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Piece No 17035

NAME Creation of The Fiscal Committee

1078

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### B.F. Dates

ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

Paris, 15th February, 1956.

F.Q.5.

DRAFT REPORT OF THE AD HOC GROUP OF EXPERTS  
OF FISCAL QUESTIONS

1. The ad hoc Group of Experts on Fiscal Questions set up in accordance with the Resolution of the Council C(56)1 of 13th January 1956, met on 14th and 15th February 1956 under the chairmanship of Mr. van den Tempel, Director General of Fiscal Affairs, Ministry of Finance of the Netherlands.
2. The Group gave close consideration to the memorandum of the Netherlands, Swiss and German Delegations, C(55)307 of 9th December 1955, concerning questions of Double Taxation and to the question whether, in accordance with the terms of the Council Resolution, the study of the problems listed in that memorandum by a specialist Committee might result in concrete and effective international action.
3. The Group has ~~found~~ ample evidence that there are cases of double taxation which constitute obstacles to the development of international trade and investment, and that action to remove these obstacles should be possible within a group of like-minded nations <sup>as the members and associated countries</sup> of the O.E.E.C. *(S-4)*
4. The Group took note that a great number of general or special agreements concerning double taxation of income, capital and estate <sup>s</sup>, had already been concluded bilaterally ~~between~~ <sup>between</sup> Member and Associated countries, but that there were substantial differences between agreements bearing on similar matters.
5. The Group was therefore of the opinion that the following studies should be undertaken:-

3/ ☒ The English text of these points is not yet available.

*[Insert catalogue]*



10. On the questions listed in the paragraphs above, the Group considered that studies and discussions within a Group of Experts could lead, in due course, to concrete proposals for effective international action.

11. Finally, the Group was of the opinion that out of the studies and discussions of the various above-mentioned questions, it might be possible, in the ~~long run~~, to evolve new model agreements and to see whether a multilateral convention can be ~~elaborated~~. *designed.*

12. The ad hoc Group of Experts therefore unanimously recommends to the Council that a specialist body on fiscal questions should be established within O.E.E.C. on a permanent basis. The task of this body would be to undertake the studies indicated in the paragraphs above in order to make concrete proposals to the Council. The specialist body, which would be open to all Members and Associated countries, should be composed of high-ranking government officials, assisted by taxation experts.

Paris, 14th February, 1956

F.Q.1

1<sup>ère</sup> Révision

AD HOC GROUP OF EXPERTS  
ON FISCAL QUESTIONS

LIST OF EXPERTS

- Austria : M. Gaeta, Austrian Delegation to OEEC.
- Belgium : M. d'Haeze, Conseiller,  
Ministère des Finances.
- Denmark : Mr. C.F. Jenfen, Chief of Section,  
Department of Taxation.
- France : M. Serre, Chef de Division,  
M. Mespoulhes, Administrateur,  
Direction Générale des Impôts.
- Germany : Mr. Mersmann, Director General,  
Ministry of Finance.  
Mr. Schulze-Brachmann, Counsellor,  
Ministry of Economic Affairs.  
Mr. Vogel, Counsellor,  
Ministry of Finance.
- Greece : (will not be represented)
- Iceland : (will not be represented)
- Ireland : Mr. S.P. Kennan, Irish Delegation to OEEC
- Italy : M. Cesare Cosciani, Professor of Financial Law  
at the University of Florence,  
Member of the Fiscal Commission of the International  
Chamber of Commerce,  
Member of the Productivity and Applied Research  
Committee of OEEC (Working Party on Fiscal Questions)
- Luxemburg : (will not be represented)



Netherlands : Mr. van den Tempel  
Assistant Director General of Taxes.  
Mr. Peeters, Chief of Division  
(International Agreements)  
Ministry of Finance.

Norway : (will not be represented)

Portugal : Mr. Silva Guerra, Portuguese Delegation to OEEC.

Sweden : Mr. Ohman, Counsellor to the Government,  
Ministry of Finance.  
Mr. Eckersten, Chief of Section.  
Mr. Gustaf Hedborg, Head of Legislative  
Department, Ministry of Finance.

Switzerland : M. Locher, Sous-Directeur,  
Administration Fédérale des Contributions.  
M. Widmer, Chef de Section, chargé des affaires  
de droit fiscal international et de double  
imposition.

Turkey : M. Cerid, Turkish Delegation to OEEC.

United Kingdom : Mr. N. Leach, Assistant Secretary,  
Mr. A. Lord, Principal,  
Board of Inland Revenue.

U.S.A. : Mr. C.E. Hunter, Director,  
Office of Financial Affairs USRO, Paris.

Canada : Mr. F. Hooton,  
Canadian Delegation to OEEC.

ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

RESTRICTED

Paris, 9th December 1955

C(55)307

Scale 1

Or. Fr./Engl.

COUNCIL

DOUBLE TAXATION

MEMORANDUM BY THE DELEGATIONS FOR THE NETHERLANDS

SWITZERLAND AND GERMANY

(Note by the Secretary of the Council)

At its 312th meeting on 5th August 1955, the Executive Committee considered notes by the Swiss and Netherlands Delegations concerning double taxation in Europe /CE/M(55)19, Minute 1647 and instructed the Secretary-General to examine what fiscal problems, particularly those relating to double taxation, might usefully be studied within the Organisation. The Secretary-General informed the Executive Committee at its 314th meeting on 4th October 1955, that the Secretariat wished to hold informal conversations with delegations who had made proposals on this matter before submitting his report to the Executive Committee and Council /CE/M(55)21, Minute 1947.

The Secretary-General has now received the attached memorandum from the Netherlands, Swiss and German Delegations, which is circulated for CONSIDERATION by the Council.

75635

Ta. 40236 - 12th December



PROPOSAL  
BY THE NETHERLANDS, SWISS AND GERMAN DELEGATIONS  
CONCERNING DOUBLE TAXATION QUESTIONS TO BE DISCUSSED  
BY A GROUP OF TAXATION EXPERTS WHICH SHOULD BE SET UP  
WITHIN THE O.E.E.C.

In a resolution of 2nd July 1954, the International Chamber of Commerce proposed to the O.E.E.C. that it should recommend its Member countries to conclude bilateral agreements for the avoidance of double taxation and to adopt unilateral measures with the same object. To give effect to this suggestion, the Executive Committee instructed the Secretary-General to prepare proposals as to what fiscal problems (particularly those relating to double taxation) might profitably be studied by a group of experts of the O.E.E.C. To facilitate the Secretariat's task, the Netherlands, Swiss and German Delegations put forward the following suggestions:

Inasmuch as double taxation agreements normally contribute to facilitate movements of capital and international trade, it would be a matter of satisfaction if it were decided to study, in the O.E.E.C. and within a group of taxation experts, the Double Taxation Agreements entered into by the Member countries of the O.E.E.C. with respect to taxes on income, capital and estates of deceased persons and, as far as possible, to endeavour to adjust these Agreements one to another. It would also be of immediate practical interest to study those cases of double taxation which have not yet been settled by such agreements, particularly cases concerning indirect taxes, which have never been the subject of preparatory studies, either in the League of Nations, the United Nations or in other International Organisations.

The group of taxation experts might profitably discuss the following questions:

1. Avoidance of double taxation with respect to taxes on income, capital and estates of deceased persons

Study of the main provisions of the Double Taxation Agreements entered into by the Member countries of the O.E.E.C., so as to determine how far it would be possible and desirable to adapt them one to another and, more particularly, to standardise their essential concepts.

*Catholic University*

- 3 -

C(55)307

*Suppl. -*

*Locher*

In the opinion of the three delegations such a study should primarily cover the following main points:

- (a) the concept of domicile;
  - 1 (b) the concept of "permanent establishment" and its field of application;
  - 5 (c) classification of income;
  - 2 (d) localisation of income (sources of income);
  - 5 4 (e) apportionment of profits between a firm's "permanent establishments" and between subsidiary companies;
  - 3 (f) the avoidance of double taxation with respect to taxes charged on investment income (dividends, interest) by deduction at the source;
  - 4 (g) the avoidance of double taxation of royalties and similar payments;
  - Spain* (h) the removal of inequalities in taxation treatment on grounds of nationality (not specifically a double taxation matter).
2. Avoidance of double taxation with respect to indirect taxes, particularly turnover taxes.

In the opinion of the three delegations, such a study should primarily cover the two problems mentioned below:

- The*
- (a) cases where, by reason of the differences between the Member countries' taxation systems, the same transaction is the subject of turnover tax in more than one country;
  - Ris. G - attempted* (b) in cases of the "rendering of services", whether and to what extent the rules in the agreements applying to taxes on income could be extended by analogy to indirect taxes (turnover taxes).

*It was* Subsequently, it would be desirable if the group of taxation experts could consider other essential double taxation questions; it might, for example, prepare new model agreements and consider whether it would be possible and useful to elaborate a multilateral Convention.

