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LEAGUE OF NATIONS

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# DOUBLE TAXATION

AND

# TAX EVASION

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REPORT

PRESENTED BY THE

Committee of Technical Experts on Double Taxation  
and Tax Evasion

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LETTER ADDRESSED BY THE CHAIRMAN OF THE COMMITTEE OF TECHNICAL  
EXPERTS ON DOUBLE TAXATION AND TAX EVASION TO THE CHAIRMAN  
OF THE FINANCIAL COMMITTEE

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London, April 12th, 1927.

The Committee on Double Taxation and Tax Evasion had been instructed to prepare draft conventions based on the resolutions adopted by the technical experts in February 1925 with a view to the avoidance of double taxation and the prevention of tax evasion. In pursuance of these instructions, the four annexed draft Conventions have been drawn up, and I have now the honour to submit them to the Financial Committee of the League of Nations.

The Committee on Double Taxation and Tax Evasion is fully conscious that the work which it has just concluded is imperfect in that it does not provide solutions for all the difficulties which may arise in this very complex question. But, having regard to the diversity of the legislative systems represented in the Committee, and the necessity for finding formulae capable of acceptance by everyone, it will be recognised that the experts were bound to confine themselves to indicating general rules, leaving particular points of difficulty to be dealt with — in the spirit of the accepted general principles — by those on whom the task of negotiating the bilateral conventions will ultimately fall.

The Committee on Double Taxation and Tax Evasion accordingly considers that it should not delay presenting its conclusions, and that the results which it has obtained can be utilised forthwith by Governments desirous of concluding conventions in the near future.

It is in the light of these considerations that the Committee on Double Taxation and Tax Evasion has drawn up the annexed report, which it has the honour to submit herewith to the Financial Committee.

(Signed) Pasquale d'AROMA.

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**REPORT PRESENTED TO THE FINANCIAL COMMITTEE  
OF THE LEAGUE OF NATIONS BY THE COMMITTEE OF TECHNICAL EXPERTS  
ON DOUBLE TAXATION AND TAX EVASION**

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London, April 12th, 1927.

INTRODUCTION.

In presenting its general and final report, the Committee of technical Experts on Double Taxation and Tax Evasion thinks it desirable briefly to recall the development of the League of Nations work in this matter.

The International Financial Conference held at Brussels in 1920 recommended that the League of Nations should take up the question of double taxation<sup>1</sup>. The Financial Committee, to which the question was referred, towards the end of 1920 entrusted the theoretical study of Double Taxation to four economists, M. BRUINS, M. EINAUDI, M. SELIGMAN and Sir Josiah STAMP, whose report (document F. 19) was published in March 1923.

Meanwhile, the International Economic Conference, which had met at Genoa in April 1922, recommended that the League of Nations should also examine the problem of the *flight of capital*<sup>2</sup>.

In June 1922, the Financial Committee decided to have both questions, namely, double taxation and tax evasion, studied from an administrative and practical point of view. It entrusted this work to a group of high officials of the fiscal administrations of various countries, namely M. CLAVIER, M. BAUDOIN-BUGET (subsequently replaced by M. BORDUGE), Sir Percy THOMPSON (temporarily replaced by Mr. G. B. CANNY), Professor Pasquale d'AROMA, Dr. SINNINGHE DAMSTÉ, M. BLAU and Dr. VALNICEK.

Notwithstanding the great difficulties of the question, these experts, after holding several meetings, agreed upon a series of Resolutions which they submitted, together with a general report, to the Financial Committee in *February* 1925 (document F. 212).

The Financial Committee, in its report dated June 1925, expressed its agreement with the main lines of the experts' Resolutions, but urged the importance, in any future enquiries, of taking into consideration "the disadvantage of placing any obstacles in the way of the international circulation of capital, which is one of the conditions of public prosperity and world economic reconstruction".

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<sup>1</sup> *Recommendations of the Brussels Conference.*

Resolution proposed by the Commission on International Credits, No. 12 :

"Apart from the above-mentioned proposals . . . the Conference believes that the activities of the League of Nations might usefully be directed towards promoting certain reforms and collecting the relevant information required to facilitate credit operations. In this connection the Conference considers it well to draw attention to the advantages of making progress under each of the following heads. . . . An international understanding which, while ensuring the due payment by everyone of his full share of taxation, would avoid the imposition of double taxation which is at present an obstacle to the placing of investments abroad."

<sup>2</sup> *Recommendations of the Genoa Conference.*

Resolution proposed by the Financial Commission, No. 13 :

"We have considered what action, if any, could be taken to prevent the flight of capital in order to avoid taxation, and we are of the opinion that any proposals to interfere with the freedom of the market for exchange ; or to violate the secrecy of bankers' relations with their customers are to be condemned. Subject to this proviso, we are of the opinion that the question of measures for international co-operation to prevent tax evasion might be usefully studied in connection with the problem of double taxation which is now being studied by a Committee of experts on behalf of the League of Nations. We therefore suggest that the League of Nations should be invited to consider it."

As regards the future progress of their work, the experts suggested, in their report dated February 1925, that the Committee should be enlarged, and that it should be requested to prepare preliminary draft conventions on the basis of the Resolutions of 1925.

This recommendation was supported by the Financial Committee and approved by the Council, which authorised the Secretary-General to issue the necessary invitations. Consequently the following Committee was constituted :

- Argentine* : Dr. Salvador ORIA, late Secretary of State in the Ministry of Finance, Member of the Board of the National Mortgage Bank.  
Replaced at the third session by M. Julian ENCISO, Councillor of Legation, Geneva.
- Belgium* : M. Ch. CLAVIER, Director-General of Direct Taxation and Land Survey in the Ministry of Finance.
- Czechoslovakia* : Dr. Vladimír VALNICEK, Chief of Section in the Ministry of Finance.  
Replaced at the third session by H.E. Dr. Bohumil VLASAK, Minister Plenipotentiary, Head of Department in the Ministry of Finance.
- France* : M. BORDUGE, Councillor of State, Director-General of Taxation and Registration, Ministry of Finance.
- Germany* : Dr. Herbert DORN, Director in the Ministry of Finance.
- Great Britain* : Sir Percy THOMPSON, Deputy Chairman, Board of Inland Revenue.
- Italy* : Professor Pasquale d'AROMA, Vice-Governor of the Bank of Italy, late Director-General in the Ministry of Finance.  
Assistant : Dr. Gino BOLAFFI, Head of Section in the Ministry of Finance, Department of Direct Taxation.
- Japan* : Mr. Kengo MORI, Financial Commissioner of Japan in London.  
Replaced by Mr. Takashi AOKI, Representative in London of the Bank of Japan.  
Assistant : M. YAMAJI, Japanese Delegation to the Reparation Commission.
- Netherlands* : Dr. J. H. R. SINNINGHE DAMSTÉ, Director-General of Taxation.  
For Colonial questions : Dr. L. J. VAN DER WAALS, Director in the Colonial Department.
- Poland* : Professor Stefan ZALESKI, Professor of Political Economy at the University at Posen.  
Assistant (for questions of succession duties): M. Edouard WERNER, Head of Department, Ministry of Finance.
- Switzerland* : M. Hans BLAU, Director of the Federal Taxation Department.
- United States of America* : Professor Thomas S. ADAMS, President of the American Economic Association, former Economic Adviser to the U.S.A. Treasury Department, Professor at Yale University.  
Assistants :  
Mr. Mitchell B. CARROLL, Chief of Tax Section, Department of Commerce ;  
Miss Annabel MATTHEWS, Attorney, attached to the Board of Inland Revenue, Treasury Department.
- Venezuela* : Dr. Federico Alvarez FEO, Professor of Finance at the University of Caracas.

It should be mentioned here that, although the members of the Committee are nominated by their respective Governments, they only speak in their capacity as experts, *i.e.*, in their own name.

The Committee has suffered a great loss by the sudden death in December 1926 of Dr. Vladimir VALNICEK, who had served on the technical expert committee since its formation in 1923. The members of the Committee desire to take this opportunity of paying a tribute to their colleague and friend, who, owing to his wide experience, afforded the most valuable assistance to the Committee.

The Committee has held three sessions :

First Session — Geneva, May 17th to 22nd, 1926.

Second Session — Geneva, January 5th to 12th, 1927.

Third Session — London, April 5th to 12th, 1927.

With the authorisation of the Council of the League of Nations, the International Chamber of Commerce was invited to send a delegation to assist in an advisory capacity at the experts' meetings. The delegation consisted of :

M. Robert JULLIARD, President of the Comptoir d'Escompte of Geneva, Chairman of the Double Taxation Committee of the International Chamber of Commerce.

