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Chapter 10

THE TAX TREATMENT OF CAPITAL GAINS AND LOSSES IN OTHER COUNTRIES

Great variety exists in the tax treatment of capital gains and losses in other countries. At one extreme, in Great Britain and other members of the Commonwealth – Canada, Australia, South Africa, and New Zealand – the general rule is to exclude them from the taxable incomes of both individuals and corporations unless they have been incurred in the course of 'trade'. At the other extreme, in Greece and some other areas, they are treated as ordinary elements of income for both individuals and corporations. Most of the countries we have studied have policies between these extremes. France, which formerly excluded them from the taxable income of individuals except when realized in the course of business, now subjects half of the gains from casual sales of common stocks and similar investments to the individual surtaxes, though exempting them from normal tax, and includes them in full in the taxable incomes of corporations and of business firms. In Belgium and the Netherlands, capital gains and losses are included in the computation of taxable income when realized by individuals or firms in the course of business or by corporations in any event, but excluded when realized by individuals outside the course of their business. In Switzerland the federal income tax treats capital gains and losses in roughly the same way as Belgium and the Netherlands do, but the Swiss cantons and communes, which collect more tax revenues in the aggregate than the federal government, include several that tax all capital gains as ordinary income.

In some instances where the nominal rule is to exclude capital gains from taxable income, the exceptions are broad enough to subject a substantial proportion of them to income tax. In Sweden, for example, where capital gains of both corporations and individuals are exempt in principle, real estate must have been held 10 years or more, and securities, 5, for gains from them to be excluded from income tax. Zurich cantonal taxes include capital gains in taxable

income if derived from property held less than 10 years. In Norway, despite a general rule excluding capital gains of both corporations and individuals, ordinary income tax rates apply to gains from real estate held less than 10 years, and to all gains from the sale of patents, copyrights, property used in business, and property purchased with the intention of reselling.

Unrealized appreciation or depreciation is usually, though not invariably, disregarded in tax accounting. Czechoslovakia before World War II recognized unrealized gains and losses from securities for purposes of the income tax if the securities were owned by individuals or firms in business but were not being used in business operations or as a guaranty of contractual performance. Sweden until recently taxed the unrealized capital gains of individuals to a limited extent under the income tax by requiring that 1 percent of the taxpayer's net worth be added to his taxable income each year to form the base of the income tax. The tax on net worth is no longer a part of the income tax, but is the subject of a special graduated capital tax levied on individual net worth in excess of Kr. 30,000 at rates ranging from .6 to 1.8 percent. Since property values for this purpose are obtained from market quotations, assessment rolls, and the like, both the previous and the present Swedish capital tax take account of unrealized appreciation and depreciation. Unrealized capital gains and losses similarly enter into the annual net worth, net yield, or net worth increment taxes levied in Germany, Hungary, Austria, Norway, Denmark, Switzerland, France, Italy, Spain, Finland, and Luxembourg.

Because the effective tax laws of every country comprise a large and intricate body of statutes, court decisions, and administrative regulations and practices, the tax treatments of capital gains and losses in various countries can be only broadly outlined here.[1]

[1] The countries surveyed are those for which published information was readily accessible. Monographs on the tax laws and practices of most of them as of about 1935-36, prepared by officials of the various countries, are contained in *Das Internationale Steuerrecht des Erdballs* (Richard Rosendorff and Joseph Henggeler, ed. Zurich-Leipzig, 1936-37).

Through the cooperation of Percival Brundage, a partner in Price, Waterhouse & Co., and the foreign offices and correspondents of this firm, we were able to bring our discussion through 1948 for Great Britain, Canada, Australia, New Zealand, South Africa, the Netherlands, Belgium, France, Sweden, Norway, and Switzerland. We are grateful also for the aid of various consular officials and other experts in interpreting the laws and practices of these and other countries.

1 GREAT BRITAIN

In principle, capital gains are not taxable under the British income tax law and capital losses are not deductible. The statute does not expressly define them, but their exclusion rests upon the interpretation of Schedule D, which alone of the 5 schedules of the British income tax law covers gains and losses from the sale of property. The British income tax law does not apply to all income as such but only to the kinds specified in the 5 schedules. Schedule D provides for the taxation of "the annual profits or gains arising or accruing – (i) to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere; and (ii) to any person residing in the United Kingdom from any trade, profession, employment or vocation. . . ."

Trade is defined as including every "trade, manufacture, adventure or concern in the nature of trade".

As was brought out in Chapter 2, the concept of taxable income in Great Britain, as in other European countries, was greatly influenced by a long agricultural tradition in which income was regarded as derived from more or less permanent sources, such as land or a vocation, while casual and irregular receipts were viewed as of a different character. The language of the present law, which stresses the word 'annual', and which has remained essentially unchanged from the Income Tax Act of 1842, reflects this tradition. As a consequence, all "casual, non-recurring or occasional profits arising from transactions that do not form part of the ordinary business of the person who makes them" were excluded from taxable income until well after World War I.[2] The Royal Commission on the Income Tax recommended in 1920 (pars. 90 and 91) that the income tax be applied to gains from all transactions entered into with a view to making profit, though not to profits arising from ordinary changes of investment unless they are a regular source of profit. Although this recommendation was not embodied in legislation, it led the Board of Inland Revenue to reinterpret 'annual' in such a manner as to permit taxation of the profits of single transactions of a trading nature, and of a series of transactions that, individually considered, might not be regarded as ventures in trade but that viewed collectively could be so considered.[3]

[2] *Report of the Royal Commission on the Income Tax* (London, H. M. Stationery Office, 1920), Section VIII, p. 85.

[3] George O. May, The British Treatment of Capital Gains, *Journal of Accountancy*, June 1942.

The courts upheld this broadened application of the income tax. In *Martin v. Lowry* (11 T. C. 297, 1927) a dealer in agricultural machinery who made a single purchase of a large quantity of linen with the expectation of reselling it to certain linen manufacturers, but who was forced to embark on an extensive advertising and selling campaign to dispose of it, was held to have engaged in the linen trade. In *Rutledge v. C.A.R.* (14 T. C. 490) the court went further, holding that even a single purchase and resale was sufficient in this case to make the profit taxable as ordinary income. Mr. Rutledge, while in Germany on business in connection with his film company, had availed himself of an opportunity to purchase very cheaply a large quantity of paper, all of which he resold in England to a single customer at a large profit. Before 1920 such a gain would have escaped the income tax on the ground that it was 'casual'.

