

RIO TINTO - ZINC CORPORATION LIMITED

PERSONAL AND CONFIDENTIAL

A. Lord Esq.,
The Board Room,
Inland Revenue,
Somerset House,
LONDON.

RTZ

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Mr's Medical

*Perhaps we can have
a word about this*

15th December, 1971. *12/12*

Dear Alan,

Thank you for your letter of 13th December. I agree that the Working Group should proceed as you suggest.

I hesitate to suggest additional double taxation points, till we deal with the existing list.

There is one point which has been on my mind for some time, and which is being brought up regularly at the various tax committees of which I am chairman.

It is a procedural one about the consultations which trade associations and the Board may have on the occasion of the initiation of negotiations for double tax treaties.

One is normally requested by the Board, on notice being given to the Board from some overseas territory of the desire to talk double tax, for a note of the points which are judged essential by the appropriate UK trade association (CBI, ICC, etc.).

What happens after this is that the expert members of the appropriate committee are canvassed for their views, which are usually given after considerable research and consideration. These are massed into one comprehensive letter, which then becomes one's official reply to the Board's request.

After that, silence.

.../...

15th December, 1971.

A. Lord Esq.

I can understand the Board's desire to play its hand untrammelled by kibitzers peering over its shoulder and advising which cards to play.

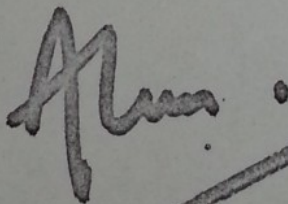
I can also understand the need for official secrecy.

There is, however, a peeved feeling on our side that some more confidence would be justified, not necessarily merely to satisfy our curiosity, but with a view to helping, if help can be given, in clarification and identification of the real issues and problems.

I know what the Board's official reply must be. Nevertheless, I will only say that on the occasion of one's visits abroad, without any attempt to pierce official secrets, one is offered detailed comment on negotiations then in train with the British and other governments. Recently in Indonesia, I was shown a letter from the UK, and offered sight of the initialled agreement with the Netherlands etc, etc. The same thing seems to happen in other countries. It is a little vexing, say the least, that one often gets news of British negotiations from the other side. I am not sure that I know what the answer is to the dilemma, if it is a dilemma. But I would certainly like to talk to you about it sometime.

With kind regards,

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'A.C. Davies', with a small dot at the end.

(A.C. Davies)

PERSONAL & CONFIDENTIAL

23 December 1971

A G Davies Esq
Rio-Tinto Zinc Corporation Ltd
6 St James's Square
LONDON SW1

Thank you for your letter of 15 December.

I accept what you say as a very proper reproof. You know how firmly we adhere to rules of confidentiality but I think on reflection that it is true that we have been playing the game by a now somewhat outdated rule book. The answer, I think, is in future to have confidential discussions on the usual consultative basis with two or three people representing the CBI Taxation Committee and perhaps separately on the same basis with the ABCC and one or two other representative bodies also. At these meetings we would tell people what changes in agreements were in the pipeline and what the main open points were and we would ask for views on the relative importance of points which were still to play for. Depending on the number of agreements under negotiation or re-negotiation we could either have meetings ad hoc and in relation to particular agreements or at intervals of not less than, say, 6 months to report progress more generally.

I think that we ourselves would find a procedure of this kind quite helpful. If it is the sort of thing you had in mind perhaps you would leave it to me to lay on a first meeting.

A2

(ALAN LORD)

15 MARCH 1972

	<u>CBI/ICC</u>	<u>Inland Revenue</u>
Messrs Davies	(Rio Tinto Zinc)	Miss A H McNicol
Northcliffe	(Unilever)	L J H Beighton
Esam	(Shell)	P Lewis
Evans	(Commercial Union)	C Stewart
Crowe	(ICI)	J M Johnson
Dale	(British American Tobacco)	
Gray	(Rio Tinto Zinc)	
Gomeche	(CBI)	

1. Miss McNicol opened by saying that these were the first round of talks aimed at a closer consultation between certain representative bodies and the Inland Revenue on matters of double taxation. It was hoped that these talks would be useful to both sides and it was suggested that they generally cover a progress report on negotiations and the views of both sides on certain of the more difficult issues - which seem to arise mostly with developing countries. The talks would of course remain confidential.

2. Starting with Malaysia, Miss McNicol said that we could not reach agreement because of shipping. The Malaysians are holding out for a 50/50 basis of taxation of shipping profits whereas the United Kingdom stands by 'the country of residence of the owner' taxing principle.

3. Davies pointed out that there was no representative from the Chamber of Shipping present but he wanted to put forward certain views on shipping generally. He felt that the profits from shipping were small and consequently there was really nothing in this question for the United Kingdom. As far as tax is concerned there is little or nothing involved and therefore it was a pity to lose an agreement just because of shipping.

4. Northcliffe felt there were three points relevant to the problem. First, shipping was really a red-herring - if we negotiated 50/50 would there really be any grounds for complaint. Secondly he thought the Inland Revenue were against entering into a new form of shipping article because this would lead to other countries pressing for similar treatment. Miss McNicol accepted this. Northcliffe's third point was that other countries who have conceded a 50/50 treatment have not in fact obtained any concession from the other side for this which would seem to indicate that there was nothing in the shipping concession.

. Davies said that Norway now gave 50/50 but Miss McNicol said that this was not with countries with whom they have large trade. Davies also referred to other countries such

as Sweden and the Netherlands. Miss McNicol said that Sweden also had only given the concession where it was not important to her but we would bear in mind what had been said. We would be discussing the shipping problem in detail with the Chamber of Shipping. Davies said he was worried that the Chamber would merely tell us to stand fast and yet he wondered what really was at stake.

6. Miss McNicol next turned to Canada saying that representatives of the Canadian Ministry of Finance had visited the Inland Revenue, not for negotiations but to discuss their new taxation system. Davies thought there were many things which could be said about this but he felt the new capital gains tax was going to be a major problem. It was a threat to the representative who went to Canada and then returned. It would impede the flow of executives to Canada.

7. Northcliffe thought the Canadian imputation system generally would cause all kinds of problems. There was discrimination against the branch of a non-resident company compared with a resident of Canada. Miss McNicol agreed that Canada does now cause us some concern. Both Crowe and Evans thought that Davies' point on capital gains was valid and hoped it could be put right by treaty or otherwise. Miss McNicol said that Canada knows this is blocked by the existing agreement. Obviously, however, we could not go into depth on Canada this afternoon but no doubt those present would reflect on what had been said for future talks.

8. Miss McNicol referred back to the shipping discussion and pointed out that the United Kingdom view was the view of Ministers, not only the Revenue. Esam suggested there would be some benefit in confidentially sounding out other interested parties, not only the Chamber of Shipping, on this question of shipping. Davies did not think there was a 'tax-bite' involved otherwise freight charges would go up. Northcliffe thought that the shipping bodies want to stick by exemption because it is so 'clean'. Davies added that he felt our agreements would erode one way or the other. If we do not give way on shipping, other countries will consider terminating agreements with the United Kingdom anyway. He then quoted an example of a case he had heard about in Australia. Despite tax penalties on overseas companies, companies of countries with whom Australia did not have an agreement covering shipping profits, were still able to outbid United Kingdom shipping companies for shipping contracts - so just how much did this tax exemption count?

9. Miss McNicol said again that these views would be borne in mind but that the main channel of discussion was the Chamber of Shipping. Mr Esam asked whether the CBI could send a circular to members asking for their views on shipping. Miss McNicol said that that would make it difficult to maintain confidentiality but Mr Esam could consult BP in confidence if he wished and then put forward any representations.

10. Miss McNicol then turned to Brazil and said we had received one of their representatives for pre-negotiation talks. It was pointed out that Brazil had a tax system tailored to economic self-interest. Both Davies and Northcliffe ran down the system. They said it was a form of exchange control with high taxation unless you kept your money in Brazil. Miss McNicol said that a non-discrimination article would obviously be important here. Gray asked whether the United Kingdom would give credit for the compulsory investment schemes in Brazil. Miss McNicol replied that this would have to be considered. We are unlikely to be negotiating with Brazil until next year and in the meantime the economic position is steadily improving there. They now have a small balance of payments surplus and might soon be able to come more into line with the tax systems of developed countries.

11. Davies asked whether anything was happening with any other South American countries - Argentina? Miss McNicol said 'no'. It seemed unlikely that any progress would be made: South American countries were very source-minded.

12. Miss McNicol said that we had sent a draft agreement to Indonesia but they had not replied. The ball was really in their court. Iran had now surfaced and it seemed likely that we might be able to settle with them on standard agreement lines. This would exclude oil. Davies remarked that if we could have an agreement with Iran excluding oil, could we not have an agreement with Malaysia without shipping. Gray pointed out that Iran has a split rate system like Germany. What therefore was the position on withholding rates. Mr Stewart confirmed that there were no rates shown in the draft from Iran.

13. Miss McNicol said that an agreement with Zambia had been initialled. It was basically on OECD lines. We had also had talks with Jamaica but these had run into difficulties on a couple of points. First, Jamaica wanted to limit the scope of the non-discrimination article so that there might be special provisions for the benefit of Jamaican and CARIFTA companies. Evans said that he understood that the withholding rates in Jamaica's other agreements were higher than in the 'Blue Book'. Mr Lewis confirmed these rates as 22½ per cent with the United States and Canada but there was this two tier system in Jamaica and credit for the withheld tax was given against the second tier.

14. Miss McNicol said the second difficulty related to management fees. The Jamaicans would probably accept a net income basis for taxation. Davies asked the position of management fees where there was no permanent establishment. Miss McNicol said we had not heard from the Jamaicans for some months but they had wanted some form of withholding tax on management fees. Davies thought the Jamaicans were coming down heavily on this item because management companies had been set up in the Cayman Islands by Jamaicans. Miss McNicol

thought there were three points which triggered off this attitude on management fees in Jamaica. First their idea of the source principle. Secondly, companies such as those in the Cayman Islands, and thirdly the incredulity of some countries that the rates of fees are genuine rates.

15. Negotiations were continuing with the British Virgin Islands and Miss McNicol pointed out that the revised agreement would contain a combined rate of 30 per cent on dividends. The old agreement was terminated and would run out on 6 April 1972 for the United Kingdom. For Montserrat there was also to be a revised agreement.

16. Miss McNicol referred to our talks in Nairobi in January and said that we had again come up against the management expenses question. Unless Kenya get an acceptable text soon, they will terminate the old agreement. Uganda was not pressing at this stage. Miss McNicol said that on management expenses, the United Kingdom takes the line that if even a modest charge is imposed on gross income, then all the profit may be taken away. There is a strong argument against imposing any tax at all on what is only a receipt. There is a similar problem with royalties.

17. Davies took up the point on royalties and referring to patents, said that countries only tolerated what was an accepted universal rate; but expenses were incurred, eg in defending patents. Miss McNicol said that it was in the national interest that a low or nil rate be applicable. Davies said that the difficulty with management fees was showing what was expended. They might as well pay the tax and get credit in the United Kingdom for British companies were involved in a running battle all the time to reduce the charge to nil. The definition of royalties in the Australian and New Zealand Agreements was very unsatisfactory because it enabled those countries to charge withholding tax on management fees.

18. Crowe said that he thought it was acceptable to give way to some extent on the management fees. Taxing on a net income basis would not cause any difficulty although this would not apply to royalties where there may be many other parties involved and the production of costs would be a very real problem. Therefore a low rate or exemption would be preferable.

19. The general feeling of the meeting was that it was necessary to hold out for a low rate on royalties but that management fees could be treated differently. Miss McNicol asked for views on fees paid to independent professional people. Northcliffe felt there was the same problem as with management fees although these other fees should be called advisory fees or technical assistance fees. Evans thought that it was often easier to get a deduction for fees if they were not being remitted abroad. Miss McNicol summed up the feeling by saying that an agreement on some basis preferably

with as low a rate as possible was more acceptable than none at all and Northcliffe added a covering option that the taxpayer could elect to be taxed on a net income basis.

20. The question of the permanent establishment article was then raised. Miss McNicol asked how important this was. Evans thought it very important from the insurance agent point of view. Crowe said there were many examples of trading with another country without having a subsidiary or a branch. Northcliffe thought the agency definition in the permanent establishment article to be very important. Evans added that the permanent establishment concept did prevent countries reaching out to tax profits which did not arise there at all. If the concept was not maintained there would be much more of this. Miss McNicol said that the permanent establishment concept ought to work and she could not see future agreements without it. While areas of trading through permanent establishments may be small, when the concept matters, it matters a lot. It was not always easy to maintain the concept where a third company is inserted between the companies because neither country can then interpose.

21. Miss McNicol then mentioned that the Revenue had been looking at the possibility of entering into discussions about the extension of matching credit for pioneer reliefs with countries with whom we could make no comprehensive agreement. This was merely an idea and could take the form of a limited agreement covering just matching credit and non-discrimination articles. Gray asked why this could not be done unilaterally. Miss McNicol said that this would need new legislation whereas a limited agreement would be covered by existing legislation and we would also have the added safeguard of an agreement providing for non-discrimination as a quid pro quo.

22. Davies asked which countries the Revenue had in mind. Miss McNicol said Argentina, Brazil, Uruguay, possibly Chile, Paraguay, Ecuador, Ceylon, India, the West African countries, Malaysia, Indonesia and Turkey. Northcliffe said that some developing countries do not always place a great importance on matching credit. They prefer frustration of their relief schemes so that profits are not remitted abroad. Davies asked how serious was this proposal. Miss McNicol said it was thought there were advantages - certainly a non-discrimination article would be one to the United Kingdom - but it was at present just a thought floated internally.

23. With regard to future meetings it was agreed to hold them about once a quarter although Davies thought consultation was absolutely vital when the United Kingdom was stuck during negotiations. It was agreed that the next meeting be fixed for Wednesday 5 July at 3.00 pm.

MISS McNICOL

MEETING WITH CBI ON 10 JULY 1972

Double Taxation Matters

1. I attach notes by Mr Stewart and Mr Lewis on the state of play in discussions etc with their countries. I believe you already have a copy of Mr Thomas' aide-memoire.

2. The important news for the CBI concerns Jamaica and Malaysia -

a. The main points with regard to Jamaica are that agreement has been reached on Management Fees and Royalties and on the Non-Discrimination Article.

Management fees are to be subject to a withholding tax of 12 $\frac{1}{2}$ % but there will be an option for the recipient to be taxed on a net income basis; on royalties the withholding tax will be 10%. The Non-Discrimination Article would be on conventional lines but would provide for the exclusion of the Jamaicans' tax on Insurance Premiums and whatever other taxes the Taxation Authorities of the two countries agreed should be excluded.

b. Agreement has been reached with Malaysia over the text of a new agreement subject to the revision of the Dividend Article in the light of our Corporation Tax changes. The Shipping Article will be in the usual form i.e. the state of residence will have the exclusive right to tax. The Royalties Article will exempt "Approved industrial royalties" from Malaysian tax, but the Credit Article will give matching Credit up to 15% in respect of the waived tax; most other royalties will be subject to a 15% withholding tax.

3. The CBI will also be interested to hear of developments in East Africa. We have sent all three countries the draft of a management fees Article along the lines of the one agreed with Jamaica, and are awaiting their comments. Kenya has given notice of termination of the present agreement and no public announcement has yet been made in this country - we should like to agree on the draft of an announcement with the Kenyans.