At the first session only :

Mr. George O. MAY, Senior Partner in Messrs. Price, Waterhouse & Co., New York, Chartered Accountants, member of the Double Taxation Committee of the National American Committee of the International Chamber of Commerce.

At the second and third sessions :

M. Jean DUCHENOIS, Doctor of Law, member of the Double Taxation Committee of the International Chamber of Commerce.

At the third session :

Sir Algernon FIRTH, Bart., Ex-President of the Association of British Chambers of Commerce, member for Great Britain on the Double Taxation Committee of the International Chamber of Commerce, Chairman of the Committee on Double Taxation of the British National Committee of the International Chamber of Commerce.

The experts thank the delegation of the International Chamber of Commerce, whose presence at their discussions on double taxation was of much value ; they greatly appreciate the spirit of wholehearted co-operation displayed by the delegation and are grateful for the valuable assistance given.

The Advisory and Technical Committee for Communications and Transit having expressed the desire to explain its views with regard to measures for avoiding double taxation in connection with maritime and inland navigation companies, the Committee of Experts, at its *first session*, heard the following delegates :

M. SUGIMURA, Chairman of the Advisory and Technical Committee for Communications and Transit ;

M. CLEMINSON, Director of the Chamber of Shipping of the United Kingdom ;

M. PALANCA, Manager of the Navigazione Generale Italiana ; and

M. WEINBRENNER, Financial Manager of the Danube Navigation Company.

The experts much appreciated the valuable assistance given by these representatives of large organisations, particularly well qualified to examine the very special and complex questions which arise in connection with the taxation of navigation companies.

As already stated, the new Committee of technical Experts was asked to consider whether it would be possible to draw up preliminary draft conventions on the basis of the February 1925 Resolutions. At its first session, the Committee began its work by reviewing the Resolutions proposed in February 1925, and examined these in detail. It appeared that the Resolutions as a whole met with general approval, including also the approval of those experts who had not taken part in the previous work. Such changes of text as seemed desirable related to points of detail only, and were, moreover, unanimously approved.

Further, the Committee endeavoured to prepare draft conventions on the basis of these Resolutions. It was considered expedient to divide up the subject-matter into four separate conventions. The question of double taxation has to be treated in two conventions :

(a) Draft Convention for the Prevention of Double Taxation.

(b) Draft Convention for the Prevention of Double Taxation in the special matter of Succession Duties.

The question of tax evasion has also to be dealt with in two conventions :

(c) Draft Convention on Administrative Assistance in Matters of Taxation,

(d) Draft Convention on Judicial Assistance in the Collection of Taxes.

A question discussed at great length by the Committee was, whether the Conventions should be *collective*, that is, signed by as many States as possible, or whether they should be merely *bilateral*.

It would certainly be desirable that the States should conclude collective conventions, or even a single convention embodying all the others. Nevertheless, the Committee did not feel justified in recommending the adoption of this course. In the matter of double taxation in particular, the fiscal systems of the various countries are so fundamentally different that it seems at present practically impossible to draft a collective convention, unless it were worded in such general terms as to be of no practical value. In the matter of tax evasion also, although unanimity would not seem to be unattainable, there is no doubt that the accession of all countries to a single Convention could only be obtained as the result of prolonged and delicate negotiations, while there is no reason to delay the putting into force of bilateral conventions which would immediately satisfy the legitimate interests of the tax-payers as well as those of the Contracting States.

For this reason, the Committee preferred to draw up standard bilateral conventions. If these texts are used by Governments in concluding such conventions, a certain measure of uniformity will be introduced in international fiscal law and, at a later stage of the evolution of that law, a system of general conventions may be established which will make possible the unification and codification of the rules previously laid down.

Such are the four draft bilateral Conventions which the experts have the honour to submit to the Financial Committee. Detailed commentaries on them will be found in the following pages, as well as in the Report (document F. 212) attached to the text of the Resolutions adopted in February 1925. This report contains important considerations on the basic principles which have guided the Committee in its work.

The Committee would, nevertheless, briefly recall the circumstances in which it has undertaken and carried out its work. It was fully aware of the difficulties inherent in the twofold problem submitted to it, as well as of those which may arise when the bilateral conventions come to be concluded. It felt compelled to make every effort to overcome these difficulties, in view of the importance of the results it is hoped to attain.

Double taxation, which affects mainly undertakings and persons who exercise their trade or profession in several countries, or derive their income from countries other than the one in which they reside, imposes on such taxpayers burdens which, in many cases, seem truly excessive, if not intolerable. It tends to paralyse their activity and to discourage initiative

and thus constitutes a serious obstacle to the development of international relations and world production.

At the same time, any excessive taxation, by its very burden, brings in its train tax evasion, the nature and grave consequences of which have been emphasised on earlier occasions; the suppression of double taxation is therefore closely connected with the measures for the systematic prevention or checking of such evasion.

It is for this twofold purpose that efforts will have to be made to secure international co-operation, with a view to making it possible to put a stop to an evil which has become especially acute owing to the increase in the fiscal burdens consequent upon the war; the measures advocated by the experts could not fail to bring about a reduction in, and a better distribution of, such burdens.

A word of explanation should be added in regard to the methods used. The Committee endeavoured to reach complete agreement on all essential points. In view of the diversity of fiscal systems, of the different economic interests and the divergent conceptions, both in regard to theory and to practice, obtaining in the various countries, unanimous agreement could not be reached in regard to all the questions which had to be dealt with. Points on which complete understanding could not be arrived at have been left for negotiation and decision to any States when, in the future, they seek to conclude bilateral treaties. The Committee has striven earnestly to restrict to the utmost possible extent the number of questions thus left open.

In order to arrive at practical results with the least possible delay and at the same time not to exceed its instructions, the Committee refrained from examining in detail several co-related questions of international law, such as the doctrine of reciprocity, the treatment of foreign nationals, and the principle of the most-favoured nation, in their relation to the problem of double taxation.

The Committee is of opinion, however, that these problems should be submitted to a detailed examination from the financial, economic and legal points of view. It considers, moreover, that the fiscal laws throughout the world will undergo a gradual evolution and that this will, in the future, make it possible to simplify the measures it has recommended and possibly even to unify fiscal legislation.

In order to make *systematic and continuous* international co-operation possible in this field, the Committee suggests that a body should be set up under the auspices of the League of Nations; the powers and duties of this body will be explained in detail in the final part of the present Report.

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I DRAFT OF A BILATERAL CONVENTION FOR THE PREVENTION OF DOUBLE TAXATION.

A. TEXT OF THE CONVENTION.

*Article 1.*

The present Convention is designed to avoid double taxation in the sphere of direct impersonal or personal taxes, in the case of the taxpayers of the Contracting Parties, whether nationals or otherwise.

For the purposes of this Convention the following shall be regarded as impersonal taxes :

- (a) . . . . .
- (b) . . . . .
- (c) . . . . .

For the purposes of this Convention, the following shall be regarded as personal taxes :

- (a) . . . . .
- (b) . . . . .
- (c) . . . . .

I. *Impersonal Taxes.*

*Article 2.*

The income from immovable property, *i.e.*, that which corresponds to the actual or presumed rental value of such property, as well as any other income from such property which is not covered by Article 5, shall be taxable in the State in which the property in question is situated.

This rule shall apply to income from mortgages or other similar claims :

*Article 3.*

Income from public funds, bonds, including mortgage bonds, loans and deposits or current accounts, shall be taxable in the State in which the debtors of such income are at the time resident.

Nevertheless, if such income is paid in one of the Contracting States to persons domiciled in the other Contracting State, the tax applicable thereto shall be refunded upon production of proper evidence. In such case the said income may be taxed in the State of domicile of the creditor.

*Article 4.*

Income from shares or similar interests shall be taxable in the State in which the real centre of management of the undertaking is situated.

*Article 5.*

Income from any industrial, commercial or agricultural undertaking and from any other trades or professions shall be taxable in the State in which the persons controlling the undertaking or engaged in the trade or profession possess permanent establishments.

The real centres of management, affiliated companies, branches, factories, agencies, warehouses, offices, depots, shall be regarded as permanent establishments. The fact that an undertaking has business dealings with a foreign country through a *bonafide* agent of independent status (broker, commission agent, etc.), shall not be held to mean that the undertaking in question has a permanent establishment in that country.

Should the undertaking possess permanent establishments in both Contracting States, each of the two States shall tax the portion of the income produced in its territory.

In the absence of accounts showing this income separately and in proper form, the competent administrations of the two Contracting States shall come to an arrangement as to the rules for apportionment.