With the word 'annual' stripped of practical significance in this way, the distinction between capital gains and ordinary income came to turn on the interpretation of 'trade'. If a person devoted the greater part of his time to the purchase and sale of securities or other capital assets, he could be regarded as engaged in the trade of dealing or speculating in them, and his gains could be taxed as ordinary income. The assets that he owned from time to time in this trade were not a part of his fixed capital, such as his furniture and fixtures, but only circulating capital. A gain that he made by selling a part of his fixed capital, however, was not taxable.

In consequence of the agricultural tradition in England and other European countries, which early led to the concept of fixed capital assets as physical entities rather than amounts of pecuniary value, increases or losses in their value, whether realized or not, were regarded as quite distinct from the recurring incomes derived from them. A man who sold a portion of his fixed capital, even at a gain, received only its money's worth, not income. In line with this view, not only are gains and losses from the sale of capital assets excluded from the income tax, but the taxpayer is not given an allowance for depletion when his income is derived from wasting natural resources in the British Isles, or for the partial return of his capital if the income is derived from an annuity, or for depreciation if the income is from the rent of residential or commercial buildings.

No disposition has been evident on the part of income tax administrators, the courts, or Parliament in recent years to abandon the

general principle of exempting capital gains from income taxes.[4] The practical problem has been to determine whether particular profits are actually 'capital' in nature or incurred in the course of trade. This is a question of fact, to be determined initially by one or more of the 725 bodies of Commissioners for the General Purposes of the Income Tax. B. Lachs (Income Tax on Capital Profits, *Modern Law Review,* April 1943, VI, 3), summarized the principle: "The accretion of capital becomes taxable profit if it results from trade. 'The circumstance that the profit is due to an accretion in the value of the article does not negative the application of income tax, because the accretion of value to the article may have been the very thing that a trade within Case I (any trade not contained in any other schedule) was established to secure' (per Rowlatt, J. in *Rees Roturbo Development Syndicate v. Ducker*—13 T. C. 366). But this qualification needs further qualification. Not every capital profit in the hands of a trader is taxable trading profit. It must be profit arising or accruing from a trade, not just profit arising or accruing to a trade, or to put it in more technical terms, the source of the taxable income is the profit arising from the exercise of a trading activity, not the profit from capital as such. It is obvious that a trading concern may have capital which is not directly employed in the carrying on of its trade, e. g., business premises, office furniture, investments, etc. and any profit from an appreciation of value of such assets would not be taxable income. To put it in the shortest possible way: in the case of a trader we have to distinguish between the assets with which he trades, and those in which he trades."

Lachs then refers to, and cites judicial sanction for, the distinction between "fixed capital", that embodied in plant, and "circulating capital", that turned over in the course of business, saying that an accretion to "fixed capital" is not taxable income, but that an accretion to "circulating capital" is. He finds, however, that the application of this distinction is complicated by the fact that the same asset may at one time represent fixed, and at another, circulating capital, for either type may be converted into the other. A business may make such a conversion of its assets as a whole or in part.

"A good example of a partial withdrawal of circulating capital is

[4] Some taxation of capital gains as income was introduced in the Income Tax Act of 1945. Patents were made depreciable, but gains from casual sales of them, previously exempt, were made taxable. Similarly, sales of machinery, etc., for more than their depreciated basis now occasion a taxable gain up to the amount of depreciation previously allowed.

afforded by the case of *Beams v. Weardale Steel, Coal, and Coke* – 21 T.C. 204. Here a company originally trading as colliery owners and steel manufacturers had acquired and added to slag heaps while carrying on business as steel manufacturers. After they had ceased to trade as steel manufacturers, but while they were carrying on the trade of colliery owners, they sold the slag heaps. The Commissioners found that the receipt from this sale was a capital receipt, and not trading income, and therefore not subject to income tax, and they were upheld. It appears that the particular asset, the slag heaps, which had been circulating capital as long as the company had been trading as steel manufacturers, was converted into fixed capital as soon as this trade ceased."

The determination of fact is difficult in borderline cases. The intention of the taxpayer, the number of his transactions in the asset, and other circumstances must be considered. The question of fact often arises because it involves the question of degree.[5] In *Tebrau (Johore) Rubber Syndicate Ltd. v. Farmer* (5 T.C. 658, 1910) the House of Lords held that a company incorporated to acquire rubber estates in the Malay Peninsula, to carry on the rubber business, and to sell the whole or any part of its property realized an exempt capital gain when it sold its entire property at a profit. Similarly, profits from the recurring sales of land by the Hudson's Bay Company, Ltd. (T.L.R. 709, 5 Tax Cas. 424, 438; C.A., 1909), were held to be nontaxable. On the other hand, in *Com'rs. v. Koren, Ltd.* (3, K.B. 258, 12 Tax, Cas. 181, 1921), a company incorporated to acquire mines, etc., and "to turn them into account" was held to be taxable on the profits from leasing one of its concessions.

Attempts by taxpayers to convert ordinary income into capital gains in order to escape taxation have been no less conspicuous in Great Britain than in the United States, and have led there as well as here to counteracting legislation. Neville Chamberlain, then Chancellor of the Exchequer, in his budget speech on April 20, 1937 called particular attention to one of the devices employed for this purpose and made recommendations for remedial legislation:

"The first one concerns the operation which is, no doubt, well known to most honorable members under the term 'bondwashing', the owner of securities sells them at a price that covers accrued dividend and buys them back again, after the dividend has been paid at a lower price. The result of these transactions, which are technically

[5] This difficulty is well illustrated in the case discussed by Magill, *op. cit.*, pp. 86-102.

of a capital character, is to deprive the Exchequer of a tax, which otherwise it would have received if the owner had retained the securities and drawn the dividends upon them."[6]

Such transactions on the part of individuals were facilitated by the readiness of various corporations dealing in securities to cooperate by serving as temporary purchasers. Since these corporations were engaged 'in trade', the taxable income from the dividend was offset by the allowance for the loss they sustained upon the sale of the security ex-dividend; and they were protected against loss through price declines from other causes by agreements of the original sellers to repurchase the securities. The remedial legislation (Finance Act of 1937, Part II, Sec. 12) provides that when the owner of securities agrees to sell or transfer them, then to reacquire the same or similar securities, any interest or dividend received by the purchaser shall be charged for income tax purposes to the original owner. It was estimated that the provision would add £1,000,000 of revenue a year.

