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## DOUBLE TAXATION WITH SPECIAL REFERENCE TO ITS INTERNATIONAL ASPECTS.

### INTRODUCTION

The question of justice is by far the most important problem in taxation. In discussing this question, one is led to criticise double taxation as being essentially unjust. Just as it is unfair to tax those having no faculty to pay, it is also unjust to exempt those having this quality. It is also held as unjust not to tax persons according to their different degrees of faculty. Sometimes it happens that two persons having the same ability are taxed differently, and an example is to be found in the case of double taxation where persons are taxed twice over, though others having the same ability are taxed but once. However, it is easy to see that double taxation does not necessarily mean an over burden on the part of taxpayers. For double taxation makes the imposition of taxes in accordance with men's faculty possible. There is also much dispute over the definition of double

taxation. That which is regarded as double taxation by some is often excluded from the category of double taxation by others. This difficulty gives rise to the following questions: first, how far should we enter this field?; secondly, what significance should be assigned to it?; and thirdly, what kind of double taxation should be regarded as unjustifiable?. I wish first to elucidate the nature of double taxation with the hope of answering these questions. Next I shall study the international aspects of double taxation. It is this particular form of double taxation which is most difficult of solution, most unjustifiable, and, at the same time, most important. The problem of international double taxation arises because of the fact that different states adopt different principles of taxation. I shall first point out the different principles of taxation and then propose the basic measures for avoiding international double taxation. I shall next study the solution of the following questions: taxes on international commerce and industry, taxing of persons having residences in several countries in the state of residence, and taxes on documentary securities in which several countries are interested. Double taxation is chiefly found in the case of direct taxes such as the income tax, taxes on products, and the property tax. When, therefore, the question of double taxation is discussed, these taxes are usually mentioned to the exclusion of other taxes. However, double taxation arises also in the case of other taxes, especially the transaction and consumption taxes. I herein wish to point out the general conceptions of double taxation, to attempt to solve some of the more difficult problems of international double taxation, and to dwell on the transaction and consumption taxes which are usually neglected by writers on double taxation.

## PART I

### DOUBLE TAXATION IN GENERAL

#### 1. TECHNICAL TERMS IN DOUBLE TAXATION

The term "double taxation" (Doppelbesteuerung; double imposition) is generally used to indicate the taxing of the same object twice over, but it is often used in referring to triple or quadruple taxation, all of which belong to the same category. For example, property, products, or income from products may be taxed either by the authority of the location of property or products, and by that of the country of the taxpayer's political allegiance, and also by that of his residence. In the case of the inheritance tax, it is levied by the authority of either the inheritor or the legator. This alone is enough to show how complicated double taxation is and that the word "double taxation" hardly expresses the real nature of this form of taxation.

There are several terms regarded as synonymous with double taxation. Conrad uses "doppelte Erfassung" and Stein uses "Deppelte Steuer" in the same sense as "Doppelbesteuerung."

There are also terms, which, while used in different sense from the term double taxation, usually are employed to convey a partial meaning of the term or in its broad sense. Lotz, for instance, uses the term "Doppelbelastung" to designate double taxation by the same authority, and prefers to employ "Doppelbesteuerung" to indicate double taxation by two equal competing authorities. Pereles, on the other hand, uses "Doppelbelastung" to designate the imposition of the same tax twice over on the "subject of the tax" (taxpayer); and, in consequence, it is narrower than Lotz's meaning, as it excludes the imposition of two different taxes (for example the income tax and tax on products.)

The best example of a term which is used in the broad meaning of double taxation is given by Eheberg. He uses

the term "wiederholte Belastung od. Besteuerung" which refers to double taxation on the same source of tax.

Lastly, there are terms which although resemble double taxation are totally different from it. Double taxation means taxing the same thing twice over, and it is not the same as the multiple tax which is opposed to the single tax. The single tax and multiple tax are the names of the tax systems of a country or body; under the former, the tax system is based on a single tax, while in the latter case, the system is based on two or more different taxes. Of course there is some connection between double taxation and multiple tax, but the connection is not essential. Multiple tax may or may not result in double taxation. Moreover, it is possible for two competing states to adopt a system of single tax on the same object. Thus, the question of double taxation can also exist in a country with a single tax.

## 2. THE MEANING AND KINDS OF DOUBLE TAXATION

(1). I shall first set forth my own views regarding the nature of double taxation and then those of other writers.

(A). The meaning of the term: double taxation is taxing the whole or part of a tax-object twice or more times.

(B). Kinds of double taxation:

i. Classification depends on whether the tax-subject is the identical person or different persons.

(i). When taxes are imposed upon the same object of the same person twice over, as follow:

(a). When the tax is imposed upon the whole of the object.

(b). When the tax is imposed upon a part of the object.

(ii). When different persons are taxed on the same object.

An example of the case given in (a) of (i) can be found

in the local government's additional charges on national taxes such as the income or business tax. That of the case given in (b) of (i) is found within a state's practice in which real products or property is taxed in addition to the income tax; another example is the practice among nations in which a person is taxed by both the country of his residence and by the country where a part of his property is located. The income tax is often imposed upon a person on his land, house, or business by the country of his residence, while a tax on products is also imposed upon him by the country where his property is located or where he carries on his business. The property and income taxes are also imposed by these two different competing authorities. Examples of the case (ii) are found first in the imposition of the income tax upon corporations and individuals on the same dividend; secondly, in the imposition of the property tax upon a person on his credit although the amount taxed is not deducted from the property of the debtor; thirdly, in the imposition of a capital interest tax upon the products of the creditor while no consideration in the imposition of a land tax is taken of the fact that the land is held as a mortgage; fourthly, in the imposition of the business tax upon a corporation while a capital interest tax is also imposed upon the members of that corporation for the dividend which they receive from the corporation; and lastly, in the imposition of taxes upon the land, buildings, and other things which are utilised in business, although the business tax does not take the fact into consideration. It may be said that in the case of (b) of (i) in which the income tax and the property tax or tax on products are imposed simultaneously, (excluding the double taxation of the income and special income tax), it may be said that these taxes are imposed on different objects; and that consequently, the case cannot be taken as an example of double taxation. But it must be admitted that there is so great similarity between income and products that they can be regarded practically as the same thing. The income and property can be also regarded as the same

thing ; in this case, property being a manifestation of income. Again the argument may be advanced that in the case of (ii) the corporation and its members are not taxed on the same object, but on different objects. It may be asserted that, when the corporation and its members pay the income tax and tax on products, they are doing so as different independent persons ; that their incomes are also different ; and that, for this reason, this case should not be included in the category of double taxation. Again, some believe that the question of nonconsideration of debt and of non-deduction of the building expenses, both in the income tax and tax on products, should be regarded as a matter of the measurement of the faculty of the debtor and of the business man who pay the taxes, instead of regarding it as an issue of double taxation. Thus, it may be contended that the case of (ii) at least should be excluded from the category of double taxation, even though the case (i) may be included. However, both are usually included in double taxation, and I have followed the usual custom.

ii. Classification depends upon the nature of authorities.

(i). When taxed by the same authority.

(ii). When taxed by different authorities.

(a). When taxed by authorities of different ranks within a body politic.

(b). When taxed by competing authorities.

1. When taxed by different localities in a state.

2. When taxed by different states.

Examples of (i) are double taxation of the income tax and tax on products (or the special income tax) in the national tax, to which sometimes is added a second tax on product, also that of the additional charge on income tax and the household tax in the local tax. The case of (a) of (ii) is exemplified by the local additional charges to taxes like the income, land, and business taxes. Whether such additional charges are to be regarded as double taxes

will depend upon what principle of taxation is adopted by a particular community. If additional charges are justified and imposed with some restriction and supervision over them, their existence is inevitable. Thus some exclude these taxes from the category of double taxation. The case in (b) of (ii) is taxation by the authority of the country of the taxpayer's residence and by the authority of the country where the taxed property is located. This case is often a hotly disputed issue between local government bodies themselves.

iii. Classification according to justifiableness.

(i). Justifiable double taxation.

(a). When double taxation arises out of the imposition of the income tax side by side with a tax on real product, or a special income tax on real products, or the property tax, within the same jurisdiction, the purpose of the whole system being to tax heavily on income from property.

(b). Double taxation by different authorities.

1. Supposing one of the several competing states should impose the personal and real taxes, the former at the places of residence and the latter at the location of the property, it is evident that the system is a double taxation even though the same system is adopted by the other states in competition. This kind of double taxation should be regarded as justifiable as that of the income tax with tax on products in a country.

2. Additional charges imposed by authorities of different ranks are also justifiable as has already been pointed out.

(ii). Unjustifiable double taxation.

(a). By the same authority.

1. The same property of the same person is often taxed twice over. Thus in localities the additional charge for one's income is imposed upon him side by side with the household tax which is also based upon his income. Although



the two taxes are not exactly the same, they are so alike that it is only sheer duplication to impose them both. It is much better to select one to the exclusion of the other so as to simplify the tax system. The matter would be quite different, if these taxes were as different from each other as the personal and real taxes are. At any rate, the elimination of one of these two personal taxes will certainly result in economy in tax collection. The imposition of the excess profit tax side by side with a tax on dividend cannot be regarded as a double taxation, inasmuch as in the former tax the income itself is not taken as its basis, but it is rather a transaction tax based upon the special condition of the income arising from the change of value. The excess profit tax may be regarded as a tax on a particular favorable manifestation of income. But even supposing that its imposition side by side with the tax on dividend is to be regarded as a double taxation, it is a justifiable one as in the case of heavy imposition on an income from property.

2. Taxing different persons for the possession of the same object separately as is shown by the following examples is also unjustifiable: taxing a person on his credit while no corresponding deduction is made from the property of the debtor; taxing the landlord for the land which is being held as a mortgage at the same time imposing a capital interest tax upon the creditor; reaching buildings through the land and house taxes but failing to deduct the building expenses from the business tax. These cases are apparently unjustifiable double taxes. This evil may be avoided by exempting them from taxation, on the ground of disability.

(b). The most objectionable form of double

taxation is that which results from competition between the authorities of the country of taxpayers' residence and those of the country where the properties are located. This happens either between states or between different localities within a state. This kind of double taxation in the income tax, the property tax and taxes on products is a great crime in public finance. But the evil is not limited to these taxes; it is also seen in the transaction tax and the consumption tax.

(iii). Debatable double taxation. The double taxation of corporations and their members. I have already pointed out why this form of double taxation is open for discussion.

The main standard by which the justifiableness of double taxation is to be judged is its practical consequence—whether a particular form of double taxation results in a heavier burden upon some taxable object compared with others belonging to the same category. Only the double taxation of the household tax and the income tax in the local tax must be judged from other standpoint.

(2). The views of other writers.