The group of experts which would be set up within the O.E.E.C. should be composed of specially qualified high-ranking Government representatives, assisted possibly by other taxation experts. Participation in the group of taxation experts should be open to all Member countries.

*Generalised and dispersed in permanent establishment*

allocation of taxing powers as prescribed in the conventions concerning direct taxes on income.



ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

RESTRICTED

Paris, 11th July 1955.

C(55)180

Scale 1

C O U N C I L

CREATION OF A COMMITTEE OF EXPERTS ON TAXATION

Note submitted by the Netherlands Delegation

The attached note, submitted in accordance with Part III  
of Council Recommendation C(55)37(Final, is circulated to the  
Council for CONSIDERATION.

CREATION OF A COMMITTEE OF EXPERTS ON TAXATION

Different factors have contributed to the fact that taxation has been a matter of increasing importance in most countries over the last few decades. The ever growing burden of taxation not only forced countries to pay increasing attention to the consequences of taxation in different sectors of the national economy but also resulted in the general necessity for national authorities to introduce tax legislation refinements for which no need had been felt before.

As a result of these considerations the number and extent of problems relating to taxation has been steadily increasing, not only in the national field but also and especially, in connection with the gradual intensification of international economic relations, in the international sphere.

The Netherlands Delegation is convinced that the solution of the problems referred to above as far as these problems have certain consequences in the international sphere would be facilitated to a large extent if provisions were made for a regular exchange of opinions in an international committee of experts on taxation. Within such a committee a basis could be prepared for an increasing international co-operation in the field of taxation.

It may be recalled that the need for an international committee of experts on taxation has already been felt in the past and did in fact lead to the creation in 1929 of a committee on taxation within the framework of the League of Nations. In the opinion of the Netherlands Delegation it is beyond doubt that the Fiscal Committee of the League of Nations has a record of important accomplishments in the field of international co-operation on matters of taxation, such as the drafting of model treaties for the prevention of double taxation and the preparation of reports on different subjects relating to the prevention of double taxation. The work of the Fiscal Committee of the League of Nations, which in itself provided an important contribution to international fiscal law, has been resumed after the second world war by the Fiscal Commission of the United Nations.

As, however, the Fiscal Commission of the United Nations was dissolved in 1954 without having its task transferred to another body, it is the opinion of the Netherlands authorities that means will have to be found for resuming within another



framework the international consultations described above. In their opinion there are several reasons why under the present circumstances creation of a forum for such consultations within the Organisation for European Economic Co-operation seems to be indicated.

It is one of the aims of the Organisation for European Economic Co-operation to achieve the speedy establishment of sound economic conditions in Europe and, in that connection, to create the institutions necessary for the success of European economic co-operation. For the re-establishment of normal economic conditions in Europe and for the adaptation of European economic activities to meet the exigencies of the present time, the progressive reduction of barriers to trade among member countries and the general stimulation of international investments including the facilitation of the international movement of capital have long been recognised as primary aims. These are precisely objects the realisation of which often meets with serious obstacles in the field of taxation.

An additional reason why consultation within the framework of the Organisation for European Economic Co-operation seems preferable is to be found in the fact that this forum would provide an opportunity for discussing international problems in the field of taxation in a smaller circle than has been the case in the United Nations. This has the considerable advantage that, where O.E.E.C. member countries have acquired roughly the same stage of economic development, it may be confidently expected that for some international problems in the field of taxation on which it has been difficult to reach a certain measure of agreement in a world-wide organisation, consultations within the O.E.E.C. will lead to generally acceptable conclusions and to positive results.

For these reasons the Netherlands Delegation invites the Council to take steps towards the creation of a committee of experts on taxation to be composed of representatives of all Member countries. It is the opinion of the Netherlands Delegation that Member countries should be represented by experts of sufficient national standing to ensure a high level study of the problems concerned.

The terms of reference of the committee might provide for the study of the undoubtedly very large number of problems in the

field of taxation that would benefit from international consultation, for the formulation of advice and for the preparation of recommendations to be addressed by the Council to Member countries. The prevention of double taxation, especially, should be mentioned. Provisions might be made to enable the committee to establish contact with other international organisations dealing with taxation whenever the committee deems such contact necessary for its activities.



Paris, 19th April 1955

C(55)88

Scale 1

Or. Fr.

COUNCIL

FURTHER NOTE FROM THE SWISS DELEGATION  
CONCERNING DOUBLE TAXATION IN RELATION TO  
INDIRECT TAXES

Note by the Secretary-General

1. At its 274th meeting on 25th February 1955, the Council adopted a recommendation concerning double taxation.

In Section III of that recommendation, the Council noted the Swiss Delegation's intention of submitting to the Organisation a further memorandum regarding the possibility of dealing with the problem of double taxation in relation to indirect taxes.

2. The Swiss Delegation has now submitted this memorandum to the Secretary-General ; the text is circulated herewith for INFORMATION.

68475  
Ta. 36298 - 21st April

NOTE SUBMITTED BY THE SWISS DELEGATION

In its note circulated on 16th December, 1954, under reference C(54)1, the Swiss Delegation stated that in recent years numerous bilateral Conventions had been concluded for the avoidance of double taxation with respect to taxes on income and property as well as taxes on the estates of deceased persons, thus complying with the first recommendation in the Resolution of 2nd July, 1954, of the International Chamber of Commerce. However, because of the growing complexity of national taxation laws, and of the legal, financial and technical difficulties which make efforts to avoid double taxation problems increasingly arduous, it has not up to now seemed possible to envisage the conclusion of multilateral Conventions in regard to such taxes, and Switzerland has therefore given its preference to the conclusion of bilateral Conventions, that having seemed to be the most suitable procedure.

The object of such bilateral Conventions is to avoid the double taxation of the income, property and estates of tax payers in the two States concerned. Their application is limited therefore to the sphere of direct taxes.

The new problem, mentioned in the Swiss Delegation's first note, is that raised by the imposition of indirect taxes, these being chiefly turnover taxes, which in particular are payable in respect of the rendering of services (e.g. income from the sale or granting of interests in copyrights, patents, trade marks, samples and models, technical plans, processes, experiments, formulae, etc., film rentals, payments for the use of industrial, commercial or scientific equipment). Certain States have now come to tax precisely those classes of income which are relieved from direct taxation by operation of international Conventions.

So it is, for example, that two States can enter into a Convention for the avoidance of double taxation with respect to direct taxes, whereby income from a sale or grant of incorporeal rights is taxed in the State in which the recipient of that income is domiciled. If one of those States imposes a turnover tax on royalties paid by persons domiciled in its territory to grantors in the other State, this constitutes a case of double taxation since such royalties are subsequently charged in the other State to a direct tax on income. This second imposition of tax is in accordance with the provisions of the Convention. For its part, however, the imposition of an indirect tax at the source in the first State is not specifically contrary to the Convention,

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since the latter only applies to direct taxes. Nevertheless, to a large extent it negates the intended effect of the Convention and leads to a form of double taxation which can only be avoided by a new agreement between the two States.

Besides the double taxation of royalties, which is a typical case, there are other similar examples, e.g. contributions to expenses of management which are paid by a subsidiary company to the principal company, or again, payments for services rendered which are made by a permanent establishment to its chief office.

All these cases of double taxation are related to specific problems which can be defined sufficiently precisely and could possibly be settled by a multilateral Convention, particularly as they seem to be engaging the attention of a number of States all of which have the same difficulties. Furthermore, it does not seem that such problems need involve insurmountable difficulties of terminology, neither would they in very many instances call for an over-extensive knowledge of every national legislation in question.

One of the greatest obstacles to such a procedure, however, would probably be the difficulty of obtaining the agreement of one State to abandon, for the benefit of a number of other States at the same time, the imposition of very productive taxes, should those other States not necessarily be in a position to offer it an equivalent counterpart.

While keeping within the scope of the suggestions made by the International Chamber of Commerce, it might be useful, in conclusion, if the O.E.E.C. set up a Group of Experts to consider such problems, to examine them in detail and to seek a solution to them, so as to be able to formulate for the benefit of the Member countries one or more recommendations on suitable measures for the avoidance of double taxation arising from the imposition of indirect taxes, or even evolve a model multilateral Convention. This conclusion goes to support the proposal made by the Netherlands Delegation to set up a committee of taxation experts within the O.E.E.C., in that one of the first taxes to be given to such a committee might well be the one now indicated.

Paris, 16th December 1954

C(54)331

Scale 1

Or. Fr.

COUNCIL

DOUBLE TAXATION IN EUROPE

NOTE FROM THE SWISS DELEGATION

CONCERNING DOUBLE TAXATION

IN RELATION TO INDIRECT TAXES AND DUTIES

A number of bilateral conventions for the avoidance of double taxation have already been concluded between Member and associated countries of the O.E.E.C. Having regard to the attempts already made to elaborate a model multilateral convention, it seems difficult to imagine that such an intricate and varied sector can be covered satisfactorily by a single convention.

