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STUDIES
CULTURAL SECTOR

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FISCAL PROBLEMS OF CULTURAL WORKERS IN THE STATES OF THE EUROPEAN ECONOMIC COMMUNITY

Study requested by the Commission of the European Communities

As it is the wish of the Commission of the European Communities that experts carrying out studies on its behalf should express their views freely and in complete independence, it does not consider itself bound by the contents of the ensuing reports.

C O N T E N T S

CHAPTER I - INTRODUCTORY REMARKS AND OUTLINE OF THE STUDY

§ 1. Aim, method and questions considered

1. The underlying purpose of this study is twofold.

In the first place it is fairly clear that the tax system as applied to performers, creative artists or, to use the latest term - cultural workers, is relevant to cultural policy. Taxation is not impartial and the very high amounts involved very often undeniably hamper the creation or distribution of works of art, even though the effect may be difficult to quantify.

Culture is a public service, but the public authorities cannot possibly take over this service entirely for fear of engendering academism and cultural ossification. The public authorities cannot be creative; they can and should encourage and support efforts made but must never stifle them. Individual inspiration must be allowed to take its course and any discouragement of this inspiration by means of taxation should be avoided.

One further consideration which supports these claims is that no-one becomes an artist or performer for the sake of making money. There are indeed artists who have made fortunes, but it is worth remembering that they are few and far between; on the other hand many artists live in very straightened circumstances and it is amongst them that we find the most true proletarians in our own countries today.

The way in which our tax systems affect the entire population group of performers and creative artists should therefore be examined.

2. A further reason, which would appear to be equally significant, came to light during the preparation of this study. There has always been considerable movement of persons and ideas, particularly in the arts, in Western Europe. Works and creative artists have travelled as dictated by curiosity or patronage and the catalogues of our museums provide striking proof of the fact that art has found frontiers no barrier.

Tax pressures may, however, add a new reason for such movement; this is regrettable from the point of view of both the individual injustices it may cause and of probable official repercussions. A tax administration should not be obliged to fight to keep 'its own' taxable products and to prevent them from leaving the country; this presupposes that blatent inequalities and discrimination must also be avoided.

A comparative study does therefore seem to be required.

3. In both respects this study is a continuation of the author's study of the tax problems of cultural foundations and of patronage[1]. The first study dealt with the tax problems affecting cultural

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[1] English version published under the title: Tax Problems of Cultural Foundations and of Patronage in the European Community, Kluwer, Deventer, 1976.

life from the point of view of the individuals and institutions not directly involved in it but striving to enrich it. The present study will be concerned with the tax problems facing those who generate cultural life with their own creative talents.

The study will follow the same pattern. For income tax, each chapter will contain a general survey of the problems involved, a description of national tax legislation and a conclusion in the form of notes for a fiscal policy. The description of national legislation is an attempt to present the main trends in legal systems in force, deliberately avoiding the controversial question and casuistic digressions; such an examination of these questions and digressions could in any case be safely undertaken only by an expert in the fiscal law of the country concerned.

Taxes other than income tax will be examined more briefly, since the subject matter is to a considerable extent identical to that of the previous report.

4. The scope of the terminology used must be explained from the outset.

The expression 'cultural workers' used in other documents and studies drawn up for the departments of the Commission of the European Communities is useful in that it highlights the fact that the individuals in question are all subject to the obligations of a demanding job. Those who devote themselves to this job have, for the most part, a fairly difficult life and have to show a personal discipline as rigorous as in any other occupation.

In reality their life is a far cry from the easy circumstances depicted in a certain type of literature written for an unsuspecting public. In fact, the individuals in question fully deserve the title 'workers' and are moreover far less well protected than many others.

This term is, however, open to criticism. Not only in this context, but in all cases where it is used to distinguish 'worker' from 'person of leisure' it has a disagreeable connotation. This is particularly true in this context in the sense that the public for whom the 'cultural workers' are working is certainly not composed of cultural 'people of leisure'.

The term is also inappropriate within the context of today's jargon, in which there is a tendency to regard workers as being employed persons, thus excluding those providing independent professional services. As will be seen, many of the individuals concerned belong more appropriately to the latter group.

The terms 'artist' and 'performer' or periphrases such as 'creative artist' or 'person engaged in a cultural activity' will be used for preference. The terms 'artist' and 'performer', moreover, correspond to the terminology used in general in tax law reference works, whereas 'cultural worker' does not appear in any of the alphabetical lists which could serve as reference documents.

5. Who are these people? All those who, whether driven by vocation or a personal creative urge, devote all or part of their lives to some activity which serves to increase our common cultural heritage.

In fact the dividing line between those individuals whose activity enriches our cultural heritage and the rest of mankind is very hazy. There are numerous intermediate or mixed, often very interesting, occupations. The case of craftsmen, whose occupation inevitably involves a certain degree of artistic creativity, is particularly worthy of attention. They are some of the chief victims of industrialization in our societies. It may be said that in their case, more than in any other sector, the tax systems are destroying their occupations.

It is not possible, however, to write a treatise on comparative tax law for each occupation. The study will therefore concentrate upon the most typical cases: on the one hand self-employed practitioners of the traditional arts: painters, sculptors, writers and composers; and on the other those who interpret and 'perform' (who play a significant rôle in the creativity process) in the performing arts. It is worth remembering that other occupations also include a significant degree of creative activity: producers in the entertainment world, craftsmen, etc. but an examination of the tax systems applicable to them would lead inevitably to discussion of the tax systems applicable to business undertakings, which in turn would tend to drown any problems which specifically need to be singled out for clarification in a sea of generalizations.

The study will not, however, be concerned with occupations connected with the real estate sector (architects, landscape gardeners, town planners), nor with 'service' occupations on the periphery of the artistic occupations (theatre or cinema technicians, publishers, art dealers, etc.). Although each of these occupations may, depending on the character or particular gifts of the individual involved, lead him to play a part in creating a cultural heritage, this rôle is nonetheless separate from artistic creation proper. The problems involved are different and should be considered separately.

The artists in question will therefore be referred to as 'artists and performers' or possibly 'creative artists'. It should be understood that these terms imply that some activity is carried out and yet make no judgement of the quality of the work produced, and do not exclude the possession of this quality by a certain number of other persons.

