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EDITORIAL

The variety of tax classifications (e.g. direct vs. indirect, subjective vs. objective, synthetic vs. analytic, cost-price raising vs. non-cost-price raising, etc.) has approached in number the various taxes themselves. This is not altogether surprising, however, and should in itself suggest the answer to those persons who discount altogether the value of classification. Any group some of the constituent members of which variously share their respective characthereries may be regrouped or sub-divided on alternative bases according to one or more such characteristics. A classification is formed by the initial import attached to certain characteristics, i.e., by the purpose of the classifier. And classification may be an effective intellectual tool. But whereas a dentist would hardly use a metal worker's drill, neither would he disparage it's value to the metal worker.

To err in the opposite direction may be worse. Better the dentist should disparage the drill, than use it.

We wonder whether the customary classifications are proper with respect to the issue of tax harmonization in the European Economic Community. At any rate we recommend for consideration (in spite of its difficulties) a "social economic incidence" basis put forth by G. Schmölders in his new edition: „Allgemeine Steuerlehre":

„Die systematische Gruppierung der Steuerarten und -formen nach ihren volkswirtschaftlichen Wirkungen ist heute weniger denn je eine müssige Spielerei oder ein blosses Lehrbuchanliegen; vielmehr erscheint gerade in der steuerpolitisch so bewegten Gegenwart eine Einteilung der Steuern nach ihren vermuteten Wirkungen und ihren Beziehungen untereinander wichtiger als eine noch so fein ausgeklügelte Systematik der Steuern nach steuerpolitischen oder juristischen Merkmalen oder nach den Kategorien eines blossen Wunschdenkens (direkte - indirekte Steuern). Erst eine empirisch fundierte Gruppierung der Steuern kann der Steuerpolitik Aufschluss über gewollte oder unbeabsichtigte Steuerhäufungen, über den voraussichtlichen Wirkungsgrad der Steuerprogression und über die Belastung der einzeln Einkommensschichten geben, also gerade über die Fragen, auf die es im Zusammenhang der Gestaltung des rationalen Steuersystems besonders ankommt."

J.C.L. HUISKAMP

CONTENTS

I

TAXATION OF DIVIDENDS IN FRANCE: A DISCRIMINATION

by

PATRICK DURAND

Since 12th July 1965, a new system of dividend taxation has been introduced in France.*)

Positive in some respects, but negative also in many details, the new system, from the international angle, has some drawbacks which must be appreciated by all tax specialists which, in a way or another, have interests in French matters.

A) The essence of the new system can be summarized as follows:

a) Dividends paid by French Corporations out of profits subject to French Corporation Tax of 50% to French residents will benefit from a tax credit which will progressively, from 1965 to 1967, reach a level of one half of the gross dividend declared.

b) Dividends paid by French Corporations to non residents will be subject to a withholding tax of 25%, instead of the 24% applicable before.

The actual impact of the new system will show as follows, as regards dividends declared on ordinary shares of French companies.

		Net income	*Tax credit*	*Withholding tax*	*Declared dividend*
A) Non Residents	1965	76	—	24	100
	1966	75	—	25	100
	1967 and onwards	75	—	25	100
B) Residents	1965	100	24	24	100
	1966	132	44	12	100
	1967 and onwards	150	50	—	100

The net dividend for a French Resident, as from 1967, appears therefore as being twice the net amount received by a Non Resident.

Of course, the various Tax Conventions between France and other countries will apply whenever possible, but here again we must say that a basic discrimination appears in the matter of dividends paid to non Residents as compared to Residents.

B) Such discrimination appears even more in the matter of dividends paid by French Companies out of dividends received from their Non-Resident Subsidiaries.

The special treatment of Parent Companies (Société Mère) does not apply in such case as the French parent company must pay a tax of one half of the portion of dividends

*) Editorial note: A complete description of the new system is published in European Taxation, December 1965.

declared out of Non Resident Subsidiaries Dividends in order to enable their French Resident Shareholders to benefit from the new tax credit.

As an example, if a Company declares a dividend of 100 francs originating from dividends received from Foreign Subsidiaries, it will have to pay a tax of 50 francs in order to enable its French Resident Shareholders to have the tax credit.

Non Resident Shareholders of the same company will see their dividend subject to a 25% witholding tax and will not benefit in any way of the 50 Francs tax paid by the French Distributing Company.

A French Company having both Resident and Non Resident Shareholders will therefore be compelled to somewhat penalize Non Resident Shareholders in order to enable Resident Shareholders to obtain a tax credit, if a substantial portion of the dividends declared originates from dividends received of Foreign Subsidiaries.

c) The 50% tax credit is applicable exclusively to dividends having supported the French Corporation Tax or the tax of 50% indicated on B above.

Therefore French Residents will not benefit of tax credit on dividends paid by foreign corporations.

A dividend of 100 Francs paid by a Foreign Company to a Resident Shareholder will represent only 100 Francs, while the same dividend, if received from a French Company, will actually be worth a 150 Francs income.

Discrimination, of some nationalistic nature, appears here again.

* * *

This system is completely new and has been introduced by the law of 12th July 1965. Since all double taxation agreements between France and other countries were based on the previous system which did not show any discriminating aspect, one is bound to wonder whether a wave of re-negociation is not due within short.

As a matter of fact, it seems hardly possible that the new method of dividend taxation in France will not cause many countries to renegociate Tax Conventions in order to reduce the impact of the above-mentioned discrimination.

It is said that the new system has been enacted with a view to increase the Stock Exchange Transactions.

This is quite true as regards Resident Shareholders, but since a sensible share of quoted securities in France are in Non Resident hands, the medecine may prove to have an effect quite opposite to the expected one.

Many other domestic and international consequences of the new system have to be carefully weighed by tax counsels for their clients having French Interests.

It is not our purpose to expose all details in our short study, since our aim was specifically to point out the international aspects of the problem.

It is however hoped that the French Authorities, when confronted with specific problems, will always remain open-minded and flexible, since Tax Conventions are, nowadays, one of the basic fundaments of international trade and understanding.

WORLD TAX REVIEW

BELGIUM

DOCUMENTS

PROJET DE LOI MODIFIANT LE CODE DES IMPOTS SUR LES REVENUS

(9 décembre 1965)

RAPPORT
FAIT AU NOM DE LA COMMISSION DES FINANCES
par M. LAVENS

INTRODUCTION

Votre Commission a consacré trois réunions à la discussion du présent projet de loi et du projet de loi modifiant le Code des taxes assimilées au timbre (voir doc. no 55/2).

Elle a décidé de procéder simultanément à la discussion générale des deux projets.

Avant d'entamer la discussion proprement dite, les membres de la Commission ont demandé quand seront distribués le budget des Voies et Moyens pour l'exercice 1966 ainsi que l'Exposé Général. Ces membres estiment que ces documents sont indispensables pour discuter, en connaissance de cause, les projets qui leur sont soumis.

Le Ministre des Finances a signalé que ces documents sont en cours d'impression; il est d'avis que la communication faite le 9 novembre à la Chambre par le Premier Ministre contient assez d'éléments pour que chacun puisse se former un jugement sur la nécessité de l'effort fiscal demandé. Le jour du vote final en commission sur les projets nos 54 et 55, les membres étaient d'ailleurs en possession du budget des Voies et Moyens ainsi que de l'Exposé Général.

Plusieurs membres de la Commission ont également demandé quand le Gouvernement déposerait ses projets relatifs aux économies sur les dépenses de l'Etat.

Le Ministre des Finances a confirmé que le Gouvernement s'en tient à son programme et qu'il est fermement décidé, après avoir déjà réduit de 11 milliards les prévisions budgétaires établies par divers départements, de proposer encore aux Chambres législatives d'autres mesures d'une impérieuse nécessité.

Le Ministre estime que, ni lui, ni la Commission des Finances ne sont compétents pour entrer dans les détails techniques quant aux économies sur les dépenses dans le domaine de l'Education Nationale, de l'A.M.I., etc.; à ce sujet, il se réfère aux commissions compétentes de la Chambre.

Il se rend compte de la difficulté de réaliser des économies, mais estime qu'il s'agit avant tout de freiner l'augmentation d'un certain nombre de dépenses; il considère que cela est possible sans porter atteinte au progrès social ni à l'expansion économique et croit que le Pays et tous ses habitants ont intèrêt à ce que de sérieux efforts soient faits en ce sens.

REMARQUES SUR LES DEUX PROJETS NOS 54 ET 55

Le Ministre expose ensuite pourquoi le budget ordinaire doit se présenter en équilibre. A ce propos, il souligne particulièrement l'effort que le Gouvernement désire accomplir dans le domaine de l'infrastructure et de la reconversion, en faveur desquelles des sommes très considérables sont inscrites au budget extraordinaire.

Le financement de ce budget extraordinaire et les besoins des organismes publics et privés menacent déjà d'excéder les possibilités de notre marché financier.

Il convient d'éviter autant que possible de recourir aux emprunts à l'étranger, parce qu'ils sont une source d'inflation; mais l'inflation est également provoquée par la création; d'un pouvoir d'achat accru, notamment par suite de l'adaptation des traitements des fonctionnaires, des transferts d'ordre social, etc . . . si ceux-ci ne sont pas compensés par l'impôt mais par la création de nouvelles ressources monétaires.

Rien que pour cette raison déjà, le budget ordinaire *doit* être en équilibre.

Or, les impôts existants, même en tenant compte d'un accroissement normal de leur produit par suite de l'expansion économique, ne permettent pas d'équilibrer le budget de 1966.

Il est indispensable de faire un effort supplémentaire de l'ordre de 13 à 14 milliards de francs au moins.

En effet, le budget des Voies et Moyens s'élève à 200.3 milliards, alors que les recettes calculées sur la base des barèmes actuels n'atteindront que 185.0 milliards environ.

Le Gouvernement escompte une grande partie des recettes supplémentaires de l'augmentation des impôts, dits «indirects»; il sait que cette solution va à l'encontre de certaines conceptions de doctrine, mais son choix a été dicté surtout par la nécessité de disposer assez rapidement de ces nouvelles recettes.

Le Ministre des Finances déclare que les notions «d'impôts directs» et «d'impôts indirects» ne sont pas nettement circonscrites; la taxe de circulation et la taxe sur les jeux et paris figurent sous la rubrique «impôts directs», alors qu'elles constituent des taxes de consommation; les droits de succession sont rangés parmi les impôts indirects, bien que, considérés sous l'angle économique, ils constituent sans doute les impôts les plus «directs».

Dans tous les pays on constate que la relation entre les impôts directs et les impôts indirects évolue dans le sens d'une augmentation proportionnelle des impôts indirects.

Le plus souvent il en est ainsi — notamment dans notre pays — en raison de l'impérieuse nécessité pour l'Etat, de se procurer assez rapidement des recettes supplémentaires; il s'agit également en partie d'une conséquence de conceptions doctrinales nouvelles.

L'attention des théoriciens s'est en effet concentrée sur le phénomène du transfert de l'impôt; en Belgique toutefois, l'étude de l'incidence réelle des divers impôts n'est guère avancée.

Il est cependant constaté que le transfert de nombreux impôts s'est fait à charge du producteur, entraînant ainsi une hausse des prix, alors que pour d'autres impôts il s'est fait dans le sens inverse, d'où une baisse des prix à la production ou aux premiers stades de la distribution.

Tout dépend finalement des positions sur le marché; il est indéniable que les taxes de transmission et autres taxes semblables ont été plus facilement transférées sur le consommateur que, par exemple, les impôts sur les revenus.

La question de savoir qui, en définitive, supportera l'impôt ne peut nous laisser indifférent, mais il y a lieu de se garder de conceptions doctrinales par trop rigides.

Il existe une opinion fort répandue selon laquelle les impôts directs sont plus équitables car, grâce à leur progressivité, ils tiennent davantage compte de la faculté contributive réelle des contribuables.

En effet, la progessivité des impôts directs peut être réalisée plus parfaitement; de plus, elle est manifeste.

Les impôts indirects présentent cependant aussi une certaine progressivité, notamment grâce à la différenciation des tarifs.

D'un tableau qui a été remis aux membres de la Commission et sera annexé au présent rapport, il ressort que la charge fiscale sur les produits de première nécessité (pain, pemmes de terre, fruits, beurre, charbons, électricité à basse tension) est très modérée; pour la plupart de ces produits cette charge n'excède pas 3% du prix du produit fini.

D'autres articles en revanche, tels les appareils de télévision, les autos, les bateaux de plaisance, les articles de maroquinerie, les bijoux, les articles de parfumerie etc. sont taxés à raison de 18 à 20% du prix au consommateur.

Il s'agit en l'occurrence d'une progressivité «structurelle».

Le Ministre se rend compte que cette progressivité n'est pas parfaite et qu'un certain nombre d'adaptations s'imposent en raison du fait que certains produits qui, il y a quelques années encore, pouvaient être qualifiés d'articles de luxe, sont devenus d'usage courant.

Il se déclare disposé à revoir la liste et à en réaliser graduellement d'adaptation.

DISCUSSION GÉNÉRALE

Un membre regrette que l'exposé du Ministre ne fournisse pas d'éclaircissements sur la portée véritable des projets, ni ne donne aucune justification du retard apporté au dépôt des projets qui doivent permettre de réaliser des économies.

Un autre membre réclame une nouvelle fois le dépôt à bref délai du budget des Voies et Moyens; il se montre méfiant devant les chiffres cités et constate que la recommandation de la C.E.E. préconisant de limiter l'accroissement du budget à 5% par an n'est pas

suivie; il ne voit aucune trace d'économies et craint que la solution adoptée ne frappe le plus lourdement les petits. S'il faut des recettes immédiates, l'augmentation proposée ne pourrait-elle n'être que provisoire?

Un autre membre estime qu'il conviendrait d'abord de démontrer que les dépenses prévues sont nécessaires.

Il craint que les prévisions en matière d'accroissement du produit national brut — 4% à prix constants — ne soient pas atteintes, étant donné que notre économie présente une tendance à «plafonner»; dans cette éventualité, l'ensemble des prévisions budgétaires serait compromis.

D'autre part, il craint que l'évolution des prix ne nous amène à dépasser au moins une fois le seuil des 2,5% de l'indice des prix de détail, ce qui entraînerait une augmentation des dépenses de l'Etat.

Il craint enfin qu'après le financement du budget extraordinaire, il ne reste, sur le marché financier, plus assez de disponibilités pour le secteur privé et il conclut que toutes ces considérations illustrent une fois de plus la nécessité de faire des économies.

Un autre membre marque son accord sur la proposition tendant à fournir au Gouvernement les moyens nécessaires à sa politique; 14 milliards d'économies supplémentaires sont inconcevables sans qu'il y ait une pause sociale ou économique.

Il estime qu'une rationalisation de l'administration publique est possible, mais le rendement d'une telle mesure ne pourra jamais produire les sommes nécessaires; toutefois il faut procéder à toutes les compressions budgétaires possibles.

Il est cependant d'avis qu'il doit être possible de répartir plus équitablement l'effort fiscal et il déclare que son groupe présentera des amendements dans ce sens.

Il croit également que, d'une part, la liste des produits soumis à la taxe de luxe doit être revue et que, d'autre part, le public doit être mieux informé de la différenciation existant dans les barèmes des impôts indirects.

Tout en promettant son appui au Gouvernement, un autre membre souligne une fois de plus une série d'aspects de la répartition des impôts.

Un membre estime qu'il convient de rechercher la solution des problèmes dans la réduction des dépenses pour la défense nationale, ainsi que dans l'instauration d'un impôt sur le capital.

Le Ministre le renvoie à l'Exposé Général, d'où il ressort que les dépenses pour la défense nationale augmentent plus lentement que les autres; en ce qui concerne l'impôt sur le capital, le Ministre croit que le produit en serait minime et qu'il se heurterait à des difficultés techniques et psychologiques telles, que personne ne peut prendre un tel risque.

Un membre pense que le pays a le droit de connaître toute la vérité et il se réjouit de ce que les impôts supplémentaires seront affectés au financement de dépenses ayant un caractère social indéniable.

Il désirerait savoir s'il a été tenu compte des plus-values, qui, d'après le Ministre des Finances, se monteraient à 5,3 milliards à la fin du mois de novembre de cette année.

Il traite ensuite de l'incidence de l'augmentation de la taxe de transmission sur les finances des provinces et des communes et souligne les suites économiques néfastes qu'

aura sur l'industrie pétrolière l'augmentation des droits d'accises sur les huiles minérales; cette augmentation, ne pourrait-elle n'être que provisoire?

Le Ministre renvoie aux discussions que se sont déroulées à la Commission des Finances du Sénat concernant un meilleur contrôle de l'exécution des budgets et des dépassements de crédit.

En 1966 les crédits budgétaires à caractère social seront supérieurs de 6,7 milliards à ceux de 1965.

L'augmentation rapide des recettes fiscales pendant le mois de novembre doit selon le Ministre être attribuée en partie à la facturation accélérée due à la perspective de l'augmentation de la taxe de transmission.

Au budget de 1966, les crédits pour le Fonds des Communes et le Fonds des Provinces ont été sensiblement majorés, notamment en vue de tenir compte de l'augmentation de la taxe de transmission.

Le Ministre estime qu'il ne faut pas écarter une revision ultérieure de certains droits d'accises, notamment dans l'éventualité où l'accélération du développement économique entraînerait un accroissement correspondant des recettes fiscales.

En réponse à une question au sujet de la spirale des salaires et des prix, le Ministre souligne qu'en plus de l'impulsion produite par l'augmentation de la taxe de transmission, se manifestent également d'autres facteurs inflationnistes qui proviennent des pays voisins, ainsi que des causes internes, telles que les augmentations de salaires spontanées. Ces facteurs exercent une influence plus considérable que la hausse de la taxe de transmission, mais le Gouvernement s'attachera à les neutraliser dans toute la mesure du possible par une politique des prix agissante.

En ce qui concerne les comparaisons de la charge fiscale dans divers pays, le Ministre estime que ces comparaisons doivent également tenir compte de la parafiscalité (et, notamment, des cotisations sociales).

Un membre attire l'attention sur la diminution progressive des droits d'entrée résultant de l'édification de la Communauté Economique Européenne.

Il fait observer que l'instauration d'une taxe sur la valeur ajoutée obligera plus d'entreprises à tenir une comptabilité, ce qui facilitera par la même occasion la perception exacte de l'impôt sur les revenus.

Il estime inéluctable une majoration des impôts indirects et rappelle que, pour les revenus modestes, une compensation est accordée par la réduction des impôts directs.

Il se demande si la progressivité des impôts directs ne pourrait être améliorée et si le plafond de 50% ne devrait pas être relevé.
Il déclare en outre, qu'après avoir étudié la question, il est arrivé à la conclusion que, tout bien pesé, mieux vaudrait ne pas relever l'impôt sur les sociétés; l'expansion économique et la reconversion requièrent des entreprises rentables et il serait inopportun d'effrayer le capital à risque.

Un autre membre estime qu'il est dangereux d'improviser et qu'il serait préférable de modifier le moins possible le régime d'imposition et les taux de taxation. Il croit qu'il faut éviter à tout prix des réactions psychologiques.

En ce qui concerne le plafond d'imposition de 50%, il rappelle que ce régime a été introduit dans la réforme fiscale pour compenser la suppression de la déductibilité de l'impôt.

Vu les déclarations solennelles qui ont été faites à cette époque, les réactions les plus violentes sont à craindre au cas où ce plafond serait relevé.

Il s'agit non seulement d'un problème technique, mais aussi d'un problème politique; les engagements contractés en 1962 doivent être respectés.

Un membre désire affirmer clairement sa conception des impôts en tant que moyen d'assurer une meilleure redistribution des revenus; pour permettre à certaines catégories de la population non-active d'obtenir leur part dans l'accroissement de la prospérité, le seul moyen existant est d'augmenter le produit des impôts.

Ce membre constate qu'il y a encore beaucoup à faire dans le domaine de l'éduction et de l'information du contribuable; il met l'accent sur la nécessité d'une comptabilité en bonne et due forme, tenue par les contribuables, et souligne l'opportunité de coordonner le contrôle.

Un membre, tout en exprimant son propre avis, donne un résumé des considérations qui ont été faites par plusieurs membres de la Commission.

1 Personne ne conteste la nécessité de nouveaux impôts; le tout est de savoir dans quelle direction il convient de rechercher les recettes nouvelles; il constate que les augmentations proposées portent principalement sur les impôts de consommation.

Il en résulte une augmentation du prix des produits, qui ne se reflète pas toujours dans l'indice des prix, de sorte que les adaptations de salaire ne compensent cette augmentation que partiellement et, chaque fois, avec un certain retard.

2. Il doit être possible de répartir les charges nouvelles d'une manière plus équilibrée.

Ce membre constate, comme d'autres membres d'ailleurs l'ont fait avant lui, qu'à partir des revenus de 500 000 F la progressivité des impôts n'est plus régulière; elle l'est moins encore à partir des revenus de 750 000 F. Il estime aussi qu'il y a lieu de relever le plafond de 50%.

3 Les membres de la Commission ont unanimement demandé qu'un sérieux effort soit fait pour combattre la fraude fiscale. Non seulement celle-ci alourdit la charge fiscale qui pèse sur les contribuables honnêtes, mais elle est également un facteur important de concurrence déloyale.

La loi du 20 novembre 1962 a donné à l'administration de meilleures armes pour combattre la fraude; il y a peut-être encore un problème de personnel à résoudre pour exploiter complètement les nouvelles possibilités.

Le Ministre répond en répétant un certain nombre de considérations sur le transfert des impôts èt en montrant une nouvelle fois combien il importe de savoir qui supporte finalement l'impôt; il constate que la plus-value escomptée ne proviendra que pour une petite partie de l'augmentation de la charge fiscale sur les produits de première nécessité et d'usage courant.

En ce qui concerne la progressivité des impôts, le Ministre rappelle les points suivants:

a) La réforme fiscale de 1962 a aggravé la progressivité de 4 à 20% pour les revenus à partir de 500 000 F.

b) La hausse des prix qui s'est produite depuis lors a accentué cette progressivité dans une mesure importante.

c) Alors que les revenus atteignant jusqu'à 415 000 F ont déjà bénéficié d'une adaptation partielle des barèmes à la hausse du coût de la vie, cela n'a jamais été le cas pour les revenus supérieurs à ce montant.

Le Ministre estime d'ailleurs que les recettes supplémentaires qui découleraient de modifications dans le sens précité seraient insignifiantes et ne pourraient contrebalancer les inconvénients psychologiques résultant du renforcement de la progressivité.

Le Ministre rappelle l'aggravation de la fiscalité communale et l'augmentation de 15 ou 7,5% qui est d'application en cas d'absence de versement anticipé.

Outre les arguments cités antérieurement à l'appui du maintien du plafond à 50%, le Ministre souligne la nécessité d'éviter, à tout prix, que se manifeste un climat de méfiance, susceptible de provoquer la fuite des capitaux.

Si nous voulons réussir le financement du budget extraordinaire, opérer la reconversion et fournir au pays les moyens de son essor futur, la confiance est, plus que jamais, indiquée.

En ce qui concerne la lutte contre la fraude fiscale, le Ministre marque son accord. La réforme fiscale est à l'origine de beaucoup d'améliorations; il convient d'en tirer parti au maximum.

ANNEXE

MONTANT DE LA CHARGE FISCALE EN MATIERE D'IMPOTS INDIRECTS QUI GRÈVE CERTAINS PRODUITS.

Objet de l'étude

L'étude a pour objet de calculer la charge fiscale grevant actuellement un certain nombre de produits. Le calcul a porté sur les taxes grevant ces produits au stade de leur fabrication et aux divers stades de distribution. La charge globale a été ensuite exprimée en pourcentage des prix de vente «sans taxe».

Le calcul appelle trois remarques:

1° Pour déterminer la charge fiscale au stade de la fabrication, on a uniquement tenu compte des taxes payées par le fabricant du produit lors de l'achat des matières premières, des matières auxiliaires, des emballages, de l'énergie, des machines et de l'outillage.

2° Pour chaque produit, le calcul est basé sur un cycle complet allant de la production à la consommation intérieure.

3° En ce qui concerne les appareils électriques électro-ménagers, les calculs ont été faits en tenant compte des marges bénéficiaires fixées par l'arrêté ministériel du 15 janvier 1964.

Choix des produits

Pour établir le montant de la charge fiscale globale, le choix s'est porté sur des produits de consommation courante achetés par les particuliers pour leur usage privé ou celui de leur ménage. En outre, on a cherché à faire porter la comparaison sur des produits appartenant à différents secteurs de l'économie (produits alimentaires, produits chimiques, produits textiles, produits céramiques, articles en bois, appareils électro-ménagers, articles de maroquinerie, etc). On a retenu le circuit de distribution le plus représentatif, c'est-à-dire, selon le cas, le circuit «long» (intervention du fabricant, grossiste et du détaillant) ou le circuit «court» (vente du fabricant directement aux grands magasins ou aux détaillants).

Tableau récapitulatif

Le tableau indique:

- colonne 1: la dénomination du produit;
- colonne 2: le régime fiscal actuel applicable à ce produit;
- colonne 3: la charge fiscale exprimée en pourcentage par rapport aux prix actuels payés par le consommateur final;
- colonne 4: le montant total de la consommation de ce produit.

Les produits sont classés en trois catégories:

- dans la première, figurent ceux dont la charge fiscale est peu importante;
- dans la deuxième, ceux dont la charge peut être considérée comme correspondant à la charge moyenne;
- dans la troisième, ceux dont la charge est importante.

Remarques

1 A la lecture du tableau, on ne peut nier qu'une certaine progressivité existe dans le domaine des impôts indirects. Les produits de première nécessité sont imposés à un taux qui varie entre 2,5% et 7%. La charge, pour les produits de grande consommation, varie entre 7% et 15%. Les produits de luxe sont imposés à un taux qui dépasse 15%.

2 La liste est loin d'être complète et ne comprend que les produits au sujet desquels l'administration possède les éléments de calcul nécessaires.

D'autre part, les produits suivants sont soumis à la taxe de luxe et la charge fiscale qui les grève peut en moyenne être évaluée à 18% au moins.

	Consommation totale en millions de francs
– antiquités, objet de curiosité et de collection	30
– armes de chasse et autres objets d'armurier	27
– bijouterie, joaillerie et orfèvrerie – coffres-forts	2 656
– montres en or, platine ou argent – peintures, sculptures et médailles	11
– voitures automobiles et motocyclettes – yachts et bateaux de plaisance – avions de tourisme	23 940

transported	26 664
– certains produits alimentaires (caviar, épices, huîtres, homards, truffes, etc.)	471
– coutellérie de luxe	95
– certains lustres, lampadaires, etc.	124
– certains articles pour fumeurs	603
– gants de peau	247
– estampes, gravures, etc.	284
– certains jeux et articles de sport	2 380
– maroquinerie	975
– optique	333
– certains articles de ménage en porcelaine, cristal, etc.	735
– ornement	3 850
– musique, radiophonie, télévision	4 690
– parfumerie	1 250
– pelleteries	1 170
– photographie	780
– manucure, boîtes à poudre, etc.	1 224
Total	45 875

TABLEAU

Produit	*Régime fiscal actuel*	*Charge fiscale totale grevant le produit au stade de fabrication et aux stades de distribution et exprimée en % du prix de vente au consommateur*	*Montant de la consommation en millions de francs*
A. *Produits dont la charge fiscale est peu importante:*			
1 Pain	En principe: taxe de facture de 6% à chaque transmission et exemption lors de la vente au consommateur.	3,00%	9 600
2 Pommes de terre	Idem	Idem	3 420
3 Fruits	Idem	Idem	3 812
4 Légumes frais	Idem	Idem	7 830
5 Œufs	Idem	Idem	3 942
6 Lait	Idem	Idem	8 625
7 Beurre	Idem	Idem	9 719

Produit	*Régime fiscal actuel*	*Charge fiscale totale grevant le produit au stade de fabrication et aux stades de distribution et exprimée en % du prix de vente au consommateur*	*Montant de la consommation en millions de francs*
8 Certains fromages	Idem	Idem	4 166
9 Sirop	Idem	Idem	(1)
10 Savons.....	Idem	Idem	595
11 Margarine.....	Idem	6,00%	3 318
12 Poulets tués.....	Idem	2,50%	(1)
13 Charbon	Taxe forfaitaire à la production de 1%.	2,40%	12 461
14 Tissus de lin.....	Taxe forfaitaire à la production de 1,20%.	4,30%	(1)
15 Electricité basse tension.	Taxe forfaitaire à la consommation de 6%.	7,00%	7 596
B. *Produits dont la charge fiscale correspond à la charge moyenne:*			
1 Bière de ménage	Taxe forfaitaire de 7,50%	9,00%	12 672
2 Biscuits	Taxe forfaitaire à la production de 6%.	9,50%	3 476
3 Pâtes alimentaires	Idem	9,30%	462
4 Confections (costumes pour homme)	Taxe forfaitaire à la production de 11%.	10,50%	3 750
5 Chaussures en cuir et pantoufles	Taxe de transmission ordinaire de 6%.	10,00%	6 046
6 Meubles de cuisine	Idem	10,10%	(1)
7 Fers à repasser.....	Taxe forfaitaire à la production de 12%.	10,00%	60
8 Machines à lessiver et essoreuses	Idem	9,00%	983
9 Aspirateurs électriques .	Idem	9,50%	252
10 Chocolat	Taxe forfaitaire à la production de 6%.	10,40%	3 369
11 Légumes conservés.....	Taxe forfaitaire à la production de 12%.	13,70%	1 032
12 Tissus de laine.....	Taxe forfaitaire à la production de 13%.	10,00%	(1)

Produit	*Régime fiscal actuel*	*Charge fiscale totale grevant le produit au stade de fabrication et aux stades de distribution et exprimée en % du prix de vente au consommateur*	*Montant de la consommation en millions de francs*
13 Vaisselle en porcelaine multicolore	Taxe de luxe à la production de 16%.	11,40%	735
14 Vaisselle en faïence.....	Taxe forfaitaire à la production de 12%.	9,50%	(1)
15 Meubles de cuisine métalliques	Taxe ordinaire de 6%	7,60%	(1)
16 Fuel-oil léger (chauffage domestique).....	Taxe forfaitaire à la production de 14%.	14,10%	(1)
C. *Produits soumis à une charge fiscale renforcée:*			
1 Appareils de radio et de télévision	Taxe de luxe à la production de 16%.	18,00%	4 690
2 Voitures automobiles, motocyclettes, bateaux de plaisance.....	Taxe de luxe à la consommation de 16%.	19,50%	23 940
3 Articles de maroquinerie (valises en cuir naturel)	Taxe de luxe à la production de 16%.	18,00%	975

(1) Montant non connu de l'administration.

GERMANY FEDERAL REPUBLIC

TAX NEWS

FINANZGERICHT ÄNDERT STEUERSATZ BEI DER AUSGLEICHSTEUER

Ein Urteil des Finanzgerichts Münster

Die für viele Importeure bedeutsame Frage der Erhebung der Ausgleichsteuer neben der Abschöpfung hat durch das Urteil der FG Münster v. 28. 9. 65 eine neue Note erhalten. Das Urteil ist nicht rechtskräftig.

Während das FG Bremen entschieden hat, daß neben der Abschöpfung keine Ausgleichsteuer zu zahlen ist, das FG Nürnberg sich auf den Standpunkt stellte, daß Abschöpfungen stets in die Bemessungsgrundlage der Ausgleichsteuer einzubeziehen sind, und das FG Rheinland-Pfalz bei etwa gleichem Sachverhalt das Zustimmungsgesetz zum EWG-Vertrag sowie das Abschöpfungserhebungsgesetz für verfassungswidrig hält, hat das FG Münster zwar die Rechtmäßigkeit der Erhebung der Ausgleichsteuer anerkannt, jedoch den für die eingeführte Ware im Gesetz vorgesehenen Steuersatz von 4% auf 1% herabgesetzt.

In seiner Urteilsbegründung führt es u. a. aus:

Ausgleichsteuer ist eine innere Steuer

Die ASt ist nach allgemeiner Ansicht, die, soweit ersichtlich, nicht bezweifelt wird, ihrem Wesen und ihrer Art nach eine sogenannte innere Steuer im Gegensatz zu einem Zoll.

Sinn und Zweck der ASt ist es, eingeführte Waren den gleichartigen inländischen Waren bezüglich der Belastung mit der Umsatzsteuer gleichzustellen. Es ist auch zutreffend, daß der Ausgleich nach dem deutschen Umsatzsteuerrecht nur im allgemeinen ohne Rücksicht auf die einzelne eingeführte Warenart erreicht werden soll.

Aus Gründen der Praktikabilität sind Durchschnittssteuersätze festgesetzt. Das war schon deshalb notwendig, weil die genaue Umsatzsteuerbelastung inländischer Waren oft infolge des deutschen Allphasenumsatzsteuersystems nur sehr schwer feststellbar ist.

Dabei ist es — soweit nur das deutsche Umsatzsteuerrecht in Betracht kommt — unerheblich, ob die ASt im Einzelfall eine zollgleiche Wirkung hat.

Das wird aber dann von Bedeutung, wenn unmittelbar geltende Rechtsnormen des EWG-Rechts bei der Einfuhr bestimmter Waren aus anderen Mitgliedstaaten die Erhebung von Abgaben mit zollgleicher Wirkung nicht zulassen ...

Ausgleichsteuer kann zollgleiche Wirkung haben

Artikel 14 Abs. 1 der Verordnung Nr. 20 hat § 7 Abs. 4 UStG für die in der Verordnung Nr. 20 erfaßten Waren geändert — ebenso wie das in den anderen Marktordnungen durch gleiche oder ähnliche Vorschriften geschehen ist.

Nach dieser Vorschrift ist mit der Abschöpfungsregelung die Erhebung von

Zöllen und Abgaben gleicher Wirkung unvereinbar.

Danach darf die Umsatzausgleichsteuer nur in dem Umfange für aus einem Mitgliedstaat eingeführte Ware erhoben werden, in dem sie keine Abgabe mit gleicher Wirkung wie die eines Zolles ist.

Zölle sind besondere Abgaben, die bei der Einfuhr ausländischer Waren erhoben werden. Sie bezwecken — die verhältnismäßig wenigen Finanzzölle scheiden hier aus —, die ausländischen Waren zu verteuern, sie dadurch dem Preisniveau für gleiche oder gleichartige inländische Waren anzupassen und so die Hersteller oder Erzeuger dieser inländischen Waren zu schützen.

Diese zweckbestimmte Wirkung eines Zolles kann durch jede, einen anderen Zweck verfolgende Steuer oder Abgabe erzeugt werden, die die Lieferung oder den Verbrauch oder den Kauf einer ausländischen Ware höher belastet als die Lieferung, den Verbrauch oder den Kauf einer gleichartigen inländischen Ware . . .

Die Art einer Abgabe als innere Steuer schließt nicht aus, daß sie zollgleiche Wirkung haben kann. Von Bedeutung ist nach Meinung der Kammer weder die Art noch die Bezeichnung noch der Zweck der Abgabe, sondern ausschließlich ihre objektive Wirkung.

Demgemäß ist auch die ASt dann eine Abgabe zollgleicher Wirkung, wenn sie ausländische Waren höher belastet, als gleichartige inländische Waren umsatzsteuerlich belastet sind.

EWG-Vertrag bestätigt, dass innere Abgaben zollgleiche Wirkung haben können

Das Gegenteil ergibt sich auch nicht aus den Artikeln 95 bis 99 des EWG-Vertrages. Diese Artikel beinhalten eine Sonderregelung für innere Abgaben, zu denen auch die ASt gehört.

So verpflichtet Artikel 95 Abs. 1 und 2 EWG-Vertrag die Mitgliedstaaten, es zu unterlassen, auf Waren aus anderen Mitgliedstaaten höhere inländische Abgaben, gleich welcher Art, zu erheben, als gleichartige inländische Waren unmittelbar oder mittelbar zu tragen haben, und auf Waren aus anderen Mitgliedstaaten inländische Abgaben zu erheben, die geeignet sind, andere Produktionen zu schützen.

Diese als Ergänzung zu den Artikeln 9 und 12 EWG-Vertrag notwendige Regelung, die auch die Steuerhoheit der Mitgliedstaaten insoweit beschränkt, soll eine Umgehung der in Artikel 9 und 12 EWG-Vertrag festgelegten Pflichten verhindern.

Dazu war — wie es in Artikel 95 Abs. 3 EWG-Vertrag geschehen ist — auch erforderlich, daß eine Pflicht der Mitgliedstaaten begründet wurde, die für innere Abgaben im Zeitpunkt des Inkrafttretens des EWG-Vertrages bestehenden Gesetze entsprechend den Grundsätzen des Artikels 95 Abs. 1 und 2 zu ändern.

Artikel 95 Abs. 3 EWG-Vertrag bestätigt demnach die Auffassung, daß innere Abgaben unter bestimmten Voraussetzungen Abgaben mit zollgleicher Wirkung sein können.

Während in den Artikeln 9 und 12 EWG-Vertrag nur die Unterlassungspflicht festgelegt ist, neue Zölle oder Abgaben gleicher Wirkung einzuführen, bestimmen die Artikel 13 bis 15 die Behandlung der bestehenden Zölle (= der in Betracht kommenden zollrechtlichen Bestimmungen).

Artikel 95 Abs. 3 EWG-Vertrag schreibt vor, welche Änderungen hinsichtlich der bestehenden inneren Abgaben zollgleicher Wirkung vorzunehmen sind (für Ausfuhrzölle und Abgaben gleicher Wirkung ist auf Artikel 16 hinzuweisen).

Die den Mitgliedstaaten in Artikel 95 Abs. 3 EWG-Vertag zugebilligte Frist, ihre bestehenden Bestimmungen für innere Abgaben soweit es sich um solche mit zollgleicher Wirkung handelte, gemäß den Grundsätzen des Artikels 95 Abs. 1 und 2 EWG-Vertrag zu ändern oder aufzuheben, lief bis zum Beginn der zweiten Stufe.

Das war der 1. 1. 62. Die erst im Laufe des Jahres 1962 erlassenen Marktordnungs-Verordnungen — hier Verordnung Nr. 20 — konnten demgemäß davon ausgehen, daß die Mitgliedstaaten ihre sich aus Artikel 95 Abs. 3 EWG-Vertrag ergebende Pflicht erfüllt hatten.

In den Marktordnungs-Verordnungen genügte deshalb das allgemeine, unmittelbar wirkende Verbot, auf die darin genannten Waren neben der Abschöpfung keine Zölle oder keine anderen Abgaben mit gleicher Wirkung zu erheben.

Ein mit dem EWG-Vertrag in Widerspruch stehender Eingriff in die Steuerhoheit der Mitgliedstaaten liegt darin nicht, weil sich das Verbot nur auf solche inneren Abgaben bezieht, die zollgleiche Wirkung haben.

Ausgleichsteuer darf nicht höher sein als umsatzsteuerliche Belastung gleichartiger inländischer Ware

Für die hier eingeführten Waren hat die erhobene ASt hinsichtlich des 1% übersteigenden Steuersatzes die Wirkung einer zollgleichen Abgabe.

Großhandelsumsätze mit geschlachteten Schweinen in halben Tierkörpern (Schweinefleisch) sind im Inland umsatzsteuerfrei (§ 4 Ziff. 4 UStG in Verbindung mit Nr. 8 der Freiliste 3).

Außerdem sind die Lieferungen und der Eigenverbrauch von Gegenständen, die der Unternehmer innerhalb eines land- und forstwirtschaftlichen Betriebes erzeugt hat und selbst liefert, wenn solche Gegenstände im Inland erzeugt zu werden pflegen, umsatzsteuerfrei (§ 4 Ziff. 19 UStG).

Andererseits unterliegen aber die im Großhandel ausgeführten Lieferungen von geschlachteten Schweinen in Hälften einer Umsatzsteuer von 1%, wenn der Unternehmer die Tiere als Schlachtvieh lebend erworben und die Voraussetzungen für die Steuerermäßigung buchmäßig nachgewiesen hat (vgl. § 7 b UStG).

Hiernach können geschlachtete Schweine in halben Tierkörpern bei Großhandelsumsätzen im Inland höchstens mit 1% belastet sein, sofern man, was für einen Vergleich mit der ASt notwendig ist, von Besonderheiten, wie Fehlen des buchmäßigen Nachweises, und den in § 4 Ziff. 4 unter a) und b) genannten Bedingungen absieht.

Da größere Mengen von im Großhandel gelieferten Schweinehälften normalerweise in gewerblichen Schlachtereien geschlachtet werden, kann im inländischen Großhandel von einer durchschnittlichen Umsatzsteuerbelastung in Höhe von 1% ausgegangen werden.

Demgegenüber beträgt die ASt für gleichartige Waren, die aus einem Mitgliedstaat der EWG eingeführt werden, 4% des Zollwertes. Der Zollwert kann hier dem Entgelt gleichgesetzt werden.

Die auf Grund des deutschen Allphasenumsatzsteuersystems auf den Schweinen lastende umsatzsteuerliche Vorbelastung dürfte gering sein.

Sie wird durch die völlige Umsatzsteuerfreiheit eines Teiles der Großhandelsumsätze aufgewogen. Demgemäß darf nach Auffassung der Kammer der nach Artikel 97 Abs. 1 EWG-Vertrag zulässige Durchschnittssatz für geschlachtete Schweine in Tierhälften für Einfuhren aus EWG-Mitgliedstaaten nicht mehr als 1%

des Zollwertes betragen. Der darüber hinausgehende Steuersatz hat die Wirkung eines Zolles.

Die sich aus den 3% (4% ./. 1%) ergebende ASt ist mit der innergemeinschaftlichen Abschöpfung unvereinbar (Artikel 14 Abs. 1 Verordnung Nr. 20).

Sie darf nicht erhoben werden, weil insoweit § 7 Abs. 4 UStG durch Artikel 14 Abs. 1 Verordnung Nr. 20 geändert worden ist.

SOURCE: *Nachrichten für Aussenhandel, 1965, no. 284, page 7; den 6. Dezember 1965.*
V.W.D.-Vereinigte Wirtschaftsdienste GmbH, Frankfurt/Main (German Federal Republic)

INTERNATIONAL

DOCUMENTS

RESOLUTION ON FISCAL LAW ADOPTED AT THE XIV CONFERENCE OF THE INTER-AMERICAN BAR ASSOCIATION

On May 22-29, 1965, the XIV Conference of the Inter-American Bar Association was held at San Juan, Puerto Rico, under the Presidency of Dr. Manuel Abreu Castillo.

The Conference adopted the following resolution on fiscal law:

Resolution 35

WHEREAS:

1. The problems of double taxation which exist between the countries of the American continents constitute an impediment to the development of most of these countries;

2. Practice has shown that the solution cannot be found for the time being through the uniform adoption of a single basis for taxation;

3. Consequently, the practical solution is to be sought in the signing of international treaties;

4. The distribution of the right to tax between the various countries of the American continents must be made taking into consideration the promotion of economical and social development, strengthening the bonds of Pan American solidarity, which would oblige to depart, under certain circumstances, from the strict application of the principle of reciprocity;

5. Notwithstanding that it has previously been stated that tax treaties should have preferably the form of multilateral conventions, practice counsels that bilateral treaties be prepared;

6. That the ideal of multilaterality may be attained by providing, in bilateral tax treaties, clauses allowing that other countries might adhere to them, except in those cases referring to problems specifically interesting only to the two contracting countries.

RECOMMENDS

1. That the countries of the Western Hemisphere attempt to enter into international treaties, conventions, or agreements which prevent double taxation to facilitate fuller cooperation between the capital exporting countries and those which need the investment of foreign capital are in the process of social and economic development.

2. That the international treaties, conventions, or agreements ought to be made in bilateral form and open to the subscription of third countries and without prejudice to the convention of multilateral treaties.

3. The international treaties, conventions, or agreements ought to contain clauses referring to the following aspects:

a) Cover all or at least most of all taxes regardless of whether payable to national, federal, state, provincial or municipal governments.

b) Provide tax credits equal to the amount of the taxes paid in those countries in which the investment is made.

c) Provide the appropriate rules for recognizing a tax credit in the amount of the taxes exempted by the country receiving the investment within the conditions established in the laws of each country.

d) Take into consideration other rules or provisions of fiscal treatment which stand to stimulate investment in countries which need them.

e) In the international treaties, conventions, or agreements the contracting countries should determine, with the most precision possible and for the sole purpose of application, the treaties, conventions, or agreements in which country is the source of taxable income.

4. To effectively apply the treaties, conventions, or agreements there ought to be provided a full service of information between the contracting countries.

5. In order that the recommendations approved by this Conference may lead to practical results and recognizing that it is necessary to make such recommendations known to all national and international organizations which can contribute to giving practical effect to such recommendations, the Secretary of the Permanent Committee on Taxation shall bring this recommendation to the attention of the Organization of American States, the Inter-American Committee of the Alliance for Progress, the Economic and Social Committee for Latin America, the Inter-American Bank for Development, the Latin American Free Trade Association, the Central American Common Market, the Ministries or Departments of Foreign Affairs, and of Finance, of countries of America, as well as of the Latin American Institute of Taxation, the National Bar Associations, the National Societies dealing with the studies of this branch of law, and the National Institutes of Accountants.

PAKISTAN

DOCUMENTS

SUPPLEMENTARY FINANCE BILL 1965

The Supplementary Finance Bill 1965 containing the supplementary financial proposals of the Central Government for the year ending 30th June, 1966, was presented by the Finance Minister to the National Assembly on 22nd November 1965.

The reason for presenting a middle-of-the-year budget was to collect additional revenue for purposes of defence. The supplementary taxes are expected to yield an estimated Rs 295 million up to June 1966.

We publish an extract of the speech of the Finance Minister:

Mr. Speaker, Sir,

When I addressed this Honourable House last June we had just completed a highly successful Second Five Year Plan and launched our Third Plan with even more ambitious aims and objectives. The events of the last few months have not shaken our will or our economic basis. In fact the administration is more determined than ever to maintain the same spirit of buoyancy and dynamism that inspired our economic policies in recent years.

Immediately after the cessation of active hostilities between Pakistan and India, we introduced a number of measures to revive the normal economic activity in the country.

A number of fiscal measures were announced on October 2, 1965, to strengthen the incentives for private investment. These measures were considered necessary for maintaining production and investment at a high level.

We should take it as a national duty to keep economic activity at a very high level despite all the difficulties with which we are confronted. Our private sector has performed well in the face of heavy odds, and I am sure, that it will be prepared to make extra efforts in the coming months to produce more and to export more in view of the urgent requirements of the country. Government will provide all possible facilities for this purpose. For exemple, an extra export bonus of 10% will be given for the export of cotton textiles for the remainder of the financial year. This concession will apply to markets where there are no quotas fixed for our exports and it will be available only if the export exceeds the export quotas currently being fixed by the Ministry of Commerce for each mill. This additional incentive is being provided to the textile industry in order to enable it to dispose of its accumulated stocks, to encourage it to explore fresh export markets and to ensure the optimum utilization of the installed capacity. This measure will also lend some support to the cotton prices and will benefit the grower. A similar extra bonus will be given to the sports goods, cutlery and surgical instruments industries which are mainly located in the Sialkot area. We shall examine whether the production and stock position justifies similar incentives to any other industries.

It has further been decided that we should revert to the practice that the period for which managing agencies can be held should be ten years so as to enable the industrial

concerns to plan long term investment with greater assurance. Another measure which Government proposes to adopt is the setting up of an Investment Corporation very shortly in order, *inter alia*, to under-write new floatations of stock.

When the import policy for 1965-66 was announced in early July this year, the number of items which could be imported under the Export Bonus Scheme stood at over two hundred. Later, 6 items e.g. tyres and tubes, auto-spares etc., were transferred from the licensable list to the bonus import list; simultaneously, as many as 33 items such as sugar, boots and shoes, old newspapers, playing cards, toilet requisites and perfumery etc., were removed from the bonus import list. In other words, the import of these thirty three items was banned totally. The list is kept under constant review. It has now been decided that a few more items which are not necessary for the economy, like large cars, electrical gadgets and marble, also be taken off the bonus import list.

We are now faced with the twin challenge of a heavy defence expenditure and a struggle for economic development. And this challenge has to be met with a much greater degree of self-reliance than before. This will entail extra effort and sacrifice. The people have already demonstrated that they are ready, in fact eager, to pay this extra price. The contributions to the National Defence Fund and the National Defence Bonds have been both spontaneous and generous and the total amount pledged so far exceeds Rs 35 crores. The normal non-development expenditure of the Central and the Provincial Government has been streamlined and the total economy from this source is estimated to be nearly Rs 15 crores on the basis of measures already introduced. Further efforts are being made to economise on Government's administrative expenditures so as to free more resources for the essential needs of the country. At the same time, every individual, big or small, has accepted a voluntary restraint in private consumption. I am sure that the extra effort that we are calling upon the nation to make, by the imposition of certain additional burdens will be accepted in the same spirit.

I now come to the proposals contained in the Supplementary Finance Bill which I am about to move. In formulating these proposals we have particularly kept the following considerations in view:-

(i) Fresh taxation should not affect the incentive for saving and investment;

(ii) it should give a sense of participation in the national defence effort to as large a number of people as possible without imposing any undue or avoidable burden on the low income groups;

(iii) it should not, in the middle of the year, interfere with the basic taxation structure; and

(iv) it should be simple in concept and easy to operate without adding to the cost of collection.

In this context, I propose the levy of a Defence Surcharge at a flat rate of 25% of the existing rates of:

(*a*) Sales Tax;
(*b*) import duties except in the case of machinery; and
(*c*) excise duties on petroleum products.

Sales Tax: The Defence Surcharge will be levied on all items liable to Sales Tax. The existing standard rate of sales tax is 15% though luxury goods are subject to higher rates ranging from 20% to 30%. A fairly large list of articles of daily use like foodstuffs, handloom cloth and kerosene is exempt from sales tax. They will remain unaffected by the proposed surcharge. This measure is thus not likely to put any appreciable strain on the common man's budget.

Customs: The imposition of the Defence Surcharge on various categories of imports will be related to the present rates of duties and will be in line with the existing pattern of tariff priorities in which capital goods and raw materials generally carry lower rates than consumer goods. It will preserve the selectivity of our tariff system, keep the existing exemptions from duty intact and spread equitably the burden of increased taxation. It will also restrain imports and thus help conserve our valuable foreign exchange.

In excluding machinery from the surcharge what has weighed most with us is that the duty on machinery was increased by 12½% in the current year's budget. Government recently decided that only 2½% of the extra duty should be recovered in cash and for the balance interest bearing debentures redeemable in 3 years after a grace period of 2 years should be accepted. This concession was granted with a view to softening the impact of the substantial increase and ensuring that the pace of industrial development was not slackened. It would not, therefore, be in the fitness of things to put any extra levy on imports of machinery.

Excise duties: I have not proposed any general increase in the existing rates of excise duties as I felt that simultaneous increases in sales tax and excise duties may create a pressure on the price situation. A surcharge of 25% has, however, been proposed on the excise duties on petroleum products to equalize the taxes on imported and locally produced petroleum products.

These measures are expected to yield, during the remaining part of the current financial year, an additional revenue of Rs 12.50 crores each from sales tax and customs and Rs 4.50 crores from excise duties. The total additional revenue will amount to Rs 29.50 crores.

These additional resources and the bulk of the existing provision of Rs 35 crores for contingencies and the savings from the reduced development programme and non-development expenditures together with the contributions to the Defence Fund and Defence Bonds and additional borrowings from the banking system as required, will all be invested in defence, the cost of which will necessarily rise very substantially due to the aggressive designs of India and the stoppage of military aid.

Quite clearly, the nation's defence has the topmost priority over all other requirements, as indeed it always has had. It is the duty of every Pakistani, whether in the Government or out of it, to devote all his energies towards the defence effort. Everything else is subordinate to the over-riding need for ensuring the safety, security and integrity of Pakistan. A firm economic base naturally imparts solidity to defence, but economic prosperity and progress are only possible behind the shield of sovereignty for which adequate defence is a pre-requisite. The nation can rest assured that our beloved President who is also the Supreme Commander of our Armed Forces will unerringly determine the correct order of priorities in all these matters.

TOGO

TAX NEWS

LOI 6510 - DU 21 JUILLET 1965 PORTANT CODE DES INVESTISSEMENTS*

– Ce code après avoir énuméré les garanties générales dont bénéficient toutes les entreprises s'installant au Togo (TITRE I), définit 3 régimes d'établissement pouvant se compléter:

- Le régime des entreprises prioritaires (TITRE II)
- Le régime fiscal de longue durée – (TITRE III)
- Le régime de la Convention d'établissement (TITRE IV)

– Un tableau en annexe présente:

- Les avantages fiscaux accordés par la législation fiscale de droit commun à toutes les entreprises qui investissent (1ère partie)
- Ceux dont peuvent bénéficier en plus les entreprises prioritaires (2è partie)
- Il énonce ensuite (3è partie) tous les impôts et taxes dont la fixité peut être garantie par le régime fiscal de longue durée.

Il paraît préférable d'exposer les uns après les autres les différents régimes existant, du plus simple au plus complèt.

Regime fiscal de droit commun:

Les avantages fiscaux accordés en matière d'investissement à toutes les entreprises installées au Togo, sans formalité particulière, sont reprises dans la 1ère partie de l'annexe au code des Investissement. Ce sont:

– En matière de droits d'entrée, l'exonération de certains matériels d'équipement industriel, minier ou agricole figurant sur une liste.

– En matière d'impots directs:

1°) la possibilité d'amortissements accélérés
2°) la possibilité de report des déficits sur 3 ans
3°) l'exonération de l'impôt sur les bénéfices de certaines plus-values d'actif lorsqu'elles doivent être réinvesties dans les 3 ans.
4°) la réduction de l'impôt sur les bénéfices en cas d'investissements en immeubles ou en installations industrielles. Il est à noter que le code des Impôts directs institué le même jour que le code des Investissements élargit la portée de l'ancienne règlementation; la limite de réduction qui était auparavant de la moitié des sommes investies est désormais fixée au 3/4, et les réductions peuvent être établies sur 5 ans au lieu de 4.
5°) l'exonération de patente des exploitants de mines.

– En matière de droits d'enregistrement:

L'enregistrement gratis ou en débet dans les conditions fixées au Chapitre – XIII – de la règlementation.

* The Code is available in the library of the International Bureau of Fiscal Documentation, Amsterdam.

Régime des entreprises prioritaires

Toute entreprise désirant s'installer ou s'étendre au Togo, présentant les conditions d'objet et d'agréément fixées aux articles 4 et 5 du Code des Investissements peut demander à bénéficier du régime des entreprises prioritaires. La procédure indispensable est décrite aux articles 6, 7 et 8 dudit code. Un décret d'agréément permet alors à l'entreprise de bénéficier, en plus des avantages du droit commun, de ceux qui sont énumérés à la deuxième partie de l'annexe et qui peuvent être résumés comme suit:

– En matière de droits d'entrée:
  1°) Exemption à l'importation pendant 10 ans de certains produits, matériaux et matériels fixés par Décret;
  2°) Réduction pendant 10 ans des droits de sortie sur les produits fabriqués.

En matière d'Impôts Directs:
– Exonération pendant 5 ans de l'Impôt sur les bénéfices et du droit de patente (il est à noter que dans l'ancienne règlementation fiscale ces exonérations étaient accordées aux usines nouvelles)
– En matière d'enregistrement:
  1°) Réduction de 50% du droit d'enregistrement et possibilité de paiements échelonnés:
  2°) Exonération de la taxe sur la prise et la remise de l'eau des rivières et du sol.

Regime fiscal de longue durée

– Les entreprises prioritaires qui présentent une importance particulière pour le développement du pays peuvent être admises par Décret au régime fiscal de longue durée. Dans ce cas, et aux avantages déjà énumérés ci-dessus s'ajoute la garantie de la fixité des charges fiscales existant au moment de l'agréément.
– La durée de la fixité, fixée à l'article 14 est fonction de l'importance des investissements.
– 15 ans pour les investissements de 20 à 100 millions
– 20 ans pour les investissements de 100 à 500 millions
– 25 ans pour les investissements de plus de 500 millions
– La liste des impôts et taxes dont la fixité est assurée sont énumérés à la 3ème partie de l'annexe.

* * *

La convention d'etablissement:

– Les entreprises prioritaires qu'elles soient ou non admises au Régime fiscal de longue durée peuvent passer avec le Gouvernement une convention d'établissement. Cette convention fixée d'un commun accord, permet de préciser certaines obligations et certaines garanties qui peuvent être particulières à l'entreprise; elle ne peut en aucun cas comporter de clause ayant pour effet de décharger l'entreprise des risques techniques ou commerciaux inhérents à un régime de libre entreprise.

Telles sont dans leurs grandes lignes les principales dispositions contenues dans le code et dans son annexe.

Reported by Jean Vanroyen, Lomé

U.S.A.

DOCUMENTS

PROPOSAL FOR A NEW YORK CITY INCOME TAX*

Following is the text of a recommendation for a city income tax by the Temporary Commission on City Finances:

The city needs a major new source of revenue to cope with its immediate fiscal problems and to help finance the improved public services a great city requires. The commission believes that improved city services must be financed by additional taxes paid directly by individuals, not just by increasing taxes on real estate or business. The necessary additional contribution from individuals will be distributed most fairly if it is based on individuals' incomes—in accord with their abilities to pay taxes.

Therefore, the commission recommends the adoption of a city personal income tax, the one major form of taxation the city itself does not now use, to meet this need. We propose a 2 per cent flat-rate city income tax, with exemptions, deductions, and credits like those in the state income tax, on the income of city residents and on the income earned within the city by nonresident commuters. We estimate that this tax would yield $250 million a year at 1965 income levels.

The commission has not reached this conclusion lightly. No new or increased tax is popular, nor is it harmless. But compared to the alternatives, the income tax is by far the best choice available to the city.

The city cannot continue to temporize with the problem through deficit borrowing and the like. We have made it clear that this course would be disastrous. Nor can it slash essential public services; this is surely the path of stagnation and decline. The remaining choices are for new and increased major taxes, such as: a 7 per cent sales; a substantial rise in the real estate tax; a doubling of the city's business taxes; or a 1¼ per cent payroll tax. Any of these alternatives would be either far more damaging to the city's economy or far more regressive (or both) than is the proposed tax on individual incomes.

A city income tax can contribute an element of progressivity to a city tax system which is now heavily regressive. To be sure, an income tax which increases city tax revenues by $250 million, or a little over 10 per cent of prescent city tax revenues, will not convert the total tax system into a progressive one—or even a proportional one—but will mitigate the harsh effects of the present arrangements.

The income tax recommended here would largely exempt the lowest income persons who are most severely treated by the present system. For example, the following tabulation compares the additional tax burden (as a per cent of income) resulting from the adoption of the proposed income tax, with the tax burden resulting from an increase in the real estate tax yielding the same net additionel revenue (approximately $250 million):

* The proposal was published in The New York Times, November 29, 1965.

Income classes	Avarage Tax as Percent of Income Tax Real	Burden Income Estate Tax
1000-2000	—	2.4
2000-5000	—	1.2
5000-7000	0.5	0.8
7000-10.000	0.9	0.6
10.000-15.000	1.2	0.5

As this comparison shows, the adoption of an income tax of this type would moderately reduce the regressivity of the city tax system, while an increase in the real estate tax would increase regressivity appreciably.

Another advantage of a city income tax would be the high degree of responsiveness of income tax revenues to economic growth. Indeed, revenues from the income tax would be more responsive to the city's economic growth than are revenues from any existing city tax. If an income tax were an important part of the revenue structure, the city would need less frequent tax rate adjustments as city expenditures and taxpayer incomes rise over time.

The income tax, as proposed, would parallel the State income tax in its geographic coverage. That is, the tax would apply to all income of city residents and to income earned within the city by nonresidents. This arrangement is not only similar to state practice, but also corresponds to practice under local income tax provisions in the majority of larger cities with income taxes. A city income tax which does *not* apply to income earned within the city by nonresidents but only to city residents is perhaps the worst of all possible fiscal measures. If the rates are high enough, such a tax would be a recipe for wholesale migration to the suburbs by upper-income and middle-income families able to afford suburban housing.

An income tax which *does* apply to income earned by commuters within the city is one of the few means available to the city with which to tap the total stream of income generated by the city's economy. That is an important goal for two reasons. First, it is reasonable to recover revenue from commuters who benefit from city services and protections which they do not support through taxes.

The second reason is equally significant. Taxing the entire city economy rather than only the income, consumption, and wealth of city residents recognizes that the city performs important functions for the entire metropolitan region by accommodating the poor and the disadvantaged. Many in-migrants, poor and ill favored, are attracted to the region by the strength of the metropolitan economy, but they are not evenly spread throughout the region. They live in New York (and the other older cities in the area), and the city government spends large amounts from city tax funds for their education, housing, welfare, and medical care.

These public service costs should properly be a charge against the entire metropolitan community. They are not under present arrangements, though state and Federal aid does somewhat spread the fiscal burden geographically. Increased intergovernmental

assistance would help further, as would full state asssumption of the public assistance function . . . A city income tax applying to all income generated in the city, regardless of where the income recipient lives, would also work in the right direction.

Any conceivable increase in city taxes would have some adverse effects on the city's economy, compared to no tax increase at all (with the increase in expenditures financed from, say, more Federal aid). The policy issue is: which of the conceivable alternatives will have the least adverse effects?

The commission believes that a city income tax, imposed at moderate rates, is best from the standpoint of economic consequences. Since all those working within the city would be subject to the tax, there would be little tax incentive for people living and working in the city to move only their residences to the suburbs. Were they to change to both suburban jobs and suburban homes, which is a difficult move to arrange for most people, they open both job and housing opportunities for other New Yorkers. It is not likely that a tax of moderate rate on personal incomes can provide any real incentive for businesses to leave the city, especially if the alternative to the income tax is higher taxes on business as such.

The income tax here proposed would be at a moderate rate, mildly progressive in its over-all effect because of the exemptions, deductions, and credits provided. Much higher income tax rates across the board, or steep progressive rates on top of the New York State income tax, already among the most progressive state income taxes in the country, might have more serious economic effects.

Under the commission proposal, the tax computation for a New York City resident would involve applying 2 per cent to taxable income already computed for State tax purposes (total income less exemptions and deductions) and substracting the credit from this amount. For example, a married couple with two children with adjusted gross income of $8,000 would compute its tax as follows:

Adjusted gross income	$8,000
Less: Exemptions and deductions	3,200
New York taxable income (line 9 of State tax return)	4,800
× 2 per cent	96
Less credit: $25 for married couple ($10 for single individual)	25
New York City tax	$71

As Table 11 * shows, for a married couple with two children, city income tax liability would begin at an income level slightly over $4,000, rising to $107 at a $10,000 income and to $369 at a $25,— 000 income. Since city taxes are deductible in computing Federal income tax liability, this tax would be offset in part by lowered Federal tax bills. For example, for the taxpayers shown in Table 11, the Federal tax saving would be $6 at the $6,000 income level, $20 at a $10,000 income, and roughly $100 at a $25,000 income.

Up to incomes of about $15,000, this proposed tax would be a progressive one, and above that level roughly a proportional tax. We believe that a city income tax of this type is the best major new revenue measure we can propose.

* Not published in the Bulletin.

III

TREATIES

CONVENTION BETWEEN RHODESIA AND SOUTH AFRICA

AGREEMENT BETWEEN THE GOVERNMENT OF SOUTHERN RHODESIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME*

The Government of Southern Rhodesia and the Government of the Republic of South Africa desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income, have agreed as follows:-

ARTICLE I

(1) The taxes which are the subject of this Agreement are—

(*a*) in the Republic of South Africa—
  (i) the normal tax; and
  (ii) the provincial income tax; and
  (iii) all other taxes on persons or on the incomes of persons which are chargeable in the Republic of South Africa;

(hereinafter referred to as 'South African tax');

(*b*) in Southern Rhodesia—
  (i) the income tax; and
  (ii) the supertax; and
  (iii) all other taxes on persons or on the incomes of persons which are chargeable in Southern Rhodesia;

(hereinafter referred to as 'Southern Rhodesian tax').

(2) This Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of this Agreement.

ARTICLE II

(1) In this Agreement, unless the context otherwise requires—

(*a*) the term 'South Africa' means the Republic of South Africa;

(*b*) the terms 'one of the territories' and 'the other territory' mean South Africa or Southern Rhodesia, as the context requires;

(*c*) the term 'tax' means South African or Southern Rhodesian tax, as the context requires;

(*d*) the term 'person' includes any body of persons, corporate or not corporate;

(*e*) the term 'company' includes any body corporate;

(*f*) (i) the terms 'resident of South Africa' and 'resident of Southern Rhodesia' mean respectively any person who is ordinarily resident in South Africa for the purposes of South African tax and any person who is ordinarily resident in Southern Rhodesia for the purposes of Southern Rhodesian tax; but

* The agreement came into force on September 3, 1965. It is effective in South Africa with regard to the assessment year ended February 29, 1964 and subsequent years and in Rhodesia with regard to the assessment year ended on March 31, 1964, and subsequent years.

(ii) where by reason of the provisions of sub-paragraph (i) an individual is a resident of both territories, then this case shall be solved in accordance with the following provisions—

(*aa*) he shall be deemed to be a resident of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as 'his centre of vital interests');

(*bb*) if he territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

(*cc*) if the has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;

(*dd*) if he is a national of both territories or of neither of them, the taxation authorities of the territories shall determine the question by mutual agreement;

(iii) where by reason of the provisions of sub-paragraph (i) a legal person is a resident of both territories, then it shall be deemed to be a resident of the territory in which its place of effective management is situated; the same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons;

(*g*) the terms 'company of one of the territories' and 'company of the other territory' mean a company which is a resident of South Africa or a company which is a resident of Southern Rhodesia, as the context requires;

(*h*) the terms 'South African enterprise' and 'Southern Rhodesian enterprise' mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of South Africa and an industrial or commercial enterprise or undertaking carried on by a resident of Southern Rhodesia; and the terms 'enterprise of one of the territories' and 'enterprise of the other territory' mean a South African enterprise or a Southern Rhodesian enterprise, as the context requires;

(*i*) the term 'industrial or commercial enterprise or undertaking' includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities or in the business of banking, insurance or dealing in investments, and the term 'industrial or commercial profits' includes profits from such activities or business but does not include income in the form of—

(i) dividends;

(ii) interest;

(iii) rents or royalties, including rents or royalties of cinematograph or television films or any sound recording or advertising matter connected with such films, and any amount received or accrued for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such film, sound recording or advertising

matter or of any patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature;

(iv) management charges;

(v) remuneration for personal services;

(vi) profits from the operation of transport services;

(*j*) (i) the term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(ii) a permanent establishment shall include especially—

(*aa*) a place of management;

(*bb*) a branch;

(*cc*) an office;

(*dd*) a factory;

(*ee*) a workshop;

(*ff*) a mine, quarry or other place of extraction of natural resources;

(iii) the term 'permanent establishment' shall not include—

(*aa*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*bb*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*cc*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*dd*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(*ee*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;

(iv) an enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if it carries on the activity of providing the services of public entertrainers or of athletes referred to in Article X, in that other territory;

(v) a person acting in one of the territories on behalf of an enterprise of the other territory, other than an agent of an independent status to whom sub-paragraph (vi) applies, shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(vi) an enterprise of one of the territories shall not be deemed to have a perment establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business;

(vii) the fact that a company which is a resident of one of the territories

controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory, whether through a permanent establishment or otherwise, shall not of itself constitute either company a permanent establishment of the other;

(viii) the fact that an enterprise of one of the territories is erecting plant or machinery in the other territory shall not of itself constitute a permanent establishment of such enterprise in the other territory, if the erection is an integral part of the contract for the supply of such plant and machinery;

(*k*) the term 'profits' means taxable income, and in the case of Southern Rhodesia includes supertax income;

(*l*) the term 'taxation authorities' means the Secretary for Inland Revenue or his authorized representative in the case of South Africa and the Commissioner of Taxes or his authorized representative in the case of Southern Rhodesia.

(2) The terms 'South African tax' and 'Southern Rhodesian tax' do not include any sum payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the laws of either territory relating to those taxes.

(3) In the application of the provisions of this Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of this Agreement.

ARTICLE III

(1) The industrial and commercial profits of an enterprise in one of the territories shall not be subject to tax in the other territory unless the enterprise is engaged in trade or business in the other territory through a permanent establishment in that other territory. If it is so engaged tax may be imposed on those profits by the other territory but only on so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein—

(*a*) there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment;

(*b*) subject to the provisions of sub-paragraph (*a*), no profits derived from sources outside that other territory shall be attributed to that permanent establishment.

(3) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(4) In determining the industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they

are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible and allocable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

(5) This Article shall not apply in any case in which its application would have the result that income, which but for such application would be subject to tax in one of the territories, would not be subject to tax in either territory.

ARTICLE IV

Where—

(*a*) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or

(*b*) the same persons partipate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory;

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits derived by the Government of or by a resident of one of the territories from operating transport services in the other territory shall be exempt from tax in that other territory.

ARTICLE VI

(1) Any royalty or rent, including royalty or rent in respect of cinematograph or television films, or any sound recording or advertising matter connected with such films, or any other consideration received by or accrued to a resident of one of the territories by virtue of the use in the other territory of, or the grant of permission to use in that other territory, any patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature, including any amount received or accrued for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such films, sound recording, advertising matter, patent, design, model, plan, trade mark, copyright, secret process, formula or other property of a similar nature, shall be exempt from tax in that first-mentioned territory if such royalty, rent or other consideration is subject to tax in the other territory.

(2) In this Article, the term 'royalty' includes, *inter alia,* a payment of any kind received as consideration for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience, but does not include any amount paid in respect of the operation of a mine, oil well or quarry or of any other extraction of natural resources.

ARTICLE VII

(1) Any pension, other than a pension paid by the Government of South Africa for services rendered to it in the discharge of governmental functions, and any annuity, derived or deemed to have been derived from sources within South Africa by an individual who is a resident of Southern

Rhodesia shall be exempt from South African tax to the extent that it is included in income for Southern Rhodesian tax purposes.

(2) Any pension (other than a pension paid by the Government of Southern Rhodesia for services rendered to it in the discharge of governmental functions or a pension paid by the Central African Pension Agency which is deemed for Southern Rhodesian tax purposes to be from a source in Southern Rhodesia) and any annuity, derived or deemed to have been derived from sources within Southern Rhodesia by an individual who is a resident of South Africa, shall be exempt from Southern Rhodesian tax to the extent that it is included in income for South African tax purposes.

(3) The term 'annuity' means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

ARTICLE VIII

(1) Remuneration, other than pensions, paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

(2) Any pension paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if, immediately prior to the cessation of those services, the remuneration therefor was exempt from tax in that territory, whether under paragrapy (1) of this Article or otherwise, or would have been exempt under that paragraph if this Agreement had been in force at the time the remuneration was paid.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

(4) For the purposes of this Article remuneration paid by the Government of the former Federation of Rhodesia and Nyasaland shall be treated in the same manner as remuneration paid by the Government of Southern Rhodesia.

(5) For the purposes of this Article a pension paid by the Central African Pension Agency and which is deemed for Southern Rhodesian tax purposes to be from a source in Southern Rhodesia shall be treated in the same manner as a pension paid by the Government of Southern Rhodesia.

(6) For the purposes of this Article the term 'Contracting Government' in the case of South Africa, includes the Administrations of the Provinces of South Africa.

ARTICLE IX

(1) An individual who is a resident of South Africa shall be exempt from Southern Rhodesian tax on profits or remuneration in respect of personal, including professional, services performed within Southern Rhodesia in any year of assessment if—

(*a*) he is present within Southern Rhodesia for a period or periods not exceed-

ing in the aggregate 183 days during that year; and

(*b*) the services are performed for or on behalf of a person resident in South Africa; and

(*c*) the profits or remuneration are subject to South African tax.

(2) An individual who is a resident of Southern Rhodesia shall be exempt from South African tax on profits or remuneration in respect of personal, including professional services performed within South Africa in any year of assessment if—

(*a*) he is present within South Africa for a period or periods not exceeding in the aggregate 183 days during that year; and

(*b*) the services are performed for or on behalf of a person resident in Southern Rhodesia; and

(*c*) the profits or remuneration are subject to Southern Rhodesian tax.

ARTICLE X

Notwithstanding anything contained in this Agreement, income derived by public entertainers, such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the territory in which these activities are exercised.

ARTICLE XI

The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory if such remuneration is subject to tax in such first-mentioned territory.

ARTICLE XII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, edution or training.

ARTICLE XIII

(1) Subject to the provisions of the law in Southern Rhodesia regarding the allowance of a credit against Southern Rhodesian tax of tax payable in South Africa, South African tax payable in respect of profits from sources within South Africa shall be allowed as a credit against any Southern Rhodesian tax payable in respect of such profits.

(2) Where Southern Rhodesian tax is payable in respect of profits derived from sources within Southern Rhodesia by a person ordinarily resident in South Africa, South Africa shall either impose no tax on such profits or, subject to such provisions, which shall not affect the general principle hereof, as may be enacted in South Africa, shall allow the Southern Rhodesian tax as a credit against any South African tax payable in respect of such profits.

(3) For the purposes of this Article profits or remuneration for personal, including professional, services performed in one of the territories shall be deemed to be profits from sources within that territory, and the services of an individual whose services are wholly or mainly performed in aircraft or other transport vehicles operated by a resident of one of the territories shall be deemed to be performed in that territory.

ARTICLE XIV

The taxation authorities of the Contracting Governments shall exchange such information, being information available under the respective taxation laws of the Contracting Governments, as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade secrets or trade process.

ARTICLE XV

This Agreement shall come into force on the date on which the last of all such things shall have been done in both territories as are necessary to give this Agreement the force of law in each territory and shall thereupon have effect—

(*a*) in South Africa, in respect of assessments for the year of assessment ended on the last day of February, 1964, and subsequent years;

(*b*) in Southern Rhodesia, in respect of assessment for the year of assessment ended on the thirty-first day of March, 1964, and subsequent years.

ARTICLE XVI

This Agreement shall continue in effect indefinitely, but either of the Contracting Governments may, on or before the thirtieth day of September in any calendar year after the year 1966, give notice of termination to the other Contracting Government and, in such event, this Agreement shall cease to be effective—

(*a*) in South Africa, in respect of any year of assessment beginning on or after the first day of March in the calendar year next following that in which such notice is given;

(*b*) in Southern Rhodesia, in respect of any year of assessment beginning on or after the first day of April in the calendar year next following that in which such notice is given.

CONVENTION BETWEEN JAPAN AND U.S.A.

UNITED STATES-JAPAN INCOME TAX CONVENTION*

M, a Japanese corporation, has arranged for a public offering in the United States through underwriters of a substantial number of shares of its common stock. As a part of the arrangement, *M* has entered into an agreement with a United States bank under which *M* will deposit the number of shares of its stock sold to United States investors in a Japanese bank which has been appointed the agent of the United States bank. These so-called "American Depositary Shares" will be recorded on the books of the corporation in the name of either the United States bank or its agent.

Upon notification of the deposit of shares of *M*'s common stock in the Japanese bank, the United States bank will execute and deliver to the United States investors specified

* The text of the convention was published in Bulletin 1965, page 294.

by *M* so-called "American Depositary Receipts". These receipts state that the United States bank certifies that the designated holder is the owner of a specified number of "American Depositary Shares" representing the number of shares of *M* corporation's common stock purchased by the holder which are on deposit in the Japanese bank as agent of the United States bank. The receipts will be transferable on books to be kept by the United States bank which will execute new receipts and issue them to the person entitled thereto after transfer.

American Depositary Receipt holders will have full voting rights with respect to the *M* corporation stock represented by the receipts and will be entitled to receive any dividends paid on the stock. A receipt holder may surrender it at any time to the United States bank and have the stock represented thereby delivered to him.

The primary purpose of the stock deposit arrangement is to overcome the mechanical and other problems involved in the purchase, holding, or sale by nonresidents of Japan of the underlying foreign securities by making available to United States investors readily transferable American-style certificates evidencing the rights to the underlying shares. The arrangement also provides for the discharge by the United States bank of a number of administrative services on behalf of a receipt holder, including the collection, conversion into dollars, and distribution to the holder of any dividends paid on the underlying shares.

Held, a holder of an American Depositary Receipt will be treated, for purposes of the foreign tax credit allowed by section 901 of the Internal Revenue Code of 1954 and for purposes of the benefits provided by the United States-Japan Income Tax Convention, C.B. 1955—1, 658, as if he held the underlying shares of *M* stock directly.

(U.S. Revenue Ruling 65-218)

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IV

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1. BOOKS

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The relevant provisions relating to the construction of the balance sheet with particular reference to the Indian Companies Act of 1956, as amended, aie dealt with in detail and the principles of ratio accountance illustrated by analyses of financial statements of Indian companies. A method is suggested so that a company's income tax liability may be taken into account in the analysis and so that the differences between the income reported for tax purposes and for commercial accounting purposes may be elaborated.

ITALY

DAS ITALIENISCHE AKTIENRECHT – Volume 11 in the series Ausländische Aktiengesetze, published by the Gesellschaft für Rechtsvergleichung. Introduction by *Dr. Dieter Henrich.* Translation by *Dr. Remo Cereghetti.* Alfred Metzner Verlag – Frankfurt am Main – Berlin – 1965. 138 pp.

This book contains a German translation of the articles of the Italian Civil Code on corporation law and translations of:
1 – the law of October 25, 1941 and the Regulation of March 29, 1942, on the obligation of corporations to issue only registered shares;
2 – the law of May 3, 1955, containing rules for the issue of shares and bonds by corporations.
In an introduction, Dr. Henrich explains the main principles of the Italian corporation law.

MANUALE SOCIETA AZIONARIE aggiornata con le più recenti disposizioni legali e fiscali, by *Prof. Rag. Francesco Martinenghi;* published by L. di G. Pirola, Milano, 1965. 17th edition, 413 pp.

This regularly updated handbook contains two parts:
Part I deals with the legal status or corporations: their organization, the legal position of foreign corporations and of foreign participation in Italian corporations, various forms of companies, reconstructions and mergers.
Part II treats the taxation of corporations, including local taxes. Appended are an index and bibliography.

JAPAN

GUIDE TO JAPANESE TAXES, by *Taizo Hayashi,* Chief Income Tax Section National Tax Administration Agency. Tokyo, Zaikei Shoho Sha, 1965, June. 177 pp.

This practical guide contains surveys on the main features of Japanese national and local taxes, national taxes on income, withholding of income tax, assessment of income tax, corporate income tax, and inheritance and gift taxes. A topical index is included.

NETHERLANDS

THE INFORMATION YOU NEED WHEN PLANNING A BUSINESS IN THE NETHERLANDS; Algemene Bank Nederland, Amsterdam. 1965 edition. 28 pp.

Pamphlet in English, French or German language, on commercial law, tax law and other topics relevant to business planning in the Netherlands.

ENKELE BESCHOUWINGEN OVER DE NEUTRALITEIT VAN DE OMZETBELASTING, by *Reugebrink, J.;* published by AE. E. Kluwer, Deventer, 1965. 28 pp. Dfl. 2.50

Text of a lecture delivered by the author on the neutrality of turnover taxation in the national and international economy with special reference to neutrality with respect to competition, retail prices, and the proposed turnover tax harmonization in the Common Market.

SUPPLEMENT OP HET TARIEF VAN INVOERRECHTEN Deel I, Douane Overeenkomst Nederland-België-Luxemburg – Nederlandse Staatswetten, Ed. Schuurman & Jordens No. 100 I, by *Hoogeveen, W.*, Zwolle, W.E.J. Tjeenk Willink, 1965. 7th. edition, 141 pp. Dfl. 1.—.

New edition of the supplement to part I of the Netherlands Customs Tariff concerning the Benelux Customs Treaty.

SOUTH-AFRICA

BULLETIN INTERNATIONAL DES DOUANES, Bruxelles, Bureau International des Tarifs Douaniers, 1965, August, Fascicule 42, thirteenth edition, loose-leaf.

List (conforming to the Bruxelles nomenclature) of duties levied on imports to South Africa.

STAMP DUTIES HANDBOOK, Cape Town, Juta & Co. Ltd., 1964, fifth edition, loose-leaf.

Survey on duties and fees payable under the Stamp Duties Act, 1962 and other laws with notes by the Department of Inland Revenue and references to relevant court decisions.
This loose-leaf handbook contains a table of cited cases; the text of the Stamp Duties Act, 1962, as amended and explanatory notes on the administration of the act, the imposition of stamp duties, the general provisions incidental to stamping of instruments and miscellaneous subjects. The schedules contain the tariff of stamp duties, laws repealed, and (alphabetically listed) instruments with rates of duty or fee.
Reference has been made to South-West Africa and Swaziland.

SWITZERLAND

L'IMPOSITION DES ENTREPRISES INTERNATIONALES, Etude des accords suisses de double imposition et du projet de convention de l'OCDE, by *Jean-Marc Rivier*, Docteur en droit. Published by Imprimerie Vausoise, Lausanne, in 1964, 237 pp.

The subject of this book is the taxation of international concerns, especially with a view to the provisions for the avoidance of double taxation in the Swiss tax treaties and in the draft OECD Convention. Special attention is given to unilateral and bilateral measures for the avoidance of double taxation, the concept of 'permanent establishment', the position of shipping and air transport enterprises and the allocation of profits between two or more permanent establishments in different countries.

UNITED KINGDOM

THE BRITISH SYSTEM OF TAXATION; Central Office of Information Reference Pam-

phlet No. 10, London, Her Majesty's Stationery Office, 1965. 59 pp. 4s.6d.

A succinct but clear survey of the U.K. tax system and its underlying principles. Separate chapters deal with 'purposes and principles', 'structure of taxation', direct taxes, 'revenue duties and purchase tax', 'protective duties' and 'local taxation'. Useful appendixes and a bibliography are included. Unfortunately, the major changes made by the 1965 Finance Act are not covered by this treatise, only a brief note on the proposals of the Finance Bill being given on a separate sheet.

U.S.A.

STATE TAX HANDBOOK; New York, Commerce Clearing House Inc. 1965, September 15. pp. 671, $ 3.00.

A guide to the current tax systems of each state and the District of Columbia including brief descriptions of state wide levies, basis and rates of each tax and the formalities of the tax return.

MEDICARE AND SOCIAL SECURITY LAW, New York, Commerce Clearing House Inc., 1965, July 30. 430 pp. $ 6.00.

The full texts of the Social Security Act relating to old-age, survivors and disability insurance benefits, medicare and public welfare, the federal insurance contributions act, the self-employment contributions act and other pertinent provisions of the I.R.C. as amended. Historical notes and an index are included.

1966 US MASTER TAX GUIDE, Chicago, Commerce Clearing House Inc., 1965, November. 560 pp. $ 4.00.

This CCH current law handbook edition serves as a master tax guide for 1965 income tax return and 1966 tax planning.

The contents includes important 1965 tax law changes, tax tables and a topical index.

THE AMERICAN PROPERTY TAX: Its History, Administration and Economic Impact Benson G.C.S., by *Benson, S., H. McClelland and P. Thomson*. Claremont (California), Institute for Studies in Federalism and the Lincoln School of Public Finance, 1965. 198 pp. $ 2,50.

Collection of essays on assessment areas and the values of decentralized government, a history of the general property tax, property tax assessment, and the propeıty tax and the interest rate.

FOREIGN AID THROUGH PRIVATE INITIATIVE; Washington, D.C. Agency for International Development, Department of State, 1965, July. 57 pp.

Report of the Advisory Committee on private enterprise in foreign aid in five sections: private enterprise and foreign aid; the flow of direct investment; the flow of finance capital; developing human resources; some issues of organization.

AMERICAN FEDERAL TAX REPORTS (second series), Volume 15; table of cases to volumes 11-15; Englewood Cliffs, N.J. Prentice Hall Inc. 1965, 1550 pp.

Bound volume to replace the loose-leaf advance sheets January 1 to June 30, 1965 from the permanent loose-leaf binders of Prentice Hall Federal Taxes (Income Tax, Estate & Gift Tax, Excise Taxes). It includes the unabridged texts of federal tax cases from both state and federal courts (other than the US Tax Court).

2. LOOSE-LEAF SERVICES

Releases received between November 1st 1965 and November 30th 1965

AUSTRIA

Österreichische Steuer- und Wirtschaftskartei, releases nos 19-21: P. Linde – Wien

BELGIUM

Guide Fiscal Permanent, release no 267: Vioburo – Bruxelles

CANADA

Canada Tax Service, release no 184: R. de Boo – Toronto

Canada Tax Service Letter, release no 92: R. de Boo – Toronto

McDonald's Current Taxation, release no 45: Butterworth – Toronto

Provincial Taxation Service, release no 196: R. de Boo – Toronto

FRANCE

Code annoté de l'enregistrement, releases nos 12-13: Seteca – Paris

Documentation Pratique de Sécurité Sociale et de Législation du Travail, release no 11: Lefebvre – Paris

Droit des Affaires, release no 10a; Ed. Législatives et Administratives – Paris

Feuillets de Documentation Pratique, release no 3: Lefebvre – Paris

Problèmes d'Outre Mer, release no November: Centre d'Etude des Problèmes d'Outre Mer – Paris

Recueils Pratique du Droit des Affaires dans les Pays du Marché Commun, releases nos 32-33: Ed. Jupiter – Paris

GERMANY

Handbuch der Einfuhrnebenabgaben, release no 8: V. d. Linnepe-Hagen

Kommentar zum Umsatzsteuergesetz, release no 34: O. Schmidt – Köln

Steuergesetze, release October: C.H. Beck – München

LUXEMBOURG

Etudes Fiscales, releases nos 11-12: A. Peiffer – Luxembourg

NETHERLANDS

Belastingberichten, releases nos 18-19: Samsom – Alphen a/d Rijn

Belastingbeschouwingen, release no 15: Samsom N.V. – Alphen a/d Rijn

Documentatie Vandewinckele, releases nos 265-266: Vandewinckele – Brugge

Fed Losbladig Fiscaal Weekblad, releases nos 1017-1020: FED – Amsterdam

Fed's Fiscaal Register, release no 7: FED – Amsterdam

Fed's Fiscaal Repertorium, releases nos 5-6: FED – Amsterdam

Handboek voor de Europese Gemeenschappen – Verdragteksten, release no 17: Kluwer – Deventer

Handboek voor de Europese Gemeenschappen – Tariefljsten voor de EEG, release no 42, Kluwer – Deventer

Handboek voor In- en Uitvoer – Belastingheffing bij-Invoer, release no 55: Kluwer – Deventer

Handboek voor In- en Uitvoer – Tarief van Invoerrechten, release no 42: Kluwer – Deventer

Kluwer's Tarievenboek, release no 47: Kluwer – Deventer

Nederlandse Wetboeken, deel B, release no 74: Kluwer – Deventer

Regelingen Euromarkt, release no 64: Vermande & Zn. – IJmuiden

Teruggaaf van Omzetbelasting bij Uitvoer, releases nos 162-163: Samsom N.V. – Alphen a/d Rijn

De Vakstudie – Personele Belasting en Grondbelasting, release no 31: Kluwer – Deventer

Vakstudie – Successiewet, release no 14: Kluwer – Deventer

SOUTH AFRICA

Law and Practice of South African Income Tax, release no 9: Butterworth – Durban

SPAIN

Circulares, release no 79: T.A.L.E. – Madrid

SWITZERLAND

Steuern in der Schweiz, 6 releases: Eidgenössische Steuerverwaltung – Bern

SYRIA

Code Fiscal Syrien Permanent, release no 29: Boite Postal 539 – Damas

TUNISIA

Fiscomptor, releases nos 509-510: La Fiduciaire – Tunis

TURKEY

Türk Argüs Ajansi, releases nos 3514-3525: La législation Turque – Istanboul

U.S.A.

Federal Tax Guide Reports, releases nos 4-8: Commerce Clearing House – Chicago

Federal Taxes Report Bulletin, release no 44; Prentice Hall-Englewood Cliffs

State Tax Guide, release no 337: Commerce Clearing House – Chicago

Tax Treaties, release no 164: Commerce Clearing House – Chicago

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

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

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. As of January, 1965, European Taxation is published monthly and the number of pages has been considerably increased. A new loose-leaf magazine *"Tax News Service"* was started, bringing rapid information of tax events all over the world. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7500 volumes on national and international tax matters, as well as more than 300 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

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

Organization

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

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

Apart from its own Associates, who represent several nationalities, the Bureau avails itself of the coopeative services of a large number of expert correspondents throughout the world.

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

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

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

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

PUBLICATIONS OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION
PUBLICATIONS DU BUREAU INTERNATIONAL DE DOCUMENTATION FISCALE

EUROPEAN TAXATION (monthly)	Europe	DFL	125
(including TAX NEWS SERVICE)	Non-Europe	US $	42.50
TAX NEWS SERVICE (bimonthly)	Europe	DFL	30
	Non-Europe	US $	10
SUPPLEMENTARY SERVICE (monthly)	Europe	DFL	125
	Non-Europe	US $	37.50

BULLETIN	without supplements	$ 7.50
	with supplements	$ 10.—

Supplements to the Bulletin:

PUBLICATIONS No. 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 14	out of print
PUBLICATION No. 6: Dr. F. E. Koch et Jean H. Rothstein: La Convention Fiscale Franco-Britannique du 14 déc. 1950.	$ 3.50
PUBLICATION No. 9: Supplement to No. 3, containing Regulations etc. the Anglo-Dutch Double Taxation Conventions	$ 1.35
PUBLICATIONS No. 10: Dr. F.E. Koch and Richard Moss: Compilation of the legal provisions, regulations, circulars and forms relating to Double Taxation Relief in the United Kingdom of Great Britain and Northern Ireland, 1957	$ 2.25
PUBLICATION No. 15 en 15A: Doppelbesteuerungsabkommen zwischen der Bundesrepublik Deutschland und dem Königreich der Niederlande: deutscher und niederländischer Text, 1960 with supplements	$ 1.75
PUBLICATION No. 16: Dr. E.W. Klimowsky and S.F.W. Bille: The Tax Convention between Israel and Sweden	$ 2.50
PUBLICATION No. 17: Dr. F.E. Koch and Victor Uckmar: The Convention between the United Kingdom and the Italian Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.	$ 2.85
PUBLICATION No. 18: Alan R. Rado: United States taxation of foreign investment—the new approach	$ 5.75
PUBLICATION No. 19: Swiss Measures against Abuse of Tax Conventions	$ 3.50

Studies on Taxation and Economic Development:

VOLUME I: Georges Constantinou et Pelopidas A. Katopodis: Fiscalité et Développement Economique en Grèce, 1961	$ 2.85
VOLUME II: Z.M. Kubinski: Public Finance for Stability and Growth in an Underdeveloped Export Economy (A case Study of the Republic of the Sudan), 1961	$ 2.85

Special Publications:

—Dr. Albert J. Rädler: Die direkten Steuern der Kapitalgesellschaften und die Probleme der Steueranpassung in den sechs Staaten der Europäischen Wirtschaftsgemeinschaft, 1960	$ 8.50
—E.E.C. Reports on Tax Harmonization (English Translation)	$11.50

Guides to European Taxation:

VOLUME I: Taxation of Patent Royalties, Dividends and Interest in Europe — including binder	$30
monthly supplement Service by airmail for 1965	$15
VOLUME II: Corporate Taxation in the Common Market — including binder	$25
monthly supplement Service by airmail for 1965	$15

EDITORIAL

Developing countries, tax treaties and turnover taxation are the important and difficult subjects of this issue of the Bulletin.

Developing countries do indeed have revenue problems and, as Mr. Surrey states (p. 47), treaty restrictions on taxation by the country of source bear heavily on their revenue potential. Quite reasonably then, developing countries seek compensatory treaty provisions to encourage foreign investment. The issue for developed countries is less the justice of the claim than the vehicle of its implementation. As opposed to the tax sparing and exemption mechanisms of other developed countries, the United States has recently responded to the demands of two its treaty partners by extending the scope of its domestic investment credit.

Apropos of these two treaties, even those inclined to disagree with the American view of the nature of 'tax neutrality' will find Mr. Surrey's comments most provocative.

Mr. Pepper's article on turnover taxation is especially welcome in light of the paucity of comparative materials in English. No less than in the international setting, the domestic tax policy of developing countries is shaped by considerations unique to their stage of development and administrative resources. In this context, turnover taxation has a special appeal, but, of course, creates special problems.

The interest in turnover taxation is by no means restricted to developing countries. Norway and Sweden in particular have in recent years focused increased attention on turnover tax revenues. Moreover, the historical preoccupation of international tax law with the relief of direct double taxation has been extended to the competitive consequences of the turnover tax structure—taken alone, and in connection with direct tax, structure. And although the measures adopted by developed countries may not be suited for their developing neighbors, the products of inquiry and experimentation will ultimately redound to their benefit.

DR. J. C. L. HUISKAMP

CONTENTS

I

THE UNITED STATES TAX SYSTEM AND INTERNATIONAL RELATIONSHIPS—CURRENT DEVELOPMENTS, 1965-6* (I)

remarks by

STANLEY S. SURREY

About a year ago in a paper presented at Montreal before the Tax Executives Institute, I discussed the United States Tax System and International Tax Relationships.**) Since then two income tax protocols, with Belgium and Germany, were signed and have been ratified by the Senate; three treaties with less developed countries, the Philippines, Thailand and Israel, have been signed and are pending in the Senate; tentative agreements have been reached with the Netherlands and India; and negotiations are actively being pursued with a number of countries, including the United Kingdom, France, Portugal, Honduras, Trinidad and Tobago, and Taiwan.

Since then important Regulations and rulings affecting the international allocation of income have been issued and more are in preparation. A comprehensive bill revising our statutory income tax treatment of foreigners is moving through the Congress.

A consideration of these current developments is now appropriate. I shall divide this consideration into three parts—income tax treaties, both with developed and less developed countries, the administration of United States statutory or unilateral treatment of foreign income, and United States statutory or unilateral treatment of foreigners. Because of the length of this paper, I have prepared a summary which precedes the paper.

SUMMARY

Income Tax Treaties

The United States is engaged in an extensive revision of its income tax treaties with *developed countries,* prompted by the recent changes in the corporate tax systems of the European countries and the adoption in 1963 by the OECD of a Model Income Tax Convention. The protocol with Germany ratified recently by the Senate and the tentative protocol with the Netherlands shortly to be signed illustrate much of the pattern that this revision is taking. This pattern provides a widened flexibility to international trade and investment activities between the United States and Europe. The scope of export activities in a treaty country can now be enlarged, for instance, by displays and warehouses for the storage or delivery of goods, without subjecting the exporter to a tax in that country.

*) For the benefit and information to our readers, the Bulletin is printing the entire text of Mr. Surrey's talk to the Tax Institute of America on December 2, 1965.

**) Reprinted in Bulletin 1964, p. 441 and p. 485; compare Recent International Tax Policy in the U.S., remarks by Richard O. Loengard Jr. in Bulletin 1965, p. 140: U.S.A. International Tax Relationship.

Also, in cases where a firm maintains considerable commercial or industrial activity in a treaty country and therefore is taxable there on that activity at regular corporate rates, it can at the same time make investments in that country, or establish licensing relationships, that will remain subject to the lower rates of tax which treaties provide for investment and royalty income. Investors, moreover, will generally be free from tax on capital gains arising in a treaty country. In the important matter of withholding rates on dividends paid to parent companies in one treaty country by their subsidiaries in another treaty country, the United States is in favor of the low OECD Model rate of 5 percent, and likewise favors the 15 percent rate on portfolio investment. It also favors the principles that the withholding rates should be non-discriminatory—in that a country should be willing to offer the same rates to all its treaty partners—and reciprocal—in that a country should not claim higher treaty rates than the rates it desires us to adopt in the treaty.

These concepts cover ground that has been considerably explored in recent years. But the new corporate tax systems present problems less fully mapped. Some of these systems involve integration of the corporate tax with the individual shareholders' taxes on distributed dividends, through credits to these shareholders for the corporate tax. Their structure, by limiting those credits to domestic shareholders in domestic corporations, discriminates against both their domestic shareholders who invest abroad and the shareholders from abroad who invest in their domestic corporations. The OECD Convention does not fully meet these problems, and therefore an analytic framework for their solution is needed. Such a framework should be rested, as far as possible, on two basic concepts: first, the concept of long-range neutrality in a country's tax system between those of its investors who invest at home and those who invest abroad; and second, the concept of non-discrimination in a country's tax system between its investors at home and investors from abroad.

These treaties, under the pressure of negotiating problems and inevitable differences among countries and negotiators, will not always exhibit uniformity in phrasing and arrangement, apart from substantive differences. There is therefore clearly a need to clarify the disuniformity—to state through Regulations or otherwise when and to what extent different phrases and different approaches in various treaties, or even the same treaty, really embody differences in end result and are so intended. The United States intends to improve its Regulations in response to this need.

The United States is also engaged in an extensive program of negotiations to obtain a network of treaties with *less developed countries*. We believe that such treaties significantly improve the trade, investment and cultural relationships between the United States and these countries. Many of the European nations are also engaged in similar efforts. While these new less developed country treaties in many provisions follow those with developed countries, there are quite significant differences arising from the fact that the investment and trade flows from the United States to these countries is generally much larger than the reverse flows. As a consequence, and also in the light of the revenue problems of these countries, the reductions in withholding rates on investment income and royalties in these treaties do not always match those in the developed country treaties. There also is pressure to widen the definition of permanent establishment and thus

contract the area of trading activities free from tax in these countries. In addition, since the restrictions on taxation by the source country that do emerge in these treaties bear in a revenue sense more heavily on the less developed countries, such countries seek some provisions on the part of the developed countries that can be regarded as an encouragement to investment in them.

The European nations have responded through provisions reducing the burden of their taxes on income flowing back from these investments, either through an exemption or adoption of tax-sparing credits. The United States, emphasizing instead the encouragement to the investment itself at the time that it is being considered by the United States taxpayer, is responding through extending to investment in less developed treaty countries the 7 percent credit now in our law for investment at home. This 7 percent treaty credit extends to investments of cash and tangible property. A complementary provision offers encouragement to the investment of technical assistance, through deferring tax in both countries where intangible assets, such as patents, processes or know-how, are exchanged by a United States investor for stock in a corporation in the less developed country. We believe that extension of the investment credit is appropriate only where the other country is receptive to our investment and where its tax system, taken as a whole and in the light of any modifications made in the treaty, does not involve measures that can be regarded as significantly working at cross purposes with this investment. This negotiating approach on our part has met with an affirmative response by the less developed countries.

The Subcommittee of the Senate Committee on Foreign Relations has performed a useful public service in holding full hearings on one of these new treaties, the Thailand treaty. The published Hearings contain a complete technical explanation of the treaty and a description of factors affecting negotiations with less developed countries. Necessarily, as experience is gained, the present pattern that has so far evolved in our negotiations with less developed countries can be improved. The progress of these negotiations is encouraging, for it indicates that the United States and these countries can reach a treaty arrangement that each regards as fair and conducive to improved investment, trade, and cultural relationships. This attitude and the promise it holds for a growing network of tax treaties represent a major step in our political and economic relationship with these countries.

Administration of United States Statutory Taxation of Foreign Income—Allocation of Income and Section 482

The importance of developing a sound administration of the United States statutory taxation of foreign income is matched by the formidable nature of the task: The field is relatively new as tax matters go, and the needed experience, analysis of detail, and synthesis of concepts are still in a formative stage; the international business activities to which the rules relate are rapidly expanding in importance and number, and thus the variety of transactions and business relationships involved steadily increases; the tax rules moreover are constantly being buffeted by the shifting exigencies of balance of payments problems. But all of this merely underscores the challenge of the task, and the Treasury is seeking to respond in a fitting manner.

The Treasury regards as the matter presently having major priority the establishment of a satisfactory framework for the administration of the rules governing transactions between the domestic and foreign units of our business companies. In our tax parlance, this centers on the application of section 482 of our Code, authorizing the Commissioner to allocate income, deductions and credits between related units of an enterprise so as to prevent evasion or clearly reflect the income of the various units. The variety and number of transactions in the foreign area that lie within the reach of the section have overstrained the level of technical development that had been achieved in the earlier domestic application of the section. The situation thus calls for a many-faceted implementation of the section so that it may carry the new burden placed on it.

Several steps have already been taken. The first, in Revenue Procedure 64-54, achieved an orderly treatment of controversies that had arisen for years prior to 1963 by permitting taxpayers to offset—against any increase in United States taxes occasioned by an adjustment under this section allocating additional income to the United States unit of the enterprise—the foreign taxes paid on the income involved and thus to avoid double taxation. In addition, the Revenue Procedure stated that the Internal Revenue Service would not pursue for those years adjustments based on applications of section 482 not clearly required by its previous technical development. Through its achievement of an orderly treatment of the pre-1963 years and the consequent very marked reduction in number and dollar amount of deficiencies under the section for those years, this Revenue Procedure has permitted the needed technical development of the section to proceed in an atmosphere free of acrimonious disputes that would otherwise have existed.

The second step, in Revenue Procedure 65-17, provides rules governing the transfer of income between foreign subsidiary and United States parent intended to reflect an adjustment correcting an understatement of the parent's income, as where it charged too low a price for goods sold to the subsidiary or rendered services to it for an inadequate fee. The principal impact of these rules is to permit broad flexibility in fitting the section 482 adjustment into a proper position within the flow of funds from the foreign subdiary and its dividend pattern. This removes impediments to the orderly repatriation of funds from the subsidiary and makes it possible for the taxpayer to accept the adjustment without increasing the transfer of income from subsidiary to parent more than it considers desirable.

These procedural steps set the stage for the development of appropriate guidelines for the substantive application of section 482. To this end the Treasury has already issued detailed proposed Regulations covering transactions where assets or services of a United States parent are made available to its foreign subsidiary—where money is lent, where management or other services are rendered, where machinery and other tangible assets are made available. Essentially the approach is to offer taxpayers a safe conduct pass through section 482 through guidelines, based on the costs incurred by the parent and an allocation of those costs to the subsidiary in a manner that follows accepted accounting precedents outside the tax field. The second set of proposed Regulations, now in preparation and far more difficult to develop, will contain the rules applicable to intercompany sales of products and transfers of intangibles, such as patent licenses. These rules will involve the determination of a fair profit for an endless variety of assets that,

under the arm's length concept of section 482, are regarded as transferred in a profit-seeking transaction. Both these Regulations must then be coordinated with the rules of section 862, requiring an allocation between domestic and foreign source income of expenses not allocable to specific items of gross income.

These Regulations relate to the proper formulation of our unilateral rules of allocation with respect to international transactions. But since these are international transactions a unilateral approach by the United States, or any country, is not sufficient. The rules of one country must mesh with those of other countries to avoid double taxation. Also, each country must see both sides of the problem—the rules we regard as proper to allocate income to our parent companies from transactions with their foreign subsidiaries are the rules we must be willing to accept when the subsidiary is here and its parent is a foreign corporation. The United States believes that the OECD Fiscal Committee is the proper body to undertake the task of establishing the allocation standards to guide countries in reaching accomodations with each other, and we are fully assisting the Working Party which that Committee appointed for this purpose.

Another aspect of the problem is to ensure that any agreements reached between Governments in particular cases, under present standards or those to be formulated, should be capable of being implemented in full. However, as these cases generally involve a considerable time before agreement is reached on the adjustment, a taxpayer and the countries concerned may find that procedural barriers, such as a statute of limitations on refunds, may make it impossible to implement the adjustment in the country that has overtaxed the income. To avoid this result, the United States believes that treaties should provide that a refund be allowed in accordance with the agreement, despite procedural or other barriers. Such agreements could relate either to the allocation of profits or to the source of an item of income, and in the latter case the implementation should extend to the effect of the agreed source on a foreign tax credit. Other countries appear to agree with this view, and clauses for this purpose are being incorporated in our treaties, as in the German protocol. We regard this result as a significant step toward the goal of achieving a proper framework to meet the problems of international allocation.

United States Statutory Taxation of Foreigners

The steady attention focused by the United States in recent years on its balance of payments position has resulted in an extensive examination of the United States tax treatment of foreigners who invest in the United States. Against the background of the "Fowler Task Force" Report to the President and Treasury recommendations, the House Committee on Ways and Means has developed a bill, H. R. 11297, now available for comment before being reported to the House in 1966. The bill recognizes that some of the existing provisions of our Code have become discriminatory and inequitable to foreign investors and thus involve a barrier to investment in the United States. In correcting this treatment the bill avoids at the other extreme rules that would represent only a desire to attract foreign investment, rules which would be but mere tax inducements to tax concessions.

The bill would, in effect, draw back United States source jurisdiction, both under the

income tax and the estate and gift taxes, to a more realistic and administratively manageable position. It would also simplify the tax rules we present to the foreigner desiring to invest here. As a consequence, in general the individual foreigner investing in our stocks and securities or real property would find his periodic income from the investment subject only to tax at withholding rates, either at 30 percent or a lower treaty rate, and not to progressive rates. His capital gains would not be taxed. These results would not be altered by extensive trading in these stocks or securities, even where the trading is conducted by a United States broker who has discretion to act for him. His real estate investments would be taxed on a net income basis at regular rates if that is preferable. The foreign investor would also see a far lower scale of United States estate tax rates on his United States investments. The exemption would start at $30,000 instead of $2,000 as at present, and the top rate would be 25 percent instead of 77 percent. The effective rates would thus be drastically reduced, and would only be 3 percent on a $100,000 United States estate, 7 percent for $500,000, 10 percent for $1,000,000, and 18 percent for $5,000,000. The corporate investor—or an individual—with a business activity in the United States would find itself taxed at regular rates on any business income and any investment income "effectively connected" with that activity, whether the source of the income is within or without the United States. The United States would thus obtain its proper tax on this type of income. But any unrelated investment income would be freed from business tax rates and taxed, where its source is in the United States, only at the withholding rates we consider appropriate for investment income. A foreign corporation whose stock is owned entirely for foreigners would no longer be subject to personal holding company tax liability. And our "second dividend" tax would only apply to a foreign corporation whose activity is almost solely confined to operating a branch in the United States. These simpler and more logical rules, applied to individual and corporate foreign investors, should in a meaningful way remove tax barriers which our present structure now presents.

The approach of the bill closely parallels the pattern now taken in our tax treaty negotiations. The bill, however, would extend these steps to all foreigners promptly and on a unilateral basis. But to preserve the bargaining power and flexibility our negotiators need to obtain through treaties reciprocal concessions from other countries on income our taxpayers derive from abroad, the bill empowers the President to reinstate the former statutory rules. The President can do so with respect to residents of a foreign country when he finds that the foreign country, if requested by the United States, does not modify its taxes to parallel the changes we are making unilaterally. This power of the President can be applied on a selective basis, country by country and tax provision by tax provision, and need be applied only when he finds that it is in the public interest to do so in each case.

Conclusion

Current developments in our international tax relationships underscore the wide range of policy and administrative issues that are under consideration. Indeed, the continued rapid growth in international investment and trade has brought with it a multitude of varied tax problems that press beyond our present framework of concepts and analysis.

Intensive legal and economic thought is required to develop that framework into one adequate to the task—a framework that embodies a coherent logic capable of expansion to meet new patterns and relationships. In one sense this is a truly formidable task, since each of the countries of the world can claim a voice in the effort. But the ingenuity and insight promised by this host of architects should be viewed as welcome assets. The task for the United States is to see that in this international effort we play a role fitting to our position. We can do so if all of us with a stake in the outcome—the Government and its officials, our taxpayers with international activities and their advisors, our universities and research institutions and their scholars—work cooperatively in shaping our contribution.

I. INCOME TAX TREATIES

The United States is continuing to maintain an active schedule of treaty negotiations, along with its participation in the deliberations of the OECD Fiscal Committee. The treaty negotiations cover a variety of issues, and extend both to developed and less developed countries.

Developed Countries

The United States now has a full complement of income tax treaties with the European Common Market countries, and indeed with most of the developed countries. Spain and Portugal remain as the principal exceptions, and arrangements for negotiations with these countries are underway.

But the treaty process in the tax field is an ever changing one, so that we and our treaty partners of the developed world find ourselves engaged in a wide-ranging revision of the existing arrangements. The principal factors behind this re-examination have been the recent changes in the corporate tax systems of the European countries and the adoption in 1963 by the OECD of a Model Income Tax Convention. The United States recently concluded protocols with Belgium and Germany, and will shortly sign a protocol with the Netherlands. It is currently engaged in negotiations with France looking to a revision of the existing treaty, which goes back to 1939, and with the United Kingdom to meet the problems created by the extensive changes enacted this year in the United Kingdom tax law.

The effect of the OECD Model Convention on these treaty negotiations is significant. While there are differences in degree among the various member countries in the extent of their adherence to the language of that Convention, and indeed these differences vary from provision to provision, that Convention is always kept in mind by treaty negotiators. This is, of course, understandable, since the representation in the OECD Fiscal Committee which drafted the Convention is composed of the officials charged with the responsibility to negotiate tax treaties for their respective countries. And indeed for many purposes, that Convention meets satisfactorily the policy and technical issues that confront treaty negotiators. But new issues constantly emerge, and old issues take

different shapes, so that in some areas the guidance offered by the Convention seems inadequate. Perhaps the principal areas in this respect relate first, to the rates of dividend withholding appropriate to the varying forms of domestic corporate income taxation that are being adopted by the member countries, and second, to the policy and technical problems that are emerging with respect to the allocation of profits between the components of international business enterprises.

As for the United States, the recent protocol with Germany and that to be signed soon with the Netherlands illustrate a significant part of the pattern which the revision of our treaties is taking. The German protocol was recently ratified by the Senate, and this action, together with the nature of the testimony at the hearing held on it, indicates that the pattern embodied in it is appropriate for the United States.

It therefore may be helpful to turn to the more significant aspect of that pattern. As will be seen later in the discussion of our unilateral treatment of foreigners, this pattern is also important in the shaping of our statutory rules.

Definition of Permanent Establishment

The definition of permanent establishment set forth in the OECD Draft is clearly becoming the model for the various treaties. The member countries have recognized that, while subject to some technical deficiencies or ambiguities, the definition is satisfactory over-all. They therefore have adopted it, improving on it as the definitional problems emerge. The provision set forth in the German protocol is the form the United States is currently using. This provision is more particularized than the previous form, and somewhat more permissive in the operations that can be conducted by a business activity before it will be regarded as having a permanent establishment. It may be observed that this definition refers specifically to a "place of management" as a permanent establishment. Though this concept was not separately delineated before, it was in effect recognized as a factor under some prior treaties, as in the case of the German treaty. But since it may be a relatively unfamiliar term, in our tax lexicon, the United States is taking appropriate steps, through memoranda of understanding, exchanges of letters and the like, together with its own Regulations, to emphasize that the term refers to "management" in a substantive and meaningful sense and not to minor, representational or sporadic activities. More care is also being given in the treaties to the definition of "industrial and commercial profits" (the kind of income for which the presence of a permanent establishment is requisite to its taxation), with the result of greater particularity in the enumeration of types of income not covered by the phrase.

Given, on the one hand, the scope of operations thus afforded to a business activity before it is regarded as constituting a permanent establishment and, on the other, the tax and non-tax factors that point to the use of a foreign subsidiary as operations become still more extensive, it seems likely that permanent establishments, or branch operations, are relatively quite few in number, or are generally confined to certain lines of activity, such as insurance, banking, and natural resource activities. Thus, as respects the permanent establishments of foreigners in the United States, there were less than 500 foreign corporations actively engaged in business in the United States in 1962, of which almost half reported a loss on their United States business operations. The total amount

of income reported by the profit-making branches was less than $100,000,000, of which over 75 percent was attributable to 58 insurance companies and 14 investment companies. If the deficit companies are taken into account and the insurance companies excluded from the calculations, the total taxable income of the 375 other branches is less than $7 million. This figure, however, reflects allowance of the 85 percent dividends received deduction, without which it might be considerably higher.

Force of Attraction

Our previous treaty pattern, once a permanent establishment existed in a country, was to provide that all income of the taxpayer arising in that country was "attracted" to that permanent establishment, and taxed at the rates and in the manner applicable to business enterprises. This meant, for example, that investment income which would otherwise have been taxed under the treaty at relatively low withholding rates or fully exempt, remained subject to tax at regular rates. The OECD draft abandons this force of attraction approach and therefore leaves the investment income of a taxpayer having a permanent establishment to be separately treated, except where the asset giving rise to that income is "effectively connected" with the permanent establishment. Also, only the industrial or commercial profits "attributable to" a permanent establishment are to be subject to tax, and any industrial or commercial profits not so attributable are, lacking the relationship to a permanent establishment, exempt from tax under this approach.

This approach has much to commend it, since the separation it permits between trading or other business activity and investment activity makes for a freer movement of capital and goods between countries. The approach also makes unnecessary the steps taxpayers have taken, recognizing the utility of that separation, to achieve it through isolating the business or investment activities in a separate subsidiary solely designed for this purpose. For these reasons the approach has been adopted by the United States in the German and Netherlands protocols. Of course any new concept and its terminology carry their interpretative problems at the edges of the concept, and this will be true of such phrases as "effectively connected" and "attributable to," just as it has been true of other phrases and concepts in the treaties. Nor can we here expect full uniformity of treaty terminology, as the combination of emerging experience and negotiating preferences will produce some variations. We hope through Regulations, however, to offer guidance as the questions emerge and to place any language variations in their proper perspective.

Capital Gains

The OECD Draft Convention, largely following European practice, restricts the taxation of capital gains to the country of residence, except as to gains on real property and assets effectively connected with a permanent establishment. While this approach is at variance with some of our prior treaties, it often has been followed by us in the past. Moreover, the approach is based on the desirability of a free movement of capital and the difficulties of effectively taxing capital gains in the source country in an orderly way. Consequently, the German and Netherland protocols provide generally for the exemption at source of capital gains. The German protocol excepts from exemption short-term

gains, on assets held for six months or less, where the taxpayer has resided in the source country for 183 days or more. This exception in the case of a taxpayer with an extended presence, i.e., 183 days, in the source country is likely to appear in our various treaties. A stay of that length seems to warrant a tax liability to the source country, especially where the gains are speculative in nature as in the case of assets held for a short period of time. Moreover, in many countries, such a stay will make a taxpayer a "resident," and hence subject to tax on capital gains. This "183 day" exception may take variant forms, as our experience develops and the attitudes of other countries are formed.

Treatment of Dividends

The OECD Draft recommends, as appropriate international withholding rates on dividends, 5 percent on parent-subsidiary dividends and 15 percent on dividends on portfolio investment. A parent-subsidiary relationships requires a stock ownership by the parent of 25 percent of the stock of the subsidiary. But the treatment of dividends is one of the treaty provisions, perhaps the principal one, that is generally the subject of real differences of opinion and hard bargaining between treaty countries. Since dividends usually represent the main item in the income flows between countries, the revenue importance of the withholding taxes on dividends is usually significant, and certainly more so than for the other items. Also, one country may find that its portfolio investment abroad is more significant than its direct investment, whereas the opposite could be the case for the other treaty country. Moreover, the rates of the underlying corporate tax will vary from country to country. Further, the form of the underlying corporate tax also will vary: some countries may have a straight corporate tax (the United States and the new United Kingdom taxes); others a tax that provides a lower rate to the corporation for distributed profits (the German tax); others a tax all or part of which is regarded as a withholding tax on the shareholders so that the latter receive a corresponding credit against their individual income tax on their dividends. The form of this credit in turn may vary: it may be of the gross-up variety, and therefore accurately reflecting the part of the corporate tax treated as withholding tax (the former United Kingdom tax, the Belgian tax, and new French tax); it may or may not involve refunds to taxpayers who otherwise cannot use the full credit; it may or may not extend to foreigners; it may not involve a gross-up credit but only be a flat percentage of dividends received (the Canadian tax). And a country which treats part of its corporate tax as a withholding tax may also have as a collection device a supplementary withholding tax on dividends similar to its other internal withholding taxes. In addition, in some countries bearer instruments may predominate and thus restrict to some extent the degree to which certain tax approaches can be effectively implemented.

These differences in revenue significance, in corporate-shareholder tax structure, in the differing policy goals and attitudes respecting the encouragement of private savings and investment that they reflect, and in the prevalence of the bearer or registered share form of corporate shareholdings all combine to shape a country's approach to the treaty provision governing dividends. Given all this, one cannot expect uniformity in this area.

The United States' basic position regarding the dividend provision is to a considerable degree, reflected in its recent treaty activities. We stand ready to offer any country the

OECD recommended rates of 15 percent on portfolio investment and 5 percent on parent-subsidiary investment. Some other countries chose, however, for a variety of reasons, not to adopt the 5 percent rate on parent-subsidiary investment so that as a consequence some of our treaties will, as a reflection of treaty negotiations, contain rates of 10 percent or 15 percent for that investment. But, since the United States offers the OECD rate of 5 percent to all, the variations in our treaties thus reflect the unwillingness of other countries to adopt that 5 percent rate. We believe, however, that countries should seek to present a uniform approach to all their treaty partners, and thus as far as possible fix on a set of rates that they will offer to all comers rather than seek to differentiate one country from another. In addition, the rates of withholding tax that are adopted should be reciprocal, in that a country should not be able to claim higher treaty rates than the rates it desires us to adopt in the treaty. The other country is free of course to prefer rates lower than those which it seeks of us.

We prefer a definition of the parent-subsidiary relationship that uses a 25 percent stock ownership test, but which would permit that degree of ownership to be met either by a single parent company or by several corporate shareholders in combination. Also, adequate attention must be paid to prevent the reduced dividend rates, as well as reduced rates on interest and royalties, from flowing to nonresidents of a treaty country, since we do not desire to encourage the tax-haven form for the holding of interests in the United States. Our treaty with Luxembourg and the Netherlands Antilles protocol reflect this approach.

The recent protocols concluded with Belgium, Germany and the Netherlands are in keeping with these concepts. The first two adopt a 15 percent rate, reflecting the desire of those countries that the withholding rate be 15 percent for both portfolio and parent-subsidiary investment; the Netherlands protocol has the OECD rates of 15 percent and 5 percent. The German protocol provides the protection needed by a country using a lower rate for distributed profits against a dividend distribution followed by immediate reinvestment, where the latter route is advantagous tax wise, by raising the German rate to 25 percent in such a situation. The Belgian protocol achieves reciprocal rates of 15 percent on registered shares, thus reducing the otherwise applicable Belgian 18.2 percent effective rate, while allowing a period of time to explore the administrative problems of applying the 15 percent rate to bearer shares and taking recognition of the fact that in actual practice the rate on the bearer shares typically held by American investors rarely exceeds 15 percent.

The concepts enumerated above will meet satisfactorily many of the varying situations presented under the influences earlier mentioned. But it is quite possible that further concepts are needed to achieve a freer flow of international investment and proper international tax treatment. Some corporate tax structures result in an unneutral tax effect between those of a country's taxpayers who invest abroad and those who invest at home. This unneutrality may not always be initially intended in the structural design, but rather may represent the way the pieces fitted together in the end. More often it will be a consequence if a structural design chosen for internal reasons, but a consequence that becomes a policy if steps are not taken to prevent the unneutrality from persisting. This is most likely to occur where a country adopts a corporate-shareholder tax relationship

under which a credit is given to domestic shareholders for part or all of the corporate tax on domestic corporations. If a comparable credit is not extended by the country to its domestic shareholders who invest in foreign corporations, then the tax system will embody an unneutrality favoring investment at home. The United Kingdom, when it used an integrated corporate tax with a grossed-up shareholder credit, avoided this unneutrality by allowing its shareholders by treaty a credit for a foreign underlying corporate tax. Its treaty partners sometimes reciprocated, as in the case of the United States – United Kingdom treaty where the United States gave its shareholders in United Kingdom corporations a credit for underlying United Kingdom corporate tax. But such reciprocity would not appear to be a necessary ingredient, since it in turn may inject an unneutrality between the reciprocating country's investors at home and its investors abroad.

It would seem that an appropriate goal in international tax relationships is the achievement as far as possible of a basic neutrality in tax effect between investment at home and investment abroad. This neutrality should be a long-range aim of a tax structure. There may be reasons, such as those associated with a balance of payments posture, to depart temporarily from time to time either to favor investment at home in the case of a deficit country, or to encourage investment abroad in the case of a surplus country. But even here the temporary swings could be made more appropriately through devices—such as the interest equalization tax in the United States or foreign exchange measures abroad—not associated with the basic income tax structure lest they become embedded in that structure and resistant to change when the temporary need has passed. The presence of investment incentives, such as investment credits or allowances or rapid depreciation, may also impart an unneutrality through being limited to domestic investment. As far as possible, however, the achievement of neutrality between investment at home and investment abroad should be a part of the basic structural design of a country's tax system. But it also would seem appropriate to use the treaty medium to achieve the alteration in unilateral statutory treatment necessary to reach this neutrality. Since the OECD Convention does not really deal with this aspect, it is an area where further exploration is needed.

One other matter requiring further exploration is that of the so-called "round trip dividend". If a parent in country A receives a dividend from its subsidiary in country B, there will usually be a withholding tax paid to country B on that dividend. If residents of country B own stock in the parent, then on payment of a dividend to them by the parent, there will be a withholding tax by country A. One can ask whether, as a consequence, this "round trip" is too heavily taxed. Of course the parent's dividends to country B are not dollar for dollar traceable to the dividends it received from its subsidiary in that country. But still some amounts have taken a "round trip". Further, there are at present very few corporate parents in the world where such flows from and to a country would be of a size in which the amounts of both flows were significant. And the technical patterns and the pitfalls of possible solutions are not readily apparent. Still, since the "round trips" are likely to increase in number and significance, the problem should commend itself to the tax experts for study.

Non-Discrimination

Another facet of international neutrality lies in the comparison of the treatment between domestic taxpayers and the taxpayer from abroad. The older version of tax treaties generally sought non-discrimination between the domestic taxpayer and the foreign national residing in the country, and sometimes extended the coverage to a permanent establishment. The OECD Convention, in the interests of a wider neutrality, further extends this non-discrimination to domestic corporations of a country owned by nationals of the other country. The United States believes the OECD approach is desirable, and it is contained for example in the Netherlands protocol. Generally, it would appear the inclusion or application of this clause should not involve serious policy differences, and neutrality of this type should be achievable.

The effect of the varying corporate-shareholder tax patterns described above on neutrality between domestic investors and investors from abroad may, however, be in need of further analysis. For example, a corporate tax system under which part or all of the corporate tax is regarded as a withholding tax on the shareholders, so that the shareholders are allowed a credit for the "withheld tax", will discriminate against the shareholder investors from abroad if the benefits of that credit are not extended to the latter. The non-discrimination clause in the OECD Draft can be regarded as implying that the task of avoiding discrimination in this context falls on the country of source. The possible methods of achieving this result would of course have to be explored. And the effect of any such step on the investment relationships in the other country, i.e., the relationship between its taxpayers who invest at home and those who invest abroad (and thus become the "shareholder investors from abroad" in the first context) must be kept in mind. These also are matters not fully discussed in the OECD Convention and thus require further attention.

Allocations of Income

The OECD Convention continues the conventional clauses regarding allocation of income: the allowance of appropriate deductions to a permanent establishment of all expenses connected with it wherever incurred; the arm's length standard of allocation between related persons, such as a parent-subsidiary relation; the entitlement of a taxpayer to present to his Government a case of alleged action contrary to the treaty and the exhortation to the Contracting Parties to resolve any such situation if well founded; and the desirability of consultation between the Contracting Parties to settle interpretative and other questions. In addition, any excess of "interest" or "royalty" payments over a fair and reasonable consideration is not regarded as covered by the interest and royalty articles, but the excess instead is taxed in a manner appropriate to the situation, which presumably will usually be as a dividend.

The United States seeks to follow these provisions in its treaties, since they represent a necessary technical framework. But we feel that the day-to-day problems of international allocation cut deeper and will require further substantive rules if a proper international framework is to be achieved. The main need, simply stated but very difficult in execution, is to achieve standards and criteria furnishing guidance on what are appropriate allocations in the great variety of cases that arise—the payment of interest on inter-

company loans, the payment of royalties on inter-company licenses, the fixing of prices on inter-company sales, the reimbursement of expenses incurred for inter-company services, and so on. This matter is discussed further in connection with our statutory rules.

It is recognized that it will take time to evolve agreed upon standards. But the United States believes that through treaties we should now ensure than any agreements that are reached between governments and taxpayers in particular cases, under present standards or those that will be formulated, should be capable of being implemented in full. As matters now stand, however, procedural and other barriers may prevent this. Thus, since disputes of this nature often take considerable time to resolve in particular cases, an agreement may be reached calling for a reduction in the tax previously paid to one of the countries only for the parties to find that the statute of limitations has run on the filing of a refund claim or the payment of the refund. Such a procedural barrier would result in international double taxation. To avoid impediments of this nature, the United States believes that treaties should provide that an agreement once reached shall be fully implemented, and a refund allowed in accordance with the agreement, despite such procedural or other barriers. Such agreements could relate either to the allocation of profits or to the source of an item of income. In the latter case the implementation should extend to the consequent effect of the agreed source on a foreign tax credit.

Other countries appear to agree with this view, and clauses to his effect are being incorporated in our treaties, as in the German and the Netherlands protocols and the Israel treaty. It has also been agreed with Belgium that the language of our existing Belgian treaty has a similar effect. We regard this result as a significant step toward the goal of achieving a proper framework to meet the problems of international allocation.

Drafting and Interpretation

Those who read and apply treaties—as well as all persons with orderly minds and habits—earnestly urge uniformity in the drafting of tax treaties. And all treaty negotiators will fully agree in principle. However, each negotiator usually has his mind set on his own pattern of a uniform and orderly treaty. And there is no negotiator who will place uniformity above agreement when the hour is late and a seemingly intractable problem yields to a welcome solution that departs "just a bit" from the words in other treaties and may "possibly" have some ambiguities which the negotiators feel any reasonable men will later be able to resolve if the cases actually arise—just as the negotiators have so successfully resolved their problem! Uniformity and clarity never stand as impassable barriers to compromise solutions. If they did, we would have the uniformity of no treaties. Nor should uniformity with the past block improvements that are now seen to be desirable.

All of this is not said to disparage the goal of uniformity, and the United States seeks to achieve it as far as possible. But in practice we know we will fall short. An offsetting step is to clarify the disuniformity—to state through Regulations or in other ways when and to what extent different words, different phrases and different approaches in various treaties, or even the same treaty, really embody differences in end result and are so intende. Despite delays that have occurred, we therefore are working on Regulations that

would maintain order among the variations. Whether this can be done within the frame work of a master set of treaty Regulations or whether some other device is more useful remains to be seen, but the end we seek seems clearly necessary.

Less Developed Countries

In my Montreal paper I described at length the interests of the United States in achieving treaty relationships with less developed countries, and the interests of those countries in the same goal. We are not alone in recognizing these values, for many of the other developed countries are engaged in considerable efforts to achieve a network of treaties with the less developed countries, and indeed are succeeding. This in turn behooves us to keep to the task, lest we lose the advantage which others find in this very useful device for ordering some of the relationships between the developed and less developed worlds.

Fortunately, our efforts to achieve a proper set of treaties are succeeding. We have negotiated treaties with the Philippines, Thailand, and Israel, in that order, and these are before the Senate. We have agreed on a draft with India, and are engaged in completing negotiations commenced earlier with Taiwan. We are informally discussing with several Latin American countries the appropriateness of negotiations. Also, existing treaties are being revised; thus we are considering with Honduras, whose treaty was the first we negotiated with a less developed country, appropriate modifications of that treaty. As another illustration, we are engaged in negotiations with Trinidad and Tobago to explore revisions in a treaty which has its origin in the extension of our United Kingdom treaty to that country on its independence. Indeed, we are likely to overlook the fact that this process of treaty extension has given us a set of treaties with a number of less developed countries which have achieved independence.*)

We also have treaties with Honduras and Pakistan—as well as the three pending in the Senate—to complete the present list of our treaties with independent less developed countries.

These treaties in one sense are in an evolutionary period, especially since for many of the countries involved the very negotiation of tax treaties involves a new activity. Moreover, many of these countries are negotiating against a background of evolving internal laws, as their tax policies change and as technical improvements are made under the pressure of modern commercial relationships and transactions. Nevertheless, a certain pattern is being achieved in these treaties, which we are seeking to utilize as we extend the range of our negotiations. The three recent treaties, with the Philippines, Thailand, and Israel, largely exhibit that pattern, with the Israel treaty evidencing the arrangement and, in general, the technical drafting which we regard as desirable.

The following is a summary of the developing pattern:

*) Cyprus, Jamaica, Malawi, Nigeria, Sierra Leone, Trinidad and Tobago, and Zambia (United Kingdom treaty extension); Burundi, Congo (Dem. Rep. of), and Ruanda (Belgium treaty extension); also Netherlands Antilles (Netherlands treaty extension).

Arrangement and Drafting

These treaties, while influenced by the OECD Draft, are not likely to be as closely tied to that draft in wording or arrangement. The treaty with Israel, for example, follows an entirely different arrangement of the treaty provisions, and one which we believe is more manageable.

Relief from Double Taxation

The countries so far have followed a credit approach to relieve double taxation, as does the United States. We may not see therefore as much resort to the exemption approach, or the combined exemption-credit approach, that we see on the part of our treaty partners in our developed country treaties.

Source of Income

The treaties generally contain a description of source rules for various items of income, following international standards. In some cases this treaty approach is a way of meeting the problem caused by the absence of, or incomplete, source rules in the statutory provisions of these countries.

Non-Discrimination

The OECD Convention respecting non-discrimination of foreign nationals residing in the country, permanent establishments, and domestic corporations owned by nationals is being followed.

Permanent Establishment and Industrial Profits

The OECD approach is generally followed in the definition of permanent establishment and on the treatment of industrial and commercial profits, with a few exceptions. One is that the force of attraction approach is still being applied, as perhaps simpler of administration, though the desirability of continuing to use this approach is an open question. Another is that some countries (not Israel) desire specifically to treat as a permanent establishment an agent who regularly secures orders in the country for the foreign taxpayer or maintains a stock of goods from which delivery is regularly made. If such an agent is an independent agent, however, he will not constitute a permanent establishment. These countries may desire to specify that an agent is not independent who acts exclusively or almost exclusively for the foreign taxpayer. Aspects of this approach are a cause of concern to some United States taxpayers who have been securing orders for their goods through a subsidiary formed in the other country. As a consequence, we will carefully explore with these countries ways of meeting this situation which do not upset these parent-subsidiary exporting arrangements or other appropriate arrangements.

Dividends

Some of these countries are hesitant to reduce their withholding rates on dividends, fearing a loss of revenue. Where relevant they point out that extensive incentive provisions of their laws often eliminate or materially lessen the corporate tax rate, so that the

effective rate of total tax is well below 48 percent. The United States, where relevant, calls attention to the desirability of reducing over-all effective rates to 48 percent, and even lower where not grossing-up the foreign dividend produces an excess foreign tax credit. The foreign reaction differs. The Philippines were not ready to make any reduction in withholding rates on investment income, leaving that country with a 30 percent internal corporation tax and a 30 percent withholding tax for an effective rate of 51 percent on dividends going abroad (in the absence of a domestic incentive provision). When all profits net of corporate tax are distributed this produces an excess credit of 8.4 percent. Thailand reduced its withholding rate from a maximum of 25 percent to 20 percent, with a corporate tax rate of 25 percent (in the absence of an incentive provision), giving an effective rate of 40 percent—the prior rate was 43-3/4 percent, which resulted in an excess credit of about 1 percent for a corporate shareholder. Israel retained its 25 percent withholding rate. Israel imposes a corporate profits tax of 28 percent plus a tax of 25 percent on corporate net income after profits tax less any dividends distributed (in the absence of an incentive provision). Dividends distributed are thus subject to the corporate profits tax of 28 percent and a withholding tax of 25 percent, leaving an effective rate of 46 percent, below our 48 percent rate but resulting in an excess credit in the absence of gross up of about 3.6 percent. As will be discussed below, the United States applied certain investment provisions on its part, such as extension of our 7 percent investment credit in the Thailand, Israel and Indian cases, but not in the case of the Philippines in part because its effective rate exceeded 48 percent.

It should be recognized that in their treaties with other developed countries, the above countries adopt largely similar approaches as respects their withholding rates.

Interest

These countries appear even more hesitant about reducing withholding rates on interest. They are willing to do so if the lender on our side is a Government Agency, where exemption is granted, and in the case of Israel if it is a bank, where a 15 percent rate is used. But otherwise they appear so far to put revenue maintenance ahead of even possible reduction in interest costs to their debtors where the foreign lender is passing on the withholding tax to the borrowers.

Royalties

The royalty area presents a mixed approach. Some countries, as Israel and Thailand, reduced their withholding rates to 15 percent. Others are not desirous of taking this step, but are willing to permit royalties (and rents) to be taxed electively on a net income basis.

In all of these situations—dividends, interest, and royalties—these countries are not basically concerned about our 30 percent withholding rate since they do not receive investment flows from the United States. As a matter of treaty reciprocity, however, they ask for provisions that match their concessions.

Ships and Aircraft

These countries, paralleling developed country treaties, consent to reciprocal exemp-

tion for air and ship transportation, though sometimes the latter will receive only a reduction to 50 percent of the otherwise applicable tax rather than complete exemption.

Temporary Visitors

These countries, here also paralleling to a considerable extent developed country treaties, consent to exempt temporary business visitors from their taxes. The standards will differ somewhat, but usually involve a limited period of time, such as 183 days, and a limitation on the amount earned, sometimes applied on a daily basis in the case of entertainers and other performers.

Other Substantive Provisions

These treaties generally contain the other standard substantive provisions, such as those affecting teachers, student and trainees (but with more emphasis on their part on this aspect and perhaps with more liberal exemptions at source being sought), government personnel, and pensions and annuities.

Procedural Provisions

These treaties also contain the customary procedural provisions, such as consultation, exchanges of taxpayer information and legal information, and taxpayer claims. The Israel treaty and the Indian draft include the removal of procedural barriers to the effectuation of agreements on the allocation of profits and the source of items of income.

Provisions on the United States Side—Investment Credit, Technical Assistance and Charitable Contributions

The treaty pattern described above represents significant accommodations by the less developed countries to the international standards that have evolved in treaties between developed countries, but do not in turn represent any real concessions on the part of the developed countries. The flows of investment income—dividends, interest, royalties—and of export trade, business and cultural visitors, and ships and aircraft are overwhelmingly from developed countries to less developed countries. Perhaps the only exception is that of students and trainees. This does not mean that the treaty provisions are wrong or unfair in concept, but simply reflects the economic relationships on which these international tax standards are being superimposed. Yet all of this understandably presents problems to the less developed countries—problem of revenue loss, of negotiation, and of justification to their peoples.

Under these circumstances these countries have sought some concession from the developed countries. This search, in the light of their desire for additional investment from abroad, has centered around treaty provisions that they regard as offering encouragement to this foreign investment.

As a consequence, the other industrialized countries entering into tax treaties with less developed countries—and there appear to be over 30 of these treaties—have found it necessary to incorporate a provision which the less developed countries consider a stimulus to capital inflows in order to obtain a treaty with them. One approach followed

involves exemption by the industrialized country of various forms of income received by its taxpayers from activities in the less developed country. Another approach is the so-called "tax sparing credit." In treaties incorporating such a provision, the capital exporting country agrees to allow a credit against its tax, not only for the taxes actually paid to the less developed country, but also for the taxes that would have been paid to the less developed country if that country had not reduced its income taxes under some special tax concession scheme. There appear to be some 20 "tax sparing" treaties in force between industrialized countries and the less developed countries.

In our view these approaches are undesirable. Thus, tax exemption of income derived from investment in less developed countries would be viewed as a highly inequitable provision by American taxpayers engaged in business in the United States and would have a highly erratic effect on the relative tax burden of foreign producers as compared with those engaged in domestic production. It would be basically inconsistent with the principle of the foreign tax credit which seeks to maintain neutrality in tax burdens as between domestic and foreign economic activities. A tax sparing credit would equally be undesirable since it would operate capriciously, providing the largest tax benefits to our investors in less developed countries having the highest nominal tax rates and without any necessary relationship to the fundamental economic needs of a country or to such policies as the "Alliance for Progress". Moreover, such a credit would stimulate the rapid repatriation of profits from less developed countries rather than the reinvestment of profits in those countries.

Clearly we need some provision comparable in purpose if the United States is to obtain treaties with less developed countries. As a consequence the United States has offered to extend by treaty to these countries the 7 percent credit that now exists in the Internal Revenue Code for investment in the United States. Since in the Code this credit does not extend to investment abroad, its adoption established in effect a preference for domestic investment as compared with foreign investment. Consequently, the extension of the 7 percent investment credit by treaty to these countries offers itself as a fitting approach to the recognition those countries seek with respect to the encouragement of capital inflows. It would, so far as the United States is concerned, remove an impediment to investment in less developed countries and thereby in this respect establish a general parity of treatment between domestic investment and investment in the less developed country. In establishing this parity and thus assisting investment in these countries, we would also be pursuing a policy reflected in other tax legislation recently adopted by Congress. Thus, the Revenue Act of 1962, which was directed to "tax-haven" or "base companies" abroad, contains a number of provisions favorable to investment in less developed countries as compared with industrialized nations. Moreover, under the interest equalization tax, loans made to enterprises in less developed countries and investments therein are treated in the same way as domestic loans and investments and thus are exempt from the tax.

Moreover, the investment credit approach is far more appropriately suited to less developed countries than the tax sparing approach or the exemption of income approach, from the standpoint of equity, efficiency, and administration. Since the investment credit operates on the act of investment, it eases the risk of investment at the very outset.

Since the credit does not turn on the receipt of income in the United States from the foreign investment, as do tax sparing and tax exemption, it does not encourage quick repatriation of profits. Since the credit does not turn on foreign tax concessions, as does tax sparing, it does not have the capriciousness of that device and its capacity to encourage "concession competition" among less developed countries, nor does it transfer from the United States to a foreign country the decision as to whether a tax benefit is to be conferred and, if so, the extent of such benefit. Since the extension of the investment credit to less developed countries would but follow the treatment accorded domestic investment, it does not involve the treaty process in favoring the foreign investor as against the domestic investor in a matter closely linked to the rates of tax, as did tax sparing.

The less developed countries so far have responded favorably to our suggestion that extension of the 7 percent investment credit is a recognition of their desire for an encouragement of capital inflows. We have been able to demonstrate, moreover, that the monetary benefits to the investor from this credit are generally equivalent in among to what it would receive from a tax sparing approach, given reasonable assumptions as to the time pattern of distributions, discount rates, and the like. And many countries recognize the advantages enumerated above, both to the investor and the less developed country, of the credit approach over the tax sparing approach.

In this light the extension of the 7 percent credit by treaty is the negotiating tool which permits the United States to achieve tax treaties with less developed countries which both we and they can regard as fair and balanced. The importance of this provision thus basically lies not in the benefits it extends to investors, but rather in what it thereby obtains for the United States — a sound treaty system with the less developed countries with all the advantages such a system provides—for both parties to the treaty—for improved investment, trade, and cultural relationships between the United States and these countries.

As a consequence, the provision is incorporated in the Thailand and Israel treaties and in the India draft. Its technical provisions, as expressed in the Israel draft, are of course subject to improvement as experience is gained. Moreover, the provision can be terminated after five years without a termination of the entire treaty.

The United States in these negotiations is quite clear on its view that extension of the investment credit is appropriate only where the other country is receptive to our investment and where its tax system, taken as a whole, does not involve measures that can be regarded as significantly working at cross purposes with this investment. In many cases the existing tax systems of less developed countries do not meet this standard. But the treaty process itself permits the foreign country to modify its tax system through the treaty and thus deal with the provisions of its tax law which act as disincentives to investment from the United States. For example, the existence of a complex of corporate taxes and withholding taxes on dividends in a less developed country, which brings the effective rate of tax on profits earned there above the general level of the United States corporate tax, creates a tax barrier to our investment in such countries. It would generally be difficult to justify a tax credit for United States investment in such a country unless that country is prepared to reduce its taxes to the level prevailing in the United

States. This often can be done by a treaty but not otherwise, since that country may not be prepared to reduce its taxes on its own nationals or those of third countries.

The treaty process also permits complementary modifications where appropriate in the tax laws of the other country which are conducive to improved international trade. Where the other country is not yet ready to make certain modifications, or is more concerned with continuing a somewhat restrictive approach to foreign investors, then the investment credit need not be extended. While it may well be that in most of these cases a treaty may presently not be negotiable, this need not always be the result, as the Philippine treaty indicates. That treaty does not contain an extension of the investment credit.

The investment credit applies to investments of cash and tangible property. The Israel and Thailand treaties, and the Indian draft, also contain a complementary provision that seeks to offer encouragement for the investment of technical assistance. Here the approach is that of a deferral of both our tax and that of the less developed country on any gain that would otherwise be recognized when intangible assets, such as patents, processes or know-how, are exchanged by a United States investor for stock in a corporation of the less developed country. Under our statutory law this deferral would, where "property" is involved, be possible if 80 percent control is obtained by the United States transferor. Below this level of control our tax would apply. Moreover, there is frequently a tax in the other country as well, even in the case of 80 percent control. The treaty provision deferring these taxes until the stock is sold removes an impediment to the transaction, and is of minor effect on the United States revenues, since a foreign tax that would be incurred in the absence of the provision would generally be creditable against the United States tax.

Finally, as a step in simplifying the process of contributions to charitable organizations in these countries, a provision may be inserted, as in the Philippine and Thailand treaties but not Israel, to permit a deduction against United States tax of contributions made directly to such organizations. Under our statute the deduction could be obtained if made indirectly through a United States organization. The treaty provision requires that the foreign organization must meet the standards established in each country for a charitable organization. It may be observed that our Internal Revenue Service has experience in passing on the charitable character of foreign organizations as a result of its administration of the rule under our statutory law that a foreign organization which meets our test of "charitable" is not subject to any tax on income it receives from the United States.

The Subcommittee of the Senate Committee on Foreign Relations has performed an useful public service in holding last August full hearings on the Thailand treaty. The published Hearings contain a complete technical explanation of these United States provisions, as well as a detailed analysis of the entire treaty and a description of factors affecting negotiations with less developed countries. They also contain the views of organizations representing United States concerns that invest aborad, and the views are favorable to these investment provisions and to the treaty itself. The only matter referred to as needing further consideration by the Treasury is that mentioned earlier in connection with the definition of permanent establishement.

Necessarily as experience is gained the present pattern described above that has so far evolved in our negotiations with the less developed countries can be improved. The progress of these negotiations is encouraging, for it indicates that the United States and these countries can reach a treaty arrangement that each regards as fair and conducive to improved investment, trade, and cultural relationships. This attitude and the promise it holds for a growing network of tax treaties represent a major step in our political and economic relationships with these countries.

To be continued in the next issue.

I

GENERAL NOTES ON TURNOVER TAXATION (I)

Especially in respect of developing countries

by

H.W.T. PEPPER

TURNOVER TAXATION

Introduction

1. The rapidly increasing importance of turnover taxation in recent years may be attributed to a number of causes.

(i) The general tendency towards freer trade –

(a) within limited "treaty" areas, as in the case of "common markets" such as the E.E.C. and E.F.T.A. in Europe and L.A.F.T.A. (Latin American Free Trade Association) in South America;

(b) within the newer federations such as the U.A.R., Tanzania, and Malaysia; and

(c) internationally through the influence of organisations such as G.A.T.T. and such proposals as the "Kennedy round" of tariff reductions.
usually involves a decrease in the revenue yield from tariffs. This deficiency must be made good and generally will be made good by other forms of indirect taxation.

(ii) The tendency, normally in developing countries, to erect quota and tariff barriers against imports in order to develop local industries also reduces considerably the tax revenue from tariffs which would logically be replaced by turnover taxation on home manufactures.

(iii) The ever-growing competition in export markets by industrialised countries has increased the importance of ensuring that the home tax climate is not less favourable than that prevailing in competing countries. Exports are normally completely free from the impact of turnover taxes.

A manufacturer who produces mainly for export in a country where income tax is light and turnover taxes heavy will be in a much better position than a competitor in another country which relies mainly on high income tax rates. Although the total tax burden in each country may be similar the burden on the export manufacturers will be widely different if, for example, the company income tax rate is 20% in country A and 40% in country B. The tax will apply equally to export and home market profits and the lower rate will leave the manufacturer in country A retaining a much larger proportion of profits which he may either plough back to increase his productivity directly or pay out in high dividends to stimulate further public investment in his enterprise.

(iv) There is currently a tendency for countries to be pre-occupied with re-shaping their tax systems in order that economic growth shall not be hampered by taxation. This usually involves a change in emphasis from direct to indirect taxation (e.g. Sweden which within the space of the few years since 1960 has introduced a retail sales tax and raised the rate to one of the highest in the world) and has been accompanied by a tendency among countries which already have turnover taxes to develop them. In some cases income taxes have been "frozen" and in others actually reduced (e.g. Norway which now has one of the highest retail sales tax in the world has recently reduced its top personal State income tax rate from 55% to 50%, Ceylon which introduced turnover tax late in 1963* has made a reduction in its income tax and has also considerably reduced the rates at which wealth tax are payable. Pakistan has reduced its top personal tax rate from 75% to 70%.

2. The importance of the trend towards turnover taxation is not a matter of mere academic interest—for the reasons given above, particularly in (iii) and (iv), no country can now afford to neglect the potentiality of turnover taxation as a major source of revenue. The more countries turn to this type of tax the less is it practicable for an individual country to slant its tax structure differently if it wishes to remain in a competitive position internationally.

