bezieht eine in einem Vertragstaat ansässige Person Einkünfte oder hat sie Vermögen und dürfen diese Einkünfte oder dieses Vermögen nach diesem Abkommen in dem anderen Vertragstaat besteuert werden, so nimmt der erstgenannte Staat, vorbehaltlich des Absatzes 2, diese Einkünfte oder dieses Vermögen von der Besteuerung aus; dieser Staat darf aber bei der Festsetzung der Steuer für das übrige Einkommen oder das übrige Vermögen dieser Person den Steuersatz anwenden, der anzuwenden wäre, wenn die betreffenden Einkünfte oder das betreffende Vermögen nicht von der Besteuerung ausgenommen wären.

(2) Bezieht eine in einem Vertragstaat ansässige Person Einkünfte, die nach Artikel 10 in dem anderen Vertragstaat besteuert werden dürfen, so rechnet der erstgenannte Staat auf die vom Einkommen dieser Person zu erhebende Steuer den Betrag an, der der in dem anderen Vertrag-

staat gezahlten Steuer entspricht. Der anzurechnende Betrag darf jedoch den Teil der vor der Anrechnung ermittelten Steuer nicht übersteigen, der auf die Einkünfte entfällt, die aus dem anderen Vertragstaat bezogen werden.

Artikel 24
Gleichbehandlung

(1) Die Staatsangehörigen eines Vertragstaates dürfen in dem anderen Vertragstaat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen die Staatsangehörigen des anderen Staates unter gleichen Verhältnissen unterworfen sind oder unterworfen werden können.

(2) Der Ausdruck „Staatsangehörige" bedeutet:

a) alle natürlichen Personen, die die Staatsangehörigkeit eines Vertragstaates besitzen;
b) alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in einem Vertragstaat geltenden Recht errichtet worden sind.

(3) Die Besteuerung einer Betriebstätte, die ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat hat, darf in dem anderen Staat nicht ungünstiger sein als die Besteuerung von Unternehmen des anderen Staates, die die gleiche Tätigkeit ausüben.
Diese Bestimmung ist nicht so auszulegen, als verpflichte sie einen Vertragstaat, den in dem anderen Vertragstaat ansässigen Personen Steuerfreibeträge, -vergünstigungen und -ermässigungen auf Grund des Personenstandes oder der Familienlasten zu gewähren, die er den in seinem Gebiet ansässigen Personen gewährt, oder diesen Personen jene Begünstigungen einzuräumen, die Ansässigen eines dritten Staates auf Grund besonderer Vereinbarungen eingeräumt werden, die mit diesem dritten Staat bestehen.

(4) Die Unternehmen eines Vertragstaates, deren Kapital ganz oder teilweise, unmittelbar oder mittelbar einer in dem anderen Vertragstaat ansässigen Person oder mehreren solchen Personen gehört oder ihrer Kontrolle unterliegt, dürfen in dem erstgenannten Vertragstaat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen andere ähnliche Unternehmen des erstgenannten Staates unterworfen sind oder unterworfen werden können.

(5) In diesem Artikel bedeutet der Ausdruck „Besteuerung" Steuern jeder Art und Bezeichnung mit Ausnahme der polnischen Meldegebühren und der polnischen Gebühren für die Genehmigung zur Eröffnung eines Betriebes.

(6) Es wird festgestellt, dass die unterschiedliche Erhebung der Steuern vom Einkommen, Ertrag und Vermögen, die in der Volksrepublik Polen für sozialistische Unternehmen vorgesehen ist, den Bestimmungen dieses Artikels nicht widerspricht.

Artikel 25
Verständigungsverfahren

(1) Ist eine in einem Vertragstaat ansässige Person der Auffassung, dass die Massnahmen eines Vertragstaates oder bei-

der Vertragstaaten für sie zu einer Besteuerung geführt haben oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach dem innerstaatlichen Recht dieser Staaten vorgesehenen Rechtsmittel ihren Fall der zuständigen Behörde des Vertragstaates unterbreiten, in dem sie ansässig ist.

(2) Hält diese zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall nach Verständigung mit der zuständigen Behörde des anderen Vertragstaates so zu regeln, dass eine dem Abkommen nicht entsprechende Besteuerung vermieden wird.

(3) Die zuständigen Behörden der Vertragstaaten werden sich bemühen, Schwierigkeiten oder Zweifel, die bei der Auslegung und Anwendung des Abkommens entstehen, in gegenseitigem Einvernehmen zu beseitigen. Sie können auch gemeinsam darüber beraten, wie eine Doppelbesteuerung in Fällen, die im Abkommen nicht behandelt sind, vermieden werden kann.

(4) Die zuständigen Behörden der Vertragstaaten können für Zwecke der Anwendung dieses Abkommens unmittelbar miteinander verkehren.

Artikel 26
Austausch von Informationen

(1) Die zuständigen Behörden der Vertragstaaten werden gegenseitig die zur Durchführung dieses Abkommens erforderlichen Informationen austauschen. Alle so ausgetauschten Informationen sind geheimzuhalten und dürfen nur solchen Personen oder Behörden mitgeteilt werden, die mit der Veranlagung oder Erhebung der unter dieses Abkommen fallenden Steuern befasst sind.

(2) Absatz 1 ist auf keinen Fall so auszulegen, als verpflichte er einen der Vertragstaaten:

a) Verwaltungsmassnahmen durchzuführen, die von den Gesetzen oder der Verwaltungspraxis dieses oder des anderen Vertragstaates abweichen.
b) Angaben zu übermitteln, die nach den geltenden Gesetzen oder im üblichen Verwaltungsverfahren dieses oder des anderen Vertragstaates nicht beschaffbar sind,
c) Informationen zu erteilen, die ein Handels-, Industrie- oder Berufsgeheimnis, ein Geschäftsverfahren preisgeben würden oder deren Erteilung der öffentlichen Ordnung widerspräche (Ordre public).

Artikel 27
Inkrafttreten

(1) Dieses Abkommen bedarf der Ratifikation. Der Austausch der Ratifikationsurkunden findet in Warschau statt.

(2) Dieses Abkommen tritt sechzig Tage nach dem Austausch der Ratifikationsurkunden in Kraft, und seine Bestimmungen finden erstmals Anwendung auf Steuern, die ab dem 1. Jänner 1974 erhoben werden.

Artikel 28
Übergangsbestimmungen

Mit dem Wirksamkeitsbeginn dieses Abkommens treten die Bestimmungen des Vertrages zwischen der Republik Österreich

und der Republik Polen vom 22. April 1932 zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern sowie über Rechtshilfe in Abgabensachen ausser Kraft.

Artikel 29
Ausserkrafttreten

(1) Dieses Abkommen bleibt in Kraft, bis es von einem der Vertragstaaten gekündigt wird.

(2) Jeder Vertragstaat kann dieses Abkommen nach Ablauf einer Frist von fünf Jahren nach Inkrafttreten dieses Abkommens jederzeit schriftlich auf diplomatischem Weg unter Einhaltung einer sechsmonatigen Kündigungsfrist zum Ende des Kalenderjahres kündigen. In diesem Fall ist das Abkommen für die Steuerzeiträume nicht mehr anzuwenden, die nach dem Ende dieses Kalenderjahres beginnen.

ZU URKUND DESSEN haben die Bevollmächtigten der beiden Staaten dieses Abkommen unterschrieben und mit Siegeln versehen.

GESCHEHEN zu Wien, am 2. Oktober 1974 in zweifacher Urschrift, jede in deutscher und polnischer Sprache, wobei beide Texte gleichermassen authentisch sind.

Für die Republik Österreich:
Dr. Alfred Twaroch

Für die Volksrepublik Polen:
Czyrek

ABKOMMEN
zwischen der Bundesrepublik Deutschland und der Sozialistischen Republik Rumänien zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIX, No. 4, April/avril 1975

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty was signed between the German Federal Republic and Romania on June 29, 1973. The treaty is subject to ratification before entering into force. It will generally be effective as of January 1, 1972.

TEXT

Die Bundesrepublik Deutschland

und

die Sozialistische Republik Rumänien

von dem Wunsch geleitet, ein Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen zu schliessen, um ihre gegenseitigen wirtschaftlichen Beziehungen zu fördern, —

Haben folgendes vereinbart:

Artikel 1
Persönlicher Geltungsbereich

Dieses Abkommen gilt für Personen, die in einem Vertragstaat oder in beiden Vertragstaaten ansässig sind.

Artikel 2
Unter das Abkommen fallende Steuern

(1) Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen und vom Vermögen, die in den Vertragstaaten gemäss den geltenden gesetzlichen Bestimmungen erhoben werden.

(2) Als Steuern vom Einkommen und vom Vermögen gelten die Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschliesslich der Steuern vom Gewinn aus der Veräusserung beweglichen oder unbeweglichen Vermögens sowie der Wertzuwachssteuern.

(3) Die zur Zeit bestehenden Steuern, die in den Anwendungsbereich dieses Abkommens fallen, sind:

a) in der Bundesrepublik Deutschland:
die Einkommensteuer
einschliesslich der Ergänzungsabgabe zur Einkommensteuer,
die Körperschaftsteuer
einschliesslich der Ergänzungsabgabe zur Körperschaftsteuer,
die Vermögensteuer,
die Grundsteuer und
die Gewerbesteuer;

b) in der Sozialistischen Republik Rumänien:
die Steuer vom Einkommen aus Löhnen, aus schriftstellerischen, künstlerischen und wissenschaftlichen Werken, aus der Mitarbeit an Veröffentlichungen, aus künstlerischen Darbietungen, aus Gutachten sowie aus anderen Quellen;
die Steuer vom Einkommen der gemischten Gesellschaften, an welchen rumänische Wirtschaftsorganisationen und ausländische Partner beteiligt sind;
die Steuer vom Einkommen aus produktiver, handwerklicher und freiberuflicher Tätigkeit sowie vom Einkommen, das von nichtstaatlichen Unternehmen bezogen wird;
die Steuer vom Einkommen aus der Landwirtschaft;
Steuern von Gebäuden und städtischen Grundstücken sowie
Abgaben für Transportmittel.

(4) Die Bestimmungen dieses Abkommens über die Besteuerung des Einkommens oder des Vermögens gelten entsprechend für die nicht nach dem Einkommen oder dem Vermögen berechnete Gewerbesteuer, die in der Bundesrepublik Deutschland erhoben wird.

(5) Dieses Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den zur Zeit bestehenden Steuern oder an deren Stelle erhoben werden. Die zuständigen Behörden der Vertragstaaten teilen einander am Ende eines jeden Jahres die in ihren Steuergesetzen eingetretenen Änderungen, soweit erforderlich, mit.

Artikel 3
Allgemeine Definitionen

(1) Im Sinne dieses Abkommens, wenn der Zusammenhang keine andere Auslegung erfordert:

a) bedeuten die Ausdrücke „ein Vertragstaat" und „der andere Vertragstaat", je nach dem Zusammenhang, die Bundesrepublik Deutschland oder die Sozialistische Republik Rumänien;

b) umfasst der Ausdruck „Person" natürliche Personen und Gesellschaften;

c) bedeutet der Ausdruck „Gesellschaft" alle juristischen Personen einschliesslich der gemischten Gesellschaften rumänischen Rechts oder Rechtsträger, die für die Besteuerung wie juristische Personen behandelt werden;

d) bedeuten die Ausdrücke „Unternehmen eines Vertragstaates" und „Unternehmen des anderen Vertragstaates", je nachdem, ein Unternehmen, das von einer in einem Vertragstaat ansässigen Person betrieben wird, oder ein Unternehmen, das von einer in dem anderen Vertragstaat ansässigen Person betrieben wird;

e) bedeutet der Ausdruck „zuständige Behörde" auf seiten der Bundesrepublik Deutschland den Bundesminister der Finanzen und auf seiten der Sozialistischen Republik Rumänien das Finanzministerium.

(2) Bei Anwendung dieses Abkommens

durch einen Vertragstaat hat, wenn der Zusammenhang nichts anderes erfordert, jeder nicht anders definierte Ausdruck die Bedeutung, die ihm nach dem Recht dieses Staates über die Steuern zukommt, welche Gegenstand dieses Abkommens sind.

Artikel 4
Steuerlicher Wohnsitz

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „eine in einem Vertragstaat ansässige Person" eine Person, die nach dem Recht dieses Staates dort auf Grund ihres Wohnsitzes, ihres ständigen Aufenthalts, des Ortes ihrer Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist.

(2) Ist nach Absatz 1 eine natürliche Person in beiden Vertragstaaten ansässig, so gilt folgendes:

a) Die Person gilt als in dem Vertragstaat ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat.

b) Kann nicht bestimmt werden, in welchem Vertragstaat die Person die engeren persönlichen und wirtschaftlichen Beziehungen hat, oder verfügt sie in keinem der Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat.

(3) Ist nach Absatz 1 eine andere als eine natürliche Person in beiden Vertragstaaten ansässig, so gilt sie als in dem Vertragstaat ansässig, in dem sich der Ort ihrer tatsächlichen Geschäftsleitung befindet.

Artikel 5
Betriebstätte

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „Betriebstätte" eine feste Geschäftseinrichtung, in der die Tätigkeit des Unternehmens ganz oder teilweise ausgeübt wird.

(2) Der Ausdruck „Betriebstätte" umfasst insbesondere:

a) einen Ort der Leitung,
b) eine Zweigniederlassung,
c) eine Geschäftsstelle,
d) eine Fabrikationsstätte,
e) eine Werkstätte,
f) ein Bergwerk, einen Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
g) eine Bauausführung oder Montage, deren Dauer zwölf Monate überschreitet.

(3) Als Betriebstätten gelten nicht:

a) Einrichtungen, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung von Gütern oder Waren des Unternehmens benutzt werden, sowie die Waren selbst, einschliesslich des Verkaufs solcher Waren im Anschluss an eine Messe;

b) Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zu dem Zweck unterhalten werden, durch ein anderes Unternehmen bearbeitet oder verarbeitet zu werden;

c) eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen Güter oder Waren einzukaufen, Informationen zu beschaffen oder Werbung zu betreiben;

d) eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen wissenschaftliche Forschung zu betreiben,

Auskünfte zu erteilen oder ähnliche Tätigkeiten auszuüben, die vorbereitender Art sind oder eine Hilfstätigkeit darstellen.

(4) Ist eine Person — mit Ausnahme eines unabhängigen Vertreters im Sinne des Absatzes 5 — in einem Vertragstaat für ein Unternehmen des anderen Vertragstaates tätig, so gilt eine in dem erstgenannten Staat gelegene Betriebstätte als gegeben, wenn die Person eine Vollmacht besitzt, im Namen des Unternehmens Verträge abzuschliessen, und die Vollmacht in diesem Staat gewöhnlich ausübt, es sei denn, dass sich ihre Tätigkeit auf den Einkauf von Gütern oder Waren für das Unternehmen beschränkt.

(5) Ein Unternehmen eines Vertragstaates wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Vertragstaat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.

(6) Allein dadurch, dass eine in einem Vertragstaat ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Vertragstaat ansässig ist oder dort (entweder durch eine Betriebstätte oder in anderer Weise) ihre Tätigkeit ausübt, wird eine der beiden Gesellschaften nicht zur Betriebstätte der anderen.

Artikel 6
Einkünfte aus unbeweglichem Vermögen

(1) Einkünfte aus unbeweglichem Vermögen können in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

(2) Der Ausdruck „unbewegliches Vermögen" bestimmt sich nach dem Recht des Vertragstaates, in dem das Vermögen liegt. Der Ausdruck umfasst in jedem Fall das Zubehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Betriebe, die Rechte, auf die die Vorschriften des Privatrechts über Grundstücke Anwendung finden, die Nutzungsrechte an unbeweglichem Vermögen sowie die Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung von Mineralvorkommen, Quellen und anderen Bodenschätzen; Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.

(3) Absatz 1 gilt für die Einkünfte aus der unmittelbaren Nutzung, der Vermietung oder Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens.

(4) Die Absätze 1 und 3 gelten auch für Einkünfte aus unbeweglichem Vermögen eines Unternehmens und für Einkünfte aus unbeweglichem Vermögen, das der Ausübung eines freien Berufes dient.

Artikel 7
Unternehmensgewinne

(1) Gewinne eines Unternehmens eines Vertragstaates können nur in diesem Staat besteuert werden, es sei denn, dass das Unternehmen seine Tätigkeit im anderen Vertragstaat durch eine dort gelegene Betriebstätte ausübt. Übt das Unternehmen seine Tätigkeit in dieser Weise aus, so können die Gewinne des Unternehmens in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser Betriebstätte zugerechnet werden können.

(2) Übt ein Unternehmen eines Vertragstaates seine Tätigkeit in dem anderen Ver-

tragstaat durch eine dort gelegene Betriebstätte aus, so sind in jedem Vertragstaat dieser Betriebstätte die Gewinne zuzurechnen, die sie hätte erzielen können, wenn sie eine gleiche oder ähnliche Tätigkeit unter gleichen oder ähnlichen Bedingungen als selbständiges Unternehmen ausgeübt hätte und im Verkehr mit dem Unternehmen, dessen Betriebstätte sie ist, völlig unabhängig gewesen wäre.

(3) Bei der Ermittlung der Gewinne einer Betriebstätte werden die für diese Betriebstätte entstandenen Aufwendungen, einschliesslich der Geschäftsführungs- und allgemeinen Verwaltungskosten, zum Abzug zugelassen, gleichgültig, ob sie in dem Staat, in dem die Betriebstätte liegt, oder anderswo entstanden sind.

(4) Soweit es in einem Vertragstaat üblich ist, die einer Betriebstätte zuzurechnenden Gewinne durch Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile zu ermitteln, schliesst Absatz 2 nicht aus, dass dieser Vertragstaat die zu besteuernden Gewinne nach der üblichen Aufteilung ermittelt; die Art der angewendeten Gewinnaufteilung muss jedoch so sein, dass das Ergebnis mit den Grundsätzen dieses Artikels übereinstimmt.

(5) Auf Grund des blossen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebstätte kein Gewinn zugerechnet.

(6) Bei Anwendung der vorstehenden Absätze sind die der Betriebstätte zuzurechnenden Gewinne jedes Jahr auf dieselbe Art zu ermitteln, es sei denn, dass ausreichende Gründe dafür bestehen, anders zu verfahren.

(7) Gehören zu den Gewinnen Einkünfte, die in anderen Artikeln dieses Abkommens genannt sind, so werden die Bestimmungen jener Artikel durch die Bestimmungen dieses Artikels nicht berührt.

Artikel 8
Seeschiffahrt, Binnenschiffahrt und Luftfahrt

(1) Gewinne aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr können nur in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

(2) Gewinne aus dem Betrieb von Schiffen, die der Binnenschiffahrt dienen, können nur in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

(3) Absätze 1 und 2 gelten entsprechend für Beteiligungen eines Unternehmens der Schiff- oder Luftfahrt an einem Pool, einer Betriebsgemeinschaft oder einem anderen internationalen Betriebszusammenschluss.