Nevertheless, income from maritime shipping concerns shall be taxable only in the State in which the real centre of management is situated.

*Article 6.*

The fees of managers and directors of joint-stock companies shall be taxable in accordance with the rule laid down in Article 4.

*Article 7.*

Salaries, wages or other remuneration of any kind shall be taxable in the State in which the recipients carry on their employment.

Salaries of officials and public employees who are serving abroad shall, however, be taxable in the State which pays these salaries.

*Article 8.*

Public or private pensions shall be taxable in the State of the debtor of such income.

*Article 9.*

Annuities or income from other claims not referred to in the previous paragraphs shall be taxable in the State of fiscal domicile of the creditor of such income.

II. *Personal Taxes.*

*Article 10.*

The personal tax on the total income shall be levied by the State in which the taxpayer has his fiscal domicile, *i.e.*, his normal residence, the term "residence" being understood to mean a permanent home.

If the State of domicile does not impose impersonal taxes on its taxpayers domiciled therein, it shall deduct from its personal tax the lesser of the two following amounts :

(a) Either the amount of the tax which would be levied exclusively on such part of the income as is taxed in the other Contracting State, or

(b) The amount of the tax paid in the said State, including the personal tax when for special reasons the State of origin has imposed such a tax on income from immovable property or from industrial, commercial or agricultural undertakings situated within its territory.

These deductions shall not in total exceed *x* per cent of the total personal tax leviable in the State of domicile.

When the State of domicile imposes impersonal taxes, the deductions provided for above shall not include impersonal taxes which correspond or relate to income taxed in the other Contracting State.

*Article 11.*

In the case of taxpayers who possess a fiscal domicile in both Contracting States, the personal tax shall be imposed in each of these States in proportion to the period of stay during the fiscal year, or according to a division to be determined by agreement between the competent administrations.

III. *Miscellaneous Provisions.*

*Article 12.*

The principles laid down in the preceding articles shall be applicable *mutatis mutandis*, to the recurrent taxes on total wealth, capital, or increments of total wealth, according as these taxes are impersonal or personal.

*Article 13.*

As regards any special provisions which may be necessary to enable the present Convention to be applied, more particularly in cases not expressly provided for, the financial administrations of the two Contracting States shall confer together and take the measures required in accordance with the spirit of this Convention.

*Article 14.*

Should a dispute arise between the Contracting States as to the interpretation or application of the provisions of the present Convention, and should such dispute not be settled either directly between the States or by the employment of any other means of reaching agreement, the dispute may be submitted, with a view to an amicable settlement, to such technical body as the Council of the League of Nations may appoint for this purpose. This body will give an advisory opinion after hearing the parties and arranging a meeting between them if necessary.

The Contracting States may agree, prior to the opening of such procedure, to regard the advisory opinion given by the said body as final. In the absence of such an agreement, the opinion shall not be binding upon the Contracting States unless it is accepted by both, and they shall be free, after resort to such procedure or in lieu thereof, to have recourse to any arbitral or judicial procedure which they may select, including reference to the Permanent Court of International Justice as regards any matters which are within the competence of that Court under its Statute.

Neither the opening of the procedure before the body referred to above nor the opinion which it delivers shall in any case involve the suspension of the measures complained of; the same rule shall apply in the event of proceedings being taken before the Permanent Court of International Justice, unless the Court decides otherwise under Article 41 of its Statute.

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B. COMMENTARY.

The explanations given in the introduction to this report and in document F. 212 of February 1925, indicate the essential principles by which the Committee was guided in framing the draft Convention on Double Taxation; the experts think, therefore, that it will be sufficient if, in the following pages, they merely comment on each article of the draft.

*Article 1.*

This article defines the purpose of the present Convention; it is designed to avoid double taxation in the sphere of direct taxes in the case of the *taxpayers* of the contracting Parties.

The tendency of modern fiscal law is to consider that all persons domiciled in a State should be liable to the same taxation therein *whatever their nationality may be*. This is why Article 1 of the draft speaks of all taxpayers, whether *nationals or otherwise*. Supposing, for instance, that two States A and B have concluded a convention on these lines, the nationals of a third State C which had not concluded a similar agreement will nevertheless be entitled to the benefits of the treaty, if they are taxpayers of States A and B, either because they have their fiscal domicile in these States or derive income from them.

If, for economic reasons, or with a view to inducing certain States to conclude similar conventions, the contracting parties deem it preferable provisionally to limit the scope of the Convention to their own nationals, they need only delete in the text of Article 1 the words "whether nationals or otherwise". They may, on the other hand, extend its application to the nationals of States with which they have concluded such conventions.

\* \* \*

After stating the general purpose of the Convention, Article 1 defines its scope : it governs *direct impersonal or personal taxes*.

Desirous of avoiding any controversy on matters of doctrine, the experts have not defined the two great categories of direct taxes. They merely note, by way of indication, that impersonal taxes are in most cases levied on all kinds of income at the source, irrespective of the personal circumstances of the taxpayer (nationality, domicile, civil status, family responsibilities, etc.) thus differing from personal taxes which rather concern individuals and their aggregate income.

The Contracting States will themselves decide which of their direct taxes they regard, for the purposes of the Convention, as being impersonal or personal taxes.

Similar forms of taxation levied on behalf of subordinate public bodies (provinces, cantons or departments, municipalities, etc.) may be included in the list, if circumstances justify such a measure.

The assignment of individual taxes to the two categories of direct taxes mentioned above is particularly important, as the draft lays down different provisions as regards each of these categories.

#### I. *Impersonal Taxes.*

##### *Article 2.*

Article 2 embodies a generally accepted principle : that income from immovable property, *i.e.*, the income which corresponds to the actual or presumed rental value, as well as every other form of income from immovable property not covered by Article 5, shall be taxable in the State in which the property in question is situated.

The above principle applies, irrespective of the nature of the right or fact (property, usufruct, possession, lease in perpetuity etc.), from which the taxable income is derived.

The term "other income from such property" is only intended to cover income which is not derived from industrial, commercial or agricultural undertakings, mentioned in Article 5 of the draft.

The second paragraph of Article 2 lays down that the rule set forth in the first paragraph shall apply *to income from mortgages and other similar claims*.

This provision is intended to apply to income from mortgages or other similar claims, whether it is deducted from the income derived from the immovable property or not. If the deduction referred to is not made, special measures will have to be taken in order to prevent the State of domicile from having to grant excessive relief.

Article 3.

This clause deals with income derived from investments in transferable securities other than shares.

It lays down that income from public funds, bonds, including mortgage-bonds, loans, and deposits or current accounts shall be taxable in the State in which the *debtors* of such income are at the time resident.

By "public funds" is meant the securities issued by the State or by other public bodies (provinces or departments, cantons, municipalities, other public establishments, etc.).

Their bonds considered are those of non-commercial (*sociétés civiles*) or commercial companies, even if secured by mortgages.

As regards loans, deposits, or current accounts, these terms are here used with their legal or customary meaning; as a rule, this clause will only be applied to income from *non-commercial* loans, deposits or current accounts. Interest on professional accounts opened for business purposes by traders or persons engaged in industry is, in fact, included under profits of business undertakings, which are covered by Article 5.

As regards interest on deposits or current accounts, the *debtor* is the establishment or branch which pays this interest.

The second paragraph of Article 3 provides for an exception to the rule laid down in the first paragraph: if the income referred to in this clause "is paid in one of the contracting States to persons domiciled in the other contracting State, the tax applicable thereto shall be refunded upon production of proper evidence. In such case, the said income may be taxed in the State of domicile of the creditor."

This is a special clause to be discussed between the contracting States. The refunding of the tax by the State of the debtor will generally depend upon economic or budgetary conditions; the levying of the tax by the State of the creditor will in some cases, however, be justified by reasons of equity, but will not be compulsory. Such refund may be limited to certain forms of income and made contingent upon the application of the deduction provided for under Article 10.

Where necessary, measures will have to be taken to prevent fraud by means of affidavits or other documents signed by or on behalf of the persons entitled to the income. In this connection, reference should be made to the draft Convention on Administrative Assistance.

Article 4.

Income from shares or similar interests is the subject of Article 4 of the draft; under the provisions of this article, it is taxable in the State in which the real centre of management of the undertaking, that is to say the management and control of the business, is situated, so that the case of a purely nominal centre of management is excluded.

This clause will have to be supplemented if it is agreed that the system of refunds contemplated in the second paragraph of Article 3 shall apply also to dividends. Here, again, the determining factors will be economic or budgetary considerations, or even political circumstances.

