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NUMBER I

DOMICILE VERSUS *SITUS* IN INTERLOCAL
INCOME TAXATION

FOREWORD

There are conflicting opinions about jurisdiction over the taxation of income or revenue, since reference may be made to either *situs* locality or domicile locality. There is no fixed principle for solving this problem among nations, the result being frequent cases of international double taxation. In the case of interlocal relations, however, the tax is levied either by one or the other of the two jurisdictions under the control of the State which is in a position to adopt some definite rule for the solution of this problem. It is not denied that there are some cases of double taxation between this country and others, but definite rules have been adopted as regards interlocal taxation in order to avoid double taxation. For instance, no prefecture (or city, town, or village) tax is allowed to levy taxes on any of the following tax objects: land, houses or goods which are owned, used, or

occupied outside the prefecture (or city, town, or village) by a taxpayer, or on his business having its business establishment outside the prefecture (or city, town, or village) or on the income therefrom. On the other hand, the following person is required by law to pay the prefectural (or city, town, or village) tax: a non-resident person (or one who does not stay in a given locality for than three months), who owns, or uses or occupies land, houses or goods, or is engaged in business or in certain act, for his land, houses, goods, or business, or income therefrom, or his certain act.

From the foregoing tax arrangement, the following results are derived: (1) In principle, only *situs* locality has jurisdiction over land, houses, goods, or a business having an establishment, or income therefrom. (2) In principle, other taxable objects such as income from primitive industries, professional income, earned income, income from movable capital such as debentures, deposits, interest on loans, dividends, etc., are to be taxed by domicile locality. By this arrangement, double taxation may be effectively avoided. Of course, there are exceptions in the actual application of this principle. Under the first principle, in levying the household tax, income from land, houses and business in *situs* locality is included in the income of the locality in which the household is situated. (Strictly speaking, this provision tends to overturn the first principle). Under the second principle, no local surtax is permitted as regards the tax on the Class B income and the capital interest tax, and for this reason the jurisdiction of domicile locality is restricted to that extent. Whether these minute rules of exception are desirable or not is a doubtful question, but I shall here examine the fundamental principles governing the interlocal taxation of income in our country. I have long doubted the advisability of these principles which, in my opinion, should be properly modified.

1. TAXATION OF INCOME FROM LAND, HOUSES,
BUSINESS AND GOODS BY *SITUS*
LOCALITY

Aside from the tax on things such as movable property and earnings, there will be no objection to the taxation of land, houses or business, so long as it is levied as a real tax or tax on products at the location of the tax objects under consideration. In regards to income tax, however, one may doubt, the wisdom of taxing income from these sources only at their location. One may, indeed, argue that it should also be taxed at the domicile of taxpayers. Of course, it will be unjust to tax this income at domicile only, but it will not be unjust to tax it at one's domicile as well as at the location of one's taxable objects. Strictly speaking, there will be some differences between the circumstances of land, houses, or business, on the one hand, and those of goods on the other. For this reason, I shall deal with each of these two sets of circumstances separately in order to elucidate my point.

(1) Land, houses and business. One cannot deny that there are some reasons in favour of taxing income from land, houses and business at *situs* locality. Let us consider these reasons.

(A) Reasons for taxation by *situs* locality.

(a) From the nature of tax objects. Land, houses and business which are the sources of the income tax are inalienable factors that go to make up the economic life of their localities, and are thus in inseparable relations with them. Justice demands that the tax should be levied by the *situs* locality.

(b) Impartiality according to benefits. Land, houses and business from which the income tax is derived receive much benefit from the development of the district in which they are located and from the establishment and development of various facilities therein. It is therefore just that the owners of land, houses or business should bear the tax

burden of the district by way of return for the benefits they have received. But domicile locality not only fails to contribute towards the prosperity of the owners of land, houses or business, but also gets benefits from the consumption of the income secured at their location. Moreover, domicile locality need not tax the income directly, for it can tax the business which is gained through the employment of the income at the location. Nor is there any reason for taxing the income itself.

