International Tax Law
Benefits for American Investors and Enterprises Abroad

Part I

Development of International Tax Law Through Model Conventions

The United States corporate and individual taxpayers who invest or trade abroad have been the beneficiaries of measures to obviate having to pay more than one country's tax on the same income ever since the introduction of the credit for foreign taxes in the Revenue Act of 1918.

Because of the sharp increases in rates during World War I liability to normal and surtaxes had risen to the point where the superposition of taxes at home on income already taxed at the source of income abroad could have resulted in a cumulation of liabilities that even exceeded the amount of the income.

Unilateral Relief from Double Taxation

Professor T. S. Adams of Yale University, then Economic Advisor to the United States Treasury Department, prevailed upon Congress in 1918, to recognize the "prior" right of the foreign country to tax the income which arose in its territory and to grant a credit for the foreign tax against the United States tax. Limitations were introduced in 1921 to prevent this measure against the double taxation of foreign income from reducing the United States tax on domestic income. The development of these limitations and of the extension of the credit to cover the proportion of the profits taxes paid by a first

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† Part II will appear in the October issue of the International Lawyer.
degree and then a second degree foreign subsidiary that the United States corporation is deemed to have paid is another story not to be covered herein. (Recent treaties recognize that this unilateral domestic measure should be supplemented by the cooperation of the administrations of the other contracting party to arrive at a proper allocation of income to assure the intended operation of the credit.)

European Method of Bilateral Relief

Our story begins with the realization on the part of officials in Washington in the mid-1920's that it would be more advantageous, from the viewpoint of the United States Treasury as well as of the taxpayer, to adopt the European method of concluding a bilateral treaty that embodied mutual concessions to prevent the double imposition of taxes on the same income or property. This had been started in a treaty between Austria-Hungary and Prussia, signed June 21, 1899, and continued in a series of bilateral treaties between States in Western Europe.¹

The treaty method was being improved through work on a model convention by a committee of technical experts—all top officials of the leading European countries—named by the Council of the League of Nations in 1922, which made its first report in 1925.²

The United States had been invited by the Council of the League to nominate an American to participate in the work of this group, but as the Senate had rejected membership in the League of Nations the Department of State had not responded to the invitation.³

Interest in this project grew because officials perceived that the United States could through tax treaties retain jurisdiction over the entire taxable income of its citizens and corporations, yet on a reciprocal basis prevail upon the other Contracting State to give up a part of its tax with a view to encouraging business and investments. This

² League of Nations Document F.212.
³ At an interdepartmental conference in the State Department the writer, who was then Chief of the Section of European Law and Taxes in the Department of Commerce, pointed out the advantages to American business if the United States collaborated in this work. This led to my being asked by the State Department in June 1926 to visit the Secretariat of the League of Nations at the Palais des Nations in Geneva, and to ascertain and report on progress of the work.
would reduce the amount of foreign taxes that could be credited against the United States tax under the provisions in the United States revenue legislation and possibly leave something for the Treasury to collect.

Advantages of Treaties for a Domestic Corporation

The head of the export department of a United States corporation will find in tax treaties that he could look into the market possibilities in one or more of the 21 foreign countries with which the United States has general tax treaties, and escape liability in all of them on his salary. To enjoy this freedom from taxes abroad, he would have to remember not to stay in each country longer than six months in the aggregate during the taxable year.

If he is negotiating with a foreign company which wants a license to manufacture and sell the American company's product, the executive can look at the treaty between the two countries and ascertain the extent of his corporation's prospective tax liability. He can see whether the royalties will come to it free of all taxes or whether a rate fixed by the treaty will be deducted at source abroad which can be credited against the United States tax.

To be sure of the successful execution of the license agreement, the responsible officer of the United States company may want to hold enough shares in the licensee company to be entitled to a seat on its board of directors. The treaty will state whether his company will be subject to a general rate of tax withheld from the dividends (e.g., 15 per cent) or whether, if his corporation holds a certain proportion of the foreign company's voting stock (e.g., more than 50 per cent), it would be entitled to a lower rate (e.g., 5 per cent). In either case, he will be gratified to read the treaty article confirming that his corporation would be entitled to the credit for foreign taxes.

Perhaps the foreign company needs capital and his board of directors is willing to grant to it a loan, whether long term or short

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4 All the members of the European Common Market—Belgium, Netherlands and Luxembourg, France, Germany, and Italy, and of the associated countries Greece, but not Turkey; the members of the European Free Trade Association except Portugal, i.e., the United Kingdom, Denmark, Norway, Sweden, the associated country Finland, Austria, and Switzerland, also the Union of South Africa, Ireland, Canada, Australia, and New Zealand, Japan, and Pakistan. A limited treaty with Trinidad and Tobago has been ratified, and the Senate has approved general treaties with France, Brazil, and the Philippines. (See Annex I.) Treaties that have been signed but not yet ratified include those with India, Israel, the United Arab Republic, and Thailand.
term. The treaty will tell him whether the interest is exempt from tax at source, or whether the debtor must withhold tax at a certain rate (e.g., 10 per cent) which can be credited against the United States tax paid by the recipient corporation.

**Reallocation Between a Parent and Subsidiary**

If the domestic corporation decides to organize in a foreign country a subsidiary corporation to manufacture and sell its products, the treaty covers all types of relations between the United States parent and the subsidiary in the other Contracting State, whether as a shareholder, or lender, or as licensor of the right to manufacture under its patents and know how. The treaty also sets forth the criteria for the proper allocation of income and expense between the related corporations.

In case the domestic corporation wishes to see at first how well it can do by selling its products through an intermediary in the foreign country the definition in the treaty of what constitutes a permanent establishment will distinguish between the independent agent through whom he can sell his corporation’s products without incurring liability to tax, and the dependent agent, i.e., an agent in the strict legal sense who will be regarded as constituting a permanent establishment of the United States corporation, which would subject it to tax in the other Contracting Party.

**Liability for U.S. Corporation with a Branch Abroad**

Once the United States corporation leases an office or other fixed place of business, it has a permanent establishment which attracts income-tax liability. The treaty sets forth the criterion of taxing the profit corresponding to what an independent enterprise would derive under similar circumstances. If the United States corporation invoices to the establishment on this basis it would obviate problems of allocation as between it and the permanent establishment abroad. The treaty also provides for the deduction from the gross income allocable to the establishment of the related direct and general overhead expenses, whether incurred within or without the country.

**Procedure in Complaints when Relief Inadequate**

Finally, if the United States taxpayer feels that he is not being taxed fairly in the other country he can determine whether the mode
of taxation conforms to the Convention. If he thinks it does not conform, he can complain to a delegate of the Secretary of the Treasury. If the latter feels that there is a justification under the treaty, he will communicate directly with a corresponding official of the other Contracting Party with a view to settling the matter as promptly as possible.

The more recent treaties even go so far as to provide that if the officials decide that certain income has been taxed in the other Contracting State that should have been taxed only in the United States, the taxpayer can apply to the other government for a refund of the amount of over-assessment.

Separate treaties on the prevention of estate and inheritance taxes, of which the United States has concluded a dozen, are intended especially to assure that the foreign property acquired by Americans while living abroad in the service of their companies will not be depleted by subjection to death taxes in both Contracting States.