4. There is little else to report on the Agreement side.

EEC

5. Only one Directive has been published which affects the Inland Revenue - Directive 69/335 on the "droit d'apport". Draft Directives have been published on The Taxation of International Mergers (COM 69/5), the Taxation of Parent and Subsidiary Companies (COM 69/6), the Rates of the droit d'apport (COM 71(8)) and Accountants and Tax Consultants. Draft Regulations have been published on joint Enterprises (Entreprise Commune) (COM 71(812)) and the European Company (COM 70(600)).

PS 398/72

Copies of these minutes to:
Mrs Smallwood
Mr Taylor Thompson
Mr Vernon
Mr Pitts
Mr Hopkins
Mr Marshall on 13.4.73

NOTES OF A MEETING IN THE BOARD ROOM, SOMERSET HOUSE,
WITH REPRESENTATIVES OF THE CONFEDERATION OF BRITISH
INDUSTRY ON 4 APRIL 1973

Present:

CONFEDERATION OF BRITISH INDUSTRY

A G Davies (RTZ)
C J Crowe (ICI)
R T Esam (Shell)
E N C Gray (RTZ)
J F P Connell

INLAND REVENUE

Mrs A H Smallwood
D Hopkins
W Coughlin

After a preliminary exchange of pleasantries Mr Davies asked what the position was regarding the proposed revised dividend Article for the UK/USA Convention. Mrs Smallwood said that exploratory discussions were held in Washington last February but there has been very little progress. Proposals have been put to the Americans, which have resulted in very little response. The reason for this may be partly caused by the departure of Mr Cohen. In the absence of a revised Article the present Convention stands, in which case American resident portfolio shareholders will not be entitled to payment of a tax credit in respect of their UK dividends. The USA may (though this seems unlikely as such action between two developed countries might be considered provocative) give notice of termination of the Convention. Should this occur on or before 30 June 1973 the Convention will cease to have effect as regards USA and UK taxes from the beginning of the next USA and UK tax years respectively. Mr Davies said that he had recently mentioned to Mr Lord the CBI's view that if no agreement is reached by 6 April then the Inland Revenue should make a public announcement explaining the situation, and that he (Mr Lord) had indicated that the Revenue may issue a statement. Mr Esam said that a short 'interim' press release would be better than no announcement at all. His particular interest is that more than 30 per cent of the shares of the Royal Dutch/Shell Group is held by persons resident in the USA. Mr Davies said that if no official statement is made there will shortly be a deluge of letters from American shareholders especially as April and May are the months when there is a heavy flow of dividends from large UK companies. Mrs Smallwood said it would be a departure from accepted custom for the Revenue to make a public statement of this nature but that she will consider the matter. Mr Davies said that a general statement of the dividend position after 6 April for those countries for which no revised agreements had been concluded would be of some help. An exchange of

Mr Davies said that there are at least 17 major contracts in Indonesia held up because of the effect of high rates of withholding tax on interest. To give an example of the punitive effect of a high withholding tax, a bank lending (say) \$200,000 for development in Indonesia would normally work on a turn of about 1 per cent (ie \$2,000) which would be completely wiped out by a withholding tax of 10 per cent deducted from interest at 10 per cent of the principal. At current open market levels of interest on international loans the cut off rate of withholding tax where such loans become uneconomic to the lender is around 8 per cent.

A
Mr Crowe said that his Company has a partly owned subsidiary which is deemed to be resident in Kenya. He would like to see a new comprehensive Agreement come into force as soon as possible. Mrs Smallwood said that there has been slow progress in our negotiations with the Kenyans; there is a limit to the number of concessions we can give, it will of course be a pity if we cannot reach agreement but this is not of vital importance. Mr Crowe said that he will write setting out a number of points. He is particularly anxious about the question of Management Fees and hopes that any new Agreement will include net income option with a reduced rate of withholding tax. He added that he does not regard Management Fees as arising in Kenya though it will be impossible to convince the Kenyans of this.

CO
Mr Davies referred to the Mexican President's visit to the UK and added that he (the President) has let it be known that British investment there is most welcome. The Mexicans wish to become less dependent on the USA for new investment. The UK is regarded as a potential good source, especially since in the past so much pioneering development in Mexico had been financed from here. Mexico is developing very rapidly and should be given high priority when deciding what countries to seek negotiations for the purpose of concluding Double Taxation Agreements. Mrs Smallwood said that we cannot pull Mexico up the queue unless we are given a good case. Mr Davies said he will let us have a note on this point.

We anticipate no trouble here and initialling should just be a formality.

No approach can be made. We only give credit for pre-UDI tax.

We intend to write to the Spaniards very soon proposing that negotiations be resumed.

2 April 1973

RTZ

**The Rio Tinto-Zinc
Corporation Limited**

B/CP/TAX

*Mr Taylor Thomas for
Mr Hopkin
A+H
2/8*

Mrs. A. Smallwood,
Secretaries Office,
Inland Revenue,
Somerset House,
New Wing,
London, WC2R 1LB.

PO Box 133
6 St James's Square London SW1Y 4LD
Telephone 01-930 2399
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1st August, 1973

Dear Anne,

You were good enough to ask us for a shopping
list selection for possible treaties.

On the assumption that you will accept individual
comment, we rather like Mexico, India, and Thailand or
Korea, in that order.

Yours sincerely,

Neil

D.N.C. Gray.

6, ST. JAMES'S SQUARE
LONDON, SW1Y 4LD
TELEPHONE: 01-930 2399

28th August, 1973

AGD/GM

Mrs. A. H. Smallwood,
The Board Room,
Inland Revenue,
Somerset House,
London, W.C.2.

Dear Mrs. Smallwood,

Double Tax Treaty Negotiations

With regard to the question you posed during the meeting on 24th July about the interest in, and priority designation of, certain countries, we have made a head-count, and subject to all the caveats about Gallup-polls and head-counting, the indications are that India, Thailand, Iran and Mexico lead the voting in that order, with Morocco, Egypt, Sudan and South Korea bringing up the rear, also in that order.

I am not sure that if I say that India was first by several heads, it will bring you very much joy.

With kind regards,

Yours sincerely,

Alan Davies
(A.G. Davies)
ppmw.

NOTE OF A MEETING IN THE BOARD ROOM, SOMERSET HOUSE AT 3PM
ON 24 JULY 1973

Confederation of British Industry

A G Davies
R T Esam
W K Evans
D N C Gray
J F P Connell
Mr Harvey

Inland Revenue

Mrs A H Smallwood
J D Taylor Thompson
D Hopkins
J Marshall
Mrs C B Hubbard

Progress of the revision of dividend articles

1. After welcoming the representatives of the CBI Mrs Smallwood started the meeting by giving a report of the Revenue's progress of the revision of the dividend articles in our Double Taxation Agreements. Seven Agreements had been approved by Parliament: these were the dividend articles with Denmark, Finland, France, Republic of Ireland and Cyprus, and complete agreements with Malaysia and Jamaica. Negotiations for a revision of the whole of the Cyprus Agreement were currently taking place. Mr Davies said that he appreciated the Revenue's invitation to make representations concerning this revision, but said the CBI had not had sufficient notice to produce considered comments, and he asked that on future occasions a minimum of three weeks' notice should be given. It was not clear why this had happened but the Inland Revenue noted Mr Davies' comment for future reference.

Jamaican Agreement

2. Mr Evans said that the rate of $22\frac{1}{2}$ per cent in the Jamaican dividend article was out of line with the OECD rate of 15 per cent and he feared that it might be a bad precedent for future negotiations with developing countries. Mrs Smallwood said that this would not be so as Jamaica was a rather special case. The Jamaican rate of $22\frac{1}{2}$ per cent broadly corresponded to a conventional 15 per cent withholding rate since it covered also the additional company profits tax. The purpose of sweeping up the additional company profits tax with the withholding tax was to avoid undue carry-forward of ACPT. The effective withholding rate was 15.75 per cent and $22\frac{1}{2}$ per cent was the nearest rounding up figure to produce a broadly equivalent rate. Mr Evans said that the comparison was not strictly accurate, as it was charged on the company profits and not on the dividend. Mr Hopkins said that the Canadians had already accepted the $22\frac{1}{2}$ per cent rate which made the United Kingdom bargaining position more difficult. Jamaica would however remain a unique agreement as the rates agreed could be easily justified as they were correct in the Jamaican context. One good point in the agreement was that the non-discrimination article had been retained, in spite of the Jamaican reluctance to keep it.

Countries which had not yet agreed in principle to a revision of the dividend Article

9. Mrs Smallwood said that the Netherlands, Switzerland and Belgium had not yet accepted the revised dividend article, but were holding out in the hope of securing more favourable terms. There had been no discussion as yet with Luxembourg and it was expected that Luxembourg would follow what was agreed with the Netherlands. Some progress had been made with Austria, and with Portugal where our proposals were being submitted to their Ministers. Arrangements had been made to see the Brazilians in November. Japan was currently undertaking a review of company taxation and the United Kingdom expected to hear from them shortly.

Possibility of new agreements

10. Mrs Smallwood said that as considerable progress had been made in revising the dividend articles it might be possible to start negotiations for 2 or 3 new agreements. She invited the CBI to send a list of their priorities. She stressed that economic and commercial factors would be decisive in choosing which to pursue. A list of possibilities was drawn up, including India, Iran, Thailand, Korea, Morocco, Egypt, Sudan and Mexico. The CBI undertook to consult their members and to send a list of their priorities to the Revenue.

United States/Soviet Double Taxation Agreement

11. Mr Davies mentioned the United States/Soviet Double Taxation Agreement. He said that it seemed nonsensical as there was no Soviet tax on profits and there was no credit mechanism in the agreement. It was thought however that the Russians were showing interest in the way profits were taxed in other countries, possibly with a view to taxing profits of foreign enterprises in the USSR.

Agreements with developing countries

12. Mrs Smallwood asked the CBI for their views on agreements with developing countries. She explained that these countries tended to be extremely source-minded and that it was sometimes necessary to concede high withholding rates in order to secure agreements with them. It was questionable whether it was worth getting agreements with such rates. A dual standard was evolving between agreements with developed and developing countries. Mr Evans agreed that it was a problem, and that the Revenue should try to contain it as far as possible. Mr Esam said that the proposal to tax on the basis of world wide profit must be resisted since it made the foreign tax credit situation unworkable. It could mean that an enterprise was taxed in a place where it had no profits, and as there was no source there there would be no double taxation relief available in the country of source. Mrs Smallwood noted that this was something that the CBI was anxious to have removed from the older agreements.

NOTE OF A MEETING WITH REPRESENTATIVES OF THE
CONFEDERATION OF BRITISH INDUSTRY AT SOMERSET HOUSE
ON 8 OCTOBER 1974.

Present:

Confederation of British
Industry

Inland Revenue

A G Davies
W K Evans
E B Nortcliffe
R T Esam
D. W. C. Gray
F N Harvey
Miss Hartland

Mrs A H Smallwood
P W Fawcett
Miss M A Barlow

1. USA - Proposed visits by Internal Revenue
Service officials to United Kingdom Companies

The CBI raised again the question (discussed at the last meeting) of IRS proposals to audit the books of selected British ~~associates~~ ^{insurance} of US Companies. Mrs Smallwood said that the Revenue had been aware of this matter for the last year and has been negotiating with IRS. The latest correspondence was received about 1 week ago and the Revenue intention is to stand firm. We are currently consulting the Solicitor. Evans for the CBI described the Dutch experience. The Dutch Government apparently took a very firm line from the beginning and asked the IRS auditors to leave. They subsequently received an apology. Other countries, particularly in South America have also raised objections. The CBI then produced copies of a draft circular on this question which they propose sending to their members. The circular advises members to deny access to books and records to IRS Officials and refer them to the Board. It also asks for details of approaches either past or future to be reported to the CBI Taxation Department. Mrs Smallwood agreed

parents

the UK was likely to set a pattern. ^{Mrs Smallwood} ~~BBB~~ also drew the CBI's attention to the provision in the Protocol relating to unit trusts.

c. Brazil: Mrs Smallwood explained that there were difficulties here since amending legislation would be necessary before there might be a possibility of our reaching agreement with Brazil. In the meantime, any talks would be informal and exploratory so that if no agreement were reached the matter might die a quiet death. The Brazilians have strange ideas about matching Credit which can be accommodated in d.t.a's by countries relieving double taxation by the ^{exemption} ~~exchange~~ method but ~~not easily~~ ~~difficult for~~ the UK which uses the Credit method. It is not helpful that the UK gives unilateral relief. We would like to find a compromise. The CBI ~~noted~~ ^{said} that they were very interested in Brazil and ~~Shell~~ were considering possibilities of investing there via Holland.

d. Other South American countries: no progress to report yet.

e. Philippines: there will be talks in the New Year. The Finance Minister was visiting the UK this week.

f. Sri Lanka: talks in November

g. Thailand: the UK have submitted a draft

h. South Korea: the UK have submitted a draft

i. Iran: drafts have been exchanged but progress is slow.

j. Bangladesh: the UK have submitted a draft but have received no reply as yet.

NOTE OF A MEETING IN THE BOARD ROOM
SOMERSET HOUSE AT 15.00 ON 23 JANUARY 1975

Present: Confederation of
British Industry

A G Davies
D N C Gray
R T Esam
E B Nortcliffe
W K Evans
F N Harvey

Inland Revenue

Mrs A H Smallwood
M H Collins
D Hopkins
I P Gunn
W M Coughlin

1. South Africa. Mr Davies opened the meeting with a reference to the Revenue's Press Notice dated 19 December 1974 - 'Taxation of Profits of Subsidiaries of United Kingdom Companies'. Whilst welcoming the general guidance it contained he was concerned about the degree of involvement by a United Kingdom company in the internal affairs of South African subsidiaries which is entailed. This was greater than the involvement by a UK parent company in the affairs of a UK subsidiary. Mrs Smallwood replied that it was difficult to think of a case where the gathering of the required information would by itself result in control being exercised in the UK, although it would be necessary to know all the facts and circumstances about any individual case before a decision could be made.

2. USA - State Taxes. The CBI were concerned that the method used by California to calculate the taxable profits of subsidiaries there was spreading to other States - in particular to Oregon, Michigan and New York. This method related the Californian figures for wages, turnover and tangible assets to global figures including those for all companies in the group to which the Californian company belonged. The result was a gross distortion of the true profit, especially as certain payments - for example Middle East taxes - were added back in the calculation. The Californian tax rate, nominally 9%, was in reality much greater. Their method of calculation, based on the desire to take the maximum amount of tax, was the cause of several tax suits going through the Courts there. The Federal authorities did not seem to be concerned about the attitude of California. The CBI had considered whether the Non-discrimination Article in the US Convention might afford protection but had concluded that the Americans would say that the subsidiaries of UK companies were not subjected to more burdensome taxation than were subsidiaries of US Companies. Mrs Smallwood sympathised with the CBI but said there was nothing we could do since the Convention did not cover State Taxes.

3. Other local taxes. The CBI were worried that local taxes in Australia, New Zealand and Canada were also becoming burdensome. The Provinces of Canada were locked in argument with the Federal authorities about the share of tax each should take.