In regard to this article, the British expert has expressed dissent. In his view, a second mandatory paragraph ought to be added to Article 4, identical with the second paragraph of Article 3. The principle of taxing business profits in the State in which they are earned has been conceded in Article 5, and provision has been made in Article 10 for a deduction of the tax so charged from the personal tax in the State of domicile. In the view of the British expert it is unreasonable that the financial burden of granting relief from double taxation in respect of the additional tax on dividends should also fall on the State of domicile.

*Article 5.*

This clause has reference to income from any industrial, commercial or agricultural undertakings, and from any other trades or professions ; it is to be taxable in the countries in which the persons controlling the undertakings or engaged in the trade or profession, possess *permanent establishments*.

The word "undertakings" must be understood in its widest sense, so as to cover all undertakings, including mines and oilfields, without making any distinction between natural and legal persons.

The second paragraph gives a list of the establishments which are considered as permanent ; they are: real centres of management, affiliated companies, branches, factories, agencies, warehouses, offices, depots, no matter whether such establishments are used by the traders themselves, by their partners, attorneys, or their other permanent representatives.

Nevertheless, the fact that an undertaking has business dealings with a foreign country through a *bona fide* agent of *independent status* (broker, commission agent, etc.) shall not be held to mean that the undertaking in question has a permanent establishment in that country. The words "*bona fide* agent of independent status" are intended to imply absolute independence, both from the legal and economic point of view. The agent's remuneration must not be below what would be regarded as a normal remuneration. The Committee has not expressed an opinion on the point whether purchasing offices or sales offices are to be considered as places of business, this being a question of fact.

Paragraphs 2 and 3 of this clause govern the case in which the undertaking possesses permanent establishments in both contracting States ; in that event, "each of the two States shall tax the portion of the income produced in its territory". This is an application of the so-called system of apportioning the income according to its source.

"In the absence of accounts showing this income separately and in proper form, the competent administrations of the two contracting States shall come to an arrangement as to the rules for apportionment."

These rules will vary essentially according to the undertakings concerned ; in certain States account is taken, according to the nature of the undertakings, of the amount of capital involved, of the number of workers, the wages paid, receipts, etc. Similarly, in cases where the products of factories are sold abroad, a distinction is often made between "manufacturing" and "merchandising" profits, the latter being the difference between the price in the home market and the sale price abroad, less cost of transport. These criteria are, of course, merely given as indications.

The last paragraph of Article 5 contains an express exception to the principle laid down in the first paragraph : it provides that income from maritime shipping concerns shall be taxable only in the State in which the real centre of management is situated.

This paragraph may, according to circumstances, be deleted or its provisions limited. They may also be extended to cover river, lake or air navigation. Should the last paragraph of Article 5 be omitted, the rules for apportionment laid down in that article would remain applicable.

*Article 6.*

This article provides that the fees of managers and directors of joint stock companies shall be taxable in accordance with the rule laid down in Article 4, that is, in the State in which the real centre of management of the undertaking is situated.

This provision is designed to cover the special tax on variable fees, which are deducted from profits and hence constitute a part of the latter. Fixed salaries, on the contrary, come within the category of general expenditure and are governed by the following article.

*Article 7.*

Salaries, wages and other remuneration of any kind (with the exception of the fees mentioned in Article 6) shall be taxable in the State in which the recipients carry on their employment.

The income is actually produced in that State and the tax can easily be levied at the source.

Nevertheless, special clauses may be inserted to meet the case of persons working in the vicinity of the frontier or engaged in any itinerant occupation, employment or trade.

The second paragraph of Article 7 lays down that salaries of officials and public employees who are serving abroad shall be taxable in the State which pays these salaries.

The fiscal regime for diplomatic or consular agents is, however, at present the object of special studies which are being carried on in conjunction with the Committee of Jurists for the Progressive Codification of International Law.

*Article 8.*

This article provides that public or private pensions shall be taxable in the State of the debtor of such income.

It appeared both right and practical that all pensions should be made subject to the same rules.

*Article 9.*

Contrary to the above-mentioned provisions, annuities or income from other claims not referred to in the previous paragraphs shall be taxable in the State of fiscal domicile of the creditor of such income.

The exception which is thus made for annuities is justified by the special nature of this form of income, since the recipient is free to select the country which is to be liable for the payment.

## II. *Personal Taxes.*

*Article 10.*

Under the terms of this article, the personal tax on total income is to be levied by the State in which the taxpayer has his fiscal domicile, *i.e.*, his normal residence, the term "residence" being understood to mean a permanent home.

This provision is of double import : it specifies the place at which the personal or general tax shall be levied and, further, gives a definition of fiscal domicile in terms which were discussed at great length and are those accepted by the majority of the existing codes of law.

The words "*permanent home*" convey the idea of an establishment intended to last for some time. Even a person who stays at an hotel for several months may be considered as normally residing there. Moreover, a State is always free to tax any of its own nationals who would not be taxed because they are continually moving about.

Article 10 provides for a modification of the rule which it lays down.

In order to avoid double taxation, the State of domicile, if it does not levy impersonal taxes on persons resident therein, will make a deduction from its personal tax with regard to the income taxed in the country of origin. But what should be the amount of such deduction ? It is to be limited to the *lesser* of the two following amounts, *i.e.* :

(a) The amount of the tax which would be paid in the State of domicile exclusively on such part of the income as is liable to taxation in the State of origin; or

(b) The amount of the tax paid in the State of origin.

Where, for special reasons, whether economic or fiscal, one of the contracting States decides to impose, in addition to its impersonal taxes, a *personal* or supplementary tax on income from immovable property and from industrial, commercial or agricultural undertakings produced within the country, the reduction provided for under (b) above shall apply not only to impersonal taxes paid in the country of origin on such income, but also to the additional personal tax paid there under this head, subject to the limitation already referred to.

Moreover, the two deductions may not in total exceed  $x$  per cent <sup>1</sup> of the total amount of the personal tax levied in the country of domicile.

This restriction is designed to prevent a taxpayer whose whole income is derived from abroad from escaping all taxation in his country of domicile.

The following example will explain the application of the system of deductions advocated by the experts: A taxpayer domiciled in State A draws a total income of 100,000 francs, 20,000 of which are derived from an industrial or commercial undertaking situated in State B, which, under this head, levies an impersonal tax of 3,000 francs and a personal tax of 1,000 francs, *i.e.*, a total of 4,000 francs.

The tax in State A, which does not levy impersonal taxes, will be calculated on the total of the income (for instance, at the rate of 20 per cent), *i.e.*,  $\frac{100,000 \times 20}{100} = 20,000$  francs, but

the fiscal authorities will deduct therefrom the sum of 4,000 francs mentioned above, so that the tax will be reduced to  $20,000 - 4,000 = 16,000$  francs.

If, however, in the State of domicile the personal tax only amounts to 3,000 francs on an income of 20,000 francs, 3,000 francs will be deducted and the tax will then be reduced to  $20,000 - 3,000 = 17,000$  francs. A State will thus not suffer loss owing to the fact that its nationals engage in business in other States.

The relief provided for above will be granted in particular in cases in which the State of domicile only levies a general income tax. If this general tax is of a purely complementary nature, and is additional to impersonal taxes, there will be no need for relief, or at any rate such relief will have to be limited. For this reason, the last paragraph of Article 10 lays down that, if the State of domicile levies impersonal taxes, the deductions provided for under (a) or (b) in Article 10 shall not include the impersonal taxes corresponding or relating to the income taxed in the State of origin.

The experts have further contemplated another method of avoiding double taxation. The tax in the State of domicile of the taxpayer would be calculated at the rate applicable to the whole of his income, but it would only be levied on that part of his income which is taxable in that country, that is to say, exclusive of the income taxed in the country of its origin. Thus a taxpayer domiciled in State A drawing a total income of 100,000 francs, 20,000 of which is derived from immovable property situated in State B, would only be taxed in State A on 80,000 francs, but at the rate applicable to 100,000 francs.

#### Article 11.

This article is designed to cover a special case, namely, that of taxpayers with a fiscal domicile in both contracting States. In this case, the tax will be imposed in each of these States in proportion to the period of stay during the fiscal year, or according to a division to be determined by agreement between the competent administrations, for instance, in proportion to the amount of income produced in each country. This clause might, if necessary, be applied to taxpayers who change their domicile during the fiscal year.

<sup>1</sup> The percentage is to be determined by the contracting parties.



III. *Miscellaneous Provisions.*

*Article 12.*

Article 12 provides that the principles laid down in the preceding articles shall be applicable, *mutatis mutandis*, to the recurrent taxes on total wealth, capital or increments of total wealth, according as these taxes are impersonal or personal.

