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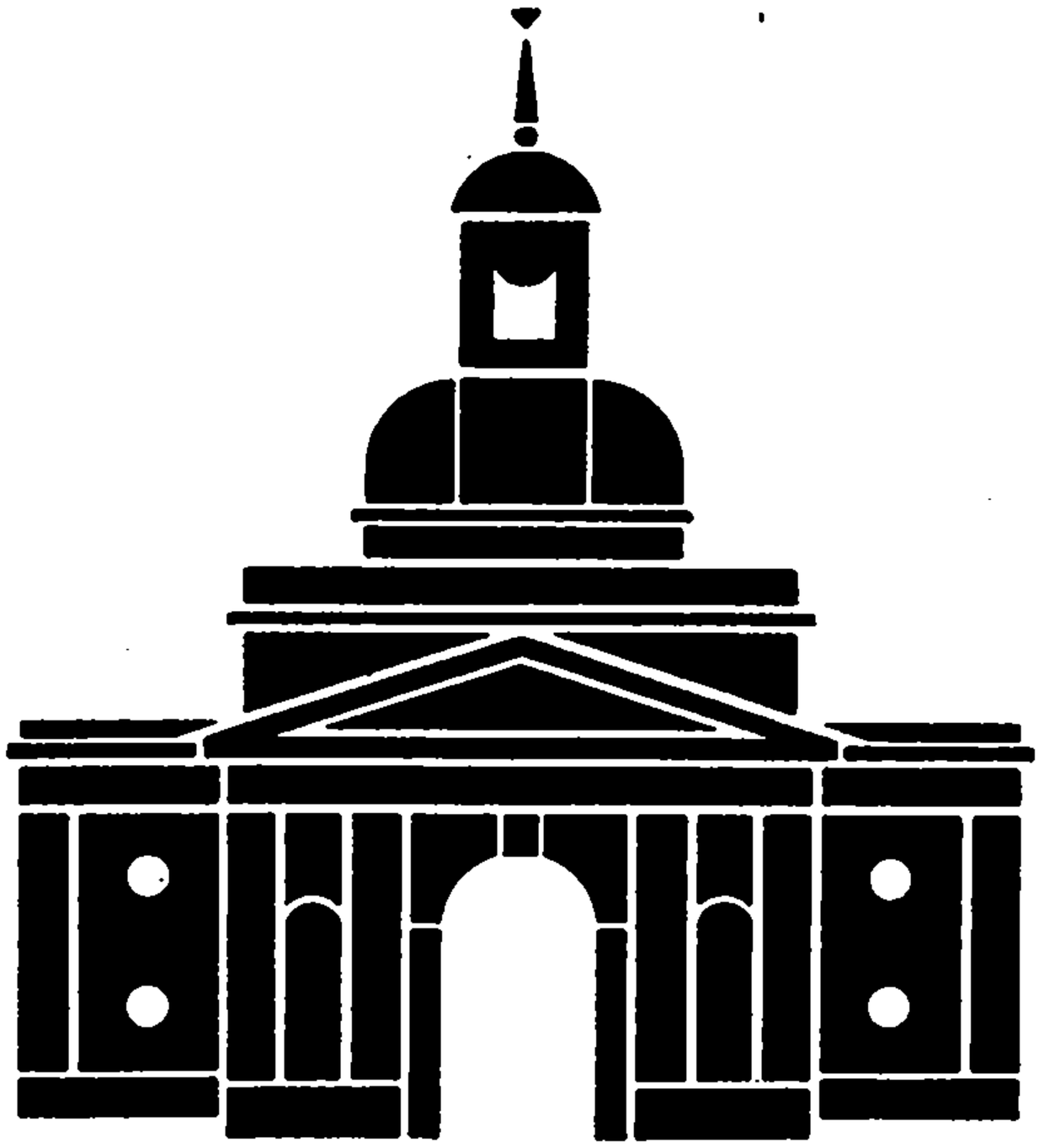

THE INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION was founded in 1938. For reasons of organizing character this Bureau is established as a separate foundation according to Netherlands law. The Bureau is a scientific, independent, non-profit making, non-political foundation of which the purpose is defined in the articles as follows:

(art. 2) The Object of the International Bureau of Fiscal Documentation is the foundation and maintenance of an international documentation bureau, in order to supply information in fiscal legislation and the application of fiscal law, and to stimulate the study of fiscal science.
(art. 3) The International Bureau of Fiscal Documentation shall endeavour to realise this object by:

a. founding a library on fiscal legislation, books, periodicals and other publications;
b. supplying information;
c. giving any one the opportunity to study all material available in its library;
d. issuing a periodical;
e. any other appropriate measures.

In close cooperation with the I.F.A., and with the aid of expert correspondents throughout the world, the Bureau acquires as much information as possible in the field of international and comparative law. The Bureau is thus able to supply data (but not advice) on specific tax problems. A fee, necessary for the maintenance and extension of the Bureau, is charged on a time/cost basis. The Bureau has published two series of monographs: "Publications of the International Bureau of Fiscal Documentation" and "Studies on Taxation and Economic Development".
The Bureau also published *European Taxation*, now a monthly journal on the tax systems of Europe. It is now published in two parts. *Tax News Service*, published twice per month, provides rapid information on world-wide tax developments. *Supplementary Service to European Taxation* is a loose-leaf reference work.
The loose-leaf series, *Guides to European Taxation* comprises "The Taxation of Patent Royalties, Dividends, Interest, in Europe", "The Taxation of Companies in Europe", "The Taxation of Private Investment Income" and "Value Added Taxation in Europe".
The loose-leaf series, *Tax Treaty Guides* comprises "Handbook on the U.S.-German Tax Convention" and "Handbook on the Dutch-German Tax Convention" (in German). The Bureau has also published two loose-leaf reference works, *Corporate Taxation in Latin America* and *African Tax Systems*.

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

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

Par une coopération étroite avec l'IFA et avec l'aide de correspondants à travers le monde, le Bureau rassemble toutes les données possibles en matière de droit international et comparé. De cette façon, le Bureau est à même de fournir des renseignements concernant des problèmes fiscaux spéciaux mais sans donner d'avis. Des honoraires, nécessaires pour le maintien et l'expansion du Bureau, sont demandés sur base du temps nécessaire et du coût. Le Bureau a publié deux séries de monographies: "Publications du Bureau International de Documentation Fiscale" et "Studies on Taxation and Economic Development".
Le Bureau publie aussi *European Taxation*, qui est devenu une revue mensuelle sur les systèmes fiscaux européens et comprend deux parties. *Tax News Service*, publié deux fois par mois, donne une information rapide, à l'échelle mondiale, de tout ce qui touche à la fiscalité.
Supplementary Service to European Taxation est un ouvrage de référence présenteé sous feuilles mobiles.
Guides to European Taxation, également une publication sous feuilles mobiles, comprend "L'imposition de Redevances, Dividendes et Intérêts en Europe", "L'imposition des Sociétés de capitaux en Europe", "L'imposition de revenu des investissements privés" et "La Taxe sur la Valeur Ajoutée en Europe".
Tax Treaty Guides, une autre publication sous feuilles mobiles, comprend le "Manuel relatif à la Convention fiscale Allemagne – Etats Unis" et le "Manuel relatif à la Convention fiscale Pays-Bas – Allemagne" (en langue allemande). Le Bureau a également publié, *Corporate Taxation in Latin America* et *African Tax Systems*, deux ouvrages d'information sous feuilles mobiles.

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

Aim

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

Plan of action

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

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

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

Objet

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

Plan d'Action

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

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

* * *

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For an index of Articles, Documents, Developments in International Tax Law, Bibliography and Supplements to the Bulletin, published in 1972 and a list of authors, see page 467 et seq.

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S. AMBALAVANER, B. SC. LL. B:

CEYLON: SUMMARY OF IMPORTANT TAXES AND LEVIES*

I. INCOME TAX

1. Income tax was introduced in 1932 as a global, non-schedular tax. Liability is based on residence and source of income and not on citizenship, domicile or remittance[1].
A year of assessment commences on the 1st of April in any year and ends on the 31st March in the succeeding year.

2. The charge to tax for any year of assessment is in respect of profits and income of *the preceding year* and is—
(a) in the case of a person resident in Ceylon in the preceding year on profits wherever arising;
and
(b) in the case of a non-resident or other person on income arising in or derived from Ceylon.

3. (a) In the case of trade, business, profession or vocation where the accounts are usually made to a date other than the 31st March, the income of the year ending on such date in the preceding year may be adopted instead of the preceding year.
(b) "Profits and income arising in or derived from Ceylon" includes all profits and income derived from services rendered in Ceylon or from property in Ceylon, or from business transacted in Ceylon whether directly or through an agent.
(c) For the year of assessment 1971/72 income from employment is taxed on the current year basis and not the preceding year basis. This is done as a consequence of income from employment being brought under "Pay As You Earn" System.

4. Profits and Income mean:—
(a) the profits from any trade, business, profession, or vocation for however short a period carried on or exercised;
(b) the profits from any employment (now subject to tax under PAYE Scheme);
(c) & (d) nett annual value of land and improvements;
(e) dividends, interest, or discounts;
(f) any charge or annuity;
(g) rents, royalties, and premiums;
(h) nett capital gains;
(i) sweep or lottery (with exceptions);
(j) income from any other source whatsoever, not including profits of a casual and non-recurring nature.

5. (a) Capital Gains were charged as income from 1st April 1958. No distinction is made between short term or long term capital gains by reference to the period during which the gains accrue. All capital gains are treated as ordinary income and aggregated therewith subject however to the rate of tax not exceeding 25%.
(b) Capital Gains arise from change of ownership of any property (with exceptions), the surrender or transfer of

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* Changes in the legislation by reason of the Budget proposals announced on the 10th November 1971, will be issued as a supplement in a later issue of the Bulletin.
1. See income tax on outward remittance as part of the tax on non-resident companies.

rights, redemption of shares, debentures or other obligations, formation of company, dissolution of business, liquidation of a company, amalgamation or merger of two or more businesses or companies, the commission or reward from any transaction promoted by a person.

(c) There are special provisions for ascertaining the nett capital gains.

(d) Income from a sweep or lottery is treated similar to capital gains.

6. The process of arriving at the income tax chargeable involves—

(a) the ascertainment of profits or income *from each source*. For any year of assessment the statutory income of every person from each source shall be the profits from that source for the preceding year;

(b) the ascertainment of assessable income. The total statutory income of a person from all sources after certain deductions becomes the assessable income of a person for the year of assessment;

(c) the ascertainment of taxable income. The assessable income after certain deductions becomes the taxable income;

(d) the ascertainment of the tax. The rates of income tax are applied to the taxable income and the tax computed.

7. The ascertainment of profits or income from each source. Subject to special provisions all outgoings and expenses incurred in the production of income are allowed as deductions. Also deducted among others are depreciation (annual/or lump sum) interest paid to bankers, bad debts, expenses on repairs, development rebates. Additional deductions are allowed in respect of agriculture, animal husbandry, hotels. Certain deductions are expressly disallowed including domestic or private expenses, expenditure of a capital nature and cost of improvements.

8. The ascertainment of assessable income.

(i) Deductions among others are made for interest paid, annuity, ground rent, royalty;

(ii) any loss incurred in any trade, business, profession or vocation.

9. The ascertainment of taxable income. Deductions (in the appropriate cases) are made for individuals, spouse, children, dependent relatives, approved investments, donations, life insurance premia, pension and provident fund contributions, dividends of resident company.

10. The ascertainment of the tax.
The rates of tax are applied to the taxable income and the tax computed.

11. Other important features of the income tax are—

(a) incomes of resident husband, wife and children and dependents are aggregated;

(b) special provisions have been made for assessment of trusts, clubs, associations, charities, executors of estates, non-resident persons and transactions, agents of non-residents, shipping, aircraft, insurance;

(c) provisions for returns and assessments and appeals with time limits;

(d) provisions for recovery of taxes which includes committal of the defaulter to imprisonment for non-payment of the tax;

(e) residence—

(i) a company or body of persons which has its registered or principal office in Ceylon or where the control and management of its business are exercised in Ceylon, is resident in Ceylon;

(ii) an individual, if he is in Ceylon for an aggregate period of six months during any year is resident in Ceylon.

12. *Tax on Companies*

Income of companies resident and/or non-resident is ascertained in the same manner.

(a) resident companies are taxed at
  (i) 60% on the taxable income; and
  (ii) 33⅓% of the gross dividends declared.

(b) non-resident companies are taxed at
  (i) 60% + 6% on taxable income; and
  (ii) 33⅓% of remittances (if any) outwards out of profits from Ceylon. Such tax cannot exceed 33⅓% of one-third taxable income.

13. Rates of Tax are as follows – Year of Assessment 1971/72.

Resident Individuals:

On the first Rs	1,800 of the taxable income	7½%
On the next Rs	1,800 of the taxable income	10 %
On the next Rs	2,400 of the taxable income	12½%
On the next Rs	2,400 of the taxable income	15 %
On the next Rs	2,400 of the taxable income	17½%
On the next Rs	2,400 of the taxable income	20 %
On the next Rs	3,600 of the taxable income	25 %
On the next Rs	4,800 of the taxable income	30 %
On the next Rs	7,200 of the taxable income	40 %
On the next Rs	10,800 of the taxable income	50 %
On the next Rs	10,800 of the taxable income	60 %
On the balance	of the taxable income	65 %

Note: Each of the first two slabs of Rs 1,800 is increased by –

(a) Rs 600 in respect of the wife,

(b) Rs 600 in respect of one child or dependent/two children or dependents,

(c) Rs 1,200 in respect of three children or dependents/four children or dependents.

For instance where a family consists of a husband, wife and 4 children, the first two slabs will be –

Rs 1,800 + Rs 600 + Rs 1,200 = Rs 3,600 at 7½% and Rs 3,600 at 10%.

Non-Resident Individuals:

On the first Rs	15,000 of the taxable income	15%
On the next Rs	6,000 of the taxable income	20%
On the next Rs	6,000 of the taxable income	25%
On the next Rs	6,000 of the taxable income	30%
On the next Rs	6,000 of the taxable income	40%
On the next Rs	6,000 of the taxable income	50%
On the next Rs	10,000 of the taxable income	60%
On the balance	of the taxable income	65%

Resident Companies:

Tax on taxable income	60%
Tax on dividends declared	33⅓%

Non-Resident Companies:

Tax on taxable income	60% + 6%
Tax on remittance of non-resident Companies: 33⅓% of its remittances abroad or 33⅓ of ⅓ of its taxable income whichever is less.	
Public Corporations	The rate of tax chargeable in respect of resident companies.
Charitable Institutions	23%
Executors (other than trustees under last wills)	30%
Trustees (including trustees under last wills)	50%
Partnerships	30%
Co-operative Societies	45%
Receivers (other than liquidators)	30%
Liquidators	The rate of tax chargeable in respect of the company concerned.
Mutual Life Assurance Companies	24%
Governments (other than the Governments of Ceylon and the United Kingdom)	56%
Clubs and other body of persons	23%

Hindu Undivided Families:

On the first Rs 25,000 of the taxable income	31%
On the next Rs 10,000 of the taxable income	36%
On the next Rs 10,000 of the taxable income	46%
On the next Rs 20,000 of the taxable income	56%
On the next Rs 20,000 of the taxable income	66%
On the balance of the taxable income	71%

II. WEALTH TAX

1. Wealth Tax was introduced from the year of assessment 1959/60. The tax is on the taxable wealth of a person. The nett wealth is ascertained by aggregating the value of all property and deducting therefrom the value of all debts. The value of property or debts is taken at 31st March of the preceding year for any year of assessment. A year of assessment commences on the 1st of April and ends on the 31st March succeeding.

2. Other important features are—

(a) wealth of the members of a family (resident and non-resident) (husband, wife, children and dependents) is aggregated in arriving at the nett wealth on which the tax is imposed;

(b) immovable property out of Ceylon is exempt; movable property out of Ceylon of a non-resident is also exempt;

(c) provision made for returns, assessments, appeals, recovery of tax;

(d) wealth tax shall not exceed 80% of the assessable income of the person;

(e) taxable wealth of any person (other than a charitable institution) is the nett wealth in excess of Rs 100,000/—;

(f) residence—same as for income tax.

3. *Tax on Companies*

(a) A resident company is not liable to the tax. The value of the share is included in the wealth of the shareholder.

(b) A non-resident company is liable to wealth tax only if it has immovable property in Ceylon. The attributable taxable wealth is—

5 × taxable income of the non-resident company from the immovable property.

Income from other sources is not taken into account for this purpose.

4. Rates of Tax – Year of Assessment 1971/72

(a) *Individuals*

On the first Rs	200,000 of taxable wealth	½%
On the next Rs	500,000 of taxable wealth	¾%
On the next Rs	1,000,000 of taxable wealth	1%
On the balance	of taxable wealth	2%

(b) *Charitable Institutions*

On all taxable wealth ..... ½%

(c) *Non-Resident Companies having immovable property in Ceylon*

On all taxable wealth 1%

III. GIFTS TAX

1. Gifts Tax was introduced from 1959.

The tax is charged on the taxable gifts of each individual. The charge is in respect of gifts made after 18th July 1958. A gift means a transfer by one person to another of any existing movable or immovable property made voluntarily and without any consideration. All gifts after 18th July 1958 are aggregated and the rates of gifts tax applied to such aggregate amount. The charge is made for each year of assessment on the total gifts made in the preceding year.

2. Other important features are—

(a) Certain transfers are deemed to be gifts.

(b) Gifts made by a Company are deemed to be gifts made by the shareholders.

(c) Gifts made by members of a family are not aggregated.

(d) The donor is liable to pay the gifts tax. If the tax cannot be recovered from the donor the tax can be recovered from the donee.

(e) Certain gifts including gifts of immovable property out of Ceylon are not liable to the tax.

(f) Gifts of movable property out of Ceylon are also not liable to the tax unless the donor is a citizen of Ceylon and is resident in Ceylon.

3. Computation of the Gifts Tax

Where any taxable gift or gifts are made in the year preceding any year of assessment, the value of all taxable gifts made after 18th July 1958 are aggregated and the current rate schedule applied. From the tax so ascertained is deducted all the tax charged or chargeable in respect of all taxable gifts made in all years prior to the year in question. The result is the gifts tax payable for such year of assessment.

4. Rates of Gitts Tax – Year of Assessment 1971/72

	Taxable Gifts	*Rate per cent*
On the first	Rs 50,000	5%
On the next	Rs 25,000	10%
On the next	Rs 25,000	12%
On the next	Rs 40,000	15%
On the next	Rs 40,000	16%
On the next	Rs 80,000	22%
On the next	Rs 80,000	24%
On the next	Rs 80,000	30%
On the next	Rs 80,000	36%
On the next	Rs 80,000	42%
On the next	Rs 80,000	54%
On the next	Rs 80,000	60%
On the next	Rs 250,000	72%
On the next	Rs 450,000	96%
On the balance		100%

IV. BUSINESS TURNOVER TAX

1. Business Turnover Tax was introduced in 1963 and became operative from 1st January 1964. The charge is on every person who carries on in Ceylon the business of a manufacturer or any other business. The tax is computed at a fixed percentage on the turnover of the business.

The year of assessment commences on the 1st October, and ends on the 30th September following. Liability of the tax arises only if the turnover is in excess of Rs 75,000/-for the accounting year of the person immediately preceding the year of assessment. The charge is however on the turnover of the year and is payable by self-assessment in four quarterly instalments on the turnover of each period of three months ending 31st December, 31st March, 30th June and 30th September.

2. Other important features are—

(a) The term 'business' includes—
  (a) any trade;
  (b) any profession;
  (c) any vocation;
  (d) the business of any person taking commissions or fees in respect of any transactions or services rendered;
  (e) the business of an independent contractor.

  Certain businesses are exempted.

(b) The term 'manufacturer' means any person who—
  (a) makes an article;
  (b) assembles or joins any article whether by chemical process or otherwise;
  (c) adapts for sale any article.

(c) The successor to a business is liable to pay tax outstanding from the previous owner.

(d) There are provisions for returns, assessments, appeals and recovery of tax.

(e) Residents and non-residents are subject to the same charge.

(f) Certain articles are exempt from the tax including all articles exported.

3. The Rates of Tax are – Year of Assessment 1971/72

(a) *General Rates*

(i) Business of manufacturer	5%
(ii) Business other than the business of a manufacturer	1%

(b) *Special Rates*

(1) Business of a manufacturer –

(i) Ayurvedic preparations; claybricks (produced exclusively by use of manual labour); dry fish; fireworks and crackers (produced exclusively by use of manual labour); joss sticks; tea chests; fishing boats; handloom textiles	1%
(ii) building materials (other than asbestos products); claybricks (produced not exclusively by use of manual labour); plywood; biscuits and confectionery (produced exclusively by use of manual labour); safety matches; aluminium, brass, enamel and iron hollow wares (produced exclusively by the use of manual labour)	3%
(iii) carpets & rugs; icecream; fireworks and crackers; drinking straws; electric cookers and hot plates; electric irons; floor and wall tiles (excluding those made wholly or manually out of local timber or rubber); furniture (including safes and office furniture); paper cups and cartons; plastic toys; razor blades; sewing machines; vacuum flasks and refills; washing machines; brief cases, suit cases, travelling bags and other bags; canned, preserved and otherwise processed fruits, vegetables, foods and drinks; cigars; coal gas; electrical machinery, apparatus, appliances and other electrical goods not elsewhere specified	10%
(iv) electric fans; motor cycles and scooters; aerated waters; asbestos products; biscuits; rum and whisky; chocolates and cocoa powder; ready made garments and other apparel made out of pure cotton textiles manufactured by such person; kerosene cookers; textiles other than pure cotton textiles; aluminium, brass and enamel hollow ware including cutlery, kitchen and table ware; confectionery; jewellery including costume jewellery; precious and semi-precious stones; readymade garments and other apparel made out of textiles other than pure cotton textiles manufactured by such person	20%
(v) motor vehicles other than motor cycles and scooters; the business of assembling or manufacturing motor vehicles other than motor cycles, motor lorries and scooters; air conditioners; cosmetics, perfumes, hair dressing and toilet requisites (excluding soap, hair oil and tooth powder); distemper, emulsion, lacquer and oil paints including paint remover, thinners, varnish, lacquer and french polish; radios, radio accessories, components and spare parts; stainless steel ware including cutlery, kitchen and tableware	25%
(vi) lubricants if not elsewhere specified; petroleum products if not elsewhere specified	32%
(vii) super and regular petrol	37%

(2) Business other than the business of a manufacturer

(i) Any person who carries on the business of accepting wagers or of entering into or negotiating transactions by way of wagers, or any business of a like nature—

(a) whether he carries on such business directly or through any other person; or

(b) whether or not there are two or more parties to such transactions; or

(c) whether such transactions are for cash or on credit 5%

(ii) The business of selling accessories, components, spares and other materials for the purpose of assembling or manufacturing motor vehicles, other than motor cycles, motor lorries & scooters.

(iii) The business of rendering services for the assembling or manufacturing of motor vehicles other than motor cycles, motor lorries and scooters. } 25%

(iv) The business of selling motor vehicles other than motor cycles, motor lorries and scooters, assembled or manufactured in Ceylon.

V. ESTATE DUTY

1. Estate Duty is charged on the value of the Ceylon Estate of a deceased person. Liability is based on domicile and situation of property and not on citizenship or residence.

2. The Ceylon Estate means

(a) in the case of a deceased person who was at the time of his death domiciled in Ceylon, all property settled or not settled which passes on his death wherever situate, except immovable property not situate in Ceylon; and

(b) in the case of a deceased person who was not domiciled in Ceylon, all property in Ceylon, settled or not settled, which passes on his death.

Property passing on death includes among other items property the deceased was competent to dispose and property in which the deceased had an interest ceasing on death. Gifts made after 18th July 1958 together with the gifts tax contributions are aggregated with the total estate on which the duty is charged. The gifts taxes already paid are allowed as a deduction against the estate duty payable.

3. Other important features are—

(a) relief for quick succession;

(b) all property is aggregated as one estate;

(c) open market value of properties is taken (with exceptions);

(d) deduction is allowed for debts and incumbrances in arriving at the nett Ceylon Estate on which the duty is charged;

(e) the executor is liable for the duty on property the deceased was competent to dispose;
in other cases the person to whom the property passes or is deemed to pass is liable for the duty;

(f) provision has been made for returns, assessments, appeals and recovery of the duty.

4. The duty is computed by applying the specified rates to the portion of the value of the Ceylon Estate. If the total estate exceeds the Ceylon Estate, portions of the Ceylon Estate subject to the specified rates are reduced in the ratio of the Ceylon Estate to the total estate.
The 'total estate' means in every case all property settled or not settled wherever situate which passes on the death.

5. The rates of duty are—

On the first Rs	20,000	of the value of the estate	NIL
On the next Rs	30,000	do	5 %
On the next Rs	30,000	do	7½%
On the next Rs	30,000	do	10 %
On the next Rs	40,000	do	13 %
On the next Rs	50,000	do	14 %
On the next Rs	100,000	do	16 %
On the next Rs	100,000	do	18 %
On the next Rs	100,000	do	24 %
On the next Rs	100,000	do	30 %
On the next Rs	125,000	do	32 %
On the next Rs	125,000	do	36 %
On the next Rs	200,000	do	42 %
On the next Rs	350,000	do	48 %
On the next Rs	500,000	do	55 %
On the next Rs	600,000	do	60 %
On the balance		do	70 %

Provided that no Estate Duty is payable unless the total Estate exceeds Rs 50,000.

VI. CUSTOMS DUTIES

1. The charge is the several duties of Customs as set forth in the table of duties upon all goods, wares and merchandise imported into or exported from Ceylon. The Brussels Tariff Nomenclature has been adopted.

2. Important features are—
(a) drawback of duties on re-exportation;
(b) the prohibition of import or export of certain goods;
(c) certain articles are exempt from import and export duties;
(d) provision made for seizure of goods, forfeiture and offences.

3. Duty is charged ad valorem, by quantity, volume or number. There is a Commonwealth preferential rate on certain items. Rates are specific to items which are classified under the B.T.N. The rates are set out in Ceylon Government Gazette No. 14, 929/5 of Monday 26th October 1970 and are operative from that date.

VII. STAMP DUTIES

1. The charge is on the instruments and documents set out in the Schedule to the Act including among others—
(a) Instruments and documents executed in Ceylon of Conveyance, contract, obligations, legal proceedings, testamentary proceedings, processes in Courts etc.
(b) Bills of Exchange and Promissory Notes drawn abroad and negotiated in Ceylon.
(c) Other instruments executed abroad relating to any property situated in Ceylon.

2. Other important features are—
(a) The duties are imposed ad valorem or per instrument.
(b) Instruments not duly stamped may be impounded and cannot be admitted in evidence.

3. The rates are set out in the Schedules to the Stamp Ordinance. They are not set out herein.

VIII. MOTOR CAR SALES TAX

1. The charge is in respect of the first sale of any motor car (registered on or after 26th January 1961) during a period of 7 years from the date of registration.
2. The charge is on the difference between the sale price and the purchase price increased by Rs 250/—.
3. The rate of tax is 80% on the difference set out in para 2.

IX. TRANSFER OF PROPERTY TAX

1. The tax is charged from the transferee on the transfer of property (land or shares in a company) to a person who is not a citizen of Ceylon.
2. Certain transfers are not subject to the tax.
3. The rate of tax is 100% of the value of the property transferred.

X. BANK DEBITS TAX

1. The tax is charged on the total amount of the debits made during each calendar month against each current account maintained in a commercial bank.
2. Certain accounts are exempt from the tax.
3. The rate of tax is 1/10 of 1%.

XI. TEMPORARY RESIDENCE TAX—VISA TAX.

1. The charge is imposed on every person (not a citizen of Ceylon) who remains in Ceylon after 1st January 1971 for a period exceeding three months on a Visa.
2. Certain persons are exempt from the tax.
3. The rate of tax is Rs 500/— for every 12 months but exceeding three months or part thereof.

XII. EMBARKATION TAX

1. The charge is imposed on every person (citizen, non-citizen, resident, non-resident) leaving Ceylon.
2. Children under 2 years, officers, members of the crew of a ship or aircraft, transit passengers, and other persons prescribed are exempt from the tax.
3. Rates of Tax are—

Person leaving

(a) by ship ..... Rs 2/50
(b) by aircraft from Bandaranaike International Airport..... Rs 10/00
(c) by aircraft from Ratmalana or Jaffna Airport ..... Rs 5/00
(d) any other airport ..... Rs 2/50

XIII. COMPULSORY SAVINGS LEVY

1. It is a levy on all individuals and other persons such as executors, trustees etc., whose total income is in excess of Rs 6,000 per year. The total income is calculated in the same way as assessable income is calculated for income tax purposes. It was introduced in the beginning of 1971 and it will operate only for a period of one year.
2. Other important features are—
(a) It will be held in deposit in a special fund operated by the Monetary Board of the Central Bank.
(b) The contributions will be refunded at any time under certain circumstances.

3. Rates of levy – Year of Assessment 1971/72

	Rate
On income between Rs 6,000 and Rs 12,000	2%
On income between Rs 12,001 and Rs 24,000	5%
On income between Rs 24,001 and Rs 60,000	10%
On income between Rs 60,001 and Rs 140,000	15%
On income over Rs 140,000	20%

Trustees (including trustees under last wills)

On income over Rs 12,000	15%

All other persons

Persons (other than those referred to above and companies and Public Corporations established with capital partly contributed by the Government of Ceylon) ..20% of income

XIV. EXCISE DUTY

1. The duty is charged on every excisable article which means and includes any liquor. Liquor includes spirits of wine, spirit, wine, toddy, beer, and all liquid consisting of or containing alcohol; also any substance which the Minister may by notification declare to be liquor for the purposes of this Ordinance.
The House of Representatives by resolution from time to time imposes a duty at such rate or rates on the manufacture of liquor.

2. Other important features are—
(a) manufactured liquor cannot be sold without payment of the duty;
(b) taxes imposed for right to tap the coconut, palmyrah or kitul palm.

3. the main rates of duty are—

Beer	Rs 9/— per gallon (bulk)
Gin, Whisky, Brandy	Rs 81/— per proof gallon
Liquors (less than 4% alcohol)	Rs 14/— per proof gallon
Rectified Spirits (manufacture & sale)	Rs 98/36 per proof gallon

XV. TOBACCO TAX

1. The tax is charged on a per pound basis of all Ceylon Tobacco leaf which is intended to be used in the manufacture of cigarettes, or pipe, tobacco.

2. The amount of tax is computed by reference to the quantity of Ceylon Tobacco leaf delivered at or received into the factory at which such manufacture is carried on.

3. The rate of tax is Rs 42/50 per pound.

XVI. PRIZE COMPETITION TAX

1. This is a tax imposed on the proceeds of every prize competition other than school magazine competitions. 'Prize Competition' means any competition in which prizes in kind, cash or services are awarded, but does not include a lottery.

2. Rates of Taxation – Year of Assessment 1971/72

In respect of Commercial prize competition promoted or conducted by a trading Company	20% of the total value of the prizes offered.

XVII. FOREIGN EXCHANGE ENTITLEMENT CERTIFICATES (FEECS)

1. This authorizes the holder of such certificate upon the surrender thereof during the period of its validity to any authorized dealer, to purchase foreign exchange for such purposes, and subject to such terms, as may be approved by the Government from time to time and notified in the Gazette.
'Authorized dealer' means a commercial bank for the time being authorized under Section 4 of the Exchange Control Act.

2. Other important features are—
(a) It is issued by, or and for and on behalf of the Central Bank.
(b) FEECS have to be offered and surrendered before remittance of Exchange can be made. This applies among others to remittances of profits and capital and certain foreign purchases.
(c) The following inward remittances will entitle the recipients to obtain certificates to their full value on surrender of the foreign exchange to a commercial bank—
(a) Income from investment abroad.
(b) Remittances from abroad for the maintenance of dependents in Ceylon.
(c) Migrants' transfers into Ceylon.
(d) Legacies, bequests and inheritances received from abroad.
(e) Gifts in cash received from abroad.
(f) Capital remittances from abroad for investment in Ceylon.
(g) Foreign exchange income received from professional services and/or employment.
(h) Other miscellaneous inward remittances after examination of the purpose and circumstances connected with each individual inward remittance.

3. Rate of the Foreign Exchange Entitlement Certificate is 55 per centum, i.e. for every Rs 100 worth of foreign exchange remitted out, Rs 55 must be paid to the State.

XVIII. FEES, LEVIES AND DUTIES

Fees, levies and duties are charged under various Ordinances for the purpose of registration, granting licences and to provide annual income for various institutions or authorities such as Ceylon Tea Board etc.

XIX. CAPITAL LEVY

1. This is a proposal announced in the Budget and the law as enacted will be set out in a later issue.

2. It is a once-for-all levy on the aggregated nett wealth of a family and on the nett wealth of a single individual. Such nett wealth will be computed on the same basis as for wealth tax.

3. Other important features are—
(a) This will operate on nett wealth of over Rs 200,000.
(b) Where the family or individual owns a residence, a further sum of Rs 50,000 will be added to the above exemption limit.

4. The proposed rates are—

(1) Rs 200,000 of leviable capital	3 per centum
(2) Next Rs 200,000 of leviable capital	5 per centum
(3) Next Rs 200,000 of leviable capital	10 per centum
(4) Next Rs 200,000 of leviable capital	15 per centum
(5) Next Rs 200,000 and above	25 per centum

XX. LOCAL AUTHORITIES

1. *Rates*
The Local Authorities can levy general rates and special rates. General rate is levied on the annual value of all rateable property situated in the area at a uniform amount per centum.

2. *Vehicles and Animals Tax*
Possession and use of certain animals and vehicles specified in the Municipal Council Ordinance, Urban Councils Ordinance, Town Councils Ordinance and Village Councils Ordinance, are taxed according to rates specified in these Ordinances.

3. *Entertainment Tax*
(1) It is a tax on payments for admission to entertainments held in the area within the administrative limits of such authority at such rate or rates as may be specified in the resolutions of the Local Authorities.
(2) Exemption from the above tax is granted where the whole proceeds of an entertainment are devoted to any such public, religious, educational, philanthropic or charitable purpose or purposes as may be prescribed by regulation.

4. *Betterment Contribution under Town and Country Planning Ordinance*
Where the value of any property is increased by the coming into operation of any provision in a planning scheme prepared under Town And Country Planning Ordinance, an amount not exceeding sixty percentum of the amount by which the value of the property is so increased may be recovered from the owner of the property.

5. *Acreage Tax*
It is a tax not exceeding fifty cents a year on each acre of land which is situated outside a built-up locality and is under permanent cultivation or regular cultivation of any kind other than paddy and chena cultivation.

APPENDIX

A. STATE LEVEL

Taxes, Levies and Fees	*Statute*	*Administrative Authority*
1. Income (including Capital Gains) Tax	Inland Revenue Act No. 4 of 1963 and Amendments	Commissioner of Inland Revenue
2. Wealth Tax	do	do
3. Gifts Tax	do	do
4. Business Turnover Tax	Finance Act 11 of 1963 and Amendments	do
5. Estate Duty	Ceylon Legislative Enactments (C.L.E.) Cap 241 and Amendments	do
6. Customs Duties (Import & Export)	C.L.E. Cap. 235 and Amendments	Principal Collector of Customs
7. Stamp Duty	C.L.E. Cap 247 and Amendments	Commissioner of Inland Revenue
8. Sale of Motor Vehicles Tax	Finance Act 11 of 1963	Registrar of Motor Vehicles
9. Transfer of Property Tax	Finance Act 11 of 1963	Registrar of Lands/Companies Commissioner of Inland Revenue
10. Bank Debits Tax	Act No. 27 of 1970	Central Bank of Ceylon

Taxes, Levies and Fees	*Statute*	*Administrative Authority*
11. Visa Tax	Act No. 15 of 1971	Controller of Immigration and Emigration
12. Embarkation Tax	Act No. 5 of 1971	do
13. Compulsory Savings Levy	Act No. 6 of 1971	Commissioner of Inland Revenue
14. Excise Duty	C.L.E. Cap 52 and Amendments	Commissioner of Excise
15. Tobacco Tax	C.L.E. Cap 245	do
16. Prizes Competition Tax	Act No. 37 of 1957 and Amendment	Government Agent (Kachcheri)
17. Foreign Exchange Entitlement Certificate (FEECS)	Act No. 28 of 1968	Controller of Exchange
18. Fees, Levies and Duties		
(i) Wireless Apparatus, Telegraphs	C.L.E.Cap 192	Director of Telecommunications/Post-Master General
(ii) Motor Vehicles....	C.L.E.Cap 203	Registrar of Motor Vehicles
(iii) Fire Arms	C.L.E.Cap 182	Government Agent
(iv) Explosives	C.L.E.Cap 183	Controller of Explosives
(v) Imports & Exports	Act No. 1 of 1969	Controller of Imports & Exports
(vi) Rubber Research..	C.L.E.Cap 439	Principal Collector of Customs
(vii) Tea Research	C.L.E.Cap 438	do
(viii) Coconut Research .	C.L.E.Cap 440	do
(ix) Ceylon Tea Board .	Act No. 15 of 1970	do
(x) Medical Practitioners	C.L.E.Cap 105	Registrar of Medical Council
(xi) Trade Marks	C.L.E.Cap 150	Registrar of Trade Marks
(xii) Business Names ..	C.L.E.Cap 149	Registrar of Business Names
(xiii) Companies	C.L.E.Cap 145	Registrar of Companies
(xiv) Marriages (General)	C.L.E.Cap 112	Registrar General
(xv) Marriages (Kandyan)	C.L.E.Cap 114	do
(xvi) Marriages (Muslim)	C.L.E.Cap 115	do
(xvii) Factories	C.L.E.Cap 128	Registrar of Factories
(xviii) Domestic Servants .	C.L.E.Cap 137	Registrar of Domestics
(xix) Patents	C.L.E.Cap 152	Registrar of Patents
(xx) Designs	C.L.E.Cap 153	Registrar of Designs
(xxi) Practitioners of Indigenous Medicine	C.L.E.Cap 106	Board of Indigenous Medicine
(xxii) Cheetus	C.L.E.Cap 159	Registrar of Lands
(xxiii) Tea Propaganda ...	C.L.E.Cap 169	Ceylon Tea Propaganda Board
(xxiv) Prize Competition Licence.....	Act No. 37 of 1957	Government Agent (Kachcheri)
(xxv) Pawnbrokers	C.L.E.Cap 190	Government Agent
19. Capital Levy – Proposed in Budget Speech 1970-71. Legislation to be introduced.		

B. LOCAL AUTHORITY

1. Rates	C.L.E.Cap 266	Local Authority
2. Vehicles and Animals Tax	C.L.E.Cap 252, 255, 256, 257 .	do
3. Entertainment Tax	C.L.E.Cap 267	do
4. Betterment Contribution under Town and Country Planning Ordinance	C.L.E.Cap 269	Municipal Council/Urban Council
5. Acreage Tax	C.L.E.Cap 257	Village Council

Taxes, Levies and Fees	*Statute*	*Administrative Authority*
6. Fees and Levies:		
(1) Boats	C.L.E.Cap 198	Local Authority
(2) Butchers	C.L.E.Cap 272	do
(3) Vehicles other than motor vehicles	C.L.E.Cap 202	do
(4) Licences under Master Attendant Ordinance .	C.L.E.Cap 369	do
(5) Poisions, Opium and Dangerous Drugs	C.L.E.Cap 218	do
(6) Auctioneers and Brokers Licence	C.L.E.Cap 109	do
(7) Licensing of Accountants and Auditors other than those who are registered under the Companies Ordinance	C.L.E.Cap 252	Municipal Council
(8) Licensing of Money Changers	C.L.E.Cap 252	do
(9) Licensing Itinerant Vendors	C.L.E.Cap 252	do
(10) Licensing Lodging House, Restaurants, Eating Houses	C.L.E.Cap 252	Local Authority
(11) Slaughter-house fees .	C.L.E.Cap 252	Local Authority
(12) Stray Cattle -fines and fees	C.L.E.Cap 252	Local Authority
(13) Licence fees on fairs, markets etc.	C.L.E.Cap 252	Local Authority
(14) Fees for Advertisement boardings.....	C.L.E.Cap 252	Local Authority

E.E.C.

Résolution concernant les Régimes Généraux d'Aides à Finalité Régionale

Première résolution du 20 octobre 1971 des représentants des gouvernements des Etats membres, réunis au sein du Conseil

LES REPRÉSENTANTS DES GOUVERNEMENTS DES ÉTATS MEMBRES, RÉUNIS AU SEIN DU CONSEIL

considérant que les aides à finalité régionale, lorsqu'elles sont adéquates et judicieusement appliquées, constituent un des instruments indispensables du développement régional et permettent aux États membres de mener une politique régionale visant à une croissance plus équilibrée entre les différentes régions d'un même pays et de la Communauté;
constatant que les risques de surenchères, qui existent en matière d'aides à finalité régionale, exigent la mise au point, sans plus attendre, d'une première série de mesures de coordination destinées à limiter ces risques;
ayant pris connaissance de la communication de la Commission, du 23 juin 1971, concernant la coordination des régimes généraux d'aides à finalité regionale;
prennent dès lors l'engagement de se conformer, en matière de régimes d'aides à finalité régionale, selon les modalités d'application jointes en annexe à la présente résolution, aux principes suivants:

1. La coordination est assurée de manière progressive.

Elle est d'abord mise en oeuvre dans les régions les plus industrialisées de la Communauté (les «régions centrales»); une solution appropriée, inspirée des principes définis à la présente résolution et qui tiendra compte des problèmes spécifiques qui se posent dans chacune des régions périphériques, sera élaborée incessamment pour ces régions. D'autre part, dans les régions centrales, la mise en application de toutes les conditions requises s'effectue progressivement à partir du 1er janvier 1972 au cours d'une période de transition d'un an.

2. La coordination comporte principalement quatre aspects formant un tout: un plafond unique d'intensité, la transparence, la spécificité régionale et la répercussion sectorielle des aides à finalité régionale.

3. Le plafond unique d'intensité des aides est fixé en équivalent-subvention net, calculé selon la méthode commune d'évaluation des aides (décrites au point 5 des modalités d'application), la tendance devant être, dans les régions centrales, de diminuer le niveau des aides dans toute la mesure du possible.

Ce plafond, fixé au début à 20% en équivalent-subvention net, entre en vigueur au 1er janvier 1972. Il s'applique à l'ensemble des aides à finalité régionale accordées à un investissement donné. A la fin de l'année 1973, le niveau de ce plafond sera réexaminé, compte tenu de l'expérience acquise, des aménagements apportés aux régimes d'aides existants dans le sens d'une transparence effective et en rapport avec le problème du cumul entre aides régionales et aides sectorielles; les États membres marquent l'intérêt qu'ils attachent à examiner d'ici là les relations entre le niveau de l'aide accordée et le nombre d'emplois créés.

Des dérogations à ce plafond peuvent être admises, moyennant communication préalable des justifications nécessaires, selon la procédure prévue à l'article 93 du traité instituant la Communauté économique européenne. Ces dérogations au plafond font l'objet d'une communication périodique de la Commission au Conseil.

4. Une condition essentielle pour assurer la coordination et l'appréciation des régimes généraux d'aides est la transparence des aides et des régimes.
Il en résulte, pour les États membres, les obligations suivantes:
a) réaliser, au cours de la période de transition, la transparence des aides et des régimes:
- ne plus mettre en vigueur de nouvelles aides opaques;
- utiliser l'occasion de toute modification ou renouvellement des régimes existants pour les aménager dans le sens d'une transparence effective;
- éliminer, avant la fin de la période de transition, les aides dont l'opacité est irréductible;

b) appliquer effectivement, et dès le 1er janvier 1972, le plafond à l'ensemble des aides accordées à un investisseur pour un investissement donné.

5. En ce qui concerne la spécificité régionale, les principes suivants doivent être effectivement respectés:
- les aides régionales ne doivent pas couvrir l'ensemble du territoire national (exception faite pour le grand-duché de Luxembourg qui est considéré comme une seule région), c'est-à-dire que des aides générales ne sont pas octroyées sous le titre d'aides au développement régional;
- les régimes généraux d'aides doivent définir clairement, soit géographiquement, soit par des critères quantitatifs, la délimitation des régions, ou à l'intérieur de celles-ci, la délimitation des zones qui bénéficient des aides;
- sauf s'il s'agit de pôles de développement, les aides régionales ne doivent pas être octroyées de manière ponctuelle, c'est-à-dire en des points géographiques isolés n'ayant pratiquement pas d'influence sur le développement d'une région;
- lorsqu'il s'agit de faire face à des problèmes de nature, d'intensité et d'urgence différentes, l'intensité des aides doit, elle aussi, être différente;
- la gradation et la modulation des taux d'aides selon les différentes zones et régions doivent être clairement indiquées.

6. Le manque de spécificité sectorielle des régimes généraux d'aides à finalité régionale constitue une difficulté d'appréciation de ces régimes en raison des problèmes que la répercussion sectorielle de ces aides peut poser au niveau communautaire. En conséquence, les États membres mettront au point avec la Commission une procédure permettant d'apprécier les effets sectoriels des aides à finalité régionale.
Indépendamment de la mise au point de ladite procédure, le double cumul, c'est-à-dire la prise en compte d'un même problème sectoriel ou régional, à la fois par des aides régionales et des aides sectorielles qui se cumulent, est interdit.

7. La surveillance de l'application des principes de coordination des régimes généraux d'aides à finalité régionale est assurée par la Commission au moyen de la communication *a posteriori* qui lui sera faite des cas significatifs d'application selon une procédure garantissant le secret des affaires.

8. Les résultats de cette application seront examinés périodiquement avec les hauts

fonctionnaires nationaux compétents en matière d'aides. Un rapport annuel sera présenté par la Commission au Conseil et aux autres instances communautaires intéressées.

Annexe

Modalités d'application des principes de coordination des régimes généraux d'aides à finalité régionale

1. *Mise en oeuvre progressive*

La progressivité vise en premier lieu le champ territorial d'application. Un des objectifs de la coordination et de l'aménagement des régimes généraux d'aides à finalité régionale étant de mettre fin à la surenchère entre États membres pour attirer les investissements sur leurs territoires respectifs, la solution préconisée devra être appliquée, en premier lieu, dans les régions où les effets de cette surenchère, notamment sur la concurrence et les échanges, se font le plus sentir, c'est-à-dire dans les régions industrialisées et celles qui se situent de part et d'autre des frontières des États membres. Ces régions sont désignées ci-après comme «régions centrales» de la Communauté.

Pour les autres régions, désignées à leur tour comme «régions périphériques», une solution appropriée inspirée des mêmes principes sera élaborée incessamment, compte tenu des problèmes spécifiques qui se posent dans chacune de ces régions périphériques.

En outre, même dans les régions centrales, la mise en application de toutes les conditions requises ne peut s'effectuer que de manière progressive. Une période de transition est prévue à cette fin. Cette période est fixée à un an à partir de la date de mise en oeuvre de la coordination, c'est-à-dire à compter du 1er janvier 1972.

2. *Délimitation des régions centrales*

Les régions centrales comprennent l'ensemble de la Communauté à l'exclusion de Berlin, du «Zonenrandgebiet», de la partie du territoire français bénéficiant actuellement des primes de développement, ainsi que du «Mezzogiorno».

Le «Zonenrandgebiet» est défini par l'annexe au paragraphe 9 de la loi allemande concernant le développement du «Zonenrandgebiet» (Gesetz zur Förderung des Zonenrandgebiets vom 5. August 1971, Bundesgesetzblatt I, S. 1237).

La zone «PDI» en France est définie par le décret n° 69-285 du 21 mars 1969 et l'arrêté du 21 mars 1969 (JORF du 30.3.69), complétés par le décret n° 70-386 du 27 avril 1970 (JORF du 10.5.70).

Les territoires désignés sous la dénomination «Mezzogiorno» sont ceux énumérés à l'article 1er du texte unique des lois pour le Mezzogiorno (Décret du président de la République n° 1523 du 30 juin 1967, GU n. 159 du 24.6.68).

3. *Aspects sur lesquels porte la coordination*

La coordination et l'aménagement des régimes généraux d'aides portent sur quatre aspects fondamentaux: un plafond unique d'intensité des aides, la transparence des aides, la spécificité régionale et la répercussion sectorielle.

Ces quatre aspects sont intimement liés entre eux au point de former un tout. Un accord de principe a été réalisé sur tous les aspects précités, bien que la mise en application de toutes les conditions requises ne puisse s'effectuer que de maniére progressive.

Pour certaines de ces conditions – la réduction de l'opacité de certaines aides, ainsi que

la répercussion sectorielle – des travaux techniques sont encore en cours. Néanmoins, les résultats obtenus jusqu'à présent permettent de commencer à appliquer les principes de coordination au 1er janvier 1972, les autres conditions devant être réalisées aussitôt après et au plus tard à l'expiration de la période de transition d'un an.

4. *Plafond unique d'intensité*

Le plafond unique d'intensité que les États membres s'engagent à respecter, pour les régions centrales définies au point 2, dans l'application concrète des aides régionales dont bénéficie un même investisseur pour un investissement donné, vise à mettre fin à la surenchère en matière d'aides.

Ce plafond unique qui, durant la première étape, n'entraîne pas nécessairement une modification des régimes généraux d'aides, tient compte de toutes les aides régionales cumulées quelles qu'elles soient. De même, il ne doit pas amener les États membres, dont les régimes d'aides actuels n'atteignent pas ce plafond, à augmenter les aides actuelles.

Compte tenu des résultats de l'application de la méthode commune d'évaluation aux principaux régimes d'aides en vigueur dans les régions centrales, le niveau de ce plafond est fixé initialement au taux de 20% en équivalent-subvention net, calculé selon la méthode commune d'évaluation des aides. Ce niveau ne peut être choisi une fois pour toutes. La tendance doit être, dans les régions centrales, de diminuer le niveau des aides dans toute la mesure du possible. D'autre part, il faudra s'assurer que le plafond choisi corresponde effectivement aux nécessités et aux problèmes des zones aidées dans ces régions centrales. C'est la raison pour laquelle, alors que l'institution d'un plafond unique d'intensité constitue un principe, le choix du niveau de ce plafond doit demeurer une modalité d'application de ce principe. Cela permettra d'agir avec la souplesse requise.

La fixation d'un plafond unique ne signifie cependant pas que l'octroi d'aides se justifie en toute zone des régions centrales. Seules les régions – ou bien à l'intérieur de celles-ci, des zones clairement définies et délimitées – dont la situation socio-économique justifie l'octroi d'aides, peuvent en bénéficier. En dessous de ce plafond qui constitue une limite supérieure, les États membres continueront à moduler l'intensité de leurs aides régionales en fonction des caractéristiques socio-économiques des régions (voir ci-après «Spécificité régionale», point 7) et, le cas échéant, de considérations sectorielles. Par ailleurs, des dérogations à ce plafond sont admissibles, moyennant communication préalable à la Commission des justifications nécessaires. La Commission décide, sur la base de ces justifications qui peuvent porter, soit sur des cas individuels, soit sur les problèmes particuliers ou urgents qui se posent dans une zone. Ces dérogations au plafond font l'objet d'une communication périodique de la Commission au Conseil.

5. *Méthode commune d'évaluation des aides*

Les travaux ont permis d'établir une méthode commune d'évaluation et de comparaison des aides.

Il convient cependant de souligner qu'il s'agit d'une méthode de comparaison et non d'une méthode comptable. Elle permet de rendre les aides comparables, à l'intérieur d'un même régime d'aides et entre les différents régimes d'aides des États membres, en prenant en considération le maximum théorique qui peut être accordé. Ce maximum théorique peut être très différent du montant effectif de l'aide octroyée dans un cas déterminé.

La méthode est basée sur un critère unique de mesure, à savoir l'importance relative de l'aide par rapport au montant de l'investissement, cette importance étant exprimée en

pourcentages. De ce fait, la méthode permet de classer les principales formes et modalités d'aides en trois catégories: les aides transparentes ou mesurables, les aides semi-transparentes ou évaluables, pour lesquelles on peut procéder à une évaluation au moyen d'hypothèses qui introduisent une marge parfois très grande d'incertitude dans les calculs, et les aides opaques pour lesquelles la méthode est inapplicable. Dans cette dernière catégorie, l'on doit encore distinguer les aides dont l'opacité est irréductible.

Pour les calculs, on ne considère que l'aide après fiscalisation, c'est-à-dire l'équivalent-subvention net qui reste acquis au bénéficiaire après paiement des impôts sur les bénéfices et en prenant comme hypothèse que l'entreprise fait des bénéfices, dès la première année, tels que le prélèvement des contributions soit maximal. En conséquence, les niveaux d'intensité résultant de l'application de la méthode se situent largement en dessous des chiffres que l'on avait l'habitude de citer jusqu'ici à propos des aides régionales.

L'application de la méthode commune d'évaluation aux principaux régimes généraux d'aides à finalité régionale, octroyée dans les régions centrales du marché commun, donne pour les seules aides transparentes et semi-transparentes les intensités maximales théoriques suivantes:

Allemagne	18,1%
Belgique	16,5%
France	24,7%
Italie	26,7%
Luxembourg	17,3%
Pays-Bas	19,8%

La présentation schématique de la méthode d'évaluation des aides d'État, mise au point au cours de plusieurs réunions multilatérales avec les experts nationaux et approuvée le 18 décembre 1970 par les directeurs généraux des administrations nationales, se borne à indiquer les définitions de base et les conventions de simplification qui ont fait l'objet d'un accord au niveau technique, sans entrer dans le détail des problèmes qui ont du être analysés pour arriver à ces résultats.

Les définitions de base et les conventions sont les suivantes:

a) *Le critère unique de mesure* est le rapport entre le montant de l'aide et le montant de l'investissement, cette relation étant exprimée en pourcentage.

b) *Les aides transparentes* ou «mesurables» sont celles qui ont l'investissement pour assiette et pour lesquelles on peut établir en pourcentage le rapport avec le montant de cet investissement.

c) *L'assiette-type de l'aide* comprend trois catégories de dépenses d'investissement: terrain, bâtiment et équipement[1]. L'application de la méthode implique donc des rectifications de l'assiette selon que l'aide est accordée seulement à une partie de ces catégories ou à des dépenses supplémentaires. Pour celles-ci, la condition de transparence est de connaître leur importance par rapport à l'assiette-type.

d) *Clefs de répartition à l'intérieur de l'assiette-type de l'aide:* les experts nationaux ont adopté les clefs suivantes[2]:

	terrain	bâtiment	équipement
Allemagne	5	30	65
Belgique	5	40	55
France	5	50	45
Italie	5	30	65
Luxembourg	5	50	45
Pays-Bas	5	40	55

1. Cette convention comporte une marge d'approximation plus ou moins grande, selon les éléments que l'on fait entrer dans ces trois catégories de dépenses.

2. Ces clefs sont des moyennes très approximatives. Sur ce point, la méthode s'éloigne donc du principe de ne considérer que le maximum théorique de l'aide.

e) *Le moment du paiement de l'aide* est le même pour toutes les aides[3]. L'on ne tient pas compte de l'écart de la date ou des dates de versement par rapport au moment de la décision d'octroi de l'aide. Les crédits à taux réduits ou avec bonification d'intérêt sont ramenés à la même date que les subventions par un calcul d'actualisation.

f) *Le taux d'actualisation* retenu pour les calculs est fixé à 8%.

g) *Le problème de la fiscalisation hétérogène des aides à* l'intérieur d'un même régime général, selon les différentes formes d'aides, et entre les différents régimes généraux d'aides régionales des États membres, pour une même forme d'aide, est résolu en adoptant la formule du *résultat net* après fiscalisation, exprimé en équivalent-subvention, des aides qui demeurent acquises aux bénéficiaires. Cela implique comme hypothèse[4], que l'entreprise est bénéficiaire dès le début et que les bénéfices obtenus à la fin du premier exercice, sont suffisants pour payer le maximum d'impôts prélevés sur les aides.

h) *Les éléments de calcul pour les crédits à taux réduit ou avec bonification* d'intérêt sont les suivants:

- *la quotité:* pourcentage des dépenses d'investissement, compte tenu de l'assiette-type, couvert par le crédit,
- *la durée du crédit,*
- *la durée de la période de franchise d'amortissement,*
- *l'ampleur de la réduction du taux d'intérêt.*

Les textes légaux, réglementaires ou administratifs communiqués à la Commission doivent contenir ces indications pour que le régime d'aides soit transparent.

i) *Le taux de référence* est le taux de référence utilisé par les pouvoirs publics pour le versement des bonifications aux organismes de crédit. A défaut, l'on prend en considération le taux d'intérêt moyen du marché considéré. Lorsque des aides de cette forme sont majorées en basse conjoncture, l'on choisit un taux correspondant à cette conjoncture.

j) *Les aides fiscales transparentes* sont celles qui remplissent les conditions suivantes:

- l'impôt prélevé selon un taux forfaitaire ou maximal d'imposition, doit avoir comme assiette un montant investi dans la région,
- en outre, l'aide doit être déterminée par une quotité du taux d'imposition et avoir une durée déterminée.

Cependant, toute aide fiscale peut être rendue transparente si l'on fixe un plafond exprimé en pourcentage de l'investissement.

6. *Transparence des aides*

L'exigence de la transparence des aides constitue une condition essentielle pour assurer la coordination et l'appréciation des régimes d'aides. Par rapport à la méthode commune d'évaluation, la notion de transparence se définit comme suit:

- une aide est transparente ou «mesurable» lorsqu'on peut lui appliquer la méthode commune d'évaluation des aides.
- un régime d'aide est transparent lorsque, pour toutes les formes d'aides qu'il prévoit, il contient toutes les indications nécessaires à l'application de la méthode commune d'évaluation à chaque forme d'aide, les critères de modulation et les conditions de cumul étant clairement précisés.

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3. Cette simplification introduit également une marge d'approximation, mais dans le sens d'une certaine augmentation de l'intensité.

4. Cette hypothèse diminue l'intensité des aides par rapport à la réalité, dans la mesure où, en pratique, cette hypothèse ne se vérifie que rarement. Une entreprise en perte ou ne faisant ni pertes ni bénéfices durant les premiers exercices, conserve une partie sensiblement plus importante des aides.

Les régimes généraux d'aides actuellement en vigueur ne remplissent pas encore ces conditions. Un certain délai sera nécessaire à cet égard. Des travaux au niveau des experts sont en cours en ce qui concerne les aides opaques. Il est néanmoins reconnu que la coordination des aides peut être appliquée progressivement sans attendre l'issue de ces travaux, moyennant l'engagement des États membres sur les obligations énumérées au point 4 des «Principes de coordination».

7. *Spécificité régionale*

Il s'agit de la différenciation de l'intensité des aides en fonction de la nature, de l'intensité et de l'urgence des problèmes de développement régional que les pouvoirs publics se proposent de résoudre.

Cette notion de spécificité régionale étant directement liée à l'élaboration d'une politique régionale de la Communauté, aucune règle plus précise que les dispositions du traité ne pourrait, dans l'état actuel des choses, déterminer les régions de la Communauté où l'octroi d'aides se justifie à des degrés divers et celles qui ne se justifient pas.

Les travaux qui seront menés en matière de spécificité régionale au sein du comité ou groupe permanent de développement régional, seront de nature à faciliter cette appréciation.

En vertu du traité, il appartient à la Commission de s'assurer que les principes énoncés sous le point 5 «Principes de coordination», soient effectivement et progressivement respectés.

8. *Répercussion sectorielle*

Le manque de spécificité sectorielle de la plupart des régimes généraux d'aides à finalité régionale est une des caractéristiques intrinsèques de ces régimes, du fait qu'une aide régionale est souvent accordée sans distinction à tous les secteurs industriels. Néanmoins, c'est au niveau des biens et des services, c'est-à-dire de ces secteurs, que les effets des aides sur la concurrence et les échanges se font sentir. Il est cependant difficile d'apprécier ces effets en l'absence de spécificité sectorielle des aides régionales.

C'est pour résoudre cette difficulté qu'il est nécessaire de mettre au point une procédure permettant d'appréhender ces effets sectoriels en raison des problèmes que ceux-ci peuvent poser au niveau communautaire.

Des travaux au niveau des experts sont en cours à ce sujet. Différentes solutions sont en cours d'examen. Il est néanmoins reconnu que la coordination des aides régionales peut commencer à être appliquée sans attendre l'issue de ces travaux, à condition que l'interdiction du double cumul (voir point 6 des «Principes de coordination») soit respectée et compte tenu de la possibilité pour la Commission d'utiliser, le cas échéant, la procédure visée à l'article 93 paragraphe 2 du traité instituant la Communauté économique européenne, notamment lorsque l'application des régimes généraux d'aides fait .l'objet de plaintes justifiées émanant d'un État membre.

Indépendamment de ces travaux, il convient d'accorder le maximum d'attention aux aspects sectoriels des informations en matière d'aides que les États membres doivent fournir à la Commission. Il est rappelé à cet égard que:

- les dispositions ou mesures destinées à orienter sectoriellement les aides régionales font l'objet, en tant qu'éléments constitutifs des régimes d'aide, au même titre que les autres dispositions, de la communication préalable qui, conformément à l'article 93 paragraphe 3 du traité doit être adressée en temps utile à la Commission: il est indifférent que les indications nécessaires soient reprises de façon organique dans le régime général d'aides ou qu'il y soit seulement fait référence à des plans de

développement, nationaux ou régionaux; la nature juridique (dispositions normatives ou circulaires administratives) ainsi que le caractère juridique (dispositions contraignantes ou seulement indicatives) de ces dispositions ne jouent aucun rôle;

- lorsqu'un régime d'aides régionales a une finalité mixte, régionale et sectorielle, il est indispensable que ce régime soit communiqué comme tel à la Commission, au titre de l'article 93 paragraphe 3 du traité, afin qu'il puisse être apprécié à la fois sous l'angle régional et sous l'angle sectoriel;
- les informations statistiques «sectorialisées» sur l'application des régimes généraux d'aides à finalité régionale font partie, au même titre que les autres informations relatives à ces régimes, des renseignements à communiquer régulièrement par les États membres à la Commission afin de lui permettre de procéder, avec ceux-ci, à l'examen permanent des régimes d'aides prévu à l'article 93 paragraphe 1 du traité.

En ce qui concerne l'examen statistique *a posteriori* des répercussions sectorielles des aides régionales, on est actuellement en train d'en mettre au point la technique (homogénéité des données, rythme de collecte).

9. *La mise en oeuvre* de la coordination et de l'aménagement des régimes d'aides à finalité régionale étant progressive, une surveillance est indispensable, non seulement pour assurer cette progressivité, mais pour pouvoir constater les résultats effectifs de cette coordination et, le cas échéant, parfaire ou compléter les modalités d'application.

Cette surveillance est assurée par la Commission au moyen de la communication *a posteriori* qui lui sera faite des cas significatifs d'application selon une procédure garantissant le secret des affaires et qui sera mise au point avec le concours des experts des États membres.

Les résultats de l'application des principes de coordination seront examinés périodiquement avec les hauts fonctionnaires nationaux compétents en matière d'aides. Un rapport annuel sera fait au Conseil par la Commission.

Communication de la Commission au Conseil concernant les Régimes Généraux d'Aides à Finalité Régionale

A maintes reprises, et tout récemment dans le troisième programme de politique économique à moyen terme pour la période 1971-1975[5], les États membres et les instances communautaires ont souligné la nécessité de mettre fin à la surenchère en matière d'aides régionales et de parvenir à une coordination de ces régimes d'aides au niveau de la Communauté. Cette nécessité est devenue encore plus urgente depuis l'adoption par le Conseil et par les représentants des gouvernements des États membres de la résolution sur la création par étapes de l'union économique et monétaire, car sa réalisation implique la coordination en matière d'aides des États.

Or, depuis plusieurs années et plus particulièrement depuis l'achèvement de l'union douanière, les aides d'État et notamment les régimes généraux d'aides à finalité régionale ont connu un important accroissement tant quantitatif que qualitatif. Si, d'une part, les États membres ont de plus en plus recours à ces mesures pour mettre en oeuvre leur politique de développement économique, d'autre part, les effets de ces interventions sur

5. Programme adopté par le Conseil et les gouvernements des États membres lors de la 141e session du Conseil, les lundi 8 et mardi 9 février 1971. Cf. doc. R/2179/I/70 (ECO 214 rev. 1) du 11. 12. 1970, p. 66.

la concurrence et sur les échanges se sont fait sentir davantage à mesure que disparaissaient les barrières douanières.

Cependant, en raison des caractéristiques des régimes généraux d'aides – lois-cadres prévoyant souvent des mesures insuffisamment transparentes et de caractère trop général –, la Commission s'est trouvée dans l'impossibilité de se prononcer, notamment au préalable, sur la compatibilité desdits régimes d'aides avec le marché commun.

Les aides à finalité régionale, lorsqu'elles sont adéquates et judicieusement appliquées, constituent un des instruments indispensables de développement régional et permettent aux États membres de mener une politique régionale visant à une croissance plus équilibrée entre les différentes régions d'un même pays.

C'est pourquoi, la Commission, soucieuse de préserver les exigences d'une concurrence efficace et d'un développement régional ordonné, avait proposé dès 1968 aux États membres une méthode pragmatique – la communication préalable des cas significatifs d'application des régimes généraux d'aides à finalité régionale – qui devait lui permettre, conformément aux dispositions des articles 92 et suivants du traité CEE, d'apprécier les effets de ces régimes sur la concurrence et les échanges et de se prononcer sur leur compatibilité avec le marché commun. Devant les difficultés rencontrées, la Commission a recherché une solution alternative visant à coordonner et à aménager les régimes eux-mêmes.

En effet, quatre États membres (Allemagne, Belgique, Luxembourg et Pays-Bas) se sont prononcés en faveur de la méthode pragmatique précitée, alors que deux États membres (France et Italie) s'y sont opposés et ont préconisé une approche plus globale.

Malgré cette divergence, tous les États membres ont coopéré à la mise au point de la solution de coordination et un consensus s'est dégagé sur les principes de cette coordination. Ce sont ces principes qui font l'objet de la présente communication au Conseil.

Par cette information, la Commission remplit l'engagement pris, lors de l'examen entrepris par le Conseil du mémorandum concernant la politique industrielle de la Communauté (session des lundi 8 et mardi 9 juin 1970) et concernant la proposition de décision du Conseil relative à l'organisation de moyens d'action de la Communauté en matière de développement régional (session du Conseil des lundi 26 et mardi 27 octobre 1970), de communiquer au Conseil les résultats des travaux menés, en application des dispositions des articles 92 et suivants du traité CEE, avec les fonctionnaires nationaux compétents, pour mettre fin à la surenchère et aboutir à une meilleure transparence des régimes généraux d'aides à finalité régionale.

En outre, après l'exposé des principes de coordination[6], cette communication contient une déclaration de la Commission.

I. PRINCIPES DE COORDINATION DES RÉGIMES GÉNÉRAUX D'AIDES À FINALITÉ RÉGIONALE[7]

1. La coordination est assurée de manière progressive.

Elle est d'abord mise en oeuvre dans les régions les plus industrialisées de la Communauté (les «régions centrales»); une solution appropriée, inspirée des principes ici définis et qui tiendra compte des problèmes spécifiques qui se posent dans chacune des régions périphériques sera élaborée incessamment pour ces régions.

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6. Les modalités d'application de ces principes font l'objet de l'annexe jointe au présent document.

7. Les modalités d'application de ces principes font l'objet de l'annexe jointe au présent document.

D'autre part, dans les régions centrales, la mise en application de toutes les conditions requises s'effectue progressivement à partir du 1er janvier 1972 au cours d'une période de transition d'un an.

2. La coordination comporte principalement quatre aspects formant un tout: un plafond unique d'intensité, la transparence, la spécificité régionale et la répercussion sectorielle des aides à finalité régionale.

3. Le plafond unique d'intensité des aides est fixé en équivalent-subvention net calculé selon la méthode commune d'évaluation des aides[8], la tendance devant être, dans les régions centrales, de diminuer le niveau des aides dans toute la mesure du possible.

Ce plafond, fixé au début à 20% en équivalent-subvention net, entre en vigueur au 1er janvier 1972. Il s'applique à l'ensemble des aides à finalité régionale accordées à un investissement donné. A la fin de l'année 1973, le niveau de ce plafond sera réexaminé, compte tenu de l'expérience acquise, des aménagements apportés aux régimes d'aides existants dans le sens d'une transparence effective et en rapport avec le problème du cumul entre aides régionales et aides sectorielles; les États membres marquent l'intérêt qu'ils attachent à examiner d'ici là les relations entre le niveau de l'aide accordée et le nombre d'emplois créés.

Des dérogations à ce plafond peuvent être admises moyennant communication préalable des justifications nécessaires selon la procédure prévue à l'article 93 du traité instituant la Communauté économique européenne. Ces dérogations au plafond font l'objet d'une communication périodique de la Commission au Conseil.

4. Une condition essentielle pour assurer la coordination et l'appréciation des régimes généraux d'aides est la transparence des aides et des régimes.

Il en résulte pour les États membres les obligations suivantes:

a) réaliser, au cours de la période de transition, la transparence des aides et des régimes:
- ne plus mettre en vigueur de nouvelles aides opaques,
- utiliser l'occasion de toute modification ou renouvellement des régimes existants pour les aménager dans le sens d'une transparence effective,
- éliminer, avant la fin de la période de transition, les aides dont l'opacité est irréductible;

b) appliquer effectivement, et dès le 1er janvier 1972, le plafond à l'ensemble des aides accordées à un investisseur pour un investissement donné.

5. En ce qui concerne la spécificité régionale, les principes suivants doivent être effectivement respectés:
- les aides régionales ne doivent pas couvrir l'ensemble du territoire national[9], c'est-à-dire, des aides générales ne sont pas octroyées sous le titre d'aides au développement régional,
- les régimes généraux d'aides doivent définir clairement, soit géographiquement, soit par des critères quantitatifs, la délimitation des régions ou, à l'intérieur de celles-ci, la délimitation des zones qui bénéficient des aides,
- sauf s'il s'agit de pôles de développement, les aides régionales ne doivent pas être octroyées de manière ponctuelle, c'est-à-dire en des points géographiques isolés n'ayant pratiquement pas d'influence sur le développement d'une région,
- lorsqu'il s'agit de faire face à des problèmes de nature, d'intensité et d'urgence dif-

8. Cette méthode d'évaluation est décrite au point 5 des «Modalités d'application».

9. Exception faite pour le grand-duché du Luxembourg qui est considéré comme une seule région.

férentes, l'intensité des aides doit, elle aussi, être différente,
- la gradation et la modulation des taux d'aides selon les différentes zones et régions doivent être clairement indiquées.

6. Le manque de spécificité sectorielle des régimes généraux d'aides à finalité régionale constitue une difficulté d'appréciation de ces régimes en raison des problèmes que la répercussion sectorielle de ces aides peut poser au niveau communautaire. En conséquence, les États membres mettront au point avec la Commission une procédure permettant d'apprécier les effets sectoriels des aides à finalité régionale.

Indépendamment de la mise au point de ladite procédure, le double cumul, c'est-à-dire la prise en compte d'un même problème sectoriel ou régional, à la fois par des aides régionales et des aides sectorielles qui se cumulent, est interdit.

7. La surveillance de l'application des principes de coordination des régimes généraux d'aides à finalité régionale est assurée par la Commission au moyen de la communication a posteriori qui lui sera faite des cas significatifs d'application selon une procédure garantissant le secret des affaires.

8. Les résultats de cette application seront examinés périodiquement avec les hauts fonctionnaires nationaux compétents en matière d'aides. Un rapport annuel sera présenté par la Commission au Conseil et autres instances communautaires intéressées.

II. DECLARATION DE LA COMMISSION

La Commission informe le Conseil que, à partir du 1er janvier 1972, elle appliquera, dans l'exécution de la mission que lui confèrent les articles 92 et suivants du traité CEE, ces principes aux régimes généraux d'aides à finalité régionale en vigueur ou qui seront institués dans les régions centrales de la Communauté.

La Commission estime souhaitable que les gouvernements des États membres prennent, de leur côté, l'engagement de se conformer, selon les modalités d'application ci-jointes, aux principes définis ci-dessus, dans l'application de leurs régimes d'aides à finalité régionale.

Annexe

Modalités d'application des principes de coordination des régimes généraux d'aides à finalité régionale

1. *Mise en oeuvre progressive*

La progressivité vise en premier lieu le champ territorial d'application. Un des objectifs de la coordination et de l'aménagement des régimes généraux d'aides à finalité régionale étant de mettre fin à la surenchère entre États membres pour attirer les investissements sur leurs territoires respectifs, la solution préconisée devra être appliquée, en premier lieu, dans les régions où les effets de cette surenchère, notamment sur la concurrence et les échanges, se font le plus sentir, c'est-à-dire, dans les régions industrialisées et celles qui se situent de part et d'autre des frontières des États membres. Ces régions sont désignées ci-après comme «régions centrales» de la Communauté.

Pour les autres régions, désignées à leur tour comme «régions périphériques», une solution appropriée inspirée des mêmes principes sera élaborée incessamment, compte tenu des problèmes spécifiques qui se posent dans chacune de ces régions périphériques.

En outre, même dans les régions centrales, la

mise en application de toutes les conditions requises ne peut s'effectuer que de manière progressive. Une période de transition est prévue à cette fin. Cette période est fixée à un an à partir de la date de mise en oeuvre de la coordination, c'est-à-dire à compter du 1er janvier 1972.

2. *Délimitation des régions centrales*

Les régions centrales comprennent l'ensemble de la Communauté à l'exclusion de Berlin, du «Zonenrandgebiet», de la partie du territoire français bénéficiant actuellement des primes de développement, ainsi que du «Mezzogiorno».

Le «Zonenrandgebiet» est défini par l'annexe au paragraphe 9 de la loi allemande concernant le développement du «Zonenrandgebiet» (Gesetz zur Förderung des Zonenrandgebietes vom 5. 8. 1971, Bundesgesetzblatt I S. 1237).

La zone PDI en France est définie par le décret n° 69-285 du 21 mars 1969 et l'arrêté du 21 mars 1969 (J.O.R.F. du 30. 3. 1969), complétés par le décret n° 70-386 du 27 avril 1970 (J.O.R.F. du 10 5. 1970).

Les territoires désignés sous la dénomination «Mezzogiorno» sont ceux énumérés à l'article 1er du texte unique des lois pour le «Mezzogiorno» (décret du président de la République n° 1523 du 30.6.1967, GU n° 159 du 24.6.1968).

3. *Aspects sur lesquels porte la coordination*

La coordination et l'aménagement des régimes généraux d'aides portent sur quatre aspects fondamentaux: un plafond unique d'intensité des aides, la transparence des aides, la spécificité régionale et la répercussion sectorielle.

Ces quatres aspects sont intimement liés entre eux au point de former un tout. Un accord de principe a été réalisé sur tous les aspects précités, bien que la mise en application de toutes les conditions requises ne puisse s'effectuer que de manière progressive.

Pour certaines de ces conditions – la réduction de l'opacité de certaines aides, ainsi que la répercussion sectorielle – des travaux techniques sont encore en cours. Néanmoins, les résultats obtenus jusqu'à présent permettent de commencer à appliquer les principes de coordination au 1er janvier 1972, les autres conditions devant être réalisées aussitôt après et au plus tard à l'expiration du délai de transition d'un an.

4. *Le plafond unique d'intensité*

Le plafond maximum unique d'intensité que les États membres s'engagent de respecter, pour les régions centrales définies au point 2, dans l'application concrète des aides régionales dont bénéficie un même investisseur pour un investissement donné, vise à mettre fin à la surenchère en matière d'aides. Ce plafond unique qui, durant la première étape, n'entraîne pas nécessairement une modification des régimes généraux d'aides, tient compte de toutes les aides régionales cumulées quelles qu'elles soient. De même, il ne doit pas conduire les États membres, dont les régimes d'aides actuels n'atteignent pas ce plafond, à augmenter les aides actuelles.

Compte tenu des résultats de l'application de la méthode commune d'évaluation aux principaux régimes d'aides en vigueur dans les régions centrales, le niveau de ce plafond est fixé initialement au taux de 20% en équivalent-subvention net, calculé selon la méthode commune d'évaluation des aides.

Ce niveau ne peut être choisi une fois pour toutes. La tendance doit être, dans les régions centrales, de diminuer le niveau des aides dans toute la mesure du possible. D'autre part, il faudra s'assurer que le plafond choisi corresponde effectivement aux nécessités et aux problèmes des zones aidées dans ces régions centrales. C'est la raison pour laquel-

le, alors que l'institution d'un plafond unique d'intensité constitue un principe, le choix du niveau de ce plafond doit demeurer une modalité d'application de ce principe. Cela permettra d'agir avec la souplesse requise.
La fixation d'un plafond unique ne signifie cependant pas que l'octroi d'aides se justifie en toute zone des régions centrales. Seules les régions – ou bien à l'intérieur de celles-ci, des zones clairement définies et délimitées – dont la situation socio-économique justifie l'octroi d'aides, peuvent en bénéficier. En-dessous de ce plafond qui constitue une limite supérieure, les États membres continueront à moduler l'intensité de leurs aides régionales en fonction des caractéristiques socio-économiques des régions (voir ci-après «Spécificité régionale», point 7) et, le cas échéant, de considérations sectorielles. Par ailleurs, des dérogations à ce plafond sont admissibles moyennant communication préalable à la Commission des justifications nécessaires. La Commission décide, sur la base de ces justifications, qui peuvent porter soit sur des cas individuels, soit sur les problèmes particuliers ou urgents qui se posent dans une zone. Ces dérogations au plafond font l'objet d'une communication périodique de la Commission au Conseil.

5. *La méthode commune d'évaluation des aides*
Les travaux ont permis d'établir une méthode commune d'évaluation et de comparaison des aides.
Il convient cependant de souligner qu'il s'agit d'une méthode de comparaison et non d'une méthode comptable. Elle permet de rendre les aides comparables, à l'intérieur d'un même régime d'aides et entre les différents régimes d'aides des États membres, en prenant en considération le maximum théorique qui peut être accordé. Ce maximum théorique peut être très différent du montant effectif de l'aide octroyée dans un cas déterminé.
La méthode est basée sur un critère unique de mesure, à savoir l'importance relative de l'aide par rapport au montant de l'investissement, cette importance étant exprimée en pourcentages. De ce fait, la méthode permet de classer les principales formes et modalités d'aides semi-transparentes ou évaluables, pour lesquelles on peut procéder à une évaluation au moyen d'hypothèses qui introduisent une marge parfois très grande d'incertitude dans les calculs et les aides opaques pour lesquelles la méthode est inapplicable. Dans cette dernière catégorie, l'on doit encore distinguer les aides dont l'opacité est réductible et celles dont l'opacité est irréductible.
Pour les calculs, on ne considère que l'aide après fiscalisation, c'est-à-dire l'équivalent-subvention net qui reste acquis au bénéficiaire après paiement des impôts sur les bénéfices et en prenant comme hypothèse que l'entreprise fait des bénéfices dès la première année, tels que le prélèvement des contributions soit maximal. En conséquence, les niveaux d'intensité résultant de l'application de la méthode se situent largement en dessous des chiffres que l'on avait l'habitude de citer jusqu'ici à propos des aides régionales.
L'application de la méthode commune d'évaluation aux principaux régimes généraux d'aides à finalité régionale, octroyés dans les régions centrales du marché commun, donne pour les seules aides transparentes et semi-transparentes les intensités maximales théoriques suivantes:

Allemagne	18,1%
Belgique	16,5%
France	24,7%
Italie	26,7%
Luxembourg	17,3%
Pays-Bas	19,8%

La présentation schématique de la méthode d'évaluation des aides d'État, mise au point

au cours de plusieurs réunions multilatérales avec les experts nationaux et approuvée le 18 décembre 1970 par les directeurs généraux des administrations nationales, se borne à indiquer les définitions de base et les conventions de simplification qui ont fait l'objet d'un accord au niveau technique, sans entrer dans le détail des problèmes qui ont dû être analysés pour arriver à ces résultats.

Les définitions de base et les conventions sont les suivantes:

a) *Le critère unique de mesure* est le rapport entre le montant de l'aide et le montant de l'investissement, cette relation étant exprimée en pourcentage;

b) *Les aides transparentes* ou «mesurables» sont celles qui ont l'investissement pour assiette et pour lesquelles on peut établir en pourcentage le rapport avec le montant de cet investissement;

c) *L'assiette-type de l'aide* comprend trois catégories de dépenses d'investissement: terrain, bâtiment et équipement[10]. L'application de la méthode implique donc des rectifications de l'assiette selon que l'aide est accordée seulement à une partie de ces catégories ou à des dépenses supplémentaires. Pour celles-ci, la condition de transparence est de connaître leur importance par rapport à l'assiette-type;

d) *Clefs de répartition à l'intérieur de l'assiette-type de l'aide:* les experts nationaux ont adopté les clefs suivantes[11]:

	terrain	bâtiment	équipement
Allemagne	5	30	65
Belgique	5	40	55
France	5	50	45
Italie	5	30	65
Luxembourg	5	50	45
Pays-Bas	5	40	55

e) *Le moment du paiement de l'aide* est le même pour toutes les aides[12]. On ne tient pas compte de l'écart de la date ou des dates de versement par rapport au moment de la décision d'octroi de l'aide. Les crédits à taux réduits ou avec bonification d'intérêt sont ramenés à la même date que les subventions par un calcul d'actualisation;

f) *Le taux d'actualisation* retenu pour les calculs est fixé à 8%;

g) *Le problème de la fiscalisation hétérogène des aides* à l'intérieur d'un même régime général, selon les différentes formes d'aides, et entre les différents régimes généraux d'aides régionales des États membres, pour une même forme d'aide, est résolu en adoptant la formule du *résultat net* après fiscalisation, exprimé en équivalent-subvention, des aides qui demeurent acquises aux bénéficiaires. Cela implique comme hypothèse[13] que l'entreprise est bénéficiaire dès le début et que les bénéfices obtenus à la fin du premier exercice, sont suffisants pour payer le maximum d'impôts prélevés sur les aides;

h) *Les éléments de calcul pour les crédits à taux réduit ou avec bonification* d'intérêts sont les suivants:

- *la quotité:* pourcentage des dépenses d'investissement, compte tenu de l'assiette-type, couvert par le crédit,

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10. Cette convention comporte une marge d'approximation plus ou moins grande selon les éléments que l'on fait entrer dans ces trois catégories de dépenses.

11. Ces clefs sont des moyennes très approximatives. Sur ce point, la méthode s'éloigne donc du principe de ne considérer que le maximum théorique de l'aide.

12. Cette simplification introduit également une marge d'approximation, mais dans le sens d'une certaine augmentation de l'intensité.

13. Cette hypothèse diminue l'intensité des aides par rapport à la réalité, dans la mesure où, en pratique, cette hypothèse ne se vérifie que rarement. Une entreprise en perte ou ne faisant ni pertes, ni bénéfices durant les premiers exercices conserve une partie sensiblement plus importante des aides.

- *la durée du crédit,*
- *la durée de la période de franchise d'amortissement,*
- *l'ampleur de la réduction du taux d'intérêt;*

Les textes légaux, réglementaires ou administratifs communiqués à la Commission doivent contenir ces indications pour que le régime d'aides soit transparent;

i) *Le taux de référence* est le taux de référence utilisé par les pouvoirs publics pour le versement des bonifications aux organismes de crédit. A défaut, l'on prend en considération le taux d'intérêt moyen du marché considéré. Lorsque des aides de cette forme sont majorées en basse conjoncture, l'on choisit un taux correspondant à cette conjoncture;

j) *Les aides fiscales transparentes* sont celles qui remplissent les conditions suivantes:

- l'impôt prélevé selon un taux forfaitaire ou maximal d'imposition doit avoir comme assiette un montant investi dans la région,
- en outre, l'aide doit être déterminée par une quotité du taux d'imposition et avoir une durée déterminée.

Cependant, toute aide fiscale peut être rendue transparente si l'on fixe un plafond exprimé en pourcentage de l'investissement.

6. *La transparence des aides*

L'exigence de la transparence des aides constitue une condition essentielle pour assurer la coordination et l'appréciation des régimes d'aides. Par rapport à la méthode commune d'évaluation, la notion de transparence se définit comme suit:

- une aide est transparente ou «mesurable» lorsque l'on peut lui appliquer la méthode commune d'évaluation des aides,
- un régime d'aide est transparent lorsque, pour toutes les formes d'aides qu'il prévoit, il contient toutes les indications nécessaires à l'application de la méthode commune d'évaluation à chaque forme d'aide, les critères de modulation et les conditions du cumul étant clairement précisées.

Les régimes généraux d'aides actuellement en vigueur ne remplissent pas encore ces conditions. Un certain délai sera nécessaire à cet égard. Des travaux au niveau des experts sont en cours en ce qui concerne les aides opaques. Il est néanmoins reconnu que la coordination des aides peut être appliquée progressivement sans attendre l'issue de ces travaux, moyennant l'engagement des États membres sur les obligations énumérées au point 4 des «Principes de coordination».

7. *La spécificité régionale*

Il s'agit de la différenciation de l'intensité des aides en fonction de la nature, de l'intensité et de l'urgence des problèmes de développement régional que les pouvoirs publics se proposent de résoudre.

Cette notion de spécificité régionale étant directement liée à l'élaboration d'une politique régionale de la Communauté, aucune règle plus précise que les dispositions du traité ne pourrait, dans l'état actuel des choses, déterminer les régions de la Communauté où l'octroi d'aides se justifie à des degrés divers et celles qui ne se justifient pas.

Les travaux qui seront menés en matière de spécificité régionale au sein du comité de développement régional seront de nature à faciliter cette appréciation.

En vertu du traité, il appartient à la Commission de s'assurer que les principes énoncés sous le point 5 «Principes de coordination», soient effectivement et progressivement respectés.

8. *La répercussion sectorielle*

Le manque de spécificité sectorielle de la plupart des régimes généraux d'aides à finalité régionale est une des caractéristiques intrinséques de ces régimes, du fait qu'une aide régionale est souvent accordée sans distinction à tous les secteurs industriels. Néan-

moins, c'est au niveau des biens et des services, c'est-à-dire de ces secteurs, que les effets des aides sur la concurrence et les échanges se font sentir. Il est cependant difficile d'apprécier ces effets en l'absence de spécificité sectorielle des aides régionales.

C'est pour résoudre cette difficulté qu'il est nécessaire de mettre au point une procédure permettant d'appréhender ces effets sectoriels en raison des problèmes que ceux-ci peuvent poser au niveau communautaire.

Des travaux au niveau des experts sont en cours à ce sujet. Différentes solutions sont en cours d'examen. Il est néanmoins reconnu que la coordination des aides régionales peut commencer à être appliquée sans attendre l'issue de ces travaux, à condition que l'interdiction du double cumul (voir point 6 des «Principes de coordination») soit respectée et compte tenu de la possibilité pour la Commission d'utiliser, le cas échéant, la procédure visée à l'article 93 paragraphe 2 du traité instituant la Communauté économique européenne, notamment lorsque l'application des régimes généraux d'aides fait l'objet de plaintes justifiées émanant d'un État membre.

Indépendamment de ces travaux, il convient d'accorder le maximum d'attention aux aspects sectoriels des informations en matière d'aides que les États membres doivent fournir à la Commission. Il est rappelé à cet égard que:

- les dispositions ou mesures destinées à orienter sectoriellement les aides régionales font l'objet, en tant qu'éléments constitutifs des régimes d'aides au même titre que les autres dispositions, de la communication préalable qui, conformément à l'article 93 paragraphe 3 du traité, doit être adressée en temps utile à la Commission: il est indifférent que les indications nécessaires soient reprises de façon organique dans le régime général d'aides ou qu'il y soit seulement fait référence à des plans de développement, nationaux ou régionaux; la nature juridique (dispositions normatives ou circulaires administratives), ainsi que le caractère juridique (dispositions contraignantes ou seulement indicatives) de ces dispositions ne jouent aucun rôle;
- lorsqu'un régime d'aides régionales a une finalité mixte, régionale et sectorielle, il est indispensable que ce régime soit communiqué comme tel à la Commission, au titre de l'article 93 paragraphe 3 du traité, afin qu'il puisse être apprécié à la fois sous l'angle régional et sous l'angle sectoriel;
- les informations statistiques «sectorialisées» sur l'application des régimes généraux d'aides à finalité régionale font partie, au même titre que les autres informations relatives à ces régimes, des renseignements à communiquer régulièrement par les États membres à la Commission afin de lui permettre de procéder, avec ceux-ci, à l'examen permanent des régimes d'aides prévu à l'article 93 paragraphe 1 du traité CEE.

En ce qui concerne l'examen statistique a posteriori des répercussions sectorielles des aides régionales, on est actuellement en train d'en mettre au point la technique (homogénéité des données, rythme de collecte).

9. La mise en oeuvre de la coordination et de l'aménagement des régimes d'aides à finalité régionale étant progressive, une surveillance est indispensable, non seulement pour assurer cette progressivité, mais pour pouvoir constater les résultats effectifs de cette coordination et, le cas échéant, parfaire ou compléter les modalités d'application.

Cette surveillance est assurée par la Commission au moyen de la communication a posteriori qui lui sera faite des cas significatifs d'application selon une procédure garantissant le secret des affaires et qui sera mise au point avec le concours des experts des États membres.

Les résultats de l'application des principes de

coordination seront examinés périodiquement avec les hauts fonctionnaires nationaux compétents en matière d'aides. Un rapport annuel sera fait au Conseil par la Commission.

IFA NEWS

DR. H.C. W. MERSMANN*:

Résumé raisonné zu Thema II 25.IFA Kongress

Kriterien fur die Aufteilung der Einnahmen und Ausgaben zwischen verbundenen Unternehmen in verschiedeiien Ländern – mit oder ohne Doppelbesteucrungsabkommen.

Die Resolution zum zweiten Thema des IFA-Kongresses in Washington 1971 befaßt sich mit Maßnahmen zur Vermeidung der wirtschaftlichen Doppelbelastung mit Ertragssteuern auf einem wichtigen Gebiet.

1.) Der Kongreß ist davon ausgegangen, daß die meisten neueren Doppelbesteuerungs-Abkommen und auch Artikel 9 des OECD-Mustervertrages dem Staate eines Unternehmens die Möglichkeit geben, dessen steuerlichen Gewinn und entsprechend die Steuer vom Einkommen und Ertrag zu erhöhen, wenn das Unternehmen einem mit ihm verbundenen ausländischen Unternehmen durch eine Transaktion finanzielle Vorteile verschafft hat, die es fremden Unternehmen nicht eingeräumt hätte. Ob dies auf ein zwischen den beiden Staaten bestehendes steuerliches Gefälle zurückzuführen ist oder auf anderen Gründen beruht, ist unerheblich. Dabei handelt es sich nach dem Wortlaut der Bestimmungen im wesentlichen um das Verhältnis von Mutter- und Tochtergesellschaften, aber auch von Schwestergesellschaften untereinander.

In der Diskussion ist insbesondere von englischer Seite (Prof. G.S.A. Wheatcroft und Mr. Alun G. Davies) die Auffassung vertreten worden, daß der Staat von diesem Recht nur ausnahmsweise Gebrauch machen könne, wenn offenbar die Absicht der Steuerhinterziehung vorliege. Diese einschränkende Auslegung, der u.a. von H. Horst Vogel (BR Deutschland) widersprochen worden ist, ist in die Resolution nicht aufgenommen worden. Andere Diskussionsredner, insbesondere Herr F. Spierdijk (Niederlande) und der Schwede Prof. Lodin wiesen darauf hin, daß die Erhöhung der Steuern unter Anwendung der sogenannten „arm's length"-Klausel in der Praxis besonders dann große Schwierigkeiten machen könne, wenn ein vergleichbarer Marktpreis nicht gegeben sei. Obgleich hierüber wohl Einigkeit bestand, hat auch dieser Hinweis in die Resolution keinen Eingang gefunden.

In dieser wird nur vorausgesetzt, daß auf Grund eines Doppelbesteuerungsabkommens Einkommen oder Ausgaben bei Geschäften zwischen verbundenen Unternehmen, die verschiedenen Ländern angehören, neu berechnet worden sind und daß dadurch die Steuer des einheimischen verbundenen Unternehmens erhöht worden ist. Eine wirtschaftliche Doppelbesteuerung ist in diesem Falle regelmäßig zu erwarten, wenn nicht in dem anderen Staate eine entsprechende Regelung, im allgemeinen also eine Verminderung der Steuer, durchgeführt wird.

Als Mittel, um diese steuerliche Doppelbelastung zu vermeiden, kommt auf lange Sicht die Aufstellung und möglichst weitgehende Koordinierung von Richtlinien für die Aufteilung der Steuern im Verhältnis zwischen verbundenen Unternehmen mehrerer Länder in Betracht. Da dieses Ziel erst in

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* Vorsitzender des Resolutionsausschusses.

langer Zeit erreichbar sein dürfte, soll nach Ansicht des Kongresses zunächst der weitere Ausbau des schon im Jahre 1969 in Rotterdam behandelten Verständigungsverfahrens ins Auge gefaßt werden.

2.) Mit dem Verständigungsverfahren beschäftigt sich die Resolution in ihren ersten drei Absätzen zu 1). Sie fordert zunächst allgemein die Einführung eines Verfahrens gegenseitiger Konsultationen und Verständigung zwischen den für die Besteuerung mit einander verbundener Unternehmen mehrerer Staaten zuständigen Steuerbehörden und, wenn diese schon erfolgt ist, die Weiterentwicklung und Ausdehnung solcher Verfahren in einem Maße, daß sich die Steuerbehörden mit diesen Fragen in angemessener Weise befassen können (Abs. 1).

Im zweiten Absatz bezieht sich die Resolution dann in vollem Umfang auf den entsprechenden Teil der Resolution der IFA von Rotterdam aus dem Jahre 1969, die bei Behandlung des Teilgebietes von Dienstleistungen und der Überlassung immaterieller Werte bereits eingehende Empfehlungen zum Verständigungsverfahren im Falle der Neuberechnung und Erhöhung der Steuer des verbundenen Unternehmens eines Staates enthält, für den Fall, daß im Lande des anderen verbundenen Unternehmens ein Ausgleich noch nicht erfolgt ist. Diese Empfehlungen werden nunmehr für das vom Washingtoner Kongreß behandelte Gesamtgebiet der Aufteilung von Einkommen- und Ertragssteuern verbundener Unternehmen bestätigt:

Dazu gehört vor allem die vorgängige Konsultation des Staates des auswärtigen verbundenen Unternehmens durch den Staat, der eine Steuererhöhung bei dem einheimischen verbundenen Unternehmen vornehmen will, auf Veranlassung dieses Unternehmens.

Weiter ist in der früheren Resolution festgelegt, daß in allen Fällen, in denen Gewinne einer oder mehrerer verbundener Gesellschaften in einem Staate in Anwendung der dem Artikel 9 OECD-Musterabkommen entsprechenden Bestimmungen der DBA korrigiert worden sind, das Verständigungsverfahren anwendbar ist. Es handelt sich hier um typische Fälle einer nicht formellen Doppelbesteuerung, vielmehr einer wirtschaftlichen Doppelbelastung. Dem Wortlaut nach ist auch der Fall von Schwestergesellschaften inbegriffen und damit die Forderung des deutschen Diskussionsredners H. Klatt erfüllt.

Die Empfehlung von 1969 sieht ferner vor, daß das Verständigungsverfahren von den beteiligten Steuerpflichtigen oder von amtswegen veranlaßt werden kann, auch schon bevor die Veranlagung durchgeführt ist.

Außerdem ist die Forderung aufgenommen, daß die interessierten Steuerpflichtigen am Verständigungsverfahren teilnehmen können, um ihre Auffassungen geltend zu machen.

Die nachfolgende Ziffer 2c ist von besonderer Bedeutung. Sie weist einen Weg für den Fall, daß sich die beteiligten Staaten in ihren Rechtsstandpunkten nicht einigen können. Dies wird solange häufig der Fall sein, als, wie die Nationalberichte betonen, noch erhebliche Verschiedenheiten in den Vorschriften und Richtlinien bestehen, die zur Zeit von den einzelnen Staaten für eine Neuaufteilung der Steuern verbundener Unternehmen erlassen worden sind. Wenn die Steuerbehörden sich im Rahmen des Rechtes ihres eigenen Staates halten oder verbindlichen Auslegungen durch die Rechtsprechung oder die Verwaltung folgen und eine Einigung hierdurch erschwert oder unmöglich gemacht wird, sind die beteiligten Staaten gehalten, eine Billigkeitsregelung anzustreben, die die Doppelbelastung im

Wege des gegenseitigen Nachgebens beseitigt. Diese Regel setzt bereits eine ernstliche Bemühung um eine erfolgreiche Verständigung voraus. Sie ist damit von der in der Diskussion von H. Becker BR Deutschland erhobenen Forderung, die Staaten zu einer Verständigung zu verpflichten, – was auf formelle Schwierigkeiten stoßen könnte, – nicht weit entfernt.

Weitere Ergänzungen der Resolution 1969 sind nicht aufgenommen worden, damit aber keineswegs abgelehnt. Das gilt insbebesondere von der Empfehlung Becker's dafür Sorge zu tragen, daß während des Laufes des Verständigungsverfahrens eine Vollstreckung nicht oder nur beschränkt durchgeführt werden sollte, sowie von der im Generalbericht enthaltenen Forderung, daß durch das Verständigungsverfahren Rechtsmittel nicht verloren gehen sollten usw.

In einem besonderen Absatz 3 betont die Resolution die Notwendigkeit, daß Verfahrensregeln des nationalen Rechts die Hindernisse für die Anwendung des Ergebnisses eines Verständigungsverfahrens bieten könnten, insbesondere also Vorschriften über Verjährung und Rechtskraft, insoweit nicht anwendbar sein dürften. Diese Empfehlung war auch bereits in der Resolution 1969 unter 2 d) enthalten.

Obgleich dies in der Diskussion keinen Ausdruck fand, hat die Resolution 1971 doch durch die Bezugnahme auf die Resolution 1969 Ziffer 3 auch ihrerseits die Durchführung internationaler Schieds- und Gerichtsverfahren in ihre Empfehlungen mit aufgenommen.

3.) Zur Erreichung des Fernzieles der Koordinierung der hier in Betracht kommenden Aufteilungsregeln für Gewinne und Steuern mit einander verbundener Unternehmen mehrerer Staaten und damit zur Erleichterung der Bemühungen, in den Staaten zu einander entsprechenden Maßnahmen zu gelangen, empfiehlt die Resolution in ihrem 4. Absatz, daß die Entwicklung der Hauptgrundsätze zur Aufteilung von Einkommen und Ausgaben im Zusammenhang mit internationalen Transaktionen zwischen verbundenen Unternehmen von hierfür geeigneten Organisationen wie IFA, OECD, EWG oder UNO studiert werden sollte. – In der Diskussion kamen verschiedene Auffassungen darüber, in welchem Umfang oder in welcher Art solche Richtlinien ergehen sollten, zum Ausdruck. Das ging von der Ablehnung jeglicher Richtlinien (durch die Engländer Mr. Davies und Mr. Wheatcroft, in der Tendenz auch durch die USA-Vertreter Mr. Smith und Mr. Brudno) bis zu der Empfehlung, ausführliche Richtlinien entsprechend Section 482 der US/ Regulations allgemein einzuführen (Hierfür ausser den Generalberichterstattern offenbar die südamerikanischen Vertreter E.J. Reig und A.R. Lopez (Argentinien)). Die dritte Meinung, die von deutschen Sprechern wie H. Becker und H. Horst Vogel und dem Schweizer H. Frony vertreten wurde und die die Resolution im wesentlichen auf die Entwicklung von Hauptgrundsätzen beschränkt wissen wollte, hat sich in der Fassung der Resolution schließlich durchgesetzt. Dabei soll den praktischen Möglichkeiten der Verwaltung und der Wirtschaftspraxis – darauf war besonders von Mr. Brudno hingewiesen worden – entsprochen werden, dies im Einklang mit den internationalen Steuerregeln und den nationalen Systemen. Dabei soll jedoch versucht werden, eine Lösung zu finden, die von möglichts vielen Ländern angenommen werden kann. Denn nur wenn dies geschieht, ist das Ziel einer gleichmäßigen Behandlung der in Betracht kommenden Fälle und vor allen auch die

Durchführung einander entsprechender Verfahren in den beiden beteiligten Staaten zu erreichen.

Trotz des reichhaltigen Materials, das die Nationalberichte und auch die Diskussion, – die durch das vorbereitete Gespräch des Panel's bereichert wurde, – geliefert haben, hat der Kongress grundsätzlich davon abgesehen, schon jetzt Empfehlungen für Grundprinzipien auf einzelnen Gebieten, etwa dem der Warenlieferungen oder der Dienstleistungen, auszuarbeiten. Er hat dies im Hinblick auf die jetzt noch bestehenden starken Widersprüche in der Lösung der verschiedenen Länder dem vorgesehenen internationalen Gremium, insbesondere dem Steuerausschuß der OECD überlassen. Ebenso wenig enthält die Resolution Empfehlungen für die formale Handhabung der Steueraufteilung in den in Betracht kommenden Fällen. Infolgedessen ist auch dem in der Diskussion laut gewordenen Wunsche, für den Normalfall eine Beweisregelung zu Gunsten des Steuerpflichtigen einzuführen oder eine Regelung zur Kompensation zwischen Transaktionen zu Gunsten und zu Ungunsten des verbundenen ausländischen Unternehmens aufzunehmen (Empfehlungen des deutschen Diskussionsredners H. Strobl) nicht entsprochen worden. Auch diese Fragen sollen von der zu beauftragenden internationalen Stelle behandelt werden. Nach dem Diskussionsbeitrag des Herrn J. Gilmer, Vertreter der O.E.C.D., beschäftigt sich der Steuerausschuß der OECD schon jetzt mit dem Fragenkomplex.

4.) Die Resolution umfaßt ferner in Absatz 5 den Vorschlag, durch Schaffung einer geeigneten Beratungsstelle ein neues Verfahren der internationalen Konsultation zu schaffen, das in geeigneten Fällen neben dem Verständigungsverfahren angewandt werden könnte, wenn eine Einigung zwischen den zuständigen Steuerbehörden auf Schwierigkeiten stößt.

Außerdem wird entsprechend den in der Diskussion vor allem von den Argentiniern Reig und Lopez vertretenen Forderungen empfohlen, bei steuerlich bedeutsamen Verträgen zwischen Unternehmen entwickelter Länder und Entwicklungsländer dafür besonders geeignete internationale Organisationen wie die UNO Ad Hoc Expertengruppe einzuschalten, um die sich ergebenden Sonderfragen zu behandeln.

Schließlich wird empfohlen, daß die Steuerbehörden auch dort, wo Steuerabkommen noch nicht bestehen, infolgedessen also die Grundlagen für die Aufteilung möglicherweise in anderer Form gegeben sind, dennoch bei Neuberechnungen des Gewinnes verbundener Unternehmen eines Landes die Gefahr von steuerlichen Doppelbelastungen ins Auge fassen und die in Betracht kommenden Fälle entsprechend behandeln, wie es bei Vorhandensein von Doppelbesteuerungs-Abkommen vorgesehen ist.

The IFA's Mitchell B. Carroll Prize for 1971 has been won by Dr. G. Bähr of Munich. The title of his book is „Gewinnermittlung ausländischer Zweigbetriebe" and is available from the publisher: Goldmann Verlag, Neumarkter Strasse 22, 8000 München 8, Germany.

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FRANCISCO DORNELLES*:

THE BRAZILIAN TAX SYSTEM AND THE ECONOMIC RELATIONSHIP BETWEEN BRAZIL AND PORTUGAL - THE DOUBLE TAXATION CONVENTION OF 1971

The Brazilian Tax system was instituted by Law no. 5172 of Jan. 27, 1965, later referred to as the National Tax Code.

When a reform of the Brazilian tax system was first discussed, the Commission studying it pointed out that the main defect in the distribution of Brazilian revenues stemmed from the fact that tax matters had been considered exclusively under their juridical aspect, while the economics of the problem had been left aside. According to the Commission, there were more taxes than economic factors substantially capable of forming the taxation basis for the same.

The problem was aggravated by the fact that Brazil is a federal Republic, and that the Federal Union, States and Municipalities are vested with private power to increase taxes and in certain cases, even to create them. Thus, the Reform Commission stated that it was impossible to refer to a Brazilian tax system, since several conflicting and antagonic tax systems existed within Brazil.

In order to find a solution for the aforementioned difficulties, the Commission has suggested the adoption of the following measures:

1. Reduction of the number of existing taxes and institution of a revenue distribution system between the Federal Government, States and Municipalities for the tax revenue collected by the Federal Union.

2. Consolidation of taxes by economic categories, with the generating factor from each tax being preferably one of economic nature.

3. Withdrawing the power which allowed the States to create new taxes.

4. Suspension of the right of States and Municipalities to increase, without a limit, the rates of taxes. Such rights were granted by the Brazilian Constitution, and could affect the Federal economic policy.

The suggestions submitted by the Reform Commission were accepted by the competent authorities, added to Constitutional Amendment no. 18, and included in Law No 5.172, also known as the National Tax Code.

Therefore, the Brazilian Tax System, as it now exists, was developed as a system integrated in the national economic plan, replacing the historical fiscal criteria in force until 1965. The latter had an essentially political origin, and was characterized by the coexistence of three autonomous tax systems—federal, state and municipal.

The Brazilian Constitution provides the Federal Union with the authority to legislate on general procedures of tax law, an area in which the States and Municipalities are permitted to legislate only in a supplementary manner.

The National Tax Code gathered taxes into four groups, as follows:

1st) *Taxes on External Trade*

I – Import tax

II – Export tax

2nd) *Taxes on Capital and Income*

I – Income Tax

II – Tax on real estate, both urban and rural, including a tax on property transfer.

* Lecture on June 24, 1971, during the Seminar conducted by the Portuguese Atlantic Bank—Lisbon, Portugal

3rd) *Taxes on the manufacture and circulation of goods*

I – Tax on industrialized products
II – Tax on financial transactions
III – Tax on circulation of goods
IV – Tax on services of any nature, including transportation and communication taxes.

4th) Special taxes on electric power, fuels and lubricants, and minerals.

Analyzing the aspects of the Brazilian Tax System which are most directly connected to the relationship between Brazil and Portugal, we believe we should concentrate our attention on the tax on income and profits, considering that it is the tax applied to revenue derived from Portugal and received by residents of Brazil, as well as on revenue derived from Brazil and received by residents of Portugal. Therefore, we are omitting from the discussion any other information related to other taxes in the Brazilian tax system.

INCOME TAX

Tax on income and profits of any nature, as it is called in Brazil, is within the exclusive jurisdiction of the Federal Union, which distributes 12 per cent of its revenue between States and Municipalities. Income tax contributes approximately 30 per cent of the Union's tax revenue. Since 1965 it has been utilized as an important policy instrument for the promotion of regional and sectorial development and the capitalization of enterprises.

In order to fulfill the goal of this meeting, which consists of analyzing the economic relationship between Brazil and Portugal, we shall divide Brazilian income tax payers into two groups, explaining, in relation to each group, the situation existing before and after the 1971 double taxation convention, which will come into effect in 1972.

Individuals shall be included in the first group and corporations in the second.

1st Group: Individuals

The Brazilian income tax law considers as individual taxpayers all residents of Brazil who obtain an annual net income above Cr$ 5,040.00, irrespective of their age, sex, marital status and nationality. The origin of the income is non-essential, since the Brazilian tax administration considers that income received by individuals, residents of Brazil, is taxable in Brazil whether it comes from Brazilian or foreign sources. According to the law, all non-resident individuals in the country who receive income which would be taxable if received by residents, are also subject to payment of income tax.

As we have seen, the Brazilian income tax law adopts two principles with regard to taxation of individuals—residence and source—all income being taxable whenever received by residents of Brazil, whether these be Brazilians or not, and all income derived from Brazilian sources and received by non-residents being the subject of taxation also.

Income is considered to be of Brazilian source when it has been paid by an individual or corporation resident or domiciled in Brazil, regardless of the site where the generating activity of such income takes place. Brazilian law does not follow the nationality criteria.

Therefore, we could say that in the case of individuals, Brazilian income tax law establishes two categories of taxpayers. In the first category may be included all individuals who reside in Brazil, independent of their nationality, who are expected to file an annual income tax return of their revenue obtained both in Brazil and abroad, and whose net income is subject to a progressive tax which ranges from 3 to 50%.

Non-residents of Brazil may be included in

the second category, regardless of their nationality. They are subjected to a proportional tax of 25 per cent falling upon all taxable income paid to them which is delivered or credited by individuals or corporations resident or domiciled in Brazil. This tax must be withheld and delivered to the National Treasury by the paying enterprise. The resident abroad who has a personal and direct connection with the economic event giving rise to the income within Brazilian territory, constitutes the taxpayer of this tax. The paying resident of Brazil becomes the withholding agent for the tax due by the nonresident.

The Income Tax Law does not define residence. Since residence depends on the person's intention, its identification requires a deep examination of that intention by means of the external signs through which it is revealed. The record in the Individual Taxpayers Master file, the entry permit for immigrants, a work contract for more than 12 months, all represent elements which have been accepted by our jurisprudence as allowing aliens to be considered residents for fiscal effects, immediately after their arrival. On the other hand, a communication to the Brazilian tax office of residence transfer, or a permanent visa in a foreign country, would be elements indicating a transfer of tax residence from Brazil to another country.

However, Brazilian law establishes that every individual who stays in Brazil for 12 consecutive months shall be taxed as a resident after the twelfth month, and that all Brazilian residents who stay outside Brazil for more than 12 months, shall be considered non-residents after the 12th month of their absence, and shall be taxed, starting from the 12th month, as non-residents, and subject to a proportional tax of 25 per cent over the revenue received from Brazilian source.

By examining the publication "Portuguese Tax System", issued by the Portugal Ministry of Finance in 1965, we have verified in page 52, that income received by resident individuals of Portugal obtained either in Portugal or abroad, is subject to additional taxes whose rates range from 3 to 55 per cent. The same is applied to income derived from Portugal and received by non-resident individuals.

In addition, the referred publication indicates, in page 53, that residents of the European Territory are so considered if they can be included in any of the following areas with regard to their annual income:

1) If they have lived in Portugal on a permanent basis, or if they have stayed there for more than 180 days, either consecutively or alternatively.

2) If they have lived within Portuguese territory for a lesser period of time, but own a dwelling which demonstrates an intention of maintaining and using a regular residence in the country.

Double taxation of income is resulting from the fact that the two States follow different taxation principles—source, domicile, residence, nationality—or, even when they follow the same principles, these have been given differing interpretations.

By examining Brazilian and Portuguese income tax legislation prior to the Convention, we could say that all patterns were leading to a double taxation situation.

When a resident individual of Portugal received income derived from Brazil, Brazil would tax such an income because it came from a Brazilian source, and Portugal would tax it as well, due to the fact that it was being received by a resident of the country.

When a resident of Brazil received income from Portugal, Portugal would tax it because it was derived from a Portuguese source, and Brazil would tax it due to the

fact that it was being received by a resident of the country.

Furthermore, the concept of residence adopted by Brazilian and Portuguese laws was different, as previously mentioned. For example, if a resident of Brazil, either Brazilian or Portuguese, would stay in Portugal for 7 months during the fiscal year, he would be considered as a Portuguese resident without ceasing to be also considered a Brazilian resident. Likewise, he was subject to the progressive tax in each country, which affected the revenue derived from both countries. Considering that the progressive tax can reach 55 per cent in Portugal and 50 per cent in Brazil, an individual taxpayer in a higher income bracket, could find out, at the end of the year, that the totality of his profits obtained from work and capital assets would have to be divided into two parts; one half would represent the tax due to the Brazilian Government and the other half the tax due to the Portuguese Government.

But the source concept adopted by the two countries was also different: Portugal considers all income derived from activities carried out within the country to be of Portuguese source; Brazil considers all income paid or credited by individuals or corporations, resident or domiciled in Brazil to be of Brazilian source. Likewise, if a professional individual (Brazilian or Portuguese) would perform a certain activity in Portugal, and received his payment from a resident of Brazil, such income would be considered of Brazilian source and taxable in Brazil in accordance with Brazilian law. In accordance with Portuguese law the same income would be considered of Portuguese source and subject to the additional Portuguese progressive tax.

Considering the absence of devices within the Brazilian and Portuguese legislation designed to avoid double taxation on a unilateral and total fashion, it could be said that the tax legislation of both countries constituted a great obstacle, if not a real threat, for Brazilian and Portuguese individuals who desired to carry out their activities in both countries.

The double taxation Convention has tried to solve such problems, and although problems are never totally solved in the tax field, we can state that the Convention has tried to eliminate every form of double taxation between the two countries. It has been successful by largely reducing the tax burden which fell upon income generated in one of the countries and received by residents of the other.

Fiscal domicile is defined in art. 4 of the Convention. Such a definition has been used by the OECD Model. Under that article, one person can hardly be considered as a resident of both countries. Even if such hypothetical situation occurred, a decision would be reached by the competent authorities of both Contracting States in order to identify the country from which that individual was a resident. In no case would he be considered as a resident of both countries.

Articles 14, 15, 17 and 20 which deal respectively with income from professionals, salaried people, pensions and annuities, have attributed, as a general rule, to the State of residence, the *exclusive* power of taxing such types of income. Thus, after the Convention, they are not taxed in the country of origin. Articles 6, 13, 16 and 22, which deal respectively with income derived from real estate property, from artists and sportsmen, as well as from any other kind of income not mentioned elsewhere in the Convention, have recognized the right of the country where such assets and activities are located or have taken place, of taxing them without

limitations. When such income is received by residents of the other Contracting State, the latter will grant a credit against the tax due corresponding to the tax paid in the State where these properties are located, or where the activities were performed. The limit shall be the portion of income corresponding to the participation of income derived from the country of origin out of the total income subject to tax.

Arts. 10, 11 and 12, which refer to dividends, interests and royalties derived from one country and paid to residents of another, have given to the country of origin the right of taxing these items at a rate not exceeding 15 per cent, and 10 per cent for royalties of literary, artistic, scientific works, moving pictures, and recordings for radio and TV. The country of residence of the recipients of that income shall grant, under the same conditions, a credit against the tax due corresponding to the tax paid in the country of origin.

Therefore, when the Convention does not allow to one of the Contracting States the exclusivity of taxation, it always establishes a credit system designed to avoid double taxation. Such a credit represents a guarantee for the taxpayer. He feels assured that the reduction or elimination of tax in the country of origin of the income, constitutes a real benefit for him, and not a mere transfer of the tax power from one country to another, while keeping the taxpayer under the same tax burden.

We should still emphasize that the income tax law in Brazil has been utilized as a policy tool aiming at the development of certain sectors and regions. It allows individual taxpayers to deduct certain portions from their gross income, to be applied in sectors or regions that the Government wishes to develop. This in addition to the regular personal exemptions. Among these exemptions from gross income we could point out the following:

1) 30% of the amount invested in National Treasury Bonds, Government Securities, nominal or endorsable Bonds of open capital societies.

2) 15% of the amount invested in investment companies shares, bonds for the construction of low-price dwellings, or bank deposits utilized by entities integrating the housing financial system.

3) 100% of the amount used for the acquisition of face value shares of enterprises which are considered of interest to the development of the Northeast and Amazonia. Additional total exemptions are granted to the amounts invested in projects approved by the Fishing Superintendency, or to projects of foresting and reforesting approved by the Brazilian Institute for Forest Development.

The sum of these deductions may reach up to a limit of 50% of the gross income obtained by Brazilian residents, whether they are Brazilians or Portuguese. The taxpayer may also deduct 12 per cent from taxes on his net income, to invest in a Fiscal Incentive Fund, designed for the purchase of shares. This amount shall be refunded after 2 years, increased by the profits obtained by the Fund.

CORPORATIONS

The second group of taxpayers—corporations—may be classified into 2 categories:

1) Corporations domiciled in Brazil

2) Corporations not domiciled in Brazil and receiving income from a Brazilian source.

All types of societies operating within the country, branch offices, agencies or representatives of corporations domiciled abroad, and individual enterprises, are taxable as corporations domiciled in Brazil.

According to Brazilian law, corporations which have their headquarters or main office in Brazil, are considered as domiciled in Brazil. The place of management is always indicated by the Acts, Contracts or Statutes, since its identification constitutes a basic pre-requisite for registration, either of Civil (Civil Code art 19-I) or for commercial societies (decree 916, of Art. 24, 1890, art. 1° alinea F).

In accordance with Brazilian law, the nationality of a corporation is identified by the locality where it is established (art. 11, Law of Introduction to Civil Code). In the case of common stock corporations, they must have their headquarters or main offices in Brazil to be considered of Brazilian nationality (art 60, Decree law 26/27 of Sept. 26, 1940).

Thus, if a common stock corporation is established in Brazil, it will be treated as a Brazilian corporation regardless the origin of its capital.

Nationality has no influence however, in the classification of corporations for income tax effects. Once it has its domicile in Brazil it will be subject to the Brazilian corporate income tax.

Permanent Establishments of alien corporations in Brazil are also liable to corporate income tax. Their domicile is the place where they are located in Brazil.

The Statute of Alien Capitals, enacted by Decree 55.762 of Feb. 17, 1965 which regulated laws 4.131 of 9. 3. 62 and 4.390 of 8.29.64 does not contain any restriction to the free entrance of alien capital in Brazil to be applied to *economic activities*.

In its two initial articles the Decree 55.762 defines alien capital—and treats it identically as national capital.

Art. 1°. – For the effects of the Decree, all machinery and equipment entering the country without an initial expense in foreign currency utilized in the production of goods or services, are considered foreign capital. Financial or monetary resources entering in the country to be applied in economical activities are also afforded the same treatment. In both cases, the items in question must belong to individuals or corporations, resident or domiciled abroad.—

Art. 2 – The foreign capital invested in the country will be entitled to juridical treatment identical to the one granted to national capital under similar conditions. Any kind of discrimination not foreseen by the law is forbidden (law 4,131, art. 2nd)—

Foreign capital, as defined in art. 1, Decree 55-762, as well as any other financial overseas transaction must have to be registered in the Central Bank of Brazil (art 3rd). Such registration must be requested within 30 days from the entrance date, and no payment will be required by the Central Bank.

The record of foreign investment is made in the foreign currency effectively entered in Brazil, and the record of reinvestments is simultaneously made in both currencies, the national currency, and the one belonging to the country to which income is to be forwarded (art 10). The convertion shall be made at the average exchange rate verified between the screening date of the profits balance and the re-investment date, in the case of corporations. (art 10, § 1st). No limit is established by the Foreign Capitals Statute to the transfer of profits obtained in Brazil to other countries.

As far as corporations are concerned, Brazilian law adopts the exclusive criteria of territoriality. Income obtained by corporations domiciled in Brazil from activities carried out abroad is not subject to the Brazilian income tax for corporations, either totally or in part. Thus, if a Brazilian corporation carries out its activities in Portugal

through a permanent establishment, income derived from those activities will not be taxed in Brazil, but exclusively in Portugal. The profits of corporations domiciled in Brazil are calculated by subtracting the expenditures, costs and losses pertinent to a company's operation, from the gross operational income increased by the results of eventual transactions. A portion corresponding to profits from the export of manufactured products, is also deductible from the taxable profit.

Profits from corporations are subject to a tax of 30 per cent. In the case of public services concessionaries, the tax is 17 per cent, and in the case of civil corporations which are organized exclusively for the professional services of doctors, engineers, lawyers and similar professions, such a tax is 11%. A corporation is still allowed to invest a portion of its tax debt in projects approved by the Government for regional and sectorial development, that is, for projects approved by SUDENE (Superintendency of Economic and Social Development of the Northeast) (50%), SUDAM (Superintendency of Amazonian Development) (50%), Fishing Superintendency (SUDEPE) (25%), Brazilian Tourism Enterprise (EMBRATUR) (8%), projects for foresting and reforesting approved by the Brazilian Institute of Forest Development (50%), and the Brazilian Aviation Enterprise (1%). The limit of such deductions cannot exceed 50% of the taxes owed. During fiscal years 1971 through 1974, 30% of the incentives offered shall be destined to the program of National Integration for the financing of infra-structure undertakings in the Amazonia and Northeast regions.

We could state that profits from corporations domiciled in Brazil are in fact subject to a tax of 15%. Income generated from activities carried out abroad by those corporations, as well as income corresponding to the export of manufactured products, are not taxable in Brazil.

CORPORATIONS NOT DOMICILED IN BRAZIL

In relation to the above named group, that is, corporations domiciled abroad, all income received from individuals or corporations resident or domiciled in Brazil, were subject to a tax of 25%. As previously explained, there is no limit, under Brazilian law for the remittance of profits overseas, but all profit remittances are taxable. In the case of dividends, the portion which exceeds, within a three-year period, 36 percent of the capital and re-investments, will suffer a progressive tax.

Prior to the double taxation Convention, profits, dividends, interests, royalties, income from technical assistance and technical services derived from Brazil and received by individuals or corporations resident or domiciled in Portugal was taxed at a 25 per cent rate in Brazil. Once such income was transferred to Portugal, it was subjected to the industrial contribution tax, to capital tax, and to other additional applicable taxes, which in total represented an effective rate of approximately 25 per cent.

Likewise, if 1000 units of profits, dividends, interests, and royalties from technical assistance were received from Brazil by a corporation resident of Portugal, the Brazilian Government would keep 250 units, the Portuguese Government 187.5, and the Portuguese investor would be left with only 562.5. The total taxation falling upon such income in both countries could reach, in general terms, up to 43.7% of the transferred amount.

Through arts. 10, 11 and 12 of the Convention to avoid double taxation, Brazil and Portugal committed themselves not to tax

such income at a rate superior to 15% when derived from either State and paid to residents of the other. They also accepted the commitment that when the country of origin was to calculate the tax on that income, it would grant a credit against the tax due by its resident, corresponding to taxes falling upon income received from the source country. Through the reduction of the Brazilian income tax from 25 to 15%, and through the credit system, taxes existing in both countries, and affecting dividends, interests and royalties transferred from Brazil to Portugal, were reduced from 43 to 25% approximately. It is worthwhile to point out that the profits available from permanent establishments of Portuguese enterprises in Brazil will be exempt from taxes when reinvested in the country. Prior to the Convention, the applicable taxes were of 25% and 15%.

Art. 4 of the Convention has defined fiscal domicile of corporations, and established rules which prevent a corporation from being considered as domiciled in both Contracting States.

Art. 5 has defined what is considered as a permanent establishment of an enterprise of one Contracting State in the other Contracting State. A series of controversies about the subject were thus eliminated. Art. 7 has determined that profits derived from an enterprise of a Contracting State may only be taxed in the other Contracting State, unless that enterprise carries out its activities in the other State through a permanent establishment.

Art. 8 has established that profits generated from the activities of ships, and aircraft services in international traffic may be taxed only in the Contracting State where the Enterprise's effective main office is located.

Another point which I was requested to include in the present Meeting was the feasibility for registration in Brazil of capitals from old Portuguese entities.

Law 4. 131 of Dec. 3, 1962 which constitutes the basis of the foreign Capitals Statute in Brazil, has established in its art 5, § 1, that alien capitals and respective re-investments of profits already existing in the country, were also subject to registration. Such registration should be requested by the owners of enterprises, or individuals responsible for the enterprises in which they were applied, within a period of 180 days from the enactment of the law.

Therefore, Portuguese capitals entering in Brazil before the enactment of the law, and whose registration had not been made within the 6 month period previously established, would be entitled to make the register within a new period of time. We believe that once the Central Bank of Brazil is provided with evidence of the capital entry, it will not refuse to study the problems related to its registration. However, such an opinion is expressed on an exclusively individual basis. It is my belief that the subject could be officially examined, only through a request from the interested people, or from the Portuguese authorities to the Brazilian Government. Moreover, we are certain, that the subject would deserve the greatest attention.

Here is the essential information on the Brazilian Tax System and its connections to the economic relationship between Brazil and Portugal, that we deemed convenient transmitting you. We are at your complete disposal for any other explanations you would like to receive about the subject matter.

ROBERT T. COLE:

U.S.A.: PROGRESS REPORT ON TAXATION OF FOREIGN SOURCE INCOME*

Two years ago Assistant Secretary Edwin S. Cohen was the principal speaker at the Tax Session of the National Foreign Trade Convention and spoke on "Reform in Taxation of Foreign Source Income." My remarks are in the nature of a progress report, and a request for comments on a number of possible changes which I will outline in some detail.

In his 1969 remarks, Mr. Cohen specifically discussed seven major items:

1. Basic reform, which included consideration of ending deferral of foreign source income or the other pole of exempting direct investment income.
2. Modification of section 367 which requires an advanced determination by the Internal Revenue Service that the avoidance of Federal income taxes is not a principal purpose of the transaction as a condition for tax-free treatment of an organization, reorganization or liquidation of a foreign corporation.
3. Revision of the regulations under section 482 which authorizes the Internal Revenue Service to allocate income between related taxpayers when they have not dealt on an arm's-length basis.
4. Foreign tax credit problems.
5. Section 956 which generally provides that investments in United States property by controlled foreign corporations will be treated as dividends paid to the U.S. shareholders.
6. Simplification within the existing structure.
7. A proposal for a domestic international sales corporation.

With regard to the last item, this was the first public discussion of the DISC concept.[1]

Mr. Cohen also articulated certain guiding principles, including: a desire to simplify an overly complex structure; a purpose to treat export income fairly as compared to income from foreign manufacturing; a feeling that tax preferences must withstand the test of a cost-benefit analysis; a recognition of jurisdictional limits on the right to tax; and a resolve to do more to prevent the use of international boundaries for tax evasion.

While we have not yet fully accomplished any of our goals, we have made fair progress. There remains much to be done, and in that connection I will try to give you an idea of how I view our priorities for the next six months or so.

OUR PROGRESS

First, the areas in which we have made considerable progress—section 367, section 482, investments in U.S. property, DISC, and international tax evasion.

Section 367.[2] Our work on section 367 reform

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* Remarks of Robert T. Cole, International Tax Counsel, United States Treasury Department before the 58th National Foreign Trade Convention, Waldorf-Astoria Hotel, New York, New York, Wednesday, November 17, 1971.

1. Domestic International Sales Corporation.
2. Section 367 I.R.C. deals with corporate organizations, reorganizations, and liquidations where one of the corporations involved is a foreign corporation. In such a case the transaction cannot benefit from the special tax deferral provisions with respect to gains realized, unless it has been established to the satisfaction of the Secretary or his delegate that the transaction is not in pursuance of a plan to avoid Federal income taxes.

is nearing the point where specific legislative proposals will be ready for presentation to Congress. I have previously indicated my thinking in this area and we have received a number of helpful comments. We have, in general, developed a Treasury position in consultation with the staff of the Joint Committee on Internal Revenue Taxation. We are now in the process of perfecting draft legislation and seeking Executive Branch clearance which is secured before making legislative recommendations to Congress.

Briefly, we are considering replacing, for many situations, the concept of "a plan having as one of its principal purposes the avoidance of Federal income taxes", with specific rules for taxation, exemption or carry-over or tax attributes. While these rules will add lines to the Internal Revenue Code and pages to the regulations, they will result in considerable simplification for taxpayers now subject to section 367.

Section 482.[3] As for modification of the section 482 regulations, we have undertaken and completed a study of section 482 cases. We hope to publish the results of our study shortly. We are also actively working on specific modifications to the regulations as they apply to intercompany pricing. Modifications we develop will, of course, be published in proposed form and will not be finalized until the comments received have been carefully studied.

It is not our purpose to abandon section 482 and the concept of arm's-length dealing between related taxpayers. Rather, it is our hope to develop amendments to the regulations which will considerably simplify the task of taxpayers seeking to set prices in compliance with the requirements of section 482, and the task of taxpayers and the Internal Revenue Service in arriving at an appropriate disposition of a case on audit.

Our present thinking is to provide that if the taxpayer can establish prices which meet any one of a number of alternative tests, these prices should be accepted unless the Internal Revenue Service shows that some other method of establishing prices is clearly more appropriate in the circumstances. In our view, if the tests are generally reflective of arm's-length prices in most cases, it is not necessary to provide a complicated hierarchy in an attempt to arrive at the precise arm's-length price. Indeed, precision in these matters, regardless of the formula used, is typically illusory. In addition to the tests now in the regulations, we would add new tests, such as the proportionate profits test. We will retain only one priority method—prices established in sales by the taxpayer (or a related person) of the same goods to an arm's-length customer.

Section 956. In his 1969 remarks, Mr. Cohen referred to section 956 of the Internal Revenue Code which provides for current taxation of the income of controlled foreign corporations when such income is invested in certain types of United States property. In our view this provision should apply only where the controlled foreign corporation makes a loan to a related United States person or is otherwise furnishing funds to a related person. Moreover, it would seem desirable to permit short term loans to related U.S. persons as long as a series of such loans were not used as a substitute for dividends.

I might note that the House Ways and Means Committee recently ordered reported out a bill, H.R. 10646, which would make such a change but only in the case of loans or acquisitions by banks or other financial insti-

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3. Section 482 IRC deals with the allocation of income and deductions among related business enterprises (requirement of arm's length dealing).

tutions. There seems to be considerable interest in the Senate Finance Committee in liberalizing section 956 and it is possible that legislation going beyond the Ways and Means bill could emerge.

DISC. As you probably know, we have expended much of our energy in developing the DISC proposal under which export profits derived through a qualifying domestic corporation would be deferred until distributed to the U.S. parent or other U.S. stockholders.

There are three versions of DISC: The Treasury proposal, the House bill and the Senate Finance Committee revision. The Treasury version was submitted to the House Ways and Means Committee by Secretary Connally on September 8, 1971 as one of the four tax recommendations in the President's New Economic Policy. The House incorporated the DISC in H.R. 10947, the proposed Revenue Act of 1971, but limited the deferral to profits on those exports which exceed 75 percent of exports during 1968 to 1970. The Senate Finance Committee rejected the incremental approach for what we believe to be sound reasons, but at the same time did not accept the complete Treasury proposal. The Finance Committee modified the Treasury proposal in three significant ways:

First, it provided that profits earned during the next ten years (until January 1, 1982) could be deferred. Such profits would continue to be deferred in subsequent years as long as the DISC requirements continued to be met. Profits earned in 1982 and thereafter would be deferred only if DISC is extended by Congress. In order to help Congress in deciding whether to extend DISC the Senate Finance bill provides for a report by the President to Congress, by the end of 1980, on the tax structures of the United States and foreign countries with respect to such items as tax holidays or grants available to exporters, other income tax benefits to exporters, border tax charges or rebates, financial or tariff concessions available to exporters, taxation of foreign sales subsidiaries and permanent establishments abroad, and rules and practices on the allocation of income between related entities.

Second, the Finance Committee was concerned about the possible use of deferred DISC profits in foreign countries, and therefore developed a provision under which DISC profits deferred in the form of "producer's loans" would become taxable in an amount, if any, by which expenditures of the parent or related companies for plant and equipment abroad exceeded certain customary foreign sources of funds. These are funds derived from foreign borrowings, depreciation of foreign assets, 50 percent of the earnings of foreign subsidiaries and branches, and 50 percent of the royalties and fees paid by foreign subsidiaries to domestic members of the group. If this provision becomes law, we would seek to draft the regulations so as to reduce to a minimum the documentation required to establish that funds from these sources had been used for financing foreign plant and equipment.

Third, the Senate Finance Committee limited the deferral to one-half of the export profits earned by the DISC. In our view this is the most serious limitation on the DISC and we will urge that it be deleted.

A final decision on DISC should be made shortly. The Senate is scheduled to vote on DISC today.

International tax evasion. Considerable progress has also been made in the last two years in dealing with international tax evasion.

We have reexamined the provisions in our income tax treaties for exchanges of informa-

tion with a view to assuring that these provisions will be fully utilized by the Internal Revenue Service in connection with its international enforcement activities. An important result of this effort is reflected in the decision of the Swiss Federal Court in the case of *X v. Federal Tax Administration*, a translation of which has been published in the United States. That decision overruled a series of objections to the Swiss Federal Tax Administration furnishing information obtained from a Swiss bank to the Internal Revenue Service under the convention between Switzerland and the United States in a case involving "aggravated fraud."

Another highlight is the enactment of H. R. 91-508 which includes provisions on recordkeeping and reporting by U.S. financial institutions and on reporting exports and imports of currency by anyone. Regulations under this Act were published in proposed form on June 10, 1971 and it is anticipated that final regulations will be issued shortly. The new question on the tax returns with respect to the ownership of, and signature authority over, foreign bank and other accounts, which is authorized by this Act as well as by the Internal Revenue Code, is also part of this effort.

Discussions are continuing on a proposed treaty for mutual assistance in criminal matters with Switzerland which would emphasize assistance in the fight against organized crime.

OUR DIFFICULTIES

As I have indicated, two years ago Mr. Cohen discussed the possibility of basic reform in the taxation of foreign source income. He recognized that it might well be desirable to retain the present structure and attempt to improve it. He also offered for consideration the possibility that it might make sense to exempt from U.S. tax direct investment income derived from those countries where the tax burden was generally as high or higher than ours. He suggested that an exemption, or limited territoriality, approach might offer considerable simplification as compared to our current system. Presently income from foreign direct investment is subject to U.S. tax, but this tax is then offset by the foreign tax credit. The thought was that simply exempting this income would be simpler than this two-step process and would largely achieve the same result—recognition of the primary tax jurisdiction of the country of the source of business income.

A limited territoriality system was also considered and recommended by the Alexander Task Force, the report of which was published in September 1970.

We have worked further on a limited territoriality approach and have met with a number of groups on it. When time permits, we plan to continue our work on this possibility, but so far we have not been able to develop a formula which meets the twin goals of simplification and tax equity.

If simplification were our only goal, the best approach would be to adopt a system of full territoriality and exempt all foreign direct investment income. However, we have felt that it is necessary and appropriate to avoid a situation under which income, which has not been subject to substantial tax abroad, is paid over to the U.S. owners without any liability for U.S. tax. We believe that the U.S. public could judge this an unwarranted departure from tax equity and would accept some complexity in order to prevent this result, even where the amount of revenue involved might not be great in terms of our National Budget.

If we retain the current system for taxing foreign source income in its broad outlines,

it is our feeling that we should do everything possible to make it work more simply. Some of the projects to which I have already referred are designed to accomplish this purpose, especially the proposed modifications to section 367 and the regulations under section 482.

The concept of simplification is not, I am afraid, unambiguous. For example, while many people might think a relatively brief rule is simple, in reality a more elaborate set of rules might indeed simplify the efforts of taxpayers who are seeking to comply. As previously indicated, this is certainly the case in our thinking about section 367.

It is interesting to note that while we have received a fair number of comments on our plans for modifying section 367, no one has suggested that the detail which would be provided would constitute anything but simplification. The only suggestion we have received along these lines is that we try to put as much of the detail in the regulations as possible, and we will try to do this. Similarly, by adding alternative methods for establishing arm's-length prices, the regulations under section 482 would become longer, but again this would simplify matters for taxpayers subject to section 482.

On the other hand, a number of problems in the taxation of foreign source income have been perceived—cases where taxpayers have with justification claimed that the current law treats them unfairly and cases where the current law permits taxpayers to avoid tax that fairly should be paid. In developing solutions to these problems I am afraid we, and our predecessors, have added some additional complexity to the rules for taxing foreign source income. Perhaps we have been overzealous in attempting to close loopholes and too responsive in dealing with complaints of taxpayers, or perhaps we have tried too hard to do our work with the type of precision which has become characteristic of the tax law.

The core of our system for taxing foreign source income is the foreign tax credit, and this should be included in attempts to achieve simplification within our current structure. We have not yet spent adequate time on this, but hope to do so in the not too distant future. As part of this effort we will reconsider the reporting requirements and the methods used by Revenue agents in auditing the foreign tax credit.

OUR PRIORITIES

It might be useful for you to have an idea of our current priorities with respect to other international tax matters. Before listing them, however, a few caveats are in order. Economic conditions change rapidly and such changes could importantly affect our work. Moreover, international tax matters must compete with other subjects within the jurisdiction of the Ways and Means Committee and the Senate Finance Committee for time. In addition to tax matters, these Committees have jurisdiction over trade, social security, and other legislation. It should also be noted that much of the important international tax work of the Treasury Department is outside of the legislative area, involving such vehicles as tax treaties and regulations. A prime example is our effort to revise the section 482 pricing regulations.

I will now turn to our priorities, aside from tax treaties.

Assuming DISC becomes law we will make every effort to offer prompt guidance to taxpayers who are considering channeling their exports through such corporations. This will include the development of proposed and final regulations, the preparation of explanatory guides in nontechnical

language and an intensive taxpayer assistance program.

An area that has been neglected for too long a time and which deserves immediate consideration are the regulations with respect to the allocation of deductions between foreign source income and United States source income. The most important ramification of these regulations is their effect on the computation of the foreign credit tax limitation. This limitation is becoming increasingly important as foreign tax rates, including withholding taxes on dividend distributions, creep upward beyond the United States corporate tax rate.

In this connection I should note that we have delayed issuing part of the regulations on the taxation of nonresident aliens on "effectively connected" income pending further progress on the rules for allocating deductions for source purposes. I should also point out that some of the tests being considered in connection with revision of the section 482 regulations and the 50-50 allocation rule incorporated in the DISC legislation require the division of taxable income derived from particular products or products lines; these also involve the allocation of deductions.

We are also making a special effort to dispose of regulations which are not yet in final form under the tax legislation enacted in 1962, 1966 and 1969. Final regulations under section 960 which were proposed in 1965 were published in June of this year. We also recently issued proposed regulations under sections 638, 904 (f), and 871 and we are seeking to finalize these and to issue regulations under the other provisions in the near future.

There has been considerable interest in two rulings issued in 1968 interpreting the minimum distribution provisions set forth in section 963 of the Internal Revenue Code and the regulations thereunder. Since Treasury participated in developing these rulings we are participating in dealing with questions which have been raised about them. We had hoped that a decision on this subject could have been announced before now, but some unanticipated problems have developed. There will be further meetings this week in an attempt to resolve these difficulties.

Returning to the legislative area, we are considering proposing legislation which would provide a uniform procedure which could be used, as an alternative to procedures provided by rules or in special legislation, for foreign depositions in connection with exchange of information provisions of tax treaties.

The tax effects of gains or losses arising from currency transactions have become of increasing interest and I look forward to hearing about them later in this program. We are exploring whether legislation is advisable.

There is considerable interest in Congress and the Administration in improving the position of the United States Merchant Marine, as compared to foreign shipping, and the question has been raised whether our tax laws should be modified in one way or the other to strike a more equitable balance.

The Treasury has been participating with the SEC in a study of offshore mutual funds. While not primarily having a tax focus, an effort to domesticate these funds would involve tax changes.

There is one final area for legislative consideration which I should mention and that is a list of miscellaneous and technical amendments which we have developed and keep adding to as we perceive problems or problems are brought to our attention. As I have indicated, our attempts to deal with specific problems, and similar attempts in the past, are important factors in the complexity that permeates the international provisions of

the Internal Revenue Code. Perhaps we should weigh the importance of simplification, or at least the importance of no more complexity, more heavily in the balance in our policy determinations.

It might be appropriate for me to stop at this point, but I feel that those of us who at any time are acting for the Government should have before us as much information and as many arguments as possible before acting. For that reason, I will briefly describe the more important miscellaneous and technical amendments we are considering in the hope that this will induce you to furnish us with information and arguments.

OUR MISCELLANEOUS AND TECHNICAL AMENDMENTS LIST

I will begin this list by referring to six international items that for one reason or another have found their way into H.R. 10947, the proposed Revenue Act of 1971, and would commend you to the bill as reported by the Senate Finance Committee and the report of the Committee for more detail. These amendments would:

(i) make the Western Hemisphere Trade Corporation deduction inapplicable in determining tax liability to the Virgin Islands;

(ii) provide the right to sue the United States on a claim for refund based on a provision of a tax treaty in the Court of Claims (and the district courts) even though the jurisdiction of the Court of Claims does not generally extend to suits based on tax treaties;

(iii) clarify the U.S. tax liability of foreigners on original issue discount not connected with a U.S. trade or business;

(iv) provide that fair market value rather than basis will be used in computing the withholding tax on dividends paid to foreigners in the form of appreciated property;

(v) provide that foreign beneficiaries of estates and trusts (including real estate investment trusts) will be taxed on U.S. source income on a gross basis appropriate to the class of underlying income if substantial deductions are attributable to the income; and

(vi) provide that the source of income derived by a financial institution on a financial lease of a ship or aircraft will be determined under the rules for the source of interest income.

With respect to the latter two amendments, we are not sure that the Senate Finance bill represents the best solution and we are considering whether changes might be desirable. Subject to modifications which might develop out of this consideration, the Treasury supports all of these provisions.

The next group of miscellaneous and technical amendments to which I should refer are those which have been recently considered by the House Ways and Means Committee and ordered reported out in five separate bills. These are the following:

(i) H.R. 9040 which would extend the exemption from withholding tax set forth in section 861 (a) (1) (G) to the estate tax;

(ii) H.R. 10412 which would provide a carry-back and carry-over of foreign tax credit in connection with foreign mineral income, where foreign tax credit has been disallowed under section 901(e);

(iii) H.R. 10646 which would, as I have indicated, exclude the acquisition by financial institutions of debt obligations issued by unrelated persons from taxation under section 956;

(iv) H.R. 10264 which would permit foreign financial institutions, other than insurance companies, to elect to be taxed on interest income from United States sources on a net basis at regular rates; and

(v) H.R. 11158 which would modify the exemption provided for income earned by

corporations from possessions of the United States.

The Ways and Means Committee ordered these bills reported out with amendments. The drafting work on these amendments has been put aside because of the need to work on the Revenue Act of 1971.

Extensive amendments were adopted by the Ways and Means Committee with respect to the possessions' corporations bill. From the Treasury point of view our general purpose would be to avoid a situation under which losses can be deducted against income subject to U.S. tax in loss years, and income excluded from U.S. tax in profit years. Our feeling is that while we do not question the importance of this exclusion for the development of Puerto Rico and our possessions, we believe that it is going too far to permit taxpayers to also deduct losses against income subject to U.S. tax. In other words, the benefits of the exclusion should be limited to the net income from Puerto Rican operations over the total period of such operations. The solution might well lie in some sort of recapture rule to deal with cases where losses have been deducted. Perhaps such a rule can be developed for presentation to the Senate Finance Committee. We are also concerned about possible inconsistencies between rules developed for possessions' corporations and rules applicable in other areas of the tax law.

In addition, there are a number of miscellaneous and technical amendments which are under consideration for possible presentation to Congress. I will mention the most important of these: exempting from the foreign tax credit limitation individuals who receive small amounts of foreign source income subject to U.S. tax; excluding liability under subpart F in de minimis cases; denying the foreign tax credit for foreign taxes on income excluded from U.S. tax by section 911; limiting the section 911 exclusion so that it only applies in cases where the United States citizen is subject to foreign tax; extending gross-up to direct investment dividends from all foreign corporations; and requiring the carry-over of foreign losses for purposes of the foreign tax credit limitation. A proposal for the carry-over of losses for foreign tax credit limitation purposes would renew a 1969 Treasury recommendation which was passed by the House as part of the Tax Reform Act of 1969. This provision was deleted by the Senate Finance Committee for the purpose of further study when it considers the taxation of foreign source income more generally.

My principal purpose in furnishing detail as to our agenda and our thinking is that all of this is very tentative and we are attempting to get all possible help in developing these ideas. Indeed, some of the items to which I have referred represent little more than preliminary views in the Office of International Tax Counsel. Hopefully, before these views go through the metamorphosis from vague idea to official legislative proposal of the Treasury Department, we can have the benefits of your thoughts and the thoughts of other interested persons. As to any item, we are ready to be convinced that the problem does not really exist, that the problem is not sufficiently serious to warrant new rules, or that our approach to a solution is wrong or requires modification. If you believe there are other problems which warrant a place on our priority list, please let us know. We would also hope that you would think seriously about simplification and offer us suggestions on how our focus on particular matters can be squared with the clear need for a simpler set of provisions for taxing foreign source income.

Our doors are open and we look forward to your participating with us in this effort.

DR. P.K. BHARGAVA*:

TRENDS IN UNION AND STATE FINANCES IN INDIA

Freeman, the famous historian, rightly said that history is a record of the past, a guide for the present and a forecast of the future. Accordingly, we propose to study here the trends in our Union and State finances since Independence as this will enable us to plan and help in evolving the necessary public finance policy to achieve our various socio-economic objectives.

Since Independence the most important feature of India's fiscal history was the financial integration of Part B States, consisting of the princely States, with the Union of India. Thus for the first time, the country achieved a fiscal unity though the size of the country was truncated due to partition. Thereafter, the federal Government acquired the same functions and fiscal powers in these States as in the rest of India. This solved many fiscal problems. Many of the former princely States had their own system of finance and taxation, army, post office, railway and coinage. The fiscal independence of these States in such matters hindered the smooth functioning of a uniform fiscal and monetary policy for the whole country. In the absence of fiscal unity, the country's economic progress was retarded. A co-ordinated and uniform fiscal and monetary policy for the entire country could be followed only after the attainment of fiscal unity.

A striking feature of Indian public finances is the considerable dependence of the States on the Union Government. Accordingly, in our federal system there is an important flow of funds from the Centre to States. The total resources transferred from the Centre to States increased from Rs. 1,413 crores in the First Plan to Rs. 2,869 crores in the Second Plan and further to Rs. 5,600 crores in the Third Plan. These transfers formed 41.1 per cent of the States' total expenditure (Revenue Account and Capital Account) in the First Plan. This percentage increased to 48.5 in the Second Plan and further to 52.2 in the Third Plan. In recent years, the importance of transfers from the Union Government to the States has further increased. In the first year (1966-67) following the Third Plan the total transfers amounted to Rs. 1706 crores, which is more than the entire amount of the First Plan. Despite their heavy fiscal dependence on the Centre, the States have maintained their fiscal autonomy. When in 1949, the Centre advised the States to go slow with their programme of prohibition, a number of State Governments went ahead with their programmes. More recently, after the General Elections of 1967 many State Governments have taken steps to abolish land revenue on small land holdings without imposing new taxes on the agricultural sector to make up the loss. A number of State Governments have changed their policy of prohibition and many a State has abolished some other taxes also.

The Constitution also safeguards the fiscal autonomy of the States by providing a share of income tax to them and by making a provision of the Finance Commission on the basis of whose recommendations resources are transferred from the federal Government to the constituent units. It is a healthy development in our federal finance that most of the recommendations of the Commission have been accepted by the Indian Parliament.

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The Indian Finance Commission is unique as it has no parallel in federal constitutions except the Australian Commonwealth Grants Commission that examines the pleas of different States for assistance. We may also emphasize here that the Indian Finance Commission has to play the role of a wise man, a judge or an impartial body between the conflicting claims of different States on the one hand and Centre on the other. Unfortunately, the Finance Commission controls a small portion of the total transfers and it continues to be a temporary body as it is appointed generally after every five years. Of the total transfers from the Union Government to the States, the Finance Commission controls only about 30 per cent or so. This is because of the rapidly increasing importance of plan grants and loan finance in our system of federal transfers which are outside the scope of the recommendations of the Finance Commission. This is not a healthy development in Indian federal finance as it will weaken the importance of the Finance Commission and will reduce it to the status of a body having duties to perform but having almost negligible power in its hands.