4. SOUTH AMERICA; ANDEAN PACT; Brazil, Argentina and Venezeula. The CBI repeated their concern expressed at an earlier meeting (see paragraph 6 of the minutes of the meeting of 22 October 1973) about the treatment of royalties by countries in the Andean Pact. Argentina, Brazil and Venezuela were tending to treat all royalties flowing out of their territories as dividends and to disallow them. Furthermore they were applying penal rates of withholding tax to royalties. Generally they were disallowing

or challenging all payments other than dividends especially payments from subsidiaries to their foreign parents. Most operations in South America by CBI members were carried out through subsidiaries or associated companies there, since there were great difficulties in operating branches. Unfortunately there were no double taxation conventions or other international agreements of any kind which would afford protection from discriminatory treatment of royalties. The CBI were concerned that the Revenue might in some cases apply strictly the provisions of Section 485, Income and Corporation Taxes Act 1970. That might result in the disallowance of expenses associated with South American royalties or the refusal to grant credit for withholding tax deducted from royalties which were treated as "dividends" in South America. It was possible that some UK parent companies would supply knowhow to their South American subsidiaries without collecting royalties in exchange, or alternatively collecting a low rate of royalty. Mrs Smallwood said that she was conscious that Section 485 was an area of difficulty viz a viz trade royalties from Argentina and elsewhere in South America. We would find it difficult to accept a zero rate or a rate as high as 25%, but we would accept that the appropriate rate of royalty for knowledge might vary from one country to another. The Revenue would not wish to be unreasonable, but we could give no blanket assurance that Section 485 would not be applied at all. It would be necessary to look at all the facts in any individual case.

5. USA - Possible abolition of Withholding Tax Mrs Smallwood referred to Robert Patrick's recent speech in St Louis in which he suggested that America might eliminate its withholding taxes. Mr Patrick's proposals might reflect the current thinking of the US Administration. He argued that it was in America's national interest to suffer the small loss of revenue that would be caused by abolishing withholding taxes since the result would be an immediate gain in cash flow and an encouragement to inward investment. Mr Hopkins said that the desire to build up New York as an international financial centre was behind the proposal to abolish withholding tax on portfolio dividends. It was interesting to hear the Swiss delegate to OECD criticise the United States for their proposals. The CBI said that the US withholding taxes represented the single greatest impediment to investment there and they would welcome their removal. UK companies still retained a very large investment in the United States though not as great as the American trade investment in this country. 25)

6. USA - Position on the Double Taxation Negotiations The CBI thought that one result of the abolition of America's withholding taxes would be to strengthen the bargaining power of the UK in the negotiations for revision of the Dividends Article. Mrs Smallwood said there had been no progress on the renegotiation since the last meeting with the CBI. The ball was now in the American court. Eventually we would seek a completely new Convention with the United States. d

7. Progress on other Double Taxation Negotiations OW

a. Mrs Smallwood reported the latest position on negotiations, mentioning in particular Netherlands, Canada, Belgium, Australia, New Zealand, Kenya, Indonesia, Sudan, Norway, Singapore, Sierra Leone, Romania, Fiji and Germany.

b. The CBI had no comments to make about the forthcoming talks with Mauritius.

c. Spain The CBI expressed great interest in Spain but had no points to raise in connection with the talks which were to be held in February.

d. Ghana Mr Collins mentioned that Ghana did not want her power to levy a minimum tax on 24% of a company's turnover to be restricted by a double taxation convention. The CBI replied that in principle such a tax should be covered by a double taxation agreement, but in the case of Ghana it was not a practical problem since it was not charged in addition to the company tax but was simply the minimum tax payable. Generally speaking, the tax paid by companies in Ghana exceeded this minimum.

e. Brazil Mrs Smallwood said that following the informal discussions last October we were considering the open points of principle, such as Brazil's unwillingness to allow deduction for certain royalties, her desire to exclude her excess remittance tax from the Convention and her insistence that we should give credit for Brazilian withholding tax given up under the Convention. Our existing statutory powers did not enable us to accept the last point. In reply to a question from Mrs Smallwood about the value of an agreement with Brazil which would involve substantial concessions by the UK, the CBI replied that any agreement would be better than no agreement at all.

f. Sri Lanka Mr Hopkins said that one of the major points discussed at the talks in Colombo in November 1974 was Sri Lanka's position on ceiling rates for dividends and interest. Sri Lanka was not prepared to accept any reduction of her withholding rates for existing investment, but would agree to ceiling rates in respect of new investment - ie new capital imported into the country. Agreement had yet to be reached on the method of distinguishing new from old investment. Sri Lanka had said that she would consider a ceiling rate for dividends paid only by companies registered after a particular date. That might be the date of signature of the Convention, the date agreement was reached at official level, or some other date which might introduce a degree of retrospection. Mr Davies considered that Sri Lanka understood little of the realities of the world of business. Her proposals were of little more than academic interest since there had been no significant new UK investment there for a long time and there was little likelihood of any in the future. British companies would be wary of any moves by Sri Lanka to encourage new investment.

g. Iran The CBI mentioned their great interest in an agreement with Iran and Mrs Smallwood replied that we still awaited the Iranian response to our offer of talks. Mr Hopkins said that Iran's other agreements excluded income from activities in Iran concerned with oil production.

8. OECD

a. Model Convention Mr Hopkins said that a revision of some parts of the 1963 Model Convention had recently been printed.

b. Multinationals Mr Collins said that there had been no significant progress since the last CBI meeting. The Working Group examining transfer pricing had been continuing its study of the treatment of interest. It was expected that there would be difficulties and that the task would take a long time to complete.

c. Mrs Smallwood said that a new Working Party had recently been created to look at the taxation of energy. We were not represented on this Working Party but will be informed of developments.

9. USA - On Site Audits (see paragraph 1 of the minutes of the October 1974 meeting). Mrs Smallwood said that we had recently written to the FCO on general grounds. The whole question needed very careful consideration.

10. Next meeting

The next meeting with the CBI was arranged for Tuesday 16 April at 15.00.

CONFIDENTIAL

The CBI Sub-Group on double taxation came to a special meeting in the Board Room on 6 August to discuss the Brazilian Double Taxation Agreement. Those present were: Mr Nortcliffe (Unilever), Mr Crowe (ICI), Mr Evans (Commercial Union), Mr Gray (RTZ), Miss James (Shell) and Mr Moran~~X~~ (CBI). Mrs Smallwood, Mr Collins and Mr Adams represented the Board.

I outlined the reasons for having a discussion on Brazil. There was a good deal of pressure on the trade side to have an agreement, almost regardless of cost and content. We were still in negotiation with Brazil but seemed unlikely to reach agreement because of a range of problems. The first was the Brazilian concept of matching credit, which includes not only credit for pioneer reliefs in the usual sense but also credit for tax foregone under an agreement by reduction of withholding tax rates. This was something which we could not do under our enabling powers, and was something which could be costly for the country if we had to make agreements, or revise agreements on similar terms with developing countries generally.

Matching credit was not however the only problem. There are a number of features of the Brazilian tax code which are expensive for British investors and are unorthodox by western fiscal standards. It was probably assumed that if we had an agreement it would remove or modify these features, but present indications were that this was unlikely to happen. The most important of these was the treatment of royalties; royalties paid to a related foreign company are disallowed in the computation of the paying company, and are also subject to withholding tax. There is also the additional remittances tax which the Brazilians regard as non-negotiable and which applies to branch profits as well as to profits of subsidiary companies, the charge on commissions and the treatment of service payments as royalties.

The question for discussion was whether an agreement on those lines was worth having to British industry either on its own or as the precursor of other similar agreements with developing countries.

The general reaction was unfavourable. Those present felt that if we conceded the Brazilian point of view about royalties British interests would be wide open in other countries to having royalties treated in the same way as dividends. There was not however identity of view because some companies would benefit substantially from pioneer relief for operations in the North Eastern Territories, while others would obtain no pioneer relief. Naturally none of them would refuse matching credit for reductions in withholding taxes, but that was not something for which British interests would press. All those present could see risks in accepting the Brazilian treatment of royalties, which they assume would spread to any other Latin American countries with which we might conclude an agreement, to developing countries in the Far East, and to Africa.

It was accepted that the consequence of having unilateral relief was that the only real loss from the absence of an agreement was pioneer relief. Competitors in countries which have concluded an agreement with Brazil were of course benefiting from the matching credit for reduced withholding taxes, whether given as a credit or as a consequence of exemption methods. Mr Nortcliffe took the opportunity to stress once again the benefits of the exemption method which automatically transferred to the investor the benefits of pioneer relief. In his view the application of the exemption method to trade dividends would be of great advantage to international trade. (This is of course a familiar argument, and our policy is firmly in favour of the exemption method.) It was pointed out that there are ways by which companies can mitigate the effects of the situation, and in particular it was hoped that we would not be too rigorous in the application of Section 485 in relation to royalties. I said that one could give no undertaking about Section 485; it would obviously be impossible for us to ignore any blatant breaches of the arm's length principle and there could be criticism from the PAC if that happened which would be damaging to the companies as well as to the Revenue. The underlying point they made was however taken.

Mr Morant for the CBI then asked how confidential these consultations were because in order to clear the lines with the CBI he would have to raise the question with his Council. This consists of some 400 members and I said that on grounds of confidentiality we could not support this. There was then a useful discussion from which it appeared that the CBI Secretariat (but not the Overseas Tax Panel) are well aware of the powerful trade and political pressures in favour of having an agreement (apparently any agreement) with Brazil which he thought could lead to an explosion in the autumn. His personal view was that the Revenue and Treasury Ministers could be under pressures from other Ministers which might lead to an agreement, in spite of the unsatisfactory features that had been discussed. Much of the pressure is based on ignorance of the effects of unilateral relief and of the likely terms of a treaty, and it appears that much of it is generated in Brazil and by companies whose only overseas operations are, or are likely to be, in Brazil and which operate on the basis of official handouts. To such companies it might well appear that the absence of a double taxation agreement was a serious disadvantage and they would be unlikely to know about the possibilities of mitigation which are familiar to larger and more experienced companies.

It is alleged that the Brazilian tax authorities has spoken very freely to British interests, particularly city interests about the importance of an agreement, but it is not clear that they have given an accurate account of the matter. In particular it is alleged that they have indicated that if ^{we} were to give way on matching credit they would give way on royalties. The fact is however that both the history of our negotiations and the evidence of other treaties indicates that the royalties point is indeed non-negotiable. Mr Crowe's view is that it is up to the

CBI to make representations to the Brazilian authorities about what they regard as unsound taxation in particular of royalties. I said that whatever happened we could not breach the normal rule of preserving the confidentiality of discussions between governments and in the end it would probably be counter-productive to do so. I would however be very glad to have particulars of any published leaks but it was thought that there had been none. The CBI will no doubt have to consider how to deal with the situation in which it is speaking with two voices, and I said that we had taken note of this helpful discussion and would see what action was appropriate at the right time.

AHS
7/8

Copies to:

Mr Pollard
Mr Collins
Mr Gunn
Mr Fawcett
Mr Adams ✓

UK/BRAZIL DTA

List of points of difficulty

1. Credit for tax given up under DTA

The Brazilians insist that in return for any reduction under a DTA in the rate of their withholding tax, which would take effect only after 3 years, on dividends, interest and royalties flowing to the United Kingdom we should give credit against United Kingdom tax for all or part of the Brazilian tax given up as well as for the reduced Brazilian tax paid at the following rates:-

Dividends - 25 per cent.

Interest - 20 per cent.

Royalties - 25 per cent where received by a United Kingdom resident controlling more than 50 per cent of the voting capital in the company paying the royalties.

20 per cent in other cases.

If the United Kingdom does not give credit for tax given up the Brazilians have suggested that the DTA should limit the withholding tax to the rate currently in force in both countries (25 per cent in Brazil).

2. Taxes covered by the DTA

The Brazilians are adamant that a DTA with the United Kingdom should not restrict their right to levy the excess remittance tax and the tax on activities of minor importance.

All DTAs concluded by Brazil exclude these taxes.

3. Independent personal services

Brazil do not accept the concept of a fixed base and want to retain the right to tax if the payment is borne by a company or a permanent establishment in Brazil. Such a provision is contained in Brazil's agreements with France, ~~West Germany~~, Belgium and Spain. *The DTA with Japan has a fixed base rule.*

4. Royalties/Management fees

Brazil want to tax as royalties, payments to United Kingdom residents for technical assistance and technical services. They cannot accept a Management fees article containing a net income option. Brazil would accept a definition of "royalties" as shown in the United Kingdom/Australia DTA. Other fees not falling within the Royalties article would be dealt with under the Independent personal services article even if received by a company.

The definition of "royalties" in the United Kingdom/Australia DTA includes the words "for the supply of scientific, technical, industrial or commercial knowledge, information or assistance" and was taken from the United Kingdom/New Zealand DTA. This latter agreement however, unlike the one with Australia, contained a provision that the recipient of the royalties could elect to be taxed under the business profits article.

We were subject to criticism that the definition of "royalties" in the United Kingdom/Australia DTA was too wide and Mr Johnstone replied to Mr A G Davies pointing out that the definition was perhaps not as wide as Mr Davies appeared to think (PS 924/68). Nevertheless, so far as I am aware, we have not concluded an agreement since then containing these words.

There is a further difficulty to our agreeing to the Brazilian proposals. Would we be exceeding our statutory powers by giving credit for Brazilian tax which was charged on a gross fee without regard to any expenses?

(The definition of "royalties" as extended by the Protocols in Brazil's agreements with West Germany and Spain includes payments for technical assistance and technical services.) The agreements with France and Belgium do not contain an extended definition.

Japan,

5. Deduction of royalties

Brazil will not agree to allow as a deduction in computing profits, royalties paid by a Brazilian company to a United Kingdom resident controlling 50 per cent or more of the voting capital in the paying company. This would apply also to payments for technical assistance and technical services and reflects Brazilian domestic law.

6. Capital gains

Brazil want the right to tax all capital gains (including those made by a United Kingdom parent company on the disposal of its shares in a Brazilian subsidiary) except those relating to ships and aircraft operating in international traffic.

Such a provision is included in Brazil's agreements with France, ~~West Germany~~, Belgium and ~~Spain~~. *The DTA with Japan is on OECD lines.*

7. Commissions

Brazil do not want a DTA with the United Kingdom to restrict Brazil's right to tax commissions at the rate of 25 per cent.

(There is an express provision to this effect in the Brazil/
West Germany DTA.)

8. Branch profits

Brazil charges a non-residents withholding tax of 25 per cent on the profits (after deduction of tax at 30 per cent) whether distributed or not. Brazil insist on retaining this right but they would be prepared to reduce the tax to 15 per cent if we gave credit for the 25 per cent. *France 15% - credit for 25%; Belgium 15% - exempt from Belgian tax; Japan 10% - credit for 10%.*

9. Interest

Brazil want interest paid by a Government of one country to be exempt from tax in the other country. *Not included in DTAs with Japan, France and Belgium.*

Withholding rates

Brazil's proposals, with a provision for tax credit for tax given up under a DTA, are:-

Dividends - 15% in all cases.

Interest - 15% generally but

(a) 10% where the recipient is a bank and the loan is for at least 7 years and is connected with the purchase of industrial or scientific equipment.

(b) interest paid to a Government or a governmental agency is exempt in the country of source

(c) no restriction in country of source for interest paid to a permanent establishment of an enterprise of the other country situated in a third country

Royalties - 15% generally but 25% in the case of trade mark royalties.

