TAXATION RULINGS AND DECISIONS

Wrights' Canadian Ropes Ltd. v. *Minister of National Revenue.*

On the 3rd August His Honour Judge J. C. A. Cameron sitting as a Deputy Judge in the Exchequer Court delivered judgment in an appeal by Wrights' Canadian Ropes Ltd.[1] against an assessment made under the Income War Tax Act.

The appellant, a company incorporated in Canada, was a wholly owned subsidiary of two English companies, these being Wrights' Ropes Ltd. of Birmingham and Charles Hirst & Sons Ltd. Some uncertainty existed as to the actual shareholdings of the two English companies it being said that of the 1500 shares of the appellant 749 were in the names Charles Hirst & Sons Ltd., and 748 in the name of Wrights' Ropes Ltd., and 3 shares in the name of three Canadian directors. It was not shown whether the latter were held as nominees of the English companies. His Lordship found it unnecessary to make any finding as to whether there was actual control of the Canadian company through a majority shareholding.

The dispute concerned the disallowance by the Minister of certain sums paid by the appellant company to Wrights' Ropes Ltd., under a contract evidenced by an agreement made in 1931 and supplemented by a further agreement made in 1935.

This agreement provided inter alia that Wrights' Ropes Ltd., the English company,—.

(*a*) would not directly or to their knowledge supply for sale or sell any rope in Western Canada;

(*b*) would refer to the appellant all enquiries and orders for western Canada;

(*c*) give the Canadian company the liberty to consult with them as to any matter pertaining to the business, and to receive technical advice;

(*d*) would furnish the Canadian company with information regarding developments in the rope industry;

(*e*) would direct and supervise the supply of wire by Charles Hirst Ltd., to the appellant.

In consideration of the above the appellant company agreed to pay to Wrights' Ropes Ltd., a commission of 5 percent upon the net selling price received for all wire ropes both manufactured and sold by it.

[1] *Wrights' Canadian Ropes Ltd.* v. *Minister of National Revenue,* [1945] C.T.C. 177.

The evidence disclosed that this commission was paid upon the basis indicated for the years following 1935 and that the amount actually paid was approximately $17,000, $29,000 and $39,000 in the years 1940, 1941 and 1942 respectively.

The Minister disallowed that portion of the commission paid in excess of $7,500 for each of the years 1940, 1941 and 1942 and assessed the company accordingly. It was stated that this disallowance was made pursuant to the discretionary powers given to the Minister under the provisions of section 6, ss. 2 of the Act as follows:

> 6. (2) The minister may disallow any expense which he in his discretion may determine to be in excess of what is reasonable or normal for the business carried on by the taxpayer, or which was incurred in respect of any transaction or operation which in his opinion has unduly or artificially reduced the income.

A claim by the appellant that the expense came within those excluded by section 6(1) para. (1), was not entertained by the Court as the evidence did not show that the appellant company was not controlled, directly or indirectly, by the English company to which the payments were made.

In the result it was held that the Minister had acted within his powers as given under the Act and accordingly the appeal was dismissed.

The judgment herein was appealed and the appeal argued before the Supreme Court of Canada on October 8th.

Nicholson Ltd. v. *Minister of National Revenue*

The judgment in the Nicholson Limited case[2] which was given by Mr. Justice Thorson on the 5th of October, raised and decided some important points particularly in the realm of administrative law, the appeal procedure under the Income War Tax Act and the remedies which the taxpayer has in respect of any assessment with which he feels aggrieved. The facts show that the directors of the company declared a bonus in one year of $3600 of which one-half was distributed amongst the officers and directors and the balance to the employees. This was said to be in proportion to the actual wages paid. A proportion of the amount so paid to the directors was disallowed under the authority of section 6, ss. (2) of the Income War Tax Act as being an expense

[2] *Nicholson Limited* v. *The Minister of National Revenue*, [1945] C.T.C. 263.

in excess of what was reasonable or normal for the business carried on by the appellant company.