6. It is also appropriate to indicate at this stage the standpoint from which the study is made.

The society in which we live has raised taxation to an extremely high level. In the history of our civilization, taxation has often been the subject of criticism and even the cause of revolution. Frequently too the tax structure has developed in conjunction with society itself, taxation acting as a political factor and at the same time as a reflection of society. Taxes have never, however, been so high in comparison with society's total resources.

There are many reasons for this situation, but increasing interference by the authorities in all areas of private life must certainly be mentioned as one of the main causes.

Any judgement of this situation will reflect the individual's political opinions, education or personal experience. This question will not be discussed here, but it is essential to take it into account since government interference constitutes in itself a danger for artistic creative activity, whereas any argument or proposal in favour of even the slightest reduction in public spending would automatically be doomed to failure. The trend mentioned is therefore dangerous and perhaps destructive for our civilization, but there is no point in our cherishing too many illusions about the possibility of turning back the tide.

On the other hand, from the psychological and political points of view, it would certainly not be possible to defend a system which would create, in the field covered by this study, a large group of persons with preferential tax treatment. There is therefore but little scope for drawing up proposals concerning fiscal policy.

The possibilities for practical measures are therefore very limited: these would be in respect either of cases involving only a reduced taxable product or of a simplification of tax formalities. Here again we can scarcely hope for any drastic measures: budgetary requirements and the desire to achieve a fair tax system constantly give rise to new measures which make simplification more and more problematical.

§ 2. Tax problems - general situation

7. Before broaching the subject of the fiscal problems facing performers and creative artists it is first of all essential to see these problems in context and present a broad outline.

All the tax arrangements of the states concerned include a global tax on the income of natural persons. The main principles governing these taxes are roughly parallel, as are the personal problems facing performers. Some of these problems are quite independent of the actual nature of their income: the total income of a married couple or the definition of deductible costs, for example, may sometimes present difficulties which are not, however, specific to the occupations in question and will not be discussed here.

In contrast, certain problems have a specific significance or arise in a particular way for artists and performers. It is important from the outset to establish what these problems are in order to be able to devote a separate chapter of the study to each of them.

One group of questions concerns the structures of the tax systems: what are the limits of liability to tax? How are profits arising from artistic activity distributed over the various categories of taxable income?

Other questions arise with respect to the application of progressive rates since the yield from the activities in question may vary to a considerable extent from one year to the next.

One particular problem for which psychological factors as well as fiscal considerations must be taken into account is the burden of the formalities to be completed for compliance with the tax laws.

A comprehensive survey will be required for the problems raised by the levying of taxes other than income tax.

8. With regard to income tax levied on natural persons, all the legal systems of the Community recognize a distinction between the various elements which may make up total income: yield from investments in real estate or movable property, trading profits, remuneration, etc. This distinction is required partly because the nature of the different elements of income involves different techniques either for calculation of the amount liable to tax or for the deduction of taxes withheld at source.

All the legal systems draw a distinction, with regard to the elements making up total income, between wages and salaries on the one hand and income from non-commercial independent activities on the other. Here the methodology of taxation is coupled with a political motive: the influence of pressure groups representing the employed persons have often led governments to grant them various privileges, particularly in the form of blanket-rate deductions.

As regards proceeds from activities carried out on a self-employed basis, a distinction is made between the income from commercial, industrial and craft activities and income from other occupations carried out on an independent basis.

Independent artists and performers are classified in this category[1] in all the legal systems. There may well be an element of creative activity in other occupational groups, for example certain craftsmen who are taxed as commercial undertakings. There are no doubt also borderline case problems between these two categories of taxable activities. The problems to be examined, however, are centered upon the tax system for non-commercial occupations.

In addition to the independent artists and performers considered by tax laws to be providing a type of independent professional service, there is a category who are normal employed persons (decorators employed by an undertaking, musicians working in an orchestra run by a public authority, etc.). But, more important, there is also a category of employed persons whose situation is, in contrast, often rather precarious: these are actors in private theatre companies. Their legal status may, like their income, present an infinite number of variations; these people rarely have the stability and security of employment of ordinary employed persons and the taxes levied on their 'fat' years sometimes prevent these periods from striking a reasonable balance with their 'lean' years.

Moreover, most of them are subject to mixed tax arrangements, with some income not counted as salary but as income from independent sources. This is the case in particular for secondary income from primary sources or payment for services outside their contract of employment.

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[1] Subject to the general exemption applicable to some members of this category under Irish law; cf. paragraph 22 et seq.

9. For employed persons, as for persons providing independent payment for artistic services, or cultural services will, as a general rule, be universally subjected to the common system of tax applicable to the entire category to which they belong. In general, and subject to the anomalies mentioned later, it may be said that artists do not have their own special tax system. The difficulty cited is: where are the frontiers of art?

There can be no question here of presenting a complete description of these systems since this would require a comparative study of all taxation systems applicable to natural persons, which would far exceed the scope of the present work. Similarly there can be no question of launching into a critical analysis of all these distinctions. It is worth recalling that one of the reasons most frequently cited for taxing those providing independent services more heavily than employed persons, namely that persons providing services have ample opportunity for fraud, whereas the income of employed persons is known and therefore taxed to the last penny, is highly debatable in general and for the most part inapplicable to the field under consideration. It is debatable in general since there are undeclared salaries, whereas the profits from independent activities are always strictly checked and often fully known, and inapplicable to the field under consideration in so far as royalties and entertainers' fees, etc. are paid by commercial agents (publishers and impresarios) whose accounts must be complete and who are responsible for the amounts paid.

Some of the special cases mentioned in the following chapters relate to the fringes of the statutory categories of taxable income, the limits of the field of liability to tax.

Others, concerning in particular the calculation of taxable profits, are aimed especially at persons providing independent services; these comments would also be applicable to the 'independent' income of taxpayers who may also be classified as employed persons, and thus to the 'mixed' income mentioned above for any 'cultural workers' in the field of entertainment.

Finally, the remarks concerning progressive rates and the simplification of tax formalities, the subject of Chapter III below, apply without distinction to all performers and creative artists.

10. French fiscal law incorporates, from the point of view of categories of taxable income, certain special features which make it a little more complicated.

