THE COMMITTEE ON INTERNATIONAL ECONOMIC POLICY

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International Double Taxation

By

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The immediate aim of the Committee on International Economic Policy is to further the serious and competent consideration of the issues which confront all the free peoples of the world and which imply their useful cooperation in reconstructing their economy after the victory of the United Nations.

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THE ADVISORY COMMITTEE ON ECONOMICS

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THE COMMITTEE ON INTERNATIONAL ECONOMIC POLICY

The following study by Paul Deperon, Member of the Secretariat of the League of Nations and Secretary of the Fiscal Committee, is one of a series prepared for the Advisory Committee on Economics to the Committee on International Economic Policy. The views expressed in each of these studies are those of the author.

INTERNATIONAL DOUBLE TAXATION

SUMMARY

Discriminatory taxation of foreign business and investment and international double taxation, i.e., concurrent taxation by two or more countries of the same income, estate or other taxable object, are practices that must be avoided or corrected if the spirit of the Atlantic Charter is to prevail in economic and financial intercourse after the war.

The solution of these difficulties has to be sought through measures of internal legislation and also through special tax treaties if only on account of the complexity of the technical questions which are involved in the mutual adjustment of national tax systems which is thus required. Such tax treaties must in the first place take into account the present differences in the economic development, commercial and financial position, and the structure of the respective tax systems of the countries concerned. In the second place, they must assure reciprocity in the concessions by a country to another country or to the taxpayers of that country in order to assure an equitable and sound tax treatment for individuals and corporations under the jurisdiction of both countries.

Largely as a result of the work undertaken by the League of Nations since 1921, there existed before the war in Europe a fairly complete network of treaties for the avoidance of international double taxation and fiscal evasion, and the United States joined that movement in the 'thirties.

The latest results of the work of the Fiscal Committee have been codified at a regional tax conference held in July, 1943, in Mexico City. This conference presented the results of its labors in the form of three coordinated model conventions covering the various aspects of international tax relations. These models are destined to serve as a basis in negotiations between national tax authorities. They proceed from the fundamental conception that a balance has to exist between the taxing rights of the country where a taxpayer is resident and of that where his property or the source of his income is situated. The recommendations made concerning the suppression of fiscal evasion should prove of value for the development of international trade not only because they render more acceptable to national treasuries the sacrifices involved in the elimination of double taxation but also because they discourage unsound financial transfers.

Several countries have recently entered into more or less formal negotiations on the basis of the new model conventions and the provisions of the latter have been indorsed by the Third Conference of the Inter-American Bar Association.

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By Paul Deperon

I. THE SPREAD OF ENTERPRISE

Taxation in any country presents intricate and highly technical questions of administrative procedure and economic justice. The framing of a tax system that will provide the needed revenue with a minimum of disturbance to economic enterprise is not a matter merely of a just distribution of the tax burden among individuals. If all taxes were levied directly upon individual incomes, it would be relatively simple to give adequate recognition to the principles of ability to pay. In most countries, however, a substantial proportion of the public revenue is obtained through other levies such as corporation taxes and excise duties. Account has also to be taken *inter alia* of the effect of such taxes upon costs, prices, the demand for goods, business risks, and the supply of capital.

A farsighted national tax policy would always seek to adjust tax burdens so as to promote productive efficiency. Article VII of the Mutual Aid Agreements states such a principle in another field of policy. The terms and conditions for final settlement of mutual aid obligations "shall be such as not to burden commerce between the two countries, but to promote mutually advantageous relations between them and the betterment of worldwide economic relations." This criterion of promoting efficient production and trade is applicable to many fields of economic policy, including taxation.

It is particularly applicable to the field of international double taxation which is explored in this paper. Business enterprise has always tended to expand beyond national frontiers. Modern methods of communication facilitate the cheap, certain and rapid transmission of information and ideas around the world. Industrial production comes to depend more and more upon scientific research, the results of which are translated into patented discoveries and processes, which are utilized in many countries. The managers of large-scale enterprises must seek assured access to a variety of raw materials in distant lands so that such enterprises grow like trees with their roots spread far afield. The scale upon which such enterprises are conducted demands large outlets also for their finished products, but many of the processes of production are most efficiently performed close to the final market.

There has, therefore, been a marked growth of what has come to be known as "direct" or "entrepeneur" investment as distinct from loans extended to governments or individuals without participation in management of the foreign enterprises. This is a world-wide phenomenon. Australian industrialists, working through London, and largely with British capital, control silver, tin, lead and other mining ventures in south-east Asia. Swedish capital establishes factories for the manufacture of electrical equipment in many countries. Above all, American enterprise develops raw material resources, establishes branch factories and assembly plants, buys into foreign businesses or participates with foreign capital all over the world. This development has now gone so far that the total of American direct investments abroad is approximately equal to the amount by which the United States is a net creditor on capital account.

It has become urgently necessary, therefore, to consider the taxation problems of these international enterprises. Each independent country makes its own tax laws, so that difficult and intricate questions arise as to the tax liability of businesses operating in more than one country. Such questions are the subject of this paper. They are necessarily technical and intricate in their ramifications, but agreement upon concerted action to settle them is urgently necessary for many reasons.

Disputes over the operations of foreign enterprises or their taxation frequently constitute a direct cause of international friction. Instances need not be cited, since the selection of particular cases would be invidious. It is highly desirable to lessen the number and diminish the significance of such disputes, not so much because in extreme cases they may lead to unfriendly acts, but because they undermine the basis of cooperative economic relations.

There are obvious hardships to individuals caused by double taxation of their investments and there are equally obvious cases where foreign enterprises may be used as a means of fiscal evasion or where they contribute less than they take from a national economy. As in all cases where economic activity crosses national boundaries national action can never provide an adequate solution for such hardships, evasions, and exploitation. International agreement is called for on just and fair principles to be applied by the governments concerned.

But the major reason, after all, for dealing with this question is not to be found in these fields of politics and equity. The worst damage done by double taxation lies in the barriers which it presents to a further development of efficient enterprise.

The most striking characteristic of the modern world is the contrast between living standards and social welfare in the areas of high industrial development and in areas which lack such development. The scientific knowledge by which man is enabled to harness natural energy for his own use, is largely confined to a relatively small proportion of the world's peoples. The equipment devised to make use of that knowledge is concentrated to an extraordinary degree in a few countries—mainly in north western Europe and the countries of European settlement overseas. If other peoples are to get such equipment, the quickest and most effective means of their doing so is to stimulate still further the spread of international investment and enterprise. Safeguards against exploitation can be erected and development can be guided into the channels most needed for national advancement. But the best way of increasing production and living standards where they are now low is to draw upon the knowledge and experience, and upon accumulated productive capacity, of the already developed countries.

Double taxation, by reason of the uncertainty which it brings to foreign investments, as much as by its burdensome effect, is one of the obstacles to achievement of the international goals quoted above in the language of the Mutual Aid Agreements. The chance is now offered of clinching the pioneer work of the International Chamber of Commerce and of the Fiscal Committee of the League of Nations. Principles have been worked out and embodied in model treaties. Many treaties have already been signed which incorporate these principles of fair and efficient taxation. The result of these treaties has been to safeguard the taxing prerogative of weaker national governments, to diminish the burdens of overlapping imposts, and at the same time to check tax evasion.

It needs to be emphasized that, without such agreements, double taxation is likely not only to hinder international enterprise, but to checkmate efforts to promote international economic cooperation. Trade cannot be freed, foreign investments will not be made, economic development cannot be hoped for in hitherto backward industrial areas, employment cannot be kept at high and remunerative levels, standards of living cannot be raised, unless enterprise is encouraged to develop the world's resources for the betterment of the world's peoples. The unfettered exercise of unlimited national sovereignty is as dangerous in the field of taxation as elsewhere. Only by mutual agreement on the application of principles that are fair to all parties concerned, business and government, debtors and creditors, can it be hoped to establish mutually advantageous international economic cooperation.

The paper shows the various ways in which double taxation arises in the modern world, analyzes the attitudes of national governments toward the question and the principles on which national tax legislation is now based. It then goes on to summarize what has already been accomplished by the negotiation of bilateral tax treaties and proceeds to set out model conventions designed to deal with the most important aspects of this complex problem. Necessarily much of the discussion is both summary and technical; but an attempt has been made to present in brief a survey of one of the unavoidable issues of postwar economic policy.

II. HOW DOUBLE TAXATION ARISES

1. TAXATION UNDER INTERNATIONAL LAW

The power to tax is a sovereign attribute of each nation. At present, international usage contains but two limitations to that power. In the first place, a state cannot tax another state. On this rule are based the tax immunities of representatives and agencies of foreign governments. In the second place, a state cannot enforce its tax claims outside its own territory. These two rules are mere corollaries of the principle of mutual respect between sovereignties.

Within its own national territory, the fiscal prerogatives of a state can be limited only by its own constitution, statutes, and the international treaties to which it has become a party. There is no general international obligation for a state to refrain from taxing property, transactions or income that has already borne a foreign tax. Interests and activities subject to the laws of two or more countries are thus exposed to higher taxation than if they were enclosed within one country. Each state may assert its tax powers without regard to measures taken by other states, provided, of course, there is within its territory property on which to enforce its claims. Thus arises what is generally known as international double taxation. It occurs mainly because the grounds of tax liability on individual and corporate income, on property, on successions, on transactions and legal or commercial instruments, differ from country to country.

2. CRITERIA OF TAX LIABILITY

According to the laws of each particular country, liability to income tax may result from the nationality of a person, his domicile or residence, or from the origin of his income. Thus, a citizen of a country which taxes its nationals on their entire income from all sources might become liable to three separate national income taxes on the same receipts if he set up his home in a country where income accruing to residents is taxable wherever it was derived and if, at the same time, he obtained that income from a third country where income from a domestic source is subject to tax.

