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INFORMATION PUBLISHED BY THE INTERNATIONAL FISCAL ASSOCIATION

I.F.A.

established February 12, 1938, with seat at The Hague
(under responsibility of the Coucil of the Association)

Honorary president (elected 1939): C. W. BODENHAUSEN (Netherl.)
President (elected 1939): MITCHELL B. CARROLL (U.S.A.)

Bureau of the Association

Dr. W. R. EMMEN RIEDEL, gen. secretary, 116 Mesdagstraat, The Hague, tel. 77.46.66
Miss Dr. J. AE. VAN BUUREN, assistant secretary.

Official information

Constitution of an English Branch

On January 4, 1949, the United Kingdom members held a meeting and decided to form a United Kingdom Branch of the Association. A committee was elected to prepare the formation of this branch. The address of the secretary of this committee, T. L. A. Graham, is as follows: 98 Park Street, Mayfair, London. W.1.

Constitution of a Swedish Branch

On January 14, 1949, a national branch consisting of 45 members was constituted in Sweden under the presidency of Mr. K. G. A. Sandström, director of the Swedish Institute of Foreign Law and member of the IFA Council (address: 12 Vasagatan, Stockholm).

Covers for „Studies on International Fiscal Law".

For members of the IFA and other readers covers are available at the Publishers D. van Sijn & Zonen, Ceintuurbaan 64, Rotterdam, one for Vol. 1 and 2 (Congress 1939), another for Vol. 3/8 (Congress 1947) at the price of fl. 1.50 each. Persons who want these covers are kindly requested to pay the amount due in ad-

vance into the Publishers' account with the Bank R. Mees & Zoonen, Rotterdam.

Unused copies of Vol. 1 *and* 2 *of the "Studies on International Fiscal Law"*

The Secretariate General is in urgent need of the volumes 1 and 2 of the "Studies on International Fiscal Law" containing the papers prepared for the congress in 1939. Members who joined the IFA after the war often express the wish to possess the complete series. The vol. 1 and 2, however, are out of print.

As, for different reasons, the IFA lost some of its members since 1939, the secretariate general is sure that in private libraries there are copies which are never used. It therefore asks readers to be helpful in procuring these volumes.

INFORMATIONS DE L'ASSOCIATION INTERNATIONALE DE DROIT FINANCIER ET FISCAL

I.F.A.

fondée le 12 février 1938, domiciliée à La Haye
(sous la responsabilité du Conseil de l'Association)

Président d'honneur (élu en 1939): M. C. W. BODENHAUSEN (PaysBas)
Président (élu en 1939): M. MITCHELL B. CARROLL (Etats Unis)

Bureau de l'Association

Dr. W. R. EMMEN RIEDEL, secrétaire général, 116 Mesdagstraat, La Haye, tel. 77.46.66
Melle J. Ae. VAN BUUREN, lic. en droit, secrétaire adjointe.

Informations officielles

Formation d'un Groupement national en Grande Bretagne

Le 4 janvier 1949 les membres de l'IFA en Grande Bretagne se sont réunis et ont décidé de former un groupement national de l'Association. Un comité fut désigné pour préparer la formation. L'adresse du secrétaire de ce comité, M. T. L. A. Graham, est le suivant: 98 Park Street, Mayfair, London. W. 1.

Formation d'un Groupement en Suède

Le 14 janvier 1949 un groupement national fut formé en Suède, consistant de 45 membres, sous la présidence de M. K. G. A. Sand-

ström, directeur du „Swedish Institute for Foreign Law" et membre du Conseil d'Administration de l'IFA (adresse: 12 Vasagatan, Stockholm).

Reliure pour les Cahiers

Les éditeurs des „Cahiers" D. van Sijn & Zonen, Ceintuurbaan 64, Rotterdam, invitent nos membres et autres lecteurs à se procurer des reliures, une pour les Vol. 1 et 2 des „Cahiers de Droit Fiscal International" (Congrès 1939), l'autre pour les Vol. 3/8 (Congrès 1947), au prix de fl. 1.50 par pièce, frais d'expédition et port compris. Il est nécessaire de payer d'avance au compte des éditeurs chez la Banque R. Mees & Zoon, Rotterdam.

Volumes 1 et 2 des „Cahiers".

Beaucoup de nos membres, admis depuis la querre, nous demandent les Volumes 1 et 2 des „Cahiers de Droit Fiscal International" contenant les rapports préparés pour le congrès de 1939, qui, pourtant, sont épuisés.

L'IFA, par de diverses raisons, ayant perdu plusieurs de ses membres depuis 1939, le secrétariat général se demande si, dans les bibliothèques privées, ne se trouvent des exemplaires qui ne sont jamais employés. C'est pourquoi le secrétariat général fait un appel aux lecteurs pour lui signaler, le cas échéant, de pareils volumes.

QUESTIONNAIRE

A. DIRECT TAXES

I. *Income Tax*

a. *Structure and underlying principles of income tax system*

1. Are there:
   (a) Schedular taxes only, levied separately, for specific income categories, on:
   (1) all nationals with regard to income:
   i. both from domestic and foreign sources;
   ii. from domestic sources only;
   (2) all residents with regard to income:
   i. both from domestic and foreign sources;
   ii. from domestic sources only;

(3) non-residents with regard to income from domestic sources only.

(b) A global tax on the total income only:

(1) of all nationals with regard to income:

i. both from domestic and foreign sources;

ii. from domestic sources only;

(2) of all residents

i. both from domestic and foreign sources;

ii. from domestic sources only;

(3) of non-residents from domestic sources.

(c) A tax on the total income superimposed on schedular taxes as described under (a) supra.

(d) Answers to (a), (b) and (c) *supra* should indicate special rules, if any, applicable to surtaxes levied on schedular or total income above a certain level.

Note: Answer each question for each schedular tax separately, where different rules apply.

b. *Income from real property*

1. In what manner and to what extent does the imposition of such tax depend on one or more of the following criteria:

(a) The nationality or domicile of the lessee or owner;

(b) The location of the property or of the instrument representing it (deed, lease etc.).

2. Do special rules apply to:

(a) Income from agriculture and livestock-raising;

(b) Income received from the use of real property by the owner, lessee, administrator;

(c) Income received from the lease of real property;

(d) Income received from the exploitation of certain parts or appurtenances of the property (royalties, water rights, rights-of-way, etc.)

(e) Any other kind of income from real property, or any special tax imposed on such income.

c. *Income from royalties on natural resources, such as mines, quarries, oil wells and other natural deposits (unless taxed as income from real property)*

1. In what manner and to what extent does the taxation of royalties

on natural resources depend on one or more of the following criteria:
(a) The nationality or domicile of the payee or payer;
(b) The physical location of the natural resource in question;
(c) The place where the natural resource is used (as in the case where one is extracted from a mine located in one country by the royalty debtor or on his behalf, and then smelted in another country by the royalty debtor or on his behalf).

d. *Income from mortgages on real property, ships or aircraft (including mortgage bonds, if they are considered as interests in realty, rather than as securities)*

1. In what manner and to what extent does the taxation of such income depend on one or more of the following criteria:
(a) The nationality or domicile of the mortgagee or mortgagor;
(b) The location of the mortgaged property;
(c) The registry or principal place of use of the mortgaged ship or aircraft;
(d) The place of registration of the mortgage (if differing from (b) or (c));
(e) The place of origin or use of the capital secured by the mortgage.

e. *Business profits*

1. In what manner and to what extent does the taxation of business profits (i.e., income derived from carrying on industrial or commercial activities, including agricultural enterprises, which is not covered by any other income category listed in this questionnaire) depend on:
(a) The nationality or domicile of the person or legal entity receiving the profits.
(b) The location of the business activity from which the profits are derived.

2. Are national enterprises [1]) taxed on their profits from:
(a) All their business activities, domestic and foreign;

---

[1]) The term ,,enterprise'' is intended to refer to both individual and corporate enterprises. Where different rules apply to these two categories, this should be indicated in each case.

(b) Their business activities in a foreign country, only insofar as:
(1) they are isolated or occasional;
(2) they are carried on through an independent agent;
(3) they are not carried on through a „permanent establishment" to be hereinafter defined (see also Article V, Protocol, Model Conventions on Income Taxes).

3. Are foreign enterprises taxed on their profits:
(a) From all their business activities, domestic and foreign, if:
(1) they carry on isolated or occasional business activities within the country;
(2) they maintain an independent agent within the country;
(3) they otherwise do business (maintain a „permanent establishment", „carry on trade", etc.) within the country;
(b) Attributable to their domestic business transactions only.

4. What constitutes a „permanent establishment", „doing business" or „carrying on trade" in the meaning of 1 (b) (3) and 2 (b) (3):
(a) The maintenance of a fixed place of business of any kind within the country, such as a physical plant (factory, oil well, mine, quarry, plantation, warehouse, dock, landing field) or a buying or contracting office;
(b) The presence in the country of a permanent employed representative;
(c) The occasional presence in the country of an agent or travelling salesman;
(d) The existence in the country of a subsidiary company whose business relations with the foreign parent company are solely of a financial character (control of stock, payment of dividends etc.);
(e) What supplementary factors not hereinabove listed enter into the definition of having a "permanent establishment", "doing business" or "carrying on trade" in the country or abroad.

5. Where a business enterprise is taxed only on certain items, parts or categories of its domestic or foreign activities, how are its taxable and non-taxable profits apportioned:
(a) A percentage of the total profits (or of the total domestic or foreign profits) of the enterprises (fractional apportionment)

corresponding to the proportion of:
(1) the taxable business activities to the entire business of the enterprise: if so how is this apportionment calculated, especially as to the division of the overhead of the central office;
(2) the value of the physical plant used in the taxable business to the value of the entire plant of the enterprise;
(3) the turnover of gross receipts, payroll, circulating capital etc. of the taxable activity to that of the entire enterprise;
(b) The actual profits of the taxable business activity, considered as a separate entity:
(1) as assigned to it on the books of the enterprise;
(2) as determined by the revenue authorities, either through presumptions (méthode forfaitaire), or through consideration of the taxable activity for taxing purposes as an independent enterprise, substituting for the prices, fees, salaries etc. carried on its books, those which would have prevailed between independent enterprises dealing at arm's length;
(c) Any other method or criteria.

6. Do special rules apply to:
(a) Enterprises operating wholly or in part in a possession, colony, mandate or other territory under the jurisdiction of the country, but subject to a different legal regime from that of the metropolitan territory;
(b) Enterprises operating wholly or in part in a certain foreign country and being, by reason of doing business there, subject to a different tax regime from enterprises operating in other foreign countries;
(c) Particular categories of enterprises such as financial institutions (e.g., banks, insurance companies), international transport and communication enterprises (e.g., air and sea navigation (foreign or coastwise), motor, rail, radio, telegraph, telephone, cable), public service companies (e.g., gas, electricity, water), mining industries, personal holding companies, moving picture producers and distributors;
(d) Business profits collected through an agent, trustee, representative broker, or other conduit or intermediary;
(e) Business enterprises owned or controlled by a domestic or foreign agency.

7. Are there any cases in which the same type of business profit is subjected to a different tax treatment depending on the nationality or domicile of the enterprise, or the location of the property, or the origin of the income, involved. If so, do these differences concern:
(a) The taxability as such;
(b) The tax rates;
(c) The permissible allowances or deductions;
(d) The collection of the tax at the source or from the recipient of the profit;
(e) The method of the tax assessment (e.g. presumptive assessment as against assessment on the basis of tax returns);
(f) Any other aspect of the tax assessment or collection.

8. Do any special rules prevail in relation with specific foreign countries on the basis of:
(a) Internal legal provisions granting tax relief on a reciprocal basis (i.e., for all foreign countries whose laws grant similar relief to citizens of the former country);
(b) International tax agreements.

9. Do any special rules prevail in the application of special taxes on business profits, as for instance:
(a) excess profits tax;
(b) undistributed profits tax;
(c) tax on illicit (e.g., black market) profits.

f. *Income from personal tangible property such as stocks, bonds, debentures and other notes and securities evidencing debt or capital participations (including mortgages and mortgage debentures, if considered as personal, rather than real, property under domestic law)*

1. In what manner and to what extent does the imposition of the tax depend on one or more of the following criteria:
(a) The nationality or domicile of the owner of the note or security, or of his trustee or legal representative;
(b) The nationality or domicile of the payer of the income;
(c) The physical location of the note or security;
(d) The country of origin or investment of the capital represented by the note or security;
(e) The place of payment of the income;

(f) The relationship between the payer company and the payee company, especially when the management or capital of the former is controlled by the latter.

2. Is the rule stated under 1 *supra* modified in cases of collection of tax at the source.

3. Is the rule stated under 1 *supra* modified in cases where the right to the note or security is held or administered by a trustee or legal representative.

4. Is the rule stated under 1 *supra* modified in the case of bonds issued by a foreign or domestic, central or local governmental agency.

5. Does the rule stated under 1 *supra* differ, depending on whether the income is received in the form of interest or dividends.

g. Income from royalties on patents, trade marks and other commercial or industrial properties

1. In what manner and to what extent does the taxation of such royalties depend on one or more of the following criteria:

(a) The nationality or domicile of the licenser or the licensee;

(b) The place where the property is used or reproduced;

(c) The origin of the capital used in the exploitation of the patent etc.

h. Income from royalties on copyrights and other intelluctual properties

1. In what manner and to what extent does the taxation of such royalties depend on one or more of the following criteria:

(a) The nationality or domicile of the licenser or licensee;

(b) The place where the property is used or reproduced;

(c) The origin of the capital used in the exploitation of the copyright, etc.

j. *Private pensions and annuities*

1. In what manner and to what extent does the taxation of such income depend on one or more of the following criteria:

(a) The nationality or domicile of the payer or payee;

(b) The place of payment of the income;

(c) The place where the consideration (services, premiums, capital) which gave rise to the pension or annuities was given.

k. *Earned income from personal services, private employment or liberal professions (fees, wages, salaries)*

1. Are nationals taxed on such income:
   (a) If they reside abroad, while receiving such income from foreign sources;
   (b) If they reside abroad, while receiving such income from domestic sources;
   (c) If they reside in the country, while receiving such income from foreign sources;
   (d) Do the answers to (a)—(c) *supra* depend on the length of their foreign residence.

2. Are foreigners taxed on such income:
   (a) If they reside abroad while receiving such income from domestic sources (e.g. through collection at the source);
   (b) If they reside in the country while receiving such income from foreign sources;
   (c) Do the answers to (a) and (b) *supra* depend on the length of their foreign or domestic residence.

3. In what manner and to what extent do the answers to 1 and 2 *supra* depend on:
   (a) The nationality or domicile of the payee or payer;
   (b) The place of payment.

4. Do the answers to 1 and 2 *supra* differ, if the fees, salaries or wages are paid:
   (a) By a central or local governmental agency of the country;
   (b) By a foreign central or local governmental agency;
   (c) To civil servants;
   (d) To military personnel;
   (e) To diplomatic or consular personnel.

5. Indicate in answers to 1—4 *supra* any difference in the tax treatment of liberal professions on the one side and personal services and private employment on the other.

Note: Indicate special rules applying to any income category not included under a—k *supra*.

For the chapters on Capital Gains Tax, Capital and Property Tax, Succession and Gift Taxes, Capitation and Head Taxes and Indirect Taxes and for the French text of this questionnaire, please apply to the IFA's general secretariate, 116-*Mesdagstraat, The Hague.*

Pour obtenir les chapitres Impôt sur l'Accroissement du Capital, Impôts sur le Capital et sur les Avoirs, Impôts sur les Successions et Donations, Impôts Personnels et de Capitation, et Impôts Indirects et pour avoir le texte en langue française de ce questionnaire, on est prié de s'adresser au secrétariat général de l'IFA, 116 *Mesdagstraat, La Haye.*

QUESTIONNAIRE

of the Fiscal Division of the U.N.O.

Shortly before the congress in Rome in October, 1948, the IFA was invited by the Director of the Fiscal Division of the U.N.O., Mr. Paul Deperon, to take part in an enquiry upon the taxation of enterprises and international investments.

This enquiry was put in the form of a questionnaire requesting detailed information on the tax provisions governing foreign nationals, assets and transactions, as compared with nationals and domestic assets and transactions. The Fiscal Division is of the opinion that a complete and fully documented survey of the various national tax systems should be of the greatest practical use to the international community in the promotion of measures to eliminate tax obstacles to foreign trade and investment..

The IFA's Council and, on their proposal, the Congress accepted with great pleasure this invitation of the Director of the Fiscal Division of the U.N.O. and found most national groups willing to cooperate in this investigation. However, collaboration from all countries is needed, also from those where as yet no national branch has been formed.

The Secretariate General calls the attention of all readers of this Bulletin to the questionnaire printed in the annex to this number. (Official information of the International Fiscal association). It hopes to receive signs of interest and willingness to cooperate in this investigation from several of the members of the I.F.A.

QUESTIONNAIRE

de la Division Fiscale de l'O.N.U.

Peu de temps avant le congrès de Rome en octobre 1948, le Directeur de la Division Fiscale de l'O.N.U., M. Paul Deperon, invitait l'IFA de participer dans une enquête sur l'imposition des entreprises et placements internationaux.

Cette enquête était mise dans la forme d'un questionnaire qui a plus particulièrement pour but d'obtenir des différents gouvernements des renseignements complets et détaillés sur l'imposition des personnes résidant à l'étranger, des ressortissants et avoirs étrangers ainsi que des transactions internationales par comparaison avec l'imposition des personnes résidant dans le pays même, des nationaux et des transactions purement nationales.

Le Conseil d'Administration de l'IFA et, à sa proposition, le congrès accueillaient avec plaisir l'invitation du Directeur de la Division Fiscale de l'O.N.U. Le Conseil trouvait disposés plusieurs groupements nationaux à participer à cette enquête. Cependant, l'exécution de cette tâche exige une collaboration étendue de tous les pays, donc aussi de ceux où il n'y a pas encore de groupement national.

Le secrétariat général attire l'attention des lecteurs de ce Bulletin au questionnaire imprimé dans l'annexe à ce numéro. (Informations de l'I.F.A.) Il espère recevoir bientôt des témoignages d'intérêt des membres de l'IFA.

I.

SHORT SURVEY OF YUGOSLAV TAX LEGISLATION

by

Dr. Ljubomir Dukanac,

Professor of political economics and public finance at
the University of Beograd.

The tax law

(Law of the Federal government, 26—XII—1946)

This basic law represents a sort of ,,fiscal constitution'' of the Yugoslav tax system; it fixes only the general principles of taxation and of distribution of tax receipts among different state authorities (federal, republican and local). It further prescribes the basic types of taxes to be levied in Yugoslavia, leaving their detailed elaboration to the respective competent legislative organs (the Federal parliament, the republican parliaments, the local popular committees).

The Law is divided into six chapters regulating the following subjects:

Ch. I — *General provisions* (Art. 1—4)

Defines the purpose of taxation, the tax duty, the types of taxes to be levied in Yugoslavia and the basic principles of their assessment and levy.

Ch. II — *Special provisions* (Art. 5—26)

Determines the general principles of the *General Sales Tax*, the *Income-Tax*, the *Succession and Donation Duty* and the *local contributions*.

These provisions settle, in general terms, the income (or property) to be taxed, the legislative competence of different state organs in this respect, the authority whose budget is to be fed by the receipts of these taxes and some other details.

Ch. III — *Tax Exemptions and Reductions* (Art. 27—30)

Ch. IV — *Assessment of Taxes* (Art. 31—38)

Ch. V — *Penal Provisions* (Art. 39—44)
Ch. VI — *Terms of Limitation* (Art. 45—47)
Ch. VII — *Final Provisions* (Art. 48—52)

On the ground of this law and within the limits of its provisions, the Federal government has passed special regulations for each of the four basic types of taxes, regulating therein in details the respective subjects, with the exception of some minor problems (f.i. the fixation of tax-rates, the regulation of the modes of tax-payments etc.), which enter into the legislative competence of the popular republics.

Regulation of the Federal government concerning the

Income-tax

(14—VIII—1948)

Chapter I — *General provisions* (Art. 1—3)

Art. 1 — Establishes five schedules under which different forms of income are taxed:

Liable to Sch. 1 are incomes of wage-earners and employers,
„ „ „ 2 „ „ „ farmers' households,
„ „ „ 3 „ „ „ cooperatives and their members,
„ „ „ 4 „ „ „ artisans' households,
„ „ „ 5 „ „ „ other professions and property.

Art. 2 — The imposition of a given income by one of the above mentioned schedules excludes its imposition by the other schedules of the income-tax. The same applies also to tax exemptions.

Art. 3 — This tax is not paid by state enterprises, state institutions, state authorities and social organisations and their enterprises.

Chapter II — *Planification of Tax Receipts* (Art. 4—6)

Art. 4 — The yearly amount of tax receipts to be collected is planned within the limits of the general economic plan, in accordance with the expected national income of the inhabitants. The sums thus due are apportioned among the popular republics.

Art. 5 — The popular republics apportion their shares among the districts of their respective territories.

Art. 6 — The share of each district is distributed among individual tax-payers, according to provisions of the income tax regulation.

Chapter III — *Special provisions* Art. 7—40)

Sch. 1) *Tax on the income of wage-earners and employers* (Art. 7—14)

Single returns from different sources of earned income are not cumulated but taxed separately by way of stoppage at the source. Only returns from unearned income of wage-earners are cumulated and taxed as a single income.

Exempted from this tax are special money prizes granted to exceptionally good workers, social insurance benefits and the like. Personally exempted are national heroes, diplomatic representatives and scholars.

The tax-rate is progressive and varies from 2%—20% of the assessed income.

Sch. 2) *Tax on the income of individual farmers' households* (Art. 15—25)

The total income of a farmers' household, with the exception of earned income and income derived from membership in a cooperative, on the territory of one district, is taxed cumulatively by a progressive tax. Allowances are granted for necessary expenses. Tax exemptions or reductions are granted to households of certain small farmers, further to those farmers who have had heavy abnormal expenses (f.i. for the reparation of war damages) and finally to some categories of farmers producing under geographically difficult conditions.

The tax-rate varies from 4,5%—35% of the assessed income.

Sch. 3) *Tax on the income of cooperatives and their members* (Art. 26—29)

The total income of a cooperative from its economic activity is liable to this schedule of the income-tax. The cooperative income which accrues to cooperative funds is taxed separately from the income accruing to individual members of the cooperative. The so-called „productive cooperatives" (agricultural cooperatives working on collectivist principles) are taxed upon their total yearly income, after deduction of sums accruing to funds for capital investment etc.

The tax-rate varies from 2,5%—15%.

Sch. 4) *Tax on the income of artisans' households* (Art. 30—34)

The households of artisans are liable to this schedule of the

income-tax with the total of their income derived from any income-yielding economic activity or property. Heavier taxed are those artisans who employ paid workers. Popular republics are authorized to grant reductions to those artisans who have had important expenses caused by illness of their members, as well as to artisans having to support children under-age, or grown-up members of the family, unable to work.

The tax-rate is progressive and varies from 7%—17% as a minimum (popular republics are authorized to determine the minimum and the maximum rate) to 34%—52% as a maximum.

Sch. 5) *Tax on the income of other professions or property* (Art. 35—40)

All the remaining persons, deriving their income from professions or property not mentioned above, are taxed on the total of their income from all sources. Popular republics are authorized to grant reductions to families with children under-age or with grown-up members unable to work, as well as allowances for important expenses caused by illness of the members of the tax-payers' family.

Exempted from this schedule of the income-tax are: interest and bounties on public loans, income from savings, income from houses built after World War II, etc.

The tax-rate is progressive and varies from 7%—52% of the assessed income.

Chapter IV — *General Principles of Assessment* (Art. 41—47)
Chapter V — *Penal Provisions* (Art. 48)
Chapter VI — *Objections* (Art. 49)
Chapter VII — *Terms of Limitation* (Art. 50—52)
Chapter VIII — *Final and Transitional Provisions* (Art. 53—59)

Regulation of the Federal Government concerning the

Succession and donation duty

(18—III—1947)

Though regulated by a federal legislative act, the Succession and Donation Duty is, from the budgetary point of view, a local tax, its receipts being destined to feed the budgets of districts and municipalities.

This regulation reposes on the principles established in the

Tax Law and gives a detailed and unique regulation of the subject.

The tax-rate is progressive and varies from 2%—70%, of the assessed value, according to the degree of relationship, the amount of direct taxes paid by the heir and the value of the inheritance.

Chapter I — *General Provisions* (Art. 1—4). Determines the subjective and objective tax liability.

Chapter II — *Tax Exemptions and Reductions* (Art. 5—8).

Chapters III-VII — *Assessment of the Tax and Tax-Rates. Penal Provisions, Terms of Limitation* etc. (Art. 9—34).

Chapter VIII — *Final and Transitional Provisions* (Art. 35—40)

Regulation of the Federal Government concerning the

General sales tax

(18—III—1947)

This regulation of the Federal government is unique for the whole territory of the Federative Popular Republic of Yugoslavia and its receipts enter into the Federal budget, with the exception of a certain amount, determined each year by the Federal assembly, which is left to the republican budgets.

Chapter I — *Object of the tax* (Art. 1—4). Liable to this tax is the sale of all products, except of basic agricultural products and of personal services.

Chapter II — *Tax Duty* (Art. 5)

Chapter III — *Tax-payer* (Art. 6—7)

Chapter IV — *Tax Exemptions* (Art. 8)

Chapter V — *Assessment of the Tax* (Art. 9)

Chapter VI — *Modes of Payment* (Art. 10—19)

Chapter VII — *Control and Inspection* (Art. 20)

Chapter VIII — *Penal Provisions* (Art. 21—28)

Chapter IX — *Liability* (Art. 29)

Chapter X — *Terms of Limitation* (Art. 30—31)

Chapter XI — *Objections* (Art. 32)

Chapter XII-XIII — *Final and Transitional Provisions* (Art.33-38)

The tariff contains a list of articles with the respective tax-rates.

III

GENERAL REVIEW OF NEW FISCAL LITERATURE
REVUE DES NOUVELLES PUBLICATIONS FISCALES

This is the right place to inform the readers of the Bulletin, that on request of the Netherlands Society for Fiscal Science the International Bureau of Fiscal Documentation is composing an international bibliography in the field of fiscal science in the broad sense of the word. Such bibliography is urgently needed and the Documentation Bureau is very pleased to accept this task. The main difficulty is to obtain a summary of the most important fiscal literature published all over the world. To this purpose the Documentation Bureau approached a great many institutions and publishers requesting them to give a list of the fiscal literature which appeared in their countries.

In most cases this request was met, and several books were sent to the Bureau. Although much material has been gathered in this way we urgently apply to our readers to be so kind as to give their co-operation to this work. Apart from pure fiscal works the bibliography will also contain works dealing with subjects closely connected with fiscal science. We presume we cannot withold from our readers a short survey of these books and therefore we will, apart from reviews of real fiscal works, give short anouncements every now and then of works of a different character which may be of importance for fiscalists. The first summary, concerning a number of American and English books, follows hereafter.

In the field of financial policy it is worth to mention: KENNETH MACKENZIE: *The Banking Systems of Great Britain, France, Germany and the United States*, (MacMillan & Co, London, 1947).

J. MERVIN PETERSON, DELMAS R. CAWTHORNE en PHILIPP H. LOHMAN: *Money and Banking* (Idem, 1948). Banking creates special problems in the field of taxation; a comparative survey of the banking systems, in a number of countries, the relations towards the private banks, the monetary systems, the position of commercial banks, questions concerning the money market, the value and the standard of money, inflation, rate of interest, the international financial reconstruction, the development of monetary matters, fiscal policy, these are a.o. the subjects discussed in these three works.

A special subject is discussed by REYNOLD E. CARLSON in his work: *British block grants and Central-Local Finance* (The John Hopkins University Studies in Historical and Political Science, Series LXV, no. 1, Baltimore, 1947) namely, financing of small legal entities. Here is touched the question of financial relations between the State and its sub-sections, a question which became of current interest in consequence of the war. An international investigation in this problem would be very interesting. Therefore this book contains valuable material for those interested in this subject.

The following works are of a more economic character. The war has had an important influence in the field of labour-conditions. Questions of labour productivity, full employment, wages-standard, and the influence of it on the price-level, are investigated in the book: A. C. PIGOU: *Lapses from full employment* (MacMillan & Co, London, 1945). Canadian problems are discussed in *Discharged, a commentary on civil re-establishment of veterans in Canada* by

ROBERT ENGLAND (MacMillan of Canada Ltd. Toronto, 1944), especially with regard to demobilized soldiers and their return to civilian life. Here it concerns special post-war difficulties of influence on the reconstruction of national economy, a problem closely connected with the question of fiscal policy. In this connection we should like to point on a number of works discussing the problem of controlled or free economy.

T. BALOGH, F. A. BURCHARDT, M. KALECKI, K. MANDELBAUM, E. F. SCHUMACHER, G. D. N. WORSWICK: *The Economics of full employment* (Basil Blackwell, Oxford, 1947) give a number of sketches about the causes of unemployment in a capitalistic economy. In this book a survey is given of the means to fight unemployment, such as: the granting of government subsidies, control of wages and prices, a redistribution of incomes etc. In *The Economic Problem in peace and war* (London MacMillan & Co, Ltd, 1947) three lectures held for the Marshall Foundation, by Professor LIONEL ROBBINS, Cambridge, are inserted. The author deals with the necessity of rationing goods during and after the war, and of maintaining controlled economy in transition period.

ABBA P. LERNER writes in *The Economics of Control* (The MacMillan Comp., New York, 1947) concerning controlled economy, the distribution of goods and incomes, production costs and capital investment, the unemployment and foreign trade in capitalistic and in controlled economy. The author compares simple production in collectivist economy, under imperfect competition and in the capitalistic and controlled economics. A special chapter deals with: an alternative formulation of the welfare equations: equality and proportionality. Two following chapters deal with the complex production. Much material is to be found concerning production factors and financial questions arising in trade and business.

How far is the State allowed to interfere with industrial enterprises? The problem of subsidies, nationalization of railways and mines, wages for piece-work, the admittance of young labourers and the function of intermediate trade is discussed by SAMUEL COURTAULD: *Government and Industry* with a preface by J. M. Keynes (MacMillan, London, 1942), while a strong opponent of controlled economy is JOHN JEWKES in his *Ordeal by planning* (idem, 1948). He is of the opinion that state control on industry is not impracticable as the stimulous to acquire a higher output is missing in big concerns. The author wonders whether it is advisable to form monopolies. In this book also the problem of non-employments comes up for discussion, while a summary is given of different groupes of supporters of controlled economy and the systems propagated by them. In this group we further mention: DAVID MCCORD WRIGHT, *The economics of disturbance* (MacMillan, New York, 1947) in which the fabrication of consumable articles and machines, the monetary friction resulting from it, the business cycle in capitalistic and socialized enterprises, the different forms of controlled economy are discussed. The work contains an appendix on income flow and prices.

The international trade and the economical relations between the states form a special category which at present, in view of the European Recovery Program is of current importance. See also the congress-reports of the International Fiscal Association written for its Congress in Rome in October 1948. For Great Britain the war supplied many problems. SAPERDON writes about this subject in *England's Service* (London, MacMillan, 1942). According to the author, at present the situation is thus, that no more, as before, the greater part of the national income was acquired from Great Britain's foreign trade, while in the mean time the Pound Sterling lost its dominating position on the money market. It is the author's opinion, that it has to be tried to return Great Britain its former position in world trade, by rising big concerns, if necessary with exchange of goods in case payment in money is impossible.

More of political interest is the work of R. F. HARROD: *A page of British Folly* (Idem, 1946), in which the relations arisen from the Atlantic Charter between America and England are discussed; the author pleads for the closest possible relations between both countries.

Then we draw attention to RALPH H. BLODGETT, PH. D.: *Comparative economic systems* (The MacMillan Comp. New York, 1948) a work of great importance for the present international economic relations. The following subjects are discussed a.o.: the limitation of production, value-theories, capitalistic and nationalized industry, comparison between the economic construction of America and that of dictatorial states, public finance, international trade.

To draw comparisons the book of P. T. ELLSWORTH: *Chile, an economy in transition* (idem, 1945) is interesting. The author discusses the economical difficulties after the depression of 1929 and the political background of it, the gradual development and the recovery of the country, a.o. by means of control on foreign trade, and a regulation of trade and industry.

A number of works we received have a bearing on the war and post-war economy. Thus a.o. W. F. CRICK: *An outline of wartime financial control in the United Kingdom*, Foreword by the Right. Hon. Sir H. Kingsley Wood, M. P. (MacMillan, London, 1941). The author discussed the radical alterations in economic life caused by the war. England's economic position was restored by raising savings, limitation of expenses for commodities of less vital importance, no-interest bearing loans, by which assets came at the disposal of trade and industry. Special attention is given to the arrangement of the flight of capital, a.o. by means of prohibition or limitation of investment in foreign countries, and to the measures which had to prevent that assets spread all over the world fell into the hands of the enemy.

Three books of PAUL EINZIG are also of importance for knowledge of the war- and postwar economy, viz.

1. *Economic Warfare* 1939—1940 (MacMillan, London, 1941)
2. *Can we win the peace?* (id. 1942)
3. *Appeasement before, during and after the war* (id. 1942).

In these books the author first deals with the great importance which lay for Great Britain in the economic warfare, defensive as well as offensive which did not get full credit at first.

In the second book the author pleads for an economic as well as military disarmament of Germany, without bringing the population to permanent poverty in order to prevent for good a possible re-armament — which was made possible in 1918 because the treaty of Versailles had omitted to settle the economic disarmament. The contents of the last book are based upon the necessity to make Germany dependent on foreign countries for procuring raw materials for every branch.

Here we also mention the collection of essays prepared by the Oxford Institute of Statistics (Basil Blackwell, Oxford, 1947): *Studies in War economics*, in which a. o. the following subjects are discussed: economic mobilization, inflation, the burden of national debt, rationing incomes and expenses of the labour-class. This book consists of 53 contributions by: Jan Bowen, G. D. N. Worswick, T. Balogh, J. Steindl, F. A. Burchardt, M. Kalecki, H. Durant, J. Goldmann, J. L. Nicholson, S. Moos, T. Schulz, G. H. Daniel, P. Ady. The economic policy with regard to business-life is a problem in itself. The reader interested will find interesting data concerning this subject in the following publications: JOSEPH STEINDL: *Small and big business, economic problems of the size of firms* (Basil Blackwell, Oxford, 1947). The author starts discussing the theories of Marshall, and investigates whether big or small enterprises are preferable. In his opinion the possibility of expansion of enterprises is limited in connection with risks and searching for sufficient outlet. In this

connection the problems with regard to invested capital and the financial reconstruction of enterprises come up for discussion. A special chapter is devoted to the financial structure of firms and the problems of risk. Besides, a survey is given of the situtation concerning this item, in the U.S.A. over the years 1914—1937.

F. K. MANDELBAUM assisted by J. R. L. SCHNEIDER: *The Industrialization of backword areas* (idem 1947) and M. P. FROGARTY: *Plan your own industries* (idem 1947) deal with problems of industrialization of hitherto mainly agricultural territories, the local and regional development of organizations for industry, the capital investments which are necessary for the establishment of new enterprises, with (K. Mandelbaum) statistical data concerning foreign participations, which subject is of current interest for those countries which suffered in the war.

A special subject is dealt with by GEORGE J. STIGLER in *The theory of Prices* (MacMillan, New York, 1947) who discusses a.o. the problem of competition, the relation between demand and supply, the production-costs in the system of imperfect competition, the distribution of goods, and the problems of production of different goods in one enterprise.

The books mentioned before all have a bearing on more or less special subjects. We also received a number of works in the field of economics in general.

FRED. ROGERS FAIRCHILD, EDGAR STEVENSON FURNISS, NORMAN SYDNEY BUCK: *Elementary Economics*, 2 vols., 5th impression (MacMillan Comp. New York, 1948) a textbook for undergraduates, in which the general principles of economics are clearly explained. Of the same authors, we mention: *Economics* 8th impr. (idem 1947) a less elementary work, in which a.o. the following subjects are discussed: the scientific bases of economics, production factors and costs, the question of competition, the relation between monopolized and nationalized enterprises. This work contains a detailed discussion concerning fiscal questions. The system of income tax in view of general tax systems, and the influence on investment of capital. The authors plead for lower income tax on dividends. Also a general contemplation is devoted to public finance, while there are detailed chapters concerning money and price theories, banking, foreign trade and labour questions.

The following two works are devoted to international economical problems; ERNEST MINER PATTERSON PH. D.: *An introduction in world economics* (idem 1947) deals a.o. with the following subjects: the population of different countries, migration, natural resources of prosperity, the world trade and transfer of capital connected herewith, the consequences of the second world war. A special chapter is devoted to the Potsdam declaration on Reparations from Germany. Concerning international trade P. T. ELLSWORTH, PH. D. writes in *International Economics* (MacMillan, New York, 1948) This work is divided into two parts. Part. I deals with the theory of international trade, which begins with an historical survey in which different theories are pointed out. The author deals with the equilibrium theory with respect to international trade, describes foreign exchange in two chapters, and in the following three: the mechanism of international adjustment under gold standard and paper- currency conditions. The second part deals with protection, tariff-walls and monopolies. The author discusses the monetary problems which are the consequences of it, and he pleads the necessity to self-supporting.

Finally we mention: *Selections from the Encyclopaedia of the Social Sciences* under editorship of EDWIN R. SELIGMAN and ALVIN JOHNSON (idem 1947) in which numerous contributions are collected. It is impossible to give a survey of the important subjects which are discussed. The work came into being because of the need of those who were not in the opportunity to buy the whole encyclopaedia of social sciences. This work reprinted in 1947 in one volume will have general interest.

Before ending this exposé we would like to draw the attention to some interesting publications: there is the edition of JOHN LOCKE's, The *second treatise of civil government* edited by J. W. Gough (Basil Blackwell, Oxford 1946) The editor gives an introduction in XXXVI pages. By MacMillan, London, a small work of LORD KEYNES was published: *The balance of payments of the United States*, of which many people will like to take notice. It is reprinted from the Economic Journal, Vol. LVI, no. 222, June, 1946.

A less known subject is the analysis given by *V.K.R.V. Rao* in his "*The national income of British India* 1931—1932" (idem 1940) After a definition of the conception national income the author gives some interesting data concerning national income in a country in which the economic structure is much more complicated than in most western countries. He describes the method of valuation of yields of agriculture and other sources of income after which follows a survey of the wages in civil service, in trade and industry and of domestic staff etc. Many statistics end this work.

In his *Economic Geography of Canada* (MacMillan, Toronto, 1947) A. W. CURRIE gives a survey of the sources of industrie, soil production, natural products and climate in different parts of Canada. A description of the economic history of U.S.A. (history from the independance, growth of capitalism in a territory where provincialism was dominating, the consequences of the crisis of capitalism, the New Deal) is to be found in *America's economic growth*, by FRED ALBERT SHANNON (MacMillan, New York, 1947).

Finally a book mainly of interest for accountants: VIVIAN H. FRANK, M.A.: *Company Accounts, the Law and practice relating to profit and loss accounts, balance sheet and group accounts.* (Sweet & Maxwell, London, 1948).

The author describes the importance of correct and trustworthy balance sheets, profit and loss accounts etc. Subjects like: reserves, responsability, depreciation and writings-off, capital investment etc. are clearly discussed. Inserted are balance sheets of several big concerns.

We had to keep ourselves in hand when writing down these short enumerations: the material to be found in the above mentioned books is utterly interesting, the scientific discussions and conclusions in many of these works are of such character, that we felt tempted to go much further into these matters. However, as the Bulletin for International Fiscal Documentation only deals with questions of fiscal character, the utmost limitation had to be taken into account, which we hope our readers will forgive us. S.

Income Tax in South Africa 1948—1949 by JOHN B. ELLIS, M. A. (Cantab.) & JOHN S. MURRAY, A.C.I.S., F.I.S. (S.A.) (Shuter & Shooter, Pietermaritzburg, 1948)

This booklet, although small, (32 pages) is very valuable, as it gives us a clear summary of fiscal law in South Africa. The authors deal with the taxability of individuals and companies (as to the private companies the authors refer to a change in taxation applicable as from 1949) not only with regard to the Union taxes, but also for provincial taxes. It is clearly explained to which taxes one is liable and in which way the tax due can be computed. Numerous examples serve for explanation. Apart from the taxes on income, in the appendix a survey is given of the rates of death and succession duties, transfer duties, Stock Exchange registration and brokerage fees.

A. v. K.

IV

TRAITÉ HOLLANDO-BELGE PREVENTIF DE LA DOUBLE IMPOSITION EN MATIÈRE DE PRÉLÈVEMENTS SUR LE CAPITAL.

Ière partie.

DEROGATIONS A LA LOI BELGE.

par

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Introduction.

La loi belge du 17 octobre 1945, établissant un impôt sur le capital, assujettit à un prélèvement uniforme de 5 p.c. certains éléments bien déterminés du patrimoine des personnes physiques et morales. Ces éléments varient selon qu'il s'agit de ressortissants belges, c.à.d. de personnes domiciliées ou établies en Belgique, ou de ressortissants étrangers, c.à.d. de personnes domiciliées ou établies dans un pays autre que la Belgique.

La qualité de ressortissant est déterminée en fonction du domicile fiscal. Le domicile fiscal des personnes physiques est au lieu de leur résidence normale entendue dans le sens de foyer permanent d'habitation, et celui des sociétés et associations qui constituent une individualité juridique distincte de la personne des associés est au lieu de leur siège social effectif (article 4 du traité).

Toutefois, les personnes ayant leur domicile en Belgique qui se sont réfugiées aux Pays-Bas en raison d'événements de guerre, sont considérées comme l'ayant conservé, à moins qu'il ne soit établi qu'elles l'aient transporté aux Pays-Bas.

De même, les personnes ayant leur domicile aux Pays-Bas et qui se sont réfugiées en Belgique en raison des événements de guerre, sont considérées comme ayant conservé leur domicile aux Pays-Bas à moins qu'il ne soit établi qu'elles l'aient transporté en Belgique.

L'impôt est calculé d'après la situation au 9 octobre 1944.

En ce qui concerne les personnes domiciliées ou établies dans un pays autre que la Belgique, la loi belge assujettit à l'impôt:

1° les immeubles situés en Belgique (articles 3 et 4 de la loi);

2° les fonds de commerce ou d'industrie exploités en Belgique (article 12 de la loi);

3° les exploitations agricoles dont le siège se trouve en Belgique (article 11 de la loi);

4° les créances garanties par un privilège ou une hypothèque sur un immeuble situé en Belgique ou sur un navire ou bateau immatriculé en Belgique (article 9 de la loi);

5° les créances résultant d'un contrat de prêt ou d'ouverture de crédit, qui ne sont pas garanties comme il est prévu sous le 4°, lorsque le débiteur est une personne habitant la Belgique (article 9 de la loi);

6° les comptes et dépôts d'argent libellés en monnaie belge auprès des établissements financiers et des sociétés belges ainsi qu'auprès des sièges belges d'établissements financiers étrangers (article 7 de la loi);

7° les contrats d'assurance et les contrats de capitalisation souscrits auprès des entreprises d'assurances sur la vie et des entreprises de capitalisation ayant en Belgique un siège quelconque d'opérations (article 8 de la loi);

8° les actions et parts dans les sociétés belges (articles 6 et 12 de la loi); ici, la taxation n'a lieu que de façon indirecte, par voie d'imposition de la société elle-même.

Quant aux ressortissants belges, ils sont imposés sur les mêmes avoirs que les étrangers, et, en outre, sur les éléments suivants de leur patrimoine:

9° les titres autres que les actions et parts des sociétés belges (article 10 de la loi);

10° les inscriptions nominatives au Grand Livre de la Dette Publique Belge ou au Grand Livre de la Dette Publique Congolaise (article 10 de la loi);

11° les avoirs en or ou en monnaie étrangère, les biens situés à l'étranger et les valeurs sur l'étranger (article 10 de la loi). Cette nomenclature est très vaste et comprend notamment: les biens meubles et immeubles situés à l'étranger, les actions et parts dans

les sociétés étrangères, les créances contre des débiteurs domiciliés ou établis à l'étranger, les créances libellées en monnaie étrangère et les billets de banque étrangers.

Par suite, dans le système de la loi du 17 octobre 1945, les personnes ayant leur domicile aux Pays-Bas sont assujetties en Belgique à l'impôt pour leurs avoirs énumérés sous les nos 1 à 8 ci-dessus, et les ressortissants belges subissent l'impôt en Belgique tant sur leurs avoirs belges que sur leurs avoirs aux Pays-Bas (v. n° 11 ci-dessus).

Les Pays-Bas ayant également établi un impôt sur le patrimoine tant à charge des ressortissants néerlandais que des ressortissants belges (loi néerlandaise du 11 juillet 1947), les avoirs belges des ressortissants néerlandais et les avoirs aux Pays-Bas des ressortissants belges sont donc exposés à être taxés par chacun des deux pays.

Le traité qui fut conclu le 25 septembre 1948 entre les Gouvernements néerlandais et belge a pour but de prévenir cette double imposition.

Dispositions dérogeant à la loi belge.

L'exposé qui suit a trait aux dispositions du traité qui dérogent à la loi belge du 17 octobre 1945 et aux arrêtés pris en exécution de cette loi.

Sous réserve de l'application de l'article 3 du traité (concernant les sociétés belges régies par l'article 6 de la loi du 17 octobre 1945), celui-ci ne fait aucune distinction entre les personnes physiques et les personnes morales.

Quant à la notion du domicile fiscal qui fut adoptée pour l'application du traité, elle est exactement la même que celle qui fut admise en Belgique pour la perception de l'impôt sur le capital. Il n'y a là aucune dérogation à la loi belge.

Pour éviter toute confusion, nous envisagerons successivement la situation des ressortissants néerlandais et celle des ressortissants belges.

I. RESSORTISSANTS NEERLANDAIS.

A. *Exonération générale.*

L'article 1er du traité restreint la perception de l'impôt belge sur le capital à charge des ressortissants néerlandais aux seuls éléments suivants de leur patrimoine:

1° les immeubles situés en Belgique;

2° les fonds de commerce ou d'industrie exploités en Belgique. A cet égard le fonds de commerce ou d'industrie comprend notamment le matériel, les marchandises, le droit au bail, la clientèle, les brevets et marques de fabrique et autres éléments immatériels, ainsi que les créances, titres et dépôts en banque qui en dépendent (art. 1er, litt. b., 2e al.).

Dans l'esprit des auteurs du traité, cette disposition vise également les exploitations agricoles;

3° les créances garanties par un droit d'hypothèque ou autre droit réel sur un immeuble situé en Belgique.

Il s'ensuit que les avoirs suivants appartenant à des ressortissants néerlandais sont exonérés de l'impôt belge sur le capital:

a) les comptes et dépôts en argent belge auprès des sociétés et établissements financiers belges et auprès des sièges belges d'établissements financiers étrangers, ceci par dérogation à l'article 7 de la loi belge du 17 octobre 1945;

b) les contrats d'assurance et les contrats de capitalisation souscrits auprès des entreprises d'assurances sur la vie et des entreprises de capitalisation, ceci par dérogation à l'article 8 de ladite loi;

c) les créances qui ne sont pas garanties par une hypothèque ou autre droit réel sur un immeuble situé en Belgique, ceci par dérogation à l'article 9 de la même loi. Cette disposition vise non seulement les créances purement chirographaires mais aussi celles qui sont garanties par un droit de privilège ou d'hypothèque sur un navire ou bateau immatriculé en Belgique.

L'exemption n'est toutefois pas applicable et le droit commun reprend son empire si les avoirs dont question sous les litt. a, b et c ci-dessus, font partie d'un fonds de commerce ou d'industrie exploité en Belgique. En effet, aux termes du 2ème alinéa de l'article 1er, litt. b, du traité, reproduit ci-dessus, le fonds de commerce ou d'industrie comprend notamment . . . les créances et dépôts en banque qui en dépendent. Ainsi, le compte ouvert à une banque belge au nom du siège belge d'une société néerlandaise serait assujetti en Belgique à l'impôt sur le capital.

Quant aux actions et parts dans les sociétés belges, la situation varie selon la nature de la société:

1) *Sociétés anonymes, sociétés en commandite par actions et sociétés en commandite simple dont l'avoir social au* 9 *octobre* 1944 *atteint ou dépasse* 10.000.000 *de francs.*

Aux termes de l'article 3 du traité, celui-ci ne porte pas préjudice à l'application de l'article 6 de la loi belge du 17 octobre 1945 qui prévoit l'imposition du patrimoine intégral des sociétés dont il s'agit. Il en résulte une imposition indirecte des actionnaires et participants néerlandais qui subsiste pour le tout.

2) *Autres sociétés belges ayant la personnalité juridique.*

En principe, ces sociétés sont imposées sur l'entièreté de leur patrimoine, mais elles bénéficient, le cas échéant, de l'exonération en Belgique de leurs avoirs aux Pays-Bas (voy. n° II ci-après).

Les associés néerlandais qui subissent indirectement l'impôt payé par la société, sont donc imposés sur une quotité ou sur l'entièreté de leurs intérêts dans les dites sociétés selon qu'elles possèdent ou non des avoirs aux Pays-Bas.

Un exemple fera mieux comprendre la portée de ce qui précède: Un ressortissant néerlandais possède des parts d'une société belge dont la moitié de l'exploitation se trouve aux Pays-Bas. Par suite de l'exonération de cette moitié de l'impôt belge, les associés ne seront imposés indirectement en Belgique que sur la moitié de la valeur de leurs parts.

B. *Exonération spéciale.*

L'article 7 du traité étend l'exonération prévue par l'article 2, § 1er, de la loi belge en faveur des pouvoirs publics belges, des établissements publics et des établissements d'utilité publique belges et des sociétés et associations formées entre les pouvoirs publics belges, aux institutions néerlandaises similaires.

C'est ainsi que l'article 7 du traité exonère de l'impôt belge sur le capital l'Etat néerlandais, les provinces, les communes et les autres institutions néerlandaises de droit public ainsi que les établissements publics, les établissements d'utilité publique et les personnes morales dont les actionnaires, associés, participants ou membres sont exclusivement ou presque exclusivement des institutions néerlandaises de droit public.

Le même article prévoit l'exemption pour les biens et avoirs appartenant aux personnes physiques ou morales ayant leur domicile

fiscal aux Pays-Bas, lorsqu'il est prouvé qu'à la date du 9 octobre 1944 ces biens et avoirs étaient affectés directement et définitivement aux besoins d'un culte public ou à des fins de philanthropie, d'éducation, d'enseignement, de prévoyance sociale ou de défense professionnelle. Il s'agit ici de la même exonération que celle prévue par l'article 2, § 2, 2°, de la loi belge en faveur des ressortissants belges.

II. RESSORTISSANTS BELGES.

Notons tout d'abord que par application de la notion du domicile fiscal, il y a lieu de considérer comme ressortissants belges, non seulement les personnes de nationalité belge mais aussi les personnes de nationalité néerlandaise résidant effectivement en Belgique à la date du 9 octobre 1944.

Nous avons vu que les ressortissants belges sont assujettis en Belgique à l'impôt sur le capital sur leurs avoirs étrangers et notamment sur leurs avoirs aux Pays-Bas (art. 10 de la loi belge du 17 octobre 1945).

Par dérogation à cet article, l'article 1er du traité réserve l'imposition de certains de ces avoirs aux Pays-Bas:

Il en est ainsi des avoirs suivants:

1° les immeubles situés aux Pays-Bas;

2° les fonds de commerce ou d'industrie exploités aux Pays-Bas. A cet égard le fonds de commerce ou d'industrie comprend notamment le matériel, les marchandises, le droit au bail, la clientèle, les brevets ou marques de fabrique et autres éléments immatériels, ainsi que les créances, titres et dépôts en banque qui en dépendent;

3° les créances garanties par un droit d'hypothèque ou autre droit réel sur un immeuble situé en aux Pays-Bas.

Il en résulte que ces avoirs sont exonérés de l'impôt belge sur le capital.

Toutefois, ainsi qu'il a été signalé ci-dessus, cette exemption n'est pas applicable aux dits avoirs appartenant à des sociétés belges visées par l'article 6 de la loi belge du 17 octobre 1945, qui sont et restent imposées sur l'intégralité de leur patrimoine, en ce compris tous leurs avoirs aux Pays-Bas. Dans ce domaine, il n'a pas paru possible d'éviter la double imposition eu égard à la différence fondamentale existant entre les systèmes de perception en vigueur dans chacun des deux pays.

TRAITÉ HOLLANDO-BELGE PREVENTIF DE LA DOUBLE IMPOSITION EN MATIÈRE DE PRÉLEVEMENTS SUR LE CAPITAL

2 ième partie.

DÉROGATIONS À LA LOI NÉERLANDAISE.

par

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Introduction.

La convention, qui a été conclue le 25 septembre 1948 entre la Belgique et les Pays-Bas, se rapporte exclusivement, en ce qui concerne la législation néerlandaise, au prélèvement sur la fortune (loi du 11 juillet 1947). L'impôt néerlandais sur l'accroissement de la fortune n'a pas encore formé le sujet d'un traité entre les deux pays.

Il ne sera pas nécessaire de souligner l'importance de cette convention. Non seulement la double imposition internationale devient plus grave à mesure que les impôts, qui l'entraînent, sont plus lourds, mais aussi le nombre des cas de double imposition à cause des prélèvements est particulièrement grand, parce que le législateur national a tâché au moyen de fictions et de méthodes spéciales d'assujettissement objectif, de tendre des filets aussi large que possible et de faciliter l'exécution de l'impôt.

La convention modifie l'imposition néerlandaise sur les points suivants:

I. La notion du domicile (art. 4 et 5 de la convention).

II. L'assiette de l'impôt (art. 1, 2 et 6 de la convention); nous traitons sous ce paragraphe aussi la méthode suivie pour éviter la double imposition.

III. Certaines exemptions particulières sont accordées (art. 7 de la convention).

Les modifications discutées sous I et II ont pour but d'éviter la

double imposition; les modifications mentionnées sous III visent à faire appliquer par rapport à l'impôt néerlandais des exemptions, accordées dans la loi belge.

Qu'il soit remarqué déjà ici que la convention n'a rapport qu'à des personnes domiciliées soit en Belgique, soit aux Pays-Bas.

I. *La notion du domicile.*

L'importance fondamentale de la notion du domicile pour la détermination de l'assiette de l'impôt justifie la préséance de ce sujet.

La loi néerlandaise distingue:

a. les contribuables domiciliés aux Pays-Bas le 1er janvier 1946 (seulement personnes physiques), dont toute la fortune aux Pays-Bas et à l'étranger est soumise à l'impôt;

b. les contribuables étrangers (personnes physiques ou morales), qui ne sont assujettis à l'impôt que du chef de leurs avoirs néerlandais.

Le domicile selon la loi néerlandaise.

Le domicile est jugé en principe selon les circonstances, comme il est d'usage dans la législation néerlandaise en matière d'impôts directs. Cette notion usuelle du domicile est cependant élargie considérablement par quelques fictions légales. L'art. 4 de la loi du 11 juillet 1947 contient entre autres les dispositions suivantes:

— on considère comme ayant son domicile fiscal aux Pays-Bas celui qui après le 30 avril 1939, mais avant le 10 mai 1940 a quitté le pays et était encore vivant au commencement de 1946, à moins qu'il puisse démontrer de façon convaincante qu'il a quitté le pays en rapport avec des occupations qui nécessitent en général le transfert de domicile, ou qu'au moment du départ il avait l'intention positive de ne pas revenir s'établir dans le pays dans trois ans;

— est considéré comme ayant son domicile fiscal aux Pays-Bas celui qui après le 9 mai 1940, mais avant le commencement de 1946 a quitté le pays et était encore vivant à cette date.

En outre l'article mentionné contient la disposition que toutes les personnes morales, érigées d'après le droit néerlandais, sont censées être établies aux Pays-Bas. Puisque les personnes morales ayant leur domicile aux Pays-Bas ne sont pas assujetties à l'impôt,

il s'ensuit qu'une personne morale, érigée selon le droit néerlandais, est exempte de l'impôt, même si elle a son domicile réel à l'étranger et possède des biens immeubles situés aux Pays-Bas.

Remplacement de cette notion par le domicile réel; conséquences pour les personnes physiques.

L'article 4 de la convention remplace cette large notion du domicile par une notion réelle. Les dispositions de cet article important rendent impossible la double imposition à cause de différence de criterium à l'égard du domicile du contribuable — supposé toutefois, ce qui n'est pas douteux, que les différends éventuels entre les administrations des deux pays soient arrangés d'une façon satisfaisante.

Pour les personnes physiques cette modification dans la notion du domicile ne peut être que favorable. Pour ces personnes, pourvu qu'elles aient leur domicile réel en Belgique, la convention comporte l'exonération de leurs biens et avoirs néerlandais, excepté ceux énumérés dans l'article 1er, qui restent naturellement soumis à l'impôt néerlandais.

Conséquences pour les personnes morales.

Pour les personnes morales l'article 4 a un tout autre effet. L'article écarte — à l'égard des personnes ayant leur siège social effectif en Belgique — la fiction mentionnée ci-dessus que les personnes morales, érigées selon le droit néerlandais, auraient toujours leur domicile aux Pays-Bas. Ce faisant il ouvre la possibilité qu'une telle société ou association, ayant son domicile fiscal en Belgique, soit assujettie — comme contribuable étranger — à l'impôt néerlandais du chef des possessions faisant partie d'une entreprise exploitée aux Pays-Bas, d'immeubles situés aux Pays-Bas, etc. Une partie de ses possessions serait alors soumise aux deux prélèvements extraordinaires néerlandais, car la loi relative à l'impôt sur l'accroissement de la fortune contient — de même que la loi relative au prélèvement sur le capital — la fiction (pas atteinte par la présente convention) que toutes les personnes morales, érigées selon le droit néerlandais, sont établies aux Pays-Bas, ce qui a pour effet qu'elles sont assujetties pour toute leur fortune à l'impôt sur l'accroissement de la fortune. Cette situation est certainement

contraire à la volonté du législateur néerlandais. Aussi on peut s'attendre à une prévision complémentaire à ce sujet dans la convention qui aura rapport à l'impôt sur l'accroissement de la fortune.

Le texte de l'article 4 est conforme au texte de l'article 1, § 2, de la convention entre la Belgique et les Pays-Bas du 20 février 1933. Les fondations ne sont pas nommées, de sorte que l'article 4, au contraire des articles 1 et 2, ne regarde pas cette catégorie de personnes morales. Il en résulte qu'une fondation, érigée selon le droit néerlandais mais établie en Belgique, ne peut pas être imposée pour ses immeubles etc. situés aux Pays-Bas; elle garde la position fiscale qu'elle avait avant la convention.

Réfugiés de guerre.

L'article 5 de la convention se rapporte aux personnes qui, ayant leur domicile fiscal dans un des deux Etats, se sont réfugiées dans l'autre en raison des événements de la guerre. L'article ne modifie pas essentiellement les dispositions de l'article 4, car la présomption, que l'émigration n'a pas amené un changement de domicile, peut être réfutée par la preuve du contraire.

II. *L'assiette de l'impôt.*

Les deux impôts, qui forment le sujet de la convention, connaissent tous les deux l'assujettissement selon le principe du domicile et l'assujettissement selon le principe de la territorialité. Cette circonstance entraîne inévitablement beaucoup de cas de double imposition internationale. La convention a l'effet heureux que cette double imposition sera évitée en général d'une façon satisfaïsante. Nous discuterons ci-dessous successivement les effets pour les diverses catégories de contribuables.

A. *Personnes fiscalement domiciliées aux Pays-Bas.*

(exclusivement les personnes physiques; les personnes morales n'étant pas soumises à l'impôt). Ceux qui sont domiciliés aux Pays-Bas, mais possèdent des biens situés en Belgique, trouveront dans l'article premier de la convention plusieurs dérogations à la loi néerlandaise, qui seront certainement bien reçues. Ces dérogations, qui résultent de l'application réciproque du principe de la territorialité, portent sur:

les *immeubles* situés en Belgique.

les *créances garanties par un droit d'hypothèque* ou autre droit réel sur des immeubles sis en Belgique. Par contre les créances néerlandaises garanties par un droit d'hypothèque sur un bateau ou navire immatriculé en Belgique restent soumises à l'impôt néerlandais, et sont exonérées en Belgique.

les *fonds de commerce ou d'industrie* exploités en Belgique. A bon droit la disposition n'exige pas l'exploitation par un établissement stable: la loi néerlandaise non plus ne le demande pas. L'énumeration d'éléments du fonds de commerce ou d'industrie qu'on trouve dans l'article premier est reprise à la convention franco-belge relative aux prélèvements sur le capital.

les actions dans des sociétés anonymes ou sociétés en commandite par actions belges (autres que celles visées à l'article 2, § 1er de la loi belge, voir pour cet article les exemptions ci-dessous) et les parts dans des sociétés en commandite simple dont l'avoir social au 9 octobre représentait une valeur de 10 millions de francs belges ou plus. Les actionnaires dans les sociétés belges subissent, comme on sait, une imposition indirecte et par conséquent impersonnelle; cette technique rend impossible les exemptions. Les négociateurs néerlandais ont reconnu cette difficulté: quoiqu'il s'agisse ici de biens qui sont imposés d'ordinaire selon le principe du domicile, le fisc néerlandais s'est retiré. Ce résultat est réalisé par l'emploi du mot „indirectement" dans l'article 6, ce qui vise sans doute à l'imposition belge des actions.

Méthode suivie afin d'éviter la double imposition.

ar rapport aux contribuables ayant leur domicile aux Pays-Bas le systèmedu rabais (nommé aussi celui de la réduction) est suivi: l'impôt néerlandais est computé sur l'ensemble de la fortune, y compris biens et avoirs en Belgique; ensuite l'impôt dû directement ou les indirectement en Belgique en est déduit (article 6). L'article ne contient pas une disposition spéciale pour l'associé néerlandais dans une société en nom collectif belge (qui est personne morale en Belgique), mais aussi cet associé pourra profiter, d'après notre avis, du mot „indirectement" pour faire imputer sur son impôt personnel 5 p.c. du montant pour lequel son fonds de commerce belge est pris en considération aux Pays-Bas.

Est-ce que le fisc néerlandais imputera le même pourcentage sur

l'impôt du possesseur d'actions belges? Calculé exactement l'impôt belge, dû indirectement par l'actionnaire, n'est que 1/21 ou environ 4¾%. Nous nous y attendons que le fisc néerlandais aura le geste d'imputer 5 p.c.

Transition de biens entre le 9 *octobre* 1944 *et le* 1*er janvier* 1946.

En ce qui concerne la plupart des biens une transition entre les dates que sont normatives pour les deux impôts n'a aucune conséquence remarquable. De même qu'avant la convention fût conclue la possibilité se présente qu'en cas de décès entre ces dates le contribuable a été imposé en Belgique du chef de biens pour lesquels, apres sa mort, son héritier néerlandais est imposé aux Pays-Bas, et il est resté également possible que, dans le cas opposé, la fortune n'est frappée dans aucun des deux Etats. Mais après la conclusion de la convention la première possibilité est restreinte; elle ne se présente plus en tant que l'héritage consiste en immeubles situés en Belgique ou aux Pays-Bas, en créancies garanties par hypothèque sur des immeubles situés dans un de ces Etats, ou en fonds de commerce ou d'industrie y exploités. Car dans ces cas la double imposition est rendu à peu près impossible par l'application déjà traitée du principe de la territorialité. C'est seulement la position d'actionnaires en sociétés belges, imposées en Belgique, qui est remarquable, à savoir si une personne domiciliée aux Pays-Bas a acquis les actions, entre les dates mentionnées, d'un compatriote. Au cas que les actions aient été heritées, le droit du héritier ou légataire à la réduction, pourvue par l'article 6 de la convention, ne nous semble pas douteux. Mais si les actions ont été acquises à titre onéreux (les cas ne seront pas fréquents) après que le projet de loi belge relatif à l'impôt sur le capital était devenu public, ou peut soutenir que ni le vendeur, ni l'acheteur n'ont droit à la réduction: car l'un n'a plus les actions (voir la fin de l'article 6) et l'autre n'a pas subi, directemènt ou indirectement, l'impôt. Peut-être l'administration néerlandaise — la difficulté ne concerne pas la Belgique — se chargera de la tâche de trouver en l'espèce une solution satisfaisante.

B. *Personnes fiscalement domiciliées en Belgique.*

(personnes physiques et personnes morales, y compris les fondations)

Selon la loi néerlandaise les personnes ayant leur domicile à l'étran-

gér ne sont soumises à l'impôt que pour les biens et avoirs suivants:

les immeubles situés aux Pays-Bas;

les créances garanties par hypothèque sur un immeuble situé aux Pays-Bas;

les possessions, autres que celles mentionnées cidessus, faisant partie d'une entreprise exploitée ou d'une profession exercée aux Pays-Bas;

possessions provenant de mise de fonds en commandite dans une entreprise exploitée ou une profession exercée aux Pays-Bas et tous les autres avoirs — sauf les valeurs de bourse — dont le produit consiste en tout ou en partie dans une participation dans le produit de telle entreprise ou profession.

La loi connaît en outre une mesure de retorsion. Mais cette disposition n'est applicable que quand un autre Etat lève un impôt similaire au prélèvement sur le capital d'après la situation entre le 30 avril 1945 et le 1er mai 1947. Or l'impôt belge frappe le patrimoine à la date du 9 octobre 1944.

L'article premier de la convention confirme, dans des mots différents, l'imposabilité des biens et avoirs énumérés ci-dessus, sans restreindre ou élargir l'étendue de l'assujettissement. Ici le fisc belge se retire; il n'y a pas de dérogation à la loi néerlandaise. Peut-être on remarquera que la convention ne parle pas des dettes dont la défalcation est permise par la loi néerlandaise. Mais il n'est pas douteux que la convention ne change rien à cet égard. Néanmoins l'article premier de la convention n'est pas sans aucune importance pratique pour la position fiscale des personnes domiciliées en Belgique envers l'impôt néerlandais. Car l'article crée une imposabilité limitée dans ces cas mentionnés sous I où l'article 4 donne un domicile belge à une société ou association, érigée selon le droit néerlandais.

L'absence de concessions du coté néerlandais en ce qui concerne l'imposition des personnes domiciliées en Belgique ne peut pas étonner: le législateur néerlandais s'était restreint tout de suite, à l'égard des personnes ayant leur domicile à l'étranger, à des objets qui font partie du territoire ou y sont liés étroitement.

C. *Personnes physiques ou morales, ayant leur domicile dans d'autres Etats.*

Ces personnes ne profitent pas de la convention; l'effet de la

convention se borne aux personnes domiciliées en Belgique ou aux Pays-Bas. Une société française, dont la succursale néerlandaise possède des actions belges, reste donc soumise aux deux impôts et ne peut pas invoquer l'article 6 de la convention.

III. *Exemptions subjectives et objectives.*

L'article 7 a pour but, de même que les autres articles de la convention, la coordination des deux prélèvements. Mais cette fois ce but n'est pas atteint par l'allocation des objets de l'impôt, mais par un échange d'exemptions. Ce n'est pas la double imposition, mais la simple imposition de certains sujets et objets qu'on a pris soin d'éviter.

La première phrase de l'article 7 contient les dérogations à la loi néerlandaise.

Exemptions subjectives.

Par dérogation à la loi néerlandaise, qui ne connaît aucunes exemptions de personnes morales, sont exempts l'Etat belge et les personnes morales visées à l'article 2, § 1er, de la loi belge, à savoir:

Art. 2, § 1er: La colonie, les provinces, les communes, les établissements publics et les établissements d'utilités publique belge et congolais, la société nationale des Chemins de Fer belges, la Société nationale des Chemins de Fer vicinaux, la Société nationale des Distributions d'Eau, La Société nationale des Habitations et Logements à bon marché, et les sociétés locales ou régionales agréées par elle, les sociétés d'Habitations ouvrières et les sociétés de crédit régies par la loi du 9 août 1889 et du 30 juillet 1892, la société coopérative „Fonds du Logement de la Ligue des Familles nombreuses de Belgique", la Société nationale de la Petite Propriété terrienne et les sociétés locales ou régionales agréées par elle, la société anonyme „Credit communal de Belgique", la Société anonyme du Canal et des installations maritimes de Bruxelles, les associations formées selon les dispositions des lois du 18 août 1907 et du 1er mars 1922, les associations de crédit agréées par la Caisse centrale du Petit Crédit professionnel, les sociétés et associations agréées en vue de l'exécution de la loi du 29 mars 1929 sur la garantie de bonne fin du crédit à l'outillage artisanal, les caisses

communes d'assurances contre les accidents du travail, les unions professionnelles et les sociétés mutualistes reconnues.

Exemptions objectives.

Sont exempts les biens et avoirs rentrant dans les prévisions de l'article 2, § 2, 2°, de la loi belge, à savoir:

Art. 2, § 2, 2°; Des . . . biens et avoirs des organismes; oeuvres, fonds et caisses ayant ou non la personnalité civile qui ne poursuivent aucun but lucratif, lorsqu'il est prouvé qu'à la date du 9 octobre 1944, ces biens et avoirs étaient affectés directement et définitivement aux besoins d'un culte public ou à des fins de philanthropie, d'éducation, d'enseignement, de prévoyance sociale ou de défense professionnelle.

THE DANISH - AMERICAN CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION IN RELATION TO THE DANISH TAXATION RULES

by

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Prefatorily is remarked that the Convention only concerns income tax and that pursuant to the general rules of the Danish tax laws *the unlimited liability to pay income tax* is imposed on all physical persons who are residents of Denmark and includes the total income, whether it derives from Denmark or abroad. As to corporations the unlimited liability to pay income tax is imposed on companies, associations and other entities, which are organized under the danish law. As in case of physical persons the liability to pay taxes includes the total income, whether it derives from Denmark or abroad. *Limited liability to pay income tax* is imposed on physical persons who are not residents of Denmark, and corporations which are not organized under the Danish law, if they receive income derived from real property or capitals in tail, or exercise or take part (hereunder as a limited partner or joint owner of a ship) in trade or business in Denmark.

While the subjective liability to pay taxes is attached to the "taxation year", running from April 1.—March 31, the objective liability to pay taxes is determined by the income of the "income year" next before the beginning of the "taxation year", normally the calender year.

With these rules the Convention interferes in the following points:

1. If a Danish enterprise is engaged in trade or business through a permanent establishment in U.S.A., Denmark gives up taxation not only of income derived from such business, but also of income derived from other sources within U.S.A., such as income

from interest, license duties or dividends, though according to the other provisions of the Convention such income should alone be subject to taxation in Denmark. Certain rules are given as to the computation of the income from such establishment or from enterprises carried on in one state, which depend on an enterprise of the other state (article III and IV).

2. Denmark gives up taxation on income which an enterprise of U.S.A. derives from the operation of ships or aircraft registered in U.S.A. (article V).
3. Denmark undertakes to reduce the tax which a person who without limitations is liable to pay taxes to Denmark, or a Danish corporation has to pay on dividend from U.S.A., with an amount equal to the tax amount withheld at the source in U.S.A. (article VI and article XV, (b) in fine).
4. Denmark gives up taxation on income from real property situated in U.S.A. (article IX).
5. Denmark gives up taxation on wages, pensions and so on paid by a public authority in U.S.A. to individuals residing in Denmark (article X).
6. Denmark gives up taxation on compensation for labor or personal services, including the practise of the liberal professions, rendered in U.S.A. As to labor rendered by a person temporarily present in U.S.A. within certain periods, U.S.A., however, gives up the right of taxation, so that the right of taxation of Denmark is equally retained (article XI).
7. Denmark gives up taxation on remittances which American citizens receive from U.S.A., while they reside in Denmark for purposes of study or for acquiring business experience (article XIII).
8. Denmark gives up taxation on remuneration which a professor or teacher, who is a resident of U.S.A., but who temporarily visits Denmark for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution, receives for such teaching (article XIV).
9. In so far as those cases are concerned, in which Denmark gives up taxation, Denmark, however, is entitled to include in the basis upon which such taxes are imposed the total income of the persons in question. From the taxes so calculated a deduc-

tion must be made corresponding to the tax which is imposed in U.S.A. on income derived from U.S.A., but in amount not exceeding that proportion of the Danish taxes which such income bears to the entire income subject to tax by Denmark (article XV).

Beyond the said rules the Convention contains rules about mutual assistance in the enforcement of taxes and about exchange of information (article XVII and XVIII).

VI

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I. General Part: A. Fiscal Law; B. Fiscal policy; C. Economic influence; D. Value; E. Fiscal evasion; F. Collection; G. Miscellaneous. — II. International Fiscal Law. — III. Comparative Fiscal Law. — IV. Income and Profits Taxes. — V. Property Tax. — VI. War-Taxes. — VII. Death Duties. — VIII. Turnover Taxes. — IX. Stamp Duties and similar Taxes. — X. Customs and Excise.

Sous la rubrique: nouvelles acquisitions, nous publierons une liste des articles parus dans les périodiques que nous recevons régulièrement. Les articles seront rubriqués comme suit:

I. Partie générale: A. Droit Fiscal; B. Politique Fiscale; C. Influence économique; D. Valeur; E. Evasion fiscale; F. Recouvrement; G. Matières diverses. — II. Droit fiscal international. — III. Droit fiscal comparé. — IV. Impôts sur les revenus et sur les bénéfices. — V. Impôts sur la fortune. — VI. Impôts de guerre. — VII. Droits de succession. — VIII. Taxes sur le chiffre d'affaires. — IX. Droits de timbre, droits d'Enregistrement et taxes y assimilées. — X. Douanes et accises.

I, A. Fiscal Law — Droit Fiscal

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III. **Comparative Fiscal Law — Droit Fiscal Comparé.**

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IV. **Income and Profits Taxes — Impôts sur les Revenus et sur les Bénéfices.**

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Liquidation of newly acquired subsidiaries. — F. X. Mannix — (Ibid., p. 1112)
Corporations, Partnerships and Proprietorships under the Revenue Act of 1948. — J. H. Landman (Ibid., p. 1156)
Purchase and sale of a business or its assests. — P. D. Seghers (Ibid., p. 1165)
Die Sonderzuschläge zur Wehrsteuer für 1949 und ihre Folgen für die Disposition der Kapitalgesellschaften und Genossenschaften. — K. Dürr (Steuer Probleme, 1948, no. 6, p. 119)
Cancellation of service agreement — (Taxation, no. 1107, p. 249)
Avoidance of sur-tax by the interposition of foreign companies. — (Ibid., p. 250)
Profits Tax, interest on war damage value payments. (Taxation, no. 1107, p. 252)
The application of profits and income — (Ibid., p. 254)
The Income Statement — D. J. H. Thompson (The Canadian Chartered Accountant, Nov. '48, p. 231)
L'imposition du Stock-outil. — (La Vie Française, no. 188, p. 2)
Buitenlandse Belastingplichtigen, heffing van inkomstenbelasting over binnenlandse lonen toekomende aan niet-ingezetenen. — H. Dijkstra (Weekblad der Belastingen, no. 3921, p. 417)
Avoidance of Surtax, the Howard de Walden Case — J. H. Munkman (The Accountant, no. 3862, p. 513)
Directe en indirecte belastingen. — (Mededelingen Verbond der Belgische Nijverheid, no. 51, p. 2818)
Betriebssteuer jetzt. — W. Seuffert (Steuer u. Wirtschaft, 1948, no. 10/11, p. 695)
Kritisches zur Kritik. Stellungnahme zu einer Druckschrift von Dohner, Letmathe „Zum Vorschlag eines Betriebssteuerrechts". — C. Fischer (Ibid, p. 709)
Zur Frage der Sonderausgaben im Gesetz Nr. 64. —M. Lorents (Ibid., p. 739)
Sind § 10 Abs. Ziff. 3 (nichtentnommener Gewinn) und § 7a Bewertungsfreiheit für Ersatzbeschaffung) des Einkommensteuergesetzes in der Fassung des Gesetzes Nr. 64 der Militärregierung für Kapitalgesellschaften anwendbar? — R. Rudolf Camerer (Ibid., p. 743)
Die Abzugsfähigkeit der Betriebsspenden. — F. Wall (Ibid., p. 749)

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Zur Rechtsgültigkeit der Verordnung über die Vermögenssteuerzahlungen im 2 Kalenderhalbjahr 1948. — H. Ehlers. (Steuer v. Wirtschaft, 1948, p. 759)

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Vermogensaanwasbelasting waardering onroerend goed en bedrijfsmiddelen krachtens erfrecht verkregen. — C. van Soest (Ibid., no. 3916, p. 377)
Enige opmerkingen over goodwill en polissen in de wet V.A.B. — E. Eckelt van Pelkinië (Weekblad der Belastingen, no. 3918, p. 397)
Goodwill en V.A.B. — J. Veenendaal (Ibid., p. 397)
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Special Contribution — (Taxation, no. 1106, p. 225)
Special Contribution and total income. — (Taxation, no. 1107, p. 245)
Special contribution, liability of trustees and wives. — (Ibid., p. 248)
E. P. T. — Professional Income — (Ibid., p. 253)
Les délais de prescription et l'impôt de solidarité. — (La Vie Française, no. 188, p. 9)
Vermogensaanwasbelasting: waardering onroerend goed en bedrijfsmiddelen krachtens erfrecht verkregen. — Y. D. C. van Duyn (Weekblad der Belastingen, no. 2921, p. 419)
Vermogensaanwasbelasting, waardering van onroerend goed en bedrijfsmiddelen krachtens erfrecht verkregen. — F. de Vries (Ibid., p. 420)
De verenigingen zonder winstgevend doel en de belasting op het kapitaal. — L. Cordy (Tijdschrift voor Notarissen, 1948, no. 11 12, p. 177)

VII. **Death Duties — Droits de succession.**

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Ontwerp Successiewet, adres tot de Tweede Kamer — (Ibid., p. 431)
De onrechtvaardigheid van de heffing van successierechten voor van elkander ervende echtgenoten. — J. J. Terpstra (Ibid., no. 4064, p. 438)
Ontwerp Successiewet. — (Ibid., no. 4065, p. 446)
New Estate and Gift Tax Regulations. — J. O. Kramer (Taxes, 1948, no. 12, p. 1139)

VIII. **Turnover Taxes — Taxes sur le Chiffre d'Affaires.**

Champ d'application (des taxes sur le chiffre d'affaires) — (Bulletin de Documentation Pratique des taxes sur le chiffre d'affaires 1948, no. 9 & 10, p.5)
Heffing van omzetbelasting in zake weeldegoederen — (Economische Voorlichting, 1948, no. 273, p. 2094)
Le nouveau régime de la taxe à la production. — (Bulletin des Contributions Indirectes no. 34, p. CLXVIII)
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Le Nouveau régime de la taxe à la production. — (Bulletin des Contributions Indirectes, no. 35 et 36)

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X. **Customs and Excises — Douanes et Accises.**

Het overgangsuitvoerrecht. — (Maandblad van Financiën. Oct. 1948, p. 237)
Vrijstelling douanerechten voor verhuisboedels, meubilair en huisraad. — (Ibid., p. 240)
Belasting op rubber in Indo-China — (Economische Voorlichting, no. 272, p. 2089)
Opheffing Douanerechten in Suriname — (Ibid., p. 2197)
Invoerrechten in Frankrijk, weder-invoering en opschorting heffing. — (Economische Voorlichting, no. 288, p. 2209)
Venezolaans invoerrecht op ruwe rubber verlaagd. — (Econ. Voorlichting, no. 291, p. 2229)
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Invoer met vrijstelling van douanerechten. — (Fabrimetal, no. 130, p. 900)
Opschorting heffing invoerrechten. — Economische Voorlichting, no. 202, p. 2305)

VII
DICTIONARY OF FISCAL LAW

ENGLISH

Alphabetical order

FRANÇAIS

Ordre alphabetique

DEUTSCH

Alphabetische Ordnung

NEDERLANDS

Alphabetische volgorde

The cooperation of all our readers is urgently requested for this column. Kindly send us your problems and experiences, for it is only in this way that this dictionary can be continued.

DICTIONNAIRE DE DROIT FISCAL

ENGLISH

Numerical order

192 Receipt
193 Promissory note
194 Debenture
195 Bill of exchange
196 Power of attorney
197 Exchange
198 Stock exchange quotation
199 Official list
200 Current account
201 Letter of allotment

FRANÇAIS

Ordre numerique

192 Quittance
193 Billet à ordre
194 Reconnaissance de dette
194 Titre de créance
195 Lettre de change
196 Mandat
196 Autorisation
197 Bourse
198 Cote
199 Cote
200 Compte courant
201 Acte d'adjudication

DEUTSCH

Numerische Ordnung

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193 Eigenwechsel
194 Schuldbekenntnis
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195 Wechsel
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197 Börse
198 Kursnotierung
199 Kursnotierung
200 Kontokorrent
201 Zuweisung
201 Zuteilung

NEDERLANDS

Numerieke volgorde

192 Kwijting
192 Quitantie
193 Promesse
194 Schuldbekentenis
195 Wissel
196 Volmacht
197 Beurs
198 Beursnotering
199 Beursnotering
200 Rekening-courant
201 Toewijzing

Pour cette rubrique, nous faisons un pressant appel à la collaboration de nos lecteurs. Nous les prions de bien vouloir nous faire part de leurs difficultés et des résultats de leur expérience personnelle, vu que c'est le seul moyen qui puisse nous permettre de continuer l'élaboration de ce dictionnaire.

X

DOCUMENTS CONCERNING FISCAL LEGISLATION
DOCUMENTS DE LÉGISLATION FISCALE

Argentine:

Income Tax

Decreto no. 26.132/48, 1.9.1948. Contribucion territorial — Pago del impuesto (Landtax — Payment) (Boletin del Ministerio de Hacienda de la Nacion III; no. 120, p. 1905)

Ley no. 13.238, 10.9.'48, Exencion de Gravamenes fiscales a las representaciones diplomaticas y consulares. (Tax exemption for diplomatic and consular representatives) (Boletin, no. 121)

Ley no. 13.243 de 10.9.'48, Reditos — Reduccion de Impuestos a las explotaciones agricola — ganaderas, mineras y de pesca y a las empresas de transportes (Reduction of taxes on agricultural, trade, cattle, dealing, mining, fishery and transport undertakings) (Boletin, no. 122)

Ley 13.244 de 10.9.'48 approving of Decree laws ,,de impuestos internos y de impuesto a las ganancias eventuales'' (Boletin, no. 121)

Tax on Extraordinary Profits

Ley no. 13.241 de 10.9.'48 Beneficios extraordinarios proroga del Impuesto (Extraordinary profits — Prorogation of the Tax) (Boletin, no. 122)

Decreto no. 27.845/48 Ganancias eventuales — Reglementacion — Modificaciones. (Modifications of the tax on extraordinary profits) (Boletin no. 124)

Customs and Excises

Ley no. 13.236 de 10.9.'48, Impuestos Internos, Tabacos. (Boletin, no. 121)

Decreto no. 29.669/48, Impustos internos — Tabacos. (Tax on tobacco) (Boletin, no. 124)

Miscellaneous

Ley no. 13.237, de 10,9.'48, Direccion general impositiva — Organizacion definitiva (Organization of the Tax Administration) (Boletin, no. 121)

Belgique:

Impôts sur les revenus

Arrêté du Regent du 17.8.'48 — Classification des communes. — Article 25 des lois coordonées des lois d'impôts sur les revenus. (Mon. 22.8.1948).