In principle it divides professional income into discrete categories which include, on the one hand, salaries and wages and, on the other, profits from independent non-commercial activities. Taxpayers in the latter category are then sub-divided into two groups - one subjected to the system of checked tax returns and the other to 'administrative evaluation'[1]. Furthermore, some of them may, despite their independent situation, be subjected to the tax arrangements for employed persons, which present various advantages. This applies in particular to authors.

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[1] cf. paragraph 54.

Their income is paid by a method (royalties paid by a publisher) which is considered to permit it to be verified in the same way as that of wage earners.

Thus for French fiscal law we have to distinguish not two categories (employed persons and persons providing independent services) but: 1) the system for persons providing independent services with checked returns; 2) the system for persons providing independent services with administrative evaulation; 3) the system applicable to persons providing independent services (authors) on the same footing as employed persons and 4) the system applicable to employed persons proper. These systems may moreover be combined in different ways, the most common combination being that of actors receiving a salary for their performance on stage but subjected to the system for persons providing independent services for secondary income from primary sources, as mentioned previously.

11. Apart from income tax, other taxes may be imposed on artistic activities, including:

(a) capital or property taxes, these exist for natural persons in the following states: Denmark, Federal Republic of Germany, Grand Duchy of Luxembourg, Ireland and the Netherlands;

(b) turnover taxes (VAT) and possibly further taxes on transactions, donations, etc.

The study of these taxes and the specific problems they raise for artists and performers warrants discussion in separate chapters (Chapters IV and V).

There are also various specific taxes, such as those levied on theatre productions or taxes levied for a financial year in respect of an occupation regardless of profits, in particular the French 'taxe professionnelle'. It is not possible, however, to include in this study a comparative analysis of these taxes, some of which in any case are imposed by local authorities and which affect only certain branches of artistic activity. We shall therefore restrict ourselves to the problems of income tax on natural persons, capital tax and VAT.

CHAPTER II - SPECIAL PROBLEMS IN CONNECTION WITH LIABILITY TO INCOME TAX

§ 1 - Problems involved in defining the limits of taxable profit

12. There can be few words which retain their meaning so constantly or have such exact equivalence from one language to another as 'profit'. Whatever the human context of an activity, the concept of profit is objective and is based on a full examination of economic facts. It is, however, well known that the definition of taxable profit varies from one legal system to another to a considerable extent. This is one of the paradoxes of our society.

The differences in the definition of what is regarded as profit from the tax point of view lie in the realm of profits accruing from non-commercial independent professional services. Most of the problems encountered in this connection are also common to several categories of taxpayer. They affect for example the inclusion under taxable income of profits (often merely imputed, resulting from currency fluctuations) arising out of the realization of assets not produced by professional activity but used in the performance of that activity. This is the problem of 'capital gains'. They affect also the deductibility, which varies from one country to another, from taxable profits of certain provisions made to cover future costs.

Even basic concepts, like that of business expenses, may be understood and applied differently. Some countries would allow a claim for deduction in respect of expenditure for the maintenance of a building used for both residential and professional purposes, whereas others would reject it. This is true also of travelling, representation and documentation, etc. expenses. Even when accepted in principle, deductions in respect of these expenses may sometimes be calculated on a very generous basis and sometimes very strictly.

These differences result in discrimination, sometimes very marked discrimination, from one country to another. The problems they raise are common to several categories of taxpayer but are mentioned here only in passing, since we should have to stray far beyond the scope of the subject under consideration here to examine them thoroughly.

13. Existing legal systems in the particular field of profits in respect of artistic creative activity nevertheless present, with regard to the extent of liability to tax, certain differences which are peculiar to them. They concern:

1) the exemption from taxation granted in respect of certain profits in view of their particular origin. This applies to profits made in Ireland by writers, painters, sculptors and composers who enjoy a general exemption from taxation under Irish law;

2) the inclusion under the heading of the product taxed of sums received following isolated or occasional transactions;

3) the taxing of awards and subsidies which constitute a donation on the part of those granting them.

14. The international context adds a new dimension to the problem.

Several questions may arise here. The performer or creative artist receiving income from abroad may be subjected to different tax arrangements, depending upon the nature of the income. The most common types are as follows:

a) payment for a tour (performances, lecturing);

b) the launching of works abroad (publications, exhibitions of paintings);

c) sale of works (royalties, records, cassettes);

d) the granting of rights (e.g. the right to make a film based on a novel).

There are further possibilities. A creative artist on his travels may complete a canvass, write a story or compose a song and sell the work on the spot; this no doubt happens less frequently.

The relationship between income and the country in which it originates may vary to a considerable extent, as we have seen. This is also true of tax arrangements, since each government has an understandable tendency to lay claim to all the taxable products within its reach.

The tax system may give rise either to personal liability of the taxpayer or to localization of the source of income. In the latter case, for the occupations under consideration, the question is not one of the place in which the work is conceived or even executed, but solely of the place in which that work yields some financial reward. If a completed work on which no financial return has been obtained crosses a frontier, only questions of customs duties or VAT will be involved and only then on the comparatively rare occasions on which it is possible to maintain checks.

15. It is worth pointing out first of all that in principle all the legal systems of the Community relate the levying of taxes to the habitual residence of the taxpayer; this is the principle of territoriality of a tax[1]. The nationality of the taxpayer is therefore not taken into consideration. Even registration of an official domicile may be disregarded if it is clear that this domicile is not the actual place of residence. It follows, however, that the official domicile will generally be taken as an indication of actual residence and that it is difficult to obtain proof to the contrary.

In principle also, all the legal systems of the Community provide for the levying of taxes on income earned within their territory by non-residents and on the world income of their residents. There are numerous international conventions

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[1] There are some exceptions to this rule for diplomatic staff and officials of international organizations, but these exceptions will not be considered since they are almost irrelevant to the problem under consideration.

designed to mitigate the effects of the double taxation which results from this rule. These conventions are, up to the present, always bilateral, but they do form a system which covers practically all the relationships of each of the Member States with all the others.

Intra-Community relationships are not governed by any special rule; the relationship between Member States and third countries are identical.