Branch profits - 15%.

Brazil/Japan

Dividends - direct dividends (25% control) - 10% ; no restriction on other dividends

Interest - 10% in specified cases eg - paid to a bank or paid by an enterprise engaged in certain activities or in respect of debentures or treasury bills.

interest received by a Government or governmental agency is exempt in the country of source.


in other cases - no restriction

Royalties - 10%.

Branch profits - 10%

Brazil/France

Dividends - 15%



Interest - 15% generally but

(a) 10% where the recipient is a bank and the loan is for a term of 7 years and is connected with the sale of equipment etc.

(b) interest paid to a Government is exempt from tax in the country of residence.

Royalties - 15% generally but

(a) 25% in the case of trade marks

(b) 10% in the case of literary, artistic or scientific royalties including films, and tapes for radio and TV.

Branch profits - 15%

Photocopy of Mr. Gurn
Mr. Collins
I mentioned this before
26/8

A G Davies Esq
Rio Tinto-Zinc Corporation Ltd
P O Box 133
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LONDON SW1Y 4LD

22 August 1975

OVERSEAS TAXATION - CBI INFORMAL GROUP

I think it would be valuable to us, at our meeting on 30 September, to discuss the trend of requests from developing countries to revise our double taxation treaties, and I am writing some weeks in advance in order to give you the opportunity to collect your thoughts on this before the meeting.

We are finding that these countries, not unnaturally, want to revise the agreements to give themselves a bigger share of the tax on the profits which are made from trading with and in their territories.

They press hard therefore for various extensions of the definition of permanent establishment, and for the right to tax such payments as management fees, payments for professional advice and so forth. In addition, they sometimes want us to accept modifications of the arm's length rule. For example, we have been asked to accept their right to charge tax on a minimum chargeable amount regardless of whether a profit has been made at all - Ghana for example operates a rule which makes a company liable on at least 2½% of its turnover. Other modifications we have been pressed to accept would restrict the deduction for head office expenses in the case of a branch of a United Kingdom company to a share of the actual expenses of the head office or a specific percentage of the turnover or receipts of the branch. Similarly they sometimes seek to be able to tax profits made from sales, outside the country, of its primary produce or natural resources, which have simply been purchased by the United Kingdom company through, perhaps, a purchasing establishment, or to tax profits made by the United Kingdom company from sales made to buyers in the country under contracts made outside it when the orders are filled from stocks of goods warehoused, even though only for convenience of delivery, in their country.

There are other problems too. For example, not only do they seek to get us to give matching credit for their development incentive reliefs, which we have, in general, been prepared to give but they press us to extend it to provide matching credit for reliefs which in some cases go beyond what seems to us to be envisaged in our legislation, such as matching credit for reliefs which are specifically designed to encourage exports (which in some cases may be a sensible form of development for them but is questionably one which we ought to encourage by United Kingdom tax reliefs).

We have some success in persuading them to drop or modify these demands but the pressure continues to mount. We are compelled at times, in order to get a reasonable agreement, to make concessions to meet them - there are often very convincing arguments from their point of view which provide them with considerable justification for what they ask. Sometimes the achievement of agreement on a revised treaty may hang on one or two such points and the question which we may have to resolve in negotiations is whether a treaty which concedes such points is better worth having than no agreement at all. In making this sort of judgment it would be helpful to us to know something of what your informal committee thinks about it.

Mrs A H Smallwood

Notes of a Meeting between representatives of the Confederation
of British Industry at Somerset House on Tuesday 30 September 1975

Present

CBI

A G Davies
E B Nortcliffe
R T Esam
F N Harvey
C J Crowe
P E Moran

Inland Revenue

Mrs A H Smallwood
M H Collins
J P B Bryce
J C Bassett

Mr Bassett
Agreed with

minor
amendment
on p. 2
AHS
8/10

Mrs Smallwood welcomed the CBI delegation and asked whether there were any matters which the CBI particularly wished to discuss.

1. Brazil The CBI said they would like to discuss the various problems and the prospects of overcoming them. The Revenue said there were several unsatisfactory features, including royalties, interest, head office expenses and matching credit which were causing great difficulty, and would appreciate any comments which the CBI might have. The CBI replied that the general feeling amongst its members was that an agreement was essential but as things stood the price was too high and on that basis it would be inadvisable to have an agreement, especially since unilateral relief was available. They would however like to put the full facts before their taxation Committee (30/35 persons) for discussion and comment, and would accordingly appreciate a detailed account of the limited meeting of 6 August if the Revenue did not think a breach of confidentiality would be incurred. The CBI handed over a copy of their limited note of the position for amplification by the Revenue and said that without the further details they could not expect to get considered opinions from their members. The Revenue agreed to provide a summary of the details but with no comment on their feelings about each outstanding matter, and on the understanding and assurance from the CBI that the detail would be kept confidential. The CBI gave such assurance and thanked the Revenue for their co-operation.

The CBI did suggest that the matching credit problem might be overcome by meeting Brazil half way and giving relief for half the reduction made in the Brazilian withholding tax rates, but the Revenue replied that if that was done it would set an awkward precedent in our negotiations with other developing countries. In any event such credit was at present outside our enabling provisions and the matter would have to go before Ministers for new legislation.

2. The Revenue's letter of 22 August The CBI said they had circulated the letter amongst their members and had received a variety of responses. They had not however had time to collate the various views and would therefore talk fairly generally on the subject. It seemed that the Revenue were raising six points:-

Permanent Establishment The responses in general indicated that the permanent establishment definition could be extended without too much difficulty, perhaps on the lines of the United Nations recommendations, to accommodate some of the more modern means of 'carrying on business' (eg telex operations). The CBI recorded their objection however to

to the Indonesian agreement wording of 'directly or indirectly' as they foresaw serious problems particularly in the field of insurance. The Revenue asked the CBI whether they could indicate how much importance they attached to the concept of a permanent establishment now that subsidiaries were becoming more popular. The CBI replied that it was still necessary to draw the line somewhere indicating that profits overseas were chargeable/not chargeable, and that in certain instances branches were even flourishing - eg the USA, where a branch could give rise to tax advantages. The permanent establishment article was certainly useful in keeping out the taxation of profits from direct sales.

Management Fees The CBI felt that it would be difficult to resist the other country's claim to tax if the management fees were earned in that country. It appeared however that the basis of taxation was wrong - the overseas revenues seemed to have forgotten the difference between gross receipts and net profits. The Revenue said that the developing countries' principal concern seemed to be that management fees provided a convenient way of salting away profits, and on that basis could understand their desire to tax. However the Revenue had so far resisted the treatment of management fees as pure income and would continue to do so wherever possible. Australia and New Zealand, the agreements with whom the CBI particularly quoted, were the exception rather than the rule and could not be regarded as a working precedent.

Arm's-length rule The CBI registered their strong objection to any amendments on this front since the alternatives were neither logical nor acceptable. To impose tax at 2½ per cent of turnover, regardless of losses or profits, would be invidious. The Revenue noted the CBI's views and said that perhaps the alternatives had been born out of the (to developing countries) excessive time and effort spent in applying the strict arm's-length calculations.

Head Office Expenses The CBI felt the same way about this as about the arms-length rule, and that any limitation should be resisted. Canada apparently operates a cost-only basis. Where cost-sharing arrangements were in force amongst 100 per cent subsidiaries the CBI felt such a basis might be acceptable, but in other cases it would be unreasonable. Service companies were tending to sell their services on a wider scale and any limitation would prejudice their activities.

mere Purchasing Establishments The CBI were firmly against allowing tax charges to be imposed on ~~more~~ purchasing establishments. Pakistan apparently imposes such tax and their method of assessing is beyond CBI comprehension. In any event no consideration could be given to whether a profit or loss was made by the United Kingdom company.

Matching Credit The CBI felt there was little point in discussing this matter in view of the well-known complications and were content to have the problem in the hands of the Revenue.

3. Draft Directive on Company Taxation The CBI were concerned that although withholding taxes were not part of the directive as such, they were nevertheless mentioned and were extremely high (25 per cent on dividends, interest, and royalties). They felt that such rates should be completely resisted and asked whether the Board was taking or proposing to take any action in this respect. The Revenue replied that there was a fair amount of support for high withholding tax rates amongst member countries but as far as the United Kingdom was concerned the problem could perhaps be overcome by agreeing lower rates in double taxation agreements. As far as dividends were concerned, withholding taxes were not suited to our imputation system anyway. What were the views of the CBI concerning interest and royalties? The CBI replied that as far as interest was concerned, they simply did not want withholding taxes; as regards royalties, the withholding rate would not be suitable if royalties were to be treated as gross income rather than pure income.

The CBI were also concerned that cash-flow problems could arise in groups of companies since no provisions were included in the directive relating to group income arrangements, and that the right to carry forward the précompte appeared to have been lost. The Revenue replied that these problems served to illustrate that the directive could not cover fine detail and suggest that the CBI make representations on these particular matters. There would be ample time for consideration to be given to the questions since it was unlikely that the directive would reach its final form before the end of 1976. The CBI agreed to this proposed course of action.

4. USA - Revision of the Agreement/State taxes The Revenue said that discussions had taken place in September about a revision of the agreement and a wide measure of agreement was reached. It would be inappropriate to say at this stage how well the talks had gone, but the question of State taxes had been brought up. Pending the outcome of this matter it would be as well to continue to have representations. The CBI handed over a further letter of protest. In reply to a question from the CBI, the Revenue said that it was not possible to comment on how far the States would comply with any clause in the revised Convention concerning the taxes.

- On-site audits The Revenue said that this matter had again arisen, but in a different context in that it did not relate to the financial sector. The USA was taking the narrow view that their attitude on banks and insurance companies could not be taken as a blanket precedent covering all forms of business. The Revenue said they felt they would resist the US demands and asked the CBI to notify them of any further approaches. The CBI agreed to the request and said that they had at the moment nothing other than the ICI involvement. Mr Crowe said he had replied to the US but was not expecting much success with his representations.

Mr Pollard
Mr Gunn
Mr A G F Adams ✓
Mr Fawcett

BRAZIL: CBI

I rang Mr Harvey at the CBI to find out what the decision of the Taxation Committee had been about the terms offered by Brazil. He said that it had not been possible to have a meeting to discuss this in November because other things had come to the top of the agenda and he had thought "that there was any panic about it from our side". I explained that there was no question of panic but that we had understood when we sought their advice that they would be able to comment by the middle of October and had acquiesced when it was deferred until the middle of November. The middle of December was however running things very fine and unless we have the CBI reaction without fail by that date it would not really ^{be} worth troubling them and we might as well call off the enquiry.

Mr Harvey had suggested as an alternative to discussion in the Taxation Committee a discussion among a few of those most closely concerned but I said that we had already had a discussion of that kind and I did not think that the views of another such group would add much.

I got the impression that Mr Harvey was reviewing his priorities on this question and I hope that we shall get comments by mid-December. If not we shall have to submit to Ministers without the CBI views.

Att

20 November 1975

Confederation of British Industry



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Mrs A H Smallwood
Board of Inland Revenue
Somerset House
London WC2R 1LB

12 January 1976

Dear Mrs Smallwood

ANGLO BRAZILIAN TREATY NEGOTIATIONS

The CBI Taxation Committee discussed the question of the Brazilian Double Taxation Agreement at its recent meeting and, as promised, I am writing to report the outcome of the discussion.

The Committee was in general agreement that a Treaty provision endorsing disallowance of inter-company payments such as royalties, technical service fees etc. should be resisted since the tacit acceptance of such a principle on the part of the United Kingdom might have repercussions on other agreements with developing countries.

On another matter the Committee felt that there should be some flexibility on the part of the Brazilians with regard to the 12% remittance ceiling based on registered capital. Although Brazil gives generous tax reliefs on unremitted profits which often help to improve the registered capital base, retention of the present remittance limitation would render a dividend withholding tax reduction largely ineffective to a successful United Kingdom investor since the limitation is concerned with after tax income. The reduction of the dividend withholding tax rate by Brazil would have only limited effect as an incentive if additional remittance funds are to be subject to penal rates of remittance tax.

Nevertheless, a reduction in the rate of withholding tax would be seen as the most important feature of a Treaty and, if the Brazilians prove to be intractable on the remittance limit, the Committee took the view that it would be wise to accept this one concession however limited its present value might be.

While the Committee is well aware of the difficult position in which the Inland Revenue is placed, it believes that every effort should be made to continue negotiations for a Treaty, if necessary even in a limited form. As other countries are entering into tax relief arrangements with Brazil, failure to reach an agreement could leave the United Kingdom in an isolated position. I think

Director-General:
Campbell Adamson
Secretary:
E M Felgate

I should also restate that there still remains a considerable pressure from our membership for the successful conclusion of a Treaty with Brazil on the best possible terms.

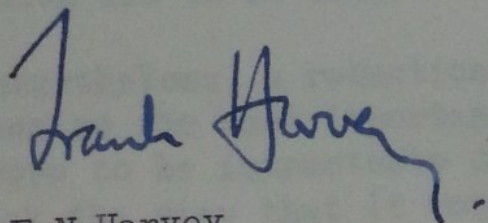
If, however, it should not prove possible to reach a satisfactory conclusion to the negotiations at the moment, it is felt that the best alternative would be to ensure that adequate unilateral relief is available to investors by appropriate amendments of United Kingdom legislation. Such amendments to legislation should be made to ensure that tax credit is available for pioneer reliefs given in Brazil to promote development. Credit should also be allowed for Brazilian taxes on intragroup payments to United Kingdom companies which have been disallowed locally.

Indeed, the Committee took the view that such unilateral relief should be available irrespective of the outcome of any Treaty negotiations. As you may be aware, the extension of pioneer relief provisions on a unilateral basis has been raised as a CBI Budget Representation on more than one occasion.

The Committee also considered that unilateral matching credit relief should be available against the tax foregone as a result of reduced rates of withholding tax if these are accepted by the UK authorities as part of an investment incentive programme. Such arrangements seem to be becoming wide-spread and we would be happy to discuss this development with the Inland Revenue.

You will be aware of developing countries' strong objections where the benefits of tax concessions to foreign investors designed to promote development, merely go to augment the revenue of the foreign government. It is imperative that United Kingdom Government Ministers should be fully aware of the difficulties inherent in a situation where the tax benefits given by a developing country are not allowed to be retained by the investor and, in particular, the competitive handicap under which United Kingdom industry labours in situations where the benefits can be retained by our competitors by not by our own firms.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Frank Harvey', with a stylized flourish at the end.

F N Harvey

CONFIDENTIAL

DOUBLE TAXATION: UNITED KINGDOM/BRAZIL
SUMMARY OF BRAZILIAN DEMANDS

The Brazilians will reduce under an agreement their rate of withholding tax on dividends, interest and royalties flowing to the United Kingdom only if credit is given against United Kingdom tax for all or part of the Brazilian tax so given up, as well as for the reduced Brazilian tax paid and for tax 'spared' under pioneer reliefs given by Brazilian law in order to promote development there. Any reduction of the Brazilian rate on dividends, and on royalties paid by a Brazilian company to its United Kingdom parent would only take effect 3 years after the agreement enters into force.