Artikel 9
Dividenden

(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 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) 10 vom Hundert des Bruttobetrages der

Dividenden, wenn der Empfänger eine Gesellschaft (ausgenommen eine Personengesellschaft) ist, die unmittelbar über mindestens 25 vom Hundert des Kapitals der die Dividenden zahlenden Gesellschaft verfügt;

b) 15 vom Hundert des Bruttobetrages der Dividenden in allen anderen Fällen.

(3) Solange in einem Vertragstaat der Steuersatz vom Gewinn einer Gesellschaft für den ausgeschütteten Gewinn niedriger ist als der Steuersatz für den nicht ausgeschütteten Gewinn und der Unterschied 20 vom Hundert oder mehr beträgt, darf abweichend von Absatz 2 die Steuer, die in diesem Staat von den Dividenden erhoben wird, 25,75 vom Hundert des Bruttobetrages der Dividenden betragen, wenn die Dividenden von einer in diesem Vertragstaat ansässigen Gesellschaft stammen und von einer in dem anderen Vertragstaat ansässigen Gesellschaft bezogen werden, der entweder selbst oder zusammen mit anderen Personen, von denen sie beherrscht wird oder die mit ihr gemeinsam beherrscht werden, unmittelbar oder mittelbar mindestens 25 vom Hundert der stimmberechtigten Anteile der in dem erstgenannten Staat ansässigen Gesellschaft gehören.

(4) Der in diesem Artikel verwendete Ausdruck „Dividenden" bedeutet Einnahmen aus Aktien, Genussrechten oder Genussscheinen, Kuxen, Gewinnanteilen oder anderen Rechten — ausgenommen Forderungen — mit Gewinnbeteiligung sowie aus sonstigen Gesellschaftsanteilen stammende Einnahmen, die nach dem Steuerrecht des Staates, in dem die ausschüttende Gesellschaft ansässig ist, den Einnahmen aus Aktien gleichgestellt sind, einschliesslich der Einnahmen aus Beteiligungen an einem Handelsgewerbe als stiller Gesellschafter im Sinne des Rechts der Bundesrepublik Deutschland, aus Gewinnobligationen oder aus partiarischen Darlehen sowie der Ausschüttungen auf die Anteilscheine von Kapitalanlagegesellschaften (Investmentfonds).

(5) Die Absätze 1 und 3 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Dividenden in dem anderen Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine Betriebstätte hat und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

(6) Bezieht eine in einem Vertragstaat ansässige Gesellschaft Gewinne oder Einkünfte aus dem anderen Vertragstaat, so darf dieser andere Staat weder die Dividenden besteuern, die die Gesellschaft an nicht in diesem anderen Staat ansässige Personen zahlt, noch Gewinne der Gesellschaft einer Steuer für nichtausgeschüttete Gewinne unterwerfen, selbst wenn die gezahlten Dividenden oder die nichtausgeschütteten Gewinne ganz oder teilweise aus in dem anderen Staat erzielten Gewinnen oder Einkünften bestehen.

Artikel 10
Zinsen

(1) Zinsen, die aus einem Vertragstaat stammen und an eine in dem anderen Vertragstaat ansässige Person gezahlt werden, können in dem anderen Staat besteuert werden.

(2) Diese Zinsen können jedoch in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 10 vom Hundert des Betrages der Zinsen nicht übersteigen.

(3) Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus öffentlichen Anleihen, aus Schuldverschreibungen, auch wenn sie durch Pfandrechte an Grundstücken gesichert oder mit einer Gewinnbeteiligung ausgestattet sind, und aus Forderungen jeder Art sowie alle anderen Einkünfte, die nach dem Steuerrecht des Staates, aus dem sie stammen, den Einkünften aus Darlehen gleichgestellt sind.

(4) Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Zinsen in dem anderen Vertragstaat, aus dem die Zinsen stammen, eine Betriebstätte hat und die Forderung, für die die Zinsen gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

(5) Zinsen gelten dann als aus einem Vertragstaat stammend, wenn der Schuldner in diesem Staat ansässig ist. Hat aber der Schuldner der Zinsen, ohne Rücksicht darauf, ob er in einem Vertragstaat ansässig ist oder nicht, in einem Vertragstaat eine Betriebstätte und ist die Schuld, für die die Zinsen gezahlt werden, für Zwecke der Betriebstätte eingegangen und trägt die Betriebstätte die Zinsen, so gelten die Zinsen als aus dem Vertragstaat stammend, in dem die Betriebstätte liegt.

(6) Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Zinsen, gemessen an der zugrunde liegenden Forderung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 11
Lizenzgebühren

(1) Lizenzgebühren, die aus einem Vertragstaat stammen und von einer in dem anderen Vertragstaat ansässigen Person bezogen werden, können nur in dem anderen Staat besteuert werden.

(2) Diese Lizenzgebühren können jedoch in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 10 vom Hundert des Betrages der Lizenzgebühren nicht übersteigen.

(3) Der in diesem Artikel verwendete Ausdruck „Lizenzgebühren" bedeutet Vergütungen jeder Art, die für die Benutzung oder für das Recht auf Benutzung von Urheberrechten an literarischen, künstlerischen oder wissenschaftlichen Werken, einschliesslich kinematographischer Filme, von Patenten, Warenzeichen, Mustern oder Modellen, Plänen, geheimen Formeln oder Verfahren oder für die Benutzung oder das Recht auf Benutzung gewerblicher, kaufmännischer oder wissenschaftlicher Ausrüstungen oder für die Mitteilung gewerblicher, kaufmännischer oder wissenschaftlicher Erfahrungen gezahlt werden.

(4) Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Lizenzgebühren in dem anderen Vertragstaat, aus dem die Lizenzgebühren stammen, eine Betriebstätte hat und die Rechte oder Vermögenswerte, für die Lizenzgebühren gezahlt werden, tatsächlich zu dieser Betriebstätte gehören. In diesem Fall ist Artikel 7 anzuwenden.

(5) Lizenzgebühren gelten dann als aus einem Vertragstaat stammend, wenn der Schuldner dieser Staat selbst oder eine in diesem Staat ansässige Person ist. Hat aber der Schuldner der Lizenzgebühren, ohne Rücksicht darauf, ob er in einem Vertragstaat ansässig ist oder nicht, in einem Vertragstaat eine Betriebstätte und ist der Vertrag, auf Grund dessen die Lizenzgebühren zu zahlen sind, für Zwecke der Betriebstätte geschlossen und trägt die Betriebstätte diese Lizenzgebühren, so gelten die Lizenzgebühren als aus dem Vertragstaat stammend, in dem die Betriebstätte liegt.

(6) Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Lizenzgebühren gemessen an der zugrunde liegenden Leistung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 12
Selbständige Arbeit

(1) Einkünfte, die eine in einem Vertragstaat ansässige Person aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art bezieht, können nur in diesem Staat besteuert werden, es sei denn, dass die Person für die Ausübung ihrer Tätigkeit in dem anderen Vertragstaat regelmässig über eine feste Einrichtung verfügt. Verfügt sie über eine solche feste Einrichtung, so können die Einkünfte in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser festen Einrichtung zugerechnet werden können.

(2) Der Ausdruck „freier Beruf" umfasst insbesondere die selbständig ausgeübte wissenschaftliche, literarische, künstlerische, erzieherische oder unterrichtende Tätigkeit sowie die selbständige Tätigkeit der Ärzte, Rechtsanwälte, Ingenieure, Architekten, Zahnärzte und Bücherrevisoren.

Artikel 13
Gehälter, Löhne und ähnliche Vergütungen

(1) Vorbehaltlich der Artikel 14 und 16 können Gehälter, Löhne und ähnliche Vergütungen, die eine in einem Vertragstaat ansässige Person aus unselbständiger Arbeit bezieht, nur in diesem Staat besteuert werden, es sei denn, dass die Arbeit in dem anderen Vertragstaat ausgeübt wird. Wird die Arbeit dort ausgeübt, so können die dafür bezogenen Vergütungen in dem anderen Staat besteuert werden.

(2) Ungeachtet des Absatzes 1 können Vergütungen, die eine in einem Vertragstaat ansässige Person für eine in dem anderen Vertragstaat ausgeübte unselbständige Arbeit bezieht, nur in dem erstgenannten Staat besteuert werden, wenn

a) der Empfänger sich in dem anderen Staat insgesamt nicht länger als 183 Tage während des betreffenden Kalenderjahres aufhält,
b) die Vergütungen von einem Arbeitgeber oder für einen Arbeitgeber gezahlt werden, der nicht in dem anderen Staat ansässig ist und
c) die Vergütungen nicht von einer Betriebstätte oder einer festen Einrichtung getragen werden, die der Arbeitgeber in dem anderen Staat hat.

(3) Ungeachtet der vorstehenden Bestimmungen dieses Artikels können Vergütungen für unselbständige Arbeit, die an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr oder an Bord eines Schiffes, das der Binnenschiffahrt dient, ausgeübt wird, in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

Artikel 14
Aufsichtsrats- und Verwaltungsratsvergütungen

Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die eine in einem Vertragstaat ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrates einer Gesellschaft bezieht, die in dem anderen Vertragstaat ansässig ist, können in dem anderen Staat besteuert werden.

Artikel 15
Künstler und Sportler

(1) Ungeachtet der Artikel 12 und 13 können Einkünfte, die berufsmässige Künstler, wie Bühnen-, Film-, Rundfunk- oder Fernsehkünstler und Musiker, sowie Sportler aus ihrer in dieser Eigenschaft persönlich ausgeübten Tätigkeit beziehen, in dem Vertragstaat besteuert werden, in dem sie diese Tätigkeit ausüben.

(2) Abweichend von Absatz 1 können Einkünfte aus Tätigkeiten der in Absatz 1 genannten Art bei Personen, die im Rahmen des von den Vertragstaaten gebilligten Kulturaustausches auftreten, nur in dem Staat besteuert werden, in dem sie ansässig sind.

Artikel 16
Öffentliche Kassen

(1) Vergütungen, einschliesslich der Ruhegehälter, die von einem Vertragstaat oder einer seiner Gebietskörperschaften unmittelbar oder aus einem von diesem Staat oder der Gebietskörperschaft errichteten Sondervermögen an eine natürliche Person für die diesem Staat oder der Gebietskörperschaft in Ausübung öffentlicher Funktionen erbrachten Dienste gewährt werden, können in diesem Staat besteuert werden. Dies gilt jedoch nicht, wenn die Vergütungen an Personen gezahlt werden, die in dem anderen Staat ständig ansässig sind.

(2) Auf Vergütungen für Dienstleistungen, die im Zusammenhang mit einer kaufmännischen oder gewerblichen Tätigkeit eines der Vertragstaaten oder einer seiner Gebietskörperschaften erbracht werden, finden die Artikel 13 und 14 Anwendung.

Artikel 17
Studenten und andere in der Ausbildung stehende Personen

Ist eine natürliche Person in einem Vertragstaat ansässig, unmittelbar bevor sie sich in den anderen Vertragstaat begibt, und hält sie sich in dem anderen Staat lediglich als Student einer Universität, Hochschule, Schule oder anderen ähnlichen Lehranstalt dieses anderen Staates oder als Lehrling (in der Bundesrepublik Deutschland einschliesslich der Volontäre oder Praktikanten) oder als sonstige Person zum Zweck der Fortbildung vorübergehend auf, so ist sie vom Tage ihrer ersten Ankunft in dem anderen Staat im Zusammenhang mit diesem Aufenthalt von der Steuer dieses anderen Staates befreit:

a) hinsichtlich aller für ihren Unterhalt, ihre Erziehung oder ihre Ausbildung bestimmten Überweisungen aus dem Ausland und

b) während der Dauer von höchstens drei Jahren hinsichtlich aller Vergütungen bis zu 6 000 DM oder deren Gegenwert in rumänischer Währung je Kalenderjahr für Arbeit, die sie in dem anderen Vertragstaat ausübt, um die Mittel für ihren Unterhalt, ihre Erziehung oder ihre Ausbildung zu ergänzen.

Artikel 18
Vermögen

(1) Unbewegliches Vermögen im Sinne des Artikels 6 Absatz 2 kann in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

(2) Bewegliches Vermögen, das Betriebsvermögen einer Betriebstätte eines Unternehmens darstellt oder das zu einer der Ausübung eines freien Berufes dienenden festen Einrichtung gehört, kann in dem Vertragstaat besteuert werden, in dem sich die Betriebstätte oder die feste Einrichtung befindet.

(3) Seeschiffe und Luftfahrzeuge im internationalen Verkehr und Schiffe, die der Binnenschiffahrt dienen, sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, können nur in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

(4) Alle anderen Vermögensteile einer in einem Vertragstaat ansässigen Person können nur in diesem Staat besteuert werden.

Artikel 19
Beseitigung der Doppelbesteuerung

(1) Bei einer in der Bundesrepublik Deutschland ansässigen Person wird die Steuer wie folgt festgesetzt:

a) Von der Bemessungsgrundlage für die Steuer der Bundesrepublik Deutschland werden die Einkünfte aus Quellen innerhalb der Sozialistischen Republik Rumänien und die in der Sozialistischen Republik Rumänien gelegenen Vermögenswerte ausgenommen, die nach diesem Abkommen in der Sozialistischen Republik Rumänien besteuert werden können, soweit nicht Buchstabe b anzuwenden ist. Die Bundesrepublik Deutschland behält aber das Recht, die so ausgenommenen Einkünfte und Vermögenswerte bei der Festsetzung des Steuersatzes zu berücksichtigen. Auf Dividenden ist Satz 1 nur anzuwenden, wenn die Dividenden einer in der Bundesrepublik Deutschland ansässigen Kapitalgesellschaft von einer in der Sozialistischen Republik Rumänien ansässigen Gesellschaft gezahlt werden, deren stimmberechtigte Anteile zu mindestens 25 vom Hundert der erstgenannten Gesellschaft gehören. Von der Bemessungsgrundlage für die Steuer der Bundesrepublik Deutschland werden ebenfalls Beteiligungen ausgenommen, deren Dividenden nach dem vorstehenden Satz von der Steuerbemessungsgrundlage ausgenommen sind oder bei Zahlung auszunehmen wären.

b) Die Steuer, die nach dem Recht der Sozialistischen Republik Rumänien und in Übereinstimmung mit diesem Abkommen für die nachstehenden, aus Quellen innerhalb der Sozialistischen Republik Rumänien stammenden Ein-

künfte gezahlt wird, wird unter Beachtung der Vorschriften des Steuerrechts der Bundesrepublik Deutschland über die Anrechnung ausländischer Steuern auf die von diesen Einkünften in der Bundesrepublik Deutschland erhobene Steuer angerechnet:

1. Dividenden im Sinne des Artikels 9, die nicht unter Buchstabe a fallen,
2. Zinsen im Sinne des Artikels 10,
3. Lizenzgebühren im Sinne des Artikels 11,
4. Einkünfte im Sinne des Artikels 14,
5. Einkünfte im Sinne des Artikels 15.

(2) Bei einer in der Sozialistischen Republik Rumänien ansässigen Person wird die Steuer wie folgt festgesetzt:
Auf die Steuer, die in der Sozialistischen Republik Rumänien von den aus der Bundesrepublik Deutschland stammenden Einkünften und den in der Bundesrepublik Deutschland gelegenen Vermögenswerten erhoben wird, wird unter Beachtung der Vorschriften des Steuerrechts der Sozialistischen Republik Rumänien über die Anrechnung ausländischer Steuern die Steuer angerechnet, die nach dem Recht der Bundesrepublik Deutschland und in Übereinstimmung mit diesem Abkommen gezahlt worden ist.
Der anzurechnende Betrag darf jedoch nicht den Teil der vor der Anrechnung ermittelten Steuer der Sozialistischen Republik Rumänien übersteigen, der auf diese Einkünfte entfällt.

Artikel 20
Verständigungsverfahren

(1) Ist eine in einem Vertragstaat ansässige Person der Auffassung, dass die Massnahmen eines Vertragstaates oder beider Vertragstaaten für sie zu einer Besteuerung geführt haben oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach innerstaatlichem Recht dieser Staaten vorgesehenen Rechtsmittel ihren Fall der zuständigen Behörde des Vertragstaates unterbreiten, in dem sie ansässig ist.

(2) Hält diese zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall durch Verständigung mit der zuständigen Behörde des anderen Vertragstaates so zu regeln, dass eine dem Abkommen nicht entsprechende Besteuerung vermieden wird.

(3) Die zuständigen Behörden der Vertragstaaten werden sich bemühen, Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung des Abkommens entstehen, in gegenseitigem Einvernehmen zu beseitigen. Sie können auch gemeinsam darüber beraten, wie eine Doppelbesteuerung in Fällen, die in dem Abkommen nicht behandelt sind, vermieden werden kann.

(4) Die zuständigen Behörden der Vertragstaaten können für die Zwecke der Anwendung dieses Abkommens unmittelbar miteinander verkehren.

Artikel 21
Austausch von Informationen

(1) Die zuständigen Behörden der Vertragstaaten werden gegenseitig die zur Durchführung dieses Abkommens erforderlichen Informationen austauschen.
Alle so ausgetauschten Informationen sind geheimzuhalten und dürfen nur solchen Personen oder Behörden mitgeteilt werden, die mit der Veranlagung und Erhebung der unter dieses Abkommen fallenden Steuern befasst sind.

(2) Absatz 1 ist auf keinen Fall so auszulegen, als verpflichte er einen der Vertragstaaten:

a) Verwaltungsmassnahmen durchzuführen, die von den Gesetzen oder der Verwaltungspraxis dieses oder des anderen Vertragstaates abweichen,
b) Angaben zu übermitteln, die nach den geltenden Gesetzen oder im üblichen Verwaltungsverfahren dieses oder des anderen Vertragstaates nicht beschaffbar sind,
c) Informationen, die ein Handels-, Geschäfts- oder Berufsgeheimnis, ein Geschäftsverfahren preisgeben würden, oder Informationen, deren Erteilung der öffentlichen Ordnung widerspräche, zu erteilen.

Artikel 22
Diplomatische und konsularische Vorrechte

Dieses Abkommen berührt nicht die diplomatischen und konsularischen Vorrechte nach den allgemeinen Regeln des Völkerrechts oder auf Grund besonderer internationaler Vereinbarungen.

Artikel 23

Dieses Abkommen wird auch auf Berlin (West) ausgedehnt, entsprechend dem Viermächte-Abkommen vom 3.9.1971 in Übereinstimmung mit den festgelegten Verfahren.

Artikel 24
Inkrafttreten

(1) Dieses Abkommen bedarf der Ratifikation; die Ratifikationsurkunden sollen so bald wie möglich in Bukarest ausgetauscht werden.