16. It is practically impossible, within the confines of the present study, to mention one by one each of the conventions concluded by each of the Member States with all the others and the numerous bilateral relationships which arise - thirty-six in all - but in fact these conventions are almost all[2] drafted on the basis of the model drawn up and published in 1963 by the OECD.

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[1] This double taxation is also the subject of a number of unilateral measures, including the application of a reduced rate for profits originating abroad.

[2] The convention between the United Kingdom and the Republic of Ireland constituted until a short time ago one important exception as the text dated from 1926 - when the study of international double taxation was still in its infancy, as was the separation of these two states. Without going into the details of this convention, it is worth pointing out one of the main differences in comparison with the others: whereas these conventions generally divide the taxable product between the state of residence and the state in which such an item of income arises and thus finally render the income exempt in one of the states, the old convention between the United Kingdom and Ireland accepted double residence and allowed certain taxes paid in one country to be deducted from taxes due in the other. The result was that a portion of income not taxed in one of the two countries could be taxed in the other. This system was amended by a recent convention; since 1976 the problems of double taxation between the United Kingdom and the Republic of Ireland have also been governed to a considerable extent by the model OECD convention.

17. The model convention lays down in Article 14 that persons providing non-commercial independent professional services shall in principle be taxable only in their country of residence. There is an exception to this rule for those who have a 'fixed base' of activity in another country; the profits arising from this 'fixed base' are taxed only in the country in which the base is established. This exception may affect for example certain experts with an office abroad as a subsidiary of the head office established in their country of residence. This hardly applies to artists and performers.

The article in question, Article 14, reads:

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that state unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term 'professional services' includes, especially in dependent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Examination of this Article highlights the similarity between industrial undertakings and commercial undertakings and shows that the Article applies only to employed persons; these persons

are mentioned in Article 15. Article 14 does not apply to public entertainers and athletes, who are covered by Article 17.

18. With regard to employment, Article 15 of the model convention lays down that tax shall be due only in the state in which the employment is exercised. We shall not dwell on this provision, nor on certain exceptions which may be made, since employed persons (apart from public entertainers, mentioned in Article 17) do not fall within the scope of this study.

19. Article 17 provides as follows for public entertainers:

'Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting States in which these activities are exercised.'

In most cases, the tax due by virtue of this provision is retained at source from the taxpayer's fees. Theatre organizers must pay the tax withheld to the Treasury of the state in which the activity is exercised.

Some conventions, however, deviate from this rule and grant the right to levy taxes to the state in which a touring artist or performer is resident.

20. Except where certain conventions contain derogation clauses, the questions raised in 14 above are therefore settled as follows:

a) Entertainers will be liable to pay tax in each of the countries in which their profit is made. Such profit will not be taxable in their country of residence. It may, however, be taken into account solely for the assessment of taxes on other income; such partitioning of income should not hinder the full application of progressive rates in the country of residence to the income taxable in that country.

b) Other income will be taxable only in the country of residence.

c) Arrangements in respect of occasional profit (other than live performances) are a little more complicated. In the countries where such profit is taxed the system is usually applied only to residents. The model convention also provides in Article 21 that items of income not expressly mentioned in the other provisions of the convention shall be taxable only in the state of residence. It often happens, however, that the Treasury of that country has no information on occasional profit earned abroad by the artist or performer on tour. This no doubt explains why no clear-cut solution has yet been devised.

Apart from the last point, it appears that the problems of double taxation of artists and performers are satisfactorily governed by the model convention at least with regard to income tax. Local or special taxes, such as entertainment

taxes, are not affected, but double taxation, apart from national income tax, will be significantly reduced if not eliminated.

It is worth remembering that agreements concluded in practice may deviate from this model. There are in fact only a few deviations. It is still necessary to check the text of the convention in force applicable to each particular case under consideration.

21. These conventions are designed to eliminate double taxation by indicating how taxable products should be distributed between the various tax authorities.

The practical rules for collection (nature of the tax liability of a certain income, deductibility of certain expenses, application of abatements or flat rates, etc.) will then depend solely on the legal system applicable.

Thus, the provisions contained in the following paragraphs will apply on a general basis to all taxpayers subject to the legal system in question.

§ 2 - The Irish tax exemption arrangements

2. The Irish Finance Act, 1969, contains, in Article 2, a provision exempting from income tax in general terms, all profits arising out of the publication, production and sale of books, plays, musical compositions, paintings or other like pictures and sculptures. This exemption is granted to authors, composers and artists resident in the Republic of Ireland who submit a claim and produce evidence of cultural or artistic merit as laid down in the Act.[1]

This exemption may be granted only to natural persons who have actually created or composed the work in question, and may under no circumstances be granted to a legal person (company or association). The exemption may, on the other hand, apply in the case of works produced jointly by two or more natural persons.

This exemption is clearly intended to attract the creative artists cited to Ireland: hence the condition of residence. There is, however, no discrimination on grounds of nationality, the place in which the work is written or created, the country in which the book is published, etc.; the position will be the same for income from abroad, for example the country in which the royalties arise or in which the payment for the work sold is received. The exemption is applicable only in respect of earnings which are in principle taxable in the Republic of Ireland. We shall refer here to the rules applicable to international double taxation mentioned in the preceding paragraph.

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[1] The full text of this provision is appended.

23. The text refers to a specific category of income - the category taxable under 'Case II of Schedule D'. The Irish system distinguishes between taxable income and income derived from a non-commercial independent activity.

The exemption may under no circumstances be granted in respect of fixed salaries or wages, even if they are paid in respect of the production of works of art (which seems highly unlikely). But there is nothing to prevent the artist or performer who earns both a salary as an employee and fees in respect of freelance activities from claiming exemption under the fiscal law for the latter portion of his income.

A teacher in receipt of earnings in respect of works he had published outside his teaching activities would be in this situation.

Similarly, an author publishing his own works could claim exemption for his royalties but not his profits as a publisher.

24. The following works may be granted an exemption from tax under Irish law:

(a) a book or other writing;
(b) a play;
(c) a musical composition;
(d) a painting or other like picture;
(e) a sculpture.

Each of these terms has been discussed.[1]

The first group contains all categories of writing likely to be published: books themselves and manuscripts, review articles, poems, etc. The works cited need not necessarily be imaginative works; scientific books and even school textbooks have been accepted as fulfilling the legal criterion.