The retention of earnings by closely held corporations in order to avoid current surtaxes on their stockholders, and the subsequent conversion of the accumulated earnings by the stockholders into capital gains through the sale of the stock led to legislation similar in intent to Section 102 of the U. S. Internal Revenue Code. Beginnings in this direction had been made in the Finance Act of 1922. In 1937, by Section 14(2)(b), additional powers were given the Special Commissioners to tax the owners of companies that did not distribute a reasonable proportion of their profits on the entire profit earned.

The widely publicized efforts of many Americans during the 1920's and '30's to avoid surtaxes on dividend and interest income by transferring securities to controlled foreign holding companies and trusts, which could convert the accumulated earnings into capital gains for their owners by subsequent liquidation and dissolution, had their counterpart in Great Britain. Even when the owners desired to receive income currently they could avoid a tax on it by arranging to have their receipts take the form of a loan from the foreign company or of a repayment of capital. This type of scheme led to the enactment of Section 18 in the Finance Act of 1936 which, as subsequently refined in Section 28 by the 1938 Act, provides that a British resident who transfers assets abroad into the hands of a foreign person but retains control of the income obtained by the latter shall

[6] *Parliamentary Debates, Commons, 1936-1937* (London, H. M. Stationery Office), Vol. 322, p. 1610.

be taxed as if he had actually received the income unless it can be shown that the transfer of assets was not made for the purpose of avoiding taxation.

In 1943 the Chancellor of the Exchequer set up a Departmental Committee to consider postwar fiscal policy, with particular regard to income taxation. The Institute of Chartered Accountants and other bodies of accountants in Great Britain were invited to make representations to the Committee. In urging that deductions from taxable income for depreciation should be allowed in connection with all fixed and wasting assets used for the carrying on of a trade, the memorandum of the joint accountancy bodies declared:

"The structure of our present income-tax law was designed almost exactly a century ago. The basic Act is still the Income Tax Act of 1842. Not until 1878 was any allowance given for depreciation (then limited to wear and tear of plant and machinery) and only in 1918 was loss due to obsolescence recognised (when the allowance given was limited by the requisite of replacement of the asset concerned). There is still no allowance in respect of forms of depreciation other than wear and tear of plant and machinery, and only a small and illogically calculated allowance in the case of certain buildings such as mills, factories, etc. It is not unreasonable to suggest that taxing machinery designed a hundred years ago, developed piecemeal by successive amendments in a long series of Finance Acts, with judicial interpretation spread over more than twenty large volumes of Reports, may need basic reconsideration in view of the unprecedented situation likely to arise at the end of the war. . . .

It follows that full allowance should be made for amortization of fixed and wasting assets of all types, spread over their estimated life. . . .

In applying the principles above set forth to the ascertainment of profits for the purposes of income-tax, it is necessary to remember that Schedule D taxes only the profits of the trade. Hence profits or losses from causes extraneous to the carrying on of the trade should be rigidly excluded in all cases."

Partly as the result of these and similar representations, the Income Tax Act of 1945 permitted deductions for the first time for the amortization of the cost of patents. The allowances for depreciation of plant and machinery were liberalized somewhat, but depreciation allowances continued to be withheld from ordinary commercial and residential buildings and similar non-industrial assets. In 1949 the depreciation allowances of the 1945 Act were

extended to capital expenditures by British residents in mines, oil wells, and similar wasting assets outside the United Kingdom, but not inside.

The new provisions were accompanied by two related changes that newly subjected to income taxation two types of gain that were generally regarded as capital gains in principle. In accepting the view that patent rights should henceforth be subject to allowance for depreciation, the Chancellor of the Exchequer insisted in return that the gain made by an investor from the sale of a patent or patent rights, even though he was not a dealer in patents, must become subject to income tax. And in instituting a system of 'balancing allowances' to permit the deduction of losses sustained when plant or machinery not yet obsolete is scrapped without replacement, the Act provided (Sec. 17) that if a gain is realized from the sale of the scrapped asset, it should be taxed as ordinary income. These two violations of the long established British tradition that capital gains do not properly constitute taxable income were enacted over the vigorous opposition of the accountancy bodies.

Far more sweeping is the legislative authority contained in the Town and Country Planning Act of 1947 for the appropriation by the government of all increases in land values arising from the development or improvement of any land, urban or rural in England, Wales, or Scotland. Part VII empowers the Central Land Board to appropriate such increases in value by levying equivalent charges on the landowners. The Board and the landowner may contract to have the levy paid by a single capital sum, a series of capital payments, or a series of combined capital and interest payments. This legislation, which went into effect in July 1948, is designed to eliminate the private enjoyment of capital gains, realized and unrealized, from the ownership of land.[7]

2 CANADA

Canada follows British practice in most respects in the tax treatment of capital gains and losses. Unless the assets are of the nature of stock-in-trade in the hands of the seller, land, buildings, patents, securities, or other property, whether previously used in business or held for investment, may be sold by individuals or corporations without recognition of any resulting gain or loss for income tax purposes.

[7] Press Notice, The Ministry of Town and Country Planning, Jan. 8, 1947. See also statements by Lewis Silkin in *Parliamentary Debates,* Jan. 29, 1947, and in the *New York Times,* Jan. 8, 1947.

As in Great Britain, questions of fact arise concerning whether particular sales are made 'in trade'. The decisions of English as well as Canadian courts are used as precedents. If securities or real estate are dealt in casually apart from the business of the taxpayer, gains and losses are not recognized. But if an individual or corporation deals in them frequently, he may be deemed to be carrying on a trade even if he is also engaged in another business. The Minister of National Revenue has full power, subject to judicial review, to determine the taxable status of such transactions.

Until 1945, as in England to this day, Canada taxed both the capital and the interest components of annuity payments as ordinary income, but the capital element has been exempt since 1945.

Since capital gains are exempt from tax, taxpayers are naturally tempted so to frame transactions as to cause ordinary income to take their guise. Legislative and administrative attempts have been made to frustrate the various schemes employed. If the Minister of National Revenue is of the opinion that the undistributed profits of a corporation exceed the accumulation reasonably required, he may tax the excess as a dividend to the stockholders. Unlike the situation in the United States, stock dividends are taxed as income in the hands of the recipients. Their value for this purpose is fixed by the taxing authorities. Typically it is the amount of profits capitalized by the new stock, but the authorities may consider also the market value of the stock.