Arrêté du Régent du 23.8.'48 relatif à l'amortissement de la valeur réévaluée des éléments d'actifs détruits, perdus ou mis hors d'usage par faits de guerre. — Modification à l'arrêté du Régent du 15.10.'47. (Mon. 5.9.1948)

Droits de Timbre

Arrêté du Régent du 17.8.'48. — Aménagement de l'article 179 du Règlement général des taxes assimilées au timbre. — Détermination des objets frappés de la taxe de 12 %. (Mon. 26.8.'48)

Douanes et Accises

Loi du 10.8.'48 concernant les accises. (Mon. 25.8.'48)
Arrêté du Régent du 17.8.'48 relatif à la décharge de l'accise pour l'alcool utilisé à des usages industriels. (Mon. 25.8.'48)
Arrêté ministériel du 17.8.'48 relatif au régime fiscal des bières. (Mon. 25.8.'48)
Arrêté du Régent du 11.9.1948 mettant fin à la suspension des droits d'entrée sur les sucres et sur les produits sucrés. (Mon. 20—21.9.1948)

Czechoslovakia:

Direct Taxes

Act of March 20,1948, No. 48 Collection, changing and supplementing several provisions of the Act concerning direct taxes.
Act of March 21, 1948, No. 49 Collection, concerning farmers' tax.
Act of March 20, 1948, No. 50 Collection, concerning tradesmen's tax.

Capital Levies

Notification of the Minister of Finance of January 17, 1948, No. 8 Collection, regulating the competence of offices in matters of the extraordinary and once-for-all levy on excessive increase in the value of property.

Turnover Tax

Government decree of March 10, 1948, No. 28 Collection, determining the definition of small agriculturalists for lump-sum turnover tax.
Notification of the Minister of Finance of May 25, 1948, No. 147 Collection, concerning lump-sum turnover tax for small agriculturalists in the provinces of Bohemia and Moravia-Silesia for the calendar year 1946.

Indirect Taxes

Government decree of May 25, 1948 No. 140 Collection, regulating the list of luxury objects.
Notification of the Minister of Finance of June 17, 1948, No. 162 Collection, fixing the amount in figures of the monopoly tax on spirits.

Customs and Excise

Government decree of June 10, 1948, No. 161 Collection, concerning the regulation of the general customs tariff for the importation of goods.

Stamps and Fees

Act of February 3, 1948, No. 20 Collection, amending and supplementing certain regulations concerning court fees and fees for the legalization of signatures.
Act of February 3, 1948, No. 21 Collection, concerning the legal status of betrothed women and illegitimate childern surviving participants in the national struggle for liberation (Sec. 16 to 18).
Notification of the Minister of Finance of February 19, 1948, No. 24 Collection, notifying the definite text of the scale of court fees.
Government decree of March 12, 1948, No. 29 Collection, changing and supplementing the enacting provisions for fees for hallmarking.
Government decree of May 18, 1948, No. 136 Collection, changing and supplementing the tariff of fees for official acts in administrative matters (Art. I. 2. c).
Act of April 28, 1948, No. 139 Collection, changing and supplementing the regulations concerning the stamp duty on bills.

Miscellaneous

Act of March 11, 1948, No. 41 Collection, concerning international and inter-regional civil law and the legal status of foreigners in the sphere of civil law (Sec. 67).

Act of May 5, 1948, No. 128 Collection, concerning tax reliefs on the adjustment of relations in banking and for certain transfers of property to national corporations.

France:

Impôts sur les revenus

Décret du 29.6.'48 no. 48—1039 édictant les dispositions d'ordre comptable applicables aux entreprises revisant ou ayant revisé leur bilan. (J. O. des 30.6. & 22.7.1948)

Arrêté du 12.8.'48 complètant l'arrêté du 12 mars 1941 fixant le taux des déductions supplémentaires pour frais professionnels applicables à certaines catégories de contribiables pour le calcul de l'impôt sur les traitements et salaires. (J.O. du 15.8.'48)

Arrêté du 2.10.'48 relatif à l'imposition des cercles et maisons de jeux à la taxe locale sur les spectacles. (J.O. 7.10.'48)

Taxe sur le chiffre d'affaires

Arrêté du 19.10.'48 fixant les conditions d'application de l'art. 43, 4° du Code des taxes sur le chiffre d'affaires.

Prélèvement temporaire

Arrêté du 28.9.'48 relatif aux catégories d'activités économiques exonérées du prélèvement temporaire sur les excédents de bénéfices. (J. O. du 1.10.'48)

Douanes et accises

Décret du 8.10.'48 no. 48-1590 portant rétablissement du régime de l'exportation préalable des rhums et tafias hors contingent, importés des départements et des territoires français d'outre-mer. (J. O. 13.10.1948)

Arrêté du 8. 10.'48 fixant les conditions d'application du régime de l'exportation préalable des rhums et tafias hors contingent importés des départements et des territoires français d'outre-mer. (J. O. 13.10.'48)

Arrêté du 5.11.'48, Prix de cession des alcools. (J. O. 7.11.'48)

Matières diverses

Arrêté du 19.7.'48 relatif aux renseignements à fournir par les caisses de sécurité sociale à l'administration des contributions directes. (J. O. 29,7 & 11.8.1948)

Loi du 22.7.'48, no. 48—1184 tendant à complèter l'article 12 de la loi no. 47. 1504 du 16 août 1947 portant amnistie. (J. O. du 25.7.'48)

Décret du 27.8.'48 portant règlement d'administration publique en exécution de l'article 3 de la loi no. 48-809 du 13 mai 1948 portant aménagement de certains impôts directs. (J.O. du 31.8.'48 et 10.9.'48)

Loi du 24.9.'48, no. 48—1477 portant création de ressources nouvelles au profit du Trésor et aménagements de certain impôts. (J. O. du 25.9.'48)

Loi du 25.9.'48, no. 48—1485 modifiant les taux des amendes pénales. (J. O. du 26.9.'48)

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III

GENERAL REVIEW OF NEW FISCAL LITERATURE
REVUE DES NOUVELLES PUBLICATIONS FISCALES

Survey of new German fiscal literature.

Those among our readers who regularly read our survey of articles published in tax periodicals under category VI will have noticed that we have received the well known German periodical „*Steuer und Wirtschaft*" for some time. The editors are Prof. Dr. Carl Boettcher, Prof. Dr. O. Bühler, Prof. Dr. R. Grabower and A. Prugger. It is published monthly in about 32 pages by J. F. Bergmann (München) and Springer Verlag (Berlin, Göttingen, Heidelberg).

It appears that the German fiscalists supply as before important contributions to the study of fiscal science. These contributions are interesting because in consequence of the occupation of Germany alterations to the tax laws are brought in which have altered considerably the former German tax system, which was inspired by the national socialistic regime. I would remind our readers of the first tax laws introduced by the Allied Control Council which I mentioned in my article published in Vol. I, p. 162 of this Bulletin. However, much has happened since in the fiscal branch, and it is worth while to take notice thereof, especially because the fiscal measures have greatly influenced the economic reconstruction of Germany.

Surveys of jurisprudence, periodicals and books are regularly published in „Steuer und Wirtschaft".

Interested to be informed about the present literature concerning the German tax legislation, the editors of the Bulletin addressed themselves to a number of German publishers with the request to send a copy of the works published by them. To oblige our readers a short survey of these books follows below.

First of all we mention here the *Bücherei für Wirtschafts- und Steuerrecht*, published by Friedrich Kiehl GmbH, Ludwigshafen am Rhein. No. 1 in this series, a brochure of 16 pages, gives the *Veranlagungsrichtlinien zur Einkommensteuer* 1946 *für Rheinland-Pfalz*. Here it concerns the guiding principles published for the French Zone in Germany with regard to the income tax. In many respects these agree with the regulations issued by the British and American Military Government. We would remind our readers that a general tax law for the whole of Germany was issued by the Allied Control Council, but it was declared that the execution was left to the Commanders of each zone. In this booklet the reader will find the French Executionary Regulations as far as they differ from those in the American and British Zones. They refer to the income tax 1946, with a supplement for the year 1947. The regulations as a whole are not inserted, but only an excerpt which is provided with examples.

No. 2 and 3: Fr. Kiehl: *Die Gebührensätze für Wirtschaftsprüfer, Bücherrevisoren, Steuerberater, Treuhand- und Revisionsgesellschaften, Handwerksbuchstellen, Buchsachverständige, Helfer in Steuersachen, Diplom-Landwirte, Testamentsvollstrecker, Nachlassverwalter, Konkursverwalter und die Prüfungs- und Zulassungsbestimmungen der Steuerhelfer und Steuerberater;* and

DR. KARL ACKERMANN & DR. GEORG HEROLD: *Die Gebürensätze für Gerichte, Notare und Rechtsanwälte.* In alphabetical order a survey is given of the recent legal rates for all these advisers.

No. 4 is of more fiscal importance: DR. KARL ACKERMANN: *Die neuen deutschen Steuergesetze nach der Währungsreform, mit Erläuterungen.* We come back to this later.

In this series we mention: no. 5: DR. H. ROSENTHAL: *Einführung ins Wechselrecht und das Wechselgesetz;* no. 6: DR. KARL ACKERMANN & OTTO JOOS: *Was ist aus meiner Lebensversicherung geworden?* (in which booklet, though dealing with civil law, a list is inserted of the allowed „Sonderausgaben" (allowances a.o. for life insurance premiums etc.) according to section 10 Income Tax); no. 7: DR. H. FROHNHÄUSER: *Der Verkehr mit dem Finanzamt,* Vol. I, Allgemeine Hinweise. This booklet, 92 pages, deals with subjects of formal law, such as liability to send in a declaration, assessment-measures, legal remedies, means of coercion, duty of a third party to supply information, fiscal penal law, etc. etc. The booklet is written in clear and brief form for laymen who regularly deal with fiscal matters, and it is meant to explain the official ways in order not to pay too much tax. In 19 annexes the author gives some practical information. The interested reader finds a clear survey of the German formal tax law.

While no. 9: F. A. SCHMITT & DR. F. O. WÖSCHLER: *Die Finanzamtliche Betriebsprüfung nach dem inneren und äusseren Betriebsvergleich* is of main importance for chartered accountants (the booklet deals with the control of industrial bookkeeping) FR. KIEHL in no. 10: *Erfahrungssätze zur Ermittlung des steuerpflichtigen Gewinns bei der Einkommensteuer-Veranlagung für nichtbuchführende Gewerbetreibende* deals with the existing regulations for the valuation of turnover and profit of enterprises which do not have bookkeeping; for the German „Abgabenordnung" knows enterprises which are not liable to do so. This booklet contains a short introduction about the general principles after which numerous examples and tables are given with formulas in order to arrive at the computation of profit. Finally an alphabetical list of all sorts of businesses is given and the concerning applicable formulas. The guiding principles are, as the author states, provided for in accordance with practical experience.

The same publisher F. Kiehl also published K. R. RINGEL, KARL ACKERMANN & FR. KIEHL: *Kommentar zum Umsatzsteuergesetz in neuester Fassung,* Stand 1.8.1948. Here it concerns a loose-leaf work, now and then supplied with the necessary supplements. Here the authors deal with the turnover tax law of October 16, 1934 with the alterations made by the Control Council Law no. 15 of 11.2.1946, the executionary regulations for this law, of 25.10. 1947, and by the law no. 64 of June 22nd, 1948. This work including 183 pages, in the first 80 pages deals with the law itself with explanatory notes. In a very clear way these notes give a description and an explanation of the legal provisions, while a short historical survey is added which is very interesting because one gets a general view of the development in Germany of the turnover tax. In the notes attention is also paid to the measures in the separate zones of Germany. The following 80 pages contain excerpts from the Allied Control Coucil Laws and the newly worded "Durchführungsbestimmungen zum Umsatzsteuergesetz" of 23.12.1938. These executionary rules are also explained section by section. Finally this very practical book contains a survey of the provisions of the "Ausgleichsteuerordnung" of 23.3.1939 as altered since, in which the regulations about the turnover tax on imported goods are included:

Important for the history of German fiscal law is a series of papers which have the income and wages tax as subject. After the Allied Control Council

had made an alteration in law no. 12 of 11.2.1946, which alteration was followed by quite a great number of other laws, in summer 1948 the partial tax reform came into being, the start of a general tax reform. It is not very well possible to give a survey of the successive alterations in the German tax system. We hope to get the opportunity to return to this subject later on. In order to guide our readers a short survey of a number of practical booklets will follow below.

From before the "Währungsreform" dates: KARL ACKERMANN & FRIEDRICH KIEHL: *Die Steuergesetze des Kontrollrats*, Heinrich Reinhardt Verlag, Frankfurt am Main, 1948. This work (133 pages) is divided in 4 parts. Part A gives a bird's eye view of the new tax laws in which one can find without trouble what is and what is not altered. Part B contains the texts of the separate laws: Law no. 12 concerning the income and company tax and excess profits tax; law no. 13 (property tax); law no. 14 (motor vehicle tax); law no. 15 (turnover tax); law no. 17 (succession duty); law no. 26 (tobacco tax); law no. 27(tax on spirits); law no. 28 (taxes on beer and matches); law no. 30 (tax on sugar); laws no. 41, 42 and 51, respectively amending the laws no. 26, 12 and 14; law no. 53, amending the law of July 9, 1937 concerning the insurance tax; law no. 61, again amending law no. 12. In part C the authors give their short but clear notes, mainly meant as a guide into the labyrinth of several modified laws. They do so by giving a short summary, section by section, elucidated with examples and provided with references to recent literature. Part D finally contains provisions from the executionary rules (a.o. with regard to article VIII of law no. 12) while those with regard to the law no. 13 only concern the American Zone.

In the same way WILHELM STEINBERG: *Die Einkommensteuer*, West Verlag Essen/Kettwich, 1947 deals with the law no. 12, situation April 1, 1947. The first 160 pages of this work contain the complete texts of all laws amended by the law no. 12, and also executionary rules. In the last 50 pages the author gives his comment. In this comment it is again clearly explained what exactly is altered and what consequences this has. In this way he has sorted out which provisions can be considered as abolished by law no. 12. An alphabetical index concludes this work.

The law of June 22nd, 1948 has modified considerably the following laws: the income tax, company tax, property tax, succession duty, motor vehicle tax, while two new ordinances were brought in: the *Bestandsaufnahmegesetz*, for the fixing of the principles of levying tax, and the *Steuerüberleitungsgesetz* containing transitional regulations in connection with the tax revision introduced by law no. 64. This law applies to the Bizone but is also completely taken over by the „Länder" in the French Zone, empowered thereto by the Decree no. 161 of the French Military Government.

In the series „Bücherei für Wirtschaft und Steuerrecht" we already mentioned KARL ACKERMANN: *Die neuen deutschen Steuergesetze nach der Währungsreform*. In this booklet of 40 pages the author gives the text of the altered laws with a brief comment, that is to say in short form he makes clear different regulations and indicates which provisions of the old law remain in force.

At the Universitäts-Verlag, Bonn two booklets appeared by Prof. Dr. A. KNUR concerning the new tax laws of which we received the volume: *Einkommensteuergesetz und Körperschaftsteuergesetz in neuer Fassung* (Bonn, 1948). This booklet (40 pages in pocket edition) gives the text of the income and company tax laws as they became after the last alterations by law no. 64. A short introduction precedes. The author communicates in his preface that the application of the different provisions will bring about many problems as long as no official linking together of the law texts is given. As in the booklets already discussed or still to be discussed, Prof. Knur with the help of the new laws investigated as to how the complete texts run. An

annexe consists of some deviating terms for the French zone, especially with regard to Württemberg-Hohenzollern and Rheinland-Pfalz.

A booklet meant for practice is: HANS BÖHLES: *Die neuen Steuergesetze für jedermann leicht verständlich*, Verlag Jacob Mendelssohn, Nürnberg, 1947. The author remarks very praising in his preface that the Control Council has co-operated to issue a legislation valid for the whole of Germany (this booklet was written before the law of June 22nd, 1948!), but that nevertheless because of the want of a supreme administration, many questions of doubt arose. In order to explain all this clearly for the taxpayers, the author has written this booklet. It is written very systematically and it gives a detailed description of German fiscal law of before 1948. The author elucidated the provisions with numerous examples.

The last book giving a survey of the German tax legislation as a whole, is the book of DR. CAHN-GARNIER & DR. KUNZ: *Die neuen Steuergesetze*, Textausgabe mit Sachregister, Adolf Rausch Verlag, Heidelberg, 1948. This book does not give any comment, but the texts of the different laws as they run at present; the altered sections have been provided with notes containing the text as it ran when the original law came into force as well as the texts of later amendments. Consequently, the authors wrote a work which is extremely useful for those who want to study the history of the German tax system which is of importance for the practiser of fiscal law, while those who study German fiscal law out of scientific interest have all sources close at hand in this book. It has been facilitated for the reader as for every law an extensive index has been inserted.

Then there are three brochures referring to the wages tax: HANS WIESCHERMANN: *Neues Lohnsteuer-Handbuch*, Heft 2 in: Die Steuerreihe im Sebaldus-Verlag, GmbH., Nürnberg, 1948. Of this booklet (54 pages) 40 pages are taken up by the tables for wages and ecclesiastical tax. Before this, the author gives a survey of the general regulations of wages tax which are very useful for the employer as well as for the employed.

WILHELM STAUSS also gives the tables for the wages tax in *Die neuen Lohnsteuertabellen*, Verlag August Lutzeyer, Bad Oeynhausen, 1948. Here also a short survey is given of the most important legal provisions. There are four tables: for day-, week-, month- and year-wages. Finally Heinrich Reinhardt Verlag, Frankfurt am Main, 1948 published *Steuertabellen gemäss Gesetz no.* 64. Here also the tables for income and wages tax, with the text of the transitional provisions (Ueberleitungsgesetz), examples and a short summary of the provisions concerning the wages tax are given.

Several brochures deal with separate subjects in short; consequently they are very suitable for laymen in order to make a judgement concerning his rights and liabilities. Friedrich Kiehl, Ludwigshafen, published three booklets in pocket edition: *Die abzugsfähigen Reisekosten nach der Währungsreform*, a subject which, according to literature from other countries, is of current interest. This booklet (33 pages) is very interesting to make comparisons. In a similar booklet, *Die Steuern des Handwerkers*, the following subjects are dealt with in question form: income tax, wages tax, enterprise tax and the turnover tax for independant artisans. Finally the *Wegweiser durch die Steuerreform* consists of a tabular survey of law alterations, the new terms for assessment and payments in advance.

In 1947 a brochure appeared by WILHELM STAUSS: *Die Gewerbesteuer*, Verlag August Lutzeyer, Bad Oeynhausen, containing a short explanation concerning the provisions of the enterprise tax, a tax which has a real character and which is levied upon every enterprise, established within Germany, according to the standard of business capital and profit.

Pauses Verlag GmbH, Weimar published volume 6 of the *Thüringische Gesetze und Verordnungen*, a collection of official law texts in Thüringen.

This volume consists of the tax laws in force in 1946 with their executionary regulations.

KARL WIENEKE: *Das Gesetz Nr.* 12 *des Alliierten Kontrollrats*, 4th ed. (Erich Schmidt Verlag, Berlin). This booklet, 135 pages pocket edition, consists of a comment on the law no. 12 as altered up till April, 1948. The author deals with each section of this important law by giving extensive comments; he thoroughly investigates the many problems, which adds to its value. Surveys are given of the former provisions, of separate alterations, where attention is paid to special regulations in different zones. Extensive explanations concerning certain conceptions make it easy to get a complete picture of the significance of the provisions. Here attention is paid to jurisdiction and to the connection with civil and commercial law. The work ends with tables and an index.

DR. ERICH FRANK: *Vermögensteuer* 1946 *und Einheitsbewertung*, Schriftenreihe Haus und Wohnung No. 1, Verlag Konrad Gubalke K.G., Berlin, 1946. In this work the author gives a systematic survey of the German property tax as altered by law no. 13 of the Allied Control Council. The material is dealt with in a scientific way, and is subdivided in three parts. Part A deals with the general principles, as the construction of property tax, general basis, legal provisions of importance for the property tax. In part B the following matters are investigated: the limited and unlimited tax liability, the taxable property, the computation of tax, questions of formal law. The most extensive part is part C in which the author occupies himself with the question of determination of the taxable property. Here he goes into the existing regulations concerning the valuation, and deals with the current problems with regard to several sorts of property, viz. agricultural property, business property and movable property. In a part D are inserted: the concerning law no. 13 of the ACC, issued regulations in the Soviet Zone, the Anglo-American Zone and other regulations concerning the property tax in the mentioned Zones and in Great Berlin.

Then there is a work which arose from a report to the "Verwaltungsamt für Wirtschaft des amerikanischen und britischen Besatzungsgebiets": Prof. Dr. HORST JECHT: *Probleme der Einkommensteuerreform*, Verlag von Vandenhoeck & Ruprecht, Göttingen, 1948. The meaning of this report was to give a critical analysis of the alterations brought into the German tax system by the Control Council law no. 12, and to make proposals concerning a revision of this law which, according to the opinion of the author, is fatal for the economic reconstruction of Germany. The author takes up his task by submitting the German income tax to an extensive examination. He states that the alterations brought in by law no. 12 impose a much too heavy tax burden, and therefore he involves in his investigation some foreign tax systems, especially the English and American systems. He notably compares the German „synthetic" with the British "analytic" tax, and concludes that although the German income tax is lower, there are a number of objective taxes as the "Gewerbesteuer" (enterprise tax) and the property tax, which make the total tax burden in Germany heavier. Apart from the fact that with regard to the English income tax we would not like to speak of an "analytic" tax — as the analytic character of it is mainly due to the technique of assessment, and not to the principle, as finally the total income is indeed taxed as a whole — and in spite of the fact that in the meantime, because of the important alterations in the German tax system, the problems discussed in this book are no more of such current interest, the author gives us in his important work a clear picture of the fiscal problems in Germany, and his scientific contemplations are of a great value for those who intend to make a comparative study of the tax systems. The book is divided as follows: A. General character of the German income tax after introduction of law no. 12. B. The position of taxes on income in Germany before the

coming in force of this law. C. the alterations brought in by law no. 12, and the problems which arose from it. In chapter V of this part, a clear explanation is given of the differences in taxation of companies in England, America and Germany. D. Retrospective view and future. Here the author deals with the problem of revision of income tax. He comes to the conclusion that actually in Germany one cannot speak of pure synthetic tax. There is no more unity in the income tax, a.o. because apart from the separate company tax, wages, salaries, income from agricultural enterprises are actually separately taxed. In this connection the author deals with the company tax, which creates an unsatisfactory situation as the juridical form in which the enterprise is raised, is of importance for a favourable fiscal treatment, and he proposes as a solution, in agreement with British and American authors, the introduction of a general business tax. As a second point of criticism the author mentions the fact that when making a tax system, mainly fiscal purposes are kept in view, and that an extensive economic policy fails. Finally the author communicates that the position of income tax has been changed by law no. 12, as this law prescribes a differential rate for earned and unearned income, this in contrast with the system in force till the present time, where a separate property tax was necessary. In an appendix a number of examples are given.

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JURISDICTION TO TAX IN THE UNITED STATES

by
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The development of the United States has involved practically all types of tax jurisdiction problems characterizing the experience of other states having federal governments. The issues as between federal and state governments concern the right to tax as an aspect of American federalism, that is, under the Constitution of the United States. Those as between the states and their subdivisions and those among the local governments, although important, are not by-products of the national constitutional plan. Thus, for the most part, this paper will concern the "vertical" problems involving federal-state relationships and "horizontal" interstate problems and will consider only incidentally state-local, county-city, inter-county, and intercity questions.

FEDERAL-STATE JURISDICTION

Immediately following relinquishment of British responsibility as a product of the American Revolution the 13 American colonies functioned as independent states loosely joined together under the Articles of Confederation. The organization plan provided that the confederation have no taxing authority. Financial support was derived from contributions which the individual states provided. As requisitions on the individual states were not always honored, the finances of the confederation were often a matter of serious embarrassment. Indeed, the fiscal problems of the league of states were a major factor in the dissatisfaction which led to the convention that wrote the Constitution of the United States.

One of the fundamental problems of the constitutional convention which reported in 1787 was to resolve differences between leaders who were jealous of state sovereignty and those who sought financial protection for the central government. In principle, as conceived in the latter part of the eighteenth century, the taxing authority conferred upon the government of the United States, which Herman Finer refers to as the first modern federal state [1]), was substantially unlimited [2]). However, the Constitution contained one fundamental concession to the proponents of states' rights. It provided that „direct taxes" could be imposed by the central government only if they were apportioned among the states on the basis of population [3]) As a matter of history, this concession did not prevent early federal taxation of property. As the distribution of incomes among the several states became more and more unequal, however, the effect of this compromise has been to exclude the federal government from the property and poll tax areas.

Until after the close of the nineteenth century, federalism affected tax practices little except in emergencies because there was practical separation of sources of federal and state revenue. Throughout nearly the whole century the government of the United States secured income adequate to its purposes through the imposition of excises resting mainly on transactions in alcoholic beverages and in tobacco and through import duties imposed primarily to restrict imports but yielding substantial incidental revenues. For most of the same period, the state and local governments derived the bulk of their revenues from property taxation, from various

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1) Herman Finer, *The Theory and Practice of Modern Governments* (New York: Dial Press, Inc., 1934), 160.

2) Speaking against proposals to limit central government taxing power, Alexander Hamilton wrote in a paper published January 1, 1788:

"As the duties of superintending the national defense and of securing the public peace against foreign or domestic violence involve a provision for casualties and dangers to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation and the resources of the community." *The Federalist*, No. 31; compare No. 36 in which the same view is repeated.

3) "Direct taxes" for purposes of this provision include poll taxes and property taxes (measured usually, but not invariably, by the capital value of property) and prior to 1894 also income taxes. In view of the Supreme Court's opinion — *Pollock* vs. *Farmers Loan and Trust Co.*, 157 U.S. 429 (1895), 158 U.S. 601 (1895) — that income taxes were also direct taxes, the Constitution was amended in 1913 to authorize federal impostion of such imposts without apportionment among the states.

types of business privilege taxes, and from capitation taxes. A few states utilized income taxes which were relatively unsuccessful, and, toward the end of the century, death duties; but these sources of revenue were of little significance [1]).

The urgent needs for revenue during the twentieth century, and especially since World War I, have led to the competitive use of tax bases. Governmental units of all classes have required sharply increased revenues, and many of them have imposed taxes on every legally authorized basis. Except for the federal income tax amendment already mentioned, however, few major changes in the jurisdiction to tax have occurred. As American federalism has developed, however, the search for additional revenues has made the intergovernmental tax problems increasingly acute as among the United States government as such, the states, the cities, and the counties or towns. In a few instances the provision of local government services is divided in rural areas between county and township governments, and in such cases the problems of taxing jurisdiction are fairly numerous even as between the county and its subdivisions.

The present situation

The Constitution provides for limited segregation of taxes to be imposed by the federal government or by the states exclusively. Import duties are imposed only by the central government, and export duties are forbidden. In view of the economic diversities among the states, the Constitution in effect accords the states exclusive jurisdiction, either directly or through their subdivisions, to tax polls and property. It is important that, although the central government has imposed numerous excises on particular classes of transactions, it has not chosen to enact a general sales tax. This means that for the present such sales taxes are employed solely by

[1]) The tax jurisdiction problems between states and their local subdivisions also were inconsequential prior to the twentieth century. Local governments supported themselves by means of miscellaneous business taxes, poll taxes, and particularly property taxes. In some states the capitation taxes were levied by the state rather than by the local governments, occasionally by both; and in general among the states there were state property levies, ordinarily imposed as supplements to the local rates. Because states provided only a minor part of the total government services, their needs for revenue were modest; and many of their constitutions severely limited the state tax rates. On the other hand, some state constitutions limited *local* levies, but regarded the possibility of excessive state taxes as so remote that the constitutions could safely leave these rates unrestricted.

the state and local governments. Thus, in practice the revenue system of the country is characterized by dependence upon some segregation and some concurrent jurisdiction. The latter, at least in terms of amounts of revenue and classes of taxes, bulks large in the total.

In the United States the Constitution has been construed to provide for reciprocal immunity of governmental instrumentalities. Thus, federally owned property is immune from state taxation; state exercise of police power is immune from federal taxation. There are certain federal activities, such as the Tennessee Valley Authority electrical business, on which Congress provides, as a matter of policy, for federal payments to states and localities in lieu of taxes. In other cases in which private corporations, such as national banks, perform national government functions Congress has authorized states to provide for taxation of the activity to a specified extent.

The right to tax is often a matter of import by reason of legal rules concerned essentially with entirely different matters. For example, under the fourteenth amendment to the Constitution of the United States, which among other things forbids state legislatures to deny citizens equal protection of the laws, it is extremely doubtful whether any state could adopt exemptions under a general sales tax as flexible as those provided under the Dominion plan in Canada. Again, to cite only one other instance, consider an example which derives directly from the division of authority between central and state governments. The definition of property rights is a function of state government. When the federal income tax law provided that each income recipient should have a minimum of subsistence exempt, therefore, it is not surprising that this exemption often applied only to the husband in the common-law state of New York and, under identical circumstances to *both* husband and wife in California (a community-property state).

The present distribution of jurisdiction to tax has led in the case of duplicating taxes to serious disregard of federal policy in state legislation and of state policy in federal legislation. Because of the strategic advantages of the central government in the present economy, the state governments must often impose such taxes as they find possible without much consideration of the taxpayer's

relationship to the government of the United States. Congress, in formulating federal legislation, has recently attempted to take a serious account of state practices; but it is embarrassed by finding that 48 states adopt 48 different practices with regard to some classes of subject matter. As a general consequence, the tax load may be distributed crudely.

Another type of economic burden imposed by overlapping federal and state taxes is found in double administration expenses. The state and local costs of administering taxes that are also imposed and separately collected by the federal government may amount annually to more than $ 100 million. These expenditures are in addition to those which the federal government incurs. Also, there appears to be an even greater expenditure occasioned directly to the taxpayer as costs of compliance. [1])

The political consequences of federal-state and to some extent of state-local overlapping in taxation are intertwined with the economic consequences. There is a tendency for financial leaders in the various levels of government to lose sight of the revenue problems of other governmental units. In consequence, the people of the United States are likely to be very much concerned at one time about the revenue needs of cities, at another about those of states, and at another about those of the central government. There is a marked tendency for public sentiment to miss altogether the need for a coordinated view of the situation at all levels of government.

In the main, with the exception noted regarding poll and property taxation, each unit of government has developed its own administration of the tax system independently of other units of government. In consequence, the taxpayers of the United States sometimes support three separate, independent tax administration machines for handling a single type of tax. Indeed, for certain cities in Alabama, there has been a municipal gasoline tax administration, a county gasoline tax administration, a state gasoline tax admini-

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[1]) For a classification of problems growing out of federal-state and interstate conflicts, see James W. Martin and others, *Conflicting Taxation* (Chicago: The Council of State Governments, 1935), 13—22. The present writer prepared the estimates on which the textual statement is based; and they were published in the *Bulletin* of the National Tax Association, Jan., Feb., Mar., and Apr., 1944 (Vol. 29, Nos. 4—7 inclusive).

stration, and a federal government gasoline tax administration. To some extent the multiplication of administrative machinery has probably led to inadequate staffing, and more frequently, to inadequate conceptions of the administration problems. In other respects the collection of taxes has been less efficient by reason of the maintenance of multiple assessment and collection agencies [1]).

Solutions proposed

It is not surprising that the increased pressures from competition between governmental units for tax resources should lead to considerable study of the tax problems of American federalism. One of the earliest systematic efforts to do anything about the problem resulted in the publication of a significant document, entitled *Double Taxation*, by the staff of the Joint Committee on Internal Revenue Taxation of the United States Congress. In the mid-1930's the various states, acting through the Council of State Governments, conducted a two-year study and carried forward some important negotiations with fiscal leaders of the national government on the one side and of local governments on the other. Little effective accomplishment resulted from these early efforts.

In response to a United States Senate resolution, the Secretary of the Treasury of the United States in 1943 submitted a reasonably comprehensive report dealing with related subject matter. [2]) In Chapter II of the 1943 report the devices and institutions of coordination, so far as they concern the present problem, are classified as:

1. Joint administration;
2. A federal-state fiscal authority to conduct continuous study and perhaps to handle certain administrative problems;
3. Separation of the sources of federal, state, and local revenues;
4. Mutual deductibility of taxes imposed by other jurisdictions

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[1]) These influences are quite apart from the impairment of public confidence in government brought about by this uneconomic and administratively inefficient duplication of resources. In the writer's own home community, for example, the county administers a property tax; the city has a separate administrative mechanism for property tax assessment and collections. Undoubtedly, the opposition to the tax is increased because county and city assessments are not always identical.

[2]) *Federal, State, and Local Government Fiscal Relations* (Washington: U.S. Government Printing Office, 1943), Sen. Doc. No. 69, 78th Congress, First Sess.

in computing income or property constituting tax base;
5. Crediting the taxes paid to another jurisdiction against the taxes payable to the taxing jurisdiction;
6. Central collection with a sharing of revenues among subordinate units of government;
7. State supplements to federal taxes;
8. Grants in aid;
9. Reallocation of governmental functions among the various levels of government, even, it is suggested, by modifying the constitutional arrangements;
10. Consolidation of local governmental machinery.

It is perhaps necessary to clarity to explain only the first of these concepts. The authors of the report conceive joint administration to include, in addition to literally joint action or delegated administrative reasonability, also *collaboration* in administration.

The earlier studies of overlapping taxation appeared to assume that the issue confronted by the student of this subject was that of finding an overall reform which would eliminate the problem or at least solve the major elements in it. The progress of tax study during the last two decades has convinced the most active researchers that no such practical solution is probable, and it has shown the likelihood that any such solution once adopted would solve such problems only for the time being. In recent years there is reason to believe that a substantial consensus has been attained. In effect, the present viewpoint is that progress is most likely through attacking one small thing at a time largely on the administrative rather than the legislative plane [1]). It seems probable, as one writer has put it, that "Conflicting taxation between the federal government and the states . . . seems inevitable so long as we have our present system of dual sovereignty with both governments exercising their powers of taxation." [2])

The practical achievement in legislation to alleviate problems of overlapping taxation are modest; most advances have not been in

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[1]) Compare the symposium by Roy Blough, Harold M. Groves, James W. Martin, I. M. Labovitz, Charles F. Keyes, L. A. Rossman, Rollin Browne, Roy G. Blakey, and others, *Proceedings* of the 36th National Conference on Taxation, 1943, 222—255.

[2]) Edward W. Reed, "Overlapping Federal and State Taxation", *Opinion and Comment*, Feb. 16, 1948, 14—15.

the area of tax policy. However, the Congress of the United States on two occasions has provided for the crediting of state tax payments against liability to the United States. In 1924 and 1926 the Treasury was required within specified restrictions to permit any taxpayer becoming liable for state inheritance or estate tax to credit the amount paid to the state against his estate tax obligation to the United States. A similar measure was incorporated a decade later in the pay roll tax on employers designed to finance the establishment of a national system of unemployment insurance. Neither of these measures effected a marked improvement in the total situation.

On the other hand, considerable progress has actually been made in administrative cooperation with numerous states in certain directions. Three illustrations of this development will depict its general character. First of all, in connection with alcoholic beverage tax administration, there is generous policing and auditing cooperation on an informal basis between federal and certain state and local field agents. The staff of the United States Treasury Department is authorized to undertake such cooperation without any particular formality unless the state desires to examine federal records, in which event the inspection can be arranged much as in the instance of income tax examinations of similar character.

In the field of death taxation there is a considerable amount of informal collaboration between federal and some of the state administrators especially incident to appraisals. As in the instance of other records, federal estate tax documents may be made available to the states only through formal official action as in the case of income tax reports and records. The informal, voluntary collaboration between agents of federal and state governments in death tax administration is much more significant than is the joint use of reports.

Two-thirds of the states impose personal and corporate income taxes as does the United States government. There are two major areas of federal-state collaboration in the administration of this revenue device. In the first place, the Treasury makes available to the states the privilege of inspecting taxpayers' returns and related documents. This privilege is important in two respects. In many cases such problems may be resolved in individual states if the

administrator is afforded an opportunity to examine the taxpayers' federal return and the audit reports filed with it. In addition, the state administrators, after formal approval of a written request by the governor of the state, may photograph all returns of a given class or of all classes, or may photograph selected returns of a particular class. These photostatic copies are used in several states incident to both compliance and audit work. In the second place, the state governments at nominal expense may have transcripts of audits made by federal agents. These transcripts may be submitted in almost any form the individual state may prescribe. Unfortunately, there is little or no advantage taken of the federal government's opportunity, afforded by most of the states, to utilize similar sources of information accumulated incident to state death and income tax administration. [1])

Conclusion

Thus, it is apparent that federalism in the United States precipitated few serious tax problems during the first 125 years of the country's existence. The needs for additional revenue largely implicit in World War I, the depression period of the 1930's and its aftermath, and World War II have led to substantial problems of taxation growing out of the federal system of government provided in the American Constitution.

During the past two decades serious official and unofficial study has been devoted to the alleviation of the federal-state tax conflicts despite the fact that the incompatible practices themselves have been expanded during the same period and that they have extended in some measure to relationships between state and local governments as well as between federal and state governments. The suggestion that an over-all solution of the tax problems incident to federalism could be reached has given way to a consensus that these issues must be attacked through the processes of painstaking advancement in relatively small matters, one at a time and mostly on the administrative plane, rather than through comprehensive tax legislation.

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[1]) The writer has analyzed at some length the general experience of the states and the federal Treasury along this line in a series of articles, "Tax Administration," published in *State Government,* Mar., Apr., and May, 1944.

INTERSTATE JURISDICTION

The "horizontal" jurisdictional issues of really major significance in American taxation are those between states. The practical difficulties of the constitutional framework are enhanced by the rapidity of changes in the economy. Perhaps the failure of legal mechanisms to adapt promptly to social change is inherent in the American type of constitutional government; federalism is merely one of the problem areas. The situation will become clearer by examination of the legal limitations and of some of the problems and their consequences.

Constitutional limitations

The right of a state to impose taxes depends to a considerable extent on the domicile of the taxpayer. This is especially true in the instance of purely personal taxes, notably the now unimportant capitation tax. Taxes imposed on certain personal property and on individual incomes — also, to a degree, corporation incomes — may be subject to the state's jurisdiction on the ground that their owners are domiciled within the state. As to personal property: jurisdiction to tax tangibles which lack a fixed location is ordinarily determined by the owner's domicile; in the instance of most intangibles owned and controlled by one individual and not used in business, also, the owner's domicile provides the legal basis for jurisdiction to tax. In certain cases even of this type, however, there are competitive bases of jurisdiction. The right of a state to impose estate and inheritance taxes, even though these measures are excises, appears to be based on domicile to the same extent as under the property tax. [1])

Jurisdiction under state income tax laws may depend on source of income rather than or in addition to the domicile of the recipient. Source is an applicable basis, not only in respect of taxes on corporations, but also in respect of those on individuals. In the instance of excises on the conduct of an activity or the exercise of a privilege, with the exception of the death duties, the jurisdiction to tax rests essentially on the place at which the activity is conducted or the privilege exercised. The net effect in most instances is to impose the tax on the basis of the source of income to the owner of a

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[1]) On the general problem, compare Robert C. Brown, "Domicile vs. Situs as the Basis of Tax Jurisdiction," *Indiana Law Journal*, Vol. 12, No. 2 (Dec., 1936), 87-93.

business although, of course, in many cases the excises are intended to be shifted as a matter of economics to persons other than owners of the enterprise required initially to pay.

Much of American taxation rests upon some concept of the situs of property or of activity subject to tax. Real estate as property is taxable only in the state in which the land is situated. Tangible personal property having a practically permanent location in a state may be taxed only in that state. In so far as transfers of such property are subject to death taxes, they are, as previously noted, governed by the property tax rules of jurisdiction. Even intangible property may be taxed under certain circumstances in jurisdictions other than the domicile of its owner. For example, if the owner of securities lives in one state, and the property is irrevocably held in trust and completely managed at the discretion of the trustee in another state, then the second state rather than the first ordinarily has taxing jurisdiction.[1]) As has been previously noted, the right of a state to impose excises is determined in most cases by the identity of the state in which the transaction or other action subject to tax occurs. To a certain extent situs of property may govern jurisdiction to tax the income from it by reason of the doctrine of taxing the source of the income rather than taxing the recipient on a personal basis.

The jurisdictional problems stem largely from duplicating bases of authority to impose taxes. These duplications in turn are brought about by the doctrine that the methods by which the several states raise their revenues are within the discretion of the individual legislatures unless the lawmakers ignore the particular requirements of the Constitution of the United States. [2]) Some of them rest on practical adjustments to secure maximum revenues under the constitutional limitations. For example, under the general and selected sales taxes, the *situs of the sale* ordinarily determines jurisdiction to tax. Complications have arisen when the state into which property is sold imposes another excise on the *use* of the

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[1]) There is nothing in the Constitution, as now construed, to prevent double taxation.

[2]) There is another problem ignored throughout this discussion, namely, what limitations are prescribed by the several state constitutions? The point of view adopted in the text is that for the moment only federal constitutional restrictions are to be considered.

commodity. Finally, to mention only one other source of difficulty, the Supreme Court of the United States has been continuously engaged in redefining jurisdiction in terms of changed economic and other social conditions. For example, what constitutes interstate commerce and what constitutes imports into a state, neither of which are within the taxing jurisdiction of the state, have been redefined so that duplicating taxes are more nearly feasible at the present time than they would have been under earlier constructions of the federal Constitution.

Examples of interstate conflict

Some interstate conflicts, stemming from inconsistent bases of jurisdiction to tax, result from the employment of differing administrative gadgets; some, from the use of basically diverse legal theories. A number of the discordances will be illustrated.

Corporate and personal income taxes illustrate both types of conflict. In the case of corporations or individuals that derive income from two or more states, apportionment may be provided by statute. Formerly one state allocated manufacturing income from interstate business on the basis of the location of property; another, on the basis of the situs of sales. Thus, a manufacturer having all his plant in the former and all his sales in the latter would have been called on to pay on a total of 200 per cent of his income. If the situation were reversed, he would have been liable under the statutory formulas for no tax in either state. In practice the inconsistent application of the „source" or „origin" principle would not produce such extreme discriminations, but it actually operates to provide considerable differentials between taxpayers. Many states seek by statute to tax incomes on the basis of origin *and also* on the basis of residence. In consequence, such states require contributions from residents on the basis of their entire income and from nonresidents on the basis of that part derived from sources in the state. [1]) Even in the case of states which invoke only one basis of jurisdiction there may be difficulties. For example, an individual domiciled in one state basing jurisdiction on residence but receiving his income from another state which invokes the „source" principle becomes subject to double tax.

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[1]) The reference in the text concerns income not subject to apportionment. In practice many states have provided for credits for income taxes paid in other states.

A chronic conflict in American tax practice has resulted from diverse bases of death tax jurisdiction. "At one time or another, individual state legislatures have asserted authority to tax the transfer of estates or bequests on the basis of the descendent's domicile and, in the case of corporate securities, on the basis of corporate domicile, the location of the property of the corporation, and the place of physical depository of corporate securities." [1]) Although at one time the Supreme Court sought to outlaw duplicate taxes under these guises [2]) some such double imposts are legal at the present time. [3])

As previously intimated the character of the interstate conflicts in the instance of property taxation is akin to that in the instance of death duties, but there are certain additional special problems. In the case of intangible property irrevocably held in trust, for example, one state may levy its tax on the ground that the trustee (the legal owner) is domiciled there and the other on the ground that it is the home of the beneficiary (the equitable owner). In the case of public service corporations the law recognizes various bases of apportionment to ascertain the share of the total property taxable in each state. These bases include, for instance, in the case of railroads, mileage of track and tonnage hauled one mile. Because of the differing selection of allocation factors among the states, the sum of the fractions of the whole allocated to every state in which the property operates totals sometimes more, sometimes less, than 100 per cent. In the case of common carrier air lines there is a peculiarly acute problem. The airplanes may be apportioned among the states in which a line operates. The whole fleet of planes may also be taxed in the state of corporate domicile. The result may produce almost 100 per cent double taxation of flight property. Again, in the case of a corporation operating wholly in a state other than its corporate domicile, the state in which the property and business is located may have jurisdiction to tax intangible property by reason of its use in the business even though the state of domicile

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[1]) James W. Martin, „Tax Competition between States," *Annals* of the American Academy of Political and Social Science, CCVII (Jan., 1940), 65. See also in the same symposium F. Eugene Welder, "Trade Barriers between States," *op. cit.*, 54 ff.

[2]) *First National Bank of Boston* vs. *Maine*, 284 U.S. 312 (1932).

[3]) *State Tax Commission of Utah* vs. *Harkness*, 316 U.S. 174 (1942).

also imposes its personal property tax on the "residence" theory.

A somewhat different situation arises from time to time in the case of excises. If a resident of one state goes to another state and buys an automobile, he may have to pay a *sales* tax to the second state. When he returns home he may become liable for a tax on the *use* of the same vehicle. Some omission or duplication of sales taxes also occurs by reason of varying legal definition in neighboring states of the situs of sales.

Effects of jurisdictional conflicts

The description of several major types of jurisdictional conflicts suggests the major economic consequences. In summary it may be said that in the aggregate the tax value of duplications and omissions from such conflicts — doubly if omission of sales by reason of the immunity of interstate commerce be included — is a large but ill-defined quantity. Whether, aside from the interstate commerce problem, more double taxation or whether more nontaxation results is not known. Because of the political elements in the situation it is highly probable that the former considerably exceeds the latter. Each, of course, is equally calculated to produce discrimination that is irrational.

The political consequences of jurisdictional conflicts are doubtless numerous, but they have generally not been demonstrated. The illustrative effects to be noted, although suggested by available evidence, are, to varying degrees, surmise.

It is probable that the conflicts in taxing jurisdiction constitutionally possible as between the states have enlarged the area within which legislatures have sought to place the tax load on the nonresident. This, however, has not been established.

It is certain that tax barriers between states, only a part of which are due to jurisdictional conflicts, have brought about retaliatory legislation in other states. If one state intensifies conflicts by the adoption of extreme policies, other find ways of making trouble for taxpayers domiciled in that state. Perhaps the outstanding case concerns the excises on motor vehicle businesses.

Another political reaction, not consistent with the policies just sketched, has given birth to various moves toward providing an official means of reducing conflicts between states. The states are

generally members of the Council of State Governments which concerns itself largely with such matters. Most of them have set up some official means of cooperation with other states — often designated a commission on interstate cooperation. Many have adopted treaties with other states (with the approval of the United States Congress) to deal with various interstate concerns — most of them not directly involving tax conflicts.

Solutions proposed

Much of the literature seeking possible solutions for interstate tax conflicts in the United States has considered one or more of five approaches. In the first place, attention has been given to the possibilities of interstate compacts or treaties. The states may, with congressional approval, enter into agreements for the attainment of any reasonable purpose; and writers have suggested that the prevention of tax discriminations might well be the object of either bilateral or multilateral conventions.

Secondly, the literature is replete with suggestions for uniform state legislation. If tax laws — and their application — are uniform in different states, then, even though there are diverse possible bases of jurisdiction, the only ones invoked in one state will be those employed in the other and there will be neither duplication of nor omission to tax.

Another device frequently proposed is reciprocal legislation. For example, there have been recommendations that each state grant credit against resident taxpayers' income tax liability for similar taxes paid as nonresidents in a state which will grant similar credits to its own residents. Again it has been said that states should refrain under death taxes from levying on the transfer of securities of domestic corporations owned by nonresident descendents if the state of residence practices like restraint.

Fourthly, there have been suggestions that the federal government take action to prevent duplicate taxation, either by constitutional amendment or by invoking its jurisdiction over interstate commerce. The latter means may be illustrated by a proposal that property taxes on interstate flight equipment be limited by congressional action providing for a uniform apportionment of such property values among the states in which each air line operates.

Finally, perhaps the most usual idea of solution stresses voluntary cooperation as the most fruitful means of solving interstate jurisdictional conflicts. The means of cooperative action include (a) direct negotiation, with or without an intermediary; (b) conference and law-making brought about through an interstate agency having to do with legislation — sometimes an organization of the states, such as the Council of State Governments, but often an organization of tax officials such as the National Association of Tax Administrators or a general membership organization such as the National Tax Association; or (c) administrative, as distinguished from legislative, action through means as varied as those which, it is suggested, should be employed to facilitate legislation.

In practice all these doctrines have been invoked in actual practice. Interstate compacts dealing with conflicts of tax jurisdiction have been rare. Indeed, there seems to have been but one and that one of very restricted scope.

A number of agencies has promoted uniform legislation, and a modicum of the wealth of uniform laws adopted by two or more states has concerned tax legislation. One of the most popular types of such uniform tax legislation has been provision for reciprocity of one sort or another in handling conflicts previously existing. All the illustrations of reciprocity previously mentioned have been enacted into law in a number of states, and most legislatures have adopted a recommended uniform bill.

Voluntary cooperation between states has in practice included several aspects. The Council of State Governments and kindred organizations provide generously for conference. In fact the first several biennial interstate assemblies were convened to discuss particularly interstate and federal-state tax conflicts. The states, moreover, made joint provision for research by setting up the Interstate Commission on Conflicting Taxation. The various organizations of public officials and the professional societies which have to do with taxation have contributed to the same end. This discussion has often made feasible the legislative approval of recommended joint legislation which otherwise might not have been acceptable. As indicated already, the administration of tax laws may often influence the enhancement or alleviation of jurisdictional conflicts. Much has been accomplished on this score by opportunities

for discussion and for the crystallization of viewpoint by organizations such as the National Tax Association, which has actively studied interstate tax conflicts since about 1920, and the National Association of Tax Administrators, in which administrator committees work diligently with such problems as the interstate apportionment of railroad and other public service properties. The latter organization also has worked out joint tax audit programs which have contributed to the same purpose.

Conclusion

On the whole, Americans can look with more satisfactions upon their achievements in meeting the interstate tax problems precipitated by federalism than on anything yet accomplished in federal-state tax relationships. The area of friction between states is still extensive, but the realist may reasonably hope for marked reduction of tax discriminations that stem from conflicting bases of jurisdiction.

V

STUDY OF THE BRAZILIAN TAX SYSTEM IN VIEW OF THE FEDERAL REGIME

by

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I VERTICAL JURISDICTION

(connection between the federal and state governments)

A. Historical Background

Brazil which was discovered in 1500 was in the beginning probably more a burden than a great advantage to King D. Manuel. Desillusioned about the uselessness of the very expensive expedition of Pedro Alvares Cabral, whose intention it would have been to discover a new and shorter way to the East Indies, the sovereign confined himself in the beginning to maintain only some coast-guard captains, inefficacious workers for the Lustian sovereignty over the new territory, in order that it should not be disputed by French and Spanish pirates.,

With the same intention the sovereign founded factories on some places of the Brazilian coast, to which he could not pay more attention, occupied as he was, by the fights near Calcutta and in other places of the Aziatic territory.

The first signs of organized government were given by the so called ,,capitanias'' concessions of land, at first let out, afterwards with a hereditary character according to a systematic division of that part of the Brazilian coast where the rights of Portugal according to the treaty of Tordesilhas were not liable to any doubt.

When the so called capitanias were granted to the persons appointed by the King, only very few made any progress. The donees were given letters or deeds which mentioned the facilities granted, among which there were very extensive powers to con-

clude so called ,,foraes'', contracts concerning use and exploitation of land and to levy taxes, in the revenu of which the Crown necessarily participated, to the extent of one fifth of the noble metals and precious stones and of one tenth of all products besides custom duties levied by officers of the King and the monopoly of Brazilian wood, of drugs and spices.

Those who were granted capitanias got a great competence. Political and military government was their part, the fulfilment of positions which they created, the organization of justice, the monopoly of certain goods and activities, exclusive competence concerning the rights of inland shipping, the tithe of the tithe of all agricultural products and concerning the taxes on the yield of fishery. The capitanias were in a limited sense the rudimentary forms of provinces.

But apart from some exceptions, the donees were unable to keep their territories and the decentralized system turned out to be a failure. For this reason, and because he realized the importance of the country, the King decided to unificate the administration by means of a general government of which he appointed as a governor his majordomus Tomé de Souza. With the unification the government system should improve by submitting different sectors to general plans and rules. The Governor General should be assisted by a chief inspector, whose main function it was to rearrange the disordered finances of Brazil while the supervision on justice came to the Auditor General. Tomé de Souza founded the bases for a rudimentary municipality system while he traced out the different territories and competences. Later on after several others had held central government it was replaced by two governments, one in the North and one in the South. Not long afterwards the government is unificated again while once more they pass to a dualistic regime, and afterwards they returned again to the unity in the form of a vice-royship, while the people got the right to interfere in certain affaires concerning Municipality, by the election of alderman and ordinary judges. In the time of such a centralization the limited Municipal autonomy was reality in Brazil.

At the end of the sixteenth century the Crown levied export and import duties in Brazil, the latter on a basis of 20% ad valorem, and the former mainly on sugar.

In 1621 the territory between Ceará and Amazonas detatched itself under the name of independent state of the Maranhao. This state was immediately dependent from the Kingdom, without being submitted to the Government General of the Colony. In 1630 the Netherlands Government established itself in Pernambuco, under the direction of which Prince Maurits van Nassau distinguished himself as a governor and granted to the conquered territory a legislative Assemblee of greater size than was known in Brazil. The power and facilities rendered to the vice-roys were very extensive. In 1642 some of the capitanias had already the form of certain future States of Brazil.

The heaviest taxes were the tithes on agricultural products, import and export duties, monopolies of the crown and the slave-excises. The fifth of the gold was also a tax of great importance with which Lisbon was build up again after the earth-quake of 1755, and so oppressing that it was a reason for discontent, and it stimulated the so called Inconfidencia Mineira, a revolutionary movement prepared in Minas Gerais, which failed. The moving of the Portugese Court to Brazil in 1807, when Don Joao VI, was prince-regent which movement was motivated by the menacing invasion of Portugal by the Napoleontic armes of Junot, undoubtedly means a great step on the way of the development of the colony; in future home-country. The first deed which showed that Brazil should enter a golden age, Don Joao VI just arrived in Bahia, signed a royal charter, the first in Brazil, whereby he opened the Brazilian ports to trade of friendly nations and established import duties of 24%, except concerning articles of Portugese origine, which enjoyed a reduction of 8%, and those of English origine which were submitted to a rate of 15%. Very soon an abnormal growth of the tax system started to run parallel with the enterprises set up by the Prince. Rebellious movements were planned, mainly in Pernambuco. Indeed apart from the above mentioned rights the following taxes were levied: "subsidio real" (duties on special national products, like meat, skins, wool, brandy), "subsidio literario" the support of professors, subsidies levied upon killed cattle, spirits and brandy, taxes in favour of the Brazilian Bank levied upon commercial activities, and also in favour of the Bank of Brazil a sumptuary tax (a tax on vehicles, boats, and

other objects) a tax on sugar mills levied upon every retort, a tithe on urban property (a rudimentary form of landtax), excise on the sale of urban immovables (10%), half excise (5%) on the profits on every productive slave, and the so called „new duties" on the salaries of civil servants. Furthermore there were stamp duties and patent-duties, and taxes on salt, on idle land and on anchorage. On the other hand in that time (in the early part of the nineteenth century) certain local taxes were levied already in some places. Moreover since 1641 a start was made with a tax on income revealing itself in the form of rents and interests, levied under the name of "décima secular direta" (the taxes were discriminated already according to the two categories of direct and indirect taxes): it was levied upon all persons, and on all income arising from farms, interests, pensions, salaries, rents, emoluments, rewards of free professions, and others on a base of 10%.

It is clear that in a poor colony, poor because of the primitive form of the whole production, and because of the abandonment in which it had levied until the migration of the Court, this tax-system with several modalities and of a very wide range, would become a constant source and cause of revolts and riots. A typical revolt which found its source in the suffocation under the tax burden was the one of Pernambuco in 1817.

In 1821 when Don Joao VI and his court returned to Portugal, and took with them the nobility's property, all the gold and other valuables which he found there, Brazil fell down in a deep financial and economical crisis, under the reign of Don Pedro the First, son of the parting King. Because the taxpaying capacity of the people was exhausted for a long time, and also because he wanted to win the sympathy of his people, he abolished some taxes, such as the import duties on salt, and lowered the export duties. Politically the situation was no better. As rumours were circulating in the Parliament ("Cortes Gerais") in Lisbon that the Prince Regent was plotting to make himself Emperor, they started to curtail his powers and to impose hatefull restrictions on Brazil. They separated the Provinces from the central government and withdrew the higher jurisdiction from Brazil, herewith returning to former time when all procedures were brought before the Court in Lisbon, and finally ordered the Prince to return to Portugal.

Against this, opposition came from several political currents which on the 9th of January 1822 obtained from the Regent the guarantee that he would stay, by this disobeying the orders of the crown. Other deeds of the regents' resistance followed till finally the complete rupture with Portugal and the Proclamation of independence on September the 7th. When the Regent had been crowned Emperor of Brazil he proceeded to the calling of the Constitutional Assemblee which by the way he did not leave in function very long; he dissolved it when the draft Constitution of the Empire had been concluded already, promising that he, the Emperor, would grant a Constitution which was twice as liberal as the drafted one. The Constitution was granted in 1824, but already Don Pedro I had dug a deep gap between himself and the Brazilian Liberals upon whom he had leaned beforehand, by the violation of the Constitutional Assemblee. The country then experienced a period of unrest with revolts a.g. the Confederation of Equador and the wars with the Argentine because of the Eastern strip of Uruguay. The impopularity of the Emperor increased continuously. Due to his impulsive character with a definite and incorrigible tendency to despotic measures combined with the irregularity of his private life. The instability of the Ministers was a proof of the political unrest in which the sovereign lived. The fall of one of them was the nearest cause of the downfall of the Emperor. On April 7th 1831 he ceded in favor of his son, later on the second Emperor of Brazil, Don Pedro II. The granted Constitution was the reflection of the political, administrative and financial-economical centralism of the country during that time. The Provinces were reigned by a President appointed by the Emperor, and to be discharged by him at will, and were granted a council which would fill legislative functions while they were not allowed to adopt tax laws which belonged to the competence of the national legislative organ. The law of August 12, 1834 known as „Ato Adicional" allocated a greater autonomy to the provincial legislative organs which they called „legislative assemblees", and consented in their fixing the municipal and provincial expenses and the creation of the necessary taxes, provided they did not affect the tax levies of the central government, while they were not allowed to make laws concerning import duties.

With regard to the municipalities they did not have autonomy as it, as to the provincial assemblees was allotted the power to rule the financial life in the municipalities, by voting their means to apportion direct taxes and to supervise the use thereof. With the adjudication to the Provinces, of the right to meet their own demands by establishing and collecting taxes the necessity arose (which did not arise until that time) to define the tax territories and the authorities of the provinces, so that law 99, 31 about which we will speak later on, is the first register of tax division. Till that time the assessment was one and general, formed by the tax revenue levied and applied throughout the country by the central government.

On the abdication of Don Pedro I — Don Pedro II being under age — a regency period followed, untill in 1841 — the solemn event being precipitated by consecutive serious crisis — the new Emperor was anointed and crowned; he reigned without interruption untill the proclamation of the Republic on the 15th of November 1889. It was a period of great material and cultural advance, but of riots and political unrest as well. The proclamation of the Republic means the definite acceptance of federalism. For a long time the Republican aspiration as well as the federalistic aspiration had been showing themselves in Brazil in the form of revolts.

The seed can be perceived already in the revolt of Pernambuco in 1711, later repeatedly stimulated by the struggle for independence of the United States of America and of the Spanish colonies in South America, but the nearest cause of the transition was the abolition of slavery. Without the abolishion the republicans would perhaps never have succeeded in getting help for the forming of the atmosphere favourable for the change as long as Don Pedro II lived, the beloved Emperor, more a republican in his outspoken liberalism than many presidents of the future republic would prove themselves to be.

Princess Isabella, reigning during the absence of her father, the Emperor, accelerated the solution of the problem which would anyhow come within the next few years, in view of the preceding laws ordaining that children born from enslaved mothers should be free, and slaves upon reaching the age of sixty should be liber-

ated. In one blow, without any gradual transition or indemnification for the owners, slavery was abolished. When the Princess Regent after having signed the abolition law asked the Baron the Cotegipe if she had not won the course she had taken up, he answered with a clear vision of the circumstances „Yes, but your Highness lost the crown". There is no doubt but the measure created a serious problem on account of a sudden breach of the existing agricultural system based upon the labour of negro slaves, and it goaded the landowners, the economic power of the country, to bitter resentment. After the proclamation of the Republic by decree 1 of the 15th of November 1889 the federal form of it was stipulated maintained in article 1 of the Constitution which took affect on 24th of February and in the following Constitutions. The Ordinance stated that the regime would be representative and the republic federalistic, formed by the everlasting and inseparable of the old provinces into the United States of Brazil. The United States of America were taken as a model for our Federation and in much that we did we were inspired by them. The Sovereignty of the federal states only infringed by what has expressly been stated in the federal Constitution — in the scheme of the general authority every state was allowed all that was not strictly forbidden, each of them was permitted to take decisions concerning its own government within the federal bounds, while the Union reserved some inviolable rights for itself — the branch of the legislative power formed by the house of representatives and the Senate, the latter composed from representatives of the states "Ambassadors of the States" as they were called, the Federal Supreme Court of Justice with national jurisdiction, all this pointed to the North American example recommended in the "Federalist". But the source of the Brazilian federalism differed a great deal from the North American federalism. As a matter of fact this as well as the Swiss idea, also „en vogue", showed a movement from the surface to the centre. The American States enjoying an independence taken by the force, by revolts against England, arrived at last at a federation, as they went a way on which they transitorily were assembled into a confederation. Autonomous units resolved then to renounce a part of their autonomy in behalf of a federal government composed out of them, to which they delegated a part of their sovereignty. In the same

way the Swiss Confederation was a result of the renunciation by the Swiss Cantons of sovereignty obtained in revolutions. In both cases there existed before the federation organisations invested with higher powers which delegated a part of these powers to the unit they formed, for the purpose of being stronger together than each one in itself would be, making use of the relationship existing between them on many points, as a means of making possible the unification of interests and aspirations. The treaty of federation had to be ratified by each of the North American States so that it was the resultant of the sovereign powers of each, which powers were delegated to the central authority created by them. Just as a treaty between several countries on the strength of which each would renounce some powers, which hitherto belonged to them as a state. Therefore, when delegating power, the American States as well as the Swiss Cantons during a long time reserved the right to enact laws concerning private rights and even several branches of public right.

In Brazil however, federalism was preceded by: a severe, exagerated, unitarium, political-administrative construction. Everything was a function of the central authority which, as mentioned above, intervened decisively in the government of the provinces. The powers belonged to the central government and the latter had all authority.

In our country the federalistic movement was a reaction of the political and public opinion in the provinces against the excessive intervenience of the crown into their lives. It was a form which, offered by the North American construction for an entirely different situation, seemed to us also suitable for Brazil. But not because the states (then still provinces) needed to enter into an allience with eachother for a resulting strengthening position, but because the central government meddled too much with their affaires. There had never been any autonomy or independence for them, but only submission. The federalistic tendency which manifested itself in Brazil during the Empire and which even tried to make the federalistic form coincide with the staying on of the Crown, only intended to extend the possibilities of sovereignty for the provinces. In stead of renouncing power and authority they extended it for themselves at the expense of the central government.

The acceptance of federalism was the reflection of a wish of the people, an expression of the popular will. Exactly as the will of the people would reveal itself in a plebecit in consequence of some constitutional problem. And the people, as national unit, as only and decisive power would decide how in their opinion the division of authority, tasks and powers should be settled to best advantage. When tracing out these powers many let themselves become intoxicated by a very exagerated federalistic opinion, by which they demanded much more for the states than these could reasonably possess in view of the Brazilian situation and its precedents. These excesses chiefly manifested themselves in two symptoms; in the demand that every state should obtain a very extensive legislative autonomy only limited by the national security and defense and in the intention to withdraw from the Union almost all her sources of tax revenues and transfer them to the states.

Campos Sales, minister of Justice, of the Provisional Brazilian Government (he would later on also become president of the Republic) only thought it compatible with the federalistic regime that the states should be granted the power to work out the laws settling the relations between citizens in consequence of which he dissolved the committee which had been set up during the monarchy for the elaboration of the project of the Civil Code, because he thought that, after the acceptance of federalism, the committee was forbidden to take this initiative. But the public opinion did not accept the explanation which carried to such decentralising extremes, probably because it was afraid for a disintegration of the national unity, and the provisional government accepted the proposition of the federal power to enact civil laws for the whole country, instructing the jurists to work out the project of the Civil Code in this sense.

As regards the tax problem, in the first place the honor fell to Rui Brabosa's share to fight gallantly against the dominating tendency to lay down in the constitution, which was to take effect in 1891, very extensive powers in the tax field for the states through which the control government would be deprived of almost every power in this matter. In memorable speeches he showed how we had been intoxicated by the federalistic idea, so much that through excessive decentralisation we endangered the national unity, which

had been saved so well by the Empire, and which the Republic ran the risk to loose. He pointed out that Brazil was born in the Union and had always lived in it in contrast with the American States, so that it would not do to follow their example too closely.

And bringing to reality the problem of the division of taxes, he emphasized the fact that whereas the North American Constitution only knew exclusive taxes for the Union, people in our country only — and with difficulty — wanted to acknowledge the import duties as belonging exclusively to the Union while the states were granted the exclusive power to levy export duties, transmission duties and land tax; as regards the other taxes the powers of the states and those of the federal Government were simultaneous. Nevertheless some people wanted, at the expense of the Union, to permit a uniting of the states as regards the import duties which should be collective in stead of exclusive, or who wanted to annul the union's power to levy any other duties in exchange for her eclusive right to levy import duty. He criticized with the greatest energy these exagerated tendencies, which would lead Brazil to regime of small, nearly independant states without any means of living as such, and in stubborn opposition to the former striving after unity and what was worse at the loss of the national unity. Concluding he argued that if on the division of the tax fields it would be proved that after the deduction of the part indispensable for the support of the union they would not supply the means for the maintaining of the states, it would be the inevitable result that no more would be given to the local organizations and not less to the central government except the acknowledgement of the prematurity of the federalistic experiment in our country.

And as regards the aspect of the power to levy taxes the settlement which finally got the upperhand in the Constitution of 1891, the first federal one was a considerable result of Rui Barbosa's efforts. The Union was reasonably endowed and so were the states, exclusive taxes were granted to the first as well as to the latter with the permission to create other taxes without discrimination, provided they were collective.

B. Existing Governments

At present there are three political and administrative categories in Brazil, the union, the states, and the municipalities, while further there are the federal territories which at the same time share the character with the states and the municipalities,

The first Brazilian Constitution granted by Emperor Don Pedro I stipulated that the country was divided into provinces in the form of those then (1824) existing, while they could be subdivided if the well being of the Nation might require so.

The central as well as the provincial government was excercised by the Emperor as head of the executive power while he delegated several powers to the presidents of the provinces which were appointed by him and dismissed at will. The legislative power was composed as follows: the federal from the House of Representatives and the Senate, and the Provincial from the provincial councils with circumscribed powers with all powers excepted to the handling of matters of national or inter-provincial importance and also of fiscal character, matters reserved for the national legislative bodies.

The organization of the municipalities was rudimentary, the respective powers were joined by the courts of sheriffs who excercised the local governments. There was only one national treasury while the collection of the moneys to be shared among the provinces in accordance with the stipulations of the federal legislative power.

The "Ato Adicional" of August 12, 1834 extended the powers of the assemblees of states by granting them the power to enact tax laws if they did not infringe upon the tax authority of the central government. They were granted the power to settle the municipal management, proposed by the respective chambers.

The first federal republican constitution of February the 24th 1891 extended the power of the states (a name that came instead of provinces) and ordered that they should organize in that respect that the municipalities should be granted autonomy in everything concerning their own interests.

The Constitution of July 1943, 16, meant for the municipalities more powers included the settling of the principle of the election

of Prefects. That of 1937 did not hold any progress as to the powers of the States or the municipalities it was an authoritative *granted* Constitution, which, its main intention being to strengthen the federal legislative power, would necessarily weaken the powers of the municipalities. The constitution of 1946 meant on the contrary a new step on the road to decentralization, with extension to the municipalities of the powers to levy taxes.

In the annotations under this item B, the matter concerning the power to levy taxes, was on purpose for methodical reasons left to the following dissertations under item C.

C. The Situation of Taxes

The system of fixing the power to levy taxes in Brazil is one of definite discrimination of the nominal revenues with parallel running powers for all not expressely stipulated taxes. Till the "Ato Adicional" of 1843 the fiscal patrimonium of the country was one; the national congress had the power to ordain taxes and to decide about the application of them throughout the country. After in 1834 the provinces had been given power to attend to their own financial needs provided they did not infringe upon the federal exclusive powers to the levy of special duties, the law number 99 of the 31th of October 1835 outlined the first classification of fiscal revenues, by which the duties of import, transit and export, the customs, the exploitation of mines, the transfer of vessels, the estate tax, the stamp duty and other taxes of less importance were reserved to the Union; the remaining field, which was not of great importance was left to the provinces. The Constitution of 1891 assigned to the Union as belonging to her exclusive power the settling of import duties on products of foreign origine, duty on the entering and leaving of vessels except of those in the coasting trade, and the stamp duty, provided that the powers of the state concerning the latter were not infringed upon. To the states were assigned duties on the export of commodities produced in these states, on immovables in town and in the country, on the transfer of property, on trades and professions, stamp duties concerning the deeds issued by their governments and businesses under their jurisdiction. The Union and the states would neither have the

competence to impose taxes on eachothers goods and incomes nor on the interstate commerce but they would be able to create other taxes apart from thouse expressly assigned to either of them cumulative or otherwise, and provided they did not come upon eachothers reserved fields. We have already mentioned the clearly decentralizing movement which pushed the federalistic constitution. Permission had been given already as a result of the "Ato Adicional", which had granted the former provinces the power for special services and new professions — to make decisions about the necessary financial means. The enlargement of the States' tax fields in 1891 logically fulfilled a larger decentralization of services and an extension of undertakings (police, justice, hygiène, other public works and traffic). It should be realized at once that collective power to levy duties was granted to the Union and the States cumulatively or otherwise. It was a copy of what had been fastened down in the United States of America but it did not find acceptance here because the idea of double taxation which appeared in the constitution of 1934 would exclude accumulation, as will be explained furtheron.

The Constitution of July 16th, 1934 reserved the following taxes for the Union, to be levied by it exclusively: import duty on foreign commodities, duties on the consumption of whatever kind of goods except on fuel for detonation engines, taxes on incomes and revenues of whatever kind except the scheduled tax on immovables, taxes on the transfer of funds abroad and duties on deeds issued by its government on businesses within its jurisdiction and on instruments of contracts or deeds ruled by the federal law. Thé states were accorded the taxes on land property except urban property, on the transfer of property „causa mortis" and of immovables „inter vivos", on the consumption of fuel for detonation-engines, on sales and consignments, duties on export of goods manufactured in their territories (to a maximum of 10% ad valorem), taxes on trades and professions (by which the State had to share the revenues with the municipality in which the taxes were levied) and on deeds issued by the Government of the State concerned, and on businesses falling within its jurisdiction or settled by a state law.

By the Constitution of 1934 the municipalities were for the first

time accorded an own and exclusive field including taxes on licences on properties and plots of grounds in the towns in the form of a tithe, on public entertainment, the tax on the revenue of immovable goods in the country, and the taxes on municipal services. The Union and the states were permitted to create other taxes apart from those belonging to their exclusive powers, by which the respective collecting belonged to the task of the states which had to share the revenues with the Union and the municipalities of origine on a basis of 50% for the state, 20% for the municipality and 30% for the Union. The latter could promote the collection and then exchange the percentage with the State concerned, in the event this one was lagging with the payment of the quotas to the Union and the municipalities. Here the idea of double taxation appeared which was prohibited by the Constitution by the stipulation that if taxes were levied by the Union and the states simultaneously, the competency of the former should prevail if there should be equal power. From this stipulation the results of the utmost importance will originate, which will be dealt with under D. It should also be pointed out at once — because the interest for the second part of this work (Horizontal Jurisdiction) will arrive from it — that the sales tax which was granted to the states formerly belonged to the competence of the Union, which had detached this tax as an autonomous category from the stamp duty, which already belonged to its capacity.

On the 10th of November 1937 the Head of the Brazilian Government dissolved the Parliament with the aid of the military power, and he gave the country a new Constitution with a fascist tendency and therefore centralizing and authoritarian.

The discrimination of fiscal revenues in this Constitution slightly altered that which has previously been in force. Henceforth the Union had the power to levy taxes on consumption without the restriction regarding fuel for detonation engines, the restriction regarding the tax on the proceeds of immovables was repealed as well whereby the Union retained this entire tax field.

In the former text a slight alteration was made regarding the taxes on deeds instruments and contracts as this text mentioned instruments *of* contracts; in future the Constitution of 1937 mentioned instruments *or* contracts thus creating the possibility for

the Union to levy duty on the contract as an instrument as well as on the contract as an engagement.

The States were deprived of the power to levy taxes on fuel for detonation engines, the municipalities of the right to levy tax on the proceeds of immovables. The idea of double taxation and the competence to create common taxes remained in existence, but in contrast with the division of these taxes levied by the states with the Union and the municipalities, it was only stipulated that the tax of a state would be excluded by an identical federal tax. On the 18th of September 1940 the Constitutional Law number 3 expressly stipulated that the states and municipalities were forbidden to levy direct or indirect taxes on the production, commerce, distribution or export of national mineral coal and of liquid fuel and lubricants of whatever origine, while the Constitutional Law number 4 of the 20th of the same month of that year granted the Union the exclusive power for this tax field and ordained that the levy should take place in the form of one single tax with a special assignment of a part of the revenue to the states for the upkeep and extension of respective highways.

The Constitution of 1946 which is strongly democratic was characterized by a double purpose: decentralization and the strengthening of the position of the municipalities. The Union kept the same tax field with the stipulation that it should distribute 10% of its income tax revenues among the municipalities with the exception of those of the states' capitals; the word „gaseous" was added to the definition of the fuels subject to the single federal tax, and in dependence on later laws the settlement was extended to the countries' minerals and to electricity. Likewise it was made clear that the power to levy taxes on deeds and instruments settled by a federal law did not extend itself to the deeds and instruments of which the taxation was expressly stipulated for the states and municipalities.

The states were denied the tax on trades and professions half of which did already belong to the municipalities which henceforth would receive the full revenue of it, while the import duties were reduced to a maximum of 5%. The municipalities were liberally endowed apart from the taxes they had already, with the total revenue of the tax on trades and professions, 10% of the income

tax to be distributed in equal parts among them by the Union, and also 30% of what the states levied in each municipality beyond the local revenues, the export duties left out of consideration in this calculation. The common power to levy not divided taxes was maintained in the form stipulated in the Constitution of 1934 but the percentage for the municipalities was to be 40% and that of the Union only 20%. The double taxation remained forbidden with the explanation that the federal taxation would exclude an identical taxation of the states.

It is to be concluded from the development briefly reflected in the above lines that the Brazilian system of defining the powers of taxation is based on a classification by which the several tax categories are precisely named and are exclusively assigned to the various institutions. Only the taxes which have not expressly been provided for go to the category of „collective taxes", which can be created by the Union or the States. As however the system of the distribution of such taxes is so that they are collected by the States with the obligation to give only 20% of the revenues to the Union and 40% to the municipalities where the taxes are levied, we may presume that Union and states will loose interest in these collective taxes they so often had recourse to in former days.

D. Results of the system

From the system of discriminating taxes as accepted in our country arise two main types of problems: that of double taxation concerning the collective taxes and that of "invasion" of tax fields concerning the exclusive taxations which only one institution has the exclusive power to collect. In Brazilian Law the double taxation is a typical problem arisen from the discrimination of tax fields, as it — under Brazilian definition — only arises if two different powers both competent to levy duty come to oppose each other. The idea of double taxation cannot be applied to accumulation of taxes or super tax so that when the same institution (Union, State, Municipality) creates one or more similar taxes there will be no double taxation but simply a „bis in idem" in the fiscal field.

The discrimination between double taxation and invasion must be made because of the fact that the Constitution granted to the

State and the Union the power to create other taxes apart from those which it had granted expressly and exclusively to each of the powers, provided the reserved field would not be usurped. But on the other hand it forbade double taxation which would be a simultaneous use of the collective power to explore the undivided field by the Union and by the states and declared that the federal taxation would have priority over that of the states, which, if identical, would be excluded. On the other hand if one of the two powers should ordain a tax which by the constitution had been exclusively granted to the other, a case of incompetence or usurpation of competence would have to be investigated. From a constitutional view the hypothesis differ in this respect that usurpation of powers for taxation is in defiance of the constitution, as it simply arises when a tax is ordained by one who is not competent to do so, whereas in the field of collective taxes it is only a question of unconstitutionality if it proved that similar taxes ordained by different institutions coincide or co-exist. It is very evident that this system was constructed to reckon with the purely political aspect of the efforts to give the federal taxation priority to that of the states by settling a constant preference for a central power which would at all times be able to curb the levy of a tax by the states by creating a similar tax. The economic aspect of the problem which was always prevailing in the definition double taxation in the various countries where the notion included cases of super tax, was completely neglected in our country, and the legislator forgot that for the tax-payer it is only important that taxes are not levied twice on the same source whereas it is of the utmost indifference to him whether the double taxation is the result of taxes created by one or by two institutions.

With reference to double taxation it should be observed that the Constitution of 1934, 1937 and 1946 did neither mention the municipalities when granting the creation of new (collective) taxes nor when settling the priority in case of similar taxes created by more than one taxlevying institution. Therefore it was declared that it would not be a case of double taxation if one of the clashing taxes should be a municipal tax because double taxation only occurred with collective taxes and these could only be created by the states or the Union. In contrast with this thesis however, there

have been judgements of the court which referred to cases of double taxation in which municipal taxes were positively involved. Some cases in which was maintained that double taxation existed were settled by the courts of Justice. If the conclusion stated that identity of taxes existed the necessary consequence was that state tax was superseded by federal tax.

It so happened with guarantee tax which was levied by the State Minas Gerais on mineral water bottled in that state and which was forbidden by the President of the Republic (in the time that he had the authority to decide whether it was a question of double taxation and to remove it), as coinciding with the federal consumption tax, which also weighed upon the said mineral waters.

In 1937 the federal Senate (before the dissolution of the Parliament and, therefore still competent to settle such matters) annulled the tax which was levied on sales at time by the state Pernambuco, because they considered this tax similar to the federal tax on such business, meanwhile granting to the states the power to levy taxes on operations in which merchants would participate with actual delivery of the goods sold, because then there was a question of sale, the taxes on which belonged to the exclusive power of the states. In other cases however the Court of Justice discriminated between the facts apparently similar tax sources, stating that one tax was exclusive and the other collective, but on different grounds. One of the most discussed among these cases probably was that of the tax on transactions levied by the State Sao Paulo on some activities that are not covered by the state tax on sales and consignments. It was maintained that this tax coincided with the federal stamp duty levied on building-contracts on which the states levied a tax as well. The Federal Supreme Court declared that there was no question of identity because the federal stamp duty weighed on the instrument representing the contract whereas the tax levied by the state touched the agreement in itself. This opinion seems unacceptable to us because the federal stamp duty includes in many places of its regulation the agreement as well as the instrument at the same time answering to the french "droit de timbre et d'enregistrement". The typical characteristic of this duality is that the tax accepts the proportionate form in such cases.

An example of the other problem, the invasion of taxfields, is the levying of taxes by certain states on the transfer of property which is not immovable nor "causa mortis" (in this case even the transfer of immovables would be taxable by the states). The Federal Supreme Court annulled the tax levied by the State Para on the transfer of vessels which are not immovables. Many states levied transfer duty, even inter vivos, of shares of companies that have immovables as object because they are of the opinion that such a sale is equal to a partial alienation of the immovable property of the company. Some even go as far as levying taxes on the simple conversion of nominal shares into shares to bearer. To us this tax seems clearly in defiance of the Constitution for since shares are not immovables not even by accession, and since the sale of them neither corresponds with alienation from the immovable patrimony of the company, as it does not coincide with that of the shareholders or partners who to the company only have a creditor's right and no actual right on their property; because of all these reasons the power to levy these taxes does not belong to the states but to the Union which levies a proportional stamp duty on the transfer and conversion of shares which are mentioned here. It thus appears that the problems of double taxation show a more serious character, not only because they occur more easily in the nominalistic system of the Brazilian division of taxes but also because it is more difficult to solve them, whereas the problem of invasion of tax fields carry more tangible and easier to handle irregularities. The economical results of the existance of double taxation are — it is plain — detrimental because double taxation means a doubling of inadequate fiscal burdens of the same taxpayer and on the same source. On the other hand the expressed nominal discrimination of the taxes which were mentioned leads to a search for distinctions bent on arranging together the taxes that can probably be considered unsimilar, only by means of crooked arguments based on juridical facts, whereas the informative criterion for the settling of taxable deeds and facts should mainly be the contemplation of the economical fact and its consequences:

From the political point of view the situation would entail granting the Union the best part of the not yet divided piece of

the tax field, opening for her almost unlimited possibilities to participate in the levying of taxes.

E. Proposed Solutions and *F. Conclusions*

We have shown that when on the coming of the Republic federalism was accepted in our country it created the tendency to excessive decentralization with results that would lead to the Union getting a ridiculous part at the dividing of tax fields in comparison with its burdens whereas the states got the greater part of the possibilities of taxation. The exagerated decentralizing tendency in the constituant assemblee led by Julio de Castilho pleaded that the constitution should grant a limited tax field to the Union, placing the remaining part at the disposal of the states. So it was the application of the system of exclusive discrimination of the revenues of one of the institutions by which the rest was assigned to the remaining powers. As a matter of fact this standard was the most available. The opposite tendency, led by Ruy Barbosa — who found it impossible to overthrow this system (which granted the greater part to the states and the remaining to the Union), as this would not find an echo in the public opinion, which craved for decentralization — managed to have another system accepted which consisted of the settling of exclusive powers for the Union and for the States and, running parallel, of a collective field for the former and the latter. However, at definite division and nominal discrimination there always remained the difficulty to provide for all categories of taxation, especially in a period of still immature tax discrimination, while the division in accordance with the sources would always be much to be desired as well and would facilitate doctrinarian quarrels for which a practical solution would not easily be found. But the worst of it is that the collective power was granted with the possibility for accumulation of which (by the simultaneous use that the Union and the States would make of the yet undivided field) a colossal number of double taxation cases would result, double taxation which later on was understood to be a sign of the friction between different tax levying powers exactly as a result of the circumstance

that the division had not been made in accordance with the sources, and because competition was allowed.