'Plays' need not necessarily be intended for theatre presentation in the narrow sense of the word; a radio play or theatre play presented on television may fulfil the legal requirement. A film scenario on the other hand would not.

Paintings and other like pictures include drawings, engravings, watercolours or even photographic compositions. In this field even the most striking extension of the concept appears not to be concerned with the definition of the works in question but rather with their method of production or reproduction; whereas a painting is by definition a unique work, drawings may be published in various forms so that strip cartoons reproduced in magazines and newspapers, jokebooks, etc. would fall within the legal concept.

The interpretation of the terms 'musical composition' and 'sculpture' appears less controversial. These terms may no doubt refer to works with fairly different characteristics;

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[1] The following remarks are taken largely from the text of a lecture delivered on 30 January 1974 to an audience of tax experts by Mr Vincent O'Leary, BL, ACA.

but here the problems which may arise in connection with the limits of the legal concept are less evident. Unforeseen difficulties may always crop up, but these will no doubt be limited to particular cases.

25. The provision setting out the works which may be exempted lays down that these works must be 'original and creative'.

This condition is closely related to the one discussed in the following paragraph - that the work must have cultural or artistic merit. It differs, however, in that relief may be granted only to the creator himself and not to any persons involved after a work has been reproduced. In particular, there can be no question of granting this exemption to anyone receiving or disposing of inherited royalties.

It appears that the exemption may be granted to the translator of a text published in another language.[1] It may not be granted to any other person involved in whatever capacity in presenting work to the public: a book publisher, printer of a drawing, theatre producer, musician playing a sonata, etc.

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[1] It appears that this exemption must in any case be granted in respect of an illustrated translation if the illustration is original. Perhaps there is scope here for striking a balance between the value of the text itself and the value of the illustration.

26. The work must have cultural or artistic merit.

This is certainly the most problematic of conditions to check. It involves a value judgement which of necessity will entail varying subjective opinions. The Irish government has, moreover, provided here for two different modes of checking: the officials responsible for applying the law may, in the light of their personal knowledge or of an expert opinion, grant the exemption[1] on the basis either of the merit of the work in itself or of the generally accepted opinion of the work.

It will probably not be difficult as a rule to convince the authorities that the work of a well-known artist is generally recognized as having cultural or artistic merit. Public opinion may, in this field, be a poor judge; many artists who were highly regarded during their lifetime have already been forgotten and yet others, now famous, remained for years in obscurity. But this is not the issue and the question is not one of putting a democratic value on public opinion, but rather on a far more modest scale, of regarding public opinion as a sufficient, but not essential, condition for granting the exemption.

The application of fiscal law is essentially always concerned with the present. It is not intended to hallow great artists producing immortal works, but simply to attract and

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[1] Although not expressely stated in the law, it follows that this evaluation is subject to the control of the courts which settle any disputes. The administration has no discretionary power.

keep in Ireland creative artists whose work appears sufficiently striking within the very limited context of the era in which they live.

In the absence of public recognition, cultural and artistic merits may be accepted following an examination of works submitted by the artist, even if he has achieved no fame; this would necessarily be the case if the work in question were the first produced by its author. This is the second possible course laid down in the document.

Here again, the opinions of experts or of authorities which the 'Commissioners' may consult may entail a certain danger of academism. It appears, however, that no such complaints have been lodged to date.

It is worth pointing out that the exemption from tax will generally be proportional to the fame of the artist submitting the claim. Once again, the publication of an author's work or the success of a painter are not always proof of merit and originality; they will, however, most frequently if not always constitute proof of sufficient fame to warrant application of the exemption law.

Finally, the merit recognized under the conditions examined above must be attributable either to the work in respect of which exemption is claimed, or to similar works. Once the 'satisfecit' is granted, the exemption will apply in full to other works in the same category; the author will not be required to renew his claim for each book nor the painter for each canvass.

It is also applicable to profits from the cession of rights deriving from the work in question, such as the right to make a film of a novel or to include a work of music in a theatre production.

27. '30 jours d'Europe'[1] contained the following comments on the application of the system described above:

"Since 1969, the Irish government has received 789 applications from those anxious to place their artistic sensibility beyond the taxman's reach. 574 applications have already been settled and a further 147 are being considered. 68% of the chosen few are writers, 23% painters, 6% sculptors and 3% musicians - and half of them are non-Irish."

"By attracting artists who would never have considered taking up residence in the Emerald Isle in view either of the weather or because it is so far from the leading cultural centres, this tax law - which exists nowhere else - has brought about a cultural and literary revival in Ireland, restoring its international prestige."

This legal system is, moreover, probably beneficial to the Irish Treasury in other respects - if only at the level of value added tax. It is, however, known to have produced certain unfavourable reactions in public opinion. Some people have already requested that the law be repealed.

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[1] No 216-217, July to August 1976, p. 14.

§ 3 - Taxation of occasional profits

28. The situation described below arises, in practice, relatively frequently and appears at first glance to receive favourable treatment.

In this modern world some people seem to escape the preoccupations and frustrations of our consumer society more effectively than others. They may have a hobby - some additional activity which serves to release their inner tensions and fulfil their need for creative activity: the 'Sunday painter', the judge who publishes a book of poetry, the village schoolmaster who occasionally takes part in a play or concert, etc.

29. The question of the tax arrangements applicable to this type of income would appear to be of minor importance both to those concerned with tax law and to those responsible for national budgets, but does have a certain significance from the cultural point of view. It is not merely that the taxation of proceeds from occasional activities absorbs the increased ability to pay tax (the increase, if any, is usually minimal) but, more important, the administrative red tape confronting the taxpayer has an inhibiting effect. The tax will do more to discourage artistic creativity than it does to distribute the burden of public finances equitably. Society will therefore be deprived of certain contributions, some of which might well have displayed originality, since the spare-time artists in question will be forced into less individualistic activities and stripped of all creativity. This would be to everyone's loss.

30. The tax systems within the Community show fairly marked differences with regard to the taxability of what we shall refer to as marginal profits.

Tax legislation in some countries regards these profits in principle as taxable income and subjects them to a special schedule either for determining the basis of assessment or the rate, whereas other countries do not regard them as taxable. The limits of taxability must therefore be determined.