(A). Those who define double taxation as taxing the same source of taxation twice over.

i. By the source of taxation is meant income and property, income in particular in normal times. In fact, income is regarded as the source of all taxes. In many countries the income tax alone is held as insufficient in order to reach this source, and taxes such as the property, transaction, consumption taxes as well as the taxes on products, are regarded as absolutely necessary. But, if taxing the same source of taxation twice or more times is regarded as double taxation, nearly all taxes by a state or local government bodies must be regarded as such. This evidently embraces too wide a field, although such a view is not impossible. A more limited definition of double taxation is desirable. This

is why I have chosen the phrase "tax-object" instead of "the source of taxation."

ii. This view, however, is not without some advantages. It may be said that this view will result in elucidating the truth that all taxes in the end is dependent upon income, and further leads one to consider whether various taxes he has to pay is equitable as far as his income is concerned. No such practical consequence will come from the other view which regards double taxation merely as taxing a tax-object twice or more times. The former view thus touches the vital issue in taxation, namely, the question of justice. From the viewpoint I am upholding, it is difficult to regard taxes such as the transaction and consumption taxes as double taxes, not to mention those taxes on income, property and products, while from the viewpoint under discussion it is comparatively easy to show that they are double taxes and that therefore are unjust ones. It goes without saying that such a critical survey of the question of justice in taxation is by all means desirable. Of course the injustice in the transaction and consumption taxes can also be detected from the viewpoint of tax-object. When the transaction tax is levied on some object once, while other objects in the same category are taxed twice or more times, the injustice of double taxation is only too apparent. It also happens frequently that the consumption tax is levied upon an object once when it is produced for personal consumption, and then for a second time when it has become material for some finer production, thereby resulting in double taxation. But such double taxation can be partly explained from the viewpoint of the source of taxation. This view may be considered as double taxation in the broad sense. But that does not imply that all cases of double taxation viewed from the standpoint of tax-object are included. The case of double taxation in which is taxed the same tax-object owned by different

tax-subjects, for instance, will be left outside its category.

(B). Those who define double taxation as taxing the same person or the same thing twice over.

i. This definition will be found to be at once superfluous and meaningless. Every tax has two aspects : tax-subject and tax-object each of which cannot be treated separately. When a person is taxed twice over, something is taxed twice over ; and when a thing is taxed twice over, some one pays his tax twice over.

ii. This definition, however, contains some measure of truth which I shall point out next.

(i). It is convenient, the advocate of this definition may contend, to divide all taxes into two categories : the personal and real taxes. The former regards man as the central factor of taxation, and embodies the income tax and property taxes in some form ; while the latter treats objects as the central factor and embraces all other taxes. It may be further asserted that taxing a person twice over is the imposition of a double personal tax, while taxing an object twice over is the imposition of a double real tax. But a serious difficulty will arise over the possibility of the case that a man may be called upon to pay a tax upon person as well as a tax upon objects. It is apparent that the case is too important to be excluded from the field of double taxation, though such a difficulty is regarded as impossible of elimination. Furthermore, a certain personal tax such as an income tax is a double tax on the same thing, simply for double imposition of capital interest as part of the whole income. Such a tax as this can be regarded neither as a double tax upon the same person nor as a double tax upon the same thing. Therein lies one defect of this dual definition of double taxation.

(ii). Taxing different persons on the same tax-object may be considered as a double taxation on the

same thing, while taxing the same person on the same thing may be regarded as double taxation on the same person. But the idea of the same thing is the central issue of double taxation, and even the case of taxing the same person twice over is not a mere taxing the same person, but taxing the same thing twice over. I am confident, therefore, that my own definition is more fitting than this view.

(iii). The view is advanced that double taxation by competing authorities is to be considered as the double taxation of the same person, while that by the same authority is to be considered as the double taxation of the same thing. This view, however, is untenable for the same reason.

(C). Those who define double taxation as taxing two different tax-subjects on the same thing under the same authority, and taxing the same person twice over on the same thing under competing authorities. This view is too narrow to suit actual facts in taxation. Although the definition embraces the most important phase of double taxation, it excludes the possibility of double taxation of the same tax-subject twice over under the same authority.

(D). Those who define double taxation as over-taxation of the same thing by competing authorities. Although such over-taxation is the principal problem of double taxation, it is by any means the only one; and therefore any definition which does not take into consideration the other phases must of necessity be inadequate.

(E). Those who define double taxation as the imposition of the same or similar tax twice over upon the same persons on the same source of taxation under the same authority. In this definition the impropriety of the term "source of taxation" is somewhat remedied by the word "similar taxes," but it excludes the cases of double taxation on different persons and by different authorities.

(F). Those who define double taxation as the imposition of the same tax twice over on the same income.

This definition is also too narrow inasmuch as it excludes the important cases of international double taxation as well as those of income and property.

(G). Those who accept the so-called popular definition. This is nearest to my own definition, but it lacks the scientific precision of terms.

### 3. THE IMPORTANCE OF THE PROBLEM OF DOUBLE TAXATION

(1). The centre of the problem. Double taxation becomes an issue chiefly because of equity in tax burden. However, it is also an important problem from the standpoint of both economic policy and government revenue.

(2). Why the problem has added importance in modern times. The problem is very old; it is as old as the oldest tax. But its importance has increased in modern times because of the following causes.

(A). The development of taxes.

i. Complexity of taxation system. The fact that taxation system grew from simple to complex has much to do with the recent growth in the importance of double taxation. In old times taxation system was simple and was made up of a few taxes; in consequence there was no serious problem of double taxation. It is difficult to imagine double taxation, for instance, where only the land tax existed. But with the increase in the number of taxes whose compensatory action is required there naturally appeared the phenomenon of double taxation.

ii. Increase in the demand for taxes. A great increase in the demand for taxes has been a cause of double taxation. If the demand of taxes is small, there would be no need of taxing objects twice over, but a great demand necessarily involves such a phenomenon.

(B). Economic development.

i. Complexity of personal relations. An increase

in the complexity of relations between men due to the economic expansion of society is another cause for the rapid increase in the number of double taxes. When one carried on its economy independent of others there could be but little double taxation ; but after communication has been developed and trade relations increased, one's tax comes in conflict with that of others, thereby giving rise to duplicate or triple taxation.

ii. Complexity of geographical relations. With an increase in the freedom of travelling, residence, enterprise, and investment, the opportunity for double taxation becomes greater. During the years before and after the World War, an increase was seen in the amount of foreign investment and in the number of foreign tourists, and this was accompanied by an increase in double taxation. Even when the countries concerned adopt the same principle of taxation for the purpose of solving this perplexed problem, it is exceedingly hard to get the desired result, especially when it comes to double taxation upon business enterprises.

(3). Double taxation viewed from equity in distribution.

(A). The importance of equity in taxation. The problem of double taxation has been actively challenging public attention because the question of equity in taxation has been subjected to a more searching scrutiny than formerly. Although the question of justice in taxation was the subject of public discussion in old times, it did not occupy the important place it commands in modern times. And, as this question is more and more regarded as important, that of double taxation has been receiving an increasing attention throughout the civilized world.

(B). Progress of general ideas.

i. Change of attitude towards the authority. In old times the authority was regarded as absolute and inviolable, but now the actions of government officials are placed under the searching criticism of citizens. With this change the question of double taxation has

been freely discussed by citizens and the cases of double taxes began to be exposed before the public gaze.

ii. Change of attitude towards foreign residents. In former times foreigners were regarded more or less as enemies, and the imposition of a heavy tax upon them was not regarded as unjust. But to-day this attitude had been greatly modified and in some cases foreign residents are treated the same as the natives regarding the matters of taxation. Discrimination against foreigners are now regarded as obnoxious, and this changed situation has given rise to a cry against double taxation.

(4). Key to the solution of the problem. The key is to be found in the improvement of the tax systems of individual countries and in the definite and specific conclusion of international agreements.

## PART II

### INTERNATIONAL DOUBLE TAXATION

#### CHAPTER I

#### DISCUSSION OVER PRINCIPLES OF INTERNATIONAL TAXATION

Of the various cases of double taxation that which is discussed frequently and the solution of which is most difficult is international double taxation. This phenomenon arises because of the fact that the different nations of the world adopt different principles of taxation, due mainly to their respective different conditions. I wish to take up herein those different principles with the hope of finding ways and means to avoid double taxation as far as possible. There are the following three main principles: personal principle (including those of political allegiance, temporary residence, and permanent residence), real principle (that of location of



property or resources), and principle of economic allegiance or economic interest, which is a sort of a combination of the first and second principles. I shall discuss them in the given order.

(1). International taxation according to personal principle.

(i). General question. It may be said that since the duty to pay taxes belongs to persons, taxes should be levied upon them as such. On the other hand, it may also be said that since taxes are to be levied not on persons as such but according to their ability to pay, any principle which does not take tax-objects into consideration is defective.

(ii). The principle of political allegiance. According to this principle, foreigners are not taxed by the authority of their residence, while the nationals of a state are taxed even when they are abroad.

(A). Its merits.

i. This principle admirably fitted the condition of the old time when there was very little communication between nations whose nationals mostly resided within their national boundaries. As there were but few foreigners in a country, they were exempted from taxation of the country where they resided; nor did this exemption cause any embarrassment to the public finance of the country.

ii. Aside from the question of the merits of this principle, it may be assumed that double taxation can be avoided if the nations should all adopt this principle.

iii. As long as a taxpayer retains his political allegiance toward the country of his domicile, he has natural affection for his home country and is conscious of his duties one of which certainly is to pay taxes. Furthermore, it may be said that, as long as he remains to be a citizen of one country, the possibility of his receiving protection from that country is ever

present; and that, as a consequence of this possibility, he should bear the tax burden of his home government.

(B). Its defects.

i. This principle has the defect of impracticability. It is highly difficult to tax those who are abroad because the rapid progress in international communication in modern times has greatly increased the number of people living or investing in foreign countries.

ii. Double taxation becomes inevitable when this principle is adopted by one country while other countries adopt other principles such as that of residence or of location of property.

iii. The exemption of the taxes on foreign residents which is one of the logical consequences of adopting this principle, will result in reducing the amount of the public revenue of the country. It is comparatively easy to enforce tax regulations upon foreigners, and consequently their exemption must be regarded as doubly unwise from the standpoint of the public income of a country. Such an exemption will indeed have a serious consequence if made by a country which is a debtor nation and which has to import capital from foreign countries.

iv. As long as foreigners and foreign investments receive protection from the country where they are located, it is proper that they share in the tax burden of that country. Even when considered from the viewpoint of the principle of faculty, the exemption seems to have no logical basis. Moreover, in modern times the force of political allegiance has been considerably weakened, and it has become more and more nominal.

(iii). The principle of temporary residence. According to this principle, taxes are imposed upon persons who happen to be in a particular place—town, city, or state.

(A). Its merits.

i. This principle may be regarded as a logical conclusion from the idea that taxes are a matter primarily of persons.

ii. Taxation upon persons at their present residences may be regarded as more practicable than other methods.

(B). Its defects.

i. The principle will result in an over burden. If a tourist happens to spend a day or two in a town or city at the time of tax collection, there is no good reason why he should be taxed for a term or year by that town or city. An economic relation may exist between him and the town or city as a result of his staying there a day or two, and in consequence he may become subject to taxation; but he should not be taxed for his whole capacity at his temporary residence. Only the simple consumption and transaction taxes should be imposed upon him.

ii. If this principle is adopted in different localities, a traveller will be taxable in each locality as the time of tax collection may not be the same for all, and thus he may be taxed twice over for his whole faculty.

iii. At the same time, it may also happen that a traveller is not taxed at all, as he may not chance to be at any of the places at the time of tax collection. Thus, it is possible according to the principle in question that the one who ought to be taxed are not taxed at all.

iv. The practicability of this principle is only superficial, for it will be nearly impossible to impose those direct taxes requiring an extensive investigation upon persons moving from one place to another.

(iv). The principle of permanent residence. According to this principle, men are taxed by the authority of their permanent residence. By permanent residence is

meant staying for a definite limit of time, such as a year, six months, or three months, etc.