When making this disallowance, the company were notified through the district Inspector of Income Tax that the discretionary power vested in the Minister by the above section was to be exercised and they were invited to submit representations for consideration before final action was taken. Such representations were made in writing but the disallowance was affirmed by a determination made by the Commissioner of Income Tax and assessments were issued accordingly. The company appealed by reason of the fact that the amount disallowed was added back to the profits of the company and assessed in the appropriate taxation year. The assessment was affirmed by the Minister and the matter ultimately was referred to and heard in the Exchequer Court. It would appear from the notes that the disallowance appears only to have been in respect of that proportion of the bonus distributed to those employees who were also directors of the company although no reference was made to this fact in the reasons for judgment.

In the judgment His Lordship first discussed the duty laid upon the Minister by the aforementioned section 6 (2) and which was to determine what was a reasonable expense for the business carried on by the taxpayer. This he stated was an administrative duty of a quasi-judicial character. The power to do so was given by Parliament to a person in whom it had confidence and for the purpose of more effectively fulfilling the purpose of the law. The Minister being the person designated had, under authority delegated, the exercise of such powers to the Commissioner of Income Tax (now the Deputy Minister for Taxation). He held, therefore, that it was not the duty of the Court to exercise these powers which were entrusted to the administration but merely to supervise the manner in which they had been exercised. If this were done upon proper legal principles and in a judicial manner then the Court had no jurisdiction to interfere with such finding. His Lordship stated that there was no evidence to show that the powers had not been exercised in a proper manner. He said:

> The courts have always jealously supervised the manner in which administrative bodies have exercised the discretionary powers vested in them, so far as they are of a judicial nature, whether the Act conferring them granted an appeal from the decision of the body or not, in order to ensure their exercise in a proper manner, but there is no case of which

> I am aware in which the court has gone beyond such supervision and assumed the exercise of such power itself in the absence of specific statutory authority enabling it to do so.

His Lordship then goes on to discuss the appeal procedure as contained in sections 58 to 69 of the Act (see 23 CAN. BAR REV. at page 145). He stated that when an appeal is transmitted to the court it is not an appeal from the decision of the Minister required to be given under section 62 affirming the assessment but it is rather an appeal from the assessment itself. This opinion is directly contrary to that implied in judgments in similar appeals previously given although the point itself does not appear to have been discussed. Thus in one case[3] MacLean, J. says in his reasons for judgment,

> "This is an appeal from the decision of the Minister of National Revenue. . . . ."

Similar words were used by Angers, J. in another case.[4] In support of this finding His Lordship refers to section 66 of the Act which gives the Exchequer Court "exclusive jurisdiction to hear and determine all questions that may arise in connection with any assessment made under this Act. . . ." This he states implies that the court, when the appeal is before it, is dealing with the assessment only, and that the decision of the Minister issued under the statutory requirement is not a matter with which the court is concerned. It was concerned only with the correctness of the assessment under appeal.

Whatever may be the merits of this finding it is suggested that the purpose of section 66 of the Act was to make the Exchequer Court the forum in which all disputes arising by way of appeal under the Act would be heard. This was to secure uniformity in the decisions throughout Canada in a court having jurisdiction throughout the country, it being obvious that it the provincial courts were used there could well be varying jurisprudence in each province.

The contention of the appellant that the right of appeal against the assessment gave the court authority to review any decision of the Minister which was exercised in the determination of the assessment and thereby consider the results of the exercise of the discretionary power was rejected. His Lordship held that the discretion was exercised before the assessment was made and such assessment having been properly made it was not within

[3] *Wilson* v. *Minister of National Revenue*, [1938] Ex. C.R. 246.
[4] *McConkey* v. *Minister of National Revenue*, [1937] Ex. C.R. 210.

the power of the court to review it in the absence of evidence that it was not made in conformity with the provisions of the Act. In this connection His Lordship said:

> The only item against which complaint is made is the amount of expense that was disallowed. If this has been lawfully determined, no exception can be taken to the assessment in respect of such item. The Minister was, in my opinion, quite within his rights in confirming the assessment on the ground taken by him and if his discretion was exercised judicially his decision in confirming the assessment on such ground was a sound one. He owed no duty to review his exercise of discretion; the appellant had suffered no loss of legal right by his not doing so and has no cause for complaint against him on such score. *It may, indeed, be open to doubt whether the Minister, while acting under his appellate jurisdiction had any right to review the exercise of discretionary powers vested in him in his administrative capacity.* But whether that be so or not, and even if the Minister on the appeal to him, while not obliged to review the exercise of his discretion is not precluded from so doing, it by no means follows that the Court may do so. There is a non sequitur in this line of reasoning, for the Act specifically vests the discretionary powers in the Minister and there is no such vesting in the Court.

There are said to be more than 100 instances in the Income War Tax Act and the Excess Profits Tax Act where the Minister has been given discretionary power. These powers extend from those which are purely administrative such as those enabling him to prescribe the form of a return (section 40) to the wholly judicial or quasi-judicial functions in the appeal procedure. A further power which is contained in section 47 of the Act is almost legislative in extent where it provides that in respect of any taxpayer, even if a return has been filed or has not been filed, "the Minister may determine the amount of the tax to be paid by any person." A consideration of this opens up the whole field of administrative law, an interesting subject but of some complexity and certainly one which is becoming of great importance in the everyday affairs of many persons.

There can be little doubt that the delegation by Parliament of its powers is necessary under present day conditions. Time which would be required by Parliament to consider every matter, the complexities and technicalities involved in many of the subjects legislated upon and the inability to provide specifically for unforeseen contingencies is ample reason for entrusting wide powers to make more effective the legislative enactments. One of the chief complaints against it is, of course, the possibility that in delegating such powers they may be of such a nature as to deprive the persons affected of the protections afforded by the

courts against what many may regard as hardship or injustice. But it has always been deemed that Parliament should exercise some control over the manner in which these powers are exercised. In respect to the Income War Tax Act there was given a right of appeal against an assessment and this right of appeal was referred to in the judgment in the Privy Council in the *Pioneer Laundry and Dry Cleaners Limited* v. *Minister of National Revenue*.[5] Mr. Justice Thorson refers to the remarks of Lord Thankerton in that case where it is said:

> so far from the decision of the Minister being purely administrative and final a right of appeal is conferred on a dissatisfied taxpayer; but it is equally clear that the Court would not interfere with the decision unless— as Davis J. states— 'it was manifestly against sound and fundamental principles.'

His Lordship in dealing with this passage states that the proper inference to be drawn from the statement was that any decision of the Minister was not final only if it was against sound and fundamental principles and that it was for that reason that the matter was referred back to the Minister to exercise his discretion in a proper manner.

While the conclusion which His Lordship reaches in the judgment as to the finality of a decision properly reached by the Minister is supported by the cases cited by him, it is difficult to believe that Parliament intended to deprive a taxpayer of any right of appeal against the actual findings. The matter does not appear to have been given consideration when the appeal procedure as presently embodied in the Act was first introduced in 1923 and which replaced the original requirement for such appeals to first be determined by an independent tribunal. If his finding is right that even the Minister acting judiciously has no power to review a decision made quasi-judicially or as an administrator then a very unusual condition is created. The fact that an appeal primarily lay to the Minister who had also to make the assessment would indicate that the matter must at least be reconsidered and from a judicial rather than from an administrative viewpoint. The principles involved in this were considered extensively by a Royal Committee in England under the chairmanship of the Right Honourable the Earl of Donoughmore and generally referred to as the Committee on Ministers' Powers. In the report of this committee certain criticisms are directed at the practice required under the terms of the Canadian law. They

[5] [1940] A.C. 127.

refer to certain fundamental principles to be observed and which are in accordance with natural justice not as yet in the category of substantive law, but important in the relations existing between the administrative officers and the persons affected. One of the first principles so enunciated is that no man shall be a judge in his own cause. In this connection the report says at page 78:

> We are of opinion that in considering the assignment of judicial functions to Ministers Parliament should keep clearly in view the maxim that no man is to be a judge in a cause in which he has an interest. We think that in any case in which the Minister's Department would naturally approach the issue to be determined with a desire that the decision should go one way rather than another, the Minister should be regarded as having an interest in a cause. Parliament would do well in such a case to provide that the Minister himself should not be the judge but that the case should be decided by an independent tribunal.