**Mutual Governmental Assistance in Taxation**

Ever since the negotiation of the treaty with Sweden, signed in 1939, the Treasury has been concerned over the extent to which the tax administrations of the two contracting parties may cooperate to prevent tax evasion. They expect to do this through exchanging information in due course, or upon request in particular cases, or in taking measures to prevent non-entitled persons from obtaining the benefits of the treaty.

These subjects will be taken up in Part II in discussing the treaties now in force.

**League of Nations Pioneer Work**

The vital interest of business in the prevention of double taxation was manifested by the appeal to the League of Nations made at the end of World War I by the International Chamber of Commerce. This association was initiated at a meeting in Atlantic City in the spring of 1919 and was organized with its head office in Paris in 1920.5

Its second resolution called for the elimination of double taxation by means of crediting foreign income taxes against the home tax of the taxpayer, along the lines of the credit for foreign taxes adopted by the United States Congress in the Revenue Act of 1918.

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Preliminary Economic Study of Double Taxation

This appeal was echoed by an International Financial Congress held in Brussels in 1920. The newly formed League of Nations responded by asking four world-known economists to make a preliminary study of the economic aspects of the problem. Their report was submitted to the League’s Financial Committee on April 3, 1923.6

One of the main points stressed in the report was that interest should be taxed only in the country of the recipient because if a tax is imposed thereon in the country of the borrower it is customary for the creditor to make the borrower assume the burden of the tax.7

This makes borrowing all the more costly and may preclude the debtor from obtaining the capital needed for the economic development of the country. Most countries which have concluded tax treaties with the United States have therefore overcome this obstacle by agreeing on a reciprocal basis to exempt interest paid by the local debtor.

Another pertinent query raised by the four economists was whether a country of source, which produces tropical or agricultural items that are processed and sold elsewhere, must wait and submit to any kind of a juridical concept of income and the tax thereon of other countries before knowing what will be its part of the tax. They surmised that the authorities of the first country would say they knew the value of the product before leaving its territory and would determine the tax accordingly. They would not wait to ascertain whether the total of the operation ended in a profit or loss for some foreign and unknown beneficiary.8

The economists discussed and abandoned the theory of economic allegiance9 as too vague and difficult to apply.

Work of the Committee of Technical Experts

The Council of the League in June 1922 assigned the study of double taxation and tax evasion from an administrative and practical point of view to a group of top officials of the fiscal administrations of important European countries—Belgium, France, the

7 Id., p. 9.
8 Id., p. 27.
9 Id., pp. 27-39.

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United Kingdom, Italy, the Netherlands, Switzerland, and Czecho-
slovakia.

After several meetings the Committee was enlarged, and to
facilitate attendance by Americans, the Committee met, April 5-12,
1927, in the offices of the Board of Inland Revenue in Somerset
House on the Strand in London.10 The Council of the League invited
the International Chamber of Commerce to send a delegation to
advise on the business aspects of the problems.

The Committee drew up model bilateral Conventions; the first
was for the prevention of double taxation in the field of taxes on
income and property, the second regarding succession duties, the
third on administrative assistance in levying taxes, and the fourth
on judicial assistance in the collection of taxes.11

Their report was sent to all interested governments, and pro-
vided the starting point for the general meeting of Governmental
Experts from 27 countries that convened in Geneva, October 22-31,
1928.12

1928 World Conference on Preventing Double Taxation

This World Conference assembled with great expectations. How-
ever, soon it was bogged down with confusion because of the di-
versity of the tax systems represented and the lack of familiarity
of the new members with the concepts and terminology adopted
by the veterans who had served as technical experts and easily
survived the metamorphosis from "technical" into "governmental"
experts.13

Draft Conventions on Income Taxes

The Draft Convention of 1927, on income and property taxes,
presupposed an income tax structure in the Contracting Parties

10 The Americans were Professor Thomas S. Adams, President of the
American Economic Association and previously Economic Adviser to the
Treasury Department, the author, who was then Chief of the Section of
European Law and Taxes, Bureau of Foreign and Domestic Commerce, and
Miss Annabel Matthews, Attorney, Bureau of Internal Revenue, specialist on
the foreign tax credit.

11 League of Nations Document C.216. M.85. 1927. II.

General Meeting of Government Experts on Double Taxation and Tax Evasion.
Herein called "1928 Report."

13 The United States was again represented by Dr. Adams, assisted by Miss
Matthews and the author.
consisting of impersonal taxes on specific categories of income with flat rates and a superimposed personal income tax with progressive rates on entire net income.

This draft could fit the essentially similar tax structures in countries such as Belgium, France, and Italy, but not the systems of most of the other countries represented. An outstanding example of a misfit was the unusual framework of the tax system of the United Kingdom which had a standard rate of income tax applicable to both individuals and corporations. In the latter case the corporation passed the tax on by deduction from dividends distributed to stockholders. A surtax was levied on the entire taxable income of individuals. Other countries had a flat rate for companies and a progressive rate for individuals; still others had progressive rates for both. There were many variations.

Hence, two other models were adopted. The original Convention was numbered 1a; the second (submitted by us) was numbered 1b. It provided for taxing certain items of income at source, namely, income from immovable property; industrial, commercial, or agricultural income; fees of managers and directors; salaries and wages; and pensions. Double taxation was prevented by allowing a credit for the tax paid at source against the tax paid at the recipient's residence. The other categories of income, such as dividends, interest, and royalties, were exempt at source and taxable only in the country in which the recipient had his fiscal domicile.

A third draft Convention, No. 1c, provided for taxing at source the same categories of income as those in 1b, and for taxing the others (e.g., dividends, interest, and royalties) at the fiscal domicile of the recipient, subject to its allowing a credit or other relief for taxes withheld at source.

Background of Article on Business Income

In the years before and after World War I the most important article in tax conventions between European countries was the one dealing with the taxation of an enterprise engaged in any kind of business. The basic principle was that it would be taxable in the country where it had its fiscal domicile, which was ordinarily its principal establishment, on its entire net taxable income or property.

As a rule, the enterprise would not become taxable in other countries if it sold its products at a mark-up to an independent
distributor who resold them for his own account. Nor would liability be incurred if it sold through a bona fide commission agent or broker who was an independent businessman selling the products of any nonresident and who received the normal rate of commission.

Nor would the foreign enterprise ordinarily become liable if it solicited business by advertising in trade journals or other publications in other countries, or by sending travelling salesmen who would visit wholesalers or other customers and send orders back to a home office to be accepted or rejected. If the orders were accepted, the home office would ship the goods directly to the customer.

Usually no attempt was made to tax the salary or commissions earned by the temporary business visitor. Nor would a government ordinarily seek to tax the foreign manufacturer who arranged with a local person established as an independent agent to solicit orders from customers in the country and send them to the manufacturer who would accept or reject them, and if he accepted them he would ship the goods to the customer.

After World War I when governments were in dire need of revenue to rebuild their economies, they began to try to tax the earnings of the visiting businessman and the profits of the foreign company on goods sold through him. Canada even tried to tax a United States firm on profits derived from advertising its wares and receiving mail orders from customers in its territory.

In the early 1920’s, the British Board of Inland Revenue sought to impose liability when the sales through a local commission agent or broker ceased to be casual and became sufficiently repetitive to constitute trading. A fundamental principle in British tax law was that income arose where the contract of sale was concluded. Even if the nonresident and his British intermediary took pains to conclude the contract abroad, the British revenue inspectors began to claim taxes if the volume of sales brought about a sufficient degree of “privity” between the local agent and the nonresident principal to justify taxing the nonresident in the name of the agent.