(A). Its merits.

i. As long as man is regarded as the central factor of taxation, this principle has a far more defensible theoretical basis than all other principles. It may be argued that residence is the basis of one's economic life, and that, for this reason, the one who has selected any place for his permanent residence ought to be taxed by the authority of that place. Moreover, even foreign residents receive benefits from the place of their residence, and therefore ought to pay taxes to its authority.

ii. As permanent residence is an easily discernible as well as permanent fact, taxation based upon this fact will be highly practicable.

iii. If this principle is adopted by all countries and practiced consistently, international double taxation could be avoided.

iv. Of course, the resource country will lose some of its revenue, as property is often owned by non-residents. However, economically such a loss may be made up by the inflow of foreign capital which will be stimulated by the exemption of taxes, thereby encouraging the economic development of the country.

(B). Its defects.

i. One difficulty of this principle is that it cannot be applied on some taxes, taxes on products for example. It is also very difficult to reach incomes derived from outside sources.

ii. When other countries adopt a principle other than the one under consideration, and tax, say, on the out-going income, a case of double taxation will follow. The only remedy in such circumstances is to coax the other countries to adopt the same principle of international taxation.

iii. Although the income derived by the resident

of a country from outside sources represents part of his faculty, as long as the income was earned in a foreign country, the revenue, which the home government derives by taxing the same income, may be regarded as a sort of an unjustifiable revenue on the part of the home government. On the other hand, it also be said that exempting the foreign residents' income which is taken out of the country is an act of injustice in taxation, inasmuch as they receive numerous benefits from the country where the income is derived. Viewed from the faculty theory, it may be said that the out-going income can be regarded as representing a faculty in taxation and for this reason is taxable.

iv. Usually foreign investors are absentees who are not desirable social elements in a country; and it may be said that they should not be exempted from taxation. On the other hand, those who make a luxurious living on their income derived from foreign soil can be regarded as highly desirable citizens from the business policy of the country in which they live; and taxing them on their foreign income in accordance with this principle may result in driving them out of the country.

v. If this principle be adopted, it would be impossible to tax on the wealth which is carried away to foreign countries; and this no doubt is undesirable from the standpoint of public revenue, especially when the country is a debtor nation.

(2). International Taxation According to Principle of Location of Resource.

(i). General question. According to this principle, taxes are levied by the authority of the location of the resource, without special regard to its owner.

(ii). Its merits.

(A). Double taxation can be avoided if this principle is adopted by all countries.

(B). It is highly practicable chiefly because it is easy to reach the object.

(C). Theoretically speaking, the fact that an income is derived from a certain source or that a certain property exists at a certain location, indicates that income or property is given protection by the government under whose jurisdiction it exists; for this reason justice demands that its owner pay taxes to that government. Furthermore, aside from the consideration of benefits, it may be said that the fact of ownership itself thrusts upon a foreigner a duty to pay taxes to the government under whose jurisdiction the property is given protection.

(D). The principle is a desirable one from the standpoint of the social and economic necessity of discouraging absentees and, of the advisability of being lenient to the foreigners who live on the income derived in a foreign country.

(E). As it is easy to reach the tax-objects under this principle, the principle is also desirable from the standpoint of public revenue.

(iii). Its defects.

(A). Its practicability is doubtful because of the difficulty of taxing income from business.

(B). When one country adopts this principle and other countries adopt other principles, such as the personal principle, double taxation follows.

(C). Under the operation of this principle those who derive their income from a foreign source are exempted from taxes, although they receive benefits from the country of their residence and have a faculty to pay taxes; this evidently is unjust. Of course this difficulty can be remedied to a certain extent by the imposition of the consumption and transaction taxes. The principle is usually criticised from the benefit theory, but it can also be explained by the faculty theory. It may be argued that as long as the resource is located within a

country its taxation will be based upon faculty, although one's faculty getting from foreign country may not be taken into consideration. But the consumption and transaction taxes may be regarded as a partial remedy for this non-consideration. This argument may be refuted by the fact that under the principle of the location of the resource, the faculty theory cannot be carried out consistently inasmuch as such important elements as progression, consideration of personal circumstances, and the exemption of debtors are lacking.

(D). The exemption of direct taxes upon the persons deriving incomes from foreign sources will prove detrimental to the public revenue of the country, especially for a creditor nation.

(E). Viewed from the economic standpoint, the taxing of imported capital may result in checking the inflow of foreign capital and the development of the natural resources of the country. A creditor nation also may experience some difficulty but only to a very limited degree inasmuch as it will not need to invest its capital in a debtor country on disadvantageous terms.

(3). International Taxation According to Principle of Economic Interest.

(i). General question. This principle is the medium between the personal principle and the real principle. It also embodies the principles of the location of the resource and of permanent residence (in some degree, temporary residence and political allegiance) and harmonizes the opposing principles of personality and reality. Under this principle one's taxes are to be distributed among competing jurisdictions according to his economic interests under each authority.

(A). The proportion of different elements. Temporary residents usually bear the burden of the consumption and transaction taxes; it is usually said to be taxed heavier on resources (earning) and lighter on residence (consumption), and Schanz shows this comparative rela-

tionship in figures, saying that the former should constitute a three-fourths and the latter one-fourth, of the fiscal burden. Although his view is too dogmatic, the theory favouring heavier taxation on resources and lighter taxation on residence is based upon the idea that a person gets more benefits from the authority where he is engaged in business than from the authority under whose jurisdiction he resides. One should show gratitude for the authority under whose jurisdiction he secures some economic gains, and he should also be thankful towards the authority of the country where he spends his income; but the country on the other hand, should also be thankful to him for consuming his income. Furthermore taxing on the resources is much more practicable than taxing on residence. There are two more reasons: taxing on resources is more sensible than that on residence, and there is a historical fact that the real tax was developed much earlier than the personal tax.

(B). The order of the elements. This is another view of the proportion of the different elements just referred to. Taxation on resources should precede that on residence, because exceptions precede the general law.

(ii). The principle in which direct taxes are levied at the location of resource and the consumption taxes at the place of residence. The conception of faculty in taxation has two aspects, namely, production and consumption. The former is taxed on income, products and property, while the latter through the consumption taxes both direct and indirect. In distributing taxes among the competing authorities, the state or states from which the earnings are derived should levy taxes on products, property, and income; while the consumption taxes should be taxed by the state or states where the earnings are spent.

(A). Its merits.

i. Both the state where the resource is located and the state where the taxpayer resides secure some revenue.



ii. Since both the location of the resource and the place of one's residence indicate the economic relationship between the taxpayer and the authorities, it is theoretically justifiable to let the interested authorities to levy taxes.

iii. Its execution is practicable.

iv. Double taxation could be avoided if the principle should be adopted by all countries.

(B). Its defects.

i. If it is a state which taxes one at his residence, its share will be great enough, because the amount of consumption taxes which are national taxes is so great as to surpass the amount of the direct taxes; however, in the case of a local body, its share will be too small as a local body usually lacks the consumption tax almost entirely.

ii. Expenditure in the state where the consumption taxes are levied cannot be regarded as a satisfactory basis for faculty in taxation. And, in the state where the direct taxes are levied, the principle of the location of the resource cannot be practiced consistently as such essential elements as progression, personal circumstances, and consideration for debts, are not sufficiently taken into consideration.

iii. When this principle is adopted by the nations of the world through an international agreement, the creditor nations will be placed in a decidedly disadvantageous position.

(iii). The principle which taxes on products, special income, and property at the location of the resource, while the general income, at the place of residence.

(A). Its merits.

i. The levying of the personal taxes at the place of residence and the real taxes at the location of the resource conforms to the respective natures of the personal and real taxes. In the case of the income tax in particular, such important elements in faculty

in taxation, as progression, personal circumstances, consideration for debts, are included in their entirety.

ii. This principle will allow the authorities of both states to secure a reasonable amount of revenue.

iii. It has a high measure of practicability.

iv. Double taxation could be avoided if all nations should adopt this principle.

(B). Its defects.

i. The property tax is often levied personally. It is not proper to levy this tax at the location of the property. On the other hand, if it is levied at the place of residence, the share of the state of residence would be too excessive.

ii. Again, suppose a country has a system of direct taxation consisting mainly of the income tax (general), and its special income tax is either partly levied or is incomplete. That country's position would be too advantageous if it is the state of residence; but it would be too disadvantageous if the country is the state where the taxable property is located; moreover, if that country is a debtor nation, its share of the tax would be too small; and if it is a creditor nation, its share would be too great.

iii. Where the general income tax and the special income tax exist side by side, it is often hard to draw a line of demarkation between the two. This also accompanies the difficulty which arises from the division of taxes among different authorities according to the kinds of taxes.

(iv). The principle under which the tax on products is levied by the state where the resource exists, while those on income and property are divided equally between the two authorities of location and residence. This principle evidently is unjust. According to this principle, a country which imposes a heavy tax on products in addition to the income tax, will get a share much larger than those of a country having the income tax only or of a

country levying the income as well as property taxes. The principle should be modified as follows: the countries having the taxes on income and products should adopt as standard one half of a sum of taxes on income and products, and this standard should be applied in taxing foreign residents' products and income from the foreign sources. In adopting progression in the division of taxes between the two authorities, in the case of the income tax alone, only one half of the income of foreign sources should be added to that of domestic sources, while the rate of tax applicable to this sum should be the same rate which is applicable to an amount equal to the entire amount of the income from foreign sources and the income from domestic sources. In the case of the countries having the income tax as well as tax on products, if the ratio between the two taxes is 1-1, the entire amount of the income from foreign sources may be taxed; if the ratio is 2-1, the three-fourths of the income from foreign sources should be taxed; if the ratio is 1-2, an amount equal to the total amount of the foreign income plus one half of the same amount, should be taxed. The calculation may be difficult and may not be exact, but it is necessary to secure equity in taxation as much as possible.

(A). Its merits.

i. Under this system both countries can derive the proper amount of revenue, as the general income tax is also divided between them.

ii. Both countries are entitled to levy direct taxes.

iii. It has a high measure of practicability, and also simplicity when interested countries have a system of direct taxation consisting chiefly of the income and property taxes, (taxes on products being excluded).

iv. Double taxation could be avoided if all nations should adopt this principle.

(B). Its defects.

i. As long as there are nations having the in-

come tax together with tax on products, instead of all nations adopting the income tax system only, the principle under discussion will involve a serious difficulty, as tax on products must be levied by the state where the resource is located.

ii. It may be suggested that an equal division of taxes into the state of residence and that of location is arbitrary, although such arbitrariness may be held justifiable to a certain extent. It may also be pointed out that the state of residence, which derives one half of the revenue from the income tax in addition to that of the consumption tax, is apparently receiving too great a share. However, this may be also held justifiable, if one takes the view that in taxation the relationship between a person and the jurisdiction under which he has residence is to be regarded as more important than the question as to where he derives his income. Modern nations attach more importance to the fact of residence than that of location, and their direct taxation is more and more based upon the income tax, abandoning taxes on products as far as possible. An international agreement embodying this tendency should be regarded as highly desirable.

(v). The principle under which the direct tax comprising the resident's tax, the origin tax, and the composite tax, and the resident's tax, is imposed upon the income from foreign sources; the origin tax, upon the out-going income; and the composite tax, upon the domestic income which stays in the country. This principle is formally a separate principle, but in its essential nature is not different from the fourth principle. The same thing could be said of the third principle, but for the fact that difference in the rates of the special and general taxes and confusion in distinguishing between these two sets of taxes, result in injustice in international taxation.

(vi). The principle under which the direct taxes are

to be levied by the state of location in their entirety, while the state of residence is to make deductions.