(2) Dieses Abkommen tritt einen Monat nach dem Austausch der Ratifikationsurkunden in Kraft und ist anzuwenden:

a) in der Bundesrepublik Deutschland auf die Steuern, die für den Veranlagungszeitraum 1972 und die folgenden Veranlagungszeiträume erhoben werden;
b) in der Sozialistischen Republik Rumänien auf die Steuern, die für den Veranlagungszeitraum 1972 und die folgenden Veranlagungszeiträume erhoben werden;
c) in beiden Vertragstaaten auf die im Abzugsweg erhobenen Steuern von Erträgen, die nach dem 31. Dezember 1971 gezahlt werden.

Artikel 25
Ausserkrafttreten

Dieses Abkommen bleibt auf unbestimmte Zeit in Kraft, jedoch kann jeder der Vertragstaaten bis zum dreissigsten Juni eines jeden Kalenderjahres nach Ablauf des Jahres, das dem Jahr des Inkrafttretens folgt, das Abkommen gegenüber dem anderen Vertragstaat auf diplomatischem Wege schriftlich kündigen; in diesem Fall ist das Abkommen nicht mehr anzuwenden:

a) auf Veranlagungszeiträume, die nach dem 31. Dezember des Kündigungsjahres beginnen;
b) auf im Abzugsweg erhobene Steuern von Erträgen, die nach dem 31. Dezember des Kündigungsjahres gezahlt werden.

Geschehen zu Bonn am 29. Juni 1973 in zwei Urschriften, jede in deutscher und rumänischer Sprache, wobei jeder Wortlaut gleichermassen verbindlich ist.

Für die Bundesrepublik Deutschland
Scheel

Für die Sozialistische Republik Rumänien
Păţan

Protokoll

Die Bundesrepublik Deutschland
und
die Sozialistische Republik Rumänien
Haben anlässlich der Unterzeichnung des Abkommens zwischen den beiden Staaten zur Vermeidung der Doppelbesteuerung auf dem Gebiet der Steuern vom Einkommen und vom Vermögen am 29. Juni 1973 in Bonn die nachstehenden Bestimmungen vereinbart, die Bestandteil des Abkommens bilden.

(1) *Zu den Artikeln 2 und 19*
Bei der Anwendung dieser Artikel in der Sozialistischen Republik Rumänien gilt die Gewinnabgabe der rumänischen staatlichen Unternehmen als Steuer der Sozialistischen Republik Rumänien im Sinne dieser Artikel.

(2) *Zu Artikel 5*
Eine Bauausführung, die in einem Vertragstaat von einem Unternehmen des anderen Vertragstaats unterhalten wird, gilt nicht als Betriebstätte, wenn ihre Dauer 18 Monate nicht überschreitet. Diese Regel gilt nur für den in Artikel 24 genannten Veranlagungszeitraum und die vier folgenden Veranlagungszeiträume.
Einrichtungen von Presse-, Rundfunk- und Fernsehunternehmen gelten nicht als Betriebstätten, wenn die eingeholten Informationen ausschliesslich dem Unternehmen übermittelt werden, das die Einrichtungen unterhält.

(3) *Zu Artikel 7*
Bei der Ermittlung des steuerlichen Gewinns einer Betriebstätte sind Entgelte, die ein Bauunternehmen an ein Subunternehmen für von diesem ausgeführte Arbeiten leistet, nach Massgabe des Rechts des Staates, in dem die Betriebstätte liegt, als Betriebsausgaben abzugsfähig.

(4) *Zu Artikel 9*
Es besteht Einverständnis, dass die in der Sozialistischen Republik Rumänien nach Artikel 13 des Dekrets Nr. 425 vom 2. November 1972 erhobene Steuer von den ins Ausland überwiesenen Gewinnanteilen aus den Gemischten Gesellschaften als Steuer anzusehen ist, die von Dividenden im Sinne des Artikels 9 Absatz 4 erhoben wird.

(5) *Zu Artikel 13*
Bei einer Person, die in einem Vertragstaat nach Artikel 4 ansässig ist und im anderen Vertragstaat vorübergehenden Aufenthalt im Sinne des Artikels 13 Absatz 2 nimmt, um in diesem Vertragstaat bei einer Bauausführung, die von einem Unternehmen des erstgenannten Staates unterhalten wird, als Arbeitnehmer dieses Unternehmens tätig zu sein, tritt an die Stelle der in Artikel 13 Absatz 2 Buchstabe a genannten Frist die Dauer vorübergehenden Aufenthalts, sofern dieser Aufenthalt die Frist nicht überschreitet, innerhalb deren die Bauausführung nach dem Schlussprotokoll zu Artikel 5 keine Betriebstätte begründet. Diese Regel gilt nur für den in Artikel 24 genannten Veranlagungszeitraum und die vier folgenden Veranlagungszeiträume.

(6) *Zu Artikel 19*
Artikel 19 Absatz 1 Buchstabe a des Abkommens gilt nur dann, wenn die Betriebstätte oder die Gesellschaft, an der die Beteiligung besteht, ihre Einnahmen ausschliesslich oder fast ausschliesslich aus folgenden innerhalb der Sozialistischen Republik Rumänien ausgeübten Tätigkeiten bezieht: Herstellung oder Verkauf von

Gütern oder Waren, technische Dienstleistung oder Bank- bzw. Versicherungsgeschäfte. Sind diese Voraussetzungen nicht erfüllt, ist Artikel 19 Absatz 1 Buchstabe b anzuwenden; bei der Besteuerung des Vermögens ist die in der Sozialistischen Republik Rumänien erhobene Steuer von den in der Sozialistischen Republik Rumänien gelegenen Vermögenswerten nach Massgabe der Vorschriften des Steuerrechts der Bundesrepublik Deutschland über die Anrechnung ausländischer Steuern auf die in der Bundesrepublik Deutschland erhobene Steuer anzurechnen.

(7) *Zu Artikel 20*
Die zuständigen Behörden der Vertragstaaten unterrichten sich auf Verlangen gegenseitig über wesentliche Änderungen ihrer Steuergesetze und beraten bei erheblichen Änderungen gemeinsam, um festzustellen, ob Änderungen des Abkommens erwünscht sind.

Für die Bundesrepublik Deutschland
Scheel

Für die Sozialistische Republik Rumänien
Pățan

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu entre la République française et l'Empire de l'Iran.

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXIX, No. 6, June/juin 1975

INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty was signed between France and Iran on November 7, 1973. The instruments of ratification were exchanged on March 10, 1975. The treaty enters into force in accordance with the provisions of Article 29 of the treaty.

TEXT

Le Président de la République française et Sa Majesté le Chahinchah de l'Iran,
Désireux de consolider les relations d'amitié entre les deux pays, ont décidé de conclure une Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu, et ont désigné à cet effet pour leurs plénipotentiaires:
Le Président de la République française: M. Robert de Souza, Ambassadeur extraordinaire et plénipotentiaire de la République en Iran;
Sa Majesté le Chahinchah de l'Iran: M. Abbas Ali Khalatbary, Ministre des Affaires étrangères,
lesquels, après s'être communiqué leurs pleins pouvoirs, et les avoir reconnus 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 de pétrole et de ses dérivés.

Article 2.

1. La présente Convention s'applique aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants, de ses subdivisions administratives et de ses collectivités locales, quel que soit le système de perception.
2. Sont considérés comme impôts sur le revenu les impôts perçus sur le revenu total ou sur des éléments du revenu, 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:
a) *En Iran:*
L'impôt sur le revenu, y compris les impôts additionnels (ci après dénommés «impôt iranien»);
b) En France:
i) l'impôt sur le revenu des personnes physiques;
ii) l'impôt sur les sociétés; y compris toutes retenues à la source, tous précomptes ou avances décomptés sur les impôts visés ci-dessus (ci-après dénommés «impôt français»).
4. La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront les modifications apportées à leurs législations fiscales respectives.
5. S'il paraît opportun, en raison de changements intervenus dans la législation fiscale de l'un des Etats contractants, de modifier un article de la Convention sans que les principes généraux de celle-ci en soient affectés, les modifications nécessaires pourront être effectuées d'un commun accord par échange de notes diplomatiques ou selon toute autre procédure conforme à leurs dispositions constitutionnelles respectives.

Article 3.

1. Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:
a) Le terme «Iran» désigne le territoire de l'Empire de l'Iran;
b) Le terme «France» désigne les départements européens et d'Outre-Mer (Guadeloupe, Guyane, Martinique et Réunion) de la République française;
c) Les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, l'Iran ou la France;
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) L'expression «autorité compétente» désigne:
— dans le cas de l'Iran, le Ministre des Finances ou son représentant autorisé;

— dans le cas de la France, le Ministre de l'Economie et des Finances ou son représentant autorisé.

2. Pour l'application de la Convention par un Etat contractant, toute expression qui n'est pas autrement définie 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 si 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 si 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 si 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 fournitures 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'une 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 tout 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 soit 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 à la législation fiscale 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, à cet établissement stable, les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'Etat où est situé cet 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. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement, mais conformément à la réglementation de l'Etat où est situé cet établissement stable.

6. 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, ce siège sera réputé situé dans l'Etat contractant où se trouve le port d'attache de ce navire ou, à défaut de port d'attache, dans l'Etat contractant dont l'exploitant du navire 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 p. 100 du montant brut des dividendes si le bénéficiaire des dividendes est une société (à l'exclusion des sociétés de personnes) qui dispose directement d'au moins 25 p. 100 du capital de la société qui paie les dividendes;
b) 20 p. 100 du montant brut des dividendes, dans tous les autres cas.
3. *a)* Un résident de l'Iran qui reçoit des dividendes distribués par une société résidente de France peut demander le remboursement du précompte afférent à ces dividendes acquitté, le cas échéant, par la société distributrice;
b) Le montant brut du précompte remboursé sera considéré comme un dividende pour l'application de l'ensemble des dispositions de la Convention.
4. Le terme «dividendes» employé dans le présent article 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, 2 et 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. Les sociétés qui sont des résidentes de l'Iran et qui possèdent un établissement stable en France restent soumises en France à la retenue à la source dans les conditions prévues par la législation interne française, étant toutefois entendu que la base d'imposition est réduite d'un tiers et que le taux applicable est celui prévu au paragraphe 2 *a* du présent article.

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 p. 100 du montant des intérêts.
3. Par dérogation aux dispositions du paragraphe 2, les intérêts mentionnés au paragraphe 1 ne peuvent pas être imposés dans l'Etat contractant d'où ils proviennent, lorsqu'ils sont payés, à raison de prêts ou crédits consentis par le Gouvernement d'un des Etats contractants ou par une entreprise dudit Etat dans le cadre d'un accord financier entre les deux Etats contractants, à un résident de l'autre Etat contractant, pour le financement d'opérations qui entrent dans le champ des exonérations prévues pour cette catégorie de revenus par la législation fiscale interne de cette autre Etat.
4. Le terme «intérêt» employé dans le présent article désigne les revenus des

fonds publics, des obligations d'emprunts, assortis 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 et 2 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, 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 ne sont imposables que dans cet Etat.

2. Toutefois, ces redevances peuvent être imposées dans l'Etat contractant dont elles proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 10 p. 100 du montant brut des redevances.

3. Le terme «redevances» employé dans le présent article désigne les rémunerations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une œuvre 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, commercial ou scientifique et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

4. Les dispositions du paragraphe 2 ne s'appliquent pas aux redevances ayant leur source dans un des Etats contractants et payées à un résident de l'autre Etat soit pour l'usage ou la concession de l'usage d'un droit d'auteur sur une œuvre littéraire, artistique ou scientifique, soit pour l'usage ou la concession de l'usage de films de télévision ou de bandes utilisées comme support d'émissions de télévision ou de radio, lorsque, dans ce dernier cas, le bénéficiaire est un service ou un organisme public de cet autre Etat.

5. Les dispositions des paragraphes 1, 2 et 4 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.

6. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision administrative, 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.

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 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, et notamment de l'article 9.

Article 13.

1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, ou de l'aliénation de parts ou de droits analogues dans une société dont l'actif est composé principalement de biens immobiliers, sont imposables dans l'Etat contractant où ces biens immobiliers 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 de navires ou d'aéronefs exploités en trafic international et de biens mobiliers affectés à exploitation desdits navires ou aéronefs ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

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;

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. Nonobstant 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.

Article 19.

1. Les rémunérations, y compris les pensions, versées par un Etat contractant ou l'une de ses subdivisions politiques ou collectivités locales, ou un établissement public de cet Etat soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de

services rendus à cet Etat ou à cette subdivision ou collectivité, ou à cet établissement public, dans l'exercice de fonctions de caractère public, sont imposables dans cet 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 ou l'une de ses subdivisions politiques ou collectivités locales ou l'un de ses établissements publics.

Article 20.

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, reçoit pour couvrir les frais d'entretien, d'études ou de formation, ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

Il en est de même de la rémunération qu'un tel étudiant ou stagiaire reçoit au titre d'un emploi exercé dans l'Etat contractant où il poursuit ses études ou sa formation à la condition que cet emploi soit directement lié à ses études ou à sa formation et que sa durée ne dépasse pas 183 jours au cours d'une même année d'imposition.

Article 21.
Professeurs et experts.

1. Un résident de l'un des Etats contractants qui se rend dans l'autre Etat contractant, aux seules fins d'y enseigner ou de s'y livrer à des recherches dans une université, un collège, une école ou tout autre établissement d'enseignement ou de recherche sans but lucratif et officiellement reconnu, n'est pas soumis à l'impôt dans cet autre Etat sur la rémunération qu'il reçoit en provenance du premier Etat.

2. Un résident de l'un des Etats contractants qui se rend dans l'autre Etat contractant soit comme expert, soit à tout autre titre, dans le cadre des accords de coopération technique et scientifique conclus entre les deux Etats contractants, n'est pas soumis à l'impôt dans cet autre Etat sur la part de sa rémunération versée par le premier Etat.

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.

La double imposition est évitée de la manière suivante:

1. Dans le cas de l'Iran:

L'impôt perçu en France, conformément aux dispositions de la présente Convention, sur les revenus provenant de France, 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 France.

2. Dans le cas de la France:

a) Les revenus autres que ceux visés à l'alinéa *b* ci-dessous sont exonérés des impôts français mentionnés au paragraphe 3 *b* de l'article 2, lorsque ces revenus sont im-

posables en Iran en vertu de la présente Convention.

b) En ce qui concerne les revenus visés aux articles 10, 11, 12, 16 et 17 qui ont supporté l'impôt iranien conformément aux dispositions desdits articles, la France accorde aux résidents de France percevant de tels revenus de source iranienne un crédit d'impôt correspondant à l'impôt perçu en Iran.

Ce crédit d'impôt, qui ne peut excéder le montant de l'impôt perçu sur les revenus en cause, s'impute sur les impôts visés au paragraphe 3 *b* de l'article 2 dans les bases desquelles lesdits revenus sont inclus.

c) Toutefois, si les dividendes ou les redevances mentionnés à l'alinéa *b* ci-dessus 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 français 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 du paragraphe 2 *b* de l'article 10 ou du paragraphe 2 de l'article 12, respectivement. Les autorités compétentes des Etats contractants s'entendent selon l'article 25 pour constater quelles sont les dispositions de la loi iranienne prévoyant les mesures spéciales au sens de la disposition précédente.

d) Nonobstant les dispositions du paragraphe 2 de l'article 1er de la Convention, lorsque des dividendes sont distribués par une société résidente d'Iran qui a été soumise à l'impôt iranien sur les bénéfices des sociétés pétrolières, ces dividendes ouvrent droit à un crédit d'impôt calculé au taux prévu par le paragraphe 2 *b* de l'article 10 et imputable sur l'impôt français dans les conditions prévues dans la seconde phrase de l'alinéa *b* ci-dessus.

e) Nonobstant les dispositions des alinéas *a* et *b* ci-dessus, l'impôt français peut être calculé sur le revenu imposable en France en vertu de la présente Convention, au taux correspondant au montant global du revenu imposable, conformément à la législation française.

Article 24.

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. Le terme «nationaux» désigne:

a) Toutes les personnes physiques qui possèdent la nationalité d'un Etat contractant;

b) Toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.

3. 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.

4. 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 disposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les autres entreprises de même nature de ce premier Etat.

5. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

Article 25.

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 auxquelles peut donner lieu 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. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vues peuvent avoir lieu au sein d'une commission composée de représentants des autorités compétentes des Etats contractants.

5. Les autorités compétentes des Etats contractants règlent, le cas échéant, d'un commun accord les modalités d'application de la présente Convention.

Article 26.

1. Les autorités compétentes des Etats contractants échangeront les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des Etats contractants relatives aux impôts visés par la Convention dans la mesure où l'imposition qu'elles prévoient est conforme à la 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 27.

1. Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.
2. La Convention ne s'applique pas aux organisations internationales, à leurs organes et fonctionnaires, ni aux personnes qui, membres de missions diplomatiques ou consulaires d'Etats tiers, sont présentes dans un Etat contractant et ne sont pas considérées comme résidentes de l'un ou l'autre Etat contractant au regard des impôts sur le revenu et sur la fortune.

Article 28.

1. La présente Convention peut être étendue, telle quelle ou avec les modifications nécessaires, aux Territoires d'Outre-Mer de la République française qui perçoivent des impôts de caractère analogue à ceux auxquels s'applique la Convention. Une telle extension prend effet à partir de la date, avec les modifications et dans les conditions, y compris les conditions relatives à la cessation d'application, qui sont fixées d'un commun accord entre les Etats contractants par échange de notes diplomatiques ou selon toute autre procédure conforme à leurs dispositions constitutionnelles.
2. A moins que les deux Etats contractants n'en soient convenus autrement, lorsque la Convention sera dénoncée par l'un d'eux en vertu de l'article 30, elle cessera de s'appliquer, dans les conditions prévues à cet article à tout territoire auquel elle a été étendue conformément au présent article.

Article 29.

1. La présente Convention sera ratifiée et les instruments de ratification seront échangés le plus tôt possible à Téhéran.
2. La Convention entrera en vigueur un mois après la date de l'échange des instruments de ratification.
Ses dispositions s'appliqueront pour la première fois:
a) En Iran:
i) En ce qui concerne la retenue à la source, aux sommes mises en paiement à compter de la date d'entrée en vigueur de la présente Convention;
ii) En ce qui concerne les autres impôts sur le revenu, à l'année d'imposition suivant celle de son entrée en vigueur et aux années subséquentes.
b) En France:
i) En ce qui concerne la retenue à la source, aux sommes mises en paiement à compter de la date d'entrée en vigueur de la présente Convention;
ii) En ce qui concerne les autres impôts sur le revenu, à l'année d'imposition suivant celle de son entrée en vigueur et aux années subséquentes.
3. L'Accord conclu entre le Gouvernement de la République française et le Gouvernement impérial de l'Iran sous forme de lettres échangées les 19 juillet 1956 et 30 août 1956 en vue d'éviter les doubles impositions des revenus et bénéfices provenant des transports aériens, ne sera pas applicable pendant toute année ou période à laquelle s'applique la présente Convention.