Succession duties form the subject of a separate Convention.

As regards taxes of an exceptional nature, special agreements may have to be concluded, having due regard to the nature of these taxes.

This provision of Article 12 is, moreover, not compulsory, inasmuch as countries which conclude a convention will have the option of omitting this article.

*Article 13.*

Any special provisions which may be necessary to enable the Convention to be applied more particularly to cases not expressly provided for shall be settled by agreement between the financial administrations of the contracting States in accordance with the spirit of the Convention.

Article 13 is designed to give effect to this principle.

*Article 14.*

There still remained to determine the procedure which should be followed in the event of a dispute as to the interpretation or application of the Convention ; this procedure is laid down in Article 14, which is based upon the text inserted in other international conventions, in particular the Convention for the Simplification of Customs Formalities signed at Geneva on November 3rd, 1923. It seemed advisable, however, to state that the contracting States will have the option of accepting the opinion of the advisory body in advance.

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One more observation : The draft Convention applies more particularly to countries which levy impersonal taxes and also a personal or general tax ; but the articles proposed could also be made to serve in the event of the simultaneous existence of a general tax in the country of domicile and schedular taxes in the country of origin ; moreover, these articles could be abridged if the fiscal systems of the two contracting States were sufficiently similar to one another.

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II. DRAFT BILATERAL CONVENTION FOR THE PREVENTION OF DOUBLE TAXATION IN THE SPECIAL MATTER OF SUCCESSION DUTIES.

A. TEXT OF THE CONVENTION.

Article 1.

The purpose of the present Convention is to prevent taxpayers of the Contracting States from being subjected to double taxation in the matter of succession duties.

For the purpose of this Convention, the following shall be regarded as succession duties :

- (a) . . . . .
- (b) . . . . .
- (c) . . . . .

Article 2.

Succession duties shall be levied by the country of domicile of the deceased, that is to say, by the country in which the deceased, at the time of his death, had taken up his residence with the manifest intention of remaining there. These duties may be levied on the total of the property left by the deceased, including property situated in another country, but, where necessary, the deductions provided for in Article 4 shall be effected and only the difference shall be collected.

In the absence of a domicile as defined in the preceding paragraph, the country of which the deceased was a national shall be considered his country of domicile.

Article 3.

If the deceased was domiciled in one of the Contracting States and leaves property in the other Contracting State, the latter State may levy succession duties on such property, but only at the rate applicable to their value, exclusive of the other assets situated in any other State.

Article 4.

In order to obviate the double taxation which would result from the simultaneous application of the two preceding articles, the country in which the deceased was domiciled shall allow the lesser of the two following amounts to be deducted in respect of the categories of property specified below :

- (a) The actual amount of duty levied by the country of domicile on assets situated in another country;
- (b) The actual amount of duty payable on such assets in the country in which the assets are situated.

The categories of property referred to above are the following :

- (a) Immovable property, furniture and fittings;
- (b) Mortgages;
- (c) Capital invested in industrial, commercial or agricultural undertakings, exclusive of shares;
- (d) . . . . .

and any other form of property which is or may subsequently be taxed by the two countries simultaneously in the country in which it is situated.

Article 5.

Debts chargeable to or secured on specific property shall be deducted from the value of that property.

Other debts shall be divided among specified classes of assets in accordance with special agreements to be concluded between the Contracting Parties.

*Article 6.*

Should a dispute arise between the Contracting States as to the interpretation or application of the provisions of the present Convention, and should such dispute not be settled either directly between the States or by the employment of any other means of reaching agreement, the dispute may be submitted, with a view to an amicable settlement, to such technical body as the Council of the League of Nations may appoint for this purpose. This body will give an advisory opinion after hearing the parties and arranging a meeting between them if necessary.

The Contracting States may agree, prior to the opening of such procedure, to regard the advisory opinion given by the said body as final. In the absence of such an agreement, the opinion shall not be binding upon the Contracting States unless it is accepted by both, and they shall be free, after resort to such procedure or in lieu thereof, to have recourse to any arbitral or judicial procedure which they may select, including reference to the Permanent Court of International Justice as regards any matters which are within the competence of that Court under its Statute.

Neither the opening of the procedure before the body referred to above nor the opinion which it delivers shall in any case involve the suspension of the measures complained of; the same rule shall apply in the event of proceedings being taken before the Permanent Court of International Justice, unless the Court decides otherwise under Article 41 of its Statute.

B. COMMENTARY.

The problem of devising suitable methods of avoiding double taxation in the matter of death duties is as difficult as the corresponding problem in relation to income tax. Here, again, double taxation arises from the fact that both the domicile of the deceased and the situation of his assets constitute grounds upon which States are in the habit of levying a duty on the occasion of death.

*Article 1.*

Article 1 defines the object of the Convention and makes provision for indicating what taxes are to be regarded as succession duties in each of the contracting States for the purpose of the Convention.

The laws of the various States, indeed, provide for various kinds of succession duties. There are, for instance, succession duties levied on the whole of the estate without taking into account the number and degree of relationship of the heirs, succession duties levied on the shares of the heirs, duties on transfer of property.

*Article 2.*

Article 2 sets forth the principle that it is the State in which the deceased was domiciled, which may assess for taxation the whole of the estate of the deceased, regardless of where it may be situated but subject to certain deductions which are provided by Article 4. It also defines the term "domicile" and it will be observed that the definition differs from the definition of domicile adopted for the purpose of personal taxes on income.

It is clear that the conception of domicile appropriate to a duty which is levied once and for all on the occasion of death must imply a greater degree of permanence than the conception on which an annual tax such as the income tax is based. It is unlikely that any State would claim the right to levy a death duty on the whole property of a deceased person on the ground that, at the time of his death, he was temporarily resident within its borders, if his permanent home and true economic allegiance lay elsewhere. But when it is sought to define the precise character and degree of permanence of the residence which should exist in order to justify a claim to tax on the ground of domicile, wide divergencies of view are found to exist in the different legal systems of the various countries of the world. In these circumstances, it has not been found possible to do more than frame a definition which seems to command the greatest common measure of agreement in the various codes of law.

It is hoped that the conception of domicile which the Committee has adopted will command a wide measure of acceptance among the various States. If so, the conclusion of bilateral agreements, and possibly general agreements for the avoidance of double death duties, will be greatly facilitated, and in its absence it is difficult to see how satisfactory arrangements could be made to attain the object in view.

*Article 3.*

Article 3 states the principle that the State in which assets belonging to a deceased person are situated, whatever may be the domicile of the deceased, may levy a duty on such assets. Of course, it in no way limits the right of the State to determine according to its own law what assets must be regarded as situated within its jurisdiction.

*Article 4.*

Article 4 contains a provision which will avoid double taxation in the case of those classes of assets regarding the situation of which there is a common conception in both the Contracting States. The Committee has earnestly endeavoured to reach an agreement on this very difficult matter. There were some differences of opinion, but a measure of agreement has been arrived at on the clauses which the Committee has the honour to submit herewith.

The measures which have been unanimously recommended will solve the difficulty of double death duties in regard to some very important categories of assets and, as regards the remainder, it is to be hoped that a mutual appreciation of the advantages which accrue from the elimination of double taxation in the sphere in which the Committee has been able to agree will lead States to concert reciprocal measures for extending the remedy into spheres in which varying legal conceptions at present constitute too serious a difficulty.

In order to prevent misapprehension, it is desirable to explain that the term "mortgages" used in this article does not include mortgage bonds.

*Article 5.*

Article 5 deals with the question of debts. It provides that debts which are secured on or relate to specific assets shall be deducted from the value of the assets. As regards other debts, the Contracting States are left to make such detailed administrative arrangements as may suit their particular circumstances. It is intended that normally the term "debts" shall include "legacies".

*Article 6.*

This article is identical with the last article in the draft Convention relating to Taxes on Income and is intended to serve a similar purpose.

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## II. DRAFT OF A BILATERAL CONVENTION ON ADMINISTRATIVE ASSISTANCE IN MATTERS OF TAXATION.

### A. TEXT OF THE CONVENTION.

#### *Article 1.*

With a view to obtaining a better apportionment of fiscal burdens in the interest both of Governments and taxpayers, the Contracting States undertake, subject to reciprocity, to give each other administrative assistance in regard to all matters required for the purpose of tax assessment.

Such assistance may consist in :

(a) The exchange of fiscal information available in either of the contracting countries. The exchange will take place following a request concerning concrete cases, or, without any special request, for the classes of particulars defined in Article 2 ;

(b) Co-operation between the administrative authorities in carrying out certain measures of procedure.