As London was a center for the entrepôt trade in raw materials of all kinds, the heads of the tax administrations of the European countries who attended in the early 1920’s the meetings of the League Committee of Technical Experts sought to prevail upon the British member to restore the exemption of nonresidents selling
such materials through bona fide commission agents or brokers in London or other British trading centers. This led to amending the United Kingdom income tax act to exempt such transactions under certain conditions. The basic trend was to limit the liability of the nonresident to cases where he had a fixed place of business in the country, such as a sales office, a plant for assembling its product, a factory to manufacture, a plantation for producing cotton, coffee, bananas, or other agricultural products, or a mine or oil well—in any case something permanent and composed of “bricks and mortar” or other physical property.

The dividing line was traced in the commentary on Article 5 of Draft Convention (1a) adopted at the 1928 meeting of Government Experts. It describes the list of establishments which are considered as permanent, namely, real centers of management, branches, mines and oil fields, factories, workshop, agencies, warehouses, offices and depots, whether used by the traders themselves or by their partners, attorneys, or other permanent representatives. Nevertheless the fact that an undertaking has business dealings with a foreign country through an agent of independent status (broker, commission agent, etc.) shall not be held to mean that the undertaking in question has a permanent establishment in that country. The words “bona-fide agent of independent status” are intended to imply absolute independence, from both legal and economic viewpoints. The agent's remuneration must not be below what would be regarded as a normal remuneration.

Conventions on Death Duties and Mutual Assistance

The 1928 meeting adopted the pattern set by the Technical Experts in 1927 for a draft Convention to prevent the double imposition of succession duties. It recognized the right of the country of the decedent's domicile to tax the entire estate, and that of situs to tax the property in its territory. To prevent double taxation the country of fiscal domicile would allow a credit against its tax for the tax imposed at situs.

The draft on administrative assistance envisaged the exchange of information on items of income flowing from one country to the other,

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15 1928 Report, at 22.
while that on assistance in collection assured mutual aid in enforcing judgments against taxpayers.\textsuperscript{16}

\textbf{Fiscal Committee's Activities, 1929-1946}

The governmental experts had recommended the creation of a permanent committee to carry out what it had proposed, and the Council of the League appointed the Fiscal Committee which held its first session on October 17-26, 1929. The Committee was composed of nine titular and thirty-eight corresponding members from countries in all parts of the world who were designated by the League with the approval of their governments in their personal capacity as experts. Dr. Adams was the first titular member from the United States. After his untimely death in 1933, the Council, with the approval of the State Department, appointed the author to succeed him.

The most important work undertaken at the outset was a survey of tax systems in some thirty countries in all parts of the world, and especially the provisions relating to international investments and trade, and the methods used to allocate business income to sources within one or another of the two or more countries where there existed establishments that had contributed to its production.

The United States was the only country which had detailed provisions in its law concerning the allocation of income to sources within or without the United States.\textsuperscript{17} These are useful in determining the income of nonresidents that is taxable because of being derived from sources within the United States, and also the income of citizens and domestic corporations derived from sources without the United States, which is placed in the numerator of the fractions limiting the credit for foreign taxes (Sec. 904 I.R.C.).

While serving as advisor to the Tax Commission of the State of Wisconsin, Professor Adams had become intrigued with the difficulties encountered in allocating or apportioning the income of a domestic corporation to sources in the various states in which it operated. He thought it would be helpful to obtain the collaboration of other governments in developing methods for dividing the earnings of a United States enterprise operating in a number of independent sovereign states between the jurisdictions concerned.\textsuperscript{18}

\textsuperscript{16} \textit{Id.}, at 25 and 29.
\textsuperscript{17} Presently, Sections 861, 862 I.R.C.
\textsuperscript{18} At the meeting held in Geneva in the spring of 1930, during an inter-
World Survey on Allocation of Business Income

A subcommittee was named to supervise the work, and appointed the writer to act as director of the survey.

In helping officials to prepare the answers to a questionnaire prepared by the Committee, the director visited the finance ministries of most of the countries of Europe. In the Western Hemisphere, he visited the income tax administrations of the United States, Canada, Cuba, and Mexico. He also visited those in the States of New York, Massachusetts, and Wisconsin, which had apportionment formulas. On the contrary, the administration in Washington, D.C., preferred determination of a foreign company's income on the basis of a separate accounting as did those in Ottawa, Mexico City, and Havana.

In the Far East, he worked with the British and Indian officials in Bombay, Delhi, and Calcutta; with the Dutch and native officials of Batavia and Surabaya in what is today Indonesia; and with Japanese officials in Tokyo. In many of the countries visited he received the collaboration of the local representatives of the International Chamber of Commerce.

The reports in countries were published in three volumes. The basic material on principles and practices in allocating taxable income to sources within or without the country is still useful.

The findings were synthesized, and a basis laid for a multi-

ruption in the negotiation of our first treaty in Paris, infra, the Fiscal Committee appointed the author to direct this world survey of tax systems for which Dr. Adams obtained a grant from the Rockefeller Foundation.

19 The chairman was Dr. Herbert Dorn, a director in the German Finance Ministry who later became President of the Federal Supreme Court of Taxation. The members included Dr. Adams; Mr. Marcel Borduge, Director General of Taxes in France; Mr. Hans Blau, Director of the Swiss Federal Tax Administration, who had had considerable experience in the allocation of taxable income among the Cantons; and Sir Percy Thompson, Deputy Chairman of the Board of Inland Revenue of the United Kingdom, who had been faced with the problem of allocating income between Britain and the members of the Commonwealth.


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lateral Convention on the allocation of business income for tax purposes in Volume IV.\textsuperscript{21}

Accounting methods were treated by Professor Ralph C. Jones of Yale University, Volume V.\textsuperscript{22}

The Fiscal Committee at its meeting in Geneva, July 16-26, 1933, adopted the draft of a multilateral Convention based on Chapter XII of Volume IV of the director's work.

\textbf{Summary of Findings}

It had been found that generally speaking many types of enterprises operated entirely within the borders of a country and therefore presented no problems of allocation or apportionment between different jurisdictions. Such types of enterprises were telephone, electric power, light, and gas. International telephone and telegraph companies generally included in their gross income the amounts received for outgoing messages while the replying company included income from the answers in its taxable income. A company would deduct pay-outs to other companies for transmitting messages over their cables or lines, operating expenses, and depreciation allowances.

Likewise there was no problem in allocating particular items of income to their single source, such as dividends to the seat of the corporation, interest to the residence of the debtor, royalties to the country where the right or property licensed is used, and remuneration for personal services to the place where they were physically rendered.

Many countries followed the same practice as that of the United States in allocating the entire income from purchasing in one country and selling in another to the place of sale,\textsuperscript{23} because it was too difficult to determine how much profit should be attributed to the mere act of purchasing.

However, real problems arose in dividing the income between the two jurisdictions when an item was produced in one and sold in the other. The United States had the criterion of the independent factory price and an apportionment formula which is rarely used.\textsuperscript{24}

\begin{footnotesize}
\begin{enumerate}
  \item Document C.425(c). M.217(c). 1933. IIA.
  \item Income Tax Regulations, §1-1.861-7(a).
  \item Income Tax Regulations, §1-1.863-3.
\end{enumerate}
\end{footnotesize}
The British law resorted to the criterion of a "merchanting" profit as distinguished from that of a manufacturer.\textsuperscript{25}

In France, the authorities employed the rule of attributing profit to an "établissement," and in Germany of determining the earnings of a "Betriebsstätte"—both of which concepts imply a division between manufacturing, on the one hand, and selling, on the other.