Article 30.

La présente Convention demeurera en vigueur tant qu'elle n'aura pas été dénoncée par l'un des Etats contractants. Chacun des Etats contractants peut dénoncer la Convention par voie diplomatique avec un préavis minimum de six mois avant la fin de chaque année civile à partir du 1er janvier de la cinquième année suivant celle de sa ratification. Dans ce cas, la Convention cessera d'être applicable:

a) En Iran:

i) En ce qui concerne la retenue à la source, aux sommes mises en paiement à partir du 1er janvier de l'année suivant immédiatement celle au cours de laquelle le préavis aura été notifié; et

ii) En ce qui concerne les autres impôts sur le revenu pour toute année d'imposition suivant immédiatement l'année au cours de laquelle le préavis aura été notifié.

b) En France:

i) En ce qui concerne la retenue à la source, aux sommes mises en paiement à partir du 1er janvier de l'année suivant immédiatement celle au cours de laquelle le préavis aura été notifié; et

ii) En ce qui concerne les autres impôts sur le revenu pour toute année d'imposition suivant immédiatement l'année au cours de laquelle le préavis aura été notifié.

En foi de quoi, les plénipotentiaires des deux Etats ont signé la présente Convention et y ont apposé leurs sceaux.

Fait en double exemplaire à Téhéran, le 7 novembre 1973, en langues française et persane, chaque texte faisant également foi.

Pour la République française:
ROBERT DE SOUZA.

Pour l'Iran:
ABBAS ALI KHALATBARY.

Supplement **D**
1975

Convention entre le Gouvernement de la République française et le Gouvernement de la République socialiste de Roumanie tendant à éviter les doubles impositions 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

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INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty between France and Romania was signed on September 27, 1974. The treaty, in accordance with Article 30, shall enter into force thirty days following the date on which the Contracting States have exchanged the notifications that the legal requirements have been complied with.
The full text of the French Explanatory Note to the double taxation treaty has been published in the August 1975 issue of the Bulletin for International Fiscal Documentation under Documents.

TEXTE

Le Gouvernement de la République française et le Gouvernement de la République socialiste de Roumanie, désireux de conclure une Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune et de promouvoir et renforcer les relations économiques entre les deux pays, sur la base du respect de la souveraineté et de l'indépendance nationales, de l'égalité des droits, d'avantages réciproques et de la non-ingérence dans les affaires intérieures, sont convenus des dispositions suivantes:

Article 1er
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2
Impôts visés

1. La présente Convention s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte de chacun des Etats contractants, de ses subdivisions adminis-

tratives territoriales et de ses collectivités territoriales, 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 ainsi que les impôts sur les plus-values.

3. Les impôts actuels qui font l'objet de la présente Convention sont:

a) En ce qui concerne la Roumanie:

1) L'impôt sur les revenus de salaires, d'œuvres littéraires, artistiques et scientifiques, sur les revenus de collaboration à des publications et à des spectacles, et sur les revenus d'expertises ainsi que d'autres sources;

2) L'impôt sur les revenus des sociétés mixtes constituées en participation avec des organisations économiques roumaines et avec des partenaires étrangers;

3) L'impôt sur les revenus réalisés par les personnes physiques et morales non résidentes;

4) L'impôt sur les revenus des locations de bâtiments et de terrains;

5) L'impôt sur les revenus d'activités productives, métiers, professions libérales, ainsi que des entreprises autres que celles d'Etat;

6) L'impôt sur les revenus réalisés par des activités agricoles;

(Ci-après dénommés «Impôt roumain».)

b) En ce qui concerne la France:

1) L'impôt sur le revenu;

2) L'impôt sur les sociétés;

Y compris toutes retenues à la source, tous précomptes et avances décomptés sur les impôts visés ci-dessus;

(Ci-après dénommés «Impôt français».)

4. La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui seraient entrés en vigueur après la date de la signature de la présente Convention. Les autorités compétentes des Etats contractants se communiqueront, à la fin de chaque année, les modifications importantes apportées à leurs législations fiscales respectives.

Article 3
Définitions générales

1. Au sens de la présente Convention:

a) Les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la France ou la Roumanie; L'expression «Etats contractants» désigne la France et la Roumanie.

b) Le terme «personne» comprend les personnes physiques, les sociétés, les collectivités publiques et tous autres groupements de personnes.

c) Le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'impositions.

d) 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.

e) L'expression «autorité compétente» désigne:

— dans le cas de la France, le Ministre de l'Economie et des Finances ou son représentant autorisé;

— dans le cas de la Roumanie, le Ministre des Finances ou son représentant autorisé.

2. Pour l'application de la Convention par un Etat contractant, toute expression qui n'est pas autrement définie 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
Domicile fiscal

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 statutaire, 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, sa situation est réglée de la manière suivante:
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
Etablissement stable

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 bureau;
d) Une usine;
e) Un atelier;
f) Une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
g) Un chantier de montage dont la durée dépasse douze mois, ou un chantier de construction dont la durée dépasse dix-huit 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) Des marchandises appartenant à l'entreprise qui étaient exposées à une foire commerciale ou une exposition, sont vendues par l'entreprise à l'issue de cette foire ou exposition;
e) Une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;
f) 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'une 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 tout 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 soit 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
Revenus immobiliers

1. Les revenus provenant de biens immobiliers, y compris les revenus des exploitations agricoles et forestières, sont imposables dans l'Etat contractant où ces biens sont situés.

2. L'expression «biens immobiliers» est définie conformément à la législation fiscale de l'Etat contractant où les biens considérés sont situés. L'expression englobe en tout 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
Bénéfices des entreprises

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, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, soit dans l'Etat où est situé cet établissement stable, soit ailleurs. Les dépenses de direction et les frais généraux d'administration concernant cet établissement stable sont déterminées selon les usages et d'une manière juste et raisonnable.

4. S'il est d'usage, dans un Etat contractant, de déterminer les bénéfices imputables à un établissement stable sur la base d'une répartition des bénéfices totaux de l'entreprise entre ses diverses parties, aucune disposition du paragraphe 2 n'empêche cet Etat contractant de déterminer les bénéfices imposables selon la répartition en usage; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.

5. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

6. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.

7. 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
Entreprises de transport

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 est à bord d'un navire, ce siège est réputé situé dans l'Etat contractant où se trouve le port d'attache de ce navire, ou, à défaut de port d'attache, dans l'Etat contractant dont l'exploitant du navire est un résident.

3. Les bénéfices provenant de l'exploitation, en trafic international, de véhicules ferroviaires ou routiers ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

4. Les dispositions des paragraphes 1 et 3 s'appliquent aussi aux bénéfices provenant de la participation à un groupe, à une exploitation en commun ou à un organisme international d'exploitation.

Article 9
Entreprises associées

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 des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

Article 10
Dividendes

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 si la personne qui perçoit les dividendes en est le bénéficiaire effectif, l'impôt ainsi établi ne peut excéder 10 p. 100 du montant brut des dividendes.
Les autorités compétentes régleront d'un commun accord les modalités d'application du présent paragraphe.
Ce paragraphe ne concerne pas l'imposition de la société pour les bénéfices qui servent au paiement des dividendes.
3. a) Le terme «dividendes» employé dans le présent article 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 assujettis au même régime fiscal que les revenus d'actions par la législation fiscale de l'Etat dont la société distributrice est un résident.
b) Sont également considérées comme des dividendes payés par une société résidente en France les sommes remboursées au titre du précompte visées au paragraphe 5 qui sont afférentes aux dividendes payés par la société distributrice.
4. Les dispositions des paragraphes 1 et 2 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.
5. Lorsque le précompte est prélevé à raison des dividendes versés par une société résidente de France à un résident de Roumanie, ce dernier peut prétendre au remboursement dudit précompte, déduction faite de l'impôt — afférent au montant des sommes remboursées — retenu à la source conformément à la législation interne et au paragraphe 2 du présent article, le cas échéant.
6. Lorsqu'une société résidente d'un Etat contractant a un établissement stable dans l'autre Etat contractant, les bénéfices de cet établissement stable peuvent, après avoir supporté l'impôt sur les bénéfices, être assujettis conformément à la législation de

cet autre Etat contractant à un impôt dont le taux ne peut dépasser 10 p. 100.

Article 11
Intérêts

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 si la personne qui reçoit les intérêts en est le bénéficiaire effectif l'impôt ainsi établi ne peut excéder 10 p. 100 du montant des intérêts.
Les autorités compétentes régleront d'un commun accord les modalités d'application du présent paragraphe.
3. Nonobstant les dispositions du paragraphe 2, les intérêts payés en vertu de prêts garantis, assurés ou financés directement ou indirectement par un Etat contractant ou un organisme public de cet Etat sont exonérés dans l'Etat contractant d'où ils proviennent.
4. Le terme «intérêts» employé dans le présent article désigne les revenus des créances de toute nature, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices du débiteur, et notamment les revenus des fonds publics et des obligations d'emprunt, y compris les primes et lots attachés à ces titres.
5. Les dispositions des paragraphes 1 et 2 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, une subdivision administrative territoriale, une collectivité territoriale 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
Redevances

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 si la personne qui reçoit les redevances en est le bénéficiaire effectif, l'impôt ainsi établi ne peut excéder 10 p. 100 du montant des redevances.

Les autorités compétentes régleront d'un commun accord les modalités d'application du présent paragraphe.

3. Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une œuvre 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, commercial ou scientifique et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial 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 considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision administrative territoriale, une collectivité territoriale 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 auquel se rattache effectivement le droit ou le bien générateur des redevances 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.

Article 13
Gains en capital

1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, ou de l'aliénation de parts ou de droits analogues dans une société immobilière de copropriété ou dans une société dont l'actif est composé principalement de biens immobiliers, 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 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
Professions libérales et indépendantes

1. Les revenus qu'un résident d'un Etat contractant tire d'une profession libérale exercée pour son propre compte 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
Salariés

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 dix-huit mois au cours de trois années consécutives;
b) Les rémunérations sont payées par une personne ou au nom d'une personne qui n'est pas résidente de l'autre Etat; et
c) La charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que cette personne a dans l'autre Etat.
3. Nonobstant les dispositions précédentes du présent article, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire, d'un aéronef, ou d'un véhicule ferroviaire ou routier, en trafic international, sont imposables dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

Article 16
Tantièmes

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
Artistes et sportifs

1. Nonobstant les dispositions des articles 14 et 15, les revenus que les artistes 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.
2. Lorsque le revenu d'activités exercées personnellement par un artiste du spectacle ou un sportif est attribué à une autre personne que l'artiste ou le sportif lui-même, il peut, nonobstant les dispositions des articles 7, 14 et 15, être imposé dans l'Etat contractant où sont exercées les activités de l'artiste ou du sportif.
Cette disposition ne s'applique pas si l'artiste du spectacle ou le sportif établit que ni lui, ni des personnes qui lui sont apparentées ou associées, ne participent directement ou indirectement aux bénéfices de la personne à laquelle les revenus sont attribués.

Article 18
Pensions

1. Les pensions, y compris les pensions de sécurité sociale, et les autres rémunérations similaires versées à un résident d'un Etat contractant au titre d'un emploi antérieur, ne sont imposables que dans cet Etat.
2. Nonobstant les dispositions du paragraphe 1, les pensions versées par l'un des Etats contractants, une subdivision administrative territoriale, une collectivité territoriale ou une personne morale de droit public de cet Etat, soit directement, soit par prélèvement sur les fonds qu'ils ont constitués, au titre de services antérieurs dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet Etat contractant.

Article 19
Fonctions publiques

1. Les rémunérations versées par un Etat contractant ou l'une de ses subdivisions administratives territoriales ou collectivités territoriales ou par une personne morale de droit public de cet Etat, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus à cet Etat, à cette subdivision, à cette collectivité ou à cette personne morale de droit public dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet Etat.
2. Les dispositions des articles 15, 16 et 18 s'appliquent aux rémunérations versées au titre de services rendus dans le cadre d'une activité industrielle ou commerciale exercée par l'un des Etats contractants ou l'une de ses subdivisions administratives territoriales ou collectivités territoriales, ou par une personne morale de droit public de cet Etat.

Article 20
Etudiants, stagiaires et personnes en cours de formation professionnelle

1. Les sommes qu'un étudiant ou un stagiaire, y compris toute personne en cours de perfectionnement, 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'étude ou de formation, ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.
2. Les personnes visées au paragraphe 1 qui exercent une activité rémunérée dans l'autre Etat contractant en vue d'obtenir une formation pratique relative à leurs études, ne sont pas soumises à l'impôt dans ce dernier Etat à raison de la rémunération versée à ce titre, à condition que la durée

de cette activité ne dépasse pas 183 jours par année civile.
3. Les personnes visées au paragraphe 1 qui exercent une activité rémunérée dans l'autre Etat contractant en vue de compléter les ressources nécessaire à leur entretien, ne sont pas soumises à l'impôt dans ce dernier Etat à raison de la rémunération versée à ce titre.

Article 21
Professeurs et chercheurs

1. Un professeur ou un chercheur qui, résident d'un Etat contractant, se rend dans l'autre Etat contractant pour y enseigner ou s'y livrer à des recherches pendant une péride n'excédant pas deux ans est exonéré d'impôt dans cet autre Etat à raison des rémunérations reçues au titre de ces activités.
2. Le présent article ne s'applique pas aux revenus reçus au titre de recherches si ces recherches sont principalement entreprises dans l'intérêt d'une ou de plusieurs personnes déterminées.

Article 22
Revenus non expressément mentionnés

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
Fortune

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 table 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, les aéronefs et les véhicules ferroviaires et routiers, 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.

Articla 24
Dispositions pour éliminer les doubles impositions

La double imposition sera évitée de la manière suivante:
1. En ce qui concerne la Roumanie:
L'impôt français payé par un résident de Roumanie sur les revenus imposables en France en application de la présente Convention sera déduit du montant de l'impôt roumain exigible conformément à la législation fiscale roumaine.
Cette déduction ne peut excéder le montant de l'impôt roumain perçu sur ces revenus.
2. En ce qui concerne la France:
a) Les revenus autres que ceux visés à l'alinéa b) ci-dessous sont exonérés des impôts français mentionnés à l'alinéa b) du paragraphe 3 de l'article 2, lorsque ces revenus sont imposables en Roumanie en vertu de la présente Convention.
b) En ce qui concerne les revenus visés

aux articles 10, 11, 12, 16 et 17, qui ont supporté l'impôt roumain, conformément aux dispositions prévues par ces articles, la France accorde à un résident de France recevant de tels revenus de source roumaine un crédit d'impôt correspondant au montant de l'impôt perçu en Roumanie.
Ce crédit d'impôt, qui ne peut excéder le montant de l'impôt français perçu sur ces revenus, est imputable sur les impôts visés à l'alinéa b) du paragraphe 3 de l'article 2, dans les bases d'imposition desquels les revenus en cause sont compris.
c) Nonobstant les dispositions des alinéas a) et b), l'impôt français peut être calculé, sur les revenus imposables en France en vertu de la présente Convention, au taux correspondant au total des revenus imposables d'après la législation française.

Article 25
Non-discrimination

1. Les nationaux d'un Etat contractant, qu'ils soient ou non résidents de l'un des Etats contractants, 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. Le terme «nationaux» désigne:
a) Toutes les personnes physiques qui possèdent la nationalité d'un Etat contractant;
b) Toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un Etat contractant.
3. Les apatrides qui sont résidents d'un des Etats contractants ne sont soumis dans l'un ou l'autre de ces Etats 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 l'Etat concerné se trouvant dans la même situation.
4. L'imposition d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant n'est pas établie dans cet autre Etat d'une façon moins favorable que l'imposition des entreprises de cet autre Etat qui exercent la 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 à ses propres résidents.
5. Les entreprises d'un Etat contractant dont le capital est en totalité ou en partie, directement ou indirectement détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat contractant ne sont soumises dans le premier Etat contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.
6. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

Article 26
Procédure amiable

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 satifaisante, 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.

Cet accord amiable sera appliqué quels que soient les délais prévus par les législations nationales des Etats contractants.

3. Les autorités compétentes des Etats contractants s'efforcent, par voie d'accord amiable, de résoudre les difficultés auxquelles peut donner lieu 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. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vue peuvent avoir lieu au sein d'une commission composée de représentants des autorités compétentes des Etats contractants.

5. Les autorités compétentes fixeront les modalités d'application de la présente Convention.

Article 27
Echange de renseignements

1. Les autorités compétentes des Etats contractants échangeront les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des Etats contractants relatives aux impôts visés par la Convention dans la mesure où l'imposition qu'elles prévoient est conforme à la Convention. Tout renseignement ainsi échangé sera tenu secret et ne pourra être communiqué qu'aux personnes ou autorités, y compris les tribunaux, 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 celles 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 des renseignements dont la communication serait contraire à l'ordre public.

Article 28
Fonctionnaires diplomatiques et consulaires et fonctionnaires des organisations internationales

1. Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques et les personnes à leur service privé, ainsi que les membres de postes consulaires, en vertu, soit des règles des gens, soit de dispositions conventionnelles.

2. Dans la mesure où, en raison de privilèges fiscaux dont bénéficient les membres des missions diplomatiques et les personnes

à leur service privé, ainsi que les membres de postes consulaires, en vertu, soit des règles du droit des gens, soit de dispositions conventionnelles, le revenu ou la fortune ne sont pas imposables dans l'Etat accréditaire, le droit d'imposition est réservé à l'Etat accréditant.

3. Aux fins de la Convention, les membres des missions diplomatiques et les personnes à leur service privé, ainsi que les membres des postes consulaires d'un Etat contractant accrédités dans l'autre Etat contractant ou dans un Etat tiers qui ont la nationalité de l'Etat accréditant, sont réputés être résidents de l'Etat accréditant s'ils sont soumis aux mêmes obligations en matière d'impôts sur le revenu et sur la fortune, que les résidents dudit Etat.

4. La Convention ne s'applique pas aux organisations internationales, à leurs organes ou à leurs fonctionnaires, ni aux membres des missions diplomatiques, aux personnes à leur service privé et aux membres de postes consulaires d'un Etat tiers lorsqu'ils se trouvent sur le territoire d'un Etat contractant et ne sont pas traités comme des résidents de l'un ou de l'autre Etat contractant en matière d'impôts sur le revenu et sur la fortune.

Article 29
Champ d'application territorial

Le champ d'application territorial de la présente Convention est:

a) En ce qui concerne la Roumanie, le territoire de la République socialiste de Roumanie et les zones situées hors des eaux territoriales de la Roumanie sur lesquelles, en conformité avec le droit international, la Roumanie peut exercer des droits souverains relatifs au lit de la mer ou au sous-sol marin en vue de l'exploration ou de l'exploitation de leurs ressources naturelles, mais seulement dans la mesure où la personne, la propriété ou l'activité à laquelle s'applique la Convention est en rapport avec l'exploration ou l'exploitation de ces ressources.

b) En ce qui concerne la France, les départements de la République française et les zones situées hors des eaux territoriales adjacentes à ces départements sur lesquelles, en conformité avec le droit international, la France peut exercer des droits souverains relatifs au lit de la mer ou au sous-sol marin en vue de l'exploration ou de l'exploitation de leurs ressources naturelles, mais seulement dans la mesure où la personne, la propriété ou l'activité à laquelle s'applique la Convention est en rapport avec l'exploration ou l'exploitation de ces ressources.