*) The Company tax rate has been reduced from 57% to 50%.

3. From a theoretical point of view a retail sales tax is regarded as the ideal tax but because of enforcement difficulties encountered in some countries, the experts usually recommend a tax at the wholeasale level on the sales by wholesalers to retailers. In practice however there is scarcely to be found anything like a "pure" wholesale tax in the sence of its being collected solely from wholesalers because

(a) large retailers tend to "reach up" and do their own wholesaling—in some cases some of their own manufacturing and importing too; and

(b) manufacturers tend increasingly to "reach down" to do their own wholesaling and often some retailing as well in order to make secure at least a part of their market.

4. The purchase tax in Britain for example in practice derives half its revenue from manufacturers and a material part from a number of large retailers. In that country however considerable pains are taken to levy the tax on the wholesale level of value by suitably adjusting realised prices.

5. Most single stage taxes in fact appear to be levied in practice either at the manufacturer/importer level or at the retail level but the tax in either case cannot be applied solely at the chosen level (see paras. 40, 41 and 56).

6. On the introduction of turnover taxation a pragmatic approach is essential and usually members of the tax administration of a country introducing the tax are sent to study the system in another country which appears nearest to what is required.

7. The following notes indicate the main policy points which have to be considered when planning the introduction or development of turnover taxation in the light of recent experience in a cross section of countries which use this form of tax.

Choice of level for imposition

8. Each of the various levels of production or distribution to which turnover taxation could be applied has both advantages and disadvantages.

9. *A manufacturers' sales tax* as applied in Canada, Pakistan, Australia, Thailand, the Philippines and Ceylon involves the fewest taxpayers and those of a reasonably high calibre, but may involve problems of valuation and escalation and certainly requires the highest rates of tax for a given tax yield. It is most appropriate in countries with a large manufacturing industry.

10. *A tax at the wholesal level* involves more taxpayers but many fewer than a retail tax. There are valuation problems in finding a notional wholesale price when goods skip the wholesale level by passing directly from manufacturer to retailer or are directly imported by the retailer.

11. The tax rate will be lower than that for a manufacturer's tax but higher than a retail tax producing the same revenue.

12. *A retail sales tax* involves no valuation problems since the retail price is the tax base, the tax rate is the lowest, the risk of escalation or pyramiding the least, but the number of taxpayers is the highest. The smaller businesses are likely to create administrative problems.

13. *A multi-stage cascade tax* has administrative simplicity but produces economic complications. The number of taxpayers however is the largest and since the rate will

usually be low administrative costs for the smallest taxpayers will be proportionately high.

14. *The T.V.A.* (*tax value added*) is also a multi-stage tax and the number of taxpayers is similar to that for cascade tax unless (as in France) the tax is not applied to the retail level.

15. The T.V.A. tax achieves neutrality and is also designed to spread payments over a large number of taxpayers. As there is no cumulative or cascade effect the rate of tax may be relatively high. (20% in France).

16. The advantages and disadvantages of the taxes are discussed more fully in the following notes.

17. On the whole a flat-rate comprehensive retail tax is usually regarded as the ideal where it is administratively practicable, with separate taxation of luxury goods by means of customs & excise duties or by sales tax at the production level.

MANUFACTURERS' SALES TAX

18. This tax applies at the manufacturing level, i.e. to the smallest number of taxpayers and generally to those who keep the most satisfactory records and who are most likely as a class to pay tax on time.

Escalation

19. Arising out of the fact that manufacturers' tax is applied at the earliest level of production and distribution is the disadvantage that there may be escalation or pyramiding of the tax i.e. that traders at the wholesale and retail levels will calculate their usual rate of mark-up to the price including tax.

20. The only effective remedy for this pyramiding is to encourage competition among traders so that traditional margins are cut by applying thém only to the tax-exclusive price. This process may be speeded if a particular manufacturer can reduce distribution costs by integration, or by the establishment of price-cutting super-markets or discount stores and the abolition of r.pm. (retail price maintenance).

21. In the case of a developing country which has not yet achieved large-scale industrialisation, however, the tax-base may well be too narrow for a manufacturers sales tax to be a satisfactory levy. This will especially be the case where generous tax concessions including relief from turnover taxation have been granted to "pioneer" new industries.

22. The political disadvantage of manufacturers' sales tax is that the rate charged has to be much higher for the same amount of revenue as a tax charged at the wholesale or retail level.

Comparison with Excise Duty

23. In the strict sense of the words a Manufacturers' Sales Tax differs from an excise duty in that the latter is usually a specific duty administered generally with tight physical controls on the taxable commodities. A sales tax is customarily an ad valorem tax based on sales in terms of cash rather than the number of items sold and accordingly enforcement procedures are materially different.

24. An excise applies to imports as well as home manufactures unless the customs duty on imports is adjusted to include the excise as well as the tariff element. Similarly there must necessarily be some form of countervailing sales tax on imports of manufactured goods when a sales tax applies to home manufactures.

Administration

25. Accordingly it may be convenient for a Manufacturers' Sales Tax to be handled by the Customs & Excise Department the organisation of which is already adapted to deal with the parallel specific excise levies.

26. Although basically simple in concept there are various difficulties in practice, foremost of which is the definition of the word "manufacturer." It will normally be essential, if the object is a general sales tax, to include not merely the comparatively few large factories but also a multitude of small workshops. If "manufacturing" is to include (as it does in some countries) trades such as restaurants (which "manufacture" meals), domestic or cottage industries, logging and saw milling, and the milling of cereals, bakeries, and repair-work, the administration will have to cope with many small, scattered units. If only a few major industries are to be covered, however, it may be preferable to proceed by way of further excises rather than a Sales Tax.

27. Another major administrative difficulty is the need for a definitive distinction between "unfinished" and "fineshed" goods, or between components (and/or "raw materials") and the completed product.

28. The "ideal" situation would be that raw materials, components, and unfinished goods should be exempt from the tax and only finished goods taxed but the definition difficulties would be formidable.

29. Many products can be used both as finished goods and also as components and their ultimate destiny may not be immediately apparent.

Manufacturers' tax in Thailand and Canada

30. In Thailand imported materials and components are charged at 1½% while home produced components are tax free and the general rate for finished goods is 5%. Various difficulties of definition have been encountered as well as requests for a drawback or rebate of tax paid on unfinished goods incorporated in the finished products.

31. The Business Tax (manufacturers' sales tax) in Thailand is very productive (yielding over twice as much as personal and company income tax combined) partly because it has a wide scope which includes logging and sawmills, hairdressing, food "processing" including rice-milling, abattoirs, restaurants, banking, insurance, pawnbroking, the rates of tax varying from below the basic rate of 5%, e.g., in the case of rice and saw-millers to a rate of 20% in the case of motor cars.

32. A solution to definition difficulties has been suggested in that finished goods should be closely defined and all goods outside the definition treated as unfinished goods.

33. In Canada the coverage of manufacturers' sales tax is narrower and a flat rate of 11% is applied, differentiation against luxury goods being achieved by means of separate excise taxation. Food processing is not taxed and most "production goods", see paras 102-106, are exempt.

Relief from double taxation of components

34. Administratively general questions of rebates or drawback on materials and components incorporated in manufactures can best be solved by the "ring" technique whereby transfers between importers and manufacturers are tax-free but tax is charged on sales outside the ring.

Valuation

35. The remaining major administrative difficulty is that of *valuation*, i.e., determining the taxable price when sales are not made by manufacturer to wholesaler. The need for valuation arises when sales are made direct to retailers or by an integrated manufacturer direct to consumers.

36. Valuation difficulties are not insuperable. They can be overcome, e.g., by agreement of suitable "mark-downs" or "discounts" from retail price which are agreed between the Revenue and representatives of the trades concerned (this procedure is adopted, e.g., in the U.K. in fixing wholesale values and in Canada in fixing manufacturers' (taxable) sale values—the former is discussed more fully in paragraphs 44-47). There are difficulties in some developing countries, however, because of the absence of representative trade associations and often of a shortage of high-calibre Revenue technical staff.

Exports

37. No practical difficulty arises with the exemption of exports from a manufacturers' tax because of its single-stage nature. The manufacturer will simply be exempted from tax on that part of his sales which is exported and auditing procedure will consist merely of checking the documents relating to such exports with the manufacturer's books.

WHOLESALE SALES TAX

38. A wholesale sales tax is often recommended as the most appropriate levy for a developing country. Supporting this recommendation are the factors that there may be insufficient manufacturing capacity to make a manufacturers' sales tax feasible, and that the administration may not be sufficiently developed to tackle the larger number of taxpayers involved when a retail tax is adopted.

39. Sales tax at the wholesale level has the advantage of involving far fewer taxpayers than a retail tax. A higher rate of tax will be necessary than at the retail stage to produce equivalent revenue.

Tax Base

40. Because of integration and the growth of direct mailorder selling the distinction between manufacturers, wholesalers, and retail tax tends to blur as far as the taxpayers involved are concerned.

41. Thus a wholesale sales tax is one charged on the *wholesale* price not solely on *wholesalers*. In many cases the function of a wholesaler may be usurped either by the manufacturer or by a large retailer. Included in the scope of Canadian manufacturers tax are

some 2,000 wholesalers. Half the British Purchase (wholesale) Tax is collected from manufacturers and a material part from a few large retailers. In the case of a Retail Sales Tax, both manufacturers and wholesalers have to be brought into the tax because either class of trader will have some sales direct to consumers and must account for tax on these sales.

Development potential of wholesale tax

42. A wholesale sales tax may readily be converted to a retail sales tax by registering retailers (see paragraphs 56-57) and switching the taxable level to the retail price.

43. On the other hand the tax may be moved back to the manufacturers' level by not registering any new wholesalers and gradually de-registering those who are already registered.

Valuation

44. With a wholesale sales tax (used, e.g., in U.K. and Australia) practical difficulties arise mostly from valuation problems. Britain has a refined system of valuation the principle behind which is that the same goods should, in general, bear the same amount of tax whoever sells them. The principle is modified, however, to extent that it is not directed to counteract distributional economies effected by manufacturers who undertake wholesale functions. To achieve the neutrality referred to in the previous paragraph a sophisticated technique is required to cope with cases (a) where wholesale sales are not at arm's length, (b) where the wholesale stage is missed altogether, or (c) where the wholesale price is abnormal, e.g., because of quantity discounts or some other special factor.

45. In Britain a system of "uplift" has been established to cover cases where the wholesale price of goods to traders such as departmental and multiple stores is less than normal because of quantity discounts, e.g., where sales are made to large retailers and where a price advantage is obtained by such retailers taking over some of a wholesaler's normal functions, i.e., to achieve broad tax equality between different retailers selling the same commodities.

46. The taxable wholesale price is determined by adopting that applicable to small retailers, by marking up the "wholesale" price to an integrated retailer, or by marking down the retail prices where no standard wholesale price is available.

47. These refinements of valuation for tax purposes are not in general employed in other countries. Without them the tax tends to fall more heavily on small traders. Clearly such refinements require an efficient and high-calibre administration and a well-developed system of trade associations so that uplift margins can be readily determined and agreed. These requirements are not usually both present in developing countries and this lack is the main obstacle to the introduction of an equitable wholesale tax.

Escalation

48. There is less danger of price escalation and pyramiding with a wholesale tax simply because it is a stage nearer to the retail stage. It is usual to require wholesalers to indicate the tax paid when invoicing goods to retailers and this in itself is some measure of

protection. Retailers are liable to protest if the net price, shown separately from the tax, is increased merely because the tax is also increased. The pyramiding of prices by the retailer adding his margin to the tax inclusive wholesale price may be combatted by the forces of competition.

49. Where detailed attention is given to valuation in the course of determining the precise taxable wholesale value this may have an influence on pyramiding. In the U.K. for example the Customs & Excise Dept. are widely known to take a keen interest in prices at all levels since a wide disparity between wholesale and retail prices may be prima facie evidence that a retailer is performing some wholesaler functions so that a degree of mark-up may be necessary to achieve a more realistic wholesale price.

Exports

50. No particular difficulty arises with the exemption from tax of goods destined for export. The exporter will normally be registered and sales to him within the ring by a registered wholesaler will be exempt as well as the export sale itself.

RETAIL SALES TAX

51 A retail sales tax is the ideal turnover tax in several respects.

Rate of tax

52. Since retail prices are higher than prices at earlier levels a lower rate of tax produces as much revenue as higher rates imposed at the manufacturing or wholesaling level and low rates are more acceptable politically.

Escalation

53. There is least danger of price escalation with a retail tax because only one level of trade is affected. Some authorities (notably some of the States of the U.S.A.) compel traders to show the tax separately on receipts. This assists the consumer in judging whether the price being charged is a fair one but is really only practicable in countries where the use of cash registers is widespread and enables tax to be computed, added and printed automatically.

54. In other countries where tax is not shown separately it does not follow that prices will automatically be unduly "rounded up". In Eire it was announced that traders might adjust their prices to avoid fractions, arising from the $2\frac{1}{2}\%$ rate applying to a non-decimal currency, such that some prices might be increased by more than and others by less than the precise amount of the tax. The actual effect on the price index appears to have been an increase approximating to the actual amount of the tax.

55. With the growth of supermarkets and the modern tendency to horizontal and vertical integrations in the distributive trades it seems likely that in general, provided trade is reasonably unrestricted, the forces of competition will be adequate to prevent any material price escalation with a retail tax.

Taxable traders

56. The application of a retail sales tax is not of course restricted to retailers because both manufacturers and wholesalers may also sell direct to consumers. Accordingly all traders (but see next paragraph) have to be registered and will be taxable on their sales outside the ring i.e. mainly on sales to consumers.

57. In order to reduce administrative costs it is desirable, especially in a developing country, to exclude from *direct* liability to tax, retailers whose turnover is below a certain limit (which initially should be quite high and later reduced, if desired, in graduated stages). Traders who sell to such excluded retailers will of course have to account for tax on those sales as if they were sales to consumers (see however paragraphs 58-59).

Tax impact

58. The effect of taking the tax back to the wholesale stage in respect of the smallest retail traders is to reduce its impact (and yield) in such cases because the wholesale price is lower than the retail price. This results in a benefit to the smaller trader which may however be slight because he may often pay a little more for his goods than his larger competitors who purchase in greater bulk.

59. The disparity has however been overcome in ingenious fashion in Eire's new turnover tax. Eire adopted a simple tax scale instead of a flat rate. The first £100 of taxable monthly turnover is taxed at 5/– and the balance at 2½% (£2.10.0 per £100). Below a turnover £9,000 per annum (£750 per month) traders have the option of registering or not registering. If they register they buy their goods tax free and their own liability to turnover tax, although based then on retail price, is abated by using the scale rate by which the first £100 of sales per month is taxed only at ¼%. A trader, who opts not to register, buys his goods already taxed at 2½% without abatement but the tax applies at the lower, wholesale level. The scale has been so computed that there is little to choose between the two systems for traders below the exclusion limit. Large numbers of these choose not to register and thus save themselves and the Department a lot of time. The benefit of the low initial rate is enjoyed by all directly taxed traders but clearly is of little consequence to those whose turnover is substantial.

Services

60. In general it is desirable to include in the scope of a retail sales tax not merely the sale of goods but also provision of services such as hotels, restaurants, entertainments, hairdressing and repair-work to vehicles, machinery, and equipment*) generally, and to watches, jewelry, etc. because some of these activities are usually associated with retail trading and because it is desirable to have as wide a tax base as possible. The exclusion of such traders from tax at the retail stage, if their turnover falls below a fixed limit, will not be appropriate because there will be no wholesale stage at which the tax can be collected. It is, however, desirable to have some fairly low exemption limit, so that administrative time will not be wasted pursuing the very smallest of such traders.

*) See however paragraphs 102-106 regarding Production Goods.

Valuation and tax base

61. Valuation difficulties do not ordinarily arise in the administration of a retail tax because the retail price is the "ultimate" price of the commodity.

62. The taxable price for retail tax will, of course, include customs and excise duties and any other taxes on the goods which may have been borne at an earlier stage. This involves what is sometimes called "tax on tax" to which traders from time to time object.

63. It is, however, the universal rule with a general retail sales tax to charge this as a top "layer" evenly spread over the existing price structure including the tax or duty element in those prices.

64. It must be assumed that the existing price pattern, insofar as it is a reflection of customs, excise and other duties on luxuries, etc., has been determined by the Government in the light of social and fiscal requirements. It is important therefore that a new general tax should be neutral, i.e., applied to existing, tax-included, prices so as not to affect the inter-relationships of the price structure.

65. Apart from considerations of policy it is administratively undesireable to attempt to dissect prices in order to separate the tax element except of course in the context of value added taxation (see paras 77-82). Even in a T.V.A. system the object of separating out the tax is to avoid the cascading of the turnover tax itself, not to make allowance for *other* types of taxation.

Exports

66. No difficulty arises with regard to the exemption of exports from retail sales tax because exports normally take place above the retail level. (The main exception is sales to tourists in respect of which special exempting arrangements are sometimes made).

Enforcement

67. The advantage of a retail sales tax from an enforcement aspect is that retailing normally is done in shops open to the public and malpractices are more likely to come to notice than with tax at other levels. The disadvantage is the large number of taxpayers involved which can, however, be reduced in the manner indicated in paragraph 57.

Multi-stage "Cascade" Tax

68. The multi-stage "cascade" tax, sometimes known as a transfer or transactions tax because it applies each time goods are transferred or "turned over", is the simplest in its basic concept in the sense that each trader is liable to tax at a flat rate* on the whole of his turnover and the levy may therefore be worked conveniently with the trader's income tax.

69. This is a case, however, where administrative convenience does not coincide with strict neutrality in the impact of tax. As is well known, some goods pass through many stages from producers to consumers, others through few stages and the tax will be heavier on those passing through many stages. This is not too serious where the rate charged in low but it becomes more serious when rates are increased.

*) In practice some countries do grant exemptions and do vary rates of tax.

70. Two processes are encouraged by a cascade tax:

first a switch by wholesalers and other "middleman" to a commission basis where this is practicable (instead of their purchasing and re-selling the goods they deal in) so that their turnover, on which the tax is calculated will be only a fraction of the value of the goods they handle;

second, the encouragement of integration whereby a single firm will take over the manufacturing, wholesaling, and retailing operations for particular commodities.

71. Not all trades are suitable for a change to a commission basis and there is therefore a difference in tax burden between different trades.

72. Some consider the integrative effects to be positively beneficial—it may be that the process gives the manufacturer a closer interest in the requirements of the consumer; it certainly gives him a somewhat securer market—at any rate the rapid resurgence of W. German industry after the 2nd World War was achieved in the climate of cascade taxation at a relatively high rate and whether this was in spite of or partly attributable to cascade taxation is a matter of dispute.

73. It must be realised, however, that cascade taxation as a means of encouraging integration is a rather blunt instrument. Not all industries are suitable for or capable of integration and those which are non-integrated are unduly hit by the tax. Other industries are eminently suited for integration and need no tax incentive to integrate (it may be noted that the considerable integration of the British textile industry that has taken place in the last few years has been done in a tax climate of single-stage turnover tax at the wholesale level and no tax motivation therefore existed).

74. The existence of casacade taxes as major revenue producers in a number of countries over a period of years cannot be ignored nor can the opposition which has led to its eventual replacement by a single stage tax, e.g., in the Philippines, Canada and Thailand.

75. The tax still operates in Western Europe (though its replacement by T.V.A. is fore-shadowed) in Taiwan and some of the Indian States (an Indian Tax Commission which sat in 1953/4 recommended a $\frac{1}{2}\%$ cascade tax) and has recently been introduced in Ceylon without much protest. The exemption in Ceylon of traders with a turnover not exceeding Rs 100,000 has, of course, limited the multi-stage operation to a considerable extent by eliminating many of the smaller businesses, especially retailers.

76. It cannot be said that a case for temporary application of a low-rate cascade tax in a developing country as a prelude to the introduction of a single-stage tax at a higher level has yet been established. Where there is no turnover tax infra-structure such a multi-stage tax might conceivably be useful in producing the data for future development. It will be interesting in this connection to study the progress of events in Ceylon where

the recently-introduced, and successful, ½% cascade tax may eventually develop along single-stage lines.

ADDED VALUE TAXATION

77. There are two main types of added value taxation.

The French T.V.A. (taxe sur la valeur ajoutée or tax value added) is a multi-stage tax embodying the principle of "fractional payments", i.e., that the total tax is best paid by the manufacturers and traders at each of the different levels of production and distribution instead, of in one sum by traders at one level only. It is reasoned that collection is thereby facilitated as each trader only has to find and pay over a proportion of the total tax due. (The French T.V.A. tax rate is about 20% at the pre-retail level). Each taxpayer has to pay tax at the fixed rate on the total price at which he sells the goods but may deduct from the tax due the tax paid by the trader from whom he purchased the goods which he is now disposing of. In this way he is paying only tax on the value he has added, i.e., the difference between his buying and selling price.

78. The fundamental virtue of T.V.A. compared with cascade tax is that the *total* tax for a particular commodity is fixed and does not vary no matter how many hands it passes through on its path from producer to consumer.

79. The other method of added value taxation is a single-stage levy applying solely, say, to manufacturers, or to wholesalers, and based simply on the difference between the sales and purchases of the taxpayer. The subject-matter of the taxation is thus the value added to materials by the manufacturer or processor, or, where no process is involved, the "mark-up" on the price he has paid which is made by a merchant or wholesaler to cover distribution charges and his profit margin.

80. The T.V.A. system can readily cope with the exemption of "production goods" (see paras 102-106) whether or not the term applies both to plant and machinery used in manufacture and to the commodities (e.g., fuel and lubricants) which are consumed in the manufacturing process but which do not become constituents of the goods manufactured. Where exemption applies the manufacturer is allowed to deduct from his total T.V.A. charge not merely the tax included in his purchases of raw materials, but also the tax charged on the production goods acquired.

81. At each stage the T.V.A. tax paid has to be clearly shown in invoices so that there is no difficulty about quantifying the tax for the purpose of relief.

82. The feature of T.V.A. whereby each trader may deduct the tax paid by the trader at the previous level is regarded as useful in connection with enforcement—each trader having an interest in the quantum of tax paid by the other. The revenue authorities may, if they wish, call for evidence of payment as a condition of granting a deduction to the trader at a subsequent level.

Neutrality or "intervention"?
Flat rate or multi-rates of tax

83. It is almost universally accepted that for administrative convenience, and for the

purpose of minimising evasion and avoidance, turnover tax is best levied at a flat rate, if possible on all commodities without exemptions.

84. This ensures tax "neutrality" as far as traders are concerned, i.e., they will have no incentive to alter the structure of trade by preferring to deal in untaxed or lower taxed rather than highly taxed goods. Differential rates are generally introduced by Government wishing to "intervene", i.e., to discourage the consumption of some goods in favour of others or to tax luxuries higher than necessities.

Intervention

85. A *high* flat rate of turnover tax does of course involve a certain degree of un-neutrality because it will have a greater impact on the sales of goods which have a greater elasticity of demand than it will have or those the demand for which is less elastic.

86. Variations from time to time in rates of turnover (purchase) tax were used in Britain over a period of years as an economic tool to depress or stimulate demand for particular products at times when the economy appeared to be over-heated or over-sluggish, but the present feeling seems to be rather lukewarm towards this kind of stop-go technique.

87. At a low rate of tax the fact that all goods are taxed equally is not important, but when higher rates apply it may be anomalous to charge the same rate on goods in the luxury class as on those which are classed as necessities or semi-necessities. Such is the importance attached to the administrative facility of a flat rate by some countries that even with high rates (e.g. in Norway where the retail sales tax is levied at 13.64%, and in Canada where the manufacturers' sales tax is levied at 11%) the flat level is maintained and heavier taxation on non-necessities achieved by separate excise taxes.

Administration: flat rate tax

88. A flat rate levy makes administration and enforcement easier because the tax will apply evenly to the whole of the traders' turnover. Such a levy also avoids the formidable difficulties that may arise in defining the different categories of goods liable to tax. It removes the incentive to ingenious manufacturers to produce goods which can be used for a certain purpose (potentially attracting a high rate of tax) but which meet the physical specifications which bring them into a lower taxed category. Definitions must be couched in words and the task of the draftsman in most countries (as one administrator was heard to lament) cannot be eased by the inclusion in the statute of pictures to illustrate what is being defined.

89. Where different rates are regarded as essential they should, if possible, not be applied in a retail sales tax but introduced in taxation at the wholesale or manufacturers/import level. Experience indicates that the *number* of different rates should preferably be kept as few as possible and applied to broad, well-defined categories.

Examples of multi-rate taxes

90. Britain which uses the wholesale level now has only 3 rates, 10% 15%, and 25%, Thailand's Business Tax (basically a manufacturers' tax although it is also levied, e.g., on restaurants and pawnshops) has 7 different rates from 1.5% to 20% including a 3% cascade tax on precious metals and jewellery—the general single-stage rate, applying to

most items, is 5%. Taiwan's commodity taxes (applied to manufactures and imports) are charged at 9 different rates ranging from 5% to 120%, but its multi-stage Business (turnover) (cascade) tax is at a flat rate of 0.6%; the Philippines has a range of 4 rates from 7% to 50% at the manufacturing/import level, with special rates of 75% and 100% on certain types of motor car.

Examples of flat-rate taxes

91. Many countries and states operate retail sales taxes at one fixed level but there are some exceptions, for example Washington D.C.'s municipal sales tax is charged at 3% on sales generally, but at 4% on hotels. In W. Bengal the general rate is 5%, but the rate of 10% is applied to luxuries. In this Indian state an eminently practical approach is taken in applying the 10% rate—it is applied only to goods which can be clearly and unmistakably defined. However luxurious a product may be, if it cannot be clearly defined, no attempt is made to include it in the 10% category. The 10% rate is applied to goods in only 20 categories. The principle, here, based on years of administrative experience, illustrates at once the difficulties and a practical way of overcoming them.

92. It must be added moreover that the most successful manufacturers' tax is the Canadian levy charged at a flat rate of 11% and the most productive and successful retail taxes those levied in Norway at a (gross) flat rate of 13.64% (net rate 12%) (producing one-third of the Government's tax revenue) and in Sweden at a gross rate of 10%.

93. The regressive effects of turnover taxation at a flat rate are discussed in paragraphs 94-101.

94. The main "social" objection to turnover-taxation is that it is regressive, i.e., that it falls equally on the poor and the rich when they buy the same articles which are within the scope of the tax, although their means to pay tax are widely different.

95. "Official" replies to such objections usually point to the fact that at modest rates of turnover tax the actual tax burden in cash terms is quite trivial, that the revenue raised goes largely into social services which mainly favour the poorer people, and finally that if useful revenue is to be raised from such taxes at low rates articles which are the subject of mass use and consumption must be included in the scope of the tax.

96. If only luxuries in the strictest sense are taxed, even very high rates of tax may produce relatively little revenue. Such highrates notoriously encourage serious tax avoidance and evasion even in countries with comparatively high tax morality. (e.g., when the rate of British purchase tax on furs was 125% evasion was regarded as serious and more revenue was in fact collected when the rate was reduced to 75%).

97. In some countries where a flat rate of tax is maintained it is offset by substantial social security benefits including (e.g., in U.K., Norway and Sweden) family allowances at the one end and supplemented by excise duties and taxes on luxuries (e.g., Norway, Canada) at the other.

98. In Canada 3% of the 11% manufacturers' sales tax is specifically allocated to old

age pensions under the Old Age Security Act; in Ceylon the health service and education are free and the rice subsidies paid by the Government are very substantial. The socialist Finance Minister who introduced turnover tax said in his Budget Speech on 1st August 1963, "Turnover taxes provide the bulk of Government's revenue in a number of socialist countries and in most of the capitalist countries in Europe. Hon. Members will also appreciate that a broadbased tax levied at a rate as low as one half of one per cent will have little or no effect on prices." It may be noted in passing that the Union of Socialist Soviet Republics obtains most of her revenue, in effect, by indirect taxation and the rates of U.S.S.R. income tax are among the lowest in the world.

99. Where turnover tax is not applied universally to transactions, those most commonly exempted are, in ascending order, sales by farmers and fishermen of their own produce, perishable food, food in general, food and other necessities such as clothing. Some countries charge most goods at a flat basic rate but make an exception by charging food at a lower rate.

100. In Britain food is exempted and clothing is mainly taxed at the lowest rate. In earlier years clothing of a certain quality could obtain a "utility" grading and was then tax-free, while subsequently the D-scheme was operated in order to exempt from tax clothing below a certain price. Where the "D" price was exceeded purchase tax only applied to the excess of the price over the D level. The D-scheme was admirably conceived to avoid regressive effects but the administrative difficulties were so formidable that the scheme was abandoned in favour of a (regressive) flat rate tax without however any public protest being aroused.

101. Although in many cases, e.g., in some of the states of the U.S.A., a comprehensive flat-rate turnover tax which includes food in its charge has in fact been accepted, it is likely that in developing countries there will be demands for the exclusion of such basic commodities as rice, bread, and flour, which, for political reasons, have to be conceded. While any exemption presents administrative difficulty the position may not be too serious if the category of exemption is narrow and clearly defined. The appropriate administrative technique to operate an exemption of this kind is, of course, to obtain a full return of turnover from the trader who will show separately, as a deduction, his sales, e.g., of rice.

PRODUCTION GOODS

102. The term "production goods" includes building, plant, and machinery used in productive processes and may be extended to materials "consumed" therein e.g. fuel and lubricants, which do not enter into the constitution of the finished product.

103. There is a strong school of thought which favours the exemption of production goods from all forms of turnover taxation so as to exclude manufacturing from any indirect tax burden. One of the reasons for this view is the "neutrality" concept that mechanised production should not be taxed more highly than manual production as this will tend to slow down the growth of mechanisation and automation to the detriment of economic growth generally.

104. The tax burden has to be looked at in perspective, however—there may already be taxes (either payroll taxes, so called, or social security levies) on the employment of manual labour which tend to discourage the use of labour and favour mechanisation.

105. These exemptions may be somewhat troublesome to administer and the tax burden is probably not too serious where the turnover tax consists of a low percentage levy at the retail level and where generous depreciation is allowed on the tax-inclusive cost of industrial buildings and machinery for income tax purposes. It will, however, be difficult to resist pressure for full exemption on the grounds that without it home manufacturers will be handicapped in competition with foreign manufacturers who are not subject to the tax.

106. Where a T.V.A. system is operating and the trader is permitted to deduct from his own tax liability the T.V.A. paid by his suppliers, exemption in respect of T.V.A. on production goods may be effectively allowed by permitting him to deduct that tax too from his present liability or, where the production goods expenditure in a particular period is very substantial, from future liability. Under T.V.A., however, it is necessary to ensure that tax on goods consumed or used by the trader himself for non-business purposes is not exempted.

To be continued in the next issue.

III

TREATIES

INTERIM TREATY BETWEEN CANADA AND THE UNITED KINGDOM

The Acting Minister of Finance, the Honourable Mitchell Sharp, announced December, 6, 1965 that an agreement between the Government of Canada and the Government of the United Kingdom for the avoidance of double taxation with respect to taxes on certain classes of income has been concluded. The Agreement was signed December 6, 1965 by Mr. Sharp and the British High Commissioner, His Excellency Sir Henry Lintott K.C.M.G. at a ceremony in Ottawa.

The agreement is of an interim nature, covering four classes of income on which action can be taken now pending consideration by Canada of the report of the Royal Commission on Taxation and appraisal of the consequences for tax treaties of the recent major changes in the British tax system.

The agreement establishes a general rule similar to that in other Canadian tax agreements that all pensions and annuities will be taxable only in the country where the recipient of the pension or annuity is a resident. This differs from the old Agreement in which the rule was that pensions paid in respect of British or Canadian governmental (or military) services could be taxed only in the country of source.

There are exceptions to this rule that preserve the position that pensioners had under the old Agreement. Thus, pensions paid by the Government of Canada that commenced before April 6, 1965, and were payable to persons resident in Britain on that date, and that would have been exempt in Britain if the old Agreement had continued in force, will continue to be exempt in Britain. This exception also covers pensions that may be paid to a surviving spouse or other dependant of an individual whose pension is exempt under this rule.

Pensions received by individuals resident in Canada from the British Government will be exempt from British tax and taxable in Canada starting on January 1, 1965. Nevertheless, if an individual who was resident in Canada on January 1, 1965, and in receipt of a pension from the British Government on that date finds that the rule that would have applied to him under the old Agreement if it were still in effect would be more favourable he may continue at his option to have his pension taxable by Britain and exempt in Canada.

These rules will benefit some 12,000 Canadian residents who are in receipt of non-government pensions from Britain and who for the first time are feeling the weight of British tax which is generally heavier than Canadian tax. They will also provide relief for some 3,000 Canadian residents in receipt of British Government pensions whose combined British and Canadian tax may now be higher than the British tax paid during the existence of the old Agreement. These rules also restore the position of some 2,500 recipients of Canadian pensions now living in Britain whose financial position has been affected by the termination of the old Agreement.

The other classes of income with which the agreement deals are profits of an enterprise earned by a "permanent establishment" (e.g., a branch office), profits from the operation of ships or aircraft, and copyright royalties. The agreement contains the usual rule that the industrial or commercial profits of an enterprise of one of the countries shall be taxed in the other country only if the enterprise has a permanent establishment in that other country and only to the extent that they are attributable to that permanent establishment. This protects a taxpayer of one country who merely buys or sells in the other country.

The agreement provides that the profits of an enterprise from the operation of ships or aircraft in international traffic shall be taxable only where the enterprise is resident.

The agreement provides that copyright royalties and similar payments in respect of the use of literary, dramatic, musical or artistic work (not including royalties for motion picture or television films) shall be exempt from tax in the country of source. Canada exempts such payments to non-residents in its Income Tax Act but, following the termination of the old Agreement, Britain has been imposing its standard 41¼% tax on these royalties paid from sources in Britain to Canadian residents. Persons in Canada who receive such royalties will thus obtain relief.

The provisions of the agreement are designed to come into operation on the dates the old Agreement ceased to have effect. For Canada this will be January 1; 1965 and taxation years ending in or after 1965. Since the Agreement is of an interim nature it may be terminated by either Government giving six months notice.

In accordance with the usual practice the Agreement signed will be submitted to Parliament for approval.

THE TEXT OF THE TREATY WILL BE PUBLISHED IN A COMING ISSUE OF SUPPLEMENTARY SERVICE TO EUROPEAN TAXATION, PUBLICATION OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION.

IV

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Study of American monetary management since 1946, outlining the steps which may be taken to meet future problems.

THE STOCK MARKET, by *Farwell, L.C.* 1963, 654 pp., $ 8,50. New York, the Ronal Press Company.

Study of the current operation and functioning of the American Stock Market.

INFLATION; DEMAND-PULL OR COST-PUSH? 1965, 130 pp. Studies in economics edited by Perlman, R. Boston, D.C. Heath & Co.

THE FEDERAL DEFICIT; FISCAL IMPRUDENCE OR POLICY WEAPON? Studies in Economics, edited by Hamovitch, W. 1965, 148 pp. Boston, D.C. Heath & Co.

These two paperback collections of essays deal with the problems that their respective titles so clearly indicate.

2. LOOSE-LEAF SERVICES

Releases received between December 1st and December 31th 1965.

AUSTRALIA
Law Book Company's Taxation Service, release no September: Law Book Co. of Australasia – Sydney

AUSTRIA
*Österreichische Steuer- und Wirtschaftskartei,*releases nos 22-24: P. Linde – Wien.

BELGIUM
Documentatie Vandewinckele, releases nos 265-267: Vandewinckele – Brugge
Guide Fiscal Permanent, release no 268: Vioburo – Bruxelles
Handleiding Inkomstenbelastingen, release no 10: Uitg. Excelsior – Brussel

CANADA
Canada Tax Service, releases nos 185-188: R. de Boo – Toronto
McDonald's Current Taxation, releases nos 46-49: Butterworth – Toronto

FRANCE
Bulletin de Documentation Pratique des Impôts Directs et des Droits d'Enregistrement, release no 10: Lefebvre – Paris
Code annoté de l'enregistrement, release no 14: Seteca – Paris
Documentation Pratique de Securité Sociale et de Législation du Travail, release no 12: Lefebvre – Paris
Feuillets de Documentation Pratique Impôts Directs, release no 4: Lefebvre – Paris
Problèmes d'Outre Mer, release no December: Centre d'Etude des Problèmes d'Outre Mer – Paris

GERMANY
Einkommensteuer, Lohnsteuer, Körperschaftsteuer, release no 66: O. Schmidt – Köln
Handbuch der Einfuhrnebenabgaben, release no 9: V.d. Linnepe – Hagen
Schnellkartei des deutschen Rechts, release no 130: O. Schmidt – Köln

Steuererlasse in Karteiform, releases nos 50-51: O. Schmidt – Köln
Steuerrechtsprechung in Karteiform, release no 167: O. Schmidt – Köln
Zollgesetz, release no 3: Gehlen – Heidelberg

MAROCCO
Codes Marocains, release no 1-2: Fiduciaire Marocaine – Casablanca

NETHERLANDS
Belastingberichten, releases nos 20-24: Samsom – Alphen a/d Rijn
Belastingwetgevingserie – Loonbelasting, release no 3; Noorduyn – Gorinchem
FED Losbladig fiscaal weekblad, releases nos 1021-1024: FED – Amsterdam
Fiscale Wetten, release no 5: FED – Amsterdam; Kluwer – Deventer
Handboek voor In- en *Uitvoer – Tarief van Invoerrechten,* release no 43: Kluwer – Deventer
Kluwer's Fiscaal Zakboek, release no 5: Kluwer – Deventer
Nederlandse Belastingwetten, release no 17: Samsom – Alphen a/d Rijn
Omzetbelasting, releases nos 91-92: Vuga Boekerij – Arnhem
Regelingen Euromarkt, release no 65: Vermande & Zn. – Ymuiden.
Teruggaaf Omzetbelasting bij Uitvoer, release no 164: Samsom – Alphen a/d Rijn
Vademecum In- en Uitvoer, release no 320: Kluwer – Deventer / Samson – Alphen a/d Rijn
Vakstudie; Alg. Wet Rijksbelastingen, release no 13: Kluwer – Deventer
Vakstudie; Vennootschapsbelasting, releases no 52-53: Kluwer – Deventer
Vakstudie; Omzetbelasting, release no 47: Kluwer – Deventer
Wetshistorie fiscale wetten, release no 3: FED – Amsterdam/Kluwer – Deventer

NEW ZEALAND
Provincial Taxation Service, release no 197; R. de Boo – Toronto

SOUTH AFRICA
Law and Practice of South African Income Tax, release no 10: Butterworth – Durban

SPAIN
Circulares, release no 80: T.A.L.E. – Madrid

TURKEY
Türk Argüs Ajansi, releases nos 3526 – 3546: La Législation Turque – Instanbul

U.S.A.
Federal Tax Guide Reports, releases nos 9-11: Commerce Clearing House – Chicago
Federal Taxes Report Bulletin, releases nos 45-50: Prentice-Hall – Englewood Cliffs
Federal Taxes Report Bulletin Treaties, release no 11: Prentice-Hall – Englewood Cliffs
State Tax Guide, releases nos 338-339: Commerce Clearing House – Chicago.

CUMULATIVE INDEX 1966

No. 1

The Bureau wishes to acknowledge especially the receipt of a collection of 36 volumes from the Mexican Ministry of Finance, *inter alia* dealing with current Mexican legislation and with the Latin American Free Trade Association. Such generous contributions greatly facilitate the Bureau's documentation function. We trust, though such motivation be certainly lacking that our benefit will ultimately redound to the contributor by virtue of the dissemination of information that this gift enables us to undertake.

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THE UNITED STATES TAX SYSTEM AND INTERNATIONAL RELATIONSHIPS—CURRENT DEVELOPMENTS, 1965-6* (II)

remarks by

STANLEY S. SURREY

II. ADMINISTRATION OF UNITED STATES STATUTORY TAXATION OF FOREIGN INCOME

In the Montreal paper I stressed the importance of developing a sound administration of the United States statutory taxation of foreign income. This task is a formidable one: The field is relatively new as tax matters go, and the needed experience, analysis of detail, and synthesis of concepts are still in a formative stage; the international business activities to which the rules relate are rapidly expanding in importance and number, and the variety of transactions and business relationships involved thus steadily increases; the tax rules moreover are constantly being buffeted by the shifting exigencies of balance of payments problems. But all of this merely underscores the challenge of the task, and the Treasury is seeking to respond in a fitting manner.

As I stated in my Montreal paper, some matters have already been accomplished. The Regulations for the 1962 Revenue Act provisions regarding foreign income have been issued. Further, one of these Regulations provides the tax accounting concepts essential to any orderly administration of United States tax rules affecting foreign income. These Regulations provide the guidance needed to translate foreign income statements into the "earnings and profits" of our tax laws.

Allocation of Income—Section 482

With this done, the Treasury has regarded as the next order of business the establishment of a satisfactory framework for the administration of the rules governing transactions between the domestic and the foreign units of our business concerns with foreign activities. In our tax parlance, this centers on the application of section 482 of our Code, authorizing the Commissioner to allocate income and credits between related units of an enterprise so as to prevent evasion or clearly reflect the income of the various units. While this section, whose presence and application are clearly necessary to a sound income tax system, had its original technical development in connection with transactions between domestic units of a United States enterprise, its recent importance is almost entirely in terms of its application to the foreign income field. The very variety and number of transactions in this field that lie within the reach of the section had over-

*) For the benefit and information to our readers, the Bulletin is printing the entire text of Mr. Surrey's talk to the Tax Institute of America on December 2, 1965; the first part was published on p. 45 (February 1966 issue).

strained the level of technical development that had been achieved in its domestic application. The situation thus called for a many-faceted implementation of the section so that it may carry the new burden placed upon it. The following discussion catalogues the steps being taken to achieve that implementation.

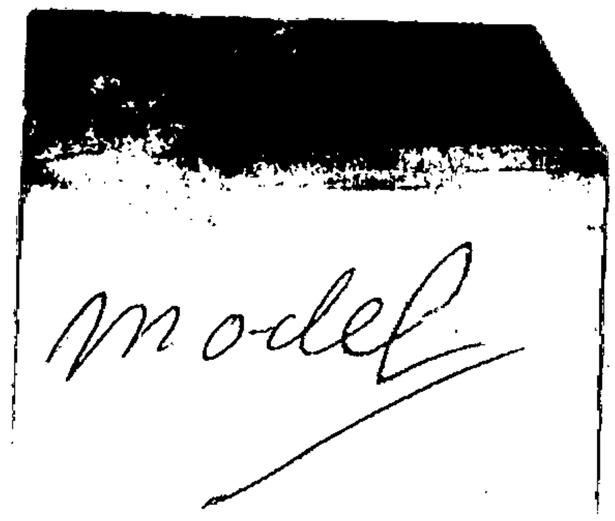
Orderly Treatment of the Pre-1963 Years—Revenue Procedure 64-65

The first major step needed was an orderly treatment of the controversies that had arisen for the years prior to 1963. The recognition by the Internal Revenue Service in the late 1950's that section 482 had to be applied on a much wider basis in the foreign field brought a sudden surge of audits and controversies, since many taxpayers in their inter-company arrangements may not have fully considered the range or implications of that section. While some aspects of the section—such as the requirement of an "arm's length price" on sales of products between related enterprise—were recognized, other requirements had not been explicitly developed. As a consequence, many taxpayers for these years were faced with Internal Revenue Service adjustments increasing their United States income under circumstances which made it doubtful, at least in their view, that they could recoup the foreign taxes paid on the income involved in the adjustment—as where on audit income was for section 482 purposes shifted from a foreign subsidiary to a United States parent. The double taxation that could result would thus generally make it imperative for the United States taxpayer to resist strongly any claimed adjustment, and the lines were being formed for prolonged and widespread controversy.

To prevent this, the Treasury, in December, 1964, issued Revenue Procedure 64-54, which allows taxpayers in the case of adjustments for years prior to 1963 to offset against any increase in United States taxes, occasioned by the adjustment, the foreign taxes paid on the income involved and thus to avoid double taxation. In addition, the Revenue Procedure states that the Revenue Service would not, except in certain limited instances, pursue for those years adjustments based on applications of section 482 that were not clearly required by its previous technical development, such as the requirement of interest on inter-company loans or royalties on patents licensed to foreign subsidiaries, or the allocation of general and administrative expenses.

The effect of this step has been quite salutary. Through its achievement of an orderly treatment of the pre-1963 years and the consequent very marked reduction in number and dollar amount of deficiencies under the section for those years, it has permitted the needed technical development of the section to proceed in an atmosphere free of acrimonious disputes that would otherwise have existed. It has thereby enabled—and indeed requires—taxpayers and the Government to consider objectively and responsibly the shape of that technical development.

The confinement to pre-1963 years of the ability under the Revenue Procedure to offset foreign taxes against a United States adjustment is of basic importance. From the standpoint of internal fairness, this limitation mirrors the fact that taxpayers by the end of 1962 had generally become aware both of the possible reach of section 482 and of the Service's decision to apply the section in keeping with that reach. But, of more importance, the limitation recognizes that a country cannot continue to administer such a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section in this self-denying manner. For the continued allowance of the foreign tax offset would simply mean that the United States would be yielding control over its allocation problems to the allocation rules of foreign countries and the decisions of their administrators. Double taxation would be averted—but the cost would be borne by the United States Treasury. While our foreign tax credit system recognizes that to prevent double taxation we are willing to yield first claim to the country of source, the integrity of that system depends on a rational framework of international allocation rules. The United States is thus entitled to insist on appropriate recognition of the rules it believes proper, and is not required to surrender its part in the construction of that framework. The same privilege of course belongs to any other country. The claims of the various countries may conflict and their failure to resolve them will lead to double taxation and increased burdens for the international taxpayer. But that is but another facet of the problem, to be discussed later, rather than a signal for us unilaterally to yield the field.

Hence, the import of Revenue Procedure 64-54 for the future is to underscore the importance of the formulation of rational internal guidelines under section 482.

Repatriation of Income and Section 482 Adjustments—Revenue Procedure 65-17

A section 482 adjustment in the foreign area usually means that a United States taxpayer has understated its United States income and overstated its foreign income—goods have been sold by a United States parent at too low a price to its foreign subsidiary, services have been rendered by that parent at an inadequate fee, and so on. What are the rules that should govern the attempt to recast the accounts between the subsidiary and the parent: Suppose the subsidiary desires now to transfer the income that is said to be the parent's income—will the transfer be a taxable dividend or handled instead as a payment on account of the section 482 adjustment? Suppose a dividend was included in the parent's income for the year to which the adjustment relates—can the dividend be recast as a payment on account of the adjustment? These questions of course required answers so that the transactions could be fitted into their proper tax niche. But balance of payments considerations added an extra urgency to the questions. Taxpayers wishing to respond to the Government's stress on the desirability of repatriating foreign earnings were concerned about distributing dividends from their foreign subsidiaries if they also were to be faced by section 482 adjustments in the parent's income. They saw in the combination the possibility of having more income being taxed in the United States than they desired or was required by law.

To meet these questions, the Treasury in March, 1965 announced rules later embodied in Revenue Procedure 65-17, establishing an appropriate relationship between repatriations of income and section 482 adjustments. Under this Revenue Procedure a taxpayer will be permitted to recast dividend payments, for the year to which a section 482 adjustment relates, into the type of payment required to reflect the section 482 adjustment—the dividend may thus become a payment to the parent for goods or services, thereby avoiding the enlargement of the parent's income that would occur if dividend and adjustment were kept separate. In this case, of course, foreign taxes associated with the dividend are not allowed as credits. A taxpayer that did not receive a dividend in the year to

which the adjustment relates (or did not elect to recast a dividend of that year) may, within 90 days after the adjustment is made, transfer an amount from the foreign subsidiary and have the transfer treated as the required payment and not as a dividend. Necessarily, the broad flexibility thus provided the taxpayer must be protected against abuse, or else section 482 would be deprived of any self-policing content. Hence the Revenue Procedure states that for years after 1963 this flexibility will not be available to taxpayers who cast their transactions in a manner which had avoidance of United States tax as a principal purpose.

This Revenue Procedure is thus an important step in permitting the section 482 adjustment to be fitted into a proper position within the flow of funds from the foreign subsidiary, a position that both removes impediments to the orderly repatriation of funds and makes it possible for a taxpayer to accept the adjustment without increasing the transfer of income from subsidiary to parent more than it considers desirable. Again, as did Revenue Procedure 64-54, its flexibility makes possible—and likewise demands—a responsible approach to the guidelines governing the substantive reach of section 482.

Section 482 Substantive Guidelines

The above procedural steps have set the stage for the development of appropriate guidelines for the substantive application of section 482. The Treasury is approaching this part of the task through the issuance of detailed proposed Regulations under section 482, to replace the present Regulations which for the most part simply establish the standard of arm's length dealing. The assignment is a formidable one, but we must remember that the development of the guidelines does not start from an accounting vacuum. The tax minded, and especially the lawyers, tend to overlook the fact that their new tax problems have very often been faced for some time in contexts outside the tax field. Thus, accounting practices and conventions respecting allocations of income have had to be developed before this in non-tax fields, both for internal accounting purposes and to meet the requirements of outside interests. The vast majority of industrial companies in the United States make some allocation of general and administrative expenses to their various operations as a normal business practice. The requirements of government procurement contracting and of public utility regulation have necessitated allocations of expenses between the government contract work and the other operations and between the regulated and the non-regulated sectors. And, indeed, even in the tax field taxpayers have made allocations to their foreign branches to determine the foreign taxes they consider to be properly payable.

The first set of proposed Regulations, building in large part on this experience, was issued in April, 1965. In general, it covers the allocations required where assets or services of the parent are made available to the foreign subsidiary—where money is lent, where management or other services are rendered or made available, where machinery and other tangible assets are made available. Essentially the approach is to provide guidelines which, if the taxpayer follows them, offer a safe-conduct pass through section 482. The guidelines are intended to furnish a maximum of flexibility, and of course do not prevent the use by the taxpayer of other defensible approaches. For the most part they are based on the costs incurred by the parent and an allocation of those

costs to the subsidiary in a manner that follows accepted accounting precedents. The following offer general illustrations. While the guidelines cover domestic as well as foreign transactions, their discussion here, and their main area of application, relate to the foreign area.

Loans—Interest must be charged on a loan to a foreign affiliate: a 4 percent rate is acceptable; a lesser rate must be justified, and if it cannot be justified, the Service will apply a 5 percent rate.

Managerial and Other Services—Managerial and other services rendered by the parent to benefit a foreign subsidiary must be compensated for, though a profit need not be charged by the parent. The amount of the compensation generally may be the cost to the parent of those services, since the subsidiary could itself have employed the persons performing the service. While cost includes both direct and indirect costs and they are to be reflected on a full cost and not a marginal cost basis, the indirect costs may be allocated under any reasonable, consistent method in keeping with sound accounting practices.

Machinery and Tangible Assets—Machinery and other tangible assets made available to a foreign subsidiary can be reimbursed on a cost basis, covering out-of-pocket costs, depreciation and a small profit representing an allowance for a return on the parent's investment. This cost allocation approach rather than that of establishing a rental figure is a method of reflecting on the income side what would otherwise generally be the required disallowance of deductions to the parent. It also eliminates the disputes that would arise under an approach seeking to establish a fair rental value based on market rates.

Arm's-Length Test—The above rules are cast within the general framework of an arm's-length test, and do not turn on following the transactions through the books of the subsidiary to see whether it used in a profitable way the money lent, the assets made available, or the services rendered. The fact that the subsidiary is losing money does not therefore prevent these allocations.

This is the essence of the arm's-length approach, and is in keeping with the fact that these are international transactions under which the United States is entitled to a fair reflection of the moneys, goods and services that are being transferred. It is also in keeping with the general deferral rules that are consequent upon treatment of the foreign subsidiary as a separate legal entity. It also is consistent with a proper approach to consolidated return accounting.

The second set of proposed Regulations, now in preparation, will contain the rules applicable to inter-company sales of products and transfers of intangibles, such as patent licenses. The problems here faced in seeking appropriate criteria or guidelines are much more difficult. The first set of Regulations involved transactions which could be governed either by cost standards or by establishing an appropriate charge for a fungible item, money. But the second set of Regulations involves the matter of determining a fair profit for assets that, under the arm's length rule, are regarded as transferred in a profit-seeking transaction. Nevertheless, we seek to establish as helpful a set of rules

as is possible in this area. We have, in this context, in TIR 441 issued in 1963, established guidelines to govern transactions between Puerto Rican affiliates, who typically engage in manufacturing activities, and their United States mainland parents, who handle the distribution of the goods. This TIR has been quite helpful in facilitating the disposition of a large number of difficult cases. While it deals with a situation that has some unique aspects, it still provides us with some experience in approaching the proposed Regulations.

Finally, we are preparing Regulations to coordinate our section 482 Regulations with section 862 of the Code, a section requiring an allocation between domestic and foreign source income of expenses not allocable to specific items of gross income. When such expenses are allocated to gross income from sources outside the United States, the net amount of that income is decreased. This allocation of expenses is important largely for foreign tax credit purposes (the gross income and expenses are independently already taken into account in computing the taxpayer's domestic taxable income), because the allocation, by reducing foreign source income, can reduce a taxpayer's foreign tax credit. Clearly coordination with section 482 is necessary—as a simple example, an expense of the parent for managerial services rendered to its foreign subsidiary and compensated for by a fee should be allocated to that fee and not to a dividend received from the subsidiary.

The Needed International Accommodation

All of the above relates to the proper formulation of our unilateral rules of allocation with respect to international transactions. But since they are international transactions, a unilateral approach by the United States, or any country, is not sufficient. For if our unilateral rules do not mesh with those of other countries the result will be double taxation, the tax burden of which will be borne either by one Government through the foreign tax credit or by the taxpayer, with the other Government obtaining an unwarranted benefit. (Far less likely, though possible, is undertaxation of the taxpayer.) Each country, of course, must see both sides of the allocation coin—the rules which the United States regards as proper to allocate income to our parent companies from transactions with their foreign subsidiaries are the rules we must be willing to accept when the subsidiary is here and its parent is a foreign corporation. This factor should have an effect in tempering the international assertion of rigid positions, and thus make it easier to achieve international accommodation. For it is clear that this must be the ultimate goal, an internationally acceptable set of rational rules to govern the allocation of international income arising through these transactions.

The United States believes that the OECD Fiscal Committee is the proper body to undertake the task of establishing the allocation standards to guide countries in reaching accommodations with each other. The OECD Fiscal Committee appointed a Working Party for this purpose. We intend, as a measure of assistance to that Working Party, to lay before it our proposed section 482 Regulations as they are developed. It is quite likely that these Regulations may represent a more structurally developed and detailed framework of allocation rules than has been formulated elsewhere, and hence may prove helpful as a starting point and as a way of focusing attention on a wide range of issues. We would, of course, welcome the analysis and discussion which we expect this would

stimulate. We would be ready to make modifications in these proposed rules if such changes are seen to be appropriate as a result of this international discussion.

It may turn out that full international agreement on all the rules is not possible. We would then expect that the various Governments would consider what steps may be appropriate in dealing with the resulting conflicts and their double taxation effects. Various devices, which can be mentioned without an endorsement, have been suggested, such as arbitration, a payment once by the taxpayer at the higher of the two rates, or some formula to divide the burden among the taxpayer and the Governments.

While this formulation of internationales rules is proceeding, we must remember that adjustments will be made under existing unilateral rules and many will be acceptable to both the countries concerned. However, as these cases tend to involve a considerable time before agreement is reached on the adjustment, a taxpayer and the countries concerned may find that procedural barriers, such as a statute of limitations on refunds, may make it impossible to implement the adjustment in the country that has overtaxed the income. To remedy this, the United States suggests that tax treaties contain provisions waiving these barriers and thus permitting the adjustment to be implemented. We are finding other countries receptive to this approach, and as observed in the discussion above under treaties, have already included such a provision in several treaties.

Section 367

There is another important aspect of our treatment of foreign income that requires an elaboration of the applicable administrative rules. This is Section 367 of our Code, which in effect requires the Commissioner's consent to be obtained by the taxpayer before the benefits available under a number of the corporate tax provisions can be achieved if the transaction in question involves a foreign corporation. Here also we are concerned with a provision of wide application necessary to prevent tax avoidance in the field of foreign income, for the taxpayer must satisfy the Commissioner that the proposed transaction—such as the formation or liquidation of a foreign corporation—does not have tax avoidance as one of its principal purposes. It would be helpful to taxpayers —and administrators—if detailed guidelines could be formulated setting forth objective standards to govern the application of that section. The Treasury is now engaged in the preparation of these guidelines and is hopeful of early action in this regard.

III. UNITED STATES STATUTORY TAXATION OF FOREIGNERS

The steady attention focused by the United States in recent years on its balance of payments position has resulted in an extensive examination of the United States tax treatment of foreigners who invest in the United States. This examination commenced with the report on April 27, 1964 of the Committee appointed by President Kennedy on Promoting Increased Foreign Investment in United States Corporate Securities and Increased Foreign Financing for United States Corporations Operating Abroad, which was chaired by the then Under Secretary, and now Secretary of the Treasury, Henry H.

Fowler. The Treasury Department study of that Report, and of the entire statutory treatment of foreigners investing here, resulted in proposals to Congress embodied in H.R. 5916, introduced in March, 1965. The House Committee on Ways and Means then gave extensive consideration to that bill and in September, 1965 Chairman Mills, at the instruction of the Committee, introduced a modified version of that bill for comment before the bill is reported to the House in 1966. The new bill, H.R. 11297, entitled the Foreign Investors Tax Act, contains the essential elements of the predecessor bill, but with certain modifications.

In my Montreal paper I discussed the principles which the Treasury Department considered applicable to the revision of this aspect of international tax relationships, and these may briefly be summarized: (1) The rules adopted should be in conformity with acceptable international norms. The United States, with its large flows of capital and goods in and out of the country, has a responsibilty to take a major role in seeing that there is developed a proper international tax framework against which the tax system of any particular country can be considered. (2) The rules should permit a fair and sensible allocation among the various countries of the income from activities that reach across international borders (3) The rules should assist in maintaining as far as possible the free international market of capital and goods, with taxes in any country as neutral a factor as possible consistent with the domestic policies to be served by a tax system. (4) A proper balance must be maintained between the taxes paid by our citizens on their United States income and those paid by foreigners on the same income arising here (5) The rules should not permit the United States to be turned into a tax haven country vis-a-vis foreign investors, nor be so framed as to permit, in combination with the tax rules of another country, the transformation of that country into a tax haven that would attract foreigners seeking to invest in the United States. (6) The rules should not be structured as to cause the capital of less developed countries, which are badly in need of the capital at home, to be drained off for investment in the United States. (7) Any benefits granted unilaterally by the United States should be so structured as to preserve a proper bargaining position for the United States in tax treaty negotiations.

The bill that has evolved from the consideration by the Committee on Ways and Means represents a balanced application of these principles. It recognizes that some of the existing provisions of our Code have become discriminatory and inequitable to foreign investors and thus a barrier to investment in the United States. In correcting this treatment the bill avoids at the other extreme rules that would represent only a desire to attract foreign investment, rules which would be but mere tax inducements or tax concessions. Indeed, the bill moves to correct certain instances where in the past our legislation was too favorable to foreigners when compared with the treatment of our own citizens.

The main provisions of the bill are here summarized:

Corporate Activity

Most foreign corporations that are involved in business activities in the United States generally operate through ownership of United States domestic subsidiaries or of significant stock interests in those corporations. The United States tax rules applicable are

not complicated, and generally relate to our withholding taxes. This is equally so as to royalty situations. But where the foreign corporation operates here in branch form, the rules become more involved.

The existing statutory rules provide that a foreign corporation (or an individual) engaged in trade or business in the United States is taxed on all its income from United States sources at the regular rates applicable to business income, including not only the income from trade or business but also any unrelated investment income. The result paralleled the force of attraction concept of the permanent establishment provision in tax treaties. The new bill confines this taxation at regular business income rates to the income "effectively connected with the conduct of the trade or business within the United States," leaving the other income of the foreigner from United States sources to be taxed at our 30 percent statutory withholding rate or lower treaty rates. The bill thus moves our treatment in this area over to the general approach followed by many other nations. It also is in accord with the OECD Model Income Tax Convention and our new treaty approach, evidenced in our protocols with Germany and the Netherlands, and thus has the advantage of conformity to international practice. The bill offers guidelines, to be supplemented by the legislative history, to the application of the "effectively connected" concept. A foreigner who is receiving large amounts of investment income from the United States, under the approach of the bill would no longer need be concerned that some other activity in the United States will suddenly be considered as giving him a trade or business status in the United States, and thus subjecting the investment income to business taxation. Instead, as long as the investment income is not connected with the other activity, any uncertainty as to the status of the latter would not color or affect the investment income.

The bill implements the "effectively connected" concept by: (1) Making taxable any income so connected even though its source is not within the United States, such as where a branch located in the United States imports goods from abroad and then resells the goods outside the United States, with title passing outside the United States. The income from the sale, untaxed today by the United States and indeed often untaxed by any country, would be taxable under the bill. (Any income not so connected with the trade or business is taxed only if it is from sources within the United States under the usual source rules.) (2) In keeping with the above approach, providing a foreign tax credit, against the United States tax on the trade or business income, for foreign taxes paid on that income, if the foreign tax is levied on the basis of source jurisdiction by the other country.

In this manner the bill obtains for the United States its proper tax on the full income of the trade or business conducted there, and on any investment income effectively connected with it. At the same time, by freeing the unrelated investment income from business tax rates, it leaves that income to be taxed at the rates we consider appropriate for investment income.

A number of our treaties provide for reduced withholding rates or exemption on investment income only if the foreign taxpayer has no permanent establishment in the United States. The adoption of the "effectively connected" approach, however, reflects a desire to permit application of those lower rates or exemption to all investment income

which is not connected with a permanent establishment. We could achieve this result by a revision of each of our treaties to apply the lower rates or exemption despite the permanent establishment. However, this process would take a period of time. The bill eliminates this problem by unilaterally stating that these treaties will be applied to income not "effectively connected" as if the taxpayer did not have a permanent establishment in the United States.

Individual Investment

Most foreign individuals with interests in the United States are involved in investment activities, such as the ownership of United States stocks or securities. Under existing rules foreign individual investors in the United States have been subject to progressive rates of tax on their United States income, when the total amount of that income involved a greater tax under the progressive rates than was collected through our withholding taxes. The investors in turn have sought to sidestep those rates through placing their investments in a foreign corporation and thereby obtaining either the 30 percent statutory withholding rate or lower treaty rates on the investment income. But they have had to be careful to structure the foreign corporation to avoid its being a personal holding company with respect to its United States source income. And of course some investors have simply sought to cover their tracks, recognizing the difficulties any tax administration faces when it moves beyond withholding taxes in its attempt to reach income going to foreigners. The consequence of all this was that the United States collected very little taxes under the progressive rates, so that the withholding rates were in practice the effective rates.

The bill simplifies this whole area by abandoning the application of progressive rates and limiting our assertion of tax, as respects investment income (not "effectively connected" with a trade or business), to the technique of withholding and to the level of withholding rates. The bill, in keeping with this approach, also exempts from personal holding company tax liability a foreign corporation whose stock is owned entirely by foreigners. Moreover, in the case of any foreign corporation receiving income from United States sources, it confines our assertion that dividends distributed by that corporation to its shareholders are in turn to be considered by us, in the shareholders' hands, as income from United States sources, to a situation where 80 percent or more of the gross income of the foreign corporation is effectively connected with the conduct of a trade or business in the United States. The tax on that portion of the dividends of the foreign corporation—our so-called "second dividend" tax—is thus confined to a case where the activities of the foreign corporation largely consist of operating a branch in the United States, so that the combination of our corporate tax on the branch profits and the second dividend tax results in about the same tax burden that would exist if the foreign corporation had conducted its United States business through an United States subsidiary.

The bill in two specific types of investment revises present law to remove tax clouds over that investment. As to real estate investment, an individual foreigner (or corporation) is permitted to elect to treat the income from the investment as trade or business income. He thereby may receive the benefits of deductions connected with that income and is taxable on the resulting net income at business rates if that approach is preferable

to taxation on the gross income at withholding rates. This provision eliminates many tax uncertainties that presently attend investment in real property in the United States. As to stocks and securities, the bill provides generally that a foreigner, individual or corporate, trading in those investment in person or through a resident agent, who may or may not have discretion to carry on investment activities, will not thereby be regarded as being engaged in trade or business in the United States. This provision should serve to clarify uncertainties in present law which have confused potential foreign investors.

Finally, as respects the United States capital gains of foreign individual investors, the present unrealistic and complicated rules have been restated to tax such gains only if the foreigner is in the United States for 183 days or more during the year, and thus has a "presence" here comparable to that which would make him a "resident" under the tax laws of many foreign countries. Also, capital gains effectively connected with a trade or business are subject to tax. In the case of foreign corporations, this is the only situation in which its United States capital gains are taxable.

This drawing back of United States source jurisdiction to a more realistic and administratively manageable position would materially simplify the tax rules which we present to the foreigner desiring to invest in our stocks and securities or real property. As a general rule, his periodic income would be subject only to withholding taxes, either at 30 percent or a lower treaty rate, and his capital gains would not be taxed. These results are not altered by extensive trading in stocks or securities, even where the trading is conducted by a United States broker who has discretion to act for him. His real estate investments would be taxed on a net income basis at regular rates if that is preferable, and if his real estate investments are so active or so conducted as to constitute a trade or business on their own account, and consequently taxable in any event at regular rates, any other investments not connected with the real estate would still remain subject only to the usual withholding rates. This simpler, logical pattern would serve to remove income tax barriers which our present structure now presents to the foreign investor.

Estate and Gift Taxation

The United States now presents the foreign individual investor with extremely high rates of estate tax on his United States investment. The estate tax starts at the $2,000 level and the rates climb to 77 percent. For a $100,000 estate in the United States this means an effective rate of 17 percent; for $500,000, 26 percent; for $1,000,000, 29 percent; and for $5,000,000 43 percent. Such rates are among the highest in the world. Moreover, they are far above the rates we impose on our own citizens, a relationship that is just the reverse of that which generally prevails in other countries, or under our income tax provisions applicable to foreigners. It is thus clear why foreigners regard our estate tax as a real barrier to investment in the United States, and one that very often bars the investment or channels it into an investment made in foreign corporate form.

The bill recognizes the unreality of this existing rate structure. In seeking a lower and more realistic level, the bill uses as a standard the effective rates applied to our own citizens (under conditions where the estate of the United States decedent is eligible for the marital deduction, which permits property passing to a spouse to be untaxed up to

one-half the total estate). The bill thus starts with an exemption of $30,000, in place of the present $2,000, and applies a 5 percent rate to the first $100,000 of taxable United States estate, rising to 10 percent thereafter up to $500,000 and then 15 percent up to $1 million. The top rate is 25 percent reached at $2,000,000 (higher than the 15 percent recommended by the Treasury). The new rate schedule would thus provide effective rates of 3 percent on a $100,000 estate, 7 percent for $500,000, 10 percent for $1,000,000, and 18 percent for $5,000,000.

The bill reshapes the definition of United States property to include bonds of a United States corporation and other debt obligations of a United States obligor, regardless of the physical location of the instruments, and also deposits in United States banks. It thus rounds out the present definitions into a consistent pattern.

As a consequence, the foreign investor would see a far lower scale of United States estate tax rates on his United States investment, and one that compares favorably with a number of foreign countries. Moreover, since many of the European countries grant their citizens, either by statute or treaty with the United States, a credit against their domestic estate tax for the United States tax on the United States estate, the new rates would be largely or entirely absorbed through these credits. As respects our gift tax, the bill would leave applicable to that tax only tangible property located in the United States. Thus, the bill would present the foreigner with a United States estate and gift tax structure vastly different from the present pattern, and one that should in a meaningful way remove barriers that the present pattern now imposes.

Relationship to Tax Treaties

The provisions of the bill provide distinct benefits to foreigners with United States income or assets as compared to present law through the changes that we would be making in our statutory provisions. These changes, at the same time, represent approaches which we think are appropriate in the treaty area as well. Thus, our recent protocol with Germany, and the tentative draft of the Netherlands protocol, reflect in a number of instances the changes in the bill, for example, with respect to the abandonment of the force of attraction and the cut-back in capital gains taxation. And in the past our treaties, in establishing reduced withholding rates for investment income, have thereby also abandoned application to that income of our progressive rates. But treaties are bilateral and their restrictions reciprocal. These concessions on our part have been matched by similar concessions granted by the treaty country on income our taxpayers derive from that country. A unilateral grant of these concessions on our part, by a statutory revision, might thus seriously affect our treaty bargaining strength and make it more difficult for us to secure similar treaty concessions in the future. At the same time, we desire to remove as quickly as possible any inappropriate tax barriers to the foreign investor now contained in our statutory system. Unilateral action can be prompt and cover all foreigners, while the treaty process takes time and operates country by country.

The bill neatly meets these difficulties by, first, providing prompt action and wide coverage through the unilateral act of a statutory revision, and, second, by retaining treaty bargaining power and flexibility through empowering the President to reinstate the former statutory rules. The President can do so, with respect to the residents of a

foreign country, when he finds that the foreign country, if requested by the United States, in a treaty negotiation for example, does not modify its taxes to parallel the changes we are making unilaterally. This power of the President can be applied on a selective basis, country by country and tax provision by tax provision, and need be applied only when he finds that it is in the public interest to do so in each case. Our treaty negotiators will thus be able to point out to a foreign country that our concessions are reversible, so that the negotiations can, in effect, proceed on a reciprocal basis.

Expatriates

The abandonment of the application of the progressive income tax rates to foreign individuals investing in the United States, the cut-back of other income tax provisions, and the reduction of estate tax rates would establish a distinctly brighter tax picture in the United States for the foreigner. Indeed, the picture is such that Americans may be tempted to become "foreigners" for tax reasons. In 1936, when the United States had similarly abandoned its progressive income tax rates as respects foreigners, it quickly restored them a year later, in part because some Americans had given up their citizenship to take advantage of the change. But to the extent possible we should not permit our tax problems with Americans to act as a bar to rational revisions in our treatment of foreigners. The proposed bill meets this objective by keeping American expatriates still subject to full United States tax on their United States income and assets, for five years after loss of citizenship in the case of the income tax and for ten years in the case of the estate tax, where the loss of citizenship is motivated by the desire to avoid our taxes. Where such a result is contrary, however, to a tax treaty, the treaty would govern. But since our tax treaties are largely with countries whose tax systems involve rates at significant levels, an expatriate who establishes residence in those countries is not likely to be motivated by a desire to avoid United States taxes.

CONCLUSION

Current developments in our international tax relationships underscore the wide range of policy and administrative issues that are under consideration. Indeed, the continued rapid growth in international investment and trade has brought with it a multitude of varied tax problems that severely strain and press beyond our present framework of concepts and analysis. Intensive legal and economic thought to develop that framework into one adequate to the task—a framework that embodies a coherent logic capable of expansion to meet new patterns and relationships. In one sense this is a truly formidable task, since each of the countries of the world can claim a voice in the effort. But the ingenuity and insight promised by this host of architects should be viewed as welcome assets. The task for the United States is to see that in this international effort we play a role fitting to our position. We can do so if all of us with a stake in the outcome—the Government and its officials, our taxpayers with international activities and their advisors, our universities and research institutions and their scholars—work cooperatively in shaping our contribution.

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GENERAL NOTES ON TURNOVER TAXATION (II) *)

Especially in respect of developing countries

by

H.W.T. PEPPER

CAPITAL "LOCKED UP" IN TAX

107. An important factor in deciding whether to impose a tax at an early or late level of distribution (e.g., manufacturers' or retail level) is the effect on trading from the point of view of the working capital involved merely in the financing of the tax element in the value of stocks and goods sold on credit.

108. If a tax of say 20% is imposed at the earliest possible level, i.e., import or manufacture, all traders subsequently handling the goods would require additional capital of the order of 20% of the value of trading stocks (inventory) and debts which apply to taxed goods. A sudden introduction of a tax on this scale or a switch of an existing tax from the retail to the manufacturing stage would thus have an immediate impact on traders at the pre-retail stages. These traders might well be temporarily embarrassed by having to find substantially more working capital within a short time.

109. Where imported raw materials and components are incorporated in goods destined for export it is customary to exempt these items (as is done with exports in general) from turnover taxation. Unless a bonded warehouse or a registration "ring" for importers is used, however, the manufacturer will have to "lock up" some capital to cover the tax element in his constituent materials for the period between (a) the date of purchase and (b) that of obtaining a *drawback* or *refund* or, where a T.V.A. system is operating, a *credit* against tax payable.

110. In the case of the production of liquor and cigarettes these are commonly subjected to very high rates of taxation. Tobacco tax is often applied to the raw leaf before it has been processed. The amount of capital locked up in stock is so formidable that the firms engaged in these types of manufacture are usually on a large scale. It is difficult for newcomers to enter the trade in competition with established concerns because of the huge capital investment required and the initial difficulties of competing with established "branded" products.

111. The factors referred to above are such serious obstacles to the free flow of trade and the working of competition that they should be counted as disadvantages of turnover taxation applied at an early stage in production and distribution. A country's economy would be better served in this connection by taxation at a much later stage.

112. Where the retail stage turnover tax is used difficulties about tax on components, etc. disappear because the tax will not apply at the manufacturing level. (In the case of

*) The first part of this study was published on p. 67 (February 1966 issue).

excise taxes on re-exports there is usually a well-established drawback system subject to tight physical controls—a separate system would be necessary for turnover taxation and would be comparatively expensive to install). The case for a late stage turnover tax must not be oversimplified, however. In the case of very highly taxed commodities such as liquor and cigarettes it is traditional to collect the tax at the earliest possible stage so as to minimise tax loss through smuggling, irregular trading, etc., the risk of which greatly increases the more tax-free stages the commodities are allowed to pass through.

113. In the case of highly-priced and heavily taxed items such as motor-cars and T.V. sets in Britain, the tying-up of capital in stocks is largely avoided by use of the sale or return technique so that goods in the retail show-room are not the subject of a "chargeable" sale until finally sold to a retail customer.

114. The other modification of the general rule about additional capital requirements for taxed stock applied (only) to the trader who has to pay the tax. If he has to pay on *sale* of the goods and the time allowed him to pay the tax is not less than the average credit period which he in turn allows to his customers his additional capital requirements may be almost negligible. No such relief is of course available to traders at lower levels in the distribution pattern. (See also paras 149-157).

QUOTATION OF TAX IN PRICE

115. Professional opinion various as to whether turnover tax should be quoted separately in prices. In some countries (e.g., some of the states of the U.S.A.) it is compulsory to indicate the tax on receipts in the case of a retail tax, while it usually compulsory with a whole-sale tax for the whole-saler to invoice the tax to the retailer.

116. In the T.V.A. system quotation of the tax by each trader to the next is essential because each trader is permitted to deduct from his own tax liability the tax paid at the previous stage of distribution.

117. In W. Germany considerable importance has been attached to the principle of 'unmerklichkeit' ("hidden nature") and traders are prohibited from indicating the tax in prices. This practice makes it less likely that the tax will become a political issue. It is significant that when traders in other countries are seeking to bring pressure to bear on the Government to reduce tax, they make a point of drawing their customers' attention to the precise tax content of their product price.

118. In a country where retailers are not well equiped with cash registers it will normally be onerous to compel them to indicate the tax separately, and some retail sales tax countries have no compelling legislation in this respect. Where there is no compulsion traders usually prefer not to show tax separately. This would most clearly be the preference where the tax rate was low and would involve awkward fractional price adjustments if evenly applied—in such cases the trader would in practice adjust some prices more than others and average out the amount shifted or passed on to his customers.

119. In Eire where a statistical check was made of the effect of the new turnover tax on prices levels, there was no legislation compelling disclosure of the tax element, but prices had in fact only risen to the extent of the tax imposed.

120. One incidental benefit of some importance to the Treasury when tax is *not* quoted separately is that the tax itself is computed on the tax inclusive price of goods. Thus in Norway a tax rate of 12% becomes 13.64% because it is levied on the gross prices while Sweden's 9% tax is equivalent to 10% in gross terms. In cases where the tax is compulsorily dissected out the administration can clearly only expect to collect tax on the net price.

COMPLICATIONS ARISING FROM CHANGES IN RATE OF TAX

121. Complications may arise from changes in turnover tax rates whether these are upwards or downwards if traders are holding stocks of already-taxed goods at the time the change is made.

122. In the event of an *increase* in a tax a trader holding goods which have been taxed at an earlier stage stands to gain if he applies the new price to the old goods and it will never be administratively worth while to insist that he does not. In practice exhortations and self-discipline among traders' associations may be sufficient to ensure that the public will in general be able to buy at the old price "while stocks last".

123. When tax rates are *reduced* the trader with tax-paid stocks finds himself in a less happy position because the public normally expects to buy at the new (lower) price immediately and will wait, or "shop around" until they find a trader with new stocks. Losses in these circumstances are almost inevitable and a trader with old stocks is generally well advised to mark down the prices immediately to retain his customers' goodwill and hope to recover the losses by a bigger turnover in future. No tax administration*) is known to grant retrospective refunds in cases of tax reductions and it would be inadvisable to try to set up a scheme.

124. The administration, as well as the taxpayer, is entitled to some certainty in taxation and if tax collected in good faith at the manufacturing or wholesale level were refundable at the retail level in the event of a *subsequent* change in rate budgetary fiscal estimating would become impossible.

125. A more serious side-effect arises when the public comes to expect a material decrease in the rate of turnover taxation and hold off buying in the meantime while traders suspend orders for the same reason. That this may have a comparatively serious, though short-term, effect on the economy is evidenced by events in Britain where the motor industry has on occasion made strong representation about slumps in demand caused by expectations of decreases in purchase tax.*)

126. The difficulties of retailers (where tax is charged at wholesale level or above) can

*) In the course of the 1965 Federal Excise Tax amendments in the U.S.A. certain reductions were made "retrospective",** approximately, to the date the reductions were announced. There was meantime a little evidence of postponement of purchases by the public. Some traders counteracted this by making immediate "tax reductions" in prices hoping to receive the appropriate refund from the Revenue in due course.

**) This is not a case of real retrospection which would occur only where a tax had been paid on the understanding that it represented the final liability.

be overcome in respect of larger items of merchandise such as motor cars, T.V. sets, refrigerators by extensive use of the "sale or return" technique where the goods remain the property of the manufacturer etc. and the chargeable sale takes place only when the ultimate consumer makes his purchase. The sale or return method of trading is now standard practice in Britain for major items of consumer durables. In general the difficulties of rate changes can be minimised by limiting as far as possible the size and frequency of the fluctuations.

Tax Finance

127. The switch in France to T.V.A.*) tax was intended to give a temporary boost to Government revenue in the financial crisis of 1948. The boost arose from the fact that T.V.A. accrued at an earlier stage than the tax it replaced. Such a change would not inevitably result in even a temporary increase in revenue however, e.g., if the tax is merely switched off at one level and on at another, with no special provisions regarding stocks, there would be no change in revenue other than occasioned by a change of rates. Where a tax is related to actual *goods,* rather than *turnover,* in the manner of an excise or purchase tax some transitional benefit to revenue will be obtained if the goods "in the pipeline" continue to be taxed while at the same time the point of impact of the tax is taken back to the stage before the pipeline is reached.

REGISTRATION OF TRADERS

128. The concept of the "ring" or circle of registered traders within which goods may circulate free of turnover tax is fundamental to a single stage turnover tax.

129. A trader who is permitted to register may obtain his purchases free of turnover tax but must account for tax on his sales of taxable goods to non-registered persons. In the case of a general turnover or sales tax applying to most commodities, the best administrative practice is to obtain returns from registered traders of their total sales and of sales (deductible from total sales) which are made to registered traders or relate to goods exported.

130. In some countries there have been launching difficulties with single stage taxes involving registration of traders. Objections have been made that only honest traders will register and others escape taxation. Such objections, among other reasons, caused the abandonment of the turnover tax in Ceylon in 1961. These objections are based on a misconception because although a registered trader certainly incurs liability to tax on his chargeable sales he acquires the right to buy his supplies tax-free.

131. Once the tax is established the larger traders speedily become aware of the advantages of registering and getting within the "ring" and thus for example, economising the amount of working capital tied up in stocks and inventories (see paragraphs 107-112). The problem then may be to discourage traders from seeking registration

*) The tax changes which introduced T.V.A. were not completed until 1953-1955 when the deduction scheme for tax paid at previous levels was introduced.

particularly where it is desired to limit the number of taxpayers from whom the tax is to be collected (see paragraph 57).

132. In the case of the smallest businesses however the taxpayer may prefer to avoid the trouble of completing returns and making periodic payments of tax. In the interests of economy the administration will usually be willing to accept this position (see paragraph 56-60).

133. In the case of a *multi-point cascade tax* there is no tax-free movement of goods within a ring and all traders are taxable on their turnover. It is usual to have an exemption limit so that the smallest traders are tax free on their *sales* and the administrative machinery is not clogged with small, troublesome, and unremunerative cases. A cascade system does not normally provide for collecting additional tax at an earlier or later level in order to compensate for the absence of tax on the exempted small trader. Registration of traders for the cascade tax therefore is for the purpose of ensuring compliance with the tax laws, not to create a "ring".

134. Registration in the case of a manufacturer's sales tax may provide a ring of limited scope in that where manufacturers buy components and semi-finished goods from each other they may be allowed to do so tax-free, the full tax being paid when the finished articles are sold. A manufacturers' sales tax is usually backed by a countervailing tax on imports (unless this is made unnecessary by existing protection in the form of quotas or high tariffs on imports) and the importers concerned must then also be registered. Where the import is of constituents which are used by the home manufacturers the (registered) importer may be exempted from tax on his sales to the (registered) manufacturer but in general the tax on the importer will be collected at the point of import in the same way as a customs duty.

135. Because turnover tax is levied on commodities and services, and is normally shifted to the consumer there is strictly no case for exempting a trader whose turnover falls below a certain limit. To do so would enable him to compete unfairly by selling his wares more cheaply than another trader whose sales exceeded the limit and thus bore the tax.

136. Where the turnover is a single-stage levy operated with registration of traders at the taxable level and also at higher or earlier levels, "exemption" of a trader at the final stage merely means that the will buy his supplies already taxed instead of tax-free, except to the extent to which he can obtain supplies from the untaxed sources referred to below.

137. It is fairly common to exempt from retail sales tax sales by a farmer or fisherman of goods (normally perishable foodstuffs) produced by him. The exemption does not usually extend to goods which are sold to wholesalers but in practise may extend to sales to the smallest retailers below the registration or exemption limit. This type of exemption is stimulated by the administrative impossibility of enforcing a tax charge.

138. In the case of a multi-stage cascade tax where there is no concept of goods passing tax-free within a ring, and tax is levied at each stage of distribution it is usual to exempt the smaller traders completely from tax, particularly where the tax rate is low (e.g. ½%) and the implications on competition therefore not too serious. A recent example is the multi-stage ½% turnover tax introduced in Ceylon late in 1963 which established an exemption limit of Rs 100,000 and thereby kept the number of chargeable traders to manageable limits for administration purposes.

139. Britain has an exemption from its purchase tax where the turnover of chargeable goods (excluding inter alia furs, jewellery, and motor cars) does not exceed £500 per year: the exemption limit was previously £2,000. Thailand exempts traders from Business Turnover Tax where monthly sales are no greater than 1200 baht.

140. In Eire, registration, and thus the liability to pay tax, is optional for traders with turnover not exceeding £9,000 per year (if they do not register they buy their supplies at tax-inclusive prices) and this has cut down considerably the number of taxpayers liable to the recently imposed tax.

141. Several of the states in India allow exemption to traders whose sales do not exceed Rs 10,000.

142. In general it makes good administrative sense to exclude the smallest traders from direct liability to tax though the principle of tax neutrality demands that if possible the goods they deal in should be taxed at an earlier level.

143. Even where it is intended ultimately to bring most or all retailers specifically into the net of a new tax it is a classic rule of administration to commence with a limited and manageable number of taxpayers and then expand the scope in graduated stages.

Commodities

144. The question of the exemption of commodities is dealt with in the notes on "Regression".

Services

145. The practice regarding the taxation of services varies considerably from country to country. At one extreme all services, including those rendered by the liberal professions, by hairdressers, repairers of all kinds, by banks, insurance companies and other financial institutions, and all forms of transport are taxed. The object is to obtain as wide a tax base as possible so that material revenue may be generated from a low rate of tax.

146. There are many arguments for exempting particular services, doctors and dentists because one should not tax ill-health, architects and contractors because to tax them would increase the cost of building, banking*) and insurance**) because the tax will increase the cost of such services and it is desirable to encourage the use of banks and of insurance in a developing country, transport because this needs encouragement particularly in developing countries where the transport system is often deficient. Where the rate of tax is very low it is unlikely that serious damage will be done if the tax is levied on services generally and the extent to which exemption are granted will depend on the circumstances of a particular country. If the tax rate increases, however, the economic arguments for exemption clearly have to be examined more closely.

*) In the case of banking the base for a turnover tax should not, in any event, include deposits and withdrawals. A bank debits tax in Ceylon, in fact, had serious repercussions in encouraging the use of cash and was abolished in 1965 after a short experiment.

**) Some countries tax insurance premium as turnover but this should not be extended to *life* assurance premiums as these are largely a form of saving which comes back to the policy holder or his heirs on maturity of the policy.

CASH OR ACCRUALS BASIS

147. When returns are made of current turnover on a monthly or evenly a quarterly basis it may be onerous for small tax payers to be asked to declare their "sales" representing the goods actually sold less bad debts, goods returned, discounts, etc. It will often be easier for the small trader to make his returns on the basis of cash actually received with possibly an adjustment to accruals basis at the year end. In general, however, returns on a cash basis for the smaller traders will give a reasonable approximation to the liability on the accruals basis taking one year with another and adjustment is hardly worth the administrative effort.

148. Some countries permit the adoption of a cash or accruals basis at the option of the taxpayer and there appears to be no objection to this course. Enforcement by audit is likely to be easier if anything if the returns are adapted to the particular way a trader keeps his books. Comparison with the turnover declared for income tax purposes should normally be an adequate way of ensuring that the cash basis option is not abused.

FREQUENCY OF RETURNS AND PAYMENTS

149. In a number of countries turnover tax declarations and payments are made monthly but this is not the universal rule. Britain collects its purchase tax quarterly (but in certain cases may arrange collection at more frequent intervals), Ceylon collects its Business Turnover Tax quarterly, while the State of W. Bengal in India allows taxpayers the option of making monthly, quarterly, half yearly, or yearly returns. In Norway a bi-monthly basis was used originally, but there was a switch to monthly payments when the rates of tax were increased. Thailand collects its Business Tax monthly except that bankers are allowed to pay quarterly. Pakistan collects its wholesale sales tax quarterly, Australia monthly, and Canada's manufacturers' sales tax is collected monthly.

150. The view taken in most countries seems to be that the tax should be collected as quickly as possible so as to leave less scope for losses through non-payment by the more improvident traders. There is an alternative, however, in that troublesome payers may be asked to put up a bond for the tax normally due (this is done in the U.K.), or, where this procedure is appropriate, may be de-registered so that they buy goods at a tax-included price, the tax being paid by their suppliers.

151. It is clear that it is more costly to collect tax monthly instead of quarterly and the danger of loss through non-payment is not so serious when the tax is levied on relatively large taxpayers at the manufacturer/wholesaler stage. At this stage the question of credit given by the taxpayer to his customers arises. If he gives 90 days' credit but has to pay his tax monthly, complaints may arise that his business requires extra capital merely to cope with "pre"-payment of tax. On the other hand if the normal commercial credit period were 30 days and the tax was payable quarterly the trader would have free temporary use of tax moneys due to the Government.

152. In Britain where purchase tax is paid quarterly with a month's grace after the end of the quarter, it is reckoned that the average period allowed for payment of the tax

($\frac{1}{2} \times 3$ months + 1 month = $2\frac{1}{2}$ months) is adequate to cover the average period of credit allowed by the trader (see also paras 107-112).

153. In a particular country the decision regarding the timing of returns and payments may depend on what will best fit in with other taxes.

154. In Eire, which was one of the most recent countries to introduce turnover taxation, monthly returns were chosen because at the retail level there are many small, and impecunious, taxpayers, but also because collection could conveniently be handled in conjunction with a computer which had been installed to deal with P.A.Y.E., already on a monthly basis.

155. Where, as in Italy, the current year's turnover tax liability is calculated on the abonnement system on the previous year's turnover there is clearly considerable freedom of administrative choice because it will not be necessary to gear payments to monthly or quarterly returns of *current* turnover.

156. In general a country will decide the most appropriate intervals for collection in the light of the following factors

(i) the existing practice regarding the payment of other taxes;
(ii) the custom regarding the giving of credit in the part of trade which is subject to tax;
(iii) the size of the tax burden;
(iv) the "size" of the taxpayer.

If the tax is payable mainly at the manufacturing and wholesaling stages by the bigger taxpayers a system of quarterly payments would appear to be most economical. The flexible procedures adopted by the British Customs & Excise Department in collecting tax more frequently, e.g., monthly or even weekly if the need arises, and by calling on "delinquent" payers to provide a bond as security, appear to be well-adapted to avoiding losses through default in payment.

157. Where the tax is chargeable at the retail level the quarterly basis may be used if the tax rate is modest but, as was found in Norway, it may be necessary to collect tax at more frequent intervals when the tax rate increases.

ENFORCEMENT

General

158. The ratio of actual to theoretical yield is commonly much higher in the case of turnover taxation than with income taxation even in countries which have not yet attained high standards of tax "morality".

159. The main reason for this is a fundamentally arithmetical one—if a trader understates his turnover by 20% this, if undetected, will be sufficient in most cases to reduce his declared income and income tax liability to NIL. For turnover taxation purposes however the Revenue Department would obtain 80% of the revenue potential.

160. The other basic point about turnover tax enforcement is that turnover is easier to check than income. The former deals with gross receipts or sales, simpliciter, while the latter involves, inter alia, incomings, outgoings, stock inventories, debtors and creditors. To check thoroughly declarations of income may involve considerations of growth

and of net capital or worth and the task usually requires highly trained personnel.
161. Where turnover tax is based on total turnover the work of checking accounts rendered for income tax and for turnover tax purposes can be readily combined.
162. Where a number of commodities and services are exempted from what is otherwise a general turnover tax the best administrative practice, adopted e.g., in Norway and Eire, is to obtain returns which declare total turnover and show separately, as a deduction, the turnover which relates to exempted items. The return of total turnover can readily be compared with the accounts rendered for income tax, while the deduction for sales of exempted goods can be compared with purchase invoices for those articles.

"Indoor" and "Outdoor" inspections

163. A good deal of effective checking can be done by "indoor" staff in the case of turnover taxes and the cost of such checking is much less than that of outdoor inspections. Where goods pass through several hands one trader's sales become another's purchases and there are opportunities for cross checking by comparing what trader A declares he has sold to trader B with what trader B claims to have purchased from A. In the French T.V.A. system the cross-check extends to the tax applicable to the goods and thus forms another obstacle to the law-evader. The greater the scope for cross-references the less the need for outdoor inspections and this seems to be borne out by the practice adopted in certain countries with comprehensive turnover taxation, where such inspections are comparatively rare but are thorough when undertaken.
164. In general it makes for administrative economy and reduces the opportunities for corruption if outdoor inspections are kept to a minimum, but when undertaken are made by a team of officers conducting a thorough and comprehensive inspection as expeditiously as possible.
165. Where reputable public auditors exist it may be useful to adopt a scheme of accepting turnover returns virtually without check where these are certified correct by auditors.

Compulsory use of receipts

166. A key enforcement tool employed in a large number of countries is the compelling of traders to issue receipts for goods or services supplied and, usually, the retention of duplicates of these receipts. A trader will probably not normally care to omit from his books transactions for which he has issued receipts, since to do so is to make himself vulnerable in the case of a comparison of receipts with his books. If he does not issue a receipt he is vulnerable to a system of check purchases by or on behalf of officials of the Revenue or to being reported by patriotic customers.
167. Many countries which employ the compulsory receipts technique do comparatively little to enforce full compliance, but the mere statutory existence of the scheme has great potential usefulness because it is usually connected with a requirement to retain the duplicates of receipts issued for a period of years for subsequent checking. Even countries which have suffered from under-staffing in their Revenue offices usually get around to launching an anti-evasion drive eventually and receipt-issuing requirements provide a useful starting-point for an investigation.

168. In some countries, e.g., Taiwan and Chile, enforcement of receipt-issuing requirements has been backed by providing prizes in a lottery based on numbered receipts issued by traders to their customers. The object was of course to encourage the public to insist on obtaining receipts by the lure of lottery prices. In Taiwan the receipts to be used by traders are printed and supplied by the Government but the lottery scheme was terminated some years ago on the grounds of cost.

169. In some countries where tax morality is low and enforcement lax there have been reports of traders having two prices for their goods, one when the customer requires a receipt, a lower one when a receipt is not requested! Such travellers' tales, though based on fact do not necessarily imply a hopeless situation. Shops which do not employ a fixed, marked, price system frequently have a number of different prices for the same article depending, inter alia, on the apparent affluence or otherwise of the customer and perhaps on his nationality also. Such shops, which are typically those selling goods to tourists, give trouble to Revenue administrators in many different countries.

170. As far as traders as a whole are concerned a little active enforcement by means of official cross-checking of transactions, or by an occasional "outdoor" visit to shop premises, followed by prosecutions where irregularities are found, will go a long way to ensure a large measure of compliance, because of the vulnerable position of shopkeepers in general. A shop-keeper normally aims to trade with whomever is attracted by his wares and cannot be sure that his customers do not contain a Revenue officer or a potential informer. Even a Revenue Department which does not attain the highest standards of efficiency can expect to keep turnover tax evasion within low limits if it displays reasonable determination to do so.

Frequency of returns and payments

171. As far as routine collection of tax is concerned the choice is between returns and payments at fairly long intervals—quarterly, half-yearly or even yearly—which will be cheaper as far as routine collection is concerned, and collection at say monthly intervals which will be comparatively costly but may be more useful in keeping inefficient traders (who may find it difficult to accumulate money to pay larger sums at lengthier intervals) up to date with their payments. This subject is dealt with in more detail at paras 149-157.

172. Rather than attempt to collect numerous small payments from small businesses it is generally preferable to keep them out of the turnover tax net altogether by excluding them from registration and ensuring, where possible, that their *purchases* are subject to tax.

Liaison with income tax

173. Some years back there appeared to be few examples of effective liaison between turnover taxes and income tax for the purpose of checking tax compliance. In some countries the taxes are administered respectively by different authorities (e.g., federal, state, municipal) or by different departments of the same authority, with comparatively little liaison between the tax officials. In recent years however there has been a tendency to closer collaboration with beneficial effects on compliance.

174. Where turnover tax is levied only on sections of a trader's turnover the usefulness of a comparison is, of course, limited although it is usually worthwhile to obtain a return

or declaration of turnover in gross terms with deductions for exempt commodities, etc. and compare the gross figures.

175. In countries where turnover tax and income tax are administered by the same department, e.g. in Washington D.C. (as regards municipal income tax and sales tax), in Eire, and in Ceylon, the beneficial effects of enforcement procedures regarding one tax on compliance with respect to the other have been apparent. In Eire the turnover tax was introduced in November 1963 and apart from current auditing programmes a routine check of the total of 12 monthly returns for turnover tax with the corresponding accounts year for income tax is being made. Ceylon, also with a turnover tax of 1963 vintage, has reported recent remarkable and substantial improvement in income tax compliance.

176. In Norway routine information regarding total sales reported has in the past been exchanged but a high degree of compliance was recorded and exchange of information between the sections is now made with more particular reference to cases where irregularities have been discovered. The attitude of the Ceylon administrators was also one of confidence that traders would make their declarations for turnover and income tax tally, even if they were evading, but that enforcement procedures for the new tax would provide (and had already provided) useful backing for enforcement of the older income tax impost. In W. Bengal comparison of figures between state and federal tax authorities was prevented by the lack of mutual statutory authorisation, but steps were being taken to provide this in the interests of better enforcement.

177. The feeling among administrators in Eire was that income tax evaders who had been keeping 2 (or more) sets of books were presented with fresh problems of making their false entries consistent by the advent of the new turnover tax and that it appeared that some had already decided to mend their ways rather than run the greater risk of detection.

178. In general there appears to be a great deal to be gained by liaison between different tax administrations. The more difficult it is for a taxpayer to make a series of declarations for different taxes all mutually consistent, the less he is likely to feel it is worthwhile to practise evasion.

179. Routine cross-checking can, of course, be carried too far but a minimum of a comparison of the year's turnover for turnover tax and income tax purposes appears worth while. Although taxpayers may soon realise the need for making the figures tally, difficulties in doing so may be productive of inconsistencies elsewhere and the rule that a liar (including a tax evader) must have a good memory is never more apt than in such circumstances.

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GERMAN FEDERAL REPUBLIC

TAX NEWS

ART. 95 EWG-VERTRAG KEIN UNMITTELBAR GELTENDES RECHT

Vorlagebeschluß des Finanzgerichtes des Saarlandes

Bonn. – Das FG des Saarlandes hat in seinem Vorlagebeschluß an den Europäischen Gerichtshof vom 28. 10. 65 in dem Fragenkomplex, ob die Umsatzausgleichsteuer neben der Abschöpfung erhoben werden darf, gegenüber den bisherigen Entscheidungen der FG Bremen und Münster*) die sehr wichtige Frage untersucht, ob bei Verletzung der Norm des Art. 95 EWGV durch einen Mitgliedstaat dieser Artikel für den einzelnen unob nur die Mitgliedstaaten die vertraglich mittelbar einen Anspruch begründet oder vorgesehenen Rechte wahrnehmen können.

In der Begründung des Beschlusses hat das FG mit einleuchtenden Argumenten einen unmittelbaren Anspruch des einzelnen aus Art. 95 EWGV verneint.

Es bliebt zu hoffen, daß der Europäische Gerichtshof sich in der Frage der unmittelbaren Geltung des Art. 95 den Argumenten des FG nicht verschließen wird und die Grundsätze seines Urteils zur Rechtssache 26/62 (Sammlung Band IX S 3 ff) zu Art. 12 des EWGV nicht auch auf Art. 95 überträgt.

Sonst könnte für die Wirtschaft und die Verwaltung eine nicht erwünschte Rechtsunsicherheit entstehen, da jedes FG auf Rüge eines Beteiligten die Steuersätze der ASt überprüfen müßte und dabei – ganz abgesehen, daß dies wohl in bezug auf die Ermittlung der Vorbelasting einer Ware mit Umsatzsteuer eine Überforderung der FG bedeuten würde – bei ein und derselben Ware zu unterschiedlichen Steuersätzen kommen könnte.

Bei der augenblicklichen Arbeitsbelastung des BFH würde eine geraume Zeit vergehen, bis er eine einheitliche Entscheidung fällen könnte.

Das FG hat trotz seiner klaren Ablehnung einer unmittelbaren Anwendung des Art. 95 durch den einzelnen die Frage zur Vorabentscheidung dem Europäischen Gerichtshof vorgelegt, weil dieser gem. Art. 177 EWGV über die Auslegung der Bestimmungen des Vertragswerkes zu entscheiden hat.

Das FG führt in seinen Gründen u.a. folgendes aus:

Die UASt hat ihre gesetzliche Grundlage in dem bundesdeutschen Umsatzsteuergesetz (UStG), das in § 1 die Lieferung und Leistung, den Eigenverbrauch sowie die Einfuhr von Gegenständen in das Inland als steuerbare Umsätze bezeichnet.

Zwar findet die UASt ihre Begründung und Rechtfertigung in ihrer Zielsetzung, auf dem Gebiete der Umsatzbesteuerung

*) Compare Bulletin 1966, p. 14.

zwischen inländischen und ausländischen Waren gleiche Wettbewerbsverhältnisse zu schaffen.

Da das Gesetz aber diese Aufgabe der UASt nicht zum Tatbestand erhoben hat, sondern allein die Tatsache der Einfuhr von Gegenständen in das Inland neben den beiden anderen Tatbeständen zum steuerbaren Umsatz erklärt hat, hegt die Kammer keine Bedenken mit der herrschenden Meinung anzunehmen, daß die UASt wie die USt als innere Abgabe und nicht als Abgabe zollgleicher Wirkung zu qualifizieren ist . . .

Das Recht der EWG ist unterschiedlich ausgestaltet. Neben Bestimmungen programmatischer Natur, z.B. Art. 67, 74 stehen Normen, die man nach ihrer Fassung als unmittelbar geltendes Recht (self-executing) werten könnte, z.B. Art. 85, bei dem aber der Gerichtshof selbst in der Rechtssache 13/61 (Sammlung der Entscheidungen des Gerichtshofes der Europäischen Gemeinschaften Band VIII S. 105 ff) nur eine recht abgeschwächte Anwendbarkeit anerkannt hat.

Andere begründen Rechte der Organe, z.B. Art. 137, 145, 155. Weitere Bestimmungen wiederum wenden sich nach ihrem Wortlaut allein an die Mitgliedstaaten, z. B. Art. 12, 13, 16.

Zu ihnen gehört auch Art. 95 des Vertragswerkes, in dem ausdrücklich ausgesprochen ist, daß die Mitgliedstaaten auf Waren aus anderen Mitgliedstaaten weder unmittelbar noch mittelbar höhere Abgaben gleich welcher Art erheben als gleichartige inländische Waren unmittelbar oder mittelbar zu tragen haben.

Aus der Fassung von Art. 95 Abs. 1 EWGV kann aber nicht geschlossen werden, daß dem einzelnen unmittelbar Rechte erwachsen sind.

In dem Vertragswerk ist das Verfahren, das bei einer Vertragsverletzung gegeben ist, abschließend geregelt (Art. 169 ff). In diesen Bestimmungen sind auch die zur Klageerhebung befugten Organe ausdrücklich bestimmt.

Dem einzelnen ist dabei weder das Recht, den Gerichtshof anzurufen, eingeräumt, noch die Möglichkeit eröffnet, eine Vertragsverletzung vor dem innerstaatlichen Richter geltend zu machen.

Es ist daher schwerlich möglich, Art. 95 Abs. 1 EWGV, der ausdrücklich die Mitgliedstaaten zu Adressaten erklärt, als Self-Executing-Norm zu werten.

Aber selbst wenn man geneigt sein wollte, aus der Formulierung von Art. 95 Abs. 1 EWGV auf eine Verbotsnorm zu schließen, die dem einzelnen einen Anspruch eröffnet, ergibt sich aus Art. 95 Abs. 3 EWGV, daß Art. 95 Abs. 1 EWGV kein mit Unmittelbarkeitswirkung ausgestaltetes Verbot sein kann, denn hätten die Vertragschließenden in Art. 95 Abs. 1 EWGV ein derartiges Verbot ausgesprochen, so wäre es wenig sinnvoll gewesen, in Art. 95 Abs. 3 EWGV den Mitgliedstaaten aufzugeben, spätestens mit Beginn der zweiten Stufe die bestehenden Diskriminierungen zu beseitigen.

Gegen die Annahme, Art. 95 Abs. 1 EWGV sei self-executing, spricht ferner, daß die Mitgliedstaaten das Recht der Gesetzgebung über die inneren Abgaben nicht auf die Gemeinschaft übertragen haben.

Sind aber die inneren Abgaben in der Gesetzgebungskompetenz der Mitgliedstaaten geblieben, so konnte und wollte die Gemeinschaft in diesem Bereich kein Recht schaffen, das dem einzelnen Rechte oder Pflichten begründet.

Berechtigt und verpflichtet aus Art. 95 Abs. 1 EWG-Vertrag sind daher nur die Mitgliedstaaten.

Unterläßt es ein Mitgliedstaat, einen vertraglich gebotenen Gesetzgebungsakt vorzunehmen, so verletzt er zwar seine Vertragspflicht; die diskriminierende innerstaatliche Rechtsnorm bleibt jedoch geltendes Recht, bis sie der Gesetzgeber des Mitgliedstaates aus freier Entscheidung oder, nach Art. 169 ff EWGV durch die zuständigen Organe der Gemeinschaft veranlaßt, ändert oder aufhebt.

Diese Ansicht kann auch nicht mit der Erwägungen entkräftet werden, dem einzelnen sei ein unmittelbarer Anspruch dann entstanden, wenn ein Mitgliedstaat trotz Ablauf der in Art. 95 Abs. 3 gesetzten Frist den vertragswidrigen Zustand nicht behoben hat.

Das Gericht vermag aus Abs. 3 dieser Bestimmung lediglich zu entnehmen, daß den Vertragschließenden die Existenz diskriminierender innerer Abgaben bekannt war und sie diesen Zustand auf Zeit sogar ausdrücklich gebilligt haben.

Es sieht sich jedoch nicht in der Lage, mit der Bfin. anzuerkennen, daß mit dem 1. 1. 62 Art. 95 des EWG-Vertrages self-executing geworden ist oder daß der einzelne verlangen kann, vor dem innerstaatlichen Richter so behandelt zu werden, als sei der gebotene innerstaatliche Rechtsetzungsakt zum 1. 1. 62 vollzogen worden.

Das Gericht vertritt vielmehr die Auffassung, daß mit dem 1. 1. 62 erstmals der Weg der Art. 169 ff EWGV beschritten werden kann.

SOURCE: *Nachrichten für Außenhandel, den 5. Januar 1966, V.W.D. Vereinigte Wirtschaftsdienste GmbH Frankfurt/Main (German Federal Republic)*

ERHEBUNG VON UMSATZAUSGLEICHSTEUER

Ein Urteil des Finanzgerichts Düsseldorf

Bonn. – Das Finanzgericht Düsseldorf befaßte sich in seinem Urteil vom 23. 9. 1965 (IV 109 – 110/62 Z[1]) mit der Frage, ob dann, wenn eine gleichartige inländische Ware keine Umsatzsteuer zu tragen hat, der Steuerpflichtige aus Art. 95 des EWG-Vertrages einen bei den Steuergerichten verfolgbaren Rechtsanspruch auf Nichterhebung von Umsatzausgleichsteuer (UASt) für eine aus EWG-Mitgliedstaaten eingeführte Ware herleiten kann.

Sachverhalt

Für die Bfin. wurde am 11. 5. 62 aus Italien stammendes Gasöl der Tarifnr. 27.10-A-II-b zum freien Verkehr abgefertigt. An UASt wurden 4% des aus dem Zoll und dem Durchschnittswert gebildeten Gesamtbetrags erhoben.

Mit ihrer Sprungberufung wandte sich die Bfin. gegen die Erhebung der UASt. Sie machte geltend, daß aus Erdöl hergestelltes Gasöl in der Bundesrepublik Deutschland im Großhandel von der Umsatzsteuer befreit sei, die Erhebung vom UASt seit dem 1. 1. 62, dem Beginn der 2. Stufe, gegen Art. 95 a.a.O. verstoße. Da der EWG-Vertrag innerdeutsches Recht geworden sei (durch das Zustimmungsgesetz vom 27. 7. 57[2]), gebe er dem einzelnen Staatsbürger einen bei den Steuergerichten verfolgbaren Rechtsanspruch

1) EFG 1966 S. 24.
2) BGBl 1958 II S. 1.

auf seine Beachtung. Er gehe entgegenstehenden nationalen Gesetzen vor.

Das Finanzgericht wies die Berufung als unbegründet zurück. In seiner Urteilsbegründung führte es u.a. aus:

Diskriminierung nur durch gesetzgeberische Maßnahmen zu beseitigen

Entgegen der Ansicht der Bfin. äußert Art. 95 a.a.O. keine unmittelbare Wirkung hinsichtlich der Gültigkeit ihm widersprechender nationaler Bestimmungen, läßt vielmehr, wie sein Wortlaut zeigt, die Steuerhoheit der Mitgliedstaaten grundsätzlich unangetastet. Wird also im Einzelfall festgestellt, daß die Erhebung einer inneren Abgabe diskriminierend wirkt und damit dem Art. 95 a.a.O. zuwiderläuft, so kann diese diskriminierende Wirkung nur durch eine entsprechende gesetzgeberische Maßnahme des betreffenden Mitgliedstaates beseitigt werden, nicht dagegen durch den einzelnen Staatsbürger mit Hilfe eines gegen die Erhebung der inneren Abgabe bei den nationalen Gerichten eingelegten Rechtsmittels. Dies gilt auch für die UASt, die, obwohl sie anläßlich der Einfuhr erhoben wird keine zollgleiche Abgabe im Sinne von Art. 12 ff. a.a.O. ist, als Teil der Umsatzsteuer vielmehr zu den von Art. 95 a.a.O. erfaßten inneren Abgaben zählt. Sie muß als solche der Steuerhoheit der Mitgliedstaaten verbleiben, wenn sie im Einzelfall auch zollgleiche Wirkung hat. Das bedeutet, daß man, wenn festgestellt wird, daß die Erhebung von UASt auf eine bestimmte Ware dem Art. 95 a.a.O. zuwiderläuft, die Bundesrepublik Deutschland aber ihrer in Art. 95 übernommenen Verpflichtung, bis zum Beginn der 2. Stufe am 1. 1. 62 zu prüfen, ob und in welchen Fällen es gesetzgeberischer Maßnahmen zur Beseitigung diskriminierender Wirkungen bedarf, nicht nachgekommen ist, die Beseitigung dieser Wirkungen allenfalls durch eine gegen die Bundesrepublik Deutschland gerichtete Leistungsklage erreicht werden kann, nicht aber im Verfahren vor den Steuergerichten[1]).

UASt für alle Waren (Ausnahmen in Freiliste 1)

Die Herauslösung der UASt aus der Steuerhoheit der Bundesrepublik Deutschland verbietet sich auch aus folgenden Gründen. Mit Ausnahme der in der Freiliste 1 aufgeführten Waren sind unterschiedslos alle Waren anläßlich der Einfuhr der UASt unterworfen, darunter auch solche, bei denen es des Ausgleichs einer inländischen Umsatzsteuer-Belastung nicht bedarf. Die Steuersätze sind ohne Rücksicht auf die durchlaufenden Umsatzphasen und die Umsatzsteuer-Belastung der entsprechenden inländischen Waren ganz roh festgesetzt. Es handelt sich praktisch um Durchschnittssätze, die die inländische Allphasen-Gesamtbelastung gleichartiger Waren nur ganz grob und, weil sie im Regelfall nur eine ausländische Umsatzphase berücksichtigen, nur teilweise ausgleichen. Eine Prüfung, ob und inwieweit diese Durchschnittssätze die Belastung gleichartiger inländischer Waren mit Umsatzsteuer ausgleichen, macht umfangreiche Erhebungen und Berechnungen erforderlich.

Diese Erhebungen und Berechnungen, die sich im Hinblick auf Art. 95 a.a.O. auf die Feststellung der unmittelbaren und mittelbaren Umsatsteuer-Vorbelastung der gleichartigen inländischen Waren d.h. auch auf die Umsatzsteuer-Belastung der Vorprodukte und Produktionsmittel zu erstrecken haben, können nicht Sache der

1) vgl. auch FG Nürnberg, Urteil v. 23. 4. 63 und 23. 3. 64 — EFG 1964 S. 282.

Steuergerichte sein, müssen vielmehr dem Gesetzgeber vorbehalten bleiben[1]). Das muß jedenfalls dann gelten, wenn Umsätze mit gleichartigen inländischen Waren nicht in allen Phasen steuerfrei sind oder wenn gleichartige inländische Waren von den Vorprodukten bzw. Produktionsmitteln her mit Umsatzsteuer vorbelastet sind. Vorliegend ist die letztere Alternative gegeben.

Umsätze mit erworbenem und mit aus erworbenem Erdöl hergestelltem Gasöl sind steuerfrei, aus inländischem Erdöl hergestelltes Gasöl ist aber, da dem Erdölererzeuger keine Befreiungsvorschrift zur Seite steht, mit Umsatzsteuer vorbelastet (Vorprodukt und Produktionsmittel).

1) vgl. auch B/H Urt. VII 43/60 v. 26. 7. 61 BStBl 1961 III S. 411 unter I.

SOURCE: *Nachrichten für Außenhandel, den* 1. *Februar* 1966, *V.W.D. Vereinigte Wirtschaftsdienste GmbH, Frankfurt/Main (German Federal Republic)*

USA

DOCUMENTS

ALIMONY AND SEPARATE MAINTENANCE PAYMENTS TO NONRESIDENT-ALIENS

Advice has been requested whether assigned trust income paid annually to the taxpayer, a nonresident-alien, pursuant to a divorce decree incorporating a separation agreement with her former husband, is taxable to her as alimony payments under section 71 of the Internal Revenue Code of 1954, or constitutes fiduciary income to her as the beneficiary of a trust under section 682 of the Code.

The taxpayer, a citizen and resident of Denmark was divorced from her husband by a Danish decree which incorporated a separation agreement. Pursuant to the agreement, the husband made an irrevocable assignment and absolute transfer for the rest of his life of an annual amount to be paid in monthly installments from the income of a trust fund created in Illinois by the husband's father. The husband had a life interest in the income of the trust and testamentary power of appointment over the corpus. Also, the husband undertook to provide by will for continuance after his death of one-half of the corpus of the trust created by his father as a trust fund from which the taxpayer would receive the income during her lifetime. Following her death and the death of the husband, the corpus would pass to issue of the husband. Prior to her death, the taxpayer could leave her share of the corpus of the trust with the Illinois trustee following the husband's death or might have it transferred to the Public Trustee in Copenhagen, Denmark.

If the assigned trust income is considered to be trust income distributed to a beneficiary under section 682 of the Code, the character of the income to the beneficiary is the same as it was in the hands of the distributing trust under the trust conduit rules provided by sections 652(b) and 662(b) of the Code. Such characterization of distributed trust income would then be a factor in applying the provisions of the United States-Kingdom

of Denmark Income Tax Convention, published in Treasury Decision 5777, C.B. 1950-1, 76, in determining the tax liability on such income.

Section 7.957 (c) (redesignated 521.108(c)), of the regulations under the United States-Kingdom of Denmark Income Tax Convention provides, in part, that a nonresident alien who is a resident of Denmark and who is a beneficiary of a domestic estate or trust shall be entitled to the exemption, or reduction in the rate of tax, as the case may be, provided in Articles VI, VII, and VIII of the convention with respect to dividends, interest, and royalties to the extent that such item or items are included in his distributive share of income of such estate or trust if he at no time during the taxable year had a permanent establishment in the United States.

Section 71 (a) (1) of the Code provides that if a wife is divorced or legally separated from her husband under a decree of divorce or of separate maintenance, the wife's gross income includes periodic payments (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise, in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the husband under the decree or under a written instrument incident to such divorce or separation.

Section 682(a) of the Code provides, in part, that there shall be included in the gross income of a wife who is divorced or legally separated under a decree of divorce or of separate maintenance the amount of the income of any trust which such wife is entitled to receive and which, except for this section, would be includible in the gross income of her husband.

Section 682(b) of the Code provides, in part, that for purposes of computing the taxable income of a trust and the taxable income of a wife to whom section 682(a) or section 71 applies, such wife shall be considered as the beneficiary specified in this part. A periodic payment under section 71 to any portion of which this part applies shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

Section 1.682(a)-1(a) (2) of the Income Tax Regulations provides, as follows:

> (2) Section 682(a) does not apply in any case to which section 71 applies. Although section 682(a) and section 71 seemingly cover some of the same situations, there are important differences between them. Thus, section 682(a) applies, for example, to a trust created before the divorce or separation and not in contemplation of it, while section 71 applies only if the creation of the trust or payments by a previously created trust are in discharge of an obligation imposed upon or assumed by the husband (or made specific) under the court order or decree divorcing or legally separating the husband and wife, or a written instrument incident to the divorce status or a written legal separation agreement. If section 71 applies, it requires inclusion in the wife's income of the full amount of periodic payments received attributable to property in trust (whether or not out of trust income)

Senate Report No. 1631, 77th Congress, 2nd session, C.B. 1942-2, 504, at 568, in explaining the addition of sections 22(k) and 171(b) of the Internal Revenue Code of 1939

(now sections 71(a) and 682(b), respectively, of the Internal Revenue Code of 1954), indicates that a wife receiving alimony payments from a trust is to be treated as a beneficiary merely for the purpose of applying the rules of trust accounting. Thus, the reference in section 682(b) of the 1954 Code to the wife as a beneficiary is only for this limited purpose and not for the purpose of applying the trust conduit rules. This interpretation is confirmed by the example in section 1.682(b)-1 (b) of the regulations, where a wife subject to tax under section 71 is required to include in her gross income a payment from trust corpus. Also, section 1.71-1(b) (5) of the regulations treats a wife receiving alimony payments from a trust as a beneficiary for the purpose of determining the year in which amounts distributed or distributable to her must be included in her gross income.

No significance, therefore, should be attached to the payment of alimony from income or capital, since the source of payment is not material. Moreover, the provisions of section 682(b) of the Code are important to the wife only in determining the taxable year in which the payments are to be included in the wife's gross income. See *Albert R. Gallatin Welsh Trust* v. *Commissioner*, 16 T.C. 1398 (1951), affirmed per curiam sub nom. *Girard Trust Corn Exchange Bank* v. *Commissioner*, 194 Fed. (2d) 708 (1952), certiorari denied, 344 U.S. 821 (1952); *Muriel Dodge Neeman* v. *Commissioner*, 26 T.C. 864 (1956), affirmed per curiam, 255 Fed. (2d) 841 (1958); and *Daisy M. Twinam* v. *Commissioner*, 22 T.C. 83 (1954), acquiescence, C.B. 1954-2, 6.

A wife is subject to tax under section 71 (a) of the 1954 Code on the full amount of periodic payments made to her in discharge of an obligation imposed upon the husband pursuant to the decree of divorce. See, in this connection, section 1.71-1(c) (2) of the regulations which provides that the full amount of periodic payments received under the circumstances described in section 71(a) of the Code is required to be included in the gross income of the wife regardless of the source of such payments. Thus, it is immaterial that such payments are attributable to property in trust, to life insurance, endowment, or annuity contracts, or to any other interest in property, or are paid directly or indirectly by the husband from his income or capital.

Accordingly, the annual payments received by the taxpayer from trust income for her maintenance and support, pursuant to a divorce decree incorporating a separation agreement with her husband, constitute alimony payments to her under section 71 of the Code. The trust conduit rules are not applicable to such payments received by the taxpayer, since she is treated as a beneficiary under section 682(b) of the Code merely for the purposes of computing the taxable income of the trust and determining the taxable year in which the alimony payments are to be included in her gross income. Consequently, the provisions of the United States-Kingdom of Denmark Income Tax Convention and the regulations, *supra*, with respect to exemptions, or reduction in the rate of tax, on interest and dividend income, respectively, are not applicable to such payments and the payments are subject to Federal income tax and withholding of the tax at source at the rate of 30 percent, under section 1441 of the Code. Compare Revenue Ruling 54-53, C.B. 1954-1, 156 with respect to the tax convention and protocol between the United States and Sweden.

Revenue Ruling 65-283.

III

TREATIES

AMENDMENT OF U.S. – U.K. TAX TREATY SUMMARY OF THE TERMS OF AGREEMENT

January 5, 1966

It was announced that representatives of the United Kingdom and the United States had agreed in principle on the terms of a protocol amending the income tax convention between the two countries. Amendment of the convention was considered desirable because of changes made in the tax law of the United Kingdom by the Finance Act of 1965. The following is a brief outline of the more important provisions of the protocol.

A major amendment to the treaty made by the protocol provides that the rate at which tax will be withheld by the two countries on dividends from a corporation of one country received by residents of the other shall not exceed 15 percent.

Under the treaty as presently in force, the United States may withhold tax at the rate of 15 percent on such dividends except where the dividend is received by a U.K. corporation controlling at least 95 percent of the voting power of the U.S. company paying the dividend, in which event the maximum rate of withholding is 5 percent. The only restriction in the existing treaty on the right of the U.K. Government to tax dividend payments prohibits the levy of U.K. surtax on such payments.

On June 30, 1965, the United States gave notice of termination of these dividend provisions of the existing treaty, which termination is effective January 1, 1966, with respect to dividends from a U.S. corporation, and April 6, 1966, with respect to dividends from a U.K. corporation. Consequently, as of those dates the rate of withholding tax levied by the two countries on dividends from a corporation of one country received by residents of the other would be, in the absence of the protocol, the statutory rate provided by the laws of the two countries, i.e., 30 percent in the case of the United States and 41¼ percent in the case of the United Kingdom. However, the protocol provides that the 15 percent limit on the withholding tax rate on dividends established by it shall become effective on the same dates on which notice of termination of the dividend provisions of the existing treaty becomes effective, January 1, 1966, in the case of the United States and April 6, 1966, in the case of the United Kingdom. Dividends received on or after such dates and prior to the ratification of the protocol will be subject to withholding at the above statutory rates, but appropriate refunds will be made after ratification of the protocol. Such refunds will be made by the persons withholding the tax or, if such tax has been paid over to the respective government, by such government.

In addition, the protocol provides that the 15-percent dividend withholding rate will apply as a maximum rate to dividends paid by a U.K. corporation prior to April 6, 1966, if such dividends are regarded by the United Kingdom as subject to income tax under Section 83 of the Finance Act 1965 because such dividends are in excess of the standard amount of dividends ordinarily paid by such U.K. corporation.

Another major change which the protocol makes in the treaty is to provide that no credit shall be allowed by either country to its residents who receive a dividend from a corporation of the other country for corporate tax paid by the corporation paying such dividend on the profits out of which such dividend is paid unless the recipient is a corporation owning at least 10 percent of the voting power of the corporation paying the dividend. Under the existing treaty, a resident of one of the countries receiving a dividend from a corporation of the other was entitled to credit for corporate tax paid by such corporation. Each country will allow credit to its residents for tax withheld by the other country on dividends paid to such residents by corporations of such other country. These changes are effective in the case of U.S. residents with respect to dividends paid by a U.K. corporation on or after April 6, 1966, and in the case of U.K. residents with respect to dividends payable by a U.S. corporation on or after the date of ratification of the protocol or, for corporation tax purposes, April 6, 1966, whichever is later. Further consideration is being given to the proper treatment governing the credit allowed for U.K. tax to U.S. corporations receiving dividends prior to April 6, 1966, where the U.S. corporation receiving the dividend owns 10 percent or more of the voting power of the U.K. corporation paying such dividend and such dividend is paid, under U.S. tax law, out of profits which have been subject to U.K. corporation tax.

In addition to the foregoing provisions, the protocol continues an exemption from tax for interest and royalties paid by residents of one country to residents of the other.

The protocol also provides that deductions for tax purposes shall be allowed to corporations of one country for interest and royalties paid to residents of the other (apart from royalties and interest paid by a U.K. corporation before April 6, 1966, for which the paying company will have had relief for income tax); but there are certain exceptions, notably where the recipient corporation is controlled by residents of the other country.

The provisions of the protocol exempting interest and royalty payments from withholding tax only apply if such interest and royalties are not effectively connected with a permanent establishment maintained by the recipient thereof in the country from which such payments are made. In the case of dividends, the protocol provides that the tax on dividends received by such a permanent establishment shall not exceed 15 percent except in certain enumerated circumstances, notably if the profit on the sale of the shares on which the dividend is paid would be taxed as a trading receipt in the United Kingdom.

The exemption from tax applicable to interest and royalties and the reduced rate of tax applicable to dividends are not generally conditioned on the recipient of these payments being subject to tax. Such a condition, which does appear in the comparable provisions of the existing treaty, will apply only in certain enumerated circumstances.

The protocol also contains provisions exempting residents of one of the countries from the capital gains tax of the other. However, under this provision in the protocol, the United States may apply its capital gains tax if a resident of the United Kingdom is present in the United States for 183 days during the taxable year in which such gain is realized. In the case of the United Kingdom, the exemption from U.K. capital gains tax provided in the protocol applies with respect to gains subject to such tax for any year of assessment beginning on or after April 6, 1965. In the case of the United States, the

amended provision is applicable to gains realized on or after the date of ratification of the protocol; until such date, the present complete exemption from U.S. capital gains tax provided in the existing treaty will continue in effect.

Other provisions of the protocol include those relating to the taxation of business profits to eliminate the force of attraction approach; the definition of "recognized stock exchange" for purposes of the U.K. tax law; consultation between the competent authorities of the two governments to avoid double taxation, and nondiscrimination. The last mentioned provision provides that it shall not affect the right of either country to levy tax on certain dividends at the rate of 15 percent.

In general, the provisions of the protocol become effective in the case of the United States on January 1, 1966, and in the case of the United Kingdom the protocol becomes effective for purposes of U.K. corporation tax and capital gains tax for all years to which such taxes apply, and for purposes of U.K. income tax and surtax for all years of assessment beginning on or after April 6, 1966. However, as noted above, certain provisions become effective at other times.

The amendments made by the protocol do not affect the application of the treaty to certain territories outside the United Kingdom to which the treaty previously has been extended by mutual agreement between the two countries. In the case of such territories, the treaty as in affect on December 31, 1965, including Article VI thereof, will continue to apply.

SIGNING OF SUPPLEMENTARY INCOME-TAX CONVENTION U.S.A. — THE NETHERLANDS

Secretary of State Dean Rusk and the Netherlands Ambassador, His Excellency Carl W. A. Schurmann, signed December 30, 1965 a supplementary convention modifying and supplementing the convention of April 29, 1948, between the United States and the Netherlands, for the avoidance of double taxation with respect to taxes on income and certain other taxes.

The primary purposes of the supplementary convention are to make it possible for the Netherlands Government to impose withholding tax on dividends derived from Netherlands sources by United States citizens, residents, and corporations; to modernize the existing convention by bringing it more closely into line with more recent income-tax conventions concluded by the United States; and to reflect certain principles expressed in the model income-tax convention proposed by the Organization for Economic and Cultural Development.

Article 1 amends the definitions of "United States" and "permanent establishment". Article 2 amends the provisions dealing with taxation of industrial and commercial profits derived in one of the countries by an enterprise of the other country. Article 3 modifies the rule authorizing allocation of income among related enterprises. Article 4 modifies the provisions regarding income derived from real property so as to exclude from their application interest from mortgages secured by real property and to provide that mineral royalties may be taxed in the country where the mine, quarry or natural

resource giving rise to the royalty is located. Article 5 revises the provisions dealing with the taxation of dividends, including a provision whereby the Netherlands may impose withholding tax on dividends paid by a Netherlands corporation to a United States resident or corporation at rates corresponding to those presently provided for in the convention with respect to dividends paid by United States corporations to Netherlands residents or corporations. The "force of attraction" rule with respect to dividends is abandoned; dividends received by a company of one of the countries from sources within the other country which are not "effectively connected" with a permanent establishment in the country from which the dividends originate will qualify for the reduced treaty rate. Article 6 amends the provisions regarding interest by providing for a reciprocal exemption of interest. Article 7 revises the provisions dealing with royalties by expanding the definition of what constitutes royalties for purposes of the article. Article 8 provides for reciprocal tax exemption, except in limited instances, for capital gains other than those arising from the sale of real property. The "force of attraction" rule is abandoned also in the cases of Article 6, 7, and 8. Article 8A modifies the "governmental salaries" provisions by limiting the exemption for compensation and pensions paid by one of the countries or its political subdivisions to an individual in the other country so as to apply only to compensation and pensions paid to a citizen of the paying country for services rendered to that country or political subdivision in the discharge of governmental functions. Article 9 makes certain drafting changes in the provision dealing with personal services and expands the class of persons for whom the employee may work and be able to take advantage of the exemption provided. Article 10 expands the scope of the provisions relating to exemptions for professors or teachers. Article 11 expands the scope of the provisions relating to students and business apprentices. Article 12 revises the provisions dealing with the relief afforded by each of the countries against double taxation. Article 13 amends the provisions under which a taxpayer can initiate consideration of his case if a problem of double taxation is involved. Article 14 broadens the non-discrimination provision by making it applicable to a permanent establishment which a citizen or corporation of one of the countries has in the other country as well as to corporations the capital of which is wholly or partly owned by citizens or corporations of the other country. Article 15 provides that the supplementary convention shall apply only to that part of the Kingdom of the Netherlands situated in Europe.

Articl 16 provides for ratification and for entry into force of the supplementary convention on the exchange of instruments of ratification, to be effective, with certain exceptions, for taxable years begining on or after January 1 of the year following that in which the exchange takes place. Special provisions are included regarding the effectiveness of the revised provisions on dividend taxation as set forth in Article 5 of the supplementary convention.

The supplementary convention will be transmitted to the Senate for advice and consent to ratification.

THE TEXT OF THE TREATY WILL BE PUBLISHED IN A COMING ISSUE OF SUPPLEMENTARY SERVICE TO EUROPEAN TAXATION, PUBLICATION OF THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION.

IV

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The World Tax Series is a series of per country tax surveys, published under the direction of the Harvard Law School, Division International Program in Taxation. At present surveys on taxation in Austria, Brazil, Germany, India, Italy, Mexico, Sweden, the United Kingdom, and the United States have been published. To this series Taxation in Columbia is a welcome addition. This book follows the usual pattern of its predecessors in order to achieve two basic goals:

- to describe each tax system in its own legal and administrative terms,
- and to present each system so that it can be compared point by point with other country surveys of this series.

For this latter purpose all chapters have been numbered and have numbered subchapters, paragraphs and sub-paragraphs. Each topic is for each country discussed under the same number.

The volume is divided into three parts.

Part I describes the background and the entire tax structure of Columbia;

Part II contains a detailed analysis of the national income tax;

Part III analysis all other taxes.

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IV — BIBLIOGRAPHY

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

HISTORY

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

In 1946, the Bureau began publication of the *Bulletin for International Fiscal Documentation,* the official organ of the International Fiscal Association. This publication has been supplemented by various special publications. In 1961, the Bureau published the first issue of *European Taxation,* a fortnightly English language review of tax developments on the European Continent, in the United Kingdom and in Ireland, followed in 1963 by two loose-leaf services, *Supplementary Service to European Taxation* and *The Taxation of Patent Royalties, Dividends and Interest in Europe.* During that time span the Bureau also published the Germany original of the well-known book by Dr. Albert J. Rädler about taxation in the common market countries. As of January, 1965, European Taxation is published monthly and the number of pages has been considerably increased. A new loose-leaf magazine *"Tax News Service"* was started, bringing rapid information of tax events all over the world. The Bureau continuously assisted in translating and preparing tax materials for other publications. Additionally, its library was greatly expanded and now contains well over 7500 volumes on national and international tax matters, as well as more than 300 selected periodicals; many visiting researchers make use of these library facilities.

GOALS

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

Organization

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

The Bureau is separated into four divisions: Library and Documentation, which is responsible for acquisition and maintenance of tax materials; International Tax Service, which prepares reports for governmental, business and scholarly purposes; Publications Department, which is responsible for the whole gamut of the Bureau's publications; and the Administrative arm, which plans and coordinates Bureau activities.

Correspondents

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

The program

1. *Training*

The Bureau seeks to prepare young lawyers and economists to meet the growing demand for international tax experts and offers to young post-graduates from developed and developing countries the opportunity to work with the Bureau.

2. *Research*

The Bureau is focusing its research efforts upon a significant contemporary problem—the relationship between capital exporting nations and developing countries. Other important research projects include studies of the tax aspects of economic integration and of the influence of tax incentives on economic growth.

3. *Education*

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

4. *Library and Documentation*

The Bureau's program of cataloguing and completing its set of materials will be continued in the framework of its library facilities which were much improved as a result of the move in 1963 to new quarters in an old city gate of Amsterdam.

5. *Reports*

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

EDITORIAL

In this issue the text of the agreement between Sweden and Brazil for the avoidance of double taxation with respect to taxes on income and capital has been published. More South American countries will enter into tax negotiations with European countries. It was noted in Tax News Service of November 30, 1965 that an Argentinian delegation met authorities from Austria, Belgium, the German Federal Republic and the United Kingdom regarding the drafting of treaties for the avoidance of double taxation. Progress in this direction was reported, and the United Kingdom has agreed on a draft agreement as a basis for discussions in 1966. We think the integration of South American countries in the network of tax treaties an important development of international tax law.

The EEC document on concentrations of enterprises in the common market may also be considered an important point of departure. An extract of this document has been published in the official *German* language on p. 137 of this issue. In the area of TAXATION *inter alia* the following conclusions were drawn (p. 142):

- it is recommended that proposals be drafted for the amendment and harmonisation of taxation of parent and subsidiary corporations in particular with respect to dividend payments, and that a general study be made as to the way in which tax obstacles to the proper functioning of related groups of corporations can be eliminated.

- it is suggested that ways be found to eliminate tax barriers to mergers and consolidations, particularly when such arrangements between corporations of different countries are permitted under corporate law. In this connection a harmonisation of the treatment of capital gains deemed realized on such mergers and consolidations would be most desirable.

- the analysis stresses the need for the harmonisation of the direct tax systems of the member countries, in particular with respect to provisions dealing with investment and profit distribution.

DR. J.C.L. HUISKAMP

CONTENTS

I

TAXATION OF PATENT INCOME IN FRANCE

by PATRICK DURAND*

Patent income derived either from patent royalties or from the sale of a patent is subject in France to different methods of taxation according to the status of the recipient.

The "inventor" under French tax law is the individual or entity whose name appears as inventor in the patent office. Inventions developed by an employee of a corporation may be filed and registered under the name of the corporation without mention of the individual. In such cases, the corporation is the "inventor" for tax purposes, not the individual.[1]

The following comments are applicable to those individuals or corporations who for tax purposes are considered French residents, irrespective of their nationality or domicile.

I – PATENT INCOME OF INDIVIDUALS

The tax treatment of patent income is differentiated according to whether the individual recipient is also the inventor.

A – PATENT INCOME OF AN INDIVIDUAL INVENTOR.

As previously stated patent income may result either from royalties or from the proceeds of a sale.

1) *Royalties*

Patent royalties received by the inventor of the patent constitute ordinary income of the recipient and are subject to the individual income tax (impôt sur le revenu des personnes physiques) at the applicable standard rate. (For detailed tax rates, see Supplementary Service to European Taxation, Section B.)

However, the French tax code permits inventors a minimum expense deduction equal to 30% of the gross royalties received.[2] The minimum expense deduction is, in fact, a minimum deduction. Actual expenses in excess of the minimum may be deducted, provided the taxpayer is able to supply the necessary evidence.

*) Mr. Durand holds the degree Docteur en Droit and is a tax consultant in Paris and member of the British Bar.

1) The position of the employee inventor has been the subject of an important report issued by the French Conseil Economique on 15 December 1965 (reference 1047/Sec. 2/79).

The author, Mr. Pierre Ribes, suggests that certain tax advantage might reasonably be granted to such employees as a research incentive. Of course, these suggestions do not constitute law, but the Government has acted on such suggestions in the past.

2) Code Général des Impôts, Art. 93 (2).

2) *Proceeds of the sale of a patent*

Article 92 of the French tax code (Code Général des Impôts) provides that income derived from the sale of a patent by the inventor constitutes a tax-free capital gain, provided four conditions are fulfilled:

- the sale must be definite and registered in the patent office[3];
- a patent must be sold, and not only a patentable invention. The involved patent must, therefore, be issued by the French patent office[4];
- the contract of assignment must benefit the inventor only and exclusively[5];
- the assignment must provide that the inventor transfer all his rights in the patent and in no way participate in its exploitation[6].

Because of the last limitation especially, great care should be taken in drafting the sales agreement: for example, any clause binding the inventor to supply technical assistance to the purchaser may result in a part or the whole of the sales price being subjected to tax. The French tax administration may view that portion of the price allocable to the personal services as ordinary income and tax it as such or even deny the exemption entirely. There exist no very definite rules to be applied to the matter, each case having to be determined according to its merits. However, with respect to other aspects, rulings have been issued by the French tax administration, which rulings may be summarized as follows:

the inventor will be deemed to participate in the exploitation of his patent and, therefore, will be liable to income tax on the proceeds of the sale:

- if he is a substantial shareholder of a corporation purchasing the patent;[7]
- if he is a director or an employee of such corporation;[8]
- if the sales agreement includes a covenant not to compete.[9]

A further complication arises as a function of the form of remuneration. Two situations are immediately apparent: the inventor may sell his patent

- for a fixed sum, or
- for a variable remuneration related to the patent's use and generally represented by a percentage of the total sales price of the patented product.

The first situation poses no difficulties. If, for instance, an inventor sells a patent for a fixed sum, the income will constitute a tax-free capital gain, provided the inventor fulfills the four conditions above.

3) Circulaire Contributions Directes of 31 July 1948, No. 2248, page 8.

4) This is implied from the French patent law of 5 July 1844, modified by the Decree-Law of 30 September 1953. Moreover, Art. 92 (2) of the Code Général des Impôts does not create any special treatment for manufacturing processes as opposed to patents and thus seemingly non patented inventions will be treated as manufacturing processes.

5) Decisions of the Conseil d'Etat of 23 June 1933, 12 January 1934, 23 April 1956, 14 April 1956 and 9 June 1951.

6) Circulaire Contributions Directes of 31 July 1948, No. 2248, page 8. Réponse ministérielle J.O. 26 March 1958. A.N. p. 1964, No. 3137. Decisions of the Conseil d'Etat of 23 April 1956, 27 March 1931, 16 May 1941, 1 July 1935 and 17 July 1944.

7) Réponse ministérielle J.O. 10 November 1955, Déb. A.N., page 5624, No. 17 614.

8) Decision of the Conseil d'Etat, 27 March 1931. Réponse Ministre des Finances, J.O. Déb. A.N. 7 December 1962, No. 2679, page 1345. and see fn. 6, *supra*.

9) Decision of the Conseil d'Etat of 17 July 1944.

Where the sales price is computed by reference to the use of the patent, the income realized may nevertheless constitute a tax-free capital gain in the hands of the inventor, again, provided the four above conditions are fulfilled.

The difficulty in the variable remuneration setting is very simply that a sale for a variable remuneration looks very much like an ordinary licensing agreement. If an ordinary licensing agreement is for tax purposes denominated a sale, the tax authorities may claim abuse of law (abus de droit) and treat the "sales proceeds" as royalties. For this reason, it is once again of the utmost importance that the relevant agreement be carefully drafted, as the line between a sale for a variable remuneration and an ordinary patent license is not easily determined.

It is interesting to note that in the case of a sale for a variable remuneration the purchaser will be entitled to deduct all payments as a business expense in computing his taxable income. The French tax administration has ruled that because of the difficulty in apportioning such payments into their capital expense and deductible expense elements, all such payments qualify as deductible expenses.[10]

Thus, although remuneration is treated as a capital gain from the sale of a patent in the hands of the recipient, the purchaser may treat the payments as if the transaction were an ordinary licensing agreement.

For this reason the French tax authorities are all the more anxious to distinguish between the sale of a patent for a variable remuneration and an ordinary licensing agreement.

B – PATENT INCOME OF AN INDIVIDUAL OTHER THAN THE INVENTOR.

Patent income may be realized by an individual other than the inventor in a number of ways. Thus the inventor may transfer to another individual the rights to receive royalty income from a patent or the rights to receive the as yet unpaid variable remuneration from the sale of a patent concluded by the inventor. On the other hand, the inventor may transfer the patent itself or rights herein. The transferce might in turn sell or sublicense such rights.

As a general rule, the transferce receives none of the benefits accorded the inventor.[11]

However, a ruling of the French tax administration provides that where tax-free capital gain treatment is accorded to the proceeds of a patent sale, even if such sales proceeds were payable in the form of a variable remuneration, the favorable treatment will also be accorded the heir, legatee or intervivos donee of the inventor (ruling of the Ministry of Finance, 9 June 1962—Journal Officiel, 9 June 1962, page 1630—No. 12 797). The legatee or inter vivos donee can quality for such favorable treatment only if he is the descendent of the inventor.

II – PATENT INCOME OF CORPORATIONS

As a general rule corporate profits, including those realized by way of patent royalties

10) Decision of the Conseil d'Etat of 28 April 1947.
11) Decisions of the Conseil d'Etat of 6 April 1959, 11 December 1950, 21 November 1960. Réponse ministérielle J.O. 26 March 1958. A.N. page 1964, No. 3137

or the sale of a patent, constitute ordinary income and are liable as such to the corporate income tax (impôt sur les sociétés) at the rate of 50%.

Certain patent income of corporations received favourable tax treatment by virtue of the law of 31 July 1962. However, the law of 12 July 1965 modified basic aspects of corporate taxation in France, including the taxation of patent income. It is, therefore, interesting to compare the current system to that applicable prior to 12 July 1965.

A – TAXATION SYSTEM BEFORE 12 JULY 1965.

1) *Royalties.*

Royalties received by a corporation are generally taxable as ordinary trading income at the standard rate of corporation tax. However, the law of 31 July 1962 instituted a most interesting system which may be summarized as follows:

Income from a patent licensing agreement was deemed to constitute a tax-free capital gain (plus-value), provided that i) the patent royalties were re-invested by the corporate recipient in accordance with the provisions of article 40 of the French tax code (exonération des plus-values de cession d'éléments d'actif sous condition de remploi), ii) that the patent license was exclusive and was granted for the whole life of the patent, and iii) that the patent constituted a fixed asset (élément d'actif immobilisé) and was amortized in equal amounts over its entire life.

2) *Sale of a patent.*

The gain realized on the sale of a patent, whether invented by the corporation or acquired from a third party, could also qualify for tax exemption if re-invested according to article 40 of the French tax code.

B – THE LAW OF 12 JULY 1965

Article 40 of the French tax code relating to re-investment of captal gains has been effectively abrogated by the new law which provides different tax treatment for long-term and short-term capital gains.

Generally, gains are long-term capital gains if realized on the sale of an asset held for more than two years. However, gain from the sale of a patent qualifies for long-term treatment without limitation as to the holding period if the corporation is the inventor.[12]

Short-term capital gains are all those other than long-term capital gains. They are taxed as ordinary trading income at the standard rate of corporate income tax of 50%, whereas long-term gains are taxed at a reduced rate of 10%.

Article 10 of the new law provides long-term capital gains treatment to profits derived from exclusive license agreements under conditions to be defined by a further decree (décret d'application), provided that the patent was either invented by the corporation itself or acquired for a valuable consideration more than two years previously.

It is, therefore, contemplated that the new system will ultimately approximate that instituted by the law of 31 July 1962. However, the tax authorities have not yet issued rulings so that substantial uncertainty yet remains.

[12]) Article 9 (3) of the law of 12 July 1965. See also Francis Lefebvre – Feuillets Rapides 1965, No. 34, page 46, No. 21.

EEC

DOCUMENTS

*Das Problem der Unternehmenskonzentration im gemeinsamen Markt**
(Auszug)

DIE STEUERRECHTLICHE PROBLEMATIK DER UNTERNEHMENSKONZENTRATION

Eine Konzentration kann vor allen Dingen durch rechtsförmliche Verschmelzung (Übernahme einer Gesellschaft durch eine andere oder Gründung einer neuen Gesellschaft) oder durch Beteiligung und Gründung einer Gruppe rechtlich verschiedener Gesellschaften vorgenommen werden.

I. DIE STEUERLICHEN VORAUSSETZUNGEN DES KONZENTRATIONSVORGANGS

1. *Verschmelzung mehrerer Gesellschaften zu einer einzigen*

Diese Form der Konzentration hat in der Regel schwierige und steuerlich kostspielige Vorgänge zur Folge, sofern der Gesetzgeber keine besonderen Bestimmungen vorsieht.

Die Verschmelzung zieht die Auflösung der übernommenen Gesellschaft oder der beiden Gesellschaften, die zu einer dritten Gesellschaft fusionieren, nach sich. Es erfolgt somit eine „Unternehmenseinstellung" und grundsätzlich werden damit die bei Liquidation anfallenden Steuern fällig.

a) *Damit werden ertragssteuerpflichtig* die noch nicht versteuerten Rücklagen und Gewinne, insbesondere die stillen Reserven aus dem Unterschied zwischen den Bilanzwerten und den tatsächlichen Werten der Posten des Betriebsvermögens der verschwindenden Gesellschaft. Diese stillen Reserven oder Wertsteigerungen können in der Praxis sehr hoch sein, und eine normale Besteuerung würde damit die Verschmelzung prohibitiv gestalten.

aa) *Auf nationaler Ebene* sehen folglich alle Mitgliedstaaten Bestimmungen vor, mit denen die Besteuerung der Wertsteigerungen bei der Fusion inländischer Gesellschaften gemildert werden soll. Diese Maßnahmen können in einer Besteuerung zu ermäßigtem Satz oder in einer Verteilung der Steuerschuld auf mehrere Jahre oder schließlich in einer vorübergehenden Befreiung bestehen, die an gewisse Voraussetzungen ge-

*) Doc. SEK (65) 3500, Europäische Wirtschaftsgemeinschaft Kommission, 1. Dezember 1965.

knüpft ist, die Frage der späteren Besteuerung der Wertsteigerungen bei der übernehmenden oder aus der Verschmelzung hervorgegangenen Gesellschaft aber offenläßt.
bb) *Auf internationaler Ebene* wirft die Verschmelzung einer inländischen mit einer ausländischen Gesellschaft Steuerprobleme auf, die noch schwerer zu lösen sind. Die Regierungen zeigen wenig Neigung, eine günstigere Regelung für die Besteuerung der Wertsteigerungen zu gewähren, insbesondere wenn es sich um den Aufschub der Versteuerung handelt, da die nationale Gesellschaft als Steuerpflichtiger verschwindet und die Steuerverwaltung – falls das Betriebsvermögen der aufgelösten Gesellschaft nicht im Land verbleibt – die Möglichkeit ihrer späteren Besteuerung verliert.
cc) *Auf der Ebene einer europäischen Gesellschaft* stellt sich das Problem in der gleichen Weise. Die Übernahme der Gesellschaft eines Mitgliedstaates durch eine europäische Gesellschaft oder die Verschmelzung zweier Gesellschaften von verschiedenen Mitgliedstaaten zu einer europäischen Gesellschaft ist je nach Fall eine nationale Verschmelzung (vergleiche aa) oder eine internationale Verschmelzung (vergleiche bb).