It would seem that the existing bilateral conventions do not cover in general a whole series of duties and indirect taxes which in themselves constitute cases of double taxation and that, in special cases of this type in which specific questions can be delimited with sufficient precision, it should not be impossible - and it might be of interest - to conclude a multilateral convention. Member countries of the O.E.E.C. would find such a convention all the more useful as this type of taxation is closely related to production and trade. If no steps were taken to prohibit double taxation in this sector, in the same way as has been done in the field of direct taxation, production or trade might suffer.

The first question involved is what is known as the turnover tax, which includes, over and above the turnover tax itself, the tax on services rendered and the tax on production. Certain payments to foreign claimants from persons within the country are also sometimes taxed (copyright and patent royalties and the like, film rentals, contributions to expenses of management and payments for services rendered, participation by subsidiaries in the overheads of the parent company and vice versa, or by a permanent establishment in those of its head office).

As these indirect taxes are not covered by the conventions on double taxation of income, this practice may render these conventions ineffectual, as, for the payments in question, they normally admit the principle of taxation in the State where the payee is domiciled. Consequently, the State in which the payer is domiciled can, by means of the turnover tax, nullify the allocation of taxing powers as prescribed in the conventions concerning direct taxes on income.



Paris, 12th November, 1954

C(54)294

Scale 1

COUNCIL

DOUBLE TAXATION IN EUROPE

RESOLUTION ADOPTED BY THE EXECUTIVE COMMITTEE  
OF THE INTERNATIONAL CHAMBER OF COMMERCE

(Note by the Secretary-General)

The following Resolution has been adopted by the Executive Committee of the International Chamber of Commerce, and has been officially transmitted to the Organisation:-

"In the interest of the development of intra-European trade and investments, to which double taxation remains a serious obstacle, and in view of the close bonds uniting the countries of the O.E.E.C. and a fortiori the "Six", the International Chamber of Commerce urges the Council of the O.E.E.C. to recommend all O.E.E.C. Governments:

- (a) to conclude as rapidly as possible with all other O.E.E.C. Governments bilateral treaties for the avoidance of double taxation based on the Model Bilateral Convention for the Prevention of the Double Taxation of Income and Property of the League of Nations (London Draft);
- (b) to adopt at the same time the only fully effective method of eliminating double taxation, namely to take unilateral measures by national legislation such as those recommended by the I.C.C. in its resolutions and reports on double taxation.

The I.C.C. believes that it would be desirable for the O.E.E.C. to undertake an investigation of the possibility of concluding a multilateral convention on double taxation, between the O.E.E.C. countries. It believes that, should

a multilateral convention prove to be practicable, it would have the great advantage of securing uniformity of principle and practice in double taxation matters over a large area of world trade. The I.C.C. would gladly co-operate with the O.E.E.C. in any investigation of this kind.

2. As the Resolution points out, there are two possible methods of eliminating double taxation. The first may be described as the "bilateral method", and the second as the "unilateral method". Either of these methods could, in theory, be applied in concert by a group of countries in a multilateral manner. It is the object of the Resolution adopted by the I.C.C. to induce the O.E.E.C. to obtain the agreement of Member (and associated) countries to the pursuit of one or other of these means of eliminating double taxation by common agreement.

3. There can be little doubt that double taxation can not only impose serious hardship on individuals, but effectively impede the development of international co-operation and international trade, and that if the greatest possible benefit is to be obtained from international trade and international capital movements, it would be desirable that double taxation should be eliminated. But not only are there serious practical difficulties in the way of achieving this; there may also, in certain countries, be difficulties of a fiscal character in that the revenue which the countries derive from the taxation of income arising abroad and accruing to their residents or of income arising within their territories and accruing to residents of other countries, may form a substantial part of the revenues of the State.

4. This question of double taxation has been under international study for a long time. One has only to mention, in particular, the model double taxation conventions produced in 1928, 1933, 1943 and 1946 by the Fiscal Committee of the League of Nations, the work of certain specialised organs of the United Nations, and the Resolutions of the International Chamber of Commerce, as well as the publications of the International Association for Fiscal and Financial Law, to indicate that the matter has received considerable international attention.

5. Moreover, practically all Member and associated countries have concluded some forms of bilateral agreements concerning double taxation with other countries, with the result that there exists already between Member and associated countries a very considerable network of bilateral agreements. The total number of such agreements in force at the present time appears to be about 40.



6. But fiscal law and fiscal systems are essentially domains in which national governments have, over many centuries, developed entirely independent policies. Thus it is an extremely complicated matter to obtain agreement between any two countries regarding the ways in which their taxation systems should affect particular categories of income or capital transfers. To begin with, identical terms are used in the legal systems of different countries with entirely different meanings to describe particular types of transactions of particular kinds of income or capital transfers, and the task of drafting an agreement which will be equally valid in the countries of both signatories is, therefore, likely to be a complicated one at the best of times. Moreover, in countries which have federal systems of government, there may exist the further complication that local or provincial governments may be competent to tax particular sources of income and that, therefore, the federal government, in making an agreement with a foreign government, will have to bear in mind the powers of other governments within its own territory.

7. These difficulties of a technical and juridical character, coupled with the understandable reluctance of finance ministers to give up lucrative sources of taxation, have inevitably made the process of producing a comprehensive network of bilateral agreements a long and tedious one, and it is for these reasons principally that the number of bilateral agreements existing between Member and associated countries is now no larger than it is. It is chiefly because of their impatience with the slowness of the present method, rather than their dislike of the method as such, that the International Chamber of Commerce have passed the Resolution quoted above and addressed it to the O.E.E.C.

8. Another consequence of the multiplicity of national laws and practices in this matter is that it is extremely difficult to reach agreement upon a satisfactory standard type of bilateral agreement. The I.C.C. Resolution refers to the model agreement produced by the League of Nations in 1946, which is known as the "London Draft", but this particular text has not been accepted by all Member and associated countries, and it seems probable that some at least of them would wish to raise fundamental objection to any attempt to make it a standard form of bilateral double taxation convention. In these circumstances, it is not easy to see how the O.E.E.C. could intervene to obtain a more rapid conclusion of bilateral agreements than that which is now taking place, nor, in particular, does it seem likely that agreement could be reached in the Council that the "London Draft" should be the standard form of bilateral convention between Member and associated countries, since the draft itself is not, at it stands at present, fully acceptable to every Member. If an approach of this kind were to be adopted by the O.E.E.C., therefore, it would be necessary for the Organisation to set up an expert body charged with the duty of attempting to produce a more acceptable draft.



9. The second solution proposed in the I.C.C. Resolution is that Member countries should take unilateral measures, by national legislation, to remove double taxation. This would involve that all countries would agree on one of the definitions of "foreign income" proposed by the I.C.C. and take the necessary internal measures to ensure that that income (at least if it arose in the territory of another Member country) should not be subject to tax. This proposal will meet with the difficulties already mentioned, difficulties of definition and of fiscal need. It will also meet with a further difficulty, that, as has been already pointed out, practically all Member countries have already concluded one or more bilateral agreements with other Member and associated countries, and that such agreements might not fit into the pattern which would be established if this part of the I.C.C. Resolution were implemented. The adoption of this part of the I.C.C. Resolution would therefore imply the abrogation of existing bilateral agreements. This might not be a serious difficulty insofar as bilateral agreements between Member and associated countries are concerned, since if this solution were adopted by resolution of the O.E.E.C. Council, it could be presumed to be satisfactory to all Members. Difficulties would, however, arise in connection with any existing bilateral agreements between Member countries and non-Member countries.

10. On the whole, for the reasons indicated, it does seem doubtful whether any action by the O.E.E.C. would be likely to speed up the process of eliminating double taxation by the means which are now being currently adopted by most Member and associated countries. Nor, since the matter is a highly technical one, which is currently under discussion in the United Nations as well as in a number of non-governmental international organisations, does there seem to be a strong prima facie case for suggesting that the O.E.E.C. should interest itself in the matter. Unless, therefore, there is very strong support for action of some kind by the Organisation, it would seem that it would probably be appropriate for the Council to take note of the I.C.C. Resolution, to draw it to the attention of Member and associated countries, and to indicate its sympathy with the objectives sought by the I.C.C. without committing itself as to the methods which should be adopted in order to achieve these objectives.



ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

*1/1/54*  
*Dep. Lnd, Ireland Review*  
*T2044/378/54*  
RESTRICTED

Paris, 3rd July, 1957

C(57)145

Scale 1

Or. Fr.

COUNCIL

INTERIM REPORT BY THE FISCAL COMMITTEE  
ON ITS ACTIVITIES

(Note by the Secretary of the Council)

The attached report, adopted by the Fiscal Committee at its fourth session on 6th June, 1957, is submitted to the Council FOR CONSIDERATION.