Article 30
Entrée en vigueur

1. Chacun des Etats contractants notifiera à l'autre l'accomplissement des procédures requises par sa législation pour la mise en vigueur de la présente Convention. Celle-ci entrera en vigueur trente jours après la date de la dernière de ces notifications.

2. Ses dispositions s'appliqueront pour la première fois:

i) en ce qui concerne les impôts perçus par voie de retenue à la source, aux sommes mises en paiement à compter de la date d'entrée en vigueur de la Convention;

ii) en ce qui concerne les autres impôts sur le revenu, aux revenus réalisés pendant l'année civile au cours de laquelle la Convention est entrée en vigueur ou afférents à l'exercice comptable clos au cours de cette année.

Article 31
Dénonciation

1. La présente Convention demeurera en vigueur sans limitation de durée. Toutefois, à partir de 1979, chacun des Etats contractants pourra, moyennant un préavis minimum de six mois notifié par la voie diplomatique, la dénoncer pour la fin d'une année civile.

2. Dans ce cas, ses dispositions s'appliqueront pour la dernière fois:

i) en ce qui concerne les impôts perçus par voie de retenue à la source, aux sommes mises en paiement au plus tard le 31 décembre de l'année civile pour la fin de laquelle la dénonciation aura été notifiée;

ii) en ce qui concerne les autres impôts sur le revenu, aux revenus réalisés pendant l'année civile pour la fin de laquelle la dénonciation aura été notifiée ou afférents à l'exercice comptable clos au cours de cette année.

En foi de quoi, les soussignés, à ce dûment autorisés par leurs Gouvernements respectifs, ont signé la présente Convention.

Fait en double exemplaire, à Bucarest, le 27 septembre 1974, en langues française et roumaine, les deux textes faisant également foi.

Pour le Gouvernement de la République française:

Norbert Segard.

Pour le Gouvernement de la République socialiste de Roumanie:

Georghe Radulescu.

Supplement **E**
1975

Proposition de Directive du Conseil des Communautés Européennes concernant l'harmonisation des systèmes d'impôt des sociétés et de régimes de retenue à la source sur les dividendes

(Présentée par la Commission au Conseil)
COM (75) 392 final, Bruxelles, le 23 juillet 1975.

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

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INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

On July 23, 1975 the Commission of the European Communities submitted a proposal for a Directive to the Council concerning the harmonisation of systems of company taxation and withholding taxes on dividends. The French text of this proposal and its explanatory memorandum is reproduced below. The English text appears in the Supplementary Service to European Taxation, Section D.

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EXPOSE DES MOTIFS

I. CONSIDERATIONS GENERALES

1. La nécessité de procéder à une harmonisation des systèmes d'impôt des sociétés et des régimes de retenue à la source sur les dividendes a été affirmée à plusieurs reprises par les institutions de la Communauté; dans sa résolution du 22 mars 1971 relative à la création par étapes de l'union économique et monétaire, le Conseil a d'ailleurs décidé que cette harmonisation devait être réalisée au cours de la première étape.

2. Les différences existant actuellement dans ce domaine entre les législations nationales ne permettent pas d'assurer la libre circulation des capitaux, qui est l'un des objectifs fondamentaux du Traité; les mouvements internationaux de dividendes sont actuellement contrariés par une série de discriminations, de doubles impositions, de formalités administratives compliquées, qui contribuent à renforcer le cloisonnement des marchés financiers. Par ailleurs, certaines dispositions fiscales peuvent être à l'origine de mouvements anormaux de capitaux, c'est-à-dire provoqués par des motifs d'ordre fiscal et non par des considérations financières classiques.

3. Une action est également nécessaire au regard de la neutralité fiscale des conditions de concurrence: dans cette perspective, il est nécessaire de réduire les différences existant dans l'imposition des bénéfices des entreprises. L'adoption d'un système commun d'impôt des sociétés constituerait un premier pas dans cette voie.

A. IMPOT DES SOCIETES

4. Les études entreprises ont montré que deux systèmes seulement pouvaient être pris en considération: le système dit „classique", qui maintient intégralement la double imposition économique des dividendes, et le système d'imputation, qui allège cette double imposition au moyen d'un crédit d'impôt accordé au bénéficiaire des dividendes. Ce crédit, qui représente une fraction de l'impôt des sociétés, peut être déduit de l'impôt du bénéficiaire des dividendes.

Après avoir procédé à de longues études et à de nombreuses consultations, la Commission s'est prononcée en faveur d'un système commun d'imputation allégeant partiellement la double imposition économique des dividendes, malgré les problèmes que soulève, du point de vue technique, l'application d'un tel système dans les relations internationales. Il apparaît en effet que des solutions peuvent être trouvées à ces problèmes et que dès lors le choix en faveur de ce système se justifie par les avantages qu'il comporte à différents égards.

1) *Neutralité à l'égard des diverses formes de financement des entreprises*

5. En maintenant intégralement la double imposition économique des dividendes, le système classique tend à décourager les distributions de bénéfices et favorise donc l'autofinancement des entreprises plutôt que le financement par des capitaux extérieurs. De plus, il augmente l'avantage à procéder à des émissions d'emprunts dont les intérêts seront déductibles des bénéfices, plutôt qu'à l'augmentation du capital au moyen de nouveaux apports. Le système d'imputation, au contraire, tend à encourager la distribution de dividendes et à mettre sur un pied d'égalité le recours à l'emprunt et à l'augmentation du capital.

6. Par ailleurs, le système classique, qui a pour effet de limiter les distributions de bénéfices et le réinvestissement par l'intermédiaire du marché dans les secteurs les plus rentables, soustrait l'investissement au contrôle du marché et empêche une meilleure allocation des ressources.

7. L'encouragement à l'autofinancement n'est pas nécessairement à rejeter dans tous les cas. La Commission estime néanmoins qu'à long terme il est préférable que le choix des moyens de financement ne dépende pas de considérations fiscales.

2) *Neutralité à l'égard des diverses formes juridiques d'entreprises*

8. Les entreprises individuelles dans tous les Etats membres et les sociétés de personnes dans la plupart d'entre eux ne sont pas soumises à l'impôt des sociétés, mais leurs profits sont directement taxés selon le cas au niveau du propriétaire de l'entreprise ou des associés de la société.
Lorsque les bénéfices sont importants, ceux-ci se trouvent donc le plus souvent taxés à l'impôt personnel sur le revenu au taux maximum, c'est-à-dire à un taux qui peut être sensiblement supérieur à celui de l'impôt des sociétés.
Plus l'écart entre ces deux taux est important, plus le désavantage de ces entreprises par rapport aux sociétés de capitaux devient grand en ce qui concerne les bénéfices réinvestis (pour les bénéfices distribués, au contraire, les sociétés de capitaux sont désavantagées).
Grâce à un taux d'impôt des sociétés supérieur (voir 4) ci-après), le système de l'imputation a pour effet de réduire cet écart par rapport au système classique. Il est donc plus neutre.

3) *Justice fiscale*

9. Du point de vue de la justice fiscale, les considérations suivantes peuvent être formulées:
En ce qui concerne l'imposition des dividendes, le système classique, en raison de la double imposition économique qu'il entraîne, a pour effet de faire supporter aux actionnaires dont le taux d'impôt personnel est faible une charge fiscale relativement plus lourde que celle des actionnaires dont le taux d'impôt personnel est élevé. Cette charge peut apparaître excessive au regard de la justice fiscale; le système de l'imputation a pour effet de la réduire.
Avec le système classique, les actionnaires importants, qui souvent déterminent la politique de distribution des sociétés, ont beaucoup plus d'intérêt à l'autofinancement qu'à la distribution, qui leur coûte trop cher. Le système classique les avantage donc en cas de mise en réserve de profits.
Par contre, l'autofinancement parfois excessif provoqué par le système classique désavantage les petits porteurs, qui sont surtout intéressés par le rendement du titre. En conséquence, le système d'imputation, qui tend à encourager la distribution et à alléger la double imposition économique de cette distribution, réduit le désavantage pour les petits porteurs d'actions.

4) *L'évasion fiscale des contribuables importants*

10. Comme le système classique ne prévoit pas d'allégement pour les bénéfices distribués, le taux de l'impôt des sociétés applicable aux bénéfices non distribués comme aux bénéfices distribués est plus bas dans ce système que dans le système d'imputation dans l'hypothèse de recettes fiscales égales. Lorsque le taux d'impôt des sociétés est

sensiblement inférieur au taux maximum de l'impôt sur le revenu, ce qui est le cas dans le système classique, il est très tentant pour les contribuables importants de faire encaisser les revenus de toute nature qu'ils veulent épargner, par une société créée à cet effet et qu'ils contrôlent entièrement. Cette société thésaurisera ces revenus, de sorte que leur imposition sera plafonnée au taux de l'impôt des sociétés. En raison du taux plus élevé de l'impôt, le système de l'imputation incite moins ces contribuables à avoir recours à cette forme d'évasion.

5) *Développement du marché des actions*

11. Il semble que le développement du marché des actions sera de plus en plus conditionné à long terme par l'intérêt que lui porteront les épargnants moyens, voire modestes. Ce développement sera de plus en plus difficilement atteint si le régime fiscal décourage les distributions de dividendes et pénalise les actionnaires dont le taux d'impôt personnel est faible. Dans cette optique, le système d'imputation paraît plus susceptible d'attirer vers le marché des actions de nouvelles couches d'épargnants.

12. Il est vrai que le système classique fonctionne simplement et, dans une très large mesure, sans discrimination dans les relations internationales. C'est là son plus grand avantage. Avec le système d'imputation, il est nécessaire, pour éviter toute discrimination, que le crédit d'impôt attaché aux dividendes d'une société soit transmis à tous les actionnaires de cette société, quel que soit l'Etat membre de leur résidence. Cette transmission au-delà des frontières peut entraîner des difficultés techniques, notamment lorsqu'il s'agit d'un actionnaire indirect, c'est-à-dire lorsque le dividende transite par une société mère avant de parvenir à l'actionnaire final.

La Commission estime cependant que ses propositions sont en mesure de réduire suffisamment l'importance de ces difficultés, qui par ailleurs, sont largement compensées par les avantages de ce système.

B. RETENUE A LA SOURCE SUR LES DIVIDENDES

13. Le crédit d'impôt accordé au bénéficiaire des dividendes dans le cadre d'un système d'imputation joue le rôle d'une retenue à la source; comme une retenue, ce crédit d'impôt est en effet un acompte sur l'impôt final du bénéficiaire. La question se pose alors de savoir si le système d'impôt des sociétés proposé doit être complété par un régime de retenue à la source.

De l'avis de la Commission, une telle retenue est indispensable pour décourager la fraude fiscale. Le crédit d'impôt tel qu'il est prévu à l'article 8 représente un prélèvement à la source de l'ordre du tiers du revenu imposable. Il est insuffisant pour assurer la justice fiscale, beaucoup d'actionnaires ayant un taux d'impôt personnel sensiblement plus élevé. A un moment où la lutte contre la fraude fiscale est l'une des préoccupations de la Communauté, il est indispensable d'augmenter le prélèvement global à la source. C'est pourquoi la Commission propose d'instaurer une retenue à la source de 25%, calculée sur le dividende distribué, qui aura pour effet de porter ce prélèvement global aux environs de 50%.

II. COMMENTAIRE DE CERTAINS ARTICLES

Article 2

14. Les trois premières définitions se réfèrent à la proposition de directive „Mères et filiales" et la quatrième à la proposition de directive „Fusions".

15. La définition de la notion de „Société d'un Etat membre" exclut les organismes qui ne sont pas soumis à l'impôt des sociétés dans un Etat membre.

16. Le recours à la définition de la notion de „société mère", telle qu'elle figure dans la proposition de directive „Mères et filiales", implique que, si un Etat utilise la faculté prévue par ce texte de reconnaître à ses sociétés la qualité de société mère en cas de participation inférieure à 20%, la définition nationale de la société mère prévaudra. Les dispositions prévues dans la présente proposition pour les sociétés mères et filiales devront alors s'appliquer.

17. La définition donnée pour les dividendes a pour but d'obliger les Etats membres à traiter tous les paiements ainsi définis de la manière fixée dans la directive. Cette définition exclut notamment les distributions des profits ou des excédents provenant d'une liquidation, car le régime auquel elles sont soumises diffère trop d'un Etat à l'autre. Les Etats membres garderont néanmoins la faculté d'accorder le bénéfice du crédit d'impôt aux dividendes qui n'entrent pas dans le champ d'application de la définition commune. Une telle faculté laissée aux Etats ne paraît en effet pas susceptible d'entraîner de sérieuses distorsions.

18. Le paragraphe 2 a pour objet de permettre aux Etats membres de régler eux-mêmes les problèmes des dividendes qui transitent par des intermédiaires financiers du type „fonds de placement", en attendant qu'une harmonisation intervienne dans ce domaine. Il a toujours été admis que le traitement fiscal des revenus de valeurs mobilières, qu'il s'agisse de dividendes ou d'intérêts d'obligations, encaissés et redistribués par ces organismes, devra faire l'objet d'une directive technique particulière lorsque les principes essentiels de l'harmonisation auront été arrêtés.

Article 3

19. L'adoption d'un système commun d'imputation nécessite, pour des raisons de neutralité fiscale à l'égard des mouvements de capitaux, que les taux des impôts des sociétés et des crédits d'impôt (article 8) ne soient pas trop différents d'un Etat à l'autre de façon à ne pas influencer les décisions des investisseurs. Le paragraphe 1 a pour objet de fixer les écarts tolérables et pose le principe du taux unique d'impôt des sociétés.[1]

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1. Les taux normaux de l'impôt des sociétés qui sont actuellement en vigueur dans les Etats membres sont les suivants:
Belgique:
42% (à partir de l'exercice 1976, donc pour les revenus de 1975: 48%)
Danemark:
37%
R.F. d'Allemagne:
— bénéfices non distribués: 51%
— bénéfices distribués: 15% (taux nominal)
23,44% (taux réel)
Depuis quelques années, ces taux ont été majorés de 3% („Ergänzungsabgabe": encore pour 1975 et 1976) et portés respectivement à 52,33% et 24,55%
France:
50%
Irlande:
Deux impôts frappent actuellement les bénéfices des entreprises:
— la „corporation profits tax": 23%
— l'„income tax" : 35%
Comme le montant de la „profits tax" est déductible de l'assiette de l'„income tax", le total des deux impôts représente environ 50%.
Ces deux impôts seront remplacés prochainement par une seule „corporation tax".
Italie:
25% (35% pour les années 1974 et 1975)
Luxembourg:
40% (pour les revenus à partir de 1.312.000 fr.)
Pays-Bas:
48%
Royaume-Uni:
52%

20. Le paragraphe 2 laisse la possibilité aux Etats d'appliquer dans certains cas un taux d'impôt des sociétés différent ou même une exonération complète après avoir consulté la Commission. Pour les cas existant avant l'entrée en vigueur du système commun, une procédure analogue d'information est prévue à l'article 20.

21. Le paragraphe 3 permet la majoration ou la diminution du taux de l'impôt des sociétés pour des raisons de politique conjoncturelle.

Article 4

22. Le paragraphe 1 établit le principe du crédit d'impôt et définit les conditions que doit remplir le bénéficiaire des dividendes pour avoir droit à ce crédit.

Bien que le paragraphe 1 exige que le bénéficiaire soit imposable, il est apparu que l'on pouvait laisser aux Etats membres la faculté d'octroyer le crédit d'impôt aux personnes qui ne sont pas imposables à raison des dividendes qu'elles reçoivent mais qui représentent un intérêt public (par exemple: les institutions charitables, les fonds de pension, les syndicats).

De manière à éviter les distorsions, il faut que le crédit d'impôt, lorsqu'il est accordé, ne soit pas limité aux dividendes d'origine nationale. Le paragraphe 2 a pour objet d'établir ces principes.

Article 5

23. Cet article instaure le principe selon lequel, en ce qui concerne le bénéficiaire, le crédit d'impôt est accordé par l'Etat membre dans lequel ce bénéficiaire est assujetti à l'impôt sur les revenus ou sur les bénéfices. Cet Etat aura néanmoins le droit de récupérer ce crédit aupres de l'Etat de la source en vertu des dispositions de l'article 13.

Exemple:

soit un dividende de 100 auquel est attaché un crédit d'impôt de 50. Le revenu imposable est 150. Si le taux de l'impôt du bénéficiaire est 40%, le montant de l'impôt qu'il doit payer est: 60 — 50 = 10. Si le montant de l'impôt n'atteint pas 50, le bénéficiaire obtient le paiement de la différence entre le crédit d'impôt et le montant de l'impôt. Si le bénéficiaire n'atteint pas le minimum imposable, le crédit d'impôt lui est payé.

Article 7

24. Cet article a pour objet de permettre l'octroi du crédit d'impôt lorsque lé bénéfice distribué ne constitue pas un dividende au sens de l'article 2, mais est considéré comme tel par la législation de l'Etat de la source.

Article 8

25. Cet article est en relation étroite avec l'article 3. Il a pour objet de fixer les écarts tolérables entre les crédits d'impôts et les reliant au taux normal de l'impôt des sociétés.

26. La formule adoptée au paragraphe 2 couvre non seulement le cas où l'on distribue un bénéfice qui aurait été imposé au taux normal, mais aussi celui où le taux de l'impôt des sociétés appliqué aux bénéfices mis en distribution aurait été plus élevé que le taux normal et le cas où un impôt compensatoire aurait été prélevé.[2]

2. Les taux actuels des crédits d'impôt et les pourcentages que ceux-ci représentent du montant de l'impôt des sociétés selon la formule de l'article 8, paragraphe 2, sont les suivants, dans les Etats membres qui pratiquement déjà un système d'imputation:

Belgique:

45% du dividende net (brut moins retenue), soit 36% du dividende brut, 49,52% du montant de l'impôt des sociétés. Ce crédit ne peut être imputé que sur la quotité d'impôt se rapportant au dividende. Il n'est pas remboursable.

→

27. Pour déterminer le taux du crédit d'impôt par rapport au montant du dividende, on utilise la formule suivante:

$$\frac{a}{100 - a} \times b$$

où a = le taux normal (pourcentage) de l'impôt des sociétés visé à l'article 3, paragraphe 1;

b = le taux visé à l'article 8, paragraphe 2.

Exemple:

Taux normal de l'impôt des sociétés = 45%.