A modern Government is wedded to the objective of promoting welfare of its people. Thus is has to perform various functions and duties. Accordingly, there has been an enormous increase in expenditure of both the Union and State Governments in India. The expenditure of the Union Government on revenue account increased from Rs. 347 crores in 1950–51 to Rs. 3,103 crores in 1970–71 (Budget). During the same period, the expenditure of the State Governments increased from Rs. 385 crores to Rs. 3,138 crores. Thus over the two decades the expenditure of the Union Government increased by 794 per cent and that of the State Governments by 718 per cent. The expenditure of Union and State Governments has increased on account of a number of factors but some of the important factors are increase in population, rising prices and demonstration effect of the outside world.

Among the items of expenditure of the Government of India, expenditure on defence is the most important and at present it constitutes more than 30 per cent of the total. Our relations with China and Pakistan have not been cordial and the continued threats of war have forced us to incur a large amount on defence. The expenditure on debt services has also risen rapidly. The total expenditure of the Government of India and of the States on debt services amounted to Rs. 44 crores in 1950–51 but it stood as Rs. 987 crores in 1970–71 (Budget). The increasing expenditure on debt services indicates the increasing reliance on loan finance to meet the plan expenditure. Part of the increase in expenditure on debt services is due to a change in the accounting technique, prior to 1962–63 recoveries of interest on loans and advances by the Government and interest charges on capital advanced to commercial departments were adjusted as reduction of expenditure but since 1962–63 receipts of interest on capital advanced to commercial departments as also recoveries of interest on loans and advances are credited to the revenue head "Interest".

Expenditure on social and development services constitutes the bulk of States' expenditure on revenue account. It increased from Rs. 182 crores in 1950–51 to Rs. 1540 crores in 1970–71 (Budget) or by 746 per cent. The increasing social and development expenditure of the States indicates that the modern Governments aim at building up a strong infrastructure for the economy and provide various amenities to their citizens on an expanding scale. We may also emphasize here that increasing social and development

expenditure is a healthy sign of economic development. During the course of economic development the proportion of social and development expenditure to the total expenditure has a tendency to rise. In 1950-51, the States' expenditure on social and development services formed 48 per cent of their total expenditure. This percentage increased to 53 in 1970-71 (Budget). This is a healthy development in Indian federal finance.

A striking feature of the expenditure policy of the Union and State Governments in recent years has been that their expenditure on capital account has risen rapidly. The total expenditure of the Union and State Governments on capital account increased from Rs. 1,147 crores during the First Plan to Rs. 3,196 crores during the Second Plan and further to Rs. 5,513 crores during the Third Plan. It was Rs. 1,292 crores in 1969-70 (Revised) and stood at Rs. 1,410 crores in 1970-71 (Budget). Most of this expenditure is used for productive purposes and enables the State to build up various social and economic overheads in the economy. The Government has not been able to raise adequate funds to finance its increasing capital expenditure and throughout the period since 1948-49, except 1958-59 when it had a small deficit, the Government of India has used its revenue surpluses to finance capital expenditure. The total revenue surplus till the end of March 1970 amounted to over Rs. 2,000 crores. Throughout this period additional taxation has been imposed to meet deficit on capital account. This is a relatively new technique that has been used to finance capital expenditure through surpluses on revenue account. The advantage of this technique is that it has helped to fight inflation by curtailing private expenditure and has also reduced to a certain extent the dependence on deficit financing. Above all, it has enabled the Government to transfer funds from the private sector to the public sector.

Owing to stringency of resources, the Union and State Governments have heavily depended on loan finance, mainly for plan purposes. At the end of 1970-71 the outstanding public debt of the Government of India was expected to rise to Rs. 14,420 crores and that of the State Governments to Rs. 8,120 crores, including Rs. 6,014 crores from the Central Government. For a long time, public borrowing in India was used mainly to finance capital expenditure or the projects which were self-remunerative but in the post-independence era Government has financed capital expenditure even on projects that are not self-remunerative. We may emphasize here that much of the success of the Government's borrowing programme has been due to the expansion of the captive market which consists of the Life Insurance Corporation of India, Provident Funds, Industrial Finance and State Finance Corporations and the Reserve Bank of India. These institutions hold among themselves a major portion of the marketable debts and the real purpose is not served as the object of mobilising public savings is not achieved. Apart from this, the very constituents of the captive market are the source of finance to the private sector. These are not healthy developments and it is necessary that the Government's public debt policy should be oriented to mobilise surplus purchasing power from the hands of the public so that inflationary pressure on the economy could be reduced. This would also limit pressure for funds on the captive market.

The Government's public debt policy has failed in the sense that it has not been able to bridge up the gap between total rupee incomings and outgoings. This gap has been bridged by the technique of deficit financing whereby the Government of India sells the

treasury bills to the Reserve Bank of India and gets the necessary rupee finance. This method of acquiring rupee finance had favourable effects during the First Plan but in the subsequent years its evil effects were realised and the Government appears to have understood that deficit financing is not an effective means of raising funds after the resources of the economy have been fully employed.

In order to meet the increasing demand for resources, the Union and State Governments have tried to raise larger funds through their tax efforts. They have imposed new taxes and have increased the rates of existing ones. The tax revenue of the Union Government increased from Rs. 405 crores in 1950–51 to Rs. 2,967 crores in 1970–71 (Budget) or by 633 per cent. During this period the revenue from State taxes increased from Rs. 222 crores to Rs. 1,399 crores or by 530 per cent. The relatively smaller increase in revenue from State taxes explains the fact that they have been assigned relatively less elastic sources of tax revenue. It also explains the laxity on the part of the State Governments in exploiting their sources of the revenue. While during the last two decades the total tax revenue of the Union and State Governments on an average has increased by 30 per cent per annum, the national income at constant prices has grown at about 4 per cent per annum. Consequently, the tax revenue which formed 6.6 per cent of the national income in 1950–51 was only about 14 per cent of the national income at the end of the Third Plan. If we consider only the tax revenue of the States as percentage of national income, the position is still worse. In 1950–51, the percentage of all States' tax revenue to national income was 2.25. This percentage increased to 4.10 in 1965–66 but declined to 3.89 in 1967–68. One may like to probe for this gloomy situation. None would dispute the fact that the State Governments have recklessly sacrificed revenue mainly for political purposes. Thus a number of States have taken steps to abolish land revenue without increasing the burden of some other tax on the rural sector. The State Governments have abolished some other taxes also. For instance, with effect from April 1, 1967 the Government of Uttar Pradesh abolished urban immovable property tax. With effect from April 1, 1971 it decided to abolish profession tax. The difficulty with the States' taxation is that the neighbouring States are tempted to follow suit.

There is yet another important problem regarding State taxation. The richer States do not necessarily have higher per capita tax incidence. For instance, the per capita income (average for 1962–63 to 1964–65) of Mysore was Rs. 373 as against Rs. 341 for Kerala but the per capita tax revenue in Kerala in 1967–68 was Rs. 27.44 and was smaller for Mysore at Rs. 23.28 in that year. Similarly, the per capita income (average for 1962–63 to 1964–65) of Uttar Pradesh and Orissa was the same at Rs. 306 but their respective per capita tax revenue in 1967–68 was Rs. 14.60 and Rs. 12.12. On the other hand, the per capita income of Jammu and Kashmir at Rs. 302 was lower but its per capita tax revenue in that year was higher at Rs. 19.44. These disparities persist with regard to individual taxes also. For instance, Pubjab has the highest per capita income but the per capita tax on land in this State was only Rs. 1.38 in 1967–68 as against Rs. 3.03 in Uttar Pradesh in that year. Similarly, the per capita income of Maharashtra and West Bengal is substantially higher as compared to Uttar Pradesh but the per capita tax on land in these two States was respectively Rs. 1.91 and 2.36 in 1967–68. It is not desirable that States with higher per capita incomes should have lower per capita tax

incidence. These matters require a thorough scrutiny in the tax structure of the individual States as this will help in finding the tax potential of the States that will help in raising additional resources.

It is unfortunate that marginal tax rates in our country are almost the highest in the world and are reached at relatively lower levels of income. These high rates of taxation not only adversely affect risk and enterprise but encourage evasion and other evils. This creates inequity between honest and dishonest tax payers. If the marginal income tax rate is as high as 97.5 per cent (including a 15 per cent Union surcharge on income tax) as at present, this would hardly leave anything with the tax payer when he has to pay other taxes also. These high rates could be tolerated only through the possibilities of a large tax evasion. The tax burden on the corporate sector also appears to have reached a saturation point and it was perhaps for this reason that the corporate sector was kept outside the tax net in 1970–71 (Budget). It is, however, unfortunate that the Finance Minister while presenting the Union budget for 1971–72 announced the discontinuance of development rebate beyond May 1974, the exclusion from the capital base of debentures and long term loans for the purpose of tax holiday under the section 80 J and deletion of certain industries from the priority list. These incentives have been withdrawn without reducing the corporate tax rate and in fact the surtax rate has been increased. This will deter fresh capital investment instead of stimulating it as intended.

In the tax structure of the States, sales tax has emerged as the most important source of revenue just as Union excise duties are the most important in the tax structure of the Union Government. The share of Union excise duties in the total tax revenue of the Government of India increased from 16.7 per cent in 1950–51 to 56.6 per cent in 1970–71 (Budget) while that of the customs duties decreased from 38.9 per cent to 15 per cent during the same period. During this period the revenue from union excise duties increased by 2369 per cent, from customs by 184 per cent, from income tax by 218 per cent and from all taxes by 633 per cent. These data clearly indicate the growing importance of union excise duties in the tax structure of the Government of India and suggest that in future they will continue to be an important source of revenue.

As pointed out above, sales tax is the most important and elastic source of revenue in the States' tax structure. The share of sales tax in the total revenue from State taxes increased from 25 per cent in 1950–51 to 35.6 per cent in 1970–71 (Budget). On the other hand, the share of land revenue declined from 22.5 per cent to 7.8 per cent during the same period. During this period the revenue from sales tax increased by 788 per cent, from land revenue by 120 per cent, from agricultural income tax by 225 per cent, from stamps and registration by 339 per cent and from all taxes by 530 per cent. These data indicate the predominance of sales tax in the States' tax structure and reluctance on their part for further extension of the scheme of additional duties of excise for sales tax.

The increasing importance of sales tax and union duties of excise in our tax structure has altered the proportion of direct and indirect taxes. There is, however, no precise dictum regarding the ratio of direct and indirect taxes. On the one hand we have highly progressive direct taxes whose incidence falls on the relatively well-to-do section of the society and on the other hand we have taxes on the commodities of general consumption. For quite some time, the commodity taxes or indirect taxes will continue to occupy an

important place in the Indian tax system as it is not feasible to collect revenue through direct taxes from the majority of population. The Government has hesitated to tax the agricultural sector of the economy. This sector forms the backbone of the economy as it contributes about 45 per cent to the country's national income and provides livelihood to 70 per cent of the population. Under our constitution, the Union Government is prohibited from taxing agricultural land or income. Accordingly, the State Governments are empowered to tax the agricultural sector but they are afraid of taxing the agriculturists as they play a decisive role under the right of adult franchise. While the burden on the agricultural sector has been inadequate; the agriculturists have gained on account of rising income both due to increasing productivity of land and rising prices of agricultural products. Our plan expenditure has also been highly agriculture-oriented. The expenditure on agriculture, community development, irrigation and other related fields increased from Rs. 610 crores in the First Plan to Rs. 950 cores in the Second Plan, to Rs. 1,738 crores in the Third Plan and has been estimated at Rs. 2,617 crores in the Fourth Plan. The State has given some other concessions also to the agriculturists in the form of farm price support schemes, cheaper credit and warehousing facilities, etc.

The two most important taxes paid by the agriculturists are land revenue and agricultural income tax. They formed 27.9 per cent of the total revenue from State taxes in the First Plan. This percentage declined to 26 in the Second Plan, to 18.4 in the Third Plan and further to 8.8 in 1970–71 (Budget); although in absolute terms their yield has increased. We may emphasize here that land revenue in its present form is a thoroughly bad tax as it provides no exemption limit and is levied at a flat rate on all land holders. Reform in the structure of land revenue is long overdue and we suggest that land revenue on holdings of 2.5 acres or below should be abolished and the State Governments should make up this loss by imposing a surcharge on a sliding scale on large land holders. The proposal is politically feasible as nearly 60 per cent of the households have holdings below 2.5 acres.

Rising prices have posed a serious challenge before the Indian economy. Prices rose by 35 per cent during the Second Plan and on the top of it they further rose by 36 per cent during the Third Plan. It is unfortunate that prices have continued to rise despite the determined efforts of the Government. Between June end 1969 and June end 1970 prices rose by 4 per cent as against 7 per cent in the corresponding period last year.

Rising prices defeat the very objectives of economic planning and distort the set priorities of the plan. Rising prices also encourage wasteful expenditure as they depreciate the real value of savings. In fact people may dis-save. Besides, the pattern of income distribution is also disturbed. The business community makes huge profits at the cost of salaried and fixed income groups. Fiscal competence is required to solve these problems.

Deficit financing has played havoc with the Indian economy. Because of its expansionary effects during the First Plan, the planners learnt a bad lesson and in subsequent years it was adopted on a larger scale. Thus during the Second Plan, deficit financing was of the order of Rs. 948 crores. In absence of real resources, it generated inflationary pressure in the economy. Accordingly, a modest target of Rs. 550 crores for deficit financing was fixed during the Third Plan; although the actual amount turned out to be Rs. 1133 crores. The economy had to pay a heavy

price for it. During the Fourth Plan the target for deficit financing has been fixed at Rs. 850 crores but it is doubtful if we shall be able to manage within this target particularly when during the first two years of the plan it has been of the order of about Rs. 500 crores.

Development necessitates extra investment. This extra investment can be financed through extra savings. Thus it is necessary that out of the additional income a major part should be saved. This is a difficult problem in an underdeveloped country where the propensity to consume of the people is very high, our success will depend on the fact how far we are able to pursuade people to postpone their present consumption. In view of the meagre savings of the people, the Government should introduce some scheme of compulsory savings. We consider it desirable that the provident fund scheme should be made compulsory for all the State Governments' employees. Part of the bonus and dearness allowance to the employees could also be given in the form of postal savings certificates.

It is unfortunate that in the development process some States have remained backward and their relative position has worsened. Thus the States like Uttar Pradesh have lower per capita income at present as compared to their pre-plan per capita income. This is a potential danger to the integrity and strength of our federation. The strength of a federation lies in its weakest links. We must base our development plans in a manner that each State is at least assured of a national minimum of various social and development services. Our approach should not be to develop richer States at the cost of backward States but we must direct our efforts to raise the level of poorer States to the standards of richer States. This may require a change in the principles for transfer of funds from Centre to the States. The States have received financial assistance from the Centre on an expanding scale as explained above and in that process we have created a Leviathan Centre with responsibility for providing finance and no responsibility for executing projects. This is an unhealthy development in our federal finance and fiscal wisdom is required to base flow of funds from Centre to the State on a sound basis so that fiscal independence of the States is not compromised with the Centre.

To sum up, we may emphasize that during the last two decades between 1950-51 to 1970-71 (Budget) the total tax revenue of the Union and State Governments increased by 596 per cent. Including the non-tax revenue, their total revenue increased by 699 per cent during the same period. On the other hand their expenditure on revenue account increased by 719 per cent while social and development expenditure increased by 873 per cent. The available data regarding national and per capita income shows that during the period 1948-49 to 1965-66 national income (at constant prices) increased by 67.5 per cent and per capita income by 19.5 per cent. These data amply demonstrate that the annual growth in tax revenue and total revenue has been faster as compared to increase in national and per capita income. The relatively faster increase in social and development expenditure indicates that during the process of growth such expenditure tends to rise as compared to other non-development expenditure. On the basis of the above data, we can draw the following conclusions:-

1. During the process of growth tax revenue, as also total revenue, tends to rise at a faster rate than the increase in national and per capita income.
2. In the course of economic development social and development expenditure

grows at a faster rate than other Government expenditure, i.e. the proportion of total expenditure devoted to social and development expenditure tends to rise.

3. The growth of public expenditure tends to equal the growth of Government revenues and the volume of public expenditure is limited to the capacity of the Government to raise additional revenue.

E.E.C.

QUATRIÈME DIRECTIVE DU CONSEIL
du 20 décembre 1971

en matière d'harmonisation des législations des États membres relatives aux taxes sur le chiffre d'affaires — Introduction de la taxe à la valeur ajoutée en Italie

Directive of the EEC Council granting Italy a further postponement of the introduction of its TVA legislation up to July 1, 1972.

LE CONSEIL DES COMMUNAUTÉS EUROPÉENNES,

vu le traité instituant la Communauté économique européenne, et notamment ses articles 99 et 100,
vu la proposition de la Commission,
vu l'avis de l'Assemblée,
considérant que, par la loi de réforme fiscale n° 825 du 9 octobre 1971, la République italienne a remplacé le système de la taxe cumulative sur le chiffre d'affaires par celui de la taxe à la valeur ajoutée, conformément à la première directive du Conseil, du 11 avril 1967, en matière d'harmonisation des législations des États membres relatives aux taxes sur le chiffre d'affaires[1], modifiée par la directive du 9 décembre 1969[2];
considérant toutefois que la République italienne fait valoir que, pour des raisons techniques, elle n'est pas en mesure de prendre les dispositions d'application indispensables pour que la taxe à la valeur ajoutée soit effectivement appliquée à partir de la date du 1er janvier 1972, fixée par la troisième directive du Conseil, du 9 décembre 1969, en matière d'harmonisation des législations des États membres relatives aux taxes sur le chiffre d'affaires[2]; que, en conséquence, la République italienne demande un délai supplémentaire de six mois pour l'application de ladite taxe;
considérant que, en raison des délais très brefs laissés au gouvernement italien pour adopter les dispositions techniques nécessaires entre le moment de l'adoption de la loi et la date du 1er janvier 1972, il y a lieu de faire droit à cette demande;
considérant que l'un des objectifs essentiels de l'harmonisation des taxes sur le chiffre d'affaires est d'établir, par l'introduction du régime commun de la taxe à la valeur ajoutée, les conditions permettant d'éviter que la concurrence ne soit faussée par l'application desdites taxes;
considérant que cet objectif ne pourra être atteint à la date du 1er janvier 1972, notamment sur le plan des échanges, puisqu'un des États membres continuera à appliquer, au titre des taxes sur le chiffre d'affaires, des taux moyens de compensation de la charge intérieure qui, en raison de leur nature forfaitaire, pourraient entraîner des disparités de traitement fiscal au profit de certains produits exportés et au détriment de certains

1. JO n° 71 du 14. 4. 1967, p. 1301/67.
2. JO n° L. 320 du 20. 12. 1969, p. 34.

produits importés; qu'il convient en conséquence que la République italienne n'augmente pas les taux moyens de compensation actuellement existants,

A ARRÊTÉ LA PRÉSENTE DIRECTIVE:

Article premier

Par dérogation à l'article 1er de la première directive du Conseil du 11 avril 1967, modifiée par la directive du 9 décembre 1969, la République italienne est autorisée à mettre en application le système commun de la taxe à la valeur ajoutée à une date qui ne sera pas postérieure au 1er juillet 1972.

Article 2

En vue de procéder aux consultations et informations prescrites par la première et la deuxième directive du Conseil, du 11 avril 1967, en matière d'harmonisation des législations des États membres relatives aux taxes sur le chiffre d'affaires, la République italienne fournit dans les meilleurs délais les éléments nécessaires à cet effet.

Article 3

Les taux moyens actuellement en vigueur, tels qu'ils sont définis à l'article 2 de la directive du 9 décembre 1969, ne peuvent pas être augmentés.

Article 4

La République italienne est destinataire de la présente directive.

Fait à Bruxelles, le 20 décembre 1971.

Par le Conseil

Le président

M. PEDINI

I. Proposition de directive du Conseil fixant les modalités de la réalisation de la liberté d'établissement et de la libre prestation des services pour certaines activités non salariées en matière fiscale

On August 11, 1971 the EEC Commission submitted two proposals for the free establishment of tax advisers and their unimpeded functioning within the Common Market Member Countries.

LE CONSEIL DES COMMUNAUTÉS EUROPEÉNNES,

vu le traité instituant la Communauté économique européenne, et notamment ses articles 54 paragraphes 2 et 3, 63 paragraphes 2 et 3, et 66,

vu le programme général pour la suppression des restrictions à la liberté d'établissement[1], et notamment son titre IV-C,

vu le programme général pour la suppression des restrictions à la libre prestation des services[2], et notamment son titre V-C,

vu la proposition de la Commission,

vu l'avis du Parlement européen,

vu l'avis du Comité économique et social,

considérant que les programmes généraux prévoient la suppression, avant l'expiration de la deuxième étape de la période de transition, des restrictions fondées sur la nationalité en matière d'établissement et de prestation des services pour les activités des conseils fiscaux reprises à la rubrique 831 de la nomenclature CITI;

considérant que les activités non salariées en matière fiscale sont différentes, selon qu'elles entraînent ou non des rapports avec les juridictions; que le programme général pour la suppression des restrictions à la liberté d'établissement, à son annexe II, n'a pas distingué, pour les activités en cause, selon qu'elles entraînent ou non des rapports avec les juridictions; que toutefois, le fait que l'assistance et la représentation de contribuables devant les tribunaux sont réservées, dans certains États membres, aux avocats, laisse clairement entendre qu'il faut interpréter la rubrique «conseils fiscaux» de l'annexe II comme ne visant que l'assistance fiscale extrajuridictionnelle, c'est-à-dire, notamment les activités de consultation fiscale, d'établissement des déclarations fiscales, d'assistance des contribuables auprès des autorités des administrations fiscales, de représentation des contribuables auprès des autorités des administrations fiscales, dans la mesure où elles n'ont pas encore été libérées par d'autres directives;

considérant que la dénomination professionnelle de «conseil fiscal» ne recouvre pas les mêmes activités dans tous les États membres; que les mêmes activités sont exercées, dans les États membres, par différents professionnels qu'il convient dès lors, afin de déterminer le champ d'application de la présente directive, de viser des activités plutôt que d'utiliser une dénomination professionnelle déterminée;

considérant que, pour les activités par la présente directive, les divergences des réglementations dans les États membres ne per-

1. JO n° 2 du 15. 1. 1962, p. 36/62.
2. JO n° 2 du 15. 1. 1962, p. 32/62.

mettent pas de réaliser, dans les délais de la suppression des restrictions, la reconnaissance mutuelle des diplômes, certificats et autres titres, ainsi que la coordination des dispositions législatives, réglementaires et administratives concernant l'accès aux activités en cause et leur exercice; que, pour cette raison et en attendant la reconnaissance mutuelle ou la coordination, certaines mesures transitoires destinées à faciliter l'exercice des activités de ce domaine aux ressortissants des États membres qui ne connaissent pas de réglementation des activités en cause, font l'objet d'une directive particulière;

considérant qu'il existe des organisations professionnelles de droit public auxquelles l'inscription est obligatoire; qu'il y a lieu en conséquence d'assurer la possibilité, pour les ressortissants des États membres bénéficiaires de la directive, d'être inscrits à de telles organisations; que, par ailleurs, en cas de prestation de services, l'exigence de pareille inscription, liée au caractère stable et permanent de l'activité exercée dans le pays d'accueil, constituerait incontestablement une gêne pour le prestataire en raison du caractère temporaire de son activité; qu'il convient donc de l'écarter; qu'il y a lieu cependant, dans ce cas, d'assurer le contrôle de la discipline professionnelle qui entre dans la compétence de ces organisations professionnelles; qu'il a été prévu à cet effet, et sous réserve de l'application de l'article 62 du traité, la possibilité d'imposer au bénéficiaire une information préalable de son intention d'effectuer la prestation de services, adressée à l'autorité compétente;

considérant que la présente directive ne vise, par le mot «sociétés» inclus dans l'article premier, que les associations ayant pris la forme de société au sens de l'article 58; que, en cette matière, la présente directive ne prévoit que la suppression des restrictions; qu'en conséquence, elle laisse inchangées les dispositions législatives, réglementaires et administratives des États membres qui, applicables sans acception de nationalité, interdisent aux sociétés, ou soumettent pour elles à certaines conditions, l'exercice de l'une des activités visées par la présente directive;

considérant qu'il convient de faciliter tant pour l'établissement que pour la prestation de services, sur le plan communautaire, la production des certificats attestant l'honorabilité professionnelle des candidats à l'accès aux activités visées par la présente directive,

A ARRÊTÉ LA PRÉSENTE DIRECTIVE:

Article premier

Les États membres suppriment en faveur des personnes physiques et des sociétés mentionnées au titre I des programmes généraux pour la suppression des restrictions à la liberté d'établissement et à la libre prestation des services, ci-après dénommés bénéficiaires, les restrictions visées au titre III desdits programmes, pour ce qui concerne l'accès aux activités mentionnées à l'article 2 et l'exercice de celles-ci.

Article 2

Les dispositions de la présente directive s'appliquent aux activités non salariées d'assistance fiscale extrajuridictionnelle, c'est-à-dire, notamment aux activités de

- consultation fiscale,
- établissement des déclarations fiscales,
- assistance des contribuables auprès des autorités des administrations fiscales,
- représentation des contribuables auprès des autorités des administrations fiscales,

dans la mesure où elles n'ont pas encore été libérées par d'autres directives.

Article 3

1. Les États membres suppriment les restrictions qui, notamment:

a) empêchent les bénéficiaires de s'établir dans le pays d'accueil ou d'y fournir des prestations des services aux mêmes conditions et avec les mêmes droits et obligations que les nationaux;

b) résultent d'une pratique administrative ou professionnelle ayant pour effet d'appliquer aux bénéficiaires un traitement discriminatoire par rapport à celui qui est appliqué aux nationaux.

2. Parmi les restrictions à supprimer figurent spécialement celles faisant l'objet des dispositions qui interdisent ou limitent de la façon suivante, à l'égard des bénéficiaires, l'établissement ou la prestation des services:

en Allemagne:

- par la possibilité de refuser à des étrangers l'accès à l'examen d'État du «Steuerberater» ou du «Steuerbevollmächtigter» (article 7 paragraphe 3 n° 2 de la loi du 16 août 1961, «Bundesgesetzblatt» I page 1301);
- par la condition de résidence exigée par l'article 14 paragraphe 1 n° 1 de ladite loi;

en Belgique:

par l'obligation, pour les étrangers, de posséder la carte professionnelle prévue par l'article 1er de la loi du 19 janvier 1965.

Article 4

Lorsqu'un État membre d'accueil exige de ses ressortissants, pour l'accès à l'une des activités visées à l'article 2 ou son exercice, l'inscription à une organisation professionnelle ou organisme de droit public, ou lorsque, dans un État membre d'accueil, cette inscription est la conséquence légale de l'admission à l'exercice des activités en cause, cet État assure que les ressortissants des autres États membres:

- en cas d'établissement, s'inscrivent à l'organisation professionnelle ou organisme de droit public aux mêmes conditions et avec les mêmes droits et obligations que les nationaux.

Cette inscription entraîne le droit de vote et l'éligibilité, ainsi que le droit d'accéder aux postes de direction de l'organisation professionnelle ou organisme de droit public. Toutefois, ces postes de direction peuvent être réservés aux de direction de l'organisation professionnelle ou organisme de droit public dont il s'agit participe, en vertu d'une disposition législative ou réglementaire, à l'exercice de l'autorité publique;

- en cas de prestation de services, sont dispensés de cette inscription; l'État membre peut toutefois prescrire que, lorsque l'exécution de la prestation entraîne leur séjour temporaire sur son territoire, les prestataires sont tenus d'en informer préalablement l'autorité compétente qui assure le respect de la discipline professionnelle.

Article 5

Les États membres d'accueil assurent que les ressortissants des autres États membres aient la faculté de s'affilier aux organisations professionnelles de droit privé aux mêmes conditions et avec les mêmes droits et obligations que les nationaux, dans la mesure où leurs activités professionnelles comportent l'exercice de cette faculté.

Cette affiliation entraîne le droit de vote, ainsi qu'en cas d'établissement, l'éligibilité et le droit d'accéder aux postes de direction de ces organisations.

Article 6

1. Lorsqu'un État membre d'accueil exige de ses ressortissants pour l'accès à l'une des activités visées à l'article 2, une condition de moralité ou d'honorabilité, cet État accepte comme preuve suffisante à cet égard, pour les ressortissants des autres États membres, une attestation délivrée par une autorité

compétente de l'État membre d'origine ou de provenance, certifiant, que les conditions de moralité et d'honorabilité exigées dans cet État membre, pour l'accès à l'activité en cause, sont remplies.
Lorsque l'État membre d'origine ou de provenance n'exige pas de condition de cette nature pour l'accès à l'activité en cause, l'État membre d'accueil peut exiger des ressortissants de cet État membre d'origine ou de provenance un extrait du casier judiciaire et, en outre, dans la mesure où la preuve des conditions exigées dans l'État membre d'accueil ne peut être apportée de façon suffisante par cet extrait, une attestation délivrée par une autorité compétente de l'État membre d'origine ou de provenance, correspondant au document de l'État membre d'accueil.
2. Lorsque dans un État membre d'origine ou de provenance et un État membre d'accueil existent des dispositions législatives ou réglementaires concernant le respect de la moralité ou de l'honorabilité et relatives à l'exercice de l'une des activités visées à l'article 2, l'État membre d'accueil obtient, sur demande, les informations nécessaires. Celles-ci indiquent les sanctions disciplinaires ou professionnelles prises à l'encontre de l'intéressé.
Les États membres assurent que la transmission de ces informations est couverte par le secret. Les États membres restent compétents quant à l'effet sur leur territoire des sanctions disciplinaires ou professionnelles encourues dans un autre État membre.
3. Lorsqu'un État membre d'accueil exige des bénéficiaires, pour l'accès à l'une des activités visées à l'article 2 ou l'exercice de celles-ci, la preuve qu'ils n'ont pas été déclarés antérieurement en faillite et que les informations délivrées par les ressortissants des autres États membres, conformément aux paragraphes 1 et 2 ne comportent pas de telle preuve, cet État accepte des bénéficiaires ressortissants des autres États membres, une déclaration sous serment fait par l'intéressé devant une autorité compétente, un notaire ou un organisme professionnel qualifié de l'État membre d'origine ou de provenance.
Lorsque dans l'État membre d'accueil, la capacité financière doit être prouvée, cet État membre accepte les attestations délivrées par des banques de l'État membre d'origine ou de provenance ou, à défaut, un document délivré par une autorité compétente de l'État membre d'origine ou de provenance, comme équivalentes aux attestations délivrées sur son propre territoire.
4. Les documents visés aux paragraphes 1 et 3 ne peuvent avoir, lors de leur production, plus de trois mois de date.
5. Les dispositions du présent article s'appliquent à l'établissement des ressortissants d'un État membre dans un autre État membre.
6. Les États membres désignent dans le délai prévu à l'article 10 les autorités et organismes compétents pour la délivrance des documents et informations ci-dessus et en informent immédiatement les autres États membres et la Commission.

Article 7

1. Lorsqu'un État membre d'accueil exige de ses ressortissants, pour l'accès à l'une des activités visées à l'article 2 ou son exercice, une des conditions de l'article 6, cet État membre accepte en cas de prestation de services, pour les prestataires ressortissant des autres États membres, un document unique délivré par une autorité compétente de l'État membre d'origine ou de provenance, en lieu et place des documents, déclarations et attestations visées à l'article 6.
2. Le document unique prévu au paragraphe précédent ne peut avoir, lors de sa production, plus de douze mois de date.
3. Les États membres désignent dans le

délai prévu à l'article 10 les autorités et organismes compétents pour la délivrance du document ci-dessus et en informent immédiatement les autres États membres et la Commission.

Article 8

Lorsqu'un État membre d'accueil exige de ses ressortissants, pour l'accès à l'une des activités visées à l'article 2, la prestation d'un serment, cet État assure que, dans le cas où la formule de ce serment ne peut être utilisée par les ressortissants des autres États membres, une formule appropriée et équivalente puisse être présentée au choix des intéressés.

Article 9

Les États membres n'accordent à ceux de leurs ressortissants qui se rendent dans un autre État membre en vue d'exercer l'une des activités visées à l'article 2, aucune aide qui soit de nature à fausser les conditions d'établissement.

Article 10

Les États membres mettent en vigueur les mesures nécessaires pour se conformer à la présente directive dans un délai d'un an à compter de sa notification et en informent immédiatement la Commission.

Article 11

Les États membres sont destinataires de la présente directive.

II. Proposition de directive du Conseil fixant les modalités des mesures transitoires pour certaines activités en matière fiscale

LE CONSEIL DES COMMUNAUTÉS EUROPÉENNES,

vu le traité instituant la Communauté économique européenne, et notamment ses articles 54 paragraphe 2, 57 paragraphe 1, 63 paragraphe 2 et 66,

vu le programme général pour la suppression des restrictions à la liberté d'établissement[1] et notamment son titre V deuxième et troisième alinéas,

vu le programme général pour la suppression des restrictions à la libre prestation des services[2] et notamment son titre VI deuxième et troisième alinéas,

vu la proposition de la Commission,

vu l'avis du Parlement européen,

vu l'avis du Comité économique et social,

considérant que les programmes généraux pour la suppression des restrictions à la liberté d'établissement et à la libre prestation des services prévoient, outre la suppression des restrictions fondées sur la nationalité, la nécessité d'examiner si cette suppression doit être précédée, accompagnée ou suivie de la reconnaissance mutuelle des diplômes, certificats et autres titres, ainsi que de la coordination des dispositions législatives, réglementaires et administratives concernant l'accès aux activités en cause et leur exercice et si, le cas échéant, des mesures transitoires doivent être prises en attendant cette reconnaissance mutuelle ou cette coordination;

considérant, compte tenu de la portée de la réglementation existant dans certains États membres et de l'absence de toute réglementation dans d'autres, qu'il n'est pas apparu possible de réaliser, dans les délais de la suppression des restrictions, la reconnaissance mutuelle des diplômes, certificats et autres titres, ainsi que la coordination des dispositions

1. JO n° 2 du 15. 1. 1962, p. 36/62.
2. JO n° 2 du 15. 1. 1962, p. 32/62.

tions législatives, réglementaires et administratives concernant l'accès aux activités en cause et leur exercice; que ces mesures de reconnaissance mutuelle et de coordination devront intervenir ultérieurement;
considérant, néanmoins, que, en matière de formation, il apparait souhaitable, en attendant la reconnaissance mutuelle ou la coordination, de faciliter la réalisation du droit d'établissement et de la libre prestation des services dans les activités en cause par l'adoption d'un régime transitoire tel que le prévoient les programmes généraux;
considérant que la preuve d'une compétence professionnelle suffisante peut résulter, pour chaque État membre, de la possession d'un des titres repris en annexe, accompagné de l'attestation, par les autorités compétentes, d'un exercice effectif et licite de l'activité en cause pendant au moins quatre années; que la durée de quatre ans est justifiée par le fait que, dans l'État membre où ces activités sont réglementées, l'accès à celles-ci est subordonné à la réussite d'un examen qui suppose la possession d'un titre de formation et une expérience pratique dans le domaine en cause d'une durée minimum de trois ans;
considérant que, en ce qui concerne le port d'un titre professionnel ou de formation, l'absence de dispositions de reconnaissance mutuelle des titres et de coordination conduit à limiter cette faculté aux titres de l'État membre d'origine ou de provenance exprimés dans la langue de cet État membre;
considérant que les mesures prévues dans la présente directive cesseront d'avoir leur raison d'être lorsque la reconnaissance mutuelle des diplômes, certificats et autres titres, ainsi que la coordination des réglementations nationales concernant les conditions d'accès aux activités en cause et l'exercice de celles-ci auront été réalisées.

A ARRÊTÉ LA PRÉSENTE DIRECTIVE:

Article premier

Les États membres prennent les mesures transitoires suivantes en ce qui concerne l'exercice, sur leur territoire, par les personnes physiques et des sociétés mentionnées au titre I des programmes généraux pour la suppression des restrictions à la liberté d'établissement et à la libre prestation des services, des activités visées à l'article 2 de la directive du Conseil du . . .

Article 2

1. Lorsque dans un État membre l'accès à l'une des activités visées à l'article 1er, ou l'exercice de cette activité, est subordonné à des conditions de formation, cet État membre accepte comme suffisante, sous réserve d'usages plus libéraux, pour les ressortissants d'un autre État membre qui désirent exercer les activités en cause, la possession d'un des titres dont la liste est reprise en annexe et de l'attestation visée au paragraphe suivant.
2. Le titre visé au paragraphe 1 ci-dessus doit être accompagné de l'attestation d'un exercice licite et effectif, à titre indépendant – ou à un poste de direction comportant une responsabilité professionnelle personnelle – des activités en cause pendant au moins quatre années consécutives, dans un État membre autre que celui d'accueil.

Article 3

Les États membres désignent, dans le délai prévu à l'article 6, l'autorité compétente pour la délivrance de l'attestation prévue à l'article 2, et en informent immédiatement les autres États membres et la Commission.

Article 4

Lorsque dans un État membre d'accueil, le droit de porter le titre professionnel ou le

titre de formation concernant l'une des activités visées à l'article 1er est subordonné à la possession d'un des titres visés à l'article 2 paragraphe 1, cet État reconnaît aux ressortissants des autres États membres qui remplissent les conditions prévues par l'article 2, le droit de faire usage:

- de leur titre professionnel licite, et de son abréviation, de l'État membre d'origine ou de provenance, dans la langue de cet État, suivi de l'indication de l'État membre d'origine ou de provenance;
- de leur titre de formation licite, et de son abréviation, de l'État membre d'origine ou de provenance, dans la langue de cet État, suivi des nom et lieu de l'établissement ou du jury qui a délivré ce titre.

Article 5

Les dispositions de la présente directive demeurent applicables jusqu'à l'entrée en vigueur des prescriptions relatives à la reconnaissance mutuelle des diplômes, certificats et autres titres, ainsi qu'à la coordination des réglementations nationales, concernant l'accès aux activités visées par la présente directive et l'exercice de celles-ci.

Article 6

Les États membres mettent en vigueur les mesures nécessaires pour se conformer à la présente directive dans un délai d'un an à compter de sa notification, et en informent immédiatement la Commission.

Article 7

Dès la notification de la présente directive, les États membres veillent en outre à informer la Commission, en temps utile, pour lui permettre de présenter ses observations, de tout projet ultérieur de dispositions essentielles d'ordre législatif, réglementaire ou administratif qu'ils envisagent d'adopter dans le domaine régi par la présente directive.

Article 8

Les États membres sont destinataires de la présente directive.

ANNEXE

Liste des titres prévus par l'article 2

Belgique

– Docteur en droit	– Doctor in de rechten
– Licence en sciences commerciales et financières	– Licentiaat in de handels- en financiële wetenschappen
– Licence en sciences économiques	– Licentiaat in de economische wetenschappen
– Licence en sciences économiques appliquées	– Licentiaat in de toegepaste economische wetenschappen

Allemagne

- le titre attestant la réussite de l'examen de «Steuerberater»,
- le titre attestant la réussite de l'examen de «Steuerbevollmächtigter»,
- le titre attestant la réussite de l'examen de «Wirtschaftsprüfer»,
- le titre attestant la réussite de l'examen de «Buchprüfer» passé avant l'entrée en vigueur de la

«Wirtschaftsprüferordnung» (1 novembre 1961) ou conformément à l'article 135 de cette loi,
- le titre attestant la réussite du premier examen d'État juridique,
- le diplôme en sciences économiques (Diplom-Volkswirt),
- le diplôme en sciences commerciales (Diplom-Kaufmann).

France
- Docteur en droit ou en sciences économiques } délivrés par les
- Licence en droit ou en sciences économiques } facultés de droit
- Diplôme d'un institut d'études politiques (section économique et financière)
- Diplôme de l'École pratique des hautes études (section des sciences économiques et sociales et section des services publics)
- Diplôme de l'École supérieure des sciences économiques et sociales (ESSEC)
- Diplôme de l'École des hautes études commerciales ou de l'École de haut enseignement commercial pour les jeunes filles
- Diplôme d'expert comptable institué par l'ordonnance du 19 septembre 1945
- Diplôme d'études comptables supérieures ou diplôme d'expertise comptable institués par le décret du 4 octobre 1963
- les titres attestant l'accomplissement du cycle de formation
  - de l'École nationale d'administration
  - de l'École nationale des impôts (ou de l'une des anciennes écoles des contributions directes, des contributions indirectes ou de l'enregistrement)
  - de l'École nationale des douanes et droits indirects
  - de l'École nationale des services du trésor.

Italie
- Diploma di laurea in giurisprudenza
- Diploma di laurea in scienze economiche e commerciali
- Diploma di laurea in scienze statistiche e attuariali
- Diploma di laurea in matematica finanziara e attuariale
- Diploma di laurea in scienze politiche
- Diploma di ragioniere.

Luxembourg
- les titres visés dans la présente liste et délivrés dans un État membre
- le titre de docteur en droit délivré par un jury luxembourgeois en vertu de la loi du 5 août 1939 sur la collation des grades.

Pays-Bas
- les titres attestant la réussite d'un examen couronnant un cycle d'études auprès de la «Rijksbelastingacademie»,
- Docteur en droit (Doctor in de rechtsgeleerdheid), avec l'une des spécialisations suivantes:
  - vrije studierichting met hoofdvak belastingrecht,
  - fiscaal-juridische studierichting,
  - notariële studierichting,

- Docteur en droit «Nederlands recht»,
- Docteur en sciences économiques,
- les titres répondant aux conditions de formation ou de pratique exigées pour l'inscription au registre des experts comptables en vertu de l'article 82 a) b) ou c) du «Wet op de Registeraccountants» du 28 juillet 1962 («Staatsblad» n° 258).

IFA-NEWS

XXVth Congress of the International Fiscal Association
Washington, D. C., October 4-8, 1971

I. INAUGURAL ADDRESS BY DR. MITCHELL B. CARROLL, PRESIDENT OF IFA

Mr. President of the Congress, Mr. Mayor, Mr. Secretary of the Treasury, Distinguished Guests, Ladies and Gentlemen.

First we express our boundless gratitude to you, Mr. Connally, by honoring us with your inspiring inaugural address.

Secondly, an accolade is given to Malcolm Andresen, President of the Congress and of the U.S.A. Branch and to all the devoted men and women who have organized this historic event, which is enlivened by a gamut of delightful festivities.

In the Peace Palace at The Hague in 1938, we dedicated our association to promoting peace between tax payers and collectors of different nations. The following year in Scheveningen we held our first Congress. Three veterans of one or both of these first meetings are here today, our Senior Vice-President and our outgoing and incoming Presidents.

Our growth to a world organization with over 4,000 members in more than 70 countries is celebrated at this 25th Congress. It will be marked by the election of a new President who will bring new perspectives. Our dedication to the development of international tax law will enable us to adapt ourselves readily to future changes in the multi-national tax situation.

The new President will be surrounded with able colleagues. One is Professor Schreuder, the wise and beloved retiring Senior Vice-President who has been our laureate at many reunions. Two other vice-presidents are Dr. Paul Gmür, President of the Swiss Branch, and Mr. Alun Davies, President of the U.K. Branch. Professor Amorós Rica, Spanish Director General of Taxes, is organizing the Congress in Madrid in 1972, to be followed in 1973 by one in Switzerland. Lic. Roberto Casas, President of the Mexican Group, has formally invited us to convene in his country in 1974. For 1975 and later years invitations are pending from various national branches up to 1978.

Our dynamic Secretary-General, Professor Dr. J.H. Christiaanse of the Netherlands School of Economics, will be busier than ever. So will Dr. J. van Hoorn, Director of the International Bureau of Fiscal Documentation, Amsterdam, and his staff who publish IFA's bulletins and the "cahiers" for the Congress.

IFA is playing a direct role in the development of International Tax Law through its consultative status with the U.N. and in particular with the Expert Group on Tax Treaties between Developed and Developing Countries. This Group works with Dr. Paul Faber, Director, Division of Public Finance. The Secretary of the Group is Dr. Karol Kromery. He is assisted by Professor Dr. Jon E. Bischel of Syracuse University Law School.

There are now over 600 general tax treaties and protocols on prevention of double taxation in the field of direct taxes, reflecting League of Nations and OECD models in which we have been interested. They are listed by the U.N. in its collection of tax treaties. They are mostly between developed countries. Germany, Sweden and Japan have taken a lead in concluding agreements

with such developing countries as Argentina, Brazil, Chile and Peru and others. However, the United States and other developed countries have fallen behind.

Mr. Nathan Gordon, Treasury Director of International Tax Affairs, represents the U.S. in this U.N. group. At the same time he is Chairman of the Committee on Fiscal Affairs of the Organization for Economic Cooperation and Development. We are honored to have him as a member as well as Mr. Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy, and Mr. Robert Cole, the Treasury's International Tax Counsel. Former officials on our roster include Professor Stanley S. Surrey of Harvard, who is a general reporter for the second theme.

We are passing on to the new régime a going and growing concern which can face the future with challenging expectations.

II. ADDRESS BY DR. PAUL GMUER, VICE-PRESIDENT OF IFA, TO THE HONOR OF DR. MITCHELL B. CARROLL, OUTGOING PRESIDENT

Le roi est mort, vive le roi!

The first half of this outcry is untrue here. Our old king is still alive, and very much so. Hence it appears to be adequate that what I am called upon to say here is a prologue rather than an epilogue, a look into the future. But this future has its roots in the past. And this past has not been stationary, it was not "immobilisme", it had all the characteristics of dynamism.

Mitchell B. Carroll emerged out of the roaring twenties and the depressed thirties as a brilliant star in the still cloudy skies of fiscal law and practices. And helped in filling these new spaces; he became a tax addict.

Then IFA was formed, just before the second world war; and he was there, of course, helping to give birth to the child.

When the devastating war years were over and a new world was shaping up, Mitchell B. Carroll assumed the leadership of IFA, then a small organisation, hardly able to interest more than one or two hundred people in its activities. And what came out of it? A flourishing body of over 3,000 members and a multitude of national groups, putting out resolutions which serve as guidelines even for governments for articulating tax policies.

The contribution of Mitchell B. Carroll to this success was not only manyfold, it was instrumental. He carried the torch and, very important in the art of leadership, as you know, he picked others to carry the torch and filled them with enthusiasm.

As IFA grew bigger and, inevitably, became a body reflecting the movements and the play of power on the political scene in Europe, Mitchell B. Carroll, the man from across the ocean, has often diligently and wisely assumed the task of an umpire, by effectively making use of the inborn abilities of a well-balanced mind.

And there is something else which he brought us from the States, thus cheering up the traditional dullness and dryness and boredom otherwise prevailing in scientific gatherings of experts in the old world: The knowledge of the fact that no speech will be remembered unless it is opened and concluded by a funny story.

Summing it all up at this moment of change: Mr. Carroll, who by some people is called Mr. IFA, will go on record not only as a

remarkable President of our Organisation, but as a landmark in its history. And this is why the Executive Committee and the General Council have unanimously resolved, to have me hand to him this gold medal in recognition of his services. It carries the following inscription:

wise in counsel
patient in discussion
indefatigable for IFA

But this is not enough. I told you that we look into the future in the first place, and to secure to IFA the wisdom, expertise and devotion of Mitchell B. Carroll, I propose to you, backed by the unanimous General Council, to pass the following resolution:

The General Assembly of the International Fiscal Association, during its meeting on October 8th, 1971, regretfully learning that Dr. Mitchell B. Carroll after holding office for 32 years – in accordance with articles 15 and 18 of the statutes – retired during the 25th Congress in Washington as President of the Association,

NOMINATED *Dr. Mitchell B. Carroll*
HONORARY PRESIDENT

III. ADDRESS BY ALUN G. DAVIES, VICE-PRESIDENT OF IFA, TO THE HONOR OF PROFESSOR EDGAR SCHREUDER, OUTGOING SENIOR VICE-PRESIDENT

It is a great honour to be called upon to speak about the services of Professor Schreuder to IFA. He has been with IFA for a long time, and has helped to lead IFA over a very long road. It reminds me of Hilaire Belloc's "Old Road" and we have seen the clans marching to Congress from all points North, South, East and West. We have seen the old waggons rolling in, filled sometimes with gold, sometimes with base metal, and sometimes, I regret to say, with trash.

It will be difficult to imagine IFA without Professor Schreuder. This is not the place to mention the great services he gave to Belgium in his capacity as a senior civil servant at the Treasury.

As senior vice-president of IFA from 1954 to 1971, he has given great leadership. The author of the Book of Proverbs said that there were three things which were difficult to foretell, the way of the eagle in the sky, the way of a ship in the sea, and the way of a man with a maid. Today is not the time to comment on the 2nd or the 3rd of these things, but I do think of Professor Schreuder's place as "the way of the eagle in the sky". He has in some ways been aloof and alone, high and mighty and dignified. He has always been a man of dignity in our affairs. But like the eagle, he has been watchful, and he has, when it has pleased him, pounced from a great height, and struck a subject with verve and ferocity, with no uncertain effect.

He has also been a man of compassion, as well as of independence. He has always fought for, and recognised, the rights of the individual against the organisation. And perhaps it is right that I, as a national of a small country, should recognise this great quality in Professor Schreuder, that he should always be mindful of the rights of others, always willing to recognise, with exquisite courtesy, the still small voice of conscience, and indeed, he might be said to have been, over the years, the voice of conscience in IFA.

His views, and his position, he has always been able to speak out with a Celtic eloquence which has no equal in conclaves. He

has swayed our meetings with his silver tongue, and he has enslaved our gatherings with his charm and command of words. The most persuasive and sweeping of his speeches was the one which he delivered at the banquet which took place in Guildhall in the City of London at the Congress of 1965. Professor Schreuder spoke with heartfelt sincerity about the price of freedom, and of the situation in Europe in the summer of 1940, when England alone held high the flame of freedom and independence from despotic tyranny. He referred feelingly to the fact that not only England's friends in Europe, but also her enemies, hoped against hope that she would stand alone in the breach to save Europe's freedom and Europe's soul.

We have much to thank Professor Schreuder for, and it is my privilege to present to him now the silver medal of IFA which recites on its face his service as vice-president, from 1954 to 1971, and on the obverse, recites his qualities for which we have been so grateful in IFA:

"Pour son indépendance d'esprit . . .
Son éloquence, son courtoisie . . .
Son inlassable et efficace dévouement . . ."

You may wonder why I do not give this tribute to Professor Schreuder in French. I once gave a talk in Brussels in French for an hour on the fiscal problems in the Common Market. Professor Schreuder listened to my Churchillian French with patience and courtesy. I do not think I should strain his human qualities any further.

In addition to the silver medal which I propose to hand to Professor Schreuder, I have the honour to present him with a scroll which sets out the decision of this General Assembly of IFA on 8th October 1971, on the retirement of Professor Schreuder from the Vice-Presidency after 17 years of service, to make him at Washington, on the occasion of the 25th Congress, a member of honour of the International Fiscal Association. Professor Schreuder, je vous salue, chevalier de l'IFA, sans peur et sans reproche.

IV. SPEECH DELIVERED BY PROF. BARON J. VAN HOUTTE AT THE CLOSING SESSION

My first duty is to thank you for the confidence you have shown in me and the honour you have done me in electing me to the presidency of our Association for the coming two years.

I will make no secret of the fact that this election is a source of keen pleasure to me and that I regard it, in a way, as the culmination of a career of forty years devoted almost entirely to the study, teaching and practice of fiscal law in the most varied capacities—on the good or on the wrong side of the fence.

But I am also aware that the honour you have done me is not without its perils. A few moments ago two of our distinguished Vice-Presidents spoke for all the members of our Association in conveying to the President, Mr. Carroll, and the Vice-President, Mr. Schreuder, our gratitude and our admiration for their work.

I rather envy Mr. Gmuer and Mr. Davies for having been entrusted by the Executive Committee with such a pleasant duty. Naturally, I do not propose to repeat what they said in such fitting and eloquent terms, but I know you will permit me to add my personal tribute to those already expressed and briefly to recall some memories. Mitchell Carroll and I met on the occasion of the foundation of our Association in 1938 and at our first Congress in Scheveningen in 1939. But five years of world war then interrupted both our personal relations and the activities of our new-born Association. The

question was: would the Association be revived? Everything had to be commenced again, practically from the beginning. And so I recall the time, in 1946, when the then General Secretary of the Association, Mr. Emmen Riedel, on learning that I was about to visit the United States, asked me to look up Mr. Mitchell Carroll in New York and to examine with him the ways in which our Association could be developed on both sides of the Atlantic. No doubt you, my dear Mitchell, also recall that meeting at your Broad Street office? For my part, I know, as does every one here, the work accomplished by Mitchell Carroll since then. To have served as president of an international scientific association for a quarter of a century is in itself a magnificent performance but to have done so with such brilliance, expanding each year the influence and prestige of the Association, is really exceptional.

You will agree with me, ladies and gentlemen, that the best promise your new President can make you is to say that he will try to follow Mitchell Carroll's example, without, of course, nourishing the unrealistic ambition of equalling it. It is a very comforting encouragement to me to learn that our Honorary President will continue to take a close interest in the IFA's problems and that the officers of the Association can count upon his invaluable advice. This is yet another reason for us to express our gratitude to him.

The existence of a powerful association through which the views of those practising fiscal law in the different countries can find expression at the international level is as necessary now as it was when the IFA was founded—and, indeed, perhaps even more necessary.

First, the level of taxation imposed on the resources of private individuals and of undertakings is constantly rising in all countries, due to the growing intervention of the public authorities in economic and social life as a result, in particular, of the multiplication of what are called collective needs. Second, the intensification and speed of communications and the growing trend towards undertakings of world dimensions are lending ever greater emphasis to the international aspects of fiscal problems.

Thus it is not surprising that fiscal problems in general, and their international aspects in particular, are the subject of constantly growing interest on the part of an ever increasing number of people. Taxation is now a matter for study not only by jurists but also by sociologists, economists, financiers, experts in administrative organisation, etc . . .

If we look again at article 2 of the IFA Statutes we find that the purpose of our Association is to promote the study of taxation under all its aspects—the financial and economic aspects are expressly mentioned—but that, above all, its aim is the study of international and comparative fiscal law, in other words, the legal aspects of taxation.

It is not my intention to minimise in any way the importance of the other aspects of taxation, and it is, for instance, gratifying to note that it is now possible to measure with greater and greater accuracy the impact of taxation on the economy in general and on such and such an undertaking or such and such a type of operation in particular. As taxation has become an instrument of economic and social policy, we must learn how to employ this instrument with the maximum efficacity. But a basic truth which we must also always keep in mind is that, in the final analysis, taxation is a levy imposed by the public authority on the income and assets of the private individuals and corporate bodies subject to such authority.

And the reason for the existence of fiscal law—and not just fiscal authority—is to ensure that this levy is made in accordance with the precepts of justice and with respect for the interests—as protected by law—of the parties involved in the fiscal obligation: the taxing authority and the taxpayer. The heavier the taxation the more important it is that it be founded on, and be collected in accordance with, the Rule of Law, at both the national and the international levels.

The task of tax lawyers is precisely to ensure that this is the case, and it is in the pursuit of this ideal of justice that they have come together in such an association as ours. The IFA ist not merely an international union of taxpayers—nor, again, an international conference of tax officials or a congress of academics plunged in fiscal problems of a theoretical or abstract kind. It is much more than that. It serves as a forum where lawyers and tax consultants, officials, professors and specialists in public finance can pool the results of their studies and their experience and together seek—regardless of the capacity in which they practise fiscal law—the most equitable and economically soundest solutions to the major tax problems of today, particularly as regards the international aspects involved.

Just as the proof of movement is to be found by moving, the utility of the IFA has been demonstrated by the number and the quality of the reports submitted to the 25 Congresses the Association has held to date. A rhythm of one Congress every year is in itself proof of exceptional vitality in a scientific association. And I willingly repeat what I said in my speech to the Brussels Congress: the 50 or so volumes of "Cahiers de droit fiscal international" today constitute what is doubtless the most extensive collection of studies available on the subject.

We will continue on the course plotted for us. After this very successful Congress here in Washington we can already look ahead to the 1972 Congress in Madrid, while detailed plans have already been drawn up for the 1973 and 1974 Congresses.

The strictly scientific character of our work, which has contributed so much to the prestige in which our Association is held by national, supranational and international authorities, must be scrupulously preserved.

We must also help in the training of young practitioners of fiscal law, not only by associating them with our meetings and those of our national sections but also by encouraging their personal work. Yet another great merit of our Honorary President is that he founded the Mitchell Carroll Prize and I am sure that he will continue to watch over the award of this prize. In addition, we must improve still further our contacts with the universities and other study centres where vocations for work in the tax field are born.

Ladies and gentlemen, the lateness of the hour prevents me speaking at greater length on these projects and many others.

In closing, I would like, in repeating my thanks for such a flattering election, to reaffirm my faith in the future of the IFA and my firm resolve to strive to follow, during my two years of office as President, the brilliant example set me by my predecessor.

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GERECHTE BESTEUERUNG DER EHEGATTEN. Ein Beitrag zur Harmonisierung des Schweizerischen Steuerrechts, by Dr. F. Cagianut, published by Cosmos-Verlag AG, Bern, 1971, 59 pp.
Discussion of joint and separate assessments of husband and wife in Switzerland and abroad. Dr. Hans Herold, member of the Bureau's Advisory Board, was so kind to send us the following review of this book which he considers to be of more than local importance:
Nach dem folgenschweren Entscheid des Bundesfinanzhofes und im Hinblick auf die Einführung des Frauenstimmrechts in der Schweiz haben sich männliche Politiker aller Parteien in der letzten Zeit für die getrennte Veranlagung der Ehegatten eingesetzt. Es geht ihnen dabei weniger um eine sachliche Würdigung der Verhältnisse als um Stimmenfang. In einem Bundesstaat wie der Schweiz sind die Kantone Experimentierfelder. Nachdem in der Nordostecke parlamentarische Vorstösse erfolgt waren, liess die sanktgallische Regierung die Verhältnisse durch Dr. F. Cagianut, Vorsteher der Kantonalen Steuerverwaltung und Dozent an der Hochschule St. Gallen, untersuchen. Er ging von der richtigen Frage aus, wieviele Personen aus einem Einkommen leben. Es liegt auf der Hand, dass eine unverheiratete Person mit einem Einkommen von z.B. Fr. 20.000,— über die Deckung des notwendigen Lebensbedarfes hinaus mehr für ihr Bedürfnis ausgeben oder sparen kann als ein Ehepaar mit gleichem Einkommen. Erzielt es ein Familienvater mit mehreren Kindern, so wird es knapper. Die wirtschaftliche Leistungsfähigkeit eines oder einer Ledigen ist somit grösser als diejenige eines Ehepaars mit gleichem Einkommen oder vollends eines Ehepaars mit Kindern. Aufgabe des Staates ist daher vorab, die Steuerbelastung nach den Familienausgaben abzustufen. Zu diesem Behuf muss das Einkommen der Ehegatten zusammengerechnet und muss der Ehemann allein als Steuersubjekt betrachtet werden. Der Verfasser kritisiert zutreffend die Methode der steuerfreien Beträge, die im Ausland verwirklichte Aufspaltung und die Besteuerung nach Konsumeinheiten. Er setzt sich für den früher einmal bei der Wehrsteuer verwirklichten getrennten Tarif für Verheiratete und Ledige und den im neuen sanktgallischen Steuergesetz verwirklichten prozentualen Abzug vom Steuerbetrag (nicht vom Einkommen) ein, der nach oben begrenzt und durch einen Minimalabzug ergänzt ist. Nur auf diese Weise lassen sich Ehefrauen, die im Gewerbe des Ehemannes und solche, die ausserhalb desselben Einkommen erzielen, gleich behandeln. An Beispielen zeigt Cagianut, dass die getrennte Besteuerung in vielen Fällen sogar höhere Steuerlasten als die zusammengerechnete brächte. Was Cagianut schreibt, darf als die in der Schweiz noch weit vorherrschende Auffassung betrachtet werden. Auch über die Landesgrenze hinaus verdient seine höchst aktuelle Schrift alle Beachtung.

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DIE BESTEUERUNG DER RENTEN UND KAPITALABFINDUNGEN, by H.P.B. von Schangnau. Dissertation Nr. 372. Published by Verbandsdruckerei Bern, 1970. 185 pp.
Thesis dealing with the taxation of annuities and lump sum payments in lieu of annuity payments.

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EIDGENÖSSISCHE WEHRSTEUER. Statistik der 14. Periode (1967-68). Eidgenössische Steuerverwaltung. Statistische Quellenwerke der Schweiz/ Heft 470. Published by Eidgenössisches statistisches Amt, Bern, 1971. 38 pp.
Statistical surveys of the federal defence tax revenue for the tax years 1967 and 1968.

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Explanation and text of the Law regarding death duties as of August 5, 1971.

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ARTICLES

ANIL KUMAR JAIN*:

PROBLEM OF ARREARS OF INCOME-TAX ASSESSMENTS IN INDIA

There is perhaps no field of state-citizen relationship in which it is so necessary that justice should not only be done but should clearly appear to be done as in that of taxation.[1] Even if taxes are imposed with meticulous regard to equity, the objective may be defeated unless the personnel entrusted with the duty of administering the tax laws bring to bear on the discharge of their daily tasks the maximum amount of tact and patience consistent with efficiency. Assessment represents the first stage in the administration of Income-tax statute when the taxpayers come into direct contact with the Income-tax Department. On timely and just assessments depend good public relations, collection of the tax and the chances of evasion. It is, therefore, essential that standards of fairness and speed should be maintained while making assessments and the assessments made should be just and they should be completed without avoidable delay.

A tax system is said to be functioning properly if it leaves no arrears of assessment at the end of the tax year. In India, the situation is entirely different in this regard. The disease of arrears of assessments in the Income-tax Department has become so chronic that various Committees and Commissions that have reported on the Income-tax Administration, have expressed concern at the progressive increase in the arrears of Income-tax assessments. In recent years the Administrative Reforms Commission and the Public Accounts Committee of the Parliament have also been expressing concern at the progressive increase in the number of income-tax assessments left uncompleted at the end of every year. Table 1 shows the progressive increase in the arrears of income-tax assessments. It is evident from Table 1 that the number of assessments pending at the end of the year have shown a progressive increase, their number increasing almost about four and a half times in 17 years. It is only after 31st March 1967 that they have shown some signs of decline but this decline was very marginal upto 31st March 1968 as is clear from the fact that while the total number of assessments pending on 31st March 1967 was 2346531, their number stood at 2329650 on 31st March 1968. It is only after 31st March 1968 that arrears have sharply declined and the number of assessments pending on 31st March 1969 stood at 1584657. Thanks are largely due to some legislative and administrative measures that were taken up by the Government in 1968-69 which resulted in 858026 more assessments[2] during 1968-69 as compared to the corresponding period of the preceding year. It is a happy augury that in recent years the number of pending assessments have further declined and "on the present indications the Department would be able to dispose of 35.5 lakhs assessments before the close of the financial year (1970-71) and will be carrying forward a pendency of 12 lakhs assessments

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1. *Report of the Taxation Enquiry Commission* (1953-54), Vol. II, p. 211.
2. See Table 2.

approximately as against the corresponding figure of 13.22 lakhs for the preceding year.[3]

ANALYSIS OF ARREARS OF INCOME-TAX ASSESSMENTS

Table 2 provides an analysis of Income-tax assessments. It clearly shows that in the past ten years the number of assessments for disposal for the Income-tax officers have become almost two and a half times of what they were in 1961-62. It is also evident from the table that while the number of assessments for disposal over the past ten years has continuously increased, the trend of the number of assessments actually disposed of (and correspondingly the trend of the number of assessments pending) has been uneven and erratic. While the percentage of assessments disposed of to assessments for disposal has shown a continuous decline from 1961-62 to 1964-65 when it went down from 64.8 percent to 50.8 percent, it increased to 52.4 percent in 1965-66. The percentage again declined to 50.5 during 1966-67. This percentage slightly increased to 52.3 again during 1967-68 and since then has been showing an upward trend. The figures also point out that at the end of the financial year 1969-70 the percentage of assessments pending to assessments for disposal stood at 27.3 which, by any standards of administration, is quite large and this percentage should be reduced at the earliest. A number of factors have been responsible for such a frozen crust of arrears of assessments.

Causes: There has been a phenomenal increase in the number of taxpayers and the assessments to be completed over the past twenty five years without a corresponding increase in manpower. This is evident from the fact that in 1944-45, they year in which the reorganisation of the Income-tax Department commenced the total number of assessees was about 4 lakhs but on 31st March 1969 it was about 27 lakhs. On the contrary, the number of officers employed on the assessment duty was 744 in 1944-45, it was 1912 in 1968-69. It is thus clear that in the past twenty-five years while the number of assessees has increased seven fold, the number of officers employed on duty has increased only two and a half times. No doubt there has been some annual additions to the posts of Income-tax officers but these additions have been inadequate to deal with the increased workload. That the average disposal per Income-tax Officer is increasing every year is evident from table 3.

It can be noticed from Table 2 that whereas the number of assessments for disposal has increased by two and a half times during the period 1961-62 to 1968-69, the increase in the number of officers has been only one-half of the strength in 1961-62 (Table 3). In 1968-69, if all the assessments for disposal had to be completed by the end of 1969 with the available strength of officers, the average disposal per officer would have to be 2615 per year i.e. about 218 cases per month per Income-tax officer. Assuming the effective working days per month to be 24 (a reasonable assumption indeed), it comes to about 9 cases per day "which is an impossible task to perform, howsoever, experienced and brilliant an Income-tax Officer may be."[4]

The Indian Income-tax Act is highly complicated and a plethora of amendments have been made in it from time to time.[5] The new

3. *Report (1970-71)*, Government of India, Ministry of Finance, New Delhi, p. 5.
4. Report of the Working Group of the Administrative Reforms Commission on *Central Direct Taxes Administration* (1968), p. 11.
5. See author's article "Why is Tax Evasion Increasing in India?", *Capital*, May 6, 1971, p. 833.

Act of 1961 was sought to simplify the 1922 Act and create confidence among the people. However, in the years that have followed more than 400 amendments have been introduced.[6] As a result, the whole Act has become so complicated that both the tax-payers and the tax gatherers are at a loss about the precise legal position.

A number of other Direct Taxes such as the Estate Duty, the Wealth Tax, the Gift Tax and the Expenditure Tax (since repealed) have been introduced in the past seventeen years. The administrative machinery for these taxes is also the one which is for the administration of the Income-tax. Hence the workload has increased.

Delay in the filing of returns under the Income-tax Act is one of the most important causes of arrears of assessments.[7] Although it has been clearly laid down in section 139(1) of the Income-tax Act, 1961 that all assessees other than those who have any income from business and profession should file their returns by the 30th day of June of the assessment year and the failure to file the return within the prescribed time entails a penal interest at the rate of 9 percent per annum,[8] and every assessee has to pay tax within 30 days of the filing of the return if his tax liability on the basis of the return exceeds Rs.500[9], in practice it has been observed that "the assessees in majority cases, particularly in high income cases, do not submit the returns on the due dates and apply for adjournments in a routine manner."[10] Since most of these applications flood the Income-tax Department in the last week of June (the month in which the officers and the staff generally go on leave), most of these applications remain unattended and consequently the assessee gets the right to argue that the extensions have been granted automatically. Not only there are delays in filing of returns, many a times the returns are incomplete and defective which delay the completion of assessments.

One of the prime causes of delay in assessments has been the frequent adjournments during the assessment proceedings. Many Income-tax Officers feel that the blame should rest on the assessees' representatives who request for frequent adjournments. On the contrary, the chartered Accountants and other representatives feel that the Income-tax Officers are generally unprepared for the case. But neither of the views is fully correct and there is truth in both the statements. As each side strongly feels that the other is responsible for the delays caused by adjournments, the working Group of the Administrative Reforms Commission on Central Direct Taxes Administration (1968) conducted a case study in 1130 cases on the random sampling basis and found that while the total number of adjournments granted by the Income-tax Officer was 1074, the total number of adjournments sought by the assessee was 361 and it concluded that "... the total number of adjournments granted by the Income-tax Officer on his own i.e. without request from the assessee is much higher than the total number of adjournments asked for by the assessee in all these charges. Of the several categories of circles stated by us, in business cases the adjournments granted by the Income-tax Officers against the adjournments asked for by the assessees have been the highest."[11] The

6. *Report of the Administrative Reforms Commission* on Central Direct Taxes Administration (1969), p. 1.
7. *Report of the Direct Taxes Administration Enquiry Committee*, (1958-59), p. 8.
8. Vide Taxation Laws (Amendment) Act of 1967.
9. Vide Section 140A.
10. *Report of the Working Group of the ARC, op. cit.*, p. 31.
11. *Ibid*, p. 26.

reasons for frequent adjournments by the Income-tax Officers are said to be the posting of more cases than could be disposed of by examination on a single day, lack of prior study and scrutiny of the assessment records and of the return, absence of complete records relating to the past assessments on the date of hearing which, many a time, is due to the fact that the records are held up with the higher authorities. Many a time the Income-tax Officers fix the cases without consulting with the representatives of the assessees and the cases have to be adjourned. Further, part-heard cases have also to be posted to suit the convenience of the assessees and their representatives. When these cases come up, the regular cases posted for the day have to be adjourned. However, the entire blame can not be put on the shoulders of the Income tax officers. There is a tendency amongst the assessees to furnish the least possible information before the Income tax Officer because they feel that if more information than what the Income tax Officer calls for, is given, the Income tax Officer might probe deeper into the case and their tax liability might be increased. Hence the assessees furnish details step by step in response to the querries by the Income tax Officers and this delays the completion of assessments. Moreover, many a times, the assessees do not furnish the required information on the prescribed date and ask for the adjournment of the case thinking that this procedure of asking for the adjournments would bring their assessments to be completed by the Income tax Officer towards the end of the financial year when the Income tax Officer, in order to boost up his disposal and raise demand, might complete the assessment in a hurry without going into the details and consequently their tax liability might be reduced.

In addition to the assessment work, the Income tax Officer has to send the advance tax notices. Notices under Section 143(2) are issued to the assessees even in cases where small inadmissibles have to be added back because under the provisions of Section 143(1) the returns can be accepted only when they are correct and complete. In addition to the issuing of notices the Income tax Officer has to attend to a number of statistical and other reports of miscellaneous character, complaints etc. without adequate assistance and this leaves less time for completing the assessments.

While completing the assessments, an Income tax Officer should scrutinise less in small income cases and more in the high revenue yielding cases. But in India there appears to be the absence of such a system of priorities in the degree of scrutiny.

Finally, frequent changes in jurisdiction, frequent transfers of Officers, lack of provision of adequate leave reserve staff, lack of adequately trained clerical assistance, absence of even ordinary facilities like the provision of a full time stenographer for each Income tax Officer, nonsupply of essential manuals and books, forms and stationery[12], all these delay the completion of assessments.

SPECIFIC MEASURES ADOPTED FOR SPEEDY DISPOSAL OF ASSESSMENTS

In the past few years specially after the end of the financial year 1966–67 when the problem of arrears of assessments assumed serious proportions, the Union Government has adopted a number of steps to expedite the speed of disposal of assessments. Small Income Cases Scheme was introduced in 1964 and since then has been liberalized from time to time. Under the scheme small income cases i.e. non-company cases involving

12. *Ibid.*, p. 10.

business income upto Rs. 10000 (RS. 15000 for the cities of Calcutta and Bombay), all Government salary cases and all non-government salary cases with income below Rs. 18000—with certain exceptions, are disposed of on the basis of statement of accounts accompanying the return, after making obvious adjustments of inadmissible items of expenditure. This scheme has been responsible to a large extent for the spurt in disposals witnessed over the past two years.[13] To expedite assessments, provisions have been made since 1967-68 for facilitating distribution and allocation of work amongst Income-tax Officers on a "functional" basis on the American pattern. Under this scheme concurrent jurisdiction is given to two or more Income tax Officers in respect of the same area or the same assessees. Where two or more Income tax Officers have concurrent jurisdiction, specified functions are allocated to particular officers and each one of the officers performs such functions in relation to the case or cases within his jurisdiction. This scheme which was extended to 82 ranges in 1968-69 has been further extended.

As an administrative measure, the company circles and central circles were suitably strengthened during 1968-69 for accelerating the disposal of important revenue yielding cases. Each officer was required to prepare a planned programme of disposals, month by month, and these programmes were carefully examined and modified as necessary by higher authorities.[14]

The legislative measure taken by the Government for expediting disposal of assessments is the reduction in the statutory time-limit for completion of assessments in original proceedings from four years to two years. This time limit for the completion of the assessment is at present two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969.[15] The existing provisions of Section 143 of the Income tax Act have now been modified[16] so as to empower the Income-tax Officer to make certain adjustments to the income or loss declared in the return. These adjustments may be made by way of rectifying any arithmetical errors in the return and the accounts and documents; allowing any deduction, allowance or relief which, on the basis of the information available in such return, accounts and documents, is, prima facie, admissible though not claimed in the return, disallowing any deduction, allowance or relief claimed in the return but which is, prima facie, inadmissible. A time limit of two years has been laid down for completion of assessments set aside in appeal or reopened under Section 146.[17] Under the existing provisions of Section 153(3), such fresh assessments are not subject to any time limit.

However, in spite of a number of steps taken by the Union Government for the speedy disposal of assessments, the problem of arrears of assessments is almost equally serious today as what it was a few years ago. Although there is truth in the statement that the Department has not been able to reduce the pendency of assessments, to any significant extent because of the increase in the number of assessees and also because of concentration on the disposal of important revenue yielding cases, but this is not a sufficient excuse. At a time when extra

13. *Report on Direct Taxes* (1969-70), Government India, Ministry of Finance, Central Board of Direct Taxes New Delhi, p. 32.
14. *Report (1968-69)*, Government of India, Ministry of Finance, New Delhi, p. 3.
15. Vide Section 153(1)(a)(iii).
16. Taxation Laws (Amendment) Act 1970.
17. *Ibid.*

resources have to be mobilised on a large scale and there is much greater emphasis on the need for external and internal surveys, a number of steps are called for which would go not only to clear the backlog of arrears of assessments but would also prevent future accumulation of arrears of assessments due to the enrollment of the new assessees on the General Index Register of the Income-tax Department.

The present strength of the assessing officers should be considerably increased with necessary complement of ministerial staff. To clear of the pending assessments as well as to avoid arrears of assessments in future, it is desirable that the number of assessing officers is doubled. But since this a long procedure and will take considerable time before it is implemented more emphasis should be laid on rationalising the procedure relating to completion of assessments and fixation of priorities. Returns should be properly and thoroughly scrutinised at the time of receipt so that later on there is no delay in making assessments because of the incomplete filing of the returns and special counters should be opened for the purpose. It is a happy augury that only recently the Government has decided that separate counters for receiving returns of income would be opened for scrutinising whether these were accompanied by copies of accounts and documents necessary for a speedy disposal of assessments.[18]

The "PAYE" (Pay As You Earn) scheme which is in operation in India, pre-supposes that the taxpayer can not only compute his taxable income but he can also calculate correctly the tax which is due. This is no problem for companies and big businessmen who can arrange for professional and expert advice in these matters. But for a large number of salaried individual assessees to acquire such knowledge is by no means easy. It is, therefore, necessary that "the form of return should be made as simple as possible and should be so devised that the taxpayer's attention is drawn to all relevant points."[19] Together with it, it is also desirable that a booklet be prepared in simple language containing important provisions of the Income-tax Act, be translated in regional languages and should be made available to the taxpayers at nominal prices.

A good deal of time of the Income tax Officers is now taken up in attending to duties of a varied nature like the sending of a number of monthly, quarterly, half yearly and annual returns to higher authorities and in replying to a host of queries arising from Parliamentary Questions, Audit and other committees and Commissions. The result is that the Income tax Officer gets less time for assessment work. This work can profitably be performed by an Inspector or a Supervisor and the Income-tax Officer should confine himself to the assessment work alone. It is a happy sign that Government of India has recently decided to engage quite a good number of income-tax officers solely for assessment work coming under the new procedure[20] introduced with effect from April 1, 1971 and these officers would be expected to dispose of a substantially larger number of assessments than done by them hitherto.[21]

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18. Reported in *The Times of India*, November 27, 1971.

19. S. Bhoothalingam – *Final Report on Rationalisation And Simplification of The Tax Structure*, Government of India, Manager of Publications (1968), p. 65.

20. The new procedure empowers the Income-tax Officer to complete the assessment without calling for the assessees or their books of account.

21. Reported in *The Times of India*, November 27, 1971.

A system of priorities in the degree of scrutiny in important and unimportant cases should be introduced. It should be impressed upon the Income-tax Officers through administrative directions that important cases (at least the big cases having large revenue potential) should be completed in the earlier part of the year so that the tax due is collected before the end of the financial year. The Income-tax Officer should make a thorough study of the case before it is posted for hearing. After studying the file he should try to obtain the required information in advance or he should ask the assessee to be present with the required papers on the date of hearing. This would considerably eliminate the present trend of frequent adjournments sought for by the assessees and granted by the Income tax Officers.

At present considerable delay occurs between the date of the final hearing and the date on which the assessment order is passed. There is no justification for this postponement and there is the danger that the Income-tax Officer might lose sight of important points in the case. It is, therefore, desired that "the Department should either by inserting an appropriate rule in the Income tax Rules or by issuing appropriate instructions, require every I.T.O. to pass the assessment order within a fortnight of the last hearing of the case. If, in any particular case, he could not do so, having regard to the complexity of the points involved he should obtain the permission of the Inspecting Assistant Commissioners stating the time he would take for the issue of the order.[22]

Frequent changes in jurisdiction, frequent transfers of Officers should be avoided, adequately trained inspectorial and clerical staff should be employed and it should be ensured that completion of assessments is not delayed for want of even ordinary facilities like the provision of a full time stenographer, non-supply of essential manual and books and forms and stationary.

The public relations activity of the Department also needs to be vitalised. At present there are very few Public Relations Officers to assist the taxpayers. The Income-tax Officers are also supposed to assist the taxpayers. But it is too much to expect this assistance from an officer who is already so much overburdened. It is, therefore, desirable that an adequate number of fully trained, courteous and alert Public Relations Officers should be appointed to guide ordinary taxpayers and assist them in filling in their forms and make their tax calculations.

RAISING THE EXEMPTION LIMIT - NOT ADVISABLE

A strong suggestion has been in the offing that the basic exemption limit of the income tax should be raised to Rs. 7500. Mr. Bhoothalingam in his Final Report on Rationalisation and Simplification of the Tax Structure had strongly recommended a substantial raising of the exemption limit and suggested that the limit be fixed at Rs. 7500 for individuals and Rs. 10000 or 11000 for Hindu Undivided Families on economic and practical administrative grounds.[23]

But this suggestion though attractive as it may seem, may bring more problems than it solves and would also result in substantial loss of revenue. Once the exemption limit is raised to Rs.7500 for individuals alone most of the assessees who would be having taxable incomes extending upto Rs.9000 or so would refrain from filing the return taking cover under the higher exemption limit and

22. Report of the Working Group of ARC, *op. cit.*, p. 36.
23. Page 53 of the Report.

it would be very difficult for the Income-tax Department to spot them without a pervasive and regular external survey. Secondly, the raising of the exemption limit would also tempt the assessees in the higher income range to so split their incomes as to come within the exemption limit.

The revenue loss involved in raising the exemption limit for individuals to Rs. 7500 would not be less as estimated by Mr. Bhoothalingam and many other economists. The loss is going to be substantial. During 1967-68 (the latest year for which data are available) out of the total number of individual assessees of 1405633 in whose cases some demand was involved, there were 770907 individual assessees who had incomes upto Rs.7500. The total income assessed to income tax for individuals having an income upto Rs.7500 stood at Rs.392.8 crores and the total tax demand (income tax plus surcharge) was placed at Rs.9.2 crores.[24] If the exemption limit was raised to Rs.7500 these 7.7 lakh assessees would go out of the registers and the total loss of revenue would be Rs.9.2 crores. In addition, if the rates of tax were to be fixed at nil percent of the first Rs.7500, there would be a net loss of Rs.275 (on the basis of the presently prevailing rates) in every case with income above Rs.7500. In 1967-68, in the case of about 6.35 lakh individual assessees having an income above Rs.7500 per annum, income tax demand was raised. In each of this case, a loss of revenue to the time of Rs.275 would be involved and there would be a loss of revenue to the time of Rs.17.5 crores for these assessees. Thus, the total loss of revenue would be Rs.26.7 crores if the exemption limit is raised to Rs.7500 and this loss is, by all means, substantial. This is the loss on the basis of 1967-68 figures. Since then there has been an increase in the number of taxpayers and the loss would be greater now.

At present the exemption limit is Rs.5000. If the exemption limit is raised to Rs.7500 the operative limit would range between Rs.8500 to Rs.9500 depending on the deductions which the taxpayer chooses to avail of. At present, in addition to the basic exemption limit of Rs.5000, the taxpayer is entitled to a conveyance deduction of Rs.600 per annum (Rs.900 per annum for those owing scooters and Rs.200 per month for those owning cars), House-rent allowance to the tune of 10 percent of the pay, Rs.500 for books, first Rs.1000 in the form of Provident Fund and Insurance.[25] In addition, incomes to the tune of Rs.3000 per annum from Unit Trust of India, dividends from Indian Companies, interest from bank-deposits etc. is wholly exempt from tax. Therefore, the raising of the exemption limit to Rs.7500 would, in fact, amount to setting free all those who have an income upto Rs.10,000 per annum. This, by any means, would not be justifiable.

Above all, the raising of the exemption limit is also not justifiable because in a democratic set-up every citizen must have a feeling of having contributed to the Exchequer and it is all the more important in our country because a pervasive tax consiousness is necessary in order to build up a healthy attitude against tax evasion.

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24. This demand was raised on the basis of actual assessments done in 1967-68. Since all the assessments are not disposed of every year, the revenue involved may be more than Rs. 9.2 crores.

25. These figures are as per the Finance Act, 1971.

TABLE I

*Statement Showing Arrears of Income-tax Assessments**

Year	No. of Assessments pending
As on 31st March 1951	5,28,070
" " " 1956	5,39,832
" " " 1961	6,19,117
" " " 1962	7,12,407
" " " 1963	9,08,659
" " " 1964	12,26,406
" " " 1965	17,84,515
" " " 1966	21,69,529
" " " 1967	23,46,531
" " " 1968	23,29,650
" " " 1969	15,84,657
" " " 1970	13,21,807

TABLE II

*Analysis of Arrears of Income-tax Assessments***

Year	No. of assessments for disposal	No. of assessments disposal of	Percentage of assessments disposed of to assessments for disposal	No. of assessments pending at the end of the year	Percentage of assessments pending to assessments for disposal
			%		%
1961-62	20,21,330	13,08,923	64.8	7,12,407	35.2
1962-63	22,18,376	13,09,717	59.4	9,08,659	40.6
1963-64	27,09,107	14,82,701	54.7	12,26,406	45.3
1964-65	36,26,144	18,41,629	50.8	17,84,515	49.2
1965-66	45,58,556	23,89,027	52.4	21,69,529	47.6
1966-67	47,64,597	24,18,066	50.5	23,46,531	49.5
1967-68	48,86,204	25,56,554	52.3	23,29,650	47.7
1968-69	49,99,237	34,14,580	68.4	15,84,657	31.6
1969-70	48,79,697	35,57,890	72.9	13,21,807	27.3

TABLE III

*Statement Showing the Disposal of Income-tax Assessments****

Year	Number of assessments disposed of	Number of Income-tax officers employed on assessments	Average disposal per Income tax Officer
1961–62	13,08,923	1289	1008
1962–63	13,09,717	1306	1003
1963–64	14,82,701	1332	1113
1964–65	18,41,629	1424	1293
1965–66	23,89 027	1548	1543
1966–67	24,18,066	1648	1467
1967–68	25,56,554	1701	1503
1968–69	34,14,580	1912	1789

* Source: (1) Report of the Taxation Enquiry Commission (1953–54) Vol. II.
(2) Report of the Direct Taxes Administration Enquiry Committee (1958–59).
(3) Report of the Working Group of the Administrative Reforms Commission on Central Direct Taxes, Administration (1968).
(4) A Statistical Review of Direct Taxes (1968–69).
(5) Report on Direct Taxes (1969–70).

** Source: (1) Report of the Working Group of the Administrative Reforms Commission on Central Direct Taxes Administration (1968).
(2) A Statistical Review of Direct Taxes (1968–69).
(3) Report on Direct Taxes (1969–70).

*** Source: (1) Report of the Working Group of the Administrative Reforms Commission on Central Direct Taxes Administration (1968).
(2) A Statistical Review of Direct Taxes (1968–69).

JAP KIM SIONG:

TAX INCENTIVES AND INCOME TAX LIABILITY OF FOREIGN BUSINESS ENTERPRISES OPERATING IN INDONESIA AS AFFECTED BY THE 1970 AMENDMENT LAWS

I. INTRODUCTION

Initiated by the Indonesian Government's new plans with goals of stabilizing the country's affairs and promoting economic recovery,[1] in which new tax laws play an important role,[2] the President gave his assent on August 7, 1970, to five tax laws which had been approved by the DPRGR (Dewan Perwakilan Rakjat Gotong Rojong) parliament on July 2, 1970.[3] These five laws, i.e. Laws 1970, nos. 8 to 12 inclusive (LN 1970 Nos. 43 to 47), entered into force on August 7, 1970, amending and supplementing as of that date the following existing laws and ordinances:

1. the Corporate Income Tax Ordinance of 1925.[4]
2. the Individual Income Tax Ordinance of 1944.[4]
3. the Dividend Tax Law of 1959.[4]
4. the Law concerning Foreign Capital Investment of 1967.[5]
5. the Law concerning Domestic Capital Investment of 1968.[6]

These amendments and additions are in accordance with the general directives as stipulated by the Government tax policy whose aim is to promote and intensify development efforts in Indonesia. These efforts include: an increase of Government savings through an increase of tax revenues; incentives for public savings; promotion of investments and production; facilitation of the redistribution of income; improvement of the balance of payment; and a more simplified tax administration. The amendments and additions made in the Individual Income Tax Ordinance of 1944, the Law concerning Foreign Capital Investments of 1967, and the Law concerning Domestic Capital Investments of 1968, as amended, pertain primarily to amendments, additions or circumscriptions of existing provisions, to reflect the alterations made in the other two tax laws, approved on August 7, 1970. In general, the amendments and additions of the laws can be divided into amendments on one hand to create a tax climate favorable for enterprises to invest capital pursuant to the tax incentives granted, and on the other hand, to extend the income tax liability of foreign enterprises in business transactions in Indonesia, evidently to increase Government savings through increase of revenue, in which foreign capital investments and foreign business operations in particular constitute a

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1. *B. Dahm.* History of Indonesia in the Twentieth Century. London 1971 at 255. *Doing Business in the New Indonesia.* New York 1968. 126 pp.
2. *Rochmat Soemitro.* Kebidjaksanaan Fiscal Dalam Repelita. *Perpadjakan Indonesia.* Djakarta 1969 No. 4 at 45 to 52.
3. *A. Wardana.* Berkenaan Dengan Disahkannja Lima R.U.U. Perubahan dan Tambakan Dibidang Perpadjakan. *Perpadjakan Indonesia.* Djakarta 1970 No. 10 at 1 to 7.
4. *Rochmat Soemitro.* Taxation in Indonesia. An Outline. *Bulletin for International Fiscal Documentation.* Amsterdam 1967 at 332 to 352.
5. *Rochmat Soemitro.* Investment of Foreign Capital in Indonesia. *Bulletin for International Fiscal Documentation.* Amsterdam 1968 at 496 to 510.
6. *Djokobirowo.* Beberapa Saran Untuk Mengamankan Pelaksanaan U.U. No. 6 Tahun 1968 Penanaman Modal Dalam Negri. *Perpadjakan Indonesia* 1970 No. 8 at 40 to 48.

new source of revenue which should be utilized intensively.[7]

In accordance with increasing Government revenue from the tax sector, the first step to be taken to promote investments is a tax incentive system, which, on one hand, can bring the greatest results for the National Economic Development, and, on the other hand, keep the State's revenue sacrifices at a minimum. Therefore, the tax incentives, as provided for in the amendment Law No. 8 of 1970 (LN 1970, No. 43) concerning amendments and additions to the Corporate Income Tax Ordinance of 1925, are generally granted to taxpayers, supporting the national economy through new investments, without effecting the favorable tax climate for the already existing enterprises.

In principle, there are two alternative methods to achieve the above mentioned goals: 1) granting full tax exemption for a certain period, i.e., a tax holiday; and 2) granting tax incentives.

The new tax incentives granted include:

1. Introduction of a provision whereby initial losses arising in the first six years of a business may be carried forward indefinitely against future profits (article 7 paragraph (2) Corporate Income Tax Ordinance 1925 as amended);
2. Extension of loss carry overs from two to four years (article 7 paragraph (1) ibid);
3. Change-over from a method of free depreciation (penghapusan bebas) to an accelerated depreciation allowance (penghapusan dipertjepat);
4. Introduction of investment allowance;
5. Introduction of a provision where by a special decree of the Minister of Finance revaluation of business assets is granted;[8]
6. Reduction of corporate tax rates, and alteration of their computation.

The following article reports the highlights of all the major renovations provided for in the corporate income tax and dividend tax which would be of particular interest to foreign enterprises considering investing in Indonesia or doing business through a permanent establishment there.

II. TAX INCENTIVES

1. Tax holiday

Prior to the amendments due to Law No. 8, 1970 (LN 1970, No. 43) tax holiday incentives were stipulated directly in Law No. 1, 1967, concerning Foreign Capital Investments, and in Law No. 6, 1968, concerning Domestic Capital Investments, without any previous relevant provisions in the basic laws, viz., the Corporate Income Tax Ordinance of 1925.[9] In order to create a stronger legal basis for the above mentioned incentive, the tax holiday provision is now incorporated in article 1a paragraph (1) of the Corporate Income Tax Ordinance of 1925.[10]

A tax holiday is only granted to new enterprise investing capital in a field of production which has Government priority. The Minister of Finance periodically issues regulations, specifically stipulating the various production activities with regard to their

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7. Cf. Explanatory notes to Law No. 8, 1970 (LN 1970, No. 43) in TLN No. 2940 and Law No. 10, 1970 (LN 1970, No. 46) in TLN No. 2942. LN is the abbreviation for Lembaran Negara (Official Gazette of the Republic of Indonesia). TLN for Tambahan Lembaran Negara (Supplement to the Official Gazette).
8. *B. Usman*. Kebidjaksanaan Baru Perangsang 2 Perpadjakan Pada Penanaman Modal. *Perpadjakan Indonesia*. Djakarta 1969 Nos. 6/7 at 13 to 17 and *Tax News Service* Part II – Non Europe 1971 at 43.
9. *B. Usman*. Beberapa Garis Besar Pada Perubahan Dan Tambahan Undang 2 PMA Dan Undang 2 PMDN. *Perpadjakan Indonesia*. Djakarta 1970 No. 8 at 18 to 21.
10. TLN No. 2940.

priority, in accordance with the economic situation at the time, the economic development level and the economic policy of the National Development Program. New business entities investing their capital in fields of production which coincide with Government priorities are granted a tax exempt period of six years, from the commencement of commercial production. Implementation is regulated by the Minister of Finance (article 1a paragraph (1) Corporate Income Tax Ordinance of 1925).

2. *Accelerated depreciation allowance*

Prior to the amendments effected by Law No. 8, 1970 (LN 1970, No. 43) the method of free depreciation (penghapusan bebas) was applied to depreciable assets provided that the amount of depreciation for each year did not exceed 25 per cent of the amount of taxable profit acquired in that year. Thus, if there was no profit, one could not apply the free depreciation allowance. Since this incentive therefore, was not really an investment incentive, it has been replaced by an accelerated depreciation allowance (penghapusan dipertjepat) not connected with the taxable profit of resident taxpayers engaged in the fields of industry, agriculture, mining and transport. The accelerated depreciation may be applied in addition to the normal depreciation allowance with respect to actual expenses for assets liable for depreciation, provided that such assets are necessary for the enterprise's activity, and include construction of a permanent nature, or equipment and infra structures (e.g. roads, bridges) not of a luxury nature, nor used before within Indonesia. The taxpayer may take, at his option, accelerated depreciation by applying an initial depreciation in any year during a period of 4 years beginning from the year the expenses are paid at the following rate of depreciation:

10 per cent of the amount of the expenses for permanent building constructions, 25 per cent of the amount of the expenses for infra structure projects, plant and equipment.

The accelerated depreciation allowance has been implemented in the Depreciation Decree to the Corporate Income Tax 1953, as amended by Decree of the Minister of Finance of the Republic of Indonesia No. KEP-630/MK/II/10/1970 of October 9, 1970.[11]

3. *Investment allowance*

Law No. 8, 1970 (LN 1970, No. 43) contains Article 4 b, incorporated in the Corporate Income Tax Ordinance of 1925, providing for an investment allowance. If, within a certain year, investments have been made within the framework of Law No. 1, 1967, concerning Foreign Capital Investments and of Law No. 6, 1968, concerning Domestic Capital Investments, an investment allowance is granted with a maximum amount of 20 per cent of the investment, to be deducted from the profit at a rate of 5 per cent a year for the first four years. This allowance has a binding character, meaning that if the enterprise in a certain year fails to make use of its right to deduct the investment allowance of 5 per cent, then that right for that year cannot be transferred to another year. If the enterprise is sustaining a loss, then the investment allowance amount will increase the amount of the loss for the tax year, and the loss can be compensated with the profits of the next 4 years, or in case of initial losses indefinitely against future profits. The investment allowance does not apply, however, if the initial investment amount invested forms part of the new enterprise's

11. See *Berita Padjak*. Djakarta No. 155 November 2, 1970 at 13 or *Warta C.A.F.I.* Djakarta No. 243 October 22, 1970 at 2642.

tax holiday allowance.[12] The investment allowance has been created as an alternative to the tax holiday,[13] for new investments after the tax holiday has expired or for investments which don't initially qualify for the tax holiday.

A sanction is provided for if a part or the entire investment is transferred later (dis-investment) within the validity period of the investment allowance deduction).[14] The expression "transfer" means sale, transfer of ownership, exchange etc. The explanatory note to Law No. 8, 1970 published in TLN No. 2940 called this investment allowance an investment incentive (perangsang penanaman), using in addition the expression "investment allowance" in parentheses. The concept of a dis-investment sanction has precedent in Dutch tax law, as the dis-investment allowance (disinvesteringsbijtelling). Therefore, the deductions available in computing taxable income as a function of investment in qualifying assets, which are granted in addition to normal and accelerated depreciation deductions, with respect to assets involved, if any, will, in effect, exceed 100% of their expenditures. The explanatory note does not, however, discuss the above mentioned effect of the said investment incentive allowance. However, it is obvious that one may refer to the fact that the explanatory note denotes that the investment allowance is granted in the form of a *premium* to enterprises investing new capital in the framework of Law No. 1, 1967, concerning Foreign Capital Investments and of Law No. 6, 1968, concerning Domestic Capital Investments, which imply in effect deductions with respect to assets which may exceed 100% of the actual paid expenses.[15]

4. *Corporate income taxe rate*

Prior to the amendments effected by Law No. 8, 1970 (LN 1970 No. 43) the corporate income tax was levied at progressive rates of tax ranging from 20 to 60 per cent. In order to create a more appropriate rate for business enterprises, the rate of tax has been reduced to a general rate of 20 per cent, with an additional rate of 25 per cent if the taxable profit amount exceeds Rp. 5,000,000. The following example may illustrate the ultimate corporate income tax amount payable. Say the taxable profit is Rp. 6,000,000. Tax thereon is

20 per cent from	Rp. 6,000,000	= Rp. 1,200,000
	Rp. 6,000,000	
	less Rp. 5,000,000	
25 per cent from	Rp. 1,000,000	= Rp. 250,000
		Rp. 1,450,000

A limit under which the additional tax of 25 % will not be levied will be fixed for every tax year. This amount is fixed now at Rp 5,000,000, in general, corporations in Indonesia receive less than Rp. 5,000,000 in profits per year.[16]

Special rates apply in certain cases, i.e., merger and liquidation profits are taxed at a rate

12. Article 4b paragraph (3) Corporate Income Tax Ordinance of 1925.
13. TLN No. 2940.
14. Article 4b paragraph (5) Corporate Income Tax Ordinance of 1925.
15. TLN No. 2940.
16. Ibid.

of 20 per cent.[17] This rate of tax was fixed by Law No. 8, 1970 (LN 1970 No. 43), but is reduced to 10 per cent on the first Rp. 10,000,000 and to 20 per cent on the balance by Decree issued by the Minister of Finance of the Republic of Indonesia No. KEP-627/MK/II/10/70 of October 9, 1970.[18] Similarly, the special rate of 20 % for revaluation of assets profits, provided for in article 10 a paragraph (2) of the Corporate Income Tax Ordinance of 1925, has been reduced to 10 per cent by article 9 paragraph (1) of the Decree issued by the Minister of Finance of the Republic of Indonesia No. KEP-508/MK/II/7/1971 of July 7, 1971, concerning revaluation of assets.[19]

III. EXTENSION OF TAX LIABILITY

1. *Foreign shipping- and airline enterprises*

Article 1a, sub-sections (a) and (b) of the Corporate Income Tax Ordinance of 1925, prior to the amendment, granted tax exemption for profits by foreign shipping- and airline enterprises from the transportation of persons and goods to and from sea-ports and airports in Indonesia (international traffic) on the condition, that in the foreign country concerned a reciprocal tax exemption was granted on profits derived by Indonesian ships/aircraft from international traffic. The entire exemption provision has been abolished, by Law No. 8 of 1970 (LN 1970 No. 43). It is stipulated in the explanatory note No. 2940 that, since the number/quantity of persons and goods transported by the foreign enterprises as well as their shipping- and flight frequency are far greater than those effected by the shipping- and airline enterprises domiciled in Indonesia, the total corporate income tax amount to be relinquished by Indonesia is also far greater than the amount to be relinquished by the foreign countries concerned.

Therefore Asian countries, which are not yet in a situation of possessing strong shipping- and airline fleets, do not need the provisions in the said Article 1 a letters (a) and (b) of the Corporate Income Tax Ordinance of 1925. These provisions prior to the amendments effected by Law No. 8, 1970 (LN 1970 No. 43) have their origin in the period of the former Netherlands East Indies Government developing because the Netherlands had certain interests in the existence of these provisions, since it owns a sufficiently large shipping and airline fleet.[20]

By Decree No. D. 15.4.1.0.192-1-7- of February 8, 1971 issued by the Director General of Taxes, it has now been determined that in accordance with the applied self-assessment system (MPS),[21] foreign shipping enterprises should pay tax at the rate of 4 per cent of the gross freight amount or the estimated remuneration received from shipping.[22] For foreign airlines the rate would be 3 per cent. It is reported, however, that because of petitions made by foreign enterprises, the rates have been reduced to 2 per cent and 1.1/2 per cent respectively.[23]

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17. Article 10a paragraph (1) Corporate Income Tax Ordinance of 1925.
18. *Business News*. Djakarta no. 2012 of October 19, 1970.
19. *Business News*. Djakarta no. 2121. July 16, 1971. *Tax News Service* Part II – Non Europe 1971 at 43.
20. TLN No. 2940 and see *B.J.F. Steinmetz*. De Indische vennootschapsbelasting. Haarlem 1933 at 88, 211.
21. See *Muhd-Husni*. The New System of Collecting Income Tax, Property Tax and Company Tax in Indonesia. *Bulletin for International Fiscal Documentation*. Amsterdam. April 1969 at 151 etc.
22. *Business News*. Djakarta no. 2060 of October 22, 1971.
23. *Tax News Service* Part II – Non Europe 1971 at 54.

2. *Introduction of withholding tax on interest and royalty payments to nonresidents*

Based on the Law for Foreign Capital Investments of 1967, foreign corporations operating in and investing their capital directly in Indonesia, have been a new source of tax revenues, since corporation tax is payable on their profits. In addition to foreign corporations which are operating and investing their capital directly, other foreign enterprises are operating indirectly in Indonesia, for example through capital-loans to foreign, as well as non-foreign owned, enterprises operating in Indonesia, for which the capital-owner abroad will receive profits as interest on the loans. Prior to the amendments, the profits derived by the capital-owner abroad in the form of interests, were not subject to income tax or corporate income tax.

As stipulated in the explanatory note No. 2942 to Law No. 10, 1970 (LN 1970 No. 45),[24] financing of business enterprises is for a great part effected by borrowed capital, for which interest must be paid. Indonesia, as it is providing natural resources needed for world consumption, is also spending its capital resources in the form of interest in sufficiently significant amounts. These interest payments, besides circulating domestically, are also flowing out abroad. Therefore, it is reasonable, that taxes should be levied on these revenues. If this is not implemented, then the country in which the recipient of the interest is domiciled or situated will receive revenues by levying taxes on this income, which means that Indonesia relinquishes the right to levy these taxes to another country, resulting in financial losses for Indonesia, which is in great need of funds.

In addition to loans mentioned above, patents, licences, trade-marks, designs or models, plans, trade secrets and other similar rights are transferred and equipments and tools for industry, trade and science are rented to enterprises in Indonesia, for which some type of remuneration is received, generally designated as royalties.

In principle, interest payments from money-loans and royalty payments are the same, as both are profits derived through indirect operations in Indonesia. Therefore, it is reasonable, that royalties, like interest, are also subject to taxation.

However, in view of the fact, that foreign enterprises operating indirectly in Indonesia are domiciled or situated abroad, outside the jurisdiction of the Indonesian tax administration, a tax collection procedure is required, which makes it possible to levy taxes on the acquired profits.

In accordance with the tax collection method, the correct procedure is to collect these taxes at their source, i.e. the taxes involved should be deducted directly by the enterprises paying the income in the form of interest and royalties. The deduction of dividend tax, governed by the Dividend Tax Law of 1959, provides for this procedure so that from practical point of view, the procedure to levy and to collect tax on interest and royalties should be effected by implementing amendments and additions in the Dividend Tax Law of 1959, while considering that the formal procedure on the levy of dividend tax should also fully apply to the levy of tax on interest and royalties. The tax levy at source has the characteristic of a final levy (eindheffing).[25]

This method of tax collection is also applied to individuals or corporations domiciled or established in Indonesia. With respect to resident taxpayers, the significance of tax collection at source is that the withholding

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24. Warta C.A.F.I. No. 192 of August 22, 1970 at 2103.
25. TLN No. 2942.

tax is, in essence, an advance levy. The tax on interest and royalty is creditable against the individual income tax/corporate income tax determined as payable at the end of the tax year.

The change-over of the tax on interest, dividends and royalties from a final levy into an advance levy also affects the procedure regarding the taxation of the profits of partnerships and their partners i.e. that at present the tax on interest, dividends and royalties withheld on the distributed profits by the partnership is to be credited against the individual income tax payable by the partner on distributed dividends, while prior to the present amendment the dividend tax (1959) is a final levy and thus not liable again to individual income tax in such case.[26]

In view of the changes made in the objectives of the Dividend Tax Law of 1959, as amended, with interest and royalty, it is felt therefore necessary to adjust its designation so that it is now called Tax on Interest, Dividends and Royalties 1970 (LN 1970 No. 46).[27]

The tax on interest, dividends and royalties is levied at the rate of 20 per cent of the interest, dividend and royalty.

3. *National Avoidance of Double Taxation*

Prior to the present amendment, dividend tax (1959) was a final tax, so that the amounts paid to the individual or company shareholder were not subject to any further tax under the Individual Income Tax and the Corporate Income Tax Ordinances. The tax on interest, dividends, and royalties is for the resident-recipient in Indonesia an advance tax and therefore the tax is creditable against the ultimate individual or corporate income tax liability.

The tax on interest, dividends and royalties with respect to nonresident taxpayers, however, remains a final tax and therefore is not creditable against any other tax in Indonesia. Generally, interest and royalties are business expenses for those paying these revenues, and can be deducted in computing the company's taxable profits, in accordance with the provisions in article 4 of the Corporate Income Tax Ordinance of 1925. The result is that interest and royalties, on one hand, will reduce income or profits subject to individual income tax or corporate income tax of the parties paying the interest, and on the other hand are income or profits for the interest-recipients, on which individual income tax or corporate income tax will be levied, or will be subject to tax on interest, dividends and royalties. However, in certain cases as stipulated in article 5 paragraph 2, 3rd. of the Corporate Income Tax Ordinance of 1925, interest and royalties cannot be considered as business expenses, and therefore cannot be deducted from the profits of the parties paying the interest, so that such interest or royalty payments are not deductible in computing the company's taxable profits. If they are also subject to tax on interest, dividends and royalties, this would mean a double taxation. In order to avoid such double taxation, article 9 paragraph (1) of the Corporate Income Tax Ordinance of 1925 stipulates that interest on loans and royalties as mentioned in article 5 paragraph (2) 3 rd. are not considered as profits (of the receiving company) as mentioned in article 3, which means, that they are exempted from corporate income tax. In connection with the tax avoidance provisions under the Corporate Income Tax Ordinance of 1925, Article 4 Number 4 of the Law concerning

26. For previous situation see *Rochmat Soemitro.* Taxation in Indonesia, An Outline. *Bulletin for International Fiscal Documentation*. Amsterdam 1967 at 341.

27. Article 28 of the Tax on Interest, Dividends and Royalties 1970 (LN 1970, No. 45).

Tax on Interest, Dividends and Royalties of 1970 provides that these interest and royalties are also exempt from this tax. The result is that no double taxation occurs between corporate income tax and tax on interest, dividends and royalties; only the paying company is taxed, since the interest and royalties are not deductible as exploitation costs.

On the other hand national double taxation is not avoided regarding dividend-income, since dividends cannot be deducted from the profits as exploitation costs by the parties paying the dividend, yet these dividends are income for the recipients, which will be subject to dividend tax (1970) or corporate income tax. Exemption is granted if the dividend-recipient is a shareholder with a "participation" in the paying enterprise, in which case the dividends are not considered as income for the recipient, as stipulated in article 9 paragraph (2) of the Corporate Income Tax Ordinance of 1925. In order to adjust the tax on interest, dividends and royalties with the provision under the Corporate Income Tax Ordinance of 1925, on such dividends, article 4 Number 5 of the Law concerning Tax on Interest, Dividends and Royalties of 1970, stipulates that no tax is levied on participation-dividends. As to the meaning of the term "participation" under the Law concerning Tax on Interest, Dividends and Royalties of 1970, the explanatory note stipulates that the participation principle governed by the Corporate Income Tax Ordinance of 1925 shall apply. This exemption is only valid in case the shareholder has a qualified participation in an enterprise domiciled in Indonesia or in a "permanent establishment" situated in and operating in Indonesia. The "Bijbladen" nos. 10797 and 15289 stipulate that a participation in another enterprise, resident in Indonesia, exists, if the holding is not qualified as an "investment", i.e. where the holding of the capital in another enterprise is held in the course of normal business operations and is of a long lasting nature.[28]

As is stipulated above the term "permanent establishment" is put between quotation marks in the Law concerning Tax on Interest, Dividends and Royalties 1970 (LN 1970 No. 46) such as in Article 1 letter a, 3rd., and Article 4 Number 5 of the said Law. No explanation, however, for the quotation marks is given in the explanatory note accompanying the bill. The concept "permanent establishment" is not defined in the Indonesian tax law itself, but is clarified in an explanatory statement accompanying the bill (Bijblad no. 15289). In the explanatory note, the legislative intent with respect to the concept "permanent establishment" is conveyed. It is the purpose, as expressly stated, not to define "permanent establishment" minutely, because, on the one hand, the concept may then easily follow the developments in international tax law and, on the other hand, where necessary, be determined by the tax administration or tax court in case it should deviate from the general accepted rule under international tax law.[29]

A permanent establishment situated in Indonesia may exist by the fact that there is an economic relation with Indonesia without any existence of an additional personal relationship as generally construed in tax treaties concluded between industrialized countries and as definied in the OECD Model Convention of 1963. In this connection, one may, in addition, notice that the maintenance of a fixed place of business

28. Bijblad stands for the Dutch expression for TLN. For more detailed information on the concept "participation" see *Jap Kim Siong*. De Indonesische vennootschapsbelasting. Kluwer. Deventer 1971 at 42 to 46.
29. Bijblad no. 15289.

solely for the purpose of purchasing goods contributes to the profit realised by the selling the goods elsewhere, so that the countries in which goods were purchased should be entitled to tax a fair share of the sales profit.[30]

One should look at Decree No. D.15.4/11/D/4-13/71 of July 7, 1971 issued by the Director General of Taxes of the Republic of Indonesia, in this light, which provides that in the scope of the applied self-assessment system (MPS), foreign companies engaged in trade and business through a representative in Indonesia shall be subject to the MPS corporate or individual income tax rate of 0.4% (previously 1%) of the value of the goods imported into Indonesia.[31]

Though tax liability of non-resident companies may only arise in accordance with article 1 paragraph (1) 3rd. of the Corporate Income Tax Ordinance of 1925, i.e., from business which is carried on within Indonesia through a permanent establishment in Indonesia, from immovable property situated or established in Indonesia, including income from loans which arises outside the business, where the capital sum concerned is secured by a mortgage established on such property, the expression "permanent establishment" may imply to have a wide, though uncertain, meaning. It may denote to include a branch, a factory, an office but also the sale of goods imported through a representative in Indonesia so that the expression "permanent establishment" may therefore been put between inverted commas to denote that the foreign enterprise operating through a permanent establishment, either *directly* or *indirectly*, situated in Indonesia, is liable for Indonesian corporate income tax on the attributable income because Indonesia becomes the source of that income.

It is apparent from what has been set out in regard to income tax liability for non-residents of Indonesia, that carrying on a business through a "permanent establishment" in Indonesia may indicate the liability to Indonesian income tax either because it is regarded to have a *direct* permanent establishment in Indonesia in accordance with the meaning of the concept permanent establishment based on the principle of domicile or because it has an *indirect* permanent establishment in Indonesia in accordance with the meaning of the concept permanent establishment based on the principle of source.[32] Obviously in the latter case, the tax on foreign enterprises on business transactions in Indonesia is then levied pursuant to the applied self assessment system (MPS/MPO).[33] Viewed from the point of legislative intent as an interpretation of law, one may say that under the two concepts of the term "permanent establishment" as being in conformity with the explanatory statements accompanying bills as to the meaning governed by the Corporate Income Tax Ordinance of 1925, the term "permanente stablishment" as used in the Law concerning Tax on Interest, Dividends and Royalties of 1970 best conveyed the meaning of the legislation.[34]

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30. See Tax treaties between developed and developing countries. United Nations. New York 1969 at 14. Idem. Second report 1970 at 11.
31. *Business News*. Djakarta no. 2124 of July 23, 1971 and *Tax News Service* Part II – Non Europe 1971 at 54.
32. For detailed information on the concept permanent establishment see *Jap Kim Siong*. De Indonesische vennootschapsbelasting. Kluwer. Deventer 1971 at 27 to 32.
33. *Soemono*. Mendalami Tata-Tjara MPS-MPO. *Perpadjakan Indonesia*. Djakarta 1971 No. 12 at 3 to 10.
34. Cf. The interpretation of tax laws with special reference to form and substance. First subject at London Congress on Financial and Fiscal Law by International Fiscal Association. 1965. 322 pp.

FRANCE

Remboursement de Crédits de la T.V.A.*

Décret n° 72-102 du 4 février 1972 relatif au remboursement de crédits de taxe sur la valeur ajoutée déductible.

Le Premier ministre,
Sur le rapport du ministre de l'économie et des finances.
Vu l'article 7-1° et dernier alinéa de la loi de finances pour 1972 (n° 71-1061 du 29 décembre 1971);
Vu l'article 5 de la loi de finances rectificative pour 1971 (n° 71-1025 du 24 décembre 1971);
Vu l'article 1er 1° de la loi n° 66-455 du 2 juillet 1966, modifié par l'article 1er de l'ordonnance n° 67-837 du 28 septembre 1967;
Vu le code général des impôts, notamment les articles 271 à 273;
Le Conseil d'Etat (section des finances) entendu,

Décrète:

Art. 1er. – La taxe sur la valeur ajoutée déductible dont l'imputation n'a pu être opérée peut, sur demande des assujettis, faire l'objet de remboursements dans les conditions fixées ci-après.

Art. 2. – Le remboursement porte sur le crédit de taxe déductible constaté au terme de chaque année civile.

Art. 3 – Pour les assujettis dont les déclarations de chiffre d'affaires ont fait apparaître des crédits de taxe déductible en 1971, le remboursement prévu à l'article 2 est limité à la fraction du crédit excédant un crédit de référence. Ce crédit de référence est égal aux trois quarts du quotient obtenu en divisant la somme des crédits figurant sur les déclarations relatives aux affaires de 1971 par le nombre total de déclarations déposées au titre de la même année.

Art. 4 – Les demandes de remboursement doivent être déposées au cours du mois de janvier et porter sur un montant au moins égal à 1.000 F.
En outre, lorsque chacune des déclarations de chiffre d'affaires déposées au titre d'un trimestre civil fait apparaître un crédit de taxe déductible, une demande de remboursement peut être déposée au cours du mois suivant ce trimestre; elle doit porter sur un montant au moins égal à 5.000 F.

Art. 5. – Les assujettis qui détiennent un crédit de taxe déductible au 31 décembre 1971 peuvent obtenir un remboursement égal au quart du quotient défini à l'article 3. Ce remboursement ne peut excéder le crédit existant à la date de leur demande.
Les demandes de remboursement doivent être déposées avant le 1er juillet 1972 et porter sur un montant au moins égal à 500 F.

Art. 6 – 1. Pour les assujettis placés sous le régime simplifié d'imposition, le crédit de taxe déductible et le crédit de référence résultent des énonciations de leur déclaration annuelle. Les demandes de remboursement annuel doivent être déposées avec cette déclaration. Les remboursements trimestriels ont un caractère provisionnel et doivent être demandés au cours du mois suivant le tri-

* Journal officiel de la République Française du 6 février 1972.

mestre considéré; ils donnent lieu à régularisation annuelle.

2. Pour les assujettis placés sous le régime du forfait, le crédit de taxe déductible et le crédit de référence sont déterminés lors de la conclusion du forfait. La demande de remboursement est déposée au cours de l'année civile suivant celle au titre de laquelle le crédit de taxe déductible est déterminé. Il s'y ajoute, le cas échéant, le crédit résultant de la déduction complémentaire visée à l'article 204 de l'annexe II au code général des impôts.

3. Pour les assujettis placés sous le régime simplifié des exploitants agricoles, autres que ceux qui ont opté pour le régime des déclarations trimestrielles, le crédit de taxe déductible et le crédit de référence résultent des énonciations de leur déclaration annuelle. La demande de remboursement doit être déposée avec cette déclaration.

Art. 7. – Le crédit de taxe déductible dont le remboursement a été demandé ne peut donner lieu à imputation; il est annulé lors du remboursement.

Art. 8. – A titre transitoire, les assujettis pourront bénéficier, sur option expresse, de remboursements mensuels ou trimestriels de leur crédit de taxe déductible dans la limite de la taxe sur la valeur ajoutée calculée sur le montant des exportations et opérations assimilées réalisées au cours de la période correspondant à chaque déclaration de chiffre d'affaires. L'option pour ce régime est exclusive du bénéfice des dispositions des articles 2, 3, 4 et 6 du présent décret; elle est exercée avant le 1er mars pour chaque année civile.

Art. 9 – Lorsqu'un assujetti perd cette qualité ou cesse son activité, le crédit de taxe déductible dont il dispose peut faire l'objet d'un remboursement pour son montant total. Toutefois, pour les assujettis visés à l'article 3, ce remboursement ne peut porter que sur la fraction excédant le crédit de référence défini audit article.

Art. 10. – L'option pour l'assujettissement à la taxe sur la valeur ajoutée prévue à l'article 260-1 du code général des impôts est reconduite de plein droit pour la période suivant celle au cours de laquelle les assujettis ayant exercé cette option ont bénéficié d'un des remboursements visés aux articles 2 à 6.

Art. 11. – Les sociétés qui effectuent à titre habituel et principal les opérations visées à l'article 1er (1°) de la loi du 2 juillet 1966 susvisée bénéficient du remboursement de leur crédit de taxe déductible non imputable résultant de droits à déduction nés depuis le 1er janvier 1972. Une demande de restitution peut être déposée, au titre de chaque trimestre civil, dès lors qu'elle porte sur un montant minimum de 5.000 F.

Les crédits de taxe déductible au 31 décembre 1971 détenus par ces sociétés ne peuvent faire l'objet d'aucun remboursement.

Ces sociétés sont tenues de distinguer en comptabilité les recettes provenant de contrats conclus postérieurement au 1er janvier 1972 ainsi que les droits à déduction visés au premier alinéa du présent article.

Art. 12. – Toute personne qui demande le bénéfice des dispositions du présent décret peut, à la demande de l'administration, être tenue de présenter une caution solvable qui s'engage, solidairement avec elle, à reverser les sommes dont elle aurait obtenu indûment le remboursement.

Art. 13. – Ne peuvent prétendre au bénéfice des remboursements prévus aux articles 2 à 6:

Les assujettis qui peuvent se prévaloir de l'article 298-4 (4°) du code général des impôts;

Les personnes qui réalisent des opérations soumises à la taxe sur la valeur ajoutée à titre occasionnel.

Art. 14. – Un décret en Conseil d'Etat fixera, avant le 1er janvier 1973, les conditions dans lesquelles les établissements publics pourront bénéficier des remboursements prévus au présent décret.

Art. 15. – 1. Par application de l'article 7 de la loi de finances pour 1972 susvisée, sont abrogés:
L'article 1er de la loi n° 70-601 du 9 juillet 1970;
Les articles 271-2 *c* et 298-4 (2° (2e alinéa)) du code général des impôts, ainsi que l'article 271-3 du code susmentionné en ce qu'il a de contraire aux dispositions du présent décret.
2. Sont abrogés les articles 216 *ter* (3°), 216 *quinquies*, 221-2, 227, 228 et 228 *bis* de l'annexe II au même code.

Art. 16. – Le ministre de l'économie et des finances et le secrétaire d'Etat auprès du ministre de l'économie et des finances, chargé du budget, sont chargés de l'exécution du présent décret qui sera publié au *Journal officiel* de la République française.
Fait à Paris, le 4 février 1972.

JACQUES CHABAN-DELMAS

Par le Premier ministre:
Le ministre de l'économie et des finances,
VALÉRY GISCARD D'ESTAING

Le secrétaire d'Etat auprès du ministre de l'économie et des finances, chargé du budget,
JEAN TAITTINGER.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

E.E.C.

The Enlargement of the European Community*

I. THE HISTORY OF THE NEGOTIATION

i) *The applications*

May 10 1967 — British Application for Membership.

May 11 1967 — Danish Application for Membership.

May 11 1967 — Irish Application for Membership.

July 21 1967 — Norwegian Application for Membership.

September 29 1967 — Commission Opinion on Membership Applications.

October 1 1969 — Second Commission Opinion on Membership Applications.

January 20 1972 — Third Commission Opinion on Membership Applications.

ii) *Development of the Community's Negotiating position*

December 2 *1969* — Hague Summit meeting of the Heads of State and of Government of the Community.

February 5 *1970* — Council meeting for preparation of negotiations which debated period of transition, the Commonwealth, Institutional Questions, Procedure for Negotiations.

March 7 — The Council decided that the Community would negotiate as a unit and that role of Commission would be much more important than in 1961–63. Also agreed that the principle of Economic and Monetary Union must be accepted as integral to Treaty:

May 11/12 — Decision by the Council that Yaoundé Agreement should provide base for settlement of problems of Independent Commonwealth Countries. Decisions on approach to problems of New Zealand and Caribbean sugar; institutional problems and details of negotiation procedure.

June 8 — Council decided on dates of Opening Conferences and Ministerial Sessions with Applicant Countries. Agreed upon formula of beginning exploratory talks with EFTA non-applicants, leading towards Agreements to come into effect concurrently with Membership Treaties.

iii) *The negotiations*

June 30 *1970* — Opening Conference for the Negotiations in Luxemburg. Formal declarations of negotiating positions.

July 21 — Council decided that ECSC matters should be a primary question for discussion with the British, in addition to the Agriculture and Customs Union. Commission asked to prepare a study of the cost to Britain of the Common Agricultural policy and the question of finance.

July 22 — Ministerial Negotiation between UK and EEC.

October 27 — Ministerial Negotiation UK/EEC.

December 8 — Ministerial Negotiation UK/EEC. UK accepts five year transition towards free circulation of goods and agricultural rules, free movement of capital and fiscal harmonisation subject to larger transition needed for budgetary contribution and Commonwealth.

December 15 — Ministerial Negotia-

* Information Memo of the Spokesman's Group of the E.E.C. (P-8 dated January 1972).

tion with Ireland. Irish accepted five year transition period for agricultural and industrial trade.
Ministerial Meeting with Denmark. Danes outlined problems of Agricultural and Fiscal situation within Denmark.
Ministerial Meeting with Norway. Norwegians accepted five year transition for industrial trade; requested longer transition for budgetary contribution.

February 2 *1971* — Ministerial Negotiations with UK. Agreement on status of Asiatic Members of Commonwealth. Accepted system of budgetary financing from national resources.

March 1 — Council prepared position on Sugar; Community preference.

March 16 — Ministerial Meeting with UK.

March 30 — Ministerial Meeting with Norway. Norwegian declarations on transitional measures for Agriculture.

May 11-13 — Ministerial Meeting with UK.

May 13 — Final agreement on transitional measures for agriculture and Commonwealth sugar. Agreed on the possibility of post transitional budgetary correctives.

June 7 — Ministerial negotiation with Ireland. Agreed on Transitional period for agriculture and antidumping measures.
Ministerial negotiation with Denmark. Danes outlined problems concerning industry, agriculture, financing, fisheries and capital movement.
Ministerial Negotiation with UK. Agreed to gradual rundown of official sterling balances.

June 21-22 — Ministerial Negotiation with UK. Agreed on New Zealand Dairy Products, Budgetary contribution, Community recognises that special arrangements will be necessary for UK hill farming and methods of keeping candidate countries informed of decisions taken by Community Institutions during the interim period.

July 12 — Ministerial Negotiations with UK. Agreed on arrangements concerning capital movements.
Ministerial Negotiations with Ireland. Community agrees to concessions pertaining to motor car assembly industry and foresees a declaration of regional policy for Ireland.
Ministerial Meeting with Denmark. Agreed on transitional measures for agriculture, capital movements and financial contribution.

September 21 — Ministerial negotiation with the United Kingdom: initial examination of fishing dossier.

October 19 — Ministerial negotiation with Norway, and with Ireland: Community declaration of intention on Norwegian agriculture; agreement on protocol concerning Irish industrial and regional development.

November 9 — Ministerial meetings with all four candidates (UK-Denmark-Norway-Ireland).
Community proposals on fishing: communication of outline mandate for negotiation with EFTA countries not desiring membership: ministerial discussion on Norwegian agriculture.

November 29 — Ministerial meetings with all four candidates: discussion on fishing continues.

December 13 — Final ministerial meeting with Denmark (8th) and with the United Kingdom (13th) at which agreement on fisheries was reached. Ministerial meetings with Ireland, in which also agreement on fisheries was reached, and with Norway.

January 10 *1972* — Final ministerial negotiations with Ireland (10th) and with

Norway (10th). Agreement on issues outstanding from these meetings was concluded at deputy level with Ireland (sugar quotas) on January 13 and with Norway (fisheries) on January 15.

January 20 — Commission opinion to the Council recommending conclusion of the acts of membership.

January 22 — Signature of the acts of membership.

II. THE BASIS OF THE AGREEMENT

Two basic rules governed the approach to the negotiations: candidate countries were required to accept the Treaties and consequential legislation adopted under the treaties; necessary adaptations were to be undertaken in the course of a transitional period uniform in time, sector and new member country. These were the central principles of the Community's declaration delivered at the inaugural Ministerial Meeting with the negotiating partners in Luxembourg on June 30th 1970. Negotiation on the basis of these principles resulted in the establishment of a general five year transitional framework at the end of which period the bulk of adaptation would be complete, the enlarged Community running normally. Certain limited exceptions and amendments to these rules were ultimately negotiated.

One now sees that these basic principles were entirely respected with the exception of a few limited cases. The problems of adaptation were solved by laying down transitional arrangements and not by modifying the existing rules governing the life of the Communities. The essential context of these transitional arrangements is as follows:

1) *Industry:* A five year period for complete abolition of tariff and non-tariff barriers between old and new Member States and establishment of a common external tariff and commercial policy. Tariffs between Member States will be reduced in five equal steps of 20% the first to take effect on April 1st 1973 the last on July 1st 1977; the three intermediary cuts to be made on July 1st of each year 1974, 1975, 1976. Adoption of the Common external tariff by the new member will proceed in four stages:

40% on January 1st 1974
20% each on January 1st 1975
January 1st 1976
and finally July 1st 1977.

Tariff quotas will be introduced on thirteen products.*

2) *Agriculture:* At the very outset of the five year transitional period new members will adopt all the market organisation rules thus instituting Community preference at the outset. Where however specific concrete measures are required for trading reasons these will be adopted in the terms of Arts. 39 and 110 of the Treaty with due concern for the situation and in conformity with the principles and mechanisms of a common agricultural policy.

The following principles govern the transitional period in agriculture. For products subject to market organisation with intervention prices, levies and restitutions, price alignment will proceed in six steps subject to a flexibility clause up to 10% of the particular alignment to be made. The various pen-ultimate steps of alignment will take place for the various products at the beginning of the 1977 marketing year and the final alignment for all products will take place on the 31st of December 1977.

Intervention prices for each new member will be fixed as a function of member's

* The products are: tea, aluminium, silicon carbide, ferro-chrome, ferro-silicon, wood pulp, newsprint, lead, zinc, wattle extract, phospherous, ply-wood, and alumina.

price level differences at each stage of price alignment. Levies and restitutions towards third countries will equally be fixed as according to these price level differences.
For farm products not subject to intervention price levies and restitutions, customs duties between old and new members will be reduced by one-fifth at the beginning of each marketing year when according to the same schedule new Member States will align themselves, to the Common External tariff. A special time table was adopted for horticulture—five equal steps of 20% on the 31st December each year from 1973 to 1977. From December 31st 1974 a flexibility clause may be applied of up to 10% of the particular alignment to be made.

III. THE INSTITUTIONAL ARRANGEMENTS

The Institutions of the enlarged Community will be:
i) The *Council* of 10 members, one from each member state.
Voting rights per country will be: Germany 10, France 10, Italy 10, the UK 10, Belgium 5, The Netherlands 5, Denmark 3, Norway 3, Ireland 3 and Luxembourg 2.
A *qualified majority* applicable when a decision is taken on a Commission proposal will require a minimum of 43 votes. Where the Council decides without a Commission proposal, the 43 necessary votes must represent at least six countries.
A *simple majority* is obtained by 6 out of the 10 members states.
As for Council Voting Methods within the ECSC Treaty it is not necessary to modify the provisions concerning unanimity but the majority of 5/6 foreseen in Article 95 (concerning "la petite revision") will be increased to 9/10 of council members.
Where the ECSC Treaty requires a confirmative opinion from the Council the opinion is considered carried if the proposal of the High Authority gains the agreement of:
- the absolute majority of the member States including the votes of two of them representing each at least one eighth of the total value of Community coal and steel production
- or, if the voting is equally split and the High Authority maintains its proposal after a second deliberation, the vote of three member States representing each at least one eighth of the total value of Community coal and steel production.

Other Council decisions are taken by simple majority including two member States representing each at least one eighth of the total value of Community coal and steel production.
Rotation of the office of President of the Council will be in alphabetic order of member states as expressed in their respective languages (Belgique-België, Danmark, Deutschland, France, Ireland, Italia, Luxembourg, Nederland, Norge and United Kingdom). Their order of presidency will operate as from January 1, 1973 with Belgium in the Chair.

ii) The *Commission* will have 14 members, two each from Italy, France, Germany and the UK and one each from the remaining six countries. The Commission will have 5 Vice-Presidents. Commissioners will hold office for 5 years, the President and Vice-Presidents being appointed for 2 years.

iii) *The European Parliament* will have 208 members, the breakdown by nationality being Italy, France, Germany and the UK 36 members each, Belgium and the Netherlands 14 each, Denmark, Ireland and Norway 10 and Luxembourg 6.

iv) The *Economic and Social Committee* will have 155 members, 24 each from Germany, France, Italy and the UK, 12 each from

Belgium and the Netherlands, 9 from Ireland, Norway and Denmark and 6 from Luxembourg.

v) The *Court of Justice* will be composed of 11 judges and 3 advocates general. They are appointed for 6 years. Every three years there is a partial renewal affecting alternately 5 judges and 2 advocates general, and 6 judges and one advocate general. For the quorum the presence of 7 judges is required when the court is sitting in plenary session.

vi) The *European Investment Bank* will be composed of a *Council of Governors* to comprise 10 members, one from each member country. *Administrative Council* to comprise 19 administrators and 10 substitutes. National representation concerning candidate countries will be:

The UK – 3 administrators 2 substitutes
Ireland, Norway and Denmark – 1 administrator each.

Management Committee to comprise 5 members: 1 president and 4 vice-presidents. The number of vice-presidents may be subsequently increased following a unanimous decision of the Council of Governors.

vii) Among *other institutional arrangements* the number of members on the ECSC Consultative Committee will be increased to between 60 and 84. The number of members on the Euratom Scientific and Technical Committee will be increased to between 20 and 28, the U.K. being represented by five members and Denmark, Ireland and Norway by one member each.

viii) During *the intermediary period* between the close of negotiations and accession to the Rome treaty, the Community institutions will take into consideration the interest of Candidate countries in all proceedings and major policy decisions, owing to their position as future members of the Community. This procedure entered into force on November 10, 1971.

a) At Council level consultations will take place prior to the adoption of any decisions. This procedure will also apply to decisions taken by applicant countries which might effect their situation as future members of the Community. Such consultations will take place at meetings of an intermediary committee comprising representatives of both the Countries and Applicant Countries, Community representatives will be members of the Committee of Permanent Representatives or their assistants. The Commission will also be represented. Consultations will normally take place when preparatory work on any given Community project is sufficiently advanced for consultations to be of value. In the case of consultations meeting with serious difficulty the question may be discussed at Ministerial level at the request of a Candidate country.

b) *The Commission* will make known all its proposals and communications to the Candidate countries, after having transmitted them to the Council. In order to ensure that all Commission decisions have taken due consideration of the interests of Candidate countries, the Commission will consult these countries before taking any decision that is likely to effect them as future members.

IV. ECONOMIC AND MONETARY AFFAIRS

The United Kingdom declared during the course of the negotiations its readiness for an ordered and gradual reduction of sterling balances after membership. In addition the enlarged Community will discuss appropriate measures for bringing about a progressive alignment of sterling's external

characteristics and practices with those of other Community currencies in the framework of progress towards economic and monetary union. Meanwhile the United Kingdom will pursue a policy aimed at stabilising official sterling balances in a manner compatible with the longterm objectives of economic and monetary union.

In the field of *capital movements* consultations will be held between new members and the Commission on applying measures for liberalisation and easing of restrictions. During the firs two years of membership new members will remove a series of restrictions notably in the fields of direct investments and individual capital movements. For other capital movements the new members will have up to 5 years in which to effect liberalisation.

V. THE FINANCIAL ARRANGEMENTS

1) *The Community Budget*

From January 1, 1973, the new Member States will contribute to the Community budget to which they will pay their receipts from agricultural levies and customs duty as well as a proportion of VAT revenue. During the five-year transition period, however, total contributions from the new Member States will be subject to limitations expressed as percentages of the total Community budget which will be:

	1973	1974	1975	1976	1977
Denmark	1.099	1.382	1.698	2.040	2.408
Ireland	0.272	0.342	0.421	0.505	0.596
Norway	0.754	0.947	1.764	1.398	1.650
U.K.	8.64	10.85	13.34	16.02	18.92

From January 1, 1978, the new Member States will make full contributions, subject to the following conditions:

- in 1978 the increase in contributions from the new members may not total more than 2/5 of the difference between their respective contributions in 1977 and what would have been their full contributions for 1977 had they not benefited from reduced payments during the transitional period.
- in 1979, the increases in the contributions from Candidate Countries (expressed as a percentage of the Community Budget) may not exceed those of the previous year.

Up to January 1, 1978, that part of the new members' normal contributions to the Community budget which is not in fact paid by them because of the transitional period limitations will be divided between the six original Members of the Community. This also applies if and when the special conditions for 1978 and 1979 apply.

2) *European Investment Bank*

New member countries will contribute to the capital, statutory reserves and funds of the European Investment Bank according to the following percentage key: Denmark 4%, Ireland 1%, Norway 3%, United Kingdom 30%. In units of account their respective shares of the Bank's capital will amount to: Denmark 60 million, Ireland 15 million, Norway 45 million, United Kingdom 450 million. 20% of these sums will be paid in national currencies within two months of membership, the remainder to be covered by treasury bonds.

VI. E.C.S.C.

Accession to the European Coal and Steel Community takes place according to Article 98 of the ECSC Treaty. The Treaty of Accession contains specific provisions concerning only three points not already covered by the ECSC Treaty and ECSC secondary legislation.

The customs union for coal and steel, as for

other products, is to be established by phasing-out internal duties over a period of 4½ years; external duties are to be aligned at the same rate. Exports of scrap from the enlarged Community to third countries will be permitted only exceptionally and subject to quantitative restrictions. The new member countries' export controls vis-à-vis the present Community countries must be dismantled, a process for which Britain is to be allowed two years, Denmark and Norway three; and Ireland five.

Under the ECSC Treaty's competition rules, undertakings are required to observe with special care the prohibition on cartels (Article 65). All cartels will have to be notified to the Commission within three months; they may remain in being until the Commission issues a ruling.

Over the years the ECSC has accumulated substantial moneys of its own, which it devotes principally to research and social aid. The acceding countries will pay a fixed amount into this fund.

VII. EURATOM

On their accession to the European Atomic Energy Community, new members will adhere to the Euratom Treaty and the regulations and directives adopted under the Treaty. This implies notably:

1) Common Research Programmes and complementary schemes, as specified by Article 7 of the Euratom Treaty.

2) A System of safeguard and verification in accordance with both the Euratom Treaty and the agreement to negotiate between Euratom and the International Atomic Energy Agency.

The abolition of customs duties within the enlarged Community, and the tariff alignment measures for products in lists A1 and A2, will take place at the end of 1973. For products on list B, tariff removal and alignment will be conducted according to the general timetable for industrial goods.

Any propositions for amendment of Chapter 4 of the Euratom Treaty will be communicated to candidate countries before they are adopted.

Following exploratory conversations, agreement was reached concerning details of information to be exchanged between new and old member countries upon adhesion to the Euratom Treaty.

VIII. ARRANGEMENTS CONCERNING THE COMMONWEALTH AND DEPENDENT TERRITORIES

The status quo will be maintained in Britain's trade relations with developing countries of the Commonwealth until December 31, 1975. Meanwhile there will be opportunity to explore and implement new relations between these countries and the enlarged Community according to the following options:

Independent Developing countries of the Commonwealth in Africa[1], the Indian Ocean[2], the Pacific Ocean[3] and the Caribbean[4], will be given the opportunity to decide on the specific type of agreement they make with the Community, within the following frameworks:

1) Participation in the same Association Agreement as the Community's present Association of African States and Madagascar.

2) Agreement or Individual Agreements

1. Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Tanzania, Uganda and Zambia.
2. Mauritius.
3. Fiji, Tonga and West Samoa.
4. Barbados, Guyana, Jamaica, Trinidad and Tobago.

with particular emphasis on reciprocal rights and obligations, notably in the trade field.

3) Commercial Agreements with a view to promoting and developing trade between the Communities and the countries concerned.

For Independent Developing Commonwealth Countries in Asia (India, Ceylon, Pakistan, Singapore and Malaysia) the enlarged Community will be ready to examine any problems within the commercial field that may arise in these countries, and in any others within the same region, with a view to finding appropriate solutions. Consideration will be taken of the extent of the Generalised Preferences System.

Dependent Territories[5] of Britain and Norway will be associated with the Communities in accordance with the Part IV of the EEC Treaty. However the status of the one European Dependent Territory—Gibraltar—will be governed by Article 237 § 4 of the EEC Treaty, thereby excluding it from any customs arrangements. Thus the Community customs regulations will not apply to Gibraltar and all imports from Gibraltar to the EEC will be subjected to the common tariff.

The Rome and Paris Treaties will not be applicable to Hong Kong which will come under the system of generalised preferences.

IX. OTHER ARRANGEMENTS

In the course of the negotiation it was agreed that in certain fields or for particular items of the new member states' legislation or practice special transitional arrangements would be required. The principal matters concerned are set out here below:

1) *Sugar*

Within the framework of the Commonwealth Sugar Agreement the United Kingdom may continue to: import until December 31, 1974 the quantities of sugar at prices previously negotiated in the Agreement.

After this date, the Communities will have as their firm purpose to safeguard the interests of these countries whose economy is largely dependent on the export of basic commodities and notably Sugar. Countries coming into this category are the Independent Developing States of the Commonwealth in the Indian and Pacific Oceans, the Caribbean and the AASM. Specific arrangements will be within the scope of the respective Arrangements with these countries. The question of Indian sugar exports will be settled in the light of the Communities' Declaration of Intent concerning Independent Members of the Commonwealth in Asia.

2) *New Zealand Butter and Cheese*

Derogatory quantitive measures in favour of New Zealand dairy products are foreseen in the framework of British adoption of Common Market organisation. The timetable for reducing the quantitive guarantees applicable only to the U.K. market is fixed for the first five years. Thus in 1977, the quantitive guarantee for butter will be at 80% of its original level, and 20% for cheese, after which time no further guarantee is anticipated for cheese.

During the course of 1975, the institutions of the enlarged Community will re-examine the question of butter in the light of supply and demand in the principal world producers

5. The Bahamas, Bermuda, British Honduras, The British Indian Ocean Territory, the Solomon Isles Protectorate, The British Virgin Isles, Brunei, the Cayman Islands, the Falkland Islands and Dependencies, the Seychelles, the Turk and Caquos Islands, Antigua, Dominica, Grenada, St. Lucia, St. Vincent, St. Kitts, Nevis and Anguilla, Norwegian concession territories in the Antarctic.

and consumers, especially in New Zealand and the Community. In the light of this examination, the Council, upon Commission proposal, will rule on appropriate measures for maintaining a derogatory status for New Zealand beyond 31 December 1977.

Finally enlarged Community will do its utmost to promote and encourage an International Agreement on Milk Production, in order to improve as soon as possible the world market conditions.

3) *Fisheries*

By derogation from the Community regulation governing access to fishing waters, member States of the enlarged Community may limit fishing in their national waters until December 31, 1982 within a six mile zone to vessels traditionally fishing in these waters from local ports. Special fishing rights enjoyed by member States in each other's waters, as established from January 31, 1971, are not affected. For specified zones[6] fishing limits are extended to 12 miles.

At the latest 6 years from entry into force of the enlargement treaty the Council, on proposal from the Commission, will pronounce on fishing conditions with a view to protecting the sea bed and conserving resources. By December 31, 1982 the Commission will report to the Council on the economic and social development of the coastal regions and the state of marine stocks. On the basis of this report and of the objectives of the Common Fisheries Policy, the Council, on Commission proposals, will examine the arrangements which could follow the derogations in force until December 31, 1982.

In the case of Norway a protocol was adopted recommending the enlarged Community's institutions to take particular account, during the examination of the Commission's report to the Council, of Norway's fishing problems both from the point of view of Norway's economy in general and the special demographic and social structure of the country, so that any subsequent dispositions are undertaken accordingly. Among other measures these dispositions may include prolongation of the system of derogations beyond December 31, 1982 to the degree necessary and according to rules to be laid down.

4) *Norwegian Agriculture*

A protocol has been adopted recognising that the transitory period might prove inadequate to the solution of those particular problems which the Norwegian farmer would come up against because of his country's membership of the Community. It has therefore been necessary to foresee specific arrangements which cannot be considered as precedents and which aim at upholding the standards of living of the Norwegian farmers whilst respecting the rules of the Common Agricultural Policy.

Miscellaneous

Among other particular arrangements drawn up during the negotiations we may note briefly the following. Progress of the *Anglo-*

6. Areas subject to the 12-mile rule are: *Denmark* – the Faroes, Groenland, and the west coasts of Denmark from Tybörön to Blåvandshut. *France* – the departments of Manche, Ile et Vilaine, Côtes du Nord, Finistère and Morbihan. *Ireland* – north and east coasts from Lough Foyle to Cork in the south west. The east coast from Carlingford Lough to Carnsore Point for shellfish. *Norway* – the west coast from the frontier with the USSR to Egersund. *United Kingdom* – Orkney and Shetland, north and east Scotland from Cape Wrath to Berwick, north-east England from the river Coquet to Flamborough Head, south-west England from Lyme Regis to Hartland Point (including Lundy island), and County Down.

Irish trade Agreement was deemed compatible with general transitional arrangements on condition that quota arrangements do not disfavour other Community members. On *Ireland's economic and regional development* specific mention will be made in the enlargement treaty of the Community's intention to act positively to promote expansion of the economy and of living standards. Special measures were also adopted for the *Irish automobile assembly industry* the special production and trading circumstances of which may continue with adjustments until January 1, 1985. *Norway's special pharmaceutical products* arrangements and *trade in alcoholic drinks* were also subject to special dispensations during the transitional period. Special attention was also paid to problems of *veterinary legislation* and satisfactory solutions were found.

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ARTICLES

MITCHELL B. CARROLL*:

UN, OECD, IMF, U.S. TREASURY AND IFA INTERNATIONAL TAX PROJECTS

Relief by treaties from conflicting claims of national tax jurisdictions to income from international business and investments is a goal of the United Nations (UN), the organization for Economic Cooperation and Development (OECD) and The International Monetary Fund (IMF), as well as of the U.S. Treasury. Their respective activities in promoting international tax law are followed assiduously by the International Fiscal Association (IFA) which has its seat in The Netherlands School of Economics in Rotterdam. It includes some 4,000 members in over 70 countries. The ramifications of the activities of these groups are so extensive it is opportune to take a brief look at them.

Through its consultative status, IFA is participating in the meeting at Geneva, which began on October 25, 1971 of the Ad Hoc group of Experts on Tax Treaties between developed and developing countries. Its purpose is to formulate a new model which balances the respective interests of the two categories of countries. Hitherto, about 600 general tax treaties have been listed in the UN collection, and they have been for the most part between developed countries. An increasing number of treaties have been concluded by such countries as Germany, Japan and Sweden with less industrialized nations that are striving to progress economically. However, the UN hopes to augment the number by having officials of governments in the two categories meet to learn how to reconcile their conflicting interests through jointly framing a new model convention.

Concurrently, the OECD which brought forth its "Paris model" in 1963 is revising it in the light of improvements in recent bilateral treaties. The new model is expected in 1973.

The present OECD text resulted from bringing up-to-date the League of Nations Fiscal Committee's London model of 1946 which was intended to be conducive to encouraging developed countries to supply capital to less developed countries. This text emerged from the same Committee's Mexico model of 1943, and the prior Geneva model of 1935 for the allocation of taxable income, as well as the earlier Geneva models of the Meeting of Governmental Experts in 1928.[1]

Members of IFA are watching with keen interest the race between the tax groups respectively of the UN and the OECD, which are supposed to reach their goals in 1973.

At the same time, the U.S. Treasury, which is administering general tax conventions between the U.S. and 22 countries and estate tax conventions with a dozen countries, is participating in these international groups through Nathan N. Gordon, director of International Tax Affairs. He is a member of the UN group and is Chairman of the OECD Committee on Fiscal Affairs.

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* Honorary President, International Fiscal Association Rotterdam.

1. The story of the development of these models and the author's part in shaping them is published by The American Bar Association, The International Lawyer, July 1968, Vol. 2 No. 4, Carroll, International Tax Law, pp. 692-728.

Purpose of Committee on Fiscal Affairs

The OECD Committee's scope was recently enlarged to cover a reappraisal and diversification of its work. The Committee recognized that taxation is now one of the principal means governments can use to influence overall demand, the long-term direction of resources, and the distribution of national income.

Cognizance is taken of the international repercussions of taxation on international flows of capital in the form of purchases of securities, or investments made by large international corporations. This may result from government policy or the interaction of different national tax systems.

Until the present, the OECD has worked, not only on the avoidance of double taxation, but also on other subjects including adjustments of border taxes, and the tax on valued-added (TVA).

Subjects Selected for Study

To bring its activities up-to-date, a group of tax experts selected subjects relevant to current policy and appropriate for the combined attention of fiscal experts and economists generally occupied with fiscal policy. The new Committee on Fiscal Affairs, would, in addition to continuing work on avoidance of double taxation and related questions, give attention primarily to: (i) taxation affecting international flows of financial capital; (ii) the international impact of company taxation; and (iii) standard classification of tax tevenues.

Flows of Financial Capital

Decisions of lenders and borrowers, investors and companies are affected by tax considerations which, in turn, influence the direction of international flows of financial capital. The Committee will seek to identify areas where decisions are likely to be taken exclusively or primarily as the result of tax factors.

Governments may deliberately use taxation to shape decisions in order to achieve objectives of domestic policy, such as growth stabilization and income distribution.

In the second place, a government may regard taxation in certain cases as an alternative or supplement to exchange controls, multiple exchange rates, administrative controls over international flows of capital, or other techniques.

The Committee on Fiscal Affairs has taken note of the fact that it is possible in some cases to receive interest on Euro-issues without deduction of a withholding tax in the country of the borrower which fact stimulates international mobility of capital. It also influences the decisions of lenders, who might prefer Euro-issues to domestic or customary foreign bonds, and of borrowers who may place their issues in countries which do not withhold a tax on interest.

Lenders may, of course, prefer to avoid a tax on interest through receiving it abroad where no tax is due, rather than bear tax at home on interest paid on domestic bonds.

The Committee has appointed a Working Party to look into the advantages and disadvantages for financial flows resulting from the difference in the fiscal treatment of interest on international issues.

Investment Companies, Funds and the Like

Investment companies, mutual funds, and pension funds affecting international transactions have tax problems which are not resolved by existing double taxation conventions. This occurs particularly when the shareholder resides in one country, the investing company is in a second country, and the investment is made in a company in a third country. The Committee is seeking an international solution.

Taxes on the Issue and Negotiation of Securities
Taxes on the issuing and negotiating of securities do not produce much revenue but are considered to be obstacles to the international flow of capital. They augment the cost of borrowing. Hence, the Committee will consider whether it is possible to reach an agreement on the reduction or even elimination of such a tax, or on reducing differences in their rates as between member countries.

International Effect of Company Taxes
In view of the increase in the international operations of domestic corporations, or so-called multi-national corporations, corporate taxation becomes increasingly important. A government may seek to insulate the domestic situation from foreign influences, and choices of investments may be affected by sharp differences in levels of company taxation.
Where the investment choice relates to facilities for production, it has implications for employment and growth. The investment has implications for the balance of payments and the policy of exchange control.
The relative levels of taxes on companies may be difficult to compute, because of the differences between taxes on profits and other levies, allowances for depreciation, and losses, tax-free holidays, and efficiency in tax collections.
Because of the importance of allowances for depreciation, the Committee is making a special study of them.