#### *Article 2.*

The exchange of information as contemplated in paragraph (a) of Article 1 shall relate to natural or juristic persons taxable in one of the two contracting countries. The particulars given shall include the names, surnames and domicile or residence of the persons concerned, and their family responsibilities, if any, and shall have reference to <sup>1</sup> :

(1) Immovable property (capital value or income, rights *in rem*, charges by way of mortgage or otherwise) ;

(2) Mortgages or other similar claims (description of the mortgaged property, amount and rate of interest) ;

(3) Industrial, commercial or agricultural undertakings (actual or conventional profits, business turnover, or other factors on which taxation is based) ;

(4) Earned income and directors' fees ;

(5) Transferable securities, claims, deposits and current accounts (capital value and income) ; any information collected by an administration, more especially in connection with exemption or relief granted by that authority by reason of the taxpayer's domicile or nationality ;

(6) Successions (names and addresses of deceased and heirs, date of death, estate, shares of heirs and other bases of the tax).

#### *Article 3.*

In no case shall the effect of applying the provisions of the preceding articles be to impose upon either of the Contracting States the obligation of supplying particulars which its own fiscal legislation does not enable it to procure, or of carrying out administrative measures at variance with its own regulations or practice.

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<sup>1</sup> The following list may be curtailed or added to, according to circumstances.

*Article 4.*

The State to which application is made may refuse to carry out such application if it considers that it is contrary to public policy.

*Article 5.*

The appropriate administrative authorities shall be empowered to communicate with each other direct for the purpose of giving effect to the provisions of the present Convention.

*Article 6.*

Administrative assistance shall be given without payment, subject to the refund of any exceptional expenditure (investigations, expert opinions, etc.) which may be incurred in special cases.

*Article 7.*

The administrations shall from time to time communicate to each other statements regarding their powers of investigation and control in fiscal matters and their administrative procedures.

*Article 8.*

The highest authorities of the financial administrations of the two States shall concert measures to implement the present Convention.

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B. COMMENTARY.

From the very outset, the Committee realised the necessity of dealing with the questions of tax evasion and double taxation in co-ordination with each other. It is highly desirable that States should come to an agreement with a view to ensuring that a taxpayer shall not be taxed on the same income by a number of different countries, and it seems equally desirable that such international co-operation should prevent certain incomes from escaping taxation altogether. The most elementary and undisputed principles of fiscal justice, therefore, required that the experts should devise a scheme whereby all incomes would be taxed once, and once only.

The Committee realised, however, that it must avoid the risk of the draft Convention appearing in some quarters as an extension beyond national frontiers of an organised system of fiscal inquisition. The employment of technical methods to deal with fraud in matters of taxation is no doubt wholly to be recommended, both for the good of the communities reaping the benefit of such taxation and in the interests of the taxpayers themselves, since any fraud which goes unpunished leads to an unfair distribution of the burden of public expenditure and to the payment by one set of persons of sums properly due by others.

In the first place, the Committee desires to observe that, where relief is sought by a taxpayer in pursuance of arrangements made between two countries for the avoidance of double income tax, it is clearly necessary that the country granting this relief should have full information in regard to the assessment and the amount of tax paid in the other country, and provision to this effect has generally been made in the conventions which have hitherto been concluded.

Knowing by experience, however, how thankless and difficult is the task of preventing fraud in each country separately, the experts were anxious that their scheme should in no case present the appearance of an organised plan of attack on the taxpayer.

In preparing the attached draft Convention, the Committee has sought to obviate any misunderstanding by framing the provisions dealing with tax evasion in the form of a scheme

of administrative assistance. Arrangements for such assistance are already in force between several countries in respect of certain classes of income, and may without difficulty be extended, subject to the conditions referred to in Report F. 212, 1925, and within the limits laid down in the draft Convention. Furthermore, as will be explained later, such assistance is a corollary of the general principles which have been adopted for the avoidance of double taxation.

*Article 1.*

We may now consider how, in the view of the experts, such a scheme of assistance should work in practice. First of all it must be reciprocal, that is to say, States will be bound to afford each other assistance only under identical conditions; in other words, subject to any provisions to the contrary, a country will only be entitled to demand information of a kind which it is itself in a position to supply.

Such assistance may work in two ways, according as it takes the form of co-operation between administrative departments, which will undertake, on each other's behalf, enquiries, verifications and expert valuations as required for the assessment of the various taxes; or as it consists in the exchange of information, which will be either supplied on request in specific cases or furnished as a matter of regular routine in connection with certain subjects which will be specified in the conventions to be concluded.

*Article 2.*

With respect to the supply of information, Article 2 of the draft Convention lays down general rules which Governments are advised to follow. The provisions governing immovable property, industrial, commercial or agricultural undertakings and earned income raise no serious difficulties, and some of them have already been embodied in conventions concluded between various countries. This also applies to successions, for the Government departments in the different countries already possess the requisite information and certain of these departments already exchange information regularly.

A more difficult question arises in the case of transferable securities, which the Committee discussed at length in its report of February 7th, 1925. The difficulty is due, first, to the fact that the means at the disposal of Governments do not afford as effective a check in this case as in that of other taxable wealth; and secondly, to the fact that every attempt to improve the methods of ascertaining the capital value of and the income derived from movable property, in particular from bearer securities and current accounts, produces a serious and complicated train of consequences when such measures are applied within the national boundaries, and that these effects would be greatly intensified if any attempt were made to carry investigations across the frontiers.

There seems, however, to be no objection to inserting a clause in the Convention to the effect that a country which, in the normal course of its fiscal administration, obtains possession of information in regard to transferable securities, claims, deposits and current accounts, should impart, on a reciprocal basis, that information to a foreign State which is interested in the matter from the point of view of the equitable distribution of taxation.

In some cases, *e.g.*, in cases where relief is sought, the assistance which it may be possible for the relieving State to afford may be considerable. For instance, taxpayers may apply to a given country, on grounds of domicile, for exemption or abatement as regards certain taxes on stocks and shares. In that case, it must be admitted that the preferential treatment claimed by such persons cannot, in all fairness, be extended to them unless their circumstances really entitle them to such treatment; since, moreover, they are applying for relief in respect of taxes levied in one country, on the ground that they are already taxed on that same income by another country, it is only natural that the latter should be informed that certain of its

citizens have advanced the plea of domicile, and that it should be enabled to verify that they are duly taxed. In such cases, the taxpayer can always obtain the application of ordinary law ; by his action in seeking to benefit by the exemption which has been provided in order to avoid double taxation, he agrees to abide by the consequences of his choice, and cannot object to the accuracy of his statement being subsequently checked.

*Articles 3 and 4.*

These articles limit the right to administrative assistance in such a way as to ensure that no country shall be committed to undertake enquiries or proceedings at variance with its own laws or practice.

*Articles 5 to 8.*

Articles 5 to 8 deal solely with measures of execution.

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The above are the considerations by which the Committee has been guided in framing the draft Convention on Administrative Assistance. While fully recognising the difficulties of this delicate subject and the necessity of making such amendments to the text as may be necessary to allow for special circumstances, the Committee, viewing the matter solely from the angle of practical administration, is of the opinion that the clauses it has drafted and adopted are calculated to ensure a more equitable distribution of fiscal burdens.

In conclusion, the Committee would again point out that the adoption of its recommendations could not, in any circumstances, hamper the free circulation of wealth or the working of economic laws ; on the contrary, the putting into force of these provisions should make it possible to prevent the course of trade and the movement of capital from being influenced by fiscal considerations arising out of the diversity of laws on the subject. The agreements to be concluded in regard to administrative assistance should, however, secure the accession of the majority of the States, as was pointed out by the experts in their Report F. 212 of February 1925. The Committee desires, therefore, once again to lay special stress on the importance of this part of its resolutions.

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IV. DRAFT BILATERAL CONVENTION ON JUDICIAL ASSISTANCE IN THE COLLECTION OF TAXES.

A. TEXT OF THE CONVENTION.

Article 1.

The Contracting States undertake to give each other mutual assistance in the collection of the following taxes<sup>1</sup> :

- (a) . . . . .
- (b) . . . . .
- (c) . . . . .

Article 2.

The assistance in question shall apply both to the principal of the tax and to charges incidental thereto (costs, interest)<sup>2</sup>.

Article 3.

Assistance shall only apply to fiscal debts which are *res judicatae*, apart from the case provided for in Article 11.

Article 4.

The recovery of fiscal debts, as provided in the previous articles, shall be effected at the request of the creditor Government (State making the application) addressed to the State having jurisdiction over the person or the property of the debtor (State to which application is made).