Taux visé à l'article 8, paragraphe 2 = 55%.

Taux du crédit d'impôt en % du dividende:

$$\frac{45}{100 - 45} \times 55 = 45\%.$$

Si le montant d'un dividende est 550, le crédit d'impôt s'y rapportant est 45% de 550 = 247,5.

(Bénéfice mis en distribution	1.000
Impôt des sociétés (45%)	450
Dividende	550

Crédit d'impôt 55% de 450 = 247,5).

Article 9

28. Les paragraphes 1 et 3 ont pour objet de réserver le bénéfice de l'allégement d'impôt au cas où il existe véritablement une double imposition économique. La technique du crédit d'impôt variable étant peu pratique et ayant été écartée pour cette raison, il faut percevoir au niveau de la société distributrice un impôt compensatoire neutralisant le crédit d'impôt, lorsque les dividendes n'ont pas supporté l'impôt des sociétés. C'est ce que fait la France avec le „précompte". Une procédure similaire doit être utilisée lorsque le bénéfice a été imposé à un taux réduit.

29. La perception d'un impôt compensatoire spécial n'est pas nécessaire si, comme au Royaume-Uni, la législation prévoit que toute distribution de dividendes donne lieu au paiement d'un acompte d'impôt des sociétés égal au crédit d'impôt. Pour que cet acompte joue vraiment le rôle d'impôt compensatoire, il faut en outre qu'il ne puisse pas être remboursé, ce qui est le cas au Royaume-Uni.

30. Le paragraphe 4 donne la possibilité aux Etats de rembourser l'impôt compensatoire lorsque le bénéficiaire n'a pas droit au crédit d'impôt. En pareil cas, en effet, l'impôt compensatoire n'apparaît pas nécessaire.

Article 10

31. Le paragraphe 1 a trait aux relations entre sociétés mères et filiales d'Etats membres différents. Le principe de non-discrimination exige que les actionnaires directs et indirects soient traités de la même façon. Cela signifie que le crédit d'impôt attaché aux dividendes d'une filiale doit être attribué aux actionnaires de la société mère lorsque celle-ci redistribue ces dividendes.

France:
50% du dividende, soit 50% de l'impôt des sociétés.
Irlande:
Il est prévu que sous le nouveau système de „corporation tax", le crédit d'impôt sera 7/13 du dividende, soit 53,85% de l'impôt des sociétés. Le système actuel donne presque le même résultat sous une autre forme.
Royaume-Uni:
7/13 du dividende. Antérieurement 33/67 du dividende, soit 45,47% de l'impôt des sociétés.

Comme la technique du crédit d'impôt variable n'est pas praticable, l'actionnaire de la société mère recevra le crédit d'impôt au taux en vigueur dans l'Etat de cette société. Pour obtenir le résultat recherché, il faut alors opérer des corrections au niveau de la société mère. La technique utilisée est celle de l'imputation, sur l'impôt compensatoire ou sur l'acompte d'impôt, du crédit attaché aux dividendes de la filiale au moment de la redistribution de ceux-ci par la société mère.

Exemple:

soit un dividende de 100 distribué par une filiale, que la société mère veut redistribuer et auquel est attaché un crédit d'impôt de 41. Si l'on suppose que le crédit d'impôt en vigueur dans l'Etat de la mère est de 50% du dividende, le calcul s'établit ainsi:

base de l'impôt compensatoire 100 + 41 = 141	
montant brut de l'impôt compensatoire 33⅓%[3]	= 47
crédit d'impôt à imputer	= 41
montant net de l'impôt compensatoire	= 6

La société mère, qui a reçu 100, doit donc payer 6 et redistribue un dividende de 94 auquel est attaché un crédit d'impôt de 50%, soit 47. Le revenu imposable de l'actionnaire de la société mère est donc: 94 + 47 = 141.

L'actionnaire direct de la société filiale reçoit 100 et bénéficie d'un crédit d'impôt de 41. Son revenu imposable est aussi de 141. Le principe de la non-discrimination est ainsi respecté.

Si le taux du crédit d'impôt est plus élevé dans l'Etat de la filiale que dans l'Etat de la mère, la logique du système voudrait que l'excédent soit versé à la société mère. Un tel mécanisme entraînerait cependant des difficultés opératiques; c'est pourquoi il a paru préférable de déroger au principe de la non-discrimination et de ne pas procéder à un tel remboursement.

Comme un laps de temps assez long peut s'écouler entre le moment de la réception des dividendes des filiales et leur redistribution, il peut être difficile de déterminer la provenance des distributions de la société mère (voir article 12). Pour éviter des complications trop importantes, l'imputation du crédit d'impôt sur l'impôt compensatoire est limitée à la redistribution de bénéfices des cinq derniers exercices.

32. Le paragraphe 2, qui a trait aux relations entre sociétés mères et filiales résidant dans le même Etat membre, n'oblige pas les Etats membres à recourir à ce mécanisme correctif. Celui-ci n'est pas nécessaire puisqu'il n'y a pas de différence de taux dans les crédits d'impôt.

Article 11

33. Dans cet article, les dispositions prévues au paragraphe 1 de l'article 10 pour les filiales sont adaptées de façon à couvrir les établissements stables.

Lorsque le siège central d'une société distribue des bénéfices provenant d'un établissement stable situé dans un autre Etat membre:

— l'Etat où est situé l'établissement stable doit accorder le crédit d'impôt à ces bénéfices;

— l'Etat du siège de la société doit appliquer l'impôt compensatoire et la règle

3. L'impôt compensatoire doit être égal au crédit d'impôt. Si celui-ci est égal à 50% du dividende, il ne représente que 33⅓% du revenu imposable puisque le crédit d'impôt est imposable.

d'imputation prévue pour les dividendes de filiales (avec le même délai de 5 ans).

Lorsque les bénéfices de l'établissement stable sont considérés comme non imposés en vertu de la loi de l'Etat où il est situé, cet Etat perçoit l'impôt compensatoire ou l'acompte de l'impôt des sociétés prévus à l'article 9. Toutefois, il ne peut le faire que s'il est établi que le siège central a distribué ces profits dans l'Etat où la société est résidente.

Article 12

34. Cet article fixe les règles pour déterminer l'origine des sommes distribuées à titre de dividendes de manière que les mécanismes d'imposition compensatoire et d'imputation prévus aux articles 10 et 11 puissent être correctement appliqués, et que les compensations financières entre Etats membres prévues par l'article 13 puissent être pratiquées.

Ce même article établit le principe selon lequel les bénéfices distribués par une société proviennent en priorité de ceux qui ouvrent droit à l'allégement d'impôt. Cette solution, la plus favorable pour les sociétés puisqu'elle limite au maximum le nombre de cas où l'impôt compensatoire sera perçu au taux plein, a été retenue, notamment pour ne pas pénaliser les sociétés qui recueillent de substantiels bénéfices provenant d'établissements stables ou de filiales situés dans des pays tiers.

Par ailleurs, il n'est pas fait de distinction entre les bénéfices réalisés dans l'Etat de la société distributrice et ceux provenant d'autres Etats membres, à condition qu'ils ouvrent droit au crédit d'impôt. Il est fait masse de tous les bénéfices et ceux-ci sont considérés comme étant distribués sur une base proportionnelle stricte. Toutefois, pour réduire les calculs, les bénéfices du dernier exercice sont traités comme s'ils avaient été distribués avant les bénéfices mis en réserve.

Article 13

35. Cet article a pour objet de faire supporter le coût budgétaire du crédit d'impôt à l'Etat de la source et d'établir le principe des compensations financières entre Etats. Toutefois, si deux Etats membres conviennent sur la base d'un accord bilatéral de répartir entre eux ce coût, un tel accord ne soulève pas d'objections du point de vue communautaire, à condition que ne soit pas affecté le droit de l'actionnaire à bénéficier dans son propre Etat membre du crédit d'impôt. C'est pourquoi le paragraphe 4 offre cette possibilité aux Etats.

36. Pour l'octroi du crédit d'impôt et pour la compensation financière dans le cas de l'actionnaire direct, le système suivant pourrait être envisagé: l'actionnaire reçoit de la société distributrice ou de la banque, en même temps que le dividende, un document certifiant qu'un crédit d'impôt est attaché au dividende. L'actionnaire joint ce document à sa déclararation d'impôt dans son propre Etat. Cet Etat envoie ces documents à l'Etat de la source à l'appui de sa demande de compensation financière.

37. Dans le cas des sociétés mères et filiales, la compensation financière est plafonnée par référence au taux du crédit d'impôt appliqué dans l'Etat de la société mère. Si le taux du crédit d'impôt de l'Etat de la filiale est supérieur à celui appliqué dans l'Etat de la mère, l'excédent ne sera pas en effet versé à la société mère (voir article 10).

Une solution analogue est retenue pour les bénéfices provenant d'établissements stables.

Article 14

38. Le paragraphe 1 établit le principe d'une retenue à la source de 25%.[4]

39. Le paragraphe 2 déroge à ce principe dans le cas où un dividende est versé par une filiale à sa mère. Celle-ci n'étant pas imposable sur ce revenu, une retenue n'est en effet pas justifiée.

40. Le paragraphe 3 permet aux Etats de ne pas percevoir la retenue lorsqu'ils sont en mesure de connaître les bénéficiaires des dividendes, le risque de fraude étant alors écarté.

Article 16

41. La retenue à la source étant un simple acompte sur l'impôt final du bénéficiaire du dividende, il est normal qu'elle soit imputée sur cet impôt ou remboursée si le bénéficiaire n'est pas redevable d'un tel impôt. Ce problème est réglé par la disposition générale du paragraphe 1, qui prévoit en outre que, pour des raisons de simplicité, le remboursement sera effectué par l'Etat de résidence du bénéficiaire. Celui-ci aura toutefois la possibilité d'obtenir une compensation financière de l'Etat de la source en vertu des dispositions de l'article 17.

42. Le paragraphe 2 introduit une exception à cette disposition générale afin d'éviter certains abus. Il ne s'applique ni aux personnes physiques ni aux sociétés qui sont soumises à un impôt des sociétés, mais seulement aux organismes exonérés d'impôt.

Article 17

43. Cet article, qui concerne les compensations financières entre Etats dans le domaine de la retenue à la source, est analogue à l'article 13 relatif aux compensations en matière de crédit d'impôt et a été rédigé dans le même esprit.

Article 19

44. Cet article laisse la possibilité à l'Etat membre du bénéficiaire d'un dividende de refuser d'accorder le crédit d'impôt s'il estime que celui-ci constituerait un avantage injustifié. Les Etats membres paraissent avoir des idées différentes sur la notion d'avantage injustifié, particulièrement lorsqu'il est procédé à l'acquisition d'une action peu avant le paiement du dividende ou lorsque l'action est cédée par une personne physique à une entreprise. Dès lors, si l'Etat membre du bénéficiaire déside d'accorder le crédit d'impôt, l'Etat membre de la source est tenu d'accorder à cet Etat la compensation financière en vertu de l'article 13, même s'il devait refuser le crédit d'impôt selon son propre régime national dans des circonstances similaires. Il en est de même pour la retenue à la source.

Article 20

45. Lorsqu'une société mère ou le siège central d'une société distribue des dividendes après la date d'entrée en vigueur de la directive, mais dans des circonstances telles qu'en raison des dispositions des paragraphes 1 et 2 de cet article, les articles 10 ou 11 ne s'appliquent pas, l'Etat de cette société mère ou de ce siège central peut percevoir l'impôt compensatoire afin de lui

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4. Pour les résidents, les taux de retenue à la source sur les dividendes qui sont actuellement en vigueur dans les Etats membres sont:

Belgique:	20%	
R.F. Allemagne:	25%	
Danemark:	30%	
France:	0%	
Irlande:	0%	
Italie:	10%	(à titre d'acompte)
	30%	(sur demande, à titre d'impôt)
Luxembourg:	15%	
Pays-Bas:	25%	
Royaume-Uni:	0%	

permettre de couvrir le coût du crédit d'impôt qui sera attaché à ces dividendes.
En ce qui concerne la distribution de bénéfices nationaux réalisés avant l'entrée en vigueur de la directive, un impôt compensatoire ou un acompte de l'impôt des sociétés doit, en tout état de cause, être appliqué — éventuellement à un taux réduit — lorsque les bénéfices distribués ont été imposés à un taux inférieur au moins élevé des deux taux prévus à l'article 3, paragraphe 1° (voir article 9, paragraphe 1, deuxième alinéa et paragraphe 3).

Article 21

46. Cet article établit le principe de la non-discrimination d'une manière tout à fait générale, puisque l'application de ce principe n'est pas limitée aux domaines du crédit d'impôt et de la retenue à la source. Un dividende encaissé par un résident d'un Etat membre provenant d'un autre Etat membre, ne doit pas être traité moins favorablement qu'un dividende analogue dont la source est située dans le premier Etat. L'obligation de non-discrimination concerne aussi les formalités exigées des contribuables, sauf celles qui peuvent être requises pour établir le droit de l'Etat membre du bénéficiaire du dividende à obtenir une compensation financière de l'Etat de la source.

PROPOSITION D'UNE DIRECTIVE DU CONSEIL

concernant l'harmonisation des systèmes d'impôt des sociétés et des régimes de retenue à la source sur les dividendes.

LE CONSEIL DES COMMUNAUTES EUROPEENNES,
vu les dispositions du traité instituant la Communauté économique européenne et notamment l'article 100,
vu la proposition de la Commission,
vu l'avis du Comité économique et social,
vu l'avis du Parlement européen,
considérant que la libre circulation des capitaux dans la Communauté et l'élimination des distorsions de concurrence constituent des objectifs fondamentaux du traité;
considérant que les systèmes d'impôt des sociétés et de retenue à la source sur les dividendes ont comme conséquence que les mouvements internationaux de dividendes sont contrariés par une série de discriminations, de doubles impositions, de formalités administratives compliquées, qui contribuent à renforcer le cloisonnement des marchés financiers; que par ailleurs certaines différences existant entre ces systèmes peuvent être à l'origine de mouvements anormaux de capitaux;
considérant que pour assurer une plus grande neutralité de la concurrence, il est nécessaire de réduire les différences existant dans l'imposition des bénéfices des entreprises;
considérant que l'harmonisation des systèmes d'impôt des sociétés et des régimes de retenue à la source est dès lors indispensable; que cette harmonisation a d'ailleurs été prévue par le Conseil dans la résolution du 22 mars 1971 relative à la création par étapes de l'union économique et monétaire;
considérant que, pour ce qui est de l'impôt des sociétés, le système de l'imputation, qui prévoit un crédit d'impôt pour le bénéficiaire des dividendes, constitue la solution la plus apte à assurer la neutralité à l'égard tant des diverses formes de financement des entreprises, que des diverses formes juridiques de leur organisation, à réduire les pos-

sibilités d'évasion fiscale des contribuables disposant de revenus importants et à développer le marché des actions en attirant de nouveaux épargnants vers cette forme d'investissements; qu'il présente en outre des aspects positifs sur le plan de la justice fiscale; et qu'il doit dès lors être retenu comme système commun;

considérant qu'il est nécessaire, pour des raisons de neutralité fiscale, que les taux de l'impôt des sociétés et du crédit d'impôt ne soient pas trop différents d'un Etat membre à l'autre;

considérant que, pour éviter les discriminations, le crédit d'impôt attaché aux dividendes d'une société doit être attribué à tous les bénéficiaires de ces dividendes, quelle que soit leur résidence dans la Communauté; que, sauf exception, seuls les bénéficiaires assujettis à un impôt sur les revenus ou sur les bénéfices doivent toutefois avoir droit à ce crédit d'impôt; que celui-ci doit constituer un revenu imposable et qu'il doit être déduit de l'impôt du bénéficiaire et lui être versé dans la mesure où il excède le montant de cet impôt; que, pour éviter des formalités compliquées, ce versement éventuel doit être effectué par l'Etat de résidence du bénéficiaire;

considérant que, lorsque les dividendes proviennent de bénéfices qui n'ont pas supporté l'impôt des sociétés au taux normal, il est nécessaire de prélever un impôt compensatoire ou un acompte d'impôt des sociétés non remboursable de manière à neutraliser le crédit d'impôt attaché à ces dividendes;

considérant que, lorsqu'une société mère redistribue des dividendes reçus d'une filiale, le bénéficiaire de ces dividendes doit être traité, dans la mesure du possible, comme s'il les avait reçus directement de la filiale; que ce principe doit également s'appliquer pour les dividendes provenant d'établissements stables;

considérant qu'il y a lieu de faire supporter en principe le coût budgétaire du crédit d'impôt à l'Etat qui a soumis à l'impôt des sociétés les bénéfices dont proviennent ces dividendes; que rien ne s'oppose cependant à ce que les Etats membres conviennent, par voie d'accord bilatéral, de se répartir ce coût;

considérant que le crédit d'impôt joue le rôle d'une retenue à la source, mais que le taux de ce crédit n'est pas suffisant pour décourager les bénéficiaires de dividendes disposant de revenus élevés de ne pas déclarer leurs dividendes; que dès lors il y a lieu de prévoir une retenue à la source à un taux commun pour assurer à la fois la neutralité et la justice fiscales; qu'un taux de 25% paraît approprié à cette fin; qu'il n'est cependant pas nécessaire de percevoir cette retenue lorsque le risque de fraude fiscale est écarté;

considérant que la retenue à la source doit être un simple acompte sur l'impôt du bénéficiaire des dividendes; que, pour éviter des formalités compliquées, l'excédent éventuel de retenue doit être remboursé par l'Etat de résidence du bénéficiaire; qu'il faut néanmoins permettre aux Etats membres de corriger, sur le plan budgétaire, les conséquences de l'application du régime commun de retenue à la source;

considérant qu'il y a lieu de prévoir certaines dispositions transitoires pour faciliter l'introduction dans les Etats membres du système commun d'impôt des sociétés;

considérant que, pour assurer la neutralité fiscale, il nest indispensable que chaque Etat membre traite de la même façon les dividendes reçus par ses résidents, quelle que soit l'origine de ces dividendes dans la Communauté;

considérant que l'harmonisation des systèmes d'impôt des sociétés et des régimes de retenue à la source doit être réalisée au plus

tard le premier janvier de la troisième année suivant la date d'adoption de la présente directive,

A ARRETE LA PRESENTE DIRECTIVE:

I

Dispositions générales et définitions

Article premier

1. Les Etats membres adoptent, conformément aux dispositions des articles suivants:
— un système commun d'imputation en matière d'impôt des sociétés;
— un régime commun de retenue à la source sur les dividendes.
2. Les Etats membres ne peuvent maintenir ou introduire d'autres dispositions visant à réduire d'une manière générale l'imposition des seuls dividendes.