In the hypothetical case which has just been outlined, the three main principles of income tax liability have been put into play: nationality, domicile or residence, and source of income. At the tax rates ruling in 1944, a person who was liable on his entire income to three tax jurisdictions could easily find himself in debt to the revenue authorities, after paying all his income in taxes. This illustrates the hardship international double taxation can cause a taxpayer who is caught unawares or who cannot adjust his affairs so as to avoid multiple taxation. It does not, however, exhaust the complexities of the problem. The legislation of most countries bases liability to income tax simultaneously on residence and on origin of income so that double taxation runs both ways. Moreover, national laws, and judicial as well as administrative rulings, differ on the definition of residence, and, even more important, on the concept of the source or origin of taxable income. When two countries simultaneously regard a taxpayer as resident in their respective territories, the resulting double taxation involves special hardship because tax liability may then apply, in both countries, to the entire income which the taxpayer derives from all sources.

There is no universally admitted definition of residence. Nor is there a generally recognized distinction between residence and domicile as it is sometimes employed for tax purposes. They are both technical expressions of the general idea of having a home. But there is no international understanding as to what may constitute a home for tax purposes or as to what kind of personal or business roots an individual or corporation should have in a country to be taxable under its laws. An individual may, for instance, be simultaneously taxable on his entire income in one country because he has spent some time within its borders and in another because there he has a household at his disposal. According to national laws, corporations may be taxable on their world income in one country because they were organized under the laws of that country, or because their statutory seat or legal address is in its territory, and again in another country because their main place of actual business is situated there. Still another kind of double taxation may occur when a person moves from a country to establish himself in another and the periods of tax liability in the two countries do not coincide, e.g., when tax is based in one country on the income of the current year and in the other on the receipts of a past year. All these varieties of double taxation arise because tax practices and definitions are not uniform.

If one turns to the origin of income a general cause of disagreement, and therefore of double taxation, is that certain fiscal codes approach this matter from a financial viewpoint while others apply economic criteria. There is a confusion first as to the financial source of the income, which may be defined as the debtor's residence, or the place where the payment is due or is actually made. Under another view, the country in which the business is situated or conducted is regarded as the source of income for tax purposes. Thus an employee who is sent abroad by his company may be subject to tax on his salary both in the country where he normally resides and in the territory in which he works.

3. SPECIAL PROBLEMS RELATING TO BUSINESS INCOME

The issues raised in this connection by business income deserve special mention. It is generally held that profits resulting from contractual transactions or technical operations are taxable at the place of business, office or plant, in which, or from which, the operations or transactions take place. Thus, a merchandising concern, catering to the domestic and foreign markets, without branches abroad, will usually be taxed, as a matter of course, on the profits of all its sales, without any attempt to segregate its domestic and export business. However, a foreign concern with no place of business in a country might nevertheless be subject to tax therein on the profits arising from activities such as concluding contracts, delivering goods to customers, supplying goods on consignment to an agent, leasing equipment, effecting business through commercial travelers or maintenance technicians, and even purchasing raw materials or finished articles through an agent.

Disagreements have also occurred as to what constituted a business establishment. Close and steady relations between foreign concerns and domestic firms, such as distributors, suppliers and contractors, have been subjected to special rules of legal construction enabling the revenue authorities to treat the domestic firms as branches of a foreign enterprise so as to tax the foreign concerns on presumed profits. At times the status of a subsidiary corporation as a separate legal entity for tax purposes has in effect been set aside, and not only the profits of the local subsidiary but also those of the foreign parent have been brought to account.

Even when two countries apply substantially the same criteria in distinguishing a branch establishment from an autonomous agent or correspondent, divergencies may occur as to what kind of activities would render the profits of the related foreign enterprise subject to tax in the country of operation. This problem confronts establishments engaged in activities which are not directly productive, such as research laboratories, experimental plants, storehouses, showrooms where no goods are sold and no orders taken, advertising displays, and purchasing offices. The revenue authorities of the country of operation may contend, particularly in the case of purchasing offices, that the existence of such places of business is evidence of economic benefit and renders the enterprise taxable. Assessments on such bases are likely to be arbitrary and may result in double taxation if at the same time the home country also feels that it possesses the authority to tax.

The most important common tax problem facing business enterprises with establishments in more than one country is that of allocating or apportioning profits. It is natural that each country in which an enterprise carries on activities should tax a part of such profits. But if the tax administrations concerned disagree about the allocation of profits, an enterprise may be taxed on an aggregate amount exceeding its total profits, or taxed in a country where the profits were not made, or taxed on expected profits that fail to materialize. All kinds of concerns doing business at home and abroad, whether in a mine, factory, office or plantation, may be liable to such double taxation. The solution resides in an agreement between tax authorities to abide by the results of specific accounting procedures adapted to the conditions of operation, capital structure and distribution, cost make-up and pricing system of each taxable enterprise.

4. DOUBLE TAXATION THROUGH DEATH DUTIES

Double taxation of income mainly arises from the fact that residence and the place where income originates are different and countries do not agree on criteria for taxation. Similarly, double taxation of an inheritance has two fundamental causes: the fact that estates may be held subject to duty in the country where the decedent lived and also in another country in which the assets in his estate are situated, and the fact that concepts of domicile, residence, and location of property may be variously interpreted. Moreover, like income taxes, death duties accrue in some countries on the basis of the decedent's citizenship. Consequently, there is close correspondence between the cases of double taxation of income and of property successions in general. A noteworthy characteristic of double taxation of inheritances is, however, its incidence on persons and individual enterprise rather than on corporations. At the same time, the fact that death duties are levied in one stroke on the accumulated wealth of a lifetime may make such double taxation more harsh than in the case of income taxes.

5. MISCELLANEOUS FORMS OF DOUBLE TAXATION

Double taxation falls most heavily on incomes and estates but it may touch other taxable objects. There have been instances of double taxation of sales and some countries have concluded mutual agreements to prevent it, although most countries exempt their exports from sales and other indirect taxes. Double taxation arises at times in connection with stamp and registration duties on commercial and legal documents. To a certain extent, the multilateral conventions on stamp laws signed at Geneva on June 7, 1930, and March 19, 1931, mitigate certain harmful effects of tax laws relating to checks and commercial documents, but no concerted plan to avoid double taxation in the field of documentary taxes has ever been put forward. As regards motor vehicle taxation, many states have ratified the Geneva Convention of March 30, 1931, which exempts motorists of one contracting state from paying a license tax or a registration fee in another contracting state if they remain in the latter state for a period not exceeding ninety days.

6. FISCAL EVASION

Double taxation in general results from the lack of coordination between tax systems. A similar absence of cooperation between revenue authorities also paves the way for fiscal evasion.

It is necessary to distinguish between fiscal evasion, tax avoidance and flight of capital. Fiscal evasion is essentially a maneuver to escape taxation through deceit or concealment, or by illegally putting taxable assets outside the reach of the revenue authorities. Tax avoidance, in strict terms, is any decision or move to conduct affairs so as to incur minimum tax liability by taking advantage of provisions in fiscal laws and regulations. A marked difference exists therefore in the ethical and technical aspects of tax evasion and tax avoidance, though blurred borderline cases may occur. Fiscal evasion and capital flight have at times been associated because capital movements may be provoked or arrested by tax measures. The threat or existence of excessive or unsound taxes may lead capital to shun a country.

Although capital export may facilitate tax evasion, the two developments are quite distinct. It would be a misuse of public authority to impede the circulation of capital on the pretext of maintaining government revenue or facilitating tax collection. The International Chamber of Commerce affirmed at its Stockholm Congress in 1927 that international tax evasion is due primarily to national and not to international causes.

In a country where tax administration runs smoothly, a taxpayer has little chance to get away for a long time with a substantial tax delinquency. Revenue authorities may, however, have some trouble with taxpayers having interests in another country, for they may have no means of ascertaining the income received or property acquired. Conversely, the country in which a taxpayer acquires income or holds property may find it difficult to assess taxes when it becomes necessary to take into account data available only in another country, as may, for instance, happen in the determination of the profits made by a local branch of a foreign concern. As regards the enforcement of tax claims in foreign countries, revenue authorities are in a worse position than private creditors as they have no access to the courts of another state, except under specific treaty provisions.

III. ATTITUDES OF NATIONAL GOVERNMENTS

1. ECONOMIC MOTIVES

The attitude of governments towards the problem of international double taxation is determined by factors such as the degree and direction of economic development of the country concerned, the commercial and financial relations that the country maintains or seeks to establish with other countries, the amount of public revenue obtained by taxing international business, and the technical features of the national tax system.

There is general agreement on the desirability of preventing double taxation both for reasons of equity and for facilitating international intercourse. In some cases, however, the intent to bar capital flight or influx has influenced methods of taxation and rates and has led to or aggravated double taxation, but such objectives are now achieved mainly through direct measures of exchange control. Trade preferences have also influenced tax policies. More fundamental considerations relating to economic policy and social reform may in other cases determine the action of states in regard to international double taxation. Countries will take care that the measures to remove international double taxation do not involve concessions which are detrimental to domestic business by placing a premium on capital export or by giving foreign concerns a competitive advantage in the internal market.

For a country that has a primary tax jurisdiction over a person on account of his nationality, domicile and residence, relief in respect of double taxation can consist in provisions making a taxpayer who is liable to foreign taxes no worse off than if his income or property had been exclusively taxable in the country concerned. Such a purpose will generally be better achieved by a deduction of foreign taxes from the home tax than by an outright exemption of foreign income or property, as the latter method of relief tends to divert business and investment to countries where tax rates are lower and also might jeopardize the enforcement of progressive taxation. Moreover, the fact that a person derives income or possesses property abroad cannot be taken as absolving him from all tax liability in the country where he has his home. He enjoys the various public, social and economic advantages of his home country and its indirect taxation is generally an inadequate payment of such services. Wherever the property or place of occupation of a person may be situated, he should in principle remain personally taxable in his country of residence. At the same time it seems fairer and more practical to base taxation on economic rather than on political allegiance. This is now recognized in nearly all legislation which uses residence rather than nationality as the basis of personal tax liability.

With regard to impersonal tax liability, which is based on origin of income or situation of wealth, certain forms of relief from international double taxation cannot be expected from most countries except as temporary or specifically limited measures because of the internal effects such concessions might have.

In this connection, states insist on taxing at least three categories of income realized in their territory: rents and other yield from real property; business profits; and, in general, salaries and wages. When relief from double taxation is granted in such matters, under existing treaties and laws, it is done, in the overwhelming majority of cases, at the expense of the state where the interested party has his residence.