Dividend Taxation
In general, dividends are subject first to the company tax on profits and, secondly, to a withholding tax. Interest income of the shareholder is usually taxed by withholding at source, and cumulative taxation is frequently not alleviated. In some cases, it is mitigated by a reduced rate of company tax on distributed income. In still other cases, the company tax pertaining to the dividend is credited against the tax borne by the shareholder on his entire net income inclusive of dividends.
The coexistence of these different systems naturally affects the choice of the country in which to invest. A number of governments are presently studying which system to adopt. Hence the Committee has appointed a Working Party to examine the advantages, disadvantages of the different forms of taxing company dividends from national and international, economic and technical points of view—especially in the light of the experience of recent changes in some countries.

Tax on Trans-Border Mergers
In view of the policy of encouraging integration in the EEC and other areas, the ascertainment of tax discrimination against mergers across frontiers, which does not apply in the case of domestic mergers, has been assigned to another group. The study will also include the remedies, such as tax treaties, which could remove such discrimination.

Standards for Classifying Tax Revenues
In view of the circumstances in comparing tax burdens, a Working Party is to prepare a list of taxes drawn up in accordance with standard definitions of various types of levies. There will follow global comparisons of tax receipts between member countries, and taxes on particular classes of enterprises or goods, or on individuals or income groups.

Double Taxation and Related Questions
In furthering the work on prevention of double taxation initiated by League of Nations' committees in the 1920's which evolved into the OECD Draft Convention

on Income and Capital published in 1963, that draft is being revised in the light of bilateral conventions since concluded.
During the next two years, the Working Party is to report on methods of protecting taxpayers and combatting abuse of tax conventions. Another aim is to formulate a draft Convention on Mutual Assistance for the Assessment and Collection of Taxes, which recalls the text of the meeting of government experts at Geneva in 1928. Clauses on this subject are found in most bilateral general tax treaties.

Insurance Against Nuclear Risks
So great is the concern in European countries about the risk of damage from the use of nuclear weapons, that consideration is being given by a Working Party to special treatment for the reserves of companies insuring against nuclear damage in view of the possibly heavy payments that such companies might have to face.

Tax Incentives and Environment Problems
Empirical research into the effect of taxation on the work supply (overtime, retiring age, number of married women seeking work, risk taking, migration of executives, etc.) are to be looked into, as well as methods to stimulate savings.
Another research subject is how taxation might be and has been used to influence urban and regional development, and to finance antipollution measures, and to combat traffic congestion.

IMF Aid to Developing Nations
The principal work of the large IMF staff (of around 40 experts) is to help less advanced members of the Fund improve their methods of budgeting and administrating their tax laws.

Proposal of Secretary of the Treasury
In his inaugural address at the Congress of the International Fiscal Association in Washington, October 4-8, 1971, the Secretary of the Treasury, John B. Connally, outlined work to be done in the international fiscal field which reflects the foregoing program of the OECD. This coincidence may be due to the fact that the President of the OECD Committee on Fiscal Affairs is Mr. Nathan N. Gordon, Director of International Tax Affairs, the U.S. Treasury.
Mr. Connally mentions the work of the OECD Fiscal Committee on developing standards for classifying taxes and measuring burdens. He contemplates agreement on border-tax adjustments and distinctions between "direct" and "indirect" taxes. A third subject is the scope of tax holidays, and tax incentives for plant investment designed primarily to produce goods for export. A fourth is principles of non-discrimination against foreign direct investment and foreign nationals.
A fifth and important point is the effect of various structures of taxation of corporate income upon the international business community.
A sixth point, reminiscent of subpart F of the U.S. Internal Revenue Code enacted in 1962, is the impact of the conduct of trade through foreign base companies and other affiliates that enable exporters of some countries to enjoy advantages over others.
Another Treasury proposal is to examine the effect of withholding taxes and exemptions for interest payments upon international capital markets and the flow of funds.
An eighth subject is expediting mutual administrative assistance to dispose of cases that might produce double taxation, or permit escape from taxation in any country. Mr. Connally says that the Treasury has taken steps to improve its competent-

authority procedures and to encourage U.S. citizens and corporations to make use of them. He adds that the Treasury has actively pursued understandings with other nations regarding exchange of fiscal information to combat tax evasion.

Mr. Connally suggested internationl codes of conduct should be developed and enforced with respect to international fiscal matters. If agreement can be reached on acceptable fiscal norms that affect trade and capital flows, "we shall have taken giant steps across mountains of misunderstanding and across crevices of tax avoidance."

To accomplish these objectives, Mr. Connally suggested exploring the feasibility of creating a continuing secretariat with a staff of experienced fiscal experts, and more frequent discussions among representatives of participating nations. This might be accomplished, he says, under the aegis of an existing international organization or through the creation of a new organization, perhaps affiliated with an existing body.

Mr. Connally expressed belief in the need of "a more active forum for multilateral study, debates and agreement on international fiscal affairs to match those that exist with respect to monetary and trade matters. He declared that the "United States stands ready in the future, as it has in the past, to participate in this essential work." He hopes "that the organizational structure can be created or extended to facilitate and expand these efforts."

Implementation of Secretary Connally's Proposal

Mr. Connally's challenging design for further development of international tax law has provoked keen expectations in all interested groups. The IMF has funds to spend on rendering technical assistance, especially in the fields of budgeting and tax administration in the less developed countries. Possibly they might be made available for projects envisaged by Secretary Connally that fit as well in the scope of the IMF.

The OECD's Committee on Fiscal Affairs, being composed mainly of European nations which benefited from the Marshall Plan, plus Canada, Japan and the United States (21 in all), has carried on the work on avoiding double taxation. It still endeavors to attain the goals of The Fiscal Committee of The League of Nations and that of the UN which after several meetings adjourned *sine die*.

Now the U.N. is active again with its Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries which took the 1963 draft of the OECD as its starting point. The OECD Committee on Fiscal Affairs is reviewing the latest of the general tax conventions registered with the U.N. in order to bring its model convention up-to-date as of 1973. By that time the U.N. Ad Hoc Group hopes to have a model for negotiations between the capital-exporting and capital-wanting countries. Because of its consultative status vis-a-vis the U.N. ECOSOC, members of the International Fiscal Association are contributing studies to the UN Group; and are following the activities of all these organizations.

Hence, it is gratifying that Secretary Connally chose the inaugural session of IFA's 25th Congress in Washington as the occasion to make his pronouncement that should give a real impetus to the further development of international tax law by treaties or otherwise. Responses have been favorable to the suggestion that the interested organizations follow the example of European companies in the EEC and enter into a cooperation agreement to cross the frontiers of their respective jurisdictions and accomplish their common objective.

PATRICK DURAND:*

A STORM IN A TEA CUP
THE FRENCH "AVOIR FISCAL"

During the past weeks, a political storm has been raised in France about the so-called tax fraud of important political French citizens who were accused of escaping taxation thanks to the "avoir fiscal" which is attached to any dividend declared by a French Corporation and paid to a French Taxpayer. It is not the purpose of this technical paper to enter into any part of the political aspect of the question, but we will try to answer one single clear question!

IS THE FRENCH "AVOIR FISCAL" ON DIVIDENDS A METHOD OF ESCAPING TAXATION?

Let us first assume that a German Corporation distributing a dividend is allowed a reduction of corporate tax on the amount of dividends actually paid. This is therefore an incentive to pay high dividends thus increasing the profitability of investment in shares and creating a financial instrument of economic development of the country.

How does the "Avoir Fiscal" work in practice?

If a French Corporation	
makes a profit of	FF 200
The Corporation Tax (50%) is ...	FF 100
Leaving a net profit of	FF 100
Assuming that such profit is	
fully paid as a dividend of	FF 100
The shareholder will receive an	
"Avoir Fiscal" of 50 % of the	
dividend.....	FF 50
and his taxable income will amount	
to the total of Dividend + Avoir	
Fiscal	FF 150

The Taxpaper will incorporate such amount of FF 150 in his tax return and will pay the normal income tax at the normal rates on such FF 150.
However he will be able to credit against his total tax liability the amount of "avoir fiscal" and we will show hereinafter how this works in practice.

Let us assume now that, for the purpose of this example, the rate of Corporate tax in Germany is 50%, reduced to 25% in case of payment of dividends.
In such case, if a German
Corporation makes a profit of ... DM 200
and distributes all such profit as a
dividend, the rate of corporate tax
(reduced) is 25%..... DM 50
Thus the shareholder of the German
Corporation will receive ..... DM 150

It is undoubtedly clear and undisputable that in the case of identical rates of corporate tax, as we have assumed for the purpose of this example, the taxable income of the French taxpayer and of his German counterpart will represent the same percentage of gross profit before tax of the distributing Corporation, i.e 75 %.
However it must also be admitted that the German method of reduction of Corporate tax on distributed dividends is far more easier to understand and to practice than the French system; in other words, the Germans say 100—25 = 75. The method is different but the result is the same.

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* Docteur en Droit; International Tax Consultant in Paris.

Let us insist here once more on the actual fact that the "French avoir fiscal" is incorporated and added to the taxable income of the shareholder and can be used as a credit for payment of his overall tax liability.
Of course, since the "avoir fiscal" represents one third of the total taxable dividend income, if a given shareholder has a level of income which makes him liable to income taxation at an overall rate lower than 33⅓%, the "avoir fiscal" will represent more than his tax liability and he will be refunded the difference.

We will now come to a practical example: But beforehand, on the grounds of equal taxation of income, one should consider that a salary paid by a corporation to an employee is a deductible expense and therefore not subject to corporate tax.
On the other hand, the shareholder receives a dividend which is only one half of the profit before tax, the rate of corporate tax being 50%.
This is why we have found advisable to compare the taxation of a salary with the taxation of the profit before tax made by the corporation and attributed to the shareholder in proportion to the number of shares he owns.
The two examples which are submitted below are based on a single taxpayer, not married and having no children.

A) *Salary of FF 30,000*

Gross salary	FF 30,000
First deduction 10%	FF 3,000
	FF 27,000
Second deduction 20%	FF 5,400
Net income	FF 21,600
Income tax	FF 4,831
First tax credit	
(3% of net income)	FF 900
	FF 3,931
(carry over)	FF 3,931
Second tax credit	
(2% of FF 3,931)	FF 79
TOTAL TAX LIABILITY....	FF 3,852

B) *Corporate Profit of FF 30,000*

Gross profit attributable	
to a shareholder	FF 30,000
Less Corporate Tax (50%)	FF 15,000
Net corporate profit	FF 15,000
Dividend (assumed as 100% of	
net corporate profit)	FF 15,000
"Avoir Fiscal"	
(50% of FF 15,000)	FF 7,500
Total taxable income	FF 22,500
Income Tax.....	FF 5,390
"Avoir Fiscal"	FF 7,500
Refund to shareholder	FF 2,110
TOTAL TAX LIABILITY	
Corporate tax (15,000) less	
refund (2,110)	FF 12,890

The comparison of the total tax charges as percentage of gross income (or gross corporate profit) is as follows:

$$\textit{Salary} : \frac{3{,}852}{30{,}000} = 12.8\%$$

$$\textit{Profit} : \frac{12{,}890}{20{,}000} = 42.9\%$$

Of course, numerous other examples could show some variations in the above-defined percentages.
It must be understood, however, that the actual mechanism of the French "avoir fiscal" can be compared, in the case of distributed profits, to a reduced rate of corporate tax (25%) to which is added a withholding tax (25%) which is refunded to the shareholder by offsetting such withholding tax against the global tax liability of the shareholder.
As one may understand easily, it was not

possible to qualify the system as a withholding tax since it would have caused great international problems with the various tax treaties concluded by France.

If one remembers that, when a French Corporation pays a dividend of FF 100 the total income disclosed to the Tax Authorities includes the "avoir fiscal" and therefore amounts to FF 150, thus avoiding any possibility for the French taxpayer to escape normal taxation on this total amount of FF 150, the answer to our question is absolutely and definitely, NO.

One significant fact is that the benefit of the "avoir fiscal", initially granted only to French Taxpayers, has recently been extended, under certain conditions, to dividends of French Corporations received by British, Swiss, German and U.S. Taxpayers.

It is also relevant that the tax authorities of these foreign countries, when negotiating and obtaining such advantage, would certainly not have requested it if it was a tool for tax evasion.

Of course, a very simple solution of such problem would be to live in a country with no private corporations, and therefore no dividends, which would imply that the only employer would be the State, all citizens being civil servants.

Is it the type of world in which you would like to live? As Hamlet, I would say . . . that is the question.

H.W.T. PEPPER:

TOURISM IN DEVELOPING COUNTRIES; SOME ECONOMIC AND FISCAL CONSIDERATIONS

CONTENTS

1. *Economic Importance*

The economic importance of tourism for developing countries is that the industry provides invisible "exports" whereby the country is enabled to sell its services, the warmth of its sunshine, the sparkle of its blue waters, or the grandeur of its mountains, for much-needed foreign exchange.

2. Tourism is an ideal export industry in that services are sold to foreigners who come to the tourist country to "purchase" the services rendered. There is no question of freighting goods overseas and trying to market them in various countries, although there has to be advertising in countries whence tourists may come in order to acquaint the public with the attractions of the tourist country. Once the tourist, as consumer, is present in the tourist country there are opportunities not only to render such services as the provision of board and accommodation at various levels from the 5-star hotel downwards, facilities for sport and leisure activities, including internal travel to beauty spots and antiquities, but also to sell locally produced artefacts and souvenirs. A proportion of tourists may decide to settle in the country, in which case it will be possible to sell (for foreign exchange) the services of local lawyers, surveyors and architects as well as of builders if the new settler has a villa or apartment built for his personal occupation.

Cost Effectiveness of Government Expenditure:

3. *Infrastructure*

As every country tries to corner a share of the tourist market, competition grows. On the one side incentives are offered for the building of hotels and other tourist facilities, and infrastructural features, such as roads, airports and deepwater berths, plus basic public utilities, are provided. On the other side package-tour operators scour the world for the cheapest sea and air fares and the minimum on/or off-season group rates at hotels; international hotel chains try to locate strategic sites for new links in their geographical coverage and property developers seek plots for building hotels, and other touristic or residential facilities.

4. An immediate problem for the developing country is to relate the expenditure it must incur to the likely return upon its investment. It will be purposeless to provide extensive facilities if the tourist trade developed will be insufficient to service the cost of the facilities provided. The subject is further discussed below under "Functions of Public and Private Sectors".

5. *Advertising*

Although advertising is essential it is also important to ensure that the ratio of advertising cost to gross expenditure in the country by tourists is reasonable. It is often possible to arrange for some advertising costs to be borne by the private sector and some of the expenditure by government may be met out of taxation on the tourists themselves.

6. Where there is a number of tourist hotels in a country the proprietors may be encouraged to come together for the purpose of financing joint advertising of their own facilities. Such concerted efforts are often more effective per unit of cost than separate efforts by individual hoteliers. A certain amount of "free" advertising will, of course, derive where hotels are part of an international chain where each hotel in the chain is likely to give information regarding all the other hotels in the same chain. Similarly, where the country is included among the list of resorts to which a tour operator extends his services the country will be advertised as a consequence of the promotion of the air or sea voyages which are being promoted by the operator.

7. It is common knowledge that newspapers and journals at particular periods of the year devote a considerable amount of space to informing their readers of what possibilities are open to them in the world of tourism and a government which takes pains to provide ample material to the editors or columnists who write these features may expect to receive more free space than other countries which do not take this trouble. It is, of course, known that where such articles are being written the newspaper or journal concerned likes to include a certain proportion of paid advertising, whether this is provided by the government or the private sector.

8. In the case of a private sector initiative, an association of hotels may decide to make levies upon their members to finance advertising and sometimes a government will impose a cess or levy upon hotels which is earmarked to be spent specifically on advertising. The subject of the taxation of tourists in general is referred to in a later paragraph.

9. *Import Policy*

It is usual for countries wishing to set up a tourist industry to allow duty-free import of building materials, fixtures, etc., needed for the building of hotels and other tourist facilities. This is, of course, preferably done by issuing exemption certificates to the entrepreneurs for specific imports rather than

exempting whole classes of goods in the customs tariff.

10. The other aspect of fiscal policy on imports concerns food and other supplies which the hoteliers may wish to import to suit the tastes and the needs of tourists from foreign countries. In general, it appears to be sound policy to have a liberal import policy giving the industry freedom as to what to import. On the other hand, there is no special reason why duties should not be levied on such imports if it has been the practice of the country to tax such items as luxury foodstuffs in the ordinary way.

11. Many would-be tourist countries have balance of payments problems and therefore take steps to restrict imports in order to improve their balance. In general it is undesirable and often unsound to pursue this policy with regard to tourism. Although there is certainly a cost in foreign exchange involved in importing different or more exotic kinds of food than are available locally, there is a considerable gain because of the substantial added value which the industry contributes through the use of local labour and where imported foods are served in meals to foreign tourists the yield in foreign exchange will be several times greater than the initial cost of the imports.

12. *Local Foodstuffs*

Although governments naturally try to promote the use of local foodstuffs by hoteliers and others catering to tourists, it is not usually a good policy to go as far as insisting that a certain proportion of local foodstuffs be used. Tourism is essentially an industry where "the customer is always right" and while there is often a readiness, even eagerness, by tourists to sample local dishes and beverages it is vital that the tourist should be able to have the sort of food that he would choose, rather than have a particular type of diet forced upon him. There are many countries competing for tourists and the fewer restrictions placed upon those who cater to them the healthier the industry is likely to be.

13. *"Souvenir" Industries*

An apparently minor but, in fact, quite important facet of tourism is that tourists like to acquire local artefacts and curios which, on their return home, will provide talking points likely to stimulate interest in the country they have visited. It is therefore well worthwhile for a government to stimulate existing handcraft industries and even encourage the establishment of new ones so as to provide reasonable stocks of articles likely to appeal to tourists. This industry also has the additional advantage of using local materials and local labour. It may, of course, be necessary to place some restrictions on what may be sold, e.g., the shells of the rarer marine life and the skins of rare animals. They have to be carefully controlled so as to avoid the extinction of species. In general, it is often necessary to direct the energies of curio makers and dealers into trade in easily replaceable articles and this is best done at the outset so as to put the industry on the right track for the future.

14. In countries where there is a local jewellery "industry", where articles of gold or silver are made, usually by handicraft workers, it is worth noting that a double benefit may be obtained by arranging to establish an assay office and instal a system of "hall-marking" of the products on a basis acceptable in more developed countries (e.g., the U.K. where hall-marking is highly developed). This procedure not only facilitates government control of standards of local production but assures the quality and authenticity of the products for the tourist and enables him to re-sell the articles at the

full value of the metal should he ever need or wish to do so.

15. *Preservation of Natural Beauty, Flora and Fauna.*

One of the basic conflicts in the development of tourism is that a particular tourist country may be attractive in having unspoiled physical attractions, rare species of flora and fauna, beaches and hilltops where the isolated tourist can enjoy solitude and privacy, but the development of tourism so that others may share these attractions may result in their destruction. Conservation of wild life has, however, now become part of the ecological scene in a great many countries so that tourists nowadays are more ready to replace the gun by the camera and co-operate in conservation.

16. The problems have been brought home in the case of various beautiful islets in the Indian and Pacific oceans. In one case an island contained unique species of birds, but tourists could only land from boats negotiating the surf through a break in the coral reef. Obviously access would have been improved by the building of a jetty but this was negatived by the conservationists on the grounds that once vessels could be moored to the jetty it was likely that rats would be able to invade the island and speedily wipe out the rare bird species found there. In another case an island was "developed" to the extent that it was made suitable for roosting by large colonies of rare sea birds which of themselves became a tourist attraction. Tourist access to the island by sea, however, was somewhat restricted by the difficulties of landing during rough weather and although it appeared that the physical features of the island would make it a fairly simple matter to make an air strip there was some doubt as to whether the coming of aeroplanes to the island would cause an exodus of the bird population. In another case the small island to which President Kennedy swam during his World War II encounter with the Japanese in the Solomon Islands was obviously a place to which tourists would have been attracted, but here again the island was a bird sanctuary and of rather small size and the ingress of tourists has had to be limited so that only a few at a time can land from small boats.

17. In general, however, it is possible to conserve a good deal of such special features in various parts of the country while making provision for larger numbers of tourists in other parts. The existence of rare botanical or ornithological features is nowadays increasingly attractive to a growing body of affluent tourists who have some scientific interest and sufficient means and leisure to study them. With current tendencies to a proper planning of development, it is often possible to establish hotels and residences with due regard to the physical features of a country so that the new structures harmonise with the surroundings.

Public and Private Sectors:

18. *Infrastructure & Entrepreneurs*

It is a matter for consideration when a country wishes to encourage tourism as to what facilities should be provided by the government and what by the private sector. In general, it is preferable for government to restrict itself to providing the infrastructure and public utilities, leaving the private entrepreneur to build hotels and other tourist facilities, such as yacht marinas, tennis courts and golf courses. Villas may be built for occupation either by permanent settlers or by others visiting for shorter periods who will make use of some or all of the facilities provided by the hotel with which the villas are connected.

19. What can reasonably be required from a government is a basic road system (leaving the private sector to provide access roads) and the provision of clean water, electricity supplies and port and/or airport facilities suitable for the unloading of passengers and freight. As regards telephone services, it is not essential that these should be government-provided. The private sector could be permitted to provide telephones with suitable safeguards about the provision of essential services and with options for the government to purchase the business at market value after, say, 20 years or some longer period. If government provides telephone services it is necessary to ensure that the services are supplied initially on an economic basis to the areas of greatest density of users, or that where exceptional facilities are provided, e.g., to a remote area of the country, suitable charges are made to cover the cost. For example, if telephones are supplied to a hotel complex or to isolated villas which, on pure geographical considerations, would not be supplied until several years had elapsed, it might be reasonable to demand a contribution to the capital cost of the installation as well as the payment of rather higher rental charges than those applied to the services given to the rest of the country.

20. A common demand by entrepreneurs who wish to build hotels on the sea coast is that they should be allowed exclusive use of choice sections of beach. In some parts of Europe the process of allowing sections of beach to be hived off to hoteliers has reached such dimensions that the public are denied access to quite long stretches. It is better policy, while allowing hotels to be built near beaches, to preserve a public right of access to the beach as a whole even though the hotel may be permitted to stake out areas of the beach for the provision of various recreational facilities so long as the areas thus used do not extend to the low water mark.

21. Among the entrepreneurs who may be expected to approach tourist countries with the object of extending their operations, are those who organise package tours. Such tours are generally more beneficial than the calls of cruise ships, which may be only for a day or part of a day. In the latter case the economic benefit to the tourist country will be restricted to the revenue generated by car or coach tours, the services of restaurants where the passengers take meals ashore, plus whatever business can be done in selling artefacts, souvenirs, and duty-free goods. In the case of a package tour, the passengers are likely to stay for periods of up to a month and thus make much greater use of hotel and tourist facilities generally. On the other hand, the package tour operator will drive a hard bargain to obtain hotel accommodation and other services at the lowest possible price and the general run of tourist who travels on a package tour is usually less affluent and less likely to spend money freely than the tourist who makes his own way to the country. These facts have to be borne in mind when deciding whether and, if so to what extent, government expenditure may be incurred, or incentives offered to encourage various types of tourism.

22. *Availability of Public Land*

Where the government owns lands which are suitable for hotel or other tourist development, it is usually best to make these available to entrepreneurs on a lease basis rather than by outright sale. While the rent charged in the first few years may be abated if thought desirable, e.g., where the tourist industry is in its infancy, it is important to insert rent review dates in the lease so that the rent payable may be brought up to the

current market levels, preferably at not more than 5-yearly intervals.

23. *Villas for New Residents*

A common development in countries which manage to place themselves on the tourist map, is that persons may take up permanent residence and may seek to have villas erected in some of the remoter parts of the country, particularly on the sea coast or on high land that commands good views. If such development is left entirely to unrestricted private enterprise the government may find itself incurring rather heavy expenses on infrastructure, e.g., the supply of water and electricity, road maintenance, etc. It is, therefore, important at the earliest stage possible to publish a master plan indicating the proposed future uses of land which will be approved by the government's planning department. The publication of such a plan may be made initially in fairly simple form, leaving details to be added in subsequent editions, so as to give would-be developers a clear idea of what areas are likely to be provided with services by government in various phases of the country's development. To clear the air in this way also helps those owning land to form a better idea of the value of their land so that they are less likely to fall prey to speculators who may be expected to come to a country at an early stage in its projected development to buy up tracts of land to hold against the prospect of quick capital gains.

24. *Role of New Settlers in Stimulating Tourism and the Economy: Incentives to Settlement*

A case has been made out for the desirability of encouraging foreigners to reside in countries with climatic or scenic attractions because of the incidental effect of such settlement in encouraging tourism. Where there are tourist "seasons", e.g., because the climate in the tourist country is more favourable during one part of the year than another, or because the tourists are expected to come from other countries more frequently in one particular period of the year in those countries (e.g., to escape cold winters), the existence of numbers of settlers residing all the year round has obvious advantages in that such persons may use facilities, provided for the tourists, during the off-season for tourism.

25. It is also argued that the development of tourism entails a raising of standards in certain respects, particularly in the provision of high class residential accommodation (e.g., the greater use of air conditioning and the wider use of mosquito or fly-screening) and the attainment of high standards of catering which will normally include the provision of more expensive specialised restaurants, apart from the restaurant facilities of hotels themselves. Both these developments are likely to be encouraged by the demands of new residents, particularly those who are relatively affluent and who have come to spend their retirement in the country concerned.

26. In Malta, which has actively encouraged the settlement of new residents by income tax concessions, in particular by applying a rate of 2½% to their remittances of foreign income and to their local investment income, it has recently been unofficially estimated that the 2,500 new permanent residents, and their estimated 2,000 dependants, have made substantial contributions to the balance of payments. It was estimated that at least £6,250,000 ($15,625,000) was brought in to purchase residences (at the rate of 1 for each 2 settlers) over a period of 7 years and that this expenditure plus annual remittances of income would have resulted in a total of foreign currency remittances each year of

£4,500,000 ($11,250,000). Figures of this magnitude are obviously of importance in a country with a population of about 315,000.

27. Some countries have restricted the influx of new "permanent" residents to those who can satisfy certain limits of capital or income. In general, tourist countries do not want to encourage an influx of beachcombers, remittance men and adventurers, and such restrictions seem to be perfectly reasonable. Such restrictions have, in fact, been imposed by such countries as Kenya, where a settler needs to show that he has an income of £1,800 p.a.; Malta where in 1971 a single man needed £1,400 p.a. and a married man £1,600 p.a., (or corresponding capital resources): as from 1972 it has been proposed that permission for permanent settlement will be restricted, in the case of new applicants, to those over 60 years of age who bring not less than £4,000 per annum into the country. In the Seychelle Islands where the limits are £2,000 p.a. for a single man and £2,500 p.a. for a married man, plus enough capital to build a house costing £6,000 and to buy the land on which it stands. In Jersey, where pressure of space is exceptionally high, a would-be settler is required to show that he would pay income tax annually to the extent of not less than £2,000 which roughly entails having a taxable income exceeding £10,000 p.a. Even where no means test is applied to settlers, few countries which are developing tourism are keen to encourage the settlement of foreigners with limited resources who may be reduced to "living on their wits" or become a liability to the social welfare services.

28. Some countries have taken steps to try to discourage the settlement of new residents into estates or enclaves where they would live apart from the population in general, so as to avoid the division of the community into separate geographical zones of "haves" and "have nots". Such countries include the Seychelle Islands where traditional development has been more in the way of interspersing higher priced houses and more modest ones, with the result that a good community spirit has developed. In some countries, however, there has been no detailed policy of this kind and enclaves are commonly formed, particularly where the settlers on the whole are unfamiliar with the local language, and tend to look to their own kind for most of their social activities.

29. The incidental benefit of having a contingent of reasonably affluent "settlers" in a tourist country is that they will generate a substantial amount of tourism because friends and relatives are likely to visit them (and in turn spread word of the attractions of the place). In addition, it is the common experience that the children of such "settlers" make regular visits, often having the fare paid by the parents. Tourism generated in this way is often more useful than that produced by package tours. The length of stay in the country may be longer and more money may be spent—moreover the visits are as likely to occur out of season as in season and thus assist in spreading tourist revenue over a longer period of the year.

30. Apart from their expenditure on goods and services in the country, settlers make contributions to the country's revenue through taxation, i.e., through income tax on their incomes while they are alive and through estate or succession duty on their estates at death. Whether such settlers should be taxed on their world income for income tax purposes with suitable relief for taxes paid on their foreign income in the countries of origin, or whether they should be taxed only on the income brought into the country of residence, is a matter which will depend on the nature of the country's tax laws. A rule adopted in many countries is

that initially a new resident will be taxed only on his local income plus what income he brings in from abroad, but when the stage is reached that he may be said to have become permanently resident he will be taxable on world income. Provided the tax rates in the country are moderate the effect of tax on world income will not be to levy any large sum of tax on the foreign income because there may be little or no liability after allowing double tax relief.

31. As regards duties payable upon death a somewhat similar rule is usually applied. Where the deceased has become domiciled in the country of residence, roughly equivalent with his having taken up permanent residence, duty will be payable on his total assets with provision for an off-set of tax paid in other countries in respect of foreign assets, but where he dies before there has been a definite transfer of domicile, tax will only be payable on the assets in the country of residence.

32. It is desirable for a would-be tourist country to enter into double taxation agreements with as many countries as possible which are likely to provide settlers or investment in hotel and tourist projects. Such treaties clarify the tax position and are usually much more readily available than the substantive tax laws of countries. The latter are in any event amended from year to year whereas tax treaties normally have a minimum life of 5 years and in practice often continue for much longer periods without material change.

33. *Incentives to New Settlers*

Incentives to new permanent residents to settle in a country are not very usual. The most striking incentive was that provided by Malta in the period to 1971 whereby a new permanent resident was chargeable to income tax at 2½% on income brought into the country (with exemption from surtax). It has, however, been announced that the concession would be withdrawn in 1972 as far as subsequent arrivals were concerned, but up until that time was regarded as having attracted a large number of reasonably affluent settlers. In some countries, such as the Channel Islands of Britain (Jersey, Guernsey, Isle of Man, etc.) income tax is chargeable at a low maximum rate (around 20%) and there are no death duties; Bermuda and the Bahamas are free both of income tax and death duties, while some other countries, e.g., the Solomon Islands, where the maximum income tax and company tax amounts to 25%, and the Seychelle Islands where the highest rate of income tax is 35% and the death duties are moderate, have tax climates which are reasonably attractive compared with those of the countries from which settlers are likely to come. In general, it is not too desirable to have a more favourable tax system for ex-patriate settlers from that which applies to the local population, since the former are likely to be more affluent on average than the latter. If a country's tax system bears unduly heavily upon new arrivals, it is possible that there are anomalies or unsuitably high rates for its stage of development which ought in any event to be adjusted for the benefit both of inhabitants and settlers.

34. *Classification of Tourist Facilities*

As a measure tending to the improvement in standards which, while of considerable interest to tourists and those who cater for them, is also a development likely to benefit the population as a whole, it is useful to establish official gradings for, in particular, hotels and restaurants. As far as charges for rooms and meals are concerned, it is usually best to leave this to the industry itself to control but in practice prices will tend to

align themselves within the selected grades so that hotels graded 'B' will tend to have charges which are roughly competitive with each other and at a lower level than hotels graded as 'A'. All gradings have to be based on some form of inspection and this should impose no great burden on the administration since it will be necessary in any event to inspect such premises in connection with public health, fire safety, and labour conditions requirements and it will be relatively easy to add a few factors such as type and standard of building, situation and general amenities so as to provide the data for the classification of the premises within the official gradings.

35. *Development of Tourist Attractions*

The attractions of a tourist country may be listed as mainly including climate, scenic and other physical attractions, antiquities and sporting and leisure facilities. Although in some cases it may be necessary for the government to maintain or improve these attractions it is necessary to be somewhat cautious in budgeting expenditure in this field.

36. *Beaches*

An obvious necessity is to see that beaches are cleaned, but a contribution to this problem can be made by fiscal means, e.g., by insisting that all beverages likely to be consumed on beaches are sold in returnable containers on which a deposit has been charged. Even if such containers are nevertheless strewn upon the beaches it is likely that local initiatives will see that they are collected in order to recover the deposit money without government expenditure being involved. Jersey, for example, has recently announced a ban on non-returnable containers for beverages, and Norway imposes a tax on non-returnables to compensate for the extra trouble they cause to government.

37. *Advisers and Entrepreneurs*

In the field of tourist attractions in general, governments commonly seek the advice of professional tourism advisers and, while such advice may be most valuable, it is necessary to weigh up the recommendations with some care. Where, for example, the advisers merely present a lengthy shopping list of what might be spent on tourist attractions without regard to the money likely to be generated from the use by tourists of the facilities it is, of course, necessary to subject the recommendations to a careful scrutiny from an economic standpoint.

38. In the course of its efforts to develop tourism a government is bound to receive visits from various persons who put forward projects, usually asking for some government support or concession. The advice of tourism advisers in assessing the bona fides and viability of such projects may be valuable, but apart from that it is desirable to take the elementary precautions of ascertaining precisely who the person is who is making the approach, i.e., whether he is a principal or a direct employee of a firm of some substance, or merely someone "touting" for options or concessions, or a letter of intent, which he will proceed to sell for a commission to some larger firm at a later date, thereby increasing the cost of the project. Such touts can be persuasive and it is not always easy to distinguish between the men of substance and the men of straw. It may be invidious for a local official to ask for banker's reference or other identification and the hands of the Department concerned may be strengthened by inserting various requirements of this kind whenever any particular project is opened for tender.

39. In many cases it would be a sensible

course for government not merely to sit and wait for entrepreneurs to come forward (especially since the early comers almost always include a proportion of touts and would-be speculators) but to make direct approaches to some of the larger international hotel chains and tour operators to invite them to study the local scene.

40. *Duty-free Sales of Liquor and Tobacco*
It is normal to allow tourists visiting a country to bring in certain quantities of duty-free alcohol and tobacco which they have usually purchased on the ship or plane which brought them to the country. It is notorious that the duty-free prices of such items are often set at levels which permit exceptional profits and there is also a certain incongruity, particularly in the case of aeroplanes in the situation that fairly large stocks of liquor, cigarettes, etc., are carried on flights when the purchases could equally well be made at the arrival air terminals. Several countries have, in fact, established facilities so that passengers landing may purchase their duty-free supplies before formally "entering" the country and there is likely to be an increase in this kind of development.

41. Another development which has also produced useful results in certain tourist countries is the keeping of the rates of duty on liquor and cigarettes at levels which yield material tax revenue to the government, but which are not high enough to encourage unduly the efforts of smugglers. Nevertheless, the duty-paid prices of the goods which the tourist can obtain in unlimited quantities on landing are often lower than the "duty-free" prices at which they can purchase supplies during their journeys. Examples of countries where this situation exists are Barbados, Gibraltar, and the Seychelle Islands.

42. *Duty-free Exports by Tourists*
Since any purchases by a tourist in a tourist country are equivalent to exports and since it is usual to relieve exports both of customs duties and internal sales taxes, there should be no question in principle but that tourists should be able to purchase goods such as cameras, watches, binoculars, record players, tape recorders and sporting goods free of duty and tax. The only problem is what should be the mechanics of providing this exemption. In some countries the purchases may only be made in the duty-free shop at the airport or port, in others the goods may be ordered within the country and delivery effected only when the tourist is leaving the country. Some countries (e.g., Barbados) go a little further in allowing genuine tourists to purchase goods tax-free in the shops, and in the Seychelles the main items of "tourist" goods are sold duty-free to the population at large as well as the tourist, so that there is no problem of controlling a duty-free concession. The government has to give up the revenue that would have been obtained on the sale of goods to ordinary residents but the incentive is that eventually the greater part of such sales will be made to tourists. Where the shopkeeper is authorised to sell taxed goods duty-free to a tourist, he is required to keep a record of the name, address and passport number of the tourist and he is asked to hand in a copy of the sale document on leaving the country. The trader is then allowed a refund of the taxes already paid in respect of goods thus sold, confirmation that the goods have indeed been sold to a genuine tourist being derived from the documents handed over by the tourist on leaving.

43. *Tax Incentives for Hotels*
There is some feeling that tax incentives by countries eager to jump on the tourism

bandwagon have sometimes been over-generous. There are examples of hotels and other facilities being granted sites at sub-economic prices or rents, being given cash grants towards the cost of buildings, duty-free concessions on imports of materials and fixtures both initially and in later years, and of also being granted duty exemptions on normal import of foodstuffs and other supplies. In addition, tax holidays exempting their profits from income tax, often for considerable periods, have been granted. While a new tourist country is naturally anxious to attract hotel development, if the country has obvious potentiality for tourism, the international hotel chains and tour operators may also be expected to take initiatives to add new resorts to their coverage. There are many cases where, in fact, hotels have been built in resorts without any fiscal incentives and accordingly it is by no means certain that development can never be envisaged without such incentives.

44. Although there may be a case for special terms in the early years of the establishment of a new industry, it seems to be desirable at least that all such incentives should be limited in time so that even the pioneer entrepreneurs take on normal tax and other burdens a few years after commencement while newcomers receive no particular incentives at all. One can argue for the pioneers that their initial costs are likely to be unduly high precisely because there has been no reservoir of skills built up in the country for their particular line of business, so that they have to incur exceptional expense, e.g., in training staff. On the other hand, where a concern actually makes profits, particularly where it is helped to do so by concessions or privileges granted by the government, there does not seem to be any reason why those profits should not pay taxes in the ordinary way. If a pioneer is unable to make profits for the first few years of his undertaking he will in any event not be liable to pay income tax and a tax holiday will be of no assistance to him.

45. There is some evidence that tax holidays are going out of favour, Malta which is developing an important tourist industry has recently announced that she will not be granting that kind of encouragement in future (the company rate of income tax being a fairly modest 25% is itself some kind of incentive to entrepreneurs) and the Seychelles have from the outset refused to contemplate tax holidays but have nevertheless generated a number of hotel undertakings which have been encouraged by generous capital allowances and other incentives. In Malaysia and Singapore there has been considerable hotel development without tax holidays, such incentives having been restricted to industrial enterprises.

Tax Revenue from Tourism:

46. *Airport Charges*

A tedious but necessary consideration which is sometimes overlooked is the need to generate some government revenue from tourism to recompense government for its expenditures. To the extent that tourism creates employment and therefore increases the incomes liable to income tax, and spending on articles subjected to customs duties and/or sales taxes, some indirect revenue will be derived in the long run. In the short run, however, it is desirable to try to establish some moderate forms of taxation which can be readily collected and which will entail some small direct contribution by the tourist. It is fairly common practice, for example, to impose an airport or terminal tax on outgoing air passengers and since such taxes are so widely spread around the world it is unlikely that tourists will find the im-

position of a moderate charge of this kind particularly repellent.

47. *Hotel & Restaurant Charges*

Similarly, hotel taxes are fairly common in established tourist countries and it is preferable, if this form of taxation is considered suitable, to impose it at as early a stage as possible so that it becomes part of the fiscal background while the industry is in its infancy. Where such a tax is imposed it is preferable, in order to avoid irritation to the tourist, to try to reach agreement with the industry that the tax will not be shown as a separate item additional to the published charges in the hotel brochures. A number of countries contrive that the prices quoted for hotels are inclusive both of service and tax and this method enables the tourist to estimate the cost of his holiday with more precision than when there is an open-ended contingent liability for such charges in addition to the net cost of his accommodation.

48. In practice, hotel taxes are either levied as a room tax at so much per night of occupation, or as a percentage levy on hotel charges (i.e. as a "sales tax"). A room tax is less flexible and less equitable in that it bears heavily on cheap rooms and lightly on expensive suites. Administratively the view is sometimes taken that it is easier to check room occupancy, since records may have to be kept, e.g., for police purposes, than room *receipts* and that therefore a room tax is preferable. On the other hand, income tax is chargeable on hotel profits and it is thus essential to endeavour to ensure that the gross earnings of the hotel are properly recorded so that net profits may be accurately computed for income tax. The same gross figures are, of course, relevant for sales tax, audit of the gross earnings would be relevant to both taxes. It is always preferable to have as wide a tax base as possible so that the *rate* of tax may be kept low. In the case of hotels it is desirable that the total turn-over of the hotel should be brought into the charge to tax. This might cause inequity if there were no corresponding tax on the high class restaurants which would compete with the restaurant services provided by the hotels. Accordingly, a sales tax on hotels, say of the order of 3%, would be preferably levied as part of a "hotels and restaurants tax". The classification of hotels and restaurants referred to earlier would be an important factor in determining the base of such a tax, since it would be desirable to exclude working men's cafés, ranking for the lowest grade, from the charge to tax which should fall only on the luxury side of the restaurant trade.

49. *Income Tax on Profits of International Tourist Operations*

It has already been mentioned that it is desirable for a tourist country to enter into as many double tax treaties as possible with more developed countries which are likely to provide investment and/or tourists and settlers. If the tourist country aspires to be a tax haven with no direct taxes there is, of course, no likelihood of any such treaties being made. The subject of tax havens is too large to be considered in these notes, but it may be noted that where moderate income taxation is levied on the profits of international concerns based in developed countries this is not likely to act as a serious deterrent to enterprise.

50. Where the local enterprise is a branch or a wholly-owned subsidiary of a concern based in a developed country and the profits from the venture in the tourist country are likely ultimately to be remitted back to the parent concern, the tax payable in the tourist country, if it does not exceed the rate of tax payable in the investing country, will in fact add nothing to the world tax bill of the

parent concern since whatever tax is paid in the toerist country may be deducted in the form of double tax relief from the tax payable by the concern in its home country on its international operations. It may be noted that the actual making of double tax treaties and their subsequent publication does of itself provide a certain amount of free publicity for the tourist country. Such treaties afford a degree of certainty in the tax climate for investors or settlers from the countries with which the treaties are made, since the reliefs provided are usually more clearly set out than in the tax statutes, and the treaties normally endure for minimum periods of 5 years, and in practice usually for very much longer.

51. Some practical difficulty may be encountered in calculating the part of the profit of an international tourist concern which relates to the local activities. For example, in the case of a package tour a part of the price paid by the tourist will relate to the organisational activities at the head office of the operator, a part to the cost of the travel by ship or plane and part to the hotel accommodation and other facilities afforded at the point of destination. It may, for example, be argued by the operator that the part of the price which relates to the hotel accommodation provides no profit whatever to the hotelier because the charge is computed at a greatly reduced rate for a large party, or on off-season terms, and that the whole profit was earned by the carrier. In general, such arguments are not acceptable and some simple rule of thumb method of allocating profits should be devised, e.g. by ascertaining the total profit on the venture and allocating it pro rata according to the part of the total price which has been paid for each of the elements in the package, so that if 40% of the price is the sum paid to the hotelier 40% of the total net profit would accrue in the tourist country.

52. The profits of the hotelier who has provided facilities for the package deal would, of course, be a separate matter and the amount paid to him by the package tour operator would merely be a sum to be taken into account with all the other earnings of the hotel during the year when computing the hotel's profit for tax purposes.

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BUNDESREPUBLIK DEUTSCHLAND
(Federal Republic of Germany)

Unterrichtung über den Stand von deutschen Doppelbesteuerungsabkommen

(Schreiben des Bundesministers für Wirtschaft und Finanzen vom 19. Januar 1972 – F/IV C 1 u. C 2 – S 1300 – 5/72 – an die Finanzminister (-senatoren) der Länder.)

I. STAND DER DOPPELBESTEUERUNGSABKOMMEN UND DER DOPPELBESTEUERUNGSVERHANDLUNGEN

A. OECD-Staaten

Australien: Der am 15. 9. 1970 paraphierte Text einer DBA konnte bisher noch nicht unterzeichnet werden. Hinsichtlich der deutschen Steuern wird das Abkommen allgemein ab dem Veranlagungszeitraum 1971 und für die von Dividenden, Zinsen und Lizenzgebühren erhobenen deutschen Abzugsteuern ab 1. 7. 1971 anzuwenden sein.

Großbritannien: Das am 23. 3. 1970 unterzeichnete Revisionsprotokoll zum DBA vom 26. 11. 1964 ist am 30. 5. 1971 mit Wirkung vom Veranlagungszeitraum 1969 an in Kraft getreten (Gesetz vom 11. 2. 1971, BGBl II S. 45, BStBl I S. 139; Bekanntmachung vom 21. 5. 1971, BGBl II S. 841, BStBl I S. 340).

Island: Der am 3. 11. 1967 paraphierte Text eines DBA wurde am 18. 3. 1971 unterzeichnet. Er wird in Kürze den gesetzgebenden Körperschaften vorgelegt werden. Das DBA wird ab 1968 anzuwenden sein.

Italien: Die gesetzgebenden Körperschaften haben dem am 17. 9. 1968 unterzeichneten Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der direkten Steuern bei den Unternehmungen der Luftfahrt bereits im Jahr 1970 zugestimmt (Gesetz vom 10. 7. 1970, BGBl II S. 723, BStBl I S. 904). Das Abkommen ist noch nicht in Kraft getreten, da der Austausch der Ratifikationsurkunden bisher nicht stattgefunden hat. Es wird ab 1957 anzuwenden sein.

Die im Jahre 1963 aufgenommenen Verhandlungen zur Revision des DBA vom 31. 10. 1925 wurden auch im Jahre 1971 nicht fortgesetzt.

Kanada: Die im Jahre 1961 begonnenen Verhandlungen zur Revision des DBA vom 4. 6. 1956 wurden im Jahre 1971 wieder aufgenommen; sie werden demnächst weitergeführt.

Luxemburg: Im Jahre 1971 wurden Verhandlungen über die Revision des DBA vom 23. 8. 1958 aufgenommen; sie sollen so bald wie möglich fortgesetzt werden.

Norwegen: Der am 1. 9. 1970 paraphierte Text eines DBA, das das zur Zeit geltende DBA vom 18. 11. 1958 ersetzen soll, konnte bisher noch nicht unterzeichnet werden. Das neue DBA wird nicht rückwirkend anzuwenden sein.

Portugal: Die von portugiesischer Seite gewünschten Revisionsverhandlungen über den am 4. 11. 1966 paraphierten Abkommenstext konnten auch im Jahre 1971 nicht aufgenommen werden.

Schweiz: Die im Jahre 1965 aufgenommenen Verhandlungen zur Revision des DBA vom 15. 7. 1931/20. 3. 1959 wurden am 11. 8. 1971 mit der Unterzeichnung eines neuen Abkommens abgeschlossen. Dieses wird in Kürze den gesetzgebenden Körperschaften vorgelegt werden. Es wird ab 1972 anzuwenden sein. Das DBA vom 15. 7. 1931/20.

3. 1959 wird noch insoweit in Kraft bleiben, als es sich auf die Erbschaft- und Nachlaßsteuern bezieht.

Türkei: Der am 19. 10. 1958 paraphierte Text eines DBA konnte auch im Jahr 1971 noch nicht unterzeichnet werden. Das Abkommen wird nicht rückwirkend anzuwenden sein.

USA: Im Jahr 1971 wurden Verhandlungen über den Abschluß eines Erbschaftsteuerabkommens geführt, die jedoch noch nicht abgeschlossen werden konnten. Sie sollen sobald wie möglich fortgesetzt werden.

B. Sonstige Staaten

Brasilien: Die im Jahre 1966 aufgenommenen Verhandlungen über den Abschluß eines DBA, die im Jahre 1969 und 1971 fortgesetzt wurden, sollen im Jahre 1972 weitergeführt werden.

Chile: Die im Jahre 1969 aufgenommenen Verhandlungen über den Abschluß eines DBA wurden nicht fortgesetzt.

Indien: Die im Jahre 1969 aufgenommenen Verhandlungen zur Revision des DBA vom 18. 3. 1959 sollen im Jahre 1972 fortgesetzt werden.

Indonesien: Die im Jahre 1970 aufgenommenen Verhandlungen über den Abschluß eines DBA sollen im März 1972 in Djakarta fortgesetzt werden.

Kenia: Der Entwurf eines DBA ist am 15. 4. 1971 paraphiert worden. Über ihn soll Anfang 1972 neu verhandelt werden.

Kolumbien: Das DBA betreffend Schiffahrt- und Luftfahrtunternehmen vom 9. 9. 1965 (BGBl 1967 II S. 763, BStBl 1967 I S. 25) ist am 14. 6. 1971 mit Wirkung von 1962 an in Kraft getreten (Bekanntmachung vom 3. 6. 1971, BGBl II S. 855, BStBl I S. 340).

Liberia: Am 25. 11. 1970 wurde ein DBA unterzeichnet; das Abkommen wird ab 1. 1. 1970 anzuwenden sein.

Marokko: Am 14. 4. 1970 wurde der Text eines DBA paraphiert. Die Unterzeichnung hat sich bisher wegen Übersetzungsschwierigkeiten verzögert; es wird nicht rückwirkend anzuwenden sein.

Neuseeland: Die im Jahre 1968 aufgenommenen Verhandlungen über den Abschluß eines DBA konnten bisher nicht fortgeführt werden.

Pakistan: Die deutschen gesetzgebenden Körperschaften haben dem Protokoll vom 27. 8. 1963 und dem Ergänzungsabkommen vom 24. 1. 1970 zum DBA vom 7. 8. 1958 zugestimmt (Gesetz vom 10. 2. 1971, BGBl II S. 25, BStBl I S. 134). Beide Vereinbarungen sind noch nicht in Kraft getreten, da der Austausch der Ratifikationsurkunden bisher nicht stattgefunden hat. Das Ergänzungsabkommen ist, soweit es sich auf die Besteuerung der Einkünfte aus internationaler Schiffahrt bezieht, ab 1967 anzuwenden; im übrigen ist, wie auch für das Zusatzprotokoll von 1963, keine Rückwirkung vorgesehen.

Philippinen: Die im Jahre 1969 begonnenen Verhandlungen wurden bisher nicht fortgesetzt.

Polen: Mit Polen wurden 1970 Verhandlungen zum Abschluß eines allgemeinen DBA aufgenommen. Die Verhandlungen sollen Anfang 1972 fortgesetzt werden.

Rumänien: Verhandlungen über den Abschluß eines DBA wurden im Jahre 1971 aufgenommen.

Sambia: Der Entwurf eines DBA ist am 28. 8. 1971 paraphiert worden. Das Abkommen wird in der Bundesrepublik Deutschland ab 1. 1. 1971 und in Sambia für Erhebungszeiträume ab 1. April 1971 anzuwenden sein.

Singapur: Der am 26. 6. 1970 paraphierte Text eines DBA soll Anfang 1972 unterzeichnet werden. Das Abkommen wird ab 1. 1. 1968 anzuwenden sein.

Tansania: Der Entwurf eines DBA ist am 15. 4. 1971 paraphiert worden. Das Ab-

kommen wird mit dem Beginn des Jahres des Inkrafttretens anzuwenden sein.

Trinidad und Tobago: Der Entwurf eines DBA ist am 25. 4. 1971 paraphiert worden. Das Abkommen wird ab 1972 anzuwenden sein.

Uganda: Der Entwurf eines DBA ist am 15. 4. 1971 paraphiert worden. Über ihn soll neu verhandelt werden.

Zypern: Das am 29. 10. 1970 paraphierte DBA steht kurz vor seiner Unterzeichnung. Das Abkommen wird ab 1970 anzuwenden sein.

II. VORLÄUFIGE VERANLAGUNGEN AUF GRUND ZU ERWARTENDER DOPPELBESTEUERUNGSABKOMMEN

Wie aus der vorstehenden Übersicht zu entnehmen ist, werden verschiedene der aufgeführten DBA nach ihrem Inkrafttreten rückwirkend anzuwenden sein. Ich wäre dankbar, wenn Sie die Finanzämter anweisen würden, auf Antrag der Steuerpflichtigen, bei denen diese DBA voraussichtlich anzuwenden sein werden, die Veranlagung vorläufig durchzuführen oder bis zum Inkrafttreten des betreffenden Abkommens zurückzustellen. Ob bei vorläufiger Veranlagung der Abkommensinhalt – soweit bekannt – bereits berücksichtigt werden soll, ist nach den Gegebenheiten des einzelnen Falles zu entscheiden.

Bei Veranlagung unbeschränkt Steuerpflichtiger zur Vermögensteuer kann das obige Verfahren auf Fälle beschränkt bleiben, bei denen der Steuerpflichtige in dem ausländischen Vertragstaat Vermögen in Form von Grundbesitz, Betriebsvermögen oder – falls der Steuerpflichtige eine Kapitalgesellschaft ist – eine wesentliche Beteiligung an einer Kapitalgesellschaft des betreffenden ausländischen Vertragstaates hat.

Nach dem in Abschnitt I angegebenen Stand werden folgende Abkommen rückwirkend anzuwenden sein:

Abkommen mit	Anzuwenden im allgemeinen ab	Bei Unternehmen der Schiffahrt und Luftfahrt ab
Australien	1. 1. 1971 (1. 7. 71 bei deutschen Abzugsteuern)	1. 1. 1971
Island	1. 1. 1968	1. 1. 1968[1])
Italien	—	1. 1. 1957[2])
Liberia	1. 1. 1970	1. 1. 1970
Sambia	1. 1. 1971	1. 1. 1971
Singapur	1. 1. 1968	1. 1. 1968
Trinidad u. Tobago	1. 1. 1972	1. 1. 1972
Portugal	—	1. 1. 1963
Pakistan	—	1. 1. 1967[3])
Zypern	1. 1. 1970	—

III. ARBEITEN DER OECD AUF DEM GEBIET DER DOPPELBESTEUERUNG

Bei der OECD wurde zur Intensivierung der Arbeiten auf steuerlichem Gebiet ein Finanzausschuß gegründet, der im Mai 1971 seine Tätigkeit aufgenommen hat. Dieser Ausschuß hat verschiedene Arbeitsgruppen gebildet, von denen eine sich mit Fragen der Doppelbesteuerung befaßt und die Arbeiten des früheren Steuerausschusses auf diesem Gebiet weiterführt. Es steht zu erwarten, daß der Finanzausschuß im Laufe des Jahres 1972 einen zusammenfassenden Bericht über die Arbeiten an der Verbesserung und Ergänzung des Abkommensmusters von 1963 herausbringen wird.

1. Bis zum Inkrafttreten ist die mit Rundschreiben vom 14. 2. 1964, BStBl I S. 43, mitgeteilte Gegenseitigkeitserklärung anzuwenden.
2. Nur für Luftfahrtunternehmen.
3. Nur für Schiffahrtunternehmen.

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FRANCE

Produits de la propriété industrielle ; Plus-values à long terme*

Instruction No. 4 B-2-72 du 14 mars 1972

En vue de favoriser le développement de la recherche scientifique et technique, *l'article 10 de la loi n° 65-566 du 12 juillet 1965* a assimilé à des plus-values à long terme certains produits de l'exploitation des droits de la propriété industrielle qui font partie de l'actif immobilisé de l'entreprise et n'ont pas été acquis à titre onéreux depuis moins de deux ans. Ces produits sont:

- ceux provenant de la cession de brevets, procédés et techniques;
- ceux tirés de la concession de licences exclusives d'exploitation;
- enfin ceux tirés de la concession de licences d'exploitation par lesquelles le titulaire se dessaisit pour un secteur géographique déterminé ou pour une application particulière.

Par ailleurs, *l'article 72 de la loi n° 67-1114 du 21 décembre 1967* a complété les dispositions précédentes en étendant le bénéfice du même régime aux produits tirés de la cession de brevets ou de la concession de licences d'exploitation de brevets en cours de délivrance. Ces mesures sont actuellement codifiées sous l'article 39 *terdecies* du Code général des Impôts. Elles ne visent que les opérations qui entraînent l'aliénation définitive des droits, procédés ou techniques cédés ou du monopole d'exploitation des droits concédés, autrement dit, des seules concessions de licences exclusives bénéficiant d'une protection légale tant en France qu'à l'étranger.

Toutefois, l'Administration a admis également au régime des plus-values à long terme, les produits tirés de la concession de procédés ou techniques non juridiquement protégés lorsqu'elle est effectuée à titre d'accessoire d'une cession ou d'une concession exclusive de brevets (*B.O.C.D. 1969-II-4440*).

L'application de ce dispositif fiscal permet notamment aux entreprises titulaires de droits de propriété ou de possession industrielle de soumettre les redevances qu'elles tirent de leur exploitation à l'impôt sur le revenu au taux réduit dan 10%.

Bien entendu, les entreprises utilisatrices peuvent, conformément aux dispositions de l'article 39-1-1° du Code général des Impôts, déduire ces mêmes redevances de leurs résultats taxables dans les conditions de droit commun.

Afin de faciliter les conditions de négociation sur les marchés internationaux, l'Administration a décidé un nouvel assouplissement de la doctrine de 1969. Mais cette nouvelle extension du régime de faveur a été accompagnée d'une mesure législative (*article 42 de la loi du 29 décembre 1971*) tendant à mettre fin aux risques d'application abusive du régime à l'intérieur d'un même groupe d'entreprises.

I. – EXTENSION DE LA DOCTRINE ADMINISTRATIVE

Ainsi qu'il est rappelé ci-dessus, lorsqu'ils constituent l'accessoire d'une cession de brevets ou d'une concession de licence exclusive d'exploitation de brevets, les profits tirés de la concession de procédés et techniques bénéficient du même régime fiscal que ceux provenant des opérations portant sur les brevets eux-mêmes et donnent lieu à l'application du régime des plus-values à long terme. En revanche, lorsque ces procédés et techniques font seuls l'objet d'une concession exclusive, l'impôt dû à raison des profits retirés

* Bulletin de la direction générale des impôts no. 49 du 17 mars 1972.

de cette opération devait jusqu'à maintenant être calculé au taux de droit commun.

Or, le secret dont s'entoure la politique de recherche des entreprises favorise de plus en plus le développement de droits de possession industrielle qui restent en dehors de la protection légale assurée par la législation des brevets.

C'est pourquoi en vue d'encourager cette évolution des méthodes de la recherche technique et de l'innovation, il est apparu nécessaire d'admettre au bénéfice du régime des plus-values à long terme les produits tirés des concessions exclusives de procédés et techniques, qu'elles soient ou non l'accessoire d'une opération portant sur une cession ou une concession de licence exclusive d'exploitation d'un brevet.

Par analogie avec la situation du concessionnaire de brevet, la condition d'exclusivité ainsi posée doit impliquer pour le titulaire des droits l'engagement de ne pas consentir d'autres concessions portant sur les mêmes procédés ou techniques, étant précisé qu'un tel contrat peut toutefois être limité territorialement à un pays donné ou à une application particulière.

Il convient de noter par ailleurs que cette condition d'exclusivité peut être réputée remplie, pour l'ensemble des droits afférents à la propriété ou à la possession industrielle, lorsque la limitation des droits du licencié ou de l'utilisateur ne résulte que de simples clauses de sauvegarde (notamment de celles prévoyant que la concession sera retirée si un minimum de production n'est pas atteint dans un délai déterminé).

II. DISPOSITION LÉGISLATIVE CONCERNANT LE RÉGIME FISCAL DES REDEVANCES VERSÉES A L'INTÉRIEUR D'UN GROUPE D'ENTREPRISES

Le dispositif fiscal actuellement en vigueur aboutit à des conséquences anormales lorsqu'une étroite communauté d'intérêts existe entre l'utilisateur du droit de propriété industrielle et le bénéficiaire des redevances et notamment lorsque la société de recherche, titulaire des droits de propriété et de possession industrielle, et la société d'exploitation des brevets appartiennent à un même groupe.

Il est en effet possible de constituer à l'intérieur d'un même groupe d'entreprises, une société détenant systématiquement tous les droits de propriété industrielle ou assimilés mis en exploitation par les autres sociétés du groupe, bien que ces dernières aient pu, le cas échéant, contribuer à la création ou à la mise au point de l'invention. Une telle organisation permet de déduire du bénéfice de la société d'exploitation taxable au taux normal, des redevances qui ne sont taxées qu'au taux réduit de 10% au niveau de la société titulaire des droits.

L'article 42 de la loi de Finances pour 1972 n° 71-1061 du 29 décembre 1971 a pour objet de remédier à cette anomalie lorsque la redevance est versée par une société d'exploitation française à une société titulaire du droit concédé et qu'il existe entre elles des liens de dépendance.

En application de ces dispositions, le montant des redevances tirées de l'exploitation des droits de propriété industrielle ou des droits assimilés est désormais exclu du bénéfice du régime des plus-values à long terme visé à l'article 39 *terdecies* du Code général des Impôts lorsque ces redevances ont été admises en déduction pour l'assiette de l'impôt sur le revenu ou de l'impôt sur les sociétés d'une entreprise avec laquelle existe des liens de dépendance.

Pour apprécier cette dépendance, le texte légal prévoit expressément que de tels liens sont réputés exister entre deux entreprises:

– lorsque l'une détient directement ou par personne interposée la majorité du capital

social de l'autre ou y exerce en fait le pouvoir de décision;
– lorsqu'elles sont placées l'une et l'autre, dans les conditions définies à l'alinéa précédent, sous le contrôle d'une même tierce entreprise.
La portée de ces dispositions nouvelles appelle les commentaires suivants:

1. La modification apportée ne concerne pas l'ensemble des produits tirés de la propriété industrielle
En principe, la limitation apportée à l'assimilation des produits de la propriété industrielle à des plus-values à long terme concerne exclusivement les redevances perçues à l'occasion de concession de licences exclusives d'exploitation ou de droits assimilés.
Cette limitation n'est donc pas applicable aux produits de la propriété industrielle réalisés à l'occasion de la cession de brevets, procédés et techniques qui demeurent imposés au taux spécial de 10%.
Toutefois, il n'en serait ainsi que dans la mesure où la cession de tels droits correspondrait à une véritable aliénation et ne pourrait être regardée comme un nouveau mode d'exploitation.
A cet égard, il résulte de la jurisprudence du Conseil d'État établie en matière de bénéfices non commerciaux que la rémunération de la cession pure et simple d'un brevet ne peut revêtir la forme de redevances périodiques calculées en fonction du chiffre d'affaires et qu'un tel mode de règlement conserve le caractère de redevances aux sommes versées en paiement du prix (*cf. en ce sens B.O.D.G.I., 5-G-1-72*).

2. Les sociétés utilisatrices des droits concédés doivent être soumises à l'impôt en France
En effet, l'exclusion du régime des plus-values à long terme édictée par l'article 42 de la loi du 29 décembre 1971 ne vise que les redevances comprises dans les charges déduites de l'assiette de l'impôt sur le revenu ou de l'impôt sur les sociétés.
Par suite, l'entreprise bénéficiaire ne perd le bénéfice du régime des plus-values à long terme qu'à raison des seules redevances qui lui sont versées par des entreprises imposables en France. Corrélativement, les redevances versées par des entreprises qui exercent leur activité à l'étranger (notamment filiales à l'étranger) demeurent soumises au taux réduit de 10%. Toutefois, il devrait en aller différemment si ces entreprises étaient imposables en France dans le cadre du bénéfice consolidé; mais dans cette hypothése il conviendra de ne pas faire, en principe, application des dispositions de l'article 42 de la loi du 29 décembre 1971.

3. Les redevances ne sont exclues du régime de taxation atténuée que dans la mesure où la concession est consentie à une entreprise avec laquelle existe des liens de dépendance
Au sens de la présomption établie par l'article 42 de la loi du 29 décembre 1971, ces liens de dépendance peuvent être bilatéraux ou résulter d'une situation triangulaire.

a. Liens de dépendance bilatéraux
La loi répute dépendantes l'une de l'autre, les entreprises dont l'une détient directement ou par personnes interposées la majorité du capital social de l'autre ou y exerce en fait le pouvoir de décision.
Cette présomption de dépendance repose sur un critère de droit ou un critère de fait.

1° *Critère de droit: Détention directe ou indirecte de la majorité du capital social.*
En l'absence de toute qualification particulière, cette majorité s'entend normalement d'une participation supérieure à 50% du capital de la société concernée.
Toutefois cette participation peut être déte-

nue indirectement pour tout ou partie et par l'intermédiaire de plusieurs sociétés.
En ce cas, l'appréciation des droits détenus par l'intermédiaire de filiales ou de sous-filiales s'opère en multipliant successivement, quel que soit le degré de filiation, les pourcentages détenus par chaque société-mère.
Exemple: Une société A détient respectivement 60% et 40% des sociétés B et C; elle a par ailleurs souscrit pour 10% au capital d'une société d'exploitation D dont les sociétés B et C sont les autres coassociés à hauteur de 30% pour B et 60% pour C.
La participation indirecte de A dans la société D correspond:
– par l'intermédiaire de B
à 60% × 30% = 18%
– par l'intermédiaire de C
à 40% × 60% = 24%
soit au total 42%
Ayant une participation directe de 10%, la société A doit être regardée comme tenant la société D sous sa dépendance (52% du capital).

2° *Critere de fait: la détention directe ou indirecte du pouvoir de décision.*
Dans le mesure où la majorité de 50% du capital n'est pas atteinte suivant les modalités visées au 1°, le lien de dépendance peut encore résulter de la détention ou de l'acquisition du pouvoir de décision.
Pratiquement, ce pouvoir de décision sera réputé exister lorsqu'une entreprise détiendra directement ou indirectement soit la gestion de droit ou de fait d'une autre entreprise soit 50% au moins des droits de vote.
Pour l'appréciation du pouvoir de décision détenu ou acquis indirectement, il sera fait application mutatis mutandis des règles à retenir pour la détermination du capital.

b. Situation triangulaire
Le lien de dépendance entre deux entreprises peut résulter des liens qui existent entre chacune d'elles et une tierce entreprise, même en l'absence de liens bilatéraux entre elles.
La dépendance par rapport à cette tierce entreprise sera déterminée dans des conditions analogues à celle définie dans le cadre liens bilatéraux.
Dans cette situation, la loi répute dépendantes l'une de l'autre les entreprises liées à une tierce entreprise qui détient, directement ou indirectement, la majorité du capital de l'une et l'autre d'entre elles ou y exerce en fait le pouvoir de décision.
Pour apprécier ces différentes situations, il sera fait application des mêmes règles que celles définies au *a* qui précède.
Exemple: Une société A détient respectivement 51%, 30% et 70% du capital des sociétés B, C et D. Par ailleurs, les sociétés C et D ont respectivement 30% et 60% du capital de la société E.
Les deux sociétés B et E doivent être considérées comme dépendantes du fait qu'elles sont placées toutes deux sous le contrôle de la société A. Cette société détient, en effet, une participation directe de 51% dans la société B et une participation indirecte également de 51% dans la société E par l'intermédiaire des sociétés C (30% × 30% = 9%) et D (70% × 60% = 42%).

III. – DATE D'ENTRÉE EN VIGUEUR DES DISPOSITIONS NOUVELLES

L'extension, par la voie d'une mesure réglementaire, du régime de taxation atténuée aux produits de concessions exclusives de procédés et de techniques comme la mesure instituée par l'article 42 de la loi du 29 décembre 1971 s'appliquent à tous les produits perçus au cours des exercices clos à partir du 31 décembre 1971.

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E.E.C.

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Comparative analysis of substantive provisions in the Model Tax Code and the existing tax codes of LAFTA countries.

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Comparative analysis of tax procedure in the Model Tax Code and the existing Codes of LAFTA countries.

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LAS INFRACCIONES Y SANCIONES TRIBUTARIAS EN LOS PAISES MIEMBROS DE LA ALALC. Published by Secretaría General de la Organización de los Estados Americanos, Washington D.C. 1971. 79 pp.
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ALGEMENE BEGINSELEN VAN BEHOORLIJK BESTUUR, by J. Peters. Published by N.V. Uitgeverij FED, Deventer, 1971. 40 pp.
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DE BELASTING OVER DE TOEGEVOEGDE WAARDE EN HAAR BETEKENIS VOOR DE ONDERNEMER, by A.E. de Moor. Published by Samsom Uitgeverij N.V., Alphen a.d. Rijn, 1971. 183 pp.
Explanation for entrepreneurs of the Dutch tax on value added, with reference to practice. The text of the law with annotations is appended.

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Taxation of Netherlands business operations by foreign investors; includes tax forms and text of the US-Netherlands treaties.

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* * * * ARTICLES * * * *

K.C. KHANNA:

INDIA: NOTE ON THE FINANCE BILL 1972

On March 16 the Indian Finance Minister, Mr. Chavan, presented his 1972 Budget to Parliament. The following summarizes the most significant features of the tax proposals.

A. CORPORATE TAXATION

Changes of note are:

1. The surcharge of 2½% imposed on advance payments of tax in December, 1971, has been confirmed with the result that an Indian company will be liable to tax on profits at the rate of 56.375% for the assessment year 1972/73; a foreign company at the rate of 71.75%.

2. For the assessment year 1973/74, the surcharge has been raised to 5%, with the result that the effective rate of company taxation on profits will be 57.75% and the advance tax during the year ending 31st March, will have to be paid at this rate. For foreign companies this rate will be 73.5%.

3. The surcharge of 2½% and 5% will also be applicable to tax payable by non-resident company shareholders. The additional tax (surcharge of 2½%) if not already deducted at source from dividends payable during the financial year ending 31st March, 1972, will have to be paid on self assessment later this year, when the return is filed.

On dividends to be paid during the year ending 31st March, 1973, tax will be deducted at source at the rate of 25.725%. Tax on resident shareholders, both corporate and individual, will be deducted at 23% during the financial year ending 31st March, 1973.

4. The surcharge of 2½% and 5% will also be applicable to tax payable by non-residents in respect of technical fees received by them. The deduction of tax at source will be made at the rate of 52.5%.

5. Exemption from tax for priority industries of profits upto 5% of total will be withdrawn from the assessment year 1973/74.

B. PERSONAL TAXATION

No changes of importance have been proposed except that casual income like winnings from lotteries, horse-racing, etc. will be subjected to taxation. Losses will be allowed to be set off against income from the same head, i.e. losses on horse-racing against income from horse-racing and not against income from card games. Lottery winnings will be taxed at a concessional rate.

Capital gains arising on the sale of personal jewellery will also be subjected to tax.

C. INDIRECT TAXATION

Changes of note are:

1. The 10 per cent ad valorem duty will be extended to items which pay customs duty of 100 per cent or more. A new rate of 5 per cent will be introduced on all items paying customs duty of more than 60 per cent, less than 100 per cent.

2. On art silk fabrics, costing over Rs. 5 per sq. metre, excise will be increased from 10 per cent to 15 per cent.

3. Excise on art silk will be reduced from 8 per cent to 5 per cent.

4. On cement, the basic duty of 20 per cent and the special duty of 4 per cent will be combined and raised to 25%.

5. Higher duty will be imposed on higher priced rayon and synthetic fibres.

6. The regulatory duty on aluminium products will be raised to 33-1/3 per cent.
7. The tax on kerosene will be increased by Rs. 0.06 per litre.
8. The duty on basic steel will be increased by 25 per cent.
9. The duty on fertilisers will be raised from 10 to 15 per cent.
10. A duty of 10 per cent will be imposed on power-driven pumps.
11. The duty on aerated water and concentrates will be increased from 10 to 20 per cent.

D. MISCELLANEOUS

1. Income of approved gratuity funds will be exempt from tax.
2. Recognised provident funds and approved superannuation funds will not be subject to Wealth tax ever since its inception.
3. Returns of income will have to be submitted by 30th June if the accounting year is on or before 31st December, otherwise by 31st July of the relevant assessment year. Any delay in filing the return will entail an interest charge of 12% even if extension for filing beyond 30th June or 31st July, as the case may be, is granted by the I.T.O. This is effective from the assessment year 1972/73.
4. Tax at 2% will have to be deducted from all payments to be made to contractors on or after 1st June, 1972, in pursuance of any contract the consideration for which exceeds five thousand rupees.

DR. P.K. BHARGAVA:*

SOME ASPECTS OF INDIA'S TAX STRUCTURE

The underdeveloped countries such as India are caught up in a vicious circle of poverty. Economic development is, therefore, the chief aim of developing countries. Development necessitates mobilisation of resources and the instrument of taxation can play a vital role in that direction. An optimum tax structure is, therefore, essential for developing countries like India where the Government expenditure is rising faster than gross national product or tax revenues under existing rates. Further, in developing economies economic policy usually dictates a rise in tax revenue (provided the Government expenditures cannot be cut) it is all the more necessary that these countries must choose intelligently the composition of taxes and alter it after a thorough scrutiny on merits. Mrs. Ursula K. Hicks has rightly stated that "tax bankruptcy was an important contributory factor to the fall of the Roman Empire. Unjust and inefficient taxes set the French Revolution aflame. An important part of the explanation of Germany's failure in the war of 1914-18 was her antiquated tax structure . . . inefficient taxes helped to lose Britain the American colonies." Hence the Government in developing countries must tailor its tax structure in a fashion that it is able to fulfil the various socio-economic objectives.

It may be quite difficult to answer what should be the tax structure for a developing country like India. However, one can say with certainty that the tax structure of a country should be flexible and that it should change keeping in view the needs and objectives of the economy. However, we may emphasise here that it is the available tax bases that set limits on possible tax structure. In the beginning the tax bases are few but as the economy advances a plethora of tax bases emerges. It is easier to exploit feasible tax bases in the early stages of economic development but as the economy advances the problems of revenue collection tend to shift from feasible tax bases to the wide variety of tax bases and from the extension of the tax net to plugging loopholes constituting legal means of avoiding tax payment.

The tax structure may also change due to the non-economic factors that we might label as social and political. It might also change due to the cultural style of the taxing Government, the degree of urbanisation and prevailing political interest groups and philosophies. The tax structure must take into consideration a mix of all these factors along with the inventory of available tax bases. No one system of taxes is suitable for all times and places. As the economic structure of a country changes so does the tax structure. The economic structure as also the tax structure of our country is changing rapidly. The tax structure is changing because of the changing needs and objective of the Indian economy. It is also changing partly due to the pulls and pressures of the taxpayers and partly due to the whims and fancies of the Finance Ministers. In a situation where changes in tax structure are too frequent as in our country it may be difficult to deal exhaustively with every aspect of tax structure in a paper such as this. Hence we shall be concentrating on some aspects of India's tax structure.

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It is a serious problem of the Indian federal finance that the division of functions and resources between the Union and State Governments has tilted the scale in favour of the former. The Centre has relatively elastic and productive sources of tax revenue whereas the States have to discharge the expensive social and development functions —the demand for which is of an expanding nature. On the other hand, the States have relatively inelastic and inadequate sources of revenue. This is clearly borne out by the fact that the tax revenue of the Union Government increased from Rs.405 crores[1] in 1950–51 to Rs.2,967 crores in 1970–71 (Budget) or by 633 percent. During the same period the revenue from State taxes increased from Rs.222 crores to Rs.1,399 crores or by 530 per cent. The relatively smaller increase in revenue resources of the States has made them highly dependant on the Centre.[2] States have, thus, received increasing financial assistance from the Centre and the Finance Commission has been playing an important role in that direction. However, it is very unfortunate that non-statutory transfers form as much as 70 per cent of the total transfers which are outside the scope of the recommendations of the Finance Commission. The increasing importance of non-statutory transfers weakens the fiscal independence of the States and some readjustments are called for.

While the States have relatively inelastic sources of tax revenue, as explained above, they are at a disadvantage in tax matters as compared to the Union Government due to certain other reasons. Firstly the important indirect taxes of the Union Government, such as the Union duties of excise, are camouflaged with the price. As a result the majority of consumers do not know the exact amount paying in taxes. While the indirect taxes of the State Governments, such as the sales tax, are shown separately. Hence the consumer realises their incidence immediately and directly. There is, therefore, greater resistance by him to pay such taxes. Secondly, the direct taxes of the States, such as the land revenue, impinge directly on the majority of population who play an important role under the right of adult franchise whereas the direct taxes of the Union Government, such as the income tax and the corporation tax, touch only a minority of the population who are politically not so powerful.

A serious difficulty with the State taxation is that the States have hesitated to tax an important sector of the economy. During the last few years the tax paying capacity of this sector has enormously increased owing to a rapid increase in income on account of rising prices of agricultural products and increasing productivity of land. The agriculturists have also benefited due to the Plan expenditure which is highly agriculture-oriented. The States have also taken steps to provide certain facilities to agriculturists in the form of cheaper credit, price support schemes and warehousing facilities etc. The overall effect has been that the terms of trade have moved in favour of the agriculturists as against non-agriculturists.

The relative position of agriculturists has also improved as the tax burden on them has been inadequate. The direct taxes (land revenue and agricultural income tax) paid by agriculturists formed 27.9 per cent of the revenue from State taxes in the First Plan. This percentage declined to 26 in the Second

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1. 1 crore = 100 lakhs; 1 lakh = 100,000 Rupees.
2. The resources transferred from the Centre to the States increased from Rs.1,389.7 crores in the First Plan to Rs.2,833.7 crores in the Second Plan and further to Rs.5600.5 crores in the Third Plan.

Plan, to 18.4 in the Third Plan and further to 8.8 in 1970-71 (Budget). These data should warn us of the fact that the fiscal importance of agricultural income tax and especially that of the land revenue will decline progressively in the States' tax structure if suitable steps are not taken. However, the Union Government is helpless in taxing agricultural land or income because under the Constitution the States are empowered to tax such land or income. This is a difficult problem of the Indian tax system and we think that the States must arrive at a broad general consensus regarding agricultural taxation through the National Development Council so that the agriculturists may be taxed adequately.[3]

It is really unfortunate that the richer States do not necessarily have higher per capita tax revenue and the disparity exists even among those States whose per capita income is the same. The Fifth Finance Commission rightly observed that "The percentages are widely different even among States with a similar level of *per capita* income. For instance, among the States with higher *per capita* income while Maharashtra and Punjab raised more than 8 per cent of their incomes as tax revenues, West Bengal with a similar industrial base as Maharashtra obtained only 6.2 per cent. Among the other four States with *per capita* income above the all-India average, Tamil Nadu raised 7.8 per cent, while Andhra Pradesh and Assam got only a little over 5 per cent.[4] There are wide disparities among States even with regard to per capita incidence of individual taxes. While the per capita income[5] of U.P. was Rs.306 which was substantially lower than the per capita income of Punjab at Rs.492 but Uttar Pradesh had the highest per capita incidence of land taxes[6] at Rs.3.03 in 1967-68 and the per capita revenue from taxes on land for Punjab was only Rs.1.38 in that year. Orissa with the same level of per capita income as that of Uttar Pradesh had only Rs.0.83 as the per capita revenue from land taxes in that year.[7] The same is true regarding other taxes also. For instance, Maharashtra had the highest per capita revenue from general sales tax at Rs.14.09 in 1967-68 whereas for Punjab it was Rs.9.34 during the same year while the per capita income of Punjab was Rs.492 as compared to the per capita income of Maharashtra at Rs.478. Similarly, Orissa and Uttar Pradesh had the same per capita income at Rs.306 which was slightly higher than the per capita income of Jammu and Kashmir at Rs.302. However, the per capita revenue from general sales tax in 1967-68 for Uttar Pradesh stood at Rs.4.10 while for Orissa and Jammu & Kashmir it was respectively Rs.3.69 and 2.57. These data make abundantly clear that there is some evasion or leakage in tax revenue of these States whose per capita income is higher but per capita tax incidence is lower as compared to other States. It is, therefore, necessary that the tax structure of the individual States should be thoroughly scrutinised and steps should be

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3. The thorny issue of the agricultural income tax was recently discussed by Mr. Chavan, the Union Finance Minister, and the Chief Ministers at New Delhi on October 12, 1971. No concrete decisions could be taken but two points became clear. First, no State is willing to surrender its power to levy the tax to the Centre and secondly, any further action on it is to be postponed until after the coming elections to the Assemblies.

4. *Report of the Finance Commission*, 1969, p. 81.

5. Per capita income figures for all the States are on the basis of State incomes for 1962-63 to 1964-65 (average) and have been quoted from the Report of The Finance Commission, 1965, p. 141.

6. Includes agricultural income tax and land revenue.

7. See *The Report of The Finance Commission*, 1969, p. 143.

taken to exploit effectively the available sources of revenue.

There is another serious difficulty also regarding State taxation. While, on the one hand, the States have expressed the urgency for want of more resources but on the other hand they have recklessly sacrificed tax revenue for political and other reasons. A number of State Governments have taken steps to provide relief to the cultivators through reduction or abolition of land revenue without increasing the burden of some other tax on the rural sector.[8] The State Governments have abolished some other taxes also. For instance, with effect from April 1, 1967 the Uttar Pradesh Government abolished urban immovable property tax and Punjab abolished profession tax. Uttar Pradesh has abolished profession tax from April 1, 1971. The difficulty with the States' taxation is that the neighbouring States are tempted to follow suit.

Predominance of indirect taxation is another feature of the Indian tax structure. There is, however, no dictum regarding the proportion of direct and indirect taxes but in underdeveloped countries, such as India, indirect taxes occupy an important place for a number of reasons.

Firstly, the per capita income of the people is low therefore they do not fall within the net of direct taxes.

Secondly, the cost considerations also prohibit the collection of revenue from them through direct taxes.

Thirdly, there is less resistance for indirect taxes as they are generally included with the price of the taxed commodities. For these reasons we find that the importance of Union excise duties and sales tax is increasing rapidly.

In the sphere of Union taxes, Union excise duties are the most important source of revenue. The share of Union excise duties in the total tax revenue of the Government of India increased from 16.7 per cent in 1950–51 to 56.6 per cent in 1970–71 (Budget). During the same period the revenue from Union excise duties increased by 2369 per cent, from customs by 184 per cent, from income tax by 218 per cent and from all taxes by 633 per cent. These data clearly indicate the growing importance of Union excise duties in the tax structure of the Government of India and suggest that in future they will continue to be an important source of revenue.

In the tax structure of the State Governments, sales tax is the most important source of revenue. The share of sales tax in the total revenue from State taxes increased from 25 per cent in 1950–51 to 35.6 per cent in 1970–71 (Budget). On the other hand the share of land revenue declined from 22.5 per cent to 7.9 during the same period. During this

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8. The Government of Uttar Pradesh had imposed an emergency surcharge of 25 per cent on land revenue in July 1962 and again in July 1965. As it was resisted by various political parties it was abolished from March 17, 1967. Madhya Pradesh abolished land revenue on all land holdings of less than 7.5 acres and also on holdings whose land revenue does not exceed Rs.5 irrespective of the acreage with effect from January 15, 1967. The Bihar Government promulgated an ordinance on January 2, 1971, which was effective from January 1, 1971 and applied to eleven districts of the State, abolishing land revenue on holdings upto 3.5 acres in the irrigated area and 7 acres in the unirrigated area. The Gujarat Government announced its decision on March 31, 1971 to abolish land revenue on small land holdings. The Uttar Pradesh Government announced its decision on December 9, 1970 to abolish land revenue on land holdings upto 6.25 acres. The Finance Minister of Jammu and Kashmir, in his budget speech for 1967-68, announced that the State Government would lose Rs. 30 lakhs per annum as a result of the exemption of holdings paying Rs. 9 as land revenue per year.

period, the revenue from sales tax increased by 788 per cent, from land revenue by 120 per cent, from agricultural income tax by 225 per cent, from stamps and registration by 339 per cent, and from all taxes by 530 per cent. These data amply demonstrate the elastic nature and predominance of sales tax in the sphere of State taxation. These data also indicate the States' reluctance for further extension of the scheme of additional duties of excise for sales tax.

The Indian tax structure aims at establishing a socialistic pattern of society. Therefore, efforts have been made to build up a progressive tax structure so that greater incidence/burden may fall on the people with higher income and larger wealth. However, it is depressing that "The income tax in India does not treat all equals equally. Nor does it adequately satisfy the effective requirements of unequal treatment of unequals. The effectiveness of income tax as an equity measure has declined over the period 1950–51 to 1963–64, and this is in sharp contrast to the generally rising statutory tax rates."[9] We may also emphasise here that when the tax rates are pitched very high there is great temptation on the part of the assessee to evade income tax. If the marginal tax rate is 80 per cent then the assessee would benefit by 400 per cent from tax evasion. An income of Rs.100/- evaded by him will be equal to Rs.500/- whereas an honest tax payer would have to earn Rs.500/- in order to have an income of Rs.100/- at his disposal. It is really depressing that the marginal tax rates in our country are almost the highest in the world and are reached at relatively lower levels of income. These high rates of taxation not only adversely affect risk and enterprise but encourage evasion and other evils. This creates inequity between honest and dishonest taxpayers. If the marginal rate of income tax is as high as 97.75 per cent (including a 15% Union surcharge on basic rate of income tax) as at present this would hardly leave anything with the taxpayer when he has to pay some other taxes also. These high rates of taxation are tolerated only through the possibility of a large tax evasion.

The Government has tried to build up an integrated tax structure in the country but in that process our tax structure has become complicated. The annual Finance Act which incorporates the various changes in the existing tax structure usually runs into eighty pages or so. It is unfortunate that tax rates are changed very frequently and every year the Finance Minister considers it almost necessary to make certain changes in the tax structure. New taxes are imposed and they are abolished or replaced at short intervals. For instance, the Budget proposals for 1963-64 included a compulsory Scheme (also known as the compulsory Deposit Scheme) but it was abandoned by 1964-65 when it was substituted by the Annuity Deposit Scheme. The Finance Act 1968 abolished the Annuity Deposit Scheme also.

The expenditure tax was imposed from 1957-58 but was abolished with effect from April 1, 1962 and revived again from the assessment year 1964-65. The expenditure Tax Act 1957, was, however abolished with effect from April 1, 1966. The same fact is true regarding the State taxation. The State Governments have also hastily imposed and abolished the taxes. For instance, the Government of Uttar Pradesh introduced the profession tax from April 1, 1966 but decided to abolish it with effect from April 1, 1971. These instances show the hasty decisions of the Union and State Governments regarding tax matters. Mr. Bhoothalingam rightly observed that, "More often than not new

9. Ved P. Gandhi, *Some Aspects of India's Tax structure*, 1970, p. 31.

taxes or other types of fiscal changes are introduced to subserve the needs of the moment and are grafted on to the existing body without enough regard for compatibility or consistency."[10] We may emphasise here that instability in tax rates and frequent changes in the tax structure create uncertainty in the minds of the taxpayers, savers and investors. It causes undesirable fluctuations in levels of income and employment.

Incentive taxation is an essential feature of the Indian tax system. Various incentives have been incorporated in the Indian tax structure to encourage savings, investment and exports, etc. Individuals and Hindu undivided families get substantial relief, upto certain specified limit, in the form of contributions to Government and recognised provident funds, Cumulative Time Deposits in Post Offices and Life Insurance premium. The budget for 1970-71 provided that interest from the Units and dividend from Indian companies upto Rs.3000 will be exempt from income tax from the assessment year 1971-72. Formerly, this limit was Rs.2000. Recently, the Union Government has raised the interest on small savings with effect from January 15, 1971. As a result, the individuals will earn higher returns on various deposits and deposit accounts opened with the post-offices. However, we may emphasise here that in a situation of rising prices it is difficult to enlarge savings through higher interest rates as the real value of savings depreciates. Moreover, the good effects of higher interest rates are nullified through rising prices as the money income earned by the people in the form of larger "interest" will buy less goods and services.

The Indian tax structure incorporates some other tax incentives also to encourage savings and investment. For instance, in December 1964, the Union Finance Minister announced a scheme of Tax-free tax credit certificates, although the scheme was abolished with effect from April 1, 1970.

The Union Government has instituted a scheme of Public Provident Fund under the Provident Fund Act, 1968 with a view to mobilise personal savings and to provide an opportunity for long term savings to all sections of the society, especially the self-employed persons. The Budget proposals for 1963-64 included a compulsory Scheme (also known as Compulsory Deposit Scheme) with the object of increasing the resources of the Government and imposing additional saving on all sectors of the economy. This scheme was abandoned in 1964-65 when it was substituted by the Annuity Deposit Scheme. The Finance Act 1968 abolished the Annuity Deposit Scheme as it involved a lot of administrative work. We may emphasise here that these instances show that how hastily the changes are made in the tax structure. This is beneficial neither for the Government nor for the tax payers.

Industrial undertakings are also given tax incentives in the form of tax holiday and development rebate.[11] Besides, the companies that produce or manufacture any of the articles specified in the First Schedule to the Industries (Development and regulation) Act, 1951 benefit from the tax credit certificates scheme. Industrial undertakings that employ displaced persons from Pakistan or repatriates from Ceylon, Burma and Mozambique or any other foreign country notified by the Government of India are given tax concessions. Industrial understandings benefit from some other tax incentives also.

While the Government has given various tax incentives to encourage savings and

10. *Final Report on Rationalisation and Simplification of the Tax Structure*, 1968, p. 2..

11. See p. 189.

investment, it is unfortunate that the corporate sector is heavily taxed in our country. It was stated in a seminar on international investment which was organised by the Indian National Committee of the International Chamber of Commerce and the Indian Investment Centre that a gross return of 30 per cent was necessary to have a 10 per cent net return in India whereas for an equal net return in the U.S., the U.K., France and West Germany a gross return of only 19.1 per cent, 16.2 per cent, 13.3 per cent and 11.3 per cent respectively was necessary. It was also emphasised recently by the Mitsubishi Economic Mission, that had visited India for Indo-Japanese Collaboration talks, before the representatives of the Federation of Indian Chambers of Commerce and Industry that the rigid attitude of the Government of India to the question of royalties acted as a disincentive to starting joint ventures and that the 50 per cent level of taxation obtaining at present must be lowered appreciably to attract modern engineering technology to India from Japan.[12] The Government appears to have realised this fact and it was perhaps for this reason that corporate sector was kept outside the tax net in the 1970–71 budget. It is, however, very depressing that the Union Finance Minister in his budget for 1971-72 withdrew some of the concessions adversely affecting the corporate sector. The withdrawal of development rebate to industries on new plant and machinery installed after 31st May 1974 and the narrowing down of the list of priority industries together with the reduction in their tax-free profits will reduce resources available for industrial expansion and would give a serious set back to industrial growth of the country. The development rebate had helped substantially the industrial development of the country and it took care, at least partially, of appreciation in the cost of plant and machinery for the purpose of replacement, rehabilitation and modernisation. The increase in surtax on corporate profits will also adversely affect the growth and development of the industrial sector. It is in the broader national interest that the structure of corporate taxation should be geared to accelerate capital formation and industrialisation of the country.

Finally, we may emphasise that it is a serious lacuna of the Indian tax policy that it has not integrated itself with price policy, incomes policy and other policies of the Government. The result has been that the favourable effects are nullified by the haphazard working of some other policies. Though the tax policy has tried to achieve social justice in the society the rapidly rising prices have unfavourably altered the distribution of wealth and income. It is, therefore, necessary that tax policy should be integrated with other policies, so that the objectives to be achieved are really achieved. Besides there is also need for simplifying the tax structure. In fairness to the taxpayers, it is also necessary that tax rates should be kept stable, at least, for a period of three to five years and changes in tax structure should be made after a careful scrutiny.

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12. Reported in *The Hindustan Times*, April 23, 1971.

J.F. CHOWN:

THE UNITED KINGDOM BUDGET: SOME POINTS OF INTERNATIONAL INTEREST

The Chancellor of the Exchequer gave his Budget speech on Tuesday March 21st. This offered a substantial stimulus to the economy, both taxes cut and social benefits increased to the extent of £1,200 million. This must be good for the level of activity in the British economy. The effects on the level of prices and on the value of the pound are more debatable. More details were given on the three major tax reforms involving company taxation, personal taxation and value added tax, all due to come into force at the begining of April 1973.

From the point of view of the foreign direct investor the most interesting feature will probably be the unprecedented incentives given to new investment in the development areas. First of all the cost of plant and machinery whether new or second hand can be written off against taxable profits in the year of purchase. This "100% initial allowance" applies to the whole country and where the allowance more than absorbs the available profits for the year the allowance can be carried *back* for up to three years and where appropriate a reclaim can be made of tax already paid. (Unused allowances could in any case be carried forward indefinitely and this treatment will continue). There will be an initial allowance of 40% again throughout the country on new industrial buildings. In the development areas investment grants will be available on new industrial buildings and on new plant and machinery. The grants will be at the rate of 20% in the intermediate and normal development areas and at a 22% in the special development areas. Unlike the old grants which although nominally tax free were in practice taxable these will be genuinely tax free. The whole cost of the purchases, *before* deducting investment grants will be available for depreciation. This means that for a machine costing £1000 there is a grant of £200 (or £220) but that there is an immediate tax relief of £400 (at a 40% corporation tax rate) if the machine is invoiced before April 1973 or £500 (at a 50% tax rate) thereafter. It might, in certain circumstances, be worthwhile persuading suppliers to delay invoices until up to April 5th, 1973. This will increase the size of the tax allowance but would delay its effective receipt by twelve months. ("This year" can become "next year" by persuading suppliers to delay formal invoices – this would also postpone the receipt of the benefit of the tax relief by one year). Taking into account this tax relief the cash cost for investment this year will be £400 or £380 and next year it will be £300 or £280. These provisions are far more generous than anything previously available in the United Kingdom or anywhere else. This package must be very attractive to both the United Kingdom and foreign owned companies seeking sites for new productive investments.

The situation is also helped by useful relaxation of exchange control restrictions on incoming investment from E.E.C. Previously, a United Kingdom company which was controlled by non-residents of the sterling area had to obtain Bank of England consent to borrow sterling and recent Bank of England policy has been to require them to bring in foreign exchange (or to borrow in foreign currencies in the City of London) to meet most if not all of their requirements.

Now, provided that the company is controlled by residents of an existing E.E.C. country or of Denmark or Norway this restriction is removed. (The other candidate member, Ireland, was always outside these restrictions).

United Kingdom companies wishing to invest up to £1 million in the existing or candidate members of E.E.C. can in general do so at the official rate of exchange without having to use the dollar borrowing route and without having to convince the Bank of England that the investment meets the rather stringent "super-criterion" rules.

As expected the United Kingdom is adopting the imputation form of corporation tax from April 1973.[1] Companies whose year end straddles 1st April, will have their profits apportioned, probably on a time basis. Pre-system profits will be taxed at 40% as at present. Post-system profits will be taxed at a rate to be determined in the 1974 Budget which will be on present indications 50%. Distributed profits will be treated in the hands of resident shareholders as if they had borne income tax at the intended basic rate of 30%. If a company pays a cash dividend of £70 the imputation credit will be £30. The shareholder will have to declare a gross income of £100 for tax purposes but will be able to treat the £30 notionally deducted as a credit. In appropriate cases he will be able to make a reclaim.

The company will however at the time of paying the dividend have to make an advance payment of corporation tax (A.C.T.) equivalent to the amount of the imputation. This advance will be creditable against the corporation tax due at the end of the year. In the first year of the new system the credit will only be available against that part of the tax computed at the 50% rate. Where a company has no corporation tax liabilities it will not be able to recover the A.C.T. but can carry it forward against future years. This produces the same effect as the French *précompte*. Present intentions are that there *will* be a penalty on companies which have to pay dividends out of profits which have been taxed abroad and for which credit relief has been obtained. Partly to meet this point transitional over-spill relief will continue to be granted to such companies for a period of 5 years. There are also indications that the Chancellor may have second thoughts on this point. Indeed the present E.E.C. is thinking that there should be no restrictions of imputation provided that the profits are earned within an E.E.C. country. Proposals are being considered for providing that the Government which collected the tax in the first place should compensate the Government which has to allow the imputation credit. It does appear that double tax agreements will be renegotiated to give the imputation credit (subject to the deduction of withholding tax on the dividend plus the credit) to non-residents on the lines of the French initiatives. This will probably *not* extend to the direct investments and for treaty countries at least the eventual answer will probably be that the corporation tax rate (probably 50%) will apply to subsidiary profits whether distributed or not and also to branch profits.

Changes in tax allowances will have the effect of relieving 3½ million people from tax altogether. To an extent this is the old "stage army" who keep being dragged back into the tax net as a result of inflation. Those who continue to pay tax will generally be better off to the extent of £1 per week per family.

The system of personal taxation is being simplified as from next year. The Chancellor announced the provisional rates as follows:-

1. See "Reform of Corporation Tax", XXV Bull. 303 (August 1971); "Value Added Tax", XXV Bull. 344 (Sept. 1971) and "Reform of Personal Direct Taxation", XXV Bull. 433 (Nov. 1971).

Taxable Income		*Tax*
Up to	£ 5,000	30%
5,000 -	6,000	£ 1,500 plus 40% of excess over £ 5,000
6,000 -	7,000	£ 1,900 plus 45% of excess over £ 6,000
7,000 -	8,000	£ 2,350 plus 50% of excess over £ 7,000
8,000 -	10,000	£ 2,850 plus 55% of excess over £ 8,000
10,000 -	12,000	£ 3,950 plus 60% of excess over £10,000
12,000 -	15,000	£ 5,150 plus 65% of excess over £12,000
15,000 -	20,000	£ 7,100 plus 70% of excess over £15,000
over	20,000	£10,600 plus 75% of excess over £20,000

Taxable income is after deducting personal allowances and other reliefs.

These are a slight reduction in the effective rates ruling since last year on *earned* income. Investment income was taxed at a higher rate across the board. Now the first £2,000 of net investment income after deducting interest on borrowed money and other charges will be subjected to the same rate as earned income. Any balance will be subject to an additional 15% tax. This is a straight figure calculated on income and not a percentage to be applied to the tax burden as had been expected.

Also from April 1973, the United Kingdom is abolishing purchase tax and selective employment tax and substituting a value added tax. This will be at one rate, probably 10%, plus a zero rate and a number of exemptions and the structure seems to be very straightforward. The main point of interest on a very preliminary look is that immediate credit will be given for V.A.T. on inputs representing new capital investment.

* * * * DOCUMENTS * * * *

UNITED KINGDOM

Introductory Remarks to the Value Added Tax Bill presented March 1972*

1. In his Budget Speech last year the Chancellor of the Exchequer announced that, as from April 1973, both SET and purchase tax will be abolished and a value added tax will become operative. He explained that the replacement of our present system of selective taxation by a broad based value added tax will produce a much fairer system of indirect taxation. A Green Paper was also published then as a basis for comprehensive discussions and consultations about the administration and other details of the tax.

2. Detailed discussions have since been held with trade and industry on the basis of the Green Paper. Customs and Excise officials have also visited other countries with a VAT in operation and have studied their systems at first hand. These discussions have been of great value, and in the light of them decisions have been taken on the structure and coverage of a VAT best suited to the needs and circumstances of the United Kingdom. The Chancellor in his Budget Statement today has announced the proposed coverage of the tax and confirmed that it will come into effect on 1st April 1973 when the remaining SET and purchase tax will be abolished. Draft Clauses and Schedules for the Finance Bill are set out in the Appendix to this White Paper for the information of Parliament and the public. Changes in numbering and arrangement as well as drafting changes may need to be made when the Clauses and Schedules come to be incorporated in the Finance Bill. In substance, however, they represent the Chancellor's proposals as they will appear in that Bill.

3. One of the major objectives in planning the VAT, widely shared by the many trade representatives who have been consulted, has been to keep it simple. VAT is now in full operation in eight countries. We have been able to benefit from their experience and the system which has been prepared for this country is much more simple than most. VAT is essentially a wide-ranging tax on consumer expenditure. Proposals for introducing deviations from the basic outline of the tax have therefore had to be subjected to extremely critical appraisal. In particular, it has been concluded that the introduction of more than one rate, in addition to being open to many of the objections which apply to the present multi-rate structure of purchase tax, would create excessive problems of administration for all concerned. The VAT system which is now proposed is as simple as is practicable in the circumstances of this country.

4. *Coverage of the tax*. VAT will be chargeable at a single standard rate on the supply of all goods and services in the United Kingdom in the course of a business and on all imports of goods, except where the legislation makes specific provision to the contrary. Exceptions to tax at the standard rate may take the form of either exemption or zero-rating. These terms are explained in paragraphs 10 and 11.

5. Exports will be zero-rated; so too will food (except those items now liable to

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purchase tax and "meals out"), books, newspapers (including newspaper advertising) and journals, coal, gas, electricity, petrol, the construction of buildings, fares for public transport, and drugs and medicines supplied on prescription. Full details are shown in Schedule 4 in the Appendix. Exemption will apply to land, insurance, letter and parcel post, betting and gaming (which already bear excise duty), finance, education and health services. The details are set out in Schedule 5 in the Appendix. There is provision for the Schedules to be modified by Treasury Order.

6. *Level of standard rate.* The Chancellor's intention is that the standard rate at the inception of the tax should be 10 per cent, and Clause 9 in the Appendix provides for this. In order to allow for the needs of economic management, however, the Clause also permits this initial rate to be altered, by Treasury Order made before 1st April 1973, to a rate in the range 7½ per cent to 12½ per cent.

7. *Motor cars.* The Chancellor has announced that, when VAT becomes operative, there will also be a separate tax on new and imported motor cars at the rate of 10 per cent of the wholesale value. This, together with VAT, will result in a slight reduction in the tax element in the retail price of motor cars.

8. *The VAT system.* In principle value added tax is, as its name implies, a tax which is paid by each trader on the value which he adds to any goods (or services) during his particular stage of the process of production or distribution. But although the tax is collected from traders at each stage, it is in final effect a tax on consumers' expenditure. Just as the value of the goods (or services) at the point of supply to the final consumer represents the sum of all the values added by successive traders, so the final tax which is paid by the consumer represents the sum of all VAT paid by successive traders. But, because each trader pays only the VAT attributable to the value added at his stage, it does not matter how many stages there are in the process: for any given final value, the final tax is the same. Thus VAT is quite different from a "cascade" tax, where tax is charged on the turnover at each stage so that the more stages there are, the bigger the tax bill at the end of the line.

9. *The "value added".* In practice a trader will not be required to calculate his actual value added. Instead, whenever he buys a product or service to which the standard rate of VAT applies, he will pay his supplier tax at this rate on his purchase. When in turn he supplies such goods or services to his own customers he will charge them tax at the standard rate on his sales. At regular intervals, when he has to make a return to Customs and Excise, he will add up first all the tax he has paid his suppliers in the period (his "input tax") and then all the tax he has charged his customers on his sales in the same period (his "output tax"); the difference is the amount which he will pay to Customs and Excise. If in any period his "input tax" is greater than his "output tax"—perhaps because he is stocking up, or has made a purchase of an expensive piece of equipment—then at the end of that period he will be entitled to a refund of tax from Customs and Excise.

10. *Exemption.* Where goods or services are exempt (see Schedule 5 in the Appendix), the trader does not have to charge his customer any "output tax". Unless he has other business which is taxable, he does not have to keep records and he does not have to account for any tax to Customs and Excise; on the other hand, he is not entitled to take

credit for, or to reclaim, any tax included in the price of his purchases.

11. *Zero-rating*. A trader selling zero-rated goods or services also does not have to charge tax to his customers. But unlike the trader in exempt goods or services he sells them entirely tax free because he can reclaim any "input tax" which he may have paid to his suppliers. Thus, because exports are zero-rated, an exporter may reclaim any tax paid at earlier stages in respect of goods he exports.

12. *Exemption for small traders*. Small traders will be exempt from VAT. For this purpose a small trader is one whose business turnover in taxable supplies of goods or services (including zero-rated supplies) does not exceed £5,000 a year: detailed provisions are in Schedule 1 in the Appendix. Traders who qualify for this exemption will not be required to register with Customs and Excise. They will pay a tax-inclusive price when they buy in goods or services, but they will not be required to keep VAT records or to charge and account for tax on the supplies which they themselves make: conversely no question of any relief from input tax will arise. Small traders may, however, be allowed to register voluntarily if their business is such that this will be to their advantage, and if they register they will, of course, have to keep records and accounts like other registered traders.

13. *Records and accounts*. All persons (including companies and partnerships) whose turnover in taxable supplies of goods or services (including zero-rated supplies) is above £5,000 will be required to be registered with Customs and Excise and to account for tax on their own transactions. When such a taxable person supplies goods or services in the United Kingdom, he will have to keep a record of the VAT chargeable on them and, if the supply is to another taxable person, to issue him with a "tax invoice" showing the amount of tax charged and other particulars.

14. To avoid unnecessary changes in business systems, records and accounts will not need to be kept in any particular prescribed form, and will be based on normal purchase and sales invoice records, coupled with a record of all operations affecting the business's VAT liability (e.g. receipts of taxable goods or services; supplies by the business; credits allowed to or by the business). The tax invoide issued in respect of each taxable supply to a taxable person will, again, not be in a prescribed form, but as well as giving particulars relating to the tax charge (description, quantity and price of goods or services, and rate and amount of VAT) it will need to contain other details necessary to establish its validity, to identify the supplier and the customer, and to show when the tax became due on the supply.

15. *Returns of tax*. At the end of each accounting period, every taxable person will be required to make a return of tax payable to Customs and Excise, or repayable to him, for that period. As is explained in paragraph 9, he will pay over to Customs and Excise the difference between his output tax and his input tax, and where the input tax in any accounting period comes to more than the output tax, Customs and Excise will repay the difference. Thus, once credit has been taken for input tax, any goods held in stock become effectively free of tax pending their sale. A typical trader, who charges more tax to his customers in an accounting period than he pays on purchases from his suppliers, will be liable to pay the difference over to Customs and Excise only at the end of the period, and to this extent VAT has the effect of increasing somewhat the liquidity of traders overall.

16. The standard accounting period will be three months, with a month's grace for paying the quarter's net tax, and accounting periods will be so allocated that about one-third of the total number of three-monthly returns will be due each month. When, however, a taxable person expects that his input tax will regularly exceed his output tax (for example, because he is an exporter and most of his outputs are zero-rated) he will be eligible for a shorter accounting period of one month so that he may obtain earlier repayments. The quarterly or monthly return form will be sent to the taxable person at the appropriate time by Customs and Excise, and will ask for information about tax due and tax deductible, together with particulars of the value of outputs in each tax category and of taxable inputs.

17. *Registration*. The process of registration will start in October 1972. Full publicity will be given to the arrangements nearer the time. Those liable to register will then be able to obtain from Customs and Excise leaflets explaining the tax in detail and a copy of the form on which they will need to make their notification. There will be provision for considerable flexibility in regard to registration of companies. For example, a group of associated companies may apply to be registered as one trader for VAT purposes, and it will be possible for a company to apply to have its various divisions registered separately.

18. *Partial exemption*. Most traders will be wholly inside or outside the scope of the tax. But where part of a taxable person's business is in exempt supplies and part is in taxable supplies, some allocation of input tax between the two types of output will be necessary. If, say, only half of a trader's outputs are taxable, only half the input tax may be deducted. (This simple formula will not, however, be appropriate to every case.) At the end of each accounting period the partly exempt trader will determine the amount of input tax which he may deduct for that period. This deduction will be provisional; at the end of the year the amount of deductible input tax will be determined finally in the light of his trading pattern for the year, as shown by his periodical returns, and any overpayment or underpayment of tax resulting from the provisional calculation will be adjusted. In order to simplify accounting, there is provision in Clause 3 in the Appendix for dispensing with allocating input tax between taxable and exempt supplies in cases where the trader's exempt outputs are not significant.

19. *Special schemes for retailers*. Even with the basically simple tax structure that is proposed, accounting problems are bound to arise for some businesses in so far as they deal in goods liable at both standard rate and zero rate. In order to simplify the administration for these businesses, enabling powers are included in Clause 30 in the Appendix to allow special methods of accounting for the tax by retailers in cases where it would be unduly difficult for them to operate the normal rules. There will be a range of special methods allowing output tax on sales of goods to be assessed by reference to purchases in each tax category, thus avoiding the need for detailed records of outputs to be kept. Information about these schemes is being made available to interested trade associations.

20. *Special scheme for local authorities, etc.* Local authorities' business activities will generally be treated in the same way as those of ordinary traders. However, their welfare and other non-business activities will be outside the scope of the tax and VAT falling on any purchases by them of goods and

services for these activities will not be deductible under the normal credit mechanism. In order to avoid the tax on these purchases burdening the rates or rate support grant, special arrangements will be made under Clause 15 in the Appendix for the tax to be refunded by Customs and Excise.

21. *Second-hand goods.* In general, there will be no special rules for second-hand goods, and the consideration for a sale of such goods by a taxable person in the course of his business will be chargeable with VAT in the ordinary way. There is, however, provision in Clause 14 in the Appendix for a special scheme to be introduced in exceptional cases (e.g. cars) where it is appropriate for the tax to be assessed on a different basis; details will be worked out in discussion with representatives of the trades concerned.

22. *Capital goods.* After careful consideration of various schemes for the special tax treatment of the acquisition or disposal of capital goods, it has been decided that any advantages such schemes might have are unlikely to justify the work and form-filling that they would involve. No special rules are therefore proposed, though there is power to introduce them later if they prove to be needed. When a capital asset is acquired by a taxable trader, the input tax paid on it will be treated in the same way as any other input tax: it will attract an immediate credit in the accounting period in which the tax invoice is received. And when capital goods are disposed of, they will be treated like other second-hand goods sold in the course of business, the value of the disposal being included in the total value of the trader's taxable supplies in the period in question.

23. *Imports.* Administratively, VAT payable on importation will generally be treated in the same way as customs duty, except that Clause 18 in the Appendix empowers the Commissioners of Customs and Excise to make regulations allowing taxable persons to take delivery of imported goods without at that time paying the tax chargeable. Wholly taxable persons will be allowed to account for import VAT by entering it in their ordinary output tax account, and at the same time to claim an input tax deduction of the same amount. The effect will be that the two items cancel each other in the return for the accounting period in question. Of course, when the point of subsequent sale or disposal is reached, output tax will be chargeable in the normal way.

24. *Self-supply and transfers to personal use.* Under Clause 5 in the Appendix a supply of goods or services will normally involve a transaction between two persons. There are, however, two cases in which a supply will be deemed to result from the action of a single person. The first is where a taxable person uses goods stocked or produced by his business for private purposes (whether of himself or someone else): Schedule 2 in the Appendix provides that such applications to personal use shall be taxable. The other may occur if an exempt or partly exempt business decides to supply its incidental needs from its own resources (for example, to print its own stationery) rather than by purchasing them from outside, when it would have to pay input tax which would be non-deductible. This may result in significant distortion of competition against the normal suppliers of the goods or services involved, and the Treasury will then be able, under the power in Clause 6 in the Appendix, to make an Order treating the self-supply as taxable. If the trader concerned is, or becomes, registered, output tax will then be payable on the value of the supply, but a deduction of the tax paid on inputs to it may be claimed. It is

intended that an Order of this kind should be made in respect of stationery, operative from the start of the tax.

25. *Non-deductible inputs.* All countries with a VAT have found it necessary to restrict the right to claim credit for tax on inputs in the case of certain goods and services, in particular those which are likely to be used for both business and private purposes. Clause 3 in the Appendix gives enabling powers to apply similar restrictions. These powers will be utilised from the start of the tax only in respect of business cars and business entertaining (other than that provided for overseas customers).

26. *Appeal machinery.* In the event of a dispute about the tax between a trader and Customs and Excise, it is important that there should be an easy and inexpensive method of resolving the dispute as quickly as possible. Clause 40 and Schedule 6 in the Appendix therefore provide for a system of independent VAT tribunals to which persons affected by the tax will be able to appeal if they think that the decision of Customs and Excise on any of the matters listed in Clause 40 is open to challenge. The tribunals will be the sole judges of fact on any matter referred to them, but an appeal will lie from their decision on points of law to the ordinary Courts.

27. *Transitional arrangements for retail and other stocks.*

(*a*) *Goods chargeable with purchase tax.* The Chancellor of the Exchequer, in his Budget Statement today, referred to the problem of stocks held by retailers and other traders which have borne purchase tax and which, if unsold when VAT is introduced, will attract VAT as well. He has proposed that those traders dealing in the goods listed below should, by agreement with Customs and Excise, use sale or return arrangements so that goods remaining unsold when VAT is introduced and purchase tax abolished will be free of purchase tax. Such arrangements are already widely used, with for example motor cars, and they work satisfactorily.

	Purchase tax groups
Furs and fur goods	1(*b*), 2(*b*), 8(*a*), 9(*b*)(i)
Jewellery (real or imitation), clocks and watches, and precious metal articles of personal adornment	4(*a*) and (*b*), 17
Domestic appliances and apparatus (except the non-electric non-gas bottom rate goods)	12(*b*) to (*e*)
Radio and television receivers, valves, loudspeakers ..	18
Musical instruments, gramophones	19(*a*) and (*b*)
Gramophone records ..	19(*c*)
Tape recorders/reproducers	19A(*a*)
Tapes and containers	19A(*b*) and (*c*)
Cameras, enlargers and projectors	24(*a*) and (*b*)
Road vehicles	27
Hair waving and hair drying machines	30(*c*)

For other goods, it is proposed to remove purchase tax by Order a short time before VAT is introduced. This will provide traders with a period within which to dispose of stocks on which purchase tax has been charged and to build up stocks which have not borne purchase tax in preparation for the introduction of VAT. The precise timing will be announced nearer the date of the changeover.

(*b*) *Goods chargeable with revenue duties.* The extent to which a duty-paid stocks problem

may arise in the case of alcoholic drinks, tobacco, matches and mechanical lighters will depend on whether the revenue duties on these goods are altered when VAT, to which they will also be liable, is introduced; this in turn will depend on the total revenue required from these duties in 1973-74. As the Chancellor of the Exchequer announced in his Budget Speech, he proposes to take power to make any appropriate reduction in these duties by Treasury Order; in that event, the date of the change will be so arranged as to provide a similar solution for stocks as is envisaged for purchase tax. No stocks problem arise with hydrocarbon oils since these will be zero-rated under VAT.

28. *Further action*. Customs and Excise are ready to continue the consultations they have been having with representative trade bodies about the detailed operation of the tax, and to give advice and guidance on any problems connected with it. Later this year steps will be taken to ensure that traders are aware of their liability to register and of the need to notify Customs and Excise of the fact. Customs and Excise will make available comprehensive literature explaining what has to be done, both for registration and subsequently. Different blocks of traders will be asked to notify by different dates, starting from 1st October 1972, so as to provide a steady flow of registrations and to ensure that all those liable to registration are in fact registered before April 1973. Those who would like any further information about VAT requirements should consult their local Customs and Excise office.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

INDIA

Excerpts from the Finance Minister's Budget (1972-73) Speech

Sir, without taxing the patience of honourable members any further, I should proceed now to the business of taxation proper.

Having introduced virtually three budgets in the past 12 months, I might well be expected to declare a holiday from further taxation for at least one year. But I am afraid I cannot allow myself such unique distinction.

A deficit of Rs.375 crores cannot be left wholly uncovered without danger to price stability. We have also certain commitments to the State Governments to raise revenue on their behalf. Fiscal policy must service the larger objectives of self-reliance and equity. Nor should I fight shy of making a few concessions. The introduction of a new Budget is also an opportunity for a certain amount of spring cleaning.

The Direct Taxes Enquiry Committee under the chairmanship of Mr. K. N. Wanchoo, ex-Chief Justice of India, submitted their report last December. It contains a number of valuable and far-reaching suggestions for unearthing black-money, preventing evasion and avoidance of taxes and reducing tax arrears. Copies of the report will soon be made available to honourable members. It has often been said in this House that basic changes in the tax system should be introduced by means of a Taxation Amendment Bill, rather than through the annual Finance Bill so as to give honourable members more time for a detailed consideration in the light of discussion both within and outside the House.

Accordingly, I propose to bring forth a separate legislation as early as possible to give effect to those recommendations of the committee which are acceptable to the Government and which require a major change in the present tax laws.

There has been a feeling for some time in the country that a family consisting of husband, wife and minor children which constitute a common unit of consumption and as such a common focal point for the incidence of indirect taxation, is also a more appropriate and equitable basis for purposes of direct taxation subject to certain safeguards for wives at work.

The present tax treatment of Hindu undivided families has also encouraged tax avoidance. On these two related questions, the members of the Wanchoo Committee have made several alternative suggestions. The Government will examine these suggestions carefully and sponsor separate legislation in due course for restructuring the Income Tax Act and the Wealth Tax Act to the extent necessary.

In the meanwhile, I propose to introduce through the Finance Bill a few changes in the direc tax structure which are designed either to produce some additional revenue in a difficult year or to give effect to such recommendations of the Wanchoo Committee as can be easily incorporated in the present tax laws.

On the assumption that no news is good news, I propose to make no change in the rates of income tax as also of surcharge on income tax in the case of tax-payers other than companies.

In order to remove any temptation that people may feel for neglecting their regular duties in favour of any casual or ephemeral

or even imaginary pastime, I propose to withdraw the present exemption in respect of casual and non-recurring income when it exceeds Rs.1000 in a year.

DIRECT TAXATION

However, a Finance Minister in particular should not frown upon those who are specially favoured by the Goddess of good luck. Accordingly, winnings from State or other lotteries will be taxed on a concessional basis. Those who win a prize in a lottery are, perhaps, in the same happy position as people who enjoy a capital gain when their property appreciates in value without any effort on their part. On this principle, in computing incomes from such winnings, a deduction of Rs.5,000 plus 50 per cent. of the balance will be allowed.

However, even those who are favoured by good luck make their offering first at the altar of the exchequer. I propose, therefore, to provide for deduction of tax at source at the rate of 34.5 per cent. from crossword puzzles and lotteries. Casual losses will be allowed to be set off only against the same type of income.

I propose to provide for deduction of tax at source at the rate of 2 per cent. of the payments made to contractors by the Government, local authorities, statutory corporations and companies. Payments made in turn by contractors, other than individuals and Hindu undivided families, to sub-contractors will attract a deduction at the rate of 1 per cent. I hope this alliance between the Revenue Department and contractors will lead to prompter payments all-round.

With effect from April 1, 1972, the Government will pay a rate of interest of 12 per cent. per annum on the amount of refund, the payment of which is delayed. Honourable members will recall that at present the rate of interest we pay is only 9 per cent. per annum. It is only fair that the interest charged when there is delay in the payment of direct taxes to the Government is also similarly increased from 9 per cent. to 12 per cent. per annum.

Capital gains arising from the transfer of jewellery held for personal use are not so far chargeable to the capital gains tax. This has given rise to fictitious transactions in jewellery in order to regularise incomes which have escaped taxation. I propose, therefore, to repair this omission.

Dividends received from co-operative societies are at present completely exempt from income taxation. I see no justification for this exemption and propose to withdraw it. Such dividends, however, will be included in the categories of income which qualify for exemption from income tax upto Rs.3,000 in a year.

These measures are likely to yield Rs.6 crores in a full year and Rs.3 crores in 1972-73 of which some Rs.2 crores will be the share of the States.

Coming to corporate taxation I propose to do away altogether with the special deduction of 5 per cent. of profits in the case of domestic companies engaged in proprietory industries. This will yield Rs.6 crores in a full year and Rs.4.5 crores in 1972-73.

Some months ago when we levied special surcharges, many honourable members had asked why the surcharge on company taxation was fixed at 2-1/2 per cent. when a surcharge of 5 per cent. was levied on many other items, including railway passenger fares. I propose now to remove this discrimination. For the assessment year 1972-73, the surcharge will continue to be 2-1/2 per cent. of the income-tax payable by all companies. However, on income-tax payable in advance during the financial year 1972-73, the surcharge would be at the rate of 5 per

cent. This change will yield Rs.12 crores over a full year and Rs.9 crores in 1972-73.

INDUSTRY

Finally, I come to the demand which has been made by industry that while the development rebate may be withdrawn, Government should introduce some other fiscal concessions and announce them in advance so as to impart a continuing momentum to industrial growth in the country. Government is not averse to the grant of fiscal concessions. It is, however, felt that fiscal concessions for promoting industrialisation should not be general or across-the-board in character but should relate specifically to our social and economic objectives. Again, as far as possible, it would be desirable to provide incentives which encourage the use of those resources, such as labour, which are in abundant supply rather than of resources, such as capital, which will continue to be scarce—for a long time to come. The Wanchoo Committee has made a number of recommendations with different objectives in view. After examining all these suggestions carefully, we propose to come up with specific provisions in the Taxation Amendment Bill which is proposed to be introduced later in the year. These provisions would be designed primarily to promote industrialisation in the backward regions of the country.

The total yield of all the changes in direct taxation will be Rs.24 crores in a full year and Rs.16 crores in 1972-73 of which the share of the Centre would be approximately Rs.14 crores. I could also have taken credit for improvement in tax collections as a result of the many changes designed to reduce tax evasion. But I have decided not to credit myself with any such gains in advance.

Sir, may I now turn to what are perhaps euphemistically called indirect taxes?

CUSTOMS DUTIES

I have only one main proposal in regard to customs duties. It will be recalled that in December last, we had imposed a regulatory duty at the rate of 2.5 per cent. ad valorem on most imported products and a higher duty of 10 per cent. on a few selected items. The need to exercise a general restraint on imports remains as great as ever. It is also necessary in imposing regulatory duties to ensure that the simplification of the import tariff which was introduced last year is not unduly disturbed. Accordingly, I propose to apply the 10 per cent. ad valorem rate to all items which pay a duty of 100 per cent. or more as well as to the few selected items which were included in the 10 per cent. list last December. A new rate of 5 per cent. ad valorem will apply to all items on which a duty of 60 per cent. or more but less than 100 per cent. is payable. The remaining items will continue to bear the regulatory duty of 2.5 per cent. However, those items which were totally exempted last December will continue to remain so. These changes will result in an additional revenue of Rs.8.60 crores in a full year.

UNITED KINGDOM

Excerpts from the Finance Minister's Budget (1972-73) Speech

In January we shall become part of a new market of 300 million people. This enlarged outlet for our goods and services, together with the present scope for expansion, provide our country with an unparalleled opportunity over the coming years. The various proposals which I shall put to the House today are designed to help British industry to modernize, to re-equip and to reorganize to meet the challenge of greater international competition and they are designed to ensure that we take full advantage of this unique set of circumstances to build a more prosperous Britain.

But if, because of the opportunity which is opening up, we are right to set our sights high and to look with confidence beyond the immediate future, we are also right to regard with profound concern the immediate problem of a level of unemployment which has persisted, despite the unprecedented action to counter it which has been taken over the past year.

So these are my aims in presenting this Budget:

First, that as we set out on our European venture, British industry should have every encouragement to be efficient and forward-looking.

Second, that the British economy should grow at a sustained and faster rate, and so bring a permanent improvement in both employment and living standards.

Third, that we should make further progress with taxation reform, so as to evolve a system which is more just, and a system which over the years and decades ahead will help to create a greater national wealth.

The House will recall that last year I announced plans for the radical reform of company taxation, of indirect taxation and of personal taxation. All these three reforms will become operative a year hence, in April 1973. Because of the needs of business planning, including computer programming, it is now more than ever desirable that people should know as far ahead as possible what are our present intentions about future tax measures. I shall therefore be setting out not only the structure and main details of the changes, but I have decided that it is right to take the unusual step of giving today my present ideas about the new rates for next year, even though the House and the country will recognize that these may have to be changed if circumstances alter. In doing this, I am following the principle of more 'open Government' in matters of taxation wherever I can, as indeed I did last year.

I shall also put forward further proposals for the reform of our taxation system, and, in particular, for the longer term, a scheme which I shall in due course ask the House to consider, for a fundamental simplification and bringing together of our systems of pay as you earn and social security.

I have come to the conclusion that the stimulus to demand will have to be sufficient, taking account of both direct and indirect effects, to raise output in the first half of next year by about 2 per cent.

The measures I shall put to the House are intended to ensure a growth of output at an annual rate of 5 per cent between the second half of last year and the first half of next. I have chosen as my base period the second half of last year because a much firmer estimate can be made of the level of output in that period than in the current half-year,

especially in view of the uncertain effects of the coal strike.

This growth rate of 5 per cent is a "central forecast", and I stress that because of the many uncertainties to which, as every former Chancellor knows, such predictions are necessarily subject. This is the reason why policies must be flexible, and why the only sensible course is to be ready to act at any time of the year, as indeed I did last year.

If my present expectations are correct, output will have risen by 10 per cent over the two-year period from the first half of 1971 to the first half of 1973. The extent to which there will be a reduction in unemployment is bound to depend on our success in slowing down inflation. If particular groups insist on pricing themselves out of jobs and the nation out of business no Government can secure full employment.

For the very purpose of avoiding "stop-go" and specifically in order to maintain steady growth over a period of years, there will doubtless from time to time need to be measures to regulate demand; and these may be in either direction. But, the prospect for expansion and for growing prosperity over the next five years must surely be better than they have been for a very long time.

This Budget is designed to set us on that path.

REFORM OF CORPORATION TAX: CHOICE OF SYSTEM

In last year's Budget speech I announced my intention to reform the structure of corporation tax in order to remove the present discrimination between retained and distributed profits. I explained that this discrimination distorts the capital market, tends to misallocate scarce investment resources, impedes companies that need to raise equity capital, and lessens the pressure for efficiency.

In the Green Paper on the reform of corporation tax which I published last year it was stated and explained that, in order to achieve our objective, there were only two real alternatives, a two-rate system or an imputation system which could be very similar in substance. Those two alternative systems were fully described and I invited views about the choice.

Since then there have been important consultations with industry, commerce, and the professions about the alternative systems. These have been invaluable and have fully justified the decision not to introduce legislation until those who would be mainly affected by it had been consulted.

In addition, the choice set out in the Green Paper has been considered by the Select Committee under the distinguished chairmanship of my hon. and gallant Friend, the Member for Walsall South, and we now have the benefit of their views. That Select Committee, like the Green Paper itself, was a new departure, although it was one which put into practice the view often expressed by those of us on this side of the House, that major tax changes should so far as possible be preceded by full and careful public consultation. The Select Committee completed their task with thoroughness and speed and the whole House will agree that their report fully justified the innovation.

I should tell the House, frankly, that last year, when I announced the proposal to reform corporation tax, I had a preference on domestic grounds for the two-rate system.

Having said that, the fact is that the majority of those with whom we consulted clearly favoured an imputation system. So did the Select Committee, by a unanimous recommendation.

I have reconsidered the matter in the light of this advice, and have come to the conclusion that the advantages of the two-rate system

are not sufficient to outweigh the arguments that have been put forward in favour of the alternative. I therefore accept and endorse the Select Committee's main conclusion that the form of corporation tax to be introduced in this country ought to follow the imputation system set out in the Green Paper, and this is what I propose. The legislation will be in this year's Finance Bill and the new tax will come into effect as from April next year.

I should add that in the course of the year I have been keeping closely in touch with developments in the Community, where they are engaged in a programme to harmonize the structure of their company taxation. They have not yet reached a conclusion, but the choice which we have made puts us in line with both France and Germany.

During the Budget debates my hon. Friend the Financial Secretary will be describing in greater detail the main features of the new corporation tax. I also thought that it would help the House, and those outside, if I were to publish, at the same time as the Finance Bill, a descriptive White Paper on the new corporation tax, and this will be done. There are however a number of matters on which it may be helpful for me to comment now.

INTERNATIONAL COMPANIES

I have given a great deal of consideration to the position of those companies—and they include a small number of very important ones—which derive their profits and income wholly or mainly from overseas countries where the rate of tax is as high as, or higher than, it is here.

What these companies wanted was in substance a return to the arrangements, like those in force up to 1965, where the excess of a company's overseas tax on its profits over the United Kingdom tax on those profits could be used to reduce the income tax on the shareholder's dividend. I made it clear in the Green Paper that this was not an alternative which the Government would favour and I am sure, with the benefit of a further year for reflection, that that decision was right.

In reaching this conclusion I am, once again, reinforced in my view by the Select Committee. The Select Committee did not, of course, formally consider the possibility of a return to pre-1965 arrangements; they were choosing between the two systems which the Green Paper had indicated as the real alternatives. But they gave a great deal of consideration to the problem of companies trading mainly in countries abroad with high tax rates; indeed, they took more evidence on this point than on any other.

Their views were clear and again unanimous. They said, first, that '... . it is hard to see why double taxation relief should be so extended as to allow a United Kingdom based company not only to pay no corporation tax, but also to pay its shareholders net dividends on which no standard rate income tax has, in fact, been paid'; and second, they said '. . . your Committee on balance . . . plump for the imputation system with a minimum corporation tax charge as an essential element'.

In addition to conforming with the unanimous view of the Select Committee on this point, there is another compelling reason for my decision. It is this. To give the overseas companies the relief they want would cost the Exchequer something of the order of £100 million a year, equivalent to increasing the rate of corporation tax for the generality of companies by 2.5 percentage points. The alternative would have been to have recouped the lost revenue from the general body of taxpayers.

It is right, too, to note that for most com-

panies trading overseas, relief for overseas tax under the new system will in fact be more favourable than at present. Furthermore none will be worse off, not even the companies whose only profits are earned in high rate countries abroad.

Indeed, what these companies fear is not that they will be worse off, for they will not. What they are apprehensive about is that they will not be able to benefit as much under the new system as companies which have at least enough United Kingdom income to cover their dividends. And so they fear that their access to new capital for expansion and development may be impaired. I believe that these fears are exaggerated; I recognize, however, that they are very real to the companies concerned, and I recognize too that these companies play a most important part in the economic life of the nation. It is for these reasons that I have decided that although I cannot meet their case in full it would be right to give them some further relief for a transitional period. The present overspill payments will therefore be continued at their 1971-72 level for the period up to the end of 1976-77; by then we should be in a position to judge whether the companies' fears have in fact been realized. For the purpose of this transitional relief I propose to leave the overspill rules unchanged with the single exception, logical under the new system, that as from 1972-73 increases in dividends will no longer diminish entitlement to overspill. This extension of transitional relief will cost £12 million in 1972-73 and £25 million for each of the four following years.

It is right that I should refer to the rate of the new tax. Because the tax will not become operative until April 1973, it will not begin to be paid for the most part until January 1st, 1975. The normal practice therefore will be for the rate to be fixed in the 1974 Budget and it will need to be determined in the light of the circumstances at that time.

This is two years ahead and for the moment I can do no more than base what I say on the 50 per cent rate which was taken for the purposes of illustration in the Green Paper, but I must stress that this is purely illustrative and that the actual rate cannot be fixed at this moment of time. I can, however, give the rate of advance payment as this is determined by the basic rate of income tax of 30 per cent. The advance payment of corporation tax will therefore be three-sevenths of the dividend paid.

CAPITAL GAINS OF COMPANIES

I come now to the treatment of capital gains of companies and I deal first with companies in general. The Green Paper recognized that it would not be appropriate for the rate of tax on companies' capital gains to rise in line with the increase in the rate of tax on retained profits. It therefore envisaged that the overall rate of tax on gains might be reduced by the expedient, which is administratively simple, of leaving part of each gain out of account but charging the remainder at the full corporation tax rate.

This approach was endorsed by the Select Committee and I propose to follow it. The fraction of the gains to be left out of account will be fixed at the same time as the new corporation tax rate. If I were fixing it now, I should proceed on the basis that the effective rate of tax on companies gains should be 30 per cent.

SHARE OPTION AND INCENTIVE SCHEMES

In 1966 the Finance Act charged to income tax all gains from share options given by a company to its employees or directors. That legislation, as was no doubt intended,

effectively put a stop to share option schemes. But, as the House knows, there has since grown up a variety of share incentives schemes under which gains to participants are liable only to capital gains tax.

I believe it is now recognized on both sides of the House that the 1966 legislation was altogether too drastic and that, contrary to the view which was then put forward by Treasury ministers, share options have a proper and valuable role to play in stimulating management enterprise and in helping industry to recruit and to keep the management talent that it needs.

The Finance Bill will therefore contain provisions under which share option schemes which are approved by the Inland Revenue as meeting prescribed conditions will be exempted from the 1966 legislation. Gains from other schemes will continue to be charged to income tax, and so in future will gains from share incentive schemes which do not meet similar conditions. The conditions will be broadly similar to those which responsible bodies regard as necessary to safeguard shareholders' interests.

FREE DEPRECIATION

For very many years the leaders of British industry have called upon successive Governments to introduce nation-wide free depreciation for all investment in plant and machinery. The problem is, of course, that to do this would remove the present taxation differential between the country in general and the development areas where, the House will recall, I introduced free depreciation in October 1970.

The other request which has repeatedly been made by industry is for investment incentives which are stable and easy to understand.

As from tomorrow, free depreciation—that is to say, a 100 per cent first-year allowance—will be introduced throughout the whole country for all investment in plant and machinery, other than passenger cars, whether the investment takes place in a development area or not.

For the sake of simplicity free depreciation will apply equally to investment in new and second-hand equipment.

In other words, as from tomorrow the whole country will enjoy the taxation treatment previously reserved for the development areas.

For industrial buildings the rate of initial allowance for new buildings outside the assisted area, which was due to revert to 15 per cent on April 6th this year, will be increased to 40 per cent. This means that the 40 per cent rate of initial allowance for new buildings will apply throughout the country.

Again, in this respect also, as from tomorrow the whole country will enjoy the taxation treatment previously reserved for the development areas. The cost of all these changes will be £5 million in 1972-73 and £115 million in 1973-74.

RATE OF CORPORATION TAX

There will be no change in the rate of corporation tax for the financial year 1971.

VALUE ADDED TAX

The House will recall that a year ago I announced a major reform of indirect taxation under which a value added tax would be introduced in April 1973 and, at the same time, purchase tax and SET would be abolished. A Green Paper was published as a basis for consultation with trade and professional associations and other interested parties. That procedure has been widely welcomed and the Customs and Excise Department have had separate discussions

with more than three hundred organizations. This process of consultation has been invaluable in planning the details of the tax with the object of ensuring that, from the point of view of industry and commerce, it will be at least as simple to operate as in any of the eight European countries which now have a VAT, and much simpler than in most of these countries. Our objective has not merely been to design a VAT, but to design the best possible form of VAT. There can be no doubt that the Green Paper procedure, and the consultations which have followed, have paid handsome dividends.

Last November I announced that I would publish the VAT legislation during the Budget debate instead of waiting for the publication of the Finance Bill as a whole. This draft legislation forms an appendix to a White Paper in which is set out an explanation of the main features of the tax. This will be a help both to the House and to those outside. In the course of the Budget debates, my hon. Friend, the Minister of State, will be giving details of the tax. This afternoon I must of necessity concentrate on those aspects which are of wide general interest.

TAX-PAID STOCKS

Before I come to the tax itself, I deal with one particular aspect of the transition from purchase tax to VAT which is both difficult and important—the treatment of stocks which will have borne purchase tax and which, being still unsold when VAT begins, will then attract VAT. The problem of purchase tax paid stocks has been with us on a number of occasions over the years. It was not a problem for the previous administration because it arises only when purchase tax is reduced. No satisfactory solution has hitherto been found. But the fact remains that if no relief were given, many retailers and others holding stocks of purchase tax paid goods would seek to protect themselves by running down their stocks. Moreover some retailers might increase their prices in order to recover both the purchase tax and VAT on their goods.

This is a very difficult problem of transition, and I have considered a number of ways of dealing with it. In fact there is no perfect solution.

It would be wholly impracticable to attempt an accurate stock-taking on April 1st of every one of the half-million businesses concerned, and then seek to estimate the purchase tax they had paid. What is wanted is a formula which is simple, which involves the minimum of additional work at a time when everyone will be occupied with the preparations for VAT, and which yet gives traders a reasonable measure of relief. After consulting a number of those concerned, the problem will be tackled in two ways.

First, those dealing in readily identifiable goods will be able to use sale or return arrangements, so that if the goods are still unsold when VAT comes into operation there will be no liability to purchase tax. Most cars and many consumer durables are, in fact, already sold under these arrangements, which work well.

For other goods purchase tax will end a short time before VAT is introduced, so that in preparation for it retailers will have an opportunity to build up stocks which have not borne purchase tax.

Details of these proposals are given in the White Paper, and there will be further consultations with trade interests. This scheme will have the advantage of benefiting the cash flow of traders. Similar problems will arise in respect of stocks of goods subject to the Revenue duties if those duties are reduced to avoid increases in the total level of taxation of the goods concerned when VAT comes into operation.

The extent to which I can make such reductions must take account of economic circumstances nearer the time. I propose, however, to take a power, to be used only before the introduction of VAT, to make appropriate reductions in the Revenue duties by order.

RATE STRUCTURE AND COVERAGE

I now turn to the structure of the tax—both the rate structure and the coverage. In those countries which operate a VAT, the number of rates varies widely. I am referring to the number of positive tax rates, not including the zero-rate.

Most countries have several rates. For instance France and Belgium have as many as four rates. Others have only one rate. It is self-evident that the fewer the different rates, the easier the tax is to administer, the easier the tax is for the business community to operate, and the fairer and less distorting the tax is.

I am convinced that this is right. I have therefore decided that there will be only one uniform rate of value added tax. What this rate should be, I will return to shortly, when I have described the coverage of the tax.

There is one area to which special considerations apply. Motorcars represent a major source of revenue from purchase tax—at present more than £300 million a year. To forgo a substantial proportion of this revenue would inevitably mean a significant increase in the rate of VAT on all other goods and services. There will therefore be, in addition to the VAT, a separate tax on new and imported cars of 10 per cent of the wholesale value, which will come into force at the same time as the VAT. The House should know that these two taxes on cars will together yield considerably less than the present 30 per cent purchase tax on cars, and this reduction in yield should be reflected in car prices.

The Finance Bill will include a regulator power to change the VAT rate between Budgets for the purposes of economic management, and this will of course apply to VAT generally, including cars. I have, however, decided that the new car tax will not be subject to a regulator power.

MAIN EXEMPTED AND ZERO-RATED CATEGORIES

I would remind the House of the difference between exemption from VAT and zero-rating. In broad terms a firm which supplies zero-rated goods or services gets complete relief from VAT both on its purchases and on its sales. One which is exempt is completely outside the tax; it does not have to charge tax on its sales but it cannot reclaim the tax on its purchases.

As is the case in all European countries with a VAT, there will be exemption for a variety of financial services including insurance. There will also be exemption for postal services, for education and health services, and for certain other areas, details of which are set out in the White Paper.

As far as charities are concerned, VAT will apply only to taxable activities undertaken by way of business. So only those few charities who supply taxable goods or services exceeding £5,000 per annum will in fact be subject to tax. The vast majority of charitable activities will therefore be outside the tax, and the overall effect on their costs of the changes in indirect taxation, taking into account the abolition of purchase tax and SET, is likely to be very small. When account is taken of the proposals I have already put to the House on the direct tax side, it is clear that charities will be substantial net beneficiaries from this Budget.

In our election manifesto we promised that VAT "would not apply to food, except for those few items already subject to purchase tax". This undertaking will be honoured. Food, other than those foods now subject to purchase tax will be zero-rated. Those items at present liable to purchase tax are estimated to yield about £150 million in the coming financial year, and if they were to be relieved altogether from VAT there would have to be a commensurate increase in the rate of VAT. They will therefore be charged at the standard rate. The overall effect of these proposals, together with the abolition of SET, will be a reduction in the burden of tax on food.

In the last Budget I said that newspapers, periodicals and books would be relieved of the tax. These too will be zero-rated. In the case of newspapers, zero-rating will apply not only to sales but also to advertising. This is right because there are special circumstances attaching to newspaper advertising, in particular the large volume of advertising by private persons. The relief will not apply to other advertising media.

Advertising on television, for example, will be undertaken almost exclusively by registered traders who will be able to reclaim the tax on this advertising under the ordinary accounting procedures of the tax.

In our election manifesto, we also said that under a VAT "special arrangements would be made for housing". The details are set out in the White Paper, but in broad terms what they amount to is that all new construction, whether of houses or other buildings, will be zero-rated, while other transactions in land and buildings will be exempt. This means that new housing will be wholly relieved from VAT. What is more it will also be relieved from the SET which is now a significant addition to housing costs. In addition all rents will be exempt and there will be full relief for local authority rates. Exports of goods will of course be zero-rated, as well as certain other items, mostly connected with exports.

One of the arguments which has been repeatedly put forward against a single rate tax is that there should be a special lower rate (as there is in some other countries) for such essentials as fuel—gas, electricity, coal—and passenger fares. I did consider these representations carefully but, as I have told the House, my conclusion was against a special lower rate for these items. But fuel and fares, like food and houses, are of special importance to poorer people, and I have therefore decided that they shall have the most favourable treatment, and be zero-rated.

RATE OF VAT

I now turn to the question of the rate at which VAT will be charged when it is introduced a year hence. As with all future rates of taxation, a final decision can only be taken in the light of the economic situation at the time.

But I am sure that it is right, in order to help industry and commerce with its forward planning, that I should state now the rate which I have in mind. Indeed I think it is right to go further and to provide for that rate in this year's Finance Bill. In order to allow for the needs of economic management at the time when the tax comes into operation, the legislation will also include a once for all power to substitute by Treasury order, before April 1st, 1973, a rate within a range of 2½ percentage points on either side of the prescribed rate. In other countries with a VAT there is a wide range of standard rates, from the lowest figure of 10 per cent in Luxembourg up to the highest, 23 per cent, in France. The rate prescribed in the Finance

Bill will be 10 per cent. The House should know that, even taking into account the special arrangements for cars, the yield will be less than the comparable yield of purchase tax and SET at current rates.

To sum up. The particular value added tax designated for the United Kingdom will be at least as simple to operate as in any of the countries which now have a VAT, and much simpler than in most of those countries. What is more, no country in Europe has a lower standard rate than the one I propose. Over the past years there has been much talk about the relative effects of the change to VAT on different levels of family income. In particular, it has been suggested that the change from purchase tax, with its high rates on so-called luxury goods and low rates on so-called essentials, to a single rate of VAT might bear more heavily on the poor than on the rich. Yet in practice these definitions of luxuries and essentials devised in the main thirty years ago have little relevance today. It makes no sense that, for example, television sets, electric, gas or paraffin heaters are taxed at 30 per cent while items such as Persian carpets or the latest Paris fashions should be taxed at a mere 11¼ per cent. And I am sure hon. Members opposite will be hard put to explain why, to take two pertinent examples, boats should be exempt from purchase tax while pipes are taxed at 45 per cent!

The VAT I have outlined has been deliberately designed with the interests of low income families in mind. Food and housing will be relieved of the tax and these are, of course, very important items in the budgets of lower income families. SET which at present enters into the cost of both food and housing, will go. If I had stopped there it would have been open to question whether the change would be regressive. But I am going much further. Fares and domestic fuel and light will also all be zero-rated. The decision on fuel is almost as important in this respect as the decision on food, because fuel, like food, takes up a significantly larger proportion of the budgets of low income families, including, of course, pensioners, than of those who are better off. There is therefore no reason to fear that the change-over to VAT will be regressive.

ESTATE DUTY

As the House knows, a number of threads run consistently through the taxation reforms on which we are engaged—the need to restore incentives, the need to encourage savings, and the need to create conditions in which men and women can, by their efforts, contribute effectively not only to their own well-being but to the prosperity of the country. Last year, I announced major reforms of personal income tax, of corporation tax, and of the whole system of indirect taxation.

On the first we legislated last year and, as I have already said, the second and third will be covered in this year's Finance Bill. The House will be relieved to know that I do not propose that this year's Bill should also provide for the complete reform of the system of taxation of capital on death.

But the time has now come when we should begin to consider whether the estate duty, which has been with us for about 80 years, is in fact the right means of taxing capital on death. Other countries have evolved systems which are fundamentally different from ours. Is it right that, in general, as under the existing system, the amount of duty should be calculated by reference to the value of the whole of the deceased's estate, without regard to its distribution? May there not be a case for calculating the duty by reference to those who inherit the property

rather than by reference to the deceased? Is there not also an argument for scales of duty which vary according to the relationship of an inheritor to the deceased? Is it right that the same rates of duty should be payable in respect of a bequest to a son or a daughter as to a stranger? In other words, while the system of estate duty undoubtedly has considerable advantages, we should consider whether an inheritance tax might not be fairer.

It would be quite wrong to take such a fundamental decision without the fullest public discussion Over the past year we have been making a thorough review of the complex issues which are involved and of the implications of replacing estate duty by an inheritance tax. The outcome of that review is today being published in a comprehensive Green Paper. It deliberately reaches no conclusion. All I ask is that the whole subject should be considered afresh without preconceived ideas.

ESTATE DUTY CHANGES

There is one particular aspect of estate duty which has been raised on a number of occasions during the past year. It has been suggested that the matrimonial home should be exempt from estate duty. I have considered this proposal carefully, but I cannot agree, because to provide this relief would be very unfair as between the widow whose husband owned his house and the widow whose husband chose to rent it. But having said that, I have no doubt that there should be special relief for the widow, and that the fairest way to achieve this is to make the relief general.

I have therefore decided that, in future, any property going from a husband to his widow, up to a sum of £15,000, will be left out of account altogether for estate duty purposes. This relief will apply equally to property left by a wife to her husband.

Secondly, I propose to raise again the threshold below which no estate duty is payable. It will be increased from £12,000 to £15,000. Taking these two reliefs together, the effect for example will be that where the estate is left wholly to the widow no duty will be paid at all unless the estate exceeds £30,000 and thereafter the estate duty will fall only on the excess over that sum, and will of course start at the lowest rate.

Thirdly, I propose to take action to ease the burden of the duty which has been increasing because of the fall in the value of money since the 1949 scale was fixed. So far as the smallest estates are concerned, the policy of both Governments in progressively increasing the exemption limit has protected these estates, and this form of relief has to some extent extended to estates immediately above the exemption limit. I have carried this process a step further today.

So far as estates above this range are concerned I would have liked in principle to have gone all the way back, to the 1949 scale re-expressed in real terms—that is, adjusted to take account of the fall in the value of money.

These changes will relieve from duty 40 per cent of estates which would otherwise have been liable, and with the changes I made last year this means that altogether 50 per cent of estates which would otherwise have been liable to duty will have been wholly relieved —all of them at the lower end of the scale.

All these proposals will take effect in relation to deaths occurring after today.

UNIFIED PERSONAL TAXATION

Last year we legislated for the new unified system of direct personal taxation, which will become operative in April next year.

The Finance Act 1971 provisionally fixed the basic rate of tax and the level of personal allowances which would apply under the new system. I explained, however, why I could not then—two years ahead— settle the higher rates of tax and the details of the surcharge on investment incomes. But I was pressed, from both sides of the House, to give some indication before the Budget of 1973.

I agree that in such an important change as we are making the people who will be affected should know broadly where they stand. Moreover many large concerns these days use computers to calculate their employees' pay and tax. If the higher rates of tax were not to be announced until this time next year, they would be faced with some difficult problems in amending their computer programmes. All the rates of tax which next year will operate under the unified system will therefore be provisionally fixed this year.

The House will recall that the present complicated dual system of income tax and surtax will be abolished and will be replaced by the higher rates of income tax. The schedule of these rates is set out in the resolution which will be circulated shortly. But I can summarize the proposals in this way. On the first £5,000 of taxable income—that is after account has been taken of personal allowances—tax will be charged at the basic rate of 30 per cent. The rate for the slice of taxable income between £5,000 and £6,000 will be 40 per cent and the rates for successive slices above that amount will rise in steps of 5 per cent until a maximum rate of 75 per cent is reached at the level of £20,000. This will provide a much simpler, smoother and more easily understood scale.

I now turn to the investment income surcharge which the House will recall is to be imposed on the larger investment incomes. I have made it abundantly clear that I regard the present form of discrimination against investment income as unacceptable. Indeed among the advanced countries of the world, the United Kingdom and France are the only two which draw such a distinction to any significant degree. One of the foundations of the unified tax system is that only the larger investment incomes should attract the surcharge: in other words, that the first slice of investment income should be charged at the same rates as earned income. To fix a low starting-point would undermine this principle.