In dem Maße, in dem die europäische Gesellschaft der steuerlichen Regelung des Landes oder der Länder, in denen sie ihre Einrichtungen hat, unterworfen bleibt, verliert dieses Land, wenn die Gesellschaft eines anderen Mitliedslands in die europäische Gesellschaft eingeht, seine steuerlichen Befugnisse über die eingegangene Gesellschaft. Bis zur erwarteten allgemeinen Harmonisierung der Besteuerungsbedingungen für Gesellschaften müßte man also die Möglichkeit in Betracht ziehen, ein gemeinschaftliches Steuersystem für die europäischen Gesellschaften allein vorzusehen, wobei anzustreben wäre, die Diskriminierungen zu begrenzen, die aus dem Nebeneinanderbestehen der nationalen steuerlichen Regelungen und dieser gemeinschaftlichen steuerlichen Regelung erwachsen könnten.

Jedenfalls könnte erwogen werden, daß die Mitgliedsländer die Bestimmungen, die sie für die Fusion zweier nationaler Gesellschaften vorsehen, auf die Fusionen ausdehnen, die die Schaffung einer europäischen Gesellschaft betreffen.

Abschließend kann also gesagt werden, daß eine Annäherung der nationalen Regelungen zur Besteuerung des Wertzuwachses bei Verschmelzungen mit dem Ziel angestrebt werden muß, in jedem Land die steuerlichen Hindernisse für Verschmelzungsvorgänge möglichst auszuschalten.

Diese Harmonisierung, die von Vereinbarungen über eine enge Amtshilfe zwischen den Steuerverwaltungen der Mitgliedstaaten begleitet sein muß, wird unabdingbar, wenn man rechtsförmliche Verschmelzungen auf internationaler Ebene fördern will.

b) Bei der Verschmelzung von Gesellschaften kommt ferner die *Gesellschaftsteuer in dem Augenblick zur Erhebung*, in dem das Vermögen der übernommenen Gesellschaft in die übernehmende oder neue Gesellschaft eingebracht wird.

Auf diesem Gebiet wird mit dem von der Kommission vorgelegten Entwurf einer Richtlinie die erwünschte Harmonisierung zwischen den Mitgliedstaaten durchgeführt und werden etwaige Doppelbesteuerungen internationaler Fusionen vermieden.

Nach der Richtlinie ist bei Fusionen ein um die Hälfte ermäßigter Gesellschaftsteuer-

satz (0,50%) vorgesehen. Diese Ermäßigung hat lediglich das Ziel, die Steuerneutralität zu gewährleisten, da ein Teil der Einbringungen im Falle der Fusion bereits die Steuer getragen hat, z.B. bei der Gründung der Gesellschaft.

2. *Beteiligungen und Bildung von Zusammenschlüssen*

Grundsätzlich stößt die Beteiligung an anderen Gesellschaften auf keine besonderen steuerlichen Hindernisse, da sich die Vorgänge des Aufkaufs oder des Austausches von Aktien in der Regel ohne jede Besteuerung abspielen. Es ist jedoch zu bemerken, daß Wertsteigerungen bei der Veräußerung einer Beteiligung auftreten und mitunter eine Besteuerung beim bisherigen Besitzer (der eine juristische oder eine natürliche Person sein kann) nach sich ziehen können. Damit kann die Regelung für Wertsteigerungen bei Aktien in Frage gestellt werden. Wenn es auch zweckmäßig wäre, eine Annäherung der nationalen Rechtsvorschriften auf diesem Gebiet zu prüfen, so ist das wichtigste Problem bei der Konzentration durch Beteiligungen und Bildung von Zusammenschlüssen doch die steuerliche Regelung, die auf den Zusammenschluß nach seiner Gründung Anwendung findet, insbesondere die Behandlung von Mutter- und Tochtergesellschaften.

II. DIE BESTEUERUNG VON UNTERNEHMEN NACH IHRER KONZENTRATION

Der Einfluß der Besteuerung auf die Konzentration äußert sich nicht nur in den Kosten des Konzentrationsvorgangs selbst, sondern auch in der Regelung, der die neue Wirtschaftseinheit künftig unterworfen wird.

1. *Nach der Fusion*

a) Soweit es sich um eine durch Fusion entstandene einzige Gesellschaft handelt, kann festgestellt werden, dass auf *nationaler Ebene* die Vorteile, die sich für vertikal integrierte Unternehmen aus dem Bestehen einer Kaskadenumsatzsteuer ergeben, mit der in den Richtlinienentwürfen über die Mehrwertsteuer vorgesehenen Beseitigung dieser Steuern aufhören werden.

Der in bestimmten Ländern angewandte progressive Satz der Steuer auf Gesellschaftsgewinne zielt anscheinend darauf ab, für Kleinunternehmen die wirtschaftliche Auswirkungen der Steuer auszugleichen, die für sie manchmal spürbarer sind als für die bedeutenderen Unternehmen.

Es lässt sich also feststellen, dass die laufende Besteuerung von Gesellschaften nur wenig Einfluss auf rechtsförmliche Fusionen auf nationaler Ebene hat. Zu betonen ist nur, dass die für die grossen Unternehmen ohnehin besseren Finanzierungsmöglichkeiten durch die Folgen der Steuerbestimmungen betreffs Neuinvestitionen noch erhöht werden dürften.

b) Wenn man davon ausgeht, dass die Hindernisse für den Fusionsvorgang selbst ausgeräumt werden, so kann auf *internationaler Ebene* eine günstigere Besteuerung von Gesellschaften in einem Mitgliedstaat als in einem anderen offensichtlich eine gewisse An-

ziehungskraft ausüben. Daraus ergibt sich die Notwendigkeit, eine Harmonisierung der direkten Steuern, insbesondere hinsichtlich der Behandlung von Investitionen und der Besteuerung von Kapitaleinkünften ins Auge zu fassen. Dieses Problem ist jedoch nur ein besonderer Aspekt des allgemeinen Problems des Einflusses der Besteuerung auf die Wahl des Investitionsortes, das sich namentlich bei der Gründung von Betriebsstätten oder Tochtergesellschaften stellt und nicht auf die internationale Fusion beschränkt ist.

c) Die Hypothese einer *europäischen Gesellschaft* bringt, wie bereits vorstehend ausgeführt, nur dann ein neues Element, wenn bis zur Erwarteten allgemeinen Harmonisierung der Besteuerungsbedingungen der Gesellschaften in den sechs Ländern eine gemeinschaftliche steuerliche Sonderregelung für europäische Gesellschaften eingeführt werden kann.

Nach dem Zusammenschluss

Während bei einer Konzentration durch rechtsförmliche Verschmelzung eigentlichen Fusionskosten, nicht aber die nach der Fusion anwendbare weitere laufende Besteuerung, den Vorgang unmöglich zu machen drohen, könnte bei einer Konzentration durch Zusammenschluss insbesondere das auf die untereinander verbundenen Gesellschaften anwendbare Steuersystem ein Hindernis für die Konzentration darstellen. Die steuerliche Regelung für Gewinne und Dividenden bei Mutter- und Tochtergesellschaften und Holdinggesellschaften, die Organschaftstheorie sowie die Theorie der konsolidierten Bilanzen könnten hier sowohl auf nationaler wie auf internationaler Ebene berührt werden.

a) *Auf nationaler Ebene.* Was zunächst die *Gewinnbesteuerung* betrifft, so vermeidet das Steuersystem in Deutschland, in den Niederlanden und in Luxemburg völlig die Doppelbesteuerung der von der Tochter auf die Mutter übertragenen Gewinne. In Frankreich ist die Doppelbesteuerung auf 20, 10 oder 5% der von der Mutter vereinnahmten Nettodividenden beschränkt (5% bei dem zur Zeit zur Diskussion stehenden Entwurf);* in Belgien ist sie auf 15 bzw. 5% beschränkt; in Italien ist sie auf die Körperschaftsteuer beschränkt, die zur Zeit den Charakter einer Zusatzsteuer trägt und nur einen geringen Anteil der Besteuerung der Gewinne ausmacht, die übrigens auch der Zedularsteuer (richezza mobile) unterliegen, die nur ein einziges Mal auf die gleichen Einkünfte erhoben wird.

Um in den Vorteil dieser Regelung zu kommen, müssen die Beteiligungen aber in Deutschland, Luxemburg und den Niederlanden mindestens 25% und in Frankreich mindestens 20% (10% nach dem neuen Entwurf)* betragen, während in Belgien keine Mindestbeteiligung verlangt wird.

Beim *Quellenabzug* für ausgeschüttete Gewinne sind die verschiedenen hierzu verwendeten Techniken auf eine nur einmalige Steuererhebung gerichtet: In Deutschland, Luxemburg und den Niederlanden ist die Tochter befreit, und die Steuer wird nur bei Wiederausschüttung durch die Mutter erhoben. In Belgien ist die Lage umgekehrt,

*) Dem Gesetz vom 12. Juli 1965 gemäß (Editor Bulletin).

während in Frankreich der Quellenabzug zwar in beiden Fällen vorgenommen wird, wobei jedoch im Falle der sofortigen Wiederausschüttung der erste Abzug auf den zweiten Abzug angerechnet werden kann. (Der neue französische Entwurf sieht jedoch die Beseitigung des Quellenabzugs zwischen steuerpflichtigen Gesellschaften und Personen in Frankreich vor.)

b) *Auf internationaler Ebene*. Belgien, die Niederlande und Frankreich wenden automatisch das nationale System auf Gewinne ausländischer Töchter an, während Deutschland und Luxemburg diese Erleichterung nur auf Grund von Abkommen gewähren. Die Anwendung des Quellenabzugs hängt ebenfalls von diesen Abkommen ab.

Sowohl auf nationaler wie auf internationaler Ebene besteht somit ganz allgemein eine gewisse Doppelbesteuerung der von der Tochter- auf die Mutter übertragenen Gewinne. Dies kann zweifellos eine Behinderung der Konzentration darstellen.

Weiter lässt sich sagen, dass zumindest bis heute die Erhebung der Quellensteuer in Belgien und Frankreich bei Abführung des Gewinns der Tochter- an die Muttergesellschaft die Zusammenführung der Finanzmittel der Gruppe bei der Mutter im Hinblick auf ihre spätere Verwendung beeinträchtigt. Dieses Problem wirkt sich auch in den Beziehungen zwischen den Mitgliedstaaten und bei der Gründung von Holdinggesellschaften aus.

Eine Harmonisierung der Regelung für Mutter- und Tochtergesellschaften und für Holdinggesellschaften wäre ausserordentlich wünschenswert. Bei gleichzeitiger Verbesserung der derzeitigen Lage müsste sie darauf abzielen, dass eine Bestrafung beim Bestehen von Gruppen von Gesellschaften gegenüber dem Bestehen einer einzigen Gesellschaft vermieden wird.

Auch die Probleme der Organschaft und der konsolidierten Bilanzen, bei denen es sich nicht um reine Steuerfragen handelt, könnten bei dieser Gelegenheit behandelt werden.

ERGEBNIS

Bei der Untersuchung der Situation innerhalb der einzelnen EWG-Staaten wurde deutlich, dass die Mittel der Unternehmenskonzentration im wesentlichen durch das nationale Gesellschaftsrecht zur Verfügung gestellt werden, die Wahl dieser Mittel indessen hauptsächlich unter dem Einfluss des Steuerrechts erfolgt. Die Unterschiede zwischen den einzelstaatlichen Rechtsformen und steuerlichen Belastungen von Unternehmenskonzentrationen können zu einem unterschiedlichen Grad wirtschaftlicher Konzentration, zu Standortverlagerungen, zu Wettbewerbsverfälschungen und -verzerrungen führen, die nur durch eine Koordinierung oder Angleichung der nationalen Rechte vermieden werden könnte. Die von der Kommission auf diesem Gebiet begonnenen Arbeiten müssen daher intensiv und beschleunigt fortgesetzt werden.

Die Untersuchung der Möglichkeiten für eine wirtschaftliche Konzentration von Unternehmen, die nach dem Recht verschiedener EWG-Staaten gegründet sind, zeigt darüber hinaus, dass hier Lücken im Gesellschaftsrecht und im internationalen Privatrecht gewisse Formen der Konzentration, z.B. die internationale Fusion, nicht zulassen.

Sie zeigt ferner, dass steuerliche Hindernisse, die an sich rechtlich möglichen Beteiligungen an ausländischen Unternehmen vereiteln oder erschweren und steuerliche Regelungen für die Durchführung der internationalen Fusion unwirksam sind oder fehlen. Will man daher gewisse Formen der Konzentration über die Grenze hinweg ermöglichen oder fördern, so muss neben die Harmonisierung der nationalen Gesellschafts- und Steuerrechte auch die Schaffung eines neuen Gemeinschaftsrechts treten. Für die Beteiligung an ausländischen Gesellschaften würde es im wesentlichen darauf ankommen, die Doppelbesteuerung abzuschaffen, soweit die Beteiligung eine bestimmte Höhe überschreitet. Diese erste Massnahme würde den Weg zum Beteiligungserwerb an ausländischen Kapitalgesellschaften bereits in relativ kurzer Zeit ebnen können. Weit komplizierter ist dagegen die Regelung der internationalen Fusion, die sowohl umfangreiche gesellschaftsrechtliche als auch steuerrechtliche Arbeiten erforderlich macht.

In bezug auf die künftigen Arbeiten auf dem Gebiet des Steuerrechts lassen sich im einzelnen noch folgende Erwägungen anstellen:

1 Die Neutralität der Umsatzsteuern im Hinblick auf die Konzentration ist gesichert, wenn die von der Kommission vorgeschlagenen Richtlinien zur Einführung einer Mehrwertsteuer in den Mitgliedstaaten angenommen werden.

2 Ebenso vermeidet die Harmonisierung der Gesellschaftsteuern, wie sie durch den gegenwärtig dem Rat vorliegenden Richtlinienentwurf vorgesehen ist, die Doppelbesteuerung bei Fusionen und vereinheitlicht in den sechs Ländern, die steuerlichen Bestimmungen bei der Gründung von Gesellschaften.

3 Es empfiehlt sich, in Kürze die Umgestaltung und eine gewisse Harmonisierung der steuerlichen Behandlung von Mutter- und Tochtergesellschaften vorzuschlagen und allgemein die Bedingungen zu prüfen, unter welchen die steuerlichen Hindernisse beseitigt werden könnten, die dem guten Funktionieren von innerhalb der Gemeinschaft in Gruppen zusammengefassten Gesellschaften entgegenstehen.

4 Es empfiehlt sich ebenfalls, Mittel zur Beseitigung steuerlicher Hindernisse zu suchen, die sich bei der Durchführung von Fusionen noch immer ergeben, und zwar insbesondere dann, wenn Fusionen zwischen Gesellschaften verschiedener Nationalität oder zur Bildung einer europäischen Gesellschaft rechtlich ermöglicht werden. In dieser Hinsicht würde die Harmonisierung der Grundsätze der Besteuerung des Wertzuwachses, der bei Fusionen eintritt, ausserordentlich nützlich sein.

5 Die Analyse der durch Konzentrationen aufgeworfenen Steuerprobleme unterstreicht die Notwendigkeit einer Annäherung der Systeme der direkten Steuern und ganz besonders der Bestimmungen betreffend die Investitionen und die Gewinnverteilung. Tatsächlich sollten Unternehmen sich nicht von steuerlichen Erwägungen leiten lassen, wenn sie sich für oder gegen die Konzentration entscheiden oder wenn sie den Ort wählen, an dem sie sich niederlassen wollen oder an dem sie neue Investitionen planen.

RECOMMANDATION DE LA COMMISSION

DU 9 FÉVRIER 1966

ADRESSÉE AU ROYAUME DES PAYS-BAS AU SUJET DU PROJET D'ARRÊTÉ ROYAL VISANT, EN TRANSPORT INTERNATIONAL, RESTITUTION PARTIELLE DU SUPPLÉMENT DE TAXE SUR LES VÉHICULES QUI S'APPLIQUE AUX VÉHICULES CONSOMMANT D'AUTRES CARBURANTS QUE L'ESSENCE

(Le texte en langue néerlandaise est le seul faisant foi)

Document (66/119/CEE)

Conformément à l'article premier de la décision du Conseil du 21 mars 1962, instituant une procédure d'examen et de consultation préalables pour certaines dispositions législatives réglementaires ou administratives envisagées par les États membres dans le domaine des transports[1], le gouvernement néerlandais a communiqué à la Commission par lettre en date du 31 janvier 1966, de la représentation permanente auprès des Communautés européennes, le projet d'arrêté royal visant, en transport international, restitution partielle du supplément de taxe sur les véhicules, qui s'applique aux véhicules consommant d'autres carburants que l'essence.

Cette communication est parvenue à la Commission en date du 1er février 1966 et le gouvernement néerlandais en a informé les autres États membres.

Par la même lettre, le gouvernement néerlandais a demandé le bénéfice de la procédure d'urgence prévue par l'article 2 paragraphe 4 de la décision susvisée.

En application de l'article 2 paragraphe 3 de la décision, la Commission a procédé, le 7 février 1966, à une consultation avec les États membres au sujet des dispositions en cause.

En vertu de l'article 2 de la décision, la Commission adresse au gouvernement néerlandais la recommandation suivante:

1. La Commission attire l'attention du gouvernement néerlandais sur le fait que les dispositions envisagées sont susceptibles de constituer une entrave à la réalisation de certaines mesures de la politique commune des transports.
2. La Commission constate que l'application de l'arrêté royal envisagé aurait pour conséquence que les transporteurs routiers néerlandais, pour autant qu'ils effectuent des transports internationaux, supportent, en ce qui concerne la taxe néerlandaise sur les véhicules, une charge fiscale sensiblement inférieure à celle actuellement acquittable. Cette diminution pourrait atteindre un maximum d'environ 60% des montants actuellement dûs.

Les mesures envisagées auraient ainsi pour effet d'accroître certaines disparités qui existent actuellement et auraient des conséquences particulièrement lourdes sur certaines des relations où le volume du trafic est le plus important, c'est-à-dire entre l'Allemagne et les Pays-Bas et, à un moindre degré, entre la France et les Pays-Bas.

[1]) JO no 23 du 3. 4. 1962, p. 720/62.

3. La décision du Conseil du 13 mai 1965, relative à l'harmonisation de certaines dispositions ayant une incidence sur la concurrence dans le domaine des transports par chemin de fer, par route et par voie navigable [2] prévoit à son article 1a) la suppression des doubles impositions en matière de taxes sur les véhicules automobiles dans le domaine des transports internationaux. Le 18 mars 1964, la Commission a déjà présenté une proposition tendant à cette suppression. Cette proposition prévoit que les véhicules immatriculés dans un des États membres ne seront plus soumis à la taxe sur les véhicules dans les autres États membres sous condition de rester intégralement taxés dans leur pays d'immatriculation.

L'exonération réciproque des véhicules automobiles immatriculés dans les États membres, est fondée sur le principe de la nationalité qui paraît plus conforme à l'orientation générale de la politique commune des transports et qui va dans le sens d'une action d'ensemble tendant à la suppression des contrôles aux frontières.

4. Tout progrès en matière d'admission en franchise du carburant contenu dans les réservoirs des véhicules automobiles utilitaires, prévue à l'article 1b) de la décision du Conseil du 13 mai 1965, pourrait être mis en cause.

5. L'uniformisation des bases de calcul de la taxe sur les véhicules automobiles, prévue à l'article 2 de la décision du 13 mai 1965, serait rendue plus difficile par l'introduction d'une différenciation de traitement entre le trafic national et le trafic international, ce qui rendrait encore plus aléatoire une harmonisation ultérieure éventuelle de ces taxes.

6. La fixation des conditions pour l'admission des transporteurs non-résidents aux transports nationaux dans un État membre, prévue à l'article 75 paragraphe 1b) du traité C.E.E., serait compromise du fait que les disparités constatées au point 2 ci-dessus à l'égard du trafic international se produiraient également en trafic national.

7. L'application des dispositions envisagées par le gouvernement néerlandais pourrait risquer de provoquer dans d'autres États membres l'apparition de mesures non concertées susceptibles de contrarier l'établissement d'une politique commune des transports fondée sur le rapprochement des conditions de concurrence.

8. En général, l'élimination ultérieure des disparités existant entre les États membres en ce qui concerne les dispositions fiscales spécifiques aux transports serait mise en question.

9. La présente recommandation ne concerne pas l'appréciation des dispositions en cause au regard des prescriptions des articles 92 à 94 et 95 à 98 du traité C.E.E.

10. Pour ces motifs, la Commission recommande au gouvernement néerlandais de surseoir à la mise en vigueur des dispositions envisagées et de les reconsidérer dans le cadre de la mise en oeuvre de la politique commune des transports et notamment de la décision du Conseil du 13 mai 1965.

11. La Commission informe les autres États membres de cette recommandation.

Bruxelles, le 9 février 1966.

Par la Commission
Le vice-president

S.L. MANSHOLT

2) JO no 88 du 24. 5. 1965, p. 1500/65.

JAPAN

TAX NEWS

TAX REVISION IN 1966

Japanese Government decided on January 21, 1966, the substance of national tax amendments which will be presented to the ordinary session of the Diet for their approval. The followings are the summary of the substance.

OUTLINE OF TAX REVISION FOR J.F.Y. 1966

In view of the recent trend in the tax burden on the people and economic situation in Japan, the following measures are to be incorporated in the tax bill for 1966 F.Y., aiming at promotion of stable growth of economy especially by increasing effective demands as well as further attaining the highstandard of living of the people.

(1) income tax cut for alleviating the tax burden on smaller income bracket people.

(2) inheritance tax cut for promoting wealth formation of the people.

(3) corporation tax cut for business and enterprise to help improve their corporate financial positions especially strengthen the sound basis for the management of smaller sized business and enterprise, as well as for pushing such measures deemed as necessary in the present economic situation.

(4) commodity tax cut for inspiring demand for sound consumption.

In addition to the measures mentioned above, such tax measures as necessary for coordinating with other intended policies of the government are to be taken. As a result, the total amount of national tax cut is estimated at 306.9 billion yen for full year (206.8 billion yen for initial year).

The brief of these tax reductions is as follows:

I INDIVIDUAL

1. *Income tax cut*

(1) increase of personal allowances

Minimum taxable amount of employment income earners with spouse and three children (standard size of family in Japan) for 1966 F.Y income tax purpose is intended to be raised to not less than 600 thousand yen.

(unit: thousand yen)

Item	Current	Revised
basic allowance	130	140
allowance for spouse	120	130
allowance for dependent		
each dependent less than 13 years of age	50	60
each dependent 13 years on more of age	60	
employment income deduction		
fixed amount	30	40
application of 20%	up to 500	up to 600
application of 10%	up to 700	up to 800
ceiling	150	180

(2) reduction of tax rates

Tax rates applied to the taxable amount of less than 300 million yen are intended to be reduced and the lowest tax rate be increased from 8% to 8.5% in consideration of increase of basic and other allowances.

Tax rate	Current (Taxable income)	(unit: thousand yen) Revised
8%	not more than 100	not more than 100
8.5%	—	,, 300
10	not more than 200	,, 600
15	,, 500	,, 1,000
20	,, 800	,, 1,500
25	,, 1,200	,, 2,200
30	,, 1,800	,, 3,000
35	,, 2,500	no revision
40	,, 4,000	

(3) others

(a) Deduction for life insurance premium

Premiums up to 25,000 yen: full amount
(current: 20,000 yen)
Premiums in excess of 25,000 yen: one half of the amount
(current: 20,000 yen)
ceiling of deduction: 37,500 yen
(current: 35,000 yen)

(b) Credit for contribution

When a taxpayer made approved contributions in a year, the amount computed on the following formula is credited against his tax in accordance with the law in force.

the amount of approved contribution or 20% of his total income amount whichever is less	300,000 yen or 3% of his total income amount whichever is less	30%

The figure 20% above is to be revised to 30%.

(c) Credits for a physically handicapped person and a working student are to have wider application than in force.

2. *Tax Reduction of the Inheritance Tax and the Gift Tax*

(1) An increase of the basic allowance

The basic allowance is to be increased as follows; so that the minimum taxable amount for an inheritance where the number of statutory heirs or legatees including the spouse of the decedent is 5 (average number of heirs) is to be raised from 5 million yen to 10 million yen.

(a) Increase of the basic allowance for the estate

The basic allowance for the estate left by the decedent is to be increased from 2.5 million yen to 4 million yen; and the basic allowance for each statutory heir is to be increased from 0.5 million yen to 0.8 million yen.

(b) Establishment of the spouse allowance for the estate

Besides the basic allowances mentioned above, 200,000 yen multiplied by the number of years in marriage life over 15 years is to be deducted from the value of the estate which is inherited to a spouse who has married with decedent not less than 15 years, provided that the deduction does not exceed 2 million yen.

(2) Reduction of the gift tax with respect to the inter-spouse gift

In connection with establishment of the spouse allowance for the estate in the inheritance tax, new deduction of 1.6 million yen is to be allowed, besides the basic allowance of 0.4 million yen now in force. As a result, the minimum taxable amount for the gift tax imposed on the gift of the real estate for dwelling made between the spouses who have married for not less than 25 years is expected to be increased to 2 million yen. Once the taxpayer is granted this deduction, he is not entitled to the spouse allowance for the estate mentioned above for the inheritance tax purpose.

(3) Reduction of the inheritance tax rates
The inheritance tax rate is to be revised. (cf. foot note 1)

(4) Reduction of the gift tax rates
In accordance with the reduction of the inheritance tax rates, the gift tax rates are also to be revised. (cf. foot note 2)

(5) Other reforms
The gift tax is to be exempt for the donated agricultural land as an inter-vivos gift, when the donee who has been granted the special tax treatment as to the gift tax payment dies before the donor dies.

II TAX CUT FOR BUSINESS AND ENTERPRISE

1. *Measures to help improve corporate financial positions*

(1) Reduction of the corporate tax rate
The corporate tax rate on reserved income is to be reduced from 37 percent to 35 percent if capital of the corporation is more than 100 million yen and the same revision be applied to such portion of reserved income of the corporation with capital of not more than 100 million yen as corresponds to the annual income exceeding 3 million yen. (cf. 2. (2) (i) below)

(2) A cut of the statutory useful lives of buildings
The statutory useful lives of buildings are to be shortened by some 15 percent with an emphasis on factory buildings, warehouses, etc.

(3) Measures to help improve capital structures of corporations
In conformity with the other measures to be taken to help improve financial positions of smaller sized corporations, tax credit of 2-10 percent of the amount of the corporate tax is to be allowed for large corporations with capital of more than 100 million yen, correspond ing to the degree of improvement in

foot note

1

tax rate	current		revised	
10%	not more than	300	not more than	600
15	,,	700	,,	1,500
20	,,	1,500	,,	3,000
25	,,	3,000	,,	5,000
30	,,	5,000	,,	8,000
35	,,	7,000	,,	12,000
40	,,	10,000	,,	18,000
45	,,	20,000	,,	30,000
50	,,	30,000	,,	50,000
55	,,	50,000	,,	75,000
60	,,	70,000	,,	100,000
65	,,	100,000	,,	150,000
70	over	100,000	over	150,000

2

tax rate	current		revised	
10%	—		not more than	300
15	not more than	300	,,	500
20	,,	500	,,	700
25	,,	700	,,	1,000
30	,,	1,000	,,	1,400
35	,,	1,500	,,	2,000
40	,,	2,000	,,	3,000
45	,,	3,000	,,	4,000
50	,,	5,000	,,	7,000
55	,,	7,000	,,	10,000
60	,,	10,000	,,	15,000
65	,,	30,000	,,	30,000
70	over	30,000	over	30,000

(unit: thousand yen)

internal funds ratio realized within 2 years through additional capital stock issue, an increase in internal capital accumulation, redemption of borrowed funds, etc.

(4) Measures to facilitate corporate merger

A tax credit of 20 percent of the corporate tax amount which corresponds to the increased proportion (maximum 50 percent) of capital attained through corporate merger, is to be allowed for 3 years after the merger, if the corporate merger takes place within 2 years.

In addition, the registration tax rate is to be reduced from 1.5/1,000 to 1/1,000 for registration of capital transferred by corporate merger, and from 4/1,000 to 2/1,000 for registration of real estate or ships transferred by the merger.

(5) Measures to help equipments scrapped down

A tax credit of 10 percent of the acquisition value of scrapped machine equipments is allowed against corporate tax or income tax (maximum of 10 percent of the total amount of the corporate tax or income tax), if a business enterprise in certain industries scraps its machine equipments within 2 years according to the standards provided for by the Minister concerned.

2. *Measures to improve financial positions of smaller sized enterprises*

(1) An increase of the amount deductible as expenses for family employees

The statutory limit for the amount deductible as business expenses for family employees is to be raised as follows:

item	present	draft reform
a family employee of an enterprise filing a blue return		
less than 20 years of age	150,000 yen	240,000 yen
not less than 20 years of age	180,000 yen	
a family employee of an enterprise filing a white return	120,000 yen	150,000 yen

(2) Reduction of the special reduced tax rate applicable to smaller corporations

(i) The corporate tax rate on reserved income for ordinary corporation with capital of not more than 100 million yen is to be reduced as described above 1. (1). In addition, the special reduced tax rate applicable to such portion of reserved income as corresponds to the annual income of not more than 3 million yen is to be reduced from 31 percent to 28 percent. This system of special reduced tax rate is not to be applied any more to ordinary corporations with capital of 100 million yen, in view of the purport of the system.

(ii) The corporate tax rate on reserved income for cooperative associations, etc. is to be reduced from 26 percent to 23 percent.

(3) Tax reduction for reserved income of family corporations

The amount of deduction for taxation on reserved income of family corporation is to be raised to the higher amount of either 30 percent of income (at present 25 percent) or 1.5 million yen (at present 1 million yen).

(4) An increase of the percentage to be accumulated as Allowance for Bad Debts

The statutory percentage rate for "Allowance for Bad Debts" is to be raised by some 20 percent of the present rate for the period of 2 years with regard to corporations with capital of not more than 100 million yen.

III REDUCTION OF COMMODITY TAX

1. *Abolishment of taxation*

In consideration of the nature of consumption of taxable goods and the small units of the manufacturing enterprises, the following commodities are to be made non-taxable: instruments for interior design, tea sets, articles for decoration, toys, "Go" playing sets, cartridges, bed materials ("Futon") made of feather, furnitures solely made of paulownia wood, leather clothes, binoculars, neon tubes, fireworks, etc.

2. *An increase of the minimum taxable price*

In accordance with the recent price-trend and the rising consumption standards, the minimum taxable price is to be raised substantially with respect to Class 1 commodities; for example, the minimum taxable prices for precious stone products and precious metal products are both to be raised to 15,000 yen (at present 10,000 yen and 5,000 yen respectively). As to Class 2 commodities, the minimum taxable prices are also raised or introduced, for example, as follows:

Commodities	Present Taxable Minimum	Revised Taxable Minimum
Oil stove	5,000 yen	6,000
Kettles, etc.	7,000 yen	9,000
Handbag	6,500	8,000
Watches	3,200 yen	3,500
Pomade (per 100 grams)		210 (newly introduced)

3. *Reduction of the tax rate*

The tax rate is to be reduced as follows for commodities within Class 2, which are closely related to an increase of the national standard of living.

Commodities	Present tax rate	Revised tax rate
Air conditioners		
(Room cooler	30%	20%
Large television sets	30%	20%
Small passenger cars	20% (temporarily) 16%	15%
Cameras	20%	15%
Photographic films	20%	15%
Music instruments	20%	15%
Records (Discs)	20%	15%
Small electric refrigirators	20%	15%
Small television sets	20%	15%
Refreshment drinks	10%	5%

4. *Extension of the Special Taxation Measures to cease to be effective within* 1966

The temporary tax reduction and tax-exemption of seven commodities, such as package-type air conditioners, ensemble-type record-players, or transistor televisions, which cease to be applicable in 1966, are to be extended for 2 years without any revision in the present mode.

IV CHANGES IN THE TAX REVENUE EXPECTED UNDER THE NATIONAL REFORM

An increase or decrease of tax revenue under the 1966 national tax reform is expected to be as follows for the fiscal year 1966.

Changes in the Tax Revenue under the 1966 Tax Reform

(unit: 100 millions yen)

Draft Reform	Full year	First year
1. Personal income tax cut		
(1) An increase of the amount of		
(a) An increase in basic allowance	259	224
(b) An increase in spouse allowance	130	112
(c) An increase in dependents allowance	137	117
(d) An increase in employment income deduction	410	361
Subtotal:	936	814
(2) Reduction of the tax rate	533	446
(3) Others	36	29
Total:	1,505	1,289
2. Tax cut for business and enterprise		
(1) Measures to help improve corporate financial positions		
(a) Reduction of the tax rate on reserved income	365	183
(b) A cut of the statutory useful lives of buildings	150	40
(c) Measures to help improve capital structures of corporations	96	26
(d) Measures to facilitate corporate merger	30	7
(e) Measures to help equipments scrapped down	29	6
Subtotal:	670	262
(2) Measures to improve financial positions of smaller sized corporations		
(a) An increase of family employee deductions	72	54
(b) Reduction of the special reduced tax rate applicable to smaller sized corporations	130	65
(c) Tax reduction for reserved income of family corporations	40	20
(d) An increase of the percentage to be accumulated as allowance for Bad Debts	94	9
(e) Others	15	4
Subtotal:	351	152
(3) Others	56	17
Total:	1,077	431
3. Reduction of inheritance and gift tax		
(1) Inheritance tax reform	137	42
(2) Gift tax reform	13	8
Total:	150	50
4. Reduction of commodity tax	347	287
5. Adjustment of the Special Taxation Measures		
(1) Adjustment of the special depreciation allowances on improved machinery for the important industries	+22	+5
(2) Abolition of special tax exemption for newly introduced important products	+7	
Total:	+29	+5
6. Others	19	6
Grand Total:	3,069	2,058

reported by: Hideyasu Iwasaki

UNITED KINGDOM

DOCUMENTS

EXTRA-STATUTORY CONCESSIONS[1]) IN OPERATION AT 31ST DECEMBER 1964

The concessions described below are of general application, but in certain cases there may be special circumstances which have to be taken into account.

INCOME TAX

1. *Business passing on the death of a trader.*

The death of a trader and the consequent passing of his business to his successor is an occasion for the application of the discontinuance provisions of the Income Tax Acts. Where, however, a business passes on death to the trader's husband or wife who has been living with her or him, the discontinuance provisions are not enforced unless claimed. But, in any case, losses and capital allowances for which the deceased had not obtained relief are not permitted to be carried forward.

2. *Machinery or plant: changes from a "renewals" to a "wear and tear" basis.*

Expenditure on machinery or plant which has been the subject of a "renewals" deduction does not technically qualify as capital expenditure for the purpose of annual "wear and tear" allowances or balancing allowances (Section 330(1)(a) of the Income Tax Act, 1952). Taxpayers who change from a "renewals" to a "wear and tear" basis are, however, permitted to claim such allowances as if the expenditure did so qualify.

3. *Capital allowances for agricultural buildings and works.*

For the purposes of the agricultural capital allowances under Section 314, Income Tax Act, 1952, and of the agricultural investment allowance under Section 16(5), Finance Act, 1954, "husbandry" is treated as including any method of intensive rearing of livestock on a commercial basis for the production of food for human consumption.

4. *Loss relief for capital allowances unused on the cessation of a business.*

Section 20 of the Finance Act, 1954, adjusted by Section 18 of the Finance Act, 1962, enables capital allowances to be taken into account in arriving at the amount of loss on which relief is given, under Section 341 of the Income Tax Act, 1952, against the tax on the trader's aggregate income. When there is a trading profit, loss relief is given on the excess of the capital allowances over the trading profit of the same basis period, and normally the capital allowances up to the amount of the trading profits are relieved by being set against those trading profits (resulting in a nil assessment). Where, however, there are capital allowances brought forward from earlier years, these must be allowed in the assessment in priority to the current allowances, and the current allowances, so far as they cannot be set against the assessment, must in turn be carried forward. In a year of cessation no such carry forward of these unused current allowances is possible. Relief may be due for them under Section 18 of the Finance Act, 1954 (terminal losses), but so far as it is not, relief will be lost. Where there would otherwise be a loss of relief, it is the practice in the calculation of the loss, for the purpose of Section 341, to treat the profits of the final year as reduced by the amount of capital allowances brought forward, thus increasing the amount of the capital allowances for the final year which are available for loss relief.

[1]) Reproduced with the permission of the Controller of Her Majesty's Stationery Office, London. The concessions have been published as an appendix to the 108th Report of the Commissioners of Her Majesty's Inland Revenue for the year ended 31st March, 1965. (Document Cmnd. 2876, February 1966).

5. *Industrial buildings allowances: private roads on industrial trading estates.*

Where the owner of an industrial trading estate has incurred capital expenditure on the provision on the estate of private roads which remain in his occupation, and he is not himself carrying on a trade which would qualify him for industrial buildings allowances in respect of the expenditure, he is treated in practice as if he were carrying on a qualifying trade and so entitled to the allowances if all the lessees occupying the premises on the trading estate are themselves carrying on qualifying trades.

6. *Maintenance and repairs of property obviated by alterations,* etc.; *Case VIII assessments.*

Where maintenance and repairs of property are obviated by improvements, additions and alterations, so much of the outlay as is equal to the estimated cost of the maintenance and repairs is allowed as a deduction in computing liability in respect of rents under Case VIII of Schedule D. This concession does not apply where—

(i) the alterations, etc., are so extensive as to amount to the reconstruction of the property, or
(ii) there is a change in the use of the property which would have made such maintenance or repairs unnecessary.

7. *Tithe redemption annuity paid by a trader.*

Under Section 31 of the Finance Act, 1963, five-sixths of a payment on account of a tithe redemption annuity is deductible from the income of the payer for the year of assessment in which it it payable.

Where a person pays tithe redemption annuity in respect of premises used for the purposes of his trade, profession or vocation, but his income is not sufficient to enable relief to be given in respect of the whole of the amount so deductible, the amount in respect of which relief cannot be given is treated as though it were a trading loss available for carry forward under Section 342 of the Income Tax Act, 1952.

8. *Maintenance expenses of owner-occupied farms not carried on on a commercial basis.*

Where the owner-occupier of a farm in the United Kingdom makes a loss but is precluded by Section 20, Finance Act, 1960, from claiming relief against the tax on his general income because his farming is not carried on on a commercial basis and with a view to the realisation of profits, he may claim the same relief for the cost of maintenance, repairs, and insurance of his agricultural land (i.e., land, houses or other buildings occupied wholly or mainly for the purpose of husbandry) as can be claimed under Section 313, Income Tax Act, 1952, by a landlord of agricultural land. For this purpose one-third of the relevant expenditure on a farmhouse is regarded as agricultural and two-thirds as domestic.

9. *Deficiency payments in respect of home grown cereals.*

Deficiency payments in respect of home grown cereals should in strictness be credited, in the case of wheat and rye, by reference to the dates when the crops were sold and delivered, and, in the case of barley, oats and mixed corn crops, by reference to the dates of harvesting as grain. In practice, except where the "commencing" or "ceasing" provisions apply, final deficiency payments for cereals other than wheat are, however, allowed to be brought into account in the farmer's accounting year in which such payments are notified.

Further, where total deficiency payments are small or where they have been dealt with in the accounts in such a way that any adjustment in respect of such payments would be unlikely to make more than a small variation in the profits, no objection is raised to the liability being settled on the basis of the accounts.

10. *Doctors' and dentists' superannuation contributions.*

Under Section 378 of the Income Tax Act, 1952, contributions required to be made in pursuance of a public general Act of Parliament by the holder of an office or employment towards the provision of superannuation benefits may be deducted in assessing his emoluments. Section 378 is in practice treated as extending to assessments under Schedule D on the profits of a medical or dental practitioner who is required to make superannuation contributions in pursuance of the National Health Service Acts. Where, however, the practitioner also pays premiums or contributions towards a retirement annuity within

Section 22 of the Finance Act, 1956, the deduction for his statutory contributions is restricted to the difference between the amount on which relief is due under the Act of 1956 and the greatest amount on which he could claim such relief on paying a sufficient premium.

11. *Flat rate allowances for cost of tools and special clothing.*

An employee who has to bear the cost of upkeep of tools or special clothing necessary for his work is entitled, under paragraph 7 of the Ninth Schedule to the Income Tax Act, 1952, to an allowance for the expenditure incurred. For most classes of trade flat rate allowances have been agreed with the trade unions concerned, and these allowances are given without enquiry as to the expenditure actually incurred in the individual case. The existence of a flat rate allowance does not, however, debar an individual employee from claiming as a deduction the actual expenses he has incurred.

12. *Miners: allowances in lieu of free coal.*

Income tax is not charged on cash payments received by miners from their employers in lieu of the free coal which they have been entitled to receive by virtue of their employment.

13. *Meal vouchers.*

Income tax is not charged on the value of meal vouchers issued to employees subject to the following conditions being satisfied:—

(i) Vouchers must be non-transferable and used for meals only;
(ii) Where any restriction is placed on their issue to employees, they must be available to lower paid staff;
(iii) The value of vouchers issued to employees must not exceed 3s. 0d. for each working day.

The value of any voucher or part of a voucher that does not comply with these conditions is taxed.

14. *Pensions to police officers and firemen.*

The amount by which the pension awarded on retirement through disablement from injury on duty (or from war wounds) exceeds the pension which would have been awarded if retirement had been on ill-health grounds is not treated as income for income tax purposes. Similarly, a disability pension awarded in addition to a retirement pension is not treated as income.

15. *Children of war widows.*

(*a*) The exemption from income tax given by Section 380(3) of the Income Tax Act, 1952, to payments made by the Ministry of Pensions to widows of members of the Forces in respect of their children is applied to similar payments in respect of children made to "unmarried wives" and also to similar payments in respect of children made to widows and "unmarried wives" of members of the Mercantile Marine and to widows of civilians who have died from war injuries.

(*b*) The same exemption is also applied to similar payments in respect of children which are made to war widows (or "unmarried wives") by Commonwealth governments.

16. *Annuities paid by approved superannuation funds.*

Where an annuity paid out of a superannuation fund approved under Section 379 of the Income Tax Act, 1952, is, by virtue of a direction made under Section 379(2), assessable on the annuitant under Schedule E, relief for the standard rate tax which, but for the direction, would be deductible from the annuity is allowed against tax borne by the fund on non-exempt income.

17. *Overseas provident fund balances.*

Income tax is not charged on lump sums referable to service overseas and receivable by employees from overseas provident funds (or under arrangements analogous to those of such a fund) on termination of employment overseas.

18. *Directors' travelling expenses.*

The general rule is that the cost to a taxpayer of travelling to and from his place of business is not

allowable as a deduction in computing his tax liability; consequently, the full amount of an allowance paid by a company to a director or senior employee in respect of such expenses is chargeable to tax under Chapter II of Part VI of the Income Tax Act, 1952, The rule is modified in the following types of case:—

(i) A director (whether whole or part-time) of two or more companies within a group of parent and subsidiary or associated companies, whether or not entitled to separate remuneration from each of the companies of which he is a director, is regarded as having one place at which he normally acts as a director of companies within the group, and as entitled to a deduction (or a dispensation from assessment under Section 164 of the Income Tax Act, 1952) for expenses necessarily incurred in travelling from that place to other places on the business of the group in the course of his duties as a director. The same principle is applied to an individual who is an employee of one company and a director of another company within the same group of companies. (By "associated company" is meant a company on whose board the group is represented because of the group's shareholding or other financial interest).

(ii) A director who gives his services without remuneration to a company not managed with a view to dividends (e.g., a company owning a hall or sports ground, or running a club) is not treated as assessable in respect of any travelling expenses paid to him.

(iii) Where a directorship is held as part of a professional practice (and not, for example, because of some direct or indirect financial interest in the company), expenses incurred by the director in carrying out his duties are allowed as deductions in assessing the profits of the practice under Schedule D, whether the practice is carried on alone or in partnership. Reasonable expenses paid to the director by the company are accordingly not assessed upon the director under Schedule E, provided no claim is made to a deduction under Schedule D.

"Travelling expenses" includes in all cases reasonable hotel expenses necessarily incurred.

19. *Expenses allowances and benefits in kind.*

Under Chapter II of Part VI of the Income Tax Act, 1952, expenses allowances and benefits in kind received by directors and (with certain exceptions) by senior employees are assessable to tax as emoluments of the director or employee, subject to a deduction for expenses incurred which satisfy the conditions laid down in Paragraph 7 of the Ninth Schedule to the Same Act. The following relaxations are made in practice:—

(*a*) No assessment is made in respect of removal expenses borne by the employer where the employee has to change his residence in order to take up a new employment or as a result of transfer to another post within an employer's organisation, provided that the expenses are reasonable in amount and their payment is properly controlled. "Removal expenses" includes such related items as a temporary subsistence allowance while the employee is looking for accommodation at the new station.

(*b*) Under Section 161(3) of the Income Tax Act, 1952, living accommodation provided for an employee (as distinct from a director) in part of the employer's business premises is exempt from charge under Chapter II of Part VI where certain conditions are satisfied. In practice the exemption is also allowed in the case of a full-time director of a company whose beneficial shareholding does not exceed 5 per cent of the ordinary share capital, unless his emoluments (including the value of benefits within the scope of Chapter II) exceed £2,000. The exemption does not apply to expenses of occupation such as heating, lighting, etc., met by the employer in respect of such accommodation, but the amounts charged under this head on an employee or director (within the above description) are restricted in the case of a patently old-fashioned and too large house.

20. *Dependent relative allowance.*

Where a dependent relative (within the meaning of Section 216 of the Income Tax Act, 1952) does not reside with the claimant and receives from him less than the amount of the allowance provided for by that Section (as amended), an allowance of the actual amount of the contribution is given, though in strictness the requirement that the relative should be "maintained" by the claimant is not fulfilled. Where contributions are made by two or more persons, though not amounting in all to the statutory allowance, an allowance, of his actual contribution is given to each.

21. *Member's contributions to trade unions.*

So much of a member's contribution to a trade union (whether registered or not) as is allocated to superannuation benefits, in addition to any portion allocated to funeral benefits or life assurance, is treated as qualifying for life assurance relief.

22. *National insurance contributions: relief for retrospective payments.*

Under the National Insurance Acts voluntary retrospective payments can be made to cover a period during which a contributor was receiving full time education after the age of 18, or was undergoing full time unpaid apprenticeship. There is no legal entitlement to income tax relief for these contributions, but in practice relief in respect of the portion of such payments which goes to secure taxable national insurance benefits is given for the income tax year in which payment is made.

23. *Retirement annuity relief.*

Under Sections 22-23, Finance Act, 1956, an individual who is taxable in respect of earned income from a trade, profession, vocation or non-pensionable employment may be allowed a deduction, from his net earnings for any year, of the amount of any premium he pays in that year under an approved contract for a life annuity on retirement.

In general, Section 23(1) restricts the allowable deduction to 10 per cent of the net earnings from the trade, etc., for the year in which the premium is paid, with an overriding limit of £750. (For persons born in or before 1915 these limits are increased; the maximum percentage is 15 per cent of net earnings, up to a limit of £1,125; and this applies in the case of persons born in 1907 or before). Section 23(2) provides that where the qualifying premium paid in any year cannot be allowed, or cannot be wholly allowed, as a deduction from that year's net earnings solely because it exceeds the relevant percentage of that year's net earnings, the unallowed portion shall be carried forward to the next year and treated as if it were a qualifying premium paid in that year, and so on for succeeding years, if necessary.

Where for any year the overriding limit (e.g. £750) applicable in the particular case is exceeded solely by reason of unrelieved premiums brought forward from earlier years, the position in strict law is that the excess over the overriding limit cannot be carried forward to subsequent years and relief is therefore lost. In practice, however, an excess arising in 1963-64 or a subsequent year will be allowed to be carried forward.

24. *Residence in the United Kingdom: year of commencement or cessation of permanent residence.*

For the income tax year in which a person comes to the United Kingdom to take up permanent residence his income from abroad is not assessed on the basis of the income for a full income tax year but is computed by reference to the period of his residence here during the year. A similar practice is adopted for the income tax year in which a person ceases to reside in this country if he has left here for permanent residence abroad. (This concession does not apply to changes of permanent residence between the United Kingdom and the Irish Republic).

25. *Interest, etc., paid otherwise than out of taxed income.*

Under Section 170 of the Income Tax Act, 1952, tax deducted from interest, annual payments, etc., paid otherwise than out of taxed income has to be paid over to the Revenue.

Where interest, etc., is so paid in a later year than the due year, but in the due year could have been paid wholly or partly out of taxed income, an allowance is made, in fixing the amount to be paid over under Section 170, for the tax which the payer would have been entitled (under Section 169 of the same Act) to deduct and retain if the interest, etc., had been paid at the due dates.

If hardship would otherwise be caused, a similar allowance is made in the case of a trust or other non-trading institution paying interest, etc., out of the taxed income of past years.

26. *Interest paid in full by a trader to a building society.*

Where, for the purposes of his trade, profession or vocation, a person pays annual interest in full to a building society which has entered into the special arrangements under Section 445 of the Income Tax

Act, 1952, but his income is not sufficient to enable relief to be given under that Section in respect of the whole of the interest, the amount in respect of which relief cannot be given is treated for the purpose of carry-forward relief as if it had been assessed under Section 170 of the Income Tax Act, 1952.

27. *Double taxation relief: United Kingdom branch of non-resident bank.*

Tax credit relief under double taxation agreements is available under the law only to persons who are resident in the United Kingdom. Where, however, the United Kingdom branch of a non-resident bank has in the past received Dominion income tax relief on its investment income, but owing to the conclusion of a double taxation agreement such relief is no longer available, tax credit relief is given on the same income as though the bank were resident in the United Kingdom.

28. *Double taxation relief: building society interest.*

Paragraph 5 of the Sixteenth Schedule to the Income Tax, 1952, provides that credit for overseas tax shall not exceed the sum arrived at by charging the doubly taxed income at a rate (generally known as the "effective rate") ascertained by dividing the United Kingdom income tax payable by the taxpayer for the year by his total income for the year. Interest received from a building society which has entered into the special arrangements under Section 445 of the Income Tax Act, 1952, is left out of account in calculating the effective rate.

29. *Double taxation relief: alimony, etc., under United Kingdom court order or agreement: payer resident abroad.*

Where alimony or small maintenance payments are paid under a United Kingdom court order or agreement, the income arises from a United Kingdom source regardless of the country of residence of the payer. Notwithstanding that the source is in law a United Kingdom source, relief by way of credit is, however, allowed where:—

(*a*) the person making the payments has left the United Kingdom and become resident in an overseas country;

(*b*) the payments are made out of that person's income in that country and are subject to tax there;

(*c*) United Kingdom income tax if deducted from the payments is duly accounted for; and

(*d*) the payee is resident in the United Kingdom and effectively bears the overseas tax.

30. *Overseas tax for which credit is not allowable.*

The tax paid in a country outside the United Kingdom by a United Kingdom resident on business profits arising there is, in general, treated as an expense of the business if credit against the United Kingdom tax on those profits is not allowable or the right to forgo credit is exercised.

31. *Double taxation relief: income consisting of royalties and "know-how" payments.*

Payments made by a person resident in an overseas country to a person carrying on a trade in the United Kingdom as consideration for the use of, or for the privilege of using, in the overseas country any copyright, patent, design, secret process or formula, trade-mark or other like property may in law be payments the source of which is in the United Kingdom, but are nevertheless treated for the purpose of credit (whether under double taxation agreements or by way of unilateral relief) as income arising outside the United Kingdom except to the extent that they represent consideration for services (other than merely incidental services) rendered in this country by the recipient to the payer.

32. *Double taxation relief: credit for underlying tax.*

(*a*) United Kingdom companies' non-resident subsidiaries.

Where a United Kingdom company controls not less than one-quarter of the voting power in an overseas company, then in computing the credit available to the United Kingdom company in respect of dividends (of any class) from the overseas company tax payable by the overseas company, whether in the country of its residence or a third country, is taken into account. A company is deemed to control not less than one-quarter of the voting power in another company if a third company having such control also controls not less than one-half of the voting power in the first company. In practice the credit also takes account of

tax paid in the same or another country by a subsidiary of the overseas company (i.e., by a sub-subsidiary of the United Kingdom parent company) provided the same condition as to control is satisfied; and similarly for tax paid by subsidiaries at further removes from the United Kingdom parent.

(*b*) Overseas dividends generally.

Where a United Kingdom resident receives dividends on a holding of ordinary shares (including the participating part of participating preference dividends) in a company resident in an overseas country which is within the Commonwealth, or with which the United Kingdom has an agreement which so provides, the credit legally due against United Kingdom tax chargeable takes into account, in addition to any direct tax on the dividends, the indirect tax payable by the company in the other country on its profits. In practice if the company's profits include dividends on such a holding in a second company resident in the same or another overseas country, both the direct tax charged on the dividends and the indirect tax payable on the profits of the second company are also taken into account, provided that all the countries concerned are of the type referred to; and similarly for tax relating to dividends and profits of companies at further removes along any chain of shareholdings.

33. *Bank interest, etc., received by charities.*

The exemption from tax under Schedule D in Section 447(1)(*b*) of the Income Tax Act, 1952, in favour of charities extends to yearly interest or other annual payments forming part of the income of a charity. In practice this exemption is extended to bank interest, whether yearly or not, received by charities and to discount on Treasury Bills held by charities.

34. *Income of Roman Catholic religious communities or of their members.*

The precise legal position as regards the title to such income, which is in fact treated by the community as belonging to the common fund, is often difficult to ascertain. In practice in the case of certain Orders (such as those engaged in charitable work among the poor) relief is given under the provisions relating to charities; in the case of the Contemplative Orders and other Orders which are not in law capable of being regarded as charities, a proportion of the aggregate income not exceeding £110 per monk or nun (as representing the amount applied for the maintenance of each individual) is regarded as his or her income for the purpose of relief from tax.

35. *Loan and money societies.*

A loan or money society is granted such relief as will restrict the net income tax liability to tax on the amount of dividends and interest paid or credited to members or depositors having taxable income, less, as regards members, an appropriate deduction for management expenses contributed by them. The tax is calculated at the reduced rates on dividends and interest accruing to members and depositors who are liable only at the reduced rates.

36. *Holiday clubs and thrift funds.*

Clubs formed annually for the purpose of providing facilities for saving towards holidays are allowed such relief as will restrict the net income tax liability to tax on the proportion of liable income applicable to members having taxable income. Similarly, in the case of a thrift fund the relief allowable is such as will restrict the net income tax liability to tax on the amount of profits or interest paid or credited to members having taxable income. The tax is calculated at the reduced rates on income accruing to members liable only at those rates.

37. *Registered trade unions.*

The exemption of registered trade unions under Section 440(2) of the Income Tax Act, 1952, from income tax under Schedules C and D in respect of interest and dividends applicable and applied solely for the purposes of provident benefits is in practice extended to rents. It is also extended to interest, dividends and rents of any year in so far as they are actually applied to provident benefits within that year (although not "applicable solely" to such benefits).

SURTAX

1. *Deduction for mineral rights duty.*

Payments of mineral rights duty are not allowable as deductions in computing total income for taxation purposes. For surtax purposes, however, an individual whose income includes mineral rents and royalties is allowed a deduction in computing his total income, in respect of mineral rights duty borne by him on the rents, etc., receivable for that year. The deduction allowed is 1s. in the £ of the gross mineral rents and royalties receivable (less any amount on which repayment of income tax in respect of management expenses has been made under Section 181 of the Income Tax Act, 1952).

2. *Administration of estates: deficiencies of income allowed against income of another year.*

Under Section 419 of the Income Tax, 1952, a person who has an absolute interest in the whole or part of the residue of the estate of a deceased person is treated, during the administration period, as entitled to the residuary income of the estate (i.e., the gross income less certain deductions, e.g., in respect of annuities payable) or to the appropriate proportion thereof. If for a particular year the deductions allowable are greater than the gross income of the estate, the excess is allowed as a deduction in computing the net income of the preceding or succeeding years.

PROFITS TAX

1. *Directors' remuneration from director-controlled companies.*

Paragraph 11 of the Fourth Schedule to the Finance Act, 1937 (as amended by Section 34 of the Finance Act, 1952, and Section 33 of the Finance Act, 1959), lays down, in the case of director-controlled companies, certain limits on the amount of the remuneration of the directors (other than whole-time service directors not owning or controlling more than 5 per cent of the ordinary share capital) which is to be allowed as a deduction in computing the profits of such a company for profits tax purposes. In certain cases the limits depend on, *inter alia,* whether, for more than half the chargeable accounting period, there are two or more directors of the company (not being "whole-time service directors") who are required to devote substantially the whole of their time to its service in a managerial or technical capacity. If a director works as such for more than one company he is in practice regarded as falling within this definition in relation to that company which has occupied the largest fraction of his time during the chargeable accounting period if:

(*a*) he has worked substantially full-time for the companies as a whole for more than half the chargeable accounting period; and

(b) the time worked for the particular company under consideration amounts in the aggregate to more than half the full normal working hours of the chargeable accounting period.

2. *Interest, in excess of investment income, paid by one overseas trade corporation to another in the same profits tax group.*

Where interest is paid by one overseas trade corporation to another and both companies are members of the same profits tax group, the interest, insofar as it exceeds the investment income of the paying company and therefore cannot be deducted in computing the profits of that company, is excluded in computing the profits of the recipient company.

INTEREST ON UNPAID TAX

1. *Death of taxpayer before due date for payment of tax.*

Section 495 of the Income Tax Act, 1962, provides for interest (at 3 per cent per annum) to be charged on unpaid Schedule D tax and surtax where:—

(*a*) the tax due on the assessment in question is more than £1,000, and

(*b*) payment is not made within three months of the date on which the tax fell due.

Where a taxpayer has died before the date on which the tax fell due and his executors or administrators cannot pay the tax before they obtain probate or letters of administration, the interest charge on the unpaid tax is abated to the amount (if any) which would have been charged if the tax had become due on the date on which probate or letters of administration are obtained.

ESTATE DUTY

1. *Mourning.*

A reasonable amount for mourning for the family and servants is allowed as a funeral expense.

2. *Roman Catholic religious communities.*

The property of Roman Catholic religious communities whose purposes are charitable is treated as trust property held for a charitable purpose even where there is no enforceable trust, with the result that estate duty is not claimed on the death of one of the nominal owners of the property.

3. *Inter vivos gifts to charities.*

Where, at the donor's death, there is no existing fund which has been and continues to be directly benefited by the gift, the claim to duty is not pursued against the charitable institution.

4. *Pensions, etc., to police widows and dependants.*

Estate duty is not claimed on pensions and other payments made upon a policeman's death to his widow or dependants under the Police Pensions Act, 1921, or the Police Pensions Act, 1948.

5. *Surrender or discharge of prior or legal rights in a Scottish estate.*

Where a surviving spouse, child or remoter issue, within five years before his or her death unconditionally surrenders or discharges certain rights in a Scottish estate (prior rights, *jus relicti, jus relictae* or *legitim*), estate duty is not claimed, although it could be claimed under the provisions of Section 45(2) of the Finance Act, 1940.

6. *Disclaimer of certain rights under an English intestacy.*

Where the surviving spouse of a person dying intestate disclaims unconditionally his or her rights under English law to a net sum charged upon the intestate's residuary estate, estate duty is not claimed in connection with the death of the spouse although it could be claimed under the provisions of Section 45(2) of the Finance Act, 1940.

7. *Loans to the Treasury free of interest.*

Certain British Government securities are exempt from death duties so long as they are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom. In similar circumstances, exemption is allowed in respect of moneys loaned to the Treasury free of interest.

8. *Premium savings bonds held by persons who die domiciled in the Channel Islands, the Isle of Man or Northern Ireland.*

Premium savings bonds held by persons domiciled in the Channel Islands, the Isle of Man or Northern Ireland are treated for estate duty purposes as property situated outside Great Britain.

9. *Value payments under the War Damage Act,* 1943.

Where the payment of duty on value payments under the War Damage Act, 1943, is postponed under the terms of Section 6(3) of the Finance Act, 1894, the taxpayer is given the option of paying duty either—

(*a*) on the statutory basis, viz., on the value at the deceased's death of the sum received, with interest on the duty from the date of death; or

(*b*) on the actual sum received, with interest on the duty from the date of receipt.

10. *Settled funds: allowance for, or repayment of, legacy or succession duty.*

Section 29 of the Finance Act, 1949, provides that where estate duty (at the new consolidated rate imposed by that Act) becomes chargeable for the first time on settled property by reason of its passing on the death of the life tenant, an allowance for any legacy or succession duty already paid on the capital value of the settled property shall be given against the charge of estate duty. It is a condition of relief that the property has not previously passed on the death, after the commencement of the Act, of a person not competent to dispose. In practice, this condition is treated as satisfied where the only previous passing under the settlement after the commencement of the Act was one on the occasion of which no estate duty was payable.

11. *Property held in joint tenancy, etc.*

Property which is so disposed of as to be enjoyed by persons in succession on death, although technically it may not be "settled property" for estate duty purposes, is (except as regards cases falling within Section 33(1) of the Finance Act, 1954) treated in the application of relieving sections as "settled property" where it is to the interest of the taxpayer so to treat it, e.g., property held in joint tenancy.

12. *Release of life interest: aggregation.*

Where property becomes liable to estate duty under Section 43 of the Finance Act, 1940, by reason of the disposition or determination of an interest limited to cease on the deceased's death, and the settlement under which that interest subsisted (not being a settlement made directly or indirectly by the deceased) came to an end before his death as regards the property in question, the property is treated for the purpose of Section 33(1) of the Finance Act, 1954, as "settled property" or "other property", whichever is in the interest of the taxpayer.

13. *Civilian deaths in Malaya, Korea, Kenya and Cyprus.*

The relief from estate duty formerly granted by wartime legislation (which expired in October 1950) to the estates of civilians dying from injuries caused by the operations of war is applied to the estates of civilians dying from injuries caused by the operations in Malaya, Korea, Kenya and Cyprus.

14. *Interest on estate duty on the proceeds of sale of timber.*

Section 9 of the Finance Act, 1912, fixed the rate of interest on estate duty on the proceeds of sale of timber at 3 per cent. In practice interest is charged at 2 per cent, which is the current rate of interest on estate duty generally.

15. *Sale of controlling shareholdings.*

Where the same person has to bear estate duty on the value of shares and debentures to which Section 55, Finance Act, 1940, applies, and any income tax payable by virtue of Section 22, Finance Act, 1960, on a sale of those shares or debentures, so much of the estate duty may be repaid as is attributable to the income tax paid *or* to the income tax that would have been incurred had the shares or debentures been sold at the time of the deceased's death for their estate duty valuation, whichever is the less.

16. *Agricultural property.*

For the purposes of the reduced rate of estate duty payable on the agricultural value of agricultural property, buildings used in connection with the intensive rearing of livestock on a commercial basis for the production of food for human consumption are treated as 'agricultural property", and "husbandry" is interpreted as including any method of such intensive rearing of livestock.

STAMP DUTIES

1. *Stamp allowance on lost documents.*

Allowance of the stamp duty on lost documents is made either by repayment, where replicas have been stamped, or by free stamping of the replicas.

2. *Stamping of replicas of documents which have been spoilt or lost.*

Where the stamp duty is allowed on a document because it has been spoilt or lost and replaced by a replica but the duty has been increased so that the amount to be impressed on the replica is more than the amount allowable on the original, the additional duty is impressed free of charge.

3. *Group life and pension policies.*

Documents which assure to the members of a fluctuating body of unnamed persons (e.g., all the employees of a company) capital sums on death before retirement, and/or pensions on retirement are assessed to stamp duty on the total at risk in one sum instead of on the individual amounts. No further duty is charged if a member withdraws without taking benefit and a new member enters in his place and takes a similar benefit, except in the case of a group pension policy under which each premium paid in respect of a member purchases a separate deferred annuity.

4. *Partial release of mortgage.*

The correct duty is 10s. deed duty, but *ad valorem* duty at 6d. per cent is accepted if such duty be less than 10s.

5. *Transfer and reconveyance of collateral security.*

The correct duty is 6d. per cent. The practice is to limit the duty to 10s. if the transfer of the original security is duly stamped.

6. *Transfers of stock issued by the Electricity Board for Northern Ireland or the Ulster Transport Authority.*

Transfers of stock issued by the Northern Ireland Electricity Board or the Ulster Transport Authority, which are exempt from stamp duty in Northern Ireland, are treated as exempt from stamp duty in Great Britain if the stock is not registered in Great Britain.

Reciprocal treatment is given by the Northern Ireland Government to transfers of stock issued by the nationalised industries in Great Britain which are exempt from stamp duty in Great Britain.

U. S. A.

DOCUMENTS

WITHHOLDING OF TAX ON NONRESIDENT ALIENS

Advice has been requested whether the principle announced in Revenue Ruling 62-154, C.B. 1962-2, 148, applies to the withholding of tax under section 1441 of the Internal Revenue Code of 1954, so that the determination of whether a United States corporation should withhold tax from dividends paid to an alien estate on stock held in the name of the estate would depend upon all the facts involved.

Revenue Ruling 62-154 holds that whether the estate of a non-resident alien decedent, which is subject to domiciliary administration in a foreign country and ancillary administration in the United States, is a resident or nonresident alien entity for Federal income tax purposes depends on all of the facts involved.

Section 1.1441-3 (b) (4) of the Income Tax Regulations provides, in general, that when a corporation paying dividends has no definite knowledge of the status of a shareholder, the tax shall be withheld under section 1.1441-1 of the regulations if the shareholder's address is outside the United States. If the shareholder's address is within the United

States, it may be assumed for the purpose of withholding on dividends that the shareholder is a citizen or resident of the United States.

While Revenue Ruling 62-154 applies to the withholding of tax under section 1441 of the Code, so that the determination of whether tax should be withheld from dividends paid to an alien estate depends on all the facts involved, all of the relevant facts are not usually available to the United States corporation paying the dividend. Therefore, section 1.1441-3 (b) (4) of the regulations is applicable. Accordingly, in the absence of facts which may be relied on to determine the status of the alien estate (i.e., resident or nonresident) a United States corporation is required to withhold in reliance on the alien estate's address if it is an address outside the United States but it not required to withhold if the address is within the United States. The written statement of a person authorized to represent the estate may be relied on by a United States corporation paying dividends to the estate. See sections 1.1441-5(a), 1.1461-1(h) and 1.1461-1 (j) (l) of the regulations.

Where the investment is held in the name of a fiduciary for an estate or trust, and the fiduciary is a nonresident alien, under section 1.1441-3 (f) of the regulations withholding is required with respect to payments of dividends even though the beneficiaries of the estate or trust are citizens or residents of the United States. When the payer corporation has no definite knowledge that the fiduciary is a nonresident alien, the tax shall be withheld if the fiduciary's address is outside the United States.

Revenue Ruling 65.311

III

TREATIES

BRAZILIAN TAX TREATIES

Representatives of the Brazilian and United States Governments will begin discussions in the near future with regard to the conclusion of a tax treaty to avoid double taxation and foster trade and investment between the two countries. Sweden has already concluded a treaty with Brazil; the text of which is published *infra*. The treaty is unusual in several ways. With only a few exceptions, no exemptions are granted under the Swedish treaty in the country of source, double taxation being almost exclusively avoided through the granting of a credit for tax of the country of source against the country of residence. Credit will also be granted in Sweden for Brazilian tax which is not, or only partly paid as a result of special exemptions and reductions, e.g. under a program of economic development (a so-called tax sparing provision).

AGREEMENT
BETWEEN SWEDEN AND BRAZIL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of the Kingdom of Sweden and the Government of the United States of Brazil, desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and capital, have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of the present Agreement are:

a) In the United States of Brazil:

i) all taxes covered by the Federal Income Tax Law, including those applicable to individual tax payers and legal persons, as well as the withholding tax, the taxes on profits deriving from the sale of real properties, and all other such taxes or not refundable additional taxes which may result from the application of Brazilian Income tax regulations. (hereinafter referred to as "Brazilian tax")

ii) for the purposes of Article XVII, refundable additional taxes and compulsory loans which may result from the application of the Brazilian income tax regulations.

b) In Sweden:

i) the State income tax, including sailors tax and coupon tax;

ii) the tax on public entertainers;

iii) the tax on undistributed income;

iv) the tax on distributed income;

v) the communal income tax; and

vi) the State capital tax.

(hereinafter referred to as "Swedish tax")

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting State subsequently to the date of signature of the present Agreement.

ARTICLE II

(1) Where income from sources within Brazil or capital situated therein under the laws of Brazil and in accordance with this Agreement may be taxed in Brazil, Sweden shall allow the Brazilian tax paid in respect of such income or capital as a credit against any Swedish tax payable in respect of that income or capital. The deduction in either case shall not, however, exceed that part of the Swedish income tax or capital tax, respectively, as computed before the deduction is given, which is appropriate, as the case may be, to the income or the capital which may be taxed in Brazil.

(2) Where income from sources within Sweden or capital situated therein under the laws of Sweden and in accordance with this Agreement may be taxed in Sweden, Brazil shall allow the Swedish tax paid in respect of such income or capital as a credit against any Brazilian tax payable in respect of that income or capital The deduction in either case shall not, however, exceed that part of the Brazilian income tax or capital tax, respectively, as computed before the deduction is given, which is appropriate, as the case may be, to the income or the capital which may be taxed in Sweden.

(3) In the application of paragraph (1) of this Article, when Brazilian income tax has been relieved or reduced for a limited period of time, the credit against Swedish tax shall be allowed in an amount equal to the Brazilian tax which would have been appropriate to the income concerned if no such relief had been given or no such reduction had been allowed. The provisions of this paragraph shall also apply, for a period not exceeding ten years, when the Brazilian income tax has been relieved or reduced under a program of economic development.

(4) For the purposes of this Article, profits, or remuneration for personal (including professional) services performed in one of the Contracting States shall be deemed to be income from sources within that State, save for exceptions stated in Articles X, XI, XII, XIII, and XIV of this Agreement.

(5) The graduated rate of Brazilian tax to be imposed on residents of Brazil may be calculated as though income or capital which under this Agreement is taxable only in Sweden were included in the amount of the total income or capital.

(6) The graduated rate of Swedish tax to be imposed on residents of Sweden may be calculated as though income or capital which under this Agreement is taxable only in Brazil were included in the amount of the total income or capital.

ARTICLE III

(1) Dividends paid by a company which is a resident of one of the Contracting States to a resident of the other Contracting State may be taxed in both Contracting States.

(2) Notwithstanding the provisions of paragraph (1) of Article II dividends paid by a company which is a resident of Brazil to a company, being a resident of Sweden, shall be exempt from tax in Sweden provided that in accordance with the Swedish tax laws the dividends would have been exempt from tax if both companies had been residents of Sweden.

ARTICLE IV

Interest on bonds, securities, notes, debentures, or any other form of indebtedness, derived by a resident of one of the Contracting States from sources in the other Contracting State may be taxed in both Contracting States.

ARTICLE V

(1) Income of whatever nature derived from real property in one of the Contracting States by a resident of the other Contracting State may be taxed in both Contracting States.

(2) Any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources within one of the Contracting States to a resident of the other Contracting State may be taxed in both Contracting States.

ARTICLE VI

Capital gains derived from the sale, exchange or transfer of a capital asset, whether movable or immovable, may be taxed both in the Contracting State in which the capital asset is situated at the time of such sale, exchange or transfer, and in the Contracting State of which the person deriving the said capital gains is a resident.

ARTICLE VII

(1) Any royalty derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed in both Contracting States; provided, however, that the tax levied on the royalty in the Contracting State from which the royalty is derived shall not exceed 15% (fifteen percent) of the gross amount of such royalty. The limitation stated in this paragraph shall not apply to royalties derived from Brazil during the first three calendar years of the application of the present Agreement during which period of time Brazil is thus entitled to apply the tax on royalties provided for in the Brazilian tax legislation.

(2) In this Article, the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark, or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

(3) Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the provisions of the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration, in accordance with the provisions of the tax legislation of the Contracting State from which the royalty is derived.

ARTICLE VIII

(1) The profits of an enterprise of one of the Contracting States shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may also be imposed in the other Contracting State on the profits of the enterprise, but only on so much of them as is attributable to that permanent establishment, in accordance with the provisions of the tax legislation of that Contracting State.

(2) Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing quite inde-

pendently with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose of the permanent establishment, including executive and general administrative expenses, provided they can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the permanent establishment is situated.

(4) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of either Contracting State in relation to the liability of the enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that State: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this Article.

(5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise, except in such cases as are envisaged by the provisions of subparagraph (1) (g) (vi) of Article XVIII.

(6) For the purposes of this Agreement the term "profits" includes profits from manufacturing, mercantile, farming, mining or financial activities but does not include, in particular, income in the form of rents, royalties, interest, dividends, remuneration for labour or personal services or income from the operation of ships or aircraft.

ARTICLE IX

Where

a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE X

(1) Income from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) Where an individual performs services wholly or mainly aboard a ship or an aircraft operated by a resident of one of the Contracting States such services shall be deemed to be performed in that State, and the income from such services may be taxed accordingly.

ARTICLE XI

(1) Profits or remuneration for professional services or for services as an employee performed in one of the Contracting States by an individual who is a resident of the other Contracting State

may be taxed in both Contracting States.

(2) Notwithstanding the provisions of paragraph (1) in this Article, remuneration derived by a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

b) the remuneration is paid by or on behalf of a resident of the first-mentioned Contracting State.

(3) The provisions of paragraph (2) in this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes.

(4) Fees and any other remuneration that a resident of one of the Contracting States may receive as compensation for being a member of a board of directors of a company resident in the other Contracting State may be taxed also in that other State, provided, however, that the company paying such fees and other remuneration deducts them as a cost.

ARTICLE XII

(1) Salaries, wages and similar compensation paid by the Government of Brazil to a citizen of Brazil who is a resident of Sweden, for services rendered to Brazil in the discharge of governmental functions, shall be taxable only in Brazil.

(2) Salaries, wages and similar compensation paid by the Government of Sweden to a citizen of Sweden who is a resident of Brazil, for services rendered to Sweden in the discharge of governmental functions, shall be taxable only in Sweden.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to salaries, wages and similar compensation paid in respect of services rendered in connection with any trade or business carried on by either of the Contracting States for purposes of profit.

(4) Any pension or annuity of whatever nature derived by a resident of one of the Contracting States from sources in the other Contracting State may be taxed in both Contracting States.

In this paragraph the term "pension" means a periodic payment made in consideration of services rendered in the past, by way of compensation for injuries received, or under the provisions of a public social security system. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE XIII

An individual from one of the Contracting States who, at the invitation of the other Contracting State or of a university, college, school, museum or other cultural institution in that other Contracting State or under an official program of cultural exchange, visits that other State solely for the purpose of teaching, giving lectures or carrying out research or artistic activities at such institution for a period not exceeding two years shall be taxable only in the first-mentioned State on his remuneration for such activity.

ARTICLE XIV

(1) An individual from one of the Contracting States who is temporarily

present in the other Contracting State solely

a) as a student at a university, college or school in that other State,

b) as a business apprentice, or

c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization,

shall not be taxed in that other State in respect of remittances from abroad for the purposes of his maintenance, education or training.

(2) An individual from one of the Contracting States who is present in the other Contracting State solely as a student at a university, college or school in that other State or as a business apprentice, shall not be taxed in that other State for a period not exceeding three consecutive fiscal years in respect of remuneration from employment in such other State, provided that

a) the remuneration constitutes earnings necessary for his maintenance and education, and

b) the said remuneration does not exceed in the fiscal year an amount corresponding to US$ 1,500.

ARTICLE XV

Where taxes on capital are imposed by one or other or both of the Contracting States the following provisions shall apply:

a) Capital represented by real property may be taxed both in the Contracting State in which such property is situated and in the Contracting State of which the owner of the real property is a resident.

b) Capital represented by assets forming part of the business property employed in a permanent establishment, situated in one of the Contracting States, of an enterprise of the other Contracting State may be taxed in both Contracting States.

c) Ships and aircraft operated in international traffic and assets, other than real property, pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

d) All other elements of capital of a resident of one of the Contracting States shall be taxable only in that State.

ARTICLE XVI

Where under the provisions of this Agreement a resident of one of the Contracting States is exempt or entitled to relief from tax in the other Contracting State, similar exemption or relief shall be applied to the undivided estate of a deceased person who at the time of death was a resident of that other Contracting State, in so far as one or more of the beneficiaries is a resident of the first-mentioned Contracting State.

ARTICLE XVII

(1) The nationals of Brazil, while residing in Sweden, shall not be subject therein to other or more burdensome taxes than are the nationals of Sweden residing in Sweden.

(2) The nationals of Sweden, while residing in Brazil, shall not be subject therein to other or more burdensome taxes than are the nationals of Brazil residing in Brazil.

(3) In this Article, the term "nationals" means

a) in relation to Brazil, all Brazilian citizens and all legal persons, partnerships and associations deriving their status as such from the laws in force in Brazil;

b) in relation to Sweden, all Swedish

citizens and all legal persons, partnerships and associations deriving their status as such from the laws in force in Sweden.

(4) A company, being a resident of one of the Contracting States, shall not be subject to any tax on capital in the other Contracting State which is other or more burdensome than the tax on capital to which a company, being a resident of that other State, is or may be subjected.

(5) In paragraphs (1) and (2) of this Article the word "taxes" means taxes of every kind or description.

(6) The provisions of this Agreement may not in any case be so interpreted as to cause a higher tax burden than would have been imposed if this Agreement had not existed.

ARTICLE XVIII

(1) In the present Agreement, unless the context otherwise requires:

a) The terms "one of the Contracting States" and "the other Contracting State" mean Brazil, or Sweden, as the context requires.

b) The term "tax" means Brazilian tax or Swedish tax, as the context requires.

c) The term "person" comprises an individual, a legal person, including a company, and any other body of persons.

d) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.

e) (i) The term "resident of Brazil" means any person who, under the law of Brazil, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

(ii) The term "resident of Sweden" means any person who, under the law of Sweden, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

(iii) Where by reason of the provisions of subparagraphs e) (i) and (ii) of this paragraph, an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

A) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

B) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

C) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

D) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(iv) Where by reason of the provisions of subparagraphs e) (i) and (ii) of this paragraph, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

f) The term "Brazilian enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Brazil; the term "Swedish

enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Sweden. The terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Brazilian enterprise or a Swedish enterprise as the context requires.

g) The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(i) A permanent establishment shall include, *inter alia*, especially:

A) a place of management;

B) a branch;

C) an office;

D) a factory;

E) a workshop; or

F) a mine, quarry or other place of extraction of natural resources.

(ii) The term "permanent establishment" shall not be deemed to include:

A) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise, i.e. when no sales operations are carried on in the country in which such facilities are situated;

B) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, i.e. when no sales operations are carried on in the country in which such facilities are situated;

C) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

D) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

E) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(iii) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom subparagraph (iv) below applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(iv) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(v) The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

(vi) Notwithstanding the provisions of subparagraphs (ii) D) and (iii) an enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if the enterprise maintains in that State for the purpose of purchasing agricultural and livestock products for the enterprise a

fixed place of business or such an agent as is envisaged in subparagraph (iii).

h) The term "competent authority" means, in the case of Brazil, the Minister of Finance or his authorised representative, and in the case of Sweden, the Minister of Finance or his authorised representative.

(2) In the application of the provisions of the present Agreement by one of the Contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the present Agreement.

ARTICLE XIX

(1) The competent authorities of the Contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or for the administration of statutory provisions in relation to the taxes which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those, including a Court, concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

(2) The competent authorities of the two Contracting States may prescribe regulations necessary to carry into effect the present Agreement within the respective States.

(3) The competent authorities of the two Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

(4) The competent authorities of the two Contracting States shall keep each other informed of significant changes in the tax laws of the respective States, and in the event of appreciable modifications in such laws, shall consult together to determine whether amendments to this Agreement are desirable.

(5) Where a taxpayer shows proof that the action of the tax authorities of either Contracting State has resulted, or will result, in taxation contrary to the provisions of the present Agreement, he shall be entitled to present the facts to the competent authority of the Contracting State of which he is a resident. Should the claim be upheld, the competent authority to which the facts are so presented shall undertake to come to an agreement with the competent authority of the other Contracting State with a view to avoidance of the taxation in question.

(6) Should any difficulty or doubt arise as to the interpretation or application of the present Agreement, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE XX

(1) The present Agreement shall be ratified by the Contracting States in accordance with their respective constitutional and legal requirements.

(2) The instruments of ratification shall be exchanged at Stockholm as soon as possible.

(3) Upon exchange of ratifications the present Agreement shall have effect:

In Brazil: in respect of income derived on or after 1st January in the calendar year next following that in which the exchange

of ratifications takes place.

In Sweden: in respect of income derived on or after 1st January in the calendar year next following that in which the exchange of ratifications takes place; and, as regards the Swedish State capital tax, in respect of tax which is assessed in or after the calendar year next following that in which the exchange of ratifications takes place.

ARTICLE XXI

The present Agreement shall continue in effect indefinitely but either Contracting State may, on or before 30th June in any calendar year not earlier than the third year after the calendar year in which the exchange of ratifications takes place, give to the other Contracting State, through diplomatic channels, written notice of termination, and, in such an event, the present Agreement shall cease to be effective:

In Brazil: in respect of income derived on or after 1st January in the calendar year next following that in which such notice is given.

In Sweden: in respect of income derived on or after 1st January in the calendar year next following that in which such notice is given; and, as regards capital tax, in respect of tax assessed in or after the calendar year next following that in which such notice is given.

In witness whereof the undersigned being duly authorized thereto have signed the present Agreement and have affixed thereto their seals.

Done at Rio de Janeiro, this 17th day of September 1965, in duplicate in the Swedish, the Portuguese and the English languages.

For the Government of the Kingdom of Sweden: JENS MALLING

For the Government of the United States of Brazil: V. DA CUNHA
OCTAVIO BULHOES

CONVENTION BETWEEN THE GERMAN FEDERAL REPUBLIC AND THE U.S.A.

The Internal Revenue Service February 23, 1966 announced an interim procedure for giving effect to the reduced rate of withholding of United States income tax from dividends paid by United States corporations to residents or companies of the Federal Republic of Germany brought about by the protocol modifying the income tax convention between the United States and the Federal Republic of Germany of July 22, 1954. The protocol was signed at Bonn on September 17, 1965, and instruments of ratification were exchanged on December 27, 1965.* This interim procedure will apply until withholding regulations under the convention as modified by the protocol are published.

The convention of July 22, 1954, provided for a 15-percent rate of United States tax (the statutory rate is 30 percent) for dividends paid by a United States corporation to a German company owning 10 percent or more of the stock of such corporation. The protocol, among other things, extends the 15-percent rate of United States tax to all dividends paid by a United States corporation to a resident or company of Germany,

*) The text of the treaty in which provisions of the protocol have been incorporated, was published in Bulletin 1965, p. 510, in the German language. The English text was published in the November 1965 issue of "Supplementary Service to European Taxation".

effective with respect to dividends paid on or after January 1, 1965. The reduction in rate does not apply if the German recipient has a permanent establishment in the United States and the holding giving rise to the dividend is effectively connected with the permanent establishment.

In order to give effect to the reduced rate of tax with respect to dividends paid in 1965, the Revenue Service said that United States withholding agents who have withheld United States tax at the statutory 30-percent rate from dividends paid during 1965 by United States corporations to recipients having addresses in the Federal Republic of Germany at the time of payment may release and pay over to the recipient from whom such tax was withheld an amount which is equal to the difference between the tax so withheld and the 15-percent tax required to be withheld pursuant to the United States-German income tax convention, as modified by the protocol. This rule will not apply if, prior to the date of release of tax, the withholding agent is notified by the Commissioner or the recipient that the recipient is not entitled to the reduced rate.

Withholding agents filing information returns on Form 1042 for 1965 which include payments of dividends made to recipients having addresses in the Federal Republic of Germany were told by the Revenue Service that, where withheld taxes are released in accordance with this announcement, the amount reported on such returns as tax withheld should be adjusted so as to reflect only the net amount withheld. The accompanying Forms 1042S reporting dividends paid to and United States tax withheld from recipients having addresses in the Federal Republic of Germany should also indicate only the amount withheld after such release of tax has been made.

Where United States withholding agents have already paid over the amounts withheld as tax at the statutory 30-percent rate to the Director, Office of International Operations, the Revenue Service advised that a claim by the German recipient for refund of any resulting overpayment of tax may be made under section 6402 of the Internal Revenue Code and the regulations thereunder.

If the claimant has previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 843 or an amended return. If the claimant has not previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 1040NB, Form 1040NB-a, Form 1040B, or Form 1120-F, whichever is applicable, showing the overpayment. Such a return will serve as a claim for refund, and it will not be necessary for the claimant to file Form 843. Amended returns or claims for refund should be filed with the Director, Office of International Operations, Washington, D.C. 20225.

The Revenue Service also announced that, pending issuance of withholding regulations, United States withholding agents paying dividends in 1966 to recipients having addresses in the Federal Republic of Germany may withhold at the reduced rate of 15 percent in every case except that in which, prior to the date of payment of the dividends, the withholding agent is notified by the Commissioner or the recipient that the reduced rate does not apply.

IV

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1. BOOKS

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KOMMENTAR ZUR BUNDESABGABEORDNUNG; by *Reeger, F. and G. Stoll,* 1966, 1128 pp. S. 882.—. Wien, Wirtschaftsverlag Dr. Anton Orac.

Handbook to the Fiscal Code, which includes provisions of formal tax law, e.g. definitions of elements creating tax liability, competence of the various tax authorities, legal formalities for returns and assessment, legal requirements for collection and accounting, and possibilities for appeal to tax courts. This handbook presents an extensive commentary to the 323 sections of this important tax code.

CHINA

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EAST AFRICA

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FRANCE

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Handbook to the French turnover taxes, discussing tax liability, exemptions, deductions, rates, etc. Practical handbook which describes the machinery of the French turnover tax in general, but which focusses in particular on problems encountered in the field building and other constructions and transportation of goods. The book will be useful both for the businessman and for accountants and tax counsel.

GERMANY

DIE LEBENSVERSICHERUNG IM STEUERRECHT, by *Reuter, H.P.,* 1965, second edition, 216 pp. DM. 19,80. Herne, Berlin, Verlag Neue Wirtschaftsbriefe.

Comprehensive handbook with respect to the tax aspects of life-insurance. The effects of contributions and benefits on income, business, net worth, turnover, and estate tax for both individuals and enterprises are discussed, together with illustrative court decisions and administrative rulings.

LANGFRISTIGE PLANUNG VON STAATSAUSGABEN, by *Tretner, C.H.* Finanzwissenschaftliche Forschungsarbeiten, Heft 32 (Neue Folge), 1965. 116 pp. Berlin, Dunker & Humblot.

Plea for a long-term planning of governments expenditures, together with suggestions with respect to its form and practical application in Germany.

BULLETIN INTERNATIONAL DES DOUANES, Exercice 1965-1966; Fascicule 25 (10e édition). Bruxelles, Bureau International des Tarifs Douaniers.

Import duties tariff according to the German Gebrauchs-Zolltarif of January 1, 1965 as amended up to July 13, 1965.

PROBLEME DER EINKOMMENSPOLITIK, 1965, 215 pp. Tübingen, J.C.B. Mohr.

Lectures held between May 17 and May 19, 1959 by the Institute for World Economies at the University of Kiel (Germany), covering several facets of taxation of income as an instrument of governments' policy.

FINANZGERICHTSORDNUNG, by *Ziemer, H.*, 1966, 175 pp. Bonn, Wilhelm Stollfuss Verlag.

Text of the new Tax Court Ordinance and auxiliary law clarified by comprehensive notes.

STEUERRECHT FÜR JEDERMANN, Schriftenreihe *Rosenau, H. and Fr. Kuhlberg*. Band 8, Teilband I: Allgemeines Steuerrecht und Besitzsteuern, 1965, 468 pp. DM 29.70. Teilband II: Verkehrsteuern und Gemeindesteuern, 1959, 301 pp. DM 13.80. Celle, Pohl Druckerei und Verlagsanstalt.

Guide to German tax law, in two volumes, primarily for use by laymen and students.

HANDELSGESETZBUCH, by *Baumbach, A. and K. Duden*, 1966, 17th edition, 946 pp. DM 45.—. München, Verlag C.H. Beck.

Comprehensive handbook presenting German commercial law pertaining to merchants, commercial dealings and commercial partnerships, clarified by a short commentary. Commercial law relating to corporations is not included.

STEUERBERATER-JAHRBUCH 1965/66, 1966, 497 pp. DM 43.—. Köln, Verlag Dr. Otto Schmidt KG.

Lectures held during the 17th Annual Meeting of German Tax Advisors, held in Cologne, between 25th and 27th October 1965. Well known tax experts discussed actual problems both of general and of specifically German interest, such as base companies, tax problems in the Common Market, actual problems in corporate and individual taxation and modern tax policy.

FINANZPOLITIK, by *Schmölders, G.*, 1965, second edition, 544 pp. Berlin, Springer Verlag.

Handbook to fiscal policy. It presents a study of the background and elements of taxation and public expenditure in Germany, particularly from a legal point of view.

DIE ERBSCHAFTSTEUER ALS MITTEL DER VERMÖGENSREDISTRIBUTION, by *Kisker, K.P.* Volkswirtschaftliche Schriften, Heft 79, 1964. 200 pp. DM. 33.60. Berlin, Duncker & Humblot.

An empirical and theoretical study in how far the German, United Kingdom and United States estate tax are or may be used by the respective governments to redistribute wealth between the citizens of Germany, the United Kingdom and the United States respectively.

DIE OBJEKTIVEN GRENZEN DER MATERIELLEN RECHTSKRAFT STEUERGERICHTLICHER URTEILE, by *Müffelmann, H.*, Schriften zum Steuerrecht, Band I, 1965. 207 pp. DM 39.60. Berlin, Duncker & Humblot.

Study on the limits of the legal force of tax court decisions and on the determination of the underlying principles involved in tax disputes.

INDIA

DIRECT TAX LAWS, Volume II, by *Dastur, S.E., H.M. Damania, J.E. Dastur*, Bombay-2, N.M. Tripathi Private Ltd., Princess Street. 2nd edition 1965, XXXVI + 357 pp.

(See bookreview with respect to volume I of Direct Tax Laws. (February issue).) Volume II of Direct Tax Laws is in five parts, dealing with the full text of the Estate Duty Act, 1953; the Expenditure Tax Act 1957, the Gift Tax Act 1958, the Companies (Profits) Surtax Act 1964 and the Wealth Tax Act 1957, as amended by the Direct Taxes (Amendment) Act 1964, the Wealth Tax (Amendment) Act 1964, the Income Tax (Amendment) Act 1965 and the Finance Act 1965. Explanatory notes are added only to the amending provisions. An Appendix gives the text of the Finance (No. 2) Act. 1965.

ITALY

LA LEGISLAZIONE SULLE IMPOSTE DIRETTE, third edition. Ed. Associazione bancaria Italiana – Raccolta di Testi Legislativi e normativi in materia tributaria, Bancaria, Roma, 1965. 841 pp.

Compilation of the texts of laws and decrees on direct national and local taxation, as applicable on January 1, 1965. An index is included.

MEXICO

EL PROBLEMA FISCAL en las distintas etapas de nuestra organización política (in 6 vols.), by *Manuel Yanez Ruiz*; Mexico – Secretaría de Hacienda y Crédito Público; 1958, 1959 and 1961 – 2984 pp.

The purpose of this work is to compile chronologically all relevant studies, treatises, articles, commentaries, legislative texts, official documents, etc. in relation to the problem of Mexico's fiscal organization from the Aztec Empire to the present by providing a historical view of the development of the tax system with regard to the federation, states and municipalities. During the Aztec Empire, the taxes levied were devided into two categories: those imposed on their own citizens and those imposed in territories conquered or subjected by them. With regard to their own citizens the taxes imposed were devided into three classes: taxes levied for purposes of their leaders, for religious purposes and for war purposes. The contributions required during wartime were collected by enlistment of the taxpayer as a warrior. A further treatise is given from the tax system during the Spanish viceroyalty based on the work "Historia General de Real Hacienda", written in 1790 by Fabián de Fonseca and Carlos de Urrutia, the work continues step by step from the time of long struggle for independence (1810-1821) to the extraordinary expenditures during the civil war between the Centralist and Federalist parties, where the first Ministers of Finance endeavored to modify the colonial fiscal system based on indirect tax into more equitable direct taxes. It was not before the introduction of the Federal Decree of July 20, 1921 which provide for a single and extraordinary levy on commercial and industrial profits and on income from salaries and wages, independent professions and the investment capital (Vol. III), that modern income tax system existed. The material compiled tends to emphazise Federal indirect taxes, such as excise tax, production tax on mining enterprises and stamp taxes, rather than income tax and profits tax.
Due to the fact that this work was published under the auspices of the Ministry of Finance and Public Credit (Secretaría de Hacienda y Crédito Público) which is in charge of all matters of fiscal and monetary policy, public credit and federal taxation, last but not least a treatise is given on the monetary policy in Vol. VI.

NEW ZEALAND

TAXATION BOARD OF REVIEW DECISIONS, by *Thompson, M.I.,* 1965, 463 pp. Wellington, Butterworth.
Bound volume of cases reported 1963, 1964 and 1965.

NIGERIA

BULLETIN INTERNATIONAL DES DOUANES, Exercice 1965-1966; Fascicule 134 (8e édition). Bruxelles, Bureau International des Tarifs Douaniers. Import duties tariff according to the Nigerian Customs Tariff Act 1965 (No 3) of July 27, 1965.

UNITED KINGDOM

REVENUE LAW, by *Pinson, B.* London, Sweet & Maxwell, 2nd edition, 1965. vii + 628 pp. £. 3.15.—. net.

Survey of the major aspects of income tax, surtax, capital gains tax, profits tax, corporation tax, estate duty, stamp duties and estate tax planning. The work is up-to-date as of August 1, 1965, and includes references to the Finance Act, 1965. It is presumably the only work covering in some detail the whole field of Revenue Law, which term unfortunately excludes customs and excises, and thus also the purchase tax.

U.S.A.

STOCK VALUES AND YIELDS for 1966 TAX PURPOSES; 1966, 173 pp. $ 3.50. Chicago, Commerce Clearing House Inc.

Market values, par values and yields of listed or regularly quoted stocks for 1966 federal, state and local tax purposes.

1966 US EXCISE TAX GUIDE, 1966 Guidebook to Labor Relations, 1966 Edition of Estate Planning.

These recent publications of Commerce Clearing House Inc., publishers of topical law reports comprising respectively 448, 367 and 96 pages. Prices $ 5.00, $ 5.00 and $ 2.00 respectively.

CURRENT PROBLEMS AND ISSUES IN STATE TAXATION OF INTERSTATE COMMERCE, Government Finance Brief No. 3 (new series), 1966, 12 pp. New York, Tax Foundation.

INTERNATIONAL MONETARY FUND, Summary Proceedings of the 20th Annual Meeting of the Board of Governors, 1966, 283 pp. Washington, D.C.

2. LOOSE-LEAF SERVICES

Releases received between February 1st 1966 and February 28 1966

AUSTRIA

Österreichische Steuer- und Wirtschaftskartei, releases nos 3/4: P. Linde – Wien

BELGIUM

Documentatie Vandewinckele, releases nos 271-272; Vandewinckele – Brugge

CANADA

Canada Tax Service Releases, releases nos 191-192; R. de Boo – Toronto
Canada Tax Service Synopsis of recent Tax Cases releases nos 80-81: R. de Boo – Toronto
Canadian Income Tax, release no 31: Butterworth & Co. – Toronto
McDonald's Current Taxation, releases nos 2-3: Butterworth – Toronto
Provincial Taxation Service, release no 199: R. de Boo – Toronto

DENMARK

Skattebestemmelser, releases nos 19-20: Skattekartoteket – København

FRANCE

Circulaire Fideuraf, release no 358: Fideuraf – Paris
Dictionnaire Fiscal Permanent, releases no 5: Ed. Législatives et Administratives – Paris
Documentation Pratique de Securité Sociate et de Législation du Travail, release no 2: Lefebvre – Paris
Feuillets de Documentation Pratique Enregistrement, release no 4: Lefebvre – Paris
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Juris Classeur Fiscal Chiffre d'Affaires, release no 6060: Ed. Techniques – Paris
Juris Classeur Fiscal Impôts Directs, release no 1063: Ed. Techniques – Paris

GERMANY

Bundessteuerblatt, release no 5: W. Stollfuss Verlag – Bonn
Handbuch Einfuhrnebenabgaben, release no 1: V.d. Linnepe – Hagen
Reichsabgabenordnung, release no 2: O. Schmidt – Köln
Steuerrechtsprechung in Karteiform, release no 169: O. Schmidt – Köln

NETHERLANDS

Beknopte Belastinggids, release no 36: L.J. Veen's Uitg. Mij. – Amsterdam
Belastingberichten, releases nos 28-29: N. Samsom N.V. – Alphen a/d Rijn
Belastingwetgevingserie; Wet op de Vermogensbelasting, release no 1: Noorduyn & Zn. – Gorinchem
Belastingwetten, release no 5: S. Gouda Quint – Arnhem
FED's Fiscaal Register, releases nos 8-9: FED – Amsterdam
FED's Fiscaal Repertorium, release no 9: FED – Amsterdam
FED's Losbladig Fiscaal Weekblad, releases nos 1030-1033: FED – Amsterdam
De Gemeentelijke Belastingen, release no 65: Vuga Boekerij – Arnhem
Handboek voor de Europese Gemeenschappen, release no 19: AE. E. Kluwer N.V. – Deventer
Handboek voor In- en Uitvoer, release no 57: AE. E. Kluwer N.V. – Deventer
Handboek voor In- en Uitvoer; Tarief van Invoerrechten, release no 45: AE. E. Kluwer N.V. – Deventer
Kluwer's Fiscaal Zakboek, release no 6: AE. E. Kluwer – Deventer
Kluwer's Tarievenboek, release no 51: AE. E. Kluwer – Deventer
Nederlandse Belastingwetten – de Groot, releases nos 19-20: Samsom – Alphen a/d Rijn
Omzetbelasting, release no 94: Vuga Boekerij – Arnhem
Teruggaaf van Omzetbelasting bij Uitvoer, release no 166: N. Samsom – Alphen a/d Rijn
Vademecum In- en Uitvoer, release no 323: AE. E. Kluwer – Deventer
Vakstudie; Wet op de Vermogensbelasting, release no 6: AE. E. Kluwer – Deventer
Vakstudie; Wet op de Inkomstenbelasting, releases nos 11-12: AE. E. Kluwer – Deventer
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NEW ZEALAND

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C. W. Bodenhausen †

On April 8, 1966, C.W. Bodenhausen, Honarary President of both the International Fiscal Association, and the International Bureau of Fiscal Documentation, passed away at the age of ninety-six. Mr. Bodenhausen was the first president of the Bureau's Board of Trustees. His contribution in the field of international tax law and to I.F.A. and the Bureau in particular can only be inadequately acknowledged on the sad occasion of his death.

I

UNITED STATES TAX ASPECTS OF JOINT VENTURES AND LICENCE AGREEMENTS IN THE UNITED STATES BETWEEN UNITED STATES AND EUROPEAN COMPANIES

by

STANLEY I. RUBENFELD*

In recent years United States companies have increasingly sought the use of patents and know-how from European companies through joint ventures in the United States or through license agreements. In order to negotiate intelligently such agreements it is important for both the European company and the United States company to know what the tax consequences will be to each in the United States. The purpose of this article is to examine the United States tax aspects of such transactions.

I. JOINT VENTURE COMPANY

(a) *Transfers on Organization of the Company*

In a typical joint venture arrangement between a U.S. company and a European company in which European technology is utilized, a United States company is formed ("J.V.") to which the European partner transfers U.S. patents and knowhow in exchange for stock of J.V. and the United States partner transfers cash in exchange for stock of J.V. The European company may also agree to furnish certain start-up services and certain continuing technological services to J.V. The U.S. company may agree to provide management, administration and sales services to J.V. If the European company transfers all substantial rights in its U.S. patents as well as an exclusive right to use its U.S. know-how in perpetuity to J.V. for stock of J.V., and the U.S. company transfers cash to J.V. for the balance of the stock of J.V., the transaction will qualify as a tax-free exchange under Code Section 351 with the result that there will be no U.S. tax payable by the European company or the U.S. company on such transfers.

The treatment of fees received by the European company for technical services is not so clear. If they are paid in connection with the start-up of operations to explain the use of the property transferred, then they should be taxfree as ancillary to the property transfer.[1] Payments to the European company in consideration of continuing services rendered after the start-up stage probably will be treated as compensation for personal services[2] and in the absence of an applicable treaty would be subject to withholding at the rate of 30%. The rendering of such services may cause the European company to be engaged in trade or business in the United States. Such payments probably will be

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1 Rev. Rul. 64-56, 1964-1 Cum. Bull. 133.

2 Cf. Int. Rev. Code of 1954, § 871 (c) and U.S. Treas. Reg. § 1.871-8. *Taxation in the United States*, World Tax Series, 1112 (1963).

characterized as "industrial and commercial profits" under most treaties,[3] and if the European company does not have a "permanent establishment" in the United States, these payments should be exempt from U.S. tax under such treaties.[4] However, the U.S. Internal Revenue Service might well argue that payments for such continuing services were "personal services" rather than "industrial and commercial profits" and were nevertheless taxable.

The U.S. partner to the joint venture transaction may have substantial U.S. tax problems if it receives stock attributable to the furnishing of management, administration or sales services. The receipt of such stock under these circumstances would result in the receipt by the U.S. partner of taxable income. In such case J.V. should be entitled to a corresponding deduction for U.S. income tax purposes even though the payment is made in stock.[5]

We have explored the situation where the European company transfers U.S. patents and know-how or grants an exclusive license. However, a European company might only grant a non-exclusive license of its U.S. patents and know-how to J.V. and in such case the U.S. tax analysis is substantially different. Code Section 351 no longer applies since the patents and know-how will not constitute property.[6] The stock received probably will be considered a royalty payment and thus would be subject to U.S. withholding tax at the rate of 30% in the absence of an applicable treaty. However, most treaties provide that royalties received for the use of patents and know-how are exempt from tax when the licensor has no permanent establishment in the United States.[7] Accordingly, if the stock received from J.V. by the European partner is treated as a royalty payment, it will be tax-free under most treaties with the United States. There is a strong argument that if the payment in stock by J.V. is a royalty payment by J.V., for U.S.

3 Rev. Rul. 54-119, 1954-1 Cum. Bull. 156.

4 See the Income Tax Treaties between the following European countries and the United States: Austria, Article III (1); Belgium, Article III (1); Denmark, Article III (1); Finland, Article III (1); France, Article 3; Germany, Article III (1); Greece, Article III (1); Ireland, Article III (1); Italy Article III (1); Luxembourg, Article III (1); The Netherlands, Article III (1); Norway, Article III (1); Sweden, Article II; Switzerland, Article III (1) (a); and the United Kingdom, Article III (1).

5 I.T. 1197, 1922 Cum. Bull. I-1 269. Under U.S. Treas. Reg. §1.1032-1(a), J.V. will realize no income on the transfer of the stock.

6 See footnote 1, *supra*.

7 See the Income Tax Treaties between the following European countries and the United States: Austria, Article VIII (1) but "only in an amount not exceeding fair and reasonable consideration for such right to use"; Belgium, Article IX (2); Denmark, Article VIII; France, Article 7; Germany, Article VIII; Greece, Article VII; Ireland, Article VIII (1), provided the recipient is "subject to Irish tax on such royalties or other amounts and not engaged in trade or business in the United States"; Italy, Article VIII; Luxembourg, Article VII; The Netherlands, Article IX; Norway, Article VII; Sweden, Article VI, exempt whether or not engaged in trade or business in the United States through a permanent establishment; Switzerland, Article VIII; and the United Kingdom, Article VIII (1), provided the recipient is "subject to United Kingdom tax on such royalties or other amounts", and even if the recipient is engaged in trade or business in the United States through a permanent establishment, the royalties or other amounts received are exempt if "not directly associated with the business carried on through that permanent establishment." The Income Tax Treaty with Finland contains no such exemption.

tax purposes it should be deductible against J.V.'s income[8] or available as a loss carry-over which can be used against J.V.'s income in the next five years.[9] Payments to the European company for technical services which are start-up services should be treated the same as payments for the patents and know-how on the theory that such services are ancillary to the license of such items. Payments for continuing services have been previously considered above.

(b) *Income, Interest, Dividends and Compensation*

Profits of J.V. wherever earned will be fully subject to the U.S. corporate income tax of 48%. Losses can be carried forward for five years against J.V.'s income generated in such years.[10] Interest payments to the U.S. partner will be taxed to the U.S. partner at 48% but will be deductible by J.V. against its taxable income. Interest payments to the European partner will be subject to U.S. withholding tax at the rate of 30% in the absence of an applicable treaty,[11] and generally are exempt or taxed at the rate of 15% under the various treaties, provided the European partner does not have a permanent establishment in the United States.[12] Such interest payments will be deductible against J.V.'s income. Dividend payments by J.V. to the U.S. partner will generally be subject to tax at the rate of 7.2%[13] and will not be deductible against U.S. income. Dividend payments to the European partner will be subject to U.S. withholding tax at the rate of 30% in the absence of an applicable treaty, and generally at the rate of 15% under the various treaties, provided the European partner does not have a permanent establishment in the

8 I.T. 1197, 1922 Cum. Bull. I-1 269.

9 Int. Rev. Code of 1954, § 172.

10 *Ibid.*

11 Int. Rev. Code of 1954, § 1442.

12 See the Income Tax Treaties between the following European countries and the United States and the U.S. Treasury Regulations promulgated pursuant to such Treaties: Austria—exempt from tax pursuant to Article VII "in an amount not exceeding fair and reasonable consideration on indebtedness"; Belgium—Article VIII A provides for tax at the rate of 15 %; Denmark—exempt from tax pursuant to Article VII; Finland—exempt from tax pursuant to Article VII (1); France—Article 6A provides for tax at the rate of 15 %; Germany—exempt from tax pursuant to Article VII; Greece—exempt from tax pursuant to Article VI (1), provided the recipient does not control, directly or indirectly, more than 50% of the entire voting power in the paying corporation; Ireland—exempt from tax pursuant to Article VII (1), provided (1) the business of the recipient is managed and controlled in Ireland, (2) the recipient is subject to Irish tax on such interest and (3) the recipient does not control, directly or indirectly, more than 50% of the entire voting power in the paying corporation; Italy—no Treaty provision reduces or exempts interest payments from tax and therefore Reg.§512.6(b) provides that the rate of withholding remains unchanged; Luxembourg—exempt from tax pursuant to Article VIII; The Netherlands—exempt from tax pursuant to Article VIII (1), provided the recipient does not control, directly or indirectly, more than 50% of the voting power in the paying corporation; Norway—exempt from tax pursuant to Article VI; Sweden—exempt from tax pursuant to Article VIII; Switzerland—Article VII (1) provides for tax at the rate of 5 %; and the United Kingdom—exempt from tax pursuant to Article VII (1), provided the recipient is subject to United Kingdom tax on such interest and does not control, directly or indirectly, more than 50% of the voting power in the paying corporation.

13 Dividend payments may under certain circumstances be tax-free to the U.S. partner. Int. Rev. Code of 1954, § 243.

United States.[14] Such dividend payments will not be deductible against J.V.'s income.

Directors' fees and salaries paid to non-resident alien directors and employees of J.V. who perform services outside the United States are not subject to U.S. tax and are subject to U.S. tax if they perform such services within the United States.

(c) *Sale and Liquidation*

The sale of the stock of J.V. by the U.S. partner would be subject to the 25% capital gains rate on appreciation in the value of the stock of J.V. over its cost if the stock has been held for more than six months. The same treatment would obtain in the case of the liquidation of J.V.[15] If the European partner sells the stock of J.V. in the United States or if J.V. were liquidated, the European partner would be subject to capital gains tax if it was engaged in trade or business in the United States but would not be subject to U.S. tax if it was not engaged in trade or business in the United States. Under certain treaties capital gains or capital gains on sales of securities are exempt from tax if the European company does not have a permanent establishment in the United States.[16]

14 See the Income Tax Treaties between the following European countries and the United States and the U.S. Treasury Regulations promulgated pursuant to such Treaties: Austria—Article VI provides for tax at the rate of 50% of the statutory rate (at the rate of 5% if the required corporate relationship is present); Belgium—Article VIII (1) provides for tax at the rate of 15%; Denmark—Article VI provides for tax at the rate of 15% (5% if the required corporate relationship is present); Finland—Article VI (1) provides for tax at the rate of 15% (5% if the required corporate relationship is present); France—Article 6A provides for tax at the rate of 15%; Germany—Article VI provides for tax at the rate of 15% and in some cases up to 25%, provided the recipient owns 10% or more of the voting stock of the paying corporation; Greece—no Treaty provision reduces or exempts dividend payments from tax and accordingly Reg. §502.2(b) provides that the rate of withholding remains unchanged; Ireland—Article VI (1) provides for tax at the rate of 15% (5% if the required corporate relationship is present), provided the business of the recipient is managed and controlled in Ireland and the recipient is subject to Irish tax on such dividends; Italy—Article VII provides for tax at the rate of 15% (5% if the required corporate relationship is present); Luxembourg—Article IX provides for tax at the rate of 50% of the statutory rate (at the rate of 5% if the required corporate relationship is present); The Netherlands—Article VII (1) provides for tax at the rate of 15% (5% if the required corporate relationship is present); Norway Article VI-A provides for tax at the rate of 15% (5% if the required corporate relationship is present); Sweden—Article VII (1) provides for tax at the rate of 15% (5% if the required corporate relationship is present); Switzerland—Article VI provides for tax at the rate of 15% (5% if the required corporate relationship is present); and the United Kingdom—Article VI (1) provides for tax at the rate of 15% (5% if the required corporate relationship is present), provided the recipient corporation is managed and controlled in the United Kingdom and subject to United Kingdom tax.

15 If the U.S. partner owns 80% or more of the stock of J.V., then the liquidation of J.V. would be tax-free to such U.S. partner. Int. Rev. Code of 1954, § 332. If the European partner owns 80% or more of the stock of J.V., then the liquidation of J.V. would be tax-free to such European partner, but only if a Code Section 367 ruling is obtained. If a Code Section 367 ruling is obtained, then a tax-free Code Section 337 sale of J.V.'s assets could not be effected. Query whether such tax-free sale could be effected if the European partner does not obtain a Code Section 367 advance ruling from the U.S. Internal Revenue Service.

16 The Income Tax Treaties between the following European countries and the United States contain provisions exempting capital gains from tax: Austria, Article III (industrial and commercial profits include gains from the sale of assets used by that entreprise); France, Article 11 (only gains from the "sale or exchange of stocks, securities or commodities"); Germany, Article IX A (excludes gains

II. LICENSE AGREEMENT

Instead of organizing a joint venture in the United States many European companies are licensing their U.S. patents and know-how to U.S. companies. Payments for the license are usually based on sales of the products utilizing the patents or know-how. If the European company transfers all substantial rights in the U.S. patents as well as an exclusive right to use the related know-how in perpetuity, payments received for such transfer should be subject to capital gains treatment. Such transfer should not be taxable to foreign companies not engaged in trade or business in the United States[17] but would be taxable to a company engaged in trade or business in the United States if the transfer is made in the United States.[18] However, there are cases which suggest that payments on the sale of a patent may constitute taxable royalty income if such payments vary with the subsequent sales of the patented products.[19] If this view prevailed, there would be withholding of U.S. tax on capital gain royalty payments at the rate of 30% in the absence of an applicable treaty. However, most of the cases seem to indicate that proceeds on the sale of a patent are not "fixed or determinable income" and thus not subject to withholding as royalties.[20] The treaties are also helpful in this respect. If the payments are royalties, then they would be free of U.S. tax to the European company under many treaties, assuming the European company has no permanent establishment in the United States.[21] If the payments are capital gain royalties, then under certain treaties, assuming no permanent establishment, the payment would be exempt from U.S. tax[22] and under the general principles of Code Section 881 should be exempt from tax so long as the European company is not engaged in trade or business in the United States. Payments by the U.S. company for a transfer or exclusive license of patents and know-how are considered payments for the acquisition of a capital asset. Under the reasoning of *Associated Patentees, Inc.* v. *Commissioner*[23] the payments for such rights should be deductible in the year made on the theory of amortization of the cost of the acquired property. There is some question about amortization of the cost of the know-how if such know-how has been granted in perpetuity. The Internal Revenue Service may take the

from the sale or exchange of real property); Sweden, Article IX (Article V provides that gains from the sale of real property are taxable only by the State in which the real property is situated); and the United Kingdom, Article XIV. The Treaties with the following European countries contain no provision exempting capital gains from tax: Belgium, Denmark, Finland, Greece, Ireland, Italy, Luxembourg, The Netherlands, Norway and Switzerland.

17 Int. Rev. Code of 1954, § 881; U.S. Treas. Reg. § 1.1441-2 (a) (3).

18 In certain cases it may be possible to effect a transfer of the patents and know-how outside the United States so that no U.S. source income arises on the transaction. If this can be accomplished, the European partner would not be subject to any U.S. tax on the transaction.

19 *E.g., Bloch* v. *U.S.*, 200 F2d 63 (2d Cir. 1952).

20 *Kimble Glass Co.*, 9 T.C. 183 (1947); *General Aniline & Film Corp.* v. *Commissioner*, 139 F2d 759 (2d Cir. 1944); Rev. Rul. 57-317, 1957-2 Cum. Bull. 909.

21 See footnote 7, *supra*.

22 *Ibid.* However, it is possible that any such exemption for capital gain royalties might not include exemption from U.S. tax for any payments considered to be for the sale or exchange of the property right of the royalties. See S. Exec. Rep. No. 10, 88th Cong., 2d Sess. 21 (1964).

23 4 T.C. 979 (1945).

position that there is no demonstrable useful life for the know-how since the grant is in perpetuity. It is believed that the cost of the know-how should be amortized over the estimated economic life of the know-how and the theory of *Associated Patentees* applied in the case of royalty payments for the know-how. Payments to the European company for technical services which are start-up services should be treated the same as payments for the patents and know-how on the theory that such payments are ancillary to the sale of such items. Payments for continuing services have been previously considered in Part I (a).

In case of a license of patents and know-how by the European company which is not a "sale" or "transfer", in the absence of an applicable treaty, the European company will be subject to U.S. withholding tax at a rate of 30%. However, many treaties exempt such royalty payments from U.S. tax.[24] Payments made by the U.S. company as royalties for the use of the patents and know-how are deductible for U.S. tax purposes.[25] Payments to the European company for technical services which are start-up services should be treated the same as payments for the patents and know-how on the theory that such services are ancillary to the license of such items. Payments for continuing services previously have been considered in Part I (a).

Some European companies may wish to utilize the royalty payments receivable under license agreements to expand their U.S. operations. For example, a European company entitled to royalties from a U.S. company which are free of U.S. tax under a treaty might assign its interest in such royalties to its U.S. subsidiary. If the reversionary interest in the U.S. patents and know-how has been transferred to the U.S. subsidiary and the right to the royalties transferred to the U.S. subsidiary, the U.S. subsidiary would be taxed on the royalties. [26] But if the patents and know-how are retained and an assignment of the royalty income is made by the European company to its U.S. subsidiary, neither the European company, under an applicable treaty, nor the U.S. subsidiary should be subject to tax on receipt of the royalties.[27] The transaction for U.S. tax purposes should be characterized as a tax-free contribution to capital by the European parent to its subsidiary or a tax-free Code Section 351 exchange.

24 See footnote 7, *supra.*
25 Int. Rev. Code of 1954, § 162 (a) (3).
26 *Commissioner v. Reece,* 233 F2d 30 (1st Cir. 1956).
27 *Commissioner v. Sunnen,* 333 U.S. 591 (1948).

TAXATION OF ROYALTIES IN SOUTH AFRICA AND THE NON-RESIDENT TAXPAYER

by

DR. ERWIN SPIRO

The income-taxation in the Republic of South Africa proceeds from gross income, as defined, *via* income as defined, to taxable income, as defined. Gross income, in relation to any year of assessment, means 1. the total amount, 2. in cash or otherwise, 3. received by or accrued to the taxpayer, 4. during the year of assessment, 5. from a source within or deemed to be within the Republic, 6. excluding receipts or accruals of a capital nature. Gross income becomes income after deducting therefrom amounts exempt from normal tax, and income, in turn, becomes taxable income after deducting therefrom all the amounts allowed to be deducted or set off. There are, however, certain classes of receipts or accruals in respect of which special provisions exist. One such class relates to what may here loosely be called "royalties".

I. ROYALTIES AND SIMILAR RECEIPTS OR ACCRUALS

As specifically laid down by section 1 (xi) (*g*) (ii) *bis*, (iii) and (iv) of the Income Tax Act, 1962 (Act No. 58 of 1962), as amended, (hereinafter referred to as "The Act"), gross income includes, whether of a capital nature or not, any amounts received or accrued from another person as premium or like consideration paid by such other person—

1. for the right of use of any motion picture film or any sound recording or advertising matter connected with such film,

2. for the right of use of any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952) or any design, as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916) or any trade mark as defined in the Trade Marks Act, 1963 (Act No. 62 of 1963) or any copyright as defined in the Copyright Act, 1965 (Act No. 63 of 1965) or any other property which, in the opinion of the Secretary for Inland Revenue, is of a similar nature;

3. for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid.

Two comments are warranted.

In the first instance, what is involved is a premium or like consideration. The Courts have held that this means a *quid pro quo* in money or of an ascertainable money value in the nature of rent or other typical prestation, passing from the grantee to the grantor.

In the second instance, such premium or like consideration must relate to the right of use of the items in question. If there is an out and out sale of the whole item, these

provisions do not apply. Whether in such a case the price amounts to income or is capital, depends on the general principles. It is beyond the scope of this article to set them out. It would not matter whether the payment is in a bulk sum or by instalments, but it would, e.g., matter if the seller were a trader in patents etc. or if the price were to be received or to accrue by way of an annuity, for in these instances income is of a revenue nature.

II. SOURCE IN THE REPUBLIC

1. *Source in general*

As can be seen from the definition of gross income, set out above, apart, however, from some exceptions which are of no interest in this connection, it is a requisite that the receipts or accruals are from a source in the Republic. There is no statutory definition of the words "from a source within the Republic" nor are there any precedents which lay down their exact meaning. What the cases have established is that the originating cause of the receipts or accruals must be within the Republic, and whether this is so depends on all the surrounding circumstances. The authoritative case dealing with royalties is *Millin v. Commissioner for Inland Revenue* (1928 A.D.207). Mrs. Millin, who had written books in the Republic, granted publishers in London the right to print and publish them in Great Britain and elsewhere for seven years. It was held that, notwithstanding the conclusion of the contract in England, the source of the whole of her income was in the Republic. For it was the exercise of Mrs. Millin's wits and labour in the Republic which produced the royalties.

2. *Statutory source*

In certain instances the Act lays down that the source is "deemed to be in the Republic". For instance, in terms of section 9(1) (*b*) of the Act an amount is deemed to have accrued to any person from a source within the Republic if it has been received or has accrued by virtue of the use in the Republic of or the grant of permission to use in the Republic or the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use in the Republic of any patent or any design, trade mark or copyright, referred to earlier, or any other property which, in the opinion of the Secretary, is of a similar nature or any motion picture film or any sound recording or advertising matter used or intended to be used in connection with such film. It does no matter where such patent, design, trade mark, copyright, property, film, sound recording or advertising matter has been produced or made or such permission has been granted or such knowledge has been imparted or such undertaking has been given or payment for such use, grant or permission, imparting of knowledge or undertaking has been made or is to be made by a person resident in or out of the Republic.

There is, however, one exception: the provision does not apply in respect of any amount which on or after July 1st, 1962, is received by or accrues to any person (other than a company) who is not ordinarily resident in the Republic or any company which

is not registered, managed or controlled in the Republic, in respect of the use (otherwise than for advertising purposes in connection with any motion picture film) in any printed publication of any such copyright. The exception is not only of a limited nature (copyright), but is also no bar to the application of the general principles (see 1 above), if there is room for their application.

III. EXEMPTION

Any amount received by or accrued to an author of a work in respect of the assignment of or grant of an interest in a copyright in such work is in terms of section 10(1) (*m*) of the Act exempt from the tax if such amount is chargeable with income tax in a country other than the Republic. But this exemption does not apply to any person who is not the first owner of a copyright. The section is another instance of the importance being attributed to copyright by the Legislature of the Republic.

IV. TAX

1. *Residents*

The premium or like consideration is taxable in the year of assessment in which it is received or has accrued. This may constitute a great hardship in a particular case, and the Secretary is, therefore, given a discretion to allow such a deduction as he may deem reasonable having regard to any special circumstances of the case (section 11 (*h*) of the Act).

2. *Non-residents*

(a) *Taxable amount*

From the principle of source in the Republic which governs the income tax legislation of the Republic, as was mentioned in the introductory remarks, it follows that also in regard to royalties it makes no difference whether the taxpayer is resident in the Republic or a non-resident.

However, logic has sometimes to be sacrificed on the altar of policy. The matter was first raised before the Committee of Enquiry into the Income Tax Act which delivered its First Report in 1951. Representations were made that were the Republic to refrain from imposing tax on royalties paid to non-residents, a possible deterrent to the use in the Republic of valuable patents held by persons abroad might be removed. It was also pointed out to the Committee that the taxation imposed upon the overseas grantor of the right to use a patent in the Republic would be bound to be taken into account by the grantor in determining the amount of his charge for such use and the incidence of tax would thus be passed on to the user of the patent in the Republic. But the Committee was not yet satisfied that the possible advantage which the Republic might derive from the removal of such obstacle to the granting of the right of use of patents to persons in the Republic would outweigh the loss of revenue which would be involved in exempting patent royalties paid to persons abroad. The Legislature changed, however, its

mind in 1961 and reduced the income of non-residents from royalties from 100 per cent to 30 per cent, these 30 per cent constituting their taxable income (now section 35(1) of the Act). In the words of the section: any person (not being a person who is ordinarily resident in the Republic or a company which is registered, managed or controlled in the Republic) to whom any amount (which in terms of what has been set out sub II 2 above) is deemed to accrue from a source within the Republic, is—apart from taxable income derived by him from other sources—deemed to have derived from that amount a taxable income equal to 30 per cent of that amount. The exact position of the grantee and grantor is laid down in section 35(2) of the Act and will now be dealt with.

(b) *Tax position of grantee*

PAYMENT OF TAX. Any person who incurs a liability to pay to a non-resident any such premium or like consideration or who receives payment of such amount on behalf of such other person, must within 14 days after the end of the month during which that liability is incurred or the payment is received or within such further period as the Secretary may approve make a payment to the Secretary in respect of such other person's obligation to pay normal tax for the year of assessment during which the said amount accrues to or is received by such other person, calculated on a sum equal to 30 per cent of the said amount at the rate of tax applicable to the taxable income of non-mining companies. This rate is at present 30c in respect of each Rl of the taxable income to which must be added a surcharge of 5 per cent on tax, the rate, therefore, being 31.5c in respect of each Rl.

Such payment is deemed to be an advance payment made on behalf of the other person.

DECLARATION. At the time of such tax payment a declaration in such form as the Secretary may prescribe must be submitted.

REBUTTABLE PRESUMPTION OF BEING NON-RESIDENT. For the purposes of making such payment and submitting such declaration a person having an address outside the Republic is, until the contrary is proved, deemed to be not ordinarily resident in the Republic or, in the case of a company, to be a company which is not registered, managed or controlled in the Republic.

RELIEF FROM DUTY TO MAKE PAYMENT AND SUBMIT DECLARATION. If the Secretary is satisfied that the required tax payment has been or will be made by any person, the Secretary may direct that any other person who is required to make such tax payment, shall be relieved of the duty to make such payment.

RIGHT TO DEDUCT OR WITHHOLD. Any person making such payment to the Secretary is, notwithstanding any agreement to the contrary, entitled to deduct or withhold the amount of such payment from the amount which he is liable to pay to the non-resident or to recover the amount so paid from such other person or to retain out of any money that may be in his possession or may come to him as the agent of such other person an amount equal to the amount of such payment.

PERSONAL LIABILITY. A person so required to make a payment to the Secretary is personally liable for making such payment, and the amount so payable is deemed to be a tax due by him and is recoverable from him.

(c) *Tax position of grantor*

OTHER INCOME. As should be mentioned, the provisions relative to royalties do not affect the taxpayer's liability for tax in respect of any other taxable income he may have. There is one exception. The payment made by the grantor to the Secretary which operates as an advance is in respect of the grantor's obligation to pay normal tax for the year of assessment during which the royalty is received or has accrued, in other words in respect of the grantor's total liability to income tax, including, therefore, such liability arising from income other than royalties, if any.

DEDUCTIONS EXCLUDED. The reduction of the income arising from royalties to 30 per cent to constitute taxable income in the case of the non-resident grantor is clearly an absolute one. There is no room for any further deductions in respect of expenses or losses connected with the earning of the royalties.

PROHIBITION OF RECOVERY. The grantor is not entitled to recover the amount of the payment made by the grantee to the Secretary from the grantee who deducts, withholds or retains the amount of such payment and is deemed to have received the amount so deducted or withheld.

RETURNS AND LIABILITY TO TAX. The grantor is not relieved from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable nor is he prevented from proving that payments made by the grantee on his behalf in respect of any year of assessment were in excess of the amount of normal tax properly chargeable under the Act in respect of income received by or accrued to him during such year.

EXEMPTION FROM PAYMENT OF PROVISIONAL TAX. The grantor in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made by the grantee is in terms of paragraph 18(1)(*b*) of the Fourth Schedule to the Act exempt from payment of provisional tax.

FINAL RATE OF NORMAL TAX. The final rate which governs the grantor's liability to normal tax depends on the general principles which cannot here be set out, more particularly on whether he is a company (see above III 2 a *in fine*) or a person other than a company in which latter case the rate of tax varies with the size of the taxable income.

IF COMPANY, EXEMPTED FROM UNDISTRIBUTED PROFITS TAX. If such grantor is a company and the above provisions are by virtue of the definition of "total net profits" in section 49 of the Act applicable to that portion of its total net profits which is derived from its principal business, such company is exempt from undistributed profits tax (section 50(*b*) of the Act).

V. PROTECTION AGAINST DOUBLE TAXATION

1. *Unilateral relief*

Further to the exemption set out under III above, the Act provides protection against double taxation by allowing a rebate. In terms of sections 6*bis* of the Act there shall be deducted from the normal tax payable by any person, in whose taxable income there is

included any amount received by or accrued to him in respect of the use or the grant or permission to use in such other country any patent as defined or any design as defined or any trade mark as defined or any copyright as defined or any other property which, in the opinion of the Secretary, is of a similar nature or any motion picture film or any sound recording or advertising matter used or intended to be used in connection with such film, the sum of any taxes on income proved to the satisfaction of the Secretary to be payable, without any right of recovery, by such person to the government of any country other than the Republic in respect of the said amount. But the rebate is not to exceed so much of the normal tax payable by the taxpayer as the Secretary determines to be attributable to the inclusion in his taxable income of the said amount.

2. *Double Taxation Agreements*

The Double Taxation Agreements which the Republic of South Africa has entered into with other countries are not uniform on the subjects of royalties. In some Agreements (e.g. Canada; Cyprus, Gambia, Grenada, Mauritius, Seychelles, Sierra Leone, Trinidad and Tobago; Kenya, Tanganyika, Uganda and Zanzibar) royalties are not dealt with at all. Other Agreements distinguish between royalties from copyright and other royalties (Sweden; United Kingdom), and some also refer to mineral royalties (United States of America; United Kingdom, Rhodesia; Sweden; Basutoland, Bechuanaland and Swaziland). In some instances the Agreement only applies if the royalties do not exceed a certain amount (Sweden; United Kingdom). If there is an exemption, the exemption is either absolute (Sweden (as to copyright)) or, as mostly, only if the royalties are subject to tax in the other country (United Kingdom; Rhodesia; South-West Africa; Basutoland, Bechuanaland and Swaziland). The agreement with Sweden also deals with capital sums derived from the sale of patent rights. The Agreement of the United Kingdom contains a rather complicated provision in regard to royalties other than from copyrights and the operation of mines: the tax in the country of source must not exceed

(a) one half of the tax which would otherwise be imposed there or

(b) 5 per cent of the royalty,

whichever is the less.

It is considered that a full summary of the provisions in point in the various Agreements would not serve a practical purpose. Not only would there be much repetition, but it would also still be necessary in a particular case to make a thorough study of the Agreement in question.

SALES TAXATION IN INDONESIA

A Fifteen Years Experience

by

K.S. JAP

Indonesia's first experience with sales taxation was the introduction in January 1951 of a multistage turnover tax (padjak peredaran) by an emergency Law of February 13, 1950 (Noodwet van 13 februari 1950), the structure of which was identical to the then applicable Dutch turnover tax[1] except for the elimination of certain exemptions, the elimination of the luxury tax, and the subjection of transfers of merchandise in the production and commercial process to a flat 2.5 per cent rate.[2]

However, after criticism by domestic businessmen it was replaced in October 1951 by a single-point sales tax (padjak pendjualan).[3]

The single-point ad valorum sales tax was collected at source with respect to goods either by the manufacturer at the time of delivery to his customers or by the importer on the entry of the goods into customs territory (padjak masuk).

The general rate of tax was 5 per cent, but on various luxury goods or goods regarded as such a 10 per cent rate on the ultimate sales price, not including the tax itself, was levied.

Basic foodstuffs were exempted as were other goods deemed essential, such as bamboo, charcoal, gas, oil for oil lamps, books, newspapers, periodicals, medicines[4] and goods supplied to hotels and restaurants, whose receipts were subjected to a special 10 per cent tax known as the reconstruction tax (padjak pembangunan) of 1947[5], as well as goods supplied to hospitals)[6].

Goods designated for export were also exempted.[7] Essential goods, medicines, and raw materials and auxiliary materials designated by the Minister of Finance were exempted from sales tax at importation.[8] Goods exempt from import duties were under certain exceptions also exempted from sales tax at importation.[9] Raw materials and auxiliary

1 Besluit op de Omzetbelasting 1940.
2 Dr. J.C.L. Huiskamp. De Omzetbelasting in Internationaal Verband. N.V. Æ.E. Kluwer, Deventer 1966. P. 6. (The Turnover tax in International Relation).
3 Law no 19 of 1951. Official Gazette 1951 no 94. Published in Perundang Undangan Padjak Indonesia by R.R. Soemitro and B. Usman. N.V. Eresco, Bandung 1962, 3rd ed. (A loose leaf of Indonesian Taxes). Hereinafter cited as Sales Tax Act.
4 Article 29 (1) to (4) Sales Tax Act.
5 Article 29 (11) Sales Tax Act.
6 Article 29 (12) Sales Tax Act
7 Article 29 (8) and (9) Sales Tax Act.
8 Article 30 (1) Sales Tax Act.
9 Article 29 (5) Sales Tax Act.

materials designated by the Minister of Finance were exempted from sales tax on domestic deliveries.[10]

As the sales tax was a single-point sales tax, the merchandise already subjected to sales tax in a previous delivery were exempt on subsequent deliveries.[11]

Under article 31 (1) to (3) of the Sales Tax Act, the amount of tax already levied on non-exempt raw materials, auxiliary materials and other supplies—including fuels and packing materials—used in manufacture could be deducted from the sales tax due by the manufacturer on the sale of the product to his customer. The amount to be deducted was the actual tax paid on purchases of incorporated materials by the manufacturer or, in the absence of adequate vouchers on which the amount of tax was stated, an amount fixed at a flat rate of 3.5 per cent of the purchase price of such materials and supplies. The total amount so deductible cannot result in a reimbursement of the tax already paid by the manufacturer on his purchases of materials and equipment for use in manufacturing except in the case of export refund shall be given.

This provision is the "buffer" rule (le butoir) as used in the tax on value added in France (Compare European Taxation 6 (1965)).

The purpose of these provisions was the avoidance of double taxation after non-exempt raw materials, auxiliary materials and supplies were incorporated in manufactured goods. It has been stated by experts on sales taxation that the structure of the sales tax was of a basically European origin, the sales taxes levied in Belgium, the Netherlands and the United Kingdom having been taken as models[12].

The method of using a partial tax on value added technique solely to avoid double taxation on raw materials, auxiliary materials and supplies incorporated or processed in the product of the manufacturer was previously used in many other countries; the Netherlands (from January 1, 1934 to January 1, 1941),[13] Canada (1924), Turkey (1927), Greece (1933), Argentina (1935), France (1937) and the Philippines.[14] In his thesis Dr. Huiskamp called this method the net-manufacturer's tax (netto-producentenbelasting).

Having taken sales taxes in developed countries as models, the sales tax introduced was subsequently adopted to the Indonesian economy. The proper application of the net-manufacturers' tax provision in Indonesia, however, was hindered by serious practical difficulties in that most undertakings had no accounting system capable of providing the necessary data.[15]

The sales tax was implemented by a system of self-assessment by the manufacturer,[16]

10 Article 29 (6) Sales Tax Act.
11 Article 29 (7) Sales Tax Act.
12 Dr. J.C.L. Huiskamp, ibid P. 97.
13 C.P. Tuk. Inleiding tot de Omzetbelasting. Noorduyn & Zn., Gorinchem 1956, P. 23. (Introduction to Turnover Tax).
14 Dr. J.C.L. Huiskamp ibid. Pp. 42, 43, 64, 98.
15 D. Dris, Taxation in Indonesia. Ekonomi dan keuangan Indonesia (Economics and Finance in Indonesia).
Vol. 11, no 8/9, August/September 1958. P. 481.
16 Article 7 Sales Tax Act.

the sales tax due having to be paid to the Treasury within 25 days of the *date of payment* of the sales price *by the customer*.[17]

Though article 3 of the Sales Tax Act stipulated that sales tax was levied on deliveries of merchandise within Indonesia by a manufacturer in the course of his business activities, article 5 (1) nullified the above provision of article 3 by stating that the sales tax was due at the moment the sales price was paid by the purchaser.

Article 5 (1) of the Sales Tax Act, stipulated that the sales tax did not become legally due until the month, or other tax period determined by the Minister of Finance, in which the sales price was paid by the buyer.[18] Where payment was made by bill of exchange, check or other negotiable instrument, the moment in which the instrument was cashed by the manufacturer or transferred by him to a third person was the moment the sales tax legally became due.[19] Only on request of the manufacturer could the tax officer, by way of exception to the above general rule, prescribe that liability to sales tax be incurred at the time when the manufacturer acquired the right to claim the amount of the sales price from the purchaser.[20] This was thus the time at which delivery was made by the manufacturer.

It has been said that this rule was justified on the ground that in the absence of complete book-keeping records in the case of many manufacturers, the determination and checking of the tax must ordinarily be based on cash ledgers or cash memoranda.[21] D. Dris thought this reasoning unconvincing[22].

Moreover, the adoption of the date of payment as the criterion whereby the sales tax became due is apt to cause considerable complication in determining and verifying the tax base, especially where claims or negotiable instruments are transferred to third parties. This also means that the purchaser is charged for and pays the tax as it relates to the full sales price whereas the tax owed to the Treasury by the manufacturer relates to only part of that price, i.e., the net amount collected after deduction of banking and discount charges. A further drawback where the criterion is the date of payment is that the incurring of liability for the tax can be indefinitely postponed or even evaded, especially in the case of deliveries of merchandise for which the terms of payment are indefinite by a manufacturer to an allied company or to one under his control or worse in the case of a delivery against actual payment but where as a camouflage, for tax purposes, the customer pretends to be insolvent or where his address is unknown.[23]

In order to counterbalance the provision that the liability to tax is due at the moment the sales price is paid by the purchaser, the statutory law provided that the purchaser be personally liable for the sales tax unless he could prove that he had paid the tax or that he acted in good faith.[24]

17 Article 9 Sales Tax Act.
18 Article 5 (1) Sales Tax Act.
19 Article 5 (2) Sales Tax Act.
20 Article 5 (3) Sales Tax Act.
21 D. Dris, ibid. P. 484.
22 D. Dris, ibid.
23 D. Dris, ibid. P. 485.
24 Article 7 (2) Sales Tax Act.

The second important step in sales tax development was taken in 1960.

As of January 1, 1960 the provision under article 31 (1) to (3) (*net*-manufacturer's tax) was abolished[25]. On the other hand the sales tax was extended to services performed by professional persons suchs as commissioners, tax consultants, accountants, notaries, etc.[26] Exempted were the services performed by doctors, transport enterprises and libraries.[27]

The general rate of tax was increased from 5 per cent to 10 per cent and for luxury goods from 10 per cent to 20 per cent.

As a novum, a reduced rate of 5 per cent was applied to essential merchandise and certain services as designated by the Minister of Finance.[28]

Under this special provision the Minister of Finance designated merchandise such as pencils and several home made products including soap, shoes, ink, margarine, paint, soja sauce (ketjap), mie and services such as haircutting (but only for men), shoe repairs and tyre vulcanizing. On request Standard Vacuum was allowed by designation of the Minister of Finance to be taxed at the special 5 per cent sales tax rate at importation of materials up to a certain quantity as specified necessary for their exploitation of oil.[29] Rental income from foreign made cinema films were subject to the 5 per cent rate, whereas rental income from domestic made cinema films were exempt from sales tax.[30]

The third important step in sales taxation was recently taken by Law no. 2 of 1965,[31] effective as of January 1, 1966. The general rate levied on merchandise and or services rendered by entrepreneurs was increased from 10 per cent to 20 per cent and the rate for luxury goods from 20 per cent to 50 per cent.

The Minister of Finance may act arbitrarily to levy a reduced rate of 5 per cent or 10 per cent on essential goods for daily use and on certain services. In addition to the sales tax, which remains a single-point tax levied on sales by domestic manufacturers and services rendered by professional persons, a multi-stage turnover tax of 5 per cent on all sales is due on the "delivery" of merchandise by merchants in the distribution chain from manufacturer to wholesaler, dealer, retailer and consumer.[32]

The tax is levied by affixing special stamps to the receipt at the moment of payment, to be born by the buyer.[33] The purpose of this special levy is to reach all merchants, including "tukang tjatut" or black marketeers,[34] well known persons in an economy where scarcity predominates.

25 Only raw materials and auxiliary materials designated by the Minister of Finance remained exempt from tax, see *supra*. (Art. 29 (6) Sales Tax Act).
26 Article 1 (1) 5 Sales Tax Act, as amended.
27 Article 29 (14), (16) and (17) Sales Tax Act, as amended.
28 Law No 20, 1959. Official Gazette 1959, no 113, modifying the Sales Tax Act.
29 Ruling no 78569, June 20, 1960.
30 Ruling no 25828, March 22, 1960.
31 Official Gazette no 121, 1965.
32 Article 4 Law No 2 of 1965.
33 This method paying sales tax by affixing special stamps on vouchers is used in Belgium (Taxes assimiliées aux timbres).
34 Guide to Law no 2 of 1965. Published in Supplement to the Official Gazette No 2794 of 1965.

EEC

DOCUMENTS

AVIS DU COMITE ECONOMIQUE ET SOCIAL

sur la proposition d'une deuxième directive du Conseil en matière d'harmonisation des législations des États membres relatives aux

TAXES SUR LE CHIFFRE D'AFFAIRES CONCERNANT LA STRUCTURE ET LES MODALITÉS D'APPLICATION DU SYSTÈME COMMUN DE TAXE SUR LA VALEUR AJOUTÉE*

LE COMITÉ ÉCONOMIQUE ET SOCIAL,

vu la demande d'avis du président du Conseil de ministres de la C.E.E. en date du 14 mai 1965 sur la «Proposition d'une deuxième directive du Conseil en matière d'harmonisation des législations des États membres relatives aux taxes sur le chiffre d'affaires concernant la structure et les modalités d'application du système commun de taxe sur la valeur ajoutée»,

vu l'article 100 alinéa 2 du traité instituant la Communauté économique européenne,

vu la décision du bureau du Comité en date du 24 mai 1965, prise en application des articles 23 et 13 du règlement intérieur saisissant de l'élaboration d'un avis en la matière, à titre principal, la section spécialisée pour les questions économiques et, à titre complémentaire, les sections spécialisées pour l'agriculture, les transports et les activités non salariées et les services,

vu l'avis de la section spécialisée pour les questions économiques, en date du 20 décembre 1965,

vu les avis complémentaires des sections spécialisées pour l'agriculture, les transports et les activités non salariées et les services,

vu le rapport de la section spécialisée pour les questions économiques, présenté par le rapporteur M. Malterre,

vu ses délibérations lors de la 51e session plénière, tenue les 26 et 27 janvier 1966, séance du 27 janvier,

considérant que la proposition de *première* directive dont est saisi le Conseil prévoit la mise en application progressive par les États membres, avant la fin de la période transitoire, d'un système commun de taxe sur la valeur ajoutée (T.V.A.);

* Le texte de la deuxième directive du Conseil a éte publié dans Bulletin 1965, p. 276 e.s.

considérant que cette proposition de *première* directive précise les éléments essentiels de la T.V.A. commune qui sera:
– un impôt général sur la consommation,
– perçue selon le système «des paiements fractionnés» avec déduction taxe sur taxe;

considérant que la proposition de *deuxième* directive, qui fait l'objet du présent avis, définit les modalités d'application du système commun de T.V.A.;

considérant qu'il est expressément prévu que les dispositions des annexes A et B font partie intégrante de la directive;

considérant que l'ensemble des dispositions de la directive et de ses annexes prévoit d'une manière très générale que:
– la T.V.A. est applicable à toutes les activités économiques, industrielles, commerciales et agricoles, qu'elles se traduisent par une livraison ou une «prestation de services» (articles premier, 2, 3, 4, 5 et 6),
– le champ d'application de la T.V.A. peut cependant ne pas comprendre le commerce de détail (annexe A point 2),
– le taux «normal» de la taxe sera uniforme pour les livraisons de biens et pour les prestations de services (article 7),
– des taux majorés ou des taux réduits peuvent cependant être appliqués (article 7),
– les livraisons expédiées ou transportées en dehors du territoire d'un État membre seront exonérées de la taxe (article 8),
– l'assujetti peut déduire de la T.V.A., calculée d'après son chiffre d'affaires, la taxe qui lui est facturée pour les biens qui lui sont livrés et pour les services qui lui sont rendus (article 9),
– chaque État membre a la faculté d'appliquer aux petites entreprises le régime particulier qui s'adapte le mieux aux exigences et aux possibilités nationales (article 11),
– certains produits agricoles peuvent bénéficier d'un taux réduit (article 12),
– enfin, une procédure de consultation impliquant, le cas échéant, une recommandation de la Commission est imposée dans certains cas où les États membres demandent des dérogations ou des adaptations aux dispositions générales de la directive (article 13);

considérant que, dans son avis du 2 juillet 1963 sur la proposition de première directive, le Comité économique et social avait estimé qu'il convenait d'harmoniser les taxes sur le chiffre d'affaires dans les différents États membres par l'adoption d'un système commun du type «T.V.A.» dont les grands principes de base seraient communs à toute la Communauté économique européenne,

considérant que, dans le même avis, le Comité économique et social avait toutefois estimé que les obstacles fiscaux aux échanges intracommunautaires ne peuvent être supprimés qu'au fur et à mesure que d'autres obstacles non fiscaux auxquels ils sont liés auront eux-mêmes disparu et que certaines options politiques auront été prises par les États membres,

A ADOPTÉ L'AVIS SUIVANT:

Le Comité économique et social approuve la proposition de directive sous réserve des suggestions, observations et propositions de modification suivantes.

I. *Observations générales*

Au cours de ses travaux, le Comité économique et social a été amené à suggérer de compléter la directive en prévoyant une modalité nouvelle, celle de la «suspension de taxe». Ce système impliquerait qu'à titre exceptionnel et dans des cas limitativement énumérés, les États membres pourront dispenser certaines entreprises, certaines catégories d'entreprises ou certaines activités du paiement de la taxe, étant bien entendu:
– que la taxe sur l'opération qui bénéficie de cette possibilité est intégrée dans le prix d'une opération ultérieure qui est, elle, soumise à la taxe,
– que la chaîne des déductions n'est pas interrompue, c'est-à-dire que les bénéficiaires de la suspension de taxe peuvent transférer ou se faire rembourser les taxes supportées sur leurs achats,
– que la suspension doit être appliquée de telle façon que la concurrence entre les entreprises ou entre les produits ne s'en trouve pas faussée.

Ce système a pour avantage de résoudre un certain nombre de cas particuliers, tel celui des livraisons à soi-même ou de l'«Organschaft» et d'éviter que certaines entreprises, dont l'activité est exclusivement consacrée à des transactions comprenant un grand nombre d'opérations portant sur des sommes considérables par rapport à la faiblesse des marges brutes, ne connaissent de graves difficultés de trésorerie.

En suggérant ce mécanisme, le Comité estime qu'il ne devrait être prévu que dans des cas limitativement énumérés par la directive et après consultation et accord de la Commission selon la procédure prévue à l'article 13.