(A). The state of residence deducts from the tax of the residents who have already paid taxes to the state of locality an amount equal to that which was paid to the state of locality. According to this principle, if the amount of the tax one paid to the state of locality is greater than that which he has to pay to the state of residence, he will be called upon to pay no more; but when the case is reverse, he will have to pay an amount equal to the difference between the two payments. This may be effective to a certain degree in preventing double taxation, but involves a sacrifice on the part of the state of residence. It is certain that the state of residence will not consent to make such a sacrifice. It is a great injustice in the international distribution of tax burdens.

(B). The principle under which the state of locality taxes in full while the state of residence imposes one half of what a person has to pay under ordinary circumstances upon income from foreign sources.

(C). The principle under which the state of locality taxes in full, while the state of residence imposes a suitable rate of tax upon the amount of income from foreign sources minus the amount of tax levied by the foreign state.

(D). The principle under which the state of locality taxes only on the immovables, while the state of residence deducts from the amount of taxes upon income from foreign immovables an amount equal to that which was paid in the state of locality. All of these principles are not essentially different in their fundamental conception from the one given in (A), and have the same defects.

(vii). The principle under which the state of residence taxes the whole income in full, at the same time imposing a tax on the out-going income. This is a kind of an

income tax system but tax on products also falls in this field. According to this principle, a state taxes on the out-going income but does not exempt the in-coming income which is taxed under the principle of residence. This principle is evidently desirable from the standpoint of a country's public finance, but it will not prevent double taxation.

(viii). The method which adopts the principle of location of resource as regards the direct taxes on the specified income and the sources of income, and the principle of residence as regards other income and sources.

(A). One practice falling under the above principle is that which adopts the principle of location of property as regards land, houses, business, and other tangible property, and the principle of residence as regards intangible property, its income and other incomes. Under this practice it is convenient to have the corporation securities taxed by the state where the corporation is located and to have the mortgages on the immovables taxed by the state where the immovables are located.

(a). Its merits.

i. If this principle be adopted by all countries, double taxation could be avoided.

ii. It has a measure of practicability.

iii. Both the states of residence and location of property get a portion of the revenue, and for this reason the principle is desirable from the standpoint of public finance.

iv. This principle may be justified from the nature of some tax-objects. Land, houses, and business should be taxed at their location as they have an inseparable connection with the place of their location, but the movables should be taxed by the authority of the residence of their possessors.

(b). Its defects.

i. The state of location of property will derive a share will be too great, while the share of the

state of residence will be too small. Credit nations will be also placed in a disadvantageous position.

ii. Theoretically speaking, it cannot be said that land, houses, business have economic relationship with the state of location only, because they also have similar relationship with their owners and with the latter's income.

(B). The practice in which the immovables, business and income from salaries and services are taxed by the state of location, while the movables and capital, by the state of residence.

(C). The practice in which land, houses and business are taxed by the state of locality while capital interest, and income from labour, by the state of residence.

(D). The practice in which the immovables (including mortgages on the immovables) are taxed by the state of locality and all others by the state of residence.

All of these practices are the same as the practice (A). They cannot bring about any better or juster distribution in international locality and all others by the state of taxation.

(ix). The principle which combine the main features of the principle of economic interest with some of the principle of political allegiance. Crobaugh treats it as a separate principle, but it hardly is entitled to such a treatment. This principle is practiced by Germany, the United States and Japan. Its essential nature is given in Principle (vii).

## CHAPTER II

### SOME CASES OF DIFFICULTY IN INTERNATIONAL TAXATION

#### Section 1. Taxation on International Business

Taxation on business is a matter full of difficulty. If the sphere of business be limited to a single locality or state, the difficulty will not be so great; but with the

rapid development in communications in modern times, business has become more and more inter-state in nature, and its sphere has been greatly expanded, so that competition between different and often conflicting authorities has given rise to many a serious difficulty in taxation on business. If, as in the case of vessels, mutual exemption of taxes can be made, the matter will be very simple, but such an exemption is possible only in the case of a few special objects such as vessels, and its general application in industry and commerce is wellnigh impossible. A modern nation is compelled to adopt one of the principles which are the middle ground between the personal and real principles; it can adopt neither the personal nor the real principle in its pure form. When business is taxed in a single district or state (according to the principle of location of property), the matter is simple enough; but when it extends over many districts or states, great will be the task of finding a proper method of taxation and of a proper standard for the distribution of the taxes. Of numerous immovables, such things as land or houses cause no dispute as to their jurisdiction (although theoretically it is possible to consider of land or a house extending over several districts or states, but they will give rise to no special difficulty as they can be taxed separately by the several authorities). In the case of business, it is frequently carried on in many jurisdictions, and thus gives rise to the difficult question of how to avoid double taxation on business products or income. This question, so far, has not been given a definite solution. I am dealing herein international double taxation but my argument will also apply to a similar phenomenon between different local jurisdictions as well as between colonies and their mother land.

#### 1. DIFFICULTY IN TAXATION ON INTERNATIONAL BUSINESS

(1). Circumstances of difficulty in taxing international business.—In taxing objects according to the principle of



location of property, the clearest cases are land and houses. Both land and houses cause no dispute as to which jurisdiction they belong. True, there can be a dispute between the authorities of residence and location, but there can be no two locations for the property. A land may extend over two jurisdictions, but such a case ought to cause no serious controversy, as it is an easy task to divide the land between them. Some movable objects may give rise to some dispute. Nevertheless their external location can be definitely ascertained. Its location can be, for convenience sake, fixed at its owner's residence. But business, although it is both external and fixed, is hard to locate. If business is comprised simply of such tangible things as land or a shop, there would be no dispute between competing jurisdictions, because it could then be taxed at its location. However, as a matter of fact, business often comprises of numerous shops, factories, offices, and other facilities all belonging to an industrial unit. Sometimes there are also branch offices or factories. If all of them are located in one jurisdiction there will be no occasion for a dispute; if they are located in different localities within a state, it is also comparatively easy to find a solution of the problem. If, on the other hand, they are scattered among different states, a serious problem will arise and double taxation will be inevitable. If the different branches and factories are managed independently of one another and their accounts are separate, it will be comparatively easy to meet the situation. But, if they are different stages of an industrial process, so that only the final stage formally derives a definite profit, the situation will be found baffling. It is clear that the state in which are located those branches and factories which do now derive any profit as far as the book-keeping of the enterpriser is concerned—that state is justified in taxing them. On the other hand, it is difficult to apportion the entire income or products among the different branches and factories. Furthermore, those branches and factories which have independent management and accounts of their own, cannot be said to be fully in-

dependent, inasmuch as they are parts of an industrial unit, and have many things in common. It is a very difficult task to find a standard by which the respective shares of those branches and factories of an industrial unit can be determined.

(2). Different taxes involved.

(A). The income tax.—This tax cannot escape the difficulty under consideration. It is greatly difficult to apportion the income of a business unit (whether a corporation or businessman) among its different establishments which are scattered in many countries. The Japanese Income tax Law now enforced imposes a personal tax upon any corporation or natural person (whether native or foreigner) who has a domicile or who has a residence of one year or more in Japan on all incomes derived both there and abroad through its establishments or factories. This method is a very simple, but it has one serious defect in that reaching the taxable objects abroad is most difficult. If the foreign state from which the income is derived taxes on the same income, double taxation ensues. In attempting to avoid double taxation, it will be much difficult to set aside this income from the entire amount of income. It must be supposed that the majority of the foreign business establishments here in Japan are the branch establishments or factories whose main offices are located in foreign countries. They will be taxed on what they earn in Japan, but it is difficult to separate this income from the total amount of which the former is part.

(B). Tax on products.—The business tax, which is one of taxes on products, will be imposed on the business done within a country only, because of the very nature of tax. This idea is adopted by our own business tax which excludes the business carried on outside of its jurisdiction. For this reason our country is compelled to face the same difficulty which is seen in case of the income tax, namely, that of separating a part from the total amount of the income of a given enterprise.

## 2. HOW TO MEET DIFFICULTY IN INTERNATIONAL BUSINESS TAXES

(1). Method of distributing tax burden between the location of the main office and those of branch establishments.

(A). Taxing the main office only.—While each business may be taxed by the state of location, the authority of the state where the main office is located can tax a business enterprise on its entire income, derived from its various branch establishments and factories, none of which may be taxed separately. This is not the taxing of the owner of an establishment in accordance with the principle of location of property, not that of residence. The residence of the owner of a business firm and the location of its main office are not always the same; for this reason the practice is not according to the principle of residence.

(a). Its merits.—

(i). This method is justifiable to some extent because of the importance of a main office.

(ii). The method has simplicity as there is no need of separate tax for each branch establishment or factory.

(iii). Double taxation could be avoided if all nations should adopt this principle.

(b). Its defects.—

(i). It has one great defect of injustice in the distribution of tax revenue among the interested states, the state where the main office is located deriving an unjustifiably great portion of the revenue. It must be seen that the states where the branches are located also assist the firm to derive profits by extending them protection and conveniences of various sorts, it will be a great injustice not to allow those states to derive a proper portion of the tax revenue.

Moreover, should this principle be adopted by all countries, firms will attempt to establish their main offices where the taxes are the lowest, and this will add to the injustice involved.

(ii). The public revenue of the state where the branches are located will suffer.

(iii). Taxing at the main office alone will result in failure in collecting the incomes derived by the branches, in actual practice.

(B). Taxing the main office as well as the branches.—This method is exactly the opposite of the one we just considered. In order to execute this method justly among the nations of the world, it would be necessary to adopt a definite standard for the distribution of the tax revenue among the competing states.

(a). Its merits.—

(i). Under this method every interested state will derive some revenue.

(ii). Since the state where a main office or a branch office is located has economic relationship with the business firm and spends money to protect it, it is just and proper that it should receive a portion of the tax revenue. This method fulfills this requirement admirably.

(iii). The collection of taxes under this method will be comparatively exact as each state will supervise the taxation in its own jurisdiction.

(iv). If this method is adopted by nations through an interstate agreement, double taxation could be largely avoided.

(b). Its defects.—

(i). This method can be said to disregard the importance of a main office as it treats a main office on the same levels with the branches.

(ii). It is greatly difficult to find a suitable standard for the distribution of taxes when such a standard is looked upon from both justice in taxa-

tion and the practicability of reaching taxable objects.

(C). Special taxes for the main office.—The main office as well as the branches are taxed, but the former is taxed specially. The state of the location of the main office should impose a portion of the regular tax on the entire business enterprise of a firm (one-fourth for instance) and then distribute the remainder among all (the main office and the branches) according to some definite standard. Or, first set aside a certain amount for the state of the location of the main office, and then distribute the whole amount among the states of the main office and of the branches; and, if the share of the state of the main office does not reach the amount reserved, the shares of the states of the branches should be reduced according to a certain ratio, in order to increase the former's share.

(a). Its merits.—

(i). This is a middle ground between the first and second methods; and it is free from the over-emphasis on the importance of the main office (as in the first method) and also from the disregard of this importance (as in the second method). It recognizes the importance of the main office, and at the same time allows the states of the branches to derive a proper amount of revenue. I believe this method to be the most equitable one.

(ii). Every interested state can receive a portion of the tax revenue.

(iii). It has some measure of practicability. It is free from the tendency seen in the first method, namely, the tendency to encourage taxpayers to remove head offices to the place where the tax burden is the lightest.

(iv). If an interstate agreement can be established, double taxation would be eliminated to some extent.

(b). Its defects.—

(i). Since the method is delicately complicated,

some measure of difficulty is accompanied by its execution.

(ii). Strictly speaking, it is highly doubtful whether the method will bring about justice. The fixing of the main office's portion and the standard of general distribution may not be equitable. However, the method seems to be better than any other.