I have decided therefore, that the surcharge will be imposed only on the excess of investment income over £2,000. As well as benefiting retired people living on income from past savings, this will also be of considerable help to people such as divorced and separated wives who depend on what the income tax rules treat as investment income. The House will be interested to know that it is estimated that no less than 30 per cent of the tax reductions arising from the new unified system will go to the 11 per cent of taxpayers who have retired. Furthermore, the fact that from next year the first £2,000 of investment income is to be treated exactly the same as earned income will be an important encouragement to the personal saving we will need to finance investment.

The rate of the surcharge will be 15 per cent. This will, of course, be in addition to other tax, so that a taxpayer whose income is within the basic rate band will pay in all 45 per cent on any investment incoming which is liable to surcharge; that is on that part of any investment income over £2,000.

SURTAX

When the new unified system of tax is in full operation, the surtax office will be run down

and eventually close. This poses a transitional problem. And so, to meet the very difficult staffing position before unification takes over, I propose to adopt precisely the same device as the Rt. Hon. member for Stechford adopted in his last Budget in almost identical circumstances. For the short time before surtax goes, the surtax starting-point will be raised by £500, with marginal relief, but when income exceeds the new limit, surtax will continue to be charged at the same rates as at present on the excess over £2,000. The result will be that, at a cost of £14 million for the full year, 130,000 taxpayers who are just within the surtax net will be taken out of charge for this year, over a third of whom have not paid surtax before. I should perhaps add that, but for this change, the cost of collection of the £14 million would be £1¼ million. The details of this change are in the financial statement and Budget report.

I know that the whole House will join with me in congratulating the two revenue departments on the way in which they have tackled the programmes of reform, and I hope the House will allow me to give my personal thanks to my three outstanding Treasury colleagues.

PERSONAL ALLOWANCES

I come, therefore, to my final proposal. Last year I reduced the standard rate of income tax and I made a start on raising thresholds by increasing all the child allowances and so raising the starting points of tax for all families with children. This year I believe a broader approach to the problem of the threshold is called for.

There will, therefore, be no change in the standard rate. Instead there will be increases in both the single person's allowance and the married allowance. This is undoubtedly the best means of helping taxpayers generally right across the board. If effect is to be given to these changes quickly and without an impossible work burden, the increases must this year be of the same amount. Otherwise it would be necessary to recode a very large number of taxpayers and it is simply not within the capacity of the Inland Revenue to do this at this time. They have in fact arranged to speed up the preparation of the new tax tables so that on this occasion the reductions can be reflected in the first pay packet after May 3rd.

We on these benches believe that the British people have been taxed too heavily for too long. We have already made a start, but we must go further. The personal allowances will therefore be increased at a cost of £960 million in 1972-73, and £1,200 million in a full year. The single person's allowance and the married allowance will each be raised by £135. The House will not be surprised to know that these are the largest increases which have ever been made in these allowances. The single person's allowance will be raised from £325 to £460 and the married allowance from £465 to £600.

The income limits for age exemption will also be raised, to £634 for a single person and to £929 for a married couple. The limit for small income relief will be raised to £550.

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* * * * ARTICLES * * * *

G. DÉJEAN*:

RÉPUBLIQUE MALGACHE: COMMENTAIRES SUR LA LOI DE FINANCES POUR 1972

L'année 1971 a été marquée par la parution de deux Lois de Finances:

- La première du 30 juin 1971 (JORM du 10 juillet 1971), a porté des rectifications à la Loi de Finances 1971;
- La deuxième du 1° décembre 1971 (JORM du 4 décembre 1971), porte Loi de Finances pour 1972.

Nous examinerons ci-après les modifications apportées aux différents textes fiscaux qui concernent les résultats de 1971.

A – IMPÔT SUR LES BÉNÉFICES DIVERS

Article 01.01.06

Pour favoriser les investissements immobiliers, les loyers des immeubles nouvellement construits étaient exonérés d'impôts sur les Bénéfices Divers pendant les cinq premières années.

Cette exonération est supprimée.

Article 01.01.07

Ancienne rédaction: L'Impôt est établi sur l'ensemble des bénéfices réalisés à Madagascar.

Nouvelle rédaction: L'Impôt est établi sur l'ensemble des bénéfices réalisés par la personne imposable.

La modification apportée surprend. Doit-on comprendre que le Législateur a voulu taxer à Madagascar des bénéfices réalisés à l'étranger où ils ont déjà payé l'Impôt local, ce qui représenterait une double imposition pénalisant ainsi l'entreprise dynamique?

Article 01.01.10

a) La Nouvelle rédaction précise que les véhicules de tourisme ne peuvent être amortis qu'à concurrence de 1.000.000; même principe pour les aéronefs dont l'amortissement est limité à 3.000.000.

b) La quote-part des frais généraux de siège incombant aux opérations faites à Madagascar ne peut plus être comprise dans les charges des entreprises. Remarquons que cette mesure ne s'applique pas aux Sociétés qui ont leur siège en France, en vertu des dispositions de l'article 10 de la Convention Franco-Malgache tendant à éliminer les doubles impositions[1].

Article 01.01.12

Dans un premier temps, le Législateur a voulu supprimer les avantages fiscaux attachés jusqu'alors aux „investissements".

Rappelons que les contribuables qui réalisaient certains investissements définis par le texte fiscal, pouvaient déduire de leur base imposable, en sus des amortissements linéaires, une quote-part des sommes investies. Cette quote-part variait de 50% à 85% suivant la nature des entreprises, et pouvait être de 100% dans le cas d'entreprises agréées.

Le Loi 71.015 se proposait donc de supprimer cette sorte de prime accordée à des investissements sélectifs.

Parallèlement, l'amortissement linéaire était remplacé par un amortissement accéléré.

Après réflexion, et considérant sans doute qu'il rompait unilatéralement un pacte signé avec les investisseurs, le Législateur est

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* Expert Comptable, directeur de l'Organisation Comptable, Tananarive, République Malgache.

1. JORM du 8 décembre 1962, page 2809.

revenue sur sa décision. Les investissements continuent donc à bénéficier des avantages précédemment accordés.

B – IMPÔT GÉNÉRAL SUR LE REVENU

Article 01.02.03
Cet article pose le principe général d'une imposition unique par foyer. Cela signifie que quel que soit le régime matrimonial choisi par les époux, les revenus du mari, de la femme et de leurs enfants mineurs vivant avec eux sont l'objet d'une seule imposition au nom du mari.
Les nouvelles dispositions prévoient que dans le cas où la femme est la seule dans la famille à avoir des revenus, l'imposition peut être établie à son nom.

Article 01.02.06
L'Impôt Général sur le Revenu qui était déductible pour moitié de la base taxable n'est plus déductible du tout.

C – IMPÔT SUR LE REVENU DES VALEURS MOBILIÈRES

Il s'agit de l'impôt de distribution. Son taux passe désormais de 10 à 15%.
Ce nouveau taux s'applique aux distributions effectuées à compter du 1° janvier 1972.

Les distributions décidées antérieurement au 1° janvier 1972 restent soumises à l'ancien taux de 10%.

D – TAXE ANNUELLE FORFAITAIRE SUR LES SOCIÉTÉS

Il s'agit d'une taxe entièrement nouvelle et qui s'applique aux Sociétés quelle que soit leur forme et qui sont passibles de l'Impôt sur les Bénéfices Divers.

Tarif: 200.000 FMG par an pour les Sociétés Anonymes
50.000 FMG par an pour les autres sociétés.

Les sociétés nouvelles ne sont pas taxables pendant les deux premières années.
Cette taxe doit être payée spontanément (il n'est pas émis de rôle), le 31 mars au plus tard.
Tout retard de paiement entraine application d'une pénalité de 5% par mois de retard.

H. W. T. PEPPER:

DEATH DUTIES: WITH PARTICULAR REFERENCE TO DEVELOPING COUNTRIES

1. *General*

Taxation imposed, by way of a capital levy on the assets an individual possessed at his death, falls into two broad categories, usually referred to as "estate (or transmutation) duties" and "succession (or inheritance) taxes". Under the estate duty concept, tax is charged upon the total value of the "estate" (assets less liabilities) which passes on death, regardless of how the assets are bequeathed or disposed of. Under the "succession" concept, tax is charged by reference to what is inherited by each beneficiary. Under each concept, it is usual to employ graduated rates of tax. The total of the assets (less any exemption or basic deduction) is taxed in either case since it is plain that all the assets of a deceased person must pass to some other person at death. Where there are two or more heirs, however, the total tax liability is usually less under inheritance taxes because the graduation of tax rates is applied two or more times according to the number of heirs.

2. The principle of death duties, in terms of applying taxation where there is taxable capacity, may be regarded as either that -
(a) the capital accumulated by the deceased is capable of bearing a once-for-all levy in addition to any annual taxes on income, wealth or capital gains which may have restricted the accumulation of capital during the deceased's lifetime, or
(b) the inheritance by heirs of capital from the deceased represents an incoming (in some cases a "windfall") which is as capable of bearing tax as other incomings such as income or capital gains which are usually regarded as suitable subjects for taxation.

3. *Economic Considerations*
In a primitive community, economic progress can only be made if some individuals can contrive to make savings out of their current incomes in order to raise themselves above subsistence level and provide a fund of capital to enable development to commence. Unless some persons thus become "richer" than others, initially by hard work and frugality and perhaps greater skill, no progress can be made. It is obvious that at this stage of development there is no economic case for death duties, which would merely deplete the limited fund of capital available for investment in economic development. At the earliest stages, those who manage to make savings may devote their capital to building a more substantial dwelling for themselves, shelters for flocks or herds, storehouses for crops, simple irrigation or water storage works for their land, wind or water mills for grinding grain or pumping water and so on. At a later stage more sophisticated techniques and machines may be developed which enhance the general wealth of the community though widening the difference in wealth between poor and rich. It is the latter, however, who are most able to contribute further to the growth of capital, though they deploy the labour of the "poor" in doing so. Curiously enough, the accumulation of wealth "collectively" through "co-operatives" and other voluntary associations engaged in entrepreneurial activity, although an extremely simple concept, only seems to occur at a late stage in economic development. In Britain, viable "co-operative societies" were invented in 1844 but their growth has been disappointing and attempts to introduce the principle in the developing world in this century have had a chequered history.

4. At a much later stage of economic development, it may be appropriate to impose death duties as a means of raising revenue. Politically it is relatively easy to justify death duties upon the estates of deceased persons. Everyone is familiar with stories of hardworking parents and prodigal sons, of frugal testators and sprendthrift heirs, and the "accident" of birth into a wealthy family is often argued to be insufficient justification for a man to inherit, untaxed, the wealth of his forbears. Death duties are, therefore, often advocated as a measure of equalisation.

5. On the other hand it is also recognised that one of the motivations which encourages an entrepreneur to a life of toil and enterprise is the desire to provide a good home and better opportunities for education and culture for his children than he himself enjoyed. His family may in fact be undeserving, but the natural love and affection he bears them spurs his efforts to increase his personal capital and consequentially, the wealth of the community. If his efforts were too effectively discouraged, e.g., by confiscatory gift taxes and death duties, the community itself would be the poorer.

6. Up to a point, it may be assumed that an individual will care less about what tax may

be payable upon his demise than about taxes levied on the income he receives from year to year in his lifetime and hence that moderate death duty is less of a disincentive than income tax at high marginal rates. Where, however, the rates of death duty are raised to higher levels, it is to be expected that steps will be taken to try to avoid or reduce the impact of such taxes where taxpayers are desirous of ensuring a certain level of endowment to their heirs. The consequential process of tax avoidance may involve the devotion of skilled professional labour to advising avoidance schemes and the incidental economic waste which deployment of professional expertise in this direction involves. Where the duties charged are exceptionally high, there may be economic distortion through individuals moving their domicile and their skills to countries where tax rates are lower, even though there is little economic logic in such a removal.

7. As a form of taxation, capital levies have the classic disadvantage that since they directly reduce capital they also reduce their own tax base. Even where an economy has long passed the earlier stages of development, if death duties are too onerous the energies of the entrepreneur may be uneconomically side-tracked into making provision for the ultimate payment of death duties, instead of investing equivalent funds in further business development. In a sophisticated economy where the joint-stock company is widely used to mobilise small savings and accordingly there is widespread investment, even by the lower- and middle-income groups, in industrial equities, death duties as a capital levy mainly on the rich will clearly have a less restrictive impact on economic development than in less-developed economies where the capital and the skill, which jointly can secure economic progress, have both to be provided by the same individual. Nevertheless the entrepreneur who can personally command investment funds to put into his own enterprises will always play a major role in development.

8. *Comparison of "Estate" and "Succession" Concepts*

In the estate duty concept, where tax is charged at graduated rates on the total assets of a deceased person, regardless of how many individuals inherit the assets, it is possible to regard the once-in-a-lifetime levy as an extension of taxes on the *income* of the deceased during his lifetime. In theory, the same result as that achieved by the estate duty could have been achieved by the levy of higher rates of income tax or surtax on the annual income. To the extent that high marginal rates of income tax are correctly regarded as a dis-incentive, however, there may be psychological, and hence, economic advantages to be gained by combining more moderate income taxation with an estate duty which is deferred until death.

9. Under the "inheritance" or "succession" concept, the tax is charged on the total amount inherited by each beneficiary and is applied at graduated rates, and usually with some basic exemption, individually to each. The logic of this form of tax is quite different from the estate duty concept, since the tax is regarded not as a levy on the testator who has anyway ceased to exist, but upon an inflow of money or other assets to beneficiaries. The inheritance is regarded as providing taxable capacity if it exceeds a certain figure and the tax rates then applied usually vary according to the degree of consanguinity, being lowest for surviving spouses and direct descendants or ascendants, and highest for strangers in blood. The principle involved in this differentiation (which will

be commented on later) is that "direct" heirs have a natural claim on the estate of a deceased person and in fact the testator owes a duty to them, while inheritance by those less closely related, or by strangers comes more as a windfall.

10. The ultimate logic for an inheritance tax, however, would be not only to have regard to what other inheritances or gifts the individual has received from other testators or donors in the current and in previous years, but also to take account of the beneficiary's domestic circumstances, such as the level of his income, the number of his dependants and any other commitment he may have. It is in fact fairly common, where a gift tax exists, to link gifts and bequests to the same beneficiary for tax purposes. No country, however, employs a tax system which aggregates for tax purposes gifts and bequests from different donors and testators to the same beneficiary although the tax structure proposed for Canada by the Royal (Carter)Commission on Taxation recommended a new concept of taxation in that country which would, *inter alia*, have had this result, although the administrative difficulties would have been formidable.

11. It is obvious that there would be administrative complications in seeking to refine an inheritance tax in the way mentioned, but equally, unless some such calculation is made, it is difficult to make out a complete case for succession duty as an improvement over estate duty. By, broadly, charging less tax in total on an estate for each additional heir who benefits from it, an inheritance tax appears to be more equitable than an estate duty. If, however, the smaller yield which an inheritance tax brings in is acceptable, a corresponding reduction could be made in the incidence of estate duty, e.g., by reducing the rates of duty, thereby benefitting all beneficiaries (except those whose inheritance was in any event bequeathed to them on a "duty-free" basis, i.e., with the stipulation by the testator that the duty should be met out of the remainder of the estate).

12. If death duties are seen as a social measure designed to redistribute wealth and end the perpetuation of differences of wealth, and if nepotism is regarded as an evil, it may be difficult to justify an inheritance or succession tax which is heavily "loaded" in its incidence against remote relatives and strangers. In some instances, indeed, it may be more meritorious for the deceased taxpayer to bequeath assets to strangers and charities and in such cases estate duty, which does not differentiate between heirs, may sometimes be more appropriate.

Gift Taxes: Gifts inter vivos

13. Some countries administer gift taxes alongside death duties in order to discourage, or limit, avoidance of the latter tax by disposals of assets during the lifetime of the deceased. Other countries, in contrast, have provisions in their death duty laws whereby gifts inter vivos made within so many years of death (commonly 3, 5, or 7 years) are disregarded for tax purposes and are aggregated with the assets remaining at death, tax being calculated on the total thus compiled as if no such gifts or transfers had been made.

14. Here again, if the logic of death duties is to tax and re-distribute capital accumulated in the hands of one individual there is a certain lack of logic in tax also being levied when the taxpayer seeks to redress the situation voluntarily by distributing his wealth during his lifetime. If, however, death duties are looked upon as a further instalment of income tax or surtax on those with large

incomes, there is some logic in taxing or "aggregating" sums transferred inter vivos which would escape duty on the death of the donor.

15. Where gift duties are imposed, it is usual to exempt a certain lifetime sum of gifts by the deceased who, however, may instead, or in addition be exempted from tax on annual gifts up to a certain amount.

16. The rates of gifts tax are often (though not always) rather less than those charged under estate duty or inheritance tax regimes. This treatment is logical since gift tax is being collected, in effect, as a prepayment of death duties and some sort of "discount" is, therefore, reasonable. Even where gift taxes exist there are sometimes provisions for aggregating taxed gifts, which were made within two or three years of death, for death duty purposes offsetting the gift tax (which is then precisely regarded as a prepayment) against the death duties payable on the gift.

Scope of Death Duties:
:Taxation of World Assets: Double Taxation Relief

17. The rules which are almost universally adopted by countries imposing death duties are that where the deceased is domiciled in the taxing country duty is charged on his world assets. Where, however, assets in that country are owned by someone who has died when not domiciled there, duty is charged only on the assets within the country.

18. The reason for charging tax on world assets for those domiciled in the taxing country is that if only local assets were taxed there would be an incentive for taxpayers to invest money abroad. The incidence of double taxation is avoided or modified by allowing in the country of domicile, relief for the tax paid on overseas assets, usually on the principle that the country where the asset is situated has the first right to tax. The country of domicile will reduce its own tax by the amount charged on the asset in the other country, the allowance for the tax charged abroad being usually limited to the level of the tax in the country of domicile. Such reliefs may be given in double taxation treaties but are more commonly allowed unilaterally in the tax legislation.

19. The concept of "domicile" is not always used. Some countries use instead the concept of "permanent" or "usual" or "ordinary" residence and some take citizenship as the guide to taxability. The U.S. charges estate tax both on those who are citizens and those who are resident in the U.S. at death.

20. As regards inheritance or succession taxes it is usual to tax in the country all assets, wherever situated, inherited from a testator "domiciled" within the country, and other assets in the country[1] which are inherited by non-resident beneficiaries. On the other hand beneficiaries living in the country are not usually[2] taxed upon foreign assets inherited from non-domiciled testators.

Immovable Assets Overseas

21. An exception to the rule that the world assets are taxed where the deceased was domiciled in the taxing country is that some countries exclude immovable assets (such as a holiday flat or villa in a sunnier climate) from the compilation of world assets, although a few, notably the U.K., Belgium and Holland, make no such exclusion. In general,

1. Belgium and Holland do not, however, tax ordinary shares (in Belgian and Dutch companies, respectively) which are bequeathed by non-resident testators.
2. An exception is inter alia Federal Germany which taxes residents on inheritances from non-resident testators.

where foreign assets are owned they are more likely to be movable assets, so that this particular exemption is of comparatively minor importance.

22. *Exemption of Government Loans to Non-Domiciled Persons*

Where a government issues loan stock for public subscription as part of its national debt, provision may be made that the stock will be free of death duties where the subscriber is domiciled and or ordinarily resident abroad. This provision serves as an incentive to foreigners to subscribe to the loan with beneficial effects on the country's balance of payments. The exemption does not of course extend to the death duty laws of the country in which the subscriber is domiciled, so that in a sense the exempting country is giving up its tax revenue for the benefit of the finances of the country where the investor resides. In effect, what is being done is to offer the foreign investor a somewhat greater inducement to invest than is represented by the actual interest on the loan stock. Obviously it is best to limit this type of exemption as much as possible and, where circumstances dictate that it must be granted, to restrict exemption to dated stocks so as at least to have a time limit.

Effectiveness of Death Duties as Source of Revenue

23. The yield of death duties tends to be an unreliable source of Budgetary revenue since in particular fiscal years the rich may show a tendency to longevity while in others a hard winter may take a heavier-than-usual toll of old and frail millionaires. Where the tax administration has difficulty in coping with tax evasion and avoidance, and where the tax rates are moderate and the reliefs reasonably generous, the yield may be so small compared with total government revenue as to make the tax seem hardly worth retaining. As a consequence some countries have sought "tax haven" status by abolishing, or not introducing, this type of taxation.

24. It is of course important not to yield to the temptation of trying to increase the revenue from death duties, especially where a low return is attributable to non-compliance, by raising tax rates, since this merely penalises the honest, while the avoiders and evaders are spurred to greater efforts. On the other hand there are good reasons for retaining death duties at moderate levels even where current yields are not very rewarding, e.g., because there is an inter-action between the administration of death and income taxes which should assist in obtaining a better level of compliance than if only one of these taxes were levied. If no death duties are levied, then the country concerned is ceding to foreign countries the sole right to tax assets in the first country which are possessed by persons dying domiciled in those foreign countries.

25. The following table illustrates the comparatively small yields from death duties in a number of developed and developing countries. Although yields are generally small there are few signs of countries deciding to abolish the tax. Kenya abolished estate duty and then reintroduced it after it became evident that abolition was not proving to have any important incentive effect encouraging wealthy settlers to come to Kenya to live, or to remain there on reaching retirement age. Canada, however, is an exception to the general rule since the federal (though not the provincial) death duties were abolished when Canada introduced a capital gains tax which also applied to assets passing at death (which are deemed to be "disposed of" at the date of death, for tax purposes).

TABLES OF DEATH DUTY YIELDS

Country	*1969 Death Duties as Percentage of Total Taxes (Central & Local Govts.)*	*Notes*
Australia	3.2%	Federal and state death duties
Belgium	1.4%	
Ceylon	1.5%	Death Duties, wealth tax and gift tax Central Government only
Denmark	0.8%	Central Government tax only
Eire	2.2%	
France	0.9%	
Germany	0.3%	
Holland	1.0%	
Italy	1.1%	
Japan	2.4%	Inheritance and gift tax
Luxembourg	0.1%	
Malaysia	0.55%	
New Zealand	2.0%	
Norway	0.2%	
Pakistan	0.2%	All direct taxes except income tax (1969/70) and corpn. tax
Philippines	0.5%	Estate, gift, and inheritance tax
Singapore	1.3%	
S. Africa	1.2%	Central Government tax only
S. Korea	0.25%	
U.K.	2.5%	
U.S.A.	1.8%	

Sources: Green Book on "Taxation of Capital on Death" (HMSO Cmnd. 4930 March 1972).
"Asian Taxation" 1970 (Japan Tax Association, Tokyo).

26. As far as countries trying to encourage tourism and encourage permanent residence by wealthy retired individuals are concerned, it is likely that a moderate level of taxation on income and capital will prove sufficiently attractive not to necessitate complete abolition of such taxes. It is plain that reliance solely on indirect taxes is likely to bear regressively and harshly on the indigenous population.

Abatements of Death Duties

(a) *Agricultural Land*

27. In some countries special abatements are allowed in calculating death duties where the deceased has investments in agricultural or forestry land, e.g., in the U.K. the duty chargeable on such land is restricted to 55% of the normal rate applicable. One reason for such abatements is that if the full weight of duty were to fall upon agricultural properties there would be a danger of the land having to be broken up and sold in order to pay duties, which might involve the fragmentation of the land into uneconomic units. Clearly, such abatements might not be appropriate in countries where land was one of the main sources of wealth and death duties formed an important source of revenue. In considering the introduction of such an abatement a detailed study would have to be made of the economic circumstances of land-owners and, particularly, of the comparative economics of large-scale and small-scale holdings.

(b) *Timber*

28. It is fairly common to exempt standing trees or timber altogether from death duties, unless these are actually felled or sold within a certain period from the date of death. Clearly if duty were levied, trees might have to be felled prematurely to pay the duty and in some cases trees may be a "permanent" feature of land, forming wind-breaks, protection against erosion, or a water catchment area so that they are as much an asset of the community as of the individual who owns them.

(c) *Works of Arts etc.*

29. Some countries exempt works of art provided these are not sold by the heirs (in which case tax would be charged on the sales price). For example, Britain exempts certain works altogether for duty provided they remain unsold in private hands, and provided undertakings are given, e.g., that the works will be made available for research if needed, and are not sent out of the country. Malaysia exempts bequests of objects of art or of scientific interest from death duty, and excludes the value of these articles from the computation of duty on the remaining assets in the estate. The principle involved in exemption is that the works of art do not confer any cash benefit upon the heir (unless sold—when they are taxed) and nowadays it is usually desired to keep works of art within the country of origin (or country of present ownership) the qualified exemption granted being a form of tax incentive to achieve this objective.

(d) *Industrial Assets*

30. Where industrial assets (plant, machinery and industrial premises) are owned by an individual (as distinct from a company or corporation) some countries abate the charge of death duties thereon. For example, there is a 45% abatement in the British estate duty for such assets. The object of such abatements is not to discourage too much the motivation by which an entrepreneur sets up for the benefit of himself and his family and heirs a "family" business which the family may take some pride in maintaining as an enterprise providing good service to the public.

(e) *Charitable Bequests*

31. Many death duty systems are rather

niggardly as regards bequests to charity although, on the "redistributive" theory of such taxation, such bequests are a voluntary exercise in redistribution. It is fairly common, for example, in estate duty regimes not only to charge full duty on that part of the estate which is bequeathed to charity but to aggregate with the estate for the purpose of computing duty, any charitable gifts made within the year preceding deaths. The principle involved is fairly clear. Where the deceased has chosen to retain control, and enjoyment, of his assets up to, or near to the time of his death, the state decides to exert its taxing rights fully, so that it, and not the dead taxpayer will then decide on the destination of the part of the estate appropriated in tax.

32. This somewhat restrictive practice, however, may be neglecting the opportunity of harnessing for the public good another human motivation. There are two points to consider, first if the object of the charity would be one which the state would have to provide for at public expense if the charity did not exist, it may be a better bargain for the state to encourage gifts or bequests with full tax relief since the amount taken in tax will normally be appreciably less than 100% of the voluntary contribution which the taxpayer may be encouraged to make. Secondly, the desire to have some memorial to himself and his family other than an engraved stone in a neglected cemetery may be a powerful motive backing up an entrepreneur's natural altruistic tendencies, and, with suitable fiscal encouragement, provide a better outlet for his skill and energy than pre-occupation with tax avoidance schemes.

33. The limiting factor is that by no means all types of charities pursue activities which a government would strongly wish to encourage and although a fairly wide spectrum of charitable endeavour may be approved for the ordinary income tax or stamp duty exemption of the charitable body in question, a more restricted list might well be made for the purpose of relief from gift tax or death duties. For the latter purpose, for example, stress might be laid on such activities as the provision of low-cost housing for rental, or of medical, educational or recreational facilities for the lower income groups. A recent (1972 Budget) proposed change in the British estate duty would allow, duty-free, bequests up to £50,000 to charities in general, and without limit to charities which are specifically concerned with the National Heritage (e.g. the National Trust which preserves amenity land and historic buildings for public access and enjoyment). Kenya, in its 1964 Estate Duty Act, provided exemption for property bequeathed to the Government, or for a purpose which was declared by a Minister to be a public purpose. Japan exempts under certain conditions, bequests for charitable, scientific, and educational, or social welfare purposes, and the U.S.A. exempts charitable bequests in general.

34. *Taxation of Surviving Spouses, Relatives and Strangers*

Once one enters the realm of differential taxation of different classes of heirs one is usually dealing with an inheritance or succession tax rather than estate duty. An exception is the British estate duty, which from 1972 (and perhaps only for a transition period) provides an exemption for a bequest of £15,000 to a surviving spouse in addition to a general exemption of £15,000. Some inheritance taxes provide full exemption for inheritance by a surviving spouse (e.g. that of Norway) and others provide a similar exemption where dependent children as well as a spouse survive the deceased (e.g.

Luxembourg). The concept is broadly that the tax should apply when the estate passes from one generation to another, but not within the same generation. Under the Danish system the position is similar to that of Luxembourg. Because of the Danish community of property law, there is deemed to be no "inheritance" by a spouse if the community estate continues to exist undivided. The U.S.A. pursues a middle course by exempting from estate tax, bequests, up to one-half the value of the estate, to a surviving spouse.

35. It is also fairly common to charge duty only once where an estate is bequeathed to children, with a life-interest to the surviving spouse. Under estate duty systems the tax is usually charged when the first death takes place and not when the surviving spouse, in turn, dies. Under an inheritance or succession tax regime, as already noted, the tax may in contrast be charged on the second death which will of course be more favourable, or merciful, to the surviving spouse whose liabilities may have increased and by no means decreased as the result of the first death.

36. Under the New Zealand Estate Duty (1969 duty rates) a general exemption up N.Z. $12,000 is granted and above that figure duty is charged on the whole estate. Where a spouse succeeds to the estate, however, the exemption limit is raised to N.Z. $40,000 with abatements where the value of the estate exceeds N.Z. $40,000. Where infant children (under 18) are included among the heirs, the exemption is increased by N.Z. $1,000 per head.

37. For heirs other than surviving spouses there are usually graduated tax rates on different scales. Within a particular group of beneficiaries the tax rates will be graduated according to the quantum of the inheritance. A higher scale of rates is, however, applied to remoter classes of beneficiaries. For example, in Belgium the tax rates for a spouse with a legitimate child of the deceased, and for his direct ascendants and descendants, are from 3% to 17%, other spouses must pay at from 7% to 35%, brothers and sisters at from 13% to 65%, other relatives at from 15% to 70%, while strangers are taxed at from 20% to 75%.

Variation of Relief with Age of Beneficiaries

38. No country seems to vary the rate of tax with the age of orphans left by the deceased, i.e., to their degree of dependency, although some distinguish between dependent and non-dependent children. Japan, logically enough, grades the deduction admissible in computing duty to the number of years a surviving *spouse* has been married, granting a deduction of Y/2,000,000, or of Y/200,000 for each year the period of marriage has exceeded 15 years, whichever total amount is the smaller. Malta grants a variable deduction from the estate duty payable in a case where an estate has been bequeathed to heirs with a life interest to a surviving spouse, the relief reaches a maximum of 75% when the surviving spouse is over 40 years old. (See para. 36, above regarding New Zealand's relief for orphans under 18).

39. The general lack of reference to the age of beneficiaries in death duty legislation is somewhat surprising. It has been said that, nowadays, in developed countries, most heirs tend to be in their thirties or forties when they inherit and not in any particular financial need. (Special considerations may, of course, apply when a family business or farm is the subject of a bequest). The position is, however, very different if a relatively high-earning individual dies prematurely

leaving a spouse with several young children who have to be maintained and educated. Few death duty systems (some exceptions have been noted above) seem, however to distinguish between the case where the heirs include a son of 40 years or one of 4 years of age and yet the respective needs of such heirs are widely different.

Variation by consanguinity

40. As has already been mentioned (paras. 9-12) the tax rates charged on beneficiaries under an inheritance tax regime differ according to the degree of consanguinity to the testator. The difference is often quite marked, for example, in Belgium the rates (as quoted above) for direct descendants and and ascendants range from 3% to 17%, while at the other extreme the scale of tax rates applied to strangers runs from 20% to 75%. In Denmark the maximum rate for descendants is 13% and that for strangers 60% and in France the respective maxima are 20% and 60%. In a sense this discrimination against bequests to more distant relatives and to strangers discourages the very process of redistribution (particularly outside the immediate family) which the tax is supposed to promote. Not all inheritance taxes have such wide disparities between the extremes, and the "sample" rates put forward for consideration in the recent Green Paper published by the U.K. Government, to test people's views on a switch to an inheritance tax from estate duty, show fairly small rate differences. The rates run from 10% to 70% for lineal issue, 25% to 75% for other near relatives and from 25% to 80% for remote relatives and strangers, the rates being charged after deducting a basic allowance which amounts to £25,000, £15,000, and £5,000 respectively for the 3 grades of heirs but it is stressed that the figures quoted are illustrative only.

41. In Western Europe, however, the pattern of wide differences between the incidence of tax on spouses and direct descendants and that on strangers, is general. If a millionaire testator left half his fortune to be divided between the ten best honours university graduates of the year of his death who wished to pursue careers in research, he might do more for mankind than if the whole fortune passed to his children, but the tax burden on such bequests to strangers might be crippling unless the testator could contrive to set up a charitable foundation (and probably do so in his lifetime).

42. *Skipping a Generation*

Another curiosity of the incidence of death duties whether of the "estate" or "inheritance" variety is that no attempt is usually made to charge any extra tax if a bequest is made by a testator to his grandchildren instead of to his children, although one imposition of tax is omitted, to the taxpayer's advantage (If he bequeathed assets to his children which they in due course bequeathed to their children there would clearly be two applications of tax). The practical effect of a bequest to grandchildren, their parents (i.e. the taxpayer's children) acting as trustees, is clearly similar to that of a bequest to the testator's children who in any event have to maintain and educate *their* children (i.e. the testator's grandchildren). Where a testator lives to a good age it may even be possible for him to "skip" two generations by bequeathing assets to his great-grand-children at an even greater (legal) tax saving.

43. A somewhat similar situation arises when an elderly taxpayer marries a very young spouse, who outlives him. Several tax systems, as noted, grant complete exemption to a surviving spouse's inheritance even though

she belongs to a different, younger, generation. Only two examples have been quoted above of countries which take age, or length of marriage into account in cases like these, both in the context of an estate duty (See para. 38).

Mistresses and illegitimate children

43A. Although mistresses, concubines, and illegitimate children would come under the heading of "strangers in blood" in some systems of inheritance tax, there is, of course, a good case for relief[3] where the testator makes bequests to persons in this category. The very fact that the testator makes such bequests will be a token of "recognition" of the persons in question. If, however, the taxpayer makes no bequest, or dies intestate, the very existence of such persons may not come to light and there will be no problem for the tax department.

Where a testator makes provision for "non legitimate" heirs at the expense of his legitimate wife and descendants the general law in many countries now protects the latter and may set aside the terms of the will to the extent necessary to make proper provision for them. The tax department will only be concerned with charging tax according to way in which the estate has been inherited after all legal adjustments have been made.

43B. Relief may be given in an inheritance tax regime by including persons who have been recognised in a will as (illegitimate) descendants or as "common-law" wives in the same category as legitimate wives and children since this is likely to accord more with social justice than regarding the former as "strangers". In some cases the testator may have wished to legitimise the persons concerned but had been unable to do so because of difficulties in obtaining a divorce or annulment from his legitimate wife from whom he has separated.

43C. In an estate duty regime which gives special relief for the surviving spouse and dependent children, it would equally be possible to grant such relief for non-legitimate heirs to whom bequests have been made in the will where it has been legally admitted that the children are offspring of the deceased and that the woman has had the relationship of a "wife" to the deceased. In some countries it is, of course, possible for a man to have more than one legal wife at the same time, and in some monogamous societies the law protects to some extent the position of a common-law wife, and of illegitimate children whose paternity is known, to the extent that a man may be required to provide for maintenance during his lifetime. In rarer cases illegitimate descendants may have a legal claim to a share in the estate of their "natural" progenitor and these provisions may be reflected in the tax law.

Payment of Tax By Surrendering Government Loan Stock or other Assets

44. A device sometimes employed as a means of popularising certain government loan issues is to make these acceptable in payment of death duties. Normally such stock will be accepted at face value and, therefore, it is convenient for the taxpayer to invest some of his money in such securities, which will then form a ready way of settling the duty on his estate when he dies. The effect of this provision is normally to keep the market value of the stock higher than would otherwise be justified but it is

3. In earlier times the code of morality in some countries would have precluded any relief of this kind but nowadays considerations of humanity tend to prevail, particularly where those concerned are more sinned against than sinning.

usual to stipulate that the stock must have been held by the deceased for a minimum period, e.g., 6 months or a year, before death so as to prevent tax avoidance by a wholesale switching of a taxpayer's investments into this form of security while he is on his deathbed.

45. This particular method of borrowing money by a government has, however, to be used with some care. If the interest offered on the loan stock accords with going rates of interest there should be no need for further inducements. The particular inducement of acceptability for payment of death duties will have direct interest for individual taxpayers only and will not be of use to companies, and banks, financial institutions and unit trust managers although there will be the indirect benefit that the price may be buoyed up by the tax payment concession. If the interest rate offered is less than the going commercial rate there is a danger the loan issue may not be successful despite the tax concession. Moreover if the conversion right is granted unconditionally (except for the period-of-holding factor) the government will not be able to control the rate at which the stock is redeemed. If the interest rate falls below the level of the market rate there may be a "run" on the stock by taxpayers buying it up as the price weakens in order to use it for tax conversion but with the government being unable to find "takers" when they try to reissue the stock if the going rate of interest has increased since the stock was originally issued.

:Other Assets

46. Some assets may be difficult to convert into cash, or be logical subjects for acquisition by the nation if offered by the executors of the deceased's estate in payment or part payment of the death duties on the estate as a whole. Some tax administrations are authorised to accept assets thought suitable for national acquisition. Such assets might include amenity land which would be thus acquired for public use, and works of art which might make useful additions to national museums and art galleries.

47. *Quick Succession Relief*

Where duty is charged on the estate of a deceased person and the same assets are again transmitted by a subsequent death, which occurs within a short time of the first death, the impact of death duties would be very severe without some relieving provision. It is usual in such cases to provide for a reduction in the ordinary rates of duty on the second death, where this occurs within a few years of the first, the relief being substantial when the second death occurs within a few months and being gradually tapered down to zero where the second death occurs at the end of the qualifying period. Usually the relief (known as "chain succession" or "quick succession" relief) is limited to the case where two deaths take place within 5 years. (Japan exceptionally has a 10-year relief period) Sample tables of relief are as follows:-

Period 2nd death within	*Rate of Quick Succession Relief*			
	Eire	*Kenya*	*New Zealand*	*U.K.*
1 month	50%	100%	75%	75%
3 months	50%	50%	75%	75%
4 months	50%	50%	75%	50%
8 months	50%	50%	60%	50%
1 year	50%	50%	50%	50%
2 years	40%	40%	40%	40%
3 years	30%	30%	30%	30%
4 years	20%	20%	20%	20%
5 years	10%	10%	10%	10%

Sundry Points

Date of Valuation

48. The date usually adopted for valuing the assets, the ownership of which passes on the death of an individual, is the date of death. This is logical because it is obviously the date on which the deceased relinquishes ownership or control. On the estate duty concept of the levy being a deferred capital charge on the assets which a deceased person has accumulated during his lifetime it is certainly appropriate that the charge should be made as at the date of death.

49. If the position of the heirs is looked at, however, and the tax related to the amount they inherit, it can readily be seen that hardship could be caused if the value of the assets inherited has fallen from the value they had at the date of death by the time distribution or conveyance takes place. For example, if company shares were inherited, there could possibly have been a dramatic fall in value and there have been cases where a negative inheritance has resulted, i.e., where tax payable on the value at the date of death has exceeded the reduced value of assets when administration of the testator's estate has been completed. Some countries accordingly allow an option, in the case of a fall in value, for the date of transmission of the inheritance to the heir by the executors to be taken as the valuation date for tax purposes.

50. Where on the other hand values have risen since the date of death, it is not usual for the tax department to be allowed the option of taxing on the value on the distribution date. It is of course desirable administrative practice to endeavour to assess and collect death duties as soon as possible after death, just as it is the duty of the executors to avoid hardship to the heirs by distributing (if necessary after realisation) or conveying assets from the estate as soon as possible to those inheriting them. Except where there is difficulty in valuing or realising assets, therefore, the use of values as at the date of death enables the duty to be computed at an early stage, which also assists the executors in ascertaining the net balance available for distribution. In Britain which uses the estate duty concept for death duties, most of the duty chargeable in the generality of cases is collected by about 3 months after death takes place. Where an inheritance tax operates it normally takes appreciably longer to compute, and hence to collect, the tax even where the executors are made responsible for payment before distribution of the assets.

Interest on Death Duties: Date Duty Payable

51. Where death duties are (theoretically) payable on the date of death it is usual to grant an interest-free grace period of 3 months or more for the payment to be made. Where this period is exceeded, however, interest on the overdue tax may be back-dated to the date of death. This is logical because if the assets of the estate are income-bearing (e.g. real property let at a rental or gilt-edged securities or ordinary shares which produce interest or dividends) there may be a temptation to slow down the proceeds of determining and distributing the estate and to delay paying death duties while the income of the intact estate is meantime accumulating for the ultimate benefit of the beneficiaries. In such circumstances the charging of interest on the death duties, back-dated for the whole period since death during which the estate income has been accumulating, clearly would be reasonable.

52. In some countries, however, death duties do not become due until some months after death, the period usually is at last 3 months and may be as much as a year (for example, Japan and New Zealand both

allow 6 months (and Belgium allows from 1 to 9 months depending on the type of beneficiary). In these countries, interest on overdue tax runs only from the official due date for payment.

53. Partly because some of the assets which form part of the estate may be non-income bearing, interest on overdue duty often starts at a comparatively low rate, such as 3% (this rate is used, e.g. in the U.K. and in Malaysia, while New Zealand charges 5%). Some countries, however, progressively increase the rate of interest as time goes on, to a rate nearer the going commercial rate of interest. It is necessary to do this in order to discourage "borrowing" the tax money by the taxpayers at a rate of interest lower than that obtainable commercially, by delaying paying the duty for an inordinate time. Even where assets are difficult to realise it may be possible to mortgage them, or pledge them for a bank overdraft, in order to settle the duty liability.

Spreading of Payments

54. Some countries provide "easy-payment" facilities, for example Britain allows an option in the case of certain assets, in respect of which estate duty would ordinarily be payable one year after death, for payment to be spread over 8 yearly or 16 half-yearly instalments, the first payable after one year, with the addition of interest at 3% per annum. The designated assets include real and leasehold property, a business or an interest in a business, and unquoted shares upon which duty could not be paid at once without undue hardship. Several other countries employ broadly similar measures and Japan allows a maximum 10-year period, under certain conditions where it is difficult to pay inheritance tax liability in a lump sum.

Prepayment of Death Duties

55. Few countries make provision to enable a taxpayer, who expects to leave substantial estate to his heirs, to make advance payments against the ultimate liability to death duties although there seems to be a good case for doing so. India has a sceme whereby a taxpayer may make a deposit against future estate duty liability and the deposit itself is not then regarded as an asset of his estate when liability is computed—the amount which may be so deposited, however, is limited to the amount of the duty, or Rs. 50,000, whichever is less. In the absence of prepayment schemes, taxpayers in some of the more developed countries make advance provision for death duties by entering into insurance policies designed for this purpose.

Locus or Situs of Assets

56. Some death duty codes lay down rules for determining the locus or situs of assets, but in many cases the matter is left to other laws of the country. It is usual, however, to have an article on the subject in any Double Tax (Death Duties) Treaty which may be entered into between countries (see, e.g., the treaties between the U.K. and Canada, France, Holland, South Africa, Sweden, and Switzerland respectively). Japan is an example of a country which specifies situs rules in its legislation—there is, of course, a fairly general line on the subject which is followed by most countries, with differences only of detail. The Draft Model Double Taxation Convention published in the Report of the O.E.C.D. Fiscal Committee in 1966 also contains situs rules for the various types of assets likely to be subject to estate or inheritance tax. A few examples of the situs commonly adopted for various types of asset follow—

(a) real property and other tangible assets are

taxed in the country where physically situated;
(b) ships and aircraft are considered to be situated in the country of registry;
(c) mining concessions are regarded as situated where the mine or mining lot is;
(d) fishing concessions are considered to be in the country to whose shores the concession is nearest;
(e) shares, debentures are situated in the country where the issuer has his head office or registered office, *except that*, where there is a local register for the shares in another country, holdings of shares on that local register are regarded as situated in that other country;
(f) patent and other industrial rights are considered to be situated in the country where they are registered;
(g) any property, or rights, not specifically covered in other rules are regarded as situated in the country where the deceased was domiciled.

Conclusion

57. For developing countries an estate duty system of charging tax on the estate of a deceased individual will usually be simplest to administer. Although such a system does not normally differentiate the tax payable according to the consanguinity of the heir to the deceased, it is not necessarily logical, if the tax is intended as a redistributive levy, or even necessarily equitable, to incorporate this factor in the tax code. On the other hand it is reasonable to make some special allowance to reduce the duty payable where an estate is bequeathed to a surviving spouse and dependent minor children.

58. Although death duty yields are not usually very high, and the flow of revenue, which depends on human mortality, is uncertain, there are good reasons for continuing to levy such a duty, at moderate rates. Not to do so would give up to the tax departments of other countries the tax which would be payable where assets within the country were owned by individuals who were domiciled outside its frontiers in countries which levied death duties. Death duties are, moreover, important administratively because the process of taxing assets at death is complementary to the taxing of income therefrom during the life of the owner, and it is obvious that some useful cross-checking can be done by the tax department.

DR. BEN-AMI ZUCKERMAN*:

PROPOSALS FOR A VALUE ADDED TAX IN ISRAEL

Israel, like many European countries, has recently been reviewing its tax system with a view to its reform. Unlike the members of the European Economic Community, Israel faces no dictate to adopt a value added tax but considers it as an important tool in the reform.

In the background of the reform there is the fact that the tax burden is among the highest in the world, and reaches some 50% (including payments to national insurance) of national income. This burden will not decrease in the coming years, and thus the importance of building the best possible tax system has increased. The planned system will enable the transfer of resources from the private sector to be done by minimizing the tax effects which act in a negative manner on the economy.

The value added tax will not replace a turnover tax (as in several of the EEC countries). There is no such tax in Israel. Instead, there is a varied collection of indirect taxes including a purchase tax which is imposed at many different rates depending on the product involved and is collected only at the manufacturing or import stage. The purchase tax as well as other indirect taxes will be streamlined with the introduction of the value added tax. Not of lesser importance will be a reduction in income tax rates reflecting the expected increase in revenues from the VAT.

The income from the new tax will replace, as noted previously, about 20% of the income generated by the taxes and compulsory loans levied on individuals income, about 50% of the income from indirect taxes on domestic output, and will serve as a source of finance for the design of a new system for grants to children and low income groups.

The State Revenue Administration has in January, 1972 published two pamphlets setting forth its proposals for a value added tax. It is hoped that these publications will prompt response and discussion by the business community and public at large. This will enable an even more thorough study of the VAT before its implementation.

SCOPE OF THE TAX

All sales of goods and real property by one whose business or part of his business is selling that product and the performance of services by one whose business is such come within the proposed taxing system. Anyone who sells goods or performs services is referred to as a "Trader" and must register with the Director of Value Added Tax.

Both terms "Sale" and "Goods" are given the broadest possible meanings in the law. A "Sale" will include exchange, hire, authority to use, using, delivering goods into the hands of one who has supplied materials or portions of the manufacture of goods and the expropriation of property for compensation or in exchange for other property. The term "Sale" shall also include the rendering of services.

"Goods" shall also include the supply of utilities or information, goodwill, patents, copyrights and a right to travel abroad (presently subject to the Foreign Travel Tax). Self-deliveries (i.e. goods set apart for business use from the inventory or production of a "Trader", or services performed by a "Trader" for his own business) of both goods and services are subject to the VAT.

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The taxable base on which the tax will be levied will be the price which is agreed upon between the parties including all taxes, charges, fees and payments imposed on the transaction and any expenses connected with its completion, including interest where payment is made in installments. If the Director of Value Added Tax is of the opinion that the price was influenced by a relationship between the parties, he may fix the price according to transactions of the same type. If there are no similar transactions, he may fix the price by calculating the cost plus a reasonable profit. Where the price is paid in property, the fair market price of that property will be used to determine the tax due.
It is the intention of the State Revenue Administration that the simpliest possible system will be introduced. That is, with only one rate of tax (plus a "Zero" rate) and with relatively few exemptions. This uniform rate will be 10%.

EXEMPTIONS

In a number of cases, the price paid for the delivery of a good or service will not be subject to the VAT. The seller of goods or provider of services will not then be required to collect or account for tax on such transactions. Except for exports, the exemption also puts the trader making the delivery or providing the service in a position where he cannot claim a credit for, or receive a refund on account of, the VAT he has borne on his own purchases. Thus, even exempt products will still contain an element of VAT.
Exempt activities are:

1) The renting of real property; (unlike many other laws, sales of real property by traders are within the normal taxing mechanism);
2) Sales of a limited number of staple foods; i.e. milk, standard bread, vegetable oil, eggs, margarine, rice, fish fillet and leben (a milk derivative product similar to yoghurt);
3) Operations of banks, insurance companies and pension funds. Instead of the VAT, these will pay a special tax of 3.5% of profits and the total wage-bill.
4) The sale of a business as a going concern.

Goods and services exported by traders are not liable to the imposition of VAT. To provide that such exports are not at a competitive disadvantage, the exporter will be able to recoup the tax paid by him on his purchases applied toward the good or service exported.

CREDIT FOR PRIOR TAX PAID

Implicit in the operation of a value added tax system is the right of a trader in the chain of production or marketing to offset the tax paid on purchases against the tax he is liable for on sales. This ensures that each trader actually pays tax only on the value which he has added to the product.
Each reporting period (the length of which has not yet been fixed) a trader will self-assess the tax due from him. From that sum he will deduct the total of all sums of tax which were collected from him on his purchases in that same period. He will remit the tax due with the periodic report. Where there is an excess of tax deductible above tax due on sales, the trader will get an immediate refund.
Credit for prior-stage tax will be substantiated by invoices. On every sale to a trader an invoice must be given showing the price and the value added tax separately. These invoices will then be real "money's worth" to a trader.

SMALL TRADERS

A trader with an annual turnover of less than IL.75,000 ($17,855) will have an option. He may elect to subject himself to the full

regulations of, and liability for, the VAT or he may instead pay a turnover tax. If he chooses the former, he may not revert to the turnover tax for two years.
The turnover tax will be a sum calculated on total turnover, whether profitable or not. It will be at a rate of 8% for traders providing services and 4% for traders delivering goods. Members of the free professions will not have the alternative of the turnover tax. They will in all cases come within the VAT system. Traders with an annual turnover of IL.2,500 ($595) or less will be exempt from both the value added tax and the turnover tax.

SPECIAL RELIEFS

Because the imposition of the value added tax will have a pronounced effect on low-income groups, the Government intends to provide ameliatory relief. Special monthly family allowances, depending on the number of children, will be given to those who would otherwise be most severely affected by the VAT. The amount of the allowance will be gauged to offset the increased expenditure due to the new tax.
In addition, the Value Added Tax Law will grant to the Minister of Finance the power to control prices on a number of essential products for a period of nine months following the introduction of the VAT. This authority will be used to protect the consumer and the economy from unwarranted inflation.

INCOME TAX REFORM

It might be of interest to mention the changes suggested in income-tax rates, as a part of the general reform in the system of taxation.
Problems caused by the present direct taxes system can be divided into two parts:

a) The short-comings of the compulsory loans levied on personal income.
b) The high, and steep, tax rates levied on personal income.

Compulsory loans were instituted in April, 1970 to replace the voluntary Defense Loan. The compulsory loans bear 5% interest and are linked to the cost-of-living index. The period of maturity of the Defense Loan is 15 years, of the compulsory Saving Loan 5 years. Two-thirds of the total income from these loans is derived from the former, one-third from the latter.

Because of defense and social welfare needs projected for the next few years, it seems that, as these loans reach maturity, new taxes or compulsory loans will be needed to replace the income generated by them: thus it would appear more rational to replace the current compulsory loans by tax.
In conjunction with the replacement of compulsory loans by VAT the marginal rates on individual income will be decreased. This change will raise the level of minimum income exempt from tax and will decrease the maximum marginal tax rate from 80% at present to 65% or 70%. It will be particularly important for the middle income groups, which fall within an income range of IL.1,000-IL.1,500 (gross) per month. For example, for a married employee with two children in this income group the present effective marginal tax rate jumps from 41.7% at IL.1,000 per month gross salary to 61.6% at IL.1,500; with the planned reform the rate will only rise from 31.4% to 45%.
Finally, it should be noted that the reform in the system of taxation, discribed above, including the introduction of the VAT, is still at the stage of proposals by the State Revenue Administration of Israel and recommendations by the blue-ribbon committee which examined, and recommended upon, the proposals. The reform so far, has not yet been approved by the Israeli parliament.

EFTA:

The Virtue of Completeness*

Excerpts from the Address by Sir John Coulson, K.C.M.G., Secretary-General of the European Free Trade Association, to the European Management Forum, Davos, 24th January 1972

The governments of the EFTA countries have seen their task as being to provide a genuine free trade framework within which private production and trade can operate to the maximum advantage. I believe that over the past decade the EFTA governments have discharged their task very well. With a minimum of machinery. EFTA has been able to create conditions in which trade between our countries has prospered. My first point, then, is the real and unquestionable benefits which free trade has brought with it, and I will give you a few measurements of the success of the EFTA experiment.

In 1959, which was the last full year before EFTA came into being, the EFTA countries imported from each other goods to a value equivalent to $3,700 million. This year the corresponding figure will be about $13,000 million, or between three and four times the trade between our countries twelve years ago. I mention trade between the EFTA countries first because naturally they have shown the larges increase, reflecting the abolition of trade barriers and the creation of a single market in the nine countries.

But EFTA trade with other parts of the world has also shown rapid rates of growth. For exemple, EFTA exports to the six countries of the European Community have nearly trebled, from $4,300 million to about $12,000 million. The total exports of the EFTA countries have grown from $18,000 million in 1959 to about $45,000 million this year, or by two and à half times.

I will not burden you with import statistics Suffice to say that other countries' sales in the EFTA markets have also shown high rates of growth, so that our trading partners have shared fully in our success. So it can be fairly said that free trade in EFTA has been a success.

When we negotiated the Stockholm Convention, which is the EFTA treaty, in 1959, we provided a basis for all later developments. We laid down a ten-year timetable whereby our member countries were to abollsh all tariffs and quota barriers on trade with each other by the beginning of 1970. In fact, we reached that objective at the end of 1966, three years ahead of schedule. We were, of course, aware from the outset that tariffs and quotas were not, the only barriers to trade and we indicated in the Convention a number of areas on which action would have to be taken to eliminate other trade barriers. Over the years we were able to tackle these problems successfully. The importance of this achievement should not be minimized. For example, in all the negotiations which are now going on between the EFTA countries and the European Community, the basis is a recognition by the Community that the free trade achieved in EFTA must be preserved and that the enlargement of the Community must not involve a re-erection of trade barriers which have been successfully demolished between the EFTA countries.

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* From the EFTA Bulletin, March 1972, at 3.

LESSONS FOR FUTURE

EFTA, in its present form at least, was always regarded as an essentially temporary organization which would help its members prepare for the time when wider trading arrangements became possible in Western Europe. But it did not just stand still and await events. EFTA used the waiting period to good effect and its successes have lessons for the present and for the future.

In my opinion the most important factor was the completeness of the EFTA arrangement. It was not limited in its scope either regarding the trade barriers it was to remove or in the list of commodities which were included. We simply took all the industrial products which were traded between our members and we applied to all of them the same timetable for the removal of trade restrictions (Incidentally, I should mention that we naturally gave special treatment to Portugal and Iceland, which were obviously special cases, in the form of a much longer timetable for the reduction of their tariffs on manufactured goods.) Back in the early '60's, when EFTA began, there were many industries which feared the worst as a consequence of free trade. We even included in in the Convention escape clauses whereby member governments could go back on their EFTA obligations if particular sectors experienced severe effects from foreign competition.

In the event, the escape clauses were never used. The prosperity engendered by free trade in most cases more than made up for the problems of free competition. Moreover, the fact that trade barriers were abolished on a fairly long timetable allowed industry several years to adapt its production patterns to the new situation. It is obviously because their early fears turned out to be illusory that the industries of the EFTA countries are now prepared to accept the free and open competition which they are all trying to negotiate with the Community.

It is important that this experience should be remembered and that too much attention should not be paid to short-term national interests which are trying to limit the future scope of the free trade which is now being negotiated.

On January 22, in Brussels, the signature ceremony took place of the new Treaties of Brussels which open the door for Britain, Denmark, Ireland and Norway to join the European Communities on 1st January, 1973. As I said earlier, this enlargement of the Community is taking place on the basis that the free trade achieved in EFTA must be maintained. To make this possible, the six other EFTA countries are now negotiating with the Communities for special relations agreements. These negotiations are taking place on the lines of a mandate agreed by the Community Council of Ministers which has instructed the European Commission to negotiate on the basis of free trade in industrial goods. Special provisions are obviously contemplated in the sectors of fisheries and agriculture for Iceland and Portugal, to whom industrial trade is of smaller importance: and the mandate is not yet complete in regard to several important questions.

The objective on all sides in that these special relations agreements should be negotiated as early as possible in 1972 so that they can come into force on the same day as the other EFTA countries enter into the Community. The agreements will provide for movement to free trade over the same five-year transitional period as it will apply to the new Community members. The agreements will also provide that the free trade now existing in EFTA will continue between the candidate and non-candidate countries over the transitional period.

You will realise that an intricate arrangement of this kind demands a great deal of advance planning. For the Community, the problem is simplified in that they negotiate as one. Their talks with the candidate countries are carried out by the Council of Ministers, who first agree amongst themselves the constituents of their negotiating position. Similarly the negotiations with the non-candidate countries are carried out by the Commission on the basis of a mandate agreed beforehand by the Community Council of Ministers. For the EFTA countries, the problem is more complicated because they are not negotiating as a unit but in nine separate bilateral processes. If the free trade already achieved in EFTA is to be preserved, then each of the EFTA countries must be aware of all the possible pitfalls that lie in the path. Trade negotiations are not a question of the broad brush, but of a multitude of details, each of which is of vital importance to particular exporters or importers. It would be only too easy, for example, for one country to agree on some item in its bilateral talks with the Community which would prejudice the interests of another EFTA country.

For the past year, therefore, EFTA has been considering in concert all the many elements which must be kept in mind if there is to be no retrogression on free trade, and this has involved close contracts in each country between ministries and representative associations in the private sector.

If we add all these negotiations together, with candidates and non-candidates alike, we hope to see at the end of 1977 in effect complete free trade in industrial products over all the existing membership of the Communities and of EFTA. This is the design which the EFTA countries have always sought as being the only appropriate arrangement for the interdependent economies of the countries of Western Europe.

There is, however, one cloud over this situation and that is the possibility that the Community may make significant exceptions to free trade in certain cases, or at least require special regimes in the case of sensitive products. Although the Commission's mandate has not yet been finalised in this respect, it is known to contain a long list of commodities which have been suggested for special treatment e.g. paper and pulp. Obviously commodities which are sensitive to an importing country are precisely those of most value to the exporting country, which will in turn have to impose restrictions on other imports if a fair bargain is to be achieved. There is thus the danger of creating a vicious circle.

Fortunately, although the provisional list of commodities I have mentioned is long, it is still tentative. We must hope that the Community will in the end take a wiser course, based on the knowledge gained both in the Common Market and in EFTA that difficulties which loom large at the beginning of such an effort will certainly evaporate with time. The essential step is to negotiate for free trade across the board for industrial products by the end of 1977. Once such a commitment exists, the planning of all Western European businessmen will take place on that basis and the difficulties now feared will disappear.

To sum up, if we can assume a successful outcome to the present complicated network of negotiations, the beginning of 1973 will ogen up a new economic map of Europe. All sorts of existing trade frontiers will begin to fade off the map. In particular, for the industrial community, we shall see the end of a situation in which industry had to make at least two investment decisions in Western Europe, one to take advantage of the Community regime and the other to take advantage of EFTA. If all goes well, Western

Europe will become a single market for industrial products of sixteen countries with 300 million people, all of relatively high purchasing power. Those responsible for investment decisions will be able to look at Western Europe as a single framework in which their investment plans for production and distribution can be considered as a unity. The existence of the Community and of EFTA has already enriched Western Europe. There is no doubt that this future design will have the same effects—and probably on a larger scale.

UNITED KINGDOM:

Estate Duty—Provisions in the Finance Bill—Notes for the Guidance of Accountable Persons and their Solicitors*

1. *Rates of Duty*. Clause 111 of the Finance Bill incorporates the Budget proposal to increase the estate duty exemption limit from £12,500 to £15,000 and to introduce a new scale of rates as follows:

Slice of Net Capital:		*Rate Per Cent of Duty*	*Cumulative Duty at Maximum of Each Slice*
Exceeding	*Not Exceeding*		
£	£		£
Under 15,000		Nil	Nil
15,000 –	20,000	25	1,250
20,000 –	30,000	30	4,250
30,000 –	40,000	35	7,750
40,000 –	50,000	40	11,750
50,000 –	60,000	45	16,250
60,000 –	80,000	50	26,250
80,000 –	100,000	55	37,250
100,000 –	150,000	60	67,250
150,000 –	200,000	65	99,750
200,000 –	500,000	70	309,750
Over 500,000		75	

2. *Aggregation*. Subsection 3 of Clause 111 also provides for the raising from £12,500 to £15,000 of the figure for relief from aggregation for small estates (Section 16(3) Finance Act 1894 as amended).

3. *Relief for Property Left to a Surviving Spouse, Charities and Certain Bodies*. Clause 112 and Schedule 26 of the Bill provide the relief in the Budget proposal for property given:

i. to a surviving spouse up to a limit of £15,000
ii. to charity, up to a limit of £50,000
iii. to certain bodies concerned with the preservation of the national heritage (see Schedule 25 to the Bill and the attached press notice issued by HM Treasury).

4. The proposals which are embodied in these provisions and which relate only to deaths after 21 March 1972 (i.e. Budget Day) are subject to the approval of Parliament and will not have legal effect before the Finance Bill becomes law. It is, however, intended to give effect to them provisionally forthwith as set out below.

5. Any assessments made by the Estate Duty

* Press Release of the Board of Inland Revenue of April 11, 1972.

Offices will be at the reduced amounts payable in accordance with these proposals, which may also be acted upon by accountable persons in assessing the duty payable on delivery of the Inland Revenue Affidavits and Inventories of estates of persons dying after 21 March 1972. A separate paper should be filed, where appropriate, setting out the property which qualifies for relief as given to a surviving spouse, to charity and to certain bodies referred to in paragraph 3. The amounts of the reliefs claimed should be deducted from the total of the property in the relative Account in England (Inventory in Scotland) and the net figure for that Account (or Inventory) carried to the assessment for duty.

6. It will not be possible to issue a Certificate of Discharge in respect of any death after 21 March 1972 where the estate exceeds £12,500 until after the Finance Bill becomes law. Informal assurances will, however, be given in the meantime.

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Seventh revised edition of handbook containing comment and text of the national and local income taxes, the national net worth tax, and other related taxes for 1971.

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Summary of every English case on the taxation of income and capital gains available at May 31, 1971. Including Scottish, Irish, and South

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TAXATION OF BUSINESSES AND BUSINESS TRANSACTIONS, by M. Storz. Published by Oyez Publishing Limited, Oyez House, Breams Buildings, London EC4P 4BU, 1972. 297 pp.
General tax legislation concerning businesses and business transactions, whether of companies or of individuals, with examples and reference to case law.

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TAXATION OF COMPANIES AND BODIES CORPORATE, by M. Storz. Published by Oyez Publishing Limited, Oyez House, Breams Buildings. London, EC4P 4BU, 1971. 239 pp.
Summary of current legislation on corporation tax and income tax, as it affects companies and bodies corporate, with examples and reference to case law.

Library International Bureau of
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TAXATION FOR EXECUTORS AND TRUSTEES, 3rd edition, by A.R. Mellows. Published by Butterworth & Co. (Publishers) Ltd., 88 Kingsway, WC2B 6AB London, 1972. 140 pp.
Income tax and capital gains tax relevant for executors and trustees, as of July 31, 1971.

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TAXATION MANUAL – Income tax and surtax. Law and practice, by P.F. Hughes and J.M. Cooper. Published by Taxation, 98 Park Street, Mayfair, London W1Y 4BR, 1971. 733 pp.
Convenient access to the interpretation and practical effect of the law relating to income tax and surtax.

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THE TRUSTEE'S HANDBOOK, 2nd edition, by A.R. Mellows. Published by Oyez Publishing Limited, Breams Buildings, Oyez House, London EC4P 4BU, 1971. 172 pp.
Explanation of the setting up of trusts and the appointment of trustees. Deals with the situations which ordinary trustees are likely to meet, including taxation aspects.

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DISC, INTERCOMPANY PRICING, FOREIGN EXCHANGE, COMPENSATING U.S. EXECUTIVES ABROAD, AND OTHER CURRENT TAX PROBLEMS, Vol. VI. Published by International Tax Institute, Inc., 70 Pine Street, New York, N.Y. 10005, 1972. 204 pp.
Compilation of papers of September and December 1971 Meetings of International Tax Institute on DISC, intercompany pricing and other current tax problems.

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ESTATE PLANNING – QUICK REFERENCE OUTLINE, 19th edition, by W.R. Spinney. Published by Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, Ill. 60646, 1972. 128 pp.

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FEDERAL TAX GUIDE 1972, Vol I. Published by Commerce Clearing House, Inc., Chicago, Ill. 60646, 1971.
Vol. I of a series of four loose-leaf volumes containing texts and explanations of income, estate, and gift taxes with illustrative examples, tax planning, tax tables, new withholding tax tables, check lists, indexes and quick reference lists.

Library International Bureau of
Fiscal Documentation no. B 6074

INTERNAL REVENUE CODE – Income, Estate and Gift Tax Provisions, including 1971 amendments. Published by Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago, Ill. 60646, 1972. 1601 pp.
Annotated text of the Internal Revenue Code, as amended by the Revenue Act 1971, relating to income tax. The non-income tax provisions of the Code are not included.

Library International Bureau of
Fiscal Documentation no. B 6219

INTERNAL REVENUE CUMULATIVE BULLETIN, 1971-1, January-June. Published by U.S. Government Printing Office, Washington D.C. 20402, 1971. 787 pp.
Cumulation of information from the Internal Revenue Service, including decisions, rulings, texts of treaties, etc.

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THE FOREIGN TRUST SETS THE NEW TAX PATTERN, by J.S. Bush. Published by Newkirk Associates Inc., 308 Wolf Road, Latham, New York 12110, 1971. 44 pp.
Reprinted from the 5th Annual Institute on Estate Planning, held by the University of Miami Law Centre.

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U.S. TAXATION OF INTERNATIONAL OPERATIONS. Published by Prentice-Hall Inc., Englewood Cliffs, New Jersey 07632, 1972.
Loose-leaf dealing exclusively with US taxation of international operations. To be updated twice a month.

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Fiscal Documentation no. B 6193

YUGOSLAVIA

PRAVO STRANIH INVESTICIJA U JUGOSLAVIJI, edited by A. Goldstajn. Published by Informator, Zagreb, Masarykova 1, 1971. 100 pp.
First volume of publication entitled The Law of Foreign Investments in Yugoslavia, containing articles by various contributors on several aspects arising from foreign business participation in Yugoslavia. An article entitled Taxation of Foreign Investors in Yugoslavia, by Marijan Hanzeković, with English summary is included. Updated as of August 5, 1971.

Library International Bureau of
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Second part of publication entitled The Law of Foreign Investments in Yugoslavia, supplementing the first volume by bringing the material up to date as of January 31, 1972. Deals with various aspects arising from foreign investments in Yugoslavia.

Library International Bureau of
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CUMULATIVE INDEX 1972

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ARTICLES

Y.C. JAO*:

RECENT CHANGES AND TRENDS IN HONG KONG'S TAXATION

An outline of Hong Kong's tax system, primarily from the legal point of view, was given in an article published in this Bulletin in 1969.[1] The purpose of the present article is to describe changes in the tax system since 1970, and present a brief economic analysis of the trends in tax revenue in Hong Kong.

CHANGES IN THE TAX SYSTEM

As is well known, Hong Kong follows the "schedular system", which used to be adopted in most British colonies and protectorates. Instead of consolidating the taxpayer's income or net accretion from whatever source, separate taxes are charged on business profits, salaries and pensions, rental income from real property, and interest and annuities. The nearest equivalent to the "global income system" in Hong Kong is the so-called "personal assessment", an option open only to local residents. It is however normally elected by taxpayers as a form of relief, since personal allowances (which otherwise are applicable only to Salaries Tax) are granted on consolidated income.

Hong Kong also adheres to the "source principle", under which only income arising in or derived from the Colony is subject to taxation.[2] Apart from the already low tax rate (the standard rate being 15%), a wide range of income and wealth are exempted. Thus there are no taxes on dividends, capital gains and gifts. Other innovations which at different times have attracted a great deal of attention elsewhere, such as expenditure tax, net wealth tax, value-added tax etc., are all unknown to Hong Kong. Furthermore, Hong Kong, unlike many less developed countries (LDC's), does not resort to various incentives, such as tax holidays and investment allowances, to attract foreign investment and stimulate capital formation. There are also no special schemes for accelerating write-off of capital assets other than the normal depreciation allowances, and no export subsidies. There is however provision for the deduction of expenditures on research and technical education from business profits. While the essential features of the basic framework have remained unaltered, during the past three years a number of changes in the tax system have either been made or are being considered. These can be conveniently summarized under the following headings.

(1) *Personal allowances*

Personal allowances were first set in 1947. Unchanged since then, these allowances are $7,000 each for the taxpayer and his spouse; those for children range from $2,000 each for first two children to $500 for the 9th child, but subject to a maximum allowance of $9,500.[3] In 1970, the Inland Revenue Ordinance was amended to provide for additional allowances. Under the new law, an allowance is given for the maintenance of dependent parents or parents-in-law, provided such dependents are permanent residents

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1. R.V. Giddy, "An Outline of Taxes under the Hong Kong Inland Revenue Ordinance", *Bulletin for International Fiscal Documentation*, 1969, pp. 574-583.
2. For an explanation of the distinction between "source principle" and "residence principle", see Carl Shoup, *Public Finance* (London: Weidenfeld and Nicolson, 1969), p. 292.
3. Throughout this article, the currency referred to is the Hong Kong Dollar.

of Hong Kong and do not have income exceeding $2,000 a year. But only one allowance will be granted for any one dependent parent, so that where two or more persons have contributed to their parents' maintenance, the allowance will be apportioned accordingly. Second, if a taxpayer has a working wife, and her earnings are included in an assessment for tax on her husband, an allowance equivalent to the wife's actual income or $3,000, whichever is less, may be given. Third, a special allowance of $3,600 is provided for the relief of taxpayers in lower income brackets. It has the effect of exempting a person in practice from tax if his tax liability would otherwise be below $100, while giving marginal relief on a reducing scale to those whose liability would otherwise be between $100 and $250. Finally, the law provides for a deduction to be made in either profits tax or salaries tax for donations made to charitable institutions and trust expecially approved for this purpose.

(2) *Tax Rates*

The standard tax rate, raised from 12½% to 15% in April 1966, has remained unchanged. However, adjustments have been made in the sliding scales for Estate Duty and Salaries Tax. The Estate Duty is assessed only on that part of an estate which is located in Hong Kong and valued at more than $200,000. There is also no tax on gifts given *inter vivos*. The marginal rates on the sliding scale used to range from 5% to a maximum of 40%. This maximum rate however has since 1967 been successively reduced to only 15% at present. The official reason is that this will help to discourage residents from taking avoidance action by transferring assets overseas before death.

Reductions have also been recently made in the sliding scale for Salaries Tax. The first step is now 2.5% instead of 2.75%, followed by marginal rates which are also multiples of 2.5%. Compared with the old scale, there is a more even gradation in the new one, and the maximum rate will not be reached until the 12th step, as shown in the following table. The major effect of this recasting of the tax schedule is to afford considerable relief to the

TABLE I

Sliding Scale for Salaries Tax

Old Scale	*New Scale*
2.75% (on the 1st $5,000)	2.5% (on the 1st $5,000)
5.5% (on the next $5,000)	5% (on the next $5,000)
8.25% (–do–)	7.5% (–do–)
11% (–do–)	10% (–do–)
14% (–do–)	12.5% (–do–)
17% (–do–)	15% (–do–)
20% (–do–)	17.5% (–do–)
23% (–do–)	20% (–do–)
26% (–do–)	22.5% (–do–)
30% (on the remainder)	25% (–do–)
	27.5% (–do–)
	30% (on the remainder)

(both scales subject to a maximum average rate of 15% on gross income before personal allowances)

middle income groups, particularly those with gross assessable income between $40,000 and $80,000 dollars per annum.

(3) *Minor Taxes*

A number of minor taxes have been abolished since 1970. These include public dance halls tax, tax on all live entertainments (except race meetings), and duties on hydrocarbon oils and methyl alcohol. They have been abolished either because the original purposes for imposition no longer exist, or because the revenue yields no longer justify the administrative expenses and efforts. However, hydrocarbon oils are widely used by industrial firms and households, and the abolition of duties on such oils will presumably help to keep down costs of living.

(4) *Tax Proposals for 1973-74*

In his maiden Budget Speech delivered on March 1, 1972, the new Financial Secretary, Mr. C.P. Haddon-Cave, proposed further changes for implementation in the next fiscal year 1973-74. The first concerns the last remaining major recommendation of the 1968 Report of the Inland Revenue Ordinance Review Committee, namely, to switch over from the present artificial basis of assessing tax for the current year with reference to income or profits earned in a preceding period to a system of asssessing tax for the current year on the actual income or profits earned in the current year. However, the change-over will be in the first instance limited to Salaries Tax only, its application to Profits Tax being deferred for the time being.

The second concerns "rates", which in the British tradition are a kind of tax for local services such as police, water, street lighting, fire prevention etc. At present the rates are charged at 17% of the annual letting value of land or buildings for urban areas, and 11% for suburban areas in the New Territories. Although nominally payable by the landlords, the tax burden is more often than not shifted to the tenants, especially during periods of excess demand for housing. As from April 1, 1973, the rate charge in urban areas is to be reduced from 17% to 15%, and to 14% and 13% respectively for those areas where only an unfiltered mains water supply is available or no mains water supply is available; but that for the suburban areas is to remain the same at 11%. The Financial Secretary did not however foresee any decline in revenue from rates since revaluations were being made at a much higher level due to the booming housing market.

The combined effects of all these changes —raising personal allowances, cutting tax rates, and abolishing minor taxes—will be undoubtedly to reduce the effective burden of the taxpayers as a whole, and thus enhance further Hong Kong's reputation as a tax haven.

TRENDS IN TAX REVENUE

The low level of taxation can best be appreciated from Table 2, where it is shown that although the ratio of tax revenue to Gross Domestic Product did increase rapidly from 3.4% in 1947 to 9.6% in 1953, it fluctuated thereafter within a relatively narrow range of between 7.2% and 9.9%. For the period 1947-70 as a whole, the mean ratio is 7.9%. It is not only sharply lower than that in advanced countries (where it is often over 30%), but also considerably lower than that in many LDC's.[4]

4. See R. A. Musgrave, *Fiscal Systems*, (New Haven: Yale University Press, 1969), chapter 7; J. R. Lotz and E. R. Morss, "Tax Effort in Developing Countries", *Finance and Development*, September 1969, pp. 36-39. The ratio used in these studies is tax/GNP ratio. To the extent that GNP is normally greater than GDP, the low tax burden in Hong Kong is even more remarkable.

TABLE II

Ratio of Tax Revenue to Gross Domestic Product

	(percentage)
1947	3.4
1948	5.6
1949	5.4
1950	5.7
1951	6.4
1952	7.8
1953	9.6
1954	9.1
1955	8.7
1956	8.0
1957	8.2
1958	8.6
1959	8.5
1960	7.2
1961	8.0
1962	8.5
1963	8.2
1964	8.5
1965	8.7
1966	8.6
1967	9.9
1968	8.9
1969	8.8
1970	8.8

Source:

1. Tax data derived from annual reports of the Accountant-General and Commissioner of Inland Revenue.
2. GDP data derived from: E.F. Szczepanik, "The National Income of Hong Kong, 1947-1960", paper presented to the First Asian Conference of the International Association for Research in Income and Wealth; *Report on the National Income Survey of Hong Kong* (Chang Report, 1969); K.R. Chou, *The Hong Kong Economy*, Hong Kong, 1966; Y.C. Jao, "Money Supply in Hong Kong", *Hong Kong Economic Papers*, No. 5, 1970, pp. 24-48.

Throughout the postwar period, taxes accounted for about 60-70% of total revenue. In Table 3 the relative shares of indirect taxes, direct taxes, and non-tax revenue are presented. It is clear that while the share of non-tax revenue has remained fairly stable, there have been notable changes in the composition of tax revenue. The share of indirect taxes had declined over the years from 58.1% in 1947 to 36.5% in 1970, while that of direct taxes had increased from only 5.6% to 25.1% during the same period. Of the indirect taxes, the share of excise duties (not given in the table) had also declined sharply from 41.6% in 1947 to 14.7% in 1970. The direct-indirect tax ratio is further given in Table 4, which shows a dramatic increase in this ratio from only 0.1 in 1947 to 0.69 in 1970. Hong Kong's experience in these respects is broadly consistent with the findings of economists, based on empirical studies of a large sample of countries (Hong Kong not included), that the direct-indirect tax ratio tends to rise during the transition of a developing economy towards modernity[5]. One point that needs to be stressed is that although Hong Kong is one of the most open economies in the world, it has, unlike most other LDC's, relied little on taxes on the foreign trade sector, mainly (though not exclusively) due to its free port status.[6]

5. See *inter alia*, R. A. Musgrave, *op. cit.*, chapter 6; H. H. Hinrichs, *General Theory of Tax Structure Change During Economic Development* (Cambridge: The Law School of Harvard University, 1966), chapter 6.

6. There is no general tariff in Hong Kong except duties on a few commodities, whether locally manufactured or imported. With the abolition of duties on hydrocarbon oils and methyl alcohol, the remaining commodities subject to tax are alcoholic liquors, tobacco, table waters and motor vehicles. Preferential rates are charged on local manufactures and imports from other Commonwealth countries.

TABLE 3

Revenue Structure of Hong Kong

(percentage of total revenue)

Year	*Indirect Taxes*[1]	*Direct Taxes*[2]	*Non-tax Revenue*[3]
1947	58.1	5.6	35.3
1948	52.0	8.6	39.4
1949	42.6	22.4	35.0
1950	45.0	15.8	39.2
1951	44.8	18.4	36.8
1952	47.2	20.1	32.7
1953	39.3	30.7	30.0
1954	38.9	29.9	31.2
1955	38.4	27.6	34.0
1956	40.7	22.9	36.4
1957	40.2	22.3	37.5
1958	38.8	22.0	39.2
1959	38.6	21.9	39.5
1960	39.9	20.3	39.8
1961	39.4	19.3	41.3
1962	38.3	21.1	40.6
1963	35.0	19.1	45.9
1964	35.7	20.9	43.4
1965	37.5	22.7	39.8
1966	37.9	24.0	38.1
1967	38.6	25.6	35.8
1968	38.1	26.4	35.5
1969	39.3	25.9	34.8
1970	36.5	25.1	38.4

Source: derived from annual reports of the Accountant-General and the Commissioner of Inland Revenue

Notes to Table 3:

1. Indirect taxes include excise duties, bets and sweeps tax, entertainment tax, stamp duties, hotel accommodation tax, royalties and concessions, motor vehicle tax, and rates.
2. Direct taxes include corporation profits tax, business profit tax, salaries tax, property tax, interest tax, personal assessment, and estate duty.
3. Non-tax revenue includes license fees, fines, water charges, land sales, earnings from Post Office, Kai Tak Airport, Kowloon-Canton Railway etc.

TABLE IV

Direct/Indirect Tax Ratio in Hong Kong

1947	0.10
1948	0.17
1949	0.53
1950	0.35
1951	0.41
1952	0.43
1953	0.78
1954	0.77
1955	0.72
1956	0.56
1957	0.55
1958	0.57
1959	0.57
1960	0.51
1961	0.49
1962	0.55
1963	0.55
1964	0.59
1965	0.61
1966	0.63
1967	0.66
1968	0.69
1969	0.66
1970	0.69

Source: See Table 3

Another important indicator in fiscal analysis is the elasticity of tax revenue with respect to national income. It measures how much tax revenue will change as a result of a change in national income, both in percentage terms. It has often been argued, though without quantitative substantiation, that tax revenue in Hong Kong generally increases at a much faster rate than national income. To test this hypothesis, we fit a double-log regression equation to tax revenue and GDP data for the period 1957-70 (n = 24) with the following result:

$$\log T = -1.7383 + 1.1683 \log Y$$
$$r^2 = 0.9227$$

where T is tax revenue, Y is gross domestic product at factor cost, and r^2 is the coefficient of determination. As shown in the equation, the income elasticity is well over unity. In other words, for every 1% increase in national income, there will be approximately 1.17% increase in tax revenue. Both the elasticity and the intercept have expected correct signs. Moreover, the magnitude of r^2 indicates that the fit is a good one.

The relatively high income elasticity may at first sight seem surprising in view of the lack of progressivity in Hong Kong's tax structure. Only two kinds of tax, namely the Salaries Tax and Estate Duty, have progressive scales whose impact has however been much softened by recent cuts in marginal rates. Moreover the Salaries Tax is subject to the constraint that the average rate should not exceed 15% on gross income before personal allowances. The remaining taxes are either proportional or regressive. One must therefore look for other factors whose effects more than compensate for the lack of progressivity. Some tentative explanations might be offered. First, during the period 1947-70, the standard rate had been increased several times, first from 10% to 12.5% in 1951, and then from 12.5% to 15% in 1966. Second, the elasticity could reflect increasing efficiency on the part of the authorities over the years in collecting revenue and coping with tax evaders and defaulters. Last but not least, it could also reflect the fact that during Hong Kong's very remarkable growth since the end of the Second World War, overall prosperity has succeeded in percolating through the hitherto lower-income groups, so that as the economy expands, more and more people are being brought into the taxable brackets.

CONCLUSIONS

Recent changes in the tax system confirm

that the overriding objective of Hong Kong Government's fiscal policy is to provide a favourable framework for economic growth by minimizing the disincentive effects of taxation, especially of marginal rates. At the same time it is clear that the Government has been most reluctant to use the tax instrument for achieving a more equitable distribution of income and wealth. Thus, whereas in most other countries the Estate Duty is normally used as a weapon against concentration, in Hong Kong its maximum rate has been sharply reduced as an inducement to wealth-holders. However it is difficult to see how the Government can continue to avoid facing the trade-off between growth and distributional justice in the years to come.

The changing pattern of tax revenue in Hong Kong generally conforms to the historical experiences of most transitional economies. However, one notable point is the relative stability of the share of non-tax revenue. Another notable point is the relatively high income elasticity, which has enabled the Government not only to cope with rapidly increasing expenditures on public services, but to achieve sizeable surplus as well.[7]

7. Throughout the postwar period, the Hong Kong Government has been able to achieve a surplus for every fiscal year except for 1959-60 and 1965-66. According to the Financial Secretary, the accumulated surplus in the General Revenue Account now amounts to $2,900 million.

MAKOTO MIURA*:

PROBLEMS CONNECTED WITH THE INTRODUCTION OF TURNOVER TAX ON VALUE ADDED IN JAPAN

The Japanese Government is currently planning to introduce a turnover tax on value added (TVA)—probably of the European Economic Community (EEC) type—in the near future. The introduction of this tax is regarded as a final measure completing the Japanese taxation system.

It should be noted that as early as in 1950 a bill was drafted for the introduction of a value added tax which would replace the business tax (local tax), in conformity with the recommendations of the Shoup Mission. This bill was passed by Japanese Parliament in 1950, but its enforcement was postponed a number of times. TVA as a new taxation method met with strong opposition from the Japanese taxpayers and the TVA Law was finally repealed by a resolution of Parliament in 1954, i.e., in the same year in which the TVA was introduced in France (so that TVA was never levied in Japan).

Japanese taxpayers have had no experience at all with TVA or any other turnover tax, except during the years 1948/49, during which period of time a cumulative turnover tax was levied. However, the life of the latter was limited to only one year and a half.

According to the announcements made by the Japanese authorities two major reasons exist for the introduction of a TVA in Japan:

(a) it is an important method to increase the tax revenue and,
(b) it is an effective method to increase the ratio which the indirect taxes bear to direct taxes.

In addition some authorities maintain that the TVA will be effective for so-called border tax adjustments, i.e., the amount of TVA to be refunded at exportation of goods can easily be ascertained.

Since it is expected that TVA will increase total tax revenue it will open up the possibility of an income tax reduction.

Should the TVA (EEC type) be introduced in Japan in 1973 (fiscal year), its estimated revenue—assuming that its rate will be 10% and assuming that gross national consumption in 1973 will be 50,000,000,000,000 Yen ($162,000,000,000)—will amount to approximately 5,000,000,000,000 Yen ($16,200,000,000). Note that Japanese tax revenue in fiscal year 1972 is estimated to total 13,838,900,000,000 Yen ($45,060,000,000).

Most of the Japanese who are knowledgeable about turnover tax and the TVA are concerned about the latter's introduction in Japan. Their anxieties are based on the following:

(a) The introduction of a TVA system tends to increase prices;
(b) The increased tax revenues will possibly not be utilized to increase the welfare of the people but will be wasted on non-essential projects.

According to my opinion the conditions surrounding the introduction of the TVA in Japan differ from those which were existent in the EEC countries.

Firstly, the EEC countries already had a turnover tax for a long period of time when the TVA was introduced. The taxpayers were therefore already accustomed to this type of tax so that for the EEC countries it was not too difficult to replace their respec-

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tive turnover taxes by the TVA. An exception, however, is the United Kingdom where no general turnover is currently levied. If the introduction of TVA in the U.K. will be carried out successfully, this will be encouraging to the Japanese Government.

Secondly, the price inflation is indeed a common problem all over the world at the present time, but the rate of inflationary increase in the EEC countries is not higher than in Japan.

Thirdly, the EEC countries already possess a complete social security system, so that their citizens cannot complain about the high tax burden (inclusive of the TVA) imposed on them. Some persons advocating the introduction of TVA in Japan say that it may become an important source of revenue which will aid in financing the extension of the Japanese social security system. In my opinion, however, no such extension of the social security system has been contemplated by the Japanese Government and no statement to this effect has ever been made, even when the possible introduction of the TVA was announced.

In addition, it is said that the TVA (EEC type) will further investment in capital goods because of the credit of TVA paid in a preceding stage which will be available for such investments. Some advocates of the TVA also state that the TVA will promote exportation. In my opinion, the Japanese people are not in need for these consequences of the introduction of a TVA system, even if they would occur. The high rate of economic growth in Japan is realized through the high rate of private investment and it would seem more necessary to increase the welfare of the population than to further economic growth through a still higher rate of investment and exportation.

I believe that the source of revenue in Japan should not depend on TVA or any other turnover tax, but rather on an increase of the corporate income tax.

ANIL KUMAR JAIN*:

THE PROBLEM OF INCOME TAX EVASION IN INDIA**

INTRODUCTION

"Tax avoidance" and "Tax evasion" are terms so frequently referred to in business and economic relationships today that they constitute part of our conversational language. The term "tax avoidance" is taken to refer to "arrangements by which a person, acting within the letter of the law, reduces his true tax liability infringing, in the process, both the spirit and the intent of the law."[1] "Tax Evasion" on the other hand, "denotes downright defrauding of revenue through illegal acts and deliberate suppression of classification of the facts relating to one's true tax liability."[2] However, their effect on tax revenue is the same i.e. they result in smaller revenue to the exchequer. Tax evasion and avoidance are neither new nor peculiar to India. In fact, they are universal and are perhaps as old as taxes themselves and no one can gainsay that the former begot the latter. There would seem to be no reason why the predisposition of people today to pay taxes is any more compelling than that of their ancestors to pay exactions, tithes, imposts and duties. The ever-increasing complexity of modern business society only serves to accentuate the problem.[3] With the passage of time this problem of tax evasion is getting more serious and universal. The problem exists in almost all countries of the world today.

EXTENT OF INCOME TAX EVASION IN INDIA

By the very nature of things, it is almost impossible to ascertain correctly the tax evasion in the country because of the numerous difficulties involved in the process. Certain attempts have been made from time to time to estimate the extent of this tax evasion. In the view of National Planning Committee such estimates varied from Rs. 200 crores to Rs. 800 crores. (1 crore = 10 million rupees) The Taxation Enquiry Commission (1953-54) admitted that evasion was prevalent on a considerable scale.[4] Prof. Kaldor in 1956 estimated that annually a non-salary income of Rs. 576 crores evaded tax[5] and that the amount of income tax lost through tax evasion was more of the order of Rs. 200-300 crores,[6] for the assessment year 1953-54, even though before the Direct Taxes Administration Enquiry Committee he stated subsequently that this estimate of his also included tax lost in avoidance as well. The Direct Taxes Administration Enquiry Committee did not precisely indicate the extent of tax evasion but it said that the quantum of tax evasion, though undoubtedly high was not of the magnitude indicated by Prof. Kaldor in his report.[7] The

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1. Report of the Direct Taxes Administration Enquiry Committee, (DTAEC), (1958-69), p. 147.
2. *Ibid.*
3. Gutkin, S.A. & Beck, D. — Tax Avoidance Vs Tax Evasion, (1958), p. 4.
4. Report of the Taxation Enquiry Commission (1953-54), Vol. II, p. 189.
5. Kaldor, N. Indian Tax Reform — Report of a Survey (1956), p. 104.
6. *Ibid.*, p. 105.
7. DTAEC, *op. cit.*, p. 148.

Central Board of Revenue was of the opinion that tax evaded in 1953-54 would not have exceeded Rs. 20 crores to Rs. 30 crores. As against these official estimates, the non-official estimates have also pointed out the seriousness of the problem. Shri Jacob Eapen in his paper on Incidence of Tax and Tax Evasion submitted to the Second All India Conference of Tax Executives gave an estimate of Rs. 38 crores.[8] Estimating the extent of income tax evasion, Shri Sahota writes, "Assuming that the taxpayers' incomes rise at the national average (a conservative assumption indeed), the extent of evasion by 1957-58 (in addition to whatever evasion existed before 1951-52), amounts to Rs. 61.31 crores."[9] Even if we go by the estimates of Shri Sahota (which appear to be on the low side) the magnitude of the problem can be visualised by the fact that since then our national income has increased considerably, inequalities of incomes have widened, and the tax rates have been made more steep and progressive. Whereas our Net National Product (at current prices) stood at Rs. 11,390 crores in 1957-58[10], (conventional estimates) in 1968-69[11] it was Rs. 27,930 crores. Therefore, there is no doubt that the extent of income tax evasion in the country must have also considerably increased. It may not be very unrealistic if the figure of the quantum of income tax evaded is placed round Rs. 400 crores.

Though tax evasion is common to all classes of citizens and to all income groups, opportunities for it vary according to the nature of income earned by them. In the case of salaries and interest on securities there is very little chance for evasion because the tax gets deducted at source. But opportunities are largest when the income is derived from business, profession or vocation. The analysis of the figures detected by the Department and the disclosures made under the various voluntary disclosure schemes, goes to show that a major part of this evasion is concentrated in the higher income groups. This is evident from the fact that in the first voluntary disclosure scheme of 1965 where the tax payable was 60 per cent, 2,001 assessees had disclosed an income of Rs. 52.19 crores giving an average of Rs. 260,000 per assessee.[12] To attract a tax of more than 60 percent, the total income must be about Rs 50,000. So almost every case here was a case falling under the higher income group where the total income exceeded Rs. 50,000.[13]

PROBLEM OF TAX EVASION

Ours is a developing economy. In order to develop we have already completed three Five Year Plans and three Annual Plans and we have entered the third year of the Fourth Five Year Plan. To fulfill our targets of the Fourth Plan we require huge resources. Much resort to the Printing Press is not in the interest of the economy as it will accentuate the inflationary pressures. Therefore, it is necessary that we take recource to additional taxation-both direct and indirect. In the field of direct taxation, India possesses the distinction of possessing the highest marginal tax rates in the world,[14] going as high as 97.75 percent taking into effect the Budget Proposals of 1971-72. In 1970 incomes above Rs. 3,000,000 attracted an average rate of income tax of the order of 92.1 percent,

8. Report of the Working Group of Administrative Reforms Commission on Central Direct Taxes Administration (1969), p. 106.
9. Sahota, G.S., Indian Tax Structure and Economic Development, (1961), p. 50.
10. Economic Survey (1970-71), p. 77
11. *Ibid.*
12. Report of the Working Group of ARC, *op.cit.*, p. 107.
13. *Ibid.*
14. Palkhivala, N.A., The Highest Taxed Nation (1965).

whereas in Japan the same income attracted an average rate of 68.1 percent, in U.K. 87.7 percent, U.S.A. 68.4 percent, in Canada 69.8 percent, in West Germany 52.9 percent, in Ceylon 64.2 percent and in Malaysia 48.8 percent.[15] These figures indicate that there is virtually no scope of raising income tax rates further. Attention will, therefore, have to be paid on the recovery of income tax arrears on the one hand and checking and preventing the evasion of income-tax on the other. If people start paying proper taxes our resource position will be considerably improved.

The first canon of taxation as propounded by Adam Smith is that, "The subjects of every state ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities, that is, in proportion to the revenue which they respectively enjoy under the protection of the State." Unfortunately, this canon is observed more in breach than in observance in our country. People in our country as in many other ones talk of tax evasion but only for others. We think that there is considerable tax evasion in the case of self-employed persons, (lawyers, doctors, chartered accountants, manufacturers, businessmen and others). It is almost certain that a major part of the income tax is evaded by the persons belonging to the higher income groups. We also think that there is considerable tax evasion in the case of small traders who do not attract the attention of the Income-tax Department as also of the public. The result is that rates of taxes have to be raised in higher income brackets in order to meet the growing expenditure.

Although the Income-tax Act is being made stricter year after year in order to make tax evadors pay proper taxes, yet all our legislative provisions could not produce the desired effect. The Income-tax Officers have extensive powers of search and seizure. There is a penal interest and penalty for not filing the return in time. The tax due according to the return has to be deposited within one month of the submission of the return, failing which the assessee is liable to a substantial penalty.[16] There is penalty for concealment which formerly varied from 20 per cent to 150 per cent of the tax sought to be evaded but which shall now not be less than a sum equal to the amount of the concealed income, and the maximum amount of such penalty will be twice the amount of the concealed income.[17] Penalty is also imposed for not paying Advance tax or for filing a wrong estimate. Then there is also the provision of search and seizure under section 132 of the Income Tax Act 1961. Provision in the Act also exists for prosecution of the assessee if he has concealed income or he has furnished inaccurate or wrong particulars. But all these penal provisions are disregarded by the tax evadors. No sooner is a method of concealment detected then another method or the same method in another form is devised. Thus, a regular game of hide and seek goes on between the tax evadors and the tax gatherers.

CAUSES OF EVASION

But why is there so much tax evasion? Although the reasons for tax evasion are numerous and vary from person to person, trade to trade and profession to profession and to include them in the scope of this paper is impossible, yet there are certain

15. Indian Economic Statistics, Part II, Public Finance, Ministry of Finance, Govt. of India, (Sept. 1970), p. 72.
16. Finance Minister's Budget Speech for 1964-65.
17. Explanatory Notes on the Main Provisions Relating to Income Tax and Surtax (The Finance Act, 1968), Ministry of Finance, p. 39.

common reasons as to why people evade so much taxes and there are factors which encourage people at large to evade taxes.

Prof. F.W. Taussig has said, "The essence of a tax, as distinguished from other charges by government, is the absence of a direct *quid pro quo* between the taxpayer and public authority. It follows that a tax is necessarily a compulsory levy." From this it appears that people do not want to pay taxes *firstly* because they do not get any direct benefit from such payment, and *secondly*, because it is a compulsory payment. It has been seen that those people who evade taxes maintain big temples, *dharmshalas*,[17a] and spend a huge sum of money on *sadhus* or pilgrimage but they do not want to pay taxes. The sole reason is that tax has to be paid under compulsion but charity is voluntary. Again, if a man pays taxes he feels that he will not get anything in return but in the case of charity people expect a peaceful and better life in the next birth.

One of the most important reasons for high tax evasion in the country is that the tax-payers are not conscious of their responsibilities towards the society and the country in which they are living. Although people in all walks of life put blames for difficulties and shortages on the Government, yet when it comes to the payment of taxes they feel as if it is their moral duty to evade the tax. They often say, "Have we undergone all this trouble for earning money to pay the major portion of it to the Government?" Such a State of affairs has come to pass because there is no system in India whereby people may know that they should pay proper taxes. In America schoolchildren are taught to fill in an income-tax return and they are taught that they should pay proper taxes. In India, no effort has been made in this direction. Nothing to talk of school children, many of the University students and professors do not know how to fill in an income-tax return. In fact, there may be many people who might pay proper taxes if they are properly trained in this direction.

On the one hand there is no training to the people about the payment of proper taxes, on the other hand, the Indian Income Tax Act is highly complicated and plethora of amendments have been made in it from time to time. The new Act of 1961 was sought to simplify the 1922 Act. In 1961 the whole of the Income-tax Act was recast, the provisions were arranged in a logical sequence, and an attempt was made to express the law in a language that could be understood without much difficulty. It was hailed as a piece of new dynamism and one which would create confidence in the people to pay taxes. However, in the years that followed more than 400 amendments were introduced.[18] As a result the whole Act has become so complicated that nothing to speak of the man in the street, even the Income-tax authorities and tax-consultants can not keep themselves abreast of the latest developments. Under such circumstances one should not wonder if there is lot of tax evasion.

But this is not the entire story. There are people who have got expert tax consultants who suggest them the means to evade taxes. Even rich people have got a tendency to evade taxes. Because they want to amass as much wealth as possible since wealth is a symbol of strength, prestige and position in the society.

There is also the dearth of experienced personnel in the Department. The present strength of fully trained and experienced

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17a. See for explanation of Indian words the Appendix on page 294.

18. Report of the Administrative Reforms Commission on Central Direct Taxes Administration (1969), p. 1.

officers is inadequate for dealing with the current cases. In addition, there is a large backlog of arrears which presents serious difficulties. Because of the time-lag in completing assessments, "in quite a few cases, the assets are alienated or frittered away during the interval between the earning of the income and its assessment, and even if ultimately a demand is raised, its collection is rendered very difficult."[19]

Another important reason for prevalence of tax evasion is the absence of a deterrent punishment. There is no doubt that the Direct Taxes Acts provide for prosecution and imprisonment in cases of concealments and false declaration of statements. But in actual practice hardly any man is prosecuted on this ground or such severe penalties are imposed. Even the moderately levied penalties by the assessing officers have been reduced by the appellate authorities. During the five years from 1962 to 1966, the total amount of penalty levied in cases where definite concealments had been proved, amounted to only Rs. 11.58 crores which works out to less than 15 percent of the concealed income, even though the Law provided for a minimum of 20 percent and maximum of 150 per cent of the evaded tax.[20] No prosecution was launched in the years 1961-62, 1963-64 and 1965-66.[21] Even if prosecution is launched it is difficult to get the assessee convicted. Out of 31 cases in which prosecution was launched during the period 1961-62 to 1965-66, only in 2 cases convictions were obtained.[22] Therefore, "unless it is brought home to the potential tax evader that attempts at concealment will not only not pay but also actually lend him in jail, there could be no effective check against evasion."[23]

Yet other reasons for increasing tax evasion are said to be lack of publicity, operation of controls and evasion of sales tax and other tax liabilities. Previously the Department was statutorily prohibited from disclosing any information relating to a person's return or assessment, excepting to specified authorities like the courts of Law, Reserve Bank of India for limited purposes mentioned in the Acts, themselves, and the Central and State Governments. In such a case even if a tax payer was caught and penalised for concealment, he could keep it a secret from everyone and escape the odium. It is a happy augury that of late these secrecy provisions have been relaxed to some extent. The Department now makes available the names of tax evaders and may also supply information if its supply is considered by the Department to be in the public interest.

It is a fact that many of the retail traders try to evade sales tax. To do this they considerably understate their sales. This they do by avoiding the issue of cash memos and the purchasers also do not insist on the issue of cash memos because they get things at cheaper rates. In such cases although the intention is not primarily one of evading the income-tax but since the business has been done outside the books of accounts they can not also-show it in their income-tax *bahi*. Thus, by suppressing sales, a trader not only defrauds the State Governments of the sales tax but also the Central and State Governments of their share of income-tax.

The officers of the Income-tax Department also find it difficult to un-earth cases of tax evasion because of several reasons. In the *first* place, they are overworked, especially the officers handling smaller charges. These

19. DTAEC, *op. cit.*, p. 149.
20. Report of the Working Group of ARC, *op. cit.*, p. 121.
21. *Ibid.*
22. *Ibid.*, p. 110.
23. DTAEC, *op. cit.*, p. 150.

officers are called upon to dispose of between 300 to 500 cases a month. From the year 1944-45 in which the reorganisation of the Income tax Department commenced to the year 1966-67 the total number of assessees increased from about 4 lakhs (400,000) to about 29 lakhs (2,900,000) but the number of officers employed on assessment duty increased only from 744 to 1648.[24] Although the average disposal per Income-tax Officer is increasing every year, yet they could be hardly expected to cope with the sevenfold increase in the number of assessees. The average number of assessments for disposal per Income-tax Officer stood at 2891 in 1966-67.[25] In such a situation it is very difficult for these officers to detect cases of tax evasion. *Secondly,* the field machinery of the Income-tax Department is hopelessly poor resulting in a long gap between two surveys.[26] There was a survey near about the year 1952 and again in 1964-65. In the meantime many businesses might have come and gone without benefiting the Income-tax revenue at all. *Thirdly,* the execution of the Income-tax Act requires the knowledge not only of the Income-tax Act but also of several other acts such as Hindu Law, Partnership Act, Companies Act, Registration of Property Act, Negotiable Instruments Act, Evidence Act etc. In addition, the Income-tax Officer has to handle cases of different types involving complexities of different trades, professions and vocations. Unless an Officer is well-versed about the technical details of each trade, which is impossible, he can not detect concealments. *Fourthly,* at times difficulty arises from the Chartered Accountants. Auditing is compulsory in the case of companies. But the Auditors are appointed or dismissed by the directors of the companies. Under such circumstances one can hardly expect them to discharge their duty properly. *Finally,* there is no connection between different departments of the Government. Take for example, the Registry Office. It is a common knowledge that wealthy people get their lands and buildings registered at a much lower value than what is actually paid by them. The sub-Registrar hardly cares to find out the exact value of the property. On account of this, the State Governments get less as registration fee and the Income-tax Department can not enhance the value of the property. Since practically all people do it, the Income-tax Officer cannot benefit much from obtaining comparative figures from the Registry Office. Again, a large number of commodities are subject to excise duties. The manufacturers keep a record of the production. The production registers are signed by the Excise Department. But cunning businessmen so manage affairs with the Excise Department that exact production is never shown in the registers. When these registers are produced before the Income-tax Officers, then, inspite of their feeling that production has been understated, they have to accept them as correct because the day to day production has been supervised by another department of the Central Government.

Again, the economic condition of the population is very poor in our country and it has worsened in recent years on account of the inflationary spiral. The middle income and salaried people have been worst hit. In 1969-70 our per capita income was Rs.589 at current prices and Rs. 339 at 1960-61 prices.[27] This is an average and includes the few who are very rich as also the majority of

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24. Report of the Working Group of ARC, *op. cit.*, p. 10.
25. *Ibid.*, p. 11.
26. See Author's article "Why is Tax Evasion Increasing in India?" Capital, May 6, 1971, p. 834.
27. Economic Survey, (1970-71), p. 78.

those who are living on or under the subsistence level. It is on account of this that even socially conscious people have to resort to the evil practices of tax evasion and they become victims of bribery and corruption. Moreover, since under inflationary conditions money values of things go on rising, it pays to evade tax and acquire any asset because its value will rise in future.

One of the important factors leading to tax evasion in our country is said to be the high tax rates that are prevalent here. High rates of tax in the top income brackets are said to be tolerated only because of the considerable evasion that takes place. Many people do not agree with this view and say that a high tax rate is not an important factor because tax evasion exists at all income levels. Some people might also argue that if tax-rates were an important factor leading to tax evasion, people would have disclosed their concealed incomes under the Tyagi Scheme or 60-40 per cent scheme or under Finance Act (No. 2) of 1965 or under Section 271(4A). But this did not happen to a large extent. I feel that most of the people did not disclose their concealed incomes out of the fear that the Income-tax Officers might investigate into the sources of these incomes and that might lead them to further troubles. It might be agreed that at lower income levels tax rates may not be an important factor for tax evasion, but there is no doubt that at high income levels high rates can only be tolerated when there is tax evasion.

The Income-tax Department is also no less responsible for the present state of affairs. It is often said, and to a large extent correctly, that even when the assessees submit correct incomes and wealth returns and produce sufficient evidences in their support, the assessing officers do not always accept them and make some additions. This encourages the assessees to understate their incomes and wealth. This mutual distrust creates a vicious circle.[28] Moreover, a majority of Government Officials are victims of bribery and corruption. Corrupton is rampant in all walks of life and at all levels. Inefficiency in administration is also clearly evident. There is considerable wastage of the Government funds by the administrators who, many a times, spend the Government money for personal uses. This creates a feeling in the minds of the taxpayers, and to a large extent correctly, that the money which they would pay in the form of taxes, would be a waste. This encourages tax evasion.

However, the entire blame can not be placed on the shoulders of the officials and Government employees. A large part of the blame should also rest with those dishonest businessmen and traders who, in their greed for money and power, take resort to all sorts of bribes to corrupt these officials.

It is clear that at present in India there is a moral crisis. Although India is considered to be a religious country yet, in fact, religion seems to have gone from our mind. People seem to have particularly no faith in moral values these days. They have become money minded. They do not realise their duties to the State and the necessity of paying the correct amount of taxes and paying them in time.

MODES OF TAX EVASION

The modes of income tax evasion adopted by the tax dodgers, are varied and varying. People try to evade taxes by showing less income in the form of sale proceeds, interest or commission etc., showing the closing stock as damaged in a year of profit or reducing the value of the closing stock, omitting a part of cash sales or sales or consignment and in the case of professionals not showing the

28. DTAEC, *op. cit.*, p. 151.

name of customers in their books, using the goods for self consumption without recording them in the books of account, suppressing the production of goods or claiming more wastage than the actual wastage, crediting sales to proprietor's or partners' accounts or to *Benamidars'* account without entering them in the sales account, non recording the purchases and sales of certain goods at all, suppressing income from speculation, rebate, discount, commission etc.

Tax is also evaded through starting a new business or branch of an existing business and not disclosing income therefrom, holding shares of companies under blank transfers or in *benami* names and not disclosing either the investment made out of concealed profits or the dividend incomes, opening bank or post-office accounts in fictitious names, holding house property or income yielding assets in *benami* names, selling by-products or scrap in a manufacturing concern but not recording their sales in the books, selling goods at a premium but recording them at controlled price in the books of account, inflating purchases and expenses in the form of salaries, insurance, advertisement, interest, commission, travelling etc., purchasing speculative losses from other parties, claiming bogus payments for bonus to employees or compensation for breach of contracts to retiring employees or paying a lesser salary than for which a receipt is take from the employees, or agents and including in the muster roll salary of non-existent employees or paying a lesser salary than for which a receipt is taken from the employees.

Yet other modes employed for evading taxes consist of appointing bogus commission agents and paying huge sums of commission to them, introducing employees as partners but paying them nominal salaries only and pocketing the difference, showing full fire insurance in the books while keeping back the rebate secretly realized from the insurance company, charging a capital expenditure as revenue expenditure, showing a part of income as arising from racing profits by acting in collusion with printers and bookmakers, arranging underhand profits transactions, taking the help of "loan racket" which operates on the basis of post dated cheques and fraudulent *hundis*.[29] Submitting "multiple expense vouchers", and effecting "fake chain sales" by some bogus importers or raw materials for industry.[30]

UTILIZATION OF CONCEALED INCOME

It is impossible to make an exhaustive list of the channels into which the untaxed money is likely to be utilised. The concealed income may create either a secret reserve or may be held as hard cash either at home or in bank chests. It may be used to purchase luxury goods, or be spent on marriages, or social or religious functions, or used for donations to charitable institutions or for the constructing of temples, dharamshalas or for contribution to political parties or for fraudulent investment in real property.[31]

Black money is also utilised for investment in a business either in the name of third parties or in suspense account or some other name, purchasing without bills raw materials and stocks for purposes of manufacture and selling the finished goods without bills in due course, purchasing licences and quotas illegally, payment of *pugree* to secure residential properties, purchasing and hoarding of grain stocks with a view to selling them in a rising market,[32] investing in the shares or deben-

29. Reported in The Times of India, July 20, 1971.
30. *Ibid.*
31. Report of the Working Group of ARC, *op. cit.*, p. 11.
32. *Ibid.*

tures in newly floated joint stock company in the names of third parties, investing in a new business in the name of wife or relation or showing it as the sale proceeds of ornaments of the family or borrowing money from the banks on the security of concealed assets, holding bank balances in foreign countries and utilizing the secret amount held in foreign countries for imports through under invoicing of such imports to the extent of such secret funds, lending money on pronotes, *hundis* etc. for short or long periods, purchasing of unauthorized foreign exchange to meet expenditure on visits abroad, and also in paying bribes.

CONSEQUENCES OF EVASION

The consequences of the increasing tax evasion in the country are numerous and far reaching. Tax evasion in our country has helped in the accumulation of black money on a large scale. It has been estimated to be of the order of Rs. 3,000 to Rs. 3,500 crores by the Wanchoo Committee.[33] Such a quantum of black money is playing havoc with our economy and has far reaching economic, social and political consequences.

Economic: The concealed income goes to enhance the wealth of the evadors. With this wealth they carry on huge transactions in the black market. They also pile up huge stocks of goods and thus bring about artificial scarcity of goods in the open market resulting in higher prices. The rise in prices affects the standard of living of the employees who then clamour for higher pay scales and dearness allowances. Since their demands are not readily conceded they adopt the go slow policy and ultimately go on strikes. The inevitable result is the strained relations between the employers and employees, loss of man-days and ultimately a decrease in the size of the national income.

Then the evaded wealth is not kept in the banks and is not openly invested in business or industries. It is kept by the evadors in their home—chests and then given on very high interest to the needy businessmen in fictitious names. The *hundi* racket was the consequence of this evaded wealth. Thus two types of markets are created. One is the open market which is represented by various banks and other financial institutions and another is the black market which is represented by the tax evadors. As a result the evadors go on becoming rich while the genuine investors cannot earn much profit. In case they (genuine investors) borrow from the evadors they can not explain the nature and source of cash credit and the entire cash credit is added to their income and in addition to that they have to pay penalty for concealment.

Black money also comes in the way of government's efforts in bringing down the prices. Because of the rapidly growing developmental and non-developmental expenditure but slowly increasing tax revenue due to evasion, the government has to resort to deficit financing which results in further rise in prices. It was the abnormal rise in price level that led the government to devalue the rupee on June 6, 1966 and to postpone the implementation of the Fourth Five Year Plan and undergo a "*Plan Holiday*" of three years. Moreover, because of this money, the open money market is always tight and the Reserve Bank of India has to expand money supply to meet the credit requirements in the busy seasons. The result is that money supply increases at a faster rate and the inevitable result is further increase in the prices. Above all, tax evasion results in inequity in the burden of taxation. The burden is heavier on the salaried class and

33. Reported in Indian Express, April 7, 1971.

honest taxpayers. Because most of the businessmen evade taxes, the Government increases the tax rates and this results in heavier tax burden on the salaried employees. This creates frustration among them because they have to pay more because their fellowmen in other professions are evading taxes.

Social: The social consequences of evasion are disastrous. This black money has created in the society two clear-cut groups – (i) the Haves, and (ii) The Have Nots. While the Haves are becoming richer day by day, The Have Nots are becoming poorer resulting in the increasing disparities of income and wealth in the society. This has created social unrest in the society.

Black money has encouraged the payment of huge dowries and spending of large sums of money at the time of marriages. The effect is badly felt by the middle income group people who, many a times, do not get good matches for their daughters because they can not afford to pay good dowries.

These rich people become very powerful in the society and become pseudo patrons of education, art, religion and other social disciplines. By donating this black money towards the construction of temples, *dharmashalas* and other religious institutions, by bearing the expenses of *Sadhus*, by employing intellectuals from different disciplines, these people come to have an important say in practically all social matters. This saves them from intellectual criticism in the society. The inevitable consequence is that people are fast losing faith in moral values which is detrimental to the interest of the future society.

Political: The black money plays an important part in politics. By donating huge sums of money in different political parties, financing elections, these persons come to have an important say in political matters. With the help of the members of Parliament, *Vidhan Sabhas* and *Vidhan Parishads,* they are able to get things done in their favour. With the help of this money they are able to get licences for setting up new businesses, get big loans from the finance corporations set up by the Government.

It is thus clear that the black money has made the evadors powerful in all spheres of life. These people generally go scot free inspite of their anti social activities.

STEPS TO TACKLE TAX EVASION

It must be admitted at the outset that it is almost impossible to devise ways and means which may totally eliminate tax evasion from the country. Total elimination of income tax evasion is possible only when the emphasis is shifted from the materialistic outlook to the spiritual outlook. This is a moral problem and in this materialistic world such a sudden moral upliftment should not be expected in the near future. However, some ways and means may be devised which may go a long way to reduce the extent of tax evasion. Even if that much is done our object will be more than fulfilled.

The problem of income-tax evasion in our country can be tackled broadly at the following levels:-

1. devising administrative processes and procedures to detect tax evasion;
2. making suitable legislative provisions to prevent tax evasion in future;
3. publicity;
4. standard of Administration;
5. arousing public conscience against tax evasion.

ADMINISTRATIVE MEASURES

The persons who evade taxes fall into two categories –

(i) those who are outside the tax net altogether; and
(ii) those who keep many of their transactions outside the tax gatherer's view.

In the former category can be included persons mainly belonging to the lower income groups such as the petty shopkeepers and traders. Besides these small income group people, the disclosures made under the first and second voluntary disclosure schemes of 1965 revealed that under the first scheme 191 persons and under the second scheme 77,030 persons were those who had not been previously assessed to tax.[34] These figures point to the urgent need of external and internal survey so that those who are escaping assessment may be brought to the Department's Registers.

To carry out external surveys, survey circles should be reorganised and their staff augmented.[35] It is necessary that the surveys are conducted on a regular and systematic basis. For this it is necessary that the field machinery of the Income tax Department is considerably strengthened so that a door to door survey at short intervals may be carried out by the inspectors of the department. These inspectors should be given power to get the returns filled on the spot and collect the tax then and there. This would avoid the complications and lengthy procedures of submitting a survey report by the Inspectors and issuing of notices.

Internal Survey i.e. extracting information from the records of the assessees has also been sadly neglected. The result is that many a times information available on records is not extracted and sent out. Even if they are sent out they are not placed at a proper place so that at times the Income-tax Officer completes the assessment proceedings without having a knowledge of the existence of these communication slips. Moreover, many of the communication slips merely mention the names of the assessee and the amount paid to him and do not contain other information. It is, therefore, necessary that these communication slips must contain other details and "this slip must be completed by the Inspectors who will prepare it in duplicate, retain one in the file with the date of despatch and send the duplicate to the Income-tax Officer in whose jurisdiction the payee is assessed or resides."[36] Information to as large an extent as possible, should be obtained from Government agencies outside the Income-tax Department which have dealings with the general public, non-Government agencies such as companies under section 186, contractors under section 285A, banks and financing companies.

Under the present system each circle has a separate General Index Register in which the assessees relating to the circle are given running numbers on an alphabetical basis. This system has, in its actual working posed several problems. Two persons with the same name may have the same number in two different circcles. The result is that when a file is transferred from one circle to the other identification of papers and documents becomes difficult. The problem of identification also comes in the way of issuing tax clearance certificates to the contractors. Many contractors are found to be carrying on business in different trade names and there are no means of checking them altogether. To remove these defects steps may be taken to introduce a system of registration of assessees on an all-India basis. Such a system of permanent registration, "will facilitate compilation of statistics on a national scale

34. Report of the Working Group of ARC, *op. cit.*, p. 112.
35. DTAEC, *op. cit.*, p. 151.
36. Report of the Working Group of ARC, *op. cit.*, p. 116.

and at a future date will prove to be a useful tool for gathering information."[37]

Although businessmen and professionals adopt very ingenious modes of evasion yet every murderer leaves a stain behind. Therefore, if the Income-tax Officer acts with caution he can detect the evasion. In order to do so he may employ several methods. *Firstly,* he should examine the cash book carefully and enquire from the assessee important items of deposits. If the assessee says that the deposits are withdrawals from the bank account he should verify the entry from the bank statement. In case the deposit is said to come from some third party he should call for these parties and examine them under section 131 of the Income Tax Act of 1961. *Secondly,* he should carefully examine the books of original entry such as production book, stock register, wages sheets, store register etc. Again, while examining the quantity of goods purchased and sold, he should compare the quantity purchased together with the opening stock with quantity sold from day to day. *Thirdly,* in cases of big firms a *gate bahi* is maintained. If a *gate bahi* is available the I.T.O. should ask the assessees to produce the *bahi* and then compare the incomings and outgoings with the day to day stock book. *Fourthly,* if the I.T.O. suspects that the drawings of the assessee are very low he should make local enquiry. *Fifthly,* in the case of companies, the I.T.O. should examine the various expenses thoroughly. He may find that commissions on sales or on loans arranged are given to some fictitious persons. He should also examine if the compensation to retiring employees has been paid genuinely or not. The Balance Sheet of the company should also be examined carefully. *Sixthly,* the I.T.O. should be very careful about dealing with cases of professionals like doctors, lawyers, and chartered accountants. He should examine not only the cases of private doctors but also doctors working in Government hospitals. These doctors generally do not show even a small portion of their private practice. He may find out from the municipal records if any building or buildings are standing in their names or in any benami names. The same procedure should also be followed while assessing the directors of big companies. *Seventhly,* in cases where cash credits are found as coming out from the sale proceeds of ornaments the I.T.O. should invariably ask why the ornaments had to be sold. What were the ornaments and what was their weight? How were the ornaments acquired? When were they acquired? In case the assessee says that they were sold in the form of bullion after getting them melted he should ask the name of the *Niyaryaor,* the refiner and see if refining or melting charges have been debited to the books of account of the person selling the ornaments. *Eightly,* the I.T.O. should ask for the statements of the deduction of tax. They should be examined as and when they are received and it should be seen if the tax deducted has been deposited in the Government Treasury or not. Many a times it happens that tax is deducted at source but is not deposited in the Treasury for several years. *Finally,* the I.T.O. should ask for the details of incentives given by the authorities to exporters and then it should be seen to whom these incentives have been sold and at what price. During the last few years exporters have earned huge profits by selling these incentives but have not shown the profit in their books of account.

A major step to prevention of evasion in India would be the introduction of the submission of a comprehensive return concern-

37. Report of the ARC on Central Direct Taxes Administration (1969), p. 24.

ing the personal accounts of each taxpayer along the lines suggested by Kaldor and the introduction of a reporting system on all capital transactions by means of tax vouchers. Mr. Kaldor stressed that with the requirement of a complete set of accounts i.e. a statement of total wealth at the beginning of the year, all accruals during the year by way of gifts, bequests, winnings, etc. as well as all forms of taxable income and gains, the application of these to personal expenses and investments—as well as the resulting asset position at the end of the year, the concealment of particular items of income or property, or the falsification of accounts, would obviously become far more difficult.[38] Although it is true that this system goes a long way in the direction of self-enforcement but it is not a closed system. It will not prevent evasion if both parties to a transaction gain by concealing or understating it. Higgins has devised a means of closing this gap and ensuring that this system is, in fact, completely self enforcing.[39] "By adding to Kaldor's expenditure and assets taxes a penal tax on excess inventories and a turnover tax it is possible to devise a closed system, so that anyone failing to report one taxable transaction will either find himself paying more under another tax, or having the transaction reported by the other party to it, because the other party can reduce his tax liability by honest reporting."[40]

The auditors and chartered accountants are a great source of tax evasion. First of all, auditing of accounts of business, profession and vocation should be made compulsory in all cases in which income or property exceeds certain limits. At present the auditors and chartered accountants are appointed or dismissed by the Directors of the companies. Under such circumstances we can hardly expect them to discharge their duty properly, unless "professional auditors (at any rate, the Chartered Accountants) should be charged with a statutory obligation whether the accounts presented by companies and other firms for income tax purposes are drawn up in the appropriate manner so as to show the true chargeable income for tax purposes, and that they should be obliged to supply a certificate to this effect."[41] But so long as the auditors and chartered accountants are remunerated by the owners of the firms their loyalties must be primarily towards their employers, and it would be wrong to impose upon them obligations which would set up a conflict of loyalties. It is, therefore, desirable that the Central Board of Revenue should take up the matter with the government and suggest that the chartered accountants be appointed by the Registrar of Joint Stock Companies and their services be terminated only with the prior approval of the Registrar.

It is also desirable that the income tax return should not be so complicated as at present and should be simplified. The system of self assessment should be extended to all those whose tax liability is Rs. 100 or above. This would result in speedy disposal of assessments and collection of tax. Frequent changes in the Income tax Act should be avoided and the Government should prepare the booklets containing important provisions of the Act in a manner that ordinary people might understand. These booklets should be translated in regional languages and be made available to the people at nominal prices.

Non-levy of deterrent penalties has been an

38. Kaldor, N., *op. cit.*, p. 13.
39. Cutt, James, Taxation and Economic Development in India, (1969), p. 368.
40. Higgins, Benjamin, Economic Development (1963), p. 526.
41. Kaldor, N., *op. cit.*, p. 11.

important factor encouraging evasion in the country. As has already been pointed out, very few cases of fraudulent evasion are prosecuted before the courts, and the tax-payer is generally promised immunity both from prosecution and publicity, if he makes a full disclosure and is willing to pay the relatively modest penalty imposed. This policy tends to increase the scope of evasion. For it leads to a "heads I win, tails I do not lose" attitude, which must have the most destructive effect on tax morality.[42] In cases of proved tax evasion, the cases must be taken up as a matter of course for prosecution and the temptation to have the case settled should be avoided.[43] Besides, prosecution proceedings require a specialized procedure. It is high time that a Central Agency is set up to look into the cases of tax evasion. It would be advisable to point out here that in the U.S., criminal prosecution of wilful evasion is frequently resorted to under code section 7201 which carries a fine of $10,000 or imprisonment for not more than five years or both. The American precedent of a five year maximum would suggest a model for the Indian system.

Besides these, the functional system or allocation of work amongst the Income-tax Officers on the American pattern introduced in the budget for 1967-68 and which is still continuing, should be improved. This system has not been welcomed in income-tax circles. The Income-tax Officers consider the system as an erosion of their power in as much as they do not deal with all the aspects of a case. The ministerial staff also feels that they can not command so much influence on the assessees as they had been doing formerly. Therefore, both sections are putting up stiff resistance to the scheme. Besides this, there is no safety of records now. Nobody is responsible for keeping the records safely, as before. Therefore, the chances of tempering with the records have now increased considerably. The assessees are now faced with more serious problems than before. They have now to please so many bosses but even then they do not get their assessment orders and refunds quickly. Complaints are being heard in the public that the functional system has led to greater corruption, irresponsibility and lack of enthusiasm.[44] It is, therefore, essential that the functional system of allocation of work amongst the income-tax officers should be properly organised so as to remove the shortcomings that have been noticed so far.

In order to determine the correct cost of land or the correct value of property, the Board should have the assistance of expert valuers. If, on the basis of the expert advice, it is clear that there has been an understatement, the Law should enable the Government to challenge the transfer in the same way as the Registrar is vested with the powers to challenge a transaction for the purpose of the stamp Act.[45]

LEGAL PROVISIONS TO SAFEGUARD AGAINST TAX EVASION

It is a common knowledge that the practice of Benami transactions has aided tax evasion a good deal. *Benami* transactions are of two kinds:

(i) Those which are permitted by law; and
(ii) Those which are entered in fictitious names.

To check this and a number of other methods, some changes in the Income-tax

42. *Ibid.*, p. 113.
43. Report of the Working Group of ARC, *op. cit.*, p. 122.
44. See author's article "Tax Sources and norms for the Budget", Economic Times, February 13, 1969.
45. Report of the Working Group of ARC, *op. cit.*, p. 127.

Act are desirable. *Firstly*, the incomes of the trust which are of religious or charitable character should be exempted so long as the income is applied or accumulated or being ultimately applied for religious charitable purposes. But the moment the trust funds are utilised for furthering the donor's business interests, it should forfait all exemption. *Secondly*, no partial partition of the Hindu Undivided Family should be allowed. Only full partition should be allowed. *Thirdly*, there seems to be no reason why a favoured treatment be given on buildings and immovable properties. In order to avoid the payment of tax on capital incomes, assessees postpone the disposal of their immovable properties to a time when their business is likely to suffer a loss. If long term income in the form of capital gains from buildings and immovable properties is taxed at the same rate as other incomes, this practice will come to a stop. *Fourthly*, a provision should be made in the Income-tax Act that only those cash credits (whether the loans aie taken from farmers or others) would be accepted which are supported by proper documentary evidence. This will go a long way to check the malpractice of lending the names to the business. *Fifthly*, the Income tax rules may be so amended as to compel a person to enter in his return not only the assets held in his name but also particulars of the assets or sources beneficially held by him. *Sixthly*, many a times assessees show their income as belonging to the ladies. The existing provisions in Section 64 are entirely inadequate to meet with such a situation. The principle of aggregating the income of the wife and husband for tax purposes is followed in Western Countries like U.S.A. and U.K. Therefore, the Law must be amended to club the income of the husband and the wife and treat the income as of one unit.[46] *Seventhly*, whenever a tax-payer submits accounts to the Income-tax Officer in support of a return made by him, the supporting accounts should be deemed as a part of the return for the purposes of the penalty provisions of the Income-tax Act. Every return should bear a verification certificate affirming the accuracy and the truth of the transactions entered in the accounts on which the return is based.[47] *Eighthly*, it is common knowledge that large sums of unaccounted money are invested in the construction and acquisition of immovable properties. To tackle this problem, the determination of the correct cost of land, expenses on the construction of the property, the real price at which the transfer of property is effected is necessary. To do this, as has already been suggested, the Board should have the assistance of expert valuers and the Government should have an option to purchase the property at the declared value. A Bill is awaiting the approval of the Parliament whereby the Government now will acquire any property having "a fair market value" of more than Rs. 25,000 which has passed hands in a shady deal.[48] Compensation will be payable for properties acquired under the proposed provision "in a sum equal to the consideration stated in the deed of transfer plus a solatium of 15 per cent thereof.[49] *Ninthly*, *benami* transactions are permitted by law and are common. This should be checked. It is a happy augury that following the recommendation of the Administrative Reforms Commission the Taxation Laws Amendment Bill introduced in the Lok Sabha (Lower House of Parlia-

46. Report of the Working Group of ARC, *op. cit.*, p. 124.
47. Report of the ARC, *op. cit.*, p. 21.
48. Reported in the Times of India, August 13, 1971.
49. *Ibid.*

ment) on August 12, 1971, seeks to introduce a new provision in the Income-tax Act. It proposes to debar a person from enforcing his claim to any property standing in the name of any other person, unless the claimant has disclosed the income from such property for purposes of income tax or the property itself for purposes of wealth tax or has given notice to the Income-tax Officer about his claim to the property.[50] *Tenthly,* at present, under Section 64(3) of the Income tax, 1961, only income from assets transferred by husband to wife is included in the husband's income, but there is no reverse provision. It is desirable that a similar provision covering cases of assets transferred by wife to the husband should also be made. Further, Section 64(3) should be so suitably amended as to tax the income arising out of the income from assets transferred directly or indirectly by the husband to the wife without adequate consideration.

Finally, the separation of agricultural income and non-agricultural income for the purposes of taxation is perhaps unique in this country.[51] Since under the Indian Income-tax Act, agricultural income is exempt from taxation, this method of segregating large slices of taxes on income by attributing it as income from agriculture has been widely practiced particularly by persons running industries which require agricultural produce as raw materials. This leads to large scale evasion of income tax on the one hand and accumulation of incomes and wealth on the other. There is a big potential source of revenue in the taxation of rural incomes. It is high time that the law should be amended to provide for removing the exemption relating to agricultural income and to make a distinction between the well-to-do minority of farmers and poor masses of farmers, just as we make a distinction in the urban areas between those who can bear the income tax and those who cannot.[52] But since under Section 10(1) of the Income-tax Act 1961, agricultural incomes, are exempt from income-tax and under the Constitution agriculture is a State subject, the levy of one single tax on both agricultural and non-agricultural incomes is not feasible till an agreement is reached between the Centre and States for a uniform levy. Till such time, a provision may be made in the Income-tax Act that for the purpose of determining the rate of assessment on non-agricultural income, the total income of the assessee including the agricultural income will be taken into account. Such a provision would also not be contrary to the provisions of the Constitution.

PUBLICITY

While administrative and legislative measures will go a long way to check tax evasion, they themselves would not be able to effectively check it unless the society develops a conscience against it. For this it is desirable that the names of the assessees with declared incomes and wealth and the quantum of penalty imposed upon them should be published in the local press. At present following the recommendations of the Direct Taxes Administration Enquiry Committee[53] an annual list of all persons in whose cases a penalty has been imposed for Rs. 5000 or more are published in the Gazette only. It is desirable that their names should also be published in the local press. In Sweden the "publicity principle" is of great import-

50. *Ibid.*
51. Report of The Finance Commission (1969), p. 85.
52. See author's article "Tax Sources and norms for the Budget", Economic Times, Fe bruary 13, 1969.
53. DTAEC, *op. cit.*, p. 186.

ance in the tax field. While details of tax declarations must be kept secret, the official assessment lists, assessment boards, are public documents. Regular figures of income and wealth of firms and individuals are thus available.[54] Equally, every citizen must declare his income when he is registered under the National Registration Law. This register is kept open to inspection by members of public. In Norway, figures of wealth and income of taxpayers are available for public inspection, and the French Government regularly publishes a list of taxpayers and the amounts of tax they pay. It is high time that this matter is taken up urgently in India and necessary steps be taken to give a wide publicity of the evadors.

STANDARDS OF ADMINISTRATION

The prevention of evasion is to a large extent dependent on the standard of administration in the Revenue Department. An efficient administration requires the ability of the Department to attract the best talent and to attract them in adequate numbers. This depends a great deal on the conditions of pay and prospects in the service. In this respect there is too much of false and misguided economy in India.[55] So long as a situation continues in which the local Income-tax Officer starts with a basic monthly salary of Rs. 350 (class II) or Rs. 400 (class I), it is idle to expect the highest standards of efficiency. From the prevailing pay scales "it seems clear that an Income-tax Officer living on a very modest scale can not have the selfconfidence and sense of social equality necessary to stand up to "great men" earning many lakhs of rupees with whom they may have to deal".[56] It is, therefore, desirable that their pay-scales be revised, designations changed and following facilities be provided:-

1. Suitable living accommodation be provided. 5 per cent should be deducted from their salary (instead of 10 per cent) or in case they can not be provided with accommodation, Government should be prepared to bear all the expenditure above 5 per cent as happens in the case of military personnel in India.
2. Arrangements up to the highest stage be made for the education of the children of Government servants in Central Schools and Colleges.
3. Articles of daily use and consumption be supplied to them through their canteens at subsidized rates as happens in the case of military officials in India.

AROUSING PUBLIC CONSCIENCE

Above all, it is desirable that public conscience should be aroused against tax evasion and evadors. Unless the society shuns the tax-evadors, the practice can not be checked. To achieve this objective people should first of all be taught through press, radio and films that they should pay proper taxes and the money paid by them is not wasted but put to proper use. This should not remain merely a slogan but the Government should make earnest efforts to make it a reality. Besides, no official patronage or recognition or awards should be given to persons who have been penalised for concealments and they should not become member of any Committee or Commission appointed by Government.[57]

CONCLUSION

The above discussion makes it abundantly clear that the problem of evasion constitutes

54. World Tax series — Taxation in Sweden (1959), pp. 50–51.
55. Kaldor, N., *op. cit.*, p. 114.
56. *Ibid.*, p. 115.
57. DTAEC, *op. cit.*, p. 187.

a challenge to, and becomes the responsibility of all the three branches of Government. It would be appropriate here to quote the following quotation from President Roosevelt's message to the 75th Congress. Pointing out that, when the legitimate revenues of the State are attacked, it constitutes an attack on the whole structure of Government, he added that–

"The three great branches of the Government have a joint concern in this situation. First, it is the duty of the congress to remove new loopholes devised by attorneys for clients willing to take an unethical advantage of society and their own Government. Second, it is the duty of the executive branch of the Government to collect taxes, to investigate full all questionable cases to prosecute where wrong has been done and to make recommendations for closing loopholes. Third, it is the duty of the courts to give full consideration to all the evidence which points to an objective of evasion on the part of the taxpayer.[58]

58. *Ibid*, p. 188.

APPENDIX

Explanation of Indian Words

1. *Dharamshala* is a place built for charitable objects by individuals and charitable societies for people visiting a particular city or town. The accommodation is provided free of cost to the visitors.
2. *Sadhus* are religious saints.
3. *Bahi* means account books.
4. *Benami*. The word "Benami" is of Persian origin. Its literal meaning is "without a name" and denotes a transaction done by a person without using his own name, but in the name of another.
5. *Benamidars*. The word "Benamidars" has been framed from the word "Benami" and denotes the fictitious person in whose name the accounts are maintained.
6. *Hundi* is a credit instrument used by indigenous bankers in India. It is written in indigenous language. It is an instrument in which one person orders the other to pay the bearer or to the person mentioned a fixed sum mentioned therein either on demand or after a fixed time.
7. *Pugree* is "on-money" which a tenant has to pay to the landlord in big cities like Calcutta and Bombay to obtain residential accommodation.
8. *Vidhan Sabha* and *Vidhan Parishad*. Since India is a federation it has a Parliament at the Centre and separate legislatures in all the States. The lower house of the State legislature is known as "Vidhan Sabha" and the upper house as "Vidhan Parishad".
9. *Gate Bahi* is the register maintained at the factory gate in which all the items taken out of the factory are recorded.
10. *Niyayour* is a person who melts the ornaments.

* * * * DOCUMENTS * * * *

BELGIQUE

Etablissement Belge[1]

Dépêche du 7 février 1972, no. Ci.RH.61/260.221

1. Les sociétés non-résidentes et les associations, établissements ou organismes de droit privé étranger, exerçant une activité professionnelle, qui donnent en location leurs biens immobiliers situés en Belgique, disposent, de ce fait, d'une installation belge de caractère productif au sens de l'art. 140, § 3, C.I.R.[2], et sont dès lors imposables à l'I.N.R./Soc.[3] sur l'ensemble de leurs revenus réalisés ou recueillis en Belgique, conformément à l'art. 148, 1°, C.I.R.

2. Les conventions préventives de la double imposition n'énervent en rien ce principe, puisqu'elles reconnaissent à la Belgique le droit d'imposer les revenus des biens immobiliers situés dans le pays, sans qu'il faille se préoccuper de savoir si ces biens constituent ou non un établissement stable au sens de ces conventions. Les revenus provenant de ces biens immobiliers doivent donc, sur base des dispositions de droit interne indiquées au n° 1, être soumis à l'I.N.R./Soc. (le cas échéant, cumulativement avec les autres revenus visés à l'art. 140, §§ 1 et 2, C.I.R.).

.....

5. .....

6. Le revenu provenant de la location de biens immobiliers et imposable à l'I.N.R./Soc. est égal à la différence entre, d'une part, le loyer et les autres avantages et, d'autre part, les dépenses et charges admissibles (amortissements, frais d'entretien, partie du Pr.I.[4] excédant 20 p.c. .....). A défaut de justifications, ces dépenses peuvent être évaluées à 25 p.c. (immeubles bâtis) ou à 10 p.c. (immeubles non bâtis) des loyer et avantages susvisés.

.....

7. L'attention est appelée sur le fait que, pour les associations, établissements ou organismes de droit privé étranger qui ne poursuivent aucun but de lucre et qui disposent en Belgique d'un ou de plusieurs établissements, l'I.N.R./Soc. – hormis la taxation distincte des plus-values sur les immeubles non-bâtis – est censé correspondre au crédit d'impôt et aux précomptes.
Etant donné que ces associations, etc., sont toutefois tenues de souscrire une déclaration-questionnaire n° 276.5 (cf. Com.I.R. 218/1, B, 2° alinéa), le Cr. ch.-soc.[5] du ressort dans lequel est situé le principal établissement est compétent pour régulariser la situation fiscale de ces contribuables.

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1. Bulletin des Contributions No. 495, avril 1972, p. 528.
2. Code des impôts sur les revenus.
3. Impôt des non-résidents/impôt des sociétés.
4. Précompte immobilier.
5. Contrôleur en chef- impôt des sociétés.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

UNITED KINGDOM:

Capital Gains Tax of Unit and Investment Trusts*

1. In his Budget Speech the Chancellor announced changes in the arrangements for taxing the capital gains of authorised unit trusts and approved investment trusts, and capital gains made on the disposal of ordinary shares and units in the trusts. Under the present law the rate of corporation tax charged on gains made by the trusts is limited to 30 per cent; the net gains (after tax) of the trusts are apportioned to the unitholders and shareholders and added to the cost of their units and shares for the purpose of calculating capital gains on the disposal of the units or shares.

2. Under the Chancellor's proposals, the trusts will pay corporation tax on their capital gains at 15 per cent from 1 April 1972. From 6 April 1972 the tax on capital gains made by unitholders and shareholders, including corporate holders, on disposals of ordinary shares in the trusts (that is, shares entitled to the capital gains made by the trusts) will be reduced by a credit equal to 15 per cent of the unitholder's or shareholder's taxable gain; the gains (or losses) will be calculated without any apportionment (including past apportionments) of the net taxed gains of the trusts. Gains and losses on disposals of units and shares in the trusts up to and including 5 April 1972 will be calculated under the present law and will not qualify for the new credit.

3. For example, an individual who sells units in an authorised unit trust in May 1972 and realises a taxable gain of £100 on which he is chargeable at the 30 per cent capital gains tax rate, will have a credit of £15 allowed against the £30 tax. If, under the alternative basis of charge, half the agin is exempt and the other half charged at his income tax rate, the tax (assuming he is not liable to surtax) will be £19.375 (£50 at 38.75 per cent); this will be reduced by a credit of £15 (£100 at 15 per cent) to £4.375. If the sale takes place after 5 April 1973 —when the new unified personal tax system comes into force—and his income tax rate is the basic 30 per cent rate, the capital gains tax under the alternative basis of charge will be £15, and the £15 credit will reduce this to Nil. The credit will not, however, be repayable (for example, where the unitholder or shareholder is exempt).

4. A special rule will be necessary to restrict the credit when the trust has been approved or authorised during only part of the unitholder's or shareholder's period of ownership, including the case where the trust has taken over a company which was not approved and the "rollover" rules applied on the takeover (Rollover does not apply where an investor transfers portfolio investments to the trust).

5. The reduction in the rate of tax on the trusts' own gains to 15 per cent from 1 April 1972 will be effected by excluding a fraction of their gains from charge and charging the balance at the full corporation tax rate. Thus, if the corporation tax rate from 1 April 1972 was 40 per cent, the fraction to be excluded would be five-eights (since three-eights of 40 per cent is 15 per cent). Where a trust's accounting period straddles 1 April 1972 the net amount falling to be included in the profits for corporation tax will be split by time apportionment and the excluded fraction will apply only to the part from 1 April 1972.

* Press Release of the Board of Ireland Revenue of March 24, 1972.

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G.C.A. SMEETS*:

SPECIAL PROVISIONS FOR THE TAXATION OF NETHERLANDS ANTILLES SHIPPING AND AVIATION COMPANIES

INTRODUCTION:

Article 9A of the Netherlands Antilles Profits Tax Ordinance 1940 (Landsverordening op de Winstbelasting 1940), as amended, contains special provisions for the taxation of companies operating shipping or air services.

Said Article 9A was introduced by the Ordinance of November 28, 1963, amending the Profits Tax Ordinance 1940. According to the Explanatory Memorandum introducing the 1963 Ordinance to Parliament, the special provisions of Article 9A intended to promote the establishment of shipping companies[1] in the Netherlands Antilles by offering an attractive fiscal situation in order to broaden the economic basis of the Netherlands Antilles.

The facilities of this attractive fiscal regime include a sharp reduction in applicable tax rates. Other incentives are provisions for tax deductibility of accelerated depreciation, investment allowances, the creation of survey and replacements reserves, and their allocation to insurance, and extension of loss carry forward facilities.

According to paragraph 1 of Article 9A the provisions of that Article apply only to limited liability companies (naamloze vennootschappen)[2] and partnerships limited by shares (Commanditaire vennootschappen op aandelen)[3] [4] the purpose of which is to carry on ocean shipping or aviation business (the letting and chartering of ocean vessels or aircraft[5] are expressly referred to as constituting such business). Such an entity must

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1. The Explanatory Memorandum contains only one reference to aviation companies: That there is sufficient reason to promote the establishment of aviation companies by the same incentives as for shipping companies; and that therefore the provisions of Article 9A are phrased in such a way that they apply to both shipping and aviation companies.

2. "Naamloze vennootschap", commonly abbreviated "N.V.". The Netherlands recently introduced a new legal form for companies: "Besloten vennootschap", abbreviated "B.V.". The B.V., however, has not been introduced in the Netherlands Antilles.

3. In this type of partnership there are one or more managing partners with unlimited liability and one or more non-managing partners whose liability is limited to the amount of their shares. The managing partner(s) may be a "naamloze vennootschap".

4. The language of paragraph 1 referred to above permits application of the provisions of Article 9A not only to N.V.'s and partnerships limited by shares, but also to entities governed by certain other, but for shipping and aviation less usual, legal forms.

5. For a definition of oceangoing vessels and of aircraft paragraph 6 of Article 9A refers to respectively Article 2 of the 1933 Curaçao Decree concerning Sea Letters (reading: this Decree considers as Oceangoing vessels all ships, including coasting ships, which are used for navigation on sea or which are designed therefor, with the exception of (a) warships; (b) ships of sailing clubs or of yachtclubs, recognized as such by the Governor; (c) salvage vessels; and (d) vessels measuring less than twenty cubic meters gross .....) and Article 1 of the 1935 Curaçao Aviation Decree (reading: ..... aircraft: motoraircraft, sailplanes, dirigibles and free balloons, except when belonging to Navy or Army, and except when used exclusively in one of the Services of the Government of Curaçao, such as, postal, customs, police services . . . .).

have been established in accordance with the laws of the Netherlands Antilles; it must have its statutory domicile within the Netherlands Antilles; and insofar as the entity is itself engaged in transportation (as opposed to chartering), it should have the day-to-day management of such transportation exercised from within the Netherlands Antilles.

For the application of the provisions related to accelerated depreciation, investment allowances, creation of, and allocation of reserves, and loss carry forward, it is required that the entity maintains proper accounting records. Finally, the ships or aircraft should be registered in the Netherlands Antilles, the Netherlands, or in Surinam. Under certain conditions, which will be discussed below, it is possible to register the ships and aircraft in other countries.

REDUCTION OF TAX RATES:

With regard to above described companies, 80% of the profits derived from the ocean shipping or aviation business and determined in accordance with the provisions of the Profits Tax Ordinance (with exception of profits derived from transports between Netherlands Antilles harbours), are considered as profits derived from sources outside the Netherlands Antilles (art. 9A, par. 1). This 80% of the profits is taxed at 1/10th of the normal profits tax rate (art. 9A, par. 2); the remaining 20% is taxed at the normal rates. Including the insular surtax, the normal rate is 27.6% on the first NAfls 100,000.— (approx. USS 54,000.—) net profit, and 34.5% on the balance of the net profit. Assuming, as will normally be the case, that the profits do not include profits from transportation between Netherlands Antilles harbours, the *effective overall tax rate*, inclusive of the insular surtax, will be approximately 7.7% for the first NAfls 100,000.— net profits, and 9.6% for the balance of the net profits. Taking full use of the available facilities and further careful planning may successfully result in a lower tax than is apparent from the foregoing.

GUARANTEE OF TAX RATES AND OF FACILITIES UNTIL 1982:

The Guarantee 9A Ordinance (Ordinance of February 13, 1967) provides that profits, which are subject to Article 9A of the Profits Tax Ordinance, made in the period of time commencing with the first fiscal year terminating after June 30, 1966 and terminating with the last fiscal year commencing, before July 1, 1981, shall not be made subject to a higher Netherlands Antilles or insular tax than the tax determined in accordance with the rates effective for the first fiscal year terminating after June 30, 1966. During the said fiscal year the effective tax rates amounted to the aforedescribed 27.6%-34.5%, inclusive of insular surtax which, with the application of the 20%-80% rule, results in effective rates of 7.7% and 9.6%, as described before[6].

The Guarantee 9A Ordinance further provides that an amendment of Article 9A, which comes into force during the above defined period of time between 1965 and 1982, shall not, during such period of time, be applied with respect to an entity which is subject to Article 9A, if and insofar as such amendments would result to any disadvantage for such entity.

6. Mentioned rates apply for companies established on the island of Curaçao where an insular surtax existed at the time that the Guarantee 9A Ordinance came into force. On the island of Bonaire and on the insular territory of the Windward Islands however, the surtax was not levied and as a result the effective tax rates for companies established on Bonaire are 6.72% and 8.4%, exclusive of insular surtax.

DETERMINATION OF TAXABLE PROFITS:
The taxable profit of an entity which is subject to Article 9A is determined in accordance with the other provisions of the Profits Tax Ordinance of 1940, insofar as Article 9A does not provide otherwise. Article 4 defines as taxable profit the sum of all net gains obtained under whatever name and in whatever form from the entity's business and from its capital employed outside its business, including capital gains realized on the sale of assets regardless whether such assets were intended for sale.
In determining the net amount of such gains all costs incurred in earning, realizing and maintaining such gains are deducted from the gross amounts (art. 5, par. 1).
Also deductible are the costs of incorporation and of increasing the entity's capital, such in conformity with the deduction made in the entity's books provided that this deduction over the various years does not exceed the actual amount of said costs (art. 5, par. 2). This implies that the costs of incorporation and of capital increase may be capitalized and written off over a number of years, or, at the entity's option, deducted entirely in the first fiscal year (or in case of capital increase, in the year of the capital increase).
Further, deductions must be made for depreciation of fixed assets and for writing off bad debts, in accordance with good commercial practice. Article 9A contains special provisions with respect to depreciation which will be discussed below.
Deductions cannot be made for the creation of and allocation to reserves except where specifically allowed.
Interest is normally deductible[7]. Article 6, paragraph 2 states that interest is not deductible in case it must be assumed, (either because such interest is paid to persons or entities which directly or indirectly, separately or jointly own more than 50% of the entity's stock, or because of other circumstances) that the legal acts of which such interest payment is the result, are not in conformity with the methods appropriate in trade and industry for obtaining funds.
Consequently, lack of "arm's length" is legally presupposed when money is borrowed from a company or individual owning more than half of the tax paying entity's stock, and as a result the entire amount of interest paid to such company or individual is not deductible. The Dutch text of Article 6, par. 2 is ambiguous as to whether or not, in case the described relationship between interest payor and payee exists, "the legal act of which the interest payment is the result" can still be deemed to be "in conformity with the methods appropriate in trade and industry for obtaining funds". It appears that the tax administration of Curaçao might be willing to settle the matter in specific cases, depending on the circumstances, favourably to the taxpaying entity. Needless to say, it is advisable to settle these matters by discussing the terms and conditions of the loan and the other circumstances before the loan in question is contracted.