Il est, en effet, souhaitable qu'il soit appliqué d'une façon uniforme dans tous les États de la Communauté économique européenne, afin d'éviter les distorsions dans la concurrence.

II. *En ce qui concerne la directive*

Le Comité économique et social suggère, à propos de chaque article de la directive, que soient apportées les modifications ou les précisions suivantes.

ARTICLE 2

Le deuxième alinéa du point 2 de l'annexe A devrait se référer explicitement à la possibilité non seulement de recourir à des exonérations si l'on décide de ne pas imposer certaines activités, mais d'appliquer aussi à ces activités le système de suspension de taxe, étant précisé que la perception de la taxe pourra être suspendue dans des cas prévus par les États membres, après consultation prévue à l'article 13.

En ce qui concerne l'assujettissement des agriculteurs à la T.V.A., le Comité économique et social estime qu'il ne sera en mesure de prendre position que lorsque la Commission aura fait connaître, de façon plus précise, ses propositions concernant les modalités d'application du système commun de T.V.A. au secteur agricole.

Le Comité devrait, pour ce faire, être saisi des propositions complémentaires de la Commission à cet égard.

En ce qui concerne le dernier alinéa du point 2 de l'annexe A, il conviendrait de préciser que, dans le cas où le champ d'application de la T.V.A. serait limité au stade du commerce de gros inclus, les États membres conserveraient la faculté d'instituer une taxe spécifique à la consommation, au niveau du commerce de détail, mais sous réserve de l'accord de la Commission sur les modalités d'application, conformément à l'article 13.

ARTICLE 3

Il serait souhaitable que le Commission puisse faire connaître, le plus tôt possible, les modalités qu'elle envisage d'appliquer aux transactions immobilières et aux ventes de biens d'occasion qui intéressent des secteurs très importants dont il faut lever les incertitudes.

En ce qui concerne les dispositions de l'alinéa b) du point 2 de l'article 3, le Comité estime que l'indemnité de réquisition ne devrait pas être grevée de la T.V.A. car il serait anormal de pénaliser fiscalement le propriétaire d'un bien qui est dépossédé sans son consentement par un acte de la puissance publique. Il y aurait lieu cependant de régler le sort des taxes payées en amont.

En ce qui concerne l'alinéa d) du paragraphe 2 de l'article 3, il conviendrait de préciser que ces dispositions s'appliquent sous réserve des cas où le paiement de la T.V.A. pourra être *suspendu* après accord de la Commission, selon la procédure de l'article 13.

Il apparaît souhaitable de considérer que la livraison est le fait générateur de la dette fiscale prévu au paragraphe 4 de l'article 3. Ce n'est qu'en cas de fraude prouvée que la facturation pourrait être considérée comme le fait générateur.

ARTICLE 4

La rédaction du point 3 de l'annexe B, relatif aux prestations de services afférentes aux travaux immobiliers, demanderait à être précisée. Afin d'éviter une confusion entre les prestations tendant à *assurer* l'exécution des travaux immobiliers et l'activité de l'entreprise qui effectue elle-même lesdits travaux, il semble opportun de remplacer le terme «assurer» par «coordonner et surveiller».

Le Comité estime que la généralisation – tant sur l'assiette que sur les biens et services pouvant donner lieu à déduction – est une condition essentielle pour réaliser la neutralité fiscale qui est reconnue indispensable en vue d'éviter les distorsions de concurrence. Aussi, dans la mesure où la proposition de directive à l'examen assure la neutralité fiscale, ce qui doit être un des objectifs fondamentaux de la politique commune des transports, il n'existe aucune objection contre l'application du système de T.V.A. au secteur des transports.

Il apparaîtrait également souhaitable qu'en vue d'assurer l'égalité de traitement, conformément aux principes d'une politique commune des transports, les transports professionnels de personnes soient soumis à un régime uniforme dans tous les pays de la Communauté. Aussi, conviendrait-il de mentionner dans l'annexe B les entreprises pratiquant le transport de personnes et de n'appliquer, à cette partie de leur activité,

qu'un taux d'imposition réduit dont le niveau devrait correspondre à la taxe moyenne perçue au stade antérieur.

Le point 10 de l'annexe B prévoit que l'exécution d'une obligation de ne pas exercer, entièrement ou partiellement, une activité professionnelle ou un droit, entre dans la liste des prestations de services taxables.

Le Comité estime que la contrepartie d'une obligation de ne pas exercer, entièrement ou partiellement, une activité professionnelle ne devrait pas – lorsqu'elle découle d'un contrat de louage de travail (clause de non-concurrence) – être frappée de la T.V.A. qui n'est pas applicable aux salariés (annexe A point 2).

Il estime par ailleurs que, le cas échéant, la contrepartie de l'obligation visée au point 10 de l'annexe B ne devrait être taxée que lorsque l'obligation constitue un engagement souscrit à titre principal et non simplement un engagement accessoire.

Il devrait être également précisé, dans l'annexe B, que les opérations d'assurances entrent dans le champ d'application de la T.V.A.

Le paragraphe 3 de l'article 4 prévoit que le lieu d'une prestation de services est réputé se situer en principe à l'endroit où le service rendu est utilisé ou exploité.

Sans doute, ce choix permet-il d'éviter des doubles impositions et des distorsions de concurrence, mais il faut souligner que les difficultés d'application seront considérables si une collaboration étroite ne se développe pas entre les administrations fiscales des États membres.

En ce qui concerne le fait générateur prévu au point 4 de l'article 4, il est dans certains cas difficile de déterminer «le moment où le service est rendu». Il serait donc plus simple de prévoir un seul fait générateur qui pourrait être l'encaissement.

ARTICLE 5

L'article 5 devrait prévoir la possibilité d'appliquer aux importations le régime de suspension de taxe, après consultation et enquête de la Commission, selon la procédure prévue à l'article 13. En effet, dans le cas des importations de matières premières ou de pondéreux, la taxe sur la valeur ajoutée constitue une très lourde charge de trésorerie pour les importateurs.

Par ailleurs, il serait souhaitable que la notion de «vente de biens au détail», visée au point 13 de l'annexe A (dernier alinéa), fasse l'objet dans tous les États membres d'une même interprétation sous le contrôle de la Commission prévu à l'article 13.

ARTICLE 7

La directive ne devrait pas exclure la possibilité d'appliquer des taux réduits – voire exceptionnellement des taux nuls – pour des raisons économiques et sociales.

Mais, dans tous les secteurs, il conviendra d'éviter la multiplicité des taux qui risquerait de compliquer de manière importante les problèmes de commercialisation, non seulement au stade industriel, mais encore au stade du commerce de gros ou de détail.

Enfin, les différences de taux ne doivent pas entraîner de distorsions entre les différents circuits commerciaux ou entre les différents produits concurrents.

ARTICLE 8

Il serait souhaitable que la faculté donnée aux États membres, par les dispositions du point 17 de l'annexe A, d'étendre aux livraisons effectuées au stade précédant celui de l'exportation, l'exonération prévue à l'article 8 soit utilisée sous le contrôle de la Commission.

En ce qui concerne les prestations de transports visées à l'annexe A point 18, le Comité recommande de rechercher, pour les transports internationaux, une solution simple et moins sujette à objections que celle prévue dans la proposition de directive à l'examen. Cette solution devrait s'appliquer tant aux transports intracommunautaires pour compte d'autrui qu'aux transports intracommunautaires pour compte propre. Elle devrait en outre ne pas affecter le choix du vendeur et de l'acheteur quant au lieu de délivrance des biens, la nationalité du transporteur, et ne pas fausser les conditions d'option entre le transport pour compte propre et le transport rémunéré.

ARTICLE 9

La rédaction du deuxième paragraphe de cet article devrait être modifiée si le système de suspension de taxe préconisé par le Comité était retenu.

Il conviendrait de supprimer les dispositions prévues au point 21 de l'annexe A et qui permettent à chaque État membre d'appliquer, pendant une certaine période transitoire, les déductions pour les biens d'investissement, selon des fractions annuelles (déductions *prorata temporis*).

Il apparaît, en effet, nécessaire de renoncer à ce système pour maintenir le principe des déductions immédiates.

Il serait enfin souhaitable d'étendre aux entreprises nouvelles ou à celles qui se consacrent à la recherche, la possibilité de remboursement prévue par le point 23 de l'annexe A, car ces entreprises peuvent rencontrer les mêmes difficultés que les entreprises exportatrices, du point de vue de leur trésorerie.

ARTICLE 10

Le Comité économique et social reconnaît la nécessité de la tenue d'une comptabilité claire. Il fait toutefois remarquer que, dans le domaine de l'application pratique, une directive ou un règlement particulier devrait préciser les obligations matérielles auxquelles seraient tenus les assujettis.

Des difficultés d'application existent en particulier pour les petites entreprises ou les entreprises agricoles, si elles doivent se conformer aux obligations édictées par l'article 10.

ARTICLE 11

Il convient de souligner la difficulté – les structures industrielles et commerciales étant différentes selon les pays – de définir les critères auxquels devrait répondre la «petite entreprise» à laquelle s'appliquerait cet article.

En définitive, deux principes semblent devoir être retenus :
1. Il faut s'en remettre aux États membres du soin d'appliquer le système communautaire aux petites entreprises, sans que cette application conduise à un système général d'exonération ;
2. Mais cette application doit se faire sous le contrôle de la Commission, car il ne faudrait pas que le notion de «petite entreprise» soit trop différente d'un pays à l'autre.

ARTICLE 13

La procédure de consultation préalable et de recommandation de la Commission, prévue par l'article 13, recueille l'assentiment du Comité économique et social. Cependant, la Commission ou le Conseil ne doit intervenir que si un État envisage de prendre des dispositions susceptibles de fausser les conditions de la concurrence sans recourir à d'autres critères. En effet, si l'on peut admettre qu'il soit nécessaire d'interdire de telles dispositions, il est plus difficile d'apprécier celles qui sont de nature à contrarier l'harmonisation ultérieure, alors que le système commun n'est pas encore connu d'une manière précise.

Cependant, le recours à la procédure prévue à l'article 13 devrait être rendu obligatoire dans tous les cas où les possibilités d'adaptation données par la directive à l'examen risquent de conduire à des distorsions dans la concurrence entre les différents États membres, entre les différents circuits producteurs ou commerciaux ou entre les différents produits.

Bruxelles, le 27 janvier 1966

Le président
du Comité économique et social
PIERO GIUSTINIANI

ANNEXE

à l'avis précité du Comité économique et social

Amendement repoussé au cours de la 51e session plénière du Comité économique et social des 26 et 27 janvier 1966

Le Comité a délibéré sur la base de l'avis de la section spécialisée pour les questions économiques.

L'amendement ci-après a été repoussé par 51 voix contre 24 et 10 abstentions :

ARTICLE 9

Ajouter après le premier alinéa :

«Le Comité considère que le principe dit du «butoir», exposé au paragraphe 2, est contraire aux principes de la T.V.A. Ce principe soulève de très grandes difficultés pour les entreprises aussi bien dans le domaine du commerce intracommunautaire que dans l'application de la règle des proratas. Les États membres devraient disposer de la faculté d'appliquer ou de ne pas appliquer le système dit de «butoir».»

INDIA

TAX NEWS

FINANCE BILL, 1966

The Indian Fianance Bill for the fiscal year 1966/67 was presented to Parliament on 28 February, 1966. The Finance Minister has proposed additional taxation of about RS. 100 crores*.

The expenditure tax has been abolished for the second time and in doing so the Finance Minister stated as under:

"I propose to abolish the expenditure tax. I do so for administrative reasons. The yield from this tax is very little, namely, RS. 60 lakhs or thereabouts which has not been commensurate with the burden it puts on the administration and the inconvenience it causes to the assessees. I recognise that on purely economic grounds, it would be a very sound principle to replace the income-tax increasingly by a tax on expenditure, so that the maximum incentive is provided for savings. Given the substantial contribution made by income-tax to our revenues and the administrative difficulties and inconvenience to assessees involved in the assessment of expenditure, it is, however, not possible to attempt this substitution on any significant scale at the present stage."

SUMMARY OF IMPORTANT TAX PROPOSALS RELATING INDIRECT AND DIRECT TAXES

Indirect taxation

1. Excise duty on crystal sugar raised from Rs. 28.65 to Rs. 37 per quintal. Additional revenue Rs. 21.93 crores.
2. Duty on cigars and cigarettes and unmanufactured tobacco raised by 25 to 30 percent. Additional revenue Rs. 9.01 crores.
3. Excise on light Diesel oil raised from Rs. 60 per kilo litre. Additional revenue Rs. 5.35 crores.
4. Duties on cotton yarn and cotton fabrics and rayon and synthetic yarn increased. Additional revenue on cotton yearn Rs. 7.23 crores, on fabrics Rs. 6.3 crores and rayon and synthetic yarns Rs. 50 lakhs.
5. Excise on sodium silicate and carbon dioxide raised and slab concessions on paper boards reduced; Additional revenue Rs. 1.46 crores.
6. New duties on optical bleaching agents and synthetic detergents to yield Rs. 58 lakhs.
7. Ad valorem 5 percent duty on motor vehicle trailers by small establishments abolished.
   Total additional yield from revision in excise duties Rs. 52.86 crores.
8. Central sales tax on inter-State sales raised from 2 to 3 percent. Yield Rs. 19 crores annually and Rs. 9.5 crores in 1966/67.
9. Ceiling on sales tax on goods of special importance in inter-State trade raised from 2 to 3 percent. Additional revenue Rs. 7.5 crores in next financial year and Rs. 15 crores in one full year.

Direct taxation

1. *Personal Taxation:*

a) Income-tax exemption limit for individuals raised from Rs. 3,000 to Rs. 3,500. Revenue reduction by Rs. 3.5 crores.
b) Exemption limit for annuity deposits raised from Rs. 15,000 to Rs. 25,000. Reduction in receipts Rs. 7 crores.
c) A flat special surcharge of 10 percent of the amount of income-tax and surcharge on earned and unearned income. Additional revenue Rs. 25.6 crores.
d) Expenditure tax abolished. Loss in revenue Rs. 60 lakhs.

*) £. = Rs. 13.33; crore = 10 millions; lakh = 100,000.

e) Rates of gift tax revised. Exemption limit raised from Rs. 5,000 to Rs. 10,000, the rate on slab from Rs. 10,000 to Rs. 25,000 reduced from 8 to 5 percent and rates on subsequent slabs, up to Rs. 15,00,000, by varying percentages. Existing marginal rate of 50 percent will operate on slab beyond Rs. 15 lakhs.
f) Estate duty on slabs Rs. 1 lakh to Rs. 2 lakhs raised from 8 to 10 percent, on Rs. 3.5 lakhs to Rs. 5 lakhs from 15 percent to 25 percent, on Rs. 5 lakhs to Rs. 10 lakhs from 25 to 30 percent. Loss in revenue due to changes in Gift Tax Rs. 1.71 crores. Additional revenue from Estate Duty Rs. 70 lakhs. Estates of members of police forces killed in action, like those of members of armed forces, exempt from duty.
g) Income-tax abolished on notional capital gain from equity shareholder holding bonus share. Loss of revenue Rs. 7 lakhs.

2. *Company Taxation:*

a) General rates of tax on corporate incomes increased by approximately 10 percent—50 to 55 percent for domestic public company, 60 to 65 percent for closely-held domestic companies and 70 percent for branches of foreign companies. Yield net of other concessions Rs. 36.70 crores.
b) 12.5 percent tax on bonus issues abolished (loss Rs. 9 lakhs)
c) Dividend tax of 7.5 percent modified to apply in excess of 10 percent of paid-up equity capital (loss Rs. 4.8 crores)
d) Company profits surtax reduced from 40 to 35 percent (loss Rs. 2.5 crores)
e) Concessional rate of 25 percent tax on dividends commission, royalties and fees received by an Indian company from abroad.
f) Incentives to tea plantations; newsprint and printing machinery industry also included in the "priority" category. This will entitle these industries to higher rate of development rebate on new plant and machinery installed. Special rebate of 10 percent on income-tax and surtax now available to "priority" industries will be replaced by a straight deduction of 8 percent of the industrial profits in the computation of total taxable income.
g) Income up to Rs. 1,000 from Unit Trust will be excluded from total income irrespective of other income.

Reported by: K.C. Khanna

U.S.A.

DOCUMENTS

THE CURRENT TAX SCENE*

I had the pleasure of addressing this group two years ago—January, 1964—and my title then was "The Current Tax Scene." My title today is the same, but the speech cannot be the same. Economic conditions, national goals and international problems are never static. And so my talk today—on The Current Tax Scene—describes a different panorama from that of two years ago.

Then we were in the final stages of the largest tax reduction bill in our history. Through the Revenue Act of 1962, depreciation reform, and the Revenue Act of 1964, we were also concluding a revision of the income tax that in the few years involved had produced more structural changes of broad policy impact than in any comparable period. And we were already starting work on the next tax reduction and reform measure, which culminated on the Exicise Tax Reduction Act of 1965.

* Remarks by the honorable Stanley S. Surrey assistant secretary of the treasury before the section of taxation New York State Bar Association the New York Hilton Hotel, New York, New York Thursday Februrary 3, 1966, 12:30 P. M., Est.

But this year the scene has changed—the Congress is now engaged in considering a revenue act that, in fiscal year 1967, will increase revenues by over $4.8 billion.

And yet, though the scenes have markedly altered in two years, there are strong links between them. The current picture, indeed, has a logical relationship to the earlier one. Throughout the past five years, our fiscal policy has concentrated on a basic goal, that of eliminating the gap between our actual economic position and our potential position. Tax policy, for the first time in our history, was asked to stimulate investment and expand consumer demand through measures that reduced tax rates despite a budget deficit. The "new economics" called for a reduction in the weight of the tax system and a continuation of temporary deficits, rather than a preservation of existing tax rates and an immediate endeavor to balance the budget. Since there was a high level of unemployment and large unused capacity, the "new economics" demanded large and bold measures—indeed, the concern of many economists was that public unfamiliarity with the new measures and any resulting timidity would yield only cautious steps that could well have meant failure. But the steps were large and bold—the reduction in the income tax through rate decreases, the investment credit and depreciation reform came to 20 percent of tax liabilities. And the economy responded. All that the economists predicted in the way of faster growth and increased revenues has come true.

We have thus moved into the range of a full employment economy. Do we now turn to the economists to say: "Your prescription was fine, these budget deficits work wonders, let's have more of this stuff." If we do, we will be sadly mistaken.

Throughout the past five years, those who disagreed with the tax reduction program have said we should follow instead a restrictive course to maintain price stability, to prevent an unsustainable boom and to prevent deterioration of our balance of payments position. History has proven the error of this viewpoint and that the wise course was to reject it in favor of an expansionary program. But clearly it was never denied that at some point an expansionary program may not be suited to prevailing economic conditions. Today our economists tell us that an expansionary policy is no longer appropriate.

There is no longer a shortage of demand, but rather the beginnings of a pressure of demand upon supply as the gap between the two narrows rapidly. The present concern is not with economic plateaus or a faltering economy, but instead the need is to reduce the risk of inflationary pressures. And all of this comes at a time when a thriving peacetime economy has been suddenly saddled with a sharp rise in military expenditures for hostilities the nature and duration of which cannot be predicted.

Using the same "new economics" but recognizing the changed conditions, the need now is to keep total demand within the bounds of our productive capacity and thereby maintain essential price stability.

The change from strong fiscal stimulus to a measure of fiscal restraint—from a willingness to accept temporary deficits to a desire to maintain a budget within the range marked balanced—does not indicate any error in past policy. Rather it marks the success of that policy, and a recognition that fiscal policy must remain flexible and responsible. And just as tax policy was called upon by the "new economics" to provide the needed fiscal stimulus in the past, so again it is called upon but this time to produce the needed

measure of restraint. But now the steps must be finely tuned, for the economic balance is more sensitive, and the future is uncertain.

We need, at this particular time, no major changes. We need only adjustments in the tax structure that permit shifts in timing without altering fundamental policies or even changing income tax liabilities—and shifts that can be accomplished quickly. We are beginning to see how tax policy can, under our form of government, be used flexibly and promptly.

The President's tax program, now before Congress, fits this prescription. It calls for temporary changes in the schedule of excise tax reductions for automobiles and telephone service. It proposes an acceleration of the scheduled transition to current tax payments for our larger corporations. It recommends action now on a previously studied graduated withholding system for individual taxpayers, at a time when the economic effect flowing from the "bunching" of payments will be appropriate. It also calls for a companion shifting of the payment of the self-employment social security tax to a current estimated basis.

These are moderate steps, each suited to the economic situation. Their permanent structural effects are all sound additions to our tax system. These recommendations do not involve any consideration of the individual income or corporate tax rates or other factors affecting final tax liabilities, such as the investment credit.

The President in his Economic Report buttressed this program by clearly indicating that special tax reduction measures are incompatible with the need for fiscal restraint. He said:

> "Against a background calling for fiscal restraint, I cannot this year endorse any specific legislative measure, however meritorious, involving significant net tax reductions. The danger of inflation from increased demand would be too great, and any special tax reduction now would postpone the time when we can achieve a meaningful general tax reduction."

This current tax program is directed at immediate budgetary problems. It achieves an administrative budget for fiscal year 1967 that has a deficit of only $1.8 billion—instead of a deficit of over $6 billion—and that closely reflects the cash budget and national income account budgets, which are both close to balance. But we can never be certain about future economic conditions, and the uncertainty is far greater than ever this year because of Southeast Asia and its uncertainties.

Our studies of the tax system therefore must be designed to yield further insights into the adjustments that are proper when we require short-range, temporary changes in income tax rates, up or down. If we need such quick temporary adjustments, it seems desirable to aim for an approach that leaves the distribution of the tax burden between the various income brackets essentially unchanged. Over the long run, of course, we must concern ourselves with the problem of equity in the distribution of the tax burden, for this lies at the heart of any tax system. It is a difficult problem and involves deep-seated feelings, so that important changes are usually attended by lengthy Congressional consideration and public debate. But when we are dealing with a short-term change in

tax levels to meet current economic conditions, we do not have the time for such debate. What is called for, therefore, is an approach that is «neutral» in its effect upon the existing structure.

«Neutrality» when applied to the individual income tax means no change in the present progressivity of the rate structure. What type of temporary downward adjustment to prevent a faltering of the economy best achieves this neutrality? It is a reduction of an equal percentage in the *final tax liability* for all taxpayers; or a reduction of an equal percentage of *taxable income before tax* for all taxpayers, which is the same as a reduction of the same number of percentage points in each tax bracket; or is it an equal percentage increase in *after-tax income* for all taxpayers? Are there other approaches to «neutrality»? If the need is for a temporary upward adjustment, which of these approaches when phrased in terms of tax increases is most «neutral»? Should the answer be the same for upward as for downward adjustments? In sum—for other questions can also be asked—e.g., how should corporate taxes be changed relative to the individual income tax—what are the guidelines for framing temporary tax changes?

Our need is not for the adoption of special Congressional procedures or standby measures to ensure that Presidential requests for temporary tax rate changes will be acted upon promptly. The Congress has demonstrated—in the Exicise Tax Reduction Act of 1965 and now in its prompt consideration of the President's present program—that measures framed responsibly and properly balanced will obtain quick and efficient Congressional consideration if that is required under the circumstances. Our need instead is for a general understanding of the principles to be followed in structuring these temporary measures. In urging tax flexibility, some of the economists have unfortunately placed far too much stress on Congressional procedures and far too little on the fiscal principles and techniques that should determine the *substantive* content of these temporary tax rate proposals.

If we can through consideration of these substantive questions obtain a consensus on the relevant criteria and appropriate techniques, then our Government will be in a better position to act quickly if ever the need for action arrives. We could thus reserve our searching debates over tax policy for the occasions when we are seeking permanent, long-run revisions of the tax system, as the rate reductions of the 1964 Act.

The President in his Economic Report for 1966 stressed the need for adequate guidelines for temporary tax changes:

> "We must always be prepared to meet quickly any problems that arise in the path of continued, stable economic growth, whether the problems call for fiscal stimulus or fiscal restraint. Background tax studies by both the Congress and Executive Branch should therefore be adequate to permit quick decisions and prompt action to accommodate short-run cyclical changes. If quick action is ever needed, we should not have to begin a long debate on what the changes in the taxes should be."

Hearings held at this time by a Committee of Congress, involving expert witnesses and representatives of interested groups, could be helpful in developing the Congressional background tax studies that are desirable.

All of this is the essence of fiscal responsibility.

It means that Government seeks to handle its part of the economy so that the private sector can make its decisions intelligently in the light of responsible governmental action.

The Federal budget, its expenditures and its receipts, is the largest factor in our economy directed by a single unit. Unless it is prudently managed, stability in private decisions becomes impossible. If it can be handled in a manner that effectively stabilizes the economy, greater freedom of private action is possible. Businessmen can then plan in terms of what new activities will best meet the requirements of market efficiency in a high employment economy. This freedom of action becomes narrowed if, because of excessive instability in the economy, they must design cut-back plans to weather the instabilities.

So far I have discussed tax policy in terms of the "new economics" and its current tasks. But you are lawyers and properly also ask what part of the current tax scene calls for your skills. Let me begin with tax simplification. Chairman Mills, in a recent and significant article, in the December 1965 issue of *Nation's Business*, called for greater emphasis on simplifying the tax laws. His suggestions were specific. He pointed to the retirement income credit, to the averaging provision, and to the sick pay exclusion as deserving re-examination in the interest of simplifying the computations and rules they now entail.

To improve administration he pointed to the treatment of tax liens, the direct filing of tax returns at regional offices, and an improved rule to determine which parent should receive a dependency exemption when there has been a divorce.

In an area of wider scope, that of personal deductions, he stated alternative plans whereby the complexities involved in the present itemization of deductions would be reduced.

One plan would increase the standard deduction—this plan would lose revenue and maintain income tax rates at present levels.

A second plan would reduce tax rates by about 10 percent, or perhaps more, in the upper brackets, for those willing to forego the standard deduction or itemized deductions. This plan, being optional, would also lose revenue.

A third plan would reduce the rates by 10 percent, and even more in the upper ranges, and then allow no standard deduction and itemized deductions only above a 10 percent of adjusted gross income level. This plan could be aimed at achieving a revenue balance, or only as little loss as would be needed to make finer adjustments among the different taxpayers involved in the restructuring.

Chairman Mills has called on the Congressional and Treasury tax staffs to explore these various suggestions and the exploration is under way.

Chairman Long, of the Senate Finance Committee, is also interested in tax simplification, and, indeed, his approach, like that of Mr. Mills, recognizes the complications now involved in our system of personal deductions. Senator Long's proposal goes beyond these deductions, and would provide substantially lower effective tax rates for those who optionally forego all tax preferences, including most of the personal deductions. The Treasury is also studying the implications and possibilities of this approach. The important factor, of course, is that the two leaders in the tax field in the respective branches of Congress are both publicly calling attention to the need for tax simplification.

President Johnson in his Economic Report stressed the same theme, stating:

> ". . . improvement of our tax system is a continuing need which will concern this Administration and which deserves the support of all Americans . . . One major goal must be simplification of the tax law."

Here, indeed, is a task in which lawyers can play an important role. The achievement of tax simplification requires a high measure of sheer ingenuity mixed with an intelligent weighing of what is valuable complexity proper to achieve needed fairness and what is expendable refinement and detail. We must recognize that society is willing to tolerate considerable tax complexity in the areas where lawyers are needed anyway—corporate organizations and reorganizations, partnerships, trusts and the like. But, in turn, society can properly ask that the lawyers join in seeking solutions to the complexities that now seriously complicate the tax system for the average taxpayer—the retirement income credit, the standard and itemized deductions, and other matters similar to those referred to by Chairman Mills. The lawyers are being asked to approach the task with a willingness to assume initially that much of this complexity makes little net contribution to either equity or any other social goal and, given that premise, to explore what may be done to achieve tax simplification. Society can then weigh the values gained and lost, and determine the extent to which the initial premise is valid. But unless lawyers assist in providing the public with this means to an intelligent choice, much of the responsibility for continued tax complexity will be laid at our door.

As President Johnson pointed out, simplification is only one of the major goals to be achieved in seeking improvement of our tax system. His Economic Report stressed two additional themes—equity and the review of special tax preferences:

> "Another aim must be a more equitable distribution of the tax load. The great variation of tax liability among persons with equivalent income or wealth must be reduced. Further, when tax reduction once again becomes feasible, particular attention must be given to relief of those at or near poverty levels of income.
>
> "Finally, we must review special tax preferences. In a fully employed economy, special tax benefits to stimulate some activities or investments mean that we will have less of other activities. Benefits that the Government extends through direct expenditures are periodically reviewed and often altered in the budget-appropriation process, but too little attention is given to reviewing particular tax benefits. These benefits, like all other activities of Government, must stand up to the test of efficiency and fairness."

The determination from time to time of how the balance among three factors—equity, special tax preferences, and simplification—should be struck will decide the nature of our tax system.

If we stress special tax preferences and through them the use of the tax system to accomplish on a wide-scale benefits for particular taxpayers or various non-tax goals, then the price must be paid through a lessening in the equitable distribution of the tax load and in increased complexity.

If we push simplification too far at the expense of fairness, then also the equity of the tax system suffers.

But if we push the demands of equity to refinement after refinement, then complexity triumphs. And if we discard each and every tax preference, then certain needed values in our society can be lost.

These interlocking pulls and counterpulls and the constant need to seek the right balance make the task of tax reform difficult. But the President's words underline that the goal can be clearly perceived and there are standards against which the present provisions can be tested. One is that of achieving a greater degree of horizontal tax equity than we have today: "great variations of tax liability among persons with equivalent income or wealth must be reduced." The other is that special tax preferences must—just as direct governmental expenditures—justify their current existence: "Tax benefits . . . like all other activities of Government, must stand up to the test of efficiency and fairness."

Here indeed is a grand challenge to lawyers. Each day you apply the many provisions of the tax system that result in a lower tax for this client as compared with other clients—but rarely yourself—because of the way his income is obtained. Each day you apply provisions of the tax law that cannot be reconciled with a proper measure of net income but are the means to some social or economic end or the way in which some activities —and thereby some taxpayers—are preferred over others. Given the President's desire to reform the tax system and his criteria, which of the provisions that you apply each day would you keep, discard or modify? As you bend each intricate part and detail of the Tax Code to some particular task, how would you answer the question whether that provision really has any reason to exist in a proper tax code?

The President also made a specific immediate recommendation and called upon the Congress "to deal with abuses of tax-exempt private foundations." Here is a fitting example of what we are discussing.

We are all well aware that private foundations have been under a cloud for many years, despite the fundamental and strong attachment Americans hold for private philanthrophy. Of all the areas in which that philanthrophy can be exercised—in private educational institutions, in religion, in community programs—basically only the area of the private foundation stands suspect. And that is because a substantial number of private foundations have not been able to separate their philanthrophy from activities and relationships that have nothing to do with philanthrophy. Prominent among these aspects are their involvement in business relationships and their maintenance of arrangements and transactions which give the appearance and often the actuality of continuing financial benefits to their donors and trustees.

I doubt there is anyone who looks upon these matters as positive benefits to philanthrophy or society. I have not found a responsible foundation trustee who, finding a foundation with a diversified investment portfolio, would switch that portfolio into the ownership of a business corporation or a minority interest in a family corporation or unimproved land or only non-dividend paying growth stocks. The present involvement of foundations in these investments and activities is thus only an accommodation to their donors, be it a reflection of the donor's past activities or as a response to a present

desire of the donor. But the involvement is hardly an inherent philanthropic virtue.

Our task is not to perpetuate these involvements of private foundations, but to seek ways in which foundation philanthrophy can be freed from them—ways whereby the private foundation can shed the activities which the donor's financial history before its organization or his present financial concerns have thrust upon it.

Nor should we look only at foundation involvements with the financial affairs of their donors. Again, I have not found any responsible trustee who has not recognized the need to maintain a balance between the influence of those donors desirous of playing a role in the philanthropic spending of the funds which used to be theirs—but legally are no longer their private concern—and the claims of society that philanthropic funds be controlled by trustees with a fiduciary regard and a degree of detachment and outlook that is not submerged in submissiveness to the donors.

The Treasury Department in its Report to the Congress on Private Foundations addressed itself to these difficult problems and made specific recommendations. I urge your careful study of these recommendations. For here also legal ingenuity should be equal to the task of removing the present clouds that hang over the private foundations. And indeed tax lawyers have a real responsibility in this regard. The proliferation of the private foundation is in large part the handiwork of the tax bar, in its use of tax provisions designed to foster general philanthrophy as a tool for family and business planning. Society can properly call upon us to recognize the wider concerns involved and to fashion our handiwork into a genuinely philanthropic instrument not tainted by the present defects and abuses.

Let me comment briefly about another social instrument that also owes much of its widespread presence to the tax law. This is the private pension plan. A Cabinet Committee on Corporate Pension Funds developed recommendations to improve the basic soundness and equitable character of these private plans. In January 1965, the President made this Report public in the interest of public examination and discussion. The discussion has developed slowly but the need for a constructive dialogue is now recognized by those concerned with this area.

Basically, the goals are to broaden the coverage of private pension plans to include a wider range of employees; to provide greater assurance that the pension benefits will materialize and be paid; to make these plans as compatible as possible with a freely mobile labor force; to make certain that the funds will be administered solely in behalf of participating employees, and to eliminate those special tax preferences associated with these plans which do not meet the test of efficiency or fairness.

Essentially the rules governing the development of private pension plans, set forth as qualifications for eligibility for special tax treatment, have not changed since 1942. Such basic problems as the vesting of pension benefits, the funding of benefits, the portability of benefits, the coverage of employees, and the integration of these plans with the Social Security system are governed today by concepts and patterns developed a quarter of a century ago. Pension plans then were just beginning to flourish and economic conditions and institutions were different. One can properly doubt that the knowledge and experience available back in 1942 was sufficient to produce decisions that could stand as immutably wise for all time.

The Treasury and other Departments involved thus welcome a serious, objective examination by business, labor, and others concerned, such as the actuarial profession, of the present pattern and operation of pension plans and of the Cabinet Report recommendations. We are hopeful that out of this dialogue we can fashion useful improvements in the present system in keeping with the goals I have stated and the fulfillment of the function of these plans in providing supplemental retirement security to the labor force.

The reform of our tax system which President Johnson seeks will call for examination of many other areas in which lawyers have special skills and experience. If we use our knowledge and insights constructively in the improvement of the tax system and the institutions which that system has fostered, then we will play our part in shaping the Great Society. The problems are difficult and complex and encrusted with history—but this is only to say that they are worthy of your talents.

PAYMENTS RECEIVED UNDER THE SOCIAL SECURITY SYSTEM OF THE FEDERAL REPUBLIC OF GERMANY

Advice has been requested whether the payments a taxpayer receives under the social security system of the Federal Republic of Germany are includible in his gross income under section 61 of the Internal Revenue Code of 1954.

The taxpayer, in the instant case, is an individual who has been admitted to the United States for permanent residence. He is receiving benefit payments under the old age insurance program of the social security system of the Federal Republic of Germany.

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived.

Section 1.61-11(a) of the Income Tax Regulations provides, in part, as follows:

> (a) *In general.*—Pensions and retirement allowances paid either by the Government or by private persons constitute gross income unless excluded by law. Usually, where the taxpayer did not contribute to the cost of a pension and was not taxable on his employer's contributions, the full amount of the pension is to be included in his gross income. But see sections 72, 402, and 403 and the regulations thereunder.* * *

Paragraph (b) of the same regulation includes the statement that "Amounts received as pensions or annuities under the Social Security Act * * * are excluded from gross income," and refers to "section 37 and the regulations thereunder" with respect to the "inclusion of pensions in income for the purpose of the retirement income credit."

Section 37(d) (1) of the Code relates to retirement income and prescribes a maximum dollar amount, to be reduced by, "in the case of any individual, any amount received by the individual, as a pension or annuity," "under Title II of the Social Security Act," or "otherwise excluded from gross income." Section 37 (e) of the Code states that subsection (d) (1) shall not apply, among other things, "to any amount excluded from gross income under section 72 (relating to annuities)." This is explained in section 1.37-3(b) (2) of the regulations in the following manner:

(2) *Amounts not includible in gross income.*—Retirement income may not include any amount not includible in the gross income of the individual for the taxable year. For example, if a portion of an annuity is excluded from gross income under section 72, relating to annuities, that portion of the annuity is not retirement income. * * *

The purpose of the retirement income credit of section 37 of the Code was explained in Senate Report No. 1622, Eighty-third Congress, at page 8, as follows:

Under existing law, benefits payable under the social security program and certain other retirement programs of the Federal Government are exempt from income tax. No similar exemption is accorded to persons receiving retirement pensions under other publicly administered programs * * *. In order to adjust this differential tax treatment, the House bill grants an individual * * * a credit against his tax liability * * *

It is evident, therefore, that in enacting the Internal Revenue Code of 1954 Congress intended the benefit of the retirement income credit to be available with respect to payments like those in the instant case, but not to payments under the U.S. social security system, Congress recognizing that such payments had been specifically held "not subject to the Federal income tax in the hands of the recipients" by the Internal Revenue Service in I.T. 3447, C.B. 1941–1, 191, 192. Accordingly, no basis is known for attributing to Congress a belief that payments under the social security system of the Federal Republic of Germany or any other foreign social security system were not subject to the Federal income tax. Compare Revenue Ruling 62-179, C.B. 1962-2, 20.

The Service has given consideration to the provisions of the *Convention between the United States of America and the Federal Republic of Germany*, July 22, 1954, 5 UST 2768, C.B. 1955-1, 635. The Convention relates to double taxation and Article XI provides, in part, as follows:

(b) Wages, salaries and similar compensation and pensions paid by the Federal Republic, Laender or municipalities, or by a public pension fund, to an individual (other than a citizen of the United States and other than an individual who has been admitted to the United States for permanent residence therein) shall be exempt from tax by the United States.

(c) For the purpose of this paragraph the term "pensions" shall be deemed to include annuities paid to a retired civilian government employee.

(3) The term "pensions", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

Since the payments in question in the instant case are to be made by the Federal Republic of Germany or from a public pension fund thereof, to an individual specifically excluded from the benefits of Article XI, they are not excludable from gross income of the taxpayer by reason of the treaty provision quoted.

Furthermore, section 2 of Article IV of the *Treaty of Friendship, Commerce, and Navigation* with the Federal Republic of Germany, October 29, 1954, 7 UST 1839, has no pertinence to the instant case although it provides that nationals of either country are

to be accorded national treatment in the application of laws and regulations within the other country which establish compensation or other benefits on account of disease or injury from the course or nature of employment or with regard to social security laws or regulations relating to sickness, disability, maternity, old age, death of breadwinner, or unemployment, since the treaty deals with the availability of such payments rather than their taxability.

In view of these circumstances and in the light of the opinion of the Supreme Court of the United States in *Commissioner* v. *Glenshaw Glass Company*, 348 U.S. 426 (1954), Ct. D. 1783, C.B. 1955-1, 207, which recognized "a clear legislative attempt to bring the taxing power to bear upon all recipients constitutionally taxable" on the part of Congress, the payments received under the social security system of the Federal Republic of Germany by individuals who are citizens of the United States or have been admitted to the United States for permanent residence are includible in their gross income for Federal income tax purposes, unless exluded by law. Such taxpayers are entitled to recover their cost, if any, in the payments under the rules of section 72 of the Code. They may also be eligible for the retirement income credit provided by section 37 of the Code.

Revenue Ruling 56-135, C.B. 1956-1, 56, held that the Panamanian social security benefit payments received by United States citizens were excludable from their gross income because the benefits were basically similar to the excludable sundry insurance benefit payments made to individuals under the U.S. social security system.

It is now the position of the Service that any similarity between the benefits provided by the social security system of the United States and those provided by the social security system of a foreign nation is not a valid basis for excluding from the gross income of the recipient, under the Federal income tax laws, the benefits paid by a foreign nation.

Pursuant to the authority of section 7805(b) of the Code, and effective with respect to Panamanian social security benefit payments received in taxable years commencing after December 31, 1965, Revenue Ruling 56-135, C.B. 1956-1, 56 is hereby revoked.

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RESEARCH AND EXPERIMENTAL EXPENDITURES

Advice has been requested whether a taxpayer may deduct, under section 174(a) of the Internal Revenue Code of 1954, relating to research and experimental expenditures, amounts spent in obtaining foreign patents on inventions covered by United States patents and patent applications owned and developed by persons other than the taxpayer.

The taxpayer in this case enters into agreements with holders of United States patents and patent applications giving to the taxpayer the right to obtain and exploit the foreign rights in the inventions owned by the other parties to the agreements. The taxpayer and the owner of the United States patent share equally in any funds collected from licensees in foreign countries or otherwise derived from the exploitation of the foreign patents.

The taxpayer applies for and obtains foreign patents and rights in its own name and

not in the name of or as licensee of the owner of the United States patents. The patents are acquired for the purpose of commercializing the inventions in foreign countries through licensees and not for purpose of resale.

All expenses in connection with the foreign patents are paid for by the taxpayer. These expenses include cost of preparing foreign translations of specifications and claims, costs of formal drawings and certified copies of United States patents and patent applications, legal fees, filing fees, and taxes.

Section 174(a) of the Code allows a deduction for research and experimental expenditures paid or incurred by a taxpayer in connection with his trade or business. The issue in this case is whether the expenditures of the taxpayer are research or experimental expenditures.

Section 1.174-2 of the Income Tax Regulations provides, in part, as follows:

> (a) IN GENERAL.—(1) The term "research or experimental expenditures", as used in section 174, means expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense. The term includes generally all such costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention, or similar property, and the improvement of already existing property of the type mentioned. The term does not include expenditures such as those for the ordinary testing or inspection of materials or products for quality control or those for efficiency surveys, management studies, consumer surveys, advertising, or promotion. However, the term includes the cost of obtaining a patent, such as attorneys' fees expended in making and perfecting a patent application. On the other hand, the term does not include the costs of acquiring another's patent, model, production or process.

While this definition includes the costs of obtaining a patent, such costs are included only in connection with inventions or improvements from research and development in the experimental or laboratory sense undertaken directly by the taxpayer or carried on in his behalf by another person or organization. The expenses incurred in this case do not differ for purposes of the question presented from the costs of acquiring the patents of others.

Accordingly, expenditures paid or incurred by a taxpayer in obtaining foreign patents on inventions covered by United States patents and patent applications owned by other persons may not be deducted as research or experimental expenditures under section 174(a) of the Code.

Rev. Rul. 66-30 Internal Revenue Bulletin

TREATIES

CONVENTION ENTRE LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE ET LE ROYAUME DE BELGIQUE, RELATIVE AU RÉGIME FISCAL DES VÉHICULES AUTOMOBILES AFFECTÉS AU TRANSPORT ENTRE LES TERRITOIRES DES DEUX ETATS ET EN TRANSIT À TRAVERS CES TERRITOIRES

LA RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE ET LE ROYAUME DE BELGIQUE

ANIMÉS DU DÉSIR de faciliter la circulation automobile entre les deux Etats et en transit à travers ces territoires,

SONT CONVENUS DE CE QUI SUIT:

ARTICLE 1

(1) Les véhicules automobiles ainsi que les remorques de tous genres, immatriculés régulièrement dans une des Parties contractantes qui séjournent temporairement sur le territoire de l'autre Partie contractante, sont exonérés des impôts et taxes qui, sur le territoire de l'autre Partie contractante, frappe l'utilisation ou la détention des véhicules automobiles et des remorques.

(2) L'exonération est également valable pour les véhicules automobiles et les remorques de véhicules automobiles, qui peuvent circuler sur le territoire d'une Partie contractante et qui sont dispensés de l'obligation d'immatriculation.

ARTICLE 2

(1) Pour les véhicules automobiles et les remorques qui, compte tenu de leur structure et de leur aménagement, se prêtent et sont destinés au transport de marchandises, l'exonération n'est accordée que dans le cas où leur séjour temporaire sur le territoire de l'autre Partie contractante n'excède pas une durée de quatorze jours consécutifs à dater de chaque entrée dans ce territoire.

(2) Pour calculer la durée du séjour, le jour de l'entrée et celui de la sortie sont comptés chacun pour un jour entier.

(3) Les Autorités compétentes des Parties contractantes peuvent tolérer des exceptions à la durée du séjour dont question au premier alinéa, lorsque les véhicules sont mis hors d'usage ou lorsqu'ils sont utilisés à l'occasion de foires, d'expositions ou de manifestations analogues.

ARTICLE 3

(1) L'exonération ne s'étend ni aux droits de douane et de consommation, ni aux droits de péage sur les routes et les ponts ou aux autres taxes similaires, ni aux impôts et taxes perçus pour le transport de marchandises et de personnes.

(2) Les dispositions de la présente Convention ne portent pas atteinte aux exonérations plus étendues qui résultent soit d'autres conventions internationales, soit de la législation interne de chacune des Parties contractantes.

ARTICLE 4

Les Autorités compétentes des Parties contractantes prendront les mesures nécessaires pour prévenir un usage abusif de l'exonération prévue par la présente Convention. Elles pourront refuser l'exonération en cas de présomption grave d'abus.

ARTICLE 5

La présente Convention s'appliquera également au Land Berlin, à moins que le Gouvernement de la République Fédérale d'Allemagne ne fasse, au Gouvernement du Royaume de Belgique, une déclaration contraire dans un délai de trois mois après l'entrée en vigueur de la présente Convention.

ARTICLE 6

(1) La présente Convention entrera en vigueur le premier jour du mois suivant celui au cours duquel la République Fédérale d'Allemagne aura notifié, au Royaume de Belgique, que les conditions nationales auxquelles est subordonnée l'entrée en vigueur de la Convention, sont remplies.

(2) A cette même date, la Convention entre le Gouvernement allemand et le Gouvernement belge, concernant le régime fiscal des véhicules à moteur, conclue à Berlin, le 21 décembre 1934, cessera de produire ses effets.

(3) La présente Convention pourra être dénoncée à la fin de chaque année civile, moyennant un préavis de trois mois.

FAIT à Bruxelles, le 17 décembre 1964, en deux exemplaires, en langue française, néerlandaise et allemande, chacun des textes faisant également foi.

Pour la République fédérale
d'Allemagne:

Herbert Siegfried
Wolfgang Juretzek

Pour le Royaume de Belgique:

H. Fayat

IV

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1. BOOKS

BELGIUM

UITVOEREN EN MET HET ZEGEL GELIJKGESTELDE TAKSEN by *Hougardy, S. and L. Van den Berghe,* Uitgeversfirma AD. Wesmael-Charlier N.V., Namen, 1965. 112 pp.

This practical book dealing with various turnover tax aspects of importation and exportation discusses, *inter alia,* the exemption or rate reduction applicable to re-exportations both in the case of goods having and having not been subject to further processing or manufacturing and the refund of turnover tax at ordinary exporation.

LES CODES ET LES LOIS SPECIALES LES PLUS USUELLES EN VIGUEUR EN BELGIQUE, TOME V, MATIERES FISCALES by *Blondiaux, J.; J. Masquelin and Gui Delree,* Etablissements Emile Bruylant, rue de la Régence 67, Brussels, 1965. 519 pp + index 279 pp. Bfrs. 680.–

This compilation of the most significant Belgian tax laws, including regulations and notes pertaining to important case law, has been updated to the Official Gazettes published up to July 1965.

LES ASSURANCES DE GROUPES; ELEMENTS TECHNIQUES, JURIDIQUES, SOCIAUX ET FISCAUX by *Carton de tournai, R. and Ch. Deleers,* Etablissements Emile Bruylant, rue de la Régence 67, Brussels, 1965. 398 pp.

This handbook deals with various aspects of group insurance. Significant tax aspects discussed in Section VIII include the deductibility of premiums for income tax purposes and liability to succession duty and turnover tax with respect to the receipt of benefits and premiums respectively. Some international aspects are also discussed.

LE REGIME FISCAL DE LA RECHERCHE SCIENTIFIQUE ET TECHNIQUE DANS L'INDUSTRIE DES FABRICATIONS METALLIQUES EN BELGIQUE by *Demin, P. Dr.,* Faculté de Droit, Liège; Martinus Nijhoff, Den Haag, 1965. 43 pp.

This very informative brochure deals with the various tax aspects of research in the Belgian metal industry and includes, *inter alia,* the following subjects: (i) research performed by the individual enterprises, (ii) collective research whereby the individual enterprises contribute financially, and (iii) collective research whereby results are exchanged or whereby efforts are combined. Tax aspects of patent rights and know how are also discussed.

PRECIS DE FINANCES PUBLIQUES, DEUXIEME PARTIE, IMPOT, RECETTES NON FISCALES, CREDIT PUBLIC by *Baudhuin, F.* Etablissements Emile Bruylant, rue de la Régence 67, Brussels, 1966. 289 pp.

This handbook concerns theoretical aspects of government revenue. Its scope includes both taxes as a source of revenue, income from services rendered by the State and public loans. The part devoted to taxes includes references to the history of taxation, the various types of taxes, assessment and collection and a number of economic aspects of taxation.

L'EVOLUTION DE LA NOTION DE REVENUS IMPOSABLE EN DROIT FISCAL BELGE by *Wibault, H.,* Etablissements Emile Bruylant, Rue de la Régence 67, Brussels, 1965. 175 pp. Bfrs. 380.–.

This book is a successful attempt to reconsider the concept of taxable income in Belgian income tax legislation as it has developed from the introduction of the income tax law of 1919 to the tax reform of 1962. The author, however, has restricted his research to "earned income" such as business income, income from employment and income from liberal professions. Some of the most significant subjects dealt with are: computation of business income (including income derived by corporations), capital gains taxation, liquidation, consolidations, taxation of corporate directors etc.

TRAITE DES TAXES ASSIMILEES AU TIMBRE by *Otten, J.* 1, rue Ch. Naguette, Liège, Loose-leaf.

This excellent loose-leaf handbook covers the entire field of Belgian turnover tax. The author

is the director of the special branch for turnover tax at the Ministry of Finance at Brussels.

L'ENREGISTREMENT DES ACTES DE SOCIETES by *Raucq, A.,* Maison Ferdinand Larcier S.A., 39, rue des Minimes, Brussels, 1966. 230 pp. Bfrs. 350.–.

This handbook deals with Belgian registration duties with respect to incorporations, contributions to capital, increase of capital, consolidations, divisions, exemptions and special rates for the issuance of bonds. Since the Law of April 14, 1965 significantly changed the Belgian registration duty, a new guide in this field was a necessity. The author has succesfully filled the existing gap.

COMMON MARKET

RECHTSVERGELIJKENDE STUDIE OVER DE NATIONALITEIT VAN VENNOOTSCHAPPEN, Centre Interuniversitaire de Droit Comparé, by *Boxsom, G. van,* Etablissements Emile Bruylant, Rue de le Régence 67, Brussels, 1964, 256 pp.

This extremely useful book deals with the issue of corporate nationality in the six common market countries, a relatively unexplored field. Although tax law is not the primary subject, the author discusses public international law of which international tax law is a branch.

FRANCE

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This handbook on French taxation as it affects industry and commerce is used as a textbook for advanced students in commercial studies. Its scope includes the entire field of taxation and it gives an excellent introduction to the existing problems.

INTERNATIONAL

DEVELOPMENT FINANCE: PLANNING AND CONTROL by *Hicks, U.K.,* Oxford University Press, London, 1965. 187 pp. 28 sh.

Survey of the various aspects of financing projects in development countries. Separate chapters deal, inter alia, with: Choice in the Public Expenditure Programme; Finance and the Financial Infrastructure; Fiscal Policy for Development; Taxes on Outgoings; Taxes on Incomings; the Organization and Execution of Development plans, etc. The author has served many developing countries in an advisory capacity.

UNITED KINGDOM

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A historic survey of the development of the United Kingdom Income Tax since its introduction in 1799.

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An authoritative and practical handbook on the law and practice of the new system of capital gains taxation in the United Kingdom.

A detailed analysis of the new legislation is given, together with many examples. The text of the relevant legislation is included.

BYLES ON BILLS OF EXCHANGE by *Megrah, M. and F.R. Ryder,* Sweet and Maxwell, London, 22nd ed., 1965. 496 pp. £ 6. 6sh.

New edition of the authoritative handbook on the United Kingdom law with respect to bills of exchange, promissory notes, bank notes and cheques, first published in 1829. A separate section deals with stamp duty.

THE INLAND REVENUE; The New Whitehall Series No. 13. by *Johnston, A. Sir,* George Allen and Unwin, London, 1965, 201 pp. 20 sh.

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New edition of the well known survey on the major aspects of income taxation. The present edition covers income tax, corporation tax and capital gains tax, and reflects the 1965 tax reform in the United Kingdom. The book was originally published under the title The Elements of Income Tax Law.

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Handbook on the new capital gains taxation in the United Kingdom, resulting from the 1962 and 1965 Finance Acts. Separate parts of the book deal with "Trading gains and other special provision "Short Term Gains", and (long term) "Capital Gains"; the relevant texts of the Acts are included in an appendix.

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IV — BIBLIOGRAPHY:

Exactly one hundred years ago, 1866 a member of the Bremen Senate stated: "the turnover tax experiment has been completely successfull".[1])
These words come to mind in connection with the current experiments with the value added tax.

The Bremen tax of 1862 was a predecessor of modern general turnover taxes, closer in design to modern turnover taxes than the German "Warenumsatz-stempel" of 1916, for example. Though the Bremen tax was in effect for more than 20 years – from 1863 to 1884 – so far as we know it was never consciously used as a model for a newly introduced turnover tax in Europe. It seems to have been forgotten, even in the modern literature on Turnover Taxes.[2])
The Bremen tax was a multistage cumulative system; the rate was 5/12 % on the first delivery of goods, further deliveries being taxed at 1/6 %. There were a number of exemptions. The tax had to be paid at the moment the movable goods were sold, if the seller were an entrepreneur of Bremen or if the goods were within Bremen territory at the moment the sale was concluded. This had the result that trade by non-Bremen entrepreneurs was shifted from Bremen and the competition between Bremen entrepreneurs and their colleagues disturbed. The law of December 18, 1871 provided an exemption at export, but international trade did not prosper, though, of course, it should be noted that the boom period (1862-1870) had ended.
In 1884 the Bremen Senate informed the citizenry that the tax was abolished.[3])
Economic conditions having changed the effect of the distortion outweighed the benefits of the tax.

The theoretical concept of value added taxation is almost ideal. We sincerely hope the practical application will not eventuate in euphoria turned bitter, as was the case in Bremen.

DR. J.C.L. HUISKAMP

[1]) "Das Experiment der Umsatzsteuer ist vollkommen gelungen".
[2]) The text of the Bremen tax has been published in Gesetzblatt der freien Hansestadt Bremen 1862, p. 30ff and is reprinted in Dr. J.C.L. Huiskamp: De Omzetbelasting in internationaal verband, 1966.
[3]) . . . das Missverhältnis wird aufgehoben, welches darin besteht, dass der hiesige Verkäufer von jedem seiner Umsätze eine Steuer zu entrichten hat, von welcher der Auswärtige frei bleibt. (Official explanation).

CONTENTS

I

THE INTEREST EQUALIZATION TAX: A NEW METHOD OF PROSPECTING FOR GOLD

by

GILBERT B. CRAMER*

I. BACKGROUND AND INTRODUCTION

The United States Interest Equalization Tax was first proposed by President Kennedy on July 18, 1963 in his Balance of Payments message to the Congress. Perhaps no tax proposal in recent years has been so unaminously criticized. Despite this criticism Congress eventually enacted the Interest Equalization Tax Act which was signed into law by President Johnson on September 2, 1964, almost 14 months after it was initilaly recommended. The delay before enactment is substantial evidence that Congress passed the measure only after the two Congressional tax-writing committees had heard numerous protests and engaged in protracted debate about the necessity of such a tax.

Why did Congress feel compelled to levy a tax which had generated so much antagonism? This article will attempt to set forth the facts and the atmosphere which led to the Interest Equalization Tax (often referred to as the IET). After discussing these circumstances, the article will describe the nature of the tax followed by an analysis of four major exemptions from the tax as well as five other areas which have presented special problems. Since it would take a medium-sized book to adequately discuss the Act and the interesting ramifications of all of its often complicated provisions, I have chosen to focus on the highlights of the Act. Therefore, the article is by no means an exhaustive treatment of the tax, and many important and specialized areas will not be mentioned. Despite these gaps, it is hoped that the article will convey a deeper understanding of the tax and some of its most important features.

Perhaps the best understanding of the rationale for the IET can be obtained from a close reading of Senate Report No. 1267, 88th Congress, 2nd Session submitted by the Senate Finance Committee on July 30, 1964 as it reported out the bill originally passed by the House of Representatives for much the same reasons. Although few people enjoy studying statistics, an appreciation for these presented by Senate Report No. 1267 is vital as background material which sets the stage for the Act. For this reason the following statistics should be kept in mind.

Beginning in 1950 the U.S. balance of payments has shown a deficit in every year except 1957. This means that the outflow of dollars from the country has exceeded the inflow, producing a deficit. Since the United States is obligated to support the dollar

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with gold, foreign countries are free to present dollars for payment in gold. As more dollars are presented for gold the U.S. supply of gold which is the foundation for the currency system of the United States, diminishes. At one time, the U.S. possessed almost sixty (60%) percent of the free world's supply of gold. However, although the U.S. had gold reserves of $24.6 billion in 1949, this had decreased to $15.7 billion in 1963. The deficits attributable to the years 1958 through 1963 alone totaled over $7 billion. The seriousness of this decline can be appreciated when it is realized that if all foreign countries presented their dollars for gold at the same time, the United States would not be able to honor its commitment. In 1963 when the tax was proposed, the United States gold reserves totaled $15.7 billion of which it was estimated approximately $12 billion was needed to back the dollars outstanding in the United States. Therefore, this left only about $4 billion of gold in the Treasury to back potential foreign dollar claims of over $25 billion.

United States monetary officials first began to be seriously alarmed over the balance of payments in 1959. Despite their attempts to reverse the trend of deficits, these deficits actually increased over the next several years. The deficit in regular transactions (excluding nonscheduled repayments of Government loans and special measures such as medium-term borrowings) resulted in a deficit of $2.7 billion seasonally adjusted at an annual rate) in the fourth quarter of 1962 and $2.9 billion in the first quarter of 1963. This increased steeply in the second quarter of 1963 to $4.6 billion. This deterioriation occurred despite strenuous efforts by the administration to reduce Government spending abroad, despite advance prepayments of debts owed the United States by other countries, and despite efforts to increase "*short-term*" interest rates to encourage retention and attraction of funds to the U.S.

Senate Report No. 1267, after delineating the problem, sets forth two of the major factors felt to be contributing to the deficit: the purchase of new and outstanding issues of foreign stock and debt obligations. Although the figures presented to support this opinion concerning the "*cause*" of the deficits are not nearly as persuasive as the statistics which demonstrate the "*existence*" of the deficit problem, they do indicate the obvious concern of Congress which considered those factors to be important in solving the balance of payments problem. For example, based on figures for the first half of 1963, it was estimated that the purchase of new foreign securities by U.S. residents approximated an annual rate of $2 billion which was twice the 1962 volume. However, when the reverse figures, the purchases of U.S. securities by foreigners, are also taken into account, these tended to offset U.S. purchases of foreign securities and the "*net*" transactions were almost favorable. However, in attempting to correct the payments imbalance for the U.S. Congress was not as impressed with the net position as with the fact that U.S. persons were acquiring foreign securities totaling close to $2 billion in the first half of 1963.

Faced with these startling and depressing statistics Congress attempted to analyze how these results could be reversed. It was felt that much of the utilization of theAmerican capital markets on the part of foreign borrowers was due to the low interest rates which prevailed in the United States for long-term loans. In addition, American investors had become more interested in foreign securities than ever before, partly because the

rate of return was more favorable. If the relatively high interest rate abroad was the substantial motivating factor in the purchase of foreign securities by Americans, it was reasoned that this incentive would disappear if a way could be found to increase the cost of borrowing in the United States with respect to foreign securities while leaving the domestic market untouched. Because many persons in the United States almost violently opposed raising U.S. interest rates across the board for all persons borrowing money for any purpose, the IET was designed in such a fashion that it only applied to capital movements from United States persons to foreign persons.

The Interest Equalization Tax Act accomplishes this purpose in a rather ingenious manner by imposing an excise tax on the acquisition only of debt obligations of foreign obligors and stocks issued by foreign issuers (jointly referred to as foreign securities) while no tax is generally imposed on domestic securities. The tax imposed on the transfer of stock is 15 percent of the actual value of the stock at the time of the transfer. The tax on debt obligations is equal to a graduated percentage which varies depending on the period remaining until the obligation matures and presently ranges from 1.05 percent on obligations with a maturity of at least "*one year*" up to 15 percent on obligations with a maturity of 28-1/2 years or more. As originally enacted the tax on debt obligations was applicable only to those with a maturity of at least "*three years*" and the rate was 2.75 percent. The rate of 15 percent on stock is equal to the rate on debt which matures after 28-1/2 years.

The theory accounting for the progressive rates on debt is as follows. The tax rates were designed to reduce the net rate of return on the foreign securities by about one percent per year. This is calculated to be the equivalent of raising the interest rate in the U.S. Market by one percent. Since the sale of stock is an alternative way of raising capital for foreign ventures, the tax is applied to equity interests in a manner calculated to have a comparable effect on the costs of raising capital by such means. It was statistically estimated that such an increase would bring the U.S. rates into balance with the interest rates existing in most other industrialized countries. Therefore, the tax could be said to "*equalize*" such rates and the cost of borrowing.

The simple logic of the equalization argument eventually overcame some of the opposition to the legislation. The Congress first considered the legislation over 13 months. It should be noted that their position during this period was hardly an enviable one. On the one hand two other alternatives, both of which appeared even less desirable, had been suggested by President Kennedy who had observed in his Balance of Payments message on July 18, 1963, that one device to alleviate the imbalance would be to raise the long-term interest rate across the board for all persons. Leading bankers, economists and Congressmen all chorused that this would have the adverse consequence of making money too difficult to obtain for everyone and therefore slowing down the spectacular economic expansion which the United States was then experiencing. The President also suggested the possibility of forming a capital controls committee to regulate who should be permitted to export capitals. This proposal was quickly and vociferously denounced by proponents of the free enterprise—free trade school of business, because it so obviously strikes at the heart of this system. On the other hand Congress was faced with a sharp set-back during the second quarter of 1964 when the deficit again increased to an

annually adjusted rate of $1.8 billion, following an improvement in the last half of 1963. In addition to these facts with which Congress was concerned, the administration kept the pressure on as it never wavered in its recommendation that the IET was an absolute necessity to help correct the problem.

Under the dual impact of deteriorating conditions in the payments deficit which continued to increase and the vision of those unpalatable alternatives, Congress finally yielded and reluctantly passed the Act. Although Congress was hardly pleased with the IET, it had done what the administration had asked of it. Clearly, Congress would never have passed such an unpopular measure unless the monetary difficulties confronting the country were acute and could be solved only by a novel approach. Despite the time Congress deliberated on the legislation, surprisingly, the structure of the Act as passed was essentially the same as the legislation originally proposed with little change in structure although many additional exemptions were included in the final version.

In analyzing the Act it is important to remember that the legislation is designed not as a revenue-raising measure but as an economic measure to prevent or at least reduce the outflow of dollars from the United States to foreign countries so that in turn such dollars may not be presented to the United States in exchange for gold. However, the Act contains a great number of specially tailored exemptions and exclusions which by their nature tend to conflict with the policy described above. Moreover, the Act is extremely difficult to administer because many transactions take place abroad and both taxpayers and the Internal Revenue Service (the "Service") personnel are still not entirely familiar with its provisions. Although in appearance and name the tax is an excise tax imposed on a specific transaction, the acquisition of a foreign security, most of the concepts relating to the tax are income tax concepts. These are most prevalent in the various exclusions from tax which are contained in the Act.

The tax was designed to be only a temporary tax and was scheduled to expire December 31, 1965. However, even when enacted it was recognized that its early expiration was only a forlorn hope which could be realized only if improvements in the balance of payments made the tax unnecessary. By early summer of 1965 it was apparent that the condition still existed and the threat of a further deficit required that the tax be extended. Accordingly the Interest Equalization Tax Extension Act of 1965 extended the tax through July 31, 1967.

For purposes of general information the main body of the Act's provisions appears as an addition to subtitle D (relating to miscellaneous excise taxes) of Title 26 of the United States Code and may be found in sections 4911 through 4920 of chapter 41 (relating to the Interest Equalization Tax). Hereafter, unless otherwise noted, section references refer to sections of the Internal Revenue Code of 1954 (the 'Code'), as amended.

II. STRUCTURE OF THE TAX

A. *"Imposition of Tax"*

As previously described above, section 4911 of the Code imposes a tax on each "*acquisition*" of a foreign security by a United States person. No distinction is made

concerning the place of sale or payment, and the tax applies whether a purchase is made inside or outside of the United States. The percentage of the tax which is applicable is applied to the actual value of the foreign security acquired. House Report No. 1046, 88th Congress, 1st Session ("House Report No. 1046") on page 15, states that in general, actual value is determined by the consideration paid by a purchaser in an arm's length transaction. In no event will the actual value of any stock or debt obligation acquired be considered to be less than the actual value of the money or other property paid for such stock or debt obligation. The instructions to form 3780, Interest Equalizations Quarterly Tax Return, also indicates that the consideration paid is to be computed exclusive of any commissions or accrued interest.

B. *"United States Person"*

The term *"United States person"* is defined in section 4920(a)(4). By negative inference a foreign corporation, even though engaged in trade or business in the United States, is not defined as a United States person. The House Report also states that the term *"United States person"* includes organizations exempt from income tax. Puerto Rico and the possessions of the United States are treated as follows. A close reading of the provisions of paragraphs (4), (5), and (6) of section 4930 (a), as supplemented by language appearing on page 13 of House Report 1046, discloses that an acquisition of Puerto Rican securities by United States persons is not subject to tax since Puerto Ricans and Puerto Rican corporations are defined as United States persons. However, the acquisition of a foreign security by a Puerto Rican will be taxable for the same reason. The possessions of the United States are similarly treated with respect to acquisitions by such corporations and as to acquisitions of their stock or debt obligations by United States persons.

It should be noted that section 4911, though it is brief, contains language which is very broad and extremely far reaching as far as the imposition of tax is concerned. Therefore, unless this broad language is restricted or limited by a specific exemption or exclusion, the literal language of section 4911 must be applied. This has produced many situations where the imposition of the tax seems inappropriate but where section 4911 is nevertheless applicable.

C. *"Acquisition"*

In general, the technical definition of the term *"acquisition"* as it appears in section 4912 is also very broad. It states that an acquisition means any purchase, transfer, distribution, exchange, or other transaction by virtue of which ownership is obtained either directly or through a nominee, custodian, or agent. For the most part the remainder of the provisions of section 4912 set forth additional transactions which will be deemed to be acquisitions. However, these provisions are limited to some extent in their broad applicability by the provisions of section 4913, relating to limitation on tax of certain acquisitions, and section 4914 relating to exclusion for certain acquisitions.

House Report 1046 on page 25 discusses the time when an acquisition is considered as having been made, stating that this occurs on the date when the consideration is paid for the security acquired. It also provides that a United States person who agrees to

make a series of loans to a foreign person over a period of time shall have each particular loan treated as a separate acquisition which is deemed to occur as of the date each loan is made, rather than treating the entire amount as acquired on the date of agreement or on the date of the first loan.

D. *"Debt Obligation"*

A *"debt obligation"* is defined by section 4920 (a)(1) as any indebtedness regardless of whether or not it is in writing or bears interest. In addition the term includes any interest in a debt obligation and any option or similar right to acquire a debt obligation. A statutory exception to this rule states that the term does not include an obligation which is convertible within five years into stock of the foreign obligor. However, this is not a liberal exception because such an obligation is deemed to be stock by section 4920 (a)(2) and accordingly is taxed at the highest rate of 15 percent. One further exception to the definition of a debt obligation is provided in House Report 1046, page 64, which states that the term doesn't refer to obligations (*"other than obligations to pay"*) of parties to *"executory contracts"* nor does it refer to the obligation of an insurer to pay under a contract of insurance or an annuity contract. Since the statutory definition of a debt obligation appears to refer only to indebtedness and obligations to pay, the language in the committee report referring to executory contracts appears unnecessary and at best it is not clear what it intends to exclude, modified as such language is by the parenthetical phrase which can be interpreted to mean that an executory contract to pay will still be regarded as a debt obligation.

E. *"Stock"*

"Stock", as defined by section 4920 (a)(2), means any stock, share, or other capital interest in a corporation, partnership, or investment trust. As described above it also includes a debt which is convertible within five years into stock of the obligor. Any right to acquire stock, such as an option, is also defined as stock.

F. *"Foreign Issuer or Foreign Obligor"*

These terms either separately or together generally can be described as meaning all persons, including business organizations, other than United States persons, who issue stock or debt obligations. Although the actual definition in section 4920 (a)(3) is much more specific than the preceding sentence, the general meaning is the same. In addition, certain U.S. investment companies were given the right under this section to elect to be treated as a foreign issuer or obligor. This election was provided to enable mutual funds which invested most of their assets in foreign securities to continue acquiring such securities without paying the tax. However, United States persons who subsequently acquire an interest in the investment company will be held to have acquired a foreign security and will be subject to the tax.

With this background it is now possible to examine the various exemptions and exclusions from the tax. Many of these are broad, general exemptions, but others are quite narrow. Thus, for example, the provisions of sections 4913 and 4914 are very specific and were generally tailored to meet certain problems which were presented to

the Congress by various taxpayers. For this reason, very often the provisions are complicated, but in general their effect tends to be narrow, and the taxpayers affected by them constitute a relatively small group. In contrast to these narrow provisions are four sections of wide-spread interest which should be throughly understood. A discussion of these provisions follows.

III. LIMITING PROVISIONS OF WIDESPREAD APPLICATION

A. *"Section 4915—Direct Investments"*

Section 4915 provides that the tax shall not be applicable to an acquisition of foreign securities by a United States person if immediately after the acquisition such person (or one or more includible corporations in an affiliated group) owns, directly or indirectly, 10 percent or more of the total combined voting power of all classes of stock of such foreign corporation. Similar treatment is available with respect to a 10 percent or more interest in a foreign partnership, but this possibility shall hereafter be disregarded for purposes of this discussion. The section also sets forth rules and procedures to be followed where the 10-percent requirement is met after a series of acquisitions within a 12-month period.

This exemption is fairly straightforward. Its rationale is based on the theory that such a direct investment implies active participation in the management of the foreign corporation. Congress stated that decisions to make investments of this type largely are concerned with questions of market position and long-range profitability rather than interest-return differentials. See Senate Report No. 1267, 88th Congress, 2nd Session at page 15.

Recognizing that this exclusion presents certain opportunities for avoiding the tax, Congress also provided that the exclusion shall be inapplicable in any case where the foreign corporation is formed or availed of by the United States person for the principle purpose of acquiring an interest in another foreign issuer or obligor which would be subject to tax if such acquisition were made directly by the United States person.

Section 4915 also states that the exclusion shall be inapplicable where such an acquisition is made with an intent to sell any part of the securities acquired to other United States persons.

It should be noted that both of these limitations are likely to be very difficult to interpret because they depend upon a subjective analysis of the intent of the person making the acquisition rather than providing some objective criteria for disallowing the exclusion.

B. *"Section 4916-Investments in Less Developed Countries"*

Congress made it clear in enacting the Interest Equalization Tax that the United States did not desire to restrict the flow of capital to less developed countries. Executive Order No. 11224, which became effective on May 14, 1965 states that for purposes of the Interest Equalization Tax Act all countries are to be regarded economically less developed except the specific countries named in the executive order. The countries originally

named are generally considered to comprise the industrialized countries of the world and those whose economies are self-supporting. In addition the executive order provides that a country within the Sino-Soviet bloc may not be treated as a less developed country and enumerates such countries.

The order also provides that each territory, department, province, and possession (other than the Bahamas, Burmuda, and Hong Kong) of any foreign country, other than one within the Sino-Soviet bloc, shall also be treated as a less developed country if such territory, etc., is overseas from the foreign country of which it is a territory.

Executive Order No. 11224 is interesting because it added five new countries to the original list of twenty-two countries defined as developed countries in the legislation enacted 8½ months earlier. The exemption from tax provided by section 4916 is not applicable to such developed countries. On January 26, 1966 the President announced his intention to terminate the less developed country status for nine additional countries and territories. With the exception of Libya and Indonesia the countries are in the Middle East and all of the countries produce oil. Despite the wealth which accumulates because of the oil activities, most of the countries hardly can be considered to be developed in the same sense as the Western European countries. If standards other than a country's overall development are being applied in making this determination, it is quite possible that other countries will lose their less developed country status in the not too distant future.

As of March 1966 the following countries and territories are defined as being developed countries for purposes of the Interest Equalization Tax. All others not included in this list (except those within the Sino-Soviet bloc) are considered to be less developed for such purposes. The developed ones are:

Abu Dhabi*
Australia
Austria
Bahamas Islands*
Bahrein*
Belgium
Bermuda*
Canada
Denmark
France
Germany (Federal Republic)
Hong Kong
Indonesia*
Iran*
Iraq*
Ireland*
Italy
Japan
Kuwait*
Kuwait-Saudi Arabia Neutral Zone*
Libya*
Liechtenstein
Luxembourg
Monaco
Netherlands
New Zealand
Norway
Portugal*
Quatar*
Republic of South Africa
San Marino
Saudi Arabia*
Spain
Sweden
Switzerland
United Kingdom

The above list of countries may have significance which is much broader than for purposes of the IET. Subpart F of Subchapter N of the Code (relating to taxation of U.S. shareholders of controlled foreign corporations) also makes a distinction between developed and less developed countries. In very general terms, these new provisions added by the Revenue Act of 1962 affect only developed countries. Perhaps of even greater long-run importance, the distinction between developed and less developed countries is also important for purposes of section 902 of the Code (relating to the indirect foreign tax credit) and section 1248 (relating to the tax on gain from the sale or

exchange of stock in a foreign corporation). In general, the treatment with respect to less developed country corporations under these provisions is much more liberal than developed country corporations. Those countries marked with an asterisk have not yet been included in a list of developed countries for purposes of any of these three provisions, and because of their inclusion for purposes of the IET, their status under the above-mentioned provisions will remain uncertain.

Under the Interest Equalization Tax the distinction between developed and less developed countries is important for the following reasons. The provisions of section 4916 exclude from tax obligations issued or guaranteed by a less developed country itself, certain debt obligations issued by an individual or partnership resident in a less developed country, and certain foreign securities which are required by the foreign government to be reinvested within such less developed country. However, the most important and basic exclusion provided by section 4916 relates to the stock or debt obligations of a less developed country '*corporation.*'

Section 4916 (c) of the Code sets forth two basic definitions of a less developed country corporation. The first provision incorporates the definition of a less developed country corporation appearing in section 955 (c)(1) and (2) of the Code (relating to controlled foreign corporations under Subpart F). This provides that 80 percent of the gross income and 80 percent of the assets of the corporation must be from and within less developed countries. To be a less developed country corporation within the meaning of section 955, the foreign corporation must also be engaged in the active conduct of one or more trades or businesses. This latter requirement is the basic distinction between this definition and the second definition of a less developed country corporation which is set forth in section 4916(c)(1)(B). This second definition also requires both 80-percent tests to be met, but since there is no active trade or business requirement. Thus, it is possible for a corporation which is incorporated in a developed country to also qualify as a less developed country corporation, provided its activities in less developed countries are such that it can meet these requirements. Thus, a holding company in a developed country could qualify under this provision, while it could not qualify under section 955(c).

The drafters of section 4916 anticipated that foreign corporations which could qualify as less developed country corporation would desire to have their status clarified so that their stock could continue to be traded in the United States and so that United States persons might invest in such corporations without Interest Equalization Tax consequences. Therefore, they provided in section 4916(c)(4) that a foreign corporation or a United States person could apply to the Secretary or his delegate (the Service) for a ruling that the foreign corporation qualified as a less developed country corporation. Section 147,3-1 of the Temporary Regulations under the Interest Equalization Tax Act sets forth the information which must accompany an application for such a ruling. An agreement executed by the principle officer of the foreign corporation which agrees to inform the commissioner of any material change in the corporation's status and furnish actual information of the corporation's income and asset holdings at the close of such corporation's annual accounting period must accompany each application for a ruling. Thus, as a practical matter it is impossible for a United States person to obtain such a

ruling unless such person either effectively controls the foreign corporation or can obtain the cooperation of the foreign corporation. The Service periodically publishes a list of those corporations which have qualified as less developed.

Section 4916(c)(5) provides that a foreign corporation may be treated as a less developed country corporation *"even in the absence of a ruling from the Service"* with respect to a particular acquisition so long as it also meets the income and asset tests of section 4916(c). The acquisition can qualify for exclusion if the acquiring United States person *"reasonably believes"* that the foreign corporation will satisfy these requirements for the corporation's annual accounting period in which his acquisition is made and for its next succeeding period. However, as a practical matter, there has been no indication that this provision is being utilized by taxpayers, perhaps because such a person is subject to subsequent liability if the corporation does not actually satisfy the 80-percent tests during such periods. It would appear that this provision might be accepted by an Internal Revenue agent questioning the taxpayer's acquisition in a situation where the taxpayer can demonstrate the great probability that the foreign corporation is likely to satisfy the income and asset requirements. Such a situation might exist in the case of a foreign utility company located in a less developed country, because it is likely that all of its income and assets would be from within such country. In most other cases it can be reasonably expected that a revenue agent would refer such a case to the national office of the Service for technical advice.

c. *"Section 4917-Original or New Issues"*

Section 4917 permits the government to in effect exempt from the tax original or new issues relating to a foreign country whenever it is determined that such treatment is vital for *"the preservation of international monetary stability."* Congress authorized the President of the United States to make such determination by executive order.

Upon issuance of such order, the tax does not apply to the acquisition of an original or new issue of stock or a debt obligation of the government of such foreign country or a political subdivision thereof, or any agency or instrumentality of such government, or any corporation, partnership, or trust organized under the laws of such country or any subdivision, or any individual resident therein, so long as such security is acquired as all or a part of an original or new issue.

In addition to such requirements, it is very important to note that the statutory language of section 4917(a) provides that the exclusion is applicable only if the acquiring person files a notice of his acquisition in a manner described in regulations published by the Secretary or his delegate. It is clear from the legislative history accompanying this section that Congress intended that original or new issues with respect to a particular country should not be taxed if it was determined that such treatment was necessary for such country's monetary stability. However, it is also clear that *"the statutory language makes the exclusion depend upon the filing of a notice of acquisition by the acquiring United States person."* This filing requirement was established because of a desire on the part of the Treasury Department to be informed concerning the amount of such issues which were being acquired. This was desired because the Executive Department was permitted to retain the power to limit the amount of foreign securities entitled to this exemption.

Unless the Treasury Department received information concerning the exempt issues, however, it would be unable to ascertain this information. The legislation authorized the Treasury Department to prescribe the time within which such notice was required to be filed following an acquisition. Section 147.4-1(c) of the Temporary Regulations required such notice to be filed within 15 days after the date of an acquisition.

Due to much confusion on the part of the public concerning this provision many persons who otherwise would have been entitled to the exemption because they acquired a new issue failed to qualify because they either filed an untimely notice of acquisition or did not file at all, believing their period for filing had lapsed. After months of self-examination by the Treasury Department concerning the claims of such taxpayers, the Service issued TIR-746. In it the Service opened up the right to file a notice of acquisition under section 4917 for all taxpayers with respect to acquisitions occurring after July 18, 1963 and before June 25, 1965. Such taxpayers were entitled to the exclusion provided they filed such notice on or before August 2, 1965. The Service also announced a liberalization of the filing requirement with respect to future acquisitions, and henceforth notices with respect to acquisitions occurring on or after June 25 must be filed on or before the last day of the month following the month in which the acquisition is made instead of within 15 days.

Section 4917 defined an original or new issue as either *"stock"* which is acquired *from the issuer* by the United States person claiming the exclusion, or a *"debt obligation"* acquired not later than 90 days after the date on which interest begins to accrue on such obligations. A special rule also exists for debts secured by a lien on certain improvements on real property. With respect to an issue of stock, the Service first took the position that to qualify the acquiring United States person must *"physically"* acquire the stock *"directly"* from the foreign issuer. This interpretation first appeared on form 3779 (August 1964), the form on which the notice of acquisition was required to be filed. Upon further consideration, the conclusion was reached that in most stock issues a shareholder rarely could be said to have acquired the stock directly from the issuing corporation in a physical sense. For this reason the interpretation of the phrase 'acquired directly' was later extended to include not only situations where the transferor is the issuing corporation but also where the transferor is acting as an agent of the issuer and is participating in a primary distribution of a new issue of stock, as for example, a United States underwriter or a foreign underwriter which elects to be treated as a United States person. See the instructions to form 3770 (revised July, 1965).

When the President initially proposed the tax in his Balance of Payments message on July 18, 1963, the proposed legislation contained no exclusion relating either to Canada or to the preservation of international monetary stability. As a matter of fact at the time the tax was proposed, American government officals estimated that 40 percent of the dollar outflow from the United States in 1962 went to Canada. However, immediately after the tax was proposed Canada reacted quickly, expressing grave concern. The Montreal Stock Exchange experienced a pronounced selling wave the following day, while Canadian officials predicted dire consequences for Canada's economy and an aggravation of its own existing balance of payments problems. As the result of intense Canadian pressure, only four days after the initial proposal on July 18, the United States announced

that the tax would not apply to new Canadian issues. Although Japan also strongly protested that the tax would seriously impede its own economic growth, the United States at first declined to provide any relief from the tax. It was not until several months after the Act was passed that the United States announced that a limited relief provision would be applicable for Japan under section 4917, permitting $100 million of new Japanese securities to be acquired free of tax per year.

As stated above, the exclusion provided by section 4917 was initially expected by Congress to be applicable only to Canada. Accordingly, the President issued Executive Order No. 11175 on September 3, 1964 excluding all original or new issues of Canadian origin. However, it was later found necessary to extend the provisions of section 4917 to Japan. Therefore, Executive Order No. 11211, dated April 2, 1965 was issued, permitting the exclusion with respect to Japanese issues but only to the extent the aggregate amount of all exempt acquisitions does not exceed $100 million during each calendar year. Section 147.4-1 of the Temporary Regulations was amended to reflect this change, and the notices of acquisition. With respect to Japanese issues is to be filed on form 3969. As of October, 1965 the Japan Telephone and Telegraph bond and the Metropolitan Tokyo bond had been floated under these provisions.

One additional problem developed with respect to Canadian debt obligations which section 4917 defined as qualifying for exclusion only if acquired not later than 90 days after the date on which interest begins to accrue on such obligation. It was found that on many occassions the Canadian Government or Canadian corporations issued a debt obligation but provided that the interest on such debt would accrue as of January 1, or July 1 of the year in which it was issued. Therefore, in many cases on its face the interest with respect to a particular debt obligation was in effect back-dated, and more than 90 days might have elapsed *"even as of the first day such obligation was first sold."* Recognizing this, the instructions to the revised June, 1965 edition of form 3779 provided that interest begins to accrue on the date a debt obligation *"is issued by the obligor"* even though the amount paid as interest may be computed with reference to a date prior to the date issued.

D. *"Section 4918-Certificates of American Ownership"*

Perhaps the broadest exemption provided in the Act related to the exemption for foreign securities acquired by one United States person from another United States person. The rationale behind this exemption is based on the desire to avoid taxing the acquisition of the same security twice in situations where that security has continuously been owned by United States persons. This is consistent with the balance-of-payments problem, because to the extent that the foreign security is acquired from another United States person, the proceeds paid will remain in the United States or under the control of the United States seller.

For this reason section 4918 provides for a certification procedure whereby the seller certifies to the buyer that the seller is a United States person with respect to the securities being transferred. Because of the great number of transactions in foreign securities which take place in the American market, Congress recognized the need for establishing a procedure on which a purchaser of a foreign security could rely. If the buyer could not

depend on a statement that the seller was a United States person, the American market in foreign securities would have completely dried up. Thus, Congress provided in section 4918(b) that a *"certificate of American ownership"* received in connection with an acquisition is to be *"conclusive proof"* of the seller's prior American ownership unless the buyer has actual knowledge that the certificate is false.

Section 147.5-1 of the Temporary Regulations provides that forms 3625, 3626, 3650, and 3651 shall be used for the purpose of executing such certificate of American ownership. The forms differ depending on whether they are issued by the actual owner as opposed to the nominee of the owner and whether they are issued with respect to a single transaction or through a blanket security account placed with a member of a national securities exchange or association registered with the Securities and Exchange Commission (S.E.C.). In the latter situation the customer certifies that no transaction conducted through such account will involve a foreign security with respect to which the seller could not issue a certificate of American ownership.

After this procedure was first proposed by the Treasury Department the brokers became apprehensive about their responsibilities for physically transferring such certificates of American ownership. They feared that *"physically"* transferring such securities would not be possible in all situations because of single-sell and multiple-buy orders and would create increased administrative expenses. In response to these fears Congress enacted two additional provisions under which the confirmation slip that a broker is already required under rules set forth by the S.E.C. to send to the purchaser of securities would also serve as conclusive proof of the seller's prior American ownership under the following circumstances.

Two procedures were set forth. One relates to transactions involving securities which are traded on a *"national securities exchange"*, while the other relates to the *"over-the-counter market"*. With respect to exchange transactions, the confirmation will be accepted as conclusive proof of prior American ownership if such exchange had previously prescribed certain rules for its members concerning the procedure to be followed respecting purchases of foreign securities. Where the procedures are satisfied the broker can issue a *"clean confirmation"*, that is, one which does not tell the buyer that he is subject to the tax. This confirmation is conclusive proof of prior American ownership under section 4918.

With respect to over-the-counter transactions, substantially the same result can be achieved if the National Association of Securities Dealers prescribed such rules for its members and the buyer receives a clean confirmation. In both cases actual knowledge on the part of the buyer of the certificate's falsity invalidates his exemption.

This exemption from the tax is the most extensive provided by the Act, and it has also created difficult administrative problems. Although the brokers are required to keep their records in such a way that a revenue agent would be able to check the validity of any particular transaction, this has often proved to be very difficult in practice because of the great volume of such transactions, the lack of uniformity in record keeping of various brokers, the fact that in a normal transaction not one but two brokers are involved, the fact that one brokerage house may have many branch offices and therefore decentralized recordkeeping facilities. Although an individual who *"physically receives"* a certificate of American ownership is required to file a nontaxable return and attach such

certificate, no return is required either on the part of the broker or on the purchaser in transactions culminating in *"clean confirmations."* Since the great majority of acquisitions involve clean confirmations, the Service must rely on the brokers in effect to administer this provision, and many individual brokers for a long period of time were themselves confused concerning this law and their responsibility under it.

While section 6680 imposes a penalty on the buyer who physically receives such a certificate and then fails to file his nontaxable return as required by section 6611(d)(1), this provision is of little use today since it does not apply to transactions with respect to which clean confirmations are issued, and these constitute almost all of the transactions involved. Section 6681 provides a penalty for any person willfully executing a false certificate, but there are indications that some of these certificates have been issued by persons other than United States persons, and such persons are beyond the jurisdiction of the United States. Section 6681 likewise provides that a penalty shall be imposed on brokers with respect to transactions where the person acquiring the security would be taxable except for the certificate of American ownership provisions. However, this penalty is applicable only to a broker who willfully flaunts the law or has actual knowledge of the falsity of the certificate or the foreign status of the person executing it. No penalty is provided for mere negligence on the part of the broker in determining whether the seller was a United States person. Thus, in the latter situation the broker would not be liable because he did not act willfully and the buyer would not be liable for tax or penalty to the extent that he received a clean confirmation because section 4918 provides that such a confirmation shall be conclusive proof of the prior American ownership of the seller.

IV. SPECIAL PROBLEM AREAS

In the preceding section four areas of wide-spread application which limited a United States person's liability for tax were discussed. The Act contains many special rules which have a similar effect but whose application is generally smaller in scope. In addition there are some provisions which make the tax applicable in situations where a tax would not otherwise be expected. The more important of these special problem areas will be discussed in this section.

A. *"Section 4920 (a) (8), later 4920 (b) — Foreign Stock Issues Treated as Domestic"*

Section 4920(a)(8) (which will hereafter be referred to as section 4920(b) is a provision which treats a class of stock of a foreign corporation as if it were stock of a domestic United States corporation under certain circumstances. The effect of this is to exempt any and all purchases of such class of stock from the tax since acquisitions of U.S. stock are not taxed. For stock which was traded on a national securities exchange registered with the Securities and Exchange Commission, this treatment is available if the trading on such national securities exchange constituted the principle market for such class of stock during the calendar year 1962 and if more than *"50 percent"* of such class of stock was held of record by United States persons as of the corporation's latest record date before July

19, 1963. Thus for corporations whose stock was traded on a national securities exchange there are two requirements:

(1) A principle market test, and

(2) An ownership test of more than 50 percent.

This treatment is also available for any class of stock if more than *"65 percent"* of such class of stock was held of record by United States persons as of the foreign corporation's latest record date before July 19, 1963.

There is nothing in the legislation itself which indicates the rationale for this exemption. From its very nature it might be inferred that Congress felt a corporation whose stock was already more than 50 percent owned by United States person would present a smaller opportunity for the outflow of dollars. It can also be inferred from the use of the principle market test that Congress did not wish to place a burden on a class of stock whose market was basically in the United States. Regardless of the original rationale for this provision, numerous probleme arose concerning its interpretation, and these necessitated first a clarification as to the meaning of the term *"class of stock"* and later a legislative amendment to these provisions. As amended by the 1965 Act, the provision appears as section 4920(b).

The basic problem presented by this provision can be stated as follows: assuming a foreign corporation demonstrates that it had a class of stock which could satisfy either the 50 percent or the 65 percent tests on its latest record date before July 19, 1963, does the legislation provide an exemption only for the number of shares outstanding in such class as of such latest record date or could the foreign corporation continue to issue additional shares of stock in such class whose acquisition would also not be subject to tax?

The Service originally concluded that Congress did not intend to allow a qualifying class of stock to be continually increased by the issuance of additional shares. An interpretation permitting such an increase would allow for a continuous outflow of dollars regardless of the future percentage of American ownership of the class of stock. This interpretation was announced in Revenue Procedure 64-50, published by Technical Information Release-654 and dated November 10, 1964. It stated that the exemptions provided by section 4920(b) were intended to facilitate trading in classes of stock of foreign corporations outstanding as of July 19, 1963 only it the specified conditions with respect to such classes were satisfied as of the corporation's latest record dated before July 19, 1963. Therefore, the Service stated that the term *"class of stock"* was intended to mean only those shares of a class which were issued and outstanding as of a corporation's appropriate latest record date. However, because of the confusion in this area on the part of the public, the Service in Revenue Procedure 64-50 broadened the definition of the term *"class of stock"* by defining it to also include shares of a class which were issued *"after"* such latest record date but *"on or before"* November 10, 1964 so long as the class of stock could initially qualify as of the corporation's latest record date. Also included in the definition were shares which the corporation was previously committed to issue, and shares issued to a shareholder as a stock dividend or in exchange for stock in such corporation.

Section 147.7-2 of the Temporary Regulations established a procedure for obtaining a

ruling that a class of stock of a foreign corporation would be treated as exempt under the provision as initially enacted. Revenue Procedure 64-50 modified this ruling procedure by requiring a foreign corporation desiring such a ruling to submit an agreement signed by an officer to inform the Service prior to the issuance after November 10, 1964 of any additional shares of stock which were *identical* to and therefore indistinguishable from, shares of the exempt class.

At the time this notification procedure was established, it was anticipated that the issuance of additional shares *"after"* November 10, 1964 which looked similar to but did not qualify as part of the class of stock would probably lead to a revocation of the corporation's exemption. It was felt that it would be impossible to distinguish between the exempt shares and those which could not qualify. It subsequently developed that corporations which were able to obtain exemptions for a class of their stock continued to have a need for issuing additional shares to finance their growth. However, a procedure was developed whereby the foreign corporation in many cases agreed to place a clearly recognizable legend on the face of the new certificates which in general stated that such certificates were not entitled to the benefit of the corporation's ruling and whose acquisition was therefore subject to Interest Equalization Tax unless some other provision of the Act exempted the acquisition from tax.

Because of the continuing uncertainty in this area Congress revised the entire provision when it enacted the Interest Equalization Tax Extension Act of 1965. The new definition of a class of stock incorporated the definition in Revenue Procedure 64-50 and also provided that it could include shares *"issued after November* 10, 1964" if the following conditions are satisfied: if the acquisition of all such additional shares would in any event be excluded from the tax by reason of the exemption provided by sections 4914 (a)(6) (relating to a transfer of all of the assets of the domestic corporation to a foreign corporation in exchange for stock in the foreign corporation), 4916, or 4917 or in a section 368(a)(1)(b) reorganization. There are certain other tests which must also be met by a corporation which desires to issue such additional shares. The corporation must have had at least 250 shareholders on its latest record date before July 19, 1963; either the 50 percent or the 65 percent ownership requirements, whichever is applicable, must continue to be met as of the corporation's latest record date before the issuance of such additional shares; the corporation must have actively engaged in a trade or business on July 19, 1963; and the corporation *"must notify"* the Service of its intent to issue such shares.

It remains to be seen what procedures will be followed if a corporation whose class of stock has received an exemption by ruling desires to issue additional shares but cannot satisfy the requirements set forth in the preceding paragraph. Presumably, the exemption will either be revoked, or the corporation will be allowed to retain its exemption but required to adequately identify and distinguish the new shares from the exempt shares in a manner similar to that worked out before the amendment of section 4920(b).

B. *"Section 4912(b)(3)—Acquisitions from Domestic Corporation or Partnership Formed or Availed of to Obtain Funds for Foreign Issuer or Obligor."*

Section 4912(b)(3) is a very terse provision which has created much controversy in its

interpretation. It provides that the acquisition of stock or debt obligations of a *"domestic corporation or a domestic partnership,"* which is formed or availed of for the *"principal purpose"* of obtaining funds (directly or indirectly) for a foreign issuer or obligor, shall be deemed an acquisition (from such foreign issuer or obligor) of stock or a debt obligation of such foreign issuer or obligor.

It should immediately be clear that this provision contains two outstanding features. The first is that the tax might be imposed on a United States person who acquires the security of a domestic corporation, i.e. *"another United States person"*. The second is that in order for the imposition of the tax to be triggered it is first necessary to discover that the domestic corporate intermediary (hereafter for purposes of this discussion the domestic partnership situation will be ignored) was formed or availed of for the principal purpose of obtaining funds for a foreign person. Thus, instead of utilizing objective guideposts for determining when this provision is to be operative, the drafters instead created a *"subjective"* test, one which depends on the intent of the parties. Due to the lack of objective criteria, the public can never be positive whether the provision is to be applicable in any situation.

However, in situations where section 4912 (b)(3) is applicable, section 4913(c) attempts to relieve the domestic corporate intermediary from also paying the tax since this would result in double taxation. This credit provision does not work perfectly because a credit for the intermediary is available only to the extent the acquiring United States person actually has paid the tax imposed under section 4912(b)(3). Unless the person acquiring a security of the domestic intermediary admits liability under section 4912(b)(3) and pays the tax, there will be no relief for the intermediary under section 4913(c).

There seems to be complete agreement that the provision was intended to be applicable in a situation where a *"foreign"* parent corporation creates a United States subsidiary corporation and the subsidiary obtains funds which it channels to the foreign parent either in the form of a dividend or as a direct investment where the subsidiary has at least a 10 percent interest in its parent. In the latter case the United States sub would be entitled to an exclusion under section 4915 if it also has a ten percent investment in the foreign parent. It is clear that section 4912(b)(3) was enacted to prevent this obvious circumvention of the tax. In the other possible situations where this provision might also be applicable the intent of Congress and the proper result are not nearly as clear.

House Report No. 1046 on page 29 states that even in situations where the *"acquiring"* United States person (for purposes of this discussion, the person who acquires the security of the domestic corporate intermediary) is *"subject"* to the tax because of section 4912(b)(3), the transaction may be *"otherwise excluded"* and therefore such acquiring person would not be taxable. It goes on to state that this might result under section 4915, 4916, or 4917 because of the status of (or the relationship of the *"acquiring person"* to) the foreign issuer or obligor. On the other hand the status of (or the relationship of) the domestic corporate *"intermediary"* to the foreign person will not serve to provide or prevent such an exclusion. This approach appears to be based on the theory that the acquiring United States person is considered to be the true lender and the foreign person to be the true borrower.

The interpretation of this provision is further complicated by a statement in the

House Report that the rule is not applicable to a domestic corporation which obtains capital to be used by it in the active conduct of its own business or the active conduct of a business by it as a participant in a joint venture *"even though the corporation may be wholly owned by a foreign issuer or obligor."* Since the Act was initiated to correct the balance-of-payments problem, this statement in the report would obviously relieve the acquiring United States person from tax in a situation where the domestic intermediary corporation used the capital in its business *"in the United States"* or in a joint venture which takes place in the United States. It is less obvious what Congress intended where the capital so obtained from the acquiring person is used in a joint venture taking place outside of the United States or in the domestic intermediary corporation's *"foreign"* business which it conducts in the form of a branch operation.

The following three situations have also raised questions concerning the applicability of section 4912(b)(3). Un the first situation a United States subsidiary of a foreign corporation borrows money from a United States insurance company and all of such capital will be spent in the United States in the active conduct of the subsidiary's own business. However, to protect its investment the insurance company requires the foreign parent to give it some type of guarantee which would protect the insurance company in the event of the subsidiary's default. In this situation the question is whether a loan could be said to have been made by the insurance company to the foreign parent.

In a second situation the domestic corporate intermediary transfers the capital to a foreign corporation which can qualify as a less developed country corporation. Often the acquiring United States person desires a ruling from the Service that section 4912(b)(3) *"is"* applicable to the transaction because such person wishes to obtain a ruling that although it would be subject to tax under section 4912(b)(3), its acquisition is nevertheless exempt under section 4916, relating to less developed country corporations. Therefore, the question confronting the Service is whether to hold that section 4912(b)(3) is applicable merely because an acquiring United States person which is attempting to obtain an exclusion affirmatively states that it is applicable. There is some debate concerning whether this provision was intended to be utilized in effect to protect the acquiring person as distinguished from its use as a taxing provision where a punitive result would be reached if the Service determined the section to be applicable.

A third situation illustrates the conflicts which often arise among various departments of the United States Government. The Commerce Department in February 1965 instituted a program under which numerous large United States corporations with international transactions voluntarily have agreed to attempt to achieve a more favorable balance of payments position concerning their own international transactions. For this reason, United States corporations are anxious to avoid being "charged" with a direct investment in a foreign subsidiary since such investments, while possibly excluded from IET under section 4915 as a direct investment, would nevertheless be counted against their balance of payments for purposes of the Commerce Department's voluntary program.

For this reason, in certain cases a United States parent corporation has created a U.S. financing subsidiary in order to obtain funds to finance the parent's overseas operations. This United States corporate intermediary first borrows its debt capital from abroad by

issuing *"its own debt obligation"* and then relends this capital abroad. On its face this results in a neutral balance of payments effect and section 4912(b)(3) does not appear applicable. However, in first borrowing the money to be reloaned the domestic corporate intermediary usually must pay the foreign lenders at a higher interest rate than is normally charged in the United States. Since such debt invariably must be guaranteed by the United States parent which has an acceptable credit rating there is little risk of loss in these situations. For this reason speculation has arisen that other unrelated United States investors might attempt to acquire the debt obligation of the domestic corporate intermediary because of its high interest rate and higher yield. If such an acquisition occured, money would travel from such United States persons to the foreign holders of the notes of the domestic financing intermediary, thus adversely affecting the balance of payments of the United States. In order to be able to favorably report to the Commerce Department that the financing transaction will not adversely affect the U.S. balance of payments at some future time, the United States parent corporation or the subsidiary requests a ruling from the Service that section 4912(b)(3) be declared applicable to the domestic corporate *"intermediary."* Moreover the request is for a holding that would *"forever taint"* the domestic corporate intermediary under section 4912(b)(3) so that any other United States investor would be subject to tax whenever he acquired the securities of the domestic corporate intermediary. The question this raises is whether section 4912 (b)(3) was intended to apply only to the initial acquisition of the securities of the domestic corporate intermediary when they were sold to foreign persons, or whether in fact such securities were to be forever tainted for U.S. persons even after their initial acquisition. It is only stating the obvious to say that the problems of interpreting the provisions of section 4912(b)(3) will continue to be difficult.

c. *"Sections 4914(b)(2) and 4931-Commercial Bank Loans"*

One of the many special exclusions provided by the Act relates to commercial bank loans. Section 4914(b)(2) provides that the tax shall not apply to the acquisition of debt obligations by a commercial bank in making loans in the *"ordinary course"* of its commercial banking business. Although it is not fully articulated in the committee reports, the theory underlying this exclusion rested on the assumption that for the most part commercial banks did not make loans in the ordinary course of their business with periods remaining to maturity in excess of three years. Since the Act as it was originally passed on September 2, 1964 imposed the tax only on debt obligations with periods remaining to maturity of *"at least three years or more"*, it was not felt that the broad exclusion provided by section 4914(b)(2) would affect any great number of transactions.

In conjunction with this broad exclusion Congress also enacted section 4931. Under this section Congress authorized the President to make commercial bank loans subject to the provisions of the Act if the President determines that the acquisition of debt obligations of foreign obligors by commercial banks has materially impaired the effectiveness of the tax by allowing foreign borrowers to switch to commercial banks. House Report No. 1816, 88th Congress, 2nd Session, states the rationale for this provision. This is the conference report for the Act, and on page 17 it is stated that the increase in bank credit since the legislation was first considered has convinced the con-

ferees on the part of the House to accept this provision which was introduced on the Senate floor by Senator Albert Gore and added to the legislation by the Senate. The President was given the power to accomplish this change by means of an executive order. The commercial banks strongly objected and the Treasury Department was not enthusiastic about this provision. However, less than 6 months after the Act passed, the Treasury Department recommended that the President invoke his power provided in section 4931, and Senator Gore's foresight was proven correct.

In Executive Order No. 11198, dated February 10, 1965, the President exercised the authority given to him by the Congress and provided that commercial banks shall be taxed as follows. With respect to acquisitions of debt obligations of three years and more the broad exclusion for acquisitions by commercial banks was *"eliminated."* The only residue remaining is an exclusion for an acquisition of a debt obligation of a foreign obligor which is *"'repayable"* exclusively in a currency other than dollars and only if such loan is made by a commercial bank at its *"branch"* office located outside of the United States. It has been argued that the word 'repayable' should also be interpreted to read 'payable'. If such interpretation is not adopted it would seem that the exclusion would be applicable to a loan which was made in dollars but repayable in a foreign currency. This would seem to be the worst possible result from the balance of payments viewpoint, but no substantive interpretation of this provision has yet been made. With respect to debt obligations with maturities from one to three years, section 4931 authorized the President to impose a tax on such acquisitions by commercial banks and in Executive Order 11198 such a tax was imposed, measured by the period remaining to maturity of the debt obligation.

Thus, after Executive Order No. 11198 was issued, commercial banks were subject to tax on short-term debt obligations from one to three years, but such obligations were not taxable when acquired by other United States persons. This diversity in treatment was eliminated with the enactment of Public Law 89-243, passed on October 9, 1965. Known as the Interest Equalization Tax Extension Act of 1965, this Act amended section 4911 and in effect broadened the base of the tax to acquisitions by *"all"* United States persons of debt obligation from one to three years, subject, of course, to the other exclusions provided by the Act. The rate of tax is graduated in a manner similar to the one-percent theory for obligations of 3 years or more. House Report No. 602, 89th Congress, 1st Session, on page 12 states that unless the tax were extended to acquisitions by all United States persons the tax would *"discriminate"* against American banks as sources of 1-to-3-year term credit. Making the tax applicable to all such loans was also necessary to prevent wide-spread avoidance through the issuance of such debt obligations as a *"substitute"* for bank loans.

The rationale cited in House Report No. 602 explaining why the tax was being made applicable to all persons with respect to loans of 1-to-3 years, was the same rationale set forth in Executive Order No. 11198 which first imposed such tax on commercial banks. Generally, the rationale is to avoid discrimination and to prevent substitution from one type of credit to another. By originally making the banks taxable on loans of from 1-to-3 years, the President in effect provided Congress with a justification for broadening the base of the tax and making it applicable for all persons to obligations of

less than three years. If the balance of payments problem remains acute, it's entirely possible that Congress will eventually be asked to make the tax applicable to obligations of less than one year, particularly if evidence establishes that the number of loans in this category has substantially increased. This would result if foreign borrowers attempt to avoid the effect of the tax by switching to short-term credit.

There are other areas in the legislation which have raised substantial interpretative questions. Two of them will be briefly mentioned in order merely to call attention to the problems.

D. *"Section 4914(c)—Export Credit Transactions"*

Section 4914(c), as amended, provides a variety of exclusions for various transactions which have some connection with the export of United States products. Congress recognized that one of the methods of reducing the balance of payments deficit is by increasing exports from this country since such exports result in dollars flowing into the United States. Congress did not wish to substantially restrict such exports in situations where the export sale could be made only by an extension of credit to the foreign buyer. The rules relating to these exclusions are intricate and will not be discussed. In general, it can be stated that Congress did not intend this exclusion to be *"transferrable"* to other United States persons. For this reason Congress also enacted section 4914(j) which generally provides that the exclusion will be lost if a debt obligation to which the exclusion applied is subsequently transferred by the acquiring person to another United States person. However, if the United States person subsequently acquiring such obligation is one of certain enumerated categories of United States persons, the exclusion is transferrable and is not lost.

E. *"Section 263(a)(3)—Income Tax Consequences"*

Finally, Congress considered what income tax consequences should be applicable to a person who is subject to or has paid the Interest Equalization Tax. The Interest Equalization Tax Act originally added paragraph (3) to section 263(a) of the Code and provided that no deduction for income tax purposes shall be allowed for any amount paid as Interest Equalization Tax *("except to the extent that any amount attributed to the amount paid as tax is included in gross income for the taxable year")*. In general, before considering the effect of the parenthetical clause, it appears that Congress by this amendment provided that no *"deduction"* for income tax purposes would be permitted because of payment of the Interest Equalization Tax. However, on page 22, House Report No. 1046 states that the amount of tax paid may be *"capitalized"* and treated as an amount paid for the security. It also states that if the Interest Equalization Tax paid when added to the cost of a 'debt' obligation creates *"bond premium"*, this premium will be amortizable and deductible in the same manner as other bond premium under existing law, i.e. rateably over the life of the bond. Thus, although an initial deduction was to be denied, Congress anticipated that some offset to income tax would be permitted at some future date, either by way of amortization or because the addition to the adjusted basis of the security contributes to a capital loss or a smaller capital gain upon the eventual disposition of the security. One difficulty with this language in the committee report is that it appears to assume that

with respect to debt obligations amortization would be allowable in all cases to the extent that bond premium resulted, and accordingly a pro rata deduction against ordinary income would result every year. However, the provisions of section 171 of the Code, relating to amortizable bond premium, themselves contain certain limitations which do not provide for the amortization of bond premium in all cases. Consequently, in those cases it would seem that any tax offset would be completely postponed until disposition of the bond.

The drafters of section 263(a)(3) anticipated that in certain cases the United States person who was liable for the tax would have the amount of such tax reimbursed to him by the foreign issuer or obligor. Therefore, in the latter part of section 263(a)(3), described above in the parenthetical clause, Congress attempted to mitigate the first part of paragraph (3) of section 263(a), which denies a deduction in the current year in which the tax is paid. Congress accomplished this by providing that section 263(a)(3) shall be inoperative where any amount attributable to the tax is included in gross income for *"the taxable year"*, presumably as the result of a *"reimbursement"*. However, it was not clear to which *"taxable year"* the amendment referred. It could be interpreted to refer either to the taxable year in which the tax was paid or accrued or also to the taxable year in which a reimbursement was made. Under the first interpretation no deduction for the tax would be permitted if a reimbursement were made in a later year than the year in which the tax was paid or accrued. Nevertheless, in such a case it would seem that amortization would still be permitted on a pro rata basis every year to the extent permitted by section 171. On the other hand, if the latter interpretation were accepted and if, for example, the reimbursement was received in a taxable year after some amortization had already been taken, the taxpayer might receive a double deduction to the extent of the amount of amortization already taken at the time of reimbursement. Because of this ambiguity Congress amended section 263(a)(3) in the Interest Equalization Tax Extension Act of 1965 and also added a new subsection (d) to section 263. In House Report No. 602 on page 23, the committee states that *"prior to its amendment"* the provision allowed a deduction only if the reimbursement income and the tax deduction were both taken into account for the *"same"* taxable year, that is, the year the tax was paid or accrued.

The addition of section 263(d) is intended to allow a deduction for Interest Equalization Tax paid or accrued regardless of whether the reimbursement is included in income in either the same year or in a subsequent year. Congress in enacting this provision made it applicable retroactively to taxable years ending after September 2, 1964. The rationale of this provision is that it would be inequitable to both impose the interest equalization tax on a person and then also impose an income tax on a reimbursement of income which is attributable to the amount paid as tax. Congress eliminated the possibility of a double deduction by making the new provision inapplicable to the extent that a deduction has been claimed under section 171. Thus, a taxpayer who expects to be reimbursed in a later taxable year will take no deduction for amortization and instead will wait until the reimbursement is received at which time an equal offsetting deduction may be taken.

V. CONCLUSION

As this is being written, it is now two years and nine months since the IET was first proposed and one year and seven months since the Act was passed. The business community, the various financial houses, and the investment public are all aware of the general nature of the tax and its consequences. After this length of time it seems appropriate to examine the tax in retrospect by raising a few questions concerning its validity and future.

"Has the tax accomplished its purpose of reducing or eliminating the deficit in the balance of payments of the United States?"

When the tax was first proposed, in addition to those who were strongly opposed to it in principle there were many who were pessimistic over its chances of success. For example, one month later on August 17, 1963, Newsweek magazine reported that London observers felt the United States would still have to resort to higher interest rates in order to solve the problem. Interestingly enough, the rate of interest on long-term loans has risen twice within the past several months in the U.S., but it is difficult to judge whether this was primarily due to domestic pressures, foreign pressures, or a combination of both.

By the time the tax had actually become law the observers were noting the effect of the tax. On September 27, 1964 only 3-1/2 weeks after enactment, John H. Allan in the New York Times reported that on a recent flotation of a particular foreign bond issue, no Americans had purchased any of the bonds. He noted that foreigners needing funds had turned to Europe where they began selling securities for U.S. dollars held there. Because of the tax and the lower yield which American investors would receive after paying the tax, he felt that borrows would try to borrow Eurodollars and would not sell securities in the United States.

The tax seriously affected the financial affairs of countries such as Canada and Japan, as previously described. For example, by October 1, 1964 eleven Japanese governmental and corporate loans, totaling an estimated $149 million, had been sold in Europe which it was estimated might otherwise have been sold in the U.S. except for the tax.

Congress and the administration appear satisfied with the tax. On October 9, 1965 the Interest Equalization Tax Extension Tax of 1965 became law. In reporting out the bill on August 17, 1965, the Senate Finance Committee in Senate Report 621, 89th Congress, 1st Session (Senate Report 621), made these comments. In the last half of 1963 after the tax was proposed, the deficit was sharply reduced from an annual rate of $4,868 million in the first half to an annual rate of $1,706 million. This trend was reversed again in 1964 when the deficit was $3,106 million due primarily to a large outflow of bank loans in the last quarter at a time when commercial banks were exempt from the tax. In the first quarter of 1965 the deficit on regular transactions was $2,932 seasonally adjusted on an annual basis. However, with respect to the second quarter of 1965 the Committee stated there might even be a slight *"surplus"* in the balance of payments. The Committee stated that a major reason for this result was due to the extension of the tax to bank loans as well as the recommendation to tax debt obligations with maturities of

one year or more instead of only those with maturities of three years or more.

From the above figures it appears that merely proposing the tax favorably affected the deficit in the latter half of 1963. However after the Act actually passed and bank loans were exempted, borrowing through this medium increased with the result that in 1964 the deficit was on a level with the immediately preceding years. After this exemption was eliminated, the situation again became favorable.

However, it is rather difficult to measure the effect of the tax by examining only the balance of payments statistics. This is because the balance of payments problem essentially is affected by a variety of factors of which the acquisition of foreign securities is only one. It is also effected by imports, exports, tourism, foreign aid, military expenditures and unscheduled movements of capital. The IET is only one of a variety of programs aimed at favorably influencing the payments position of the United States. Encouraging exports, encouraging foreign tourists to visit the United States, and restricting the foreign purchases which American tourists can bring home duty-free will also have an impact on the payments balance. Two other widely-hailed programs were introduced by the administration in 1965. These two programs have attempted to enlist the cooperation first of U.S. corporations to voluntarily limit their direct capital investments abroad, and second, of U.S. banks to voluntarily limit their foreign loans, including even export-related loans. The former program is administered by the Commerce Department while the latter is managed by the Federal Reserve System. Government officials appear highly enthusiastic about the results of these programs as of April 1966. It is quite likely that in the short-run they have made a larger contribution to reduce the balance of payments deficit than the IET.

"In spite of the complicated nature of the overall problem and the number of programs directed at the problem, is it possible to cite any tangible evidence concerning the effectiveness of the tax?"

One statistic included in Senate Report 621 relates to the number of new foreign issues acquired by Americans. The report estimates that sales of new issues decreased 50 percent on volume in the first three calendar quarters after the tax was proposed. In addition, net purchases of foreign bonds have been slight while acquisition of *"outstanding"* securities by U.S. persons from foreign owners also has declined.

The number of people who have been affected by the tax can be judged from the fact that Service officials estimated the Service had received between 50,000 and 100,000 IET returns with respect to the original filing period covering transaction from July 19, 1963 through September 30, 1964. This was reported in the Wall Street Journal on December 2, 1964. Even though many who filed did not owe tax, the figure is still impressive.

"Assuming the tax is workable are there any areas where it can be made more effective?"

The main acquisitions of foreign securities still not subject to the tax are those which Congress specifically determined should be exempt. These primarily include the exclusions provided for in Section 4915 (direct investments), section 4917 (monetary stability), as well as section 4916 (less developed countries). Also exempt are demand deposits placed with foreign persons since these are considered to be debt with a maturity of less than one year, and the tax is not applicable to debt of less than one year.

In the absence of the voluntary program which has acted as a restraint on direct investments, it is extremely doubtful if the IET could have tolerated the direct investment exemption. In any event everyone realizes that although the administration attaches great importance to the voluntary program, there is no actual penalty for violation of the voluntary guidelines. Business will follow the guidelines only so long as they do not seriously conflict with the profit motive, and when a conflict eventually arises the guidelines will probably be disregarded, perhaps forcing countermeasures.

> *"Has the theory of the IET, namely that the tax will equalize interest rates and thus ease the tendency of foreign borrowers to resort to the U.S. capital market, proven valid?"*

In many discussions of the Act, its proponents have stated that once the U.S. interest rate is equalized with foreign interest rates, foreigners who are able to borrow money in the U.S. will be permitted to do so without further restrictions on the transaction. Thus, they imply that such borrowing will not be objectionable once the interest rates are equalized. Despite these comments, it is important to remember that the tax was designed to help cure the payments problem. Therefore, to the extent that foreigners are still willing to utilize the U.S. market and in effect pay the higher interest rate when the tax is passed on to them by the lender, this capital outflow will continue to strain the U.S. balance of payments. Although more tax dollars will be collected, the last thing the measure intended was to raise any revenue, even though Congress estimated some revenue would result. The greater the success of the tax in raising revenue, the greater will be its failure as an economic regulator.

Furthermore, in order to be consistent in theory, the Interest Equilization Tax Extension Act of 1965, passed in October, should have increased the tax rates so that the effective interest rate increase would amount to more than merely one percent. The necessity for such a move was caused by the heavy burden placed on the European capital market by foreign borrowers as well as by United States corporations which are still being urged by the Commerce Department to borrow abroad if they wish to invest abroad. Consequently, interest rates in Europe have tended to increase depending on the country involved, and even with the IET the rates were not always equalized.

Also noticeable is that for very large transactions the foreign market at times was unable to supply a sufficient amount of capital. For these reasons borrowers once again have been returning to the U.S. to borrow capital. The theory of the tax does not attempt to resolve this problem. In effect, if the only capital available is in the United States, a foreign person desiring capital will still borrow in the U.S. at almost any interest rate within reason unless he decides not to borrow anywhere. The situation would perhaps be even worse except for the two increases which have been made to the long-term interest rates in the United States within the past 6 months. This in effect has tended to again *"equalize"* the respective interest rates. However, this was the very alternative which Congress had originally hoped to avoid by instead passing the IET Act. It is possible that these increases were caused solely by domestic economic conditions, but it is also a possibility that the increases were made necessary by the strain placed on the foreign capital markets partly by the tax and partly by the administration's voluntary restraint program urging business to borrow abroad. If this theory of inter-

dependent spiraling interest rates is true, the IET would almost certainly have to be assessed as a dismal exercise in futility.

"Finally, what are the prospects for the elimination of this temporary tax in the future?"

The Interest Equalization Tax is now scheduled to expire July 31, 1967 and has already been extended from its original expiration date of December 31, 1965. The answer to this question obviously must first depend on the U.S. balance of payments situation.

By November of 1965 the balance of payments outlook had improved so much that U.S. officials began talking of reaching equilibrium of payments in the coming months. However, U.S. officials must also estimate whether they will remain in balance. In connection with this thought, in early April of 1966 Treasury Secretary Fowler was discussing the prospects for ending the voluntary restraints program respecting direct investments abroad. He indicated that the United States is not likely to be able to terminate this program so long as the Vietnam situation continues at its present level. Therefore, if the administration considers that Vietnam is a sufficient reason for continuing the voluntary restraints programs, it certainly can be anticipated that the fate of the Interest Equalization Tax will be similarly affected.

Accordingly, even if equilibirium in the United States balance of payments becomes a reality after over 16 years of deficits, it seems probable that the Interest Equalization Tax, like certain other taxes which also were originally labled as merely temporary taxes, may yet linger awhile.

INSTANT TAX

An appraisal of enforcement methods with regard mainly to current collection of direct taxes on income

by

H.W.T. PEPPER

PREFACE

In framing tax policies the conflict of equity, economic incentive, and ease of administration is ever present and usually results in a patchwork of taxes which individually satisfy on or more of these three principles, and which collectively form a tax pattern which is regarded as politically acceptable.

The test of equity is best met by direct taxes which have regard to ability to pay, but expediency, including ease of collection, and the need not to discourage economic growth, may be better served by indirect taxes. The former often have more political impact than the latter and the justification of equity may be lost if enforcement of direct taxation is not prompt and efficient.

Where enforcement of direct taxes is a problem, Government may be tempted to the line of least resistance and increase more easily enforceable indirect taxes to supply the deficiency. The consequent enhancement of the regressive effects of indirect taxation by its disproportionate weight is likely, however, to bring social problems with political difficulties following in their wake.

This article, which is mainly devoted to enforcement problems connected with direct taxation, endeavours to suggest the general lines of approach to the improvement of enforcement, so that when a government has framed a balanced and equitable tax policy, that policy at least shall not fail from any inability to collect the taxes due.

The following paragraphs will show that there is a world-wide tendency to adopt current collection methods with regard to income taxes and, where such methods are already in use, to bring forward collection dates within the system to accelerate collection still further.

The methods of collection are examined and the benefits of early enforcement and the difficulties of securing that result are discussed. The conclusion reached is that early collection of direct taxes is a desirable objective and that it is worth while taking considerable pains to achieve it.

INTRODUCTION

1. In an age when the word "instant" is being applied to everything from coffee to car-washing and the accent is generally on the instantaneous and on electronic performance in micro-seconds, it would perhaps be remarkable if the regime of the taxman were not affected. In fact, as we shall see, the "instant movement" is invading tax systems on a world-wide scale.

Definition

2. In this article the words "Instant Tax" will be used to refer to a system whereby tax is both computed and collected "instantanously".

Indirect taxation[1] is usually an "instantaneous" levy, at the port, factory or distillery, or at the Customs or Excise post wherever that may be. The duty is thus normally collected where goods pass a frontier, where having been manufactured or imported they pass into the wholesale, or retail sphere for distribution or, in the case of retail sales taxes, where the goods cross a shop counter. The goods are usually physically present when the tax is levied, the rate of duty chargeable is readily ascertainable, and the duty is thus an "instant tax", in the fullest sense, that is, the correct amount can be both calculated and collected immediately, although for administrative convenience collection may in fact be made monthly or quarterly.

Instant collection: indirect taxes

3. The advantages of an instant tax on commodities are the greater certainty of collection, the economy in enforcement costs and the exclusion of the possibility of hardship to the taxpayer through his own improvidence. Such improvidence might occur were it possible for a person to buy goods exclusive of (and perhaps regardless of) tax and have to pay the tax separately later. The more improvident taxpayer would be likely to buy and "consume" goods (and this would apply especially to heavily-taxed luxury goods) for which he could not then, or later, afford to pay the tax.

The instantaneous impact of indirect taxation has such a lengthy history and is so taken for granted that its importance is in danger of being overlooked. It is indeed a little curious that in many countries the lesson to be learned from indirect tax collection has been applied only recently to direct taxes.

Direct taxes

4. As far as direct taxation is concerned it is also an essential feature of tax enforcement —using this term in its widest sense—that the tax due should be collected as soon as possible. The smaller the time-lag between accrual of the income and the collection of the tax the less likelihood there is of tax being lost. The ideal position is where the tax is levied at source so that, for example, where employment income is concerned, the employee can from the outset plan his domestic expenditure on the basis of "take-home pay" rather than on the basis of a gross figure, some of which must eventually find its way to the tax collector.

5. No matter how excellently drafted and how equitable tax laws may be in the statute book they will secure neither the appropriate yield to Government nor equity between taxpayers unless there is prompt enforcement. Moreover, if tax can be collected from income as it accrues, Government revenue will benefit sooner from any increase in national income[2]. These factors, combined with the soundness of the policy of collecting

1 Indirect taxes, which include customs and excise duties and purchase and sales taxes are sometimes known as "transactions", "turnover" or "transfer" taxes and are usually associated with the physical movement of the goods from one place, or the transfer from one ownership to another.

2 Further discussion on this point is included in the paragraphs (72-76) on Budgetary Considerations.

tax from income while the source of the income continues to exist, accounts for the fact that "instant" collection methods are rapidly spreading in the world of direct taxation.

6. Because there is a much greater danger of loss to the Revenue where the collection of tax is long delayed, the question of the extent to which direct taxes can be made "instant" taxes is particularly important for developing countries which need the stability afforded by a balanced "budget" and to achieve this must ensure as far as possible that taxes imposed are fully and promptly collected.

7. Direct taxes vary from the minor licence or registration type collected more or less instantaneously as the price of such miscellaneous items as licences for the use of a vehicle on the public highway, ownership of a pet, or a firearm, or the existence of a business name, trademark or patent, to the more sophisticated taxes on income or wealth which are computed in a more complicated manner.

Requirements for "instant" levy of income tax

8. Where a direct tax is computed by reference to income, however, it can only be a true "instant" levy if both the income and the tax on it can be measured as the income accrues.

9. The twin problems to be overcome in the quest to achieve an early incidence of direct taxes upon *income* are thus—

(a) the precise ascertainment of the *income*,
(b) the computation of the *tax* on the income.

Examples of current collection systems: Employment income

10. In recent years many countries have been adopting "current collection" systems, notably in connection with employment income. The United Kingdom's old deduction (or "withholding") scheme was succeeded in 1944 by the P.A.Y.E. ("Pay as you earn") system and "P.A.Y.E." has since found many emulators. Some form of deduction of tax from remuneration can now be found in countries all over the world.

11. In Europe certain countries use payroll taxes[3] while others use various types of P.A.Y.E. systems[4] both of which involve deduction at the source. Various P.A.Y.E. systems are also to be found in North America, in the West Indies[5], in Africa[6], in Australia, and in Asia[7], while payroll taxes are also widely spread outside Europe (see further notes in paragraphs 55-58).

3 e.g. Belgium, France, Holland, Italy and Spain.
4 e.g. Denmark, Eire, Federal Germany, Norway, Sweden, and the United Kingdom.
5 e.g. Jamaica and Trinidad.
6 e.g. Ghana, Libya, Nigeria, S. Africa, and Southern Rhodesia.
7 e.g. Ceylon, India, Japan, the States of Malaya (referred to in these paragraphs as "Malaya"[8]) Pakistan, the Philippines, Sabah[8], Sarawak[8], Taiwan; deductions at source are also made in Cambodia, Indonesia, Korea and Thailand.
8 Now incorporated in Malaysia.
Note: The above lists of countries are not comprehensive—the number of countries adopting P.A.Y.E. and other deduction systems increases year by year.

Investment income

12. Investment income such as dividends, interest, rents, and royalties is also frequently the subject of deduction of tax at the source.

This method was pioneered in the U.K. as a fundamental principle of tax enforcement and has also been adopted in many other countries[9]. Deduction at source is convenient where a schedular tax system is in use and income in a particular "schedule" is taxable at a flat rate of tax so that the deduction is the "final" liability.

Business income

13. The current collection of income tax on business incomes is being undertaken by an increasing number of countries[11] either by means of provisional payments based on estimates of profits, or by adopting a basis which relates current liability to ascertained profits of a previous period[12] (see paragraphs 40 and 46-51).

Income measurement difficulties: Employments

14. Employment income can be measured at the time of payment where, for example, it is a fixed weekly or monthly payment and the employer pays or reimburses all expenses incurred by the employee in the line of duty. In these circumstances of cash receivable is the income of the recipient and such cases lend themselves readily to the operation of a P.A.Y.E. scheme (see paragraphs 54-71 below). In practice, however, not many employments embody these (from a tax administrator's viewpoint) "ideal" characteristics.

Trades and businesses

15. On the other hand, business income, which is measured by the excess of gross earnings over expenses (neither of which elements may accrue evenly over the income period), can clearly *not* be measured as it accrues. There is no fixed ratio between gross earnings and expenses, the ratio indeed often varies for the same business at different times in the same year, and at times the "income" may be negative because the expenses exceed the gross earnings. Moreover, since such income is usually measured by reference to a period of a year it cannot be finally measured until the end of that period.

Other income

16. Other types of income which can be measured as it arises may be readily subjected to tax at the source. The United Kingdom pioneered (provisional) taxation at the source of dividends, interest, royalties and rent (the tax on let property being paid initially by the tenant on behalf of the landlord) and the deduction system is even more applicable to

9 e.g. Argentina, Belgium, Brazil, Cambodia, Canada, France, Holland, India, Indonesia, Italy, Japan, Korea, Malaysia[10], Nigeria, Pakistan, Philippines, Taiwan, Thailand and Trinidad.

10 "Malaysia", formed in September, 1963 now comprises Malaya, Sabah and Sarawak. Although income tax is a Federal tax there are at present certain differences between the income tax legislation of the four constituent States.

11 e.g. Australia, Canada, France, Japan, Korea, New Zealand, Norway, Pakistan, Sweden, Thailand, (which extended the system to all income, other than emoluments, in 1963).

12 e.g. Jamaica, Malaya, Nigeria, Singapore and the U.K.

countries which have schedular systems of taxation under which different flat rates of tax are applied respectively to different types of income. (See paragraphs 17-18).

Schedular Tax Systems

17. A schedular tax system is one under which tax is charged on the income within each particular "schedule", regardless of what income the taxpayer may have under other schedules. For example rents, interest, and income from employments would normally be regarded as forming the subject of 3 different (income) taxes chargeable at different rates and probably according to different sets of rules with no inter-correlation between the 3 sources. (See also paragraph 52).

18. It is common for a schedular tax to be charged at a flat rate and, where it is, it clearly lends itself to a system of deduction at the source. Such deductions will, of course, produce the exact tax liability and thus constitute a true "instant tax" on the income. (An example is the 8% income tax on salaries in Libya).

19. Schedular systems of income taxation, though convenient in many respects, tend to be superseded[13] nowadays by systems which charge personal income tax by reference to progressive rates on *total* income. In theory at least the taxpayer derives diminishing marginal utility from each additional layer of income and can, therefore, equitably be asked to pay at progressively higher rates on each additional layer. (There are limitations to this theory which are beyond the scope of the present article).

20. In what may perhaps be a transitional stage of development towards a unitary tax, schedular taxes on various types of income are sometimes supplemented by an additional tax, which may be known as a "surtax", "supertax", "complementary tax" or "personal tax", the function of which is to levy further income tax on the income which has already borne schedular tax at a flat, but modest, rate. In such cases the schedular tax itself becomes in effect a payment on account of the total *income tax* liability which is made up of two separate elements.

Problems of tax ascertainment: Taxpayers in general

21. Where there is no schedular system so that income tax on a particular type of income cannot be instantaneously ascertained, deduction at the source is not necessarily precluded but the deduction, for the reasons given below, can then in most cases only be a provisional payment in respect of tax which must be ascertained and adjusted later. (See also paragraph 50).

22. An instant levy of income tax (which involves tax being deducted at the source) can operate (a) where the levy is an arbitrary one of so much per cent of the *gross* income received, (but is then likely to be inequitable except in cases where gross income received is the same as the net income derived from the source) or (b) where gross income bears a fixed ratio to net income for all recipients. (See paragraph 33, regarding Thailand).

13 Recent examples of such a tendency include the schedular system in Sarawak which was largely converted to the unitary system with effect from 1965. Italy is proposing to replace her schedular system by a single personal income tax and corporate tax from 1st January 1967. Mexico has also taken, with effect from 1965, a major step in the integration of schedular taxes into a single tax and Uruguay is integrating her personal and professional taxes into an individual income tax.

23. A levy at the source can normally be applied by the payer only to the gross amount he pays because the expenses incurred by the recipient in producing his income are within the latter's knowledge only. The types of income susceptible of being taxed equitably on the gross amount payable are therefore limited to investment income, and employment income of the kind referred to in paragraph 10. Employment income, however, accrues to individuals and is therefore subject to the considerations referred to in paragraphs 25 et seq.

24. In most cases, however, gross income bears no precise relation to net income because the relevant expenses of "production" incurred by different recipients of income will vary considerably so that the burden of a tax charged on the gross income will vary with the respective recipients, even of the same type of income. Equity can then only be achieved it the whole burden of the tax can be readily shifted to the payer. Where this *is* possible, however, the object of the tax, which is to charge the *recipient,* is defeated and it becomes a levy of a different character, namely an indirect tax.

Individuals

25. Where the recipient of income is an individual it is generally accepted that a tax of any size must have regard to the individual's ability to pay. This involves consideration of the following:

(i) the level of the total income accruing over the whole of a fixed period of time, for example, 12 months;
(ii) the personal circumstances of the individual, number of dependants, etc; and
(iii) the nature of the income, for example whether from earnings or investments, and whether ephemeral (e.g. income of boxers, writers) or having a degree of permanence.

26. Where the individual's income comes from one source only (for example an employment) and accrues evenly over the tax year, considerable refinement is possible in calculating the appropriate weekly or monthly deduction from wages or salary so that tax is collected over the year in a total figure which has full regard to the individual's circumstances.

27. Where the income fluctuates however the graduated tax systems employed by most countries normally result in deductions which produce rather more or rather less than the exact tax liability for the year and thus necessitate a refund or an additional charge in the following year.

Employment income: calculation of deductions at source

28. Taxation of employment income at source is complicated by the fact that changes in employer may take place during the year. The employee may also acquire or lose other sources of income during the year, and his personal circumstances may change, for example, through marriage, the birth of a child, or the contracting of new life assurance or other commitments.

29. Some countries solve the difficulty in coping with other sources of income possessed by an employee by excluding them from the calculation of deductions from emoluments which thus represent solely the tax relevant to the emoluments. Other sources of income

are then dealt with separately and the tax on these usually becomes payable on different dates from the dates on which tax is deducted from emoluments.

30. Other countries by contrast adjust the deductions to be made from emoluments so that the deductions represent the tax on total income. This, of course, is only possible in the cases where the non-employment income is not out of proportion to the emoluments. If the non-employment income is large compared with the emoluments from the employment it may well happen that the total tax on the aggregate income exceeds the actual amount of the employment income. In that case the total tax clearly cannot be collected by deductions alone.

BUSINESS INCOME: difficulties of "current collection"

31. While, despite the difficulties, systems have been worked out for collecting current tax from emoluments and certain types of investment income, the task of collecting tax currently from trade, business, or professional income, appears at first sight to be almost impossible.

32. The ratio of net business profit to gross receipts may vary considerably from trade to trade, and from person to person in the same trade. Even in the same trade carried on by the same person the ratio may change considerably from year to year, and even from time to time in the same year. Changes in income are likely to be more violent than in the case of employment and all the other changes which affect employees are applicable to business and professional men too. Moreover, there is unlikely to be an opportunity for deduction at source in the normal case since most business receipts come from a multitude of different customers.

33. *: estimates by taxpayers and other bases*

Where it is desired to effect current collection of income tax on businesses and professions, therefore, it may be necessary to ask the taxpayer to estimate his current income and make payments accordingly on account of his ultimate tax liability. In Australia and New Zealand the previous year's income is generally used for the purpose of estimating provisional payments of current tax. An alternative to the system of provisional payments is the special basis of assessment adopted by certain countries and referred to in paragraphs 46-51. Thailand has a system of adopting (generally at the taxpayer's option) the gross turnover less a percentage deduction which varies with the type of activity, to represent the income subject to tax.

34. *: deduction at source*

A certain degree of prepayment of tax on professional activities by deduction at source is, however, practised in Japan where 10% of the gross fees and retainers paid by companies to professional men (lawyers, architects, etc.) is collected along with the P.A.Y.E. deductions for employees. Since 1962, a similar system has also been applied in Italy where 5.33% is deducted at source from payments in respect of artistic activities or as directors' or auditors' remuneration, the deductions being payments on account of the final liability of the recipient. Israel withholds tax at rates up to 25% from artistic royalties (literary, dramatic, musical) and insurance commissions.

35. *: pre-payment by contract retentions, etc.*
Where contractors in the private sector carry out contract work in the public sector on the erection of buildings or other public works, it is common practice to hold back 10% or more of the contract price for a period after completion of the contract. This provides an opportunity for faults in the work done to be discovered and counter-claims to be formulated. It would appear to be worth considering whether in such cases all or part of the retentions could be transmitted to the tax authorities and credited as a pre-payment of income tax by the contractors. This would be subject to subsequent adjustment for any part of the payment which was eventually re-claimed from the contractor by the Government Department concerned.

36. The advantage of this system would be the provision of a direct link between the Department paying out a contractor's earnings and the Tax Department which is responsible for determining the total profit and the tax payments due *from* the contractor. The system might be useful in a developing country where existing machinery for obtaining tax compliance was weak. The disadvantage would be that where the margin of profit on a contract was small the amount retained might be excessive and restrict the working capital available to contractors, such capital being often a somewhat scarce commodity. The disadvantage could be overcome by giving suitable administrative priority to the payment of sums due under contracts and the computation of tax due from the contractors.

37. The same possibility of income tax pre-payment by retentions at "source" offers itself where Government undertakes marketing in respect of primary commodities under a marketing scheme or provides centralised smelting capacity for mineral exports but a detailed examination of these possibilities is beyond the scope of the present notes.

38. *: provisional payment system: general*
Where collection is based on estimates of current business income, or where deduction at source is applied, it is clear that collection of the full amount of tax in the tax year cannot ordinarily be expected. Countries that employ this system usually allow for the collection to be spread over a period that ends some time after (or provide a "settlement day" that occurs after) the end of the tax year. Interest, or even a penalty, may be charged where the estimate is substantially less than the true income but a reasonable margin of error has necessarily to be allowed to the taxpayer. Examples of the provisional payments system are given in paragraph 39.

39. *: examples of provisional payment system*
In the U.S.A. companies were required to pay 50% (in 1964 increased to 60% and in subsequent years to be increased by stages to 100%) of their estimated current tax in the tax year and the day of reckoning for taxpayers generally is the 15th April, i.e. 3½ months after the end of the tax year when interest at approximately commercial rates may be applied to tax under-estimated. A similar system operates in Canada and France. Canada under its new proposals for accelerated collection of company income tax was to collect 50% of the tax due for tax years ended before December, 1964 by monthly instalments during the tax year and the remainder within 5 months after the end of the year (see also paragraph 45). In Australia a self-employed taxpayer is required to pay tax in

two instalments during the tax year on the basis of his previous year's income. The taxpayer may instead estimate his current year's income, if he prefers, for the purpose of provisional payments. The system is not applied to companies (corporations). In India a somewhat similar system operates, 4 quarterly payments of "advance tax' being required in the income year with a final settlement during the following (assessement) year. New Zealand employs a similar system to that in Australia and has extended it to companies formed since 25th July, 1957. Sweden collects 6 bi-monthly instalments of "preliminary tax", based on the taxpayer's estimate, the last being paid after the end of the tax year. Japan collects two-thirds of the estimated tax in 2 instalments during the tax year (not later than 31st July and 30th November in the year to 31st December). Taiwan collects 50% of the expected tax liability by the 31st July, and Trinidad has recently (1963) extended a system of quarterly pre-payments to all taxpayers in respect of income other than from employments.

Payments of tax in year following income year

40. Some countries, for example Australia (in respect of companies only), New Zealand ("old" companies only), Brazil, Denmark, East Africa, the Philippines (companies), Sabah and Sarawak, collect tax on trade or business income in the year after the income has accrued. This system has the advantage that the tax collected in the tax year is normally the tax finally due—there is no provisional collection and subsequent adjustment or settlement. The disadvantage is the time-lag in collection, which is of particular significance where a source of income ceases and the tax bills continue for a further year after cessation.

41. For Budgetary purposes, however, subject to the point mentioned in paragraph 5., the position is reasonably satisfactory in that the probable income tax revenue can be estimated fairly early in the fiscal year.

Transitional acceleration of collection: general

42. Where a country which has the system referred to in paragraphs 40-41 decides to change to a system involving current payments out of current income, there is a most useful budgetary side-effect which may be obtained in the years of transition in that more than 1 year's tax will be received in the fiscal year. For example, if the change were to be phased over a period of, say 5 years, in each of those years the tax revenue from the income concerned would be 120% of a normal year's tax so that in 5 years, 6 years' tax would have been collected and the year's time-lag eliminated.

Applications of accelerated collection

43. A "historical" application of accelerated collection was that by the United Kingdom in the "crisis" Budget of October, 1931, when the tax instalment due from individual income taxpayers on 1st January, 1932 was increased from the usual $\frac{1}{2}$ to $\frac{3}{4}$ of the total tax due for the fiscal year ended 5th April, 1932 in order to increase the tax receipts of that crisis year (the second instalment—previously $\frac{1}{2}$ but then reduced to $\frac{1}{4}$, was payable on 1st July, 1932, the usual date). The $\frac{1}{2}/\frac{1}{2}$ payment system was however restored in the following year.

44. A feature of the recent U.S.A. tax cuts is the accompanying provision for collecting more of the tax due (initially 60% instead of 50%) during the tax year which will offset the decrease in tax yield result from the decrease in *rates* of tax. The changes in favour of earlier payment of tax were to be phased over the next few years just as the decreases in rates were also phased rather than made in one large single cut. By the end of the period of transition it is no doubt hoped that the tax revenue will have been restored by a buoyant economy to yield as much at the lower rates of tax as was formerly yielded on lower income by higher rates of tax.

45. In Canada the application of accelerated collection referred to in paragraph 39 will result, after 2 more stages have been applied, in 2/3rds of the current tax being collected by monthly instalments in the current year and the remainder within 4 months of the end of the year. Brazil, which charges tax in the year after the income year, brought forward collection dates during 1963 and added penalties to the interest charged on late payment and on the other hand provided generous discounts for prepayment of tax.

"Special" basis of assessment

46. The device of a special basis of assessment as a means of achieving current tax payments out of current income has been adopted in the United Kingdom and certain countries in the British Commonwealth (e.g. Jamaica, Nigeria, Malaya and Singapore). There are special provisions for the first three and last two tax years during which a source exists (in the United Kingdom for the last *three* years as well as the first three years). For all other years during which the source exists the income of the tax year is measured for tax purposes by reference to the income of the previous year. Accordingly, the tax liability can be determined early *in* the tax year and final payment of the tax can therefore be arranged comparatively early.

47. In the United Kingdom[14] companies were required to pay their whole income tax liability on 1st January in the tax year which runs from 6th April to 5th April[15]. As regards individuals with business or professional income, one-half of the tax is due on 1st January and the other half on the 1st July, that is about 3 months after the end of the tax year (see also paragraph 43). (Tax on employment income is collected at source currently from the emoluments payable during the tax year—see paragraphs 60-64).

48. In Malaya and Singapore the collection of tax from companies and individuals (whether employees or not) is done wholly during the tax year, except in cases where the liability cannot be determined in that year. It is a feature of the special basis that in the first and last years of the existence of the source the tax is charged on the actual income of those years. In the second and third years there are transitional arrangements which include an option in the case of earned income for the taxpayer to claim that the tax charge for all of the first three years (but not solely for an individual year) of the source

14 The system in the United Kingdom changed with effect from the 6th April, 1966 when corporation tax superseded both income tax and profits tax.

15 In the United Kingdom the tax charged on companies previously included a 'Profits Tax' related to the accounting period rather than to a tax year and there is a "surtax" (additional income tax) charged on individuals. Both of those levies were collected separately and at different times from the main income tax.

should be calculated on the actual income of the respective years. For the penultimate year (in the United Kingdom for the *two* years before the cessation year) there is an "anti-avoidance" provision enabling the actual income to be substituted for that year too, if this would increase the tax charged. For the most part however taxpayers pay on the basis of previous years' figures.

49. This "special" basis is thus an efficient instrument for achieving early computation of the tax liability and hence early settlement of the tax. It is accordingly of value to a developing country, or any other country where the civic virtue of prompt tax compliance is not yet firmly established. There is an advantage to Government in being able to obtain a fairly early estimate of the probable tax revenue. It follows that there is less uncertainty as to revenue prospects, for example at a time of falling staple produce prices in a producing country, than under a system where taxpayers make their own estimates of *current* income as a basis for provisional tax payments. The cost of administration is likely to be less where previous year figures are used than where current estimates, which must be subsequently adjusted, are utilised.

50. The disadvantage of the special basis of assessment is the complication when income commences or ceases—the ordinary previous year basis of measurement cannot be used in these "transitional" years. Even in these years, however, the position is really very little different from the position where the system of provisional payments operates; the necessity for adjustments when the final liability has been calculated (it cannot be calculated during the year when the income is accruing) arises under both systems.

51. Despite the advantages of the special basis the disadvantage of "complication" may be crucial as regards its general application in a developing country although a case could be made out even where taxpayers in the mass are comparatively unsophisticated for its application to business and professional income.

To be continued.

IV

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- ESTATE PLANNING, by *Trachtman, J.*; 1965, pp. 227
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– OPERATING ABROAD UNDER CURRENT US TAX RULES AND ECONOMIC POLICIES; 1965; pp. 173; discussion of the general aspects of the foreign tax credit; the foreign tax credit & subpart F; the excess foreign tax credit, its causes and remedies; section 963, its general statutory scheme and the minimum overall tax burden and taxes on intercorporate distributions; repatriation relief under revenue procedure 65-17; know-how transfers under sections 351 and 367; the interest equalization tax; the general statutory scheme of section 367; and the doomsday tax of section 1248.
A syllabus on the taxation of foreign income under the Revenue Act of 1962 is included as an appendix.

– INCOME TAXES ON REAL ESTATE; report of a forum given in February 1965; pp. 185; remarks on problems of incorporation; multiple corporations; real estate partnerships; real estate investment trusts; depreciation and recapture; landlord and tenant problems; deductions and other tax opportunities of owners; deferral and non-recognition of gain; sales, exchanges and conversions; withdrawing investments and profits; collapsible corporations and how to avoid them.

PROPOSALS FOR AMELIORATION OF SECTION 482 ALLOCATIONS AFFECTING US TAXPAYERS WITH FOREIGN AFFILLIATES; a report on proposed regulations under section 482 and Revenue Procedures 64-54 and 65-17, by the Committee on International Taxation of the Tax Section of the New York State Bar Association; February 1966.

The report's basic criticism of the proposed regulations relates to their failure to provide relief from the international double taxation which will frequently result from section 482 allocations involving controlled foreign corporations. The report demonstrates why adequate relief will not be available under existing or proposed tax treaties and suggests possible remedies.

2. LOOSE-LEAF SERVICES

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AUSTRALIA
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CANADA
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V.d. Linnepe – Hagen (Westfalen)
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Belastingberichten, releases nos 35-36: N. Samsom N.V. – Alphen a/d Rijn
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FED's Fiscaal Register, releases no 10-11, FED – Amsterdam
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De Gemeentelijke Belastingen, release no 68: Vuga – Boekerij, Arnhem
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Handboek voor In- en Uitvoer; Belastingheffing bij Invoer, release no 60: N.V. Uitg. Mij. AE. E. Kluwer – Deventer
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EDITORIAL

I.F.A. will hold its 20th Congress in Lisbon this year.
With the kind cooperation of the Centro de Estudos Fiscais and Mr. Paulo de Pitta e Cunha of Portugal we are able to publish an extensive survey of the Portuguese Tax System and those of Cape Verdi, Guinea, Sao Tomé e Príncipe, Angola, Mozambique, Macau and Timor.
As to section 4 (taxes on expenditures) it should be noted that the new sales tax law has not yet been enacted.
The bill has been drafted, but not yet published.
Mr. Paulo de Pitta e Cunha intends to write an article on this subject as soon as the draft is published, which article will be published in a coming issue of the Bulletin.
We wish all I.F.A. members a good congress in Lisbon.