The taxation of financial investments and holdings and their income is one of the matters where national tax administrations may find it most difficult to agree on a method of double taxation relief. A capitalexporting country, unless it wants to follow an active policy of fostering private financial investment abroad, will be unwilling to recognize any tax priority in favor of the capital-importing country. For their part, the tax authorities of the latter country to which taxation of foreign capital may represent a relatively large source of revenue, may not be inclined to abandon it, especially in view of the difference in interest rates between debtor and creditor economies.

2. REVENUE CONSIDERATIONS

From a fiscal viewpoint, the governments of the economically less developed countries may derive a relatively larger proportion of their income and other direct tax receipts from the taxation of foreigners holding investments or doing business in their territory, than the governments of the more advanced and richer countries obtain from the taxation of resident individuals or companies on the income and property they have abroad. For their part, wealthier and more developed countries are more inclined to favor taxation according to nationality, domicile and residence, which enable them to tax the foreign income and assets of persons under their jurisdiction. But the less developed countries may be expected to adhere firmly to the criteria of income origin and property situation because foreigners control a greater part of the national wealth. These countries may feel reluctant to reduce the scope of impersonal taxation in order to protect prosperous citizens of wealthier countries from double taxation. This tendency to tax those most able to pay may be strengthened by a desire to recoup part of the outflow of wealth created in the country, an outflow that national opinion may consider excessive. As an application of the principle of territoriality of taxation, the primary producer and debtor countries may insist on the rule that interest and dividends payable to foreigners should be taxed in the country of investment. They may even attempt to reach income that was not produced within their borders.

It may be feared that such difficulties will be relatively more frequent in countries where impersonal taxation of income and wealth is relatively more important as a source of revenue than personal taxation. This may occur partly on account of the fiscal objectives that are pursued in those countries and partly because their tax administrations are usually younger and have not learned the same lessons from experience as the older administrations of the more developed countries. Motives of technical convenience may, for instance, be among the contributing causes of measures granting tax relief on account of foreign investments of a citizen rather than attempting to secure foreign data.

IV. NATIONAL LAWS

An appreciable number of countries have included in their tax laws provisions designed to neutralize or reduce the double taxation which their residents or nationals might bear. Such provisions are found chiefly in the income tax field, where double taxation most frequently arises and therefore relief is needed to aid intercourse. The relief provisions relate chiefly to profits from business in foreign countries, but not infrequently they apply to all foreign income. Within its scope of application, the relief may be more or less complete, and may be granted under various forms. Some countries will concede it through an outright tax exemption of certain income from foreign sources. At least one country does not tax profits from foreign business when under certain conditions such profits are left abroad. In another country, reduced rates may be applied to income from specific foreign sources. Under other tax systems, the relief granted residents or nationals may take the form of a limited deduction of foreign taxes from tax due in the home country. The double taxation relief granted by a country to its residents is sometimes made subject to reciprocity on the part of the other country concerned.

Sometimes, discriminatory taxation has been applied to the income or property of foreigners. On the other hand, countries have sometimes maintained mild forms of taxation or have granted exemptions for the special benefit of foreigners and the stimulation of domestic economic development.

A country goes a step toward preventing double taxation when it lays down that profits of transactions made in its territory are taxable only if they pertain to an establishment therein; or when it taxes remuneration for personal services rendered in its territory only if certain conditions of time or amount are fulfilled; or when it applies reduced rates on income accruing to non-residents.

V. TAX TREATIES

1. GENERAL TREND

Very few tax treaties existed before the First World War. That war left a legacy of high taxes on the incomes of individuals and corporations. Business felt a new impulse to spread over frontiers and acquire bases of operation in foreign countries. Causes of this tendency were the expansion and technological advancement of large-scale industry, the improvement and multiplication of means of communication, and the aim of firms interested in foreign markets to surmount trade barriers by establishing plants to produce, process, assemble or finish goods inside the protected areas.

The inhibitory effects of increased direct taxation on the expanding network of international businesses engaged in trade and banking, especially in the jurisdictions of the newly created states in Europe, was largely responsible for the appreciable number of international agreements on double taxation and fiscal evasion concluded during the interwar period. For similar reasons provisions for domestic relief from international double taxation were incorporated in national tax laws.

International agreements on double taxation have supplemented national enactments and have often dealt with specific concessions of particular concern to individual nations. Thus, there are fairly numerous special agreements on the reciprocal exemption of the income of maritime navigation enterprises—with signs of a possible movement in the same direction as regards air navigation, on the reciprocal exemption of the profits of business done through bona fide agents of independent status, and, in addition to the plurilateral conventions of 1930 and 1931, some forty bilateral agreements have been reached on the taxation of motor traffic and on stamp duties.

But, more important are the sixty-odd general agreements for the prevention of double taxation of income, which were concluded during the interwar period, mostly between countries of continental Europe. The United States is a party to three such agreements, namely with France, Sweden and Canada. The United Kingdom has a general agreement about income tax with Ireland by which each country reciprocally exempts persons resident in the other, but it has only a few agreements with foreign governments, and these provide only for the reciprocal exemption of the income of shipping or air navigation enterprises, or of income from sales effected through defined classes of agents. Britain, under certain conditions specified in its law, exempts the foreign profits of resident taxpayers unless they are remitted to its territory. To encourage the development of business within the Commonwealth, Great Britain grants resident taxpayers relief in respect of income derived in a Dominion, known as Dominion income tax relief. It consists in allowing a deduction from the United Kingdom tax for the tax paid in the Dominion up to one-half the British rate, with the understanding that if the Dominion tax exceeds half of the British rate, the Dominion concerned will for its part forego the excess of its rate over the half of the British rate.

The general agreements concerning income and property taxation which have been concluded since 1920 by countries of continental Europe—mainly Germany, France, Italy, Austria, Czechoslovakia, Hungary, Yugoslavia, Roumania, Poland, Sweden, Denmark, Finland, the Netherlands, Belgium and Switzerland—were often supplemented, either at the time of their signature or at a later date, by stipulations on death duties and on reciprocal administrative assistance for the assessment and collection of taxes.

On the whole, if allowance is made for the diversity of national tax systems involved, and for mere variations in phraseology, a remarkable degree of similarity will be found to exist among these agreements.

A noteworthy factor making for uniformity was the initiative taken by the Economic and Financial Organization of the League of Nations which began to study the problem of double taxation and tax evasion in 1921. Since 1923, the League has at intervals of one or two years convened a group of leading tax officials or experts from various countries. In 1929, this group of experts was given a permanent status as the Fiscal Committee of the League. It held regional conferences in Mexico both in June, 1940, and July, 1943.

2. INCOME TAX CLAUSES

Most general agreements on income and property taxes embody separate clauses dealing with income derived from such sources as real property and mortgages thereon; securities, loans and deposits; agriculture, mining, industry, commerce and finance; shipping; independent professions; patents and copyrights; private employment; public employment; pensions and annuities. In general, it is agreed that income from real property and mortgages thereon are taxable in the country where the property is situated, that income from business is taxable in the country where is located the permanent establishment to which the income is attributable, and that compensation for personal services is taxable in the country where the services are rendered.

Sometimes, rules for the division of profits of enterprises operating in both contracting nations are included, such as the one specifying that permanent establishments are to be taxed on the same basis as if they were independent enterprises.

Profits from maritime shipping and air navigation are on the contrary often exempted from tax except in the country in which the company was organized and the ships or aircraft are registered.

In some treaties, patent and copyright royalties are exempted in the country of the licensee, so as to be taxable only in the country of the licensor; but, by way of exception, if a company is engaged in the business of licensing patents or copyrights, such income is brought under the provisions concerning business income. Salaries and pensions paid by governments are always made taxable in the debtor country.

In contrast to the fairly uniform provisions to the effect that income from real estate and private mortgages and business establishments should be taxed in the country of its economic origin, the rule that income from financial holdings such as bonds, loans, deposits and corporate shares should be taxed in the country of domicile or residence of the recipient is rather frequently admitted in principle in double taxation agreements. However, the treaties do not generally preclude the retention of a tax at source from interest and dividends paid by debtors in one state to persons resident in the other state. Profits from shares in ordinary partnerships are often treated as income from business and not from capital, but receipts from participation in a company are treated as dividends, unless they represent payment for services. Private pensions and life annuities are sometimes considered as taxable only in the country of residence of the recipient, but sometimes only at origin.

Provisions of the foregoing type, framed in the proper legal terminology and completed by clauses on definitions and administration, could, in principle, constitute an acceptable system for preventing or reducing double taxation, especially if the tax systems in the contracting states consisted of flat rates on the separate categories of income. Each country would tax the income assigned to it on grounds of origin or residence according to agreed rules, and only one country would tax a given item.

Income tax systems, however, frequently include a progressive tax on all classes of income in the case of residents, in addition to flat withholding rates applicable to certain categories of income regardless of where the recipient resides. Some states apply a flate rate to income derived by non-residents because of the inconvenience of subjecting them to the progressive rates imposed on residents.

If a country imposes a progressive tax on both residents and non-residents, the effective percentage of tax depends on the amount of taxable income; therefore a special problem arises when the income of a given person is taxable first in one state and then in another. Three kinds of solutions have been adopted. Each state may tax only the income assigned to it, applying the effective rate which corresponds to the total income of the taxpayer, including the part taxable in the other states. The state where the income originates may levy its customary tax and the country where the taxpayer resides may deduct such tax from its tax on entire taxable income, subject to limitations which prevent reduction of the tax applicable to domestic income. Under another formula, countries that tax income through a composite system of flat rates on particular classes of income and a superimposed general progressive tax on total net income may agree that the country of origin of the income will impose only its flat rates while the country of domicile will subject income from the other state only to its general income tax.

Tax agreements that refer to annual taxes on property and capital usually extend to those taxes the rules applying to income taxes.