DEPRECIATION AND ACCELERATED DEPRECIATION:
In determining its net taxable profit, a company is required to depreciate its fixed assets and to write off its bad debts in accordance with good commercial practice (art. 5 par. 3). Expenditures for improvement and alteration of fixed assets, as opposed to ordinary repairs, cannot be deducted (art. 6 par. 1), but must be capitalized and be subject to depreciation.

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7. A notable exception: interest paid by an investment, holding or finance company is deductible only when paid to a bank or when a specific ruling has been obtained.

The Profits Tax Ordinance does not prescribe any particular methods of depreciation and the only requirement is that the method choosen by the taxable entity be in accordance with good commercial practice. Methods which are based on the yearly profits are not deemed to be in accordance with good commercial practice. Normal depreciation is not an optional facility but a requirement.

Accelerated depreciation, on the other hand, is a facility optional to, and available only for shipping and aviation companies. This discretionary accelerated depreciation is permitted on one third of the cost of acquisition of a vessel or aircraft, acquired after December 1, 1960 and prior to January 1, 1981, or ordered prior to January 1, 1981 and acquired prior to January 1, 1982[8].

Improvements of a vessel or aircraft which has previously been acquired, are deemed to be acquisitions, hence subject to capitalization and discretionary accelerated depreciation. The Netherlands Antilles accelerated depreciation is almost identical to the Netherlands accelerated depreciation. The major difference is that in the Netherlands the Minister of Economic Affairs is authorized to modify or to suspend the facility; the Netherlands Antilles government does not have such authority.

Normal depreciation, which must be taken, and accelerated depreciation, which can be taken, supplement each other. According to the Supreme Court of the Netherlands in a Netherlands tax decision, the term "accelerated" depreciation implies that the accelerated depreciation, when taken, includes the amount of the normal depreciation. Accordingly, the acquisition cost of a vessel or aircraft should be divided into a two thirds and a one third part. With respect to each part the normal depreciation should be determined in accordance with the depreciation method chosen, before taking all or part of the accelerated depreciation on the third part. As a result, the depreciable amount each year may vary between two limits such that the total amount which has been depreciated at the end of the fiscal year is subject to a maximum of one third of the acquisition price plus the total normal depreciation on the two thirds part and subject to a minimum of the total normal depreciation of the whole acquisition cost. Though the Netherlands Supreme Court does not have jurisdiction over Netherlands Antilles tax cases (as it has in civil and penal cases), it is not likely that a Netherlands Antilles Court in this matter would rule otherwise. When, because of sale or of liquidation of the Company, the "hidden reserves" created by normal and accelerated depreciation become taxable, the tax is levied in accordance with the 80%-20% rule.

INVESTMENT ALLOWANCE:

If in any year (but not later than December 31, 1980) an investment in vessels or aircraft has been made, 8% of the invested amount is deducted from the net taxable profit of such year and 8% from the net taxable profit of the subsequent year. "Investment" is defined as the contracting of an obligation incurred with respect to the acquisition or improvement of a vessel or aircraft, insofar as such obligation is borne by the taxable entity in question (art. 9A, par. 9a). The Netherlands Antilles investment allowance is basically the same as the Netherlands investment allowance. However, the Netherlands investment

8. When article 9A was introduced in 1963 the facility of accelerated depreciation was possible for vessels and aircraft acquired before January 1, 1971, or ordered before same date and acquired before January 1, 1972. In 1970 the dates were by amendment of Article 9A extended to January 1, 1981 and January 1, 1982.

allowance amounts to 5% for each of the first two years of investment (for aircraft: 8%) instead of twice 8%. As with the accelerated depreciation, the Netherlands Antilles government cannot, as opposed to the Netherlands government, modify or suspend the facility.

Further, Article 9A does not provide for a minimum investment and there are no provisions with respect to obligations contracted between related parties.

The investment allowance is an exemption from taxation of part or all of the taxable profit and does not prejudice the depreciable amount of the acquisition price. Application of the investment allowance can result in a loss which can be carried forward.

The investment allowance was originally available until December 31, 1970 and had to be taken in the year that the investment was paid for, "investment" being defined as the fulfilment of an obligation. In 1970 the period during which the facility will be available, was extended to December 30, 1980 and the definition of "investment" was amended to its present version meaning the contracting of an obligation. This new definition of "investment" was apparently not taken into account in the amendment of paragraph 9b of Article 9A which reads: "The investment allowance may also be applied with regard to a vessel or aircraft which has been ordered or the improvement of which has been ordered prior to January 1, 1981 (originally 1971), provided the investment takes place prior to January 1, 1982 (originally 1972)." The distinction is not quite clear between "ordering a vessel or ordering the improvement thereof" and "investment" presently defined as the contracting of an obligation. The provision of Article 9A, par. 9b should apparently be read as if "investment" had its old meaning of fulfulling an obligation with respect to the purchase or improvement of a vessel or aircraft. The matter may well be an academic one because it is not impossible that in 1980 the investment allowance will be extended for another ten year period.

As a measure against abuse of the investment allowance, par. 10 of Article 9A provides that if in any year within ten years from the beginning of the fiscal year in which the investment took place, vessels or aircraft for which the investment allowance has been applied, are sold, 8% of the transfer price shall be added to the profit of such year and 8% of the transfer price shall be added to the profit of the subsequent year.

CREATION OF, AND ALLOCATION TO RESERVES:

Tax deductible creation of, and allocation to reserves is available only to shipping and aviation companies.

Reserves can be made in order to obtain an even spreading of costs and charges *(survey reserves)* and to cover risks which would as a rule have been insured but have not been insured *(own insurance reserve)*, insofar as such costs, charges and risks are related to vessels and aircraft (art. 9A, par. 11).

In 1970 the possibility was introduced of a *replacement reserve* to cover the cost of replacement or repair in case of loss of, or damage to vessels or aircraft: In case the indemnifications for loss or damage of vessels or aircraft exceed the fiscal book value thereof or of the damaged part, the balance can in each case, if and as long as the intention to replace or repair exists, be and remain reserved for first deduction from the costs of replacement or repair. To the amount of such first deduction the accelerated depreciation cannot be used. The reserve has to be incorporated in the taxable profit at the utmost during the fifth calendar year after the year in which the reserve was created,

unless a longer period for replacement or reserve is required. It should be noted that the replacement reserve cannot be used when a vessel or aircraft is sold.

LOSS CARRY-FORWARD:

Losses incurred in any taxable year by a shipping or aviation company can be carried forward to the subsequent six years, beginning with the first of such years (art. 9A, par. 13a). For other companies the loss carry forward period is limited to five years.

The "initial losses" of a shipping or aviation company, viz. the losses incurred in its first six fiscal years may be carried forward without regard to the above mentioned six years limitation.

"Losses" which can be carried forward include book losses created by application of the accelerated depreciation and the investment allowance.

Loss carry backs are not possible.

CONSOLIDATED RETURNS (Fiscal unity):

No provisions have been made for the consolidated return (fiscal unity) of shipping companies. Use of single ship companies, for other than tax reasons, may quite often be necessary or advisable and it is not unlikely that in such cases the tax inspector may allow, by ruling, the tax consolidation of companies.

REGISTRATION OF VESSELS AND AIRCRAFT:

The provisions of Article 9A apply only in case and for the time that the vessels or aircraft belonging to the business of the concerned entity are registered in the Kingdom of the Netherlands (art. 9A, par. 4). However, on request of the concerned entity, a vessel or aircraft not registered in the Kingdom of the Netherlands and belonging to such entity's business, may by Government Decree be determined to have, as far as the application of Article 9A is concerned, the same status as a vessel or aircraft registered in the Kingdom of the Netherlands. Such Decree, bracketing foreign registered ships with Netherlands registered ships, may be granted only in case the legal provisions concerning the safety and the care of the crew in the country of registration may be deemed to be at least equivalent to those of the Netherlands Antilles. It is not necessary that the concerned entity obtains a separate Decree for each vessel, the Decree usually states that the provisions of Article 9A apply to all vessels belonging to the petitioning entity when registered in one of the countries mentioned by name in the Decree.[9] As a condition for the application of Article 9A, the Decree usually requires that the concerned entity in the annual accounts filed with the tax returns, mention the names of the vessels, the countries where they are registered, the period of time during which the vessels have belonged to the enterprise of the concerned entity, and the gross and net income per vessel. The Decree, when issued, is published in the Official Gazette. Decrees, bracketing foreign ships with Netherlands ships, have not been issued on a wide scale, but it appears that a corresponding small number of companies have requested such decree. To my knowledge all decrees that have been issued concerned vessels chartered by Netherlands Antilles companies, but it should be also possible, as far as the language of Article 9A is concerned, to obtain such decrees for vessels owned by the Netherlands Antilles entity and registered abroad.

9. The list of countries usually includes: Norway, Sweden, Denmark, Finland, Iceland, West Germany, the United Kingdom, France, Belgium, Switzerland, Israel, U.S.A., Spain, Liberia, Greece and Italy.

DR. P.K. BHARGAVA*:

TAXATION OF AGRICULTURE - THE INDIAN CASE

It has been the experience of developing countries that it is both easy and quick to raise resources from agriculture for development purposes.[1] Professor Wald has rightly observed that, "Land taxes are often the only promising means of tapping in the required large amounts ..... of the agricultural sector, a weighty consideration in view of the key position which agriculture holds in most underdeveloped countries."[2] Agriculture occupies a key position in the Indian economy as it contributes about 45 percent to national income and provides livelihood to nearly 70 per cent of population. It is, however, unfortunate that the agricultural sector is inadequately taxed[3] and that the *Plan* documents do not state any policy regarding the mobilisation of surpluses from the agricultural sector. As the Union Government is prohibited from taxing agricultural land or income—only the State Governments are empowered to tax such land or income—a written policy statement on the taxation of agriculture does not exist. Unfortunately, the State Governments have not laid down any guiding principles for the purpose because their policies have often been guided by their own needs and interests rather than any rationale.

There is abundant evidence to show that tax burden on the agricultural sector has been declining. Table I (see for Tables at the end of this article) shows that during 1950-51 to 1955-56 there was some increase in the burden of direct taxes on the agriculturists but since then, except marginal variations, it has been declining. We may emphasise here that even during the period 1950-51 to 1955-56 the increase in the tax burden on the agriculturists was not due to the upward revision of agricultural tax rates or due to imposition of more taxes on this sector but the increase in the yield from agricultural taxes was primarily due to abolition of intermediaries in land and increase in area under cultivation. Whereas in 1938-39, direct agricultural taxes, namely land revenue and agricultural income tax, formed 4 per cent of the income originating in the agricultural sector;[4] this percentage declined to 1.0 in 1950-51

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1. For a detailed discussion see H.P. Wald, "*Taxation of Agricultural Land In Underdeveloped Economies*," Harvard University Press, Cambridge, Massachusetts, 1959; The Role of Agricultural Land Taxes in Japanese Development (by the Food and Agriculture Organisation of the United Nations) in *Readings on Taxation In Developing Countries*, (ed.), Richard Bird and Oliver Oldman, The Johns Hopkins Press, Baltimore, 1964; E.R. Schlesinger, "The use of Special Assessments to Finance Development Projects", International Bank for Reconstruction and Development (Mimeographed), July 15, 1953.
2. *Ibid*, p. 3.
3. See P.K. Bhargava, Agricultural Taxation and India's Fourth Five Year Plan, *Agricultural Situation in India*, February, 1969; Ved P. Gandhi, *Tax Burden on Indian Agriculture*, Harvard Law School, Cambridge, Massachusetts, 1966; Harold M. Groves and Murugappa C. Madhavan, Agricultural Taxation and India's Third Five-Year Plan, *Land Economics*, XXXVIII, 1, February 1962; A.M. Khusro, Taxation of Agricultural Land: A Proposal, *Economic Weekly*, XV, 4-6, February 1963; I.M.D. Little, Tax Policy and the Third Plan in *Pricing and Fiscal Policies: A Study in Method*, P.N. Rosenstein Radan (ed.), George Allen & Unwin Ltd., London, 1964.
4. See the author's Paper "Taxation of Agriculture in the Fourth Plan", *Eastern Economist*, Annual Number, 1970.

gradually rising to 2.0 in 1955-56 and is less than one at present. "Direct taxation on agriculturists so far is thus out of accord with modern concepts of progressivity."[5]

The two most important taxes paid by the agriculturists are land revenue and agricultural income tax. Land revenue is a tax on the net produce and is regressive in nature as it is levied at a flat rate on all land holders. It is inequitable as it provides no exemption limit and is levied at a flat rate on both small and large land holders. It has built in rigidities as it does not change with changes in income, output or price. It was the most important source of revenue in the States' tax system during 1952-53 to 1956-57. From 1957-58, land revenue stood next to sales tax and from 1966-67 it has been third in order of fiscal importance in the States' tax system; the first being sales tax and the second State excise duties. It may also be emphasised here that the yield from land revenue increased by 211 per cent in 1967-68 as compared to 1950-51 as against an increase of 272 per cent in State excise duties, an increase of 910 per cent in sales tax and an increase of 505 per cent in revenue from State taxes during the same period.[6]

These data amply demonstrate the built-in-rigidities and inflexibility in land revenue. It also indicates the declining importance of land revenue in the States' tax system. Land revenue formed 25.9 per cent of the revenue from State taxes during the First Plan.[7] This percentage declined to 24 in the Second Plan, to 17 in the Third Plan and further to 6.3 in 1971-72 budget. Table III also shows that the contribution of land revenue in most of the States in their own tax revenue in 1971-72 (Budget) is below the average of 6.3 per cent for all the States.

The incidence of land revenue has fallen since it is fixed in money terms and it bears no relation with rising productivity of land and increasing income of the farmers. During the quinquennium 1961-62 to 1965-66 the income of the agricultural sector increased by approximately 26 to 30 per cent and the productivity of land by approximately 20 to 25 per cent.[8] Such a trend is likely to continue in the future also since top priority has been given to agriculture in the Fourth Plan. In fact, the farmer has improved his relative economic position due to the declining burden of land revenue. In a study[9] conducted in Uttar Pradesh it was revealed that in most of the districts the revenue which the cultivator was paying to the Government was less than the rent paid by him to the *Zamindar*. The *Zamindar* used to take not only the legal charges but extracted some illegal charges also. Besides, he used to take some manual work and services in kind from the tenant. After the abolition of *Zamindari* system the cultivator is paying only the legal charges to the Government and is enjoying certain concessions. It will thus be observed that the cultivator has actually benefited despite the increase in the yield from land revenue; this increase is partly at the cost of the *Zamindar* and partly due to increase in area under cultivation.

It will be observed from table IV that there are wide variations in land revenue rates per hectare. The level of land revenue per hectare varies from Rs.2.13 in Nagaland to Rs.14.61 in Uttar Pradesh. The incidence of land revenue is substantially higher in the States of

5. *Report of the Finance Commission*, Government of India Press, Manager of Publications, Delhi, 1969, p. 83.
6. *Ibid*, p. 135.
7. See Table II.
8. See the author's Paper "Incidence of Agricultural Taxation", *Commerce*, October 1, 1966.
9. Professor Baljit Singh and Shridhar Misra, *A Study of Land Reforms in Uttar Pradesh*, Oxford Book Company, p. 135.

Uttar Pradesh, Assam, West Bengal, Kerala, Tamil Nadu, Jammu & Kashmir and Gujarat as compared to other States. On the other hand the *per capita* land revenue is highest in Andhra Pradesh at Rs.6.56 followed by Rajasthan and Madhya Pradesh but the *per capita* cultivated land is highest in Rajasthan at 2.93 acres followed by Bombay (now Maharashtra) and Mysore.[10] If we compare the revenues collected in all the States in terms of certain variables such as percentage distribution of area, percentage distribution of agricultural households and gross value of agricultural income per acre, certain disparities are obvious as shown in Table V. For instance, Kerala tops the list in gross value of agricultural income per acre but in terms of percentage distribution of agricultural households it ranks 14th and in terms of per hectare land revenue it ranks 4th (Table IV). While Uttar Pradesh tops the list regarding percentage distribution of cultivated area and ranks 10th in gross value of agricultural income per acre, it has the highest incidence of land revenue per hectare (Table IV).

These inter-state differences persist due to historical reasons and in recent years they have been accentuated partly due to the lukewarm attitude adopted by some of the State Governments in taxing the agricultural sector. These disparities also persist, to some extent, because of the fact that in recent years agricultural development is confined to those States that have fertile lands.

Table II shows that agricultural income tax formed 2 per cent of the revenue from State taxes during the First Plan. This percentage declined to 1.4 in the Third Plan and further to 0.8 in 1971-72 (Budget), although in absolute terms the yield from this tax increased from Rs.24.6 crores in the First Plan, to Rs.42.5 crores in the Second Pland and further to Rs.48.9 crores in the Third Plan but it should be noted that the increase in yield during the Three Plans was due to more States imposing it, otherwise in many of the individual States the yield from agricultural income tax has been declining. For instance in Uttar Pradesh it declined from Rs.53 lakhs in 1957-58 to Rs.8 lakhs in 1963-64. During the same period it declined from Rs.54 lakhs to Rs.38 lakhs in Mysore and from Rs.117 lakhs to Rs.65 lakhs in West Bengal. Since then the yield in these States increased to Rs.150 lakhs and Rs.122 lakhs respectively in 1971-72 (Budget). We may also emphasise here that the yield from agricultural income tax increased by 336 per cent in 1967-68 as compared to 1950-51 as against an increase of 910 per cent in sales tax, an increase of 769 per cent in stamps and registration, an increase of 1030 per cent in taxes on transport and an increase of 505 per cent in revenue from all State taxes. These data clearly demonstrate the declining importance of agricultural income tax and emphasise the prosperity of the agricultural population in general and especially that of the affluent section.

A distinguishing feature of agricultural income tax is that three States, namely, Assam, Kerala[11] and Tamil Nadu account for almost 70 per cent of the collection where plantation is predominant.[12] The exemption limit for agricultural income tax also differs significantly among the States as is clear from Table VI. In some States it is very high and in others where size of holding is the basis it

10. See *Techno Economic Survey of Uttar Pradesh*, National Council of Applied Economic Research, New Delhi, 1965, p. 331.

11. The Kerala Government announced its decision on August 1, 1971 to levy plantation tax at the rate of Rs. 50 per hectare on all holdings of cash crops above one hectare. Hitherto, plantation tax on holdings above two hectares was in existence in the State.

12. See Table III.

differs very significantly. For instance, in West Bengal 75 *bighas* (25 acres) of cultivable land is the maximum one can possess, which means not a single cultivator would be liable to pay the tax as the exemption limit is 82 *bighas*. In Maharashtra the exemption limit is as high as Rs.36,000 while in Uttar Pradesh, Kerala, Tamil Nadu, and Orissa it is moderate. We may also emphasise here that some major States such as Gujarat, Madhya Pradesh (except Bhopal), Andhra Pradesh and Punjab do not levy this tax at present. Even in States where the tax is levied there is a general feeling that it is inadequately enforced.

The biggest headache with agricultural taxation is that, under the Indian Constitution, only the State Governments are competent to tax agricultural land or income. The State Governments thus have a direct touch with the agriculturists and none of them wants to be unpopular with its electorates as this sector can play a decisive role under the right of adult franchise. The State Governments are, thus, tempted to give relief to the agriculturists by abolishing/reducing agricultural tax rates. A number of State Governments have taken steps in this direction.[13] The data available in the Report of the Finance Commission (1969) indicate that the loss of revenue to the State Governments due to abolition of land revenue and concessions granted to agriculturists during 1967-68 and 1968-69 would be of the order of Rs.77.80 crores over the five years period 1969-70 to 1973-74. On the other hand, the estimated loss of revenue during the same five years, from abolition of taxes other than land revenue and concessions granted to non-agriculturists during 1966-67 to 1968-69 would be of the order of Rs. 38.35 crores. These data amply indicate that the State Governments in providing tax relief have favoured the agriculturists as against non-agriculturists. It is depressing to note that the richer States do not necessarily have higher per capita incidence of land taxes.[14] While the per capita income[15] of Uttar Pradesh was Rs. 306 which was substantially lower than the per capita income of Punjab at Rs.492 but Uttar Pradesh had the highest per capita incidence of land taxes at Rs. 3.03 in 1967-68 and the per capita revenue from taxes on land for Punjab was only Rs.1.38 in that year. Orissa with the same level of per capita income as that of Uttar Pradesh had only Rs. 0.83 as

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13. The Government of Uttar Pradesh had imposed an emergency surcharge of 25 per cent on land revenue in July 1962 and again in July 1965. As it was resisted by various political parties it was abolished from March 17, 1967. Madhya Pradesh abolished land revenue on all land holdings of less than 7.5 acres and also on holdings whose land revenue does not exeed Rs. 5 irrespective of the acreage with effect from January 15, 1967. The Finance Minister of Jammu & Kashmir, in his budget speech 1967-68 announced that the State Government would lose Rs. 30 lakhs per annum as a result of the exemption of holdings paying Rs. 9 as land revenue per year. The Bihar Government promulgated an ordinance on January 2, 1971, which was effective from January 1, 1971 and applied to eleven districts of the State, abolishing land revenue on holdings up to 3.5 acres in the irrigated area and 7 acres in the unirrigated area. The Gujarat Government announced its decision on March 31, 1971 to abolish land revenue on small land holdings. The Uttar Pradesh Government announced its decision on December 9, 1970 to abolish land revenue on land holdings upto 6.25 acres. The various State Governments have taken these steps to provide relief to the cultivators without increasing the burden of som e other tax on them.

14. Includes agricultural income tax and land revenue.

15. Per capita income figures for all the States are on the basis of State incomes for 1962-63 to 1964-65 (average) and have been quoted from the Report of the Finance Commission 1969, p. 141.

the per capita revenue from land taxes in that year. Maharashtra, which has the second highest per capita income, had Rs. 1.91 as the per capita taxes on land in that year. These data suggest that the States which have relatively higher per capita income but lower per capita tax incidence should modify their tax structure suitably by plugging loopholes in their tax system.

The expenditure policy of the State has been agriculture-oriented that has also relatively improved the economic position of agriculturists. The total expenditure on agriculture, community development, irrigation and other related fields formed 31 per cent of the total public sector outlay in the First Plan. This percentage decreased to 20 in the Second Plan but rose to 21.2 in the Third Plan and has been estimated at 22.1 in the Fourth Plan. In absolute terms this expenditure increased from Rs. 610 crores in the First Plan to Rs. 950 crores in the Second Plan, to Rs. 1,738 crores in the Third Plan and has been estimated at Rs. 2,617 crores in the Fourth Plan. The agriculturists have also benefited due to relatively greater rise in the price of agricultural products. During the Third Plan alone, the wholesale price index of food articles increased by 48 per cent as against an increase of 36 per cent in the general price index and an increase of 25 per cent in the price index of manufactured commodities. The terms of trade have thus moved in favour of the agricultural sector. As a result of rising productivity of land and increasing income, the agriculturist has improved his relative economic position. Besides, he is enjoying certain concessions in the form of cheaper credit facilities, price support schemes, warehousing facilities, etc. which he never enjoyed before.

The above discussion makes it clear that the agricultural sector is inadequately taxed. The inadequate taxation of the agricultural sector has disturbed the intersectoral equity between the agricultural and non-agricultural sectors and has put a heavy tax burden on the urban sector of the economy.[16] It is a peculiar feature of the Indian tax structure that an industrialist with an income of over Rs. 2 lakhs gives as much as 97.75 per cent of it to the exchequer, while a farmer with the same income keeps a major part of it. According to a Finance Ministry study on the incidence of indirect taxation for 1963-64, the monthly tax payment per thousand population worked out to Rs. 5,800 for the urban households and Rs. 2,000 for the rural households.[17] The rural sector contributes relatively less as compared to urban sector is also evident from the fact that in 1970-71 the total yield from land revenue and agricultural income tax was Rs. 137 crores, which formed 0.85 per cent of the net output of the agricultural sector. As against this, the income tax collected was estimated at Rs. 473 crores in the same year, which formed 2.6 per cent of the net output of the non-agricultural sector. Between 1960-61 and 1970-71, while the proportion of income and

16. See P.K. Bhargava, Need for Raising Agricultural Tax, *Capital*, February 29, 1969; P.K. Bardhan, Agriculture Inadequately Taxed, *The Economic Weekly*, XIII, 49, December 9, 1961; Y.K. Alagh, Case for an Agricultural Income Tax, *The Economic Weekly*, XIII, 39, September 30, 1961; K.N. Raj, Resources for the Third Plan, *The Economic Weekly*, Annual Number, 1959; I.S. Gulati, *Resource Prospects of the Third Five-Year Plan*, Orient Longman's Ltd., Bombay, 1960; C.H. Hanumantha Rao, *Taxation of Agricultural Land in Andhra Pradesh*, Asia Publishing House, Bombay, 1966; *Report of the Taxation Enquiry Commission* (1953-54), Vol. III, Government of India Press, Manager of Publications, Delhi, 1955.

17. Reported in *The Hindustan Times*, May 5, 1970.

corporation tax to national income from sources other than agriculture has risen from 4.1 per cent to 4.6 per cent, the proportion of land revenue and agricultural income tax to national income deprived from agriculture has declined from 1.63 per cent to 0.85 per cent. It may also be added here that the agricultural sector continues to be heavily subsidised and the losses suffered by irrigation works increased from Rs. 16 crores in 1960-61 to Rs. 84 crores in 1970-71. The agricultural sector has improved its relative economic position due to certain other reasons also as explained above.

In view of what has been stated above it is felt desirable that steps should be taken to raise the fiscal contribution of agricultural sector so that it may be taxed adequately. As the Union Government cannot tax agricultural land or income, the State Governments *must* make adequate efforts to tax the agricultural sector. This is a difficult problem of the Indian tax system as the State Governments have failed in taking measures to raise the fiscal contribution of the agricultural sector and they have not even agreed to Centre's advice to surrender their power to levy the tax on agricultural income by the Union Government.[18] We think that if all the State Governments arrive at a general consensus regarding agricultural taxation, it may be possible to tax the agriculturists. Though there are great diversities among States and each State has its own problems and peculiarities. Uniformity in any sphere is neither desirable nor should it be achieved. However, a broad uniformity in matters relating to agricultural tax policy has become urgent in the various states of India as that would enable State Governments to frame a suitable tax policy to tax agriculturists keeping in view their own circumstances and objectives.

It is difficult for the State Governments to change the basic land revenue rates for the reasons other than political. It may be possible for the State Governments to change the land revenue rates sometime after 1992 when their past settlements will be over. This is a long time and we cannot wait till then. In fact, the reform in land revenue structure is long over due. We are of the opinion that the State Governments should abolish land revenue on holdings of 2.5 acres or less and make up this loss by imposing a surcharge on a sliding scale on land revenue. We think it desirable that the farmers with holdings below five acres should be kept away from the proposed surcharge and thereafter it should be levied on a progressive basis. The proposed reform is politically feasible and it would also fetch large revenues to the State Governments. Table VII shows that households with holdings below 2.5 acres account for 57.6 per cent of the total and own 6.67 per cent of the total operated area. The same table also shows that households with holdings above 2.5 acres but not exeeding 5 acres account for 16.1 per cent of the total and own 12.08 per cent of the total operated area. The proposed scheme will benefit 57.5 per cent of the households who will not have to pay land revenue and will not be opposed by another 16.1 per cent of the households who will pay land revenue. Thus the proposed scheme will get support of nearly 74 per cent of the households. It is encouraging to note that recently the Resources

18. The thorny issue of agricultural income tax was discussed by Mr. Y.B. Chavan, the Union Finance Minister, and the Chief Ministers at New Delhi on October 12, 1971. No concrete decision could be taken but two points became clear. First, no State is willing to surrender its power to levy the tax to the Centre and secondly, any further action on it had to be postponed until after the coming elections to the Assemblies in February/March, 1972.

Committee of the Bihar Government has recommended the levy of 100 per cent surcharge on farmers owning more than 20 acres of land and a 50 per cent surcharge on farmers owning ten to 20 acres of land. The *status quo* be maintained with respect to other farmers. The proposed surcharge is intended to make good the loss sustained by the State Government due to the abolition of land revenue on holdings below five acres.[19]

It would be ideal if agricultural and non-agricultural incomes could be taxed under one income tax. The Fifth Finance Commission (1969) rightly observed that "A single income-tax levied both on agricultural and non-agricultural incomes will have the advantage of a unified system, leaving no scope for evasion by showing greater income under les-taxed or non-taxed sections; it will also be in line with the practice of other advanced countries of the world."[20] But as taxation of agricultural incomes falls in the States List it will be difficult to do so, because the States have already resented such a move. In the present state of Centre—States relations, amendment of the Constitution also does not appear to be a proper solution. However, a proper solution could be found along the following lines and it would be beneficial both for the Union and State Governments. For purposes of determining the rate of assessment on agricultural income, the total income of the assessee including the non-agricultural income should be taken into account. This procedure would bring larger revenue to the States and will also have the advantage that there will be no encroachment on the Centre's autonomy as it involves no taxation of non-agricultural income but only considering it for purposes of determining the rate of tax. Correspondingly, the agricultural income will also have to be taken into account by the Income Tax Department of the Union Government in determining the rate of tax on non-agricultural incomes. Under this system there would be no encroachment on the States' autonomy as it involves no taxation of agricultural income by the Centre. However, the efficacy of the proposed scheme would depend on the co-ordination and cooperation between the Central Income Tax Department and State authority, but such a scheme is earnestly desirable in the broader national interest as it will help in checking tax evasion to a considerable extent and would also bring greater revenue to the State exchequer.

It may also be emphasised that agricultural income tax should be levied on a slab system basis and suitable changes in tax rates should be made so that the tax burden on the small and large land owners as also on the agricultural and non-agricultural income may be made equitable. The tax should be introduced in States where it is not levied at present and the exemption limit should be suitably modified so that the relatively better-off farmers may fall within the net of this tax.

Additional resources should be raised from the agricultural sector by imposing a cess on commercial crops. It should not be opposed by the agriculturists as, at present, land revenue rates bear no relationship with the increase in the price and yield of commercial crops. For instance, the production of ground nut (peanut) during 1955-56 to 1965-66 increased by 8.3 per cent but during the same period its price rose rapidly and increased by 181.6 per cent. However, it should be pointed out that the scope is restricted in the case of coffee, tobacco and tea which are subject to central excise duties. It was a wise decision of the Union Finance

19. Reported in *The Hindustan Times*, September 9, 1970.
20. *Op. cit.*, p. 85.

Minister that he introduced a tax on agricultural wealth in the Union budget for 1969-70 by including agricultural property (that is, agricultural land, standing trees[21] as also buildings) for wealth tax purposes under the Wealth Tax Act, 1957. As a result the value of agricultural and non-agricultural property is to be aggregated for purposes of the tax. Agricultural land upto the value of Rs. 1.5 lakhs is exempt from the tax. The net proceeds of tax on agricultural property/ wealth, which were estimated at Rs. 5 crores per annum, are passed on to the State Governments as grants-in-aid. However, the agricultural wealth tax has not been favoured by the agriculturists and State Governments.[22] Mr. H.S. Dhillion, representing the Punjab Farmers Forum, had filed a writ petition in the Punjab and Haryana High Court that declared the agricultural wealth tax imposed by the Union Government as Ultra Vires of the Constitution.[23] The High Court had held that Section 24 of the Finance Act 1969, to the extent that it included agricultural land within the definition of assets for the purpose of Wealth Tax Act 1957, was beyond the competence of Parliament and was, therefore, ultra vires. Thereafter, the Union Government approached the Supreme Court that upheld the constitutional validity of the Wealth Tax Act as amended by the Finance Act 1969 in so far as it includes the capital value of agricultural land for assessing the net wealth of an individual.[24] In his judgement Chief Justice Sikri said: "We are definitely of opinion that the scheme of our Constitution and the actual terms of the relevant Articles 246, 248 and entry 97 show that any matter, including a tax which has not been allotted exclusively to the State legislatures under list two or concurrently with Parliament under list three falls within list one including entry 97 read with Art. 248." The agricultural wealth tax should not be opposed by the agriculturists as its incidence will fall on the relatively well-to-do farmers. The State Governments should also not oppose it as the net proceeds of the tax will be distributed among them.

In the underdeveloped countries as also in India, "it seems quite clear that special localised benefits will greatly exceed cost in the case of many projects in the general field of irrigation, drainage and rural highway transportation".[25] The State should tax such special benefits by imposing a betterment levy. The Taxation Enquiry Commission (1953-54) had recommended that the levy be fixed at a rate of 50 per cent of the increase in the value due to irrigation. The Planning Commission had also suggested such a levy and against the Commission's additional taxation target of Rs. 16 crores to be realised through this source during 1956-61, the States could achieve only a sixth of the target. We think that it is desirable to impose a graduated betterment levy of 25 per cent to 50 per cent of the benefits derived and of the increase in the value of land due to irrigation facilities.

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21. However, exemption was granted in respect of standing crops (including fruits on trees) and grass on agricultural land and the value of tools, implements and equipment used for cultivation.
22. The Taxation Enquiry Committee (1969) appointed by the Kerala Government has expressed its opinion that the States should be authorised by suitable Central legislation to levy wealth tax on agricultural land.
23. Reported in *The Hindustan Times*, September 29, 1970.
24. Reported in *The Hindustan Times*, October 22, 1971.
25. Quoted by H.P. Wald in *Taxation of Agricultural Land in Underdeveloped Economies*, Harvard University Press, Cambridge, Massachusetts, 1959, p. 221.

To conclude, it may be reiterated that agricultural tax rates should be raised because the burden of land revenue and agricultural income tax has been declining progressively. In order to raise fiscal contribution of the agricultural sector in India, the proposals that we have made are:

1. a graduated surcharge on land revenue;
2. rationalisation of agricultural income tax on the lines indicated above. The exemption limit of agricultural income tax should also be suitably modified and it should be introduced in all the States;
3. a cess on commercial Crops;
4. a wealth tax on rich farmers. A tax on agricultural wealth is levied from the assessment year 1970-71 but it would be better if its exemption limit is lowered so that many farmers may fall in the tax net; and
5. betterment levies.

The above proposals indicate the broad outlines to raise the fiscal contribution of the agricultural sector. It is in the interest of agriculturists as also in the broader national interest that they should be taxed adequately. Moreover, inequity in taxation cannot be tolerated for long. Accordingly, it becomes necessary that the tax burden on the agriculturists should be increased so that the tax incidence on the rural and urban sectors, as also between the rich/large land holders and poor/small land holders, may be made equitable.

TABLE I

Incidence of Direct Taxes on Indian Agriculture

Year	Direct Taxes*			Net National output from Agriculture (in Million Rupees)	Direct Taxes as percentage of Net National Output from Agriculture
	Land Revenue	Agricultural Income Tax	Total (in Million Rupees)		
1950-51	452.4	31.2	483.6	47800	1.0
1951-52	508.7	43.3	552.0	49100	1.1
1952-53	578.4	40.6	619.0	47100	1.3
1953-54	714.9	57.7	752.6	52000	1.5
1954-55	730.3	47.7	778.0	42300	1.8
1955-56	788.9	76.7	865.6	43900	2.0
1956-57	932.0	77.3	1009.3	53800	1.9
1957-58	880.7	78.0	958.7	51300	1.9
1958-59	923.8	84.2	1008.0	60800	1.7
1959-60	957.5	89.2	1046.7	60900	1.7
1960-61	977.8	94.9	1072.7	66800	1.6
1961-62	957.9	94.4	1052.3	67700	1.6
1962-63	1206.5	95.9	1302.4	67900	1.9
1963-64	1237.0	92.6	1329.6	79400	1.7
1964-65	1198.5	107.3	1306.8	101600	1.3
1965-66	1120.4	102.4	1223.0	106000	1.2
1966-67	880.5	105.7	967.1	116000	0.8

* Excluding revenue from betterment levy as the data for annual yield from this tax are not available. However, it will not make much difference in the total incidence of direct taxes on Indian agriculture.

Source: 1. *Reports on Currency and Finance* (Annual, Reserve Bank of India).
2. *Statistical Abstract of India*, (Annual, Central Statistical Organisation, Delhi.)

TABLE II

Importance of Land Revenue and Agricultural Income Tax in Total Revenue from State Taxes

(Crores of Rupees)

	Land Revenue	Agricultural Income Tax	Total Revenue from State Taxes	1 as percentage of 3	2 as percentage of 3
	1	2	3	4	5
First Plan (1951-52 to 1955-56)	326.7	24.6	1257.1	25.9	2.0
Second Plan (1956-57 to 1960-61)	455.0	42.5	1896.9	24.0	2.0
Third Plan (1961-62 to 1965-66)	570.3	48.9	3339.9	17.0	1.4
1971-72 (Budget)	101.1	13.4	1606.9	6.3	0.8

Source: Reserve Bank of India Bulletin May 1968 and August 1971.

TABLE III

Contribution of Land Revenue and Agricultural Income-Tax to States' Own Tax Revenue in 1971-72 (Budget)

(Lakhs of Rupees)

States	Land Revenue	Agricultural Income Tax	Total Revenue from State Taxes	2 as percentage of 4.	3 as percentage of 4.
1	2	3	4	5	6
Andhra Pradesh	1781	–	14910	11.9	–
Assam	451	434	3150	14.3	13.8
Bihar	724	48	8827	8.2	0.5
Gujarat	769	–	11110	6.9	–
Haryana	122	–	4592	2.7	–
Himachal Pradesh	42	–	700	6.0	–
Jammu & Kashmir	79	–	802	9.9	–
Kerala	212	325	7439	2.8	4.4
Madhya Pradesh	770	–	9262	8.3	–
Maharashtra	1750	25	27175	6.4	0.1
Meghalaya	–	–	74	–	–
Mysore	590	150	11521	5.1	1.3
Nagaland	1	–	40	2.5	–
Orissa	174	18	3475	5.0	0.5
Punjab	230	–	8066	2.9	–
Rajasthan	1036	1	6575	15.8	0
Tamil Nadu	166	197	16068	1.0	1.2
Uttar Pradesh	791	19	13016	6.1	0.1
West Bengal	421	122	13890	3.0	0.9
Total:	10109	1339	160692	6.3	0.8

Source: Reserve Bank of India Bulletin, August, 1971.

TABLE IV

Incidence of Land Revenue per hectare of net area sown

States	Land Revenue in 1967-68 (Rs. crores)	Net area sown in 1965-66* (Thousand hectares)	Land Revenue per hectare (Rupees)
1	2	3	4
1. Andhra Pradesh	7.90**	10995	7.19
2. Assam	3.04	2337	13.01
3. Bihar	3.24	8338	3.89
4. Gujarat	7.81	9528	8.20
5. Jammu & Kashmir	0.58	671	8.64
6. Haryana	1.43	3403	4.20
7. Kerala	1.85	2064	8.96
8. Madhya Pradesh	7.26	16529	4.39
9. Maharashtra	8.74	18122	4.82
10. Mysore	7.41	10011	7.40
11. Nagaland	0.01	47	2.13
12. Orissa	1.61	5989	2.69
13. Punjab	1.85	3836	4.82
14. Rajasthan	10.14	14131	7.18
15. Tamil Nadu	5.28	5934	8.90
16. Uttar Pradesh	25.33	17343	14.61
17. West Bengal	5.47	5443	10.05
Total:	98.95	134721	7.34

Source: Col. (2) State Budgets.
Col. (3) Directorate of Economics and Statistics, Ministry of Food and Agriculture, Community Development and Co-operation.

* Figures for years later than 1965-66 are not available.
** This includes revenue from irrigation charges also for which separate figures are not available.

TABLE V

Inter-State Difference (1960-61)

State	Percentage distribution of cultivated area		Percentage distribution of agricultural households		Land Revenue	Agricultural Income Tax	Total of Col. 5 & 6	Rank	Gross value of agricultural income per acre	
	Percentage	Rank	Percentage	Rank	Rs. crores	Rs. crores	Rs. crores		Rs.	Rank
	1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	8.50	5	8.07	4	9.30	0.03	9.33	3	159	8
2. Assam	1.93	13	3.11	13	2.77	2.75	5.52	9	249	4
3. Bihar	7.53	6	11.94	2	8.76	0.51	9.27	4	169	7
4. Gujarat	6.41	8	3.91	11	4.39*	–	4.39	11	133	11
5. Jammu & Kashmir	0.51	14	1.02	15	0.69	–	0.69	15	224	5
6. Kerala	0.50	15	2.10	14	1.46	2.35	3.81	13	333	1
7. Madhya Pradesh	12.32	3	8.86	3	9.65	0.01	9.66	2	119	14
8. Madras	4.03	10	6.74	6	4.98	1.35	6.33	8	280	2
9. Maharashtra	13.18	2	7.75	5	8.77	–	8.77	5	128	12
10. Mysore	7.13	7	5.19	9	4.40	0.74	5.14	10	120	13
11. Orissa	3.40	11	5.01	10	2.06	0.04	2.10	14	194	6
12. Punjab	6.24	9	3.46	12	4.25	–	4.25	12	153	9
13. Rajasthan	11.29	4	5.44	8	7.15	0.03	7.18	6	76	15
14. Uttar Pradesh	13.63	1	19.67	1	22.23	0.83	23.06	1	153	10
15. West Bengal	3.40	12	6.33	7	6.33	0.85	7.18	7	276	3
All India	100.00		100.00		97.19	9.49	106.68			

Source: i) For items 1 to 4, P.S. Sharma: A Study of the Structural and Tenurial Aspects of Land Economy in the Light of 1961 Census—Indian Journal of Agricultural Economics, Vol. XX, No. 4.
ii) For items 5 to 8 Reserve Bank of India Bulletin, October 1962.
iii) For items 9 & 10, National Council of Applied Economic Research, Agricultural Income by States 1960-61.
* 11 months figures.

TABLE VI

Exemption Limit for Agricultural Income Tax

State	Income (Rs.)	Size of holding (acres)
Maharashtra	36,000	–
Orissa	5,000	–
Uttar Pradesh	3,600	30
Madras	3,500	12½
Bihar	3,000	–
Kerala	3,600	–
West Bengal		82 Bighas (1 Bigha = 0.32 acre)
Mysore	–	50 acres of 8th class of land (lowest) or an extent equivalent to one or more of the class.
M.P. (Bhopal)	–	50 acres of tractorized land 100 acres of intractorized land.

Source: A.K. Gupta, Reconstruction of Land Taxation for Economic Development (Paper submitted at the Forty-Seven Annual Conference of the Indian Economic Association).

TABLE VII

Distribution of Area operated and the Households by Size Classes

Size of holdings	Total area operated		No. of households	
	Area (Lakh acres)	Percentage	Total No. (in ,000)	Percentage
1. Below 2.5 acres	216	6.67	41524	57.6
2. Over 2.5 but not exceeding 5 acres	391	12.08	11606	16.1
3. Over 5 but not exceeding 7.5 acres	352	10.87	6488	9.0
4. Over 7.5 but not exeeeding 10 acres	294	9.08	3466	4.8
5. Over 10 but not exeeeding 15 acres	446	13.77	3911	5.4
6. Over 15 but not exeeeding 20 acres	304	9.39	1826	2.5
7. Over 20 but not exeeeding 25 acres	232	7.17	1088	1.5
8. Over 25 acres	1003	30.97	2143	3.0
Total:	3238	100.00	72052	100.00

Note: (1) Area operated represents all lands used wholly or partly for agricultural production and operated by the persons, alone or with the assistance of others, without regard to title, size or location.

(2) A household is a group of persons who usually live together and take their meals from a common kitchen.

Source: National Sample Survey, 17th Round.

BELGIUM

Sociétés - Droit d'apport

Décision administrative No. E.E./E.L. 448 du 30 mars 1972

Le Conseil des Communautés européennes a adopté le 17 juillet 1969 une directive concernant les impôts indirects frappant les rassemblements de capitaux (*Journal officiel des Communautés européennes*, n° L 249 du 3 octobre 1969).

Cette directive entraîne pour la Belgique l'obligation d'apporter certaines modifications, avec effet au 1er janvier 1972, aux dispositions du Code des droits d'enregistrement concernant les apports en société, et notamment:

1° de réduire à 2 p.c. les droits de 2,50 p.c. prévus pour les apports de biens à des sociétés ayant leur siège de direction effective en Belgique et pour les augmentations du capital statutaire, sans apport nouveau, de sociétés ayant leur siège de direction effective en Belgique (Code des droits d'enregistrement, art. 115 et 116);

2° de réduire à 1 p.c. le droit de 1,25 p.c. prévu pour les opérations visées à l'article 117, §§ 1er et 2, du code précité;

3° de modifier le régime prévu pour les apports en société d'immeubles situés en Belgique (même code, art. 118).

Le gouvernement vient de déposer un projet de loi tendant à réaliser les adaptations prescrites.

En attendant le vote de ce projet par les Chambres et afin d'éviter des restitutions ultérieures, les droits d'enregistrement dus pour les opérations visées aux articles 115, 116, 117 et 118 du Code des droits d'enregistrement seront perçus, à compter de la réception de la présente circulaire, en tenant compte de modifications indiquées ci-après, pour autant que la cause d'exigibilité soit survenue après le 31 décembre 1971.

A. – *Apports de biens à des sociétés civiles ou commerciales ayant leur siège de direction effective en Belgique (art. 115).*

Le droit sera perçu au taux de *2 p.c.* (au lieu de 2,50 p.c.), sur la base imposable déterminée par l'article 119.

Les dispositions de l'article 120, pour le cas où l'apport est rémunéré en partie autrement que par l'attribution de droits sociaux, demeurent applicables.

B. – *Augmentation du capital statutaire, sans apport nouveau, d'une société ayant son siège de direction effective en Belgique (art. 116).*

Le droit sera perçu au taux de *2 p.c.* (au lieu de 2,50 p.c.), sur le montant de l'augmentation.

Le droit n'est pas dû dans la mesure où le capital statutaire est augmenté par incorporation de réserves ou de provisions constituées en contrepartie d'apports assujettis au droit prévu à l'article 115 (art. 116, al. 3).

C. – *Fusion et scission de sociétés. – Apports de branches d'activité.*

Les dispositions de l'article 117, §§ 1er et 2, continueront d'être appliquées, sous cette seule réserve que le droit sera perçu au taux de *1 p.c.* (au lieu de 1,25 p.c.).

Comme par le passé, il faudra tenir compte, le cas échéant, des dispositions de l'article 120, alinéa 3.

D. – *Apports d'immeubles situés en Belgique à des sociétés civiles ou commerciales dont le siège de direction effective est à l'étranger (art. 118).*
Les actes constatant ces apports seront enregistrés contre paiement du droit fixe général, sauf application des dispositions de l'article 120 en cas d'apport rémunéré en partie autrement que par l'attribution de droits sociaux.
Il est entendu que les apports à des sociétés coopératives agréés conformément à la loi du 20 juillet 1955 portant institution d'un Conseil national de la Coopération bénéficieront, comme par le passé, de la réduction du droit d'apport à 1 p.c. (art. 117, § 3).
Les receveurs porteront immédiatement à la connaissance des notaires dont les actes sont enregistrables à leur bureau les nouveaux taux du droit d'apport applicables.

BELGIQUE:

Importation Temporaire de Matériel*

Circulaire n° 145, du 30 septembre 1971

Objet de la circulaire

1. Différentes dispositions de l'arrêté royal n° 7, du 12 mars 1970 (*Moniteur belge* du 18 mars 1970), permettent d'importer temporairement dans le pays du matériel destiné à l'exécution de travaux, soit en franchise de la taxe sur la valeur ajoutée, soit avec report du paiement de cette taxe à l'intérieur du pays.

La présente circulaire commente les régimes prévus par ces dispositions et fixe les conditions et les formalités à respecter pour en bénéficier.

Dans un premier chapitre seront traitées les notions générales qui peuvent s'appliquer aussi bien au régime de la franchise qu'à celui du report de paiement.

Le deuxième chapitre sera consacré au régime de la franchise, la troisième au régime du report de paiement.

Enfin, le quatrième chapitre traite de dispositions particulières.

CHAPITRE PREMIER. – *Notions générales*

Raison d'être des régimes faisant l'objet de la présente circulaire

2. En règle, toute importation de biens par une personne quelconque rend la taxe exigible dès l'introduction des biens dans le pays (Code, art. 3 et 23). Toutefois, il ne se concevrait pas de réclamer le paiement intégral de la taxe lorsque les biens importés ne doivent séjourner que temporairement dans le pays. C'est pourquoi l'article 24, 2°, du Code donne au Roi le pouvoir d'exonérer totalement ou partiellement de la taxe les importations de biens qui se trouvent dans une des situations prévues par le chapitre IV des dispositions préliminaires du Tarif des droits d'entrée[1].

L'arrêté royal n° 7, pris notamment en exécution de l'article 24, 2° du Code, détermine dans quelles limites et sous quelles conditions l'exonération prévue par cette disposition légale peut s'exercer.

3. En ce qui concerne les importations temporaires de matériel destiné à l'exécution de travaux, l'exonération est accordée selon deux régimes qui diffèrent quant au fond, mais qui aboutissent au même résultat quant à leurs effets.

Le premier consiste à dispenser l'importateur du paiement de la taxe à la condition d'avoir préalablement obtenu une autorisation de l'administration et d'avoir accompli certaines formalités: c'est le régime de franchise, analogue aux régimes de franchise qui existent en matière de douanes. Ce régime de franchise est prévu, pour ce qui concerne l'importation temporaire de matériel, dans les articles 25, 27 et 28 de l'arrêté royal n° 7.

Le second régime, qui est celui du report de paiement prévu par l'article 7 de l'arrêté royal n° 7, utilise les mécanismes propres au système de la T.V.A., et notamment celui de la déduction. A l'inverse de ce qui se passe dans le régime des franchises, l'importateur est tenu de payer la taxe, mais ce paiement est différé jusqu'au moment où il peut déduire cette taxe. La compensation immédiate qui s'opère entre le montant des taxes dues et le montant des taxes à déduire a les mêmes effets que la dispense du paiement de la taxe accordée dans le régime des franchises.

Il est clair que le régime du report de paiement ne peut être invoqué, d'une manière générale, que par des personnes qui peuvent opérer la déduction des taxes qu'elles doivent supporter en raison de l'importation; autrement dit, ce régime ne concerne que des assujettis qui déposent des déclarations périodiques à la T.V.A. Le régime de la franchise reste donc nécessaire pour les autres personnes.

Importation temporaire de matériel

4. Est considéré comme importé temporairement le matériel qui ne séjournera pas plus de deux ans dans le pays. En conséquence, si, au moment de l'importation, il est certain que le matériel restera plus de deux ans dans le pays, l'importateur ne peut revendiquer ni le régime de la franchise, ni celui du report de paiement.

Pour l'application de l'alinéa qui précède, les séjours successifs d'un même matériel dans le pays se cumulent.

★ T.V.A. *Revue* no. 6, mars 1972 p. 121.

1. Ces situations sont actuellement décrites dans le chapitre III des dispositions préliminaires du Tarif des droits d'entrée.

Matériel

5. La notion de matériel est large. Est visé tout matériel quelconque qui sert directement ou indirectement à l'exécution de travaux (appareils, outils, instruments de toute nature, engins de manutention, matériel de transport, emballages, containers, etc.).

Travaux

6. Par travaux, on entend non seulement les travaux, qui sont effectués en exécution d'un contrat d'entreprise ou de sous-entreprise d'ouvrage, mais également ceux qui sont effectués par une personne pour son propre compte ou par une personne qui a reçu le matériel importé en prêt ou en location.

L'Administration admet encore que la notion de travaux couvre les utilisations du matériel visé à l'article 25, annexe, 2° à 7°, 10°, 13°, 14°, 16°, 18° à 21°, et à l'article 28 de l'arrêté royal n° 7.

Exemples: matériel destiné à la démonstration (art. 25, 2°); matériel professionnel utilisé par des artistes, des hommes d'affaires, etc. (art. 25, 3°); matériel destiné à faire des transports internationaux (art. 25, 21°); matériel de montage (art. 28).

Dans la suite de la présente circulaire, lorsqu'il sera question de l'article 25, ne seront visées que les importations temporaires des biens repris à l'annexe de l'arrêté royal n° 7, sous 2° à 7°, 10°, 13°, 14°, 16°, 18° à 21°. Les autres biens visés à l'article 25 (annexe, 1°, 8°, 9°, 11°, 12°, 15°, 17°), bien qu'ils bénéficient de la franchise temporaire, ne sont pas régis par la présente circulaire.

7. N'est pas considéré comme devant servir à l'exécution de travaux, le matériel qui est importé temporairement dans le pays aux fins indiquées ci-après:

1° matériel importé pour être vendu ou pour être mis en dépôt en attendant d'être réexporté ou d'être vendu dans le pays;

2° matériel envoyé à vue, à l'essai ou en consignation. Ce matériel peut être déclaré pour la consommation avec paiement de la taxe dans le chef de la personne qui le reçoit à vue, à l'essai ou en consignation, dans les conditions prévues par l'article 5, § 2, 1°, de l'arrêté royal n° 7;

3° matériel importé en vue de subir une réparation, une main-d'œuvre, une adaptation ou une transformation. Ce matériel peut soit être déclaré pour la consommation avec paiement de la taxe dans le chef de l'entrepreneur d'ouvrage dans les conditions prévues par l'article 5, § 2, 2°, de l'arrêté royal n° 7, soit être importé en franchise de la taxe dans les limites et aux conditions prévues par l'article 43 du Code et l'arrêté royal n° 18, du 20 juillet 1970 (*Moniteur belge* du 31 juillet 1970).

8. Bien qu'il constitue un matériel destiné à l'exécution de travaux, le matériel qui peut être importé en exemption de la taxe à la faveur de l'article 42 du Code de la T.V.A. (v. notamment circulaire du 31 décembre 1970, n° 110) n'est pas visé par la présente circulaire.

Assujettis

9. En vertu de l'article 4 du Code de la T.V.A., est un assujetti, toute personne établie en Belgique ou à l'étranger, dont l'activité consiste à effectuer d'une manière habituelle et indépendante, à titre principal ou à titre d'appoint, avec ou sans esprit de lucre, des livraisons de biens ou des prestations de services.

Ainsi qu'il résulte de la circulaire du 31 décembre 1970, n° 105[2], l'assujetti établi à l'étranger n'a d'obligation à remplir pour l'application de la T.V.A. que lorsqu'il effectue en Belgique une livraison de biens, une prestation de services ou une importation de biens.

Lorsqu'il n'a pas d'établissement stable dans le pays, l'assujetti établi à l'étranger est tenu, avant d'effectuer toute opération dans le pays, de faire agréer un représentant responsable qui remplira au nom et pour le compte de l'assujetti qu'il représente, les obligations auxquelles cet assujetti est astreint (Code. art. 55).

CHAPITRE II. – *Régime des franchises*

Dispositions réglementaires

10. L'importation temporaire de matériel peut avoir lieu en franchise de la T.V.A. par application des articles 25, 27 et 28 de l'arrêté royal n° 7 (ces articles sont reproduits à l'annexe 1 de la présente circulaire).[3]

On remarquera que le matériel peut également être importé en franchise des droits d'entrée dans les limites et aux conditions fixées par les articles 23, 25, 27, 31, 53, 1°, 2°, 3°, 4°, 5°, 7°, 9°, 11°, 12°, 13°, 14°, 15°, 18°, 19°, 23°, 25°, 26°, 27°, 28°, de l'arrêté ministériel du 17 février 1960, réglant les franchises en matière de droits d'entrée (v. annexe 2).[4]

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2. V. *Revue* n° 2, pp. 186 et suiv.
3. V. *Revue* n° 6, pp. 147 et suiv.
4. *Ibid.*

Portée de ces dispositions

11. L'analyse de ces dispositions permet de constater:

1° que dans tous les cas où une franchise est prévue en matière de douane, une franchise de la T.V.A. peut être accordée, soit par application des articles 25 et 28, soit par application de l'article 27 de l'arrêté royal n° 7;

2° que la franchise de la T.V.A. peut être accordée par application de l'article 27 dans des cas où il n'existe pas de franchise en matière de douane (exemple: matériel destiné à l'exécution de travaux autres que des travaux publics);

3° que la franchise accordée par application de l'article 25 de l'arrêté royal n° 7, est subordonnée aux conditions qui sont fixées par les dispositions réglant la franchise des droits d'entrée, réserve faite néanmoins des dispositions générales ou particulières qui sont inscrites respectivement dans les articles 15 à 19 et 25 dudit arrêté royal n° 7;

4° que la franchise accordée par application de l'article 28 de l'arrêté royal n° 7, est subordonnée à des conditions propres à la T.V.A., indépendamment des conditions prévues par l'article 53, 7°, de l'arrêté ministériel du 17 février 1960, réglant les franchises en matière de droits d'entrée;

5° que si l'on applique largement le § 3 de l'article 27 de l'arrêté royal n° 7, ce texte apparaît comme une disposition générale et que, par conséquent, le matériel visé par les articles 25 et 28 dudit arrêté pourrait également être importé temporairement en franchise aux conditions dudit article 27.

SECTION PREMIÈRE. – *Franchise prévue par l'article 27 de l'arreté royal n° 7.*

Personnes qui peuvent revendiquer la franchise

12. En vertu de l'article 27, § 2, la franchise est accordée quand le matériel est et reste la propriété d'une personne qui n'a pas d'établissement stable dans le pays et qui n'est pas un assujetti tenu au dépôt d'une déclaration mensuelle ou trimestrielle.

13. D'autre part, par application de l'article 27, § 3, la franchise peut être accordée à toute personne quelconque qui importe temporairement un matériel pour l'exécution de travaux, sans distinguer selon qu'elle est établie en Belgique ou à l'étranger, selon qu'elle a ou n'a pas un établissement stable ou un représentant responsable dans le pays.

Par ailleurs il n'échappera pas que les assujettis qui déposent des déclarations mensuelles ou trimestrielles peuvent éviter les formalités inhérentes au régime de la franchise en invoquant le régime du report de paiement (v. chapitre III ci-après).

Etendue de la franchise

14. La franchise totale de la taxe est accordée lorsque le matériel ne séjourne pas plus d'un an dans le pays. Pour l'application de ce qui précéde les séjours successifs d'un même matériel dans le pays se cumulent.

15. La franchise partielle de la taxe est accordée si le matériel reste plus d'un an, mais ne séjourne pas plus de deux ans dans le pays.

16. Toutefois, bénéficie de la franchise totale de la taxe, même s'il reste pendant deux ans dans le pays:

1° le matériel (machines, appareils, outils, instruments et outillages) qui sert à l'essai ou au contrôle de biens qui seront exportés en *totalité* à l'étranger;

2° le matériel (machines, clichés, moules) qui sert à la fabrication de biens qui seront exportés en *totalité* à l'étranger;

3° le matériel qui rentre dans les prévisions de l'article 25, annexe, 19° à 21° (v. nos. 17 à 19).

17. Rentrent dans les prévisions de l'article 25, annexe, 19°, de l'arrêté royal n° 7, les emballages et autres objets, contenant ou non des marchandises, à l'exception des moyens de transport et des containers, ainsi que les bâches et le matériel d'arrimage qui sont utilisés à l'importation ou à l'exportation de marchandises.

18. Rentrent dans les prévisions de l'article 25, annexe, 20°, de l'arrêté royal n° 7, les containers contenant ou non des marchandises qui sont utilisés à l'importation ou à l'exportation de marchandises ainsi que les accessoires et équipements normaux de containers qui sont importés et réexportés avec ceux-ci.

19. Rentrent dans les prévisions de l'article 25, annexe, 21°, de l'arrêté royal n° 7, les moyens de transport ainsi que les pièces de rechange, accessoires et équipements des moyens de transport, importés et réexportés avec ceux-ci à la condition que ce matériel soit importé, soit:

a) par des personnes physiques dont la résidence normale se trouve à l'étranger pour être utilisé par elles pour leur usage privé, c'est-à-dire à des fins autres que le transport de personnes contre rémunération, prime ou autre avantage matériel, le transport industriel ou commercial de mar-

chandises ou l'accomplissement d'autres prestations industrielles ou commerciales;
b) par des entreprises dont le siège d'exploitation est situé à l'étranger pour être utilisé par elles, sans rémunération, prime ou autre avantage matériel, au transport de personnes qui ont leur résidence normale à l'étranger;
c) par des entreprises dont le siège d'exploitation est situé à l'étranger pour être utilisé par elles au transport de personnes moyennant rémunération, prime ou autre avantage matériel ou à des transports industriel ou commercial de marchandises avec ou sans rémunération, pour autant que ces transports s'effectuent en partance ou à destination de l'étranger.
De ce qui précède, il convient de relever que, notamment, ne rentre pas dans les prévisions de l'article 25, annexe, 21°, de l'arrêté royal n° 7, le matériel de transport qui est importé pour effectuer des transports de biens d'un point à un autre du territoire belge. Tout comme le matériel, en général, ce matériel de transport bénéficie cependant des dispositions de la présente circulaire; la franchise dont il jouit est donc totale si ce matériel ne séjourne pas plus d'un an dans le pays mais elle est partielle s'il reste dans le pays plus d'un an sans dépasser deux ans.

20. Il résulte des dispositions des nos. 16 à 19, que la taxe de 2,50 pour cent devient exigible à l'expiration du délai d'un an ou si ce délai est déjà expiré, aussitôt que:
a) dans les cas visés au n° 16, 1° et 2° tout ou partie des biens soumis à des essais ou à des contrôles ou encore fabriqués au moyen de ce matériel n'est pas exporté;
b) dans le cas visé au n° 16, 3°, le matériel est utilisé à d'autres fins que celles qui sont prévues par les dispositions de l'article 25, annexe, 19° à 21°.

1er exemple.

21. Le 10 mars 1971, A, propriétaire d'une table de contrôle importe celle-ci pour tester des grilles de précision qui seront exportées en totalité en Allemagne.
L'importation a lieu en franchise totale de la T.V.A. sous le couvert d'un acquit-à-caution validé pour un an (v. nos. 14, 28 et 29).
Le 8 mars 1972, A demande et obtient que la durée de validité du document de franchise soit prorogée pour un an. La franchise totale de la T.V.A. est accordée.
Le 15 juin 1972, une partie des grilles contrôlées au moyen de la table importée est livrée dans le pays.
A doit présenter au bureau d'entrée un document 45 B dressé à son nom pour acquitter la taxe de 2,50 pour cent devenue exigible dès la première livraison des grilles dans le pays.

2e exemple.

22. Le 10 mars 1971, B, propriétaire de matrices importe celles-ci pour fabriquer des flacons qui seront exportés pour la totalité aux Pays-Bas.
L'importation a lieu en franchise totale de la T.V.A. sous le couvert d'un acquit-à-caution validé pour un an (v. nos. 14, 28 et 29).
Le 15 septembre 1971, une partie des flacons fabriqués au moyen de ces matrices est livrée dans le pays. A cette date, B ne doit accomplir aucune formalité.
Le 8 mars 1972, B demande et obtient que la durée de validité du document de franchise soit prorogée pour un an. La prorogation est accordée à la condition que B présente un document 45 B dressé à son nom pour acquitter la taxe de 2,50 pour cent devenue exigible en raison du fait que la totalité des flacons n'a pas été exportée.

3e exemple.

23. Le 10 mars 1971, C, propriétaire d'un camion, importe celui-ci pour effectuer des transports de terre d'un point situé à l'étranger jusqu'à un point situé en Belgique.
C se trouve dans une des situations prévues par l'article 25, annexe, 21° de l'arrêté royal n° 7 et par l'article 25, § 1er, lettre c) de l'arrêté ministériel du 17 février 1960 réglant les franchises en matière de droit d'entrée.
L'importation a lieu en franchise totale de la T.V.A. sans document (v. nos. 14, 28 et 29).
Le 10 mars 1972, C utilise toujours son camion au transport de terre en partance de l'étranger. A cette date, C ne doit accomplir aucune formalité.
Le 15 juin 1972, C utilise son camion au transport de terre d'un point à un autre du territoire belge. Dès ce moment, C ne se trouve plus dans la situation prévue par les articles 25 susvisés.
En conséquence, il doit présenter au bureau d'entrée un document 45 B, dressé à son nom pour acquitter la taxe de 2,50 pour cent qui est devenue exigible au moment où il a effectué un transport d'un point à un autre du territoire belge.

4e exemple.

24. Le même que l'exemple 3, mais C a utilisé le 15 septembre 1971 son camion au transport de terre d'un point à un autre du territoire belge.

Au plus tard le 10 mars 1972 (expiration du délai d'un an à compter de l'importation) C doit présenter au bureau d'entrée un document 45 B dressé à son nom pour acquitter la taxe de 2,50 pour cent devenue exigible à cette date, pour autant, bien entendu, que C utilise encore le camion dans le pays à cette date.

Montant de la taxe exigible

25. Lorsque la franchise partielle est accordée le montant de la taxe qui reste exigible est égal à 2,50 pour cent de la valeur du matériel, considérée au moment de l'importation.

SOUS-SECTION PREMIÈRE. – *Conditions et formalités*

26. Pour bénéficier de la franchise, le matériel importé doit être destiné à l'exécution de travaux (v. nos. 6 à 8) et être réexporté dans le délai imparti, lequel ne peut dépasser deux ans (v. n° 4).
En outre, le bénéfice de la franchise est subordonné aux conditions et aux formalités prévues par la présente sous-section.

Autorisation

27. L'autorisation d'importer le matériel en franchise doit être obtenue au plus tard au moment où il est déclaré pour la franchise temporaire.
Elle est accordée par le fonctionnaire des douanes et accises désigné à cette fin par le Directeur général de cette administration.

Document de franchise

28. La franchise est subordonnée à la présentation au bureau d'entrée:
1° d'un acquit-à-caution 133 ou, le cas échéant, d'un certificat d'admission temporaire 133 V indiquant les nom et adresse du déclarant, du propriétaire du matériel et, éventuellement, du représentant responsable de ce dernier.
Si l'assujetti établi à l'étranger n'a ni établissement stable, ni représentant responsable dans le pays, ce fait est mentionné sur le document.
La franchise de la T.V.A. doit être justifiée sur le document par l'indication de la mention prescrite en l'occurrence par l'Instruction T.V.A. de l'Administration des douanes et accises.
Toutefois, lorsque la réglementation douanière le permet, l'importation peut avoir lieu sous le couvert d'un autre document de franchise (carnet A.T.A., E.C.S.) ou même avec dispense de tout document (matériel de transport, containers, etc.).
2° d'une déclaration rédigée en trois exemplaires, conformément au modèle A 71/2 (v. annexe 3)[6].
Cette déclaration doit être dûment complétée, datée et signée par le déclarant avant sa présentation au chef local du bureau d'entrée.
Cette déclaration ne doit pas être présentée au bureau d'entrée lorsqu'il s'agit de matériel importé, soit:
a) sous le couvert d'un carnet A.T.A., d'un carnet E.C.S., d'un certificat 133 V ou sans document;
b) pour rechercher des commandes de biens à importer ou pour passer des commandes de biens à exporter.

Durée de validité du document de franchise

29. Pour l'application de la T.V.A., le document de franchise est validé pour le temps nécessaire à l'exécution des travaux avec maximum d'un an, sous réserve de prorogation et sans que le délai total puisse dépasser deux ans.

Caution

30. En cas d'importation sous le couvert d'un acquit-à-caution 133 ou d'un certificat 133 V, caution est exigée pour la T.V.A. dont la franchise est accordée et pour une somme de 500 F destinée à garantir la reproduction régulière du document de franchise.
Toutefois, le chef local du bureau d'entrée peut dispenser de fournir caution pour la T.V.A. les assujettis qui ont un établissement stable ou un représentant responsable dans le pays.

Paiement de la taxe

31. La taxe de 2,50 pour cent qui reste exigible (v. nos. 15 et 25) est acquittée au nom du propriétaire du matériel, sur un document 45 B si le propriétaire est un assujetti, ou sur un document 45 A (jaune) dans le cas contraire.

Déduction de la taxe

32. Lorsque la taxe de 2,50 pour cent, qui reste exigible, est payée par un assujetti, celui-ci ne peut pas la déduire. A cette fin, le document 45 B porte la mention suivante «T.V.A. non déductible. – Circulaire T.V.A. n° 145/1971». Cette mention doit être faite à l'encre rouge dans la case 14 du document 45 B.

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5. V. *Revue* n° 6, pp. 147 et suiv.

Prorogation de la durée de validité du document de franchise

33. A la demande des intéressés, l'Administration des douanes et accises peut proroger la durée de validité du document de franchise pour autant que le séjour total du matériel dans le pays ne dépasse pas deux ans. Aucune prorogation ne peut être accordée au-delà du délai de deux ans.

Toutefois, le carnet A.T.A. ou le carnet E.C.S. doivent être remplacés par un acquit-à-caution 133 à l'expiration de son délai de validité. A ce moment et si le matériel couvert par ces documents doit encore séjourner dans le pays, la déclaration A 71/2 prévue au n° 28, 2°, doit être souscrite.

La prorogation se fait sans paiement d'une taxe de 2,50 pour cent (v. n° 26) si le délai d'un an n'est pas atteint. Sous réserve des exceptions prévues au n° 16, elle se fait contre paiement de cette taxe dans le cas contraire.

Utilisation du matériel

34. Le matériel ne peut servir qu'à l'exécution de travaux. Il ne peut être vendu alors qu'il se trouve sous le régime de la franchise.

Changement d'affectation du matériel

35. Lorsque le matériel importé est affecté à de nouveaux travaux, soit sur un autre chantier, soit pour le compte d'une personne autre que celle qui a été désignée sur la déclaration A 71/2, l'acquit-à-caution 133 ou autre document de franchise qui a été levé lors de l'importation doit être remplacé par un nouveau document 133 et une nouvelle déclaration A 71/2 doit être remise, en trois exemplaires, au chef local du bureau d'entrée. Cette déclaration indique, notamment, la dénomination et le siège du nouveau chantier ainsi que, la cas échéant, le nom ou la raison sociale, le domicile ou le siège social du nouveau maître d'ouvrage ou du nouvel entrepreneur d'ouvrage.

Il est à remarquer que le délai total de séjour du matériel ne peut dépasser deux ans et que la taxe de 2,50 pour cent (v. n° 16) est exigée dès que la durée de séjour atteint un an.

La date de la première importation doit figurer sur le nouveau document de franchise.

Réexportation du matériel

36. Le matériel peut être réexporté en une ou en plusieurs fois. La réexportation doit être constatée par une ou plusieurs déclarations d'exportation 68.

SOUS-SECTION 2. – *Renonciation à la franchise*

Demande de renonciation

37. Conformément aux dispositons de l'article 17 de l'arrêté royal n° 7, les intéressés peuvent demander qu'une destination autre que la réexportation soit donnée au matériel importé en franchise sous condition de réexportation.

38. La demande doit être motivée, être introduite aux services des douanes avant l'expiration du délai de validité du document de franchise, éventuellement prorogé (v. nos. 29 et 33), et être accompagnée de la déclaration prévue pour la nouvelle destination. Cette destination peut être la déclaration pour la consommation, l'entrepôt ou le transit[6].

Lorsque l'autorisation est accordée, le matériel est censé être importé pour la nouvelle destination au moment de la demande.

A. *Renonciation pour la consommation*

Autorisation

39. L'autorisation de renonciation à la franchise pour la consommation ne peut être accordée que par l'Administration des douanes et accises en accord avec l'Administration centrale de la taxe sur la valeur ajoutée, de l'enregistrement et des domaines.

L'autorisation n'est accordée que lorsqu'il existe des circonstances spéciales, imprévisibles au moment de l'importation, qui empêchent de réexporter le matériel. Elle est refusée dans tous les autres cas. Lorsque l'autorisation de renoncer à la franchise est refusée, le matériel doit être réexporté. S'il ne l'est pas, l'intéressé commet un abus de franchise (v. nos. 52 à 56).

Destinataire

40. La déclaration en consommation du matétiel pour lequel la renonciation à la franchise est autorisée peut avoir lieu avec paiement de la taxe dans le chef de l'une des personnes visées à l'article 5 de l'arrêté royal n° 7 (v. annexe 1).[7]

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6. Etant donné que le régime de franchise prévu par l'article 27 de l'arrêté royal n° 7 englobe les régimes de franchise prévus par les articles 25 et 28 de cet arrêté, il est exclu que l'intéressé renonce à la franchise qui lui a été accordée pour revendiquer un des régimes de franchise temporaire prévus par les dits articles 25 et 28 (v. n° 51).

7. V. *Revue* n° 6, pp. 147 et suiv.

Calcul de le taxe

41. Pour déterminer la base d'imposition et la taxe due, il y a lieu d'appliquer les règles tracées par les articles 23, alinéa 2, 33 et 34 du Code (v. annexe 1)[8] considérées à la date de la demande de renonciation à la franchise.

1er exemple.

42. Le 15 janvier 1971, A, établi à l'étranger, importe un matériel d'une valeur de 1.000.000 F pour lequel il obtient la franchise de la T.V.A.
Par hypothèse, le matériel n'est pas passible de droits d'entrée et il ne séjournera que six mois dans le pays.
Le 15 mars 1971, A demande et obtient l'autorisation de renoncer à la franchise. Un document 45 A est dressé au nom de A. La valeur des biens au 15 mars 1971 est estimée à 900.000 F.
La T.V.A. due pour la mise en consommation des biens doit être calculée compte tenu de la valeur de 900.000 F. Le taux de la T.V.A. applicable est celui en vigueur au 15 mars 1971.

2e exemple.

43. Même cas, mais le matériel étant passible de droits d'entrée, la franchise de ceux-ci a été accordée en même temps que la franchise de la T.V.A.
La base de perception des droits d'entrée ne peut être inférieure à la valeur du matériel au jour de la levée du document de franchise, soit 1.000.000 de F.
Pour l'application de la T.V.A., les biens sont censés être importés au jour de la réception de la demande de renonciation à la franchise, et, partant, la taxe due doit être calculée compte tenu de la valeur des biens au 15 mars 1971, soit 900 000 F. L'Administration admet que, dans les cas de l'espèce, il n'y a pas lieu d'appliquer les dispositions de l'article 34, dernier alinéa, du Code qui prévoient que la base d'imposition de la taxe ne peut être inférieure à celle qui est retenue pour la perception des droits d'entrée, augmentée des dits droits.
En conséquence, la taxe se calculera comme dans le 1er exemple.

44. Du montant de la taxe ainsi calculée ne peut être déduit le montant de la taxe qui, éventuellement, a dû être payée par application des dispositions des nos. 15 et 25.

Formalités

45. La déclaration en consommation des biens pour lesquels la renonciation à la franchise a été demandée et obtenue s'effectue comme si les biens étaient introduits dans le pays le jour de la demande de renonciation à la franchise.
En conséquence, l'obligation et la manière de déclarer les biens, ainsi que le mode de paiement de la taxe, différeront selon que les biens importés en franchise ont été introduits dans le pays par les frontières belgo-luxembourgeoise ou belgo-néerlandaise ou par une autre frontière.

1° *Biens introduits dans le pays par une frontière autre que les frontières belgo-luxembourgeoise ou belgo-néerlandaise.*

Déclaration

46. La déclaration pour la consommation se fait par écrit selon les règles applicables en matière de douane, même si les biens ne sont pas passibles de droits d'entrée, en raison de leur nature, de leur provenance ou pour tout autre motif.

2° *Biens introduits dans le pays par les frontières belgo-luxembourgeoise ou belgo-néerlandaise.*

47. La déclaration pour la consommation se fait verbalement. Une copie de la facture adressée au destinataire et, à défaut de copie de facture, un document qui en tient lieu, doit être remis au bureau des douanes.

Paiement de la taxe

48. Le paiement de la taxe se fait selon les règles habituelles.

B. *Entrepôt*

Conditions

49. Le dépôt et le séjour en entrepôt public, particulier ou fictif, des biens pour lesquels la renonciation à la franchise a été demandée et obtenue s'effectue aux conditions prévues en matière de douane, même s'il s'agit de biens qui ne sont pas passibles de droits d'entrée en raison de leur nature, de leur provenance ou pour tout autre motif (arr. roy, n° 7, art. 14).

C. *Transit*

Conditions

50. Dans les cas exceptionnels où l'intéressé est autorisé à renoncer au régime, de la franchise pour obtenir un régime de transit, celui-ci

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8. *Ibid.*

s'effectue aux conditions prévues en matière de douane, même si les biens ne sont pas passibles de droits d'entrée en raison de leur nature, de leur provenance ou pour tout autre motif (arr. roy. n° 7, art. 13).

D. *Autres régimes de franchise temporaire*

51. Il convient de rappeler (v. nos. 11, 5°, et 29) que le régime de franchise prévu par l'article 27 englobe les régimes de franchise prévus par les articles 25 (pour les cas visés au n° 6 de la présente circulaire) et 28 de l'arrêté royal n° 7, et que, dans ces conditions, l'intéressé ne peut pas renoncer à la franchise qui lui a été accordée sur la base de l'article 27 pour obtenir ensuite un des régimes de franchise temporaire prévus par les articles 25 ou 28.

SOUS-SECTION 3. – *Abus de franchise – Perte du bénéfice de la franchise*

Enumération des cas
52. Conformément aux dispositions de l'article 18 de l'arrêté royal n° 7, les intéressés commettent un abus de la franchise et perdent le bénéfice de celle-ci:
1° si les renseignements qu'ils ont fournis pour l'obtenir sont inexacts ou incomplets;
2° si le matériel est utilisé à d'autres fins que l'exécution de travaux (v. nos. 6 à 8), notamment si le matériel est vendu dans le pays alors que l'intéressé n'a pas obtenu l'autorisation de renoncer à la franchise;
3° si d'autres biens sont substitués au matériel importé en franchise;
4° si les conditions auxquelles la franchise est subordonnée ne sont pas observées. Ce sera notamment le cas lorsque le matériel n'aura pas été exporté dans le délai de validité du document de franchise, éventuellement prorogé (v. nos. 29 et 33).

Calcul de la taxe
53. En cas de perte du bénéfice de la franchise, la taxe devient exigible au moment où l'abus a été commis.
Pour déterminer la base d'imposition, il y a lieu d'appliquer les règles tracées par les articles 33 et 34 du Code, *considérées à la date de la validation du document de franchise*. En ce qui concerne le taux de la taxe, il y a lieu d'appliquer les règles tracées par l'article 23, alinéa 2, du Code.
54. Sur le montant de la taxe calculée conformément au n° 53, peut être imputé le montant de la taxe qui aurait été éventuellement payée par application des nos. 15 et 25.

Sanctions et intérêts de retard
55. En cas d'abus de la franchise les sanctions prévues par le Code peuvent être appliquées.
En outre, un intérêt de 0,60 p.c. par mois est exigé lorsque les intéressés commettent un abus de la franchise (v. n° 52). Cet intérêt se calcule à compter du jour où la taxe exigible aurait normalement dû être payée, tout mois commencé étant compté pour un mois entier.
Toutefois, l'intérêt n'est pas réclamé s'il n'atteint pas 50 F par mois de retard.

Formalités
56. En cas de perte du bénéfice de la franchise, le matériel doit être déclaré pour la consommation et le paiement de la taxe doit être fait dans le chef du propriétaire du matériel importé.
Par ailleurs, les dispositions des nos. 46 à 48 sont applicables.

SECTION 2. – *Franchises prévues par les articles 25 et 28 de l'arrêté royal n° 7*

Liminaire
57. L'annexe à l'arrêté royal n° 7 énumère les situations dans lesquelles des biens peuvent être importées temporairement en franchise de la taxe par application de l'article 25 dudit arrêté.
Ainsi qu'il est dit au n° 6 de la présente circulaire, l'Administration admet que la notion de travaux couvre les utilisations du matériel visé à l'article 25, annexe, 2° à 7°, 10°, 13°, 14°, 16°, 18° à 21°.
La franchise prévue par l'article 25 est accordée dans les limites et aux conditions qui sont fixées par les dispositions réglant la franchise en matière de droits d'entrée sous la réserve que, par application de l'article 16 de l'arrêté royal n° 7, l'Administration fixe à un an la durée maximum de séjour du matériel dans le pays et subordonne la franchise à l'accomplissement des formalités prévues au n° 28 de la présente circulaire.
Le matériel importé temporairement en franchise de la taxe par application de l'article 28 de l'arrêté royal n° 7 doit être réexporté au plus tard dans les six mois à compter du jour de l'importation (article 28, § 2, 3°). Par application de l'article 16 de l'arrêté royal n° 7, l'Administration subordonne la franchise à l'accomplissement des formalités prévues au n° 28 de la présente circulaire.

Application de l'article 27
58. Etant donné que le matériel visé aux articles 25 et 28 est un matériel au sens de l'article 27 de l'arrêté royal n° 7, la franchise temporaire est accordée d'office par application conjointe des articles 25 ou 28 et 27. Il s'ensuite que si le matériel est autorisé à séjourner dans le pays pour une durée supérieure à celle prévue pour les articles 25 ou 28 il est considéré comme bénéficiant uniquement de la franchise de l'article 27.

Conclusion
59. Eu égard à ce qui précède, la franchise est accordée dans les limites, aux conditions et avec les formalités prévues aux nos. 12 à 56 de la présente circulaire.

CHAPITRE III. – *Report de paiement*

Notion
60. Le report de paiement est un mode de paiement de la T.V.A. qui, sous certaines conditions, permet à un assujetti qui est tenu au dépôt d'une déclaration mensuelle ou trimestrielle (v. n° 9) de ne pas payer la taxe due au moment de la déclaration pour la consommation, mais de différer ce paiement jusqu'au moment où il dépose la déclaration mensuelle ou trimestrielle relative à la période au cours de laquelle l'importation a eu lieu.

Bénéficiaire du report de paiement
61. En vertu de l'article 7, § 1er, de l'arrêté royal n° 7, le régime du report de paiement est réservé au propriétaire d'un matériel lorsqu'il est un assujetti qui n'a pas d'établissement stable dans le pays, mais qui est tenu au dépôt d'une déclaration mensuelle ou trimestrielle.
Toutefois, l'article 7, § 4, de l'arrêté royal n° 7 donne à l'administration le pouvoir d'autoriser les assujettis qui ont un établissement stable dans le pays à bénéficier du report de paiement de la taxe.
62. Usant de cette faculté, l'administration a décidé d'accorder le régime du report de paiement à tous les assujettis qui déposent des déclarations périodiques lorsqu'ils importent temporairement un matériel, pour exécuter des travaux, et ce, sans distinguer selon qu'ils sont établis en Belgique ou à l'étranger, ou selon qu'ils ont un établissement stable dans le pays.

Conséquences du report de paiement
63. Le report de paiement permet aux assujettis qui peuvent en bénéficier de se trouver dans la même situation que s'ils obtenaient un des régimes de franchise visés au chapitre II. Il leur permet, en outre, d'éviter les limitations et les formalités et les vérifications qu'imposent ces régimes de franchise.

Conditions auxquelles est subordonné le report de paiement
64. Pour pouvoir bénéficier du régime du report de paiement, l'assujetti doit remplir les conditions suivantes:
1° déposer des déclarations mensuelles ou trimestrielles pour l'application de la T.V.A. belge;
2° être propriétaire du matériel importé;
3° importer temporairement ce matériel pour un séjour dans le pays qui ne peut dépasser deux ans;
4° opérer le paiement et la déduction de la taxe conformément aux prescriptions des nos. 69 et 70;
5° effectuer les formalités prévues aux nos. 73 à 77.

Dépot des déclarations mensuelles ou trimestrielles
65. Pour pouvoir bénéficier du régime du report de paiement, les assujettis établis en Belgique et les assujettis établis à l'étranger qui ont un établissement stable en Belgique, doivent déposer les déclarations mensuelles ou trimestrielles dans les formes et les conditions prescrites par l'article 50 du Code et par les arrêtés pris en exécution de cette disposition.
66. Les assujettis établis à l'étranger qui n'ont pas d'établissement stable dans le pays et qui veulent bénéficier du report de paiement doivent également déposer des déclarations mensuelles ou trimestrielles par l'intermédiaire d'un représentant responsable. Dans ce cas, le représentant responsable doit être agréé avant l'importation.

Propriété du matériel
67. Le régime du report de paiement est un mode de paiement de la taxe, ce qui implique que le matériel doit être déclaré pour la consommation. Etant donné que, conformément à l'article 5 de l'arrêté royal n° 7, la taxe doit être acquittée dans le chef du destinataire et que celui-ci ne peut être que le propriétaire du matériel importé, le report de paiement ne peut être invoqué que par le propriétaire du matériel importé.

Importation temporaire
68. Le matériel importé avec report de paiement

ne peut séjourner plus de deux ans dans le pays. En conséquence, si, au moment de l'importation, il est certain que le matériel restera plus de deux ans dans le pays, le report de paiement ne peut pas être invoqué (v. n° 2).

Paiement et déduction de la taxe

69. Le montant de la taxe normalement due en raison de l'importation du matériel est repris dans la case 13 de la déclaration mensuelle ou trimestrielle relative à la période au cours de laquelle l'importation du matériel a eu lieu.

70. La déduction de cette taxe s'opère dans la case 21 de cette même déclaration, savoir:

1° totalement, si le matériel est destiné à ne pas séjourner plus d'un an dans le pays;

2° partiellement, à concurrence de la différence entre le montant de la taxe due et le montant d'une taxe égale à 2,50 pour cent de la valeur du matériel lors de l'importation, si le matériel doit séjourner plus d'un an sans dépasser deux ans dans le pays.

1er exemple.

71. Le 10 mars 1971, A, assujetti tenu au dépôt d'une déclaration mensuelle, importe un matériel de génie civil pour la construction d'une route en Belgique. Le matériel vaut 1.000.000 de F et il restera 6 mois dans le pays. Le taux de la taxe est de 18 p.c.

Dans la déclaration qu'il a dû déposer au plus tard le 20 avril 1971, A a dû reprendre:

dans la case 13: 180.000 F

dans la case 21: 180.000 F

2e exemple.

72. Même cas, mais le matériel séjournera 18 mois dans le pays.

Dans la déclaration qu'il a dû déposer au plus tard le 20 avril 1971, A a dû reprendre:

dans la case 13: 180.000 F

dans la case 21: 155.000 F (180.000 – 1.000.000 x 2,50 p.c.)

Formalités

A. *Importation*

73. Lors de l'importation, le déclarant doit présenter au bureau des douanes un document 45 C imprimé sur papier vert. Des listes 45 Cbis, imprimées sur papier vert sont prévues pour continuer la désignation des biens lorsque l'espace réservé à cette fin sur les documents 45 C est insuffisant.

74. Les documents 45 C et les listes 45 Cbis doivent être établis en deux exemplaires. Un des exemplaires est destiné à l'administration et il est retenu par la douane; l'autre exemplaire est destiné au déclarant et il lui est remis.

75. Le déclarant doit, sous sa signature, compléter la case 14 du document 45 C par la mention suivante: «A.R. n° 7, art. 7. – Circulaire n° 145/1971».

76. Aucune autorisation particulière n'est nécessaire pour bénéficier du report de paiement.

B. *Exportation*

77. L'exportation du matériel peut être faite en une ou en plusieurs fois.

Révision des déductions

78. La déduction opérée conformément au n° 70 doit être revue dans les cas suivants:

1° lorsque le matériel séjourne plus d'un an dans le pays alors que la déduction totale de la taxe a été opérée lors du dépôt de la déclaration mensuelle ou trimestrielle relative à la période au cours de laquelle l'importation a eu lieu;

2° lorsque les conditions auxquelles est subordonné le régime du report de paiement n'ont pas été respectées.

Tel sera le cas:

a) si le matériel est utilisé à d'autres fins que l'exécution de travaux. Ce sera, notamment le cas lorsque le matériel est vendu pendant son séjour dans le pays;

b) si d'autres biens sont substitués au matériel importé avec report de paiement;

c) si les conditions auxquelles le report de paiement est subordonné ne sont pas respectées, par exemple, lorsque le matériel n'a pas été exporté dans le délai de deux ans.

Calcul de la taxe à reverser au Trésor

79. Dans le cas prévu au n° 78, 1°, la taxe due qui doit être reversée au Trésor est égale à 2,50 pour cent de la valeur du matériel, considérée au moment de l'importation.

Exemple.

80. Le 10 mars 1971, A a importé avec report de paiement, un matériel valant 1.000.000 de F. Taux de 18 p.c. Dans la déclaration qu'il a dû déposer au plus tard le 20 avril 1971, A a dû reprendre:

dans la case 13: 180.000 F

dans la case 21: 180.000 F

Le 10 mars 1972, le matériel n'est pas réexporté.

A doit revoir la déduction qu'il a opérée. La taxe qu'il doit reverser au Trésor est égale à 2,50 pour cent de la valeur du matériel lors de l'importation, soit
1.000.000 à 2.50 p.c. = 25.000 F.
81. Dans les cas prévus au n° 78, 2°, la taxe à reverser au Trésor est égale au montant de la taxe qui, compte tenu de l'article 100 du Code, n'était pas déductible au moment de l'importation.

1er exemple.
82. Le 10 mars 1971. A a importé avec report de paiement un matériel valant 1.000.000 de F. Taux de 18 p.c. Dans la déclaration qu'il a dû déposer au plus tard le 20 avril 1971, A a dû reprendre:
dans la case 13: 180.000 F
dans la case 21: 180.000 F
Le 10 juin 1971, A a loué le matériel à C pour 10 ans. A doit revoir la déduction qu'il a opérée.
S'il n'avait pas revendiqué le régime du report de paiement, A n'aurait pu déduire que 80.000 F (1.000.000 à 8 p.c.). A devra donc reverser 100.000 F au Trésor dans la déclaration qu'il a dû déposer au plus tard le 20 juillet 1971.

2e exemple.
83. Même cas, mais A loue le matériel à C le 10 septembre 1972.
Le 10 mars 1972, le matériel a séjourné un an dans le pays. Conformément aux dispositions du n° 78, 1°, A a reversé au Trésor 25.000 F
(1.000.000 à 2,50 p.c.) dans la déclaration qu'il a déposée le 20 avril 1972.
S'il n'avait pas revendiqué le régime du report de paiement, A n'aurait pu déduire que 80.000 F et, en principe, il devrait reverser 100.000 F au Trésor. Mais comme A a déjà reversé 25.000 F le 20 avril 1972, il ne devra en définitive reverser que 75.000 F (100.000 – 25.000) dans la déclaration qu'il doit déposer au plus tard le 20 octobre 1972.

Mode de régularisation
84. Le reversement de la taxe due au Trésor s'effectue dans le cadre V c), 2e tiret, de la déclaration mensuelle ou dans la rubrique V de la déclaration trimestrielle, relative à la période au cours de laquelle s'est produit l'événement qui entraîne la revision de la déduction.

Sanctions et intérêts de retard
85. Lorsque les conditions auxquelles est subordonné le régime du report de paiement n'ont pas été respectées (v. n° 78), il est dû, outre les sanctions prévues par le Code, un intérêt de 0,60 p.c. par mois. Cet intérêt se calcule à compter du jour où la taxe exigible aurait normalement dû être payée.

CHAPITRE IV. – *Dispositions diverses*

Entrée en vigueur de la circulaire
86. Les dispositions de la présente circulaire entrent en vigueur le 1er novembre 1971.

Situation du matériel importé dans le pays à la date du 1er novembre 1971
87. Diverses dispositions temporaires ont été prises depuis le 1er janvier 1971 en ce qui concerne les importations temporaires de matériel. Ces dispositions temporaires ont fait l'objet des circulaires de l'Administration des douanes et accises, du 28 décembre 1970, n° D.L. 1/16.050, du 31 décembre 1970, n° D.L. 1/16.350, et du 25 mars 1971, n° D.L. 1/17.400 (v. annexe 4).[9]
88. Ces dispositions temporaires sont abrogées à la date d'entrée en vigueur de la présente circulaire.
89. Le matériel qui a été importé temporairement dans le pays sous le couvert d'un document de franchise validé ou prorogé conformément aux dispositions temporaires visées ci-avant (v. n° 87) reste soumis au régime de la franchise qui a été accordée jusqu'à l'expiration du délai de validité du document de franchise.
90. Dans l'éventualité où une prorogation de ce délai serait demandée, celle-ci serait accordée ou refusée conformément aux dispositions de la présente circulaire.

Modification des dispositions de la présente circulaire
91. L'Administration se réserve le droit de modifier totalement ou partiellement les conditions ou les formalités auxquelles sont subordonnés les régimes de franchise et du report de paiement.

9. V. *Revue* n° 6, pp. 147 et suiv.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

FRANCE:

Avoir Fiscal - Fonds de placement des Pays du Marché Commun

Communiqué du Ministre de l'Economie et des Finances du 2 mai 1972

Le Ministre de l'Economie et des Finances vient de décider de faciliter au maximum l'achat de valeurs françaises par les fonds de placement et les caisses de retraite des pays de la Communauté Economique Européenne élargie.

Jusqu'à présent le seul de ces pays à bénéficier de cette facilité était le *Royaume-Uni*, et une attestation de l'administration britannique était nécessaire. Les fonds *d'Allemagne* fédérale ne pouvaient obtenir qu'un avantage plus limité – l'exonération de la retenue à la source – et cet avantage ne valait que pour leurs porteurs allemands, à l'exclusion, par exemple, des porteurs belges ou néerlandais. Les fonds et caisses de retraite des sept autres pays ne disposaient d'aucune facilité particulière.

En vertu de cette décision, le bénéfice de *'avoir fiscal, après déduction* de la *retenue à la source de 15%*, sera *accordé aux organismes intéressés* moyennant des formalités réduites au minimum et sans distinction suivant les porteurs. Les fonds de placement devront simplement montrer qu'ils ont une vocation internationale affirmée, et les autres organismes, que leur but n'est pas lucratif, ces précautions permettant de prévenir d'éventuelles évasions fiscales.

Cette mesure *s'applique* à tous les *pays* de la Communauté Economique Européenne élargie ayant passé un *accord* avec la France *en matière d'avoir fiscal:* c'est-à-dire l'*Allemagne* Fédérale, la *Belgique*, le *Luxembourg* et le *Royaume-Uni*. Elle *s'étendra aux Pays-Bas et à l'Italie* dès la ratification des accords qui ont été paraphés. Des *négociations* vont être incessamment engagées avec la *Norvège*.

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D.H. HAMDANI*:

INVESTMENT INCENTIVES IN THE CANADIAN BUDGET

The Canadian budget, tabled on May 8, 1972, is most conspicuous by the generous incentives given to the manufacturing and processing industry for investment in machinery and equipment. It is estimated that the proposed measures will save this industry half a billion dollars in taxes per annum. This amount represents 15 per cent of the total capital and repair expenditure on machinery and equipment in manufacturing in 1971.

The two major incentives which have overshadowed all other measures to stimulate business investment and provide relief to the needy, the old, the disabled and the pensioners are a sizable reduction in the rate of the corporation income tax and a fast write-off on machinery and equipment.

The corporation income tax rate would have been 49 per cent of the taxable corporate income in 1973 before abatement to provide room for the imposition of the provincial tax. Effective January 1, 1973 it will be cut by nine percentage points to 40 per cent. This might tend to overstate the tax relief for two reasons. Firstly, in comparison with 1972, the tax cut amounts to 6.5 percentage points because the current rate is 46.5 per cent. Secondly, half of the total investment in machinery and equipment in the manufacturing and processing industry is made in the province of Ontario. Its average share in the two preceding years was 51.8 per cent.[1] The combined federal and provincial corporation income tax rate is higher in Ontario than other provinces. The tax rate given in the budget is 40 per cent. Under the present arrangements, the Federal Government will reduce the rate by 10 percentage points with the hope and understanding that the provincial governments will impose a tax rate of 10 per cent to raise their revenue so that the combined federal and provincial rate will remain at 40 per cent. The provinces are, however, free to choose their own rates. Ontario levies 12 per cent tax on the taxable income of the corporations while all other provinces with the exception of Quebec keep their rate equal to the abatement provided by the federal government. The tax rate in Ontario will, therefore, be 42 per cent and not 40 per cent unless the Government of Ontario decides to move in line with other provincial governments. This is, however, compensated by an investment tax credit which allows the investors to reduce their tax payment by 5 per cent of the value of the new and used machinery and equipment put in place in Ontario after March, 1971. But this concession, as initially announced, will cease to exist at the end of the fiscal year 1972-73 on March 31.[2]

Income from manufacturing and processing operations in Canada which qualifies for small business incentive[3] will be taxed at

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1. Statistics Canada and Department of Industry, Trade and Commerce, *Private and Public Investment in Canada, Outlook 1972,* Catalogue No. 61-205 (Ottawa: Information Canada), Tables 3 and 18.
2. Honourable W. Darcy McKeough, *1971 Ontario Budget* (Toronto: Department of Treasury and Economics) p. 25.
3. For detail, see Honourable E.J. Benson, *Summary of 1971 Tax Reform Legislation* (Ottawa: Department of Finance), pp. 37-39.

the rate of 20 per cent instead of 25 per cent of the taxable income.

The second measure allows the manufacturing and processing industries to write off their new assets in two years at the rate of 50 per cent per year. It will replace the existing credit introduced in December, 1970, whereby the basis for calculating capital consumption allowance for tax purposes was set at 115 per cent of the cost of assets. The new provision compares with the current business practice of depreciating at the rate of 20 per cent on declining balance basis which takes 13 years to completely write off an asset. The fast write-off is allowed only on machinery and equipment, and structures are excluded.

The industries which do not qualify for either of these incentives are construction, natural resources operations, fishing and farming, public utilities and transportation and communication.

The stimuli provided in the budget were overdue for quite some time now. In recent years Canada has been experiencing a high rate of unemployment; it stood at 5.8 per cent of the labour force in April, 1972. This contrasts with the objective of 3 per cent called for by the Economic Council of Canada. The Council further feels that the unemployment rate must be reduced to 3.8 per cent this year—a goal which is unlikely to be achieved in 1973. It is quite logical that an attempt to create more jobs should begin with the secondary industry which is the largest employer of labour in Canada. In 1971, 40 per cent of the work force in the private industrial sector was employed in the manufacturing industries.[4] But, unfortunately, this sector of the economy has not performed very well in the past. The volume index of the domestic output for the economy, as a whole, gained 12 percentage points between the first quarter of 1970 and the last quarter of 1971, while the output of the manufacturing sector registered only half as much gain.[5]

Until recently, the major portion of the responsibility for the slow growth of manufacturing has been shared by a rise in the unit cost of production supplemented with the revaluation of the Canadian dollar, whose value has jumped to above parity with the U.S. dollar from 92 cents before it was floated. Consequently, excluding the exports of automobiles and parts which are covered by an automotive agreement with the U.S., the manufactured goods trade has been experiencing a rising deficit.

Further difficulties have stemmed from the enlargement of the trading blocs and adoption of restrictive trade policies abroad. Both of these developments in the area of international economic relations have been of very special concern to Canada because its two top trading partners, U.K. and U.S.A. have figured most prominently in these practices. Britain will be joining the European Economic Community in 1973. It is allowed a transitional period up to 1977 by which time it must adopt the common external tariff of the EEC. This signals the end of the British tariff preferences. In spite of the British claim that it has negotiated for sufficient safeguards with the EEC against any undue disruption and harm to trade with Canada, the special tariff advantages are already beginning to crumble. The evidence of this was provided a few months ago when Britain raised the rate of duty on textile imports from the member countries of the Commonwealth and Canada responded by

4. Dominion Bureau of Statistics, *Employment, Earnings and Hours*, March-June, 1971, Catalogue No. 72-002, Table 1.

5. Statistics Canada, *Canadian Statistical Review*, March, 1972, Catalogue No. 11-003, Table 2.

raising duty from 18 per cent to 25 per cent on the imports of knitted goods from Britain.

Because of the large U.S. investment in Canada and the high volume of trade between the two countries, Canada has been watching with interest and concern the U.S. policies to improve its balance of payments. The most recent measure in this respect is DISC (Domestic International Sales Corporation) which allows a corporation earning 95 per cent of its income by exporting domestically produced goods to defer the payment of tax on half of its income indefinitely. It will quite obviously encourage the U.S. owned multi-national corporations to increase their production at home and increase their exports rather than production in subsidiary plants abroad. Nearly 2,000 corporations have already registered themselves for establishing DISCs, among them such large ones as Chrysler, Ford, General Motors and Dow Chemical which have sizable investments and plants in Canada. In a statement before the Commons Finance Committee, the Deputy Minister of Finance said that the DISC programme could save the U.S. exporters anywhere between 2.5 per cent and 12.0 per cent of the value of their exports which could be used to increase dividends or reduce prices or both.[6] This programme hurts Canada in two ways. First, in the international markets it enhances the advantage of the U.S. manufacturers who already have an edge over their Canadian counterparts by virtue of the revaluation of the Canadian dollar. Second, since it becomes more advantageous to produce at home and export, the U.S. corporations might not find it to their benefit to expand facilities in their Canadian plants, hurting the Canadian efforts to create more jobs.

The fast write-off and the reduced corporation income tax rates will effectively counteract the effects of the DISC programme.

In addition to the above factors which emphasize the need for stimulating the manufacturing and processing industry, the survey of business intentions, published just before the budget, did not indicate any particular buoyancy in investment plans. The planned increase in capital expenditure at 5 per cent in 1972 is less than half the 11 per cent rise in 1971. It is true that 1971 was not a normal year but it must be recalled that the average rate of growth of investment has been 7 per cent in the past decade. The pinch will especially be felt this year in investment in the manufacturing industry. While the total investment in machinery and equipment is expected to rise by 6 per cent, the manufacturing industry has planned for an increase of only 3 per cent.[7]

The slow growth and rising costs in the manufacturing industry, revaluation of the currency, enlargement of trading blocs, stiff competition in international trade intensified by various forms of export incentives and subsidies, and high unemployment at home underlie the generous benefits given to the manufacturing and processing operations in Canada. The provisions made for accelerated depreciation for tax purposes and reduction in the rate of the corporation income tax will effectively counterpoise the effects of U.S. programme of DISC by cutting down the advantage of the U.S. manufacturers stemming from the deferment of tax payment. The problem of unemployment will also ease. The new measures will enhance the ability of the corporations to finance investment from internal resources, reducing the

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6. *Globe and Mail*, May 17, 1972.
7. Statistics Canada and Department of Industry, Trade and Commerce, *Op. cit.*, pp. 5, 8.

need and hence the cost of borrowing funds. In addition, the consumer demand is giving signals of strength. The forecasts are suggesting that consumer spending will increase by more than 9 per cent. The survey of consumer buying intentions conducted in March this year is very optimistic and the index of buying intentions is at its highest since 1966.[8] This explains to a large extent why the budget contains no across-the-board cut in the personal income tax rates which was being urged upon by some critics. In fact, the government has not even indicated that the 3 per cent income tax reduction allowed in the second half of 1971 and to continue in 1972 will be extended.

8. *Financial Post*, May 20, 1972.

HIDEYASU IWASAKI*:

REVISION OF THE RECENT JAPANESE TAXATION SYSTEM AND MAJOR QUESTIONS UNDER DISCUSSION

The 68th regular session of the Diet was finally adjourned on June 16, 1972, after being in session for a record 171 days including an extension of 21 days. Many important bills including the National Railways Fare Adjustment Bill and the National Health Insurance Revision Bill were rejected for consideration at the final stage. However, the 1972 fiscal general budget and various bills embodying the national and local tax revision, which were submitted in early January, were approved near the end of the Diet session, despite the prolonged deliberations caused by the question over the preallocated funds for the 4th defense budget and the political dispute over leakage of Foreign Ministry secrets.

The general accounts budget showed an increase of 21.8 per cent over the previous year and totalled Yen 11,470,400 million ($37,240 million, computed at the exchange rate of 308 yens to a U.S.dollar.) The Governmental investment and financing plans totalled Yen563,000 million (an increase of 31.6 per cent over the previous year). The Government explained this very large budget as having its aim at "buoying up the economy" and "giving priority to the nation's welfare." The Japanese economy has been at a standstill since the autumn of 1970 and the outlook has further darkened as a result of the Nixon Administration's announcement in August 1971 to defend the dollar and the adoption of the policy to float the yen that led in December to the revaluation of the yen exchange rate. It is generally predicted that the recession will be prolonged. Thus, there was the need for the budget to aim at "byoying up the economy."

The continued high rate of economic growth in the 1960s has resulted in many social distortions including the marked delay of social infrastructure and a reflection on this point has moved the Government to give its priority to the Nation's welfare.

A study in detail of the 1972 fiscal program reveals that the added public works projects aimed at buoying up the economy are going to evaporate without much effect mainly for purchase of land. In absence of an effective land policy, there is a danger of further accelerating the rise of land prices. Also, the allocation of the social security funds appears to have been made without much careful consideration; there is an overall lack of effective price policies. Plans were made avoiding any effective reform of the systems when drafting bills for increase of National Railways fares, university tuitions and medical fees. There are attempts to increase government organizations and sections without fundamental reform of the administrative system itself. Informed circles point out that these are some of the many criticisms that are fired at the recent budget. Due to the prolonged recession, the increase of tax revenue in 1972 is estimated at about Yen 552,000 million, or about only one third of the previous year. On the other hand, the floating of government debts is to be increased by more than four times to the previous year's level Yen 1,950,000 million ($6,331 million). As a result, the degree of dependency of the general account on government debts will come to

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* Secretary General of the Japan Tax Association.

reach 17 per cent, the highest ratio in the postwar period. It is regrettable that the Diet failed to thoroughly deliberate on ways to exercise discretion in floating public debts. Ways to save unnecessary expenditures ought to have been studied with as much emphasis as to float sizable debts.

TAX REVISION SWEET AND SOUR

Concerning the revision of the taxation system, mention should be first given to national taxes. Efforts were made to increase revenue by three measures: (i) revision of bad debt reserve, (ii) abolition of tax incentives fore xport and (iii) creation of an aircraft fuel tax (their total will produce Yen 72,200 million in the first year and Yen 124,800 million in a regular fiscal year). The funds obtained from these sources are to be used for the improvement of the nation's welfare such as increased deductions for aged persons and widows, reduction of inheritance tax, special measures for housing and special measures for small and medium enterprises, technical development and special measures concerning devaluation of the currency and so forth. Income tax is estimated to be decreased by Yen 67,400 million in the first year and Yen 129,400 million in the regular fiscal year.

The balance shows that there will be an increase of revenue by Yen 4,800 million ($15,550,000) in the first fiscal year and a decrease of Yen 4,600 million ($14,610,000) in regular fiscal years.

Concerning local taxes, there will be increases, in the basic deduction, deductions for spouse and dependents as well as decrease in inhabitant tax, enterprise tax, real property acquisition tax, property tax, electricity and gas tax. The decrease will amount to Yen 80,400 million ($ 261,040,000) in the first year and Yen 86,900 million ($282,140,000) in the regular year.

FOR MORE INCOME TAX REDUCTION

The foregoing was the outline of the 1972 tax revision.

The writer wishes to capitalize on this opportunity to point out a few major questions that are deemed to have important bearings on the future course of the Japanese tax system. The questions would challenge the new Tanaka Administration that came to power on July 7.

Firstly, concerning the income tax, it was reduced by Yen 165,000 million in autumn 1971 as a part of the emergency measures to cope with the recession caused by the "dollar shock" of August 1971. On the basis of the 1972 fiscal budget, this figure would come to the scale of Yen 253,000 million ($821,430,000). This is given as the main reason why only partial revision was made in the 1972 income tax system. The way how the tax deductions were made last autumn is criticized because the tax rate revision favored the higher income group. Consequently, there were demands for a general tax reduction in the 1972 revision plan. The floating of the pound sterling in June 1972 has given rise to fears for a deepening of the recession and to a strong demand for tax reduction of about Yen 300,000 million ($974,030,000), within the fiscal year 1972.

CORPORATE SURTAX AND VALUE ADDED TAX

Concerning the corporation income tax, the 1972 tax revision included a two-year extension of the special surtax which was established in 1970 as special tax measure. On the one hand, there were views that this special measure should be incorporated into the law as a permanent measure. On the other hand, however, there were voices of opposition to such a move heard among business circles. As this matter is closely related to the business outlook, it is bound to

become a major problem in the future.
Questions and discussions concerning a value added tax were heard sporadically during the 68th Diet session. However, no meaningful results were gained because of the absence of any concrete plans on the part of the Government.
Recently, there are frequent newspaper reports on the Government's study of ways to revise the commodity tax, raise the non-taxable amount and increase the taxable objects. Japan Tax Association is conducting its own work on the rationalization and simplification of collection of the commodity tax.

MORE EFFECTIVE LAND TAX?

Lastly, reference should be made to the problem of land taxation which was the major problem of deliberation during the last 68th Diet session. By the tax system revision acts of fiscal 1969, the separate taxation system on capital gains derived from the sale or transfer of land held by an individual for a long term (not less than five years) was introduced (the tax rate: 1970 and 1971—10 per cent, 1972 and 1973—15 per cent, 1974 and 1975—20 per cent). This resulted in a rush of land sales by end of 1971 and in the appearance of a large number of high income earners. In fact, 95 persons out of 100 on the top list of high income earners were those who derived their income from the sale of land. What is more, most of the land sold was purchased by real estate brokers so that hardly any land was acquired by land-hungry individuals. There was criticism that this is evidence of the failure of the Government's land tax policy. It is true that the land problem cannot be solved by revision of the taxation system alone; however, it has been pointed out that there is a need to give more careful study to the possible refinement in the land taxation system.

DR. ERWIN SPIRO:

THE 1972 INCOME TAX[1] CHANGES IN SOUTH AFRICA

I. INTRODUCTION

The 1972 income tax legislation still aims at combating inflation. Apart from a few new exemptions and allowable deductions, the main features of the 1972 Income Tax Act[1] may be found in the taxation of the benefits of certain single premium insurance policies, in some relaxation of the loan levy and in further incentives to exporters. Only the more important changes will now be dealt with.

II. GROSS INCOME (INSURANCE GAINS)

In the last few years the generous provisions of the Income Tax Act in respect of traditional insurance policies had been exploited by means of single premium insurance policies which were in effect ordinary fixed deposits. In this way more than R50,000,000 had, according to the Minister of Finance, been drained from other financial sectors, particularly the building societies. The benefits of or under these policies have now been dragged into the taxation net, but in a very elaborate, if not complicated manner. The new Act proceeds in two stages. First, it lays down that any amount determined under the provisions of the Sixth Schedule (which is added to the existing five Schedules) in respect of any gain under or in respect of any insurance policy is included in gross income. Second, the Sixth Schedule referred to and consisting of twenty-three paragraphs sets out which gains must be included in the gross income of owners of insurance policies and which procedure must be followed.

Taxable gains are in terms of the Sixth Schedule those which arise from payments or accruals to the taxpayer on or after the 30th March, 1972, either in respect of insurance benefits (meaning any amounts or benefits payable under an insurance policy including any bonus or share of profits, any amounts received by reason of the surrender of the policy and any amounts received in respect of the commutation of any annuity payable under the policy) derived from a policy which is not a standard policy or the consideration received or accrued in respect of the cession by him of his rights under such a policy. A standard policy is a life policy as defined in the Insurance Act, 1943 (Act No. 27 of 1943) which secures the payment of an insurance benefit upon the death or earlier disablement of the person insured or at the end of a specified term of not less than ten years or upon the earlier death or disablement of the person insured; certain other policies are deemed to be standard policies.

Taxable gains are not

(i) accruals under the policy which are subject to normal tax under any other provisions of the Income Tax Act;

(ii) benefits specifically payable in respect of disablement;

(iii) considerations payable in respect of the cession of a policy between spouses if they are not living apart permanently; and

(iv) considerations for the cession of a policy effected at a time when the policy is a standard policy.

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1. Income Tax Act, 1972 (Act No. 90 of 1972), promulgated on the 28th June, 1972.

Gains are normally determined by deducting the sum of
(i) the total of the premiums due under the policy since the time when the taxpayer became the owner of the policy until the happening of the event giving rise to the benefit in question; and
(ii) any amounts which the taxpayer may have paid as consideration for the cession to him of the rights under the policy; and
(iii) if the taxpayer was the owner of the policy on the 29th March, 1972, an amount equivalent to the gain which he would have made had he surrendered the policy on that date,
from the amount or value of all the insurance benefits derived from the policy concerned or the amount of the consideration received in respect of the cession of the rights under the policy. Any gains regarding the policy which have been taxed in previous years of assessment are, however, deducted, and the calculated gain is then further reduced by an amount which bears the same ratio to the calculated gain as the total of the non-taxable insurance benefits together with insurance benefits and considerations which were payable before the 30th March, 1972, bears to the total amount of insurance benefits and considerations received or deemed to be received by the taxpayer since he became the owner of the policy.
In certain circumstances an insurance benefit or the consideration in respect of the cession of a policy is deemed to be from a source within the Republic.
An insurer who on or after the 28th June, 1972 (that is the date of the promulgation of the 1972 Act), pays or becomes liable to pay a taxable insurance benefit to a policy holder must deduct and within fourteen days pay to the Secretary for Inland Revenue an amount equivalent to fifteen per cent of the taxable gain. The amount so deducted shall be set off against the owner's income tax liability and if the amount deducted is in excess of the liability the excess shall be refunded or credited to the owner. An agreement whereby an insurer undertakes not to make the deduction is void nor is the owner of the policy entitled to recover from the insurer any tax deducted by the insurer.

III. EXEMPTIONS

1. *Interest under the State-Aided Home-Ownership Savings Scheme*
Interest received by or accrued to any person from deposits in any savings account with any building society under the State-Aided Home-Ownership Savings Scheme is exempt from tax.

2. *Interest distributed by unit portfolios to holders of units*
So much of the interest received by or accrued to unit portfolios as has been distributed or as the Secretary for Inland Revenue is satisfied will be distributed by way of a dividend or a portion of a dividend to persons who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolios on a date falling on or after the 1st April, 1971, is exempt from tax. But the interest portion of dividend distributions made out of the assets of the unit portfolios will be regarded as being interest and will be taxable as such in the hands of unit holders, whether for purposes of normal tax or non-residents tax on interest.

3. *Interest and dividends from building societies*
Where a building society registered under the Building Societies Act, 1965 (Act No. 24 of 1965) is empowered to carry on its business in a country or territory other than the Republic or South-West Africa, an

exemption applies in respect of the interest or dividends paid by such society to persons (other than companies) who are ordinarily resident in the country or territory in question or to companies which are managed or controlled therein, on investments made through a branch or agency of the society in such country or territory.

4. *Exporters' rebates or other assistance*
Amounts which are received by or accrue to exporters by way of rebates or other assistance from the State in respect of the financing of exports are exempt from tax if the Minister of Finance has directed that such amounts be exempt from tax.

IV. ALLOWABLE DEDUCTIONS

1. *Erection of employees' dwellings allowance*
The erection of employees' dwellings allowance has been extended from 31st December, 1971, to 31st December, 1974.

2. *Exporters' allowance*
The basic exporters' allowance is increased from fifty per cent to seventy-five per cent of the market development expenditure; if the current export turnover exceeds the adjusted basic export turnover by more than ten per cent of the latter turnover, the allowance is to be hundred per cent of the market development expenditure. There are also some new definitions of technical terms.

3. *Allowance for compensation payable to Railway Administration*
Compensation paid by a taxpayer to the Railway Administration for losses incurred by the Administration in operating a railway line which the Administration has in terms of a written agreement providing for such compensation undertaken to construct and operate is deductible; the taxpayer's liability for the compensation must be incurred in connection with a trade carried on by him in the Republic.

4. *Machinery investment allowance*
The relevant date of the machinery and investment allowance is extended from the 30th June, 1973 to the 30th June, 1975.

5. *Building investment allowance*
The relevant date of the building investment allowance is extended from 30th June, 1973, to 30th June, 1975.

6. *Allowance for donations to universities etc.*
As regards the allowance for donations to universities etc., the definition of "college" has been broadened to include colleges for advanced technical education established or deemed to have been established under other Acts of Parliament besides the Advanced Technical Education Act, 1967 (Act No. 40 of 1967). The Explanatory Memorandum[2] instances the Indians Advanceed Technical Education Act, 1968 (Act No. 12 of 1968).

7. *Allowance in respect of not exempted dividends on shares in permanent building societies*
Income received by or accrued to any person other than a company by way of a dividend on indefinite period or fixed period shares in any permanent building society is, notwithstanding the definition of "dividend", deemed, as regards deductions relative to dividends, to be income derived by such person in the form of dividends.

8. *Married woman's earnings allowance*
The special deduction of R500 in respect of a married woman's earnings is no longer to be reduced by R1 for every R10 by which the

2. W.P. 8-'72.

combined income of the two spouses exceeds R8000.

9. *Development allowance in respect of industrial undertakings in economic development areas*

The last day by which applications for the development allowance in respect of industrial undertakings in economic development areas must be made has been extended from the 30th September, 1972, to the 30th September, 1975.

10. *Deduction, under a livestock reduction scheme, of cost of livestock purchased*

If it is proved to the satisfaction of the Secretary for Inland Revenue that any farmer has in any year of assessment (other than a year of assessment in respect of which tax liability is calculated under the scheme for equalizing rates) sold livestock by reason of his participation in a livestock reduction scheme organized by the Government and has within nine years after the close of the said year of assessment purchased livestock to replace the livestock so sold, the cost of the livestock so purchased shall be allowed, at the option of the farmer, as a deduction in the determination of his taxable income for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within ten years after the close of that year of assessment. The cost of livestock so allowed shall, however, not be allowed as a deduction in the year of assessment in which the purchases were made.

V. DEDUCTIONS WITHDRAWN

Lessor's improvement allowance

In one instance the 1972 Act withdraws a previously existing allowance, viz. the lessor's improvement allowance where the lessee is a company controlled by the lessor or *vice versa* or where both parties are companie controlled by a third company (an example of "lifting the veil"), provided, however, the lessor's right to have the improvements effected accrued after 29th March, 1972.

VI. NORMAL (INCOME) TAX

1. *Rating formula in regard to insurance gains*

Where gains made under or in respect of insurance policies (see *sub* II above) relate to a death or maturity benefit or a benefit arising from the surrender or cession of a policy (except where the insurance benefit takes the form of a bonus, share of profits or other periodic payment or advance against future benefits) and the period from the commencement date of the policy to the date of the happening of the event giving rise to the benefit is two or more full years, a rating formula will be applied so as to ensure that the taxpayer's marginal rate of tax is not unduly increased. If the commencement date of a policy fell before the 30th March, 1972, the period will be reckoned from the latter date.

2. *Rates in the case of persons other than companies*

Persons other than companies pay the tax at the rates contained in the *two tables annexed hereto* in respect of the year of assessment ending the 28th February, 1973, or the 30th June, 1973. To the basic tax is added a surcharge which is payable where the basic tax is R150 or more. The surcharge is twenty per cent of the basic tax, but is reduced to ten per cent of the basic tax in the case of a natural person who is over sixty years of age on the last day of the year of assessment and whose taxable income for that year is R5000 or less. Due regard being had to the surcharge, the maximum marginal rate is now seventy-two per cent. There is no longer a

loan levy in the case of persons other than companies.

3. *Rates in the case of companies*

The rates for companies which apply for the year of assessment, that is the financial year, ending during the twelve-month period from 1st April, 1972, to 31st March, 1973, in respect of taxable income derived in South-West Africa and taxable income derived in the Republic are as follows:-

(a) *Taxable income derived otherwise than from mining*

(i) if derived in South-West Africa: thirty-five cents per R1;

(ii) if derived elsewhere than in South-West Africa, that is in the Republic: forty cents per R1.

To the above tax is added a surcharge of two and a half per cent of such tax and a loan portion of five per cent of such tax.

(b) *Taxable income derived from gold mining*

(i) on any mine other than a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for plus a surcharge (which is not payable in the case of certain assisted gold mines) equal to five per cent of the said amount and a loan portion equal to five per cent of the said amount;

(ii) on a post-1966 gold mine: an amount determined in accordance with one of the formulae provided for plus a surcharge of five per cent of the said amount and a loan portion of five per cent of the said amount.

(c) *Taxable income in the form of "recoupments" of capital expenditure accruing to companies which are or have been gold mining companies*

the average rate of tax, as determined in accordance with the Schedule, or thirty-five cents per R1, whichever is higher.

(d) *Taxable income from diamond mining*

a basic tax of forty-five cents per R1, plus a surcharge equal to ten per cent of the basic tax plus a loan portion equal to ten per cent of the basic tax.

(e) *Taxable income from mining operations (other than mining for gold, diamonds or natural oil)*

(i) where derived in South-West Africa: thirty-five cents per R1;

(ii) where derived elsewhere than in South-West Africa, that is in the Republic: forty cents per R1.

To the above tax is added a surcharge of two and a half per cent of such tax and a loan portion of five per cent of such tax.

(f) *Taxable income derived in the form of dividends*

a loan portion of three per cent.

A company is exempt from the loan portion of normal tax if before the assessment for the particular period of assessment is raised the winding-up or liquidation has commenced. The Secretary for Inland Revenue may further refund the loan portion of any normal tax if the winding-up or liquidation of a company has commenced.

VII. NON-RESIDENT SHAREHOLDERS TAX

A partial exemption from non-resident shareholders tax is provided in respect of dividends distributed out of the assets of certain unit portfolios which are for income tax purposes regarded as being companies. So much of such a dividend as has been distributed out of interest which is exempt from normal tax in the hands of such unit portfolios is exempt from non-resident shareholders tax, but may be subject to non-residents tax on interest. The amendment operates with effect from 1st April, 1971.

VIII. NON-RESIDENTS TAX ON INTEREST

Apart from the last remarks, there are two further amendments of the non-residents tax on interest.

Firstly, interest accruing to a non-resident on loans to the South African Broadcasting Corporation is exempt from the non-residents tax on interest.
Secondly, an exemption also applies in respect of interest or dividends paid by a South African registered building society empowered to operate in a country or territory outside the Republic and South-West Africa to persons other than companies who are ordinarily resident in that country or territory or to companies which are managed and controlled therein on investments made through a branch or agency of such building society in the country or territory in question.

Annexures

TABLE I

Taxable Amount.	Rates of tax in respect of married persons.
Where the taxable amount—	
does not exceed R1 000	9 per cent of each R1 of taxable amount;
exceeds R1 000 but does not exceed R2 000	R90 plus 10 per cent of the amount by which the taxable amount exceeds R1 000;
„ R2 000 „ „ R3 000	R190 plus 10 per cent of the amount by which the taxable amount exceeds R2 000;
„ R3 000 „ „ R4 000	R290 plus 11 per cent of the amount by which the taxable amount exceeds R3 000;
„ R4 000 „ „ R5 000	R400 plus 12 per cent of the amount by which the taxable amount exceeds R4 000;
„ R5 000 „ „ R6 000	R520 plus 14 per cent of the amount by which the taxable amount exceeds R5 000;
„ R6 000 „ „ R7 000	R660 plus 16 per cent of the amount by which the taxable amount exceeds R6 000;
„ R7 000 „ „ R8 000	R820 plus 18 per cent of the amount by which the taxable amount exceeds R7 000;
„ R8 000 „ „ R9 000	R1 000 plus 20 per cent of the amount by which the taxable amount exceeds R8 000;
„ R9 000 „ „ R10 000	R1 200 plus 22 per cent of the amount by which the taxable amount exceeds R9 000;
„ R10 000 „ „ R11 000	R1 420 plus 24 per cent of the amount by which the taxable amount exceeds R10 000;
„ R11 000 „ „ R12 000	R1 660 plus 26 per cent of the amount by which the taxable amount exceeds R11 000;
„ R12 000 „ „ R13 000	R1 920 plus 28 per cent of the amount by which the taxable amount exceeds R12 000;
„ R13 000 „ „ R14 000	R2 200 plus 30 per cent of the amount by which the taxable amount exceeds R13 000;

Taxable Amount.	Rates of taxes in respect of married persons.
Where the taxable amount—	
exceeds R14 000 but does not exceed R15 000	R2 500 plus 32 per cent of the amount by which the taxable amount exceeds R14 000;
„ R15 000 „ „ R16 000	R2 820 plus 34 per cent of the amount by which the taxable amount exceeds R15 000;
„ R16 000 „ „ R17 000	R3 160 plus 36 per cent of the amount by which the taxable amount exceeds R16 000;
„ R17 000 „ „ R18 000	R3 520 plus 38 per cent of the amount by which the taxable amount exceeds R17 000;
„ R18 000 „ „ R19 000	R3 900 plus 40 per cent of the amount by which the taxable amount exceeds R18 000;
„ R19 000 „ „ R20 000	R4 300 plus 42 per cent of the amount by which the taxable amount exceeds R19 000;
„ R20 000 „ „ R21 000	R4 720 plus 44 per cent of the amount by which the taxable amount exceeds R20 000;
„ R21 000 „ „ R22 000	R5 160 plus 46 per cent of the amount by which the taxable amount exceeds R21 000;
„ R22 000 „ „ R23 000	R5 620 plus 48 per cent of the amount by which the taxable amount exceeds R22 000;
„ R23 000 „ „ R24 000	R6 100 plus 50 per cent of the amount by which the taxable amount exceeds R23 000;
„ R24 000 „ „ R25 000	R 6 600 plus 52 per cent of the amount by which the taxable amount exceeds R24 000;
„ R25 000 „ „ R26 000	R7 120 plus 54 per cent of the amount by which the taxable amount exceeds R25 000;
„ R26 000 „ „ R27 000	R7 660 plus 56 per cent of the amount by which the taxable amount exceeds R26 000;
„ R27 000 „ „ R28 000	R8 220 plus 58 per cent of the amount by which the taxable amount exceeds R27 000;
„ R28 000	R8 800 plus 60 per cent of the amount by which the taxable amount exceeds R28 000.

TABLE II

Taxable Amount.	Rates of tax in respect of persons who are not married persons.
Where the taxable amount—	
does not exceed R1 000	12 per cent of each R1 of taxable amount;
exceeds R1 000 but does not exceed R2 000	R120 plus 12 per cent of the amount by which the taxable amount exceeds R1 000;
„ R2 000 „ „ R3 000	R240 plus 13 per cent of the amount by which the taxable amount exceeds R2 000;
„ R3 000 „ „ R4 000	R370 plus 14 per cent of the amount by which the taxable amount exceeds R3 000;
„ R4 000 „ „ R5 000	R510 plus 17 per cent of the amount by which the taxable amount exceeds R4 000;
„ R5 000 „ „ R6 000	R680 plus 20 per cent of the amount by which the taxable amount exceeds R5 000;
„ R6 000 „ „ R7 000	R880 plus 23 per cent of the amount by which the taxable amount exceeds R6 000;
„ R7 000 „ „ R8 000	R1 110 plus 26 per cent of the amount by which the taxable amount exceeds R7 000;
„ R8 000 „ „ R9 000	R1 370 plus 28 per cent of the amount by which the taxable amount exceeds R8 000;
„ R9 000 „ „ R10 000	R1 650 plus 30 per cent of the amount by which the taxable amount exceeds R9 000;
„ R10 000 „ „ R11 000	R1 950 plus 32 per cent of the amount by which the taxable amount exceeds R10 000;
„ R11 000 „ „ R12 000	R2 270 plus 34 per cent of the amount by which the taxable amount exceeds R11 000;
„ R12 000 „ „ R13 000	R2 610 plus 36 per cent of the amount by which the taxable amount exceeds R12 000;
„ R13 000 „ „ R14 000	R2 970 plus 38 per cent of the amount by which the taxable amount exceeds R13 000;
„ R14 000 „ „ R15 000	R3 350 plus 40 per cent of the amount by which the taxable amount exceeds R14 000;
„ R15 000 „ „ R16 000	R3 750 plus 42 per cent of the amount by which the taxable amount exceeds R15 000;
„ R16 000 „ „ R17 000	R4 170 plus 44 per cent of the amount by which the taxable amount exceeds R16 000;
„ R17 000 „ „ R18 000	R4 610 plus 46 per cent of the amount by which the taxable amount exceeds R17 000;
„ R18 000 „ „ R19 000	R5 070 plus 48 per cent of the amount by which the taxable amount exceeds R18 000;

Taxable Amount.	Rates of tax in respect of persons who are not married persons.
Where the taxable amount—	
exceeds R19 000 but does not exceed R20 000	R5 550 plus 50 per cent of the amount by which the taxable amount exceeds R19 000;
„ R20 000 „ „ R21 000	R6 050 plus 52 per cent of the amount by which the taxable amount exceeds R20 000;
„ R21 000 „ „ R22 000	R6 570 plus 54 per cent of the amount by which the taxable amount exceeds R21 000;
„ R22 000 „ „ R23 000	R7 110 plus 56 per cent of the amount by which the taxable amount exceeds R22 000;
„ R23 000 „ „ R24 000	R7 670 plus 58 per cent of the amount by which the taxable amount exceeds R23 000;
„ R24 000	R8 250 plus 60 per cent of the amount by which the taxable amount exceeds R24 000.

DR. P.K. BHARGAVA*:

A CRITIQUE OF THE INDIAN FISCAL SYSTEM

In a democratic country like India, the efficacy of direct controls is often restricted due to scarce administrative talent. Direct controls are also less effective, for they encourage black marketing and give rise to fresh inequities. The scope of direct controls, therefore, is very limited in achieving the various socio-economic objectives of the State. Accordingly, increasing reliance has to be placed on the fiscal system of the economy. It is a serious problem of the Indian fiscal system that the division of functions and resources between the Union and State Governments has tilted the scale in favour of the former. The Centre has relatively elastic and productive sources of tax revenue whereas the States have to discharge the expensive social and development functions—the demand for which is of an expanding nature. On the other hand, the State Governments have relatively inelastic and inadequate sources of revenue. This is clearly borne out by the fact that during the last two decades from 1950-51 to 1970-71 (Revised) the tax revenue collected by the Union Government increased from Rs. 405 crores[1] to Rs. 3,198 crores or by 690 per cent. During the same period the revenue from State taxes increased from Rs. 222 crores to Rs. 1,507 crores or by 579 per cent. The relatively smaller increase in revenue resources of the States has created a fiscal imbalance in the Indian fiscal system and has made the State Governments highly dependent on the Centre for their financial requirements. The total transfers from the Union Government to States, thus, increased from Rs. 1,413 crores in the First Plan to Rs. 2,869 crores in the Second Plan and further to Rs. 56,00 crores in the Third Plan. These transfers formed 41.4 per cent of the States' total expenditure (Revenue Account and Capital Account) in the First Plan. This percentage increased to 48.5 in the Second Plan and further to 52.2 in the Third Plan. In recent years, the transfers from the Union Government to the States have further increased. In the first year (1966-67) following the Third Plan the total transfers amounted to Rs. 1,757 crores, that is more than the entire amount of the First Plan. In 1971-72 (Budget) these transfers amounted to Rs.2,655 crores, that is slightly less than the entire amount of the Second Plan. It is, however, unfortunate that in the process of providing more assistance from the Centre to States we have created a *Leviathan* Centre with responsibility for providing finance but no responsibility for executing projects.

Despite their heavy fiscal dependence on the Centre, the State Governments have maintained their fiscal autonomy. When in 1949, the Centre advised the States to go slow with their programme of prohibition, a number of State Governments went ahead with their programmes. More recently, after the General Elections of 1967 many State Governments have taken steps to abolish land revenue on small land holdings without increasing the burden on large land holdings or imposing new taxes on the agricultural sector to make up the loss. A number of

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1. Rs. 1 crore is = 100 lakhs and Rs. 1 lakh is = Rs. 100,000.

State Governments have changed their policy of prohibition and many a State has abolished some other taxes also. We may emphasise here that the Constitution also safeguards the fiscal autonomy of the States by providing a share of income tax to them and by making a provision of the Finance Commission on the basis of whose recommendations, resources are transferred from the federal Government to the constituent units. It is a healthy development in our fiscal system that most of the recommendations of the Commission have been accepted by the Indian Parliament.

The Indian Finance Commission is one of the most important Commissions provided in the constitution. It is unique as it has no parallel in federal constitutions, except the Australian Commonwealth Grants Commission that examines the pleas of different States for assistance. In some matters, the Indian Finance Commission is superior to the Australian Commonwealth Grants Commission. For instance, the Indian Finance Commission can change the percentages of the taxes which are shared between the Centre and the States whereas the Australian Commonwealth Grants Commission cannot. The Finance Commission in India has also helped in ensuring fiscal integration between the Centre and the States as also between the States themselves since it has to examine the pleas of the Centre as also of the different States on an impartial basis. The Finance Commission has, thus, played the role of a wise man, a judge on an impartial body. It is, however, unfortunate that the Finance Commission continues to be a temporary body as it is generally appointed after every five years, and of the total transfers from the Union Government to States it controls less than one-third. This is because of the rapidly increasing importance of plan grants and loan finance in our system of federal transfers which are outside the scope of the recommendations of the Finance Commission. This is not a happy development in the Indian fiscal system as it will weaken the importance of the Finance Commission and will reduce it to the status of a body having duties to perform but having almost negligible power in its hands.

In order to raise larger revenue resources, the Union and State Governments have tried to collect larger funds through their tax efforts. They have imposed new taxes and have increased the rates of existing ones. In India we have, thus, been able to increase the percentage of taxes to national income from about 6.6 in 1950–51 to about 14 at present.[2] This achievement, but for certain difficulties, would have been better. This has helped the Government to increase the rate of savings and enabled the Government to build up larger revenue surpluses. We may, however, emphasise here that the State Governments in India are at a disadvantage in tax matters as compared to the Union Government. Firstly, the important indirect taxes of the Union Government, such as union duties of excise, are camouflaged with the price. As a result the consumers do not know the exact amount paying in taxes. While the indirect taxes of the State Governments, such as the sales tax, are shown separately. Hence, the consumer realises their incidence immediately. This invites more resistance from him. Secondly, the direct taxes of the States, such as land revenue and agricultural income tax, impinge directly on the majority of population who play an important role under the right of adult franchise whereas the direct taxes of the Union Government, such as the income tax and corporation tax, affect only that seg-

2. Tax revenue as percentage of national income in 1954-55 was 19.2 in Sweden, 23.4 in France, 28.4 in the Netherlands and 31.0 in the U.K.

ment of the society who are a small political minority. The Union Government has, therefore, found it easy to increase the tax load on this sector whereas the State Governments have hesitated to tax the agricultural sector.

It is really a peculiar feature of the Indian tax system that an industrialist with an income of over Rs. two lakhs gives as much as 97.75 per cent of it to the exchequer while a farmer with the same income keeps a major part of it. It is necessary to emphasise here that the two most important taxes paid by the agriculturists are land revenue and agricultural income tax. However, the fiscal importance of both these taxes has been declining progressively. Land revenue and agricultural income tax formed 27.9 per cent of the revenue from State taxes in the First Plan. This percentage declined to 26.0 in the Second Plan, to 18.4 in the Third Plan and further to 7.1 in 1971-72 (Budget). In 1970-71 the total yield from land revenue and agricultural income tax was Rs. 127 crores, which formed 0.85 per cent of the net output of the agricultural sector. As against this the income tax collected was estimated at Rs. 460 crores in the same year which formed 2.6 per cent of the net output of the agricultural sector. Between 1960-61 and 1970-71, while the proportion of income and corporation tax to national income from sources other than agriculture has risen from 4.1 per cent to 4.6 per cent, the proportion of land revenue and agricultural income tax to national income derived from agriculture has declined from 1.63 per cent to 0.85 per cent. The green revolution has also improved the relative position of the agriculturists and has introduced new inequities within the agricultural sector.

The separation of agricultural and non-agricultural income for tax purposes is not only a source of tax evasion but also helps in converting black money into white money. Even if the agricultural income is taxed at as high rates as other income, it is quite advantageous to have the total income divided into two parts under progressive rates of taxation. The agriculturists have also benefited due to the plan expenditure which is highly agriculture-oriented.[3] Besides, the States have taken steps to provide certain facilities to the agriculturists in the form of cheaper credit, price support schemes and warehousing facilities, etc. It is, therefore, necessary that additional resources should be raised from the agricultural sector to ensure equity in taxation and to accelerate the pace of economic development. However, it is a difficult problem of the Indian tax system as the Union Government is prohibited from taxing agricultural land or income in the Indian Constitution. The structure of federal finance in India has, thus, encouraged the growth of inequities in the Indian fiscal system and some adjustments are called for. It is a happy augury that a committee, under the chairmanship of Dr. K.N. Raj, has been set up to examine, among other things, the bifurcation of tax jurisdiction between agricultural and non-agricultural income.

There is yet another serious difficulty of the Indian fiscal system. The richer States do not

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3. The total expenditure on agriculture, community development, irrigation and other related fields formed 31.0 per cent of the public sector outlay in the First Five-Year Plan. This percentage decreased to 20.0 in the Second Plan but slightly rose to 20.4 in the Third Plan and has been estimated at 24.0 in the Fourth Plan. In absolute terms this expenditure increased from Rs. 610 crores in the First Plan to Rs. 950 crores in the Second Plan, to Rs. 1,754 crores in the Third Plan and has been estimated at Rs. 3,815 crores in the Fourth Plan.

necessarily have higher per capita tax incidence and the disparity exists even among those States whose per capita income is the same. The fifth Finance Commission rightly observed that, "The percentages are widely different even among those States with a similar level of *per capita* income. For instance, among the States with higher *per capita* income, while Maharashtra and Punjab raised more than 8 per cent of their incomes as tax revenues, West Bengal with a similar industrial base as Maharashtra obtained only 6.2 per cent. Among the other four States with *per capita* income above the all-India average, Tamil Nadu raised 7.8 per cent, while Andhra Pradesh and Assam got only a little over 5 per cent."[4] There are wide disparities among States even with regard to per capita incidence of individual taxes. While the per capita income (average for 1962-63 to 1964-65) of Uttar Pradesh was Rs. 306 which was substantially lower than the per capita income of Punjab at Rs. 492 but Uttar Pradesh had the highest per capita incidence of land taxes[5] at Rs. 3.03 in 1967-68 and the per capita revenue from taxes on land for Punjab was only Rs. 1.38 in that year. Orissa with the same level of per capita income as that of Uttar Pradesh had only Rs.0.83 as the per capita revenue from land taxes in that year. The same is true regarding other taxes also. For instance, Maharashtra had the highest per capita revenue from general sales tax at Rs. 14.09 in 1967-68 whereas for Punjab it was Rs. 9.34 during the same year while the per capita income of Punjab was Rs.492 as compared to the per capita income of Maharashtra at Rs.478. Similarly, Orissa and Uttar Pradesh had the same per capita income at Rs.306 which was slightly higher than the per capita income of Jammu and Kashmir at Rs.302; however the per capita income from general sales tax in 1967-68 for Uttar Pradesh stood at Rs.4.10 while for Orissa and Jammu & Kashmir it was respectively Rs.3.69 and 2.57. These data make abundantly clear that there is some evasion or leakage of revenue in the tax system of those States whose per capita income is higher but per capita tax incidence is lower as compared to other States. It is, therefore, necessary that the tax structure of individual States should be thoroughly scrutinised and steps should be taken to exploit effectively the available sources of tax revenue.

Predominance of indirect taxation is another feature of the Indian tax system. There is, however, no dictum regarding the proportion of direct and indirect taxes but in underdeveloped countries, such as India, indirect taxes occupy an important place for a number of reasons. Firstly, the per capita income of people is low; therefore they do not fall within the net of direct taxes. It may be emphasised here that in India only one in about 450 persons is assessed for income tax and that income tax assessees form about 0.2 per cent of the population as against about 35 per cent in the U.K. and 27 per cent in the U.S.A.[6] Secondly, the cost considerations also prohibit the collection of revenue from poor people through direct taxes. Thirdly, there is less resistance for indirect taxes as they are generally camouflaged in the price of the taxed commodities. For these reasons we

4. *Report of the Finance Commission*, 1969, Manager of Publications, Government of India Press, Delhi, 1969, p. 81.
5. Includes agricultural income tax and land revenue.
6. In 1964-65, the yield from federal taxes on income (including those on the corporate sector) formed 2.9 per cent of the national income in India as against 14.2 per cent in U.S.A. and 12.6 per cent in the U.K.

find that the importance of union duties of excise and sales tax is increasing rapidly.

In the sphere of union taxes, union excise duties are the most important source of revenue. The share of union excise duties in the total tax revenue of the Government of India increased from 16.7 per cent in 1950-51 to 44 per cent in 1971-72 (Budget). During the same period the revenue from union excise duties increased by 2,963 per cent, from customs by 240 per cent, from income tax by 269 per cent and from all taxes by 665 per cent. These data clearly indicate the growing importance of union excise duties in the tax structure of the Government of India and suggest that in future they will continue to be an important source of revenue.

In the tax structure of the State Governments, sales tax is the most important source of revenue. The share of sales tax[7] in the total revenue from State taxes increased from 26.9 per cent in 1950-51 to 50.2 per cent in 1971-72 (Budget). On the other hand the share of land revenue declined from 22.5 per cent to 6.3 per cent. During this period the revenue from sales tax increased by 1,245 per cent, from land revenue by 102 per cent, from agricultural income tax by 160 per cent, from stamps and registration by 400 per cent and from all taxes by 621 per cent. These data amply demonstrate the elastic nature and predominance of sales tax in the sphere of State taxation. These data also indicate the States' reluctance for further extension of the scheme of additional duties of exicise for sales tax.

Incentive taxation is an essential feature of the Indian fiscal system. Various incentives have been incorporated in the Indian tax structure to encourage saving, investment and exports, etc. Individuals and Hindu Undivided families get substantial relief, up to certain specified limits, in the form of contributions to Government and recognised provident funds, cumulative Time Deposits in Post Offices and life insurance premium. The Union budget for 1970-71 provided that interest from the Units of the Unit Trust of India and dividend from India Companies up to Rs.3,000 will be exempt from income tax from the assessment year 1971-72. Formerly, this limit was Rs. 2,000. The Indian tax structure incorporates some other tax incentives also to encourage saving and investment. For instance, in December 1964, the Union Finance Minister announced a scheme of tax-free tax credit certificates; although the scheme was abolished with effect from April 1, 1970. The Union Government has instituted a scheme of Public Provident Fund, under the Provident Fund Act 1968, with a view to mobilise personal savings and to provide an opportunity for long term savings to all sections of the society, especially the self-employed persons. The budget proposals for 1963-64 included a compulsory scheme (also known as Compulsory Deposit Scheme) with the object of increasing resources of the Government and imposing additional saving on all sectors of the economy. This scheme was abandoned in 1964-65 when it was substituted by the Annuity Deposit Scheme. The Finance Act 1968 abolished the Annuity Deposit Scheme as it involved a lot of administrative work. We may emphasise here that these instances show how hastily the changes are made in our tax structure that introduce instability in the tax system which is beneficial neither for the Government nor for the tax payers. Moreover, in the absence of availability of adequate data it

7. Includes general sales tax, Central sales tax, sales tax on motor spirit and purchase tax on sugarcane.

is very difficult to say if the incentives incorporated in the Indian tax structure have really helped in creating substantial savings in the economy because these incentives have benefited mostly the people in the larger income brackets who have used these tax relief measures to reduce their tax liability. We think that this is a field for further investigations for the fiscal theorists and requires some more researches to be done to arrive at a definite conclusion.

Industrial undertakings are also given certain tax incentives in the form of tax holiday and development rebate. Besides, the companies that produce or manufacture any of the articles specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 benefit from the tax credit certificates scheme. Industrial undertakings that employ displaced persons from Pakistan or repatriates from Ceylon, Burma and Mozambique or any other foreign country are given tax concessions. Industrial undertakings benefit from some other tax concessions also. It may be emphasised here that the Government has given these tax incentives and concessions to the corporate sector to promote the industrial development of the country; however the real purpose is not achieved as the tax incidence on the corporate sector is very high in our country.[8] The maximum corporate tax rates in India are higher than even some of the advanced countries of the world.[9] While in India the maximum statutory tax rates on companies vary between 60 per cent to 75 per cent (including surtax), the maximum tax rates on companies are 12.5 per cent in Hong Kong, 18.7 per cent in the United Arab Republic, 25 per cent in Korea, Laos, Thailand and Turkey, 40 per cent in the United Kingdom, 46 per cent in Canada, 50 per cent in France, New Zealand, Pakistan and Kuwait and 57.64 per cent in Austria.We may also emphasize here that the Indian corporation tax is progressive and this progressivity exists because of the surtax which is charged on the "excessive" profits of the companies.[10]

The Government appears to have realised this fact and it was, perhaps, for this reason that the corporate sector was kept outside the tax net in the union budget for 1970-71. However, the Union Finance Minister in the budget for 1971-72 withdrew some of the concessions adversely affecting the corporate sector. In our opinion, the blanket withdrawal of development rebate on new plant and machinery installed after 31st May 1974 and the narrowing down of the list of priority industries together with the reduction in their tax-free profits was a hasty measure as it will reduce resources available for industrial expansion and would give a serious set back to industrial growth of the country. The development rebate had helped substantially the industrial development of the country and it took care, at least partially, of appreciation in the cost of plant and machinery for the purpose of replacement, rehabilitation and modernisation. In view of

8. It was stated in a Seminar on international investment which was organised by the Indian National Committee of the International Chamber of Commerce and the Indian Investment Centre that a gross return of 30 per cent was necessary to have a 10 per cent net return in India whereas for an equal net return in the U.S., the U.K., France and West Germany a gross return of only 19.1 per cent, 16.2 per cent and 11.3 per cent respectively was necessary.

9. N.A. Palkhivala, *The Highest Taxed Nation*, Manaktalas, Bombay, 1965, pp. 34-37.

10. There are many countries like Belgium, Denmark, France, Germany, Greece, Norway, Sweden and Spain which levy only a flat rate tax on corporate profits. These countries appear to be better-off in so far as their corporation tax is neutral between vertical or horizontal integration (or disintegration) of companies.

the progress already achieved in the industrial sphere, we think that, instead of giving development rebate to all industries, this facility should be given on a selective basis to industries that are essential for economic growth or help to increase exports or encourage import substitution. The Planning Commission should conduct research in this direction on a regular basis and advise the Government from time to time. However, we may emphasise here that it is in the broader national interest that the structure of corporate taxation should be geared to accelerate capital formation and industrialization of the country.

One of the most serious *lacunae* of the Indian fiscal system is that *ad hoc* changes are made in the tax structure almost every year and a number of these changes have been made with remarkable rapidity. The annual Finance Act which incorporates the various changes in the existing tax structure usually runs into seventy or eighty pages, and the knowledge of tax laws becomes obsolete with remarkable rapidity. It is unfortunate that tax rates are changed very frequently and every year the Finance Minister considers it almost necessary to make some changes in the tax structure. New taxes are imposed and they are abolished or replaced at short intervals. For instance, the budget proposals for 1963-64 included a compulsory scheme (also known as the Compulsory Deposit Scheme) but it was abandoned in 1964-65 when it was substituted by the Annuity Deposit Scheme. The Finance Act 1968 abolished the Annuity Deposit Scheme also. The expenditure tax was imposed from 1957-58 but was abolished with effect from April 1, 1962 and was revived again from the assessment year 1964-65. The expenditure tax Act 1957 was, however, abolished with effect from April 1, 1966. The same fact is true regarding the State taxation. The State Governments have also hastily imposed and abolished the taxes. For instance, the Government of Uttar Pradesh introduced the profession tax from April 1, 1966 but abolished it with effect from April 1, 1971. These instances show the hasty decisions of the Union and State Governments regarding tax matters. Mr. Boothalingam rightly observed that, "More often than not new taxes or other types of fiscal changes are introduced to subserve the needs of the moment and are grafted on to the existing body without enough regard for compatibility or consistency."[11] We may emphasise here that instability in the tax rates and frequent changes in tax structure create uncertainty in the minds of tax payers, savers and investors. It causes undesirable fluctuations in levels of income and unemployment. We strongly suggest that tax structure and tax rates should be kept stable (at least for a period of five years) after ensuring revenue elasticity so that the tax revenue increases automatically with the generation of additional income. A stable tax structure is also necessary to encourage increase in saving and investment in a developing economy and to ensure wise planning of private investment.