The Brazilians also want to preserve in an agreement a number of features of their domestic tax code. They want to continue to:-

- a. disallow deduction in computing profits, for royalties paid by a Brazilian subsidiary company to its United Kingdom parent;
- b. charge their additional tax or excess remittances of dividends and other profits;
- c. tax commissions arising in Brazil and paid to a United Kingdom resident;
- d. impose their withholding tax on the profits (whether remitted or not) of Brazilian branches of United Kingdom companies. They will reduce their rate to 15% three years after the agreement enters into force if the United Kingdom gives credit for all or part of the tax so given up as well as for the reduced Brazilian tax paid.
- e. extend the definition of royalties to include payments for technical assistance and technical services;
- f. tax other service payments by extending the Independent Personal Services article to companies as well as individuals and dispensing with the fixed base concept;
- g. tax all capital gains (including those made by a United Kingdom parent company on the disposal of its shares in a Brazilian subsidiary) except gains relating to ships or aircraft operating in international traffic.

MEETING WITH REPRESENTATIVES OF THE CONFEDERATION OF BRITISH INDUSTRY
SOMERSET HOUSE WEDNESDAY 21 JANUARY 1976.

Present:

CBI

Mr A S Davies
Mr D N C Gray
Mr C J Crowe
Mr W K Evans
Mr R T Esam
Mr P E Moran

Inland Revenue

Mrs A H Smallwood
Mr B Pollard
Mr J P B Boyce
Mr I P Gunn
Miss M A Hill

Revision of the UK/USA Double Taxation Agreement

1. Mrs Smallwood explained that the US and UK had agreed that, while copies of the text of the new Convention could - exceptionally - be made publicly available, there could be no public discussion of its provisions until the text had received the approval of the two governments. At this juncture, therefore, the Revenue could merely make certain of the CBI's questions. Both Governments were eager to have the Treaty in operation as soon as possible: it was likely to go through US Congress about the end of February and come before the UK Parliament (who could reject, but not amend it) within the next 2 or 3 months.

2. The CBI recognised that the new UK/USA convention might well be taken as a model for future agreements. The Americans had told OECD that they saw it as a suitable pattern for countries having an imputation system and the UK Revenue, while seeing the 'pattern' as appropriate only in certain circumstances, expected pressure from other countries to conclude treaties on similar lines to the new US one. In this context the CBI welcomed Article 9 (Associated Enterprises) but were disappointed at the omission of specific protection for branches of 3rd country companies which could be taxed in both partner countries.

Mrs Smallwood said the Revenue recognised there was a certain difficulty about the position of branches (which were not, for tax purposes, 'resident' in the country in which they were situated) but felt that the kind of protection the CBI wanted was strictly outside the scope of a bilateral treaty and in any case would present substantial technical problems.

3. The CBI also made several detailed points about the text of the new Agreement. First Mr Esam wondered why the wording of the provision dealing with the state tax problem (paragraph 4 of Article 9) departed from the wording he had earlier suggested. Mr Pollard assured him that this wording had been carefully considered but the UK, given the particularly sensitive nature of this provision, had to accept the US view as the way in which it could best be presented to Congress. Our latest information was that there would be no serious trouble in Congress over the provision as drafted. As the CBI wished to convene a meeting

ACTION
REVENUE

to discuss this measure. The Revenue agreed to send Mr Esam a list of the companies which had responded to the Revenue's invitation to make representations on the state tax point.

4. Secondly the CBI questioned the wording of Article 16 (Investment and Holding Companies); as they read it a US company set up to raise money in the US market to be on-lent to UK operations would, by virtue of Article 16, be precluded from the benefits of the Treaty. They explained that this was a ~~new~~ widely used financing route and that some companies would find it difficult to make alternative arrangements. The Revenue, while ~~not been~~ able to enter into discussion on the interpretation of ~~about~~ the article, assured the CBI that the UK had good reasons for agreeing to the incorporation of this provision. Thirdly the CBI referred to paragraph (1)(c) of Article 23 (elimination of Double Taxation); they felt that by deeming half the imputation credit to be a tax on the UK company the Americans were proposing to give a double allowance. The Revenue noted the point and let the CBI have copies of the US Treasury 6 January Press Notice which described briefly the new US rules for giving credit for UK tax. Finally the CBI asked about the elimination of dual resident companies from the scope of the Treaty under Article 1. The Revenue recognised the situation could in fact arise in practice but said the exclusion was not inadvertant.

On Site Audits

5. Mr Crowe said that the US authorities had been told that photocopies of the accounts of ICI North America Ltd were now available for inspection in Wilmington but so far the authorities had taken no action. Mrs Smallwood explained there had been correspondence between ourselves and the US authorities through the competent authority procedure. As a result the Revenue would be surprised if the American authorities approached any further UK companies.

Brazil

6. Discussions centered on the CBI's letter of 12 January to Mrs Smallwood.

The CBI felt that the ambiguities of their letter reflected a certain divergence of opinion within the CBI itself as to whether or not an agreement on the lines suggested by Brazil should be accepted by the UK. On the one hand, some of the CBI members, especially on the commercial side, were pressing for an agreement almost at any price. They argued that Brazil offered vast potential for overseas investment but the commercial viability of such investment hinged on whether or not UK investors would benefit from a reduced Brazilian withholding tax and the tax sparing provisions enjoyed by their competitors. The CBI members differed among themselves on which was the more important to them; reduced withholding taxes or credit for pioneer industry reliefs. On the other hand, others in the CBI were reluctant to accede to the

Brazilian terms, feeling the UK should not seem to bless the disallowance of royalties etc.

7. Any agreement, Mrs Smallwood explained, would have to follow the German pattern and simply be silent on the less acceptable features of the Brazilian tax system such as the Excess Remittances Tax on which Brazil would not give way. Referring to Mr Davies' conversation with Dornelles in New York, Mrs Smallwood acknowledged the international pressure to conclude agreements with developing countries but emphasised that the UK position was not on all fours with that of France and Germany (who had already concluded agreements with Brazil). The French and Germans had not accepted all the terms which were offered to the UK and in any case the problems were not so great for countries which used the exemption rather than credit method of relieving double taxation and which had fewer agreements with the developing countries. The Revenue were worried, not about fiscal theories, but about the loss of money which might follow concluding an agreement with Brazil. The other South American countries were evidently waiting on the outcome of the Brazilian negotiations while the other third world countries and perhaps even some capital importing developed countries, would exert pressure for an agreement with the UK on the lines of any agreement concluded between the UK and Brazil.

8. Recognising the strength of the arguments against an agreement some of the CBI representatives thought the UK should give unilateral matching credit on a discretionary basis and should seek to use this discretion to oblige Brazil to reduce its withholding taxes. The Revenue felt that such a provision might at best result in Brazil raising its withholding taxes so as to be able to "reduce" them without any loss to itself. More particularly by giving unilateral relief for pioneer reliefs - a course which so far as we are aware no country had adopted - the UK would not only lose its only bargaining counter which might force Brazil etc to conclude agreements on reasonable terms but also saddle itself with a system which was wide open to abuse.

Other Agreements

9. Mrs Smallwood explained recent progress on those double taxation agreements which were of particular interest to the CBI.

Canada

An agreement has been initialled and a text will be published fairly soon.

Czechoslovakia

We hoped to have talks last November but the Czechs have still not yet commented on the draft convention sent to them.

Egypt

Talks will take place shortly on the basis of a draft OECD-type convention.

NOTES OF A MEETING WITH REPRESENTATIVES OF THE
CONFEDERATION OF BRITISH INDUSTRY AT SOMERSET HOUSE
ON THURSDAY 2 SEPTEMBER 1976

Present:

Inland Revenue:

CBI:

Mrs A H Smallwood
B Pollard
H B Thompson
J C Bassett

A G Davies
C J Crowe
R T Esam
E B Nortcliffe
F N Harvey

Mrs Smallwood welcomed the CBI delegation and said that progress had been made in a number of areas since the last meeting. Before dealing with Revenue topics however, any CBI problems could be cleared.

The CBI said there were three matters they wished to discuss.

USA. They were concerned about what would happen if the Senate threw out Article 9(4). The Revenue replied that if the US Senate had reservations about the treaty, as they had in 1946, a Protocol would be required and this could be dealt with by existing machinery. It was quite possible that the USA might experience difficulties quite apart from Article 9(4), but only time would tell.

The treaty would be debated in Parliament in the usual way and a date for the proposed Seminar would be fixed when the treaty had been approved by Parliament.

Brazil. The CBI paper which they had undertaken to prepare for the Department of Trade was awaiting signature and would be with the Revenue in the near future. The Revenue no doubt had a good idea of what was said - commercial pressure to forget tax considerations was dominant. The paper did however present the other views as well, and suggested inter alia that discussions continue to try to find a way round the difficulties.

The companies which wanted an agreement at any price were probably those involved only in Brazil, so that any spin-off effects on other countries would not be considered. Those operations were however tending to move to or invest in areas where incentive reliefs were available, and investment at anywhere between £mn 150-450 was involved. The question of unilateral relief for tax spared came up and the CBI said that if the UK were to give this pressure for a treaty would disappear; they recognised the difficulties however of granting unilateral matching credit.

On more general topics Brazil's 'restrictive' practices were still very prominent. Any minerals discovered had to be processed there, which multiplied the expenses several times, and management fees were included in the definition of royalties, leading to costly exercises to prove net income in order to get double taxation relief. There were indications though that things might change - Chile had threatened to leave the Andean Pact unless Brazil changed her outlook.

The Revenue's view was that although Australia, New Zealand and many developing countries (for example Morocco where the point was most recently raised) had the same outlook as Brazil on management fees, the practice was still a minority one, but in any event the United Kingdom attitude would not change. Morocco had in fact been persuaded to adopt an acceptable definition of royalties in the new agreement.

The Revenue would await the formal CBI paper.

Law of the Sea Conference. The CBI did not want to develop any arguments at present as they were regularly reviewing progress. In general though they were against the proposed taxation provisions. The payment of royalties, and over 30 per cent of proceeds of exploitation into a pool for allocation 'in equity' to countries with no sea, were not acceptable. Without double taxation relief there would effectively be no research and no mining unless confined to no-tax countries. The main concern at present though was the late stage at which the Revenue had been brought into the picture for comment.

The Revenue had been contacted only recently (end of June) due to a combination of circumstances, and it was not possible to go into detail about the proposals. On the face of it the payments to a new authority would be very expensive to the United Kingdom, but a lot more work would have to be done before formulating a definite line. The Revenue thanked the CBI for their provisional comments pro tem.

The Revenue then moved to their topics:

USA. The States of California and Oregon were still actively lobbying against the treaty prohibition of the unitary basis of taxation. It was not appropriate for the UK to defend the treaty provisions in the Senate but there was perhaps a lot to be said for the CBI coordinating some active lobbying on the issue. The CBI agreed to keep up the pressure in the USA.

India. Talks had been resumed after a long delay, and a DTA was a real possibility; further talks would be taking place in November. India were however adamant that any reduction in withholding rates should be extended to new investment only (and new contracts in the case of royalties) and they saw no hope of getting an agreement through their Government on any other basis. The United Kingdom had been assured though that no better terms would be made available to any other country. As the idea of restriction of relief to new investment was somewhat novel it was felt that the CBI should be given the opportunity to comment.

The CBI offered no comment on the matter; they were more concerned with the administration of tax in India and expressed the hope that Indian officials would become less persistent with minor detail in the future. (Apparently it was common for a particular point to be taken up for argument each year despite Court rulings on it.)

The Revenue thought that with an agreement the competent authority procedure might be of assistance.



Departamento Comercial
British Embassy
Gonzalez Suarez III Casilla 314 Quito Ecuador
Telephone 230-070 Telex 38 Cables Prodrome Quito

Financial Relations Dept.,
FCO.

Your reference

Our reference 106/1.

Date 10 May 1977

Dear Dept.

Double Taxation Agreements

The Commercial Counsellor of the West German Embassy in Quito tells me that they are on the point of final agreement with the Ecuadoreans on double taxation. Apparently it has been a long and tedious negotiation, but as the Germans attach great importance to achieving double taxation agreements around the world, they stuck to the Ecuadoreans until they finally succeeded. My colleague in mentioning this to me however, suggested that it would provide for some EEC solidarity if we and other EEC members would follow up with a request for similar negotiations. As I was not sure what our own policy on the subject was I did not commit myself one way or the other. Nor was I aware that there was any special EEC significance to the subject. However I pass this on for what it is worth and would be grateful in due course to receive your guidance on whether there is any advantage in our considering similar negotiations. As one of the principal purposes of such agreements is to provide equitable treatment for foreign investors in Ecuador, I can well imagine why it was important to the Germans with their much greater existing and planned commitments in the country. We by contrast have so few such investments and are unlikely to attract few more that it cannot have any great priority for us. We ourselves have never raised the subject or had it raised with us by Ecuadoreans.

I would be grateful for guidance in case the subject comes up again.

Yours ever

R.G. Marlow

R.G. Marlow
First Secretary

c.c. H.J. Owen CRE2 D/T

C.J. McGillivray, Bank of England.

BRIEFING:

MEETING WITH REPRESENTATIVES OF THE CBI AT 11.00 AM
ON 9 OCTOBER 1978

1. MATTERS ARISING OUT OF THE LAST MEETING

There are no matters arising out of the last meeting (minutes flagged "A") and the CBI have not suggested any specific topics for discussion.

2. MATTERS WHICH THE REVENUE WISH TO RAISE

(a) Brazil

There have been some developments which need to be reported to the CBI. *(copies of relevant correspondence are flagged "B")*.

Position to date

You will recall that the last round of talks with Brazil took place in January 1977 when the Brazilians made it clear that that they would not relax any of those demands which caused us the most difficulty. In the submission to Ministers following the talks it was pointed out that a few remaining loose ends still had to be settled in correspondence but when these were settled we would let Ministers have a draft of the Convention which Brazil would be prepared to sign. The further correspondence took place but this only resulted in more substantial concessions being sought by Brazil. A draft convention was finally submitted to Ministers in April this year together with a paper setting out the pros and cons of entering into such an agreement on Brazil's terms. The Minister of State (Denzil Davies) consulted the Secretary of State for Trade (Edmund Dell) on the issue.

Treasury Ministers' view

Our view and that of the Minister of State is that the disadvantages of conceding terms which are likely to create a damaging precedent in our negotiations with other developing countries far outweigh the advantages of securing limited benefits to those with interests in Brazil. Consequently we do not feel that the agreement should be proceeded with unless Brazil is prepared to soften her line and withdraw some of her present demands. Two of her more extreme demands are in any case completely unacceptable to us.

View of the Secretary of State for Trade

We have now heard that Edmund Dell does not dissent from this view but wishes us to inform the CBI of the more recent developments and seek their 'understanding' before a final decision is taken. The Minister of State agreed to do this.

Consultation procedure

Although the CBI were consulted in a similar exercise just over two years ago and the Taxation Committee have been kept informed of developments since then we have told Mr Dell we will again let them have a short paper explaining the main features of

the draft convention as it now stands and its wider implications. The CBI will be invited to consult fairly widely within their membership - although in confidence - and will be asked for their present views on the matter.

We are presently preparing the paper which we hope to send them shortly.

(b) Ecuador

We have had some correspondence with our embassy (copies flagged "C") about the desirability of a DTA with Ecuador.

We would like to sound the CBI out on this. [This item will also be included in briefing for the next meeting with the BIA.]

3. OTHER MATTERS LIKELY TO ARISE

(a) Nigeria and Tanzania

Briefing about the termination of our agreements with these countries is included in Section 4.