3. CONVENTIONS ON DEATH DUTIES

The agreements about death duties which European countries concluded among themselves during the interwar period are much simpler, more uniform, and less numerous than those on income taxation. Nearly all stipulate that real property and business establishments, including all assets pertaining to such establishments, are subject to death duties in the country where such property or establishment is situated, while private personal property is dutiable in the country where the decedent was domiciled at the time of his death. For the determination of the net value of property subject to duty, it is generally agreed that a debt secured by a specific guarantee such as a mortgage is to be primarily deducted from the gross value of the property in the country where the property is situated, and that general debts are to be deducted from the estate taxable in the country of domicile. It is understood that when a liability exceeds the assets in the country where it has to be primarily deducted, it may be set off against the value of the property taxable in the other country. The rate of duty which each state is entitled to apply to the property taxable in its territory is to be fixed either on the basis of the value of only the property taxable by the state concerned, or with regard to the total amount of the property in the estate.

4. ADMINISTRATIVE ASSISTANCE AGREEMENTS

All the thirty-odd international agreements for the prevention of fiscal evasion that have come into existence since the First World War were entered into by countries that had already concluded or were concluding arrangements for the avoidance of double taxation.

The operation of these agreements on reciprocal administrative assistance for the assessment and collection of taxes is limited by numerous safeguards in favor of the taxpayers involved, other private persons, and the national governments themselves. The cardinal rule seems to be mutual respect for national laws and procedure. Professional and administrative secrecy is always closely protected. Tax administrators may refuse to accede to any request for assistance when they deem that their national interests may be involved or individual rights challenged. While such limitations give a highly voluntary character to the reciprocal assistance rendered, abuse of exceptions is unlikely lest it induce a similarly elusive attitude on the part of the other contracting state. Some arrangements provide for yearly automatic reciprocal communication of certain data—such as lists of persons living in one country who collected dividends in the other—coming to the knowledge of each administration in the usual course of its operations. More modest in scope and more frequent in application are the agreements according to which one administration is to supply specific information concerning particular cases at the special request of the other administration. Within the safeguards summarized above, this procedure can be of help not only to the tax administration, but also to the taxpayer when, for instance, his statements have to be verified. Other fiscal assistance agreements provide facilities for the collection of the taxes of one country in the territory of the other, enabling each administration to act on behalf of the other, and simplifying various matters of procedure, preserving at the same time the rights of the domestic private creditors of delinquent taxpayers.

VI. PRINCIPLES OF ADJUSTMENT

1. GENERAL OBJECTIVES

A perhaps ideal solution of the problem of international double taxation would consist in the exclusive taxation of income and wealth in the country of the taxpayer's domicile or residence. From the taxpayer's point of view such a rule would have the advantage of being simple and equitable. Each person would be subject to one fiscal jurisdiction, his tax liability would remain the same wherever his interests were situated, and he would have no advantage in carrying out his activities or placing his assets in one country rather than another. Nevertheless, this rule might be detrimental to countries where rates of personal taxation are high, as some individuals or companies might be induced to move to a country with lower rates. At the same time, states in general cannot now afford to forego impersonal taxation according to origin of income and situation of wealth. Such a prospect could materialize only if contrasts were less sharp than at present in the economic and financial structure and relations of the different countries.

As shown in Chapter V, the general treaties on prevention of double taxation through income taxes are based, almost without exception, on the idea that proper recognition has to be given to the basic principles of personal and impersonal tax liability, to the respective jurisdiction of the country of the residence of the taxpayer, on the one hand, and to that of the origin of income, on the other. This concept underlies the entire work of the tax experts of the League of Nations and may explain the influence their recommendations exerted on the bilateral and unilateral measures taken by states to prevent or remedy double taxation during the interwar period. This concept was also accepted, on behalf of the business world, by the International Chamber of Commerce when it endorsed, at its Amsterdam Congress in 1929, the conclusions reached by the League experts in 1927 and 1928.

Reciprocity and uniformity are major objectives that should be sought to the fullest possible extent, in treaties and laws on international double taxation. Effective reciprocity in these matters is, in principle, an indispensable safeguard for governments from the point of view of revenue and general economic policy. Uniformity in international tax provisions in so far as it can be made consistent with the diversity of national tax systems is obviously convenient for business. It facilitates the propagation of improved tax formulas. It brings closer the prospect of multilateral tax agreements, and above all tends to make the rules about the prevention of double taxation more imperative as they become more universal.

The main task which the League experts have pursued in connection with international double taxation and fiscal evasion during the last twenty-odd years has been that of testing and drafting standard clauses to facilitate the work of national legislators and treaty negotiators. The trend of this effort has been towards a system of legal rules and definitions, as well as administrative methods, enabling each country to prevent international double taxation through formulas that would be reciprocal, uniform, flexible and convenient.

From time to time, the conclusions reached by those experts have been communicated to the various governments in the form of model tax agreements and standard provisions. Most significant were the texts contained in the report of the General Meeting of Government Experts on Double Taxation and Fiscal Evasion (Geneva, 1928), the model convention on the taxation of business income and property which the Fiscal Committee completed in 1935, and the draft which resulted from the Mexico Regional Tax Conference of 1943.

2. MEXICO PROPOSALS

The Mexico model conventions represent a tentative synthesis of the various findings and recommendations made by the League experts since the General Meeting of 1928, in the light of the experience gained by national tax administrations in making and applying tax treaties.

The immediate object of these conventions is to facilitate the settlement of tax problems between countries of the Western Hemisphere. In general they reflect insistence upon taxation at origin or situs, therefore throwing the apparent burden of relief mainly on the country of residence or domicile. Their utility is not necessarily confined to the Western Hemisphere. The clauses of both the convention on income taxes and that on succession duties cover practically all the questions which should be settled in any complete treaty concerning either subject, whatever the tax systems of the countries involved. Moreover, the models were prepared with the object of making it easy to adapt their features to special national circumstances by partial changes, additions or suppressions, without involving the necessity of recasting the entire instrument. In this way, the models can be modified to suit particular requirements without departing significantly from the general trend towards uniformity in international canons of taxation. At the same time, it is to be expected that such models will not be used as sole bases for tax negotiations and that reference will be had to existing treaties, notably those previously passed by one or both of the states concerned. In any case, the models constitute a means of common approach and a standard of reciprocity, completeness and adequacy.

The conclusions of the Mexico Conference are embodied in three model conventions dealing respectively with double taxation through income taxes, double taxation through death duties, and reciprocal administrative assistance in the assessment and collection of taxes.

The first two draft agreements are not limited to the purely legal clauses to prevent double taxation, but provide for the establishment of a continuous procedure of cooperation and consultation between tax authorities to solve complications and unforeseen difficulties and grant to the taxpayers special remedial facilities. Such clauses allow freer play to equity in the application of the conventions. Experience indicates that they are likely to foster a gradual development of common practices among national tax administrations.

3. DOMICILE AND RESIDENCE TAXATION

Both models extend the benefit of their provisions to all taxpayers, whether nationals or foreigners, having their fiscal domicile, or permanent home, in either of the contracting states. Hence, they recognize that foreigners as well as citizens should be shielded from international double taxation.

The model income tax convention requires the state of fiscal domicile to deduct from its levy on income the taxes paid elsewhere on grounds of origin. The deduction cannot, however, be more than an amount proportionate to the ratio between income taxable in the state of origin and the entire income. These relief provisions safeguard the fiscal interests of countries with high or low rates of income taxation. This remedy, based on the American pattern, has the merit of being relatively simple and universally applicable. Moreover, it implies that the country of origin of income should limit its tax to income realized within its borders.

4. ORIGIN TAXATION

In determining which country has a tax claim on income on grounds of source, the criterion of immediate economic origin is applied. Income is thus made primarily taxable in the country where the actual factors that directly produced it were located. The criterion of immediate economic origin permits the framing of a coherent system with objective tests for delimiting the power to tax. Some exceptions are allowed for reasons of business convenience or administrative expediency.

5. BUSINESS INCOME

The model convention stipulates in effect that foreign enterprises cannot be made subject to tax on their profits in a country merely because of isolated or occasional transactions within its territory. This results from the provision that a foreign enterprise is taxable in respect of business income only when it has a permanent establishment in the country. The expression "permanent establishment" is defined in substance as any fixed place of business in or from which a concern habitually carries out the activities that relate to its business and directly contribute to its earnings. An enterprise is not regarded as having a permanent establishment in a country if it deals regularly through an independent commission agent or broker, regardless of whether goods may be temporarily consigned, or if it sends commercial travelers to the country or maintains a subsidiary. Nor does liability arise if the enterprise sells goods to an exclusive dealer who resells for his own account. Thus business firms enjoy freedom from taxation and they incur no tax liability in a foreign country on business income unless they participate in the economic life of the country by carrying out a business clearly localized within its borders. On the contrary, profits from maritime and air navigation are exempted from taxation except in the country where the enterprise has its fiscal domicile and in which its ships or aircraft are registered.

A branch of a foreign enterprise may be taxed only on the earnings that are the direct result of its activities. To apply that principle the League experts declared in 1943, as they had done in 1935, that "there shall be attributed to each permanent establishment the net business income which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions."

When one establishment supplies goods or services to another establishment of the enterprise, even though there is no transfer of title between two parts of the same legal entity, each establishment should enter the goods or services on its books at the "value which would prevail between independent persons dealing at arm's length." In other words, transactions within the enterprise should be put on the same accounting basis as if they were made by each unit concerned with an outsider, whether the establishment is producing goods and supplying them to another unit for further processing or for sale, or is receiving them to sell in its capacity as a dealer or commission agent, or acquiring them in its capacity as a merchant or commission agent to supply to other establishments, or is rendering some service to other establishments. As a rule, there will be similar transactions between the enterprise and third persons or customary prices or rates of commission prevailing between third parties for similar transactions which will serve as a basis for the book entries.

The method of separate accounting gives a strictly territorial scope to the taxation of branch establishments by the country where they are located as this method treats such branches as self-contained taxable entities, thus eliminating in principle the need for outside data. This method enforces the principle of equality of treatment of foreigners by placing branches of foreign enterprises on the same footing as domestic enterprises as regards the computation of receipts and expenses. It bases taxation on separate accounts and thereby achieves flexibility and keeps in line with business usage. Evidence that separate accounting as a standard tax procedure is favored by the taxpayers concerned is shown by the resolutions adopted by the International Chamber of Commerce in 1929 and 1937.