The necessity arose, not only to repeal the authorisation in the Constitution of 1934 to make use of the accumulative collective power but also to forbid double taxation emphatically. In case collective taxes ordained by Union and states should exist at the same time the taxes levied by the Union would prevail. But the collection would be done by the states which would divide the revenues with the Union and the municipalities. Thus the right was reserved for the Union not to permit the states to squander the collective field or to misuse it, but at the same time the participation in all the taxes not reserved for them was guaranteed to all free tax levying powers which together formed the National Government.

The Constitution of 1937 which was thoroughly authoritarian and was dictated by the tendency to strengthen the executive power thus being of the centralizing character, abolished the participation of the states and the municipalities in the collective taxes and resolved the problem of accumulation by declaring simply that the federal tax would exclude those levied by a state. For the states there only remained the possibility to receive the revenues of collective taxes, as long as the Union did not decide to take them away.

The Constitution of 1946 restored the criterion of 1934, which ordered the division but converted the percents, so that the best part of the revenues was assigned to the states and the municipalities where the collection took place.

Thus it removed in a certain measure the stimulous to have recourse to collective taxation because the state which can ordain such taxes will have the task of collecting them and besides the obligation to give a part to the Union and another part, equal to its own to the municipalities, which do not participate in the levying and the law only grants 20%, otherwise liquid means, to the Union which can also enact them. The Federal Taxation continued excluding indentical statual ones in case of collective taxes. It goes without saying that since 1891 with the development of the nominal system the division of tax revenues became gradually more and more differential by the entering of new taxes

in the exclusive register, i.e. the register of taxes belonging to the exclusive power of only one institution. Thus it proves that under the Constitution of 1946 the number of cases of double taxation should decrease in concurrence with a greater differentiating of the taxes, which made a more detailed catalogue possible, also because the unprovided taxes which were discovered and applied should (as they cannot be ordained by Union and states at the same time) be settled either by the State Law, provided there was no relative federal law, or by the latter if it should exist, alone or in combination with the State Law. And the participation of the Union and the States together with the municipalities in the revenues of the tax levy will reconcile coinciding interests, as neither the Union nor the States will ever be able to have the sole profit of a not exclusive tax. The difference will probably confine themselves to the cases in which the interested power will add a certain tax to its exclusive list and such cases are usually easier to solve.

Among the most usual systems of classification of tax revenues — viz. limitation by means of assigning special tax fields to one power and the remaining to the others, or the guarantee to the various powers of the right to ordain similar taxes to one in the form of principal taxes and to the others as complementary taxes; or moreover the assignment of private fields by settling the sources or mentioning the taxes by name with or without remaining collective taxes — among all these systems the one which grants to each institution as many exclusive taxes as possible will no doubt be the most accurate. In view of the impossibility to make a catalogue which is complete and will not become insufficient in course of time, a necessary result of the system is: permission of a collective field. And the safest treatment of such a field is in our opinion the treatment which has been accepted through the Constitution of 1946 by which priority is given to one of the institutions (among which the central institution) to enact a law whenever two of them prepare to do so and by sharing the revenues. The solution is right in a political point of view because it eliminates conflicts between the powers interested. It is justified because it gives the opportunity to all to participate in the field as, if it concerns a tax not provided for in the division of different territories, everything indicates that this, at least for some time should not be the

privilege of the powers, which ever they may be. The solution also counts with the aspect, untill now not-considered, of an economical reaction on the taxpayer who will be reassured concerning unity and non-repetition of the fiscal burden. Surely it has to be awaited whether the system will be applicated in order that the results of it will either be secured or belied. The draft of 1934 did not have time to settle and therefore could not supply the basis for certain conclusions as it was altered in 1937.

II HORIZONTAL JURISDICTION.

(Relations of the States each other with the local institutions)

Since the states got their own tax territories conflicts arose concerning the competence. It is clear that these conflicts could not be of the same character as those between the Union and the states, because these questions arose always from a difference in judgement of the tax and its character and the first mentioned conflicts from a basis for juridical discussion concerning the form of the limitation of the tax competence according to one of the outings of this sovereignty, when two or more states in view of certain circumstances can state that the taxpayer is somehow bound to their taxing competences. In other words in conflicts between the Union and the states, because of accumulation of taxes — as the Union has tax competence in their territory — it would only serve to discuss whether the tax on account of its nature is due to one or the other, while with conflicts between the states both are supposed to be competent according to the division and distinction of revenue, but only one of them will be able to practice this principle competence in a given case. Only the questions of this second category are of importance for this part of this treatment as the other was dealt with in the first part. The Constitution of 1891 the first one which has a, although rudimentary, division of the revenue between the Union and the states, did not fixe any rule concerning the sovereignty of the states and the practising of their competences to levy taxes. Except that it allowed the levying of taxes on the export of products produced within the state. It also forbade to create taxes on the transit relations between the states, which indeed happened in the later constitutions.

The Constitution of 1934 contained a rule concerning the levying

of transfer tax, according to which the tax on tangible goods would be due to the state where they were situated and the taxes ,,causa mortis'' on intangible goods including bonds shares and credits to the state where the inheritance was opened and in case this was opened in a foreign country, to the state on which territory the value of the inheritance should be liquidated and transferred to the heirs. The same regulation of the Constitution of 1891 remained in force for the export taxes which were only allowed with regard to goods produced by the state. The Constitution of 1937 maintained the regulation concerning the export taxes, concerning the transfer tax as it was in the Constitution of 1934 but when the inheritance would be opened also in another state not only in a foreign country the tax was assigned to the state where the values would be liquidated or transferred to the heirs. The Constitution of 1946 maintained the same regulations but reduced the export taxes on goods which would be exported to foreign countries. As a matter of fact the taxes, of which the levying was the main cause of questions of competence between the states, were the following: the taxation on property transfer, and the one on sales of commodities, the first mentioned one expressly ruled by the constitution since that of 1934 and the latter clarified by Law 915 of 1938. Other taxes also caused sporadic or removed difficulties: an ordinance of constitutional character existed only for the transfer tax, not to speak of those allowing export taxes only on products produced by the state, which means in a certain way a restriction which would share the character of those defined by the origine of the taxable article. Of principles to discriminate the tax competence it can be said that the dominating one is that of location not of the person but of the goods, business establishments or facts to be taxed. Let us consider some conflicts brought before court concerning the competence of the states and even of the municipalities when within the respective tax territories two or more thought to have the right to tax.

Capital Tax (is not actually levied by the states anymore).

The Court of São Paulo thought it improper to levy tax on capital of business exploiting public services beçause as this business was a foreign one its capital was invested abroad. The Court af-

firmed the principle of territoriality with regard to the place of the taxable element. In the same sense there is a decision of more recent date which affirms in principle the territoriality of tax. When dealing with a case in which it concerns imposing tax on insurance companies with domicile outside the state, the same Court decided that the tax was not inconstitutional with regard to transactions performed within the state. Later on the same Court analysed the hypothese better and made a decision in this sense that tax on suchlike companies, levied upon their agents, was not allowed if computed on the capital. In São Paulo it was also the opinion that tax on capital of a foreign enterprise, realized and used in a foreign country was not allowed, but only tax on realization within the state. This same Court took another decision concerning the case of capital used for loan outside the state, and was of the opinion that this tax was not to be levied even if the debtor and the secured goods were within the state, here the factor domicile of the debtor and place of the secured goods was neglected, to give priority to those of the situation of the capital on which the tax was levied.

Taxes on goods coming from other states.

A question arose concerning the possibility for a state to levy tax on goods coming from another state. There was the prohibition of levying tax on inter state transit and the Court of São Paulo was of the opinion that only then it was allowed to levy taxes on suchlike goods, if they were inserted in the wealth, the circulation of the state. The case arose of the coffee originating from Minas Gerais exported via the Port of Santos of the state São Paulo, which state wanted to tax the coffee, stating that in that port the goods were inserted in the production of São Paulo. The Court consented to this tax because the coffee concerned was sold by the shippers in Santos by which it was inserted in the production of the state. The Federal Supreme Court annulled, as being unconstitutional, a tax which the state Ceara wanted to levy on goods coming from another state, because the Court was of the opinion that these goods as they remained in their original pockets in the power of the importers, and as they were not subject to the retail dealing within the state Ceara, were not inserted in

its production. Another case still according to the same criterion, the Federal Supreme Court consented to a tax on goods which although coming from another state were intended for use in the state Bahia and consequently inserted in its circulation. Also faithful to this criterion the Federal Supreme Court rejected a tax that the State Paraiba wanted to levy on goods originating from other states which goods would have to be transferred to a third. As the goods were only temporary landed there in order to go out again this would be a case of transit tax between states, which is prohibited by the Constitution. Regarding the municipalities this problem was solved, in different cases the tax was disguised as a tax on enterprises and professions, although it was clearly founded on goods in transit. The controverse often adopted a concrete form in the case of cattle killed outside the municipalities, and of other products. In all these cases the constitutional principle that prohibited taxes between the states and on the transit of goods produced in other states, was not based upon the domicile but upon the taking root of the products because of being inserted in the stock or in the production of the state.

Taxes on trades and professions.

Questions of intermunicipal character arose with regard to the question whether entreprises having their domicile in one municipality and practising their business in another had to pay business and profession tax in both municipalities. Although it concerns a conflict between municipalities it participates in the character of the conflicts which are dealt with in this part of this treatment because of the absolute similarity of the terms of the problem with that of questions between the states. The Court of São Paulo, which is the most fertile in state's and municipal jurisprudence of this sort, was in the beginning of the opinion that tax was due for every institution even if the main activities of the enterprise were practised in only one of them, but later on this Court made a contrary decision. Another question that was touched was which capital should serve for the tax assessment, and the same Court declared that only the capital of the institution within the municipality could be considered as such. The questions connected with this tax do not deserve great attention as they are solved

in an easy way as the levying of the tax is founded on an objective fact and without developments extended to more than one place. Moreover it has to be noted that in 1934 the tax went over to the competence of the states and only returned to the municipalities in 1946.

Tax on transfer of property.

With this tax the Courts are often occupied as the levying thereof can divide itself in a number of movements or manipulations practised in different states or can cause disagreement about the question which is the dominating factor when determining the competence: either the place of the goods or the domicile of the transferor or of the transferred goods or the place where the action is performed which led up to the transfer. Just in this case the constitution of 1934 and the following constitutions (1937 and 1946) consist of a pronounced ordinance which aims to solve possible disagreements.

The conception in force is, as we already noticed, that the competence with regard to the transfer of tangible goods is granted to the State where they are situated concerning transfer inter vivos as well as causa mortis. This is a very clear rule which confirms the competence rei sitae. The main difficulty, however, lays in the determination of the competence with regard to intangible goods transferred causa mortis (the competence of the states inter vivos is limited to immovable goods). With regard to the intangible goods the appointed Rule is that the levying of the tax wil be granted to the state in which the value of the inheritance is liquidated or transferred to the heirs. The Constitution of 1937 decided differently as it granted the tax to the State probate was to be prosecuted, but in those cases where it was opened in a foreign country or in one state where the value had to be liquidated or transferred to heirs in another state the competence to levy this tax would be vested with last mentioned state. It is clear that the difference in text in 1946 is purely editorial, because the working of the latter says that always even if the probate was to be prosecuted abroad the state where the values are liquidated or transferred will have the competence whereas the Constitution of 1937 although it granted the competence to the state where the probate

was to be prosecuted ordered to count with the priority of that state where the goods were liquidated or transferred, so that if the state where the probate was to be prosecuted and the state where the values were transferred or liquidated were not the same the latter would have priority as in general it was laid down in the Constitution of 1946. In relation to the Constitution of 1934, however, the difference was substantial because it only granted the competence to the state where the value was liquidated or transferred when the probate was to be prosecuted in a foreign country, while in the remaining cases that state was competent where the probate was to be prosecuted even if the value of the will would not be liquidated or transferred there. So the principle in force at present is still that the factor of the place where the goods are situated prevails and not the factor of domicile. In this sense the Court of São Paulo expressed itself in a case in which the only heir had his domicile in Portugal explaining that there was no extraterritoriality because the treasury did not tax the heir personnally but the transfer of the goods to him. In another sentence the same Court was of the opinion that the tax on the transfer of intangible goods could only be levied when the person had been domiciled within the state. To justify this opinion the Court declared that tangible goods were supposed to be situated within the residence of the person entitled. The same Court had the opinion that tax on transfer of shares of companies situated in São Paulo would not be due in case the probate was to be prosecuted and in case the mentioned value was liquidated in another state. An other question submitted to the Court of São Paulo was which value should have to serve for the computation of the tax when some goods find themselves in another state and the probate was to be prosecuted in São Paulo and vice versa.

The Court was of the very even opinion that the tax should have to be computed and levied with as a basis only the value of the goods on which the State should be allowed to levy tax, even if the application of this standard should be the reason of exemption, dismissal when there would be question about the value of goods not liable to tax.

The Court rejected the argument of the Commissioner that levying on a basis of the complete property, was not equal to the

levying of tax outside the state but only meant the adoption of a tax basis which apparently did not deserve adoption. Another question connected with this tax and which occupied different Courts is the problem that refers to the levying of a super tax or the imposing of a higher tax when the heir or the recipient should have his residence outside the state, or the country. This question was not connected with the competence of levying tax which is out of discussion, but only gives an example of a case in which the factor residence or domicile has consequences of fiscal character. These super taxes or special contributions did go through serious experiences in the juridical sentences in which they were always proclaimed as being inconstitutional as the opinion was that they were discriminative. In 1918 the Federal Supreme Court was of the opinion that the levying of this supertax by the State of São Paulo was not in contradiction with the constitution as it did not discriminate Brazilians and foreigners, as both, as long as they resided outside the country, were submitted to this tax. Yes, even because the rule of equality of rights between Brazilians and Foreigners should not be broken as said surtax was only applicable for the latter when residing in Brazil, while the super taxes were for those not residing in Brazil. The Court of São Paulo many times took a decision in favour of the super tax.

In 1939 the Federal Supreme Court thought it illegal to levy super taxes when imposed on Brazilians outside Brazil as in their opinion this was equal to discrimination. In 1940 the Court of the Federal District acknowledged the super taxes as they were of the opinion that no discrimination was committed as there was an inequality if different situations should be dealt with in the same way. The said court decided the same way in 1943. In 1942 the Court of Bahia sentenced like that. A particular aspect seen by the Court of São Paulo was the following: The law of São Paulo ordered to levy super taxes in case the inheritance or legacy was to leave Brazil, because the heir or recipient had his domicile outside the country. So the super tax was not allowed to be levied in case it concerned immovable property, but later on the Court had a different opinion. It decided afterwards again to illegality of levy in case of immovable property and later on another sentence followed according to which tax was due in any case. Another as-

pect considered by the Court of São Paulo was that of the cause of the domicile in a foreign country where a Brazilian Consul residing in a foreign country because of an official dedication was not considered to be subject to super tax.

Tax On Sales of Commodities.

The Constitution of 1934 classified among the state taxes those on sales of commodities and consignments by dealers, producers and industrials, so did the Constitution of 1937 and 1946. It concerned here a new autonomous tax which originally was a federal tax comprised within the stamp taxes. When the levy of this tax passed on to the states, differences of opinion arose regarding the power to tax in those cases, where trade operations took place in more than one state or even when commodities when produced in one state were exported to another without provisionally the intention to sell but only as a transfer to another establishment to the same taxpayer in order to be sold in that state later on. It occurred that at the moment of sale within the second state tax was levied whereas at the moment of exportation the state of production should like to do so. This twofold tax brought about double taxation. The Senate which according to the constitution of 1934 was competent to state double taxation and to rectify this, had the opportunity to realize the problem on the initiation Moinbo Fluminense S.A. which was placed in the following situation: It had a factory in the Federal District where commodities were produced and afterwards sent to a representative in Pernambuco, who promoted the sale within that state. Both the Federal District and Pernambuco claimed tax, stating that within their territory the sale was effected, the state because of the fact of the delivery in it, and the District because the drafts and invoices were directly sent to the buyer from here. The Senate decided it was not a case of twofold taxes as the transfer of the products to the agent did not include a taxable operation. Thus this double taxation should be eliminated by conferring power to tax to Pernambuco, as in that state the transaction is settled, without taking into consideration the fact that the drafts and invoices were sent directly from the Federal District. Afterwards this situtation is defenitely regulated by Decree Law 1915 of December 1, 1938

corrected by the Decree Law 1061 of January 20th 1939, which on the other hand declared that the tax is due on the place where the transaction is executed. This is to be considered the place where the enterprise of the seller or consigner is situated, either parent enterprise or permanent establishment branch, agency or representation with storage at his charge of sold goods or goods on consigment except where it concerned a sale or consignment directly by the manufacturer or producer; in this case the place of transaction would be that of production or manufacture. When in a state the merchandise was produced in one state and should be transferred to another, to a branch, succursale, agency or representative, to form a stock there, the tax should be paid to the State-producer before the transfer. But as manipulations between the different goods of the same person, between him and his agents or representatives were not subject to tax, the tax levied before the transfer would apply to the sale or consignments which should happen in the other state by the branch, succursale, agency or the representative, so that these would be exempted of the paying of tax to the state where the manipulation was performed. In the case of goods produced in one state and sold in another, the principle of the change of tax prevailed, which adopted the character of production tax, not only because the levy was not dependent on the effectivity of the sale, which could even not take place, but also because it was due to the state where the production took place, so not to the state where the actual sale would be realized.

Another question which also found response and which although it does not concern a conflict between the states has to be mentioned in this treatment because of its significance for the determination of conceptions of territoriality, was the problem of sale done in a foreign country to a buyer in Brazil. It seemed very clear then that a sale done by a firm domiciled in a foreign country to a buyer in Brazil, should not be submitted to tax at least not in the Federal District, which law claims very positively that the seller and the buyer have their domicile in national territory. But the question gets complicated with regard to sales performed and promoted by mediators or representatives domiciled in Brazil, although the merchandise was transferred directly from abroad to the buyers in Brazil, and also with regard to sales performed by the seller

abroad with a branch within the country. At first the administrative jurisprudence of the First Council of Taxpayers was of the opinion that tax was not to be levied even if there was a mediator within the country who did the business by order, and the Federal Supreme Court decided accordingly. Later on, however, the Council of Taxpayers decided that it was permitted to levy the tax. Lately however the Minister of Finance sent a circular in which it is ordered that the levy is not allowed if the mediator appears. But with regard to sales performed by foreign enterprises with branches which have warrant to be active in Brazil the administrative as well as the judicial issues including those of the Federal Supreme Court have had the dominating opinion that the sale is liable to tax even if the whole transaction is performed abroad and if the marchandise is delivered directly from the head-office abroad to the buyer residing within Brazil, and this in accordance to the principles of private law that determines the domicile of juridical persons as according to the fiscal doctrine. Moreover the explanation prevails that branch and mother-company are one institution the former an extension of the latter and consequently a sale to Brazil performed by the Mother-company is considered to be established here because of the circumstance that the branch is situated here.

Taxes on the substitution of burdens.

Certain states levy a tax on "subrogação de vinculo" which means transfer of the burden of unsalability with which a certain immovable is charged to another good. A juridical question which arose with regard to this tax was to which state the competence of appointing taxes was due, when the goods on which the burden was transferred would be situated outside the state where the goods of which the "lieu" was originating, were situated. The solution given by the Court of São Paulo is as follows: the tax can not be levied by the state when the immovable property to which the burden is transferred is situated outside its territory. Here the criterion on which the aggravating obligation will rest prevails.

Of Conflicts arisen between the states and municipalities we find an example in the levy by the State Minas Gerais of a tax to protect the production which was also claimed by the municipalities and

which was levied on killing cattle. The Court of Minas Gerais thought this duality adequate and explained that no double taxation existed. But the Federal Supreme Court proved not to agree with this conception and declared that as the control over this service was mainly local only the municipality could levy tax thereon.

Conclusion.

From these explanations follows that the questions brought up by the competence of the states with regard to the collision of jurisdictions as well as those between the states and the municipalities do not give cause to sharp disagreements, as the taxes allotted to the states and the municipalities have suchlike character that they leave little space for dispute because of their character, and the objectivity of the facts that created these taxes and which are nearly always localised and without reaction or development in time or space. The only ones that could cause difficulties should be the tax on transfer of property and that on sales and consignments. But these are regulated in the form mentioned above. On the other hand in general it can be said that when solving the questions the criterion of the situation of the goods prevails as regards the tax on transfer of material goods, the criterion of the death of the person prevails for the tax causa mortis, because his last domicile appoints the forum of succession and this is the indication for the determination of the competence and the criterion of transfer or liquidation of goods of the estate with regard to intangible goods. In case of the determination of the competence for the levying of taxes on sales and consignments concerning goods produced in one state and transferred to another to form a stock there, the standard of production source prevailed while for the remaining cases the criterion of actual execution of the transaction counted.

The simple fact that the conflicts concerning competences are very rare, speaks in favour of the system of the award and tracing out of competences, that is appointed for the taxes of states and municipalities and appears good to us, because it mainly counts with the principles of the taking root of goods and of the situation of juridical enterprises.

VI

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Unter this category we intend to publish a list of articles which have been published in the periodicals regularly received by the Bureau. These articles will be classified as follows:

I. General Part: A. Fiscal Law; B. Fiscal policy; C. Economic influence; D. Value; E. Fiscal evasion; F. Collection; G. Miscellaneous. — II. International Fiscal Law. — III. Comparative Fiscal Law. — IV. Income and Profits Taxes. — V. Property Tax. — VI. War-Taxes. — VII. Death Duties. — VIII. Turnover Taxes. — IX. Stamp Duties and similar Taxes. — X. Customs and Excise.

Sous la rubrique: nouvelles acquisitions, nous publierons une liste des articles parus dans les périodiques que nous recevons régulièrement. Les articles seront rubriqués comme suit:

I. Partie générale: A. Droit Fiscal; B. Politique Fiscale; C. Influence économique; D. Valeur; E. Evasion fiscale; F. Recouvrement; G. Matières diverses. — II. Droit fiscal international. — III. Droit fiscal comparé. — IV. Impôts sur les revenus et sur les bénéfices. — V. Impôts sur la fortune. — VI. Impôts de guerre. — VII. Droits de succession. — VIII. Taxes sur le chiffre d'affaires. — IX. Droits de timbre, droits d'Enregistrement et taxes y assimilées. — X. Douanes et accises.

I, A. Fiscal Law — Droit Fiscal.

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VII
DICTIONARY OF FISCAL LAW

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Alphabetical Order

FRANÇAIS

Ordre Alphabétique

DEUTSCH

Alphabetische Ordnung

NEDERLANDS

Alphabetische volgorde

The cooperation of all our readers is urgently requested for this column. Kindly send us your problems and experiences, for it is only in this way that this dictionary can be continued.

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203 Promotary company
204 Fire insurance
205 Marine insurance
206 Adhesive stamp
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FRANÇAIS

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209 Imposition par foyer
210 Stock-outil
211 Recouvrement forcé

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206 Stempelmarke
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204 Brandverzekering
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208 Termijn
208 (Betalings) termijn
209 Gezinsbelasting
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211 Executie

Pour cette rubrique, nous faisons un pressant appel à la collaboration de nos lecteurs. Nous les prions de bien vouloir nous faire part de leurs difficultés et des résultats de leur expérience personnelle, vu que c'est le seul moyen qui puisse nous permettre de continuer l'élaboration de ce dictionnaire.

X

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Douanes et accises:

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Décret no. 48-1990 du 31.12.'48 Taxe sur les locaux d'habitation insuffisamment occupés. Taux applicables en 1949. (J.O. 1.1.'49).

Loi no. 48-1992 du 31.12.'48 portant fixation du budget général de l'exercice 1949. (J.O. 2.1.'49).

Arrêté du 6.10.'48 fixant les modalités d'application de l'art. 5 de la loi no. 48-1477 du 24.9.'48 portant création de ressources nouvelles au profit du Trésor et aménagements de certains impôts. (J.O. 9.10.'48).

Décret no. 48. 1986 du 9.12.'48 portant réforme fiscale.

Loi no. 48.1973 du 31.12.'48 portant fixation pour l'exercice 1949 des maxima des dépenses publiques et évaluation des voies et moyens.

Décret no. 48.1988 du 31.12.'48 portant fixation des nouveaux taux de la taxe à la production et des impôts indirects.

Décret du 5.11.'48, no. 48-1759 modifiant le décret no. 45-1274 du 13.6.'45 fixant les conditions de fonctionnement du conseil supérieur de confiscation des profits illicites. — (J.O. 23.11.'48).

Arrêté du 6.10.'48 fixant les modalités d'application de l'art. 5 de la loi no. 48-1477 du 24.9.'48 portant création de ressources nouvelles au profit du Trésor et aménagement de certains impôts. (J.O. 7 et 9, 10.'48).

Décret du 29.10.'48 fixant les conditions d'application de l'art. 12 de la loi no. 48-340 du 28.2.'48 portant organisation de la marine marchande. (J.O. 30. 10.'48).

Arrêté du 22.10.48 relatif au remboursement des souscriptions à l'emprunt libératoire du prélèvement exceptionnel de lutte contre l'inflation dont la somme dépasse le montant du prélèvement. (J.O. 24.10.'48).

Décret du 4.1.'49, no. 49-13 portant règlement d'administration publique pour l'application de la loi no. 48-1474 du 23.9.'48 instituant une aide temporaire à l'industrie cinématographique. (J.O. 6.1.'49).

Arrêté du 25.1.'49 fixant la valeur imposable servant au calcul de la taxe cumulée sur les laines. (J.O. 27.1.'49).

Loi du 31.12.'48, no. 48-1992 portant fixation du budget général de l'exercice 1949 (dépenses ordinaires civiles) (J.O. 2.1.'49).

Arrêté du 14.2.'49. Fixation du taux de la redevance instituée par l'article 3 (bis) du code des contributions indirects pour les rhums et les tafias. (J.O. du 17.2.'49).

Roumania:

Decree nr. 314/1948 Reduction and exemption of some taxes and duties. (J.O. 25.11.'48).

Sweden:

Customs and excises:

Royal decree of 30.12.'48 modifying section 14 of the decree of 4.10.'29 with additional rules to the ordinance of 4.10.'29 concerning restitution of customs. (O.G. 1948, no. 812).

International:

Royal Decree of 30.12.'48 concerning the convention between Sweden and Argentine with respect to income tax on income from shipping and air navigation. (O.G. 1948, no. 815).

I

THE AUSTRALIAN PAY-ROLL TAX

by

JEFFERY E. HODGINS,
Melbourne.

Synopsis

The Pay-roll Tax was introduced in Australia as from 1/7/1941. The tax falls on all "wages" at a rate of 2½%, and each taxpayer has a monthly exemption of £86.13.4. This exemption means that the taxpayers are comparatively few in number (less than one per cent of the population). The tax contains aspects of great interest among which may be mentioned that, unlike Income Taxpayers, the taxpayers assess themselves, and lodge not annual but monthly returns.

Introductory

In the Basic Wage Enquiry of 1940, the Chief Judge of the Commonwealth Court of Conciliation and Arbitration pointed out that "the present method of wage fixation operates unjustly to the worker who has to provide for dependent children", while one of his learned colleagues stated that "the solution . . . is not to be found in the indiscriminate increase in wages which is now sought but in a system of child endowment."

These suggestions were considered by the Commonwealth Government and it was decided to introduce, as from 1/7/41, a system of child endowment under which payment was to be made at the rate of 5/— per week (increased to 7/6 from 26/6/45 and 10/—from 9/11/48) in respect of all children under the age of sixteen in excess of the first child maintained in a family, and for each child under sixteen years in an approved institution. The scheme was to be financed partly from Consolidated Revenue and partly from the proceeds of a tax of 2½% which was to be imposed on all pay-rolls in excess of £ 20 per week. The legislation to impose this tax was introduced into the House of Representatives on 27/3/1941, and finally passed on 3rd April, 1941.

Form of the Legislation

The Acts referred to were the Pay-roll Tax Assessment Act, 1941, and the Pay-roll Tax Act, 1941 (numbers 2 and 3 respectively of 1941. They are hereinafter referred to as "the Act", and "the Rates Act", respectively). The date of commencement of the two Acts was 2nd May 1941, but by Section 3 of the latter Act the liability to pay the tax did not commence until 1st July 1941. The first-mentioned Act is the machinery Act, while the other one is the taxing Act. The two Acts are to "be incorporated and read as one", however, the use of two Acts being dictated solely by legal requirements. Certain procedural amendments were made to the Act by the Pay-roll Tax Assessment Act 1942. The administration of the Acts was vested in the Commissioner of Taxation. The Legislature empowered the Commissioner to delegate to any person all or any of his powers and functions (except the power of delegation). The Act contains the requirement common to Acts of its type to the effect that the Commissioner shall furnish an annual report upon its working for presentation to the Parliament.

Every officer executing any power under the Act is required to observe the strictest secrecy "relating to the affairs of a person". The Act requires every officer to make a declaration to this effect in a prescribed form.

Administration

The administration of the tax has been placed by Parliament in the hands of the Commissioner of Taxation. The Commissioner is the permanent head of the Federal Taxation Department. The political head is the Treasurer. The Commissioner is located at the seat of the Federal Government, viz. Canberra. The detailed application of the tax to individual cases is carried out by a Deputy Commissioner located in each State capital. This detailed administration of the tax is performed by the officers of the Sales Tax Division of each Deputy Commissioner.

Registration

The Act requires every employer who pays or is liable to pay "wages" in excess of £20 per week, to make application in accord-

ance with the form and in the manner prescribed, for registration as an employer.

We must, therefore, turn to the subordinate legislation on the matter, viz. Statutory Rules 121 of 1941, 483 of 1942 and 117 of 1944. Regulation 5 of these Regulations provides that "every person making application for registration as an employer shall do so in accordance with Form 2", and that in general the application shall be made "at the office of the Deputy Commissioner for each State in which the employer has an established place of business at or from which wages are paid."

Returns

The Act provides for the lodgment by each employer of one of three types of returns, viz.:—

(a) monthly returns;
(b) where "it would be unduly onerous" to require monthly returns, for periods other than that of a month; and
(c) yearly returns.

Under the powers referred to in (b), those taxpayers whose average monthly tax do not exceed 1/— and 5/— have been permitted to furnish half-yearly and quarterly returns respectively. Class (c) consists only of those taxpayers in which "the Commissioner is of the opinion that no tax will be payable", that is those who are expected to pay not more than £ 1040 in "wages" in a financial year (12 months at £ 86.13.4).

The vast majority of taxpayers, therefore, are required to submit monthly returns and these must be lodged within seven (7) days of the close of the month in which the "wages" were paid.

The returns must be compiled on prescribed forms, and in general must be forwarded to the office of the Deputy Commissioner in the capital of the State in which the "wages" were paid, either through the post, or by handing them in at the Department. A remittance for the tax involved should accompany each return.

The return forms are printed in sets of three. The triplicate has a protruding space at the top whereon the teller imprints a receipt by means of a cash register. It also has certain general information on the back. The original becomes the Departmental copy, the duplicate is for the Commonwealth Statistician, while the receipted

triplicate is returned to the taxpayer, together with forms for use in the following month.

Wages

It has been already pointed out that the base of the tax is what is termed "wages". Section 3 of the Act contains an extended meaning of this term, viz.:—

> "Wages" means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or kind) to any employee as such and, without limiting the generality of the foregoing, includes —
>
> (a) any payment made under any prescribed classes of contracts to the extent to which that payment is attributable to labour;
> (b) any payment made by a company by way of remuneration to a director of that company;
> (c) any payment made by way of commission to an insurance or time-payment canvasser or collector; and
> (d) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee's services.

Section 3 (2) of the Act provides that in connection with (d) above, meals or sustenance shall be valued at fifteen shillings weekly, and premises or quarters, at five shillings weekly.

There have been no prescriptions as yet under clause (a) above.

Exemptions

The Act provides that tax shall not be payable on "wages" paid: —

(a) by the Governor-General or the Governor of a State;
(b) by a religious or public benevolent institution, or a public hospital;
(c) to members of his official staff by —
  (1) a diplomatic, consular or other representative in Australia of the Government of any other part of His Majesty's dominions or of any other country; or
  (2) a Trade Commissioner representing in Australia any other part of His Majesty's dominions; or

(d) to a person who is a member of —

(1) the Defence Force of the Commonwealth or of the armed forces of any other part of His Majesty's dominions;
(2) the Australian Army Nursing Service;
(3) the Australian Women's Army Service;
(4) The Women's Auxiliary Australian Air Force;
(5) a Voluntary Aid Detachment, and who has been called up for full time service with the Defence Force of the Commonwealth;
(6) the Women's Royal Australian Naval Service; or
(7) any other organization similar to any of those specified in sub-paragraphs (2) to (6) of this paragraph which is prescribed, and who, by reason of his or her service as such a member, or of capture in the course of that service, does not, during the period in respect of which the wages are paid, render services in consideration of the payment of those wages.

Productivity and Disposition

The amounts produced by the tax since its imposition are: —

Financial Years, 1st July to 30th June	Pay-roll Tax	Total Taxation	Percentage of Pay-roll Tax to Total Taxation
	In thousands of Australian pounds		
1941/1942	8,962	179,435	4
1942/1943	10,451	257,144	4
1943/1944	10,903	303,667	3
1944/1945	11,088	337,995	3
1945/1946	11,499	353,211	3
1946/1947	13,647	385,616	3
1947/1948	16,595	422,412	3

There has been no change in the base of the tax, in the rate, or in the statutory exemption, and consequently the remarkable

increase in the amounts of Pay-roll Tax collected, is a reflection of the state of full civil employment and rising wage rates.

The proceeds of the tax are paid into the National Welfare Fund.

Assessments, Objections and Appeals

There is a wide power of assessment conferred upon the Commissioner for use against recalcitrant taxpayers. The Assessment Act also provides that any taxpayer so assessed, or dissatisfied with any decision by which his liability to pay tax is affected, may object within 42 days, and if the Commissioner does not fully allow the objection, may within 30 days, appeal to a Board of Review. The Board's decision on questions of fact are final, but on questions of law, its decisions may be appealed against either by the Commissioner or the taxpayer, to the High Court of Australia.

A Direct or an Indirect Tax?

The tax is classified in the Budget as a direct one, but the correctness of such a classification appears to be open to some doubt. The definition of a direct tax accepted for the purposes of this consideration is one that is not passed on wholly or in part by the employer who pays the tax to the Taxation Department. Take the case of a Tramways Board. Such a Board cannot, with the imposition of a 2½% Pay-roll Tax, raise its fares by 2½%. The tax must for a time at least be a direct one, although in the long run it would no doubt have to be reflected in the fares charged. A manufacturing engineer, on the other hand, would normally include in his Manufacturing Account the Pay-roll tax on his manufacturing wages, and would, therefore, pass such tax on in the selling price of his goods. In those circumstances, the tax would be an indirect one.

Books of Account

Every employer who, during any week pays more than £ 20 in "wages" is required by the Act to "keep proper books or accounts", and to preserve them for not less than five years after their completion. The main books to be kept in this respect would, of course, be the wages and cash books.

Relations with State Governments

The exemption from Federal taxation normally enjoyed by the Governments of States comprising a federation has not been applied to the Australian Pay-roll Tax. In view of this the question of inter-governmental relationships has assumed added importance. In order that these relationships may be facilitated the Act provides that each State shall ,,be represented by such officer or officers as the State appoints."

Administrative Tribunals

The Act makes provision for reference either by the Commissioner or by any dissatisfied taxpayer to a Board of Review constituted under the Income Tax Assessment Act 1936/40. The Board is empowered to confirm or alter any decision so referred to it.

The Act also sets up what is generally spoken of as a "Hardships Board". This Board consists of the Commissioner, the Secretary to the Treasury, and the Comptroller-General of Customs, or of substitutes. It is empowered to give releases of tax in any case where the exaction of the full amount of tax will entail serious hardship.

We learned with deep regret of the death on 5th June of our Yugoslav co-operator

Dr. LJUBOMIR DUKANAC,

Professor of political economics and public finance of the University of Beograd,

who wrote several interesting articles for our *Bulletin*. The Editors extend their sincere sympathy to Mrs. Dukanac.

ISRAEL INCOME TAX PROPOSALS

The following is part of an article on income tax, published in the „Business Digest", The Israel Economic Weekly, no. 50, Vol. IV.

The present system of imposition of income tax is entirely outmoded and obsolete. Modern income tax systems the world over are based on that of the U.S.A. Yet nobody in the Commissioner's office has working experience of U.S.A. achievements. Roughly speaking our system of income tax calls for the following improvements:

(1) Tax should be payable as soon as the equivalent of profits made reaches a firm's coffers and not two years later — as is the case today. „Pay-as-you-earn" systems adapted to business profits work successfully today in a number of countries and we should attempt a similar system;

(2) Tax should be payable by everyone who earns profits, and by all co-operative groups as soon as their membership exceeds twenty;

(3) The agricultural tax year should cease on 1st October and the tax year for citrus cultivation on 1st May;

(4) Lump taxation on turnover for retailers should be introduced here, following the French example;

(5) Family companies („private companies controlled by less than six persons") should be taxed as partnerships, and every endeavour should be made not to allow legal differences in the structure of commercial bodies to influence tax yield;

(6) Husband and wife should be free to choose as to whether they be assessed as individuals or jointly, like in the U.S.A. and not merely as families — as at present;

(7) Profits retained in the business should in all cases be taxed not higher than the company rate of profit in force. We are, after all, interested in fostering investment by every means available;

(8) No special tax relief should be given to non-residents as in most cases, such relief would merely mean a donation to the Treasury of the foreign investors home country. Relief accorded to foreign (and local) investors should be given in respect of rates and property tax, fixed taxes, relief from which brings much greater advantage than relief from income tax which in itself

varies according to business results. The only relief to be granted to non-residents which might commend itself, is the choice of being taxed either as an individual, or on the rates applicable to companies;

(9) The present Committee for Tax Reform composed of non-experts only should be enlarged by the inclusion of one or two persons who understand something about income tax.

From many quarters a higher taxation of real property (on the lines of „single tax") is advocated. The „single tax", in the long run, depends upon business profits as any other tax; but it is much less elastic than income tax, as it influences first and foremost the rather inelastic rents. From the point of modern economics with their emphasis on the avoidance of unemployment the „single tax" is highly undesirable.

Japan's New Tax System

The American authorities in Japan have overhauled and revised Japan's tax system and legislation is now in force whereby there is imposed personal income tax, with a system of deduction at the source, company income tax and excess profits tax, estate and gift duty.

In order to put the financial system on to some reasonable basis of equality steps were taken to break up such holdings of the Zaibatsu class (zia for financial and batsu for clique). This term usually refers to twenty-odd holding companies and the big-four families og Mitsui, Mitsubishi, Yasuda and Sumitomo. For this purpose a capital levy was designed and enacted to transfer some of the top wealth from the private owners to the public purse. Owners of property valued at over 100.000 yen were taxed on their property at a rate ranging from ten to ninety per cent.

To catch the man who might under-value his property, for the purpose of the tax, the Government received the power to buy the property at the valuation placed upon it.

The rates on personal income begin at twenty per cent. on taxable income of 10,000 yen and advance to eighty-five per cent. on incomes of over a million yen.

The new Japanese corporation income tax is combined with an excess profits tax. The rates begin at thirty-five per cent. on corporate net income where there are not excess profits, and progress to forty-five and sixty-five per cent., according to the amount of excess profit. Japan's total tax load has been increased from eight percent. of her national income in 1945 to twenty per cent. in 1947/48.

(The Taxpayers Bulletin, Vol. 18-no. 2, p. 32)

III

GENERAL REVIEW OF NEW FISCAL LITERATURE
REVUE DES NOUVELLES PUBLICATIONS FISCALES

Dans ce numéro nous commençons notre bibliographie fiscale en commentant brièvement quelques publications de la section des affaire économiques des Nations Unies. On peut se procurer ces publications aux agences de l'O.N.U. qui sont etablies dans une quarantaine de pays, et au Bureau de Ventes du Bureau des Nations Unies de Genève — Palais des Nations à Genève, Suisse, et encore au Bureau de Ventes des Nations Unies à Lake Success (N.Y.) États-Unis.

National Income Statistics 1938—1947 (publié en 1949). Prix: Frs.S. 10.— (relié) ou frs.S. 6 (broché) ou l'équivalent en d'autres monnaies.

Ce rapport détaillé de 150 pages a été fait à la suite de la résolution no. 40 (IV) du 29 mars 1947 du Conseil Economique et Social de l'O.N.U. Le rapport a été rédigé sous la direction du docteur J. B. D. Derksen à l'aide des données fournies par „Measurements of National Income and the Construction of Social Accounts", un rapport de la sous-commission des Statistiques des Revenus nationaux du Comité de la Société des Nations des Statisticiens, et par un appendice du Président de cette sous-commission, M. J. R. N. Stone: „Definition and Measurement of the National Income and Related Totals", ensuite par des statistiques déjà existantes, et enfin par un grand nombre de publications dont on trouvera une bibliographie détaillée aux pages 137—147.

A l'aide de ces données, le Bureau des Statistiques de l'O.N.U. a étudié et comparé les estimations des revenus nationaux des différents pays; les résultats de cette étude ont été consignés dans le rapport en question. Ce dernier a été divisé comme suit:

Chapitre Premier: Introduction
Chapitre II: La définition du revenu national et ce qu'elle implique
Chapitre III: Étude des définitions du revenu national dans 39 pays
Chapitre IV: Examen des statistiques des revenus nationaux de 39 pays, de 1938 à 1947
Chapitre V: Propositions en vue d'augmenter la comparabilité des statistiques des revenus nationaux.

Quatre annexes complètent le rapport:

1. Le revenu national de plusieurs pays, de 1929 à 1948
2. Estimations diverses du revenu national.
3. Revenu national réel de plusieurs pays, 1938 à 1947.
4. Bibliographie choisie, 1938 à 1947.

Major Economic Changes in 1948 (publié en 1949) Prix: frs. s. 4.— ou l'équivalent en d'autres monnaies.

Ce rapport est le troisième d'une série dont les premiers ont paru sous les titres: „Economic Report: Salient features of the world economic situation, 1945—47" et „Selected world economic indices" paru en 1948. Bien que d'une importance moins grande pour les spécialistes du droit fiscal que le premier rapport de cette bibliographie, il est utile de mentionner ce deuxième rapport à cause de l'aperçu qu'on y trouve de l'évolution économique en

1948 dans un grand nombre de pays. L'importance de ce rapport résulte des sujets traités:

Première partie: Introduction; L'approvisionnement du monde en denrées; mouvements d'inflation et de déflation en 1948; commerce et finances internationaux.

Dans la seconde partie on trouve des données statistiques détaillées comme complément de la première partie. On y donne une énumération très succincte du progrès économique dans un grand nombre de pays. Cependant les causes de ce progrès n'y sont point étudiées. A notre avis ce rapport aurait gagné en intérêt et en importance, s'il avait donné un aperçu de la politique économique des différents pays avec une étude de la politique fiscale des différents pays. Du moins cela aurait intéressé un plus grand nombre de lecteurs.

Public Debt, 1914—1946 (publié en 1948) Prix: frs. s. 10.— ou l'équivalent en d'autres monnaies.

„L'Avis Général" qui précède les innombrables tableaux de ce livre, indique que le but de cette publication est de faire ressortir, dans les grandes lignes, les différences qui existent dans les différentes conceptions nationales du concept „dette publique". Ces différences résultent de la grande diversité des systèmes d'organisation des Etats: il y a des Etats fédéraux, des Etats unitaires centralisés ou décentralisés etc. L'activité économique gouvernementale, diffère d'un Etat à l'autre, ainsi que les méthodes budgétaires et comptables. Ces différences et bien d'autres encore, se rapportant à 52 pays, résultent des tableaux des pages 11 à 159. Ces tableaux comprennent chacun deux parties: la première concerne la dette publique pas encore amortie et le service de la dette publique, la seconde contient un exposé détaillé de la dette publique.

Nous apprécions beaucoup et nous admirons le travail énorme qu'a exigé la composition de ce livre et dont la plus grande partie a été accomplie par Mr. Alfred Landon, de la Section fiscale, du département des Affaires économiques.

Juste avant de mettre sous presse ce numéro de notre Bulletin, nous avons reçu

Economic Survey of Europe in 1948 composé par la Commission des Nations Unies pour l'Europe. Prix: $ 2,50.

Cette publication de 288 pages contient une étude très détaillée de la situation économique de l'Europe. Les neuf chapitres sont complétés par 144 tableaux et 7 graphiques. L'oeuvre importante accomplie par la Commission économique pour l'Europe est suffisamment connue, de sorte que nous n'avons pas besoin d'entrer dans le détail. Cet ouvrage montre une fois de plus combien le travail de cette Commission est soigné. Voici quelques sujets traités dans ce livre:

1 . L'évolution de l'agriculture et de l'industrie. On y étudie en particulier la productivité, les chiffres de la production de chaque branche, les transports et la répartition géographique des industries.

2 . L'équilibre interne est traité lors de l'étude du rapport des prix et des salaires, du problème monétaire et de l'équilibre budgétaire. On y indique brièvement les relations entre les politiques économique et fiscale, spécialement à l'égard d'un budget en équilibre.

3 . Un chapitre est consacré à la politique des investissements des pays européens. Cette étude permet aux auteurs de tirer des conclusions très intéressantes, entre autres celle-ci: la formation de nouveaux capitaux a été plus accentuée dans les pays industriels que dans les pays moins développés, ce qui ne favorise pas les relations économiques inter-européennes.

4 . Quatre chapitres sont consacrés à l'analyse des échanges commerciaux des pays européens. On passe en revue d'une façon approfondie et

systématique les mouvements commerciaux généraux de l'Europe, considérés du point de vue des principales catégories de produits; le niveau européen des prix, les bilans de paiement et le commerce avec les pays d'outre-mer, le commerce et les paiements inter-européens.

5 . Les deux derniers chapitres donnent un aperçu des plans nationaux des différents pays ainsi que des résultats enregistrés et des perspectives. On ne sera pas étonné de voir traiter dans ce cadre le problème du dollar.

Le livre que nous venons d'examiner brièvement contient des données intéressant les spécialistes du droit fiscal qui s'occupent des relations fiscales internationales dans la mesure où celles-ci sont entravées par des problèmes économiques.

International Tax Agreements (publié en 1948) (Conventions fiscales internationales). Prix $ 5.—.

Nous connaissons deux collections de traités fiscaux qui constituent un instrument de travail excellent pour ceux qui s'occupent des problèmes fiscaux internationaux: la „Collection of International Tax Agreements and Internal Legal Provisions for the Prevention of Double Taxation and Fiscal Evasion", publiée en six tomes par la Société des Nations au cours des années 1928 à 1936 et les textes des traités cités dans l'ouvrage de Rosendorff-Henggeler: „Das Internationale Steuerrecht des Erdballs."

La première collection qui a perdu entretemps beaucoup de son actualité, contenait toutes les dispositions aussi bien des textes de traités que des lois nationales relatives au droit fiscal international. Elle était un instrument de travail très intéressant pour ceux qui voulaient vérifier les bases légales d'une situation pratique déterminée.

Les textes de traités joints à l'oeuvre connue de Rosendorff-Henggeler avaient une fonction très spéciale: ils complétaient le livre proprement dit. Le grand mérite de l'oeuvre de Rosendorff-Henggeler réside dans l'aperçu des systèmes fiscaux des pays européens, des États-Unis et du Canada. Dans cet aperçu, la situation des „non-résidants" occupe une place importante. Il va de soi que pour ceux-ci les traités jouent un rôle important. Or, ce livre permettait de voir instantanément quels traités avait conclu un pays déterminé et de tenir compte des incidences de ces traités sur les dispositions autonomes du pays en question. Cette oeuvre qui malheureusement n'est plus actuelle par suite de la guerre, est tout aussi utile au monde scientifique que le recueil de traités édité par la Société des Nations aux juristes pratiques.

La Division fiscale du Conseil Économique et Social de l'O.N.U. vient de continuer l'oeuvre de l'ancienne Societé des Nations, en publiant le livre „International Tax Agreements" dont il est question ici. Le livre a un plan systèmatique et distingue les traités suivant leur nature:

A. traités généraux concernant les impôts sur le revenu et sur la fortune.
B. traités concernant l'impôt sur le revenu appliqué aux „non-résidants"
C. traités concernant les impôts appliqués aux entreprises commerciales et industrielles.
D. jusqu'à F. traités concernant les impôts appliqués aux compagnies aériennes, de navigation et de chemins de fer.
G. traités concernant les impôts sur les véhicules automobiles.
H. traités concernant les droits de succession et les impôts sur les donations.
I. traités concernant l'assistance administrative internationale.

Cette publication, que l'on peut également se procurer en français et en espagnol, comble une lacune. Nous ne regrettons que l'absence des dispositions des lois nationales concernant les étrangers, lesquelles figuraient autrefois dans les éditions de la Société des Nations. En effet, ce serait plus commode

pour les conseillers fiscaux s'ils disposaient d'un ouvrage indiquant dans quelle mesure les traités fiscaux complètent les lois nationales ou y dérogent.

Sous ce rapport il nous semble utile d'attirer l'attention sur la série: ,,*Publications du Bureau International de Documentation Fiscale*'' dont la publication a commencé il y a peu de temps et qui contiendra, entre autres, de brefs commentaires sur les traités fiscaux et écrits par des spécialistes de chaque pays contractant. Le but de ces commentaires est de donner un aperçu pratique des dérogations aux lois nationales et résultant des traités, pour que les intéressés puissent voir instantanément de quelles exceptions ils doivent tenir compte. De cette manière le Bureau de Documentation se propose de rendre service aux praticiens du droit fiscal et de fournir des sujets d'études à ceux qui s'attachent au côté scientifique du droit fiscal international. De cette façon, il veut compléter par ses publications, les nombreux et excellents travaux d'autres organismes et s'efforcer d'accomplir la tâche qu'il s'est assignée.

Dans les numéros des deux premières années de ce Bulletin, nous avons publié deux parties d'un aperçu de la bibliographie italienne de droit fiscal, écrit par le professeur CESARE COSCIANI (Vol. I, page 316; Vol. II, page 255). Au cours de cette année nous publierons la troisième partie de cet aperçu. Entretemps le Bureau de Documentation a reçu de nombreux ouvrages nouveaux dont voici un résumé:

Le droit fiscal a eu de nombreux spécialistes éminents en Italie. Il nous suffira de mentionner quelques noms seulement, pour montrer aux lecteurs toute l'importance qu'a l'Italie pour la science fiscale: le Président actuel de la République italienne, LUIGI EINAUDI, est connu de nous tous comme membre du Comité des Savants, qui a accompli des travaux très importants pour la Société des Nations.

Un autre nom connu de tous ceux qui étudient scientifiquement le droit fiscal est celui de l'actuel Ministre des Finances, EZIO VANONI. Et qui ne connaît celui du Professeur BENVENUTO GRIZIOTTI, fondateur de la ,,Rivista di Diritto Finanziario e Scienza delle Finanze''. Nous pourrions citer encore bien des noms, mais nous nous contenterons de ces trois, car avec Messieurs ACHILLE D. GIANNINI et SALVATORE SCOCA, ils constituent la rédaction de la Rivista susmentionnée qui a paru en Mars 1949, après une interruption de six années. Tous ceux qui connaissent cette revue (qui paraît tous les trois mois chez Giuffrè à Milan), se réjouiront de cette réapparition. Le premier numéro se compose de deux parties dont la première contient des articles, des communiqués et une bibliographie, tandis que la seconde partie nous fait connaître la jurisprudence la plus récente.

Nous avons reçu deux ouvrages du Professeur A. D. GIANNINI, qui ont été analysés par le Professeur Cosciani dans sa bibliographie: ,,*Il rapporto giuridico d'imposta*'' (Giuffrè, Milan 1939) et ,,*Istitizioni di diritto tributario*'', 4e édition (ibïd. 1948). Les théories de l'auteur ont été résumées dans les aperçus cités du Professeur Cosciani, de sorte que nous pouvons nous contenter d'en indiquer le contenu.

Le premier ouvrage comprend cinq chapitres:

I l'imposta II i soggetti del rapporto giuridico d'imposta III Il contenuto del rapporto d'imposta IV L'accertamento dell'imposta V L'estinzione del rapporto d'imposta.

Cet ouvrage a un caractère purement juridique, comme d'ailleurs le second qui comprend trois parties: une introduction générale, une partie générale et une partie plus spécialisée. Les deux premières parties de cet ouvrage traitent à peu près les mèmes sujets que le premier ouvrage: le droit fiscal, la place qu'il occupe dans le droit, son fonctionnement, le droit fiscal comme partie

des finances publiques; la classification des impôts, le caractère juridique, les sujets etc., etc.

La partie plus spécialisée traite en détail des différents impôts, aussi bien des impôts directs qu'indirects. Cette partie de l'ouvrage contient plus de deux cents pages. Auparavant l'auteur a déjà exposé en détail la distinction entre impôts directs et impôts indirects (pages 110 et suivantes). L'auteur y établit des relations avec le droit international, et il fait remarquer que la distinction est extrêmement importante, parce que dans les traités que l'Italie a conclus avec d'autres puissances, il est souvent question d'impôts directs s'ils sont assis directement sur les revenus bruts ou nets, ou sur le capital (voir entre autres les traités germano-italien de 1925, italo-français (1931) et belgo-italien (1932)).

La place nous manque pour citer en détail tous les sujets traités. Nous croyons cependant devoir faire remarquer qu'il fait bon lire cet ouvrage purement juridique. En effet, la grande importance qu'ont de nos jours les impôts pour la vie économique, nous incite trop souvent à ne considérer la question fiscale que du point de vue économique. Or, le droit et l'économie politique constituent tous deux les sciences fondamentales de la science fiscale moderne. De nos jours, on l'oublie parfois.

Dans la série „Collana di diritto finanziario" sous la direction d'ANTONIO UCKMAR a paru „*Il concordato tributario*" de BENEDETTO COCIVERA, préfacé par A. D. GIANINNI (Societa Editrice Libraria, Milan, 1948). Dans sa préface, le Professeur Gianinni écrit qu'il est très attrayent d'écrire un livre sur le concordat en matière fiscale, et qu'il y a deux raisons à cela: traiter ce sujet d'une façon systématique et scientifique qui puisse donner satisfaction, et ensuite trouver une réponse à de nombreuses questions qui se présentent dans la réalité. En effet, écrit le Professeur Giannini, il s'agit d'un sujet très délicat, du point de vue du droit civil aussi bien qu'administratif. En ce qui concerne les contradictions qui existent dans la littérature italienne à ce sujet, nous renvoyons le lecteur aux remarques du Professeur Cosciani dans le Bulletin, Volume II, page 262 et aux ouvrages qui y ont été cités.

Il est certain qu'aussi longtemps qu'on n'aura pas résolu la question de savoir si le concordat fait partie du droit civil ou administratif, on se heurtera à de nombreuses difficultés pratiques. Le problème a été traité par l'auteur d'une façon très approfondie. Il cite de nombreux ouvrages et il expose clairement des points de vue opposés. Il analyse avec le plus grand soin les différentes théories. Dans trois chapitres, comprenant 60 paragraphes (l'ouvrage contient 157 pages) l'auteur passe successivement en revue la théorie d'après laquelle le Concordat est un contrat (la teoria contrattuale). Il montra pourquoi les adversaires de cette théorie ont tort, mais que ses défenseurs sont divisés entre eux, et il balance le pour et le contre de tous les arguments. Le second chapitre traite de la théorie unilatérale. Ici également l'auteur expose les arguments qui militent en faveur du point de vue d'après lequel l'administration fiscale fonctionne suivant un droit public qui lui est particulier.

Le troisième chapitre, intitulé: Il concordato tributario quale negozio unilaterale di accertamento, est le chapitre le plus détaillé dans lequel l'auteur traite les aspects juridiques du concordat et ses répercussions sur l'imposition. Il y énonce enfin les conclusions auxquelles il est parvenu.

Nous croyons pouvoir nous contenter de ces quelques remarques pour attirer l'attention du lecteur intéressé sur cet ouvrage.

Dans cette même série a paru „*L'imposta generale sull'entrata*", du même auteur, en deux volumes, Milan, 1948. Le premier tome de cet ouvrage comprend 237 pages et analyse l'impôt général italien sur le revenu, qui constitue une sorte d'impôt sur le chiffre d'affaires. L'auteur avait

l'intention d'écrire un ouvrage synthétique sur cet impôt, de façon à ce qu'aussi bien le théoricien que l'homme de la pratique puissent y trouver traités tous les sujets importants. Cet ouvrage a été divisé en quatre sections, comprenant ensemble 70 paragraphes. Dans la première section on peut trouver l'exposé du caractère de cet impôt, et du fondement sur lequel il repose, tandis que l'auteur y brosse également un tableau historique et comparatif.

Dans la seconde section il analyse à fond le côté juridique de cet impôt, ce qui lui permet de passer en revue de nombreux points de doctrine tels que l'obligation fiscale, la solidarité dans le domaine de la créance fiscale, etc.

La troisième section est consacrée à l'étude des sujets suivants: la détermination de la matière imposable et ses conséquences juridiques, les règles d'imposition et la liquidation de l'impôt, les voies de recours contre l'imposition. Dans la dernière section on trouvera également quelques remarques succinctes au sujet de la prescription de la dette fiscale et des dispositions concernant les sanctions.

Outre cette étude scientifique, l'auteur a fait oeuvre très utile en donnant dans le second tome le texte complet de la loi, qu'il a coordonné et mis à jour jusqu'au 15 octobre 1938, en collaboration avec le Professeur OSCAR CESAREO. Ce texte a été ordonné de façon claire, et la date de chaque changement ou complément y a été indiqué.

Citons dans cette même série: *Le tre imposte straordinarie sul patrimonio,* d'ANTONIO UCKMAR, (Milan 1948). Ce gros ouvrage comprend 260 pages de commentaires et autant de pages de documents (qui sont contenus dans une dizaine d'appendices).

L'auteur s'est assigné une tâche difficile: sans pouvoir se baser sur la jurisprudence, sans l'aide d'une littérature scientifique abondante, il devait donner un aperçu synthétique des trois impôts exceptionnels que l'Italie a connus depuis la dernière guerre mondiale. Il s'agit de:

1 . l'impôt exceptionnel progressif sur le capital des personnes naturelles
2 . l'impôt exceptionnel proportionnel sur le capital des sociétés et des personnes morales, et enfin
3 . l'impôt exceptionnel proportionnel sur le capital.

L'auteur fait remarquer dans sa préface, qu'il n'a pas eu l'intention de traiter son sujet de façon scientifique, mais sans aucun doute les lecteurs de son ouvrage lui seront reconnaissants, parce qu'il y expose d'une façon claire, la matière si délicate de ces trois impôts si importants pour les milieux fiscaux italiens.

Nous n'avons pas besoin de dire que les textes de loi et les remarques liminaires facilitent grandement l'étude de cet ouvrage.

La legge del Registro, d'A. UCKMAR, Commento teorico pratico, III. Edizione, Libro Primo — Casa editrice Dott. Antonio Milani (CEDAM) Padova 1949).

A ET V. UCKMAR: *Il Codice delle leggi di registro,* 1948.

Les commentaires bien connus du Professeur Antionio Uckmar, dont nous venons de recevoir la troisième édition, ont déjà paru en 1928. Nous n'étonnerons personne en disant qu'au fond il s'agit d'un ouvrage entièrement nouveau plutôt que d'une réimpression.

Dans la préface de cette première partie (qui comprend 424 pages) l'auteur fait remarquer que la matière qu'il va traiter est devenue très compliquée au cours des dix dernières années, par suite des nombreuses modifications et additions de la législation, et il montre qu'une révision générale et complète est devenue urgente. Il plaide en faveur de l'introduction d'un ,,Codice tributario'', pour que toute la législation fiscale soit basée sur les mêmes principes, ce qui rendrait le tout plus ordonné et plus uniforme. Tout l'ouvrage est imprégné de cette idée.

L'ouvrage est divisé en trois parties, dont la première contient un aperçu historique et la seconde (comprenant environ 80 pages) les principes généraux de la loi sur l'enregistrement. L'auteur attire l'attention sur le caractère du droit d'enregistrement, qui n'est pas une taxe, mais un impôt indirect.

Ensuite, l'auteur étudie les fondements juridiques de cet impôt: il énonce les théories allemandes et françaises concernant le fondement juridico-economique des droits perçus lors de la transmission de biens à titre onéreux. Il analyse les opinions d'un certain nombre d'économistes au sujet du problème de la question de savoir si le droit d'enregistrement est un complément des impôts directs, parce qu'il frappe un avantage né de la transmission d'un bien (WAGNER), ou bien s'il est une rémunération pour la protection de la propriété par l'État ou de la transmission de la propriété (la théorie française de CHAMPONNIÈRE et RIGAUD). Dans cette même partie, l'auteur traite la question de l'interprétation. Il y analyse également la question de savoir si l'obligation fiscale a une cause juridique. Il expose la théorie de Griziotti et de l'École de Pavie qui l'affirment, mais il est en désaccord avec elle parce qu'elle ne fait pas une assez grande distinction, d'après lui, entre la cause de l'obligation primitive et celle de l'obligation fiscale. À cet égard, l'auteur ne partage pas l'opinion de ceux qui croient que la cause juridique consiste dans la capacité contributive; il estime que cette opinion ne portera pas de fruit.

Dans la troisième partie, l'auteur traite les dispositions légales, à savoir les articles 1 à 41. Cela est fait en tenant compte du caractère de la loi et en analysant les points généraux de doctrine.

Cette première partie sera suivie de deux autres dont la dernière contiendra un index général.

Afin d'épargner au lecteur les pertes de temps qu'entraîne la recherche des textes, ces derniers ont été édités de façon coordonnée dans le second ouvrage susmentionné qui comprend 345 pages, le registre compris.

The Economics of Public Finance, par PHILIP E. TAYLOR (The MacMillan Company, New York, 1948).

Cet ouvrage est un livre d'études destiné spécialement aux étudiants américains qui ne disposent pas de l'abondance de livres de droit fiscaux. Il traite les aspects politique et sociologique du sujet, mais le plus fort accent est mis sur le côté économique. En effet, l'auteur estime que la science des finances publiques fait partie de la science de l'économie politique. À son avis, on ne traite pas assez ces deux sciences comme un tout organique, et dans les cours normaux on ne traite que quelques répercussions, comme la théorie de la plus-value décroissante résultant de la progressivité fiscale, et le mécanisme de l'incidence des impôts sur l'analyse des prix.

Dans son ouvrage, l'auteur exprime explicitement ses opinions personnelles. D'après lui, les méthodes de travail objectives de certains ont des inconvénients, puisqu'ils n'estiment pas nécessaire d'exprimer leurs opinions personnelles.

Ce livre de 600 pages traite entre autres: le domaine des finances publiques, l'administration fiscale, les dépenses publiques et le bien-être économique, les dépenses gouvernementales en vue de réduire le chômage, les dettes publiques (caractère, origine de fonds, charges), revenus publics et commerciaux, répartition des charges fiscales, incidence de l'impôt, imposition du capital et des revenus, droits de succession et de donations, contributions d'affaires, etc.

The incidence of income taxes, par D. BLACK (Mac Millan, London, 1939).

Dans cet ouvrage, l'auteur oppose les théories anciennes et nouvelles relatives à l'incidence: Il combat la théorie de Coats et d'autres qui énonce que l'impôt sur le revenu *laisse en fait* chaque producteur, tel qu'il était, que le

nombre d'entreprises reste stationnaire de même que la production sans qu'il y ait d'augmentation de prix.

Au sujet du concept ,,incidence'' l'auteur écrit que les économistes limitent ce concept à la seule question de savoir qui supporte l'impôt, sans considérer les autres répercussions telles que la réduction de la production, le licenciement de personnel etc.

L'auteur fait remarquer qu'il y a deux tendances: on peut soutenir que les impôts ne peuvent être rejetés sur d'autres personnes; dans le monde des affaires, par contre, on estime qu'on les rejette bien, en augmentant les prix. Cette augmentation des prix aura pour conséquence une diminution de la demande.

On peut classifier comme suit les marchandises ou biens, et cette classification a son importance, comme l'a également l'emploi des rentrées fiscales: les services que rend l'Etat (biens indivisibles) et les biens de consommation (biens divisibles). Si les rentrées fiscales augmentent, on dépensera davantage pour les biens indivisibles, et une demande accrue de biens divisibles en résultera.

Répercussions sur la population: si on emploie une plus grande partie des rentrées fiscales aux biens indivisibles la natalité augmentera parmi les classes les plus pauvres de la population, et celle des autres classes diminuera. Les produits du travail augmentent, le capital diminue. Il en résulte une diminution du standard de vie de tous sauf de la classe la plus pauvre.

En analysant la ,,double imposition'' des économies (on frappe d'abord le revenu global, puis on le frappe de nouveau y compris les intérêts des économies), l'auteur est amené à combattre la théorie d'après laquelle il s'agirait vraiment d'une double imposition.

Dans le dernier chapitre, l'auteur traite les effets économiques de l'imposition des réserves des associations coopératives. Il se demande si cet impôt est juste et si l'on ne devrait pas seulement imposer les répartitions de bénéfices, comme c'était le cas avant 1933. Bien des gens font la distinction entre les bénéfices et les surplus, dont seuls les derniers devraient être exempts de l'impôt. Sous ce rapport l'auteur attire l'attention sur la différence entre la société anonyme et l'association coopérative, en ce qui concerne les avantages que les réserves ont pour les associés.

Il en conclut que l'imposition des associations coopératives ne doit pas être condamnée à priori, mais qu'il est possible que l'imposition soit trop lourde.

v. H.

IV

LA CONVENTION FRANCO-AMERICAINE RELATIVE AUX DOUBLES IMPOSITIONS ET A L'ASSISTANCE FISCALE [1])

par

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Les relations franco-américaines en matière de doubles impositions et d'assistance fiscale, sont actuellement régies, ou du moins sont appelées à être régies à brève échéance, par la Convention du 18 Octobre 1946, complétée par un Protocole additionnel du 17 Mai 1948. Cette Convention a été ratifiée par les Etats-Unis le 2 Juin 1948. Elle n'a pas encore été ratifiée par la France.

La Convention du 18 Octobre est la troisième qui ait été signée

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[1]) La rédaction de ce travail était dejà terminée, avant que ne soit promulgué le Décret du 9 Décembre 1948. La réforme fiscale rend nécessaire certaines modifications à la Convention franco-américaine, comme aux autres Conventions internationales signées par la France.

Mais ces modifications, qui semblent devoir être de forme beaucoup plus que de fond et ne pas empêcher l'application de ces traîtés, n'interviendront d'ailleurs pas avant de nombreux mois, car il faut d'abord, que paraissent les décrets d'application prévus dans l'art. 295 du décret du 9 Décembre 1948, fixant les modalités de la nouvelle législation.

Aussi, sans attendre cette révision, faut-il étudier la Convention franco-américaine dans son texte actuel, qui est celui qu'elle conservera, lors de sa très prochaine ratification par la France.

Notons cependant l'existence d'une solution devant nécessairement s'imposer dès maintenant, malgré l'absence de toute décision administrative formelle. Elle consiste à exonérer entièrement de l'impôt français sur le revenu des valeurs mobilières, (réduit de 30 % (25 % + 5 %), taux de l'art. 51 1° du Code fiscal des valeurs mobilières majoré de la surtaxe exceptionelle établie par la loi du 29 Mars 1941, à 18 %, correspondant au taux de la nouvelle taxe proportionnelle instituée par le Décret du 9 Décembre 1948), le contribuable bénéficiaire de la déduction forfaitaire de 25 % accordée par l'art. 14 B a, de la Convention, pour tenir compte de l'impôt perçu aux Etats-Unis.

par les deux Etats. Elle fait suite aux Convention du 27 Avril 1932, entrée en vigueur le 1er Janvier 1936, et du 25 Juillet 1939, entrée en vigueur le 1er Janvier 1945. Elle est beaucoup plus complète elle est aussi beaucoup plus complexe, que les précédentes. Il faut donc admettre que les deux signataires estiment nécessaire de règler ces questions par voie de traité, et sont décidés à étendre à l'extrême le domaine du droit conventionnel.

Le fait mérite d'être noté. Il le mérite d'autant plus, qu'il est corroboré par d'autres faits. Il en résulte que la tendance à l'internationalisation du droit fiscal par le moyen des traités de doubles impositions et d'assistance fiscale, s'affirme nettement.

D'un point de vue strictement fiscal, on constate que les Conventions antérieurement signées par la France, continuent d'être appliquées, et que ce pays signe de nouveaux traités. On constate également que les travaux entrepris avant la guerre sous les auspices de la Société des Nations, afin d'unifier le droit conventionnel, par l'élaboration de Conventions types, sont poursuivis allègrements.

D'un point de vue général, on constate que les Conventions de doubles-impositions, et d'assistance fiscale sont considèrées comme un élément notable, si ce n'est, essentiel, d'institutions économiques de haute portée. Les travaux du Comité fiscal de la Société des Nations, montrent que la solution de ces problèmes, importe aux mouvements de capitaux au travers du monde, et favorise leur bonne répartition entre les nations. Ce point de vue est repris dans la Charte du Commerce International, adoptée à la Conférence de La Havane, en laquelle fut constituée l'organisation internationale du Commerce et de l'Emploi. Enfin la Convention bilatérale entre la France et les Etats-Unis signée pour l'application du Plan Marshall, d'une part vise formellement l'assistance fiscale, prise en tant que moyen d'aider au financement des importations françaises et, d'autre part, contribue à rendre la suppression des doubles impositions plus nécessaire à raison de l'augmentation des investissements américains en France, prévue en ses dispositions.

L'activité grandissante et appellée à grandir, des relations économiques Franco-Américaines explique le développement des conventions de doubles impositions. Ce développement se justifie d'autant mieux, que dans les deux Etats, bien que ce soit iné-

galement, la pression fiscale s'accroit et l'emprise gouvernementale sur les individus se fait plus sévère. La suppression de la double imposition jadis utile, devient maintenant indispensable.

Si l'entreprise est urgente, elle ne laisse pas d'être difficile. La difficulté de la chose ne fait qu'ajouter à l'urgence d'entreprendre et la nécessité de réussir; ce mot n'est pas d'hier.

Il existe un modèle, les conventions types élaborées par le Comité fiscal de la S.D.N., révisées pour la dernière fois à Londres et Mexico; il est recommandé de s'y tenir. Les hautes puissances contractantes ne l'ont fait que très partiellement. Il ne semble pas, pour autant que nos renseignements très insuffisants nous permettent de juger, que l'obstacle se dressait de ce côté de l'Atlantique; la France a signé diverses conventions très proches des canons. Il semble que la répugnance se manifestait à Washington. Nous ne croyons pas que les Etats-Unis aient, jusqu'à ce jour, signé de nombreuses conventions de doubles impositions et d'assistance fiscale. Ils commencent seulement de pénétrer sur ce terrain épineux, de même qu'ils viennent seulement de pénétrer avec un premier rôle dans l'arène de la politique mondiale. Ils avancent avec prudence et paraîssent redouter de troubler le système fiscal national par le contact avec les systèmes fiscaux étrangers. De plus, le libéralisme du Nouveau Monde, même s'atténuant, ainsi que le donne à penser l'évolution présente, recule devant la rigueur du contrôle fiscal sévissant sur la vieille terre d'Europe. Le traîté est visiblement dominé par le désir de respecter autant que faire se peut, l'indépendance des législations nationales, selon la formule consacrée, la Souveraineté. Sans doute est-il également inspiré par la volonté d'appliquer strictement la progressivité toutes les fois qu'elle a lieu d'intervenir. Destinées à répondre à ces désirs multiples, parfois quelques peu contradictoires, les règles adoptées sont souvent unilatérales, différentes selon celui des signataires considéré et faites en particulier pour chacun d'eux; elles présentent de manière générale une regrettable complexité.

Sous réserve de cette remarque, il importe de louer la très grande portée de la nouvelle convention. Elle s'applique à la totalité des impôts fédéraux, pour les Etats-Unis, à la totalité des impôts nationaux, pour la France, sauf les taxes sur le chiffre d'affaires, c'est à dire à la totalité des impôts, dont l'application suscite de

graves conflits. Il n'existe qu'un pays, outre la Sarre, avec lequel la France soit liée par un système conventionnel aussi complet, la Suède.

Il sera procèdé à l'étude de la convention suivant l'ordre des titres:

I Impôts sur les mutations par décès
II Impôts sur le revenu et le capital
III Assistance administrative
IV Dispositions diverses.

Section I: IMPOTS SUR LES MUTATIONS PAR DECES.

Il s'agit d'une matière toute nouvelle qui n'est pas abordée dans les récentes conventions, entre la France et la Grande-Bretagne, du 19 Octobre 1945, entre les Etats-Unis et la Grande Bretagne, du 2 Août 1946, entre les Etats-Unis et les Pays-Bas du 24 Mai 1948, et qui n'est visée, en dehors de la Convention Franco-Sarroise d'un intérêt un peu spécial, que dans la seule convention Franco-Suédoise du 24 Décembre 1936.

L'accord fiscal Franco-Américain de 1946 présente donc un intérêt tout spécial en ce domaine, qui n'était pas traité dans les deux premiers accords de 1932 et de 1939.

Le problème est d'importance; l'impôt sur les successions constitue un impôt sur le capital, de telle sorte que les règles de double imposition, admises pour les successions, pourraient être appliquées dans leurs principes, aux impôts sur le capital, qui se multiplient de nos jours, et que certains proposent de rendre permanents.

Le système adopté par la convention consiste à combiner la perception à la source par l'Etat de la situation des biens, avec la perception par l'Etat du domicile du défunt, lors de son décès.

La convention contient tout d'abord, des règles pour déterminer la situation légale des biens successoraux, en vue d'effectuer une répartition de la matière imposable, pour la perception à la source. Ces règles se trouvent énoncées dans l'article 3 de la convention du 18 Octobre 1946:

Les immeubles et les meubles corporels ordinaires seront réputés situés au lieu où ils se trouvent matériellement;

Les meubles corporels enregistrés seront censés situés au lieu de leur enregistrement;

Les brevets de marques, au lieu où ils ont été déposés;
Les lettres de changes et chèques, au lieu de la résidence du tiré;
Les billets à ordre négociables, au lieu de la résidence du souscripteur;
Tous les autres biens, et cette dernière catégorie comprend notamment les créances, dans l'Etat où le défunt était domicilié, lors de son décès.

Ce recours à des règles communes pour la répartition de la matière imposable, entre l'Etat de la situation, et l'Etat du domicile, selon le critère de la source, évite des doubles impositions, et l'idéal serait de n'utiliser que ces seules règles.

Malheureusement, l'autonomie fiscale de chacun des deux pays et le souci de sauvegarder strictement la progressivité ont rendu nécessaire de reconnaître à côté de ces règles communes, au profit de l'Etat du domicile, le droit d'imposer tous les biens successoraux réputés imposables, en vertu de sa législation interne.

Il en résulte inévitablement, une certaine superposition entre les impôts ainsi prélevés par l'Etat du domicile, et ceux perçus sur les mêmes biens par l'Etat de leur situation légale.

Pour l'éviter, la convention du 18 Octobre 1946 dispose dans son article 5—1, que l'Etat du domicile accordera sur l'impôt perçu par lui, „une réduction correspondant au montant de l'impôt prélevé par l'autre Etat contractant, sur les biens sis sur le territoire de ce dernier, et inclus dans l'assiette de l'impôt prélevé par chacun des deux Etats", sans que, „le montant de cette réduction", puisse „excéder la partie de l'impôt perçue par le premier Etat sur les mêmes biens".

Mais, comme la convention abandonne à la législation de chacun des Etats, la définition du domicile du de cujus, au moment de sa mort, la détermination de ce domicile sera faite, en France conformément à l'article 103 du Code Civil, et aux Etats Unis, conformément à l'article 81—5 des Estate Tax Régulations (Protocole additionnel du 17 Mai 1948, art. 1er Parg. 2 a et b).

Il peut en résulter cette conséquence, que dans un cas déterminé, le défunt soit considéré par chacun des deux pays, comme domicilié, au moment de sa mort, sur son territoire, et que par conséquent, chacun des deux Etats, impose tous les biens taxables, en vertu de sa propre législation.

En pareille hypothèse, le critère de la source et celui de domicile, au lieu de s'appliquer, l'un en France, et l'autre aux Etats-Unis, jouent ensemble pour les deux pays; il en résulte que la superposition des deux législations fiscales, au lieu d'être simplement partielle, peut devenir totale.

Pour remédier aux doubles impositions pouvant en résulter, la convention prévoit une double réduction appliquée à la fois par l'un et l'autre Etat.

Chacun des deux pays réduira de l'imposition qu'il prélève comme Etat du domicile, tout d'abord, le montant prélevé par l'autre Etat, sur les biens sis sur son territoire. Cette réduction n'est autre, que celle précèdemment indiquée, mais appliquée en même temps par les deux Etats, qui se considèrent tous deux comme Etat du domicile du défunt à son décès.

Mais une seconde réduction doit être opérée, pour tenir compte de l'impôt frappant les biens, notamment les créances, qui sont fictivement rattachées au territoire du domicile, en vertu des règles de répartition de la matière imposable, précèdemment indiquées, et qui par suite vont être imposées dans les deux pays, lorsqu'ils considèrent l'un et l'autre, dans un cas déterminé, que c'est sur leur territoire, que le de cujus est mort domicilié.

C'est cette seconde réduction qui est visée par l'article 5—2 de la convention du 18 Octobre 1946, où il est dit, avec un cert in manque de clarté, qu'outre la réduction ci-dessus visée, une seconde réduction doit être accordée, „correspondant à la partie de l'impôt prélevée par l'autre Etat, sur les biens situés ou censés situés: a) — sur le territoire des deux Etats contractants, ou b) — en dehors de ces deux territoires", cette dernière alternative visant le cas d'un impôt prélevé par un Etat tiers, sur le territoire duquel certains biens pourraient être situés.

La convention a soin de préciser, comment doit être calculé la réduction totale à opérer ainsi, dans les deux Etats; elle correspondra au montant de l'impôt perçu sur lesdits biens dans celui des deux Etats, où ce montant est le moins élevé (art. 5 Parg. 2 in finé).

La réduction totale ainsi calculée sera répartie entre les deux Etats, proportionnellement aux impôts payés dans chacun d'eux. Si par exemple l'impôt était en France de 500, et aux Etats-Unis

de 1.000, la réduction totale serait de 500, montant de la perception la moins élevée.

Cette réduction serait répartie entre la France et les Etats Unis, dans la proportion des impôts payés repectivement dans chacun des deux pays, par rapport à l'imposition totale de 1.500, c'est à dire qu'elle serait de $\frac{500}{3}$ en France et de $\frac{500 \times 2}{3}$ aux Etats-Unis.

En définitive, le contribuable supporterait une imposition totale de:

en France : $500 - \frac{500}{3} = 333$

Aux Etats-Unis : $1.000 - \frac{2}{3} \times 1.000 = 667$

soit un total: $333 + 667 = 1.000$, c'est à dire en définitive le montant perçu aux Etats-Unis, où l'impôt est le plus élevé.

La double imposition est donc évitée, en cas de conflits positifs, dans la détermination du domicile. Mais le système présente une telle complication, qu'il est à craindre qu'il ne soit pas pratiquement appliqué par les contrôleurs, moins bien informés, des départements.

Il y a en outre lieu d'observer, que le contribuable doit avec le système adopté dans la convention, commencer par payer dans les deux pays le montant total de ses impositions, et ne pourra obtenir qu'ultérieurement un remboursement du trop perçu. Il aura donc à supporter l'inconvénient d'une avance qui pourra être fort gènante pour sa trésorerie, étant donné la lenteur des administrations fiscales.

Cet inconvénient provenant de conflits positifs en matière de domicile, eut été évité avec l'adoption, dans la convention, d'une notion commune de domicile, à l'exemple de ce qui a été réalisé dans la Convention franco-suédoise en matière de successions (art. 4 Pag. 2) ou dans les modèles de conventions fiscales de Londres et de Mexico (Protocole additionnel aux Conventions modèles, en matières de successions, art. 1er).

Une situation particulière doit être indiquée, s'agissant des Etats-Unis. Si le de cujus est américain, le critère du domicile est remplacé aux Etats-Unis par celui de la nationalité, en vertu de l'article 4 in fine de la convention nouvelle, ce qui permet aux

Etats-Unis, d'imposer conformément à leur législation interne, la succession d'un citoyen américain, domicilié en France.

La situation est alors la même, que si le de cujus était mort domicilié aux Etats-Unis, d'après la notion américaine du domicile. Il y a donc lieu d'appliquer dans ce cas, si par ailleurs le de cujus est considéré en France, comme y étant domicilié à son décès, le système de réductions réciproques précédemment exposé, pour le cas d'un conflit positif dans la détermination du domicile.

Cette utilisation du critère de la nationalité aux Etats-Unis, marque une intrusion fâcheuse d'une notion d'allégeance politique en cette matière, qui ne devrait être dominée que par celle d'allégeance économique (situation des biens et domicile du contribuable).

Telles sont les solutions principales de la convention Franco-Américaine, en matière d'impôt sur les successions.[1]) Elles marquent un recul par rapport à celles suivies dans la Convention franco-suèdoise, et les modèles de Conventions de Londres et de Mexico.

Tout d'abord en effet, tandis que ces dernières ont soin de dégager une notion commune du domicile, „foyer permanent d'habitation", „résidence permanente", la Convention franco-américaine ne réalise en cette matière aucune oeuvre d'unification entre les législations des deux pays. C'est une lacune fâcheuse, car l'adoption d'une règle commune pour la répartition de la matière imposable, comme notamment celle consistant à rattacher au domicile du de cujus, les créances successorales, ne saurait suffire pour réaliser des solutions uniformes, et éviter les doubles impositions, lorsque chacun des pays suit sa propre législation interne, pour déterminer le domicile.

Il est regrettable que la Convention franco-américaine ne contienne pas une définition commune du domicile, malgré les voeux émis sur ce point, par la Chambre de Commerce Internationale.

En second lieu, alors que la Convention franco-suèdoise, à l'imitation des conventions modèles, utilise exclusivement le procédé de la répartition de la matière imposable entre l'Etat de la source et celui du domicile, la Convention franco-américaine juxtapose à ces règles de répartition de la matière imposable, pour la per-

[1]) Observons ici, que la Convention franco-américaine à la différence de la Convention franco-suédoise et des Conventions modèles de Londres et de Mexico, ne contient aucune règle pour le passif héréditaire que l'on doit répartir selon les règles énoncées pour l'actif.

ception de la source, les règles nationales de la législation interne de chacun des Etats signataires, pour la perception au domicile.