The structure of federal finance in India has encouraged the growth of new inequities in the Indian fiscal system. The Government has found it easy to increase the tax burden on direct tax payers who are a political minority. It may be emphasised here that marginal tax rates in our country are almost the highest in the world and are reached at relatively lower levels of income. The present marginal rate of income tax on slabs exceeding Rs. 2 lakhs is as high as

11. *Final Report on Rationalisation And Simplification of The Tax Structure*, Government of India Press, New Delhi, 1968, p. 2.

97.75 per cent (including a 15 per cent Union surcharge on basic rate of income tax). Against this the maximum marginal rate of personal income tax is only 45 per cent in France (on earned income), 53 per cent in Germany, 65 per cent in Sweden, and 70 per cent in the U.S.A. and Pakistan.[12] It may be emphasised here that the Government does not have the administrative competence to enforce these high rates (except on the honest tax payers) and they are tolerated through the possibility of a large tax evasion. Such high rates of taxation have not only encouraged tax evasion but have introduced inequity in the burden of taxation between honest and dishonest tax payers. These high rates of taxation have tended to narrow the gap between honest tax payers and less well-to-do section of the society but have widened the gap between dishonest tax payers and less well-to-do section of the society. These high rates have also diverted funds from productive investment to conspicuous consumption and have encouraged black-marketing, corruption and bribery.

The high rates of taxation have disincentive effects too on the will to save and invest, and create a psychological barrier to greater effort and enterprise. It is, therefore, felt strongly that tax rates should be reduced. The Committee[13] headed by Mr. K.N. Wanchoo has emphasised that the maximum marginal rate of income tax, including surcharge, should be brought down from its present level of 97.75 per cent to 75 per cent. The Committee has favoured some reduction in tax rates at the middle and lower levels also. As it will entail a loss of revenue, the Government may not accept this recommendation of the Committee. We, therefore, suggest that there should be a rebate in the high marginal rates of direct taxes provided the entire amount or a very substantial portion of it is left to the Government in the form of long term or irredeemable interest bearing securities. These should be non-transferable except with the permission of the Government and for special purposes. Another solution to the problem could be to have a statutory ceiling on the tax liabilities of the individual tax payer as is done, for instance, in Denmark, Norway and Sweden where the individual's tax liability is limited to 80 per cent of the assessable income.[14] However, for India this limit may have to be fixed keeping in view the development needs and socio-economic objectives of our fiscal policy.

A striking and notable feature of the Indian fiscal system is the rapid increase in expenditure of both the Union and State Governments on revenue account and capital account. The expenditure of the Union Government on revenue account increased from Rs.347 crores in 1950–51 to Rs.3,527 crores in 1971-72 (Budget). During the same period the expenditure of the State Governments increased from Rs.385 crores to Rs. 3,729 crores. Thus, during the last twenty-one years, the expenditure of the Union Government increased by 916 per cent and that of the State Governments by 869 per cent. The expenditure of Union and State Governments has increased on account of a number of factors but some of the important factors are increase in population, rising prices and demonstration effect of the outside world.

Among the items of expenditure of the Government of India, expenditure on defence

12. Cf. N.A. Palkhivala, "Consequences of the Budget", in *The Times of India*, March 19, 1968.
13. The Committee submitted its Report to Indian Parliament on March 20, 1972.
14. See, *Taxation in Western Europe: A Guide for Industrialists*, Federation of British Industries, London, 1963.

is the most important and at present it constitutes slightly more than 30 per cent of the total. Our relations with China and Pakistan have not been cordial and the continued threats of war have forced us to incur a large amount on defence to maintain the integrity of our motherland. The expenditure on debt services has also risen rapidly. The total expenditure of the Government of India and of the States on debt services amounted to Rs.44 crores in 1950-51 but stood at Rs.822 crores in 1971-72 (Budget). The increasing expenditure on debt services indicates the increasing reliance on loan finance to meet the plan expenditure. Part of the increase in expenditure on debt services is due to a change in the accounting technique. Prior to 1962-63 recoveries of interest on loans and advances by the Government and interest charges on capital advanced to commercial departments were adjusted as reduction of expenditure but since 1962-63 receipts of interest on capital advanced to commercial departments as also recoveries of interest on loans and advances is credited to the revenue head "Interest".

Expenditure on social and development services constitutes the bulk of States' expenditure on revenue account. It increased from Rs.182 crores in 1950-51 to Rs.2,088 crores in 1971-72 (Budget) or by 1,047 per cent. During the same period the social and development expenditure of the Union Government increased from Rs.40 crores to 493 crores or by 1,132 per cent. The increasing expenditure on social and development services by the State indicates that the modern Governments aim at building up a strong infrastructure for the economy and provide various amenities to their citizens on an expanding scale. We may also emphasise here that increasing social and development expenditure is a healthy sign of economic development. During the course of economic development the proportion of social and development expenditure to the total expenditure has a tendency to rise. In 1950-51, the States' expenditure on social and development services formed 48 per cent of their total expenditure. This percentage increased to 56 in 1971-72 (Budget). This is a healthy development in Indian federal finance.

The total expenditure of the Union and State Governments on capital account has also risen rapidly. It increased from Rs.1,147 crores during the First Plan to Rs.3,196 crores during the Second Plan and further to Rs.5,513 crores during the Third Plan. It stood at Rs.1,553 crores in 1970-71 (Revised) and Rs.1,531 crores in 1971-72 (Budget). Most of this expenditure is used for productive purposes and enables the State to build up various social and economic overheads in the economy. However, the Government has not been able to raise adequate funds to finance its increasing capital expenditure. Throughout the period since 1948-49—except 1958-59 when it has a small deficit—the Government of India has used its revenue surpluses to finance capital expenditure. The total revenue surplus till the end of March 1972 amounted to over Rs.2,500 crores. Throughout this period additional taxation has been imposed to meet deficit on capital account. This is a relatively new technique that has been used to finance capital expenditure through surpluses on revenue account. The advantage of this technique is that it has helped to fight inflation by curtailing private expenditure and has also reduced to a certain extent the dependence on deficit financing. Above all, it has enabled the Government to transfer funds from the private sector to the public sector.

Owing to stringency of resources, the Union and State Governments have heavily depended on loan finance, mainly for plan

purposes. At the end of 1971-72, the outstanding public debt of the Government of India was expected to rise to Rs.15,053 crores and that of the State Governments to Rs.8,758 crores, including Rs.6,510 crores from the Central Government. For a long time, public borrowing in India, was used mainly to finance capital expenditure or the projects which were self-remunerative. But in the post-independence era Government has financed capital expenditure even on projects that are not self-remunerative. We may emphasise here that much of the success of the Government's borrowing programme has been due to the expansion of the captive market which consists of the Life Insurance Corporation of India, Provident Funds, Industrial Finance Corporation and State Financial Corporations and Reserve Bank of India. These institutions hold among themselves a major portion of the marketable debts, and the real purpose is not served as the object of mobilising public savings is not achieved. Apart from this, the very constituents of the captive market are the source of finance to the private sector. These are not the healthy developments and it is necessary that the Government's public debt policy should be oriented to mobilise surplus purchasing power from the hands of the public so that inflationary pressure on the economy could be reduced. This would also limit pressure for funds on the captive market.

The Government's public debt policy has failed in the sense that it has not been able to bridge up the gap between total rupee incomings and outgoings. This gap has been bridged by a new technique whereby the Government of India sells the treasury bills to the Reserve Bank of India and gets the necessary rupee finance. This method of acquiring rupee finance had favourable effects during the First Plan but in the subsequent years its evil effects were realised and the Government appears to have understood that deficit financing[15] is not an effective means of raising funds after a certain limit. Our past experience shows that if deficit financing is resorted in the absence of the availability of adequate real resources it generates inflationary pressures in the economy. Accordingly it is necessary that in future we must reduce our dependence on deficit financing.

Rising prices have posed a serious challenge before the Indian economy. Prices rose by 35 per cent during the Second Plan and on the top of it they further rose by 36 per cent during the Third Plan. Prices have continued to rise and the index number of wholesale prices (Base: 1961-62 = 100) which stood at 173.5 at the end of June 1969 rose to 180.5 at the end of June 1970 and to 186.1 at the end of June 1971. Rising prices defeat the very objectives of economic planning and distort the set priorities of the Plan. Rising prices also encourage wasteful expenditure as they depreciate the real value of savings. In fact people may dis-save. Besides, the pattern of income distribution is also disturbed. The business community makes huge profits at the cost of salaried and fixed-income groups. Fiscal competence is required to solve these problems.

It is necessary to emphasise here that the strength of a federation and its fiscal system lies in its weakest links. It is unfortunate that in the development process some States have remained backward and their relative position has worsened. For instance, the per

15. Since the commencement of planning in India from April 1, 1951 til March 31, 1972, the total amount of deficit financing has been around Rs. 4,000 crores.

capita income of Uttar Pradesh in 1950-51 —the last year of the pre-Plan period—was 5 per cent above the all-India average but it was 20 per cent lower than that in 1960-61. This is a potential danger to the integrity and strength of our federation. We must, therefore, base our development plans in a manner that each State is at least assured of a national minimum of various social and development services. Our approach should not be to develop richer States at the cost of backward States but we must direct our efforts to raise the level of poorer States to the standards of richer States..

Finally, we may emphasise that there is a serious gap in the Indian fiscal system in so far as the various fiscal instruments have not integrated themselves with price policy, incomes policy and other policies of the Government. The result has been that the favourable effects of fiscal policy have been nullified by the haphazard working of some other policies. Though the fiscal policy has tried to achieve social justice in the society, the rapidly rising prices have unfavourably altered the distribution of wealth and income. It is, therefore, necessary that fiscal policy should be integrated with other policies so that the various socio-economic objectives may be achieved effectively.

DOCUMENTS

FRANCE

La publicité de l'impôt sur le revenu[1]

La publicité des impositions a été décidée par le législateur, lors de l'adoption de la loi de finances pour 1972. L'article 4 de ce texte fait obligation au Gouvernement de prendre, avant le 1er juillet 1972, le décret d'application prévu par l'article 243 du Code général des Impôts, instituant la publication de certains éléments relatifs aux conditions d'imposition des contribuables. Cette mesure répond à la volonté des Pouvoirs publics d'améliorer la connaissance qu'ont les Français de leur système fiscal.

Tel est l'objet du décret n. 72-548 du 30 juin 1972 qui vient d'être publié au *Journal Officiel* du 2 juillet 1972 (page 6.807).

La présente note «Mesures Nouvelles» rappelle les grandes lignes du dispositif prévu par la loi et commente de façon sommaire les mesures d'application prises par le décret.

I. LA PUBLICITÉ PRÉVUE PAR LA LOI

1) *Jusqu'en 1959* le montant de l'impôt sur le revenu acquitté par chaque contribuable était tenu secret; il en allait autrement des impôts locaux (contribution mobilière, patente, contributions foncières), dont les bases d'imposition peuvent être consultées dans les mairies.

Cette situation n'a pas paru compatible avec le principe même d'un impôt général sur le revenu acquitté par un très grand nombre de Français. L'Ordonnance du 4 février 1959 (article 243 du Code général des Impôts) a donc retenu le principe du dépôt dans les mairies de la liste des contribuables de la commune assujettis à l'impôt sur le revenu et à l'impôt sur les sociétés avec l'indication, selon les modalités à fixer par décret, du *nombre de parts* retenu pour la détermination du quotient familial et du *montant de l'impôt* mis à la charge de chaque contribuable.

Par ailleurs, le législateur a entendu réprimer sévèrement tout usage abusif des renseignements ainsi publiés. Aussi a-t-il interdit la divulgation totale ou partielle des listes déposées dans les Mairies ainsi que de toute indication se rapportant à ces listes et visant des personnes nommément désignées; la méconnaissance de ces règles est punie de peines d'amende ou d'emprisonnement.

2) *la loi de finances pour 1972* a modifié ces dispositions sur trois points:

a) *Le dépôt de la liste* des contribuables sera effectué dans les directions départementales des services fiscaux et non plus dans les mairies. Les contribuables justifiant qu'ils relèvent, pour l'impôt sur le revenu, de la direction départementale concernée pourront demander à consulter cette liste au siège de ce service.

b) *Les sanctions* réprimant la divulgation des renseignements ainsi publiés ont été aggravées. Les contrevenants s'exposent:

— sur le plan pénal, à une amende de 3.600 F à 18.000 F et à une peine d'emprisonnement de un à cinq ans, ou à l'une de ces deux peines;

— sur le plan fiscal, à une amende égale au montant des impôts divulgués.

c) *La publicité* entrera en application pour les revenus de l'année 1972, le décret nécessaire à la mise en oeuvre de ces mesures devant être pris avant le 1er juillet de cette année.

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1. Communiqué du Ministère de l'Economie et des Finances de juillet 1972.

II. LES MODALITÉS D'APPLICATION DU NOUVEAU SYSTÈME

Le décret fixe les modalités pratiques d'établissement et de communication des listes de contribuables.

1. Les renseignements soumis a la publicité.

Des listes de contribuables assujettis à *l'impôt sur le revenu* seront établies chaque année et comporteront les indications suivantes:

— les noms, prénoms et adresse des contribuables,

— le nombre de parts correspondant à leurs charges de famille,

— le montant des droits dus en principal (déterminés par application au revenu imposable des barèmes en vigueur), compte tenu des impositions supplémentaires ou afférentes aux plus-values de cession taxables à un taux proportionnel et des dégrèvements contentieux éventuels.

2. Les impositions concernées.

Cette liste comprendra les impositions mises en recouvrement jusqu'au *30 avril de l'année suivant celle de la production des déclarations de revenus.* Chaque liste sera établie pour les impôts afférents aux revenus d'une même année.

Ainsi, la première liste, qui sera établie au début de l'année 1974, concernera les impôts établis sur les revenus de l'année 1972 et mis en recouvrement au plus tard le 30 avril 1974.

3. La communication des listes de contribuables.

Le décret prévoit enfin que ces listes pourront être consultées au siège de la Direction des services fiscaux par les contribuables justifiant qu'ils relèvent – en matière d'impôt sur le revenu – de la compétence de ce service.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

BELGIQUE

Projet de loi établissant un décime additionnel à l'impôt des sociétés et à l'impôt des non-résidents: Exposé des Motifs[1]

Le présent projet de loi, que le Gouvernement a annoncé dans la déclaration faite aux Chambres législatives le 25 janvier 1972, tend à établir au profit exclusif de l'Etat, à partir de l'exercice d'imposition 1973 (revenus de l'année 1972 ou de l'exercice social 1972-1973), un décime additionnel à l'impôt des sociétés et à l'impôt des non-résidents dû par les sociétés et collectivités étrangères en raison de l'ensemble de leurs revenus d'origine belge.

Ce nouveau décime additionnel s'ajoutera à celui qui a été instauré par l'article 2, § 1er, de la loi du 31 mars 1967 et qui a été prorogé en dernier lieu pour l'exercice d'imposition 1973 par l'article 11, § 2, de la loi de finances pour l'année budgétaire 1972 (loi du 21 décembre 1971).

Les deux décimes additionnels seront calculés sur les mêmes bases et suivant les mêmes modalités, sauf que le nouveau décime, dont l'instauration vous est proposée, sera appliqué quel que soit le montant du revenu imposable, alors que le décime actuellement en vigueur n'est dû que dans l'éventualité ou le montant total du revenu imposable excède 3 millions.

Compte tenu des 6 centimes additionnels perçus au profit d'un fonds spécial géré par le Ministère de l'Intérieur, mais compte non tenu des majorations éventuelles pour absence ou insuffisance de versement anticipé, les sociétés seront soumises à l'impôt, en raison de leurs bénéfices de l'année 1972 ou de l'exercice social 1972-1973, aux taux globaux indiqués ci-après:

1. *Sociétés belges soumises à l'impôt des sociétés suivant le régime ordinaire de taxation.*

a) Petites et moyennes entreprises (revenu imposable ne dépassant pas 3 millions):
— impôt afférent aux bénéfices non distribués (bénéfices réservés plus dépenses non admises):
– bénéfices non distribués ne dépassant pas 1 million[2]: 29 p.c. (25 p.c. + 2,5 p.c. + 1,5 p.c.),
– bénéfices non distribués compris entre 1 million et 1.250.000 francs: 29 p.c. à 34,8 p.c.,
– bénéfices non distribués dépassant 1.250.000 francs: 34,8 p.c. (30 p.c. + 3 p.c. + 1,8 p.c.);
— impôt afférent aux bénéfices distribués (revenus de capitaux investis ou tantièmes plus dividendes): 34,8 p.c. (30 p.c. + 3 p.c. + 1,8 p.c.).

b) Entreprises relativement importantes (revenu imposable dépassant 3 millions — bénéfices réservés ne dépassant pas 5 millions)[2]:
— ensemble du revenu imposable: 37,8 p.c. (30 p.c. + 3 p.c. + 3 p.c. + 1,8 p.c.)[3].

c) Grosses entreprises (bénéfices réservés dépassant 5 millions)[2]:
— première tranche de 5 millions de bénéfices réservés: 37,8 p.c. (30 p.c. + 3 p.c. + 3 p.c. + 1,8 p.c.);
— tranche de bénéfices réservés dépassant 5 millions: 43,8 p.c. (35 p.c. + 3,5 p.c. + 3,5 p.c. + 1,8 p.c.);
— dépenses non admises et bénéfices distribués: 37,8 p.c. (30 p.c. + 3 p.c. + 3 p.c. + 1,8 p.c.).

2. *Sociétés et collectivités étrangères soumises à l'impôt des non-résidents sur l'ensemble de leurs revenus d'origine belge.*
— revenu imposable ne dépassant pas 3 millions: taux uniforme de 40,6 p.c. (35 p.c. + 3,5 p.c. + 2,1 p.c.);

— revenu imposable dépassant 3 millions[2]: taux uniforme de 44,1 p.c. (35 p.c. + 3,5 p.c. + 3,5 p.c. + 2,1 p.c.).

Ainsi qu'il l'a déclaré, le Gouvernement place l'instauration d'un nouveau décime additionnel à l'impôt des sociétés dans la perspective de l'harmonisation fiscale européenne, dont un des objectifs essentiels est d'assurer ce que l'on appelle dans les milieux européens la neutralité concurrentielle des impôts frappant les bénéfices des entreprises.

Pour atteindre cet objectif, il ne suffit évidemment pas de rapprocher dans une mesure suffisante les taux des impôts sur les sociétés applicables dans les Etats membres des Communautés européennes. En effet, l'application de taux nominaux uniformes peut conduire à des charges fiscales sensiblement différentes aussi longtemps que la structure et les principaux éléments de l'assiette des impôts sur les sociétés (régime des amortissements fiscalement admissibles; règles concernant l'évaluation des éléments de l'actif et du passif et l'imposition des plus-values; régime applicable à certaines réserves, provisions ou prévisions; compensation des pertes) ne sont pas harmonisés dans une mesure suffisante.

A cet égard, il y a lieu de noter que l'assiette de l'impôt des sociétés ne paraît pas plus étendue en Belgique que chez nos partenaires européens et qu'au contraire, notre législation fiscale est, dans de nombreux cas, comparativement très souple en matière de déduction ou d'immunité de certains éléments des bénéfices. C'est ainsi notamment que le système en vigueur en matière d'application du «principe non bis in idem» (déduction des revenus déjà taxés à un stade antérieur) est de loin plus libéral ici que chez nos partenaires, de même d'ailleurs que notre système de crédit d'impôt, par lequel nous atténuons la double imposition économique des dividendes (imposition au niveau de la société distributrice et au niveau du bénéficiaire des dividendes).

D'autre part, du point de vue technique, les modalités de détermination du revenu imposable et de calcul de l'impôt sont devenus tellement compliquées qu'il est presque impossible, dans l'état actuel des choses, d'avoir recours aux procédés modernes d'automatisation des travaux de taxation. Or, seul l'emploi de ces procédés permettrait aux services de taxation d'affecter une part plus importante de leur temps et de leurs efforts à la vérification approfondie des déclarations aux impôts sur les revenus et des pièces justificatives produites à l'appui de ces déclarations, c'est-à-dire à la répression de la fraude et de l'évasion fiscales.

Le Gouvernement estime donc qu'il convient non seulement de rapprocher les taux nominaux de l'impôt des sociétés de ceux qui sont en vigueur dans les autres pays de la Communauté économique européenne, mais aussi d'améliorer, dans toute la mesure du possible, les règles qui régissent l'assiette et le calcul de cet impôt, de manière telle qu'il en résulte à la fois une meilleure harmonisation de notre législation avec celle de nos partenaires européens et une sérieuse simplification de cette législation.

Dans cet esprit, le présent projet de loi constitue ce que l'on peut appeler un projet intérimaire qui sera suivi, cette année encore, d'un projet de réforme plus profonde de l'impôt des sociétés.

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1. Sénat de Belgique, session de 1971-1972, No. 278, 29 mars 1972.
2. Pour la simplification de l'exposé, on néglige le fait que la limite de 1 million (bénéfices non distribués) ou de 5 millions (bénéfices réservés) s'apprécie en ajoutant au montant imposable de ces éléments du revenu, le montant des «revenus définitivement taxés» qui en ont été déduits.
3. Sous réserve de l'application de la «règle du palier» faisant l'objet de l'article 1er de l'arrêté royal du 23 janvier 1969.

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ARTICLES

H.W.T. PEPPER

TAXATION OF LAND AND REAL PROPERTY IN DEVELOPING COUNTRIES

Some Points of Practice and Policy

CONTENTS

INTRODUCTION

Most governments try to obtain their tax revenues from a number of different sources, since to rely on merely one or two taxes would mean that these had to be charged at very high and oppressive rates.

In many countries it is more or less traditional that the central government draws its revenue from direct taxes such as those leviable on income and wealth, including the transmission of wealth upon the death of the owner, and indirect taxes such as Customs and Excise duties, and often some form of sales or commodity taxes. The taxation of real property either upon the owner, the occupier, or upon both, is, equally traditionally, generally reserved for local governments.

In general, the central government is happy to have some of the necessity for levying taxes, never a very popular activity for a politician, taken off its shoulders.

There is another aspect; the devolution to local authorities of responsibility for collecting taxes and spending the proceeds on local needs creates a useful training ground for responsible democracy. The elected local leaders of the people have to balance what ought to be done to improve amenities, and provide services for their constituents, with

what taxes may reasonably be collected from them without undue loss of political popularity. A budding national statesman may thus obtain training in the elements of politics at the local level which will stand him in good stead should he later "arrive" on the national scene.

Curiously enough, although it is in respect of local taxation that taxpayers have the greater opportunities to exercise some influence by their votes, it is often found that local taxes are much more unpopular than those imposed nationally by a central governmentl even though, as is often the case, the actual amount of tax raised locally is a great deal smaller than the taxes raised by the central government. The political sensitivity engendered by property taxation has created various problems in many countries, not least those which are the most industrially advanced.

EQUITY

A basic requirement of any tax is that it should be equitable and it is this factor which is sometimes the most difficult to achieve, except in a rough and ready way, in the taxes upon real property.

It is obvious that a system of taxation based on the capital value or annual (or rental) value of property owned or occupied is not necessarily going to be charged upon capacity to pay, as measured in terms of the income or wealth of the person assessed. In the case where property is occupied by a person other than the owner, it does not matter very much whether the rates or property tax are charged upon the owner or the occupier; the tax burden will inevitably be borne by the occupier since the owner will endeavour to pitch the rent payable at a level which will provide sufficient revenue to cover the tax chargeable.

There are several different "philosophies" as regards the ethos of a tax on land and real property. Probably the most satisfactory way of imposing the tax is to deem it to be a contribution, towards the cost of certain local services, which it is logical to levy roughly proportionately to the value of property occupied.

Broadly speaking, there are two levels involved. Where the middle and higher income groups tend to live in houses the value of which accords with their respective income levels, a flat rate tax will in practice also accord with the relative taxable capacities. It is indeed reasonable that the charges made should be higher on the wealthier because they obviously have greater taxable capacity. Although such taxpayers may make no greater personal demands on local services as individuals than those lower down the income scale, it is evident that those with more valuable tangible possessions do obtain a greater proportionate benefit from the local provision of "security" services, such as the provision of a police force (to keep vandalism, theft and burglary within bounds), fire fighting, flood control and other services which help to protect the physical integrity of property.

As far as persons in the lower income groups are concerned, the adjustment of tax burden to taxable capacity is roughly achieved in that the same tax is charged on equal property although the actual benefits from local services, particularly those connected with social welfare and public health, are likely to be of greater benefit to those in greater need, because of senility, ill-health, or numerous progeny. For example, for a married couple with no children occupying a similar residence to another couple with several children, the tax (payable on property value in each case) will be the same, although the larger family may obtain much greater benefit from the services

provided for the community by the local government.

Sometimes a different ethos is adopted in levying property taxation, e.g., where a graduated system is adopted charging the owners of property at higher average rates of tax the greater the total value of the property they own. There may, however, be a certain lack of equity if real property is selected for this type of taxation and there is no corresponding tax on other forms of wealth (e.g., stocks and shares). Such a discrimination would become more marked as a country developed, so that the wealth other than land and real property became a larger proportion of the total national wealth. It is also sometimes thought that the application of the graduation principle can be overdone if it pervades all aspects of taxation and that the application of the principle is best restricted to direct taxes on total income and total wealth.

INDIGENT TAXPAYERS

Although it is a reasonable principle that persons living in the community which jointly provides them with various services should pay their share of the cost of providing those services, it is nevertheless a fact of life that some individuals are too poor to pay their share. This is readily taken care of in income tax laws by incorporating a basic exemption so that those whose incomes are below the exemption limit pay no tax at all. Where, however, taxation is charged upon the occupation of property it is obvious that everyone must occupy some property or other and it is not usually appropriate to exempt property below a certain level of value where the principle of taxation is that the cost of services should be shared *pro rata*. In practice, persons do not always occupy property which is precisely commensurate with their means and exemptions of certain properties could cause anomalies (such as the eccentric millionaire who insists on living in a loghouse or trailer camp) unless the exemption limit is pitched so low as to make little appreciable impact. At the present time, however, when the possibilities of negative income taxes are receiving increasing attention in various countries it is also becoming more common to find attention being given to devising schemes of abating property tax for those with lower incomes. The subject is discussed in more detail under the heading "Abatements and Exemptions of Property Taxation" below.

EXPORT TAXES AND LAND TAXATION

In a number of countries where tropical produce (such as rubber, tea, coffee, cocoa, copra, oil-palm, sisal) is grown mainly for export to industrialised countries, taxes, are levied on the exported products. Where most of a country's arable land is devoted to cash crops for export, an export duty or tax acts as a kind of crude tax on land, where land tax is regarded as a form of tax on wealth rather than a *pro rata* sharing out of local expenditure.

Export taxes can only be collected as long as the price of the commodity on the world market is sufficient to give an adequate return to the grower after tax. Accordingly it is usually best for export taxation to be graded according to price scales so that below a certain "subsistence" price level only a fairly nominal percentage of tax is imposed.

Where export taxes exist, a case for their abolition is often made out by visiting economists, and the larger landowners (not so much by small-holders who are often unaware of the precise incidence of export taxes) the former advocating replacement by land taxation.

Export taxation may often be at least partly justified by the fact that the country concern-

ed has natural advantages of climate and soil for growing certain crops, producing a kind of economic (Ricardian) rent which the government may tax without causing hardship. The land on which such crops grow may originally have been acquired free of charge by the occupiers, either by "settlement" or by deliberate allocation by the government to those occupying and cultivating it. Where the land has been purchased by the present occupier, the price paid will inevitably reflect the existence of the export tax. To abolish the tax, therefore, would give an unexpected bonus to the owner.

Although a relatively crude levy, export duties are based on exported output so that the more productive land is taxed more heavily than comparatively barren lands. Where a crop is lost or decimated by cyclone, pests, fire or flood, the tax is automatically cancelled or reduced without the need for an appeal by the taxpayer. A reduction of crop during a period of replanting a plantation with higher-yielding material, and in the period before the new material has reached maturity, will similarly be reflected in a lower tax charge.

Export taxes are extremely cheap and easy to collect, in a single operation, when the product is exported from ports which are already "controlled" for the purpose of collecting customs and import duties and charge. An equivalent land tax which reflected merely the refinements mentioned above in connection with export taxes would be much more difficult to assess and collect so that countries with effective export taxes often have no general land taxation, or apply such taxation only to areas where export duties do not apply.

In the long run it may be inevitable that export taxes may be replaced by land and income taxation but in small, tropical, countries with limited administrative resources it will obviously be wise to let the process be spread over a very lengthy time span.

ECONOMIC ORIENTATION OF TAX POLICY

On the assumption that rates or property taxes are a contribution *pro rata* to the cost of providing various services, payable by those who enjoy the services, there is little scope for superimposing any form of economic orientation upon the tax structure.

: *Graduation of Tax Rates*

Where a tax on land or other real property is regarded merely as a tax (even as a discriminatory tax) on this type of wealth, the graduation of such tax is hard to justify if there exists also in the same country graduated taxes on the income from the property, including income tax on its product and wealth tax and death duties on the total capital value. Although there may be some economies of scale there is not likely to be a great deal of difference in the profit per unit of area on equally fertile agricultural land producing, say, wheat, or pasture-fed cattle, if the holding is 10,000 acres than if it is 100,000 or 1,000,000 acres.

Nevertheless, some countries have graduated their taxes on land at anything from ½% to 3% or 5%, sometimes with the ostensible object of encouraging the breaking up of the larger holdings, and sometimes merely on the grounds that greater wealth has greater taxable capacity. As mentioned above, however, the more appropriate way of levying higher taxes on greater aggregations of wealth is by way of graduated taxes on total income and/or wealth, plus transmission taxes on death. One usually finds that where graduated taxes on land and other real estate are nevertheless persisted in,

the actual tax burden is considerably mitigated by the use of out-of-date values, such that the taxable value may be only a small fraction of real value. The larger land-holdings are commonly valued in practice at less *per unit of area* than smaller holdings.

Generally speaking, it is more equitable to have a more accurate tax base with up-to-date values and a comparatively modest rate of tax than to have hopelessly out of date values and try to obtain a reasonable yield by applying rather high rates of tax. This subject will be referred to below under the heading of "Valuation".

: *Size of Land Holdings*

There have been examples of land taxation which have been biased against larger holdings, sometimes on the basis that it must be wrong in principle for a few individuals to hold disproportionately large quantities of land while others have none. The history of taxation appears to indicate that in general taxes are not very effective as a means of securing economic or social goals and that it is usually better for taxation to be fairly neutral, other measures being employed to achieve economic and social ends.

If there is to be an attempt at economic orientation such directive efforts should be planned in accord with economic facts. For example, if it is more productive (e.g., because of economies of scale in the use of equipment, irrigation schemes, etc.) that land should be worked in large units rather than small it will hardly be appropriate to impose graduated tax up to levels which would force the break-up of large holdings. Sometimes the agricultural population prove not to be particularly adept at becoming small farmers or entrepreneurs and the fact has to be faced that until a lengthy period of education has been carried out, the economy will benefit more from farms or plantations being managed on a large scale with corresponding economies of scale. Moreover, where a tax system does contain a graduation of this nature there is likely to be a good deal of avoiding action taken, e.g., by putting land in separate parcels in the names of various members of a family rather than have it wholly in the name of the *pater familias*.

: *"Fragmentation" of Holdings*

Australia is an example of a country where property tax is graduated, at least in some of the states, partly with the object of encouraging reductions in the size of holdings. Although the result of reducing the size of average holdings has to some extent been achieved, apparently there has not been a resulting gain in productivity. In a number of countries attemps have been made by the state to acquire land, divide it into small holdings, and settle landless persons on the land but the results have sometimes been rather poor. In some countries, e.g., Malaysia and Ceylon, speculators have taken advantage of the "land hunger" among the lower income groups by buying up plantations from their owners, sub-dividing the land into small areas and selling these off at a handsome total profit. Unfortunately, the results have not usually been a rise in productivity.

The plantation will formerly have been running as a unit with various economies of scale, the crops being gathered under centralised direction, conveyed by centralised transport and treated in centralised plants. Moreover, the plantation owners would ordinarily provide housing and some medical and education services for the workers and their children and such centrallyprovided services are normally abandoned after "fragmentation" of the estate. Workers who have bought their own holdings have thus

often been considerably worse off after the subdivision has taken place. Accordingly, the governments both in Ceylon and Malaysia have taken action to curtail or prohibit the fragmentation of estates in this way.

On the other hand there have, of course, been examples of "absentee" landlords possessing large tracts of land, farmed by tenant farmers, where the landlords have contributed nothing to the development of the lands or the provision of centralised services, and productivity has improved when the land has been acquired by the government and made available to the existing occupiers on terms such that they can become the proprietors after some years of paying "rents" which include an element of capital purchase.

In some countries large plantation units exist alongside "associated" small-holdings which form efficient groupings which incorporate some of the best features of both large-scale and small-scale agriculture. In several countries oil-palm production is organised in such a way that the owners of the oil factory also run a fairly large area of oil-palms (producing up to one-half of the raw material required). The remainder of the factory's requirements are produced by small-holders who may receive technical help with their crop from the factory-owners. In Malaysia a somewhat similar system operates in connection with pine-apple, the canning factories producing part of their own requirements and drawing the rest from small-holders in the vicinity, while Fiji's sugar crop is entirely grown by small-holders who send their output to sugar factories which were formerly run by a commercial company (now by the government) which also supplied agricultural advisory services, a system which appeared to produce a reasonably efficient industry.

: *Taxation of "Idle Lands"*

The concept of taxing lands, usually in remoter parts of the country, which are not being used or are under-utilised by the owners, is a constantly recurring theme although the scope for such taxation is usually a great deal less than sometimes envisaged. One of the obstacles to the full exploitation of agricultural potential may be the lack of access to markets and to metalled roads or railways for transportation of the produce. There may be a difficulty of getting labourers to travel to remote parts of the country, or irrigation may be lacking. Where it is not an economic proposition to bring land under cultivation, there is no point in trying to direct that the land should nevertheless be cultivated. Nor is a tax levy imposed despite the fact that there is no revenue from the land, likely to be effective. Cases have occurred where taxes have been levied on large tracts of land in wilderness country. The tax has not been paid and when the lands have been sold by auction for payment of taxes the amounts bid have been less than the taxes due. Since the new owner could not normally be saddled with the tax of the previous owner the tax due would be lost to the government and the new owner may be in no better position to pay tax than the previous one.

: *Urban Areas*

: *Vacant Sites*

There is a somewhat different principle involved in the case of urban land, particularly where sites are kept vacant in otherwise completely built-up areas and where the owner is merely hanging on to obtain a larger capital gain at some stage from a would-be developer. Where property taxation is not on a "site value" basis there have nevertheless been efforts by local authorities

to tax such sites. By declining to develop the owner is depriving the government of the revenue which would flow in from property tax if the site were properly developed, and to levy tax seems a reasonable remedy. A more unusual case has arisen in London's West End where, although there is a shortage of office space with consequent booming rents, several large buildings have been left unoccupied apparently in the sure knowledge that the annual increase in capital value will more than compensate for the loss in rental revenue.

Suggestions for dealing with the latter problem have ranged from levying taxes at rates higher than those applicable to occupied buildings, to using compulsory purchase powers for taking the buildings over and then letting these out to would-be tenants.

: *Unimproved Values*

An advantage of site value or unimproved value taxation is that the value of the land only is taxed so that the tax impact is the same whether the site is properly developed or not. Accordingly there is pressure upon the owner of the vacant land to develop it in order to generate rent revenue in order to pay the tax. (See also "Bases of Taxation of Land and Improvements" below). Of course it does not follow that no tax is payable where total values are taxed and there is no reason why empty sites in developed areas should not be taxed, whether capital or annual values are the basis for taxation. Where both the land and improvements are taxed, however, (the latter forming the larger part of the tax assessments) the tax payable on the land alone is usually much lower than under a system of taxing unimproved values. The theoretical possibility of taxing "national" buildings on empty sites on the ground that this would produce the revenue the taxing authority *ought* to be receiving from the site (and *would* be receiving but for the non-development) has been given consideration but presents certain practical difficulties and has not been adopted by taxing authorities.

: *Rural Areas*

: *Under-utilised Land*

In addition, some countries have problems where there are large areas of rural land owned by individual landlords where the land is not worked to its proper agricultural potential and it is felt that if the workers themselves owned pieces of the land there would be increases in productivity.

These circumstances have led to efforts being made by governments to give agricultural workers a bigger stake in the land and redistribution has sometimes been attempted through the medium of taxation. In general, however, it is better to use other methods than the somewhat clumsy instrument of a tax to achieve the desired ends.

In Eire a good deal of work over a lengthy period has been done by the Land Commission, usually through the Commission's acquiring land and then leasing it to small farmers on lease-purchase arrangements so that they can hope to acquire a title to it after a period of years of such payments.

The Commission also acquires land coming on to the market partly in order to re-allocate it to augment the area of farming land available to those with uneconomic small units. In Britain the Agricultural Department had powers, particularly during the second world war, to acquire land compulsorily, or to direct what use should be made of it, and the Department through local agricultural committees still has some power to direct the use to which land is put as well as to encourage the build-up of holdings into economic units.

Taiwan is another country which introduced

land reform after the second world war and Algeria has recently announced proposals to nationalise land belonging to absentee landlords to make it available to those now cultivating it.

In South Vietnam steps have recently been taken to make land available to those cultivating it, particularly where the landlord has absented himself during periods when parts of the country were overrun by invading forces. Provision has, however, been made for compensating the owners appropriately.

Provided the right kind of human material can be found among agricultural workers, i.e., in selecting some who have the potential to become successful farmers, it usually makes good economic sense to buy up lands from the existing landlords, particularly where such lands are under-utilised, so as to make them available for new farmers. Where compensation is made by way of an annuity or of instalment payments of capital plus interest, there is usually a clear benefit both to the State and the new farmers in a take-over at full valuation. Even if care is taken to value the holdings accurately at the time of take-over there is sure to be a loss of value through depreciation of currencies in subsequent years, so that the burden of paying off capital and interest becomes lighter as time goes on. For tax purposes, the part of an annual payment made by the tenant which relates to the financing cost of acquiring his agricultural holding will usually be deductible for income tax purposes.

: *Uneconomic Holdings*

A frequent cause of fragmentation of land into uneconomic holdings is the inheritance laws of a country which provide that the estate of a deceased person should be divided equally among his heirs. In such a country where the population is increasing it is clear that land-holdings will continue to be reduced in average size. Various measures have been tried to prevent this type of fragmentation. In some countries a system of primogeniture (dating back to feudal times) has ensured that the eldest son would inherit all the lands in the estates, the younger brothers having been effectively excluded and having to make their own way in the world.

Sometimes the inheritance laws have a religious background and the sharing out of land among heirs is compulsory whether there is a will or an intestacy. Even if the heirs agree that one of their number should, in fact, succeed to the whole of the land, allowing the others to be bought out, this may not be a satisfactory answer because the heir who takes on the land will have a perhaps impossible burden of debt and be unable to manage the land as an economic holding for lack of working capital. Measures taken to build up uneconomic holdings into larger estates have, as mentioned above, been taken in some countries, notably in Britain and Eire, where in addition older farmers whose holdings are sub-economic are encouraged to retire and give up their holdings in exchange for an annuity, which may be treated as earned income for tax purposes, the land then being re-allocated to other, younger, farmers whose holdings are of inadequate size.

: *Absentee Landlords, Crop-sharing, etc.*

The somewhat emotive issue of absentee landlordism has arisen in a number of countries in a variety of different circumstances. In some countries where land holdings tend to be large the term "absentee" may merely relate to the fact that the owners or managers have their offices in the city while the lands are in remote rural areas.

In other cases there is a connotation of oppression by the agents of absentee landlords, the landlords themselves perhaps even living in other countries and being generally accused of having no interest in the welfare of their tenants. A minor category of absentees is that of persons who buy a plot of land in a foreign country in which they intend to reside upon retirement.

It is generally accepted that the system of letting lands to a farmer by a landlord on the basis that the crop from the land is shared, the farmer perhaps keeping one-half of the crop and paying the other half over as rent, is an undesirable system. The main objection is that the farmer's incentive is blunted by the knowledge that the greater his efforts to produce large crops the greater will be the amount he has to pay to his landlord.

Of course if the "rent" is only a relatively small proportion of the product of the land and the landlord is active, e.g., in making improvements to drainage and irrigation of the land, the system of taking a share of the crop as rent, i.e., as a rent in kind, is not necessarily wholly bad, at least there is the advantage that in a poor season the rent is reduced proportionate to the output. Historically, of course, various religions of the world have sought to finance their good works by making levies (e.g., tithes, fitrah) based on the gross product of agricultural land.

EXISTING TAXES ON LAND

It is more or less axiomatic that where there is an existing tax on land, producing a material amount of revenue, even though it is full of imperfections, it is not desirable to abolish it and make a fresh start with some other form of taxation. Where such a tax has existed for a decade or more the prices of land and real property will have become adjusted to the existence of a tax and to abolish it would merely enrich existing holders of property which had formerly been subjected to the tax. In general, therefore, it is preferable when reforming land taxes to do so by evolutionary methods, possibly in several successive stages.

An exception to the general rule of the inadvisability of abolishing land taxes was the abolition by Britain of a land tax which had existed for several centuries. Abolition (in 1963) followed a lengthy period when redemption of the tax was at first voluntary and subsequently compulsory, but the tax was a very minor levy which had long since ceased to be a material factor in land values. The tax was no longer worth while collecting (less than £¼m. in a Budget of over £7,000m.) and was abolished more or less on *de minimus* grounds.

ABATEMENT AND EXEMPTIONS OF PROPERTY TAXATION

As with most forms of taxation, administration of property taxation is facilitated, and a worthwhile yield ensured, only if exemptions and abatements can be kept to an absolute minimum.

Because of the inherent nature of property taxation, there can never be anything approaching absolute equity of incidence. The basic proposition that taxable capacity is roughly proportionate to the value of property, owned or occupied, can be demonstrated to have innumerable exceptions and hence to produce countless anomalies. Nevertheless, a stand has to be made at an early stage against trying to introduce additional refinements so as to seek to achieve a degree of equity which is not really attainable. Instead, one has to take the view that although the tax has its anomalies it is fundamentally not an unreasonable way of raising revenue, provided the rates of tax are moderate and that those with the lowest income are not unduly burdened.

In some property tax regimes, abatements are granted to residential property in general at the expense of commercial and industrial property (a move which is obviously likely to be politically popular). On the other hand, there have been cases where the burden of tax has been lightened to encourage economic development in the commercial and industrial spheres, and it is soon evident that once the policy-makers show a willingness to listen to pleas for exemptions and abatements, grounds can be found by almost all taxpayers for some reduction in their property tax liability. Even in the instance of wealthy owners of residential property it is sometimes somewhat speciously argued that basing property tax on the total value of property is a dis-incentive to the improvement of property, which in itself is beneficial to the community, e.g., in producing a more beautiful environment, giving work to artisans and unskilled workers, etc.

Britain has been a pioneer of rebates of property taxation, dating from the depression years after the first world war. At one time there was complete exemption for agriculture, and industrial properties were granted a 75% rebate, the object being to stimulate economic activity generally so as to create employment. At present, agricultural land and buildings are still exempted but the abatements of industrial property have been removed by stages so that such property is now fully taxable.

As already indicated, when a tax on real property exists or is proposed, it is best to have as wide a coverage as possible (so that a wide tax base may be accompanied by a moderate tax *rate* and avoid undue argument as to whether the tax is or is not a dis-incentive to economic activity).

: *Industrial Buildings*

All forms of taxation can be "proved" to be a dis-incentive to one or other form of economic activtiy, but revenue has nevertheless to be raised by taxation. There will obviously be illogicalities in the incidence of tax between different types of factories when tax is levied according to respective capital or annual values as a measure of the demands made on locallyprovided services. For example, one factory may have a very large work force for whom the local authority may have to provide all kinds of services, such as public transport and health and other facilities, while the products of the factory may be bulky and may involve extra expenditure on road making and road maintenance when they are transported away from the factory. Another type of factory may be highly mechanised and require comparatively few workers, or it may be a power station, or waterworks, or oil refinery, the output of which is conveyed by wires or pipelines without making much demand on the infrastructure.[1]

: *Churches and Schools*

It is fairly common to exempt specific buildings, for example, those devoted to religious worship, but on the other hand this exemption should not ordinarily extend, e.g., to the houses occupied by the clergy, who will make the same demands upon the communal services as their neighbours in the community.

Educational establishments are sometimes exempted but a town which happens to have an exceptional number of such establish-

1. Curiously enough, although the use of transmission wires or pipes means that the industry is making correspondingly less use of highways, etc., instead of a "rebate" being granted, the concern will in fact pay more tax because the capital or annual value of the installations will enter into the property tax computation!

ments, e.g., a university town, may thus lose a disproportionate part of its potential tax base.

: *Central Government Property*

Buildings owned by the Central Government are sometimes exempted from local taxes but it is usually preferable for such buildings to be brought into a calculation of tax forgone for the purpose of determining subventions from central to local government. Where exemptions stem from the initiative of the Central Government, e.g., the buildings occupied by embassies and consulates, and the religious and educational buildings above referred to, an amount equivalent to the local tax which would otherwise be payable is usually transferred from the central to local revenues in compensation.

: *Accounting for Exemptions*

Where the central government insists on rebates being granted on property tax as a form of incentive to particular types of industry or activity, it is again appropriate for the local government concerned to expect an appropriate subvention to cover the revenue thus given up. Such transfers are in any case desirable, so that the actual cost of various types of incentive may be computed and the cost thus brought home to the central authority concerned (and hence no doubt compared with the cost of other alternative incentives which could conceivably be granted instead).

In general, exemptions made for incentive reasons should always be costed out and recorded in the accounts of the authority concerned and of the taxing department responsible. This practice gives a better idea of the "real" (potential) yield of the property tax and of the percentage cost of collection and is the best way of ensuring that the tax structure does not become too distorted by exemptions. When the attention of the responsible authority is annually drawn to the actual cost of concessions a much more realistic appraisal of these is likely to arise than if an exemption merely becomes a matter of course, the cost of which is long forgotten.

RELIEF OF POVERTY

The exemption of small properties is not usually desirable except for the very smallest areas (e.g., a piece of land too small to contain any kind of dwelling or shop or even an advertisement bill board) when a *de minimus* exclusion may be warranted. In general, however, it is better that property tax or rates be levied comprehensively on all property and that any relief on the grounds of the poverty of the occupier of property be granted separately. Clearly a small property might be occupied by a rich man (who perhaps had other property elsewhere) and relief by reference to property value alone might create anomalies.

One feature of property tax is that in a community where most of the inhabitants are wealthy and have acquired relatively expensive property the total tax base is large, the percentage tax rate chargeable may be correspondingly low. By contrast, in another community where properties are less valuable and incomes a good deal lower the percentage *rate* of tax may have to be higher to meet the expenses of local government, although the people concerned have a lower taxable capacity. This anomalous situation can only be put right either by having a national or regional system of property taxation to even out the tax rates. The broadening of taxable areas, however, somewhat limits the advantage referred to earlier of encouraging local democracy and a responsibility for ensuring that local expenditure produces good value for money.

Another possibility is the provision of equalisation funds by the central government which may make larger subventions to poorer communities than to wealthier environments. In Greater London, which is governed by the Greater London Council, although the rating authorities are the smaller constituent councils, some re-allocation of revenue is done in this way. The tax is levied at a higher rate than necessary in the wealthier areas, the extra revenue being paid into an equalisation fund which is distributed to the poorer areas.

In Britain as a whole the question of relief to the poorest members of the community is dealt with nationally. There are schemes for rebates of rates (property tax) where the income of the occupier of property is below certain levels, the relief being a form of subvention by the central to local governments which, however, benefits specific individual ratepayers.

Certain of the cities in the U.S.A. have also introduced schemes of (rebates) of property tax, consequent upon increases in sales tax, the retail sales taxes being also a form of local (State) revenue in the United States. Generally speaking the rebate is computed in cases where, for example, the State sales tax has been increased and the income of the family is below certain levels. The actual approximate additional sales tax payable by the family on its food purchases is calculated and this sum is rebated from the property tax payable.

BASES OF TAXATION OF LAND AND IMPROVEMENTS

: *General*

Broadly speaking, there are two main methods of taxing urban property. Under one system the whole value of the land and "improvements", i.e., buildings, structures, etc., erected on or under the land, are taxed as a single unit, or the unimproved value or site value of the land only may be taxed. The same choice exists regarding rural land but there is less cause in such areas to promote building developments except in respect of farming operations where there may in any event be a measure of incentive exemption.

The advantages of taxing full values are briefly .

(a) a larger tax base is provided, which is preferable on classic tax principles. A larger tax base means that the lower *rate* of tax may be charged and the yield per unit rate of tax is obviously greater than if the tax is restricted to the value of the land only;

(b) if the tax is intended to have some relation to ability to pay, clearly it is preferable for the tax to have regard to the improvements as well as the land. Where buildings on the land produce rents for the owner it is obvious that more tax can be "borne" than in a case where the land has not been developed;

(c) if the tax is intended to provide revenue to cover the cost of services provided by a local authority, it is reasonable that the assessment should be made with regard to the value, e.g., of a skyscraper office block, and the services provided to its occupants rather than be restricted to the bare land upon which the building stands.

The argument for a tax on unimproved site values is simply that if tax is levied on the empty site and no extra tax is charged when buildings are erected thereon, there is an incentive to erect "tax-free" buildings upon the site so that development is accelerated.

The theoretical power of tax incentives to secure economic ends is very widely proselytized despite the general lack of evidence that the incentives actually produce activity that would not otherwise have taken

place. The proponents of site value taxation will point to the cities of Sydney and Nairobi as examples of the effects of granting the incentive of taxing site values only, but those who doubt the efficacy of the incentive could equally point to cities such as Singapore, Kuala Lumpur, New York and London, which have developed without the benefit of site value taxation.

In general, the development of urban sites seems to take place when economic conditions are right and no tax incentive will cause entrepreneurs to build when times are not propitious and buildings would not find tenants. In the city of Georgetown, Guyana, exemption for a period of 5 years from city property tax was offered during three periods (separated from each other by a number of years) for buildings erected during the designated periods. There was, however, no appreciable development during the first two periods and while some substantial buildings were erected in the third exemption period, notably one to house, inter alia, the new Central Bank, it was thought that this development might have taken place even if the exemption had not existed. The cause of site value taxation was originally espoused in Canada, particularly in the provinces of British Columbia and Alberta, but these provinces now tax buildings as well as land (though applying abatements of value for tax purposes of 25% and 40% respectively) but most of the other provinces have always taxed buildings fully. Australia and New Zealand have also added taxes on urban improvements to their taxes on unimproved values.

Dr. Lent, in his "Taxation of Land Value"[2] comments "there is considerable evidence... that site valuation in Canada helped to break up large land-holdings and encouraged sub-divisions. Yet development must await favourable economic conditions for expansion and many sub-divided lands in Canada remained undeveloped for years". Contrary to the claims made for site or unimproved value taxation, there is no evidence that the tax on unimproved land values has had much, if any, effect on the productivity of rural land used in Australia. No differences in this respect are discernable between communities using site value and those using a broader property-tax base.

The advocates of site value taxation sometimes urge that where the development of a site is of a ratio of improved value to site value exceeding 4:1 or 5:1 the full value of the property should be taxed. This feature, which is incorporated in some systems, could, however, have a distorting effect since the developer is encouraged to develop a site only up to a certain limit and is positively and considerably discouraged from developing any further.

: *Tax Yield*

In some cities which have adopted site valuation the time has come when it has been felt that further increases of the *rate* of tax were not politically possible and the tax, therefore, lacked potential for producing additional revenue. Sometimes an additional tax on improvements is then introduced and levied separately which, of course, more or less invalidates the site value principle. There are some examples of local authorities taxing full values but charging a lower rate of tax on improvements compared with the rate of tax charged on the land. If one is right in asserting that buildings are, in fact, erected according to economic need, whether or not tax incentives are given, there is no particular virtue in applying a lower rate of tax upon

2. Dr. George E. Lent, "Taxation of Land Value" International Monetary Fund Staff Papers March 1967.

improvements. Moreover, there is an inhibiting effect on the growth of revenue if the taxing authority restricts itself to a low tax rate on improvements in relation to the tax levied on the site, since there is an evident practical ceiling to the rate which may reasonably be imposed on the site alone. There is one further point which is not always fully taken into account when opting for a site value tax. Within the context of a master plan for the development of a town or city there are usually several areas where it would be permissible to build, say a tall office block, and each site might be valued for that potential use. It is, however, usually only possible to develop office building capacity in stages. If all possible office sites were developed together there would obviously be a lot of empty rooms and the usual and obvious timing would be to phase such developments over a period of years, the timing being adjusted according to the demand by would-be tenants. If, however, all the potential sites are valued on the same basis, while it might be argued that the tax incentive immediately exists for the development of each site, the economic realities are that no such instant development could be looked for. The sites that remain unused for some years are thus, as far as equity is concerned, over-taxed and in this type of situation it is clear that a valuation of the whole property, i.e., land plus improvements, for land or property tax purposes will give fairer results.

: *Introduction of Land Taxation*

In some countries land or property taxation hardly exists or is levied at low rates on out-of-date values, so that the yield is small.

It is clear that land and property taxes are often politically unpopular, so that the government may be reluctant to up-date values, increase rates of tax and enforce collection of taxes. It is because of this political sensitivity that it makes sense to link land taxes to services and bring in local authorities to operate the taxes. Although the administration is likely to be less efficient if it is the responsibility of a local authority, instead of the central government, it is nevertheless often a sound political move to decentralise. An incentive to the local authority to make a reasonable job of administering property taxes is to link central government subventions for various purposes to the tax performance, i.e., to the amount of tax which the local authorities effectively collect. Another device sometimes used is to have property taxes jointly administered by central and local governments, the revenue being shared. The central government taxing authority will be able to introduce the techniques learned from the larger administrative operations conducted at the centre of the country, while the local authority's tax officials will have local knowledge of properties which will be invaluable in actually applying and collecting the tax.

: *Registration of Ownership in preparing Cadastre*

Sometimes taxes have been applied in rural areas mainly as an instrument of registration where ownership is uncertain and it is necessary to prepare or update cadastral records.

It is a reasonably good test of ownership that the person assumed to be the owner, particularly of land which is producing no revenue, is prepared to pay the taxes thereon. Where no-one is prepared to pay the tax then the operation of selling the land for payment of unpaid taxes will often bring to light the true position regarding ownership. The level of taxes in this kind of instance will normally of course, be quite low. In some countries, the government has taken back lands that

have long since been alienated in areas where no development or cultivation has taken place, usually by paying reasonable compensation based on the existing value of the land. This procedure has much to commend it and there is, in fact, a good case for continued government ownership of virgin lands which may serve little other purpose than a refuge for rare botanical or zoological species, and where perhaps there are catchment areas for water supply, or drainage areas for rivers that flow to the developed parts of the country, the ownership of which is important for the control of potential pollution.

: *State-owned and Alienated Lands*

It will usually be easier for a government to secure some revenue from the lands to compensate for its own expenditures in building access or trunk roads to remote regions, harnessing water resources for irrigation or hydro-electric power, if the undeveloped lands are in State ownership (in which case rents can be adjusted) than if the land has been alienated. In the latter case it is equitable to collect some contribution from the owners of the land that is benefitted by Government-sponsored developments which, in fact, add a great deal to the value of the land concerned without conferring any *immediate* income or inward cash flow upon the owners. It is desirable in such cases to revalue alienated land as soon as possible after the development has taken place but it may be necessary to abate, or spread collection of, the additional land or property tax payable in the first year or two until the impovements have produced a cash return.

: *Collection of Tax*

It is a matter of general experience that where the payment of land and property tax is linked to the title of the property concerned, so that a title may be forfeited if taxes remain unpaid, it is usually much easier to collect such tax than where this sanction does not exist. It is not usually necessary that the sanction should actually be imposed in a large number of cases. The mere existence of the power, plus its occasional use in a few carefully selected cases is often enough to encourage prompt payment of taxes.

As a general principle of tax administration, it is always desirable to have a selection of sanctions available for non-payment and for the tax administration to be ready to use these before tax gets very much in arrear. It is not usually beneficial to the taxpayer to be allowed to go into arrear with his taxes. If he is allowed to carry on industrial, business, agricultural or other operations without due regard for tax he may run his operation on unsound lines without due regard to financial considerations, and be unable to make a full economic assessment of the viability of his enterprise. Since every entrepreneur has to pay most of his outgoings promptly, it is desirable that the government should expect at least similar treatment to that accorded to landlords and traders by their tenants and customers. It is just as easy to establish a system whereby taxpayers pay their tax promptly at a certain period of the year as to allow them habitually to pay much later in the year. In the case of agricultural land it is wise to have some regard to the timing of harvests, so that tax is made payable when payments for crops and other produce are coming in, particularly in the case where there is one single crop per year and it is usually possible to arrange this facility within the fiscal year the country has chosen for its own national accounting.

VALUATION

Although the valuation of property for rates

and property taxes is a highly skilled task, valuation itself cannot be regarded as a finite science. There may be widely differing views among expert valuers, particularly those employed by the taxpayer compared with those employed by the tax department, as to the true value of the property concerned.

Moreover, the fact that a valuation process is fundamental to property taxation can easily make for some inequity in that the wealthier taxpayers, or those owning the more valuable properties, can usually afford to employ the most expert valuers and advisers with the result that their taxable values may in practice be on a lower scale then those of taxpayers not so well served by professionals.

The process of valuation is made easier by the collation of all possible evidence of values in a particular area, since the most important factor in determining the value of a particular property is the comparison of it with adjoining or nearby properties of a similar kind.

Some countries adopt capital values and others adopt annual or rental values as the tax base. Others still have systems in which use can be made of either capital or annual values, by employing a conversion factor to transmute one type of value to the other. There is nothing to choose between the two systems except that (a) where capital values are adopted the tax *rate* will be much lower than where annual values are charged, and this is usually a good psychological point for the tax administration; and (b) the choice of one or the other system should, in practice, be made on the basis of whether the property concerned is mostly owner-occupied or rented by occupiers from landlords. If property is typically owner-occupied there will usually be ample evidence of capital values available whereas if the normal practice is for property to be rented then clearly there is likely to be more evidence of annual values based on rents payable.

: *tax base*

Although the valuation process calls for the employment of great skill, certain shortcuts may be taken which, while still preserving broad equity, may facilitate the valuation process.

For example, a town or country area may be divided into fairly large sections within which values are fixed at a common figure per unit of area in the case of the land, or at a common value per square foot of floor space or cubic foot of cubic space in respect of buildings, without having full regard to the finer points of higher values accruing to corner sites or main street frontages.

All tax systems start off with a reasonably simple structure and there is always scope for more refinement and for the proliferation of various types of relief as the tax develops. Similarly, with the valuation exercise in connection with a new land or property tax the assigning of values on a block basis, where relatively large areas are allotted to each block or section, makes for some administrative simplicity even though values will have to be limited within each section to the level of the lowest valued property in the area. As time goes on, however, it will be possible to refine the valuation process by reducing the size of the various sections so that more distinctions can be made between different types of site and property within the larger areas, e.g., property bordering on streets or roads should be sub-divided from property in back lots, and houses bordering parks from those adjoining the gas works, ascribing higher values, of course, to the property which has a road or scenic frontage.

In the case of a fairly undeveloped economy where property values are not large enough

to warrant a large administrative expenditure on valuation, rule of thumb methods are sometimes adopted with regard to buildings by adopting fairly nominal values which, however, are based on the superficial square footage of the habitable or usable areas in buildings, using an arbitrary scale of values with the lowest unit value being allotted to the cheapest buildings, e.g., of wood with corrugated iron or thatched roof, and the highest to modern concrete buildings with tiled roofs, and such systems seem to work reasonably well as an interim measure which may, however, endure in practice for a lengthy period.

The use of site value taxation or unimproved value taxation such that land only is taxed, buildings or improvements in general being omitted from the tax charge, is also generally reckoned to simplify the valuation process, especially where improvements are completely ignored. All that is necessary in such circumstances is the allocation of the land into suitable sections or areas within which the value per square foot or per square metre will generally be at the same level. When revaluation has become necessary, this type of taxation has the great advantage that it will generally be possible to update values as a fairly routine exercise by applying a factor or series of factors to the old levels of value in each block or section, the factor being the multiplier appropriate to bring the value up to current levels. There are, however, other drawbacks to the use of site values or unimproved values for property tax purposes which are discussed above under "Bases of Taxation of Land and Improvements".

: *revaluations*

Countries commonly provide for general revaluations to take place every 5 years, or sometimes at shorter intervals. Equally commonly, such revaluations tend to be postponed for one reason or another; for example, there was a fairly general postponement of such operations during the second world war, and then it is often difficult to "catch up". Apart from the practical administrative difficulties of revaluation, there is always political difficulty involved when values have to be increased very considerably because they have, in fact, risen a great deal since the last general revaluation, and this increase usually brings in its train some reluctance on the part of elected governments to bring new values into force as promptly as would be desirable. Sometimes out-of-date values are continued for a long time beyond the time when a revaluation would be desirable, not least on equitable grounds. In the U.S.A., although property tax values are reasonably up-to-date, the tax administrations in many areas use the device of a general abatement of the current values which is deducted in arriving at the taxable figure. In other countries, it is often accepted that the values currently used for tax are quite out of date but it is hoped that because all values are made on the same basis (see note below on the "tone of the list") equity is preserved. In practice, however, it is rare that values fixed long ago will keep precisely in step with each other for an indefinite period in the presence of physical and economic developments in the environment and in the absence of a general revaluation.

: "*tone of the list*"

The difficulty in administering property taxation where revaluations are made, say, quinquennially, is that properties brought into being in the period between revaluation have to be valued (or are most readily valued) on the value at the time they are created. Such values, however, are likely to be different (usually higher) from the values

prevailing at the time the last quinquennial valuation was made. Accordingly, it is usual to prescribe that values of new properties should be scaled down to the same level as values prevailing at the time when the last general revaluation was made, which will usually be the tax year before such values were first brought into charge to tax. The level of values at the last revaluation is often referred to as the "tone" and the expression" tone of the list" refers to the general level of values of the properties appearing in the valuation list at the time the general revaluation had been carried out.

: *collation of information for valuations*

Since an essential of the valuation process is to have ample material in the shape of property prices or rentals on which to work, it is desirable that all information regarding property sales or transfers or rental agreements should be fed, from the departments which collect such information, to the valuation section of the department administering rates or property tax. Such information may be available from declarations for tax purposes of transactions involving stamp or transfer taxes and, of course, in connection with the administration of income tax, wealth tax, and capital gains taxation. It is, therefore, important to have lines of communication between the various departments concerned and there will probably be a backflow of information from the property tax department to the other taxing departments in respect of information, furnished for property tax purposes, which may have relevance for other froms of taxation.

Apart from gathering information regarding property values and rentals, it is also important to establish sources of information regarding the erection of new properties or the rebuilding of old ones as well as the building of extensions or additions to existing buildings, and to the installation of major fixtures in existing buildings which do not necessarily alter their external structure. In some countries, notably New York State in the U.S.A., use is made of aerial surveys, usually made for other purposes than property tax, which serve to indicate physical changes in properties when compared with surveys of the same area in previous years. For example, it is evident that the addition of swimming pools, tennis courts, glasshouses, or new wings to buildings, are likely to show up fairly clearly and enable the administration to up-date values, possibly with the addition of some penalty on the year's tax in cases where taxpayers have not duly reported the physical changes concerned.

: *fixtures*

It is fairly usual to regard the taxable value of a building which is charged to rates or property taxation as incorporating any major fixtures which would increase the rental value of the place if it were let to a tenant. A central heating circuit or an air conditioning system which is added to a property would, therefore, be regarded as an addition which justified an increase in the value, as would the addition of a garage or glasshouse. Where a capital value system is operating it will be a fairly simple matter to add on to the old value the cost of the additions or alterations, modified as necessary, to accord with the "tone of the list" where the basic valuation was made some years before. Where the property is rented, of course, such additions will normally be reflected in the rents so that there will be no great difficulty in making a revaluation.

VOID RELIEF

In the case of urban properties where the principle of the tax is to collect a contribu-

tion from persons using the services provided by the administration, it is usual to grant relief from tax where a property is empty for a material period. This is logical since if the place is empty there is no person there to take advantage of the services provided.

Where the property concerned is unfurnished, the previous tenant having taken his furniture and effects with him on removing, and attempts to re-let the property have failed, it is reasonable that some abatement should be given and, in fact, it is fairly usual to grant full relief from tax, at least for a limited period, in such circumstances.

Where property continues to be kept empty and it is evident that the landlord is holding out for an exceptionally high rent, there may well be a case for charging the full tax. It may be difficult to prove the facts in such cases, although the existence of an unrequited demand for accommodation in the area concerned would usually be good evidence that the building could be let if the landlord fixed the rent at prevailing market levels.

Some tax administrations, however, charge one-half of the tax on urban properties when they are empty and clearly some kind of case could be made out for proportionate tax since some of the locally-provided services are obviously required whether the building is occupied or not, e.g., the services of police to stop buildings being broken into or vandalised, and of the Fire Brigade to prevent fire, e.g., where neighbouring buildings may be involved in conflagration are examples of services which relate to the property as much as to the occupants.

Most tax administrations refuse to give relief for empty premises when these are furnished and available for occupation by the owner. This may apply even though the property in question is merely a summer home which is used for part of the year only, the owner having his main residence in a town or city, so that for most of the year he may be a kind of "absentee landlord". For administrative reasons it is necessary to have simple rules regarding relief and it is obviously good practice to tax property which is ready for immediate occupation without having to go to the length of proving that somebody is actually living there, a process which would soon give rise to complaints of bureaucratic inquisition. (See also Taxation of Idle Lands).

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L.S. ULLMAN*:

THE DOMESTIC INTERNATIONAL SALES CORPORATION ("DISC"); A UNITED STATES TAX VEHICLE TO ENCOURAGE EXPORTS

The Revenue Act of 1971[1] brought forth a new vehicle, the Domestic International Sales Corporation ("DISC"), designed to promote United States exports by means of certain tax benefits for U.S. corporations engaged primarily in export activities.[2] In general, the use of a qualifying DISC will permit a tax deferral of 50% of taxable income attributable to export activities, until such income is either distributed or deemed distributed, or until the corporation's qualification as a DISC or its corporate existence is terminated.[3]

The relevant statutory provisions and Regulations ensure that the DISC need not have more than minimum substance[4] and that the measure of export profits in the case of sales to a DISC by a related company will be determined in a manner most favorable to the taxpayer.[5]

I. QUALIFICATION AS A DISC

There are five requirements which must be met in order for a corporation to qualify as a DISC; two are substantive, the others procedural.[6]

The two substantive requirements are:

1. At least 95% of the gross receipts must be export-related as qualified "export receipts" from export sale or lease transactions or from other qualifying investments and activities;[7] and

2. At least 95% of the assets must be export-related as qualified "export assets."[8]

The procedural requirements are:

1. The corporation's paid in capital must be at least $2,500;[9]

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1. P.L. 92-178, 85 Stat. 497.

2. The rules governing DISC are set forth in sections 501-505 of the Revenue Act of 1971 and in sections 991-997 of the Internal Revenue Code (hereinafter "I.R.C."). Congress in enacting the DISC rules emphasized that domestic manufacturing companies engaged in export activities are treated less favorably than those corporations manufacturing abroad through foreign subsidiaries. [See Senate Finance Committee Report, S. Rept. No. 92-437, 92nd Cong., 1st Sess. (hereinafter "Senate Report") at pp. 1-7].

3. I.R.C. §§991 and 995(b). See also Senate Report at pp. 90-92.

4. Rev. Rul. 72-166 I.R.B. 1972-15.

5. I.R.C. §994.

6. The Senate Report noted that the reason for requiring separate corporate existence for DISC status is so simplify accounting for the deferred taxable profits arrangements of the DISC. S. Rept. No. 92-437 at par. E3.

7. I.R.C. §992 (a) (1) (A). See VIII, *infra.*

8. I.R.C. §992 (a) (1) (B). See VII, *infra.*

9. I.R.C. §992 (a) (1) (C). The purpose of this provision, according to the House and Senate Committee reports, is to make clear that a corporation may qualify as a DISC even if the corporation has little capital.

2. It may have only one class of stock;[10] and
3. It must elect to be treated as a DISC.[11]

The Treasury has also made clear that the DISC must maintain separate bank accounts.[12]

It is fairly clear that Congress and the Treasury expected that a DISC need not have much more than a paper existence. The minimum capital requirement, of course, is some evidence of this. Congress has also made clear that a DISC and its parent company need not observe in all respects other than separate bank accounts, for example, the separate relationships ships which normally exists between parent company and subsidiary.[13]

The Treasury, since enactment of the DISC legislation, has made clear that the DISC need not have any employees nor carry any inventory.[14]

Further, the parent company of a DISC may solicit orders on behalf of the DISC, make direct shipments to customers and handle all billing and collection efforts.[15] Thus, the DISC may receive a commission on all export sales, and need have no other corporate activities.

II. TAXATION OF A DISC AND ITS SHAREHOLDERS

A. *Income Deemed Distributed*

The DISC itself is not generally a taxable entity for Federal income tax purposes.[16] It is essentially a conduit whose shareholders are taxed on that part of the DISC's income which is either actually distributed or deemed to be distributed to stockholders.

A DISC is deemed to distribute (and hence its shareholders will be taxed currently on):

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10. I.R.C. §992 (a) (1) (C). It would appear that this rule, which is comparable to one of the qualifications of a small business corporation to elect a pass-through of certain tax attributes to shareholders (Subchapter S of the I.R.C.) will be interpreted in a manner similar to the rules of Subchapter S and could thus create substantial problems in cases of voting trusts or agreements, proxies and other arrangements which have the result of creating any differentiation of rights with respect to election of directors, liquidation preferences, and the like. The Committee reports also make clear that there is no limitation as to the debt-to-equity ratio of a DISC. In the absence of this rule, a large debt-to-equity ratio could result in the debt being considered a second class of stock.

11. I.R.C. §992 (a) (1) (D). Pursuant to proposed Regs. §1.992, the election must generally be made by filing a statement of election with the I.R.S. within 90 days preceding the commencement of the taxable year. In the case of the first year of newly organized corporations, the election may be made at any time within the first 90 days of the taxable year.

Once an election is made, such election will remain in effect for all subsequent years the corporation qualifies as a DISC unless revoked by the corporation, or unless the corporation fails to qualify as a DISC for five consecutive years.

An election requires written consents of all persons who were shareholders of the corporation on the first day of the initial year for which the election is made. Consents filed by all the shareholders, for the initial election year are binding on all subsequent shareholders.

In the case of foreign shareholders the consent constitutes an agreement that any actual or deemed distribution of the DISC constitutes income effectively connected with the conduct of a trade or business through a permanent establishment, and will therefore be subject to tax at regular U.S. rates.

12. Rev. Rul. 72-166. I.R.B. 1972-15.

13. S. Rept. No 92-437 at Par. E3.

14. "DISC – A Handbook for Exporters" published by the U.S. Department of the Treasury and dated January 24, 1972 (hereinafter referred to as "Handbook") at IIIA. The Handbook makes clear that a parent of a DISC, for example, can arrange for its employees to act as officers of the DISC.

15. Rev. Rul. 72-166, I.R.B. 1972-15.

16. I.R.C. §991. It should be noted that this fact may cause substantial difficulty under the laws of the various states. In the absence of statutory

1. interest on "producer's loans," (further described in V, *infra*)[17]
2. gain on the sale or exchange of non-qualified export property acquired by the DISC in a tax-free transaction;[18]
3. gain on the sale or exchange of any property acquired by the DISC in a tax-free transaction requiring a recapture of depreciation or investment tax credits;[19] and
4. 50% of the excess of the DISC's taxable income (before actual distributions) over the aggregate of items (1), (2) and (3);[20] plus
5. foreign investment attributable to "producer's loans"[21] (as further discussed below).

The income not treated as if distributed to shareholders is not taxed either to the DISC or to its shareholders, and may thus be accumulated free of tax until in fact distributed.

The following example is illustrative of the tax treatment of DISC profits (all numbers are hypothetical):

DISC income	000 omitted
Income on export sales	4,000
Interest on producer's loan	120
Gain or sale of assets received in tax-free transaction	150
Foreign investment attributable to producer's loan	180
Total Disc Income	4,650
Income Deemed Distributed	650
DISC Net Income	4,000
30% deemed distributed	2,000
Accumulated (tax free) DISC Income	2,000

B. Foreign Tax Credits

A U.S. shareholder of a DISC may claim the "deemed-paid" foreign tax credit for foreign taxes paid by the DISC to the extent that any income or gains of a DISC are treated as dividends.[22] However, only dividends attributable to qualified export receipts or gains from the sale of property obtained by the DISC in certain tax-free transactions will be treated as foreign-source income and hence the credit will be available only with respect to such dividends.[23]

The DISC legislation prohibits a shareholder of a DISC from offsetting excess foreign tax credits on non-DISC income against U.S. taxes on DISC dividends.[24] Correspondingly, any excess foreign tax credits on DISC income may not be offset against non-DISC income. The foregoing rules result

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relief under the laws of a large number of states, DISCs, like other corporate entities, may be subject to regular state income taxes on all their income. Many states in order to grant relief to DISCs and their shareholders, have adopted rules the effect of which is to follow the Federal treatment of DISCs and DISC shareholders.

The DISC is subject, however, to the 27½% excise tax imposed under Section 1491 of the I.R.C. with respect to any gain on stock or securities transferred to a foreign corporation. The DISC will also be subject, presumably, to Interest Equalization Tax with respect to the acquisition of any stock or debt of a foreign issuer or obligor.

17. I.R.C. §995 (b) (1) (A).

18. I.R.C. §995 (b) (1) (B) Such transactions would include the initial transfer of such assets to the DISC in exchange for its shares.

19. I.R.C. §995 (b) (1) (C). This rule is intended to avoid the possibility that a corporation could avoid the recapture (inclusion in taxable income) of depreciation or investment credits by simply transferring such assets to the DISC and having the DISC sell such assets.

20. I.R.C. §995 (b) (1) (D). This, of course, is the converse of the 50% deferred.

21. I.R.C. §995 (b) (1) (E).

22. I.R.C. §§861 (a) (2) (D); 862 (b) (2); 902.

23. *Id.*

24. I.R.C. §904 (f). This is one drawback of a DISC since export income is generally low-taxed income. Companies having excess tax credit problems, as well as those having excess foreign tax credit carry forwards, may not benefit from a DISC.

from the treatment of a DISC as a non-"includable corporation" for purposes of of filing consolidated returns and the specific rules governing foreign tax credit limitations.

III. EFFECT OF NON-QUALIFICATION OR TERMINATION OF THE ELECTION

If a corporation having previously qualified as a DISC fails during any year to qualify as a DISC, or if its election to qualify as a DISC is revoked or terminated during any taxable year,[25] such corporation will be taxed for the year in question in the same manner as any other domestic corporation *and* the corporation will be treated as having distributed its tax deferred income pro-rata to its stockholders as a dividend.[26] In order to minimize the adverse effect of the constructive distribution of all accumulated DISC earnings, the Code permits the distribution to be spread for tax purposes over the lesser of (1) the 10 years following the disqualification or revocation of election or (2) the number of years equal to the number of prior consecutive years for which the corporation qualified as a DISC.[27]

IV. DISTRIBUTIONS TO MEET QUALIFYING REQUIREMENTS OF DISC

The new DISC provisions create a unique scheme which in effect permits a corporation to maintain its qualification as a DISC ex post facto, if supported by "reasonable cause." Thus, a corporation may retain DISC status for a given year by making a "curative" distribution to shareholders after the close of that year of an amount equal to that portion of its income attributable to gross receipts which do not qualify as "export receipts" and/or its assets which do not qualify as "export assets."

Such distributions of amounts equal to non-qualifying receipts or assets must meet three specific statutory requirements: (1) the distribution must be made pro rata to shareholders; (2) it must be designated at the time of the distribution as a distribution to meet the DISC qualification requirements and (3) the distribution must be in an amount equal to *all* taxable income of the corporation attributable to non-qualified receipts and/or an amount equal to the fair market value of *all* assets which are not qualified export assets on the last day of the taxable year.[28] Thus, a "curative" distribution made after the end of the year will not be sufficient if it results in a distribution of only such amuonts by which the corporation failed to meet the 95% test: the entire non-qualified amounts must be distributed.[29]

The distribution after the close of the year in order to meet qualification requirements for a DISC for that year is subject to the general

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25. The election of DISC status may be voluntarily revoked at any time prior to the 90th day of the year in question. DISC status is automatically terminated, as earlier indicated, if a corporation fails to qualify as a DISC for 5 consecutive years. It is also terminated in the event of an "A" (statutory merger or consolidation) or "C" (stock for assets) reorganization.

26. I.R.C. §995 (b) (2) (A).

27. I.R.C. §995 (b) (2) (B). Thus, for example, if a corporation qualifies as a DISC for 7 consecutive years and fails to qualify in the 8th year, income of the 8th year would be taxed to the corporation in the same manner as any other domestic corporation. Its accumulated DISC income will be taxed to shareholders in equal installments in the 9th through 15th years.

28. I.R C §922 (c) (1)

29 It should also be emphasized that with respect to any distribution of assets, the distribution need not in fact be the actual non-qualifying assets There simply has to be a distribution of property

condition that the failure to meet the receipts or asset tests must have been for "reasonable cause."[30] There is a statutory presumption that a distribution made on or before the 15th day of the ninth month after the close of the taxable year shall be deemed "for reasonable cause" if at least 70% of the gross receipts of the corporation were qualified export receipts and if the aggregate adjusted basis for qualified export assets is equal to or greater than 70% of the aggregate adjusted basis of all assets held by the corporation on the last day of *each* month of the taxable year.[31]

A distribution after the end of the year, even if not conclusively presumed to be for reasonable cause under the above-described 70%-8½ month rule may nonetheless be made after 8½ months for "actual reasonable cause" under appropriate facts and circumstances.[32]

The Finance Committee Report also contemplates relief by way of at least a 90-day period for a distribution after receipt by the taxpayer of notice by the I.R.S. of non-qualification as a DISC where the taxpayer in good faith believed it had qualified.[33]

Any distribution made *more than 8½ months* after the close of the taxable year will bear interest at 4½% of the amount of the distribution for each taxable year *beginning after* the corporation failed to qualify as a DISC.[34]

Any distributions made to meet the qualification requirements of a DISC will ordinarily be fully taxable Such distributions are deem-. ed to be made first out of "accumulated DISC income," which is income not previously taxed to stockholders, then out of earnings and profits (other than previously taxes income and accumulated DISC income) and finally out of previously taxed income.[35]

V. LOANS TO MANUFACTURERS

A DISC may make loans to any person engaged in the U.S. in manufacturing export property, including its parent company.[36] Such loans, referred to as "producer's loans" must be evidenced by a note, have a maturity of not more than five years, and must be designated as a producer's loan.[37] In the case of loans made by a DISC to a parent or other related company, the loan must bear interest at rates required under section 482 of the I.R.C.[38]

Certain measures, generally referred to as

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equal *in amount* to the non-qualifying export assets If the specific non-qualifying assets are not distributed during any year they will presumably continue to be non-qualifying assets in following years

Another substantial problem is that any "curative" distribution of assets which have increased in value will result in such increase being taxed as a dividend, thus effectively converting amounts which would otherwise have been capital gain into ordinary income

30. I.R.C. §992 (c) (2).

31. I.R.C. §992 (c) (3).

32 I.R.C. §992 (c) (2). The Committee Reports cite currency exchange controls and expropriation as examples.

33. Senate Report at page 16.

34. I.R.C. §992 (c) (2) (B). This interest charge, however, is deductible to the corporation in computing its earnings and profits.

35. Foreign tax credits will not be available since the distributions will not be considered foreign-source income.

36. Such loans are included as qualified export assets. This provision is regarded as a crucial benefit favoring a DISC over a foreign-incorporated sales company, for example. In the absence of this type of provision, such loan, if made to a parent company, might be treated by the I.R.S. as essentially equivalent to a dividend and thus taxed currently to the parent company.

37. I.R.C. §993 (d).

38. See Handbook, at III J. The Regulations to Section 482 generally require interest to be specified at a rate of not less than 4% nor more than 6%. In the absence of such specification,

"fugitive capital rules," are included to prevent such loans from being used by the producer for investments in foreign plant and equipment, and also from being used by the manufacturing company for purposes unrelated to exports. Thus, such loans will give rise to a taxable "deemed" distribution of both current *and* accumulated earnings and profits of the DISC to the extent of the foreign investment "attributable to" such producer's loans. The amount of foreign investment attributable to producer's loans is generally equal to the lesser of (1) the net increase of foreign assets of the borrower's "controlled group"; (2) the actual foreign investment by the members of such group, and (3) the total of outstanding producer's loans of said DISC.[39]

Further such producer's loans may not exceed in the aggregate the accumulated DISC income, nor that part of the borrower's assets devoted to manufacture for export. There are a number of tests to ensure that the loan does not exceed the investment in assets attributable to production for export. Thus, the loan cannot exceed that part of the value of the borrower's plant and machinery which bear the same proportion to the total value of such assets as export receipts bear to total receipts.[40] Further, the borrower must increase its investment in such assets by an amount at least equal to the amount of the loan.[41]

VI. SALE OR OTHER DISPOSITION OF DISC STOCK

In the event of the sale or other disposition by a shareholder of its interest in a DISC, the shareholder is treated as having received a dividend to the extent of his share of accumulated (untaxed) DISC income during the period the shareholder held the DISC shares.[42] In general, the amount of the dividend is limited to the amount of gain realized. Thus, for example, if the basis (cost) of a DISC stock is $1,000, the accumulated (untaxed) DISC income is $400 and the stock is sold for $2,000, $400 would be taxed at ordinary income rates and $600 would be taxed at the capital gain rate. If the accumulated income were $1,200, $1,000 would be taxed at ordinary income rates.

VII. "QUALIFIED EXPORT ASSETS"

In general, "qualified export assets" include "export property," i.e., property manufactured, produced, grown or extracted in the United States by someone other than a DISC; held primarily for sale, lease or rental in the ordinary course of business by or to a DISC for direct use, consumption or disposition outside the U.S.[43]; and having less than 50% of its value attributable to imported components, materials, etc.[44] Property leased or rented by a DISC to related persons,[45]

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the rate will be presumed to be 5%. It should also be noted that interest on producer's loans itself constitutes qualified export receipts. However, such interest is treated as if distributed to shareholders. If the borrower is also a shareholder, the effect is an interest-free loan, since the deduction for interest paid will offset the interest deemed distributed as a dividend.

39. I.R.C. §995 (d) (1).
40. I.R.C. §993 (d).
41. *Id.*
42. I.R.C. §995 (c). Since a DISC is treated for foreign tax credit purposes as a foreign corporation, the disposing shareholder may claim a "deemed paid" foreign tax credit in respect of any foreign taxes paid by the DISC to the extent attributable to that part of the gain taxed as a dividend.
43. The determination of destination is expressly made without regard to passage of title. See Handbook IIIF.
44. I.R.C. §993 (b); I.R.C. §993 (c) (1) (C).
45. I.R.C. §993 (c) (2) (A).

intangibles (patents, trademarks, know-how and the like)[46] and property which the President determines to be in "short supply"[47] is excluded from qualification as "export property."

Qualified export assets also refer to assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly or servicing of export property or in connection with managerial, architectural or engineering services[48] producing qualified export receipts. Qualified Export assets would include, for example, materials handling equipment, warehouses, containeers, office equipment and the like.[49] They would also include accounts receivable arising in connection with qualified export sale or lease transactions or other activities producing qualified export receipts (infra),[50] producer's loans (supra),[51] working capital[52] FCIA or Ex-Im bank obligations or obligations of certain corporations organized to finance sales of export property[53] and securities of "Related Foreign Export Corporations."[54]

The term "Related Foreign Export Corporation" includes a "Foreign International Sales Corporation ("FISC"), a "Real Property Holding Company," or an "Associated Foreign Corporation".[55]

A FISC refers to a subsidiary organized in a foreign country, (a) 95% of the gross receipts of which are from the marketing or leasing, of export property, or from services related to sales or leases of qualified export property, or interest on accounts receivable or other indebtedness arising out of transactions producing qualified export receipts, and (b) 95% of the assets of which constitute export property and other assets of the type described above sa "qualified export assets."[56] The requirements for qualification as a FISC are thus substantially similar to those of a DISC with three significant exceptions:

1. A FISC cannot make producer's loans.
2. A FISC cannot hold moneys in excess of reasonable working capital needs; and
3. A FISC cannot qualify retroactively by distributing non-qualifying assets or income.[57]

A Real Property Holding Company refers to a foreign corporation whose *exclusive function* is to hold real property for the *exclusive use* of the U.S. DISC.[58]

An Associated Foreign Corporation is a foreign corporation of which the DISC (or related corporations) owns less than 10% of

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46. I.R.C. §993 (c) (2) (B).
47. I.R.C. §993 (c) (3).
48. I.R.C. §993 (b) (2).
49. Handbook III H (2).
50. I.R.C. §993 (b) (3). Also, certain funds deposited in U.S. banks at the end of the year, in excess of working capital pending investment by other qualified export assets. I.R.C. §993 (b) (9).
51. I.R.C. §993 (b) (5).
52. I.R.C. §993 (b) (4).
53. But only if acquired directly from the Export-Import Bank or the Foreign Credit Insurance Association or from the person selling or purchasing the goods giving rise to the boligation. I.R.C. §993 (b) (7) and (8). The Treasury has also indicated that it will not permit pure "financial DISCs" whose sole activity would be the holding of such obligations, even though the statute would appear to present no bar thereto.
54. I.R.C. §993 (b) (6).
55. I.R.C. §993 (e).
56. I.R.C. §993 (e) (1) (B).
57. Since a FISC cannot make curative distributions, the holdings by the DISC of the corporation not qualifying as a FISC would constitute assets other than qualified export assets and the DISC might be forced to distribute such holdings, thus giving rise to dividend receipts to the shareholder.
58. I.R.C. §993 (e) (2).

the voting power and the ownership of which is reasonably in furtherance (under Regulations yet to be issued) of transactions giving rise to qualified export receipts.[59]

VIII. "QUALIFIED EXPORT RECEIPTS"

"Qualified export receipts" include principally receipts from sales of "export property," as described in VI above[60]; gross receipts from leases or rentals of export property; gross receipts for services related to either of the foregoing: gross receipts from the sale or other disposition of export assets; gross receipts for engineering or architectural services on foreign construction projects; and gross receipts for managerial services in furtherance of the production of other qualified export receipts of a DISC.[61]

The "related receipts" category would include receipts from all services rendered in connection with qualified export sales, gains from the sale of plant and equipment used in the export business, dividends from related Foreign Export Corporations, (see VII, supra), interest on qualified export assets and the like.[62]

IX TAXABLE INCOME OF THE DISC

Congress in introducing the DISC sought specifically to avoid the erosion of its tax benefits by the possible application of reallocations of income pursuant to Section 482 of the Internal Revenue Code[63] with respect to sales of property between the DISC and its parent company. Accordingly, the law provides certain "safe haven" pricing rules which apply regardless of the actual sales price for the property in question,[64] and without regard to the reasonableness of the arrangement. This is of special significance in the light of the very limited substance required of a DISC. Thus, the DISC will be permitted to treat as the selling price, such price as will permit the DISC to obtain taxable income in an amount equal to the greatest of (1) 4% of qualified export receipts on the sale of such property plus 10% of export promotion expenses;[65] (2) 50% of the combined taxable income derived by both the seller and the DISC from the sale and resale of property attributable to the qualified export receipts plus 10% of the export promotion expenses; and (3) the

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59. I.R.C. §993 (e) (3).

60. Receipts from the sale of export property are not qualified if the property's "ultimate use" is in the United States. The Treasury in determining whether the ultimate use is in the U.S., in the case of sales to unrelated persons, imposes the test of whether a "reasonable person" would believe that the property will be used in the United States.
If a product sold abroad will be used as a component of a second product, and if such component constitutes 20% or more of the value of the second product, the component product will be considdered for ultimate use in the United States. See Handbook III, F.
The Handbook indicates that the property must be used *predominantly* abroad. Reference to other sections of the I.R.C. would indicate that 70% use abroad may be sufficient. The Congressional Reporter, however, indicated that only "de minimus" use of the property in the United States would be permitted.

61. I.R.C. §993 (a) (1). Note: legal fees for services to DISCs are excluded.

62. I.R.C. §993 (a).

63. Senate Report at p. 7.

64. I.R.C. §994.

65. Export promotion expenses include such expenses as market studies, advertising, wages of clerical and other personnel, rentals, sales commissions, warehousing and other selling expenses and ½ of freight expenses for voluntarily shipping export property aboard U.S. flag vessels. See *Handbook* at III M.

taxable income based on the actual selling price.[66]

The above "safe haven" rules, which are available only in the case of sales of export property to a DISC by a *related person* may be applied on a product-by-product basis; they need not be uniformly applied to all sales.[67] It should be noted that for purposes of determining the combined taxable income attributable to the qualified export receipts, the use of "marginal costing" is specifically contemplated by the Committee Reports, but pricing so that the producer has a loss with respect to such export sale is specifically prohibited.[68]

The following example illustrates the difference between the two "safe haven" pricing formulas:

(000 omitted)

Assumptions:	DISC	U.S. Parent Manufacturing Co.
SALES (assume all qualified export receipts)	20,000	80,000
Deductible Expenses	2,000	16,000
Cost of Goods Sold (to DISC)		8,000
Export Promotion Expenses	500	
DISC Profit under 4% rule:		
4% of Qualified Export Receipts		800
10% of Export Promot. Expenses		50
		850
DISC Profit under 50% rule:		
Gross profit (DISC sales. Manufacturer's Cost of goods sold to DISC) (20,000 less 8,000)	12,000	
a) DISC deductions	2,000	
b) part of parent's expenses allocable to DISC (assume $\frac{8,000}{80,000} \times 16,000$)	1,600	
c) Export promotion expenses	500	
Combined net income		7,900
50% of combined net income		3,950
+10% of export promotion expenses		50
		4,000

66. I.R.C. §994 (a). The use of the actual sales price, however, will not avoid the possible application of the reallocation rules of Section 482. The Treasury has indicated that the parent company and the subsidiary should enter into an agreement authorizing a year-end adjustment to reflect the most favorable pricing arrangement permitted under section 994. See Handbook at IIIM.

67. Senate Report at p. 139.

68. Senate Report at p. 7.

X. MISCELLANEOUS CONSIDERATIONS

i) No advance tax ruling is required in order to incorporate and qualify as a DISC;
ii) an existing corporation can qualify as a DISC merely by making a timely election;
iii) the DISC can be owned by foreign persons;
iv) a DISC can be used in conjunction with existing or future sales companies incorporated and operating outside the United States[69]
v) A DISC need not be owned by a manufacturing corporation;
vi) a U.S. manufacturer engaged in export sales through export representatives or combination export managers in the U.S. can nevertheless benefit from a DISC;
vii) a DISC is available for firms rendering architectural engineering or export related services outside the U.S.[70]
viii) A DISC cannot be used in conjunction with a Western Hemisphere Trade Corporation or a possessions corporation, i.e. a corporation may not obtain the tax benefit of a Western Hemisphere Corporation or a Possessions Corporation and at the same time elect DISC status.[71] Similarly, a Western Hemisphere Corporation or a Possessions Corporation may not own stock of a DISC;[72]
ix) Foreign tax credits are available generally to shareholders of a DISC to the extent of the DISC qualified export receipts;[73]
x) DISC benefits are not available to a Subchapter S corporation;[74]
xi) a bank, insurance company or other financial institution cannot qualify as a DISC;[75]
xii) a DISC is not an includable corporation for purposes of filing consolidated returns.[76] Similarly, a dividends-received deduction is not available for dividends paid by a DISC.[77]

CONCLUSION

The DISC may be a useful vehicle for tax saving. However, there are a number of restrictions with respect to producers' loans, availability of foreign tax credits, qualifying export assets and promotion expenses, for example, which may make the DISC less attractive than the initial rush to incorporate DISCs would appear to indicate.
Further, the use of DISCs for export operations may still be substantially less advantageous than the use of foreign sales companies where the purchases and sales are from and to unrelated persons.
Finally, the cost of organizing and operating a DISC must be carefully considered in relation to its benefits. It is probably fair to estimate an annual minimum of $5,000 in direct costs. If export profits were $100,000 and the DISC could therefore result in deferral of taxes on $50,000, the saving would be the annual borrowing cost of $50,000. Assuming such cost would be 6%, or $3,000, it might be less costly to borrow the amount otherwise deferred than to create and operate the DISC.

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69. I.R.C. §993 (e). See the dicussion relating to Related Foreign Export corporations.
70. I.R.C. §993 (a) (1) (C), (G) & (H).
71. I.R.C. 992.
72. *id.* The statutory provisions would permit a DISC to sell to a Western Hemisphere Trade Corporation but the Treasury has indicated that it will not permit a DISC to be so used.
73. I.R.C. §901 (d) and 904.
74. I.R.C. §992 (d) (7). Small business corporations, the income of which is taxed to shareholders generally as in the case of partnership.
75. I.R.C. §992 (d) (3).
76. I.R.C. §1504 (b).
77. I.R.C. §246 (d).

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ROBERT E. BALDWIN*:

EXPORT SUBSIDIZATION

The purpose of this paper is to give a general background survey of export subsidies and in particular, an evaluation of such subsidies from an economic viewpoint.

Export subsidization should be defined very broadly as any policy action that grants preferential treatment to export activities compared to producing for domestic markets. This definition covers both public and private export subsidies, but it is probably best to confine our attention to public measures that artificially increase exports. Moreover, I shall be discussing only measures which seem to have a substantial effect on trade.

If existing international agreements were closely adhered to, export subsidization presumably would not be a significant problem. Aricle XVI of the General Agreement on Tarriffs and Trade specifically condemns the use of export subsidies. It directs all contracting parties to "cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market." Members of GATT are also urged not to subsidize exports of primary products, but if they do so, the subsidies should "not be applied in a manner which results in that contracting party having more than an equitable share of world export trade" in the affected product. If the Contracting Parties determine that serious prejudice to the interests of any other contracting party is caused or threatened by export subsidies the party granting the subsidey shall discuss with the affected country the possibility of limiting the subsidization.

Article VI of the GATT on anti-dumping and countervailing duties also is directed at preventing export subsidization. In response to public export subsidies as well as the main private manifestation of export subsidization, namely, dumping, affected countries are permitted to levy countervailing and anti-dumping duties to the extent of the subsidization, provided the subsidization causes or threatens to cause material injury. The United States countervailing duty law, incidentally, does not contain this latter "injury" provision. But, since the law predated the GATT, the U.S. is permitted, under the so-called "grandfather clause", to follow this practice without being in violation of the GATT. Pressures have frequently been exerted by other countries for the U.S. to bring its domestic legislation on this matter into conformity with the GATT.

Despite these particular articles of the GATT and certain others that bear on the matter, export subsidization—as we all know — does occur on a wide scale in world trade. To an important extent, this is due to the lack of any truly effective enforcement power by the Contracting Parties. The problem also arises because certain forms of export subsidization are excluded or not dealt with adequately in GATT. For example, the very important area of export financing is outside the scope of the agreement. The relevant articles also focus on subsidies to particular products rather than general subsidies that cover all potential exports. Nevertheless,

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most international economists would, I think, still say that at the present time the problem of artificially promoting trade is still less serious than that of artificially restricting trade by various tariff and nontariff devices. A better understanding of the various sorts of public policies falling within the framework of export subsidization can be obtained if these are further classified on the basis of the purpose for which they are introduced. There seem to be four main objectives behind the use of export subsidies: first, to improve a country's balance of payments position; second, to stimulate economic growth; third, to assist in maintaining full employment conditions at home; and fourth, to aid particular industries or sectors that are faced with the problem of surplus productive-capacity. Of course, all four reasons may account for the introduction of any particular export-creating measure, but usually one of the reasons dominates.

A common element in export subsidies designed for balance-of-payments, aggregate employment, or growth purposes is that they usually cover a wide range of products. The best example, of course, is a subsidy on all exports such as is often introduced by countries in severe balance of payments difficulties. Both France and the United Kingdom have temporarily used general export subsidies of this type in recent years. The French subsidy of 6 percent on wages in export industries between July 1 and October 31, 1968, and of 3 percent between November 1, 1968 and January 31, 1969, was approximately equivalent to a price subsidy on exports of 2.5 percent for the earlier period and 1.25 percent for the later. The subsidy was granted to offset the adverse pressures on the balance of payments that resulted from the significant wage increase granted workers as part of the settlement of the political crises in May and June of 1968. The U.K. subsidy, which was in effect from 1965 to 1967, varied from 1 percent to 3.25 percent of the export value of commodites and was paid in compensation for certain indirect taxes included in the production costs of the commodities. However, the British government made clear that the scheme was introduced for balance-of-payments reasons. Both of these British and French export subsidies were not consistent with a strict interpretation of GATT rules—just as the current U.S. import surcharge is not.

Economists generally argue that devaluation of a country's currency or deflationary domestic policies are the more appropriate means of correcting a balance-of-payments deficit than export subsidies. By making both foreign currencies more expensive to domestic residents and the devaluating country's currency cheaper to foreigners, devaluation shifts resources into both export and import-competing industries. Export subsidies, on the other hand, only pull resources into export industries and thus tend to restore balance of payments equilibrium at the cost of distorting the best use of total domestic resources. Resources become committed to export industries that have more productive uses in other parts of the economy. Foreign consumers tend to benefit from the export subsidization, but foreign producers of the subsidized items are forced to curtail their output levels. A particularly bad feature of such types of subsidies is that they often vary considerably in their magnitude over time and thus force a continuing series of artificial and painful adjustments on foreign industries.

One of the most widely used forms of general export subsidization today relates to export financing. The subsidization usually consists of establishing special financing or refinancing facilities as well as providing favorable insurance and guarantee arrangements for

credit provided by private institutions. Both types of help enable exporters and foreign importers to obtain credit at interest rates lower than those for financing comparable domestic transactions.

Government aid in the export financing field has greatly increased in importance within the last decade. For many countries this has been based on the desire to speed up the rate of industrialization by opening up new export markets. Since capital goods have been increasingly sold on credit, one of the main obstacles to this goal that faced these countries was the traditionally lower credit terms available from U.S. exporters. To offset this U.S. competitive advantage, most of the other industrial nations established special financing and rediscount facilities for exporters and insulated export credit terms from those prevailing in domestic markets.

The extent of this is apparent from the differentials in interest rates between export and domestic credit that prevailed in the major countries in November 1970. In France the medium-term interest rate for domestic loans from commercial banks was 10 percent whereas that for exports from commercial banks was only between 5—6 percent. In Germany the two rates were 9.5 and 6.5 percent; in Italy, 10.25 versus 6.5 percent; in Japan, 7.5 versus 4-7 percent; and in the U.K. 8 percent for domestic credit and 7 percent for export credit. In the U.S. the domestic prime rate was 7.25 percent and the export rate between 7.15 and 11 percent. The Export-Import Bank provided some direct financing at a 6 percent rate and had some rediscounting facilities but on balance U.S. exporters were often at an absolute disadvantage compared to foreign exporters.

This situation has quite understandably led to pressures for the expansion of export subsidizing activities in the U.S., especially in view of our balance-of-payments problem. In effect the U.S. has permitted other countries to offset one of its main competitive advantages. Because capital is relatively abundant in the U.S., interest rates tend to be lower here than in most other nations. The other side of this coin is that wages tend to be relatively lower in the rest of the world compared to the U.S. because labor is relatively more abundant in these other countries. Subsidizing export credits to match or go below U.S. rates is no different than the U.S. subsidizing wages in its export industries in order to match lower foreign wages. Yet, from a world point of view, successive competitive actions of this type either in the credit or wage field result not only in a lowering of potential world income but in no one country getting much of a jump on the others.

Another important way of subsidizing exports is by providing special tax advantages. The French government, for example, at one time—and perhaps still does—issued special cards to exporters that significantly increased their foreign sales which enabled them to obtain favorable credit terms and pay lower taxes. The Administration in this country has also proposed a program that would grant tax privileges to U.S. exporters. Still another form of providing tax favors to exporters exists in Italy where subsidies on virtually every export are granted, ostensibly as a refund for indirect taxation other than turnover taxes.

There is, however, one other broad form of export subsidization I would like to mention. It is not usually regarded as subsidization of exports but in fact it is. This is the maintenance of an undervalued currency as a long-run policy objective. A number of developed and developing countries seem to have pursued this goal in recent years. One should probably permit export subsidizing activities by and directed at developing countries on

the grounds that this improves the distribution of world income. However, the practice by countries that are already industrialized of undervaluing their currency in order to stimulate further industrialization and domestic employment should, in my view, be condemned. It might be argued, however, that we in fact should not object to a particular country following this practice because we benefit from the artificially low export prices of the country undervaluing its currency. If labor and capital were completely mobile within every country and wages and prices perfectly flexible, then other countries would benefit from this sort of export subsidization. But these conditions do not hold. One of the serious actual consequences of persistent currency undervaluation is that it magnifies the adjustment problems of industries that are being forced into lower competitive positions even under equilibrium exchange-rate conditions. In other words, the unemployment problem in some of these industries is made worse. To some extent, this has occurred in the U.S., and has contributed to the rise of protectionist pressures in this country. A nation that undervalues also finds it difficult itself eventually to shift resources into more productive uses because of the vested interests that have arisen as a consequence of the subsidization.

As mentioned at the outset, some export subsidies are directed at particular industries or sectors rather than exports generally. Export subsidies to agricultural goods are the most important example of this type of subsidization. They usually first arise in order to offset domestic price supports for agricultural goods and maintain traditional export patterns. However, one soon ceases to know what export patterns would be like in the absence of price supports and outright export subsidization tends to occur, especially if acreage controls are not introduced and thus surplus production tends to build up. As one country after another tries to dump its excess production we lose contact with where the real cost advantages in agriculture lie in the world and trade in agricultural products becomes mainly a political rather than an economic matter.

For my final comments on the subject of export subsidization I want to mention briefly how we might, through international negotiations and agreements, reduce and eventually eliminate most export subsidies. First, we should recognize that the present flexible exchange-rate conditions provide an unparalleled opportunity to move vigorously not only against export subsidies but against a host of other trade distorting devices. As I pointed out before, an important reason for the introduction or tightening of trade distorting measures has been to improve a country's balance of payments. This is particularly true in the U.S. where not only has greater export subsidization been urged on these grounds but such policies as more restrictive govenment purchasing activities, tied foreign aid, and controls over direct foreign investment have already been put into effect because of balance-of-payments difficulties. Now that the dollar is floating against many currencies, there is no longer any need for these measures. The dollar should be permitted to seek its true equilibrium level—and this can be found if not only the import surcharge is removed but all other trade-distorting measures of this sort. Removing these measures would not only raise real income in the U.S. and elsewhere but clearly demonstrate to the world community the basically outward-looking orientation of the U.S. on trade matters.

If the U.S. as well as such countries as Japan do not unilaterally liberalize their trade distorting commercial policies, other countries should insist that these policies become

a part of the negotiations for a new international financial order. More specifically, we must recognize that commercial policies can and have been widely used for balance of payments, growth, and employment purposes and, therefore, should not be treated in isolation from exchange-rate policies. Yet the existing compartmentalization of these policies in the GATT and the IMF do not permit these two sets of policies to be considered simultaneously in one international forum. Thus, one important reform I would like to see is giving the IMF the power to police and negotiate on those trade-distorting policies which, like export subsidies and tied aid, have significant balance-of-payments effects. The GATT should restrict its activities to trade-distorting devices whose main effects fall on particular industries or sectors.

The article in the IMF dealing with commercial policy matters should condemn the use of export subsidies, government purchasing policy, etc. for balance-of-payments objectives and insist that exchange-rate changes or perhaps temporary uniform import levies and export subsidies be used to meet deficit difficulties.

The articles in GATT dealing with export subsidies (as well as most other trade distorting measures) also need to be updated and tightened. It should be noted that not all export subsidies should be condemned in these revisions. Some are justifiable on economic grounds. The latter group covers government programs to assist firms in opening up entirely new export markets. The revenue benefits resulting from the market surveys, advertising campaigns, and other promotional programs in such ventures accrue not just to the firm initiating the new trade pattern but in part to their potential competitors. Because of these spillover effects, the socially optimal expenses will exceed what the initial private entrants would be willing to spend on promotional efforts. Government aids to these firms are, therefore, desirable. Assistance to the first firms entering a new market are also economically justifiable on the grounds that private producers may systematically overestimate the risks involved in exporting to a new market. On the other hand, such measures as foreign exchange guarantees at below-market rates and below-cost insurance against the risks of increases in domestic production costs after a foreign contract has been signed cannot be economically justified and should be eliminated. To distinguish justifiable from unjustifiable export subsidies, not only must the articles pertaining to export subsidies be made as specific as possible but the fact-finding role of GATT must be expanded. But the most important point to make at this time is that we must use the occasion of general exchange-rate realignments also to revise our commercial policy relations. To make the first change without the second is to deal with only a part of the basic problem.

G.A. BROWN*:

TAX INCENTIVES FOR EXPORT BY DEVELOPING COUNTRIES

Developing countries by definition are those which either have a small endowment of natural resources or latent resources not yet discovered or if discovered requiring large amounts of capital to exploit. Typically too, the population is large in relation to available resources and the population itself is underdeveloped i.e. consisting mostly of unskilled people. The lack of capital, the lack of natural resources and the lack of a population with the necessary skills rule out in the majority of cases the production of other than the most elementary goods. This inevitably means that the population of the developing country can only enjoy the basic amenities of a civilized life if goods or services can be exported and the foreign exchange earned thereby becoming available to purchase these necessities. Necessities that have to be imported commence with food, clothing, means of transportation, electricity generating plants, water pipes, pumps, drugs, medicines, pins and needles.

It is this absence of diversification of production and, in many cases, the existence of a one crop or one mineral economy which requires that the developing country must literally export or die.

The developed country, in many instances, is more nearly self-sufficient in natural resources although in the majority of these countries there is a severe shortage of sources of energy. Even where the natural resource base is small in the developed country, this is offset by the skill of its population and the availability of past accumulated savings. This combination of skill and capital is used to process imported raw materials for local consumption and for export. This arrangement is not available to the developing country and it is this almost complete dependence on foreign exchange earnings for the basic necessities of life in a developing country which has led to many of these countries taking extraordinary action to subsidise or to have special tax regimes for their exports.

The typical developing country, up to the end of World War II was content to rely on its export earnings from plantation agriculture as is evidenced by the vast sugar, rubber, tea and banana estates. In other cases, the dependence was on exploitation of mineral resources such as oil, tin, copper and iron ore. These plantations and mineral resources were, invariably, exploited by foreign capital. Where there was a Colonial relationship, the capital was mostly provided by the metropolitan country.

Existing side by side with these developments was a large subsistence sector where the people more or less consumed what they produced, but life was primitive. In the plantation and mineral sectors possibly the first example of a subsidy for the encouragement of exports would have taken the form of land grants or land concessions. Public finance was organised on the basis that either no income tax or very low rates of taxes applied to the plantations with a royalty being applied to mineral production. The main source of Government's revenue therefore came from import duties levied on the consumer goods which were financed from the foreign receipts of the plantations.

The post-World War period has seen a drastic change in this simple arrangement. In many countries the large foreign-owned

* Governor of the Bank of Jamaica.

plantations have become either nationalised, state-regulated or broken up into smaller holdings. In addition, not only has growth in the demand for the typical plantation products lagged, but because of the production of substitutes in the developed countries and the pursuit of a highly protected agricultural policy in developed countries, export markets and prices for these primary products have been both difficult and poor, subject to large fluctuations and, on an average, falling far behind prices for manufactured goods.

Superimposed on all of this is the political and social ferment which has swept through most countries and which has had the effect of stirring up a hitherto dormant people in the subsistence sector to express demands for roads, electricity, schools, modern drugs, better housing and so on. It is in the context of this background that policies for the subsidising or granting of tax incentives for exports must be considered. Unless these factors are taken into account one may be tempted to make facile mathematical calculations of cost and benefits as applicable to the programmes of developing countries but without having taken into the calculations the social and political factors that the developing countries themselves have had to contend with.

The following are some of the subsidies and tax incentives which have been provided for the stimulation of exports of primary products.

PRODUCTION SUBSIDIES

Subsidies start at the production end. These have taken a variety of forms beginning with cheap land being made available by the Government to those who have undertaken to produce specified crops for export. There are subsidised seeds; subsidies for land clearing; subsidies for terracing and soil conservation measures; the provision of subsidised agricultural credit are all well-known devices. Subsidised transportation, both of the finished product and of the raw materials is practised in Jamaica. For example, cane farmers living beyond a specified distance from the central factory can obtain a transportation subsidy. Special low rates are available on the railways for the transportation of crops to the ports.

MARKETING BOARDS

A large number of developing countries established state-owned marketing boards for different commodities shortly after World War II and these Boards were given the monopoly of selling a particular product abroad. The Boards in many cases started life as a means of bringing stability to prices i.e. creaming off large profits in good years and using this to subsidise prices in bad years. In cases where the production of the export commodity was largely in the hands of small farmers, such as in the case of cocoa, coffee, ground nuts, palm oil etc. the Boards performed a taxing function. It was a cheap and conveneient means of extracting direct taxes from producers who would never have been caught up in an income tax net. However, because of the falling behind of prices for tropical products in world markets and increased production costs at home, these Boards are in many cases now performing a completely different role. They are used as instruments of the Government to provide the farmer with a guaranteed price which is set at a figure designed to ensure that the farmer will continue to produce. The marketing board then takes its chance on the world markets and the usual operation is now one of deficit trading which has to be financed by Government. Bananas in Jamaica is only one of many examples in which marketing boards which once had surpluses

are now deliberately operating at a deficit in order to ensure that production continues.
Economists used to argue in the case of these primary crops—particularly peasant produced crops—that the peasant adjusted his production as prices fluctuated in order to give himself a minimal income. When prices fall he would endeavour to increase production and maintain his income and when prices increased, it was said that he would reduce production. For the most part this theory now belongs to the history books because peasants all over the world have adopted the attitude that they prefer to starve in the city than to break their backs to increase production in a bid to maintain their incomes when prices fall. In other words, the policy of guaranteed minimum prices which have continuously to be reviewed upwards, notwithstanding the performance of the commodity on the world markets, is an absolute necessity to stem or reduce (it cannot prevent) mass migration to urban areas.
In calculating the cost and benefits of an export subsidy in these circumstances one must take into account the costs which would otherwise have been incurred in economic, social and political terms by an increased migration from country to town. It is true the same considerations apply whether we are dealing with subsidies for export crops or subsidies for crop production for local consumption. The fact is, however, that it is the export crops where the market is organised and where it is possible to apply the principle of the guaranteed price with little administrative burdens.
In the field of mineral production, the position has not been as critical as in the case of agriculture and it is true to say that mineral producing countries have, by and large, relied on these industries as one of their prime sources of tax revenue rather than as industries requiring subsidisation. There are exceptions such as tin production where Governments have contributed to the maintenance of export earnings by providing for the financing of buffer stocks for example.
As a final commentary on marketing boards, it should be mentioned that in some countries where the demand for foreign exchange is critical, the Government will deliberately set out to encourage an industry which is known beforehand to be high cost, but where it is believed that the product could be sold to earn foreign exchange. This is possible where the inputs consist essentially of local manpower and land, for example, the cultivation of sugar cane. If the industry occupies a major part of the economic activity of the country such action would, of course, be inflationary but where it is small, this operation by itself may not have any effect on the price level and in cases where there are rigid exchange controls, there will be no resultant foreign exchange leaks.

MANUFACTURED GOODS

The previous statements have looked at various forms of subsidies in relation to primary goods. Tax incentives of one type or another are also applicable to primary industries, but to avoid repetition, the tax incentives which are applied to stimulate the export of all types of goods will be dealt with in our discussion regarding manufactured goods.
Over the past twenty to thirty years, developing countries have progressively adopted the policy of encouraging the establishment of local manufacturing enterprises. Such enterprises range from semi-processing or processing of locally available raw materials so as to increase the value added to the commodity which is exported.
The second category would consist of manufacturing based on imported raw materials in different stages of processing for local con-

sumption.
The third category would consist of the importation of raw materials for the manufacture of goods partly for local consumption and for export or primarily or solely for export.
Pressure has developed within the developing country for more and more processing to take place of its own raw materials before they are exported. A country producing crude oil expects as large a proportion of the product to be refined locally as possible. From refining they expect the establishment of a petro-chemical industry. In Trinidad, for example, there is an export tax on crude oil exports but which is removed where the oil is refined locally.
In Venezuela, crude oil exports are restricted when they are sent to refining centres, i.e. where the oil is refined in an offshore refining centre but the refined oil is not consumed there.
In Jamaica, the royalty on bauxite which is exported as bauxite is higher than the royalty on bauxite converted into alumina locally.
These are really negative subsidies which by discouraging one form of operation, hopefully, would encourage another and desirable form. In some cases where unit costs of production can only be kept low by very large scale processing, a direct subsidy may be needed to bring in the processing operation. Sugar refining, for example, has typically taken place in the country of consumption because of the advantages of economies of scale.
In the second case of manufacturing, partly for consumption locally and partly for export, the subsidy has taken the form of the grant of a monopoly or of a highly protected local market in which the manufacturer could cover his higher local costs and obtain a profit which would enable him to export at any price above marginal costs. Invariably, the foreign or local capitalist holds out the carrot of an export potential to the Government when he negotiates for the setting up of the factory, and the concessions are granted on this assumption. Unfortunately, no guarantee can be built into this and the country can end up with a high cost producer serving only the local market and getting none of the benefits of foreign exchange earnings. The subsidies here are not coming directly from the Treasury but are a tax on the consumer of the particular product.
There are cases where the Government itself decides to enter the manufacturing field in the full knowledge that its unit costs will be higher than could be recovered from exports but because of the need for foreign exchange and to create employment, the resultant loss is accepted and financed from the Budget.

TAX INCENTIVES

It is common in the majority of countries to grant Customs duty exemptions on construction materials and machinery which are imported for the establishment fo a factory. This is sometimes restricted to approved industries. In other cases, to plant and equiment imported for export industries. Customs duty exemptions are also extended to raw materials imported for the manufacture of commodities which would be exported. Where the factory is manufacturing for export only, no other considerations arise: where the production is partly consumed locally and partly exported, the Government has to consider its own fiscal position particularly where the local product replaces an imported product on which Customs duty used to be collected. In this case, the loss of revenue can be covered simply by an Excise Tax or Purchase Tax or Consumption Tax on the product which is sold locally. This is administratively a less

cumbersome way of dealing with the matter than to have the manufacturing industry pay import duty on its raw materials and thereafter claim a drawback in respect of materials incorporated in the goods exported.

There are cases in which manufacturing in bond is permitted. In this case, the plant enjoys complete Customs duty exemptions but a tax is levied on any goods passing from the In-bond area into the rest of the country. Export goods would move freely out of the country.

INCOME TAXES

Probably the best known of the tax concessions is a tax holiday. As mentioned previously, prior to 1945, the income tax in developing countries was either non-existent or was levied at low rates. With a shift from indirect to direct taxation and at the same time the pursuit of a policy by Governments to encourage new investments, a means had to be found to encourage not just foreign capital but also local capital into manufacturing undertakings. A person who had accumulated any savings in a developing country invariably invested these funds outside of the home country or in fixed interest-bearing mortgages. It was assumed that he had to be given some incentive to get into the risk-taking field, but as regards the foreign investor, he had to be lured away from an investment at home.

Where the production consists largely of making goods for local consumption and where the local market was protected, the risk was obviously not as great as in those cases where the industry was to be dependent on exports and even more generous income tax incentives have been provided for the export industries than for those which manufacture wholly or partly for the home market. In Jamaica the incentives are divided into two categories—those which apply to factories manufacturing primarily for the home market (whether or not they export some of their production) and those manufacturing wholly for export:—

(a) In both cases there is a basic 10-year tax holiday. This can be extended to 15 years where the factory is established in an undeveloped area of the country.

(b) At the end of the tax holiday period, the manufacturer is entitled to commence writing off depreciation against his income in the post-tax holiday period in respect of the cost incurred on plant and equipment during the tax holiday period. The theory here is that in the normal course of events the owner of plant and equipment would have been allowed to write off the cost of this plant and equipment against his income before being taxed and that his tax holiday, in the absence of the arrangements mentioned above, would only have applied to the income earned in excess of the capital cost of his plant and equipment.

It will seem, therefore, that as a result of this arrangement, particularly as the manufacturer is additionally entitled to claim a 20% initial allowance (really accelerated depreciation) in respect of any capital costs incurred after the tax holiday period, that there can also be a further exemption from tax payment for another 5—10 years. It should be noted that in addition to the depreciation mentioned above, the company would be able to claim concurrently, depreciation on equipment acquired each year subsequent to the tax holiday period.

(c) A company enjoying a tax holiday can declare a dividend free of taxes provided it is paid to a person who will not be subject to tax thereon in his home country. The rationale of this, of course, is to ensure that a

tax concession does not merely result in the Treasury of the recipient's country getting the tax instead of the tax holiday country. In these cases, there is a withholding tax on the dividends up to the extent of the normal withholding tax or the tax payable in the recipient's country, whichever is the less.

(d) Losses incurred during the tax holiday period and not offset by profit in that period can be written off against profit in the post-tax holiday period.

(e) There is a provision that the tax holiday can be reduced from 100% tax exemption to 50% tax exemption in cases where it is considered that the full exemption was not warranted. The theory on which this proposal was based is sound. It was assumed that where the incentive was either 100% exemption or nothing, some industries would be given more than is required to bring forward the investment while there are others which would not come into being because it was considered they could not qualify for the full range of incentives. It is significant here to note that throughout the entire administration of the Law in Jamaica, in no case has an incentive industry been given less than 100% exemption. It points out the serious problem of administration which arises once a concession exists on the statute book and the investor is in a position to bring pressure to bear on the Government to grant the full range that is available.

(f) Plant and equipment are imported free of Customs duties.

(g) Industries manufacturing for export are allowed all their raw materials duty free but those manufacturing partly for export and partly or wholly for the local market do not always have this concession.

(h) The main difference in the administration of the Law in its application to industries manufacturing wholly for export and industries manufacturing primarily for the home market lies in the criteria used in determining whether the product should be an approved product. In the case of those factories manufacturing primarily for home consumption, the product has to be one which is not being manufactured in the country on a substantial scale. If, for example, boots and shoes are being manufactured locally, a manufacturer hoping to sell his product to the home market (even though exporting some) would not be granted approved status. Where, however, he is manufacturing wholly for export, he is readily granted approved status whatever the product. This does not apply to agricultural or mineral products.

A word should be said about the industries manufacturing wholly for export. They are in a special category. They normally manufacture various types of wearing apparell and assemble electronic components for domestic and industrial apparatus and other operations in which the labour element is relatively high compared with the final value of the product. In these cases, someone in the United States or other developed country with a marketing outlet—it might be a large distribution firm—finds that by locating a factory in a low wage country considerable savings can be effected. Most of the raw material is provided by the sponsor, the plant and machinery are generally of the simplest type and the developing country provides a factory building in which the machinery is installed. These industries are the "foot loose" industries ready to move from one location to another and for this reason have been criticised by many persons as making very little contribution to the country of location. The fact is, however,

that the country benefits from the employment provided.

It is true that there is no example which can be found of countries in which an export industry of this nature has remained in the developing country after it has come to the end of its tax holiday period.

Experience in Jamaica has shown, however, that long before they get to the end of that period, which as indicated above could be for as long as 20 years, a reorganisation has taken place and a new company is established undertaking more or less the same type of operation and starting out on its tax holiday period afresh. Experience in Mexico has shown too that there is an increasing number of local entrepreneurs who are prepared to set up factories in Mexico and negotiate sales of products with American buyers on the basis that the buyer will supply the raw materials and take the finished product. These products enter the United States under Tariff Item 807 which provides for the levy of Customs duty on the value added only. If this arrangement did not exist in the United States Tariff structure, this type of manufacturing plant would not have been possible.

The United States Tariff Commission in a recent report states that in 1969, 60% of the imports under Tariff Item 807 came from foreign plants in which a United States importer or manufacturer had no investment participation. This is important in so far as stability is thereby given to this type of operation. It is the foreign owner who would be "foot loose" and skipping from location to location, whilst the local owner would be more concerned to keep his factory going, assuming he was not in a position where he had run out of tax concessions.

A report from the Banco Nacional de Comercio Exterior, Mexico, shows that the value added on the Mexican plants in respect of these industries was 35%. In 1969, components imported for assembly or further processing in Mexico amounted to $ 98 mn: the export value was $ 150 mn. There were 120 such plants and they employed 19,000 persons.

In Jamaica there are 42 plants manufacturing wholly for export and enjoying the tax concessions stated above. They provide employment for 6,000 persons. Capital invested is approximately J$ 4 mn. It is estimated that the tax foregone under these incentive laws runs to $ 200,000 per annum. As against this the wage bid is at least J$ 4 mn per annum. There is no hesitation in saying that without the special tax concessions, export industries of this type would never come into being.

The case of plants manufacturing for the local market is quite different and there have been many studies to show that in these cases the tax holiday was not a priority consideration for the investor in deciding whether he should make the local investment. There are many other factors which were uppermost in his mind. It would be wrong, however, to generalise from these studies and apply the same conclusions to plants which are operated solely for export, particularly where they were not engaged in the processing of local raw materials but were largely dependent on imported raw materials.

INDUSTRIES MANUFACTURING PARTLY FOR EXPORT

Much thought has been given to arrangements for providing tax incentives to well established local industries to get into the export field. This matter was dealt with at a United Nations-sponsored conference in Trinidad and I set out below the recommendations made by that conference:

"Where an approved enterprise is exporting *only a part, and not whole*, of its output out-

side of the Area, partial relief from income tax should be given with respect to *profits attributable to exports* at the rates set out in the schedule for enterprises manufacturing exclusively for exports. With respect to the balance of its profits, i.e. those attributable to sales within the Area, relief would be available to such an enterprise at the lower rate applicable to other enterprises in the schedule referred to above.

For purposes of the preceding paragraph, it is proposed that *profits attributable to exports* should be taken to be the amount produced by the formula: $\frac{P \times E,}{S}$

where P is chargeable profit of the enterprise for the year; E is sales proceeds (ex-factory) of the output of the enterprise exported during the same year outside of the Area; and S is the sales proceeds (ex-factory) of the total output of the enterprise sold during the same year (excluding any excise duty, if paid).

Although, ordinarily the rate of profit per unit of output should be lower for export than for local sale, under the proposed formula it is assumed to be the same. This is deliberate.

The intention is to create thereby a bias in favour of export-oriented import-substitute enterprises as compared to both purely import-substitute enterprises and also enclave enterprises.

INCREASED EXPORT ALLOWANCE: This additional relief from income tax is proposed to be offered to all manufacturers, including approved enterprises after they have exhausted their period of partial exemption, on the basis of the increase they show in their export sales. It is proposed that the allowance should be given at the rate of 1% of the profits attributable to exports for every 1% increase in the proceeds from the sale of exports during the year over the sale proceeds from exports in the year immediately preceding. The profits attributable to exports will be calculated in the manner proposed in the paragraph above. The allowance should not, however, exceed the tax that would have been payable on the profits attributable to exports in that year at the company rate of tax. This allowance should, it is believed, promote expansion in exports even after the other tax concessions have exhausted themselves."

SPECIAL EXCHANGE RATES FOR EXPORTERS

In many countries with multiple exchange rates, an exporter is granted the most favourable rate of exchange i.e. he can obtain in exchange for foreign currency a greater amount of local currency than other holders of foreign currency. Sometimes, in buying special raw materials, the opposite applies. He needs less local currency to purchase foreign currency to pay for the imports than would be the case with other persons.

Multiple exchange rates are frowned upon by institutions like the International Monetary Fund. There are many administrative problems which are involved. They can result in great inequities but at the same time it is true that the system provides a direct means of subsidising and encouraging manufacture for export.

Whilst great progress has been made in the last 10—15 years in eliminating multiple exchange rates, it can be argued that unless there is an early resolution of the present international monetary crisis, we are likely to see a return to the use of this system as a means of encouraging exports.

EXPORT TRADE CREDITS

Another area to be mentioned is that of the guarantee of trade credits. The majority of developed countries have a system of insuring

export trade credits. The rates of insurance charged are low and would not have been obtainable if there was not Government backing of the scheme. Developing countries are just realising the necessity for such arrangements and a number of them are in the process of establishing Export Credit Insurance Schemes.

EXPORT OF SERVICES

Finally, a word should be said about the export of services. In the Caribbean countries particularly, Tourism is one of the most important export services and throughout the region there has been heavy direct and indirect subsidisation of the tourist industry as a means of increasing foreign exchange earnings and providing employment. Building and construction materials are allowed in duty free for hotel construction. One of the most important areas of subsidisation is the provision by Government of guarantees in respect of non-equity investment in hotels. In Jamaica such guarantees now exceed $50 mn. The entrepreneur, if he can get together 40% of the required capital can borrow 60% with a Government guarantee. This not only ensures that he gets a reduced rate of interest but in many cases is the only basis on which the funds would be made available by the lenders.

In Jamaica both the hotel-owning company and the operating company (in the majority of large hotels they are different companies) are entitled to a 10—15 year tax holiday.

The Governments of tourist countries spend large sums of money on advertising the country, and the hotels of course, automatically benefit from this. It is estimated that tourists spend US$220 mn. in the Bahamas and of this US$44 mn. has been traced to Government revenues arising from this expenditure. Thee is no income tax in the Bahamas, so that the revenues would arise from Customs duties, gambling licences etc. There are no estimates of retained earnings in the Bahamas but studies in Jamaica show that between 60—65% of tourist expenditure was retained in the country. Undoubtedly, in this case, subsidies provided by the Government have paid off and it can be assumed that so long as an expansion of the industry is required, the subsidies and tax concessions will continue to be provided.

CARL S. SHOUP:

EXPORT INCENTIVES IN THE CONTEXT OF THE INDIRECT TAX STRUCTURE

I submit herewith eight general propositions on which a discussion of export incentives, in the context of the indirect tax structure, should in my opinion be based.

First, it is not very useful to ask half-questions, for example, can a trade advantage be gained by imposing a destination principle VAT? Such a question fails to specify what other tax the VAT replaces. The consequences of substituting a VAT for a corporation income tax (CIT) will differ from those of substituting it for a payroll tax (PT) or a retail sales tax (RT).

Second, we should distinguish the consequences over the short term (say a few years) with those over the long-term (a decade or more). A trade advantage gained, or disadvantage incurred, over the short term, from a change in the tax structure, tends to be lost, or escaped, respectively, over the longer period. This is so because the alteration in the trade balance brought about initially by the tax change tends to cause (1) exchange rates to be different (in the opposite direction) from what they otherwise would be, and (2) regulations on transfer of capital to be different. We may recall here that, in general, the substitution of a destination basis for an origin basis in a general sales tax is very much the same as a devaluation of the currency for trade purposes only. Current developments perhaps illustrate the second proposition. The degree of upward revaluation of other currencies against the dollar that will have occurred when the period of "floating" is over will probably be greater than if the United States had for some time been imposing a VAT, destination basis, along with lower personal income tax rates.

Third, as a corollary to the second proposition, we should not lay the blame for current trade balance difficulties on a tax structure developed decades earlier, for example, a structure that applies the destination principle (exempting exports) to a general sales tax but not to a payroll tax (this is the case in virtually all countries that levy both taxes). As an example, let us consider the cascade turnover taxes that had been in force in Germany, and, until the late 1940's, in France. In the days of the dollar shortage immediately after the war, we did not, of course, hear these taxes condemned because they exempted exports. And I do not recall hearing complaints about the payroll taxes in these countries on this score, though that may have been because they were not so extensive and substantial as they later became. At the same time, the European sales taxes were not, if I recall correctly, praised loudly because of their contribution toward rectifying the dollar shortage. All this was as it should be, since the general sales taxes had been in force for so long at roughly the then current rates that the exchange rate alterations had had plenty of opportunity to take them into account.

Fourth, it is necessary to distinguish between changes that involve tax measures of general scope and those that affect taxes of restricted scope, or that change only a restricted part of a general tax. The narrow-scope measures will not be offset, over the long run, by exchange rate changes or capital-flow regulations; these latter, broad-scope measures cannot very well counterbalance a narrow-scope measure. For example, the effect of the Western Hemisphere Trade provision in the

United States income tax law is probably too narrow to have been offset by exchange rate alterations. The same prediction could be made with respect to the proposed DISC provision (domestic international sales corporation). These measures do indeed constitute long-lasting subsidies to particular kinds of exporters of particular products or to particular regions.

Fifth, proposals for change from an origin basis must specify, if they are to be appraised correctly, whether the change to a destination basis is to be complete, in which case imports will be struck by a compensating tax, or whether it is to be merely a matter of exempting exports, and hence more like a one-half devaluation. Most of the proposals I have seen for changing the corporation income tax do not specify that a compensating corporation income tax shall be imposed on imports.

Sixth, it should occasion no surprise if tax policy planners prove unsympathetic to proposals for radical changes in a country's tax structure aimed simply at maintaining an existing exchange rate. These changes are likely to have important consequences for tax equity and tax administration, some of them quite unacceptable, especially when the tax policy planner knows that in another ten years or so he may be asked to engineer a change back to the original structure, as international trade and capital flows alter.

Seventh, if the proponents for change in the tax structure for international trade objectives are sure that the pressures they are proposing to mitigate are indeed long term pressures, the tax policy planner can rightly ask why, in that event, the simpler course of action is not the one to be taken, namely, a change in the exchange rate.

Eighth, the proposals for a border tax only, which have surfaced in recent years, are in fact proposals for a differential exchange rate system, one rate for trade and another rate (the official one) for capital transactions. Anyone who has his doubts about the usefulness of such a differential, on a permanent basis (as I do) cannot be enthusiastic about a pure border tax (and export rebate). To be sure, the initial effect of a change in a general tax, from origin to destination basis, is much the same, as noted above; but there is this difference: once the change has been made, and once later revaluations or devaluations again adjust balances of payments, there is no more to be done, whereas there seems nothing to prevent a border-only tax-and-rebate from being increased repeatedly, to levels that could not be accepted for a tax that applied also to domestic production for domestic use.

As to the question whether different types of general sales taxes differ in their influence on the trade balance, we may say that in principle they certainly must, with the exception of the pure retail sales tax vis-a-vis the pure VAT consumption type. This is because the cascade type of tax, for example, favors those commodities that are heavily weighted with late-stage value added, quite apart from the fact that such a tax discriminates against vertically non-integrated production and sale. The manufacturers sales tax has the same shortcoming, as does also, to a slightly lesser degree, the wholesale sales tax. And in practice the retail sales tax omits many services, and includes in its scope certain producers goods. This latter fact tends to lead to a burden on exports that are produced with the aid of these taxed producer goods. There is some difference of opinion as to whether this taxation of producers goods is easier to avoid under a VAT consumption type than under a retail sales tax; in my opinion it is, but the issue cannot be taken as

settled.

The eight propositions enunciated above are to some degree less significant for the developing countries than for the developed countries in that many of the developing countries present special cases with respect to their pattern of exports, which may be concentrated in one or a few natural-resource or similar products. Particular regimes of export taxes or marketing boards, royalties, and sharing in profits of extractive enterprises, may overshadow the question of export incentives in the context of the indirect tax structure. Also, few of these countries impose a broad-base well developed general sales tax. It remains true, of course, that these countries have a lively interest, over the short term, as to the kind of general-scope taxes that their customers, the importing countries, make use of. For the short term, and aside from the ultimate exchange rate adjustments suggested as likely, above, they would prefer to see their customer countries imposing payroll and income taxes rather than the destination type of sales tax. But it must again be emphasized that these are essentially short-run considerations.

V.J. GANGADIN:

TAXATION IN GUYANA

"Property and law are born together. Before the laws there was no property: take away the laws, all property ceases."–Jeremy Bentham, Principles of Civil Code (1786)

Guyana, like most former British colonies, inherited its fiscal system from Britain. It has also, with minor exceptions, patterned its administration of the law along the lines of the English legal system. Income Tax was introduced in Guyana in 1929. Previous to its introduction, representatives of a number of the more advanced British colonies met in London under the auspices of the British Government and formulated what was known then as the "Model Income Tax Ordinance."

This model ordinance provided the nucleus of the early income tax legislation of each of the participating countries. From time to time, the colonies modified their tax laws to conform with their special needs although up to the time of their independence the basic pattern of their tax laws remained largely the same.

With the advent of freedom, most former colonies made major, and, sometimes drastic changes to their tax laws to coincide with the objectives of their political and economic aspirations. Some of these countries, including Guyana, in making changes placed little or no importance on the psychological and sociological repercussions which usually attend revolutionary actions. In Guyana the first attempt to carry out a comprehensive tax reform, all in one breath, largely contributed to a general strike over the land lasting several months in 1962 and 1963.

1962 TAX REFORM

Before 1962 the only direct taxes imposed were a graduated income tax on individuals and a standard income tax on companies other than Estate Duty and such petty levies as licences and stamp duty. In 1962 the following new taxes were imposed on the recommendation of Mr. N. Kaldor the well known Cambridge Economist:

1. Capital Gains Tax (unlimited as to time) to be aggregated with income for the purpose of computing the quantum of tax payable, but setting a ceiling rate of 45% on capital gains.
2. Net Property Tax on both "individuals" and "companies" based on the net worth position at the end of each year with a graduated scale and an exemption limit of $50,000 in the case of individuals. The company rate was set at ½% on net property while the rate for individuals ranges from ½% to 1½%.
3. Gift Tax based on a graduated scale to supplement Death Duty.
4. National Development Saving Levy on a graduated scale and discriminating against self-employed individuals and companies.
5. Turn-Over Tax as a supplement to income tax in cases where actual profits fell below a minimum standard computed on the basis of a fixed percentage on turnover.

Changes were made in the deductibility of business expenses in arriving at the taxable income for income tax purposes. Hitherto all outgoings wholly and exclusively incurred in production of the income were admitted as deductions but the change effected limited outgoings to those that were "wholly, exclusively and *necessarily* incurred" in production of the income subject to tax.

Certain expenses like "Advertising" and "Entertainment Expenses" were strictly limited as deductions while the maximum rate of tax on the graduated scale affecting individuals increased from 60% to 70%. One very serious restriction empowered the Commissioner of Inland Revenue to disallow expenses in excess of the amount he considers reasonable having regard to the requirements of the business.

ABROGATION OF 1962 REFORM

With a change of Government at the end of 1964, the new Government at once made comprehensive amendments to the 1962 tax reform legislation abolishing at the same time the Gift Tax, the National Development Savings Levy and the Turn-over Tax. The Capital Gains Tax was retained but only as a short-term capital gains tax on gains realised from the disposal of property within seven years of its acquisition, bearing a flat rate of 15% on any such gains. The tax on Net Property was retained.

1970 TAX REFORM

Within the period from the time of those amendments up to December 1970, the tendency has been for a return to the more comprehensive reform made in 1962 and many amendments were made which clearly indicated the coming of a second general shake-up of the entire tax structure. It was therefore not surprising when in December 1970 a Corporation Tax on companies and a comprehensive form of Withholding Tax on payments to non-residents were introduced for the first time in Guyana to become effective on the income of the year 1969. At the same time legislation was introduced to limit the deductibility of liabilities for the purpose of ascertaining the taxable amount of net property for property tax purposes. While the pattern differed from that of 1962, the 1970 reform penetrated much deeper into the pockets of the taxpayer. The impact of those changes caused a definite "marking of time" in investments and retarded business expansion. Foreign investors who recently established themselves in the country carrying out economic viability surveys with a legitimate view to promote new enterprises, promptly packed up and cleared out.

In essence with the introduction of "Corporation Tax" and "Withholding Tax", the following changes were brought about:-

A. Corporation Tax

1. Companies were now to be classified as "Commercial" and "Non-Commercial" unlike in the past where all companies were regarded as the same.
2. Companies will no longer pay Income tax at the rate of 45% on their chargeable profits but will now pay tax as follows on their chargeable profits -

	Income Tax	*Corporation Tax*
(i) Commercial Companies -	20%	35%
(ii) Non-Commercial Companies -	20%	25%

3. Credit will no longer be given to shareholders on dividends received from companies at the full company rate (i.e. 45% as in the past) but only at the Income Tax rate of 20%.

B. Withholding Tax

Tax is to be withheld from any Distribution or Payment. A "Distribution" is deemed to be any dividend paid by a company including any payment made to a shareholder which does not amount to a return of share capital or a repayment of a debt due to him. "Payment" represents payments to a non-resident who is not engaged in business in Guyana, of any interest, royalty, rental,

premium, discount, annuity, or charges for the provision of personal technical or managerial services.

The rates of tax on "Distributions" vary between 27% and 40% in accordance with the amount of the distribution and as according to whether the recipient is a non-resident individual or a resident or non-resident company. Résident individuals do not suffer the withholding tax on distributions, since in any event any such payments to them constitute returnable receipts for income tax purposes.

The effect of the withholding tax on charges payable to non-residents for technical or managerial services results in the imposition of Guyana tax to a large extent on income arising to non-residents outside of Guyana. This clearly amounts to a form of extra-territorial taxation. Previously non-residents submitted tax returns of income accruing in Guyana and suffered income tax at the same rates as residents and enjoyed the same credits as Guyanese. The witholding rates are higher than the corresponding effective rate applicable to residents. This will naturally deter foreigners from investing in Guyana and to cause them to increase their charges from abroad for technical services rendered to Guyana undertakings.

THE ANNUAL PROPERTY TAX

A developing economy depends principally on its own savings and on aid from the advanced countries for economic development. Industrial enterprises, especially those faced with the burden of replacing heavy equipment must constantly depend on credit facilities. Plantations which seek to expand their areas of cultivation involving large outlays and where the period of gestation stretches over a length of time must also rely heavily on credit for development. Any tax, therefore, which unduly restricts credit facilities in a developing economy and at the same time strikes at the root of savings needs to be carefully examined in the context of development.

The annual Net Property tax in Guyana imposes greater burdens on enterprises which must maintain more heavy capital outlay than those which require relatively less. Before the December 1970 reforms, the tax was imposed on the actual net worth of a person. But legislation was imposed in December 1970 to limit the deductibility of liabilities from total assets. In the case of companies the amount of the deductible liabilities is now limited to 20% of the gross value of their assets while that of individuals is limited to 50% of the gross value of their assets. The effect of this limitation makes for a regressive form of direct taxation which in principle tends to deplete the resources which are most needed for development. It also discourages the use of credit as a factor in financing the expansion of existing enterprises and creates, at the same time, a disincentive in the launching of new projects.

An example would serve to illustrate the regressiveness created by the limitation of the deduction of liabilities:

Take three companies whose net worth positions are as follows:

	A $	B $	C $
Assets	1,200,000	2,000,000	2,000,000
Liabilities	167,500	967,500	1,500,000
Actual Net Worth	1,032,500	1,032,500	500,000

Property Tax payable on Net Worth of	1,032,500	1,600,000	1,600,000
Property Tax payable .	5,162	8,000	8,000
% on actual Net Worth	.50	.77	1.6

While the private sector is weakening through the diversion of a greater proportion of its income into the public sector, the additional taxes are consumed in increased recurrent public expenditure. Government now emphasises a new sector made up of co-operatives, self-help and voluntary labour hoping through it to attain an appreciable standard of self-sufficiency in the near future. As advocated, Government expects that by this means the people will in a few years be able to house, clothe and feed themselves. Co-operative Societies are exempt from taxation and their shareholdings are limited to residents only. By imputation, the contribution of this new sector to the country's economy as a whole is virtually nil and is indicative of a return to primaeval economics.

RETROSPECTIVE TAX LEGISLATION

A great degree of resentment was aroused by the retroactivity of the December 1970 legislation introducing the Corporation and Withholding Tax with effect from the year of income commencing 1st January, 1969. In Guyana a person (including a company) is assessable in the current year on his income of the preceding year. This has always been the case since the introduction of income tax in 1929 when the income of the year 1928 was assessed. If a person for instance, commences business in 1972 he will pay tax on the profits made in 1972 in the "Year of Assessment" 1973. For the income earned in 1969 most companies would have paid off their taxes assessed latest by September 1970, that is, for the Year of Assessment 1970. The legislation introducing Corporation Tax and Withholding Tax for the first time on 12th December, 1970, ostensibly imposed these taxes on the profits of 1969 or on payments and distributions made in 1969 notwithstanding the fact that income tax was already assessed and paid on the income of the year 1969. In fact many of the obligations imposed by the provisions of the Withholding Tax laws were impossible of performance since the December 1970 legislation imposed the withholding of taxes on payments and distributions already made in 1969. Severe penalties have also been attached for non-compliance. This resulted in the challenge of the constitutionality of the legislation in the High Court. Unlike the haste with which the new tax legislation was passed (when indeed the opposition walked out of the legislature en bloc in protest of not having been given adequate time to study the bill), the hearing of the matter challenging the constitutionality of the legislation has considerably been delayed. In the meantime the Commissioner of Inland Revenue is seeking to enforce payment of the retrospectively imposed tax.

Happily for the Companies which challenged this legislation, the charging Section of the Corporation Tax Act was worded, unlike the Income Tax Act, in a manner to lend support to the fact that Corporation Tax is payable for the first time on the basis of the income of the calender year 1970 for the Year of Assessment 1970. The Income Tax Act has always imposed income tax on the preceding year's income, that is, for instance, on the income of the calender year 1969 for the Year of Assessment 1970. Since upon the introduction of Corporation Tax the Company rate of income tax was reduced from 45% to 20% on chargeable income effective from the Year of Assessment 1970

companies ostensibly became entitled to a refund of 25% for the Year of Assessment 1970. The anomaly, however, was subsequently discovered while the case in the High Court is still pending, and an amendment was made on 31st December, 1971, that is, two years after the end of 1969, to relate the tax back retrospectively to the Year of Income commencing 1st January, 1969. No doubt this will also raise new issues on the retrospectivity of the Amendment while the amendment itself serves to strengthen the challenge of the constitutionality of retroactive imposition of taxes. Dr. Carleton Allen, the English jurist, in his "LAW IN THE MAKING"[1] stated, "every statute . . . which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past must be presumed to be intended not to have a retrospective operation". He added, "Wise Government will not lightly resort to retrospective legislation for the sake of expediency since it . . . should realise that in the last analysis justice itself is the highest form of expediency". Abuse of either legislative or judicial powers amounts to the taking away of the laws themselves since the aim of the law is to enforce justice.

PAYMENT OF TAX IN ADVANCE

Some other major changes carried out, either imposed abnormal hardships on the taxpayer, or subtly destroyed his right of redress to petition higher tribunals in his quest for fair treatment. Among them two changes are worth commenting on i.e. payment of taxes before they become assessable and the payment of the full amount of taxes assessed to earn a right of appeal to the High Court.

On the introduction of the pay-as-you-earn system in 1963 affecting employees only, one year's tax was forgiven to employees to avoid the collection of two year's tax in 1963 (i.e. for 1962 and 1963), since the preceding year basis of assessment remained unchanged. Companies and later self-employed taxpayers were asked to pay by quarterly instalments in advance their taxes on current year income while the preceding year basis of assessment still remains. In the case of companies a phasing out has been permitted over a period of five years to pay six years taxes but the self-employed were requested to pay tax in 1971 on their income for 1970 and once again on their income for 1971 in advance, while the Commissioner of Inland Revenue remained powerless in law to make an assessment on anyone in 1971 on his income for the year 1971. The change of basis of assessment from the preceding year income to the current year income would naturally have meant that in the year of change both bases could very well not have applied, and in order to relieve the taxpayer of his funds at technically a higher rate of tax than that imposed by legislation, justification was sought in changing the machinery of collection. In the 44 years of income tax imposition so far in Guyana, 45 years tax is sought to be collected while income tax remains an annual tax. Countries in which tax is paid currently, the current year income is the basis of assessment, the previous year's figures being used in the interim to estimate current advances towards the assessment to be made on current year's income.

RIGHT OF APPEAL

What may yet be a challenge, however, to the legal minds is the question of the astuteness of politicians under the Rule of Law

1. 6th Edition — page 450 *et seq.*

in the imposition of taxes. If taxes were peremptorily imposed the sufferer if he feels that he has been unjustly treated may yet perforce petition the High Court for a reviewal of his case without having to pay the disputed portion in advance of his petition.

The Income Tax Act of Guyana while providing a right of appeal to the High Court against arbitrary and contentious assessments, now expressly stipulates that such a right cannot be exercised unless the whole amount of the tax assessed, that is both the disputed and undisputed portions, is fully paid within the time allowed to file the petition of appeal. And the situation is not made any better when the Inland Revenue is at liberty to refuse to accept a person's tax return under the Act and assess him arbitrarily at any amount thought fit by the assessor.

The trend has been for Governments of backward developing economies in their drive for more and more funds amid noticeably public graft and corruption to look upon taxation as the panacea for all social evils having at the same time little or no regard for the incidence and economic effects created by sophisticated and complex forms of taxation in relatively simple economies. In backward countries especially, taxation ought not to be permitted to destroy incentives which lead to greater individual initiative and resourcefulness. Perhaps N.A. Palkhivala, an acknowledged Indian authority entertained the same thought when in his "THE HIGHEST TAXES NATION"[2] stated:

> "Post-war history shows in luminous contrast the two types of tax policies pursued by different democracies — the nutritive Budget which breeds lilacs out of the dead land and stirs dull roots with spring rain, and the bleak Budget which saps the nation's strength, blights confidence and strangles enterprise. In economics there are no miracles, there are only consequences".

In law and taxation too, there are no miracles, there can only be consequences.

2. First Edition, page 1.

D.H. HAMDANI:

Investment Incentives in the Canadian Budget – A Clarification

My paper in the September 1972 issue of this Bulletin gives the erroneous impression that the statutory rate of provincial corporation income tax is 10 per cent in all provinces except Ontario and Quebec. Of the ten provinces, only four tax corporations at the rate of 10 per cent, two at 11 per cent, two (Ontario and Quebec) at 12 per cent and the remaining two at 13 per cent.

However, this does not detract from my conclusion that the tax relief is less than the 9 percentage points reduction announced in the budget. In order to demonstrate this point, the analysis is cast in terms of the relationship between provincial tax rates and their shares of investment in machinery and equipment in the manufacturing industries. In 1971, nearly 93 per cent of the investment was distributed among provinces which have a tax rate of either 10 per cent or 12 per cent, with 22 per cent going to the former and 71 per cent to the latter. Indeed, if Ontario and Quebec are excluded, the combined provincial corporation income tax rate, weighted by investment, comes to 10 per cent.