If an enterprise fails to keep adequate separate accounts, the Fiscal Committee and the Mexico Conference suggest that the national tax administration may determine the profits of the establishment concerned "in a presumptive manner by applying a percentage on the gross receipts of that establishment. This percentage is fixed in accordance with the nature of transactions in which the establishment is engaged and by comparison with the results obtained by similar enterprises operating in the country." Even under this presumptive method, the League experts have indicated that branches of foreign enterprises should be treated as nearly as possible like national concerns in the country where such branches are taxable.

Only when the two preceding methods cannot operate satisfactorily, do the League experts admit recourse to "fractional apportionment." This method is generally understood to proceed from the view that dependent establishments are but parts of an organic whole. Accordingly, the profit to be taxed in each country should be computed by apportioning the profit of the enterprise as a whole, as revealed by the general balance sheet and profit and loss account.

According to one type of fractional apportionment, the profits attributable to each establishment are to be determined by applying to the total net profits or loss of the enterprise a ratio based on selected factors, e.g., comparative value of real property, equipment and machinery, amount of circulating capital, size of payrolls, physical output and cost of operation. Apportionment methods of this type are used to some extent to adjust cases of interstate and intercantonal taxation in the United States and Switzerland. They are rarely employed in international practice, except in Spain where a taxation board computes the taxable income of a foreign company on the basis of a relative percentage reflecting the importance of the business in Spain to total business. While France taxes branches of foreign companies on a separate basis, that country subjects the dividends of the foreign company to another tax based on the proportion of assets in France to total assets.

Another form of fractional apportionment employs systems of fixed coefficients which are based on the nature of the activities involved and which do not change from enterprise to enterprise. According to such systems, especially known in Central Europe, each phase of a transaction—purchase, manufacture, sale—is calculated to yield a constant proportion of the profits on the complete transaction and the total profits are divided on that basis. Thus prewar Austrian legislation provided for apportioning income from manufacture in one country and sale in another in the ratio of two-thirds to manufacture and one-third to sale.

At best, apportionment ratios and coefficients are based on averages. Applied to the annual taxation of individual enterprises, their results will normally be less true than those derived from separate accounts based on objective and directly pertinent facts such as price quotations, commission rates, and costs prevailing between independent enterprises.

The advantages that may possibly be credited to fractional apportionment within a country composed of federated states do not qualify it for international usage. Differences in the scale of values and relative yield of factors of production are likely to be greater between countries than between the components of a federation which constitutes an economic and financial unit. Exchange fluctuations also complicate the picture. Moreover, in international practice, differences in language, business and accounting practices, fiscal and commercial legislation, make hazardous any attempt to evaluate the profits of a particular establishment on the basis of the central accounts of the enterprise to which it belongs.

Fractional apportionment should not be employed in international practice except when comparison with national firms or references to market conditions is not possible or relevant, as may be the case with regard to concerns engaged in international transport, communications, or insurance.

In any event, the League experts specify that fractional apportionment should be based exclusively on that part of the total income of the enterprise that is derived from activities in which the establishment concerned took part. They also insist on the requirement that the factors of apportionment be so selected as to insure results approximating those of separate accounting.

6. INCOME FROM REAL PROPERTY

Rents, royalties and other income from the ownership and tenancy of land, realty mortgages, buildings, and mines and other natural resources are left under the traditional rule of taxation in the country of location. Income from mortgages on sea or air vessels is made taxable in the port of registration.

7. INTEREST AND DIVIDENDS

While the Fiscal Committee has evolved a complete body of principles and rules concerning business income, it has taken no definite stand concerning the taxation of income from capital not represented by mortgages. In fact, it has confined itself to presenting technical formulas which tax negotiators could use in actual practice.

The Mexico Tax Conference brought out a rule to the effect that interest, dividends and other income from capital are to be taxed in the country where the capital is invested.

The new rule, to which the Conference gave no detailed interpretation, seems to mean that, in principle, income from capital should be taxed in the country where it is effectively used. Interest would be taxable in the country where the debtor establishment concerned is situated. Dividends would be taxable in the country where is situated the head office of the company which distributes them. Interest on deposits and non-commercial accounts would be taxable in the country where the deposit or account is maintained. Interest on private, non-business loans could remain taxable in the country of the debtor's fiscal domicile.

8. PATENT AND COPYRIGHT ROYALTIES

The new model suggests that royalties and receipts from patents, secret processes or formulas, trademarks and so forth should be taxed in the country where the right is exploited. But copyright royalties on artistic or scientific works are exempted from tax in the state where they are used—though remaining subject to tax in the country of the licensor—in order to facilitate cultural exchanges.

9. TAX STATUS OF SUBSIDIARY COMPANIES

The League experts have always firmly maintained that subsidiary companies should be treated as separate legal entities and not as parts of the parent company. Their original opposition to fractional apportionment was due in part to the efforts of certain tax administrations to reach the profits of a parent company in a foreign country through a local subsidiary. There was no departure from that attitude at the

Mexico Conference. A corollary of the principle of taxing a subsidiary as a separate entity is that the country in which the parent company has its seat may not tax the income earned by the subsidiary until that has been distributed to it as dividends. Hence, a subsidiary in one country may develop its business and reinvest its profits therein without being hampered by taxation in the country where the parent is incorporated. This is an advantage which does not exist in the case of ordinary establishments or branches with no separate legal existence. On the other hand it is not permissible that the connections between related companies should cover fictitious or abnormal transfers of receipts or expenses and losses that would be detrimental to the interests of public revenue in either of the countries concerned. In such cases the revenue authorities are entitled to make the necessary adjustments in the accounts so as to correct any unwarranted diversion of profit or loss.

10. EARNINGS FROM PERSONAL SERVICE

Income from professions is taxable in the country where the individual concerned maintains his professional establishment. Salaries, wages and other remuneration from employment are taxable in the country where the services are rendered. However, when an enterprise in one country sends an employee to work in the other country for less than six months the employee's pay is exempt in the latter country and therefore remains taxable exclusively in the first country.

Private pensions and annuities are taxable according to the general criterion of origin taxation in the country of the debtor.

Public salaries and pensions are taxable only by the government which pays them.

11. ADDITIONAL CLAUSES ON INCOME TAXATION

The model convention also contains various clauses concerning other matters such as: directors' percentages and capital gains which constitute a direct application of the principle of origin taxation; the determination of fiscal domicile and the distinction between the various categories of income; consultation between the competent administrations to prevent double taxation in cases not specifically covered by the treaty.

12. PROVISIONS ON DEATH DUTIES

The Mexico model convention follows the general pattern of the European treaties as regards taxation in the country of situs of real property and business enterprises forming part of a succession. That rule is extended to all other kinds of property, but it is left to the contracting states to define the criteria to be used in determining the situs of property other than real estate and business. The state in which a decedent was domiciled may tax all personalty and realty of the deceased, including that located in the other state but must grant a credit against its tax in respect to the tax paid in the other state on assets located therein.

The model also contains the fairly well established rules that are found in most conventions concerning the allocation of debts for the computation of the taxable value of the estate in each country concerned.

13. ADMINISTRATIVE TAX ASSISTANCE

The experts at the Mexico conference prepared model clauses concerning mutual assistance in administrative problems connected with tax assessment and collection, which are intended to implement the provisions for preventing double taxation contained in the principal model conventions along the lines of the previously mentioned agreements on this subject.

ANNEX A

THIRD CONFERENCE OF THE INTER-AMERICAN BAR ASSOCIATION

MEXICO, D. F., AUGUST, 1944

RESOLUTION ON INTERNATIONAL TAX PROBLEMS

TAX PROBLEMS

The Third Conference of the Inter-American Bar Association

RECOMMENDS:

That, through internal regulations or through international agreements, the Governments of the countries of the Western Continent cooperate in the adoption of measures for the equitable treatment of taxpayers, in accordance with the recommendations formulated by the Fiscal Committee of the League of Nations at the Second Regional Conference held in Mexico in July 1943, which embody the following essential principles:

1. To avoid *discriminatory taxation* of foreigners, each country, subject to reciprocity, should not levy on another country's nationals, whether natural or juristic persons, other or higher taxes than those imposed on income, property and successions of its own nationals, whether natural or juristic persons, under similar circumstances.

2. To avoid *international double taxation* of income, the country where a natural or juristic person is taxable on entire net income on account of residence,

domicile or nationality shall deduct from such tax, the amount of the tax payable in another country where income has its origin. In order, however, to prevent such relief from reducing the country's tax on domestic income, such deduction should be limited by the proportion existing between the part of the income taxable in the other country and the entire net income of the taxpayer concerned.

3. To avoid *extra-territorial taxation* of the income in the case of individuals resident or corporations organized in one country and deriving income from sources in another country, herein called the country of origin, the country of origin shall impose its tax only on the following:

(a) Income derived from real property situated in its territory;

(b) Royalties and other income paid in consideration of the right to exploit mines, quarries, oil wells and other natural deposits when the deposit is situated in the country;

(c) Income from mortgages on real property situated or ships registered in the country;

(d) Profits from the operation of mining, agricultural, industrial and commercial establishments situated in its territory as determined through the separate accounts of such establishment on the same basis as an independent domestic enterprise engaged in the same or similar activities under the same or similar conditions. Income from maritime and air navigation should however not be taxable if the ship or aircraft is registered in the country of the operator's residence;

(e) Income from movable capital, including bonds issued by public or private entities, loans, deposits, current accounts, which income is paid by a debtor resident in the country, and dividends paid by a corporation organized in the country;

(f) Royalties on patents, trade-marks, secret processes and other similar industrial or commercial rights paid by a licensee resident in the country. In order to facilitate cultural exchanges, royalties on copyrights of artistic and scientific works and publications (except cinematographic productions) should be exclusively taxable in the country in which the licensor resides even if they are used elsewhere;

(g) Income from personal services including salaries, wages and remuneration from liberal professions which involve a sojourn in the country of over six months in the aggregate during the taxable year. Remunerations for services rendered in the country over a period of less than six months in the aggregate should be exempt;

(h) Private pensions and annuities paid by a private debtor resident in the country;

(i) Salaries or wages paid for services rendered to a governmental agency or political subdivision of the country concerned, but not those paid by an agency or political subdivision of a foreign government.