*This is substantially the  
same document that we  
approved in draft in  
Paris on 6/6. Also  
Lawrie (F.O.) this + said  
it was O.K.*

*A2. 11/7*

16. The removal of the obstacles caused by double taxation to the expansion of trade and intra-European investment is an essential task. The adoption of common rules, among other things, would give European investors more certainty about the taxation obligations to which they will be subject and this would be bound to have a favourable effect on intra-European investment. Common rules would also provide more stability than can be guaranteed by bilateral Conventions on double taxation negotiated independently from one another. In effect, to ensure the harmonious development of intra-European economic relations, the risks of losses which may result from modification of the tax treatment to which nationals of other countries are subjected must be avoided as far as possible. Finally, common rules would have an additional advantage over bilateral conventions in that they would solve the difficulties which may occur when one or more third countries are also involved.

17. Another consideration is that the application of common rules by the Member countries of the O.E.E.C. would, because of their position in the world economy, be an inducement to other countries to adopt the same rules.



INTERIM REPORT  
ON THE ACTIVITIES OF THE FISCAL COMMITTEE

1. After its first year of existence, the Fiscal Committee set up by Resolution of the Council C(56)49(Final) of 16th March, 1956, for the study of questions relating to double taxation and of other fiscal questions of a similar technical nature, considers that it should report to the Council on the progress of its work and, in particular, on the manner in which it proposes to fulfil the task entrusted to it and on the results which it hopes to obtain.

2. Considering that double taxation creates obstacles to the development of international trade and investment, in the Resolution referred to above the Council has clearly defined the questions on which the Committee is instructed to submit to it concrete proposals for the avoidance of double taxation. The Council has not laid down a timetable, nor has it set any final date for this submission, but it decided to review the work of the Fiscal Committee before 1st July, 1958, in order to determine whether or not the Committee should continue after that date. This implies that before that date the Committee should submit to the Council a report on the results of its studies. With this in mind, the Committee at its first Session on 23rd and 24th May, 1956, decided on its method and programme of work.

I. METHOD OF WORK

3. The Committee considered that, in view of the highly specialised nature of the matters which it had been set up to deal with, the best method of obtaining speedy and concrete results was to entrust their study direct to its own members, who were designated by the Governments of the Member countries from among officials responsible for the conclusion and application of Conventions for the avoidance of double taxation.

4. The fact that the members of the Committee are in daily contact with the practical aspects of the problems involved, together with their knowledge of taxation legislation in other countries, their experience in negotiations on double taxation, and in most cases their professional contacts, all constitute at the outset a series of advantages which it would have been difficult to find if the preparation of the studies had been entrusted to the Secretariat or to consultants recruited by the Organisation. In addition, in view of the number and complexity of the studies envisaged, if any other method of work had been adopted it would have been necessary for the Committee to have a fairly large specialist secretariat.



5. The Committee has noted, in this connection, that the method of work it has adopted was taken into consideration by the Council when it examined the Budget of the Organisation for 1956-57 [cf. C/M(56)34 of 3rd October, 1956]. The Committee considers that the measures taken by the Secretary-General for providing it with a Secretariat are entirely satisfactory and will request the Secretary-General to recruit consultants, if necessary.
6. The Committee has set up several Working Parties each consisting of two Delegates chosen from amongst its members. The Working Parties may ask the members of the Committee for any information or circulate any questionnaires to them on a personal and informal basis and with the Chairman's consent. The replies are not binding on the Governments concerned and the final use made of them in the reports submitted to the Committee by the Working Parties is subject to the approval of the Delegates concerned.
7. Because of its composition and its method of work, the Committee has not so far been able to meet as often as would have been necessary to deal with all the questions which it has been asked to study in the time which the Council appears to have allowed it. Its members have heavy responsibilities in their capitals and have to make frequent journeys abroad; the studies assigned to them have therefore taken some time to prepare. Thus, the Committee has been able to hold only four Sessions since it was formed, although its Sessions have become longer as its work developed (May 1956 =  $1\frac{1}{2}$  days; October 1956 =  $2\frac{1}{2}$  days; January 1957 = 3 days; June 1957 =  $3\frac{1}{2}$  days). The Committee feels, however, that these inconveniences are unavoidable if the representation is to be kept at the highest possible level and if some of its responsibilities are not to be delegated to a Committee of Alternates for example.

## II. PROGRAMME OF WORK AND FIRST RESULTS OBTAINED

8. The Committee considered, in view of the differences in the taxation concepts and systems of the various countries, let alone difficulties of terminology, that the proper course was first to seek some common ground of agreement on certain questions and to determine certain common concepts and guiding principles on which an agreement on the definitions and methods to be applied in preventing double taxation, could be based. The question of how to give effect subsequently to this agreement, that is the form and scope of the Recommendations to be submitted later to the Council, was reserved by the Committee from the outset.

9. It, therefore, took as its first objective the study of the following five subjects, Reports on which have been submitted to it by the Working Parties appointed for the purpose:



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- (a) The concept of permanent establishment  
(Working Party No. 1: Germany-United Kingdom)
- (b) The concept of fiscal domicile  
(Working Party No. 2: Denmark-Luxembourg)
- (c) The listing and definition of taxes on income and capital  
(including taxes on estates and inheritances) which  
should be covered by Double Taxation Agreements  
(Working Party No. 3: Italy-Switzerland)
- (d) Tax discrimination on grounds of nationality or similar  
grounds  
(Working Party No. 4: Netherlands-France)
- (e) The taxation of income and capital of shipping and air  
transport enterprises and of their crews  
(Working Party No. 5: Sweden-Belgium).

10. These studies are of great importance as the adoption of common concepts often implies delimitation of taxing powers as between States. With regard to the last-mentioned subject, the study undertaken goes even further because the question here is precisely that of delimiting the States' taxing powers with respect to the taxation of shipping and air transport companies. A number of the questions down for consideration have already been closely studied by various international Organisations, a fact which should make it easier to reach a common solution more speedily within the O.E.E.C.

11. On each of the five above-mentioned subjects, the studies of the Working Parties and the discussions within the Committee have resulted in the establishment of a draft Article for a Convention or Recommendation, accompanied by an illustrative or interpretative commentary. At its June 1957 Session, the Committee unanimously adopted the draft recommendation concerning the taxation of shipping and air transport companies and of their crews as well as the draft Article concerning the listing and definition of taxes which should be covered by Double Taxation Agreements. The Committee hopes to adopt also, at its October 1957 Session, the draft Article concerning tax discrimination. The work on the draft Articles concerning the concept of permanent establishment and the concept of fiscal domicile is sufficiently advanced for an agreement to be reached at one of the next two Sessions.

12. It is clear that these questions, however important they are, cover only part of the matters which the Committee must examine under its terms of reference. The Committee has therefore decided, at its June 1957 Session, to create five new Working Parties to study the following questions:

- (a) Taxation of inland waterways transport enterprises and of transport on own account;  
(Working Party No. 6: France-Germany).
- (b) Definition and apportionment of profits between the head office of an undertaking, its permanent establishments and its subsidiary companies;  
(Working Party No. 7: United Kingdom-Netherlands).
- (c) Direct taxation of royalties;  
(Working Party No. 8: Germany-Luxembourg).
- (d) Taxation of immovable assets;  
(Working Party No. 9: Italy-Austria).
- (e) Taxation of dependent and independent work;  
(Working Party No. 10: Sweden).

The Committee also decided to discuss at its next Session the method to be adopted for the study of the complex problems of double taxation with respect to indirect taxes.

### III. THE COMMITTEE'S AIMS

13. It is useful to recall here that the work on double taxation undertaken by the League of Nations in 1920 culminated in the establishment of two Model Tax Conventions, the Mexico draft (1943) and the London draft (1946). Although many of the Member countries have been guided by the contents of these drafts when concluding new Conventions or when interpreting existing ones, uniformity is still by no means achieved and no satisfactory solution has yet been found for many cases of double taxation.

14. Co-ordination in international taxation matters between the Member countries is particularly essential because of the increasingly close interdependence of their economies and of the need to develop to the utmost the movement of goods and services, capital and manpower. In view of the ties which already unite the Member countries within the O.E.E.C. and of their existing mutual obligations, further co-operation in international fiscal relations is certainly feasible and even necessary.

15. There can, of course, be no question of harmonising the taxation systems of the Member countries. The Committee has set itself a less ambitious aim, which, generally speaking, is to delimit uniformly the Member countries' taxing powers on the international plane. Such an objective, if attained, would already be of very great importance for the free development of economic relations between the Member countries of the O.E.E.C.



C(57)145

16. The removal of the obstacles caused by double taxation to the expansion of trade and intra-European investment is an essential task. The adoption of common rules, among other things, would give European investors more certainty about the taxation obligations to which they will be subject and this would be bound to have a favourable effect on intra-European investment. Common rules would also provide more stability than can be guaranteed by bilateral Conventions on double taxation negotiated independently from one another. In effect, to ensure the harmonious development of intra-European economic relations, the risks of losses which may result from modification of the tax treatment to which nationals of other countries are subjected must be avoided as far as possible. Finally, common rules would have an additional advantage over bilateral conventions in that they would solve the difficulties which may occur when one or more third countries are also involved.