31. German income tax applicable to natural persons is levied on income arising from the sources set out in Article 2 of the Law (Einkommensteuergesetz § 2). The list covers a wide area but is limitative. It covers the various forms of income received in respect either of investments or occupational activities. It does also mention certain 'miscellaneous income'. But this Law[1] taxes only: 1) certain items of regular income and similar periodic income; 2) proceeds from speculative dealing, and 3) income in respect of occasional services.

These are not three common sources of income for performers, creative artists or cultural 'workers'. It is possible to imagine that as regards the first category a performer may be granted an allowance by a rich patron without any reciprocal service. There have been examples of this type of patronage in the past, and such income would be taxable under the provision mentioned above. But this situation arises so rarely nowadays that it may be disregarded.

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[1] Einkommensteuergesetz § 22. See also K. Tipke, Steuerrecht, 2nd edition Cologne 1974, No 3.327, p. 148 et seq.

The law cites occasional letting as an example of services. The case law states that awards and gifts received do not fall into this category.[1] Proceeds arising out of occasional creative activity which are not 'services'[2] should not be included either. This provision is therefore not applicable to the field under consideration.

32. The list of sources of taxable income in German law is limitative. Any income from a source not listed is not taxable.[3]

The law is therefore not applicable to proceeds from an activity carried out on an amateur basis as a leisure-time pursuit (Liebhaberei). It is no doubt difficult to draw the dividing line between occupational activities and leisure-time activities.

The authorities tend to opt for the latter alternative in the event of a loss and refuse to deduct the loss from other income if it is not clear that the loss resulted from an occupational activity in the full sense of the word;[4]

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[1] Handwörterbuch des Steuerrechts, V° Leistung (Einkünfte aus -).

[2] The legal term cited ('wirtschaftliche Leistung') was, it is true, interpreted by the High Fiscal Court in a fairly broad sense. It does not however include proceeds from an occasional sale: Herrmann-Heuer, Kommentar zum Einkommen-und Körperschaftsteuergesetz, § 22, Anm. 72-1.

[3] Tipke, op.cit., No 3.30, p. 155.

[4] See for example F.G. Berlin, 30 August 1966, EFG 1967, 127: a painter whose costs had exceeded income over a lengthy period, whereas his wife had a substantial income.

on the other hand they are more likely to opt for the former if the activity generates profits.[1]

However, once it has been established that an artistic creative activity is simply a 'hobby', the proceeds remain non-taxable. The final criterion is in fact not the absence of profit but the absence of profit motive.[2]

33. In France Articles 4 to 9 of the Code Général des Impôts list items of taxable income, including the various traditional sources corresponding to different types of investment or occupation. But the list has no subsidiary categories. Occasional profits which do not relate to any constant source of income are not taxable.

Administrative practice, however, places in a separate category income from ancillary activities not directly related to the main occupation. In so far as this income does not exceed FF 9 000 an abatement of 25%, with a minimum of FF 1 200, is applied. For income in excess of FF 9 000 the normal rate applies.[3]

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[1] W. Schinck and K. Otto, Einkommensteuer, Körperschaftsteuer, Gewerbesteuer, Cologne 1971, pp. 3-4.

[2] BFH 27 June 1968 B.St.Bl. II 1968, 815, quoted by Schick-Otto, op.cit., p. 4.

[3] Instruction administrative 5 G II-74 of 1 March 1974 and Documentation F. Lefebvre, Impôts directs, III, No 4200 et seq.

34. British fiscal law has, as is well known, retained an age-old structure which classifies taxable income under various categories called 'schedules' subdivided into 'cases'. One of these categories (Schedule D Case VII) concerns 'annual profits or gains not falling under any other schedule or case'.

This provision creates a category of taxable income of a subsidiary nature. It was originally intended to tax any 'income' in the technical sense of the word not taxed elsewhere. But the reference to the concept of income excludes all capital gains and the terms 'profits' and 'gains' imply that the income must be generated by a type of activity which, if repeated, would generate business profits (commerce, industry, professional services, etc.) taxable under the other rules of 'Schedule D'.[1]

There does seem to have been a tendency over the years to extend the field of application of this provision.[2] It has in particular been decided that occasional profits, such as commission for isolated transactions, are taxable under this heading.[3] There is, however, no decision in the case law[4] by which the sale price of an individual work of art has been pronounced liable for tax. There is a judgment dating from 1975 concerning a series of transactions involved in transferring a considerable sum of money to an actress; but

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[1] Whiteman and Wheatcroft, Income Tax, London 1976, No 13.01.

[2] Op.et.loc.cit. and Pinson, Revenue Law, 10th ed., London 1976, No 4.02-4.03.

[3] Whiteman and Wheatcroft, op.cit. No 13.06.

[4] See the general table of this case law in Whiteman and Wheatcroft, op.et.loc.cit.

the transactions cited had all the characteristics of an operation calculated to avoid normal tax liabilities attaching to a 'professional or vocational' activity proper.[1] Thus, this decision does not imply that the profits from occasional transactions are liable to tax.[2]

35. With regard to the taxable category mentioned in 'Schedule D, Case VI', the scope of the concept of 'profession or vocation' the profits from which are taxable under 'Schedule D, case 2' still needs to be clarified.

This category relates to profits arising out of non-commercial professional or vocational activities. The precise dividing line between these and commercial occupations may present some problems. What is important here is that a 'profession or vocation' generates taxable income only if it has sufficient continuity or is repeated sufficiently frequently.[3] It may be worth noting in this connection that British law, in contrast with certain other legal systems, does not require that the activity be carried out for gain.[4]

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[1] Ibid. No 13.09.

[2] See the list of taxable income arising out of this provision in K.S. Carmichael, Income Tax, London 1972, p. 391 et seq. Occasional profits from artistic activities are not mentioned. See also Simon's Taxes, B 1.207.

[3] Whiteman and Wheatcroft, op.cit. No 5.43.

[4] This is the result of explicit case law with regard to commercial profits, Schedule D, Case I (see Whiteman and Wheatcroft, op.cit. No 5.12) and is a fortiori applicable to the non-commercial professions or vocations.