4. To avoid extraterritorial taxation of foreign natural and juristic persons in respect [of] property, each country should tax such persons who are resident in another country only on the basis of property situated in its territory.

5. To avoid extraterritorial taxation of foreign estates, each country should impose its succession duties on the estate of foreigners who died domiciled in another country only on the basis of the property situated in its territory.

ANNEX B

LEAGUE OF NATIONS FISCAL COMMITTEE

SECOND REGIONAL CONFERENCE IN MEXICO

EXTRACT OF REPORT

I. MODEL BILATERAL CONVENTION FOR THE PREVENTION OF THE DOUBLE TAXATION OF INCOME

Article I

1. The present Convention is designed to prevent double taxation in the case of the taxpayers of the contracting States, whether national or not, as regards the following taxes:

A.—With reference to State A.

1. . . . .
2. . . . .
3. . . . .

B.—With reference to State B.

1. . . . .
2. . . . .
3. . . . .

2. It is mutually agreed that the present Convention shall apply also to any other tax, or increase of tax, imposed by either contracting States subsequent to the date of signature of this Convention upon substantially the same bases as the taxes enumerated in the preceding paragraph of this article.

Article II

Income from real property shall be taxable only in the State in which the property is situated.

Article III

1. Income from mortgages on real property shall be taxable only in the State where the property is situated.

2. Income from mortgages on sea and/or air vessels shall be taxable only in the State where such vessels are registered.

Article IV

1. Income from any industrial, commercial or agricultural business and from any other gainful activity shall be taxable only in the State where the business or activity is carried out.

2. If an enterprise or an individual in one of the contracting States extend their activities to the other State, through isolated or occasional transactions, without possessing in that State a permanent establishment, the income derived from such activities shall be taxable only in the first State.

3. If an enterprise has a permanent establishment in each of the contracting States, each State shall tax that part of the income which is produced in its territory.

4. As regards agricultural and mining raw materials and other natural materials and products, the income which results from prices prevailing between

strangers or conforming to world market quotations shall be regarded as realized in the State in which such materials or products have been produced.

Article V

Income which an enterprise of one of the contracting States derives from the operation of ships or aircraft registered in such State is taxable only in that State.

Article VI

1. Directors' percentages, attendance fees and other special remuneration paid to directors, managers and auditors of companies, are taxable only in the State where the domicile of the enterprise is situated.

2. If, however, such remuneration is paid for services rendered in a permanent establishment situated in the other contracting State, it shall be taxable only in that State.

Article VII

1. Compensation for labour or personal services shall be taxable only in the contracting State in which such services are rendered.

2. A person having his fiscal domicile in one contracting State shall, however, be exempt from taxation in the other contracting State in respect of such remuneration, if he is temporarily present within the latter State for a period or periods not exceeding a total of hundred and eighty three days during the calendar year, and shall remain taxable in the first State.

3. If the person remains in the second State more than hundred and eighty three days, he shall be taxable therein in respect of compensation he earned during his stay there, but shall not be taxable in respect of such compensation in the first State.

4. Income derived by an accountant, an architect, a doctor, an engineer, a lawyer or other person engaged in the practice of a liberal profession, shall be taxable only in the contracting State in which the person has a permanent establishment at, or from, which he renders services.

5. If any such person has a permanent establishment in both contracting States, he shall be taxable in each State only on the income received for services rendered therein.

Article VIII

1. Salaries, wages and other remuneration paid by one of the contracting States or by public bodies, institutions or services depending on it, to their nationals carrying out public functions in the other State shall be taxable only in the first State, provided that these functions are included within the normal field of activity of the State, as this field is defined by international usage.

2. Public pensions shall be taxable only in the State of the debtor entity.

Article IX

Income from movable capital shall be taxable only in the contracting State where such capital is invested.

Article X

1. Royalties from immovable property or in respect of the operation of a mine, a quarry, or other natural resource shall be taxable only in the contracting State in which such property, mine, quarry, or other natural resource is situated.

2. Royalties and amounts received as a consideration for the right to use a patent, a secret process or formula, a trademark or other analogous right shall be taxable only in the State where such right is exploited.

3. Royalties derived from one of the contracting States by an individual, corporation or other entity of the other contracting State, in consideration for the right to use a musical, artistical, literary or other cultural work or publication shall not be taxable in the former State.

Article XI

Private pensions and life annuities shall be taxable only in the State where the debtor has his fiscal domicile.

Article XII

Gains derived from the sale or exchange of real property shall be taxable only in the State in which the property is situated.

Article XIII

The State where the taxpayer has his fiscal domicile shall retain the right to tax the entire income of the taxpayer, whether derived from its territory or that of the other contracting State, but shall deduct from its tax on the entire income the lesser of the two following amounts:

A. The tax collected by the latter contracting State on the income which is taxable in its territory according to the preceding articles;

B. The amount which represents the same proportion in comparison with the total tax on the income that is taxable in both States as the income taxable in the other State in comparison with the total income.

Article XIV

In the case of a taxpayer with a fiscal domicile in both contracting States, the tax, the collection of which under this Convention depends on fiscal domicile, shall be imposed in each of the contracting States in proportion to the period of stay during the preceding year or according to a proportion to be agreed by the competent administrations.

Article XV

A taxpayer having his fiscal domicile in one of the contracting States shall not be subject in the other contracting State, in respect of income he derives from that State, to higher or other taxes than the taxes applicable in respect of the same income to a taxpayer having his fiscal domicile in the latter State, or having the nationality of that State.

Article XVI

1. When a taxpayer shows proof that the action of the tax administration of one of the contracting States has resulted in double taxation, he shall be entitled to lodge a claim with the tax administration of the State in which he has his fiscal domicile, or of which he is a national.

2. Should the claim be admitted, the competent tax administration of that State shall consult directly with the competent authority of the other State, with a view to reaching an agreement for an equitable avoidance of double taxation.

Article XVII

As regards any special provisions which may be necessary for the application of the present Convention, more particularly in cases not expressly provided for, the competent authorities of the two contracting States may confer together and take the measures required in accordance with the spirit of this Convention.

Article XVIII

1. This Convention and the accompanying Protocol, which shall be considered to be an integral part of the Convention, shall be ratified and the instruments of ratification shall be exchanged at................as soon as possible.

2. This Convention and Protocol shall become effective on the first day of January 19.... They shall continue effective for a period of three years from that date and indefinitely after that period. They may, however, be terminated by either of the Contracting States at the end of the three-year period or at any time thereafter, provided that at least six months prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

Done in duplicate, at .... this .... day of ....19 ....

PROTOCOL

On proceeding to sign the present Convention for the prevention of double taxation of income concluded this day between .... and .... the undersigned Plenipotentiaries have agreed [on] the following provisions which shall form an integral part of the said Convention.

Article I

The terms "taxpayer of a contracting State" and "enterprise of a contracting State" mean a taxpayer or an enterprise which have their fiscal domicile in the said State.

Article II

1. For the purpose of the present Convention the term "fiscal domicile" means, in the case of an individual or of an enterprise belonging to an individual, the place where the individual has his normal residence, the term "residence" being understood to mean permanent home.

2. Should a taxpayer possess a residence in both the contracting States, the competent administration shall determine, by common agreement, the place of his main residence which shall be considered as his fiscal domicile. In order to determine, as between several residences, the main residence, the competent administration will take into account elements such as the duration, regularity, frequency of stays, the place where the family of the taxpayers is usually present, the proximity to the place where the party concerned carries out his occupation.

3. In the case of a taxpayer having a residence in both of the contracting States of which either can be considered as his main residence, Article XVII shall apply.

4. The fiscal domicile of partnerships, companies and other legal entities or *de facto* bodies shall be the State under the laws of which they were constituted.

ARTICLE III

Differences which arise concerning the nature of real property shall be settled in accordance with the legislation of the territory where the property is situated.

ARTICLE IV

The term "enterprise" includes any kind of enterprise whether it belongs to an individual, a partnership, a company or any other legal entity or *de facto* body.

ARTICLE V

The term "permanent establishment" includes head offices, branches, mines and oil wells, plantations, factories, workshops, warehouses, offices, agencies, installations, professional premises and other fixed places of business having a productive character.

2. A building site (*chantier de construction*) constitutes a "permanent establishment" when it is destined to be used for a year at least or has been erected since such period.

3. The fact that an enterprise established in one of the contracting States has business dealings in another contracting State through an agent of genuinely independent status (broker, commission agent, etc.) shall not be held to mean that the enterprise has a permanent establishment in the latter State.

4. When an enterprise of one of the contracting States regularly has business relations in the other State through an agent established there who is authorized to act on its behalf, it shall be deemed to have a permanent establishment in that State.

A permanent establishment shall, for instance, be deemed to exist when the agent:

A. Is a duly accredited agent (*fondé de pouvoir*) and habitually enters into contracts for the enterprise for which he works; or

B. Is bound by an employment contract and habitually transacts business on behalf of the enterprise in return for remuneration from the enterprise; or

C. Is habitually in possession, for the purpose of sale, of a depot or stock of goods belonging to the enterprise.

5. As evidence of an employment contract under the terms of B above may be taken, moreover, the fact that the administrative expenses of the agent, in particular the rent of premises, are paid by the enterprise.

6. The fact that a broker places his services at the disposal of an enterprise in order to bring it into touch with customers does not in itself imply the existence of a permanent establishment for the enterprise, even if his work for the enterprise is, to a certain extent, continuous or is carried on at regular periods, and even if the goods sold have been temporarily placed in a warehouse. Similarly, the fact that a commission agent (commissionnaire), acts in his own name for one or more enterprises and receives a normal rate of commission, does not constitute a permanent establishment for any such enterprise, even if the goods sold have been temporarily placed in a warehouse.

7. A permanent establishment shall not be deemed to exist in the case of commercial travellers not coming under any of the preceding categories.