17. Another consideration is that the application of common rules by the Member countries of the O.E.E.C. would, because of their position in the world economy, be an inducement to other countries to adopt the same rules.

18. It should also be noted that, from the taxation point of view, the great advantages that would result from the adoption of common rules can be secured without the Member countries suffering any appreciable loss. In effect, the restrictions placed on their respective taxing powers would merely entail readjustments which would be limited to certain extensions or reductions, and any losses of Budget revenue which might be incurred by a State on account of the elimination of double taxation could find their justification in the advantages that this very elimination would entail.

19. The Committee has not yet decided upon the form in which to put before the Council the uniform course of action which it is to propose. The establishment of new Model Conventions will probably not meet the case. The Committee will therefore examine the various other possibilities and will weigh their respective advantages and disadvantages before making concrete proposals to the Council.

#### IV. LIAISON WITH INTERNATIONAL ORGANISATIONS

20. The Committee feels that before submitting its recommendations to the Council it would be useful to know the views of certain international Organisations which, for many years past, have dealt with questions of double taxation. This question is included, in particular, in the programme of work of the Economic and Social Council of the United Nations. An observer representing the United Nations Secretariat was invited at the outset to participate informally in the Committee's work. Liaison should also be established in due course with the International Chamber of Commerce, which has studied these questions in great detail.

CONCLUSIONS

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CONCLUSIONS

21. In view of the extent and complexity of the problems involved, it would be a mistake to expect spectacular results in a short time. It is already clear that, between now and July 1958, the Committee will be unable to deal with all the questions concerning which it has been instructed to submit concrete proposals to the Council.
22. It hopes, however, that, before 1st July, 1958, it will be able to submit to the Council a report setting out the points on which agreement has been reached and the procedure for giving effect to such agreement.
23. Finally, the Committee wishes to point out that, apart from the concrete results which it hopes to obtain gradually, the fact that officials of the Member countries who are in charge of international double taxation questions and experts on the subject can meet periodically to clarify problems by discussing them frankly and thoroughly and to harmonise their views represents, in its opinion, a considerable advantage. Moreover, the work which the Committee has accomplished up to now has proved very useful during certain recent bilateral negotiations on double taxation.



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T2044/378/54 -  
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INWARD SAVING TELEGRAM

BY BAG

FROM UNITED KINGDOM PERMANENT DELEGATION PARIS TO FOREIGN OFFICE

Sir H. Ellis-Rees (O.E.E.C.)  
No. 206 Saving  
March 16, 1956.

EUROPEAN RECONSTRUCTION

DISTRIBUTION

RESTRICTED  
FRAME

R. March 17, 1956.

Addressed to Foreign Office telegram No. 206 Saving of  
March 16, 1956.

Fiscal Committee

The Council today considered the Report by the Ad Hoc Group of Experts on fiscal questions, C(56)49, and adopted a draft Resolution based upon this Report, a copy of which has already been sent to the Board of Inland Revenue.

2. The three Scandinavian Delegations urged that the Committee should not be set up on a permanent basis and their request will be covered by a new paragraph in the Resolution along the following lines -

"The Council will review the work of the Fiscal Committee before July 1, 1958 in order to determine whether the Committee's existence should be continued or discontinued".

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T2044/378/54



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CONFIDENTIAL

(30107/ /56)

United Kingdom Delegation to OEEC,  
62, rue du Faubourg St. Honoré,  
Paris, 8e.

March 16, 1956.

Dear Lord,

You informed me on the telephone yesterday, firstly that the Draft Resolution of the Council creating a Fiscal Committee (CES/56/60) was in general acceptable to you and, secondly, that you thought there was advantage in provision being made for a reconsideration of the Committee's usefulness at some future date. You will have seen from our Savingram of to-day's date that the Resolution was passed by the Council this morning, subject to the addition of a paragraph which would provide for reconsideration of whether or not the Committee should continue in existence, some time before 1st July, 1958.

2. The three Scandinavian Delegations and we ourselves would have preferred an earlier date than that provided for, but others felt strongly that, in view of the complex technical nature of the new Committee's mandate, it would be unrealistic to expect the Committee to have reached anywhere near completion of its work within a shorter period of, say, 12 months. *This doesn't do away with the CES for an annual review.*

3. A point of general interest which arose during the discussion was that the Swedish Delegate said that his authorities were increasingly concerned at the tendency to create more and more committees, without winding up any existing bodies. Valéry (France) seemed to endorse this view, and Sir Hugh Ellis-Rees took the opportunity of saying that he thought that the existing committee structure ought to be reconsidered.

4. I am copying this letter to Miss Muskett (Board of Trade), to McCann (Foreign Office) and to Collier (Treasury), (paragraph 3 will be of interest to them rather than to you).

Yours sincerely,

(S. H. WRIGHT)

A. Lord, Esq.,  
Secretary's Office,



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bought rang me up this evening.  
 The Resolution attached to his  
 letter of 14th March as to be  
 taken by the Council of O.E.C.C.  
 tomorrow - this is a surprise  
 move of which he was given  
 no notice. He asked for  
 my comments on the Resolution

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I said that the Substantive  
 paragraphs appeared merely  
 to restate the main points  
 of the Cooper Group's Report  
 were therefore unobjectionable

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As for the question of the  
 "permanent" nature of the  
 fiscal committee he had  
 no comments except that  
 I thought our view would

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with which the Fiscal Committee might have relations.  
 this letter without enclosure to

be that we should not wish to  
be associated with a Committee  
that was plainly serving no  
useful purpose; ~~the~~ to that  
extent we should have no  
objection to a periodic review  
of the Committee's activities

He said he would brief the U.K.  
representative in that sense  
would write to me later setting  
out both our phone conversation  
and ~~the~~ a record of the Committee  
deliberation.

42.573



CONFIDENTIAL  
30107/29/56

United Kingdom Delegation to O.E.E.C.,  
62, rue du Faubourg St. Honoré,  
Paris, VIIe.

March 14, 1956.

Dear Lord,

The Executive Committee yesterday considered the Report by the Ad Hoc Group of experts on fiscal questions, (C(56)49). In the course of the discussion a draft Resolution of the Council embodying the Report's conclusions was circulated and I am enclosing a copy of this draft, (CES/56/60.)

2. The only matters in the Report which produced any discussion were paragraph 8 and the reference in paragraph 11 to setting up a specialist body on a "permanent basis". Several Delegations thought that paragraph 8 was a little too wide, but it was pointed out, I think with justice, that paragraph 1(a) of the draft Resolution is at once more precise and more narrow.

3. The Danish Delegate thought that the Organisation should not at this stage create a new permanent committee. In order to meet him it was agreed that the Secretariat should revise the draft Resolution in such a way as to permit the Council to review, after a suitable lapse of time, the desirability of keeping the Committee in being. BK

4. It was decided to forward the Report to the Council and to ask the Secretariat to provide a draft Resolution based on CES/56/60 for the Council. Delegations were in the meantime asked to provide the Secretariat with their comments on CES/56/60.

5. I should be grateful if you would let us know whether CES/56/60 is acceptable to you. It seems to me to reproduce faithfully the recommendations in the group of experts' Report.

6. I should perhaps add that the Committee for Invisible Transactions is to be included with the Managing Board and the Steering Board in paragraph 4 as a body with which the Fiscal Committee might have relations.

7. I am copying this letter without enclosure to Miss Muskett, McCann and Collier.

Yours sincerely,  
S. H. Wright

(S. H. Wright)

T2044/378/54

O.E.E.C.

Proposal to set up a specialist body to  
study certain double taxation questions

Brief for the United Kingdom Delegation

1. In accordance with the decision of the Council of O.E.E.C. contained in C(56) 1 a group of experts on fiscal questions, representing most of the member countries of O.E.E.C. and associated countries, met in Paris on 14th and 15th February, 1956, to consider the proposal put forward in C(55) 307 by the representatives of Germany, the Netherlands and Switzerland that the Organisation should sponsor a new specialist group to study certain problems arising from the double taxation of profits and income.
2. It will be recalled that prior to the meeting in February the United Kingdom had taken the view that a study on the lines proposed in C (55) 307 would almost certainly prove to be fruitless and unrewarding and that the results that such a study group might be expected to produce would be insufficient to justify setting up the group and servicing it with all the detailed information it would inevitably require.
3. At the opening meeting of the expert group on 14th February it soon became clear, after a series of explanatory speeches by representatives of the countries that had jointly produced C (55) 307, that the feeling of the group was strongly in favour of the proposals put forward in that paper. In explaining the attitude of H.M. Government the United Kingdom delegates therefore took the line that although they were not wholly convinced that the proposed study group would be able to produce practical benefits they would nevertheless be prepared if it was the wish of the Organisation that such a group should be established, to co-operate with the study group and participate in it. In taking this line the United Kingdom delegates were influenced by the following considerations:-
  - (a) In the opening speeches in which they commended to the meeting the proposals outlined in C (55) 307 the representatives of the three countries responsible for drafting that document made it quite clear that they were much more concerned with the practical results which they hoped would flow from a study of particular problems than with general theoretical considerations. To this extent their proposals were more realistic than might have been assumed from C (55) 307 and were therefore in the view of the United Kingdom delegates, rather more acceptable.
  - (b) With the exception of the Swedish delegation who were distinctly lukewarm towards the proposal, it was clearly the wish of the meeting that a study group should be set up, and in the modified form in which the proposal was presented to the meeting it was obviously impossible for the United Kingdom representatives to demonstrate that no benefits whatsoever could be expected to accrue from the work of the study group. On the assumption that it is the general policy of H.M. Government to co-operate in O.E.E.C. projects even though in a particular instance the United Kingdom may be doubtful whether any substantial benefits may be expected to arise from the project, it therefore seemed preferable for the United Kingdom to express its willingness to co-operate and participate, partly to obtain the goodwill of the other countries concerned and partly to ensure that if the study group is set up the United Kingdom will be able to exercise some influence on its course of work and its recommendations.