When principal and interest are commingled in a single payment, the Minister of National Revenue has power to separate them for the purpose of designating the interest as taxable income. Thus, if a bond or a share of preferred or common stock is redeemed at a sizeable premium, the premium may be taxed if it may reasonably be regarded as a payment of interest or a distribution of profits. It will not be taxed if it is viewed as only reasonable compensation for the cancellation of the investment.

Distributions to stockholders upon the liquidation of a corporation, or for the redemption of any of its common stock, and stock dividends capitalizing undistributed income are fully taxable as stockholders' income up to the amount of undistributed profits so disposed of (Income Tax Act of January 1, 1949, Sec. 8 and 9).

Unlike Great Britain, Canada under its new law, does not confine depreciation allowances to a narrow category of plant and equipment, but extends them to all depreciating assets, and permits deductions for depletion and obsolescence as well. Canada shifted in 1949

from the straight-line to the diminishing balance method of calculating depreciation, and the new law provides, in effect, for taxing previous excessive depreciation allowances when an asset is sold at a price exceeding its written-down value at the end of 1948, minus depreciation allowed after that date. In consequence capital gains realized from the sale of such assets are subject to tax up to the amount of the previously allowed depreciation.

3 AUSTRALIA

In Australia capital gains and losses except those of a bona fide prospector from the sale of rights or claims for gold-mining, are treated essentially as in Great Britain, with the statutory modification that the assessable income of persons and corporations includes profits arising: "(1) from the sale by the taxpayer of any property acquired by him for the purpose of profit-making by sale, or (2) from the carrying on or carrying out of any profit-making undertaking or scheme."[8] The corresponding losses may be deducted from assessable income received in the same year.

Whether particular gains and losses are truly 'capital' in character is a frequent source of argument between taxpayers and the federal revenue department. The contention that losses from the sale of property were deductible because the property had been acquired for profit-making by sale was made so often that Section 52 of the Federal Income Tax was amended in 1941 to specify:

"Provided that, in respect of property acquired by the taxpayer after the date of the commencement of this proviso (31st December, 1941), no deduction shall be allowable under this section (except where the Commissioner, being satisfied that the property was acquired by the taxpayer for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme, otherwise directs) unless the taxpayer, not later than the date upon which he lodges his first return under this Act after having acquired the property, notifies the Commissioner that the property has been acquired by him for the purpose of profit-making by sale or for the carrying on or carrying out of any profit-making undertaking or scheme."

The omission of this declaration is not conclusive against the taxpayer, for the Commissioner is empowered to direct that the loss

[8] Section 26 (a) of the Australian income tax law. See Ratcliffe, McGrath, and Hughes, *The Law of Income Tax* (Law Book Co., Australasia Printing Ltd., Sidney, 1938).

be allowed if he is satisfied that the property was acquired with the purpose of selling it or for the carrying on or carrying out of any profit-seeking undertaking. Similarly, if a taxpayer who realizes a gain has not given the notice specified under Section 52, his gain will not necessarily avoid taxation, for the Commissioner may determine that the property had been acquired with the idea of selling or for carrying on a profit-seeking enterprise.

In determining whether a profit from the sale of property is taxable, the Australian courts consider whether the intention of the seller was to make a nonbusiness use of the property. *Wright v. Deputy Commissioner* (So. Aust. S. R. 212, 1927) dealt with the taxability of a large profit on the sale of land purchased a short time previously for residence purposes. The taxpayer had been in the habit of purchasing land which he would work for a few years, then sell. Nevertheless, the court held that he was not taxable on the profit from the sale of his residence because at the time of purchase he had not intended to resell it.[9]

4 NEW ZEALAND

New Zealand also follows the general principle of excluding capital gains and losses from the calculation of income for tax purposes. Profit or loss from the sale of property is a part of taxable income if the business of the seller specifically includes buying, selling, or dealing in the property, or if the property was acquired for the purpose of reselling or otherwise disposing of it at a profit.[10]

The Wellington Steam Ferries Company was organized for various functions, including the operation of a steam ferry and of hotels and boarding houses; the acquisition of land; the development of recreation centers; the supplying of electricity, water and gas; and finally the buying, selling, leasing, or dealing in land. Following the closing out of its ferry business, the company sold some of its holdings of land at a profit. This gain was held taxable on the ground that the company had been granted by charter the power to buy and to sell land (*Wellington Steam Ferries Company v. Commissioner of Taxes,* 29 N. Z. L. R. 1028-1029).

But for a profit from this source to be taxable, the power to deal in land must be an important function of the company making the sale, or the intention to sell at a profit must have motivated the pur-

[9] Magill, *op. cit.,* p. 87, note.

[10] James H. Gilbert, *The Tax Systems of Australasia* (University of Oregon, 1943), pp. 108-10.

chase. The Marainanga Estates Ltd., organized to operate a sheep farm, bought a large estate and had power to purchase and to sell other properties. Following the sale of the estate, the taxability of the large profit realized was litigated. The court held that this gain was nontaxable because the main business of the company was not dealing in land, and the gain was not income from business. "The dominant object was the sheep-farming business; other operations were incidental or auxiliary thereto."[11]

New Zealand does not directly tax dividends received by stockholders as a part of the personal income, but includes all dividends, stock as well as cash, in the income base of the shareholders for the purpose of determining the rate of tax payable on taxable income. The Land and Income Tax Amendment Act of 1939 defines dividends to cover the value of any shares allotted by a corporation to its shareholders.

5 SOUTH AFRICA

The Union Income Tax Act of 1941 (Ch. II, Sec. 7 and 11) expressly excludes from the gross income of individuals and corporations "receipts or accruals of a capital nature", and disallows as deductions "expenses and losses of a capital nature". Profits and losses from the sale of fixed assets are therefore excluded. But any amounts previously allowed by the revenue authorities for depreciation of such assets are taxed if they are recovered in the sales price.

South Africa follows British practice more closely than the other Dominions in withholding depreciation allowances from 'buildings or works of a permanent nature', confining the allowances largely to machines and equipment; but unlike Great Britain, permits domestic mining companies to recover their capital investment free from tax through regular deductions over the estimated life of the mine.

Two provisions of the South African tax system cause reinvested corporate earnings to be a less important source of capital gains than in other countries. 'Public companies', defined as those whose shares of all classes are listed on a recognized stock exchange or are held in substantial amounts by the public, are subject not only to a normal tax of 20 percent of taxable income but also to a graduated undistributed profits tax on 'distributable income' not paid out in dividends. The basic rate of the latter tax, 20 percent, is reduced 2½ percentage points for each one-eighth of the distributable income

[11] *Marainanga Estates Co. Ltd. v. Commissioner of Taxes* (30 N. Z. L. R. 417).

paid out. 'Distributable income' is 80 percent of the company's taxable income plus dividends received, minus taxes and the amounts paid to redeem bonded debt.