(c) From the standpoint of financial revenue. If *situs* locality has the right to tax such income, it will have the utmost financial advantage, while if it does not share in it at all, it will be placed in great financial distress.

(d) From the standpoint of tax technique. Taxing of the income from the foregoing sources amounts to the stoppage-at-source system which will enable the revenue officials to reach and ascertain the tax objects with comparative ease. Thus, there will be much less tax evasion under this system than when the taxpayer's income from these sources is taxed by domicile locality as part of his entire income.

(e) From the social standpoint. If *situs* locality alone should tax the income under consideration, the taxpayer who lives in some other locality will be able to secure only as much profits as he is able to secure when he lives where his property is situated. This will discourage absentee landlords, house owners and business enterprisers, all of whom are undesirable elements when viewed from the welfare of society. If, on the other hand, the tax is levied at one's domicile, taxpayers will prefer to live where the tax burden is lightest, and in consequence, there will be many absentee owners at the location of the tax objects, where only the poor will dominate. This will be not only an undesirable social phenomenon, but also a serious financial problem.

(f) From the economic standpoint. We have seen that failure to tax the income under consideration at the location of tax objects will encourage absentee owners. Now, supposing there are other owners present in the same locality,

they will be placed in a more disadvantageous position than absentee owners in their economic competition. In other words, those who live in the locality will have to shoulder a financial burden which will be much heavier than that which is borne by absentee owners. All this is unpardonable when viewed from the economic as well as the social standpoint.

(B) Reasons for taxation by domicile locality.

We have now seen reasons for taxation by *situs* locality. But there are reasons for taxation by domicile locality also. As these reasons cannot be ignored, I shall take them up.

(a) From the ground for taxation. As the ground for taxation, privilege and sacrifice elements are adopted side by side, and the income tax is considered from both productive and consumptive angles. Similarly, it may be said that income should be taxed by both *situs* and domicile localities. For the earner of an income, his domicile locality is just as important as his *situs* locality, because he makes the real use of his income at the former locality, and the securing of income alone is not all-important. Nor does *situs* locality alone make an economic contribution to that income. Domicile locality also makes such a contribution to the owner of income who lives therein. Thus, it would be unjust should domicile locality possess no power to tax him. The income is used at one's domicile and the earner also receives protection there in securing his income. This point must be taken into consideration in taxing such an income. If importance is attached to the sacrifice element rather than to the privilege element, and to the consumption element rather than to the production element, one may indeed argue in favour of the taxation of income by domicile locality, especially when it is remembered that the consumption tax is insignificant in local taxation. This is particularly so when there is also a tax on products. At any rate, the right to tax should not be given only to *situs* locality.

(b) From the standpoint of justice in taxation. It is proper that the residents of domicile locality should be taxed on their personal lumpsum income, according to their ability

to bear taxation, and this is only possible when the income secured in other localities is added to make up the whole. If the tax is based on the income from which is deducted the income secured from other localities, such a personal tax will be an imperfect one. Of course, a taxpayer's whole income may be first estimated at his domicile and taxes be distributed between *situs* and domicile localities according to their respective incomes.

(c) From financial revenue. If *situs* locality alone is permitted to tax the income, domicile locality will sustain a serious financial loss. The greater the financial benefit the former locality receives, the greater will be the loss the latter will suffer, and those citizens of domicile locality who do not secure income from *situs* locality will be greatly overburdened. Furthermore, there will be an unequal division of tax burden between two sets of citizens—between those getting income within a given locality and those getting income from elsewhere. Thus, we inevitably face the issue of justice in taxation.