Nor does British practice distinguish between a professional or vocational activity and a hobby where the hobby takes the form of a commercial activity.[1]

On the other hand, the tax due under 'Schedule D, Case II' attaches only to proceeds from a professional or vocational activity proper and the field of application extends only to the transactions arising out of that activity.[2] It would therefore not apply to profits arising out of an occasional transaction carried out outside that activity.

36. Belgian law is much more strict on the point in question than the other legal systems mentioned above.

Article 67 of the Code des Impôts sur les Revenus renders liable for tax certain types of gains included under the heading 'Miscellaneous income' and intended to cover all possible sources of income apart from traditional types of income. The first of these sources referred to is defined as follows: "Profits or gain of whatever nature in respect of any services, transactions or speculation or of services rendered to third parties, even on an occasional basis or owing to unforseen circumstances - outside occupational activities ..... excluding normal administration of one's private estate .....".

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[1] Ibid, No 5-40.

[2] Ibid, No 5.44 - 5.45.

The aim of this provision was essentially to tax profits made on property speculation or occasional and isolated commissions. But the general terms of the text bring all other occasional profit or gain, including proceeds from individual artistic activities, within the ambit of taxation.

There are no doubt very few cases of this type of taxation and such as there are probably relate to minor matters. The provision is very difficult to enforce. The tax due in such cases moreover escapes the progressive rate where this exceeds 30%. In principle, however, there are no exceptions to the regulation.

37. Italian law contains a provision similar to that of Belgian law, but perhaps even more severe, since it features the application of the general rate pure and simple.

Article 77 of Decree No 597 of 29 September 1973 provides that income in respect of an independent non-habitual occupation shall be included as part of the total income for the tax period during which it is received. The law states that tax shall fall due in respect of the net proceeds following deduction of costs incurred specifically and unavoidably in generating the income.

This provision involves the levying of state tax (imposta sul reddito delle persone fisiche, I.R.P.E.F.) and local income tax (imposta locale sui redditi, I.L.O.R.).

Moreover, the abatement generally granted in respect of the latter tax does not apply to profits from occasional activities.

38. Luxembourg law also mentions, in addition to traditional sources of income, a category of taxable income styled 'miscellaneous income', which includes amongst other things 'income in respect of services not included in another category of income, for example income in respect of occasional intermediary services. This income shall, however, be taxable only if it exceeds 10 000 francs per annum. Where expenditure exceeds income, it shall not be possible to set the deficit off against other earnings'.[1]

In theory profits from occasional artistic services could be covered by this provision, but in practice there seems to be no case law to this effect. On the other hand the proceeds from a single transaction would not be taxable since they do not constitute 'income'.

39. The system in the Netherlands is similar to the system applicable in Germany: the law does not provide for taxation in the sector in question outside traditional occupational activities. In the case law the attitude adopted is similar to that already described for Germany with respect to activities pursued on an amateur basis or as a relaxation; once the activities have been placed in this category no profits will be taxable and no loss deductible.

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[1] Law of 4 December 1967, Article 99 (3).

The distinction is not, however, based on a purely subjective criterion in relation to the intention of the individual concerned. On the contrary, a great deal of importance is attached to the de facto potential profitability of the activity. The activity will thus become taxable if it is pursued for gain and is such that it may reasonably be expected to be gainful.

40. Finally, under Danish law each resident is taxed on his world income and no distinction is made with regard to source. Proceeds from an ancillary activity would therefore receive no favourable treatment under the law.

If the activity is definitely pursued very occasionally and brings in only minimal proceeds, its exclusion from tax may sometimes quite simply be tolerated.

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[1] Law H.R. of 1 December 1954, B.N.B. 1955, 22. See also the comments contained in the 'De Vakstudie' collection under Article 4 of the income tax law, No 15; ibid., Article 22, No 61.

§ 4 - Awards and subsidies

41. Taxation of awards and subsidies poses a problem at the outset with regard to interpretation of the facts.

At first glance, awards and subsidies must always be received by the beneficiary in his professional capacity; no one is likely to grant such payments to a person who has not provided any services in the field being promoted, except possibly in the form of study grants.

The relationship between the award or subsidy and the occupational activity may take several different forms. Amounts paid as either awards or subsidies by an employer to his employee, like the amounts paid by a third party to a professional artist or performer as payment for some specific service, constitute direct profit from a given professional activity. This is not so clear as regards awards granted by a non-profit-making institution to mark the merit of a work, and even less clear where subsidies are intended to give a beginner the chance to perfect his skills in a particular field.

42. Legislators in the Community scarcely seem to have been made aware of the specific problem of awards and subsidies.

In general the beneficiary will be regarded as having received a payment in his professional capacity whenever that payment constitutes business expenditure for the party making the payment. This rule implies that the sum involved

represents payment for actual services rendered within the context of the economic cycle. It applies to all the legal systems of the Community.

In contrast, if the payment is made or the grant allocated gratuitously and in the form of a donation, it can no longer be regarded with certainty as business profit and it tends for the most part not to be taxed. Only French law and Belgian law, however, have specific provisions in this area.[1]

In Germany these awards are not taxable for lack of any legal provisions.[2]

43. French law exempts 'academic' awards from tax. The exact meaning of this expression is not clear in the law. It should no doubt be interpreted as meaning the awards granted by an official institution. The text states that awards 'granted to reward a writer, artist or performer' (attribués à titre de récompense à un écrivain ou à un artiste) shall be exempted from tax.

The text implies that awards which are not 'academic' in character are not exempt. This brings us back to the discussion of the principle of the concept of income: all income within the meaning of 'taxable income' is taxable. These awards do not, however, appear to be taxed very often.

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[1] Article 375 of the British Tax Law (ICTA 1970) explicitly exempts student grants mentioned in the Law.

[2] Tipke, op.cit. No 3.330, p. 155.

44. The legal distinction is taken further in Belgium. Article 41 § 2, 3 of the Code des Impôts does not regard awards and subsidies 'granted by public authorities or official bodies to scholars, writers, artists or performers' as profits from professional services. This exemption presupposes that the professional character of what is given is recognised in principle and is granted only if the award or subsidy does not constitute an award for services rendered.