DR. J. C. L. HUISKAMP

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I

THE PORTUGUESE TAX SYSTEM

by the members of the

CENTRO DE ESTUDOS FISCAIS: P. PITTA E CUNHA, N. SÁ GOMES, MANUEL PIRES, ALVES DOS SANTOS, GALHARDO SIMOES, A. BRAZ TEXEIRA, M. CORREIA VALE

CONTENTS OF THE ARTICLE

I. A GENERAL SURVEY OF THE TAX REFORM IN METROPOLITAN PORTUGAL

1. Before the present reform, the Portuguese tax system was based on principles established in 1929. During the following three decades, an incessant effort was no doubt made to adapt tax regulations to new situations that began to appear; but the fundamental rules of the 1929 reform remained unchanged.

This reform was carried out during a period of serious financial difficulties, and was aimed at guaranteeing the stability of government revenue by creating an adequate level of receipts and by assuring its effective and regular collection. Far from seeking to adjust the level of tax receipts to changes in the general economic picture, subject as this was to fluctuations that were difficult to foresee and which might adversely affect government revenue, the reform was basically aimed at achieving a balanced budget, without which the economic life of the nation could not return to normality and private enterprise could not find the indispensable atmosphere of confidence and stimulation.

2. When the 1929 reform was promulgated, a 1922 law was still in force. The latter had brought about a broad reorganisation of the former tax system, that involved the creation of direct taxes based on the principle of income actually earned by the taxpayer. But, in the course of time, it became clear that the system defined in 1922 was not suitable to the economic and financial structure of the times. Tax evasion was frequent and the administration was powerless to combat it successfully. As a result, public revenue was insufficient and its collection irregular.

3. The 1929 reform sought to adopt a realistic approach and justified the changes to be introduced into the tax system by pointing to the conditions existing at that time. The main idea was to establish order and simplicity in the relationship between the tax authorities and the taxpayers, giving the latter as clear an idea of their tax liabilities as possible and assuring the former a definite level of revenue. The result was that the principle of taxing normal incomes was adopted as regards taxes on income. That is, the tax authorities, instead of trying to determine the income actually earned by the taxpayer, were satisfied with just taxing the income which they presumed the taxpayer should normally receive, on the basis of certain general criteria.

The system thus was totally unaffected by fluctuations in the economy, since taxes tended to become stable amounts that were uninfluenced by changes in income produced by developments in the general economic picture. This indifference of the system to economic changes was explained by the absolute necessity of obtaining a regular and sufficient amount of revenue; on the other hand, the disadvantage from the point of view of the level of economic activity was attenuated by the under-developed state of the Portuguese economy, which was then little affected by the wide fluctuations typical of highly industrialised economies.

4. The 1929 reform, besides modifying the income taxes already in force (the property tax, assessed on income derived from rural and urban property; the industrial tax, assessed on incomes derived from trade and industry; and the tax on income from capital, which includes interest on loan capital and income derived from investment capital), created the professional tax (which applies to incomes obtained from labour), maintained the personal surtax instituted in 1928 (the complementary tax) and distinguished, in the field of wealth taxation, the transfer tax (levied on transfers of real property for money) from the gift and inheritance tax (applicable to property acquired without any payment). These last two forms of taxation resulted from the division of the old register tax.

In 1929, it was also decided to abolish the turnover tax, which was levied at all stages of production and distribution on the total value of the sales of most goods. Besides this, the 1929 reform was limited to the field of direct taxation; a number of excise taxes, established at various times, therefore remained in force. Subsequently, some new types of indirect taxes were introduced according to the needs of the moment and without any attempt at systematisation.

5. The evolution of the economic structure of the country, with its progressive industrialisation within the framework of an intensive development policy that was sponsored and supervised by the Government, made the revision of the tax structure indispensable. On the other hand, reasons of a social nature advised a tax reform that would make the distribution of the tax burden more equitable. Finally, the stability and relatively healthy state of the Treasury—to which the regulations established in 1929 contributed in no small degree—made moderate changes possible in the amount of tax revenue.

6. The present reform, announced by the Government in 1950, is of much greater amplitude than that of 1929. Changes have been made not only in the system of direct taxation (in accordance with new principles of assessment which are believed to be in line with the present economic and social structure), but also in that of indirect taxation. The administrative and justice departments have undergone important changes, too.

7. In 1951, the Committee for the Study and Improvement of Tax Law and the Committee for Tax Technique were formed. In 1957, however, these were both combined into a single body—the Committee for Tax Reform—which, having formed groups for the study of the several direct taxes, drew up the necessary projects with the object of systematising the regulations of each tax in order to codify them into a single text. These

projects, after being discussed and appreciated by experts on taxation and representatives of the various activities concerned, were then converted into laws which have been published from 1958 onwards.

The first to be published was the Code governing the transfer tax and the gift and inheritance tax (1958) This was followed by the Tax Codes governing the professional tax 1962; the tax on income from capital (1962); the property tax (1963); the tax on agricultural profits (1963); the industrial tax (1963); and the complementary tax (1963). The direct taxation reform has been completed by the creation of a capital gains tax, which is levied on exceptional and fortuitous earnings on capital, the Tax Code of which being published in 1965.

8. As regards indirect taxation, the tax reform involves changes in the stamp duty, which is levied on various documents, acts and contracts, and the creation of a sales tax, which shall include the tax on the purchase of superfluous or luxury goods, established on a temporary basis in 1961.

9. Just as was the case in 1919, the present tax reform has been dominated by the problem of subordinating the tax structure to the circumstances of the times, harmonising doctrine with the results of experience and seeking, in a realistic way, to innovate and bring things up to date while making all possible use of the existing organic and juridical structures and without attempting to make sudden, drastic changes in the traditional system.

10. That is why the system of various partial taxes (levied on incomes from real property, commerce and industry, capital and labour) corrected by a personal surtax was maintained in the field of direct taxation.

The advantages of a unified income tax, which would permit tax collection to be based on a single document or report submitted by each taxpayer, have been fully recognised. However, the introduction of such a system would require a vast reorganisation of the tax services, which would be impossible under the present circumstances. Therefore, it seemed advisable to wait for the results of the changes made in the existing partial taxes so as to be able to act more surely when the time came to devise the single unified tax which would replace them. However, an attempt has been made to convert the complementary tax into a personal income tax which, superimpose on the system of partial taxes on income, should be able to ensure, as far as possible, justice in tax matters.

11. Although the formal structure of the direct tax system has been maintained, the present reform has, nevertheless, brought about important changes in various of its aspects. Brief references shall be made to the main modifications that have taken place in the financial, economic and juridical fields.

12. From the financial point of view, the most important changes refer to the determination of the tax base.

The main objective of the present reform is that taxation should be aimed, as far as possible, at the real income of the taxpayers—although it is admitted that, in some cases, the only income that can be determined may not be the real income or anything considered as such, but simply a presumed income.

The substitution of the principle of taxation on *normal* income by that of taxation on *real* income made possible the attainment of highly important objectives. The following are the main ones:

a) Reduction of the inequality in the distribution of the tax burden. The former inequality encouraged to tax evasion, especially with respect to the industrial tax.

b) Establishment of a real personal tax in the form of a progressive complementary tax based on real income and not on mere suppositions of average income, as was previously the case.

c) Attenuation of forward shifting of direct taxes. Previously, taxes were collected the year after income had been earned, which converted them into a fixed element in the going expenses of a business, since they were considered part of its costs. The inclusion of direct taxes in the prices of goods, led to hardships in the case of essential purchases, since it had a regressive effect. It also led to generally higher prices for domestic goods, thus placing them at a disadvantage in the face of international competition, a particularly serious factor at a time when the integration of national economics was being undertaken intensively.

d) Improvement in the sensitivity of tax revenue to changes in the over-all economic situation, thus permitting taxes to carry out the important function as built-in economic stabilisers which, varying with fluctuations in the level of private incomes, exercise a deflationary action in periods of expansion and a reflationary action in periods of recession.

In certain cases, the taxes continue to be levied on normal incomes. This is true as regards the incomes of small-cale industrial activities and incomes derived from landholding. But even in these cases, frequent modifications will be made in order to bring the respective values up to date.

13. The taxation of real profits, as regards the industrial tax, was only made possible by the broad changes in the structure of the Portuguese economy that has taken place during the last few decades. In particular, the increase in the number of firms whose management is based on modern and sufficiently uniform accounting techniques provided greater possibilities of efficient control of financial results.

The realistic spirit that dominated the reform explains why the taxation of real profits as shown by private accounts has been limited to firms of a reasonable size having a developed accounting system.

14. Besides the reorganisation of the direct taxes already in existence, the tax on agriculture was made autonomous. This tax is levied on the profits of the farmer, and is on the same level as the rural property tax, which is assessed on incomes derived from landed property.

15. The complementary tax, which is of a personal and progessive nature, is aimed at the taxation of every element that composes the total income of the taxpayer. That is why it is levied on both the incomes that are the object of the partial taxes and the incomes that are exempted from them. This tax is organised in such a way as to take into account the family situation of the taxpayer and the necessity of assuring him a minimum standard of living.

16. The changes made in the tax base implied an adjustment of the rates so that taxes might represent a reasonable cooperation of the citizens in meeting public needs.

A rise in receipts was not the fundamental objective of this reform, but it was a result that could easily be foreseen since taxation came to be based more on real incomes and since, even in those cases where assessment continued to be determined by normal income, this came to be guaranteed by a more perfect system.

17. The objective of social justice which has dominated the organisation of the complementary tax, has also been taken into account in the reorganisation of the various partial taxes. For example, as regards the professional tax, greater exemption has been granted to the earners of modest incomes while a moderately progressive rate structure has been adopted for the first time.

18. In drawing up the reform of the direct taxes, capital importance was attached to the other functions of the tax system, besides that of collecting revenue in itself. In this regard, it must be remembered that the tax system is a factor in bringing about a redistribution of income and that, in general, it is one of the most efficient and active tools of Government economic policy.

In view of the intensive economic development that has taken place in Portugal (and which is proved by the very real and progressive changes in the volume and composition of the Gross National Product), it was obvious that the tax system could not be relegated to a position of neutrality. On the contrary, it was duty-bound to play a leading role in the carrying out of long-run economic policy.

In a country engaged in furthering rapid economic growth, tax policy must be used in order to encourage saving and investment and to direct capital into those sectors of the economy where it is most needed. Only in this way will the tax system be able to contribute to economic progress and only thus will some inevitable deviations from the strict rules of equity seem acceptable to the taxpayers.

19. The most important deviations which are expected consist fundamentally of a reduction in the tax rate on profits incorporated in reserves and a temporary exemption of gains or profits on such agricultural or industrial investments that the Government considers, or may come to consider, worthy of and lacking encouragement.

The relief of smaller incomes and of productive investments will facilitate the expansion of the home market and encourage the process of industrialisation. But, naturally, tax measures are far from being the only decisive factor economic development.

20. In the legal field, reform has been inspired by certain principles which are either

mere continuations of long traditions or their convenient readjustment to new conditions.

Thus an attempt has been made to disturb as little as possible in the existing legal structure by taking advantage of those legal norms that have proved to be useful, as well as of administrative experience and the results obtained by the courts in many years of interpreting and applying the tax laws.

On the other hand, an attempt has also been made to establish more precise, uniform and clear texts. This has been done with a view towards the eventual preparation of a single tax code, and, in the short run, in order to put an end to all existing doubts caused by a dispersed legislation that had been accumulated over three decades on a structure that was initially quite simple but which had become extremely complicated for, if not unintelligible to the average taxpayer.

21. As part of the revision of the basic tax laws, it was also considered logical and necessary to bring tax technique in line with the applicable principles of common law. In fact, without prejudice to the independence of tax law, it seemed that such an adjustment would surely lead to a better understanding of the tax laws on the part of the taxpayer, and to easier administrative and jurisdictional solutions in doubtful cases.

22. Another important criterion that guided the present reform was the one dealing with evasion, and especially with those cases which in a way seem to represent authentic frauds. Severe sanctions are applied in this regard since, once it has been decided to create a reasonable and technically more perfect and balanced taxation, based mainly on declarations made by the taxpayers themselves and checked in different ways, there is no reason why that fraud should not be considered a serious offence. It is hoped that the improvements made in the technique of assessing incomes, which have eliminated a considerable amount of inequality in the distribution of the tax burden, will create an atmosphere of moral reprobation of fraud among the public.

23. One of the fundamental objectives of the recent tax reform was the establishment of greater confidence in relations between the taxpayer and the administrative authorities, through a relative strengthening of the former's legal guarantees. To be more precise, a great effort has been made to make profound changes in a short period of time in traditions relating to tax assessment and collection, both through a detailed revision and extension of the guarantees afforded the taxpayers, and the creation of better conditions as regards contacts between the administrative departments and individuals.

24. The reorganisation of indirect taxation, together with the reform of the direct taxes, will give the Portuguese tax system a more balanced and harmonious nature.

Given the sensitivity of receipts from direct taxes (and especially, from the industrial tax) to changes in the economic situation, now that the principle of taxing the real tax base has been adopted, it is advisable to grant the taxation of expenditure the role of a stabilising element capable of guaranteeing a convenient regularity in the raising of funds to meet government expenditure.

On the other hand, the reform of the indirect tax system will have to be considered, as was the case with direct taxes, within the framework of the Government's policy of economic development. Measures are therefore being envisaged which will be aimed at directing consumption, reducing expenditures on luxury goods and encouraging savings and investment.

25. Besides the reorganisation of the stamp duty, the reform in the sector of indirect taxation will include the creation of a sales tax which, through high rates on transactions involving expensive products, will incorporate the present tax on the purchase of superfluous or luxury goods. It is also envisaged that various special excise taxes will be integrated into the sales tax.

The new tax will be applied at the wholesale level, and an exemption will be made for transactions relating to finished goods of primary consumption (in order to counteract the regressive effects of this type of taxation) and machinery and industrial equipment.

26. The creation of a sales tax, on the other hand, is connected with Portugal's membership in the European Free Trade Association and, in general, with Portuguese participation in the movement for the economic integration of Western Europe.

The new tax is intended to fill the gap in public receipts resulting from the progressive decrease in revenue from customs duties, and will be organised so as to offer national industry the best possible conditions for facing international competition by means of exemptions of exports and compensatory levies on imports. These measures, which embody the principle of taxation in the country of destination, are permitted in the field of indirect taxation by international agreements currently in force.

27. As in 1929, but now on a larger scale, the new reform has not been limited to revising and improving the essential principles of the tax system and changing the legal texts on which it is based, but is the result of a careful and detailed reorganisation of the tax administration services so as to supply them with the staff and means necessary for putting the new system into practice; by the organisation of the tax procedure on new lines; and by the creation of special justice departments completely independant of those charged with assessing or collecting taxes. Thus the Government has sought to guarantee the correct execution of the new reform and to create a more effective atmosphere of confidence in relations between taxpayers and the Administration.

28. Contrary to what takes place in those countries where there is a single income tax varying according to the different sources of income, the Portuguese system of income taxation consists of several autonomous or independent taxes with proportional or progressive rates that form, so to speak, the base of a pyramid whose vertex is the complementary tax, which is personal and progressive in nature and aimed at amending the results of the operation of the independent taxes.

29. The following is an outline of the main taxes on income:

a) Urban and rural property is subject to the *property tax* and the *tax on agricultural*

profits, which are levied on income from real property and on the profits of agricultural undertakings.

b) Commercial and industrial activities are subject to the *industrial tax*, which is levied on profits derived from them, even when they are carried on in a casual manner.

c) Capital earnings (interest and dividends) are subject to the *tax on income from capital*, which is generally based on income actually received but sometimes on presumed income as well.

d) Incomes derived from labour are subject to the *professional tax* and, besides this, to a special tax known as the *contribution to the Unemployment Fund*.

e) The taxes mentioned above are amended and completed by a progressive and personal tax called the *complementary tax*.

Thus we may group the most important direct taxes together in the following manner:

1.—Taxes on income from property.
2.—Taxes on income from trade and industry.
3.—Taxes on income from capital.
4.—Taxes on income from labour.
5.—The complementary tax.

30. The taxes on wealth currently in force are:

a) The *transfer tax*, which is levied on transfers of real property against payment and;

b) The *gift and inheritance tax*, which is levied on the free transference of property, "inter vivos" or "mortis causa".

A *capital gains tax* has recently been introduced. It taxes several forms of fortuitous enrichment, caused by factors alien to labour, skill and genius on the part of those who benefit from them.

31. The tax reform has not yet resulted in the publication of new regulations as regards indirect taxes, although it is expected that the *sales tax*, which will replace the present tax on superfluous or luxury purchases, will appear this year.

Until the new sales tax goes into force, no attempt will be made to abolish the various excise taxes now in existence, such as those on tobacco, matches, medicines, cosmetics, alcohol and brandy, bottled drinks and ice-cream, beer, etc.

2—TAXES ON INCOME

1—TAXES ON INCOME FROM PROPERTY

The new Code of the Property Tax and the Tax on Agricultural Profits, approved by Decree Law no 45, 104 of 1st July 1963 makes a sharp distinction for tax purposes between rent from land and profit from farming as a business.

The fact is that rent and profits are quite different in nature and stability, and are not always derived from the same source. Rent is that part of income that is derived from

capital invested in land and buildings, for which reason it changes rather slowly, while profits are derived from capital invested in business activity, and thus fluctuate from year to year.

The new code therefore distinguishes between the rural property tax, the urban property tax and the tax on agricultural profits.

The distinction made between the two branches of the property tax, and the separation of the tax on agricultural profits from the rural property tax, resulted in the application of a rigorous definition of the concept of property and a revision of the criteria governing the classification of rural and urban property.

Thus property, for the effects of the property tax, is considered to be any plot of land, including any cultivated fields and permanent buildings existing on it, that may belong to an individual or corporate person and, under normal circumstances, may possibly produce income. The same is also true of any cultivated field or building in the above circumstances, even when it is situated on a plot of land that belongs to another owner or that has no private owner.

The buildings, even though movable in nature, shall be considered to be of a permanent character if they remain in the same place for more than six months.

Rural property is that which is used or which could be used for agricultural purposes, comprising farming, forestry and cattlebreeding.

Urban property is that which is used for any other purposes, or which could not be used for agricultural purposes.

Whenever the whole or a part of any property is being used for distinct and different purposes, and it is impossible to determine which is the main one, the property will be classified simultaneously as rural and urban and considered to be mixed in nature.

a) The rural property tax

1. This tax is levied on rent from agricultural land; that is, on the value that is attributed to the productive use of land and its respective improvements.

The rent is determined, in principle, by cadastral surveys.

However, the old land registers are still in force in most of the country. These are organised on the basis of a direct evaluation of property and, though they have been periodically brought up to date, they are not completely satisfactory. For this reason, they are being systematically replaced by cadastral registers based on the geometric registers which already exist in many municipalities.

2. The tax is paid by those who have a legal title to the incomes from the properties. It is presumed that these are the persons in whose names the same rents are recorded in the land register, or who effectively enjoy their use.

3. The Code has established several exemptions, amongst which the most important are those aimed at stimulating economic development, such as those granted to small farms, agricultural improvements, agricultural reorganisation (by means of consolidating small estates and parcelling out large ones), the planting of forests, etc.; and that aimed at benefitting those who have a low standard of living.

1. The tax rate is proportional and set at 10 per cent, though it will provisionally be kept at 8 per cent until 1966.

b) The urban property tax

1. This tax is levied on income from urban property. Income from urban property is considered to be the respective rental value in currency, in case the plot or building is rented out, or the equivalent benefits obtained from it (or that could be obtained from it) when it is not rented out. Thus, in the first case, it is the real income based on the taxpayer's declaration that is taxed; while in the second, it is the estimated income—though it is envisaged that this will be brought up to date periodically.

In the case of subletting, when the sublessee receives income superior to that which he pays to the land-lord, he is subject to pay the tax on the difference.

In the case of both rented and non-rented property, and except for subletting, allowances can be made for up to 20 per cent of expenses on maintenance, and for expenses on electricity, lifts, central heating, etc.

2. Numerous temporary exemptions have been created regarding new, enlarged and improved urban buildings designed to house poor families and those with modest incomes.

The exemption period varies from four to sixteen years, and is fundamentally based on the following circumstances:

a) The gravity of the housing problem in the various urban areas.

b) Requirements imposed by the standard of living of the various urban areas, and their administrative classification.

c) The master plan of Lisbon in relation to the capital and, as regards other urban areas, the town or regional plans that have been approved or are up for approval.

d) The requirements of industrial reorganisation.

e) The characteristics of the houses and their adaptation to family necessities resulting from local conditions, with regard to the proper rent scale.

The creation of a minimum exemption is also envisaged.

3. The rate is fixed at 12 per cent, reduced, however, to 11 per cent until 1966.

c) The tax on agricultural profits

1. This tax is levied on profits derived from farming, forestry or cattle-raising.

An exception is made of cattle-raising that is unconnected with farming or forest activities, and that is integrated into industrial activities and subject to the industrial tax.

2. An exemption is made of all units whose annual profits do not exceed Esc. 30,000. Various measures designed to stimulate the economic development of the country are also being taken. These include the exemption granted to cooperatives engaged in farming, forestry or cattle-raising, and the temporary reduction in the tax rate granted to firms that are set up in rural areas that are economically less favoured, as well as to firms that set up industries that make use of local resources or result in the decentralisa-

tion of industries concentrated in urban areas. This reduction may only be claimed during the first ten years.

3. For taxpayers who do not have a proper accounting system, taxable income is determined on the basis of the declarations made by the taxpayers. After being checked by the administrative services, these are submitted to a committee (which contains a representative of the taxpayers) which decides on the gross income, allowances and taxable profits. The decisions may be appealed to a district committee, on which the taxpayers are also represented. None of the decisions of these committees may be brought to court. However, in cases where legal formalities have been disregarded, appeals may be made to the Tax Court of Second Instance.

In the case of taxpayers who have a proper accounting system, taxable income is determined on the basis of the profits that have effectively been obtained, as shown by the profit and loss account, similar to what takes place as regards Group A of the industrial tax.

4. The tax rate is 10 per cent, though it is set at 8 per cent until 1966.

II—TAXES ON INCOME FROM TRADE AND INDUSTRY

a) The industrial tax

1. According to the Tax Code approved by Decree-Law no. 45,103 of 1st July 1963, the industrial tax is levied on profits derived from even the casual execution of any activity of a commercial or industrial nature. For the purposes of this tax, the exercise on one's own account of any activity that is not subject to the professional tax as well as of cattle-raising activities when they are not connected with farming or forestry and are integrated into industrial units, are always considered to be of a commercial or industrial nature.

As a rule, this tax is levied only on profits made in Continental Portugal or the Azores or Madeira. All individual or corporate persons, national or foreign, who exercise any of the above mentioned activities in this area are subject to the tax.

However, there are exceptions to this rule. In the case of trading companies subject to this tax which have their main office in Continental Portugal or the Azores or Madeira, the industrial tax is also levied on a third of the profits before taxes earned abroad, and not just on profits earned in the area mentioned above.

As regards individual or corporate persons who have their residence or main-office[1]) abroad or in the Overseas Territories, the principle of taxing only the profits earned in Continental Portugal or the Azores or Madeira is maintained. However, they are only subject to the tax if they have branch offices, agencies, delegations or any other form of

1) The companies that have their main-office abroad or in the Overseas Provinces, and that have their effective management in Continental Portugal or the Azores or Madeira, shall be considered, for the purposes of the industrial tax, to have their main-office here (Article 162 of the Code of the Industrial Tax).

permanent representation, or commercial or industrial installations, in the above mentioned area.

As regards individual or corporate persons who, while having their residence or main-office in Continental Portugal or the Azores or Madeira, maintain any form of permanent representation or commercial or industrial installations in the Overseas Territories, the industrial tax is levied on all profits earned either in Metropolitan or Overseas Portugal. In this case, adequate deductions are permitted in order to avoid possible double taxation.

2. This tax contains three different groups of taxpayers.

Group A—the tax is levied on the real profits of the taxpayers, as shown by their accounts.

Group B—the tax is levied on the presumed profits of the taxpayers.

Group C—the tax is levied on the profits that the taxpayers might earn under normal circumstances.

To a certain extent, Group A corresponds to the country's big firms. The following, among others, belong to it:

a) Joint-stock companies and limited societies.
b) Cooperatives.
c) Other trading companies whose capital is more than Esc. 3,000,000.
d) Credit institutions, exchange houses and insurance companies.
e) Trading companies that have their main-office in Continental Portugal or the Azores or Madeira and earn profits abroad.
f) Individual or corporate persons who have their residence or main-office in a foreign country, and who have branch offices, agencies, delegations or any other form of permanent representation, or commercial or industrial installations, in Continental Portugal or the Azores or Madeira.
g) Individual or corporate persons who have their residence or main-office in the Overseas Provinces, and who have branch offices, agencies, delegations or any other form of permanent representation, or commercial or industrial installations, in Metropolitan Portugal.
h) Individual or corporate persons who have their residence or main-office in Continental Portugal or the Azores or Madeira, and have branch offices, agencies, delegations or any other form of permanent representation, or commercial or industrial installations, in the Overseas Provinces.
i) Taxpayers in Group B whose average annual taxable income during the last three years has been more than Esc. 300,000.
j) Corporative organisations.

Any taxpayer in Group B may choose to be included in Group A. However, once he so chooses, he must wait three years before he can request to return to Group B.

Group B, which is comprised of medium-sized firms, is composed of all those tax-

payers who are not included in Groups A and C, as well as those who are subject to the tax only because of some isolated act or operation of a commercial or industrial nature.

Group C contains all firms of a small or extremely small size.

3. The tax base is determined in a different way for each of the three groups of taxpayers. As regards the firms included in Group A, taxable profits are those shown in the statement of profit and loss, brought into line with modern accounting principles. It consists of the difference between all the income earned during the previous year and all the costs or losses incurred during the same period of time, both being determined in agreement with the regulations contained in the Code.

Thus, income is considered to be the revenue derived from any transaction or operation carried out by the taxpayer as a consequence of an action that is normal or casual, basic or merely accessory, namely, the results of basic and complementary or accessory activities. This includes social and welfare activities, income from property or securities held as reserves or in usufruct (with the exception of Government bonds), financial operations, remunerations received for holding management positions in other firms, income from industrial property or anything analogous and the rendering of scientific or technical services.

Capital gains are not taken into consideration in determining taxable profits. For the purposes of this tax, capital gains are defined as income earned through any kind of sale of fixed assets or of property or securities held as reserves or in usufruct. The same is true of purely monetary capital gains resulting from changes in the book value of assets caused by fluctuations in the purchasing power of money, and of capital gains of merely an accounting nature; that is, resulting from evaluations and not effected.

Costs or losses are considered to be those which, within the limits considered reasonable by the Directorate-General of Taxes, were indispensable for earning the profits subject to the tax and maintaining the business in good running order. As such, reference may be made to basic, complementarey or accessory activities related to the production or acquisition of any goods or services; distribution and selling costs; financial and administrative costs; the reintegration and amortisation of assets subject to wear and tear; provisions, etc.

Bad debts, whenever the fact that they are not receivable results from legal action, bankruptcy or insolvency, are also considered as costs or losses.

The setting of reintegration and amortisation rates is envisaged. However, until these have been set by the Directorate-General of Taxes, all costs of this nature will be considered as part of the year's costs or losses within the limits generally accepted for each branch of activity and to the degree that they are not considered unreasonable by the said Directorate-General.

The method of constant percentages was adopted for the calculation of the costs of reintegration and amortisation. However, taxpayers may use another method whenever the nature of the wear and tear or the accounting traditions of the firm justifies it and if the Directorate-General of Taxes does not object.

Donations are subjected to special treatment. Strictly speaking, they are not costs or losses, but they are fully treated as such when they are made to the State or local govern-

ments. A variable percentage allowance, based on taxable income, is permitted when they are made to certain other bodies.

Though, as a rule, tax and para-tax payments may be considered as costs or losses, this is not permitted in the cases of the industrial tax and the complementary tax. Fines and other payments resulting from violations of the tax laws, as well as indemnity payments in the case of insured risks, also may not be considered as costs or losses.

As regards the estimation of the value of stocks, it is envisaged that the Directorate-General of Taxes will establish special rules for each category of activity. Until these rules have been established, the value of the stocks of materials, products or merchandise to be considered as earnings or costs, or to be taken into account in the calculation of profit and loss, shall be arrived at by estimating methods that may be subjected to strict accounting control, are traditional in the industry in question and are generally recognised as valid and effective from the accounting point of view. Besides this, the methods must be used in successive years and must be based on authentic and documented purchase prices or on replacement or sales prices taken from official or other reliable source.

Since it is permitted to form reserve funds designed to cover losses in the value of stocks, no deductions may be made of their costs, be they in the form of depreciation, obsolescence or possible losses in the value of their components.

Net profits, determined by the difference between income and costs or losses, calculated as stated above, may not coincide with taxable profits.

In fact, various deductions from net profits may be made. The most important are the possible deduction of losses suffered in any given year from the taxable profits, if any, of one or more of the following three years; the deduction, though within certain limits and under certain conditions, of profits retained in various reserve funds and, within the next three years, reinvested in the firm itself in new plant or equipment of interest to national economic development, from the taxable profits of the three years immediately following on the conclusion of the investment; and the deduction benefitting societies whose activity consists of the mere management of a securities portfolio with a capital of more than Esc. 50,000,000, as regards dividends and interest on national securities.

Both individual taxpayers and trading companies may belong to Group A.

In the case of individual taxpayers, the income to be considered for purposes of the industrial tax is only that derived from property or securities that make up the assets of the respective firm.

In the case of trading companies, the tax is levied on all profits regardless of their source. For this reason, and in order to avoid double taxation, it is permitted that certain incomes already subjected to other partial taxes be deducted from their total net profits. As an alternative, the taxes paid on these incomes may be deducted from the amount owed on the industrial tax up to the total value of the latter.

4. The taxable profits of the taxpayers who belong to Group A, determined in the above terms, are based on the declaration made by the taxpayer himself. The declaration must be submitted annually and in triplicate during the months of May or July, depending on whether or not the taxpayer has commercial or industrial installations or permanent representation outside Continental Portugal or the Azores or Madeira.

The taxpayers in the group mentioned above must submit various documents along with this declaration. These include, for example:

a) A list of the permanent representatives, directors, managers and members of the Board of Auditors.

b) A copy of the minutes of the meeting or shareholders' meeting that approved the accounts.

c) General estimates made before and after the entry of rectifying elements and the verification of profit and loss.

d) Extract from the balance sheet of the corresponding year, with an indication of the persons who signed it.

e) Extracts from the profit and loss account and, whenever it be necessary to spotlight this, extracts from the account or accounts of activities.

f) Technical reports.

The annual presentation of the declaration mentioned above is compulsory until there is a complete cessation of activities which, in the terms of the Tax Code, shall take place on the day the accounts are closed. In the case of a regularly established society with main-office in Continental Portugal or the Azores or Madeira, this shall be the day the accounts of the liquidator or director are approved.

Up to 15 days after the complete cessation of activities, the taxpayers in this group are obliged to submit the declaration mentioned above, along with certain other documents. Taxpayers who have their residence or mainoffice abroad or in the Overseas Provinces and commercial or industrial installations or permanent representation in Continental Portugal or the Azores or Madeira, must present the declaration referred to above when they totally cease carrying on activities in Continental Portugal or the Azores or Madeira.

The tax base subject to the industrial tax is calculated on the basis of the declarations submitted by the taxpayers. However, whenever such declarations are lacking or insufficient, an examination will be made of the firms's accounts and, if it is still impossible to determine the tax base, the system envisaged for Group B shall be observed.

The accounts of the firms included in Group A are examined at least once every five years.

5. The taxable profits of the taxpayers included in Groups B and C are determined in a different way.

As regards the taxpayers in Group B, taxable profits are set by municipal committees that contain representatives of both the Treasury and the taxpayers.

The committees, after examining the declaration that the taxpayers must submit each year, the information supplied by the verification and control services and any other elements that may be at their disposal, must calculate the earnings and costs of the previous year of every taxpayer in this group and fix the amount of his taxable profits, if any.

Both the taxpayers and the Treasury may appeal the decisions of the committees to a district committee, which is likewise of mixed composition.

The tax base set by the committees cannot be contested in court. However, if legal formalities have been disregarded, the taxpayers may appeal the decisions of any committee to the Tax Court of Second Instance.

The obligation of submitting the annual declaration only ceases when the firm totally desists from its activities. However, the declaration must be submitted within 15 days following the complete cessation of activities.

Whenever the taxpayers in Group B have a regularly organised accounting system, they must include the result of the year's activities in their declaration and must submit along with it copies of their balance sheet and profit and loss account, signed by whoever is responsible for their preparation.

If the taxpayers do not possess a regularly organised accounting system, they must include, among other things, facts about the amount of their purchases and sales and services rendered. In this case, they must keep books registering their purchases and sales and services rendered.

All merchants and industrialists, regardless of the group they belong to, must file their accounts and related documents and keep them in good condition during the next five calendar years. The accounts must never be more than 90 days behind time.

6. The taxable profits of the taxpayers in Group C are also determined by the same committees that deal with the taxpayers in Group B. However, after examining the declarations, the information supplied by the verification and control services and any other facts at their disposal, the committees must decide on the results that every taxpayer in Group C would have obtained during the previous year under normal market and productive conditions, and must determine the amount of their taxable profits, if any.

The taxable profits of the taxpayers in this group will only be revised when the committees have reasons to believe that they should be increased or decreased by more than 25%.

The decisions of the municipal committees may be appealed to the district committees. The tax base set by the committees cannot be contested in court but, if legal formalities have been disregarded, the decisions may be appealed to the Tax Court of Second Instance.

The taxpayers in Group C are not obliged to submit annual declarations. They are only obliged to submit a declaration during the first ten days of January of the first or second calendar year after the firm begins its activity, depending on whether this took place during the first nine months of the year or the last three.

This declaration only needs to be renewed in the case of certain conditions set forth in the law.

7. The rate of the industrial tax is set at 15%. Corporative organisations benefit from a reduced rate of 5 %.

When certain conditions are met, the Minister of Finance may grant a reduction in the tax rate to firms that are set up in regions that are economically less favoured as well as to those who set up industries that make use of local resources or lead to the decentralisation of industries located in urban areas. This reduction may only take place during the first ten years of the firm's activity.

Under certain conditions, firms that run hotels and similar establishments that have been declared of touristic value may also benefit from reductions in the tax rate.

b) Industries with special tax systems

Certain commercial and industrial activities are not liable to the general system contained in the Code of the Industrial Tax, but are subject to special tax systems.

This is the case of the *tobacco manufacturing industry* (see below, No. 4, III); those firms which hold a concession of games of fortune or chance in each of the gambling zones, being subject to the *gambling tax;* and the owners of buildings or places where public spectacles and entertainment are offered, being subject to the *tax on public spectacles or entertainment,* with rates that range between 3.5% and 8%.

Another industry that enjoys a special tax system is the public transport and car rental industry, which is subject to the *bus and driving tax* and the *compensation tax*.

III—TAX ON INCOME FROM CAPITAL INVESTMENTS

Capital tax

1. The new capital tax, whose regulations are to be found in the Code approved on 10th September 1962 by Decree-Law No. 44,561, is, as the introduction to the Decree-Law makes clear, nothing more than a reform of the former *tax on capital investments,* introduced by Law No. 8,719 of 17th March 1923.

The Code employs the shortened name which had long been used by the administrative services and the taxpayers, but leaves the basic structure and concept of the reformed tax intact. The only changes introduced are a number through advisable experience or required by the fundamental ideas on which the entire tax reform is based.

2. The capital tax is a tax on income. It is levied on certain earnings which, as a rule, are periodically received by taxpayers.

It is rather difficult, however, to give an over-all but exact idea of its tax base, since the tax is a highly pragmatic one. In general terms, the Code defines its essence by merely saying that the tax is levied "on income from capital investments". It then enumerates in a specific way incomes subject to it in each of the two sections (A and B) into which it is divided. Besides the incomes named specifically, "any other incomes derived from any capital investments" are also subject to the tax and included in Section B.

The following incomes are included in Section A:

a) Interest on loan capital, either in the form of money or of goods.

b) Income derived from agreements to open credit.

c) Income arising from deferred payments or overdue payments.

The following incomes are included in Section B:

a) Profits distributed to partners of trading companies, and interim interest payments.

b) Money distributed to members of cooperatives when it represents a return on the capital they have subscribed.

c) Profits earned from participation accounts.

d) Interest on bonds and other securities representing loans, except those issued by the Government.

e) Interest on credit advanced by the partners to societies that are neither joint-stock companies nor limited societies.

f) Interest on deposits.

g) The interest earned on current accounts.

h) Sums given to a firm to compensate it for a suspension or reduction in its activity.

All these incomes are *real* incomes and, as a rule, are also incomes *effectively received.* There are a few exceptions, however, in the sense that the tax is levied on merely presumed incomes in the cases of loan capital and agreements to open credit in Section A, and in that of credit advanced by partners to their societies in Section B. It is presumed that interest is received in all these cases: at a minimum rate of 6% per year in the first two cases, and at a minimum rate of 5% in the last. However, while the last case is a question of a "juris et de jure" presumption, the existence of interest in the agreements to open credit and to lend capital may be proved false through the presentation of evidence to the contrary. This possibility is strictly limited, since the proof must be presented in a judicial action brought by the taxpayer against the State.

The system adopted by the Code in the case of bills and promissory notes is also related in some way with the effective or presumed nature of the incomes subject to the tax. This system represents a mere improvement on that already contained in Decree No. 8,719. Given the abstract character of these bonds, which do not permit anyone to know the underlying situation, the Code considers them to be mere *payment bonds* if the drawee or drawer is recorded as a merchant and if they are statedly the result of a commercial transaction; and *capital investment bonds* in all other cases. Whenever bills or promissory notes are issued under such conditions that they should be called capital *investment bonds,* the presumption may be invalidated if the taxpayer presents direct proof to the contrary. In its turn, the Treasury has the right to demand confirmatory evidence whenever the bills or promissory notes are issued under such conditions that they should be called *mere payment bonds.*

The incomes included in Section A are taxable when they are produced in Continental Portugal or the Azores or Madeira, or earned by anyone who has his residence, real main-office or permanent establishment there to which the incomes should be attributed. The incomes included in Section B are taxable whenever the payee has his residence, real main-office or permanent establishment to which the payment may be imputed, in Continental Portugal, the Azores or Madeira.

3. The new Code of the Capital Tax grants several exemptions of a personal and real nature corresponding to a number of differing situations. Some of them represent classical principles of taxation, such as the exemption granted the State, local governments, etc.; others deal with cases which, due to the smallness of the tax base or its inherent liquidity, can hardly be classified as capital investments (for example, the exemption of interest up to Esc. 5,000 which is due to compensation resulting from judicial divisions of estates, and the exemption of interest on sight deposits); and still others are connected with questions of social justice or with the particular nature that economic life may have in certain *milieux,* as is the case of the exemption of interest on loans for seeding purposes.

Particular reference, however, should be made to certain exemptions imposed by the logical articulation of the tax system—a knowledge of which is indispensable for a proper understanding of its structure—as well as to the list of those that are directly connected with economic development, and which reflect a concept of taxation that is contrary to the idea of mere financial neutrality.

Thus the following are exempt from the capital tax: the income of credit institutions subject to the industrial tax; interest on loans made by pawn brokers; interest on loans made by insurance companies on life policies; interest on hire-purchase sales, when these refer to products of the merchant's particular trade; and that which is designed to compensate payments which are over-due. It was considered that all these earnings arose from trading or industrial activities, and for this reason they ought to be included in the tax pertinent to such activities: the industrial tax.

In the same way, the following are exempt from the capital tax: interest on loans made to wine producers by the National Wine Board and the "Casa do Douro" (Port Wine Producers Federation); dividends from shares and interest on bonds issued by companies set up with the specific aim of building low-rent dwellings in urban or industrial zones; profits due to the partners of financing concerns (capital investment societies, etc.) whose activity consists of the simple management of a securities portfolio; interest on bonds issued by various enterprises considered to be of public interest—such as the "Metropolitano de Lisboa, S.A.R.L." (Lisbon Underground Railway Company, Ltd.), the "Banco de Fomento Nacional" (National Development Bank), the "Companhia dos Caminhos de Ferro Portugueses, S.A.R.L." (Portuguese Railways), the "Transportes Aéreos Portugueses, S.A.R.L." ("TAP"—Portuguese Air Lines), and "Radiotelevisão Portuguesa, S.A.R.L." (Portuguese Television).

4. The tax rate is always proportional and, generally speaking, 15% on the total effective income, or that presumed according to the law.

In some cases, the Tax Code itself fixed lower rates and, in others, gave express authorisation to the Minister of Finance to reduce the rate on application from the interested parties.

The following is entitled to a reduced rate of 8%: interest on bonds issued by any company. A reduced rate of 5% is granted to: profits attributed to the partners of trading companies; interim interest payments; monies attributed to members of cooperatives (when these are taxable under the terms of the law); and profits obtained from participation accounts. A reduced rate of 1% is granted to interest on bonds referring to loans made by the Merchant Marine Renewal Fund and by the Fishing Industry Renewal and Equipment Fund.

The Minister of Finance is authorised to reduce the tax rate in four cases:

1. Interest on bonds issued with the aim of investments in the Overseas Provinces when such are included in the official development plans.

2. Interest on securities of the Merchant Marine Renewal and Equipment Fund and the Fishing Industry Renewal and Equipment Fund relative to the Second Development Plan.

3. Interest on loans or bonds subscribed abroad whose product is intended to carry out investments in Portugal when these are included in official development plans.

4. Interest on bonds issued with the aim of investment in rural and underdeveloped regions and of the setting up of industries designed to make use of local resources or for the decentralisation of industries situated in urban districts.

5. The registration and payment of the tax are carried out in a different manner according to whether they refer to income included under Section A or Section B.

Under Section A, the process laid down provides for the collection of the tax directly from those who have a legal title to the income subject to such tax. To this effect, such persons shall declare the existence of the situation or act whereby they derive their income, within a period of 30 days from the date on which such income begins to be due, or on which such rights are presumed to be due. If they do not comply with this, they shall be subject to a fine equal to five times the tax due, except in such cases in which the administrative services should have cognisance by virtue of the reports which notaries and the courts are obliged to send every month, in which case the fine shall be reduced to twice the amount of the tax.

In the finance department, a register is kept of the situation or act whereby the taxable income is derived; this register calls for the payment of the tax until it is cancelled by the interested parties, who may, however, independently of such cancellation, cause it to be suspended in the case of credits in legal dispute. Apart from the monthly reports and the inspection carried out directly by the administrative services, the taxpayers who fall within the terms of Section A shall be obliged to meet their obligations also by means of the following dispositions: the registrars of the property registration office and of the automobile registration office shall not make any final registrations of acts and contracts from which there are derived income subject to the aforesaid tax unless the declaration is duly shown; the courts shall not receive any documents or permit the hearing of cases unless the tax obligations related thereto are fulfilled; the courts and official departments shall not authorise payments, adjudication of property or delivery of money existing in deposit without the corresponding tax having been previously paid.

In Section B, the tax is *withheld at source,* and must be delivered by the individuals or firms who owe the income subject to this tax. Delivery is effected by means of proformas filled out in triplicate by the end of the month following that in which the income is placed at the disposal of those who have title to it, in the case of profits attributed to the partners of trading companies, in the case of amounts remunerating the capital subscribed by the members of cooperatives and in the case of amounts remunerating the capital subscribed by the members of cooperatives and in the case of interest on advances made by partners to their societies up to the end of the month following that in which the interest on the bonds falls due, when these are the incomes in question, and by the end of the month following that in which the payment of the income occurs, in all other cases. The individual or firm who carries out the delivery is always obliged to deduct the tax from the income paid.

IV—TAXES ON INCOME FROM LABOUR

a) The Professional Tax

1. This tax, regulated by the Tax Code of 27th April 1962, is levied on income from labour in money or in kind, whether it be contractual in nature or not, regular or occasional, fixed or variable, regardless of the kind or place of work, and of the money and form established for its calculation and payment, when it is earned by individuals—nationals or foreigners—who in Continental Portugal and the Azores and Madeira:

a) Carry on any activity on account of any other person.

b) Carry on, on their own account, any of the activities mentioned in the table attached to the Code.

c) Are the holders of author's rights or permanent or temporary patents for inventions, licences for exploitations, scale models or any similar rights to the results of intellectual labour.

2. The main exemptions from this tax are in regard to the employees of the State, local governments and their federations and unions and of corporate persons of administrative public utility; the personnel of diplomatic missions, when reciprocal rights have been granted to Portugal; priests and religious covered by the Concordat between the Holy See and the Portuguese Republic; and all tax-payers whose annual taxable income is no more than Esc. 18,000.

3. The tax is levied on real income, and its determination is based on the declarations that the taxpayers themselves must submit in January every year to the finance department of the areas where they live.

As regards taxpayers who exercise on their own account any of the activities mentioned in the table attached to the Code (lawyers, doctors, engineers, economists, etc.), the law permits them to issue receipts to their clients, on officially approved forms, for all the sums they receive. These must be presented along with the respective annual declaration.

These declarations are then passed on to a municipal or borough committee which includes a representative of the taxpayers. As regards taxpayers who exercise activities on account of any other person, are the holders of author's rights or any similar rights or who exercise on their own account any of the activities mentioned in the table attached to the Code and have chosen to adopt the system of official receipts, the committee merely *checks* the declarations that have been submitted. However, if the committee discovers any errors or omissions in the declarations, it shall *fix* the tax base itself.

In all other cases, the committee shall *fix* the taxable income of the taxpayer.

As relates to taxpayers who need and possess fixed and permanent installations in order to exercise on their own account any of the activities mentioned in the table attached to the Code, the law allows the deduction of certain expenses from gross receipts. These expenses include rent paid for the installations, remuneration of permanent personnel, insurance, telephone, water, etc.. They shall be deducted in agreement with the minimums set forth in the aforecited table, or up to the total amount that the taxpayer can prove

by document to have paid out when this exceeds the minimums or when no corresponding sums appear in the table.

During the first fortnight in April, the taxpayers or the Treasury may appeal the taxable income fixed by the municipal or borough committees to a district committee on which the respective profession is also represented. In principle the decisions of these district committees may not be contested in court. However, their decisions, as well as those of the municipal or borough committees, may be appealed to the Tax Court of Second Instance whenever legal formalities have been disregarded. The bringing of such action does not suspend the effects of the decision.

4. The tax rate is 8%, but when incomes are no more than Esc. 300,000, it is reduced to:

Taxable Income Up To	Per Cent
300,000$	7
250,000$	6
200,000$	5
160,000$	4
120,000$	3
80,000$	2
40,000$	1

The remunerations of the owners of single-proprietor firms who, under the terms of the Code, are considered to exercise activities on account of other persons, as well as those of the members of the various management bodies of societies or of partners who are obliged by statute to hold any other positions, are subject to a different rate sytem.

Thus the industrial tax rate is applied to remunerations corresponding to amounts spent on trips or as company representative when receipts for such expenses have not been presented by the end of the year. As to any other remunerations, the professional tax rate is levied on the first Esc. 80,000 and on half the rest; while the industrial tax rate is levied on the second half; this, however, is only true when the remunerations are between Esc. 80,000 and Esc. 160,000. If such remunerations are more than Esc. 160,000, the professional tax rate is levied on Esc. 120,000 and the industrial tax rate on all the rest.

Taxpayers who during any part of the year have simultaneously exercised two or more activities on account of private entities, as well as one of these activities and functions as civil servants or employees of local governments and their federations or unions and any corporate person of administrative public utility, and who have received more than Esc. 150,000 from these activities, are subject to a *surcharge* on the income exceeding this amount. The surcharge includes the following rates:

Taxable Income (Part Exceeding Esc. 150,000)	Per Cent
Up to 100,000$	8
Up to 300,000$	10
Up to 500,000$	12
More than 500,000$	15

5. As regards taxpayers who exercise any activity on behalf of any other person or who hold author's rights, the law has adopted, though to a limited degree, the system of withholding the tax at source. The persons who pay or deliver the respective remunerations are obliged to withhold 1% which they must hand over to the Treasury during the month following that in which the remunerations were paid or delivered.

If the taxable incomes are between Esc. 18,000 and Esc. 40,000, the tax owed by such persons shall be fully paid in this way. In all other cases, the taxpayers are only obliged to pay, during July of each year, the difference between the total tax they owe and the amounts that have already been withheld and handed over to the Treasury by the paying entity.

b) Contribution to the Unemployment Fund

The present regulations of this tax are contained in Decree-Law No. 45,080 of 20th June 1963. Under their terms, the following are subject to the tax: all persons—individual or corporate, nationals or foreigners—who carry on, in Continental Portugal or the Azores or Madeira, any profit-seeking activity and employ one or more wage or salary earners or any other employees (including managers, directors, and members of Boards of Auditors, and engineers, doctors, lawyers and any other technicians in their permanent or temporary service), as well as all those who hire out their labour or activity to any other person in return for any remuneration, regardless of its nature or objective.

The tax is levied on all wages, salaries, gifts, commissions, subsidies, bonuses, additional salary payments and other fixed or contingent remunerations in the form of money, goods, food or habitation.

Employers pay a tax rate of 1%, while workers pay 2%.

The assessment, collection and later payment of the tax are always the exclusive responsibility of the employer, who must deduct the worker's part of the tax from the remunerations he pays out.

V—THE COMPLEMENTARY TAX

1. The complementary tax is levied on the total income of individuals—Section A—and corporate persons—Section B—, according to the terms of the respective Code.

Section A

2. When it is levied on individuals, the complementary tax acts to correct the effects of the system of parcial taxation and constitutes an element of personalisation in Portuguese direct taxation, since it takes the special circumstances of every taxpayer into account.

The following are subject to this tax:

1 All persons residing in European Portugal are taxed on their total income. The latter is the sum of the following incomes, included after the tax due has been deducted

whether they are subject to partial taxes in this territory or not and, in the negative case, whether they were produced therein or not:

a) Income from rural and urban property.

b) Income from agriculture.

c) Income from trade and industry.

d) Income from labour, including allowances and pensions received by those on retirement and by regular officers who have been placed on the reserve list.

e) Income from capital investments.

f) Pensions and temporary or life annuities.

2 All persons not residing in European Portugal are taxed on their total income, taken as the sum of the incomes cited immediately above that are subject to partial taxes in that territory or, in the negative case, produced therein; the taxes being likewise deducted.

A person shall be considered a resident of European Portugal if in a given year he:

1) Has resided permanently in this territory or remained there for more than 180 days, whether these be consecutive or not.

2) Has remained for less time, but on the 31st December possesses a dwelling that implies an intention to maintain and occupy it as his habitual residence.

3) Is on 31st December a crew member of a ship or plane registered in the aforementioned territory.

For the purposes of this tax, the following incomes are imputed to the head of the family:

a) The common incomes of the couple.

b) The separate incomes of the other spouse, if not separated judicially from bed and board.

c) The incomes of minor children and step-children administered by the head of the family, or by the other spouse if the latter is not separated judicially from bed and board.

3. It should be noted that the law grants exemptions in order, for example, not to create undesirable or unjust situations, or to avoid technical difficulties.

4. After adding together all the aforementioned incomes—whose sums are, generally speaking, equal to those considered for the purposes of the partial taxes[2])—i. e., after calculating the *gross income,* various deductions are made in order to obtain, first, the *net income,* and second, the *taxable income.* These deductions are more limited in the case of non-residents, since not all their income is subject to the tax.

In order to obtain the *net income,* all compulsory liabilities are deducted (viz. taxes and

2) Incomes produced outside European Portugal and not subject to any partial taxes in that territory shall be considered in their net forms, taxes included, except for the complementary tax or corresponding tax paid in the Overseas Provinces. This exception results from the fact that this tax is imputed to the complementary tax paid in European Portugal.

surcharges relating to the incomes included, compulsory dues to which those earning income from labour are subject, interest payments and debt liabilities). In order to obtain *taxable income,* the following deductions are made:

a) 20% of income from labour, up to a maximum of Esc. 20,000, in order to put it, in a certain way, on the same level as incomes from capital and property.

b) A flat sum of Esc. 60,000, in order to permit a minimum standard of living.

c) An allowance of Esc. 20,000 for the taxpayer's spouse if not separated judicially from bed and board.

d) An allowance of from Esc. 2,500 to Esc. 10,000 for each minor, dependent child or step-child who is not a taxpayer. The amount varies with the age of the child[3]).

e) Other sums spent on life and accident insurance premiums, contributed to charities or invested in regional development firms.

5. The rates of this tax are progressive and range from 3% for taxable income up to Esc. 50,000 to 45% for that portion of taxable income exceeding Esc. 3,000,000. The minimum rate of 3% is increased by 1% for each block of Esc. 50,000 of income up to the limit of Esc, 1,200,000; above that amount, the rate is increased by 1% for each block of Esc. 100,000 up to the limit of Esc. 3,000,000[4]).

Section B

6. With the introduction of the complementary tax, Section B, an attempt has been made to cover various tax loop-holes and make the taxation of certain corporate persons more equitable.

The following are subject to this tax:

1) Trading companies with main-office or effective management in European Portugal ([5]), as regards their total income. The latter is the sum of the incomes subject in this territory to the partial taxes indicated below, after the profits distributed to partners in relation to the year to which the tax refers have been deducted:

a) Property tax;
b) Tax on agricultural profits;
c) Industrial tax;
d) Capital tax;
e) Tax on public spectacles or entertainment.

3) As regards non-residents, a single deduction of Esc. 40,000$ is permitted as an allowance for a minimum standard of living and family responsibilities.

4) Although the tax is levied on the total amount, agricultural profits arising from forestry activities whose income is produced over a certain number of years are considered, for the effect of determining the applicable rates, only as the result of the division of the income corresponding to the undertaking by the number of years (not more than ten) that make up the productive cycle (Decree-Law no. 46.369 of 7th June 1965).

5) Companies having their main-office or effective management outside this territory are not subject to the complementary tax.

2) All other corporate persons, whether national or foreign, as regards their total income; this being taken to be the sum of the incomes indicated above.

7. Several exemptions are granted: for example, in favour of corporate persons whose taxable income is no more than Esc. 2,500 and, under certain conditions, those who carry on new or reorganised industries or manage hotels or similar establishments considered officially to be of touristic interest.

8. The applicable parts of the rules laid down for Section A are followed in determining the amounts of the various kinds of incomes and their addition. The partial taxes due on these incomes are deducted.

9. The tax rates vary, according to whether the taxpayers are societies or not.

As regards societies, the rate is 4 % on all taxable income up to Esc. 100,000. Above that amount, it is 5%, 6%, 7%, and 8% on taxable income from Esc. 100,000 up to Esc. 1,000,000; from Esc. 1,000,000 up to Esc. 2,500,000; from Esc. 2,500,000 up to Esc. 5,000,000; and exceeding Esc. 5,000,000, respectively.

These are reduced to a half in the case of all other corporate persons. There is one exception, however, since the rates are doubled for enterprises which are believed to have been constituted merely for the administration of assets. The latter are defined as enterprises deriving an average of more than 80% of their total revenue, over a three year period, from assets and properties held as reserves or in usufruct.

Special System for Securities

10. As has been said, the complementary tax is determined through administrative assessment. However, it is withheld at source in the following cases:

1) Dividend and interest payments, after deduction of the capital tax, Section B, of shares and bonds to the bearer issued by entities with main-office in European Portugal, at the rate of 20%.

2) Dividend and interest payments made in European Portugal and referring to the above mentioned securities, issued by entities with main-office in any other Portuguese territory. The rate is equal to the difference between that mentioned above and that of the complementary tax or equivalent to which they were subject in the respective territory as dividend or interest payments of non-registered securities to the bearer.

However, any and all of these securities may be registered, at the request of the respective owner, without their ceasing to be considered to the bearer, at the main-office of the issuing entity or, if the latter is situated outside European Portugal, at its permanent representation. The result is that the dividend and interest payments are totalled with the other income received by the owner, thus avoiding deduction at source.

Foreign securities must be registered in the finance departments whenever they are found to be in European Portugal and belong to individuals or entities that have their residence or main-office therein.

3—TAXES ON WEALTH

I—GIFT AND INHERITANCE TAX

1. This tax is levied on the free transfer or movable or immovable property, on either a permanent or temporary basis, when this takes place by reason of inheritance or as a gift.

The term "immovable property" includes both that which is immovable by nature or by the action of man, and that which is so considered by law. The term "movable property" is construed in a parallel sense.

By the word "inheritance" is meant hereditary succession in its legitimate, legitimised, testamentary or contractual forms envisaged in civil law, whether the successor be heir or legatee.

For the purposes of this tax, a "gift" is fundamentally a free transfer of property, and does not presume the existence of the contract referred to in civil law. The renunciation or abandonment of any established rights that immediately benefits any other person is always considered a free transfer when the taxpayer can prove this. If no proof is presented, it shall be presumed to be a free transfer in cases of renunciation of rights to movable property; but if the renunciation is related to immovable property or to a mixture of immovable and movable property, the transfer shall only be presumed to be free if this leads to a larger tax payment than would result from the presumption of a transfer against payment, in which case it would be subject to the transfer tax.

The mere juridico-civil acquisition of property, according to the above terms, does not in itself, however, lead to the assessment of the gift and inheritance tax. The only transfer that counts is the real and effective transfer of property. Thus the tax is only levied when there is economic acquisition of property, in addition to juridico-civil acquisition. Thus for the purposes of this tax, where conditions are attached to the transfer and the conditions are not fulfilled, the transfer shall only be considered to have been effected when the giver dies, in cases of gifts received on occasion of death or between husband and wife; or, in the latter case, when the donor definitely alienates the property. In cases of inheritance or gifts or property separate from their usufruct, the transfer shall only be considered to have been effected when the usufruct ends or the property is alienated.

2. This tax is paid by those who receive the property.

3. The tax base is the total value of the property involved after deducting all liabilities (debts, etc.); i.e., the tax is levied on the net part received by the heir or donee.

4. The law grants numerous exemptions. These are, viz.: in favour of descendents in cases of transfers derived from the same ascendant, though at different times, when the value is no more than Esc. 100,000 per heir or legatee; transfers of literary, scientific or artistic property; bequests, legacies and donations to corporate persons of administrative public utility as well as to museums, libraries, schools and teaching, educational, scientific, literary, artistic and charitable institutes and associations and those devoted to assistance and beneficence; the acquisition of property by physical culture associations, when it is designed for installations that are not normally used for spectacles whose admission is

not free; the acquisition of property for the building and installation of hotels or similar establishments that have been previously declared to be of touristic interest; and, finally, the acquisition by foreign governments of buildings and their annexes when these are to be used as their embassies or legations or of plots of land to be used for their construction, as long as Portugal has been granted reciprocal rights.

5. There are special rules for determining the locality of property, since the tax is only levied on property that exists in or is situated in Continental Portugal and the Azores or Madeira. These rules are the following:

1) The locality of the rights to movable and immovable property are determined by the locality of the property to which they refer. Motor vehicles, ships, planes and railway rolling stock are considered to be situated in the place of their registration.

2) Financial assets, even when they take the form of securities or a part interest in a partnership, belong to the residence of their owner. An exception is made in the case of bonds and certificates of the funded public debt, as well as in those of bonds issued by any other public or private entities and of shares of companies with main-office in Continental Portugal or the Azores or Madeira, all of which are always considered to be situated in European Portugal.

The locality of property is therefore determined by either its physical or effective presence.

6. The successors or donees must sign a declaration containing an estimate of the property and assets comprising the bequest or gift. The tax shall be paid on the value of the property transferred.

If the property is expropriated for reasons of public utility before the tax has been paid, its value shall be equal to the indemnity payment unless this is determined by agreement or transaction.

If their is an evaluation—something which may take place in most cases—the value of the property shall be thereby determined. The evaluation may be held at the request of the National Treasury, although this is a right that, under certain terms, the taxpayer also enjoys.

In all other cases, the value of immovable property shall be determined by the property registry unless it has been attributed a higher value by an inventory or in a division of the estate. The value of those items of immovable property that cannot be determined by the property registry, as well as of all movable property, shall be declared by the taxpayer unless there is an inventory or division of the estate, in which case the value shall be thereby determined. There are also special rules for determining the value of certain kinds of property, viz., national or foreign coins; gold objects, jewels, silver, precious stones and similar valuables; commercial or industrial establishments; part interest in societies that are not joint stock companies; and shares, bonds and certificates of the public debt and other credit instruments.

7. A system of progressive tax rates is levied on the net value of the property in question. These rates depend on the degree of relationship existing between the "de

cujus" or giver on the one hand, and the successor or donee on the other, according to the following table:

On Tranfers	Up to 5,000$00 %	From 5,000$01 to 20,000$00 %	From 20,000$01 to 100,000$00 %	From 100,000$01 to 250,000$00 %	From 250,000$01 to 500,000$00 %	From 500,000$01 to 1,000,000$00 %	From 1,000,000$01 to 2,000,000$00 %	From 2,000,000$01 to 5,000,000$00 %	From 5,000,000$01 to 10,000,000$00 %	From 10,000,000$01 to 50,000,000$00 %	More than Esc. 50,000,000$00 %
To descendents	—	—	3	5	7	9	11	14	17	21	25
To ascendents	9	11	13	15	17	19	21	24	27	31	35
Between husband and wife	10	12	14	16	18	20	22	25	28	32	36
Between brothers and sisters	11	13	15	17	19	21	23	26	29	33	37
Between 3rd degree collateral kinsmen	17	19	21	23	25	27	29	32	35	39	43
Between anyone else	26	28	30	32	34	36	38	41	44	48	52

The applicable rates are those that are in force at the time the property is transferred. The degrees of relationship are determined by the regulations contained in civil law, and refer to the date on which, according to the latter, the transfer took place.

The tax shall be reduced by a half in cases of transfers occasioned by death if the property has been transferred during the five previous years.

8. The tax may be paid in various ways. It may be paid in instalments, but the period of time between each payment shall not be more than six months. There may be no more than sixteen payments; but the lower the tax to be paid, the higher shall be the number of payments. However, if the taxpayer wants to pay the tax in a single payment he may do so; in this case, he benefits from a special discount.

If the tax regards the transfer of property held in usufruct or for use or habitation, or the transfer of property to a trustee, or any pension established in favour of a third party, it shall be paid in no more than twenty annual payments. The annual payments shall lapse if the right to enjoy the property ceases, and they shall benefit from a reduction if the taxpayer wants to or has to pay them in advance.

The inheritance and gift tax is, in certain cases, payable by means of a block agreement. This is what happens when it refers to transfers of bonds and certificates of the funded public debt, bonds issued by any other public or private entities, shares of companies with main office in Continental Portugal or the Azores or Madeira, and bonds issued by foreign concessionary companies that have been placed on the same footing as those issued by national companies, under the terms of Decree Law N.° 41,223 of 7 th August 1957. In these cases, the tax is paid by means of a deduction from the income of the securities. The block agreement is for 5 per cent of the interest, dividends or any other income attributable to the securities, and shall be withheld from these incomes by the payer.

II—THE TRANSFER TAX

1. The transfer tax is levied on all transfers, either perpetual or temporary, of real property against payment.

Some acts which are not considered transfers of real property by law are so considered for the purposes of this tax. In this regard, special mention should be made of: the sub-letting and transfer of concessions made by the State or local governments for the operation of industrial firms of any nature; promises to buy and sell or to exchange real property, as soon as the promising buyer or exchangers have carried out the transfer or are enjoying the usufruct of the property in question; the renting, sub-renting or consignment of incomes on a long term basis (considered to be more than thirty years); the acquisitions of part interests in copartnerships or limited companies, as well as amortisation or any other facts, when such companies possess real property and the acquisitions or facts result in one of the partners coming to own at least 75 per cent of the capital stock, or if they result in the number of partners being reduced to two, these being husband and wife with community property.

The simple renunciation of any right to real property or to a mixture of real and personal property that immediately benefits another party is always considered to be a transfer; it is considered to be a transfer against payment whenever the taxpayer proves it to be so. In the absence of proof, it shall be so considered whenever this produces more tax revenue than would occur if it were considered a free transfer, in which case it would be subject to the gift and inheritance tax.

2. The transfer tax is payable by those who receive the property. It is only levied on property that exists or is situated in Continental Portugal or the Azores or Madeira, the rules governing this matter being the same as those already described in connection with the gift and inheritance tax.

3. The transfer tax is levied on the value for which the goods are transferred. This, generally speaking, is taken to be the price agreed upon by the contracting parties, or the value resulting from the taxable income, if this is higher.

4. The law grants exemptions to a number of transfers viz.:

a) The acquisition of plots of land for the construction of buildings designed for habitation and the renting of plots for the same purpose, in the terms and under the conditions established by the law.

b) The acquisition of cheap housing units.

c) The acquisition of property by corporate persons of administrative public utility and by museums, libraries, schools, and teaching, educational, scientific, literary, artistic and charitable institutes and associations and those devoted to assistance and beneficence, when the property is to be devoted to the direct and immediate realisation of their objectives.

d) The acquisition of property by physical culture associations, when it is to be devoted to installations that are not normally used for spectacles whose admission is not free.

e) The acquisition of property by dioceses, missionary districts and institutes and other canonically created ecclesiastical bodies and religious institutes, for the achievement of their purposes.

f) The acquisition of property for the construction and installation of hotels or similar establishments, when these have been previously declared to be of touristic value.

g) The acquisition by foreign governments of buildings and their annexes which are to be used as their embassies or legations, as well as of plots of land to be used for their construction, as long as Portugal has been granted reciprocal rights.

The law also permits the government to grant exemptions from this tax in cases of transfers aimed at reorganising industries in line with established rules.

5. The tax rate is, generally speaking, 8 per cent, though it is reduced in certain cases and under certain conditions. Thus, for example, it is 1 per cent for the first transfer of urban buildings designed for habitation or of the right to use the surface of a plot of land if the building has already been constructed; 4 per cent for transfers that take place because of the merger of trading companies; and also 4 per cent for the acquisition of buildings, or building sites, when these are designed for the setting up of industries of interest to the economic development of the country, or of the proper expansion of firms when this is aimed at the production of new goods or at obtaining reductions in costs or better quality products.

III—THE CAPITAL GAINS TAX

1. The capital gains tax, created by Decree-Law No. 46,373 of 9th June 1965, is a new tax as far as Portugal is concerned. However, it does not represent a new form of taxation, since capital gains were already taxed in certain isolated cases, either under this specific name or under the name of income. Thus since 1948, any increase in land values caused by the execution of public works has been subject to a capital gains tax envisaged in Article 17 of Law No. 2,030 of the 22nd June of that year. In the same way, gains resulting from the incorporation of reserves in the capital of joint-stock companies and partnerships organised on a share basis, as well as from the issue of shares with preference rights retained by existing share-holders, were subject to the former tax on capital investments, though they were not then considered true capital gains for tax purposes. In their turn, gains resulting from the transfer of office space used by the learned professions were subject to the stamp duty for a long time, although this tax was legally due from the new occupant and not by the party that effectively realised the capital gain.

2. The capital gains tax is levied on a form of wealth that cannot be considered, in the light of the basic principles that underlie the Portuguese system of direct taxation, either income, capital, or property. This form of wealth was formerly more frequently confused with income, but if income is taken by us to be, as a rule, of a recurring nature (composed of property that, as a rule, is regularly received by taxpayers), it is obvious that gains which result from increases in the value of property that was neither produced nor acquired for sale (capital gains) are of a different nature.

However, this is not a tax levied on all real increases in the value of property. The tax is limited to four typical and specific forms of capital gains that, being those that most frequently occur, are also those that offer no serious difficulties as regards their determination.

a) The first consists of gains resulting from the transfer against payment of plots of land for building purposes. In this case, the capital gain is taken to be the difference between the selling value and the original purchase value, the latter being corrected to take losses in the purchasing power of money into account. In order to facilitate the determination of the tax base, the selling value is taken to be that which was decided on in connection with the transfer tax, while the original purchase value is taken to be that decided on in connection with the transfer tax or the gift and inheritance tax, depending on whether the transfer was against payment or free. Of course, the capital gains tax is only applicable if the plots of land were not acquired for re-sale; for if this is the case the gain takes the form of a profit attributable to a commercial act, and it is presumed that the acquisition against payment of building sites that are sold within two years of the date of acquisition, was effected with the intention of a later re-sale.

b) The next consists of gains resulting from the transfer against payment of fixed assets of firms or of property or securities held by them as reserves or in usufruct. In this case, too, the capital gain is taken to be the difference between the selling value and the purchase value, but the latter—besides being corrected to take losses in the purchasing power of money into account—is also corrected by amounts equal to those which, according to sound accounting criteria, should have been set aside to amortise or replace it. It should be noted, however, that while the first correction (losses in the purchasing power of money) increases the purchase value, the second (amortisations and replacements) reduces it. In this regard, the declaration of capital losses is permitted, in which case the tax shall be levied on the difference between the total amount of capital gains received and the total amount of capital losses suffered during a given year.

c) The third form is the transfer of office space used by the learned professions, and once again the capital gain is the difference between the selling value and the purchase value (corrected). As a rule, neither of these values may be taken to be less than five times the taxable income attributed to the transferred space in the respective property registry. However, there exists the possibility that, in the last analysis, the tax base may be fixed by evaluation, since the taxpayer may contest the value resulting from the taxable income, while the National Treasury may contest the prices or values declared by the former.

d) Finally, there is the case of gains resulting from the incorporation of reserves in the capital of joint-stock companies and partnerships organised on a share basis, and from the issue of shares with preference rights retained by existing share-holders. Since it is obviously impossible, from a technical point of view, to determine these gains directly, they are estimated *à forfait* to be equivalent to 50% of the reserves incorporated, or to the difference between the value of the shares and their issue price, depending on the case. This amount is then apportioned to the share-holders or partners in proportion to the increase in the nominal capital that is due to each one.

All the taxed forms of capital gains therefore represent effective gains that have been converted into money. For tax purposes, neither purely nominal gains (resulting from a mere increase in the money value of property due to a fall in the purchasing power of the currency) nor potential gains (i.e., those increases in property values that the respective owner does not convert into money because he either keeps the property or transfers it freely), are taken into account.

Very few exemptions are permitted. Besides those that result from the application of classical principles of taxation, such as the case of the exemption of the State and local governments, the only ones that are granted on principle regard the situation of the Bank of Portugal; the contractors and those who submit successful tenders for works and projects that make up the common N.A.T.O. infra-structure; and social security bodies. However, for special reasons connected with economic policy, consideration has also been given to the following cases: companies whose activity is limited to the simple management of a portfolio of securities and which have a capital of more than Esc. 50,000,000, as regards capital gains resulting from the incorporation of reserves and the issue of shares with reserved preference rights; and firms which sign agreements tending to lead to the industrial reorganisation of the respective sector, as regards capital gains resulting from the sale of fixed assets or of property or securities held as reserves or in usufruct.

The report preceding the Tax Code explains these limitations in the following way: "Since, as a matter of fact, this tax is only aimed at merely occasional increases in values, the existence of this taxation cannot in most cases constitute an obstacle to the achievement of capital gains, nor does justice demand that any exemptions be granted".

4. Contrary to what is current practice as regards this form of taxation (capital gains are fortuitous—windfall profits), the tax rates are low: 20% for capital gains received from building sites, and 10% for the other three types of capital gains. The report preceding the Tax Code justifies this fact on two principal grounds: " . . . first, the tax does not touch all capital gains, nor perhaps the greater part; second, the report of capital losses has not been permitted because of various difficulties . . ." The increase in rates in the case of building sites is due, still according to the aforementioned report, to the ". . . rapidity with which prices rise considerably nowadays . . ." " . . . all the more since it was not at all probable that the tax would make land values dearer, being passed on to the buyers".

5. The entry, assessment and collection of this tax vary according to the type or category of capital gains in question.

In the case of capital gains regarding building sites, and in that regarding the transfer of office space used by the learned professions, it is the taxpayer himself who requests the assessment of the tax (for eventual collection), without which the signing of the respective transfer deed shall not be permitted.

The assessment and collection of the tax as refers to capital gains resulting from the sale of fixed assets belonging to any firm or of property or securities held by it as reserves or in usufruct, are carried out at the same time as those regarding the industrial tax due

by the same taxpayer, according to the terms established by the respective Tax Code.

As to capital gains resulting from the incorporation of reserves in the capital of joint-stock companies or of partnerships organised on a share basis, or from the issue of shares with preferential rights reserved for existing shareholders, the assessment of the tax is carried out on the request of the companies that wish to proceed with these operations. Until this is done, the notaries may not draw up the respective deeds permitting the increase in capital. The total amount of the tax is eventually paid by the interested company, which shall later require the non-exempt partners or share-holders to pay a part proportional to the increase in the nominal capital that is attributable to each one. To this end, the company may retain the shares that are due to negligent partners or share-holders as long as they are in default of payment, and may recover the debt from the profits attributed to them.

4—TAXES ON CERTAIN TYPES OF EXPENDITURE

1—TAX ON SUPERFLUOUS OR LUXURY ARTICLES

1. Institution of a sales tax is forecast for this year. Apart from several taxes on consumption which we shall mention below, the tax on superfluous or luxury articles was created in June 1961 and extensively amended in March 1962. Two of its main aims are to discourage luxury expenditure and to encourage saving within the policy of economic development.

2. Originally there was a sole rate of tax, 15%. The revision, however, extended the list of articles liable to the tax and instituted three rates of tax, 10%, 15% and 20%, corresponding to the various degrees of superfluity of consumption.

3. The tax is levied on the articles and services contained in an appended list. The most important of these are: heating and refrigeration apparatuses, cameras and film cameras, film projectors, radio and television sets, sports goods, pleasure vessels, fancy goods, meals in de luxe restaurants, beauty treatments, etc.

4. The tax is levied on the price of sale to the public of the articles concerned, or on the charge for the services given, and the law obliges those who sell such articles, or provide such services, and who are responsible for payment to the State, to transfer this liability to consumers. In selling-prices for the public they must indicate what part of the price represents the tax payable.

5. The following are exempted from payment of the tax: purchases of products to set up industrial or trading establishments, or the instruments of professional activity, or the supplying of public departments, and purchases made by foreigners who are not residents in Portugal, when paid for by traveller's cheques and when the articles concerned are delivered to the purchasers at the customs houses of harbours or international airports, when such purchasers leave the country.

6. In instituting this tax, steps were taken, in accordance with international agreements to which Portugal is a party, to levy it without distinction on articles produced in Portugal and foreign goods.

As the tax is levied at the retailing stage, it was not, generally speaking, necessary to make allowance for methods to exempt exports and to make imports liable. On the one hand, the tax applies without distinction to both Portuguese and foreign goods, at the time of their purchase by their final consumer; on the other, as exports normally take place at stages anterior to retailing, goods are exported without being subject to the tax, and it thus proves unnecessary to make allowance for exemptions therefrom.

We should, however, note that in order to encourage tourism, an exemption has been granted in the case of purchases made by non-resident foreign nationals, as has been mentioned.

Moreover, the law determines that in cases where consumers directly import goods subject to tax, this tax is to be paid at the customs when the customs duties are paid. In this case, the rate of tax will be, in principle, the selling price to the public charged in the home trade for the article in question.

II—NATIONAL SECURITY TAX

This tax is at present levied on imports of sugar of any type, caramel, glucose, maltose, lactose and levulose (at the rate of 1$0125 per kilo), petrol (3$52 per kilo), ethers and perfumes (3$52 per kilo), oils non-infammable at ordinary temperatures and which distil completely by 245°C (3$52 per kilo) and lighting oils (0$1125 per kilo).

III—TAX ON TOBACCO MANUFACTURES

This tax is levied on the public selling price of manufactured tobacco and is paid at the producer's level, by means of note of payment, at the rate of 28%. Exported goods are exempted.

IV—TAX ON TOBACCO CONSUMPTION

This tax also applies to manufactured tobacco at the producer's or importer's stage. Rates vary according to the type of tobacco and its origin or form of production. It is paid by note of payment, and it must be passed on to the consumer.

V—TAX ON SALE OF TOBACCO

This tax is also levied on manufactured tobacco. It is paid by the producer or importer, by note of payment, at the rate of 0$80 per kilo sold; it must be passed on to the consumer.

VI—TAX ON MOTOR-CARS

This tax is levied by the Trade Promotion Board and applies to light motor vehicles, classified by the Customs as being "for passengers" or "mixed passenger and freight vehicles", and is paid by note of payment by the importer or assembler. Vehicles assembled in Portugal in Europe and exported to the Overseas Provinces or to foreign countries are exempted.

The tax is calculated by applying the factor 0.20 to the public selling-price, in escudos, with a maximum limit of 30%.

VII—FISHERIES TAX

This tax is levied on fishing done by Portuguese vessels at sea and in rivers as far as the zone of influence of the tides, and on certain by-products. It is paid by note of payment when the fish is despatched, at the general rate of 7% of the value. There are special rates for certain kinds of fish and their by-products, such as codfish and fish oil.

VIII—TAX ON BEER MANUFACTURE AND CONSUMPTION

The rate is 2$10 per litre and it is levied on beer brewed in Portugal and the Azores and Madeira and intended for domestic consumption. It can be paid by note of payment, by block agreement or by direct inspection.

IX—TAX ON SOFT DRINKS, BOTTLED ALCOHOLIC BEVERAGES AND ICES

This tax is of recent institution. It applies, among other products, to soft drinks, fruit juices and concentrates, mineral and table waters, table wines, licorous and generous wines, natural and gaseous sparkling wines, ices or icecreams. The tax is levied on the producer or importer and is paid by stamp or by note of payment.

The rate varies between $50 per recipient of 1 litre for mineral and table waters to 30$00 for each recipient of 5 litres for liqueurs and other beverages the price of which is above 50$00 a litre. For ices, the rate is 0$50 per 50 grammes.

There is an additional tax of 10% on the sale price to the consumer whenever the products are sold, or are intended for sale, at a price which is more than 70% above the producer's or importer's price.

X—TAX ON THE MANUFACTURE OF MATCHES

This tax is levied at the rate of 0$06 per box of 40 matches and is paid by note of payment by the producer or importer.

XI—TAX ON PERFUMERY AND TOILET PREPARATIONS

This tax is levied on products used for beauty treatments, such as perfumes of any kind, including essences, extracts, eaux-de-cologne, lotions, brilliantines, hair creams, hair-removers, face powders, rouges and lipsticks, nail-varnishes and cosmetics in general.

The tax is levied on the public selling-price at the rate of 15%, and is paid by the producer or importer.

XII—TAX ON PROPRIETARY MEDICINES AND MEDICINAL MINERAL WATERS

The tax is levied on the public selling-price, at the rate of 0,5%, on Portuguese or foreign proprietary medicines and foreign medicinal mineral waters.

XIII—TAX ON PLAYING CARDS

This tax is levied on playing cards, whether Portuguese or imported. It is paid by the

producer or importer, respectively. The tax is paid by stamp, at the rate of 10% on every pack produced in Portugal and 20% on every pack imported. In case of export, the tax is refunded.

XIV—TAX ON THE PRODUCTION OF BRANDY OR ALCOHOL

This tax is levied on the production of alcohol or brandy from the distillation of wines, wine lees, grape husk and washings of wine vats, produced by others. It is paid by note of payment by the producer at the rate of 2% of the value of output.

XV—SALES TAX

1. Institution of a sales tax to replace the present tax on superfluous and luxury goods is forecast for this year. It will be paid at the wholesale level. There will be more than one rate, to burden especially luxury goods. Exemption will be given to purchases of primary consumer goods, to counteract the tendency to regression in this type of tax, and purchases concerning capital goods, in order to facilitate the modernisation of equipment and economic development.

2. The creation of the sales tax forms part of the present tax reform. The latter, as regards direct taxation, is now complete and will proceed in the sphere of indirect taxation.

The tax on income from trading and industrial activities (the industrial tax), as regulated in 1963, is levied in principle on profits actually made by taxpayers, determined according to their book-keeping returns. This tax was formerly levied on a normal profit based on mere presumed profits, so that it often worked as an indirect tax. The change that has taken place thus shows how timely is the institution of the general tax on sales.

3. Portugal's participation in E.F.T.A. and the prospects of association with E.E.C. make it advisable, both financially and economically, to institute this new tax on sales, a type of taxation which, in various guises, is also to be found in most countries in Western Europe.

4. The general principles of the new tax, recently made public by the Government, laid down after long study to take into account, in its structure and its functioning, the main systems of taxation on sales as effected in other countries. On the other hand, the enforcement of the tax on superfluous and luxury goods has given useful experience and knowledge, of which we have made use in drawing up the new tax.

The possibility is now being considered of abolishing some of the taxes on expenditure mentioned above by incorporating them into the sales tax.

5. The rate of taxation to be introduced has not yet been fixed, but it is expected to be moderate. Even so, this sales tax, given its wide field of application, may produce substantially increased revenue. We should note, however, that the new tax will come into force at a time when a fall in customs revenue will begin to be felt, due to the movement of European economic integration. Such revenue is still the main source of tax revenue in Portugal.

6. The sales tax will apply to both Portuguese and foreign imported goods without distinction.

Normally, it is expected that imported goods will be taxed when they change hands between the importer and the retailer. Where the importer is himself a retailer or a consumer, the tax will be payable at the Customs, when duty is paid.

In their turn, exports will normally be exempt from tax, in accordance with the principle of taxation in the country of destination.

5—STAMP DUTY

The reform of the legislation governing the stamp duty is still in an initial phase.

The basic law in this regard continues to be the Regulations of the Stamp Duty of 1926. This law is very much out of date, not only as refers to the criterion that lies behind its organisation, but above all because of the large number of laws that have later been published.

The "Stamp Schedule" of 1932 completes these Regulations. This is a list or table that enumerates, in alphabetical order, all the taxable acts or situations and the way in which the tax should be paid in each case.

The stamp duty may be paid by means of stamped paper or revenue stamps—printed at the Mint and sold by the tax service—or in other special ways, the most noteworthy being a block agreement. The latter is a contract signed between the taxpayer and the State and which provides for the payment of the duty in a lump sum or in instalments. This payment method is permitted in the cases of advertisements, public transport tickets, playing cards, etc.

On the other hand, there are acts and documents subject to a stamp of a given value (applications, documents or papers belonging to a lawsuit, etc.) and others subject to a proportional amount of stamp (bonds, contracts governing deposits, hiring, sales, etc.).

Because of its frequent use, special mention should be made of the stamp on receipts, which takes the form of revenue stamps which must be payed by the person receiving the sum.

For receipts for sums ranging from Esc. 200 to Esc. 1,õoo, the tax is set at Esc. 1; above this amount, the tax is proportional at the rate of Esc. 1 per Esc. 1,000. Receipts for less than Esc. 200 are exempt from the stamp duty.

Besides those documents which constitute bonds, and certain books (belonging to notaries, merchants, etc.) and contracts (letting for hire, transference of industrial or commercial establishments, etc.), all licences for the carrying on of certain activities are also subject to the stamp duty (licences for public shows or entertainment, gambling establishments, the sale or re-sale of tobacco, the use and carrying of fire-arms for hunting or self-defense, the possession of cigarette lighters, etc.).

On the other hand, numerous products and services are only subject to this law for the reason that the tax which is levied on them—really an excise tax—is paid by means of stamps.

The reform to be carried out in this sector shall have a stricter determination of the incidence of the stamp duty as one of its main objectives.

6—TAX INCENTIVES DIRECTLY OR INDIRECTLY AIMED AT THE ECONOMIC DEVELOPMENT OF THE COUNTRY

It is clear that taxation policy cannot be the sole, or even the main instrument of an economic development policy. What the former can do, in most cases, to further the latter is to lighten the tax burden on activities that would normally have to bear this burden, or for which it would be heavier.

It is, therefore, a subordinate, indirect process. It is subordinate because it assumes the planning of activities the development of which, at a given juncture, can make the greatest contribution to the economic development concerned, and it is indirect because it does not, in the first instance, develop the activities concerned but merely encourages tendencies towards such development that already existed or which it is sought to foster.

To sum up, therefore taxation policy functions to encourage an economic development policy but it is not, in itself, an economic development policy. But, having laid down this distinction, it cannot be denied that tax advantages are an effective development measure. They create situations of relative advantage that must of necessity be a considerable factor in favour of the activities that it is sought to develop.

It has been traditional in the direction of Portuguese taxation policy to place considerable faith in tax incentives as a powerful help in solving economic problems, and this orientation has clearly been justified. The principle was already generously applied in previous legislation, but as a result of the Tax Reform it has been amplified and extended. The aim has been to make it function as part of the tax system so as to give the activities encouraged an incentive, wherever possible, in the sphere of each tax. Naturally, by thus obtaining a maximum of efficiency, we also take from the tax instrument a maximum of usefulness in the direction with which we are concerned.

There follows a description of the activities encouraged and the means used, both under former legislation and as a result of the Tax Reform:

I—BEFORE THE TAX REFORM

a) Industry

The following industrial activities were encouraged:

a) Re-equipment of less advanced industrial plant through the concession of a deduction from the industrial tax in favour of enterprises carrying out productive investments leading to new lines of output or a reduction in costs or an improvement in the quality of goods. (Decrees 40,874 of 23.11.56 and 43,871, of 22.8.61).

Benefits made available by 31st October 1963 represent a reduction in the industrial tax on the main account (the State's revenue) of Esc. 223,841,600, without taking into account the benefits resulting therefrom as regards the complementary tax. No figure is available for the reduction in revenue in this latter tax as a result of the benefits given.

b) Research financed by the enterprises considered to be of importance for the industrial development of the country, though concession of a reduction in the industrial tax (Decree 43,879 of 25.8.61).

c) Production and distribution of electrical power, both from hydro-electric and thermic sources, by exempting enterprises from taxes (Law 2,002 of 26.12.44 and Decree-Law 43,335 of 19.11.60).

d) The hotel industry, by allowing exemption from, and reduction in, the property and industrial taxes and stamp duty to proprietary or exploiting enterprises (Laws 2,073 of 23.12.54 and 2,081 of 4.6.56).

e) Projects forming part of development plans and carried out by private enterprises, by exempting them from payment of the tax on capital investments as regards stock they issue for this purpose (Decree-Law 42,301 of 4.6.59).

b) Agriculture

Encouragement was given to:

a) The planting of fruit trees and the improvement of the conditions of agricultural exploitation, by temporary exemption from property tax on the increased income thus gained. (Law 2,070 of 8.6.54).

b) Loans of seeds and plants for seeding, by exempting their repayment from the tax on capital investments. (art. 3, no. 2 of Decree 8,719 of 17.3.23).

On a wider scale efforts were made to restrict expenditure considered to be unnecessary and thus to encourage savings, by introducing taxes on superfluous or luxury articles and on soft drinks (Decrees 32,376 of 30.6.61; 43,788 of 17.7.61; 43,791 of 14.7.61; 42.641 of 12.11.59; 43,764 of 30.6.61; 43,862 of 16.8.61; and 44,235 of 14.4.62).

II—UNDER THE TAX REFORM

a) Industry

Encouragement is being given to the following activities in this field as being important for general development:

a) The setting up of new basic industries or others of recognized importance for the national economy, and the reorganisation of existing industries, where this is considered to be economically and socially advisable. For this purpose, temporary exemption is given from the industrial tax and the complementary tax on the income gained by the enterprises concerned, and also the possibility of exemption from the transfer tax on transactions carried out with a view to such reorganisation, and reduction to half of this tax on transactions carried out with a view to the installation of new industries (art. 20 of the Industrial Tax Code; art. 85, no. 15 of the Complementary Tax Code; and art. 11 §1 and art. 38 of the Transfer, Gift and Inheritance Tax Code).

b) Gifts to Portuguese educational or scientific research institutions considered to be important for the industrial progress of the country or, more especially, for the training of personnel and the organisation, equipping or manufacturing processes of enterprises. For this purpose, enterprises are allowed to deduct from profits liable for industrial tax the sums thus given, up to a limit of 10% of the income on which tax was paid in the previous year (art. 36 of the Industrial Tax Code).

c) Self-investment in new plant or equipment considered to be important for the

development of the national economy of profits placed to reserves, and thus invested within the three years following.

For this purpose, enterprises are allowed to deduct from profits liable to taxation (industrial tax), during the three years following the conclusion of such investment, half or the whole of the value invested, where such profits arise from normal operating or from the realisation of capital gains, respectively (Art. 44 of the Industrial Tax Code).

d) The financing of national industry in general. The profits accruing to the partners of financing corporations are exempted from capital tax up to the total of the income and dividends on Portuguese securities received by such corporations or accruing to them. The latter are also authorised to deduct the dividends or income from Portuguese securities from the net profit liable to the industrial tax (Art. 10, no. 1 of the Capital Tax Code and art. 42, para. b) of the Industrial Tax Code).

e) Investment in the setting up, expansion and renovation of industrial equipment and the development of agricultural and livestock undertakings provided that both are included in the annual list of priorities approved by the Council of Ministers for Economic Affairs.

These tax incentives may consist of exemptions from taxes, a reduction in the rate of taxation, deductions in the calculation of profits liable to tax, and permission to accellerate redemption for tax purposes (art. 13 of Law 2,124 of 19.12.64.)

Furthermore, tax incentives in this sphere extend to specialized branches of activity:

1) Electrification

Encouragement is given to the production, transportation and large-scale distribution of electrical power, and hydro-electrical undertakings, by exempting the enterprises concerned from the industrial tax and, in certain cases, from the transfer tax on the acquisition of capital goods connected therewith (art. 14, no. 16 of the Industrial Tax Code, and art. 11, no. 24 of the Transfer, Gift and Inheritance Tax Code).

2) Mining

The application of ores and coal produced in mines in metallurgy is encouraged by exempting enterprises concerned from industrial tax on the profits deriving from such output. A more extensive use of Portuguese ores and coal is sought in metallurgical units and more efficient mining operations by granting temporary exemption from the industrial tax to the former, to the proportion of the profits deriving from such use, and to the mining companies concerned in the latter in suitable conditions (art. 14, no. 22 and art. 18, no. 8 of the Industrial Tax Code).

3) Hotel industry

With a view to the setting up of good hotels and similar units (for which an essential condition is a declaration that they are of touristic value), the following concessions are made:

a) Exemption for enterprises engaged in this work from the industrial tax and the complementary tax, for a period of 10 years, and a reduction to half of these taxes for the

15 years next following (art. 18, no. 2 and art. 82 of the Industrial Tax Code, and art. 8, para. f) and art. 34 of the Complementary Tax Code).

b) Exemption from property tax and complementary tax on the income from buildings where such establishments are installed, for a period of 10 years, and a reduction to half of these taxes for the 15 years next following (art. 26 and 221 of the Property Tax Code, and art. 8, para. f) and art. 34 of the Complementary Tax Code).

c) Exemption from the transfer and the gift and inheritance taxes on acquisition of property intended for the building or installation of such establishments (art. 13, no. 8 of the Transfer and Gift and Inheritance Tax Code).

To provide further encouragement in this industry, and as regards the special case of Santa Maria Airport, and independent of the declaration of touristic value, the enterprises concerned may be temporarily exempted from the industrial tax and the gift and inheritance tax on the purchase of buildings for this purpose (Art. 18, sole clause, of the Industrial Tax Code, and art. 8, no. 1, para. f) and art. 86 of the Complementary Tax Code, and art. 13, sole clause, of the Transfer, Gift and Inheritance Tax Code).

4) Transports

In this field, special encouragement is given to development of the Lisbon Underground Railway, the Portuguese Railway Company and the Portuguese Air Lines (T.A.P.), by exempting their fixed-income securities from the industrial tax, the capital tax and the complementary tax and also, as regards the last of the three, exemption of its purchases from the taxes on transfers, gifts and inheritance (Art. 19 of the Industrial Tax Code, art. 10, no. 3, 5 and 6 of the Capital Tax Code, art 8, no. 1, para. s) and art. 86 of the Complementary Tax Code, and art. 13, no. 9 of the Transfer, Gift and Inheritance Tax Code).

5) Merchant Navy and Fisheries

Renovation and re-equipment are encouraged by the reduction to 1% of the rate of the Capital Tax and exemption from the complementary tax on fixed-income securities issued for the same purpose but in different circumstances (art. 21, no. 2 and art. 22 of the Capital Tax Code, and art. 8, no. 1, para. g) and art. 86 of the Complementary Tax Code).

6) House-building

Cheap housing is encouraged in this field by exempting new urban housing and those buildings extended and improved from property tax, temporarily, to the extent of a resulting increase in income, and also the building of the former (Art. 17 and 21 of the Code of the Property Tax and the Tax on Agricultural Profits, and art. 11, no. 8 of the Transfer, Gift and Inheritance Tax Code).

b) Agriculture

Various activities in this sector are being encouraged by tax benefits. Among them are:

a) Loans or financing for wine-growers by the National Wine Board and the Federation of Wine-Growers in the Douro Region ("Casa do Douro"), by exemption from the capital tax and the complementary tax (Art. 9 of the Capital Tax Code and art. 85, no. 16 of the Complementary Tax Code).

b) Loans of seeds and plants for sowing, by exemption from the capital tax (art. 9, no. 4 of the Capital Tax Code).

c) Acquisition of form property, under Laws 1,949, 2,014 and 2,072 by exemption from property tax for the period corresponding to two-thirds of the period initially granted for redemption; and exemption from the transfer and inheritance taxes on transactions effected during the definite function (Art. 12, no. 1 of the Code of the Property Tax and the Tax on Agricultural Profits, and art. 13, no. 5 of the Transfer, Gift and Inheritance Tax Code).

d) Acquisition of buildings or building rights for the setting up of exploitation on own account and of the family type recognised to be economically suitable by the Internal Settlement Board; exemption from property tax for a period corresponding to two-thirds of the redemption period, but in no case for more than twenty years (Art. 12, no. 2 of the Code of the Property Tax and the Tax on Agricultural Profits).

e) Agricultural improvements mentioned in Decree-Law 43,355 of 24.2.60 by exemption from property tax for a period of twenty years, beginning at the termination of such improvements (art. 12, no. 3 of the Code mentioned above.

f) Afforestation recognised to be to the public interest by exemption from property tax for a period of twenty years beginning from the date of sowing or planting (art. 12, no. 4 of the Code mentioned above).

g) Consolidation of rural property, by exemption from property tax on the resulting units, during the first six years, counting from the date on which the deed, specified in art. XXIX of Law 2,116 of 14.8.62, was drawn up or from the beginning of regrouping provided for in art. IX of the same law (Art. 12, no. 5 of the Code mentioned above).

c) Regional development

To encourage investment in those rural regions that are economically least favoured, the installation of industries to make use of local resources and to decentralise industries located in urban areas, the following measures are provided for:

a) A possible reduction in the rate of industrial taxation and the tax on agricultural profits payable by the enterprises concerned (Art. 83 of the Industrial Tax Code and art. 350 of the Code of the Property Tax and the Tax on Agricultural Profits).

b) A parallel reduction in the complementary tax (art. 35 of the Complementary Tax Code).

c) A possible reduction in the rate of capital tax on securities issued for this purpose (art. 22 of the Capital Tax Code).

d) As regards the complementary tax, a deduction from the total net income of individual taxpayers of sums which the individual has invested in the fixed assets of individual companies or regional development companies, up to 50% of such total net income, by buying partnerships, share of capital, shares or bonds (art. 30, para. d) of the Complementary Tax Code).

d) Incentives in other sectors

This field includes those measures taken to create the means necessary to carry out the development plans throughout Portuguese territory. Among them are:

a) Extension of the power of action of the National Development Bank, by exempting it temporarily from the industrial tax, and by exempting its bond issues and time deposits made in the Bank from the capital tax and complementary tax (Art. 18, no. 5 of the Industrial Tax Code, art. 10, no. 4 and 9 of the Capital Tax Code and art. 8, no. 1, para. d) and n) and art. 86 of the Complementary Tax Code).

b) Financing of development plans through exemption of national development promissory notes from the capital and complementary taxes (Art. 10, no. 11 of the Capital Tax Code, and art. 8, no. 1, para. p) and art. 86 of the Complementary Tax Code).

c) Carrying out of investments in the Overseas Provinces expressly included in programmes of execution of development plans; here the rate of capital tax payable on stock issùed may be reduced (art. 22 of the Capital Tax Code).

d) Foreign financing of investments in Portugal included in programmes of execution of development plans, through a reduction in the rate of capital tax on bonds issued (art. 22 of the Capital Tax Code).

7—TAX SYSTEMS IN THE OVERSEAS PROVINCES

I—INTRODUCTION

The variety of geographical, social and economic conditions to be found in the overseas provinces of Portugal necessitates a certain differentiation in legal systems so that, without any diminution of the political unity of the nation, a greater justice may be assured as well as a more perfect adaptability to the specific conditions ruling in each province. Tax law is one of the aspects of the legal systems in which this differentiation is most imperative, deeply rooted as it is in economic conditions and so largely dependent on social structures.

Legislation has taken this fact into consideration. It has established two parallel differentiated systems of sources of tax law, one for Metropolitan Portugal and the other for the Overseas Provinces, and it has also guaranteed each province the measure of legislative autonomy necessary to lay down its own tax system. So that, side by side with the tax system which obtains in Metropolitan Portugal itself, there are eight other different tax systems, the difference lying not only in the number and kind of the taxes included but also the different regulations applying to the same tax in the various provinces.

II—CAPE VERDE

a) Direct taxes

1. As a result of a tax reform carried out in 1953, there are at present the following direct taxes levied in the Province of Cape Verde:

a) Industrial tax;
b) Professional tax;
c) Property tax;
d) Interest tax;
e) Complementary tax;
f) Gift and Inheritance Tax;
g) Tax on the transfer of real property for money.

2. The industrial tax (legislative act 1542 of 12th June 1963) is levied on the income:

a) Of Portuguese or foreign individuals or bodies engaged in the province in trade, industry, an art or a craft or any of the activities listed in the General List of Industries appended to the Regulations of the tax.

b) Of agricultural concerns which also include types of industrial activities to preserve, improve, transform and make use of products and subproducts necessary for commercialisation, provided that they work with over 50% of products that are not produced by the concerns themselves and in this case for the whole process of manufacture.

The main exemptions from the tax relate to the exportation of the products of the province, when done by the producers themselves; primary and secondary schools; public spectacles with cultural or educational purposes; and the importation of products or raw materials intended for the manufacture of industrialised articles in the province, when done by the manufacturers.

The tax is levied on the presumed taxable income of each taxpayer. For trade, this consists of the difference between the purchase price and the selling price; for industry, the difference between production cost and the selling price.

This presumed income is fixed by a committee made up of Tax Department officals and representatives of the industry concerned. A rate of 10% is then payable on this tax base.

3. The professional tax, set up under legislative act no. 1543, of 12th June 1963, is divided into two groups.

The first includes those employed by others in trade, industry and agriculture; those who, with power of attorney or not, administer or direct the work of others, in return for some form of remuneration or compensation, and those who, although carrying on any one of the professions listed in the list append to the Regulations of the tax, work for others as their employees.

The most important exemptions refer to annual incomes of less than Esc. 12,000 or daily wages of less than Esc. 20, to family allowances and to retirement, old age or disablement pensions.

The tax base for taxpayers in this category includes all remunerations, fixed or occasional, including the value of board and lodging given.

The tax in this first group is levied on the basis of annual income declarations made by taxpayers and by their employers. The rates are:

Fixed remunerations:
Workmen:
a) Wages giving a daily income of from Esc. 20 to Esc. 80 ..... 2%
b) On income above this level 4%
Employees and others, on the basis of annual income:
a) The first Esc. 12,000 ..... (exempt)
b) Above this figure: from Esc. 12,000 to Esc. 25,000 ..... 2%
Above this figure: from Esc. 25,000 to Esc. 50,000 ..... 3%
Above this figure: from Esc. 50,000 to Esc. 100,000 ..... 5%
Above this figure: from Esc. 100,000 upwards 7%

Occasional remuneration:
a) Taxpayers whose fixed annual income is reckoned as not more than Esc. 50,000 ..... 6%
b) Taxpayers whose fixed annual income is more than Esc. 50,000 ..... 8%

The second group includes taxpayers engaged in some liberal or technical profession included in the List appended to the Regulations of the Tax. The tax is levied on a system of fixed rates. But in tax areas where there are more than five taxpayers of the same class, they can choose from among themselves a committee to apportion the total tax liability of their annual individual taxes.

4. The property tax (legislative act no. 1,545, of 12th June 1963) is levied on two different types of property: rural and urban. In both cases the tax rate is 10% and is levied on the taxable income therefrom as indicated in the Property Registers.

5. The interest tax (legislative act no. 388, of 16th February 1963) is levied on exchanged capital of a value of not less than Esc. 1,000, whether the exchange is done for money or gratis; on debts, not less than the same value, arising from other contracts and transactions, and which pay interest; and on debts not less than the same figure represented by bills.

The tax, at the rate of 15%, is paid by the debtors and claimed by them from the creditors of the interst concerned. For the purposes of paying this tax it is assumed, when no higher rate of interest is stipulated, that the interest is 10% for bills and 8% in other cases.

6. The complementary tax on income was instituted by legislative act no. 1,545 of 12th June 1963 to replace the defence tax. It is personal in nature and is a surtax on income subject to industrial tax, professional tax, property tax and interest tax, with a progressive rate schedule, varying from 2% on incomes up to Esc. 100,000 to 20% on incomes exceeding Esc. 1,500,000.

The rates applicable to joint stock companies and limited liability companies are 8% (companies with headoffices in the province) and 10% (other cases). Co-operative societies pay 5% (when their head office is in Cape Verde) or 7% (when their head office is

elsewhere). Exemption from this tax is granted to individuals resident in the province on the first Esc. 60,000 of income, and bodies and companies on the first Esc. 40,000.

7. The gift and inheritance tax (legislative act no. 901 of 25th March 1946) is levied on gratis gifts of property between living people, or as a bequest, by the application to the value of the property transferred of rates varying between 2% and 35%, according to value and the degree of kinship between the donor and the beneficiary.

8. The transfer tax (legislative act no. 901 of 25th March 1946) applies to transfers of real property for money at the sole rate of 10%. Where, however, there is an exchange of property the rate is 5%, each of the parties to the exchange to pay one half of this rate.

b) Indirect taxes

Among the main indirect taxes at present levied in Cape Verde are the following: stamp duty, import and export duties, the brandy tax, the tax on consumption of manufactured tobacco, the tonnage tax and the tax on sea trade.

III—GUINEA

a) Direct taxes

1. The tax system in Guinea is more complex than in Cape Verde. The following are the direct taxes levied:

a) Industrial tax;
b) Professional tax;
c) Tax on income from public offices;
d) Property tax;
e) Interest tax;
f) Complementary tax;
g) Residence tax;
h) Gift and inheritance tax;
i) Tax on the transfer of real property for money.

2. There are two different kinds of industrial tax:

a) Fixed industrial tax (legislative act no. 1,754 of 8th May 1961) which is payable by all Portuguese or foreign individuals or bodies engaged in the province in some trade, industry, craft or occupation or any other activity mentioned in the general list of industries appended to the Regulations of the tax.

The tax is levied on the tax base fixed by a committee, but this cannot be inferior to the fixed rates laid down in the list mentioned for each type of activity. The tax rate is 10%.

b) Variable industrial tax (legislative act no. 942 of 23rd December 1935). This is collected at the Customs together with other import duties and is levied on the same values fixed for payment of those duties. The tax rate is 1.5% or 3%, according to whether the goods are of national or nationalised origin or are foreign.

3. The professional tax, created by legislative act no. 1,753 of 8 May 1961, includes two groups, as in Cape Verde and the system of levying tax is the same as that described above.

The rates in the first group are the following:

Fixed annual remunerations or salaries:

a)	Up to 20,000	(exempt)
b)	Above this figure: from Esc. 20,000 to Esc. 50,000	1%
	Above this figure: from Esc. 50,000 to Esc. 75,000	1,5%
	Above this figure: from Esc. 75,000 to Esc. 100,000	2 %
	Above this figure: from Esc. 100,000 upwards	4 %

Occasional remunerations:

a)	Taxpayers whose annual fixed remuneration is reckoned as up to Esc. 100,000	4 %
b)	Taxpayers without a salary or with fixed annual remuneration in excess of Esc. 100,000	6 %

4. The tax on income from public position (legislative act no. 1,772 of 27th June 1962 is a percentage tax on the income (fixed income, emoluments, bonuses, expense allowances, shares of profits, etc.) received in the performance of duties for the State, economic co-ordination bodies, administrative bodies, public utility administrative bodies or dependent bodies.

The rate is 3% on salaries the basis of which is Esc. 8,000 or more; 2% where the basic salary is between Ecs. 4,500 and Esc. 8,000; and 1% where it is less than Esc. 4,500.

5. The rural property tax (Decree no. 3442 of 8 October 1947; legislative acts nos. 1,220 of 13th December 1943 and 1,752 of 8th May 1962) is levied on all exporters of national agricultural produce from the province, according to rates per kilogramme.

The urban property tax (legislative act no. 1,376 of 18th December 1946), at the rate of 10%, is levied on all the urban property in the province.

6. The interest tax (legislative act no. 967 of 12th October 1936) is similar to that in operation in Cape Verde, both in incidence and in rates and system of levy and payment.

7. The complementary tax (legislative act no. 1,775 of 8th May 1961 is identical to this same tax in Cape Verde; the only differences are some details and the system of rates payable, which are the same for all taxpayers, individuals or bodies, and do not go beyond 30%.

8. The residence tax (legislative act no. 1,771 of 26th June 1962) is payable by all males between the ages of 18 and 60 resident in the province, and is similar to the municipal work tax payable in Metropolitan Portugal itself.

9. The gift and inheritance tax (order no. 160 B of 30th April 1920) is levied on all transactions involving the perpetual or temporary transfer of any value, of any kind or nature, gratis, on a sliding scale according to the value of the degree of kinship between the two parties concerned.

10. The transfer tax (order no. 160B of 30th April 1920) affects the transfer for money of real property. The normal rate is 8% (reduced to 5% for exchange agreements, as in Cape Verde) and is levied on the declared value of the property transferred or on the value calculated from the tax base entered on the Property Registers, where the latter is the same as, or higher than, the former.

b) Indirect taxes

Among the indirect taxes levied in the province the most important are: import and export duties, stamp duty, lighthouse tax and tonnage tax.

IV—SAO TOMÉ E PRÍNCIPE (ST. THOMAS AND PRINCE ISLANDS)

a) Direct taxes

1. There are the following direct taxes in this province:

a) Industrial tax;
b) Property tax;
c) Defence tax;
d) Gift and inheritance tax;
e) Tax on the transfer of real property for money;
f) Special tax.

2. There are three varieties of the industrial tax (legislative act no. 2, of 20th January 1925);

a) Fixed industrial tax, on fixed rates and through licences, payable by all Portuguese or foreign individuals or bodies engaged in the province in any industry, trade, profession, craft or occupation.

b) Variable industrial tax, levied at the Customs on imported goods.

c) Industrial tax on emoluments (Decree of 22nd June 1898) by note of payment.

3. Urban property tax (legislative act no. 450 of 8th September 1954) is levied on all urban property at the rate of 10%. The most important exemptions are for buildings used as hospitals, charitable institutions, asylums, any assistance and beneficence institutions and places where child protection is provided free.

The rural property tax (Decree no. 39,028 of 6th December 1952, comprises rates applied to the average of agricultural produce exported over the last three years by each taxpayer.

4. The defence tax (Decree no. 30,117 of 8th December 1939) is a personal surtax applicable to:

a) All gross income of any kind of civil or military servants of the State, the administrative bodies and public administrative utility bodies, on service or resident in the province, to a total equal or superior to Esc. 40,000.

b) All income produced in the province or coming from it or received therefrom, arising from income or profits of any nature, coming from engagement in trade, industry, business, profession or employment, from dividends, interests or discounts, fixed rents, the rents of urban or rural properties, bonuses and other profits, the total importance of which, for each taxpayer, is equal or superior to Esc. 40,000.

Those taxpayers are exempt from this tax who have three or more minors for whom they are responsible and when their tax base is less than Esc. 100,000.

The rates of taxation are:

Up to Esc. 80,000	1%
Between Esc. 80,000 and Esc. 500,000	2%
Above Esc. 500,000	3%

5. The gift and inheritance tax and the transfer tax (Decree of 22 june 1898 are identical to those in the other provinces.

6. The special tax (Decree no 22,793 of 30th June 1933, art 36) is an additional tax of 5% on the total tax payable under the industrial tax (fixed, variable and on emoluments paid by note of payment), and the property tax (urban and rural), and an additional tax of 10% on import duties and other revenue.

b) Indirect taxes

The indirect taxes of this province are the import and export duties, stamp duty, consumption tax, lighthouse tax and the tonnage tax.

V—ANGOLA

a) Direct taxes

1. The present direct tax system of Angola stems from Decree no 37,215 of 16th December 1948, which laid down the general principles, the main features of which were later adapted to the other provinces, except São Tomé e Príncipe and Mozambique.

The following are the direct taxes in Angola:

a) Industrial tax;
b) Professional tax;
c) Urban property tax;
d) Exploitation tax;
e) Complementary tax;
f) Gift and inheritance tax;
g) Tax on the transfer of real property for money;

h) General minimum tax;
i) Special tax for the defence of Angola.

2. The industrial tax (legislative act no 2,151 of 14th May 1949) is identical in incidence, method of imposition and settlement and collection to those applied in Cape Verde and Guinea and already described. The rate is also 10% here.

3. The professional tax (legislative act no. 2,549 of 5th May 1954 is identical to that of Cape Verde. The tax rates in the first group are:

Fixed remunerations:
1) Workmen:
a) On wages or bonuses giving a daily income of up to Esc. 130 ..... 1%
b) On sums in excess of this figure 4%

2) Employees and others, on the basis of annual remunerations:
a) Up to Esc. 20,000 ..... 1%
b) Above this figure: between Esc. 20,000 and Esc. 50,000 ..... 2%
c) Above this figure: between Esc. 50,000 and Esc. 100,000 ..... 4%
d) Above this figure: over Esc. 100,000 ..... 6%

Occasional remunerations:
a) Taxpayers whose fixed annual income is reckoned as up to Esc. 100,000 ..... 4%
b) Taxpayers without a fixed annual income or whose fixed annual income exceeds Esc. 100,000 ..... 6%

4. The urban property tax (legislative act no. 2,149 of 4th May 1949) applies to the income from urban property, including building sites within the urban zone of the towns of Luanda, Lobito, Benguela, Nova Lisboa, Malange and Sá da Bandeira.

Among others, the following are exempt from this tax: all permanent buildings set up in the province (for 10 years) and buildings intended for private institutions where secondary education courses are provided (on certain conditions, and for 20 years).

The tax rate is 10% on the income from property, after a deduction of 20% has been made for maintenance expenses.

5. The exploitation tax (legislative act no. 2,152 of 4th June 1949 applies to the income from the exploitation of agriculture, forests, fisheries, livestock, mines, salt deposits, quarries used only for the manufacture of cement, when such exploitation and manufacture is effected on land belonging to the taxpayer or when such land is ceded to him for that purpose by the State or administrative bodies.

Exploitations where the net profit does not exceed Esc. 60,000 are exempt from this tax, and also new agricultural and forest exploitations (for 10 years).

The income, or part of income, of taxpayers liable for industrial tax are not liable for the purposes of this tax.

Rates of taxation are:

a) On the first Esc. 20,000..... 1%
b) On sums in excess of Esc. 20,000 ..... 4%
c) On sums in excess of Esc. 100,000 ..... 6%

6. Complementary tax on income (legislative act no. 2,237 of 30th January 1958) is identical in structure to the those already described. But the rates of taxation vary considerably with those in the other provinces.

As regards individuals, the rates vary between 3% on incomes between Esc. 60,000 and Esc. 100,000 to 40% on incomes exceeding Esc. 10,000,000. For bodies, the rates vary between 1% for incomes up to Esc. 250,000 to 8% for those in excess of Esc. 1,500,000.

7. The gift and inheritance tax (legislative act no. 230 of 8th May 1931 is identical to that in the other provinces.

8. The property tax (legislative act no. 230 of 18th May 1931 is also similar to those already described.

The normal rate is 10%, which is reduced to 3% in cases of a first transfer for money of urban properties, or portions thereof (purchase of flats), for dwelling, when temporarily exempt from the property tax, provided the transfer is made by contract drafted within four years after licence was granted for building to begin, and provided the seller has paid the industrial tax to which he is liable.

9. The general minimum tax (legislative act no. 31,191 of 14th December 1961) is payable:

a) By all males between 18 and 60, Portuguese or foreign, who work in the province for more than six months.

b) By all officials of the public departments, of both sexes, whatever their category and form of recruitment.

10. The special tax for the defence of Angola (Decree n.° 46,112 of 29th December 1964), applies to:

a) All individuals and bodies, Portuguese and foreign, who, in the year previous to the settlement of the tax, had net profits or income, separately or taken together, of Esc. 500,000 or more, arising from the exercise in the province of any trade, industry, renting of urban property or agricultural exploitation, or forestry, livestock, fisheries; mining or salt exploitation.

b) Dividends and bonuses legally considered as such paid to the shares in limited liability companies and limited companies, and the interest on advances and deposits made in any establishment, provided they reach that sum, separately or cumulatively, with any of the profits or income mentioned in § a).

The rates of this tax are on a progressive scale, from 4% for incomes between Esc. 500,000 and Esc. 600,000 to 30% for incomes in excess of Esc. 50,000,000.

b) Indirect taxes

The main indirect taxes at present levied in Angola are: import and export duties, stamp duty, tax on the consumption of industrial alcohol, tax on the manufacture and consumption of tobacco, tax on sugar consumption, tax on the brewing and consumption of beer, mines taxes, cotton tax, lighthouse tax, tonnage tax and consumption tax.

VI—MOZAMBIQUE

a) Direct taxes

1. There are at present the following direct taxes in Mozambique:

a) Commercial and industrial tax;
b) Property tax;
c) Professional tax;
d) Income tax;
e) Defence tax;
f) Residence tax;
g) Gift and inheritance tax;
h) Tax on the transfer ot real property for money.

2. The commercial and industrial tax (legislative act n.° 121 of 5th January 1929) applies to the exercise of trade or industry and is collected through fixed and special tax rates laid down in the Regulations ot the tax. An additional levy of 20% is made on these rates (legislative act n.° 402 of 7th February 1961).

3. The urban property tax (legislative act n.° 810 of 5th September) is levied on the net income from urban property at the rate 10%. Among others, the following are exempt from this tax: buildings in which hospitals, charitable institutions, asylums, and any public assistance and beneficence institutions are installed.

The rural property tax is levied on the income from the rural property in the province. The rate is 5%. Among the most important exemptions are buildings and property with an area less than one hectare and property used for agricultural or livestock exploitation. This latter exemption refers to each property, is tor 3 years for investments up to Esc. 5,000,000 and for 5 years for higher figures.

4. The professional tax (legislative acts n.°s 1,694 of 27th July 1957 and 1,701 of 14th September 1957) is little different, in its structure and legal systems, from those of the other provinces. The tax rates in the first group are:

Fixed remunerations:

a) Workmen 1%
b) Employees and others (annual income):
Sums between Esc. 20,000 and Esc. 40,000..... 1%
Sums between Esc. 40,000 and Esc. 60,000..... 2%
Sums between Esc. 60,000 and Esc. 120,000 ..... 3%

Sums between Esc. 120,000 and Esc. 420,000..... 5%
Sums in excess of Esc. 420,000..... 6%

Occasional remunerations:

a) Taxpayers whose fixed annual income is reckoned as up to Esc. 100,000..... 3%
b) Taxpayers whose fixed annual incomes is reckoned as between Esc. 100,000 and Esc. 400,000..... 5%
c) Taxpayers without fixed annual income or with an income in excess of Esc. 400,000..... 7%

As for the second group, and similar to what the law allows in Cape Verde, Angola, India and Macau, when in a given tax area there are more than five taxpayers of the same category, they may choose from among themselves a committee to apportion out the total tax liability of their individual annual taxes. Otherwise, or if taxpayers do not take advantage of this faculty, they will pay tax according to the fixed rates laid down in the tables appended to the Regulations of the tax.

5. The income tax (order n.° 9,473 of 1st March 1940) is a personal surtax applicable to all income arising from Mozambique, stemming from it, or received there, as the result of any kind of income or profits from engagement in trade, industry, a profession, from dividends, interest or discounts, fixed rents, the rent of urban or rural property, bonuses and other profits, the annual sum of which for each taxpayer is in excess of Esc. 600,000.

The progressive tax rate varies between 2% for incomes between Esc. 60,000 and Esc. 100,000 and 35% for incomes in excess of Esc. 100,000. The minimum tax payable is, however, Esc. 100.

This is the most important tax in Mozambique, both because it is the most productive and also because it is the most perfect, technically considered.

6. The defence tax (Decree n.° 30,117 of 8th December 1939) is also a personal surtax, like that in Sao Tomé e Príncipe.

7. The residence tax (legislative act n.° 2,185 of 30th December 1961) is similar to that levied in Guinea and Timor and the general minimum tax of Angola.

8. The gift and inheritance tax (Decree of 19th July 1902) is no different in its structure and general legal system from the corresponding taxes described for the other provinces. There are several rates of the transfer tax in Mozambique (10%, 5%, 4%, 2% and 1%) depending on the place where the property transferred is located.

b) Indirect taxes

The most important indirect taxes are import and export duties, stamp duty, tax on consumption, tax on consumption of alcohol, beer and sugar, the tax on the manufacture and consumption of tobacco, the cotton tax, the tonnage tax and the lighthouse tax.

VII—MACAU

a) Direct taxes

1. Present direct taxes in Macau are:

a) Industrial tax;
b) Professional tax;
c) Urban property tax;
d) Complementary income tax;
e) Gift and inheritance tax;
f) Tax on transfer of real property for money.

2. The industrial tax (legislative act n.° 1,634 of 30th May 1964) in Macau is identical in structure and procedure to those in force in the other overseas provinces.

3. The same is true of the professional tax (legislative act n.° 1,632 of 16th May 1964), the most outstanding feature of which is the scale of rates applicable to wage-earning taxpayers or salaried taxpayers receiving a monthly wage or salary, which are as follows:

Fixed remunerations:

a) Wage-earners:	
On daily wages of up to 10 patacas	exempt
On daily wages of between 10 and 15 patacas	24 patacas
On daily wages of more than 15 patacas	36 patacas
b) Employees and others receiving a monthly wage, on the basis of annual income:	
On the first 3,600 patacas	exempt
On sums between 3,600 and 7,200 patacas	2%
On sums between 7,200 and 15,000 patacas	4%
On sums in excess of 15,000 patacas	6%

Occasional remunerations:

a) Taxpayers whose fixed income is up to 15,000 patacas per annum	3%
b) Taxpayers without stipulated salary or whose fixed income is more than 15,000 patacas per annum	6%

4. The urban property tax (legislative act n.° 1,630 of 9th May 1964) is levied on all urban property, taking this term to mean:

a) Buildings with foundations, intended for dwellings, trade or industry, and the land which serves as their surroundings or pleasure grounds, whatever their value.
b) Building sites within the urban zone of Macau.

The tax is levied at the rate of 12% on the income from property as registered in the property registers.

5. The complementary tax (legislative act n.° 1,635 of 2nd June 1964) only differs from those in force in the other provinces in that it also applies to the value of the acts of buying and selling property.

The rates applicable to income, profits, dividends or gains range between 1% for those between 7,500 and 10,000 patacas, and 15% for those in excess of 350,000 patacas. As for the buying and selling of property, the rate of the complementary tax involved is 3% of the value of the transfer that was taken as a basis for the payment of the transfer tax.

6. The gift and inheritance tax and the transfer tax (Decree of 29th August 1901) are similar to those existing in the other provinces. The rates of the transfer tax are: 5% on the transfer of real property in the peninsular area of the province; 3% on the transfer of real property located on the islands of Taipa and Coloane.

b) Indirect taxes

Macau is the overseas province that has the widest and most complex range of indirect taxes. They include stamp duty, about a dozen taxes on consumption, levied on alcoholic drinks, fermented drinks and apéritifs; mineral oils, light, medium and heavy fuels, petrol and oil; tobacco, bricks, cement, coffee and matches from foreign countries; sugar and dark palm sugar; salt; soft drinks, fruit juices and similar beverages.

VIII—TIMOR

a) Direct taxes

1. The tax system of Timor includes the following direct taxes:

a) Industrial tax;
b) Professional tax;
c) Property tax;
d) Residence tax;
e) Gift and inheritance tax;
f) Tax on the transfer of real property for money.

2. As in Guinea, there are two different classes of industrial tax in Timor:

a) Imposed industrial tax (legislative act n.° 473 of 8th July 1955), at the rate of 8%, levied on all individuals and bodies, Portuguese or foreign, engaged in the province in trade, industry, a craft or occupation or any of the activities mentioned in the general table of industries.

b) Variable industrial tax (levied at the Customs) (legislative act n.° 36 of 22nd December 1934) on the value of all imported goods at the rate of 1.5% for national or nationalised goods, and 3% for foreign goods.

3. The professional tax (legislative act n.° 474 of 8th July 1955) is similar to those in force in the other provinces. The rates in the first group are:

Fixed remunerations:

On the first Esc. 7,500	Esc. 175
Between Esc. 7,500 and Esc. 20,000	1%
Between Esc. 20,000 and Esc. 50,000	2%
Between Esc. 50,000 and Esc. 100,000	4%
In excess of Esc. 100,000	6%

Occasional remunerations:

a) Taxpayers whose annual remuneration is up to Esc. 100,000	4%
b) Taxpayers without fixed salary, wages or bonus or whose fixed income is in excess of Esc. 100,000	6%

4. The urban property tax (legislative act n.° 471 of 27th July 1955 is levied, at the rate of 11% on the income from urban property in the province, on the basis of figures in the property registers.

The rural property tax (legislative act n.° 5,811 of 31 st December 1960) is levied on all exporters of agricultural produce at the rate of 5% ad valorem, the tax being collected at the Customs, together with customs duties, in the act of clearance for export.

5. The residence tax (legislative act n.° 470 of 27th June 1955) is identical to that collected in other provinces. The rate is Esc. 155, but in some regions it is reduced to Esc. 120 and Esc. 95.

6. The gift and inheritance tax and the transfer tax (Law of 30th June 1860) are widely similar in structure and procedure to those in force in the other provinces.

The rates on gifts and inheritance are:

a) 2% on transfers to parents or between spouses.
b) 3% on transfers between second-degree collateral kinsmen.
c) 6% on transfers between third-and fourth-degree collateral kinsmen.
d) 10% on transfers between other people.

The rate of the transfer tax is 3% on exchange contracts and 6% in other cases.

b) Indirect taxes

The indirect taxes at present levied in Timor are import and export duties, stamp duty and the mines tax.

INSTANT TAX

An appraisal of enforcement methods with regard mainly to current collection of direct taxes on income (II)

by

H. W. T. PEPPER*

INCOME TAX ON INDIVIDUALS: computation of personal reliefs or exemptions—advantages of previous year system

52. In calculating the income tax of an individual it is usual to grant allowances ("reliefs" or "exemptions") for his dependants, including his wife and children, and in some cases for his payments to procure life assurance or retirement benefits. It is also fairly usual to give these allowances by reference to the taxpayer's circumstances in the tax year. This is, of course, a further factor which may delay ascertainment of the tax liability because the taxpayer may marry, have a child, or take on new commitments at any time during the year, necessitating one or more recomputations.

53. While it may be logical to grant personal reliefs or exemptions on the basis of the circumstances in the tax year (which in many countries is also the income year), a system of giving reliefs by reference to the circumstances of the previous year produces, over a period of years, results virtually identical to the current year system. The previous year method for reliefs is, however, much cheaper to administer particularly where a P.A.Y.E. system is operating because in computing current year's tax, no adjustments are necessary in respect of changes in a taxpayer's domestic circumstances during the current year. The advantages of a previous year system for reliefs apply whatever method is employed to assess the taxpayer's gross income.

P.A.Y.E. Systems

54. There are broadly 4 systems whereby tax is deducted at source from emoluments of employment:-

(1) Schedular and payroll taxes; (paragraphs 55-58)
(2) Non-cumulative deductions based on tables; (paragraphs 59-63)
(3) Cumulative deductions based on tables; (paragraphs 64-68)
(4) Deductions based on specific directions not involving tables; (paragraphs 69-71)

and the payroll taxes [16] referred to in (1) may be divided into 3 categories—

(i) those which are payable by employers and are either intended as a contribution to general Government revenue or are earmarked for specific social services such as

*) The first part of this article has been published in the June 1966 issue.

16 Argentina, Australia, Austria, Belgium, Chile, Congo (Brazzaville) Eire, Finland, France, W. Germany, Holland, Italy, Japan, Malaysia, Mexico, New Zeeland, Norway, Portugal, Spain, Switzerland, the U.K. and U.S.A. among others have some form of payroll tax.

medical benefits, sickness and accident insurance, retirement benefits, unemployment benefits;

(ii) those intended as a tax on employees and levied for example by a Municipality or other local authority to finance public services the rationale being that those employed in the taxing area are "commuters" who reside outside the area and pay their local taxes to local authorities other than that of the area in which they find employment;

(iii) those employed[17] for economic rather than fiscal purposes to make labour more costly and thus encourage greater productivity per worker employed and the development of automation.

55. *: schedular and payroll taxes*

Where schedular and payroll taxes are not linked to the compilation of a "global" tax bill or the provision of specific benefits for particular individual employees but are taken into Government revenue "in bulk" the cost of administration is comparatively cheap and this advantage is allied to that of instant collection. In the case where individual recording is required—for example where an individual's retirement benefit is linked to the number or amount of this contributions, or where the amount of schedular tax paid is a factor in the total tax bill the cost of keeping records is greatly increased although the benefit of instant (and cheap) *collection* is still present.

56. It has been argued that payroll taxes should not be levied when there is unemployment, or in developing countries where there are many labour-intensive industries since by increasing the cost of labour such taxes will tend to cause technological unemployment, make industries uncompetitive by increasing their costs and hurt most those industries which provide most employment. In practice, provided the rate charged is moderate it is doubtful whether the tax will do more than slightly speed up technological changes already in progress.

57. It is nowadays becoming more common for Governments to have some form of "incomes policy" by which it is generally understood that the Government will attempt a measure of correlation between the incomes from profits and investments and those from employment. The objectives include the curbing of inflation and particularly of the potential "spiral" of rapidly increasing profits, wages and prices in a time of boom conditions. The introduction of or an increase in payroll taxation to finance additional social security benefits may have a mildly dampening effect on profits and on the pressure for wage increases which is by no means incompatible with an incomes policy.

58. One may perhaps summarise by saying that while schedular and payroll taxes are not ideal they have the merit that they can be computed and collected instantaneously but this must be weighed with other factors in deciding whether to adopt such means of taxation. At present it seems clear that schedular taxes (because of inequities in impact) are disappearing but payroll taxes appear to be growing in popularity.

17 Although payroll taxes are from time to time advocated for this purpose the writer is unaware of any actual case where such a tax has been levied *solely* for this economic reason.

Non-cumulative P.A.Y.E. systems

59. Most P.A.Y.E. systems in current use are non-cumulative, that is they apply income tax to the emoluments of the week or month on the basis of tables which take account, to a greater or less extent, of the personal reliefs or exemptions due to the taxpayer. In many cases the employer is given the task of determining the relief on the basis of a declaration of dependants made by the employee, other reliefs being calculated by the Tax Department when making the final comparison between tax liability and tax deducted. The tax deductions for each week or month represent the tax for those periods respectively on the assumption that the remuneration for the period will be earned at the same rate over the whole year[18]. Where the remuneration is at a fixed rate, therefore, and does not change in the year, the tax deducted will accurately represent the tax liability. It will not normally do so when the remuneration fluctuates during the year and income tax is charged at graduated rates.

60. The non-cumulative system is used in a number of countries[19] and it is worthy of note that in Australia, in the U.S.A. and in one or two other countries, the tax administrations have found that employees have deliberately *under*stated their reliefs or exemptions for provisional tax deduction purposes. In this way the deductions would be too large, and a sizeable refund from the Tax Department would ensue when the "assessment" is made in the following year. This method of self-enforced saving appears to be growing in favour.

61. The Philippines is an example of a country which, though its income taxpayers do not number the millions encountered in fully developed countries, applies a high degree of mechanisation (and is introducing a computer) to its income tax administration. Data processing is extensively used in the major task of making the final check or assessment of tax paid by deduction and tax actually due, which is done in the period after the end of the income year, and such methods are spreading in S.E. Asia in common with the rest of the world.

62. The disadvantage of the non-cumulative system arises from the very fact that an adjustment *is* almost invariably necessary in the following year, to charge more tax, or to make a refund, and cannot readily be done in the income year. Where the employee has become unemployed after having had tax deducted he may have no net tax liability for the year but may have to wait a considerable length of time for his tax refund.

63. The non-cumulative system, as mentioned above, operates on the assumption that the remuneration for each separate deduction period (week, month, etc.) is an exact proportion by time of the remuneration for the whole year.

Cumulative systems

64. The cumulative system on the other hand assumes that the cumulative total remuneration for the part of the year to date is an exact proportion of the total year's remunera-

18 This will however only apply where the tables take account of all the reliefs, allowances or exemptions due. In some countries the P.A.Y.E. deductions only allow for basic exemptions and reliefs—the remainder are dealt with when the final adjustment for the year is made.

19 e.g. Antigua, Australia, Barbados, Canada, Cyprus, India, Japan, New Zealand, the Philippines, Sabah, Sarawak, Scandinavia, Taiwan, Thailand, U.S.A.

tion. By the end of month 3 therefore cumulative P.A.Y.E. tables will have produced a total tax bill of 3/12ths of a year's tax computed on the assumption that the year's remuneration was 4 times that of the 3 months.

65. Non-cumulative tables will by contrast have produced 3 items of tax for each of the first 3 months which form 1/12th of a year's tax computed on the assumption that each particular month's remuneration is exactly 1/12th of the year's remuneration. Where the remuneration fluctuates from month to month the tax computed by the respective tables will clearly diverge after the first month.

66. Since the cumulative tables continually "correct" the total tax payable by recomputing the liability by reference to the total remuneration received to date (which as time goes on will form a larger and larger proportion of a year's remuneration) they give a truer result than tables which look solely to the remuneration of a particular month (or week) and not to the growing cumulative total.

67. The reliefs and exemptions have to be calculated accurately for the purpose of applying the tables to the (adjusted) remuneration and the cumulative tables produce interim results in the case of fluctuating emoluments which, though logical, are not always easy for the taxpayer to follow. The cumulative system does, however, have the important advantage that it automatically calculates a refund where a taxpayer becomes unemployed after having had deductions made from his remuneration, and the refunds can be made without delay.

68. A cumulative system has been used successfully in the United Kingdom since 1944 and has also been adopted in Jamaica, Ghana and Eire. In the case of Eire, an electronic computer is now being used (and computers are to be used in the United Kingdom) to assist with the cumulative P.A.Y.E. system as well as for other tasks.

"P.A.Y.E." by specific deductions

69. The specific deduction system is the simplest of those which seek to apply deductions to employees' remuneration which accurately reflect their true tax liability. The tax liability is computed first and then deducted by equal instalments out of current earnings. It follows that the time of payment must be a period commencing after the end of the income year or else that some special basis of assessment such as referred to above (paragraphs 46-51) must apply.

70. The tax liability being "pre-computed", i.e. based on predetermined income, there is no reason for adjusting the figure as the tax deduction year progresses. The system was used in the United Kingdom before the present P.A.Y.E. scheme was inaugurated, and is used now in, for example, British Honduras and Malaya.

71. The system works well where the basis described in paragraphs 40-41 applies. It also operates smoothly to produce accurate current deductions from current employment income in "continuing" cases where the special basis of assessment applies. Where "commencing" or "ceasing" cases are concerned the deductions can only be provisional but this position arises with all deduction schemes except the cumulative system and even that system inevitably results in over-deduction in the case of a cessation part way through the tax year. The manner in which deductions for current tax are made out of current income in Malaya is described in the Appendix.

BUDGETARY CONSIDERATIONS

72. Reference has already been made (in paragraphs 42-45) to the scope for augmenting revenue in a transitional period as a result of changing the timing of income tax payments where these are not already due during the income year. There are however other points of some importance which are relevant to the subject of fiscal Budgets.

73. Where periods of economic recession and resurgence alternate there are likely to be material practical differences in the effect on the revenue between the working of systems of estimated provisional payments and those by which tax liability which has actually been computed is collected, for example on the basis referred to in paragraphs 40-41 or the special basis described in paragraphs 46-51.

74. The first difference concerns the fact that provisional payments are based on current income and the other bases operate mainly on the previous year's income. Where a year of recession follows one of prosperity the revenue from indirect taxes being based on current "consumption", decreases immediately. Where current income is the basis for income tax payments the direct tax from this source will also show an immediate decrease. The total revenue decrease will thus be somewhat severe and will clearly be more serious for a developing country with a precarious balance of payments than for an industrialised country with a tradition of economic stability.

75. The fiscal effect of a year of recession is however mitigated in a country taxing income by reference to a previous year basis because while indirect taxes decrease, the income taxes, based on the income of the previous, prosperous, year remain buoyant. Where recessions and upturns in the economy alternate rapidly the income taxes act as a revenue-stabilising influence because the yield is higher in a depression year following a boom year than current incomes would justify and correspondingly lower in the prosperous year that follows a recession. Where recessions and upturns succeed each other more gradually at longer intervals the stabilising influence is not so marked (nor so necessary) but will be clearly evident in the year of the onset of change. The effect referred to will of course only have a worthwhile impact where direct taxation forms a substantial part of total revenue.

76. The other practical point is that where the bases which relate liability to the previous year's income apply, the final tax liability can be determined during the fiscal year and estimated with some accuracy for budgetary purposes early in, or even a little before the beginning of that year. Where the provisional payment system operates the tax revenue must be based primarily on the taxpayer's own estimate. In times of rising prosperity his estimates are likely to err on the side of caution and lag behind the actual rise of income. In times of a downturn the taxpayer is likely to be over-pessimistic and the effects of his pessimism on current revenue may exaggerate the fall in direct taxes which could statistically be expected. This may not be of great importance in reasonably stable conditions in a country with a diversified economy but a particularly serious position might arise in this way in a developing country, economically dependent on the production of raw materials, in the event of falling commodity prices. Such difficulties are endemic to systems employing provisional estimated payments and are not so likely to occur where other bases are used.

CONCLUSIONS

77. The use of the various methods described above to achieve as great as possible a degree of "instant" collection of direct tax is an important feature of modern tax administrations. The instant type of levy is beneficial to the Government which needs the revenue and even taxpayers nowadays are often realistic enough themselves to prefer the instant to the deferred tax levy.

78. No one method of speeding enforcement can be laid down as a panacea for universal application. Different countries obtain successful results with systems which have been applied and adapted over a period of time and to which taxpayers and their advisers have become accustomed but which differ markedly from those adopted in other countries.

79. In Australia, for example, the provisional payments system contains scope for deferment by the taxpayer, without penalty[20], of a proportion of the provisional tax due each year. The cynic might expect considerable abuse to arise; in practice collection generally proceeds smoothly on the basis of the assessed amounts.

80. In P.A.Y.E. schemes where deductions are applied by the employer on the basis of information about dependants supplied by the employee one would expect that false claims leading to under-deductions would be rife. Instead (see paragraph 60) the opposite case is by no means unusual, some taxpayers contriving provisional *over*-deductions as a form of personal saving.

18. Evidently, therefore, attempts to improve tax enforcement are not in general likely to encounter difficulties on the score of taxpayer co-operation. Moreover it is fair to say that the honest taxpayers who always form the majority have a direct interest in improvements which make it more likely that delinquents will be brought to book.

82. Tendencies which will assist the speeding of the enforcement process include the continual raising of accountancy standards and the spread of mechanised and electronic book-keeping, both in the private and the Government sectors.

83. Apart from the improvement and extension to the other countries of the current collection methods noted above, wider use of the system pioneered by Japan, and one or two other countries, of deductions from the *gross* earnings of independent professions, and perhaps of trades as well, (paragraphs 34-37) appears to be a likely development for the future.

84. Few countries in the modern world are without income tax systems and any would-be adviser must take into account the existing structure and the degree to which taxpayers, the professions, and the administrators have become accustomed to it. An abrupt change from one system or concept to another is therefore generally to be avoided and in practice the most successful transitions have been by way of "organic" growth rather than by "surgery".

20 In Australia, in the case of non-corporate businesses the taxpayer may in effect estimate his current income at 80% of that for the previous year as an alternative to being assessed provisionally on the full previous year's income. No penalty is incurred if the actual income exceeds an estimate made on that basis. In practice taxpayers are normally content to pay on the full previous year's income which is subsequently adjusted to the actual year's income.

85. The current acceleration of payments (see paragraphs 44-45) in the U.S.A. and Canada represents material change but is being introduced by easy stages by adapting an existing system. In Britain the revolutionary "cumulative" P.A.Y.E. system owed part of its success to the transitional provisions whereby the considerable numbers of employees already paying by deduction continued without a break to do so on the new basis. In Malaya the present compulsory "P.A.Y.E." system was built smoothly on a voluntary scheme which had existed for many years, and was introduced in stages (see Appendix).

86. Where *no* P.A.Y.E. scheme exists and it is desired to introduce one the likeliest recipe for smooth success is to start in a simple way either by adopting specific deductions, based on actual tax computed on the income for the previous year, or by using the simplest possible non-cumulative tables. A greater degree of sophistication can be introduced when the initial system is working well.

87. In the case of the introduction of withholding taxes or deductions at source from investment income as a tax-enforcement measure where no such system exists, it is clearly advisable to commence with a low rate of deduction (say 5%) and bring this up to the desired fiscal level in stages when the new system has settled down.

88. In general it may be said that the instant levy, computed as closely as possible to the true liability, is the mark of an efficient administration. It may be achieved in a sophisticated manner, employing computers to compute the tax deductible from salaries and to "process" potentially delinquent taxpayers before they actually become delinquent. It may also be achieved using simple manual methods, competently administered. "Instant" collection may be achieved by the small developing country as well as by the giant industrialised State. Whatever methods are adopted the results are well worth the attainment.

89. There follows in the form of an appendix a description of the income tax payment systems in use in Malaya, a developing country in S.E. Asia, where efficiency in income tax collection is achieved at a modest administrative cost (1.45% in 1963).

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APPENDIX

*Collection of income tax in Malaya**)

1. Malaya has a unitary income tax system the rate of tax on companies being 40% while the scale of rates applicable to individuals ranges from 6% to 50%. The special basis of assessment applies to all source of income (except dividends which are taxed invariably on the previous year's income but with current tax prepayment) and liability to tax thus commences when the income first arises and ceases when the source ceases.

2. The following are the main features of the enforcement system—

(i) deduction at the source ("withholding") is applied to dividends, employment[1]) income [see(iii)] and to interest paid to non-residents;

(ii) tax due on business income of companies and individuals is collected during the income year;

(iii) tax on employment income is collected during the income year by monthly instalments on a "P.A.Y.E." system;

(iv) personal allowances, reliefs, and exemptions due to individuals are invariably based on the circumstances of the previous year (see paragraphs 52-53) so that no adjustments are necessary to the tax due by reason of changes in personal circumstances during the income year.

The proof of the efficacy of the methods employed is that losses from tax through default in payment are usually negligible.

Tax on business income

3. No fixed time of payment is laid down in respect of the tax due from companies and other taxpayers on business income. Legally the tax is due within a month of the making of the assessment or computation of the tax and most of this work is done and most of the tax collected in the middle months of the tax year. In most cases, the tax due is paid in a single sum but a flexible attitude is adopted and in some cases where there is difficulty in financing the payment of the tax in one sum the taxpayer is permitted to pay in 2 or 3 instalments.

"P.A.Y.E."; employment income

4. Malaya is fortunate in that the remuneration of employees is generally paid monthly so that there is the administrative economy of having only 12 payments of salary per year to cope with for all employees within the "P.A.Y.E." scheme.

5. The system of specific deductions of tax from salaries operates without code numbers or tax tables. The system was introduced by stages—in 1963, employees whose income tax amounted to $50 per month or more (=U.S. $16.67 per month or U.S. $200 per year, U.K. £6 per month) were brought in. In 1964 the scheme was extended to those whose tax was $20 per month or more (U.S. $6.67, U.K. £2.7.0.) For smaller cases monthly deductions can be arranged on request but in most cases such taxpayers choose to pay either in a single sum or in two or three instalments only.

6. When the appropriate monthly deductions have been calculated, based on the tax liability for a particular year they are applied for that year and also for the following year until the tax for that year has been determined. The monthly deductions for the remainder of that following year are then adjusted as necessary and the new rate of deduction applied until the next subsequent year's liability has in turn been computed.

7. Provisional monthly deductions were withheld in all over—$50 cases during 1963 (the first year of the deduction scheme) and corrected when the 1963 assessments were computed. For example, assume

* A broadly similar system to that operating in Malaya was independently adopted during 1963 in Ceylon and has had beneficial effects on tax enforcement which has greatly improved over the last two or three years.

1. Payroll taxes of 5% in respect of lower-paid employees (payable to the Government's Employees Provident Fund) to provide retirement benefits and at 2% on total payroll are collected monthly from employers. The retirement benefits also involve a 5% contribution from the employees and this is deducted monthly from remuneration by the employer and remitted with his own contributions.

that $60 tax per month was deducted for the first 5 months of 1963 and that the 1963 final tax liability was computed in June 1963[2]) at $755. The deductions for June-December 1963 then should total [$755-($60 × 5 already deducted =) $300 =] $455 producing for the remaining 7 months a monthly rate of $65 per month. This rate of $65 per month would normally be continued into 1964. If however the rate for the remainder of 1963 was a great deal higher[3]) than the corrected monthly average for the *whole* of 1963 then the latter figure would be used provisionally for 1964.

8. If the taxpayer showed that the provisional rate of deduction should be materially higher or lower than that chosen, his own estimate would normally be adopted so that the system has a great deal of flexibility as well as simplicity.

2. Based on 1962 income—see under "Special Basis of Assessment".
3. This might occur, for example, if the computation of the final liability was made late in the year or if there were a change of circumstances materially affecting the tax.

III

TREATIES

ABKOMMEN ZWISCHEN DER REGIERUNG DER BUNDESREPUBLIK DEUTSCHLAND UND DER REGIERUNG DES STAATES ISRAEL ZUR VERMEIDUNG DER DOPPELBESTEUERUNG BEI DEN STEUERN VOM EINKOMMEN UND BEI DER GEWERBESTEUER VOM 9. JULI 1962*)

ARTIKEL 1

(1) Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen, die für Rechnung der Bundesrepublik Deutschland oder des Staates Israel, eines Landes oder einer ihrer Gebietskörperschaften erhoben werden.

(2) Als Steuern vom Einkommen gelten alle Steuern, die vom Gesamteinkomden oder von Teilen des Einkommens erhoben werden, einschließlich der Steuern vom Gewinn aus der Veräußerung beweglichen oder unbeweglichen Vermögens sowie der Steuern vom Vermögenszuwachs und der in der Bundesrepublik Deutschland erhobenen Gewerbesteuer.

(3) Zu den Steuern, für die dieses Abkommen gilt, gehören zur Zeit insbesondere:

a) in der Bundesrepublik Deutschland:
   aa) die Einkommensteuer einschließlich der Lohnsteuer, der Kapitalertragsteuer und der Aufsichtsratsteuer;
   bb) die Körperschaftsteuer;
   cc) die Gewerbesteuer (im folgenden „Steuer der Bundesrepublik" genannt);
b) im Staat Israel:
   aa) die Einkommensteuer (income tax) einschließlich der Gesellschaftsteuer (company tax),
   bb) die Grundwertzuwachssteuer (land betterment tax) (im folgenden „israelische Steuer" genannt).

(4) Dieses Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den bestehenden Steuern oder an deren Stelle erhoben werden. Die zuständigen Behörden der Bundesrepublik Deutschland und des Staates Israel werden sich erforderlichenfalls die in ihren Steuergesetzen eingetreteten Änderungen mitteilen.

(5) Die zuständigen Behörden der Bundesrepublik Deutschland und des Staates Israel werden im beiderseitigen Einvernehmen alle etwaigen Zweifel darüber klären, für welche Steuern dieses Abkommen zu gelten hat.

(6) Dieses Abkommen gilt für Personen, die im Hoheitsgebiet einer oder beider Vertragsparteien ansässig sind.

ARTIKEL 2

(1) Für die Anwendung dieses Abkommens gilt folgendes:

1 Der Ausdruck „Bundesrepublik" be-

*) Both Houses of the German Legislature have approved the convention (House of Representatives on June 11, 1965; Senate on December 17, 1965).
The Israeli Government decided on May 29, 1966 to ratify the convention. At the moment the instruments of ratification have not yet been exchanged, but ratification is expected in the near future. The English text of the treaty has been published in the July 1966 issue of Supplementary Service to European Taxation.

deutet die Bundesrepublik Deutschland; der Ausdruck „Israel" bedeutet den Staat Israel.

2 Die Ausdrücke „eines der Hoheitsgebiete" und „das andere Hoheitsgebiet" bedeuten je nach dem Zusammenhang die Bundesrepublik oder Israel.