Companies other than 'public' are termed private companies. The latter's taxable income, distributed and undistributed, is allocated among the stockholders in accordance with their shareholdings and is treated as a part of their individual incomes for the purpose of the normal tax, supertax, and provincial income taxes.[12]

6 FRANCE

Until 1949 capital gains and losses were excluded from the taxable incomes of individuals, but included in those of commercial or industrial enterprises, the liberal professions, and agriculture. Accordingly, an individual's profits from sales of real estate or securities were not taxable unless he habitually speculated in them or unless the property formed a part of the assets of his business. In 1949, however, along with substituting a uniform normal tax for the variety of normal tax rates previously applicable to different types of income, France adopted the recent American practice of subjecting to the graduated income surtaxes, but without the American ceiling rate, half of the capital gains realized by individuals from the sale of common stocks and similar investments. The gains are exempt if they do not exceed 100,000 francs, and they are exempt in any event from the proportional or normal tax. Capital gains of business firms are still taxed in full.

An individual owning a business establishment is not thereby precluded from making personal as distinguished from business dealings in property. But the two accounts must be kept separately, transfers between them must be at market prices, and, when assets are transferred from a firm to the owner, any gain or loss enters into the calculation of its taxable income. Thus an individual cannot avoid full taxation of the capital gain on an asset owned by his firm by having it transferred to him for sale. Commercial and industrial enterprises are required to register with a government agency and to cite the registration on their letterheads. The books of business enterprises are, in practice, examined every 3 years by a representative of the revenue administration.

The division between ordinary taxable income and formerly exempt and still half-exempt capital gains offers an inducement for the

[12] From information supplied by W. A. Horrocks, Commercial Secretary of the Embassy of the Union of South Africa, Washington, D. C.

conversion of income into capital gains. A favorite method formerly practiced on a large scale was selling French government loans, mainly *rentes,* just before the interest payment became due, when the market price reflected the accrued interest, then repurchasing them immediately after the price had fallen in reflection of the interest payment. This device has lost much of its attraction in recent years because the pronounced inflationary movements of commodity prices and the accompanying fears of further declines in the purchasing power of the franc led to erratic changes in the price of *rentes* and made their future prices, even for short periods, highly uncertain. Stocks are sometimes sold and repurchased, respectively, just before and after the dividend payment date, with the same object, but this practice is not common. Since *rentes* are ordinarily more stable in price, they are a better medium for operations of this kind.

As in the United States and other countries, tax avoidance also takes place through the reinvestment of corporate earnings and the subsequent realization of the accumulations by stockholders in the form of capital gains through sale of their stock. This method of tax avoidance has been somewhat restricted for owners of closely held corporations by a recent statutory provision that any profit on a sale of shares is fully subject to income tax if the vendor or a member of his family has been a director of the company for at least 5 years and the share of the family in the profits of the company exceeds 25 percent.

The capital gains and losses of business undertakings, whether carried on by an individual, a partnership, or a company, are included in the definition of taxable profit: ". . . the net profit, determined on the basis of the aggregate result of all the operations of any nature carried out by the enterprise, including the sale of any assets, whether in the course of, or on the termination of, the business." A ruling in 1941 defines net profit as the increment in net assets during the accounting year.

The taxation of capital gains of business enterprises has been modified in various ways during the last 10 years both to encourage reinvestment of such gains in the business and to allow for the depreciation of the French franc. The chief modifications are:

1) Capital gains on sales of real or intangible assets, including securities under certain circumstances, are not taxable if an amount equal to the proceeds is invested by the enterprise within the 3 succeeding calendar years in assets of a similar nature; in such case, however, the capital gain must be applied to reduce the cost of the new assets

so acquired, leaving only the balance of cost to be amortized from future earnings or to be taken into account when computing the taxable profit on the sale of these new assets. The taxation of the capital gain is therefore not waived, but the payment is deferred, perhaps for a considerable time.

2) No tax is payable on capital gains by the shareholders of a merged company on the transfer of the assets to the acquiring company, or on those arising when the business of an individual is transferred to members of his family or to his heirs. In all such instances, the tax is merely postponed, as the new owners must adopt as their cost for tax purposes the figures at which the assets were recorded before the transfer.

3) In May 1948 the normal rate of the profits tax, i.e., 24 or 28 percent, was reduced 50 percent for capital gains made on the termination or sale of a business.

4) Reflecting the reduced purchasing power of the franc, the law of May 13 and decree of May 15, 1948 greatly increased the authority granted business enterprises under previous measures to raise the book values of capital assets for purposes of calculating depreciation and capital gains. Book values can be increased up to certain multiples of the cost of the asset, but not above its present value. Assets acquired in or before 1914 may be revalued at up to 60 times their cost; those purchased in 1915, 42 times; 1916, 32; 1917, 22; 1918, 18; 1919, 17.4; 1920, 12; 1921, 18; 1922, 19.4; 1923, 15; 1924, 12.8; 1925, 11.4; 1926, 8.8; 1927, 9.6; 1928, 9.6; 1929, 9.8; 1930, 11; 1931, 12; 1932, 14; 1933, 15.4; 1934, 16; 1935, 18; 1936, 15; 1937, 10.6; 1938, 9.4; 1939, 9; 1940, 7.2; 1941, 6.6; 1942, 6; 1943, 4.4; 1944, 4; 1945, 2; 1946, 1.3; 1947, 1. Accrued depreciation to 1946 must be increased by the same multiples.

The excess of net book value after the revalorization must be credited to a special reserve account and will not be taxable as profit unless it is transferred for a purpose other than offsetting a deficit or conversion into share capital, when a 6 percent tax is imposed. Amounts set aside for cash dividends will be subject to the commercial profits tax of 28 percent, and the dividends tax of 30 percent. Taxable gains on future sales of the assets will be computed by taking the difference between the sale price and the revalorized net book value at the time of the sale. Depreciation is allowed on the basis of the revalorized net book values.

Persons and corporations who avail themselves of the revalorization privilege are subject to the profits tax at the 28 percent instead

of the normal rate, 24 percent, and are required to reinvest in productive installations or equipment, within periods to be announced by decree, amounts equal to the enlarged depreciation allowances; if they do not, the depreciation allowance will be subject to the profits tax. Roughly similar provision was made for the permissible revaluation of securities and accounts receivable in foreign currencies.