We have seen that there are some reasons for taxation of income either by *situs* locality or domicile locality, and the exclusive taxation by either of method cannot be adopted without inflicting some injury. So long as one's income from land, houses or business comes from locality other than domicile, it should be divided equally between *situs* locality and domicile locality. But in order to reach the whole amount of one's income and to fix progressive rates of taxation, it is necessary to calculate the undivided amount of one's income by domicile locality. Although all this has the disadvantage of being inconvenient to some extent, the fact remains that it is unjust to tax one's income exclusively by *situs* locality. Objection may be made against the equal division of income between the two localities on the ground that so long as the tax on products is levied by *situs* locality, the imposition of the income tax by domicile locality will be sufficient for the purpose in view. It may be said in reply to this objection that the equal division of income be-

tween the two localities will be just and appropriate when consideration is given to the special relations between income and *situs* locality, its financial difficulty and the ill effects on society of absentee landlords and owners. It should be admitted, however, that this arrangement somewhat favours *situs* locality. But this arrangement is not intended as being rigid and absolute. It is intended in present-day Japan as a general principle to be translated into actuality by paying proper attention to our historical and other circumstances.

(2) What is meant by income from goods? This is income from tangible goods, other than land, houses and business. For instance, it may be equipment or apparatus, implements, machines, cattle, etc. The tax law refers to "goods or gain therefrom." The tax, therefore, may be levied not only on material goods but on gain which cannot properly be termed income. But it is in connection with income that problems arise in the tax law. However, cases of application of the law are not many in number. But some part of a taxpayer's income is composed of such income from tangible goods, and in principle such income is taxed along with land, houses and business by *situs* locality alone. This is open to doubt. Strictly speaking, some of the goods such as equipment and machines are in inseparable relations with their locality, but all others may be detached from the *situs* locality from whose development and facilities they rarely receive any great benefit.

On the whole, one may say that such goods do not have such relations which land, houses or business have with *situs* locality. For this reason, the right to tax on the part of *situs* locality may be restricted, if not totally ignored; and the tax may be levied on individual citizens at their domicile in accordance with the inherent nature of the income tax. On the other hand, it cannot be gainsaid that some goods are located at a certain place and yield certain income, and because of this fact *situs* locality should possess the right to tax them. In other words, the privilege element and factors of production are found rather in their locality.

Often local miscellaneous taxes are levied on these goods. But inasmuch as not all of them are taxed, and furthermore as their taxes are not usually so heavy as the taxes on land, houses and business, the right of *situs* locality to tax income from such goods should be recognized. But if the right of taxing such income is given to *situs* locality alone, there will result the injustice of ignoring the principle of income taxation by domicile locality and of disregarding the sacrifice element and consumption factors in taxation. If consideration is given to the financial needs of both localities, as well as to the relations between taxpayers in each of these localities and other citizens therein, one may justly say that the income in question must be taxed equally by both localities. In the progressive taxation of income by domicile locality, what applies to the case of taxes on land, houses and business should also apply to it.

2. TAXATION OF OTHER INCOMES BY DOMICILE LOCALITY

In principle in our tax system, land, houses, business or goods and income therefrom should be taxed by *situs* locality. But income from primitive industries, professional income, earned income and capital income should be taxed by domicile locality. Is this principle right? It has been asserted that in the case of the general income tax, all incomes should be taxed by domicile locality. If this principle be adopted, the income from the foregoing sources should rightly be taxed by the same locality. But the opinion is expressed that some income may be taxed by *situs* locality to a greater advantage. In actual practice, there are examples in which some of such incomes are actually taxed by *situs* locality. Let us therefore examine this phase of our question.

(1) Income from primitive industries and professional labour. According to our law, a primitive industry may be defined as a form of business but it is business without any

business establishment attached to it. However, the income therefrom may be considered to be the same as income from land, although such a view is open to serious doubt when examined carefully. Not all primitive industries can be regarded as being the same as land. Even agricultural income does not come entirely from land alone; it is derived partly from human labour applied to land—from man's physical and mental labour as well as from his management. For this reason, it may be said to be income from a business undertaking. More strictly speaking, it may be considered as income from production and business undertaking. This being so, such income should be taxed by domicile locality as it is a tax object other than land, houses or business with a business establishment. Income of persons engaged in professions such as physicians, lawyers and artists may also be regarded as a business income, but our law does not so regard it; and it is taxed by domicile locality. One may justly doubt whether such treatment is correct.

(A) Reasons for taxation by domicile locality.