(2). Standard of distribution of tax revenue among different states where business establishments are located.—While some differentiation is necessary between the tax revenue of the state of the main office and those of the states of the branches as above seen, some standard of distribution of tax revenue among states where business establishments are located should be adopted. The following are some of the theories on this standard:

(A). Taking income as basis.—The incomes of the various establishments are calculated and the share of each is measured according to the relative amount of income.

(a). Its merits.—

(i). This method will be equitable, if it can only be carried into practice. If the separate income of each location can be established, its share of tax revenue can be determined easily, a special share being reserved for the state of the head office. This is the most equitable method of international tax distribution.

(ii). Every interested state will be enabled to derive a proper amount of revenue.

(iii). Double taxation would be avoided if the method could be carried into practice.

(b). Its defects.—

(i). Of various earnings, business income is most difficult to reach. Where an industry has various establishments in various places and each is regarded as a stage or different phase, of a business enterprise, it will be greatly difficult to divide the entire income into two parts. And if this division is carried out

there will arise serious difficulty. Supposing that Place A has a pasture, Place B, a milk manufacturing factory, Place C, a canning factory, and Place D, a selling shop, it may be contended that Place D only derives a profit. Thus no state where the pasture or the factory is located can get a part of the revenue, as there is no means of distribution. When Place A has the central supply bureau and Places B, C, and D are retail shops, Place A derives no profit and its state can derive no revenue. It is unjust to deny the state of Place A to the right to derive revenue, but there is no way of levying a tax if the principle under consideration should be adopted. If each Place were all retail shops, the income of each might be computed and a tax may be levied on each income. But when each of them is a part of an industrial unit, such computation will be very difficult because there is a business expense which is common to all. Thus the method under consideration has the serious difficulty of impracticability.

(ii). The execution of this method despite its impracticability will result in an injustice in the distribution of tax revenue. Taking advantage of this difficulty in distribution, business houses will shift their income to wherever the lightest tax is imposed, thereby aggravating the injustice involved.

(iii). Because of this possibility some of the interested states will suffer losses in their revenue, and some of the states where branch establishments or factories are located may lose their entire revenue, as a consequence of what I have pointed out in (i).

(B). Taking gross revenue as basis.—Instead of income, gross revenue may be taken the basis of taxation.

(a). Its merits.

(i). Gross revenue or gross amount of sale is easier to reach than income and therefore it is more practicable.

(ii). Because of this easiness for reaching gross revenue or gross sale there is a corresponding certainty of securing public revenue for a state.

(iii). A rough estimate can be made of real income and distribute it among the interested states.

(iv). Although the method may result (as will be explained later) in non-taxation in some states, where it is adopted there will be no double taxation.

(b). Its defects.—

(i). This method may be workable in case all the establishments of a business unit are all commercial ones, but it will not be so where some of them are commercial while others are industrial, because industrial establishments would have no gross revenue. Even where all establishments are commercial, those of them which are supply stores would derive no profit, and consequently the states where they are located will have no share of tax revenue.

(ii). If those non-business establishments are taxed, double taxation will ensue.

(iii). If they are taxed injustice will ensue, but if they are not taxed, injustice also will follow. Moreover, gross revenue cannot be regarded as a good index of faculty in taxation; this is a fundamental objection to the method under consideration.

(iv). If gross revenue is strictly construed and no tax is imposed by the states where non-business establishments are located, those states must lose a great portion of their public revenue.

(C). Taking the amount of capital invested as basis.

(a). Its merits.—

(i). This method is practicable in case of corporations, banks, and industries whose capital is visible to outsiders.

(ii). So far as it concerns, it has the merit of certainty of public revenue.

(iii). Double taxation can be avoided.



(iv). Capital is a somewhat good index of income and a distribution of income based upon capital may be equitable. This system will not result in non-taxation in any of the states already referred to.

(b). Its defects.—

(i). This has the defect of difficulty in reaching the revenues of individual business firms. Where a business organisation is composed of such separate establishments as a pasture, factory, and selling department, the difficulty of assessment will not be the same for each of them; the difficulty will increase in the given order.

(ii). The difficulty in assessment gives rise to an unjust distribution of tax revenue among several jurisdictions. Furthermore, assessment based upon the amount of capital invested will not always correspond to the amount of income, and therein lies an injustice in taxation.

(iii). Because of the foregoing defects some states will lose some portion of their public revenue.

(D). Taking the rent of land and building as the basis.

(a). Its merits.—

(i). This is the most tangible method and assessment based upon this method will be most practicable. Moreover, it is better than any other methods as regards the division of tax revenue among the interested authorities.

(ii). It is not only practicable but also enables the just division of tax revenue among the interested authorities, as every establishment must pay rent for the land and the building it occupies. Rent roughly expresses the extent of the protection and benefit each establishment receives from the state of *situs*.

(iii). Each state will receive a proper share of revenue.

(iv). Double taxation can be avoided.

(b). Its defects.—

(i). The method fails to take into consideration the personal element in business, and this results in an injustice in distribution. The personal element has close connection with the state of location and failure to consider it involves one serious fault. Especially where a single industry is composed of several establishments, such as a factory and a selling department, the method will be found faulty, as the tax on a factory will be much larger than that on a selling department. Again between different selling departments, the amount of rent will not always correspond to that of their incomes.

(ii). Some interested states are likely to suffer a loss in their public revenue.

(E). Taking the number of employees as the basis.

(a). Its merits.—

(i). Reaching the taxable objects will be easy.

(ii). As each business establishment has a certain number of employees, taxation according to number will be equitable. The number of employees can be taken as an indication of the extent of the protection and benefit given by a state.

(iii). Each interested state will receive some share of revenue.

(iv). Double taxation can be avoided.

(b). Its defects.—

(i). The greatest defect of this method is lack of justice. The number of employees cannot be regarded as a good index of the relative power between the whole industry and its branch establishments. Employees are of various ranks and of various powers so that they cannot be taken as equals. Of various establishments, a selling department will have a larger number of employees, than, say, a work shop.

(ii). Some interested states may suffer a loss in their public revenue.

(F). Taking the wages of employees as the basis.

(a). Its merits.—

(i). Reaching the taxable objects will be easy though in a lesser degree compared with the case of the number of employees.

(ii). The rank and faculty as well as the importance of employees are taken into consideration, and therefore it is juster than the method in which the number of employees is taken as the basis of taxation.

(iii). Each interested state will receive a proper portion of the revenue.

(iv). Double taxation can be avoided if all nations should adopt this method.

(b). Its defects.—

(i). The method has one defect of difficulty in reaching the tax-objects.

(ii). There is possibility of injustice because it fails to consider real elements in taxation.

(iii). It may result in a financial embarrassment to some states.

(G). Taking a combination of various bases as the basis.—Each of the foregoing bases has serious defects. For this reason combinations of several of them have been proposed, as the following will show.

(A). Combination of income with some external basis.

(i). Combination of income and capital invested.

(a). Its merits.—

i. This method contains the fundamental justice of taking income as the basis of taxation; at the same time it takes into consideration the capital invested in order to avoid the difficulty of reaching the taxable objects which is inherent in the method of taking income as the only basis.

ii. Assessment and collection of tax will be easier.

iii. Each interested state will derive a proper amount of revenue with certainty.

iv. Double taxation could be avoided.

(b). Its defects.

i. The difficulty of reaching income and capital will persist to remain to some extent. It will be also difficult to divide income among the various establishments.

ii. Since the method reaches capital (which is a purely real element in production) once more in addition to the income resulting from the operation of the personal as well as real elements, the share of the real elements of business will be much heavier than that of the personal elements.

(ii). Combination of income and salaries.

(a). Its merits.—

i. This method also contains the fundamental justice of taking income as the basis and is supplemented by a consideration of the salaries which are easy to reach.

ii. It has a merit of practicableness.

iii. It ensures a proper revenue for every interested state.

iv. Double taxation could be avoided if the system should be adopted by all nations.

(b). Its defects.—

i. The difficulty of reaching income and of distributing tax revenue will persist to remain.

ii. The personal elements of business are unduly emphasized.

(B). Taking combinations of various external bases.

(i). Combinations of definite external bases.

(a). Combination of gross sale, rent of land and building, and the number of employees.

i. Its merit.—Since the bases are comparatively easy to reach, the system has a merit of practicability. The defect of one basis can be remedied by the merit of other bases, and both the personal and real elements of business are evaluated pro-

perly. The method will give a proper revenue to each interested state and double taxation could be avoided if all nations should adopt the method.

ii. Its defects.—As the method is composed of many bases, it has the defect of complication. The mere number of employees should be replaced by that of the amount of salaries paid to them.

(b). Taking the rent of facilities and the number of employees, each as one half.

i. Its merits.—The bases are easy to reach and it also has a merit of simplicity compared with the above method. It considers both the personal and real elements of business equally, and is free from the defects of the system which we shall take up presently. The method also enables each interested state to derive a proper amount of revenue. Double taxation could be avoided if the method should be adopted by all states.

ii. Its defects.—The respective value of each employee is totally neglected. The mere number of employees should be replaced by their salaries (including bonuses). It may be contended that both the rent and salaries will not correspond to the income of a given firm. This argument, however, will be met by the contention that, since income itself involves much difficulty although it approaches nearest to the ideal of faculty, such an external basis should be regarded as inevitable. The method is better than the income basis in international and local taxation, where not only one's faculty to pay but also the degree of benefits he has received from a state or a local district, are equally important. Employees also receive benefits from the state under whose jurisdiction they labour, and the various facilities of a given industry or business also receive protection from the state of their location. Consideration of the rent of facilities

and employees' salaries is a proper basis of taxation.

(ii). Combinations of different external bases for different businesses.

(a). Its merits.—

i. This method is more practicable than the one just been considered, because in some business, other bases, such as capital invested or gross sale, may be more adapted than the rent bases.

ii. It is a juster means of distribution.

iii. Each interested authority will be enabled to get a proper share of tax.

iv. Double taxation could be avoided when the method is adopted by all.

(b). Its defects.—

i. Selection of bases for different businesses will be done arbitrarily and will result in an unequitable distribution.

ii. It is too complicated to secure an interstate agreement for the purpose of avoiding international double taxation.

## Section II. Location of Persons and Securities in International Taxation.

I have already dwelt on some difficult cases in international taxation and discussed their possible remedies. I shall further study another difficulty connected with the same question and which centers around persons and securities. The location of a person is usually the place of his residence, but when he has two places of residence, it is difficult to select one. As to securities, they can be taxed either by the authority of their location or by that of the residence of their owner. By the location of securities, may be meant either the place where they are actually kept, (i.e. a bank or trust company) or the place where the interest or dividend thereon is paid, or the locations of the

state, local body and the corporation issuing the securities, or the location of the establishments of the firm or corporation issuing the securities. Thus it is difficult to select one out of these numerous possible meanings.

## 1. LOCATION OF PERSONS

When a person has a single place of residence, there is scarcely no difficulty in international taxation on his property or income, but a serious complication will arise when he has two, supposing the principle of residence is to be adopted. The following are some of the plans proposed to remedy the difficulty:

### (1). Solution through interstate agreements.

(A). Method of taxing at one's principal place of residence.—When a person has two or more places of residence he is to be taxed at his principal place of residence. Interstate agreements should decide which is the principal place of residence, but if a person works in any of the interested states, he should be taxed in the country where he actually works; if not, he should be taxed by the country of his political allegiance, provided the latter is one of the countries he resides in, because such place has deeper relations with him than any other places of residence. In case a person resides in neither of these two places, the place where he lives longest or where he pays the largest amount of rent should be chosen. If the amount of rent is taken instead of the period of residence, a person will have less occasion for deciding on the question arbitrarily. When things cannot decide on the question, he may be allowed to decide by himself. And, since a person will naturally select the place where taxes are lightest, a plan of equal distribution (which will be taken up later) may be adopted.