Cette situation critiquable provient de l'autonomie fiscale des Etats. Elle s'explique également par leur âpreté dans la perception de l'impôt, car ceux-ci peuvent, en appliquant leur législation interne, faire jouer le taux progressif de l'impôt de manière plus avantageuse, en établissant son assiette sur un plus grand nombre de biens.

Une illustration pratique de cette tendance fâcheuse nous est fournie par la solution peu équitable et peu conforme à une saine application des principes du droit, adoptée récemment par les Autorités fiscales fédérales américaines, dans la détermination des droits de mutation par décès, dûs sur les biens laissés aux Etats-Unis et appartenant à la succession de français domiciliés en France et mariés sous le régime de la communauté de biens réduite aux acquets.

D'après un principe universellement admis en droit international privé, c'est la loi française, comme loi du domicile matrimonial, qui doit seule être appliquée à la détermination de l'organisation du régime matrimonial et de ses effets.

C'est donc le régime de la communauté réduite aux acquets du droit français, avec toutes ses conséquences de droit, qui devrait régir la situation envisagée, ce qui conduit notamment, à reconnaître, qu'au jour du décès, l'époux étant propiétaire de la moitié des biens communs, l'assiette des droits de mutation doit être limitée à l'autre moitié de ceux-ci.

Cette solution a été suivie par les Autorités fiscales fédérales américaines qui, jusqu'au 21 Avril 1942, reconnaissaient tous ses effets au régime de communauté en vigueur dans la législation de l'Etat du domicile des époux.

Mais, postérieurement à cette date, et jusqu'à la nouvelle législation, intervenue en 1948, qui a rétabli l'état législatif antérieur au 21 Avril 1942, ces Autorités ont abandonné cette solution et ont prétendu calculer le droit de mutation sur la totalités des biens communs, à défaut par l'époux survivant d'apporter la preuve de sa participation à la constitution de l'actif commun.

Ainsi donc, de 1942 à 1948, les Autorités fiscales fédérales américaines ont été, en ce domaine, en contradiction avec les principes généraux du droit ci-dessus rappelés et ont consacré une solution

profondément injuste, car le plus souvent, l'époux survivant n'est pas en mesure de faire cette preuve extrèmement difficile et les droits de mutation sont alors exigibles même sur la portion des biens communs appartenant au survivant. Or ces biens, lors de l'ouverture en France, de la succession du conjoint survivant, pourront être frappés une seconde fois de droits de mutation français et subire de ce fait, une double imposition.

Le caractère critiquable de cette solution est mis en évidence par le fait qu'elle a été abandonnée par les Autorités fiscales fédérales américaines en 1948. Mais l'injustice subsiste pour les successions de Français qui se sont ouvertes dans la période intermédiaire de 1942 à 1948.

Il faut espérer que les services compétents du Ministère des Finances, dont l'attention a été récemment attirée sur ce point, pourront remédier à cette situation, en intervenant auprès des Autorités américaines compétentes, pour qu'elles reconnaissent un effet rétroactif à la législation intervenue en 1948 et abandonnent pour la période 1942—1948, leur solution si critiquable.

Cela est d'autant plus désirable, que la pratique actuelle des Autorités Américaines, très injuste pour les particuliers, est fort préjudiciable aux intérêts du Trésor Public. En effet les actifs successoraux français se trouvent retenus aux Etats-Unis par les oppositions des Autorités américaines, pour le paiement des droits de mutation indûment réclamés par elles, sur l'ensemble des acquets de communauté, que les Français se refusent justement de payer. Les dollars correspondant ne peuvent alors profiter au fonds de stabilisation des changes, et les droits successoraux français demeurent bien souvent impayés, faute de disponibilités suffisantes en France.

Ainsi donc la France, aussi bien que les Français, souffre directement de cette situation, dont le redressement s'impose au nom de ces deux ordres d'intérêts.

Section II — IMPOTS SUR LE REVENU ET SUR LE CAPITAL

Les dispositions du titre relatif aux impôts sur le revenu, qui de plus sont applicables aux impôts sur la fortune et l'accroissement de richesse en vertu du Protocole du 17 Mai 1948, art. 19A, pré-

sentent les mêmes caractères généraux que les dispositions du titre relatif aux impôts aux impôts sur les mutations par décès.

Selon une première série de mesures, art. 7 à 19, il est procédé au rattachement des diverses sources de revenus à un pays déterminé, selon une deuxième série de dispositions, art. 14, il est établi pour certains impôts tout au moins, un procédé par lequel la double imposition est évitée.

Cette technique est compliquée; elle se fonde sur le désir de respecter les souverainetés et la progressivité. Si l'on considère le processus de la perception, on constate que chaque Etat applique intégralement son système fiscal, sans tenir compte des règles de rattachement conventionnelles. Ceci fait, chaque Etat déduit de l'impôt ainsi établi, les sommes déjà payées du chef de l'autre Etat. Cette déduction est effectuée selon les règles de rattachement conventionnelles. Chaque Etat perçoit la totalité de son impôt pour les sources de revenus et les biens rattachés à son territoire; chaque Etat déduit de son impôt les sommes perçues au titre des sources de revenus et des biens rattachés au territoire de l'autre Etat.

La répartition de la matière imposable, en vertu des rattachements conventionnels, joue en quelque sorte au second degré, par déduction après application de la loi nationale, non au premier degré, par modification des règles nationales, relative au domaine dans l'espace de cette loi; la restriction à la souveraineté est en quelque sorte indirecte et non directe.

On doit remarquer que ce procédé est utilisé dans les Conventions types de Londres et de Maxico, mais de manière beaucoup moins large. Etant donné les complications en résultant, il est affectivement préférable de réduire son domaine au minimum.

1° — *Impôts auxquels s'applique la Convention* (art. 1er de la Convention du 25 Juillet 1939, modifié par l'art. 7 de la Convention du 18 Octobre 1946).

La Convention s'applique:

Pour les Etats-Unis, aux impôts fédéraux.

Pour la France, aux impôts sur le revenu (Intitulé du titre deux), plus précisément, aux impôts sur le revenu lesquels sont énumérés dans la Convention, cédules et impôt général.

Cette énumération doit être considérée comme limitative. Cependant, étant donné l'intitulé, il semble que les dispositions du titre sont applicables de plein droit à tous les impôts qualifiés par le législateur français d'impôt sur le revenu, quelles que soient les modifications apportées à la réglementation en vigueur au jour de la signature du traité. Il peut être tiré argument de l'art. Ia, en raison des termes très larges en lesquels cet alinéa est conçu.

Il faut ajouter aux impôts sur le revenu, l'impôt français des patentes et l'impôt américain sur le „capital stock", spécialement visés à l'Art. 13 de la Convention du 25 Juillet 1939.

2° — *Règles de rattachement.*

A) — *Impôt foncier, impôt sur les bénéfices de l'exploitation agricole* (Art. 1b 1° et 4° Convention 25 Juillet 1939).

Les revenus des biens immobiliers sont imposables dans le pays où se trouvent ces biens. Les bénéfices de l'exploitation agricole sont soumis à la même règle.

B) — *Impôt sur les bénéfices industriels et commerciaux.* (Art. 3 Convention du 25 Juillet 1939).

Le rattachement est indiqué selon l'Art. 3 parag.I: „une entreprise de l'un des Etats contractants n'est soumise à l'impôt de l'autre Etat contractant, en ce qui concerne les bénéfices industriels et commerciaux, qu'en raison des bénéfices provenant des établissement stables, qu'elle exploite dans ce dernier Etat".

L'impôt est donc perçu au lieu où se trouve tout établissement stable. Le critère de l'établissement stable est adopté, soit en termes identiques, soit avec diverses variantes de formes plutôt que de fonds, dans la Convention type en sa teneur de Londres (Art. IV Parag. I), dans les conventions signées par le France avec d'autres pays (Allemagne Art. 3; Belgique Wt. 7; Italie art. 6; Suède art. 3; Suisse art. 3; Sarre art. 23).

Les notions d'établissement stable et d'entreprises sont définies de manière plus précise au paragraphe 3 du protocole annexe à la Convention du 25 Juillet 1939:

„Pour l'application de la présente Convention:

a) „le terme „établissement stable" désigne les succursales, ex-
„ploitations minières et petrolières, plantations, fabriques, ateliers,

„magasins, bureaux, comptoirs d'achat et de vente, agences, dépots „et autres centres fixes d'affaires, mais ne comprend pas les sociétés „filiales."

„Lorsqu'une entreprise de l'un des Etats contractants fait des „affaires dans l'autre Etat par l'entremise d'un employé ou d'un „agent établi, qui est investi des pouvoirs nécessaires pour la né- „gociation et la conclusion des contrats, ou qui dispose d'un stock „de marchandises pour satisfaire habituellement aux commandes „qu'il reçoit, cette entreprise est considérée comme ayant un „établissement stable dans ce dernier Etat.

„Mais le fait qu'une entreprise de l'un des Etats contractants ait „des relations d'affaire dans l'autre Etat, par l'intermédiaire d'un „commissionnaire ou courtier vraiment autonome, ne permet pas „de regarder cette entreprise comme ayant un établissement stable „dans ce dernier Etat. Les entreprises d'assurances sont considérées „comme ayant un établissement stable dans l'un des Etats, dès „l'instant qu'elles y perçoivent des primes ou qu'elles assurent des „risques situés sur le territoire de cet Etat;

„b) le mot „entreprise" comprend toute forme d'exploitation ap- „partenant à un particulier, sociétée en nom collectif, société ano- „nyme ou toute autre personne morale;

„c) l'expression „entreprise de l'un des Etats contractants" signifie, „suivant les cas, „entreprise américaine" ou „entreprise française";

„d) l'expression „entreprise américaine" désigne une entreprise „exploitée aux Etats-Unis d'Amérique par un résident des Etats- „Unis d'Amérique ou par une société ou autre collectivité améri- „caine; l'expression „société ou autre collectivité américaine" dé- „signe toute société ou autre collectivité créée ou organisée dans „les Etats-Unis d'Amérique, ou suivant les lois des Etats-Unis „d'Amérique, ou d'un Etat ou territoire des Etats-Unis d'Amérique;

„e) l'expression „entreprise française" se définit de la même façon „mutatis mutandis, que l'expression „entreprise américaine".

Le paragraphe a) n'appelle guère de commentaires; les dispositions sont à peu près conformes à la jurisprudence française en matière de B.I.C. (V. les références données ci-dessus). De même en est-il pour les paragraphes b) et c).

Selon le paragraphe d), constitue une entreprise américaine, l'entreprise exploitée, appartenant à une personne physique, res-

sortissante de la France, des Etats-Unis ou d'une Tierce Puissance, résidant aux Etats-Unis, ou l'entreprise exploitée par une société constituée en Amérique selon la loi américaine. Cependant certaines difficultés d'intreprétation peuvent parfois s'élever.

L'exploitant d'une entreprise est normalement son propriétaire; dans certains cas, cependant, l'exploitant peut n'être pas le propriétaire, tel le cas où une entreprise est donnée en location ou en gérance libre; en pareille hypothèse, selon la législation française, l'impôt sur les B.I.C. est dû en premier lieu par le gérant, exploitant, sur le montant de son bénéfice, en second lieu par le propriétaire, sur le montant de la redevance.

Il est permis de se demander si la personne qui a donné en gérance le fonds sis en France, mais résidant hors de France, serait-ce aux Etats-Unis, doit être considéré comme ayant une entreprise française; il est donc permis de se demander si cette personne peut bénéficier éventuellement de l'art. 9 de la Convention. Ces difficultés ne semblent pas devoir présenter un grand intérêt pratique, étant donné la portée très restreinte du mot entreprise. On ne le rencontre guère qu'à l'art. 3 de la Convention et il apparaît que la disposition pourrait être rédigée de telle sorte qu'il n'y figure pas.

Tout établissement stable est imposable dans celui des deux pays où il se trouve. La convention s'applique toutes les fois qu'une même personne physique ou morale possède un établissement stable dans chacun des deux pays.

Selon le même paragraphe d) du paragraphe 3 du Protocole de la Convention de 1939, les sociétés et autres personnes morales sont ressortissantes de l'Etat dans lequel, ou conformément à la loi duquel, elles se sont constituées. Les critères du lieu de constitution, du reste fort ambigus, et de la loi compétente sont donc cumulés, ce qui crée quelque confusion, sans conséquence pratique, pensons-nous. Les critères du siège social et du contrôle sont écartés. Le lieu de constitution est presque nécessairement le lieu du siège social et la loi compétente est celle du siège social; il y a donc, pratiquement, équivalence ou identité entre ces trois critères adoptés.

Le critère de l'établissement stable a été adopté pendant longtemps par la Jurisprudence française en application de l'art. 2

du Code général des Impôts ditects (C.G.I.D.); le Conseil d'Etat en des arrêts récents, a écarté ce critère pour lui substituer celui de l'exercice en France d'une activité commerciale habituelle; cette notion apparaît très voisine de celle d'établissement stable, un peu plus large cependant (V. cons. d'Etat 30 Juin 1947, Reg. 76.000 J.C.P. 48.4993 Note Debèse, Feuillets Francis Lefebvre, Impôts sur les bénéfices industriel et commerciaux, série N Div. IIn, Jurisclasseur fiscal Div. 22).

Le principe étant posé, suivent plusieurs mesures d'application.

L'alinéa 2 de l'article 3 complète l'alinéa 1 de cet article, en disposant qu'une entreprise établie dans un Etat n'est pas imposable dans l'autre Etat, pour les opérations qu'elle y fait, sans avoir d'établissement stable. Ainsi qu'il vient d'être dit, le Traîté s'écarte du droit national tel qu'il est compris par le Conseil d'Etat, selon la jurisprudence nouvelle, car le critère tiré de „l'activité habituelle en France" est un peu plus large que le critère tiré de „l'établissement stable".

L'article 3 Parag. 4 écarte facultativement du revenu taxable au titre de l'impôt sur les B.I.C., certains revenus taxable à d'autres titres:

a) Revenu de la propriété; cette règle est conforme à celle de l'art. 8 du Code général des impôts directs (C.G.I.D.).

b) Revenu d'hypothèque, fonds publics, valeurs mobilières (obligations hypothècaires comprises), emprunts, dépots et comptes courants; cette règle est conforme à celle de l'Art. 8 C.G.I.D.);

c) Dividendes et autre revenus provenant des actions dans une même société, même remarque;

d) loyers ou participations (royalties), provenant de la location de propriété personnelle, ou d'un intérêt quelconque dans une telle propriété, y compris les loyers ou participations (royalties), pour l'usage ou pour le privilège d'usage de brevets, droits d'auteur, procédés et formules secrètes, clientèle (Goodwill), marques déposées, marques de commerce (Trade marks) concessions (Franchises) et autres analogues; il faut entendre par propriété personelle, les biens meubles; en droit français, ces revenus sont au contraire compris dans le revenu taxable au titre des B.I.C. (Feuillets Fr. Lefebvre B.I.C. Serie N Div. IIIn, No. 84, Jurisclasseur Fiscal Div. 27);

e) Profits ou pertes provenant de la vente ou de l'échange de capitaux (capital assets), cette règle vise les plus values ou moins values, elle est conforme à l'Art. 1, C.G.I.D.

En vertu de l'Art. 3 in fine: „sous réserve des dispositions de la présente convention, paragraphes a), b), c), d), e), sont taxés séparément, ou avec les bénéfices industriels ou commerciaux, conformément aux lois de chacuns des Etats contractants". Ce texte veut dire, que les revenus aux paragraphes a), b), c), d), e), ci-dessus énumérés, peuvent être taxés au titres des B.I.C. ou bien à un autre titre, conformément à la législation de chacun des pays contractants, mais qu'il ne peut en résulter une double imposition. Cette disposition semble devoir rendre inutile la disposition du paragraphe précédent.

Il faut enfin signaler les dispositions des articles 10 et 11 relatives aux pouvoirs reconnus aux Administrations, afin de lutter contre des fraudes éventuelles; la première à trait aux justifications à fournir par les entreprises américaines en France et aux rectifications que le fisc français peut apporter aux documents fournis; la seconde a trait aux réintégrations de bénéfices à opérer dans le cas où des bénéfices ont été dissimulés, à raison des conditions spéciales sur lesquelles des transactions ont été opérées entre sociétés mère et fille (Cf. Code général des Impôt directes).

C) — *Impôts sur les traitements, salaires et pensions.*

En vertu de l'Art. 8, les traitements et pensions payés par une personne publique d'un Etat à une personne résidant dans l'autre Etat, sont imposables dans le premier Etat. Une exemption est prévue en ce qui concerne les fonctionnaires de l'un des Etats, citoyens de l'autre Etat et exerçant des fonctions dans celui-ci. La règle de l'article 8 ne s'applique, ni aux revenus provenant d'immeubles, sis dans ce dernier Etat ni aux revenus provenant d'occupations privées.

Une autre exemption doit être signalée, celle établie à l'art. 9 paragraphe I (Convention de 1939). Selon cet article, les salaires payés par une personne privée sont imposés dans l'Etat où s'exerce l'activité du salarié. De plus, en vertu de l'Art. 9 parag. 3, ajouté par le protocole du 17 Mai 1948, le résidant de l'un des Etats exerçant une activité dans l'autre Etat est exempté de l'impôt

dans le second Etat, lorsque sa présence dans cet Etat a duré moins d'une année fiscale, en une période ou en plusieurs périodes ajoutées, et qu'il est le préposé d'une personne physique ou morale relevant du premier Etat.

Il résulte de la première condition, qu'un américain qui n'est pas resté en France une année au moins, du 1er Janvier au 31 Décembre, soit de manière continue, soit avec des interruptions, mais des interruptions telles qu'elles ne mettent pas terme à ses fonctions en France, n'est pas imposable en France.

Cette règle a été adoptée à raison de la législation française; un étranger menant une activité salariée en France, pour le compte d'un employeur étranger, n'est imposé que s'il est domicilié en France; en pratique, après un an de séjour. Cette solution étant admise en France, l'autorité américaine a par la disposition de l'art. 9 parag. 3a, conféré un traitement égal au Français remplissant des fonctions salariées pour un employeur français aux Etats-Unis.

D) — *Impôts sur les revenus commerciaux.*

En vertu de l'Art.10, parag. 1, les revenus des professions non commerciales sont imposés dans l'Etat où s'exerce cette profession. En vertu de l'Art. 10 parag. 2, l'exercice d'une profession dans un Etat suppose l'existence d'un „point d'attache fixe". Il semble que la notion de „point d'attache fixe" est analogue à celle d'établissement fixe; cette disposition est conforme à celle de l'Art. 82 C.G.I.D. (V. Jurisclasseur fiscal Div. 50 No. 557 Feuillets Fr. Lefebvre Série 9 No. 348).

E) — *Les patentes.*

L'impôt français des patentes, en principe n'est pas visé par la Convention (V. supra). Exceptionnellement, une disposition insérée à l'Art. 13 s'y rapporte.

L'impôt français des patentes est visé en même temps que l'impôt américain sur le „capital stock", en tant qu'impôt sur „les capitaux ou l'accroissement des capitaux".

La patente frappe le capital en tant qu'elle frappe l'entreprise, sous la forme du droit fixe, et le capital de l'entreprise, sous la forme du droit proportionnel. N'étant ni une taxe sur les affaires, ni une taxe sur les bénéfices, elle est une taxe sur le capital.

Conformément aux principes de territorialité, il est disposé que la patente doit être évaluée en considération des seuls établissements stables sis en France et des capitaux relevant de ces établissements. (V. Feuillets Fr. Lefebvre Série F Jurisclasseur fiscal, Patentes div. III No. 39). Une exemption est prévue au profit des sociétés de navigation.

F) — *Impôts sur le Capital.*

En vertu du protocole du 17 Mai 1948, il est ajouté à la Convention du 25 Juillet 1939, un article 19A relatif aux impôts sur le capital et l'augmentation de capital; cet article prend le numéro 25A dans la Convention nouvelle du 18 Octobre 1946.

Les immeubles et fonds de commerce sont rattachés à l'Etat du lieu de la situation. Les autres biens sont rattachés à l'Etat du lieu du domicile.

Le domicile est qualifié, pour la personne physique, comme étant le lieu de l'habitation permanente, pour les personnes morales, comme le lieu du siège social ou plus exactement, de la direction effective. Il faut remarquer que le domicile a été défini de manière uniforme pour l'impôt sur le capital, alors que'il ne l'a pas été en matière d'impôts sur les successions.

Les règles de la Convention franco-américaine sont proches de celles adoptées dans le projet de Londres art. XV. Elles sont également proches de celles adoptées dans la convention franco-tchécoslovaque du 6 Août 1948 (Istruction 4957); franco-sarroise du 15 Décembre 1947 art. 37; franco-belge du 29 Décembre 1947 (Instruc. 4389 Rev. Enreg. 12280); franco-roumaine du 7 Octobre 1942 (Instr. 4661); franco-suisse du 13 Octobre 1937 art. 1 (Rev. Enreg. 5833); franco-suédoise du 24 Janvier 1936 art. 12 (Rev. Enreg. 10958). Elles sont cependant assez sommaires.

Selon le rapport du Sénat américain, cette clause constitue une concession unilatérale de la France, qui limite son droit d'imposer les ressortissants américains à leur immeubles et fonds de commerce sis en France. L'unilatéralité ressort du fait qu'il n'est pas de pareil impôt aux Etats-Unis. Les dispositions prévisées ne constituent pas cependant des solutions contingentes d'espèces. Elles sont conformes aux principes régissant la matière.

Les dispositions susvisées ne traitent pas du passif. Il nous

paraît que les dettes doivent être déduites selon les règles applicables en matière d'impôt sur le revenu. L'application de ce principe est plus ou moins usée selon les cas. En matière de fonds de commerce, le passif doit être imputé sur l'actif. En matière d'immeubles, ou même de meubles grèvés de droits réels, la question se pose de savoir si la dette doit être déduite de la valeur du bien; cette solution est suivie en matière de successions pour les immeubles (Traité franco-suédois art. 5 parag. 2).

Il semble que la même solution puisse être adoptée, en France tout au moins, en matière immobilière à raison du fait que, selon la convention, les règles applicables à l'impôt sur le capital sont celles applicables à l'impôt sur le revenu, et que l'impôt foncier comporte des dégrèvements pour intérêts des dettes hypothécaires et privilégieés (Cf. C.G.I.D. art. 228 bis, Jurisclasseur fiscal Div. 107 No. 25).

Toutes les autres dettes doivent être rattachées au domicile et récupérées sur le montant des biens divers, pareillement rattachés au domicile. Une difficulté apparaît lorsque le montant du passif excède le montant de cet actif, de telle sorte que le contribuable est exposé à payer les droits sur le montant de certains de ces biens sis en d'autres pays, sans pouvoir déduire l'excédant du passif rattaché au domicile, en dépit de l'insuffisance de l'actif soumis à cette même localisation. En matière d'impôt sur les successions, cette imputation est généralement prévue (Traité Franco-Suédois art. 5 parag. 4). Il ne semble pas qu'il puisse en être ainsi en l'absence de dispositions formelles en ce sens.

G) *Dispositions diverses.*

Il faut citer:

L'article 6 (Convention du 23 Juillet 1939) confirmant une exemption établie au profit des entre prises de navigation par échange de lettre des II Juin et 8 Juillet 1927 et en étendant le bénéfice aux entreprises de navigation aerienne.

L'article 7 est relatif à certains revenus provenant de la jouissance de biens immobiliers, de l'exploitation des mines et carrières ou autres ressources naturelles, qui sont imposés dans le pays du lieu de la situation; provenant en second lieu de l'exploitation des

droits de propriété littéraire et artistique et des droits de propriété industrielle, qui sont imposés dans l'Etat où réside le créancier, à condition que ce créancier n'ait pas d'établissement fixe dans l'Etat où le revenu est payé.

Les impôts visés à ce texte rentrent selon le droit français en des catégories diverses. Il n'existe pas en France d'impôt sur la redevance versée pour la jouissance d'un immeuble. L'impôt français sur les redevances tirées de l'exploitation de mines et carrières et autres ressources naturelles, de même que les redevances tirées de l'exploitation des droits de propriété littéraire et artistique, où des droits de propriété industrielle, sont imposées tantôt à la cédule des Bénéfices industriels et commerciaux, tantôt à la cédule des revenus des professions non commerciales.

L'article 11 vise les gains provenant de la vente ou échange de valeurs mobilières ou de marchandises; ces gains sont imposés non dans l'Etat où ces biens sont vendus ou échangés, mais dans l'Etat où réside le bénéficiaire, lorsque celui-ci n'a pas d'établissement stable dans le premier Etat. La disposition se réfère à la taxation des plus-values. Une disposition analogue, mais plus complète, se rencontre aux art. XII des Conventions de Londres et de Mexico. Il faut supposer que cette plus value est frappée d'un impôt sur le revenu, tel le cas d'une société américaine qui céderait un portefeuille d'actions, qu'elle détiendrait en France dans une société française, et qui de ce fait est passible en principe de l'impôt français sur les B.I.C. Les plús-values sont imposables, selon les cas, soit à la cédule des bénéfices industriels et commerciaux, soit à la cédule des revenus des professions non commerciales. L' application de l'art. 11 apparaît du reste, comme devant être assez rare, du fait que la perception de l'un et l'autre de ces deux impôts suppose l'existance d'un établissement stable ou d'un point d'attache fixe, ce qui exclut justement la taxation dans le seul Etat duquel relève l'intéressé.

On constate que ces règles de rattachement sont à la fois assez complexes et insuffisantes, en ce sens que tous les impôts, tous les revenus imposables et tous les biens les produisant ne sont pas énumérés, tel le cas des valeurs mobilières. Ces insuffisances s'expliquent par la nature des règles adoptées pour éviter la double imposition.

3°. — *Technique évitant la double imposition.*

On pourrait penser que la suppression de la double imposition, résulte du fait que seul un des deux contractants peut imposer les biens ou sources de revenus rattachés à son territoire. Il n'en est pas nécessairement ainsi. Il doit être distingué, conformément à l'Art. 14 de la convention, selon qu'il s'agit des États-Unis ou de la France.

En ce qui concerne les Etats-Unis, les Etats conservent le droit d'asseoir leurs impôts en pleine conformité avec leur législation fiscale, sans tenir compte des doubles impositions. Il doivent seulement, l'impôt ayant été ainsi calculé, percevoir la taxe après déduction des sommes afférentes aux revenus et aux biens rattachés au territoire français, selon les régles exposées ci-dessus. Cette déduction est effectuée selon la section 131 du Code des Impôts.

En ce qui concerne la France, il doit être sous distingué.

En matière d'impôts cédulaires, en principe, la France ne peut percevoir l'impôt que pour les revenus et sources de revenus rattachés à son territoire, selon les règles exposées ci-dessus; exceptionnellement, elle peut appliquer pleinement ses règles nationales relatives à l'impôt sur le revenu des valeurs moblières, mais l'impôt perçu doit être diminué d'une déduction forfaitaire, lorsque le revenu ainsi frappé est soumis à l'impôt aux Etats-Unis.

Cette déduction, qui était de 12% d'après l'art 14 Ba, de la Convention, dans son texte de 1939, a été élevé à 25% d'après le texte nouveau de cet article modifié en 1946.

Le procédé est quelque peu imparfait, car la déduction n'est forfaitaire et peut ne pas éviter complètement la double imposition.

Quoi-qu'il en soit, il résulte de ce texte, que le fisc français ne peut percevoir en France, sur le revenu des valeurs étrangères, que 5% (30% taux fixé par le Code des valeurs mobilières, art. 51 1°, (soit 25% + 5%), moins 25%, déduction forfaitaire prévue par l'art. 14B a nouveau de la Convention).

En matière d'impôt général, l'impôt peut être assis en pleine conformité avec la législation française; la double imposition est évitée par l'application pure et simple du C.G.I.D., art. 114, selon lequel ne sont pas compris dans la masse des revenus soumis à l'impôt global, ceux de ces revenus à raison desquels il a été payé

un impôt global à l'étranger, application formellement prévue à l'art. 14B b 2 de la Convention.

Ces régles présentent une originalité égale à leur diversité et à leur complexité. Il semble qu'elles se fondent sur deux ordres de considération. Elles se fondent en premier lieu sur le désir de s'accomoder des différences que présentent les législations respectives des deux signataires et de respecter la traditionnelle indépendance des lois fiscales. Elles se fondent en second lieu, du moins nous paraît-il, sur la volonté d'appliquer pleinement dans chacun des deux pays la progressivité qui sévit rigoureusement. Dans la plupart des traités de doubles impositions, les biens et les revenus sont répartis entre les puissances contractantes qui asseyent leurs impôts respectifs sur la seule masse qui leur est attribuée; l'impôt est donc assis sur une fraction des revenus, non sur leur totalité; la progressivité en est singulièrement atténuée. Selon le traité franco-américain, l'impôt est assis dans chaque pays sur la totalité des revenus de telle sorte que la progressivité joue pleinement, ensuite il est procédé à une déduction proportionnelle au montant des revenus rattachés à l'autre état, la double imposition est évitée et la progressivité respectée. Il est facile de s'en convaincre.

Supposons un français dont les revenus s'élévent au total à 1 million, 750.000, rattachés à la France, 250.000 aux Etats Unis. Supposons qu'à un revenu de 1 million corresponde dans les deux pays un impôt général progressif de 40.000 Frs, à des revenus de 750.000 et 250.000 des impôts de 20.000 et 5.000 Frs.

Avec le premier système, la France perçoit 20.000 Frs, les Etats-Unis 5.000, au total: 25.000; la progressivité est très atténuée. Avec le second système, la France perçoit:

$$40.000 - \frac{40.000 \times 250.000}{1.000.000} = 30.000$$

les Etats Unis perçoivent:

$$40.000 - \frac{40.000 \times 750.000}{1.000.000} = 10.000$$

soit au total 40.000; la progressivité est pleinement respectée.

Qu'elle que soit l'évidence de la démonstration, nous ne sommes pas persuádés, que les avantages de ce dernier système valent ses

inconvénients et que sa complexité ne nuise pas si bien à son efficacité, en rebutant administrateurs et contribuables qu'il faille s'y tenir. Le sacrifice à la progressivité admis en d'autres conventions nous paraît préférable.

Section III — ASSISTANCE ADMINISTRATIVE.

Elle a été introduite dans la Convention du 25 Juillet 1939 où elle faisait l'objet d'un Titre II, intitulé: „Asistance fiscale".

La Convention du 18 Octobre 1946 a repris cette matière dans son Titre III, en complétant et renforçant les dispositions de la Convention de 1939, malgré les critiques de la Chambre de Commerce Internationale, déclarant que l'élimination de la double imposition ne devrait pas être considérée comme le prix payé pour introduire des dispositions administratives relatives à l'évasion fiscale", (Résolutions de Montreux, 2—7 Juin 1947, p. 45 No. 7), et suggérant, „qu'il suffirait d'insérer dans les Conventions, pour éviter la double imposition, un paragraphe unique, prévoyant un échange d'information, qui serait limité à l'examen des demandes de dégrèvement de la double imposition, présentées par les contribuables de l'autre Etat". (Résolution du Conseil du 8 Juin 1948).

L'assistance administrative est présentée dans la nouvelle Convention, comme étant destinée, à la fois à „assurer une meilleure application des impôts" et à „prévenir la fraude". (Art. 8).

Les règles édictées en ce domaines sont applicables, tant pour les impôts en matière de successions, que pour les impôts sur les revenus et la fortune.

Elles réglementent:

1°) L'assistance à l'assiette
2°) L'assistance en matière de recouvrement des impôts
3°) Un certain nombre de réserves, entrainant des dérogations dans l'application des règles précédentes
4°) Les pouvoirs des Administrations fiscales.

I°) *L'assistance à l'assiette.*

Celle-ci se réalise par l'échange de renseignements d'office et par la transmission de renseignements sur demande.

I) — *Renseignements à échanger d'office:*

Ces renseignements, qui comprennent l'indication du montant des revenus périodiques fixes et variables, et celle des noms et adresse du contribuable, doivent être fournis par l'Etat qui les a, à l'autre Etat. (Convention du 18 Octobre 1946, art. 9 et 10).

Il est intéressant de noter, que tandis que dans l'article 21 de la Convention de 1939, figurait une restriction à ces échanges d'office, de renseignements, puisque cet article excluait cet échange de renseignements dans le cas de nationaux (personnes physiques ou morales) de l'Etat appelé à fournir ces renseignements, au contraire, dans la Convention de 1946, cette restriction a été supprimée. C'est là un exemple du renforcement de l'assistance administrative dans la Convention de 1946.

Il convient, d'autre part, de souligner que, tant du côté français que du côté américain, le champ de la communication d'office de renseignements est étendu, de manière à permettre le contrôle et de l'impôt sur les revenus et de l'impôt sur les droits de mutation.

Les informations nécessaires pour assurer le contrôle du premier impôt devront être transmises „aussi rapidement que possible après le 31 Décembre de chaque année"; celles requises pour assurer le contrôle du second „aussi rapidement que possible au cours de l'examen fiscal de la succession". (Art. 9—2 de la Convention de 1946).

2) — *Renseignements à échanger sur demande.*

La situation visée ici est différente, au lieu de renseignements reçus qui n'ont pas été sollicités, on se trouve en présence de la communication de renseignements, effectuée à la suite d'une demande, motivée en général par certaines présomptions ou certaines indications possédées par l'Etat requérant.

La Convention de 1939, sous l'influence d'un climat d'allégeance politique, excluait en principe cet échange de renseignements pour les „citoyens, sociétés ou collectivités de l'Etat auquel la demande est faite", sauf si ce dernier Etat le jugeait „oppertun pour éviter la fraude fiscale". (Art. 22, 1 et 2).

Cette restriction dans la transmission de renseignements sur demande, disparaît dans l'article 11 de la Convention du 18 Octobre 1946, qui précise au contraire sans aucune restriction, que

les „autorités compétentes de chacun des Etats contractants auront le droit d'obtenir des autorités compétentes de l'autre Etat, des renseignements concernant des cas concrêts, intéressant les personnes physiques ou morales, en vue de l'application des impôts visés au Titre I de la présente Convention (Impôts sur les mutations par décès), et des impôts visés par la Convention fiscale du 25 Juillet 1939". (Impôts sur les revenus et la fortune).

C'est là une illustration de l'accroissement du contrôle fiscal dans cette dernière Convention, mais, celui-ci est limité néanmoins à des cas particuliers.

Cependant depuis lors, une réaction en sens contraire s'est produite, et sous diverses influences, un retour à la situation plus restrictive de la Convention de 1939. En effet on trouve en annexe de la Convention de 1946, une règle d'interprétation no. 5, aux termes de laquelle: „les règles contenues dans l'article 11 relatives à la transmission d'information dans des cas concrêts, doivent être considérées comme ayant le même sens et le même effet, que celles édictées dans l'article 22 de la Convention entre les Etats-Unis et la France du 25 Juillet 1939".

C'est bien là une illustration de l'emprise exercée en ce domaine par l'allégeance politique, phénomène que l'on retrouve en étudiant l'assistance en matière de recouvrement.

2°) — *L'assistance en matière de recouvrement.*

Il ne peut s'agir que d'une assistance sur demande et jamais d'une assistance d'office, qui serait inconcevable, les Etats ne pouvant savoir, si une personne ayant des biens sur leur territoire, est débitrice d'un autre Etat.

On retrouve, ici encore, la même évolution précèdemment retracée, pour l'assistance à l'assiette.

L'article 23 qui organisait l'assistance en matière de recouvrement dans la Convention du 25 Juillet 1939, prévoyait en effet une restriction, en écartant celle-ci „en ce qui concerne les citoyens, sociétés ou autres collectivités de l'Etat requis".

Or cette restriction, qui a été supprimée dans l'article 12 de la Convention nouvelle du 18 Octobre 1946, a été réintroduite dans l'article 1 (5) du Protocole du 17 Mai 1948, qui dispose que: „l'assistance prévue au présent article (Art. 12 de la Convention du

18 Octobre 1946), ne sera accordée, ni lorsqu'il s'agit de citoyens, sociétés ou autre personnes morales, de l'Etat auquel elle est demandée, ni lorsqu'il s'agit des patrimoines de ces citoyens''.,

Ce cas particulier étant mis à part, l'assistance en matière de recouvrement, est organisée dans la nouvelle Convention, de manière à assurer le recouvrement de toutes les créances fiscales de l'Etat requeérant.

La notion de créance fiscale qui est la même dans la Convention de 1939 et dans celle de 1946, comprend, non seulement l'imposition elle-même, mais les intérêts de celle-ci et les amendes fiscales qui s'y rattachent pour retard dans le paiement. Mais il faut que la créance fiscale soit nettement déterminée dans son quantum et ne soit l'objet d'aucune contestation ou discussion.

L'article 12 al. 3 de la Convention de 1946 précise à ce sujet que „la demande sera accompagnée des documents exigés par la loi de l'Etat requérant, pour établir que les impôts sont définitivement dûs''. C'est donc la législation de ce dernier Etat qui détermine si la créance fiscale a un caractère définitif.

Tels sont les principes directeurs qui régissent l'assistance à l'assiette et l'assistance en matière de recouvrement, mais ces principes subissent certaines dérogations du fait de l'existance, en faveur des Etats signataires, d'un certain nombre de réserves.

3°) *Les réserves à l'application des principes régissant l'assistance à l'assiette et l'assistance en matière de recouvrement.*

Ces réserves, que l'on retrouve dans toutes les Conventions fiscales relatives à l'assistance administrative, sont au nombre de quatre:

1) Réserve de réciprocité
2) Réserve de législation
3) Réserve de secret relatif à un commerce ou à une industrie
4) Réserve de sécurité.

1) *Réserve de Réciprocité:*

C'est l'application d'une règle générale, en vertu de laquelle chaque Etat signataire ne s'engage à prêter son concours à l'autre, que si celui-ci contracte la même obligation.

Cette règle n'était édictée expressément dans la Convention de

1939 que pour l'assistance à l'assiette, bien qu'elle fut également applicable implicitement pour l'assistance en matière de recouvrement.

La Convention de 1946, plus explicite sur ce point, a expressément formulé la règle de réciprocité, tant pour l'assistance à l'assiette (Art. 8), que pour l'assistance en matière de recouvrement (Art. 12).

Il est évident que cette réserve ouvre la possibilité pour chaque Etat signataire, de refuser l'assistance qu'il devrait normalement accorder à l'autre Etat, en invoquant le fait, qui peut être inexacte, que l'autre Etat se dérobe lui-même à l'assistance.

2) *Réserve de législation.*

Cette réserve consiste à reconnaitre à l'Etat qui fournit l'assistance, le droit de ne donner celle-ci, que conformément à sa législation.

Elle est expressement formulée, pour l'assistance à l'assiette, dans l'article 8, et pour l'assistance en matière de recouvrement, dans l'article 12, de la Convention de 1946, après l'avoir été dans l'article 24 de la Convention de 1939, qui, allant même plus loin, posait le principe qu'il n'y a pas lieu pour un Etat „de fournir des renseignements, qui ne peuvent être obtenus, en vertu de la législation, soit de l'Etat requis, soit de l'Etat requérant".

La réserve moins large de la Convention de 1946, en faveur de la seule législation de l'Etat qui fournit l'assistance, constitue une soupape de sureté pour cet Etat. Elle ne comporte qu'une seule dérogation, celle précèdemment mentionnée, de l'article 12 al. 3, qui soumet à la législation de l'Etat requérant, la détermination du caractère définitif de la créance fiscale.

3 et 4) *Réserves de secret relatif à un commerce et à une industrie et réserve de sécurité.*

Elles sont visées l'une et l'autre, et dans la Convention de 1939 (Art. 24) et dans celle de 1946 (Art. 8). Ce dernier texte est ainsi conçu:

„En aucun cas, les dispositions du présent titre (Titre III relatif à l'assistance administrative), ne sont censées imposer à l'un ou l'autre des Etats contractans, l'obligation de prendre des mesures

administratives . . . ou de fournir des renseignements de telle nature, qu'ils constitueraient la violation d'un secrêt industriel ou commercial ou compromettrait sa sécurité".

On voit combien large est ce texte, qui étend les deux réserves, de secret relatif à un commerce et à une industrie et de sécurité, à tous les cas d'assistance.

4°) *Pouvoir des Administrations fiscales.*

Les administrations fiscales se voient reconnaître des prérogatives considérables, tout d'abord pour modifier la Convention en cas de changement dans la législation interne, „envue d'adapter les dispositions de la Convention à ces modifications", la Convention étant „conclue en l'état des législations française et américaine à la date de la signature". (Art. 1 (3) de la Convention du 18 Octobre 1946).

Tandis que d'après le principe formulé dans l'article 29 bis de la nouvelle constitution française du 13 Octobre 1946, les traités diplomatiques ont „une autorité supérieure à celle des lois internes", en notre matière, c'est le principe inverse qui est consacré, puisque les autorités fiscales compétentes, en cas de modification dans la législation interne, s'engagent à se concerter, en vue d'adapter les dispositions de la Convention".

On ne peut s'empêcher d'être surpris de la consécration d'un pareil principe, qui subordonne à la loi interne, la Convention internationale, dont elle place le sort entre les mains de l'administration fiscale.

Les pouvoirs des autorités fiscales pour l'interprétation de la Convention, ne sont pas moins considérables. Aux termes de l'art. 13 de la Convention du 18 Octobre 1946, qui reprend sur ce point les termes de l'art. 26 de la Convention du 25 Juillet 1939, „les autorités compétentes des deux Etats contractants, pourront édicter les règlements nécessaires à l'interprétation et à l'exécution de la Convention, et d'un commun accord, établir les règles relatives aux questions de procédure".

Ces pouvoirs des administrations fiscales sont discrétionnaires, en ce sens qu'il n'existe aucun organisme juridictionnel, devant lequel puisse se pourvoir le contribuable, qui s'estime victime d'une double imposition.

Ce dernier n'a que le „droit d'adresser une réclamation à l'Etat dont il est ressortissant", et, „si la réclamation est reconnue fondée, l'autorité compétente de cet Etat, peut s'entendre avec l'autorité compétente de l'autre Etat, en vue d'obvier d'une manière équitable à la double imposition en cause". (Art. 14 de la Convention du 18 Octobre 1946, reproduisant l'art. 25 de la Convention du 25 Juillet 1939).

Ces dispositions ne sont particulières à la Convention franco-américaine, elles se retrouvent dans les autres Conventions fiscales, qui contiennent sur ce point la même lacune. Elles constituent pour le contribuable une garantie insuffisante.

Il y a là une situation à laquelle il faudrait remédier en prévoyant la création, dans l'avenir, d'une juridiction fiscale internationale.

Section IV — REGLES DIVERSES.

Pour conserver un caractère homogène, la Convention n'aurait du contenir que des dispositions pour éviter les doubles impositions et organiser l'assistance fiscale.

Mais, et c'est là une autre faiblesse de cette Convention, d'autres règles ont été insérées, qui lui donnent un caractère un peu disparate.

On peut signaler notamment, les dispositions des art. 17 de la Convention du 25 Juillet 1939 et 17A, ajouté par la Convention du 18 Octobre 1946, relatives aux modalités d'acquittement de l'impôt sur le revenu des valeurs mobilières, pour les sociétés américaines possédant en France un établissement stable. Aux termes de ces articles la faculté d'acquitter l'impôt sur le revenu des valeurs mobilières, sur les ¾ des bénéfices effectivement retirés de ces établissements, est très largement accordée à ces sociétés.

Ces dernières pourront en effet, pendant un délai de 6 mois, „à partir de l'échange des ratifications de la présente Convention", exercer le droit d'option prévu par les art. 5 et 6 de la Convention du 27 Avril 1932, en faveur de ce mode d'imposition, plus avantageux pour elles, en période d'exploitation déficitaire en France, que celui consistant à être imposé suivant le régime de droit commun, prévu par le Décret du 6 Décembre 1872, sur la base de la quotité imposable de leurs distributions, fixée par le Ministère des Finances.

On peut encore mentionner la règle posée par l'Art. 18, pour le règlement des dettes d'impôt sur le revenu américain des personnes résidant en France ou des collectivités françaises. Ce texte prévoit, que si ces impôts n'ont pas été payés à la date d'entrée en vigueur de la Convention, ils pourront être, sous certaines conditions, l'objet d'un „ajustement" de la part des autorités fiscales compétentes aux Etats-Unis.

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En matière de conclusion, il ne nous est guère permis de dire: „tout est bien qui finit bien". De son premier à son dernier article, la Convention franco-américaine du 25 Juillet 1939, modifiée et complétée par celle du 18 Octobre 1946, est viciée par l'excessive complexité, que nous avons indiquée, dès notre introduction.

Les deux défauts fondamentaux sont connus. Ils consistent, le premier en la répugnance de l'administration américiane, en particulier, à voir limiter l'application de ses règles nationales par le traité; le second en la répugnance des deux administrations à limiter leurs ressources avec le progressivité, dans les cas où elle intervient.

Les inconvénients particuliers découlent tous de cette source: juxtaposition pour le plus grand nombre d'impôts, de règles de rattachement et de règles de perception, chaque Etat appliquant tout d'abord purement et simplement sa législation, pour procéder ainsi à l'assiette, et ensuite seulement tenant compte des règles de rattachement, pour renoncer à perçevoir la fraction d'impôt correspondant à des biens ou des revenus localisés hors de son territoire. Ainsi en est-il pour l'impôt sur les successions, de même, pour la plupart des impôts sur les revenus. Encore apparaît-il des difficultés complémentaires: absence de qualification commune du domicile, en matière d'impôt sur les successions, systême de la déduction forfaitaire pour l'impôt français sur le revenu des valeurs mobilières, absence de règles conventionnelles originales et renvoi à la législation nationale, en matière d'impôt général sur le revenu.

Les idées qui viennent d'être exposées ne jouent plus en matière d'assistance fiscale. Mais les règles qui la dominent, sont affligées

d'une troublante incertitude. L'exception grève trop souvent et trop lourdement le principe. On ne peut qu'approuver les Etats-Unis de ne pas se laisser contaminer par l'inquisition fiscale. Inversement, il serait possible de dire que cette incertitude est heureuse, puisque elle menace le fraudeur, le seul fraudeur, la règle diminuée par la dérogation discrète étant telle ces friandises empoisonnées que Sixte Quint, le Pape justicier, envoyait en caravane pour que les brigands qu'il ne pouvait chatier autrement, succombent à la tentation. Nous croyons que des réglementations, éventuellement plus rigoureuses, seraient néanmoins préférables, si elles étaient plus claires.

Nous ne dirons que fort peu de chose du procédé qui consiste à modifier et interpréter un texte de Convention, par des protocoles et notes successives, si bien que consulter le Traité devient un puzzle ou un mot croisé.

Ces faiblesses de la Convention franco-américaine sont d'autant plus regrettables, que lors de l'élaboration du premier accord en 1932, on avait espéré réaliser entre les deux pays une oeuvre, pouvant servir de modèle de Convention fiscale.

Au terme de cette étude, il apparait que les négociateurs des Conventions de double imposition devraient s'efforcer d'atteindre la simplicité sur la base de principes constants et universels. Sans même parler de l'embarras du contribuable, taillable et corvéable à merci, que l'on se représente en effet, la tâche des fonctionnaires tenus d'appliquer des législations nationales épineuses, et, en outre, tenus de connaître des règles fiscales internationales, non moins subtiles, et différentes pour chaque pays avec lequel un accord a été signé!

Les Conventions de double imposition seront lettre morte, si l'excès de leur complication détourne de leur application. Souhaitons que bientôt elles présentent une ligne d'une simplicité toute dorique.

THE CONVENTION BETWEEN SWEDEN AND SWITZERLAND FOR THE AVOIDANCE OF DOUBLE TAXATION OF INCOME AND PROPERTY

by

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Contents:

I. *Introduction*

In order to give an insight into the fiscal effects of the convention as far as Sweden is concerned, it is considered necessary to give a general survey of the principal rules of the Swedish tax system.

The tax system of Sweden comprises the following direct taxes:—

a) The state income tax, being a progressive tax on total income.

b) The coupon tax, being a tax deducted at the source on dividends paid out from sources within Sweden to non-residents of Sweden; this is a proportional tax, the rate at present being 20 per cent.

c) The state capital tax, being a progressive tax on the net amount of capital (in cash, claims, assets, real property etc.) owned by the taxpayer.

d) The local income tax, which is a proportional tax, each commune determining the rate of the tax imposed in that commune.

e) The local tax on real estate. This tax is intended to be a tax on the income from real estate but is in reality computed on an estimated income of 5 per cent. of the rateable value of the estate.

If the real income is greater, the excess income will be charged to local income tax.

f) The tax on the undistributed profits of companies. Liable to this tax are companies and societies, the activities of which mainly consist in the administration of real estate or assets or movable property of a similar kind, and also certain foreign body corporates.

g) The division-tax, being a tax on the amount paid out from a joint-stock company in liquidation or when such a company lowers its share capital. In so far as the amount paid out does not constitute repayment of capital, formerly paid into the company, the company has to pay a tax of 30 per cent. on the amount paid out.

h) The Forestry Due, this being a small local due the proceeds of which are assigned to the cultivation of forests.

A person's liability to tax in Sweden primarily depends upon if he is domiciled or, if not domiciled, resident in Sweden. An individual's domicile is the place in which he has a permanent home, his residence is the place where he permanently resides. The signification of the term domicile is therefore more narrow than the signification of the term residence. Liable to tax in Sweden is, however, everyone who is domiciled *or* resident in Sweden.

According to what has already been said, a person's residence in a certain place is depending on the length of his stay in the place in question; his stay must be "permanent" before he will be regarded as resident there. There is no special rule about the length of time which constitutes a permanent stay but, in practice, a stay in a certain place for a period of more than six months will as a rule be deemed to create residence.

As to legal entities, however, the nationality of the entity is decisive. According to practice, a legal entity will be considered as a Swedish one if by Swedish law the entity should be registered at a public office, and such registration has taken place within Sweden. If the legal entity is not subject to registration, it will be considered a Swedish legal entity if the board of directors or other governing or managing body has its real seat in Sweden, or the business activities are located in Sweden.

As a general rule *income tax* is chargeable in respect of—

1. The income of individuals domiciled (resident) in Sweden, whether arising within or outside Sweden.

2. The income of individuals not domiciled nor resident in Sweden from real property in or trade carried on in Sweden.

3. The income of Swedish corporations, whether arising within or outside Sweden.

4. The income of foreign corporations from real property in or trade carried on in Sweden.

Liable to *capital tax* are—

1. Individuals residing in Sweden at the commencement of the year of assessment; the estate of a deceased person who at his death was a resident of Sweden; and Swedish family funds; they are liable to tax on all the property they own in Sweden or abroad.

2. Swedish body corporates other than joint-stock companies and economic societies (Swedish joint-stock companies and economic societies do not pay any capital tax); they are liable to tax on all the property they own in Sweden or abroad.

3. Individuals not resident in Sweden at the commencement of the year of assessment; the undivided estate of a deceased person who at his death was not a resident of Sweden; and foreign companies. These are liable to tax solely on capital invested in Sweden and they have, moreover, not to pay any capital tax on shares in Swedish companies; instead they have to pay coupon tax on the dividends.

It ought perhaps to be especially observed that according to the legal rules mentioned above a non-resident of Sweden pays no Swedish income tax on *interest* derived from sources within Sweden. On the other hand he has to pay income tax in Sweden on royalty from sources within Sweden because income from such royalty is in Sweden appraised as income from trade carried on in Sweden.

II. *The convention and the tax laws of Sweden; modifications of the legal rules through the convention*

The convention in question follows the general lines of continental double taxation conventions. The sources of income and the capital to be taxed are definitely divided between the two contracting

states, each state imposing tax only on the income from sources and on the capital allotted to that state.

The convention refers to direct taxes on income and property, including taxes on capital gains and taxes on increment and increase in capital. The convention furthermore mentions taxes deducted at the source on the returns of capital, those taxes not being regarded as direct taxes in Switzerland.

The taxes falling within the scope of the convention are not only taxes imposed by one of the contracting states but also taxes imposed by cantons in Switzerland and by communes in Sweden and Switzerland. In a special supplement are enumerated the taxes which at the present time are especially designed in the convention. Of the Swedish taxes mentioned above the division tax is the only one not included in the enumeration, this tax being considered of no importance in the connexion.—Thus, looking on the convention with the eyes of Mr. van Themaat, [1]) we might say that the convention contains a definition of the taxes concerned and applies to all taxes imposed before or subsequent to the date of signature, which comply with this definition.

The convention applies to all individuals resident in one of the states and to all nationals of the two states, notwithstanding where they are resident. The term "residence" is, however, defined in a way divergent from the Swedish legal rule. According to the convention, an individual's residence is the place where he has a permanent *abode*. As a person may have an abode (though hardly a real home) in many places, the result might be that one and the same individual may be deemed resident in both states. In such a case, that place will be considered as his residence with which he has his strongest individual connections. As this in most cases will be the place where the individual has his normal permanent home, the convention might be said to return in a roundabout way to the definition in the Mexico and London drafts of model tax conventions.

The convention, furthermore, applies to Swedish and Swiss legal entities. Such an entity will be considered resident in the state in the territory of which the entity has its seat.

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[1]) Vide this Bulletin, Vol. I. sid. 133.

The general rules of the convention as to the state that may charge income or property to tax are as follows.

1. *Real property* and income from such property are taxable solely in the state where the property is situated.—The convention, therefore, does not modify the Swedish legal rule concerning the taxation of real property located in Sweden. If the property is situated in Switzerland, there is on the other hand a modification of the Swedish legal rule imposed by the convention: Contrary to the legal rule, Sweden may not tax this property nor the income accruing from the property even though the owner be a resident of Sweden.—This is of course, quite in accordance with the usual wording of the conventions and also with the Mexico and London drafts.

2. Income from any *industrial or commercial enterprise,* as well as the capital invested in the enterprise, is taxable only in the state where the enterprise has a permanent establishment. Thus Sweden in the future may not tax a resident of Sweden for income derived through a permanent establishment in Switzerland nor for the capital invested in such an establishment.—The term "permanent establishment" is defined in the convention in much the same way as in the Swedish law and in the Mexico and London drafts; there are, of course, some differences of wording but these do not involve any differences as to the real signification of the term in question. If an enterprise has permanent establishments in both states, each state is entitled to tax the income derived through the business activities of the permanent establishment situated within that state and the capital invested in the establishment. By this division for tax purposes of income and property there is a special divisionrule: That state in the territory of which the enterprise has its seat will primarily be allotted 10 per cent. of the income and of the property, provided that with the seat of the company also is connected an essential part of the management and the control of the enterprise. In certain cases the part thus allotted may be increased but never higher than to 20 per cent.

Profits from operation of ships or aircraft are taxable only in the state where the management of the enterprise is situated.

There are two special rules about parent companies and subsidiary companies. The fact that a company which is a resident of one

of the states has a subsidiary company which is a resident of the other state shall not in itself constitute that subsidiary company a permanent establishment of its parent company, even though the parent company has a dominant participation in the management of the subsidiary company. Furthermore, it is provided that the income of either company may not be computed at a higher amount than which corresponds to the real income. An adjustment of the income may, however, take place if special advantages, other than such as should have been bestowed upon an outsider, have been conferred upon shareholders or their relatives.—These rules are quite in accordance with the Swedish tax laws and correspond also, though worded differently, to the rules proposed in the Mexico and London drafts.

3. The provisions concerning the taxation of income from *royalties* follow the general rule in the continental conventions. A royalty or other amount paid in respect of the operation of a mine or quarry or of any extraction of natural resources is taxable solely in the state where the mine etc. is situated. Any royalty or other amount paid as consideration for the use of any copyright, patent, design, secret process or formula, trade-mark, or other like property is taxable solely in the state where the payee (licenser) is resident.—This, of course, is a departure from the Swedish legal rule concerning the taxation of royalties on copyrights, patents etc., Sweden having foregone its right to tax the last-mentioned royalties. The rule about royalties on copyrights, patents etc., laid down in the convention, differs from the Mexico and London drafts. In these drafts there is a distinction between royalties for the right to use a patent, a trade-mark, etc. on the one hand, such royalty being taxed only in the state where patent etc. is used, and royalties for the use of copyrights which are taxable only in the state where the payee is resident (domiciled). Sweden has never accepted this distinction between the different kinds of royalties derived from the use of intangible property, and the rule laid down in the convention (i.e. liability to tax in the state where the recipient of the royalty is resident) corresponds with the rules in most other conventions concluded by Sweden.

4. Profits in respect of *professional services* shall be taxable in the state in which the receiver of the profits has a permanent

contrivance regularly at his disposal. Though the wording is different, the purport of this rule might be deemed to be the same as of the rules in the Mexico and London drafts, according to which the recipient of the income is taxable in the state "in which the person has a permanent establishment at, or from, which he renders services".

5. The general provision about taxation of remunerations in respect of *personal services* follows the Swedish legal rule but differs in part from the rules in the Mexico and London drafts: The remuneration will always be taxable solely in that state, in the territory of which the services are rendered.—From the Swedish point of view such a rule is considered desirable because of the pay-as-you-earn system which Sweden recently has inaugurated. The Swiss negotiators on this point have accepted the Swedish proposal.

There are, however, three exceptions to the prescription just mentioned: a) Private pensions arising out of a former service relation will be taxable solely in the state where the recipient of the pension is resident; this is a departure from the Swedish legal rule.—b) Percentages and other remunerations to the members of the board of a joint-stock company will be taxed only in the state where the company is resident.—c) Remunerations and pensions paid by, or out of funds created by, one of the states to any individual in respect of services rendered to that state are taxable solely in the state from which the income is derived.

6. Income derived from *capital assets* (dividend, interest etc.) should in principle be taxable only in the state where the recipient of the income is resident. This is quite in accordance with the general Swedish legal rules if, for the moment, we disregard the Swedish coupon tax, but differs from the Mexico draft according to which income from movable capital shall be taxable only in the state where such capital is invested, and also from the London draft as far as dividends are in question, these being taxable only where the company has its fiscal domicile according to the London draft.

The general rule just mentioned is, however, seriously limited through a special prescription in the convention relating to taxes on movable capital deducted at the source. Each state retains its right to deduct such taxes notwithstanding the general rule men-

tioned above. If the deduction at the source exceeds 5 per cent. of the income in question the recipient of the income is nevertheless entitled to repayment of the amount exceeding 5 per cent.; still, this is only the case on condition that the state, where the recipient of the income is resident, deducts such a tax at the source. As Sweden deducts a tax at the source on dividends from sources within Sweden, but not on interest from such sources, this means, briefly expressed, that dividends paid out from sources in one state to a resident of the other state will be taxed fully in the latter state and, moreover, be subject to a tax of 5 per cent. in the other state; that interest from sources in Sweden paid out to a resident of Switzerland will be taxed only in Switzerland; that interest from sources in Switzerland paid out to a resident of Sweden will be taxed in Switzerland with 30 per cent. as well as in Sweden according to the usual Swedish rules. This result of the convention is, of course, very unsatisfactory from the Swedish point of view, but might be removed if Sweden introduced a tax at the source also on interest paid from sources in Sweden to residents abroad.

The rules about taxes on income from movable capital mean, of course, a limitation of the scope of the Swedish coupon tax. The rule concerning dividends corresponds to the rule in the London draft about income from interest.

III. *Conclusion*

The concluding of a double taxation agreement between two states implies the making of concessions on the side of both parties about their internal right to tax different kinds of income and property. It is, therefore, a question of giving and taking. The pre-requisite condition, however, ought always to be that all double taxation between the two states should be effectually avoided through the convention.

The convention between Sweden and Switzerland, regarded from this point of view, is not quite satisfactory. Double taxation will still occur in two cases: All dividends will be subject to a certain double taxation; this double taxation will, however, never amount to exactly 5 per cent. and the real amount of double taxes depends on the rate at which tax is charged in the state of the recipient,

provided, of course, that this state only taxes the net amount of dividend after deduction of the tax charged at the source; the amount of the double taxation will grow smaller as the rate of the tax in the last named state grows higher and will cease if the rate increases to 100 per cent.—Still more to be deplored is the fact that a real and unlimited double taxation will remain in case of interests from sources in Switzerland paid out to residents of Sweden. This strange condition appears still more peculiar in view of the standpoint of the Swedish tax laws, according to which no tax is charged on interest paid out from sources in Sweden to residents abroad.

On the Swedish side it is against this point in the convention, too, that the severest exceptions have been taken.

Luxury Tax in Israel

Shortly the Government of Israel decided to levy a luxury tax on autocars, motor-bicycles, refrigerators, wirelesses clocks and watches, musical instruments (except accordions and flutes), cameras, fur-coats, jewelry, cosmetics, (except soap, tooth-paste, Eau de Cologne, lipsticks, talcum-powder etc.) and carpets.

The tax is levied on the wholesale price, but is not allowed to be more than 35% of these prices.

INCOME TAX CONVENTION BETWEEN THE UNITED STATES AND DENMARK

MITCHELL B. CARROLL.

The convention between the United States and Denmark for the avoidance of double taxation of income, which was signed May 6, 1948, (hereinafter referred to as Convention), contains a number of provisions, which under normal conditions should encourage the flow of business and capital between the two signatory states. Inasmuch as the tax system of Denmark is fairly similar to that of Sweden, the income tax convention of March 23, 1939 between the latter country and the United States served as a model in negotiating the Danish-American convention.

However, the more recent convention is limited to income taxes. In the case of Denmark it applies to the national income tax, including the war profits tax, the intercommunal income tax and the communal income tax, and in the case of the United States of America it applies to the Federal income tax, including surtaxes (Convention, Art. I). It will also apply to any other taxes of an essentially similar character imposed by either contracting state subsequent to the signing of the present convention.

As used in the convention the term "United States" includes the States, the territories of Alaska and Hawaii, and the District of Columbia. The term "Denmark" as employed in the convention means only the Kingdom of Denmark and does not extend to the Faeroe Islands nor to Greenland.

Royalties

An invitation to American citizens and corporations to license their copyrights, patents, designs, secret processes and formulas, trade marks and other like property (including motion picture films) to residents of Denmark, is extended by the exemption, on

a reciprocal basis, of royalties and other amounts derived as consideration for the use of such rights by Danish licensees, provided the resident, corporation or other entity of the United States deriving such income, does not have a permanent establishment in Denmark (*id.* Art. VIII).

Interest and Dividends

Denmark also invites Americans to lend their capital to Danish enterprises by exempting, in a reciprocal clause, interest on bonds, securities, notes, debentures, or any other form of indebtedness derived from sources in Denmark by a resident, corporation, or other entity of the United States not having a permanent establishment in Denmark (*id.* Art. VII).

The principle of taxing dividends only at the shareholder's residence is adopted, subject to the exception that each of the contracting states reserves the right to collect and retain the tax, which, under its revenue laws, is deductible at the source. However, the tax may not exceed 15% of the amount of the dividends, provided the nonresident recipient has no permanent establishment in the state from which the dividends are derived. It is understood that Denmark does not have any such withholding rate. Thus, while the Danish law remains unchanged, no Danish tax will be paid on dividends distributed by Danish companies to shareholders in the United States.

In the case of dividends flowing from American corporations to a resident or corporation of Denmark, the present United States withholding rate of 30% is reduced to 15%. Furthermore, the American rate is reduced to 5% if the shareholder is a Danish corporation controlling directly or indirectly at least 95% of the entire voting power of the American corporation, and if not more than 25% of the gross income of the American corporation is derived from interest and dividends, other than interest and dividends received from its subsidiary corporations. This provision is subject to the condition that the relationship of the Danish and American corporations has not been arranged or is not maintained primarily with the intention of securing such reduced rate. These provisions are framed in reciprocal language (*id.* Art. VI).

Business Income

The removal of unnecessary tax obstructions to the development of business enterprises is accomplished by the adoption of the principle of taxing an enterprise of one contracting state in the other, in respect of its industrial and commercial profits, only if it is engaged in trade or business through a permanent establishment in the other contracting state. Thus if an enterprise of the United States is engaged in business in Denmark through a permanent establishment, the latter state may impose its tax upon the entire income of the American enterprise from sources within its territory, including royalties on copyrights, patents and similar property, interest on indebtedness, and it may levy its full tax deductible at source (*id.* Art. III (1)).

To encourage the export of goods, no profits are deemed to arise from mere purchases of goods or merchandise within the territory of one state by an enterprise of the other state (*id.* Art. III (2)).

The basic principle of allocation of income to a permanent establishment is followed. Thus there is attributed to a permanent establishment the industrial and commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arms-length with the enterprise of which it is a permanent establishment. Furthermore, such attributed profits are deemed to be income from sources within the territory of the state where the permanent establishment is situated (*id.* Art. III (3)).

As a corollary to this principle, which is applied in the case of an enterprise of one country which has a subsidiary enterprise in the other country, if the former enterprise, by reason of its participation in the management or the financial structure of the subsidiary enterprise, makes with or imposes on the latter in their commercial or financial relations, conditions different from those which would have been made with an independent enterprise, any profits which would normally have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly (*id.* Art. IV).

Shipping and Air Navigation

As an exception to the foregoing rule, income which an enterprise of one of the contracting states derives from the operation of ships or aircraft registered in that state, shall be exempt from taxation in the other contracting state. However, this provision does not affect the arrangement between the United States and Denmark providing for the relief from double taxation on shipping profits effected by exchanges of notes dated May 22, August 9 and 18, October 24, 25 and 28, and December 5 and 6, in the year 1922 (*id.* Art. V).

Rentals and Mining Royalties

The principle of taxation at source, at least in the first instance, is also followed in the case of income from real property (not including interest derived from mortgages and bonds secured by real property which, under Art. VII, is taxable at the residence of the recipient, if he has no permanent establishment in the country of the debtor), and royalties in respect of the operation of mines, quarries, or other natural resources, which are taxed in the state where such property is situated. Nevertheless, to obviate the application of the United States withholding rate of 30% on the gross income from such sources in the United States, a resident or corporation of Denmark deriving such income from United States sources may elect for any taxable year to be subject to the United States tax on a net basis, as if such resident or corporation were engaged in trade or business within the United States through a permanent establishment situated therein during such taxable year. Such provision is reciprocal (*id.* Art. IX).

Compensation for Personal Services

The Article on compensation for labor or personal services, including the practice of the liberal professions, begins with the generally accepted principle that such income shall be taxable only in the contracting state in which such services are rendered. By way of exception, if a resident of Denmark is temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year, and his compensation received

for such services does not exceed $ 3,000.00 in the aggregate, he will be exempt from the United States tax.

This provision reproduces in substance the exemption already allowed to certain aliens under section 211 (b) of the Internal Revenue Code, but omits the requirement that the alien must be employed by a "nonresident alien individual, foreign partnership or foreign corporation not engaged in trade or business within the United States." Consequently, if a resident of Denmark came to the United States for a period not exceeding 90 days, and earned less than $ 3,000.00 from any source while here, he would be exempt under this provision.

The situation of the resident of Denmark who receives compensation for labor or personal services performed as an employee of, or under contract with, a resident or corporation or other entity of Denmark, is that he will be exempt from United States tax if his stay in the United States does not exceed a total of 180 days during the taxable year. Corresponding exemptions are granted to a resident of the United States who goes to Denmark (*id.* Art. XI). This Article does not affect compensation paid by the government or any other public authority of one of the contracting states to individuals residing in the other state, who are taxable only in the paying state (*id.* Arts. X and XI (3)).

Private pensions and life annuities derived from within one of the contracting states and paid to individuals residing in the other contracting state, are exempt from taxation in the former state (*id.* Art. X (2)).

Relief from Double Taxation

Where under the convention, as in the case of income attributable to a permanent establishment, real estate rentals and mining royalties, income may be taxable both at its source and at the residence or home country of the recipient, provision is made for avoiding double taxation. In the case of the United States this is done by permitting the United States, in determining the income tax and surtaxes of its citizens, residents or corporations, to include, regardless of any other provisions in the convention, in the basis upon which such taxes are imposed, all items of income taxable under the revenue laws of the United States, as if the

convention had not come into effect; but from such United States taxes there may be deducted the amount of Danish taxes listed in the convention, subject to the provisions for crediting foreign taxes in section 131 of the Internal Revenue Code (*id.* Art. XV (a)).

For its part, Denmark may include in the basis upon which its taxes are imposed all items of income subject to its taxes, but it shall deduct therefrom the United States tax on income attributable to a permanent establishment, real estate rentals and mining royalties, public salaries earned in the United States by its nationals, and whatever United States tax might be paid on remittances to students, and on the remuneration of visiting professors, as well as on earned income earned within the United States. The credit, however, shall not exceed that proportion of the Danish tax which such income bears to the entire income subject to tax in Denmark. In addition Denmark will also allow as a deduction from its taxes an amount equal to 15% of the gross amount of dividends (reduced by the United States tax of 15% applicable to such dividends) from United States sources, as well as a further deduction from its taxes of 5% in the case of dividends received by a Danish corporation from an American corporation which it controls as provided in Article VI (3) (*id.* Art. XV (b)).

Cultural Exchange

To encourage the exchange of professors and students, a professor or teacher normally resident in one country, who temporarily visits the other for the purpose of teaching for a period not exceeding two years at a university, college, school or other educational institution in the other country, is exempted in such other country from tax on his remuneration for teaching during such period (*id.* Art. XIV). Similarly, students or apprentices, or citizens of one country who reside in the other exclusively for purposes of study, or for acquiring business experience, are not taxable in the latter state in respect of remittances (other than their own income) received by them from abroad for the purpose of their maintenance or studies (*id.* Art. XIII).

Protection Against Discrimination

A general clause against discrimination provides that citizens

of one of the contracting states (for example the United States) shall not, while resident in the other contracting state (i.e. Denmark) be subjected to more burdensome taxes than are citizens of such other contracting state (i.e. Denmark) residing in its territory. The term "citizens" is defined to include all legal persons, partnerships and associations created or organized under the laws of the respective contracting states, but there may be some confusion as to what constitutes residence in one state in the case of a corporation or other entity organized in the other state. The term "taxes" means taxes of every kind or description whether national, Federal, state, provincial or municipal (*id.* Art. XVI). Thus, while the double taxation provisions in the case of the United States relate only to Federal taxes, this discrimination clause refers as well to state and municipal taxes.

A special provision is added to protect a shareholder who is a resident of the United States or a United States corporation or other entity, against an addition of 50% to the capital increment tax on corporations in cases where a single shareholder residing outside Denmark owns more than 50% of the entire stock capital (*id.* Art. XVI (2)).

Unforseen Cases of Double Taxation

If a taxpayer can prove that the action of the revenue authorities of the contracting states has resulted in double taxation in his case in respect of any of the taxes to which the convention relates, he may lodge a claim with the state of which he is a citizen, or, if he is not a citizen of either contracting state, with the state of which he is a resident, or, if the taxpayer is a corporation or other entity, with the state in which it is created or organized. If the claim is upheld, the competent authority of such state may come to an agreement with the competent authority of the other state, with a view to equitable avoidance of the double taxation in question (*id.* Art. XX).

Mutual Assistance

The convention provides for a certain degree of mutual assistance, both in regard to exchange of information and in collection of taxes. However, one state may refuse to comply with a request made by

the other state for reasons of public policy, or if compliance would involve violation of a trade, business, industrial or professional secret or trade process (*id.* Art. XIX).

As regards exchange of information, the competent authorities undertake to exchange information available under their respective taxation laws, which information is necessary for carrying out the provisions of the convention, or for the prevention of fraud, or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the convention. However, any information so exchanged shall be treated as secret and shall not be disclosed to any person not concerned with the assessment and collection of the taxes which are the subject of the convention. No information shall be exchanged which would disclose any trade secret or trade process (*id.* Art. XVII).

The contracting states undertake to lend assistance in the collection of taxes which are the subject of the convention, together with interest, costs and additions to the taxes, and the finally determined revenue claims of one state may be accepted for enforcement by the other state and collected in the latter state in accordance with its laws applicable to the enforcement and collection of taxes. The state to which a request is directed shall not, however, accord assistance with respect to its citizens, corporations or other entities, except to insure that an exemption or reduced rate of tax granted under the convention to its citizens, corporations or other entities, shall not be enjoyed by persons not entitled to such benefits (*id.* Art. XVIII).

Miscellaneous Provisions

The convention contains a saving clause to make sure nothing in the convention may be construed to limit in any manner any exemption, deduction, credit or other allowance granted by the laws of one of the contracting states in the determination of the tax which it imposes (*id.* Art. XXI (2)).

Moreover, if any difficulty should arise as to the interpretation or application of the convention or its relationship to conventions between one of the contracting states and any other state, the contracting authorities may agree upon a settlement of the question. In addition, the competent authorities are authorized to prescribe

necessary regulations to interpret and carry out the provisions of the convention. With respect to provisions relating to exchange of information and mutual assistance, the competent authorities may by agreement prescribe rules relating to matters of procedure, forms of application and replies thereto, conversion of currency, disposition of amounts collected, minimum amounts subject to collection, and related matters (*id.* Art. XXII).

Effective Date

As the exchange of ratification took place during 1948 the convention came into effect with regard to the United States tax for the taxable years beginning on or after January 1, 1948. In the case of the Danish tax, the convention became effective for the taxable years beginning on or after April 1, 1948.

The convention is to continue in effect for a period of five years, and indefinitely thereafter, but may be terminated by either of the contracting states at the end of the five year period, or at any time thereafter, provided that at least six months' prior notice of termination has been given. When notice is given, the convention will cease to be effective as regards the United States tax for the taxable years beginning on or after the first day of January next following the expiration of the six-month period; and as respects Danish tax, for the taxable years beginning on or after the first day of April next following the expiration of the six-month period (*id.* Art. XXIII).

Conclusion

It is too early to appraise the benefits that should arise from the income tax convention between Denmark and the United States; but it obviously serves as an important link in consolidating economic relations between the two countries. With the alleviation of exchange problems, especially as progress is made in the carrying out of the European Recovery Program, and as pending measures are effected to give assurance of greater security, it is to be hoped that the favorable tax regime embodied in this convention will help to encourage development of trade and information between the signatory states.

VI

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I. General Part: A. Fiscal Law; B. Fiscal policy; C. Economic influence; D. Value; E. Fiscal evasion; F. Collection; G. Miscellaneous. — II. International Fiscal Law. — III. Comparative Fiscal Law. — IV. Income and Profits Taxes. — V. Property Tax. — VI. War-Taxes. — VII. Death Duties. — VIII. Turnover Taxes. — IX. Stamp Duties and similar Taxes. — X. Customs and Excise.

Sous la rubrique: nouvelles acquisitions, nous publierons une liste des articles parus dans les périodiques que nous recevons régulièrement. Les articles seront rubriqués comme suit:

I. Partie générale: A. Droit Fiscal; B. Politique Fiscale; C. Influence économique; D. Valeur; E. Evasion fiscale; F. Recouvrement; G. Matières diverses. — II. Droit fiscal international. — III. Droit fiscal comparé. — IV. Impôts sur les revenus et sur les bénéfices. — V. Impôts sur la fortune. — VI. Impôts de guerre. — VII. Droits de succession. — VIII. Taxes sur le chiffre d'affaires. — IX. Droits de timbre, droits d'Enregistrement et taxes y assimilées. — X. Douanes et accises.

I, A. **Fiscal Law — Droit Fiscal.**

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X

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Austria:

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Law of 9.2.'49 concerning procedure. — (Bundesgesetzblatt für die Republik Österreich, no. 12).

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Taxe de transmission

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Matières diverses

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Impôts sur les revenus

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1. Décret portant exonération du droit proportionnel de mutation prévu par l'article 2, littéra a, du décret du 31 mars 1926, relatif au droit d'enregistrement en matière foncière.

2. Décret portant exonération du droit proportionnel de 1,20 % exigible sur le dépôt des actes de sociétés, prévu par le décret du 8 octobre 1942, incorporé dans l'article 13 du décret du 27 février 1887 sur les sociétés. (B.A. 15.1.'49).

Douanes et accises

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Turnover Tax

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Income Tax

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Dominica:

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Income Tax

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Turnover Tax

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Decree of the Minister of Finance of 5.7.'48 concerning the tax which shall be repaid in accordance with the law of 4.6.'48, no. 427. (O.G. 1948, no. 527).

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Law of 30.12.'48 concerning the decreased import duties. (O.G. 1948, no. 950).

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Law of 1.7.'48 modifying the customs-law of 8.9.'39 (O.G. 1948, no. 517).

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Décret du 10.2.'49 no. 49—189 relatif au contenu et à la présentation des déclarations à souscrire par les contribuables en vue de l'établissement de l'impôt sur le revenu des personnes physiques. (J.O. 11.2.'49).

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Décret no. 49—366 du 17.3.'49 fixant de nouveaux coefficients de réévaluation pour l'application de la revision des bilans prévue par l'article 1er de la loi no. 48—809 du 13 mai 1948. (J.O. 19.3.'49); rectificatif (J.O. 23.3.'49).

Décret no. 49—367 du 17.3.'49 fixant en application des dispositions du paragraphe IV de l'article 280 du décret no. 48—1986 du 9.12.'48 les conditions de constitution par les entreprises commerciales d'une dotation pour approvisionnements techniques, ainsi que le régime fiscal de cette dotation. (J.O. 19.3.'49) rectificatif (J.O. 23.3.'49).

Loi no. 49—348 du 21.3.'49 exonérant de certains impôts les bénéfices

réalisés par les sociétés d'investissement (J.O. 22.3.'49).

Décret no. 49.250 du 21.2.'49 portant règlement d'administration publique relatif à la restitution par voie d'imputation de la taxe sur les coupons des valeurs mobilières étrangères non abonnées et des fonds d'Etats étrangers. (J.O. 25.2.'49).

Arrêté du 24.2.'49 fixant le taux des déductions supplémentaires pour frais professionnels applicable à l'égard de certaines catégories de contribuables pour la régularisation des retenues à la source supportées en 1948 au titre de l'impôt sur les bénéfices des professions non commerciales. (J.O. 25.2.'49).

Arrêté relatif à l'introduction dans le département de la Guadeloupe, du régime fiscal applicable aux traitements, aux salaires et à certaines pensions (rectificatif) (J.O. 25.2.'49).

Décret du 9.5.'49 approuvant deux délibérations de l'assemblée representative des établissements français dans l'Inde instituant un impôt général sur le revenu et fixant les tarifs (J.O. 14.5.'49).

Taxes sur le chiffre d'affaires

Décret du 25.9.'48, no. 48—1494 portant modification des conditions d'exigibilité de l'intérêt de crédit pour les obligations cautionnées souscrites en matière de taxes sur le chiffre d'affaires. (J.O. 26.9.'48).

Prélèvement exceptionnel

Arrêté du 12.1.'49 relatif au remboursement des souscriptions à l'emprunt libératoire du prélèvement exceptionnel de lutte contre l'inflation qui excèdent le montant du prélèvement. (J.O. 14.1.'49).

Douanes et accises

Loi no. 49—294 du 4.3.'49 établissant les conditions dans lesquelles sont fixées les taxes intérieures de consommation visées à l'article 265 du code des douanes. (J.O. 5.3.'49).

Arrêté du 28.2.'49 portant prorogation du groupement d'importation et de répartition de graines de betteraves à sucre (J.O. 21.4.'49).

Conventions

Loi no. 49—246 du 24.2.'49 portant approbation de la convention signée le 6.8.'48 entre la France et la Tchécoslovaquie et tendant à éviter les doubles impositions résultant de l'application des impôts sur la fortune ou sur l'accroissement de fortune établis en France et en Tchécoslovaquie. (J.O. 25.2.'49; rectificatif J.O. 25.5.'49).

Matières diverses

Décret du 31.12.'48, no. 48—1990 modifiant le décret no. 47—2414 du 30.12.'47 fixant les conditions d'application de l'article 18 de l'ordonnance no. 45—2394 du 11.10.'45 instituant une taxe de compensation sur les locaux d'habitation insuffisamment occupés. (J.O. 17.1.'49).

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Décret no. 49—319 du 7.3.'49 modifiant le décret no. 46—1410 du 13.6.'46 relatif à l'organisation du service des contributions indirectes. (J.O. 10.3.'49).

Loi no. 49—310 du 8.3.'49 relative aux comptes spéciaux du Trésor. (J.O. 9.3.'49).

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Arrêté du 16.3.'49 portant fixation de la valeur imposable servant au calcul de la taxe cumulée sur les laines. (J.O. 22.3.'49).

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Arrêté du 3.5.1949 portant fixation de la valeur imposable servant au calcul de la taxe cumulée sur les laines. (J.O. 4.5.'49).

Décret no. 49—631 du 4.5.'49 modifiant et précisant le décret du 30 octobre 1948 fixant certaines caractéristiques des valeurs mobilières (J.O. 5.5.'49).

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Décret du 30.4.'49 portant non-approbation de la délibération no. 30—48 du conseil général de la Guinée française portant institution d'une contribution exceptionnelle pour l'année 1949 (J.O. 11.5.'49).

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Law of February 18, 1949, abolition of payments on the income and companies tax. (Ibid., no. 7).

Law of 18.2.'49 alteration of the law abolishing the tax ,,Notopfer Berlin''. (Steuer u. Zollblatt, no. 7).

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Property Tax

Law of 2.2.'49 concerning the first property tax payment in advance 1949. (Steuer u. Zollblatt no. 5).

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Law of 18.2.'49 modifying the law establishing the ,,Notopfer Berlin''. (Steuer u. Zollblatt, no. 5).

Ordinance of 22.2.'49 for the execution of the law modifying the law concerning the ,,Notopfer Berlin''. (Ibid.).

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Turnover Taxes

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Customs and Excise

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Miscellaneous

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Law of 11.3.'49 re custom duties and consumption tax. (Steuer u. Zollblatt no. 14).
Law of 21.9.'48 Tax on land and agricultural enterprises and Inland fishery enterprises in the United Territory. (Ibid.).
Law of 10.4.'49 re the valuation of landproperty. (Gesetzblatt der Verwaltung des Vereinigten Wirtschafts Gebietes, no. 9).

Hungary:

Turnover Tax

Ordinance of 25.8.'48 re turnover tax on imported goods. (O.G. 30.8.'48).

Italy:

Impôts sur le revenu

Law of 10.11.'48 Regulations concerning the tax on securities. (Gazz. Uff. 31.12.'48).
Loi du 23.12.'48, no. 1451 — Impôt extraordinaire de guerre. Impôts directs et impôts indirects ordinaires. — (Gazz. Uff. no. 300).

Taxes sur le Chiffre d'affaires

Décret ministériel du 30.11.'48 concernant la taxe de circulation. (Gazz. Uff. no. 299).
Loi du 10.12.'48, no. 1469 normes relatives à l'impôt de négociation (Gazz. Uff. suppl. au no. 304).
Décret loi du 20.12.'48 no. 1427 modifiant le régime fiscal de quelques produits assujettis à l'impôt de fabrication. (Gazz. Uff. no. 296).
Law of 7.1.'49 Regulations in favour of the General Turnover Tax. (Gazz. Uff. no. 5 of 8.1.'49).
Décret ministériel du 9.2.'49 Modalités de payement de la taxe générale sur le chiffre d'affaires en ce qui concerne le commerce d'articles médicinaux. (G.U. 18.2.'49).
Décret ministériel du 18.2.'49 portant quelques modifications au régime spécial de la taxe générale sur le chiffre d'affaires pour quelques produits agricoles. (G.U. 1.3.'49).
Décret ministériel du 1.2.'49 Restitution de la taxe pour manufactures de coton exportées. (G.U. 29.3.'49).