7 BELGIUM

Corporations, and persons registered as 'in trade', include all gains from the sale of domestic property, whatever its description or use, with ordinary income for purposes of taxation. The corresponding losses are fully deductible from taxable income. They determine their taxable income or loss by comparing their balance sheets at the beginning and end of the tax year, after adjusting for distributions of earnings, changes in capital, etc. Their capital gains from investments abroad, however, are taxed at the same preferential rate as all other profits earned abroad, viz., at a quarter of the normal rate. Capital losses sustained in business from foreign investments are allowed in full.

Persons not registered as 'in trade' do not include in their reports of taxable income capital gains from sales of property, whether foreign or domestic, nor are their losses from this source deductible. These rules hold irrespective of the kind or use of the property.

Individuals who habitually perform acts designated in the Code of Commerce as those of trade are legally engaged in trade, and, like corporations, are required to register and to prepare balance sheets in a prescribed form (Art. 1 and 2). Trading activities comprise chiefly buying with the purpose of reselling, manufacturing, acting as a contractor or commission agent, transportation, banking. An individual who is in fact in trade but has not registered as such is not permitted to deduct capital losses. In practice, professional speculators register.

The Belgian franc, like the French franc, suffered a severe, and, with relatively brief interruptions, an almost continuous decline in purchasing power between 1918 and 1948. In consequence, the same problem arose as in France with respect to the measurement of taxable income and taxable capital gains in such manner as would permit adequate allowance for the cost of replacing capital assets worn out or sold.

The problem was met in much the same way as in France. Measures were enacted from time to time to permit industrial enterprises

to revalue their properties within certain limits for the purpose of computing appropriate depreciation charges, the limits being set by lists of published coefficients, based upon the price level and related to the year of purchase, by which cost values and previously accrued depreciation allowances could be raised. The latest permissible revaluation was made as of December 31, 1945. When the surplus arising from such a revaluation is credited to the capital or capital reserves account, it is not taxable. If it is subsequently credited to income or used to pay dividends, it becomes subject to the income tax at the rate then in force. Further, the law of August 20, 1947 permits the use of the coefficients for raising the cost basis of property sold by a business concern in order to determine the taxable capital gain. This gain also becomes exempted from tax if it is credited to capital or capital reserve accounts. When the application of the coefficient yields a value higher than the sales price, the theoretical loss is not deductible.

Individual investors not 'in trade' are not affected by these measures because their capital gains and losses are not recognized for income tax purposes.

8 THE NETHERLANDS

For corporations, limited partnerships, and other business firms capital gains are included in taxable profits, and capital losses are deductible in full. As in Belgium, the taxable profit is measured by the difference between the net worth at the beginning and end of the fiscal year corrected for withdrawals or additions of capital, dividend disbursements, and income taxes paid. A capital increment levy at the rate of 50 percent of the increase in net worth between May 1, 1940 and December 31, 1945 of business firms, and at graduated rates of 50 to 70 percent on that of individuals, was imposed as a single levy, but an annual capital tax based on net worth was abolished as of January 1, 1947.

The capital gains of individuals are taxable as ordinary income if they arise from sales of real estate held less than 2 years or from marketable securities or goods held less than 1 year. Capital gains from assets held longer are not taxable unless they occur in connection with a man's business or the stock in a corporation of which an individual together with his wife and next of kin owns 25 percent or more. In the latter case, gains from the sale of any of the shares are taxed as income, though losses are not allowed. Nonbusiness capital losses are deductible from taxable capital gains realized in the same tax period, but are not allowed to offset ordinary income.

Unlike the United States, where the reinvestment of corporate earnings in the business instead of their distribution in dividends is subject to tax penalties unless the retention can be demonstrated to be motivated by a valid business purpose, the Netherlands government imposes severe tax penalties upon large corporations that distribute dividends in excess of 9 percent annually of their paid-up capital. In general, corporations with a nominal paid-up capital of 500,000 florins or more are required to restrict their dividends to the same percentage of the paid-up capital as they distributed in the last year before 1941; but beginning with the tax year 1946, a dividend up to 9 percent (earlier the exemption was 6 percent) is allowed without tax penalty. If more is paid out, a Super-Dividend Tax is levied at sharply rising rates ranging from 50 to 400 percent of dividends in excess of 9 percent. The maximum rate of tax is applicable to dividends of 14 percent or more, the rate applying to the entire amount of the dividend in excess of 9 percent. Since these taxes on liberal dividends are prohibitive, the benefits of unusual earnings come to stockholders mainly in the form of tax-free capital gains, though the effective ceiling on dividend distributions doubtless retards advances in the prices of equity securities commensurate with increases in earnings.

9 SWEDEN

Annual direct taxes upon individuals in Sweden are of 4 kinds: local income tax, local real property tax, national income tax, and national tax on capital owned. Except for differences in exemptions and allowances, taxable income is determined in the same way for both local and national taxes. All local income taxes are proportional. The rates vary as between localities, but average about 10 percent of taxable income.[13] The national income tax is levied at progressive rates ranging from 10 to 70 percent of the different brackets of taxable income, being 10 percent on amounts less than Kr. 1,000 and 70 percent on amounts in excess of Kr. 200,000 (the Swedish Krona is worth about 28 U. S. cents). The local real property tax is also an income tax in effect. It is levied on the income from the property, except that the income is assumed to be at least 5 percent of the assessed value.

Individuals who, jointly with their wives and minor children, own property with a market value exceeding Kr. 30,000 at the end of the calendar year are subject to an annual capital tax at bracket rates

[13] *Key to Swedish Taxes,* Skattebetalarnas Förening (Stockholm, 1948).

ranging from .6 to 1.8 percent of the value. The .6 percent rate applies to amounts between Kr. 30,000 and 100,000; 1 percent on the next Kr. 50,000; 1.2 percent on the next Kr. 50,000; 1.5 percent on the next Kr. 100,000; and 1.8 percent on amounts in excess of Kr. 300,000. The value of all property other than household furnishings, minus debts, constitutes the base of the annual capital tax.

Gains from the sale of real estate held less than 10 years, and from the sale of securities and other property held less than 5 years, are treated as ordinary taxable income for both the local and national income tax applicable to individuals. They are so treated also for the purpose of the local and national income taxes on corporations. Losses from such transactions are deductible only from the gains from them, except in the case of dealers. Corporations pay the same rates of local income and property taxes as individuals, but their national income tax rate is 40 percent.