#### (a). Its merits.—

- i. Double taxation will be avoided since all interested states are to conclude an agreement.

ii. Considering the method from the technical standpoint, it may be said that a taxpayer's faculty to pay, progression, personal circumstances, consideration for debts, and exemption point, etc. will have a full chance for realisation under the proposed method.

(b). Its defects.—

i. Taxing at only one place will give rise to a serious injustice. A person receives benefits from all the states in which he lives, and for this reason every one of the states has a right to tax him. The fact that he manifests faculty to pay in every one of the states may be taken as a sufficient reason for taxation.

ii. Those states which do not tax him will lose a portion of their rightful revenue. The places where villas are located will suffer especially.

iii. Consequently, it will be difficult to persuade all the interested states to conclude an agreement.

iv. There is much technical difficulty in deciding on the principal place of residence. The place where one works and his political allegiance are clear enough, but it will be mighty hard to decide on this question according to the amount of rent paid or according to the length of his residence. There is an official standard for rent, but there is no way of fixing the length of one's residence, especially the members of one family may live separately in several places. It will be practically impossible to compare the lengths of residences in different places. Furthermore, when one is to decide in what state he should pay tax, his whims and fancies may decide the whole question. As to selecting a residence at one's political allegiance, it must be noted that it is very often only a name. And if persons are to pay taxes at their political allegiances, they may choose the state where the lightest taxes are imposed as their domiciles. When a person works in two places, further difficulty becomes inevitable.



(B). Distributing taxes among the interested states. —There are various methods falling under this principle, but each of them has the defect of offering an opportunity for tax evasion. However, as the method allows every interested state to derive some portion of the revenue, it is juster than the one we have just considered. When progression and exemption point are to be applied, they must be adopted in accordance with the total income or property of a taxpayer.

(a). Method of taxing according to the lengths of the periods of residence.

i. Its merits.—

a. It will prove the most just one if it can be adopted, as it is likely to result in an equitable distribution of revenue. Supposing a person has two residences and alternately live in them, it will be just to tax him by the authority of each residence according to the length of period he lives in each.

b. Each interested state will derive a proper share of revenue.

c. If an interstate agreement is concluded, double taxation would be avoided.

ii. Its defects.—

a. The method involves a serious technical difficulty. When a person lives in two places alternatively, the matter will be simple, but when the master of a family lives in one place and other members in the other, serious difficulty will ensue, making the application of the method under consideration impossible. Even when the two places are used alternatively, it will be greatly difficult to compute the length of the period of residence. In case the length of the period of residence in a previous year is to be reported by a taxpayer, he would invariably lengthen the period of residence in a state where comparatively lighter tax is im-

posed, so as to make his tax burden as light as possible; and it is difficult to disprove such a report. Furthermore, one may contend that it is unjust to base the distribution of one year's taxes upon a standard of a previous year; on the other hand, it is difficult to forecast the length of the period of residence of a particular year. Progression and exemption point should be based not upon different states' shares but upon the whole amount of the income or property; at any rate it will be difficult to take into considerations such things as personal circumstances or debts.

b. Thus this method is liable to give rise to injustice in the distribution of tax revenue among competing authorities and in distributing tax burden among taxpayers.

(b). Method of taxing according to the amount of rents.

i. Its merits.—

a. This method will enable the authority of each interested state to derive a revenue which will be in accordance with the value of each residence—a share whose equity will be established objectively.

b. Each interested state will derive a revenue which will be satisfactory to itself.

c. The method will be highly practicable. Let each person make a report of his rent certified by a proper authority.

d. An interstate agreement ought to eliminate double taxation.

ii. Its defects.—

a. The need of certifying a report involves difficulty but certification is necessary for a report of this kind. The method will have much difficulty in taking personal circumstances into consideration.

b. The method may give rise to injustice in

distribution. It does not take the length of the period of residence into consideration. Moreover, certification or revision of a report by an authority may be done arbitrarily, thereby giving birth to injustice. These defects, however, are not so serious as to be unbearable.

(c). Method of distributing tax revenue equally among the interested states.

i. Its merits.—

a. The method is simple and practicable.

b. It will enable each state to derive a proper amount of revenue.

c. An interstate agreement adopting the method will eliminate double taxation.

ii. Its defects.—

a. The method will not result in a just distribution. All residences do not have equal values. Some are big, others are small; some are used for a long period, others, a short period. And, if the state of each is to get an equal share of revenue, an obvious injustice will follow. Its injustice will be clear when it is viewed from the theory of faculty.

b. The state of main residence will lose a big portion of its rightful revenue.

c. Personal circumstances will not be taken into consideration.

(c). Method of giving a major portion to the state of main residence and the remainder to other states.— The interested states are separated into two groups, the main state constituting the one and other states, the other group, by applying the principles of work, political allegiance and rent, as given in the preceeding pages; and in case such separation is impossible, each state is regarded as equal of others and the revenue is divided equally among them all. After setting aside part of the revenue for the main state, the remainder is divided

equally among the other states, although it is possible to divide it among those states in accordance to the amount of rent paid in each state; the last method is too complicated to be practicable. Taxation according to the amount of rent is also troublesome and the principle of work or political allegiance is preferable to it. When a person works in two places, one must be selected as the main state. In case this selection cannot be made, the principles of political allegiance and rent should be used as a supplementary standard. It is difficult to find a definite ratio of a share for the main state; however, when there are two residences, the state of the main residence should receive a two-third of the revenue; and if there are three or more residences, one-half should be reserved for the state of the main residence, although such divisions are more or less arbitrary. In applying progression, the principle just above mentioned under (B) should be used.

a. Its merits.—

i. This method is not very impractical.

ii. The method makes distinction between the main and secondary states clear, thereby eliminating the injustice involved in the taxing of the main state alone as well as in the equal taxation among all the interested states. It is comparatively simple and conducive to equity.

iii. Each interested state will derive a proper amount of revenue.

iv. The method will eliminate double taxation.

b. Its defects.—

i. The method involves some difficulty. In the first place, it is difficult frequently to select from several places one's place of work. Then it is also difficult to reach rents. The method fails to take personal circumstances into consideration.

ii. Fixing the definite ratio of apportioning shares for the main and secondary states inevitabl-

ly involves a certain measure of arbitrariness, though such arbitrariness is often unavoidable in taxation. Domicile at one's political allegiance, which is one standard by which the main state is distinguished from secondary states, often exists in name only; and persons often select such domiciles with an intention to evade taxes. For this reason it may best be eliminated as standard for taxation; and if this be done, the method would be less impractical.

(2). Method adopted conveniently by a single country.—Each country adopts a method by itself. A country may tax a person having a residence in that country on the entire income or property without regard to other countries and the possibility of double taxation. The following are other methods falling under this category:

(A). Method of regarding house rent multiplied by a definite number as a minimum of income.—This method does not take into consideration other residences. Although it cannot be regarded as entirely just, at least has the merit of practicability inasmuch as no consideration of residences in other countries is required; and it must be noted that acquiring exact facts regarding residences in other states is very difficult.

(B). Method of regarding a business shop as a residence.—This method assumes that a person's residence is located where he has his business shop. It is a convenient method for the authority which imposes the tax, but the assumption is unjustifiable.

(C). Method of regarding a temporary residence as a permanent residence until it is proved otherwise.—The method is effective in preventing tax evasion but it increases complication. Usually a certain period of residence is regarded as a condition for a permanent residence.

## 2. TAXATION OF SECURITIES

Tax on documentary securities may be levied either at the residence of the possessor (according to the personal principle) or at the location of the securities (according to the real principle); and the latter method has divergent forms.

(1). Method of taxing the owner of securities—personal principle.

(A). Its merits.—

(a). This method will be regarded as just from the standpoint of either the idea that greater importance should be attached to person than property in taxation, or the view that personalty follows the owner—*mobilia personam sequuntur*. It also takes into consideration the benefit the owner receives from the state of his residence.

(b). The method is practicable in the case of registered securities, and is juster than in the case of the real principle because it makes a personal lump-sum tax possible.

(c). Adoption of this method by all nations will eliminate double taxation.

(d). It will reduce the revenue of the state where the enterprise having relations with the securities is located, but the loss will be made up by the increase in the investment of foreign capital which will be one consequence from the exemption of the tax under consideration.

(B). Its defects.—

(a). The theory that personalty follows the owner does not apply in the case of securities; it may be true of such things as furnitures or implements. Securities are accompanied by the immovable enterprises or facilities which represent them, and various kinds of protection are given to the latter. The owner of securities, therefore, must pay due consideration to the business

or facilities rather than to the securities themselves. Consideration of his residence to the exclusion of other factors will not be proper when viewed from justice in taxation.

(b). States where the business or facilities are located will lose a portion of their public revenue, and their financial difficulty will be greater if the stocks held by foreigners are preference stocks.

(c). Although double taxation could be avoided if the interested states should conclude an agreement, the state, where the business representing the securities is located, will not likely to refrain from taxing the business, in which case double taxation will be inevitable.

(d). It will not be practicable inasmuch as it must deal with a large number of unregistered certificates which will be difficult to reach.

(e). It is not a desirable economic policy for the state of residence as it drives out the very people whom the state must welcome from the economical standpoint. Moreover, those people usually pay comparatively heavy taxes on consumption and, therefore, the imposition of no direct tax will be required for revenue purposes.

(2). Methods based on real principle.—These methods are taxation solely on objects, and have the defect of not being equitable as in the case of the taxation based upon personal principle. Another defect is that it does not take into consideration the position of the state to which the owner belongs.

(A). Method of taxing securities where they are actually located.

(a). Its merits.—

(i). This method is definite and reaching the taxable objects will be comparatively easy.

(ii). It may be regarded as just inasmuch as a certain amount of protection is given to the securities by the state of their location.

(iii). Double taxation may be avoided through an interstate agreement.

(b). Its defects.—

(i). The method cannot be justified from the standpoint of equity in taxation. True, protection is extended to securities by the state where they are located; but securities are merely certificates which can be re-issued whenever they are lost; and as property, they are less important than the business facilities which are represented by them and which are the source of interest or dividend. Much greater protection is extended by the state where these facilities are located than the state where the certificates are located; and it will be a great injustice to allow the latter state to receive the entire tax revenue while no portion is given to the former state.

(ii). The state in which the resources are located will lose a great portion of its public revenue, and the same thing can be said of the state where the owner resides though to lesser degree.

(iii). In actual practice it will be greatly difficult to conclude an interstate agreement regarding the adoption of this method, and some states will insist on taxing according to their own wills, thereby causing double taxation.

(iv). The method will prove highly impracticable. The existence of securities is hard to prove while it is easy to hide them in order to evade taxation. Furthermore, their movability encourages tax evasion; this point alone is a sufficient reason for the rejection of the method.

(B). Method of levying taxes where the earnings from securities are paid.

(a). Its merits.—

(i). No other method seems to be more practicable and more certain than this method since the actual payment of earnings is made the basis of taxation. Moreover, the method can reach unregistered securities as well as registered securities.



(ii). In one sense where an earning is actually paid is the resource; it is just and fair, therefore, that the authority which controls and protect this payment should have a right to impose taxes.

(iii). An interstate agreement will eliminate double taxation.