The second principle is that no party ought to be condemned unheard and that it may well be argued that any party may be entitled to know the reason for any decision arrived at. As regards the latter point it is important to note that nothing was presented in the Nicholson case which would indicate the reasons upon which the Minister determined the amount which was disallowed and that the court was concerned only in the manner in which it was determined and not the reasons therefor.

The practical effect of administrative action such as has been approved in these cases can be readily appreciated. In the Wrights' Canadian Ropes case the appellant company is not discharged by reason of the action of the tax authorities from its liability to pay the commission required under the contract. Where the disallowance is substantial, and the present high rates of tax are imposed the financial position of the taxpayer may be seriously impaired. As a result a restraint is put upon ordinary and necessary business transactions, as no company can be assured that what may be required to be paid may be charged off as a business expense. In the instant case, even the agreement as to a reasonable or minimum percentage on which to base the payment involves risk, as the tax authorities consider, not whether it was a reasonable or normal rate, but whether it was a reasonable or normal amount that was actually paid.

With respect to the Nicholson case, the effect of the judgment is to preclude any appeal from an assessment being effective as regards a finding under discretionary powers. Whether this was ever intended it is not possible to say. As it stands it is an effective bar to any taxpayer seeking relief from what he may

consider harsh or unfair administrative action. By doing so, it violates a right which has always been granted in similar taxing laws, by which any taxpayer who feels aggrieved may have the facts reviewed by the courts or an independent tribunal.

It is of interest that Mr. Justice Thorson in the Nicholson case refers to the provisions of Australian Income Tax Assessment Act. This provides that in respect of any opinion, decision or determination of the Commissioner the Court shall entertain an appeal therefrom, and may substitute its own opinion or determination for that of the Commissioner.

CONVENTION BETWEEN CANADA AND THE UNITED STATES OF AMERICA FOR THE AVOIDANCE OF DOUBLE TAXATION (SUCCESSION DUTIES).

Signed at Ottawa, June 8, 1944

The Government of Canada and the Government of the United States of America, being desirous of avoiding double taxation and of preventing fiscal evasion in the case of estate taxes and succession duties, have decided to conclude a convention and for that purpose have appointed as their Plenipotentiaries:

W. L. Mackenzie King, Secretary of State for External Affairs, and Colin W. G. Gibson, Minister of National Revenue, for Canada;

Ray Atherton, Ambassador Extraordinary and Plenipotentiary of the United States of America at Ottawa, for the United States of America;

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following Articles:

ARTICLE I

1. The taxes referred to in this Convention are:

(*a*) for the United States of America: the Federal estate taxes;

(*b*) for Canada: the taxes imposed under the Dominion Succession Duty Act.

2. In the event of appreciable changes in the fiscal laws of either contracting State, the competent authorities of the contracting States will consult together.

ARTICLE II

1. Real property situated in Canada shall be exempt from the application of the taxes imposed by the United States of America.

2. Real property situated in the United States of America shall be exempt from the application of the taxes imposed by Canada.

3. The question whether rights relating to or secured by real property are to be considered as real property for the purposes of this Convention shall be determined in accordance with the laws of the contracting State imposing the tax.

ARTICLE III

1. Shares in a corporation organized in or under the laws of the United States of America, of any of the states or territories of the United States of America, or of the District of Columbia, shall be deemed to be property situated within the United States of America.

2. Shares in a corporation organized in or under the laws of Canada, or of any of the provinces or territories of Canada, shall be deemed to be property situated within Canada.