(b) USA

The CBI will almost certainly want to discuss the ^{position following the} Senate reservation on the new double taxation convention. A copy of a press report about their recent meeting with the Chief Secretary and Minister of State, Treasury, is flagged "D".

The Revenue had not yet received this letter but would certainly consider the CBI suggestion when they did.

SRI LANKA

The CBI enquired about the delay in finalisation of the new double taxation Convention with Sri Lanka.

The Revenue informed them that the points previously outstanding had been cleared up and the convention was now proceeding towards signature and eventual ratification.

BRAZIL

The Revenue recapped briefly on the position to date. They had consulted the CBI about their difficulties in getting a satisfactory double taxation Convention with Brazil about two years ago.

Since then they had had further contact with the Brazilians and found that they were now offering something less. The package which Brazil envisaged was not at all orthodox. It was not of any interest to the UK (either Government or investors): among other things Brazil now wanted the UK to give the whole of the dividend credit to Brazil resident companies, although Brazil was not prepared to reduce its own withholding rates. Brazil also wanted the UK to give credit for Brazilian tax, whether it was paid or not, at the full 30 per cent rate.

During the last quarterly meeting the Revenue had told the CBI that they were submitting the matter for consideration by Ministers.

They had now done this, and Ministers had asked them in their reply to consult further with the CBI.

The Revenue were now preparing a consultative paper for this purpose and would be sending a number of copies to the CBI, for distribution among their members, shortly.

The CBI asked whether Brazil had adopted a similar stance in their negotiations with other countries.

The Revenue confirmed that they had. And unfortunately some countries had accepted Brazil's terms. [They agreed with the CBI that this had created precedents which were disadvantageous for the UK.]

The CBI wondered whether Brazil had agreed any more of these adverse treaties since the last quarterly meeting.

The Revenue thought that the Brazilian treaty with Japan was the only one which might have moved, and they were not sure how far this had got.

THAILAND

The CBI asked how the new Convention with Thailand was progressing. (Mr Egan's company had an interest there.)

The Revenue explained that there had been a recent change in Thailand's matching credit legislation which would require a slight alteration to the Credit Article. The Revenue were corresponding with the Thai about this and unfortunately this would delay signature for a while.

VENEZUELA

The CBI had noticed that the new air/shipping agreement restricted exemption from Venezuelan tax to (UK) companies serving Venezuelan ports "on a regular basis". Was this usual? Their feeling was that the company which operated in and out of Venezuela on an irregular basis really needed the exemption more. They also observed that the word "regular" was a very difficult one to define.

The Revenue confirmed that this was not usual, but it was all that Venezuela were prepared to agree, and it was better than nothing. The Revenue confirmed that decisions about what constituted "regular" visits might end up by being left to the discretion of the Venezuelans.

ECUADOR

The Revenue reported that they had had some correspondence with the Embassy in Quito about the desirability of a double taxation Convention with Ecuador. Would the CBI please sound out their members about this?

The CBI undertook to do so.

NIGERIA

The Revenue reported that Nigeria had given notice of termination of the present double taxation agreement with the UK. It would cease to be effective in Nigeria from 1 April 1979. They hoped to commence negotiations for a new agreement shortly.

The CBI thought that Nigeria's intention in terminating was to bring their turnover taxes into charge.

There would be pressure from their members to get exemption from these under any new agreement.

The Revenue recognised this but pointed out that it had difficulty in doing anything about pure turnover taxes in double taxation agreements.

But perhaps the CBI could include this in the representations which they would be making in response to the Press Release which would be issued when the Revenue had arranged dates for talks with the Nigerians.

The Revenue would hope to agree retrospection. Whether or not they would be able to was of course another matter.

The CBI (Mr Nortcliffe) thought that there would be a lot of trouble with the Nigerian tax authorities in the meantime: the man in charge was a "peculiar fellow". Once he took it into his head that a treaty was finished it was finished
.....

STATE OF PLAY ON COUNTRIES, EEC AND OECD MATTERS

The Revenue reported the state of play on the following:-

Argentina

[It was interesting, if true, that Germany had succeeded in agreeing an OECD type Convention, because at one time the Revenue had expected Argentina to be more difficult than Brazil.]

Canada

[The CBI asked whether the Canadians had made any important concessions in this treaty. The Revenue reported that they had not - but the UK had not given them the UK's dividend credit either.

There were a few trivial concessions - on pensions - but that was all. In the main it was simply a tidying up job - a codification.

The CBI had noticed that the treaty had not yet been published in the UK, although it had in Canada. They thought that treaties ought to be published simultaneously, ideally, and wondered whether there was any way in which this could be arranged in future.

The Revenue said that there was not. Normally the UK published its treaties immediately after signature, in the FCO treaty series. The current strike in HMSO had prevented this in the case of the Canadian agreement. The UK could not prevent Canada publishing if they wanted to. And there was no way to ensure simultaneous publication anyway, because of the widely differing practices. Some countries, for example, published agreements as soon as they were initialled, whereas the UK treated them as confidential until they had been signed.]

POLICY DIVISION

Mr Whitear

Mr Gray, I agree - remains

3/8/78

UNITED KINGDOM/BRAZIL

I telephoned Neil Munro (CBI) about his note of 29 November saying that almost all CBI members consulted were strongly against any agreement on current terms. I asked him about his consultation process and he said that, as is normal, particularly with a confidential paper, it had been confined to the CBI Taxation Committee. However this numbers about 40 representatives of the largest companies and at the specific meeting of the Tax Panel at which Brazil was discussed only 1 of the 20 odd members present - Rio Tinto Zinc - was in favour of an agreement on these terms. All the rest were strongly in agreement with our paper. However, he confirmed that the British Chemical Engineering Contractors Association were not among those consulted, nor the Council of British Manufacturers of Petroleum Equipment - no doubt closely related to the BCECA - from whom we had recently had a similar briefer submission about the need for an agreement with Brazil. The Revenue, or more likely the CBI, might therefore expect some resentful comeback from these important unconsulted organisations; Munro said he was not too worried about this: the CBI Taxation Committee were the policy makers for the CBI on taxation and their Taxation Committee was broadly representative. The weight of feeling was overwhelmingly in favour of the Revenue's persuasive paper against an agreement on these terms, even if one or two CBI members later took an independent line. I said I was glad to hear of this line and promised not to disclose what he had told me about consultation procedures etc.

If you agree, I will now write to the Department of Trade to inform them of the CBI's view.

A C GRAY

8 December 1978

1 copy for
Confederation of British Industry

Mrs A H Smallwood
Board of Inland Revenue
Somerset House
Strand
LONDON WC2R 1LB

21 Tothill Street
London SW1H 9LP
Telephone 01-930 6711
Telex 21332
Telegrams
Cobustry London SW1

29 November 1978

Our Ref. D12

Dear Nam

DOUBLE TAXATION AGREEMENTS

Thank you for your letter of 6 November enclosing the position paper on the proposed agreement with Brazil. I have taken soundings with our members - stressing the confidentiality of the matter - and almost all of them strongly opposed any agreement with Brazil on the terms currently available. Those who would be prepared to accept such an agreement would do so very reluctantly, and only because their firms have a large stake in Brazil.

While I am writing to you, may I raise the separate question of the UK/US tax treaty? We have seen from the newspapers that agreement has been reached at official level. But it is impossible to say what the CBI's line will be until we have had a chance to study the whole package. We should be very grateful to have a copy of the text as soon as possible.

Yours sincerely

Neil Munro

N C Munro
Head of Taxation Department
Economic Directorate

Director General
Sir John Mathew
Secretary
D E Jackson

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BRIEFING:

MEETING WITH REPRESENTATIVES OF CONFEDERATION OF BRITISH
INDUSTRY AT 11.00 AM ON 9 JANUARY 1979

1. MATTERS ARISING OUT OF THE LAST MEETING

Soviet Union

During the last meeting (minute flagged "A") the CBI referred to a letter sent to us by Dunlop on the subject of the new 40% withholding tax.

A copy of this letter and subsequent correspondence is flagged "B".

We are not yet able to advise companies of the affects of the Soviet decree because the Soviets have only just begun to issue tax return forms to a few Western companies, and we are still waiting to see what the practical affects of the new edict are.

Brazil

Copies of the reply to our consultative paper - in which the CBI conclude that the vast majority of their members strongly oppose any agreement with Brazil on the terms currently available - and a subsequent telephone conversation during which Mr Munro outlined the way in which the consultation took place are flagged at "C".

We have written to the DOT, telling them of the outcome and asking for their confirmation that they do not in the circumstances wish to press for an agreement at this time, but have not received their reply yet.

2. MATTERS WHICH THE REVENUE WISH TO RAISE

Argentina

During the November 1977 meeting we asked the CBI whether they were interested in a double taxation agreement with Argentina. The CBI said that they were, but wondered what terms we might have to accept to get an agreement.

We told them that we thought that these might be similar to those demanded by Brazil.

The CBI agreed to sound out their members on the desirability of an agreement with Argentina, but we have never heard anything further from them on this. As the possibility of getting a relatively OECD agreement with Argentina now looks more promising (see State of Play) it may be an appropriate time to press the CBI to take soundings of their members, so that we can gauge the amount of interest in an agreement.

NOTE OF MEETING WITH REPRESENTATIVES OF THE CONFEDERATION OF
BRITISH INDUSTRY AT SOMERSET HOUSE ON 9 JULY 1979

Present:

Revenue

Mrs A H Smallwood
Mr M H Collins
Mr J F Hall
Mr B O'Connor
Mr G F E Cook

CBI

Mr R T Esam
Mr I O Barnett
Mr H Roe
Mr R White
Miss C Pleming

Confidentiality of these meetings

The Revenue welcomed the CBI representatives and asked whether they had had any further thoughts about the shape of these meetings.

The CBI had two suggestions:-

1. They wondered whether it would be possible before the Revenue entered into negotiations with a particular country, for the CBI to nominate two or three people who had a particular knowledge of and interest in that country, who would be taken more fully into the negotiating process and who could be available to advise the Revenue as the talks developed.
2. They thought that the Revenue should be prepared to disclose negotiating documents during the course of talks. They had found that the "other Government" in particular talks was always more ready to do this than the UK, although admittedly there had been some improvement in this respect recently.

On 1. the Revenue thought that they did this already: before talks began they asked the CBI for their comments. They expected the people who were interested in and who had particular knowledge of the country involved to give their views at that stage.

If special difficulties arose subsequently the Revenue were prepared to consult them again on an ad hoc basis. But they were not able, or prepared, to emulate - for example - the Swiss who had representatives of their CBI sitting in as observers during their double taxation talks.

On the second point, the Revenue did not agree that all countries were more ready than the UK to disclose the text while negotiations were in progress.

Moreover the Revenue could (and had) discussed specific areas of difficulty with the CBI while negotiations were in progress. But it was not possible for them to go further. Foreign office protocol precluded this. It was a matter of principle that negotiations between Governments were confidential.

The CBI wondered whether this was just FCO protocol, or whether there were practical advantages also.

The Revenue agreed that there were practical advantages in not disclosing the text until the negotiated package was complete: it maintained the bargaining strength vis a vis the other side.

Moreover it was one thing to consult interested parties about aspects of policy - this was desirable - but quite another to disclose the shape of an agreement before it was published. Recipients could possibly benefit financially from advance knowledge, and so Finance Bill type considerations applied.

It was possible that confidentiality would disappear in time, with the coming of Freedom of Information Laws. But the stage had not yet been reached where developed countries were disclosing texts during the course of negotiations. At present the US Freedom of Information Law protected treaty negotiations, although there could not be any guarantee that this might not change in the future.

The CBI (Barnett) thought that it would be useful to have more discussions on specific problems, as in the recent case of Nigeria.

Individual members of the CBI could use their expert knowledge of particular countries to help the Revenue by advising them on specific (eg economic) problems.

The Revenue pointed out that the purpose of the ad hoc meetings which had been held in the past had not been to get facts - they usually had enough of these - but to ascertain the CBI's views eg on where the balance of advantage lay in a particular agreement.

The CBI were not necessarily always unanimous on this.

The Revenue did not therefore think that the informal consultation with one individual which was proposed by Mr Barnett would be of very much use.

The CBI asked whether they could tell other members of their tax committee that these meetings took place.

The Revenue thought that they should: the existence of the group ought to be made known within the CBI, so that CBI members would know that they could feed problems up through it, otherwise it could not operate efficiently.

The CBI anticipated that they would in this case have to give their members an opportunity to say who should represent them.

The Revenue thought that the question which had to be answered was whether the group was limited to technical problems, or whether there was really any scope for discussion of policy questions as well.

The CBI reacted quite strongly to the implication that policy questions might be inappropriate.

Barnett considered that these created the most interest among CBI members, not the least.

Roe cited the dialogue which had taken place about the unitary basis of taxation and the new US double taxation convention in support of this view.

The CBI had told the Revenue, in these meetings, that they were underestimating the problems caused by the unitary basis.

The Revenue refuted this statement. They had not underestimated these problems. They were in complete agreement with the CBI that the unitary basis was both pernicious and odious, and had always made this perfectly clear. But where did this take them now? They had been offered, and had accepted, the treaty route of stopping it, and the treaty had been delayed considerably as a result.

There was no prospect now of succeeding by the treaty route, so what was to be gained by rejection of the treaty?

The discussion returned to the subject of these meetings.

The Revenue thought that they had been useful in that they had enabled them to get views and opinions and had also kept lines of communication open.

But they felt that it had become clear that on bigger issues they could not be confident that because they had consulted a small group like those present they would necessarily know what the mind of the CBI was.

The CBI thought this was true. White did not believe that it was possible for a small group like theirs to commit an enormous bureaucratic body like the CBI to any particular line. Esam agreed, but thought that it might be possible for them to speak authoritatively on matters of which they had had advance warning and which they had been able to discuss first within the CBI tax committee.

Barnett mentioned that while between them they already represented the CBI, ICC and CCAB it was probable that other groups should also be represented: White was wearing both his CBI and CCAB hats. Barnett represented only the CBI, although he was also a member of the Bar, and he suspected that one or both of the Bar bodies - the Bar Association and the Bar in Practice - might also be interested in taking part if they knew that the accountants were already represented.

The Revenue suggested that the Bar in Practice - which was not closely concerned with international matters - would not have much interest.

Barnett agreed, but thought that the Bar Association would.

It was decided that future meetings would benefit from a slight increase in formality - the CBI would notify the names of the people who would be attending, in advance, and say who precisely they represented.

The CBI would ascertain whether the Bar Association and other bodies wished to be represented while endeavouring to limit the number of representatives to 6 or 8. Bigger meetings would not be useful. [Barnett might possibly be able to

represent both the CBI and Bar Association]. Meetings would continue much as before with informal exchanges of views and (perhaps) facts. But if the Revenue ever needed to be able to quote the CBI on any particular issue they would first have to consult the CBI membership by means of a consultative document, as they had done in the case of Brazil.

Austria

The Revenue referred to the question which the CBI had raised during the last meeting about feedback on the Austrian two tier system of taxing company profits.

The CBI representatives had no recollection of this and could not say what precisely they had had in mind.

Argentina

The Revenue asked whether the CBI had received any further representations from their members since the last meeting.

The CBI representatives said that they had not. It subsequently became clear that they had not previously asked members how much importance they attached to an agreement with Argentina, although the Revenue had understood from previous meetings that they had, but had not had any response. The CBI undertook to sound their members out.