(b). Its defects.—

(i). This method is not quite desirable from the viewpoint of justice in taxation. The place of payment is simply a place of convenience and can be changed at will; and for this reason it cannot be regarded as the source of income from securities. The real source of earnings from securities are business establishments themselves which are represented by securities, and the location of these establishments is more important than that of securities. The authority which gives protection to the establishments should possess a greater power of taxation than the authority having jurisdiction over the place of payment of earnings from securities.

(ii). The state where the business establishments are located will lose a portion of its rightful revenue.

(iii). The method may cause tax evasion as the place where earnings are paid may be changed at will

(C). Method of levying taxes where enterprises or organizations represented by securities are located. In case of government bonds, taxes are to be levied in the debtor state. In the case of commercial stocks and debentures, taxes are levied where the main office of the corporation issuing securities is located.

(a). Its merits.—

(i). This method is more effective in checking tax evasion than any other which has already been considered. The owner of securities, the place of their safe-keeping as well as the place of their payment are subject to change, and this fact encourages

tax evasion. But there is absolutely no danger of evasion under the method now under consideration. As the method deals with the fundamental fact of securities there is no danger of evasion even of unregistered securities. This is the strongest merit of the method.

(ii). Viewed from justice in taxation, the method can be said to be an equitable one inasmuch as it reaches the real sources of earnings. It can be said to be the most natural method of stoppage. And the authority having jurisdiction over the location of enterprises or organizations are located has a greater right of taxation than any other interested authorities.

(iii). The authority having the greater relationship with the business enterprises which are represented by securities, will secure correspondingly greater portion of the revenue.

(iv). An interstate agreement will eliminate double taxation.

(b). Its defects.—

(i). There is no defect as to its practicability.

(ii). However, there is a grave doubt as to its justice. Although the state, where the main office of an enterprise or organization is located, may be regarded as the real source of earnings, it is not just to disregard the places where the earning is paid or the securities are held; those places are entitled to some portions of the revenue. However, this defect is not very serious. The method does not allow the states where branch establishments or factories are located to levy a tax on securities. Here the method of division of revenue discussed in the foregoing chapter on taxation on international business, may be used as a supplement.

(iii). The aforementioned defects will result in a financial embarrassment to some of the interested authorities.

(iv). The method discourages the importation of capital into the country where the resources are located.

(D). Method of taxing, in the case of stocks, not only at the place where the main office of the business represented by the securities is located, but at the places of branch establishments as well, according to a definite standard of taxation, the division of the revenue being based upon the methods we have already considered in connection with taxation on international business.

(a). Its merits.—

(i). This method is juster than the preceding one when viewed from the standpoint of equality in the distribution of taxes, as it allows all the interested authorities to secure a portion of the revenue.

(ii). The method is a desirable one from the viewpoint of the public finances of the interested states.

(iii). An interstate agreement regarding the adoption of the method ought to eliminate double taxation.

(b). Its defects.—

(i). Its greatest defect is impracticability. The division of taxes among all the branch establishments in addition to the main office is inevitably too intricate to be a practicable system.

(ii). The method is not perfectly just inasmuch as it fails to take into consideration the place of the payment of earnings and the place where the taxable securities are held.

(3). Method, embodying the personal as well as real principles.—This method takes the view that one half importance of securities exists in person while the other half, in tax-object, and the tax is levied at both the place of the owner and that of the location of the organizations or business establishments which are represented by the securities. In the case of stocks, the tax is levied at the location of

the main office as well as at those of branch establishments or factories.

(A). Its merits.—

(a). The method is just because it embodies both the personal and real principle—person as well as things. It eliminates the defects of each principle.

(b). In its technical aspect, progression can be adopted in personal taxation, while taxation at the location of property can reach the tax-objects with certainty.

(c). All interested authorities can secure some portion of the revenue.

(d). An interstate agreement regarding the method will eliminate double taxation.

(B). Its defects.—

(a). Its greatest defect is the high intricacy which makes the method impracticable.

(b). It is not quite just as it fails to consider the place where securities are held and the place where the actual payment of earnings is made. This defect, however, is not serious enough to discredit the method all together.

### PART III

#### DOUBLE TAXATION IN THE TRANSACTION AND CONSUMPTION TAXES

Double taxation chiefly takes place in direct taxes such as taxes on income, products, and property. Domestic and international double taxation is usually discussed in reference to those taxes, and my previous discussion also concerned itself with them. However, the phenomenon of double taxation is not limited to them alone: it is also seen in other taxes such as the transaction and consumption taxes. I shall now take up this phase of double taxation.

## 1. DOUBLE TAXATION IN TRANSACTION TAXES

### (1). Ordinary transaction taxes.

#### (A). Double taxation viewed from the source of taxes.—

(a). Double taxation between one of transaction taxes and the principal direct taxes.—A transaction tax is in the nature of a supplementary tax for the principal direct taxes (the income, products, and property taxes). This means that it is imposed upon the income or property which has been taxed once, and in consequence a double taxation on the same source of tax. But this kind of double taxation is regarded as permissible under the present tax system, and for this reason does not constitute a serious problem. It is sufficient here to remember that there is such double taxation.

(b). Double taxation between different transaction taxes.—Double taxation on the same source of tax often takes place between transaction taxes themselves. An example is to be found in the imposition of the stamp duty and the register tax on the same object. Such double taxation seems inevitable because of the following reasons: in the first place, each of these two taxes regards the object as a different tax-object; secondly, the taxes are intended as supplementary to each other; and lastly, modern states usually adopt a multiple tax system instead of a single tax system. A business transaction which merely represents the will of the transactors is vastly different from the same transaction plus government registration thereof in preparation against the possible claim of a third party, and the latter is regarded as representing a faculty higher than the former. This justifies each of these two taxes. When both are levied, there arises double taxation.

#### (B). Double taxation viewed from tax-objects.

(a). External double taxation.—One notable in-

stance is to be found in the case of a stamp tax upon securities circulated internationally. This, however, is not regarded as serious because such a tax usually involves but a small amount of revenue. The adoption of an agreement among nations to levy a tax only in the state where the securities are issued will eliminate double taxation; such an agreement is indeed desirable.

(b). Internal double taxation.—

(i). The view that admits of double taxation.—

The objects of transaction taxes are value-objects as manifested in communication, and the taxes are levied upon them only at the time when the objects are taken in their relations with communication. Supposing there are three similar objects, the first of which does not become a matter of communication during a definite period of time, while the second becomes such a matter but once, and the third, twice—then no tax will be levied on the first, while the second will be taxed but once, and the third, twice. Thus, if the second is taken as a standard, the third is subject to double taxation. Although such a phenomenon seems to be inevitable from the very nature of such a tax, it is undoubtedly an unjust system. A transaction tax is thus regarded as necessarily involving the injustice of double taxation.

(ii). The view that does not admit of double taxation.—It is possible to regard the object of a transaction tax as a matter of communication or as an object manifested in communication. Since such a tax is levied on an object in reference to its faculty manifested at a particular point of communication, it may be argued that the system is not double taxation. The tax is levied not in terms of land and other objects manifested in communication but in terms of the time element—the time of transaction. For this reason the same object may be regarded as

two different things in two different times. Physically the object may be the same thing, but at least in the conception of taxation it can be regarded as different things, and a transaction tax may not be regarded as double taxation.

(2). The inheritance tax in particular.

(A). Causes for double taxation.—The first question is whether the personal or real principle should be adopted, and if the former principle is to be adopted the next question will be whether the legator or inheritor should be taxed. Supposing the legator or inheritor is to be taxed, there will arise the question whether he be taxed by the state of his political allegiance or the authority of his permanent residence or that of his temporary residence. In actual practice there arise many such questions, the solution of which is difficult indeed. Taxation on the immovables and their rights is usually based upon the real principle, but sometimes it is based upon the personal principle and this fact also causes double taxation. Of the movables, tangible properties and those having external bases can be taxed according to either the principle of location or that of residence, and this possibility is also a potent source of double taxation. Of those having external bases, stocks and bonds may be taxed at one of the following places: the place where securities are held; the place of payment of earnings; the location of the capital of a state, or of the local government and of the main office of the organization or company; or the location of the business establishments. Double taxation is liable to rise even among the authorities adopting the principle of location. It is impossible to tax intangible properties or rights at the place of their location; and they must be taxed at the residence of their owners, especially the legator. Double taxation is more frequently seen in the case of tangible movables which can be taxed according to either the personal or real principle, at the discretion of a state. An interstate agreement can

eliminate this phenomenon, but it will be difficult to conclude such an agreement among different nations.

(B). Principles of international taxation.

(a). The real principle or the personal principle.

(i). The real principle.

a. Its merits.—

i. Since the tax is levied at the location of objects, it is highly practicable. It is especially effective in reaching land, houses, business, registered securities and other principal forms of property. Of course there are things which may escape taxation even under this principle but they will also do so under the personal principle.

ii. Since protection is extended to all taxable objects at their location, it is just that they be taxed by the authority of their location, when they are transferred from one person to another. Of the various inheritance taxes, the estate duty must be taxed by the authority of the location of the estate, inasmuch as it is intended to make up the revenue loss made through the evasion of the direct tax by the decedent during his life time.

iii. This principle is desirable for the public revenue of the state of location.

iv. An interstate agreement ought to eliminate double taxation.

b. Its defects.—

i. Inheritance is not only a phenomenon of property but is also a matter of person and signifies a change in the status of one's ownership. The fact of inheritance begins with the death of the legator whose property is secured by the inheritor without labour. Thus inheritance necessarily involves personal circumstances. The inheritance tax considered only from the standpoint of person may be inadequate, but the same



tax considered only from the viewpoint of property will be also unjust.

ii. The public revenue of the country where the tax-subject resides will be reduced if the tax is to be wholly levied on the tax-object.

iii. It is difficult to adopt progression as the taxation of the whole property of the legator or of the inheritor. Neither can debts be deducted properly. Moreover, taxes on the movables may easily be evaded.

(ii). The personal principle.

a. Its merits.—

i. Under the operation of this principle the adoption of progression in the taxation of the property left by the decedent or received by the inheritor will be possible. The deduction of debts will be also possible, and the movables can be reached.

ii. The principle may be said to be fair from the standpoint of justice in taxation, because the inheritance tax is due to the death of the legator and is levied upon the unearned income of the inheritor.

iii. The state to which the taxpayer belongs will get a share of the revenue.

iv. An interstate agreement will eliminate double taxation.

b. Its defects.—

i. There is a great danger of tax evasion which, however, can be remedied to some extent through international cooperation.

ii. It is unjust to disregard the country to which the tax-objects belong.

iii. The country where the tax-objects are located will lose a portion of its rightful revenue.

(iii). Combination of both principles.—The revenue is divided equally between the country of the

taxpayer's residence and that of the location of the property which affects international relations.

(a). As far as the tax-objects are concerned there will be but little tax evasion. There will be much international cooperation and the country of the residence of the tax-subject will receive a portion of the revenue. The country of the tax-subject's residence may adopt a lump-sum progressive tax.

(b). Both the country of residence and that of location can get a share of the revenue. This makes the method more equitable.

(c). All interested authorities will receive a portion of the revenue. This will be impossible where any one-sided method is adopted.

(d). Double taxation will be eliminated. This principle is the best of all.

(b). Two forms of personal principle: the inheritor principle or the legator principle.

In most cases the inheritance tax is imposed on the legator principle instead of the inheritor principle, but the latter also has a strong theoretical reason in its favour so that the lawmaker will find it difficult which to adopt.

(i). The legator principle.