3. This Article shall not be construed as limiting the liability of the estate of any person not domiciled in Canada or of any citizen of the United States of America, under the estate tax laws of the United States of America.

ARTICLE IV

1. The situs of property shall be determined in accordance with the laws of the contracting State imposing the tax, except as otherwise provided in this Convention.

2. Allowances for debts shall be determined in accordance with the laws of the contracting State imposing the tax.

3. Domicile shall be determined in accordance with the laws of the contracting State imposing the tax.

ARTICLE V

1. In the case of a decedent who at the time of his death was a citizen of, or domiciled in, the United States of America, the United States of America may include in the gross estate any property (other than real property) situated in Canada as though this Convention had not come into effect.

2. In the case of a decedent (other than a citizen of the United States of America) who at the time of his death was domiciled in Canada, the United States of America shall, in imposing the taxes to which this Convention relates:

(*a*) take into account only property situated in the United States of America; and (*b*) allow as an exemption an amount which bears the same ratio to the personal exemption allowed in the case of a decedent who was at the time of his death a citizen of, or domiciled in, the United States of America as the value of the property of such decedent situated in the United States of America bears to the value of the property included in the entire gross estate of the decedent.

3. In the case of a decedent who at the time of his death was domiciled in Canada, Canada may include in the gross estate any property (other than real property) situated in the United States of America as though this Convention had not come into effect.

4. In the case of a decedent who at the time of his death was domiciled in the United States of America, Canada shall, in imposing the taxes to which this Convention relates:—

(*a*) take into account only property situated in Canada; and

(*b*) allow as an exemption an amount which bears the same ratio to the personal exemption allowed in the case of a decedent who was at the time

of his death domiciled in Canada as the value of the property of such decedent situated in Canada bears to the entire value of the property, wherever situated.

ARTICLE VI

1. In the case of a decedent who at the time of his death was a citizen of or domiciled in the United States of America, the United States of America shall impose the estate taxes to which this Convention relates upon the following conditions:—

(*a*) In respect of property situated in Canada which, for the purpose of estate taxes, is included in the gross estate, less such property as is specifically deducted therefrom (either because of transfer for public, charitable, educational, religious or similar uses or because the property has been previously taxed under provisions of law relating to property previously taxed) there shall be allowed against the estate taxes a credit for Canadian succession taxes in respect of the property situated in Canada, the situs of such property being determined in accordance with the laws of Canada, subject to the provisions of this Convention.

(*b*) The portion of the Canadian succession taxes to be allowed as a credit against United States estate taxes shall be an amount which bears the same ratio to the total Canadian succession taxes as the value of the property situated in Canada and with respect to which estate taxes are imposed by the United States of America bears to the total value of the property with respect to which succession taxes are imposed by Canada.

(*c*) The credit in any such case shall not exceed an amount which bears the same ratio to such estate taxes, computed without the credit provided for herein, as the value of the property situated in Canada and not excluded or deducted from the gross estate as provided in (*a*) bears to the value of the entire gross estate.

(*d*) The values referred to in (*c*) are the values determined by the United States of America for the purpose of estate taxes.

(*e*) The credit provided for herein shall apply after the application of section 813 (*b*) of the Internal Revenue Code, as amended by the Revenue Act of 1942.

2. In the case of a decedent who at the time of his death was domiciled in Canada, Canada shall impose the succession taxes to which this Convention relates upon the following conditions:—

(*a*) In respect of property situated in the United States of America which, for the purpose of succession taxes, is included in the gross estate, less such property as is specifically deducted therefrom (because of transfer for charitable, educational, religious or similar uses), there shall be allowed against the succession taxes a credit for United States estate taxes in respect of the property situated in the United States of America, the situs of such property being determined in accordance with the laws of the United States of America, subject to the provisions of the Convention.

(*b*) The portion of the United States estate taxes to be allowed as a credit against Canadian succession taxes shall be an amount which bears the same ratio to the total United States estate taxes as the value of the property situated in the United States of America and with respect to which succession

taxes are imposed by Canada bears to the total value of the property with respect to which estate taxes are imposed by the United States of America.