Article 2

1. Au sens de la présente directive, l'expression ou le terme:
— „société d'un Etat membre" désigne toute société qui remplit les conditions fixées à l'article 2 de la directive n° ..... du Conseil du .....;
— „société mère" désigne toute société à laquelle cette qualité est reconnue en vertu des dispositions de la directive n° ..... du Conseil du .....;
— „société filiale" désigne toute société à laquelle cette qualité est reconnue en vertu des dispositions de la directive n° ..... du Conseil du .....;
— „établissement stable" désigne toute installation fixe d'affaires à laquelle cette qualité est reconnue en vertu des dispositions de la directive n° ..... du Conseil du .....;
— „dividende" désigne les bénéfices que toute société d'un Etat membre, autre qu'une société en liquidation, distribue en vertu d'une décision régulière de ses organes compétents et qu'elle répartit entre ses associés au prorata de leurs droits sociaux; les distributions d'actions gratuites ne sont pas considérées comme dividendes au sens de la présente directive;
— „impôt sur les revenus ou sur les bénéfices" désigne les impôts suivants ou tout autre impôt de nature identique ou analogue qui viendrait à s'y ajouter ou à les remplacer:
Belgique:
impôt des personnes physiques - personenbelasting
impôt des personnes morales - rechtspersonenbelasting
impôt des sociétés - vennootschapsbelasting
Danemark:
indkomstskat
selskabsskat
Allemagne:
Einkommensteuer
Körperschaftsteuer
France:
impôt sur le revenu
impôt sur les sociétés
Irlande:
income tax
corporation profits tax
Italie:
imposta sul reddito delle persone fisiche
imposta sul reddito delle persone giuridiche
Luxembourg:
impôt sur le revenu des personnes physiques
impôt sur le revenu des collectivités
Pays-Bas:
inkomstenbelasting
vennootschapsbelasting
Royaume-Uni:
income tax
corporation tax.
2. Les dispositions de la présente directive ne s'appliquent pas aux dividendes que le

bénéficiaire final reçoit par l'intermédiaire de sociétés mobilières d'investissements ou de fonds de placement.

II

Dispositions relatives à l'impôt des sociétés

Article 3

1. Chaque Etat membre applique aux bénéfices distribués ou non distribués des sociétés un seul taux d'impôt des sociétés. Ce taux, appelé taux normal, ne peut être inférieur à 45% ni supérieur à 55%.

2. Par dérogation aux dispositions du paragraphe 1, un Etat membre peut, dans des cas particuliers et pour des raisons de politique économique, régionale ou sociale bien déterminées, appliquer soit à titre permanent, soit pour une durée limitée, un taux différent du taux normal ou une exonération complète.
Si un Etat membre désire faire usage de cette faculté, il communique les dispositions envisagées à la Commission, qui dispose d'un délai de trente jours à partir de la réception de la communication pour faire connaître sa position à l'Etat membre intéressé. Celui-ci ne met en vigueur les dispositions en cause qu'à l'expiration de ce délai ou qu'après que la Commission lui a fait connaître sa position.

3. Sans préjudice de l'application de l'article 9, paragraphe 1, de la Décision du Conseil 74/120/CEE du 18 février 1974, relative à la réalisation d'un degré élevé de convergence des politiques économiques des Etats membres de la Communauté économique européenne, les dispositions des paragraphes 1 et 2 ne font pas obstacle à l'application par un Etat membre, pour des raisons de politique conjoncturelle, de majorations ou de réductions temporaires de l'impôt des sociétés. Il n'est pas tenu compte de ces majorations ou réductions pour l'application des dispositions de l'article 8, paragraphe 2.

III

Dispositions relatives au crédit d'impôt

Article 4

1. Un dividende distribué par une société d'un Etat membre ouvre droit à un crédit d'impôt au taux visé à l'article 8, au profit du bénéficiaire de ce dividende, à condition:

a) que celui-ci soit résident d'un Etat membre, et

b) qu'il soit assujetti à l'impôt sur les revenus ou sur les bénéfices de façon que le montant de ses revenus ou de ses bénéfices imposables tienne compte du montant total du dividende augmenté du crédit d'impôt.

2. Par dérogation aux dispositions du paragraphe 1, b) le bénéfice du crédit d'impôt peut être accordé à un résident d'un Etat membre, même si ce résident est exonéré de tout impôt sur les revenus ou sur les bénéfices, soit pour l'ensemble de ses revenus, soit pour la partie de ceux-ci constituée par des dividendes, à condition qu'il s'agisse d'une institution présentant un intérêt public.
S'il est fait usage de cette faculté, le bénéfice du crédit d'impôt doit être accordé quel que soit l'Etat membre d'origine des dividendes.

3. Par dérogation aux dispositions du paragraphe 1, b) le bénéfice du crédit d'impôt peut être accordé au bénéficiaire d'un dividende lorsque, pour des raisons de convenance administrative, le montant de ce dividende non augmenté du crédit d'impôt est imposé, à titre d'impôt définitif, au moyen d'une retenue à la source ou de n'importe quelle autre manière.

4. Le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, arrêtera en tant que de besoin les mesures nécessaires pour l'application des dispositions des paragraphes 2, premier alinéa, et 3.

Article 5

Le crédit d'impôt est imputé sur le montant de l'impôt sur les revenus ou sur les bénéfices dû par le bénéficiaire des dividendes. Il est versé à ce dernier par l'Etat membre qui perçoit cet impôt dans la mesure où il excède le montant de celui-ci.

Article 6

Par dérogation aux dispositions de l'article 4, paragraphe 1, le bénéfice du crédit d'impôt peut, dans le cadre des conventions contre la double imposition, être accordé, en totalité ou en partie, à des résidents de pays tiers. En aucun cas cependant, ceux-ci ne peuvent être traités plus favorablement que les résidents de la Communauté.
Les Etats membres se concertent entre eux et avec la Commission en vue d'adopter une attitude commune à ce sujet.

Article 7

Si une distribution de bénéfices ne constituant pas un dividende au sens de l'article 2 est affectuée par une société d'un Etat membre à un résident d'un autre Etat membre, les dispositions des articles 4 et 5 s'appliquent dans la mesure où cette distribution est considérée par la législation du premier Etat comme un dividende ouvrant droit au crédit d'impôt.

Article 8

1. Chaque Etat membre fixe le taux du crédit d'impôt attaché aux dividendes distribués par les sociétés de cet Etat.

2. Ce taux doit être unique dans chaque Etat membre. Il est déterminé de telle sorte que le crédit d'impôt ne soit ni inférieur à 45% ni supérieur à 55% du montant de l'impôt des sociétés au taux normal calculé sur le dividende mis en distribution augmenté de cet impôt.

Article 9

1. Dans la mesure où une société distribue des dividendes provenant de bénéfices pour lesquels elle n'a pas supporté l'impôt des sociétés, l'Etat membre de cette société perçoit un impôt compensatoire égal au crédit d'impôt attaché à ces dividendes.
Lorsque ces dividendes proviennent de bénéfices qui ont été soumis à une imposition réduite, l'impôt compensatoire est également perçu mais peut être réduit à due concurrence.

2. Les Etats membres ont la faculté de percevoir l'impôt compensatoire visé au paragraphe 1 lorsque les dividendes proviennent de bénéfices soumis à l'impôt des sociétés mais mis en réserve depuis plus de cinq ans.

3. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque la législation de l'Etat membre en cause prévoit que les distributions de dividendes donnent lieu au paiement d'un acompte d'impôt des sociétés au moins égal au crédit d'impôt, à condition que cet acompte ne soit pas remboursable et qu'il puisse être déduit de l'impôt des sociétés des exercices clos au cours des cinq années qui précèdent.

4. L'impôt compensatoire, ou l'acompte dans la mesure où il n'est pas effectivement déduit de l'impôt des sociétés de l'exercice ou des exercices précédents, peut être remboursé au bénéficiaire des dividendes lorsque celui-ci ne bénéficie pas du crédit d'impôt.
S'il est fait usage de cette faculté, le remboursement doit être effectué quel que soit

l'Etat membre de résidence du bénéficiaire des dividendes.

Article 10

1. Lorsqu'une société mère redistribue des dividendes reçus d'une filiale résidente d'un autre Etat membre au cours des exercices clos depuis cinq ans au plus, le crédit d'impôt attaché aux dividendes de la filiale est inclus dans la base de calcul de l'impôt compensatoire ou de l'acompte visé à l'article 9 dû par la société mère, puis imputé sur le montant de cet impôt ou de cet acompte sans que l'excédent éventuel puisse être remboursé.

2. Lorsqu'une société d'un Etat membre n'est pas passible de l'impôt des sociétés à raison des dividendes qu'elle reçoit d'une société de cet Etat et qu'elle redistribue ces dividendes, l'une des deux règles suivantes doit être appliqué:

— soit la règle d'imputation visée au paragraphe 1; dans ce cas, l'Etat membre en cause a la faculté d'autoriser l'imputation, même si les dividendes ont été encaissés au cours d'exercices clos depuis plus de cinq ans;
— soit, par dérogation aux dispositions de l'article 9, paragraphes 1 et 3, l'absence de perception de l'impôt compensatoire ou de l'acompte.

Article 11

Dans la mesure où les dividendes distribués par une société d'un Etat membre proviennent de bénéfices d'exercices clos depuis cinq ans au plus d'un établissement stable situé dans un autre Etat membre,

— les bénéfices de l'établissement stable ouvrent droit au crédit d'impôt en vigueur dans l'Etat où est situé cet établissement et les règles prévues à l'article 9 pour les sociétés sont appliquées à cet établissement;
— le crédit d'impôt attaché aux bénéfices de l'établissement stable est inclus dans la base de calcul de l'impôt compensatoire ou de l'acompte visé à l'article 9 dû par la société, puis imputé sur le montant de cet impôt ou de cet acompte sans que l'excédent éventuel puisse être remboursé.

Article 12

1. Pour l'application de la présente directive, les dividendes distribués par une société d'un Etat membre sont considérés comme provenant:

— d'abord des bénéfices du dernier exercice clos ouvrant droit à l'allégement de la double imposition économique des dividendes, la part imputable aux bénéfices d'origine nationale, aux dividendes de filiales dans d'autres Etats membres et aux bénéfices d'établissements stables dans d'autres Etats membres étant déterminée selon une règle proportionnelle;
— puis, s'il y a lieu, des bénéfices d'exercices clos depuis cinq ans au plus ouvrant droit à l'allégement de la double imposition économique des dividendes, la part imputable aux bénéfices d'origine nationale, aux dividendes de filiales dans d'autres Etats membres et aux bénéfices d'établissements stables dans d'autres Etats membres étant déterminée selon une règle proportionnelle à partir de la masse de ces bénéfices et dividendes;
— puis, s'il y a lieu, des bénéfices d'origine nationale d'exercices clos depuis plus de cinq ans si ces bénéfices ouvrent droit à l'allégement de la double imposition économique des dividendes;
— enfin, s'il y a lieu, des autres sources éventuelles.

2. Au sens du présent article, l'expression „bénéfices ouvrant droit à l'allégement de la double imposition économique des dividendes" désigne les bénéfices qui, s'ils étaient distribués, ne donneraient pas lieu à la perception de l'impôt compensatoire, ou pour lesquels, s'ils étaient distribués, l'acompte d'impôt des sociétés visé à l'article 9, paragraphe 3, serait effectivement déduit de l'impôt de l'exercice ou de l'impôt des exercices précédents, ainsi que les bénéfices visés aux articles 10 et 11.

Article 13

1. Sous réserve des dispositions des paragraphes 3 et 4, le coût budgétaire du crédit d'impôt est supporté par l'Etat membre de la société distributrice des dividendes.

2. Les dispositions du paragraphe 1 s'appliquent également lorsque le bénéficiaire du dividende est une institution présentant un intérêt public qui ne bénéficie pas du crédit d'impôt.

3. Lorsqu'une société mère résidente d'un Etat membre distribue des dividendes provenant de dividendes d'une filiale résidente d'un autre Etat membre, l'Etat de la filiale verse à l'Etat de la société mère le montant du crédit d'impôt attaché aux dividendes de la filiale.
Ce versement ne peut être supérieur au montant qui résulterait de l'application aux dividendes de la filiale du taux du crédit d'impôt en vigueur dans l'Etat de la société mère à la date de la distribution effectuée par celle-ci.

4. Lorsqu'une société d'un Etat membre distribue des dividendes provenant des bénéfices d'un établissement stable situé dans un autre Etat membre, l'Etat dans lequel est situé l'établissement stable versé à l'Etat de la société le montant du crédit d'impôt attaché à ces bénéfices.
Ce versement ne peut être supérieur au montant qui résulterait de l'application aux bénéfices de l'établissement stable du taux du crédit d'impôt en vigueur dans l'Etat de la société à la date de la distribution.

5. Par dérogation aux dispositions des paragraphes 1 à 4, les Etats membres peuvent se répartir entre eux, par voie d'accord bilatéral, le coût du crédit d'impôt à condition que cet accord n'affecte en aucune façon les droits des bénéficiaires de dividendes tels qu'ils sont établis par la présente directive.

IV

Dispositions relatives à la retenue à la source sur les dividendes

Article 14

1. Sous réserve des dispositions des conventions conclues entre les Etats membres et les pays tiers, chaque Etat membre perçoit une retenue à la source de 25% sur les dividendes distribués par les sociétés de cet Etat quel que soit le bénéficiaire de ces dividendes.

2. Par dérogation aux dispositions du paragraphe 1, un Etat membre ne perçoit aucune retenue à la source sur un dividende distribué par une société filiale à une société mère résidente d'un Etat membre.

3. Par dérogation aux dispositions du paragraphe 1, les Etats membres ont la faculté de ne percevoir aucune retenue à la source sur les dividendes distribués à leurs propres résidents:
— lorsque le nom et l'adresse du bénéficiaire, ainsi que le montant des dividendes reçus, sont communiqués automatiquement à l'administration fiscale,
— lorsque les titres représentatifs du capital social de la société distributrice sont nominatifs.

Article 15

Lorsqu'un Etat membre perçoit une retenue à la source sur des bénéfices distribués qui ne constituent pas un dividende au sens de l'article 2, les dispositions de la présente directive relatives à la retenue à la source sont applicables.

Article 16

1. La retenue visée à l'article 14 est imputée sur le montant de l'impôt sur les revenus ou sur les bénéfices dû à raison des dividendes par le bénéficiaire de ceux-ci.
Cette retenue est restituée au bénéficiaire par l'Etat membre qui perçoit l'impôt visé à l'alinéa précédent, dans la mesure où elle excède le montant de cet impôt ou lorsque le bénéficiaire n'est pas imposable.

2. Par dérogation aux dispositions du paragraphe 1, un Etat membre ne rembourse pas la retenue à la source à un organisme qui n'est pas assujetti dans cet Etat membre à l'impôt sur les revenus ou sur les bénéfices, lorsqu'il apparaît qu'un tel remboursement serait incompatible avec le principe de neutralité fiscale.
Le Conseil, statuant à la majorité qualifiée sur proposition de la Commission, arrêtera en tant que de besoin les mesures nécessaires pour l'application de cette disposition.

Article 17

1. Dans la mesure où une retenue à la source perçue par un Etat membre est imputée ou restituée dans un autre Etat membre, l'Etat qui a perçu la retenue la rembourse à cet autre Etat membre.

2. Les dispositions du paragraphe 1 sont également applicables lorsque l'impôt sur les revenus ou sur les bénéfices est censé correspondre ou est limité au montant de la retenue à la source.

3. Par dérogation aux dispositions du paragraphe 1, les Etats membres peuvent se répartir le montant de la retenue sur la base d'un accord bilatéral, pourvu que cet accord n'affecte en aucune façon les droits des bénéficiaires des dividendes tels qu'ils sont établis par la présente directive.

V

Dispositions communes au crédit d'impôt et à la retenue à la source sur les dividendes

Article 18

Les dispositions de la présente directive ne font pas obstacle à l'application de dispositions nationales prises dans le but de réduire le travail administratif et prévoyant le non-remboursement du crédit d'impôt ou de la retenue à la source lorsqu'il s'agit de sommes minimes.

Article 19

Les dispositions de la présente directive ne font pas obstacle à l'application de dispositions nationales prises dans le but d'empêcher le bénéficiaire d'un dividende d'obtenir un avantage injustifié et prévoyant la possibilité de refuser l'imputation ou la restitution du crédit d'impôt ou de la retenue à la source.

VI

Dispositions transitoires

Article 20

1. Lorsqu'une société mère redistribue, après la date visée à l'article 22, un dividende reçu d'une filiale avant cette date, l'Etat de la société mère a la faculté de percevoir l'impôt compensatoire visé à l'article 9, paragraphe 1.
Les dispositions des articles 10, paragraphe 1, et 13, paragraphe 3, ne s'appliquent que s'il existe un accord entre l'Etat membre de la société mère et l'Etat membre de la filiale.

2. Lorsqu'une société d'un Etat membre

distribue, après la date visée à l'article 22, des bénéfices réalisés dans un établissement stable avant cette date, l'Etat de cette société a la faculté de percevoir l'impôt compensatoire visé à l'article 9, paragraphe 1.
Les dispositions des articles 11 et 13, paragraphe 4, ne s'appliquent que s'il existe un accord entre l'Etat membre de la société et l'Etat membre dans lequel l'établissement stable est situé.

3. Les Etats membres communiquent à la Commission, dans un délai de trois mois à compter de la date de notification de la présente directive, les dispositions visées à l'article 3, paragraphe 2, premier alinéa, en vigueur à cette date.
La Commission dispose d'un délai de soixante jours à compter de cette communication pour faire connaître aux Etats membres intéressés sa position au sujet de ces dispositions.

VII

Dispositions finales

Article 21

Sans préjudice de l'application des dispositions de l'article 92 du traité CEE, un dividende distribué à une personne résidente d'un Etat membre par une société d'un autre Etat membre ne peut être soumis, dans le premier Etat membre, à un traitement fiscal moins favorable, ou à une obligation plus lourde — autre qu'une obligation imposée par le premier Etat membre aux fins de l'application des articles 13 ou 17 — que si ce dividende avait été distribué par une société du premier Etat membre.

Article 22

1. Les Etats membres mettent en vigueur les dispositions législatives réglementaires et administratives nécessaires pour se conformer aux dispositions de la présente directive au plus tard le 1er janvier de la troisième année suivant celle de son adoption, et les communiquent immédiatement à la Commission.

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

Article 23

Les Etats membres sont destinataires de la présente directive.

Fait à ....., le .....

Par le Conseil

Le Président

Supplement **F**
1975

Convention entre le Gouvernement de la République française et le Gouvernement de la République socialiste fédérative de Yougoslavie tendant à éviter les doubles impositions en matière d'impôts sur les revenus

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

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INTERNATIONAL BUREAU
OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty between France and Yugoslavia was signed on March 28, 1974. The treaty, in accordance with Article 29, shall enter into force on the first day of the month following the month in which the last Contracting State has exchanged the notification that the legal requirements have been complied with.