Roe said that his company (ICI) had a substantial subsidiary in Argentina which could provide feedback on the position there if the Revenue found they needed this after they had opened negotiations.

The Revenue thanked him, and said they would bear this in mind.

White did not think that Argentina was going to be as important as Brazil, in terms of economic growth etc.

State of Play on Countries

The Revenue reported the present position in double taxation negotiations with the following countries:-

Australia	Nigeria
Canada	USSR
Finland	Norway
Italy	Japan
Netherlands	

British Tax Review

Barnett had noticed a recent report in the British Tax Review that agreements with Bangladesh, Germany, Italy, Sri Lanka, Thailand, and Yugoslavia had all been initialled but not yet published.

NOTE OF MEETING WITH REPRESENTATIVES OF THE CONFEDERATION OF
BRITISH INDUSTRY AT SOMERSET HOUSE ON 6 NOVEMBER 1979

Present:

Revenue

Mrs A H Smallwood
Mr J F Hall
Mr G F E Cook

CBI

Mr R T Esam
Mr I O Barnett
Mr H Roe
Mr W K Evans
Mr R White
Mr A Willingale
Miss C Pleming

The CBI representatives thanked the Revenue for receiving them, and apologised for the fact that Neil Munro (who was to be a regular member of their team) had been prevented by other business from attending.

Confidentiality of these meetings

The CBI confirmed that the existence of this group was now known to their tax committee.

The Revenue were pleased to hear this, and expressed their satisfaction with the revised format proposed in Esam's letter of 12 October. With regard to confidentiality the CBI should assume that information which they were given by the Revenue during these meetings could be passed on to their tax committee unless the Revenue said that it could not.

The Revenue would not of course like information which was passed on to be made too public - ie it should not get into the press.

The CBI took the point.

Argentina

The CBI had taken preliminary soundings of the importance which their members attached to a double taxation agreement with Argentina. Most of those who had responded would like an agreement, but not at the cost of creating dangerous precedents.

The Revenue reported that they had, since the last meeting, received a favourable response to an approach to the Argentinians for double taxation negotiations. They hoped to see the Argentinians in May 1980 but the CBI should not publicise this date because it was not firm.

The CBI wanted to know whether the draft contained exchange of information provisions.

The Revenue confirmed that it did - these were necessary if the "collecting" country was to be told what the debt was or what assets were available to collect against. But they did not extend the usual double taxation information powers.

Commonwealth Tax Administrators meeting

The CBI referred to a "conclave of Commonwealth tax administrators" about a year ago which - they had heard - had agreed to get tougher in their treatment of head office charges, (service fees etc)*. They seemed to feel that there had been a recent hardening in the attitude of UK Inspectors to d.t.r. for foreign taxes on these payments and they wondered whether there was any connection.

The Revenue said that there was not: this could only be coincidental. They were sorry that it was not always possible for the UK to give d.t.r. for foreign taxes on these payments. This was because certain payments were regarded as having a UK source. By concession the UK did not take this attitude on royalties.

More and more developing countries were now taking the view that they were the source of service fees. The Revenue resisted this strongly in double taxation negotiations, but had not succeeded in pushing the developing world off this in principle, although they had managed in most cases to reduce the foreign withholding rate.

The CBI mentioned their problems in India in this context. The Revenue pointed out that if they were to start giving d.t.r. now for the Indian tax on service fees they would not have such a strong hand in the negotiations for a double taxation agreement.

UN Guidelines for treaties between developed and developing countries

The CBI reported that ICC members had discussed these guidelines during a recent meeting in Paris and had agreed to ask their national tax administrations to make representations about the proposed source taxation of service fees, and other problems.

* The Revenue assumed that the CBI were talking about CATA, and gave an account of UK involvement in the ~~October~~ 1979 meeting (on evasion) and plans for the 1980 meeting (on collection). But subsequent research has shown that we do not know anything about a technical CATA discussion in 1978 - all the 1978 CATA meetings were managerial and the ~~October~~ 1979 meeting was the first technical meeting. But the CBI may have been thinking of the follow up commentaries on the August 1978 Commonwealth Secretariat survey of the taxation of Multinational Corporations which (against our advice) made some recommendations.

The Revenue told them that the subject was to be discussed again in December, in Geneva. The purpose of the meeting would be to translate the draft guidelines into a draft agreement.

The Revenue did not like this, because the guidelines contained a lot of objectionable features (like source taxation) and a draft agreement was likely to be much more binding than the guidelines. Moreover they felt that the Group of Experts should see how the Guidelines worked in practice before proceeding to a draft agreement.

The UK had tried to enlist the help of developing countries in opposing the draft agreement, (perhaps not surprisingly) without success. But the UK delegates would be attending a preparatory OECD meeting in Paris to work out tactics which would hopefully enable the developed countries to present as solid a front as possible.

The Revenue would welcome any representations that the CBI wished to make, although they thought that there was unlikely to be anything "new" on this now.

The CBI objected to the fact that no figures were suggested for withholding rates - at present the sky was the limit.

The Revenue agreed that this was worrying, but pointed out that the alternative - an illustrative rate - was likely to be too high and would then become a 'norm'.

The Revenue told the CBI in strictest confidence that they now met regularly with the treaty negotiators of other European countries to discuss ways in which negotiations with developing countries could be kept in step.

The object was to prevent undercutting of the kind which had occurred (eg with Brazil) in the past.

Debt/Equity ratios

The CBI wondered whether the Revenue had any policy on debt/equity ratios of the kind which were prescribed in many other countries by Investment Review Bodies, ie was any account taken of them in double taxation agreements?

Willingales company had run into this problem recently in Australia.

They wanted to invest in Australia by means of a loan, which would take out the profits as interest, which would be subject to Australian withholding rates.

But the Australian review body had prescribed a low debt/equity ratio. They resented the fact that they were as a result being controlled in tax by a non tax institution.

BOTSWANA AGREEMENT

OUTSTANDING PROBLEMS

JANUARY 1977

The main problem in the negotiations on the revision of this agreement has been that of the treatment of income from mineral production combined with the desire of the Botswana authorities to exclude from the scope of the agreement enterprises which make a special deal of their own with the Tax Authorities under the law.

The Botswana law has a provision - Section 30 of their Income Tax law - which extends the liability to tax of profits from minerals very widely - if a person is carrying on the business of mining he can be charged on all amounts accruing to him, or to any associated person, from processing, marketing, servicing, financial or administrative operations carried out anywhere in the world. In other words, if a UK company carries on a mining business in Botswana it could, but for the existing double taxation agreement, be taxed on profits derived from operations outside Botswana which would not be attributable on the ordinary arm's length basis, to the Botswana permanent establishment. Similarly a Botswana resident subsidiary of a UK company could be taxed on profits arising to the parent company or any other affiliated company from, for example, processing and marketing the minerals mined by the Botswana company - again the liability could go well beyond the normal arm's length profit attributable to the subsidiary. Such additional taxation is only limited by the discretion of the tax authorities-income from these activities is taxable to the extent to which the Botswana Commissioner of Taxation is of the opinion that it relates to the mining operations.

In the 1974 negotiations we were pressed strongly to allow these provisions to override the agreement, thus seriously weakening the effect of the arm's length provisions. We resisted and the Botswana delegation eventually gave way on the point.

But they have also pressed upon us another proposal. They say that the very wide provisions of Section 30 which are obviously to some extent a deterrent to mining activity are essentially designed to provide an incentive to mining enterprises to enter into an agreement under Section 54. This latter section, which however applies in terms to any taxpayer and not only to mining enterprises, allows taxpayer and tax authority to make an agreement under which the normal provisions of the tax law can be set aside and other provisions substituted. The advantage to the Botswana authorities is apparently that in this way they can increase the tax on an enterprise's profits from its operations in Botswana, so, in the case of minerals, increasing the Government's take to a level satisfactory to the Government and making the deal palatable to the enterprise by concessions in other directions. There are not many such deals as yet in fact. In the case of the only one of which we have details, the Selebi-Pikwe agreement, this is the sort of pattern. The Government can tax the profits of the relevant companies' profits from operations in Botswana at rates varying from 40% to

BOTSWANA AGREEMENT

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65% depending on the proportion these profits bear to the operating expenses. (The normal company rate is 30%.) Profits of affiliated companies are aggregated for tax purposes. Capital allowances are accelerated. The companies are protected against any other taxation in Botswana related to production, sales, exports, turnover, or the profits of the relevant operations. The wide scope of Section 30 seems in this case to be narrowed and there are other modifications of the rules which appear to benefit the companies. But there can be no certainty that all such agreements would follow the same pattern.

Botswana wants us to exclude from the scope of the revised double taxation agreement any enterprise which makes an agreement under Section 54 except that they presumably want us to give credit for any tax paid under the Section 54 agreement and certainly want us to give credit for tax spared under it - if tax is spared under it.

We have resisted this. Mining enterprises are probably the only UK enterprises which are likely to be substantially affected by our double taxation agreement, except Costains and perhaps other construction enterprises. If we allow the Botswana Government to make private tax deals with the mining enterprises a good deal of the point of the double taxation agreement disappears. Even more point disappears if the private deals are with other kinds of enterprise as well (and the Botswana law allows for this). True, double taxation agreement would even so provide some sort of floor for the private deals so that on balance such deals could not be seriously more disadvantageous to the taxpayer than the double taxation agreement. It might not therefore worry those taxpayers too much who are so left out of the double taxation agreement. But such a provision on the face of it leaves the road open for the Botswana Government and the taxpayer to do a deal for themselves partly at the expense of the UK Revenue. The Botswana authorities could ensure that their take consisted of a high rate of tax on profits for which the UK would give credit, offset by, for example, low tax or no tax or interest and dividends paid out of the profits - which need not come to a UK resident company or by other advantages which would not give the UK any counterbalancing tax. Alternatively, they could get their take by way of high royalties on output while giving the enterprise tax-sparing relief against any tax on its profits so as to reduce (by way of matching credit) the UK tax on those profits. These possibilities would be bad enough if they were confined to Botswana but no doubt the Section 54 idea would spread if we gave it our blessing by excluding enterprises which made such deals from the scope of the double taxation agreement.

However, it now seems clear that if we do not give way on this point, at least to some extent, we may well lose the double taxation agreement altogether.

Mr. Collins

BOTSWANA DOUBLE TAXATION AGREEMENT

FEDERATION OF
79

We are most regrettably at a point of crisis in our negotiations with Botswana for the revision of our double taxation agreement. The Botswana authorities have in fact sent a note to the UK High Commission in Gaborone terminating the agreement for 1977-78 and subsequent years under the termination article. The UK High Commission (on advice from other Botswana Government Officials) is seeking to persuade them to withdraw this notice or treat it as not having been given but they may not be successful. Meanwhile, we are, on FCO advice, not taking any formal action on the termination. Obviously however we must do something about it informally at least.

asked whether
of these

The ostensible reason for terminating the agreement at this stage is that negotiations for a revision have reached an advanced stage and are hoped to be completed in the near future. The real reason appears to be impatience on behalf of the Botswana tax authorities with our delay in reacting to their last communication. It is regrettably true that we have taken nearly a year to reply to it. However, they took much the same period to reply to our previous letter and there are still some points (though admittedly minor ones) on which we are awaiting their views. Moreover, they did not draw our attention to the delay before making their démarche.

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Nevertheless, it is an unsatisfactory situation and apologies are due all round.

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There is a difficult point at issue - Botswana wants to exclude from the scope of the agreement companies, essentially mining companies, which make a special tax deal with the Botswana Government. If we want to have an agreement with Botswana it seems to me therefore that I ought to go out there and resume our talks as soon as possible. (Even if the termination is effective there is still time to maintain a continuity of agreements.)

I have had considerable doubts as to whether an agreement on the sort of terms which we will probably have to make will be worth while but on balance and subject to any further advice from the High Commission in Gaborone on the point and anything the BOMA may say, I think it would just be better to have such an agreement than not to have one at all (see my notes below). (I have asked the British Overseas Mining Association if they have any special points to make on the Botswana Agreement though I have not asked them specifically how they view the Botswana desire to make special deals. They have not yet, however, replied.)

If you agree, I will make arrangements to resume talks on this basis.

Mr Collins.

*I think that we should
press BOMA for an answer
& consult the CBI. May
we have a word.*

*Acts
24/1*

*OK 24/1
79*

NOTES OF A MEETING WITH REPRESENTATIVES OF THE CONFEDERATION
OF BRITISH INDUSTRY AT SOMERSET HOUSE ON MONDAY 14 MARCH 1977

Present:

Inland Revenue

Mrs A H Smallwood
B Pollard
M H Collins
Mrs C B Hubbard
A C Gray
J O Edwardes

CBI

E B Nortcliffe
A G Davies
D N C Gray
C J Crowe
W E Evans
I Barnett
Mrs M Moullin

Mrs Smallwood welcomed the CBI delegation and invited their comments on the following state of play report:

Bangladesh Talks would be held during the following week on a comprehensive Convention.

The CBI referred to the provisions of Section 23A Indian Income Tax Act which was being held on abeyance until June 1978. They asked whether a provision similar to the one in the United Kingdom/Pakistan Convention would be incorporated in the United Kingdom/Bangladesh Convention. The Revenue said they had it on board.

The CBI said Bangladesh had been trying to assess the combined Pakistan/Bangladesh profits of companies since 1971/72. Also as no personal allowances were given to non-residents, a Personal allowances Article might be useful. The Revenue noted these points.

Belgium Talks were likely to be re-opened soon.

Brazil Talks were held in January and a further round was scheduled for later this year. There had not been much change in Brazil's outlook.

Hungary A limited air transport agreement was now in force. A comprehensive treaty had recently been initialled.

India A further round of talks might take place in June.

In view of the exceptional importance of having an agreement with India, the CBI thought the United Kingdom might have to be prepared to make substantial concessions. The Revenue said the cost to the Exchequer and to investors would need to be considered.

India had at last given way in principle on shipping and the Revenue was in touch with the India-Pakistan-Bangladesh Association about some other difficult aspects of the negotiations.

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NOTE OF A MEETING WITH REPRESENTATIVES
OF THE CONFEDERATION OF BRITISH INDUSTRY
AT SOMERSET HOUSE ON 13 JUNE 1977

Present:-

Inland Revenue

Mrs A H Smallwood
Mr M H Collins
Mr M D Whitear
Mr A C Gray
Mr G Cook

CBI

Mr E B Nortcliffe
Mr A G Davies
Miss James
Mr D N C Gray
Mr C J Crowe

Mrs Smallwood welcomed the CBI representatives and introduced them to Mr Whitear, who would be taking Mr Pollard's place as Assistant Secretary on Policy Division 5/3. Mr Pollard was moving to Policy Division 5/2 (oil taxation) following the tragic death of Mr Hopkins in a car accident.

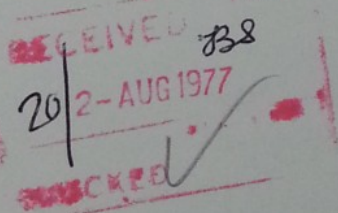
The CBI representatives said how sorry they were to hear of this.

Mrs Smallwood asked whether there were any matters which the CBI wished to raise.

Treaties with less developed countries

The CBI asked whether there was any possibility of including a capital gains article in our treaties with Ghana and Nigeria.