(*c*) The credit in any such case shall not exceed an amount which bears the same ratio to such succession taxes, computed without the credit provided for herein, as the value of the property situated in the United States of America and not excluded or deducted from the gross estate as provided in (a) bears to the entire value of the property, wherever situated.

(*d*) The values referred to in (*c*) are the values determined by Canada for the purpose of succession taxes.

3. (*a*) The credit referred to in this Article may be allowed by the United States of America if claim therefor is filed within the periods provided in section 813 (*b*) of the Internal Revenue Code, as amended.

(*b*) The credit referred to in this Article may be allowed by Canada if claim therefor is filed within the period provided by subsection 4 of section 35 of the Dominion Succession Duty Act relating to refund of overpayment.

(*c*) A refund based on the credit may be made if a claim therefor is filed within the respective periods above provided.

(*d*) Any refund based on the provisions of this Article or any other provisions of this Convention shall be made without interest.

ARTICLE VII

1. With a view to the prevention of fiscal evasion each of the contracting States undertakes to furnish to the other contracting State as provided in the succeeding Articles of this Convention, the information which its competent authorities have at their disposal or are in a position to obtain under its revenue laws in so far as such information may be of use to the authorities of the other contracting State in the assessment of the taxes to which this Convention relates.

2. The information to be furnished under this Article, whether in the ordinary course or on request, may be exchanged directly between the competent authorities of the two contracting States.

ARTICLE VIII

1. The Commissioner shall notify the Minister as soon as practicable when the Commissioner ascertains that in the case of:—

(*a*) a decedent any part of whose estate is subject to the Federal estate tax laws, there is property of such decedent situated in Canada;

(*b*) a decedent domiciled in Canada, any part of whose estate is subject to the Dominion Succession Duty Act, there is property of such decedent situated in the United States of America.

2. The Minister shall notify the Commissioner as soon as practicable when the Minister ascertains that in the case of:—

(*a*) a decedent, any part of whose estate is subject to the Dominion Succession Duty Act, there is property of such decedent situated in the United States of America;

(*b*) a decedent domiciled in the United States of America, any part of whose estate is subject to the Federal estate tax laws, there is property of such decedent situated in Canada.

ARTICLE IX

1. If the Minister deems it necessary to obtain the co-operation of the Commissioner in determination of the succession tax liability of any person, the Commissioner may, upon request, furnish the Minister such information bearing upon the matter as the Commissioner is entitled to obtain under the revenue laws of the United States of America.

2. If the Commissioner deems it necessary to obtain the co-operation of the Minister in the determination of the estate tax liability of any person, the Minister may, upon request, furnish the Commissioner such information bearing upon the matter as the Minister is entitled to obtain under the revenue laws of Canada.

ARTICLE X

The competent authorities of the contracting States may:—

(*a*) prescribe regulations to carry into effect this Convention within the respective States and rules with respect to the exchange of information;

(*b*) if doubt arises, settle questions of interpretation or application of the Convention by mutual agreement;

(*c*) communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

ARTICLE XI

If any fiduciary or beneficiary can show that double taxation has resulted or may result in respect of the taxes to which this Convention relates, such fiduciary or beneficiary shall be entitled to lodge a claim or protest with the State of citizenship or domicile of such fiduciary or beneficiary, or, if a corporation or other entity, with the state in which created or organized. If the claim or protest should be deemed worthy of consideration, the competent authority of such State may consult with the competent authority of the other State to determine whether the alleged double taxation exists or may occur and if so whether it may be avoided in accordance with the terms of this Convention.

ARTICLE XII

The provisions of this Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed to such State.

ARTICLE XIII

1. As used in this Convention:—

(*a*) The term "Minister" means the Minister of National Revenue of Canada or his duly authorized representative.

(*b*) The term "Commissioner" means the Commissioner of Internal Revenue of the United States of America, or his duly authorized representative.