Droits d'Enregistrement

Loi du 15.2.'49 modifiant les lois concernant les droits d'enregistrement et d'hypothèque (G.U. 28.2.'49).

Douanes et Accises

Décret loi du 14.12.'48 no. 1419 portant modification au régime fiscal du sucre et des autres produits sucrés. (Gazz. Uff. no. 292).
Law of 25.11.'48 Provision concerning an additional tax on imported textiles and concerning the payment of production tax on exported textiles. (Gazz. Uff. 8.1.'49).
Loi du 12.2.'49 Régime fiscal du sucre et des autres produits sucrés. (Gazz. Uff. no. 36 de 1949).
Loi du 3.12.'48 modifiant le régime fiscal des alcools et du benzol. (G.U. 16.12.'48).
Décret ministériel de 7.2.'49 concernant la taxe de fabrication (G.U. 12.2.'49).
Loi du 18.2.'49 Conversion du décret-loi du 20.12.'48 modifiant le régime

fiscal de quelques produits assujettis à la taxe de fabrication (G.U. 19.2.'49).
Décret Ministériel du 24.3.'49 Prorogation de termes. (G.U. 30.3.'49).

Matières diverses

Décret du Président de la République. Variation de la mesure des droits fixes dûs au trésor sur les pierres à fusil. Nouveau tarif de vente au public des pierres à fusil. (Gazz. Uff. n. 294).

Loi du 21.12.48, no. 1440 contenant des dispositions en matière de droits du trésor public et instituant d'un prix additionnel sur les billets d'entrée dans les locaux de spectacles. (Gazz. Uff. no. 298).

Décret du 7.2.'49 concernant l'impôt de fabrication. (Gazz. Uff. no. 35 de 1949).

Loi du 3.12.'48 Conversion dans une loi du décret-loi du 6.10.'48 concernant la taxe de consommation de l'énergie électrique (G.U. 4.12.'48).

Loi du 17.1.'49 concernant la taxe sur les automobiles. (G.U. 19.1.'49).

Netherlands:

General

Frontier Correction ordinance of 23.4.'49 Provisions re governmental taxes. (O.G. 23.4.'49).

Peru:

Miscellaneous

Decree of 22.2.'49 concerning reclamations to the Treasury (El Peruano Diario Oficial no. 2473, 11.4.'49).

Poland:

Income Tax

Decree of 3.2.'47 concerning the executionary regulations re the taxation of acquisition of property rights.

Turnover Tax

Decree of 25.10.'48, re Turnover Tax.

South Africa:

Customs and Excise

Rebate of Duty in terms of the Customs Act no. 35 of 1944. (G.G. no. 4102).
Rates of Customs Duties (G.G. no. 4103).
Application of the minimum intermediate and maximum rates of Duty in terms of the Customs Act. (G.G. no. 4103).
Application of the Customs Union (Interim). Agreement between the Governments of the Union of South Africa and Southern Rhodesia (G.G. no. 4087).
Admission of certain articles at reduced rates of duty.
Regulations in terms of the Customs Act no. 35 of 1944 (G.G. no. 4128).
Customs Act no. 35 of 1944 — Amendment to annexures nos. 1 and 3 to Government Notice no. 526 of 16th March 1949 (O.G. 28.3.'49).

Sweden.

Income Tax

Royal Decree of 17.12.'48 modifying section 4 § 1 of the State income tax ordinance of 26.7.'47 (no. 576). (O.G. 1948, no. 764).
Royal Decree of 29.10'48 fixing the tables of tax for the calculation of the preliminary A-tax for 1949 in Stockholm (O.G. 1948, no. 768).

Royal Decree of 17.12.'48 fixing certain tax tables for the calculation of the preliminary A-tax for 1949 (O.G. 1948, no. 796).

Royal Decree of 17.12.'48 fixing forms with respect to the preliminary tax (O.G. 1948 no. 770).

Royal Decree of 17.12.'48 fixing tables for the calculation of the amount with which the state income tax shall be taken up in the assessed preliminary tax on income for 1949. (O.G. 1948, no. 771).

Property Tax

Royal Decree of 17.12.'48 modifying section 5 of the state property tax ordinance of 26.7.'47 (no. 577). (O.G. 1948, no. 765).

Death Duties

Royal Decree of 10.12.'48 concerning the calculation of interest on unpaid estate and succession duties. (Off. Gazette, 1948, no. 718).

Land Tax

Royal Decree of 17.12.'48 concerning special delay for the payment of land tax 1948 in arrear. (O.G. 1948, no. 761).

Customs and Excise

Royal Decree of 17.12.'48 modifying section 195 of the customs statute of 7.10.'27 (no. 391). (O.G. 1948, no. 793).

Miscellaneous

Royal Decree of 17..12'48 modifying the tax collecting ordinance of 31.12.'45 (no. 896). (O.G. 1948, no. 762).

Royal Decree of 17.12.'48 modifying section 29, § 1 and 33 of the assessment ordinance of 28.9.'28 (no. 379). (O.G. 1948, no. 763).

Royal Decree of 17.12.'48 Assessment of tax with respect to change of communal and ecclesiastic dictricts. (O.G. 1948, no. 766).

Law of 17.12.'48 re change of communal and ecclesiastic districts. (O.G. 1948, no. 767).

Tanger:

Taxes sur le chiffre d'affaires

Loi du 21.2.'49 portant modifications des droits de consommation sur les essences de pétrole. (B.O. 31.3.'49, no. 372).

Loi portant modification des droits de consommation fixés par la loi du 24.4.'46 pour la saccharine et autres substances édulcorantes artificielles. (B.O. no. 273 de 31.3.'49).

Matières diverses

Loi portant supression de la taxe de circulation des véhicules. (B.O. 372 de 31.3.'49).

Loi portant modification de la taxe de transport des viandes. (B.O. no. 372, de 31.3.'49).

Turkey:

Turnover Tax

Ordinance of 12.1.'49 concerning import without turnover tax. (Off. Gaz. 24.1.'49).

THE DEVELOPMENT OF THE AUSTRIAN FISCAL LAW SINCE APRIL 1945 TO APRIL 1948

by

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A. Introduction

1. The German fiscal law as introduced in Austria since March 1938, originates from the democratic period in Germany before Hitler's rise to power. Its system shows striking similarities to the Austrian system then in existence. Owing to many alterations and extensive codifications which mainly date from October 1934, it was however construed in accordance with the national socialist spirit and completely adapted to the requirements of the national socialistic Taxation, Economy, and Population policy.

2. In April 1945 it was practically impossible also in consequence of the shifting of economical taxes which would have been the result thereof- to substitute the old Austrian fiscal law all at once for those then in practice. Therefore the following measures were taken:

Immediate abrogation of all typical national socialist ideas and general transitional temporary provisions (vide infra B: Temporary transitional provisions)

Adjustment of the existing laws to the new situation in the form of partial changes (vide infra C: The prevailing law)

Introduction to fundamental reform of the whole fiscal law as a long-time work (vide infra D).

B. Transitional temporary provisions

1. Constitutional law of May 1, 1945 (Rechtsüberleitungsgesetz: Transitional provisions law) § 1: „All laws and ordinances enacted after May 13, 1938 as well as all separate decrees in such prescriptions which are inconsistent with the sence of justice of the national socialist ideas are abrogated."

2. Law of May 8, 1945 concerning the application of provisions

on taxation (Weitergeltungsgesetz) § 1: "Until the introduction of an Austrian tax system the present German fiscal laws if not abrogated or changed will remain in force."

§ 2: settles the immediate abrogation of:

a) § 1 of the law of fiscal adaptation (Steueranpassungsgesetz) of October 16, 1934 which requires the taxation laws to be interpreted in accordance with the national socialist spirit, and

al 3 of § 2 of the law of fiscal adaptation (Steueranpassungsgesetz) by which questions of justice and practice be judged in accordance with the national socialistic ideas.

b) The discriminating regulations in some taxation laws concerning the fiscal treatment of Jews, Poles and gypsies.

c) The regulations about the levying of a social adjustment contribution (Sozialausgleichsabgabe).

3. Law of June 20, 1945 Transitional fiscal law (Steuerübergangsgesetz) already makes material judicial stipulations for a number of taxes in view of the assessment years 1944 and 1945, the advance payments and the tax returns (§§ 1—3).

§§ 1—3 of the Transitional fiscal law (Steuerübergangsgesetz) read:

§ 1: The income tax, corporation tax, trade tax and turnover tax for the calendar year 1944 and for the first quarter of 1945 are settled by the advance payments for the time mentioned.

§ 2: (1) No assessment for the taxes mentioned in § 1 will take place.

(2) For the calendar year 1945 the income tax, corporation tax and trade tax will be assessed with three quarters of the whole tax amount over that year.

(3) The turnover tax assessment for the calendar year 1945 will take place on the taxable proceeds obtained between April 1st and December 31st.

§ 3: Advance payments which have not been made in the period mentioned in § 1 can be paid afterwards; amounts for which a delay of payment is granted, can be reduced by the Ministry of Finance, if the taxpayer can prove that the advance payment is higher than the amount for which he would be taxed in case of final assessment.

§ 4: abrogates the ordinance of January 21, 1941 German

RGBL I page 42, concerning freedom in valuation methods and reconstruction provisions allowance.

By the law of December 13, 1945 the application of §§ 1—3 were restricted as far as they concerned Vienna, Lower Austria, Styrian and Burgenland.

4. The law of July 27, 1945 stipulates that additional war percentages raising the amounts of several taxes will now be levied as additional percentages in order to stimulate reconstruction (Aufbauzuschläge).

5. The law of July 25, 1946 concerning changes in the direct taxes and the turnover tax (Steueränderungsgesetz 1946) the application of which is discussed under C.

6. The law of June 11, 1947: Provisional law regarding legal fiscal remedies (Vorläufiges Abgabenrechtsmittelgesetz) (wording under C 1).

C. The present fiscal law

The Austrian fiscal system is divided into general fiscal law and special fiscal law.

I. General Fiscal law

1. The Reichsabgabenordnung (General Tax Law) law of December 13, 1919, latest wording as per law of July 4, 1939 RGBl I page 1181, contains the principal provisions which are of importance for the whole fiscal system. The first part of it: "Administration" is still in force as far as the law of taking over the government (Behördenüberleitungsgesetz) of July 20, 1945 StGBl Nr. 94 (modified by law of December 13, 1945 BGBl Nr. 23 of 1946). does not provide otherwise. Consequently the activities of the "Oberfinanzpräsident", as far as not executed by the former Minister of Finance of the Federation according to the situation of March 12, 1938, will be transferred to the "Finanzlandesdirektion" of Vienna, Graz, Linz, Klagenfurt, Innsbruck, Salzburg and Bregenz. The "Finanzämter", "Hauptzollämter" and "Zollämter" will remain in office for the time being. The stipulations about the "adviser" at the "Finanzämter" are unapplicable at present.

Against decisions by a „Finanzamt" there are legal remedies

about which the "Finanzlandesdirektion" decides. Against decisions of the latter complaints can be lodged at the administrative court (Verwaltungsgerichtshof). By the Verwaltungsgerichtshofgesetz of October 12, 1945 StGBl Nr. 208, the §§ 52 to 66 of the Abgabenordnung about the Financial Court are out-dated.

The instructions in Part 2, al 3 "Rechtsmittel" (legal measures) are only applicable as far as the Provisional law regarding legal fiscal measures (Vorläufiges Abgabenrechtsmittelgesetz B 6) does not provide otherwise. The latter reads:

§ 1 (1) The remedy to oppose against the various kinds of assessments (Steuerbescheid, Feststellungsbescheid, Steuermessbescheid) concerning direct taxes, turnover tax, legal charges and other direct taxes is given in accordance with § 230 Abgabenordnung.

(2) The remedy decisions concerning the resolutions in al (1) issued since July 29, 1945 serve as protest resolutions in the sense of this federal law.

§ 2: This federal law becomes ineffective on December 31, 1948.

Concerning the third part (criminal law and criminal jurisdiction) the separate regulations of the "Verordnung über das gerichtliche Strafverfahren in der Ostmark" of June 23, 1939, Deutsches RGBl I page 1046 are in force in Austria. The Austrian criminal Code and the Criminal Procedure Code are supplementary in force.

2. The fiscal adaptation law (Steueranpassungsgesetz) of October 16, 1934 RGBl I page 925.

The changes in this law made by the "Weitergeltungsgesetz" have been introduced above under B 2).

3. The State revaluation law (Reichsbewertungsgesetz) in the redaction of 1939.

4. The constitutional law of January 21, 1948 concerning the establishing of financial relations between the "Bund" and the other existing powers (Gebietskörperschaften) (Finanzverfassungsgesetz: F.—VG 1948) settles the range of influence of the "Bund" and the „Länder" in the financial field. The public contributions in accordance with the right of the "Gebietskörperschaften" to have the disposal of the proceeds in their own household fall into the following divisions and sub-divisions:

1) Exclusive federal taxes, the revenues of which fall completely to the "Bund".

2) Taxes divided between the Bund and the counties (communities), the division of the revenues of which is settled as follows:

a) collective federal taxes, levied by the „Bund" parts of the revenues of which fall to the "Bund" or the counties (communities);

b) Additional taxes, consisting of principal tax of the „Bund" and surtaxes of the counties (communities);

c) Forces levied on the same object: the "Bund" and the counties (communities) both levy the same taxes on the same object.

3) Exclusive taxes of the county, the revenues of which completely fall to the counties.

4) Taxes divided between the counties and the communities the revenues of which fall partly to the county and partly to the community with the following subdivision:

a) collective taxes levied by the counties the revenues of which are divided between the counties and communities.

b) additional taxes consisting of a principal tax levied by the county and a surtax levied by the community.

c) Taxes levied on the same object: Counties and communities levy the same taxes on the same object.

5) Exclusive communal taxes the revenues of which fall completely to the community.

5. The federal law of January 21, 1948 concerning the introduction of the "Finanz-Verfass. Gesetz: F—AG 1948. By this law all the present mutual taxes are mentioned and it is established to which "Gebietskörperschaft" the revenues fall.

II. Special taxation

In the classification of the "Bundesfinanzgesetz for the year 1948" of December 18, 1947.

1. *Direct taxes*

(1) *Income tax* a) *Taxpayer*

Renewed by: Steueränderungsgesetz of September 25, 1946, BGBl. 1946 Nr. 171.

ESt- Novelle 1946 of October 29, BGBl. Nr. 203.

Erste ESt-Novelle 1947 of July 3, BGBl. Nr. 127 and Zweite ESt-Novelle 1947 of July 30, BGBl. Nr. 184.

Of these amendments the following is important:

§ 3 of the Income Tax which at present reads as follows: Free of tax are:

1. The income of persons whose taxation of incomes is unrestricted when the said income does not exeed S 2.000,—.

2. The indemnifications of persons disabled in the war, of relations of war victims or persons in equal cases in accordance with the existing regulations concerning public support, as well as interests falling under § 2 Z 6 of the law concerning the support of war victims of July 17, 1945 StGBl Nr. 90.

3. The allowances paid to officials of the Police, the Gendarmerie and the Customs, as well as gratifications paid to the said officials.

4. Allowances from national legal health insurance (companies) and national accident insurance (companies), as well as gratifications from the other branches of national public insurance.

5. The allowances paid by unemployment insurances.

6. Allowances out of public means or out of means of a public endowment, which are paid as relief or as subsidies for the development or practising of science or arts.

7. Reimbursements of travelling and other expenses paid out of public funds. On the other hand indemnifications paid for loss of profit or loss of time are taxable.

8. Incomes of officials working abroad are subject to tax in the state where the said officials have their working area. This does not count for incomes made inland, according to § 49.

9. Presents to employees celebrating a jubilee if

a) they are given on the occasion of an employee's jubilee and do not exeed

aa) the amount of a six month's salary (not exceeding S 3.600,—) given because the said employee has been in the employer's service for 25 consecutive years

bb) the amount of a nine month's salary (not exceeding S 5.400,—) given because the said employee has been in the employer's service for 40 consecutive years

cc) the amount of a years' salary (not exceeding S 7.200,—) given because the said employee has been in the employer's service for 50 consecutive years.

b) they are given on the occasion of a jubilee of the firm and if the amounts given to the individual employees do not exceed a

month's salary and are given because the firm has existed for 25, 50 or a multiple of 25 years.

In all other cases the total amount of jubilee presents is subject to income tax.

10. Allowances granted for dirty, heavy or dangerous labour if granted by a collective agreement; further measures are taken after hearing the "Arbeiterkammertag" of the federal ministry of Finance in agreement with the federal ministry for social administration.

The following incomes also include the incomes through not-independent work: Payments of interest out of the legal social insurance and

Payments and profits from former services rendered, no matter if they are wholly or partly due to former contributions of the person entitled to the payment or their lawful predecessor, and if they fall to the nearest person entitled or to his legal successors. In § 32 E.St.G. the taxes for which the ESt-tables are of importance are modified. The regulations in question are:

New tax groups:

Group I

1. In the first group fall persons who were neither married at the beginning of the period of assessment nor were married for at least 4 months in the period of assessment.

2. Under Nr. 1 do *not* fall:

a) Persons who are entitled to child allowance or whose request for it has been granted and persons who have formerly been entitled to child allowance because of step children;

b) Men, who have reached their 65th year at least four months before the end of the period of assessment and widowers or divorcees with a child born in wedlock;

c) Women, who had a child before the end of the period of assessment or who had reached their 51st year at least four months before the end of the period of assessment;

d) Orphans, who have not yet reached their 25th year and are being educated for a profession. These conditions should have existed simultaneously in the period of assessment for at least four months.

Group II

This group includes persons who do not fall under group I or III. Group II includes further (if group II cannot be applied) widows of victims who fell in the fight for an independent, democratic Austria (§ 1 Opferfürsorgegesetz vom 17.7.1945 StGBl 90).

Group III

1. To this group those persons belong who are entitled to child allowances (Z. 2) or whose request for it has been granted.

2. The taxpayer is entitled to child allowance for children under age and for other relatives under age, provided they fulfil the two following conditions:

a) The children or other relatives should have belonged to the family of the taxpayer for at least 4 months during the period of assessment or they should for the greater part have been maintained and educated by the taxpayer during the period of assessment. In the second case the taxpayer should have had to pay the costs of maintainance and education for at least four months.

b) The children or relatives mentioned should have been under age during that period (nr. a).

3. The taxpayer will be granted the request for child allowance for children of age for other relatives of age if they fulfil the two following conditions:

a) The children or other relatives should for the greater part have been maintained and trained for a profession at the expense of the taxpayer. Those expenses should have been paid by the taxpayer for at least four months.

b) The children or other relatives should not have reached their 25 year during that period (nr. a 2nd §).

4. Children or other relatives in the sense of nr. 2 and 3 are those who fall under § 10, nr. 3—6 of the StAnpG.

5. The abatement (as contrasted with the amount of tax of group I) for persons being neither legal descendants, nor legal stepchildren, nor adopted children, nor children declared legal may not exceed S 720,— (and S 360,— additional reconstruction charge) a person for those taxpayers who would fall under Group I without these children.

b) *The wages tax*

is an income tax originating from the deduction of a tax from wages or salaries.

The classification of tax groups is carried out in correspondence with the modification of § 32 ESTG.

The fixed tariffs of § 40 ESTG are settled anew as follows:

	to S 1.000,—	over S 1.000,—
Tax group I	12 %	18 %
„ „ II	9 %	13 %
„ „ III/1 child	7 %	10 %
„ „ III/2 children	5 %	7,5 %
„ „ III/3 children	3 %	4 %
„ „ III/for more than 3 persons	1,5 %	2 %

The "Jahresausgleich" (a concept from the „Einkommenabzugssteuer" the Austrian form of wages tax) is introduced again within moderate limits. According to this, employers who have not been engaged for the whole year can obtain a "Jahresausgleich" of the deducted wages tax so that it will be assimilated to an amount of the tax which, at a general assessment, will come about under *that* condition that the wages he is earning is the only income of the employer. The employer can only then apply for the "Jahresausgleich" if a modification of the deducted wages tax of at least 10 % results from it. § 5 of the "Einkommensteuernovelle 1946" prohibits to transfer the income tax to the employer. Impeding stipulations are legally unapplicable.

c) *Dividend tax (not modified)*

(2) *Fines:* National Socialists have to pay a capital levy and a tax on income as a "Sühneabgabe". The rates of tax are progressive.

(3) *Company tax:* In § 4 of the KStG dealing with the personal exemption, the numbers 1—4 are modified as follows:

1. The Austrian State railways and the concerns monopolised by the State.
2. The Austrian national Bank,
3. The Postal Savings Bank,

4. The Savings Banks as far as they are connected with the saving in particular.

According to the "Aufbauzuschlagegesetz" (decree for additional levy for reconstruction) of 27.7.1945 StGBl nr. 100 the additional war taxes on the company tax are levied furthermore as an additional tax for reconstruction. These additional war taxes are settled in the Vdg. of 20.8.1941 RGBl I S 162. In accordance with it the Company tax of 40 % on a taxable income of more than S 500.000,— is raised to 55 %.

(4) *The Directors' Tax* is raised from 20 to 30 % on 1.8.1946 by the BGBl 109/46. Through this increase furthermore following tax rates when levying this tax — which follows from tax reduction — are in force:

30 % if the recipient has to pay the tax
42,5 % if the enterprise takes over the tax
40,5 % if the income tax is levied as well and the recipient has to pay the tax
68 % if the income tax is levied as well and the enterprise takes over the tax.

(5) *The property tax* and *the „Aufbringungsumlage"-tax*

By the property tax revision 1946 (Ges. of 13.6.1946) the so called "Wertfortschreibungsgrenzen" are modified retrospectively from 1.1.1946. The concerning decree reads at present: "In contrast with § 22 Abs. (1) 1—3 Satz des RBewG of 16.10.1934, Deutsches RGBl I S 1035, the "Einheitswert" is fixed anew (Wertfortschreibung) if the value has changed:

1. In the case of a business concerning land or forestry, or an estate by about more than 1/5, but at least by more than 100.000,— S.

2. In the case of an industrial business or an industrial licence either by more than 1/5 or at least by 10.000,— S or more than 100.000,— S."

By the "Steueränderungsgesetz" 1946 of July 25.1946 the following decrees are modified (from January 1.1947):

§ 3 of the VStG concerning the exemption from tax
§ 5 of the VStG concerning the amounts of exempt tax
§ 11 of the VStG concerning the collective assessment of the head of the family together with wife and children or relations under age.

The tax (a 4 pro mille assessment on the working capital) is unaltered.

(6) *The trade tax* is not altered fundamentally. By the "Finanzausgleichsgezetz" 1948 (vgl. C I 5) it was declared a tax to be levied by the municipalities exclusively.

2. *Turnover tax*

From April 1945 the turnover tax is to be paid monthly. From October 1,1946 the average turnover tax-tariffs, which were calculated upon the provisions until then in force, were annulled.

It is made possible for enterprises with more than one tariff or which have a turnover exempt from tax as well as a taxable turnover, to pay their turnover tax in accordance with an average tax tariff.

In accordance with the "Gebührengesetz" of July 25,1946 the "Rechnungsstempel" with a "Pauschbetrag" is for the present to be paid in the form of an additional charge of 10 % on the turnover tax. In force from November 1, 1946 (in October 1946 it was only 5 per-cent).

3. *Customs*

No essential modifications.

4. The following *consumption taxes* are in force:

(1) Tobacco tax and reconstruction charge on the retail price of tobacco.
(2) Beer tax and reconstruction charge on the retail price of beer
(3) Wine tax and reconstruction charge
(4) Sugar tax
(5) Salt tax
(6) Tax on mineral oils
(7) Tax on fuels
(8) Tax on playing cards
(9) Tax on acetic acid
(10) Tax on illuminants
(11) Reconstruction charge on the retail price of champagne.

The tax rates are raised separately — partly inconsiderably.

5. *Legal charges and Traffic duties*

(1) *Stamp duties and legal charges:*

This legal matter was settled anew by the legal charges decree of July 25, 1946 in the way as before March 1938. Distinction is made between legal charges for manuscripts and official deeds and those for legal actions. The rates for the first are put down in § 14, for the latter in § 33.

(2) Taxes on profits from money lotteries or other lotteries and games (In general unaltered).

(3) Taxes on totalisator- and bookmakers betting (unaltered).

(4) *Death duties*

Amending act of July 25, 1946 BGBl nr. 164

Important is § 17 Abs. (1) which runs:

1. for persons of tax groups I or II an inheritance of not more than S 10.000,—.

2. for persons of tax groups III or IV an inheritance of not more than S 2.000,—.

3. for persons of tax group V an inheritance of not more than S 500,—.

Should the inheritance exceed the taxable limit then the whole inherited amount ist taxable.

(5) *Tax on the obtaining of land*

Amending act of July 25, 1946 BGBl nr. 203.

By this act the decree concerning tax on the obtaining of land of March 29,1940 is modified on several points and furthermore completed. The most important modifications concern § 3 and § 13. In § 3 concerning general exemptions of tax cypher 2 is modified as follows:

The obtaining of a plot of land by a person who is directly related to the seller (or giver) is exempt from tax if the said plot of land is used for agriculture and the compensation (or value of the land) does not exceed S 6.000,—. Adopted children are equal to descendants, step children to children. Furthermore equal to descendants are their spouses, if on account of the state of the property, they share in the inheritance without any legal transfer.

In § 13, tax rates in § 2 (according to which the tax amounts to 2 %) a new nr. 4 is to be inserted:

"As the obtaining of property by persons mentioned in § 3 cipher 2."

Par. (3) is changed and reads as follows:

"The tax amounts to 4 per centum on the purchase of land property, if the amount paid exceeds S 30.000,—.

Par. (4) *New:* An additional tax of 2 per centum of the calculated basis is levied. Exempt from this additional tax are the inheritance of land through death or gift of land of one living person to another in the sense of the Death duty act, furthermore the obtaining of land by persons mentioned in § 3 nr. 2.

Par. (5) *New:* If within the time of two years pieces of land or part of them are transferred from one living person to one and the same other living person by means of volontary legal actions, the tax to be levied ist to be calculated from the amount of the collective value of the pieces of land transferred within these two years.

(6) *Insurance tax*

Some items and some stipulations in the text are modified by the "Verkehrssteuernovelle 1948" of February 18,1948 BGBl nr. 58.

(7) *Kapitalverkehrssteuer*

This was abolished by § 14 of the „Steuervereinfachungs-Vdg." (a tax simplifying decree) of September 14,1944, Deutsches RGBl I S 202.

It has been introduced again from October 3,1945 by decree of July 27,1945 StGBl nr. 99 and by the "Verkehrssteuernovelle" Amending act 1948 (compare with above mentioned under (6)) it was slightly modified.

(8) *Fire Insurance tax*

Of this tax, now levied by the municipalities, the rates (hitherto 8%) as well as the text was altered by "Verkehrssteuer" amending act 1948 (s.o.).

(9) *Transport duties*

Through "Verkehrssteuer" amending act 1948 the transport duties Decree of June 29,1926 (Deutsches RGBl I S 357) which is worded in the Decree of July 2,1936 Deutsches RGBl I S 53,1 together with the execution decree hitherto ordained are abolished from December 31, 1948.

(10) *Tax on motor vehicles*

The concerning decree of March 23, 1936 Deutsches RGBl I S

407, has been fundamentally altered in its rates (§ 11) as well as in its text by „Verkehrssteuer" Amending Act 1948.

The "Verkehrssteuer" Amending Act came in force on April 1, 1948. The new execution decrees announced in Act VI have not appeared until this report was drawn. (Since the execution decrees for Insurance, Motor-vehicle and Fire Insurance duties have been published in BGBl 1948, 17. Stück).

D. The future Austrian tax system

For the elaboration of a new Austrian tax system a committee has been appointed consisting of judicial and economic experts. The work is in rapid progress. As is mentioned in Par. C a number of necessary and important alterations have been prepared, in the form of „Teilnovellen". But a codified publication of the new fiscal system can only be expected when the political and economical conditions of Austria (State treaty!) will be fully consolidated. The "Nationalrat" has for a long time been occupied with a bill for a property tax payable once for all and a capital accretions tax.

Vienna, April 1948.

Abbrevations:

RGBL: Reichssteuergesetzblatt (Official Gazette of Germany)
BGBL: Bundesgesetblatt
StGBL: Staatsgesetzblatt } (Official Gazette of Austria)
ESt: Einkommensteuer (Income Tax)
EStG: Einkommensteuergesetz (Income Tax Act)
StAnpG: Steueranpassungsgesetz (Fiscal Adaptation Law)
KStG: Körperschaftsteuergesetz (Company Tax Law)
VStG: Vermögensteuergesetz (Property Tax Law)

III

BIBLIOGRAPHIE DE DROIT FISCAL ET FINANCIER EN ITALIE

par

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(III) [1])

LA PROCÉDURE EN MATIÈRE DE DROIT FISCAL

Si l'administration financière et le contribuable ne sont pas parvenus à conclure un accord ou si la loi ne prévoit pas d'accord, l'administration financière notifie au débiteur du fisc le montant de l'impôt mis à sa charge en lui remettant sa feuille de contributions ou l'ordre de paiement. La notification du taux de l'impôt est importante, puisqu'elle fixe la date du délai d'opposition par les moyens suivants:
recours par la voie hierarchique;
recours par la voie administrative en vue de l'obtention d'un arrêt;
action juridique.

Sans aucun doute c'est à CARNELUTTI que revient le mérite d'avoir fixé à la fin de 1932 les principes fondamentaux d'une systématisation rationelle de la matière (*Introduzione allo studio del diritto processuale*, dans „Riv. di dir. processuale civile", 1932, primo p. 105) et d'avoir précisé par la suite les autres aspects du problème (*Finanza e processo*, dans „Riv. di dir. fin. e sc. di fin.", 1937, I, p. 243, suivi d'une apostille de GRIZIOTTI).

Depuis lors, les traités présentant un caractère général concernant cet argument spécifique ont été publiés en plus grand nombre. Parmi les meilleurs, nous signalons ceux d'ALLORIO (*Diritto processuale tributario*, Giuffrè, Milan, 1942), de BERLIRI (*Il*

[1]) (I) dans Vol. I, No. 7; (II) dans Vol. II, No. 6.

processo tributario amministrativo, Magnani e Ganassi, Reggio Emimia 1940, 2 vol.), de GRECO (*Il procedimento contenzioso dinanzi alla giurisdizioni tributarie speciali*, Cedam, Padoue, 1943), de MERLO (*Il contenzioso in materia d'imposte dirette*, Pozzo, Turin, 1935) et de PUGLIESE (*Corso di diritto e procedura tributaria*, Cedam, Padoue, 1935, et *Le prove nel processo tributario*, Cedam, Padoue, 1935).

Intéressante est la contribution de BUZZETTI intitulée *Rassegna critica di giurisprudenza in tema di diritto processuale*, parue dans „Rivista di diritto finanziario e scienza di finanza", 1937, 1938 et 1940.

Ont écrit sur les arguments de caractère général en matière de procédure fiscale: BERLIRI (*Della giustizia tributaria*, dans „Riv. di dir. fin.", 1943, I, p. 69), BUZZETTI (*Dell' assistenza e della rappresentanza volontaria nel processo tributario*, dans „Tributi", Décembre 1937), GIUSSANI (*Diritti soggettivi e interessi legittimi nel rapporto d'imposta*, dans „Riv. it. di dir. fin." Janvier 1942, 5, p. 1), LUCIFREDI (*In tema di imposte di consumo, Ricorso amministrativo e azione giudiziaria secondo il decreto legge 25 febbraio* 1939, *n.* 338, dans „Riv. di dir. fin. e sc. fin.", 1939, p. 131), PUGLIESE (*Diritti subbiettivi ed interessi legittimi di fronte alla giurisdizione amministrativa tributaria*, dans „Riv. ital. di dir. fin.", Mars et Avril 1938, et *Sistema delle opposizioni di forma e di merito nel processo tributario*, dans „Riv. di dir. fin. e sc. di fin.", 1937, p. 165), RAGGI (*Sui rapporti tra ricorso amministrativo e azione giudiziaria in tema di tributi locali*, dans „Riv. di dir. fin. e sc. di fin.", 1941, p. 133), RAGNISCO (*Sul carattere giuridico delle commissioni tributarie*, dans „Riv. di dir. fin.", 1943, I, p. 1), STOLFI (*Ricorsi amministrativi e procedure giudiziarie in tema di tasse di registro*, dans „Il Foro italiano", 1932, I, p. 350), et VANONI (*Irregolarità fiscali e processo*, dans „Riv. di dir. fin. e sc. di fin.", 1938, p. 222).

En matière de preuve en procédure fiscale, outre les ouvrages de PUGLIESE que nous avons déjà mentionnés, il y a lieu de citer: ANDRIOLI (*Intorno ai principi generali della prova nel processo tributario*, dans „Riv. ital. di dir. fin.", 1939, I, p. 281), AMADIO (*Se nei giudizi di appello la commissione centrale in materia d'imposte dirette sia ammessa l'audizione personale delle parti*, dans „Riv.

legale fiscale", 1940, I, p. 725), D'ANCONA (*L'accertamento dei meri fatti materiali e relativi mezzi di prova nel sistema dell'imposta di R.M.*, dans „Foro italiano", 1916, I, p. 1288), FASOLIS (*L'audizione del contribuente avanti la centrale*, dans „Diritto e pratica tributaria", 1941, I, p. 309), GRECO (*L'audizione personale del ricorrente nel processo tributario*, dans „Tributi", 1939, I, p. 422, et *I mezzi di prova nel processo tributario*, dans „I Tributi", Juin 1939, *Brevi osservazioni sulla prova per perizia nel processo tributario* dans „Foro Italiano", 1940, p. 6); MICHELI (*Aspetti e problemi della prova e della decisione nel processo tributario*, dans „Riv. di dir. fin. e sc. fin.", 1940, I, p. 220, ainsi que l'ouvrage de caractère général, *L'onere della prova*, Cedam, Padoue, 1942).

On peut faire opposition à la décision de la commission de diverses manières: appel, recours à la commission centrale ou à l'autorité judiciaire, opposition d'un tiers ou revocation. Ce dernier point a attiré l'attention de divers savants tels que BUZZETTI (*Dei mezzi straordinari di impugnativa nel processo tributario*, dans „Riv. ital. di dir. fin.", Novembre-Decembre 1937) DE CAPRARIS (*la revocazione nel processo tributario*, dans „Riv. di dir. fin. e sc. di finanza", 1938, I, p. 248); GRECO, (*Il rimedio straordinario della revocazione nel processo tributario*, dans „Diritto e pratica tributaria", 1937, p. 164). Pour les autres formes d'opposition, voir: GRECO (*L'instituto dell'opposizione di terzo nel processo tributario*; dans „Riv. ital. di dir. finanziario" Mai-Juin 1939). Parmi les autres problèmes particuliers traités dans notre littérature, nous pouvons mentionner: ALLORIO (*Solidarietà processuale e varizione di motivi nell'impugnazione tributaria* dans Riv. di dir. fin. e sc. di finanza, 1943, II, p. 65); CELLITTI (*I limiti del giudizio di rinvio nel processo tributario*; dans „Riv. ital. di dir. fin.", 1941, I, p. 127); GRECO (*il giudizio di rinvio nel processo tributario*, dans „Diritto e pratica tributario", 1939, p. 429).

Le proces fiscal par devant le juge ordinaire a fait surgir quelques problèmes et questions qui ont été traités par ALLORIO (*Relazione tra giudice speciale tributario e giudice ordinario*, dans „Riv. di dir. fin. e sc. di finanza", 1943, II, p. 65), par BERLIRI (*Sul ricorso dell'autorità giudiziaria nel processo fiscale per l'applicazione delle imposte dirette*, dans „Riv. ital. di dir. finanziario", 1942, I, p. 175), par BODDA (*Intorno alla competenza dell'autorità giudiziaria or-*

dinaria sulle questioni concernenti irregolarità verificatesi nel procedimento d'avanti alle commissioni amministrative, dans „Riv. di dir. fin. e sc: fin.", 1937, pag. 24), par BONGIANNINI (*Proponibilità dell'azione giudiziaria in materia di tributi locali senza il preventivo esperimento dei ricorsi amministrativi*, dans „Riv. di dir. fin. e sc. di fin.", 1939, pag. 147) par BUZZETTI (*Presuppposti e limiti del ricorso contro il ruolo per inesistenza di debito* dans „Riv. di dir. fin. e sc. di fin." 1938, pag. 293) par GIUSSANI (*La competenza dell'autorità giudiziaria in materia tributaria*, dans „Riv. di dir. finanziario", Janvier 1942) par INGROSSO (*Sull'autonomia dell'azione giudiziaria in materia tributaria* dans „Foro italiano", 1938, I, pag. 953) par PAOLETTI (*Decisione definitiva in sede amministrativa e azione giudiziaria in materia di imposte dirette*, dans „Riv. di diritto pubblico", 1940, pag. 145) par PUGLIESE (*Il sistema delle opposizione Cit.*) et par SERA (*La competenza funzionale della commissione centrale per le imposte dirette e il ricorso all'autorità giudiziaria per incompetenza o eccesso di potere*, dans „Imposte dirette" 1918, p. 97).

Dans la législation italienne, l'action judiciaire ne peut être intentée par le contribuable que si celui-ci a satisfait au paiement de l'impôt qui lui a été reclamé. Il s'agit ici de la règle dite du „solve et repete". L'interpretation juridique de ce principe est très controversée dans la doctrine. Certains justifient cette norme en la considérant comme un privilège dévolu tout particulièrement à l'administration financière dans la pratique et concret de lui permettre de réaliser l'impôt et d'éviter tout préjudice pouvant résulter de la nonréalisation par suite des retards de paiement frauduleux. Conférer à ce sujet: BERLIRI (*Sull'ammissibilità del pagamento dei tributi in córso di causa e la ragione del „solve et repete"* dans „Temi amministrativi", 1930, pag. 300: Appunti sulla regola del „solve et repete", dans Corte dei Conti, 1933, pag. 41-237, I) DE CUPIS (*Commento esegetico alla legge sulla contabilità di stato*, 1899) MOFFA (*Il procedimento esecutivo per la riscossione delle entrate patrimoniali degli enti pubblici*, Cedam Padova, 1931) QUARTA (*Commentario*, cit. II vol. pag. 702) et SCANDALE (*Sulla natura del „solve et repete"*, dans „Giurisprudenza italiana" 1935, col. 739 et *Efficacia e limiti del „solve et repete"*, dans „Giustizia tributaria", 1933, pag. 757).

D'autres reconduisent le „solve et repete" à un principe de caractère plus général, au principe qui attribue un caractère exécutoire aux actes administratifs. Voir Bodda (*Di alcune opinioni in tema di „solve et repete"*, dans Annali de l'ist. Superiore di Magistero del Piemonte", Torino, 1933), Borsi (*L'esecutorietà degli atti amministrativi*, dans „Studi Senesi", 1901) D'Alessio (*Oltre che nelle Istituzioni di diritto amministrativo, Torino*, 1934, II vol. pag. 253 dans *Il „solve et repete", contro l'amministrazione dello Stato*, dans „Riv. di dir. pubblico", 1929, I, pag. 419) Jarach (*Sul fondamento giuridico del „solve et repete"*, dans „Riv. di dir. fin. e sc. d. finanze", 1937, I pag. 54) Mortara (*Commentario alle leggi e al codice di procedura civile*, Vallardi, Milano, I vol. pag. 232) Pugliese (*Natura e limiti del „solve et repete"* dans „Foro Lombardo", 1943, n. 5—6, pag. 391) Scoca (*La regola del „solve et repete" nei giudizi di graduazione* dans „Riv. ital. di dir. finanziario", 1942, vol. II, pag 9).

D'autres le considèrent comme une présupposition objective de la procédure ou plus spécifiquement comme une exception de la procédure analogue à celle qui résulte de l'exécution que la loi impose fréquemment au demandeur comme condition de l'admissibilité de sa demande. Dans ce sens voir surtout Giannini („*Solve et repete*", nella „Riv. di dir. pubblico" 1936, pag. 349). Voir en outre Carnelutti (*Clausola „solve et repete"* dans „Riv. di dir. processuale civile", Janvier 1936, I).

En ce qui concerne le problème du „solve et repete", consulter entre autres Borra (*Sull'applicabilità del „solve et repete" all'imposta di consumo*, dans „Riv. di dir. fin. e sc. di finanze", 1937, pag. 216): Brunelli („*Solve et repete", nei giudizi di produzione*, dans „Riv. di dir. pubblico", 1936, pag. 51): Candian (*L'opinione al fallimento fiscale e il „solve et repete"*, dans „Riv. di dir. processuale civile", 1934, I, pag. 400) Coco (*Il „solve et repete", nel fallimento del contribuente e nel giudizio di produzione"* dans „Riv. di dir. pubblico", 1945, pag. 75): D'Onofrio (*L'opposizione al fallimento fiscale ed il „solve et repete"* dans „Riv. di process. civile, 1943, II, pag. 83); La Rosa („*Solve et repete"* dans „Diritto e pratica tributaria", 1935, pag. 400) Micheli („*Solve et repete" e prova „prima facie"*, dans „Riv. di dir. fin. e sc. di fin." 1941, I, pag. 55); Pacelli (*Opponibilità del „solve et repete" al curatore*

del contribuente fallito dans „La rivista tributaria", 1947 pag. 45) PERONACI (*Il „solve et repete" in materia d'imposte,* dans „Giurisprudenza italiana" 1905, IV, pag. 422).

5. EXTINCTION DE L'OBLIGATION FISCALE

a) Paiement

Normalement, l'obligation fiscale s'éteint en effectuant le paiement de l'impôt, c'est à dire en operant le versement de la somme constituant l'objet de l'obligation fiscale conformément au mode, à la date et au lieu de paiement convenus. Abstraction faite de quelques modes particuliers (abonnements, timbres, monopoles), le recouvrement peut être effectué directement ou indirectement par l'entremise d'un tiers chargé de cette opération en vertu d'un contrat d'exaction prévoyant une prime (dans le cas du percepteur d'impôts directs, p. ex.) ou une indemnité fixe. Le percepteur chargé de la perception de l'impôt d'après les rôles répond des impôts non-perçus.

Le cas normal est celui des impôts directs. Les traités présentant un caractère général ou monographique concernant cette institution sont très communs. Il est pourtant nécessaire de se borner aux plus importants: SCANDALE (*La riscossione delle imposte dirette,* Jovene, Napoli, 1940); SPINELLI (*Le legge sulla riscossione delle imposte dirette,* Cedam, Padova, 1940).

On peut également consulter les monographies suivantes: BRUNELLI (*La riscossione delle entrate patrimoniali degli enti pubblici* dans „Riv. dir. pubblico, 1942, II, pag. 326) FARINA (*Sulla natura giuridica delle somme riscosse dall'esattore delle imposte,* dans „Riv. it. di dir. finanziario", 1940, I, pag. 258) FUNAIOLI (*Soggetto giuridico dell'esazione ed esattore,* dans „Riv. di dir. fin. e sc. di finanza", 1938, I, pag. 316) INGROSSO (*L'aggio dell'esattore é pignorabile,* dans „Foro italiano" 1940, I, pag. 242); MOFFA (*Il diritto dell'agio nel rapporto di gestione delle pubbliche entrate,* Magnani, Reggio Emilia, 1935; *Il diritto esattoriale nella giurisprudenza della Corte dei Conti,* Cedam, Padova, 1931; *Il fondamento di diritto all'agio nel rapporto di gestione delle pubbliche entrate,* dans „Riv. di dir. fin. e sc. di fin." 1939, p. 323; *Natura ed elementi*

del corrispettivo della concessione ad agio dell'esercizio privato, dans „Riv. di dir. fin. e sc. di fin." 1937, p. 413).

Un problème extrêmement ardu est celui qui a trait aux „cotes inexigibles", c'est-à-dire aux montants d'impôts pour lesquels le percepteur astreint à répondre des impôts non recouvrés peut exiger la décharge en prouvant l'inexigibilité de ces montants de la part du contribuable. Voir les deux traités généraux de COCIVERA (*Le quote inesigibili,* Cedam, Padova, 1941) et SCIUTO (*Le quote inesigibili delle imposte dirette,* Jovene, Napoli 1941) et la monographie de FERRETTI (*Il diritto a rimborso dell'esattore per le quote d'imposta inesigibili,* dans „La giustizia amministrativa" 1907, pag. 15) et MOFFA (*Il diritto del ricevitore provinciale al rimborso delle imposte per inesigibilità,* dans „Riv. di dir. pubblico" 1927, I, pag. 1).

Le non-paiement de l'impôt consécutive à la notification du percepteur chargé du recouvrement de l'impôt entraîne l'exécution par le percepteur. L'exécution par contrainte sur le biens du contribuable négligent diffère de la procédure d'exécution ordinaire en ce sens qu'elle est notablement simplifiée. Parmi les traités généraux, on pourra consulter: BASETTI (*La procedura d'esecuzione per la riscossione delle imposte dirette,* Noccioli, Empoli 1940) e MOFFA (*Trattato di procedura esecutiva fiscale,* Morano, Napoli 1938—40).

Les monographies suivantes indiquent ses arguments spécifiques: BUZZELLI (*In tema di surroga ordinaria e surroga fiscale,* dans „Foro italiano" 1941, I, pag. 701) CARNACINI (*Peculiarità delle sanzioni contro il contribuente,* dans „Studi in memoria di V. Ratti", Milano 1934; *I mobili invenduti al secondo in conto nell'esecuzione fiscale* dans „Riv. dir. process. civ." 1936, II, p. 109; *Il diritto al riscatto dell'immobile espropriato dall'esattore e la sua cedibilità* dans „Riv. di dir. fin. e. sc di fin. 1940, II, p. 221); COCIVERA (*Il diritto dei creditori ipotecari nelle esecuzioni immobiliari fiscali,* dans „Riv. di dir. fin. e sc. di fin." 1940, II, p. 54) LA TORRE (*La sospensione degli atti esecutivi per la riscossione delle imposte dirette,* dans „Riv. di dir. fin." Juillet-Octobre 1938) MOFFA (*Il diritto dei terzi nel rito esecutivo fiscale,* dans „Rivista bancaria" 1940, pag. 163 et 234) PUGLIATTI (*Limiti della c.d. interposizioni procesessuali nell'esecuzione tributaria,* dans „Riv. di dir. fin. e sc.

di fin." 1942, p. 170) SCOCA (*Chiamata in causa dell'amministrazione finanziaria nei giudizi esattoriali*, dans „Riv. di dir. fin." 1940, II, p. 121).

Dans le cas où l'impôt est perçu directement par des fonctionnaires publics, ceux-ci peuvent procéder par contrainte envers le contribuable négligent. Contraindre le débiteur négligent à payer l'impôt dont il est redevable par mandat d'exécution, le mandat d'exécution est l'acte formel de la fixation du montant de l'impôt et en même temps l'acte qui inaugure la procédure de recouvrement coërcitive. La nature juridique du mandat d'exécution est discutée; certains la considèrent comme un principe du droit commun, d'autres l'assimilent à la notification du titre exécutoire, d'autres encore la considèrent comme un acte caractéristique et particulier du prodécé de perception de l'impôt. Pour l'argumentation, on pourra consulter les écrits ci-dessous: BERLIRI (*Appunti sull'ingiunzione fiscale*, dans „Temi emiliani" 1934 et *Della natura giuridica dell'ingiunzione fiscale nelle piú recenti interpretazioni giurisprudenziali*, dans „Riv. ital. di dir. fin." Janvier-Février 1937) CONIGLIO (*Sulla ingiuzione fiscale in tema d'imposta di consumo*, dans „Riv. di dir. fin. e sc. di fin.", 1941, pag. 195), CANTUCCI (*Sulla natura del procedimento per la riscossione delle entrate patrimoniali dello Stato e degli enti pubblici*, dans „Riv. di dir. proc. civ." 1936, I, p. 45) SEGNI (*L'opposizione del convenuto nel procedimento monitorio* dans „Studi Sassaresi" Serie II, vol. III, 1932, p. 251).

b) Prescription

La prescription extinctive appliquée à tout autre rapport de créance est valable pour l'obligation fiscale. La discussion ne porte que sur le délai de prescription. En ce qui concerne la prescription de la créance fiscale, voir: GRECO (*Sospensione ed interruzione della prescrizione in dirit-tributario*, dans „Diritto e pratica tributaria", Mai-Juin, 1938); SCANDALE (*L'interruzione della prescrizione nel Codice Civile e nel diritto tributario* dans „Riv. di dir. fin. e sc. di fin.", 1942, p. 180) SCOCA (*In tema di prescrizione d'imposta suppletiva*, dans „Riv. di dir. finanziario", 1941, II, pag. 92).

c) Il y a lieu de faire remarquer qu'en général la novation

est exclu en tant que moyen d'extinction des obligations fiscales. (Cf. MOFFA: *La „novazione" nel debito d'imposta* dans „Riv. di dir. pubblico", 1931, I, pag. 86).

6. LE DROIT FISCAL PÉNAL

On peut dire que la loi italienne du 7 janvier 1929, no. 4, qui a fixé des normes de caractère général donnant à la matière une vigoureuse organicité, a donné en Italie une forte impulsion au droit fiscal pénal.

Parmi les nombreux traités de caractère général on peut en citer trois excellents: DE MATTEIS: (*Manuale di diritto penale tributario*, Torino, Giuffrè, 1933) LAMPIS (*Le norme per la repressione delle isolazione delle leggi finanziarie*, Cedam, Padova, 1942) et SPINELLI (*Le preleggi penali finanziarie*, Cedam, Padova, 1943) On pourra également consulter avec profit quelques traités présentant surtout un caractère pratique: ALOISI (*Manuale pratico di procedura penale*, Milano, 1932) ANELLI (*Il diritto giuridico finanziario*, Alessandria 1932). Un ouvrage surpassé aujourd'hui, mais pouvant encore être consulté est celui de CARANO DONVITO (*Trattato di diritto penale finanziario*, Torino 1904) GALIANO (*Il diritto primitivo tributario*, tip. Fiamme Gialle, Roma, 1937).

Les problèmes de caractère général sont signalés dans les écrits mentionnés ci-après: DE FRANCESCO (*Sanzioni penali e sanzioni amministrative in materia d'imposte dirette* dans „Riv. ital. di dir. penale" 1924, pag. 105) GIROLA (*Sanzione penali e sanzione amministrative*, dans „Riv. Dir. pubblico", 1924, I, pag. 424) MAFFUCCINI (*Delitti e contravvenzioni nella legge sulle imposte sui consumi*, Tributaria, Roma, 1937) NUVOLONE (*Diritto penale e diritto finanziario penale*, dans „Riv. di dir. fin. e sc. di fin." 1943, pag. 151) SPINELLI (*Violazione delle leggi finanziarie e giurisdizione di controllo* dans „Tributi", février 1934) ZANOBENI (*La sistemazione delle sanzioni fiscali*, dans „Riv. dir. pubblico" 1929, pag. 500). Conformément à la loi de 1929, il y a lieu de distinguer les sanctions civiles ou administratives, consistant en peines pécuniaires et en surtaxes (indépendamment des sanctions accessoires telles que l'exclusion de l'exercice de fonctions publiques ou l'interdiction d'exercer une industrie ou un commerce) des

sanctions pénales consistant en peines de prison et amendes pour les délits et en arrestation et amendes pour les contraventions.

En matière de sanctions civiles, on pourra consulter: ARDIZZONE (*Sul decreto dell'intendente di finanza,* dans „Archivio giuridico", 1938 fasc. 2) COCE'PARISI (*Natura giuridica delle pene pecuniarie fiscali,* Radio, Trapani, 1932) GIROLA (*Il decreto finale dell' intendente di finanza,* dans Studi Urbinati, Urbino 1928) TOSATO (*L'impugnativa dell'ordinanza intenditizia di pena pecuniaria,* dans „Riv. di dir. fin. e sc. di. fin." 1937, pag. 273). En matière de sanctions pénales voir: FONTANA (*Il valore lieve nei reati finanziari,* dans „La giustizia penale" vol. II, 1938) GIACQUINTO (*Responsabilità degli enti per contravvenzioni dei rappresentanti e dipendenti,* „Riv. dir. pubblico" 1931, I, p. 1925) LAMPIS (*Le condizioni di procedibilità per inreati in materia di imposte dirette,* dans „Annali di diritto e procedura penale", 1941, III, pag. 461) MONTINI (*Le sanzioni pecuniarie applicate all'autorità hanno carattere penale,* dans „Diritto e pratica tributaria" janvier-février 1938) et (*Il controbbando e gli altri reati doganali,* Roma 1935—'36, et les autres écrits de l'auteur en matières de douanes) NUVOLONE (*Il delitto di controbbando nella nuova legge doganale,* dans „Riv. di dir. fin. e sc. di fin," 1941, V, pag. 64).

En ce qui concerne le problème de la récidive en matière pénale, voir: BATTAGLINI (*Sulla ultrattività delle leggi penali temporanee ed eccezionali,* dans „Giustizia penale", 1931, I pag. 244).

Le contribuable en retard de six termes successifs en ce qui touche le paiement de l'impôt relatif à son activité commerciale sera déclaré en faillite. La question de savoir si la faillite fiscale est une sanction (comme semble l'admettre le législateur) ou moins qu'une sanction est discutable.

Le traité le plus complet sur l'argumentation est celui de MURANO (*Il fallimento per debito di imposta,* Jovene, Napoli 1936). En ce qui concerne l'argumentation, on pourra consulter également: BORNESCHI (*Il fallimento per debito d'imposte,* dans „Il diritto fallimentare" 1930, pag. 580) CANDIANI (*L'opposizione del fallimento fiscale e „il solve repete"* dans „Riv. dir. proc. civ." 1934, I, pag. 400) FROLA (*Il fallimento fiscale,* dans „Riv. dir. comm." 1921, II, p. 537 et *La riscossione delle imposte e il fallimento del contribuente,* dans „Riv. di dir. comm." 1931, II, pag. 582) MI-

CHELI (*Profilo del fallimento per debiti d'imposta*, dans „Riv. di dir. fin. e sc. d. fin." 1941—1942) SPINELLI (*Il fallimento del contribuente commerciante*, dans „Dir. e prat. tributaria" 1930) VALORI (*La qualità di commerciante ed il fallimento per debito d'imposta*, dans „Diritto e pratica tributaria, 1934, pag. 333).

(Fin)

REVIEWS — COMPTE-RENDUS

Skatterett (Volume I) by K. L. BUGGE (Sem & Stenersen A/S, Oslo 1946) deals with the general problems of the Norwegian fiscal system. In this volume the author discusses the main principles of taxation: provisions regarding the subjective liability to tax, domicile and the tax on property. As it is not possible to give here a complete review of this valuable book, the attention is drawn to chapter II („Hovedprinsippenne for beskatningen"), which heading is self-evident and to chapter IV („Skedet for beskatningen") in which attention is paid to principles of the power to taxation. Should taxation be effected on account of the taxpayer's domicile or residence or should the place where the taxable property is situated or where the taxable income is derived be decisive. As in many countries Norway too applies a combination of the principle of domicile and of territoriality. The author aimed at a wording in such a way; that even the fiscal-untrained reader can easily understand the principles of taxation.

With the same publishing company Sem & Stenersen, Oslo was published in 1946 a supplement edition by K. L. BUGGE to J. E. THOMLE's work „*Skattelov for byene*". The full title of this book is „*Samlet tillegg av januar* 1946 *til Skattelov for byene, 7. utgave*". On pages 6 seq, an extensive list of all fiscal measures which had been introduced during the war, is given. Owing to this it is possible to get a survey of the development of the Norwegian fiscal system in the period, when all communications with the country were interrupted by our common usurper. In 1943 Fabritius & Sonners Forlag, Oslo published the third edition of „*Våre Skatteregler*" by CHRISTOPHER LUND. This author gives a succinct review of the tax system prevailing in Norway. The book is very important and helpful, because Mr. Lund has been able to include court decisions etc., which helps the reader to get a clear view of the state of affairs in fiscal problems, whereas on the pages 10 and 11 the relation between the fiscal law and the Constitution is explained.

„*Om beskatning av Aksjeselskaper*" by K. L. BUGGE (Sem & Stenersen, Oslo 1946) is a practical guide of the taxes on limited liability companies. After discussing in the first chapter some general problems, such as the seat of the company, the obligation to file declarations and the contro thereof by the administration, the following chapter includes the discussion of the computation of taxable property: assets, which are not included in the capital and liabilities, which are not allowed to be deducted. This chapter ends with the assessment for state and local taxes. Further in the same clear way the computation of taxable profits is discussed, whereas chapter 4 includes the problems regarding shareholders: valuation of shares and the taxation of dividends with respect to local and state taxes. The fifth chapter deals with the allocation methods of taxable profits, whereas in the following chapters special kinds of trade or business carried on by limited liability companies (e.g. shipping and insurance companies) and the consequences of contributions to „arbeidsfondet" are object of discussion. One detail should be observed: viz. the problem of writing-off with respect to the

economical situation in the years during and after the war. In replacing industrial equipment it is allowed to compare the actual costs with the 1939—value of the replaced items. The deficiency can be written off at once before applying the normal annual deductions for wear and tear („overprisavskrivning").

Is Mr. Bugge's book again a practical guide in applying taxes on limited liability companies, REIDAR HOLST in *„Beskattning av Handels- og Industribedrifter"* (Johan Grundt Tanum, Oslo 1944) does not restrict the problems of business taxation to companies. He takes into view the general system of business taxation: principles of taxation (chapter 1. par. 2) and a review of some kinds in taxes (personal taxes, succession duties, income and property taxes etc.). He describes the Norwegian fiscal system and its development, taking into account comparative fiscal law by reference to the systems of Great Britain, Sweden, Finland, Germany and France (chapter 1 par. 4 pages 30 and 31 seq.), the notion of income from a social-economical point of view, and of property in its juridical aspects, both as compared with the legal definition of income and property in the fiscal laws. The scope of these laws is discussed in chapters III and IV.

„Oversikt over de gjeldende rettsregler ved beskatning av livsforsikring" by J. Fr. COUCHERON (Marten Johansen Boktrykkeri, Oslo 1946). In this booklet (45 pages) the author gives a clear and succinct review of the provisions regarding life insurance. After a general scope of the fiscal system and of the different kinds in insurance, he goes further into these matters as to the fiscal consequences with respect to income and property taxes and succession duties. In connection herewith may be mentioned *„Avgift til Arbeidersfondet, Pensjonfond, Pensjonforsikring"* by T. BRUN FRETHEIM (Johan Grundt Tanum, Oslo 1942) in which the various problems of retirement schemes through the foundation of an employee's fund are dealt with. This special levy „Avgift till Arbeiderfondet" is planned to be levied from limited liability companies, from other companies with economical purposes and from all enterprises, the net profits of which are beyond a certain limit.

„Omsetningsavgiften" by TRYGVE HIRSCH and H. G. WILLE (Tell Forlag, Oslo 1946) is a book (385 pages) which is a practical guide of turnover taxation for commerce and industry. In the introduction the authors give a description of the historical development of turnover tax in Norway in comparance with the development in Denmark, Sweden, whereas also some other countries (U.S.S.R. and England) are included. In the following chapters the details of the turnover tax (every sale is chargeable —import and export) are discussed as well as the taxability of the performing of services. The very carefull consideration of the problems can be illustrated as in dealing with the basis of taxation attention is paid by the author to problems of a delivery c.i.f., f.o.b. etc. and to the use of commodities by the taxpayer himself. Those who are carrying on trade or business within Norway will easily understand the problems of this complicated tax and find a solution when studying this book.

1946 appeared to be a voluminous year for Norwegian fiscal literature. It proves not only that Norway exerted its strength to overcome the bad influences of the occupation but also the complexity of fiscal measures in the post-war period. In this year was also published *„Engangskatten i praksis"* (Sem & Stenersen, Oslo), the first volume prepared by K. L. BUGGE and the second one by L. FAGERNAES and S. B. SKOTTUN. This book gives a clear survey of the Norwegian capital accretion tax, introduced by Law of July 19, 1946. Persons, who have to deal with the problems of post-war capital levies are recommended to have a view at these books. They may feel comforted, that in other countries too these matters are complicated. Reference can be made to the words „Loven om engansskatt pa formuestigning er blitt et yterst innviklet lovstoff", the first sentence of the preface

in „*Loven om Engangsskat pa formuestigning*" by KARE KVISLI and TORSTEIN BRUN FRETHEIM. (Johan Grundt Tanum, Oslo 1946). The capital accretion is computed by comparing the capital at January 1, 1940 („forkrigsformuen") with the capital at September 9, 1945 („etterkrigsformuen"). The taxable amount, being the excess of etterkrigsformuen over forkrigsformuen is corrected by deductions and allowances. These books are very useful as complicated matters are illustrated by many examples.

Finally should be mentioned „*Fradragspostene i Selvangivelsen, Leksikon*" (Jacob Dybwads Forlag, Oslo 1943) by K. TORGERSEN. The author made his task to explain various tax terms to those taxpayers who wish to file their own declarations without help of any tax adviser.

A. v. K.

DIE DOPPELBESTEUERUNGSABKOMMEN ZWISCHEN DER SCHWEIZ UND SCHWEDEN VOM 16. OKTOBER 1948

von Fürsprecher Dr. KURT LOCHER,
Adjunkt der Eidg. Steuerverwaltung, Bern.

Einleitung

Am 16. Oktober 1948 sind in Stockholm zwei schweizerisch-schwedische Abkommen zur Vermeidung der Doppelbesteuerung unterzeichnet worden, deren eines von den Steuern vom Einkommen und vom Vermögen, das andere von den Erbschaftssteuern handelt. Der schweizerische Bundesrat hat die beiden Abkommen mit Botschaft vom 19. Oktober 1948 (Bundesblatt 1948 III 477 f.) den eidgenössischen Räten zur Genehmigung unterbreitet; diese Genehmigung ist durch Bundesbeschluss vom 12. Februar 1949 (eidg. Gesetzessamlung 1949, S. 436) erteilt, und der Bundesrat ist ermächtigt worden, die beiden Abkommen zu ratifizieren. Der Austausch der Urkunden über die Ratifikation hat am 25. März 1949 in Bern stattgefunden. Die beiden Verträge sind hierauf in der eidgenössischen Gesetzessammlung (1949, S. 437 und 449) veröffentlicht worden und haben damit für das ganze Gebiet der Eidgenossenschaft Gesetzeskraft erlangt, d.h. sie sind von allen eidgenössischen, kantonalen und kommunalen Steuerbehörden bei der Erhebung der direkten Steuern vom Einkommen und vom Vermögen des Bundes, der Kantone und Gemeinden, der eidgenössischen Quellensteuern und der kantonalen und kommunalen Erbschaftssteuern zu beachten.

Für die Geltendmachung einer den Abkommen widersprechenden Doppelbesteuerung stehen dem betroffenen Steuerpflichtigen die Rechtsmittel der internen schweizerischen Steuergesetzgebung zu Gebote, in letzter Linie bei eidgenössischen Steuern die Verwaltungsgerichtsbeschwerde an das schweizerische Bundesgericht nach Art. 97 des Bundesgesetzes vom 16. Dezember 1943 über die Organisation der Bundesrechtspflege (OG) und bei kantonalen und Ge-

meindesteuern die kantonrechtliche Steuerbeschwerde sowie die staatsrechtliche Beschwerde an das schweizerische Bundesgericht wegen Verletzung von Staatsverträgen mit dem Ausland nach Art. 84, Abs. 1, lit. c OG. Daneben steht einem Steuerpflichtigen, der effektiv doppelt besteuert wird, der Weg der Anrufung des in beiden Abkommen vorgesehenen Verständigungsverfahrens offen.

Die beiden Verträge vom 16. Oktober 1948 sind die ersten umfassenden Nachkriegsabkommen der Schweiz über Fragen des internationalen Steuerrechts. Sie unterscheiden sich von den früheren schweizerischen Doppelbesteuerungsabkommen mit Deutschland (von 1931; direkte Steuern und Erbschaftssteuern), Grossbritannien (von 1931; Vermeidung der Doppelbesteuerung von durch Vermittlungsagenten abgeschlossenen Geschäften), Frankreich (von 1937; direkte Steuern), Ungarn (von 1942; direkte Steuern) und Oesterreich (Verhandlungsprotokoll von 1946; direkte Steuern und Erbschaftssteuern) einmal durch einen systematischeren Aufbau und eine präzisere Umschreibung der einzelnen Kollisionsnormen. In materieller Hinsicht zeichnet sich das Abkommen über die Steuern vom Einkommen und vom Vermögen vor allem dadurch aus, dass es auch der aus der Erhebung von Kapitalertragssteuern an der Quelle für den Gläubiger resultierenden Doppelbelastung begegnet.

Der bundesstaatliche Aufbau der schweizerischen Eidgenossenschaft hat es mit sich gebracht, dass dem Problem der Vermeidung der Doppelbesteuerung, mindestens im Verhältnis der Kantone untereinander, seit 100 Jahren alle Aufmerksamkeit geschenkt wurde. Seit dem Jahre 1874 ist es Sache des schweizerischen Bundesgerichts, über die Einhaltung des in Art. 46, Abs. 2 der schweizerischen Bundesverrassung ausgesprochenen Verbotes der interkantonalen Doppelbesteuerung zu wachen. In einer 75-jährigen Rechtsprechung hat das Bundesgericht die für die Abgrenzung der kantonalen Besteuerungszuständigkeit massgebenden Sachnormen aufgestellt und diese sog. Kollisionsnormen mit absoluter Wirkung ausgestattet. Zwar ist der Geltungsbereich des verfassungsmässigen Doppelbesteuerungsverbotes und der in Anwendung desselben vom Bundesgericht aufgestellten Normen auf interkantonale Konflikte, d.h. auf Konflikte zwischen Kantonen, zwischen Gemeinden verschiedener Kantone oder zwischen einem Kanton und der Gemeinde eines andern Kantons beschränkt. Im Falle internationaler Be-

steuerung hilft eine Berufung auf Art. 46 der Bundesverfassung (von der Ausnahme der Besteuerung ausländischen Grundeigentums und seines Ertrages abgesehen) nicht. Trotzdem haben die Kantone die innerhalb des Bundesstaates wirksamen Beschränkungen ihrer Steuerhoheit weitgehend auch im Verhältnis zum Ausland beachtet und von der Möglichkeit, die Voraussetzungen der Besteuerung von im Ausland domizilierten und Gesellschaften ohne Bindung an bundesstaatliche Fesseln zu umschreiben, nur zurückhaltend Gebrauch gemacht. Die von der Schweiz abgeschlossenen internationalen Doppelbesteuerungsabkommen hatten deshalb — mindestens für das geltende kantonale Steuerrecht — relativ geringe Einschränkungen zur Folge. Etwas anders liegen die Verhältnisse auf dem Gebiete der vom Bund erhobenen Steuern (einschliesslich der Quellensteuern von Kapitalerträgen), das ausserhalb des Bereichs des interkantonalen Doppelbesteuerungsverbotes steht. Hier lässt sich ein gewisses Bestreben erkennen, sich der von andern Staaten in neuerer Zeit wahrgenommenen Möglichkeiten der Ausweitung der Besteuerungsbefugnisse gleichfalls zu bedienen. Der schwedische Steuerpflichtige mit schweizerischen Interessen ist indessen vor einer solchen Ausweitung der schweizerischen Fiskalansprüche auch für die Zukunft durch die Abkommen vom 16. Oktober 1948 geschützt; darin liegt für ihn ein nicht unbeachtlicher Vorteil für die Zukunft.

I. Einkommens- und Vermögenssteuern

1. Das Abkommen über die Steuern vom Einkommen und vom Vermögen (DBA) entfaltet seine Wirkung zugunsten:

a. schweizerischer und schwedischer Staatsangehöriger sowie Angehöriger dritter Staaten, die in Schweden oder in der Schweiz Wohnsitz (im Sinne von Art. 2 DBA) haben;

b. schweizerischer und schwedischer juristischer Personen. Eine juristische Person gilt dann als schweizerisch, wenn sie ihren Wohnsitz (Art. 2, Abs. 4 DBA) in der Schweiz hat;

c. von Kollektiv- und Kommanditgesellschaften und andern Personengesamtheiten ohne Rechtspersönlichkeit (z.B. Erbengemeinschaften, einfache Gesellschaften), deren Wohnsitz sich in der Schweiz oder in Schweden befindet, sofern diese Gesellschaften

und Personengesamtheiten als solche der Besteuerung unterliegen (Art. 2, Abs. 4, Satz 2).

Die Bestimmung des Wohnsitzes einer natürlichen Person richtet sich nach schweizerischem Steuerrecht in der Regel nach der Umschreibung des Wohnsitzbegriffs im schweizerischen Zivilgesetzbuch (Art. 23—26 ZGB). Danach hat eine natürliche Person Wohnsitz an dem Orte, wo sie sich mit der Absicht dauernden Verbleibens aufhält. Nach dem Abkommen (Art. 2, Abs. 2 und 3) wird dagegen in erster Linie auf das objektive Moment der ständigen Wohngelegenheit abgestellt; bestehen in beiden Staaten ständige Wohngelegenheiten, so ist der Mittelpunkt der Lebensbeziehungen, das wirkliche Heim des Steuerpflichtigen entscheidend. Ist eine ständige Wohngelegenheit in keinem Staate nachzuweisen oder ist eine Einigung unter den obersten Verwaltungsbehörden über den Mittelpunkt der persönlichen Interessen nicht möglich, so wird auf den dauernden Aufenthalt, fehlt auch ein solcher, auf die Staatsangehörigkeit des Pflichtigen abgestellt.

Als Wohnsitz juristischer Personen gilt bei Körperschaften und Anstalten der statutarische Sitz, bei Stiftungen der Ort der Leitung (Art. 2, Abs. 4). Nicht berührt werden durch diese Vorschrift die landesrechtlichen Bestimmungen über den Besteuerungsort ruhender Erbschaften; dagegen haben jene Kantone, die unverteilte Erbschaften als Ganzes besteuern, insoweit auf die Verfolgung ihrer Steueransprüche zu verzichten, als für das Einkommen, das aus der Erbschaft herrührt, oder für das Vermögen, das zu ihr gehört, der Erwerber nach dem Abkommen in Schweden besteuert werden kann (Schlussprotokoll (SP) zu Art. 1, Abs. 4).

Abweichend von der bisherigen schweizerischen Vertragspraxis, wonach die Anrufung des zwischenstaatlichen Verständigungsverfahrens (Art. 10 und 11) nur dem Angehörigen der Vertragsstaaten zustand, und von diesem Recht nur gegenüber der Heimatbehörde Gebrauch gemacht werden konnte, öffnet das Abkommen den Einspruchsweg allen in der Schweiz oder in Schweden wohnhaften Steuerpflichtigen, ohne Ansehen ihrer Staatsangehörigkeit. Schweizerische oberste Verwaltungs- und Verständigungsbehörde ist die eidg. Steuerverwaltung in Bern.

2. In sachlicher und zeitlicher Hinsicht findet das Abkommen mit Bezug auf die schweizerischen Steuern erstmals Anwendung:

a. auf die direkten Steuern vom Einkommen und vom Vermögen (einschliesslich der Zuwachs- und Kapitalgewinnsteuern) des Bundes, der Kantone und Gemeinden, die für das Jahr 1949 erhoben werden (Art. 1, Abs. 1, 12, lit. c und 14, Abs. 3); und

b. auf die im Abzugswege erhobenen eidgenössischen Quellensteuern (Couponabgabe und Verrechnungssteuer) auf Aktiendividenden, die im Kalenderjahr 1949 fällig werden und nicht schon vorher ausbezahlt worden sind (Art. 1, Abs. 1, 9, 12, lit. a und 14, Abs. 3; vgl. Abschnitt II hienach).

Schweden glaubte einer rückwirkenden Anwendung des Abkommens auf im Zeitpunkte der Unterzeichnung oder des Inkrafttretens hängige Steuerfälle nicht zustimmen zu können; deshalb hat auch die Schweiz die Einbeziehung von aus früheren Jahren stammenden, nicht rechtskräftigen Steuerforderungen (z.B. für das eidgenössische Wehropfer und die Kriegsgewinnsteuer) ablehnen müssen.

3. Zur Abgrenzung der Herrschaftsbereiche der schweizerischen und der schwedischen Steuerrechtsordnung stellt das Abkommen sog. Kollisionsnormen auf, deren Wesen in der Lokalisierung und Zuteilung der einzelnen Steuerobjekte unter die beiden beteiligten Vertragsparteien besteht. Die einmal gewählte Zuteilung wirkt dabei absolut, d.h. die Schweiz wäre auch dann nicht zur Besteuerung eines bestimmten Objektes befugt, wenn das Königreich Schweden von dem ihm nach den Abkommen zustehenden Besteuerungsrecht keinen Gebrauch macht.

a. An der Spitze der Kollisionsnormen steht als Generalklausel der Satz, dass Vermögen und Einkünfte, für die nichts anderes bestimmt ist, dem Wohnsitzstaate der Person, der das Vermögen zusteht, oder die Einkünfte zufliessen, zur Besteuerung zugewiesen werden (Art. 2, Abs. 1 DBA). Der Steuerort des Wohnsitzes gilt für Einkünfte aus freien Berufen, sofern der Erwerbende seine persönliche Tätigkeit im andern Staat ohne Benützung einer ihm regelmässig zur Verfügung stehenden ständigen Einrichtung ausübt (Art. 5, Abs. 1), ferner für Lizenzeinkünfte (Patentroyalties) und Immaterialgüterrechte (SP zu Art. 2, Abs. 1), private Renten, Ruhegehälter, Pensionen (Art. 6, Abs. 2), Versicherungen, bewegliches Kapitalvermögen (Wertpapiere, Forderungen mit und ohne Grundpfandsicherheit, Guthaben) und Einkünfte daraus (Art. 9,

Abs. 1). Einkünfte (ausgenommen Kapitalerträgnisse; Art. 9), die der direkten Besteuerung in Schweden unterliegen, dürfen in der Schweiz nicht an der Quelle besteuert werden (SP zu Art. 2, Abs. 2); deshalb wäre es z.B. nicht erlaubt, die Leistungen aus schweizerischen Lebensversicherungen an in Schweden domizilierte Berechtigte einer schweizerischen Abzugssteuer zu unterwerfen. Anderseits hat Schweden den in der Schweiz steuerpflichtigen Personen die erhobenen Quellensteuern (insbesondere die Präliminarsteuer) zurückzuerstatten.

b. Der Belegenheitsstaat ist Steuerort für das unbewegliche Vermögen (einschliesslich der Zugehör) und für das aus solchem Vermögen erzielte Einkommen. Dem unbeweglichen Vermögen gleichgestellt sind Vermögen (mit Einschluss des lebenden und toten Inventars) und Ertrag landwirtschaftlicher Betriebe, Berechtigungen, auf die die privatrechtlichen Vorschriften über Grundstücke Anwendung finden, und Nutzungsrechte an unbeweglichem Vermögen wie Grunddienstbarkeiten, Nutzniessung u.a., ferner Royalties, d.h. feste oder variable Vergütungen für die Nutzung von Gruben und andern Mineralvorkommen (Art. 3 und zugehöriges SP).

c. Erwerbseinkünfte aus Anstellung bei einem privaten Arbeitgeber sind am Arbeitsort zu versteuern (Art. 6, Abs. 1); eine Ausnahme besteht nur für Monteure u. dgl., die sich vorübergehend beruflich ausserhalb ihres Wohnsitzstaates aufhalten, aber von ihrem Arbeitsgeber im Wohnsitzstaat entlöhnt werden und deshalb für ihren Arbeitserwerb in ihrem Wohnsitzstaate steuerpflichtig sind (SP zu Art. 6). Am Arbeitsort steuerbar sind auch die Einkünfte aus freien Berufen (Art. 5), sofern die wissenschaftliche, künstlerische usw. Erwerbstätigkeit von einem festen Mittelpunkt aus erfolgt (Bureau eines Anwaltes, Ordinationszimmer eines Arztes etc.). Für Bühnen-, Radio-, Filmschauspieler, Musiker und Artisten gilt diese Einschränkung nicht; ihre Erwerbseinkünfte werden stets am jeweiligen Arbeitsort besteuert (SP zu Art. 5, Abs. 2).

d. Erwerbseinkünfte sowie Ruhegehälter auf Grund eines beamtenrechtlichen Dienstverhältnisses werden im Schuldnerstaat besteuert (Art. 8).

e. Vergütungen wie Tantiemen und Sitzungsgelder an Verwal-

tungsratsmitglieder von Aktiengesellschaften, die weder freiberufliche (Art. 5) noch dienstvertragliche (Art. 6) Erwerbseinkünfte darstellen, sind dem Sitzstaate der Gesellschaft zur Besteuerung zugewiesen (Art. 7).

f. Von besonderer Bedeutung für die schweizerischen und die schwedischen Wirtschaftskreise sind die Bestimmungen des Abkommens, die die Besteuerung von Unternehmen von Handel, Gewerbe und Industrie dem Staate zugestehen, in dessen Gebiet eine Betriebsstätte unterhalten wird (Art. 4, Abs. 1). Eine Abweichung hiervon ist nur für Vermögen und Ertrag von See- und Luftfahrtunternehmungen vereinbart, die stets nur in dem Staate besteuert werden sollen, in dem sich der Ort der Leitung des Unternehmens befindet (Art. 4, Abs. 5). Als Betriebsstätte gelten der Sitz des Unternehmens, der Ort der Leitung, Zweigniederlassungen, Fabrikations- und Werkstätten, Einkaufs- und Verkaufsstellen, in Ausbeutung befindliche Gruben und andere Mineralvorkommen, ständige Vertretungen, sowie Einrichtungen für die Ausführung von Bauten, deren Bauzeit 12 Monate überschreitet (Art. 4, Abs. 2). Keine Betriebsstätte begründen Verarbeitungslager, das Unterhalten von Geschäftsbeziehungen durch einen völlig unabhängigen, d.h. selbständig auftretenden und in eigenem Namen, wenn auch für fremde Rechnung handelnden Vertreter, oder durch einen Vermittlungsagenten, ferner das Unterhalten eines Warenlagers (Muster-, Konsignationslager) bei einem völlig unabhängigen Vertreter. Dagegen gilt ein von einem Vermittlungsagenten verwaltetes Auslieferungslager, nicht aber ein blosses Musterlager, als Betriebsstätte des auftraggebenden Unternehmens (SP zu Art. 4, Abs. 1—3).

Wie Betriebe werden Beteiligungen an Kollektiv- und Kommanditgesellschaften behandelt, nicht dagegen Beteiligungen in Form von Wertpapieren, Anteilen an Genossenschaften und G.m.b.H., selbst wenn mit ihrem Besitz ein Einfluss auf die Leitung des Unternehmens verbunden ist (Art. 4, Abs. 4; SP zu Art. 4, Abs. 4).

Unterhält ein Unternehmen in beiden Vertragsstaaten Betriebsstätten, so soll jeder Staat nur das der auf seinem Gebiet befindlichen Betriebsstätten dienende Vermögen und die hier erzielten Einkünfte besteuern (Art. 4, Abs. 3), gegebenenfalls einschliesslich der Zurechnung verdeckter Gewinnausschüttungen (SP zu Art. 4, Abs. 7 und 8). Der Sitzstaat des Unternehmens kann aber immerhin

verschiedenheit über den Mittelpunkt der Lebensinteressen besteht (Art. 4, Abs. 2). Beim Fehlen einer ständigen Wohngelegenheit in beiden Staaten wird dagegen unmittelbar auf die Staatsangehörigkeit abgestellt (Art. 4, Abs. 3).

2. Sachlich und zeitlich gilt das Abkommen für die Nachlass- und Erbanfallssteuern, einschliesslich allfälliger Zuschläge (Art. 1, Abs. 2 und 3, SP zu Art. 1), die erhoben werden, wenn der Erblasser nach dem 24. März 1949 verstorben ist (Art. 7 und 8).

3. Für die Ausscheidung der Besteuerungszuständigkeit stellt das Abkommen drei Normen auf:

Der Belegenheitsstaat allein kann Erbschaftssteuern von unbeweglichem Vermögen einschliesslich Zugehör und landwirtschaftlicher Fahrhabe erheben (Art. 2). Das in Betriebsstätten angelegte bewegliche Vermögen soll dagegen den Erbschaftssteuern nur in dem Staate unterworfen sein, in dem die Betriebsstätte liegt (Art. 3). Der Wohnsitzstaat des Erblassers ist zuständig zur Besteuerung des beweglichen Nachlassvermögens, sowie des in dritten Staaten liegenden unbeweglichen Nachlassvermögens, ferner der grundpfändlich gesicherten Forderungen und des unbeweglichen Vermögens, das in ständigen, der Ausübung eines freien Berufes in einem der beiden Staaten dienenden Einrichtungen angelegt ist (Art. 4, Abs. 1).

4. Das Abkommen enthält in Art. 5 ferner eingehende Regeln über die Verlegung der Erbschaftsschulden, die dem kantonalen Recht z.T. erheblich derogieren.

THE DOUBLE TAX RELIEF CONVENTION BETWEEN THE UNITED KINGDOM AND SWEDEN AS IT EFFECTS UNITED KINGDOM TAX LAW

by

F. E. Koch.

The Convention between the United Kingdom and Sweden of March 30, 1949 in respect of income tax follows the pattern of United Kingdom conventions set by the Convention with the United States of April 16, 1945. Differences in the taxation system of the two countries necessitate, however, certain deviations such as on tax on dividends, on capital gains, on capital and in respect of the method of relief from double taxation in the countries of residence. The Convention is the first comprehensive convention of the United Kingdom with an European country and an important step toward the removal of European trade barriers and towards the fulfilment of the European recovery programme. [1])

I.

The Convention applies in the United Kingdom to income tax (including surtax) provided by the Income Tax Acts 1918—1948, and to Profits Tax under the Profits Tax Acts 1937—1948. The special contribution imposed by Part 5 of the Finance Act of 1948 upon individuals whose total income for the year 1947/48 exceeded 2.000 Pound and whose aggregate investment income for that year exceeded 250 Pound, is not a United Kingdom tax in the meaning of the Convention. Section 47 (3) provides that non-residents are not liable to the special contribution.

1. *The income tax and surtax* provided by the Income Tax Acts 1918—1948 apply (a) to all income derived by any person, whether a British subject or not, and whether resident in the United Kingdom or not, from sources within the United Kingdom, and (b) to

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[1]) The convention with the Netherlands which was concluded on October 15, 1948, has not yet been ratified.

all income accruing to any person residing in the United Kingdom without regard to the location of its source.