No foreign government had adopted precise formulas for apportioning income like those in Massachusetts, New York, or Wisconsin. The nearest to this concept was Spain, which resorted to determining a relative percentage or "cifra relativa" based on a comparison of the business in Spain to the total business of the enterprise as shown by certain factors such as receipts, property, and payroll. This percentage was fixed by a "Profits Jury." According to recent reports from Spain, the authorities decided to abandon it as a means of computing taxable profits but soon returned to using it for profits as well as for the determining the extent of a foreign company's liability to the tax on dividends distributed at the head office abroad.

The French Bureau de l'Enregistrement based liability of a foreign company with a branch or subsidiary in France to the tax on income from securities on a taxable quota (quotité imposable), determined by the ratio of assets in France (biens en France) to total assets, but this was abandoned in 1965. Similar factors were used in Switzerland to apportion the income of an enterprise among the Cantons in which it operated.

**Basic Principles of Allocation Convention**

However, the members of the Fiscal Committee decided that the best and fairest method was to determine the income of a permanent establishment,\textit{ e.g.}, a local sales office, by means of a comparison with what a similarly situated independent enterprise would make. This was the criterion incorporated in the Draft Convention on the allocation of business income for purposes of taxation. It was first prepared in the form of a multilateral Convention.\textsuperscript{26} As very few governments were interested in such a Convention,

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\textsuperscript{26} League of Nations, Document C.399.M.204.1933.IIA. Annex to the Fiscal Committee Report of 1933.
the draft was published again in 1935 as a model for bilateral Conventions.\textsuperscript{27}

In short, after studying the principles and practices inherent in the tax laws and practices of some thirty countries, the Committee (all tax administrators—Dr. Adams having died) unanimously accepted the author's proposal. They decided first to exclude from the definition of business income all items of income that could be allocated to a particular source such as dividends, interest, etc. With regard to the remainder which was called "business income" the Committee agreed that if an enterprise with its fiscal domicile in one Contracting State has a permanent establishment in another Contracting State, there should be attributed to the permanent establishment the net 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 (Arts. II and III).

Such net income would, in principle, be determined on the basis of the separate accounts pertaining to such establishment. Subject to the provisions of the Convention, the net income would be taxed in accordance with the legislation and international agreements of the State in which the establishment is situated.

If the authorities found that the accounts were inadequate, they could rectify them 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 (Art. III).

If necessary, the authorities could proceed to the method of applying to gross receipts a percentage of turnover corresponding to the profits realized by a similar undertaking. Only in the last analysis, could the authorities resort to the fractional apportionment of the entire net income of the enterprise by using such factors as receipts, assets, hours worked, payroll, and the like. The factors should be chosen so as to arrive at a result which would be as close as possible to that which would be reflected in a separate accounting (Art. III).

Although this allocation Convention has never been adopted as such, its provisions were incorporated in the model Conventions of

Mexico of 1943 and London of 1946. They were omitted from the OECD Draft of 1963.

Nevertheless, they have been incorporated in substance in the second United States Convention with France of 1939 and subsequent Conventions.

**Mexico (1943) and London (1946) Model Conventions**

During the session the Fiscal Committee held in Geneva in June 1939, it was noted that numerous Conventions had been concluded during the decade since the meeting of the governmental experts in 1928 and the suggestion was made that the models drafted at that meeting should be brought up-to-date in the light of the improvements made in formal negotiations. Thus the United States had concluded its first Convention, that with France on April 27, 1932, and its second Convention, that with Sweden on March 23, 1939. The second Convention with France followed on July 25, 1939.

World War II broke out the following September 1, 1939, but was so slow in getting under way that the Fiscal Committee's subcommittee met at The Hague on April 1940 to start the work which was abandoned in Europe after Rotterdam was bombed on May 10, 1940.

Mr. Alexander Loveday, the Director of the League of Nations Financial Division, and Mr. Paul Deperon, the Secretary of the Fiscal Committee, had left Geneva by bus for Lisbon where they took an airplane to the United States and were given an office at Princeton University to carry on their work. The writer flew to Mexico and as Chairman of the Committee arranged through the Mexican corresponding member Licenciado Luciano Weichers, and the Mexican Minister of Finance, Licenciado Edouardo Suarez, to hold a Regional Tax Conference composed of representatives of Canada, the United States, Mexico, and other countries to the South. No Latin American had attended the meeting of 1928, and inasmuch as the less-developed countries of the Western Hemisphere would be interested in industrial and commercial expansion when the war was over it seemed desirable to give them an opportunity to participate in revising the 1928 model Conventions.

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28 The author was elected Chairman of the Fiscal Committee at this meeting, and continued to serve in that capacity through World War II until the opening of the final meeting in London in 1946.
Except for the Canadian Deputy Minister for Internal Revenue C. Fraser Elliott, K.C., and the writer, all the members were representatives of Latin American countries, such as Argentina, Bolivia, Chile, Colombia, Cuba, Ecuador, Uruguay, Guatemala, Mexico, Peru, and Venezuela. The author was accompanied by Eldon P. King, Special Deputy Commissioner, who was in charge of the work on tax treaties in the Internal Revenue Service, Treasury Department.

The overwhelming majority were in favor of taxing income derived by nonresidents exclusively at the source in their territories. They preferred the concept, in Article IV of the Draft Convention on income taxes, of taxing income from any industrial, commercial, or agricultural business and from any other gainful activity only in the State where the business or activity is carried out, rather than the traditional principle of where the taxpayer has a permanent establishment.

They contended that the European definition of a permanent establishment was too restrictive and they wanted to reach any activity that gave rise to income. They are said to have reiterated their contentions even in the most recent negotiations between their representatives and United States officials.

The Mexico draft on income taxes replaced the three models on income and property taxes framed in Geneva in 1928, and incorporated the provisions of the 1935 model on the allocation of business income. It was predicated almost entirely on the principle of taxation at source. This draft, a second on estate and succession taxes, and a third on reciprocal administrative assistance for the assessment and collection of taxes were distributed to the governments of the Western Hemisphere for study and were reviewed at a second Regional Tax Conference held in Mexico City in July 1943.

These texts were reexamined by the full Fiscal Committee at its tenth and final session in London, March 1946, which prepared new drafts. Apart from important exceptions, infra, they were substantially the same as the Mexico models and are known as the London Model Conventions. They were published side by side with a Commentary.20 This brochure was the sole official guide in tax treaty negotiations until the Tax Committee of the OECD used

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it as a starting point in preparing a new draft on income and property taxes, begun in 1958 and published in 1963.30

OECD Tax Committee Model (1963)

Officials now turn to this later document as a guide. United States Treasury representatives have modified and often improved upon some of its articles in the negotiation of treaties with less developed countries, in a treaty with Luxembourg signed in 1962, and in a series of revisions of existing treaties, i.e., in 1963 with Sweden, 1965 with Belgium, Germany, and the Netherlands, 1966 with the United Kingdom, and 1967 France.