3 Der Ausdruck „Person" bedeutet natürliche Personen und Gesellschaften.

4 Der Ausdruck „Gesellschaft" bedeutet eine juristische Person oder einen anderen Rechtsträger, der steuerlich als juristische Person behandelt wird.

5 a) Der Ausdruck „eine in einem der Hoheitsgebiete ansässige Person" bedeutet je nach dem Zusammenhang eine in der Bundesrepublik oder in Israel ansässige Person. Der Ausdruck „eine in der Bundesrepublik ansässige Person" bedeutet eine Person, die für die Zwecke der Steuer der Bundesrepublik in der Bundesrepublik ansässig (und dort unbeschränkt steuerpflichtig) ist, und der Ausdruck „eine in Israel ansässige Person" bedeutet eine Person, die für die Zwecke der israelischen Einkommensteuer in Israel ansässig ist.

b) Ist nach Buchstabe a eine natürliche Person in beiden Hoheitsgebieten ansässig, so gilt folgendes:

aa) Die Person gilt als in dem Hoheitsgebiet ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Hoheitsgebieten über eine ständige Wohnstätte, so gilt sie als in dem Hoheitsgebiet ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat (Mittelpunkt der Lebensinteressen).

bb) Kann nicht bestimmt werden, in welchem Hoheitsgebiet die Person den Mittelpunkt der Lebensinteressen hat, oder verfügt sie in keinem der Hoheitsgebiete über eine ständige Wohnstätte, so gilt sie als in dem Hoheitsgebiet ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat; hat die Person ihren gewöhnlichen Aufenthalt in beiden Hoheitsgebieten oder in keinem der Hoheitsgebiete, so werden die zuständigen Behörden der Hoheitsgebiete die Frage im beiderseitigen Einvernehmen regeln.

c) Ist nach Buchstabe a eine Gesellschaft in beiden Hoheitsgebieten ansässig, so gilt sie als in dem Hoheitsgebiet ansässig, in dem sich der Ort ihrer tatsächlichen Geschäftsleitung befindet. Dasselbe gilt für Personengesellschaften und andere Personenvereinigungen, die keine Gesellschaften im Sinne des Absatzes 1 Nr. 4 sind.

6 Die Ausdrücke „Unternehmen eines der Hoheitsgebiete" und „Unternehmen des anderen Hoheitsgebiets" bedeuten je nach dem Zusammenhang ein Unternehmen der Bundesrepublik oder ein israelisches Unternehmen; der Ausdruck „Unternehmen der Bundesrepublik" bedeutet ein gewerbliches Unternehmen, das von einer in der Bundesrepublik ansässigen Person betrieben wird, und der Ausdruck „israelisches Unternehmen" bedeutet ein gewerbliches Unternehmen, das von einer in Israel ansässigen Person betrieben wird.

7 a) Der Ausdruck „Betriebstätte" bedeutet eine feste Geschäftseinrichtung, in der die Tätigkeit des Unter-

nehmens ganz oder teilweise ausgeübt wird.

b) Als Betriebstätten gelten insbesondere:
   aa) ein Ort der Leitung,
   bb) eine Zweigniederlassung,
   cc) eine Geschäftsstelle,
   dd) eine Fabrikationsstätte,
   ee) eine Werkstätte,
   ff) ein Bergwerk, ein Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
   gg) eine Bauausführung oder Montage, deren Dauer zwölf Monate überschreitet.

c) Als Betriebstätten gelten nicht:
   aa) die Benutzung von Einrichtungen ausschließlich zur Lagerung, Ausstellung oder Auslieferung von dem Unternehmen gehörenden Gütern oder Waren;
   bb) das Unterhalten eines Bestandes von dem Unternehmen gehörenden Gütern oder Waren ausschließlich zur Lagerung, Ausstellung oder Auslieferung;
   cc) das Unterhalten eines Bestandes von dem Unternehmen gehörenden Gütern oder Waren ausschließlich zur Bearbeitung oder Verarbeitung durch ein anderes Unternehmen;
   dd) das Unterhalten einer festen Geschäftseinrichtung ausschließlich zum Einkauf von Gütern oder Waren oder zur Beschaffung von Informationen für das Unternehmen;
   ee) das Unterhalten einer festen Geschäftseinrichtung ausschließlich zur Werbung, zur Erteilung von Auskünften, zur wissenschaftlichen Forschung oder zur Ausübung ähnlicher Tätigkeiten, die für das Unternehmen vorbereitender Art sind oder eine Hilfstätigkeit darstellen.

d) Eine Person, die in einem der Hoheitsgebiete für ein Unternehmen des anderen Hoheitsgebiets tätig ist — mit Ausnahme eines unabhängigen Vertreters im Sinne des Buchstaben e – gilt als eine in dem erstgenannten Hoheitsgebiet belegene Betriebstätte, wenn sie eine Vollmacht besitzt, im Namen des Unternehmens in diesem Hoheitsgebiet Verträge zu schließen, und diese Vollmacht dort gewöhnlich ausübt, es sei denn, daß sich ihre Tätigkeit auf den Einkauf von Gütern oder Waren für das Unternehmen beschränkt.

e) Ein Unternehmen eines der Hoheitsgebiete wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Hoheitsgebiet, weil es dort Geschäftsbeziehungen durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter unterhält, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.

f) Die Tatsache, daß eine in einem der Hoheitsgebiete ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Hoheitsgebiet ansässig ist oder dort (entweder durch eine Betriebstätte oder in anderer Weise) Geschäftsbeziehungen unterhält, macht für sich allein die eine der beiden Gesellschaften nicht zur Betriebstätte der anderen Gesellschaft.

8. Der Ausdruck „Dividenden" bedeutet Einkünfte aus Aktien, aus Anteilen an einer Gesellschaft mit beschränkter Haf-

tung, aus Kuxen und Genußscheinen sowie Einkünfte eines an dem Kapital des Unternehmens nicht beteiligten stillen Gesellschafters aus seiner Beteiligung als solcher. Der Ausdruck umfaßt ferner Ausschüttungen auf Anteilscheine von Kapitalanlagegesellschaften.

9 Der Ausdruck „Staatsangehöriger" bedeutet

a) in bezug auf die Bundesrepublik alle Deutschen im Sinne des Artikels 116 Absatz 1 des Grundgesetzes für die Bundesrepublik Deutschland;

b) in bezug auf Israel alle israelischen Staatsangehörigen;

c) alle Gesellschaften, Personengesellschaften und anderen Personenvereinigungen, die nach dem in einem der Hoheitsgebiete geltenden Recht errichtet worden sind.

10 Der Ausdruck „zuständige Behörde" bedeutet auf seiten der Bundesrepublik den Bundesminister der Finanzen und auf seiten Israels den Minister der Finanzen oder seinen bevollmächtigten Vertreter.

(2) Können nach diesem Abkommen Einkünfte aus Quellen innerhalb eines der Hoheitsgebiete in diesem nicht oder nur zu einem ermäßigten Satz besteuert werden und sind diese Einkünfte nach dem geltenden Recht des anderen Hoheitsgebiets dort nur insoweit steuerpflichtig, als Beträge nach diesem anderen Hoheitsgebiet überwiesen oder dort entgegengenommen werden, so gilt die nach diesem Abkommen in dem erstgenannten Hoheitsgebiet zu gewährende Steuerbefreiung oder -ermäßigung nur für die in das andere Hoheitsgebiet überwiesenen Beträge. Das gilt nicht in den Fällen der Artikel 9 Absatz 2, Artikel 15 und Artikel 16 Absätze 1 bis 3.

(3) Bei der Anwendung dieses Abkommens durch eine der Vertragsparteien hat jeder Begriff, der in diesem Abkommen nicht bestimmt worden ist, dieselbe Bedeutung wie in den im Hoheitsgebiet dieser Vertragspartei geltenden Gesetzen, die sich auf Steuern im Sinne dieses Abkommens beziehen, falls der Zusammenhang keine andere Auslegung erfordert.

ARTIKEL 3

(1) Einkünfte aus unbeweglichem Vermögen können in dem Hoheitsgebiet besteuert werden, in dem dieses Vermögen liegt.

(2) Der Begriff „unbewegliches Vermögen" bestimmt sich nach dem Recht des Hoheitsgebiets, in dem das Vermögen liegt. Der Begriff umfaßt in jedem Fall das Zubehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Unternehmen, die Rechte, auf welche die Vorschriften des Privatrechts über Grundstücke Anwendung finden, die Nutzungsrechte an unbeweglichem Vermögen sowie die Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung von Mineralvorkommen, Quellen und anderen bodenschätzen; Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.

(3) Die Absätze 1 und 2 gelten für Einkünfte aus der unmittelbaren Nutzung, der Vermietung, Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens, einschließlich der Einkünfte aus land- und forstwirtschaftlichen Unternehmen. Sie gelten ferner für Gewinne aus der Veräußerung unbeweglichen Vermögens.

(4) Die Absätze 1 bis 3 gelten auch für Einkünfte aus unbeweglichem Vermögen anderer als land- und forstwirtschaftlicher

Unternehmen und für Einkünfte aus unbeweglichem Vermögen, das der Ausübung eines freien Berufes dient.

ARTIKEL 4

(1) Gewinne eines Unternehmens eines der Hoheitsgebiete können nur in diesem besteuert werden, es sei denn, daß das Unternehmen in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte ausübt. Übt das Unternehmen eine gewerbliche Tätigkeit in dieser Weise aus, so können die Gewinne des Unternehmens in dem anderen Hoheitsgebiet besteuert werden, jedoch nur insoweit, als sie dieser Betriebstätte zugerechnet werden können.

(2) Auch der Anteil an den Gewinnen eines Unternehmens, der auf einen in einem der Hoheitsgebiete ansässigen Mitunternehmer entfällt, kann nur in diesem Hoheitsgebiet besteuert werden, es sei denn, daß das Unternehmen in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte ausübt. Übt das Unternehmen eine gewerbliche Tätigkeit in dieser Weise aus, so können in dem anderen Hoheitsgebiet die anteiligen Gewinne dieses Mitunternehmers besteuert werden, jedoch nur in Höhe seines Anteils an dem Gewinn, der dieser Betriebstätte zugerechnet werden kann.

(3) Übt ein Unternehmen eines der Hoheitsgebiete in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte aus, so sind dieser Betriebstätte in jedem der beiden Hoheitsgebiete die Gewinne zuzurechnen, die sie als selbständiges Unternehmen mit gleicher oder ähnlicher Tätigkeit unter gleichen oder ähnlichen Bedingungen und unabhängig von dem Unternehmen, dessen Betriebstätte sie ist, hätte erzielen können.

(4) Bei der Ermittlung der Gewinne einer Betriebstätte können die für diese Betriebstätte entstandenen Aufwendungen, einschließlich der Geschäftsführungs- und allgemeinen Verwaltungskosten, abgezogen werden, gleichgültig, ob sie in dem Hoheitsgebiet, in dem die Betriebstätte liegt, oder anderswo entstanden sind.

(5) Absatz 3 schließt nicht aus, daß eine der Vertragsparteien die einer Betriebstätte zuzurechnenden Gewinne durch eine Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile ermittelt; die Art der angewendeten Gewinnaufteilung muß jedoch so sein, daß das Ergebnis mit den Grundsätzen dieses Artikels übereinstimmt.

(6) Auf Grund des bloßen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebstätte kein Gewinn zugerechnet.

(7) Bei Anwendung der Absätze 1 bis 6 sind die der Betriebstätte zuzurechnenden Gewinne jedes Jahr auf dieselbe Art zu ermitteln, es sei denn, daß ausreichende Gründe dafür bestehen, anders zu verfahren.

(8) Die Absätze 1 und 2 sind nicht so auszulegen, als hinderten sie eine der Vertragsparteien daran, die aus Quellen innerhalb ihres Hoheitsgebiets einem Unternehmen des anderen Hoheitsgebiets zufließenden Einkünfte (Einkünfte aus unbeweglichem Vermögen, Dividenden, Zinsen, Lizensgebühren im Sinne des Artikels 14 Absätze 2 und 3) nach Maßgabe dieses Abkommens zu besteuern, auch wenn diese Einkünfte keiner im erstgenannten Hoheitsgebiet gelegenen Betriebstätte zuzurechnen sind.

(9) Die Absätze 1 bis 8 gelten ent-

sprechend für die nicht nach dem Gewerbeertrag berechnete Gewerbesteuer.

ARTIKEL 5

(1) Wenn

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

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

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

(2) Absatz 1 gilt entsprechend für die nicht nach dem Gewerbeertrag berechnete Gewerbesteuer.

ARTIKEL 6

(1) Einkünfte aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr können nur in dem Hoheitsgebiet besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

(2) Befindet sich der Ort der tatsächlichen Geschäftsleitung eines Unternehmens der Seeschiffahrt an Bord eines Schiffes, so gilt er als in dem Hoheitsgebiet gelegen, in dem der Heimathafen des Schiffes liegt oder, wenn kein Heimathafen vorhanden ist, in dem Hoheitsgebiet, in dem die Person, die das Schiff betreibt, ansässig ist.

(3) Die Absätze 1 und 2 gelten entsprechend für die nicht nach dem Gewerbeertrag berechnete Gewerbesteuer.

ARTIKEL 7

(1) Vorbehaltlich des Artikels 3 Absatz 3 kann der Gewinn aus dem Verkauf, der Übertragung oder dem Tausch von Vermögenswerten, den eine in einem der Hoheitsgebiete ansässige Person aus Quellen innerhalb des anderen Hoheitsgebiets bezieht, nur in dem erstgenannte Hoheitsgebiet besteuert werden.

(2) Absatz 1 gilt nicht, wenn eine in einem der Hoheitsgebiete ansässige Person in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte ausübt und der Gewinn dieser Betriebstätte zuzurechnen ist; in diesem Fall ist Artikel 4 anzuwenden.

ARTIKEL 8

(1) Einkünfte, die eine in einem der Hoheitsgebiete ansässige Person aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art bezieht, können nur in diesem Hoheitsgebiet besteuert werden, es sei denn, daß die Person für die Ausübung ihrer Tätigkeit in dem anderen Hoheitsgebiet regelmäßig über eine feste Einrichtung verfügt. Verfügt sie über eine solche feste Einrichtung, so kann der Teil der Einkünfte, der dieser Einrichtung, zuzurechnen ist, in diesem anderen Hoheitsgebiet besteuert werden.

(2) Ungeachtet des Absatzes 1 können Einkünfte, die berufsmäßige Künstler, wie Bühnen-, Film-, Rundfunk- oder Fern-

sehkünstler und Musiker sowie Sportler aus ihrer in dieser Eigenschaft persönlich ausgeübten Tätigkeit beziehen, in dem Hoheitsgebiet besteuert werden, in dem sie diese Tätigkeit ausüben.

(3) Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die eine in einem der Hoheitsgebiete ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrates einer Gesellschaft bezieht, die in dem anderen Hoheitsgebiet ansässig ist, können in diesem anderen Hoheitsgebiet besteuert werden.

ARTIKEL 9

(1) Gehälter, Löhne und ähnliche Vergütungen, die eine in einem der Hoheitsgebiete ansässige Person aus unselbständiger Arbeit bezieht, können nur in diesem Hoheitsgebiet besteuert werden, es sei denn, daß die Arbeit in dem anderen Hoheitsgebiet ausgeübt wird. Wird die Arbeit dort ausgeübt, so können die dafür bezogenen Vergütungen in diesem anderen Hoheitsgebiet besteuert werden.

(2) Abweichend von Absatz 1 können Vergütungen, die eine in einem der Hoheitsgebiete ansässige Person für eine in dem anderen Hoheitsgebiet ausgeübte unselbständige Arbeit bezieht, nur in dem erstgenannten Hoheitsgebiet besteuert werden, wenn:

a) sich der Empfänger während des betreffenden Steuerjahres insgesamt nicht länger als 183 Tage in dem anderen Hoheitsgebiet aufhält,
b) die Vergütungen von einem Arbeitgeber oder für einen Arbeitgeber gezahlt werden, der nicht in dem anderen Hoheitsgebiet ansässig ist, und
c) die Vergütungen nicht vom Gewinn einer Betriebstätte oder einer festen Einrichtung abgezogen werden, die der Arbeitgeber in dem anderen Hoheitsgebiet hat.

(3) Abweichend von den Absätzen 1 und 2 können Vergütungen für Dienstleistungen, die an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr erbracht werden, in dem Hoheitsgebiet besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

ARTIKEL 10

(1) Abweichend von Artikel 9 können Gehälter, Löhne und ähnliche Vergütungen, die von öffentlichen Kassen der Bundesrepublik, eines Landes oder einer seiner Gebietskörperschaften für Dienstleistungen gezahlt werden, in der Bundesrepublik besteuert werden; sie werden in Israel nicht besteuert, wenn die Zahlung an einen deutschen Staatsangehörigen im Sinne des Artikels 2 Absatz 1 Nummer 9a geleistet wird.

(2) Abweichend von Artikel 9 können Gehälter, Löhne und ähnliche Vergütungen, die von öffentlichen Kassen Israels für Dienstleistungen gezahlt werden, in Israel besteuert werden; sie werden in der Bundesrepublik nicht besteuert, wenn die Zahlung an einen Staatsangehörigen Israels im Sinne des Artikels 2 Absatz 1 Nummer 9b geleistet wird.

(3) Die Absätze 1 und 2 sind nicht auf Zahlungen für Dienstleistungen anzuwenden, die im Zusammenhang mit einer gewerblichen Tätigkeit der Bundesrepublik oder Israels, eines Landes oder einer ihrer Gebietskörperschaften erbracht werden.

(4) Die Absätze 1 und 2 gelten auch für Gehälter, Löhne und ähnliche Vergütungen, die im Falle der Bundesrepublik die Deutsche Bundesbank, die Deutsche Bundesbahn und die Deutsche Bundes-

post, und im Falle Israels die Bank von Israel zahlen.

ARTIKEL 11

(1) Renten, Ruhegehälter und andere ähnliche Vergütungen, die für frühere unselbständige Arbeit gezahlt werden, können nur in dem Hoheitsgebiet besteuert werden, in dem der Empfänger ansässig ist.

(2) Abweichend von Absatz 1 können Renten, Ruhegehälter und andere ähnliche Vergütungen für frühere unselbständige Arbeit, die von öffentlichen Kassen des Staates einer Vertragspartei, eines Landes oder einer ihrer Gebietskörperschaften an eine in dem Hoheitsgebiet des Staates der anderen Vertragspartei ansässige Person gezahlt werden, in dem Hoheitsgebiet des Staates der erstgenannten Vertragspartei besteuert werden; sie werden in dem Hoheitsgebiet des Staates der anderen Vertragspartei nicht besteuert.

(3) Absatz 2 gilt auch für Renten, Ruhegehälter und andere ähnliche Vergütungen für frühere unselbständige Arbeit, die im Falle der Bundesrepublik die Deutsche Bundesbank, die Deutsche Bundesbahn und die Deutsche Bundespost, und im Falle Israels die Bank von Israel zahlen.

ARTIKEL 12

(1) Für Dividenden, die einer in einem der Hoheitsgebiete ansässigen Person von einer in dem anderen Hoheitsgebiet ansässigen Gesellschaft gezahlt werden, darf der Satz der Steuer in diesem anderen Hoheitsgebiet 25 vom Hundert nicht übersteigen.

(2) Absatz 1 gilt nicht, wenn der Empfänger in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte ausübt und die Dividenden dieser Betriebstätte zuzurechnen sind; in diesem Fall gilt Artikel 4.

ARTIKEL 13

(1) Für die einer in einem der Hoheitsgebiete ansässigen Person von einer in dem anderen Hoheitsgebiet ansässigen Person gezahlten Zinsen und sonstigen Einkünften aus Obligationen, Wertpapieren, Wechseln und Schuldverschreibungen oder anderen Schuldverpflichtungen, auch wenn sie durch Grundpfandrechte gesichert sind, darf der Satz der Steuer in diesem anderen Hoheitsgebiet 15 vom Hundert nicht übersteigen.

(2) Absatz 1 gilt nicht, wenn der Empfänger in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte ausübt und die Zinsen dieser Betriebstätte zuzurechnen sind; in diesem Fall gilt Artikel 4.

(3) Abweichend von den Absätzen 1 und 2

a) können Einkünfte im Sinne des Absatzes 1, die eine in Israel ansässige Person an die Deutsche Bundesbank zahlt, nur in der Bundesrepublik besteuert werden;

b) können Einkünfte im Sinne des Absatzes 1, die eine in der Bundesrepublik ansässige Person an die Bank von Israel zahlt, nur in Israel besteuert werden.

ARTIKEL 14

(1) Wiederkehrende oder einmalige Lizensgebühren auf Grund von Urheberrechten und anderen Vergütungen, die für die Benutzung oder das Recht auf Benutzung literarischer, bühnenschriftstellerischer, musikalischer oder künstlerischer Werke gezahlt werden (mit Ausnahme von wiederkehrenden oder einmaligen Lizensgebühren und ähnlichen Vergütungen für kinematographische o-

der im Fernsehen verwendete Filme), können nur in dem Hoheitsgebiet besteuert werden, in dem der Empfänger ansässig ist.

(2) Für wiederkehrende oder einmalige Lizensgebühren und andere Vergütungen, die einer in einem der Hoheitsgebiete ansässigen Person von einer in dem anderen Hoheitsgebiet ansässigen Person für die Benutzung oder das Recht auf Benutzung von Patenten, Warenzeichen, Mustern oder Modellen, Plänen, geheimen Verfahren oder Formeln gezahlt werden, darf der Satz der Steuer in diesem anderen Hoheitsgebiet 5 vom Hundert nicht übersteigen.

(3) Absatz 2 gilt auch für wiederkehrende oder einmalige Lizenzgebühren und andere Vergütungen für die Benutzung oder das Recht auf Benutzung gewerblichen, kaufmännischen oder wissenschaftlichen Geräts und für die Erteilung von Auskünften über gewerbliche, kaufmännische und wissenschaftliche Erfahrungen.

(4) Die Absätze 1 bis 3 gelten nicht, wenn der Empfänger in dem anderen Hoheitsgebiet eine gewerbliche Tätigkeit durch eine dort gelegene Betriebstätte ausübt und die Lizenzgebühren oder anderen Vergütungen dieser Betriebstätte zuzurechnen sind; in diesem Fall gilt Artikel 4.

ARTIKEL 15

Hochschullehrer oder Lehrer aus einem der Hoheitsgebiete, die während eines vorübergehenden Aufenthaltes von höchstens zwei Jahren eine Vergütung für ein Lehrtätigkeit an einer Universität, Hochschule, Schule oder anderen Lehranstalt in dem anderen Hoheitsgebiet erhalten, sind hinsichtlich dieser Vergütung in diesem anderen Hoheitsgebiet nicht steuerpflichtig.

ARTIKEL 16

(1) Eine natürliche Person aus einem der Hoheitsgebiete, die sich vorübergehend in dem anderen Hoheitsgebiet aufhält, und zwar lediglich

a) als Student an einer anerkannten Universität, Hochschule oder Schule dieses anderen Hoheitsgebiets,
b) als Lehrling (in der Bundesrepublik einschließlich der Volontäre oder Praktikanten) oder
c) als Empfänger eines in erster Linie für das Studium oder für die Forschung bestimmten Zuschusses, Unterhaltsbetrages oder Preises einer religiösen, mildtätigen, wissenschaftlichen oder pädagogischen Organisation,

wird mit den für ihren Unterhalt, ihre Erziehung oder ihre Ausbildung bestimmten Überweisungen aus dem Ausland, mit einem Stipendium und mit allen Beträgen, die eine Vergütung für eine in diesem anderen Hoheitsgebiet ausgeübte nichtselbständige Arbeit darstellen, in dem anderen Hoheitsgebiet nicht zur Steuer herangezogen.

(2) Eine natürliche Person aus einem der Hoheitsgebiete, die sich in dem anderen Hoheitsgebiet vorübergehend für die Dauer von längstens einem Jahr als Arbeitnehmer eines Unternehmens der erstgenannten Hoheitsgebiets oder einer der in Absatz 1 Buchstabe c genannten Organisationen oder auf Grund eines mit einem solchen Unternehmen oder einer solchen Organisation geschlossenen Vertrages lediglich zu dem Zweck aufhält, technische, berufliche oder geschäftliche Erfahrungen von einer anderen Person – also nicht von dem Unternehmen oder der Organisation – zu erwerben, wird in dem anderen Hoheitsgebiet mit den Vergütungen, die für diesen Zeitraum gezahlt werden, nicht zur Steuer herangezogen, es

sei denn, daß die Vergütungen den Betrag von 15 000 DM oder dessen Gegenwert in israelischer Währung übersteigen.

(3) Eine natürliche Person aus einem der Hoheitsgebiete, die sich in dem anderen Hoheitsgebiet vorübergehend auf Grund von Vereinbarungen mit der Regierung des anderen Hoheitsgebiets lediglich zur Ausbildung, zur Forschung oder zum Studium aufhält, wird in dem anderen Hoheitsgebiet mit den Vergütungen, die sie für die Ausbildung, Forschung oder das Studium erhält, nicht zur Steuer herangezogen, es sei denn, daß die Vergütungen den Betrag von 25 000 DM oder dessen Gegenwert in israelischer Währung übersteigen.

ARTIKEL 17

Die in den vorstehenden Artikeln nicht ausdrücklich erwähnten Einkünfte können nur in dem Hoheitsgebiet besteuert werden, in dem der Empfänger ansässig ist.

ARTIKEL 18

(1) Bei einer in der Bundesrepublik ansässigen Person wird die Steuer wie folgt festgesetzt:

a) Von der Bemessungsgrundlage für die Steuer der Bundesrepublik werden die Einkünfte aus Quellen innerhalb Israels ausgenommen, die in Übereinstimmung mit diesem Abkommen in Israel besteurt werden können, es sei denn, daß Buchstabe b anzuwenden ist. Die Bundesrepublik behält aber das Recht, die so ausgenommenen Einkünfte bei der Festsetzung des Steuersatzes zu berücksichtigen.

b) Auf die für die nachstehenden Einkünfte zu zahlende Steuer der Bundesrepublik vom Einkommen wird die israelische Steuer angerechnet, die für diese Einkünfte nach israelischem Recht und in Übereinstimmung mit diesem Abkommen zu zahlen ist:

aa) Dividenden, soweit sie nicht unter Buchstabe d fallen;

bb) Zinsen im Sinne des Artikels 13 Absatz 1;

cc) Lizenzgebühren und andere ähnliche Vergütungen im Sinne des Artikels 14;

dd) Gehälter, Löhne und andere ähnliche Vergütungen, die von öffentlichen Kassen Israels für Dienstleistungen gezahlt werden und nicht nach Artikel 10 Absätze 2 und 4 von der Steuer der Bundesrepublik befreit sind.

c) Wird in den Fällen des Buchstaben b Doppelbuchstaben aa und bb die israelische Steuer von Dividenden oder Zinsen nach Vorschriften des israelischen Steuerrechts, welche die Vertragsparteien im beiderseitigen Einvernehmen bezeichnen, für eine begrenzte Zeit ganz erlassen oder ermäßigt, so wird ein Betrag von mindestens 25 vom Hundert dieser Dividenden oder 15 vom Hundert dieser Zinsen auf die Steuer der Bundesrepublik von diesen Einkünften angerechnet. Die Anrechnung nach Satz 1 darf jedoch nicht die Steuer übersteigen, die Israel ohne diesen Steuererlaß oder diese Ermäßigung erhoben hätte.

d) Abweichend von den Buchstaben b und c gilt Buchstabe a für Dividenden, die einer in der Bundesrepublik ansässigen Gesellschaft von einer in Israel ansässigen Gesellschaft gezahlt werden, deren stimmberechtigte Anteile zu mindestens 25 vom Hundert der erstgenannten Gesellschaft gehören.

e) Buchstabe c gilt nicht für Dividenden, die von einer Gesellschaft gezahlt

werden, deren Vermögenswerte zu mindestens 50 vom Hundert aus Anteilen an Gesellschaften bestehen, die ihre Geschäftsleitung außerhalb Israels haben.

f) Buchstabe d gilt für Dividenden nur dann, wenn sie von einer Gesellschaft gezahlt werden, deren Einkünfte ausschließlich oder fast ausschließlich

aa) aus der Herstellung oder dem Verkauf von Gütern oder Waren, aus Dienstleistungen oder aus Bank- oder Versicherungsgeschäften oder

bb) aus Dividenden stammen, die von einer oder mehreren in Israel ansässigen Gesellschaften gezahlt werden, deren stimmberechtigte Anteile zu mehr als 50 vom Hundert der erstgenannten Gesellschaft gehören und die ihre Einkünfte wiederum ausschließlich oder fast ausschließlich aus der Herstellung oder dem Verkauf von Gütern oder Waren, aus Dienstleistungen oder aus Bank-oder Versicherungsgeschäften beziehen.

(2) Bei einer in Israel ansässigen Person wird die Steuer wie folgt festgesetzt:

Werden in eine in Israel durchgeführte Veranlagung Einkünfte einbezogen, die aus Quellen innerhalb der Bundesrepublik stammen und in Übereinstimmung mit diesem Abkommen in der Bundesrepublik besteuert werden können, so wird auf die israelische Steuer von diesen Einkünften ein Betrag angerechnet, welcher der tatsächlich erhobenen Steuer der Bundesrepublik, höchstens aber der israelischen Steuer von diesen Einkünften entspricht; der anzurechnende Betrag darf jedoch den Teil der israelischen Steuer nicht übersteigen, der dem Verhältnis dieser Einkünfte zum Gesamtbetrag der der israelischen Steuer unterliegenden Einkünfte entspricht. Handelt es sich bei diesen Einkünften um eine gewöhnliche Dividende, die eine in der Bundesrepublik ansässige Kapitalgesellschaft zahlt, so wird bei der Anrechnung (neben einer für die Dividenden zu zahlenden Steuer der Bundesrepublik) die von der Gesellschaft für ihre Gewinne zu zahlende Steuer der Bundesrepublik berücksichtigt; handelt es sich um eine auf Gesellschaftsanteile mit zusätzlicher Gewinnbeteiligung gezahlte Dividende, die sowohl eine in den Anteilen verbriefte Dividende zum festgesetzten Satz als auch eine zusätzliche Gewinnbeteiligung umfaßt, so wird bei der Anrechnung die von der Gesellschaft für ihren Gewinn zu zahlende Steuer der Bundesrepublik auch insoweit berücksichtigt, als die Dividende den festen Vorzugsbetrag übersteigt.

ARTIKEL 19

(1) Die Angehörigen des Staates einer der Vertragsparteien dürfen in dem Hoheitsgebiet der anderen Vertragspartei keiner Besteuerung oder damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender ist als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen die Angehörigen des Staates dieser anderen Vertragspartei unter gleichen Verhältnissen unterworfen sind oder unterworfen werden können.

(2) Staatenlose dürfen in dem Hoheitsgebiet einer der Vertragsparteien keiner Besteuerung oder damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender ist als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen die Angehörigen des Staates dieser Vertragspartei unter gleichen Verhältnissen unter-

worfen sind oder unterworfen werden können.

(3) Die Besteuerung einer Betriebstätte, die ein Unternehmen eines der Hoheitsgebiete in dem anderen Hoheitsgebiet hat, darf in dem anderen Hoheitsgebiet nicht ungünstiger sein als die Besteuerung von Unternehmen dieses anderen Hoheitsgebiets, welche die gleiche Tätigkeit ausüben.

Diese Vorschrift ist nicht dahin auszulegen, daß sie eine Vertragspartei verpflichtet, den in dem Hoheitsgebiet der anderen Vertragspartei ansässigen Personen Steuerfreibeträge, -vergünstigungen und -ermäßigungen auf Grund des Personenstandes oder der Familienlasten zu gewähren, die sie den in ihrem Hoheitsgebiet ansässigen Personen gewährt.

(4) Die Unternehmen eines der Hoheitsgebeite, deren Kapital ganz oder teilweise, unmittlebar oder mittelbar, einer in dem anderen Hoheitsgebiet ansässigen Person oder mehreren solchen Personen gehört oder der Kontrolle dieser Personen unterliegt, dürfen in dem erstgenannten Hoheitsgebiet keiner Besteuerung oder damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender ist als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen andere ähnliche Unternehmen des erstgenannten Hoheitsgebiets unterworfen sind oder unterworfen werden können.

(5) In diesem Artikel bedeutet der Ausdruck „Besteuerung" Steuern jeder Art und Bezeichnung.

ARTIKEL 20

(1) Die zuständigen Behörden werden die ihnen auf Grund ihrer Steuergesetze auf dem normalen Verwaltungswege zur Verfügung stehenden Auskünfte austauschen, die zur Durchführung dieses Abkommens erforderlich sind. Die so ausgetauschten Auskünfte sind als geheim zu behandeln und dürfen nur Personen zugänglich gemacht werden, die sich mit der Veranlagung oder Erhebung von Steuern im Sinne dieses Abkommens befassen. Die zuständige Behörde eines Hoheitsgebiets darf keine Auskünfte geben, die der Behörde des anderen Hoheitsgebiets ein Handels-, Geschäfts-, Gewerbe- oder Berufsgeheimnis oder ein gewerbliches Verfahren preisgeben würden.

(2) Absatz 1 darf nicht so ausgelegt werden, als verpflichte er eine der Vertragsparteien. Verwaltungsmaßnahmen durchzuführen, die von ihren Vorschriften oder ihrer Verwaltungspraxis abweichen oder die der Souveränität, der Sicherheit oder öffentlichen Ordnung ihres Staates widersprechen, oder Angaben zu übermitteln, die auf Grund der Rechtsvorschriften ihres oder des Staates der ersuchenden Vertragspartei nicht beschafft werden können.

ARTIKEL 21

(1) Weist eine in einem der Hoheitsgebiete ansässige Person nach, daß Maßnahmen der Steuerbehörden der Staaten der Vertragsparteien eine diesem Abkommen widersprechende Doppelbesteuerung bewirkt haben oder bewirken werden, so kann sie ihren Fall der zuständigen Behörde des Hoheitsgebiets, in dem sie ansässig ist, unterbreiten. Werden ihre Einwendungen als begründet erachtet, so wird sich die zuständige Behörde dieses Hoheitsgebiets mit der zuständigen Behörde des anderen Hoheitsgebiets über die Vermeidung der Doppelbesteuerung zu verständigen suchen.

(2) Über Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung

dieses Abkommens oder im Verhältnis dieses Abkommens zu Abkommen der Staaten der Vertragsparteien mit dritten Staaten auftreten, verständigen sich die zuständigen Behörden der Hoheitsgebiete möglichst rasch.

ARTIKEL 22

(1) Die zuständigen Behörden der beiden Hoheitsgebiete können die für die Anwendung dieses Abkommens in dem jeweiligen Hoheitsgebiet erforderlichen Richtlinien erlassen.

(2) Zum Zwecke der Anwendung dieses Abkommens können die zuständigen Behörden der beiden Hoheitsgebiete unmittelbar miteinander verkehren.

ARTIKEL 23

Zwischen den Vertragsparteien bereits in Kraft befindliche Vereinbarungen werden von diesem Abkommen nicht berührt.

ARTIKEL 24

Dieses Abkommen gilt auch für das Land Berlin, sofern nicht die Regierung der Bundesrepublik Deutschland gegenüber der Regierung des Staates Israel innerhalb von drei Monaten nach Inkrafttreten des Abkommens eine gegenteilige Erklärung abgibt.

ARTIKEL 25

Dieses Abkommen tritt einen Monat nach dem Tag in Kraft, an dem die Bevollmächtigten der Vertragsparteien in Bonn Urkunden ausgetauscht haben, in denen bestätigt wird, daß die verfassungsrechtlichen Voraussetzungen für das Inkrafttreten erfüllt sind, und gilt dann

a) hinsichtlich der Steuer der Bundesrepublik für Steuern, die für das Kalenderjahr 1961 und die folgenden Kalenderjahre erhoben werden, und
b) hinsichtlich der israelischen Steuern, die für das Steuerjahr 1961 und die folgenden Steuerjahre erhoben werden.

ARTIKEL 26

Dieses Abkommen bleibt auf unbegrenzte Zeit in Kraft, jedoch kann jede der Vertragsparteien am oder vor dem 30. Juni jedes Kalenderjahres, frühestens jedoch 1965, das Abkommen gegenüber der anderen Vertragspartei schriftlich kündigen; in diesem Fall verliert das Abkommen seine Gültigkeit wie folgt:

a) hinsichtlich der Steuer der Bundesrepublik für Steuern, die für die dem Kündigungsjahr folgenden Kalenderjahre erhoben werden;
b) hinsichtlich der israelischen Steuern für Steuern, die für die dem Kündigungsjahr folgenden Steuerjahre erhoben werden.

ERGÄNZENDER NOTENWECHSEL
ZUM ABKOMMEN VOM 9. JULI 1962

1. Dr. F. E. Shinnar, Außerordentlicher und bevollmächtigter Botschafter, Leiter der Israel-Mission

Bad Godesberg, den 9. Juli 1962

Sehr geehrter Herr Ministerialdirektor von Haeften,

Ich beehre mich, den Empfang Ihres heutigen Schreibens zu bestätigen, das wie folgt lautet:

„Anläßlich der heutigen Unterzeichnung des Abkommens zwischen der Regierung der Bundesrepublik Deutschland und der Regierung des Staates Israel zur Vermeidung der Doppelbesteuerung

bei den Steuern vom Einkommen und bei der Gewerbesteuer beehre ich mich, Ihnen im Namen der Regierung der Bundesrepublik Deutschland folgendes mitzuteilen:

Artikel 18 Absatz 1 Buchstabe c des Abkommens ist anzuwenden, wenn die israelische Steuer nach folgenden Vorschriften – in der beim Inkraftreten des Abkommens geltenden Fassung – ganz erlassen oder ermäßigt wird: Section 11 des Encouragement of Capital Investments Law 5710 – 1950 und Sections 46, 47, 47 A, 52 und 53 des Encouragement of Capital Investments Law 5719 – 1959. Er ist ferner anzuwenden, wenn derartige Steuererlasse oder -ermäßigungen auf Grund künftiger Vorschriften gewährt werden, welche die erstgenannten Vorschriften ändern oder ersetzen, ohne die durch diese gewährten Vergünstigungen wesentlich zu ändern. Die zuständigen Behörden der beiden Hoheitsgebiete werden im beiderseitigen Einvernehmen alle etwaigen Zweifel darüber klären, für welche Vorschriften der vorhergehende Satz zu gelten hat.

Falls dieser Vorschlag die Billigung der Regierung des Staates Israel findet, können dieses Schreiben und Ihr Antwortschreiben als Bestandteil des Abkommens gelten."

Ich beehre mich, Ihnen mitzuteilen, daß die Regierung von Israel mit dem in Ihrem Schreiben enthaltenen Vorschlag einverstanden ist.

Genehmigen Sie die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shinnar

An
Herrn Ministerialdirektor
G. von Haeften
Auswärtiges Amt
Bonn

2. Dr. F. E. Shinnar, Außerordentlicher und bevollmächtigter Botschafter, Leiter der Israel-Mission

Bad Godesberg, den 9. Juli 1962

Sehr geehrter Herr Ministerialdirektor von Haeften,

Ich beehre mich, den Empfang Ihres heutigen Schreibens zu bestätigen, das wie folgt lautet:

„Anläßlich der heutigen Unterzeichnung des Abkommens zwischen der Regierung der Bundesrepublik Deutschland und der Regierung des Staates Israel zur Vermeidung der Doppelbesteuerung bei den Steuern vom Einkommen und bei der Gewerbesteuer beehre ich mich, Ihnen im Namen der Regierung der Bundesrepublik Deutschland folgendes mitzuteilen:

Die zuständigen Behörden werden die Schritte unternehmen, die erforderlich sind um sicherzustellen, daß der Quellenstaat den Steuersatz für wiederkehrende oder einmalige Lizenzgebühren und ähnliche Vergütungen für kinematographische oder im Fernsehen verwendete Filme mit Wirkung vom 1. Januar 1965 in Übereinstimmung mit den vom Steuerausschuß der OEEC (OECD) festgelegten Grundsätzen beschränkt.

Falls dieser Vorschlag die Billigung der Regierung des Staates Israel findet, können dieses Schreiben und Ihr Antwortschreiben als Bestandteil des Abkommens gelten."

Ich beehre mich, Ihnen mitzuteilen, daß die Regierung von Israel mit dem in Ihrem Schreiben enthaltenen Vorschlag einverstanden ist.

Genehmigen Sie die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shinnar

An
Herrn Ministerialdirektor
G. von Haeften
Auswärtiges Amt
Bonn

3. Dr. F. E. Shinnar, Außerordentlicher und bevollmächtigter Botschafter, Leiter der Israel-Mission

Bad Godesberg, den 9. Juli 1962

Sehr geehrter Herr Ministerialdirektor von Haeften,

Ich bestätige den Empfang Ihres Schreibens vom heutigen Tage, das folgenden Wortlaut hat:

„Anläßlich der heutigen Unterzeichnung des deutsch-israelischen Doppelbesteuerungsabkommens darf ich feststellen, daß sowohl die Regierung der Bundesrepublik Deutschland als auch die Regierung des Staates Israel die Auffassung vertreten, daß die Tätigkeit deutscher Firmen in Israel einschließlich der Errichtung von Niederlassungen wie auch die Tätigkeit israelischer Firmen in der Bundesrepublik Deutschland einschließlich der Errichtung von Niederlassungen keinen anderen gesetzlichen Bestimmungen unterliegen als solchen, die ganz allgemein für ausländische Firmen gelten.

Ich wäre Ihnen sehr verbunden, wenn Sie mir den Empfang dieses Schreibens sowie das Einverständnis der Regierung des Staates Israel mit seinem Inhalt bestätigen könnten."

Ich darf Ihnen bestätigen, daß die Regierung des Staates Israel mit dem Inhalt Ihres Schreibens einverstanden ist.

Genehmigen Sie die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

Shinnar

An
Herrn Ministerialdirektor
G. von Haeften
Auswärtiges Amt
Bonn

4. Auswärtiges Amt, Ministerialdirektor G. von Haeften

Bad Godesberg, den 9. Juli 1962

Sehr geehrter Herr Dr. F. E. Shinnar,

Ich beehre mich, den Empfang Ihres heutigen Schreibens zu bestätigen, das wie folgt lautet:

„Anläßlich der heutigen Unterzeichnung des Abkommens zwischen der Regierung der Bundesrepublik Deutschland und der Regierung des Staates Israel beehre ich mich, Ihnen im Namen der Regierung des Staates Israel mitzuteilen, daß Renten, Ruhegehälter und andere wiederkehrende oder einmalige Zahlungen, welche die Bundesrepublik Deutschland, ein Land oder eine ihrer Gebietskörperschaften an eine natürliche Person als Vergütung für einen Schaden leistet, der als Folge von Kriegshandlungen oder politischer Verfolgung entstanden ist, zur Zeit in Israel nicht steuerpflichtig sind. Die Regierung des Staates Israel sagt zu, hieran nichts zu ändern.

Falls dieser Vorschlag die Billigung der Regierung der Bundesrepublik Deutschland findet, können dieses Schreiben und Ihr Antwortschreiben als Bestandteil des Abkommens gelten."

Ich beehre mich, Ihnen mitzuteilen, daß die Regierung der Bundesrepublik Deutschland mit dem in Ihrem Schreiben enthaltenen Vorschlag einverstanden ist.

Genehmigen Sie die erneute Versicherung meiner ausgezeichnetsten Hochachtung.

G. von Haeften

An den
Leiter der Israel-Mission
Herrn Botschafter Dr. F. E. Shinnar
Köln

IV

BIBLIOGRAPHY

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Discussion of the Belgian corporation with respect to commercial law. The book focuses on aspects such as incorporation, contribution of capital, stock issues, administration and management, reserves, liquidation and consolidations. Tax aspects are not dealt with.

COURS DE DROIT FISCAL, IMPOTS SUR LE REVENU, by *Coart-Frésart, P.* Librairie Universitaire Uystpruyst, 10, rue de la Monnaie, Louvain, 1963. 300 pp. Bfrs. 325.—

This handbook discusses in a clear and concise manner the Belgian income tax system and the most significant provisions. It is published in mimeographed form and used by the students of the Université Catholique de Louvain as a textbook.

BEGINSELEN VAN HET BELGISCH BELASTINGRECHT, by *van Houtte, Prof. Mr. J.* Wetenschappelijke Uitgeverij E. Story-Scientia P.V.B.A., Gent, 1966. 793 pp. Bfrs. 1.000 (ing.) or Bfrs. 1.200 (geb.)

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In Part II a more theoretical analysis of the turnover tax phenomenon is developed.

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CUMULATIVE INDEX 1966
No. 1–6

EDITORIAL

A draft bill for a turnover tax on value added and an accompanying explanatory memorandum have been published in the Netherlands. The draft does not purport to be an official Government proposal, but has been submitted to the business community for its comments in order to form a basis of discussion with regard to a Dutch T.V.A.

The draft opts for the prior tax deduction method whereby the tax due on the gross turnover is first determined and the turnover tax amounts paid are deducted; for capital investment, the draft opts for an immediate deduction in full with a possibility to refuse deduction (totally or partly) or to allow the deduction only pro-rata temporis under special economic circumstances. In principle, however, the model of the tax is more or less "pure". The introduction of a nil rate (to be effected in the last stage) has as a consequence an ultimate tax burden on the favored items which is really nil, as the draft does not follow the proposals in section 7 (2) of the second directive of the E.E.C. Commission concerning reducted rates. The directive commentary notes that such a course will occasion continuous requests for refunds. However, the draft requires that favored items be particularly essential. The ultimate composition of the list of favored items (assuming acceptance of the draft principle) is questionable because although the existing turnover tax contains numerous exemptions, as a result of the cumulative character of the existing tax an exemption does not result in a complete exemption of the tax burden, as would be the case in the proposed T.V.A.

No decision has been made as to the occupancy of the retail stage in the tax structure, retailers being exempt from turnover tax under the present system; nevertheless the draft's starting point is the taxability of the retailers. If the retail stage is not included in the tax structure, the contingent draft provision follow the principle of Art. 9 (2) of the second draft directive by declaring the T.V.A. invoiced to the retailer not deductible. Again politically, the repeal of the exemption for retailers will involve substantial controversy, but in general we think the occupancy of the retail stage in the tax structure has in the Netherlands more to recommend it than does an exemption. The maintenance of a book keeping system sufficiently detailed to permit the application of the tax on value added with requisite tax administration control is a problem for all small enterprises, not simply retailers. In the draft, enterprises whose taxable amount is less than Dfl. 2,500 a year are allowed (in accordance with a sliding scale) to deduct an additional amount of up to Dfl. 1.000 of the tax. Technical problems of having a sufficiently detailed bookkeeping ar not met; rather the enterprises receive a sort of subsidy to meet the extra expenses of maintaining adequate books. The draft definition of a small enterprise relates not to the turnover but to the tax liability and thus seemingly includes large enterprises with small tax liabilities resulting from the exemption of certain products. These clearly should not receive the special subsidy. However, as emphacized the last words on the Dutch T.V.A. have not yet been spoken. In fact, in the Netherlands, discussions are just beginning.

DR. J.C.L. HUISKAMP

CONTENTS

1

TAX REFORM IN BRAZIL

by

RUBENS GOMES DE SOUSA*

Introduction

Taxation played a not inconspicuous part in the history of Brazil in the 19th century. Here as elsewhere, the inherent opprobrium of colonial exactions worked as a political factor instrumental to Brazil's secession from Portugal in 1822. Discontent generated in the Provinces by excessive fiscal and political centralization was one of the causes leading to the abdication in 1831 of Emperor Pedro I. The Imperial Constitution was amended in 1834 precisely to insure a degree of political and financial autonomy to the Provinces, but Pedro II nevertheless continued his father's policies through the half-century of his otherwise enlightened reign. This, compounded by the unfavourable economic conditions following the war with Paraguay (1864-1871) and the abolition of slavery (1888), contributed to the final overthrow of the monarchy in 1889.

It is not surprising, therefore, that acute awareness of the political implications of public finance prompted the first republican Congress to regulate taxing powers in the Constitution of 1891 in much greater detail than usual for such documents in Europe and America. The system then adopted rested on the allocation to the Federal Government and to the former Provinces (now called States) of specific taxes designated by name in the Constitution itself. In the shortlived Constitution of 1934, other specific allocations were made to the local governments (Municipalities). The Constitution of 1937 reflected the political philosophy of the moment by evidencing a return to centralization, but this trend was reversed by the Constitution of 1946. The latter, while preserving the basic feature of specific allocations of individual taxes, allowed all "other" (i.e., non-designated) taxes to be imposed by the States, except that the revenue from the State tax was shared with the other two governments, and that the creation of such a tax by the Federal Government would abrogate the identical one being charged by a State. Also, the Municipalities were granted a share in the proceeds of certain Federal taxes, and in the excess of State tax collections over local revenue from all sources. In 1961 a Constitutional Amendment further increased the taxing powers of the Municipalities and their share in Federal tax revenues.

The Brazilian tax system was therefore divided into three separate areas, Federal, State, and Municipal, each comprising a certain number of taxes defined by the Constitution according to legal rather than economic concepts. Theoretically, these areas were rigidly separate and distinct, and the taxes included in each were different from those of

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the others. In practice, however, interpenetration occured among the areas, and taxes of different governments, and sometimes those of the same government, actually overlapped. As a typical example, both the Federal excise tax and the State sales tax were taxes on the circulation of goods, their only difference being the purely formal one that the State tax was confined to circulation through sale. And the Municipal business tax, assessed in a majority of cases at percentage rates on gross receipts, superimposed itself on both the Federal and the State circulation taxes, besides duplicating in cruder form the Federal income tax.

Similar instances occurred in respect of taxes not defined in the Constitution, which the States were at liberty to impose and which in many cases were different in legal form only from other State taxes, or from Federal or Municipal taxes. Also, the fact that either the Federal, State, or Municipal governments could charge fees for public services frequently lent itself to the imposition of fees which were actually taxes, distinguished in name only from taxes allocated by the Constitution to the same or to a different government. The factor mainly responsible for the situation described was the previously noted fact that the Constitution defined taxes in legal rather than economic terms, thereby permitting distortions of legal concepts, or of statutory construction, which ultimately led to the co-existence of taxes formally distinct but substantially identical.

Basic concepts of the new tax system

As part of its program of economic, financial and administrative reform, the Federal Government in January of 1965 appointed a special committee of official and private experts to revise the tax system, with a view to submit to Congress a proposal for a Constitutional Amendment.[1] In July the committee produced a first draft, discussed in the three following months by tax officials of the three governments, by Chambers of Commerce and other organizations representing taxpayers or devoted to economic and fiscal studies, by University professors of law and of public finance, and by private specialists, considerable attention being given to the matter in legal and technical journals and in the daily press. At the end of October the committee met again and in the light of this debate produced a revised draft which the Government adopted with minor alterations and immediately submitted to Congress as a bill for a Constitutional Amendment. This bill was debated and voted during November and approved, with a few changes of detail, on 1st December 1965 as Amendment No 18 to the Constitution of 1946.[2]

The committee states in its report that the guiding spirit of the reform is to replace the supposedly independent Federal, State and Municipal groups of taxes by one integrat-

1) For administrative and technical reasons, the committee was placed within the Getulio Vargas Foundation, a semipublic research organization acting as economic and financial consultant to the Government. Dr. Luiz Simões Lopes, President of the Foundation, is Chairman of the committee, the other members being Professor Gerson Augusto da Silva, representing the Ministry of Finance; Professor Sebastião Santana e Silva, representing the Minister Extraordinary for Economic Development; Dr. Gilberto de Ulhõa Canto, an independent lawyer and tax consultant in Rio de Janeiro; Dr. Mario Henrique Simonsen, staff economist of the Foundation; and the writer as General Reporter.

2) An English translation of the Constitutional Amendment No 18 is included in the Appendix.

ed national tax system. As a first step toward this purpose, the former method of allocating specific taxes to individual governments on the basis of legal definitions was abandoned, and three economic areas, namely, foreign trade, property and income, and production and circulation, were defined in which all taxes could then be classified. A fourth class was added for certain special taxes, which because of their characteristics or of the circumstances of their imposition could not be included in any of the three main areas. As a second step, the economic activities falling into each area were analyzed and those more adequate to serve as bases for taxation were allocated to the government best suited in each case to tax them, selection of the suitable taxing authority being governed primarily by economic considerations, and secondarily by legal, political or administrative reasons. In this way a total of only twelve taxes could be arrived at, against the seventeen formerly recognized by the Constitution apart from the unspecified taxes which could be imposed by the States, this so-called "residuary' taxing power being now abolished.

From the viewpoint of its enactment, the tax reform will be accomplished in three stages, of which the first was completed with the approval of the Constitutional Amendment itself. The second stage will consist of the "complementary statutes" called for by certain provisions of the Amendment: these will be enacted by the Federal Congress, but their character is national rather than Federal, in the sense that they are intended to implement those constitutional provisions which simultaneously affect the taxing powers of more than one government. The third and final stage will then consist of the individual tax statutes to be enacted by the Federal, State, and Municipal governments, repealing or amending their existing taxes, or creating new ones, in accordance with the Constitutional Amendment and the complementary statutes. The main principles of the tax reform being thus indicated, the following is a brief summary of the provisions of Constitutional Amendment No 18.[3]

Limitations to taxing powers

In the matter of this heading, very few changes were introduced in the Constitution of 1946, which itself preserved certain principles traditional in Brazilian law. Thus, the principle of legality is retained in the provision (Art. 2, I) that no fiscal charges (taxes, fees, or improvement contributions) may be created or increased otherwise than by statute, in the sense of an act voted by the Legislature and ratified by the Executive. Certain exceptions are provided, however, in respect of the increase, but not of the creation, of taxes which by their special characteristics may require prompt action by the government. The delegation of powers being prohibited by the Constitution, the Amendment directly vested in the Executive arm of the government, or sometimes in the Federal Senate, the necessary powers for that action, which will be discussed

3) At the time of this writing (March 1966), the complementary statutes are being drafted by a subcommittee composed of Professor Gerson Augusto da Silva, Dr. Gilberto de Ulhôa Canto, and the writer, with the collaboration of experts from the Federal, State and Municipal governments. The finished draft will be published for suggestions and criticism before being submitted to Congress, which is expected to occur by late April or in early May. Whenever the following description refers to matters included in this draft, and therefore subject to change, the necessary reservation is indicated.

below in the appropriate places. The principle of annuality is also preserved (Art. 2, II), but only in respect of taxes on property and income, which are assessed on the basis of annual returns. New or increased taxes on transactions or services, in which the taxable event is an isolated fact, may therefore be enforced in the same year of their enactment. Other existing limitations, related to the national unity of the tax system, are retained in Art. 2, III, which requires Federal taxes to be uniform throughout the country; and in Art. 3, II, which prohibits State or Municipal taxes to discriminate against goods by reason of their origin or destination.

Still other existing limitations are preserved in Art. 2, IV, which prohibits any government to impose taxes on the property, income, or services of another or of political parties and educational or charitable institutions, on places of worship of whatever denomination, and on newsprint. The so-called "reciprocal immunity" of the property, income or services of the three governments does not extend to public services concessions granted to private persons, but, if the general interest so requires, Federal concessions may be exempted from State or Municipal charges. This exception to the general rule was necessary to solve an existing conflict of jurisdiction between the Federal and the State or Municipal governments; it is justified by the fact that public services, when exercised through a concession, must be assured of the same tax treatment they would enjoy under Art. 2, IV (a) if directly performed by the government. The Amendment is silent on the matter of Municipal taxation of State concessions, or vice-versa, but this may be dealt with by the State Constitutions.

An important provision of the Amendment is Art, 4, which reserves to the Federal Government the power to impose compulsory loans. These, generally regarded as "refundible taxes", were used in recent years in a rather indiscriminate manner by all three governments. Since the compulsory subscription of a public loan may be equated to the payment of a tax, however temporary, it was felt that the integrity of the national tax system required a stricter regulation of the matter. It is proposed in a complementary statute to restrict the powers of the Federal Government in this respect to exceptional and well-defined cases, such as actual or imminent foreign war and public calamities requiring Federal aid impossible to provide with available funds.

As noted before, the Amendment abolished the so-called "residuary powers" under which the States were free to impose any tax not specifically allocated by the Constitution to another government: thus, Art. 5 stipulates that the only taxes recognized by the Constitution are those defined in the following provisions. An exception to this general rule is to be found in Art. 17, which allows the Federal Government temporarily to impose other taxes in the case of actual or iminent foreign war. In Art. 6, Amendment No 18 regulates cumulative taxing powers in the case of States or Federal Territories not divided into Municipalities[4].

4) With an area of nearly 3,300,000 square miles and a population of over 80 million (about half those of the South American continent), Brazil has one Federal District, four Territories and 22 States, unequally divided into some 4,000 Municipalities. The Federal District, including the city of Brasilia and adjoining areas, is the capital of the nation (the former capital, the city of Rio de Janeiro, not to be confused with the State of the same name, is now in the State of Guanabara). The Territories are administered by the Federal Government until they reach statehood, and their laws are voted by the Federal

Taxes on foreign trade

Import duties (Art. 7, I) have always been a Federal tax, consistently with their primary function as instruments to regulate foreign trade and exchange. The Amendment strengthened this aspect by delegating to the Executive the power to change rates and bases of computation whenever necessary to implement the Federal policy on those two areas. The definition of the tax basis, i.e., the import price on value, was adapted from the recommendations of the Brussels Customs Co-Operation Council. The *export tax* (Art. 7, II) was formerly a State tax, but under such limitations as to make it practically useless in most cases. The Amendment, therefore, restored its proper definition as a Federal tax, to be used in regulating foreign trade and exchange rather than to produce revenue. It is proposed that a complementary statute shall provide for a "standard export price" for each type of goods, to be established and revised when necessary by Executive order, the tax falling only on the excess of the actual export price over the "standard" price. The proceeds of the tax are earmarked as monetary reserves to assist in maintaining the stability of international prices.

Taxes on property and income

The tax on *rural real property*, traditionally a State tax, was allocated to the Municipalities in 1961 by Constitutional Amendment. In 1964 another Amendment provided that it should be enacted and collected throughout the country by the Federal Government, the proceeds being returned to the Municipalities: this was necessary to insure uniform regulation of the tax as a means to implement the national land reform program enacted at the same time. Amendment No 18 preserves these features in Art. 8, I, and in Art. 20, I. It is proposed that a complementary statute shall embody the tax provisions of the Land Reform Act of 1964, under which the tax is assessed at a basic percentage rate on land values and adjusted in each case according to a number of factors related to the characteristics of the property and of its economic exploitation.

The *income tax*, first introduced in Brazil in 1924, has always been a Federal tax, and this allocation is preserved by the Amendment in Art. 8, II, the revenue being, however, handed over to the States and Municipalities when the tax is assessed on income from their public debt or on the emoluments of their civil servants. The constitutional definition of the tax as falling on income and "gains of whatever nature" adequately covers its imposition on income according to the traditional economic concept and on capital gains.

The true nature of *real property transfer taxes* (Art. 9), either *inter vivos* or by inheritance or legacy, may be a matter of dispute, but in Brazil these are traditionally regarded as property taxes assessed at the time of a change in ownership. Before 1961, the tax was imposed in both cases by the States, but in that year a Constitutional Amendment vested into the Municipalities the power to tax *inter vivos* transfers. Practical experience de-

Congress. The States vote their own Constitutions, which include rules of Municipal administration, and elect a Governor and a Legislative Assembly. Municipalities are governed by elective Mayors and Municipal Councils. Elections are by the direct and secret vote of all literate citizens of both sexes over 18 years of age.

monstrated this move to have been unfortunate, since the large number of Municipal legislations brought about a wide discrepency in criteria and in rates, apart from the fact that in many cases the Municipalities proved less able to administer the tax. For these reasons, and in the interest of achieving a more uniform treatment, the Amendment returned the *inter vivos* tax to the States, besides consolidating it and the *causa mortis* tax in only one definition, since the taxable event is in both cases the same, i.e., the transfer of ownership.

Some members of the committee held that these taxes ought to be abolished altogether: the taxable matter in a transfer should be only the gain, and therefore the appropriate method of taxation should be the income tax, even though the Federal Government were to hand the proceeds over to the States. For policy reasons, however, it was felt that such a radical departure from established tax ideas might be premature, and therefore the tax was retained but made subject to limitations intended to offset its inadequacies and especially its adverse effect on the capitalization or reorganization of companies. Thus, the *causa mortis* tax is now restricted to transfers of real property, a limitation formerly applicable only to the *inter vivos* tax; and the incidence of the latter is excluded when real property is contributed to the capital of legal entities, except of course those dealing in real estate. Moreover, in all cases the tax rate is subject to a ceiling to be established and revised by the Federal Senate in accordance with a complementary statute: it is proposed that the latter shall provide certain rules for graduating the tax in each case according to the nature and characteristics of the taxable transaction.

Urban real property is of course the proper object of a local tax, and the Amendment so defines it in Art. 10. However, as a result of the Land Reform Act previously referred to, the terms "urban" and "rural" have lost in Brazilian law their purely geographical sense of "city" or "country". For the purposes of that Act, rural property is defined as any real property, regardless of its location, which is permanently exploited for agricultural or livestock production, or for the primary industrialization of natural products. Therefore, the Municipal tax on "urban" real property will be confined to land and buildings not so utilized, even though geographically non-urban; whilst the seats of agricultural, livestock, or industrial exploitations will be subject to the "rural" real estate tax administered by the Federal Government, the proceeds of which, however, will be returned to the Municipalities.

Taxes on production and circulation

In Brazil's present stage of economic development the so-called "indirect" turnover taxes necessarily have an important place in the tax system: in the Federal budget estimates for 1966, the income tax with 1,100 billion cruzeiros runs a poor second to the excise tax with 1,895 billion[5]; the sales tax alone produced about 70 percent of the entire State tax revenue; and the business tax, assessed, as previously noted, on gross income from sales and services, and therefore resembling the Italian I.G.E., was the mainstay of Municipal finances. These facts could not, of course, be ignored when drafting the Amendment, but on the other hand they suggested that those essentially identical taxes

5) The official parity of the cruzeiro is 2,200 for one U.S. dollar.

on production and circulation should be coordinated so as to avoid their overlapping and to minimize their burden both on the "statutory" taxpayer (i.e., the manufacturer or merchant) and on the "economic" taxpayer (i.e., the ultimate consumer).

The sales tax was, in most cases, assessed on each sale under the non-creditable or "cascade" method[6]. Incidence being based on the legal concept of a sale to an independent purchaser, circulation internal to the taxpayer enterprise in the manufacturing or distribution process naturally escaped the tax, which therefore favored integration. It is now replaced by a *circulation tax* (Art. 12) not confined to sales and assessed according to the value added principle pioneered by the French T.V.A., every time a merchant, or a manufacturer, or a (non-industrial) producer transfers merchandise or goods in process from an establishment to another, owned by a third party or by himself, and the transfer increases the value of the goods. This increase in value may be due to the receipt of a price including a profit, or to the addition of freight and insurance charges, or it may result merely from the fact that transportation makes the goods available for sale or use at a place where they are in greater demand. The incidence of the tax being independent of a legal change in ownership, it is proposed to make it payable whenever the goods leave an establishment of a merchant, manufacturer, or producer, under a concept similar to that of "delivery" in the German turnover tax, but taxing the transfer at the point of origin rather than destination. As an exception to this general rule, it is proposed to provide for the incidence of the tax also when merchandise is acquired without being physically moved, as in the sale or merger of an entire establishment as a going concern.

From the viewpoint of national unity, probably the most serious problem under the former tax system was that of interstate sales. Marked differences in capacity of production, especially of manufactured goods, and in consumer needs still exist among the various regions of Brazil, creating a sharp economic distinction between "producer" and "consumer" States. One result of this situation was that when consumer goods were shipped to another State for sale by a branch or other establishment of their producer or manufacturer, both the State of origin and that of destination claimed the power to tax the sale. A Federal statute passed in 1938 ruled that the tax was due only to the producer State: this solution, though upheld by the Supreme Court as constitutional, was nevertheless unfortunate both economically and legally as well as politically. Since the tax was predicated on the event of a sale, the consumer State, where the sale actually took place, understandably felt deprived of a legitimate right, and exerted every effort to counteract the Federal statute by collecting the tax under several ingenious devices, which of course led to protracted, costly, and demoralizing litigation. The replacement of the sales tax by a circulation tax independent of the legal concept of sale is expected to eliminate this problem, since both States will now be able to collect the tax. However, in order to equalize the taxing powers of the producer State (on the full transfer price) and of the consumer State (on the fraction of the sales price representing the value added by

6) Only one State (Amazonas) imposed the tax only once on the first sale; in recent years some States adopted this system in respect of certain goods, usually agricultural products or livestock; but in all such cases the single rate was about three times the normal cumulative rate, which varied according to the State between 3 and 6 percent, with a national average of 5 percent.

the transfer), and to avoid hardship to the ultimate consumer of the goods, the Amendment provides that on interstate transfers the tax rate is subject to a ceiling established by the Federal Senate in accordance with a complementary statute[7].

As previously stated, the Federal excise tax was a tax on the circulation of goods, distinguished from the State sales tax only by the purely formal circumstance of the latter being confined to circulation through sale. In Amendment No 18, the abandonment of the "sale" concept in the circulation tax eliminated that distinction, and therefore paved the way for a better integration of the two taxes. This was achieved in Art. 11 by replacing the former excise tax by a *tax on industrial manufactured products* intended to run parallel to the State tax under the same non-cumulative or value-added principle during the manufacturing process, after the end of which only the State tax will continue to be assessed on each subsequent stage or purely mercantile circulation down to the ultimate consumer. A significant difference between the two taxes, however, is that the Federal tax will be selective according to the nature ot the goods, whereas the State tax will be uniform regardless of that circumstance.

Still another problem to be solved in this group of taxes was that of replacing the Municipal business tax by another which, while yielding comparable revenue and having a similar flexibility to economic fluctuations, would not reproduce its defects, mainly that of giving rise to conflicts of tax jurisdiction between Municipalities of the same or of different States. The solution adopted in Art. 13 of the Amendment was the simple one of permitting a *Municipal circulation tax* assessed as an addition to the State tax of the same nature, but limited to 30 percent of the rate charged by the State[8]. The incidence of this addition is of course restricted to transactions taking place within the Municipal boundaries, but it is not dependent upon actual collection by the State of its own circulation tax: in this way, a Municipality will not loose revenue as a result of exemptions or other reliefs granted by the State.

The Federal *tax on financial transactions* (Art. 14) replaces the stamp tax on legal deeds and instruments regulated by Federal law, an ubiquitous relic of colonial taxation which burdened the most routine business transactions and subjected them to intricate regulations. It is proposed to collect the new tax from banks and financial institutions, and to use it chiefly as a means to control the financial and exchange markets. For this purpose a delegation of powers to the Executive will insure the necessary flexibility of the tax, the proceeds of which are earmarked for the formation of monetary reserves. Under the same provision of the Amendment, the Federal Government is empowered to tax

7) Each State elects three members to the Federal Senate, whilst the membership of the House of Representatives is proportional to State population. Therefore it is felt that the Senate, being free from the political injunctions inherent to proportionate representation, is the authority best suited to rule on matters of national interest affecting more than one State.

8) The national average of the former State sales tax being 5 percent, the Municipal circulation tax will be of the order of 1.5 percent of gross turnover. This average rate, compared to the one percent national average of the former Municipal business tax, will compensate for the fact that the new State circulation tax is non-cumulative and no longer of the "cascade" type. Moreover, it is expected that for this same reason the percentage rates of the new State circulation tax will be correspondingly higher than those of the former sales tax, though the effective rate shall remain at about the same previous level.

intermunicipal, interstate, and international transportation and communications, a measure intended as a necessary safeguard of national security and defense.

Last in this group is the Municipal *tax on services of whatever nature,* except those already subject to Federal or State taxation (Art. 15). This and the Municipal circulation tax combined will cover the area formerly under the Municipal business tax. A problem was raised by certain activities, such as hotels, restaurants, repair shops, and others which combine the rendition of a service with the supplying of consumer goods. To avoid the superimposing of this tax and of the State and Municipal circulation taxes, it is proposed in such cases to assess the State circulation tax on the cost of the goods, plus a stated percentage intended to represent the profit on their sale to the consumer of the service. The Municipal service tax, being then assessed on gross receipts less the amount already subject to the State circulation tax, will automatically fall on the value of the service.

Special taxes

Most important in this last group is the *tax on fuels, lubricants, electric power, and domestic minerals.* Art. 16 of the Amendment preserves the system, first introduced in 1940, of a "single tax" assessed and collected by the Federal Government in the interest of uniformity throughout the country, but shared with the States and the Municipalities according to their area and population, and to their production and consumption of the commodities subject to the tax. For this reason, and because it replaces all other taxes capable of falling on the production, importation, circulation, distribution, or consumption ot the commodities concerned, this tax, ever since it was first imposed, is regarded as "national" rather than Federal, and was indeed the original inspiration of the national tax system created by Amendment No 18.

The only "blanket" provision of the Amendment is Art. 17, which grants to the Federal Government a general and indiscriminate power to impose taxes of whatever nature in the case or the imminence of foreign war. These taxes may be identical to any of those allocated to the States or the Municipalities, or they may be different from any of the taxes otherwise recognized by the Amendment. Because of their emergency nature, these taxes, as an exception to the general rule of Art. 2, II, should be enforceable immediately even when falling on capital cr income, and their revenue should not be shared with the States or the Municipalities, since it is the Federal Government that directly bears the burden of war. They are, however, temporary, and must be gradually repealed within five years from the celebration of the peace.

Fees and improvement contributions

In Brazilian law, fees are distinguished from taxes by the fact that they are related to specific public services rendered or available to the taxpayer. But fees could not be individually defined by the Constitution without limiting betorehand the scope of the public services capable of being financed in this way. Therefore the Constitution of 1946 contained only a general provision empowering all three governments to charge fees, but did not include specifications or limitations capable of legally separating a fee from a tax. As noted before, that provision was often distorted to evade constitutional limitations applicable to taxes. Typical examples were the "sanitary inspection" or the "econo-

mic statistics" fees imposed, in violation of the rule prohibiting the taxation of interstate and intermunicipal trade, at percentage rates on the value of goods entering a State or a Municipality. In order to end this practice, the Amendment provides in Art. 18 a definition of fees which includes the rule that they shall not be computed on the same basis applicable to a tax.

Improvement contributions are defined in Art. 19 as charges imposed on real property benefiting from public works, and limited generally to the total cost of the work and specifically to the appreciation in value resulting from the work to each individual property. This definition reproduces that of the Constitution of 1946 and of a complementary statute voted in 1949, but it is proposed to replace the latter by other provisions which might avoid the present inadequate regulation of improvement contributions as a kind of income tax on presumptive and unrealized capital gains.

Distribution of tax revenues

Equalization of public revenues on a national basis, though recognized as a major function of the tax system, was, in this writer's opinion, unsatisfactorily regulated in the Constitution of 1946. Except in respect of the distribution of the single tax on fuels, lubricants, electric power and mineral products, the Constitution provided only for grants in aid by the Federal Government to the Municipalities in the form of stated percentages of the revenue from the income tax and the excise tax. These, however, were distributed in equal parts to all Municipalities, with the result that some local governments received as much as, and sometimes even more than, the revenue from their own taxes, whereas the same amount paid to other local governments would be insignificant as compared to their own revenues.

Two other provisions of the 1946 Constitution could be interpreted as a recognition of the national character of the tax system, but in actual practice both fell short of their mark. The first provision stipulated that the revenue from the unspecified taxes imposed by the States should be shared with the other two governments. But the adverse results of the so-called "residuary" taxing power have been indicated above, and this revenue-sharing provision proved to be a concurring factor of its failure. The other provision of the Constitution of 1946 also has been mentioned before: it required the States to pay their Municipalities a grant in aid equal to 30 percent of the State taxes collected in the Municipal territory in excess of all local revenues. This had the consequence of leading many Municipalities to neglect any measures to further their own development, and even to be lax in enforcing their own taxes, since otherwise they would reduce the excess of the State taxes in which they participated at no cost or effort to themselves.

The Amendment in Art. 21 replaces all former grants in aid by two Participation Funds, one of which is reserved to the States and the Federal District, and the other to the Municipalities. Twenty percent of the proceeds from the Federal taxes on income and on industrial manufactured products are allocated in equal parts to these Funds, and only the remaining 80 percent legally constitute Federal revenue. The management and disbursement of the Funds are entrusted to the Federal Court of Claims, and will be regulated by a complementary statute. It is proposed that the latter shall provide for quarterly distributions to all States and Municipalities in direct ratio to their population

and in inverse ratio to their *per capita* income. Besides adopting what is felt to be a better balanced method of distribution, this provision will improve upon the former system by assuring the States and Municipalities of prompt and automatic payment of their dues under the supervision of an independent judicial agency. Therefore, bureaucratic and sometimes even political factors will no longer be instrumental in delaying such pay ments.

As an incentive to the national coordination of tax and financial policies, Art. 22 provides that those States and Municipalities which celebrate agreements for that purpose with the Federal Government may be granted additional participations of up to 10 percent of the proceeds of certain Federal taxes collected in their respective territories. Still other participations are not prohibited and may be granted by statute; but in the interest of eliminating administration costs, which might complicate or delay the computation of the distributions, Art. 24 provides that the government benefiting from a participation may be entrusted with the collection of the tax from which that participation is drawn. This is understood to mean that the participating government must bear the collection costs in proportion to the participation it receives from the proceeds of the tax.

Amendment No 18 is in force from 1st December 1965, the date of its approval by Congress. However, in Art. 26 it provides that a complementary statute shall regulate the effective date of the new laws which the Federal Government, the States, and the Municipalities must enact not later than 31 December 1966 to repeal or amend their existing taxes, or to replace them by others, so that the new tax system becomes operative gradually between 1st January 1967 and 31 December 1969.

The Brazilian tax reform constitutes a novel, indeed sometimes a bold, experiment in better government, healthier economics, and higher social justice. It is the common fate of all human endeavours that only by the actual test of experience may their aims be vindicated. But this writer at least is convinced that another firm step has been taken by Brazil upon the road laid open by her economic and human resources.

APPENDIX

CONSTITUTIONAL AMENDMENT NO. 18

The Chamber of Deputies and the Federal Senate, in accordance with Article 217 Paragraph 4 of the Constitution, hereby promulgate the following Constitutional Amendment:

CHAPTER I

General Provisions

Article 1. The national tax system consists of taxes, fees, and improvement contributions; it is governed by this Amendment, by complementary statutes, by resolutions of the Federal Senate, and by Federal, State, and Municipal statutes within their respective powers.

Article 2. The Federal Government, the States, the Federal District, and the Municipalities shall not:

I – create or increase fiscal charges otherwise than by statute, except as provided in this Amendment;

II – impose taxes on property or income by any statute enacted after the first day of the corresponding fiscal year;

III – impose restrictions on the circulation of persons or of goods within the national territory by means of interstate or intermunicipal taxes;

IV – impose taxes on:

a) the property, income, or services of each other;

b) places of worship of whatever denomination;

c) the property, income, or services of political parties and of educational or charitable institutions which meet the requirements established by complementary statute;

d) paper destined exclusively for the printing of news papers, periodicals, and books.

Paragraph 1 – The provisions of IV(a) apply to decentralized Government agencies exclusively in respect of property, income, or services related to their essential objects or derived therefrom.

Paragraph 2 – The provisions of IV(a) do not apply to public service concessions, the tax treatment of which is regulated in respect of its own taxes by the Government granting the concession; except that, as the general interest requires, the Federal Government shall have power by special statute to exempt Federal concessions from all fiscal charges.

Article 3. – It is prohibited:

I – for the Federal Government to create fiscal exactions which are not uniform throughout the national territory, or which are discriminatory in favour of a given State or Municipality;

II – for the States, the Federal District, or the Municipalities to discriminate between goods of any kind by reason of their origin or destination.

Article 4. The Federal Government shall have exclusive power to levy compulsory loans in special cases defined by a complementary statute.

CHAPTER II

Taxes

SECTION I

General Provisions

Article 5. The taxes included in the national tax system are exclusively those defined in this Amendment, subject to the allocations and limitations herein established.

Article 6. It is recognized:

I – that the Federal District and those States which are not divided into Municipalities shall have cumulative powers to impose all taxes pertaining to States and to Municipalities;

II – that the Federal Government shall have power to impose in the Federal Territories all taxes pertaining to States; provided that if such Territories are not divided into Municipalities this power shall be cumulative with the power to impose all taxes pertaining to the latter.

SECTION II

Taxes on Foreign Trade

Article 7. The Federal Government shall have power to impose:

I – a tax on the importation of foreign goods;

II – a tax on the exportation to foreign countries of national or nationalized products.

Paragraph 1 – The Executive shall have power, subject to the conditions and limitations established by statute, to modify the rates or the bases of computation of the taxes described in this Article so as to adjust them to the objectives of its exchange and foreign trade policies.

Paragraph 2 – The net revenue from the tax described in item II of this Article shall be applied in the formation of monetary reservas, as provided by statute.

SECTION III

Taxes on Property and Income

Article 8. The Federal Government shall have power to impose:

I – a tax on rural real property;

II – a tax on income and gains of whatever nature.

Article 9. The States shall have power to impose a tax on any transfers of title to assets defined by law as real property by their nature or by physical accretion, and on all transfers of rights over real property except rights in guarantee of obligations.

Paragraph 1 – The tax is due on the assignment of the right to acquire the assets described in this Article.

Paragraph 2 – The tax is not due on such transfers when made as a contribution to the capital of legal entities, except when their principal activity as defined by complementary statute is the sale or renting of real property or the assignment of the right to acquire such property.

Paragraph 3 – The tax is imposed by the State in which the property forming the object of the transfer is situated. This rule applies to transfers resultant upon succession to an estate settled outside Brazil.

Paragraph 4 – The rate of the tax shall not exceed the maximum limit established by resolution of the Federal Senate as provided by complementary statute; the amount of the tax shall be credited against the Federal tax payable under Article 8(II) on the gain derived from the same transfer.

Article 10. The Municipalities shall have power to impose a tax on improved or unimproved urban real property.

SECTION IV

Taxes on Production and Circulation

Article 11. The Federal Government shall have power to impose a tax on industrial manufactured products.

Sole Paragraph – The tax rate is variable according to the essentiality of the product. The tax is non-cumulative, the amount paid on each transaction being deductible from the amount due on any subsequent transaction.

Article 12. The States shall have power to impose a tax on transactions relating to the circulation of goods in the hands of merchants, manufacturers, and producers.

Paragraph 1 – The tax rate is uniform for all kinds of goods. On transactions whereby the goods are shipped to another State, that rate shall not exceed the maximum limit established by resolution of the Federal Senate as provided by complementary statute.
Paragraph 2 – The tax is non-cumulative, the amount due on each transaction being reduced, as provided by complementary statute, by the deduction of the amount paid on any prior transaction to the same or another State. The tax shall not be due on retail sales made directly to consumers of essential staple commodities as defined by the State Executive.

Article 13. The Municipalities shall have power to impose the tax described in the preceding Article, in accordance with the pertinent State legislation, and at a rate not exceeding 30 per cent of the rate charged by the State.

Sole Paragraph – The incidence of the tax described in this Article is restricted to transactions taking place within the Municipality but its collection is not dependent upon the actual collection by the State of the tax described in the preceding Article.

Article 14. The Federal Government shall have power to impose a tax:

I – on credit, exchange and insurance transactions, and on transactions relating to securities;

II – on transport and communication services except those strictly limited to the territory of a Municipality.

Paragraph 1 – The Executive shall have power, subject to the conditions and limitations established by statute, to modify the rates or the bases of computation of the tax described in Section I of this Article to adjust it to the objectives of its monetary policy.
Paragraph 2 – The net revenue from the tax described in Section I of this Article shall be applied in the formation of monetary reserves.

Article 15. The Municipalities shall have power to impose a tax on services of any nature not included in the taxing powers of the Federal Government or the States.

Sole Paragraph – A complementary statute shall establish criteria to distinguish the activities referred to by this Article from those described in Article 12.

SECTION V

Special Taxes

Article 16. The Federal Government shall have power to impose a tax:

I – on the production, import, circulation, distribution, or consumption of liquid or gaseous fuels and lubrificants of whatever nature;

II – on the production, import, distribution, or consumption of electric power;

III – on the production, circulation, or consumption of Brazilian minerals.

Sole Paragraph – The tax is chargeable only once and on any one of the transactions described in each Section of this Article; it excludes all other fiscal charges, of any nature and pertaining to any Government, which might be imposed on the said transactions.

Article 17. The Federal Government, in case of actual or imminent foreign war, shall have power to impose special temporary taxes, corresponding to those described in Articles 7 to 16 or otherwise. These taxes shall be repealed gradually within a maximum of five years from the celebration of the peace.

CHAPTER III

Fees

Article 18. The Federal Government, the States, the Federal District, and the Municipalities shall, within their respective functions, have power to charge fees in respect of the lawful exercise of their regulatory

powers or of specific and rateable public services available to the taxpayer, whether or not actually utilized by the latter.

Sole Paragraph – A fee shall not be computed on the same basis as any tax described in this Amendment.

CHAPTER IV

Improvement Contributions

Article 19. The Federal Government, the States, the Federal District, and the Municipalities shall, within their respective functions, have power to impose improvement contributions to defray the cost of public works causing an appreciation in the value of real property. These contributions shall not exceed as a whole the expenditure incurred, nor in each individual case the appreciation in value of the real property benefiting from the public work.

CHAPTER V

Distributions of Tax Revenues

Article 20. The Federal Government shall distribute:

I – to the Municipalities where the real property subject to the tax described in Article 8 (I) is situated, the proceeds from the collection of that tax;

II – to the States and Municipalities, the proceeds from the tax described in Article 8 (II) collected by withholding from the income of their public debt and from the remuneration of their officials.

Sole Paragraph – The authorities responsible for the collections of the taxes referred to in this Article shall, on pain of dismissal from the service, deliver the proceeds thereof to the States and Municipalities, within 30 days of their collection, irrespective of any order from a superior authority.

Article 21. Of the proceeds from the collection of the taxes described in Article 8 (II) and in Article 11, eighty per cent shall constitute Federal revenue and the remainder shall be allocated as to ten per cent to the States and Federal District Participation Fund and as to ten per cent to the Municipal Participation Fund.

Paragraph 1 – The disbursement of the Funds referred to in this Article shall be regulated by complementary statute. That statute shall entrust the Federal Court of Claims with the computation and payment of the amounts pertaining to each participating entity. The said payment shall be independent of budget allocation or of any other formality and shall be made every month through a Government banking establishment.

Paragraph 2 – From the amounts received under the preceding Paragraph, each participating entity shall obligatorily allocate not less than fifty per cent to capital investment.

Paragraph 3 – In the computation of the percentages allocated to the Participation Funds there shall be deducted from the proceeds of the tax described in Article 8 (II) the amounts distributed under Article 20 (II).

Article 22. In addition to what is provided in Article 21, those States and Municipalities which enter into agreements with the Federal Government designed to coordinate their respective investment and public works programmes, especially as related to tax policy, may be granted a further participation of up to ten per cent on the proceeds from the collection, in their respective territories, of the tax described in Article 8 (II) and imposed on the income of individuals, and of the tax described in Article 11, except that imposed on tobacco and alcoholic beverages.

Article 23. Of the proceeds from the collection of the tax described in Article 16, there shall be distributed to the States, the Federal District, and the Municipalities sixty per cent of the total imposed on transactions relating to fuels, lubricants, and electric power, and ninety per cent of the total imposed on transactions relating to Brazilian minerals.

Sole Paragraph – The distribution provided for in this Article shall be regulated by resolution of the Federal Senate as provided in a complementary statute; it shall be apportioned according to the area and the population of each participating entity, and to the production and consumption, in their respective territories, of the commodities to which the tax relates.

Article 24. A federal statute may entrust to the States, the Federal District, and the Municipalities the collection of the Federal taxes in the proceeds of which they participate.

Sole Paragraph – The provisions of this Article apply equally to the States in respect of their own taxes, on the proceeds of which they may have granted participations to their Municipalities.

CHAPTER VI

Final and Temporary Provisions

Article 25. (Not translated. This Article abrogates those provisions of the Constitution, whose subject is dealt with by this Amendment).

Article 26. All fiscal charges imposed on the date of this Amendment by the Federal Government, the States, the Federal District, or the Municipalities, with the exception of the export tax, may continue to be enforced until the 31st. December 1966; on or prior to that date they shall be repealed, amended, or replaced by others in accordance with the provisions of this Amendment.

Paragraph 1 – A complementary statute may, however, establish that the new or modified fiscal exactions provided for in this Amendment shall become effective gradually during the course of the fiscal years 1967, 1968 and 1969.

Paragraph 2 – (Not translated. Matter of detail).

Paragraph 3 – The provisions of Article 7(II), of Article 7 Paragraph 2, and, in respect of the tax on exports, of Article 7 Paragraph 1 shall become effective on the 1st January following the promulgation of this Amendment.

Article 27. All tax incentives, credit facilities, and other advantages granted by law to the North-eastern Region of Brazil shall extend to the Amazon Region.

BRASILIA, 1st December 1965

For the Chamber of Deputies:

Bilac Pinto
Chairman

For the Federal Senate:

Auro Mouro Andrade
Chairman

DIRECT TAXATION IN IRAN

AN OUTLINE

by

T.J. GROVE*

Introduction

The bases of direct taxation by the Iranian government and the municipalities are respectively the Tax Law of 1335 (1957) and the Municipalities Act of 1334 (1956).[1] However, since the draft of a new tax law has been prepared, the content of this article has been restricted so far as possible to a general explanation. It appears that the new law which contains some sweeping changes will be approved by the Iranian parliament (Majlis) very shortly.

As is the case in all developing countries certain difficulties are encountered in both the interpretation of the tax laws and their implementation, although to a limited extent these difficulties have been overcome in Iran in recent years.

Iran at present has no double taxation agreements with other countries and no unilateral measures to alleviate the burden of international double taxation.

In effect all foreign income of corporations will be included at the net amount received and it is on this net income that tax will be imposed. No foreign taxes already deducted from income received will be credited against Iranian taxes payable. Although it appears that the possibility has been forseen in the proposed law, there is no past experience or history by which to judge whether adequate and proper relief will be obtained in Iran for taxes already borne on foreign source income.

TAXES—NATIONAL AND LOCAL

Local Taxes

Local taxes are both assessed and collected by municipalities in accordance with the Municipalities Act of 1956, which permits municipalities to impose such taxes as they deem necessary unless the Ministry of the Interior rules to the contrary. However, since a complete list of local taxes is difficult to compile, prospective taxpayers should make careful enquiries in each particular locality. It is possible that no complete list of taxes will be readily available even upon enquiry. As an indication of the taxes which may be imposed, a summary is included in Appendix "A" of the taxes in Teheran.

*) Tax consultant.

1) The Iranian fiscal years starts on 21st March and ends on the following 20th March. The present fiscal year is 1344. The two laws mentioned above will in the remainder of this article be referred to by the corresponding years in the Gregorian calendar—that is 1957 and 1956, respectively. The Iranian unit of currency is the Rial (R.L.) At present 75 Rials are equivalent to one U.S. Dollar.

Apart from the municipality taxes, section 18 of the Tax Act of 1957, as amended by decree in 1963, imposes for the benefit of the municipalities a surcharge of 15% on all assessed national taxes, except those imposed on income from real estate rentals, income from agricultural property, salaries and wages, and those imposed on government owned organisations. In addition to this 15% surcharge, a further 1.5% is assessed for the benefit of the Chambers of Commerce.

National taxes

As previously mentioned, the Tax Act of 1957, together with the many amending laws, decrees in various forms, and interpretive instructions of the Ministry of Finance, forms the basis on which national direct taxes are assessed and administered.

Taxes are assessed on varying bases and at different rates depending upon the income class under which the assessment is made. The classes of income are as follows:

1. Wages and salaries
2. Income of merchants and traders
3. Income of shopkeepers, artisans and other self-employed persons, other than merchants and traders and members of professions
4. Income of members of professions
   (Profits from the operation of hospitals and sanatoriums, notary public offices, technical and engineering offices, and newspapers are also taxed under this classification).
5. Profits of companies and legal entities
6. Income from real estate rentals
7. Income from agricultural property
8. Income received under the terms of a specific contract and income of landlords
9. Income from mortgage transactions and pledges
10. Directors fees
11. Total income

(In addition to the above should be added taxes imposed by the law on owners of motor vehicles and sailing vessels which, so far as they affected privately owned motor and other passenger vehicles except diesel engined lorries and buses, were abolished as from the 21st March 1965).

Appendix "B" summarizes the details of income covered under each of the first ten classifications and the bases and rates used to assess tax liability.

Section 14 of the Tax Law of 1957 which governs the tax on total income is complicated both by the difficulty of its interpretation and by the impossibility of enforcing in practice the obligation imposed on the taxpayer to declare his total income.

Persons subject to the law are all persons resident in Iran with respect to their domestic and foreign source income and all other persons with respect to their Iranian source income. Residence so far as legal persons are concerned is defined in the Civil Code of 1935 (Section 1002) as the central place of their operations. The commercial Code of

1932 defines residence of legal persons as the place where the office of legal persons is located. Neither definition is clear and no clearer explanation is available.

Residence is not defined in the tax law, but in practice, foreigners who remain in the country for a continous period of three month or more will be treated as resident. The reason lies in the need for all foreigners to obtain a tax clearance certificate and to obtain a residence permit in such circumstances. Since Iranian nationals do not require such a certificate it is not possible to state with any degree of certainty what definition of residence would be applied.

Exemptions

Exemptions of a general scope which are applicable to all national taxes are set out in general terms in sections 2 and 3 of the Tax Law of 1957. Exemptions applicable to specific classes of incomes are dealt with in the appropriate sections of the same law, i.e., in the section concerning the specific class of income. The latter exemptions are discussed in Appendix B.

The most important general exemptions are the following:

- All persons in receipt of an annual income of less than Rls. 3,000, whether in cash or in kind;
- Government employees;
- All farmers in respect of their share of crops;
- Retirement pensions, end-of-service payments, insurance premiums or savings fund payments, amounts received from insurance policies, recoveries for personal damages and the like, and non-cash income of labourers in factories and workshops;
- Certain classes of factories in the provinces for the five years subsequent to their commencement. For purposes of this exemption factories situated in an area outside a radius of 60 kilometers from Teheran are considered to be in the provinces);
- Agricultural income in the province of Khuzestan;
- Income derived from the rental of agricultural equipment;
- Interest on fixed deposit accounts with banks and income from government loans or treasury notes.

Although generally viewed as a deduction, charitable donations not exceeding 15% of the income of an individual or legal person given to approved charitable organisations are viewed as an exemption.

In practice the general exemptions above are not always allowed. For example contributions by employees to the Workers Social Insurance Organisation (a government operated scheme) are not allowed as a deduction from total salary in computing the tax payable.

Taxes on Companies

Section 8 of the Tax Law of 1957 deals with taxes applicable to companies and legal entities and applies to all such organisations, except those paying tax under another section. For example, a company paying taxes on all income as a contractor will not be liable to the tax applicable to companies. There are, in accordance with Section 11 of the Commercial Code of Iran of 1932, seven categories of companies as follows:

Sahami: a joint-stock company, formed for commercial purposes, the capital of which is divided into shares and in which the responsibility of shareholders is limited to their shares.

Tazamoni: a general partnership, formed by two or more persons with joint and several responsibility under a common name for the purposes of trade.

Nesbi: a proportional liability partnership formed for trading purposes, under a common name by two or more persons the liability of each partner being in proportion to the amount of capital subscribed by him.

Ba Masouliat Mahdoud: a limited liability company formed by two or more persons for trading purposes, when the company's capital is not represented by shares or bonds, but when each of the partners is responsible for the liabilities and obligations of the company to the extent of his contributions only.

Mokhtalet Sahami: a joint-stock partnership, formed under a common name between a number of shareholding partners and one or several partners with unlimited liability. The shareholding partners are partners whose capital is represented by shares or part shares of equal nominal value and their responsibility is limited to the extent of the amount of capital each has contributed to the partnership. A general partner is a partner whose capital is not represented by shares and who is liable for all debts the firm may have incurred beyond its capital. If there are several general partners their relationship inter se is governed by the regulations concerning general partnership.

Mokhtalet Gher Sahami: a limited partnership, formed for trading purposes under a common name, without shares, by one or more general partners and one or more with limited liability. The general partners are liable for all the debts and obligations of the firm that may be incurred in excess of assets of the firm, whereas the limited partners are only liable to the extent of the capital they have contributed or may contribute to the firm. The term "limited partnership" and the name of at least one of the general partners must appear in the name of the firm.

Ta'avoni: a co-operative society for production, formed between artisans for the production and sale of goods they produce in common. Co-operative societies engaged in trading activities as well as co-operative societies of this type have become increasingly common in recent years in Iran.

The tax on total income has never properly been put into effect. Thus if contractors taxes have been deducted from all gross income then no further assessment to tax will normally be made. However if only a part of gross income is received after deduction of such taxes then the net income might be assessed to tax, or more commonly, the gross income will be assessed and the contractors tax already suffered will be allowed as a deduction from the assessed taxes payable. See discussion of contractors tax, *infra*.

Accounts and accounting records

Companies may choose a financial year different from that of the government fiscal year. However, no provision of the tax laws deals with a change of the taxpayer's financial year.

Companies are required to publish annual accounts within 4 months of the end of their financial year in either the official gazette or in a national newspaper, but no exact

form is specified except for private banks. These published accounts and the company's accounting records are the basis on which the Ministry of Finance computes the tax liability. Article 6 of the Commercial Code requires merchants (and companies) to maintain the following books: the ledger, the journal, the copy book, and the inventory book; although in practice the latter two books are not maintained. These books must be sealed before the beginning of the company's financial year by the Companies Registration Department of the Ministry of Justice. The official books are the only evidence acceptable to tax assessors as to the profits or losses of a company. In practice the assessor may refuse to accept the results shown by the legal books if it appears to him that because of alternations or omissions they do not reflect the true state of affairs. Unfortunately this feature of tax assessment procedure together with the practical difficulty of recording all transactions in the journal as they occur (as required by the Commercial Code) allows a certain amount of space for negotiation which adds to the difficulty of proper interpretation of the law.

Within 4 months of the end of its financial year, the company must submit a declaration of its income for that year and the tax payable. Tax declared as due may be paid when the declaration is given. This declaration includes details of the balance sheet and a reconciliation of opening and closing stocks, purchases and sales.

Allowable expenses

Section 8 states that both the rates of tax payable by companies and allowable expenses are the same as for merchants dealt with in Article 6.

Note 1 to Article 6 states that:

> The net income (of merchants) consists of the income of the fiscal year less expenses incurred in acquiring and retaining the income. Allowable expenses will be dealt with by way of decree.

The Decree setting out details of allowable expenses, issued in 1957 and confirmed in 1965 by a further decree, states that allowable expenses are:

1. Rent of premises needed for the purposes of the business or depreciation of the premises if owner occupied;
2. All expenses necessarily incurred for the maintenance and needs of the business premises, stock in trade and furniture and equipment, such as lighting and heating, etc., and expenses such as postage, telephones and telegrams;
3. Interest on loans to meet the needs of the business or for the purpose of increasing the profits;
4. Wages, salaries, bonuses, and travel expenses relating to the business, as well as commissions, fees, piece work wages, and publicity and entertainment expenses relating to the business;
5. Office supplies, tools and spare parts which are used within a period of one year (provided that the cost is not also charged to fixed assets) together with machinery repairs;
6. Amounts paid on account of insurance relating to the business such as transportation insurance, fire insurance, storm insurance, and indemnity paid to workers and similar

persons, as well as insurance concerning workers and employees which must be paid in accordance with law;

7. Bad debts proved to be bad by the taxpayer. Amounts recovered in following years must be accounted for in the year of collection;
8. Duties, license fees and other taxes paid to the government or municipalities, except income taxes;
9. Essential expenses relating to the business which were incurred but not paid in prior years will be allowed in the year when paid;
10. Depreciation of fixed assets. There are 29 schedules setting out the maximum rates allowable. If a taxpayer chooses to use a rate lower than that allowed he will not be allowed to make use of a higher rate in a later year, though the applicable depreciation period will be extended. The decree of 1965 deals with allowable expenses in relation to various classes of taxpayers with depreciation rates applicable to each class in addition to the expenses mentioned above. Other provisions covered by the decree which are of interest include the following:
11. If tools are not put to use during the first six months of the financial year, only 50% of the cost will be allowed as a deduction during that year and the balance in the following year;
12. Banks will be allowed to deduct amounts set aside for retirement benefits for their employees, but any such amounts set aside will be added back to profits if not paid in the year in which an employee leaves. (It should be noted that, not uncommonly, this provision was applied to all years from 1961/2 onwards). The same basic provisions apply to amounts set aside by banks for insurance of employees which do not exceed 10% of the employee's salary;
13. Establishment expenses may be written off in computing profits over a maximum period of 3 years;
14. Depreciation allowable as a deduction in computing the profits of banks is the same as laid down in the Monetary and Banking Law of Iran.

Other aspects of taxation on company profits are dealt with below.

Directors remuneration

No regulations specifically restrict the amount of directors remuneration allowable as a deduction in computing profits. It is possible that any extraordinarily excessive sums would be disallowed, but to the author's knowledge this has not occurred to-date. Tax on the remuneration itself is assessed and deducted in accordance with section 14 of the 1957 Tax Law and must be remitted within one month of deduction to the Ministry of Finance.

Contractors tax

It is possible for a company to have borne contractors tax on part of its income, and when this happens it is normal for the tax so borne to be credited against the assessed taxes in arriving at the amount payable, although there appears to be nothing in the law to support this practice.

Losses

Losses suffered in one year may not be carried over to be offset against the profits of either prior or subsequent years.

Dividends

Dividends received will have been subjected to deduction of tax at source.

Dividends declared are paid less tax at the rate of 6% plus the surcharges in favor of the municipalities and the chambers of commerce. Dividend income from which tax has been deducted is included at the net sum in assessable profits in the case of companies, but not individuals.

Basic deduction

As stated in Appendix "B" a flat exemption of 10% of "taxable income" is allowed when computing the tax payable by companies. Certain companies are allowed a 50% exemption. In both cases the exemption is calculated on the taxable income before deduction of the exemption itself.

Both the 10% and the 50% exemptions are computed on the basis of the declaration made by the company. If that declaration is not accepted by the authorities and tne pre-exemption taxable income is increased, the exemption is not thereby increased accordingly. Thus, honest taxpayers receive a benefit not accorded to those taxpayers who understate their income.

FOREIGN INVESTMENT AND TAXATION

Foreign investment in Iran is normally made with the approval of the Centre for Attraction and Protection of Foreign Investment of the Central Bank of Iran. This Centre was established in 1963 under a law with the same title which came into force in 1957. Investment generally takes the form of shares in an existing limited company (Sherkate Sahami) and/or a loan which may or may not be interest bearing and may consist of a transfer of cash, plant, equipment or materials.

Among the benefits obtained if foreign investment is made in the above manner are the following:

(a) profits earned in Iran may be transferred abroad in foreign currency at official exchange rates;
(b) capital may be repatriated in foreign currency at official exchange rates;
(c) compensation will be given if expropriation occurs.

Apart from approved investment in Iranian companies, investment may take the form of a branch office, an agency arrangement or a technical assistance agreement with an Iranian organisation. Apart from the liability to Iranian taxation which may arise if investment in such manner is undertaken, liability will also arise when, for example, a foreign company enters into contractual relations with an Iranian organisation. In brief taxation to which a foreign investor should direct his attention is:

(a) Company Taxation based on net profits;
(b) Dividend tax at basic 6% of the amount paid;

(c) Tax on royalties at the rates applicable to contractors; (permission to transfer the amounts concerned must be obtained from the Central Bank of Iran)
(d) Tax on wages or salaries after deduction of an allowance of Rls. 4,000 per month at 10% to a limit of Rls. 600,000 and afterwards at rates of 27% and higher;
(e) Contractors tax at rates of 2%, 3% and 4% of the total amount payable under the contract, which tax is deductible at source;
(f) Taxation on net profits of branches. In arriving at the relevant amount the Ministry of Finance can take into account total income of the foreign company wherever arising.[1]

Other dues or taxes which will be payable include municipality taxes; stamp duties payable on the registration of a company, branch or contract; and import duties on plant, equipment or materials. In accordance with the law mentioned above relief may be available from import duties.

Appendix 'A'

LOCAL TAXES

This appendix details the taxes levied in Teheran

1 Surcharges on contracts—these vary with the amount of stamp duty or other charges payable and cover all contracts registered at notary public offices as well as other contracts such as guarantees given by banks, mortgage agreements, loan agreements and the like. There is no complete list avialable giving details of all such surcharges.
2 Town development tax—Imposed at rates varying from Rls. 0.1 to Rls. 1.5 for each square metre of occupied land with reductions of up to 60 % of the assessed amount if certain services are not provided by the municipality and of 100 % in a few limited cases. The tax is payable by the owner.
3 Commercial signs tax—Payable in respect of commercial advertisements (including films in cinemas) by the owners, users and/or persons who display the signs or films (for example cinema and bus owners) at the rate of 10 % of the value of the advertisement. In respect of certain fixed signs a monthly tax of Rls. 200 for the first and Rls. 150 for each additional square metre is payable before the sign is erected.
4 Hotels and guest house tax—Imposed on hotels (at 5 different rates and varying with the number of rooms) cabarets, restaurants, snackbars (dependant upon their class and service provided) and upon various other classes of hotels, guest houses, eating houses, clubs, shops selling certain foods, dance halls and clubs. The rates at which the tax is imposed starts at a minimum of Rls. 100 per month and are as high as Rls. 30,000 per month. Exemption provisions are few and in certain cases the tax must be paid as a file tax before permission will be given for the establishment of the enterprise.
5 (a) Entrance tax is collected by the customs authorities and includes air duty Rls 15 per Kilo, 1 % of value of merchandise (for assistance to the poor), Rls 30 per ton for asphalt tax. This tax is imposed on all goods entering Teheran. It is unclear as to whether goods coming by air will be subject to all taxes or only the one.
(b) A levy in place of the former Gate tax at the rate of 6 % of goods subjected to customs duties, to be collected by the Ministry of the Interior.
6 Drinks tax.

1) This power is used only to a limited extent. In recent years in the case of pharmaceutical companies having foreign parent companies supplying goods, the Ministry of Finance has based the tax assessment on percentages of capital and gross sales. This has occurred even when the firm was not a registered branch but an Iranian joint-stock company. In practice no real steps have been taken to implement the powers mentioned above except to the extent just noted, i.e., basing assessments on amounts other than recorded net profits.

(a) Applicable to all locally manufactured alcoholic drinks at the following rates: Vodka—Rls. 10 per bottle
Liquers, cognac, whiskey—Rls. 20 per bottle
White wines—Rls. 6 per bottle.
Ordinary wines—Rls. 6 per bottle.
(b) beer – Rls. 1.5 per bottle
(c) Non-alcoholic drinks – large bottle Rls 0.15.
small bottle Rls 0.10.

7 Electricity tax – Imposed on all users of electricity other than schools, clinics, hospitals owned by the government, or the Workers Social Insurance Organisation, mosques with an insufficient income and users of less than 50 kw per month at the rate of 10%.

8 Fire insurance tax – Payable by all insurance companies at the rate of 10% of the fire insurance premiums received.

9 Brickworks at rates of Rls 30 to Rls 160 per 1,000 bricks and for chalk producers at Rls 7 per 1000 kilos and for lime producers at rate of Rls 7 per 300 kilos.

10 Slaughter houses –
pig meat Rls 5 per kilo
for each single sheep or goat, Rls 37
for each cow or ox Rls 57
each goat or sheep skin 75 % of a value (not stated)
each cow or ox skin Rls 4
offal 50 % of a value (not stated)

11 Passport tax at Rls 1,000 for each Iranian passport

12 Gasoline products at rates for 5 % to 15 % for each 1,000 litres (taken to equal Rls 50 for purposes of computing dues)
Rls 1 per litre for oils
Rls 60 per ton (1,000 kilos) of pitch
Soluble petrol Rls 2.7. per can

13 From the Sugar monopoly at Rls 2 per kilo

14 From each telephone user Rls 20 per month

15 Other taxes are collected by the Ministry of the Interior for the Municipality on foreign alcoholic beverages oil productx, foreign cement, imported and non-monopoly sugar. A part of the 6% collected by Customs Authorities on imported goods is also passed to the Municipality.

Appendix 'B'

NATIONAL TAXES

This appendix is intended to provide a general guide to the taxes imposed by the tax law of 1957 and all references are to that law unless otherwise noted.

Section

4 Wages and salaries tax – collected at source. A flat deduction of Rls. 48.000 is allowed from taxable income, but no further allowances are available. There are no practical means of ensuring that the total allowance of Rls. 48.000 has been taken into account in computing the tax paid, particularly in the case of persons employed for less than the full tax year.

5 Tax on shopkeepers, artisans and self employed persons – The basis of assessment and amount of tax payable is usually the subject of negotiation between the Ministry of Finance and the guild representatives.

6 Tax on merchants (as defined in Articles 1 and 2 of the Commercial Code) and other taxpayers for whom provision is not otherwise made in the law – Tax is based on the net profits of the taxpayer at the rates noted at the end of this appendix. Allowable expenses are dealt with by way of decree and are the same as for companies.

7 Tax on members of professions and others as follows –

a. Physicians, surgeons, dentists, opticians, midwifes and veterinary surgeons are exempt during the first 3 years of practice in Teheran and for the first 6 years elsewhere. Flat rate taxes are imposed dependant upon grading of the Ministry of Finance at amounts ranging from Rls. 15,000 per annum to Rls. 120,000 per annum.
b. In the case of hospitals and the like, tax is based on net profit but at a flat rate of 6 %. If the taxpayer is located other than in Teheran or a provincial capital no tax is payable during the first 6 years of operation.
c. Income of notary public offices is presumed to equal 60 % of the fees received and tax is payable at the rates applicable to merchants.
d. Lawyers pay tax by affixing stamps to the powers of attorney which are given them and the amount is determined by the nature of the work to be carried out and fees to be received.
e. Net taxable income of owners of technical offices (such as architects) and builders is presumed to equal 60 % of the fees received and tax is payable at a flat rate of 12 % of such presumed taxable income.
f. Newspaper and magazine publishers are treated as merchants for tax purposes. However, if circulation is less than 2500 for each issue, no liability to tax arises.

9 Real estate rental tax – All real estate from which the owner derives rental income is subjected to tax. The net taxable income is presumed to equal 80 % of the annual rental (for public baths 70 %). In the case of new properties and certain enlargements of existing premises an exemption for the 3 years following completion may be granted. Tax is payable at the rates applicable to merchants.

10 Agricultural property tax – Tax is payable at the rate of 10 % of net income computed in accordance with the detailed provisions of this article. The recent land reforms have created numerous units not subject to tax, however. Since it is common for co-operative companies to act in collecting and distributing income from agricultural products, tax is collected on any profits retained by the company.

11 Contractors and lessors tax – Tax is imposed on all persons who fall within the definition of contractors given in the section and on lessors of mines, gardens, and agricultural property and is deductible at source at the following rates:

Total contract or rental income received	
not exceeding Rls. 2,500,000	2 % of gross income
from Rls. 2,500,001 to Rls. 5,000,000	3 % of gross income
from Rls. 5,000,001 upwards	4 % of gross income

8 Tax on companies and legal entities Taxable income is computed on the basis of the published accounts and legal books. The applicable rates and allowances are the same as for merchants except that an exemption of 10 % of taxable income is given to all companies and for certain specified manufacturing or processing companies an exemption of 50 %.

12 Income from mortgage transactions and pledges – Tax is imposed at the rate of 15 % of income not exceeding Rls. 200,000 and at the rate applicable to merchants for income in excess of this amount. Income under this section includes profits arising from mortgage and property transactions and income from loans and debentures which is presumed equal to a minimum 12 % of the capital sum loaned, except in the case of loans made as a result of foreign investment in Iran when special provisions are applied. Income from betting and lotteries is covered by this section.

13 Taxes on owners of motor vehicles – The tax is collected at the end of the 7th month (October 22) and the 11th month (February 19) each year. Privately owned motor vehicles, passenger vehicles with the exception of engined lorries and buses are not subjected to this tax. Tax rates range from Rls. 300 to Rls. 3000 per annum.

14 Tax on total income – In accordance with this section all persons subject to tax must complete a declaration of total income by July 22 each year. Tax is payable on this total income at the rates applicable to traders(section 6) less tax already paid or suffered. The wording of the law was not sufficiently clear and in 1965 a decree was issued which set out the income to be covered by this article. This decree defines total income as –

Trading income of persons or companies, interest, casual income, income from newspapers and magazines and other income for which no specific provisions have been included in the income tax law.

This definition taken in conjunction with the wording of Article 6 and the fact that the purpose is to require taxpayers to declare all casual or non-taxed income make imposition of the article rather difficult. The proposed tax law may enable present difficulties to be overcome by stating that, in appropriate cases, tax paid is "on account" only.

ARTICLE 6 – TAXES PAYABLE BY TRADERS

From	*To*	*Rate of tax payable*
Rls 0	Rls 48,000	Exempt
Rls 48,001	Rls 100,000	12 %
Rls 100,001	Rls 200,000	15 %
Rls 200,001	Rls 300,000	18 %
Rls 300,001	Rls 400,000	21 %
Rls 400,001	Rls 800,000	24 %
Rls 800,001	Rls 1,200,000	30 %
Rls 1,200,001	Rls 1,500,000	33 %
Rls 1,500,001	Rls 2,000,000	36 %
Rls 2,000,001	Rls 2,500,000	40 %
Rls 2,500,001	Rls 3,000,000	45 %
Rls 3,000,001	Rls 4,000,000	46 %
Rls 4,000,001	Rls 4,500,000	47 %
Rls 4,500,001	Rls 5,500,000	48 %
Rls 5,500,001	Rls 6,000,000	49 %
Rls 6,000,001	Upwards	50 %

The rates do not include the 15 % Municipality and 1.5 % Chamber of Commere dues calculated on tax payable.

III

TREATIES

ABKOMMEN ZWISCHEN DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT UND SPANIEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG AUF DEM GEBIETE DER STEUERN VOM EINKOMMEN UND VOM VERMÖGEN VOM 26 APRIL 1966*)

Übersetzung aus dem französischen und spanischen Originaltext

Der Schweizerische Bundesrat und der spanische Staatschef,

vom Wunsche geleitet, ein Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen abzuschliessen,

haben zu diesem Zweck zu ihren Bevollmächtigten ernannt:

Der Schweizerische Bundesrat:

Herrn Bundesrat Willy Spühler, Vorsteher des Eidgenössischen Politischen Departementes,

Der spanische Staatschef:

Seine Exzellenz Herrn Juan Pablo de Lojendio e Irure, Marquis von Vellisca, Botschafter Spaniens in Bern,

die, nachdem sie sich ihre Vollmachten mitgeteilt und diese in guter und gehöriger Form befunden, folgendes vereinbart haben:

Abschnitt I

Geltungsbereich des Abkommens

ARTIKEL 1

Persönlicher Geltungsbereich

Dieses Abkommen gilt für Personen, die in einem Vertragstaat oder in beiden Vertragstaaten ansässig sind.

ARTIKEL 2

Unter das Abkommen fallende Steuern

1. Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen und vom Vermögen, die für Rechnung eines der beiden Vertragstaaten, seiner politischen Unterabteilungen oder seiner lokalen Körperschaften erhoben werden.

2. Als Steuern vom Einkommen und vom Vermögen gelten alle Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschliesslich der Steuern vom Gewinn aus der Veräusserung beweglichen oder unbeweglichen Vermögens, der Lohnsummensteuern (unter Ausschluss der Sozialversicherungsbeiträge) sowie der Steuern vom Vermögenszuwachs.[1])

3. Zu den zurzeit bestehenden Steuern,

*) In the next issue: Botschaft des Scheizerischen Bundesrates an die Bundesversammlung über die Genehmigung des zwischen der Schweiz und Spanien abgeschlossenen Abkommens zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen, dated May 31, 1966

[1]) Es besteht Einvernehmen darüber, dass Artikel 2 sowohl die ordentlichen als auch die ausserordentlichen Steuern vom Einkommen und vom Vermögen umfasst (Botschaft am 26. April 1966).

für die das Abkommen gilt, gehören insbesondere:

a. in Spanien:

(1) die allgemeine Einkommenssteuer der natürlichen Personen;
(2) die allgemeine Steuer auf den Gewinnen der Gesellschaften und anderer juristischer Personen, mit Einschluss der in Artikel 104 des Gesetzes Nr. 41/1964 vom1 1. Juni 1964 erwähnten Sonderabgabe von 4 vom Hundert;
(3) folgende Vorsteuern: die Steuer auf dem ländlichen Grundeigentum, die Steuer auf dem städtischen Grundeigentum, die Steuer vom Erwerbseinkommen, die Steuer vom Vermögensertrag und die Steuer vom Geschäftsertrag;
(4) für Fernando Poo, Rio Muni, Sahara und Ifni: die Steuern vom Einkommen (Erwerbseinkommen und Vermögensertrag) und von den Unternehmensgewinnen;
(5) für die unter das Gesetz vom 26. Dezember 1958 fallenden Unternehmen, die nach Kohlenwasserstoffen schürfen oder diese ausbeuten, neben den in diesem Artikel aufgezählten Steuern: die Oberflächengebühr, die Steuer vom Bruttoertrag und die Sondersteuer von den Gewinnen dieser Gesellschaften;
(6) die lokalen Steuern vom Einkommen und vom Vermögen (im folgenden als „spanische Steuer" bezeichnet);

b. in der Schweiz:

die von Bund, Kantonen und Gemeinden erhobenen Steuern
(1) vom Einkommen (Gesamteinkommen, Erwerbseinkommen, Vermögensertrag, Geschäftsertrag, Kapitalgewinn und andere Einkünfte);
(2) vom Vermögen (Gesamtvermögen, bewegliches und unbewegliches Vermögen, Geschäftsvermögen, Kapital und Reserven und andere Vermögensteile)
(im folgenden als „schweizerische Steuer" bezeichnet).

4. Das Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den zurzeit bestehenden Steuern oder an deren Stelle erhoben werden. Die zuständigen Behörden der Vertragstaaten teilen einander jedes Jahr die in ihren Steuergesetzen eingetretenen Änderungen mit.

5. Das Abkommen gilt nicht für die an der Quelle erhobenen Steuern von Lotteriegewinnen.

Abschnitt II

Definitionen

ARTIKEL 3

Allgemeine Definitionen

1. Im Sinne dieses Abkommens, wenn der Zusammenhang nichts anderes erfordert:

a. bedeutet der Ausdruck „Spanien" den spanischen Staat (im geographischen Sinne verstanden: das spanische Hoheitsgebiet auf der iberischen Halbinsel, die Balearen und die Kanarischen Inseln, die spanischen Städte und Provinzen in Afrika sowie Äquatorial-Guinea, bestehend aus den Territorien Rio Muni und Fernando Poo, die auf dem Wege zur Selbstbestimmung sind);

b. bedeutet der Ausdruck „Schweiz" die Schweizerische Eidgenossenschaft;

c. bedeuten die Ausdrücke „ein Vertragstaat“ und „der andere Vertragstaat“, je nach dem Zusammenhang, Spanien oder die Schweiz;

d. umfasst der Ausdruck „Person“ natürliche Personen, Gesellschaften und alle anderen Personenvereinigungen;

e. bedeutet der Ausdruck „Gesellschaft“ juristische Personen oder Rechtsträger, die für die Besteuerung wie juristische Personen behandelt werden;

f. bedeuten die Ausdrücke „Unternehmen eines Vertragstaates“ und „Unternehmen des anderen Vertragstaates“, je nachdem, ein Unternehmen, das von einer in einem Vertragstaat ansässigen Person (einschliesslich dieses Staates selbst, seiner politischen Unterabteilungen und seiner lokalen Körperschaften) betrieben wird, oder ein Unternehmen, das von einer in dem anderen Vertragstaat ansässigen Person (einschliesslich dieses Staates selbst, seiner politischen Unterabteilungen und seiner lokalen Körperschaften) betrieben wird;

g. bedeutet der Ausdruck „zuständige Behörde“:

(1) in Spanien:
den Finanzminister, den Generaldirektor der direkten Steuern oder jede andere vom Minister beauftragte Behörde;

(2) in der Schweiz:
den Direktor der Eidgenössischen Steuerverwaltung oder seinen bevollmächtigten Vertreter.

2. Bei Anwendung des Abkommens durch einen Vertragstaat hat, wenn der Zusammenhang nichts anderes erfordert, jeder nicht anders definierte Ausdruck die Bedeutung, die ihm nach dem Recht dieses Staates über die Steuern zukommt, welche Gegenstand des Abkommens sind.

ARTIKEL 4

Steuerlicher Wohnsitz

1. Im Sinne dieses Abkommens bedeutet der Ausdruck „eine in einem Vertragstaat ansässige Person“ eine Person, die nach dem Recht dieses Staates dort auf Grund ihres Wohnsitzes, ihres ständigen Aufenthalts, des Ortes ihrer Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist.

2. Ist nach Absatz 1 eine natürliche Person in beiden Vertragstaaten ansässig, so gilt folgendes:

a. Die Person gilt als in dem Vertragstaat ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, zu dem sie die engeren persönlichen und wirtschattlichen Beziehungen hat (Mittelpunkt der Lebensinteressen).

b. Kann nicht bestimmt werden, in welchem Vertragstaat die Person den Mittelpunkt der Lebensinteressen hat, oder verfügt sie in keinem der Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat.

c. Hat die Person ihren gewöhnlichen Aufenthalt in beiden Vertragstaaten oder in keinem der Vertragstaaten, so gilt sie als in dem Vertragstaat ansässig, dessen Staatsangehörigkeit sie besitzt.

d. Besitzt die Person die Staatsangehörigkeit beider Vertragstaaten oder keines Vertragstaates, so regeln die zuständigen Behörden der Vertragstaaten die Frage in gegenseitigem Einvernehmen.

3. Ist nach Absatz 1 eine andere als eine natürliche Person in beiden Vertragstaaten ansässig, so gilt sie als in dem Vertragstaat ansässig, in dem sich der Ort ihrer tatsächlichen Geschäftsleitung befindet.

ARTIKEL 5
Betriebstätte

1. Im Sinne dieses Abkommens bedeutet der Ausdruck „Betriebstätte" eine feste Geschäftseinrichtung, in der die Tätigkeit des Unternehmens ganz oder teilweise ausgeübt wird.

2. Der Ausdruck „Betriebstätte" umfasst insbesondere:

a. einen Ort der Leitung,
b. eine Zweigniederlassung,
c. eine Geschäftsstelle,
d. eine Fabrikationsstätte,
e. eine Werkstätte,
f. ein Bergwerk, einen Steinbruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
g. eine Bauausführung oder Montage, deren Dauer zwölf Monate überschreitet.

3. Als Betriebstätten gelten nicht:

a. Einrichtungen, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung von Gütern oder Waren des Unternehmens benutzt werden;
b. Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zur Lagerung, Ausstellung oder Auslieferung unterhalten werden;
c. Bestände von Gütern oder Waren des Unternehmens, die ausschliesslich zu dem Zweck unterhalten werden, durch ein anderes Unternehmen bearbeitet oder vetarbeitet zu werden;
d. eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen Güter oder Waren einzukaufen oder Informationen zu beschaffen;
e. eine feste Geschäftseinrichtung, die ausschliesslich zu dem Zweck unterhalten wird, für das Unternehmen zu werben, Informationen zu erteilen, wissenschaftliche Forschung zu betreiben oder ähnliche Tätigkeiten auszuüben, die vorbereitender Art sind oder eine Hilfstätigkeit darstellen.

4. Ist eine Person – mit Ausnahme eines unabhängigen Vertreters im Sinne des Absatzes 5 – in einem Vertragstaat für ein Unternehmen des anderen Vertragstaates tätig, so gilt eine in dem erstgenannten Staat gelegene Betriebstätte als gegeben, wenn die Person eine Vollmacht besitzt, im Namen des Unternehmens Verträge abzuschliessen, und die Vollmacht in diesem Staat gewöhnlich ausübt, es sei denn, dass sich ihre Tätigkeit auf den Einkauf von Gütern oder Waren für das Unternehmen beschränkt.

5. Ein Unternehmen eines Vertragstaates wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Vertragstaat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.

6. Allein dadurch, das eine in einem Vertragstaat ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Vertragstaat ansässig ist oder dort (entweder durch eine Betriebstätte oder in anderer Weise) ihre Tätigkeit ausübt, wird eine der beiden Gesellschaften nicht zur Betriebstätte der anderen.

Abschnitt III

Besteuerung des Einkommens

ARTIKEL 6
Einkünfte aus unbeweglichem Vermögen

1. Einkünfte aus unbeweglichem Vermögen können in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

2. Der Ausdruck „unbewegliches Vermögen" bestimmt sich nach dem Recht des Vertragstaates, in dem das Vermögen liegt. Der Ausdruck umfasst in jedem Fall die Zugehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Betriebe, die Rechte, auf die die Vorschriften des Privatrechts über Grundstücke Anwendung finden, die Nutzungsrechte an unbeweglichem Vermögen sowie die Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung von Mineralvorkommen, Quellen und anderen Bodenschätzen; Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.

3. Absatz 1 gilt für Einkünfte aus der unmittelbaren Nutzung, der Vermietung oder Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens.

4. Die Absätze 1 und 3 gelten auch für Einkünfte aus unbeweglichem Vermögen eines Unternehmens und für Einkünfte aus unbeweglichem Vermögen, das der Ausübung eines freien Berufes dient.

ARTIKEL 7
Unternehmensgewinne

1. Gewinne eines Unternehmens eines Vertragstaates können nur in diesem Staat besteuert werden, es sei denn, dass das Unternehmen seine Tätigkeit im anderen Vertragstaat durch eine dort gelegene Betriebstätte ausübt. Übt das Unternehmen seine Tätigkeit in dieser Weise aus, so können die Gewinne des Unternehmens in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser Betriebstätte zugerechnet werden können.

2. Übt ein Unternehmen eines Vertragstaates seine Tätigkeit in dem anderen Vertragstaat durch eine dort gelegene Betriebstätte aus, so sind in jedem Vertragstaat dieser Betriebstätte die Gewinne zuzurechnen, die sie hätte erzielen können, wenn sie eine gleiche oder ähnliche Tätigkeit unter gleichen oder ähnlichen Bedingungen als selbständiges Unternehmen ausgeübt hätte und im Verkehr mit dem Unternehmen, dessen Betriebstätte sie ist, völlig unabhängig gewesen wäre.

3. Bei der Ermittlung der Gewinne einer Betriebstätte werden die für diese Betriebstätte entstandenen Aufwendungen, einschliesslich der Geschäftsführungs- und allgemeinen Verwaltungskosten, zum Abzug zugelassen, gleichgültig, ob sie in dem Staat, in dem die Betriebstätte liegt, oder anderswo entstanden sind.

4. Soweit es in einem Vertragstaat üblich ist, die einer Betriebstätte zuzurechnenden Gewinne durch Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile zu ermitteln, schliesst Absatz 2 nicht aus, dass dieser Vertragstaat die zu besteuernden Gewinne nach der üblichen Aufteilung ermittelt; die Art der angewendeten Gewinnaufteilung muss jedoch so sein, dass das Ergebnis mit den Grundsätzen dieses Artikels übereinstimmt.

5. Auf Grund des blossen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebstätte kein Gewinn zugerechnet.

6. Bei Anwendung der vorstehenden Absätze sind die der Betriebstätte zuzurechnenden Gewinne jedes Jahr auf dieselbe Art zu ermitteln, es sei denn, dass ausreichende Gründe dafür bestehen, anders zu verfahren.

7. Gehören zu den Gewinnen Einkünfte, die in anderen Artikeln dieses Abkommens behandelt werden, so werden die Bestimmungen jener Artikel durch die Bestimmungen dieses Artikels nicht berührt.

ARTIKEL 8

Seeschiffahrt und Luftfahrt

1. Gewinne aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr können nur in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

2. Absatz 1 gilt auch für Gewinne, die von einem Unternehmen eines Vertragstaates aus einem Pool, einer gemeinsamen Betriebsorganisation oder einer internationalen Betriebskörperschaft erzielt werden.

ARTIKEL 9

Verbundene Unternehmen

Wenn

a. ein Unternehmen eines Vertragstaates unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens des anderen Vertragstaates beteiligt ist, oder

b. dieselben Personen unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens eines Vertragstaates und eines Unternehmens des anderen Vertragstaates beteiligt sind,

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

ARTIKEL 10

Dividenden

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

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

a. 10 vom Hundert des Bruttobetrages der Dividenden, wenn der Empfänger eine Gesellschaft (ausgenommen eine Personengesellschaft) ist, die unmittelbar über mindestens 25 vom Hundert des Kapitals der die Dividenden zahlenden Gesellschaft verfügt;

b. 15 vom Hundert des Bruttobetrages der Dividenden in allen anderen Fällen. Die zuständigen Behörden der Vertragstaaten regeln in gegenseitigem Einvernehmen, wie diese Begrenzungsbestimmung durchzufuhren ist.

Dieser Absatz berührt nicht die Besteuerung der Gesellschaft in bezug auf die Gewinne, aus denen die Dividenden gezahlt werden.

3. Der in diesem Artikel verwendete Ausdruck „Dividenden" bedeutet Einkünfte aus Aktien, Genussaktien oder Genussscheinen, Kuxen, Gründeranteilen oder anderen Rechten – ausgenommen Forderungen – mit Gewinnbeteiligung sowie aus sonstigen Gesellschaftsanteilen stammende Einkünfte, die nach dem Steuerrecht des Staates, in dem die ausschüttende Gesellschaft ansässig ist, den Einkünften aus Aktien gleichgestellt sind.

4. Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine Betriebstätte hat und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu die-

ser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

5. Bezieht eine in einem Vertragstaat ansässige Gesellschaft Gewinne oder Einkünfte aus dem anderen Vertragstaat, so darf dieser andere Staat weder die Dividenden besteuern, die die Gesellschaft an nicht in diesem anderen Staat ansässige Personen zahlt, noch Gewinne der Gesellschaft einer Steuer für nichtausgeschüttete Gewinne unterwerfen, selbst wenn die gezahlten Dividenden oder die nichtausgeschütteten Gewinne ganz oder teilweise aus in dem anderen Staat erzielten Gewinnen oder Einkünften bestehen.

ARTIKEL 11

Zinsen

1. Zinsen, die aus einem Vertragstaat stammen und an eine in dem anderen Vertragstaat ansässige Person gezahlt werden, können in dem anderen Staat besteuert werden.

2. Diese Zinsen können jedoch in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 10 vom Hundert des Betrages der Zinsen nicht übersteigen. Die zuständigen Behörden der Vertragstaaten regeln in gegenseitigem Einvernehmen, wie diese Begrenzungsbestimmung durchzuführen ist.

3. Ungeachtet des Absatzes 2 können Zinsen, die aus Spanien stammen und an eine Bank, die eine in der Schweiz ansässige Person ist, für ein langfristiges (nicht vor Ablauf von fünf Jahren ganz oder teilweise rückzahlbares) Darlehen gezahlt werden, nur in der Schweiz besteuert werden.

4. Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus öffentlichen Anleihen, aus Obligationen, auch wenn sie durch Pfandrechte an Grundstücken gesichert oder mit einer Gewinnbeteiligung ausgestattet sind, und aus Forderungen jeder Art sowie alle anderen Einkünfte, die nach dem Steuerrecht des Staates, aus dem sie stammen, den Einkünften aus Darlehen gleichgestellt sind.

5. Die Absätze 1, 2 und 3 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Zinsen in dem anderen Vertragstaat, aus dem die Zinsen stammen, eine Betriebstätte hat und die Forderung, für die die Zinsen gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

6. Zinsen gelten dann als aus einem Vertragstaat stammend, wenn der Schuldner dieser Staat selbst, eine seiner politischen Unterabteilungen, eine seiner lokalen Körperschaften oder eine in diesem Staat ansässige Person ist. Hat aber der Schuldner der Zinsen, ohne Rücksicht darauf, ob er in einem Vertragstaat ansässig ist oder nicht, in einem Vertragstaat eine Betriebstätte und ist die Schuld, für die die Zinsen gezahlt werden, für Zwecke der Betriebstätte eingegangen worden und trägt die Betriebstätte die Zinsen, so gelten die Zinsen als aus dem Vertragstaat stammend, in dem die Betriebstätte liegt.

7. Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Zinsen, gemessen an der zugrundeliegenden Forderung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

ARTIKEL 12

Lizenzgebühren

1. Lizenzgebühren, die aus einem Vertragstaat stammen und an eine in dem anderen Vertragstaat ansässige Person gezahlt werden, können in dem anderen Staat besteuert werden.

2. Diese Lizenzgebühren können jedoch in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 5 vom Hundert des Bruttobetrages der Lizenzgebühren nicht übersteigen.

Die zuständigen Behörden der Vertragstaaten regeln in gegenseitigem Einvernehmen, wie diese Begrenzungsbestimmung durchzuführen ist.

3. Der in diesem Artikel verwendete Ausdruck „Lizenzgebühren" bedeutet Vergütungen jeder Art, die für die Benutzung oder für das Recht auf Benutzung von Urheberrechten an literarischen, künstlerischen oder wissenschaftlichen Werken, einschliesslich kinematographischer Filme, von Patenten, Marken, Mustern oder Modellen, Plänen, geheimen Formeln oder Verfahren oder für die Benutzung oder das Recht auf Benutzung gewerblicher, kaufmännischer oder wissenschaftlicher Ausrüstungen oder für die Mitteilung gewerblicher, kaufmännischer oder wissenschaftlicher Erfahrungen gezahlt werden.

4. Die Absätze 1 und 2 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Lizenzgebühren in dem anderen Vertragstaat, aus dem die Lizenzgebühren stammen, eine Betriebstätte hat und die Rechte oder Vermögenswerte, für die die Lizenzgebühren gezahlt werden, tatsächlich zu dieser Betriebstätte gehören. In diesem Fall ist Artikel 7 anzuwenden.

5. Lizenzgebühren gelten dann als aus einem Vertragstaat stammend, wenn der Schuldner dieser Staat selbst, eine seiner politischen Unterabteilungen, eine seiner lokalen Körperschaften oder eine in diesem Staat ansässige Person ist. Hat aber der Schuldner der Lizenzgebühren, ohne Rücksicht darauf, ob er in einem Vertragstaat ansässig ist oder nicht, in einem Vertragstaat eine Betriebstätte, und hängt die Leistung, für die die Lizenzgebühren gezahlt werden, mit der Betriebstätte zusammen und trägt die Betriebstätte die Lizenzgebühren, so gelten die Lizenzgebühren als aus dem Vertragstaat stammend, in dem die Betriebstätte liegt.

6. Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Lizenzgebühren, gemessen an der zugrundeliegenden Leistung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes Vertragstaates und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

ARTIKEL 13

Gewinne aus der Veräusserung von Vermögen

1. Gewinne aus der Veräusserung unbeweglichen Vermögens im Sinne des Artikels 6, Absatz 2 können in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

2. Gewinne aus der Veräusserung beweglichen Vermögens, das Betriebsvermögen einer Betriebstätte darstellt, die ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat hat, oder das zu einer festen Einrichtung gehört, über die eine in einem Vertragstaat ansässige Person für

die Ausübung eines freien Berufes in dem anderen Vertragstaat verfügt, einschliesslich derartiger Gewinne, die bei der Veräusserung einer solchen Betriebstätte (allein oder zusammen mit dem übrigen Unternehmen) oder einer solchen festen Einrichtung erzielt werden, können in dem anderen Staat besteuert werden. Jedoch können Gewinne aus der Veräusserung des in Artikel 22, Absatz 3 genannten beweglichen Vermögens nur in dem Vertragstaat besteuert werden, in dem dieses bewegliche Vermögen nach dem angeführten Artikel besteuert werden kann.

3. Gewinne aus der Veräusserung des in den Absätzen 1 und 2 nicht genannten Vermögens können nur in dem Vertragstaat besteuert werden, in dem der Veräusserer ansässig ist.

ARTIKEL 14

Selbständige Arbeit

1. Einkünfte, die eine in einem Vertragstaat ansässige Person aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art bezieht, können nur in diesem Staat besteuert werden, es sei denn, dass die Person für die Ausübung ihrer Tätigkeit in dem anderen Vertragstaat regelmässig über eine feste Einrichtung verfügt. Verfügt sie über eine solche feste Einrichtung, so können die Einkünfte in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser festen Einrichtung zugerechnet werden können.

2. Der Ausdruck „freier Beruf" umfasst insbesondere die selbständig ausgeübte wissenschaftliche, literarische, künstlerische, erzieherische oder unterrichtende Tätigkeit sowie die selbständige Tätigkeit der Ärzte, Rechtsanwälte, Ingenieure, Architekten, Zahnärzte und Bücherrevisoren.

ARTIKEL 15

Unselbständige Arbeit

1. Vorbehältlich der Artikel 16, 18 und 19 können Gehälter, Löhne und ähnliche Vergütungen, die eine in einem Vertragstaat ansässige Person aus unselbständiger Arbeit bezieht, nur in diesem Staat besteuert werden, es sei denn, dass die Arbeit in dem anderen Vertragstaat ausgeübt wird. Wird die Arbeit dort ausgeübt, so können die dafür bezogenen Vergütungen in dem anderen Staat besteuert werden.

2. Ungeachtet des Absatzes 1 können Vergütungen, die eine in einem Vertragstaat ansässige Person für eine in dem anderen Vertragstaat ausgeübte unselbständige Arbeit bezieht, nur in dem erstgenannten Staat besteuert werden, wenn

a. der Emptänger sich in dem anderen Staat insgesamt nicht länger als 183 Tage während des betreffenden Steuerjahres aufhält,

b. die Vergütungen von einem Arbeitgeber oder für einen Arbeitgeber gezahlt werden, der nicht in dem anderen Staat ansässig ist, und

c. die Vergütungen nicht von einer Betriebstätte oder einer festen Einrichtung getragen werden, die der Arbeitgeber in dem anderen Staat hat.

3. Ungeachtet der vorstehenden Bestimmungen dieses Artikels können Vergütungen für unselbständige Arbeit, die an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr ausgeübt wird, in dem Vertragstaat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

ARTIKEL 16

Aufsichtsrats-und Verwaltungsratsvergütungen

Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die

eine in einem Vertragstaat ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrates einer Gesellschaft bezieht, die in dem anderen Vertragstaat ansässig ist, können in dem anderen Staat besteuert werden.

ARTIKEL 17
Künstler und Sportler

Ungeachtet der Artikel 14 und 15 können Einkünfte, die berufsmässige Künstler, wie Bühnen-, Film-, Rundfunk- oder Fernsehkünstler und Musiker, sowie Sportler aus ihrer in dieser Eigenschaft persönlich ausgeübten Tätigkeit beziehen, in dem Vertragstaat besteuert werden, in dem sie diese Tätigkeit ausüben.

ARTIKEL 18
Ruhegehälter

Vorbehältlich des Artikels 19 können Ruhegehälter und ähnliche Vergütungen, die einer in einem Vertragstaat ansässigen Person für frühere unselbständige Arbeit gezahlt werden, nur in diesem Staat besteuert werden.

ARTIKEL 19
Öffentlich-rechtliche Vergütungen

Vergütungen, einschliesslich der Ruhegehälter, die von einem Vertragstaat, einer seiner politischen Unterabteilungen oder lokalen Körperschaften oder von einer juristischen Person oder einer selbständigen Anstalt des öffentlichen Rechts dieses Vertragstaates unmittelbar oder aus einem Sondervermögen an eine natürliche Person, welche die Staatsangehörigkeit dieses Vertragstaates besitzt, für gegenwärtig oder früher erbrachte Dienste gezahlt werden, können nur in dem Vertragstaat besteuert werden, aus dem diese Vergütungen stammen.

ARTIKEL 20
Studenten

Zahlungen, die ein Student oder Lehrling, der in einem Vertragstaat ansässig ist oder vorher dort ansässig war und der sich in dem anderen Vertragstaat ausschliesslich zum Studium oder zur Ausbildung aufhält, für seinen Unterhalt, sein Studium oder seine Ausbildung erhält, werden in dem anderen Staat nicht besteuert, sofern ihm diese Zahlungen aus Quellen ausserhalb des anderen Staates zufliessen.

ARTIKEL 21
Nicht ausdrücklich erwähnte Einkünfte

Die in den vorstehenden Artikeln nicht ausdrücklich erwähnten Einkünfte einer in einem Vertragstaat ansässigen Person können nur in diesem Staat besteuert werden.

Abschnitt IV

Besteuerung des Vermögens

ARTIKEL 22
Vermögen

1. Unbewegliches Vermögen im Sinne des Artikels 6, Absatz 2 kann in dem Vertragstaat besteuert werden, in dem dieses Vermögen liegt.

2. Bewegliches Vermögen, das Betriebsvermögen einer Betriebstätte eines Unternehmens darstellt oder das zu einer der Ausübung eines freien Berufes dienenden festen Einrichtung gehört, kann in in dem Vertragstaat besteuert werden, in dem sich die Betriebstätte oder die feste Einrichtung befindet.

3. Seeschiffe und Luftfahrzeuge im internationalen Verkehr sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, können nur in dem Vertragstaat besteuert werden, in dem

sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.

4. Alle anderen Vermögensteile einer in einem Vertragstaat ansässigen Person können nur in diesem Staat besteuert werden.

Abschnitt V

Methoden zur Vermeidung der Doppelbesteuerung

ARTIKEL 23

1. Bezieht eine in einem Vertragstaat ansässige Person Einkünfte oder hat sie Vermögen und können diese Einkünfte oder dieses Vermögen nach diesem Abkommen in dem anderen Vertragstaat besteuert werden, so nimmt der erstgenannte Staat, vorbehältlich der nachfolgenden Absätze, diese Einkünfte oder dieses Vermögen von der Besteuerung aus; dieser Staat kann aber bei der Festsetzung der Steuer für das übrige Einkommen oder das übrige Vermögen dieser Person den Steuersatz anwenden, der anzuwenden wäre, wenn die betreffenden Einkünfte oder das betreffende Vermögen nicht von der Besteuerung ausgenommen wären.

2. Bezieht eine in Spanien ansässige Person Einkünfte, die nach den Artikeln 10, 11 und 12 in der Schweiz besteuert werden können, so rechnet Spanien auf die vom Einkommen dieser Person zu erhebende Steuer den Betrag an, der der in der Schweiz gezahlten Steuer entspricht; der anzurechnende Betrag darf jedoch den Teil der vor der Anrechnung ermittelten Steuer nicht übersteigen, der auf die aus der Schweiz bezogenen Einkünfte entfällt.

Dieser Absatz gilt sowohl für die allgemeinen Steuern als auch für ihre Vorsteuern.

3. Bezieht eine in der Schweiz ansässige Person Einkünfte, die nach den Artikeln 10, 11 und 12 in Spanien besteuert werden können, so gewährt, die Schweiz dieser Person auf Antrag eine Entlastung. Die Entlastung besteht

a. in der Anrechnung der nach den Artikeln 10, 11 und 12 in Spanien erhobenen Steuer auf die vom Einkommen dieser Person geschuldete schweizerische Steuer, wobei der anzurechnende Betrag jedoch den Teil der vor der Anrechnung ermittelten schweizerischen Steuer nicht übersteigen darf, der auf die Einkünfte, die in Spanien besteuert werden, entfällt, oder

b. in einer pauschalen Ermässigung der schweizerischen Steuer, oder

c. in einer teilweisen Befreiung der betreffenden Einkünfte von der schweizerischen Steuer, mindestens aber im Abzug der in Spanien erhobenen Steuer vom Bruttobetrag der aus Spanien bezogenen Einkünfte.

Die Schweiz wird gemäss den Vorschriften über die Durchführung von zwischenstaatlichen Abkommen des Bundes zur Vermeidung der Doppelbesteuerung die Art der Entlastung bestimmen und das Verfahren ordnen.

4. Eine in einem Vertragstaat ansässige Gesellschaft, die Dividenden von einer im anderen Vertragstaat ansässigen Tochtergesellschaft bezieht, geniesst bei der Erhebung der Steuer des erstgenannten Staates auf diesen Dividenden die gleichen Vergünstigungen, wie sie ihr zustehen würden, wenn die die Dividenden zahlende Tochtergesellschaft im erstgenannten Staat ansässig wäre.

5. Bei der Anwendung des Absatzes 3 wird angenommen, dass von Zinsen auf Darlehen, die seit dem 1. Januar 1966 gewährt worden sind und die gestützt auf das Gesetzesdekret vom 19. Oktober 1961

oder andere Bestimmungen, die diesen Erlass ergänzen oder ersetzen sollten, eine Ermässigung der spanischen Steuer geniessen, die spanische Steuer zu dem in Artikel 11, Absatz 2 vorgesehenen Satz erhoben worden ist.

Abschnitt VI

Besondere Bestimmungen

ARTIKEL 24

Gleichbehandlung

1. Die Staatsangehörigen eines Vertragstaates dürfen in dem anderen Vertragstaat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen die Staatsangehörigen des anderen Staates unter gleichen Verhältnissen unterworfen sind oder unterworfen werden können.

2. Insbesondere geniessen die Staatsangehörigen eines Vertragstaates, die in dem anderen Vertragstaat steuerpflichtig sind, die gleichen Befreiungen, Abzüge, Steuerfreibeträge und -ermässigungen auf Grund des Personenstandes, wie sie den Staatsangehörigen dieses anderen Staates gewährt werden.

3. Der Ausdruck „Staatsangehörige" bedeutet:

a. alle natürlichen Personen, die die Staatsangehörigkeit eines Vertragstaates besitzen;

b. alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in einem Vertragstaat geltenden Recht errichtet worden sind.

4. Die Besteuerung einer Betriebstätte, die ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat hat, darf in dem anderen Staat nicht ungünstiger sein als die Besteuerung von Unternehmen des anderen Staates, die die gleiche Tätigkeit ausüben.

Diese Bestimmung ist nicht so auszulegen, als verpflichte sie einen Vertragstaat, den in dem anderen Vertragstaat ansässigen Personen Steuerfreibeträge, -vergünstigungen und -ermässigungen auf Grund des Personenstandes oder der Familienlasten zu gewähren, die er den in seinem Gebiet ansässigen Personen gewährt.

5. Die Unternehmen eines Vertragstaates, deren Kapital ganz oder teilweise, unmittelbar oder mittelbar, einer in dem anderen Vertragstaat ansässigen Person oder mehreren solchen Personen gehört oder ihrer Kontrolle unterliegt, dürfen in dem erstgenannten Vertragstaat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen andere ähnliche Unternehmen des erstgenannten Staates unterworfen sind oder unterworfen werden können.

6. In diesem Artikel bedeutet der Ausdruck „Besteuerung" Steuern jeder Art und Bezeichnung.

ARTIKEL 25

Verständigungsverfahren

1. Ist eine in einem Vertragstaat ansässige Person der Auffassung, dass die Massnahme eines Vertragstaates oder beider Vertragstaaten für sie zu einer Besteuerung geführt haben oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach innerstaatlichem Recht dieser Staaten vorgesehenen Rechtsmittel ihren Fall der zuständigen

Behörde des Vertragstaates unterbreiten, in dem sie ansässig ist.

2. Hält diese zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall durch Verständigung mit der zuständigen Behörde des anderen Vertragstaates so zu regeln, dass eine dem Abkommen nicht entsprechende Besteuerung vermieden wird.

3. Die zuständigen Behörden der Vertragstaaten werden sich bemühen, Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung des Abkommens entstehen, in gegenseitigem Einvernehmen zu beseitigen. Sie können auch gemeinsam darüber beraten, wie eine Doppelbesteuerung in Fällen, die in dem Abkommen nicht behandelt sind, vermieden werden kann.

4. Die zuständigen Behörden der Vertragstaaten können zur Herbeiführung einer Einigung im Sinne der vorstehenden Absätze unmittelbar miteinander verkehren. Erscheint ein mündlicher Meinungsaustausch für die Herbeiführung der Einigung zweckmässig, so kann ein solcher Meinungsaustausch in einer Kommission durchgeführt werden, die aus Vertretern der zuständigen Behörden der Vertragstaaten besteht.

ARTIKEL 26

Diplomatische und konsularische Beamte

1. Dieses Abkommen berührt nicht die steuerlichen Vorrechte, die den diplomatischen und konsularischen Beamten nach den allgemeinen Regeln des Völkerrechts oder auf Grund besonderer Vereinbarungen zustehen.

2. Bei Anwendung des Abkommens gelten die Angehörigen einer diplomatischen oder konsularischen Vertretung, die ein Vertragstaat in dem anderen Vertragstaat oder in einem dritten Staat unterhält, als im Entsendestaat ansässig, wenn sie die Staatsangehörigkeit des Entsendestaates besitzen und dort zu den Steuern vom Einkommen und vom Vermögen wie in diesem Staat ansässige Personen herangezogen werden.

3. Das Abkommen gilt nicht für zwischenstaatliche Organisationen, ihre Organe oder Beamten sowie nicht für Angehörige diplomatischer oder konsularischer Vertretungen eines dritten Staates, die in einem Vertragstaat anwesend sind, aber in keinem der beiden Vertragstaaten für Zwecke der Steuern vom Einkommen und vom Vermögen als dort ansässig behandelt werden.