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4. With these considerations in mind it is therefore recommended that when the proposal to set up a study group on double taxation questions comes before the Organisation for final acceptance the United Kingdom representative should express H.M. Government's qualified approval of the project.

12044/378/54

## Double Taxation

### Note of a meeting of a specialist group convened by O.E.E.C.

1. In accordance with the decision in C(56)1 a meeting of a group of fiscal experts representing almost all the member and associated countries of O.E.E.C. was held in Paris on 14th and 15th February to discuss the proposals on double taxation matters put forward in C(55)307.
2. The leader of the Dutch delegation, Dr. van den Tempel, was invited to take the chair. He then called on the Secretariat to make a short introductory speech; this consisted of a historical resume of the way in which the problem had arisen within the Organisation; this resume was for the most part a re-capitulation of the papers previously circulated. The Chairman then suggested that the best way of dealing with the problem that had been remitted to the expert group would be to invite the representatives of the three delegations that had drafted and sponsored C(55)307 to explain their views at greater length; other representatives could then make clear the views of their respective Governments.
3. The first speech was made by M. Locher of Switzerland. He put it to the group as his view that sufficient justification for the creation of a study group could be found in the subjects listed in Paragraph 1 of C(55)307 and that further matters requiring study were to be found in paragraph 2. The questions mentioned in these two paragraphs were, he said, merely intended to demonstrate that there was already ample scope for study of international double taxation problems. It was not intended that the list of problems in C(55)307 should be regarded as final; other suggestions might well be made. The important thing was to study the problems in a realistic way so as to achieve practical results and not merely theoretical conclusions.
4. M. Locher was supported by Herr Mergmann of Germany who said that the main interest of his Government lay in ensuring some standardisation of the concepts such as "branch" or "permanent establishment" used in double taxation conventions. If such a standardisation were achieved it would, he thought, be of considerable assistance to international trade and commerce.
5. A further supporting speech was made by the Chairman, Dr. van den Tempel, speaking as the representative of Holland. His Government was also anxious to see some considerable standardisation of the terms and concepts commonly used in double taxation conventions. If this could be achieved he thought that it would go some way towards abolishing many of the uncertainties with which the international entrepreneur was faced. If it were possible to make a start on developing established and universal "rules of play" it would, he thought, be possible to tackle the problems piecemeal and that valuable results would follow.
6. M. Serre of France said that he agreed with preceding speakers but did not think that the problems facing any future study group would be easy to solve because different interpretations of the same concept in different countries were an almost inevitable result of differing commercial and legal systems. If, nevertheless, any progress towards standardisation could be made he would be glad to see it and he therefore supported the proposal for a study group. As for the inclusion of indirect taxes, as was proposed in C(55)307, he merely wished to make the reservation that where a single source of income was subjected to both direct and indirect taxes it should not, solely on that account, be regarded as an example of double taxation.

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7. Prof. Conziani of Italy raised five points about the course of work that it was intended the proposed study group should cover.

- (a) Would the group go on to consider other matters in addition to double taxation questions?
- (b) Was the group to look for a model multilateral convention?
- (c) Was the aim of the group to be to establish another model after the pattern of the London agreement?
- (d) Was the group to be restricted to discussion of concepts used in double taxation conventions?
- (e) Could the group also consider the taxation effects of nationality, i.e. some sort of Article parallel to the customary "most favoured nation" Clause in commercial treaties.

Referring to these five points Herr Hermann of Germany said that in his view the first concern of any study group ought to be the study and standardisation of the concepts in common use in conventions. It might be that out of this study there would emerge something approaching a model multilateral convention but that was rather a secondary consideration.

8. The Committee was then addressed by a representative of the United Nations Organisation who promised that should a study group be set up it would have at its disposal all the preparatory work done by the U.N. Fiscal Commission.

9. At this point Mr. Leach put the view of the United Kingdom. He said that when faced with the proposal for a study group to consider the double taxation problems that had been mentioned our attitude was a mixture of benevolent neutrality and scepticism. Our benevolent neutrality sprang from the fact that if anything could be done to standardise the concepts used in double taxation conventions or in any other way to solve these double taxation problems we should be glad to see it done; our scepticism arose from the fact that we had already negotiated over sixty conventions and we had found it sufficiently difficult to achieve anything like a standardised model. If, however, it was the view of the committee that a study group, if set up, could do valuable work the United Kingdom would be willing to co-operate with the group and participate in it. This promise of co-operation was received with evident satisfaction by the representatives of the countries most interested.

10. Mr. Olsson of Sweden said that his country was also sceptical of the proposal. He was impressed by the difficulties of achieving any degree of standardisation. Moreover, he felt that as it stood paragraphs 1 and 2 of C(55)307 were too widely drafted to be taken as the terms of reference of a study group. The subjects for study ought to be less theoretical and more closely restricted.

11. After the statement by the Swedish representative the committee turned its attention from the question whether it would be desirable to set up a study group - for the majority of the active participants were clearly in favour of such a group and there was really no opposition to the proposal - and began to study C(55)307 in detail in order to determine to what extent it might be used as the group's terms of reference. After some discussion had taken place the Swedish delegation put in an alternative draft (numbered P.Q.3 among the conference papers) and in further discussion this was substantially altered. The question of the terms of reference was then remitted to a drafting committee. This committee, consisting of representatives of France, Germany, Holland, Sweden, Switzerland and the

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United Kingdom, met on the morning of 15th February and produced a draft (see the proposals of the drafting group in the conference papers). This draft was later submitted to a meeting of the full committee and was approved, subject to minor amendment, together with additional paragraphs, the whole comprising the committee's report to the Council of O.E.E.C.

You told me when I spoke to you a few days ago that you were shortly to prepare a letter for the Council of O.E.E.C. on the report of the drafting group of Experts on Article 12 (C(56)9). I have today been informed that this report is to be considered by the Executive Committee of O.E.E.C. on Tuesday, March 13. It should be gratifying to hear from you as soon as possible whether the report in its present form is acceptable to you (i.e. whether there have been any deviations from the report as you and I agreed to do) and also to have such comments as you think may be made at all points, unacceptable to you, which were raised by experts during the meeting and which may be re-raised by the Representatives of those countries to the Executive Committee.

2. In view of the upcoming date of C(56)12, the Executive Committee will not be considering before the meeting of the Executive Committee a draft recommendation. Their feeling is that it would perhaps be better to have a preliminary round of discussion on the Executive Committee and perhaps also in the Council before a final decision is made up. They say, however, that a draft report is to be prepared in case it is asked for by any Representative of the Executive Committee.

3. I should perhaps explain that the Executive Committee at its second meeting will be the Administration, that is a body of limited membership and that its principal function is to sift material and to make recommendations to the Council being the broad body for decisions to be taken.

4. I am copying this letter to the Secretary General.



T-2044/378/54

1. So far as I can discover from this rather  
Crazy Gang file, the paper is being made by

(i) the Dutch, who seem to be resentful about  
the liquidation of the Fiscal Commission of UN  
(which we ourselves regarded as a good thing) & so  
want to set up a new Committee or Commission to  
discuss, inter alia, fields, spheres and bases, &

(ii) the Swiss, who seem to be engaged in a  
private brawl with the French. So far as I can  
see the French have outwitted them by

agreeing that the charge of direct taxation &  
royalties should be by way of the residence of  
the recipient rather than by way of the residence of  
the payer, which nullifies or reduces

the exemption by origin. There seems also to be  
a brawl about the allocation of overheads

by parent & subsidiary companies.

T2044/378/54

2. If this basis, the answer to (i) is that we've got the seminar, but the  $\Phi$  phase, as "futile and unwelcoming" and (ii) that this is a private fight - which we do not wish to join.