Nigeria was raising its Capital Gains tax rate, and Ghana was no longer accepting par value as the minimum cost, as it had previously. These moves were causing deep concern, coming as they did at a time when many people were having to sell shares.



EDERATION OF
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The Revenue said that it would hope to get these treaties on a normal basis. This might be difficult however if the partner country was keen to have its capital gains tax.

The Nigeria treaty was an old one and we were not at present negotiating a revision.

A draft of a new agreement had been sent to Ghana recently however. The Revenue promised to let the CBI know what this said about the treatment of Capital Gains.

Alimony

The CBI considered that double taxation agreements should provide for the allowance of alimony payments for tax purposes, in the country of residence of the payer.

Companies often experienced difficulty in posting divorced or separated men to countries which did not give tax relief for such payments. Frequently the ex-wife remained in the UK and was taxed on these payments here, although the payer had had no relief himself.

The CBI agreed that this was economic double taxation, not legal double taxation.

The Revenue said that it would look into this if the CBI would first write in with evidence, and some indication of how important a problem this was.

"Private" contracts

FEDERATION OF
73

Mr Davies referred to the question of private contracts between UK companies and the governments of less developed countries. During the last meeting the Revenue had indicated (on Botswana) that it might not be prepared to give credit for foreign taxes paid under such arrangements. He was rather concerned about this because his company had just signed such a contract with Indonesia. It now had to go through the Indonesian parliament. He explained that the object was to tie the other country down to a fixed rate of taxes. A private contract was the only way to do this.

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The Revenue replied that Botswana was a special case. We ~~would normally~~ give credit for taxes paid under such arrangements. However the Revenue must reserve the right to consider each arrangement separately.

Botswana

Mr Collins reported on the second round of talks with Botswana. The Revenue ~~had~~ ^{were} ~~prepared~~ ^{prepared} to allow Botswana to take a higher rate of tax on the income of mining companies, but not on other than arms length profits. We were waiting to hear whether they accepted.

We were not very optimistic however because Botswana seemed to have an emotional ^{feel very} ~~attachment to the idea of~~ getting more from mining enterprises than the tax on arms length profits.

strongly
that they
ought to

International Sea Bed Authority

The CBI said that proposals for creation of this body were going ahead rather more quickly than expected. It appeared that it would be a Sovereign State, and the less developed countries were getting worried in case it impinged on their raw material monopoly. Presumably it would be a long time before the UK concluded double taxation agreements with it.

very similar to

They hoped however that the UK would give unilateral credit for any ISBA taxes, as otherwise any mining operations would be unprofitable.

The Revenue explained that this was very much in the melting pot at present, but note would be taken of what the CBI had said.

Germany

The Revenue informed the CBI that the Bunderstag had directed that Germany should seek a 25 per cent withholding tax in her DTA's, on dividends paid to direct investors.

Exploratory talks were taking place with different countries. The German tax administration were probably getting unfavourable replies and would have to report back to the Bunderstag accordingly.

The Revenue agreed with Mr Davies that this was contrary to the EEC draft directive on harmonisation. If this was ever implemented Germany would have to comply. In the meantime however it could do as it pleased.

RECEIVED
Internal Revenue
POLICY DIVISION
Somerset House
London
WC2R 1LB

Telephone Enquiries 01-455 6576

D S Keeling Esq
South American Department
Foreign and Commonwealth Office
LONDON
SW1

Your reference

Our reference
T1169/102/75

Date

Mr. Cook

*Pl. see undertaking given in this
letter. 28/7/77.*

Mr. Denton

*to note to be brought
all out 1/2 by meeting*

*Copy of letter given
to Mr. Cook for inclusion
in future brief for 1/2 by
meetings*

28/7

UNITED KINGDOM/ ARGENTINA DOUBLE TAXATION AGREEMENT

Thank you for your letter of 22 July enclosing the Embassy's response to our proposal to start talks about a comprehensive double taxation agreement with Argentina.

Anglin's view that the Argentines are unlikely to be very interested in such an agreement is perhaps what we expected, and is certainly in line with our - and that of other European countries too no doubt - past experience in trying to get talks going. But I am a little puzzled by the view that United Kingdom firms in Argentina would feel that an agreement was not to their advantage; it seems to go rather against the conclusion of the memorandum prepared in 1975 by Price Waterhouse and, although one cannot of course predict in advance the likely terms of an agreement, one can scarcely envisage it being more, or even as, burdensome as exposure to the normal internal Argentine tax law. A propos I note that there has recently been some substantial modifications in Argentine tax law affecting non-residents. I enclose a copy of a cutting giving details, and this itself might be a sign that Argentines wish to encourage foreign investment, may have led to some softening of attitude concerning double taxation talks.

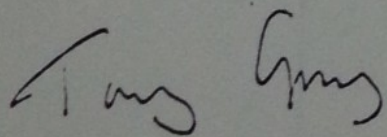
It is however true that we have not made specific approaches to the United Kingdom headquarters of major British firms already in or likely to invest in Argentina. Their general approach in such matters is to favour the conclusion by the United Kingdom of comprehensive agreements since, as I mentioned above, these generally involve an alleviation in the tax burden imposed under the other state's internal law. But now that Anglin has raised doubts as to whether an agreement with Argentina might be worthwhile it is certainly something we shall bring up at the next of the quarterly meetings which we have with representative bodies such as the CBI, British Insurance Association, General Council of British Shipping etc.

as far as the limited option, that of going for a simple extension to the existing limited agreement to cover municipal taxes, on the lines of the agreement Brazil has concluded with Argentina, there may be something of a difficulty. Our existing agreement provides reciprocal exemption for shipping and air enterprises from "income tax and all other taxes on profits which are chargeable in the Argentina republic" (and vice versa). We are not really empowered to cover other taxes, such as turnover taxes, and the Buenos Aires municipal tax on gross freights would seem to come within this category. It may be that within the context of a comprehensive agreement, which deals with many other things in addition to the taxation of shipping and air enterprises, it may be possible to find a way around this issue, but it is much more doubtful whether we can suitably extend a limited agreement by binding ourselves to exempt Argentinian enterprises from gross freights and any other turnover type taxes that may be imposed in the United Kingdom, in return for a similar assurance by Argentina.

This is obviously something we will have to examine further together with the General Council of British Shipping who, I understand, are well aware of this particular difficulty. We will also sound out United Kingdom representative bodies about their attitude to a comprehensive agreement with Argentina and if there is anything more which Anglin can let us know about the likely Argentine attitude, or indeed why he thinks British firms might not welcome an agreement, I will be glad to hear from

I am copying this letter to Richard Ewbank, Bank of England, Brian Fox, Treasury, John Lamont, Department of Trade, and Wally Henry, Department of Trade (Shipping).

Yours sincerely



A C GRAY

MEETING WITH REPRESENTATIVES OF THE CONFEDERATION
OF BRITISH INDUSTRY AT 11.00 AM ON 28 NOVEMBER 1977

1. MATTERS WHICH THE CBI MAY RAISE

The CBI have not suggested any specific subjects for discussion but the following are all possibilities:

Treaties with less developed countries

During the last meeting (minutes flagged "A") the CBI expressed concern about the rates and basis of assessment respectively of Capital Gains Taxes charged in Nigeria and Ghana, and asked whether there was any possibility of including a C.G. article in our treaties with those countries.

We told them that we had revision of the Ghana agreement in hand (although not Nigeria), and Mr Collins subsequently confirmed in writing that the initialled agreement with Ghana did include a C.G. article broadly on the lines of our normal model confining the right to tax such gains ordinarily to the country of residence of the disponent but - as in our agreement with Zambia - allowing the other country to tax capital gains made by a person who was resident in that country up to five years previously.

We can now tell the CBI that we expect the Ghana agreement to be signed tomorrow: (29 November). But we do not at the moment have any plans to approach Nigeria.

Alimony

At the last meeting the CBI said that they considered that D.T. agreements should provide for the allowance of alimony payments for tax purposes, in the country of residence of the payer.

We pointed out that the problem [of a divorced man posted to a country which did not give tax relief for payments which he made to a former wife in the United Kingdom] was one of economic double taxation, not legal double taxation. But we would look into this if they would write in with evidence, and some indication of how important a problem this was.

They have ^{not} done so.

Private Contracts

Botswana

During the last meeting Mr Davies raised the question of credit in the United Kingdom for foreign taxes paid under "Private" contracts between United Kingdom companies and governments of less developed countries.

We had indicated (on Botswana) that we might not be prepared to give credit: Davies was concerned about this because his company had just signed such a contract with Indonesia.

We explained that Botswana was a special case, but although we did not have a general rule of refusing to give credit for such taxes we had to reserve the right to consider each arrangement separately.

We can now tell Mr Davies that the new Botswana agreement which is to be laid before Parliament shortly overrides any "Special Agreements" between mining companies and the Botswana government.

The CBI may also like to know that, as indicated by Mr Collins during the last meeting, the new agreement allows Botswana to take a higher rate of tax on the income of mining companies, but not on other than arms length profits. [We would defend this on the grounds that the United Kingdom does something similar on the taxation of North Sea Oil profits.]

Germany U.S.A

were both mentioned during the last meeting. A note of what we said to the B.I.A at their last quarterly meeting is flagged "B". There have been no developments of any consequence since.

Whitehall/Joint Associations and C.B.I Informal Consultative Meetings

The C.B.I may mention their recent approaches to the FCO about the possibility of reviving these meetings.

A copy of Mr Whitears letter of 27 September setting out our attitude on this and other relevant correspondence is flagged "C".

Proposed International Sea Bed Authority

At the last meeting the C.B.I said that they hoped that the United Kingdom would give unilateral credit for any ISBA taxes.

We noted their views on this but pointed out that the ISBA proposals were very much in the melting pot.

If they raise this again there is little that we can add. [In the UN Working Party which is considering ISBA we have consistently taken the line that the levies paid to ISBA are not eligible for tax credit: levies paid to international bodies are traditionally treated as expenses or royalties and although invariably deductible for United Kingdom tax, are not creditable against tax.]

2. MATTERS WHICH THE REVENUE WISH TO RAISE

Turnover taxes

General

During our March meeting we told the CBI that we were very much aware of the difficulties facing some companies operating in countries - mainly South American - where turnover taxes were imposed instead of, or in addition to income taxes. The United Kingdom was unable to give credit for taxes on turnover but before proper consideration could be given to the tax credit relief problems the Revenue needed to know the extent of the problem. Could the CBI take soundings and let us know how much of a practical problem these taxes presented?

The CBI mentioned Mexico, Venezuela and Singapore, and promised to let us have letters about their problems there. We have heard from them on Mexico - [although the problem was one of "permanent establishment" not turnover tax - see copy letter flagged "D"] and as a result we have made an (as yet unsuccessful) approach for a comprehensive DTA.

But we have not heard anything about Venezuela and Singapore. The time now seems to be ripe for a reminder.

Argentina

Following a letter from GCBS on the subject of Buenos Aires Municipal and Provincial taxes the Embassy in Buenos Aires were asked to approach the Argentines about commencing negotiations about a comprehensive double taxation agreement. The Embassy discussed the matter with the local Price Waterhouse representative and have replied that the Argentines are unlikely to be very interested; apparently the Canadians recently made an approach and were told as much. The Embassy also asked whether we had approached headquarter offices of firms with interests in Argentina to seek their views on whether they were in favour of an agreement; they have suggested, rather surprisingly, that United Kingdom businesses might not necessarily find it to be in their interests to have such an agreement. (Mentioned firms with interest in Argentina include Duperial (ICI), BAT, British Steel and J and P Coats). Consequently, the Embassy's view is that, as the immediate impetus arises from the problems of the freight tax imposed by the Buenos Aires Municipal Authorities on non-resident shipping concerns, we should concentrate at the moment on extending the existing agreement on shipping and air transport to exclude each country's firms from the scope of such taxes.

Our view is that we are not really empowered to cover turnover taxes in our agreements. But it is more likely that it will be possible to find a way around this issue in a comprehensive agreement rather than in a limited agreement. We have told the Foreign Office this but nevertheless have undertaken to examine the matter further with the GCBS and to sound out both the BIA

and CBI about their attitude to a comprehensive agreement with Argentina.

We sounded out the GCBS and BIA at our meetings of 7 and 11 October: copies of their reports and our observations/replies are flagged "E". We now have to raise the matter with the CBI.

MEETING WITH REPRESENTATIVES OF THE CONFEDERATION OF BRITISH
INDUSTRY AT 11.00AM ON 6 MARCH 1978

1. CBI Representations: Finance Bill 1978

Budget representations made by the CBI to date which concern us,
either directly or indirectly are as follows:-

- a. Credit for overseas tax should be available for setting against ACT.
- b. Unilateral relief should be extended to enable the foreign tax spared under pioneer relief schemes to be credited in UK taxation in the absence of a double taxation agreement.
- c. Unilateral relief should be extended to include the tax on intra-group payments on UK companies which have been disallowed abroad.
- d. The operation of Section 482 ICTA 1970 should be reviewed to reduce unnecessary administrative burdens on companies, particularly in connection with transfers within the EEC.

As the CBI have not suggested these as topics for the meeting detailed briefing has not been prepared. If they would like to discuss them a special meeting would seem to be indicated.

2. Matters likely to arise

The CBI have not written in with any specific topics for discussion, and there are no matters arising out of the last meeting (minutes flagged). But the following may be mentioned:-

Argentina

Following representations from the GCBS in May 1977 the Embassy in Buenos Aires were asked to approach the Argentinians about commencing negotiations about a comprehensive double taxation agreement. The Embassy discussed the matter with the local Price Waterhouse representative and replied that the Argentinians were unlikely to be very interested; apparently the Canadians had recently made an approach and were told as much. The Embassy also asked whether we had approached headquarter offices of firms with interests in Argentina to seek their views on whether they were in favour of an agreement; they suggested, rather surprisingly, the United Kingdom businesses might not necessarily find it to be in their interests to have such an agreement. They felt that as the immediate impetus arose from the problems of the freight tax imposed by the Buenos Aires Municipal Authorities on non-resident shipping concerns we should concentrate on extending the existing agreement on shipping and air transport to exclude each country's firms from the scope of such taxes.

Our view is that we are not really empowered to cover turnover taxes in our agreements. But it is more likely that it will be possible to find a way around this issue in a comprehensive agreement rather than in a limited agreement. We told the Foreign Office this but nevertheless undertook to examine the matter further with the GCBS and to sound out the other representative bodies about their attitude to a comprehensive agreement with Argentina. The CBI promised to sound out their members, at the last meeting.

We have not yet heard from them but as the general first reactions of the BIA and GCBS were that they would be in favour of a comprehensive agreement we again asked the Embassy at the end of 1977 to approach the Argentinians, unless there were good reasons for not doing so.

The Embassy recently informed us in reply that the Argentinian Chamber of Commerce are now showing an interest in the possibility of a comprehensive agreement, but want to sound out the British side of the Anglo/Argentinian Businessmen's Committee on Trade and Investment when this meets in Argentina in April before deciding whether an approach to the Argentinian authorities would be worthwhile.

USA

The CBI will probably want a report on the progress (or lack of it) of the new Convention. The position is that the difficulty over Article 9(4) remains: the Governor of California has withdrawn his objections, but the State Franchise Board have not. The Senate Foreign Relations Committee may consider the Convention again this week.