(a) From justice in taxation. If the income tax is levied on such incomes, justice in taxation will be secured by taxing one's entire income at his residence, for such is the aim of the income tax and in accordance with the principle of personal taxation. If it is levied at the location of the tax object alone, and one's income at his domicile is excluded therefrom, the tax will not be levied according to the principle of ability to bear taxations.

(b) From financial revenue. The principle of personal taxation enables domicile locality to possess an excellent source of revenue, and thereby gives it a financial advantage.

(c) From taxation technique. In the case of such income, domicile locality usually corresponds with *situs* locality. For this reason, taxation by domicile locality will amount to taxation by *situs* locality, and from the technical standpoint the income will be reached comparatively easily.

(B) Reasons for taxation by *situs* locality. But such income need not be taxed by domicile locality alone. There

are examples of its taxation by *situs* locality, for which some reasons may be given.

(a) From the quality of tax objects and the principle of benefits received. Primitive industries and free professions should be regarded primarily as something like business and held in inseparable relations with the locality in which they are situated and should be considered as receiving benefits from the development of the locality and facilities established therein. This fact should not be ignored in taxing them. Suppose the business tax is levied on them. It will most probably take into consideration the foregoing relations, but in actuality no such a tax is levied. Because of this, *situs* locality should be entitled to share the revenue from the income tax. In olden times, these industries and professions existed in the domicile locality of their owners, and thus domicile locality coincided with *situs* locality, as far as the taxation of these industries and professions was concerned. But domicile and *situs* became divorced from each other, so that the taxation of these industries and professions by domicile locality prevents *situs* locality from sharing in the revenue from the tax thereon.

(b) From financial revenue. When *situs* locality has the right to tax its local resources, it will be in a position to have an ample supply of revenue and its local facilities will be perfected; while primitive industries and professions will be able to undergo a greater development. Moreover, the tax burden of the people of the locality will be alleviated to some extent.

(c) From taxation technique. When these industries and professions are taxed by *situs* locality, the stoppage-at-source system will be realised and the evasion of the tax will be reduced to the minimum, and the income can be reached with comparative ease.

(d) From the social and the economic standpoints. If income from such sources is taxed only by domicile locality, many taxpayers will have their residences at places where tax rates are the lowest, because it is easier to change the

place of their residence than that of their business establishments. As people will prefer to go where the tax is lightest, the tax burden of the citizens of such a locality will become all the lighter. On the other hand, the number of citizens where the tax rate is high will decrease and the tax burden of the remaining citizens will become all the greater, thereby causing them financial distress. Thus, this tax arrangement will result in an inequality of local developments. All these unfortunate consequences will be especially disastrous for *situs* locality where, although tax objects are there located, there will be financial distress as revenue from these objects will go to domicile locality, and the financial burden of its people will be increased. Moreover, the concentration of people in localities where the tax rates are the lowest is an undesirable social phenomenon, and the tax system that gives rise to such ill results cannot be considered as desirable. For this reason, the income under consideration should be taxed equally between *situs* and domicile localities. Moreover, the business tax should be extended to these localities, thereby giving a better share to *situs* locality.

(2) Earned income. Unlike the business enterprises above mentioned, earned income is entirely personal and should therefore be taxed by domicile locality. However, reasons may be found for its taxation by *situs* locality.

(A) Reasons for taxation by domicile locality.

(a) From justice in taxation. The first feature of taxation by domicile locality is that personal lump-sum taxation is possible and greater justice in taxation is thereby secured. Earned income may be supposed not to have received any benefit from *situs* locality, and for this reason it need not be taxed by that locality.

(b) From financial revenue. The great majority of those who secure earned income are proletarians, and the locality in which they live has the responsibility of providing for their education, health, economic relief, etc. For this reason, domicile locality is often unable to cope with its financial needs, so that it should be given the right to demand finan-

cial aid from the locality where the business establishments of its citizens are located. It is clear, therefore, that domicile locality has a perfect right to tax the earned income of workers and is thus enabled to secure the financial revenue necessary for its civic life.