3. There seems to have been talk of a gang of up of friends, Swiss & Dutch to give a respectable academic flavor to the whole thing, & to discuss domestic, "classification-  
fine-ware", and "localisation of fine-ware", but even these terms may mean. Presumably some thought to be made, for example, of a great - whether interested to be changed by a few bar-jin or evidence, - a seminar which by experience has shown to be profitable.



by ...  
sir H. Ellis-Rees (O.E.E.C.)

DISTRIBUTION

No. 12 Saving  
January 11, 1956

R: January 12, 1956

CONFIDENTIAL  
FRAME

Double Taxation

Executive Committee yesterday considered memorandum submitted by the German, Dutch and Swiss Delegations (C(55)307). The copy of Daymond's letter did not reach me until the meeting had started, and although we had advance warning of its contents there was then no time to discuss the matter before the meeting.

2. Other members of the Committee were all agreed that there ought to be a meeting of taxation experts. I criticised the memorandum for being vague and for not revealing what the usefulness of the study would be, nor what were its precise objectives. However, as the discussion proceeded, it was clear that few were prepared to enter any commitments about the setting up of any permanent committee, or about adopting the suggestions in the memorandum.

3. As I was in the Chair and there was a unanimous wish to take the matter a stage further, I agreed that the following proposals should be submitted to the Council on Friday, January 13. An ad hoc meeting of taxation experts should be convened to consider whether there were problems of double taxation which could usefully be tackled through international co-operation in O.E.E.C. The memorandum presented by the Netherlands, Swiss and German Delegations would be considered at this meeting, not as representing any terms of reference, but as a contribution by these Delegations. Other members could make similar contributions if they wished. If this ad hoc group decided that it would be worth while going on, they could draft their own terms of reference and submit them to the Council for approval. The United States and Canadian Delegations would be asked whether they would be willing to join such a group. No-one would be committed by joining it.

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CONFIDENTIAL

United Kingdom Permanent Delegation Paris telegram No. 12 Saving  
to Foreign Office

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4. The Secretary General will draw up a short paper for the Council on the lines of the previous paragraph, and I shall be glad to know whether you would agree to this procedure.
5. I think that we ought to support it, and that it would be much better to have people who are expert in the subject to advise the Council on whether anything is to be gained from studies of the kind recommended by the joint authors of the memorandum.
6. If at a later stage the majority would want to press on with studies which we regarded as leading to no useful result, or cutting across our own bilateral arrangements, we could allow the others to proceed by invoking Article 14. But I think that in our position in the Organisation it would be tactically unwise to try to suppress at this stage a movement which has some support however ill-founded it may turn out to be.



F 2044/378/52

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BF. Bp 10 Feb 1956

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M. Land

Looked but said this before it goes  
into BF. We began the whole idea  
as if I had known the F.O.'s words,  
"futile & unviewed" or, in crude  
terms, as a gathering of intentional  
chatterers ~~gathered together~~ for the  
purpose of chattering.

We must, in the interest of  
intentional unity, agree to attend  
by meeting which is engaged to be

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January 7, 1956

On December 17 Stanley Wright wrote to me about double taxation problems (see 12811/-/55 of December 17).

2. I duly passed copies of paper C(55)307 of December 9 to Customs and Excise and Inland Revenue, and I have now received their comments on this new joint memorandum by the Delegations for the Netherlands, Switzerland and Germany.

3. In general, we are opposed to the setting up of a special body to consider double taxation unless the Terms of Reference of their work are defined more clearly beforehand. The terms proposed in the paper under reference seem to include an investigation of the whole field of indirect taxation which, of course, includes Customs and Excise duties and Purchase Tax.

4. Our feeling is that if your opposition to the setting up of such a body is not successful, then you should not only ensure that the U.K. is represented on it but that its Terms of Reference should be narrowed down so as definitely to exclude the consideration of Customs and Excise duties and Purchase Tax. As you are already aware, we are extremely loth to have such questions discussed internationally.

5. The paper under reference in its Section 1 on page 2 proposes the "harmonisation" of double taxation agreements, and this, in general, we consider to be a futile and unrewarding exercise.

I have sent a copy of this letter to Collier (Treasury), Collins (Inland Revenue) and O'Keeffe (Customs and Excise).

(Michael D. W. McCann)

Alastair G. Maitland, Esq.,  
U.K. Delegation,  
PARIS.

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Christopher  
"International"  
agreements.

CONFIDENTIAL

FOREIGN OFFICE, S.W.1.

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(Michael D. W. McCann)

Alastair G. Maitland, Esq.,  
U.K. Delegation,  
PARIS.

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Christopher  
on "preliminary"  
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ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

RESTRICTED

Paris, 11th July 1955.

C(55)180

Scale 1

C O U N C I L

CREATION OF A COMMITTEE OF EXPERTS ON TAXATION

Note submitted by the Netherlands Delegation

The attached note, submitted in accordance with Part III of Council Recommendation C(55)37(Final, is circulated to the Council for CONSIDERATION.

Miss Musket  
T2044/348/54

CREATION OF A COMMITTEE OF EXPERTS ON TAXATION

SRI Different factors have contributed to the fact that taxation has been a matter of increasing importance in most countries over the last few decades. The ever growing burden of taxation not only forced countries to pay increasing attention to the consequences of taxation in different sectors of the national economy but also resulted in the general necessity for national authorities to introduce tax legislation refinements for which no need had been felt before.

As a result of these considerations the number and extent of problems relating to taxation has been steadily increasing, not only in the national field but also and especially, in connection with the gradual intensification of international economic relations, in the international sphere.

The Netherlands Delegation is convinced that the solution of the problems referred to above as far as these problems have certain consequences in the international sphere would be facilitated to a large extent if provisions were made for a regular exchange of opinions in an international committee of experts on taxation. Within such a committee a basis could be prepared for an increasing international co-operation in the field of taxation.

It may be recalled that the need for an international committee of experts on taxation has already been felt in the past and did in fact lead to the creation in 1929 of a committee on taxation within the framework of the League of Nations. In the opinion of the Netherlands Delegation it is beyond doubt that the Fiscal Committee of the League of Nations has a record of important accomplishments in the field of international co-operation on matters of taxation, such as the drafting of model treaties for the prevention of double taxation and the preparation of reports on different subjects relating to the prevention of double taxation. The work of the Fiscal Committee of the League of Nations, which in itself provided an important contribution to international fiscal law, has been resumed after the second world war by the Fiscal Commission of the United Nations.

As, however, the Fiscal Commission of the United Nations was dissolved in 1964 without having its task transferred to another body, it is the opinion of the Netherlands authorities that means will have to be found for resuming within another



framework: the international consultations described above. In their opinion there are several reasons why under the present circumstances creation of a forum for such consultations within the Organisation for European Economic Co-operation seems to be indicated.

It is one of the aims of the Organisation for European Economic Co-operation to achieve the speedy establishment of sound economic conditions in Europe and, in that connection, to create the institutions necessary for the success of European economic co-operation. For the re-establishment of normal economic conditions in Europe and for the adaptation of European economic activities to meet the exigencies of the present time, the progressive reduction of barriers to trade among member countries and the general stimulation of international investments including the facilitation of the international movement of capital have long been recognised as primary aims. These are precisely objects the realisation of which often meets with serious obstacles in the field of taxation.

An additional reason why consultation within the framework of the Organisation for European Economic Co-operation seems preferable is to be found in the fact that this forum would provide an opportunity for discussing international problems in the field of taxation in a smaller circle than has been the case in the United Nations. This has the considerable advantage that, where O.E.E.C. member countries have acquired roughly the same stage of economic development, it may be confidently expected that for some international problems in the field of taxation on which it has been difficult to reach a certain measure of agreement in a world-wide organisation, consultations within the O.E.E.C. will lead to generally acceptable conclusions and to positive results.

For these reasons the Netherlands Delegation invites the Council to take steps towards the creation of a committee of experts on taxation to be composed of representatives of all Member countries. It is the opinion of the Netherlands Delegation that Member countries should be represented by experts of sufficient national standing to ensure a high level study of the problems concerned.

The terms of reference of the committee might provide for the study of the undoubtedly very large number of problems in the

field of taxation that would benefit from international consultation, for the formulation of advice and for the preparation of recommendations to be addressed by the Council to Member countries. The prevention of double taxation, especially, should be mentioned. Provisions might be made to enable the committee to establish contact with other international organisations dealing with taxation whenever the committee deems such contact necessary for its activities.



ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

*Mr Green*  
*Antand Rev.*  
*T2044/378/54*

RESTRICTED

Paris, 7th April 1955

C(55)81

Scale 1

Or. Fr./Engl.

*we have already p. n. p. n.  
had one copy  
of this. *26/4*  
*22/4**

COUNCIL

LETTER FROM THE INTERNATIONAL CHAMBER  
OF COMMERCE RELATING TO THE RECOMMENDATION OF THE  
COUNCIL CONCERNING DOUBLE TAXATION

[C(55)37(Final)]

(Note by the Secretary of the Council)

Attached, for the INFORMATION of Delegations, is a copy of a letter from the Secretary-General of the International Chamber of Commerce acknowledging receipt of the above Recommendation.