The „surtax" is an additional income tax upon individuals at a rising scale of incomes exceeding an amount fixed by the annual Finance Act, at present 2,000 Pound. As mentioned, the tax is, in contrast to the income tax, not payable in the year of assessment but as a „deferred instalment of income tax" on or before January 1st in the following year. Surtax on the excess income for the year 1947/48, for instance, would be payable on or before January 1st, 1949.

2: The Profits Tax, originally introduced as a national defence contribution by Section 19 of the Finance Act 1937, and limited to a period of five years beginning on April 1st, 1937, was extended indefinitely by Section 36 of Finance Act 1942. It was repeatedly amended, the last time by the Finance Act 1948. It is a tax (a) on the profits from any trade or business carried on, personally or through an agent, by a person ordinarily resident in the United Kingdom, (b) on the profits from any trade or business carried on in the United Kingdom by a person not ordinarily resident in the United Kingdom. As from January 1st, 1947 individuals and partnerships are no longer subject to Profits Tax.

The tax, which was originally fixed at 5 % of the profits, has been increased to 25 %. A reduction of 15 % is, however, allowed for undistributed profits. Profits from trade or business by a person ordinarily resident outside the United Kingdom throughout the chargeable accounting period are taxed at only 10 %. Where a company resident in the United Kingdom is controlled by a non-resident company holding more than one half of the voting power in the resident company, the distributions to that non-resident company shall also be left out of account [1]).

The Convention shall also apply to any future taxes introduced in one of the two countries which are of substantially similar character, i.e., with similar economic fundations and effect.

II

The Convention provides relief from double taxation by three principal methods:

[1]) Section 39 Finance Act 1947.

(1) the *elimination* of double taxation by exemption of certain classes of income from tax at source and by exemption from Swedish tax of income derived by Swedish residents from sources within the United Kingdom which suffer United Kingdom tax.

(2) the *reduction of tax* at source (United Kingdom profits tax, Swedish tax on dividends from United Kingdom companies, Swedish coupon tax).

(3) the *alleviation* of double taxation by credit of Swedish tax against United Kingdom tax payable by residents of the United Kingdom on income from sources within Sweden.

The exemption from tax at source is given to a resident of the *other* country, ie.e. a person who is resident in the other country without having a residence in the country of source.

The definition of the term *"residence"* is left to the national tax law of both countries. In the United Kingdom an individual is regarded as resident in the United Kingdom:

(a) if he is in the United Kingdom for a period or periods amounting to an aggregate of 6 months in the income tax year, or

(b) if he has a fixed place of residence in the United Kingdom and has been staying in the country during the year of assessment for any length of time, or

(c) if he has no fixed abode anywhere or has a permanent home abroad and no fixed place of residence in the United Kingdom, but spends part of the year in the United Kingdom in the regular course of his life. [1])

A *corporation*[1a]) is deemed to be resident in the United Kingdom if its business is managed and controlled there, even though it is incorporated in Sweden. A company is resident in Sweden if it is incorporated in Sweden and not managed or controlled in the United Kingdom or if its business is managed and controlled in Sweden though it is not incorporated there.

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[1]) The ruling of the Board of Inland Revenue provides that a person is regarded as becoming resident if he visits theUnited Kingdom year after year and the annual visits are of a substantial period or periods of time. An annual average period or periods amounting to 3 months would normally be regarded as substantial, and the visits having become habitual after 4 years, and where the visitor's arrangements indicated from the start that regular visits for substantial periods were to be made, he would be regarded as resident in and from the first year.

[1a]) The same rule applies to a partnership.

bei Aufteilung des Vermögens und des Einkommens ein Praecipuum von 10 bis 20 % beanspruchen (SP zu Art. 4, Abs. 5). Die Aufteilung der Gewinne von Versicherungsunternehmungen erfolgt entweder nach dem auch in der Schweiz angewendeten Verhältnis der Rohprämieneinnahmen der Betriebsstätte zu den gesamten Rohprämieneinnahmen der Unternehmung oder aber nach der sog. Koeffizientenmethode; bei dieser werden auf die Rohprämieneinnahmen der Betriebsstätte die Koeffizienten angewendet, die sich aus den durchschnittlichen Geschäftsergebnissen der ansehnlichsten inländischen Unternehmungen des nämlichen Versicherungszweiges ergeben (SP zu Art. 4, Abs. 6). Ueber weitere Aufteilungsregeln werden sich die obersten Verwaltungsbehörden von Fall zu Fall oder für bestimmte Gruppen von Fällen einigen.

II. Quellensteuern von Kapitalerträgen

1. Einleitend ist bereits darauf hingewiesen worden, dass das Abkommen über die Steuern vom Einkommen und vom Vermögen als erstes schweizerisches Doppelbesteuerungsabkommen in gewissem Umfange auch die Beschränkung der Doppelbesteuerung bei Quellensteuern von Kapitalerträgen zum Gegenstande hat. Art. 9 des Abkommens erlaubt dem Schuldnerstaat die Besteuerung der Erträgnisse beweglichen Kapitalvermögens — d.h. des Ertrages von Wertpapieren (Aktien, Genussaktien, Genussscheine, Gründeranteile, Obligationen, Grundpfandtitel), Anteilen an Genossenschaften und Gesellschaften mit beschränkter Haftung, Bank- und andern Kapitalguthaben — durch Abzug an der Quelle; er beschränkt aber, soweit auch der Wohnsitzstaat des Ertragsgläubigers Kapitalerträge gleicher Art an der Quelle besteuert, die Belastung durch den Schuldnerstaat auf fünf Prozent des Ertrages und begründet den Anspruch auf Rückerstattung höherer Abzüge. Schweden beschränkt die Besteuerung von Kapitalerträgen an der Quelle auf Aktiendividenden (Couponsteuer von zwanzig Prozent des Bruttoertrages). Diesen Steuerabzug kann der in der Schweiz wohnhafte Aktionär einer schwedischen Aktiengesellschaft auf Grund des Abkommens vom schwedischen Fiskus für den fünf Prozent der Bruttodividende übersteigenden Betrag, d.h. im Ausmasse von drei Vierteln (fünfzehn Prozent des Kapitalertrages)

zurückverlangen. In gleicher Weise steht dem in Schweden wohnhaften Aktionär einer schweizerischen Aktiengesellschaft ein Rückerstattungsanspruch für das volle, die schweizerische Dividende belastende Verrechnungssteuerbetreffnis von fünfundzwanzig Prozent des Ertrages, nicht aber für die fünfprozentige Couponabgabe zu. Dagegen haben in Schweden wohnhafte Eigentümer schweizerischer Obligationen und Bankguthaben keinen Anspruch auf Befreiung oder Rückerstattung der auf ihren Erträgnissen in der Schweiz abgezogenen Coupon- und Verrechnungssteuer von fünf bzw. fünfundzwanzig Prozent.

2. Das Abkommen knüpft die Rückerstattung von auf Aktiendividenden erhobenen Quellensteuern an folgende Voraussetzungen:

Erstens muss der Dividendenempfänger im andern Staat Wohnsitz haben und an seinem Wohnsitz für das in den Aktien angelegte Vermögen und für das daraus fliessende Einkommen die Steuerpflicht nach der dort massgebenden Gesetzgebung über die direkten Steuern erfüllen. Die Erfüllung dieser Bedingungen muss durch einen amtlichen Ausweis der Steuerbehörde des Wohnsitzstaates nachgewiesen werden. Für den Begriff des Wohnsitzes gilt die im Abkommen (Art. 2, Abs. 2—4) enthaltene Umschreibung.

Zweitens muss der Rückerstattungsanspruch vom Dividendenempfänger innert zwei Jahren nach Ablauf des auf die Dividendenfälligkeit folgenden Kalenderjahres bei der Steuerbehörde des die Quellensteuer erhebenden Staates geltend gemacht werden.

3. Die Einzelheiten des Rückerstattungsverfahrens (Antragsformulare, Ausweise, Prüfung der Anträge usw.) hat das Abkommen einer besondern Verständigung zwischen der eidgenössischen Steuerverwaltung und dem schwedischen Finanzministerium vorbehalten. Eine solche Vereinbarung über die Durchführung der Rückerstattung von Quellensteuern von Kapitalerträgen ist am 28. Dezember 1948/2. Februar 1949 zustande gekommen und mit dem Abkommen in Kraft getreten. Auf Grund dieser Vereinbarung wickelt sich das Verfahren für die Rückerstattung von drei Vierteln der schwedischen Couponsteuer von 20 Prozent auf Dividenden schwedischer Aktien wie folgt ab:

Der in der Schweiz wohnhafte Besitzer schwedischer Aktien hat der eidgenössischen Steuerverwaltung in Bern einen Rückerstattungsantrag nach besonderem Formular R-Sv 1 (mit zugehörigem

Merkblatt erhältlich bei der eidg. Steuerverwaltung in Bern) in dreifacher Ausfertigung einzureichen. Darin sind Angaben zu machen über Ort und Dauer des Wohnsitzes in der Schweiz, über die Art und Anzahl der schwedischen Aktien, den Zeitpunkt ihres Erwerbes, die Höhe der Bruttodividende vor Abzug der 20 %igen schwedischen Couponsteuer; ferner ist eine Anerkennung der grundsätzlichen Steuerpflicht für die Aktien und deren Ertrag in der Schweiz erforderlich. Die Angaben des Rückforderungsberechtigten werden von den kantonalen und gegebenenfalls von der lokalen Steuerbehörden überprüft; die im Antragsformular angegebenen Werte und deren Ertrag werden, soweit eine Besteuerung noch nicht stattgefunden hat, zur Berücksichtigung bei den folgenden Veranlagungen zu den eidgenössischen, kantonalen und kommunalen Steuern vom Einkommen und vom Vermögen vorgemerkt. Die kantonale Steuerbehörde teilt ihren Prüfungsbefund der eidg. Steuerverwaltung mit, die ihrerseits eine Ausfertigung des Antrages an den schwedischen Couponsteuerausschuss weiterleitet mit der Bestätigung, dass der Antragsteller seinen Wohnsitz im Sinne des Abkommens in der Schweiz habe und hier für die im Antrag angegebenen schwedischen Aktien und ihren Ertrag die Steuerpflicht nach den massgebenden schweizerischen Gesetzen über die direkten Steuern erfülle. Es versteht sich von selbst, dass, wo bisher der Veranlagung zu den schweizerischen Einkommenssteuern der Nettoertrag (d.h. der um den schwedischen Quellensteuerabzug gekürzte Bruttoertrag) schwedischer Aktien zugrunde gelegt worden ist, inskünftig nun der um 5 statt um 20 Prozent gekürzte Bruttoertrag in Rechnung gestellt wird.

Der schwedische Couponsteuerausschuss wird sodann den Antrag in rechnerischer Hinsicht und daraufhin prüfen, ob der behauptete Steuerabzug tatsächlich erfolgt ist; der Entscheid des Ausschusses wird dem Antragsteller direkt eröffnet unter Ueberweisung des Rückerstattungsbetreffnisses an die im Antrag angegebene Adresse nach Massgabe der bestehenden Clearingvorschriften. Wird ein Rückerstattungsgesuch ganz oder teilweise abschlägig beschieden, so kann der Betroffene innert 60 Tagen seit der Zustellung des Entscheides beim Kammergericht in Stockholm oder zu dessen Handen beim Couponsteuerbüro in Stockholm Beschwerde einlegen. Gegen den Entscheid des Kammergerichts ist innert 60 Tagen

Berufung an das schwedische Finanzministerium zuhanden des schwedischen Königs möglich. Beschwerden (und auf Zusehen hin auch Berufungseingaben) können in schwedischer oder deutscher, französischer und englischer Sprache verfasst sein.

4. Für die Rückerstattung schweizerischer Quellensteuern auf Aktiendividenden an in Schweden domizilierte Aktionäre gilt die geschilderte verfahrensrechtliche Ordnung analog. Die Rückerstattungsanträge schwedischer Empfänger schweizerischer Aktiendividenden werden vom schwedischen Couponsteuerausschuss nach Prüfung durch die lokalen Veranlagungsbehörden der eidg. Steuerverwaltung zugeleitet. Gegen abweisende Rückerstattungsentscheide steht dem schwedischen Antragsteller die Einsprache an die eidg. Steuerverwaltung zu; der Einspracheentscheid kann durch Verwaltungsgerichtsbeschwerde an das Bundesgericht angefochten werden. Beide Rechtsmittel müssen je innert 30 Tagen seit Zustellung des anfechtbaren Entscheides eingelegt werden; Verwaltungsgerichtsbeschwerden müssen in einer der drei schweizerischen Amtssprachen abgefasst sein; Einsprachen können überdies in englischer Sprache redigiert sein.

5. Stellt die Steuerbehörde des einen Staates allfällige Unregelmässigkeiten (missbräuchliche Geltendmachung von Rückerstattungsanträgen u.ä.) fest, so wird sie die Verwaltung des Vertragsstaates unverzüglich benachrichtigen und mit ihr nach Mitteln und Wegen suchen, um derartigen Machenschaften zu begegnen.

III. Erbschaftssteuern

1. Es hat sich im Laufe der Verhandlungen als zweckmässig erwiesen, die Bestimmungen über die Vermeidung der Doppelbesteuerung bei den Erbschaftssteuern in ein besonderes Abkommen zu verweisen. Insbesondere sind der persönliche Geltungsbereich (Art. 1, Abs. 1) des Erbschaftssteuerabkommens und der Wohnsitzbegriff (Art. 4, Abs. 2 und 3) enger umschrieben als im Abkommen über die direkten Steuern. Das Abkommen kann nur angerufen werden, sofern der Erblasser im Zeitpunkt seines Todes die Staatsangehörigkeit eines der beiden Staaten besessen hat. Bei der Umschreibung des letzten Wohnsitzes gilt der dauernde Aufenthalt nur dann als Ausscheidungskriterium, wenn Meinungs-

Persons residing in both countries are relieved from double taxation in the United Kingdom by credit of Swedish tax of income derived from sources within Sweden, in Sweden by exemption from Swedish tax on income from sources within the United Kingdom. When the double resident has income from sources outside the United Kingdom and Sweden, each of the two countries gives relief by credit of foreign tax or exemption from Swedish tax in the proportion of his income from the one country to that from the other country.

The Convention has become law in the United Kingdom by Order in Council of September 29, 1949 [1]) and has effect in the United Kingdom for income tax for the year of assessment 1949/50, for surtax for the year of assessment 1948/49 [2]) and for profits tax for accounting periods beginning on or after April 1st, 1949. It applies to tax on profits derived before that date if those profits were assessed to income tax to which the Convention applies [3]). (Article XXIV).

III.

Apart from the avoidance of double taxation the Convention is made to prevent fiscal evasion. Article XX provides for fiscal cooperation between the contracting Governments to that effect by the exchange of information. That will enable the revenue authorities of either country to obtain or verify material regarding the foreign transactions of their residents so as to prevent fraud and to administer the statutory provisions against legal avoidance of those taxes which are the subject of the convention. In order to enforce that part of the convention, Section 55, Finance (no. 2) Act, 1945, provides that the obligation to secrecy imposed by any United Kingdom enactment shall not prevent the United Kingdom Revenue

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[1]) ST.I. 1949 No. 1841.

[2]) Surtax is a deferred instalment of income tax. Surtax payable on January 1st, 1950 is assessed for 1948/49 on income taxed at source in 1948/49 plus income directly assessed for 1948/49 on the basis of income derived in 1947/48 or 1948/49.

[3]) Profits tax is assessed on income derived during the chargeable accounting period. Income tax is normally assessed on the preceding years' basis. Profits tax for 1948/49 is therefore based on profits derived during 1949/50, while income tax for the same period may be based on profits for the financial year 1948/49. In such cases the Convention shall apply in respect of profits tax to profits derived in 1948/49.

authorities from disclosing to any officer of the Swedish Government such information as is required to be disclosed under the arrangement.

IV.

The Convention affects the United Kingdom tax laws in various respects:

(1) *Income from Business:* (Article III).

Prior to the Convention a Swedish enterprise was liable to tax on the profits from its business in the United Kingdom no matter whether the business was transacted through a branch or other permanent establishment or an agent or the representative of the entreprise during his stay in the United Kingdom. The Convention introduces an important change. Profits from business carried on in the United Kingdom shall be exempt from tax unless the business is carried on through a "permanent establishment", (in the meaning of Article II (1) (j)). An agent who has and habitually exercises the general power to negotiate and conclude contracts on behalf of the enterprise, or has a stock of merchandise from which he regularly fills orders on its behalf, constitutes a permanent establishment in the meaning of the convention. A Swedish enterprise, which carries on business dealings in the United Kingdom through an agent who has not such qualifications for instance one who has only the authority to sell at prices or on conditions fixed by the principal or who is a bona fide broker or general commission agent acting in the ordinary coures of his business, shall not be deemed to maintain a permanent establishment and is therefore exempted from tax on profits.

Where the Swedish enterprise trades in the United Kingdom through a permanent establishment it is liable to tax on those profits which are attributable to the permanent establishment. As chargeable profits are to be regarded the industrial or commercial profits which the permanent establishment might be expected to derive if it were an independent enterprise engaged in the same activities under the same or similar conditions and dealings at arm's length with the Swedish enterprise whose permanent establishment it is. Profits from sales of goods in the United Kingdom which were

stocked in a warehouse for convenience only and not for the purpose of display have to be left out of account.

(a) *Where the enterprise is carried on by an individual resident of Sweden* the profits are subject to income tax and where they exceed £ 2000. to surtax. The tax is, however, reduced by the personal allowances given to the Swedish resident under Article XVIII (1)

(b) *Where the Swedish enterprise is a company* it is subject to profits tax at a rate of 10 % and to income tax on the net profits after deduction of profits tax at the standard rate without any allowance.

(c) *Where the Swedish enterprise* is an individual or a partnership who *carries on business in the United Kingdom through a company* the company is liable to profits tax at the rate of 25 % with a reduction of 15 % of the undistributed profits [1a]). The dividend is paid to the individual shareholder under deduction of tax at the standard rate of (at present 9/-) in the £, but is exempt from surtax unless the shareholder is engaged in trade or business in the United Kingdom through a permanent establishment there (Art. VII 1 (a). [1]) In Sweden the dividends actually received, i.e. after deduction of United Kingdom income tax, are subject to tax at the normal rate reduced by 20 % of the dividends so charged.

(d) *If the Swedish enterprise is a company* which holds not less than 50 % of the voting power of the United Kingdom company the subsidiary company is subject to United Kingdom profits tax at the rate of 25 % with a reduction of 15 % of the undistributed profits and of the profits distributed to the Swedish parent company. [2]) The subsidiary is subject to income tax on the profits after deduction of profits tax. The dividend is paid to the parent company after deduction of income tax at the standard rate. There is no surtax liability of companies. The dividend is exempt from Swedish tax.

[1a]) The Chancellor of the Exchequer has announced in the House of Commons that the tax will be increased as from October 1, 1949 to 30 % with a reduction of 20 % of the undistributed profits.

[1]) The company is not a "permanent establishment" in the meaning of the convention.

[2]) Where the parent company controls less than 50 % of the voting power of the subsidiary company it does not enjoy the benefit of the reduction of tax by 15 % of the profits distributed to the parent company (section 39 (2) Finance Act, 1947).

Article IV of the Convention aims at the prevention of any avoidance of tax in one or the other country by the creation of artificial and abnormal commercial or financial relations between parent and subsidiary company.

(2) The profits from *shipping and aircraft operations* shall be subject to tax in the country of residence only, no matter whether or not a permanent establishment is maintained in the country of source (Article VI). The liability to tax on profits derived from other services than the operation of ships or aircraft, such as warehousing, insurance, travel agency etc. depends on whether the conditions of exemption under Article III are fulfilled. (sec. (1)).

(3) *Article V* confirms the rule of Section 39 Finance Act, 1947 that industrial and commercial profits of a Swedish, as any foreign, enterprise, shall be subject ot United Kingdom profits tax only at the rate of 10 % regardless of whether and to what extent they are distributed. Distribution of profits derived by a United Kingdom subsidiary to a Swedish parent company which controls not less than 50 % of the voting power of the subsidiary shall not be subject to the additional profits tax of 15 % levied on distributed profits.

(4) *Employment and profession* (Articles XIV, XVI).

Non-residents are subject to United Kingdom tax on remuneration for labour and personal, including professional, services exercised in the United Kingdom. [1]) Directors of United Kingdom companies are subject to tax on their fees even though they may never have been present in the United Kingdom. [2]).

In order to encourage the development of mutual trade and professional relations the Convention (Article XIV 2.) exempts from tax in the United Kingdom a Swedish resident on profits or remunerations for personal or professional services performed *on behalf of a resident in Sweden* if he does not stay in the United Kingdom for more than 183 days during the year of assessment and if he is subject to Swedish tax on these profits.

The exemption does not apply to public entertainers such as

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[1]) Schedule D. 1. (a) (iii) Income Tax Act 1918.
[2]) Proctor v. Ryall (1928) 14 Tax c. 204. Mc. Millan v. Guest (1942) A.C. 561.

artists, musicians and athletes. They are relieved from double tax by exemption from tax in Sweden under Article XIX 2.

A professor or teacher from Sweden who visits the United Kingdom for the purpose of teaching at a university, college etc. would be liable to United Kingdom tax on his remuneration. If he visits the United Kingdom for such purpose for a period of not more than 2 years, he shall be exempt from tax on his remuneration under Article XVI of the Convention. It must be assumed that the professor or teacher is not regarded as "resident" for United Kingdom tax purpose and therefore not liable to tax on any other income derived from a source outside the United Kingdom.

(5) *Remunerations or pensions* paid by a foreign Government to a resident of the United Kingdom in respect of services *in discharge of governmental functions* are not liable to tax in the United Kingdom unless the recipient is a British subject, or the services are rendered in connection with any trade or business carried on in the United Kingdom by the foreign government for purpose of profit (Section 20 Finance Act, 1930). The Convention — in accordance with the principle adopted in all conventions — confirms the United Kingdom law with the exception that a British subject who is at the same time a Swedish national is also exempted from tax in the United Kingdom (Article XIII).

(6) *Pensions* received by foreign residents from sources in the United Kingdom are subject to tax in the United Kingdom. Swedish residents shall be exempt from United Kingdom tax on such pensions; and also from tax on purchased annuities which are payable for life time or for a specified or ascertainable period of time.

(7) *Dividends* (Article VII).

There is no United Kingdom tax levied on dividends paid by companies managed and controlled in the United Kingdom. The company, is, however, empowered to recoup the income tax payable on its profits from its shareholders by deduction of income tax at the standard rate from the dividend. The shareholder suffers, in fact, tax by deduction. If he is an individual, he is also subject to surtax (on income over L 2.000 at progressive rates). Swedish residents who are not engaged in trade or business in the United

Kingdom through a permanent establishment and subject to tax on the dividend in Sweden are exempt from surtax. In Sweden tax is imposed on the net dividends from United Kingdom companies, i.e. after deduction of the United Kingdom income tax by the company and at a rate reduced by 20 % of the dividend si charged (Art XIX 2 [1]).

(8) *Interests and royalties* of Swedish residents derived from sources within the United Kingdom are liable to United Kingdom tax. They are now exempted from tax if the Swedish resident is not engaged in trade or business in the United Kingdom through a permanent establishment and is subject to tax on such income in Sweden (Article VIII, IX). The exemption includes interests from mortgages on real property in the United Kingdom. Any avoidance of tax on profits by charge of excessive interests is counteracted by the provision that the exemption applies only to so much of the interest or royalty as represents a fair and reasonable consideration (Article VIII).

Royalties in the meaning of Article IX are royalties for the use of any copyright, patent right, design, secret process or formula, trade mark or other like property. Capital payments are considered as chargeable income under the Income Tax Act, 1945. They are also exempted from tax no matter whether or not the Swedish resident is subject to tax in Sweden. [2]) If he is engagend in trade or business in the United Kingdom through a permanent establishment he is liable to United Kingdom tax, but is exempt from Swedish tax under Article XIX 2.

(9) *Income from real property* (Article X).

Rentals from real property and royalties from natural resources situated in the United Kingdom are liable to tax there, and remain so chargeable to Swedish residents under the Convention. Tax is deducted at source at the standard rate. A resident of Sweden has, however, a claim to relief by proportional personal allowances

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[1]) The United Kingdom does not tax dividends paid to non-residents by Swedish companies which derive profits from sources within the United Kingdom, nor does it impose undistributed profits tax on such profits. Article VII 2 of the convention confirms, therefore, United Kingdom tax law.

[2]) Whether the Swedish resident is liable to Swedish tax depends on whether he has been the lawful owner of the patent right for not less than 5 years.

and reductions under Section 17 ff. Finance Act, 1920, as provided by Article XVIII.

(10) *Income from an undivided estate* (Article XI).

The Convention includes a special provision with regard to the treatment of income from an undivided estate if the beneficiary is a resident of the United Kingdom. The exemptions and relief provisions of the Convention shall apply to undivided estates in so far as one or more of the beneficiaries are resident in the United Kingdom.

United Kingdom law does not recognise undivided estates as taxable entities. The executor or administrator of an estate is liable to return trust income and is assessed and charged to tax on behalf of the beneficiaries. The courts have, however, decided that since these rules are collecting rather than charging provisions, the trustee is chargeable only to the extent to which the beneficiary himself would be chargeable. [1]) In so far as the beneficiary is exempt or relieved from tax under the Convention the trustee enjoys the benefit of such exemption or relief.

(11) *Capital gains.* (Article XII).

They are, in general, not chargeable to income tax in the United Kingdom unless they are derived from transactions in the ordinary course of trade. Article IX of the Convention refers to the exception from the rule in case of the sale of patent rights the proceeds of which are subject to income tax under Income Tax Act, 1945, section 37. Such capital gains shall be exempted from tax in the hands of a Swedish resident who is not engaged in trade or business in the United Kingdom.

A resident of Sweden who derives profits from other capital transactions in the United Kingdom would not be liable to income tax in the United Kingdom. He would however, be subject to tax in Sweden. [1])

(12) *Students and apprentices* who receive training or education

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[1]) William v. Singer (1921) A. C. 25. Kelly v. Rogers (1935) 2 K. B. 446.

abroad will, in general, not be subject to tax in the foreign country on any payment which they receive from persons in their home country for the purpose of maintenance or education or training. Such payments will not constitute "income" for the purpose of income tax. The Convention (Article XVII) confirms the principle.

(13) *Personal allowances, reliefs and reductions* of United Kingdom tax are given to non-residents only if they are British subjects. Aliens enjoy the benefit of such allowances etc. only on certain special conditions (Section 24 Finance Act, 1920). Article XVIII (in accordance with the Convention with the Netherlands and with similar provisions in the Convention with France) extends the benefit to residents of Sweden. When claiming relief they must declare their entire income from sources within and without the United Kingdom. They are liable to United Kingdom tax in the same proportion of tax on their total income (computed as if they were resident in the United Kingdom) as their income from sources within the United Kingdom bears to their total income.

(14) *Relief from double taxation* (Article XIX).

Where double taxation on income derived from sources in Sweden is not eliminated by exemption from tax in Sweden, credit of Swedish tax is given in the United Kingdom to a person resident there no matter whether he has a double residence in Sweden. The legal provisions to which Article XIX 1 refers are contained in Part V of Finance (No. 2) Act, 1945 and the Seventh Schedule to the Act as amended by Section 66 of Finance Act, 1947 and Schedule IX to the Act.

There is no agreement between the contracting governments on the geographical location of the various sources of income with which the Convention deals. *For the purpose of tax credit only*, there is agreement that the source of income from personal and professional services is deemed to be within the country where such services are performed. The United Kingdom will, therefore,

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[1]) A non-resident is liable to Swedish tax on capital gains only which are derived from the transfer of property situated in Sweden and of businest enterprises carried on there. A resident of the United Kingdom is exempt from tax unless he is engaged in trade or business in Sweden through a permanent establishment.

give credit for Swedish tax on any income from services performed in Sweden regardless of whether under United Kingdom tax law the source of such income is regarded as within Sweden or elsewhere[1]). Where income is derived by a double resident from a source *without the United Kingdom as well as without Sweden*, either country is the country of residence and may tax such income. In order to give relief from double taxation each of the two countries shall give proportional relief, the United Kingdom by tax credit, Sweden by exemption from Swedish tax. Swedish tax shall be limited to tax on that proportion of such income from a foreign source as the income from sources in Sweden bears to to the income from sources within the United Kingdom. The United Kingdom tax shall be reduced by a credit for Swedish tax on that proportional income.

(15) *Equality of taxation* (Article XXII).

There shall be no discrimination between the *nationals* of the two countries under their respective tax laws. This entitles Swedish nationals who are domiciled in the United Kingdom to exemption from tax on not remitted income from foreign possessions under Schedule D Case IV and V *as long as they have no ordinary residence in the United Kingdom*. They are, however, entitled to allowances, reliefs or reductions only if they are *resident* in Sweden.

The provision that residents of Sweden shall not be subject to any higher tax on capital is of no practical importance as capital is not taxed in the United Kingdom. Permanent establishments of Swedish enterprises shall not suffer higher tax on profits than United Kingdom enterprises. This also does not involve any change of United Kingdom law.

V

Termination (Article XV).

The Convention is made for a fixed term of 5 years and can then be terminated by notice of termination to be given on or before

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[1]) The credit for Swedish tax shall take into account the special tax payable in Sweden by public entertainers. (Article XIX 4.)

June 30th in any year to have effect for the next year of assessment (or for sur-tax the same) or for the chargeable accounting period beginning on or after April 1st in the next calendar year.

With the termination the Conventions of December 19th, 1924 and July 6th, 1931 in respect of tax on profits from shipping and agencies, referred to in Article XXI of the Convention, shall have effect again.

INTER-AMERICAN BAR ASSOCIATION
AMERICAN BAR ASSOCIATION, SECTION OF INTERNATIONAL AND COMPARATIVE LAW

Below a number of resolutions will follow, which we suppose are of importance for our readers. It is with the kind permission of Dr. Mitchell B. Carroll that we publish these resolutions. Dr. Carroll, as President of the International Fiscal Association (I.F.A.), was invited to attend the meeting of Comittee II on Taxation of the Inter-American Bar Association, which voted one set of resolutions, and has for 15 years been Chairman of the Committee on International Double. Taxation of the Section of International and Comparative Law, which proposed the other resolutions.

COMMITTEE II
RESOLUTION
THEME I
Approved by Plenary Session

Inter-American Bar Association
Detroit, May 31, 1949

Whereas, it is deemed necessary and desirable to encourage and further commerce between the nations of the Western Hemisphere and to promote the free flow of investment capital as between such nations; and

Whereas, such commerce and free flow of investment capital are at present burdened and obstructed by tax barriers and the double taxation which now exists between nations of the Western Hemisphere; and

Whereas, while recognizing and appreciating the valuable work and studies which have been and are being conducted in this field by the United Nations and various private international and national organizations, as well as the past efforts in this regard of the Inter-American Bar Association, it appears that additional

and more concerted efforts to relieve the aforesaid situation are necessary.

Now therefore, be it

Resolved: To Recommend:

(1) That immediate action be taken by the proper fiscal authorities of the Governments of the various nations of the Western Hemisphere leading to the adoption of bilateral tax treaties, or unilateral legislation, for the relief of international double taxation.

(2) That the following general principles for the relief of double taxation be brought into effect either by being incorporated in bilateral tax treaties or in national legislation, whether or not conditioned upon reciprocity:

(a) A commercial, industrial, service or agricultural enterprise of one nation shall not be taxed by the other nation upon its profits except in respect of such profits which are fairly attributable to a permanent establishment located within such latter nation.

(b) A "permanent establishment" should be defined as meaning a branch, factory, mine, oil well, plantation, workshop, warehouse, installation, or other fixed place of business.

(c) A permanent establishment should not include an agent, unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has control over a stock of merchandise from which the agent regularly fills orders on behalf of such enterprise. An enterprise of one nation should not be deemed to have a permanent establishment in the other nation merely because it carries on business dealings in such other nation through a *bona fide* independent broker or commission agent acting in the ordinary course of the agent's business as such.

(d) The income or profits of a permanent establishment should be determined upon the basis of separate accounts and there should be attributed to such permanent establishment the net industrial and commercial profit which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions.

(e) For the purpose of avoiding the double taxation of enterprises which have their head office in one nation and a permanent es-

tablishment in another, it should be provided that the country of the head office will:

(A) Exempt the income of the permanent establishment which is taxable in the country in which the permanent establishment is situated, or

(B) Grant against its tax a credit for taxes payable by the establishment, including

(i) income taxes of any kind, whether imposed on net or gross income;

(ii) taxes in lieu of income taxes, whether or not an income tax is generally imposed;

(iii) taxes on any basis which are actually payable out of income;

(iv) taxes on the remittance of income or foreign exchange granted for transfers from the country to residents abroad;

(v) taxes corresponding to the amounts of income exempted from tax or allowed as a deduction under a provision of law intended to encourage the investing of profits in the development of the activities of the permanent establishment.

(f) In order to encourage, rather than hinder, the free flow of capital it should be provided that dividends and interest shall be taxable only by the country of residence of the recipient. No right should be retained by the country of source to impose a system of withholding of tax at the source in respect of such dividends and interest.

(g) Royalties derived from copyrights, patents, trademarks and secret processes should be taxed only in the country of residence of the recipient.

(h) Rents from real property or the royalties from the operation of mines or other natural resources should be taxed only in the country where the resources are located.

(i) In general, income from personal services should be taxed only by the country in which the services are rendered. It should be provided further, however, that an individual rendering services in a foreign country who is not present in such foreign country for a period in excess of 183 days in the taxable year shall not be subject to tax therein on the income therefrom, regardless of to whom the services are rendered. There should be no limitation upon the amount of compensation which may be received during such

183 day period. When the individual has overstayed the 183 day period so as to be subject to tax in such foreign country he should be taxed only upon that compensation received after the expiration of the 183 day period. Once subject to tax on his compensation in the foreign country he should be exempted from tax thereon in his home country.

(j) Earnings of ships and aircraft should be taxable only in the country of registry of the ship or aircraft.

COMMITTEE II
RESOLUTION
Theme 4
Approved by Plenary Session
Inter-American Bar Association
Detroit, May 31, 1949

Resolved:

(A) That the Member Associations exert all possible efforts in their respective countries to obtain the enactment of legislation (where such legislation does not already exist);

(1) Authorizing the competent fiscal authorities of such country to enter into final and binding agreements, as between the Government and the Taxpayer, settling, compromising or adjusting disputed tax claims or issues; and

(2) To issue binding rulings, in respect of the tax effects of any proposed or consummated transaction, when such authorities are requested so to do by the party or parties beneficially interested in such transaction.

(B) That the Member Associations also urge their governments to enact legislation embodying the following principles:

(a) A country should not pay officials or Government attorneys or representatives a percentage of the amount of any deficiency in tax liability that they may assess, or other special remuneration, before such time as the legality and correctness of the deficiency has been finally determined (i.e., without any further appeal);

(b) A country should not require payment of the amount of an assessed deficiency before it is finally determined; and

(c) If the final determination of a taxpayer's liability shows that he or it has paid more than the tax due, the amount of the overpayment should be refunded in full to the taxpayer or credited against his or its liability for the subsequent year or years.

RESOLUTION

Adopted by the Section of International and Comparative Law
American Bar Association
Detroit, May 27, 1949

Whereas it is desirable to encourage international commerce through liberalizing the provisions in tax laws that are inhibitory to the exchange of visits of employees of enterprises, as well as of technicians and other individuals engaged in business activities,

Be it resolved:

1. That Congress be requested to amend the Internal Revenue Code so as:

(a) to grant an alien employee of a branch abroad of an American corporation the same exemption as that granted to an alien employee of a foreign corporation, and

(b) to grant, on condition of reciprocity, to any alien resident abroad who visits the United States an exemption of income earned while in the United States during a period or periods not exceeding 183 days in the aggregate during the taxable year, subject to a reasonable ceiling if he is paid by an employer in the United States but not otherwise, and regardless of whether the employer is engaged in business in the United States.

2. That this resolution and the accompanying report be submitted to the Treasury Department and the appropriate committees of Congress.

REPORT ON RESOLUTION

Need for Liberalized Tax Treatment of Alien Employees of Branches Abroad of American Corporations.

Under section 211 (b) of the Internal Revenue Code, a nonresident alien individual employed by another nonresident alien individual, foreign partnership or foreign corporation, not engaged in trade or business within the United States, [1]) is exempt from the United States income tax in respect of compensation received for the performance of personal services in the United States, if he is temporarily present in this country for a period or periods not exceeding a total of 90 days during the taxable year, and if his compensation for such services does not exceed in the aggregate $ 3,000.

This provision discriminates against nonresident aliens employed by a branch office abroad of an American corporation as distinguished from a nonresident alien employed by a foreign corporation, even if it be a wholly-owned subsidiary of a United States corporation. In view of the fact that it is becoming increasingly expedient, if not necessary, for foreign branches of American corporations to employ nationals of the country in which they are situated, which employees sometimes must come to the United States to learn about the business of their employers or for some other purpose connected with their services abroad, the importance of eliminating this discrimination is self-evident.

Under tax treaties concluded by the United States with various foreign governments, the exemption in section 211 (b), I.R.C., has been liberalized on a reciprocal basis. In some cases the exemption applies only to employees of an enterprise of the other contracting state, while in other cases it also applies to residents of the other country who come for a shorter time in the aggregate but without any restriction as to the payor of the compensation.

The conventions falling within the former category are those in force with the United Kingdom and The Netherlands, as well as the convention with New Zealand and the supplementary protocol with France, neither of which has yet been ratified. Conventions within the second category include those in effect with Sweden, Canada and Denmark and the not yet ratified convention with Belgium. These provisions are all reciprocal in language but are discussed from herein from the viewpoint of the resident in the other contracting state who visits the United States.

The provisions in the two categories mentioned above are summarized below:

I) *Exemption of employees of foreign enterprises:*

Under Article XI of the convention between the United States and the United Kingdom of April 16, 1945, an individual resident in the United Kingdom is exempt from United States tax upon compensation for personal

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[1]) It is to be noted that the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, and excludes only the performance of personal services for a nonresident alien individual, foreign partnership or foreign corporation by a nonresident alien individual meeting the conditions set forth above. Hence, there may be a question as to whether the nature of the employee's services might be such as to give rise to tax liability on the part of the foreign employer, which would deprive the employee of his exemption from tax.

(including professional) services performed within the United States if (a) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (b) such services are performed for or on behalf of a person resident in the United Kingdom. This latter condition has been construed to apply even if a British corporation has a permanent establishment in the United States.

This article served as a model for Article IX of the convention with New Zealand of March 16, 1948. However, while the foreign visitor must be in the employ of a person resident in New Zealand, it is expressly provided that a New Zealand corporation will not be considered a resident of the United States, even though it has a permanent establishment in the United States. This permits the business visitor to enjoy the exemption, even if he comes to a permanent establishment in the United States of a corporation "resident' in New Zealand. The article does not apply to the profits or remunerations of public entertainers, such as stage, motion picture or radio artists, musicians and athletes. A similar limitation, originally included in the convention with the United Kingdom was eliminated by the supplementary protocol of June 6, 1946.

Article XVI of the convention between the United States and The Netherlands, signed April 29, 1948, grants the exemption to a resident of The Netherlands if (a) he is temporarily present in the United States for a period or periods not exceeding a total of 183 days during the taxable year, and (b) his compensation is received for labor or personal services performed as a worker or employee of, or under contract with, a resident or corporation of The Netherlands, which carries the actual burden of the remuneration.

Under Article I (3) of the supplementary protocol with France, signed May 17, 1948, which is awaiting ratification by France, Article 9 of the existing convention, signed July 25, 1939, is amended so that an individual resident of France shall enjoy the exemption for compensation for personal services (other than income from the exercise of a liberal profession) performed during the taxable year within the United States if (a) he is present in the United States for a period or periods aggregating less than the taxable year, and (b) such services are performed for or on behalf of a resident, corporation or other entity of France.

II) *Exemption of Employees of Foreign Enterprises and Other Visitors:*

The conventions concluded by the United States with Sweden of March 23, 1939 (Art. XI), with Canada of March 4, 1942 (Art. VII), with Denmark of May 6, 1948 (Art. XI), and convention with Belgium of October 28, 1948 (Art. XI), which has not yet been ratified, contain essentially the same provisions, the minor variations being noted. Residents of the other contracting states are divided into two categories for the purpose of the exemption granted by the United States (or vice versa) as follows:

(1) The resident of the other contracting state comes to the United States as an employee of a resident or corporation of the other state for a stay of less than 180 days (conventions with Sweden and Denmark) or 183 days (other conventions) in the aggregate during the taxable year. The convention with Canada adds that his compensation must not exceed $ 5,000 in the aggregate during such period and that the provision does not apply to the professional earnings of actors, artists, musicians and professional athletes;

(2) The resident of the other contracting state is temporarily present in the United States for not more than 90 days in the aggregate and his compensation for personal services in the United States does not exceed $ 3,000 in the aggregate. As an exception, the convention with Canada limits the amount of compensation to $ 1,500. The convention with Belgium adds that this exemption shall not apply to remuneration of officers and directors

of American corporations, which corresponds to a similar exclusion from the clause applying to residents of the United States who go to Belgium.

Recommendation

It is of primary importance in stimulating economic reconstruction to encourage visits to the United States not only of alien employees, resident abroad, of foreign enterprises whether or not engaged in trade or business in the United States, but also of nonresident alien employees of foreign branches of American corporations, as well as technicians, engineers and any other business or professional men. Hence, it would be desirable to liberalize the provisions in section 211 (b), I.R.C.

The tax conventions indicate an increasing acceptance of the idea that the time limit for the exemption of earned income of business visitors should be 183 days in the aggregate during the taxable year. It is urged that this be made the statutory rule.

As long as the visitor is paid by a resident or corporation of a foreign country, or the permanent establishment abroad of an American corporation, there is no need of a ceiling on the compensation attributable to his stay here. If in other cases it is found necessary to place a ceiling on sums earned while in the United States during the 183 day period, to be reasonable the ceiling should be not less than $ 10,000.

In order to facilitate the business and professional visits of Americans to foreign countries, this more liberal exemption might be conditioned on reciprocity. The exemption could then be brought into effect either by an executive agreement between the United States and a foreign country, confirming that the foreign country by law grants the United States resident a similar exemption, or it could be embodied in a bilateral tax convention such as those described above.

Proposed Amendment to Section 212, I.R.C.

To obtain general adoption of this principles as rapidly as possible, an amendment might be incorporated in section 212, I.R.C., as follows:

(3) *Business Visitors* — Earnings of a nonresident alien individual which consist exclusively of compensation for the performance of personal services by such individual while temporarily present in the United States for a period or periods not exceeding a total of one hundred eighty-three days during the taxable year, and whose compensation for such services if paid in the United States does not exceed in the aggregate $ 10,000, provided the foreign country of which he is a resident grants an equivalent exemption to residents of the United States temporarily present in such foreign country.

If a foreign country does not meet the requirement of reciprocity, nevertheless it would be desirable to remove the present discrimination between a nonresident alien individual employed by a foreign branch of an American corporation and one employed by a foreign corporation. For this purpose, section 211 (b), I.R.C., might be amended so as to recognize the tax-treaty concept of treating a permanent establishment as an independent entity, and inserting after the words ,,or foreign corporation ', in section 211 (b), I.R.C., the words ,,or for a permanent establishment of a domestic corporation in a foreign country''. Incidentally, the present qualification that the foreign employer must not be engaged in trade or business within the United States should be deleted.

The amended section would then read (new language underscored):

Section 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(b) United States Business or Office. — A nonresident alien individual engaged in trade or business in the United States shall be taxable without

regard to the provisions of subsection (a). As used in this section, section 119, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, *or for a permanent establishment of a domestic corporation in a foreign country* by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year, and whose compensation for such services does not exceed in the aggregate $ 3,000

Mitchell B. Carroll, Chairman
John H. Alexander
Daniel O. Dechert
James P. Economos
M. L. McNeill
Robert N. Miller
Marguerite Rawalt
George E. Ray
William R. Spofford
Edward S. Stimson
Laurence D. Weaver
James O. Wynn.

VI

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I. General Part: A. Fiscal Law; B. Fiscal policy; C. Economic influence; D. Valué; E. Fiscal evasion; F. Collection; G. Miscellaneous. — II. International Fiscal Law. — III. Comparative Fiscal Law. — IV. Income and Profits Taxes. — V. Property Tax. — VI. War-Taxes. — VII. Death Duties. — VIII. Turnover Taxes. — IX. Stamp Duties and similar Taxes. — X, Customs and Excise.

Sous la rubrique: nouvelles acquisitions, nous publierons une liste des articles parus dans les périodiques que nous recevons régulièrement. Les articles seront rubriqués comme suit:

I. Partie générale: A. Droit Fiscal; B. Politique Fiscale; C. Influence économique; D. Valeur; E. Evasion fiscale; F. Recouvrement; G. Matières diverses. — II. Droit fiscal international. — III. Droit fiscal comparé. — IV. Impôts sur les revenus et sur les bénéfices. — V. Impôts sur la fortune. — VI. Impôts de guerre. — VII. Droits de succession. — VIII. Taxes sur le chiffre d'affaires. — IX. Droits de timbre, droits d'Enregistrement et taxes y assimilées. — X. Douanes et accises.

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VII
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Ordre Alphabétique

DEUTSCH

Alphabetische Ordnung

NEDERLANDS

Alphabetische volgorde

The cooperation of all our readers is urgently requested for this column. Kindly send us your problems and experiences, for it is only in this way that this dictionary can be continued.

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FRANÇAIS

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Pour cette rubrique, nous faisons un pressant appel à la collaboration de nos lecteurs. Nous les prions de bien vouloir nous faire part de leurs difficultés et des résultats de leur expérience personnelle, vue que c'est le seul moyen qui puisse nous permettre de continuer l'élaboration de ce dictionnaire.

X

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DOCUMENTS DE LÉGISLATION FISCALE

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Income Tax

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Impôts sur le revenu

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Impôts directs

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Chiffre d'affaires

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International

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France d'outre-mer

Droits d'importation

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Droits minières

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Germany:

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Property tax

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Miscellaneous

Second law of 20.4.'49 of provisional reorganization in taxation. (Gesetzblatt der Verwaltung des vereinigten Wirtschaftsgebietes, nr. 15).

Verordnung vom 7.6.1949 zur Durchführung des Tarifvertragsgesetzes. (Gesetzblatt 1949, no. 18).

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Hungary:

Property Tax

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Indonesia:

Double taxation

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Israël:

Income Tax

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Customs and Excises

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Italy:

Succession duties

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Customs and excises

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Miscellaneous

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Arrêté Ministériel du 2.8.1948 concernant l'exécution de certaines dispositions en matière d'impôt sur le revenu. (Mém. du 7.8.1948, Pasinomie 1948 p. 344).

Arrêté Ministériel du 1.10.1948 portant publication du barème de l'impôt sur le revenu des personnes physiques, applicable pour l'année d'imposition 1948. (Mém. du 16.10.'48 Pas. 1948 p. 366).

Arrêté grand-ducal du 24.12.1948 réglementant l'exécution de certaines dispositions en matière d'impôt sur le revenu. (Mém. du 31.12.1948, Pas. 1948 p. 454).

Arrêté Ministériel du 7.10.1948 modifiant les barèmes concernant la retenue d'impôt sur les traitements et salaires. (Mém. du 16.10.1948, Pas. 1948 p. 370).

Arrêté Ministériel du 16.12.1948 rajustant certaines dispositions en matière de retenue d'impôt sur les traitements et salaires. (Mém. 27.12.1948, Pas. 1948 p. 445).

Conventions

Arrêtés Ministériels décrétant en vertu de la Convention Belgo-Luxembourgeoise relative à l'Union économique, la publication et la mise en vigueur dans le Grand-Duché de:

1. l'arrêté du Régent belge du 17.8.1948 sur les entrepôts. (Modifications au Règlement général du 7.7.1947). (Mém. du 9.10.1948).
2. l'arrêté du Régent belge du 17.8.1948 sur les entrepôts. (Modifications à la loi du 4.3.1946). (A.M. du 2.10.1948, Mém. du 16.10.1948).
3. l'arrêté ministériel belge du 17.8.1948 relatif aux entrepôts fictifs. (A.M, du 4.10.1948, Mém. du 16.10.1948).
4. l'arrêté ministériel belge du 28.9.1948 sur les franchises en matière de douane. (A.M. du 6.10.1948. Mém. 16.10.1948).
5. l'arrêté ministériel belge du 27.9.1948 sur les tares légales en matière de douane. (A.M. du 6.10.1948. Mém. du 16.10.1948).

(pasinomie 1948, p. 369).

Arrêté Ministériel du 10.7.1948 décrétant en vertu de la Convention Belgo-Luxembourgeoise relative à l'Union économique, la publication et la mise en vigueur dans le Grand Duché de l'arrêté du Régent belge du 22.12.1948 relatif au tarif des droits d'entrée. (Mém. du 30.12.1948, Pas. 1948, pag. 457).

Douanes et accises

Arrêté grand ducal du 9.7.1948 réglant le classement des bureaux de recette de l'Administration des Contributions et des Accises (Mém. du 14.7. 1948, Pasinomie 1948, p. 324).

Arrêté grand ducal du 19.7.1948 modifiant le régime de la taxe d'importation et de l'impôt sur le chiffre d'affaires des véhicules à moteur. (Mém. du 21.7.1948, Pas. 1948, p. 334).

Matières diverses

Arrêté Ministériel du 10.7.1948 concernant la ristourne de droit sur l'essence achetée dans le pays par des touristes étrangers. (Mém. du 24.7.1948, Pas. 1948, pag. 325).

Maroc:

Impôts indirects

Dahir du 6.3.1949 abrogeant quelques impôts indirects (Bulletin Officiel 29.4.1949).

Peru:

Customs and Excise

Decree law of 1.4.'49 no. 11000 re tax on spirits. (El Peruano, no. 2479, 20.4.'49).

Decree Law of 1.4.'49 no. 10995 re tax on wood (El Peruano, no. 2478, 19.4.'49).

Miscellaneous

Decree law of 1.4.'49 no. 10997, re taxes on bets on race-courses. (El Peruano, no. 2478, 19.4.'49).

South Africa:

Customs and Excise

Customs Act no. 35 of 1944: Amendment to Annexures nos. 1 and 3 to Government Notice no. 526 of 18th March 1949 (Government Gazette Extraordinary no. 4151).

Income tax

Income Tax Act, 1949 (Id. no. 4201).

Conventions signed or negociated by the United States of America

New Zealand (Income Tax), signed March 16, 1948
Greece (Income and Estate Tax), drafted
Italy, Spain, Portugal } negociated
Eire (Income and Estate Tax), negociated
Norway (Income and Estate Tax), signed.
Union of South Africa (Income and Estate Tax conventions, signed on december 13, 1946 and April 10, 1947 are awaiting certain amendments and additions.
Mexico
Philippine Islands, Venezuela, Columbia, Brazil } negociated

I

CZECHOSLOVAK FISCAL LEGISLATION DURING AND AFTER THE SECOND WORLD WAR

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Introduction

A survey of fiscal legislation reflects the development of the public (economic, political, military) activity of the respective country. The development of fiscal legislation in the Second World War in those states which participated in the war, is characterized by the strained war effort. Again the development after the war is determined by the exertions of the national endeavour for economic reconstruction and sometimes even social rebuilding. In many states there is a connection link between both phases of these exertions: these nations freely imposed upon themselves financial burdens with the object of defending their liberty during the war, and after the war of making good war damage. In Czechoslovakia matters are different. Here the chronicle of fiscal legislation in the Second World War is a picture of the war effort of the *occupying power*, and in Slovakia it is a picture of a Quisling government. In Czechoslovakia Victory Day implies a deep caesura, after which follows a new development, continuing the pre-Munich tradition, especially in the western part of the state. The Czechoslovak exiled war-time Government which represented the uninterrupted legal continuity of Czechoslovakia, had practically no fiscal components.

The war-time fiscal legislation in the territory of Czechoslovakia is not at all uniform. The disastrous Munich agreement introduced the partitioning of the territory of Czechoslovakia into several areas: at the beginning of October 1938 the frontier territory of Bohemia, Moravia, and Silesia (collectively called the „Czech Lands") is annexed by Germany; a month later, on the basis of

the Viennese arbitration Slovakia is amputated in favour of Hungary and Poland. At the same time Poland occupies a small but economically very important part of eastern Silesia; in March 1939 comes to the occupation of the inner area of the Czech Lands by Germany and to the formation of the so-called Protectorate of Bohemia and Moravia. Simultaneously the amputated Slovakia secedes and declares itself an independent state. The conclusion of this Munich period for Czechoslovakia was the annexation by Germany, in autumn 1939, of the territory of Silesia, hitherto occupied by the Poles.

Owing to these events fiscal legislation in the territory of Czechoslovakia since 1939 also developed in four areas: in the Czech frontier territory forming directly part of Germany; in the Protectorate of Bohemia and Moravia, where there was a pretence of a certain „autonomy"; in Slovakia, organized as an independant state; and in the southern frontier district of Slovakia forming directly part of Hungary. Owing to this dismemberment we also excuse ourselves that this article exceeds the usual length.

So that the changes resulting from the war — and they were changes both varied and deep — will appear more distinctly we shall attempt first to give a brief sketch of the scheme of the fiscal system in Czechoslovakia before Munich.

1. *Czechoslovak Fiscal System in* 1938

Traditional basis of the Czechoslovak system — Characteristic of its economic structure — Summary of its main components and individual taxes — Predecessor of wartime fiscal regulations: regulations effected to cover increased expenditure for defence before Munich.

The system of taxation which existed in Czechoslavakia at the time of the Munich agreement was based on foundations built up in the last century in the Habsburg Monarchy. It consisted of direct taxes (law of the year 1927), the backbone of which was the general income tax; of turnover tax introduced at the beginning of 1920, at first only as a temporary measure which was later repeatedly renewed and improved; of customs duties almost exclusively on imports (law of the year 1927); of consumption taxes and state financial monopolies rather unsystematically regulated by numerous laws which were promulgated in the course of the last 100

years; and finally of transfer taxes and stamp duties regulated especially by the law of 1850.

Among the financial monopolies we include in this article the tobacco monopoly, which was carried on in the last decade of the Republic as a state enterprise, so that its yield was included in the state's budget as a component of the resulting balance of the state enterprises.

The relative importance of these individual groups of fiscal revenue for the state budget can be seen from the share of each group in the total state fiscal revenue; the share of the income tax in the total fiscal revenue in 1937 amounted to 10.29 %, the share of the remaining direct taxes 7.30 %, so that the total share of direct taxes was 17.59 %; the proceeds of the turnover tax attained 24.83 %, customs duties 7.0 %, indirect taxes 20.20 %, the proceeds of the tobacco monopoly 10.97 %, the proceeds of the state financial monopolies 0.58 %, and the proceeds of transfer taxes and stamp duties 18.83 %. An economically important feature of this taxation system was the comparatively important preponderance of indirect taxation over direct taxation; in this respect the tax system differs greatly from the tax system of Britain, for instance.

We should not omit to state that all the relative figures mentioned include — for the correctness of comparison — not only state taxes but also surcharges levied together with them in favour of local government authorities; in the post-war system these surcharges were included in the tax rates. The surcharges for local government authorities used to form a considerable source for their financing. The most important were the surcharges to the special profits tax. These will not be dealt with later so as to simplify the matter which, without this, is very complicated.

(*a*) *Direct Taxes*

Income tax was a general tax on the income of physical persons which affected in principle the whole net income of the household. In the case of salaries and wages the tax was deducted by the employer, and for the smaller taxpayer the tax deducted was in full settlement of tax obligations (in this case it was not necessary to make an income-tax return). Otherwise the tax was assessed by the

tax offices on the basis of yearly income-tax returns of the taxpayer. As the progressive rates of the tax were rather sharp it was an advantage that wages and salaries of members of the family were not included in the income of the head of the household, but were taxed separately.

The purpose of the other direct taxes was to affect certain components of income in addition to their being affected by the general tax, in so far as the legislator considered it as bearable and socially just. Some of these taxes had the character of partial income taxes, and some affected the profit. To the first of these groups belonged mainly the *general profits tax*. A substitute income tax for corporate bodies was the *special profits tax*.

This tax concerned especially enterprises of joint-stock companies, mining partnerships, insurance companies, public credit limited companies, as well as enterprises in which a foreign joint-stock company, mining partnership, or private limited company participated to at least 50 %. The basis of the tax was the net profit of the trading year. The tax amounted to 9 % of the net profit; for certain groups of enterprises, however, this rate was lower. When there was no profit, tax was still collected to an amount equal to 1/1000 of the capital (the so-called minimum tax). If the profit exceeded a certain percentage of the capital, a so-called rentability surcharge was collected together with the tax the scale of which was progressive. By the taxation of liquidation surpluses of companies and co-operatives in liquidation the so-called liquidation surcharge was levied instead (with a fixed rate).

The remaining profit-making enterprises of physical persons or associations of persons, were subject to a general profits tax. The net profit was also the basis of this tax. The tax was assessed on the basis of the taxpayer's returns. The rate was slightly progressive, and amounted to 0,5 up to 4 % of the taxable profit.

The land tax was collected from the fictitious (average) yield of the land. The taxed yield here was determined by a multiple of the so-called cadastral yield. The cadastral yield is understood as the number expressing the yielding capacity of land of a certain quality and a certain kind of cultivation, determined in the cadaster of land for the whole country. The actual yield on agricultural land was not taken into consideration.

The house tax affected the rent yield of buildings after deducting admissible items. If the building was not let on the normal conditions, or in the case of the flat used by the owner of the house, the rent value was the basis for taxation. The tax so assessed was called house rent tax. In smaller places the tax was assessed by a fixed classification of unrented buildings into classes of a special tariff (house-class tax).

Capital income was taxed by an *interest tax*. In certain cases the law prescribed that he who effected capital payments subject to taxation had to deduct the interest tax on payment to the recipient. Various types of payments made by the cash-offices of the state and local government authorities, public funds, enterprises subject to special profits tax, and banking institutions were affected by this tax regulation. The deducted tax as a rule amounted to 6 %, and the tax paid by the taxpayer direct only 3 %.

Emoluments received by members of boards, administrative and supervisory councils and similar organs of profit-making societies for the execution of their function, were taxed by a special 10 % *tax on royalties*.

Salaries exceeding 100,000 Kč per year were subject to a *tax on higher salaries* (rate 3 %).

An extraordinary tax on dividends and interest of certain securities was introduced in 1936. The tax was collected by a 10 % deduction on inland dividends in so far as they attained at least 5 % of the nominal value of the shares, and also interest on inland bank, mortgage, and other joint bonds; state and other public bonds were not subject to this tax but the interest rate on State bonds was reduced simultaneously.

In connection with the survey of direct taxes it is necessary to mention the question of the *fiscal year*. Up to the year 1936, Czechoslovak direct taxes were collected for every calendar year after the end of the year from the income (yield) attained in the year. From the year 1937 the taxes were collected for every year from the income (yield) attained in the preceding calendar year. The year for which they were assessed was called the fiscal year. Therefore the so called fiscal year 1937 dealt with incomes for the calendar year 1936, etc. The German occupying power stopped this system but it was re-introduced after the liberation.

(*b*) *Indirect taxes* (*turnover tax, consumption taxes, and monopolies*)

The most important of the group of indirect taxes was *the turnover tax.* This was collected from payments for inland deliveries and services, for one's own consumption taken from the enterprise for the household of the proprietor or for his employees, and from the importation of all objects except those which were subject to luxury tax and except those objects excluded on a special list. It did not matter whether these were deliveries or services of an entrepreneur or non-entrepreneur. The rate of the tax was 2 % of the payment; in the case of agricultural and some other food products, however, it was only 1 %. At the end of 1935 a surcharge of 50 % to the 2 % rate was introduced, so that the tax was really 3 % of the payment. A further 100 % surcharge was then introduced for entrepreneurs with a larger number of branches and for one-price shops.

The Czechoslovak turnover tax was a phase tax, i.e. it was collected on individual turnovers, therefore in all individual phases of the economic circulation of goods; in the price of the final product, therefore, it was generally contained several times, and thus became an important component in price calculation..

A remarkable feature of the Czechoslovak turnover tax was payment in lump-sums. The law empowered the Minister of Finance to fix lump-sum payments after coming to an agreement with some other Ministers, these lump-sum payments to replace the regular tax on all turnovers. This simplified the assessment of the tax. Lump-sum payments were fixed either for certain products and their groups or for certain groups of entrepreneurs (e.g. for small farmers). They concerned only objects delivered several times in an unchanged state; sometimes they also covered deliveries of raw materials necessary for manufacturing goods subject to lump-sum taxation, as well as various services connected with these goods. Their rates were fixed either at a certain percentage of the payment or common price, or according to weight, volume, or quantity of the goods. Some of them were collected together with the respective consumption tax or with import duty.

The tax had to be paid by the supplier (importer), but he could transfer it to the customer; in this case he could — and when requested had — to invoice it separate from the price of the goods. Exports

were not subject to the tax.

A supplement to the turnover tax was the *luxury tax*, collected from deliveries and imports of luxury objects and services (e.g. goods of precious metals, gobelins, furs, certain kinds of furniture, luxury toys, and the like). The tax collected from the manufacturer was 12%, otherwise 10%, and for certain purposes 2%. In spite of the fairly high rate the tax never had any special importance. According to circumstances lump-sum payments of turnover tax also included luxury tax.

The regulations concerning turnover tax and luxury tax applied analogously for the so-called *cartel tax* introduced in 1937 for deliveries and services according to cartel agreements. We will deal with this tax later in the article.

In addition to turnover tax, the so-called *large consumption taxes* (*tax on sugar, alcohol, beer, mineral oils, and the tobacco monopoly*) formed the main components of indirect taxes. The monopoly of *artificial sweetening substances* was a supplement to the sugar tax. In addition to the beer tax the taxation of beverages before Munich applied also to wine (partly the so-called *general tax on beverages* and partly the special *tax on sparkling wine*) and on non-alcoholic beverages (*tax on lemonade, mineral and soda waters*). Power consumption was affected by the *tax on coal* or the *substitute tax* collected on importation of coal, and the *tax on water power;* in this group is also the *tax on electric radiation and the match tax*. The *tax on motor vehicles* was a tax for a certain purpose (it was allotted to the road fund). In addition to the aforementioned state monopolies of tobacco and artificial sweetening substances there were also the *salt monopoly* and the *explosives monopoly*. The *meat tax*, the *tax on artificial cooking fat, tax on yeast, tax on acetic acid, tax on preparations for raising dough, and the provisions octroy* collected on the outskirts of large towns on provisions brought into the town, conclude the variegated circle of these taxes. The collection and control of them were regulated in principle for each tax independently; therefore the system they presented was not very clear.

(c) *Customs Duties*

In the sphere of customs duties the basic regulations were codified in the law on customs duties promulgated in the year 1927. Customs

rates were determined on the one hand by the autonomous Customs Tariff of the year 1919, based on the Customs Tariff of the former Habsburg Monarchy, which in the course of years was adapted to contemporary economic needs, and on the other hand by treaty rates. Up to the year 1938 treaty-rates had been arranged with all important countries, and applied to goods of nearly the whole world as a result of the most-favoured-nation clause contained in the commercial treaties with other countries.

(d) Transfer Taxes and Stamp Duties

Certain administrative or economic services and facts capable of taxation are reflected in the legal sphere, and manifest themselves therein as legal acts or legal facts (official dealings, documents, ducumentary evidence). This rather formal side of matters grouped fiscal imposts of various kinds under the common heading of „stamp duties" in the law concerning stamp duties of the year 1850.

The *tax on enrichment* belonged to the group of imposts from legal transfers (tranfer taxes) comprising the tax on transfers of property in the case of death (inheritance tax) and of gratis transfers among the living (tax on gifts). As transfers *mortis causa* do not occur in the case of corporate bodies the so-called *tax on mortmain estates* was fixed for them, and was assessed on their property every ten years and paid in quarterly instalments. Transfers of real estate were subject to a *tax on real property transfers* on the basis of maximum rates of 3 and 7 % of the gross value. The rates differed in principle according to whether there was any relationship or not between the vendor and the purchaser.

The conditions and rates of taxation for the other legal transfers documents (e.g. invoices, balance-sheets, cheques, bills of exchange), applications to courts and offices, official negotiations, and the so-called *taxes on official acts in administrative matters*, were fixed by the respective tariffs and many other regulations; various exemptions, in many cases annexed to laws dealing with various public tasks from other points of view, are especially difficult to summarize.

Special mention must be made of a group of taxes affecting transport. First and foremost are the railway taxes (*tax on railway tickets for passenger conveyance, tax on luggage, transport tax for the*

carriage of goods). In addition to them there was also a *special tax on fares for the conveyance of passengers by railway and tax on telephone fees*, which were introduced in the year 1924 to provide cover for the adjustment of state pensions.

Motorbus transport was affected by the *tax on fares for the mass conveyance of persons.*

The rates of the imposts included under the device „transfer taxes and stamp duties" were very diverse. Some were established in fixed sums, some by scales or by percentage rates according to the value of the objects. Some of these could be paid by affixing (revenue) stamps.

(e) *Fiscal Legislation resulting from Defence Preparations before Munich*

The exceptional armament efforts which preceded the Munich crisis and the war required some fiscal measures. The law of May 13, 1936, No. 131 Colln. (the State Defence Act) took certain oragnizatory measures also in the fiscal sphere: it empowered the Government, in case of a declaration of a state of defensive readiness of the country, to issue with the consent of the President of the Republic an ordinance by which public fiscal revenues would be temporarily regulated; it also empowered the Goverment to make any changes in customs duties.

The financial means for armaments in the years 1936 to 1938 were provided partly by credit and partly by increased tax rates. The range of fiscal laws promulgated at the end of 1937 is an example of this financial mobilization. Unfortunately, the Munich Agreement reversed the results of these efforts against Czechoslovakia and the whole democratic world.

The most important bill for cover in this range was law No. 247/1937 Colln., which introduced for a period of five years a *contribution for the defence of the State and a tax on exceptional profits*. The contribution for the defence of the state affected physical persons, legacies not yet handed over, and enterprises subject to the general or special profits tax. In the first category the contribution was paid by a certain percentage of the basis for income tax, in the case of subjects liable to profits taxes it was paid in the form of a surcharge to these taxes. The tax on exceptional profits

was to affect more sharply the profits arising to entrepreneurs from the armament boom. Taxpayers subject to either of the profits were subject to this tax, whereby the rates were higher in the case of capital enterprises. Law No. 245/1937 Colln. introduced for a period of three years the *cartel tax* affecting the total payment for inland delivery and services, the turnover of which is regulated by the cartel agreement. The rate was 0.5 %. Further laws belonging to this range increased the rates of consumption taxes on *lemonade* and *mineral waters* (law No. 248/1937 Colln.), on the consumption of *wine* (law No. 249/1937 Colln.), on the consumption of *beer* (law No. 250/1937 Colln.), and on *artificial cooking fats* (law No. 251/1937 Colln.).

The disturbed period which followed the disastrous Munich Agreement induced the Government to issue the ordinance of December 17, 1938, No. 338 Colln., by which reliefs in determining tax periods were fixed. The Government ordinance of December 22, 1938, No. 393 Colln., abolished the abovementioned law concerning contributions for the defence of the state and concerning the extraordinary tax on exceptional profits, as well as the law of the year 1931 concerning the temporary surcharge to the income tax and the tax on royalties. The contribution for the defence of the state was replaced by a „special" contribution, and the temporary surcharge was included in the rate for income tax; in addition to this, however this ordinance increased the rates of income tax, so that the new arrangement implied an increased tax burdening of incomes. Surcharges were introduced for both profits taxes and the tax on royalties and the rates of the special profits tax were also increased.

By the Government ordinance of October 25, 1938, No. 252 Colln., concerning aid to motorism, the tax on motor vehicles was abolished and the tax on fares for the mass transport of persons was reduced.

(2) *The Development of Fiscal Law in the so-called Protectorate of Bohemia and Moravia* (March 1939—May 1945)

Two main objects of interference by the occupying power in the fiscal legislation in the so-called Protectorate: adaptation to Reich legislation and the attainment of maximum yield for military purposes. — Main types of changes: owing to the inclusion of the Protectorate customs, Reich legislation concerning customs duties and consumption taxes was extended to the Protectorate, thus necessitating the adaptation of the turnover tax. — The income tax introduced later came to life only in the form of a tax on wages; also the corporation tax and the corporations profits tax were

introduced but not assessed. — Changes in the other direct taxes and some new kinds of taxes (periodical tax on property, tax on emigration, handing over profits). — Extensive changes in the transfer taxes and stamp duties. — Questions of double taxation.

The survey of fiscal legislation for the period of occupation in territories which were amputated from Czechoslovakia and taken over by neighbouring countries as a result of the Munich and Vienna decisions, is more or less the registration of the temporal advance made by the Germans when adapting the legal order of these territories into the legal order of the metropolitan territories. The Germans were not so intensively interested in the adaptation of Slovak legislation and did not exert such a heavy pressure on it, so that on the whole the Czechoslovak pre-war system remained unchanged there. For this reason the main problem during the whole war remained the so-called Protectorate of Bohemia and Moravia, which, in spite of amputation of the territory, remained economically strong and a comparatively compact and distinct territory in the heart of the Reich; and its population sturdily resisted German attempts to absorb the country.

In the fiscal legislation of the Protectorate it is characteristic from the formal point of view that, except in the sphere of customs and consumption taxes, the adaptation to Reich legislation was not carried out by the direct introduction of Reich laws, but only in the form of Protectorate legal regulations with a view to the differing Protectorate circumstances. It never went as far as a general reception of Reich fiscal regulations.

Adaptations of fiscal legislation had mainly two objects: to extract the maximum amount of taxation for German purposes, and to adapt to the limit the existing legal system to the Reich pattern for the purpose of facilitating the domination of the occupied territory. This object was not attained during six years of occupation; nevertheless the former Czechoslovak fiscal system was upset and the most important branches were accommodated to the Reich pattern. In this connexion we would mention that certain — not unimportant — measures by the occupying power remained only on paper. The Czech authorities found pretexts for constantly delaying their application.

The relation between direct and indirect taxation was considerably changed during the war in favour of direct taxation. In the

year 1944 of the total of State revenues (100%) income tax amounted to 32.94%, other direct taxes 19.90%, therefore total direct taxation 52.84%; turnover tax 14.31%, customs duties and consumption taxes 24.41%, financial monopolies 0.88%, and transfer taxes and stamp duties 7.56%. The absolute figures, which during the war were greatly increased by inflation, are still more characteristic, especially when we realize, in comparison with the pre-war period, that they concern the rump territory dismembered by the Munich Agreement. In 1937 income tax yielded, 1,157 million Kčs for the whole of Czechoslovakia; in 1944, however, 4,986 million Kčs in the Protectorate territory, whereas restricted civil consumption and other economic phenomena caused by the war reduced consumption taxes, monopolies, and import duties from 4,358 million Kčs to 3,829 million Kčs in spite of considerably increased rates of consumption taxes.

The legislative development on the whole was as follows:

(*a*) *Customs Inclusion*

The principle of customs union of the so-called Protectorate with the Reich customs territory was expressed in Hitler's decree concerning the establishment of the Protectorate of March 16, 1939.

The first measure giving effect to this principle, at least on a minor scale, was the introduction of the so-called *war surcharge on beer, tobacco goods, cigarette paper, sparkling wine, and alcoholic products* shortly after the outbreak of war (ordinance of September 15, 1939, Official Gazette of the Reich Protector, page 146).

After several postponements the Germans resorted to the first fundamental measures at the end of September 1940. They promulgated the so-called customs inclusion of the Protectorate with effect from October 1, 1940. The customs frontier between this territory and the Reich was abolished, and the Czechoslovak customs regulations, consumption taxes, and monopolies, were substituted by the Reich regulations (ordinance of September 16, 1940, RGBl, I, page 1238), introducing the Reich *customs law* and *customs tariff*, also the *laws concerning the tax on tobacco, sugar, salt, beer, the alcohol monopoly, tax on sources of light, playing cards, artificial sweetening substances, mineral oils, fats, slaughterings,* and the equalization *turnover tax on importation.* At the same time

the *Reich tax order* was applied, together with the *law concerning tax adaptation* and the *law concerning the consequences arising from tax limits*. Only the Czechoslovak taxation on matches (with the exception of pocket lighters) was left in force for the time being; it was replaced half a year later (ordinance of March 25, 1941, RGBl. I, page 165) by the Reich *law concerning the lighter monopoly* and the *law concerning the tax on lighters*.

Taxes collected according to these regulations were administered by Reich financial organs and the proceeds flowed to the Reich Treasury.

With regard to customs duties, we would mention further that, in the period from Munich to the customs inclusion, provisions were made for customs-free relations of the so-called Protectorate with the amputated frontier districts, with Slovakia, and with the territory temporarily annexed by Poland (from the Protectorate side this was carried out by the Government ordinance of February 24, 1939, No. 40 Colln., of April 28, 1939, No. 127 Colln., and of the same day No. 131 Colln.).

Simultaneously with substituting Czechoslovak regulations concerning customs duties and consumption taxes by the German regulations, the Protectorate Government had also to adjust the turnover tax to fit in with the Reich pattern. On October 1, 1940, therefore, two Government ordinances dated September 25, 1940, Nos. 314 and 315, 1940, Colln., came into force. The new arrangement brought a reduction of the previous rate of 3 % to 2 %; the rate of 1 % for deliveries of agricultural products remained, but its conditions were also adjusted to Reich law; a ½ % rate was introduced for wholesale deliveries and deliveries of certain raw materials and semi-products wholesale, the so-called prolonged import, the first wholesale deliveries of imported raw materials, semi-products, and fodder and others being free from tax. The previous lump-sum payments of the turnover tax were abolished. Deliveries from the Protectorate to Germany and vice versa were from this time subject to the same taxation as inland deliveries. The expression „enterprise" was defined as the total of all trade activity or the business of an entrepreneur. As the tax was assessed by the financial authority in whose district the head office of the enterprise was situated, and as important enterprises in the Protectorate had be-

come parts of concerns with their seats in German territory, the yield of the turnover tax of these enterprises flowed to the Reich Treasury through these Reich head offices. Otherwise the yield of the tax flowed to the Protectorate Treasury. Tax favouritism for wholesale deliveries mainly cheapened deliveries for the Reich (especially for the armed forces), as these deliveries were always declared as wholesale deliveries.

For the purpose of turnover tax the Government ordinance of May 29, 1941, No. 297 Colln., introduced the obligation for entrepreneurs to keep certain records.

(*b*) *Introduction of Income Tax on the Reich Model*

With regard to the development of income tax we would first mention measures of temporary importance. By the Government ordinance of November 9, 1939, No. 281 Colln., *a special tax on the interest of savings deposits* was introduced which, with its linear rate of 5 %, was to affect interest on savings which had hitherto escaped taxation by being concealed. This tax was deducted by the interest payer. Interest subject to this tax was excluded from taxation by income tax. The tax had a comparatively low yield and was abolished from April 1, 1943 (Government ordinance No. 234/1943 Colln.).

The Government ordinance of February 29, 1940, No. 162 Colln., fixed three special scales of income tax according to the number of members of the family, increased the rate of income tax, and adjusted analogously the extent of the tax deduction effected by employers from salaries paid; in the case of tax deducted a special surcharge was fixed for unmarried taxpayers. The salaries of members of the family were counted into the income of the head of the household, if the total income exceeded a certain, very low, fixed minimum income.

The fundamental change in income tax, however, came in the year 1943. An ordinance was issued concerning *the tax on wages* (of April 22, 1943, No. 105 Colln.) and an ordinance concerning *income tax* (of August 9, 1943, No. 233 Colln.), formulated according to the Reich model. According to these adjustments income tax was to be collected:

(a) by a deduction from the income from non-independent work, i. e. from salaries (*tax on wages*) and from incomes from the proceeds

of capital (dividends, interest, participation in private limited companies and in profitmaking and economic co-operatives, etc.); this deduction tax was called in the ordinance a *tax on capital proceeds;*

(b) by direct payment on the basis of an official assessment in the remaining cases.

This ordinance classified taxpayers into four groups; all unmarried persons belonged to the first on principle, the second included married people without children in certain circumstances, the fourth comprised people entitled to tax relief for children, and the third was intended for the remaining persons. Jews, Poles, and gypsies were affected by discriminating regulations.

The rate of the tax, very heavy especially in the first group, was increased for Protectorate nationals (i.e. for Czechs) by a *war contribution* introduced by the Government ordinance of April 28, 1943, No. 115 Colln. Jews, Poles, and gypsies were again discriminated, namely by a special surcharge to income tax, called the *social adjustment tax,* to the extent of 15 % of the income (ordinance of May 3, 1943, No. 119 Colln.); this title was derisive as the tax did not adjust social differences but served only for national and racial discrimination.

The tax on wages began to be collected on June 1, 1943; otherwise the income tax should have been imposed for the first time for the assessment period 1943 (calendar year 1943); this regulation should have abolished the previous Czechoslovak regulation concerning the so-called fiscal year, which was the year following the calendar year in which the income was received. Up to the national liberation, however, this income tax was not realized owing to continual postponement of assessment.

(c) *Introduction of Corporation Tax*

The second main group of interference with the system of direct taxes came at the beginning of 1944 in the sphere of the special profits tax (of a tax affecting the proceeds of capital societies). Up to that time this tax was affected practically only by the introduction of a 40 % state surcharge and an increase of the rates at the end of 1938; this surcharge was increased to 160 % in 1941 (Government ordinance of September 18, 1941, No. 380 Colln.).

The same regulation increased from 70% to 85% the maximum limit which the special profits tax, with all surcharges for local government authorities, was permitted to take from the net proceeds subject to the tax.

The Government ordinance of December 29, 1943, No. 4 of the year 1944, however, abolished the special profits tax and introduced the *corporation tax* and the *corporation profits tax* on the Reich model. The ordinance of the same day, No. 5, 1944 Colln., ordered the preparation of *starting balance sheets* as from January 1, 1943, or, in the case of a commercial year not coinciding with the calendar year, from the end of the commercial year ending in 1942. The *war surcharge* was to be collected together with the corporation tax.

The regulations of these taxes should have been applied for the first time for the assessment period 1943, but by various delays it was possible to prevent assessment till the national liberation in 1945. This group of German interferences, therefore, failed in the intended effects; after the liberation we were able to reintroduce the Czechoslovak pre-Munich system; its only practical result was that we had to deal with a block of tax obligations not assessed for several years.

(*d*) *The other Direct and Related Taxes*

The *general profits tax* was not fundamentally changed during the occupation, Certain changes, which we have mentioned in dealing with the special profits tax, affected also the general profits tax. The Government ordinance of October 19, 1944, No. 238 Colln., adapted this tax to certain principles of the German system, especially also the introduction of the corporation tax.

The interest tax collected direct and the *tax on higher salaries* were abolished from January 1, 1943; the *deductible interest tax, extraordinary tax on dividends and interest on certain securities*, and the *special tax on the interest of savings deposits* were abolished from April 1, 1943 (Government ordinance of August 10, 1943, No. 238 Colln.).

The change in the fiscal year ordered for income tax by the aforementioned Government ordinance, No. 233, 1943 Colln., was fixed for all direct taxes by the ordinance of January 5, 1944, No. 6 Colln.

The sphere of the *land tax* was enriched by two surcharges during

the occupation. By the Government ordinance of February 29, 1940, No. 162 Colln., a surcharge to the extent of 1 % of the basis of the tax was introduced, which accrued to the State. Moreover, according to Government ordinance No. 294/1942 Colln., members' contributions were collected from the year 1943 for the Agricultural and Forestal Union as a surcharge to the land tax. Later it was determined that this surcharge amounts to 100 % of the tax.

The *house tax* was affected only by smaller changes, especially in the range of tax reliefs.

Of the direct taxes of the German system the *periodical property tax* (Government ordinance of December 16, 1942, No. 410 Colln., applied and supplemented by the Government ordinance of May 14, 1943, No. 1943, No. 144 Colln.) was introduced in addition to the income tax, corporation tax and the corporation profits tax. Physical persons and some corporate bodies were subject to this tax. The basis of the tax was the net value of all properties; the state was ascertained on the fixed day according to the regulations of the valuation ordinance (Government ordinance of December 16, 1942, No. 411 Colln., and Government ordinance of May 25, 1943, No. 145 Colln.). The rate of the tax was 5 % of the basis.

Dividends of capital societies were affected by an *impost on dividends* introduced by the Government ordinance of April 22, 1942, No. 141 Colln. This impost was intended only for the period of the war. Excessive distribution of profits was affected by this taxation, i.e. profits exceeding 6 % of the capital of the company. The rate of the tax was 50 to 400 % of the excessive profits distributed.

As a tax originally only temporary the *tax on removal* was introduced in 1939 to affect people fleeing from the occupation régime (Government ordinance of November 23, 1939, No. 287 Colln.). The object of the tax was all net property of emigrant wherever it was situated. The tax amounted to 25 % of the net value of the property on the day of removal. The effect of this ordinance was prolonged repeatedly, and later indefinitely.

Ordinances concerning *the handing over of profits* endeavoured to absorb increased war profits, which formed an excessive purchasing power. Doubts were expressed as to whether this was a tax, or a reserve of the taxpayer for a certain purpose. These doubts

were settled by the budget law for the year 1946, which declared these receipts to be regular State income.

The first of these ordinances, Government ordinance of September 18, 1942, No. 327 Colln., concerned the handing over of exceptional profits of entrepreneurs for the year 1941; profits were ascertained by a comparison of the net proceeds of the enterprise in 1939 with those of 1941. Physical persons had to pay 25 %, and enterprises subject to the special profits tax 30 %, of the exceptional increase in profit. An exceptional increase was defined as the sum by which the profits attained in 1941 exceeded double the profit of the year 1939.

The second ordinance concerning handing over profits, that of May 6, 1944, No. 114 Colln., fixed an analogous obligation for the year 1942, but under stricter conditions. The third ordinance (Government ordinance of January 2, 1945, No. 1 Colln.) fully changed the principles for calculating profit. It was never applied, however, and in that year nothing more was paid for handing over profits.

The total working mobilization brought the so-called simplifying ordinances (ordinances of the Minister of Finance of September 30, 1944, No. 236 Colln., and of March 3, 1945, No. 33 Colln.). These ordinances endeavoured to simplify and limit the activity of financial offices to a minimum. They established the possibility of issuing provisional demands for payment on the basis of particulars mentioned in the taxpayers' returns, established reliefs in time limits, simplified to the utmost regulations concerning delivery and appeals; assessment was postponed indefinitely and the taxpayers had to calculate their taxes themselves and pay accordingly, the assessments for the year 1943 were to have been valid in principle for the two following years, etc. In the case of turnover tax those entrepreneurs who were to pay taxes on the basis of several different rates were ordered, to simplify the work in the enterprises, to pay the tax on principle at an average rate.

(e) *Transfer Taxes and Stamp Duties*

The year 1942 became the turning point for transfer taxes and stamp duties. At that time a Reich tax for protection against fire was introduced, the Czechoslovak transport taxes were replaced

by taxes of a Reich coinage, the stamp-duty law for bills of exchange was modified, and the tax on mortmain estates was abolished.