8. The fact that a parent company, the fiscal domicile of which is one of the contracting States, has a subsidiary in the other State does not mean that the

parent company has a permanent establishment in that State, independently from the fiscal obligations of the subsidiary toward the State in which it is situated.

Article VI

The allocation of the income of the enterprises mentioned in Article IV of the Convention shall be effected in the following manner:

1. In respect of industrial, commercial and agricultural enterprises in general and for other independent activities:

A. If an enterprise with its fiscal domicile in one contracting State has a permanent establishment in the other contracting State, there shall be attributed to each permanent establishment the net business income which it might be expected to derive, if it were an independent enterprise engaged in the same or similar activities, under the same or similar conditions. Such net income will, in principle, be determined on the basis of the separate accounts pertaining to such establishment. According to the provisions of this Convention, such income shall be taxed in accordance with the legislation and agreements of the State in which such establishment is situated.

B. The fiscal authorities of the contracting States shall, when necessary, in execution of the preceding paragraph, rectify the accounts produced, especially to correct errors or omissions, or to re-establish the prices or remunerations entered in the books at the value which would prevail between independent persons dealing at arm's length. If the accounts of the permanent establishment in one contracting State are rectified as a result of such verification, a corresponding rectification shall be made in the accounts of the establishment in the other contracting State with which the dealings in question have been effected.

C. If an establishment does not produce an accounting showing its own operations, or if the accounting produced does not correspond to the normal usages of the trade in the country where the establishment is situated, or if the rectifications provided for in the preceding paragraph cannot be effected, or if the taxpayer agrees, the fiscal authorities may determine, in a presumptive manner, the business income by applying a percentage to the gross receipts of that establishment. This percentage is fixed in accordance with the nature of the transactions in which the establishment is engaged and by comparisons with the results obtained by similar enterprises operating in the country. Where the activities of the permanent establishment are in the nature of those of a genuinely independent commission agent or broker, the income may be determined on the basis of the customary commission received for such services.

D. If the methods of determination described in the preceding paragraphs are found to be inapplicable, the net business income of the permanent establishment may be determined by a computation based on the total income derived by the enterprise from the activities in which such establishment has participated. This determination is made by applying to the total income, coefficients based on a comparison of gross receipts, assets, number of hours worked or other appropriate factors, provided such factors are so selected as to ensure results approaching as closely as possible to those which would be reflected by a separate accounting.

2. In determining the net income on the basis of the separate accounting of a permanent establishment, a properly apportioned part of the general expenses of the head office of the enterprise may be deducted.

3. In respect of banking and financial enterprise, the allocation of the income shall be effected in conformity with the principles laid down in paragraph 1 of the present Article, provided that when a permanent establishment of the enterprise is in the position of a creditor or debtor in relation to another permanent establishment of the enterprise, the following provisions shall apply:

A. If a permanent establishment in one State (creditor establishment) supplies funds, whether in the form of an advance, loan, overdraft, deposit, or otherwise, to a permanent establishment in a second State (debtor establishment), interest shall be deemed to accrue as income to the creditor establishment and as a deduction from gross income to the debtor establishment for tax purposes, and it shall be computed at the inter-bank rate for similar transactions in the currency used;

B. The interest corresponding to the permanent capital allotted to the debtor establishment, whether in the form of an advance, loan, overdraft, deposits or otherwise shall be, however, excluded from the interest accruing as income to the creditor establishment and deductible from gross income by the debtor establishment.

4. The net income of insurance enterprises shall be determined in conformity with the principles laid down in paragraph 1 of the present Article. If, however these principles are not applicable in a given case, the net taxable income of a permanent establishment belonging to an insurance enterprise may be assessed, either by applying to the gross premiums received as a result of the activity of the permanent establishment, coefficients computed on the basis of the total income of a representative national enterprise of the particular category of insurance concerned, or by apportioning the income according to the ratio existing between the gross premiums relating to the permanent establishment and the total gross premiums received by the enterprise.

5. In cases where the foregoing rules do not result in a fair allocation of income, the competent authorities may consult to agree upon a method that will prevent double taxation.

Article VII

When an enterprise of one contracting State has a dominant participation in the management or capital of an enterprise of another contracting State, or when both enterprises are owned or controlled by the same interests, and, as the result of such situation, there exists in their commercial or financial relations, conditions different from those which would have been made between independent enterprises, any item of profit or loss which should normally have appeared in the accounts of one enterprise, but which has been, in this manner, diverted to the other enterprise, shall be entered in the accounts of such former enterprise, subject to the rights of appeal allowed under the laws of the State of such enterprise.

Article VIII

The provisions of Article IV of the Convention shall not apply to pedlars, inland shipping, touring shows and other similar occupations, which shall be taxable in accordance with the legislation of the country where these occupations are carried out and concerning which the competent administrations may, if necessary, agree [on] special provisions.

Article IX

For the purposes of Article IX of the Convention, the term "income from movable capital" includes income from public funds, obligations, loans, deposits, whether fixed or on current account, income from shares and similar participations in companies, as well as income from sleeping partner shares or shares of partners having no powers of management or personal liability in partnerships.

Article X

Students and apprentices from one contracting State residing in the other contracting State exclusively for the purpose of study or for acquiring business experience shall not be taxable by the latter State in respect of remittances received by them within the former State for the purpose of their maintenance or studies.

II. MODEL BILATERAL CONVENTION FOR THE PREVENTION OF THE DOUBLE TAXATION OF SUCCESSIONS

Article I

1. The present convention, the purpose of which is to prevent the double taxation of successions, applies to all duties and taxes levied, by reason of death, on the estate, or on the transfer of, or the succession to, the estate of a person who, at the time of his death, had his domicile in one of the two contracting States, whether he was or not a national of that State or the other State, and on the part of such estate that accrues to each heir or legatee.

2. The duties and taxes to which this Article refers are:

A.—In the case of State A:

1. ....
2. ....
3. ....

B.—In the case of State B:

1. ....
2. ....
3. ....

Article II

Real property, personal property accessory thereto and rights relating to, or secured by, real property which are included in the estate of a person who, at the time of his death, had his domicile in one of the two contracting States shall be subject to the duties and taxes described in Article I only in the State in which such property is situated.

Article III

Property appertaining to a commercial, industrial, mining, agricultural or other enterprise, including a maritime or an air navigation enterprise, left by a person who, at the time of his death, had his domicile in one of the contracting States shall be subject to the duties and taxes described in Article I in accordance with the following rules:

A. If the enterprise has a permanent establishment in one of the two States, the property shall be taxable only in that State;

B. If the enterprise has a permanent establishment in both States, the property shall be taxable in each State to the extent to which such property belongs or relates to the establishment situated in that State.

ARTICLE IV

If a person who, at the time of his death, had his domicile in one of the contracting States leaves in the other contracting State property to which Articles II and III do not apply, the former State may apply the duties and taxes described in Article I of the present Convention to the entire estate, subject to the provisions of Article VI, and the latter State may apply such duties and taxes to the property situated in its territory, but only according to the rate which corresponds to the value of the latter property, without taking into account the property situated in the territory of the other State.

ARTICLE V

For the purposes of determining the net value of the property subject to the duties and taxes to which this Convention refers, the debts of the deceased shall be deducted according to the following rules:

A. A debt secured by, or relating to, property to which Articles II and III apply shall be deducted from the value of the specific property by which it is secured, or to which it relates;

B. If a debt to which rule A applies exceeds the value of the property by which it is secured or to which it relates, it shall be deducted from the value of the other property left by the deceased in the same country;

C. If a debt to which rule A applies exceeds also the value of the property situated in the same country, the excess shall be deducted from the value of the property left by the deceased in the other country.

D. A general debt without specific guarantee will be deducted proportionately to the value of the property left by the deceased in each country.

ARTICLE VI

The State in which the deceased, at the time of his death, had his domicile shall retain the right to the entire estate, whether situated in its territory or that of the other contracting State, but shall deduct from the duties and taxes it applies to the entire estate the lesser of the two following amounts:

A. The sum of the duties and taxes levied by the other contracting State on the property which is taxable in its territory, according to the preceding articles;

B. The sum which represents the same proportion in comparison with the duties and taxes due in the State of domicile as the property taxable in the other State in comparison with the entire taxable estate of the deceased.

ARTICLE VII

As regards any special provisions which may be necessary for the application of the present Convention, more particularly in cases not expressly provided for, the competent authorities of the two contracting States may confer together and take the measures required in accordance with the spirit of this Convention.

Article VIII

1. This Convention and the accompanying Protocol, which shall be considered to be an integral part of the Convention, shall be ratified and the instruments of ratification shall be exchanged at .... as soon as possible.

2. This Convention and Protocol shall become effective on the first day of January 19... They shall continue effective for a period of three years from that date and indefinitely after that period. They may, however, be terminated by either of the contracting States at the end of the three-year period or at any time thereafter, provided that at least six months prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

Done in duplicate, at .... this .... day of .... 19...

PROTOCOL

On proceeding to sign the Convention concluded this day between the contracting States regarding the prevention of the double taxation of successions, the undersigned Plenipotentiaries have made the following joint declaration which shall form an integral part of the said Convention.

Article I

1. For the purposes of the foregoing Convention, the domicile of a person, at the time of his death, is the place where he then had his permanent residence with the manifest intention of retaining it.

2. If the deceased, at the time of his death, had no such domicile and was a national of both contracting States, he shall be regarded as having had his domicile in the country in which his family, social and economic interests were centered.

Article II

The question whether property is to be regarded as real or personal shall be settled in accordance with the laws of the State in which the property is situated.

Article III

The situation of personal property accessory to real property and of rights relating to, or secured by, real property shall be determined in accordance with the laws of the State in which the real property concerned is situated.

Article IV

1. The expression "commercial, industrial, mining, agricultural or other enterprises, including a maritime or an air navigation enterprise" and the expression "permanent establishment" have the same meaning for the purposes of the foregoing Convention as in Articles IV and V of the Protocol of the Model Convention for the Prevention of the Double Taxation of Income.

2. In the case of an enterprise with a permanent establishment in each of the two contracting States, the apportionment of the assets and liabilities will be achieved through the application, by analogy, of the rules concerning the allocation of profits that are expressed in Article VI of the Protocol of the Model Convention for the Prevention of Double Taxation of Income.

