region's leadership. To achieve this feat the leadership would have to shed myopic and self-perpetuating solutions; it would have to posit the region in a global perspective. What is comforting is that the days when African leaders run their countries as personal fiefdoms are numbered. The African masses are now clamoring for popular participation in all spheres of policy-making. That being the case, the African peoples must decide for themselves whether they see benefits from regional integration. To hazard a guess this author would confidently answer in the affirmative.

All these developments strongly favor the formation of a single organization to oversee trade liberalization, stimulate industrialization, and spur economic growth for the whole of southern Africa. This effort only requires positive governmental intervention that establishes the necessary regulatory framework for the expeditious advancement of this laudable process.

European Taxation*

I. Austria

The United States and Austria entered into a Social Security Agreement, effective November 1, 1991, that will eliminate dual coverage and taxation under the two countries' social security systems. The Agreement applies to those provisions of the Austrian social security laws pertaining to old-age, survivors, and disability insurance, and sickness and accident insurance. In the United States, the Agreement involves title II of the Social Security Act, the Federal Insurance Contributions Act, and the Self-Employment Contributions Act.

The Agreement eliminates dual coverage and taxation by establishing a territorial rule that subjects the employer and employee to compulsory coverage and taxation under the social security system of the country where the employee performs his or her work. This rule is inapplicable, however, to employees temporarily transferred by their employer in one country to work in the other country for a period of five years or less, in which case coverage and taxation is imposed by the former country. The Agreement subjects self-employment to compulsory coverage and taxation only in the country where the individual resides and performs the work.

The Agreement ensures that entitlements earned in both countries are not lost or duplicated by allowing work credits earned under each system to be "totalized" or

*Prepared by the European Tax Law Subcommittee of the Committee on International Taxation, Howard M. Liebman, Chair (Oppenheimer, Wolff & Donnelly, Brussels, Belgium), with contributions from Kevin J. Moore (Salzburg, Austria).

combined. Based on the combined work credits, entitlements are then paid under both countries' social security systems. The Agreement bases the U.S. entitlement on both the duration of coverage under the U.S. Social Security Act and the level of earnings during the actual periods of U.S.-covered work. The Austrian entitlement, however, is based on a "theoretical benefit amount" (that is, entitlements that would have been earned under Austrian law if the U.S. periods of coverage had been completed in Austria) multiplied by the ratio of the actual periods of coverage credited in Austria to the total periods credited in both countries.

The Agreement contains various other rules concerning the administration of rights and obligations, transitional periods, claims and notification procedures, nondiscrimination rules, and the like. The Agreement is the first of its kind between the United States and Austria and places Austria in the ranks of other industrialized nations that already have similar agreements with the United States.[1]

II. France

The French Technical Amendments Act 1991 (*Loi de Finance Rectificative*)[2] implements the European Community (EC) Parent-Subsidiary Tax Directive in article 119ter of the French Code *Général des Impôts*. Notably, however, a number of provisions will create some uncertainty both as to the use of French-based holding companies and the role of intermediate vehicles located elsewhere in the EC to hold French subsidiaries.

First, contrary to some expectations, a French company must own the shares in the company paying dividends for at least two years before such dividends are paid (rather than committing to hold the shares for two years thereafter, as has typically been the approach in France) in order to qualify for the 95 percent participation exemption. Secondly, language has been added to the law requiring the holding company to be "the effective beneficiary of the dividends." This introduces a beneficial ownership or flow-through concept—presumably to avoid "directive shopping"—which could be very broadly construed by the authorities. Indeed, another condition is even more explicit in this regard. In free translation, it indicates that the exemption from withholding tax will not apply when

> the dividends distributed benefit a juridical person directly or indirectly controlled by one or more residents of States which are not members of the Community, except if this juridical person justifies that the chain of ownership does not have, as its principal purpose or as one of its principal purposes, the [object of] taking advantage of the dispositions of [paragraph] 1.

1. Notably, Belgium, Canada, France, Germany, Italy, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Andre Fogarasi, et al., *Current Status of U.S. Tax Treaties*, 20 TAX MGMT. INT'L J. 539 (1991).
2. French Law No. 91-1323 of Dec. 30, 1991, 31 J.O. 17278.

Obviously, this rule shifts the burden of proof to the taxpayer, and allows for any significant tax-motivated purpose to be suspect. Unfortunately, the law does not indicate how one proves a nontax motivation.[3]

Finally, for French-source dividends to qualify for the withholding tax exemption, the parent company/recipient should be subject to tax at normal rates. A Dutch holding company would presumably meet this test because it is subject to normal Dutch rates; it is only untaxed on its dividends and capital gains under the "participation exemption" that will now apply throughout the EC in any case. Of course, one could argue that the Dutch capital gains tax exemption (as provided for under Dutch domestic law[4]) goes further than the EC Directive, and hence, that capital gains are not subject to a "normal rate" of tax in the Netherlands. In addition, there is some discussion that the French authorities may eventually take the position that pure Dutch (or other) holding companies owned by non-EC-based persons may not qualify for an exemption from French dividend withholding, whereas a holding with other, taxable, activities would so qualify.

These stricter rules aside, the good news for U.S.-based multinationals is that the French corporate tax system has been simplified by eliminating the erstwhile higher tax rate of 42 percent previously imposed on distributed income. Instead, all corporate income will be taxed at 34 percent (except for qualified capital gains, which may benefit from a reduced rate of 18 percent).

III. European Community

The EC Court of Justice last year rendered two decisions that relate to the payment of capital duty in the context of interest-free loans and the cancellation of debt, respectively. The Court decided in both cases that capital duty may indeed be levied. In the case of the interest-free loan, the duty is due on the amount of interest that would have been paid in an arm's-length transaction. In the case of the debt cancellation, duty is apparently due on the amount of debt forgiven.[5]

Subsequently, a third, more recent decision[6] held that a capital contribution in the form of shares of stock in a wholly owned subsidiary does not qualify as the contribution of a "part of the business" of the parent; hence, it cannot be treated as free from duty under section 7(1) of EC Capital Duty Directive No. 69/335 of July 17, 1969.[7] The latter provides that transactions previously exempt or subject

3. *See generally* LE FISCOLOGUE INTERNATIONAL, Jan. 27, 1992, at 7.

4. *See* Dutch Corporation Income Tax Act 1969, art. 13(1).

5. *See* EUROPE, No. 5426 (n.s.), Feb. 7, 1991, at 9; EUR. REP., Feb. 6, 1991, at II-2.

6. Case 164/90, Muwi Bouwgroep B.V. v. Staatssecretaris van Financiën (1991), *noted in* BUS. L. BRIEF, Jan. 1992, at 22.

7. Council Directive 69/335, 1969 O.J. (L 249) 25, *amended by* (*inter alia*) Council Directive 85/303, 1985 O.J. (L 156) 23.