It was used but modified in various ways in negotiating the Conventions with such underdeveloped countries as the Philippines in 1964, Thailand and Israel in 1965, Trinidad and Tobago in 1966, and Brazil in 1967. It was expected to be the last word in language but the United States Treasury draftsmen have already made many changes. Nevertheless it is still useful as a composite of the views of the official representatives of the 20 members of the OECD.31

Comparison of Mexico, London, and OECD Models

Although there are some differences in form, the divergencies in substance between the London and OECD models are relatively minor. As the Mexico model is still the expression of the views of less-developed countries, the main provisions of this model will be compared with those in the London and OECD models. For convenience they will be referred to as the Mexico, London, and Paris Drafts—the last term being used because the OECD Tax Committee did its work in Paris.

Interest

Starting off with interest, the Mexico Draft states flatly that income from movable capital will be taxable only in the Contracting State where such capital is invested (Art. IX).

The London Draft, on the contrary, declares in Article IX
that interest on bonds, securities, notes, debentures, or any other form of indebtedness will be taxable only in the State where the creditor has his fiscal domicile. The State of the debtor may continue to deduct a withholding tax but it must be limited to a certain per cent of the interest.

The Paris Draft provides for taxing interest at the residence of the recipient and the state of the debtor must limit its withholding tax to 10 per cent (Art. II, 1 and 2). The American qualification appears in Paragraph 4 which bars the foregoing reduction if the recipient has in the state of source a permanent establishment with which the debt claim is effectively connected. If the indebtedness was incurred in connection with a permanent establishment and is borne by it, then the interest will be deemed to arise at the permanent establishment (id., Par. 5).

If interest is higher than it would normally be because of the special relationship of the debtor and creditor, the benefit under Paragraphs 1 and 2 will apply only to the normal amount, and the excess will be taxable according to the law of each State (id., Par. 6).

**Dividends**

The Mexico Draft taxes dividends, like other income from movable capital, only where the capital is invested (Art. IX). The London Draft taxes dividends at the fiscal domicile of the paying company, unless a company in the other Contracting State has a dominant participation in the management or capital of the paying company in which event the dividends will be exempt in the state of source (Art. VIII, Pars. 1, 2). Dividends paid by, or undistributed profits of, a company with its fiscal domicile in one State will not be taxed by the other because of the fact that the dividends or undistributed profits represent in whole or in part income derived from the territory of the second State (Art. VIII, Par. 5). This provision would indirectly bar the application of extraterritorial taxation contemplated in the United States Internal Revenue Code (Secs. 861(a)(2)(B), and 541-547).

The Paris Draft (Art. 10, pars. 1 and 2) envisages taxation by the State where the shareholder resides and limits withholding taxes in the other State to 5 per cent in the case of dividends paid by a 25 per cent-owned subsidiary and to 15 per cent in all other cases. However this concession is barred if the shareholder has in the State of the dividend payer a permanent establishment with which the
holding is effectively connected. In that event the dividends are included in the business profits of the establishment (id., par. 5 and Art. 7).

The Paris Draft follows the example of the London Draft in providing that where a corporation of one State derives profits or income from the other, the latter may not tax dividends distributed to persons who are not residents in its territory, nor tax undistributed profits, in either case on the grounds that the profits or income were derived from sources in its territory (id., par. 4). As in the London Draft this provision would bar extraterritorial taxation of dividends.

Royalties

The Mexico Draft gives exclusive jurisdiction to tax royalties for the use of a patent, secret process or formula, a trademark, or other analogous right to the country where such right is exploited (Art. X, par. 2). To help cultural relations, copyright royalties are exempt in the State of source (Art. X, par. 3).

The London Draft exempts such income in the State of source (Art. X, 2). On the contrary, it allots the royalty to the State where the patent, etc., is exploited if the licensee is related through ownership or control to the licensor enterprise, subject to the deduction from the gross amount of the royalty of all expenses and charges, including depreciation, relative to such rights and royalties (id., par. 3). Nevertheless copyright royalties are exempt at source (id., par. 4).

Article 12 of the Paris Draft in principle allots both patent and copyright royalties to the country of residence of the recipient, provided the property or right giving rise to the royalty is not "effectively connected" with a permanent establishment in the country of the licensee (Art. 12(3)).

This phrase "effectively connected" was probably introduced by the United States member of the Fiscal Committee because it evolved from an amendment in a supplementary protocol of 1957 to Article VIII of the 1945 Treaty with the United Kingdom, which overruled the "force of attraction" doctrine so that the exemption at source for royalties would not apply if the licensor opened in the United Kingdom a sales branch which had no connection whatsoever with an existing royalty agreement. The new phrase was incorporated in the Internal Revenue Code by the Foreign Investors Tax Act of November 13, 1966.

The definition in Article 12(2) of the term "royalty" is also
worthy of note because after the usual enumeration of items such as copyrights, patents, and trademarks, it adds the right to use industrial, commercial, or scientific equipment and "information concerning industrial, commercial, or scientific experience"—i.e., "knowhow."

**Capital Gains**

The Mexico Draft taxes gains from the sale of real property in the State where the property is situated but says nothing about the sale of personal property (Art. XII).

The London Draft follows the above rule for real property as well as assets pertaining to an industrial, commercial, or agricultural enterprise, or independent occupation. However, it allots gains from the sale or exchange of other capital assets (e.g., stocks or bonds) to the State of the recipient's fiscal domicile (Art. XII).

The Paris Draft follows the same principles as those in the London Draft. It adds that ships and aircraft operated in international traffic, boats engaged in inland waterways transport, and movable property pertaining to their operations will be taxable only at the seat of effective management of the enterprise (Arts. 13 and 22).

**Business Income and Permanent Establishment Defined**

As has been pointed out, while the Mexico Draft seeks to eliminate the benefits of the permanent establishment principle and to tax the foreign industrial, commercial, or agricultural enterprise where the business or activity is carried out (Art. IV), the London Draft reaffirms the permanent establishment concept (Art. IV). The Paris Draft maintains it also (Art. 7).

Nevertheless if an enterprise of one State has a permanent establishment in the other the Mexico Draft would tax that part of the income produced in its territory, and the London Draft does the same.

The Paris Draft introduces in Article 7 the clause from the League of Nations Allocation Convention of 1935, attributing to the permanent establishment the profits it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing independently with the enterprise of which it is a permanent establishment (Art. 7, par. (2)).

The Mexico Draft contains a provision (Art. IV (4)) not...
repeated in the others which is designed to favor less-developed countries. It declares that in the case of establishments producing agricultural and mining raw materials and other natural materials and products, the income which results from prices prevailing between independent persons or conforming to world market quotations shall be regarded as realized in the State in which such materials or items have been produced. In other words, if a corporation of one Contracting State has an establishment in the other which produces raw materials which are sold at an establishment in the first State at world market prices the entire profit is to be allocated to the State where the raw materials were produced (Par. 4).

The Paris Draft (Art. 7) contains several additional paragraphs. Paragraph 3 provides for deducting, in determining the expenses which are incurred for the purposes of the establishment, executive and general administrative expenses wherever incurred. This is essentially the same as Paragraph 2 of the provisions on allocation of income in Article VI of the Protocol to each of the Mexico and London Drafts.

Paragraph 5 of Article 7 of the Paris Draft also embodies a proposition not found in the earlier drafts, namely that no profits should be attributed to a permanent establishment by reason of its merely purchasing goods or merchandise for the enterprise.

The definition of a "permanent establishment" in Article V of the Protocol to the Mexico and London Drafts is very detailed and extensive but is even further refined in the Paris Draft. This definition in Article 5 of the Paris Draft has been extensively used in subsequent treaty negotiations. It begins with the premise that the term "permanent establishment" means a fixed place in which the business of the enterprise is wholly or partly carried on (par. 1).