Gains and losses from property held longer are not recognized for the national or local income taxes proper but are fully reflected in the annual capital tax. In fact, this tax by its nature takes into account unrealized as well as realized gains and losses. Despite a provision that limits the sum of the capital tax and national and local income taxes to not more than 80 percent of the taxpayer's net income, the joint effect of the income and capital taxes may cause an individual's net yield from investment to be negative after taxes. For example, a person with an earned income of Kr. 40,000, and an investment income of Kr. 20,000 from bonds or other property yielding 3 percent, would pay Kr. 20,275 of additional taxes by reason of his investment income and its capital value, or Kr. 275 more than his entire yield from his investment assets.

The gains and losses of dealers from sales of property are treated as elements of ordinary income regardless how long the property has been owned, but the distinction between dealers and nondealers is sharp. A dealer must actually possess a stock of the property from the turnover of which his income is derived. A real estate operator who buys land and holds or develops it to resell, and an investment banker who holds securities for sale, are dealers. But professional speculators, whether in real estate, stocks, commodities, or other property, are not dealers however frequent their purchases and sales.

10 NORWAY

Norway, like Sweden, imposes both national and local income taxes. The national income tax is levied at progressive rates upon the income

of individuals, but at a flat rate upon corporate incomes. Gains and losses from the sale of capital assets used in business by an individual or corporation are elements of ordinary income under both national and local income taxes. Capital gains and losses on the sale of non-business assets are also treated as components of ordinary income if derived from the sale of building sites, patents, or copyrights. Gains and losses from the sale of real estate other than building sites are also included in calculating taxable income if the property has been held less than 10 years.

Other gains and losses from the sale of capital assets not used in business are excluded from both national and local income taxes. Thus profits from transactions in securities are usually taxable only if the buying and selling of securities is a business activity. Similarly, the gains and losses of individuals from the sale of furniture, jewelry, or other belongings are not recognized for the income tax. A blanket rule, however, provides for the full recognition of gains and losses from the sale of property purchased with the intention of reselling.

Both realized and unrealized capital gains and losses are embodied in the base for the annual tax on net worth, which is levied at progressive rates upon individuals and at a flat rate upon corporations.

11 DENMARK

The Danish statutes effect a partial integration of the income tax, from which most capital gains and losses are excluded, with the annual net worth tax, under which both unrealized and realized capital gains and losses form a part of the tax base.

Profits from sales of property are not taxed as income unless the sales constitute a part of the customary activities of the taxpayer or unless the property has been acquired with speculative intent. A presumption of speculative intent, subject to rebuttal, exists if the sale takes place within 2 years after purchase.

For the purpose of the annual tax on net worth which, like the income tax, is levied at progressive rates, property holdings are valued at market prices or, in the case of real estate, at assessment values. If the taxpayer's net income is less than various proportions of his net worth, he becomes entitled to varying rebates of the tax on the latter, the tax being reduced 80 percent if the taxpayer's income is zero or negative.[14]

[14] Hiort-Lorenzen and Pinholt, in *Das Internationale Steuerrecht des Erdballs*, I, 39-79.

12 FINLAND

In Finland taxable income includes capital gains from the customary business activities of the taxpayer, and in addition, all other capital gains realized through the sale of real property held less than 10 years and other property held less than 5 years. Capital losses are deductible from capital gains.

Net capital gains and losses of both individuals and corporate entities are included in the base for the annual tax on net worth, but the value of patents and copyrights is excluded if the taxpayer is the inventor or author.[15]

13 SWITZERLAND

The tax treatment of capital gains and losses in Switzerland differs as between the federal government and the cantonal and communal governments and also among the latter. The differences are significant because the burden of cantonal and communal income taxes is generally heavier than that of the federal government.

Under the Swiss Federal Defense Tax (as extended to 1949), business concerns, including individuals engaged in a business of a kind for which they are bound by law to keep a set of books, are required to treat capital gains and losses realized from business operations, including profits from the sale of real estate, securities, and from the sale or liquidation of a business, as taxable income (Art. 21, 1-d, and Art. 49, 1). They are required also to include unrealized capital gains and losses if these are recorded in their books.

Individuals in their private capacities are not subject to income tax on capital gains, realized or unrealized, and are not allowed to deduct capital losses. Under the annual capital or net fortune tax, however, both realized and unrealized capital gains and losses are reflected in the tax.

In Zurich canton realized capital gains of individuals are added to taxable income if they reflect increases in value during the 10 years preceding the sale; but no deductions are allowed for capital losses, realized or unrealized (Law of Oct. 29, 1944, as amended, Art. 77, 9a, and Art. 87).

In Basle the cantonal law requires that individuals treat as elements of ordinary income all realized capital gains and such unrealized ones as become apparent when computing their net fortune for purposes of the capital tax (Law of April 6, 1922, as amended, Art.

[15] See Aarre Linturi, *ibid.*, 563-96.

17, 1-4). They may deduct from capital gains realized capital losses and 'permanent' though unrealized decreases in values. Such capital losses or decreases in values may not be carried forward to be deducted from capital gains of future years (Art. 17a, 1 and 2).

In Geneva (Law of March 24, 1923, as amended) the treatment is substantially the same.

14 GERMANY

Detailed information on recent tax legislation in the two main zones into which Germany is now divided (1950) is difficult to obtain, and would be of dubious significance for our purposes if obtainable, because of the presumably tentative character of any recent changes. In the Western zone income taxes on individuals and corporations are of the same general character as before the war, though rates in general are higher.

Immediately before World War II, gains from speculative transactions, which were defined with reference to both the kind of assets sold and the period of ownership, were specifically included in the taxable incomes of both individuals and corporations. Profits from real estate held 2 years or less, from corporation shares or other property held 1 year or less, and from short sales regardless of the time held, were labeled speculative. On the other hand, gains from the sale of preferred stock of German railroads, bonds (unless they possessed convertible privileges), and other registered claims were exempt. Capital losses from speculative transactions could be deducted only from gains of like origin realized in the same calendar year.