The receipts of insurance payments for fire insurance were subject to the *tax for protection against fire* (Government ordinance of January 3, 1942, No. 41 Colln.). The tax amounted to 6 % and affected both the insurance company and the insured, who each had to pay one half. The yield of this tax was reserved for the support of fire-fighting measures. This tax replaced the former fire-brigade contribution, which was collected for the local government authorities and not for the State Treasury.

The following were abolished in the transport sector: The Czechoslovak law concerning *transport taxes* and tax *on fares for the conveyance of passangers by railway*, as well as the law concerning the *tax on fares for the mass conveyance of persons in motor vehicles*. In their place a *tax on transport by railways* was introduced according to the Reich model (Government ordinance of July 31, 1942, No. 282 Colln.), and the *tax on transport by motor vehicles* (Government ordinance of July 27, 1942, No. 281 Colln.), which appeared in two forms, as a *tax on passanger transportation*, and as a *tax on transportation of goods*. The tax on transport by railways was assessed from payments for transport at various percentages according to whether it was the transport of persons (and in what class of carriage), luggage, or goods; a special rate applied for tramways. The tax on transport by motor vehicles concerned the transport of persons, carried on as a trade or in vehicles belonging to the Protectorate Railways. Transport of goods was subject to a tax for distances in excess of 50 km from the station of the vehicle. The tax for the transport of persons amounted to 2 % of the net fare in local traffic, and 12 % for distant traffic. The tax for the transport of goods amounted to 7 % of the net freight rate. In the case of all these taxes the person who paid the fare or the freight was the taxpayer.

The Czechoslovak stamp duty bills of exchange was replaced by the *tax on bills of exchange* which took over the German regulations to a considerable extent (Government ordinance of November 20, 1942, No. 385 Colln.). On January 1, 1943, the tax on mortmain estates was abolished (Government ordinance of December 16, 1942, No. 412 Colln.) with a view to the periodical tax on property

introduced at the same time. Apart from this, many taxes included according to Czechoslovak regulations under the heading „Stamp Duties" (on cheques, invoices, and other business documents) were abolished by a number of measures, further the regulations concerning the collection of some duties by deduction were abolished, and many reliefs from imposts were granted.

(f) Questions of Double Taxation

The Protectorate had not an independent international legal subjectivity; the German Reich acted on its behalf and the agreements of the Reich with other countries concerning the avoidance of double taxation usually applied to the Pretectorate (see the agreement with Croatia of December 19, 1942, RGBl. II of the year 1944, page 11), or extended to it (exchange of notes with Switzerland of June 15, 1942, and with Hungary of October 24, 1942). The Protectorate tax law was also affected by Reich ordinances concerning the avoidance of double taxation in the sphere of direct taxation in relation with Norway (of October 20, 1943, RGBl. II, page 411) and with Greece (of June 15, 1944, RGBl. II, page 47).

(3) *Changes in Fiscal Law in Slovakia* (March 1939 to April 1945)

The original Czechoslovak law maintained on the whole in Slovakia — Partial modifications due to changes in political circumstances (limitation of the State territory; acquisition of international legal subjectivity as impulse to the concluding of treaties concerning the avoidance of double taxation) — Further changes affected to promote economic expansion (especially support for investment activity) — Many changes resulting from the war (increasing of rates and more severe conditions; introduction of war surcharges and war taxes) — Hunting tax — Taxation of holdings.

Whereas the so-called Protectorate of Bohemia and Moravia presents a picture of nearly full reconstruction of the tax system, Slovakia in the same period is characterized by comparative calm. Although this certainly was not the intention of those who called the Slovak State to life under German patronage, the amputated Slovakia became a sort of reservation of Czechoslovak legal order, at least in certain branches including taxation legislation. It was not least to its advantage that Slovakia at first did not participate actively in the war, and that it enjoyed the war economic boom.

This situation, however, changed radically after the national rising in August 1944. The initial intensive life of peace, accompanied by extensive investment activity, later the increasing pressure of the danger of war and the accelerated speed of the fall in the purchasing power of money, gave rise to many changes But neither of them had any serious structural importance.

We cannot well follow the change in effect of the individual tax groups for the State Budget as compared with the pre-war period, as, before the war, the tax burden of economic activity in Slovakia was not precisely separated statistically, and was not even separable from the same burden of the Czech Lands. In the year 1943 direct taxes of the total fiscal yield (100 %) amounted to relatively much more than in the scale for the whole of Czechoslovakia in 1937, namely 28,7 %. Turnover tax amounted to only 20,6 %, customs duties fell to 3,7 %, stamp duties to 12,3 %, whereas indirect taxes and monopolies showed on the whole the same importance (21,5 %), and the yield of the tobacco monopoly was even increased (13,2 %).

The changes effected in the Czechoslovak fiscal law valid in Slovakia can be roughly divided into three groups: changes arising from the fact that Slovakia began to appear as an independent state; changes for the purpose of supporting economic development which, in the first years of the war, found very favourable conditions in Slovakia; and finally changes brought about by Slovakia's participation in the war. This participation enforced partly the equalization of the bounding price and income level by the valorization of tax rates, partly absorbed the excessive purchasing power being formed, and partly necessitated the creating of means for war expenditure.

(a) Changes Justified by the Formal Independence of Slovakia

The organization of Slovakia as an independent state gave rise to the need to deal with the question of territorial sovereignty in the sphere of direct taxes. The Government ordinance of April 18, 1939, No. 64 Sl.C., determined that „inland" is to be understood only as the territory of Slovakia, and that taxpayers who had hitherto been taxed outside this territory are under the obligation to make a new tax return by the end of April 1939 of the income arising from sources in Slovakia. In so far as these taxpayers had

kept proper books of accounts, they were under the obligation to establish an initial balance sheet for entreprises (plants) in Slovakia.

The Government ordinance of March 14, 1939, No. 2 Sl.C., determined that the territory of Slovakia is an independent customs territory. By the law of November 25, 1941, No. 258 Sl.C., a new *autonomous customs tariff* was published for this territory, but it did not differ substantially from the Czechoslovak tariff.

The *turnover tax* and *luxury tax* also received a new formal adjustment. A number of older and newer supplements amending the regulations of the Cxechoslovak law concerning this tax were codified by the law of October 15, 1942, No. 210 Sl.C. The registration of cartel agreements according to the regulations concerning the *cartel tax* was introduced by the Government ordinance of May 2, 1939, No. 93 Sl.C. The partners of cartel agreements relating to branches situated in Slovakia and subject to the cartel tax were instructed to present a notification of these agreements. The validity of the regulations concerning the cartel tax was gradually prolonged (finally to December 31, 1946).

A new formulation of the regulations concerning the *monopoly of artificial sweetening substances* is contained in the law of December 20, 1940, No. 329, Sl.C., and a new formulation of the regulations concerning *taxes on official acts in administrative matters* was determined by the law of December 20, 1940, No. 340 Sl.C., without in either case coming to considerable changes of the contents.

In a supplement to the law concerning direct taxes (of June 26, 1941, No. 130 Sl.C.), the regulations concerning income tax were more closely adapted to Slovak civil law beside other changes.

The formal independence of Slovakia also brought with it the necessity of solving questions of *double taxation*. On June 21, 1941, an agreement was concluded with Germany concerning the prevention from double taxation in the sphere of direct taxes (No. 191, 1941 Sl.C.). On December 4, 1939, an agreement was made with Rumania concerning the avoidance of double taxation in river transport enterprises (No. 133, 1943 Sl.C.).

The first of these agreements determined that taxes which affect income from real estate are to be collected only on the territory of the contracting party where the property is situated. Taxes which affect income from enterprises or from participation in enterprises

(e.g. from shares) are collected on the territory where the enterprise has its plants. If it has plants in both territories, each of the contracting parties collects taxes on that part of the income which arises from the activity of the plants on the territory in question. Taxes from the activities of shipping and air-transport enterprises are collected only on the territory where the head office of the enterprise is situated. Taxes on incomes paid by corporations under public law (e.g. the State) are collected in the debtor's State. Otherwise taxes affecting incomes from wages or incomes from free occupations are collected in the territory where the activity resulting in the income is carried out. Taxes on incomes from capital property and other incomes not specially mentioned are collected in the place where the taxpayer resides.

The second agreement determined that Slovak and Rumanian transport enterprises on the river Danube are subject to taxation only where they have their head office. Their activity covered by this regulation included also all activity in ports. Income from real estate, however, is taxed where the property is situated.

(*b*) *Adjustments in Support of Economic Development in Slovakia*

In the part concerning Protectorate tax legislation we nearly completely avoided mention of tax reliefs granted for the purpose of economic development; the economic development of the Protectorate was not an aim of the occupying power. For this reason any reliefs worth mentioning were fully in the background of the other interferences of the occupying power in the system of fiscal law. In Slovakia, however, the support of economic development was such an important component of fiscal legislation that we cannot overlook it fully.

In the year 1940 several regulations concerning reliefs for investment activity were published. After the Government ordinance of March 28, 1940, No. 76 Sl.C., and after the ordinance with the force of a law of May 8, 1940, No. 122 Sl.C., which determined exceptional depreciations for buildings and other investments, the important law of November 26, 1940, No. 307 Sl.C., concerning tax reliefs for investments, was published. This law permitted the formation of an untaxed investment reserve up to 40 % of the net

profit shown in the balance sheet, but to a maximum of 50 % for expenditure for building investments or new machinery and other equipment. Apart from ordinary depreciations this law permitted an exceptional of 50 or 70 % of the expenditure for the investments made in the years 1940 to 1942. The expenditure in this period for any equipment to increase the spiritual level of employees, and serving for their recuperation and the maintenance or improvement of corporal power of resistance, were recognized as deductible sums at the assessment. In the same way expenditure for the replacement of machinery and adaptation of works buildings was declared as deductible. All these advantages applied for income tax, and for the general and special profits tax. Several further ordinances granted tax reliefs in the sphere of the house tax for expenditure on house repairs.

And, on the other hand, there were reliefs on account of war damage to material, the granting of which became necessary in 1944 by the progress of war events (law of July 19, 1944, No. 104 Sl. C.).

(c) *Changes Caused by the War*

The increase of the price and income level automatically increased the yield of certain taxes. In so far as the rates of these taxes were progressive, taxes automatically became more oppressive. However, in spite of this the legislator sharpened the tax regulations in various directions, both in important outlines and in details, as is shown by the Government ordinance of July 4, 1939, No. 160 Sl.C.; from the year 1943 war surcharges and new taxes were introduced. The law of February 29, 1940, No. 60 Sl.C., deepened the regulations concerning the deductible interest tax. With this tax the law also caught the interest from Post Office Savings Bank accounts, and considerably increased the tax on interest from savings deposits (from 9 to 20 %); it increased the tax on interest from deposits in banking institutions from 6 to 16 % (later this was also increased to 20 %); and interest on accounts in the Post Office Savings Bank were subject to a rate of 10 %.

The Czechoslovak extraordinary tax on dividends and interest of certain securities was extended by the law of July 31, 1941, No. 181 Sl.C., to capital companies, co-operatives, and profit-making enterprises in which foreign capital societies participate

to at least 50 %. The rate of the tax was increased by 100 up to 400 %, according to the relation between the taxed proceeds and the nominal value of the capital.

The fixed rates of certain indirect taxes and stamp duties were subject to various increases. This was the case, for instance, in the *tax on alcohol, general tax on beverages* (wine), *tax on sparkling wine*, and the *tax on beer*. Also in the case of the tax *for official acts in administrative matters* certain rates were increased by the Government ordinance of December 21, 1940, No. 368 Sl.C. The increase in the fixed scale of the stamp duties was effected by the law of January 27, 1942, No. 14 Sl.C., and the law of October 28, 1943, No. 138 Sl.C. The 30 % surcharge introduced by the Government ordinance of December 16, 1944, No. 45 Sl.C., was part of the stamp duty.

The increase of the economic figures, however, was respected in favour of the taxpayers too; thus the law of December 22, 1943, No. 175 Sl.C., increased the tax-free minimum for income tax from 7,000—11,000 Ks to 12,000—17,000 Ks.

War surcharges were added to a number of direct and indirect taxes. For several of their the form of an independent war tax was chosen. Thus from incomes subject to income tax, in so far as they arose from lottery winnings, speculative profits, royalties, authors' fees, and alimony, a 10 % *war tax on higher incomes* (law of July 19, 1944, No. 105 Sl.C.) was collected under certain conditions in the fiscal year 1944. The law of July 8, 1943, No. 107 Sl.C., introduced for those taxpayers of the general or special profits tax who attained an increase of their incomes from profit-making enterprises; a *tax on war profits*. The rate was 25 % of the war profit for taxpayers paying the general profits tax, and in principle 35 % of the war profit for taxpayers paying the special profits tax. The same law introduced a war surcharge to the land tax to the amount of 100 % of the tax, and a war surcharge to the house class tax (also to the extent of 100 % of the assessed tax). To the *tax on higher salaries* adjusted by the law of November 12, 1941, No. 250 Sl.C., a 100 % surcharge was introduced by this law.

War surcharges to the *tax on alcohol, general tax on beverages, tax on sparkling wine*, and the *tax on beer*, were collected in accordance with the law of February 25, 1943, No 17 Sl.C.; at the

end of the same year and in 1944 these surcharges were increased.

Slovakia also had certain forms of handing over profits. One part of this fell within the sphere of activity of the Ministry of Economy, the Supreme Office of Supply, and the Slovak National Bank, in the form of contributions to the price equalization funds. Export profits were limited by the regulations of the Government ordinance of November 6, 1943, No. 145 Sl.C., by which it was determined that 5 % of the export value in Slovak Crowns is to be deducted and deposited in favour of the exporters on special deposit books at the Post Office Savings Bank. Owners were to use these deposits for the settlement of *post-war* deliveries from Germany, and for the purposes determined by the Ministry of Finance.

An arrangement similar to a considerable extent was intended for entrepreneurs' profits by the Government ordinance of December 13, 1944, No. 240 Sl.C.; this ordinance, however, never came to life.

We should like to conclude the report on Slovakia with two references concerning specific Slovak adjustments. The first is the regulation of hunting taxation, carried out by the Government ordinance of June 26, 1939, No. 162 Sl.G., concerning the *tax on hunting*, which replaced the former tax on guns and hunting taken over from Hungarian law. In the Czech part of the Republic there was nothing analogous to this tax.

The abovementioned law of June 26, 1941, No. 130 Sl.C., regulated the question of *holdings* in a different manner than the law of the year 1927 concerning direct taxes. The new adjustment referred to enterprises which kept regular books of accounts, and which could prove that they had in the course of one economic period (formerly two periods) uninterruptedly in their ownership at least 15 % (formerly 20 %) participation in an inland trading partnership or „société en commandite" which keeps regular books of accounts and is subject to the general profits tax, or 15 % (formerly 20 %) of the shares and similar participations in another inland enterprise; the law declared that participation in the profits of these enterprises is not counted in the basis for the general profits tax. A stricter procedure, which was fromerly in force in case the mentioned amount of capital participation was not fully acquired from their own means, was abolished. A similar solution was established for

holdings in the case of the special profits tax.

The Czechoslovak arrangement of the fiscal year remained in force in Slovakia.

(4) *Development in the Territories Joined up to Germany and Hungary*

It is remarkable how many regulations the Germans issued to carry out the fiscal union of the *Czech frontier territory* to the Reich. The decree concerning the so-called „Sudetenland" of October 1, 1938, RGBl. I, page 1331, maintained existing Czecholovak law in force temporarily. The first fiscal measure was the freeing of customs between this territory and the Reich (ordinance of October 7, 1938, RGBl. I, page 1392). By the ordinance of October 14, 1938, RGBl. I, page 1420, Reich customs regulations were introduced in this territory; but the part of the „Sudeten" territory which bordered on Austria was included in the Austrian customs regulations, which were brought into line with the Reich regulations only from April 1, 1939.

Then, little by little, individual Reich tax laws or parts of them were put into force either without change or with some adjustments. Thus from January 1, 1939, the German *turnover tax* was introduced there (ordinance of October 28, 1938, RGBl. I, page 1523); from November 10, 1938, the *transfer taxes*, the *inheritance tax*, and the *tax on flight of capital* were introduced, also the *Reich tax law*, the *law concerning tax adaptation*, and a number of other regulations (ordinance of November 5, 1938, RGBl. I, page 1556). At the same time the Czechoslovak regulations concerning stamp duties were abolished with the exception of the impost on playing cards. The *Reich tax on sugar* was introduced on January 1, 1939 (RGBl. I, page 1703), *income tax* was introduced with validity for the calendar year 1938, bu the *tax on wages* from January 1, 1939 (ordinance of December 21, 1938, RGBl. I, page 1837). By the same ordinance a *defence tax* and *regulations concerning the obligation to record the movement of goods* were introduced. With the ordinance of December 29, 1938, RGBl. I, page 2014, the *Reich alcohol monopoly* was introduced in the part of the borderland adjoining the Reich customs territory; in the south part, however, Austrian regulations concerning the *tax on alcohol and acetic acid* were introduced.

In the year 1939 nearly all the remaining tax branches were

adapted. From April 1, 1939, the *tax on fats* (ordinance of March 20, 1939, RGBl. I, page 630), on *mineral oils*, and an ordinance concerning the *use of alcohol for driving purposes* (ordinance of March 25, 1939, RGBl. I, page 653) were introduced. With retrospective validity from October 10, 1938, the Czechoslovak *tax on coal* and the substitute tax collected on importation were abolished (ordinance of March 22, 1939, RGBl. I, page 801). From March 1, 1939, Reich taxes were introduced on *sources of light*, on *tobacco* and on *salt* (ordinance of February 9, 1939, RGBl. I, page 169, ordinance of February 10, 1939, RGBl. I, page 211 and ordinance of February 14, 1939, RGBl. I, page 276). From April 1, 1939, the *Reich lighter monopoly* came into force (ordinance of February 18, 1939, RGBl. I, page 325, and ordinance of February 20, 1939, RGBl. I, page 326). The *corporation tax*, which substituted the Czechoslovak special profits tax, was applied for the first time for the calendar year 1939 (ordinance of April 11, 1939, RGBl. I, page 802). The *Reich tax on trading profits* according to the ordinance of April 15, 1939, RGBl. I, page 821, was used for the first time for taxation in the accounting year 1939 (1.4.1939—31.3.1940) in place of the Czechoslovak general profits tax (a special adjustment was in force for itinerant occupations). On October 1, 1939, the *Reich tax on beer* and a *tax on playing cards* were introduced (ordinance of September 14, 1939, RGBl. I, page 1933, and ordinance of August 31, 1939, RGBl. I, page 1821). With retrospective validity to January 1, 1939, the Czechoslovak tax on water power was abolished, and so, with validity from October 1, 1939, was the tax on yeast and the tax on preparations for raising dough (ordinance of October 21, 1939, RGBl. I, page 2421). The first application of the *periodic tax on property* was ordered according to the state on January 1, 1940; the valuation law was used for the first time on the same day (ordinance of September 26, 1939, RGBl. I, page 1993). The *tax on slaughtering* entered into force on November 1, 1939) ordinance of October 25, 1939, RGBl. I, page 2124). Regulations concerning the adaptation of Czechoslovak fiscal law in the borderland still occur even in the further years of the occupation, especially in the years 1940 to 1942. On account of their comparatively smaller importance, however, and owing to limited space, we do not detail them.

In the south of Slovakia, joined up to Hungary in 1938, the Hungarian tax system was introduced by an ordinance of the Presidium of the Government of December 30, 1938, No. 9.800 M.E., published on December 31, 1938, in No. 294 of the publication „Budapesti Közlöny". The applying ordinance of the Ministry of Finance of January 14, 1939, No. 200/1939 P.M., was published in No. 3 of the publication „Pénzügyi Közlöny", volume 1939.

This ordinance of the Presidium of the Government introduced Hungarian fiscal law in the south of Slovakia in principle on January 1, 1939; as from that day taxes were to be assessed, paid, and executed according to Hungarian legal norms without regard to the time of the origin of the tax obligation. Moreover, some provisional regulations, especially in the sphere of consumption taxes and the alcohol monopoly, were provided by this ordinance. In addition to formal and material legal regulations the ordinance also contains an adjustment of the personal rights of financial employees, pension and sickness measures of civil servants in general, and general regulations for the administration of money and public property, as well as for state accounting.

(5) *Period after the Liberation* (May 1945—December 1946)

Tasks of reconstructing Czechoslovak fiscal law: uniting of the territory, clearing of Nazi admixtures and adapting to the changed economic and social circumstances — Complicated constitutional foundations — Progress of renovation in the individual components of the fiscal system; initial differences in the development in the western and eastern parts of the country — By the spring of 1946 the main foundation stones of the renewed uniform fiscal law were laid — Comparatively small influence of the changed social circumstances on these first adjustments.

The national liberation and the end of the war in 1945 created new problems even for the fiscal law. It was necessary to unite this law which had been split up among four territorial entities by the occupation, each of which developed in a differend manner; it was necessary to purge it of undemocratic admixtures and from the sediment of various war measures, and to adapt it to the changed economic circumstances. It was impossible simply to renew the whole of this branch with all its features as they were in 1938; the war had too greatly changed the face of the country.

Before proceeding to detailing the development of legislation in

the years 1945 and 1946, however, we must make clear certain fundamental circumstances especially of a constitutional nature. For the sphere of fiscal law it is important that the constitutional development was not uniform in the whole of Czechoslovakia, but was solved differently in the western and eastern part of the country.

In the western part (in the Czech Lands) the constitutional decree of the President of the Republic, published in London on August 3, 1944, and concerning the renewal of legal order, was put into force. According to this decree, constitutional and other Czechoslovak legal regulations issued up to September 29, 1938, arise from the free will of the Czechoslovak people and form their legal order. On the other hand, regulations issued in the sphere of this order in the period when the Czechoslovak people were deprived of their liberty (the period of bondage) are not components of the Czechoslovak legal order. Arising from the will of the Chechoslovak legislative power, however, these regulations from the period of bondage will continue to be used in the transitional period, in so far as their contents do not conflict with the wording or democratic principles of the Czechoslovak constitution (of the year 1920 and its supplements published up to September 29, 1938). This decree was published in the territory of Czechoslovakia by a notification of July 27, 1945, No. 30 Colln., and newly arranged and again published by the law of December 19, 1945, No. 12 Colln., of the year 1946. With regard to the Government ordinance of July 27, 1945, No. 31 Colln., the period of bondage in the legal sphere of the western part of the country lasted from September 30, 1938 (September 29 is the date of the Munich Agreement) till May 4, 1945 (May 5 is the day of the Prague rising). For the sphere of fiscal law this abolished, *inter alia*, all regulations which resulted from joining up parts of the Czechoslovak Republic to the Reich, such as for instance the German regulation of customs and consumption taxes.

In Slovakia fiscal right does not know the idea of the period of bondage. The national rising, which took place in Slovakia on August 30, 1944, created a new focus of legal order in the Slovak National Council. The first of its ordinances (ordinance No. 1 of September 1, 1944) determined that the Slovak National Council executes all the legislative, governmental, and executive power in

Slovakia. All existing norms, in so far as they do not conflict with the republican democratic spirit, remained in force. Thus on principle nearly all existing fiscal norms remained in force. However, the norms published by Quisling Government in Bratislava from September 1, 1944, till the end of the occupation, did not become part of the Slovak legal order. The activity of the Slovak National Council was extensive even after the end of the war, as the central constitutional organs were renewed little by little in their full extent; this is manifested also in the sphere of fiscal law.

In the sphere of legal order in Slovakia May 5, 1945, did not count as the day of liberation, as Slovakia was liberated earlier; on the whole its liberation was terminated at the beginning of April. In Slovak legal regulations, therefore, we meet with various dates for the day of liberation. According to the ordinance of the Presidium of the Slovak National Council of March 30, 1945, No 22 Colln. S.N.C., it was generally established that on the territory of Slovakia temporarily occupied by Hungary after the Vienna arbitration of the year 1938, the validity of Hungarian norms issued during the period of occupation (i.e. after November 2, 1938) are cancelled on the day of liberation. March 31, 1945, was proclaimed as the day of liberation in the sphere of the stamp duty law (notification of the Commissioner of the S.N.C. for Finance of July 12, 1945, No. 77 Colln. S.N.C.). On the same day the validity of stamp duty regulations in force in the remaining territory of Slovakia were extended to the territory of southern Slovakia. For the sphere of turnover tax and luxury tax, Slovak law valid in this sphere was extended to the southern territory of Slovakia formerly occupied by Hungary, with validity from January 1, 1945, and to the insignificant territorial corners which were separated from Slovakia in 1938 and joined up to Germany, with validity from April 5, 1945 (notification of the Commissioner for Finance of November 10, 1945, No. 135 Colln. S.N.C.). April 1, 1945 became the decisive day for the tax on mortmain estates in the Slovak territories occupied by Hungary and Germany (notification of the Commissioner for Finance of February 11, 1946. No. 36 Colln. S.N.C.).

After this account we again turn our attention to reviewing the dynamics of the fiscal development.

The first endeavour after the revolution was to liquidate the

legislative inheritance of the occupation quickly. The decree of the President of the Republic issued in London on November 12, 1944, had already established that taxes, stamp duties, and other State revenues are to be collected according to Czechoslovak legal order, therefore excluding the regulations of the occupying powers. For the remainder of the current fiscal period after the day of liberation, but not longer than for six months, they were to be collected according to regulations hitherto applicable in the individual territories of Czechoslovakia, in so far as these regulations in their contents did not conflict with the wording or democratic principles of the Czechoslovak constitution.

This principle was more precisely expressed in the decree of the President of the Republic of August 14, 1945, No. 62 Colln., which limited the period of the temporary application of the regulations valid during the occupation to the period up to December 31, 1945, and determined that the above principle applied only in so far as a different arrangement is not made for individual territories.

This was a very suitable reservation; practice really demanded different manners of solutions for individual branches and for individual territories.

(a) Unification of Customs Regulations

The first branch in which the Republican law was re-established in the whole country was customs. By a decree of the President of the Republic of June 23, 1945, No. 25 Colln., the exclusive validity of the Czechoslovak customs law, valid up to September 29, 1938, was proclaimed from July 16, 1945, on the whole territory of the State. At the same time, however, all import duties were suspended for the period up to the end of 1945, with the exception of several small financial customs duties (on coffee, tea, spices, pineapples, almonds, and tobacco). Duty-free importation was prolonged by a Government ordinance of December 14, 1945, No. 152 Colln., for half a year, but at the same time import duties were renewed on a number of goods mainly of a luxury character. For the second half of 1946 the economic situation, improving little by little, made it possible to renew the validity of import duties on principle; however, importations of provisions, raw materials and important semi-products, technical auxiliary appliances and the like continued

to be duty free, the respective tariff items being expressly stated (Government ordinance of June 21, 1946, No. 141 Colln.). The same regulation, coupled with the crossing out of certain items on the free list, was maintained for the first half of the year 1947, too (Government ordinance of December 6, 1946, No. 219 Colln.), and this continued in half-yearly adjustments, whereby the extent of the temporary suspension of import duties was reduced or extended according to the requirements of the contemporary economic situation.

(b) Turnover Tax

The regulation of the turnover tax proved to be more difficult than that of the customs law. By a decree of the President of the Republic of October 13, 1945, No. 98 Colln., concerning provisional measures in the sphere of the turnover tax, the unification of the regulations concerning the turnover tax was attained at least for the Czech Lands. This took place with retrogressive validity to May 5, 1945. It was carried out in such a way that the regulations issued in the Protectorate during the occupation were adapted to the changed constitutional circumstances and extended to the Czech borderland; the temporary autonomous adjustment in Slovakia, which will be dealt with later, had the result that Slovakia had to be temporarily proclaimed foreign territory for the sphere of the turnover tax.

This decree also abolished the so-called average rate of turnover tax introduced in the Protectorate by the second simplifying ordinance (No. 33/1945 Colln.). The luxury tax, well known to pre-war Czechoslovak law, was not renewed.

In Slovakia, where the original Czechoslovak regulations for turnover tax and luxury tax together with lump-sum payments were maintained in a slightly changed form, the ordinance of the Slovak National Council of July 2, 1945, No. 60 Colln. S.N.C., preserved this system for the assessment of taxes for the year 1944 also. It was determined that for the year 1944 the assessment of this tax for the year 1943 would be valid with an increase of 20 % without issuing a new demand for payment. Regular assessment should take place only in the case of new taxpayers, large taxpayers (with a total payment exceeding one million Ks), or for taxpayers

who request assessment or for whom the office itself recognizes assessment as justified. Mention has already been made of the extension of Slovak regulations concerning turnover and luxury taxes to southern Slovakia.

The unification of the regulations concerning turnover tax were made for the whole country by the law of February 21, 1946, No. 31 Colln., with validity from March 1, 1946. On the whole this law renewed Czechoslovak pre-Munich law concerning the turnover tax and once more regulated details. However, neither the luxury tax nor the collection of the turnover tax for supplies and services of non entrepreneurs was renewed. The law renewed the possibility of lump-sum tax payment; but nevertheless no such payments were introduced and even the regulations of lump-sum payments existing in Slovakia were abolished by this law. The only exception are the lump-sum payments introduced generally for small farmers.

Instead of a rate of 2 % with a supplement of 50 %, introduced in 1935, a basic rate of 3 % is established, which is increased to 5 % in the case of enterprises with a larger number of branch offices and for one-price firms. The reduced rate of 1 % remained for agricultural and foodstuff products. The entrepreneur is not entitled to invoice the turnover tax either in full or in part; exceptions are determined especially for cases where price regulations fix prices expressly as excluding turnover tax. Applying instructions for this law are contained expecially in the Government ordinance of December 10, 1936, No. 233 Colln.

(c) *Direct Taxes*

Still more complicated problems arose in the adjustment of direct taxes, mainly because this group of taxes was profoundly reconstructed in various directions during the occupation; because it was also necessary to adapt the original tax rates to higher economic figures; and because it became necessary to get rid of the balast of unassessed taxes for several years.

For this reason normative order was carried out first separately for the Czech Lands and for Slovakia. In the Czech Lands this took place by decrees of the President of the Republic of October 13, 1945, No. 97 and 99 Colln. Taxes introduced by the Germans in

he so-called Protectorate were abolished by these decrees (including ordinance No. 5/1944 Colln. concerning initial balance sheets).

The first of these decrees (No. 97) concerns the *special profits tax.* The validity of the pre-Munich regulations concerning this tax was renewed by it, although with certain changes.

In this decree we meet again the institution of fiscal year according to Czechoslovak pre-war law. The general displacement of the assessment period introduced by the occupying power by Government ordinance No. 6/1944 Colln., was abolished from the beginning by the second of these decrees. Further, the decree No. 97/45 Colln. established new rates for the special profits tax, in which were also included surcharges for the State and local government authorities which had formerly been fixed separately. In future the special profits tax is no longer the basis for any surcharges; local government authorities now receive State allowances instead of this, so that this part of public needs now passes through the State budget. For this reason the basis of the special profits tax is relatively high, viz. 60 % of the net profits. The rate is reduced in the case of certain subjects enjoying advantages. For profit-making and economic societies it is 7 %, for building associations 4 %, and for savings banks it can be reduced to as little as 2 % according to the amount of their financial means. This tax was renewed for the territory of the former Protectorate with validity for the fiscal year 1943 (economic year 1942). For the Czech borderland it came into force from the fiscal year 1946. In this territory the assessment of the German corporation tax and the German tax on trading profits for the year 1943 is considered a legal assessment for the calendar years 1944 and 1945 also.

In Slovakia it was simply determined that the assessment of a special profits tax for the fiscal year 1944, collected according to the regulations from the time of the so-called Slovak State, is valid for smaller taxpayers for the fiscal year 1945 also (ordinance of the Slovak National Council No. 69/1945 Colln. S.N.C.). The Slovak regulations concerning the special profits tax were applied to the Slovak territory occupied by Hungary in 1938, beginning with the fiscal year 1946, by notification No. 77/1945 Colln. S.N.C.

The second of the two decrees (No. 99/1945 Colln.) renewed in principle in the Czech Lands, with the exception of the borderland,

the validity of the Czechoslovak law concerning direct taxes for the fiscal year 1943 and the following years, although with certain variations. It did not yet affect the regulations concerning the deductible tax on wages. The Czechoslovak regulations concerning the defence contribution, however, were abolished with validity from June 1, 1943, respectievely from the fiscal year 1944. The decree determined that for the fiscal year 1943 the income taxed in the fiscal year 1942 is in principle automatically the basis of the tax obligation in the case of income tax and the general profits tax for smaller taxpayers; analogously the income (yield) which is taxed for the fiscal year 1944, will be valid for the year 1945 too. For assessment for the years 1944 and 1945 the income-tax rates fixed by the Protectorate ordinance No. 233/1943 Colln., will be used. The validity of the regulations of the law concerning direct taxes was renewed beginning with the fiscal year 1945 for the taxes on real estate (the land tax and house tax).

In the Czech borderland assessment and collection of direct taxes were left according to German regulations till the fiscal year 1943; the assessment of the fiscal year 1943 applied for the years 1944 and 1945. Tax obligation newly arising in the calendar year 1943 or later, however, was already judged according to the Czechoslovak law concerning direct taxes. The regulations of the law concerning direct taxes were applied from the day this decree came into force for the term of payment, accounting, collection, enforcement, etc. Later, with validity from the calendar year 1942, the tax on higher salaries was to be collected, and with validity from the calendar year 1943 also the war contribution, according to Government ordinance No. 115/1943 Colln.

In Slovakia it was determined that the assessment of direct taxes for the fiscal year 1944, according to the regulations valid in the so-called Slovak State, is also valid for the fiscal year 1945 (ordinance of the Slovak National Council No. 59/1945 Colln. S.N.C.). In southern Slovakia occupied by Hungary in 1938, the Slovak regulations concerning direct taxes were put into force by a notification of the Commissioner of Finance of July 12, 1945, No. 77 Colln. S.N.C., beginning with the fiscal year 1946. For the previous years taxes were to be collected according to the Hungarian legal regulations. Special arbitration commissions, in which

laymen acquainted with local circumstances participated, were established for decisions concerning legal remedies presented according to Hungarian regulations. Reliefs in the terms of limitation arising from exceptional circumstances caused by the war or the state of readiness for the defence of the country, were determined in Slovakia by the ordinance of the Slovak National Council of July 25, 1945, No. 84 Colln. S.N.C.

It was only at the end of 1945 that a law *concerning the unification of income tax* was issued (law of December 20, 1945, No. 161 Colln.). This law introduced a unifrom rate of deductible income tax from January 1, 1946, and also adapted to this rate the scale of the tax assessed on the basis of an income-tax return. The German regulations concerning the tax on wages were abolished. The minimum tax-free income was increased to 15,000 Kčs per year, eventually up to 40.000 Kčs according to the number of members of the family.

This law, except for this minimum, still did not take into consideration the formation of the new income and price levels which had taken place at the end of 1945. This was not affected till the law of October 25, 1946, No. 202 Colln., which, for the purpose of supporting working morale, freed from income tax salaries paid for overtime and for higher output, and determined that the income of members of the household is not to be counted in the income of the head of the family (thus they do not contribute to the progressive taxation of the head of the family).

(d) Transfer Taxes and Stamp Duties

In the sphere of transfer taxes and stamp duties, the tax on mortmain estates was first renewed. The decree of October 23, 1945, No. 107 Colln., determined that this tax will again be collected in the Czech Lands from July 1, 1945. The regulations concerning stamp duties, transfer taxes, and taxes on official acts in administrative matters, valid in the inner territory of the Czech Lands, were also applied to the borderland by the afore-mentioned decree No. 99, 1945 Colln., which otherwise was mainly concerned with questions of direct taxes.

In Slovakia reliefs in *the terms of limitation* for reason of excep-

tional war circumstances or the state of readiness for the defence of the country, were also granted for stamp duties by the ordinance of the Slovak National Council No. 84/1945 Colln. S.N.C., mention of which has already been made in connexion with customs duties and direct taxes. The tariff of taxes on official acts was supplemented by a new item by the ordinance of the Board of Commissioners of December 6, 1945, No. 3 Colln. S.N.C. of the year 1946. For southern Slovakia the notification of the Commissioner of Finance of July 12, 1945, No. 77 Colln. S.N.C., determined that, whether legal-material regulations from the time of the Hungarian occupation or the Slovak regulations are to be used, is to be decided according to when the claim of the State to the duty arose. In the sphere of formal-legal regulations the Slovak regulations were applied to this territory.

The law of February 19, 1946, No. 32 Colln., unified certain stamp duty regulations for the whole country with validity from March 16, 1946. It renewed, with certain exceptions, the exclusive validity of the pre-Munich regulations in the sphere of the *tax on enrichment, stock transfer tax, transport tax,* the *tax on telephone fees,* the *tax on fares for the conveyance of passangers by railway,* the *taxes on official acts,* and in the sphere of stamp duties. It increased the rates of fixed stamps, abolished the Czechoslovak regulations concerning the deduction of *contract and receipt stamps,* changed the regulations concerning the *revenue stamp on playing cards,* admitted the arrangement of an annual lump-sum payment of 3 % on the takings of the enterprise instead of revenue stamps on invoices, unified and arranged the stamp duties on *totalizator and bookmaker bets,* etc. For the Czech Lands it maintained the validity of the Protectorate ordinance concerning *the tax for protection against fire,* and regulated certain questions for Slovakia independently. On the basis of this law a number of notifications were then issued fixing details.

(e) *Indirect Taxes and State Monopolies*

With regard to the decree of the President of the Republic concerning the re-establishment of legal order, mention of which has already been made, the legal regulations in this sphere, issued by the occupying powers for the borderland both of the Czech Lands

and Slovakia, were considered as inoperative immediately after the revolution. Therefore the regulations valid in the sphere of indirect (formerly consumption) taxes and monopolies in the internal districts of the Czech Lands and Slovakia were extended to these territories without special publication.

It was not till the February series of fiscal laws of the year 1946 (law of February 19, 1946, No. 30 Colln.), that the legal adjustment of the regulations concerning indirect (consumption) taxes and financial monopolies was realized. First it was necessary to finish the organization of the financial offices and also the raising of the price level, the first steps to which object were taken at the end of 1945. With validity from March 1, 1946, Czechoslovak regulations concerning consumption taxes were unified and at the same time simplified, partly also newly adjusted, by this law. The German regulations were expressly declared as not valid. Almost all Czechoslovak consumption taxes were re-introduced with the exception of the tax on lemonade, mineral and soda waters, octroi taxes on provisions, the tax on preparations for raising dough, and the tax on water power. These taxes formerly needed considerable expenditure for collection, whereas the yield was small. Until further notice the tax on motor vehicles and the tax on the mass transport of persons by motor vehicles (motorbuses) ware not to be collected. The coal tax was to come into force with validity from July 1, 1946. However the law of July 18, 1946, No. 162 Colln., postponed its coming into force till January 1, 1947; even then, however, it was not collected. Similarly the tax on artificial cooking fats was also not collected. A new *tax on cigarette paper* was introduced. Certain taxes (tax on meat, wine, must, and fruit juices) were readjusted.

The financial monopolies were also renewed almost without change. But an *alcohol monopoly* was newly introduced to replace the former tax on alcohol. It is a manufacturing and sales monopoly. In addition to the monopoly there is the so-called *monopoly tax on alcohol* which applies mainly to alcohol manufactured from fruit, berries, and similar raw materials. The extent of the monopoly tax on alcohol was fixed by a notification of the Minister of Finance of March 23, 1946, No. 58 Colln., and increased by the notification of October 5, 1946, No. 185 Colln. A number of regulations, formerly various for individual taxes, were unified by law No. 30/1946

Colln. (e.g. manner of payment). The tax rates were adapted to the increased price level. An applying Government ordinance of April 26, 1946, No. 98 Colln., was issued for this adjustment. The changes effected by this law gave the Czechoslovak system of indirect taxes and monopolies a more large-scale, more expressive, and more purposeful character.

With this survey of Czechoslovak financial legislation for the year 1946 we endeavour to comply with the task of this article in general. By this we do not mean to state that the end of 1946 was a milestone in the development of this legal branch in Czechoslovakia. Nevertheless the period 1945 to 1946 has a certain characteristic which distinguishes it from the following years. In the first period the main purpose was to take steps to remove occupation sediments and once more to unify the Czechoslovak fiscal system. The adaptation of the fiscal legislation to the changing social structure of Czechoslovakia, which on the contrary is characteristic for the coming years, appears expressive only to a small extent here. As a matter of fact the reconstruction of this branch, announced in the Government programme of July 8, 1946, was really inaugurated only in the year 1947, and is not yet completed. We hope that the kindness of the editor of the „Bulletin" will enable us to inform you later about the development of Czechoslovak tax reform.

Concluding Remarks

Considering the number and variety of changes which fiscal legislation went through in the territory of Czechoslovakia in the period 1938 to 1946, we were able to register only the most important facts in this article. For this reason we have entirely omitted the questions of the organization of the financial offices and the development of regulations concerning the financial law for local and self-governing bodies.

Abbreviations:

Designation of currency: K = Protectorate Crowns; Kč = prewar Czechoslovak Crowns; Ks = Slovak Crowns (1939—1945); Kčs = renewed uniform Czechoslovak Crown introduced in November 1945.

Designation of collections of legal regulations: Colln. = Collection of Laws and Statutes of the Czechoslovak Republic; Sl.C. = Slovak Code (1939—1945); Colln. S.N.C. = Collection of Ordinances of the Slovak National Council (since September 1944); RGBl = German Reich Code.

C'est avec un profond regret que nous avons appris le décès de notre éminent collaborateur luxembourgeois, Monsieur

JEAN J. LENTZ,

Expert-Comptable
Chargé de Conférences à l'Ecole des Hautes-Etudes Internationales de Paris,

qui à montré tant d'intérêt aux activités du Bureau International de Documentation Fiscale. Nous faisons nos condoléances les plus sincères à Madame Lentz.

III

GENERAL REVIEW OF NEW FISCAL LITERATURE
REVUE DES NOUVELLES PUBLICATIONS FISCALES

Tractatus Tributarii. — Recueil d'études en la matière fiscale, offert au professeur ADRIANI de l'Université d'Amsterdam, à l'occasion de sa retraite. 1949. H. D. Tjeenk Willink & Zoon N.V., Haarlem.

Ce recueil est à la mesure de l'éminent fiscaliste qu'un groupe de collègues et d'amis s'est plu à honorer de la sorte pour son 70ème anniversaire.

A M. ADRIANI revient le grand mérite d'avoir, dans son pays, fait passer la science fiscale du stade de l'interprétation des textes légaux, à celui autrement large et fécond de l'étude systématique de la loi fiscale dans ses rapports avec les autres branches du droit, dans ses répercussions d'ordre économique et social et dans ses ramifications sur le plan de la législation comparée. C'est ce dont témoigne, dans la préface du recueil, l'éminent civiliste néerlandais M. MEIJERS.

Les publications du professeur ADRIANI ne se comptent plus: le *Tractatus Tributarii* s'achève sur un tableau impressionnant qui couvre 27 pages de petit texte, établi dévotieusement par quelques disciples, et qui rappelle les principaux articles de revue sortis de la plume de l'auteur et ses quelques maîtres-ouvrages dont le dernier, intitulé „Le droit fiscal, ses principes et son évolution" constitue une véritable somme d'érudition et de critique savante qui mériterait, par une traduction soignée en français et en anglais, de trouver l'audience des spécialistes ignorant le néerlandais.

Les „Mélanges ADRIANI" débutent par un article du professeur MEIJERS au sujet de la notion juridique de l'impôt. L'étude s'appuye principalement sur le droit positif et la jurisprudence des Pays-Bas et l'auteur a soin de souligner que la notion „impôt" en droit néerlandais, ne répond pas nécessairement à la notion synonyme en droit belge ou français et que le mot „impôt" peut même avoir

dans la Constitution un autre sens que dans la loi communale. Quelle que soit la forme juridique dans laquelle est enveloppée l'obligation, dit en conclusion M. MEIJERS, celle-ci constitue un impôt, du moment qu'elle est fixée unilatéralement en termes d'acte d'autorité et qu'elle vise à faire face aux dépenses d'un organe qui sert exclusivement l'intérêt général. Faut-il en déduire que tous les péages, y compris les taxes postales, par exemple, sont des impôts?

Sous le titre „Tributum" le professeur VAN OVEN nous convie à une promenade dans l'antiquité et nous retrace l'évolution de la fiscalité romaine. L'article est suivi d'un post-scriptum qui contient l'analyse d'un papyrus découvert en Egypte et qui illustre la démonstration.

La contribution du professeur SMEETS a également trait à l'histoire de la fiscalité: elle apporte un exposé de différentes impositions du moyen-âge qui sont de véritables précurseurs de l'impôt moderne assis sur les facultés contributives des redevables.

Suivent trois articles sur l'évolution de l'impôt sur le revenu par le professeur VAN HOUTTE, pour la Belgique, par le professeur GRIZIOTTI, pour l'Italie, et par le professeur TROTABAS, pour la France. Nous en avons surtout retenu qu'au dernier stade de cette évolution, les tendances sont remarquablement divergentes: tandis qu'en Belgique paraît se cristalliser la formule d'impôts cédulaires autonomes complétés par un impôt sur le revenu global, une véritable révolution vient d'avoir lieu en France, où les impôts cédulaires ont été supprimés. Ainsi, la cédule des traitements et salaires a été remplacée par une contribution nouvelle à charge des employeurs et égale à 5% de l'ensemble des salaires versés. L'auteur ne nous dit rien du nouveau régime des sociétés.

En Italie, les projets du Ministre VANONI font prévoir de profondes réformes tendant à simplifier les droits de mutation (enregistrement) et à les limiter à quelques catégories de transmissions, sauf à imposer le bénéfice de ces transmissions par la voie de l'impôt sur le revenu. Les impôts réels seraient réduits et la pression fiscale concentrée sur l'impôt progressif appliqué aux revenus du capital et assorti de critères personnels, et sur l'impôt complémentaire

frappant le revenu global, en sorte que, par le jeu du premier de ces deux impôts, la taxation des revenus fondés soit rendue plus lourde que celle des revenus du travail. Les impôts indirects seraient ramenés à deux: d'abord, une taxe de transmission généralisée dont le produit servirait à compenser celles des dépenses publiques qui contribuent à réduire les frais de production des entreprises; ensuite, un impôt général sur la consommation du revenu constituée par une taxation unique sur le prix des produits au moment où ils sont livrés au détaillant. Il semble bien aussi, nous dit M. GRIZIOTTI, que la réforme fiscale italienne devra être complétée par l'introduction d'un ou plusieurs monopoles à grand rendement, celui du tabac par exemple.

Le professeur PITLO montre la place qu'a occupée dans le passé et qu'occupe actuellement le notariat dans l'ensemble de l'appareil fiscal.

La fonction de la commune dans la structure actuelle de l'Etat est étudiée par M. PRINSEN, à la lumière de la situation financière des communes par rapport à l'Etat. Quelle doit être actuellement l'autonomie communale et quel doit en être le support financier?

M. SCHIPPER nous entretient d'un très important problème de droit fiscal international, celui de la situation fiscale d'une société-mère qui possède une filiale dans un pays étranger. L'auteur passe en revue les différentes réglementations adoptées dans les principaux pays soit par voie législative interne, soit par la voie d'accords bilatéraux, en vue d'éviter la double imposition.

M. BLUMENSTEIN donne un aperçu du plus haut intérêt sur cette jurisprudence absolument remarquable de la Cour fédérale helvétique, grâce à laquelle a été réglé de façon aussi complète que satisfaisante le problème de la double imposition intercantonale, et cela sur la seule base légale d'une disposition de la Constitution fédérale de 1864 portant que „la législation fédérale prendra les dispositions nécessaires contre la double imposition". Devançant et suppléant l'action du législateur, la Cour fédérale a établi pour le cas de conflit, des normes (Kollisionsnormen) qui constituent un droit supra-étatique devant lequel doit céder la législation fiscale d'un canton déterminé. Ces „normes de conflit" ont une valeur absolue et

s'opposent même à une double imposition virtuelle. Si cet heureux aménagement jurisprudentiel ne trouve pas d'application sur le terrain de la double imposition internationale, il n'en a pas moins déjà inspiré les conventions bilatérales conclues par la Confédération avec des pays étrangers et il constitue un champ fécond d'observations pour tous ceux qui s'intéressent à la promotion du droit fiscal international.

C'est aussi au problème de la double imposition, spécialement en matière de droits de succession, que s'intéresse M. SCHUTTEVAER. Il l'examine en se plaçant sur le terrain des principes, faisant observer très justement que les divergences de conception (imposition de la masse successorale, imposition de la part héréditaire, etc.) sont considérables et que l'on n'aperçoit pas toujours pourquoi un pays devrait céder devant un autre pays concurrent. L'auteur résume excellemment les tentatives faites jusqu'ici, surtout par les auteurs et les experts, pour résoudre de manière satisfaisante la question des doubles taxations.

Enfin, le professeur SCHENDSTOK étudie l'influence des prélèvements fiscaux sur la circulation internationale des capitaux, en distinguant avec beaucoup de soin la situation très différente des Etats, selon que leur balance des comptes est débitrice ou créditrice et aussi selon qu'ils importent ou qu'ils exportent des capitaux.

Nous ne voulons pas terminer ce bref compte-rendu d'un très substantiel ouvrage sans y ajouter une pensée d'hommage et de reconnaissance pour les services que M. le Professeur ADRIANI a déjà rendus non seulement à la science fiscale néerlandaise, mais aussi à la science fiscale internationale, ni sans exprimer l'espoir qu'il continuera, pendant de nombreuses années encore, le combat pour cette cause, qui, au total, n'est qu'un aspect de la cause du rapprochement des peuples.

É. SCHREUDER,
Professeur à l'Université de Bruxelles.

Dutch Literature

A short survey of the works that came in at the International Bureau of Fiscal Documentation shows that also in the Netherlands

fiscal science is practised with result. On the following works under different headings the attention can be drawn:

I. *Doctrine of Finance*

N. BOLKESTEIN: *De invloed van de financiële politiek der overheid op de verdeling van lasten en baten over den tijd.* (De problemen: belasting of leening,. heffing ineens of jaarlijkse belastingen; fondsvorming of Omslagstelsel) Academisch Proefschrift, Utrecht 1948.

An extensive work (346 pages) which is followed by a summary in English "It is the aim of this treatise to investigate in how far it is possible to transfer assets and charges to the future and, in as far as this appears to be the case, whether the financial policy of the government, as expressed in the alternatives: taxes versus loans, capital-levy versus annual high taxes and setting up a fund versus the application of a pay-as-you-go system for the purpose of social insurance, can be the cause of such a transfer. The subject is connected with other branches of economics, particularly with the interest-theory, the theory of saving and the theory of business cycles. The problem is approached from the theoretical side and no attempt is made to deal with it quantitatively".

The development of the views concerning tax or loan are extensively discussed, whereby the "static" and "dynamic" theory are put next to each other. The change in the views under the influence of the theory of business cycles is treated, and further the war and post-war financing.

"The problem of the choice between a fund and a pay-as-you-go system in the field of social insurance is not dealt with as a separate problem, but as a part of the problem of the time-distribution of assets and charges. The social insurance and pensioning off of civil servants in the Netherlands are financed on a basis of funds, apparently in imitation of private life insurance."

"In case of taxes, the charges weigh directly on private households. In case of a loan the burden weighs in the first instance on the public household and is only later on apportioned between the private households. The choice between taxes or loan is not so much of importance at the moment the burden is impinging upon the public household, but rather at the moment it is transferred

to the private households and thus makes itself felt. The choice is also of importance to the national economy as a whole in as far as the distribution of the national income as between consumption and investment may be influenced by it."

II. *General principles for levy of taxes*

Dr. W. H. VAN DEN BERGE, *Beginselen van de belastingheffing.*
Prof. Dr. P. B. KREUKNIET, *De algemene beginselen voor de heffing van dè belastingen.*

Reports brought out before the Association for Fiscal Science (Vereniging voor Belastingwetenschap) 1949 and discussed in the general meeting of the Association on May 1949. Editor N. Samsom N.V. Alphen a/d Rijn.

The work of Dr. W. H. van den Berge appeared before as a thesis in Amsterdam. He urges, that renewed conciousness of the principles is necessary and states, that every activity of the Government, consequently also the levy of taxes, should be focussed on what is called by Randolph E. Paul „creating and maintaining the world we want".

Much attention is paid to the question whether in principle the levy of tax should only take place for obtaining the means necessary for the Government. First he deals with problems of neutrality, fiscality and relativity of taxlevy. Thereupon the different aspects of the question of taxation are discussed: the financial, the economical, the tax-technical and philosophy of law. The lastmentioned part, the sense of justice as the basis for the levying of taxes, has the special attention of the author. He deals with the contents of the sense of justice and also the social aspect.

He puts up a stubborn resistance against the opinion, that the levying of taxes should be an economic category and that pure causal arguments can and must be decisive here.

The report of Prof. Kreukniet on the contrary is wholly economical of structure. Consecutively he discusses the objective of levying tax, the structure of the tax system. Moreover: levying tax or loan and finally the policy of business cycles and levying tax. The favouring of social justice repeatedly comes in his argumentation, to the realization of which the leving of tax can fulfil a task by accomplishing a partly redistribution of the national

income. In this way the author comes to important considerations concerning the connection levying tax — creating money — and loan. Also to the question of shifting of tax, specially the shifting of tax on income, much attention is paid. The conclusion that there is not a choice between direct and indirect taxes, but between progressive and not progressive taxes is interesting.

K. V. ANTHAL: *Eenvoud in het belastingrecht in Nederland*. Openbare les, uitgesproken bij de aanvaarding van het ambt van lector in de Faculteit der Rechtsgeleerdheid aan de Rijks Universiteit te Leiden op 9 December 1947.

The author points on the complication of the tax-declaration-form, which most people cannot fill in without experted help. The costs thereof are actually an increase of tax. The author investigates the causes of the complication and discusses some proposals which had the tendency to come to more simplification. The abundance of taxes is inevitable: A single income tax could not possibly suffice. The non-fiscal purposes when levying tax promote the complication; specially the luxury tax is mentioned. The most important cause for the unjust complication is lain in history according to the opinion of the author. There was no building up in one piece. Coordination is necessary and there is a need of a general law. The process of the refinement of law in the Netherlands strode forward too far in fiscal law. With many examples this is illustrated. A truly simple tax system is impossible in our society, but there are means and possibilities to come to more simplicity.

III. *Fiscal Law in general*

Prof. Dr. P. J. A. ADRIANI: *Het Belastingrecht, zijn grondslagen en ontwikkeling*, deel I 1948, deel II 1949. L. J. Veen's uitgeversmij., Amsterdam.

Two parts of this work, which consists of three parts, appeared. The first part described the way in which the Government provides itself with the necessary means, the purpose of the levies by the Government; furthermore the conception „levy" is investigated and the sorts of levies, indicated as fee, monopoly etc. Afterwards the distinction and the classification of taxes is dealt with, the theoretical principles, the tax rates and the technics

of levying tax. The end of this part covers a survey of the historical development of tax levying, first in general and afterwards for the Netherlands.

In the second part fiscal law itself comes forward. Structure and task, connection with other parts of law, discrimination and classification of fiscal law. The tax debt is extensively dealt with. The interpretation of the tax laws, legal actions which cause the levying of tax, the fiscal jurisprudence and the administrative treatment of the submitted appeals are discussed thereafter. Both last chapters are devoted to the important question of value, in which a.o. the valuation of immovable property, shares and securities, — specially the unlisted securities — take an important place, and international fiscal law. Last mentioned subject covers general considerations, autonomous rules and treaties. Netherlands law is not exclusively dealt with, although it is in the foreground, but regarding most subjects a comparison is drawn with the law in other countries.

J. B. J. PEETERS, A. MEERING and C. VAN SOEST: *Leidraad bij de belastingstudie*, 2 volumes. S. Gouda Quint, D. Brouwer & Zoon, Arnhem, 1949.

A concise work, specially written for students who do not have to go very far into the matter. Specially there is thought of students for trade and administration. After a short introduction there follows in succession (in part I) a discussion of the income tax, wages tax, property tax, the company tax, the enterprise tax, gift duty, duty on deeds and turnover tax, while in a last chapter, some communications are made with reference to some other taxes and some general subjects. Part II consists of the principal regulations of the fiscal laws and decisions.

Dr. M. J. H. SMEETS and J. H. MEIHUIZEN, *Beknopte belastinggids*, 8e druk. Uitgave L. J. Veen's Uitgeversmij., Amsterdam, 1947.

The previous print was discussed in the Bulletin I, p. 97. The 8th edition is classified in the same way as the previous edition and brought up-to-date till September 1947. The numerous changes in the fiscal legislation were the cause of many alterations and supplements that have been brought in this edition. In September 1947 however fiscal legislation did not subside, so that in February

1948 another supplement had to be prepared. The book consists of valuable information.

J. P. H. SMITS. *Inleiding tot het belastingrecht,* deel I, 3e druk. 1946. Uitgeversmij. v.h. G. Delwel, Wassenaar, 1946.

While before the matter had been placed in one volume, at present it has been divided in three parts. It is written for those preparing for examinations, specially thought of examinations for chartered accountant. It does not give more than an introduction. In the first part there are some general contemplations concerning construction of fiscal law, classification, fiscal theories, rates etc. Moreover of some fiscal laws parts of the text are inserted with some notes. The wages tax is dealt with extensively.

J. C. TIMMERMANS: *Rijks en Provinciale belastingen.* Handleiding voor studerenden. N. Samsom N.V. Alphen a/d Rijn, 1948.

In the first place this work is also written for students, specially for candidates for the examination public finance. Also a thought is given to the municipality, civil servants and authorities who come into contact with the levy of taxes.

In a concise form the book consists of much information. To the theory of taxes the necessary attention is paid, whereby the conception tax and the discrimination of taxes, rates, etc. are discussed. The second chapter deals with the history of the Netherlands tax system, to begin with the period of counts, and finishing off with the system as it was build up by law of July 12th, 1821. The following chapter is mainly devoted to jurisprudence. Then the discussion of the principal state taxes and provincial taxes follows.

F. KUIPERS: *De reserves van de belastingherzieningen* 1947. 2e druk. Uitgave Taylor, Nijmegen.

The Tax Reform Act, 1947 brought in important alterations in the computation of the fiscal profits. Reserves for assurance of own risk and equalization funds, formerly admitted, went out of the legislation during the occupation. By the law of 1947 they were restored. This law went still further and made it possible to form untaxed reserves, which were limited however in many ways. The adjustment is very complicated and in a draft bill 1949 it is proposed to let these reserves go before long.

In the meantime many questions arose, which are extensively

discussed in the booklet mentioned above, that already went through its second edition.

V. S. OHMSTEDE: *Reserves en Belastingen van boekjaar* 1946 *of* 1945/46 *af*. N.V. Joh. Mulder's Uitgeversmij. Gouda, 1947.

The same matter is dealt with in this publication by an author who, during many years, provided the new tax laws with comments entirely focussed on practice.

IV. *Special tax laws*

A. J. VAN SOEST and J. B. J. PEETERS: *Belastingen*, 5th and 6th edition 1948. S. Gouda Quint-`D. Brouwer en Zoon, Arnhem.

In this book, much consulted in the Netherlands, the Income, Property and Enterprise tax are dealt with, each article separate. The 5th edition was out of stock so soon, that the 6th edition had to be turned out unaltered in a photo-mechanical way. In a concise form the book gives a clear comment on three most important tax`laws. Naturally jurisprudence and litèrature are incompletely inserted in this book of 292 pages, but the most important parts of it are worked up in the text. Often the meaning of a law or the influence of a decision of the Supreme Court are elucidated with examples.

F. VAN BLERKOM: *Besluit op de Inkomstenbelasting* 1941 *en Besluit op de Dividendbelasting* 1941. Nederlandse Uitgeversmij., Leiden.

This book is more extensive than the one mentioned above, but deals with less material, as property tax and enterprise tax are missing here.

On the contrary Dividend tax is inserted here. The book consists of more contemplations and goes further into details while it refers very often to literature and jurisprudence. The book does not give a systematical discussion of the matter, but consists of the text of the articles of the law with extensive notes thereon. It is a drawback that the year of publication is not mentioned; as this is a necessity for a book dealing with such a mobile matter as fiscal law. Since the appearance numerous alterations have been brought in the legislation.

F. KUIPERS: *Teksten van de gewijzigde wet op de Vermogensaanwasbelasting en de wet effectenwaardering*. Taylor, Nijmegen.

F. KUIPERS: *Beknopte practische toelichting met de tekst van de wet bij de wet op de Vermogensheffing ineens.*

F. KUIPERS: *Beknopte practische toelichting bij de wet op de Vermogensaanwasbelasting*. (Voorzover deze van toepassing is op natuurlijke personen). — Ibid.

V. S. OHMSTEDE: *Vermogensheffing ineens*. (4—20 %). Toegelicht voor Accountants, Belastingconsulenten, advocaten, notarissen en belastingplichtigen (met beknopt overzicht en voorbeelden voor de praktijk).

V. S. OHMSTEDE: *Nieuwe wettelijke bepalingen betreffende waardering van effecten voor de vermogensaanwasbelasting, de vermogensheffing ineens en andere belastingen en wijzigingen inzake vermogensaanwasbelasting en vermogensheffing ineens*. N.V. Johan Mulder's Uitgevers-mij. Gouda, 1947 and 1948.

F. E. D. UITGAVE: *Vermogensaanwasbelasting*. Bureau van Fiscale en Economische Documentatie Amsterdam, Herengracht 456.

The laws introducing a capital increase tax and a single capital levy caused many practical difficulties. The first mentioned tax is levied upon the increase of capital during the period between May 1940 and December 31, 1945, the last mentioned upon all assets present on January 1st, 1946. Individuals are liable to both taxes, corporations to the capital increase tax only.

In the professional periodicals numerous pages are written about the many problems arising with regard to the application of these laws, and it is doubtful whether all difficulties have been solved.

It seemed that the matter had subsided a little, but at present one is in full action again. The laws are modified, a new law has been introduced, containing provisions as regards the valuation of stocks and shares, the declaration forms for the definite assessments have been delivered with the result that many persons — especially tax counsels — for which individual taxpayer dares to study this matter? — are puzzling with the forms.

The above mentioned booklets no doubt will be of much use for them as they contain short and clear surveys of the laws in question.

P. J. A. ADRIANI.

ROY E. BORNEMAN & PERCY F. HUGHES: *The Profits Tax.* Taxation Publishing Company Ltd., 98 Park Street, London, W. 1., 1948.

Key to Profits Tax, Profits Tax Law and Practice, edited by Ronald Staples, Ibid., 1948.

H. & A. M. EDWARDS: *Profits Tax,* 2nd edition. Gee & Co (Publishers) Ltd., 27—28 Basinghall Street, London, E.C.2, 1948.

La „Profits Tax" anglaise occupe une place si importante dans le système fiscal anglais que beaucoup de gens seront satisfaits de la parution de ces brochures si bien présentées.

En 1937, lorsque la „National Defence Contribution" fut appliquée, on avait l'intention de lever cet impôt seulement pendant 5 ans. Pendant la guerre, on a successivement prolongé ce terme de sorte que par le Finance Act 1947 la National Defence Contribution fut définitivement transformé en la Profits Tax, impôt levé en principe sur la même base, quoique sous différents rapports, on y introduisît une extension assez considérable. Nous mentionnerons entre autres: une importante augmentation du taux (à l'origine 5 % du bénéfice d'une société anonyme supérieur à £ 2.000 et 4 % de celui d'autres entreprises. Actuellement le taux atteindra 30 % dont il sera remboursé 20 % pour la partie du bénéfice non distribué). Mais il y a d'autres modifications, entre autres que les personnes physiques et les „partnerships" ne sont pas assujetties à la Profits Tax; en principe, les revenus provenant de capitaux investis sont considérés comme bénéfices, excepté s'ils ont déjà été frappés plus tôt par la Profits Tax; on a introduit le principe de la „non distribution relief" dont le but est très clair; un abattement en ce qui concerne les filiales d'entreprises étrangères (la répartition des bénéfices de l'Angleterre à une société-mère étrangère n'est pas considérée comme distribution de bénéfices comme prévue par la loi en question, de sorte que le tarif élevé n'est pas applicable dans ce cas); une autre modification est que l'on peut déduire des bénéfices, jusqu'à un certain maximum, les salaires payés aux directeurs dont le travail n'est pas continu.

Le premier volume qui contient 219 pages donne un aperçu détaillé des stipulations légales sans pourtant trop s'étendre sur le développement historique. Il nous est inutile d'introduire les auteurs, déjà connus par tant d'autres publications, auprès des

lecteurs, pour leur dire que cet ouvrage donne un aperçu très clair et précis, illustré d'exemples et de nombreuses décisions judiciaires.

La brochure „Key to Profits Tax" est du même genre que toutes les autres éditions annuelles publiées par la même maison d'éditions: un petit livre commode à l'usage, dans lequel on trouve les principales règles énoncées sous une forme très concise.

Le troisième volume mentionné (88 pages) prend comme point de départ les stipulations du Finance Act 1937 et traite les modifications apportées entretemps, avec de brefs commentaires. Deux annexes reproduisent les „Statutory Rules and Orders no. 731", contenant les „Régulations" du 5-8-1937 et les prescriptions relatives à la Profits Tax dans le Finance Act 1947.

G. S. HAMILTON: *Brewery Income Tax.* Taxation Publishing Company Ltd., London, 1944.

C'est un œuvre destiné aux brasseurs et à leurs conseillers. En 251 pages, l'auteur donne un aperçu de toutes les prescriptions ayant rapport aux problèmes des impôts sur les revenus pour les brasseries. L'auteur part du principe que ni les manuels, ni les revues ne traitent assez à fond les décisions judiciaires qui concernent ce sujet.

L'ouvrage est divisé en 3 parties: la première partie traite l'impôt sur les revenues de la cédule A, c.à.d. ayant rapport à tous les biens immeubles. La deuxième partie s'occupe de l'impôt sur les bénéfices d'exploitation. On y trouve: 1. Tied houses; 2. Legal and similar expenses; 3. Brewery rent, advertising and other expenses; 4. Directors and employees; 5. Dividends and interest; 6. Wear and tear; 7. Some general matters (entre autres la Profits Tax); 8. Operations abroad; 9. War-time expenditure; 10. Licence Duty; 11. Compensation fund and Monopoly value. Dans la troisième partie l'auteur donne un résumé des décisions judiciaires spécialement importantes pour ce genre d'exploitation, et à la fin de l'ouvrage on trouve 9 annexes.

J. H. MUNKMAN: *The Special Contribution or Capital Levy under the Finance Act,* 1948. The Solicitors' Law Stationery Society, Ltd., 88—90 Chancery Lane, London, W.C. 2, 1948.

Le Finance Act 1948, 5me Partie, renferme des stipulations relatives à un nouvel impôt sur les revenus provenant d'investisse-

ments. Dans un guide pratique de 39 pages, l'auteur donne un aperçu de cette soi-disant „Contribution Spéciale".

Cet impôt extraordinaire levé pour une seule fois, frappe dans la pratique le capital investi, parce que les taxes ordinaire et additionnelle (Normal tax et sur-tax) sont trop élevées pour que l'on puisse encore payer cet impôt en recourant au revenu. L'impôt doit être payé par des personnes physiques dont les revenus totaux ont dépassé £ 2.000 dans l'année fiscale 1947—1948, et dont les revenus provenant de capitaux investis ont dépassé £ 250 dans la même année. Les 250 premières livres sont exemptes d'impôt, les £ 250 suivantes sont frappées de 10 %, les £ 500 qui suivent de 20 %, les £ 1.000 suivantes de 30 %, les £ 3.000 suivantes de 40 %, tandis que tous les montants dépassant £ 5.000 sont frappés de 50 %.

Au moyen de nombreux exemples, l'auteur traite les divers problèmes parmi lesquels nous citerons: que faut-il entendre par revenu total? (il semble qu'il ne soit pas tout à fait égal au revenu prévu par la „income tax"); que faut-il entendre par investissement (il s'agit ici de la différence entre: „earned" et „invested income", d'investissements de personnes qui ont une exploitation, des revenus de trusts, des annuités, des dividendes, de compagnies privées, etc.). D'autres questions sont traitées, à savoir: les rapports entre les époux, et les bénéfices dans les sociétés familiales, bénéfices que l'on a soustraits aux impôts en ne les distribuant pas d'une manière normale et raisonnable.

La Maison d'Editions H.F.L. (Publishers), 29 Mincing Lane, London, E.C. 3, nous a envoyé un livre qui n'a pas directement trait aux impôts: A. J. H. MORVELL: *An Introduction to index numbers*, 1948, 48 pages. Ce petit livre se compose des Chapitres IX et X de la 9e édition de „Statistics and their application to Commerce" par A. Lester Boddington. La première partie de ce livre donne une description du concept Indices, en général; la seconde montre l'usage qu'on en fait généralement. Nous nous contentons de la simple mention de ce petit livre qui intéressera plus spécialement les statisticiens.

L'ASSOCIATION NATIONALE DES SOCIETES PAR ACTIONS (A.N.S.A.), 32 Avenue Marceau, Paris, nous a adressé les publications suivantes:

No. 70 (Mai 1947) *La Législation des Sociétés par Actions*, un recueil des textes, à jour au 15 mai 1947, et deux suppléments, à jour au 31 décembre 1948. Ce livre, qui comprend en tout 324 pages, contient les textes législatifs ayant trait aux sociétés par actions, subdivisés en six chapitres:

I. La Société par Actions (Organes constitutifs, fonctionnement); on y trouvera, outre les dispositions du Code Civil, du Code de Commerce et du Code Pénal, les lois spéciales.

II. Les Titres. III. Les Sociétés Coopératives et les Sociétés de Caution Mutuelle IV. Les Interventions de l'Etat dans la gestion de Sociétés et dans la désignation de leurs dirigeants. V. L'intervention du personnel des sociétés. VI. Taux des amendes pénales. Annexe: Application territoriale de la législation française des sociétés. Tables.

No. 71 (Juillet 1947) *La réparation des dommages de guerre.* Cette publication de 142 pages contient un commentaire de la loi du 28 octobre 1946 et des textes d'application. La France a, comme tant d'autres pays qui ont beaucoup souffert de la guerre, sa législation sur les réparations des dommages de guerre. Ce problème soulève de nombreuses difficultés, comme ailleurs. Dans ce livre on trouvera: Les principes généraux de la législation nouvelle; le droit à la réparation; les indemnités prévues par la loi; la présentation et l'instruction des demandes d'indemnités; le paiement des indemnités et l'attribution des prêts; le contrôle et le contentieux des dommages de guerre; la réparation des sinistrés; les dispositions fiscales; les sanctions administratives et pénales; les dispositions transitoires et les mesures d'application. En principe, on répare tous les dommages, ce qui constitue un grand changement par rapport aux dispositions provisoires en vigueur avant la loi du 28 octobre 1946. Les différents chapitres expliquent clairement l'application de ce principe aux différents groupes de sinistrés.

Cet ouvrage ne montre pas comment l'Etat finance le tout. Ce problème n'est pas non plus de notre ressort, du moins directement. Mais, surtout dans le supplément de Novembre 1947, on passe en revue les dispositions fiscales qu'a nécessitées la réparation des dommages de guerre. Des dispositions sont formulées dans une décision ministérielle du 15 octobre 1947 et dans un certain nombre de textes législatifs qui ont modifié la loi du 28 octobre 1946.

La décision ministérielle a surtout trait à la réparation du dommage subi par les entreprises industrielles et commerciales.

No. 72 (Décembre 1947) *Les Comités d'Entreprise.* Ce livre de 158 pages donne une explication détaillée de cette institution. L'ordonnance du 22 février 1945, qui a été modifiée depuis, a institué des Comités d'Enterprise dans toutes les entreprises, dans tous les services et dans les professions, employant au moins 50 salariés. L'ouvrage traite, dans l'ordre des dispositions législatives, les différents problèmes qui se posent dans ce domaine, et constitue donc un instrument de travail utile pour ceux qui veulent connaître le droit français du travail et des entreprises.

No. 73 (Février 1948) *Le Prélévement Exceptionnel et l'Emprunt.* 68 pages, avec un supplément de mars 1948. Deux lois du 7 Janvier 1948 (Journal Officiel du 8-1-1948, p. 226) ont institué le prélèvement exceptionnel de lutte contre l'inflation et autorisé l'émission d'un emprunt. Ces deux lois constituent un tout, car ceux qui sont soumis au prélèvement peuvent se libérer de leurs obligations en souscrivant à l'emprunt; les fonds constitués par le prélèvement et par l'emprunt serviront au même but.

Sont soumis au prélèvement, tous ceux qui sont imposés au titre du B.I.C., de l'impôt sur les bénéfices de l'exploitation agricole ou de l'impôt sur les bénéfices des professions non commerciales, ainsi que les personnes physiques soumises à l'impôt sur le revenu, à l'exception des étrangers qui ne sont pas domiciliés en France. Le tarif peut être de 80% du bénéfice, mais il diffère selon des catégories de contribuables. Dans ce livre, on trouvera un résumé de cet impôt (18 pages). Les cinq pages suivantes indiquent les conditions de l'emprunt. La brièveté de ce commentaire a des avantages: on connaît les grandes lignes après avoir lu le livre, ce qui permet de prendre connaissance des textes législatifs sans rencontrer de difficultés. Ces textes se trouvent dans les 13 suppléments. Le tout constitue un manuel extrêmement utile.

No. 74 (Juin 1948) *Le Régime de l'or, des devises et des valeurs étrangères.* Cet aperçu montère une fois de plus la variété des sujets traités dans les publications de l'A.N.S.A. Cet aperçu indique les dispositions législatives, anciennes et nouvelles, concernant l'or, les devises et les valeurs étrangères. Le lecteur intéressé y trouvera les mesures économiques et monétaires prises en France depuis

dix ans; ces mesures exerceront une influence sur les relations économiques des années d'après-guerre. Le marché d'or est redevenu libre, et on a amnistié tous ceux qui n'ont pas tenu compte de l'obligation de déclarer leurs avoirs à l'étranger et leurs devises. D'ailleurs, cet ouvrage de 55 pages n'a pas la prétention de donner un aperçu complet des problèmes relatifs au contrôle des changes. L'extension de ce domaine l'a rendu impossible. Nous espérons que l'A.N.S.A. publiera une étude plus détaillée sur cette question.

No. 75 (Octobre 1948). *L'Imposition des bénéfices investis dans les stocks.* Cette brochure de 24 pages traite du problème soulevé par le fait que les stocks ne sont pas compris dans les éléments susceptibles de réévaluation dans le cadre de la révision des bilans. Ces stocks devaient être comptabilisés pour leur prix de revient. Ce problème est devenu actuel depuis que l'ordonnance du 15 août 1945 a enlevé aux entreprises la possibilité de constituer, en franchise d'impôt, des provisions pour renouvellement de stocks. Les tentatives de rétablir cette possibilité n'ont pas réussi. Cependant le législateur français a pris des mesures provisoires, dans la loi du 13 mai 1948, complétée par le décret No. 48—1350 du 27 août 1948. Cette mesure revient à ceci: pour les entreprises ayant pour objet la fabrication ou la vente après transformation de matières, produits ou marchandises, le taux de l'impôt dû au titre de 1948 est provisoirement réduit de moitié pour la fraction du bénéfice qui est investie dans les approvisionnements nécessaires à l'exploitation. Cette brochure passe en revue ces mesures.

No. 76 (Novembre 1948). *Le règlement d'ensemble de la fiscalité de guerre.* L'article 50 de la loi du 6 Janvier 1948 a autorisé les administrations fiscales à effectuer, dans des formes simplifiées, un règlement d'ensemble de la situation des contribuables pour toute la période de guerre (septembre 1939 à fin 1945). Ce règlement était devenu nécessaire parce qu'autrement les administrations n'auraient pas pu se dégager du marécage des innombrables difficultés nées de la guerre. Cette liquidation générale de ces difficultés se manifeste soit dans une imposition générale pour 1946, soit dans l'allocation d'un dégrèvement unique. Cette brochure contient tous les textes législatifs et les circulaires de la Direction Générale des Impôts relatifs à cette matière.

No. 77 (Décembre 1948). *La suppression du droit de timbre des*

valeurs mobilières et le rachat de la taxe d'abonnement.

La loi de finances du 31 Décembre 1945 a supprimé le Titre II du Code fiscal des Valeurs mobilières. Cela revenait à abolir la taxe de transmission de ces valeurs. Le décret du 8 Novembre 1948 a supprimé l'impôt du timbre, de sorte que seul l'impôt sur le revenu des capitaux mobiliers subsistait. Le Trésor a été en quelque sorte compensé par la loi du 24 septembre 1948, qui obligeait les sociétés à racheter les abonnements en cours. Cette brochure et les 3 suppléments donnent un aperçu des mesures prises dans ce domaine et les commentent brièvement.

En conclusion, nous devons signaler que le grand organisme qui sauvegarde les intérêts des entreprises françaises, aide puissamment au moyen de ses publications, à la compréhension du système fiscal français qui n'est pas toujours simple.

F. M. RICHARD: *Guide pratique des Impôts en Afrique du Nord.* Dépôt de l'auteur à Paris, aux Presses Alpha, 26 rue du Delta. Prix frs. 150. Paris, 1948.

Ce livre de 64 pages passe en revue les impôts levés en Algérie, en Tunisie et au Maroc. L'auteur indique les données les plus intéressantes relatives à tous les impôts de chacun de ces trois territoires: le sujet de l'impôt, les principes, les taux, la déclaration. On y trouvera également la date d'entrée en vigueur des impôts ainsi qu'un résumé du système fiscal de chaque territoire.

Ce livre est destiné aux commerçants, aux industriels etc. qui ont établi des entreprises en Afrique du Nord et qui veulent se mettre au courant de la législation fiscale actuelle.

L'auteur rencontrera certainement de l'intérêt, car il a eu une très bonne idée de donner un aperçu d'ensemble d'un sujet dont les sources sont souvent cachées.

Sept graphiques mettent en valeur les renseignements fournis. Si l'auteur peut réaliser sa promesse de publier régulièrement un supplément, la valeur de cet ouvrage sera encore augmentée.

JUDR BEDRICH JAKUBEC: *Platná soustava přímých dani v zemi České, Moravskoslezské a na Slovensku.* (La système des impôts directs en Bohême, Moravie-Silésie et en Slovaquie). Bibliothèque du Ministère de l'Unification des lois, Prague, 1949.

Nous citons ci-dessous une partie du résumé que nous a envoyé

le Ministère de l'unification des Lois de la République tchécoslovaque.

„Le but de cette publication est de mettre à la disposition du public le texte continu de la loi du 15 Juin 1927, No. 76 du Recueil des Lois et Décrets; tel qu'il résulte des différents changements apportés à cette loi par la législation ultérieure. L'évolution de cette législation a été commune pour toutes les provinces de la République tchécoslovaque jusqu'au début de 1939, où elle s'est engagée sur une voie double, différente dans les provinces de Bohême et de Moravie-Silésie, constituées comme „Protectorat du Reich", et en Slovaquie, devenue „Etat slovaque". Après la Révolution de 1945, les deux voies recommencent à se rapprocher et le système est, en grande partie, en voie d'unification. Toutefois à l'heure actuelle encore certaines prescriptions de la loi sur les impôts directs, différentes en Bohême et Moravie-Silésie d'une part et en Slovaquie de l'autre, continuent à rester en vigueur.

L'auteur du livre poursuit cependant un autre but encore: celui de la publication d'un tableau d'ensemble du système, aujourdhui valable, des impôts directs. A l'heure actuelle en effet, deux systèmes sont en vigueur côte a côte: celui de la loi sur les impôts directs de 1927, et une partie d'un système nouveau."

Il n'est pas nécessaire d'indiquer ici aux lecteurs quels sont les impôts en vigueur maintenant en Tchécoslovaquie. On peut lire ça dans l'article du Dr. Eberl, publié dans ce même numéro du Bulletin.

JUDr. Ladislaw Svatuška et JUDr. Jirí Zimák: *Příručka právú dokumentace* (Manuel de la documentation juridique). Ibid., 1949.

Cet ouvrage comprend l'élaboration d'une classification décimale spéciale de l'ordre juridique tchécoslovaque, parce que la classification décimale internationale ne satisfait pas aux exigences de la documentattion juridique tchécoslovaque. A la fois, on a créé un Centre de documentation juridique près la Ministère de l'Unification des Lois, à Prague. Le lecteur intéressé pourra obtenir tous les renseignements sur ce Centre et sur la classification, du Ministère de l'Unification des Lois à Prague.

v. H.

IV

THE SIGNIFICANCE OF THE TREATY TO AVOID DOUBLE SUCCESSION DUTIES BETWEEN GREAT BRITAIN AND THE NETHERLANDS

by

H. SCHUTTEVAÊR

I. *General purport of the treaty*

According to the preamble, the treaty originates from the wish of both parties to avoid double succession duties.

Such double taxation can arise from the fact that the Netherlands and British taxes in this branch do not start from the same principles.

In the Netherlands in this case are levied according to the Succession Duty Act (Act of 1859 as amended):

1. succession duty from the value of everything inherited or acquired out of the estate of a resident because of his death.

2. mutation duty upon the value of all immovable property situated within the country, obtained by inheritance or legacy (or by gift, but this is not of importance for this subject) of a nonresident.

Apart from this there is a gift tax levied upon gifts and every other voluntary disposition by a resident; so here it concerns donations inter vivos; in this connection it ought to be remembered that according to special provisions of the Succession Duty Act there is a possibility that suchlike gifts are not taxed with gift tax, but with succession duty.

Both levies mentioned under 1 and 2 are covered in this treaty; the preamble (and also art. I, subsection 2) proves this; the text of article I, subsection 1, of the treaty might have been clearer in this respect. [1])

From British side the treaty covers the "estate duty" levied in England, Wales and Scotland; for Ireland compare article VII. Here it concerns the tax which — as it may be expressed in general,

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1) Under the present Succession Duty Act the question is not of practical importance; this could become otherwise in case the mutation duty is extended to other property than only immovables.

but which is possibly not quite correct — is levied upon the transfer of the estate as such according to the law of succession; in the British handbooks there is generally spoken of a "mutation duty". Consequently the treaty does not refer to the British "succession duty" and "legacy duty", both belonging to the genus "taxes on acquisitions".

When considering roughly this treaty the attention is drawn to the fact that it is no more than a "rump-treaty". Namely the provisions concerning "credits" always met in other treaties, are missing here. It may be wondered therefore: is there a treaty for the avoidance of double taxation in the real sense of the word? Is it not restricted only to an enumeration of "situs rules"? It is not hazardous to presume that the summary form of the treaty is connected with the provision of Sect. 45 of the Finance (no. 2), Act 1945, which, in this branch, makes it only possible to conclude treaties to avoid double taxation in case the taxation in the "foreign country" is "of a similar character" as the British Estate Duty. Presumably from British side the line has been taken that the Netherlands succession duty has not a similar character as the "estate duty"; principally the Netherlands duty has been considered to be a tax on the acquisition by each of the heirs etc. and which detaches itself from the estate as such. Seen the total picture the Netherlands succession duty gives, this conception is understandable, although Adriani's explanations in different publications show that also for the contrary conceptions arguments are availible.