Article 5.

The request of the State making the application shall be issued by the highest authority of its financial administration or by an authority designated under the agreement contemplated in Article 12, and shall be accompanied by an order of execution (*titre exécutoire*) certified by that authority. It must be addressed directly to the corresponding authority of the State to which application is made.

The authority of the State making the application shall further certify that the liability in question is *res judicata*.

Article 6<sup>3</sup>.

The State making the application shall furnish a translation of the documents transmitted in the language of the State to which application is made.

<sup>1</sup> The Contracting States shall decide in agreement with one another whether the Convention is applicable to State taxes only or to provincial, communal and other taxes also.

<sup>2</sup> Penalties of a fiscal nature, etc., may also be inserted.

<sup>3</sup> May be deleted or modified according to circumstances.

*Article 7.*

The State to which application is made shall comply as soon as possible with the request addressed to it. Nevertheless, it may refuse to do so if it considers that it is unable to comply with this request for reasons of public policy. In such case it shall inform the State making the application as soon as possible.

*Article 8<sup>1</sup>.*

Prosecutions and other measures of execution shall be carried out without exequatur.

*Article 9.*

The fiscal debt which forms the subject of the request shall be collected in accordance with the laws of the State to which application is made, but this does not oblige the latter State to employ a means of execution which is not provided for by the laws of the State making the application.

Nevertheless, at the request of the State making the application, the State to which application is made may, if it thinks fit, adopt a special form of procedure, even if not provided for by its laws, subject to the condition that such procedure is not contrary to its laws.

*Article 10.*

The taxes which it is sought to collect shall not be regarded as privileged debts in the State to which application is made.

*Article 11.*

If a fiscal debt is still liable to be appealed against, the State making the application may request the State to which application is made to take conservatory measures, to which the above provisions shall be applicable *mutatis mutandis*.

*Article 12.*

The highest authorities of the financial administrations of the two States shall concert measures to implement the present Convention. In particular, they may, by agreement, draw up rules for the disposal of the sums collected, for the determination of an average rate of exchange for the conversion of these sums and for the expenses of collection.

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B. COMMENTARY.

In the introduction to its report, the Committee explained the reasons why, in regard to the collection of taxes also, it preferred the form of a simple bilateral Convention.

*Article 1.*

The taxes which it is desired to collect will be enumerated, so that no doubt will exist as to the scope of the Convention. Moreover, this method enables States to include in the Convention, if they deem it desirable, all kinds of taxes in addition to direct taxes. The question whether the Convention will also apply to provincial or communal taxes and to taxes levied by other public bodies is left for decision to the contracting Parties. As it was not considered essential to extend the Convention in this direction, the Committee thought it best only to

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<sup>1</sup> May be deleted or modified according to circumstances.

mention these taxes in a footnote. As regards the “centimes additionnels”, it is well known that, by their very nature and in accordance with generally recognised principles, these are collected with the principal tax, and there is no need for any special rule in regard to them.

*Article 2.*

The word “collection” is used in a fairly wide sense in this Convention. It is intended to cover not only the actual measures of execution but also preliminary measures, such as the serving of the documents of execution, etc. On the other hand, it would seem necessary to state definitely whether the Convention is to extend to incidental charges, such as costs of execution, interest on arrears, etc. It will be for the States concerned to decide, in agreement with one another, how far it is necessary to enumerate these incidental charges and also to consider the question, referred to in a footnote, of fiscal penalties, which are provided for in many codes of law.

*Article 3.*

Article 3 corresponds to Rule 3 in the 1925 Resolutions (document F. 212, page 35), the grounds for which will readily be understood. It would hardly be desirable to invite a foreign administration to take measures to collect a debt which was still liable to be cancelled on appeal. As regards temporary measures, this article gives a reference to Article 11.

*Article 4.*

Article 4 defines the nature of the assistance in question. This will be granted by the State in which the debtor is living or in which his property is situated. It should be noted that the jurisdiction of the State is the true criterion and that the nationality of the debtor is not to be considered.

In taking this view, the Committee had in mind the principle stated in document F. 212 (page 35, Rule 1) which lays down that the State must also afford assistance in respect of taxes due from persons other than nationals of the State making the application. This rule, which has already been adopted in regard to double taxation, is fully in accord with the principle of international solidarity, by which the experts have constantly been guided. In their separate treaties, however, the States will be free to introduce exceptions to this rule, when this may be necessary in order to avoid running counter to public opinion in their own countries, as might be the case, for instance, where the measures in question would have to be taken against the nationals of the State to which application is made.

The terms “State making the application” and “State to which application is made” were used with a view to simplifying the drafting of the subsequent articles.

*Article 5.*

Although the principle of mutual assistance is fully recognised, it is equally certain that this principle should only be applied subject to certain safeguards. There is always a possibility of administrative errors, and if these occurred in an international question of this kind they might give rise to serious and awkward situations. It is necessary, therefore, to take all possible precautions, and in particular to require that the highest authority in each of the fiscal administrations, or another administrative authority designated by common consent in accordance with Article 12, is to take the necessary measures, in order to ensure as far as possible that the documents produced shall be correct and that the administration collecting the debt shall take proper action. As regards the second paragraph, Article 3 should be referred to.

*Article 6.*

This article is based on the same principle as Article 5. It may happen that the State to which application is made, in order to comply with a request for execution, will require a translation of the documents sent to it. As, however, this necessity will not arise in every State, the Committee thought it best to point out in a footnote that the provision could be omitted or modified.

*Article 7.*

The fundamental principle of the assistance to be granted having already been stated in Articles 1 and 4, the first sentence of Article 7 is merely intended to indicate the necessity for prompt assistance. The need for despatch is mentioned again in the last sentence, which, together with the second, provides for the possibility of a refusal on grounds of public policy. Reasons of this kind are sometimes present and induce the fiscal authorities to exercise a certain indulgence.

As the State making the application cannot possibly foresee, or even be aware of, all the more general consequences to which its request may give rise, the State to which application is made must have the right to refrain from measures which would prejudice its vital interests. The State making the application must, however, be immediately informed of the fact so that it may be able, if circumstances admit, to choose another method of procedure.

*Article 8.*

This article, which is of a subsidiary character, emphasizes the principle, already set forth in Article 5, of direct communication between the fiscal authorities of the two countries concerned, without the need for using diplomatic or judicial channels. In some States, however, the laws would not allow a request put forward in accordance with Article 5 to be complied with unless accompanied by a writ of execution issued by a judicial authority. In order to meet this special case, the footnote indicates that the article may require to be modified.

*Article 9.*

This article explains the system by which the fiscal debt will be recovered. This system — which will be found in Rule 1, page 35, of document F. 212 — provides that, in principle, the means of execution employed will be those provided for in the State to which application is made, and this for two reasons. In the first place, the enforcement of a foreign law would at once involve the revenue officials in difficulties and would hence become a source of inconvenience, vexation and complaint for both parties. In the next place, public opinion would object to the taking of measures foreign to the laws of the State to which application is made. Imagine, for example, the position of a State which has never known the practice of imprisonment for debt and which, under the terms of a treaty, is nevertheless forced to lock up someone (perhaps one of its own nationals) who has not paid his taxes abroad and persists in saying that all his property has disappeared.

Care must also be taken to respect the scruples which the public in the State making the application may feel on account of differences in the measures taken to execute judgments. It would certainly offend public opinion if the State to which application is made were to adopt methods of constraint alien to the laws of the creditor State. The people of Morania would say: "Why does Imeria imprison a fellow-countryman of ours who, if he had remained in our territory, would merely have had his property seized?"

In view of these considerations, the Committee proposes a rule based to some extent on the highest common factor, *i.e.*, that no means of execution should be employed unless it is included in the laws of both States concerned. It is clear, of course, that this restriction only

applies to means of execution in the general sense ; the details must in all cases be governed by the laws of the State to which application is made.

The system thus laid down in the first paragraph of Article 9 is only subject to a very slight exception, which is explained in the second paragraph, and may be considered from two points of view. It is possible, on the one hand, that the two States in question have several modes of procedure at their disposal, which are common to them both ; in such cases the State making the application may, in making its request for assistance, specify the procedure which, having regard to the object, it deems the most appropriate. On the other hand, it may happen that the State making the application may attach some importance to formalities of execution which, although not employed in the State applied to, are not incompatible with its laws. For example, in the State to which application is made notification may be valid if it has been served at the domicile of the debtor, whereas the laws of the State making the application require that notification should be served on the debtor in person. In such a case the State making the application may express the desire that the latter procedure should be followed in serving the notification. The State to which application is made is free to accede to this request or to refuse it. The request might be refused on the grounds that the laws of the State to which application is made explicitly prohibit the measure asked for (not a very likely reason in the example chosen), or that it would be too difficult to serve the notification in the manner indicated.