(c) From taxation technique. Taxation by domicile locality not being a stoppage-at-sources system, it will be open to evasion when looked at from taxation technique. But earned income being the income of individual citizens, obnoxious practices such as assuming of another's name or the false reporting of the amount of income will not be so easy as in the case of income from property or business. Thus, this method will not give rise to many evils.

(B) Reasons for taxation by *situs* locality. But one should not forget that there are some reasons for taxation of earned income by *situs* locality.

(a) From justice of benefits received. It is doubtful whether one can say that *situs* locality does not confer any benefit on those who secure earned income. Suppose a person is working for a company or in a government office located in a place named A and lives in a neighbouring place, B. In this case, can one say that such a person does not receive any benefit from A although he receives benefit from B? He is securing income from some business or institutions receiving benefit from the development and facilities of A. He is participating in such a business enterprise. If such business receives benefits from *situs* locality, it means that the worker himself is also receiving them from the same locality. Moreover, he makes use of the roads, health facilities, fire-prevention system, etc., in the place where he works, and thus receives numerous benefits therefrom. He is not like a tourist who may come to A one day and gets the benefit of its facilities, but spends money there in return. The worker, therefore, should be required to make some sort of return for the benefits received at A.

(b) From financial revenue. If *situs* locality taxes the earned income of workers residing in other places, it will

be enabled to establish various facilities which in return will benefit other inhabitants.

(c) From taxation technique. Taxation by *situs* locality being a stoppage-at-source system, income may be reached with comparative ease. But taxation by *situs* locality will create a somewhat perplexing issue in respect of the salaries and pensions of government officials and public servants. In international relations, there will not be any such issue because the tax is levied by the State to which the officials belong, but in the case of interlocal taxation within a State, there is some doubt as to their exact location. I suggest that in the case of salaries, they should be taxed by the locality in which the government office is located; and that in the case of local pensions, they should be taxed by the locality which pays them out. Again, in the case of State pensions, I suggest that they should be taxed in the locality where they are paid.

(d) From the social and economic standpoint. If the tax on earned income is taxed solely by domicile locality, persons will go to places where the tax rates are the lowest, because it is easier to change their domicile than the location of their employment. This will result in an unequal development of different localities. It should be noted in this connection that the advent of workers, unlike that of propertied persons, will cause embarrassment of the locality rather than assist its prosperity. Thus, their arrival at a given locality will increase the financial burden of the inhabitants of that locality.

The foregoing discussion convinces one that earned income should be taxed at least partly by *situs* locality, it being also taxed by domicile locality. But in the case of domicile locality having a financial deficit because of such an arrangement, a method should be contrived by which such loss on the part of domicile locality can be compensated for by *situs* locality. This should not be forgotten. At any rate, *situs* locality should be allowed to share in the taxation of earned income to a certain extent.

(3) Interest on capital. Inasmuch as all surtaxes on the Class B income tax and on the tax on capital interest is forbidden by our tax law, the local surtax on capital interest can only be levied on Class C income such as interest on loans among individual citizens and dividends from stocks. Interest on corporate bonds and debentures and bank deposits are taken into consideration as a partial basis for the household tax. The location of the owners of such bonds, debentures and bank deposits is easy enough to ascertain, but the location of these tax objects is somewhat difficult to find. In actual practice, the most convenient method is to tax such interest by the locality where it is paid, but this may be sometimes criticized as being too formal. A more appropriate method would be to tax such interest at the residence of debtors. In the case of interest on foreign government bonds, debentures of foreign corporations and domestic government bonds, there is no way other than to tax it at the place of payment. But in the case of local domestic bonds, interest thereon should be taxed by the locality which pays the interest. In the case of interest on domestic debentures, it may be taxed by the locality where the head office of the company issuing the debentures is situated. The interest on bank deposits may be taxed at the location of the head office of the bank, but the more appropriate method would be to tax it at the locality where the deposits are made and incidentally where interest is paid. In the case of loans among individual citizens, either the location of the debtors or of their business establishments may be taken. Where business establishments and domiciles are differently situated and where indications are clear that the latter were rented for business reasons, the tax should be levied at the place of the business establishments. But where there are only domiciles clearly indicated, the tax should be levied there. On the other hand, it should be admitted that, when there are numerous debtors involved, it will be very burdensome to tax them at each of their domiciles. Such a system will be highly impracticable. Taxation by *situs* locality is correct as a theory, but in actual

practice there is no way other than to tax creditors at the location of their domicile. I shall make a comparative study of taxation on the income in question by *situs* and by domicile localities.