Article V

For the purpose of Article IV of the foregoing Convention, personal property herein below mentioned shall be deemed to be situated:

A. At the place where the property is situated, in the case of:

a...

b...

c...

B. At the place where the property is registered for transfer purposes, as in the case of:

a...

b...

c...

C. At the domicile of the debtor, in the case of property transferable only by notification to the debtor or endorsement as in the case of:

a...

b...

c...

Article VI

The question whether a debt which is deductible according to the Article V of the foregoing Convention is to be regarded as a *bona fide* debt shall be settled in accordance with the laws of the State in which such debt would be deducted.

Article VII

A debt shall not be deducted from the value of inalienable property unless such property has been made inalienable by the will of the deceased.

Article VIII

The present Convention shall not affect such immunities as are at present, or may hereafter be, accorded to diplomatic, consular or foreign government officials in virtue of the general rules of international law or the internal legislation of either of the contracting States. Where, by reason of such immunities, the estate left by such an official is not subject to the duties and taxes to which the present Convention applies in the State in which they exercise their functions, the State which they serve shall be entitled to levy such duties and taxes.

III

MODEL BILATERAL CONVENTION FOR THE ESTABLISHMENT OF RECIPROCAL ADMINISTRATIVE ASSISTANCE FOR THE ASSESSMENT AND COLLECTION OF DIRECT TAXES

Article I

With a view of assuring, in the interest of Governments and taxpayers, an effective and fair application of the taxes to which apply the conventions for the prevention of double taxation of income and successions, concluded this day by the contracting States, each of the contracting States undertakes, subject to reciprocity, to furnish on special request, such information in matters of taxation which the competent authorities of each State have at their disposal or are in a position to obtain under their own laws as may be of use to the competent authorities of the other State in the assessment of the above mentioned taxes and to lend assistance to the competent authorities of the other State in the collection of such taxes.

Article II

The competent authorities of each of the contracting States shall be entitled to obtain through direct correspondence, from the competent authorities of the other contracting State, information concerning particular cases that is necessary for the assessment of the taxes to which the present Convention relates.

Article III

In accordance with the preceding article, the competent authorities of each contracting State shall transmit, in concrete cases and on special request, to the competent authorities of the other State:

A. The name and address of any individual, partnership, corporation or other entity having an address in the territory of the other State and deriving from sources within the territory of the former State, rents, dividends, interests, royalties, income from trusts, wages, salaries, pensions, annuities or other fixed or determinable periodical income, indicating the amount of such receipts in the case of each addressee;

B. An extract of the inventories received by the competent authorities in the case of property passing on the decease of persons that had an address in the territory of the other State or the nationality of that State;

C. Any particulars which the competent authorities may obtain from banks, insurance companies, or other financial institutions concerning assets and claims belonging to persons having an address in the territory of the other State;

D. Any particulars which the competent authorities may obtain from inventories in the case of property passing on death concerning debts contracted to, or property passing to, persons having an address in the territory of the other State.

Article IV

1. The competent authorities of each of the contracting States shall be entitled to obtain, through direct correspondence, the assistance and support of the competent authorities of the other contracting State for the collection of the taxes to which the present Convention relates together with interest, costs, additions to taxes, and fines not being of a penal character, according to the laws of the State applied-to, in the case of taxes that are definitely due according to the laws of the applying State.

2. In the case of a request for the enforcement of a tax, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the other contracting State and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

3. The request shall be accompanied by such documents as are required by the laws of the applying State to establish that the taxes are definitely due.

4. If a revenue claim is not definitely due, the State applied-to may, on the

request of the other contracting State, take such measures of conservancy as are authorized by the revenue laws of the former State.

Article V

Special requests for information and/or assistance for the enforcement of taxes under Articles II and IV of the present Convention may be refused in the following cases:

A. If they involve the obligation to obtain or supply information which is not procurable under the legislation of the State applied-to or that of the applying State;

B. If they imply administrative or judicial action incompatible with the legislation and practice of either contracting State;

C. If compliance involves violation of a professional, industrial or trade secret;

D. If the request relates to a taxpayer who is a national of the State applied-to;

E. If, in the opinion of the State applied-to, compliance with the request may compromise its security or sovereign rights.

Article VI

When the competent authorities of one of the contracting States have requested from the authorities of the other State information to which this Convention applies, they shall observe secrecy as regards such information, in the same way and to the same extent as is done in the State that supplies it, and the competent authorities of the former State shall apply to its officials the administrative and penal sanctions that correspond, under its own laws, to the violation of such secrecy.

Article VII

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this convention. With respect to the provisions of this convention relating to exchange of information, service of documents and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and reply, conversion of currency, disposition of amounts collected, minimum amounts subject to collection and related matters.

Article VIII

1. This Convention and the accompanying Protocol, which shall be considered to be an integral part of the Convention, shall be ratified and the instruments of ratification shall be exchanged at .... as soon as possible.

2. This Convention and Protocol shall become effective on the first day of January 19... They shall continue effective for a period of three years from that date and indefinitely after that period. They may, however, be terminated by either of the contracting States at the end of the three-year period or at any time thereafter, provided that at least six months prior notice of termination has been given, the termination to become effective on the first day of January following the expiration of the six-month period.

Done in duplicate, at .... this .... day of .... 19..

PROTOCOL

On proceeding to sign the Convention, concluded this day for the establishment of reciprocal administrative assistance in the case of direct taxes, the undersigned Plenipotentiaries, duly authorized by their respective governments for the purpose, have made the following joint declaration, which shall form an integral part of the said Convention.

Article I

As used in this Convention, the term "competent authorities" means the highest tax authorities of each of the contracting States or the duly authorized representative of such authorities.

Article II

Reciprocity is deemed to exist as regards requests under Article III of the foregoing Convention. In the matter of other requests, reciprocity shall be deemed to exist when the request is accompanied with a declaration by the competent authorities who make the application officially confirming that any similar request would be complied with, in accordance with the laws of the applicant State.

Article III

Information communicated under Article II, shall be in the official language of the State by which they are communicated.

Article IV

1. Special requests for information shall specify: the authority making the request; the name, address and nationality of the person to whom the request relates; the taxation in respect of which the request is made and period or date in respect of which it is imposed.

2. Requests for the service of documents shall specify, in addition to the particulars mentioned in the first paragraph of this article: the address of the recipient; and the nature and purpose of the document for service.

3. Requests concerning the collection of taxes shall indicate in addition to the information mentioned in the first paragraph of this article: the amount of principal due and interest due and the date from which such interest begins to run; in the case of fiscal penalties, the nature and amount of such penalties; and any other information of a nature to facilitate or accelerate collection.

Article V

Requests to which Article IV refers shall be formulated in the official language of the applicant State and accompanied by a translation in the official language of the State applied-to.

Article VI

The competent authorities of the State to which a request for the service of documents is made may limit their action in connection with the service of the document to merely handing it to the recipient, if the latter is willing to receive it.

Article VII

If the competent authorities of the applicant State so desire, the document may be served in the form prescribed in similar cases by the internal law of the State applied-to.

ARTICLE VIII

Requests for collection must be accompanied by a copy or official extract of the final decision or order by the competent authorities concerning the revenue claim in question and by a statement from the competent authorities to the effect that the revenue claim is final.

ARTICLE IX

No request for assistance for the collection of taxes shall be formulated when:

A. There is a presumption that the amount due is in fact recoverable in the interested State;

B. The amount due is less than ....

ARTICLE X

Assistance procedure shall be in the form for which the laws of the State applied-to provide, as stipulated in the Convention. Nevertheless, any special forms of assistance not being incompatible with the laws of the State applied-to may be adopted at the request of the applying State.

ARTICLE XI

Revenue claims for collection shall not receive preference over either public or private claims in the State applied-to.

ARTICLE XII

The authorities of the State applied-to shall take all such steps and employ all such means of action as they would be bound to take and employ in similar cases, when their own interests are involved, provided that no means of action shall be employed to which there is no corresponding means of action under the law of the applicant State. In doubtful cases, the competent authorities of the applicant State must certify that their national legislation empowers them to comply with a similar request from the State applied-to.

ARTICLE XIII

The competent authorities of the State applied-to shall inform, without delay, the competent authorities of the applicant State as to the action taken on the request, whether such action is complete or incomplete.

ARTICLE XIV

If a request cannot be complied with the competent authorities of the State applied-to shall advise the competent authorities of the applicant State of the reasons which prevent complying with the request, and shall transmit to such authorities all information which may have a bearing on the case.

ARTICLE XV

The State applied-to shall be responsible to the applying State for the sums collected on the latter's behalf by its officials or agents.

ARTICLE XVI

Collection shall always take place in the currency of the State applied-to. To that effect, the competent authorities of the State applied-to shall convert the amount for collection into their own currency at the last rate quoted between the two contracting States.

ARTICLE XVII

Amounts collected by the competent authorities of one State on behalf of the competent authorities of the other State shall be paid over immediately, after deduction of the costs under Article XVIII below, to the account of the Central Bank of the applying State with the Central Bank of the State applied-to.

ARTICLE XVIII

No fees or costs shall be charged for action taken on requests for assistance. This provision shall, however, not apply, in the absence of any agreement to the contrary, to emoluments paid to witnesses, experts, agents of execution and to legal and judicial fees incurred in connection with the service of a document or the enforcement of a revenue claim. The revenue authorities shall notify one another as required of the probable amount of such costs, fees or charges. When relating to the collection of a revenue claim, the amount of such costs, fees and charges shall be retained from the amount collected by the competent authorities of the State applied-to.

ARTICLE XIX

The present Convention shall not apply to measures of conservancy in respect to taxes that have not yet been assessed.

ARTICLE XX

Over and above the measures of assistance for which the present Convention provides, the competent revenue authorities of the two contracting States may concert together for the exchange of information other than that for which provision is made and also for the purpose of the assessment of the taxes to which the present Convention relates.

Papers Submitted to

THE COMMITTEE ON INTERNATIONAL ECONOMIC POLICY

BY ITS

ADVISORY COMMITTEE ON ECONOMICS

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