Abschnitt VII

Schlussbestimmungen

ARTIKEL 27

Inkrafttreten

1. Dieses Abkommen soll ratifiziert, und die Ratifikationsurkunden sollen so bald wie möglich in Madrid ausgetauscht werden.

2. Dieses Abkommen tritt mit dem Austausch der Ratifikationsurkunden in Kraft, und seine Bestimmungen finden Anwendung

a. in Spanien:
auf die Steuern, die für das Jahr 1967 und die folgenden Jahre geschuldet sind;

b. in der Schweiz:
für die Steuerjahre, die am oder nach dem 1. Januar 1967 beginnen.

3. Die Vereinbarung zwischen dem Schweizerischen Bundesrat und der Regierung Spaniens vom 27. November 1963 über die Besteuerung von Unternehmungen der Luftfahrt wird mit dem Inkrafttre-

ten dieses Abkommens aufgehoben und wird letztmals auf die für das Jahr 1966 geschuldeten Steuern angewendet.

ARTIKEL 28

Ausserkrafttreten

Dieses Abkommen bleibt in Kraft, solange es nicht von einem der Vertragstaaten gekündigt worden ist. Jeder Vertragstaat kann das Abkommen auf diplomatischem Wege unter Einhaltung einer Frist von mindestens sechs Monaten zum Ende eines Kalenderjahres kündigen. In diesem Fall findet das Abkommen nicht mehr Anwendung:

a. in Spanien:
auf die Steuern, die für die auf die Kündigung folgenden Kalenderjahre geschuldet sind;

b. in der Schweiz:
für die Steuerjahre, die am oder nach dem 1. Januar des auf die Kündigung folgenden Kalenderjahres beginnen.

Zu Urkund dessen haben die vorgenannten Bevollmächtigten dieses Abkommen unterzeichnet und mit ihren Siegeln versehen.

Gefertigt zu Bern, im Doppel, am sechsundzwanzigsten April neunzehnhundertsechsundsechzig, in französischer und spanischer Urschrift, die gleicherweise authentisch sind.

Für die Schweizerische Eidgenossenschaft:

(gez.) Spühler

Für den spanischen Staat:

(gez.) J.P. de Lojendio

IV

BIBLIOGRAPHY

1. BOOKS

AFRICA

INVESTMENT LAWS AND REGULATIONS IN AFRICA; United Nations Publication; 1965, 79 pp. $ 1.00.

Survey of investment law in 31 African countries.

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DAS ARGENTINISCHE INVESTITIONSRECHT, by *Kook-Weskott, J.;* Bundesstelle für Aussenhandelsinformation (Sonderveröffentlichungen des Legislativen Dienstes Nr. 33), Köln, 1966. 95 pp.

Brochure on the legal tax and monetary aspects of investing in Argentina.

AUSTRALIA

PAPERS presented at the Taxation Convention arranged by the Western Australian Division of the Taxation Institute of Australia, 1966. 62 pp. The Taxation Institute of Australia, 15 Bligh Street, Sydney.

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This 50th volume of the series on Austrian tax law is devoted to import duties. The text of the law (Act of 1955), rules and regulations are included. The commentary includes references to important court decisious, and to relevant treaty provisions.

STEUERINDEX ÜBER RECHTSMITTELENTSCHEIDUNGEN, ERLÄSSE UND SCHRIFTTUM DES JAHRES 1965, by *Neuner K., und O. Zechmeister.* Wirtschaftsverlag Dr. Anton Orac, Wien; 1966, 229 pp. AS 288.–.

Bibliography to 1965 publications (court decisions, ministerial decrees, periodicals) concerning Austrian taxation.

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REGIME FISCAL DES GAINS ET PERTES DE CAPITAL ET FORCES DE MARCHÉ, by *Malherbe, J.;* Université Catholique de Louvain, Faculté des Sciences Economiques, Institut des Sciences Economiques, Louvain. 1965, 182 pp.

This book submitted in preparation for the degree of "licencié en sciences économiques" surveys the economic consequences of the introduction of a general capital gains tax and the manner in which it can be used as an instrument of economic policy.

CANADA

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C$ 2.00. 179 pp. Toronto, 1, Canadian Tax Foundation, 154 University Avenue.

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Booklet summarizing the laws concerning establishment in the Common Market countries and treating in cursory manner the following subjects: restrictions with respect to import and export of capital, company law, protection of industrial property, labor law, social security systems, investment incentives, anti-trust law, and tax law.

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Report of a special Committee of tax experts formed to promulgate proposals for tax reform in Germany, especially the relationship between federal, state and municipal taxes; the business tax; the possibility of introducing special emergency powers; and other important subjects. Committee proposals will serve as a subject of discussion but have not yet been incorporated in a tax reform bill.

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Köln, 1966. 627 pp. DM 72.—.

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GESELLSCHAFTSRECHT, by *Hueck A.*, Verlag C.H. Beck, München. 1965, 288 pp. DM 12.—.

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Master tax guide for the 1965 tax returns, including the individual and corporate income taxes, business tax and turnover tax. The text of the various acts is reproduced together with regulations and rulings and references to important court decisions. New developments are indicated. The master tax guides are also obtainable in separate volumes for the respective taxes: individual income tax, 679 pp., DM. 17,80; corporate income tax, 220 pp., DM 14,80; business tax, 184, pp. DM 12.50 and turnover tax, 421 pp., DM 18.80.

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Explanatory handbook thoroughly discussing the German Fiscal Code in which the provisions of formal tax law (administration, collection, appeal, definitions of concepts used in various tax acts, etc.) are collected. This well-known commentary, at present in its ninth edition, will be issued in five volumes of which two have been published, the first in 1963 (951 pp., DM 98.—) the second in 1965 (659 pp., DM 86.—). The discussion includes acts related to the Fiscal Code, e.g. the important Tax Adaptation Act (Steueranpassungsgesetz) (in volume I).

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DIE VERANLAGUNG ZUR GEWERBESTEUER FÜR 1965, DM 9.80. 182 pp.;
DIE VERANLAGUNG ZUR UMSATZSTEUER FÜR 1965, DM 12.80. 345 pp. Verlagsbuchhandlung des Instituts der Wirtschaftsprüfer GmbH., Düsseldorf.

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The 82nd publication in these series of "letters" is devoted to section 15 (2) of the German Corporate Income Tax Law, which provides that no gain will be recognized if all assets of a domestic corporation are exchanged for stock in another domestic corporation. Problems of mergers, amalgamations, affiliations and consolidations are discussed and existing law critically analysed.

CUMULATIVE INDEX 1966
No. 1–8

Of the score of tax treaties that the United States has concluded with developed countries the German—U.S. double taxation treaty may be one of the most important. Rudolf J. Niehus expressed in his article: "The Revised US/German Double Taxation Treaty—a German View" which is published in this issue of the Bulletin, the significance of this agreement for the German economy. Because of its great importance, the International Bureau of Fiscal Documentation has devoted the first number of its new series: "Tax Treaties Handbooks" to an extensive commentary, complete with all relevant documents on the convention, a commentary which has been written by Dr. H. Debatin (Germany) and Dr. O. Walter (U.S.A.).

The United States and several other nations have also concluded tax treaties with less-developed countries. These treaties differ significantly from those concluded with developed countries. Whereas, as Mr. Surrey[1]) states, some treaty provisions are comparable, differences arise from the disproportionate flow of investments and trade between the well- and the less-developed states, the flow being more abundant from the former party.

The primary interest of less-developed countries is not the treatment of their nationals in the developed countries, but the treatment of investment and investment income in the state where the inventor resides. Thus, the extension of the U.S. 7% investment credit, allowed on investments made in the U.S.A. to investments in less-developed countries, as effected through a few U.S. tax treaties, may be of principal interest. This does not, however, effect more advantageous investment incentive than that granted for domestic investment in the U.S.[2]) Besides, we wonder what influence on future treaty provisions president Johnson's 16 month suspension of the national 7% investment credit will be.[3])

The Interest Equalization Tax, levied on each acquisition of a foreign security by a U.S. person gives loans to less developed countries the same status as domestic loans.[4]) Neither does this incentive make investment in less developed countries *more* attractive than domestic investment.

In the field of taxation a lot can still be done in favour of the economy of emerging states, but, taxation is not the only factor which may influence investment.[5]) The political climate is the most important factor. Confidence is the last word!

DR. J.C.L. HUISKAMP

1) Bulletin 1966, p. 46.

2) Compare recommendations in Fiscal Incentives for Private Investment in Developing Countries. Report of the O.E.C.D., Fiscal Committee 1965, p. 66.

3) Investment Credit and Accelerated Depreciation Suspension Bill; Federal Tax Guide Reports No. 51, September 30, 1966, C.C.H.

4) See Gilbert B. Cramer: "The Interest Equalization Tax: a new method of prospecting for gold", Bulletin 1966, p. 221.

5) Compare "The Legal Problems of Foreign Investment in Developing Countries", by E. I. Nwogugu, reviewed on p. 436 of this Bulletin issue.

CONTENTS

I

THE REVISED US/GERMAN DOUBLE TAXATION TREATY — A GERMAN VIEW —

by

RUDOLF J. NIEHUS*)

INTRODUCTION

On April 1, 1966 the number of general tax treaties concluded by the Federal Republic of Germany totaled 22[1]), that with the United States, concluded on July 22, 1954[2]) having been the first entered into after the war. For the German economy it has been by far the most important.

By the end of 1964, the total foreign investment in German enterprises was DM 11.2 billion; more than a third, i.e. DM 3.8 billion by US firms and private persons.[3]) This was more than twice the DM 1.7 billion investment of the second largest foreign investor, the Netherlands. Moreover, the relative importance of investment in the Federal Republic of Germany is reflected by the fact that in the same year the total US investment in France was DM 5.7 billion and in Italy DM 2.6 billion.

Furthermore, the tendency during the past five years has been for US firms to invest more in common market countries than in England. In 1964 alone, the investments in the common market countries reached DM 21.5 billion versus DM 18.2 billion in Great Britain (i.e. 45 percent versus 38 percent of all US investments in Europe). Projected over a six year period from 1958 to January 1964 the number of new enterprises founded in the common market countries was seven times as great as that in England (2290 versus 313).[4])

In 1954, the corporation income tax rate in Germany was 60 percent—on distributed income 30 percent—with the dividends distributed then as now, burdened in addition by a 25 percent capital withholding tax. However, in the case of a US corporate shareholder the tax treaty provided for a reduction of the capital withholding tax to 15 percent if the US corporation owned at least 10 percent of the voting stock of the German company.[5]) This special reduction, it is understood, was motivated by the theory (since also adopted by the OECD Draft Double Taxation Convention) that the taxation in the country of origin of dividends paid to foreign shareholders should be reduced, and that full taxation should take place in the country of residence only. Moreover, the relatively

*) Diplom-Kaufmann, Wirtschaftsprüfer.

1) Exhibit 1 to income tax regulations 1964.

2) Bundesgesetzblatt II, p. 1118.

3) Monatsberichte der Deutschen Bundesbank, Mai 1965, p. 51 et seq.

4) US-Investitionen in Europa, CEPES, Comité Européen pour le Progrès Economique et Social, Frankfurt, March 1, 1966—Manuscript.

5) Article VI, s. 3 of the old treaty.

low rate of 15 percent was to attract foreign investment in Germany which was still suffering from the war.[6])

The Internal Revenue Code, on the other hand, provides that the US corporation is entitled to claim (in addition to a direct tax credit) an indirect tax credit for that portion of foreign taxes paid by the foreign corporation which relates to its "accumulated" profits.[7]) The indirect tax credit (to a limited extent and to the taxpayer's advantage) pierces the otherwise generally recognized separate legal personality of the subsidiary.

A reduction of the capital withholding tax levied on non-resident shareholders generally accords with the internationally favored principles of taxation. The OECD Draft Double Taxation Convention limits the capital withholding tax on dividends going abroad to 15 percent and suggests that in case of a substantial holding the tax not exceed 5 percent. However, the OECD Draft recognizes that countries with a split income tax rate for distributed and undistributed profits may be entitled to a higher rate of withholding.[8])

As far as Germany was concerned, the situation changed radically in 1958 when the newly enacted income tax law sharply reduced the corporation income tax. Instead of the then prevailing 45 percent tax rate, the new law provided for a 15 percent tax on properly distributed profits, while undistributed profits (including that portion of the taxable income used to pay non-deductible taxes, e.g. the net worth and income taxes) became taxable at 51 percent. The German fiscal authorities felt that in view of the income tax on profit distributions having been lowered by 30 percentage points from the tax that was in force when the agreement was concluded, it would no longer be justified for American shareholders to pay only a 15 percent withholding tax.[9]) In all other double taxation conventions the German Government has insisted that the rate of capital withholding tax on dividends distributed to a foreign shareholder be at least 25 percent, so long as the tax rate on distributed profits remains at least 20 percentage points below that on undistributed profits.

In 1960, the Federal Republic suggested to the US that negotiations be resumed for the purpose of revising the US/German Double Taxation Treaty. After several meetings, a revised treaty was finally concluded on September 17, 1965.

In many respects, the new treaty is radically different from the old. The changes primarily concern the reinvestment clause with regard to capital withholding tax, the redefinition of the term "permanent establishment", the treatment of know-how fees, the taxation of earned income, and the basic rule for the avoidance of double taxation.

In the following an attempt will be made to analyse those major changes of the revised US/German Double Taxation Convention that will primarily affect US investors in Germany and US citizens or residents living in Germany and to present such changes against the background of the internal German tax law and practice.

6) Debatin, H., Die Besteuerung der Ausschüttungen deutscher Tochtergesellschaften an ihre amerikanischen Mutterunternehmen, AWD 1960, S. 286; Stiefel, E.C. u. Horst A. Vogel, Das deutsch-amerikanische Doppelbesteuerungsabkommen, Der Betrieb 1954, Beilage 15/54.

7) IRC, s. 902 (a).

8) Draft Double Taxation Convention on Income and Capital, Report of the OECD Fiscal Committee 1963, Article 10, p. 47 and p. 94.

9) Grund, W., Zur Revision des deutsch-amerikanischen Doppelbesteuerungsabkommens, RWP-Blattei 1965, S. 591, 39.

THE CAPITAL WITHHOLDING TAX RATE AND THE REINVESTMENT CLAUSE

As said in the foregoing, it was the rate of tax to be withheld on dividends payable by a German company to a US shareholder which precipitated the German demand that negotiations towards a revision be resumed.

The new treaty generally stipulates "Except as otherwise provided in this Article, Federal Republic tax on dividends received by a resident or corporation or other entity of the United States from a German company shall not exceed 15 percent of the gross amount of the dividends".[10]) This is a marked change from the old agreement where the 15 percent capital withholding tax applied only if a US corporation was the shareholder and such shareholder owned at least 10 percent of the voting stock of the German company. In all other cases the tax was 25 percent.

However, this new and favorable development in many cases will lose its significance by virtue of sections 3 and 5 of new Article VI. The first contains the principle, the latter interprets and defines it. According to section 3 ". . . Federal Republic tax on dividends received by a US corporation or other entity from a German company at least 10 percent of the voting shares of which are owned directly by the former corporation or entity may exceed 15 percent but shall not exceed 25 percent of that portion of any dividend which... is deemed reinvested". Naturally, such additional tax—as was mentioned above—shall apply only if at the time the dividends are distributed the Federal Republic imposes a corporation tax on the distributed profits of the German company at a rate of at least 20 percentage points lower than the tax imposed upon its undistributed profits.

The term "reinvestment" is defined as follows: ". . . if the US corporation transfers money or other property directly or indirectly, to the German company as a loan or as an increase in the equity capital of the German company, or as any other form of investment in such company, and if the amount so transferred exceeds 7.5 percent of the dividends received by the US corporation from the German company in the calendar year in which such transfer is made, then the entire amount transferred shall be deemed to be a reinvestment of dividends received from the German company

(a) in the calendar year preceding the year in which the amount is transferred
(b) in the calendar year in which the amount is transferred, and
(c) in the following calendar year,

in that order and to the extent of such dividends. With respect to dividends paid in any year there shall first be taken into account the amount transferred in the preceding year to the extent that such amounts were deemed to be reinvestments and did not result in the imposition of tax under paragraph (3) of this Article on any prior dividend."[11]) In other words the tests as to whether a reinvestment has taken place, will be applied to a three year period.

It is beyond doubt that this clause will be the most complicated of the new agreement and certainly will prove to be a veritable battle ground for taxpayers and their advisors, and the German fiscal authorities. The following example may illustrate how this clause will work:

10) Article VI, s. 2.
11) Article VI, s. 5.

Year	*Dividend*	*Amount Transferred*	*25 percent taxable amount*	
1966	100	10	10	Current year in excess of 7.5 percent
1967	100	5	0	Not in excess for current year; reinvestment in 1966 taxed, not in excess for 1968.
1968	100	5	10	not in excess for current year; reinvestment in 1969 deemed made in 1968.
1969	0	10	0	See results for 1968
1970	200	10	0	Not in excess for current year; 1969 already accounted for, and 1970 not in excess.
1971	100	0	10	Not in excess for current year, reinvestment in 1972 deemed made in 1971.
1972	100	10	0	See result for 1971.
1973	200	5	90	Not in excess for current year; reinvestment in 1974 deemed made in 1973
1974	50	90	0	See result for 1973
	950	145	120	

As previously stated, section 5 of Article VI contains certain terms which require an interpretation. While the words "investment in the German company resulting in an increase in equity" seem to be clear, the term "loan" calls for an explanation. German tax practice has developed definite rules for the interpretation of the term "loan". For the purpose of this paper it will suffice to say that an amount outstanding in order to qualify as a loan must have been granted on a medium or long-term basis. "Medium-term" in German tax practice usually means three to twelve months, and "long-term" over twelve months).[12]) It remains to be seen what interpretation will be given to this new clause. Naturally, a "reinvestment" will be deemed to have taken place, not only if the transfer is made in the form of cash, but also if made in the form of tangible or intangible assets.

Words that will most certainly cause a controversy are the terms "directly or indirectly' in section 5. It is understood that the local fiscal authorities in Germany will be instructed to interpret this word in the broades possible sense and that the American counterpart has been informed of this intention. For instance, loans from an affiliated company, parent company guaranteed bank loans, loans extended by another affiliate or by an officer of the parent company—all could come under this clause. On the other hand, in our opinion, exempt from the reinvestment penalty will be funds obtained from a

12) 'See for instance municipal trade tax regulations 1964, s. 47 (4).

company in which the shareholder owns less than 50 percent of the capital stock, because under the internationally accepted rules such a company would not constitute an affiliate or subsidiary.[13])

It should also be noted that according to the memorandum of understanding a "regular business credit" will not come under the reinvestment clause, even if the usual credit terms in a particular line of business should extend beyond, say, a year; and if due to lack of transferable funds (so-called frozen funds) the taxpayer cannot meet his obligation, a business credit would not become long-term for this reason alone. This is a standard ruling developed by the German tax courts and applied to more than one tax law (for instance municipal trade tax and capital transactions tax law) [14]) and, in our opinion, should also be applicable to the new provision.

In order to facilitate the administration of the reinvestment provision, a "triviality clause" has been incorporated in the new agreement. The higher capital withholding tax rate of up to 25 percent may be imposed only if the amount transferred exceeds 7.5 percent of the dividend and the other conditions are fulfilled.[15]) In such case the full amount and not only that exceeding 7.5 percent becomes subject to the higher rate.

Finally, for the first time in the treaty with the US a definition of the term „dividend" has been attempted. By "dividends" the treaty means distribution of profit by corporations as well as income from jouissance shares or as a sleeping partner.[16]) The latter was not included in the old treaty and consequently was subject to a higher tax of 49 percent, which is the tax rate generally applicable in case of non-resident corporate taxpayers.

TAXATION OF DIVIDENDS RECEIVED FROM US CORPORATIONS

The taxation of dividends earned by German taxpayers from shares in US corporations also has been revised. As was the case in the past, if a German corporation owns more than 25 percent of the voting stock of a US corporation, the dividends are exempt from tax in German provided such dividends were taxable in the US.[17]) The same applies to the net worth taxation of the investment in respect of which the dividends were paid.

If a German corporation owns less than 25 percent in a US corporation or if stock, regardless of the amount, is owned by an individual resident in Germany, the tax paid in the US on dividend income is creditable against German tax; however,—and this is new—"such credit shall not exceed that portion of the Federal Republic tax which such items of income bear to the total amount of all items of income".[18])

THE REDEFINITION OF THE TERM "PERMANENT ESTABLISHMENT"

If one considers interest income and income from the sale of real estate to be other than business income in the strictest sense, it is accurate to say that US corporations doing business in Germany are taxable as a rule only if they maintain a "permanent establish-

13) Kohler, E.L., A dictionary for Accountants, Englewood Cliffs, 1963.
14) BFH I 54/60 dated July 15, 1961; BFH 268/60 dated May 25, 1963.
15) Article VI, s. 5.
16) Article VI, s. 7.
17) Article XV, s. 1 (b) (1) (aa).
18) Article XV, s. 1 (b) (1) (bb).

ment" in Germany. Consequently, the definition of such "permanent establishment" is of the highest importance.

Since the enactment of the first treaty with the US in 1954 numerous other double taxation agreements have been concluded by Germany.[19]) In order to further international trade, an attempt has been made in all such agreements to define the term "permanent establishment" as precisely as possible. Most of these agreements rule that the maintenance of storage facilities for the purpose of display, for processing purposes by another enterprise, for the purchase of goods, for the supply of information, for scientific activities—provided they are not the main activities of the enterprise—do not lead to taxation in the other country. With the exception of the supply of information (for instance on marketing facilities) which was regulated by a special German tax decree after the enactment of the first tax convention with the US[20]), all the aforementioned activities did constitute a permanent establishment under the former agreement. In order to avoid any misunderstanding in future and to ensure uniformity in the implementation of this provision of the new agreement, it was decided to incorporate—more or less completely—those sections of the OECD Draft Treaty which deal with the term "permanent establishment".[21])

It should be noted in particular that not only does the new agreement enumerate more activities of the sort that do not constitute a "permanent establishment" than did the old agreement but that it also clearly states that "one or several of these activities . . . do not lead to a permanent establishment'.[22]) This means that an accumulation of the various, individually tax-exempt activities does not create a tax liability in Germany. For instance an information office may also maintain a place for the display and delivery of goods.[23])

Of even greater practical importance is the new provision which excludes from the definition of permanent establishment a mere agent entrusted with operating a warehouse for the delivery of goods.[24])

Finally, a sweeping change took place in this connection with respect to the power of attorney which may be given to an agent without thereby creating a "permanent establishment". Under the old agreement, an agent could not be furnished with the power to negotiate and conclude contracts without thereby incurring a possible tax liability. The new agreement mentions only the power to conclude contracts.[25]) Therefore, in future, so long as an agreement is concluded outside Germany the negotiations may be completed by an agent in Germany without thereby creating a permanent establishment. In the past the German tax authorities considered such final approval a mere formality and ruled that actually the agreement was negotiated and concluded inside of Germany and thus led to a "permanent establishment".

19) See note 1.
20) Tax regulation issued on January 1, 1960 reproduced in "Wirtschaftsprüfung" 1960, p. 74.
21) Loc. cit. Article 5, p. 43 and p. 70 et seq.
22) Article 11, s. 1 (c) (cc).
23) See also Debatin, das deutsch-amerikanische Doppelbesteuerungs-abkommen, Gesetzänderung 1965, unprinted manuscript.
24) Article 11, s. 1 (c), (dd), (ee).
25) Article 11, s. 1 (c), (dd).

This change will be of great practical consequences because it will allow US importers to negotiate business dealings in Germany continuously. A separate company as agent could be compensated for its activities, with the remaining profit on the sale as such accruing to the importer outside of Germany.

The aforementioned memorandum of understanding further clarifies that "a hotel room or similar place temporarily occupied by officials of an enterprise exercising management functions shall not be interpreted to constitute a place of management"—and therefore not as a "permanent establishment". In the past the Supreme Tax Court (BFH) had to decide on such a case.[26])

REDEFINITION OF THE PROFIT OF A "PERMANENT ESTABLISHMENT"

An even more important change is contained in the revised Article III which deals with the profit of a "permanent establishment".

Former Article III had stated "if it (an enterprise of one of the contracting states) is so engaged (i.e., in trade or business through a permanent establishment situated in the other state), such other state may impose its tax upon the entire income of such enterprise from sources within such state . . ."[27])

Thus income was deemed attributable to the permanent establishment (so-called "attractive power of the permanent establishment"). The classical case was that of a US company with a permanent establishment in Germany doing business as an import dealer and in addition earning license fees from a German licensee. In such case the US corporation in its capacity as licensor was not entitled to claim tax exemption for the royalties as they were considered to be income of the permanent establishment even if such establishment itself had no business connections whatsoever with the licensor.

In future the German fiscal authorities cannot impose an income tax on royalties unless effectively connected with the permanent establishment, because new Article III states "if such enterprise is so engaged, (namely in the trade or business in such other state through a permanent establishment situated therein), tax may be imposed by such other state on the industrial or commercial profits of the enterprise but only on so much of them as are attributable to the permanent establishment or are derived from sources within such other state from sales of goods or merchandise of the same kind as those sold, or from other business transactions of the same kind as those effected, through the permanent establishment.[28])

The foregoing makes it also quite clear that the so-called "attractive power" of the permanent establishment was not completely abandoned, although this is foreseen by the OECD model treaty. The German tax authorities, it is understood, insisted on inserting the clause" . . . or are derived from source within such other state from sales of goods or merchandise of the same kind as those sold, or from other business transactions of the same kind as those effected, through the permanent establishment" because they wanted to be entitled to tax transactions which the US parent might conduct directly because

26) BFH IV 155/60 from May 10, 1961 (a hotel room, it was held, can become a permanent establishment if the business visibly to outsiders is conducted from there.

27) Article III, s. 2 of the old treaty.

28) Article III, s. 1.

more important, more complicated, or more profitable, while lesser transactions were handled by the permanent establishment. For instance, a US corporation might set up an office in Germany to accept orders for the import of its products, while certain major orders are processed by the US corporation directly. The profits from such orders will be attributed to the local permanent establishment and will thus be taxed in Germany.

It is of importance to note that such "attraction" of profits occurs only with respect to industrial or commercial profits. It does not apply to royalties in the above example, because section 5 of new Article III excludes income from dividends, interest, royalties, real property and natural recources, capital gains and labor and personal services from the term "industrial or commercial profits".

Two examples may illustrate the implications of this new provision:

(a) US parent companies sometimes deemed it appropriate to delegate one of their top officials to Germany to supervise the management of the German company and perhaps also of other European companies. As in most cases such a supervision entailed a small office, the official and his staff for fear of creating a permanent establishment would not rent a separate office or be listed in the telephone book separately from the local company. Rather they would attempt to slip under the cloak of the German subsidiary hoping that the full scope and meaning of their activities would go undetected by the German tax authorities because in the usual case, due to the existence of a permanent establishment, the parent corporation would have lost at least the following two preferences to which it would otherwise have been entitled under the former treaty.

(aa) Reduction of capital withholding tax on dividends from the regular rate of 25 percent to 15 percent.

(bb) Tax-exemption of license fees. Both dividends and royalties would accrue to the permanent establishment and would be subject to the 49 percent income tax rate payable by non-resident corporations.

(b) If a US firm had a substantial interest in several German enterprises which warranted a local supervision by a so-called "resident shareholder", under the old convention circumstances could arise where—to say the least—it became doubtful whether or not such a resident shareholder constituted a permanent establishment. The decision probably would have depended on the size and the activities of the office.
In future, such activities—regardless of their size—will not lead to taxation in Germany; in other words, the dividends and royalties for patents or know-how which may be paid to the US firm will remain exempt from tax. They will not be attributed to the office which is the seat of such supervisory activities.

Finally, section 3 of Article III contains a very important change. It stipulates that all expenses, including administrative and general expenses, wherever incurred, are deductible from the profit of the permanent establishment provided they are reasonably connected with such profits.

This new provision settles a question which in practice was much in dispute. The German tax authorities were extremely suspicious of any overhead charges of a foreign

parent firm being absorbed by a branch in Germany so that such charges were allowed as a deduction only if they were clearly and directly connected with the activities in Germany, which naturally in many cases was difficult to prove. These charges can now be assumed by the German branch if "reasonably connected" with its activities. Furthermore, it has been made clear in the new treaty that although the permanent establishment must deal at "arm's-length" with the foreign enterprise of which it is a part, no profit for the mere purchase of goods for the US parent need be included in the invoice amount of such goods.[29]) In other words, if a permanent establishment purchases goods in Germany to be sold to the US firm it need not include a reasonable profit in the price it charges to the latter. However, it would have to make a mark-up to cover allocable expenses of the permanent establishment related to such purchasing activities. It is regrettable that the above provisions do not apply to other services rendered to the US parent. Unless such services are merely incidental (purchase of tickets, plane reservations, etc.) an adequate profit must be included in the charge made to the US parent.

MUNICIPAL TRADE TAX AND "PERMANENT ESTABLISHMENT"

Whereas under the former convention no mention was made of the German municipal trade tax, it has been expressly included among those taxes to which the new convention applies. Basically the income and capital bases of the trade tax are governed by the treaty provisions applicable to the income and capital taxes. Furthermore, Article I, section 3 provides that provisions of the treaty applicable in respect to the taxation of profits shall likewise apply to the basis of the trade tax computed other than on income or capital. This is of importance because the internal German tax law definition of the term "permanent establishment" for purposes of the trade tax [30]) differs radically from the definition contained in the treaty. If in future it should be established that no permanent establishment exists within the meaning of Article III of the treaty, then no liability to municipal trade taxation will arise. Under the old treaty it was quite possible that an installation might have been exempt from income taxation because it was considered not to constitute a permanent establishment but nevertheless subject to municipal trade tax because within the definition of the internal German tax law.

The previously mentioned provision of section 3 of Article I makes it clear that exemption from municipal trade tax applies to all three elements of the tax, i.e., the income, capital, and payroll bases.

THE EXEMPTION OF ROYALTIES

The great importance of royalty agreements—and consequently their tax treatment—to the German economy is evidenced by the fact that in 1964 German licensees paid DM 822 million to foreign investors while German licensors received only DM 287 million from foreign licensees.[31])

The interpretation given by the German fiscal authorities to Article VIII, dealing with royalties, was one of the most controversial of the old treaty. It stated that

29) Article III, s. 4.
30) s. 1, (1) municipal trade tax ordinance.
31) Statistisches Jahrbuch 1965, p. 567.

"Royalties and other amounts derived as bona fide consideration for the right to use copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks and other like property and rights (including rentals and like payments in respect to motion picture films or for the use of industrial, commercial or scientific equipment . . . by a resident, or corporation or other entity of the United States, not having a permanent establishment in the Federal Republic, shall be exempt from tax by the Federal Republic."[32])

The German fiscal authorities decreed in a regulation issued to the local tax offices that the foregoing provision was to be so interpreted that a specific capitalizable asset must be the subject of a royalty agreement in order for the respective royalties to qualify for a tax-exemption. Such a capitalizable asset, however, usually would not be deemed to exist where there was a continuous supply of know-how and services. The consideration paid under this type of royalty agreement were not treated as within the scope of Article VIII and were therefore subject to tax even in the absence of a permanent establishment.[33]) This was one of the few cases where German companies not related financially to the US companies argued against the German tax authorities alongside the US subsidiaries in Germany who had to pay know-how fees to their US parent company. This was so because most agreements apparently stipulated that royalty payments be computed as a percentage of net sales or of some other figure "net of any deductions". Thus, as a consequence of the interpretation given former Article VIII by the German tax authorities, the licensee had to bear the tax and the know-how royalty became that much more costly.

The aforementioned interpretation came as a great surprise to German licensees of US companies, the more so because under the present US/Swiss convention, which contains exactly the same wording, know-how fees paid by a Swiss company to the US are tax-free income in Switzerland. Upon presentations made by the US Chamber of Commerce in Germany, the German attitude relaxed somewhat in that the German tax offices were instructed that the term "know-how" was to be interpreted as follows:

(a) One time know-how, i.e. an accumulation of knowledge materialized for instance in blueprints, instructions, etc. placed at the disposal of the German licensee for "exploitation" was considered to be in the nature of secret processes etc., and thus tax-free.

(b) Continuous supply of know-how, mostly in the form of specific written or oral instructions to a given problem—this was not deemed to be within the scope of Article VIII as that article mentioned only specific assets, tangible or intangible, but not written or oral advice.[34])

Still the competent government officials in Germany took a particularly inflexible

32) Article VIII of the old treaty.
33) See Tax Ruling dated December 24, 1958 issued by the Hessian State Ministry of Finance, reproduced in "Betrieb", 1959, p. 361.
34) Tax Ruling of the Düsseldorf District Tax Office, April 20, 1964, reproduced in "Betrieb", 1964 p. 640.

attitude as far as the interpretation of Article VIII was concerned and when in the course of the negotiations leading to the revised agreement the German side finally agreed to a change, they stipulated in the memorandum of agreement that the new article was in no way to reflect a change in the interpretation previously accorded to former Article VIII. The new wording "for knowledge, experience or skill (know-how)" is so broad and allows for so wide an interpretation, that one really cannot think of a situation where the German tax authorities in future may subject a payment for the utilization of intangibles or mere advisory services to taxation—always assuming that an adequate benefit is derived therefrom by the German company, and further assuming that such charges are reasonable. Section 5 of the new Article VIII particularly stresses this point.

Finally, the scope of Article VIII has been broadened in another, similarly important respect. The income from a sale in Germany of the rights protected by a patent, trademark, secret process etc. is exempt from tax in Germany, if a royalty from the patent etc. would have been exempt. This is accomplished by section 3 of Article VIII which defines the term "royalty" to include gains derived from the alienation of the above types of property or rights.

Generally, speaking, experience proves that as a percentage of sales, a know-how fee of 5 percent to 7.5. percent (the latter in the case of chemical companies) is usually accepted by the German tax authorities under the above conditions.

As previously stated the attractive power doctrine has been eliminated insofar as royalties are concerned. Thus royalties earned by a US resident or corporation will be taxable in Germany only if the property or right giving rise to the royalty is "effectively connected" with a permanent establishment.[35]) The meaning of the term "effectively connected" is amplified in the "memorandum of understanding" attached to the agreement, but not officially published. It states that "items of income are effectively connected with a permanent establishment if such items accrue to the recipient by virtue of assets (a) held by the permanent establishment or (b) held by the recipient specifically to promote the business activities of such permanent establishment, or if the activities of the permanent establishment are a material factor in realizing such items of income".

THE EXEMPTION OF INCOME FROM CAPITAL GAINS

Provisions that govern capital gains taxation in the Federal Republic are contained in two sections of the German Income Tax Code.[36])

1. If a private individual sells a substantial block of shares, i.e. more than 25 percent of the voting stock of a company, the gain, to the extent it exceeds DM 20,000 is subject to income tax regardless of the period for which the seller was the owner of the shares.
2. So-called speculative gains are taxable to the extent they exceed DM 1,000 annually. A speculative gain is realized if a private individual sells
   (a) a parcel of land or a building within two years from the date of purchase; or
   (b) shares or other assets within six months from the date of purchase.

35) Article VIII, s. 4.
36) ss. 17 and 23 German Income Tax Code.

Apart from these provisions, capital gains realized on the sale of non-business assets by a private individual are not taxable at all. Of course all the assets of a business enterprise are deemed to be business assets and the gains realized in respect thereof are subject to tax.[37])

If however, the conditions outlined under 1. and 2. above exist, capital gain is taxable according to the German Income Tax Law regardless of the residence or place of abode of the taxpayer and, in case of a non-resident taxpayer also regardless of whether the taxpayer is an individual or a corporation. Naturally, a double taxation agreement may overrule this internal German law. Since—at least in the opinion of the German tax authorities—the old US/German tax law did not provide for an exemption of capital gains by residents in the US, American companies in Germany, sometimes to their great surprise found that if they had sold shares in a German company under the above conditions, such gain was deemed to be taxable in Germany. This occured quite frequently when as a consequence of the 1962 US tax reform law, US-based international companies that had been organized in the US as holding companies for investments in overseas *subsidiaries were* liquidated or merged into the US parent. In such cases the alienation of the shares of the German subsidiary by the international company was considered to be a sale of a substantial block of shares and thus became taxable in Germany. The gain was calculated as the difference between the cost of such shares and their value at the time the transaction occured.

In future, such transactions will be exempt from tax in Germany.[38])

Again, this new clause follows the OECD recommendation[39]) and is in line with most double tax treaties concluded by the Federal Republic.[40]) It goes without saying that such tax-exemption is not available if the assets are effectively connected with a "permanent establishment".[41])

It is not unlikely that the German government was induced to relax its position as a function of the difficulty in collecting the tax from a non-resident. Even if the assets were purchased by a resident taxpayer, he usually could be made liable for such taxes only in case of collusion to evade German tax.

In line with the OECD recommendations[42]) and similar provisions of many other double tax treaties, income from real estate and similar "immovable" property, including capital gains derived therefrom, is taxable in the country in which it is located.[43]) In this respect, the revised convention effects no change from the old.

Notwithstanding the above provisions, if a natural person resident in Germany is present in the US for a period of 183 days or more during the taxable year, then US tax may be imposed on capital gains realized in respect of assets held by such person for six

37) s. 49, 1, 2 German Income Tax Code.

38) Article IX A, s. 1. That Article IX A, s. 1 applies to the sale, liquidation or other alienation of a substantial participation (wesentliche Beteiligung) in a German company is expressly stated in the Memorandum of Understanding.

39) Loc. cit. Article 10, p. 49 and p. 122 et seq.

40) For instance the tax treaties with the Netherlands, Norway, Ireland, France, Great Britain.

41) Article IX A, s.3.

42) Loc. cit., Article 10, p. 49 and p. 122 et seq.

43) Article IX, s. 1 of the old treaty.

months or less.[44]) No comparable treaty provision exists with respect to US residents present in Germany. However, a similar provision of the internal German tax law will apply, because persons present for 183 days in Germany will be deemed residents thereof. In this case, however, the holding period is only three months.

THE EXEMPTION OF INTEREST SECURED BY REAL ESTATE

Article VII of the former treaty did not specifically mention interest income from a loan secured by a mortgage which a corporation, citizen or resident of the US might own in Germany. Therefore, section 49 of the German Income Tax Code subjected to tax interest earned on loans etc. secured by a mortgage or similar lien on real property in Germany regardless of the residence of the taxpayer. Under the new treaty all interest on indebtedness earned by a non-resident will be exempt from tax in Germany unless the indebtedness is effectively connected with a permanent establishment.[45])

Article VII in its section 4 contains the OECD proposal permitting the deduction of "bona fide" interest on a loan granted by an affiliated company. In principle, such interest, at least for income tax purposes, has been always deductible in Germany provided the rate was "reasonable".[46]) But the new provision, in our opinion, gives a US taxpayer added protection as it guaranties the deductibility of such charges even if at a later date the national tax law concerning the interest between closely related taxpayers should change.

THE TAXATION OF EARNED INCOME

The former treaty dealt with the taxation of earned income to a very limited extent only in that it provided that a US resident was to be exempt from German tax upon compensation for labor or personal services performed in Germany (including the practice of the liberal professions and services as a director) if he were temporarily present in Germany for a period or periods not exceeding a total of 183 days during the taxable year and if either (a) his compensation were received for such labor or personal services performed as an employee of, or under contract with, a German resident or a German company or (b) his compensation received for such labor or personal services did not exceed $ 3,000.[47])

In this connection a peculiar German provision came into effect which adversely affected Americans living in Germany. Section 49 of the German Income Tax Code which deals with the tax treatment of non-resident taxpayers stipulates that individuals earning salaries or wages are subject to taxation in Germany if the services are either performed or "exploited" in Germany. By "exploitation" the tax law for instance means the utilization in Germany of advisory services of the parent company by a US subsidiary.

It is one of the more esoteric concepts of the German Income Tax Code that allows the German tax authorities to disregard the legal form of the entity rendering such services and to decree a legal presumption that such services, for instance the rendition of know-

44) Article IX A, s. 4.
45) Article VII, s. 1, 2, 3.
46) BFH I 178/55 dated March 20, 1956.
47) Article X, s. 1 (b) of the old treaty.

how by a US parent to a German subsidiary, are of the nature of the service rendered by an individual. Since "exploitation" took place in Germany, the US company rendering such services became taxable here. In the absence of such legal subterfuge, US companies would have been taxable only in the very rare cases where they also maintained a permanent establishment in Germany.[48])

In future, and again in accordance with OECD proposals,[49]) "exploitation" of services as such does not lead to taxation in the other country.

THE AVOIDANCE OF DOUBLE TAXATION ON INCOME EARNED BY INDIVIDUALS

Under the old Agreement, income earned in the US by a taxpayer resident in Germany was fully tax-exempt in Germany. However, the German government had the right to include this income in the basis on which the income tax was calculated (Progressionsvorbehalt). Article XV of the new agreement retains the aforementioned exemption as a basic concept. But in practice it applies only to income from real estate, to income from a permanent establishment located in the US, and to earned income.

As far as dividend income is concerned, this in future will be taxed at 15% in the US—and—contrary to the old agreement—it will be fully taxable in Germany with the amount of taxes paid in the US available as a credit. In this respect the US/German Tax Treaty is now in line with the treaties concluded with other States.

Also the position of taxpayers with double residence has now been clarified. The old treaty covered only US citizens with a double residence, whereas the revised treaty deals with American citizens as well as with other individuals having a residence in the US. Under the old agreement US citizens with residence in Germany were exempt from taxation in respect of all income earned in the US, provided that such income actually was taxed there. This in effect meant that the German "unlimited tax status" as far as income earned in the US was concerned, had to recede to American taxation in cases where US citizens were involved. As a result of this provision American citizens resident in Germany were taxexempt with respect to royalties and fees earned in the US although the agreement in principle delegated the right to tax such income to the country of residence, i.e. Germany. Consequently, the regulations (section 19) issued in respect of the US/German Tax Treaty decreed that all income earned in the US by US citizens and covered by the tax treaty should be exempt from German taxation.

On the other hand, nothing was said in the agreement as far as other persons with a double residence were concerned. Therefore, they could in effect be taxed twice, as virtual double taxation had not been eliminated. A rather sweeping change has taken place here. It has now been stipulated that regardless of the citizenship a taxpayer with residence in the Federal Republic in principle is subject to German taxation with the consequence that income earned in the US may be taxed there and will be available for tax credit in Germany. Such individuals consequently will be taxed as would be an individual resident in Germany who is not a US citizen or resident.

This conceptual departure from the old treaty may, according to Debatin, be not very

48) p. 49, ss. 1, 2 German Income Tax Code.
49) Loc. cit. Article 15, p. 50 and p. 130.

pleasant for the taxpayer concerned, but it is in line with modern double taxation practice.'[50])

THE EXEMPTION FROM NET WORTH TAXATION

The revised tax convention for the first time expressly deals with taxes on capital and in particular with the German net worth tax (Vermögensteuer).

As in the past, German real estate remains subject to net worth tax in the Federal Republic as do the assets of a permanent establishment.[51]) This accords with the internal German net worth tax law. Again in accordance with the internal German law, a person or juridical body owning property other than real estate in Germany will be exempt from this tax. Only in the case of patents, trade-marks, secret processes, and know-how where the foreign licensor derived income from such intangibles, or where machinery had been leased to a domestic enterprise the German tax authorities can no longer establish a certain value for such assets[52])—usually determined in the past on the basis of the capitalized annual earnings. In future, such assets will not bear a net worth tax in Germany.

This new provision[53]) will be of major consequence to US licensors or their German licensees—if the latter in addition to the royalty had to assume the net worth tax, while cases where equipment was leased from abroad to a German enterprise so far seem to have been relatively rare.

EXCHANGE OF INFORMATION

This provision has been revised so as to make it more comprehensive. In the past, only persons concerned with the assessment or collection of the taxes regulated by the treaty were allowed to demand from the other state additional information on the respective tax matters.[54])

Under the new agreement, however, such persons specifically include a court or administrative body and the legitimate area of concern includes the enforcement and prosecution of tax laws. However, as in the past no information may be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.[55])

CONSULTATION OF THE CONTRACTING STATES

The provisions calling upon the contracting states to communicate with each other in cases where the implementation of this agreement leads to unjust or unwarranted results, have remained virtually unchanged.[56]) As in the past, the taxpayer does not have any legally enforceable right to demand that such consultation proceedings be instituted. But in one important respect this Article has been expanded: The contracting states shall

50) Debatin H., in a lecture given before the American Chamber of Commerce in Germany on October 29, 1965.
51) Article XIV A, S. 1, 2.
52) s. 77 Bewertungsgesetz (Special Tax Valuation Law).
53) Article XIV A, S. 4.
54) Article XVI, s. 1 of the old treaty.
55) Article XVI, s. 1.
56) Article XVII of the old treaty.

consult with each other when a dispute has arisen over what portion, if any, of a profit shall be attributed to the company in one country as opposed to its permanent establishment in the other country.[57])

EFFECTIVE DATES OF THE NEW TREATY

The new agreement was ratified by the US Senate on October 22, 1965 and by the German Bundestag on December 22, 1965 and came into effect after the exchange of the instruments of ratification on January 1, 1966 with the following important exceptions:

1. The tax-exemption of royalties, including know-how fees, will be available in respect of any payments made after January 1, 1963.[58])
2. The reinvestment clause will come into effect with respect to any payments made after January 1, 1965. This means that profits distributed after that date will be subject to the higher 25 percent capital withholding tax provided by German law unless conditions under which the lower rate of tax is applicable have been met.

REGULATIONS

As was the case for the 1954 treaty[59]), the German fiscal authorities will issue regulations which will explain and interpret certain provisions of the new treaty. It is understood that such regulations may also deal in some detail with problems arising out of the reinvestment clause.

For instance, it is hoped that they will rule that as to dividends distributed and reinvested in Germany between January 1, 1965 and October 26, 1965[60]) the date on which the new treaty was published in Germany the higher capital withholding tax cannot apply. A retroactive change in a tax law that has the effect of worsening the position of the taxpayer generally is held to be unconstitutional if such retroactivity goes back beyond a date on which the new measure was discussed publicly and beyond which the taxpayer had no possibility of arranging his affairs in light of the change in law.[61])

57) Article XVII, s. 3 (a).
58) Article 17 of the protocol of the Revised Treaty, "Bundesanzeiger" October 26, 1965.
59) Published in "Bundessteuerblatt" 1957 I, p. 154 et seq.
60) "Bundesanzeiger", October 26, 1965.
61) Becker, H. Das neue Doppelbesteuerungsabkommen mit USA "Steuer und Wirtschaft", 1966 Nr. 1, p. 48.

TAX INCENTIVES TO PROMOTE CHARITABLE GIVING, FOR SELECTED COUNTRIES

by

JEFFREY SCHAEFER*)

In order to evaluate how generous provisions of the United States tax law are regarding philanthropic contributions, a comparison with other countries is useful. If we find that the U.S. tax treatment of charitable giving differs noticeably from that of other nations, this suggests reflecting seriously upon the U.S. measures. On the other hand, if we find close conformity between U.S. tax treatment and that of most other countries, we will gain confidence in the soundness of her measures promoting charitable giving. The primary focus of this paper lies in trying to discern any common tax attitudes prevailing between nations toward charitable giving. We might note that recently, interest has arisen in comparing among different countries respective tax laws concerning charitable establishments.[1])

Tax provisions can be aimed at aiding organizations created for charitable purposes directly, for example, by relieving them of income taxation, or by promoting their growth indirectly by stimulating donations and bequests to them from the general public. In this paper we shall concentrate on the latter method of furthering philanthropy on the part of selected nations, though confining ourselves to inquiring about the incentives afforded by the income, gift, and death taxes only.[2])

On the whole, the income tax treatment of charitable institutions is not too dissimilar among the nine countries selected for investigation—Australia, Brazil, West Germany, India, Italy, Mexico, Sweden, the United Kingdom, and the United States. Every country offers at least partial exemption from income taxes. Complete exemption seems to be an exception—only Australia and Brazil allow all charitable receipts to escape taxation regardless of the income source. Indeed, in the case of Brazil the unqualified exemption is highly surprising in view of the existing schedular levy that assesses receipts at different rates depending upon the source of income. One might conjecture that as charities within Australia and Brazil seek new ways of earning income, they will eventually purchase and create in ever increasing amounts their own businesses, especially if business earnings remain exempt. As owners of enterprises feel the pressure of

I wish to take this opportunity to express my appreciate to Professor Carl S. Shoup for his very helpful comments in the earlier stages of this article.

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1) George Nebolsine, *Fiscal Aspects of Foundations and of Charitable Donations in European Countries* (Amsterdam: European Cultural Foundation 1963), and International Bureau of Fiscal Documentation, "The Tax Treatment of Charitable Institutions and Charitable Donations in Europe", *European Taxation*, V (July, 1965) pp. 178-181.

2) I have attempted, through supplementary reports undertaken by the Harvard Law School and more recent sources such as the International Bureau of Fiscal Documentation's *European Taxation*, to update as much as possible the pertinent tax laws of the nations discussed below.

charitable competitors, cries will mount for legislation to protect private business interests. One way of handling this is to assess income from unrelated business activities sponsored by charities at the same tax rates imposed upon other business owners, which is the method employed by all but Sweden among the other seven nations.

The general consensus seems to be that earnings from unrelated business endeavors should not elude taxes even in countries neglecting to differentiate income according to source for tax purposes. Italy offers little relief from its taxes on income sources to charitable organizations, though permitting exemption from the corporation personal tax. Sweden's federal tax on unrelated business income of charitable establishments is applied at a lower rate—15 per cent as compared to 40 per cent for other business owners; however, the communal taxes are levied at the same rates on all business income in spite of the proprietors.

When attempting to discover common attitudes among nations towards allowing individuals and business enterprises charitable deductions, our task is more complicated. Postures seem to vary over the entire spectrum from an unlimited charitable deduction to the absence of any such deduction at all. Once again, Australia and Brazil are the most liberal, though Brazil admits individuals a deduction for complementary tax purposes only and requires a receipt from the donee organization to be filed together with the individual donor's tax return. Four of the nine countries—West Germany, India, Italy, and the United States—place a percentage limitation on the charitable deduction ranging for individuals from a high of 30 per cent of adjusted gross income in the United States[3]) to a low of 5 per cent of net income from movable wealth in Italy. India is unique in that besides a percentage restriction of 7.5 per cent, she also has an absolute ceiling on the permissible charitable deduction—150,000 rupees, and a floor on the minimum amount of donations to be made (250 rupees) if any contributions are to be deductible.

Of the four countries with percentage limitations, only the United States has two separate rates for individuals (30 per cent) and corporations (5 per cent). This most likely is an endeavor to protect shareholders from overly generous corporate managers. In actuality, the 5 per cent restriction has little relevance since few corporations come anywhere near donating 5 per cent of their net income. Most corporations making substantial contributions bestow about 1 per cent of the company's profits to charities.

Brazil and Mexico both require the donee's receipt to be filed with individuals' returns before any charitable deduction is granted. However, this practice could spread to other nations as they become increasingly concerned with abusement of the charitable deduction. The use of receipts seems to be a coming trend in the United States where a more stringent outlook towards tax integrity has been taking place. Recently, the Internal Revenue Service's North Atlantic region[4]) has followed the policy of disallowing unexplained charitable deductions to exceed $78 regardless of income.

3) In some cases, no restriction exists if specified conditions are met. The U.S. personal income tax offers an unlimited deduction only where an individual in the current taxable year and 8 of the 10 preceding taxable years made charitable contributions which together with the amount of income tax paid exceeded 90 per cent of his taxable income for such years.

4) The following states comprise the North Atlantic Region: New York, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

The $78 figure allows for a weekly $1 donation by regular churchgoers, but no more unless the individual has a statement from the church or cancelled checks. If the taxpayer fails to obtain a statement from his clergyman indicating he attends church regularly, the $52 deduction would not be permitted. In addition, the $78 deduction allows a 50-cents-a-week limit on charitable gifts that cannot be proved. Apparently, taxpayers may claim the $26 deduction, even without proof of making the donations. Other regions besides the Northeast have authority to set charity guidelines. Those regional offices setting guidelines have kept the deduction between $50 and $80 annually, the smaller limits applying in regions where incomes are lower.

Mexico's tax code is quite ambiguous in spelling out exactly what is the maximum charitable deduction permitted. We note that the charitable deduction is not limited in amount, but should be "reasonable" compared to the taxpayer's operations. Does reasonable mean in absolute amount, or in percentage terms? Undoubtedly one can surmise that a case will appear causing the allowable charitable deduction to be more specifically defined.

The United Kingdom denies any charitable deduction for contributions except those occurring under a Seven Year Covenant. Even for donations transpiring under a covenant, the donor gains relief from the standard tax only. Sweden's tax treatment seems austere with no charitable deduction existing for enterprises or individuals at all.

Viewpoints appear to conform considerabely concerning the taxation of charitable gifts and bequests under the transfer levies. Italy, with two methods of assessing transfers, is the only nation taxing charitable gifts, and yet still manages to offer partial relief. Contributions are not deductible for estate tax purposes, but charitable gifts received by organizations are freed from inheritance duty. The remaining eight nations impose no gift taxes whatsoever, either on donors or donees in regard to donations, with the United Kingdom and Mexico lacking any levy on inter vivos transfers of any kind. With respect to death duties, general unanimity still is evident, but to a lesser extent. Australia and the United States allow all charitable bequests to be deductible in deriving the taxable estate. India also admits charitable bequests to escape estate taxation; however, such testamentary transfers cannot equal or exceed 2,500 rupees, otherwise they are taxable. Brazil, Germany, and Mexico[5]) require no inheritance tax to be paid on legacies received by charitable establishments. Italy's inheritance tax is applied at a relatively favorable rate of 5 per cent unless the charitalbe bequest is granted with definite objectives, in which case no inheritance tax is due. However, Italy's estate levy fails to provide for any charitable deduction regarding charitable transfers occurring at death. Sweden offers little relief from inheritance duty for some charitable legacies; testamentary transfers of this kind are placed in the second highest taxed category. The United Kingdom seems to be alone in not granting any tax relief for transfers at death to charitable institutions. We might also note that India, Sweden, and the United Kingdom all provide more favorable tax provisions for inter vivos charitable transfers as compared with charitable bequests.

How does the United States fare relative to the eight other nations as to promoting through tax regulations the well-being of charitable organizations? In respect to assessing

5) Under her former tax.

the income of charitable institutions, the United States follows the same practice as employed by most others—taxing unrelated business income only. Australia, Brazil, and even Sweden (regarding the lowering of the federal income tax) are more liberal, Italy less so. Although Australia and Brazil have unlimited charitable deductions in respect to the income and complementary taxes respectively, the United States' charitable deduction allowed individuals is more munificent than that of the remaining six countries. With reference to the charitable deduction permitted under the transfer levies, the United States is as generous as Australia, Brazil, Germany, and Mexico, all of which are more liberal than India, Italy, Sweden, and the United Kingdom. This study, in conjunction with published material produced by Nebolsine and the International Bureau of Fiscal Documentation, reveals that on the average, tax favoritism afforded charities by Western European nations is less generous than that provided by non-European countries.

E.E.C.

DOCUMENTS

CONFÉRENCE PERMANENTE DES CHAMBRES DE COMMERCE ET D'INDUSTRIE DE LA COMMUNAUTÉ ECONOMIQUE EUROPÉENNE.

Prise de position sur le problème de la concentration dans le Marché Commun.

LA CONFERENCE PERMANENTE DES CHAMBRES DE COMMERCE ET D'INDUSTRIE DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE,

Après avoir examiné le rapport des services de la Commission Européenne sur le problème de la concentration dans le Marché Commun en date du 1er décembre 1965,

I Sur les problèmes économiques de la concentration d'entreprises

- CONSTATE avec satisfaction que la Commission de la C.E.E. a abordé le problème de la concentration d'entreprises dans le Marché Commun, problème fondamental aussi bien pour la politique de la concurrence que pour la politique de développement industriel;
- SOULIGNE, comme l'a également fait la Commission de la C.E.E., que l'élargissement des marchés au fur et à mesure que se réalise la Communauté Economique Européenne, exige un accroissement des dimensions des entreprises, que le souci d'affronter une concurrence internationale de plus en plus vive sur les marchés extérieurs justifie aussi le renforcement de la puissance des entreprises et que le coût des équipements dans une époque où l'automation s'impose de plus en plus, celui de la recherche et de l'innovation nécessite la réunion de moyens financiers de plus en plus considérables;
- FAIT REMARQUER que la concentration des entreprises n'implique pas celle des activités, ni même des exploitations, et qu'elle est parfaitement compatible avec les exigences d'une politique de décentralisation et d'aménagement du territoire conçue sur un plan communautaire;
- ESTINE toutefois que la concentration connaît nécessairement des limites étant donné que la rentabilité ne peut être assurée à long terme que s'il existe une relation convenable entre les procédés de production les plus appropriés, la taille de l'entreprise, et la dimension du marché;

– CONSTATE en outre l'existence de besoins que dans de larges secteurs ne peuvent pas être satisfaits par de grandes exploitations, mais qui demandent des spécialisations diversifiées et des gestions décentralisées, donc plus souples, qui sont les caractéristiques essentielles des petites et moyennes entreprises.

C'est pourquoi la CONFERENCE PERMANENTE

– ESTIME que, dans le cadre du problème de la concentration, il est indispensable que la Commission consacre une attention particulière au maintien de la capacité concurrentielle des petites et moyennes entreprises, notamment par la suppression de toutes les mesures favorisant uniquement ou dans une proportion inégale les grandes entreprises, et par la mise en vigueur de dispositions facilitant la coopération entre les entreprises de toutes dimensions;
– RECOMMANDE de préconiser et de faciliter la coopération des entreprises surtout dans les domaines suivants:
  – production organisation de la fabrication notamment en ce qui concerne la programmation et la simplification du flux de la production;
  – études et prospection des débouchés et des marchés d'approvisionnement; promotion des ventes y compris la publicité;
  – comptabilité et administration générale;
  – formation et perfectionnement des cadres;
  – institutions collectives pour la recherche industrielle (cf. la résolution de la CONFERENCE PERMANENTE sur l'harmonisation des mesures d'encouragement en matière fiscale pour la recherche et le développement dans les Etats membres de la C.E.E. du 23 novembre 1965).

II Sur les aspects fiscaux de la concentration des entreprises.

– REGRETTE que des obstacles de nature fiscale entravent les efforts effectués en vue d'aboutir à une concentration et à une coopération souhaitables;
– DEPLORE que la diversité des dispositions fiscales frappant les fusions d'entreprises, les scissions et les apports partiels d'actif dans les divers pays de la C.E.E. nuise gravement à l'adaptation convenable des entreprises aux conditions nouvelles du marché, et demande qu'une nécessaire unification de la charge fiscale intervienne en ce domaine.

– PROPOSE par conséquent:
en ce qui concerne la réévaluation systématique des bilans
  – que les règles fiscales relatives aux fusions d'entreprises soient, dans tous les pays de la C.E.E., harmonisées sur un modèle évitant toute réévaluation systématique des bilans, prévoyant une réduction de l'impôt sur les plus-values effectivement dégagées et un étalement dans le temps du paiement de cet impôt pour tenir compte du fait qu'il n'y a pas liquidation d'entreprise mais continuation des exploitations sous une forme économiquement plus justifiée, génératrice de futures plus-values fiscales;
  – que ces règles soient applicables non seulement aux fusions effectuées entre des

entreprises d'un même pays, mais aussi aux fusions intéressant des entreprises de pays différents de la C.E.E.;

- que si des actifs de sociétés absorbées continuent à faire l'objet d'une ou de plusieurs exploitations dans un ou plusieurs pays, autres que celui dans lequel est situé le siège de la société absorbante, ces exploitations fassent toujours l'objet d'impositions dans chacun des pays où elles ont lieu, conformément au principe de la territorialité de l'impôt et à la théorie de l'imposition des établissements stables retenue dans les conventions internationales sur les doubles impositions;
- que, pendant une période transitoire, si les actifs des sociétés absorbées sont totalement ou partiellement transférés ou liquidés au profit de la société absorbante, ces opérations donnent lieu à l'imposition, au profit du ou des Etats dans lesquels sont situés les actifs transférés ou liquidés, à un taux intermédiaire entre le régime des liquidations et le régime des fusions, le paiement de l'impôt ne pouvant être différé dans ce cas:
- que toutes les sociétés bénéficiant de la reconnaissance mutuelle au titre de l'article 220 du Traité de Rome puissent être admises aux fusions dans les mêmes conditions;

concernant le droit d'apport applicable en cas de fusion

- que, conformément à la suggestion formulée dans le rapport du 1er décembre 1965, le droit d'apport soit réduit de moitié en cas de fusion d'entreprises pour tenir compte du fait que les apports en cause ont déjà été soumis au même droit d'apport, au taux normal, lors de la constitution des sociétés absorbées;

en matière d'imposition des répartitions de bénéfices entre sociétés

- que, pour encourager les prises de participations d'une société dans d'autres sociétés, qui constituent, par rapport aux fusions, des formes atténuées de concentration, les répartitions de bénéfices ou d'actifs effectuées par une société ne puissent donner lieu à une nouvelle imposition, ni au titre des bénéfices, ni au titre des distributions, lorsqu'elles seront perçues par une autre société qui elle-même les inscrira dans ses recettes et éventuellement les distribuera à ses propres actionnaires;
- que le nouveau régime soit appliqué, quelle que soit la nationalité de la société en cause, sans considération de l'importance des participations et pour l'intégralité des répartitions;

– SOUHAITE

sur la fiscalité d'une société européenne

- que contrairement à ce qu'envisage le rapport du 1er décembre 1965 sur la concentration des entreprises dans le Marché Commun il ne soit créé aucun système fiscal privilégié pour un type quelconque de société européenne.

III Sur les aspects juridiques de la concentration des entreprises

– SE FELICITE des activités déployées par la Commission de la C.E.E. tendant à suppri-

mer les difficultés d'ordre juridique qui entravent la concentration et la coopération des entreprises;

– SOULIGNE toutefois qu'il y a des cas où une harmonisation des législations nationales suffit, tandis que dans d'autres une unification, soit sur le plan communautaire, soit par des conventions à conclure entre les Etats membres, est préférable;

– CONSIDERE l'harmonisation des structures juridiques comme une mesure utile tendant à promouvoir l'établissement du Marché Commun, déclenché par la suppression progressive des barrières douanières entre les Etats membres de la C.E.E.;

– SOUHAITE

sur le droit des sociétés et des fusions

– que la convention sur la reconnaissance mutuelle des sociétés et personnes morales préparée en application de l'article 220 du Traité de Rome soit mise en vigueur le plus tôt possible;
– que, vue la nécessité de «joint ventures» et de fusions internationales, soient rapidement élaborées de nouvelles conventions prévoyant, conformément aux prescriptions de l'article 220, le maintien de la personnalité juridique d'une société en cas de transfert de son siège de pays à pays et la possibilité des fusions de sociétés de nationalités différentes;
– que les trois premiers projets de directives soient simplifiés et allégés et maintenus dans le champ de la protection des intérêts des associés et des tiers, qui sont les seuls objectifs de l'harmonisation prévue par l'article 54, par. 3, al.g du Traité de Rome;
– que la création d'une société de type européen offre une autre possibilité de faciliter la coopération et la concentration des entreprises au sein du Marché Commun; une telle société pourrait être introduite, par une convention spéciale, dans la législation interne de chacun des Etats membres, l'interprétation de la loi uniforme étant confiée à la seule Cour de justice européenne;

sur la propriété industrielle

– que les Etats membres instituent le plus rapidement possible un brevet européen par une convention spéciale ouverte ultérieurement à l'adhésion des Etats tiers, qui assurerait aux inventeurs une protection aussi large que possible, l'accessibilité au brevet européen ne devant toutefois pas être accordée immédiatement aux ressortissants des pays non signataires de la convention, mais seulement après une période transitoire et une négociation sur ses conditions;

RECOMMANDE que des efforts d'unification soient accomplis pour le droit des marques et la protection des dessins et modèles;

EST D'AVIS, contrairement à ce que proposè la Commission de la C.E.E., les licences doivent pouvoir être restreintes territorialement dans le cas où le titulaire de la licence ne peut ou ne veut pas utiliser l'invention dans toute la Communauté; de telles restrictions territoriales ne courent pas le risque d'empêcher le jeu de la libre concurrence dans le

Marché commun dès lors que ces contrats se bornent à transférer au titulaire de la licence une partie des droits résultant du brevet européen lui-même;

sur l'application des articles 85 et 86 du Traité de Rome aux concentrations d'entreprises

SOUHAITE que les compétences attribuées à la Commission Européenne par l'article 86 du Traité de Rome et le règlement no 17 soient considérées comme suffisantes pour que, si dans un secteur déterminé une société exerce à la suite de fusions une influence dominante sur un marché, les intérêts des tiers puissent être efficacement protégés contre tout abus;

SOUHAITE qu'une concentration ne soit jamais considérée comme abusive du seul fait qu'elle aboutit à exclure des entreprises concurrentes; l'article 86 du Traité ne vise pas à maintenir des structures déterminées de marché, mais seulement à réprimer les abus qui pourraient survenir à la suite de l'élimination de mécanismes régulateurs inhérents aux marchés concurrentiels, le comportement sur le marché d'une entreprise ou d'un groupement d'entreprises devant seul décider de l'application éventuelle de l'article 86;

EST D'AVIS que ni l'article 86 et encore moins l'article 85 n'offrent la possibilité juridique d'annuler un processus de concentration et que l'article 3 du règlement no 17 ne peut pas davantage être utilisé à cet effet;

EMET LE VOEU que l'application des articles 85 et 86 du Traité soit effectuée au regard des objectifs et des critères de ces deux articles afin que, dans la pratique, des régimes de contrôle et de sanctions différentes ne soient pas utilisés pour apprécier des pratiques identiques quant à leurs incidences économiques pour la seule raison qu'elles auraient été instaurées grâce à l'emploi de moyens juridiques différents;

- qu'en particulier les formes de coopération adoptées par les petites et moyennes entreprises afin d'améliorer leurs capacités concurrentielles soient jugées en fonction du rôle de contrepoids au mouvement de concentration qui leur est proposé par la Commission Européenne elle-même.

IRAQ

TAX NEWS

THE ESTATE TAX*)

Over the last six years, the Estate Tax has been subject to many modifications and amendments in order to secure social and economic justice. This tax was first introduced in Iraq in 1959 by Law No. (157) of 1959, according to which two sets of progressive tax rates were applied; the first on the deceased's total net estate and the second on the inheritances received by each of the deceased's heirs. This law was amended in 1961 by Law No. (17) of 1961.

*) Compare Bulletin 1965 issue, p. 456 (income tax).

The new law abolished the tax on the heirs' inheritances, but retained the Estate Tax at higher rates than before. This law was again amended in 1964 by Law No. (130) of 1964. Still the Estate Tax was retained but imposed at a much higher progressive rate, the maximum rate being 60%. However, early in 1966, the Estate Tax was replaced by the new Estate Tax No. (7) of 1966.

The new Estate Tax applies to the net estates of Iraqi decedents, whether they were resident in Iraq or not.

1. The taxable estate under this law is defined as "all the deceased's movable property, real estate, rights and obligations including insurance contracts". The taxable estate also includes:

- Real estate located in Iraq and owned by a non-Iraqi decedent irrespective of his place of residence.
- Movable property, money, commercial paper, shares and bonds owned by a non-Iraqi decedent permanently resident in Iraq or having an investment therein.
  (Law No. 7 of 1966, Article 4)
- Property donated by the decedent without payment therefor entrusted by him during the three years prior to his death.
  (Law No. 7 of 1966, Article 5)

2. The main items of property exempted from the tax are as follows:

- The house in which the decedent's family lives, provided that the value does not exceed ID. 10,000. The amount in excess of this value is subject to the Estate Tax.
- Life insurance, provided the value does not exceed ID. 1,000. The amount exceeding this value is subject to the Estate Tax.
- Household equipment, furniture for the use of the deceased's family and jewellery.
- Salaries, allowances due or paid to the family of the deceased not exceeding ID. 3,000.
- Property entrusted or donated to Iraqi religious, scientific, charitable or social organizations provided the value of such donation does not exceed one third of the net estate.
- 30% of shares and movable and immovable property invested by the deceased in industrial enterprises.
- Government bonds and treasury bills with a value of not more than ID. 1,000.
- 50% of the value of investments owned by Arab nationals.
- Such property as cemeteries, places of worship and other real estate appropriated for public or religious purposes, (which was owned by the deceased).
- Burial expenses.

(Law No. 7 of 1966, Article 6)

3. The tax is levied on the net estate after an allowance of ID. 10,000 has been made in addition to the exemptions mentioned above.

The rates are as follows:

Net estate	Tax rate
up to ID. 1,000	5%
between ID. 10,000 and ID. 25,000	10%
between ID. 25,000 and ID. 40,000	15%
between ID. 40,000 and ID. 60,000	20%
between ID. 60,000 and ID. 80,000	25%
between ID. 80,000 and ID. 100,000	30%
in excess of ID. 100,000	35%

(Law No. 7, 1966, Article 2)

4. In order to avoid double taxation, the law provides for certain reductions of the actual tax burden in case of consecutive deaths within a short period of time. These deductions are as follows:

- A reduction of 40% with respect to the second deceased, who, having inherited the estate of the first, dies within one year of the first deceased's death.
- A reduction of 30% with respect to the second deceased who, having inherited the estate of the first, dies within two years of the first deceased's death.
- A reduction of 20% with respect to the second deceased who, having inherited the estate of the first, dies within three years of the first deceased's death.

(Law No. 7, 1966, Article 3)

5. The Ministry of Finance may levy wholly or partly the equivalent of the tax in kind, e.g. in shares, securities held in limited companies, Government and semi-Government securities, compensatory bonds received in connection with the Agrarian Reform Law, compensatory bonds received on the nationalization of shares and other property, and real estate owned by the deceased.
(Law No. 7, 1966, Article 26 (1 & 2))

6. The valuation of the assets mentioned above is made at the date of death. (Law No. 7, 1966, Article 10)

7. The provisions of this law are applicable in Iraq to deaths occurring on or after February 3, 1966.

reported by: Miss Siham Kamil Sharif

SOUTH AFRICA

TAX NEWS

SOUTH AFRICA'S 1966 BUDGET

Picturing himself as a chef, Dr. Doenges, the Minister of Finance, delivered this year's budget speech on the 17th August, 1966, five months late because of elections. The curb of inflation and the maintenance of the Rand are among the main aims. The income tax proposals contained in the budget may be briefly summarized as follows:

RATE OF TAX

PERSONS OTHER THAN COMPANIES. The 5 per cent discount on income tax which was granted last year has been withdrawn. The 5 per cent loan levy is retained.

COMPANIES. The basic income tax has been increased to 33⅓ per cent. The 5 per cent surcharge will fall away, but the 5 per cent loan levy will continue.

GOLD MINING COMPANIES. There will be a surcharge of 5 per cent on the income tax.

DIAMOND MINING COMPANIES. The 5 per cent surcharge imposed last year will be continued and a further 5 per cent surcharge will be levied for the companies 1966-67 tax year.

NON-RESIDENT SHAREHOLDERS' TAX. The tax is raised from 7½ to 10 per cent.

CONCESSIONS

FARMERS. Farmers will now benefit from the exporters allowance.

NEW GOLD MINES. The capital allowance in respect ot capital expenditure incurred by gold mines established after the 17th August, 1966, will be raised to 8 per cent per annum (from 6 per cent), and the tax formula for such mines will be altered so that such mines would not pay income tax until their ratio of profits to recovery exceeds 8 per cent.

MACHINERY INVESTMENT ALLOW-

ANCE. Apart from certain exceptions, the machinery investment allowance was due to lapse at the end of the 1966 tax year. "To soften the blow", an investment allowance at half the present rate will be granted in respect of machinery ordered before the 17th August, 1966, provided the machinery is bought into use within a reasonable time.

PATENT RIGHTS. A person who bought or developed patents, designs, copyright, trade marks or similar rights and used them in his business, will be allowed to deduct from his taxable income the cost of such rights, spread over the life of the rights or 25 years whichever is the shorter.

INSURANCE REBATES. As an encouragement to saving and as an incentive to taxpayers to make adequate provision for old age and for their dependants, the tax rebate in respect of insurance premiums, which was at present fixed at 7 per cent of such premiums up to a maximum of R25, will be raised to 8 per cent with a maximum of R30.

CONTRIBUTIONS TO PENSION AND RETIREMENT ANNUITY FUNDS. For similar reasons, the maximum deduction allowed in respect of contributions to pension funds will be raised from R600 to R1000 and the maximum in respect of contributions to retirement annuity funds from R1200 to R2000, the maximum being higher in the latter case because there is no employer's contribution. Where a person contributed to both types of funds the overall maximum will be R2000.

DONATIONS BY PUBLIC COMPANIES. As public companies could hardly avoid tax in any of the ways which donations tax was designed to prevent, public companies will now be exempted from donations tax.

FURTHER TAX CONCESSIONS. The Minister promised to submit a few other small tax concessions of limited scope to Parliament when introducing the tax legislation.

The budget also increases the customs, excise and stamp duties in many respects which need not be pursued here. What may, however, be mentioned is that the rebate of transfer duty for properties up to R 15000 does no longer apply where the purchaser is a company, and the rebate is, with effect from the 17th August, 1966, limited to individuals who purchase properties for residential purposes.

reported by: Dr. Erwin Spiro

U.S.A.

DOCUMENTS

TAX GUIDELINES COVERING INCOME ALLOCATIONS BETWEEN RELATED CORPORATIONS

TREASURY DEPARTMENT ANNOUNCES PROPOSED SECTION 482 REGULATIONS

The Treasury Department announced[1]) the issuance of proposed regulations affecting

1) August 1, 1966.

the taxation of American firms with subsidiaries, including companies with foreign affiliates.

The proposed standards, published in the *Federal Register* on Tuesday, August 2, 1966, advise taxpayers of the policies to be applied by the Internal Revenue Service in Section 482 cases. Section 482 of the tax law gives the Commissioner of Internal Revenue authority to adjust or allocate the incomes of various members of a group of firms under common control, in order to reflect accurately the true income of the members or to prevent tax avoidance. While in recent years Section 482 has been most frequently applied to transactions between U.S. companies and their foreign affiliates, the section and the regulations now being issued are equally applicable to transactions between two related domestic taxpayers.

The regulations are designed to give U.S. taxpayers, including those engaged in exporting to foreign subsidiaries, guidance as to the manner in which they may carry out transactions with their affiliates with reasonable confidence that audit of these transactions by the Internal Revenue Service will not result in increased tax liabilities under Section 482. To accomplish this, the regulations set out specific rules and standards which taxpayers may follow to avoid allocations on audit. The regulations also will facilitate the audit procedures of the Service and thereby result in quicker disposition of those cases that do arise under Section 482.

It is not the policy of the Service to make minimal allocations under Section 482. Rather, adjustments will be proposed only in those cases where there have been significant deviations from so-called arm's length dealing—that is, dealings that would take place between unrelated companies—or where there has been significant shifting of income. This attitude toward the administration of Section 482 and the guidance provided by the proposed regulations for both taxpayers and revenue agents are expected to minimize uncertainty as to the application of Section 482 and thereby facilitate intercompany transactions, including exports by U.S. firms to their affiliates. For example, the proposed regulations make clear that a U.S. company exporting goods to a foreign subsidiary may determine its intercompany selling price with reference to the competitive condition faced by that subsidiary.

Issuance of regulatory guidelines under Section 482 was one of the administrative measures recommended in a recent report to the Department of Commerce of the National Export Expansion Council's Action Committee on Taxation. This Committee suggested that issuance of clarifying regulations would "remove some of the disincentives affecting export trade."

The proposed regulations set forth standards for the application of Section 482 to cases involving the pricing of tangible property sold by one member of the group to another member, and cases in which intangible property, such as patents, copyrights, and trademarks, are made available by one member of a group of companies to another member.

The regulations also reflect certain modifications of earlier proposed regulations under Section 482 which were issued on March 31, 1965. The earlier regulations covered cases in which money or services or tangible property are made available between members of a group, and also contained rules generally applicable to alle cases under Section 482.

Neither the newly-proposed regulations nor the revisions of the proposed regulations issued on March 31, 1965 are final. The Internal Revenue Service will schedule public hearings on the proposed regulations later this year, following the 60-day period specified in the proposed regulations for the submission of views by interested parties.

The Treasury Department also will make the proposed regulations available to the working party of the Fiscal Committee of the Organization for Economic Cooperation and Development (OECD), which is studying the international implications of allocations made by tax authorities of the various countries under provisions comparable to Section 482. This study is designed to develop internationally accepted rules governing allocations between affiliates in different countries so that the same transaction is not subject to excessive taxation because of conflicting rules in those countries.

At the same time, the Treasury is continuing its efforts to reach agreement with other countries on tax treaties providing that the "competent authorities" of each country may agree in particular cases as to the proper allocation of profits between related companies. These agreements will be implemented by the imposition of tax in one country and a corresponding credit or refund in the other. The recently ratified tax treaties with West Germany and the Netherlands contain a provision of this type, as does the existing tax treaty with Belgium. The revised treaty with the United Kingdom recently approved by the Senate, also contains similar provisions, and a like provision is being proposed in connection with the revision of the treaty with France. In this connection, the IRS will study the "competent authority" procedures under U.S. tax treaties to determine whether those procedures are fulfilling their objective of eliminating double taxation.

In addition to proposed regulations under Section 482, proposed regulations under Section 861 of the Code are to be published as part of the same notice in the *Federal Register*. The Section 861 regulations contain standards to be applied in properly apportioning deductions between income from U.S. and non-U.S. sources. A review of the present rules for apportioning deductions under this section was prompted by publication of the first part of the proposed regulations under Section 482 in March 1965. A description of the proposed regulations under Sections 482 and 861 is attached.

The Internal Revenue Service also plans other actions related to Section 482. It will:

1 Publish announcements changing two Revenue procedures (Rev. Proc. 64-54 and Rev. Proc. 65-17). One of these procedures (Rev. Proc. 64-54), originally announced by the IRS in late 1964, provided that the Revenue Service would not pursue certain types of Section 482 allocations for taxable years beginning prior to January 1, 1963, and that, in cases where allocations were made, foreign taxes paid could be offset against the U.S. tax attributable to the Section 482 allocation. The announcement will extend the period to which this Revenue Procedure will apply to taxable years beginning prior to January 1, 1965. The other Revenue Procedure (Rev. Proc. 65-17) provides that, in certain circumstances, a taxpayer whose income has been increased as a result of a Section 482 allocation may receive from its affiliate an amount equal to that allocation tax-free. Rev. Proc. 65-17 now applies for all taxable years, but for years beginning after December 31, 1962, it is subject to different conditions. The effective date of these conditions is now postponed to taxable years beginning after

December 31, 1964. The Internal Revenue Service also will announce that it contemplates applying the regulations issued under Section 482 to prior taxable years except in those cases covered by Rev. Proc. 64-54.

2 Publish notices clarifying the position of the Service in certain court cases in which acquiescences were previously announced.

Proposed Regulations

The Commissioner of Internal Revenue has, through the powers granted him under Section 482, authority to adjust incomes within groups of commonly controlled corporations or other entities to reflect accurately the true incomes of the members of the group or to prevent tax avoidance. For example, he may make allocations to reflect adequate reimbursement for services rendered by one member of a group of corporations to another member of the group where the services are for the benefit of the latter member. He also has the authority to adjust the prices charged for goods sold by one member to another where the prices charged are not a fair reflection of the proper price, or to require a proper charge where money or property of one member is made available to another.

Section 482 applies to any group of corporations under common control, including groups in which one or more foreign corporations are members. The proposed regulations set forth the standards to be applied by the Internal Revenue Service in making allocations in cases involving the sale of tangible property by one member to another, and in cases in which intangible property is made available by one member to another. The proposed regulations also contain changes in the proposed regulations under Section 482 published on March 31, 1965. The changes made in this portion of the proposed regulations are mainly the result of comments received from taxpayers in the period since their publication. These earlier regulations contain certain general rules, as well as more specific standards, applicable to cases in which intercompany loans or advances, services, or the use of tangible property are involved.

The standards set forth in the proposed regulations include:

1 *Sale of Goods:* In determining arm's length price of the seller for the sale of goods in transactions between members of the same group, the proposed regulations describe in detail three methods which may be used in determining that price. If sales of the product involved in the intercompany transaction have taken place between unrelated parties under comparable circumstances, the price charged in the unrelated sale applies. If no such sales have occurred, the regulations require that under certain conditions the arm's length price of the seller must be determined by making certain calculations based on the sale price of the property outside the group. Under this method, the arm's length price is ascertained by subtracting from the resale price outside the group an appropriate profit margin for the member reselling the goods. Typically, this method would be most appropriate where a manufacturer sells merchandise to a related distributor which, without further processing, resells the merchandise to unrelated parties. The third method described in the proposed regulations involves determination of the arm's length price of the seller by adding an appropriate profit

margin to the cost of producing the property. The regulations also permit the use of any other method of determining an intercompany price if the taxpayer can establish that the method has been consistently used by the taxpayer and is clearly more appropriate. Moreover, the regulations permit the taxpayer in appropriate cases to take into account the competitive position of its affiliate in establishing an intercompany price.

2 *Intangibles:* The proposed regulations require that an arm's length royalty or other charge be paid if one member of a related group allows another member of the group to use intangible property (such as a patent, trademark or copyright) belonging to the first member. The regulations describe the factors to be taken into account in determining a proper charge for the use of such property. Normally no charge is to be made until the property is made available by the member of the group which developed it. As an alternative to requiring a royalty or other charge, the regulations permit the establishment of a bona fide cost sharing arrangement under which two or more members of a group may share the costs and risks of developing intangible property in return for an interest in any intangible property that may be produced under the arrangement. Such an arrangement may apply to a single research project or to all research and development activities of the group. If such an arrangement exists, no charge will be made for the use of the property developed under the arrangement by a member participating in the arrangement.

Because these regulations affect different types of cases, they are of necessity rather detailed. Therefore, the general statements above are subject to a number of conditions and exceptions.

The proposed regulations under Section 861 set forth standards to be applied in apportioning deductions between income from U.S. sources and income from non-U.S. sources. These rules are of particular importance for purposes of computing the foreign tax credit. The proposed regulations make clear that where an item of gross income (such as a management fee) results from the rendition of services to another member of the group, the costs or deductions associated with such services will be allocated to the fee and not to any other income received by the member rendering the services. The proposed regulations also contain rules for allocating deductions where they are related to two or more items of income.

III

TREATIES

BOTSCHAFT DES SCHWEIZERISCHEN BUNDESRATES AN DIE BUNDESVERSAMMLUNG ÜBER DIE GENEHMIGUNG DES ZWISCHEN DER SCHWEIZ UND SPANIEN ABGESCHLOSSENEN ABKOMMENS ZUR VERMEIDUNG DER DOPPELBESTEUERUNG AUF DEM GEBIETE DER STEUERN VOM EINKOMMEN UND VOM VERMÖGEN

(Vom 31. Mai 1966 *)

Herr Präsident!
Hochgeehrte Herren!
Am 26.April 1966 ist in Bern ein Abkommen zwischen der Schweizerischen Eidgenossenschaft und Spanien zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen unterzeichnet worden. Wir beehren uns, Ihnen dieses Abkommen hiermit zur Genehmigung zu unterbreiten.

I. Vorbemerkungen

Die Schweiz unterhält mit Spanien enge Wirtschaftsbeziehungen. Zahlreiche schweizerische Unternehmen haben Zweigniederlassungen und Tochtergesellschaften in Spanien errichtet oder der spanischen Wirtschaft auf andere Weise Kapital zur Verfügung gestellt. Diese Investitionen nehmen derzeit unter den ausländischen Kapitalanlagen in Spanien den zweiten Platz ein; sie sind in ständiger Entwicklung begriffen. Deshalb haben auch Kapitalerträge, Lizenzgebühren und andere Vergütungen für unsichtbare Leistungen, die aus Spanien in die Schweiz fliessen, bereits eine beachtliche Höhe erreicht.

Da solche Einkünfte sowohl in Spanien als auch in der Schweiz besteuert werden, mithin einer Doppelbesteuerung ausgesetzt sind, haben schweizerische Wirtschaftskreise seit Jahren den Abschluss eines Doppelbesteuerungsabkommens mit diesem Land gewünscht. Spanien hat jedoch erst nach Abschluss der entsprechenden Arbeiten des Fiskalkomitees der Organisation für wirtschaftliche Zusammenarbeit und Entwicklung (OECD) und der spanischen Steuerreform von 1964 begonnen, Doppelbesteuerungsabkommen abzuschliessen.

Die Kontakte zwischen den Delegationen der Schweiz und Spanien im Fiskalkomitee der OECD haben am 27. November 1963 zunächst zu einer Vereinbarung über die Besteuerung von Unternehmungen der Luftfahrt (AS 1964, 957) und später zur Einleitung von Verhandlungen über den Abschluss eines umfassenden Doppelbesteuerungsabkommens geführt. Diese haben im Mai 1965 in Bern und im Oktober 1965 in Madrid stattgefunden. In der Zwischenzeit ist bei den Kantonen und den interessierten Kreisen

*) The text of the convention has been published in the September 1966 issue, p. 380

der Wirtschaft ein Vernehmlassungsverfahren durchgeführt worden, das ein positives Erhebnis gezeitigt hat.

II. Erläuterungen zu den einzelnen Bestimmungen des Abkommens

Dem Doppelbesteuerungsabkommen mit Spanien liegt das Musterabkommen der OECD zur Vermeidung der Doppelbesteuerung des Einkommens und des Vermögens vom Juli 1963 zu Grunde. In der Botschaft vom 13. Juli 1965 zum neuen Abkommen mit Schweden vom 7. Mai 1965, das auf der gleichen Grundlage beruht, haben wir die von der OECD empfohlenen Musterbestimmungen einlässlich erläutert (BBI 1965, II, 701). Wir beschränken uns deshalb nachstehend darauf, die wichtigeren Abweichungen vom OECD Text und die Besonderheiten des Doppelbesteuerungsabkommens mit Spanien zu kommentieren. Diese hängen zum grossen Teil mit der wirtschaftlichen Lage Spaniens als Entwicklungsland zusammen. Bereits in der Botschaft vom 18. März 1960 zum Doppelbesteuerungsabkommen mit Pakistan (BBI 1960, I, 1165) haben wir dargetan, dass und in welcher Weise diesem Umstand von seiten der Schweiz in einem Doppelbesteuerungsabkommen Rechnung getragen werden kann.

ARTIKEL 2: *Unter das Abkommen fallende Steuern*

Das Abkommen soll sich auf die Einkommens- und Vermögenssteuern beziehen, obwohl Spanien derzeit keine allgemeine Steuer vom Vermögen erhebt. Das Abkommen schliesst auf spanischer Seite die in den afrikanischen Provinzen und Territorien erhobenen direkten Steuern ein. In einem besondern Briefwechsel wird festgelegt, dass das Abkommen sowohl für die ordentlichen wie für die ausserordentlichen Steuern gilt. Die an der Quelle erhobenen Steuern von Lotteriegewinnen fallen dagegen nicht darunter.

ARTIKEL 3: *Allgemeine Definitionen*

Nach übereinstimmender Ansicht gelten Personengesellschaften als Personen im Sinne des Abkommens (vgl. auch Art. 4, Abs. 3). Sie sind mithin berechtigt, die Abkommensvorteile aus eigenem Recht zu beanspruchen. Sollten sich auf Grund des Umstandes, dass Spanien Personengesellschaften steuerlich wie juristische Personen behandelt, Überschneidungen ergeben, so sind diese im Verständigungsverfahren (Art. 25) zu lösen.

ARTIKEL 5: *Betriebsstätte*

Im Gegensatz zum neuen Abkommen mit Schweden enthält der vorliegende Vertrag eine Bestimmung, wonach Werbe-, Informations- und Forschungsstellen, die ein Unternehmen des einen Vertragstaates auf dem Gebiet des andern unterhält, keine Betriebsstätte darstellen. Die interessierten Kreise der schweizerischen Wirtschaft haben sich nachhaltig dafür eingesetzt, dass die entsprechende OECD Empfehlung inskünftig befolgt wird. Sie weisen darauf hin, die Schweiz habe im Hinblick auf die wissenschaftlichen Büros und die klinischen Forschungsstellen, die insbesondere schweizerische Unternehmen der pharmazeutischen Industrie im Ausland unterhalten, an einer solchen Bestimmung ein erhebliches, materielles Interesse. Eine erneute Überprüfung der Sachlage hat diese Auffassung bestätigt.

ARTIKEL 7: *Unternehmensgewinne*

Nach schweizerischer Praxis, die im interkantonalen Verhältnis entwickelt worden ist, wird der gesamte Gewinn eines international tätigen Unternehmens nach einem bestimmten Schlüssel auf die verschiedenen Betriebsstätten aufgeteilt (sog. indirekte Methode; Abs. 4). Demgegenüber lässt Spanien, wie im Ausland gebräuchlich, den Gesamtgewinn des Unternehmens ausser Betracht und ermittelt den Gewinn einer Betriebsstätte einzig auf Grund ihrer Buchhaltung (sog. direkte Methode; Abs. 2) oder pauschal nach den für die betreffende Branche geltenden Erfahrungszahlen. Die im neuen Abkommen mit Schweden vorgesehene, gegenüber dem OECD Musterartikel erweiterte Anwendung der indirekten Methode, insbesondere für Versicherungsunternehmen, konnte mit Spanien nicht vereinbart werden. Umgekehrt hat dieses Land auf Sonderbestimmungen über die Besteuerung von Agenten verzichtet, die in anderen spanischen Doppelbesteuerungsabkommen enthalten sind.

ARTIKEL 8: *Seeschiffahrt und Luftfahrt*

Diese Bestimmung ersetzt die bereits erwähnte Vereinbarung vom 27. November 1963 (AS 1964, 957), die aufgehoben wird (Art. 27, Abs. 3); sie ist auch auf Unternehmen der Schiffahrt anwendbar.

ARTIKEL 10, 11 UND 12: *Dividenden, Zinsen und Lizenzgebühren*

Spanien kann als Entwicklungsland kaum mit dem Zufluss nennenswerter Dividenden, Zinsen und Lizenzgebühren aus dem Ausland rechnen. Es ist daher verständlich, dass es die von der Schweiz angestrebte ausschliessliche Besteuerung im Wohnsitzstaat des Empfängers ablehnt und sich für den Vorrang der Besteuerung im Quellenstaat einsetzt. Auf der Grundlage der Empfehlungen der OECD ist es gelungen, zwischen den sich gegenüberstehenden Auffassungen einen vertretbaren Kompromiss zu finden.

Dividenden, die an nicht ansässige Personen gezahlt werden, werden in der Schweiz mit 30 Prozent, in Spanien mit 15 Prozent an der Quelle besteuert. Nach dem Abkommen hat der Quellenstaat im Normalfall das Recht, darauf eine Steuer zu erheben, die 15 Prozent nicht übersteigt (Art. 10, Abs. 2, Buchst. *b*). Diese Lösung entspricht der Empfehlung der OECD.

Ist der Empfänger der Dividenden eine Gesellschaft, die über eine Beteiligung von mindestens 25 Prozent am Kapital der auszahlenden Gesellschaft verfügt, so beträgt der Steuersatz 10 Prozent (Art. 10, Abs. 2, Buchst. *a*). Die OECD-Empfehlung lautet in diesem Fall allerdings auf 5 Prozent, doch entsprechen alle von Spanien bisher abgeschlossenen Doppelbesteuerungsabkommen der mit der Schweiz getroffenen Regelung, die die interessierten Kreise der schweizerischen Wirtschaft als annehmbar ansehen.

Hervorzuheben ist, dass Spanien auf die Besteuerung der Gewinnausschüttungen schweizerischer Unternehmen, die in Spanien Betriebsstätten unterhalten (sog. extraterritoriale Besteuerung der Dividenden), verzichtet (Art. 10, Abs. 5).

Zinsen, die ein in Spanien ansässiger Schuldner an einen Gläubiger im Ausland zahlt, unterliegen einer Quellensteuer von 24 Prozent. In der Schweiz werden Zinsen von Obligationen und Bankguthaben ab 1. Januar 1967 einheitlich mit 30 Prozent an der Quelle besteuert. Für Gläubiger, die nicht in der Schweiz ansässig sind, stellt dieser

Abzug eine endgültige Belastung dar. Die im Ausland wohnhaften Empfänger schweizerischer Hypothekarzinsen sind hier beschränkt steuerpflichtig.

Das Abkommen sieht vor, dass Zinsen im Quellenstaat im allgemeinen mit einer Steuer von 10 Prozent belastet werden dürfen (Art. 11, Abs. 2), was der Empfehlung der OECD entspricht. Spanien verzichtet darüberhinaus auf jegliche Besteuerung an der Quelle, wenn die Zinsen von einem spanischen Schuldner an eine schweizerische Bank für ein Darlehen gezahlt werden, das auf die Dauer von mindestens 5 Jahren fest gewährt worden ist (Art. 11, Abs. 3).

Lizenzgebühren aus spanischen Quellen, die ins Ausland fliessen, unterliegen einer Abzugssteuer von 20 Prozent, wobei vom steuerbaren Betrag ein pauschal ermittelter Unkostenanteil abgezogen werden kann. In der Schweiz werden Lizenzgebühren, die ins Ausland gezahlt werden, überhaupt nicht besteuert. Von der dem Bund in Artikel 41 bis Absatz 1, Buchstabe *d* der Bundesverfassung erteilten Ermächtigung, Sondersteuern zur Abwehr von Besteuerungsmassnahmen des Auslandes zu erheben, hat er bis heute keinen Gebrauch gemacht.

Alle bisher von der Schweiz abgeschlossenen Doppelbesteuerungsabkommen sehen die ausschliessliche Besteuerung der für die Schweiz besonders wichtigen Lizenzgebühren am Wohnsitz des Empfängers vor. Auf diese Weise gelangen die schweizerischen Fisci in den Genuss einer Gegenleistung, für die von ihnen als Gewinnungskosten anerkannten, erheblichen Forschungskosten schweizerischer Industrieunternehmen. In der OECD ist nun aber Spanien neben drei weiteren wirtschaftlich schwächeren Mitgliedstaaten eine Quellensteuer von 5 Prozent auf den Lizenzgebühren zugestanden worden. Entsprechend räumt die Schweiz im vorliegenden Abkommen dem Quellenstaat erstmals das Recht ein, auf dem Bruttobetrag der Lizenzgebühren eine Steuer von 5 Prozent zu erheben.

ARTIKEL 15: *Unselbständige Arbeit*

Der Artikel bestimmt, dass das Erwerbseinkommen aus unselbständiger Tätigkeit im allgemeinen am Arbeitsort zu besteuern ist. Dieser Grundsatz gilt auch für die in der Schweiz tätigen spanischen Gastarbeiter. Die spanischen Behörden legen aber Wert darauf, dass ihre hier tätigen Landsleute steuerlich nicht schlechter behandelt werden als die italienischen Gastarbeiter. Im Hinblick auf die dem Abkommen zwischen der Schweiz und Italien über die Auswanderung italienischer Arbeitskräfte nach der Schweiz vom 10. August 1964 beigegebene gemeinsame Erklärung IV (BBI 1964, II, 1040) wünschten die spanischen Unterhändler analoge Zusicherungen. Im schweizerisch-spanischen Paraphierungsprotokoll vom 8. Oktober 1965 wird dazu folgendes festgestellt (Übersetzung):

„Zur Besteuerung des Arbeitseinkommens erklärt die schweizerische Delegation, dass die Kantone bereits besondere Verfahren, insbesondere die Quellensteuer, eingeführt haben oder noch einführen werden, um Veranlagung und Erhebung der Steuern auf dem Einkommen ausländischer Arbeitskräfte zu vereinfachen und zu erleichtern. Weil diese Verfahren und die Entwicklung auf diesem Gebiet sehr verschieden sind, sind die beiden Delegationen übereingekommen, dass allfällige Fragen im Verständigungsverfahren (Art. 25 des Abkommens) geprüft werden sollen.

Zur Steuerpflicht der Saisonarbeitskräfte erklärt die schweizerische Delegation, dass die Bundesbehörden den Kantonen empfehlen werden, für die Festsetzung des Steuersatzes auf das während der Zeitdauer der Besteuerung erworbene Arbeitseinkommen und auf eine jährliche Arbeitsdauer von höchstens 11 Monaten oder 2300 Stunden abzustellen. Für die Arbeitskräfte günstigere kantonale Vorschriften bleiben vorbehalten."

ARTIKEL 19: *Offentlich-rechtliche Vergütungen*

Die Bestimmung entspricht dem im neuen Abkommen mit Schweden enthaltenen Artikel 20, der klarer gefasst ist als die entsprechende Musterbestimmung der OECD.

ARTIKEL 23: *Methoden zur Vermeidung der Doppelbesteuerung*

Dieser Artikel bestimmt, auf welche Weise der Wohnsitzstaat des Einkommensempfängers bzw. Eigentümers zur Vermeidung der Doppelbesteuerung beizutragen hat.

Einkommen und Vermögen, das dem Quellenstaat oder dem Staat der gelegenen Sache zur ausschliesslichen Besteuerung zugewiesen ist, darf im Wohnsitzstaat nicht besteuert werden. Dieser behält jedoch das Recht, die erwähnten Einkommens- und Vermögensteile für die Bestimmung des Steuersatzes in Rechnung zu stellen (Abs. 1).

Dividenden, Zinsen und Lizenzgebühren können sowohl im Quellenstaat (vgl. Bemerkungen zu Art. 10-12) als auch im Wohnsitzstaat des Empfängers besteuert werden. Zur Vermeidung der Doppelbesteuerung rechnet Spanien im Falle von unbeschränkt steuerpflichtigen Personen, die solche Einkünfte aus der Schweiz beziehen, die schweizerischen Steuern an seine eigenen an (Abs. 2). Im umgekehrten Fall gewährt die Schweiz für die spanischen Quellensteuern auf Dividenden, Zinsen und Lizenzgebühren eine Entlastung (Abs. 3) von den eidgenössischen, kantonalen und kommunalen Steuern, und zwar in der gleichen Weise wie sie erstmals im neuen Abkommen mit Schweden zugestanden und in der zugehörigen Botschaft näher erläutert worden ist. Der Bundesrat wird die Einzelheiten ordnen.

Diese schweizerischerseits zugestandene Entlastung wird nicht nur für die in Spanien tatsächlich bezahlten, sondern unter ganz bestimmten Voraussetzungen auch für die nicht bezahlten Quellensteuern gewährt (Abs. 4). Damit hat es folgende Bewandtnis: Wie die meisten Entwicklungsländer gewährt auch Spanien besondere steuerliche Vergünstigungen, um ausländisches Kapital anzuziehen. Die zuständigen spanischen Behörden haben die Befugnis, die Steuer auf Anleihens-, und Darlehenszinsen, die von spanischen Unternehmen an ausländische Banken und Finanzinstitute gezahlt werden, um höchstens 95 Prozent des ursprünglich geschuldeten Steuerbetrages zu senken. Spanien legt grössten Wert darauf, dass diese Vergünstigung vollumfänglich den interessierten schweizerischen Banken zukommt und nicht durch die Besteuerung in der Schweiz ganz oder teilweise zunichte gemacht wird. Die Entlastung in der Schweiz soll mit andern Worten für die volle, Spanien gemäss Artikel 11 zustehende Steuer von 10 Prozent gewährt werden, auch wenn diese Steuer, gestützt auf interne Massnahmen, gar nicht oder nur zum Teil erhoben wird. Diese Anrechnung für nicht bezahlte Steuern („matching credit" oder „tax sparing") findet sich häufig in den von Entwicklungsländern abgeschlossenen, namentlich in den von Spanien ausgehandelten Doppelbesteue-

rungsabkommen. Im internationalen Steuerrecht der Schweiz stellt diese Massnahme eine Neuerung dar, sie lässt sich aber im Rahmen der Entwicklungshilfe verantworten. Sie wird nur in wenigen Fällen anwendbar sein und bedeutet ausserdem veranlagungstechnisch eine Vereinfachung, da mithin bei Zinsen in allen Fällen eine spanische Quellensteuer von 10 Prozent in Rechnung gestellt werden kann.

Spanien hatte eine entsprechende Regelung auch für Dividenden auf Beteiligungen von mindestens 25 Prozent angestrebt, die gemäss Artikel 10, Absatz 2, Buchstabe *b* in den Genuss einer Steuerermässigung gelangen. Da solche Dividenden dank dem sogenannten Holdingprivileg der Wehrsteuer und den kantonalen Steuern aller Regel nach ohnehin nicht unterliegen (vgl. z.B. Art. 59 des Wehrsteuerbeschlusses), kann im Abkommen auf die innerstaatliche Regelung verwiesen werden. Die entsprechende Bestimmung (Abs. 4) gilt übrigens auch im umgekehrten Verhältnis.

ARTIKEL 24: *Gleichbehandlung*

Gegenüber dem OECD-Musterartikel wird verdeutlicht, dass unter gleichen Verhältnissen auch die gleichen Freibeträge, Abzüge und Steuerermässigungen für Familienlasten zugestanden werden (Abs. 2).

ARTIKEL 27: *Inkrafttreten*

Das Abkommen ist vom 1. Januar 1967 hinweg anwendbar.

Das vorliegende Abkommen hat seine verfassungsmässige Grundlage in Artikel 8 der Bundesverfassung, der dem Bund die Befugnis verleiht, Staatsverträge mit dem Ausland abzuschliessen. Für die Genehmigung des Abkommens ist nach Artikel 85, Ziffer 5 der Bundesverfassung die Bundesversammlung zuständig. Das Abkommen ist zwar auf unbestimmte Dauer abgeschlossen, kann aber, unter Einhaltung einer Frist von mindestens 6 Monaten, auf das Ende jedes Kalenderjahres gekündigt werden. Der Genehmigungsbeschluss unterliegt deshalb nicht dem Staatsvertragsreferendum von Artikel 89, Absatz 4 der Bundesverfassung.

Das vorliegende Abkommen stellt gesamthaft betrachtet eine ausgewogene Lösung dar, die für die wirtschaftlichen Beziehungen der Schweiz zu Spanien beachtliche Erleichterungen bringt. Die Kantone und die interessierten Kreise der schweizerischen Wirtschaft stimmen ihm zu. Wir beantragen Ihnen deshalb, das Abkommen durch Annahme des beiliegenden Entwurfes zu einem Bundesbeschluss zu genehmigen.

Wir benützen auch diesen Anlass, um Sie, Herr Präsident, hochgeehrte Herren, unserer vollkommenen Hochachtung zu versichern.

Bern, den 31. Mai 1966.

Im Namen des Schweizerischen Bundesrates,
Der Bundespräsident:
Schaffner
Der Bundeskanzler:
Ch. Oser

IV

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Aktuell und wichtig für alle Steuerpflichtigen, die Auslandsbeziehungen unterhalten

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Rädler-Raupach

Deutsche Steuern bei Auslandsbeziehungen

von Dr. Albert Joseph Rädler und Arndt Raupach
1966. Rund 700 Seiten gr. 8°. In Leinen DM 78.–

Wer mit der Praxis internationaler Steuerfälle vertraut ist, weiß, wie sehr deren Lösung meist von einer Vielzahl sich teilweise überschneidender Gesichtspunkte abhängt. Abgesehen von den verschiedenen Steuerarten kommt dabei auch den Fragen des formellen Steuerrechts eine gewichtige Rolle zu. Aus diesem praktischen Bedürfnis heraus ist diese Schrift zweier Fachleute – eines Betriebswirtes und eines Juristen – entstanden. In 35 Kapiteln werden folgende Gebiete behandelt, soweit sie bei Auslandsbeziehungen Bedeutung erlangen:

Beförderungsteuer, Börsenumsatzsteuer, Einkommensteuer, Erbschaftsteuer, Gesellschaftsteuer, Gewerbesteuer, Grunderwerbsteuer, Körperschaftsteuer, Kraftfahrzeugsteuer, Umsatzsteuer, Umsatzausgleichsteuer, Verbrauchsteuern, Vermögensteuer, Wechselsteuer; ferner Entwicklungshilfesteuergesetz, EWG-Vertrag und GATT sowie die Besteuerung internationaler Konzerne.

Der Praktiker wird es vor allem begrüßen, daß hier die Auslandsfragen, die in den Kommentaren zu den einzelnen Steuergesetzen verstreut und meist nur am Rande behandelt sind, eine ausführliche und zusammenfassende Darstellung gefunden haben. Dabei sind Rechtsprechung und Literatur vollständig verarbeitet und zahlreiche Beispiele und tabellarische Übersichten beigefügt. Das Buch ist daher besonders geeignet für inländische Unternehmen, die sich im Export betätigen oder Niederlassungen im Ausland unterhalten, für ausländische Unternehmungen mit Geschäftstätigkeit oder Niederlassungen in Deutschland, für Wirtschaftsverbände, Banken und Versicherungen, rechts- und steuerberatende Berufe und Notare.

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EDITORIAL

Portugal has created a wholesale sales tax. The reasons for the introduction of this tax in July, 1966, have been explained by Paulo de Pitta e Cunha in this issue of the Bulletin. A tax on value added has not been created, but, as is stated in the article, the Government has already foreseen the possibility of substituting a tax on value added for the single stage tax on wholesales, thus acknowledging the possible necessity of harmonising the system adopted in Portugal with that which may come to predominate in Western Europe. Since Portugal is a member of the European Free Trade Association (EFTA), the thesis of Mr. Galeen in Bulletin for International Fiscal Documentation, 1963, p. 129, is relevant here: "tax harmonization inside EFTA is a prerequisite of effective free trade inside the group. If EFTA countries decided to investigate the effect of differing national tax structures on competition, the findings would probably be the same as for the EEC countries".

The Danish Government (Denmark is an EFTA member too) presented on May 12, 1965, a draft TVA to the Parliament. The draft has not yet become an act. In United Kingdom the Committee on Turnover Taxation, set up on April 16, 1963, concluded, however: "we can find no valid reason for the introduction of a value added tax in substitution for the purchase tax; in itself a value added tax would not assist exports or growth, and it would involve a far greater administrative burden both for business and for the tax authorities". We think the Committee considered the tax primarily from a purely national point of view.

Mr. Nowak, describing the Chilean Tax System in this issue of the Bulletin, does not mention, in his description of the Chilean sales tax, problems as to future harmonization of turnover taxes in LAFTA (Associación Latino Americana de Libre Comercio). As we are well aware, harmonization of turnover taxes does not have high priority in the LAFTA countries, even though one of their aims is the future establishment of a Common Market. Herrara in Proposals for the creation of the Latin American Common Market (April 1965), states that for Latin America harmonization of taxes on capital traffic from outside the LAFTA countries has, in his opinion, the highest priority.

Tax specialists in all countries follow the TVA developments in Europe. But we think the general words of Luther Gulick*), especially with respect to TVA, may be true: "Many a fine tax theory will continue to be a mirage until and unless we can embody the tax theory in appropriate laws, rules and regulations, administrative structure, trained personnel and the consonant pattern of official and taxpayer behavior.

The purpose of taxation is not its administration, but without the administration none of the purposes of taxation can be achieved."

DR. J.C.L. HUISKAMP

*) Income Tax Administration, New York, 1949, p. 13.

CONTENTS

I

A WHOLESALE SALES TAX IN PORTUGAL

by

PAULO DE PITTA E CUNHA*

1. The creation of a sales tax in July, 1966, represented an important step towards the adaptation of the tax system to the situation facing the Portuguese economy during the sixties.

The recent reform of direct taxes maintained the basic structural pattern of income taxation, characterised by the existence of a series of partial taxes levied on the different sources of income, crowned by a personal tax with a progressive rate structure, called the "complementary tax". However, it introduced important changes in the ways of determining the tax base, especially as regards the tax on incomes derived from the carrying on of trade or industry. Previously, this tax had been levied on "normal income" or "presumed income", determined on the basis of objective criteria of a more or less general natuie that were centered above all on what may be called extrinsic aspects, such as the amount of capital stock of the firms in question, or the size of the establishment. In the present system, introduced in 1964, joint-stock companies and other firms of a reasonable size are taxed in line with their "real" profits as shown by their profit and loss accounts.

The new way of determining the tax base makes the tax system more sensitive to changes in the level of economic activity, which is advantageous from the point of view of cyclical stabilisation. However, the "normal income" method offered the State the advantage of a volume of receipts that was regular and easy to forecast, to the degree in which the tax burden was independent of the current situation of the firms. Thus the government, interested in maintaining a sound budget situation and aware that, given the State's participation in the effort of economic development, public expenditures may possibly increase more rapidly than the national product, has sought to diversify the sources of its tax revenues, attaching more attention, especially, to indirect taxes.

2. Portugal's participation in the international economic integration movement, through its position as a founder member of the European Free Trade Association, also helps explain the particular emphasis attributed to the development of indirect forms of taxation.

The Stockholm Convention, which established E.F.T.A., in line with the rules included in G.A.T.T., in this regard, affirms the principle of taxation by the country of destination as refers to taxes on merchandise. As a consequence of this principle, there exists the

*) The author is Lecturer in Economics and Public Finance, University of Lisbon.

possibility of imposing compensatory burdens on imports and of exempting exports. Thus those countries whose system of taxation confers a predominant position on indirect taxes do not fail to be at an advantage from the point of view of international competition.

Although, in Portugal, income from indirect taxes represents about 60% of the total tax revenue of the central government, a very substantial part of this derives from customs duties on imports; that is, from the very kind of taxation that is in decline due to the process of growing liberalisation of international merchandise movements.

3. As can be seen, therefore, reasons of an internal nature connected with the new methods for determining the tax bases of direct taxes, combined with reasons of an external nature related to the financial and economic effects of international integration, resulted in the attribution of particular importance to indirect internal taxation. This explains the creation of the new sales tax, which the government sought to fit into the over-all reform of the various types of indirect taxation that had already been begun.

4. Previous to this new tax, and besides various excise taxes, Portugal only had a tax on consumption of some amplitude, which had been created in 1961. This tax, which was levied on the retail level, affected a reasonable range of products and a limited number of services that were considered superfluous or in the luxury category.

Created on a provisional basis, under the pressure of urgent financial needs resulting from the increase of national defence expenditures, the tax on superfluous or luxury articles and services met with considerable difficulties in its application. The large number of taxpayers and their dispersion, the limited size of their establishments and the non-existence, in most cases, of a proper accounting system, made this tax ineffective and constituted a strong incentive to tax evasion.

5. Given the impossibility of levying the new sales tax on the final stage of the distributive cycle, due to the pulverisation and lack of preparation that mark the retail trade at the present moment, the Government decided to make it applicable to the next to the last phase: that of the wholesale trade. The adoption of a single stage tax on the wholesaler involved the rejection of other possible forms, such as the cascade cumulative tax and the value-added tax: the former, because of the congenital defects that are attributed to it, namely as regards the differential treatment of integrated and non-integrated channels and the incorrect application of the system of compensations in the field of imports, and rebates in the field of exports; the latter, because although it is technically adequate, it leads to considerable difficulties from the point of view of control, given the large number of taxpayers distributed among all the stages of the productive and distributive cycle.

6. Although the desire to assure the practical conditions of the smooth functioning of the tax that justified the rejection of the value-added tax and of taxation on the level of the retailer, would seem to counsel the choice of the stage of production for the incid-

ence of the tax, in detriment to that of the wholesale trade, it appears to us that the solution adopted in Portugal is correct.

In the first place, the sales tax, as a typical form of expenditure taxation, should be levied on a stage of the channels that is as close to the consumer as possible. The farther away the incidence of the tax is from the final stage of the distributive cycle, the more serious are the inevitable distortions resulting from the co-existence of commercial channels of differing structure and extension. And there is no doubt that the tax on the producer causes greater relative disparities in the tax burden on the level of the consumer than does the tax on the wholesaler.

In the second place, the tax on the wholesaler presents the fundamental advantage of assuring in a practically automatic way the non-discriminatory tax treatment of imported and domestic goods and, by the simple exemption of all exports, it brings about the desired relief for domestic products without it being necessary to resort to rebates to exporters. These advantages are not shared by the tax on the producer.

Finally, taxation on the wholesale stage permits the setting of rates at a level below that which, in order to obtain comparable revenue, would have to be established on the producer's stage. This constitutes an appreciable advantage from the point of view of preventing tax evasion.

7. The control machinery of the new sales tax is based on the previous compulsory registration of not only wholesalers but of producers as well, seeing that the latter will have to pay the tax when there is no independent wholesaler in the channels. Transactions between registered firms are not subject to the tax, once the buyer presents a declaration to the effect that the goods are for future wholesale sale or for incorporation, as raw materials, in the products he manufactures. Besides the declaration valid only for a given transaction, the law foresees the use, in cases in which frequent transactions are carried on between the same buyers and suppliers, of a "general declaration" valid for a whole year. The tax must be paid by the last firm registered, being levied, therefore, in normal cases, on the transactions that take place between the wholesaler and the retailer. The registration of wholesalers and producers and the system of declarations are aimed at preventing double taxation.

In cases in which products have been acquired by wholesalers or producers without payment of the tax, and the buyers then divert them from the purpose for which they were intended, employing them for their own personal use or for the use of their respective firms, transmitting them gratuitously or transferring them directly to retail sales establishments or departments subject to them,—in these cases, the law treats such employments for personal use, gratuitous transmissions and transfers as taxable sales.

8. The regime to which imported products are subject, whenever, as is the rule, the respective importers are producers or wholesalers, is not different from that which is applied to home goods, since the tax is only levied on the transaction that marks the introduction of the products previously imported, into the retail market. It is thus sought to assure strict non-discrimination as regards the tax treatment of home and foreign products. Only in those cases in which the importers are not wholesalers or

producers will the tax be levied on the act of importation itself. A coefficient of correction will then be applied to the customs value so as to make it correspond, as far as possible, to the internal wholesale price.

9. In contrast with the excise taxes that have been in force in Portugal up to the present time, and which have been limited to one product or to a more or less extensive range of products, the sales tax is characterised by its general nature, since it is levied, in principle, on all merchandise produced in or imported into Continental Portugal or the Azores and Madeira.

For this reason, the law does not specify the products subject to it, but merely lists those goods which are considered exempt and those which should be subject to a higher rate then the normal one established for this tax. Given the lack of individualisation, at the moment the tax is levied, of the final receivers of the merchandise, exemptions of a personal character are not established except in a few rare cases.

In spite of the fact that it has been sought to give this tax a general character, broad categories of products have been exempted from it because of basic preoccupations of an economic and social nature. Thus, the need to free from this tax some of the essential consumers' goods that are especially important in the budgets of lower income families led to the establishment of an exemption of sales involving food products, with the few exceptions contained in the lists annexed to the law that created the tax. A vast sector of consumers' goods is therefore entirely free from this tax. This implies lower revenues for the State, of course, but it will not fail to have favourable consequences: on the one hand as regards the non-aggravation of the cost of living, and on the other as refers to the protection of the agricultuıal sector, which needs support and incentives.

Also of great importance is the exemption of sales involving machinery, tools and other producers' goods intended for use in the production of merchandise. This exemption guarantees the principle of taxing only once the wholesale value of final goods, preventing those situations of double taxation that would result from the application of the tax to sales involving producers' goods. Moreover, it also makes it possible to convert the sales tax into a tool for technical progress and an incentive for reproductive investments, to the degree in which the exemption covers the very producers' goods used in the manufacture of merchandise considered exempted, as is the case of food products. It is also aimed at placing domestic goods in the best possible competitive position to meet international competition.

As part of the same preoccupation with adjusting the forms of taxation to the objectives of the policy of economic growth as defined in the development plans, there have also been exempted from the tax all transactions involving aircraft intended for the collective transport of passengers or merchandise, ships (with the exception of those used for recreation or sport) and railway rolling stock.

Among the other exemptions that have been established, mention should also be made of those regarding sales involving pharmaceutical products, teaching materials, books and newspapers. Of still greater importance, since it is connected with the very *raison d'être* of the tax, is the exemption of exports when these are carried on by producers or wholesalers.

10. The fact that it was decided to levy the tax on the wholesale stage lends considerable importance to the problem of determining taxable value.

The value of the sales subject to the tax is, in principle, the gross price charged. But, in many cases, the typical transaction covered by the tax—that which takes place between a wholesale merchant, as seller, and a retail one, as buyer—does not exist, and there arises the question of finding out what value should be considered for the purpose of paying this tax.

The law establishes that in cases in which the sales price is missing, unknown or below the officially set wholesale price or that currently practised in the typical transaction—the sale between wholesaler and retailer in the free market—the value to be considered for tax purposes shall be, according to the case, the officially set price, the current wholesale price or the price that under normal conditions would be charged if there were no suppression or integration of channels.

Given the obvious difficulty involved in resorting to the determination of theoretical prices for tax purposes, the Government did not deem it advisable, at least for the time being, to increase the number of hypotheses in which it is possible to set a taxable value different from the real price charged in the transaction.

11. Although recognising that the refusal to adopt a uniform tax rate might result in difficulties as regards the application of the tax, especially in the matter of identification of taxable goods, the Government considered it indispensable to maintain, as far as possible, the orientation that characterised the tax on superfluous or luxury articles and which took the form of the establishment of differentiated rates. But only two rates have been adopted for the time being, due to the necessity of making as simple as possible the practical aspects of a new tax that is going to meet with some difficulties during the initial phase of its application. It is foreseen that the two rate categories that have been adopted will be divided into a greater number when the Government deems that the initial inconveniences or difficulties have been by-passed.

Thus, besides the normal rate, set at 7 per cent., a higher rate of 20 per cent. has been established for transactions involving products likely to satisfy luxury needs: jewels, furs, sports boats, alcoholic beverages with the exception of table and common wines, beauty products, etc.

12. Except in those cases in which it is the responsibility of the customs, tax services or other government departments because the tax is owed by persons who are not producers or wholesalers, the calculation of the tax must be carried out by the taxpayers themselves in regard to the transactions they realise. Taxpayers are obliged to keep accounting records of the tax, and to hand the corresponding sums over to the State during the month following that in which the sales take place. However, when suitable guarantees have been given, the taxpayers are permitted to hand over the collected tax funds during the months of January, April, July and October, with reference to sales realised during the quarter immediately previous.

13. The law permits those subject to the tax to pass it on. Taxpayers are given the right

to add the amount of the tax to the net value of the respective bills of sale or equivalent documents, for the purpose of demanding its payment by the adquirers of the merchandise.

What is in no case permitted is that the amount of tax included in sales prices be separately indicated in any place of display and in retail sales establishments, departments or other installations, or in bills, invoices or other documents intended for final consumers. It is also not permitted to make known, directly or indirectly, the fact that the transaction is not subject to the same tax.

14. With the coming into force of the Sales Tax Code, the tax on superfluous or luxury articles was abolished, along with various excises, such as the tax on bottled drinks and ice-cream, and the taxes on perfumery and toilet preparations, on playing cards and on brandy or alcohol obtained from the distillation of wine, wine lees, grape husk and washings of wine vats, produced by others[1].

Although it was the Government's intention to integrate into the sales tax all the existing forms of taxes on expenditures, the need for longer study of the special tax set-up pertaining to certain products resulted in its keeping certain excises in force, such as the national security tax, levied on sugar and petrol, the tax on motor-cars and the taxes levied on fishing, tobacco, matches and beer. In order to avoid double taxation, the law creating the sales tax exempted all merchandise transactions subject to such taxes.

15. When it established the new sales tax, the Government was clearly aiming at obtaining a tool that was likely to provide it with an appreciable amount of income and, at the same time, assure a certain stability in the volume of tax revenues.

On the other hand, however, a desire to attenuate the regressive tendency of this new type of taxation led the Government to state its intention of establishing differentiated tax rates according to the degree of dispensability of the various products. If the rate categories initially fixed are really broken up into a larger number—and the Government has already admitted this possibility—the sales tax may become a flexible tool of economic stabilisation policy through the regulation of consumption, and help bring about a redistribution of income.

It is difficult to give an accurate forecast as to which of the two tendencies, to a certain extent incompatible, will be dominant in the future. But the Government already foresees the possibility of substituting a tax on value-added for the single stage tax on the wholesaler, acknowledging the possible necessity of harmonising the system adopted in Portugal with one that may come to predominate in Western Europe. This preoccupation with assuring the internationalisation of the system of sales taxation and the vigour with which the financial objective of the tax is affirmed may result in the prevalence of the tendency towards rate uniformity and the renunciation of the use of the sales tax as an active stabiliser of economic activity and as an instrument of social policy. But, even in this case, the way will remain open to increasing progressiveness in the sector of direct taxation and to the establishment, at the retail stage, of an independent tax on articles and services considered to be in the luxury class.

1) Compare 'The Portuguese Tax System'. Bulletin 1966, p. 265 e.s.

THE CHILEAN TAX SYSTEM

by

NORMAN D. NOWAK*

I INTRODUCTION:

The Chilean Tax System includes most of the taxes common to the countries of the Western Hemisphere, plus a few which are unusual, such as the wealth tax and the tax on copper mining. The list of taxes is discussed in Part II and III. Recent years have seen a strong improvement in tax administration, derived from work of the AID/IRS Tax Modernization Program.

Tax revenue in 1965 provided 83% of total government current revenue excluding social security. The remainder came from customs duties and fees or profits of government agencies. Of the tax revenue, 15% in 1965 came from the tax on the large copper companies. This tax will not be discussed here, except to note that its proportional contribution to tax income in the last five years has ranged from 12 to 16%. The remaining taxes may be divided as direct and indirect taxes. In 1965 the direct taxes, excluding copper, contributed 36% of tax yield; the indirect taxes contributed 49%. The most important direct tax in terms of yield is the income tax. In 1965 it provided 18% of total tax yield. The principal indirect tax is the sales tax, which provided 33% of total tax yield in 1965. Details of tax yields are contained in Part IV.

Highly summarized descriptions of the major tax laws of Chile as of May 1966 follow below.

II DIRECT TAXES

A. Income Tax:

The income tax is divided into two main components:

1) schedular taxes, which levy at varying flat rates on income as distinguished by source, and

2) complementary tax (global surtax), which levies at progressive rates on the sum of income from all sources.

In the 1964 tax reform most of the rates of the schedular taxes were lowered, while the rates of the surtax were raised. As a result, the surtax has gained increasing importance.

There are four rates for the schedular taxes: 3.5% on wages and salaries, 7% on professional fees, 20% on income from business and capital investments, and 30% on corporate income. The 3.5% tax is withheld directly at the source; in certain cases 3.5% in also withheld from professional fees paid; the 20% tax is withheld from interest payments, annuities, and similar income from passive investments. The other schedular taxes are declared and paid in the year following that in which income was earned. In arriving at net schedular income from business and professional sources, deductions for expenses

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are allowed on a basis similar to that used in other countries. In the case of unincorporated businesses, one annual minimum wage per owner may be taxed at 3.5% as an "owner's salary."

The rates of the surtax range from 10% on the first three annual minimum wages (E° 7.485 in 1965) up to 60% on income above 80 annual minimum wages (E° 199.603 in 1965). Individuals with less than one annual minimum wage of income are exempt from filing returns. All net schedular income is aggregated to arrive at gross global income. Schedular tax paid is deductable from gross global income, but almost no other deductions are allowed in reaching net global income. The following credits may be taken against the global surtax: 10% of one annual minimum wage (AMW) for single individuals; 15% of AMW for heads of households; 30% of AMW for married individuals; 5% AMW for each dependent other than the spouse.

A tax return must be filed by March 31 of the year following that in which the income was earned. Payment of the global surtax and schedular taxes other than those withheld at the source is made in three equal installments during the year; wage and salary earners have the option of paying the global surtax in 10 equal installments starting in July and withheld at the income source.

B. Additional Tax:

The additional tax is essentially a substitute for the global surtax. It is applicable to income from Chilean sources received by taxpayers neither resident nor domiciled in Chile; a Chilean citizen resident abroad for more than one year, but who retains domicile in Chile is also subject to the additional tax. The rate is a flat 30% of income received. The payer of the income is required to withhold the tax at the source in about half the instances where the tax is applicable. Both foreigners and Chileans resident abroad are subject to the additional tax on income from Chilean sources.

It should be noted that the income tax itself taxes world wide income of individuals resident or domiciled in Chile, whether Chilean citizens or not. Foreigners, however, are taxable solely on income from Chilean sources during the first three years of residence or domicile in Chile.

C. Capital Gains Tax:

Capital gains are taxable in Chile at the rate of 20% on income received through sale or transfer of capital goods purchased after February 14, 1964(date the tax was first enacted). The rate is 8% on capital gains received through sale or purchase of goods owned prior to that date. The tax is definitive and exempts the gain from payment of the income tax. Filing and payment rules are the same as for the global surtax. Both the additional and capital gains taxes are included in the same law as the income tax proper.

D. CORVI Tax:

'Business income in Chile, that which is taxed at the 20 and 30% schedular rates, is subject to an additional tax in favor of the CORVI (the Government Housing Corporation). The tax amounts to 5% of net schedular income as calculated for income tax purposes. The taxpayer may either pay the tax directly into the Treasury as is done with the

regular income tax or he may as a substitute for it invest in an equivalent amount directly in the construction of low cost housing. Acceptable direct investments include workers' housing built or paid for by the taxpayer, purchase of certain CORVI bonds or deposit of money in savings and loan associations specializing in low cost housing. Most businessmen have chosen one of the acceptable housing investments in preference to direct payment of the tax.

E. Patrimony Tax:

This is essentially a tax on capital; it is framed as a tax on presumed income derived from capital, but the presumption is irrebuttable. Because it levies on presumed income, however, the tax may, when appropriate, be taken as a credit against U.S. income tax.

The 1965 law establishing the tax states that duration of the tax will be three years.

Capital for purposes of the law is that held by the individual taxpayer as of October 31, 1964. Included as capital are all holdings as of that date of real estate, stocks, bonds and similar investments, loans due, shares of unincorporated business, motor vehicles, and most other forms of personal wealth except household furnishings, personnel apparel, social security savings accounts, and owner operated taxis, and a very few other items. Debts directly relating to specific components of capital (an installment loan on a car, a home mortgage) are deductible, but general debts are not.

'Residents of Chile, whether citizens or not, are subject to tax on all capital located both within and outside Chile. Chilean citizens resident abroad are subject to tax solely on their capital within Chile. When the gross capital is less than twelve annual minimum wages for 1964 (E° 21,633.12), the individual is exempt from both tax and filing a return; when gross capital exceeds twelve AMW but net capital is less than E° 16,250 (approximately nine AMW, enough capital to produce E° 1,300 of presumed income) the individual remains exempt from tax but must file a return.

Net capital declared is irrebuttably presumed to earn income of 8% annually. This presumed income is taxed at the following rates:

Presumed Income from Capital						*Rate*
From	E°	0	to	E°	1,300	0%
,,		1,301	,,		6,000	20%
,,		6,001	,,		12,000	25%
,,		12,001	,,		24,000	30%
,,		24,001 and above				35%

The resulting tax is payable during the years 1965, 1966 and 1967. It was payable in two installments for 1965, and in three for 1966 and 1967. Since the base amount of tax is calculated in 1964 escudos, the actual amount payable is readjustable annually according to the cost of living index. One half of the amount paid during the respective year for global surtax may be credited against the patrimony tax. The owner of the capital as of October 1964 is responsible for payment of the patrimony tax for 1965-1967, despite subsequent changes in ownership of assets included in the tax base; to be elegible for a proportionate reduction in tax, the 1964 owner must show that current value of the assets declared in 1964 has diminished by more than 40%.

F. Gift and Inheritance Taxes:

Chile taxes the heir on the inheritance received, not the general estate on the amount left by the decedent. Different rate scales are applied according to the degree of kinship between the heir and the decedent. For each kinship degree, the rate scale is progressive as the size of the taxable inheritance increases. The rates vary from a scale of 5 to 55% for a child to 7 to 77% for an unrelated heir.

A substantial exemption per heir, before a taxable level is reached, plus the fact that community property laws allow one half of a decedent's property to pass to a surviving spouse tax free, the exemption from inheritance tax of certain kinds of property and the mandatory undervaluation of others, combine to make relatively few inheritances subject to much tax.

Gifts are taxed at the same rates as inheritances, the sole difference being that the exempt minimum is lower. No total limit is placed on gifts made or received during a year. Apparently the gift and inheritance taxes have not greatly influenced the distribution of estates in Chile or substantially changed the nature of wealthy persons' holdings; a possible exception has been the tendency for persons of wealth to increase their holdings in DFL 2 housing which passes to heirs free of tax.

G. Real Property Tax:

All real property in Chile is subject to the national property tax. The rate is 2% of assessed value, payable in three annual installments. Between 1962 and 1964 all real property in Chile was reassessed with the advice of the Tax Modernization Program. The new urban property assessment for 1965 showed a 577% increase; rural property assessments rose by 145%. The new urban assessments approximate full market value; the rural assessments are calculated on a formula which reflects the site value of the land at its best potential use. This latter has in some cases produced an assessed value above the market. It has been the practice to readjust the assessments annually to reflect inflationary changes.

Certain classes of property are exempt from tax. These include DFL-2, (low cost housing not exceeding 140 square meters in area), special earthquake exemptions, newly planted forests, certain new industrial sites, all property assessed at less than E° 5,000, Indian reservations, and property owned by the Government, charitable or educational institutions, hospitals, firehouses, and cemetries. More than one third of property in Chile is tax exempt.

The entire real property tax is collected by the national tax agency. A portion of the tax, varying according to the province is returned to the provincial and municipal governments for their use.

III INDIRECT TAXES

During the first half of 1966 the sales, service, producers and stamp taxes were all modified and recodified. In all cases changes in the law since the last codification were included, rates were to a certain extent simplified, and the number of special rates reduced. The sales, tax and the service and producers' taxes were codified as one law; the sales tax and the service tax remain separate by virtue of separate titles within the law, but the producers' tax is classified as a special case of the sales tax.

A. Sales Tax:

As a norm, the sales tax applies to sales or transfers of goods at all levels, producers' wholesale and retail. A basic rate of 6% of the sales price applies.

Three main special rates exist: 1.2% on sales of some necessities including rice, salt antibiotics, and flour; 12% on semi—luxuries, including radios, records, candy, pisco and wine, suitcases and chinaware; 20% on luxuries including jewelry, furs, photographic equipment, aguardiente and champagne, and playing cards. Sales of food and service in hotels, restaurants, and bars, are taxed at rates varying from 6 to 20% depending on the class of establishment.

The former producers' taxes are not called taxes on first sale; on the first sale of specified items they are substituted for the regular sales tax. Rates vary from 60% on playing cards and 35% on non-alcoholic beverages to 1% on coal. A special tax on gasoline is paid by the distributor at the rate of 26.05% on the retail price.

A relatively short list of items are free of all sales taxes. These include basic necessities such as bread, milk, eggs, meat, sugar, as well as fish, books, tobacco, (this latter being taxed by a different law.) There are a few regional exemptions from sales tax in the far North and South, and cooperatives are partially exempt from payment of tax.

The tax is collected by the seller on the sales price. For sales above E° 2.70 sales tickets must be given. Within 15 working days following the end of the month the seller must declare all sales made and pay the tax into the Treasury. Farmers declare and pay in January and July for sales made during the preceding six months.

B. Service Tax:

The Service tax applies to payments received from rendering services of all kinds. As now in force, the service tax combines the former *chiffre d'affaires* tax and the numerous miscellaneous service taxes. Specifically taxed are commissions, premiums, interest and other remuneration received by brokers, auctioneers, custom agents, etc., by hotels, moviehouses, parking lots and the like; through mining, fishing, commercial or industrial activities; and through rental of property. The basic rate is 15%. Special rates include the following: 6% on services provided by hospitals, laundries, tailors, freight handlers and a series of others; 7.5% on print shops and publishers; 16% on insurance premiums; and 22.5% on banks.

The tax is collected by the person or entity providing the services and is declared and payed in the same way as the sales tax. The list of persons and entities exempt from the tax includes the CORFO, CORA, and several other semi-public institutions, professional man, benefit performances of all kinds, and about 20 others.

C. Stamp Tax:

The stamp tax applies to all judicial or contractual documents, as well as a series of items ranging from legally required account books to police certificates. The rates are of two kinds: 1) those which are fixed as so much per page or document, i.e. E° 0.62 per page of notarized documents, or E° 14.88 for a foreigner's identity card, and 2) those which vary according to the amount of the transaction recorded in the document, i.e. 0.5% of total value of a rental contract, or 1% of stated capital for incorporation papers.

Payment may be made through purchase of sealed paper, purchase of revenue stamps to be affixed to the document, or direct payment into the Treasury, joining the receipt or a revenue seal to the document. The first two methods are used for most transactions with a fixed rate per document; the third method is commonest where the tax varies with the amount of the transaction recorded in the document.

He who pays the tax may be the grantee of the document, as in the case of passports, certificates, or patents; or the transferee, as in the case of legacies or real property sales, or in some cases the law may not clearly specify, as where sealed paper is required, although in these latter cases the identity of the taxpayer is usually evident.

Exemption from payment of the taxes is granted to certain entities, ranging from the University of Chile and the Banco del Estado to Volunteer Fire Departments and cooperative associations.

D. Alcohol Taxes:

The taxes classified as being on alcohols are those bearing on the producer or manufacturer. The tax on retail sales of alcoholic beverages is part of the general sales tax system.

Four classes of alcohols are distinguished and taxed as follows:

1. Pure alcohol: the tax varies from E° 0.015 to E° 0.03 per liter according to the quality. Alcohol sold for medical uses is exempt from tax.
2. Liquors, including fortified wines: the tax is levied per liter of 100% alcohol. (About three bottles of Pisco equals one liter of 100% alcohol). The rate varies from E° 1,20 per liter of alcohol if the product is sold by the producer for less than E° 2.00 per bottle of liquor to E° 2.70 if the producer's sales price exceeds E° 5.00.
3. Beer: the rate is a flat 25% of the producer's sales price.
4. Wine: the tax is based not on actual production and sales, but rather on a formula keyed to hectares of vineyard planted. A coefficient is established representing the average wine production per hectare of irrigated and non-irrigated vineyards in each province over the three years preceeding the taxable year. This is applied to the average sales price of wines in each province during the taxable year, the product is multiplied by a percentage factor, and an annual tax per hectare of vineyard results. For 1964 this tax fluctuated from E° 370.98 per hectare in Constitución Sur to E° 4,193.90 in Rancagua. It is the most important of the alcohol taxes.

Alle the above taxes are payable monthly by the producer except that on wines. This latter is collected from the vineyard owner in three equal installments payable in August, September, and October of the year following that in which the wine was produced. In all cases there are numerous favorable rates and exemptions for specific localities and provinces and for cooperatives.

E. Tobacco Taxes:

The tax on tobacco products is relatively simple. Three rates apply: on cigarettes, 56% of retail price; on cigars, 40% of retail price; and on other tobacco products, 20% of retail price. Payment is made by the manufacturer through purchase of revenue stamps which he affixes to the packages. The manufacturer purchases the stamps with a note payable 90 days after the stamps are acquired.

F. Other Indirect Taxes:
Of the remaining indirect taxes, only one, the entertainment tax, is of any significance in revenue yield. It taxes admissions at rates which vary from 10% on sporting events to 55% on foreign movies. Benefit performances are tax-exempt.

Other indirect taxes include the tourism tax (2% on travel fares, and 1% on hotel bills) and the tax on parimutual betting. (39%).

IV GOVERNMENT OF CHILE REVENUES

The two tables below show the distribution by source of current revenues received by the Government of Chile in 1965.

A. Government Revenue from Tax Sources

TAX	YIELD (in thousands of E°)	YIELD (as % total tax yield)
Direct Taxes:		
a) Income	507.984,3	18.40
b) Additional	45.402,8	1.64
c) Capital Gains	1.971,5	0.07
d) CORVI, Other Taxes on Income	63.910,1	2.32
e) Patrimony	99.392,8	3.60
f) Gift & Inheritance	6.620,1	0.24
g) Real Property	255.898,7	9.27
TOTAL	981.180,3	35.54
Indirect Taxes:		
a) Sales	902.274,3	32.68
b) Service	132.815,8	4.81
c) Stamps	140.975,6	5.11
d) Alcohol	29.992,1	1.09
e) Tobacco	101.980,9	3.69
f) Entertainment	18.358,3	0.67
g) Tourism & Other	3.580,3	0.13
h) Interest and Fines	26.866,8	0.97
TOTAL	1.356.844,1	49.15
Special Taxes:		
a) Copper Companies	422.779,8	15.31
Total Revenue from Tax Sources.	2.760.804,2	100.00

B. Current Government Revenue from All Sources (Social Security Payments Excluded)

SOURCE	YIELD (in thousands of E°)	YIELD (as % of total revenue)
Direct Taxes	981.180,3	29.55
Indirect Taxes	1.356.844,1	40.87
Tax on Copper	422.779,8	12.73
Customs Duties	427.500,0	12.88
Non Tax Income	132.000,0	3.97
TOTAL	3.320.304,2	100.00

TREATIES

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME OF JUNE, 13, 1966.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand,

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of this Agreement are—

(a) in the United Kingdom of Great Britain and Northern Ireland:
the income tax (including surtax), the profits tax, the corporation tax and the capital gains tax.

(b) in New Zealand:
the income tax (including social security income tax) and the excess retention tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Contracting Government or by the Government of any territory to which this Agreement is extended under Article XXII.

ARTICLE II

(1) In this Agreement unless the context otherwise requires—

(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial waters of the United Kingdom which has been designated, under the law of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "New Zealand" means the metropolitan territory of New Zealand (including the outlying islands) and excludes the Cook Islands, Niue and the Tokelau Islands; it includes the continental shelf of New-Zealand as defined under the law of New Zealand concerning the continental shelf;

(c) the terms "the territory", "one of the territories" and "the other territory" mean the United Kingdom or New Zealand as the context requires;

(d) the term "taxation authorities" means in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative; and in the case of any territory to which this Agreement is extended under Article XXII the competent authority

for the administration in such territory of the taxes to which this Agreement applies;

(e) the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Agreement applies by virtue of Article 1; the term "New Zealand tax" means tax imposed by New Zealand being tax to which this Agreement applies by virtue of Article 1;

(f) the term "tax" means United Kingdom tax or New Zealand tax as the context requires;

(g) the term "person" includes any body of persons corporate or not corporate;

(h) the term "company" means any body corporate;

(i) the term "national" means—

(i) in relation to the United Kingdom—

(aa) all citizens of the United Kingdom and Colonies and British protected persons other than those citizens and protected persons who derive their status as such from connection with any territory to which this Agreement may be extended under Article XXII but has not been so extended;

(bb) all legal persons, associations and other entities deriving their status as such from the law of the United Kingdom or any territory to which this Agreement is extended under Article XXII;

(ii) in relation to New Zealand—

(aa) any individual who is a New Zealand citizen;

(bb) any legal person deriving its status as such from the law of New Zealand or any territory to which this Agreement is extended under Article XXII;

(j) the term "New Zealand company" means any company which is—

(i) incorporated in New Zealand and which has its centre of administrative or practical management in New Zealand whether or not any person outside New Zealand exercises or is capable of exercising any overriding control or direction of the company or of its policy or affairs in any way whatsoever; or

(ii) managed and controlled in New Zealand;

(k) the term "United Kingdom company" means any company which is managed and controlled in the United Kingdom and which is not a New Zealand company;

(l) *(i)* the term "resident of the United Kingdom" means any United Kingdom company and any other person who is resident in the United Kingdom for the purposes of United Kingdom tax and the term "resident in New Zealand" means any New Zealand company and any other person who is resident in New Zealand for the purposes of New Zealand tax; but

(ii) where under sub-paragraph (i) above an individual is a resident of both territories, his status shall be determined in accordance with the following rules—

(aa) he shall be deemed to be a resident of the territory in which he has a permanent home available to him; if he has a

permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests)

(bb) if the territory in which he has his centre of vital interests; cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

(cc) if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;

(dd) if he is a national of both territories or of neither of them, the taxation authorities of the territories shall determine the question by mutual agreement;

(iii) where under sub-paragraph (i) above a person who is neither an individual nor a company is a resident of both territories, it shall be deemed to be a resident of the territory in which it is managed and controlled;

(m) the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of New Zealand as the context requires;

(n) the terms "United Kingdom enterprise" and "New Zealand enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand, and the terms 'enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a New Zealand enterprise as the context requires;

(o) the term "industrial or commercial profits" means income derived by an enterprise from the conduct of a trade or business, including income derived by an enterprise from the furnishing of services of employees or other personnel, but it does not include income in the form of dividends, interest or royalties (as defined in Article VII) other than dividends, interest or royalties effectively connected with a trade or business carried on through a permanent establishment which an enterprise of one of the territories has in the other territory; nor does the term include income in the form of rents or remuneration for personal (including professional) services;

(p) *(i)* the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(ii) a permanent establishment shall include especially—

(aa) a place of management;

(bb) a branch;

(cc) an office;

(dd) a factory;

(ee) a workshop;

(ff) a mine, quarry, oilwell or other place of extraction of natural resources;

(gg) a building site or construction or assembly project

which exists for more than twelve months;

(iii) the term "permanent establishment" shall not be deemed to include—

(aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;

(iv) an enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if—

(aa) it carries on supervisory activities in that other territory for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other territory;

(bb) it carries on the activity of providing the services within that other territory of public entertainers or athletes referred to in Article XIV;

(v) a person acting in one of the territories on behalf of an enterprise of the other territory—other than an agent of an independent status to whom subparagraph (vi) applies—shall be deemed to be a permanent establishment in the former territory if he has, and habitually exercises in that former territory, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise on behalf of the enterprise;

(vi) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status where any such person is acting in the ordinary course of his business;

(vii) the fact that a company which is a resident of one of the territories controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other;

(viii) where an enterprise of one of the territories sells in the other

territory goods manufactured, assembled, processed, packed or distributed in the other territory by an industrial or commercial enterprise for, or at, or to the order of, that first-mentioned enterprise and—

(aa) either enterprise participates directly or indirectly in the management, control or capital of the other enterprise;

or

(bb) the same persons participate directly or indirectly in the management, control or capital of both enterprises, then for the purposes of this Agreement that first-mentioned enterprise shall be deemed to have a permanent establishment in the other territory and to be engaged in trade or business in the other territory through that permanent establishment;

(q) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

(2) Where under Articles VI or VII of this Agreement income from a source in one of the territories is relieved from tax in that territory, and, under the law of the other territory an individual is subject to tax in respect of the said income by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof, then the relief to be allowed under those Articles of this Agreement in the first-mentioned territory shall apply only to so much of the income as is remitted to or received in the other territory.

(3) in the application of the provisions of this Agreement in either territory any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that territory relating to the taxes which are the subject of this Agreement.

(4) For the purposes of this Agreement the terms "United Kingdom tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either territory relating to the taxes which are the subject of this Agreement.

ARTICLE III

(1) Industrial or commercial profits of a United Kingdom enterprise shall be exempt from New Zealand tax unless the enterprise is engaged in trade or business in New Zealand through a permanent establishment situated therein. If such enterprise is so engaged, tax may be imposed by New Zealand on the industrial or commercial profits of the enterprise but only on so much of them as is directly or indirectly attributable to that permanent establishment.

(2) Industrial or commercial profits of a New Zealand enterprise shall be exempt from United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If such enterprise is so engaged, tax may be imposed by the United Kingdom on the industrial or commercial profits of the enterprise but only on so much of them as is directly or indirectly attributable to that permanent establishment.

(3) Nothing in paragraphs (1) and (2) of this Article shall affect any provisions of the law of either territory regarding the taxation of any person who carries on a

business of any form of insurance or of renting motion picture films (other than films for exhibition on television); provided that if the law in force in either territory at the date of signature of this Agreement relating to the taxation of such persons is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult each other with a view to agreeing to such amendment of this paragraph as may be necessary.

(4) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or 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 arm's length with the enterprise of which it is a permanent establishment. If the information available to the taxation authorities concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authorities of that territory; provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authorities permits, in accordance with the principle stated in this paragraph.

(5) In determining the industrial or commercial profits of an enterprise of one of the territories which are taxable in the other territory in accordance with the previous paragraphs of this Article, there shall be allowed as deductions all expenses (including executive and general administrative expenses) which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the profits so taxable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

(6) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

ARTICLE IV

(1) Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and, in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises dealing at arm's length, then any profits which would, but for those conditions, have accrued to one of the enterprises but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) If the information available to the taxation authorities concerned is inadequate to determine for the purpose of paragraph (1) of this Article, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall

affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authorities of that territory; provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authorities permits, in accordance with the principle stated in that paragraph.

ARTICLE V

Notwithstanding paragraphs (1) and (2) of Article III, but subject to paragraphs (4), (5) and (6) of that Article and to Article IV, profits which a resident of one of the territories derives from the operation of ships or aircraft in international traffic shall be exempt from tax in the other territory.

ARTICLE VI

(1) The United Kingdom tax on dividends which are derived from a United Kingdom company and paid after 5th April 1966 and which are beneficially owned by a resident of New Zealand shall not exceed 15 per cent. of the gross amount of the dividends.

(2) Dividends which are derived from a United Kingdom company and paid before 6th April 1966 and which are beneficially owned by a resident of New Zealand shall be exempt from United Kingdom surtax.

(3) For the purposes of paragraphs (1) and (2) of this Article dividends in respect of which a trustee is subject to tax in New Zealand shall be treated as being beneficially owned by that trustee.