Copies of the study by the Committee on Tax Questions referred to in the fourth paragraph of the letter will be sent to Heads of Delegations separately.

63201

Ta. 36141 - 8th April

INTERNATIONAL CHAMBER OF COMMERCE  
Industry - Finance - Trade - Transport

General Secretariat:  
38, cours Albert Ier,  
Paris, C.

our ref: RB-180

24th March 1955

Financial and Economic Policy

Sir,

I must thank you for your letter of 11th March with which you communicated to us the recommendation of the Council of the O.E.E.C. concerning Double Taxation.

It is a source of satisfaction to us that this recommendation entirely agrees with the recommendation made by the International Chamber of Commerce.

As is implied in our Resolution, we raised the question of a multilateral convention merely as a suggestion and we are fully aware of the difficulties in the way of such an undertaking.

Our Commission on Taxation has just published a further study on the problem of Double Taxation; "Avoidance of Double Taxation - exemption versus tax credit method" (Brochure No. 180). I enclose two copies (in English and French) and will be pleased to let you have as many copies as you may require for a wider circulation.

I need hardly say that the International Chamber of Commerce is ready to do its utmost to further such studies as the O.E.E.C. may undertake in this field.

I remain, Sir,

Your obedient Servant,

Pierre Vasseur  
Secretary-General

The Secretary-General,  
O.E.E.C.,  
2, rue André Pascal,  
Paris 16e.



ORGANISATION FOR EUROPEAN  
ECONOMIC CO-OPERATION

*T2044/378/54/m. Mackay*  
*H.M. Mackay*  
RESTRICTED

Paris, 12th November, 1954

C(54)294

Scale 1

COUNCIL

*Mr. Loumer*  
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DOUBLE TAXATION IN EUROPE

RESOLUTION ADOPTED BY THE EXECUTIVE COMMITTEE  
OF THE INTERNATIONAL CHAMBER OF COMMERCE

(Note by the Secretary-General)

The following Resolution has been adopted by the Executive Committee of the International Chamber of Commerce, and has been officially transmitted to the Organisation:-

"In the interest of the development of intra-European trade and investments, to which double taxation remains a serious obstacle, and in view of the close bonds uniting the countries of the O.E.E.C. and a fortiori the "Six", the International Chamber of Commerce urges the Council of the O.E.E.C. to recommend all O.E.E.C. Governments:

- (a) to conclude as rapidly as possible with all other O.E.E.C. Governments bilateral treaties for the avoidance of double taxation based on the Model Bilateral Convention for the Prevention of the Double Taxation of Income and Property of the League of Nations (London Draft);
- (b) to adopt at the same time the only fully effective method of eliminating double taxation, namely to take unilateral measures by national legislation such as those recommended by the I.C.C. in its resolutions and reports on double taxation.

The I.C.C. believes that it would be desirable for the O.E.E.C. to undertake an investigation of the possibility of concluding a multilateral convention on double taxation, between the O.E.E.C. countries. It believes that, should

a multilateral convention prove to be practicable, it would have the great advantage of securing uniformity of principle and practice in double taxation matters over a large area of world trade. The I.C.C. would gladly co-operate with the O.E.E.C. in any investigation of this kind".

2. As the Resolution points out, there are two possible methods of eliminating double taxation. The first may be described as the "bilateral method", and the second as the "unilateral method". Either of these methods could, in theory, be applied in concert by a group of countries in a multilateral manner. It is the object of the Resolution adopted by the I.C.C. to induce the O.E.E.C. to obtain the agreement of Member (and associated) countries to the pursuit of one or other of these means of eliminating double taxation by common agreement.

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3. There can be little doubt that double taxation can not only impose serious hardship on individuals, but effectively impede the development of international co-operation and international trade, and that if the greatest possible benefit is to be obtained from international trade and international capital movements, it would be desirable that double taxation should be eliminated. But not only are there serious practical difficulties in the way of achieving this; there may also, in certain countries, be difficulties of a fiscal character in that the revenue which the countries derive from the taxation of income arising abroad and accruing to their residents or of income arising within their territories and accruing to residents of other countries, may form a substantial part of the revenues of the State.

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4. This question of double taxation has been under international study for a long time. One has only to mention, in particular, the model double taxation conventions produced in 1928, 1933, 1943 and 1946 by the Fiscal Committee of the League of Nations, the work of certain specialised organs of the United Nations, and the Resolutions of the International Chamber of Commerce, as well as the publications of the International Association for Fiscal and Financial Law, to indicate that the matter has received considerable international attention.

5. Moreover, practically all Member and associated countries have concluded some forms of bilateral agreements concerning double taxation with other countries, with the result that there exists already between Member and associated countries a very considerable network of bilateral agreements. The total number of such agreements in force at the present time appears to be about 40.

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6. But fiscal law and fiscal systems are essentially domains in which national governments have, over many centuries, developed entirely independent policies. Thus it is an extremely complicated matter to obtain agreement between any two countries regarding the ways in which their taxation systems should affect particular categories of income or capital transfers. To begin with identical terms are used in the legal systems of different countries with entirely different meanings to describe particular types of transactions of particular kinds of income or capital transfers, and the task of drafting an agreement which will be equally valid in the countries of both signatories is, therefore, likely to be a complicated one at the best of times. Moreover, in countries which have federal systems of government, there may exist the further complication that local or provincial governments may be competent to tax particular sources of income and that, therefore, the federal government, in making an agreement with a foreign government, will have to bear in mind the powers of other governments within its own territory.

7. These difficulties of a technical and juridical character, coupled with the understandable reluctance of Finance Ministers to give up lucrative sources of taxation, have inevitably made the process of producing a comprehensive network of bilateral agreements a long and tedious one, and it is for these reasons principally that the number of bilateral agreements existing between Member and associated countries is now no larger than it is. It is chiefly because of their impatience with the slowness of the present method, rather than their dislike of the method as such, that the International Chamber of Commerce have passed the Resolution quoted above and addressed it to the O.E.E.C.

8. Another consequence of the multiplicity of national laws and practices in this matter is that it is extremely difficult to reach agreement upon a satisfactory standard type of bilateral agreement. The I.C.C. Resolution refers to the model agreement produced by the League of Nations in 1946, which is known as the "London Draft", but this particular text has not been accepted by all Member and associated countries, and it seems probable that some at least of them would wish to raise fundamental objection to any attempt to make it a standard form of bilateral double taxation convention. In these circumstances, it is not easy to see how the O.E.E.C. could intervene to obtain a more rapid conclusion of bilateral agreements than that which is now taking place, nor, in particular, does it seem likely that agreement could be reached in the Council that the "London Draft" should be the standard form of bilateral convention between Member and associated countries, since the draft itself is not, at it stands at present, fully acceptable to every Member. If an approach of this kind were to be adopted by the O.E.E.C., therefore, it would be necessary for the Organisation to set up an expert body charged with the duty of attempting to produce a more acceptable draft.

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9. The second solution proposed in the I.C.C. Resolution is that Member countries should take unilateral measures, by national legislation, to remove double taxation. This would involve that countries would agree on one of the definitions of "foreign income" proposed by the I.C.C. and take the necessary internal measures to ensure that that income (at least if it arose in the territory of another Member country) should not be subject to tax. This proposal will meet with the difficulties already mentioned, difficulties of definition and of fiscal need. It will also meet with a further difficulty, that, as has been already pointed out, practically all Member countries have already concluded one or more bilateral agreements with other Member and associated countries, and that such agreements might not fit into the pattern which would be established if this part of the I.C.C. Resolution were implemented. The adoption of this part of the I.C.C. Resolution would therefore imply the abrogation of existing bilateral agreements. This might not be a serious difficulty insofar as bilateral agreements between Member and associated countries are concerned, since if this solution were adopted by resolution of the O.E.E.C. Council, it could be presumed to be satisfactory to all Members. Difficulties would, however, arise in connection with any existing bilateral agreements between Member countries and non-Member countries.

10. On the whole, for the reasons indicated, it does seem doubtful whether any action by the O.E.E.C. would be likely to speed up the process of eliminating double taxation by the means which are now being currently adopted by most Member and associated countries. Nor, since the matter is a highly technical one, which is currently under discussion in the United Nations as well as in a number of non-governmental international organisations, does there seem to be a strong prima facie case for suggesting that the O.E.E.C. should interest itself in the matter. Unless, therefore, there is very strong support for action of some kind by the Organisation, it would seem that it would probably be appropriate for the Council to take note of the I.C.C. Resolution, to draw it to the attention of Member and associated countries, and to indicate its sympathy with the objectives sought by the I.C.C. without committing itself as to the methods which should be adopted in order to achieve these objectives.

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4/12/54