(*c*) The term "competent authority" or "competent authorities" means the Commissioner and the Minister and their duly authorized representatives.

2. When used in a geographical sense:—

(*a*) The term "United States of America" includes only the States, the Territory of Alaska, the Territory of Hawaii, and the District of Columbia.

(*b*) The term "Canada" means the Provinces, the Territories and Sable Island.

ARTICLE XIV

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa as soon as possible.

2. This Convention shall be deemed to have come into effect on the 14th day of June, 1941. It shall continue in effect for a period of five years from that date and indefinitely after that period, but may be terminated by either of the contracting States at the end of the five-year period or at any time thereafter provided that at least six months prior notice of termination has been given.

Done in duplicate, at Ottawa, this eighth day of June, 1944.

W. L. MACKENZIE KING.
COLIN GIBSON.
RAY ATHERTON.

* * *

The following instructions have been issued in connection with the application of the terms of the convention between Canada and the United States of America for the avoidance of double estate or succession duties.

The Canada-United States Death Duty Convention was signed June 8, 1944 by representatives of Canada and the United States and was proclaimed by the Governor in Council as of May 1, 1945.

1.—*Estates of Persons Dying Domiciled in the United States of America*

Adjustments in any estate will be made only upon the written request of the estate representatives or a beneficiary.

In making application for an adjustment, the assessment should be examined and the request made to the Succession Duty Office where such assessment has originally been prepared.

The provisions of the Convention change the method of assessment in the estates of persons dying domiciled in the United States of America in the following manner:

(a) Where formerly the situs of shares of companies organized in Canada or the United States depended upon many

factors there is now only one factor to take into consideration. Shares of companies organized in Canada are deemed to have a situs in Canada for Succession Duty purposes. (Art. III–2). Shares of companies organized in the United States are deemed to have a situs in the United States. (Art. III–1). This is so regardless of the physical situs of the certificates or the location of the share registers. It should be noted that these rules apply to bearer share warrants, street certificates, certificates endorsed by the deceased, certificates in the names of nominees whether endorsed or not, as well as certificates registered in the name of the deceased not endorsed.

(b) The initial rate which formerly depended upon the aggregate net value now depends upon the net Canadian assets, that is the gross Canadian assets less the proportion of debts (Art. V–4(a)).

No adjustments will be made until such time as the applicant has submitted detailed schedules of all assets of the deceased wheresoever situated unless, of course, this information is already on file. The reason these schedules are required is that we may assure ourselves that all assets, particularly shares formerly not dutiable are disclosed.

Article V–4(b) deals with the method of apportioning exemptions. This involves no change and is merely a recital of present practice.

Debts will be apportioned in accordance with present practice.

2—Estates of Persons Dying Domiciled in Canada.

There is no change in the imposition of tax in the estates of persons dying domiciled in Canada or in the treatment of real estate.

Credits

Article VI–2 of the Convention provides for a credit against the Canadian duty for tax paid to the United States on property deemed to be situated in the United States in respect to which tax has been paid to the United States. To obtain this credit the applicant must complete Form S.D. 1–U.S. in quadruplicate. The applicant must forward three copies to the Commissioner of Internal Revenue, attention Miscellaneous Tax Unit, Washington 25, D.C., U.S.A. The Commissioner will forward two

certified copies to the Deputy Minister of National Revenue (Taxation) who in turn will forward one copy to the District Office concerned.

Upon receipt of Form S.D. 1–U.S. the Succession Duty Office will proceed with the calculation of the credit to be allowed, provided the original Succession Duty assessment has been completed and any adjustments of which the Succession Duty Office has knowledge have been made.

From the information already on our file and the information in Form S.D. 1–U.S. we will be able to prepare a statement of the Credit to be allowed on Form S.D. 20–U.S. and the schedule attached thereto. This will be done in triplicate as follows:

S.D. 20–U.S.

This form must *not* be completed until the assessment of duty and all adjustments have been approved by Head Office.