The present treaty comes to this, that the possibility of avoidance of double taxation is only sofar created as in the situs rules the inhereited property items are imputed to the country where the deceased had his last domicile, and that apart from this the method of relief by credits has not been used.

II. *The Netherlands Succession Duty* [1])

It may be useful to give a rough picture of this tax. I presume in

[1]) In this article no reference is made to the contents of a draft-law presented in the summer of 1948 containing a technical revision of the Succession Duty Act. The preliminary report of the Second Chamber on this draft did not yet appear.

the article from British side this will be done where it concerns the Estate Duty.

While art. 1 of the Succession Duty Act defines roughly the levy in the way mentioned above, furtheron the law lays the stress on the fact that duty is due on what is acquired by each of the heirs under the law of succession (under various legal fictions also several not successional acquisitions e.g. life insurance are taxed). This involves that for the levy it is not decisive what the deceased's net property was on the day of his death (assets and liabilities), but that those items should be taxed which pass over to each heir or legatee under the law of succession. That this difference is of importance catches the eye, when one thinks of the case in which the deceased has bequeathed such an amount of legacies that this amount exceeds the net balance of the estate of which possession is taken. In case the legacies also exceed the assets of the estate, the Administration confines, on disputable grounds, the levy of tax upon the amount of the assets of the estate.

It does not matter, where the goods are situated and what their juridical character is; nevertheless — as is assumed on good grounds — a property value has to belong to the "objects" in the sense of art. 555 Code of Civil Law ("goods and rights which can be object of ownership") for being taxable. The "goodwill" of a business does, from this point of view, not fall within the scope of this levy. For the computation of duty all the debts of the deceased existing on the day of his death and also the funeral expenses and the expenses of religious services up to a certain limit are allowed to be deducted.

In general the valuation of the property items left behind has to take place according to the market-value; for some categories (f.i. unlisted securities) the money value is the standard. For the valuation of usufruct and life annuities tables inserted in the law apply.

The succession duty due is progressive and as to each successor depends on the amount of the acquisition and the degree of relationship between him and the deceased. The rate moves between 3 and 54. Before the computation of the duty can take place the exemptions in force in certain circumstances have to be taken into account.

As appears from the above, the character or situation of the pro-

perty left is of no importance (different from the mutation duty): rules of situation are so far unknown in the Netherlands with regard to this branch.

The last domicile of the deceased is on the contrary of decisive significance. The law mentions "resident", but it means according to article 2 "everyone who had his last „woonplaats" (place of living) within the Kingdom in Europe". And „woonplaats" is meant to be, — according to the Administration, jurisprudence and nearly all authors, except Adriani — the domicile in the sense of civil law, consequently not the residence judged "according to the circumstances" as in many new tax laws. So the question may be asked: Do not the circumstances play a part too for the domicile according to civil law?

Yes, they certainly do; and so the question principally arises only when it concerns estates of persons who, according to civil law, have a so called "dependent domicile"; consequently a minor residing outside the Netherlands, but whose parents or guardian live within the Netherlands, is supposed to have his domicile in the Netherlands.

I have the impression that the British views assume obtaining or loss of domicile less soon than according to the Dutch point of view. So it may occur that an Englishman living in the Netherlands for some years will be considered as being domiciled in this country, while, according to British views he kept his domicile in Great Britain. On the other hand it would be possible that a person departed to England, who lived in the Netherlands before, will after some time no more be considered as being domiciled in the Netherlands, while nevertheless he did not yet obtain the British domicile according to the British view. That this causes inequality when it concerns the levy of estate taxes in both countries is self-evident. The treaty does not contain particular provisions (compare art. III, 1) in this case.

In the meantime one has to take into account the arrangement of art. 3 of the Succession Duty Act, serving to oppose tax evasion, at least to destroy the consequences of such evasion as far as these consequences would be prejudicial for the Netherlands treasury.

Art. 3 decides, as far as of importance here:

"A Netherlands citizen who has been domiciled within the King-

dom and died within ten years after his departure from the Kingdom is deemed to be domiciled within the Kingdom at the time of his death, unless it appears that on that date he is domiciled within Indonesia, Surinam or the Netherlands Antilles.

In case this article should be applicable the last domicile of the deceased within the Kingdom is deemed to be his domicile at the time of his death.

Consequently these provisions mean if e.g. A is domiciled in the Netherlands, takes up his residence in another country and dies within ten years after his departure (while he still has his Netherlands-nationality), that all his property will be subject to tax. In case however the country in which he had his actual domicile on the day of his decease should also tax his estate, this amount is allowed to be deducted from the Netherlands duty, as far as the duty levied in the foreign country should not have been due in case the deceased should have had his domicile in the Netherlands only on the day of his death. Should the foreign country e.g. have been Great Britain this means that is due in the Netherlands: succession duty on the whole estate, and in Great Britain: estate duty on the whole estate (except immovable property outside Great Britain). And that from the Netherlands succession duty the estate duty is deducted, as far as this is not due on account of the „situs" of the estate in Great Britain. Financially the legal arrangement gives the same result for the heirs as in case the deceased should really have had his domicile in the Netherlands.

III. *Principal possibilities of „double levy" according to the legislation in force*

These are inserted already in the preceding exposition. Here it mainly concerns cases of the last domicile in the Netherlands and situs of the property in Great Britain. Apart from this, cases of double domicile have to be considered. Also cases of so called "British settlements", which I presume will be discussed in the British part. Finally attention has to be paid to cases of coincidence of estate duty and the Netherlands gift tax, (this is not within the scope of the treaty), e.g.: A person living in the Netherlands, grants, within 5 years preceding his death, property situated within Great Britain;

at his death, I presume, estate duty is due in Great Britain; on account of the gift, gift tax has been levied in the Netherlands. In case the gift had taken place 180 days preceding the death, gift tax would not have been levied, but succession duty and consequently this situation would have been brought within the scope of the treaty.

IV. *Operation of the Treaty*

It is no use, getting ahead on what will be the result of the application of the treaty by the tax authorities of both countries, to try to solve all sorts of casuistry. Instead of that it may suffice to give a condensed and rough outline in view of the principal articles of the treaty.

Under 1 in this article attention has been drawn to the fact that the main point of this treaty lies in the formation of a number of „situs rules". On this account the following can be remarked:

The question, when a property item is supposed to be situated on British territory, is incompletely solved in the British legislation. Under the influence however of authors and jurisprudence a number of situs rules have become a fixed standard for the application of the law.

E.g. debts are supposed to be situated in the place of residence of the debtor; tangible personal property (bearer-securities included) in the place where they are actually situated. For shares in limited liability companies a number of rules are in force, of which the purport is, to consider as decisive the place where the shareholders-register is to be found or where otherwise the transfer of shares is damed to take place.

The purport of the drafted treaty is to confine as much as possible the possibility of the genesis of double succession duty by replacing the British situs rules by the rules inserted in Article III subsection 2. According to letter c of that provision, debts (bonds and bank balances included) are deemed to be situated there where the deceased had his last domicile; the same counts for claims on payments under agreement of life insurance (letter e). Shares in limited liability companies etc. will be considered, irrespective the question where the exhibits are actually situated or where transfer has to take place, to be situated in the place where (or

according to the laws of which) the company has been founded. Consequently in case a person, domiciled within the Netherlands dies, only shares in British companies will be subject to estate duty, under the effect of the treaty.

Naturally for immovables the rule remains in force that for taxing purposes they are supposed to be situated there, where they are actually located (letter a). Also for movable tangible property the place of actual situation remains decisive. (letter b). For the other categories of property elements, which are practically of less importance, see the remaining subsections of mentioned provision; in classification and wording connection is apparently sought with treaties Great Britain concluded with the United States, Canada and South Africa.

According to an alteration of the Estate Duty legislation which came into effect in April 1946, in future estates (or the part of it situated on British territory in case the deceased died domiciled somewhere else) are free of estate duty, in case the value of it does not exceed an amount of £ 2000. Consequently this rule, seen in connection with the provisions of the treaty, brings a decrease of the burden of estate duty on Netherlands investments in Great Britain.

The first subsection of article IV provides, that the deduction of debts or charges of the estate has to take place in accordance to the prescriptions in the fiscal legislation of the country where the levy takes place.

The second subsection is of importance for the effect of the progression. In case Great Britain levies estate duty upon a part of an estate situated on British territory of a person who died domiciled in the Netherlands, for the application of the rate (and consequently also for the exemption of £ 2000 meant before) of estate duty only the British property has to be taken into account. Consequently for the reverse situation with regard to the Netherlands the same counts, but even without the treaty regulation the result would have been the same, as the mutation duty in the Netherlands is levied according to a fixed percentage of 6 %.

For the Netherlands, sub-division a of the aforementioned subsection contains a useful exception to the aforementioned principle for the cases in which the Netherlands—according to art. 3 of the Suc-

cession Duty Act — levies succession duty upon the whole estate of a Dutch citizen who dies domiciled somewhere else within 10 years after he had left the Netherlands. The computation of succession duty in respect of this decease is allowed (as if there was no treaty) to take place by taking into account the acquisitions out of the whole estate. Subsection b (like the final clause of Art. III) refers to the inheritance of property according to the so called British settlements. When a testator domiciled in the Netherlands leaves property on British territory and also property situated elsewhere — outside that territory — passing over according to suchlike settlement, that property will also be taken into account when computing the Estate Duty.

V. *Conclusion*

It may appear from the given review that the treaty, seen the limitation of its plan, does not work out complete elimination of double taxation in this branch, but nevertheless will be able to have a useful effect because of the application of the situs-rules.

Dans le Volume IV de notre Bulletin (année 1950) nous commencerons la publication d'une série d'articles traitant du problème du calcul des bénéfices imposables. Ces articles seront écrits par des experts d'un grand nombre de pays, et nous avons l'intention de publier après un résumé synthétique donnant une comparaison des différents systèmes fiscaux.

THE EFFECT ON BRITISH ESTATE DUTY OF THE DOUBLE TAXATION AGREEMENT BETWEEN GREAT BRITAIN AND THE NETHERLANDS

by

REGINALD K. JOHNS.

A Double Taxation Agreement, relating to Death Duties, between Great Britain and the Netherlands was signed on 15th October 1948, but has not yet been ratified. The Agreement of course cannot come into operation until ratification has been effected. This article is concerned with the effect on British Estate Duty of the Draft-Agreement, assuming that it is in due course ratified in its present form.

I. GENERAL SCOPE OF THE DRAFT AGREEMENT

Duties leviable on death are of two main types, viz:

(1) Mutation duties, imposed on the *passing* of property on death; and (2) Acquisition duties, imposed on the *acquisition* of property on death.

In Great Britain there were until recently imposed:

(1) "Estate Duty", a mutation duty of which brief particulars are given at II below. The rates of duty depend solely on the value of the property passing on the death.

(2) "Legacy Duty" and "Succession Duty", two complementary acquisition duties, one or other of which (but not both in respect of the same acquisition) may be payable in addition to Estate Duty. The rates of these duties depend solely on the relationship of the beneficiary to the deceased.

By the British Finance Act, 1949, the Legacy and Succession Duties are abolished as respects deaths, or claims for duty otherwise arising, on or after 30th July, 1949. The Estate Duty remains in force, the rates of this duty being increased on estates over £17.500 in value.

In the Netherlands there is imposed:

(1) "Succession Duty", an acquisition duty charged on the value of property, real and personal, regardless of its *situs*, received by an individual or corporation out of the estate of a deceased who was resident in the Netherlands;

(2) A "special inheritance tax" or mutation duty, charged on the value of real property situate in the Netherlands received by a person from a deceased who was not resident there:

There is also a Gift tax in the Netherlands, charged, on similar principles to those of the Succession Duty, in respect of dispositions *inter vivos*.

The Double Taxation Agreement, when ratified, is to operate where the deceased died on or after 1st July 1948. It gives relief from dual liability to (1) British Estate Duty and (2) Dutch Succession Duty. The other duties are not affected. The term „British" refers to Great Britain, i.e. England, Wales and Scotland. Northern Ireland and The Republic of Ireland levy their own Estate, Legacy and Succession Duties. The Agreement is to apply separately to the Northern Irish Estate Duty, which is levied in similar terms to British Estate Duty. It does not apply to The Republic of Ireland.

The Agreement differs from the Double Taxation Agreements previously entered into by Great Britain in giving relief from Estate Duty in respect of a foreign *acquisition* duty. The previous Agreements, i.e. those with the U.S.A., Canada and South Africa relate solely to the mutation duties of the respective countries, acquisition duties being ignored. The British and Dutch mutation duties however, do not overlap, as the British Estate Duty does not extend to Dutch real property.

In consequence of this difference, the new Agreement, though modelled on the previous Agreements, is more limited in its scope. This is shown by the following comparison with the British—U.S.A. Agreement:

The most frequent cause of double death duty taxation is conflict between the *situs* of the property and the domicil of the deceased as grounds of liability. To meet this, the British—U.S.A. Agreement provides a comprehensive and twofold scheme of relief between the two countries by (i) setting out a code of *situs* rules, including two abnormal rules under which certain types of property are treated as notionally situate where the deceased was

domiciled, thus eliminating the claim for duty by the country of the normal *situs*; and (ii) providing that, where (i) does not eliminate double duties, the country claiming by reason of domicil is to give a credit against its duty for the duty payable in the country claiming by reason of *situs*. The British—Netherlands Agreement adopts method (i) but not method (ii), i.e. there is no provision for "credits" and the only relief which it gives is by applying artificial *situs* rules to certain limited classes of property.

II. IMPOSITION OF BRITISH ESTATE DUTY

The following broad outline of the Estate Duty is subject to detailed modifications.

By Section I of the Finance Act, 1894, Estate Duty is imposed on all property, real or personal, settled or not settled, which passes on the death of a deceased person; and the charge for duty is extended, by Section 2 (1) of the Act and by subsequent statutes, to property, the subject of various types of disposition, which is deemed to be included in the property which so passes. Broadly speaking, the duty is charged on (1) the deceased's „free estate", i.e. the property which he owned; (2) property of which he was otherwise competent to dispose — including interests in expectancy, on which duty may be paid either immediately or when the interest falls into possession; (3) settled property passing on, and interests ceasing on, his death; (4) gifts made by him either within 5 years of his death or with the reservation of a benefit or interest; (5) joint property, to the extent of his beneficial interest; (6) insurance policies and annuities and other interests provided by him and arising on his death; and (7) certain property transferred to Companies. The charging provisions are highly complex and are designed to prevent avoidance of the duty.

Where settled property passes on the successive deaths of persons having limited interests only (e.g., life interests) the duty is charged on the capital value of the property on each death.

There are various express exemptions and allowances. Amongst these are exemption for: (i) Property passing by reason only of a bona fide purchase; (ii) Property in which the deceased's interest failed before it became on interest in possession; (iii) Settled property passing on the death of a spouse which bore duty on the prior

death of the other spouse; (iv) Certain British Government securities, issued in wartime, if held at the death by a person neither domiciled nor ordinarily resident in the United Kingdom. The allowances include, under reciprocal arrangements, credits against the duty for duties paid in Northern Ireland, the Republic of Ireland and certain „British possessions" in respect of property situate in those territories; and, under the Double Taxation Agreements, for duties paid in the U.S.A., Canada and South Africa in respect of property situate there. Duty paid in other foreign countries—including the Netherlands—in respect of property situate in such countries is deductible against the *value* of the property for duty purposes (Section 7 (4) of the Finance Act, 1894): this is not affected by the new Agreement.

Property is valued at its open market value at the date of death. Allowance is made for debts and funeral expenses; but debts due to persons resident outside Great Britain must be treated as primarily payable out of the deceased's foreign property.

The rate of duty depends solely on the aggregate value of all the property passing, and is independent of the relationship of the successor to the deceased. Certain property is, however, excepted from aggregation and the rate of duty on such property is fixed by reference to its separate value. As regards deaths on or after 30th July 1949, the rate of duty is nil where the aggregable value does not exceed £ 2.000. For the range £ 2.000 to £ 3.000 the rate is 1%; for estates over £ 1.000.000 it is 80%; there are 22 intermediate stages. Lower rates are applicable to agricultural property. A gradual transition from one rate to another is provided by „marginal" relief at the points where the rates change.

The territorial scope of the duty is as follows:

(A) The duty is levied on all property situate in Great Britain, whether movable or immovable, real or personal, passing on the death of any person. It does not matter (i) where the deceased was domiciled, or (ii) where the beneficiaries are domiciled.

(B) Immovable property (not subject to a trust for sale), including leasehold property, situate outside Great Britain is not liable to duty;

(C) Movable property (including, in certain circumstances, im-

movable property subject to a trust for sale) situate outside Great Britain is liable to duty, in the case of free estate, if the deceased was domiciled in Great Britain at his death, but not otherwise. As regards such property other than free estate, the tests of liability are complex: the main test in the case of settled property is whether the "proper law" of the settlement (i.e. the law which the parties to it are presumed to have intended should govern it) is British.

In British law, a person's "domicil" is, briefly, the place of his *permanent* residence — not necessarily where he is actually living at the death. Every person at birth has a "domicil of origin", viz. the domicil of his or her father (or, in the case of an illegitimate child, of the mother). This domicil is retained until he or she (not being a minor) acquires a different "domicil of choice" by taking up residence in another country with the intention of residing there permanently. If a domicil of choice is lost without another being acquired, the domicil of origin revives. A minor's domicil changes with that of his parent. A married woman has the domicil of her husband.

The conception of "residence" or "domicil" in Dutch law appears to have much in common with that of „domicil" in British law; but a domicil of origin is less easily displaced by a domicil of choice in British than in Dutch law.

As to the *situs* of property in British law, see IV below.

III. EXTENT OF DOUBLE TAXATION

Subject to the provisions of the Agreement, dual liability to British Estate Duty and the Dutch Succession Duty occurs:

(1) Where the deceased was domiciled ("resident") in the Netherlands and left property (real or personal) in Great Britain. Both countries charge duty on the British property.

(2) Where the deceased was resident in the Netherlands by Dutch law but domiciled in Great Britain by British law. In such cases, which are likely to be rare, both countries charge on (i) real and personal property in Great Britain and (ii) personal property outside Great Britain (whether in the Netherlands or elsewhere).

The duties are similarly charged where the deceased has a British domicil (by both British and Dutch law) but, having left the

Netherlands for less than 10 years and being still a Dutch citizen, is deemed under Art. 3 of the Dutch Succession Duty Act to have a notional Dutch domicil for Succession Duty purposes. But Art. 3 provides in these circumstances for allowance against the Succession Duty in respect of any British duty which would not have been charged had the deceased's *real* domicil been in the Netherlands, i.e. for Estate Duty on the assets outside Great Britain (and also for any British Legacy or Succession Duty chargeable on *any* of the assets — such duties being charged by reason of the deceased's British domicil).

(3) Where the deceased was domiciled in the Netherlands and was the creator of a British *inter vivos* Settlement under which property passes on his death. Here Great Britain charges duty on all the settled property other than Dutch immovable property; and in certain circumstances Succession Duty may also be chargeable under Article 11 of the Dutch Succession Duty Act.

The main overlap arises from the conflict between British *situs* and Dutch domicil in case (1).

IV. EFFECT OF THE DOUBLE TAXATION AGREEMENT ON ESTATE DUTY

The following account of the draft Agreement is subject to any modification which may be necessary when practice becomes established by the Revenue authorities of the two countries.

Under Article III (1) of the Agreement each country is to determine the deceased's domicil according to its own law.

Article IV of the Agreement in effect affirms both the ordinary British law and the ordinary Dutch law as regards the imposition of their duties (including the allowance to be made for debts), subject to the *situs* changes made by Article III (2) (see below). As regards Estate Duty, it is provided that duty is not to be charged on property situate outside Great Britain if the deceased was domiciled in the Netherlands and not domiciled in Great Britain, except where the property passes under a disposition governed by British law. This affirms the ordinary charging principle; the exception preserves the liability to duty of settled property under a British Settlement.

Articles III (1) and (IV) thus do not prevent or relieve the

overlap between the British and Dutch duties.

Article III (2) of the Agreement — the operative clause — sets out a code of eleven rules for determining the *situs* of various classes of property, to be applied by both countries where the deceased was domiciled in either. Its effects are as follows:

(1) *Abnormal rules fixing situs by reference to domicil*

Rules (c) and (e) of Art. III (2) provide that the *situs* of debts (secured or unsecured), including securities issued by any government, municipality, or public authority, debentures and debenture stock, and monies payable under insurance policies, are to be deemed situate where the deceased was domiciled.

These rules differ from the normal British law of *situs*, under which (i) debts under seal ("specialty debts"), including policies under seal, are situate where the document is physically located: (ii) other debts, including policies, are situate where the debtor is resident; and (iii) government, etc., securities and debentures and debenture stocks are situate where the security is registered, or, if in bearer form, where the certificates are physically located.

(a) *Netherlands domicil.* The effect of rules (c) and (e) in the normal case of overlap, i.e. where the deceased was domiciled in the Netherlands and left property in Great Britain, is that property of the above types which under normal British law would be situate in Great Britain — e.g., British government securities registered in London, accounts at British banks, mortgages on British land (the mortgage deeds being in Great Britain) — will be deemed situate in the Netherlands and Estate Duty will not be chargeable.

The Dutch duty, being independent of *situs*, is unaffected.

(b) *British domicil.* Where the deceased was domiciled in Great Britain, the rules have no effect, since the Netherlands does not charge duty and the Estate Duty is payable irrespective of *situs*.

(c) *Double domicil.* If the deceased was domiciled in Great Britain by British law and in the Netherlands by Dutch law, property of the above types will be deemed situate *both* in Great Britain *and* in the Netherlands; but this has no effect on double taxation, since each country claims duty by reason of domicil irrespective of *situs*.

(2) *Other abnormal rules*

The remaining rules of Art. III differ in certain respects from the normal British law of *situs*. In particular, under rule (d), shares or stock in companies (including shares or stock held by nominees), are to be deemed situate where the company was incorporated. Under normal British law shares and stock are situate where they are registered, or, if in bearer form, where the share or stock certificates are actually found at the death. Very often, of course, the *situs* under the Agreement will be the same as under the ordinary law; but it will sometimes be different, and the effect of the Agreement is then arbitrary: it *may* prevent double taxation as at (1) above but it may, on the other hand, cause double taxation which would not otherwise arise.

For example, the deceased was domiciled in the Netherlands and owned (a) bearer shares in a Dutch company, the certificates actually being in England and (b) bearer shares in a English company, the certificates actually being in the Netherlands; the Agreement changes the situs of the shares at (a) from England to the Netherlands and the situs of the shares at (b) from the Netherlands to England. Estate Duty on (a) is no longer chargeable and double taxation is prevented; but a new liability to Estate Duty is imposed on (b), with resultant double taxation which would not otherwise occur. There is no relief from this.

Rule (b) fixes the *situs* of (inter alia) negotiable bills of exchange and promissory notes at the place where the instrument is actually situate at the death. This accords with the normal British law but prevents the money due under such an instrument being regarded as a distinct asset situate where the debtor is resident. Thus if the debtor is resident in Great Britain but the instrument elsewhere, liability to Estate Duty may be eliminated.

Rule (g) fixes the *situs* of goodwill at the place where the business etc. was carried on. The normal British law fixes the *situs* at the *principal* place of business. The new rule might possibly cause a new liability to Estate Duty in respect of the goodwill of the British branch of a foreign business.

(3) *Normal rules*

Except as indicated above, the rules set out by Art. III (2)

conform, broadly speaking, with the normal British law of *situs*, and may be referred to as in effect a "codification" of it. There is no relief from double duties in respect of the classes of property to which these normal rules apply.

(4) *Property outside Art. III (2)*

Although Art. III (2) specifies *situs* rules for most types of property, there are one or two exceptions, e.g. shares in partnerships, for which no rule is given. It is provided that the *situs* of such property is to be fixed by the law of the country in which the deceased was *not* domiciled so that, if the deceased was domiciled in Holland, the *situs* will be ascertained under normal British law and the Agreement will have no effect.

(5) *Deceased domiciled in neither country*

If the deceased was domiciled in neither country, Art. III (2) does not apply. In such circumstances Dutch Succession Duty is not charged and there is no double taxation.

(6) *"Notional" Dutch domicil: actual domicil in neither country or in Great Britain*

If, however, the deceased, though actually domiciled in neither country, had a „notional" Dutch domicil under the "10-years rule" mentioned above, and left British property, both countries charge duty on that property. It is thought that Art. III (2) of the Agreement will not apply by reason solely of such a "notional" domicil; if this view be correct, there is no relief under the Agreement. But, *as a result* of the Agreement, allowance against the Dutch duty, under Art. 3 of the Succession Duty Act, would presumably have to be made for the Estate Duty on any of the property which, had the deceased's *real* domicil been in the Netherlands, would have had its *situs* shifted out of Great Britain by Art. III (2) of the Agreement so that Estate Duty would not have been chargeable on it.

The allowance under Art. 3 would be similarly affected where the deceased's actual domicil (by both British and Dutch law) was British and he had a notional Dutch domicil under the 10-years rule.

(7) *Proviso to Art. III (2): Non-British Settlements*

It is provided that Art. III (2) shall not apply to the duty imposed by either country on property situate in its territory and passing under a disposition not governed by its law unless (by reason of its application or otherwise), the other country imposes duty on it, or would but for some specific exemption, impose duty on it.

This preserves the claim for Estate Duty on British assets passing under foreign Settlements in such circumstances that Dutch Succession Duty is not chargeable. For example, the deceased (X), was domiciled in the Netherlands and during his lifetime granted property, including British debenture stocks registered in London, to another person (Y) absolutely, but himself retained an usufructuary interest; this transaction would attract an immediate Gift Tax in the Netherlands in respect of Y's interest, but no Succession Duty would be payable on X's death except in certain cases where Article 11 of the Succession Duty Act applies (in which event the Gift Tax previously paid would be credited against the Succession Duty). British Estate Duty therefore remains payable on X's death in respect of the British debentures, Art. III (2) (c) of the Agreement — which would have shifted the situs of the debentures to the Netherlands and so freed them from duty — being rendered inoperative by the proviso.

On the other hand, had X *by his will* bequeathed an usufructuary interest in the debentures to Y (also domiciled in the Netherlands) and the bare dominium to Z, Succession Duty would have been payable on the death of X in respect both of Y's usufruct and Z's bare dominium; and, although no *further* Succession Duty would be payable on the death of Y, Art. III (2) (c) would, it is thought, prevent Estate Duty being charged on the deaths of both X and Y.

But if, in this latter example, Y had been domiciled in Great Britain, the *situs* of the debentures on *his* death would be governed by *his* domicil, i.e. they would be deemed situate in Great Britain and Estate Duty would be payable on his death (though not on X's).

(8) *British Settlements*

Property passing on the death of any person (wherever domiciled),

under a British Settlement, other than immovable property outside Great Britain, is chargeable with Estate Duty irrespective of its *situs*, and the Agreement therefore has no effect on such property.

V. CONCLUSION

It will be seen that:

(1) The relief to be given by the Agreement applies only to certain classes of property, but these are, perhaps, the types of British property most likely to be owned by Dutchmen and so liable to double duties.

(2) As the Dutch duty does not depend on *situs*, the relief is unilateral, i.e. it is given by Great Britain only. But it is only fair to add that this is due to the narrower initial scope of the Dutch duty.

ERRATUM

We regret that in Mr. Koch's article on the Anglo-Swedish double taxation convention there is a mistake on page 267. The text has *two* references to a footnote [1]) instead of references to footnote [1]) and footnote [2]). There is only one footnote [1]) while the second footnote is at the foot of page 268 without any reference to it. This second footnote should have been printed at the foot of page 267 as footnote [2]).

LA RECENTE CONVENTION FRANCO-TCHECOSLOVAQUE TENDANT A EVITER CERTAINES DOUBLES IMPOSITIONS

par

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I

Au Journal Officiel de la République Française du 25 Février 1949, est parue une Loi no. 49.246 du 24 Février 1949 portant approbation de la convention signée le 6 Août 1948 entre la France et la Tchécoslovaquie et tendant à éviter les doubles impositions susceptibles de résulter de l'application des impôts sur la fortune ou sur l'accroissement de fortune établis en France et en Tchécoslovaquie.

L'objet de l'accord est assez restreint.

Contrairement à diverses conventions destinées à éviter dans de nombreux domaines les superpositions d'impôts possibles et dont nous avons vu l'exemple le plus récent et le plus complet dans l'intervention de la convention franco-sarroise, le nouveau texte signé le 6 Août 1948 entre la France et la Tchécoslovaquie n'a qu'une portée fort limitée.

Il procède du désir d'éviter dans toute la mesure du possible de soumettre les mêmes biens à une double taxation susceptible de résulter, en France, de l'application de l'Ordonnance du 15 Août 1945 instituant l'impôt de Solidarité Nationale, et en Tchécoslovaquie, de la Loi du 15 Mai 1946, établissant des impôts sur la fortune et sur l'accroissement de fortune.

Aussi, et pour en apprécier la portée, apparaît-il indispensable de résumer tout d'abord les principes sur lesquels repose l'Ordonnance française.

II

L'économie du document du 15 Août 1945 comporte:

D'une part, la taxation des personnes physiques vivantes à la date du 4 Juin 1945;

D'autre part, l'imposition au nom des héritiers, donataires ou légataires de l'enrichissement réalisé entre le 1er Janvier 1940 et le jour du décès, par toute personne décédée entre le 1er Janvier 1949 et le 4 Juin 1945;

Enfin, l'assujetissement de certaines sociétés et autres personnes morales à un prélèvement proportionnel sur leurs biens.

L'idée générale est donc de soumettre à l'impôt de solidarité nationale toutes personnes physiques ou morales autres que les sociétés ayant leur siège en France, et dont le patrimoine comprend des biens qui seraient assujettis en France à l'impôt de mutation par décès s'ils dépendaient de la succession ouverte au 4 Juin 1945 d'une personne ayant même nationalité et même domicile. Cet impôt comporte lui-même deux branches distinctes: l'une, dénommée „prélèvement sur les patrimoines", visè la valeur nette de l'ensemble des biens existant à la date du 4 Juin 1945; l'autre, dénommée „contribution sur l'enrichissement" frappe les accroissements dont le patrimoine a fait l'objet entre le 1er Janvier 1940 et le 4 Juin 1945.

Le principe de la territorialité de l'impôt s'oppose, évidemment à la taxation des biens étrangers. Mais si ce principe s'applique sans aucune restriction aux immeubles situés à l'étranger, il en est autrement pour les biens mobiliers étrangers, lesquels en certains cas se trouvent tenus — en raison de textes spéciaux — à l'impôt de mutation par décès en France, et par voie de conséquence se trouvent atteints pas l'impôt de solidarité nationale.

C'est donc en fonction de ces données générales que la nouvelle convention peut être appréciée.

III

Conformément à la règle généralement admise, la convention déclare que les immeubles, les objets mobiliers corporels et les fonds de commerce (éléments corporels et incorporels) sont imposés uniquement dans l'Etat où les biens ont leur situation ou leur exercice.

Malgré leur caractère incorporel, les fonds de commerce one d'habitude une assiette déterminée et leur nationalité s'apprécti en fonction du lieu d'exploitation. La convention, tout en soulignant

clairement ce principe, ne déroge donc pas ici au Droit commun.

Mais il va de soi que pour la détermination du caractère mobilier ou immobilier des biens, c'est la législation française seule qui doit être consultée.

Doivent être considérés comme des fonds de commerce ou d'industrie distincts, les succursales, fabriques, usines et ateliers, les comptoirs de vente et autres lieux fixes d'affaires ayant un caractère productif, ainsi que les dépôts gérés par des agents non autonomes situés dans l'un des deux Etats et dépendant d'un établissement ayant son siège dans l'autre Etat.

Les créances commerciales ainsi que les redevances provenant de la concession de brevets, licences ou marques de fabrique, à moins que le paiement desdites redevances n'incombe à un établissement stable possédé par le titulaire dans l'autre Etat se trouvent assujetties à l'împôt uniquement dans l'Etat où le propriétaire ou le créancier possède domicile.

Une exception intervient toutefois à l'égard des créances assorties d'une garantie hypothécaire qui, de ce fait même sont déclarées imposables dans l'Etat de la situation de l'immeuble grevé par l'hypothèque. C'est ainsi que des dettes dont la garantie serait constituée par une hypothèque sur des immeubles tchécoslovaques, dettes dont la déduction est d'ailleurs interdite en France en cas de mutation par décès, ne peuvent non plus être admises en déduction de l'impôt de solidarité nationale français.

D'autre part, il est à noter que les autres biens incorporels et notamment les valeurs mobilières ne se trouvent pas libérées d'une double imposition possible, chacun des Etats contractants conservant la faculté de taxer ces biens et valeurs suivant les principes de sa propre législation.

Ici, en effet, le Gouvernement Français n'a pas jugé possible d'aller plus loin et de mettre en oeuvre une solution qui eût consisté à abandonner l'imposition des biens et valeurs du Pays du débiteur ou de l'investissement des capitaux, ou à réserver à ce Pays une priorité d'imposition à charge par l'autre Etat d'imputer sur son propre impôt l'impôt déjà perçu dans le premier Etat.

On ne retrouve donc pas dans la nouvelle convention certaines formules que l'Association financière et fiscale connaît bien pour les avoir étudiées, et dont les avantages sont évidemment incontes-

tables.

Dans le cadre des relations franco-tchécoslovaques, l'application d'une modalité trop générale aurait vraisemblablement abouti à une répartition inégale des sacrifices réciproques.

A cet égard, il n'est pas indifférent de noter qu'au cours de la discussion intervenue au sein du Conseil de la République qui après l'Assemblée Nationale était appelée à connaître de la question, un membre de ce Conseil a formulé quelques réserves à l'égard des mesures d'exception qui, dans certains Pays, notamment d'Europe Centrale, ont depuis la fin de la guerre, frappé les intérêts français.

Nos nationaux qui possédaient dans ces Pays des immeubles, des biens meubles, des créances, les sociétés qui s'y trouvaient établies et qui avaient des exploitations attendent encore des règlements d'indemnités qui jusqu'à présent ne se sont pas manifestés effectivement.

Cette circonstance de fait, parait avoir contribué à rétrécir le développement actuel de la convention nouvelle.

* * *

L'accord franco-tchécoslovaque définit le régime auquel sont soumises les sociétés. Celles-ci sont imposées dans l'Etat selon les lois duquel elles ont été constituées, et d'après les règles qui sont en vigueur.

Dans l'Etat autre que celui du siège social, elles ne sont passibles de l'impôt de cet autre Etat que sur l'actif qu'elles y possèdent les stipulations concernant les personnes physiques et autres personnes morales leur étant, à cet égard, en tous points applicables. Ce qui signifie qu'une société tchécoslovaque ne pourra être taxée à l'impôt français que pour les biens qu'elle possède en France ou qui sont considérés comme français. Elle ne pourra d'ailleurs être assujettie qu'à un prélèvement sur le patrimoine, et non à une taxe d'enrichissement.

* * *

On peut conclure en disant que dans toutes les hypothèses prévues par la convention c'est la doctrine de la taxation „ratione loci" qui est appelée à intervenir.

Elle est d'une délimitation assez facile pour éviter toute compli-

cation: elle paraît au surplus conforme à une idée d'équité nationale.

Elle ne constitue d'ailleurs pas une nouveauté; et le texte de la convention parait davantage destiné à éviter des équivoques qu'à créer des formules neuves, ce qui fait qu'en définitive les dispositions adoptées se résument sous une forme tout à fait classique, et n'offrent qu'une portée assez limitée.

IV

L'accord comports enfin une partie plus particulièrement relative à l'assistance réciproque qu'entendent se prêter les deux Gouvernements pour assurer l'exacte perception des impôts qui se trouvent visés.

Toutefois, les mesures prévues à cette fin, et sur lesquelles les autorités compétentes des deux Pays se sont concertées, n'ont pas été insérées à l'interieur même de la convention, mais ont simplement fait l'objet d'échanges de lettres intervenues à la date du 6 Août 1948 entre nôtre Quai d'Orsay et le Ministre Plénipotentiaire et Envoyé Extraordinaire, Président de la Délégation Tchécoslovaque, à Paris.

La base des instructions échangées repose sur l'intention manifestée par chacun des deux Gouvernements de transmettre à l'autre, tous les renseignements qu'il détient ou pourra se procurer conformément à sa législation, et qui sont relatifs à des biens dont l'imposition appartient exclusivement à ce dernier Gouvernement dans les conditions définies par l'accord. En particulier des échanges d'informations joueront à l'égard des créances commerciales pour vente de marchandises dont sont titulaires réciproquement dans chaque Pays des personnes établies dans l'autre, ainsi que sur l'existence dans les établissements de crédit de comptes ouverts également respectivement en fonction de créances de même nature.

Les indications mutuelles des deux Gouvernements porteront également sur l'existence dans les établissements de crédit de chaque Pays, de comptes ouverts au nom de personnes respectivement domiciliées en France ou en Tchécoslovaquie.

Des renseignements de cet ordre seront enfin susceptibles d'intervenir à l'égard des redevances de brevets, licences, marques de fabrique, etc. . . .

* * *

Là encore, aucune innovation, mais bien au contrairie la persistance d'une conception contre laquelle d'ailleurs la Chambre de Commerce internationale a tenu à diverses reprises à s'élever. Notamment, le 8 Juin 1948, son Conseil avait pris en la matière une position très nette, en estimant que des accords d'assistance administrative ne répondaient pas aux conditions fiscales actuelles; qu'ils étaient inutiles lorsque l'administration était efficace; qu'ils soulevaient des problèmes politiques et financiers délicats et extérieurs au domaine fiscal; et qu'en définitive ils ne facilitaient pas l'allégement des doubles-impositions.

Cette question a été de nouveau évoquée au congrès de Québec du 13 juin 1949 dont elle constituait un des projets de résolutions.

Sa discussion a permis de réaffirmer le souhait de voir se développer de véritables accords bilatéraux sur la base des conventionstypes publiées en 1946 par le Comité Fiscal de la Société des Nations. La C.C.I. a souligné que la double imposition et l'assistance administrative constituaient des problèmes absolument distincts et que rien ne justifiait le lien que l'on essayait de créer artificiellement extre eux.

La modeste convention franco-tchécoslovaque est bien loin de l'ampleur des projets de la C.C.I.; elle ne vise au surplus que l'application de textes fiscaux de circonstance dont la mise en oeuvre est fort limitée dans le temps.

Souhaitons cependant que ce document, pour imparfait et incomplet qu'il apparaisse aujourd'hui, constitue l'amorce d'un accord ultérieur infiniment plus complet.

VI

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Unter this category we intend to publish a list of articles which have been published in the periodicals regularly received by the Bureau. These articles will be classified as follows :

I. General Part: A. Fiscal Law; B. Fiscal policy; C. Economic influence; D. Value; E. Fiscal evasion; F. Collection; G. Miscellaneous. — II. International Fiscal Law. — III. Comparative Fiscal Law. — IV. Income and Profits Taxes. — V. Property Tax. — VI. War-Taxes. — VII. Death Duties. — VIII. Turnover Taxes. — IX. Stamp Duties and similar Taxes. — X. Customs and Excise.

Sous la rubrique: nouvelles acquisitions, nous publierons une liste des articles parus dans les périodiques que nous recevons régulièrement. Les articles seront rubriqués comme suit :

I. Partie générale: A. Droit Fiscal; B. Politique Fiscale; C. Influence économique; D. Valeur; E. Evasion fiscale; F. Recouvrement; G. Matières diverses. — II. Droit fiscal international. — III. Droit fiscal comparé. — IV. Impôts sur les revenus et sur les bénéfices. — V. Impôts sur la fortune. — VI. Impôts de guerre. — VII. Droits de succession. — VIII. Taxes sur le chiffre d'affaires. — IX. Droits de timbre, droits d'Enregistrement et taxes y assimilées. — X. Douanes et accises.

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Bemaerkninger til Skattelovkommissionens betaeknings 1 del om Beskatningen af indkomst og Formue M.V. — (Skattepolitisk Oversigt supplement).
Federal Income Tax: Payroll Tax. — H. R. Irving (The Federal Accountant, no. 8 vol. XXXI, p. 268).
De vorming van een pensioenreserve en de fiscale winstbepaling. — H. L. Drost (De Naamlooze Vennootschap, no. 8, p. 124).
Liquidatiewinst. — B. de Boer (Ibid., p. 127).
Verlaging van Inkomsten en loonbelasting. — C. van Soest (W.d.B. 3964, p. 369).
Le régime fiscal des sociétés civiles. — (Bulletin Fiduciaire, no. 255, p. 13).
Profits Tax distributions on winding up. — (Taxation, no. 1151, p. 93).
Double taxation relief: Royalties paid under Rule 21. — (Ibid., p. 96).
Tax reform in Italy. — B. M. Berry (The Accountant, no. 3906, p. 475).
Nouvelle réflexions sur le réequipement industriel. — J. J. Lentz (L'Echo de l'Industrie, 1949, no. 27, p. 1).
Underwriters and Profits tax. — (Taxation, no. 1152, p. 105).
Profits Tax and Schedule D. — (Ibid., p. 115).
New Profits Tax Bill. — (Taxation, no. 1153, p. 129).
Income Taxation in the United Kingdom. — B. H. Binder (The Canadian Chartered Accountant, no. 4, vol. 55, p. 147).

V. **Property Taxes — Impôts sur la Fortune.**

The Finance Act 1949 III. — (The Accountant, no. 3900, p. 286).

VI. **War Taxes — Impôts de Guerre.**

Impôt exceptionnel et réserves spéciales. — J. A. Tartakovsky (La Gazette Fiscale (Egypte), no. 9/10, p. 271).
Durchführungsverordnung zum Ersten Teil des Soforthilfegesetzes (StDVO—SHG) vom August 8, 1949. — H. Megow (Deutsche Steuerzeitung, no. 17, 1949).
L'Amnistie fiscale en matière d'impôt de solidarité. — (La Vie Française, no. 224, 1949, p. 10).
Commentaire de la loi du 30 mai 1949 modifiant la loi du 15 octobre 1945 établissant un impôt spécial sur les bénéfices résultant de fournitures et de prestations à l'ennemi et la loi du 16 Octobre 1945 établissant un impôt extraordinaire sur les revenus, bénéfices et profits exceptionnels réalisés en période de guerre (Moniteur du 19 juin). — (Journal Pratique de droit fiscal et financier, no. 7—8, p. 177).
Zur Soforthilfe-Abgabepflicht beim Betriebsvermögen. — F. Heider. (Deutsche Steuerzeitung, 1949, no. 18, p. 333).
Vruchtgebruik en de heffingen ineens. — B. de Boer (Weekblad voor Privaatrecht, Notarisambt en Registratie, no. 4105, p. 449).
Het beginvermogen voor de Vermogensbelasting. — J. H. Smeets (Weekblad der Belastingen no. 3958, p. 319).
Heffing ineens in verband met vruchtgebruik en blote eigendom. — H. W. Holleman (Weekblad voor Privaatrecht, Notarisambt en Registratie, no. 4107, p. 472).
Steuerliche Bestimmungen des Soforthilfegesetzes (Steuer u. Zollblatt, no. 41).
Erläuterung steuerlicher Bestimmungen des Soforthilfe-Gesetzes. — (Deutsche Steuerzeitung, no. 37) (Steuer Schnellpost).
Een leemte in art. 41 lid 3 van de wet op de vermogensaanwasbelasting. — R. W. J. den Tex (Weekblad der Belastingen no. 3962, p. 355).

Waardering van polissen voor de V.H.I. — H. J. J. Hendriks (Weekblad voor Privaatrecht, Notarisambt en Registratie, no. 4110, p. 508).
General Relief Provisions of the Excess Profits Tax. — L. Sevreson (National Tax Journal, vol. II, no. 3, p. 247).
Oorlogsschade en Vermogensaanwasbelasting. — W. L. Schenk (De Naamlooze Vennootschap, no. 8, p. 132).
Prescription de l'action administrative en matière d'impôt de solidarité. (Bulletin Fiduciaire, no. 255, p. 31).
De middenstand en de V.H.I. — J. L. van Hedel (Maandblad voor Belastingrecht, 18e jrg. no. 1).
Niet-ingegane lijfrenten en pensioenen in de Heffingen ineens. — H. L. Drost (Ibid.).
Achterstallige dividendbewijzen van certificaten en de heffingen ineens. — (Ibid., p. 9).

VII. **Death Duties — Droits de Succession.**

Assignment of life policies.— R. J. Lawthers (Taxes, the Tax Magazine, vol. 27, p. 710).
Martial deduction formulas — where the interest of the surviving Spouse is affected by taxes. — I. A. Powers (Ibid., p. 726).
Enkele opmerkingen naar aanleiding van de progressie in het successierecht. — A. van Keulen (Weekblad voor Privaatrecht, Notarisambt en registratie, no. 4101, p. 401).
Succession duty valuations. — Ph. F. Vineberg (The Canadian Chartered Accountant, no. 2, vol. 55, p. 49).
Absolute gifts by parents to infant children. — Is the Hood-Barrs' decision correct? — T. J. Sophian (Taxation, no. 1144, p. 504).
Estate Duty and Life insurance. — G. Eichelgruen (The Business Digest (Israel) no. 85, p. 714).
Estate Duty. — (Ibid., p. 714).
De derde progressie in het successierecht in verband gebracht met de rechtvaardigheid van het heffen van successierechten voor van elkander ervende echtgenoten, alsmede de wenselijkheid der derde progressie. — J. J. Terpstra (Weekblad voor Privaatrecht, Notarisambt en Registratie, no. 4107, p. 473).
Die Erbschaftsteuerversicherung in der Praxis. — Th. Dörstling (Steuer u. Wirtschaft, no. 10, p. 923).

VIII. **Turnover Taxes — Taxes sur le Chiffre d'Affaires.**

La situation des oeuvres charitables ou philanthropiques au regard des taxes sur le chiffre d'affaires. — (Bulletin des contributions indirectes, no. 22, 1949).
Les cessions de droits d'exploitation devant la taxe sur le chiffre d'affaires. — (La Vie Française, no. 224, 1949, p. 10).
La taxation d'office en matière de taxe de transmission. — S. Scailteur (Commentaire de l'article 484 du Code des taxes assimilées au timbre) (Répertoire fiscal no. 9, p. 269).
Wijziging van omzetbelasting. — C. P. Tuk (Weekblad der Belastingen, no. 3961, p. 341).
The Los Angeles City Sales Tax Administration. — W. C. Peterson (National Tax Journal, vol. II, no. 3, p. 232).
Wholesale value for the purpose of purchase tax. — T. J. Sophian (Taxation, no. 1153, p. 135).

IX. **Stamp Duties and Similar Taxes — Droits de Timbre, Droits d'Enregistrement et Taxes y Assimilées.**

Du projet de Loi sur le droit de timbre. — (La Gazette Fiscale (Egypte), no. 9/10, p. 273).

La réduction de moitié de la taxe sur le revenu des valeurs mobilières est applicable à la surtaxe de 5 %. — (Bulletin fiduciaire no. 255, p. 29).

X. **Customs and Excises — Douanes et Accises.**

Wederinvoering van het banderollenstelsel voor de heffing van tabaksaccijns. — W. Satijn (Maandblad voor Financiën, Juni 1949, p. 135).
Alcoholic Beverage Tax. — (State Tax Review, no. 29, vol. 29).
Berekening algemeen uitvoerrecht en statistiek recht in Indonesië. — (Economische Voorlichting, no. 201, p. 1274).
De Plastica in het tarief van Invoerrechten. — J. B. Hovestreijdt (Weekblad der Belastingen no. 3959, p. 326).
De plastica in het tarief van invoerrechten. — J. B. Hovestreijdt (Ibid., no. 3960, p. 335).

EDITORS' NOTE

As from January 1, 1950 the heading: Articles published in periodicals received for the Bureau's library, will be discontinued.
At the same time it is the intention to stop the publication of Documents concerning fiscal legislation (Category X).
These two categories will henceforth be published in the „DOCUMENTATION SERVICE" published twice a month by the International Bureau of Fiscal Documentation. This „Documentation Service" will be sent to those who are a member of the International Fiscal Association (I.F.A.). We regret that it will not be possible to send it to other readers of this Bulletin.

The following periodicals are regularly received for the Bureau's library. Les périodiques suivants arrivent régulièrement pour la bibliothéque du Bureau.

ARGENTINE:

Ministerio de Hacienda de la Nación, Boletin. Weekly. Division Informaciones. Archivo y Boletin, Dirección General de Finanzas, Hipolito Yrigoyen 250, Buenos Aires.

AUSTRALIA:

The Australian Accountant. Monthly. Accountants Publishing Company, Ltd. Melbourne, 37 Queen Street.

The Federal Accountant. Monthly. Federal Accountant Publishing Coy. Pty. Ltd., Melbourne, 108, Queen Street.

The Taxpayers' Bulletin. Monthly. Taxpayers' Association of New South Wales, 111c Castlereagh Street, Sydney.

The Law Book Co. Taxation Service (Loose-leaf). Melbourne.

AUSTRIA:

Bundesgesetzblatt für die Republik Oesterreich. Staatsdruckerei, Vienna.

BELGIQUE:

Annales du Notariat et de l'Enregistrement. Recueil mensuel. E. Bruylant, Bruxelles, 67, rue de la Régence.

Belgique Coloniale et Commerce International. Revue mensuelle. Administration: 24, Avenue Michel-Ange, Bruxelles.

Bulletin des Contributions Directes. Publication mensuelle du Ministère des Finances, Bruxelles, 14, rue de la Loi.

Fabrimetal. Hebdomadaire. Bruxelles.

Journal Pratique de Droit Fiscal et Financier. Recueil mensuel. E. Bruylant, Bruxelles, 67, rue de la Régence.

Recueil Général de l'Enregistrement et du Notariat. Recueil mensuel. Administration: 93, Boulevard St. Michel, Bruxelles.

Répertoire Fiscal. Publication mensuelle du Maison F. Larcier, S.A., 26—28 rue des Minimes, Bruxelles.

Revue Juridique Fiscale et Financière. Revue mensuelle. Editions JARIC, Bruxelles, 34, rue de la Tulipe.

Revue Pratique du Notariat Belge. Publiée 3 fois par mois. Administration: 40, rue Crespel, Bruxelles.

Tijdschrift voor Notarissen. Revue mensuelle. Même adresse.

Revue de la Fédération des Industries Belges. Hebdomadaire. Bruxelles, 33 rue Ducale.

Bulletin de la Chambre de Commerce néerlandaise pour la Belgique et le Luxembourg, mensuel. Administration: Warandeberg 4, Bruxelles.

Moniteur Belge, Bruxelles.

Documentatie Vandewinckele. Beernem. Publication à feuilles supplémentaires.

CANADA:

The Canadian Chartered Accountant. Monthly. Dominion Association of Chartered Accountants, Toronto, 10, Adelaide Street East.

Canada Taxation Service (loose-leaf). Richard De Boo Ltd., Toronto.

Provincial Taxation Service (loose-leaf). Same publisher.

DENMARK:

Skattepolitisk Oversigt. Monthly. Erhvervenes Skattesekretariat, Vestre Boulevard 20, Copenhagen.

EGYPTE:

La Gazette Fiscale, Revue mensuelle. B.P. 350, Alexandrie.

FINLAND:

Finland Författningsammling (Gazette of Finland). Government Printers, Helsinki.

Unitas, Helsinki, Nordiska Föreningsbanken. Quarterly.

Affärs ekonomisk Revy. Monthly. Rönnvägen 17A, Helsinki.

Monthly Bulletin. Bank of Finland, Institute for Economic Research, Helsinki.

FRANCE:

Bulletin Fiduciaire, recueil mensuel, 51 Rue de la Chaussée d'Antin, 51, Paris.

Bulletin des contributions indirectes, Paris. Hebdomadaire. 10 rue de Solférino, Páris.

La Vie Française. Hebdomadaire 1., Rue de Caumartin, Paris.

Impôts et Sociétés, Mensuelle. 5 Rue Lamartine, Paris.

Feuillets de Documentation Rapide. 15, Rue Viète, Paris, paraissant tous les 10 jours.

Revue de Science et de Législation financière. Tous les trois mois. 20, Rue Soufflot, Paris.

Revue des impôts sur le commerce et l'industrie. Recueil mensuel. 5, Rue de Vienne, Paris.

Bulletin Officiel des Contributions Directes et du Cadastre, Paris.

Bulletin de Documentation Pratique des taxes sur le chiffre d'affaires, Paris.

Bulletin de Documentation Pràtique des Impôts Directs, Paris. 15, Rue Viété, mensuel.

Bulletin Statistique du Ministère des Finances, Paris.

Journal Officiel de la République française.

Bulletin Analytique de Documentation Politique, Economique et Sociale Contemporaine. Fondation Nationale des Sciences Politiques, 27 rue St.-Guillaume, Paris.

GERMANY:

Steuer und Wirtschaft. Monthly, J. F. Bergmann, München; Springer Verlag, Berlin.

Steuer und Buchhaltung. Publisher: F. Kiehl, Ludwigshafen a.Rh.

Deutsche Steuer Zeitung. Publisher Industrie-Verlag Gehlsen, Siegburg/Rhld., Wilhelmstr. 59.

Steuer und Zollblatt. Publishers: Hansestadt Hamburg, Finanzbehörde.

Gesetzblatt der Verwaltung des vereinigten Wirtschaftgebietes. Bundesgesetzblatt.

GREAT BRITAIN:

The Accountant, Weekly. Gee & Co. Publishers, 27—28 Basinghall Street, London.

Taxation. Weekly. Taxation Publishing Company Ltd. 98 Park Street, London.

GRÈCE:

Oikonomia Nea. Revue mensuelle, Rue Emm. Mpenaké 18, Athènes.

H Nea Oikonomia. Revue Mensuelle. Rue Issiodou 24, Athènes.

Revue Hellénique de Droit International. Institut Hellénique de Droit International et Etranger, Palaia Anaktora, Athènes.

INDONESIA:

Maandblad van Financiën. Scottweg 23. Batavia C.

ISRAEL:

Business Digest. Weekly. Paltax Publishers. P.O.B. 1313, Haifa.

ITALIE:

Giurisprudenza delle Imposte di Registro e di Negoziazione. Associazione fra le società italiane per azioni, Roma, Via Cesare Battisti 121.

Giurisprudenza delle Imposte dirette (Id., Id.).

Rivista internazionale di scienze sociali. Milano, Piazza S. Ambrogio 9.

Giornale degli economisti e Annali di economia. Cedam, Padova.

Banca Nazionale del Lavoro. Roma, Via Vittorio Veneto 119.

La Rivista Tributaria, Napoli, Via Mezzocannone 109.

Quaderni di Studi e Notizie, Milano, Foro Bonaparte 31.

Bolletino Tributario d'Informazioni. Piazza Borromei, 5.

Diritto E Pratica Tributaria. Cedam, Padova.

Rivista di Diritto Finanziario e Scienza delle Finanze. Revue trimestrielle, Pavia, Istituto di Finanza.

Bancaria. Rassegna dell' Associazione Bancaria Italiana. Roma, Piazza del Gesù, 49. Monthly.

LUXEMBOURG:

L'Echo de l'Industrie. 8, avenue de l'Arsenal, Luxembourg.

Pasinomie Luxembourgeoise. Imprimerie Victor Buck, Luxembourg.

MEXICO:

Revista Fiscal y Financiera. Venustiano Carranza 69, Mexico D.F.

El Foro. Ave Madero 29, Mexico D.F.

Revista de la Escuela de estudios contables: Apartado Postal 118, Monterrey.

NETHERLANDS:

Bestuurswetenschappen. Paleisstraat 5, The Hague.

Gemeente financiën. Monthly Review. Id.

Mededelingen van het Afrika Instituut. Coolsingel 58, Rotterdam.

Weekblad der Belastingen. Weekly. 'sHertogenbosch, Emmaplein 2.

Economisch Statistische Berichten. Weekly. Rotterdam, Pieter de Hoochstraat 5.

Economische Voorlichting. The Hague, Bezuidenhout 64.

Lijst van aanwinsten van de bibliotheek van den Economischen Voorlichtingsdienst. Bezuidenhout 64, The Hague.

De Financiële Koerier. Amsterdam, Kalverstraat 35—37.

Maandblad voor Accountancy en Bedrijfshuishoudkunde. Amsterdam, Emmastraat 36.

Weekblad voor Privaatrecht, Notarisambt en Registratie. The Hague, Paviljoensgracht 17-19.

Maandblad voor Belastingrecht. Leiden, Breestraat 117.

De Naamlooze Vennootschap. Amsterdam, Herengracht 314.

Openbare Financiën. Alphen aan den Rijn, Samsom N.V.

Belastingberichten. (Loose-leaf service). N. Samsom, Alphen aan den Rijn.

Vakstudie. Loose-leaf service. Uitgeversmaatschappij AE. E. Kluwer, Deventer.

De Belastingwetgeving. Loose-leaf service J. Noorduyn & Zoon N.V., Gorinchem.

Fiscale en Economische Documentatie. Loose-leaf service, Amsterdam, Herengracht 456.

NEW ZEALAND:

The New Zealand Economist and Taxpayer. Wellington, P.O. Box 974.

New-Zealand Government Gazette.

PERU:

El Peruano, Diario Oficial. Lima.

PORTUGAL:

Boletim da Direcção Geral das Alfândegas. Imprensa Nacional de Lisboa.

Boletim da Direcção Geral das Contribuições e Impostos. Ibid.

SUEDE:

Svensk Författingssamling. (Official Gazette). Stockholm.
Svensk Skattetidning. Postfack 2013. Stockholm.
Quarterly Review Skandinaviska Banken. Stockholm.
Index, Svenska Handelsbanken. Arsenalsgatan 11, Stockholm.

SUISSE:

Schweizerische Aktiengesellschaft. Limatquai 4, Zürich.
Schweizerisches Zentrallblatt für Staat- und Gemeinde-Verwaltung. Verlag Art. Institut Orell Füssli AG, Zürich.
Schweizerische Bank Verein. Monthly Bulletin. English, French and German edition. Basel.

SOUTH AFRICA:

Government Gazette.

TANGER:

Bulletin Officiel, Edition Française.

TCHECOSLOVAQUIE:

Věstnik. Prague, Letenskà 15.
Prumyslovy Věstnik. Prague II, Na prîkopě.
Bulletin of the National Bank of Czechoslovakia. Prague.

TURKEY:

Maliye Bülteni. Maliye Bakanligi, Ankara.

UNITED STATES OF AMERICA:

The Tax Digest. Los Angeles, 775 Subway Terminal Building 417 S. Hill Street.

State Tax Review. Commerce Clearing House Inc., Chicago, 214 N. Michigan Avenue.

State Tax Guide. Loose-leaf service Id.

Tax Policy. Tax Institute Inc. New York, 150 Nassau Street.

Tax Institute Bookshelf. (Id).

Tax Topics. Los Angeles, 1130 West Olympic Blvd.

Tax Administrators news. Federation of Tax Administrators, Chicago, 1313 East Sixtieth Street.

The Tax Commentator. Issued by the Tax Digest, New York.

Taxes. The Tax Magazine. Commerce Clearing House, Chicago.

Tax Law Review. Bi-monthly. New York University School of Law, 100 Washington Square East, New York 3.

National Tax Journal. Quarterly. National Tax Association, P.O. Box 1799, Sacramento 8, California.

Nouveaux impôts en France,

Le Ministre des Finances a présenté le projet de budget pour 1950. Ce projet comprend un nombre d'impôts nouveaux qui produiront 165 milliards de francs. Il s'agit des impôts suivants:

1) une taxe de 10% sur les bénéfices non distribués des sociétés;
2) une taxe au poids des véhicules lourds (10.000 frs. à la tonne);
3) une taxe sur les cessions d'automobiles d'occasion.

Seront majorés les impôts suivants:

a) la taxe à la production (de 12,5 à 13,5%);
b) la taxe sur les transactions (augmentation de 0,1%);
c) la taxe sur les mutations d'immeubles et de fonds de commerce (de 9 à 12%);
d) le droit d'apport aux sociétés (de 1,5 à 3%);
e) la cotisation patronale sur les salaires (de 5 à 7%).

(*Source:* La Vie Française du 18 novembre 1949).

VII
DICTIONARY OF FISCAL LAW

ENGLISH
Alphabetical Order

FRANÇAIS
Ordre Alphabétique

DEUTSCH
Alphabetische Ordnung

NEDERLANDS
Alphabetische volgorde

The cooperation of all our readers is urgently requested for this column. Kindly send us your problems and experiences, for it is only in this way that this dictionary can be continued.

DICTIONNAIRE DE DROIT FISCAL

ENGLISH
Numerical Order

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225 Perpetual annuity
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DEUTSCH
Numerische Ordnung

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224
225 Ewige Rente
226 Zeitrente
227 Abzüge von der Bemessungsgrundlage
228 Unterhaltsbeitrag
229 Absetzung für Abnützung
230 Persönliche Abzüge

NEDERLANDS
Numerieke volgorde

223 Annuïteit
224 Uitgestelde rente
225 Voortdurende rente
226 Tijdelijke rente
227 Vrijgesteld minimum
228 Alimentatie
229 Toegestane afschrijving
230 Aftrek wegens persoonlijke omstandigheden

Pour cette rubrique, nous faisons un pressant appel à la collaboration de nos lecteurs. Nous les prions de bien vouloir nous faire part de leurs difficultés et des résultats de leur expérience personnelle, vue que c'est le seul moyen qui puisse nous permettre de continuer l'élaboration de ce dictionnaire.

IX

INFORMATION PUBLISHED BY THE INTERNATIONAL FISCAL ASSOCIATION

I.F.A.

established February 12, 1938, with seat at The Hague (under the responsibility of the Council of the Association)

Honorary president (elected 1939): C. W. Bodenhausen (Netherlands) President (elected 1939): MITCHELL B. CARROLL (U.S.A.).

Bureau of the Association:

L. KORTHALS, general secretary, 68, Balistraat, The Hague, tel. 11.33.57.

Miss J. AE. VAN BUUREN, assistent secretary.

Official information

The general secretariate changed its address from 116, Mesdagstraat, to 68, Balistraat, The Hague, tel. 11.33.57.

On September 10, 1949, the Council, during its meeting at Zurich (Switzerland) took i.a. the following decisions:

1) Dr. W. R. Emmen Riedel's resignation from his function of secretary general was accepted by the Council.

2) In his place Mr. L. Korthals, doctorandus in economic science, Head of the Financial Department of the Dutch Ministry of Overseas Territories, was appointed secretary-general.

3) The secretariate general was removed from Dr. Riedel's residence to 68, Balistraat, The Hague.

4) In recognition of his devoted services to the IFA for many years the Council offered Dr. Emmen Riedel a honorary membership of the Council.

5) Mr. Maurice Polti, director of the "Association Nationale des Sociétés par Actions (A.N.S.A.)", was appointed a second representative for France in the Council.

6) Professor P. J. A. Adriani has consented to take his place again within the Council.

7) The English name of the IFA has been changed from "International Association for Public Finance and Fiscal Law" into „International Fiscal Association".

8) The Regulations drawn up by the newly founded national branches in Brazil, Sweden and Switzerland were approved of by the Council.

9) All persons who had applied for membership since the last meeting of the Council in Rome on October 3, 1948, were admitted by the Council.

10) The Bulletin for International Fiscal Documentation will henceforward also become the official organ of the IFA.

The Council has not yet taken any definite decision as to the place and time of the IFA-Congress in 1950.

The themes to be treated at the IFA-congress in 1950 are:

1) Tax incentives to realization of the objectives of the European Recovery Program and the program for the development of underdeveloped areas;

2) The effect of fluctuations in the value of currencies upon taxable income, from the national and international viewpoint.

Mr. Mitchell B. Carroll has insisted that the national branches hold a meeting still this year, where these topics are prepared and national reporters designated. The names of the general reporters will be published in one of the following numbers of this Bulletin.

Persons who apply for membership after October 1 of a certain year will be exempted from paying a membership fee for the current year. They are entitled to a reduction on the complete subscription to the Bulletin of the current year, provided that they pay this subscription as well ás the membership fee of the following year at the moment of application.

In the announcement of the Mitchell B. Carroll Prize 1949/'50 the award has erroneously not been mentioned. It consists of a gold medal and expenses while attending the congress to be held in 1950 as the guest of the Association. Travel expenses to and from the Congress are not included.

INFORMATIONS DE L'ASSOCIATION INTERNATIONALE DE DROIT FINANCIER ET FISCAL

I.F.A.

fondée le 12 février 1938, domiciliée à La Haye
(sous la responsibilité du Conseil d'Administration de l'Association)

Président d'honneur (élu en 1939): M. C. W. BODENHAUSEN (Pays Bas)
Président (élu en 1939): M. MITCHELL B. CARROLL (Etats Unis)

Bureau de l'Association:

M. L. KORTHALS, secrétaire général, 68 Balistraat, La Haye, tel. 11.33.57
Melle J. AE. VAN BUUREN, secrétaire adjointe.

Informations Officielles

Le secrétariat général de l'IFA a été transféré de 116 Mesdagstraat à 68 Balistraat, La Haye tel. 11.33.57

Le 10 septembre 1949 le Conseil d'Administration s'est réuni à Zurich (Suisse), où ont été prises e.a. les décisions suivantes:

1) La résignation de sa fonction de secrétaire général offerte par le Dr. W. R. Emmen Riedel a été acceptée par le Conseil d'Administration.

2) A sa place M. L. Korthals, doctorandus ès sciences économiques, chef de la Section Financière du Ministère Hollandais de Territoires d'Outremer, a été nommé secrétaire général de l'IFA.

3) Le secrétariat général a été transféré à 68, Balistraat, La Haye.

4) En reconnaissance de ses services dévoués à l'IFA pendant une longue série d'années le Docteur W. R. Emmen Riedel a été nommé membre honoraire du Conseil d'Administration.

5) M. Maurice Polti, directeur de l'Association Nationale des Sociétés par Actions (A.N.S.A.), a été nommé second représentant de la France dans le Conseil d'Administration.

6) Le Professuer P. J. A. Adriani a consenti à reprendre sa place au sein du Conseil d'Administration.

7) Le nom anglais de l'IFA a été changé de „International Association for Public Finance and Fiscal Law" en „International Fiscal Association". Un nouveau nom français sera fixé par un comité établi pendant la réunion.

8) Les règlements dressés par les groupements nationaux récemment établis en Brésil, Suède et Suisse, ont été approuvés par le Conseil d'Administration.

9) Les personnes qui se sont inscrits comme membre depuis la dernière réunion du Conseil d'Administration, tenue à Rome le 5 octobre 1948, ont été tous admis comme tel.

10) Le Bulletin de Documentation Fiscale Internationale sera désormais l'organe officiel de l'IFA.

Le Conseil d'Administration ne s'est pas encore définitivement décidé quant au lieu et date du congrès de 1950.

Les deux thèmes qui seront traités à ce congrès sont:

1) Les bases d'imposition des revenus affectés par les variations de la monnaie nationale ou des devises étrangères;

2) Utilisations et aménagements des systèmes fiscaux pour faciliter les objectifs du programme de relèvement européen et rendre plus aïsé et plus rapide le progrès économique des pays à économie retardataire.

M. Mitchell B. Carroll a insisté auprès les comités nationaux à ce que cette année encore on tienne des réunions nationales pour préparer ces thèmes et désigner des rapporteurs nationaux. Les noms des rapporteurs généraux seront publiés dans un des numéros suivants de ce Bulletin.

Ceux qui s'inscrivent après le 1 octobre d'une année quelconque seront dispensés de cotisation pour l'année courante. Ils ont droit à une réduction sur l'abonnement complet du Bulletin de l'année courante, pourvu qu'ils paient cet abonnement et la cotisation de l'année suivante au moment qu'ils s'inscrivent.

Dans la circulaire du Prix Mitchell B. Carroll 1949/'50 on a omis de mentionner en ce qui consiste ce Prix. Il consiste d'une médaille d'or et certains frais nécessités par la présence au congrès de 1950 de l'auteur du mémoire choisi. Les frais de voyage au congrès ne sont pas inclus.

X

DOCUMENTS CONCERNING FISCAL LEGISLATION
DOCUMENTS DE LÉGISLATION FISCALE

Argentine:

General

Decree no. 11.420/49 of 13.3.'49 ordinating the text of the general tax law no. 11.683 as modified by decree no. 14.341/46 and by laws nrs 12.922; 12.944; 12.965; 12.989; 13.237; 13.245. (Boletin Ministerio de Hacienda de la Nacion, no. 158).

Profits Tax

Decree no. 11.418/49 of 13.5.1949 ordinating the texts with respect to extraordinary profits (Boletin Ministerio de Hacienda de la Nacion no. 159, 1949, p. 1229).

Decree no. 11.41/49 of 13.5.1949 modifying the ordinated text concerning casual profits. (Ibid., p. 1236).

Sales Tax

Law no. 11716/49 of 18.5.1949 exempting certain petroleum derivates from increased sales tax. (Ibid., p. 1255).

Stamp Duty

Law no. 13514 of 28.5.1949 Stamp Duty Exemption (Ibid., p. 1249).

Belgique:

Enregistrement

Loi du 29 Mai 1948 portant des dispositions particulières en vue d'encourager l'initiative privée à la construction d'habitation à bon marché et à l'acquisisation de petites propriétés terriennes (Moniteur belge du 10 juin 1948).

Loi du 30.5.'49 modifiant certaines dispositions du Code des droits d'enregistrement d'hypothèque et de greffe (Mon. 4 et 5.7.'49).

Impôts directs

Loi du 30.5.'49 instaurant des mesures exceptionnelles et interprétatives en matière d'Impôts directs (1) (Mon. 19.6.'49).

Impôts sur les revenus

Arrêté du Régent du 7 juin 1949 comportant classification des communes en matières d'impôts sur les revenus (Mon. 3.7.'49).

Impôts de guerre

Loi du 30.5.'49 modifiant la loi du 15 octobre 1945 établissant un impôt spécial sur les bénéfices résultant de fournitures et de prestations à l'ennemi et la loi du 16 octobre 1945 établissant un impôt extraordinaire sur les revenus, bénéfices et profits exceptionnels réalisés en période de guerre (1) (Mon. 19.6.'49).

Matières diverses

Arrêté ministériel du 31.5.1949 relatif au régime fiscal du tabac (Mon. 6.7.8.6.1949).

Arrêté du Régent relatif au tarif des droits d'entrée. — 28 juin 1949 (Mon. 30.6.'49).

Congo Belge:

Impôts sur les revenus

Ordonnance no. 32/260 du 19 août 1949 relative à l'impôt sur les revenus — E.V. 1.1.1949 (B.A. 10.9.'49).

Douanes et accises

Ordonnance no. 33/244 du 24 juillet 1949 fixant les valeurs devant servir de base à la perception des droits de sortie ad valorem sur les produits et marchandises. E.V. 1.8.1949 (B.A. 1.8.1949).

Matières diverses

Ordonnance no. 32/218 du 7 juillet 1949 désignant le fonctionnaire chargé d'exercer les droits et missions prévus par le déciet du 12 août 1937 sur l'impôt sur les revenus dans la mesure où les dispositions de ce décret sont applicables aux cotisations à l'impôt exceptionnel de guerre et à la contribution spéciale de guerre et à l'impôt complémentaire (B.A. 25.7.1949).

Décret du 23 juillet 1949 modifiant le décret du 29 juillet 1937 relatif à l'impôt personnel sur la superficie des concessions minières (B.O. 15.8. 49).

Czechoslovakia:

Direct Taxes

Law of December 21, 1948, No. 294 Colln., concerning special tax on interest from savings deposits.

Law of December 21, 1948, No. 307 Colln., concerning certain measures in the sphere of direct taxes.

Property and Extraordinary Levies

Law of July 19, 1948, No. 180 Colln., amending and supplementing the law of October 31, 1947, No. 185 Colln., concerning the extraordinary non-recurrent levy and the extraordinary levy on excessive property increments.

Notification of the Minister of Finance of August 13, 1948, No. 218 Colln., concerning the full wording of the law on the extraordinary non-recurrent levy and the extraordinary levy on excessive property increments.

Notification of the Ministry of Finance of February 12, 1949, No. 39 Colln., cancelling the authority of the tax administrations to assess property and extraordinary levies for payers of the special profits tax.

Law of February 22, 1949, No. 68 Colln., amending and supplementing certain provisions of the law concerning the levy on property increments and the levy on property.

Turnover Tax

Law of October 25, 1948, No. 252 Colln., concerning tax reliefs in cases of conversion, fusion, and separating of pension and relief funds or similar institutions.

Indirect Taxes

Government ordinance of July 7, 1948, No. 166 Colln., abrogating the application of regulations concerning the adjustment of sales of tobacco products.

Law of December 21, 1948, No. 283 Colln., concerning the General Tax.

Ordinance of the Minister of Finance of December 22, 1948, No. 284 Colln., fixing the date when the General Tax law comes into operation.

Ordinance of the Minister of Finance of December 24, 1948, No. 285 Colln., publishing the Tariff of the General Tax.

Ordinance of the Minister of Finance of December 29, 1948, No. 290 Colln., concerning the taxation of stocks of goods by the General Tax.

Customs

Government ordinance of June 29, 1948, No. 167 Colln., changing Sect. 219 of the applying ordinance of the Customs Law.

Law of December 21, 1948, No. 292 Colln., concerning a temporary adjustment of the customs tariff.

Law of December 21, 1948, No. 293 Colln., concerning customs reductions for the importation of machines and apparatuses.

Government ordinance of December 7, 1948, No. 297 Colln., concerning the adjustment of the general customs rates for the importation of goods.

Government ordinance of March 22, 1949, No. 105 Colln., amending the applying ordinance of the Customs Law.

Government ordinance of June 7, 1949, No. 149 Colln., adjusting the general customs rates for the importation of goods.

Transfer Taxes and Stamp Duties

Law of October 25, 1948, No. 252 Colln., concerning tax reliefs in cases of conversion, fusion, and separating of pensions and relief funds or similar institutions.

Government ordinance of April 27, 1949, No. 131 Colln., concerning the temporary adjustment of surcharges to fees for testing rules, weights, and other measuring instruments in Slovakia.

Law of May 11, 1949, No. 146 Colln., concerning reliefs from stamp duties and imposts for transfers of real estates for building purposes in the period of the Five-Year Plan.

Miscellaneous

Law of July 20, 1948, No. 186 Colln., concerning the auditing service of the financial administration.

Law of July 19, 1948, No. 209 Colln., concerning the provisional adjustment in the sphere of municipal rates.

Law of December 21, 1948, No. 281 Colln., concerning the financial administration by national committees.

Government ordinance of December 28, 1948, No. 302 Colln., concerning financial departments of country national committees, and concerning the transfer of the competence of certain financial offices to the tax administrations.

Government ordinance of February 22, 1949, No. 36 Colln., concerning the financial departments of district national committees.

Government ordinance of April 22, 1949, No. 116 Colln., concerning further transfers in the sphere of activity in public administration.

Law of May 11, 1949, No. 145 Colln., concerning certain temporary measures in financial penal matters.

Finland:

Turnover Tax

Law of 22.6.1949 modifying the turnover tax law. (O.G. 1949, no. 440).

Decree of 7.7.1949 modifying the tax on medicines as required by the turnover tax law (O.G. 1949, no. 503):

Miscellaneous

Law of 20.5.1949 modifying the law re the taxation of alcoolic industries. (O.G. 1949, no. 373).

Law of 22.6.1949 modifying the law concerning the exemption from tax for the promotion of house building. (O.G. 1949, no. 441).

Ordinance of 22.6.1949 concerning the additional tax due in case of tax arrears (O.G. 1949, no. 442).

Decree of 25.8.1949 concerning the tax on coffee. (O.G. 1949, no. 573).

France:

Impôts sur les revenus et sur les bénéfices

Loi no. 49-1033 du 31 juillet 1949 portant aménagement d'ordre fiscal. Réduction du taux de l'impôt frappant les plus-values de cession. (J.O. 2.8.'49).

Loi no. 49-1035 du 31.7.1949 portant aménagements fiscaux en matière de bénéfices agricoles et de revenus fonciers (J.O. 2.8.'49).

Tableau des éléments retenus pour le calcul des bénéfices agricoles forfaitaires imposables au titre de l'année 1949 (bénéfices de 1948). (J.O. 30. 9.'49).

Droits de douane

Arrêté rétablissant certains droits de douane (Ovins, conserves de viandes, bois, produits réfractaires, ferro-alliages metaux etc.) (J.O. 30.9.'49).

Matières diverses

Décret homologuant des taxes parafiscales dans le domaine agricole (laits pasteurisés, conserves exportées, pêches, pâtes betteraves). (J.O. 6.10.49)

Conventions

Loi no. 49-1043 portant approbation de la convention signée à Paris le 18 octobre 1946 entre la République française et les Etats Unis d'Amerique en vue d'éviter la double imposition et l'évasion en matière d'impôts sur les successions et de modifier et compléter la convention franco-américaine du 25 juillet 1939 relative aux impôts sur les revenus et du protocole signé à Washington le 17 Mai 1948, modifiant et complétant la convention du 18 octobre 1946 (rectificatif). (J.O. no. 260 2 et 3, 10, 1949).

Germany:

Company Tax

Law of 5.9. 49. Announcement of the new wording of the compànies tax. (Gesetzblatt der Verwaltung des vereinigten Wirtschaftsgebietes, nr. 34).

Turnover Tax

Third joint law of 15.9.'49 concerning the Turnover Tax (Steuer u. Zollblatt, no. 46).

Succession Duty

Decree of 27.8.'49 concerning the Succession Duty. (Steuer und Zollblatt, no. 31).

Excises

Ordinance of 5.9.1949. Alteration of the Ordinance concerning tobacco tax (Steuer u. Zollblatt, no. 48, jg. 4).

War Taxes

Law of 8.8. 49 to relieve urgent social evils (Soforthilfegesetz) with executionary regulations (Gesetzblatt der Verwaltung des Vereinigten Wirtschaftsgebietes, nr. 28).

Miscellaneous

Law of 24.6.'49 re the termination of the municipality taxes. (Steuer u. Zollblatt nr. 33a).

Law of 29.7.'49 Second law concerning the payment of municipalty taxes. (Ibid.).

Law of 10.8.'49 concerning the alteration of the law for the security of claims for the adjustment of charges. (Steuer u. Zollblatt no. 34, p. 277).

Law of 10.8.'49 concerning the tax free loan of the "Kredietanstalt für die Wiederaufbau" (Ibid., p. 282).

Third Law of 10.8.'49 concerning the alteration of the law re the levy of a tax "Notopfer Berlin" (Steuer u. Zollblatt, no. 34, p. 282).

Executionary Regulations of the "Soforthilfegesetz" (Steuer u. Zollblatt nr. 34. p. 275).

Law of 16.8.'49. Concerning the alteration of § 55 of the executionary regulations for the motorvehicle tax of July 5, 1935. (Ibid., nr. 34).

Law of 22.8.'49 concerning temporary consent of toll favours (alteration Law 23.8.'49). (Gesetzblatt der Verwaltung des Vereinigten Wirtschaftsgebietes, nr. 32).

Israel:

Land Tax

Land Improvement Tax law 1949 (Business Digest (Israel), no. 86, p. 759; no. 87, p. 18; no. 88, p. 75).

Company Tax

Company Profits Tax (Amendment) Bill. (Business Digest of Israel, no. 80, vol. V., p. 542).

Property Tax

Law of 17.8.1949. Urban Property Tax (Various Provisions). (Book of Laws, no. 19 of 17.8.'49).

Luxury Tax

Regulation no. 38 of September 14th, 1949. Luxury tax exemption for municipalities and local councils in respect of goods exempted from customs duty according to pos. 785. (Business Digest, no. 88, p. 75).

Luxury Tax Rulings. (Ibid., no. 80, p. 542, no. 81, p. 580).

Customs and Excise

Law of 17.8.1949. Customs and Excise Duty (Tariff Changes). (Book of Laws, no. 19 of 17.8.1949).

Miscellaneous

Ordinance of 17.8.1949. Rates and Taxes (Exemption) (Amendment) (Book of Laws, no. 19 of 17.8.1949).

Italy:

Succession Duty

Official Explanation Succession Duty Act of 12 May 1949. — (G.U. 112, 16.5.'49).

Maroc:

Arrêté viziel du 3.9.1949. Abrogation de la taxe de compensation sur ciment importé. (B.O. du 14.10.1949).

Peru:

Income Tax

Decree law no. 11051 of 15.7.1949 modifying section 10 of the income tax

law no. 10168 (El Peruano Diario Oficial, no. 2566, p. 1).

Miscellaneous

Decree-law no. 11041 of 27.6.'49 concerning a tax on minerals (El Peruano, Diario Oficial, no. 2547 of 12.7.'49).

Decree Law no. 11.166 dated 16th September 1949, increases the tax on the sale of properties by 1 per cent., raises the stamp tax on public deeds by 30 per cent, and doubles the stamp tax on chèques drawn by or on banks established in Peru. The last mentioned impost thus goes up from 4 centavos to 8 centavos, irrespective of the amount of the chèque.

Decree law, no. 11.68 of 16.9.1949 introduces an additional stamp tax of 10 centavos on every bill of exchange, regardless of its face value.

Poland:

Property Tax

Law of July 2, 1949. Alteration of the Decree of February 3 1947 concerning the tax on yields of property rights. (Dz. U.R.P. nr. 27/1947, pos. 309).

Portugal:

Loi no. 2.031 du 27.12.'48 autorisant le gouvernement à percevoir, pendant l'année 1949, des taxes et des impôts ainsi que des autres revenus nécessaires pour son administration financière (Boletin da Direcçao geral das alfandegas, 1948 no. 4, p. 660).

South Africa:

Custom Duties

No. 39 of 1949: Customs Amendment Act 1949. (Government Gazette Extraordinary, no. 4193 of 28.6.'49).

Turkey:

Turnover Tax

Law of 31.5.'49 concerning the alteration of the turnover tax law. (Resmi Gazete nr. 7224 of 4.6.'49).

AVIS IMPORTANT.

A partir du 1ér Janvier 1950, la rubrique: articles publiés dans les revues que le Bureau recoit régulièrement pour sa bibliothèque, cessera.

En même temps on a l'intention de mettre fin à la publication de la rubrique: Documents de législation fiscale (la rubrique X).

Ces deux rubriques seront désormais publiées dans la "DOCUMENTATION SERVICE", service assuré deux fois par mois par le Bureau International de Documentation Fiscale. L'envoi en sera fait à tous ceux qui sont membres de l'Association Internationale de Droit Financier et Fiscal (I.F.A.). Nous regrettons qu'il ne soit pas possible d'envoyer la "Documentation Service" à d'autres lecteurs de ce Bulletin.

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