*Article 10.*

This article simply expresses the idea already contained in Rule 2 of document F. 212 (page 35). The granting of a preferential position to foreign taxes would at once give rise to legal difficulties ; moreover, it would in many cases be a cause of loss both to public and to private creditors, and would therefore inevitably render the execution of judgments under the Convention an unpopular measure.

*Article 11.*

The rule laid down in Article 3, though framed in the interests of moderation, might nevertheless have the effect of enabling the debtor to evade the claims made upon him. It is therefore desirable that the creditor State should be able, through the State to which application is made, to have recourse to conservatory measures, which would be carried out in accordance with the laws of the State to which application was made.

*Article 12.*

In view of the diversity of the different systems of law and the more or less general character of the above provisions, it will be necessary to draw up regulations for the application of the Convention. In the Committee's opinion, it would be best that these rules should not be laid down in the Conventions themselves. They are of too special a nature, and, moreover, the fact that they were embodied in a convention might delay the introduction of changes which circumstances or experience had shown to be necessary. Accordingly, the Committee proposes that the highest fiscal authorities should be left free to agree upon the practical measures necessary to implement the Convention. In order to make this intention clear, a second sentence giving a few examples has been added to Article 12.

## V. PROPOSALS REGARDING FUTURE ORGANISATION.

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The task of the Committee of technical Experts is now concluded with the submission of the draft Conventions which it was asked to prepare. The Committee desires, nevertheless, to add a few observations on the necessity of creating a permanent organisation for the future.

The completion of these draft Conventions by no means solves the problems of double taxation and administrative and judicial assistance, nor would even the approval of the Conventions by a general Conference have that result. The preliminary work done and the texts which have been established are only the first step. Clearly, the value of these texts will depend upon the extent to which the Governments take them as a basis when negotiating bilateral conventions.

A list will be found below of measures likely to promote the conclusion of conventions of this kind. Furthermore, the model Conventions must be revised and supplemented at regular intervals in order to keep pace with the changes which may take place in the fiscal systems, and to embody such alterations as experience alone can suggest.

In addition to conventions, a number of other international measures would be useful in order to eliminate double taxation and to secure a more equitable distribution of fiscal burdens. It would be well, for example, to draw up a procedure of conciliation and arbitration, to which reference was made in the Technical Experts' Report of February 1925 (document F. 212, page 30); to draw up model rules for the apportionment of taxation applicable to the profits or capital of undertakings working in several countries; to standardise the fiscal clauses in commercial treaties; and, lastly, to give advice when required to administrations engaged in preparing fiscal reforms.

For these reasons the Committee suggests that a standing committee on taxation questions should be set up as a part of the League organisation. This committee should be composed of a limited number of members selected for their individual technical qualifications; it would meet once or twice a year, or more often as circumstances might dictate.

Its chief task would be to hasten the solution of the problems of double taxation and administrative and judicial assistance. The committee might, in particular, give its attention to the following points:

- (1) Periodical investigations and reports on the general situation in regard to these problems;
- (2) The preparation of model bilateral conventions or collective conventions and revised texts thereof;
- (3) The preparation of any other international measures calculated to eliminate double taxation and to secure a more equitable distribution of fiscal burdens;
- (4) Comparison of fiscal systems;
- (5) Preparation of general conferences, should such be contemplated.

Such a committee, if established, might also be of service to the Council as an advisory committee on taxation questions, even apart from the problems of double taxation and administrative and judicial assistance.

The results of the work just mentioned might be embodied in a series of publications issued under the direction of the committee. We give below explanations regarding these publications, and these explanations at the same time will indicate the guiding principles on which the committee's work should be based. These publications might be as follows:

(a) *Annual Collection of Conventions on Double Taxation and Administrative and Judicial Assistance*

The conclusion of bilateral conventions would be made easier if all the fiscal administrations throughout the world had access to the texts of the conventions already concluded. They would then be able to take advantage of the work done abroad and to keep abreast of the progress made in this matter in other countries. The publication of these texts would have the further effect of strengthening the tendency towards uniformity in future conventions.

With this object, it would be well to publish an annual collection of the original texts of the treaties and, if necessary, of the French and English translations. The first volume might contain all the treaties, agreements, conventions, exchanges of notes and other international engagements now in force, and each annual volume thereafter might include all the international engagements signed during the previous year.

A yearbook of this kind could be published with very little trouble or expense. It will be remembered that the Legal Section of the Secretariat of the League already publishes a *Treaty Series* containing, in the original language or languages and in French and English, the texts of all international engagements registered with the Secretariat. Thus engagements concerning double taxation have to be translated in any case. If the volumes of the special collection of conventions relating to double taxation were produced in the same form as the general *Treaty Series*, the same type might be used for both, and this would considerably reduce printing costs.

The publication of a special series of double taxation conventions would not mean any duplication of the general series. The latter is very voluminous; it did not begin to be published until 1920, but it already consists of 50 volumes, containing 1,218 treaties and other international engagements. Of all these, about 20 conventions or groups of conventions deal with double taxation and administrative and judicial assistance.

Furthermore, treaties are not published in the general series until they have been registered with the Secretariat, and cannot be presented for registration until they have been officially ratified. On account of the considerable period which sometimes elapses between signature and ratification, and again between ratification and presentation for registration, the Secretariat is frequently unable to publish conventions in the general series for a considerable time after signature. In the special collection, conventions on double taxation and administrative and judicial assistance could be published immediately after signature, *i.e.*, in the course of the following year. These conventions become of interest to taxation experts as soon as they are *signed*, and continue to be of interest, even in the unusual event of their failing subsequently, owing to considerations of home or foreign policy, to be ratified.

(b) *Memoranda on Existing Systems of Taxation.*

For any administration wishing to negotiate with the administration of another country a bilateral convention for the prevention of double taxation, it is essential to have an accurate and detailed knowledge of the taxation system of that country. It would be most useful, with this object, for the fiscal administrations of all countries to draw up surveys of their fiscal systems on uniform lines. These surveys — which would illustrate the similarities and differences of the fiscal burdens in different countries, excluding purely formal differences, as of terminology — would lighten to a considerable extent the work of any negotiators who might be called upon to bring the various fiscal systems into harmony.

In this connection, the Committee of Experts recalls the fact that Article IX of the

Recommendations of the Brussels Financial Conference<sup>1</sup> advocated a series of analogous publications. This article has so far never been fully applied, owing to the frequent changes which have occurred since the war in the fiscal legislations of many States. At the present time a certain stability seems to have been achieved, and the moment appears to have arrived when the task which was first proposed in 1920 might be begun.

The surveys drawn up by the administrations of the different countries might be published under the direction of the committee, which would need to produce a questionnaire or detailed scheme in order to have them framed on uniform lines. The committee should be empowered to suggest to the authors of the surveys any additions or alterations it might think desirable.

(c) *Annual Report.*

Once a year the committee might draw up a report on the progress made during the year with regard to double taxation and administrative and judicial assistance. Attention might be drawn in this report to the special characteristics of the conventions concluded during the past year and any new principles they might contain, to the signature or ratification of collective conventions and to the characteristics of the evolution of the principal fiscal systems. The report might perhaps be published as an introduction to the annual collection of conventions.

Lastly, it would be useful to publish a half-yearly bulletin in which the administrations of the various countries would announce any changes in their legislation or procedure. This bulletin might also contain a bibliography of the books and publications appearing with regard to double taxation, administrative and judicial assistance and comparative fiscal law.

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<sup>1</sup> Article IX of the Recommendations of the Brussels Financial Conference reads as follows :  
"IX. In order to enlist public interest, it is essential to give the greatest publicity possible to the situation of the public finances of each State.

"The Conference is therefore of the opinion that the work already accomplished by the Secretariat in its comparative study of public finances should be continued, and it suggests that the Council of the League of Nations should request all its Members and all the nations represented at this Conference to furnish it regularly not only with budget estimates and final budget figures but also with a half-yearly account of actual receipts and expenditure. At the same time, countries should be urged to supply as complete information as is possible on the existing system of taxation, and any suggestions which may appear to each State to be useful for the financial education of the public opinion of the world.

"With the aid of the information thus obtained, the League of Nations would be enabled to prepare pamphlets for periodical publication setting out the comparative financial position of the countries of the world, and making clear the various systems of taxation in force."