G.C.A. SMEETS:

Special Provisions for the Taxation of Netherlands Antilles Shipping and Aviation Companies – A Clarification

In the article under the above title which appeared in the August 1972 issue of the BULLETIN, mention was made of consolidated returns (fiscal unity). The author correctly stated that no special provisions were made for the consolidated returns of shipping companies. However, the use of single ship companies, for other than tax reasons, may often be necessary or advisable and the author thinks that in such cases it is likely that the tax inspector may allow, by ruling, the tax consolidation of such shipping companies. The latter statement has now been confirmed by Mr. H. Henriquez, Chief-Inspector of taxes in Curaçao who writes that in such a case a fiscal unity will indeed be permitted, provided that such a single ship company has been created for other than mere tax purposes and provided that the taxpayer meets the conditions which will be imposed upon him by the Netherlands Antilles tax administration.

DEVELOPMENTS IN INTERNATIONAL TAX LAW

AUSTRALIA*

1. 1972 Federal Budget

In Canberra last night, the Treasurer (the Rt. Hon. B. M. Snedden, Q. C., M.P.) brought down the 1972 Federal Budget. Expenditure for the 1972-1973 fiscal year is expected to total $A10,078 million, an increase of 11.6% on that of last year. An overall deficit of $A630 million is budgeted this year, as against a deficit of $A11 million last year. The budgeted domestic deficit this year will be $A60 million, compared with an expected surplus of $A630 million last year. The Budget is intended to stimulate private sector spending, and step up the rate of growth of the economy from the 3% recorded in the 1971-1972 fiscal year, to 5% in the current fiscal year. Pensions, housing, education, aboriginal advancement, the performing arts and industry will benefit from increased direct transfer payments.

Wide taxation reductions aimed at benefiting individual taxpayers, are proposed by this election year Budget. An outline of the main taxation proposals of the Budget is presented below:

PERSONAL INCOME TAX:-

Tax Rate Scale

It is proposed to reduce the rates of personal income tax by an average of 10%. This is to be achieved by a restructuring of the tax scale so as to ensure diminishing percentage reductions as incomes rise. Taxable incomes below approximately $A5,500 (the great bulk of individual taxpayers in Australia) will be subject to tax reductions in excess of 10%, whilst taxable incomes above that figure will be subject to proportionately lower reductions. (This is expected to cost $A432 million in 1972-1973 and $A565 million in a full year).

Examples of the effective reduction of tax on various taxable incomes are as follows:-

Taxable Income	*Tax Payable*		*Tax*
	Old Rates	*New Rates*	*Reduction*
$A	$A	$A	$A
5,000	1,026.53	917.30	109.23
10,000	3,139.06	2,888.70	250.36
15,000	5,910.66	5,490.70	419.96
20,000	9,047.16	8,448.70	598.46
25,000	12,465.53	11,648.70	816.83
30,000	15,883.91	14,848.70	1,035.21
35,000	19,302.28	18,048.70	1,253.58

Dependant's Allowances

It is proposed to increase all dependants' allowances (deductions) by an amount of $A52 each per annum. (This is expected to cost $A38 million in 1972-1973 and $A63 million in a full year).

Minimum Taxable Income

It is proposed to raise the minimum taxable income for individuals from $A417 to $A1,041 per annum. This proposal will exempt about 600,000 taxpayers from income tax liability. (This is expected to cost $A14 million in 1972-1973 and $A18 million in a full year).

Self Education

It is proposed to allow a deduction for income tax purposes of up to $A400, for expenditure

* From our Australian Correspondent, Charles J. Berg. O.B.E., F.A.S.A., A.C.I.S., of Charles J. Berg & Partners, Public Accountants, Sydney, Australia.

by a taxpayer on his own education where such expenditure is related to his income producing activities. (This is expected to cost $A200,000 in 1972-1973 and $A4.8 million in a full year).

SALES TAX

It is proposed to exempt works of art from sales tax regardless of origin, or of the nationality of the artist. (This is expected to cost $A480,000 in 1972-1973 and $A-600,000 in a full year).

ESTATE DUTY

It is proposed to double all statutory exemptions applicable to the calculation of the dutiable portion of an estate. It is expected that the major benefit will fall upon modest estates, with "shading-in" provisions applying to estates with higher values. Only 5% of estates which would be dutiable under present law will not experience some reduction in duty. (This is expected to cost $A3 million in 1972-1973 and $A19 million in a full year).

GIFT DUTY

It is proposed to increase the level of exemption in respect of gift duty, from $A4,000 to $A10,000 for gifts made by the same donor, within the period of 18 months before and 18 months after, the day upon which the gift was made. (This is expected to cost $A-400,000 in 1972-1973 and $A750,000 in a full year).

The following new or increased charges were also announced-

LIGHT DUES

It is proposed to increase the charges to shipping for the use of marine navigation aids from 22c to 25c per net registered ton per quarter, from 1st October, 1972. (This is expected to yield $A750,000 in 1972-1973).

AIR NAVIGATION CHARGES

It is proposed to increase air navigation charges by an average of 5% from 1st December, 1972. (This is expected to yield $A800,000 in 1972-1973).

LIQUIFIED GAS TAX

At present no excise tax is levied on liquified petroleum or other gas used in propelling road vehicles. It is proposed to introduce a tax at the rate of 3c a litre on liquified gas used in propelling road vehicles.

OIL SHALE PRODUCTS

The exemption from excise tax on products refined from oil shale is to be removed.

STAMP DUTY (A.C.T.)

It is proposed to increase the rates of stamp duty on the sale and purchase of marketable securities in the Australian Capital Territory, to the same level as applies in each of the States. (This is expected to yield $A200,000 in 1972-1973).

2. General Taxation Review

On Monday August 14th, the Treasurer announced the appointment of Mr. Justice Asprey of the N.S.W. Supreme Court as Chairman of a Commonwealth Committee of Inquiry into the taxation system in Australia. The other members of the Committee will be announced in the near future, together with the arrangements for the Committee to begin its investigations.

The Government had announced on April 11th, 1972 that a ful-scale inquiry into the Australian taxation system would take place. Subsequently, the following terms of reference were made public:-

The Committee is

*To examine and inquire into the structure

and operation of the present Commonwealth taxation system.

*To formulate proposals for improving the system and to report accordingly to the Treasurer.

All forms of Commonwealth taxation will be embraced by the inquiry.

IFA-NEWS

1. Two new *national branches* were established this year. They were formally admitted at the Official Congress.

A. *Canada*
Chairman: Philip F. Vineberg, Montreal, Quebec
Secretary: Prof. Robert J. Bertrand
Faculty of Law, University of Montreal
POB 6128
Montreal 101, Quebec

B. *Central America* (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua)
Chairman: Dr. José Antonio Rivera H. - El Salvador
Secretary: Sergio García Granados
Sarvia & Munoz
Guatemala

2. In Brazil the office of National Secretary was transferred from Mr. Mairo Caldeira de Andrade to Dr. Condorcet Rezende, Instituto Brasileiro de Direito Financeiro—Av. Rio Branco, 277, 14°, Conj. 1401—Rio de Janeiro.

3. In Finland Mr. Mauno Turunen retired as secretary. In his place Mr. A. Järvilehto and Mr. H. Lax were appointed; their address is: c/o Kansallis-Osake-Pankki, Trust Department, Kluuvikatu 2, 0100 Helsinki 10.

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FINANZEN UND STEUERN VON BUND, KANTONEN UND GEMEINDEN/FINANCES ET IMPOTS DE LA CONFEDERATION DES CANTONS ET DES COMMUNES. 1970. Published by Statistische Quellenwerke der Schweiz, Heft 482, Eidgenössisches Statistisches Amt, Bern, 1972 and Consulat Général de Suisse, Joh. Vermeerstr. 16, Amsterdam. 92 pp.
Statistical data of revenue and expenditures of the Confederation, the cantons and municipalities.

Library International Bureau of
Fiscal Documentation no. B 6547

STEUERBELASTUNG IN DER SCHWEIZ/CHARGE FISCALE EN SUISSE 1971. Published by Statistische Quellenwerke der Schweiz, Heft 480, Eidgenössisches statistisches Amt, Bern, 1972 and Consultat Général de Suisse, Joh. Vermeerstr. 16, Amsterdam. 89 pp.
Statistical surveys of the taxes levied in the various cantons.

Library International Bureau of
Fiscal Documentation no. B 6548

UNITED KINGDOM

THE VALUE ADDED TAX (GENERAL) REGULATIONS 1972. Statutory Instruments 1972 No. 1147. Published by Her Majesty's Stationery Office, P.O.B. 569, London SE1, 1972. 25 pp.
These regulations prescribe various practical arrangements required for the introduction of the value added tax.

Library International Bureau of
Fiscal Documentation no. B 6555

THE VALUE ADDED TAX (SUPPLIES BY RETAILERS) REGULATIONS 1972. Statutory Instruments 1972 No. 1148. Published by Her Majesty's Stationery Office, P.O.B. 569, London SE1, 1972. 3 pp.
General provision for special schemes by which a retailer may calculate value added tax on his outputs.

Library International Bureau of
Fiscal Documentation no. B 6556

VAT: GENERAL GUIDE. Notice No. 700. Published by Her Majesty's Customs and Excise, King's Beam House, Mark Lane, London EC3R7HE, 1972. 76 pp.
This Notice explains how the tax on value added operates as of April 1, 1973.

Library International Bureau of
Fiscal Documentation no. B 6524

VAT: SCOPE AND COVERAGE. Notice No. 701. Published by Her Majesty's Customs and Excise, King's Beam House, Mark Lane, London EC3R7HE, 1972.
This Notice explains which supplies of goods and services are chargeable with value added tax as of April 1, 1973.

Library International Bureau of
Fiscal Documentation no. B 6525

UNITED KINGDOM/ZAMBIA

THE DOUBLE TAXATION RELIEF (TAXES ON IMCOME) (ZAMBIA) ORDER 1972. Published by Draft Statutory Instruments, Her Majesty's Stationery Office, P.O.B. 569, London SE1, 1972. 16 pp.
Text of new treaty which is to replace the existing treaty made with Zambia in 1964.

Library International Bureau of
Fiscal Documentation no. B 6554

U.S.A.

DISC (DOMESTIC INTERNATIONAL SALES CORPORATION). Tax guide for manufacturers. How to use a DISC to export more profitably, by P.D. Seghers. Published by International Tax Institute, Inc., 70 Pine Street, New York, N.Y. 10005. 82 pp.
Explanation of the US income tax advantages which a US manufacturer can obtain by using a DISC to export US products. Text of the statute provisions are appended.

Library International Bureau of
Fiscal Documentation no. B 6559

1972 GUIDEBOOK TO LABOR RELATIONS. Published by Commerce Clearing House, Inc., 4020 W. Glenlake Avenue, Chicago, Ill. 60646, 1972. 398 pp.
Explanation and summary of the general principles of labor relations law and the important rules developed under the statutes and decisions.

Library International Bureau of
Fiscal Documentation no. B 6558

LOOSE-LEAF SERVICES

Releases from September 1 - September 30

AUSTRALIA

AUSTRALIAN CURRRENT TAXATION & SERVICE, August release
Butterworth & Co., Sydney

SALES TAX EXEMPTION AND CLASSIFICATIONS, releases 1, 2, 3, 4
Commissioner of Taxation, Canberra, A.C.T. 2600

BELGIUM

BELASTING OVER DE TOEGEVOEGDE WAARDE, release 48
C.E.D. Samsom N.V., Brussels

FISCALE DOCUMENTATIE VANDEWINCKELE. Boek der Barema's, Tome VI, release 22; Tome VIII, release 114; Tome IXa, releases 38–41
E.K. Vandewinckele, Brugge/C.E.D. Samsom N.V., Brussels

HANDLEIDING DER INKOMSTENBELASTING, release 40
C.E.D. Samsom N.V., Brussels
IMPOTS ET TAXES, release 217
C.E.D. Samsom N.V., Brussels

TRAITES DES IMPOTS SUR LES REVENUS, release 46
C.E.D. Samsom N.V., Brussels

BENELUX

BENELUX PUBLICATIEBLAD, release 5
Staatsuitgeverij, Den Haag

CANADA

CANADA TAX SERVICE – LETTER, releases 187, 188
Richard de Boo Ltd., Toronto

CANADIAN INCOME TAX. Martin L. O'Brien, release 67
Butterworth & Co., Toronto

CANADIAN CURRENT TAX, releases 35–38
Butterworth & Co., Toronto

ONTARIO TAXATION SERVICE RELEASE, release 7
Richard de Boo Ltd., Toronto

DENMARK

SKATTEBESTEMMELSER
– SKATTENYT, releases 63, 64
– SKATTEBESTEMMELSER – OMSAETNINGSAFGIFT, release 29
A.S. Skattekartoteket Informationskontor, Copenhagen

E.E.C.

HANDBOEK VOOR DE EUROPESE GEMEENSCHAPPEN
– KOMMENTAAR OP HET E.E.G., EURATOM EN EGKOS VERDRAG, releases 113, 114, 115
– EUROPEES MEDEDINGINGS- EN KARTELRECHT, release 34
– TARIEFLIJSTEN, release 117
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

FRANCE

JURIS CLASSEUR: DROIT FISCAL: COMMENTAIRES "CHIFFRE D'AFFAIRES", release 6077
Editions Techniques, Paris

MEMENTO LAMY
– SOCIAL, release K
Services Lamy, Paris

GERMANY

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

KOMMENTAR BEWERTUNGSGESETZ – VERMÖGENSTEUERGESETZ, releases 34, 35
Verlag Dr. Otto Schmidt KG, Köln-Marienburg

RWP. RECHTS- UND WIRTSCHAFTS PRAXIS STEUERRECHT, release 152
Forkel Verlag, Stuttgart-Degerloch.

STEUERERLASSE IN KARTEIFORM, releases 128–132
Verlag Dr. Otto Schmidt, Köln-Marienburg

STEUERGESETZ, July release
C.H. Becksche Verlagsbuchhandlung, München

STEUERRECHTSPRECHUNG IN KARTEIFORM, releases 244–248
Verlag Dr. Otto Schmidt, Köln-Marienburg

NETHERLANDS

BELASTINGBERICHTEN
– OMZETBELASTING BTW, releases 89, 92
– LOONBELASTING, releases 109–111
– VENNOOTSCHAPSBELASTING, release 34
– INKOMSTENBELASTING, releases 245, 246, 247
– PERSONELE BELASTING, ENZ., release 111
– INTERNATIONALE ZAKEN, releases 90, 91
– ALGEMENE WET, ENZ., releases 125, 126, 127
N. Samsom N.V., Alphen a.d. Rijn

BELASTING WETGEVINGSERIE
– OMZETBELASTING, I, II, III, release 13
J. Noorduyn en Zn. N.V., Arnhem

BELASTINGWETTEN, release 42
D. Brouwer en Zn., Arnhem

FED'S FISCAAL REGISTER. release 49
N.V. Uitgeverij Fed., Amsterdam

FED'S LOSBLADIG FISCAAL WEEKBLAD, releases 1369–1373
N.V. Uitgeverij Fed., Amsterdam

FISCALE WETTEN, release 49
N.V. Uitgeverij Fed., Amsterdam

HANDBOEK VOOR IN- EN UITVOER
– BELASTINGHEFFING BIJ INVOER, release 138
– I TARIEF VAN INVOERRECHTEN, release 175
– 2 TARIEF VAN INVOERRECHTEN, releases 103, 104
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

KLUWER'S FISCAAL ZAKBOEK release 54
N.V. Uitgeversmij., AE.E. Kluwer, Deventer

NEDERLANDSE BELASTINGWETTEN. W.E.G. de Groot, release 88
N.V. Samsom N.V., Alphen a.d. Rijn

NEDERLANDSE WETBOEKEN, release 121
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

DE SOCIALE VERZEKERINGSWETTEN, release 62
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

STAATS- EN ADMINISTRATIEFRECHTELIJKE WETTEN, release 118
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

VAKSTUDIE BELASTINGWETGEVING
– BIERACCIJNS, release 4
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

VENNOOTSCHAPPEN, VERENIGINGEN EN STICHTINGEN
– ALGEMEEN DEEL, releases 32, 33, 34
N.V. Uitgeversmij. AE.E. Kluwer, Deventer

SOUTH AFRICA

LAW AND PRACTICE OF SOUTH AFRICAN INCOME TAX, release 22
Butterworth & Co., Durban

SPAIN

CIRCULARES- BOLETINES DE INFORMACION, July/August release
Gabinette de Estudios (T.A.L.E.), Madrid

SWITZERLAND

RECHTSBUCH DER SCHWEIZER. BUNDESSTEUERN, release 51
Verlag für Recht und Gesellschaft, Basel

DAS SCHWEIZERISCH-DEUTSCHE DOPPELBESTEUERUNGSABKOMMEN LOCHER, release 12
Verlag für Recht und Gesellschaft, Basel

UNITED KINGDOM

BRITISH TAX ENCYCLOPEDIA, release 42
Sweet & Maxwell, London

U.S.A.

FEDERAL TAX GUIDE REPORTS, releases 50, 51, 52
Commerce Clearing House, Inc., Chicago

FEDERAL TAXES REPORT BULLETIN, releases 32–36
Prentice Hall, Inc., Englewood Cliffs

FEDERAL TAXES REPORT BULLETIN – TREATIES, release 2
Prentice Hall, Inc., Englewood Cliffs

STATE TAX GUIDE, release 516
Commerce Clearing House, Inc., Chicago

TAX IDEAS – REPORT BULLETIN, release 4
Prentice Hall, Inc., Englewood Cliffs

TAX TREATIES, release 248
Commerce Clearing House, Inc., Chicago

U.S. TAXATION OF INTERNATIONAL OPERATIONS, releases 14, 15
Prentice Hall, Inc., Englewood Cliffs

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10

I. ARTICLES

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* * * * ARTICLES * * * *

V.J. GANGADIN:

TAXATION IN GUYANA
DEPLETING RIGHTS AND INCREASING IMPOSITIONS

There is no automatic or natural right of appeal against the decisions of lower courts or tribunals to the High Court. A right of appeal is a creature of legislation and where a right of appeal is so given all the statutory conditions precedent to or concurrent with the appeal must be strictly complied with in order to earn such a right. Failure to comply in any material particular forfeits the right of redress.

But where express provision is not made for the right of appeal, the sufferer's right of redress is not necessarily exhausted. In the absence of clear legislation barring the aggrieved from obtaining a reviewal of the matter in dispute the High Court may be petitioned for further consideration. Such a petition, on the other hand, cannot be used for the review of a decision where express provision is made for a right of appeal.

FUNCTION OF THE HIGH COURT

One of the fundamental functions of the High Court is to secure the rights of the citizen and to protect him against maladministration and the abuse of powers. This function is jealously guarded by High Court judges, and it is in this context that great weight is given to the pronouncement, that "judges are no respector of persons"— meaning whatever the person's position, office, powers or station in life, he is not excluded from the jurisdiction of the High Court.

But what is the position of the citizen in a case where although a right of appeal is given to him by statute, he is required as a condition precedent to comply with conditions which are impractible of performance or made beyond his competence to perform for no reason of his own? Is he to be deprived of all rights of review surrendering his liberty or property merely because the same statute which ostensibly accords him the right takes it away again? Could this be construed in law as no right of appeal at all because in real terms the section imposing the harsh conditions indeed and in fact nullifies the right given by another section? Answers to these questions must be left to the great juridical minds.

THE TAX ORDINANCE AND THE CONSTITUTION

Let us examine however these propositions in the light of the Guyana Constitution and in terms of the Income Tax Ordinance. By Article (2) of the Constitution any law which is inconsistent with the Constitution itself is void to the extent of its inconsistency. By Article (8) of the Constitution no property of any description shall be compulsorily taken possession of except by or under the authority of a written law and where there is such an authority the written law must make provision for prompt payment of adequate compensation. To the extent, however, that the law in question makes provisions for the taking of possession of any property in satisfaction of any tax to that extent it is not inconsistent with the Constitution.

"Tax" is an impost with a measurable quantity and something which must be lawfully imposed. As such it could not include any proportion of the quantum assessed which is

in dispute for the time being or any tax which is not lawfully imposed. The Constitution can only contemplate the undisputed proportion of the quantum of tax lawfully imposed when it permits the taking of possession of property in satisfaction of any tax. It would be unconstitutional therefore for Government to take away property in satisfaction of a tax not lawfully imposed or any proportion of a tax lawfully imposed but which is in dispute and as such not enforceable.

"Satisfaction of any Tax" as used in the Constitution must mean payment of money due and owing as tax which is enforceable under the provisions of the tax ordinance but as we shall see disputed tax is not enforceable until determination of an appeal.

By Article 19 of the Constitution if any person alleges that the provisions of Article (8) have been, are being or are likely to be contravened in relation to him he may apply to the High Court for redress without prejudice to any other action with respect to the same matter which is lawfully available. The High Court has original jurisdiction to hear and determine any such application and is empowered to make such orders, issue such writs and issue such directions as it considers appropriate for the purpose of securing enforcement of the Provisions of Article (8). The jurisdiction of the High Court is precluded, however, if it is satisfied that adequate means of redress are available under any other law.

APPEAL PROCEDURE

Previous to the Income Tax (Amendment No. 2) Act, 1970 if any person disagrees with the assessment of the Commissioner of Inland Revenue the steps that might be taken by him to obtain a review were briefly as follows:

1. *Lodge an objection in writing to the Commissioner against the assessment setting out the grounds of disagreement.* By Section 67 of the Income Tax Ordinance the Commissioner is precluded from collecting that proportion of the tax assessed which is in dispute and can only enforce payment of the amount not in dispute.
2. *Appeal to the Board of Review or directly to the High Court if there is disagreement with the Commissioner's decision after his review of his own assessment.* If the appeal was made to the Board of Review the payment of a fee of five dollars was made which was refundable if the appellant was successful. If appeal was made to the High Court directly the taxpayer was required under Section 68 of the Income Tax Ordinance to secure payment of the tax assessed to the satisfaction of the Registrar of the Supreme Court.
3. *Appeal to the High Court if there is disagreement with the decision of the Board of Review*—procedure as in second part of (2) above. Any further appeal from the decision of the High Court could only be made on a point of law. The High Court therefore has jurisdiction to review facts just as the Commissioner and the Board of Review.

IN THE MEANTIME AND UNTIL THE APPEAL WAS FINALLY DETERMINED PAYMENT OF THE DISPUTED AMOUNT OF THE TAX REMAINED UNENFORCEABLE and this amount was completely discharged or varied in amount if the taxpayer was successful or partly successful. The security lodged with the Registrar was held until determination of the appeal.

With the enactment of Income Tax (Amendment No. 2) Act, 1970, all the abovementioned steps remained the same with the following exceptions—

1. In proceeding to the Board of Review (which on its constitution intended to

serve as an uncostly and informal appeal tribunal) the appellant is no longer required to pay a fee of five dollars, BUT IS NOW REQUIRED TO PAY TO THE COMMISSIONER TWO THIRDS OF THE TAX WHICH IS IN DISPUTE BEFORE he can earn the right of appeal to the Board.

2. In proceeding to the High Court, no longer is it required to secure payment of the tax assessed with the Registrar of the Supreme Court but IT IS NOW REQUIRED THAT THE WHOLE OF THE TAX IN DISPUTE BE PAID to earn the right of appeal to the High Court.

GLARING CONFLICT

Strangely enough there is a glaring conflict between the provisions of Section 67 of the Income Tax Ordinance which preclude the Commissioner of Inland Revenue from enforcing payment of the disputed portion of the tax and the provisions of Section 68 which demand full payment of the same to earn the right of appeal. And strictly speaking by the words of Section 68, which read

"No appeal shall lie under Section 57 (1) (a) to a judge... unless that person has paid to the Commissioner the whole amount of tax which is in dispute...",

the taxpayer need only pay the disputed portion *and not necessarily the undisputed portion* to earn the right of appeal. Section 67 (2) however reads as follows:

"Collection of tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance until the objection or appeal is determined but the Commissioner may in such case enforce payment of that portion... which is *not* in dispute."

Since time is of the essence in filing an appeal, the taxpayer with insufficient funds may withhold for the time being payment of the undisputed portion of the tax assessed even though interest will be added in the meantime.

CONFISCATION

Any attempt by Government to take possession of a person's property without payment of prompt and adequate compensation, whether through enactment of legislation or not is unconstitutional. If by Section 67 of the Income Tax Ordinance the disputed portion of the tax is unenforceable, that portion, for the time being, is not a tax which should be satisfied by taking possession of an incumbent's property within the meaning of the Constitution and the devious attempt to enforce payment by a threat to rob the citizen of his right of appeal amounts to an act of confiscating the citizen's property contrary to the provisions of the Constitution. And it is clear from the provisions of Section 68 that the disputed portion of the tax is not an appeal fee. To the extent therefore that those provisions are inconsistent with the provisions of Article 8 of the Constitution to that extent (i.e. enforcing payment of the disputed portion to earn a right of appeal) those provisions must be considered to be invalid.

JUDGE IN HIS OWN CAUSE

The arbitrary powers of the Commissioner of Inland Revenue to make assessments are virtually unlimited. He can refuse to accept a taxpayer's return and assess him according to the best of his judgement. Seven years later he can make additional assessments where it merely, APPEARS TO HIM that taxpayers were underassessed, notwithstanding the fact that he may have originally assessed according to the best of his judgement. He, according to law, knows everything about running every type of business for he can

dissallow "expenses in excess of the amount" he considers reasonable and necessary having regard to the requirement of the business. *Above all, in law, he reviews and decides his own arbitrary assessments upon objections laid by taxpayers—a judge in his own cause*—while the onus of proof that his assessment is wrong lies on the already heavily burdened taxpayer. If taxpayers must be made aggrieved because of the whims and caprice of their own public servants why should politicians who represent the taxpayers on the highest forum of the land make the conditions of their right of appeal so torturous as to render the aggrieved incapable of approaching the High Court to lay their grievances? Let me conclude with Lord Cooper of the Court of Sessions (The Scots Law Times 30/10/54)—

> "Despotism, however benevolent, will not be tolerated long. During the last few decades the citizen has been stripped of much of the protection against arbitrary Government on which we had come to rely,... mainly by the central Government and partly by the local authorities exercising delegated powers and partly by those public corporations which only differ from the central Government being in some measure accountable to nobody for what they do or leave undone...".

Depleting the rights of taxpayers and increasing the impositions upon them mark the road to a new serfdom.

PROF. DR. GERD ROSE*:

BETRIEBSWIRTSCHAFTLICHE STEUERLEHRE AN DEUTSCHSPRACHIGEN HOCHSCHULEN

I. DIE WISSENSCHAFTLICHE DISZIPLIN "BETRIEBSWIRTSCHAFTLICHE STEUERLEHRE"

1. Ökonomische Zustände und Prozesse in Betrieben bilden den Forschungsgegenstand der Allgemeinen Betriebswirtschaftslehre. Die Betriebswirtschaftliche Steuerlehre, die sich mit den Einflüssen der Besteuerung auf diese Zustände und Prozesse beschäftigt, ist daher ein Teil der Allgemeinen Betriebswirtschaftslehre.

Die Besteuerungstatbestände werden durch das materielle und formelle Steuerrecht gesetzt. Während sich die Steuerrechtswissenschaft mit den ausschließlich juristischen Fragen dieser Materie beschäftigt, nimmt die Betriebswirtschaftliche Steuerlehre die für ihren Bereich relevanten Teile in die Analyse der einzelwirtschaftlichen Vorgänge und Wirkungen als Datum auf. Zwischen Betriebswirtschaftlicher Steuerlehre und Steuerrecht bestehen somit Gemeinsamkeiten und Unterschiede.

Fragen der Besteuerung bilden auch den Gegenstand der Finanzwissenschaft, die sich mit den makroökonomischen Auswirkungen der Steuern auf den Wirtschaftskreislauf, die Staatshaushalte, die Einkommensverteilung, das Investitions- und Konsumverhalten der Wirtschaftsteilnehmer und ähnlichen gesamtwirtschaftlichen Problemen beschäftigt. Die Gegenstandsbehandlung unterscheidet sich also von der der Betriebswirtschaftlichen Steuerlehre vor allem durch die Perspektiven der Problematisierung.

2. Als wissenschaftliche Disziplin läßt sich die Betriebswirtschaftliche Steuerlehre unter verschiedenen Gesichtspunkten systematisieren. Vorherrschend ist die Untergliederung in die Teilgebiete: Steuerwirkungslehre, Steuerbeeinflussungslehre und normative Betriebswirtschaftliche Steuerlehre.

Die Steuerwirkungslehre verfolgt das Ziel, Erkenntnisse über die Auswirkungen der Besteuerung auf die Wirtschaftseinheit "Betrieb" zu erarbeiten. Insoweit stellt die Betriebswirtschaftliche Steuerlehre eine analysierende und beschreibende Betriebswirtschaftslehre dar.

Die Steuerbeeinflussungslehre (auch Steuerberatungslehre, Steuergestaltungslehre, Betriebswirtschaftliche Steuerpolitik) verfolgt auf der Basis der Ergebnisse der Steuerwirkungslehre das Ziel, Verhaltens- und Entscheidungsregeln zur Optimierung der betrieblichen Steuerbelastung aufzuzeigen. Insoweit stellt die Betriebswirtschaftliche Steuerlehre eine gestaltende Betriebswirtschaftslehre dar.

Die normative Betriebswirtschaftliche Steuerlehre sieht ihre Aufgabe darin, betriebswirtschaftlichen Grundsätzen bei der Gestaltung des Steuerrechts Einfluß zu verschaffen.

II. FORSCHUNGSSTÄTTEN UND LEHREINRICHTUNGEN DES FACHES AN DEUTSCHSPRACHIGEN UNIVERSITÄTEN

1. Bedingt durch die hier sprunghaft ansteigende Steuerbelastung und die damit einhergehende starke Verkomplizierung des Steuerrechts hat sich das Fach "Betriebswirtschaftliche Steuerlehre" nach dem Ende des

* Universität zu Köln.

ersten Weltkrieges entwickelt. Als seine Begründer sind Franz Findeisen (Frankfurt/Main), Fritz Schmidt (Frankfurt/Main) und Hermann Großmann (Leipzig) anzusehen. Jedoch blieb die Zahl der Lehrstühle und sonstigen Universitätseinrichtungen, die sich speziell mit der Betriebswirtschaftlichen Steuerlehre beschäftigten, lange Zeit—auch noch nach dem zweiten Weltkrieg—sehr gering. Erst in jüngster Zeit, nämlich gegen Ende der sechziger Jahre, begann ein rascher Aufbau; an den Universitäten und Hochschulen der Bundesrepublik Deutschland und der Republik Österreich (aus der deutschsprachigen Schweiz liegen keine Angaben vor) wurden in rascher Folge zahlreiche spezielle Lehrstühle oder Lehrkanzeln eingerichtet. Diese Entwicklung ist noch nicht abgeschlossen; auch Hochschulen, an denen noch keine speziellen Einrichtungen bestehen, pflegen die Disziplin entweder im Rahmen der Allgemeinen Betriebswirtschaftslehre oder zusammen mit speziellen Betriebswirtschaftslehren wie z. B. dem Revisions- und Treuhandwesen oder der Industriebetriebslehre.

2. Spezielle Lehr- und Forschungseinrichtungen für das Fach Betriebswirtschaftliche Steuerlehre, die auch als solche bezeichnet sind, bestehen an den Universitäten Berlin (FU), Bochum, Erlangen-Nürnberg, Frankfurt, Göttingen, Hamburg, Innsbruck, Köln, Mannheim, München, Münster und Saarbrücken.
Lehr- und Forschungseinrichtungen, die sich mit Fragen der Betriebswirtschaftlichen Steuerlehre beschäftigen, ohne daß dies in ihrer Bezeichnung zum Ausdruck kommt, bestehen an den Universitäten Augsburg, Berlin (TU), Bonn, Clausthal, Graz, Linz, München (TU), Tübingen und Wien.

3. Als Gegenstand ihrer wissenschaftlichen Tätigkeit nennen die folgenden ordentlichen Professoren (d. h. Inhaber von Lehrstühlen oder Lehrkanzeln) Probleme der Betriebswirtschaftlichen Steuerlehre: Horst Albach (Bonn), Kuno Barth (Mannheim), Enno Biergans (München), Dietrich Börner (Münster), Karl F. Bussmann (TU München), Lutz Fischer (Hamburg), Lutz Haegert (Augsburg), Anton Heigl (Erlangen-Nürnberg), Otto H. Jacobs (Mannheim), Karl Lechner (Graz), Hans Lexa (Innsbruck), Gerhard Mann (Köln), Alexander Marettek (Clausthal), Dieter Pohmer (Tübingen), Gerd Rose (Köln), Peter Scherpf (München), Dieter Schneider (Frankfurt), Karl Vodrazka (Linz), Wilhelm H. Wacker (Göttingen) und Günter Wöhe (Saarbrücken); vermutlich gehören in diesen Kreis ferner Franz Jonasch und Erich Loitlsberger (beide: Wien).

4. Die sachlichen Beziehungen zwischen den drei "Steuerwissenschaften" Betriebswirtschaftliche Steuerlehre, Steuerrecht und Finanzwissenschaft bieten besonders gute Voraussetzungen für eine interdisziplinäre Zusammenarbeit in Forschung und Lehre. Sie ist allerdings, wo sie bereits besteht, unterschiedlich intensiv ausgestaltet und reicht von Orientierungsgesprächen zwischen den Fachvertretern (z. B. Göttingen) über den Austausch von Publikationen, insbesondere Dissertationen, oder die Abstimmung der Institutsbibliotheken bis zur Abhaltung gemeinschaftlicher Seminarveranstaltungen (z. B. Köln). Die meisten Hochschulen, an denen noch keine interdisziplinäre Zusammenarbeit erfolgt, planen diese jedoch oder sind damit bereits im Aufbau begriffen.
Derzeit arbeiten die Vertreter der Betriebswirtschaftlichen Steuerlehre interdisziplinär bereits praktisch zusammen mit Steuerrechtlern an den Universitäten Bonn, Erlangen-Nürnberg, Innsbruck, Köln, Linz, Mannheim, München und Münster, mit Finanzwissenschaftlern außerdem an den Univer-

sitäten Erlangen-Nürnberg, Innsbruck, Köln, Münster und Saarbrücken.

III. DERZEITIGE FORSCHUNGSTHEMEN

1. Beurteilt man den Stand der Forschung auf dem Gebiet der Betriebswirtschaftlichen Steuerlehre nach dem Umfang und der Intensität der literarischen Bearbeitung, so muß festgestellt werden, daß sich das Fach auch insoweit noch in der Entwicklungsphase befindet. Denn es fehlt an Publikationen zu wesentlichen Teilbereichen der Betriebswirtschaftlichen Steuerlehre. Gegenstand tiefergehender Untersuchungen waren allerdings die Einflüsse der Besteuerung auf die Investition, auf die Finanzierung, auf das Rechnungswesen, auf die Unternehmungsformen und -verbindungen; auch sind methodische und materielle Fragen der Steuerplanung und des Einflusses der Besteuerung auf unternehmerische Einzelentscheidungen bereits anspruchsvoll behandelt worden.

2. Angesichts dieser Situation verwundert es nicht, daß die derzeit in Arbeit befindlichen Forschungsthemen breit gefächert sind. Nach dem Ergebnis einer Befragung können als grundlegende bzw. allgemeine Forschungsthemen genannt werden: Methodenprobleme der Betriebswirtschaftlichen Steuerlehre, Fragen der Steuerreformen, Einflüsse und Auswirkungen der Steuern auf die betrieblichen Entscheidungsprozesse, Steuerplanung und Steuerpolitik, Besteuerung international tätiger Unternehmungen, Berücksichtigung der Interdependenzen zwischen den einzelnen Steuerarten, Besteuerung und Absatz, Besteuerung und Unternehmungsform, Besteuerung und Unternehmungswachstum. Als speziellere, in Arbeit befindliche Themen wurden genannt: Grundlagen der Steuerbilanz, Steuerbilanzpolitik, Erfolgs- und Kostenwirksamkeit der Mehrwertsteuer, Betriebsanalyse und steuerliche Betriebsprüfung, Steuerverwaltungskosten in der Unternehmung, betriebswirtschaftliche Wirkung der Wachstumsgesetze, Finanzierung und Kapitalverkehrsteuer, Kapitaltheorie und Besteuerung, Vergleich der Vermögensbesteuerung innerhalb der EWG-Staaten, Besteuerung öffentlicher Betriebe, Wirkungen divergierender Steuerlasten auf die Wettbewerbsfähigkeit der Unternehmungen, methodische und anwendungsseitig orientierte Weiterentwicklung der Teilsteuerrechnung.

3. Mit wissenschaftlichen Arbeiten auf dem Gebiet der Betriebswirtschaftlichen Steuerlehre sind außer den Hochschullehrern derzeit auch mindestens 350 Studierende beschäftigt. Verwendet man die Zahl der von ihnen gegenwärtig bearbeiteten Diplomarbeiten und Dissertationen als Einteilungskriterium, dann liegen die Universitäten Köln, Mannheim (die über je zwei Lehrstühle verfügen) und Saarbrücken an der Spitze; in weiterer Reihenfolge sind München, Hamburg, Münster, Göttingen und Frankfurt zu nennen.

IV. DIE BETRIEBSWIRTSCHAFTLICHE STEUERLEHRE ALS FACH IM STUDIUM DER WIRTSCHAFTSWISSENSCHAFTEN

1. Ungeachtet der wissenschaftstheoretischen Zugehörigkeit zur Allgemeinen Betriebswirtschaftslehre wird die Betriebswirtschaftliche Steuerlehre dort, wo sie intensiver gepflegt wird, als selbständiges Lehrfach, nämlich als eine besondere (spezielle) Betriebswirtschaftslehre, angesehen; der Grund hierfür dürfte im Umfang des Stoffgebietes, den Überschneidungen mit der Finanzwissenschaft und dem Steuerrecht und Gesichtspunkten der Examenstechnik liegen.

Die Verselbständigung der Betriebswirtschaftlichen Steuerlehre als Lehrfach hat zur Folge, daß ihr Stoffgebiet aus dem Lehrbereich der Allgemeinen Betriebswirtschaftslehre weitgehend ausscheidet. Die Studierenden der Betriebswirtschaftslehre, die dieses Spezialfach nicht wählen, brauchen sich infolgedessen an deutschsprachigen Hochschulen mit Fragen der Besteuerung allenfalls oberflächlich auseinanderzusetzen; eine Ausnahme bildet lediglich der Komplex "Steuerbilanz".

Wer die Betriebswirtschaftliche Steuerlehre jedoch als Prüfungsfach wählt, beginnt mit dessen Studium regelmäßig erst in der zweiten Studienphase, also nach Ablegung der Zwischenprüfung, weil nicht nur Grundkenntnisse der Allgemeinen Betriebswirtschaftslehre, sondern auch vertiefte Kenntnisse des betriebswirtschaftlichen Rechnungswesens und in den Rechtswissenschaften, insbesondere im Gesellschaftsrecht, vorausgesetzt werden. Die Mindeststudiendauer wird mit drei bis vier Semestern veranschlagt. Während dieser Zeit werden zwischen 12 und 18 Wochenstunden an Pflichtveranstaltungen in Form von Vorlesungen, Übungen, Proseminaren und Hauptseminaren geboten und gefordert. An einigen Universitäten geht das tatsächliche Angebot jedoch über diese Pflichtstundenzahl beträchtlich hinaus.

Gegenstand des Lehrangebots sind zunächst die für betriebswirtschaftliche Problembearbeitungen relevanten Gebiete des materiellen und formellen Steuerrechts und der Themenkomplex "Besteuerung und Rechnungswesen". In der Schlußphase des Studiums werden die Einflüsse der Besteuerung auf die verschiedenen Rechts- und Konzentrationsformen der Unternehmung sowie deren Veränderungen, auf den betrieblichen Standort und auf die Entscheidungen innerhalb der betrieblichen Funktionsbereiche Produktion, Absatz, Finanzierung und Investition, gelegentlich auch Personalwesen, untersucht.

2. Ein eigenständiges Prüfungsfach ist die Betriebswirtschaftliche Steuerlehre derzeit an den Universitäten Berlin (FU), Erlangen-Nürnberg, Frankfurt, Göttingen, Hamburg, Innsbruck, Köln, Mannheim, München (Universität und TU) und Saarbrücken. An den Universitäten Bochum und Tübingen wird die Betriebswirtschaftliche Steuerlehre zusammen mit der Finanzwissenschaft geprüft; beide Hochschulen planen jedoch eine Trennung. An der Universität Bonn wird die Betriebswirtschaftliche Steuerlehre wahlweise finanzwissenschaftlich oder zusammen mit der speziellen Betriebswirtschaftslehre "Wirtschaftsprüfung und Unternehmensberatung", an den Universitäten Bochum (nach der Neuregelung), Graz, Münster und der Hochschule für Sozial- und Wirtschaftswissenschaften Linz, vermutlich auch an der Hochschule für Welthandel Wien, in Kombination mit dem Wahlfach Treuhandwesen bzw. Revisionswesen bzw. Betriebswirtschaftliches Prüfungswesen.

Die Prüfungsleistungen bestehen im allgemeinen aus einem schriftlichen und einem mündlichen Teil. Als schriftliche Arbeiten werden regelmäßig eine vierstündige oder zwei zweistündige Aufsichtsklausuren verlangt. Weiterhin besteht die Möglichkeit, eine Diplomarbeit als freie wissenschaftliche Arbeit aus dem Gebiet der Betriebswirtschaftlichen Steuerlehre anzufertigen, häufig innerhalb einer (z. B. auf sechs Monate) begrenzten Bearbeitungszeit.

3. Der steigende Umfang der Steuerbelastung und die auf zahlreiche Umstände zurückzuführende ständige Komplizierung der Besteuerungsregeln machen Kenntnisse der Betriebswirtschaftlichen Steuerlehre zuneh-

mend wichtiger; zumindest grundlegende Kenntnisse des Steuerwesens sind in der Praxis eine unerläßliche Voraussetzung für viele anspruchsvolle kaufmännische Tätigkeiten in Unternehmungen. Für diejenigen, die später eine steuerberatende oder wirtschaftsprüfende Tätigkeit ausüben wollen, bildet das Studium dieses Lehrfaches die Grundlage, die durch die nachuniversitäre Praxis gefestigt und ausgebaut wird. Die genannten Gründe erklären allgemein die steigende Attraktivität des Faches und speziell den Umstand, daß sich ein beachtlicher Teil der Studierenden aus Anwärtern auf die Berufe des Steuerberaters und/oder Wirtschaftsprüfers rekrutiert.

ROBERT S. RENDELL*:

UNITED STATES INCOME TAXATION OF FOREIGN GOVERNMENTS, INTERNATIONAL ORGANIZATIONS AND THEIR EMPLOYEES

I. INTRODUCTION

Alien individuals and foreign corporations are subject to United States income tax according to whether they are engaged in a trade or business within the United States during the taxable year, and, in the case of alien individuals, whether they are considered to be residents of the United States. If an alien individual is a U.S. resident, he will be subject to tax on his worldwide income at ordinary progressive rates in basically the same manner as a United States citizen. Non-resident aliens and foreign corporations which are not engaged in a U.S. trade or business are taxable on certain specified categories of fixed or determinable income (such as dividends and interest) from U.S. sources at the rate of 30% of the gross amount of such income. Nonresident aliens are also subject to tax at the rate of 30% on U.S. source capital gains if they are present in the United States for 183 days or more during the taxable year. Items of U.S. source income not specified in the law and all foreign source income derived by a non-resident alien or foreign corporation not engaged in a U.S. trade or business will not be subject to U.S. tax.

If a nonresident alien or foreign corporation is engaged in a U.S. trade or business, tax will be imposed on income which is effectively connected with such trade or business at the full statutory rates, i.e., the ordinary progressive rates in the case of nonresident aliens and 48% in the case of foreign corporations. The specified categories of fixed or determinable income and U.S. source capital gains which are not effectively connected with the trade or business continue to be taxed at a 30% rate.

If a nonresident alien or foreign corporation is a resident of a foreign country which has concluded an income tax treaty with the United States, the United States tax may not apply or may apply at a lower rate.

To what extent are these basic rules for taxing foreigners modified under United States law where the taxpayer is a foreign government, international organization, or an employee of either?

II. FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Dating back to 1917, the United States tax law has provided some form of exemption for the income of foreign governments derived from United States sources. The original exemption was limited to (1) income from investments in the United States in stocks, bonds, or other domestic securities, and (2) interest on deposits in banks in the United States.[1] In 1918, the statutory exemption was expanded to include income of foreign governments from any other source

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1. Section 1211 (30) of the Revenue Act of 1917.

within the United States.[2] The exemption took on its present form in 1945 when international organizations were included.[3]

A. *Foreign Governments*

The present statutory provision, section 892 of the Internal Revenue Code of 1954, does not contain any definition of a "foreign government," and the absence of a definition has resulted in considerable difficulty in administering the exemption. The regulations promulgated under section 892 and a recently published ruling provide that the exemption applies to political subdivisions of foreign governments, including foreign municipalities,[4] but the principal problem here has been whether State-owned corporations or agencies will be treated as foreign governments. In 1920, the Internal Revenue Service published a ruling[5] which held that the Commonwealth Bank of Australia, which was established by an act of the legislature of Australia and was operated by government appointed officials, was exempt from U.S. tax as a governmental agency. Thus, interest credited to the account of the bank by a United States corporation was not subject to withholding. However, in 1946 the Internal Revenue Service announced[6] that it had reconsidered its earlier ruling and now was of the opinion that the exemption for income of foreign governments should not be extended to a corporation which was wholly owned by a foreign government. Since a corporation was an entity separate and distinct from its stockholders, the Service reasoned that it could not qualify for exemption as a foreign government, even where its sole stockholder was a foreign government. The 1920 ruling concerning the Bank Of Australia was revoked, but on a prospective basis only.

This highly formal and restrictive view of the meaning of a foreign government was challenged by the taxpayer in 1950 in the case of *Louis Vial*[7] which was litigated before the United States Tax Court. Corporacion de Fomento de la Produccion was established by the Chilean legislature for the purpose of promoting national production. The Tax Court found that while Fomento was a legal person under Chilean law, it was not a corporation as that term was understood under United States law since it had no stock or stockholders and no provision was made for it to be owned by anyone. Fomento was held to be part of the government of Chile on the basis of the means of its creation, its activities and purposes, its funding, and the extent of government supervision regulation.[8] While not necessarily inconsistent with the 1946 ruling, the decision in the *Vial* case forced the Internal Revenue Service to reconsider again its position in this area. The result was Revenue Ruling 66—73[9] which modified the 1946 ruling and adopted the principles of the Tax Court in the *Vial* case.[10] Revenue Ruling 66—73, which represents the current Service position, provides that an organization which is separate in form and wholly owned by a foreign government will be treated as a part of that government under

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2. Section 213 (b) (5) of the Revenue Act of 1918.
3. Section 4 (a) of Public Law 291 (79th Congress, 1st Session), effective with respect to taxable years beginning after December 31, 1943.
4. Reg. § 1. 892-1 (a); Rev. Rul. 72-54, 1972-6 I.R.B. 17
5. O.D. 628, 3. C.B. 124 (1920)
6. I.T. 3789, 1946-1 C.B. 100. For an interesting description of the background to this ruling, see Senate Report No. 163, 87th Congress, 1st session, page 3.
7. 15 T.C. 403 (1950), acq. 1952-1 C.B. 4
8. Thus, Fomento's employees were exempt from U.S. tax. See III, *infra*.
9. 1966-1 C.B. 174
10. The Service had acquiesced in 1952 in the result in the *Vial* case.

the following conditions:
(1) No part of the net earnings of the organization inures to the benefit of any private shareholder or individual, and
(2) It does not constitute a "corporation" as that term is generally understood in the United States.
An organization will constitute a corporation if its purposes, functions, and activities, taken as a whole, customarily are attributable to and carried on by a private enterprise for profit in the United States. The fact that the organization does or does not have stock outstanding will not be considered as a factor in determining whether it is a "corporation" for this purpose. Thus, instead of looking at the formal characteristics of the organization, the Service has announced that it will henceforth look to its purposes, functions and activities to determine if it substantially resembles a private United States enterprise or a governmental body. However, no examples were given by the Service and it remains to be seen how this test will be applied in individual cases. It is possible that, given the role of private enterprise in this country in such fields as communications, transportation, and public utilities, many State-owned corporations and agencies will not be treated as part of their governments under the terms of this ruling.[11] On the other hand, use of a United States standard can be defended as a means of preventing the extension of a tax advantage to foreign businesses which are in competition with private United States firms solely because such foreign businesses are conducted through government corporations or agencies.

B. *International Organizations*

The 1945 legislation which added international organizations to the statutory exemption for foreign governments contained the following definition of an "international organization:"[12]

> "...a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions and immunities herein provided."

This definition has been adopted in the Internal Revenue Code through the mechanism of a cross reference to the International Organizations Immunities Act which incorporates many of the provisions of the 1945 law.[13] It should be noted that this definition of an international organization is somewhat restrictive in that: (1) It must be a public organization, i.e., those which are composed of governments as members — private international organizations are excluded from the definition; (2) It must be an organization in which the United States is a member; and (3) It must have been designated by the President by Executive Order as being entitled to the benefits of the International

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11. For example, there has been some question as to whether foreign central banks would be exempt from U.S. tax on interest earned in the United States under section 892. To deal with this problem, Congress has specifically exempted foreign central banks with respect to interest on noncommercial holdings of U.S. Government obligations or bank deposits. See section 895 of the Code. On the other hand, the Internal Revenue Service has ruled in a special ruling dated May 21, 1959, that Sovexport Film, an agency of the Government of the USSR, was entitled to the section 892 exemption with respect to the sale of Russian films in the United States. 596 CCH ¶ 6532.
12. Section 1 of Public Law 291, *supra*. note 3.
13. Section 7701 (a) (18) of the Code; Reg. §§ 1.892-1 (b) (1), 1.893-1 (b) (3).

Organizations Immunities Act. Nevertheless, the list of qualifying organizations is quite extensive and includes such prominent organizations as the World Bank, the International Monetary Fund, the Organization of American States, and the United Nations. A complete list of these qualifying organizations is set forth in Appendix A to this article. In addition, the retirement fund of a qualifying organization, the OECD, has been held to be exempt from tax under section 892.[14]

Since the United States is not a member of the European Economic Community and its related organizations, these entities can not qualify as international organizations within the meaning of the Code. However, the Internal Revenue Service has ruled[15] that the European Economic Community, the European Coal and Steel Community, and the European Atomic Energy Community constitute a "foreign government" for purposes of the tax exemption under section 892 of the Code. While this ruling certainly stretches the language of section 892, this seems justified in view of the narrow definition of an "international organization" found in the statute. On the other hand, the Bank for International Settlements, another organization in which the United States is not a member, has been granted a specific exemption under section 895 of the Code with respect to certain types of interest income.

C. *Income Tax Consequences*

Once it is established that a foreign taxpayer is entitled to an exemption as a foreign government or an international organization, the next question is the scope of the exemption. It is apparent that the exemption under section 892 is very broad, since it applies to income from investments in United States stock or securities, interest from United States bank deposits and income from any other source within the United States. Moreover, the regulations promulgated under section 892 provide that income received by an international organization prior to the date of the issuance of an Executive Order designating it as exempt can still qualify for the exemption.[16] The exemption applies to withholding of tax at the source as well as payment of tax with the filing of a return.

However, the exemption is not without its limitations. For one, while the exemption literally applies to business income from United States sources, if a state-owned corporation or agency which is considered part of a foreign government earns a sufficient amount of business income it may lose its exemption under Revenue Ruling 66—73 on the grounds that its activities indicate that it is in fact a private enterprise rather than a governmental body. Thus, the principal beneficiary of the exemption is likely to be investment income such as interest and dividends paid by U.S. persons. In addition, where the foreign government or international organization earns interest or dividend income, the statute requires that it must own the underlying investment. For example, in Revenue Ruling 69—316[17] a foreign government owned and operated certain hospitals with funds appropriated out of its national Treasury as well as funds or assets which had been donated to the hospital by private persons. Under the law of the foreign government, these privately donated funds or assets were not government funds or assets. The board of governors of the hospital, acting as trustee, invested these privately donated funds in stock of United

14. Rev. Rul. 72-183, 1972-16 I.R.B. 39
15. Rev. Rul. 68-309, 1968-1 C.B. 338
16. Reg. § 1. 892-1 (b) (2)
17. 1969-1 C.B. 193

States corporations (some of the stock had also been acquired by gift). The Internal Revenue Service ruled that the resulting dividend income was not exempt from United States tax under section 892 for the reason that the foreign government did not actually own the stock in the U.S. corporations which had produced the dividends.[18]

Finally, it would appear that the exemption provided at section 892 would not cover certain categories of foreign source income such as dividends, interest and gain on the sale of stock or securities which may, under the Foreign Investor's Tax Act of 1966, be subject to tax in the hands of a foreign taxpayer. The failure to amend section 892 in 1966 to account for these limited categories of foreign source income appears to be the result of legislative oversight, and the omission may have an effect on certain international organizations with their principal office in the United States.

If a foreign government or international organization is not protected by the section 892 exemption, how will it be taxed? Except for State-owned corporations, the United States tax law makes no provision for taxing these organizations. Presumably, in most cases they would be subject to U.S. tax as a foreign corporation in the manner described above. However, where the income is received by a trustee, such as in Revenue Ruling 69—361 concerning the investment of funds donated to a public hospital, the trustee will be taxed as an alien individual.

III. EMPLOYEES OF FOREIGN GOVERNMENTS OR INTERNATIONAL ORGANIZATIONS

The tax laws of the United States did not contain any provision for exempting employees of foreign governments or international organizations from tax until 1935 when the predecessor of present Code section 893 was enacted. The reason for this omission was twofold: foreign diplomats were considered exempt under international law and the United States made no attempt to tax these persons[19]. Nondiplomatic personnel such as consular officers and employees of foreign governments had been granted an exemption from tax since 1924 on a reciprocal basis under administrative regulations issued by the Internal Revenue Service.[20] However, on August 7, 1934, the Treasury Department issued a ruling in the form of a letter to the Secretary of State to the effect that the income tax exemption accorded to foreign consular officers and employees of foreign governments had been granted, not as a matter of right, but solely as a matter of administrative policy which the Treasury had come to believe was not justified from the standpoint of the law. While the Treasury considered the policy of granting an exemption to these nondiplomatic officials as meritorious from the point of view of administrative policy and expediency, it decided in 1934 that its regulations over the preceding 10 years were without constitutional or legal authority.[21]

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18. See also Reg. § 1. 892-1 (a)

19. *Chapman*, 9 T.C. 619, 622 (1947); O.D. 336, 1 C.B. 91 (1919), Decl. obs., Rev. Rul. 68-674. For this purpose a foreign diplomat can be defined as a representative of a foreign sovereign accredited or assigned to the United States.

20. For example, see Article 641 of the Income Tax Regulations issued under the Revenue Act of 1932.

21. The Treasury concluded in its letter of August 7, 1934, that exemptions from tax on the basis of reciprocity could only be granted under a treaty of the United States or by act of Congress. Apparently, the Treasury also understood that it was not obligated under international law to grant a tax exemption to these officials.

The Secretary of State, Mr. Cordell Hull, persuaded the Treasury Department to postpone the revocation of its regulations pending the submission of the matter to the Congress for its determination whether the exemption should be continued by specific legislation. The State Department was concerned in 1934 that the revocation of the income tax exemption under United States law would result in American consular officers, nondiplomatic representatives and employees in foreign countries being subject to tax in these countries on their official compensation. Thus, the State Department submitted draft legislation to Congress in April, 1935 which was enacted as an amendment to the Revenue Act of 1934.[22] Since the Congress viewed the legislation as merely ratifying the Internal Revenue Service regulations in force from 1924 to August 7, 1934, the provisions of the new law were made retroactive to cases arising under prior Revenue Acts. The Treasury Department did not oppose the proposed legislation, but in fact recommended its early enactment. The Treasury Department called the attention of the Congressional Committees to a demand made by the Austrian Government upon the United States Treasury attaché in Vienna and several of his staff for payment of Austrian income taxes. This seemed to confirm the fears of the State Department as to the consequences of the revocation of the tax exemption by the United States.

Except for the addition of employees of an international organization in 1945,[23] the original statutory exemption has retained its basic form and can now be found at section 893 of the Code.

A. *Eligible Employees*

Section 893 provides that an employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative) will be exempt from tax with respect to his wages, fees or salary received as compensation for official services under the following conditions:

(1) He is not a citizen of the United States or a citizen of the Republic of the Philippines.[24] However, the employee need not be a national of the foreign government which employs him.

(2) In the case of an employee of a foreign goverment, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) The foreign government grants an equivalent exemption to employees of the United States performing similar services in such foreign country.

The Secretary of State is required by law to certify to the Secretary of the Treasury the names of the foreign countries which satisfy the equivalent exemption requirement, i.e., grant an equivalent tax exemption to employees of the U.S. Government performing similar services in such foreign country. The last time the Internal Revenue Service published a list of those countries which had been certified by the Secretary of State as satisfying the equivalent exemption requirement was in 1940 and this list has since been declared obsolete.[25] However, it is understood that the State Department considers most

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22. S. 2762, Senate Report No. 632; H.R. 7998, House Report No. 1759; 74th Congress, 1st Session.

23. Section 4 (b) of Public Law 291, *supra*. note 3

24. Citizens of the United States employed by a foreign consul in the United States may, however, be exempt from U.S. tax under the applicable consular convention. *Singer* v. *United States*, 83 F. 2d. 358 (7th Cir. 1936).

25. Mim. 4967 (Rev.), 1940-1 C.B. 52; Decl. Obs., Rev. Rul. 68-674.

foreign countries to have satisfied the equivalent exemption requirement and freely issues these certificates.

Since the equivalent exemption requirement does not apply to employees of international organizations, this same certification procedure is not imposed with respect to these employees. However, as noted above, an international organization must be designated by the President through Executive Order as entitled to the privileges, exemptions, and immunities provided in the International Organizations Immunities Act. The Internal Revenue Service has suggested[26] that an employee of an international organization should notify the State Department of his status and should formally request that the Secretary of State designate him as an employee of a qualified international organization.

There is one important exception applicable to both employees of foreign governments and international organizations: If such an employee executes and files with the Attorney General the waiver provided at section 247(b) of the Immigration and Nationality Act, he will no longer be entitled to the exemption provided at section 893 of the Code.[27] A section 247(b) waiver is filed by an alien who requests to be permitted to retain his status as an immigrant in the United States. The effect of the filing of such a waiver is that the statutory exemption does not apply to income received by him after such date. However, as discussed below, an employee who has filed the section 247(b) waiver may still be exempt from United States tax under a tax treaty, a consular convention or the international agreement creating the international organization for which he works.

B. *Income Tax Consequences*

The tax exemption provided at section 893 of the Code is limited to wages, fees or salary received by employees of foreign governments or international organizations as compensation for official services rendered to such foreign government or international organization. Income from United States sources and the employee's income which is effectively connected with a U.S. trade or business which is not part of his official compensation will be subject to tax in the manner described at the beginning of this article.[28] This rule would apply even to an accredited diplomat present in the United States on an official mission. For example, in the case of *Van Der Elst* v. *Commissioner of Internal Revenue Service*,[29] the taxpayer was an attaché of the Belgian Embassy who had entered the United States in 1940 under a diplomatic visa. He served in the United States until 1946 when he was appointed Belgian Ambassador to Portugal. While he was stationed in New York he was employed by and became vice-president of the Heller Candy Company, a New York Corporation. He retained this position and received a salary until his departure for Portugal in 1946. The Internal Revenue Service determined that he was engaged in a trade or business within the United States and taxed him on the salary he received from the candy company. This determination was upheld by a United States Court of Appeals. Diplomats and consular officers would also be taxable on investment income such as dividends and interest received

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26. "United States Tax Guide for Aliens," Internal Revenue Service Publication No. 519 (October, 1971), p. 29.
27. Reg. §1. 893-1 (a) (1), (5); (b) (1), (4); Rev. Rul. 54-397, 1954-2 C.B. 171.
28. Subject to any rate reductions or exemptions provided in a tax treaty between the foreign country of which the employee is a resident and the United States.
29. 223 F. 2d 771 (2nd Cir. 1955)

from United States sources.[30] Moreover, the Internal Revenue Service has ruled that a pension received by a former representative of a foreign government is not entitled to the statutory exemption because it is not received during a period when the representative is actually employed by such foreign government.[31]

Since an employee of a foreign government or international organization is subject to tax in the United States on his income which is unrelated to his official duties, it becomes important to determine whether such employee is a resident or nonresident of the United States. If he is held to be a resident, he will be subject to tax on his foreign source income with a credit for foreign income taxes paid with respect to such income. In addition, he will be subject to the progressive tax rates ordinarily applicable to U.S. citizens. On the other hand, if he is a nonresident, he will not be subject to U.S. tax on his foreign source income (except for certain limited categories of effectively connected income) and his U.S. source investment income will be subject to tax at a flat rate of 30% rather than the progressive rates. However, as a nonresident, the employee will not be permitted to file a joint tax return with his spouse and the expenses which he is permitted to deduct in computing his taxable income will be severely limited. Nevertheless, it is generally to the advantage of an employee of a foreign government or an international organization to be treated as a nonresident. A recent revenue ruling[32] sets forth the categories of employees of foreign governments and international organizations (diplomatic and nondiplomatic) and members of their families according to the type and number of their visas. The ruling concludes that holders of the nonimmigrant visas listed therein will be treated as nonresidents "in the absence of exceptional circumstances."[33] The text of this important ruling is reproduced as Appendix B. Of course, if an employee of a foreign government or an international organization files a section 247 (b) waiver under the Immigration and Nationality Act he will most certainly be taxed as a resident of the United States.

Nondiplomatic personnel failing to qualify for the section 893 exemption, because their foreign government employer does not satisfy the equivalent exemption requirement, because the international organization for which the employee works has not been designated by Executive Order, or because a section 247(b) waiver has been filed, would be taxable on their official compensation as well as their other income unless a tax treaty or consular convention applies. Diplomatic personnel would probably continue to be exempt from tax on their official compensation under the general principles of international law unless they are present in the United States for reasons other than an official mission to or with the Government of the United States. For example, in the case of *John Henry Chapman*[34] an official of the League of Nations with diplomatic status under article 7 of the Covenant of the League was held to be taxable on his salary from the League because the League of Nations was not covered by the section 893 exemption at the time, and he was not present in the United States on an official mission with the U.S. Government.

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30 "United States Tax Guide for Aliens," *supra.* note 24, p. 30; But see O.D. 336, *supra.* note 19, with respect to diplomats.

31. Rev. Rul. 56-44, 1956-1 C.B. 319.

32. Rev. Rul. 71-565, 1971-2 C.B. 266

33. This ruling is consistent with the holding in the *Van Der Elst* case where the Court stated "because of his (the taxpayer's) diplomatic status (he) was a nonresident alien, despite his presence in this country."

34. 9 T.C. 619 (1947)

IV. THE IMPACT OF TAX TREATIES

The United States has entered into income tax treaties with 22 other countries. With the exception of Australia, each of these treaties contains provisions for exempting income earned by employees of foreign governments. However, except for interest income derived by one of the Contracting States or an agency or instrumentality thereof, none of these treaties provide an exemption for income derived by a foreign government.

The typical United States tax treaty will contain an article under which wages, salaries, and other compensation, including pensions, paid from public funds to a national of the other Contracting State in connection with the discharge of governmental functions for that State will be exempt from United States tax. Under most treaties, nationals of a third country are not eligible for the exemption. An exception can be found in article 19(1) (b) of the United States-Belgian treaty where the exemption for governmental functions is extended to citizens of a third country who come to the United States expressly for the purpose of being employed by Belgium or a political subdivision or local authority thereof. However, by restricting the exemption in most other treaties to nationals of the other Contracting State, the United States treaty exemption for governmental employees is more limited than the statutory exemption described above. On the other hand, the inclusion of pensions in the treaty exemption goes beyond the statutory exemption as interpreted by the Internal Revenue Service.

Some of the more recent United States treaties also provide, in the context of the governmental functions article, that compensation paid in connection with industrial or commercial activity conducted by one of the Contracting States will be treated the same as compensation received from a private employer.[35] In such case, the compensation would not be exempt from United States tax unless specifically provided for in some other article of the treaty. This rule parallels Article 19(2) of the OECD Model Double Taxation Convention.

Some of the United States tax treaties also contain an article which states that nothing in the treaty shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements. This article also follows the OECD Model Convention at Article 27.

A complete list of the income tax treaties to which the United States is a party is set forth in Appendix C with the pertinent articles relating to governmental employees noted therein.

The principal problem in the treaty area has been the relationship between the internal tax law of the United States and a tax treaty where an employee of a foreign government has filed a section 247(b) waiver to retain his immigrant status. As described above, the filing of this waiver will terminate his statutory exemption under section 893 of the Internal Revenue Code. Can the employee then rely on an exemption provided in a tax treaty between his country of nationality and the United States? It would appear that the employee would be protected by the governmental functions article in the treaty assuming his employer was the same country of which he was a national. However, most United States income tax treaties have a "Savings

35. See for example, Article 19 (2) of the Belgian treaty and Article 16 (2) of the French treaty. In some cases, this rule is provided in the accompanying Technical Memorandum. See discussion under Article 22 of the Finnish Technical Memorandum.

Clause" under which the United States reserves the right to tax its citizens and residents as if the treaty had not come into effect. Since the filing of the section 247(b) waiver would mean that the employee will be treated as a resident of the United States, the Savings Clause would cancel the benefits of the governmental functions article with the result that the employee would be fully taxable in the United States on his official compensation.[36] This would be the case, for example, under Article XIII(1) of the United States–United Kingdom tax treaty as amended by the 1966 Protocol.[37]

However, Savings Clauses are frequently made inapplicable to the governmental functions article. In such a case, the employee would continue to be exempt from U.S. tax under the governmental functions article of the treaty even though he has filed a section 247(b) waiver.[38] On the other hand, under our more recent treaties the exception to the Savings Clause for governmental functions is conditioned on the employee not having immigrant status in the United States.[39] Since the filing of a section 247(b) waiver will result in immigrant status for an employee of a foreign government, the Savings Clause will continue to apply in these circumstances. Thus, in the case of one of our more recent tax treaties, such as those concluded with Belgium, Finland, Japan, Trinidad and Tobago, and Norway, the filing of a section 247(b) waiver will result in loss of the tax exemption under both section 893 of the Code and the governmental functions article of the tax treaty.

It should also be noted, without further discussion, that an employee who loses his statutory exemption because he has filed a section 247(b) waiver may still be exempt from U.S. tax under a consular convention or an international agreement. Examples of such an international agreement are the Articles of Agreement of the International Monetary Fund and the World Bank.[40]

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36. Reg. § 1. 893-1 (c) (1)
37. Rev. Rul. 71-566, 1971-2 C.B. 267
38. Rev. Rul. 54-397, 1954-2 C.B. 171; Reg. § 1. 893-1 (c) (2)
39. Belgium, Article 23 (1) (b); Finland, Article 4 (3) (b); Japan, Article 4 (4) (b); Trinidad and Tobago, Article 3 (4) (b); Norway, Article 22 (3) (b).
40. Reg. §1. 893-1 (c) (2)

APPENDIX A

International Organizations Qualifying for Exemption from United States Income Tax

I. *Under Presidential Executive Order*

Asian Development Bank
The Caribbean Organization
Coffee Study Group
European Space Research Organization
Food and Agricultural Organization
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agricultural Sciences
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank for Reconstruction and Development
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Hydrographic Bureau

International Joint Committee—United States and Canada
International Refugee Organization
International Secretariat for Volunteer Service
International Telecommunication Union
The International Labor Organization
International Monetary Fund
International Pacific Halibut Commission
International Wheat Advisory Committee
Organization for American States
Organization for European Economic Cooperation
Pan American Sanitary Bureau
Pan American Union
South Pacific Commission
The United Nations
The United Nations Educational, Scientific and Cultural Organization
United International Bureau for the Protection of Intellectual Property
Universal Postal Union
World Health Organization

II. *Under Administrative Ruling by the Internal Revenue Service* (*Revenue Ruling* 68-309)
European Atomic Energy Community
European Coal and Steel Community
European Economic Community

III. *Under Section* 895 *of the Internal Revenue Code*
The Bank for International Settlements (interest income only).

APPENDIX B

Part II—Nonresident Aliens and Foreign Corporations
Subpart A—Nonresident Alien Individuals

SECTION 871.—TAX ON NONRESIDENT ALIEN INDIVIDUALS

26 CFR 1.871-2: Determining residence of alien individuals.

Categories of foreign government representatives, employees, and family members issued nonimmigrant visas and treated as non-resident aliens for Federal tax purposes, and definition of "members of families"; Revenue Ruling 69-517 amplified and clarified.

Rev. Rul. 71-565
The Internal Revenue Service has been requested to amplify and clarify Revenue Ruling 96-517, C.B. 1969-2, 149, which relates to the classification of the members of families of certain representatives of foreign governments for Federal income tax purposes.
Revenue Ruling 69-517 holds that the members of families of foreign ambassadors and ministers occupy the status of nonresident aliens for Federal income tax purposes. The questions presented are (1) whether Revenue Ruling 69-517 also applies to categories of foreign government representatives and employees (and members of their families) other than ambassadors and ministers, and (2) what particular relationships are contemplated by the phrase "members of families."
Section 41.120(a) of the State Department Regulations, Chapter I of 22 CFR, promulgated under the Immigration and Nationality Act, Public Law 414 of June 27, 1952, as amended, provides that nonimmigrant visas, including diplomatic visas, may be issued to nonimmigrants who are in an official or quasi-official status and who are qualified and classifiable under the visa symbols A-1, A-2, A-3, C-2, C-3, G-1, G-2, G-3, G-4, G-5, NATO-1, NATO-2, NATO-3, NATO-4, NATO-5, NATO-6, or NATO-7. The persons to whom such visas are issued are described in section 41.12 of the State Department Regulations as follows:
A-1. Ambassador, public minister, career diplomatic or consular officer, and members of immediate family.
A-2. Other foreign-government official or employee, and members of immediate family.
A-3. Attendant, servant, or personal employee of A-1 and A-2 classes, and members of immediate family.
C-2. Alien in transit to United Nations Headquarters District under section 11.(3), (4), or (5) or the Headquarters Agreement.
C-3. Foreign government official, members of immediate family, attendant, servant, or personal employee, in transit.
G-1. Principal resident representative or (sic) recognized foreign member government to international organization, his staff, and members of immediate family.
G-2. Other representatives of recognized foreign

member government to international organization, and members of immediate family.
G-3. Representative of nonrecognized or nonmember foreign government to international organization, and members of immediate family.
G-4. International organization officer or employee, and members of immediate family.
G-5. Attendant, servant, or personal employee, of G-1, G-2, G-3, and G-4 classes, and members of immediate family.
NATO-1. Principal permanent representative of Member State to NATO (including any of its subsidiary bodies) resident in the United States and resident members of his official staff; Secretary General, Deputy Secretary General, Assistant Secretaries General and Executive Secretary of NATO; other permanent NATO officials of similar rank; and members of immediate family.
NATO-2. Other representatives of Member States to NATO (including any of its subsidiary bodies) including representatives, advisers and technical experts of delegations, and members of immediate family; dependents of member of a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement or in accordance with the provisions of the Protocol on the Status of International Military Headquarters; members of such a force if issued visas.
NATO-3. Official clerical staff accompanying a representative of Member State to NATO (including any of its subsidiary bodies) and members of immediate family.
NATO-4. Officials of NATO (other than those classifiable under NATO-1) and members of immediate family.
NATO-5. Experts, other than NATO officials classifiable under the symbol NATO-4, employed on missions on behalf of NATO; and their dependents.
NATO-6. Members of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement; members of a civilian component attached to or employed by an Allied Headquarters under the Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty; and their dependents.
NATO-7. Attendant, servant, or personal employee of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 and NATO-6 classes, and members of immediate families.
Section 41.1 of the State Department Regulations defines the phrase "immediate family," as used in the classifications listed above, as close relatives who are members of the immediate family by blood, marriage, or adoption, who are not members of some other household, and who will reside regularly in the household of the principal alien (an alien from whom another alien derives a privilege or status under the law or regulations).
The stay in the United States of non-immigrants is limited to a definite period of time. Section 214 of the Immigration and Nationality Act.
Section 1.871-2(b) of the Income Tax Regulations defines residence for the purpose of section 871 of the Code and provides, in pertinent part, that an alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of section 871 of the Code, in the absence of exceptional circumstances.
Accordingly, holders of visas described above are nonresident aliens for purposes of section 871 of the Code, in the absence of exceptional circumstances. Furthermore, the relationships contemplated by the phrase "members of families," as used in such descriptions, are those as described in section 41.1 of the State Department Regulations.
Revenue Ruling 69-517 is hereby amplified and clarified.

26 CFR 1.871-7: Tax on nonresident alien individuals.
Revenue Ruling 70-247 is clarified to remove the implication that a foreign corporation with a permanent establishment in the United States is not entitled to exemption or lower rates on certain investment income under the United States-United Kingdom Income Tax Convention.

Rev. Rul. 71-302
Revenue Ruling 70-247, C.B. 1970-1, 156, holds that a resident of the United Kingdom (other than a citizen of the United States) who is employed by a foreign corporation managed and controlled in the United Kingdom is exempt under Article XI(1) of the United States-United Kingdom Income Tax Convention, T.D. 5569, C.B. 1947-2, 100, from United States income tax with respect to compensation received from the foreign corporation for personal services rendered in the United States, if he is present in the United States for a period or periods aggregating not in excess of 183 days during the

taxable year, even though such corporation has a permanent establishment in the United States.
The seventh paragraph of Revenue Ruling 70-247 states, in part, as follows:
"Thus, a foreign corporation managed and controlled in the United Kingdom, as is the instant corporation, and having a permanent establishment in the United States, is not, for example, entitled to the benefits of the provisions of Articles VI, VII, or VIII of the Convention."
The benefits of the provisions of Articles VI, VII, and VIII of the Convention are available to the foreign corporation when it has been established that income of the type with which these Articles are concerned is not effectively connected with the conduct of a trade or business within the United States. See sections 864(c) (2) and 894(b) of the Internal Revenue Code of 1954. In other words, with respect to investment income not effectively connected with the conduct of a trade or business within the United States a foreign corporation will be taxed at the lower treaty rate or exempt from taxation as specified in Articles VI, VII and VIII of the Convention.
Accordingly, the seventh paragraph of Revenue Ruling 70-247 is clarified to remove therefrom the implication that a foreign corporation having a permanent establishment in the United States would not under any circumstances qualify for the benefits of Articles VI, VII and VIII of the Convention.

Subpart B.—Foreign Corporations

SECTION 883.—EXCLUSIONS FROM GROSS INCOME

26 *CFR* 1.883-1: *Exclusions from gross income of foreign corporations.*
Determination of gross income for purposes of section 954(b) (3) of the Code. See Rev. Rul. 71-369, page 273.

Subpart C.—Miscellaneous Provisions

SECTION 893.—COMPENSATION OF EMPLOYEES OF FOREIGN GOVERNMENTS OR INTERNATIONAL ORGANIZATIONS

26 *CFR* 1.893-1: *Compensation of employees of foreign governments or international organizations.*

The filing of a waiver provided by section 247(b) of the Immigration and Nationality Act by a resident alien Government employee waives the exemption on compensation for official services provided by Article X(2) of the United States-United Kingdom Tax Convention and section 893 of the Code.

Rev. Rul. 71-566
Advice has been requested whether the execution and filing of a waiver provided by section 247(b) of the Immigration and Nationality Act (8 U.S.C. 1257(b)) by a resident alien individual who is employed by a Government covered by the United States-United Kingdom Income Tax Convention and whose compensation for official services to such government is exempt from Federal income tax under Article X(2) of the Convention and section 893 of the Internal Revenue Code of 1954, would cause such individual to lose such exemption and be subject to such tax.

Article X(2) of the Convention provides that any salary, wage, similar remuneration, or pension, paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of governmental functions, shall be exempt from United States tax.

Article XIII(1) of the Convention, as amended by Article 9 of the Supplementary Protocol to the Convention (brought into force September 9, 1966), provides, in part, that the right to tax its residents is reserved unto the United States as if the Convention had not come into effect.

Prior to its amendment by the Supplementary Protocol, the Convention contained no savings clause, but the provisions of a savings clause were incorporated in regulations under the Convention (26 CFR 507.103(e)) as published in T.D. 5569, C.B. 1947-2, 100. The benefits of Article X were excepted, however, from the savings clause. Section 893 of the Code provides that wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation if the conditions enumerated therein are met. Section 1.893—1 (a) (5) of the Income Tax Re-

gulations provides that an employee of a foreign government who executes and files with the Attorney General the waiver provided for in section 247 (b) of the Immigration and Nationality Act thereby waives the exemption conferred by section 893 of the Code. As a consequence, that exemption does not apply to income received by that alien after the date of filing of the waiver. Section 1.893—1 (c) (2) of the regulations promulgated in 1957 provides, however, that if income tax exemption of compensation paid by a foreign government to its employees is provided by a tax convention and is not dependent upon the provisions of the internal revenue laws, the exemption so conferred is not affected by the execution and filing of a waiver. Reference is made to Article X of the Convention with the United Kingdom for an example of such an exemption. Section 1.893—1 (c) (2) of the regulations and section 507.103 (e) of the regulations under the Convention do not reflect the amendment to the Convention made by the Supplementary Protocol.

Accordingly, the execution and filing of a waiver provided by section 247 (b) of the Immigration and Nationality Act by a resident alien individual who is employed by a Government covered by the United States-United Kingdom Income Tax Convention and whose compensation for official services to such government is exempt from Federal income tax under section 893 of the Code, would cause such individual to lose such exemption. Subsequent to September 9, 1966, such compensation of a resident alien would not be exempt under Article X (2) of the Convention.

APPENDIX C

United States Income Tax Treaties With Articles Relating to Foreign Government Employees

Treaty	*Governmental Functions Article*	*Diplomatic and Consular Officials Article*
Australia	—	—
Austria	XI	XVIII (1)
Belgium (New)	19	28 (1)
Canada	VI	—
Denmark	X	XXI (1)
Finland	22	26
France	16	28
Germany	XI	XVIII (1)
Greece	XI	—
Ireland	X	—
Italy	X	XIX (1)
Japan	21	24
Luxembourg	XI	XX (1)
Netherlands	XV	—
New Zealand	X	—
Norway	17	22 (4), 26
Pakistan	IX	—
Sweden	X	8 (Protocol)
Switzerland	XI	XVIII (1)
Trinidad and Tobago	20	—
Union of South Africa	VIII	—
United Kingdom	X	—

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Supplement **A**
1972

Convention entre le Royaume de Belgique et le Japon tendant à éviter les doubles impositions en matière d'impôts sur le revenu

TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
SUPPLEMENT AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVI, No. 2, February/février 1972

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Mulderpoort – 124 Sarphatistraat – Amsterdam

A double taxation treaty between Belgium and Japan was signed on March 28, 1968. The treaty is in effect according to the rules of Article 28.

TEXTE

Le Gouvernement du Royaume de Belgique
et le Gouvernement du Japon,
Désireux de conclure une Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu,

Sont convenus de ce qui suit:

Article 1er

Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un État contractant ou de chacun des deux États.

Article 2

Impôts visés

§ 1. Les impôts qui font l'objet de la présente Convention sont:
(a) au Japon:
(i) l'impôt sur le revenu;
(ii) l'impôt des sociétés; et
(iii) les impôts des habitants au profit des pouvoirs locaux,
(ci-après dénommés «l'impôt japonais»).
(b) en Belgique:
(i) l'impôt des personnes physiques;
(ii) l'impôt des sociétés;

(iii) l'impôt des personnes morales;
(iv) l'impôt des non-résidents;
(v) les précomptes et compléments de précomptes; et
(vi) les centimes additionnels aux impôts visés *sub* (i) à (v) ci-dessus, y compris la taxe communale additionnelle à l'impôt des personnes physiques,

(ci-après dénommés «l'impôt belge»).

§ 2. La présente Convention s'appliquera aussi aux impôts de nature analogue à ceux visés au paragraphe précédent qui seraient établis dans l'un ou l'autre État contractant après la date de signature de la présente Convention.

§ 3. En ce qui concerne les entreprises de navigation maritime ou aérienne, la présente Convention s'appliquera aussi à l'impôt japonais sur les entreprises visé à l'article 8, paragraphe 2.

Article 3

Définitions générales

§ 1. Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:

(a) le terme «Japon», employé dans un sens géographique, désigne tous les territoires dans lesquels la législation relative à l'impôt japonais est d'application;

(b) le terme «Belgique», employé dans un sens géographique, désigne le territoire du Royaume de Belgique;

(c) les expressions «un État contractant» et «l'autre État contractant» désignent, suivant le contexte, le Japon ou la Belgique;

(d) le terme «impôt» désigne, suivant le contexte, l'impôt japonais ou l'impôt belge;

(e) le terme «personnes» comprend les personnes physiques et les sociétés;

(f) le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition;

(g) les expressions «entreprise d'un État contractant» et «entreprise de l'autre État contractant» désignent respectivement une entreprise exploitée par un résident d'un État contractant et une entreprise exploitée par un résident de l'autre État contractant;

(h) l'expression «autorité compétente» désigne, en ce qui concerne la Belgique, l'autorité compétente suivant la législation belge et, en ce qui concerne le Japon, le Ministre des Finances ou son représentant autorisé.

§ 2. Pour l'application de la présente Convention par un État contractant, toute expression qui n'est pas autrement définie dans la présente Convention a le sens qui lui est attribué par la législation dudit État régissant les impôts auxquels cette Convention s'applique, à moins que le contexte n'exige une interprétation différente.

Article 4

Domicile fiscal

§ 1. Au sens de la présente Convention, l'expression «résident(e) d'un État contractant» désigne toute personne qui est résidente de cet État contractant aux fins d'imposition par ledit État et qui n'est pas considérée comme résidente de l'autre État contractant aux fins d'imposition par cet État.

§ 2. Lorsqu'une personne est résidente des deux États contractants conformément à leurs législations internes respectives, les autorités compétentes déterminent de commun accord l'État contractant dont cette personne sera considérée comme résidente pour l'application de la présente Convention.

Article 5

Etablissement stable

§ 1. Au sens de la présente Convention,

l'expression «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.
§ 2. L'expression «établissement stable» comprend notamment:
(a) un siège de direction;
(b) une succursale;
(c) un bureau;
(d) une usine;
(e) un atelier;
(f) une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
(g) un chantier de construction ou de montage dont la durée dépasse douze mois.
§ 3. On ne considère pas qu'il y a établissement stable si:
(a) il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
(b) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
(c) des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
(d) une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;
(e) une installation fixe d'affaires est utilisée, pour l'entreprise, aux seules fins de publicité, de fourniture d'informations, de recherches scientifiques ou d'activités analogues qui ont un caractère préparatoire ou auxiliaire.
§ 4. Une personne – autre qu'un agent jouissant d'un statut indépendant visé au paragraphe 5 – qui agit dans un État contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme constituant un établissement stable dans le premier État contractant si elle dispose dans cet État de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne ne soit limitée à l'achat de marchandises pour l'entreprise.
§ 5. On ne considère pas qu'une entreprise d'un État contractant a un établissement stable dans l'autre État contractant du seul fait qu'elle y exerce son activité par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.
§ 6. Le fait qu'une société qui est un résident d'un État contractant contrôle ou est contrôlée par une société qui est un résident de l'autre État contractant ou qui y exerce son activité (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces sociétés un établissement stable de l'autre.

Article 6

Revenus de biens immobiliers

§ 1. Les revenus provenant de biens immobiliers sont imposables dans l'État contractant où ces biens sont situés.
§ 2. L'expression «biens immobiliers» est définie conformément au droit de l'État contractant où les biens considérés sont situés. L'expression englobe en tout cas les accessoires, le cheptel mort ou vif des exploitations agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droits à des redevances variables ou fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres richesses du sol; les navires, bateaux et aéronefs ne sont pas considérés comme biens immobiliers.
§ 3. La disposition du paragraphe 1 s'applique aux revenus provenant de l'exploitation ou de la jouissance directes, de la location ou de l'affermage, ainsi que de toute autre forme

d'exploitation de biens immobiliers.
§ 4. Les dispositions des paragraphes 1 et 3 s'appliquent également aux revenus provenant des biens immobiliers d'une entreprise ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

Article 7

Bénéfices des entreprises

§ 1. Les bénéfices d'une entreprise d'un État contractant ne sont imposables que dans cet État, à moins que l'entreprise n'exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre État contractant, mais uniquement dans la mesure où ils sont imputables audit établissement stable.
§ 2. Lorsqu'une entreprise d'un État contractant exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chaque État contractant, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.
§ 3. Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés, soit dans l'État contractant où est situé cet établissement stable, soit ailleurs.
§ 4. S'il est d'usage, dans un État contractant, de déterminer les bénéfices imputables à un établissement stable sur la base d'une répartition des bénéfices totaux de l'entreprise entre ses diverses parties, aucune disposition du paragraphe 2 n'empêche cet État contractant de déterminer les bénéfices imposables selon la répartition en usage; la méthode de répartition adoptée doit cependant être telle que le résultat obtenu soit conforme aux principes énoncés dans le présent article.
§ 5. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.
§ 6. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.
§ 7. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas affectées par les dispositions du présent article.

Article 8

Entreprises de navigation maritime ou aérienne

§ 1. Les bénéfices provenant de l'exploitation, en trafic international, de navires ou d'aéronefs par une entreprise d'un État contractant ne sont imposables que dans cet État contractant.
§ 2. Une entreprise exploitée par un résident de la Belgique est exemptée au Japon de l'impôt sur les entreprises en ce qui concerne l'exploitation en trafic international de navires ou d'aéronefs.

Article 9

Entreprises interdépendantes

Lorsque
(a) une entreprise d'un État contractant participe directement ou indirectement à la

direction, au contrôle ou au capital d'une entreprise de l'autre État contractant, ou que (b) les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un État contractant et d'une entreprise de l'autre État contractant,
et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées qui diffèrent de celles qui seraient conclues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

Article 10

Dividendes

§ 1. Les dividendes attribués par une société qui est un résident d'un État contractant à un résident de l'autre État contractant sont imposables dans cet autre État contractant.
§ 2. Toutefois, ces dividendes peuvent être imposés dans l'État contractant dont la société qui attribue les dividendes est un résident et selon la législation de cet État, mais l'impôt ainsi établi ne peut excéder 15 pour cent du montant brut des dividendes.
Ce paragraphe ne concerne pas l'imposition de la société pour les bénéfices qui servent au paiement des dividendes.
§ 3. Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de fondateur ou autres parts bénéficiaires, à l'exception des créances, ainsi que les revenus d'autres parts sociales assimilées aux revenus d'actions par la législation fiscale de l'État contractant dont la société distributrice est un résident.
§ 4. La limitation du taux de l'impôt prévue par le paragraphe 2 ne s'applique pas lorsque le bénéficiaire des dividendes, résident d'un État contractant, a dans l'autre État contractant dont la société qui paie les dividendes est un résident un établissement stable auquel se rattache effectivement la participation génératrice des dividendes.
§ 5. Lorsqu'une société qui est un résident d'un État contractant tire des bénéfices ou des revenus de l'autre État contractant, cet autre État contractant ne peut percevoir aucun impôt sur les dividendes attribués par la société en dehors du territoire de cet autre État à des personnes qui ne sont pas des résidents de cet autre État, ni prélever aucun impôt au titre de l'imposition des bénéfices non distribués, sur les bénéfices non distribués de la société, même si les dividendes attribués ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre État.

Article 11

Intérêts

§ 1. Les intérêts provenant d'un État contractant et attribués à un résident de l'autre État contractant sont imposables dans cet autre État contractant.
§ 2. Toutefois, ces intérêts peuvent être imposés dans l'État contractant d'où ils proviennent et selon la législation de cet État, mais l'impôt ainsi établi ne peut excéder 15 pour cent du montant brut des intérêts.
§ 3. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et des créances de toute nature, ainsi que tous autres produits assimilés aux revenus de sommes prêtées par la législation fiscale de

l'État contractant d'où proviennent les revenus.
§ 4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un État contractant, a dans l'autre État contractant d'où proviennent les intérêts un établissement stable auquel se rattache effectivement la créance génératrice des intérêts. Dans ce cas, les dispositions de l'article 7 sont applicables.
§ 5. Les intérêts sont considérés comme provenant d'un État contractant lorsque le débiteur est cet État contractant lui-même, une collectivité locale ou un résident de cet État. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un État contractant, a dans un État contractant un établissement stable pour lequel l'emprunt générateur des intérêts a été contracté et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'État contractant où l'établissement stable est situé.
§ 6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des intérêts attribués, compte tenu de la créance pour laquelle ils sont versés, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des paiements reste imposable conformément à la législation de l'État contractant d'où proviennent les intérêts.

Article 12

Redevances

§ 1. Les redevances provenant d'un État contractant et attribuées à un résident de l'autre État contractant sont imposables dans cet autre État contractant.
§ 2. Toutefois, ces redevances peuvent être imposées dans l'État contractant d'où elles proviennent et selon la législation de cet État, mais l'impôt ainsi établi ne peut excéder 10 pour cent du montant brut des redevances.
§ 3. Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets, ou pour l'usage ou la concession de l'usage d'un équipement industriel, commercial ou scientifique ou pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique, ainsi que les revenus de la location coque nue d'un navire ou d'un aéronef.
§ 4. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un État contractant, a dans l'autre État contractant d'où proviennent les redevances un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.
§ 5. Les redevances sont considérées comme provenant d'un État contractant lorsque le débiteur est cet État contractant lui-même, une collectivité locale ou un résident de cet État. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un État contractant, a dans un État contractant un établissement stable pour lequel le contrat donnant lieu au paiement des redevances a été conclu et qui supporte la charge de celles-ci, ces redevances sont réputées provenir de l'État contractant où l'établissement stable est situé.
§ 6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que

l'un et l'autre entretiennent avec des tierces personnes, le montant des redevances attribuées, compte tenu de la prestation pour laquelle elles sont versées, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des paiements reste imposable conformément à la législation de l'État contractant d'où proviennent les redevances.

Article 13

Gains en capital

§ 1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis à l'article 6, paragraphe 2, sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. Les gains provenant de l'aliénation de biens (autres que des biens immobiliers) faisant partie de l'actif d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant, ou de biens (autres que des biens immobiliers) constitutifs d'une base fixe dont un résident d'un État contractant dispose dans l'autre État contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre État contractant. Toutefois, les gains qu'un résident d'un État contractant tire de l'aliénation de navires et d'aéronefs exploités en trafic international ainsi que des biens (autres que des biens immobiliers) affectés à l'exploitation de tels navires et aéronefs sont exonérés de l'impôt dans l'autre État contractant.

§ 3. Les gains qu'un résident d'un État contractant tire de l'aliénation de tous biens autres que ceux qui sont mentionnés dans les dispositions des paragraphes 1 et 2 du présent article sont exemptés de l'impôt dans l'autre État contractant.

Article 14

Professions libérales

§ 1. Les revenus qu'un résident d'un État contractant tire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet État, à moins que ce résident ne dispose de façon habituelle dans l'autre État contractant d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base, les revenus sont imposables dans cet autre État contractant, mais uniquement dans la mesure où ils sont imputables à ladite base fixe.

§ 2. L'expression «professions libérales» comprend en particulier les activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique, ainsi que les activités indépendantes des médecins, avocats, ingénieurs, architectes, dentistes et comptables.

Article 15

Professions dépendantes

§ 1. Sous réserve des dispositions des articles 16, 18 et 19, les salaires, traitements et autres rémunérations similaires qu'un résident d'un État contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet État, à moins que l'emploi ne soit exercé dans l'autre État contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre État contractant.

§ 2. Nonobstant les dispositions du paragraphe 1, les rémunérations qu'un résident d'un État contractant reçoit au titre d'un emploi salarié exercé dans l'autre État con-

tractant, ne sont imposables que dans le premier État si:
(a) le bénéficiaire séjourne dans l'autre État contractant pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année civile considérée, et
(b) les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de cet autre État contractant, et
(c) la charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans cet autre État contractant.
§ 3. Nonobstant les dispositions des paragraphes 1 et 2, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef exploité en trafic international par une entreprise d'un État contractant sont imposables dans cet État contractant.

Article 16

Administrateurs et commissaires de sociétés

Les tantièmes, jetons de présence et autres rétributions qu'un résident d'un État contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est un résident de l'autre État contractant, sont imposables dans cet autre État contractant.

Article 17

Artistes et sportifs

§ 1. Nonobstant les dispositions des articles 14 et 15, les revenus que les professionnels du spectacle, tels les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité sont imposables dans l'État contractant où ces activités sont exercées.
§ 2. Nonobstant toute disposition de la présente Convention, lorsque les services d'un professionnel du spectacle ou d'un sportif mentionnés au paragraphe 1 sont fournis dans un État contractant par une entreprise de l'autre État contractant, les bénéfices que cette entreprise retire de la fourniture de ces services sont imposables dans le premier État contractant.

Article 18

Pensions

Sous réserve des dispositions de l'article 19, paragraphe 1, les pensions et autres rémunérations similaires, versées à un résident d'un État contractant au titre d'un emploi antérieur, ne sont imposables que dans cet État.

Article 19

Rémunérations et pensions publiques

§ 1. Les rémunérations, y compris les pensions, versées par un État contractant ou par l'une de ses collectivités locales, soit directement, soit par prélèvement sur des fonds qu'ils alimentent, à un national de cet État contractant au titre de services rendus à cet État ou collectivité locale, dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet État.
§ 2. Les dispositions des articles 15, 16, 17 et 18 s'appliquent aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une exploitation à but lucratif exercée par l'un des État contractants ou par l'une de ses collectivités locales.

Article 20

Professeurs

Nonobstant les dispositions de l'article 15,

un professeur ou membre du personnel enseignant, qui séjourne temporairement dans un État contractant pour y enseigner, pendant une période n'excédant pas deux ans, dans une université, un collège, une école ou une autre institution d'enseignement, et qui est, ou qui était immédiatement avant ce séjour, un résident de l'autre État contractant, est imposable uniquement dans cet autre État contractant sur les rémunérations de cet enseignement.

Article 21

Etudiants

Les sommes qu'un étudiant ou un stagiaire qui séjourne dans un État contractant à seule fin d'y poursuivre ses études ou sa formation et qui est, ou qui était immédiatement avant son séjour, un résident de l'autre État contractant reçoit pour couvrir ses frais d'entretien, d'études ou de formation, sont exonérées d'impôt dans le premier État, à la condition que ces sommes proviennent de sources situées en dehors de ce premier État.

Article 22

Revenus non expressément mentionnés

Les éléments du revenu d'un résident d'un État contractant qui ne sont pas expressément mentionnés dans les articles précédents de la présente Convention ne sont imposables que dans cet État.

Article 23

Dispositions pour éviter la double imposition

§ 1. Sous réserve des dispositions existantes de la législation du Japon concernant l'imputation sur l'impôt du Japon de l'impôt dû dans un autre État et de toute modification ultérieure de ces dispositions qui n'en affecterait pas le principe, l'impôt belge dû, directement ou par voie de retenue, conformément aux dispositions de la présente Convention est porté en déduction de l'impôt japonais; lorsque le revenu est un dividende attribué par une société qui est un résident de la Belgique à une société résidente du Japon qui possède au moins 25 pour cent des actions ou du capital de la société distributrice, la déduction porte également sur l'impôt belge dû par cette société distributrice en raison de ses bénéfices.

§ 2. En ce qui concerne les revenus ayant leur source au Japon qui, conformément à la présente Convention, ont été soumis directement ou par voie de retenue, à l'impôt japonais et qui sont passibles de l'impôt en Belgique suivant la législation belge:

(a) (i) Lorsqu'une société résidente de la Belgique a la propriété d'actions ou parts d'une société résidente du Japon, les dividendes attribués à la première société et non soumis au régime prévu à l'article 10, paragraphe 4, sont exemptés en Belgique de l'impôt visé à l'article 2, paragraphe 1 (b) (ii) dans la mesure où cette exemption serait accordée si les deux sociétés étaient résidentes de la Belgique.

Une société résidente de la Belgique qui a la propriété exclusive d'actions ou parts d'une société résidente du Japon pendant toute la durée de l'exercice social de cette dernière société, est également exemptée ou obtient le dégrèvement du précompte mobilier exigible suivant la législation belge sur le montant net des dividendes visés ci-dessus qui lui sont attribués par ladite société résidente du Japon et soumise à l'impôt visé à l'article 2, paragraphe 1 (a) (ii), à la condition d'en faire la demande par écrit au plus tard dans le délai prescrit pour la remise de sa déclaration annuelle, étant entendu que lors de la redistribution à ses propres actionnaires de ces dividendes non soumis audit précompte mobi-

lier, ceux-ci ne peuvent, par dérogation à la législation belge, être déduits des dividendes distribués passibles du précompte mobilier. Cette exemption n'est pas applicable lorsque la première société a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.

Toutefois, l'application de cette disposition sera limitée aux dividendes attribués par une société résidente du Japon à une société résidente de la Belgique qui contrôle directement ou indirectement au moins 25 pour cent des droits de vote dans la première société, au cas où, pour l'exemption de l'impôt visé à l'article 2, paragraphe 1 (b) (ii), une limitation similaire serait imposée par la législation belge concernant les dividendes attribués par des sociétés non résidentes de la Belgique.

(ii) Dans les cas non visés au sous-paragraphe (a) (i), lorsqu'un résident de la Belgique reçoit des revenus soumis au régime prévu à l'article 10, paragraphe 2, à l'article 11, paragraphes 2 et 6, et à l'article 12, paragraphes 2 et 6, la Belgique accorde sur l'impôt belge afférent à ces revenus une déduction tenant compte de l'impôt supporté au Japon. La déduction est accordée sur l'impôt afférent au montant net des dividendes provenant de la société résidente du Japon, ainsi que des intérêts et des redevances ayant leur source au Japon et qui y ont été imposés; la déduction correspond à la quotité forfaitaire d'impôt étranger prévue par la législation belge actuellement en vigueur, compte tenu de toute modification ultérieure n'en affectant pas le principe.

(b) (i) Lorsqu'un résident de la Belgique reçoit des revenus autres que ceux qui sont mentionnés au sous-paragraphe (a) ci-avant, qui, conformément aux dispositions de la présente Convention, sont imposables au Japon, la Belgique exempte ces revenus, mais elle peut, pour calculer le montant de l'impôt sur le reste du revenu de ce résident, appliquer le même taux que si les revenus en question n'étaient pas exemptés.

(ii) Les revenus imposables, conformément à la législation belge, au titre de bénéfices dans le chef d'associés ou membres de sociétés et groupements de personnes sont traités comme s'il s'agissait de bénéfices provenant d'une entreprise exploitée par les associés ou membres eux-mêmes pour leur propre compte.

(iii) Par dérogation au sous-paragraphe (b) (i) ci-dessus, l'impôt belge peut être établi sur des revenus imposables au Japon, dans la mesure où ces revenus n'ont pas été imposés au Japon parce qu'ils y ont été compensés avec des pertes qui ont également été déduites, pour une période imposable quelconque, de revenus imposables en Belgique.

§ 3. Pour l'application du présent article, l'expression «résident du Japon» désigne toute personne qui est considérée comme un résident du Japon pour l'application de l'impôt japonais et l'expression «résident de la Belgique» désigne toute personne qui est considérée comme un résident de la Belgique pour l'application de l'impôt belge.

Article 24

Non-discrimination

§ 1. Les nationaux d'un État contractant ne sont soumis dans l'autre État contractant à aucune imposition ou obligation y relative qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les nationaux de cet autre État contractant se trouvant dans la même situation.

§ 2. Le terme «nationaux» désigne:

(a) en ce qui concerne le Japon: toutes les personnes physiques qui possèdent la nationalité japonaise et toutes les personnes juridiques créées ou organisées conformément à la législation du Japon ainsi que toutes les organisations sans personnalité juridique considérées pour l'application de l'impôt japonais,

comme des personnes morales créées ou organisées conformément à la législation du Japon;
(b) en ce qui concerne la Belgique: toutes les personnes physiques qui possèdent la nationalité belge et toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur en Belgique.
§ 3. L'imposition d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant n'est pas établie dans cet autre État d'une façon moins favorable que l'imposition des entreprises de cet autre État qui exercent la même activité.
Cette disposition ne peut être interprétée comme obligeant un État contractant à accorder aux résidents de l'autre État contractant les déductions personnelles, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.
§ 4. Les entreprises d'un État contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre État contractant, ne sont soumises dans le premier État contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier État.
§ 5. Le terme «imposition» désigne, dans le présent article, les impôts de toute nature ou dénomination.

Article 25

Procédure amiable

§ 1. Lorsqu'un résident d'un État contractant estime que les mesures prises par un État contractant ou par chacun des deux États entraînent ou entraîneront pour lui une imposition non conforme à la présente Convention, il peut, indépendamment des recours prévus par la législation de ces États. soumettre son cas à l'autorité compétente de l'État contractant dont il est résident.
§ 2. L'autorité compétente s'efforce, si la réclamation lui paraît fondée et si elle n'est pas en mesure d'apporter une solution satisfaisante, de régler la question par voie d'accord amiable avec l'autorité compétente de l'autre État contractant, en vue d'éviter une imposition non conforme à la présente Convention.
§ 3. Les autorités compétentes des États contractants s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peut donner lieu l'application de la présente Convention.
§ 4. Les autorités compétentes des États contractants peuvent communiquer directement entre elles pour l'application des dispositions de la présente Convention.

Article 26

Echange de renseignements

§ 1. Les autorités compétentes des États contractants échangent les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des États contractants relatives aux impôts visés par la présente Convention dans la mesure où l'imposition qu'elles prévoient est conforme à cette Convention. Tout renseignement ainsi échangé est tenu secret et ne peut être communiqué qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la présente Convention.
§ 2. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à l'un des États contractants l'obligation:
(a) de prendre des dispositions administratives dérogeant à sa propre législation ou à sa

pratique administrative ou à celles de l'autre État contractant;
(b) de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre État contractant;
(c) de transmettre des renseignements qui révèleraient un secret commercial, industriel, professionnel ou un procédé commercial, ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27

Fonctionnaires diplomatiques et consulaires

Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

Article 28

Entrée en vigueur

§ 1. La présente Convention sera ratifiée et les instruments de ratification seront échangés à Bruxelles aussitôt que possible.
§ 2. La présente Convention entrera en vigueur le trentième jour suivant celui de l'échange des instruments de ratification et elle s'appliquera:
Au Japon: aux revenus recueillis pendant les années d'imposition commençant le 1er janvier de l'année civile au cours de laquelle la présente Convention entre en vigueur ou après cette date;
En Belgique: (a) à tous impôts dus à la source sur des revenus attribués ou mis en paiement à partir du 1er janvier de l'année civile au cours de laquelle la présente Convention entre en vigueur;
(b) à tous autres impôts établis sur des revenus de périodes imposables prenant fin le 31 décembre de l'année civile au cours de laquelle la présente Convention entre en vigueur ou après cette date.

Article 29

Dénonciation

Chacun des États contractants peut dénoncer la présente Convention après une période de cinq ans à compter de la date d'entrée en vigueur de la présente Convention, en notifiant, par écrit et par la voie diplomatique, sa dénonciation à l'autre État contractant, pourvu que cette notification soit faite au plus tard le 30 juin d'une année civile; dans cette éventualité, la présente Convention cessera d'être applicable:
Au Japon: aux revenus recueillis pendant les années d'imposition commençant le 1er janvier de l'année civile suivant celle au cours de laquelle la dénonciation a été notifiée ou après cette date;
En Belgique: (a) à tous impôts dus à la source sur des revenus attribués ou mis en paiement à partir du 1er janvier de l'année civile suivant celle au cours de laquelle la dénonciation a été notifiée;
(b) à tous autres impôts établis sur des revenus de périodes imposables prenant fin le 31 décembre de l'année civile suivant celle au cours de laquelle la dénonciation a été notifiée ou après cette date.
En foi de quoi les soussignés, à ce dûment autorisés, ont signé la présente Convention.
Fait en double exemplaire à Tokyo, le 28 mars 1968, en langue anglaise.

Pour le Gouvernement du Royaume de Belgique:
Albert Hupperts

Pour le Gouvernement du Japon:
Takeo Miki

Protocole

Au moment de procéder à la signature de la Convention entre le Royaume de Belgique et le Japon tendant à éviter les doubles impositions en matière d'impôts sur le revenu, les soussignés sont convenus des dispositions suivantes qui forment partie intégrante de la Convention.

1. Pour l'application de l'article 5, une entreprise d'un Etat contractant sera considérée comme ayant un établissement stable dans l'autre État contractant si elle se livre pendant plus de douze mois dans cet autre État contractant à des activités de surveillance relativement à un chantier de construction ou de montage situé dans cet autre État contractant.

2. Pour l'application de l'article 10, paragraphe 3, le terme «dividendes» comprend également, dans le cas d'une société belge autre qu'un société par actions, les attributions faites aux associés de la société au titre de revenus de capitaux investis.

3. En ce qui concerne l'article 16, lorsqu'un membre du conseil d'administration ou de surveillance d'une société reçoit de celle-ci des rémunérations en raison de l'exercice d'une activité journalière de direction ou de caractère technique, les dispositions de l'article 15 sont applicables comme s'il s'agissait de rémunérations payées à un employé en raison d'un emploi salarié et comme si l'employeur était la société.

4. Les dispositions de la présente Convention n'empêchent pas la Belgique de prélever:
(a) la cotisation spéciale exigible en vertu de la législation belge sur tout ou partie des sommes payées en cas de partage de l'avoir social d'une société résidente de la Belgique;
(b) la cotisation spéciale exigible d'une telle société, conformément à la législation belge, en cas de rachat de ses propres actions ou parts.

En foi de quoi les soussignés, à ce dûment autorisés, ont signé le présent Protocole.

Fait en double exemplaire à Tokyo, le 28 mars 1968, en langue anglaise.

Pour le Gouvernement du Royaume de Belgique:
Albert Hupperts

Pour le Gouvernement du Japon:
Takeo Miki

Les instruments de ratification ont été échangés à Bruxelles le 17 mars 1970.

Conformément aux dispositions de l'article 28, § 2, de la Convention, ces actes entrent en vigueur le 16 avril 1970.

Supplement **B**
1972

Convention entre la République Française et la République Fédérative du Brésil tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

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INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort – 124 Sarphatistraat – Amsterdam

A double taxation treaty between France and Brazil was signed on September 10, 1971. The treaty will be effective according to the rules of Article 29.

TEXTE

Le Président de la République française et le Président de la République fédérative du Brésil, désireux d'éviter dans la mesure du possible les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu, ont désigné à cette fin comme plénipotentiaires:

Le Président de la République française:
M. Valéry Giscard d'Estaing, Ministre de l'Economie et des Finances;

Le Président de la République fédérative du Brésil:
M. Mario Gibson Barboza, Ambassadeur du Brésil, Ministre d'État des Relations extérieures,

lesquels, après avoir présenté leurs pouvoirs qui ont été reconnus en bonne et due forme, sont convenus des dispositions suivantes:

Article 1er

Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un État contractant ou de chacun des deux États.

Article 2

Impôts visés

1. Les impôts actuels auxquels s'applique la Convention sont:

a) Pour la France:

L'impôt sur le revenu;

L'impôt sur les sociétés,

y compris toute retenue à la source, tout précompte ou tout versement anticipé afférents aux impôts visés ci-dessus (ci-après dénommés «impôt français»).

b) Pour le Brésil:

L'impôt fédéral sur le revenu et les profits de toute nature, à l'exclusion de l'impôt sur les transferts excédentaires et sur les activités de moindre importance.

2. La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient.

Article 3

Définitions générales

1. Dans la présente Convention:

a) Le terme «France» désigne les départements européens et d'Outre-Mer (Guadeloupe, Guyane, Martinique et Réunion) de la République française et les zones adjacentes aux eaux territoriales de la France sur lesquelles, en conformité avec le droit international, la France peut exercer les droits relatifs au lit de la mer, au sous-sol marin et à leurs ressources naturelles;

b) Le terme «Brésil» désigne la République fédérative du Brésil;

c) Les expressions «un État contractant» et «l'autre État contractant» désignent, suivant le contexte, la France ou le Brésil;

d) Le terme «personne» comprend une personne physique, une société et tout autre groupement de personnes;

e) Le terme «société» désigne toute personne morale ou toute entité qui est considérée comme une personne morale aux fins d'imposition;

f) Les expressions «entreprise d'un État contractant» et «entreprise de l'autre État contractant» désignent respectivement une entreprise exploitée par un résident d'un État contractant et une entreprise exploitée par un résident de l'autre État contractant;

g) L'expression «autorité compétente» désigne:

1. En France: le Ministre de l'Economie et des Finances ou son représentant dûment autorisé;

2. Au Brésil: le Ministre des Finances, le Secrétaire de la Recette fédérale ou ses représentants autorisés.

2. Pour l'application de la Convention par un État contractant, toute expression qui n'est pas autrement définie a le sens qui lui est attribué par la législation dudit État régissant les impôts faisant l'objet de la Convention, à moins que le contexte n'exige une interprétation différente.

Article 4

Domicile fiscal

1. Au sens de la présente Convention, l'expression «résident d'un État contractant» désigne toute personne qui, en vertu de la législation dudit État, est assujettie à l'impôt dans cet État, en raison de son domicile, de sa résidence, de son siège de direction ou de tout autre critère de nature analogue.

2. Lorsque, selon la disposition du paragraphe 1, une personne physique est considérée comme résident de chacun des États contractants, le cas est résolu d'après les règles suivantes:

a) Cette personne est considérée comme résident de l'État contractant où elle dispose d'un foyer d'habitation permanent. Lorsqu'elle dispose d'un foyer d'habitation permanent

dans chacun des États contractants, elle est considérée comme résident de l'État contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);
b) Si l'État contractant où cette personne a le centre de ses intérêts vitaux ne peut pas être déterminé, ou si elle ne dispose d'un foyer d'habitation permanent dans aucun des États contractants, elle est considérée comme résident de l'État contractant où elle séjourne de façon habituelle;
c) Si cette personne séjourne de façon habituelle dans chacun des États contractants ou si elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme résident de l'État contractant dont elle possède la nationalité;
d) Si cette personne possède la nationalité de chacun des États contractants ou si elle ne possède la nationalité d'aucun d'eux, les autorités compétentes des États contractants tranchent la question d'un commun accord.

3. Lorsque, selon la disposition du paragraphe 1, une personne autre qu'une personne physique est considérée comme résident de chacun des États contractants, elle est réputée résident de l'État contractant où se trouve son siège de direction effective.

Article 5

Etablissement stable

1. Au sens de la présente Convention, l'expression «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.

2. L'expression «établissement stable» comprend notamment:
a) Un siège de direction;
b) Une succursale;
c) Un bureau;
d) Une usine;
e) Un atelier;
f) Une mine, une carrière ou tout autre lieu d'extraction de ressources naturelles;
g) Un chantier de construction ou de montage dont la durée dépasse six mois.
3. On ne considère pas qu'il y a établissement stable si:
a) Il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
b) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
c) Des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
d) Une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;
e) Une installation fixe d'affaires est utilisée, pour l'entreprise, aux seules fins de publicité, de fourniture d'informations, de recherches scientifiques ou d'activités analogues qui ont un caractère préparatoire ou auxiliaire.

4. Une personne agissant dans un État contractant pour le compte d'un eentreprise de l'autre État contractant, autre qu'un agent jouissant d'un statut indépendant, visé au paragraphe 5, est considérée comme «établissement stable» dans le premier État si elle dispose dans cet État de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne ne soit limitée à l'achat de marchandises pour l'entreprise.
5. Une entreprise d'assurances d'un État contractant est considérée comme ayant un établissement stable dans l'autre État contractant dès l'instant que, par l'intermédiaire d'un représentant, elle perçoit des primes sur le territoire de ce dernier État ou assure des risques situés sur ce territoire.
6. On ne considère pas qu'une entreprise d'un Etat contractant a un établissement sta-

ble dans l'autre État contractant du seul fait qu'elle y exerce son activité par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

7. Le fait qu'une société qui est un résident d'un État contractant contrôle ou est contrôlée par une société qui est un résident de l'autre État contractant ou qui y exerce son activité (que ce soit par l'intermédiaire d'un établissement stable ou non) ne suffit pas, en lui-même, à faire de l'une quelconque de ces sociétés un établissement stable de l'autre.

Article 6

Revenus immobiliers

1. Les revenus provenant de biens immobiliers sont imposables dans l'État contractant où ces biens sont situés.

2. *a*) L'expression «biens immobiliers» est définie conformément à la législation fiscale de l'État contractant où les biens considérés sont situés.

b) Cette expression englobe en tous cas les accessoires, le cheptel et l'équipement des exploitations agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droits à des redevances variables ou fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres ressources naturelles; les navires, bateaux et aéronefs ne sont pas considérés comme biens immobiliers.

3. Les dispositions du paragraphe 1 s'appliquent aux revenus provenant de l'exploitation directe, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers.

4. Les dispositions des paragraphes 1 et 3 s'appliquent également aux revenus provenant des biens immobiliers d'une entreprise ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

Article 7

Bénéfices des entreprises

1. Les bénéfices d'une entreprise d'un État contractant ne sont imposables que dans cet État, à moins que l'entreprise n'exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre État mais uniquement dans la mesure où ils sont imputables audit établissement stable.

2. Lorsqu'une entreprise d'un État contractant exerce son activité dans l'autre État contractant par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chaque État contractant, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et traitant en toute indépendance avec l'entreprise dont il constitue un établissement stable.

3. Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable, y compris les dépenses de direction et les frais généraux d'administration ainsi exposés.

4. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.

5. Lorsque les bénéfices comprennent des éléments de revenu traités séparément dans d'autres articles de la présente Convention, les dispositions de ces articles ne sont pas

affectées par les dispositions du présent article.

Article 8

Navigation maritime et aérienne

1. Les bénéfices provenant de l'exploitation, en trafic international, de navires ou d'aéronefs ne sont imposables que dans l'État contractant où le siège de la direction effective de l'entreprise est situé.
2. Si le siège de la direction effective d'une entreprise de navigation maritime est à bord d'un navire, ce siège sera réputé situé dans l'État contractant où se trouve le port d'attache de ce navire ou, à défaut de port d'attache, dans l'État contractant dont l'exploitant du navire est un résident.

Article 9

Entreprises associées

Lorsque:
a) Une entreprise d'un État contractant participe directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise de l'autre État contractant, ou que
b) Les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au capital d'une entreprise d'un État contractant et d'une entreprise de l'autre État contractant,
et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées, qui diffèrent de celles qui seraient conclues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises mais n'on pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

Article 10

Dividendes

1. Les dividendes payés par une société qui est résidente d'un État contractant à un résident de l'autre État contractant sont imposables dans cet autre État.
2. Toutefois, les dividendes peuvent être imposés dans l'État sur le territoire duquel la société qui paie les dividendes a son domicile fiscal et selon la législation de cet État, mais l'impôt ainsi établi ne peut excéder 15 p. 100 du montant brut des dividendes.
3. *a*) Les dividendes payés par une société ayant son domicile fiscal en France, qui donneraient droit à un avoir fiscal s'ils étaient reçus par une personne ayant son domicile réel ou son siège social en France, ouvrent droit, lorsqu'ils sont payés à des bénéficiaires qui sont des résidents du Brésil, à un paiement brut du Trésor français d'un montant égal à cet avoir fiscal, sous réserve de la déduction prévue au paragraphe 2 ci-dessus.
b) Les dispositions de l'alinéa *a* s'appliqueront aux bénéficiaires ci-après qui sont résidents du Brésil:
1. Les personnes physiques assujetties à l'impôt brésilien à raison du montant total des dividendes distribués par une société résidente de France et du paiement brut visé à l'alinéa *a*;
2. Les sociétés qui sont assujetties à l'impôt brésilien à raison du montant total des dividendes distribués par la société résidente de France et du paiement brut visé à l'alinéa *a*.
4. A moins qu'elle ne bénéficie du paiement prévu au paragraphe 3, une personne résidente du Brésil qui reçoit des dividendes distribués par une société résidente de France peut demander le remboursement du précompte afférent à ces dividendes, acquitté, le cas échéant, par la société distributrice.
5. *a*) Le terme «dividende» employé dans le

présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de mine, parts de fondateurs ou autres parts bénéficiaires à l'exception des créances, ainsi que les revenus d'autres parts sociales assimilés aux revenus d'actions par la législation fiscale de l'État dont la société distributrice est résidente.

b) Sont également considérés comme des dividendes payés par une société résidente de France le paiement brut représentatif de l'avoir fiscal visé au paragraphe 3 et les sommes remboursées au titre du précompte visées au paragraphe 4 qui sont afférents aux dividendes payés par cette société.

6. Les dispositions du paragraphe 2 ne concernent pas l'imposition de la société pour les bénéfices qui servent au paiement des dividendes.

7. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des dividendes résident d'un État contractant a, dans l'autre État contractant dont la société qui paie les dividendes est résidente, un établissement stable auquel se rattache effectivement la participation génératrice des dividendes. Dans ce cas, les dispositions de l'article 7 sont applicables.

8. *a*) Lorsqu'une société résidente du Brésil a un établissement stable en France, elle peut y être assujettie à un impôt retenu à la source conformément à la législation française mais cet impôt est calculé au taux prévu au paragraphe 2 de l'article 10 sur une base correspondant aux deux tiers du montant des bénéfices de l'établissement stable, déterminé après paiement de l'impôt sur les sociétés afférent auxdits bénéfices.

b) Lorsqu'une société résidente de France a un établissement stable au Brésil, elle peut y être assujettie à un impôt retenu à la source conformément à la législation brésilienne, mais cet impôt ne peut pas excéder 15 p. 100 du montant brut du bénéfice de l'établissement stable, déterminé après le paiement de l'impôt sur les sociétés afférent auxdits bénéfices.

9. Les limitations du taux de l'impôt prévues au paragraphe 2 et à l'alinéa *b* du paragraphe 8 ci-dessus ne s'appliqueront pas aux revenus qui seront payés ou transférés jusqu'à l'expiration de la troisième année civile suivant l'année au cours de laquelle interviendra la signature de la présente Convention.

Article 11

Intérêts

1. Les intérêts provenant d'un État contractant et payés à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces intérêts peuvent être imposés dans l'État contractant d'où ils proviennent et selon la législation de cet État, mais l'impôt ainsi établi ne peut excéder 15 p. 100 du montant brut des intérêts.

3. Par dérogation aux dispositions du paragraphe 2:

a) Les intérêts des prêts et crédits consentis par le Gouvernement d'un État contractant ne sont pas imposés dans l'État d'où ils proviennent;

b) Le taux de l'impôt ne peut excéder 10 p. 100 en ce qui concerne les intérêts des prêts et crédits consentis, pour une durée minimum de sept ans, par des établissements bancaires avec la participation d'un organisme public de financement spécialisé et liés à la vente de biens d'équipement ou à l'étude, à l'installation ou à la fourniture d'ensembles industriels ou scientifiques ainsi que d'ouvrages publics.

4. Le terme «intérêts» employé dans le présent article désigne les revenus des fonds publics, des obligations d'emprunts, assorties ou non de garanties hypothécaires ou d'une clause de participation aux bénéfices, et des créances de toute nature, ainsi que tous autres

produits assimilés aux revenus de sommes prêtées par la législation fiscale de l'État d'où proviennent les revenus.

5. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un État contractant, a, dans l'autre État contractant d'où proviennent les intérêts, un établissement stable auquel se rattache effectivement la créance génératrice des intérêts. Dans ce cas, les dispositions de l'article 7 sont applicables.

6. La limitation prévue aux paragraphes 2 et 3 ne s'applique pas aux intérêts provenant d'un État contractant et payés à un établissement stable d'une entreprise de l'autre État contractant qui est situé dans un État tiers.

7. Les intérêts sont considérés comme provenant d'un État contractant lorsque le débiteur est cet État lui-même, une subdivision politique, une collectivité locale ou un résident de cet État. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un État contractant, a dans un État contractant un établissement stable pour lequel l'emprunt générateur des intérêts a été contracté et qui supporte la charge de ces intérêts, lesdits intérêts sont réputés provenir de l'État contractant où l'établissement stable est situé.

8. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec de tierces personnes, le montant des intérêts payés, compte tenu de la créance pour laquelle ils sont versés, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des paiements reste imposable conformément à la législation de chaque État contractant et compte tenu des autres dispositions de la présente Convention.

Article 12

Redevances

1. Les redevances provenant d'un État contractant et payées à un résident de l'autre État contractant sont imposables dans cet autre État.

2. Toutefois, ces redevances peuvent être imposées dans l'État contractant dont elles proviennent et selon la législation de cet État, mais l'impôt ainsi établi ne peut excéder:

a) 10 p. 100 du montant brut des redevances payées soit pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, soit pour l'usage ou la concession de l'usage de films cinématographiques, de films ou de bandes magnétiques de télévision ou de radiodiffusion produits par un résident de l'un des deux États contractants;

b) 25 p. 100 du montant brut des redevances payées pour l'usage d'une marque de fabrique ou de commerce;

c) 15 p. 100 dans les autres cas.

3. Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets, ainsi que pour l'usage ou la concession de l'usage d'un équipement industriel, commercial ou scientifique et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

4. Les redevances sont considérées provenant d'un État contractant lorsque le débiteur est cet État lui-même, une de ses divisions politiques, une collectivité locale ou un résident de cet État. Toutefois, lorsque le

débiteur des redevances, qu'il soit ou non un résident d'un État contractant, a, dans un État contractant, un établissement stable pour lequel il a contracté l'obligation de payer les redevances et que cet établissement stable supporte le paiement de ces redevances, lesdites redevances sont considérées provenant de l'État contractant où l'établissement stable est situé.

5. Les dispositions des paragraphes 1 et 2 ne s'appliquent pas lorsque le bénéficiaire des redevances, résident d'un État contractant, a, dans l'autre État contractant d'où proviennent les redevances, un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.

6. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec de tierces personnes, le montant des redevances payées, compte tenu de la prestation pour laquelle elles sont versées, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, les dispositions du présent article ne s'appliquent qu'à ce dernier montant. En ce cas, la partie excédentaire des paiements reste imposable conformément à la législation de chaque État contractant compte tenu des autres dispositions de la présente Convention.

Article 13

Gains en capital

1. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis au paragraphe 2 de l'article 6, ou de l'aliénation de parts ou de droits analogues dans une société dont l'actif est composé principalement de biens immobiliers sont imposables dans l'État contractant où ces biens immobiliers sont situés.

2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un État contractant a dans l'autre État contractant, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) sont imposables dans cet autre État. Toutefois, les gains provenant de l'aliénation de navires ou d'aéronefs exploités en trafic international et de biens mobiliers affectés à l'exploitation desdits navires ou aéronefs ne sont imposables que dans l'État contractant où le siège de la direction effective de l'entreprise est situé.

3. Les gains provenant de l'aliénation de tous biens ou droits autres que ceux qui sont mentionnés aux paragraphes 1 et 2 sont imposables dans les deux États contractants.

Article 14

Professions indépendantes

1. Les revenus qu'un résident d'un État contractant tire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet État, à moins que la charge de ces rémunérations ne soit supportée par un établissement stable ou par une société résidente de l'autre État. Dans ce cas, ces revenus peuvent être imposés dans cet autre État.

2. L'expression «profession libérale» comprend en particulier les activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique, ainsi que les activités indépendantes des médecins, avocats, ingénieurs, dentistes et comptables.

Article 15

Professions dépendantes

1. Sous réserve des dispositions des articles 16, 18 et 19, les salaires, traitements et autres rémunérations similaires qu'un résident d'un

État contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet État, à moins que l'emploi ne soit exercé dans l'autre État contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre État.

2. Nonobstant les dispositions du paragraphe 1, les rémunérations qu'un résident d'un État contractant reçoit au titre d'un emploi salarié exercé dans l'autre État contractant ne sont imposables que dans le premier État si:

a) Le bénéficiaire séjourne dans l'autre État pendant une période ou des périodes n'excédant pas au total 183 jours au cours de l'année fiscale considérée;

b) Les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas résident de l'autre État; et

c) La charge des rémunérations n'est pas supportée par un établissement stable ou une base fixe que l'employeur a dans l'autre État.

3. Nonobstant les dispositions précédentes du présent article, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef en trafic international sont imposables dans l'État contractant où le siège de la direction effective de l'entreprise est situé.

Article 16

Tantièmes

Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident d'un État contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance d'une société qui est un résident de l'autre État contractant sont imposables dans cet autre État.

Article 17

Artistes et sportifs

Nonobstant les dispositions des articles 14 et 15, les revenus que les professionnels du spectacle, tels les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité sont imposables dans l'État contractant où ces activités sont exercées.

Article 18

Pensions

1. Sous réserve des dispositions du paragraphe 1 de l'article 19, les pensions et autres rémunérations similaires, versées à un résident d'un État contractant au titre d'un emploi antérieur, ne sont imposables que dans cet État.

2. Les pensions alimentaires et les rentes payées à un résident d'un État contractant sont imposables dans cet État contractant.

3. Le terme «rentes» employé dans le présent article désigne une somme déterminée payée périodiquement à échéance fixe à titre viager ou pendant une période déterminée ou qui peut l'être, en vertu d'un engagement d'effectuer les paiements en contrepartie d'une prestation équivalente en argent ou évaluable en argent.

4. Le terme «pensions» employé dans le présent article désigne les paiements périodiques effectués après la retraite en considération d'un emploi antérieur ou à titre de compensation de dommages subis dans le cadre de cet emploi antérieur.

Article 19

Rémunérations publiques

1. Les rémunérations, y compris les pensions, versées par un État contractant ou l'une de ses subdivisions politiques ou collectivités locales, ou un établissement public de cet Etat soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, à une personne physique au titre de services rendus

à cet État ou à cette subdivision ou collectivité, ou à cet établissement public, dans l'exercice de fonctions de caractère public, ne sont imposables que dans cet État.
Toutefois, cette disposition ne s'applique pas lorsque les rémunérations sont allouées à des personnes possédant la nationalité de l'autre État.
2. Les dispositions des articles 15, 16 et 18 s'appliquent aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par l'un des États contractants ou l'une de ses subdivisions politiques ou collectivités locales ou l'un de ses établissements publics.

Article 20

Professeurs

Une personne physique qui est un résident d'un État contractant au début de son séjour dans l'autre État contractant et qui, sur l'invitation du Gouvernment de l'autre État contractant, ou d'une université ou d'un autre établissement d'enseignement ou de recherches officiellement reconnu de cet autre État, séjourne dans ce dernier État principalement dans le but d'enseigner ou de se livrer à des travaux de recherche, ou dans l'un et l'autre de ces buts, est exonérée d'impôts dans ce dernier État pendant une période n'excédant pas deux années à compter de la date de son arrivée dans ledit État à raison des rémunérations reçues au titre de ses activités d'enseignement ou de recherche.

Article 21

Etudiants

1. Les sommes qu'un étudiant ou un stagiaire qui est, ou qui était auparavant, un résident d'un État contractant et qui séjourne dans l'autre État contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir les frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre État, à condition qu'elles proviennent de sources situées en dehors de cet autre État.
Il en est de même de la rémunération qu'un tel étudiant ou stagiaire reçoit au titre d'un emploi exercé dans l'État contractant où il poursuit ses études ou sa formation à la condition que cette rémunération soit strictement nécessaire à son entretien.
2. Un étudiant d'une université ou d'un autre établissement d'enseignement supérieur ou technique d'un État contractant qui exerce une activité rémunérée dans l'autre État contractant uniquement en vue d'obtenir une formation pratique relative à ses études n'est pas soumis à l'impôt dans ce dernier État à raison de la rémunération versée à ce titre, à condition que la durée de cette activité ne dépasse pas deux années.

Article 22

Règles générales d'imposition

La double imposition est évitée de la façon suivante:
1. Dans le cas du Brésil:
Lorsqu'un résident du Brésil perçoit un revenu qui est imposable au Brésil conformément à sa législation interne et que ce revenu est imposé en France selon les dispositions de la présente Convention, le Brésil accorde pour l'application de son impôt un crédit d'impôt équivalent à l'impôt payé en France.
Toutefois, la somme ainsi déduite ne peut excéder la fraction de l'impôt brésilien calculé selon la proportion de ce revenu par rapport à l'ensemble des revenus imposables au Brésil.
2. Dans le cas de la France:
a) Les revenus autres que ceux visés aux alinéas *b* et *c* ci-dessous sont exonérés des impôts français mentionnés au paragraphe 1 *a*

de l'article 2, lorsque ces revenus sont imposables au Brésil en vertu de la présente Convention.

b) Les dividendes qu'une société résidente de France reçoit d'une société résidente du Brésil dans laquelle elle possède une participation d'au moins 10 p. 100 ne sont pas soumis, en France, à l'impôt sur les sociétés sur leur montant brut sous déduction d'une quote-part de frais et charges limitée à 5 p. 100 de ce montant, lorsqu'ils sont imposables au Brésil en vertu de la présente Convention.

c) En ce qui concerne les revenus visés aux articles 10, 11, 12, 13, 14, 16 et 17 qui ont supporté l'impôt brésilien conformément aux dispositions desdits articles, la France accorde aux résidents de France percevant de tels revenus de source brésilienne un crédit d'impôt correspondant à l'impôt perçu au Brésil et dans la limite de l'impôt français afférent à ces mêmes revenus.

d) En ce qui concerne les revenus visés aux articles 10, 11 et au paragraphe 2 *c* de l'article 12, l'impôt brésilien est considéré comme ayant été perçu aux taux minimum de 20 p. 100.

e) Nonobstant les dispositions de l'alinéa *a*, l'impôt français peut être calculé sur le revenu imposable en France en vertu de la présente Convention, au taux correspondant au montant global du revenu imposable conformément à la législation française.

Article 23

Modalités d'application

Les autorités compétentes des États contractants règlent d'un commun accord les modalités d'application de la Convention.

Article 24

Non-discrimination

1. Les nationaux d'un Etat contractant ne sont soumis dans l'autre État contractant à aucune imposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les nationaux de cet autre État se trouvant dans la même situation.

2. Le terme «nationaux» désigne:

a) Toutes les personnes physiques qui possèdent la nationalité d'un État contractant;

b) Toutes les personnes morales, sociétés de personnes et associations constituées conformément à la législation en vigueur dans un État contractant.

3. L'imposition d'un établissement stable qu'un entreprise d'un État contractant a dans l'autre État contractant n'est pas établie dans cet autre État d'une façon moins favorable que l'imposition des entreprises de cet autre État qui exercent la même activité. Cette disposition ne peut être interprétée comme obligeant un État contractant à accorder aux résidents de l'autre État contractant les déductions personnelles, abattements et réductions d'impôt en fonction de la situation ou des charges de famille qu'il accorde à ses propres résidents.

4. Les entreprises d'un État contractant, dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre État contractant, ne sont soumises dans le premier État contractant à aucune disposition ou obligation y relative, qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier État.

5. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

Article 25

Procédure amiable

1. Lorsqu'un résident d'un État contractant

estime que les mesures prises par un État contractant ou par chacun des deux États entraînent ou entraîneront pour lui une imposition non conforme à la présente Convention, il peut, indépendamment des recours prévus par la législation nationale de ces États, soumettre son cas à l'autorité compétente de l'État contractant dont il est résident.

2. Cette autorité compétente s'efforcera, si la réclamation lui paraît fondée et si elle n'est pas elle-même en mesure d'apporter une solution satisfaisante, de régler la question par voie d'accord amiable avec l'autorité compétente de l'autre État contractant, en vue d'éviter une imposition non conforme à la Convention.

3. Les autorités compétentes des États contractants s'efforcent, par voie d'accord amiable, de résoudre les difficultés auxquelles peut donner lieu l'application de la Convention. Elle peuvent aussi se concerter en vue d'éviter la double imposition dans les cas non prévus par la Convention.

4. Les autorités compétentes des États contractants peuvent communiquer directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents. Si des échanges de vues oraux semblent devoir faciliter cet accord, ces échanges de vues peuvent avoir lieu au sein d'une commission composée de représentants des autorités compétentes des États contractants.

Article 26

Echange de renseignements

1. Les autorités compétentes des États contractants échangeront les renseignements nécessaires pour appliquer les dispositions de la présente Convention et celles des lois internes des États contractants relatives aux impôts visés par la Convention dans la mesure où l'imposition qu'elles prévoient est conforme à la Convention. Tout renseignement ainsi échangé sera tenu secret et ne pourra être communiqué qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la présente Convention.

2. Les dispositions du paragraphe 1 ne peuvent en aucun cas être interprétées comme imposant à l'un des États contractants l'obligation:

a) De prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celle de l'autre État contractant;

b) De fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre État contractant;

c) De transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27

Diplomates et organisations internationales

1. Les dispositions de la présente Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les fonctionnaires diplomatiques ou consulaires en vertu soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

2. La Convention ne s'applique pas aux organisations internationales, à leurs organes et fonctionnaires, ni aux personnes qui, membres de missions diplomatiques ou consulaires d'États tiers, sont présentes dans un État contractant et ne sont pas considérées comme résidentes de l'un ou l'autre État contractant au regard des impôts sur le revenu et sur la fortune.

Article 28

Champ d'application et extension territoriale

1. Le champ d'application de la présente Convention pourra être étendu par accord entre les États contractants au moyen d'échanges de notes diplomatiqes ou selon toute autre procédure conforme à leurs dispositions constitutionnelles respectives.

2. A moins que les deux États contractants n'en soient convenus autrement, lorsque la Convention sera dénoncée par l'un d'eux en vertu de l'article 30, elle cessera de s'appliquer, dans les conditions prévues à cet article, à tout territoire auquel elle a été étendue conformément au présent article.

Article 29

Entrée en vigueur

1. La présente Convention sera ratifiée et les instruments de ratification seront échangés à Paris dès que possible.

2. Elle entrera en vigueur le trentième jour qui suivra l'échange des instruments de ratification et ses dispositions s'appliqueront pour la première fois:

a) Aux impôts perçus par voie de retenue à la source dont le fait générateur se produit à partir du 1er janvier de l'année qui suit immédiatement l'entrée en vigueur de la Convention;

b) Aux impôts établis sur des revenus perçus à partir du 1er janvier de l'année qui suit immédiatement l'entrée en vigueur de la Convention.

Article 30

Dénonciation

La présente Convention restera en vigueur sans limitation de durée.

Toutefois, chaque État pourra, moyennant un préavis de six mois notifié par la voie diplomatique, la dénoncer pour la fin d'une année civile, à partir de la troisième année à compter de la date de son entrée en vigueur. Dans ce cas, la Convention s'appliquera pour la dernière fois:

a) En ce qui concerne les impôts perçus par voie de retenue à la source, aux impôts dont le fait générateur se produira avant l'expiration de l'année civile au cours de laquelle la dénonciation aura été notifiée;

b) En ce qui concerne les autres impôts sur le revenu, pour l'imposition des revenus afférents à l'année civile au cours de laquelle la dénonciation aura été notifiée ou aux exercices clos au cours de ladite année.

En foi de quoi, les plénipotentiaires des deux États ont signé la présente Convention et y ont apposé leurs sceaux.

Fait à Brasilia, le 10 septembre 1971, en deux originaux, chacun en langue française et en langue portugaise, les deux textes faisant également foi.

Pour la République française:
VALÉRY GISCARD D'ESTAING.

Pour la République fédérative du Brésil:
MARIO GIBSON BARBOZA.

PROTOCOLE

Au moment de procéder à la signature de la Convention tendant à éviter les doubles impositions conclue ce jour entre la République française et la République fédérative du Brésil, les plénipotentiaires soussignés sont convenus des déclarations suivantes:

1. Pour l'application de l'alinéa *b* du paragraphe 3 de l'article 11:

a) Les prêts et crédits consentis par la Banque française du Commerce extérieur, dans la mesure où elle agit en qualité d'organisme public de financement, sont traités comme des prêts et crédits consentis par le Gouvernement français visés à l'alinéa *a* du même paragraphe;

b) Il est entendu que le délai minimum de sept ans est compté à partir de la date d'entrée en vigueur du contrat de financement, telle qu'elle a été approuvée par les autorités de l'État du bénéficiaire.

2. Les dispositions de l'article 20 s'appliquent aux experts et techniciens mis par un État à la disposition de l'autre État dans le cadre de l'accord de coopération technique et scientifique conclu entre les deux pays.

VALÉRY GISCARD D'ESTAING.
MARIO GIBSON BARBOZA.

Supplement **C**
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Income tax treaty between Japan and the United States

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INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

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A double taxation treaty between Japan and the United States was signed on March 8, 1971. This treaty will be effective according to the provisions of Article 28.

TEXT

The United States of American and Japan,
Desiring to conclude a new convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
Have agreed upon the following articles:

Article 1

(1) The taxes which are the subject of this Convention are:
(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code, hereinafter referred to as "United States tax", and
(b) In the case of Japan, the income tax and the corporation tax, hereinafter referred to as "Japanese tax".
(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) of this article which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention.
(3) For the purpose of Article 7, this Convention shall also apply to taxes of every kind imposed by a Contracting State or a political subdivision or local authority thereof. For the purpose of Article 26, this Convention shall also apply to taxes of every kind imposed by a Contracting State.

Article 2

(1) In this Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America and, when used in a geographical sense, means the states thereof and the District of Columbia.

(b) The term "Japan", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are in force.

(c) The term "a Contracting State" or "the other Contracting State" means the United States or Japan, as the context requires.

(d) The term "person" means an individual, a corporation, or any other body of persons.

(e) (i) The term "United States corporation" means a corporation which is created or organized under the laws of the United States or any state thereof or the District of Columbia, or any unincorporated entity treated as a United States corporation for purposes of United States tax; and

(ii) The term "Japanese corporation" means a juridical person which has its head or main office in Japan or any organization without juridical personality treated for purposes of Japanese tax as a Japanese juridical person.

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of Japan, the Minister of Finance or his authorized representative.

(g) The term "citizen" means:

(i) In the case of the United States, a citizen of the United States, and

(ii) In the case of Japan, a national of Japan.

(2) As regards the application of this Convention by a Contracting State, any term used in this Convention and not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

Article 3

In this Convention:

(1) The term "resident of Japan" means:

(a) A Japanese corporation, or

(b) Any other person resident in Japan for purposes of Japanese tax.

(2) The term "resident of the United States" means:

(a) A United States corporation, or

(b) Any other person (except a corporation or any entity treated under United States law as a corporation) resident in the United States for purposes of United States tax, but in the case of an estate or trust only to the extent that the income derived by such person is subject to United States tax as the income of a resident.

(3) An individual who is a resident of both Contracting States shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither Contracting State, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests). If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode. If he has a habitual abode in both Contracting States or in neither Contracting State, he shall be deemed to be a resident of that Contracting State of which he is a citizen. If he is a citizen of both Contracting States or of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement. An individual who is deemed to be a resident of a Contracting State and not a

resident of the other Contracting State by reason of the provision of this paragraph shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of this Convention, including Article 4.

Article 4

(1) A resident of a Contracting State may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 6 shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—(a) By the laws of a Contracting State in the determination of the tax imposed by that Contracting State, or (b) By any other agreement between the Contracting States.

(3) Except to the extent provided in paragraph (4) of this article, this Convention shall not affect the taxation by a Contracting State of its residents (and, in the case of the United States, its citizens).

(4) The provisions of paragraph (3) of this article shall not affect:

(a) The benefits provided under Articles 5, 7, 21, and 25; and

(b) The benefits provided under Articles 19, 20, and 22, but in the case of benefits conferred by the United States only if the person claiming the benefits neither is a citizen of, nor has immigrant status in, the United States.

(5) There shall be allowed, for purposes of United States tax, in the case of a resident of Japan who is not a resident of the United States (other than an officer or employee of the Government of Japan or local authority thereof), in addition to the deduction for one personal exemption provided in section 873 of the United States Internal Revenue Code as in effect on the first day of December 1968, a deduction for personal exemptions, subject to the conditions prescribed in sections 151 through 154 of the Internal Revenue Code as in effect on the said date, for the spouse of the taxpayer and for each child of the taxpayer present in the United States and residing with him in the United States at any time during the taxable year, but such additional deduction shall not exceed that proportion thereof which the taxpayer's gross income from sources within the United States which is treated as effectively connected with the conduct of a trade or business within the United States within the meaning of section 864(c) of the Internal Revenue Code for the taxpayer's taxable year bears to his entire income from all sources for such taxable year.

(6) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Convention. However, a Japanese corporation shall be exempt from the United States personal holding company tax in any taxable year if all of its stock is owned, directly or indirectly, by one or more individuals who are residents of Japan (and not citizens of the United States) for that entire year. A Japanese corporation shall be exempt from the United States accumulated earnings tax in any taxable year unless such corporation is engaged in trade or business in the United States through a permanent establishment at any time during such year.

(7) Where, pursuant to any provision of this Convention, a Contracting State reduces the rate of tax on, or exempts from tax, income of a resident of the other Contracting State and under the law in force in that other Contracting State the resident is subject to tax by that other Contracting State only on

that part of such income which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income as is remitted to or received in that other Contracting State.

Article 5

(1) Double taxation of income shall be avoided in the following manner:

(a) In accordance with the provisions of the law of the United States, as in force from time to time, regarding the allowance of a credit against United States tax of tax payable in any country other than the United States, the United States shall allow to a citizen or resident of the United States as a credit against United States tax the appropriate amount of Japanese tax and, in the case of a United States corporation owning at least 10 percent of the voting power of a Japanese corporation from which it receives dividends, shall allow credit for the appropriate amount of Japanese tax paid by the Japanese corporation paying such dividends with respect to the profits out of which such dividends are paid. For the purpose of applying the United States credit in relation to taxes paid to Japan, the rules set forth in Article 6 shall be applied to determine the source of income.

(b) In accordance with the provisions of the laws of Japan, as in force from time to time, regarding the allowance of a credit against Japanese tax of tax payable in any country other than Japan, Japan shall allow to a resident of Japan as a credit against Japanese tax the appropriate amount of United States tax and, in the case of a Japanese corporation owning at least 10 percent of the voting shares of a United States corporation from which it receives dividends, shall allow credit for the appropriate amount of United States tax paid by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. For the purpose of applying the Japanese credit in relation to taxes paid to the United States, the rules set forth in Article 6 shall be applied to determine the source of income.

(2) The tax of a Contracting State which shall be credited by the other Contracting State in accordance with this article shall include any tax on income or profits imposed by any political subdivision or any local authority of the first-mentioned Contracting State.

Article 6

For purposes of this Convention:

(1) Dividends shall be treated as income from sources within a Contracting State only if paid by a corporation of that Contracting State.

(2) Interest shall be treated as income from sources within a Contracting State only if paid by that Contracting State, a political subdivision or local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence, if the person paying the interest (other than interest paid on indebtedness incurred in connection with the purchase of ships or aircraft)—

(a) Whether or not such person is a resident of a Contracting State, has a permanent establishment in a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, or

(b) Is a resident of a Contracting State and has a permanent establishment in a State other than the Contracting States in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such permanent establishment, such interest shall be deemed to be from sources within the State in which the permanent establishment is located.

(3) Royalties for the use of, or the right to use, property (other than ships or aircraft)

or rights described in paragraph (3) (a) of Article 14, and gains to the extent that they are contingent on the productivity, use, or disposition of such property or rights described in paragraph (3) (b) of Article 14, shall be treated as income from sources within a Contracting State only if the royalties, or the amount realized on the sale, exchange, or other disposition from which the gain is derived is paid for the use of, or the right to use, such property or rights within that Contracting State.

(4) Income from real property including royalties in respect of the operation of mines or quarries, or the exploitation of any natural resources and gains derived from the sale, exchange, or other disposition of such property of of the right giving rise to such royalties, shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(5) Income from the rental of tangible personal property (other than from the rental of ships or aircraft) shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State. Income from the rental of ships or aircraft derived by a person not engaged in the operation of ships or aircraft in international traffic shall be treated as income from sources within a Contracting State only if the lessee is a resident of that Contracting State.

(6) Income (other than directors' fees described in paragraph (5) of Article 18) received by an individual for his performance of labor or personal services whether as an employee or in an independent capacity shall be treated as income from sources within a Contracting State only if such services are performed in that Contracting State. Income from labor or personal services performed aboard ships or aircraft operated by a resident of a Contracting State in international traffic shall be treated as income from sources within that Contracting State, if rendered by a member of the regular complement of the ship or aircraft. For purposes of this paragraph, income from labor or personal services includes pensions (as defined in paragraph (2) of Article 23) paid in respect of such services. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 21 shall be treated as income from sources within a Contracting State only if paid by, or out of the funds to which contributions are made by, that Contracting State or a political subdivision or local authority thereof. Directors' fees described in paragraph (5) of Article 18 shall be treated as income from sources within a Contracting State only if the corporation of which the individual is a director is a corporation of that Contracting State.

(7) Income from the purchase and sale of personal property (other than gains defined as royalties in paragraph (3)(b) of Article 14) shall be treated as income from sources within a Contracting State only if such property is sold in that Contracting State.

(8) Notwithstanding paragraphs (1) through (7) of this article, industrial or commercial profits which are attributable to a permanent establishment which the recipient, being a resident of a Contracting State, has in the other Contracting State, including income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (3) of Article 14), and capital gains, but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment, shall be treated as income from sources within that other Contracting State. To determine whether property or rights are

effectively connected with a permanent establishment, the factors taken into account shall include whether the property or rights are used in or held for use in carrying on industrial or commercial activity through such permanent establishment, and whether the activities carried on through such permanent establishment were a material factor in the realization of the income derived from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

(9) The source of any item of income to which paragraphs (1) through (8) of this article are not applicable shall be determined by each of the Contracting States in accordance with its own law.

Article 7

(1) A citizen of a Contracting State who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof.

(2) A permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, and deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own individual residents.

(3) A corporation of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first-mentioned Contracting State, is or may be subjected.

Article 8

(1) Industrial or commercial profits of a resident of a Contracting State shall be exempt from tax by the other Contracting State unless such resident is engaged in industrial or commercial activity in that other Contracting State through a permanent establishment situated therein. If such resident is so engaged, tax may be imposed by that other Contracting State on the industrial or commercial profits of such resident but only on so much of such profits as are attributable to the permanent establishment.

(2) Where a resident of a Contracting State is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected

with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of a Contracting State in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term "industrial or commercial profits" includes income derived from manufacturing, mercantile, insurance, agricultural, fishing, or mining activities, from the operation of ships or aircraft, from the furnishing of personal services, and from the rental of tangible personal property (other than ships or aircraft). Such term also includes income derived from real property and natural resources; dividends, interest, royalties (as defined in paragraph (3) of Article 14); and capital gains but only if the right or property giving rise to such income, dividends, interest, royalties, or capital gains is effectively connected with a permanent establishment which the recipient, being a resident of a Contracting State, has in the other Contracting State. Such term does not include—

(a) Income received by an individual as compensation for his personal services either as an employee or in an independent capacity, or

(b) Income derived by a corporation or other entity of a Contracting State from sources within the other Contracting State from furnishing personal services of an individual who does not or would not qualify for exemption under paragraph (2) of Article 18 by reason of paragraph (3) thereof.

Article 9

(1) For the purpose of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of a Contracting State engages in industrial or commercial activity.

(2) The term "fixed place of business" includes but is not limited to:

(a) A branch;

(b) An office;

(c) A factory;

(d) A workshop;

(e) A warehouse;

(f) A mine, quarry, or other place of extraction of natural resources; and

(g) A building site or construction or installation project which exists for more than 24 months.