Item 1—Insert the total duty as finally determined.

Item 2—Insert total U.S. Tax. The conversion of funds should always be shown so that either the Canadian or United States funds are indicated by one dollar. For instance while U.S. funds remain at a 10% premium the matter will be handled thus—

"Converted to Canadian Funds at *$1.00* U.S.–$1.10 Can."

Item 3—The gross value to be inserted here is the gross value as finally determined and used in the final assessment of duty. This of course, is the total value of the assets after deducting from any particular asset any lien, charge or encumbrance thereon. In those cases where specific charges have been improperly shown among the general debts and have not been adjusted in our assessment the necessary adjustment must be made in order to arrive at the proper amount to be inserted.

Item 4—Insert here the total amount of the debts as finally allowed exclusive of liens, charges and encumbrances against any particular assets.

Item 5—Insert here the aggregate net value as finally determined. (Item 3 minus item 4).

Item 6—In the space provided immediately above item six each item of property appearing in Item 5 of S.D. 1–U.S. must be listed. The values to be shown, the total of which constitutes Item 6, are the values determined by

Canada for Succession Duty purposes in Canadian funds and not the values determined by the United States which appear in Item 5 of S.D. 1–U.S. These Canadian values are of course those determined after deduction of any liens, charges or encumbrances against any of the property listed.

Item 7—Except in cases of abatement the fraction to be inserted here is:

$$\frac{\text{Gross U.S Property (Item 6) less U.S. realty \& U.S. specifics}}{\text{Gross whether situate (Item 3) less U.S. realty and all specifics (Item 4)}} \times \text{Debts}$$

The word "specifics" as used in the fraction above, this memorandum, and Form S.D. 20–U.S. and schedule, means all property which passes direct to a successor without change of character such as bequests of particular property, insurance and annuities payable to a named beneficiary, joint property passing to the survivor, property forming part of a trust created by the deceased prior to death and passing in accordance with the terms of the trust, and gifts inter vivos.

Item 8—The amount to be inserted here is item 6 less Item 7.

Schedule to S.D. 20–U.S.

As the duty under the Dominion Succession Duty Act is charged in respect of each succession the credit is also so calculated.

It will be seen from the first column of the schedule that each succession will be broken down into four categories and totals only entered in each category. Even though U.S. Realty is a specific it must appear opposite "U.S. realty", Item "W".

Column A—The distribution to appear here is the distribution of the aggregate net value used for final assessment of duty rearranged in each succession into the categories indicated in the first column.

Column B—In each succession repeat item "Z" in Column A.

Column C—In this column Item 8 is distributed among the successions as follows: Those items in "W" and "X" in each succession in Column A which are included in Item 8 are repeated in this column. The remainder of item 8 is divided among the successions in the proportion that the amount in

Column B in each succession bears to the total of Column B and the result applicable to each succession is inserted in item "Z" in this column.

Column D—Insert in this column for each succession the total succession duties as finally determined in respect thereof.

Column E—The amount to be inserted for each succession in this column is the result of $\frac{X+Z \text{ in Col. C.}}{X+Y+Z \text{ in Col. A}} \times$ Col. D.

Column F—The amounts to be inserted for each succession here are amounts that bear the same ratio to Item 2 as each item in the succession in Col. C bears to the total of Col. C.

Column G—The total of "X" and "Z" in Col. F in each succession is inserted in Col. G. It may be noted that the amount arrived at here is that required by the ratio in Art. VI–2(b) in that it bears the same ratio to the total estate taxes in the succession as the value of the United States property taxed by Canada in the Succession bears to the value of the property taxed by the United States in the succession.

Column H—The credit for each succession to be inserted in this Column is the amount for each succession shown in Column G unless it exceeds the amount shown for the succession in Column E in which case the amount shown for the succession in Column E is to be inserted.

Forms covering the refunds and exchange of information between the two countries are available either at the local Succession Duty Offices or at Head Office in Ottawa.

J. S. FORSYTH.

Ottawa.