It then lists in Paragraph 2 the types of establishments that appeared originally in, or have been added to, the treaty definition over the years, namely, (a) a place of management (which usually means the head office of the enterprise); (b) a branch; (c) an office; (d) a factory; (e) a workshop; (f) a mine, quarry, or other place of extraction of natural resources; (g) a building site or construction or assembly project which exists for more than twelve months.

Under 3, on the contrary, the term is not deemed to include the following which cover marginal activities such as those conducted in a bonded warehouse or a free zone in a city like Antwerp or
Hamburg that are auxiliary to those at a sales office in the country itself, or a bureau d’étude in Paris or a supervisory office in Brussels. More specifically the limited activities are:

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

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

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

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

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supplying of information, for scientific research, or for similar activities which have a preparatory or auxiliary character for the enterprise.

Considered separately each of these activities is not ordinarily considered to be productive of taxable income.

We now come to some traditional tests that from the beginning of the 1920's have been considered to constitute a permanent establishment. Under Paragraph 4 a person acting in a Contracting State on behalf of an enterprise of the other Contracting State, other than an agent of independent status to whom Paragraph 5 applies, shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

On the contrary, an enterprise of one State is not deemed to have a permanent establishment in the other merely because it carries on business in the other through a broker, general commission agent, or any other agent of an independent status, where such persons are acting in the ordinary course of their business (par. 5).

To protect an enterprise in one State with a subsidiary company in the other from being regarded as having a permanent establishment, Paragraph 6 embellishes a clause incorporated in our 1932 Con-
vention with France (Protocol, par. 3(a)), namely, that the term permanent establishment includes branches, etc., but does not include a subsidiary corporation. Paragraph 6 elaborates this simple statement to read in substance that a company resident in one State which controls or is controlled by a company resident in the other, or which carries on business in that State (through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

**Income from Real Property and Mining Royalties**

The Mexico and London Drafts both provide for taxing income from real property and mining royalties only in the State where the real property is situated (Arts. II and X, 1). Likewise the Paris Draft follows this principle (Art. 6).

**Income from Personal Services**

The Mexico Draft (Art. VII) and the London Draft (Art. VI) both start with the premise of taxing remuneration from personal services in the State where the services were rendered. However they grant an exemption when the employee, who resides and is taxed in one State, renders the services in the other State over a period not exceeding 183 days in the aggregate (id., par. 2). Both Drafts add (id., par. 3) that if he remains in the other State for more than 183 days, he becomes taxable on his remuneration earned therein, but his liability to tax ceases in the State from which he came.

According to both the Mexico and London Drafts a person engaged in a liberal profession is taxable only where he has a permanent establishment and renders services. If he has a permanent establishment in both States his liability in each State is measured by the income received for services rendered at each establishment (id., pars. 4 and 5).

The Paris Draft classified personal services as "Independent" (Art. 14) and "Dependent" (Art. 15) and allocates remuneration for the former category to the place where the recipient has a "fixed base." This article relates to physicians, lawyers, engineers, architects, dentists, and accountants.

As regards dependent personal services, a resident of one State who normally exercises his employment there but works in the other State remains taxable (under Art. 15) only in the first State if (a) he is present in the other State a period or periods not
exceeding 183 days in the aggregate during the taxable year, and

(b) his remuneration is paid by an employer who is not a resident in the other State, and provided his remuneration is not borne by the permanent establishment or a fixed base in such other State belonging to the employer in the first State.

By way of exception, remuneration in respect to an employment exercised aboard a ship or aircraft in international traffic or aboard a boat engaged in transport on inland waterways may be taxed in the State where the enterprise has its effective management. Another exception to the foregoing is that company directors who normally reside in one State but attend director's meetings in the other State may be taxed in the latter State (Art. 16). Public entertainers, such as theater, motion picture, radio or television artists and musicians, and athletes may be taxed in the State in which they carry on their activities (Art. 17).

Under the Mexico Draft private pensions and life annuities are taxable in the State of the debtor (Art. XI) and under the London Draft by the State of residence of the recipient (Art. XI). In the Paris Draft private pensions and similar remuneration in consideration of past employment are taxable only in the States where the recipient resides (Art. 18).

Public remuneration paid for normal governmental services and public pensions are taxable by the State, or public entity or agency thereof, which pays them (Mexico Draft, Art. VIII, London Draft, Art. VII) and Paris Draft (Art. 19). However, if the public entity engages in a trade or business, the remuneration of its employees is taxed as private remuneration *supra*. (Paris Draft, Art. 19, par. 2).

To encourage the development of cultural and business relations, the Mexico (Protocol, Art. X) and London Drafts (Protocol, Art. IX) contained identical provisions exempting from tax remittances received in the State visited by students and apprentices from the other State exclusively for the purpose of study or for acquiring business experience. Remittances for the purpose of maintenance, education, and training, and payments made from sources outside the State are exempt under the Paris Draft (Art. 20).

The Draft of the OECD (Art. 21) contains a basket clause allot-
ting to the State when the taxpayer resides all items of income not previously mentioned.

**Tax Saving Clause and Relief from Double Taxation**

The Mexico and London Drafts (Art. XIII in both) embody the principle asserted by the United States Treasury that regardless of provisions in the Convention subjecting income to the tax of the other Contracting State, such as income from real property and permanent establishments, the State in which the taxpayer has his fiscal domicile shall retain the right to tax his entire income from all sources. However it must deduct from its tax thereon the lesser of (a) the tax imposed in the State of source according to the Convention or (b) the amount which represents the same proportion of the tax on entire net income as the net income taxable in the State of source bears to the entire net income.

A substantially similar provision is contained in the Paris Draft (Art. 23A). However, Article 23A envisages exempting the resident of one State on income derived from sources, or on capital, situated in the other State, subject however to including in total income or capital the exempted part in order to determine the rate applicable to the remaining income or capital that is taxable. Article 23B envisages a credit similar to that granted by the United States in Secs. 901 and 904, I.R.C.

**Taxation of Capital**

Nothing is said about taxes on capital in the Mexico Draft because the Latin American countries did not have such taxes. However as European countries do have them, in the London Draft Article XV provides in substance that the preceding articles on the various items of income shall be applicable *mutatis mutandis* to taxes on property, capital, or increment of wealth whether they are permanent or are levied once only.

The Paris Draft, in Article 22, reflects provisions in bilateral treaties between European countries. It allots the tax on immovable property to the country where the property is situated, that on business property to the permanent establishment to which it pertains, or on movable property used in performing professional services to the fixed base used for performing such services. The Contracting State in which is situated the place of effective management of the enterprise is to tax ships and aircraft operated in international traffic, boats
engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft, and boats. Article 22(4) reserves the right to tax all other elements of capital to the State where the owner resides.

**Fiscal Domicile in Two States—Division of Income**

To take care of the infrequent cases when a taxpayer may be regarded as having a fiscal domicile in each of the two Contracting States, both the Mexico and London Drafts provide in an identical Article XIV that the tax depending on fiscal domicile shall be imposed in each in proportion to the period of stay therein during the preceding year, or as agreed by the competent administrations.

The Paris Draft (Art. 4) handles dual residence first by deeming the individual to be resident where he has a permanent home. If he has a permanent home in each State then he is resident in the State with which his personal and economic interests are closest. If the foregoing tests fail then he is resident where he has a habitual abode, or if he has such an abode in both or in neither State, then he will be deemed a resident in the State of which he is a national. If he is a national of both States or neither of them, then the authorities of the two States will agree on a solution. The test of domicile for a company is the location of its place of effective management.