(a). Its merits.—

i. This system is less practicable than a real principle but better than the inheritor principle. It is the legator from whom the act of inheritance commences and he can be reached at his residence with more certainty than in the case of the inheritor. This is further supported by the fact that usually part of the property inherited is located at the residence of the legator or decedent.

ii. Viewing the matter from justice in taxation, it must be noted that the taxation of inheritance arises because of the commencement of inheritance; that it often results from the death of those whose property is inherited; and that it is concerned with the settlement

of the estate of a decedent or legator. For this reason it seems just that the inheritance tax should be levied by the state to which the legator belongs. The fact that the estate duty is intended to make up the loss in the revenue made by the evasion of taxes on property by the legator in the past, adds to the weight of the foregoing argument. As to taxes on recipient, so long as they concern themselves with the settlement of the estate of a legator, they should be levied by the country to which he belongs.

iii. The tax will benefit the public revenue of the state to which the legator belongs.

iv. An interstate agreement will eliminate double taxation.

(b). Its defects.—

i. In the case of the inheritance tax proper, namely taxes on recipient, (which are imposed upon unearned income) it seems juster that the state of the inheritor instead of the legator should levy the tax. And, if the inheritance tax proper is levied by the state of the inheritor, the estate duty should also be levied by the same authority, as the latter is regarded as a supplement to the former, beside its being intended to make up the past loss of revenue.

ii. The state of the inheritor will lose a portion of its revenue.

(ii). The inheritor principle.

(a). Its merits.—

i. This principle may be said to be just as it is imposed upon the inheritor's special faculty based upon his unearned income.

ii. The state of the inheritor will be enabled to derive a revenue.

iii. An international agreement will eliminate double taxation.

(b). Its defects.—

i. It disregards the fact that inheritance owe its

origin to the decedent or legator and that the estate duty is intended to make up the loss of revenue caused by the tax evasion by the legator. Any system which does not allow the state of the legator to levy the inheritance tax must be unjust.

ii. The state of the legator will lose a portion of its rightful revenue,

iii. This principle is liable to cause much tax evasion. When the inheritance tax is imposed, not at the location of the property inherited, it will be difficult indeed to tax the inheritor, especially in view of the fact that the system disregards the cause of the commencement of inheritance—the legator.

(iii). Combination of the two systems.—Under this system both the state of the inheritor and that of the legator will be able to levy an inheritance tax. There are the following two forms of the system.

(a). A system under which the estate duty is levied by the state of the legator while the tax on recipient, by the state of the inheritor.—This system eradicates the evil involved in either of the two systems already considered—the tax levied by either the state of inheritor or that of the legator. The division of revenue under this system is based upon the fact that the estate duty has close relations with the state of the legator, and the tax on recipient, with that of the inheritor. However, it is impossible to make such an absolute distinction between the two, as each of the two taxes involves the interests of the other. Moreover, there are states which do not adopt the two taxes together, having only the tax on recipient or the estate duty. Should those countries adopt this system, an unjust distribution of revenue would inevitably follow. Some countries will also lose a portion of their rightful revenue. I have no idea to recommend this system to lawmakers.

(b). The system of an equal division of revenue between the two states.—This system will satisfy the

claims of both the state of the inheritor and that of the legator with regards to their shares of the revenue. It is also practicable and can be adopted by both states with good results.

(c). The inheritance tax under personal principle (inheritor or legator) should be levied by the state of one's permanent residence, instead of his political allegiance or temporary residence. The reason for this is given in Chapter 1, Part 11, under the title of Discussion over Principles of International Taxation. In modern times permanent residence has much closer relationship to a man's economic life than either his political allegiance or temporary residence. Political allegiance is regarded comparatively unimportant to-day, while the relations between a man and his temporary residence are only ephemeral. Neither is it a sufficient basis for a tax which is levied upon a man only once in his lifetime. However, the ordinary transaction and consumption taxes are levied not unfrequently by the state of one's temporary residence. In view of this fact, it is noteworthy that the inheritance tax is not following the same line of thought.

(d). The location of documentary securities under a real principle is another question that must be faced. However, this question has been discussed in the chapter on taxation of international business, specially in reference to documentary securities. The state where the main office of an enterprise or organisation is located should impose the tax. In the case of shares of stocks the tax should be levied where the business establishments are located. Although this is difficult to practice, it is not impossible of realisation through international cooperation. An inheritance tax upon securities should be divided between the residence of the tax-subject and location of the tax-object.

## 2. DOUBLE TAXATION IN CONSUMPTION TAXES

(1). Double taxation viewed from the source of taxes.  
—Double taxation in the sense of taxing the same source of taxes twice over will be unavoidable in any consumption tax. In the first place, the consumption taxes are imposed on men's faculty as manifested in their power of consumption. The income tax, the tax on products, and the property tax are all levied on income, products which give birth to income, and property which is also a manifestation of income. Consumption is regarded as dependent upon income, and taxing consumption is the same as taxing income. When, therefore, a consumption tax is levied, after the income, or the product tax, or the property tax has been levied, there will be double, or triple, or even quadruple taxation. This sort of double taxation, however, is not all together unpermissible in the modern fiscal system.

(2). Double taxation viewed from taxable objects.

(A). Different cases and evils involved.—Double taxation which I shall now consider, namely taxing of the same tax-object twice over, is double taxation proper, and this phenomenon happens frequently and variously. Some believe that double taxation cannot take place in the consumption taxes, but the matter is not so simple as people generally believe. True, double taxation would be impossible if taxes are levied at the time of consumption. But in actual practice they are levied at the time of production. For this reason, it is possible that a thing which was taxed once where it was produced can be taxed again in another country into which it is imported. It also happens that an import tax is levied on the material which after being manufactured is exported into another country where it is again taxed. Internally speaking, it is possible that a tax is levied upon the production of the material which again is taxed upon being manufactured,

within the same jurisdiction. In the case of the direct tax on use, a thing may be taxed twice, when transferred from one place to another, by the authorities of both places. When the consumption tax on some goods are not refunded upon their being exported, the export business of the country will be placed in a disadvantageous position. Such a system cannot be said to be desirable from the economic policy of any nation. Refusal to return the payment of the import tax or delay in the payment of the tax will also prove detrimental to the commerce of the interested nations. Taxing both raw material and manufactured goods will also be an economic burden upon the interested industries as well as the consumers. Double taxation in the direct tax on use also will result in an overburden, and therefore must be avoided.

(B). Their remedies.

(a). The indirect consumption tax.—Double taxation in the indirect consumption tax can be remedied comparatively easily. Drawbacks or exemption of the tax (under definite conditions) will remove the difficulty. This remedy has been adopted by some nations from the viewpoint of their economic policies, and of tax burdens.

(i). Internal cases.—The following cases are found in Japan:

a. The raw materials which are used in manufacturing the things on which are imposed the consumption tax, are either exempted or untaxed. Examples are found in the case of taxes on sake and other alcoholic beverages and also in that of the sugar consumption tax.

b. Exemption is made in the case of the manufactured goods which are made of the material on which a similar consumption tax has already been levied. An example of this practice is found in the sugar consumption tax.

c. No consumption tax is levied at the time of a second business transaction, although it is

levied at the first time. An example is found in the case of the textile consumption tax.

(ii). External cases.—Individual states adopt various means separately in order to avoid international double taxation, instead of waiting to accomplish the same purpose through an interstate agreement, incidentally protecting their own interests thereby.

a. The following means have been adopted by nations with regard to their internal taxes on consumption :

i. The goods or manufactured articles which are made with the purpose of exportation, are exempted from the consumption tax. An example in Japan's fiscal system is found in the case of the tax on soft drinks, the sugar tax, the tax on playing card and the textile consumption tax.

ii. Drawbacks are made on the tax already paid at the time of exportation. The taxes on sake, beer and other alcoholic beverages, the sugar consumption tax, and the textile consumption tax, are examples of this system.

b. Tariff duties are exempted on the raw materials which are imported for the express purpose of manufacturing. Tariff duties on such materials are also returned to the taxpayer.

(b). The direct taxes on use.—Taxes on the things which are used in different places the periods of which can be ascertained, are levied in accordance with the length of the periods. If the entire amount of the tax upon the use of a thing is paid to place A, although it is used part of the time in place B, a part of the tax must be returned by the state of place A. In case it is impossible to ascertain the period (which will be the case where a thing is used in many different places within one year, for example), the only method will be to conclude some sort of an agreement for the apportioning of the tax (for example, equal distribution).



## CONCLUSION

## Summary :—

(1). The word "double taxation" is not adequate to designate the real meaning it is intended to convey. The real meaning of the word is taxing the same taxable object twice over. There are various cases of double taxation: that of taxing different persons on the same thing, that of taxing the same person; double taxation under the same authority, that under different authorities (either those of different ranks or competing authorities); double taxation through the same tax or that through different taxes. Some of these cases are justifiable while others are not so. Those cases which are unjustifiable as well as important are those between equal local authorities within a state and those between different states. There must be some means to readjust tax relations so as to eliminate double taxation in those cases. Double taxation in general has become more and more important due to various changes in modern times, and is regarded as a serious problem from the standpoint of justice in taxation.

(2). There are the following three principles of international taxation: the personal principle, the real principle, and the combination of the two. The first and third principles have many sub-divisions. As to the combination of the first and second principles, the best method is to take into consideration both residence and the resource, and the equal division of the direct taxes between the state of residence and that of the location of the tax-object. An interstate agreement regarding the adoption of this principle ought to eliminate double taxation, although the conclusion of such an agreement will be a difficult task. Taxing international business is also difficult. To avoid double taxation in this connection it is necessary to conclude an agreement among the nations concerning the adoption of a principle which will assure justice in the distribution of revenue

among the interested parties. The best conceivable method will be to establish a definite scale of the division of tax between the state where the main office of a given business establishment is located and the state where the branch establishments of the business enterprise are located, and to distribute the tax among the latter states in proportion to the rental value of each establishment and the salaries or number of the employees. This method, of course, has some shortcomings, but it is better than any other. Taxation of persons having many residences in different countries and that of documentary securities present a baffling situation. However, an interstate agreement even in these case will eliminate double taxation to some extent. In the case of a person having many residences in different countries, his main residence should be first decided upon by taking into consideration the place of his work and the amount of rental value at each residence. Then after setting aside a certain portion of revenue for the state of his main residence, the remainder should be divided equally among the rest of the states. As to documentary securities, the most practicable method is to divide the tax revenue equally between the state of their owner's residence, on one hand, and those where the organization or the business establishments represented by the securities are located, on the other.

(3). Double taxation in the transaction and consumption taxes often escapes the attention of people but it is also an issue which must be scrutinized. However, double taxation in the ordinary transaction taxes in a sense is not double taxation in the true sense, and therefore there is no need of an attempt to eliminate it. As to the indirect consumption taxes, nations are attempting to avoid it both in internal and external taxation, chiefly because of the necessity of their economic policies. But the inheritance tax has proved a serious question for all nations. The fact that the nations adopt various principle of taxation on inheritance has given rise to double taxation in this tax. I am of the

opinion that the combination of the personal and real principles is the best conceivable method; that, where the personal principle is adopted, the principle of inheritor and that of legator should be adopted as supplement; that the principle of residence is the best basis of taxation; and that, in case of documentary securities, the tax should be levied where the main office of the enterprise or the headquarters of the organization is located. The stamp duty on documentary securities which are circulated internationally and on the direct consumption tax on the use of the objects which are used internationally, also give rise to double taxation. In the former case the duty should be levied where the securities are issued; in the latter case, the tax should be apportioned among the different places in accordance with the periods of use; if the latter can not be used, an equal distribution among the places should be adopted. There seems to be no other method which is more effective.

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