A portion of certain other capital gains also was subject to income taxes. Profits from the sale in whole or in part of a farm, forest, or other business enterprise were regarded as 'extraordinary income', and, on petition of the taxpayer and approval of the authorities, could be excluded in part from income taxes. The taxed fraction commonly ranged from 10 to 25 percent for married persons and from 15 to 35 percent for single. The same practice was followed with respect to profits from the sale of shares of stock constituting more than 1 percent of the paid-in-capital of a corporation, by the individual owner of a 'substantial interest'. Such an interest existed if the seller or his relatives controlled 25 percent of the outstanding stock within 5 years preceding the sale.[16] Losses from the sale of an

[16] *Reichsgesetzblatt,* 1934, I, 1032, par. 6. See also Pfundtner-Neubert, *Das Neue Deutsche Reichsrecht,* V, Vermoegensteuer, Einkommensteuer.

enterprise, but not from the sale of the shares of stock, could be used to offset gains from similar sources.[17]

A striking extension of taxable income to embrace all realized capital gains was enacted in Germany in 1920, but was replaced by a quite different statute before it could take effect. The still-born law taxed any capital gain in full, but avoided the application of the full surtax rate by dividing the realized gain by the number of years, up to 5, that the asset had been held; calculating the average rate of tax on the taxpayer's other income plus this quotient; then applying this rate to the entire capital gain as well as to the remainder of his income. Losses were treated similarly.

Professor Haig has noted that the provisions finally adopted, calling for the taxation of speculative gains and the exemption of gains from investment transactions, stimulated taxpayers to adopt various expedients in arranging their transactions so as to avoid taxation.[18]

Capital gains and losses, realized and unrealized, form a part of the base of the annual tax on net worth.

15 CZECHOSLOVAKIA

At the outbreak of World War II the tax system of Czechoslovakia provided for the inclusion of some realized and unrealized capital gains as components of ordinary income, the taxation of others at special rates, and the complete exemption of still others.

Gains from the sale of real estate, whether used for personal or business purposes, were subject to a special tax at rates ranging from 5 to 50 percent, depending on both the amount of the gain and the period the property had been owned. Such gains were taxable again under the ordinary income tax if they had been realized by individuals or business enterprises in the course of a business operation or in a transaction undertaken with a speculative purpose.

Since business operations for profit were assumed to be conducted only by regular or established firms, most individuals selling real estate were subject to ordinary income tax on their gains only if the transaction was deemed speculative in intent. A speculative purpose was presumed if the property had been held not more than 2 years, but this presumption was subject to rebuttal. A loss from real estate sold in the course of business was fully deductible from ordinary income, but a loss from a speculative transaction in real estate could be deducted only from speculative gains realized in the same year.

[17] Income Tax Law of 1934, Sec. 5, par. 17.

[18] *Wall Street Journal,* April 13, 1937.

Business enterprises, whether conducted by individuals, partnerships, or corporations, were required to treat as taxable income not only realized capital gains and losses from securities and other movable property but also any unrealized gains or losses accruing during the year on securities held for purposes other than as a guaranty for the performance of some act or for use as part of the capital employed in operations. The accrued unrealized gains or losses were determined by the difference between the previous values and the market values at the year-end. Gains from the purchase by a corporation of its own stock below par, however, were exempt.

Gains realized by individuals from the sale of securities and other personal property held for nonbusiness purposes were exempt from income tax unless the property had not been held longer than 3 months. In the latter event, the gains were presumed to be speculative profits, taxable as ordinary income, unless the presumption of speculative intent was rebutted. Similarly, capital losses realized by individuals from the sale of personal property were disregarded for the purpose of the income tax unless incurred in speculative transactions similarly defined, in which case the losses were deductible only from speculative gains realized in the same year.

16 HUNGARY

In Hungary, just before World War II, individuals paid both a graduated tax on total net income, minus personal allowances, and a separate additional graduated tax, levied at higher rates, on net income from business. The latter tax applied to capital gains from the sale of securities and other movable property, whether the gains were casual or recurring or derived from business or from personal possessions. It applied also to dividends, interest, rents, entrepreneurial profits, and compensation received for services rendered irregularly, such as the fees of lawyers, doctors, and other independent practitioners. Capital losses of individuals from securities and other personal property were fully deductible from business income.

If a capital gain or loss had accrued over a period of years, the amount taxable or deductible in the year of realization was, within limits, proportionate to the period of holding, and the tax returns for preceding years were reopened to determine the change in tax liability due to including in them the *pro rata* shares of the gain or loss. The tax liability for income received in a single year for services performed over several years was also subject to this adjustment.

Capital gains of corporations realized from the sale of movable

property were similarly treated. They were added to the other net income of corporations for taxation at progressive rates, and capital losses from movable property were fully deductible from taxable income. As for individuals, gains and losses that had accrued over a period of years were prorated, within limits, among the years of accrual.

Neither individuals nor corporations had to include gains from the sale of real estate in their taxable income, but both had to pay a graduated tax on the resulting increase in their capital. Corporations or individuals engaged in business could deduct the amount of this tax paid on business real estate from profits subject to income taxes.

Capital gains, realized and unrealized, were fully reflected in the base for the annual tax on net worth, which was levied at progressive rates.

17 GREECE

Greece taxes the income of individuals in 2 ways: once under various net yield imposts and a second time under a general or composition income tax. Capital gains realized from the sale of business or personal property, including securities and real estate, are embraced in the net yield levies, and capital losses are deductible from taxable net yields in the same year. Any excess of capital gains over losses, or losses over gains, is included with other components of income for taxation at the progressive rates of the general income tax.

Capital gains realized by corporations are taxed only under the net yield imposts; and only their undistributed net profits are taxed under the corporation income tax.

No general conclusion can confidently be drawn from the divergent practices of the countries covered in the foregoing review, except that the place of capital gains and losses in taxable income appears nearly everywhere to be subject to modification. Taxable income itself is a relatively new concept and is still being evolved. The early European income taxes were not conceived as personal taxes, but as levies upon certain kinds of income, usually those from more or less traditional sources, such as land, professions, business enterprises, and securities. Different rates of tax were often, and in some instances still are, applied to the different categories of income. As general or global income taxes came into use, they tended at first to be merely super-

imposed upon the total of 'schedular' incomes (the total of the different categories), which did not usually embrace capital gains or losses. With increased acceptance of the view that the income tax is a personal tax, the previous exclusion of capital gains and losses has tended to be modified in different degrees in various countries. Short term gains of individuals, sometimes defined as those from assets held as long as 5 or 10 years, are in several countries now taxable in full. The peculiar character of long-emerging capital gains and losses, together with tradition, remains the ground for treating long term gains in a special way or excluding them altogether in some countries. Outside the British Commonwealth, the capital gains of corporations are usually treated as ordinary income. Severe restrictions upon the recognition of net capital losses of individuals, or their complete exclusion, appears to be the rule everywhere.