**Non-Discrimination and Other Protective Clauses**

The Mexico and London Drafts embody a number of protective clauses which are taken over by the Paris Draft.

The first (Mexico Draft, Art. XVI; London Draft, Art, XVI) protects the taxpayer having his fiscal domicile in one State and deriving income from sources in the other against higher or other taxes in such other State than those applicable in respect of the same type of income to a taxpayer who has his fiscal domicile in or the nationality of the other State.

Furthermore if a taxpayer can show that he has been subjected to double taxation resulting from the action of the administration of the other State, he is entitled to lodge a claim with the Administration of the State where he has his fiscal domicile or of which he is a national. If this Administration accepts the claim, it may consult directly with the competent authority of the other State, with a view to reaching an agreement for the equitable avoidance of double taxation (Mexico Draft, Art. XVI and London Draft, Art. XVII). Sub-
stantially similar provisions are contained in Article 25 of the Paris Draft.

The London Draft introduced a protective clause which is used in its Conventions by the United States to the effect that the Convention could not be construed to restrict in any manner any exemption, deduction, credit, allowance, advantage, and right of administrative or judicial appeal accorded to a taxpayer by the laws of either Contracting State (Art. XVIII).

This was not included in the Paris Draft.

Mutual Governmental Assistance

To preclude the articles intended only to prevent double taxation from causing loopholes for tax avoidance or evasion, a Model Bilateral Convention on Reciprocal Administrative Assistance for the Assessment and Collection of Taxes on Income, Property, Estates and Successions was adopted at both Mexico and London.32

However the OECD Tax Committee embodied in its draft only a short Article 26 on exchange of information. It contemplates exchanging such information as is necessary for carrying out the Convention and laws of the Parties concerning taxes covered by the Convention insofar as the taxation thereunder is in accordance with the Convention.

The safeguards provided are, first, that the information exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes covered by the Convention. Secondly, a State is not obligated to carry out measures contrary to the administrative practice of either Contracting State, or to supply particulars not obtainable under the laws or in the normal course of the administration of either State, or to supply information that would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Diplomatic Exemption and Territorial Extension

The general rules of international law or provisions of special agreements containing fiscal privileges of diplomatic or consular officials are to be respected (Paris Draft, Art. 27). This is essentially

the same as a clause embodied in the Mexico (Art. VIII) and the London (Art. VII) Drafts.

The Paris Draft contains the innovation of providing for the extension of the Convention in whole or in part to any State or territory for whose international relations a Contracting Party is responsible, presupposing it imposes taxes substantially similar to those covered by the Convention.

Conclusion

It is evident from the foregoing that little substance was added by the 1963 Paris Draft Convention on income taxes to the London model. In the meantime members of the OECD had become parties to numerous bilateral Conventions between themselves and with still other States but evidently they had adhered rather closely to the pattern set in 1946 by the League of Nations Fiscal Committee.

The principal new aspect of the 1963 Draft was the qualification introduced by the United States in Article 7 of its 1945 Convention with the United Kingdom through the supplementary protocol of August 19, 1957. The new limitation would permit a United States licensor to be deprived of its exemption for royalties on patents paid by a British licensee as the result of opening a permanent establishment in London only if the royalties were directly associated with the business carried on through that permanent establishment.

The OECD Tax Committee inserted this qualification in Paragraph 3 of its Article 12 on royalties and declared that the exemption at source would not apply if the "right or property giving rise to the royalties was "effectively connected" with a permanent establishment. The same qualification was inserted in Paragraph 4 of Article 10 on dividends, and Paragraph 4 of Article 11 on interest. However it was omitted in Article 13 on capital gains.

The Treasury heralded this OECD provision as overcoming the general application of the force of attraction theory introduced in tax treaties after the Revenue Act of 1936 had amended the United States law to tax nonresident aliens and foreign corporations at regular rates only if they were engaged in trade or business and had an office or place of business in the United States. In other words, it marked a return to the underlying concept in the draft Conventions of 1928, namely, that each category of income would be segregated and dealt with specifically in a separate article of the Convention.

We have hurriedly traced the results of the series of meetings under the auspices of the League of Nations from those of the four
economists who rendered their report in 1923 to the final report of its Fiscal Committee in 1946. We have followed the resumption of the work on model conventions in 1958 by the Tax Committee of the OEEC, which became the OECD, up to the present—a span of over four decades. The technical and governmental experts of the League of Nations found that a realistic way to avoid the problems of double taxation resulting from the overlapping principles of tax jurisdiction of governments was for the governments to agree to avoid such conflicts, just as Austria-Hungary and Prussia had done as far back as 1899. Such self-imposed restraints in a formal treaty unquestionably constituted international law.

These groups of experts were constantly seeking to harmonize the differences between their respective systems in model conventions. They thought that the text would be followed verbatim for years to come when government representatives met and used them as guides in framing a bilateral convention between their respective countries. Frequently participants in their meetings at Geneva would adjourn to a restaurant on the shores of Lac Leman, or to another room in the Palais des Nations, to discuss the adaptation of what they were doing in the Committee to the formulation of a bilateral agreement between their respective countries.

Part II will synthesize as briefly as possible the evolution of the provisions in bilateral agreements on particular classes of income and subjects. Although more or less the same principles run through them, the reader may be astonished at the wide differences in language, and especially in varying concessions in the constant economic and fiscal “tug of war” between the proponents of taxation at source and those of taxation only at the fiscal domicile of the recipient of income.

Annex I

TREATIES BETWEEN THE UNITED STATES OF AMERICA AND OTHER COUNTRIES RELATING TO DOUBLE TAXATION

A. TREATIES IN FORCE

NOTE: References are given below to all conventions and related protocols in force between the United States of America and other countries for the avoidance of double taxation. In each instance the convention or protocol was brought into force by the exchange of instruments of ratification.

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Except as otherwise stated, (a) each income-tax convention or protocol became operative retroactively as of the first day of January of the year in which the instruments of ratification were exchanged, (b) each estate-tax convention or protocol became operative only as to estates of persons dying on or after the date on which the instruments of ratification were exchanged, and (c) each gift-tax convention (or gift-tax provisions embodied in an estate-tax convention) became operative only as to gifts made on or after the date on which the instruments of ratification were exchanged. Text references are to:

TS — Treaty Series (leaflet or pamphlet numbered series published by the Department of State);
TIAS—Treaties and Other International Acts Series (leaflet or pamphlet numbered series published by the Department of State);
Stat. — United States Statutes at Large (see 1 U.S.C. 112);
UST—United States Treaties and Other International Agreements (statutory volumes having status equivalent to Statutes at Large containing texts of agreements entering into force during or after 1950; see 1 U.S.C. 112a).

AUSTRALIA—

AUSTRIA—

BELGIUM—
For exchange of notes of April 2, 1954 and July 28, 1959 regarding extension of income-tax convention, as modified, to the Belgian Congo and the Trust Territory of Ruanda-Urundi, see TIAS 4280; 10 UST 1358.
NOTE: Burundi (formerly Urundi) became independent July 1, 1962. Congo (Kinshasa) became independent June 30, 1960. Rwanda (formerly Ruanda) became independent July 1, 1962. The convention of 1948, as modified by the supplementary conventions of 1952 and 1959, continues to apply to those areas.
Exchange of notes signed at Brussels December 11, 1967, prolonging
the supplementary income-tax protocol of May 21, 1965, to continue
it in effect with respect to income of calendar years or taxable years
beginning (or, in the case of taxes payable at the source, payments
made) prior to January 1, 1971. (See paragraph (5) of Article II
of the 1965 protocol.) TIAS

BURUNDI—
(See NOTE under Belgium, above.)