(3) Notwithstanding paragraphs (1) and (2) of this article, a permanent establishment shall not include a fixed place of business used only for one or more of the following:

(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) The purchase of goods or merchandise, or the collection of information, for the resident; or

(e) Advertising, the supply of information, the conduct of scientific research, or similar activities which have a preparatory or auxiliary character, for the resident.

(4) A person acting in a Contracting State on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) of this article applies, shall be deemed to be a permanent establishment in the first-mentioned Con-

tracting State if such person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of that resident, unless the exercise of such authority is limited to the purchase of goods or merchandise for that resident.

(5) A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) The fact that a resident of a Contracting State is a related person with respect to a resident of the other Contracting State or with respect to a person who engages in industrial or commercial activity in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first-mentioned Contracting State has a permanent establishment in that other Contracting State.

Article 10

(1) Notwithstanding Article 8 and Article 16, income which a resident of the United States derives from operation in international traffic of ships or aircraft registered in the United States and gains which a resident of the United States derives from the sale, exchange, or other disposition of ships or aircraft operated in international traffic by such resident and registered in the United States shall be exempt from Japanese tax.

(2) Notwithstanding Article 8 and Article 16, income which a resident of Japan derives from the operation in international traffic of ships or aircraft which are either registered in Japan or leased by such resident and gains which a resident of Japan derives from the sale, exchange, or other disposition of ships or aircraft operated in international traffic by such resident and registered in Japan shall be exempt from United States tax.

Article 11

(1) Where a resident of a Contracting State and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, then any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be allocated and utilized in computing the amount of the income subject to tax and the taxes payable by such resident of that Contracting State.

(2) A person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

Article 12

(1) Dividends derived from sources within a Contracting State by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by a Contracting State on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed—

(a) 15 percent of the gross amount actually distributed; or

(b) When the recipient is a corporation, 10 percent of the gross amount actually distributed if—

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the voting shares of the paying corporation was owned by the recipient corporation, and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received).

(3) Paragraph (2) of this article shall not apply if the recipient of the dividends, being a resident of a Contracting State, has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment.

Article 13

(1) Interest derived from sources within a Contracting State by a resident of the other Contracting State may be taxed by both Contracting States.

(2) Notwithstanding paragraph (1) of this article, interest derived from sources within the United States by the Bank of Japan or by the Export-Import Bank of Japan, or by any resident of Japan with respect to debt obligations guaranteed or indirectly financed by either of such banks or with respect to debt obligations insured by the Government of Japan pursuant to the Law concerning Export Insurance of March 31, 1950 (Law No. 67), shall be exempt from United States tax.

(3) Notwithstanding paragraph (1) of this article, interest derived from sources within Japan by any Federal Reserve Bank in the United States or by the Export-Import Bank of the United States, or by any resident of the United States with respect to debt obligations guaranteed or insured or indirectly financed by any of such banks, shall be exempt from Japanese tax.

(4) The rate of tax imposed by a Contracting State on interest derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 10 percent.

(5) Paragraphs (2), (3), and (4) of this article shall not apply if the recipient of the interest, being a resident of a Contracting State, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment.

(6) Where any interest paid by a person to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case, the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(7) The term "interest", as used in this Convention, means income from bonds, debentures, Government securities, notes, or other evidences of indebtedness, whether or not secured, and whether or not carrying a right to participate in profits, and debt-claims of every kind, as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income has its source.

Article 14

(1) Royalties derived from sources within a Contracting State by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by a Contracting State on royalties derived from sources within that Contracting State by a resident of the other Contracing State shall not exexceed 10 percent.

(3) The term "royalties", as used in this article, means—

(a) Payment of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, scientific works, or motion picture films or films or tapes used for radio or television broadcasting, patents, designs or models, plans, secret processes or formulae, trademarks, or other like property or rights, or know-how, or ships or aircraft (but only if the lessor is a person not engaged in the operation in international traffic of ships or aircraft), and

(b) Gains derived from the sale, exchange, or other disposition of any property or rights referred to in subparagraph (a) of this paragraph (other than ships or aircraft) to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

(4) Paragraph (2) of this article shall not apply if the recipient of the royalty, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the property or rights giving rise to the royalty are effectively connected with such permanent establishment.

(5) Where any royalty paid by a person to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case, the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

Article 15

(1) Income from real property, including royalties in respect of the operation of mines or quarries, or the exploitation of any natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties, may be taxed by the Contracting State in which such real property, mines, quarries, or natural resources are situated. For purposes of this Convention, interest on indebtedness secured by real property or secured by a right giving rise to royalties in respect of the operation of mines or quarries, or the exploitation of any natural resources shall not be regarded as income from real property.

(2) Paragraph (1) of this article shall apply to income derived from the usufruct, direct use, letting, or use in any other form of real property.

Article 16

Gains from the sale, exchange, or other disposition of capital assets derived by a resident of a Contracting State shall be exempt from tax by the other Contracting State unless—

(1) The gain is derived by a resident of a Contracting State from the sale, exchange, or other disposition of property described in Article 15 situated within the other Contracting State,

(2) The gain arises out of the sale, exchange, or other disposition described in paragraph (3)(b) of Article 14,

(3) The recipient of the gain, being a resident of a Contracting State, has a permanent establishment in the other Contracting State and the property giving rise to the gain is

effectively connected with such permanent establishment, or

(4) The recipient of the gain, being an individual who is a resident of a Contracting State—

(a) Maintains a fixed base in the other Contracting State for a period or periods aggregating more than 183 days during the taxable year and the property giving rise to such gains is effectively connected with such fixed base, or

(b) Is present in the other Contracting State for a period or periods aggregating more than 183 days during the taxable year.

Article 17

(1) Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity may be taxed by that Contracting State. Except as provided in paragraph (2) of this article, such income shall be exempt from tax by the other Contracting State.

(2) Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State, if:

(a) The individual is present in that other Contracting State for a period or periods aggregating more than 183 days in the taxable year, or

(b) The individual maintains a fixed base in that other Contracting State for a period or periods aggregating more than 183 days in the taxable year, but only so much of it as is attributable to such fixed base, or

(c) The individual is a public entertainer, such as a theater, motion picture or television artist, musician, or athlete, and the income is derived from his personal services as such public entertainer, unless such individual is present in that other Contracting State for a period or periods not exceeding a total of 90 days during the taxable year and such income does not exceed 3,000 United States dollars in the aggregate or its equivalent in Japanese yen in the aggregate during the taxable year.

Article 18

(1) Wages, salaries, and similar remuneration derived by an individual who is a resident of a Contracting State from labor or personal services performed as an employee, including remuneration derived by an officer or a member of the board of directors of a corporation, may be taxed by that Contracting State. Except as provided in paragraph (2) of this article, such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration of the type described in paragraph (1) of this article derived by an individual who is a resident of a Contracting State shall be exempt from tax by the other Contracting State if—

(a) He is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year;

(b) He is an employee of a resident of the first-mentioned Contracting State or of a permanent establishment of a resident of a State other than the first-mentioned Contracting State if such permanent establishment is situated in the first-mentioned Contracting State (such resident, including a corporation or other entity to which the permanent establishment belongs, is referred to in this article as "the employer"); and

(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State.

(3) Paragraph (2) of this article shall not apply to remuneration of the type described in paragraph (1) of this article if the indivi-

dual receiving such remuneration is a substantial owner of the employer and 50 percent or more of the income of the employer for the taxable year from sources within that other Contracting State is derived from furnishing the labor or personal services of one or more individuals (computed without deductions for compensation paid to such individuals) each of whom is a substantial owner of the employer. For purposes of the preceding sentence, an individual shall be treated as the substantial owner of the employer if the employer is a corporation or other entity and such individual—

(a) Owns directly or indirectly 25 percent or more of the total voting power of all classes of stock entitled to vote, or of the total value of all classes of stock, of such corporation or other entity, or

(b) Has directly or indirectly an interest of 25 percent or more in the assets, or has a right to 25 percent or more of the profits of such other entity.

In computing the ownership of an individual, he shall be deemed to own the stock, assets, or rights owned directly or indirectly by his brother, sister, spouse, ancestor, or descendant.

(4) Notwithstanding paragraph (2) of this article, remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of a Contracting State in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

(5) Notwithstanding paragraph (2) of this article and Article 17, a director's fee derived by an individual resident of a Contracting State in his capacity as a member of the board of directors of a corporation of the other Contracting State, which cannot be taken as a deduction by the corporation but is treated as being a distribution of profits in that other Contracting State, may be taxed by that other Contracting State.

Article 19

(1) An individual—

(a) Who is a resident of a Contracting State at the beginning of his visit to the other Contracting State, or

(b) Who was, immediately before receiving the invitation referred to below, exempt from tax in that other Contracting State under paragraph (1)(a) of Article 20,

and who, at the invitation of the Government of that other Contracting State or of a university or other accredited educational institution situated in that other Contracting State, is temporarily present in that other Contracting State for the primary purpose of teaching or engaging in research, or both, at a university or other accredited educational institution shall be exempt from tax by that other Contracting State on his income from personal services for teaching or research at such university or educational institution, for a period not exceeding two years from the date of his arrival or the date he completed the study, training, or research in that other Contracting State with respect to which the exemption in paragraph (1) (a) of Article 20 applied.

(2) This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 20

(1) (a) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of—

(i) Studying at a university or other accredited educational institution in that other Contracting State, or

(ii) Securing training required to qualify him to practice a profession or professional specialty, or

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to the amounts described in subparagraph (b) of this paragraph for a period not exceeding five taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) of this paragraph are —

(i) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;

(ii) The grant, allowance, or award; and

(iii) Income from personal services performed in that other Contracting State in an aggregate amount not in excess of 2,000 United States dollars or its equivalent in Japanese yen for any taxable year.

(2) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of—

(a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State, or

(b) Studying at a university or other accredited educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period of 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 5,000 United States dollars or its equivalent in Japanese yen.

(3) An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding one year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study, performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Japanese yen.

Article 21

(1) Wages, salaries, and similar remuneration, including pensions or similar benefits, paid by, or from public funds of, the United States, or a political subdivision or local authority thereof to a citizen of the United States for labor or personal services performed for the United States or for any of its political subdivisions or local authorities in the discharge of governmental functions shall not be subject to Japanese tax, if such individual is not a national of Japan and has not been admitted to Japan for permanent residence.

(2) Wages, salaries, and similar remuneration, including pensions or similar benefits, paid by, or out of funds to which contributions are made by, Japan, or local authority thereof to an individual who is a national of Japan for labor or personal services performed for Japan or for any of its local authorities in the discharge of governmental functions

shall not be subject to United States tax, if such individual is not a citizen of the United States and does not have immigrant status in the United States.

Article 22

(1) Reimbursed travel expenses shall be subject to Articles 17 through 21, but such expenses shall not be taken into account in computing the maximum amount of exemptions specified in paragraph (2) of Article 17 and in Article 20.

(2) If an individual qualifies for benefits under more than one of the provisions of Articles 17 through 21, he may apply those provisions which are most favorable to him. He may not claim benefits under more than one of the provisions of such articles with respect to the same income.

(3) The benefits provided under Article 19 and paragraph (1) of Article 20 shall extend only for such period of time as may be reasonably or customarily required to effectuate the purpose of the visit, but in no case shall any individual have the benefits provided therein for more than a total of five taxable years from the date of his arrival.

Article 23

(1) Except as provided in Article 21, pensions and annuities paid to an individual who is a resident of a Contracting State shall be taxable only in that Contracting State.

(2) The term "pensions", as used in this article, includes periodic payments made after retirement or death in consideration for services rendered, or by way of compensation for injuries received, in connection with past employment, including United States and Japanese social security payments.

(3) The term "annuities", as used in this article, includes a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

Article 24

Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

Article 25

(1) Where a resident of a Contracting State considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident. Should the resident's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. In particular, the competent authorities of the Contracting States may consult together to endeavor to agree—

(a) To the same attribution of industrial or commercial profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) To the same allocation of income, deductions, credits, or allowances between a resident of a Contracting State and any related persons;

(c) To the same determination of the source of particular items of income; or
(d) To the same meaning of any term used in this Convention.
(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.
(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed, and refund or credit of taxes shall be allowed, by the Contracting States in accordance with such agreement.

Article 26

(1) The competent authorites of the Contracting States shall exchange such information as is pertinent to carrying out the provisions of this Convention or preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative body) concerned with assessment, collection, enforcement, or prosecution in respect of the taxes which are the subject of this Convention.
(2) In no case shall the provisions of paragraph (1) of this article be construed so as to impose on a Contracting State the obligation—
(a) To carry out administrative measures at variance with the laws or the administrative practice of that Contracting State or the other Contracting State;
(b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that Contracting State or of the other Contracting State; or
(c) To supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.
(3) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States shall agree on the list of information which shall be furnished on a routine basis.
(4) The competent authorities of the Contracting States shall notify each other of any amendments of the laws relating to the taxes referred to in paragraph (1) of Article 1 and of the adoption of any taxes referred to in paragraph (2) of Article 1 by transmitting the texts of any amendments or new statutes at least once a year.
(5) The competent authorities of the Contracting States shall exchange the texts of all published material interpreting this Convention under their respective laws, whether in the form of regulations, rulings, or judicial decisions.

Article 27

(1) Subject to the provisions of paragraph (2) of this article, each of the Contracting States shall endeavor to collect such taxes imposed by the other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The Contracting State making such collections shall be responsible to the other Contracting State for the sums thus collected. The competent authorities of the Contracting States may consult together for the purpose of giving effect to this article.
(2) In no case shall this article be construed so as to impose upon a Contracting State the obligation to carry out administrative

measures at variance with the regulations and practices of either Contracting State or which would be contrary to the first-mentioned Contracting State's sovereignty, security, or public policy.

Article 28

(1) This Convention shall be ratified and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force on the thirtieth day after the day of the exchange of instruments of ratification. Its provisions shall for the first time have effect:

(a) In the case of Japan—

For income derived during any taxable year beginning on or after January 1 of the year next following the year in which this Convention enters into force; and

(b) In the case of the United States—

(i) As respects taxes withheld at source on dividends, interest, royalties, and similar payments, to any obligation to pay such taxes arising on or after January 1 of the year next following the year in which this Convention enters into force; and

(ii) As respects other taxes on income, to taxable years beginning on or after January 1 of the year next following the year in which this Convention enters into force.

(2) The Convention between the United States of America and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington, D. C. on April, 16, 1954, modified and supplemented by the Protocols signed at Tokyo on May 7, 1960, and August 14, 1962, shall terminate and cease to have effect in respect of income to which this Convention applies under paragraph (1) of this article.

Article 29

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after five years from the date on which this Convention enters into force by giving to the other Contracting State notice of termination at least six months before the end of any calendar year through diplomatic channels. In such event, this Convention shall cease to have effect:

(1) In the case of Japan—

For income derived during any taxable year beginning on or after January 1 of the year next following the year in which the notice of termination is given; and

(2) In the case of the United States—

(a) As respects taxes withheld at source on dividends, interest, royalties, and similar payments, on January 1 of the year next following the year in which the notice of termination is given; and

(b) As respects other taxes on income, for any taxable year beginning on or after January 1 of the year next following the year in which the notice of termination is given.

In WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Convention.

DONE at Tokyo, in duplicate, in the English and Japanese languages, the two texts having equal authenticity, this eighth day of March, 1971.

For the United States of America:

ARMIN H. MEYER.

For Japan:

KIICHI AICHI.

Convention entre la Belgique et le Luxembourg en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur la revenu et sur la fortune

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVI, No. 8, August/août 1972

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty between Belgium and Luxembourg was signed on September 17, 1970. The treaty will enter into force 15 days after the instruments of ratification have been exchanged. It will be effective as of January 1 of the year in which the instruments of ratification are exchanged.

TEXT

Sa Majesté le Roi des Belges
et
Son Altesse Royale le Grand-Duc de Luxembourg

Désireux d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune, ont décidé de conclure une convention et ont nommé à cet effet pour leurs Plénipotentiaires, savoir:
Sa Majesté le Roi des Belges:
Son Excellence le Comte François de Selys Longchamps, Ambassadeur de Belgique à Luxembourg,
Son Altesse Royale le Grand-Duc de Luxembourg:
Son Excellence Monsieur Gaston Thorn,
Ministre des Affaires étrangères et du Commerce extérieur,
Lesquels, après avoir échangé leurs pleins pouvoirs reconnus en bonne et due forme, sont convenus des dispositions suivantes:

I. CHAMP D'APPLICATION DE LA CONVENTION

Article 1
Personnes visées

La présente Convention s'applique aux personnes qui sont des résidents d'un Etat contractant ou de chacun des deux Etats.

Article 2
Impôts visés

§ 1er. La présente Convention s'applique aux impôts sur le revenu et sur la fortune perçus pour le compte de chacun des Etats contractants, de ses subdivisions politiques et de ses collectivités locales, quel que soit le système de perception.
§ 2. Sont considérés comme impôts sur le revenu et sur la fortune, les impôts perçus sur le revenu total, sur la fortune totale ou sur des éléments du revenu ou de la fortune, y compris les impôts sur les gains provenant de l'aliénation de biens mobiliers ou immobiliers, les impôts sur le montant des salaires payés par les employeurs ainsi que les impôts sur les plus-values.
§ 3. Les impôts actuels auxquels s'applique la Convention sont:
1° En ce qui concerne la Belgique:
a) l'impôt des personnes physiques;
b) l'impôt des sociétés;
c) l'impôt des personnes morales;
d) l'impôt des non-résidents,
y compris les précomptes et les compléments de précomptes, les centimes additionnels auxdits impôts et précomptes ainsi que la taxe communale additionnelle à l'impôt des personnes physiques (ci-après dénommés «impôt belge»);
2° En ce qui concerne le Luxembourg:
a) l'impôt sur le revenu des personnes physiques;
b) l'impôt sur le revenu des collectivités;
c) l'impôt spécial sur les tantièmes;
d) l'impôt sur la fortune;
e) l'impôt commercial communal d'après les bénéfice et capital d'exploitation;
f) l'impôt communal sur le total des salaires;
g) l'impôt foncier
(ci-après dénommés «impôt luxembourgeois»).
§ 4. Les dispositions de la Convention concernant l'imposition des bénéfices des entreprises s'appliquent également par analogie aux impôts sur le montant des salaires payés par les employeurs.
§ 5. La Convention s'appliquera aussi aux impôts futurs de nature identique ou analogue qui s'ajouteraient aux impôts actuels ou qui les remplaceraient. Les autorités compétentes des Etats contractants se communiqueront, à la fin de chaque année, les modifications apportées à leurs législations fiscales respectives.

II. DEFINITIONS

Article 3
Définitions générales

§ 1er. Au sens de la présente Convention, à moins que le contexte n'exige une interprétation différente:
1° Le terme «Belgique», employé dans un sens géographique, désigne le territoire du Royaume de Belgique; il inclut tout territoire en dehors de la souveraineté nationale de la Belgique qui est ou sera désigné, selon la législation belge sur le plateau continental et conformément au droit international, comme territoire sur lequel les droits de la Belgique à l'égard du sol et du sous-sol de la mer et de leurs ressources naturelles peuvent être exercés;
2° Le terme «Luxembourg», employé dans un sens géographique, désigne le territoire du Grand-Duché de Luxembourg;
3° Les expressions «un Etat contractant» et «l'autre Etat contractant» désignent, suivant le contexte, la Belgique ou le Luxembourg;
4° Le terme «personne» comprend les personnes physiques et les sociétés;
5° Le terme «société» désigne toute personne morale ou toute autre entité qui est imposable comme telle sur ses revenus ou sur sa fortune dans l'Etat dont elle est un résident ainsi

que les sociétés en nom collectif, sociétés en commandite simple et sociétés civiles de droit luxembourgeois;

6° Les expressions «entreprise d'un Etat contractant» et «entreprise de l'autre Etat contractant» désignent respectivement une entreprise exploitée par un résident d'un Etat contractant et une entreprise exploitée par un résident de l'autre Etat contractant;

7° L'expression «autorité compétente» désigne:

a) en ce qui concerne la Belgique, l'autorité compétente suivant sa législation nationale, et

b) en ce qui concerne le Luxembourg, le Ministre ayant les contributions directes dans ses attributions ou son délégué.

§ 2. Pour l'application de la Convention par un Etat contractant, toute expression qui n'est pas autrement définie a le sens qui lui est attribué par la législation dudit Etat régissant les impôts qui font l'objet de la Convention, à moins que le contexte n'exige une interprétation différente.

Article 4
Domicile fiscal

§ 1er. Au sens de la présente Convention, l'expression «résident(e) d'un Etat contractant» désigne toute personne qui, en vertu de la législation dudit Etat, est assujettie à l'impôt dans cet Etat en raison de son domicile, de sa résidence, de son siège de direction ou de tout autre critère de nature analogue; elle désigne également les sociétés en nom collectif, sociétés en commandite simple et sociétés civiles de droit luxembourgeois, qui ont leur siège de direction effective au Luxembourg, ainsi que les sociétés de droit belge – autres que les sociétés par actions – qui ont opté pour l'assujettissement de leurs bénéfices à l'impôt des personnes physiques.

§ 2. Lorsque, selon la disposition du § 1er, une personne physique est considérée comme résidente de chacun des Etats contractants, le cas est résolu d'après les règles suivantes:

1° cette personne est considérée comme résidente de l'Etat contractant où elle dispose d'un foyer d'habitation permanent. Lorsqu'elle dispose d'un foyer d'habitation permanent dans chacun des Etats contractants, elle est considérée comme résidente de l'Etat contractant avec lequel ses liens personnels et économiques sont les plus étroits (centre des intérêts vitaux);

2° si l'Etat contractant où cette personne a le centre de ses intérêts vitaux ne peut être déterminé ou qu'elle ne dispose d'un foyer d' habitation permanent dans aucun des Etats contractants, elle est considérée comme résidente de l'Etat contractant où elle séjourne de façon habituelle;

3° si cette personne séjourne de façon habituelle dans chacun des Etats contractants ou qu'elle ne séjourne de façon habituelle dans aucun d'eux, elle est considérée comme résidente de l'Etat contractant dont elle possède la nationalité;

4° par dérogation aux dispositions des 1, 2 et 3:

a) les salariés et appointés qui sont en service sur un bateau de navigation intérieure exploité en trafic international et dont le seul foyer d'habitation permanent se trouve à bord de ce bateau sont considérés comme des résidents de l'Etat contractant où se trouve le siège de direction effective de l'entreprise exploitant ce bateau;

b) les bateliers dont le seul foyer d'habitation permanent se trouve à bord d'un bateau qu'ils exploitent en trafic international sont considérés comme des résidents de l'Etat contractant dont ils possèdent la nationalité;

5° si une personne visée au 3 ou au 4, *b*, possède la nationalité de chacun des Etats contractants ou qu'elle ne possède la nationalité d'aucun d'eux, les autorités compétents des

Etats contractants tranchent la question d'un commun accord.

§ 3. Lorsque, selon la disposition du § 1er, une société est considérée comme résidente de chacun des Etats contractants, elle est réputée résidente de l'Etat contractant où se trouve son siège de direction effective.

§ 4. Si le siège de direction effective d'une entreprise de navigation intérieure en trafic international est à bord d'un bateau, ce siège est réputé situé dans l'Etat contractant dont l'exploitant unique ou principal est le résident.

Article 5
Etablissement stable

§ 1er. Au sens de la présente Convention, l'expression «établissement stable» désigne une installation fixe d'affaires où l'entreprise exerce tout ou partie de son activité.

§ 2. L'expression «établissement stable» comprend notamment:

1° un siège de direction;
2° une succursale;
3° un bureau;
4° une usine;
5° un atelier;
6° une mine, une carrière ou tout autre lieu d'exploitation de ressources naturelles;
7° un chantier de construction ou de montage dont la durée dépasse six mois.

§ 3. On ne considère pas qu'il y a établissement stable si:

1° il est fait usage d'installations aux seules fins de stockage, d'exposition ou de livraison de marchandises appartenant à l'entreprise;
2° des marchandises appartenant à l'entreprise sont entreposées aux seules fins de stockage, d'exposition ou de livraison;
3° des marchandises appartenant à l'entreprise sont entreposées aux seules fins de transformation par une autre entreprise;
4° une installation fixe d'affaires est utilisée aux seules fins d'acheter des marchandises ou de réunir des informations pour l'entreprise;
5° une installation fixe d'affaires est utilisée, pour l'entreprise, aux seules fins de publicité, de fourniture d'informations, de recherches scientifiques ou d'activités analogues qui ont un caractère préparatoire ou auxiliaire.

§ 4. Une personne – autre qu'un agent jouissant d'un statut indépendant visé au § 5 – qui agit dans un Etat contractant pour le compte d'une entreprise de l'autre Etat contractant est considérée comme constituant un établissement stable de l'entreprise dans le premier Etat si elle dispose dans cet Etat de pouvoirs qu'elle y exerce habituellement lui permettant de conclure des contrats au nom de l'entreprise, à moins que l'activité de cette personne ne soit limitée à l'achat de marchandises pour cette entreprise.

§ 5. On ne considère pas qu'une entreprise d'un Etat contractant a un établissement stable dans l'autre Etat contractant du seul fait qu'elle y exerce son activité par l'entremise d'un courtier, d'un commissionnaire général ou de tout autre intermédiaire jouissant d'un statut indépendant, à condition que ces personnes agissent dans le cadre ordinaire de leur activité.

L'intermédiaire qui agit pour le compte d' une entreprise d'assurances et qui dispose de pouvoirs qu'il exerce habituellement, lui permettant de conclure des contrats au nom de cette entreprise, n'est pas visé à cette disposition.

§ 6. Le fait qu'une entreprise d'un Etat contractant contrôle ou est contrôlée par une entreprise de l'autre Etat contractant ou une entreprise qui exerce son activité dans cet autre Etat (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 entreprises un établissement stable de l'autre.

III. IMPOSITION DES REVENUS

Article 6
Revenus de biens immobiliers

§ 1er. Les revenus provenant de biens immobiliers sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. L'expression «biens immobiliers» est définie conformément au droit de l'Etat contractant où les biens considérés sont situés. L'expression englobe en tout cas les accessoires, le cheptel mort ou vif des exploitations agricoles et forestières, les droits auxquels s'appliquent les dispositions du droit privé concernant la propriété foncière, l'usufruit des biens immobiliers et les droits à des redevances variables ou fixes pour l'exploitation ou la concession de l'exploitation de gisements minéraux, sources et autres richesses du sol; les navires, bateaux et aéronefs ne sont pas considérés comme des biens immobiliers.

§ 3. La disposition du § 1er s'applique aux revenus provenant de l'exploitation ou de la jouissance directes, de la location ou de l'affermage, ainsi que de toute autre forme d'exploitation de biens immobiliers.

§ 4. Les dispositions des §§ 1er et 3 s'appliquent également aux revenus provenant des biens immobiliers d'une entreprise ainsi qu'aux revenus des biens immobiliers servant à l'exercice d'une profession libérale.

Article 7
Bénéfices des entreprises

§ 1er. Les bénéfices d'une entreprise d'un Etat contractant ne sont imposables que dans cet Etat, à moins que l'entreprise n'exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établissement stable qui y est situé. Si l'entreprise exerce son activité d'une telle façon, les bénéfices de l'entreprise sont imposables dans l'autre Etat, mais uniquement dans la mesure ou ils sont imputables audit établissement stable.

§ 2. Sans préjudice de l'application du § 3, lorsqu'une entreprise d'un Etat contractant exerce son activité dans l'autre Etat contractant par l'intermédiaire d'un établissement stable qui y est situé, il est imputé, dans chaque Etat contractant, à cet établissement stable les bénéfices qu'il aurait pu réaliser s'il avait constitué une entreprise distincte et séparée exerçant des activités identiques ou analogues dans des conditions identiques ou analogues et agissant en toute indépendance.

§ 3. Dans le calcul des bénéfices d'un établissement stable, sont admises en déduction les dépenses exposées aux fins poursuivies par cet établissement stable y compris les dépenses normales de direction et les frais généraux d'administration ainsi exposé, soit dans l'Etat où est situé cet établissement stable, soit ailleurs.

§ 4. A défaut de comptabilité régulière ou d'autres éléments probants permettant de déterminer le montant des bénéfices d'une entreprise de l'un des Etats contractants, qui est imputable à son établissement stable situé dans l'autre Etat, l'impôt peut notamment être établi dans cet autre Etat, conformément à sa propre législation, compte tenu des bénéfices normaux d'entreprises analogues du même Etat, se livrant à la même activité ou à des activités analogues dans des conditions identiques ou analogues.

Dans l'éventualité visée à l'alinéa précédent, le bénéfice imputable audit établissement stable peut également être déterminé sur la base d'une répartition des bénéfices totaux de l'entreprise entre ses diverses parties, pour autant que le résultat ainsi obtenu soit conforme aux principes énoncés dans le présent article.

Si l'application des dispositions du présent paragraphe entraîne une double imposition des mêmes bénéfices, les autorités compéten-

tes des deux Etats contractants se concertent en vue d'éviter cette double imposition.
§ 5. Aucun bénéfice n'est imputé à un établissement stable du fait que cet établissement stable a simplement acheté des marchandises pour l'entreprise.
§ 6. Aux fins des paragraphes précédents, les bénéfices à imputer à l'établissement stable sont calculés chaque année selon la même méthode, à moins qu'il n'existe des motifs valables et suffisants de procéder autrement.
§ 7. Lorsque les bénéfices d'une entreprise comprennent des éléments de revenu traités séparément dans d'autres articles de cette Convention, les dispositions du présent article ne font pas obstacle à l'application des dispositions de ces autres articles pour la taxation de ces éléments de revenu.

Article 8
Bénéfices des entreprises de navigation maritime, intérieure ou aérienne

Par dérogation à l'article 7, §§ 1 à 6:
1° les bénéfices provenant de l'exploitation de navires ou d'aéronefs en trafic international sont imposables dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise;
2° les bénéfices provenant de l'exploitation de bateaux servant à la navigation intérieure sont imposables dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

Article 9
Entreprises interdépendantes

Lorsqu'une entreprise d'un Etat contractant participe directement ou indirectement à la direction, au contrôle ou au financement d'une entreprise de l'autre Etat contractant, ou que les mêmes personnes participent directement ou indirectement à la direction, au contrôle ou au financement d'une entreprise d'un Etat contractant et d'une entreprise de l'autre Etat contractant,
et que, dans l'un et l'autre cas, les deux entreprises sont, dans leurs relations commerciales ou financières, liées par des conditions acceptées ou imposées, qui diffèrent de celles qui seraient convenues entre des entreprises indépendantes, les bénéfices qui, sans ces conditions, auraient été obtenus par l'une des entreprises, mais n'ont pu l'être en fait à cause de ces conditions, peuvent être inclus dans les bénéfices de cette entreprise et imposés en conséquence.

Article 10
Dividendes

§ 1er. Les dividendes attribués par une société résidente d'un Etat contractant à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.
§ 2. Toutefois, ces dividendes peuvent être imposés dans l'Etat contractant dont la société qui attribue les dividendes est un résident et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder:
a) 10 p.c. du montant brut des dividendes si le bénéficiaire des dividendes est une société (à l'exception des sociétés civiles, sociétés en nom collectif, sociétés en commandite simple et sociétés coopératives) dont la participation directe, détenue depuis le début de son exercice social, dans le capital de la société (à l'exception des sociétés civiles, sociétés en nom collectif, sociétés en commandite simple et sociétés coopératives) attribuant les dividendes est d'au moins 25 p.c. ou a un prix d'acquisition d'au moins 250 millions de francs;
b) 15 p.c. du montant brut des dividendes, dans tous les autres cas.
Les dispositions de l'alinéa 1er, *a*, s'appliquent également lorsque les dividendes sont attri-

bués à plusieurs sociétés (à l'exception des sociétés civiles, sociétés en nom collectif, sociétés en commandite simple et sociétés coopératives) dont les participations cumulées, détenues depuis le début de leurs exercices sociaux respectifs, dans le capital de la société (à l'exception des sociétés civiles, sociétés en nom collectif, sociétés en commandite simple et sociétés coopératives) attribuant les dividendes sont d'au moins 25 p.c. ou ont un prix d'acquisition d'au moins 250 millions de francs et que l'une des sociétés bénéficiaires possède plus de 50 p.c. du capital social de chacune des autres sociétés bénéficiaires.

Le présent paragraphe ne concerne pas l'imposition de la société pour les bénéfices qui servent au paiement des dividendes.

§ 3. Le terme «dividendes» employé dans le présent article désigne les revenus provenant d'actions, actions ou bons de jouissance, parts de fondateur ou autres parts bénéficiaires à l'exception des créances, ainsi que les revenus d'autres parts sociales soumis au même régime que les revenus d'actions par la législation fiscale de l'Etat dont la société distributrice est un résident.

Ce terme désigne également:

1° les revenus, même attribués sous la forme d'intérêts, imposables au titre de revenus de capitaux investis par les associés dans les sociétés – autres que les sociétés par actions – résidentes de la Belgique;

2° les parts de bénéfice touchées du chef de sa mise de fonds dans une entreprise du Luxembourg par le bailleur de fonds rémunéré en proportion du bénéfice.

§ 4. Les dispositions des §§ 1er et 2 ne s'appliquent pas lorsque le bénéficiaire des dividendes, résident d'un Etat contractant, a dans l'autre Etat contractant dont la société qui attribue les dividendes est un résident, un établissement stable auquel se rattache effectivement la participation génératrice des dividendes. Dans ce cas, les dispositions de l'article 7 sont applicables; celles-ci ne font pas obstacle à la perception de l'impôt dû à la source sur ces dividendes conformément à la législation de cet autre Etat contractant.

§ 5. Lorsqu'une société résidente d'un Etat contractant tire des bénéfices ou des revenus de l'autre Etat contractant, cet autre Etat ne peut percevoir aucun impôt sur les dividendes attribués par cette société à un résident du premier Etat, ni aucun impôt au titre d'imposition complémentaire des bénéfices non distribués de la société, même si les dividendes distribués ou les bénéfices non distribués consistent en tout ou en partie en bénéfices ou revenus provenant de cet autre Etat; cette disposition n'empêche pas cet autre Etat d'imposer les dividendes afférents à une participation qui se rattache effectivement à un établissement stable exploité dans cet autre Etat par un résident du premier Etat.

Article 11
Intérêts

§ 1er. Les intérêts provenant d'un Etat contractant et attribués à un résident de l'autre Etat contractant sont imposables dans cet autre Etat.

§ 2. Toutefois, ces intérêts peuvent être imposés dans l'Etat contractant d'où ils proviennent et selon la législation de cet Etat, mais l'impôt ainsi établi ne peut excéder 15 p.c. de leur montant.

§ 3. Par dérogation au § 2, les intérêts ne peuvent être imposés dans l'Etat contractant d'où ils proviennent lorsqu'ils sont attribués à une entreprise de l'autre Etat contractant.

L'alinéa précédent ne s'applique pas lorsqu'il s'agit:

1° d'intérêts d'obligations et autres titres d'emprunts, à l'exception des effets de commerce représentatifs de créances commerciales;

2° d'intérêts attribués par une société résidente d'un Etat contractant à une société résidente de l'autre Etat contractant qui détient directement ou indirectement au moins 25 p.c. des actions ou parts assorties d'un droit de vote de la première société.

§ 4. Le terme «intérêts» employé dans le présent article désigne, sous réserve de l'alinéa 2 ci-après, les revenus des créances de toute nature, assorties ou non de garanties hypothécaires ou d'une clause de participation aux résultats du débiteur, et notamment les revenus des dépôts, des fonds publics, des obligations d'emprunt, y compris les primes et lots attachés à ces titres, et tous autres produits soumis au même régime que les revenus de sommes prêtées ou déposées, par la législation fiscale de l'Etat d'où proviennent les revenus.

Ce terme ne comprend pas les revenus considérés comme des dividendes en vertu de l'article 10, § 3, alinéa 2.

§ 5. Les dispositions des §§ 1er à 3 ne s'appliquent pas lorsque le bénéficiaire des intérêts, résident d'un Etat contractant, a dans l'autre Etat contractant d'où proviennent ceux-ci un établissement stable auquel se rattache effectivement la créance génératrice des intérêts. Dans ce cas, les dispositions de l'article 7 sont applicables; celles-ci ne font pas obstacle à la perception des impôts dus à la source sur ces intérêts, conformément à la législation de cet autre Etat contractant.

§ 6. Les intérêts sont considérés comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision politique, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des intérêts, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel l'emprunt générateur des intérêts a été contracté et qui attribue directement les intérêts au créancier, ceux-ci sont réputés provenir de l'Etat contractant où est situé l'établissement stable.

§ 7. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des intérêts, compte tenu de la créance pour laquelle ils sont attribués, excède celui dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, la limitation de taux et l'exemption prévues au §§ 2 et 3 ne s'appliquent qu'à ce dernier montant. La partie excédentaire des intérêts est imposable, conformément à sa législation, dans l'Etat contractant d'où proviennent les intérêts.

Article 12
Redevances

§ 1er. Les redevances provenant d'un Etat contractant et attribuées à un résident de l'autre Etat contractant ne sont imposables que dans cet autre Etat.

§ 2. Le terme «redevances» employé dans le présent article désigne les rémunérations de toute nature payées pour l'usage ou la concession de l'usage d'un droit d'auteur sur une oeuvre littéraire, artistique ou scientifique, y compris les films cinématographiques et les films ou bandes pour émissions radiophoniques ou télévisées, d'un brevet, d'une marque de fabrique ou de commerce, d'un dessin ou d'un modèle, d'un plan, d'une formule ou d'un procédé secrets, ainsi que pour l'usage ou la concession de l'usage d'un équipement industriel, commercial ou scientifique ne constituant pas un bien immobilier visé à l'article 6 et pour des informations ayant trait à une expérience acquise dans le domaine industriel, commercial ou scientifique.

§ 3. La disposition du § 1er ne s'applique pas lorsque le bénéficiaire des redevances, résident d'un Etat contractant, a dans l'autre Etat contractant d'où proviennent les redevances

un établissement stable auquel se rattache effectivement le droit ou le bien générateur des redevances. Dans ce cas, les dispositions de l'article 7 sont applicables.

§ 4. Les redevances sont considérées comme provenant d'un Etat contractant lorsque le débiteur est cet Etat lui-même, une subdivision politique, une collectivité locale ou un résident de cet Etat. Toutefois, lorsque le débiteur des redevances, qu'il soit ou non résident d'un Etat contractant, a dans un Etat contractant un établissement stable pour lequel le contrat donnant lieu au paiement des redevances, a été conclu et qui attribue directement les redevances au bénéficiaire, celles-ci sont réputées provenir de l'Etat contractant où est situé l'établissement stable.

§ 5. Si, par suite de relations spéciales existant entre le débiteur et le créancier ou que l'un et l'autre entretiennent avec des tierces personnes, le montant des redevances, compte tenu de la prestation pour laquelle elles sont attribuées, excède le montant normal dont seraient convenus le débiteur et le créancier en l'absence de pareilles relations, la disposition du § 1er ne s'applique qu'à ce dernier montant. Dans ce cas, la partie excédentaire des redevances est imposable, conformément à sa législation, dans l'Etat contractant d'où proviennent les redevances.

§ 6. Lorsque, dans le cas visé au § 5, le débiteur est une entreprise qui est en fait sous la dépendance ou sous le contrôle de l'entreprise bénéficiaire des redevances ou vice-versa, ou encore lorsque ces deux entreprises sont, en fait, sous la dépendance ou le contrôle d'une tierce entreprise ou d'entreprises juridiquement distinctes, mais dépendant d'un même groupe, le montant normal des redevances peut être déterminé compte tenu du coût, augmenté d'un profit normal, de l'acquisition, du perfectionnement et de la conservation des droits, biens ou informations donnant lieu aux redevances, lorsque ce montant normal ne peut être évalué en fonction d'autres critères plus adéquats et notamment par comparaison avec les redevances librement fixées pour des prestations similaires entre des entreprises réellement indépendantes.

Article 13

Gains en capital

§ 1er. Les gains provenant de l'aliénation des biens immobiliers, tels qu'ils sont définis à l'article 6, § 2, sont imposables dans l'Etat contractant où ces biens sont situés.

§ 2. Les gains provenant de l'aliénation de biens mobiliers faisant partie de l'actif d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant, ou de biens mobiliers constitutifs d'une base fixe dont un résident d'un Etat contractant dispose dans l'autre Etat contractant pour l'exercice d'une profession libérale, y compris de tels gains provenant de l'aliénation globale de cet établissement stable (seul ou avec l'ensemble de l'entreprise) ou de cette base fixe, sont imposables dans cet autre Etat. Les règles prévues à l'article 7, §§ 2 et 3, s'appliquent à la détermination du montant de ces gains.

Toutefois, les gains provenant de l'aliénation de biens mobiliers, visés à l'article 22, § 3, ne sont imposables que dans l'Etat contractant où ces biens eux-mêmes sont imposables en vertu dudit article.

§ 3. Les gains provenant de l'aliénation de tous autres biens ne sont imposables que dans l'Etat contractant dont le cédant est un résident.

Cette règle s'applique notamment aux gains provenant de l'aliénation d'une participation, ne faisant pas partie de l'actif d'un établissement stable visé au § 2, alinéa 1er, dans une entreprise exploitée par une société par actions ou par une autre société de capitaux.

Article 14
Professions libérales

§ 1er. Les revenus qu'un résident d'un Etat contractant tire d'une profession libérale ou d'autres activités indépendantes de caractère analogue ne sont imposables que dans cet Etat, à moins que ce résident ne dispose de façon habituelle dans l'autre Etat d'une base fixe pour l'exercice de ses activités. S'il dispose d'une telle base, les revenus sont imposables dans l'autre Etat, mais uniquement dans la mesure où ils sont imputables aux activités exercées à l'intervention de ladite base fixe.
§ 2. L'expression «professions libérales» comprend en particulier les activités indépendantes d'ordre scientifique, littéraire, artistique, éducatif ou pédagogique, ainsi que les activités indépendantes des médecins, avocats, ingénieurs, architectes, dentistes et comptables.

Article 15
Professions dépendantes

§ 1er. Sous réserve des dispositions des articles 16, 18, 19 et 20, les salaires, traitements et autres rémunérations similaires qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié ne sont imposables que dans cet Etat, à moins que l'emploi ne soit exercé dans l'autre Etat contractant. Si l'emploi y est exercé, les rémunérations reçues à ce titre sont imposables dans cet autre Etat.
§ 2. Par dérogation au § 1er et sous la réserve y mentionnée, les rémunérations qu'un résident d'un Etat contractant reçoit au titre d'un emploi salarié exercé dans l'autre Etat contractant ne sont imposables que dans le premier Etat si:
1° elles rétribuent l'activité exercée dans l'autre Etat pendant une période ou des périodes – y compris la durée des interruptions normales du travail – n'excédant pas au total 183 jours au cours de l'année civile;
2° les rémunérations sont payées par un employeur ou au nom d'un employeur qui n'est pas un résident de l'autre Etat, et
3° la charge des rémunérations n'est pas supportée directement par un établissement stable ou une base fixe que l'employeur a dans l'autre Etat.
§ 3. Par dérogation aux §§ 1er et 2 et sous la réserve mentionnée au § 1er, les rémunérations au titre d'un emploi salarié exercé à bord d'un navire ou d'un aéronef exploité en trafic international ou à bord d'un bateau servant à la navigation intérieure en trafic international, sont considérées comme se rapportant à une activité exercée dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise et sont imposables dans cet Etat.

Article 16
Administrateurs et commissaires de sociétés par actions et autres sociétés de capitaux

§ 1er. Les tantièmes, jetons de présence et autres rétributions similaires qu'un résident d'un Etat contractant reçoit en sa qualité de membre du conseil d'administration ou de surveillance ou d'un autre organe analogue d'une société par actions ou d'une autre société de capitaux qui est un résident de l'autre Etat contractant, sont imposables dans cet autre Etat.
Cette disposition s'applique également aux tantièmes, jetons de présence et autres rétributions visés à l'alinéa premier, qui sont perçus par un associé commandité d'une société en commandite par actions résidente d'un Etat contractant.
§ 2. Toutefois, les rémunérations normales que les personnes visées au § 1er touchent en une autre qualité sont imposables, suivant le cas, dans les conditions prévues soit à l'article 14, soit à l'article 15, § 1er.

Article 17
Artistes et sportifs

Nonobstant les dispositions des articles 14 et 15, les revenus que les professionnels du spectacle, tels que les artistes de théâtre, de cinéma, de la radio ou de la télévision et les musiciens, ainsi que les sportifs retirent de leurs activités personnelles en cette qualité sont imposables dans l'Etat contractant où ces activités sont exercées.

Article 18
Pensions

§ 1er. Sous réserve des dispositions de l'article 19, les pensions et autres rémunérations similaires, versées à un résident d'un Etat contractant au titre d'un emploi antérieur, ne sont imposables que dans cet Etat.
§ 2. Les pensions et autres allocations, périodiques ou non, payées en exécution de la législation sociale d'un Etat contractant par cet Etat, par l'une de ses subdivisions politiques ou collectivités locales ou par une personne morale ressortissant à son droit public, sont imposables dans cet Etat.

Article 19
Rémunérations et pensions publiques

§ 1er. Les rémunérations, y compris les pensions, versées par un Etat contractant ou par l'une de ses subdivisions politiques ou collectivités locales, soit directement, soit par prélèvement sur des fonds qu'ils ont constitués, au titre de services rendus à cet Etat ou à l'une de ses subdivisions politiques ou collectivités locales, sont imposables dans ledit Etat.
Cette disposition ne s'applique pas lorsque le bénéficiaire de ces revenus possède la nationalité de l'autre Etat sans posséder en même temps la nationalité du premier Etat.
§ 2. Le § 1er ne s'applique pas aux rémunérations ou pensions versées au titre de services rendus dans le cadre d'une activité commerciale ou industrielle exercée par l'un des Etats contractants ou par l'une de ses subdivisions politiques ou collectivités locales.

Article 20
Professeurs et étudiants, apprentis ou stagiaires

§ 1er. Les rémunérations quelconques des professeurs et autres membres du personnel enseignant, résidents d'un Etat contractant, qui séjournent temporairement dans l'autre Etat contractant, pour y enseigner ou s'y livrer à des recherches scientifiques, pendant une période n'excédant pas deux ans, dans une université ou dans une autre institution d'enseignement ou de recherche scientifique officiellement reconnue ne sont imposables que dans le premier Etat.
§ 2. Les sommes qu'un étudiant, un apprenti ou un stagiaire qui est, ou qui était auparavant, un résident d'un Etat contractant et qui séjourne dans l'autre Etat contractant à seule fin d'y poursuivre ses études ou sa formation, reçoit pour couvrir ses frais d'entretien, d'études ou de formation ne sont pas imposables dans cet autre Etat, à condition qu'elles proviennent de sources situées en dehors de cet autre Etat.

Article 21
Revenus non expressément mentionnés

Un résident d'un Etat contractant n'est pas imposable dans l'autre Etat contractant sur les éléments de son revenu qui ne sont pas expressément mentionnés dans les articles précédents si, suivant la législation du premier Etat, il y est imposable sur ces éléments de revenu.

IV. IMPOSITION DE LA FORTUNE

Article 22

§ 1er. La fortune constituée par des biens immobiliers, tels qu'ils sont définis à l'article 6, § 2, est imposable dans l'Etat contractant où ces biens sont situés.

§ 2. Sous réserve des dispositions du § 3, la fortune constituée par des biens mobiliers faisant partie de l'actif d'un établissement stable d'une entreprise ou par des biens mobiliers constitutifs d'une base fixe servant à l'exercice d'une profession libérale est imposable dans l'Etat contractant où est situé l'établissement stable ou la base fixe.

§ 3. Les navires et les aéronefs exploités en trafic international et les bateaux servant à la navigation intérieure, ainsi que les biens mobiliers affectés à leur exploitation, ne sont imposables que dans l'Etat contractant où est situé le siège de la direction effective de l'entreprise.

§ 4. Tous les autres éléments de la fortune d'un résident d'un Etat contractant ne sont imposables que dans cet Etat.

Cette règle s'applique notamment à une participation ne faisant pas partie de l'actif d'un établissement stable visé au § 2, dans une entreprise exploitée par une société par actions ou par une autre société de capitaux.

V. DISPOSITIONS PREVENTIVES DE LA DOUBLE IMPOSITION

Article 23

§ 1er. En ce qui concerne les résidents du Luxembourg, la double imposition est évitée de la manière suivante:

1° les revenus provenant de la Belgique – à l'exclusion des revenus visés au 2° ci-après – et les éléments de fortune situés en Belgique, qui sont imposables dans cet Etat en vertu des articles précédents, sont exemptés de l'impôt luxembourgeois. Cette exemption ne limite pas le droit du Luxembourg de tenir compte, lors de la détermination du taux de ses impôts, des revenus et des éléments de fortune ainsi exemptés.

Lorsque, dans l'éventualité où les dispositions de la législation luxembourgeoise seraient modifiées de manière à permettre, quant aux pertes subies dans un établissement stable situé dans un Etat avec lequel le Luxembourg a conclu une convention contre les doubles impositions, la compensation avec les revenus nets imposables de la même année d'imposition et la déduction du total des revenus nets d'années ultérieures d'imposition, les pertes subies par une entreprise du Luxembourg dans un établissement stable situé en Belgique seront, pour l'imposition de cette entreprise, effectivement déduites de ses revenus imposables au Luxembourg, l'exemption prévue à l'alinéa qui précède ne s'appliquera pas au Luxembourg aux bénéfices d'autres périodes imposables qui seront imputables à cet établissement, dans la mesure où ces bénéfices auront aussi été exemptés d'impôts en Belgique en raison de leur compensation avec lesdites pertes;

2° l'impôt perçu en Belgique conformément à la présente Convention:

a) sur les dividendes soumis au régime prévu à l'article 10, § 2, à l'exclusion des revenus de capitaux investis dans les sociétés en nom collectif et sociétés en commandite simple, résidentes de la Belgique, et

b) sur les intérêts soumis au régime prévu à l'article 11, § 2, est imputé sur l'impôt afférent à ces mêmes revenus qui est perçu au Luxembourg. Le montant ainsi déduit ne peut toutefois excéder ni la fraction de l'impôt, qui correspond proportionnellement auxdits revenus reçus de la Belgique, ni un montant correspondant à l'impôt qui est prélevé à la source au Luxembourg sur des

revenus analogues attribués à des résidents de la Belgique. Ledit impôt perçu en Belgique est déductible des revenus imposables au Luxembourg dans la mesure seulement où il excède l'impôt qui est prélevé à la source au Luxembourg sur des revenus analogues attribués à des résidents de la Belgique.

3° par dérogation au 2°, *a*, sont soumis au régime prévu au 1°, alinéa 1er, les dividendes et répartitions de liquidation qui sont distribués par une société par actions, résidente de la Belgique, qui ont été soumis au régime prévu à l'article 10, § 2 et qui sont recueillis par une société de capitaux, résidente du Luxembourg, dont la participation directe, détenue depuis le début de son exercice social dans le capital de la société attribuant les dividendes, est d'au moins 25 p.c. ou a un prix d'acquisition d'au moins 250 milllons de francs. Dans ce cas, l'impôt prélevé à la source en Belgique n'est ni déductible desdits revenus exemptés au Luxembourg ni imputable sur l'impôt luxembourgeois.

Les actions ou parts susvisées d'une société résidente de la Belgique sont, aux mêmes conditions, soumises également au régime prévu au 1°, alinéa 1er.

Les dispositions des deux alinéas qui précèdent s'appliquent également lorsque les participations cumulées de plusieurs sociétés de capitaux, résidentes du Luxembourg, atteignent 25 p.c. au moins du capital social de la société par actions, résidente de la Belgique, ou ont un prix d'acquisition d'au moins 250 millions de francs, et que l'une des sociétés de capitaux, résidentes du Luxembourg possède plus de 50 p.c. du capital social de chacune des autres sociétés de capitaux, résidentes du Luxembourg.

§ 2. En ce qui concerne les résidents de la Belgique, la double imposition est évitée de la manière suivante:

1° les revenus provenant du Luxembourg – à l'exclusion des revenus visés aux 2° et 3° – et les éléments de fortune situés au Luxembourg, qui sont imposables dans cet Etat en vertu des articles précédents, sont exemptés d'impôts en Belgique. Cette exemption ne limite pas le droit de la Belgique de tenir compte, lors de la détermination du taux de ses impôts, des revenus et des éléments de fortune ainsi exemptés;

2° en ce qui concerne les dividendes soumis au régime prévu à l'article 10, § 2, les intérêts soumis au régime prévu à l'article 11, §§ 2 ou 7 et la partie excédentaire des redevances visée à l'article 12, § 5, la quotité d'impôt étranger prévue par la législation belge est imputée dans les conditions et au taux prévus par cette législation, soit sur l'impôt des personnes physiques afférent auxdits dividendes – à l'exclusion des répartitions de liquidation – soit sur l'impôt des personnes physiques ou sur l'impôt des sociétés, afférent auxdits intérêts et excédents de redevances qui sont imposables au Luxembourg conformément à la législation de cet Etat ainsi qu'à l'article 11, §§ 2 ou 7 et à l'article 12, § 5;

3° lorsqu'une société résidente de la Belgique a la propriété d'actions ou parts d'une société de capitaux, résidente du Luxembourg, les dividendes – y compris les répartitions de liquidation – qui lui sont attribués par cette dernière société et qui ont été soumis au régime prévu à l'article 10, § 2, sont exemptés de l'impôt des sociétés en Belgique, dans la mesure où cette exemption serait accordée si les deux sociétés étaient résidentes de la Belgique. Cette disposition n'exclut pas le prélèvement sur ces dividendes du précompte mobilier exigible suivant la législation belge;

4° lorsqu'une société résidente de la Belgique a eu pendant toute la durée de l'exercice social d'une société de capitaux, résidente du Luxembourg et soumise dans cet Etat à l'impôt sur le revenu des collectivités, la propriété exclusive d'actions ou parts de cette der-

nière société, elle peut également être exemptée du précompte mobilier exigible, suivant la législation belge, sur les dividendes de ces actions ou parts, à la condition d'en faire la demande par écrit au plus tard dans le délai prescrit pour la remise de sa déclaration annuelle; lors de la resditribution à ses propres actionnaires de ces dividendes ainsi exemptés, ceux-ci ne peuvent, dans ce cas, être déduits des dividendes distribués passibles du précompte mobilier. Cette disposition n'est pas applicable lorsque la première société a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.

Dans l'éventualité où les dispositions de la législation belge, exemptant de l'impôt des sociétés le montant net des dividendes qu'une société résidente de la Belgique reçoit d'une autre société résidente de la Belgique, seraient modifiées de manière à limiter l'exemption aux dividendes afférents à des participations d'une importance déterminée dans le capital de la seconde société, la disposition de l'alinéa précédent ne s'appliquera qu'aux dividendes attribués par des sociétés résidentes du Luxembourg et afférents à des participations de même importance dans le capital desdites sociétés;

5° lorsque, conformément à la législation belge, des pertes subies par une entreprise de la Belgique dans un établissement stable situé au Luxembourg ont été effectivement déduites des bénéfices de cette entreprise pour son imposition en Belgique, l'exemption prévue au 1° ne s'applique pas aux bénéfices d'autres périodes imposables qui sont imputables à cet établissement, dans la mesure où ces bénéfices ont aussi été exemptés d'impôt au Luxembourg en raison de leur compensation avec lesdites pertes.

VI. DISPOSITIONS SPECIALES

Article 24
Non-discrimination

§ 1er. Les nationaux d'un Etat contractant ne sont soumis dans l'autre Etat contractant à aucune imposition ou obligation y relative qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les nationaux de cet autre Etat se trouvant dans la même situation.

§ 2. Le terme «nationaux» désigne:

1° toutes les personnes physiques qui possèdent la nationalité d'un Etat contractant;

2° toutes les sociétés constituées conformément à la législation en vigueur dans un Etat contractant.

§ 3. Les apatrides ne sont soumis dans un Etat contractant à aucune imposition ou obligation y relative qui est autre ou plus lourde que celle à laquelle sont ou pourront être assujettis les nationaux de cet Etat se trouvant dans la même situation.

§ 4. Une personne physique, résidente de la Belgique, qui, conformément aux articles 7 et 14 à 19, est imposable au Luxembourg du chef de plus de 50 p.c. de ses revenus professionnels, est, sur sa demande, imposée au Luxembourg, en ce qui concerne ses revenus y imposables conformément aux articles 6, 7 et 13 à 19 de la Convention, au taux moyen d'impôt qui, compte tenu de sa situation et de ses charges de famille et du total de ses revenus généralement quelconques, lui serait applicable si elle était un résident du Luxembourg.

§ 5. L'imposition d'un établissement stable qu'une entreprise d'un Etat contractant a dans l'autre Etat contractant n'est pas établie dans cet autre Etat d'une façon moins favorable que l'imposition des entreprises de cet autre Etat qui exercent la même activité.

§ 6. Les entreprises d'un Etat contractant,

dont le capital est en totalité ou en partie, directement ou indirectement, détenu ou contrôlé par un ou plusieurs résidents de l'autre Etat contractant ne sont soumises dans le premier Etat contractant à aucune imposition ou obligation y relative autre ou plus lourde que celle à laquelle sont ou pourront être assujetties les autres entreprises de même nature de ce premier Etat.

§ 7. Le terme «imposition» désigne dans le présent article les impôts de toute nature ou dénomination.

Article 25
Procédure amiable

§ 1er. Lorsqu'un résident d'un Etat contractant estime que les mesures prises par un Etat contractant ou par chacun des deux Etats entraînent ou entraîneront pour lui une double imposition non conforme à la présente Convention, il peut, sans préjudice des recours prévus par la législation nationale de ces Etats, adresser à l'autorité compétente de l'Etat contractant dont il est un résident une demande écrite et motivée de révision de cette imposition. Pour être recevable, cette demande doit être présentée dans un délai de deux ans à compter de la notification ou de la perception à la source de la seconde imposition.

§ 2. L'autorité compétente visée au § 1er s'efforce, si la réclamation lui paraît fondée et si elle n'est pas elle-même en mesure d'apporter une solution satisfaisante, de régler la question par voie d'accord amiable avec l'autorité compétente de l'autre Etat contractant, en vue d'éviter une double imposition non conforme à la Convention.

§ 3. Les autorités compétentes des Etats contractants s'efforcent, par voie d'accord amiable, de résoudre les difficultés ou de dissiper les doutes auxquels peut donner lieu l'application de la Convention.

§ 4. Les autorités compétentes des Etats contractants peuvent communiquer directement entre elles en vue de parvenir à un accord comme il est indiqué aux paragraphes précédents.

Article 26
Echange de renseignements

§ 1er. Les autorités compétentes des Etats contractants échangent les renseignements nécessaires pour appliquer les dispositions de la Convention et celles des lois internes des Etats contractants relatives aux impôts visés par celle-ci, dans la mesure où l'imposition qu'elles prévoient est conforme à cette Convention.

Tout renseignement ainsi obtenu doit être tenu secret; il ne peut être communiqué, en dehors du contribuable ou de son mandataire, qu'aux personnes ou autorités chargées de l'établissement ou du recouvrement des impôts visés par la Convention et des réclamations et recours y relatifs.

§ 2. Les dispositions du § 1er ne peuvent en aucun cas être interprétées comme imposant à l'un des Etats contractants l'obligation:

1° de prendre des dispositions administratives dérogeant à sa propre législation ou à sa pratique administrative ou à celles de l'autre Etat contractant;

2° de fournir des renseignements qui ne pourraient être obtenus sur la base de sa propre législation ou dans le cadre de sa pratique administrative normale ou de celles de l'autre Etat contractant;

3° de transmettre des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial, ou des renseignements dont la communication serait contraire à l'ordre public.

Article 27
Divers

§ 1er. Aucune disposition de la présente Convention ne peut avoir pour effet de limiter l'imposition d'une société résidente de la Belgique en cas de rachat de ses propres actions ou parts ou à l'occasion du partage de son avoir social.

§ 2. Les dispositions de la Convention ne portent pas atteinte aux privilèges fiscaux dont bénéficient les membres des missions diplomatiques et des postes consulaires en vertu, soit des règles générales du droit des gens, soit des dispositions d'accords particuliers.

§ 3. Aux fins de la Convention, les membres d'une mission diplomatique ou d'un poste consulaire d'un Etat contractant accrédités dans l'autre Etat contractant ou dans un Etat tiers, qui ont la nationalité de l'Etat accréditant, sont réputés être résidents dudit Etat s'ils y sont soumis aux mêmes obligations, en matière d'impôts sur le revenu et sur la fortune, que les résidents de cet Etat.

§ 4. La Convention ne s'applique pas aux organisations internationales, à leurs organes ou à leurs fonctionnaires, ni aux personnes qui sont membres d'une mission diplomatique ou d'un poste consulaire d'un Etat tiers, lorsqu'ils se trouvent sur le territoire d'un Etat contractant et ne sont pas traités comme des résidents dans l'un ou l'autre Etat contractant en matière d'impôts sur le revenu et sur la fortune.

§ 5. Les autorités compétentes des Etats contractants se concertent au sujet des mesures administratives nécessaires à l'exécution des dispositions de la Convention et notamment au sujet des justifications à fournir par les résidents de chaque Etat pour bénéficier dans l'autre Etat des exemptions ou réductions d'impôts prévues à cette Convention.

§ 6. Les Ministres des deux Etats contractants qui ont les contributions directes dans leurs attributions ou leurs délégués communiquent directement entre eux pour l'application de la Convention.

VII. DISPOSITIONS FINALES

Article 28
Entrée en vigueur et cessation d'effets de conventions antérieures

§ 1er. La présente Convention sera ratifiée et les instruments de ratification seront échangés le plus tôt possible à Bruxelles.

§ 2. Elle entrera en vigueur le quinzième jour suivant celui de l'échange des instruments de ratification et elle s'appliquera:

1° en Belgique:

a) aux impôts dus à la source sur les revenus normalement attribués ou mis en paiement à dater du 1er janvier de l'année au cours de laquelle les instruments de ratification auront été échangés;

b) aux autres impôts établis sur des revenus de périodes imposables prenant fin à partir du 31 décembre de l'année au cours de laquelle les instruments de ratification auront été échangés;

2° au Luxembourg:

a) aux impôts dus à la source sur les revenus attribués aux bénéficiaires à dater du 1er janvier de l'année au cours de laquelle les instruments de ratification auront été échangés;

b) aux autres impôts afférent à l'année d'imposition portant le millésime de l'année au cours de laquelle les instruments de ratification auront été échangés et à toute année d'imposition postérieure.

§ 3. La Convention conclue entre la Belgique et le Grand-Duché de Luxembourg en vue d'éviter la double imposition en matière d'impôts directs et de garantir l'assistance réciproque des deux pays pour le recouvrement de ces impôts signée à Bruxelles le 9

mars 1931, modifiée par le protocole additionnel du 7 février 1952 puis par échanges de lettres des 9 et 11 mars 1965 et des 16 novembre et 14 décembre 1965, ainsi que les dispositions d'exécution de cette Convention faisant l'objet des arrangements des 22 juillet 1938, 25 mars 1948 en 28 décembre 1949, prendront fin et cesseront de s'appliquer aux impôts belges et luxembourgeois mentionnés à l'article 2, § 3, de la présente Convention, afférents à des revenus et éléments de fortune auxquels celle-ci est applicable en vertu du § 2, 1° et 2° du présent article.

Article 29
Dénonciation

La présente Convention restera indéfiniment en vigueur; mais chacun des Etats contractants pourra, jusqu'au 30 juin inclus de toute année civile à partir de la cinquième année à dater de celle de sa ratification, la dénoncer par écrit et par la voie diplomatique à l'autre Etat contractant. En cas de dénonciation avant le 1er juillet d'une telle année, la Convention s'appliquera pour la dernière fois:
1° en Belgique:
a) aux impôts dus à la source sur les revenus normalement attribués ou mis en paiement au plus tard le 31 décembre de cette année;
b) aux autres impôts établis sur des revenus de périodes imposables prenant fin normalement au plus tard le 30 décembre de l'année suivant celle de la dénonciation;
2° au Luxembourg:
a) aux impôts dus à la source sur les revenus attribués aux bénéficiaires au plus tard le 31 décembre de cette année;
b) aux autres impôts afférents à l'année d'imposition portant le millésime de l'année de la dénonciation.
En foi de quoi, les Plénipotentiaires des deux Etats ont signé la présente Convention et y ont apposé leurs sceaux.

Fait à Luxembourg le 17 septembre 1970, en double exemplaire, en langue française et en langue néerlandaise, les deux textes faisant également foi.

Pour le Royaume de Belgique,
François de Selys.

Pour le Grand-Duché de Luxembourg,
Gaston Thorn.

Protocole final

Au moment de procéder à la signature de la Convention en vue d'éviter les doubles impositions et de régler certaines autres questions en matière d'impôts sur le revenu et sur la fortune, conclue ce jour entre la Belgique et le Luxembourg, les Plénipotentiaires soussignés sont convenus des dispositions suivantes qui forment partie intégrante de la Convention.

§ 1er. Sociétés holdings.
Ad article 3, § 1er, 4° et 5°, et article 4, §§ 1er et 3.
Par dérogation à ces dispositions, la Convention n'est applicable ni aux revenus ni à la fortune des sociétés holdings résidentes du Luxembourg qui jouissent d'avantages fiscaux particuliers en vertu de la loi luxembourgeoise du 31 juillet 1929 et de l'arrêté-loi du 27 décembre 1937 ou de toute autre loi similaire qui entrerait en vigueur au Luxembourg après la signature de la Convention, ni aux revenus qu'un résident de la Belgique tire de telles sociétés, ni aux participations de ce résident dans lesdites sociétés.

§ 2. Domicile fiscal.
Ad article 4, § 1er.
Les termes «en vertu de la législation dudit Etat», insérés à cette disposition, s'entendent de la législation de cet Etat, telle qu'elle est

éventuellement modifiée ou complétée à cet égard par des accords internationaux.

§ 3. Revenus de biens immobiliers situés en Belgique.
Ad article 6.
Aussi longtemps que le complément de précompte immobilier exigible en Belgique sur le revenu cadastral des immeubles imposables en Belgique conformément à l'article 6 sera perçu à un taux fixe dépassant 10 p.c.:
a) ledit complément de précompte immobilier dû par des résidents du Luxembourg soumis à l'impôt des non-résidents conformément aux articles 148 et 149 du Code des impôts sur les revenus, sera remboursé dans la mesure où, cumulé avec la fraction imputable du précompte immobilier, il dépasse l'impôt des non-résidents dû par les intéressés;
b) ledit complément de précompte immobilier dû par d'autres résidents du Luxembourg sera éventuellement limité de manière telle que la charge globale constituée par ce complément de précompte et par la fraction imputable du précompte immobilier n'excède pas la quotité de l'impôt des non-résidents calculé fictivement sur l'ensemble des revenus produits ou recueillis en Belgique, qui correspondrait proportionnellement audit revenu cadastral.

§ 4. Bénéfices des établissements stables d'entreprises d'assurances.
Ad article 7, § 4.
Les autorités compétentes des deux Etats contractants pourront notamment se concerter, dans l'éventualité visée à cette disposition, en vue de déterminer les bénéfices imputables à l'établissement stable d'une entreprise d'assurances, sur la base d'une répartition de ses bénéfices totaux entre ses divers établissements en fonction des primes ou d'autres critères arrêtés de commun accord.

§ 5. Prévention de la double imposition au Luxembourg.
1° Ad article 23, § 1er, 1°.
Ne sont pas visés à cette disposition les revenus imposables en Belgique en vertu de l'article 9.
2° Ad article 23, § 1er, 1° et 2°.
a) Lorsque le résident du Luxembourg est une société en nom collectif, une société en commandite simple ou une société civile, les dispositions de l'article 23, § 1er, 1° et 2°, s'appliquent aux associés, qu'ils soient ou non des résidents du Luxembourg, dans la mesure où ces associés sont imposables dans cet Etat à raison des revenus qu'ils tirent de ladite société ou de leur participation dans la fortune de celle-ci.
b) Lorsque le résident du Luxembourg est un associé d'une société en nom collectif ou société en commandite simple, résidente de la Belgique, les dispositions de l'article 23, § 1er, 1°, s'appliquent à la quote-part des bénéfices et éléments de fortune de la société qui est imposable au Luxembourg en vertu de sa législation et qui, conformément à la Convention, est imposable en Belgique à charge de la société ou dudit associé.
3° Ad article 23, § 1er.
En ce qui concerne la partie excédentaire des intérêts visés à l'article 11, § 7 et la partie excédentaire des redevances visée à l'article 22, § 5, la double imposition est évitée conformément aux dispositions applicables aux revenus auxquels cette partie excédentaire peut être assimilée d'après la législation du Luxembourg.

§ 6. Prévention de la double imposition en Belgique.
1° Ad article 23, § 2, 1°.
Ne sont pas visés à cette disposition les revenus imposables au Luxembourg en vertu de l'article 9.
2° Ad article 23, § 2, 1° et 2°.

a) Lorsque le résident de la Belgique est une société – autre qu'une société par actions – résidente de la Belgique:
1. l'exemption prévue au 1° s'applique aussi aux associés de cette société, qu'ils soient ou non des résidents de la Belgique, dans la mesure où les revenus ou éléments de fortune de ladite société qui sont imposables au Luxembourg en vertu de la Convention sont également imposables en Belgique, autrement qu'au titre de revenus de capitaux investis, à charge de ces associés en vertu de la législation belge;
2. la déduction prévue au 2° s'applique dans la même mesure aux associés de ladite société, lorsque celle-ci a opté pour l'assujettissement de ses bénéfices à l'impôt des personnes physiques.
b) L'exemption prévue au 1° ne s'applique pas aux revenus d'un résident de la Belgique, associé d'une société en nom collectif, société en commandite simple ou société civile, résidente du Luxembourg, lorsque ces revenus ne constituent pas des revenus imposables dans ce dernier Etat en vertu de sa législation.

§ 7. Report des pertes subies dans un établissement stable.
Ad article 24, §§ 1er et 5.
Lorsqu'une entreprise d'un Etat contractant dispose d'un établissement stable dans l'autre Etat contractant, les dispositions en vigueur dans cet autre Etat quant au report des pertes y sont applicables pour l'imposition de cet établissement dans les mèmes conditions qu'à l'égard des entreprises dudit autre Etat.

§ 8. Dividendes recueillis par un établissement stable dont dispose dans un Etat contractant une société résidente de l'autre Etat.
Ad article 24, § 5.
Par application de cette disposition, lorsqu' une société résidente d'un Etat contractant possède dans l'autre Etat contractant un établissement stable auquel se rattache effectivement une participation dans le capital d'une société résidente de l'un des deux Etats, les dividendes afférents à ladite participation, ainsi que la participation elle-même, sont exemptés dans cet autre Etat des impôts visés à l'article 2, dans la mesure où ils seraient exemptés suivant la législation de cet autre Etat si la participation était détenue par une société résidente dudit Etat du mêne type que la société dont dépend l'établissement stable. Toutefois, lorsqu'une société par actions ou société de personnes à responsabilité limitée, résidente de la Belgique, a un établissement stable au Luxembourg et que cet établissement stable détient, depuis le début de l'exercice social pendant lequel les dividendes sont mis à sa disposition, une participation directe et ininterrompue d'au moins 25 p.c. dans le capital d'une société de capitaux, résidente du Luxembourg, les dividendes afférents à ladite participation sont soumis à la retenue d'impôt luxembourgeoise sur les revenus de capitaux au taux de 10 p.c. de leur montant brut.

§ 9. Etablissements stables entretenus en Belgique par des sociétés résidentes du Luxembourg ou par des groupements de personnes ayant leur siège de direction effective au Luxembourg.
Ad article 24, § 5.
Les sociétés résidentes du Luxembourg et les groupements de personnes ayant leur siège de direction effective au Luxembourg, qui possèdent un établissement stable en Belgique, sont soumis dans ce dernier Etat, du chef des bénéfices qu'ils y réalisent, au régime applicable aux sociétés et groupements de personnes étrangers similaires.
Toutefois, l'imposition exigible sur ces bénéfices suivant la législation belge ne peut être supérieure au total des divers impôts calculés au taux normal qui seraient dus par une

société résidente de la Belgique sur les bénéfices et sur les revenus distribués à ses actionnaires ou associés, dans le cas où ces bénéfices recevraient la même affectation que ceux de la société résidente du Luxembourg ou du groupement de personnes ayant son siège de direction effective dans cet Etat.
Pour l'application de cette disposition, l'impôt qui frapperait les bénéfices distribués d'une société résidente de la Belgique est calculé au taux de 10 p.c. sur la moitié de la différence entre, d'une part, le bénéfice de l'établissement stable et, d'autre part, le montant obtenu en appliquant à ce bénéfice le taux normal, en principal, de l'impôt des sociétés frappant les bénéfices distribués des sociétés résidentes de la Belgique.

§ 10. Application des législations nationales relatives à la répression de l'évasion et de la fraude fiscales.
Aucune disposition de la Convention ne peut être interprétée comme empêchant un Etat contractant d'appliquer les dispositions de sa législation tendant à éviter l'évasion et la fraude fiscales.
Fait à Luxembourg le 17 septembre 1970, en double exemplaire, en langue française et en langue néerlandaise, les deux textes faisant également foi.

Pour la Belgique,
François de Selys.

Pour le Luxembourg,
Gaston Thorn.

Abkommen zwischen der Republik Österreich und dem Königreich der Niederlande zur Vermeidung der Doppelbesteueruug auf dem Gebiete der Steuern vom Einkommen und vom Vermögen

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVI, No. 10, October/octobre 1972

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort - 124 Sarphatistraat - Amsterdam

A double taxation treaty was signed between Austria and the Netherlands on September 1, 1970. The treaty is retroactively effective as of January 1, 1969.

TEXT

Der Bundespräsident der Republik Österreich
und
Ihre Majestät die Königin der Niederlande,
von dem 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 Bundespräsident der Republik Österreich:
Herrn Sektionschef Dr. Josef Hammerschmidt im Bundesministerum für Finanzen;
Ihre Majestät die Königin der Niederlande:
Baron Constant Wilhelm van Boetzelaer van Asperen, außerordentlicher und bevollmächtigter Botschafter in Wien;

die, nachdem sie ihre Vollmachten ausgetauscht 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 der beiden Staaten oder in beiden Staaten 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 Staaten oder seiner Gebietskörperschaften erhoben werden.
(2) Als Steuern vom Einkommen und vom Vermögen gelten alle Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschließlich der Steuern vom Gewinn aus der Veräußerung beweglichen oder unbeweglichen Vermögens sowie der Steuern vom Vermögenszuwachs.
(3) Zu den zur Zeit bestehenden Steuern, für die das Abkommen gilt, gehören insbesondere:
a) in den Niederlanden:
- i) de inkomstenbelasting (die Einkommensteuer);
- ii) de loonbelasting (die Lohnsteuer);
- iii) de vennootschapsbelasting (die Körperschaftsteuer);
- iv) de dividendbelasting (die Dividensteuer);
- v) de commissarissenbelasting (die Aufsichtsratsteuer);
- vi) de vermogensbelasting (die Vermögensteuer);
- vii) de grondbelasting (die Grundsteuer);
- viii) de gemeentelijke baatbelastingen (die kommunalen Steuern auf den Wertzuwachs bestimmter Grundstücke);
- ix) de gemeentelijke bouwterreinbelastingen (die kommunalen Bauland-steuern);
- x) de wegen-, straat- en vaartbelastingen (die Straßen- und Wasserstraßensteuern);
- xi) het recht op de mijnen (die Bergwerksteuer);

b) in Österreich:
- i) die Einkommensteuer (einschließlich der Lohnsteuer und der Kapitalertragsteuer);
- ii) die Körperschaftsteuer (einschließlich der Kapitalertragsteuer);
- iii) die Vermögensteuer;
- iv) der Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches;
- v) der Katastrophenfondsbeitrag vom Einkommen;
- vi) die Sonderabgabe vom Einkommen;
- vii) die Aufsichtsratsabgabe;
- viii) die Gewerbesteuer (einschließlich der Lohnsummensteuer);
- ix) die Grundsteuer;
- x) die Abgabe von land- und forstwirtschaftlichen Betrieben;
- xi die Abgabe vom Bodenwert bei unbebauten Grundstücken;
- xii) der Katastrophenfondsbeitrag vom Vermögen;
- xiii) die Sonderabgabe vom Vermögen;
- xiv) die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind;
- xv) die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen.

(4) Dieses Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den zur Zeit bestehenden Steuern oder an deren Stelle erhoben werden. Die zuständigen Behörden der beiden Staaten teilen einander die in ihren Steuergesetzen eingetretenen wesentlichen Änderungen mit.

ABSCHNITT II
DEFINITIONEN

Artikel 3
Allgemeine Definitionen

(1) Im Sinne dieses Abkommens, wenn der Zusammenhang nichts anderes erfordert:
a) bedeuten die Ausdrücke „einer der beiden

Staaten" und „der andere Staat", je nach dem Zusammenhang, die Niederlande oder Österreich;
b) umfaßt der Ausdruck „die Niederlande" den in Europa gelegenen Teil des Königreiches der Niederlande und den Teil des Meeresgrundes und des Meeresuntergrundes unter der Nordsee, worüber das Königreich der Niederlande in Übereinstimmung mit dem internationalen Recht Hoheitsrechte ausübt;
c) bedeutet der Ausdruck „Österreich" das Gebiet der Republik Österreich;
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 der beiden Staaten" und „Unternehmen des anderen Staates", je nachdem, ein Unternehmen, das von einer in einem der beiden Staaten ansässigen Person betrieben wird, oder ein Unternehmen, das von einer in dem anderen Staat ansässigen Person betrieben wird;
g) bedeutet der Ausdruck „zuständige Behörde":

1. in den Niederlanden: den Minister der Finanzen oder seinen bevollmächtigten Vertreter;
2. in Österreich: den Bundesminister für Finanzen.

(2) Bei Anwendung des Abkommens durch einen der beiden Staaten 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 der beiden Staaten ansässige Person" eine Person, die nach dem Recht dieses Staates dort auf Grund ihres Wohnsitzes, ihres ständigen Aufenthaltes, des Ortes ihrer Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist.
(2) Im Sinne dieses Abkommens gilt eine natürliche Person, die Mitglied einer diplomatischen oder konsularischen Vertretung eines der beiden Staaten in dem anderen Staat oder in einem dritten Staat ist und die Staatsangehörigkeit ihres Entsendestaates besitzt, als in dem Entsendestaat ansässig.
(3) Ist nach Absatz 1 eine natürliche Person in beiden Staaten ansässig, so gilt folgendes:
a) Die Person gilt als in dem Staat ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Staaten über eine ständige Wohnstätte, so gilt sie als in dem Staat ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat (Mittelpunkt der Lebensinteressen).
b) Kann nicht bestimmt werden, in welchem Staat die Person den Mittelpunkt der Lebensinteressen hat, oder verfügt sie in keinem der beiden Staaten über eine ständige Wohnstätte, so gilt sie als in dem Staat ansässig, in dem sie ihren gewöhnlichen Aufenthalt hat.
c) Hat die Person ihren gewöhnlichen Aufenthalt in beiden Staaten oder in keinem der beiden Staaten, so gilt sie als in jenem der beiden Staaten ansässig, dessen Staatsangehörigkeit sie besitzt.
(4) Ist nach Absatz 1 eine andere als eine natürliche Person in beiden Staaten ansässig, so gilt sie als in dem Staat 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 verarbeitet 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 der beiden Staaten für ein Unternehmen des anderen Staates 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 der beiden Staaten wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Staat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.

(6) Allein dadurch, daß eine in einem der beiden Staaten ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Staat 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 dürfen in dem Staat besteuert werden, in dem dieses Vermögen liegt.

(2) Der Ausdruck „unbewegliches Vermögen" bestimmt sich nach dem Recht des Staates, in dem das Vermögen liegt. Der

Ausdruck umfaßt in jedem Fall das Zubehör zum unbeweglichen Vermögen, das lebende und tote Inventar land- und forstwirtschaftlicher Betriebe, die Rechte, auf die die Vorschriften des Privatrechts über Grundstücke Anwendung finden, die Nutzungsrechte an unbeweglichem Vermögen sowie die Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung vom Mineralvormen, Quellen und anderen Bodenschätzen, und Forderungen jeder Art – mit Ausnahme von Obligationen – die durch Pfandrechte an Grundstücken gesichert sind; 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 der beiden Staaten dürfen nur in diesem Staat besteuert werden, es sei denn, daß das Unternehmen seine Tätigkeit in dem anderen Staat durch eine dort gelegene Betriebstätte ausübt. Übt das Unternehmen seine Tätigkeit in dieser Weise aus, so dürfen die Gewinne des Unternehmens in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser Betriebstätte zugerechnet werden können.

(2) Übt ein Unternehmen eines der beiden Staaten seine Tätigkeit in dem anderen Staat durch eine dort gelegene Betriebstätte aus, so sind in jedem Staat 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 der beiden Staaten üblich ist, die einer Betriebsstätte zuzurechnenden Gewinne durch Aufteilung der Gesamtgewinne des Unternehmens auf seine einzelnen Teile zu ermitteln, schließt Absatz 2 nicht aus, daß dieser Staat 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, Binnenschiffahrt und Luftfahrt

(1) Gewinne aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr dürfen nur in dem Staat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.
(2) Gewinne aus dem Betrieb von Schiffen, die der Binnenschiffahrt dienen, dürfen nur in dem Staat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet.
(3) Befindet sich der Ort der tatsächlichen Geschäftsleitung eines Unternehmens der See- oder Binnenschiffahrt an Bord eines Schiffes, so gilt er als in dem Staat gelegen, in dem der Heimathafen des Schiffes liegt, oder, wenn kein Heimathafen vorhanden ist, in dem Staat, in dem die Person, die das Schiff betreibt, ansässig ist.

Artikel 9
Verbundene Unternehmen

Wenn
a) ein Unternehmen eines der beiden Staaten unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens des anderen Staates beteiligt ist.
oder
b) dieselben Personen unmittelbar oder mittelbar an der Geschäftsleitung, der Kontrolle oder am Kapital eines Unternehmens eines der beiden Staaten und eines Unternehmens des anderen Staates 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 der beiden Staaten ansässige Gesellschaft an eine in dem anderen Staat ansässige Person zahlt, dürfen in dem anderen Staat besteuert werden.
(2) Diese Dividenden dürfen jedoch in dem Staat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 15 vom Hundert des Bruttobetrages der Dividenden nicht übersteigen.
(3) Ungeachtet der Bestimmungen des Absatzes 2 darf der Staat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, die Dividenden, die von dieser Gesellschaft an eine in dem anderen Staat ansässige Kapitalgesellschaft, die unmittelbar oder mittelbar über mindestens 25 vom Hundert des Kapitals der die Dividenden zahlenden Gesellschaft verfügt, gezahlt werden, nicht besteuern.
(4) Die zuständigen Behörden der beiden Staaten regeln in gegenseitigem Einvernehmen, wie die Bestimmungen der Absätze 2 und 3 durchzuführen sind.
(5) Die Absätze 2 und 3 berühren nicht die Besteuerung der Gesellschaft in bezug auf die Gewinne, aus denen die Dividenden gezahlt werden.
(6) 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.
(7) Die Absätze 1, 2 und 3 sind nicht anzuwenden, wenn der in einem der beiden Staaten ansässige Empfänger der Dividenden in dem anderen Staat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine Betriebstätte hat und die Beteiligung, für die die Dividenden bezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.
(8) Bezieht eine in einem der beiden Staaten ansässige Gesellschaft Gewinne oder Einkünfte aus dem anderen Staat, so darf dieser andere Staat weder die Dividenden besteuern, die die Gesellschaft an nicht in diesem anderen Staat ansässige Personen zahlt, noch die nichtausgeschütteten Gewinne der Gesellschaft einer Steuer für nichtausgeschüttete Gewinne unterwerfen, selbst wenn die gezahlten Dividenden oder die nicht ausgeschütteten Gewinne ganz oder teilweise aus in dem anderen Staat erzielten Gewinnen oder Einkünften bestehen.

Artikel 11
Zinsen

(1) Zinsen, die aus einem der beiden Staaten stammen und an eine in dem anderen Staat ansässige Person gezahlt werden, dürfen nur in dem anderen Staat besteuert werden.
(2) Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus öffentlichen Anleihen, aus Obligationen, auch wenn sie 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. Der Ausdruck umfaßt jedoch weder die Einkünfte aus den in Artikel 6 Absatz 2 bezeichneten Forderungen noch die in Artikel 12 Absatz 1 bezeichneten Gewinnanteile.
(3) Absatz 1 ist nicht anzuwenden, wenn der in einem der beiden Staaten ansässige Empfänger der Zinsen in dem anderen Staat, aus dem die Zinsen stammen, eine Betriebstätte hat und die Forderung, für die die Zinsen gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.
(4) Bestehen zwischen Schuldner und Gläubiger oder zwischen jedem von ihnen und einem Dritten besondere Beziehungen und übersteigen deshalb die gezahlten Zinsen, gemessen an der zugrundeliegenden Forderung, den Betrag, den Schuldner und Gläubiger ohne diese Beziehungen vereinbart hätten, so wird dieser Artikel nur auf diesen letzten Betrag angewendet. In diesem Fall kann der übersteigende Betrag nach dem Recht jedes der beiden Staaten und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 12
Stille Gesellschaften

(1) Bezieht eine in einem der beiden Staaten ansässige Person Gewinnanteile aus der Beteiligung als stiller Gesellschafter an einem Unternehmen, dessen Geschäftsleitung sich in dem anderen Staat befindet, so dürfen diese Gewinnanteile in diesem anderen Staat besteuert werden, wenn mit der Beteiligung keine Beteiligung am Vermögen des Unternehmens verbunden ist.
(2) Auf Gewinnanteile aus Beteiligungen als stiller Gesellschafter, mit denen eine Beteiligung am Vermögen des Unternehmens verbunden ist, ist Artikel 7 anzuwenden.

Artikel 13
Lizenzgebühren

(1) Lizenzgebühren, die aus einem der beiden Staaten stammen und an eine in dem anderen Staat ansässige Person gezahlt werden, dürfen, vorbehaltlicht des Absatzes 2, nur in dem anderen Staat besteuert werden.
(2) Lizenzgebühren, die von einer in einem der beiden Staaten ansässigen Gesellschaft an eine in dem anderen Staat ansässige Person gezahlt werden, die zu mehr als 50 vom Hundert mittelbar oder unmittelbar am Kapital der auszahlenden Gesellschaft beteiligt ist, dürfen auch in dem erstgenannten Staat besteuert werden; die Steuer darf jedoch die Hälfte des gesetzlichen Steuersatzes, jedenfalls aber 10 vom Hundert des Rohbetrages dieser Lizenzgebühren nicht übersteigen.
(3) Der in diesem Artikel verwendete Ausdruck „Lizenzgebühren" bedeutet Vergütungen jeder Art, die für die Benutzung oder für das Recht auf Benutzung von Urheberrechten an literarischen, künstlerischen oder wissenschaftlichen Werken, einschließlich kinematographischer Filme, von Patenten, 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 der beiden Staaten ansässige Empfänger der Lizenzgebühren in dem anderen Staat, 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) 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 der beiden Staaten und unter Berücksichtigung der anderen Bestimmungen dieses Abkommens besteuert werden.

Artikel 14
Gewinne aus der Veräußerung von Vermögen

(1) Gewinne aus der Veräußerung unbeweglichen Vermögens im Sinne des Artikels 6 Absatz 2 dürfen in dem Staat besteuert werden, in dem dieses Vermögen liegt.
(2) Gewinne aus der Veräußerung beweglichen Vermögens, das Betriebsvermögen einer Betriebstätte darstellt, die ein Unternehmen eines der beiden Staaten in dem anderen Staat hat, oder das zu einer festen Einrichtung gehört, über die eine in einem der beiden Staaten ansässige Person für die Ausübung eines freien Berufes in dem anderen Staat verfügt, einschließlich derartiger Gewinne, die bei der Veräußerung einer solchen Betriebstätte (allein oder zusammen mit dem übrigen Unternehmen) oder einer solchen festen Einrichtung erzielt werden, dürfen in dem anderen Staat besteuert werden.
(3) Ungeachtet der Bestimmungen des Absatzes 2 dürfen Gewinne aus der Veräußerung von Seeschiffen und Luftfahrzeugen im internationalen Verkehr und von Schiffen, die der Binnenschiffahrt dienen, sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, nur in dem Staat besteuert werden, in dem sich

der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet. Die Bestimmungen des Artikels 8 Absatz 3 sind sinngemäß anzuwenden.
(4) Gewinne aus der Veräußerung des in den vorstehenden Absätzen nicht genannten Vermögens dürfen nur in dem Staat besteuert werden, in dem der Veräußerer ansässig ist.
(5) Die Bestimmungen des Absatzes 4 berühren nicht das Recht jedes der beiden Staaten zur Besteuerung, nach seiner innerstaatlichen Gesetzgebung, der Gewinne aus der Veräußerung von Aktien oder Genußscheinen einer in diesem Staat ansässigen Kapitalgesellschaft, die von einer in dem anderen Staat ansässigen natürlichen Person, die im Laufe der letzten fünf der Veräußerung der Aktien oder Genußscheine vorhergehenden Jahre in dem erstgenannten Staat ansässig war, bezogen werden.

Artikel 15
Selbständige Arbeit

(1) Einkünfte, die eine in einem der beiden Staaten ansässige Person aus einem freien Beruf oder aus sonstiger selbständiger Tätigkeit ähnlicher Art bezieht, dürfen nur in diesem Staat besteuert werden, es sei denn, daß die Person für die Ausübung ihrer Tätigkeit in dem anderen Staat regelmäßig über eine feste Einrichtung verfügt. Verfügt sie über eine solche feste Einrichtung, so dürfen die Einkünfte in dem anderen Staat besteuert werden, jedoch nur insoweit, als sie dieser festen Einrichtung zugerechnet werden können.
(2) Der Ausdruck „freier Beruf" umfaßt insbesondere die selbständig ausgeübte wissenschaftliche, literarische, künstlerische, erzieherische oder unterrichtende Tätigkeit sowie die selbständige Tätigkeit der Ärzte, Rechtsanwälte, Ingenieure, Architekten und Wirtschaftstreuhänder.

Artikel 16
Unselbständige Arbeit

(1) Vorbehaltlich der Artikel 17, 19, 20 und 21, Absatz 2, dürfen Gehälter, Löhne und ähnliche Vergütungen, die eine in einem der beiden Staaten ansässige Person aus unselbständiger Arbeit bezieht, nur in diesem Staat besteuert werden, es sei denn, daß die Arbeit in dem anderen Staat ausgeübt wird. Wird die Arbeit dort ausgeübt, so dürfen die dafür bezogenen Vergütungen in dem anderen Staat besteuert werden.
(2) Ungeachtet des Absatzes 1 dürfen Vergütungen, die eine in einem der beiden Staaten ansässige Person für eine in dem anderen Staat ausgeübte unselbständige Arbeit bezieht, nur in dem erstgenannten Staat besteuert werden, wenn:
a) der Empfänger sich in dem anderen Staat insgesamt nicht länger als 183 Tage während des betreffenden Kalenderjahres aufhält,
und
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 dürfen Vergütungen, die eine in einem der beiden Staaten ansässige Person aus unselbständiger Arbeit bezieht, die an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr oder an Bord eines Schiffes, das der Binnenschiffahrt dient, ausgeübt wird, nur in diesem Staat besteuert werden.

Artikel 17
Aufsichtsrats- und Verwaltungsratsvergütungen

(1) Aufsichtsrats- oder Verwaltungsratsvergütungen und ähnliche Zahlungen, die eine in den Niederlanden ansässige Person in ihrer Eigenschaft als Mitglied des Aufsichts- oder Verwaltungsrates einer in Österreich ansässigen Gesellschaft bezieht, dürfen in Österreich besteuert werden.
(2) Vergütungen und andere Zahlungen, die eine in Österreich ansässige Person in ihrer Eigenschaft als „bestuurder" oder „commissaris" einer in den Niederlanden ansässigen Gesellschaft bezieht, dürfen in den Niederlanden besteuert werden.

Artikel 18
Künstler und Sportler

Ungeachtet der Bestimmungen der Artikel 15 und 16 dürfen 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 Staat besteuert werden, in dem sie diese Tätigkeit ausüben.

Artikel 19
Ruhegehälter

Vorbehaltlich des Artikels 20 Absatz 1 dürfen Ruhegehälter und ähnliche Vergütungen, die einer in einem der beiden Staaten ansässigen Person für frühere unselbständige Arbeit gezahlt werden, nur in diesem Staat besteuert werden.

Artikel 20
Bezüge aus öffentlichen Kassen

(1) Vergütungen einschließlich der Ruhegehälter, die von einem der beiden Staaten, einer seiner Gebietskörperschaften oder einer anderen Körperschaft des öffentlichen Rechts dieses Staates unmittelbar oder aus einem von diesem Staat, der Gebietskörperschaft oder der Körperschaft des öffentlichen Rechts errichteten Sondervermögen an eine natürliche Person für die diesem Staat, der Gebietskörperschaft oder der Körperschaft des öffentlichen Rechts in Ausübung öffentlicher Funktion erbrachten Dienste gezahlt werden, dürfen in diesem Staat besteuert werden.
(2) Pensionen, die an eine in einem der beiden Staaten ansässige Person aus der gesetzlichen Sozialversicherung des anderen Staates bezahlt werden, dürfen in diesem anderen Staat besteuert werden.
(2) Auf Vergütungen oder Ruhegehälter für Dienstleistungen, die im Zusammenhang mit einer kaufmännischen oder gewerblichen Tätigkeit eines der beiden Staaten, einer seiner Gebietskörperschaften oder einer anderen Körperschaft des öffentlichen Rechts dieses Staates erbracht werden, finden jedoch die Artikel 16, 17 und 19 Anwendung.

Artikel 21
Studenten

(1) Zahlungen, die ein Student oder Lehrling, der in einem der beiden Staaten ansässig ist oder vorher dort ansässig war und sich in dem anderen Staat 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.
(2) Vergütungen, die ein Student oder Lehrling, der in einem der beiden Staaten ansässig ist oder vorher dort ansässig war, für eine Beschäftigung erhält, die er im anderen Staat zur Erlangung praktischer

Erfahrungen für einen 183 Tage im betreffenden Kalenderjahr nicht übersteigenden Zeitraum ausübt, werden in diesem anderen Staat nicht besteuert.

Artikel 22
Nicht ausdrücklich erwähnte Einkünfte

Die in den vorstehenden Artikeln nicht ausdrücklich erwähnten Einkünfte einer in einem der beiden Staaten ansässigen Person dürfen nur in diesem Staat besteuert werden.

ABSCHNITT IV
BESTEUERUNG DES VERMÖGENS

Artikel 23
Vermögen

(1) Unbewegliches Vermögen im Sinne des Artikels 6 Absatz 2 darf in dem Staat besteuert werden, in dem dieses Vermögen liegt.
(2) Bewegliches Vermögen, das Betriebsvermögen einer Betriebstätte eines Unternehmens darstellt oder das zu einer der Ausübung eines freien Berufes dienenden festen Einrichtung gehört, darf in dem Staat besteuert werden, in dem sich die Betriebstätte oder die feste Einrichtung befindet.
(3) Seeschiffe und Luftfahrzeuge im internationalen Verkehr und Schiffe, die der Binnenschiffahrt dienen, sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, dürfen nur in dem Staat besteuert werden, in dem sich der Ort der tatsächlichen Geschäftsleitung des Unternehmens befindet. Die Bestimmungen des Artikels 8 Absatz 3 sind sinngemäß anzuwenden.
(4) Alle anderen Vermögensteile einer in einem der beiden Staaten ansässigen Person dürfen nur in diesem Staat besteuert werden.

ABSCHNITT V
BESTIMMUNGEN ZUR VERMEIDUNG DER DOPPELBESTEUERUNG

Artikel 24

(1) Die Niederlande sind berechtigt, bei der Erhebung der Steuern von in diesem Staat ansässigen Personen alle Einkommensteile und Vermögensteile, die nach den Bestimmungen dieses Abkommens in Österreich besteuert werden dürfen, in die Bemessungsgrundlage einzubeziehen.
(2) Unbeschadet der Anwendung der Bestimmungen bezüglich des Verlustausgleiches in ihren innerstaatlichen Vorschriften über die Vermeidung der Doppelbesteuerung lassen die Niederlande von den gemäß Absatz 1 dieses Artikels errechneten Steuerbetrag einen Abzug zu. Dieser Abzug entspricht dem Teil des Steuerbetrags, der sich zu diesem Steuerbetrag verhält, wie sich der Betrag der in die in Absatz 1 bezeichnete Bemessungsgrundlage einbezogenen Einkommensteile oder Vermögensteile, die nach den Artikeln 6, 7, 10 Absatz 7, 11 Absatz 3, 13 Absatz 4, 14 Absätze 1 und 2, 15, 16 Absatz, 1, 17 Absatz 1, 18, 20 und 23 Absätze 1 und 2 dieses Abkommens in Österreich besteuert werden dürfen, zu dem Einkommens- oder Vermögensbetrag, der die in Absatz 1 bezeichnete Bemessungsgrundlage bildet, verhält. Weiterhin lassen die Niederlande von dem gemäß Absatz 1 errechneten Steuerbetrag einen Abzug zu für die Einkünfte, die nach den Artikeln 10 Absatz 2, 12 Absatz 1, 13 Absatz 2 und 14 Absatz 5 in Österreich besteuert werden dürfen und in die in Absatz 1 bezeichnete Bemessungsgrundlage einbezogen sind. Der Betrag dieses Abzugs ist der niedrigere der folgenden Beträge:
a) der Betrag, der der österreichischen Steuer entspricht;

b) der Betrag der niederländischen Steuer, der sich zu dem gemäß Absatz 1 dieses Artikels errechneten Steuerbetrag verhält wie sich der Betrag der genannten Einkünfte zu dem Einkommensbetrag, der die in Absatz 1 bezeichnete Bemessungsgrundlage bildet, verhält.

(3) Bezieht eine in Österreich ansässige Person Einkünfte oder hat sie Vermögen und dürfen diese Einkünfte oder dieses Vermögen nach diesem Abkommen in den Niederlanden besteuert werden, so nimmt Österreich, vorbehaltlich des Absatzes 4, diese Einkünfte oder dieses Vermögen von der Besteuerung aus; Österreich darf aber bei der Festsetzung der Steuer für das übrige Einkommen oder das übrige Vermögen dieser Person den Steuersatz anwenden, der anzuwenden wäre, wenn die betreffenden Einkünfte oder das betreffende Vermögen nicht von der Besteuerung ausgenommen wären.

(4) Bezieht eine in Österreich ansässige Person Einkünfte, die nach Artikel 10 Absatz 2, Artikel 12 Absatz 1, Artikel 13 Absatz 2 und Artikel 14 Absatz 5 in den Niederlanden besteuert werden dürfen, so rechnet Österreich auf die vom Einkommen dieser Person zu erhebende Steuer den Betrag an, der der in den Niederlanden gezahlten Steuer entspricht. Der anzurechnende Betrag darf jedoch den Teil der vor der Anrechnung ermittelten Steuer nicht übersteigen, der auf die Einkünfte entfällt, die aus den Niederlanden bezogen werden.

ABSCHNITT VI
BESONDERE BESTIMMUNGEN

Artikel 25
Gleichbehandlung

(1) Die Staatsangehörigen eines der beiden Staaten dürfen ohne Rücksicht darauf, ob sie in diesem Staat ansässig sind oder nicht, in dem anderen Staat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Verpflichtungen, denen die Staatsangehörigen des anderen Staates unter gleichen Verhältnissen unterworfen sind oder unterworfen werden können.

(2) Der Ausdruck „Staatsangehörige" bedeutet:

a) alle natürlichen Personen, die die Staatsangehörigkeit eines der beiden Staaten besitzen;

b) alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in einem der beiden Staaten geltenden Recht errichtet worden sind.

(3) Die Besteuerung einer Betriebstätte, die ein Unternehmen eines der beiden Staaten in dem anderen Staat 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 der beiden Staaten, den in dem anderen Staat ansässigen Personen Steuerfreibeträge, -vergünstigungen und -ermäßigungen auf Grund des Personenstandes oder der Familienlasten zu gewähren, die er den in seinem Gebiet ansässigen Personen gewährt.

(4) Die Unternehmen eines der beiden Staaten, deren Kapital ganz oder teilweise, unmittelbar oder mittelbar, einer in dem anderen Staat ansässigen Person oder mehreren solchen Personen gehört oder ihrer Kontrolle unterliegt, dürfen in dem erstgenannten Staat weder einer Besteuerung noch einer damit zusammenhängenden Verpflichtung unterworfen werden, die anders oder belastender sind als die Besteuerung und die damit zusammenhängenden Ver-

pflichtungen, denen andere ähnliche Unternehmen des erstgenannten Staates unterworfen sind oder unterworfen werden können.

Artikel 26
Verständigungsverfahren

(1) Ist eine in einem der beiden Staaten ansässige Person der Auffassung, daß die Maßnahmen eines Staates oder beider Staaten 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 Staates 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 Staates so zu regeln, daß eine dem Abkommen nicht entsprechende Besteuerung vermieden wird.
(3) Die zuständigen Behörden der beiden Staaten 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, sie eine Doppelbesteuerung in Fällen, die in dem Abkommen nicht behandelt sind, vermieden werden kann.
(4) Die zuständigen Behörden der beiden Staaten können zu Herbeiführung einer Einigung im Sinne der vorstehenden Absätze unmittelbar miteinander verkehren.

Artikel 27
Austausch von Informationen

(1) Die zuständigen Behörden der beiden Staaten werden die Informationen austauschen, die zur Durchführung dieses Abkommens, insbesondere zur Verhinderung der Steuehinterziehung und zur Durchführung der Steuerhinterziehung und zur Durchführung der gesetzlichen Vorschriften gegen Steuerverkürzung in bezug auf Steuern im Sinne dieses Abkommens erforderlich sind. Die zuständigen Behörden der beiden Staaten können Auskünfte ablehnen, die nicht auf Grund der bei den Finanzbehörden vorhandenen Unterlagen gegeben werden können, sondern ausgedehnte Ermittlungen notwendig machen würden. Alle so ausgetauschten Informationen sind geheimzuhalten und dürfen nur solchen Personen oder Behörden zugänglich gemacht werden, die mit der Veranlagung oder Einhebung der unter das Abkommen fallenden Steuern befaßt sind.
(2) Absatz 1 ist auf keinen Fall so auszulegen, als verpflichte er einen der beiden Staaten:
a) Verwaltungsmaßnahmen durchzuführen, die von den Gesetzen oder der Verwaltungspraxis dieses oder des anderen Staates abweichen;
b) Angaben zu übermitteln, die nach den Gesetzen oder im üblichen Verwaltungsablauf dieses oder des anderen Staates nicht beschafft werden können;
c) Informationen zu erteilen, die ein Handels-, Geschäfts-, Gewerbe- oder Berufsgeheimnis oder ein Geschäftsverfahren preisgeben würden oder deren Erteilung der öffentlichen Ordnung widerspräche.

Artikel 28
Diplomatische und konsularische Beamte

Diese Abkommen berührt nicht die steuerlichen Vorrechte, die den diplomatischen und konsularischen Beamten nach den allgemeinen Regeln des Völkerrechts oder auf Grund besonderer Vereinbarungen zustehen.

Artikel 29
Ausdehnung des territorialen Geltungsbereiches

(1) Dieses Abkommen kann entweder als Ganzes oder mit den erforderlichen Änderungen auf eines der beiden Länder oder auf beide Länder Surinam und die Niederländischen Antillen ausgedehnt werden, wenn das betreffende Land Steuern erhebt, die im wesentlichen den Steuern ähnlich sind, für die das Abkommen gilt. Eine solche Ausdehnung wird von dem Zeitpunkt an und mit den Änderungen und Bedingungen, einschließlich der Bedingungen für das Außerkrafttreten, wirksam, die durch auf diplomatischem Weg auszutauschende Noten vereinbart werden.
(2) Wurde nichts anderes vereinbart, so tritt mit der Kündigung nach Artikel 31 das Abkommen nicht auch für das Land außer Kraft, auf das es nach diesem Artikel ausgedehnt worden ist.

ABSCHNITT VII
SCHLUSSBESTIMMUNGEN

Artikel 30
Inkrafttreten

(1) Dieses Abkommen soll ratifiziert und die Ratifikationsurkunden sollen so bald wie möglich in Den Haag ausgetauscht werden.
(2) Dieses Abkommen tritt mit dem Austausch der Ratifikationsurkunden in Kraft, und seine Bestimmungen sind für die Steuerjahre und Steuerzeiträume anzuwenden, die am oder nach dem 1. Januar 1969 beginnen.

Artikel 31
Außerkrafttreten

Dieses Abkommen bleibt in Kraft, solange es nicht von einer der beiden vertragschließenden Parteien gekündigt worden ist. Jede vertragschließende Partei kann das Abkommen auf diplomatischem Wege unter Einhaltung einer Frist von mindestens sechs Monaten zum Ende eines Kalenderjahres kündigen. In diesem Fall ist das Abkommen für die Steuerjahre und Steuerzeiträume nicht mehr anzuwenden, die nach dem Ende des Kalenderjahres beginnen, zu dessen Ende die Kündigung erfolgt ist.
ZU URKUND DESSEN haben die vorgenannten Bevollmächtigten der beiden Staaten dieses Abkommen unterzeichnet und mit Siegeln versehen.
GESCHEHEN zu Wien, am 1. September 1970, in zweifacher Urschrift in deutscher und niederländischer Sprache, wobei beide Texte authentisch sind.

Für die Republik Österreich:
Hammerschmidt

Für das Königreich der Niederlande:
C.W. van Boetzelaer

SCHLUSSPROTOKOLL

Bei der Unterzeichnung des heute zwischen der Republik Österreich und dem Königreich der Niederlande abgeschlossenen Abkommens zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern von Einkommen und vom Vermögen haben sich die unterzeichneten Bevollmächtigten auf die folgenden, einen integrierenden Bestandteil des Abkommens bildenden Erklärungen geeinigt:

I. Zu Artikel 1:
Das Abkommen findet keine Anwendung auf internationale Organisationen, ihre Organe und Beamten sowie auf Mitglieder einer diplomatischen oder konsularischen Vertretung eines dritten Staates, die sich in einem der beiden Staaten aufhalten oder dort ihren Sitz haben und dort nicht mit ihrem Gesamteinkommen und ihrem Gesamtvermögen der Besteuerung unterliegen.

II. Zu Artikel 10:
Solange in Österreich der Satz der Körperschaftsteuer einschließlich der Zuschläge für ausgeschüttete Gewinne niedriger ist als der Steuersatz für nicht ausgeschüttete Gewinne, gilt für Beteiligungen im Sinne des Artikels 10 Absatz 3 das folgende:
a) beträgt der Unterschied in der höchsten Einkommenstufe 10 vom Hundert oder mehr, so dürfen die Dividenden in Österreich besteuert werden; die Steuer darf aber 5 vom Hundert des Bruttobetrages der Dividenden nicht übersteigen;
b) beträgt der Unterschied in der höchsten Einkommenstufe 20 vom Hundert oder mehr, so dürfen die Dividenden in Österreich besteuert werden; die Steuer darf aber 10 vom Hundert des Bruttobetrages der Dividenden nicht übersteigen.

III. Zu den Artikeln 10, 11 und 13:
Anträge auf Rückerstattung einer in Widerspruch mit den Artikeln 10, 11 und 13 erhobenen Steuer müssen innerhalb von drei Jahren nach dem Ende des Kalenderjahres, in dem die Steuer erhoben wurde, gestellt werden.

IV. Zu Artikel 24:
Es besteht Einverständnis darüber, daß, wenn es sich um die niederländische Einkommensteuer oder Körperschaftsteuer handelt, die im ersten Absatz des Artikels 24 bezeichnete Bemessungsgrundlage der „onzuivere inkomen" oder „winst" im Sinne des niederländischen Einkommensteuergesetzes oder Körperschaftsteuergesetzes ist.

V. Zu Artikel 24:
Der in Artikel 24 Absatz 2 a bezeichnete Betrag der österreichischen Steuer errechnet sich für die in Artikel 14 Absatz 5 genannten Gewinne nach einem durchschnittlichen Steuersatz.

VI. Zu Artikel 27:
Die Verpflichtung, Informationen auszutauschen, erstreckt sich nicht auf die von Banken oder ihnen gleichzustellenden Instituten erlangten Informationen. Der Ausdruck „ihnen gleichzustellende Institute" umfaßt unter anderem Versicherungsgesellschaften.

GESCHEHEN zu Wien, am 1. September 1970, in zweifacher Urschrift in deutscher und niederländischer Sprache, wobei beide Texte authentisch sind.

Für die Republik Österreich:
Hammerschmidt

Für das Königreich der Niederlande:
C.W. van Boetzelaer

die verfassungsmäßige Genehmigung des Nationalrates erhalten hat, erklärt der Bundespräsident dieses Abkommen samt Schlußprotokoll für ratifiziert und verspricht im Namen der Republik Österreich die gewissenhafte Erfüllung der darin enthaltenen Bestimmungen.

Zu Urkund dessen ist die vorliegende Ratifikationsurkunde vom Bundespräsidenten unterzeichnet, vom Bundeskanzler, vom Bundesminister für Finanzen und vom Bundesminister für Auswärtige Angelegenheiten gegengezeichnet und mit dem Staatssiegel der Republik Österreich versehen worden.

Geschehen zu Wien, am 22. März 1971

Der Bundespräsident:
Jonas

Der Bundeskanzler:
Kreisky

Der Bundesminister für Finanzen:
Androsch

Der Bundesminister für Auswärtige Angelegenheiten:
Kirchschläger

Die Ratifikationsurkunden zum vorliegenden Abkommen wurden am 21. April 1971 in Den Haag ausgetauscht; somit ist das Abkommen gemäß seinem Abschnitt VII Art. 30 Abs. 2 am gleichen Tag in Kraft getreten.

Kreisky

Abkommen zwischen der Bundesrepublik Deutschland und der Republik Singapur zur Vermeidung der Doppelbesteuerung auf dem Gebiete vom Einkommen und vom Vermögen

SUPPLEMENT TO THE BULLETIN FOR INTERNATIONAL FISCAL DOCUMENTATION
AU BULLETIN DE DOCUMENTATION FISCALE INTERNATIONALE

Vol. XXVI, No. 12. December/décembre 1972

INTERNATIONAL BUREAU OF FISCAL DOCUMENTATION

Muiderpoort – 124 Sarphatistraat – Amsterdam

A double taxation treaty was signed between Germany and Singapore on February 19, 1972. The treaty will be retroactively effective as of January 1, 1968 for German taxes and as of January 1, 1969 for Singapore taxes.

TEXT

Die Bundesrepublik Deutschland und die Republik Singapur,

In dem Wunsch, ein Abkommen zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen zu schließen,
Haben folgendes vereinbart:

Artikel 1
Persönlicher Geltungsbereich

Dieses Abkommen gilt für Personen, die in einem Vertragstaat oder in beiden Vertragstaaten ansässig sind.

Artikel 2
Unter das Abkommen fallende Steuern

(1) Dieses Abkommen gilt, ohne Rücksicht auf die Art der Erhebung, für Steuern vom Einkommen und vom Vermögen, die für Rechnung eines der beiden Vertragstaaten, seiner Länder oder einer ihrer Gebietskörperschaften erhoben werden.

(2) Als Steuern vom Einkommen und vom Vermögen gelten alle Steuern, die vom Gesamteinkommen, vom Gesamtvermögen oder von Teilen des Einkommens oder des Vermögens erhoben werden, einschließlich der Steuern vom Gewinn aus der Veräußerung beweglichen oder unbeweglichen Vermögens sowie der Steuern vom Vermögenszuwachs.

(3) Zu den zur Zeit bestehenden Steuern, für die dieses Abkommen gilt, gehören insbesondere

a) in der Bundesrepublik Deutschland:
die Einkommensteuer einschließlich der Ergänzungsabgabe zur Einkommensteuer,
die Körperschaftsteuer einschließlich der Ergänzungsabgabe zur Körperschaftsteuer,
die Vermögensteuer und
die Gewerbesteuer
(im folgenden als „deutsche Steuer" bezeichnet);

b) in Singapur:
die Einkommensteuer (income tax)
(im folgenden als „singapurische Steuer" bezeichnet).

(4) Dieses Abkommen gilt auch für alle Steuern gleicher oder ähnlicher Art, die künftig neben den zur Zeit bestehenden Steuern oder an deren Stelle erhoben werden.

(5) Die Bestimmungen dieses Abkommens über die Besteuerung des Einkommens oder des Vermögens gelten entsprechend für die nicht nach dem Einkommen oder dem Vermögen berechnete deutsche Gewerbesteuer.

Artikel 3
Allgemeine Definitionen

(1) Im Sinne dieses Abkommens, wenn der Zusammenhang nichts anderes erfordert:

a) bedeutet der Ausdruck „Bundesrepublik Deutschland", im geographischen Sinne verwendet, den Geltungsbereich des Grundgesetzes für die Bundesrepublik Deutschland sowie das an die Hoheitsgewässer der Bundesrepublik Deutschland angrenzende und steuerrechtlich als Inland bezeichnete Gebiet, in dem die Bundesrepublik Deutschland in Übereinstimmung mit dem Völkerrecht ihre Rechte hinsichtlich des Meeresgrundes und des Meeresuntergrundes sowie ihrer Naturschätze ausüben darf;

b) bedeutet der Ausdruck „Singapur" die Republik Singapur und, im geographischen Sinne verwendet, das Hoheitsgebiet von Singapur sowie das an die Hoheitsgewässer Singapurs angrenzende und steuerrechtlich als Inland bezeichnete Gebiet, in dem Singapur in Übereinstimmung mit dem Völkerrecht seine Rechte hinsichtlich des Meeresgrundes und des Meeresuntergrundes sowie ihrer Naturschätze ausüben darf;

c) bedeuten die Ausdrücke „ein Vertragstaat" und „der andere Vertragstaat", je nach dem Zusammenhang, die Bundesrepublik Deutschland oder Singapur;

d) umfaßt der Ausdruck „Person" natürliche Personen, Gesellschaften und alle anderen Personenvereinigungen, die für die Besteuerung wie Rechtsträger behandelt werden;

e) bedeutet der Ausdruck „Gesellschaft" juristische Personen oder Rechtsträger, die für die Besteuerung wie juristische Personen behandelt werden;

f) bedeuten die Ausdrücke „eine in einem Vertragstaat ansässige Person" und „eine in dem anderen Vertragstaat ansässige Person" je nach dem Zusammenhang eine in der Bundesrepublik Deutschland ansässige Person oder eine in Singapur ansässige Person;

g) bedeuten die Ausdrücke „Unternehmen eines Vertragstaates" und „Unternehmen des anderen Vertragstaates", je nach dem Zusammenhang ein Unternehmen, das von einer in einem Vertragstaat ansässigen Person betrieben wird, oder ein Unternehmen, das von einer in dem anderen Vertragstaat ansässigen

Person betrieben wird;
h) bedeutet der Ausdruck „Staatsangehöriger"
aa) in bezug auf die Bundesrepublik Deutschland alle Deutschen im Sinne des Artikels 116 Absatz 1 des Grundgesetzes für die Bundesrepublik Deutschland sowie alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in der Bundesrepublik Deutschland geltenden Recht errichtet worden sind;
bb) in bezug auf Singapur alle singapurischen Staatsangehörigen und alle juristischen Personen, Personengesellschaften und anderen Personenvereinigungen, die nach dem in Singapur geltenden Recht errichtet worden sind;
i) bedeutet der Ausdruck „zuständige Behörde" auf seiten der Bundesrepublik Deutschland den Bundesminister für Wirtschaft und Finanzen und auf seiten Singapurs den Finanzminister oder seinen bevollmächtigten Vertreter.
(2) Bei Anwendung dieses Abkommens durch einen Vertragstaat hat, wenn der Zusammenhang nichts anderes erfordert, jeder nicht anders definierte Ausdruck die Bedeutung, die ihm nach dem Recht dieses Staates über die Steuern zukommt, welche Gegenstand dieses Abkommens sind.

Artikel 4
Steuerlicher Wohnsitz

(1) Im Sinne dieses Abkommens bedeutet der Ausdruck „eine in einem Vertragstaat ansässige Person" eine Person, die nach dem Recht dieses Staates dort auf Grund ihres Wohnsitzes, ihres ständigen Aufenthalts, des Ortes ihrer Geschäftsleitung oder eines anderen ähnlichen Merkmals steuerpflichtig ist.
(2) Ist nach Absatz 1 eine natürliche Person in beiden Vertragstaaten ansässig, so gilt folgendes:
a) Die Person gilt als in dem Vertragstaat ansässig, in dem sie über eine ständige Wohnstätte verfügt. Verfügt sie in beiden Vertragstaaten über eine ständige Wohnstätte, so gilt sie als in dem Vertragstaat ansässig, zu dem sie die engeren persönlichen und wirtschaftlichen Beziehungen hat (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 gewönlichen Aufenthalt hat;
c) Hat die Person ihren gewöhnlichen Aufenthalt in beiden Vertragstaaten oder in keinem der Vertragstaaten, 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) eine Farm oder Plantage,
g) ein Bergwerk, eine Ölquelle, einen Stein-

bruch oder eine andere Stätte der Ausbeutung von Bodenschätzen,
h) eine Bauausführung oder Montage, deren Dauer sechs 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 verarbeitet 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
a) 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;
b) die Person eine Vollmacht besitzt, aus Beständen von Gütern oder Waren des Unternehmens, die sie in diesem Staat unterhält, Bestellungen für das Unternehmen auszuführen, und die Vollmacht in diesem Staat gewöhnlich ausübt.
(5) Ein Unternehmen eines Vertragstaates wird nicht schon deshalb so behandelt, als habe es eine Betriebstätte in dem anderen Vertragstaat, weil es dort seine Tätigkeit durch einen Makler, Kommissionär oder einen anderen unabhängigen Vertreter ausübt, sofern diese Personen im Rahmen ihrer ordentlichen Geschäftstätigkeit handeln.
(6) Allein dadurch, daß eine in einem Vertragstaat ansässige Gesellschaft eine Gesellschaft beherrscht oder von einer Gesellschaft beherrscht wird, die in dem anderen Vertragstaat ansässig ist oder dort (entweder durch eine Betriebstätte oder in anderer Weise) ihre Tätigkeit ausübt, wird eine der beiden Gesellschaften nicht zur Betriebstätte der anderen.

Artikel 6
Unbewegliches 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 Rechte auf veränderliche oder feste Vergütungen für die Ausbeutung oder das Recht auf Ausbeutung von Bergwerken, Ölquellen, Steinbrüchen oder anderen Stätten der Ausbeutung von Bodenschätzen. Schiffe und Luftfahrzeuge gelten nicht als unbewegliches Vermögen.
(3) Absatz 1 gilt für die Einkünfte aus der unmittelbaren Nutzung, der Vermietung oder Verpachtung sowie jeder anderen Art der Nutzung unbeweglichen Vermögens.
(4) Die Absätze 1 und 3 gelten auch für Ein-

künfte 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 Geschäfsführungs- und allgemeinen Verwaltungskosten, zum Abzug zugelassen, gleichgültig, ob sie in dem Staat, in dem die Betriebstätte liegt, oder anderswo entstanden sind.
(4) Auf Grund des bloßen Einkaufs von Gütern oder Waren für das Unternehmen wird einer Betriebstätte kein Gewinn zugerechnet.
(5) 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
Seeschiffe und Luftfahrzeuge

(1) Gewinne eines Unternehmens eines Vertragstaates aus dem Betrieb von Seeschiffen oder Luftfahrzeugen im internationalen Verkehr können nur in diesem Staat besteuert werden.
(2) Absatz 1 gilt entsprechend für Beteiligungen eines Unternehmens, das Seeschiffe oder Luftfahrzeuge im internationalen Verkehr betreibt, an einem Pool, einer Betriebsgemeinschaft oder einem anderen internationalen Betriebszusammenschluß.

Artikel 9
Verbundene Personen

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 de 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 ist, der unmittelbar mindestens 25 vom Hundert des Kapitals der die Dividenden zahlenden Gesellschaft gehören;

b) 15 vom Hundert des Bruttobetrages der Dividenden in allen anderen Fällen.

(3) Ungeachtet des Absatzes 2 darf bei Dividenden, die eine in der Bundesrepublik Deutschland ansässige Gesellschaft an eine in Singapur ansässige Gesellschaft zahlt, der entweder selbst oder zusammen mit anderen Personen, von denen sie beherrscht wird oder die mit ihr gemeinsam beherrscht werden, mindestens 25 vom Hundert des Kapitals der erstgenannten Gesellschaft unmittelbar oder mittelbar gehören, die deutsche Steuer 15 vom Hundert, nicht aber 27 vom Hundert übersteigen, wenn der Satz der deutschen Körperschaftsteuer für ausgeschüttete Gewinne niedriger ist als für nichtausgeschüttete Gewinne und der Unterschied zwischen diesen beiden Sätzen 15 Punkte oder mehr beträgt.

(4) Ungeachtet des Absatzes 2 gilt folgendes: Solange Singapur neben der Steuer vom Gewinn oder Einkommen einer Gesellschaft keine Steuer von Dividenden erhebt, sind die Dividenden, die eine in Singapur ansässige Gesellschaft an eine in der Bundesrepublik Deutschland ansässige Person zahlt, in Singapur von allen Steuern befreit, die neben der Steuer vom Gewinn oder Einkommen der Gesellschaft gegebenenfalls von Dividenden erhoben werden.

Dies gilt mit der Maßgabe, daß dieser Absatz nicht die singapurischen Rechtsvorschriften berührt, nach denen die Steuer für eine Dividende, die eine in Singapur ansässige Gesellschaft zahlt und von der die singapurische Steuer abgezogen worden ist oder als abgezogen gilt, unter Zugrundelegung des Steuersatzes berichtigt werden kann, die für das singapurische Veranlagungsjahr gilt, das auf das Veranlagungsjahr folgt, in dem die Dividende gezahlt worden ist.

(5) Der in diesem Artikel verwendete Ausdruck „Dividenden" bedeutet Einkünfte aus Aktien, 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; er umfaßt die Ausschüttungen von Kapitalanlagegesellschaften sowie in der Bundesrepublik Deutschland die Einkünfte, die ein stiller Gesellschafter aus seiner Beteiligung als stiller Gesellschafter bezieht.

(6) Die Absätze 1 bis 4 sind nicht anzuwenden, wenn der in einem Vertragstaat ansässige Empfänger der Dividenden in dem anderen Vertragstaat, in dem die die Dividenden zahlende Gesellschaft ansässig ist, eine Betriebstätte hat und die Beteiligung, für die die Dividenden gezahlt werden, tatsächlich zu dieser Betriebstätte gehört. In diesem Fall ist Artikel 7 anzuwenden.

(7) 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 von einer in dem anderen Vertragstaat ansässigen Person bezogen werden, können in dem anderen Staat besteuert werden.
(2) Diese Zinsen können jedoch in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden; die Steuer darf aber 10 vom Hundert des Betrages der Zinsen nicht übersteigen.
(3) Ungeachtet des Absatzes 2 sind Zinsen, die aus einem Vertragstaat stammen, in diesem Staat von der Steuer befreit, wenn die Zinsen bezogen werden von
a) dem anderen Vertragstaat, einem seiner Länder oder einer ihrer Gebietskörperschaften oder
b) im Falle der Bundesrepublik Deutschland von der Deutschen Bundesbank, der Kreditanstalt für Wiederaufbau oder der Deutschen Gesellschaft für wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) und im Falle Singapurs vom Board of Commissioners of Currency oder von der Monetary Authority of Singapore.
Die zuständigen Behörden der Vertragstaaten bestimmen im gegenseitigen Einvernehmen alle sonstigen staatlichen Einrichtungen, auf die dieser Absatz Anwendung findet.
(4) Der in diesem Artikel verwendete Ausdruck „Zinsen" bedeutet Einkünfte aus öffentlichen Anleihen, aus Schuldverschreibungen, auch wenn sie durch Pfandrechte an Grundstücken gesichert oder mit einer Gewinnbeteiligung ausgestattet sind, und aus Forderungen jeder Art sowie alle anderen Einkünfte, die nach dem Steuerrecht des Staates, aus dem sie stammen, den Einkünften aus Darlehen gleichgestellt sind.
(5) Die Absätze 1 bis 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, einers seiner Länder oder eine ihrer Gebietskörperschaften 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 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 von einer in dem anderen Vertragstaat ansässigen Person bezogen wer-

den, können nur in dem anderen Staat besteuert werden.
(2) Ungeachtet des Absatzes 1 können Lizenzgebühren, die für die Benutzung oder das Recht auf Benutzung von Urheberrechten an literarischen oder künstlerischen Werken einschließlich kinematographischer Filme oder Bandaufnahmen für Fernsehen oder Rundfunk gezahlt werden, in dem Vertragstaat, aus dem sie stammen, nach dem Recht dieses Staates besteuert werden.
(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 oder Bandaufnahmen für Fernsehen oder Rundfunk, von Patenten, Warenzeichen, Mustern oder Modellen, Plänen, geheimen Formeln oder Verfahren der für die Benutzung oder das Recht auf Benutzung gewerblicher, kaufmännischer oder wissenschaftlicher Ausrüstungen oder für die Mitteilung gewerblicher, kaufmännischer oder wissenschaftlicher Erfahrungen gezaht 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, die eine in einem Vertragstaat ansässige Person bezieht, gelten als aus dem anderen Vertragstaat stammend, wenn die Lizenzgebühren nach dem Recht des anderen Staates aus diesem Staat stammen.
(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, einschließlich derartiger Gewinne, die bei der Veräußerung einer solchen Betriebstätte (allein oder zusammen mit dem übrigen Unternehmen) 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 nichtgenannten Vermögens können nur in dem Vertragstaat besteuert werden, in dem der Veräußerer ansässig ist.

Artikel 14
Arbeit

(1) Vorbehaltlich der Artikel 15 bis 19 kön-

nen Gehälter, Löhne und ähnliche Vergütungen, die eine in einem Vertragstaat ansässige Person aus Arbeit (einschließlich eines freien Berufes) 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 Arbeit bezieht, nur in dem erstgenannten Staat besteuert werden, wenn

a) der Empfänger sich in dem anderen Staat insgesamt nicht länger als 183 Tage während des Kalenderjahres aufhält;

b) die Vergütungen von einer Person oder für eine Person gezahlt werden, die nicht in dem anderen Staat ansässig ist;

c) die Vergütungen nicht von einer Betriebstätte getragen werden, die die Person, welche die Vergütungen zahlt, in dem anderen Staat hat, und

d) die Vergütungen in dem erstgenannten Staat besteuert werden.

(3) Ungeachtet des Absatzes 1 können Vergütungen, die eine in einem Vertragstaat ansässige Person für unselbständige Arbeit bezieht, die an Bord eines Seeschiffes oder Luftfahrzeuges im internationalen Verkehr ausgeübt wird, nur in diesem Staat besteuert werden.

Artikel 15
Berufsmäßige Künstler und Sportler

(1) Artikel 14 Absatz 2 findet auf Gehälter, Löhne und ähnliche Vergütungen für Arbeit (einschließlich eines freien Berufes), die berufsmäßige Künstler (wie Bühnen-, Film-, Rundfunk- oder Fernsehkünstler und Musiker) oder Sportler in einem Vertragstaat ausüben, nur dann Anwendung, wenn der Besuch dieses Vertragstaates aus einem Sondervermögen, das von dem anderen Vertragstaat, einem seiner Länder oder einer ihrer Gebietskörperschaften errichtet worden ist, unmittelbar oder mittelbar in wesentlichem Umfang unterstützt wird.

(2) Erbringt ein Unternehmen eines Vertragstaates in dem anderen Vertragstaat die in Absatz 1 erwähnten Leistungen, so können die Gewinne aus dem Erbringen dieser Leistungen durch ein solches Unternehmen ungeachtet anderer Bestimmungen dieses Abkommens in dem anderen Staat besteuert werden, es sei denn, daß das Erbringen dieser Leistungen durch ein solches Unternehmen unmittelbar oder mittelbar aus einem Sondervermögen, das von dem erstgenannten Staat, einem seiner Länder oder einer ihrer Gebietskörperschaften errichtet worden ist, in wesentlichem Umfang unterstützt wird.

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
Ruhegehälter

Ruhegehälter und ähnliche Vergütungen, die einer in einem Vertragstaat ansässigen Person für frühere unselbständige Arbeit gezahlt werden, können nur in diesem Staat besteuert werden.

Artikel 18
Öffentliche Kassen

(1) Vorbehaltlich des Artikels 17 können Vergütungen, die von einem Vertragstaat, einem seiner Länder oder einer ihrer Gebietskörperschaften unmittelbar oder aus einem von dem Vertragstaat, einem seiner Länder oder einer ihrer Gebietskörperschaften errichteten Sondervermögen an eine natürliche Person für eine unselbständige Arbeit gezahlt werden, nur in diesem Staat besteuert werden. Wird aber die unselbstandige Arbeit in dem anderen Vertragstaat von einer in diesem Staat ansässigen Person ausgeübt, die nicht Staatsangehöriger des erstgenannten Staates ist, so können die Vergütungen nur in diesem andern Staat besteuert werden.

(2) Auf Vergütungen für unselbständige Arbeit, die im Zusammenhang mit einer auf Gewinnerzielung gerichteten gewerblichen Tätigkeit eines Vertragstaates, eines seiner Länder oder einer ihrer Gebietskörperschaften geleistet wird, finden die Artikel 14 bis 16 Anwendung.

Artikel 19
Lehrer, Studenten und andere in der Ausbildung stehende Personen

(1) Hochschullehrer oder Lehrer, die in einem Vertragstaat ansässig sind oder unmittelbar vorher dort ansässig waren, und die sich für höchstens zwei Jahre zwecks fortgeschrittener Studien oder Forschungsarbeiten oder zwecks Ausübung einer Lehrtätigkeit an einer anerkannten Universität, Hochschule oder anderen änhlichen, nicht auf Gewinnerzielung gerichteten Anstalt in den anderen Vertragstaat begeben, werden in dem anderen Staat mit ihren Vergütungen für diese Arbeit nicht besteuert, vorausgesetzt, daß sie diese Vergütungen von außerhalb dieses anderen Staates beziehen.

(2) Ist eine natürliche Person in einem Vertragstaat ansässig, unmittelbar bevor sie sich in den anderen Vertragstaat begibt, und hält sie sich in dem anderen Staat lediglich als Student einer Universität, Hochschule, Schule oder anderen ähnlichen Lehranstalt dieses anderen Staates oder als Lehrling (in der Bundesrepublik Deutschland einschließlich der Volontäre oder Praktikanten) vorübergehend auf, so ist sie vom Tage ihrer ersten Ankunft in dem anderen Staat im Zusammenhang mit diesem Aufenthalt von der Steuer dieses anderen Staates befreit:
a) hinsichtlich aller für ihren Unterhalt, ihre Erziehung oder ihre Ausbildung bestimmten Überweisungen aus dem Ausland, und
b) während der Dauer von höchstens drei Jahren, hinsichtlich aller Vergütungen bis zu 6000 DM oder deren Gegenwert in singapurischen Dollar je Kalenderjahr für Arbeit, die sie in dem anderen Vertragstaat ausübt, um die Mittel für ihre Erziehung oder ihre Ausbildung zu ergänzen.

(3) Ist eine natürliche Person in einem Vertragstaat ansässig, unmittelbar bevor sie sich in den anderen Vertragstaat begibt, und hält sie sich in dem anderen Staat lediglich zum Studium, zur Forschung oder zur Ausbildung als Empfänger eines Zuschusses, Unterhaltsbeitrags oder Stipendiums einer wissenschaftlichen, pädagogischen, religiösen oder mildtätigen Organisation oder im Rahmen eines Programms für technische Hilfe, an dem die Regierung eines Vertragstaates beteiligt ist, vorübergehend auf, so ist sie während der Dauer von höchstens zwei Jahren vom Tage ihrer ersten Ankunft in dem anderen Staat im Zusammenhang mit diesem Aufenthalt von der Steuer dieses anderen Staates befreit hinsichtlich:
a) dieses Zuschusses, Unterhaltsbeitrags oder Stipendiums,
b) aller für ihren Unterhalt, ihre Erziehung oder ihre Ausbildung bestimmten Über-

weisungen aus dem Ausland, und
c) aller Vergütungen bis zu 6000 DM oder deren Gegenwert in singapurischen Dollar je Kalenderjahr für Arbeit, die sie in diesem anderen Staat ausübt, sofern die Arbeit zu ihrem Studium, ihrer Forschung oder ihrer Ausbildung gehört.

Artikel 20
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.

Artikel 21
Begrenzung der Befreiung

Wenn auf Grund einer Bestimmung dieses Abkommens Einkünfte, die aus einem Vertragstaat stammen und bei denen es sich nicht um Zinsen handelt, die unter Artikel 11 Absatz 3 fallen, in diesem Staat von der Steuer befreit sind, und wenn nach dem in dem anderen Vertragstaat geltenden Recht diese Einkünfte unter Zugrundelegung des Betrages besteuert werden, der in den anderen Staat überwiesen oder dort bezogen wird, nicht aber unter Zugrundelegung des Gesamtbetrags der Einkünfte, ist die nach diesem Abkommen in dem erstgenannten Staat zu gewährende Befreiung nur auf den Teil der Einkünfte anzuwenden, der in den anderen Staat überwiesen oder dort bezogen wird.

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 einer Unternehmens darstellt, kann in dem Vertragstaat besteuert werden, in dem sich die Betriebstätte befindet.
(3) Seeschiffe und Luftfahrzeuge, die von einem Unternehmen eines Vertragstaates im internationalen Verkehr betrieben werden, sowie bewegliches Vermögen, das dem Betrieb dieser Schiffe und Luftfahrzeuge dient, können nur in diesem Staat besteuert werden.
(4) Alle anderen Vermögensteile einer in einem Vertragstaat ansässigen Person können nur in diesem Staat besteuert werden.

Artikel 23
Befreiung von der Doppelbesteuerung

(1) Bei einer in der Bundesrepublik Deutschland ansässigen Person wird die Steuer wie folgt festgesetzt:
a) Soweit nicht Buchstabe b anzuwenden ist, werden von der Bemessungsgrundlage der deutschen Steuer die Einkünfte aus Singapur sowie die in Singapur gelegenen Vermögenswerte ausgenommen, die nach diesem Abkommen in Singapur besteuert werden können. Die Bundesrepublik Deutschland behält aber das Recht, die auf diese Weise ausgenommenen Einkünfte und Vermögenswerte bei der Festsetzung des Steuersatzes zu berücksichtigen. Auf Dividenden sind die vorstehenden Bestimmungen dieses Buchstabens nur anzuwenden, wenn die Dividenden an eine in der Bundesrepublik Deutschland ansässige Gesellschaft von einer in Singapur ansässigen Gesellschaft gezahlt werden, deren Kapital zu mindestens 25 vom Hundert unmittelbar der deutschen Gesellschaft gehört. Von der Bemessungsgrundlage der deutschen Steuer werden ebenfalls Beteiligungen ausgenommen, deren Dividenden, falls solche gezahlt werden, nach dem vorhergehenden Satz von der Steuerbemessungsgrundlage auszunehmen wären.

b) Auf die von den nachstehenden Einkünften aus Singapur zu erhebende deutsche Einkommensteuer und Körperschaftsteuer wird unter Beachtung der Vorschriften des deutschen Steuerrechts über die Anrechnung ausländischer Steuern die singapurische Steuer angerechnet, die nach singapurischem Recht und in Übereinstimmung mit diesem Abkommen gezahlt worden ist für:

aa) Dividenden, die nicht unter Buchstabe a fallen;

bb) Zinsen, die unter Artikel 11 Absatz 2 fallen;

cc) Lizenzgebühren, die unter Artikel 12 Absatz 2 fallen;

dd) Einkünfte, die unter Artikel 15 fallen;

ee) Vergütungen, die unter Artikel 16 fallen.

Der anzurechnende Betrag darf jedoch nicht den Teil der vor der Anrechnung ermittelten deutschen Steuer übersteigen, der auf diese Einkünfte entfällt.

c) Für die Zwecke der in Buchstabe b erwähnten Anrechnung gilt folgendes: Ist der Satz der singapurischen Steuer auf Zinsen, die unter Artikel 11 Absatz 2 fallen, auf Grund von Sondermaßnahmen zur Förderung der wirtschaftlichen Entwicklung in Singapur auf weniger als 10 vom Hundert des Bruttobetrags der Zinsen ermäßigt worden, so wird so verfahren, als habe die singapurische Steuer 10 vom Hundert des Bruttobetrages der Zinsen betragen.

d) Für die Zwecke der Besteuerung der nicht unter Artikel 12 Absatz 2 fallenden Lizenzgebühren gilt folgendes: Wären diese Lizenzgebühren, abgesehen von der Befreiung nach Artikel 12 Absatz 1, auf Grund von Sondermaßnahmen zur Förderung der wirtschaftlichen Entwicklung in Singapur von der singapurischen Steuer befreit, so wird für die Zwecke des Buchstabens b ein Betrag in Höhe von 10 vom Hundert des Bruttobetrags der Lizenzgebühren angerechnet.

(2) Bei einer in Singapur ansässigen Person wird die Steuer wie folgt festgesetzt:

a) Auf die singapurische Steuer, die von den aus der Bundesrepublik Deutschland stammenden Einkünften und den in der Bundesrepublik Deutschland gelegenen Vermögenswerten erhoben wird, wird unter Beachtung der Vorschriften des singapurischen Steuerrechts über die Anrechnung ausländischer Steuern die deutsche Steuer angerechnet, die nach dem Recht der Bundesrepublik Deutschland und in Übereinstimmung mit diesem Abkommen gezahlt worden ist.

Der anzurechnende Betrag darf jedoch nicht den Teil der vor der Anrechnung ermittelten singapurischen Steuer übersteigen, der auf diese Einkünfte entfällt.

b) Handelt es sich bei diesen Einkünften um Dividenden, die eine in der Bundesrepublik Deutschland ansässige Gesellschaft an eine in Singapur ansässige Gesellschaft zahlt, der unmittelbar oder mittelbar mindestens 25 vom Hundert des Kapitals der deutschen Gesellschaft gehören, so wird bei der Anrechnung (neben der deutschen Steuer auf Dividenden) die deutsche Körperschaftsteuer berücksichtigt, die von der die Dividenden zahlenden Gesellschaft auf ihren Gewinn zu entrichten ist.

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) 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, der Familienlasten oder sonstiger persönlicher Verhältnisse zu gewähren, die er den in seinem Gebiet ansässigen Personen gewährt.
(3) 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 Staat 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.

Artikel 25
Verständigungsverfahren

(1) Ist eine in einem Vertragstaat ansässige Person der Auffassung, daß die Maßnahmen eines Vertragstaates oder beider Vertragstaaten für sie zu einer Besteuerung geführt haben oder führen werden, die diesem Abkommen nicht entspricht, so kann sie unbeschadet der nach innerstaatlichem Recht dieser Staaten vorgesehenen Rechtsmittel ihren Fall der zuständigen Behörde des Vertragstaates unterbreiten, in dem sie ansässig ist.
(2) Hält diese zuständige Behörde die Einwendung für begründet und ist sie selbst nicht in der Lage, eine befriedigende Lösung herbeizuführen, so wird sie sich bemühen, den Fall durch Verständigung mit der zuständigen Behörde des anderen Vertragstaates so zu regeln, daß eine dem Abkommen nicht entsprechende Besteuerung vermieden wird.
(3) Die zuständigen Behörden der Vertragstaaten werden sich bemühen, Schwierigkeiten oder Zweifel, die bei der Auslegung oder Anwendung des Abkommens entstehen, in gegenseitigem Einvernehmen zu beseitigen. Sie können auch gemeinsam darüber beraten, wie eine Doppelbesteuerung in Fällen, die in dem Abkommen nicht behandelt sind, vermieden werden kann.
(4) Die zuständigen Behörden der Vertragstaaten können zum Zwecke der Anwendung des Abkommens unmittelbar miteinander verkehren.

Artikel 26
Austausch von Informationen

(1) Die zuständigen Behörden der Vertragstaaten werden die Informationen austauschen, die zur Durchführung dieses Abkommens erforderlich sind. Alle so ausgetauschten Informationen sind geheimzuhalten und dürfen nur solchen Personen, Behörden oder Gerichten zugänglich gemacht werden, die mit der Veranlagung oder Erhebung der unter das Abkommen fallenden Steuern oder strafrechtlicher Verfolgung in bezug auf diese Steuern befaßt sind.
(2) Absatz 1 ist auf keinen Fall so auszulegen, als verpflichte er einen der Vertragstaaten:
a) Verwaltungsmaßnahmen durchzuführen, die von den Gesetzen oder der Verwaltungspraxis dieses oder des anderen Vertragstaates abweichen;
b) Angaben zu übermitteln, die nach den Gesetzen oder im üblichen Verwaltungsverfahren dieses oder des anderen Vertragstaates nicht beschafft werden können;
c) Informationen zu erteilen, die ein Han-

dels-, Geschäfts-, Gewerbe- oder Berufsgeheimnis oder ein Geschäftsverfahren preisgeben würden oder deren Erteilung der öffentlichen Ordnung widerspräche.

Artikel 27
Diplomatische und konsularische Vorrechte

Dieses Abkommen berührt nicht die diplomatischen und konsularischen Vorrechte nach den allgemeinen Regeln des Völkerrechts oder auf Grund besonderer internationaler Vereinbarungen.

Artikel 28
Land Berlin

Dieses Abkommen gilt auch für das Land Berlin, sofern nicht die Regierung der Bundesrepublik Deutschland gegenüber der Regierung der Republik Singapur innerhalb von drei Monaten nach Inkrafttreten des Abkommens eine gegenteilige Erklärung abgibt.

Artikel 29
Inkrafttreten

(1) Dieses Abkommen bedarf der Ratifikation; die Ratifikationsurkunden sollen so bald wie möglich in Bonn ausgetauscht werden.
(2) Dieses Abkommen tritt am Tage nach dem Austausch der Ratifikationsurkunden in Kraft und ist anzuwenden:
a) in der Bundesrepublik Deutschland auf die Steuern, die für die am oder nach dem 1. Januar 1968 beginnenden Veranlagungszeiträume erhoben werden;
b) in Singapur auf die Steuern, die für die am oder nach dem 1. Januar 1969 beginnenden Veranlagungsjahre erhoben werden.

Artikel 30
Außerkrafttreten

Dieses Abkommen bleibt auf unbestimmte Zeit in Kraft, jedoch kann jeder der Vertragstaaten bis zum dreißigsten Juni eines jeden Kalenderjahres nach Ablauf von fünf Jahren, vom Tage des Inkrafttretens an gerechnet, das Abkommen gegenüber dem anderen Vertragstaat auf diplomatischem Wege schriftlich kündigen; in diesem Fall ist das Abkommen nicht mehr anzuwenden:
a) in der Bundesrepublik Deutschland auf die Steuern, die für den Veranlagungszeitraum, der auf den Veranlagungszeitraum folgt, in dem die Kündigung ausgesprochen wird, und für die folgenden Veranlagungszeiträume erhoben werden;
b) in Singapur auf die Steuern, die für das Veranlagungsjahr, das auf das Jahr nach dem Kündigungsjahr folgt, und für die folgenden Veranlagungsjahre erhoben werden.

Zu urkund dessen haben die hierzu von ihren Regierungen gehörig befugten Unterzeichneten dieses Abkommen unterschrieben.

Geschehen zu Singapur am 19. Februar 1972 in vier Urschriften, je zwei in deutscher und englischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist.

Für die Bundesrepublik Deutschland
WILHELM LÖER

Für die Republik Singapur
DR. HON SUI SEN

PROTOKOLL

Die Bundesrepublik Deutschland und die Republik Singapur

Haben anläßlich der Unterzeichnung des Abkommens zwischen den beiden Staaten zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen am 19. Februar 1972 in Singapur die nachstehenden Bestimmungen vereinbart, die Bestandteile des Abkommens bilden.

(1) *Zu Artikel 5:*
Es wird davon ausgegangen, daß ein Unternehmen eines Vertragstaates so behandelt wird, als habe es eine Betriebstätte in dem anderen Vertragstaat, wenn es in dem anderen Staat für die Dauer von mehr als sechs Monaten eine überwachende Tätigkeit im Zusammenhang mit einer Bauausführung oder Montage ausübt, die in diesem anderen Staat vorgenommen wird.

(2) *Zu den Artikeln 8 und 22:*
Die Artikel 8 und 22 des Abkommens finden auf die Einkünfte, die eine in Singapur ansässige Gesellschaft oder Personenvereinigung, die für die Besteuerung wie ein Rechtsträger behandelt wird, aus der Bundesrepublik Deutschland bezieht, und auf die in der Bundesrepublik Deutschland gelegenen Vermögenswerte, die einer solchen Gesellschaft oder Personenvereinigung gehören, deren Kapital zu mehr als 50 vom Hundert unmittelbar oder mittelbar in Singapur nicht ansässigen Personen gehört, nur dann Anwendung, wenn diese Gesellschaft oder Personenvereinigung nachweist, daß die auf die Einkünfte entfallende singapurische Steuer der Höhe nach der singapurischen Steuer entspricht, die auf diese Einkünfte entfallen wäre, wenn die singapurische Steuer ohne Berücksichtigung von Bestimmungen ermittelt würde, die mit Section 13A der Singapore Income Tax Ordinance in der Fassung des Income Tax (Amendment) Act, 1969, übereinstimmen oder ihr entsprechen.

(3) *Zu Artikel 23:*
Ungeachtet des Artikels 23 Absatz 1 Buchstabe a des Abkommens gilt Absatz 1 Buchstabe b des genannten Artikels entsprechend für die Gewinne einer Betriebstätte und für das Vermögen, das Betriebsvermögen einer Betriebstätte darstellt; für die von einer Gesellschaft gezahlten Dividenden und für die Beteiligung an einer Gesellschaft; oder für die in Artikel 13 Absatz 2 des Abkommens erwähnten Gewinne, es sei denn, daß die in der Bundesrepublik Deutschland ansässige Person nachweist, daß die Einnahmen der Betriebstätte oder Gesellschaft ausschließlich oder fast ausschließlich stammen:
a) aus einer der folgenden innerhalb Singapurs ausgeübten Tätigkeiten: aus der Herstellung oder dem Verkauf von Gütern oder Waren, aus technischer Dienstleistung oder aus Bank- oder Versicherungsgeschäften oder
b) aus Dividenden, die von einer oder mehreren in Singapur ansässigen Gesellschaften gezahlt werden, deren Kapital zu mehr als 25 vom Hundert der erstgenannten Gesellschaft gehört und die ihre Einkünfte wiederum ausschließlich oder fast ausschließlich aus einer der folgenden innerhalb Singapurs ausgeübten Tätigkeiten beziehen: aus der Herstellung oder dem Verkauf von Gütern oder Waren, aus technischer Dienstleistung oder aus Bank- oder Versicherungsgeschäften.

Für die Bundesrepublik Deutschland

WILHELM LÖER

Für die Republik Singapur

DR. HON SUI SEN