(4) The New Zealand tax on dividends derived from a New Zealand company and beneficially owned by a resident of the United Kingdom shall not exceed 15 per cent. of the gross amount of the dividends.

For the purposes of this paragraph dividends in respect of which a trustee is subject to tax in the United Kingdom shall be treated as being beneficially owned by that trustee.

(5) Subject to paragraph (5) of Article VII of this Agreement—

(a) the term "dividends" in the case of the United Kingdom includes any item which under the law of the United Kingdom is treated as a distribution of a company except that this term does not include any redeemable share capital or security issued by a company in respect of shares in the company otherwise than wholly for new consideration, or such part of any redeemable share capital or security so issued as is not properly referable to new consideration;

(b) the term "dividends" in the case of New Zealand includes any payment or other transaction which under the law of New Zealand is deemed to be a dividend.

(6) Paragraphs (1) and (2) of this Article shall not apply if the owner of the dividends, being a resident of New Zealand, has in the United Kingdom a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade carried on through such permanent establishment and, in the case of a company, the trade is such that a profit on the sale of the holding would be a trading receipt.

(7) Paragraph (4) of this Article shall not apply if the owner of the dividends, being a resident of the United Kingdom has in New Zealand a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade or business carried on through such

permanent establishment and, in the case of a company, the trade or business is such that a profit on the sale of the holding would be a taxable receipt.

(8) The Government of one of the territories shall not impose any form of taxation, in addition to tax on the company's profits, on dividends paid by a company which is a resident of the other territory to persons not resident in the first-mentioned territory.

(9) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those undistributed profits represent, in whole or in part, profits or income so derived.

(10) Paragraph (1) of this Article shall not apply if the owner of a dividend is exempt from tax thereon in New Zealand and owns 10 per cent. or more of the class of shares in respect of which the dividend is paid and the dividend is paid in such circumstances that, if the owner were a resident of the United Kingdom exempt from United Kingdom tax, the exemption would be limited or removed.

ARTICLE VII

(1) The United Kingdom tax on royalties derived from the United Kingdom and beneficially owned by a resident of New Zealand shall not exceed 10 per cent. of the gross amount of the royalties.

For the purposes of this paragraph royalties in respect of which a trustee is subject to tax in New Zealand shall be treated as being beneficially owned by that trustee.

(2) The New Zealand tax on royalties derived from New Zealand and beneficially owned by a resident of the United Kingdom shall not exceed 10 per cent. of the gross amount of the royalties.

For the purposes of this paragraph royalties in respect of which a trustee is subject to tax in the United Kingdom shall be treated as being beneficially owned by that trustee.

(3) A resident of one of the territories who derives royalties from the other territory may elect for any year of assessment to be taxed on those royalties in that other territory as if they were a receipt included in industrial or commercial profits attributable to a permanent establishment in that other territory.

(4) Paragraphs (1) and (2) of this Article shall not apply if the owner of the royalties, being a resident of one of the territories, has in the other territory a permanent establishment and the right or property giving rise to the royalties is effectively connected with a trade or business carried on through such permanent establishment.

(5) Royalties paid by a company which is a resident of one of the territories to a resident of the other territory shall not be treated as a distribution of or a dividend from such company. The preceding sentence shall not apply to royalties paid to a company which is a resident of one of the territories where *(a)* the same persons participate directly or indirectly in the management or control of the company paying the royalties and the company deriving the royalties, and *(b)* more than 50 per cent of the voting power in the company deriving the royalties is controlled, directly or indirectly, by a person or persons resident in the other territory.

(6) The term "royalties" as used in this Article means payments of any kind paid

as consideration for the use of, or the right to use, any copyright, patent, trademark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for the supply of scientific, technical, industrial or commercial knowledge, information or assistance, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of natural resources; the term "copyright" in this paragraph includes copyright in respect of films or tapes for radio or television broadcasting but does not include payments in respect of the business of renting motion picture films in New Zealand.

(7) Where, owing to a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the royalties paid exceeds the amount which would have been agreed upon in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount.

(8) Royalties shall be deemed to be derived from the territory in which the property referred to in paragraph (6) is to be used.

ARTICLE VIII

(1) Income from immovable property may be taxed in the territory in which such property is situated.

(2) *(a)* The term "immovable property" shall, subject to sub-paragraphs *(b)* and *(c)* below, have the meaning which it has under the law of the territory in which the property in question is situated;

(b) the term "immovable property" shall in any case include—

(i) property accessory to immovable property;

(ii) livestock and equipment of agricultural, pastoral and forestry enterprises;

(iii) rights to which the provisions of the general law respecting landed property apply;

(iv) usufruct of immovable property;

(v) rights to variable or fixed payments as consideration for the working of mineral deposits sources and other natural resources;

(c) ships and aircraft shall not be regarded as immovable property.

(3) Paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) This Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE IX

(1) Gains from the alienation of any property forming part of the business property of a permanent establishment which an enterprise of one of the territories has in the other territory, or of any property pertaining to a fixed base available to a resident of one of the territories in the other territory for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other territory.

(2) Notwithstanding paragraph (1) of this Article, gains derived by a resident of one of the territories from the alienation of

ships and aircraft operated in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be exempt from tax in the other territory.

(3) Gains from the alienation of any property other than those mentioned in paragraph (1) shall be taxable only in the territory of which the alienator is a resident.

ARTICLE X

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not resident in that territory or is resident in that territory solely for the purpose of rendering those services.

(2) Where such remuneration is not exempt under paragraph (1) of this Article it shall for the purposes of Article XVIII be deemed to be income from a source within the territory of the Contracting Government paying the remuneration.

(3) This Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

ARTICLE XI

(1) Any pension or annuity derived from sources within one of the territories by an individual who is a resident of the other territory shall be exempt from tax in the first-mentioned territory.

(2) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE XII

Income derived by a resident of one of the territories in respect of professional services or other independent activities of a similar character shall be subjected to tax only in that territory unless he has a fixed base regularly available to him in the other territory for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base may be taxed in that other territory.

ARTICLE XIII

(1) Subject to Articles X, XI and XV, salaries, wages and other similar remuneration derived by a resident of one of the territories in respect of an employment shall be subjected to tax only in that territory unless the employment is exercised in the other territory. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other territory.

(2) Notwithstanding paragraph (1) remuneration derived by a resident of one of the territories in respect of an employment exercised in the other territory shall be subjected to tax only in the first-mentioned territory if—

(a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(b) the remuneration is paid by or on behalf of an employer who is not a resident of the other territory, and

(c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the

employer has in the other territory.

(3) Notwithstanding the preceding provisions, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the territories may be taxed in that territory.

(4) In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as it the remuneration were remuneration of an employee in respect of an employment, and as if references to an employer were references to the company.

ARTICLE XIV

Notwithstanding Articles XII and XIII, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the territory in which those activities are exercised.

ARTICLE XV

A professor or teacher who visits one of the territories for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that territory and who immediately before that visit is a resident of the other territory shall be exempt from tax in the first-mentioned territory on any remuneration for such teaching in respect of which he is subject to tax in the other territory.

ARTICLE XVI

A student or business apprentice, who immediately before visiting one of the territories, is a resident of the other territory and is present in the first-mentioned territory solely for the purpose of his education or training shall not be taxed in that first-mentioned territory on payments which he receives for the purpose of his maintenance, education, or training provided that such payments are made to him from sources outside that first-mentioned territory.

ARTICLE XVII

Any income not expressly mentioned in the foregoing provisions derived by a resident of one of the territories shall be subjected to tax only in that territory; provided that this Article shall not apply to—

(a) interest, or

(b) income in any form from an estate or trust, or

(c) income from a business of any form of insurance or of renting motion picture films (other than films for exhibition on television)

derived by a resident of one of the territories from sources in the other territory.

ARTICLE XVIII

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

(a) New Zealand tax payable under the law of New Zealand and in accordance with this Agreement whether directly or by deduction, on profits, income or chargeable gains from sources within New Zealand (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the

New Zealand tax is computed; and

(b) where a company which is a resident of New Zealand and is not resident in the United Kingdom pays a dividend to a United Kingdom company which controls, directly or indirectly, at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any New Zealand tax creditable under *(a)*) the New Zealand tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) *(a)* Subject to the provisions of the law of New Zealand from time to time in force relating to the allowance as a credit against New Zealand tax of tax payable in any country other than New Zealand (which shall not affect the general principle hereof), United Kingdom tax computed by reference to income from sources in the United Kingdom and payable under the law of the United Kingdom and in accordance with this Agreement, wether directly or by deduction (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid), shall be allowed as a credit against the New Zealand tax computed by reference to the same income and payable in respect of that income.

(b) In the event that the Government of New Zealand should impose tax on dividends received by companies which are resident in New Zealand the Contracting Governments will enter into negotiations in order to establish new provisions concerning the taxation of such dividends derived from sources in the United Kingdom.

(3) For the purposes of this Article—

(a) dividends paid by a company which is a resident of one of the territories shall be deemed to be income from sources in that territory;

(b) any amount which is included in a person's taxable income under any provision of the law of either territory for the time being in force regarding taxation of income from any form of insurance shall be deemed to be derived from sources in that territory;

(c) remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources in that territory;

(d) the services of an individual which are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

(4) Where profits on which an enterprise of one of the territories has been charged to tax in that territory are also included in the profits of an enterprise of the other territory and the profits so included are profits which would have accrued to that enterprise of the other territory if the conditions made between each of the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount of such profits included in the profits of both enterprises shall be treated for the purpose of this Article as income from a source in the other territory of the enterprise of the first-mentioned territory and credit shall be given accordingly in respect of the extra tax chargeable in the other territory as a result of the inclusion of the said amount.

(5) Notwithstanding anything to the contrary in this Agreement the provisions of Article XIV, in so far as they are applicable, of the Agreement between the Government of the United Kingdom and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at London on 27th May 1947 shall apply to dividends paid before 6th April 1966 by a company which is resident in the United Kingdom to a resident of New Zealand.

ARTICLE XIX

(1) The nationals of one of the territories shall not be subjected in the other territory to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which the nationals of the latter territory in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of one of the territories has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities; provided that this paragraph shall not prevent the Government of one of the territories from imposing on the profits attributable to a permanent establishment in that territory of a company which is a resident of the other territory a tax not exceeding 5 per cent. of those profits in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of the territory of that Government.

(3) Enterprises of one of the territories the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned territory are or may be subjected.

(4) This Article shall not be construed as obliging either of the Contracting Governments to grant to persons not resident in its territory those personal allowances and reliefs for tax purposes which are by law available only to persons who are so resident, nor as restricting the taxation of dividends paid to a company which is a resident of the other territory.

(5) In this Article the term "taxation" means the taxes which are the subject of this Agreement.

ARTICLE XX

The taxation authorities of the Contracting Governments shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or tribunal) concerned with the assessment or collection of, or enforcement or prosecution in relation to, the taxes which are the subject of this Agreement. No such information shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

ARTICLE XXI

(1) Where a taxpayer considers that the action of the taxation authorities of the Contracting Governments has resulted or will result in taxation contrary to the provisions of this Agreement, he shall be entitled to present his case to the taxation authorities of the territory of which he is a resident. Should the taxpayer's claim be deemed worthy of consideration, those taxation authorities shall endeavour to come to an agreement with the taxation authorities of the other territory with a view to a satisfactory adjustment.

(2) The taxation authorities may communicate directly with each other to implement the provisions of this Agreement and to ensure its consistent interpretation and application. In particular, the taxation authorities may consult each other to endeavour to resolve disputes arising out of the application of paragraph (4) of Article III or Article IV, or the determination of the source of any particular item of income.

ARTICLE XXII

(1) This Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations either of the Contracting Governments is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Agreement, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Governments in Notes to be exchanged for this purpose.

(2) The termination in respect of the United Kingdom or New Zealand of this Agreement under Article XXIV shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of this Agreement to any territory to which it has been extended under this Article.

ARTICLE XXIII

(1) This agreement shall come into force on the date when the last of all such things shall have been done in the United Kingdom and New Zealand as are necessary to give the Agreement the force of law in the United Kingdom and New Zealand respectively, and shall thereupon have effect—

(a) in the United Kingdom—

(i) as respects income tax, for any year of assessment beginning on or after 6th April 1965;

(ii) as respects surtax, for any year of assessment beginning on or after 6th April 1964;

(iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January 1965 and for the unexpired portion of any chargeable accounting period current at that date;

(iv) as respects capital gains tax, for any year of assessment beginning on or after 6th April 1965; and

(v) as respects corporation tax, for any financial year beginning on or after 1st April 1964;

(b) in New Zealand—

for any year of assessment beginning on or after 1st April 1965.

ARTICLE XXIV

This Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before 30th June

in any calendar year after the year 1967 give notice of termination to the other Contracting Government and, in such event this Agreement shall cease to be effective—

(a) in the United Kingdom—

(i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given; and

(ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given.

(b) in New Zealand—

for any year of assessment beginning on or after 1st April in the calendar year next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Wellington, this 13th day of June, one thousand nine hundred and sixty-six.

For the Government of the United Kingdom:

BARRY SMALLMAN

For the Government of New Zealand:

H. R. LAKE

CONVENTION FISCALE

ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FÉDÉRALE DU CAMEROUN DU 10 JUILLET 1965

Le Gouvernement de la République française et le Gouvernement de la République fédérale du Cameroun désireux d'éviter dans la mesure du possible les doubles impositions et d'établir des règles d'assistance réciproque en matière d'impôts sur le revenu, d'impôts sur les successions, de droits d'enregistrement et de droits de timbre sont convenus, à cet effet, des dispositions suivantes:

TITRE PREMIER
Dispositions Générales

ARTICLE PREMIER

Pour l'application de la présente Convention:

1. Le terme «personne» désigne:
a) toute personne physique;
b) toute personne morale;
c) tout groupement de personnes physiques qui n'a pas la personnalité morale.

2. Le terme «France» désigne la France métropolitaine et les départements d'outremer Guadeloupe, Guyane, Martinique et Réunion).

Le terme «Cameroun» désigne les territoires de la République fédérale du Cameroun.

ARTICLE 2

1. Une personne physique est domiciliée, au sens de la présente Convention, au lieu où elle a son «foyer permanent d'habitation», cette expression désignant le centre des intérêts vitaux, c'est-à-dire le lieu avec lequel les relations personnelles sont les plus étroites.

Lorsqu'il n'est pas possible de déterminer le domicile d'après l'alinéa qui précède, la personne physique est réputée posséder son domicile dans celui des Etats contractants où elle séjourne le plus longtemps. En cas de séjour d'égale durée dans les deux Etats, elle est réputée avoir son domicile dans celui dont elle est ressortissante. Si elle n'est ressortissante d'aucun d'eux, les autorités administratives superieures des Etats trancheront la difficulté d'un commun accord.

2. Pour l'application de la présente Convention, le domicile des personnes morales est au lieu du siège social statutaire; celui des groupements de personnes physiques n'ayant pas la personnalité morale au lieu du siège de leur direction effective.

ARTICLE 3

Le terme «établissement stable» désigne une désigne une installation fixe d'affaires où une entreprise exerce tout ou partie de son activité.

a) Constituent notamment des établissements stables:
(aa) un siège de direction;
(bb) une succursale;
(cc) un bureau;
(dd) un usine;
(ee) un atelier;
(ff) un mine, carrière ou autre lieu d'extraction de ressources naturelles;

(gg) un chantier de construction ou de montage;

(hh) une installation fixe d'affaires utilisée aux fins de stockage, d'exposition et de livraison de marchandises appartenant à l'entreprise;

(ii) un dépôt de marchandises appartenant à l'entreprise entreposées aux fins de stockage, d'exposition et de livraison.

(jj) une installation fixe d'affaires utilisée aux fins d'acheter des marchandises ou de réunir des informations faisant l'objet même de l'activité de l'entreprise;

(kk) une installation fixe d'affaires utilisée à des fins de publicité.

b) On ne considère pas qu'il y a établissement stable si:

(aa) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;

(bb) une installation fixe d'affaires est utilisée aux seules fins de fournitures d'informations, de recherches scientifiques ou d'activités analogues qui ont pour l'entreprise un caractère préparatoire.

c) Une personne agissant dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant — autre qu'un agent jouissant d'un statut indépendant, visé à l'alinéa (*e*) ci-après — est considérée comme «établissement stable» dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise.

Est notamment considéré comme exerçant de tels pouvoirs, l'agent qui dispose habituellement dans le premier Etat contractant d'un stock de produits ou marchandises appartenant à l'entreprise au moyen duquel il exécute régulièrement des commandes qu'il a reçues pour le compte de l'entreprise.

d) Une entreprise d'assurance de l'un des Etats contractants est considérée comme ayant un établissement stable dans l'autre Etat contractant dès l'instant que, par l'intermediaire d'un représentant n'entrant pas dans la catégorie des personnes visées à l'alinéa (*e*) ci-après, elle perçoit des primes sur le territoire dudit Etat ou assure des risques situés sur ce territoire.

e) On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y effectue des opérations commerciales par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordiniare de leur activité. Toutefois, si l'intermédiaire dont le concours est utilisé dispose d'un stock de marchandises en consignation à partir duquel sont effectuées les ventes et les livraisons, il est admis que ce stock est caractéristique de l'existence d'un établissement stable de l'entreprise.

f) Le fait qu'une société domiciliée dans un Etat contractant contrôle ou soit contrôlée par une société qui est domiciliée dans l'autre Etat contractant ou qui y effectue des opérations commerciales (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces deux sociétés un établissement stable de l'autre.

ARTICLE 4

Sont considérés comme biens immobiliers, pour l'application de la présente Convention, les droits auxquels s'applique la législation fiscale concernant la propriété foncière, ainsi que les droits d'usufruit sur les biens immobiliers, à l'exception des créances de toute nature garanties par gage immobilier.

La question de savoir si un bien ou un droit a le caractère immobilier ou peut être considéré comme l'accessoire d'un immeuble sera résolue d'après la législation de l'Etat sur le territoire duquel est situé le bien considéré ou le bien sur lequel porte le droit envisagé.

ARTICLE 5

1. Les ressortissants, les sociétés et autres groupements d'un Etat contractant ne seront pas soumis dans l'autre Etat à des impôts autres ou plus élevés que ceux frappant les ressortissants, les sociétés et autres groupements de ce dernier Etat se trouvant placés dans la même situation.

2. En particulier, les ressortissants d'un Etat contractant qui sont imposables sur le territoire de l'autre Etat contractant bénéficient, dans les mêmes conditions que les ressortissants de ce dernier Etat, des exemptions, abattements à la base déductions et réductions d'impôts ou taxes quelconques accordés pour charges de famille.

ARTICLE 6

Pour l'application des dispositions contenues dans la présente Convention, l'expression «autorités compétentes» désigne:

– dans le cas de la France, le Ministre des Finances et des Affaires économiques;
– dans le cas du Cameroum le Ministre des Finances;

ou leur représentants dûment autorisés.

ARTICLE 7

Pour l'application de la présente Convention par l'un des Etats contractants, tout terme non défini dans cette Convention recevra, à moins que le contexte ne l'exige autrement, la signification que lui donnent les lois en vigueur dans l'Etat considéré, en ce qui concerne les impôts visés dans cette Convention.

TITRE II

Doubles Impositions

CHAPITRE PREMIER

Impôts sur les revenus.

ARTICLE 8

1. Le présent chapitre est applicable aux impôts sur le revenu perçus pour le compte de chacun des Etats contractants et de ses collectivités locales, quel que soit le système de perception.

Sont considérés comme impôts sur les revenues les impôts sur le revenu total ou sur les éléments du revenu (y compris les plus-values).

2. les dispositions du présent chapitre ont pour objet d'éviter les doubles impositions qui pourraient résulter, pour les personnes (entendues au sens de l'article premier) dont le domicile fiscal, déterminé conformément à l'article 2, est situé dans l'un des Etats contractants, de la perception simultanée ou successive dans cet Etat et dans l'autre Etat contractant des impôts visés au paragraphe 1 ci-dessus.

3. Les impôts actuels auxquels s'applique le présent chapitre sont:

En ce qui concerne la France:
a) l'impôt sur le revenu des personnes physiques,
b) la taxe complémentaire,
c) l'impôt sur les bénéfices des sociétés ou autres personnes morales.
En ce qui concerne le Cameroun:
a) l'impôt sur le revenu des personnes physiques (taxe proportionnelle et surtaxe progressive),
b) l'impôt forfaitaire sur le revenu des personnes physiques,
c) l'impôt sur les sociétés ou l'impôt minimum forfaitaire sur les sociétés,
d) les centimes additionnels communaux et taxes accessoires.

4. La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats se communiqueront, dès leur promulgation, les modifications apportées à leur législation fiscale.

5. Si, en raison de modifications intervenues dans la législation fiscale de l'un des Etats contractants, il apparait opportun d'adapter certains articles de la Convention sans affecter les principes généraux de celle-ci, les ajustements nécessaires pourront être effectués d'un commun accord, par voie d'échange de notes diplomatiques.

ARTICLE 9

Les revenus des biens immobiliers, y compris les bénéfices des exploitations agricoles et forestières ne sont imposables que dans l'Etat où ces biens sont situés.

ARTICLE 10

1. Les revenus des entreprises industrielles, minières, commerciales ou financières ne sont imposables que dans l'Etat sur le territoire duquel se trouve un établissement stable.

2. Lorsqu'une entreprise possède des établissements stables dans les deux Etats contractants, chacun d'eux ne peut imposer que le revenu provenant de l'activité des établissements stables situés sur son territoire.

3. Le bénéfice imposable ne peut excéder le montant des bénéfices industriels, miniers, commerciaux ou financiers réalisés par l'établissement stable, y compris, s'il y a lieu, les bénéfices ou avantages retirés indirectement de cet établissement ou qui auraient été attribués ou accordés à des tiers soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen. Une quote-part des frais généraux du siège de l'entreprise est imputée aux résultats des différents établissements stables au prorata du chiffre d'affaires realisé dans chacun d'eux.

4. Lorsque les contribuables dont l'activité s'étend sur les territoires des deux Etats contractants ne tiennent pas une comptabilité régulière faisant ressortir distinctement et exactement les bénéfices afférents aux établissements stables situés dans l'un et l'autre Etats, le bénéfice respectivement imposable par ces Etats peut être déterminé en répartissant les résultats globaux au prorata du chiffre d'affaires réalise dans chacun d'eux.

5. Dans le cas où un des établissements situés dans l'un ou l'autre des Etats contractants ne réalise pas de chiffre d'affaires et dans le cas où les activités exercées dans chaque Etat ne sont pas comparables, les autorités compétentes des deux Etats se concertent pour arrêter les conditions d'application des paragraphes 3 et 4 ci-dessus.

ARTICLE 11

1. Lorsqu'une entreprise de l'un des Etats contractants du fait de sa participation à la gestion ou au capital d'une entreprise de l'autre Etat contractant, fait ou impose à cette dernière, dans leurs relations commerciales ou financières, des conditions différentes de celles qui seraient faites à une tierce entreprise, tous bénéfices qui auraient dû normalement apparaitre dans les comptes de l'une des entreprises, mais qui ont été de la sorte tranférés à l'autre entreprise, peuvent être incorporés aux bénéfices imposables de la première entreprise.

2. Une entreprise est considérée comme participant à la gestion ou au capital d'une autre entreprise notamment lorsque les mêmes personnes participent directement ou indirectement à la gestion ou au capital de chacune de ces deux entreprises.

ARTICLE 12

Les revenus provenant de l'exploitation d'aéronefs, en trafic international, ne sont imposables que dans l'Etat contractant où se trouve le domicile fiscal de l'entreprise.

ARTICLE 13

Sous réserve des dispositions des articles 15 à 17 ci-après, les revenus des valeurs mobilières et les revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêts et de commandites, intérêts d'obligations ou de tous autres titres d'emprunts négociables) payés par des sociétés ou des collectivités publiques ou privées ayant leur domicile fiscal sur le territoire de l'un des Etats contractants sont imposables dans cet Etat.

ARTICLE 14

Une société d'un Etat contractant ne peut être assujettie sur le territoire de l'autre Etat contractant au paiement d'un impôt sur les distributions de revenus de valeurs mobilières et de revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêts et de commandites, interêts d'obligations ou de tous autres tires d'emprunts négociables) qu'elle effectue, du seul fait de sa participation dans la gestion ou dans le capital des sociétés domiciliées dans cet autre Etat ou à cause de tout autre rapport avec ces sociétés; mais les produits distribués par ces dernières sociétés et passibles de l'impôt sont, le cas échéant, augmentés de tous les bénéfices ou avantages que la société du premier Etat aurait indirectement retirés desdites societés, soit par voie de majoration ou de diminution des prix d'achat ou de vente, soit par tout autre moyen.

ARTICLE 15

1. Lorsqu'une société ayant son domicile fiscal dans l'un des Etats contractants s'y trouve soumise au paiement d'un impôt frappant les distributions de revenus de valeurs mobilières et de revenus assimilés (produits d'actions, de parts de fondateur, de parts d'intérêts et de commandités, intérêts d'obligations ou de tous autres titres d'emprunts négociables) et qu'elle possède un ou plusieurs établissements stables sur le territoire de l'autre Etat contractant à raison desquels elle est également soumise dans ce dernier Etat au paiement d'un même impôt, il est procédé à une répartition, entre les deux Etats, des revenus donnant ouverture audit impôt, afin d'éviter une double imposition.

2. La repartition prévue au paragraphe

qui précède s'établit, pour chaque exercice, sur la base du rapport:

$\frac{A}{B}$ pour l'Etat dans lequel la société n'a pas son domicile fiscal,

$\frac{B-A}{B}$ pour l'Etat dans lequel la société a son domicile fiscal,

– la lettre A désignant le montant des résultats comptables obtenus par la société en provenance de l'ensemble des établissements stables qu'elle possède dans l'Etat où elle n'a pas son domicile fiscal, toutes compensations étant faites entre les résultats bénéficiaires et les résultats déficitaires de ces établissements. Ces bénéfices comptables s'entendent de ceux qui sont réputés réalisés dans lesdits établissements, au regard des dispositions des articles 10 et 11 de la présente Convention;

– la lettre B le résultat comptable total de la société, tel qu'il résulte de son bilan général.

Pour la détermination du résultat comptable total, il est fait abstraction des résultats déficitaires constatés pour l'ensemble des établissements stables de la société dans un Etat quelconque, toutes compensations étant faites entre les résultats bénéficiaires et les résultats déficitaires de ces établissements.

Dans le cas où le résultat comptable total d'un exercice est nul ou négatif, la répartition s'effectue sur les bases antérieurement dégagées.

En l'absence de bases antérieurement dégagées, la répartition s'effectue selon une quotité fixée par commune entente entre les autorités competentes des Etats contractants intéressés.

3. Lorsque les bénéfices distribués comprennent des produits de participations détenues par la société dans le capital d'autres sociétés et que ces participations remplissent, pour bénéficier des régimes spéciaux auxquels sont soumises les sociétés affiliées, les conditions exigées en vertu de la législation interne soit de l'Etat du domicile fiscal de la societé, soit de l'autre Etat, selon qu'elles figurent à l'actif du bilan concernant l'établissement stable situé dans le premier ou dans le second Etat, chacun desdits Etats applique à ces bénéfices distribués, dans la mesure où ils proviennent des produits des participations régies par sa legislation interne, les dispositions de cette législation, en même temps qu'il taxe la partie desdits bénéfices qui ne provient pas du produit de participations, dans la mesure où l'imposition lui en est attribuée suivant les modalités prévues au paragraphe 2 di-dessus.

ARTICLE 16

1. Quand, à la suite de contrôles exercés par les administrations fiscales compétentes, il est effectué sur le montant des bénéfices réalisés au cours d'un exercice, des redressements ayant pour résultat de modifier la proportion définie au paragraphe 2 de l'article 15, il est tenu compte de ces redressements pour la répartition, entre les deux Etats contractants, des bases d'imposition afférentes à l'exercice au cours duquel les redressements interviennent.

2. Les redressements portant sur le montant des revenus à répartir, mais n'affectant pas la proportion des bénéfices réalisés dont il a été tenu compte pour la répartition des revenus faisant l'objet desdits redressements, donnent lieu, selon les règles applicables dans chaque Etat, à une imposition supplémentaire répartie suivant la même proportion que l'imposition initiale.

ARTICLE 17

1. La répartition des bases d'imposition visée à l'article 15 est opérée par la société et notifiée par elle à chacune des administrations fiscales compétentes dans le délai qui lui est imparti par le législation de chaque Etat pour déclarer les distributions de produits imposables auxquelles elle procède.

A l'appui de cette répartition, la société fournit à chacune desdites administrations, outre les documents qu'elle est tenue de produire ou de déposer en vertu de la législation interne, une copie de ceux produits ou déposés auprès de l'Administration de l'autre Etat.

2. Les difficultés ou contestations qui peuvent surgir au sujet de la répartition des bases d'imposition sont réglées d'une commune entente entre les administrations fiscales compétentes.

A défaut d'accord, le différend est tranché par la Commission mixte prévue à l'article 41.

ARTICLE 18

Les tantièmes, jetons de présence et autres rémunérations attribués aux membres des conseils d'administration ou de surveillance de sociétés anonymes, sociétés en commandite par actions ou sociétés coopératives, en leur dite qualité, sont imposables dans l'Etat contractant où la société a son domicile fiscal, sous réserve de l'application des articles 22 et 23 ci-après en qui concerne les rémunérations perçues par les intéressés en leurs autres qualités effectives.

Si la société possède un ou plusieurs établissements stables sur le territoire de l'autre Etat contractant, les tantièmes, jetons de présence et autres rémunérations visés ci-dessus sont imposés dans les conditions fixées aux articles 15 à 17.

ARTICLE 19

1. L'impôt sur le revenu des prêts, dépôts, comptes de dépôts, bons de caisse et de toutes autres créances non réprésentées par des titres négociables est perçu dans l'Etat du domicile fiscal du créancier.

2. Toutefois, chaque Etat contractant conserve le droit d'imposer par voie de retenue à la source, si sa législation interne le prévoit, les revenus visés au paragraphe 1 ci-dessus.

3. Les dispositions des paragraphes 1 et 2 ci-dessus ne s'appliquent pas lorsque le bénéficiaire des intérêts, domicilié dans un Etat contractant, possède dans l'autre Etat contractant d'où proviennent les intérêts, un établissement stable auquel se rattache effectivement la créance qui les produit. Dans ce cas l'article 10 concernant l'imputation des bénéfices aux établissements stables est applicable.

ARTICLE 20

1. Les redevances (royalties) versées pour la jouissance de biens immobiliers ou l'exploitation de mines, carrières ou autres ressources naturelles ne sont imposables que dans celui des Etats contractants où sont situés ces biens, mines, carrières ou autres ressources naturelles.

2. Les droits d'auteur ainsi que les produits ou redevances (royalties) provenant de la vente ou de la concession de licences d'exploitation de brevets, marques de fabrique, procédés et formules secrets qui sont payés dans l'un des Etats contractants à une personne ayant son domicile fiscal dans l'autre Etat contractant ne sont imposables que dans ce dernier Etat.

3. Sont traitées comme les redevances visées au paragraphe 2, les sommes payées pour la location ou le droit d'utilisation des films cinématographiques, les rému-

nérations analogues pour la fourniture d'informations concernant des expériences d'ordre industriel, commercial ou scientifique et les droits de location pour l'usage d'équipements industriels commerciaux ou scientifiques sous réserve du cas où ces équipements ont le caractère immobilier, auquel cas le paragraphe 1 est applicable.

4. Si une redevance (royalty) est supérieure à la valeur intrinsèque et normale des droits pour lesquels elle est payée, l'exemption prévue aux paragraphes 2 et 3 ne peut être appliquée qu'à la partie de cette redevance qui correspond à cette valeur intrinsèque et normale.

5. Les dispositions des paragraphes 2 et 3 ne s'appliquent pas lorsque le bénéficiaire des redevances ou autres rémunérations entretient dans l'Etat contractant d'où previennent ces revenus un établissement stable ou une installation fixe d'affaires servant à l'exercice d'une profession libérale ou d'une autre activité indépendante et que ces redevances ou autres rémunérations sont à attribuer à cét établissement stable ou à cette installation fixe d'affaires. Dans ce cas, ledit Etat a le droit d'imposer ces revenus conformément à sa législation.

ARTICLE 21

Les pensions et les rentes viagères ne sont imposables que dans l'Etat contractant où le bénéficiaire a son domicile fiscal.

ARTICLE 22

1. Sauf accords particuliers prévoyant des régimes spéciaux en cette matière, les salaires, traitements et autres rémunérations similaires qu'une personne domiciliée dans l'un des deux Etats contractants reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi est exercé dans l'autre Etat contractant, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.

2. Nonobstant les dispositions du paragraphe 1 ci-dessus, les rémunérations qu'une personne domiciliée dans un Etat contractant reçoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:

a) le bénéficiaire séjourne dans l'autre Etat pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée;
b) les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas domicilié dans l'autre Etat et
c) les rémunérations ne sont pas déduites des bénéfices d'un établissement stable ou d'une base fixe que l'employeur a dans l'autre Etat.

3. Nonobstant les dispositions précédentes du présent article, les rémunérations afférentes à une activité exercée à bord d'un aéronef en trafic international ne sont imposables que dans l'Etat contractant où l'entreprise a son domicile.

ARTICLE 23

1. Les revenus qu'une personne domiciliée dans un Etat contractant retire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que cette personne ne dispose de façon habituelle dans l'autre Etat contractant d'une base fixe pour l'exercice de ses activités. Si elle dispose d'une telle base, la partie des revenus qui peut être

attribuée à cette base est imposable dans cet autre Etat.

2. Sont considérées comme professions libérales, au sens du présent article, notamment l'activité scientifique, artistique, littéraire, enseignante ou pédagogique ainsi que celle des médecins, avocats, architectes ou ingénieurs.

ARTICLE 24

Les sommes qu'un étudiant ou un stagiaire de l'un des deux Etats contractants, séjournant dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

ARTICLE 25

Les revenus non mentionnés aux articles précédents ne sont imposables que dans l'Etat contractant du domicile fiscal du bénéficiaire à moins que ces revenus ne se rattachent à l'activité d'un établissement stable que ce bénéficiaire posséderait dans l'autre Etat contractant.

ARTICLE 26

Il est entendu que la double imposition est évitée de la manière suivante.

1. Un Etat contractant ne peut pas comprendre dans les bases des impôts sur le revenu visés à l'article 8 les revenus qui sont exclusivement imposables dans l'autre Etat contractant en vertu de la présente Convention mais chaque Etat conserve le droit de calculer l'impôt au taux correspondant à l'ensemble des revenus imposables d'après sa législation.

2. Les revenus visés aux articles 13, 15, 18 et 19 ayant leur source au Cameroun et perçus par des personnes domiciliées en France ne peuvent être imposés au Cameroun qu'à la taxe proportionnelle frappant par voie de retenue à la source les revenus des capitaux mobiliers.

Réciproquement les revenus de même nature ayant leur source en France et perçus par des personnes domiciliées au Cameroun ne peuvent être imposés en France qu'à la retenue à la source sur le revenu des capitaux mobiliers.

3. Les revenus de capitaux mobiliers et les intérêts de source camerounaise visés aux articles 13, 15, 18 et 19 et perçus par des personnes physiques, sociétés ou autres collectivités domiciliées en France sont compris dans cet Etat dans les bases des impôts visés au paragraphe 3 de l'article 8 pour leur montant brut sous réserve de la disposition ci-après:

Les revenus mobiliers de source camerounaise visés aux articles 13, 15 et 18 et soumis à l'impôt camerounais sur le revenu des capitaux mobiliers par application desdits articles sont exonérés en France de la retenue à la source sur le revenu des capitaux mobiliers. Cette retenue est néanmoins considérée pour le calcul, soit de l'impôt sur le revenu des personnes physiques, soit des autres impôts dans les bases desquels ces revenus se trouvent compris, comme ayant été effectivement acquittée au taux normal applicable aux revenus de même nature ayant leur source en France.

4. Les revenus de capitaux mobiliers et les intérêts de source française visés aux articles 13, 15, 18 et 19 et perçus par des personnes domiciliées au Cameroun ne peuvent être assujettis dans cet Etat qu'à la surtaxe progressive.

CHAPITRE II
Impôt sur les successions.

ARTICLE 27

1. Le présent chapitre est applicable aux impôts sur les successions perçus pour le compte de chacun des Etats contractants.

Sont considérés comme impôts sur les successions: les impôts perçus par suite de décès sous forme d'impôts sur la masse successorale, d'impôts sur les parts héréditaires, de droits de mutation ou d'impôts sur les donations pour cause de mort.

2. Les impôts actuels auxquels s'applique le présent chapitre sont:

En ce qui concerne la France:

– l'impôt sur les successions:

En ce qui concerne le Cameroun:

– l'impôt sur les successions.

ARTICLE 28

Les biens immobiliers (y compris les accessoires) ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où ils sont situés; le cheptel mort ou vif servant à une exploitation agricole ou forestière n'est imposable que dans l'Etat contractant où l'exploitation est située.

ARTICLE 29

Les biens meubles corporels ou incorporels laissés par un défunt ayant eu au moment de son décès son domicile dans l'un des Etats contractants et investis dans une entreprise commerciale, industrielle ou artisanale de tout genre sont soumis à l'impôt sur les successions suivant la règle ci-après:

a) Si l'entreprise ne possède un établissement stable que dans l'un des deux Etats contractants, les biens ne sont soumis à l'impôt que dans cet Etat; il en est ainsi même lorsque l'entreprise étend son activité sur le territoire de l'autre Etat contractant sans y avoir un établissement stable;

b) Si l'entreprise a un établissement stable dans les deux Etats contractants, les biens sont soumis à l'impôt dans chaque Etat dans la mesure où ils sont affectés à un établissement stable situé sur le territoire de cet Etat.

Toutefois, les dispositions du présent article ne sont pas applicables aux investissements effectués par le défunt dans les sociétés à base de capitaux (sociétés anonymes, sociétés en commandite par actions, sociétés à responsabilité limitée, sociétés coopératives, sociétés civiles soumises au régime fiscal des sociétés de capitaux) ou sous forme de commandite dans les sociétés en commandite simple.

ARTICLE 30

Les biens meubles corporels ou incorporels rattachés à des installations permanentes et affectés à l'exercice d'une profession libérale dans l'un des Etats contractants ne sont soumis à l'impôt sur les successions que dans l'Etat contractant où se trouvent ces installations.

ARTICLE 31

Les biens meubles corporels, y compris les meubles meublants, le linge et les objets ménagers ainsi que les objets et collections d'art autres que les meubles visés aux articles 29 et 30 ne sont soumis à l'impôt sur les successions que dans celui des Etats contractants où ils se trouvent effectivement à la date du décès.

Toutefois, les bateaux et les aéronefs ne sont imposables que dans l'Etat contractant où ils ont été immatriculés.

ARTICLE 32

Les biens de la succession auxquels les articles 28 à 31 ne sont pas applicables ne

sont soumis aux impôts sur les successions que dans l'Etat contractant où le défunt avait son domicile au moment de son décès.

ARTICLE 33

1. Les dettes afférentes aux entreprises visées aux articles 29 et 30 sont imputables sur les biens affectés à ces entreprises. Si l'entreprise possède, selon le cas, un établissement stable ou une installation permanente dans les deux Etats contractants les dettes sont imputables sur les biens affectés à établissement ou à l'installation dont elles dépendent.

2. Les dettes garanties, soit par des immeubles ou des droits immobiliers, soit par des bateaux ou aéronefs visés à l'article 31, soit par des biens affectés à l'exercice d'une profession libérale dans les conditions prévues à l'article 30, soit par des biens affectés à une entreprise de la nature visée à l'article 29, sont imputables sur ces biens. Si la même dette est garantie, à la fois par des biens situés dans les deux Etats, l'imputation se fait sur les biens situés dans chacun d'eux proportionnellement à la valeur taxable de ces biens.

Cette disposition n'est applicable au dettes visées au paragraphe 1 que dans la mesure où ces dettes ne sont pas couvertes par l'imputation prévue à ce paragraphe.

3. Les dettes non visées aux paragraphes 1 et 2 sont imputées sur les biens auxquels sont applicables les dispositions de l'article 32.

4. Si l'imputation prévue aux trois paragraphes qui précèdent laisse subsister dans un Etat contractant un solde non couvert, ce solde est déduit des autres biens soumis à l'impôt sur les successions dans ce même Etat. S'il ne reste pas dans cet Etat d'autres biens soumis à l'impôt ou si la déduction laisse encore un solde non couvert, ce solde est imputé sur les biens soumis à l'impôt dans l'autre Etat contractant.

ARTICLE 34

Nonobstant les dispositions des articles 28 à 33, chaque Etat contractant conserve le droit de calculer l'impôt sur les biens héréditaires qui sont réservés à son imposition exclusive, d'après le taux moyen qui serait applicable s'il était tenu compte de l'ensemble des biens qui seraient imposables d'après sa législation interne.

CHAPITRE III

Droits d'enregistrement autres que les droits de succession. Droits de timbre.

ARTICLE 35

Lorsqu'un acte ou un jugement établi dans l'un des Etats contractants est présenté à l'enregistrement dans l'autre Etat contractant, les droits applicables dans ce dernier Etat sont déterminés suivant les règles prévues par sa législation interne, sauf imputation, le cas échéant, des droits d'enregistrement qui ont été perçus dans le premier Etat, sur les droits dus dans l'autre Etat.

Toutefois, les actes ou jugements portant mutation de propriété, d'usufruit d'immeubles ou de fonds de commerce, ceux portant mutation de jouissance d'immeubles et les actes ou jugements constatant une cession de droit à un bail ou au bénéfice d'une promesse de bail portant sur tout ou partie d'un immeuble ne peuvent être assujettis à un droit de mutation que dans celui des Etats contractants sur le territoire duquel ces immeubles ou ces fonds de commerce sont situés.

Les dispositions du premier alinéa du présent article ne sont pas applicables aux

actes constitutifs de société ou modificatifs du pacte social. Ces actes ne donnent lieu à la perception du droit proportionnel d'apport que dans l'Etat où est situé le siège statutaire de la société. S'il s'agit de fusion ou d'opération assimilée, la perception est effectuée dans l'Etat où est situé le siège de la société absorbante ou nouvelle.

ARTICLE 36

Les actes ou effets créés dans l'un des Etats contractants ne sont pas soumis au timbre dans l'autre Etat contractant lorsqu'ils ont effectivement supporté cet impôt au tarif applicable dans le premier Etat, ou lorsqu'ils en sont légalement exonérés dans ledit Etat.

TITRE III

Assistance Administrative

ARTICLE 37

1. Les autorités fiscales de chacun des Etats contractants transmettent aux autorités fiscales de l'autre Etat contractant les renseignements d'ordre fiscal qu'elles ont à leur disposition et qui sont utiles à ces dernières autorités pour assurer l'établissement et le recouvrement réguliers des impôts visés par la présente Convention ainsi que l'application, en ce qui concerne ces impôts, des dispositions légales relatives à la répression de la fraude fiscale.

2. Les renseignements ainsi échangés qui conservent un caractère secret, ne sont pas communiqués à des personnes autres que celles qui sont chargées de l'assiette et du recouvrement des impôts visés par la présente Convention. Aucun renseignement n'est échangé qui révélerait un secret commercial, industriel ou professionnel. L'assistance peut ne pas être donnée lorsque l'Etat requis estime qu'elle est de nature à mettre en danger sa souveraineté ou sa sécurité ou à porter atteinte à ses intérêts généraux.

3. L'échange des renseignements a lieu soit d'office, soit sur demande visant des cas concrets. Les autorités compétentes des Etats contractants s'entendent pour déterminer la liste des informations qui sont fournie d'office.

ARTICLE 38

1. Les Etats contractants conviennent de se prêter mutuellement assistance et appui en vue de recouvrer, suivant les règles propres à leur législation ou réglementation respectives, les impôts visés par la présente Convention ainsi que les majorations de droits, droits en sus, indemnités de retard, intérêts et frais afférents à ces impôts lorsque ces sommes sont définitivements dues en application des lois ou règlements de l'Etat demandeur.

2. La demande formulée à cette fin doit être accompagnée des documents exigés par les lois ou règlements de l'Etat requérant pour établir que les sommes à recouvrer sont définitivement dues.

3. Au vu de ces documents, les significations et mesures de recouvrement et de perception ont lieu dans l'Etat requis conformément aux lois ou règlements applicables pour le recouvrement et la perception de ses propres impôts.

4. Les créances fiscales à recouvrer bénéficient des mêmes sûretés et privilèges que les créances fiscales de même nature dans l'Etat de recouvrement.

ARTICLE 39

En ce qui concerne les créances fiscales qui sont encore susceptibles de recours, les autorités fiscales de l'Etat créancier, pour la sauvegarde de ses droits, peuvent

demander aux autorités fiscales compétentes de l'autre Etat contractant de prendre les mesures conservatoires que la législation ou la réglementation de celui-ci autorise.

ARTICLE 40

Les mesures d'assistance définies aux articles 38 et 39 s'appliquent également au recouvrement de tous impôts et taxes autres que ceux visés par la présente Convention, ainsi que, d'une manière générale, aux créances de toute nature des Etats contractants.

TITRE IV

Dispositions Diverses

ARTICLE 41

1. Tout contribuable qui prouve que les mesures prises par les autorités fiscales des Gouvernements contractants ont entraîné pour lui une double imposition en ce qui concerne les impôts visés par la présente Convention, peut adresser une demande, soit aux autorités compétentes de l'Etat sur le territoire duquel il a son domicile fiscal soit à celles de l'autre Etat. Si le bien-fondé de cette demande est reconnu, les autorités compétentes des deux Etats s'entendent pour éviter de façon équitable la double imposition.

2. Les autorités compétentes des Gouvernments contractants peuvent également s'entendre pour supprimer la double imposition dans les cas non régles par la présente Convention, ainsi que dans les cas où l'application de la Convention donnerait lieu à des difficultés.

3. S'il apparaît que, pour parvenir à une entente, des pourparlers soient opportuns, l'affaire est déférée à une Commission mixte composée de représentants, en nombre égal, des Gouvernements contractants, désignés par les Ministres des Finance.

La présidence de la Commission est exercée alternativement par un membre de chaque délégation.

ARTICLE 42

Les autorités compétentes des deux Gouvernements contractants se concerteront pour déterminer, d'un commun accord et dans la mesure utile, les modalités d'application de la présente Convention.

ARTICLE 43

La présente Convention sera approuvée conformément aux dispositions constitutionnelles en vigueur dans chacun des deux Etats. Elle entrera en vigueur dès que les notifications constatant que de part et d'autre il a été satisfait à ces dispositions auront été échangées, étant entendu qu'elle produira ses effets pour la première fois:

– en ce qui concerne les impôts sur les revenus, pour l'imposition des revenus afférents à l'année civile 1964 ou aux exercices clos au cours de cette année. Toutefois, pour ce qui est des revenus dont l'imposition est réglée par les articles 13, 15 à 18, la Convention s'appliquera aux distributions ayant eu lieu postérieurement à l'entrée en vigueur de la loi de finances camerounaise n° 9 du 11 juillet 1962;

– en ce qui concerne les impôts sur les successions, pour les successions de personnes dont le decès se produira depuis et y compris le jour de l'entrée en vigueur de la Convention;

– en ce qui concerne les autres droits d'enregistrement et les droits de timbre,

pour les actes et les jugements postérieurs à l'entrée en vigueur de la Convention.

ARTICLE 44

La Convention restera en vigueur sans limitation de durée.

Toutefois, à partir du 1er janvier de l'annee qui suit les cinq premières années d'entrée en vigueur de la présente Convention, chacun des Gouvernements contractants peut notifier à l'autre son intention de mettre fin à la Convention, cette notification devant intervenir avant le 30 juin de chaque année. En ce cas, la Convention cessera de s'appliquer à partir du 1er janvier de l'année suivant la date de la notification, étant entendu que les effets en seront limités:

– en ce qui concerne l'imposition des revenus, aux revenus acquis ou mis en paiement dans l'année au cours de laquelle la notification sera intervenue;

– en ce qui concene l'imposition des successions, aux successions ouvertes au plus tard le 31 décembre de ladite année;

– en ce qui concerne les autres droits d'enregistrement et les droits de timbre, aux actes et aux jugements intervenus au plus tard le 31 décembre de ladite année.

En foi de quoi les soussignés, dûment autorisés à cet effet, ont signé la présente Convention, établie en deux exemplaires originaux.

Fait à Paris, le dix juillet mil neuf cent soixante cinq.

Pour le Gouvernement de la
République française,
Signé: Michel HABIB-DELONCLE

Pour le Gouvernement de la
République fédérale du Cameroun,
Signé: V. KANGA

PROTOCOLE

Au moment de procéder à la signature de la Convention entre le Gouvernement français et le Gouvernement du Cameroun tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative en matière fiscale, les signataires sont convenus de la déclaration suivante qui fait partie intégrante de la Convention:

L'expression «montant but» figurant à l'article 26 de la Convention doit s'entendre du montant des revenus imposables avant déduction de l'impôt auquel ils ont été soumis dans l'Etat de la source.

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IV — BIBLIOGRAPHY:

1. *Books*

2. *Loose-leaf services* 41, 88, 130, III (IV) 219, 263, 350, 437

EDITORIAL

This is the last 1966 issue of the Bulletin. Next year volume XXI will start with a new look and will have supplements every two months. More details will be provided in the first 1967 issue. 1966 is past. During this year the Bulletin has again given its attention to a number of tax problems; aside from problems concerning conventions for the avoidance of double taxation, especially important and difficult subjects of the 1966 Bulletin issues were taxation in developing countries and problems concerning turnover taxation, as became evident in the 1966 editorials. In Europe, a shift from direct taxes to indirect taxes, of which the most important is the turnover tax, seems nearly inevitable. As a result of the efforts of the E.E.C., the value-added system will probably be adopted. In this issue, the text of the Dutch study, announced in the September issue, has been published in German.

Mr. Pepper contributed to the Bulletin, in the February and March issues, general notes on turnover taxation, especially with respect to developing countries, and considered, comprehensively, the causes of the rapidly increasing importance of turnover taxation in recent years all over the world. Mr. de Pitta e Cunha deepened our insight into the causes of the introduction of the Portuguese sales tax (November issue). A new period in the history of turnover taxation is arising. Its ancient and medieval history can be traced through Greece, Indo-China, Egypt, Rome, the German towns of the middle ages, the Kingdom of France, and the Spanish Alcabala, which died its inglorious death under Ferdinand VII in 1819 and the more modern turnover taxes, starting during World War I in Germany, which had their predecessor in the Bremen tax of 1862. Now we discern the rise of a new boom in turnover taxation, but a turnover taxation with a new look. The old or existing look appears to be unsatisfactory for modern times. If we may say so, the existing turnover taxes are again dying an inglorious death. We express our sincere hope that the application of the new concept of turnover taxation will not devolve into an euphoria turned bitter, as was the case with its predecessors. We think, however, that the future of the turnover tax is at the disposal of the politicians. Every deviation from the established basis of the tax calls for problems and may be the cause of a fatal "illness" of the tax. Notwithstanding special political considerations, in our opinion the soundness of the tax system in general is an asset of prime importance to our complex society. "However, much education in citizenship and improvement in parliamentary standarsd is still needed in order to achieve the necessary freeing of turnover tax legislation from political elements."*)

DR. J.C.L. HUISKAMP

*) Quotation from Schmölders: "Turnover Taxation", Developments in Taxation since World War I, volume IV, p. 61.

CONTENTS

I

THE TAXATION OF FOREIGN ENTERPRISES IN TURKEY

by

FEHAMETTIN ERVARDAR

Turkey is, because of its geographical location, its population, its riches and its endless touristic possibilities, a country that promises great economic opportunities. Turkey is not well enough known in Europe. Only since the second world war, after increasing political contacts, did Europe begin to learn again about this country.

Thus, situated at the point where Asia and Europe meet, stretching like a bridge between the two continents, it has been for centuries the scene of many civilizations. It is situated on the migration routes, it possesses a stretch of coast of about 7000 km. and its territory amounts to 3/4 million km². Turkey has all kinds of underground treasures which have hardly been touched. With its population of nearly 35 million it presents a consumers market which cannot be looked down upon.

As regards its geographical characteristics: the Mediterranean climate has plenty of sun, there are coasts of unequalled beauty, high plateaus and grassy plains. Archeological remains of old civilizations are being found again and again, and there are touristic treasures which until now have not been discovered by the West. During the past 30 years industrialization has started, oil fields were discovered and their exploitation developed. All this promises great possibilities for those capitals that are seeking opportunities for investment.

For centuries the Turks have founded free and independent states and empires, they have been attached to their country and their freedom; as a brave and heroic people whose military characteristics are know the world over, they managed to resist the worst of attacks without outside help. Their political ideologies are tied to the west. They take part in defence pacts like Nato and Cento, they are a member of agreements like O.E.C.D., E.E.C., and United Europe. Besides all this, Turkey has a 5 year development plan in order to organize its economy. It is a country that is trying to ensure progress under stable conditions and democratic order.

In this short outline we have tried to show how Turkey presents a favourable market for foreign enterprises which are seeking opportunity for investments.

Foreign investments in Turkey

During its long history, Turkey was, generally speaking, a feudalistic and military state. That is why economic activities, especially in the business and industrial fields, were not sufficiently organized and no experience was obtained. During these times primarily government administration and the military professions were in demand and economic activities were confined to minorities while major industries, communications ect., were in the hands of government, semi-government organizations and under

disguise in the hands of foreign powers. This kind of enterprise had in general such military and political aims that after the proclamation of the Republic many of these enterprises, especially those connected with communications, were nationalized. Only after 1950, when relations were increasing and technical possibilities and means of transport were improving did Turkey, like the rest of the world, try to attract foreign capital. Between 1953 and 1954 laws like the Law on Oil and the Law on the Encouragement of Foreign Capital were passed; they ensure really great possibilities for foreign enterprises. They give them the same privileges as local enterprises and even some special privileges which the local enterprises do not possess. They also give them facilities for the transfer of capital and profits. Thus, in the field of oil, refineries, medicine-production, the manufacturing of tires, cars and trucks, communications, tourism, etc., there are many enterprises taking advantage of these possibilities.

The financial conditions to which foreign enterprises are subject.

In principle, foreign enterprises are subject to the same tax regulations as local enterprises. According to the present tax system foreign enterprises are divided into two groups: private enterprises and capital companies.

A-Private enterprises:

Private firms and private companies (like partnerships, companies with limited liabilities etc.) are subject to income tax. According to this tax, those who settle in Turkey (that is those who take up residence and stay longer than 6 months) are subject to taxation on their earnings and income obtained both in Turkey and abroad. But those those who do not settle in Turkey are only subject to taxation on their professional earnings obtained for services rendered to their place of employment and on income obtained from movable and real estate capital in Turkey.

The terms discussed above should be examined more deeply because precise definitions and descriptions enter into this problem. Income tax in Turkey is a progressive tax and depends on the taxpayers civil status and the grade of his income. Calculated according to the taxation table tax will range from 10% to 60% for incomes of more than half a million lira.

B-Capital and other companies:

A separate and independent Company Tax exists for this group. According to this tax, those who have their legal headquarters as well as their working places in Turkey pay tax on income obtained inside and outside Turkey. If both legal headquarters and working places are outside Turkey, then tax is to be paid only on income obtained from work and activities inside Turkey.

The Company Tax amounts to a fixed 20%. But this kind of company is obliged to make, apart from the paid tax, an extra withholding tax of 20% on the amount of dividend they will pay to their stockholders. So the tax ratio for the above mentioned foreign companies is: 20% Company Tax + (100-20) 20% = 16%, which amounts to 36%.

Companies that earn money without founding any establishment in Turkey (e.g.

royalties, professional activities etc.) must pay only a withholding tax of 20%.

Both for income tax of private persons and for company tax of capital companies the stipulations of the law are as follows: Accounts and their balances must be accurately kept. Tax declarations must be calculated and collected according to loss and profit accounts. The administration can always examine and check these declarations within five years; in the case of deficient or wrong declarations, an added penalty tax will be imposed. These penalties vary from 50-300% according to the seriousness of the case.

Apart from these direct taxes, there may be indirect taxes depending on the character of the entering enterprise (some industrial and service enterprises). Whether taxes like these are imposed or not depends on the law and its application, and will be decided by the experts.

After the foreign enterprises have paid the necessary tax on their net income, and after the yearly balance and net profit have been examined and checked by the administration, they can make a transfer to their home countries, according to specified procedures.

According to this system, foreign companies very often pay a lower tax than they would in their own countries. In addition to the tax paid to the Turkish Ministry of Finance they may have to pay a complementary tax to their home administration.

In this outline we want to show that, in general, under the Turkish Tax System foreign enterprises are under a lighter financial burden than they would be in their own countries.

WORLD TAX REVIEW

NETHERLANDS

DOCUMENTS

EINFÜHRUNG

In den Niederlanden ist seitens des Finanzministeriums ein Studienentwurf eines Mehrwertsteuergesetzes der Wirtschaftskreisen zugeleitet. Der Entwurf ist ein amtlicher Studienentwurf, der nicht von dem Finanzminister oder Staatssekretär unterzeichnet worden ist. Der Entwurf bezweckt die Urteilsbildung mit Bezug auf die Funktionierung einer Mehrwertsteuer für das Wirtschaftsleben zu vereinfachen. Der Entwurf ist seiner Form und seinem Inhalt gemäss das Ergebnis eines nationalen *Studiums und weicht auf verschiedenen Punkten von den EWG Richtlinien ab.*

In dieser Hinsicht ist von Bedeutung dass der Entwurf die Einführung eines Nullsatzes mit völligem Vorsteuerabzug bezweckt (Artikel 9, Absatz 2, c). Er lehnt also diesbezüglich das Prellbockverfahren ab!

Von besonderer Bedeutung ist auch Artikel 22 Absatz 3. Die dort erwähnte Klausel ermöglicht es, auf die Steuererhebung bei der Einfuhr zu verzichten. Damit würden im EWG Binnenhandel die Grenzformalitäten überflüssig werden.

Im Allgemeinen ist das Model der Steuer so weit wie möglich „chemisch rein" gehalten.

*Studienentwurf eines Mehrwertsteuergesetzes für die Niederlande**)

KAPITEL I — *Einführungsvorschriften*

ARTIKEL 1

Unter der Bezeichnung „Umsatzsteuer" wird eine Steuer erhoben:

a) auf Lieferungen von Gegenständen und Dienstleistungen, die Unternehmer im Reich im Rahmen ihres Unternehmens ausführen;

b) auf die Einfuhr von Gegenständen.

ARTIKEL 2

Vom dem geschuldeten Steuerbetrag wird die auf Lieferungen und Dienstleistungen an den Unternehmer sowie auf die Einfuhr von für ihn bestimmten Gegenständen erhobene Umsatzsteuer in Abzug gebracht.

*) Übersetzung Europäische Wirtschaftsgemeinschaft Kommission, 109/IV/66-D.

KAPITEL II — *Besteuerung von Lieferungen und Dienstleistungen*

Abschnitt *1* — *Steuertatbestand*

ARTIKEL 3

1 Lieferungen von Gegenständen sind:
- *a)* die Übertragung des Eigentums an Gegenständen auf Grund eines Vertrages;
- *b)* die Übergabe von Gegenständen auf Grund eines Mietkaufvertrages;
- *c)* die Ablieferung von Gegenständen durch den, der die Gegenstände angefertigt hat;
- *d)* der Übergang des Eigentums an Gegenständen auf Grund einer behördlichen Anordnung;
- *e)* die Übertragung von Gegenständen mit der Folge, daß diese aus dem Betriebsvermögen eines Unternehmers ausscheiden;
- *f)* der Übergang des Eigentums an Gegenständen, die gemäß vertraglicher Vereinbarung an einen beweglichen oder unbeweglichen Gegenstand befestigt werden;
- *g)* das Verfügen über Gegenstände zu betriebsfremden Zwecken;
- *h)* das Verfügen über Gegenstände zu betrieblichen Zwecken, wenn diese im eigenen Betrieb hergestellt worden sind und die Vorsteuer nicht, nicht ganz oder nicht in einem Mal hätte abgesetzt werden können, wenn diese Gegenstände von einem Unternehmer bezogen wären; entsprechendes gilt für die Fälle, in denen das Unternehmen diese Gegenstände unter Materialbeistellung herstellen läßt.

2 Ist der Tatbestand der Lieferung auf Grund von mehr als einer Bestimmung in Absatz 1 erfüllt, wird die zuerst genannte Bestimmung angewendet.

3 Schliessen mehrere Personen Verträge ab, aus denen sich für jeden von ihnen eine Verpflichtung zur Lieferung desselben Gegenstandes ergibt, und wird dieser Gegenstand von der ersten Person unmittelbar an den letzten Abnehmer geliefert, so wird der Gegenstand als durch jede dieser Personen geliefert angesehen.

4 Sicherungsübereignung ist keine Lieferung.

ARTIKEL 4

Dienstleistungen sind alle entgeltlichen Leistungen, die keine Lieferungen von Gegenständen sind.

ARTIKEL 5

Gegenstände sind alle beweglichen und unbeweglichen körperlichen Sachen.

ARTIKEL 6

1 Ort der Lieferung ist,
- *a)* falls der Gegenstand im Zusammenhang mit der Lieferung befördert wird, der Ort, an dem die Beförderung beginnt;
- *b)* in den anderen Fällen der Ort, an dem sich der Gegenstand im Zeitpunkt der Lieferung befindet.

2 Ort der Dienstleistung ist hinsichtlich:

a) der Beförderung von Personen und Gegenständen der Ort, an dem die Beförderungsleistung tatsächlich erbracht wird,

b) — der Vermittlung von Geschäften,
— der Veröffentlichung von Werken einschließlich Musik, Wort und Bild,
— der Reparatur oder anderweitiger Bearbeitung von Gegenständen,
— der Besorgung der Beförderung von Gegenständen
der Ort, an dem die Leistung oder der größte Teil der Leistung erbracht wird;

c) der Vermietung eines Gegenstandes der Ort, an dem von dem Gegenstand Gebrauch gemacht wird, mit der Maßgabe, daß der Ort der Dienstleistung gänzlich als im Reich belegen angesehen wird, wenn ein von einem inländischen Unternehmer gemieteter Gegenstand auch im Ausland verwendet wird;

d) anderer Dienstleistungen der Ort, an dem der Leistungsempfänger die Nutzniessung der Leistung hat.

ARTIKEL 7

1 Unternehmer ist jeder, der selbständig ein „Unternehmen" ausübt.

2 Wo in diesem Gesetz das Wort „Unternehmen" verwendet wird, ist darunter auch Beruf zu verstehen.

3 Unser Minister kann anordnen, daß öffentlich-rechtliche Körperschaften, die Leistungen erbringen, welche ihrer Art nach auch von anderen Unternehmen erbracht werden können und die deswegen nicht schon auf Grund von Absatz 1 die Unternehmereigenschaft besitzen, für diese Leistungen dennoch als Unternehmer anzusehen sind.

Abschnitt *2 — Besteuerungsmaßstab und Steuersätze*

ARTIKEL 8

1 Die Steuer wird nach dem Entgelt bemessen.

2 Entgelt ist der Gesamtbetrag — oder, soweit die Gegenleistung nicht in einer Geldsumme besteht, der Gesamtwert der Gegenleistung —, der für die Lieferung oder Dienstleistung in Rechnung gestellt wird, vermindert um die Umsatzsteuer. Falls für die Lieferung oder Dienstleistung mehr gezahlt als in Rechnung gestellt wurde, tritt der gezahlte Betrag an die Stelle des in Rechnung gestellten Betrages.

3 Abweichend von Absatz 2 gelten für Lieferungen im Sinne von Artikel 3 Absatz 1 Buchstabe g und h die Anschaffungs- oder Herstellungskosten der Gegenstände ohne Umsatzsteuer als Entgelt.

4 Nicht zum Entgelt gehören die in Rechnung gestellten oder gezahlten Beträge, wenn es sich um für den Auftraggeber gezahlte Auslagen an Steuern, einschließlich Zölle handelt.

ARTIKEL 9

1 Der Steuersatz beträgt x vom Hundert.

2 Abweichend von Absatz 1 beträgt der Steuersatz:

a) y vom Hundert für Lieferungen und Dienstleistungen der zu diesem Gesetz gehörenden Tabelle I;
b) z vom Hundert für Lieferungen und Dienstleistungen der zu diesem Gesetz gehörenden Tabelle II;
c) null für Lieferungen und Dienstleistungen der zu diesem Gesetz gehörenden Tabelle III, vorausgesetzt daß die von Uns nötigenfalls zu erlassenden Bedingungen erfüllt sind.

ARTIKEL 10

Wer einen Gegenstand abliefert, für den das Material von einem Nichtunternehmer zur Verfügung gestellt wurde, schuldet, wenn der Steuersatz für den Gegenstand höher ist als für das Material, in den von Unserem Minister zu bestimmenden Fällen auch Umsatzsteuer auf den Wert des zur Verfügung gestellten Materials nach einem Satz in Höhe der Differenz zwischen den beiden obenerwähnten Steuersätzen.

Abschnitt *3* — *Steuerbefreiungen*

ARTIKEL 11

Unter Voraussetzungen und nach Maßgabe von Vorschriften, die von Uns durch Erlass festgesetzt werden, sind von der Umsatzsteuer befreit:

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

Abschnitt *4* — *Erhebungsmodalitäten*

ARTIKEL 12

1 Die Steuer wird erhoben von dem Unternehmer, der die Lieferung oder Dienstleistung ausführt.
2 Hat der Unternehmer, der die Lieferung oder Dienstleistung ausführt, weder Wohnung noch Sitz und keine Betriebstätte im Reich und ist derjenige, an den die Lieferung oder Dienstleistung bewirkt wird, ein Unternehmer, eine öffentlich-rechtliche Körperschaft, Vereinigung oder Stiftung mit Wohnung oder Sitz im Reich, dann wird die Umsatzsteuer jedoch von demjenigen erhoben, an den die Lieferung oder Dienstleistung bewirkt wird.

ARTIKEL 13

1 Die Steuerschuld entsteht:
a) wenn für die Lieferung oder Dienstleistung eine Rechnung ausgestellt werden muss, im Zeitpunkt, in dem die Rechnung ausgestellt wird oder, wenn innerhalb der dafür bestimmten Zeit keine Rechnung ausgestellt worden ist, im Zeitpunkt in dem die Rechnung spätestens hätte ausgestellt werden müssen. Wenn jedesmal für einen Teil der Lieferung oder Dienstleistung rechtzeitig Rechnungen ausge-

stellt werden, wird der betreffende Steuerteilbetrag in dem Zeitpunkt geschuldet, in dem die Rechnung ausgestellt wird;

b) wenn keine Verpflichtung zur Ausstellung einer Rechnung besteht, im Zeitpunkt, in dem die Lieferung oder Dienstleistung ausgeführt wird.

2 Abweichend von Absatz 1 wird die Steuer bei der Vereinnahmung des Entgelts geschuldet, wenn und soweit des Entgelt vereinnahmt wird, bevor die Rechnung ausgestellt oder die Lieferung oder Dienstleistung ausgeführt worden ist, oder soweit das vereinnahmte Entgelt nicht in Rechnung gestellt worden ist oder werden wird.

ARTIKEL 14

Die in einem Zeitraum entstandene Steuerschuld muß auf Grund einer Steuererklärung entrichtet werden.

ARTIKEL 15

Von der in einem Zeitraum entstandenen Steuerschuld kann abgesetzt werden:

a) die Steuer, die in diesem Zeitraum von anderen Unternehmern für die von ihnen an den Unternehmer erbrachten Lieferungen und Dienstleistungen auf einer ordnungsgemäss ausgestellten Rechnung ausgewiesen worden ist.

b) die in diesem Zeitraum entstandene Steuerschuld:

1 für die Einfuhr von Gegenständen durch den Unternehmer oder in dessen Auftrag;

2 wegen Artikel 12 Absatz 2 für Lieferungen und Dienstleistungen, die an den Unternehmer erbracht worden sind;

3 für Gegenstände, über die der Unternehmer zu betrieblichen Zwecken verfügt hat;

jeweils soweit die Gegenstände und Dienstleistungen von dem Unternehmer im Rahmen seines Unternehmens verwendet werden.

2 Kein Vorsteuerabzug wird gewährt, soweit die Gegenstände und Dienstleistungen für die von dem Unternehmer vorzunehmenden Leistungen im Sinne von Artikel 11 benützt werden.

3 Unser Minister erläßt nähere Vorschriften über den Vorsteuerabzug bei Gegenständen und Dienstleistungen, die auch für andere als betriebliche Zwecke oder für Leistungen im Sinne von Artikel 11 verwendet werden.

4 Wir behalten Uns vor, durch Erlass Gegenstände und Dienstleistungen zu benennen, bei denen wegen der Art ihrer Verwendung die Vorsteuer nicht oder nur zum Teil abgesetzt werden kann.

ARTIKEL 16

1 Hinsichtlich des Vorsteuerabzugs für Gegenstände, die als Betriebmittel benutzt werden, kann Unser Minister im Einvernehmen mit Unserem Wirtschaftsminister anordnen, daß

a) der Vorsteuerabzug über mehr als einen Zeitraum verteilt wird,

b) ein Vorsteuerabzug nicht oder nur zum Teil zugelassen wird.

2 Nachdem Unser Minister eine Verordnung zu Absatz 1 erlassen hat, ist der Zweiten Kammer der Generalstaaten sobald wie möglich, spätestens aber innerhalb von

zwei Monaten ein Gesetzentwurf zur Genehmigung der Verordnung vorzulegen. Wird der Gesetzentwurf zurückgezogen oder von einer Kammer der Generalstaaten abgelehnt, ist die Verordnung unverzüglich zurückzuziehen.

ARTIKEL 17

Ist der absetzbare Betrag grösser als der geschuldete Steuerbetrag, wird die Differenz nach Artikel 15 auf die in dem folgenden Zeitraum geschuldete Steuer angerechnet oder, wenn die Differenz mehr als 1.000 Gulden ausmacht oder sich auf den letzten Zeitraum eines Kalenderjahres bezieht, dem Unternehmer auf Antrag zurückgezahlt.

KAPITEL III — *Steuererhebung bei der Einfuhr*

Abschnitt *1* — *Steuertatbestand*

ARTIKEL 18

Einfuhr von Gegenständen ist das Verbringen von Gegenständen in den freien Verkehr. Im freien Verkehr sind alle im Reich befindlichen Gegenstände mit Ausnahme des Zollguts im Sinne des Allgemeinen Zoll- und Akzisengesetzes (Stb. 1961, 31*).

Abschnitt *2* — *Besteuerungsmaßstab und Steuersatz*

ARTIKEL 19

1 Die Steuer wird vom Einfuhrwert erhoben.
2 Der Einfuhrwert ist
   a) der Wert, der nach den für die Ermittlung des Zollwerts geltenden Bestimmungen festgestellt wird, — mit der Massgabe, daß dort, wo von dem Hoheitsgebiet der Niederlande, Belgiens und Luxemburgs die Rede ist, nur Hoheitsgebiet der Niederlande gelesen werden darf, — vermehrt um alle niederländischen Steuern und Abgaben, aber ohne die Umsatzsteuer, und um die Transportkosten bis zum Bestimmungsort, die nicht schon im Wert enthalten sind, oder
   b) das Entgelt für die Lieferung der eingeführten Gegenstände an denjenigen, für den die Gegenstände zum Zeitpunkt der Einfuhr bestimmt sind, wenn das Entgelt höher ist als der Wert im Sinne des Buchstaben a).

ARTIKEL 20

1 Die Steuer beträgt x vom Hundert.
2 Abweichend von Absatz 1 beträgt die Steuer
   a) y vom Hundert für Gegenstände der zu diesem Gesetz gehörenden Tabelle I;
   b) z vom Hundert für Gegenstände der zu diesem Gesetz gehörenden Tabelle II;
   c) Null für Gegenstände der zu diesem Gesetz gehörenden Tabelle III, vorausgesetzt daß die von Uns nötigenfalls zu erlassenden Bedingungen erfüllt sind.

*) Staatsblad van het Koninkrijk der Nederlanden, 1961, p. 31; Staatsdrukkerij- en Uitgeverijbedrijf, Den Haag.

Abschnitt *3* — *Steuerbefreiungen*

ARTIKEL 21

Die Zollbefreiungen nach Artikel 23 Absatz 1 Buchstabe a, Artikel 24 Absatz 1 Buchstabe a, soweit es sich um die Reparatur von Gegenständen handelt, Artikel 25, 26, 27, 28, 30 (Buchstabe a - e?), f, g und h, Artikel 31, 32, 33, 34 und 35 des Erlasses über Zollerhebung 1960 (Stb. 30) gelten entsprechend auch für die Besteuerung der Einfuhr von Gegenständen mit der Maßgabe, daß dort, wo in den Bestimmungen von dem Hoheitsgebiet der Niederlande, Belgiens und Luxemburgs die Rede ist, nur Hoheitsgebiet der Niederlande gelesen werden darf.

Abschnitt *4* — *Erhebungsmodalitäten*

ARTIKEL 22

1 Für die Umsatzbesteuerung der Einfuhr von Gegenständen ist das Allgemeine Zoll- und Akzisengesetz so anzuwenden, als wäre die Umsatzsteuer ein Zoll.
2 Wir behalten Uns vor, mit den nötigen Vorkehrungen zur Sicherung der Steuererhebung durch Erlaß von Absatz 1 abweichende Bestimmungen festzusetzen. Soweit nicht anders angeordnet, gelten diese dann als Zoll- und Akzisenbestimmungen.
3 Unser Minister kann von Absatz 1 abweichende Bestimmungen erlassen, um die Steuer für eingeführte Gegenstände bei dem Bezieher der Gegenstände zu erheben.

KAPITEL IV — *Ausfuhr von Gegenständen*

ARTIKEL 23

Körperschaften im Sinne des Allgemeinen Steuergesetzes (Stb. 1959, 30L)*) ohne Unternehmereigenschaft, die Gegenstände in ungebrauchtem Zustand ausführen oder in Zollagern umschlagen, erhalten die für diese Gegenstände gezahlte Umsatzsteuer auf Antrag erstattet.

KAPITEL V — *Sonderregelungen*

Abschnitt *1* — *Steuerermässigung (Kleine Unternehmer)*

ARTIKEL 24

1 Beträgt die Steuerzahllast eines Unternehmers im Kalenderjahr nach dem Vorsteuerabzug gemäss Artikel 15 nicht mehr als 1.500 Gulden, dann ermässigt sich dieser Betrag um 1.000 Gulden, aber um nicht mehr als den Betrag der Steuerzahllast. Falls die

*) Körperschaften im Sinne dieses Gesetzes sind:
– Juristische Personen,
– Gesellschaften,
– sonstige Personenvereinigungen,
– Unternehmen von juristischen Personen des öffentlichen Rechts,
– Zweckvermögen.

Steuerzahllast höher ist als 1.500 Gulden, wird sie um einen Betrag ermässigt, um den sie niedriger ist als 2500 Gulden.

2 Unser Minister regelt die Anrechnung der Steuerermässigung nach Absatz 1 auf die Zeiträume des Kalenderjahres.

3 Ein Unternehmer, der auf Grund von Absatz 1 keine Steuer, zu entrichten hat, kann auf Antrag nach den von Unserem Minister festzusetzenden Regeln von den Verpflichtungen aus Artikel 30 und 31 entbunden werden. Der Unternehmer darf dan die Umsatzsteuer in keiner Weise auf der Rechnung bekannt geben. Wenn er hiergegen verstösst, wird die Steuerentlastung hinfällig und wird die in Absatz 1 genannte Ermässigung für das betreffende Kalenderjahr nicht gewährt.

Abschnitt *2* — *Steuerzahlung nach vereinnahmten Entgelten*

ARTIKEL 25

Unser Minister kann Regelungen treffen für darin angegebene Unternehmer, die normalerweise nicht an Unternehmer liefern oder für Unternehmer Dienstleistungen erbringen, wonach die Steuerschuld für Lieferungen und Dienstleistungen in dem Zeitraum entsteht, in dem das Entgelt gezahlt wird; die Steuer wird dann nach dem Vereinnahmten Entgelt erhoben.

Abschnitt *3* — *Tabakerzeugnisse*

ARTIKEL 26

Lieferung und Einfuhr von Tabakerzeugnissen im Sinne von Artikel 2 Absatz 1 des Tabaksteuergesetzes (Stb. 1964, 208) werden nach den für die Tabaksteuer geltenden Regeln besteuert und zwar mit der Maßgabe, daß die Steuer a vom Hundert des für die Berechnung der Tabaksteuer maßgeblichen Kleinhandelspreises beträgt. Für diese Steuer wird kein Vorsteuerabzug nach Artikel 15 gewährt.

KAPITEL VI — *Einzelvorschriften*

ARTIKEL 27

1 Auf Antrag wird die für Lieferungen und Dienstleistungen in Rechnung gestellte Steuer erstattet, soweit diese nicht vereinnahmt worden ist und nicht vereinnahmt werden wird.

2 Der Unternehmer, der die ihm in Rechnung gestellte Steuer nach Artikel 15 abgesetzt hat, schuldet den abgesetzten Betrag als eigene Steuer in dem Zeitpunkt, in dem billigerweise angenommen werden muß, daß er die ihm in Rechnung gestellten Beträge nicht oder nicht ganz bezahlen wird. Die Steuerschuld entsteht in jedem Fall zwei Jahre nach der Fälligkeit der in Rechnung gestellten Beträge, soweit sie in diesem Zeitpunkt noch nicht bezahlt worden sind. Die fällig gewordene Steuer wird nach Artikel 14 entrichtet.

ARTIKEL 28

Die Lieferungen und Leistungen eines Unternehmers mit Wohnung oder Sitz im Reich, gelten als im Reich erbracht, soweit er nicht anhand der Bücher und Belege das Gegenteil beweist.

ARTIKEL 29

1 Der Antrag auf Steuererstattung ist zusammen mit der Steuererklärung für den Zeitraum zu stellen, in dem der Erstattungsanspruch entstanden ist.
2 In den Fällen, in denen keine Steuererklärung nach Artikel 14 erforderlich ist, ist die Erstattung auf einem besonderen Vordruck zu beantragen, den Unser Minister herausgibt. Dieser Antrag ist innerhalb von drei Monaten nach Ablauf der Quartals, in dem der Erstattungsanspruch entstanden ist, einzureichen.
3 Über den Erstattungsantrag entscheidet der Inspekteur durch besondere Verfügung.

ARTIKEL 30

Der Unternehmer ist gehalten, unter Beachtung der von Unserem Minister zu erlassenden Richtlinien, über die von ihm und an ihn ausgeführten Lieferungen und Dienstleistungen und die von ihm oder in seinem Auftrag vorgenommenen Einfuhren Aufzeichnungen zu machen.

ARTIKEL 31

1 Der Unternehmer ist verpflichtet, über seine Lieferungen und Dienstleistungen an einen anderen Unternehmer eine nummerierte und mit Datum versehene Rechnung auszustellen, die folgende Angaben enthält:
   a) Tag der Lieferung oder Dienstleistung;
   b) Name und Anschrift des Unternehmers, der die Lieferung oder Dienstleistung ausführt;
   c) Name und Anschrift des Unternehmers, für den die Lieferung oder Dienstleistung ausgeführt wird;
   d) klare Beschreibung der gelieferten Gegenstände oder der geleisteten Dienste;
   e) Menge der gelieferten Gegenstände;
   f) Entgelt;
   g) Betrag der für die Lieferung oder Dienstleistung geschuldeten Steuer. Die Angabe eines anderen als des geschuldeten Steuerbetrags ist nicht zulässig.
2 Die Rechnung muss vor den 25. Tag nach dem Monat angestellt werden, in dem die Lieferung oder Dienstleistung bewirkt wurde.
3 Der Unternehmer ist verpflichtet, ein Doppel der ausgestellten Rechnung aufzubewahren.
4 Unser Minister kann bestimmte Unternehmer oder Gruppen von Unternehmern von den in diesem Artikel genannten Verpflichtungen entbinden.

ARTIKEL 32

Werden die Verpflichtungen aus Artikel 30, 31 und 34 nicht in vollem Umfang erfüllt, dann sind Artikel 25 Absatz 3 und Artikel 29 Absatz 1 des Allgemeinen Steuergesetzes entsprechend anzuwenden.

ARTIKEL 33

Wer auf einer Rechnung Umsatzsteuer angibt, ohne diese Steuer auf Grund von Kapitel I und II zu schulden, schuldet diese Steuer in dem Zeitpunkt, in dem er die Rechnung ausgestellt hat, und hat sie gemäß den Bestimmungen in Artikel 14 abzuführen.

ARTIKEL 34

1 Zur Erleichterung der Steuererhebung können durch Königlichen Erlaß weitere, wenn nötig von den Bestimmungen dieses Gesetzes abweichende Vorschriften angeordnet werden.
2 Durch Königlichen Erlaß können im Rahmen des Gesetzes zweckdienliche nähere Bestimmungen zur Ergänzung der in dem Gesetz geregelten Fragen angeordnet werden.

KAPITEL VII — *Steuereinziehung*

ARTIKEL 35

Die Einziehung von nachveranlagten Steuerbeträgen erfolgt nach den Bestimmungen, die für die Einziehung der direkten Steuern mit Ausnahme der Grundsteuer gelten.

ARTIKEL 36

Die nachveranlagte Steuer ist einen Monat nach dem Datum des Steuerbescheids einziehbar.

KAPITEL VIII — *Strafvorschriften*

ARTIKEL 37

Wer einer Verpflichtung aus Artikel 14, 30 oder 31 nicht nachkommt oder ein in diesen Artikeln ausgesprochenes Verbot übertritt, wird bestraft mit einer Geldbusse bis zu 5.000 Gulden.

KAPITEL IX — *Übergangs- und Schlußvorschriften*

TABELLE III

zum dem Umsatzsteuer-Studienentwurf

1 Lieferung von Zollgut im Sinne des Allgemeinen Zoll- und Akzisengesetzes;
2 Lieferung von Gegenständen, die zur unmittelbaren Ausfuhr bestimmt sind, oder die in einem Zollager umgeschlagen und danach wie in das Inland gelangtes Zollgut behandelt werden;
3 Dienstleistungen, die für Gegenstände im Sinne von 1 und 2 erbracht werden;
4 Beförderung eingeführter Gegenstände bis zum ersten Bestimmungsort nach der Einfuhr;
5 Beförderung von Personen mit Seeschiffen oder Verkehrsflugzeugen, wenn der Bestimmung- oder Abgangsort im Ausland liegt;
6 usw. . . .

ERLÄUTERUNGEN ZU DEM NIEDERLÄNDISCHEN STUDIENENTWURF EINES MEHRWERTSTEUERGESETZES

Einleitung

Der Entwurf stammt von der Direktion Zölle und Verbrauchsteuern des Finanzministeriums. Er trägt den Charakter einer *Studie* und soll in erster Linie der Wirtschaft die Möglichkeit geben, sich ein Urteil über die Wirkungsweise einer Mehrwertsteuer zu bilden.

Überlegungen betreffend ein Umsatzsteuersystem, das eine grössere Wettbewerbsneutralität als das bisher hierzulande geltende System verbürgt, sind nicht allein aufgrund der Entwicklung innerhalb der EWG geboten, sondern auch deshalb, weil die Nachteile der gegenwärtigen kumulativen Allphasensteuer eine Weiterentwicklung des Umsatzsteuersystems hemmen. Insbesondere beeinträchtigt das gegenwärtige Umsatzsteuersystem die Arbeitsteilung, indem es integrierte Unternehmen vielfach günstiger stellt als nicht-integrierte Unternehmen. In verschiedenen Bereichen der Wirtschaft führt dieses System zu einer ungleichen Steuerbelastung. Nachteilig wirkt sich bei diesem Steuersystem auch aus, daß sich bei der Einfuhr die Höhe der Ausgleichsabgaben und bei der Ausfuhr die Höhe der Rückvergütung nicht genau festlegen lassen.

Die Herausgabe des Studienentwurfs eines Mehrwertsteuergesetzes*) will keineswegs besagen, daß die Regierung in der Sache bereits Entscheidungen getroffen hätte. Die in Form eines Gesetzentwurfs vorgelegte Studie beschränkt sich denn auch auf die Hauptprobleme der Technik des Mehrwertsteuersystems und enthält im allgemeinen keine Befreiungen, Steuersätze u. dgl. Indes wird im Entwurf wohl die Wirkungsweise differenzierter Steuersätze im Rahmen des Steuersystems behandelt.

Nach Form und Inhalt stellt der Entwurf das Ergebnis von Untersuchungen im eigenen, nationalen Rahmen dar. Dabei haben die verschiedenen, von den EWG-Organen herausgegebenen Veröffentlichungen — darunter die Richtlinienentwürfe der EWG-Kommission zur Harmonisierung der Umsatzsteuern — als Studienmaterial gedient.

Grundzüge des Entwurfs

Im Mehrwertsteuersystem entrichtet jeder Unternehmer per saldo die Umsatzsteuer für den Mehrwert, den er Gütern oder Dienstleistungen hinzugefügt hat. Im Entwurf ist von der Methode ausgegangen worden, nach der der Unternehmer einen bestimmten Prozentsatz seines Brutto-Umsatzes als Umsatzsteuer schuldet, jedoch die sog. Vorsteuer — die ihm von seinen Lieferanten in Rechnung gestellte Steuer — von seiner Steuerschuld abziehen kann (sog. Vorsteuerabzug). Bei dieser Methode kann auch bei unterschiedlichen Steuersätzen eine Kumulativwirkung vermieden werden. Der Vorsteuerabzug ist in Artikel 15 des Entwurfs geregelt. Ein Beispiel dürfte dies verdeutlichen: Ein Unternehmer verkauft einen Gegenstand zu 1.000 Gulden. Der Verkaufspreis setzt sich zusammen aus: Rohstoffeinkauf 400 Gulden, Hilfsstoffverbrauch 50 Gul-

*) Die Mehrwertsteuer wird auf niederländisch als „belasting over de toegevoegde waarde" (B.T.W.) bezeichnet.

den, Investitionsgüter 50 Gulden, Löhne 400 Gulden, Gewinn 100 Gulden. Bei einem Steuersatz von 10% beträgt die Steuerschuld des Unternehmers 10% von 1000 = 100 Gulden. Diesen Betrag muß er jedoch nicht an das Finanzamt abführen, da er die auf den Roh- und Hilfsstoffen und den Investitionsgütern lastende Steuer von seiner Steuerschuld abziehen kann. Bei 10% von 400 + 50 + 50 sind dies 50 Gulden. Per saldo beträgt seine Steuerzahllast also 50 Gulden. Die Besteuerung seines Lieferanten erfolgt in gleicher Art und Weise.

Aus diesem einfachen Beispiel lassen sich folgende Schlüsse ziehen:

a) Die steuerliche Gesamtbelastung auf den Endpreis des Gegenstands läßt sich genau feststellen. Sie beträgt nämlich 10% van 1.000 Gulden, also 100 Gulden. Die genaue Feststellung der Steuerbelastung ist für die steuerliche Belastung der Einfuhr und die Steuervergütung bei der Ausfuhr von großer Bedeutung. Bei der Einfuhr kann die Ware genau so belastet werden wie eine inländische Ware, und bei der Ausfuhr kann der Gesamtbetrag der im Inland erhobenen Steuer (auch die auf Investitionsgütern ruhende Steuer) vergütet werden. Somit läßt sich die sogenannte externe Neutralität vollständig verwirklichen.

b) Das Ausmaß der Integration und die Zahl der Produktions- und Handelsstufen hat im Güter-wie im Dienstleistungsbereich keinen Einfluß auf die Höhe der Gesamtsteuerbelastung. Hätte der Unternehmer in unserem Beispiel die nötigen Rohstoffe selbst produziert, wäre die Gesamtbelastung immer noch 100 Gulden geblieben. Wettbewerbsstörungen wird damit vorgebeugt, so daß auch die sogenannte „interne Wettbewerbsneutralität" zu ihrem Recht kommt.

c) Ein vom Normalsatz abweichender Steuersatz auf den vor der Endstufe liegenden Umsatzstufen hat keinen Einfluß auf den Endpreis der Ware. Werden im gegebenen Beispiel die Rohstoffe niedriger besteuert, kann der Unternehmer auch weniger Vorsteuer abziehen. Die Gesamtbelastung der hergestellten Waren bleibt jedoch gleich. Dies wird in der Regel als Nachholwirkung der Mehrwertsteuer bezeichnet.

Im vorliegenden Beispiel wurde zur Verdeutlichung eine direkte Verbindung zwischen der Umsatzsteuer auf dem Verkaufspreis des Endprodukts und der Umsatzsteuer auf den Einzelbestandteilen des Verkaufspreises hergestellt. In dem Entwurf ist dies jedoch nicht der Fall, denn hier geht man davon aus, daß der Unternehmer die gesamte in Rechnung gestellte Steuer sofort abziehen kann. Es ist also nicht so, daß die Umsatzsteuer, die auf einem bestimmten Rohstoff lastet, erst abgesetzt werden könnte, wenn das Endprodukt geliefert wird. Die Gesamtsteuer auf allen während eines bestimmten Zeitraums getätigten Ankäufen kann mit der Gesamtsteuer auf allen in diesem Zeitraum vorgenommenen Verkäufen sofort verrechnet werden.

Auch für Investitionsgüter gilt nach dem Entwurf der Sofortabzug. Der Entwurf sieht jedoch die Möglichkeit vor — beispielsweise aus konjunktur-politischen Gründen — für Investitionsgüter auf eine andere Regelung überzugehen, z.B. auf die Verteilung des Vorsteuerabzugs auf mehrere Zeiträume.

Im Interesse eines reibungslosen Funktionierens des Vorsteuerabzugs fordert der Entwurf, daß die gesamte auf den Lieferungen oder Dienstleistungen lastende Umsatzsteuer auf jeder Rechnung getrennt ausgewiesen wird. Selbstverständlich ist auch die ggf. bei der Einfuhr geschuldete Steuer als Vorsteuer absetzbar.

Wie aus Artikel 8 deutlich wird, wird im Gegensatz zu der bisherigen Steuerpraxis im allgemeinen von dem in Rechnung gestellten Betrag ausgegangen. Dies bedeutet eine Vereinfachung, indem ausserdem bei abnormen Verhältnissen die „Nachholwirkung" in Erscheinung tritt. Der Einfachheit halber ist auch auf der letzten Stufe der in Rechnung gestellte Betrag (also nicht der „normale Verkaufspreis") die Bemessungsgrundlage. Steuerbemessungsgrundlage ist nach dem Entwurf das in Rechnung gestellte Entgelt, die Steuer nicht inbegriffen.

Obwohl in dem Entwurf Lieferungen und Dienstleistungen unterschieden werden, kommt dieser Unterscheidung in einem Mehrwertsteuersystem nicht die Bedeutung zu wie bei einer kumulativen Allphasensteuer. Eine unterschiedliche Besteuerung von Lieferungen und Dienstleistungen hat im Unternehmensbereich wegen der genannten Nachholwirkung wenig Bedeutung. Ausserdem wird dadurch das Steuerrecht unnötig kompliziert und in bestimmten Fällen die Wettbewerbsneutralität gestört. Dennoch mußten in dem Entwurf besondere Begriffsbestimmungen für Lieferungen und Dienstleistungen eingeführt werden, weil z.B. der Ort der Lieferung nicht in der gleichen Weise definiert werden kann wie der Ort der Dienstleistung.

Im Entwurf werden mehrere bereits existierende, manchmal bei der Rechtsprechung entwickelte Begriffe verwendet. So ist der bisher geltende Lieferungsbegriff in Artikel 3 fast vollständig übernommen worden. Naturgemäß können die bisher angewendeten zusätzlichen Besteuerungen bei integrierten Unternehmen aufgehoben werden. Eine derartige Besteuerung ist in einem Mehrwertsteuersystem nur in Ausnahmefällen erforderlich (siehe Artikel 3 Absatz 1 Buchstabe h). Auch der Begriff „Dienstleistung" ist im Prinzip unverändert übernommen worden.

VERSCHIEDENE EINZELFRAGEN

a) *Unbewegliche Gegenstände*

Nach Artikel 5 des Entwurfs wird grundsätzlich davon ausgegangen, sowohl bewegliche als auch unbewegliche Gegenstände in die Besteuerung einzubeziehen. In bezug auf unbewegliche Gegenstände bringt der Entwurf noch keine abgerundete Regelung, denn hierbei muß auch noch die Eintragungssteuer und die Mietpolitik beachtet werden.

Für die Umsatzsteuer ist vor allem wichtig, inwieweit eine optimale Neutralität erreicht werden kann und erreicht werden soll. Sie läßt sich erzielen, indem innerhalb der Wirtschaft alle produzierten oder gehandelten Waren möglichst gleichmässig besteuert worden, unabhängig davon, in welcher Weise das Unternehmen an seine unbeweglichen Investitionsgüter herangekommen ist (durch Bau auf Grund eines Auftrags oder durch Kauf) und ob diese Güter nur gemietet oder Eigentum des Unternehmers sind.

Verschiedene Lösungen sind hier denkbar. Extreme Lösungen sind: entweder volle Einbeziehung der unbeweglichen Gegenstände — Verkauf und Vermietung — in die Mehrwertsteuer oder voller Ausschluß. Die erste Lösung paßt am besten in das Mehrwertsteuersystem, da dann der Unternehmer auch die auf den unbeweglichen Gegenständen lastende Steuer voll in Abzug bringen kann. Diese Lösung hat jedoch auch ihre

Nachteile, z.B. daß jeder, der einen unbeweglichen Gegenstand vermietet, auch als Unternehmer angesehen werden müßte. Dies könnte zu Verwaltungsschwierigkeiten führen, weil die Zahl der „Unternehmer" dann sehr zunehmen würde. Blieben dagegen die unbewegliche Gegenstände völlig von der Steuer ausgeschlossen, so hätte das zur Folge, daß die auf dem eingesetzten Material lastende Umsatzsteuer, die natürlich in dem Preis des unbeweglichen Gegenstandes enthalten ist, nicht absetzbar ist. Damit wäre jedoch die Wettbewerbsneutralität der Steuer gestört. Es lassen sich vielleicht Zwischenlösungen finden, die diese Nachteile abschwächen und die Vorteile so weit wie möglich bestehen lassen.

b) *Nullsätze und Steuerbefreiungen*

Der Entwurf unterscheidet zwischen Umsätzen, die dem Steuersatz „Null" unterliegen (Gegenstände und Dienstleistungen laut Tabelle III; siehe Artikel 9 Absatz 2 Buchstabe c) einerseits und steuerbefreiten Umsätzen (Artikel 11) andererseits. Tabelle III enthält eine Reihe von Umsätzen im Zusammenhang mit dem grenzüberschreitenden Warenverkehr. Ferner können hier Gegenstände und Dienstleistungen des notwendigen Lebensbedarfs aufgenommen werden, die aus sozialen Gründen *ganz* von der Steuer befreit werden sollen. Für die in dieser Tabelle aufgeführten Umsätze soll es einen vollständigen Vorsteuerabzug geben, so daß die Gegenstände und Dienstleistungen den Verbraucher „umsatzsteuerfrei" erreichen bzw. das Land „umsatzsteuerfrei" verlassen. Die Zahl der Befreiungen soll jedoch im Hinblick auf die administrativen Erschwernisse niedrig gehalten werden.

Bei den Umsätzen nach Artikel 11 wird wie bei den zum Null-Satz besteuerten Umsätzen keine Umsatzsteuer erhoben, nur gibt es hier keinen Vorsteuerabzug. Die Unternehmer, die diese Umsätze tätigen, kommen mit der Umsatzsteuer nicht in Berührung. Sie sind gewissermassen Privatpersonen gleichzustellen. Durch Artikel 11 können beispielsweise auch die bisher bestehenden Steuerbefreiungen für Umsätze im sog. sozialkulturellen Bereich berücksichtigt werden. Derartige Steuerbefreiungen bezwecken im übrigen, auch den in dem Entwurf zwangsläufig etwas weit gefaßten Begriff „Unternehmer" indirekt wieder etwas einzuengen.

c) *Einfuhr und Ausfuhr*

Die bisherigen umsatzsteuerlichen Vorschriften für das Laden und Löschen, den Güterumschlag u.s.w. in Seehäfen können auch beim Übergang zur Mehrwertsteuer im grossen und ganzen beibehalten werden. Obwohl solche Vorschriften bei einem Mehrwertsteuersystem eigentlich nicht unbedingt erforderlich sind, da die Steuer doch wieder abgezogen werden kann, werden mit der vorgeschlagenen Regelung Verwaltungsschwierigkeiten beseitigt, und die bisher in den Seehäfen bestehende Freiheit bleibt erhalten. Diese Regelungen werden besser funktionieren als bisher, weil die fraglichen Leistungen nach dem Entwurf in Tabelle III aufgenommen werden sollen und der Unternehmer damit in den Genuß des vollen Vorsteuerabzugs gelangt.

Die Ermächtigungsklausel in Artikel 22 Absatz 3 beabsichtigt, die bereits erwähnte Nachholwirkung bei der Wareneinfuhr nutzbar zu machen. Wenn ein Unternehmer, der Waren einführt, deswegen Umsatzsteuer entrichten muß, kann er sie normalerweise fast

sofort wieder abziehen. Insoweit hat die Besteuerung der Einfuhr wenig Wirkung. Die erwähnte Klausel ermöglicht es deshalb, auf die Steuererhebung bei der Einfuhr überhaupt zu verzichten. Damit würden dann insbesondere im EWG-Binnenhandel die Grenzformalitäten überflüssig sein.

Eine besondere Regelung für die Vergütung der Umsatzsteuer bei der Ausfuhr ist beim Mehrwertsteuersystem nicht mehr erforderlich. In Tabelle III (Null-Satz) ist auch die Lieferung von Waren, die das Land verlassen, aufgeführt. Der Vorsteuerabzug hat dann zur Folge, daß die Ware die Grenze völlig „umsatzsteuerfrei" passiert.

d) *Einzelhandel*

Die Umsatzsteuer soll als allgemeine Verbrauchssteuer den Verbraucherpreis von Gütern (und Dienstleistungen) gleichmässig belasten. Dieses Ziel läßt sich optimal durch ein Mehrwertsteuersystem erreichen. Erforderlich ist aber, daß jede Produktions- und Handelsstufe in die Besteuerung einbezogen wird. Wird eine Stufe der Besteuerung entzogen, dann gibt es neben dem Widerspruch zu dem eben verkündeten Ziel der gleichmässigen Belastung noch andere Unzuträglichkeiten, und dies vor allem auf der letzten Handelsstufe beim Einzelhandel, der eine sehr bedeutende Wertschöpfung hat.

Wird die Wertschöpfung im Einzelhandel nicht besteuert, muß dort mit Wettbewerbsdisparitäten gerechnet werden, denn gleichartige Waren werden dann auf eine ungleiche Belastung im Endpreis kommen. In diesem Fall wäre der Einkaufspreis des Einzelhandels entscheidend für die Höhe der Steuerendbelastung. Daraus folgt, daß der Einzelhändler, der aufgrund eines hohen Umsatzes billiger einkaufen kann, weniger Steuer zu überwälzen braucht als ein anderer, der teurer einkauft.

Eine Steuerbefreiung des Einzelhandels würde auch in viel stärkerem Masse als bisher zu verwaltungsmäßigen Komplikationen führen, weil es eine sehr große Gruppe von Unternehmen gibt, bei denen der Einzelhandel eng mit anderen Wirtschaftsfunktionen verbunden ist (zu denken wäre hier sowohl an Kaufhäuser wie an Handwerks- und Dienstleistungsbetriebe).

Bei allen diesen Unternehmen muß sodann die Einzelhandelsfunktion abgetrennt werden. Diese Trennung läßt sich nur durch Pauschalregelungen erreichen. Praktisch werden sich aber Wettbewerbsverzerrungen damit nicht genügend verhindern lassen, da die Spannen des Einzelhandels stark variieren. Selbst in ein und derselben Branche sind die Spannen auf der Einzelhandelsstufe sehr unterschiedlich. Ausserdem ist es oft unmöglich, die Einzelhandelsfunktion von einer anderen Handels- oder Produktionsstufe zu unterscheiden.

Die Einbeziehung des Einzelhandels in die Besteuerung hat ferner den Vorteil, daß auch auf der Einzelhandelsstufe die auf den Investitionsgütern lastende Vorsteuer abgesetzt werden kann, so daß die Umsatzsteuer keine hemmende Wirkung auf die Investitionsbereitschaft in diesem Sektor ausübt. Ausserdem werden bei Lieferungen eines Einzelhändlers an einen anderen Unternehmer keine Störungen auftreten, weil dann die Steuer vom Abnehmer in Abzug gebracht werden kann.

Gegen eine Einbeziehung des Einzelhandels in das Mehrwertsteuersystem können andererseits auch Bedenken vorgebracht werden. In erster Linie handelt es sich hier um die große Gruppe von Unternehmern, die seit dem 1. Januar 1955 nicht mehr mit der

Umsatzsteuer in Berührung gekommen ist. Die Aufhebung der Umsatzsteuerbefreiung für diese Gruppe stößt also an und für sich schon auf Bedenken. Obwohl darauf hingewiesen werden kann, daß eine Befreiung des Einzelhandels von der Umsatzsteuer bedeuten würde, daß er die Steuer — in den höheren Einkaufspreisen — vorzeitiger entrichten muß, als es der Fall wäre, wenn er direkt in die Umsatzsteuer einbezogen wäre, darf nicht übersehen werden, daß er im letzten Fall doch selbst für die pünktliche Abführung der Steuer Sorge zu tragen hat. Ausserdem bringt die Umsatzsteuer für den Einzelhandel, sofern er nicht schon aus anderen Gründen in das Umsatzsteuersystem einbezogen ist, eine zusätzliche administrative Belastung. Indes hätte ein Ausschluß des Einzelhandels von der Mehrwertbesteuerung zur Folge, daß die unter c) erwähnte Möglichkeit, auf die Steuererhebung bei der Einfuhr zu verzichten, in Frage gestellt wird.

Ferner muß noch bedacht werden, daß die in dem Entwurf vorgesehene Regelung für Kleinunternehmer (siehe Abschnitt e) auch für viele kleine Einzelhändler eine Erleichterung bringen würde.

Zum Schluß sei daran erinnert, daß in dem Entwurf zwar von einer Einbeziehung des Einzelhandels in das Mehrwertsteuersystem ausgegangen wird, daß die Regierung aber in diesem Punkte — wie bereits in der Einleitung gesagt — noch keine Entscheidung getroffen hat.

e) *Kleinunternehmer*

Eine Regelung für Unternehmer mit zumeist kleinerem Umsatz enthält Artikel 24. Die in dem Entwurf gewählte Lösung hat einmal zur Folge, daß die kleinsten Unternehmer ganz ausserhalb des Steueranwendungsbereichs bleiben, und zum anderen, daß durch eine gleitende Staffelung sich ein reibungsloser Übergang zur vollen Besteuerung vollzieht. Diese Unternehmer haben grundsätzlich das Recht, die volle Umsatzsteuer ihren Abnehmern gesondert in Rechnung zu stellen, so daß die Steuer auf der nächsten Stufe wieder zum Abzug gelangen kann. Aus kontrolltechnischen Gründen werden diese Unternehmer selbstverständlich die normalen, mit der Steuer verbundenen Pflichten erfüllen müssen. Artikel 24 Absatz 3 gibt allerdings den Kleinunternehmern die Möglichkeit, sich von diesen Pflichten entbinden zu lassen; sie dürfen die Steuer dann aber den Abnehmern nicht gesondert in Rechnung stellen. Diese Regelung kann vor allem vielen kleine Ladenbesitzern und Handwerksmeistern zugute kommen.

Die im Vergleich zu den gegenwärtig geltenden Bestimmungen recht großzügige Regelung, die in Artikel 24 für die Kleinunternehmer vorgesehen ist, erhebt übrigens keinen Anspruch darauf, die einzig denkbare Lösung zu sein.

Beispiele

Einige Beispiele mögen die für Kleinunternehmer vorgeschlagene Regelung verdeutlichen, wobei der Einfachheit halber wieder von einem Steuersatz von 10% ausgegangen wird:

1 Jahresumsatz 20.000 hfl. Dem Unternehmer in Rechnung gestellte Vorsteuer 1.000 hfl. Der Unternehmer hätte dann eine Steuerzahllast von 2000-1000 = 1000 hfl. Er gehört zu dem Personenkreis des Artikels 24 und bleibt ganz ausserhalb des Steueranwendungsbereichs.

2 Jahresumsatz 30.000 hfl. Dem Unternehmer in Rechnung gestellte Vorsteuer 1.500 hfl. Seine Steuerzahllast beträgt somit 3.000-1.500 = 1.500 hfl. Auf Grund von Artikel hat er aber nur 1.500—1.000 = 500 hfl zu entrichten.

3 Jahresumsatz 40.000 hfl. Dem Unternehmer in Rechnung gestellte Vorsteuer 2.000 hfl. Seine Steuerzahllast beträgt somit 4.000—2.000 = 2.000 hfl. Er fällt jedoch unter den Personenkreis des Artikels 24 und braucht nur 2.000—(2.500—2.000) = 1.500 hfl. Steuer zu entrichten.

Nach diesen Beispielen würde ein Einzelhändler mit einer Wertschöpfung (Bruttogewinnspanne) von 20% bei einem Steuersatz von 10% ganz ausserhalb des Anwendungsbereichs der Steuer bleiben, sofern sein Jahresumsatz nicht mehr als 50.000 hfl. beträgt. Einzelhändlern mit einem Umsatz von 50.000 bis 125.000 hfl. kommt bei den gegebenen Sätzen die gleitende Staffelung zugute.

f) *Landwirtschaft*

Abgesehen von der unter e) angeführten Regelung für „Kleinunternehmer" müßten zur systemgerechten Anwendung des Mehrwertsteuersystems alle Unternehmer in die normale Besteuerung einbezogen werden. Geschieht dies nicht, dann besteht die Gefahr, daß die Steuer an den Sachausgaben der Unternehmer „hängen" bleibt. Dies gilt auch für die Unternehmer in der Landwirtschaft, es sei denn, es lägen besondere Umstände vor, die einen Eingriff in das System rechtfertigen. Hierbei muß berücksichtigt werden, daß die Erzeugnisse der Landwirtschaft meistens noch eine oder mehrere Produktions- oder Handelsstufen durchlaufen, auf denen infolge der Nachholwirkung eine auf der Landwirtschaftsstufe abweichende Besteuerung noch korrigiert werden kann. Somit ist es nicht ausgeschlossen, daß eine Regelung zustande kommt, die für diese grosse Unternehmergruppe oder zumindest für einen grossen Teil dieser Gruppe eine Anwendung des Mehrwertsteuersystems in vereinfachter Form vorsieht, die mit einem Mindestmaß an Verwaltungsaufwand funktioniert, jedoch so, daß der Vorteil des Mehrwertsteuersystems, nämlich die Erstattung der Vorsteuer an die Unternehmer, erhalten bleibt.

Um hierzu geeignete Maßnahmen zu treffen, muß noch näher untersucht werden, welches die beste Lösung ist. Die EWG-Kommission konnte bislang noch keine Lösung finden, die für alle Mitgliedstaaten annehmbar wäre.

EINIGE UNTERSCHIEDE ZWISCHEN DEM BISHERIGEN SYSTEM DER KUMULATIVEN MEHRPHASENSTEUER UND DER MEHRWERTSTEUER

Der wichtigste Unterschied zwischen dem bisher geltenden Steuersystem und dem Mehrwertsteuersystem besteht darin, daß bei der Mehrwertsteuer eine optimale Wettbewerbsneutralität hergestellt werden kann. National wie international wird der Unternehmerwettbewerb durch die Mehrwertsteuer nicht gestört. Ferner ist aber noch auf verschiedene für die Erhebungspraxis nicht unwichtige Schwierigkeiten hinzuweisen, die das derzeitige Kumulativsystem mit sich bringt, die jedoch bei einem Mehrwertsteuersystem keine oder nur eine sehr viel geringere Rolle spielen.

Eine bisher regelmässig auftauchende Schwierigkeit ist die Frage, wann eine „Her-

stellung" (Fabricage) vorliegt. Hierzu gibt es eine umfangreiche Rechtsprechung. Bei einer Mehrwertsteuer wird dieses Problem nur sehr geringe Bedeutung haben.

Auch die bisherige, nicht ganz unwichtige Unterscheidung zwischen Roh- und Hilfsstoffen wird fortfallen. Das gleiche gilt für die Unterscheidung zwischen Roh- und Hilfsstoffen einerseits und „Mischnahrung" andererseits. Dies ist u.a. wichtig für die Ausfuhr von Fleisch, Geflügel u.dgl., denn die auf Mischnahrung lastende Steuer kann gegenwärtig bei der Ausfuhr nicht erstattet werden, weil Mischnahrung nicht zu den Grund- und Hilfsstoffen rechnet. Bei einer Mehrwertsteuer würden aber die bezeichneten Waren das Land „steuerfrei" verlassen.

Bei der Mehrwertsteuer braucht auch nicht mehr — von Ausnahmefällen abgesehen — vorgeschrieben zu werden, daß der Wert der Materialbeistellung (um eine Störung des Wettbewerbs zu verhindern) dem vereinbarten Preis oder dem Entgelt zugerechnet werden muß. Im Mehrwertsteuersystem kommt es nämlich nicht zu einer derartigen Wettbewerbsstörung.

Die Mehrwertsteuer sorgt auch dafür, daß die sog. steuerliche Unternehmereinheit keinen Einfluß mehr auf die Höhe der Steuerbelastung hat. Das Dogma der steuerlichen Unternehmereinheit wird demzufolge sehr an Bedeutung verlieren. Das gleiche gilt auch für die Frage, welche Leistungen zu den Innenumsätzen gehören und welche Umsätze innerhalb eines geschlossenen Unternehmer-kreises erbracht werden.

Schließlich sei noch darauf hingewiesen, daß die bisher zwangsläufig recht komplizierte Regelung der Umsatzsteuervergütung bei Ausfuhren in einem Mehrwertsteuersystem auf grund des Vorsteuerabzugs automatisch und ohne umständliche Berechnungen bewirkt wird.

SCHLUSSBEMERKUNGEN

Zur Klarstellung sei darauf hingewiesen, daß der Entwurf davon ausgeht, daß das allgemeine Reichssteuergesetz (Algemene wet inzake rijksbelastingen) auch für die Mehrwertsteuer gilt. Bezüglich der Formvorschriften (Steuererklärung, Nachsteuererhebung usw.) wird auf dieses Gesetz verwiesen.

Die beim Übergang von der bisherigen kumulativen Mehrphasensteuer auf das Mehrwertsteuersystem entstehenden Probleme müßten noch gesondert untersucht werden. So ist es z.B. denkbar, daß die Unternehmer, nachdem der Entwurf eines Mehrwertsteuergesetzes in die Zweite Kammer der Generalstaaten eingebracht worden ist, ihre Investitionen und sonstigen Ankäufe bis zum Zeitpunkt der Einführung der Mehrwertsteuer zurückstellen, um die Möglichkeit des Vorsteuerabzugs ausnutzen zu können. Es müßte daher unter anderem untersucht werden, in welcher Weise ein derartiger „Käuferstreik" begrenzt werden kann.

Erläuterungen zu einzelnen Artikeln

ARTIKEL 3 *Absatz 1 Buchstabe c*

Der Begriff „Herstellen" („vervaardigen") in Artikel 3 Absatz 1 Buchstabe c) deckt sich nicht mit dem bisher gültigen Begriff „Hervorbringen-Fabrikation-" („voort-

brengen-fabricage-") und entspricht mehr dem, was in der Wirtschaft allgemein darunter verstanden wird. Damit wird auch die in dem Entwurf getroffene Unterscheidung zwischen Lieferungen und Dienstleistungen stärker der Verkehrsauffassung angepaßt. Arbeitsgänge wie Verchromen und andere Oberflächen-Bearbeitungen fallen also nicht unter den Begriff „Herstellen" („vervaardigen"), sondern sind Dienstleistungen.

Die Ablieferung von neuerstellten unbeweglichen Gegenständen ist eine Lieferung und fällt damit unter Artikel 3-1-c. Die Reparatur von unbeweglichen Gegenständen ist dagegen als Dienstleistung anzusehen.

ARTIKEL 3 *Absatz 1 Buchstabe h*

Bei Umsatzsteuerbefreiungen auf Grund von Artikel 11 wird, wie bereits in den allgemeinen Erläuterungen gesagt, kein Vorsteuerabzug gewährt (siehe Artikel 15 Absatz 2). Unternehmer, die die für diese befreiten Umsätze benötigten Güter, z.B. Betriebsmittel, selbst herstellen (vervaardigen), unterliegen also einer geringeren Steuerbelastung als Unternehmer, die diese Güter zukaufen. Durch Artikel 3 Absatz 1 Buchstabe h wird dieser Belastungsunterschied korrigiert. Der Artikel ist so gefaßt, daß auch dann, wenn für die sog. Investitionsgüter eine Regelung im Sinne von Artikel 16 getroffen wird, eine unterschiedliche Steuerbelastung vermieden wird.

ARTIKEL 3 *Absatz 3*

Dieser Artikel ist etwas anders gefaßt als der gegenwärtig geltende Artikel 3 Absatz 6 des Umsatzsteuergesetzes 1954. Aufgrund der Neufassung sollen auch Kommissionsgeschäfte unter diese Regelung fallen. Damit wird das reibungslose Funktionieren des Vorsteuerabzugs gefördert.

ARTIKEL 6

Mit der Definition des Ortes der Lieferung wird vermieden, daß eine Vielzahl ausländischer Lieferer in die Umsatzsteuer einbezogen werden muß. Dies bringt administrative Vorteile, hat aber keinen Einfluß auf die Höhe der Steuerendbelastung.

Der Ort der Dienstleistung ist fast genau so definiert wie in dem heutigen Artikel 5 Absatz 2, nur daß Buchstabe d so gefaßt ist, daß er mehr der praktischen Handhabung des heutigen Artikels 5 Absatz 2 Buchstabe e entspricht.

ARTIKEL 7 *Absatz 3*

Auf Grund der geltenden Rechtsprechung bleiben verschiedene Tätigkeiten zur Ausübung der öffentlichen Gewalt ausserhalb der Umsatzbesteuerung. Dies kann vereinzelt zu Störungen der Wettbewerbsverhältnisse führen, wenn nämlich solche Tätigkeiten auch durch Unternehmer ausgeführt werden. Artikel 7 Absatz 3 schafft die Möglichkeit, diese Störungen zu beseitigen.

ARTIKEL 9

Da stark differenzierte Steuersätze das Mehrwertsteuersystem beeinträchtigen, sieht dieser Artikel neben dem allgemeinen Steuersatz und dem sog. Null-Satz lediglich einen ermässigten Steuersatz und einen erhöhten Steuersatz vor.

ARTIKEL 10

Wenn die Rohstoffe für ein bestimmtes Produkt niediger besteuert sind als das Produkt selbst, würde ein fertig gekauftes Endprodukt anders belastet sein, als wenn das gleiche Produkt aus zur Verführung gestellten Grundstoffen hergestellt worden wäre. Artikel 10 soll diese Besteuerungsunterschiede korrigieren, soweit dies aus Wettbewerbsgründen erforderlich erscheint.

ARTIKEL 12

Der Entwurf geht davon aus, daß auch die Auktionsgeschäfte (Veilingen) auf normale Weise in das Steuersystem einbezogen werden. Nach derzeitigen Recht entrichtet für denjenigen, der seine Ware im Wege der Auktion absetzt, der Auktionator (Veiling) die Steuer. Diese gegenwärtig bestehende Sonderregelung würde indes beim mehrwertsteuerlichen Mechanismus des Vorsteuerabzugs gewisse Schwierigkeiten bereiten.

ARTIKEL 25

Da nach Artikel 15 nur *die in Rechnung gestellte* Steuer für den Vorsteuerabzug maßgebend ist, geht der Entwurf von der sogenannten Besteuerung nach vereinbarten Entgelten aus, d.h. die Steuer wird geschuldet im Zeitpunkt der Rechnungserteilung. Artikel 25 gibt Unternehmern, die normalerweise nicht an andere Unternehmer liefern, (z.B. Einzelhandelsgeschäften), die Möglichkeit, die Besteuerung auf die Vereinnahmung abzustellen. In diesen Fällen wird die Steuer in dem Zeitpunkt geschuldet, in dem das Entgelt vereinnahmt worden ist. Diese Regelung bringt andererseits mit sich, daß verschiedene Unternehmer, die nach bisherigem Recht auf die Vereinnahmung abstellen konnten (Handelsagenten, Bücherrevisoren, Rechtsanwälte, Transportunternehmer u. dgl.), sich bei Einführung der Mehrwertsteuer auf die Rechnungserteilung umstellen müssen.

III

TREATIES

NEW TAX CONVENTION BETWEEN FRANCE AND SWITZERLAND – NEUES ABKOMMEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG ZWISCHEN FRANKREICH UND DER SCHWEIZ VOM 9.9.1966

Am 9. September 1966 ist in Paris ein Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Französischen Republik zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen unterzeichnet worden.)*
Das Abkommen wird das jenes über den gleichen Gegenstand vom 31. Dezember 1953 ersetzen.

1. Nach zehnjährigen Verhandlungen ist am 13. Oktober 1937 zwischen der Schweiz und Frankreich ein erstes Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern abgeschlossen worden und am 1. Februar 1939 in Kraft getreten. Die Initiative zum Abschluss dieses Abkommens war von der Schweiz ausgegangen, deren Exportindustrie durch die Auswirkungen des französischen Gesetzes vom 29. Juni 1872 besonders hart getroffen war. Durch dieses Gesetz und ein zugehöriges Dekret vom 6. Dezember 1872 unterwarf Frankreich alle ausländischen Gesellschaften mit Betriebsvermögen irgendwelcher Art in Frankreich der französischen Kapitalertragsteuer. Im Abkommen von 1937 gelang es der Schweiz, diese extraterritoriale französische Besteuerung gemäss Gesetz und Dekret von 1872 zwar zu mildern, nicht aber zu beseitigen. Darüber hinaus wies das Abkommen weitere Lücken auf, indem unter anderem keine Entlastung für die an der Quelle erhobenen Steuern vom Ertrag beweglichen Kapitalvermögens vorgesehen war.

2. Nachdem die Schweiz 1944 die Verrechnungssteuer (von ursprünglich 15%, ab 1. Januar 1945 von 25%) auf Dividenden und Zinsen eingeführt hatte, was insbesondere die französischen Gläubiger solcher schweizerischer Kapitalerträge hart traf, war es 1950 Frankreich, das bei der Schweiz das Begehren um Revision des Abkommens von 1937 anhängig machte, den Einbezug der Quellensteuern vom Ertrag beweglichen Kapitalvermögens verlangte und den Abschluss auch eines Erbschaftssteuerabkommens anregte.

In den beiden am 31. Dezember 1953 nach zähen Verhandlungen unterzeichneten, heute in Geltung stehenden Abkommen betreffend die Einkommens- und Vermögenssteuern einerseits und die Erbschaftssteuern ist es gelungen, neben zahlreichen kleineren Verbesserungen gegenüber dem ersten Abkommen von 1937 insbesondere zu erwirken:

*) Vergleiche: Bundesblatt 27.10.1966, p. 577 et seq.: Botschaft des Bundesrates an die Bundesversammlung über die Genehmigung des zwischen der Schweiz und Frankreich abgeschlossenen Abkommens zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen vom 18. Oktober 1966.

a. für die Einkommens- und Vermögenssteuern: eine weitere, erhebliche Reduktion des Anwendungsbereichs des französischen Gesetzes und Dekrets von 1872 für schweizerische Gesellschaften mit Betriebsstätten in Frankreich (Herabsetzung der Bemessungsgrundlage auf ein Viertel derjenigen von 1937); ferner den vollständigen Verzicht Frankreichs auf seine Quellensteuern auf Dividenden und Zinsen, die in der Schweiz wohnhaften Gläubigern zufliessen. Demgegenüber hat die Schweiz bei Dividenden und Zinsen nur den 5 Prozent der Bruttoerträge übersteigenden Betrag ihrer Quellensteuern zurückzuerstatten.

b. für die Erbschaftssteuern: die Anerkennung des Grundsatzes, dass bewegliches Nachlassvermögen auch dann nur am letzten schweizerischen Wohnsitz des Erblassers zu besteuern ist, wenn dieses Vermögen nach französischer Gesetzgebung seinen Steuerort („assiette") in Frankreich hat.

Allerdings musste die Schweiz Frankreich einen sogenannten Austausch von Auskünften zubilligen, der aber auf Auskünfte beschränkt ist, die für eine richtige Durchführung des Abkommens notwendig sind (Art. 12 des Abkommens von 1953). Auf ursprünglich weitergehende französische Amtshilfeforderungen wurde von der Schweiz nicht eingetreten.

3. Mit Note vom 22. Juli 1965 hat das französische Aussenministerium namens der französischen Regierung beim Bundesrat das Begehren gestellt, kurzfristig Verhandlungen einzuleiten über die Revision des schweizerisch-französischen Einkommens- und Vermögenssteuerabkommens, weil die Erfahrung gezeigt habe, dass angesichts der Entwicklung der Kapitalbewegungen und allgemein der Wirtschaftskonjunktur die Bestimmungen dieses Abkommens der gegenwärtigen Situation nicht mehr angepasst seien.

Der Bundesrat hat am 24. September 1965 beschlossen, diesem Begehren um Einleitung von Verhandlungen zu entsprechen. Er hat eine schweizerische Verhandlungsdelegation aus Vertretern der Eidgenössischen Steuerverwaltung, des Eidgenössischen Politischen Departements, der Konferenz der kantonalen Finanzdirektoren und der Wirtschaft bestellt und diese beauftragt, die französischen Revisionsbegehren abzuklären und die Revision des Abkommens von 1953 unter möglichster Wahrung der Vorteile für die schweizerische Wirtschaft an die Hand zu nehmen. In den ersten beiden Verhandlungsphasen vom 26./27. Oktober 1965 in Bern und vom 21. bis 25 Februar 1966 in Paris haben die französischen Unterhändler ihre Revisionsbegehren dargelegt und durch einen Abkommensentwurf konkretisiert. Nach weitern Verhandlungen vom 18. bis 22. April in Lausanne und vom 10. bis 12. Mai in Paris konnte schliesslich am 26. Mai 1966 in Paris ein neues Abkommen paraphiert werden. Dessen Unterzeichnung ist am 9. September 1966 in Paris erfolgt.

In a coming Supplement to the Bulletin the text of the new convention and an explanation will be published.

MULTILATERAL CONVENTION ON THE AVOIDANCE OF DOUBLE TAXATION IN THE EUROPEAN COMMON MARKET

The Standing Committee of Heads of Revenue Departments met in Brussels on 8 and 9 November 1966 under the chairmanship of M. VerLoren van Themaat, Director-General for Competition. The meeting was concerned mainly with the avoidance of double taxation in the EEC. It was agreed that a multilateral convention would be a suitable means, on the whole, of regulating this matter. However, the novelty of this method means that it is not yet possible to obtain a complete picture of its consequences, which arise chiefly from the very fact that the proposed convention is multilateral. Working Party No. V (International Tax Questions) is to go into this particular aspect more thoroughly.

There was full discussion of the substantive content of the convention. Working Party No. V did the necessary preliminary work: following the OECD model convention, it drew up the text of most of the articles of the convention.

A number of problems that could not be solved at expert level were dealt with by the Heads of Department. These included several specific items such as definition of "permanent establishment", treatment of dividends received from subsidiary companes, royalties and interest.

All the delegations helped to cut down the number and importance of outstanding problems appreciably, so that it was seen that the methods selected and the work done by the experts had really proved their worth.

IV

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GROUPE TERMINOLOGIE; Liste des définitions. Fédération Européenne d'Analystes Financiers. Commission permanente de terminologie. Verlag Hoppenstedt & Co., Darmstadt, Havelstr. 9, W. Germany. 44 pp.

List of book-keeping terms in current use in six European countries (Belgium, West Germany, France, Netherlands, Switzerland, Great Britain) together with their definition and short comments in the French language.

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The second part is concerned with the Federal consumption taxes, stamp duties and tax on motor fuel and other sources of energy, insofar as these taxes can be modified without amendments being made to the Constitution. Part III contains suggested measures for the general improvement of the Brazilian tax system with respect to federal, municipal and state taxes. Some of these measures would necessitate amending the Constitution.

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This comprehensive comparative discourse on the two most significant aspects of European economic integration enables the reader to grasp the full scope of the progress and remaining problems to be solved by the still burgeoning European Communities, the EEC, the ECSC and EURATOM. Beginning with a discussion of the budgetary policies and regulations of the Communities, the presentation turns to an analysis of the tax problems in the Common Market and the activities of the Communities in the field of taxation with particular attention to the basic questions relating to tax harmonization. In addition to statistical comparisons, the authors scrutinize and contrast the legal frameworks under which the Communities are operating. Their work is an important contribution to an understanding of the similarities and differences in those organizations which have been established to further the joint economic goals of their members.
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ITALY

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INKOMSTENBELASTING 1965; Algemene Bank Nederland, Amsterdam. 1965, 32 pp.

Short survey of the major changes in the income tax resulting from the Income Tax Act 1964.

LOONBELASTING VAN AANGENOMEN WERK TOT ZEEVARENDEN, by *Bieze, J.W.;* N.V. Uitgeverij FED – Amsterdam. 1966, 51 pp. Dfls. 5.75.

Compilation of those provisions in the Wage Tax Act and Regulations which concern special categories of taxpayers deemed to receive income from employment, together with annotations.

E.E.G. EN OMZETBELASTING II; Raad voor het Midden- en Kleinbedrijf, Den Haag. 1965, 56 pp.

Second report prepared by the Common Market Committee of the Council for the Medium and Small Business, on the harmonization of turnover tax within the E.E.C. Dutch texts of the E.E.C. Commission's directives, and French, German and English translations of the main contents of the report are added.

NEDERLAND EN DE INTERNATIONALE ONTWIKKELINGSSAMENWERKING, Geschrift No. 136; Centrum voor Staatkundige Vorming, Den Haag. 1966, 85 pp.

Brochure on the role of the Netherlands in international co-operation for development, issued by the Centre of Political Education, an affiliate of the Catholic Party.

INKOMSTENBELASTINGTABEL 1966; L.J. Veen's Uitgeversmij. N.V., Amsterdam, 1966. 91 pp. Dfls. 1.75.

Complete table of individual income tax rates for 1966, with annotations. Notes on the compulsory old age pension premiums are also added.

BEGINSELEN VAN FORMEEL BELASTINGRECHT, by *Soest, J. van;* N.V. Uitgeverij FED., Amsterdam. 1966, 34 pp.

Text of inaugural speech by Professor Van Soest, on the principles of formal tax law (assessment, collection, etc.).

FISCAAL ONDERNEMERSBELEID, Marka boeken, voor organisatie en bedrijf, by *Lindeijer, A.G.F.;* Uitgeverij "Het Spectrum" N.V., Utrecht/Antwerpen. 1966, 218 pp.

Survey on the impact of various kinds of taxation on business decisions.

OPSTELLEN OVER OPENBARE FINANCIËN, 1) Algemene Vraagstukken, 2) Bijzondere Onderwerpen. Agon Bibliotheek, by *Goedhart, C.;* N.V. Uitgevers Mij. Agon Elsevier, Amsterdam. 1966, 228 and 264 pp. Dfls. 11.90 and Dfls. 12.90.

Two collections of articles on various aspects of public finance, which originally appeared in other publications.

Vol. 1 (General Problems) contains articles by, inter alia, *J. Zijlstra* on "the Possibilities and Limits of an Anti-Cyclical Policy" (in German), *P. de Wolff and Th. A. Stevers* on "State Budget and Planning", and *Th. Stevers* on "the Financial Relationship between the State and the Municipalities" (in Dutch).

Vol. 2 (Special Subjects) contains articles by, inter alia, *P.B. Kreukniet,* on "the General Principles of Taxation" (in Dutch), *W. Drees Jr.* on "Distribution of Income and State Expenditure"(in Dutch), and *C. Goedhart* on "Debt-Management in the Netherlands since 1945" (in German).

THE COOPERATIVE MOVEMENT IN THE NETHERLANDS: AN ANALYSIS, Nationale Coöperatieve Raad, 3 Groenhovenstraat, the Hague. 1964, 115 pp.

Analysis of the co-operative movement in the Netherlands with special references to agricultural co-operatives, though some attention is also given to consumers' co-operatives and other forms of co-operation. The text of the new civil law code not yet in force regarding societies is appended.

DE BESTENDIGE GEDRAGSLIJN, FED's Fiscale Brochures, by *Vries, M. de;* N.V. Uitgeverij FED, Amsterdam. 1966, 37 pp. Dfls. 0.10 per page (Dfls. 0.08 subscription rate).

Survey on the meaning and importance of the rule of continuity in the system of computation of annual trade or business profits.

VORDERINGEN, VERPLICHTINGEN, TRANSITORIA, TIJDSTIP VERLIES- EN WINSTREKENING, FED's Fiscale Brochures, by *Hof, J.J.;* N.V. Uitgevers Mij. FED, Amsterdam. 1966, 35 pp. Dfls. 0.10 per page; (Dfls. 0.08 per page subscription rate).

Discussion of the problems arising in connection with the valuation of debts, work in progress and similar assets and liabilities in computing the annual business profits.

DE VERVANGINGSRESERVE, FED's Fiscale Brochures, by *Stil, L.;* N.V. Uitgeverij FED, Amsterdam. 1966, 36 pp. Dfls. 0.10 per page (Dfls. 0.08 subscription rate).

Survey of the history and present legislation concerning replacement reserves.

NEW ZEALAND

A GUIDE TO NEW ZEALAND INCOME TAX PRACTICE 1965-66, by *Staples, C.A.* Sweet and Maxwell (N.Z.) Ltd., 54, The Terrace, Wellington, New Zealand. 1966, 26th edition. 496 pp.

Clear and comprehensive survey of New Zealand income tax provisions, arranged in alphabetical order according to key words.

SUPERANNUATION EXPLAINED (See Australia)

PORTUGAL

LEIDFADEN FUR INVESTITIONEN IN PORTUGAL; Ergänzungsband zu Sonderveröffentlichung Nr. 31 "Die portugiesische Investitionsgesetzgebung". Bundesstelle für Aussenhandelsinformation, Köln, 1966.

Brochure on the Portuguese law applicable to foreign investment.

SWEDEN

O.E.C.D. ECONOMIC SURVEYS; Organisation for Economic Co-operation and Development. 1966, 45 pp. 5 s.; Ffrs. 3; US$ 0.80; Sw.F. 3; DM 2.50.

This O.E.C.D. publication contains a succinct survey of the present state and prospects of the Swedish economy. The main chapters deal with: Recent Developments; Economic Policy; Short-term Prospects and Policy Issues; Longer-Term Trends and Problems.

SKATTEN På AKTIEVINSTER, Näringslivets kritik av aktievinstutredningens förslag; Industrieförbundets Förlag, Stockholm, 1966. 109 pp. S.Cr. 9.75.

Comments by the Swedish Federation of Industries on the report regarding the proposed changes in the taxation of capital gains published in "Statens Offentliga Utredningar" (SOU) 1965: 72 with respect to capital gains realized on the sale of shares and similar securities outside the scope of ordinary business activity. See for a detailed article 6 *Eur. Tax.* 188 (1966).

VAL AV FÖRETAGSFORM OCH ÖPPNA KONCERN BIDRAG, Två skatterättsliga uppsatser; by *Klercker, B. af.* Industriförbundets Förlag, Stockholm. 1965, 63 pp. S.Cr. 7.50.

Two essays issued by the Swedish Federation of Industries, the first concerning the choice of the legal corporate form, the second relates to the new modified legislation with respect to subvention payments.

OMS 10%, En orientering om varuskatten, by *Helmers, Dag and Erik Eklund;* Publication of the Industrieförbundets Förlag, Stockholm 1965. 1965, 219 pp. S.Cr. 12.—.

This book published by the Federation of Swedish Industries provides a general introduction to the general turnover tax, as amended in 1965. The amended text of the Law and the official explanatory notes issued by the National Tax Board Serie II, pertaining to the interpretation and the clarification of the text are appended.

AKTIEBOLAGENS UTSKIFNINGSSKATT, by *Sandström, K.G.A.;* P.A. Norstedt & Söners förlag, Stockholm. 1965, 317 pp. S.Cr. 36—.

This book deals exclusively with the corporation tax imposed on distributions arising from capital reductions or from company liquidation, relating the historical background to this tax and the implications of the later amendments. References are made to case law.

INVESTMENT FUNDS IN OPERATION, Occasional Paper 2, by *Eliasson, G.* National Institute of Economic Research, Stockholm. 1965, 161 pp. S.Cr. 7.—.

This study investigates the effects of the use of business cycle equalization reserves as an instrument of anti-cyclical policy.

SKATTEHANDBOK Del I, by *Geijer E., E. Rosenqvist (†), H. Sterner,* 6th edition by *E. Geijer, H. Sterner and Gösta Ekman.*
Stockholm, P.A. Norstedt & Söners Förlag. 1965. 1224 pp. S.Cr. 98.50 (bound).

Latest (6th) edition of the authoritative handbook on Swedish income and net worth taxes. It contains the texts of an extensive commentary to all net worth and income tax legislation and matters connected therewith, including surveys of tax treaties concluded by Sweden.

SKATTERNA I UTLANDET; En kortfatted översikt och jämförelse av skatterna i Sverige, England, Schweiz, USA, Västtyskland; Meddelanden från Skattebetalarnas Förening nr. 191, by *Öjeman, Ulf, Bengt M. Dubois and Ulf Hörding;* Skattebetalarnas Förening, Stockholm, 1965. 74 pp. Sw.Cr. 8:—.

This revised edition of the 1959 publication is now extended to include taxation in the United States. It provides a short comparative survey of direct and indirect taxation in Sweden, Switzerland, the German Federal Republic, the United Kingdom and the United States which is followed by an account of the various taxes levied in each country with examples of tax computation, and the tax relations between Federal and State Governments. Such taxes under discussion are the corporate and individual income taxes, the business, net wealth and inheritance taxes.

SWITZERLAND

SKATTERNA I UTLANDET (See Sweden)

UNITED KINGDOM

TAXATION OF CAPITAL GAINS; 1966 Supplement, by *Hughes, Percy F. and K.R. Tingley,* London, Taxation Publishing Company Ltd., Staples Printers Ltd. St. Albano, Herts. 1966, XIII + 68 pp. 10 s. net.

This supplement to the main work – published in 1965 – analyses the changes and amendments introduced by the Finance Act of 1966. It is fully cross referenced to the main work and the arrangement of the subject-matter corresponds to that used in the main volume.

ESTATE DUTY SAVING AND CAPITAL GAINS TAX, by *Morcom, J.B.,* London, Butterworth & Co. (Publishers) Ltd. The Chapel River Press Ltd., Andover, Hants. 3rd. ed. 1966, LVII + 415 pp. 57s.6d. net.

Practical handbook demonstrating the various ways the taxpayer can minimise his tax commitments, thus "enabling the taxpayer to live a planned revenue life". Major emphasis is placed on the estate duty, and the requirements and effects of a large number of transactions is shown in great detail. Full reference is made to relevant legislation and case law up to and including the Finance Act, 1965. This new edition also covers the 1965 capital gains tax provisions. Tables of tax cases and statutes and an alphabetical index are added.

MANUAL OF AUDITING, by *Cooper, V.R.V.;* London W.C. 2, Gee & Co. (Publisheres) Ltd., 1966. XXIII + 621 pp. 75 s. net.

A handbook on the main aspects of auditing, especially for medium useful and large businesses. The 16 chapters of the book deal, inter alia, with basic principles of auditing, audit procedures, internal control and procedural tests, fixed assets and depreciation, stock and work in progress, taxation, audit of group accounts, etc.

TAXATION KEY TO INCOME TAX AND SURTAX, 61st edition (Budget 1966) and 62nd edition (Finance Act 1966), by *Hughes, Percy F. and J.M. Cooper*. London, Taxation Publishing Company Ltd. 61st edition, 1966, 62nd edition, 1966. 239 pp. each, 14 s. net each.

New editions of the well-known bi-annual reference work on U.K. income taxation; the 61st edition includes the amendments proposed in the 1966 Finance Bill, the 62nd edition is fully updated to include the provisions of the 1966 Finance Act.

SKATTERNA I UTLANDET (See Sweden)

UNITED STATES OF AMERICA

SKATTERNA I UTLANDET (See Sweden)

TAXATION OF FOREIGN INCOME BY UNITED STATES AND OTHER COUNTRIES: Symposium conducted by the Tax Institute of America; 1966. 340 pp. Princeton, Tax Institute of America.

Lectures and discussions held at the annual symposium of the Tax Institute of America on the taxation of foreign income both in the United States and in other countries, including less developed countries. An index and bibliography are included.

A manual for programme and performance budgeting; Department of economic and social affairs of the United Nations; 1965, 103 pp. $ 2.00; New York.

PARTNERSHIP AND INCOME TAXES; Practising Law Institute, revised edition 1966. 194 pp.

The taxation of partnerships often gives rise to many problems. This study discusses the tax aspects of the creation, activities and termination of a partnership.

EFFECTS OF THE CORPORATION INCOME TAX; Wayne State University Press, Detroit, 1966. 251 pp.

Papers presented at the Symposium on Business Taxation at Wayne State University. The papers included are as follows: Effects of Profits Taxes: Deduced from Neoclassical Growth Models; Efficiency Effects of Taxes on Income from Capital; Effects of Business Taxes upon International Commodity Flows; Corporate Tax Incidence; Economic Adjustments to Differentials under a Two-Tier Tax Structure; Rates of Return, Income Shares, and Corporate Tax Incidence.

2. LOOSE-LEAF SERVICES

Releases between August 1st and September 30th 1966

ALGERIA

Circulaire Fideuraf, release no 361: Fideuraf – Algeria

AUSTRIA

Österreichische Steuer- und Wirtschaftskartei, releases nos 14-18: P. Linde – Wien

Steuerrechtliche Tabellensammlung-Handbuch für den Steuerpraktiker, release no 9: Wirtschaftsverlag Dr. Anton Orac – Wien

BELGIUM

Documentatie Vandewinckele, release no 283; Vandewinckele – Brugge

Guide Fiscal Permanent, release no 274: Editions Vioburo – Brussel

Traité des Taxes assimilées au timbre, release no 37: Joseph Otten – Liège

CANADA

Canada Tax Service Letter, release no. 96: R. de Boo – Toronto

Canada Tax Service, releases nos 203-205: R. de Boo – Toronto

McDonald's Current Taxation, releases nos 28-35; Butterworth & Co. – Toronto

Provincial Taxation Service, releases nos 205-206: R. de Boo – Toronto

FRANCE

Bulletin de Documentation Pratique des Impôts Directs et des Droits d'Enregistrement, release no 7: E. Francis Lefebvre – Paris
Dictionnaire Fiscal Permanent, releases nos 23-27: Ed. Législatives et Administratives – Paris
Documentation Pratique de Securité Sociale et de Législation du Travail, releases nos 8-9: Fr. Lefebvre – Paris
Feuillets de Documentation Pratique: Impôts Directs, release no 2: Fr. Lefebvre – Paris
Lamy Social, releases I-K } Services Lamy –
Lamy Fiscal, releases H-J } Paris

GERMANY

ABC Führer Lohnsteuer, release no 57: Fachverlag für Wirtschafts- und Steuerrecht Schäffer & Co. – Stuttgart
Handbuch der Einfuhrnebenabgaben, release no 6: v.d. Linnepe Verlagsgesellschaft – Hagen
Kommentar zum Einkommensteuer einschl. Lohnsteuer und Körperschaftsteuer, release no 69: Verlag O. Schmidt – Köln
Kommentar zum Gewerbesteuergesetz, release no. 18: Verlag O Schmidt – Köln
Kommentar zum Umsatzsteuergesetz, release no 37: Verlag O. Schmidt – Köln
Schnellkartei des deutschen Rechts, release no 134: Verlag O. Schmidt – Köln
Steuererlasse in Karteiform, releases nos 59-60: Verlag O. Schmidt – Köln
Steuergesetze, release no Aug.: C.H. Beck'sche Verlagsbuchhandlung – München
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LUXEMBOURG

Etudes fiscales, releases nos 16-17: Editions Armand Peiffer – Luxembourg

NETHERLANDS

Algemene Wet inzake Rijksbelastingen, releases nos 15-16: F. Kuipers Fiscale Uitgaven en adviezen – Nijmegen
Belastingberichten, releases nos 53-59: N. Samsom N.V. – Alphen a/d Rijn
Belastingwetgevingserie, Inkomstenbelasting, release no 6: J. Noorduyn & Zn. Gorinchem
Belastingwetten, release no 8: N.V. Uitgevers Mij. S. Gouda Quint, D. Brouwer & Zoon – Arnhem
FED's Fiscaal Register, releases nos 1-5: FED – Amsterdam
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FED'S Fiscaal Repertorium, release no 1-3: FED – Amsterdam
Handboek In- en Uitvoer, releases nos 64-66: N.V. Uitgevers Mij. AE.E. Kluwer – Deventer
Handboek voor de Europese Gemeenschappen, Tariefjijsten voor de E.E.G., releases nos 52-54: N.V. Uitgevers Mij. AE.E. Kluwer – Deventer
Invorderingsrecht van de fiscus, release no 2: N.V. Uitgevers Mij. AE.E. Kluwer – Deventer
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Nederlandse Wetboeken, releases nos 78-80: N.V. Uitg. Mij. A.E.E. Kluwer – Deventer
Omzetbelasting – Fiscale handleiding voor de praktijk, releases nos 96-98 Vuga Boekerij – Arnhem
Regelingen Euromarkt, release no 70: Vermande & Zn. – IJmuiden
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Vakstudie – Inkomstenbelasting, release no 83:
Omzetbelasting, releases nos 51-52:
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Vermogensbelasting, release no 28:
Wet op de Inkomstenbelasting 1964, releases nos 21-23;
N.V. Uitg. Mij. AE.E. Kluwer – Deventer
Vennootschappen, Verenigingen en Stichtingen, deel B, release no 12: N.V. Uitg. Mij AE.E. Kluwer – Deventer
Wetshistorie fiscale wetten, release no 5: N.V. Uitg. Mij. AE.E. Kluwer – Deventer

NEW ZEALAND

New Zealand Taxation Board of Revenue Decisions, releases nos 16-19: Butterworth – Wellington

NORWAY

Skatte-Nytt, releases nos 8-10: Norsk Skattebetalerforening – Oslo

RHODESIA

Legislation Service of the Rhodesian Income Tax Service, release no 15: Juta & Co. Ltd., Capetown

SOUTH AFRICA

Law and Practice of South African Income Tax, release no 13: Butterworth & Co. Ltd. – Durban
Legislation Service of Juta's South African Income Tax Service, release no 8: Juta & Co. Ltd., Capetown

SPAIN

Circulares, release no 87: T.A.L.E. – Madrid

SWITZERLAND

Die Steuern der Schweiz, release no 7: Verlag für Recht und Gesellschaft – Basel

TURKEY

Türk Argüs Ajansi, releases nos 3715-3779: Karaköy – Istanbul

UNITED KINGDOM

British Tax Encyclopedia, releases nos 16-17: Sweet and Maxwell Ltd. – London
Income Taxes in the Commonwealth, release no 7: Her Majesty's Stationery Office, London

U.S.A.

Federal Tax Guide Reports, releases nos 42-50: Commerce Clearing House – Chicago
Federal Taxes Report Bulletin, releases nos 29-37: Prentice Hall – Englewood Cliffs
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State Tax Guide, releases nos 355-359: Commerce Clearing House – Chicago
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IV — BIBLIOGRAPHY:

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KORN-DIETZ

Doppelbesteuerung

Loseblattkommentar

zu den zwischen der Bundesrepublik Deutschland und dem Ausland bestehenden Abkommen über die Vermeidung der Doppelbesteuerung von Dr. Rudolf Korn, Ministerialrat im Bayerischen Staatsministerium der Finanzen, und Rechtanwalt Dr. Georg Dietz, unter Mitwirkung von Rechtsanwalt und Fachanwalt für Steuerrecht Heinz Popp.

3., neubearbeitete Auflage 1966

1610 Seiten 8°. In Leinenordner DM 58.—
Die Bedeutung der Doppelbesteuerungsabkommen ist einmal infolge der Erweiterung des Anwendungsbereichs durch Abschluss neuer Abkommen, zum anderen wegen der zunehmenden internationalen wirtschaftlichen Verflechtung enorm gewachsen. Die Probleme der Doppelbesteuerung und ihrer Vermeidung sind zu einer Spezialmaterie geworden, mit der sich die Praktiker des Steuerrechts befassen müssen.

Der Allgemeine Teil des Werkes gibt in gedrängter Darstellung einen Überblick über die zwischenstaatlichen Verträge, über die Grundprobleme und Typen dieser Art von Vertragsrecht sowie über die Möglichkeiten zur Vermeidung oder Milderung der Doppelbesteuerung beim Fehlen solcher Abkommen und schliesslich eine Definition der auf diesem Rechtsgebiet gebräuchlichen Begriffe und Rechtsfiguren. Dann folgt der besondere Teil mit den einzelnen Abkommen und entsprechenden Erläuterungen dazu.

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