

*Commentary.*

*Article 2.*

In this article there is substantial agreement between the Convention and the Union system.

*Article 3.*

The main provision of this article is in accord with the Union law.

The qualification for refund in the event of such income being taxed by an impersonal tax in the country of fiscal domicile is, of course, the direct negation of the first provision and would be in conflict with the Union system. It would mean the abandonment of all tax on moneys invested in the Union by way of loan otherwise than that secured by the mortgage of fixed property. This is hardly a feasible proposition for a developing and debtor country, which could not contemplate such a limitation of its field of taxation. How far the suggestion that the liability for taxation affects the price paid for the borrowed capital applies to the conditions of the Union is a question to which a practical answer is not easily given. But there should not even be a theoretic loading of the price if the lending country accepts the source of such interest as being in the debtor country and thus eliminates the interest from any impersonal tax it imposes itself or allows the taxation of the debtor country as a set-off against its own personal taxation. In that case the lender will not be disadvantaged by the taxation imposed in the country of his borrower and will not require to be compensated.

*Article 4.*

In this article there is a divergence between the proposed basis and that adopted by Union practice. That practice has been to treat dividends as being derived from the same source as the profits from which they are paid. If, therefore, the profits of a company are apportionable as being partly derived from sources outside the Union, the dividends have been treated as being apportionable on the same basis.

The adoption of the view put forward in the draft Convention would be to exclude from the Union field of taxation dividends distributed by companies which, though conducting all or the bulk of their detailed business in the Union, maintain a control over those operations from an office outside the Union.

The adoption of this basis for the Union would mean the abandonment of super-tax upon dividends of such companies carrying on business as have their head offices in countries other than the Union, but would bring within the charge dividends distributed by large companies whose head offices are within the Union which now escape either entirely or only rank for taxation as to a small percentage.

*Article 5a.*

The difference between the Convention basis and the Union system is small. The Union system accepts the limitation of the charge to profits earned by branches of a business in the Union and provides for apportionment where separate accounts are not kept. It is also in accord with the Convention in abstaining from taxing foreign enterprises in respect of trade conducted by agents of independent status in the Union. It exceeds the proposals by taxing casual transactions carried out in the Union by peripatetic traders or by professional men from outside the Union.

*Article 5b. — Shipping.*

On this point there is complete divergence between the Convention and the Union system. But the proposal in the Convention is put forward tentatively and with an appreciation of the wide difference of opinion held on the subject. The Convention proposal is sound as a basis between two maritime States. It is hardly practicable, save as a concession, between a great maritime State and a State such as the Union in its present stage of development.

*Article 6.*

The proposed basis as to directors' fees is that which holds the field in the Union under decisions of the Income-tax Court.

*Article 7.*

In the main this article accords with the Union law and its authoritative interpretations, save that it fails to deal with the case of remuneration attached to a post whose duties are in the main required to be performed in one country though the nature of the duties may require casual absences from that country.

*Article 8.*

For all practical purposes the basis is the same as regards pensions. The grantor of the pension is generally the debtor, though the Union basis was adopted to meet cases in which