CANADA—
Income-tax convention, with accompanying protocol, signed March 4,
Estate-tax convention, signed June 8, 1944. Ratifications exchanged
February 6, 1945. TS 989; 59 Stat. 915.
Income-tax supplementary convention, signed June 12, 1950. Ratifica-
tions exchanged November 21, 1951. Operative as indicated above
except as provided in Article I (1)(A) in regard to amendment of
part of Article XV of the 1942 convention. TIAS 2347; 2 UST, pt. 2,
2235.
Estate-tax supplementary convention, signed June 12, 1950. Ratifica-
tions exchanged November 21, 1951. TIAS 2348; 2 UST, pt. 2, 2248.
Income-tax supplementary convention, signed August 8, 1956. Ratifica-
tions exchanged September 26, 1957. TIAS 3916; 8 UST 1619.
Estate-tax convention, signed February 17, 1961. Ratifications ex-
changed April 9, 1962. TIAS 4995; 13 UST 382.
(This convention applies only with respect to estates of decedents
dying on or after January 1, 1959. The 1944 convention as supple-
mented June 12, 1950 continues to apply only as to an estate of a
decedent dying prior to January 1, 1959.)
Income-tax supplementary convention signed October 25, 1966. Rati-
fications exchanged December 20, 1967. TIAS

CONGO (KINSHASA)—
(See NOTE under Belgium, above.)

DENMARK—
Income-tax convention, signed May 6, 1948. Ratifications exchanged

FINLAND—
Income-tax convention, signed March 3, 1952. Ratifications exchanged
December 18, 1952. TIAS 2596; 3 UST, pt. 3, 4485.
Estate-tax convention, signed March 3, 1952. Ratifications exchanged
December 18, 1952. TIAS 2595; 3 UST, pt. 3, 4464.

FRANCE—
Income-tax convention, with protocol, signed at Paris, April 27, 1932.
Ratifications exchanged April 9, 1935, effective January 1, 1936.
T.S. No. 885, replaced by:

Income-estate-tax convention, signed October 18, 1946, with supplementary protocol, signed May 17, 1948. Ratifications exchanged October 17, 1949, operative as to various provisions as stipulated in the convention and protocol. TIAS 1982; 64 Stat., pt. 3, B3.


GAMBIA—
(See NOTE under United Kingdom below.)

GERMANY, FEDERAL REPUBLIC OF—


GREECE—
Income-tax convention, signed February 20, 1950, with supplementary protocol, signed April 20, 1953. Ratifications exchanged December 30, 1953. TIAS 2902; 5 UST 47. (For exchange of notes of August 3 and 19, 1954, regarding clerical errors, see TIAS 3679; 5 UST 1543.)

Estate-tax convention, signed February 20, 1950, with supplementary protocol, signed July 18, 1953. Ratifications exchanged December 30, 1953. TIAS 2901; 5 UST 12.

IRELAND—
Income-tax convention, signed September 13, 1949. Ratifications exchanged December 20, 1951, operative January 1, 1951 for United States tax and as otherwise provided in the convention for Irish taxes. TIAS 2356; 2 UST, pt. 2, 2303.


ITALY—


JAMAICA—
(See NOTE under United Kingdom, below.)

JAPAN—
(This protocol abrogated a supplementary protocol of March 23, 1957. TIAS 3901; 8 UST 1445.)

LUXEMBOURG—

MALAWI—
(See NOTE under United Kingdom, below.)

NETHERLANDS—
(For exchange of notes of June 24 and August 7, 1952 and September 15, November 4 and 10, 1955, see TIAS 3367; 6 UST, pt. 3, 3703.)

NEW ZEALAND—

NIGERIA—
(See NOTE under United Kingdom, below.)

NORWAY—

PAKISTAN—

RWANDA—
(See NOTE under Belgium, above.)

SIERRA LEONE—
(See NOTE under United Kingdom, below.)
SOUTH AFRICA, REPUBLIC OF—

SWEDEN—

SWITZERLAND—

TRINIDAD AND TOBAGO—*

UNITED KINGDOM—
Income-tax convention, signed April 16, 1945, and supplementary protocol, signed June 6, 1946. Ratifications exchanged July 25, 1946, operative as of January 1, 1945 for United States tax and as otherwise provided in the convention for United Kingdom taxes. TIAS 1546; 60 Stat., pt. 2, 1377.
For exchange of notes of August 19, 1957 and December 3, 1958, regarding extension of income-tax convention, as modified, to certain British territories, see TIAS 4141; 9 UST 1459.
For exchange of notes of December 31, 1963, regarding continued application of the income-tax convention, as modified, to Southern Rhodesia, Northern Rhodesia, and Nyasaland, see TIAS 5501; 14 UST 1899.

* On December 19, 1967, at the time of exchanging ratifications, the American Embassy and the Foreign Office exchanged diplomatic notes, in accordance with Article 5(3), agreeing that the convention shall continue to be effective during the year 1968.

NOTE: British territories to which application of the 1945 income-tax convention was extended and which thereafter became independent states include Cyprus, Gambia, Jamaica, Malawi (formerly Nyasaland Protectorate), Nigeria, Sierra Leone, Trinidad and Tobago, and Zambia (formerly Northern Rhodesia). The convention, as modified by the protocols of 1946, 1954, and 1957, continues to apply to Gambia, Jamaica, Nigeria, Sierra Leone, and Zambia. Application to Cyprus and to Trinidad and Tobago ceased by reason of notices of termination given by those states in accordance with provisions of the convention.

ZAMBIA—
(See NOTE under United Kingdom, above.)

B. TREATIES SIGNED BUT NOT IN FORCE

NOTE: Text references are to:
S. Ex.—Senate Executive document; e.g., “S. Ex. G, 83d, 2d” signifies Senate Executive G, 83d Congress, 2d Session.

BELGIUM—
Estate-tax convention, signed May 27, 1954. This convention has been ratified by the United States; awaiting action by Belgium before instruments of ratification can be exchanged.
S. Ex. G, 83d, 2d.

BRAZIL—
S. Ex. J, 90th, 1st.

FRANCE—
S. Ex. N, 90th, 1st.

GREECE—
Estate-tax supplementary protocol, signed February 12, 1964. This protocol has been ratified by the United States; awaiting action by Greece before instruments of ratification can be exchanged.
S. Ex. A, 88th, 2d.

ISRAEL—
Income-tax convention, signed June 29, 1965. Under consideration in the Senate Committee on Foreign Relations.
S. Ex. F, 89th, 1st.
PHILIPPINES—
Income-tax convention, signed October 5, 1964. Under consideration in the Senate Committee on Foreign Relations.
S. Ex. D, 89th, 1st.

THAILAND—
Income-tax convention, signed March 1, 1965. Under consideration in the Senate Committee on Foreign Relations.
S. Ex. E, 89th, 1st.

DEPARTMENT OF STATE
OFFICE OF THE LEGAL ADVISER
ASSISTANT LEGAL ADVISER FOR TREATY AFFAIRS
January 1, 1968.