TEXTE

Le Gouvernement de la République française et le Gouvernement de la République socialiste fédérative de Yougoslavie, désireux de conclure une Convention tendant à éviter les doubles impositions en matière d'impôts sur les revenus, sont convenus des dispositions suivantes:

CHAPITRE Ier
CHAMP D'APPLICATION DE LA CONVENTION

Article 1er
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2
Impôts visés

1. La présente Convention s'applique aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants, de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.

2. Sont considérés comme impôts sur le revenu les impôts perçus sur le revenu total,

ou sur des éléments du revenu, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers.

3. Les impôts auxquels s'applique la Convention sont:

a) En ce qui concerne la France:
— l'impôt sur le revenu;
— l'impôt sur les sociétés;
y compris toutes retenues à la source, tous précomptes ou avances décomptés sur les impôts visés ci-dessus,
(ci-après dénommés: «l'impôt français»);

b) En ce qui concerne la Yougoslavie:

i) impôts et contributions cédulaires sur le revenu des personnes physiques (activités dépendantes, bénéfices agricoles, revenu des artisans et autres activités indépendantes, professions libérales);

ii) l'impôt sur le revenu global des personnes physiques;

iii) l'impôt sur le revenu provenant de l'usage ou de la concession d'un droit d'auteur, d'un brevet et de perfectionnements techniques;

iv) l'impôt sur le revenu des personnes étrangères qui investissent dans une entreprise nationale pour une activité commune,
(ci-après dénommés: «l'impôt yougoslave»).

4. La Convention s'appliquera aussi aux impôts de nature identique ou analogue qui seraient entrés en vigueur après la date de signature de la présente Convention et qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront les modifications importantes apportées à leurs législations fiscales respectives.

CHAPITRE II
DEFINITIONS

Article 3
Définitions générales

1. Au sens de la présente Convention:

a) Le terme «Etat» désigne, suivant le contexte, la France ou la Yougoslavie;

b) Le terme «France» désigne les départements européens et les départements d'Outre-Mer (Guadeloupe, Guyane, Martinique et Réunion) de la République française et les zones situées hors des eaux territoriales de la France sur lesquelles, en conformité avec le droit international et selon sa législation, la France peut exercer les droits relatifs au lit de la mer, au sous-sol marin et à ses ressources naturelles;

c) Le terme «Yougoslavie» désigne le territoire de la République fédérative socialiste de Yougoslavie et les zones situées hors des eaux territoriales de la Yougoslavie sur lesquelles, en conformité avec le droit international et selon sa législation, la Yougoslavie peut exercer les droits relatifs au lit de la mer, au sous-sol marin et à ses ressources naturelles;

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) L'expression «autorité compétente» désigne:

1° En France: le Ministre de l'Economie

et des Finances ou son représentant dûment autorisé;
2° En Yougoslavie: le Secrétaire fédéral des Finances ou son représentant dûment autorisé.

2. Pour l'application de la Convention par un Etat contractant, toute expression qui n'est pas autrement définie 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
Domicile fiscal

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, son statut est déterminé 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 si 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 si 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 si 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
Etablissement stable

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 bureau;
d) Une usine;
e) Un atelier;
f) Une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
g) Un chantier de construction ou de montage dont la durée dépasse douze 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'une 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 tout 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 soit 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.

CHAPITRE III

IMPOSITION DES REVENUS

Article 6
Revenus immobiliers

1. Les revenus provenant de biens immobiliers y compris les revenus des exploitations agricoles ou forestières sont imposables dans l'Etat contractant où ces biens sont situés.

2. L'expression «biens immobiliers» est définie conformément à la législation fiscale 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

Bénéfices des entreprises

1. Les bénéfices d'une entreprise industrielle, commerciale ou artisanale 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, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'Etat où est situé cet 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. Les bénéfices de l'activité d'un établissement stable sont déterminés essentiellement d'après le bilan de cet établissement stable. Dans le cas où l'établissement stable ne tient pas une comptabilité régulière faisant ressortir distinctement et exactement ses bénéfices, il peut être procédé, aux fins de déterminer les bénéfices de l'établissement stable, à une répartition du bénéfice total de l'entreprise.
Les autorités compétentes des Etats contractants s'entendront, le cas échéant, pour arrêter les règles de répartition des bénéfices de l'entreprise à défaut d'une comptabilité régulière faisant ressortir exactement et distinctement les bénéfices afférents aux établissements stables situés sur leur territoire respectif.

6. 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

Navigation maritime, fluviale et aérienne

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 ou fluviale est à bord d'un navire, ce siège sera réputé situé dans l'Etat contractant où se trouve le port d'attache de ce navire ou, à défaut de port d'attache, dans l'Etat contractant dont l'exploitant du navire est un résident.

3. Les dispositions des paragraphes 1 et 2 s'appliquent aussi aux bénéfices provenant de la participation à un groupe, à une exploitation en commun ou à un organisme international d'exploitation.

Article 9
Entreprises associées

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 des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

Article 10
Dividendes

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) 5 p. 100 du montant brut des dividendes si le bénéficiaire est une société qui dispose directement d'au moins 25 p. 100 du capital de la société qui paie les dividendes;

b) 15 p. 100 du montant brut des dividendes dans tous les autres cas.

3. Le terme «dividendes» employé dans le présent article 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 contractant dont la société distributrice est un résident.

4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des dividendes, résident de l'un des Etats, a, dans l'autre Etat 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.

5. Une personne qui est un résident de Yougoslavie et qui reçoit des dividendes distribués par une société résident de France, peut demander le remboursement du précompte afférent à ces dividendes acquitté, le cas échéant, par la société distributrice, sous réserve de la déduction de l'impôt prévu au paragraphe 2 ci-dessus.

6. Lorsqu'une société résidente de Yougoslavie dispose en France d'un établissement stable, elle peut y être assujettie à la retenue à la source dans les conditions prévues par la législation interne française.

Article 11
Intérêts

1. Les intérêts provenant d'un Etat contractant et payés à un résident de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

2. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assortis

ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, des dépôts 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.

3. Les dispositions du paragraphe 1 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.

4. Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision politique, une collectivité locale ou un résident 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.

5. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des 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
Redevances

1. Les redevances provenant d'un Etat contractant et payées à un résident de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

2. Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une œuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, et les films et bandes magnétiques de télévision ou de radiodiffusion, 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 secret, ainsi que pour l'usage ou la concession de l'usage d'un équipement industriel, commercial ou scientifique et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

3. Les dispositions du paragraphe 1 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, exerce dans l'autre Etat contractant d'où proviennent les redevances, soit une activité industrielle, commerciale ou artisanale par l'intermédiaire d'un établissement stable, soit une profession libérale au moyen d'une base fixe et que le droit ou le bien générateur des redevances s'y rattache effectivement. Dans cette hypothèse, les dispositions de l'article 7 ou de l'article 14 sont, suivant les cas, applicables.

4. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des 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.

Article 13

Gains en capital

1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, ou de l'aliénation de parts ou de droits analogues dans une société dont l'actif est composé principalement de biens immobiliers, sont imposables dans l'Etat contractant où ces biens immobiliers 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 indépendante, 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.

3. Les gains provenant de l'aliénation de navires ou d'aéronefs exploités en trafic international et de biens mobiliers affectés à l'exploitation desdits navires ou aéronefs ne sont imposables que dans l'Etat contractant où le siège de la direction effective de l'entreprise est situé.

Article 14

Professions indépendantes

1. Les revenus qu'un résident d'un Etat contractant retire d'activités indépendantes ne sont imposables que dans cet Etat à moins que lesdites activités n'aient été exercées dans l'autre Etat contractant. Les revenus provenant d'activités indépendantes exercées dans l'autre Etat contractant sont imposables dans cet autre Etat.

2. Nonobstant les dispositions du paragraphe 1, les revenus qu'un résident d'un Etat contractant retire d'activités indépendantes exercées dans l'autre Etat contractant ne sont pas imposables dans cet autre Etat:
a) Si le bénéficiaire séjourne dans l'autre Etat contractant pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée, et
b) Si le bénéficiaire ne dispose pas d'une base fixe dans l'autre Etat pendant une période ou des périodes excédant au total 183 jours au cours de ladite année.

3. L'expression «activités indépendantes» désigne toutes les activités — autres que les activités commerciales, industrielles ou agricoles — exercées pour son propre compte, d'une manière indépendante, par une personne qui reçoit les profits ou supporte les pertes provenant de ces activités.

Article 15

Professions dépendantes

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'em-

ploi 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;
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. Nonobstant 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
Tantièmes

1. Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident de Yougoslavie reçoit en sa qualité de membre du conseil d'administration, du directoire ou du conseil de surveillance d'une société qui est résidente de France sont imposables dans cet Etat.

2. Les rémunérations similaires qu'un résident de France reçoit pour l'exercice de fonctions analogues à celles qui sont définies au paragraphe 1 ci-dessus d'une entreprise qui est résidente de Yougoslavie sont imposables dans cet Etat.

Article 17
Artistes et sportifs

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
Pensions

Sous réserve des dispositions 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.

Article 19
Fonctions publiques

Les rémunérations, y compris les pensions, versées par un Etat contractant ou l'une de ses subdivisions politiques ou collectivités locales, ou un établissement public de cet Etat, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus à cet Etat ou à cette subdivision ou collectivité, ou à cet établissement public, dans l'exercice de fonctions de caractère public, sont imposables dans cet Etat.

Article 20
Professeurs

Un résident d'un Etat contractant qui séjourne dans l'autre Etat contractant principalement dans le but d'enseigner ou de se

livrer à des travaux de recherche, ou dans l'un et l'autre de ces buts, est exonéré d'impôt dans ce dernier Etat contractant, pendant une période n'excédant pas deux années à compter de la date de son arrivée dans ledit Etat, à raison de ses revenus qui proviennent de services personnels rendus aux fins d'enseignement ou de recherche.
Cette disposition n'est pas applicable aux revenus provenant de travaux d'enseignement et de recherche si ces travaux ne sont pas entrepris dans l'intérêt public mais principalement en vue de la réalisation d'un avantage particulier bénéficiant à une ou à des personnes déterminées.

Article 21

Etudiants et stagiaires

1. Les sommes qu'un étudiant ou un stagiaire qui est 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 ne sont pas imposables dans cet autre Etat.

2. Il en est de même de la rémunération qu'un tel étudiant ou stagiaire reçoit au titre d'un emploi exercé dans l'Etat contractant où il poursuit ses études ou sa formation à la condition que cette rémunération soit strictement nécessaire à son entretien.

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.

CHAPITRE IV

Article 23

Dispositions pour éliminer les doubles impositions

La double imposition est évitée de la façon suivante:

A. — En France:
a) Les revenus autres que ceux visés à l'alinéa b) ci-dessous sont exonérés des impôts français visés à l'article 2, paragraphe 3 a), lorsque ces revenus sont imposables en Yougoslavie en vertu de la présente Convention;
b) En ce qui concerne les revenus visés aux articles 10, 16 et 17 qui ont supporté l'impôt yougoslave conformément aux dispositions de ces articles, la France accorde aux personnes qui sont résidentes de France et qui perçoivent de tels revenus un crédit d'impôt d'un montant égal à l'impôt yougoslave.
Ce crédit d'impôt, qui ne peut excéder le montant de l'impôt perçu en France sur les revenus en cause, s'impute sur les impôts visés à l'article 2, paragraphe 3 a), dans les bases desquels lesdits revenus sont inclus.
c) Nonobstant les dispositions des alinéas a) et b), l'impôt français peut être calculé sur le revenu imposable en France en vertu de la présente Convention au taux correspondant au montant global du revenu imposable conformément à la législation française.

B. — En Yougoslavie:
a) Les revenus sont exonérés des impôts yougoslaves visés à l'article 2, paragraphe 3 b), lorsque ces revenus sont imposables en France en vertu de la présente Convention.
b) Nonobstant les dispositions de l'alinéa

a), l'impôt yougoslave peut être calculé sur le revenu global imposable en Yougoslavie en vertu de la présente Convention au taux correspondant au montant global du revenu imposable conformément à la législation yougoslave.

CHAPITRE V
DISPOSITIONS SPECIALES

Article 24
Non-discrimination

1. Les nationaux d'un Etat contractant, qu'ils soient ou non des résidents de l'un des Etats contractants, 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.
En particulier, les nationaux de l'un des deux Etats contractants qui sont imposables sur le territoire de l'autre Etat bénéficient, dans les mêmes conditions que les nationaux de ce dernier Etat, des exemptions, abattements à la base, déductions et réductions d'impôts ou taxes quelconques accordés pour charge de famille.

2. Le terme «nationaux» désigne:
a) Toutes les personnes physiques qui possèdent la nationalité de l'un des deux Etats;
b) Toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans l'un des deux Etats.

3. Les apatrides qui sont résidents d'un des Etats contractants ne sont soumis, dans l'un et l'autre de ces Etats, 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 l'Etat concerné se trouvant dans la même situation.

4. L'imposition d'un établissement stable qu'une entreprise de l'un des Etats a dans l'autre Etat 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.

5. Les entreprises de l'un des Etats, dont le capital est en tout ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat, ne sont soumises dans le premier Etat 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.

6. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

7. Les dispositions de la présente Convention ne limitent pas les avantages accordés aux résidents selon la législation de chacun des deux Etats ou sur la base d'accords internationaux.

Article 25
Procédure amiable

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 auxquelles peut donner lieu 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. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vues peuvent avoir lieu au sein d'une commission composée de représentants des autorités compétentes des Etats contractants.

5. Les autorités compétentes des Etats contractants déterminent les modalités d'application de la présente Convention.

Article 26
Echange de renseignements

1. Les autorités compétentes des Etats contractants échangeront les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des Etats contractants relatives aux impôts visés par la Convention dans la mesure où l'imposition qu'elles prévoient est conforme à la 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 27
Fonctionnaires diplomatiques et consulaires

1. Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

2. Dans la mesure où, en raison des privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires, en vertu des règles générales du droit des gens ou aux termes des dispositions d'accords internationaux particuliers, le revenu ou la fortune ne sont pas imposables dans l'Etat accréditaire, le droit d'imposition est réservé à l'Etat accréditant.

3. Aux fins de la présente Convention, les membres d'une mission diplomatique ou consulaire d'un Etat contractant accréditée dans l'autre Etat contractant ou dans un Etat tiers qui sont ressortissants de l'Etat accréditant, sont réputés être résidents de l'Etat accréditant s'ils y sont soumis aux mêmes obligations, en matière d'impôts sur

le revenu et sur la fortune, que les résidents dudit Etat.

4. La Convention ne s'applique pas aux organisations internationales, à leurs organes et fonctionnaires, ni aux personnes qui, membres de missions diplomatiques ou consulaires d'Etats tiers, sont présentes dans un Etat contractant et ne sont pas considérées comme résidentes de l'un ou l'autre Etat contractant au regard des impôts sur le revenu et sur la fortune.

Article 28

Extension territoriale

1. La présente Convention peut être étendue, telle quelle ou avec les modifications nécessaires aux Territoires d'Outre-Mer de la République française qui perçoivent des impôts de caractère analogue à ceux auxquels s'applique la Convention. Une telle extension prend effet à partir de la date, avec les modifications et dans les conditions, y compris les conditions relatives à la cessation d'application, qui sont fixées d'un commun accord entre les Etats contractants par échange de notes diplomatiques ou selon toute autre procédure conforme à leurs dispositions constitutionnelles.

2. A moins que les deux Etats contractants n'en soient convenus autrement, lorsque la Convention sera dénoncée par l'un d'eux en vertu de l'article 30, elle cessera de s'appliquer, dans les conditions prévues à cet article, à tout territoire auquel elle a été étendue conformément au présent article.

Article 29

Entrée en vigueur

1. Chacun des Etats contractants notifiera à l'autre l'accomplissement des procédures requises par sa législation pour la mise en vigueur de la présente Convention. Celle-ci entrera en vigueur le premier jour du mois suivant celui au cours duquel a eu lieu la dernière de ces notifications.

2. Ses dispositions s'appliqueront pour la première fois:

i) en ce qui concerne, d'une part les impôts perçus par voie de retenue à la source sur les dividendes, d'autre part les paiements prévus à l'article 10, paragraphe 5, aux produits mis en paiement à compter du 1er janvier de l'année de l'entrée en vigueur;

ii) en ce qui concerne les autres impôts sur le revenu, à l'année d'imposition au cours de laquelle la Convention est entrée en vigueur.

CHAPITRE VI

DISPOSITIONS FINALES

Article 30

Dénonciation

La présente Convention restera en vigueur aussi longtemps qu'elle n'aura pas été dénoncée par l'un des Etats contractants.

Toutefois, chaque Etat pourra, moyennant un préavis de six mois notifié par la voie diplomatique, la dénoncer pour la fin d'une année civile, à partir de la cinquième année à compter de la date de son entrée en vigueur.

Dans ce cas, la Convention s'appliquera pour la dernière fois:

a) En ce qui concerne les impôts perçus par voie de retenue à la source sur les dividendes, aux produits dont la mise en paiement interviendra avant l'expiration de l'année civile pour la fin de laquelle la dénonciation aura été notifiée;

b) En ce qui concerne les autres impôts sur le revenu, pour l'imposition des revenus af-

férents à l'année civile pour la fin de laquelle la dénonciation aura été notifiée ou aux exercices clos au cours de ladite année.

En foi de quoi, les soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont signé la présente Convention.

Fait à paris, le 28 mars 1974, en double exemplaire, en langues française et serbo-croate, les deux textes faisant également foi.

Pour le Gouvernement de la République française:

VALERY GISCARD D'ESTAING.

Pour le Gouvernement de la République socialiste fédérative de Yougoslavie:

JANKO SMOLE.

PROTOCOLE

Au moment de procéder à la signature de la Convention tendant à éviter les doubles impositions en matière d'impôts sur les revenus entre le Gouvernement de la République française et le Gouvernement de la République socialiste fédérative de Yougoslavie, les soussignés sont convenus des dispositions suivantes qui font partie intégrante de la Convention:

1. — Pour l'application de l'article 8 sont assimilés à des bénéfices provenant de l'exploitation de navires ou d'aéronefs en trafic international les bénéfices provenant des activités accessoires énumérées ci-après:

— location de navires ou aéronefs entièrement armés et équipés;

— vente de billets de passage pour une autre entreprise.

2. — Les dispositions de l'article 24 ne doivent pas être considérées comme interdisant à la Yougoslavie d'appliquer aux nationaux français retirant des revenus de sources situées dans cet Etat sans en être des résidents, le régime fiscal applicable, selon la législation yougoslave, aux contribuables non résidents pourvu qu'il ne résulte pas de cette application une imposition plus lourde que celle qui aurait frappé les mêmes revenus s'ils avaient été perçus par des nationaux yougoslaves.

Fait à Paris, le 28 mars 1974.

Pour le Gouvernement de la République française:

VALERY GISCARD D'ESTAING.

Pour le Gouvernement de la République socialiste fédérative de Yougoslavie:

JANKO SMOLE.