(A) Reasons for taxation by domicile locality.

(a) From justice in taxation. Justice in taxation will be attained when one is taxed at one's domicile for one's income. So long as this income does not receive any benefit from *situs* locality, its taxation based on the principle of benefits received has no place in our discussion.

(b) From taxation technique. As has been observed, in the case of loans among individual citizens, it is simpler to tax the interest on such loans at the domicile of creditors.

(c) From financial revenue. There is no doubt that taxation by domicile locality is advantageous to this locality.

(d) From the economic standpoint. It will be economically advantageous for *situs* locality to leave the taxation of this kind of income to the locality where capitalists reside. It may suffer some financial loss, but it may also, on the other hand, receive economic benefits inasmuch as it will encourage the utilization of capital and bring about prosperity within its boundaries. Taxation by *situs* locality will discourage the inflow of capital from other localities and thus depress its own industries. This will be all the more so when the tax rates are high or when *situs* locality is primarily short of capital and depends on the inflow of capital from other localities. Thus, the taxation of income exclusively by domicile locality harmonises with the interest of localities in need of external capital. In other words, this system of taxation is beneficial to the financial interests of domicile localities and the economic interests of *situs* localities.

(B) Reasons for taxation by *situs* locality.

(a) From taxation technique. So long as interest on capital is paid in a great majority of cases by banks and companies, the best possible way to reach the tax object is to tax it by the locality in which the payment of interest is made.

(b) From financial revenue. Taxation by *situs* locality will enrich the financial revenue of such locality and alleviate the financial burden of other inhabitants of the same locality and will enable it to perfect the various facilities which are needed for its development. If *situs* locality is unable to secure such a tax, it will be faced by financial distress.

(c) From the social and economic standpoint. If domicile locality has an exclusive right to tax this income, capitalists will move to localities where the tax rates are the lowest; and in consequence, not only will *situs* locality lose a rich source of revenue, but a heavy burden will also fall on the shoulders of other inhabitants, and there will be an unequal development for different localities.

(d) From the principle of benefits received. Anyhow, the locality where interest is paid out is the income-yielding place so far as the recipients of interest are concerned. Thus, they may owe a measure of obligation to that locality, which fact may be taken as some excuse for taxation by *situs* locality. Thus, we find some reason for taxation by *situs* locality. However, as has been already noted, such taxation is sometimes highly impracticable. Interest on loans among individual citizens should be taxed only by the domicile locality of its recipients.

CONCLUSION

To summarise: The principle of taxation now in force in this country relative to the interlocal taxation between *situs* and domicile localities—a principle under which land, houses, business, goods and income therefrom are taxed by *situs* locality while other tax objects are taxed by domicile locality—cannot be regarded as desirable. A more suitable system would be to tax all of these tax objects equally between the two localities. However, practical necessity demands that such a special tax object as interest on loans among individual citizens should be taxed by the domicile locality of creditors. True, the adoption of the proposed

new principle would leave many elements undealt with. Such a defect, however, can be eliminated only by suspending local taxation in favour of national taxation. But even this would not eliminate difficulties over jurisdiction in international relations. To do this, a world State capable of a universal taxation would need to be established. Of course, one may seriously doubt the possibility of such an ambitious scheme. But such an idea is conducive to a single world-taxing power. At any rate, one way of mollifying the existing conflicts over jurisdiction in interlocal taxation is to enlarge the unit of locality, in order that differences between *situs* locality and domicile locality may be reduced to a minimum.

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