Moreover, Article 67 (2) of the same Code lays down that 'awards and subsidies received over two years, in respect of the portion in excess of Bfrs 100 000, other subsidies, regular payments or pensions paid or granted to scholars, writers, artists or performers by public authorities or by national or foreign non-profit-making official bodies, excluding payments for services rendered constitute income from the exercise of a profession' and are subject to tax. This provision may apply to awards and subsidies exempted by Article 41 § 2, 3 mentioned above.

The reference to awards or subsidies granted 'in payment for services rendered' may seem unnecessary, since payments made in this way do not precisely correspond to our concept of awards or subsidies. It has already been pointed out (§ 41) that in that case there would be no exeptions to the rule for taxability.

This comment apart, the texts mentioned from Belgian Law lead to the following distinction:

(a) an award or subsidy is granted by a public authority body or an official body. It is taxable subject to the conditions and limitations mentioned in Article 67 (2) (which includes a maximum rate of 15% for taxation).

(b) an award or subsidy granted by another donor (individual, foundation, non-profit-making association). In this case it will have to be decided whether the payments received constitute gain from the professional activities of the beneficiary. If so, the general tax provisions will apply; if not, no tax will be due. This will probably not happen very frequently in practice, although it will apply to subsidies in the form of student grants.

45. In other countries the absence of any legal provisions has sometimes given rise to decisions in case law. For example, in the Netherlands if an award is granted to a performer or artist to pay tribute to his entire work or part of his work which itself forms a whole, the award will be regarded as a personal tribute and not as taxable income; the opposite would be true if the award were granted in respect of a specific work.[1]

The German administrative instructions contain a similar rule.[2]

Danish administrative practice draws a distinction subjecting certain awards to tax under the general progressive rate tax system, whereas others are taxed at the proportional rate applicable to certain capital gains. This is the case if the award: (a) is not granted in respect of a

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[1] Judgments of the Hoge Raad of 4 February 1959, BNB 1959, 111, and 10 December 1969, BNB 1970, 30. See also the note in Weekblad voor fiscaal recht, 1962, p. 970; the notes by van Soest in the same publication, 1970, pp. 169 and 770; and the remarks in the 'De Vakstudie' collection under Article 7 of the Law on Income Tax, No 88-89.

[2] Cf Betriebsberater, 1973, p. 601.

specific work; (b) is not granted in response to any prior application which would place the beneficiary in competition with other candidates.

Awards and subsidies are also taxable in Italy. There is a Central Tax Commission Decision of 16 November 1960 to this effect, which has in fact been the subject of some criticism.[1] The new legal provisions introduced in 1971 did not depart from this rule.

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[1] See: Giurisprudenza delle imposta, 1961, p. 516 with observations. The author of these observations accepts that an award constitutes, as stated in the Decision, 'the fruits of productive labour which give rise to new wealth', but points out the differences which may arise between the amount received and the productive activity.

§ 5 - Some suggestions for a fiscal policy

46. Any remarks to be made in this context must inevitably be based on the structures of existing tax systems. Not that these structures are perfect or immutable, but any reform which could be made would go far beyond the problems of cultural life and would inevitably be influenced by other factors and by pressures from other social groups with manifestly greater power.

The problems presented in this chapter are of comparatively minor importance within the context of these tax systems.

Nevertheless, it is probably worth noting in passing the criticisms which may be levelled at the division of taxpayers into employed persons and persons providing independent services and at the advantages accorded by some legal systems to the former. It is normal for different methods of collection to be applied in respect of different material situations; since the law requires that tax be withheld by those who habitually make payments which constitute income for the beneficiaries, the tax formalities for these beneficiaries are simplified. But differences in the methods of collection cannot mask differences in the actual tax burden. It is unfair to introduce into the tax system for employed persons deductions which are clearly vastly in excess of the deductions allowed for other taxpayers.

Such an anomaly seems particularly irritating in the case cited above in which an employed person (entertainer)

receiving, through channels similar to those used for payment of his usual income, secondary income from primary sources which is subjected to practically inexplicable discriminatory treatment for taxation. The increasing number of techniques for reproducing sound and visual material have significantly strengthened the contribution of these sources to the income of the artists and performers in question and thus also significantly increased the financial disadvantage caused by this discrimination.

However, this problem would not be solved by putting profits from such sources on the same footing as wages. This would simply be an artificial palliative. There is no point in calling a chicken a pheasant - he is still the same old chicken. The only solution would be to abolish the technicalities which discriminate against some items of income in relation to others.

47. The total exemption of income from cultural activities, as granted for certain categories of artists or performers under Irish law, may appear particularly attractive from the point of view of cultural policy, but it is nevertheless open to criticism. Many other social categories, for example artistic craftsmen, are at the very least equally deserving of such favourable treatment. Moreover, it does not seem strictly fair to grant such a privilege to some authors, artists or performers who live quite comfortably on the earnings from their art. For the even greater number of individuals with a lower income the question is not so much one of abolition of taxes as simplification of tax formalities and rectification of certain anomalies. These will be dealt with in the next chapter.

There does not appear to be any possibility of such an exemption at Community level. The criticisms inspired by the application of this system in the comparatively small area of the Republic of Ireland would assume much greater proportions at Community level. The very successful within the privileged occupations might even give rise to a scandal. Moreover, the very existence of a category of income totally exempt from taxation could lead to large-scale fraud (e.g. in the form of sales of paintings at inflated prices). The probable reason for the Irish system - encouraging recognized artists to take up residence in Ireland - would become quite meaningless if the system were to be generally applied.

48. The problem of occasional profits is practically irrelevant from the point of view of the budget. From the tax point of view they could be disregarded. At the cultural level, as at the level of humanizing taxation, society as a whole would benefit. There is not much point in granting a tax exemption to a Picasso who is making a fortune; taxation must not, however, be allowed to discourage the modest efforts of a potentially gifted individual who nevertheless knows and accepts his limitations. It is among the ranks of just such individuals that we often find the truly free man - a part of society but not a slave to its ways, finding relaxation in creativity and perhaps even escaping the frustrations of the consumer society.

It would moreover be good legal practice to define taxable income in a comprehensive way instead of describing it in law by means of a series of analytical enumerations and provisions. Dutch law appears to present a good example: profits arising out of an activity carried out on a profit-making basis are taxable; this is the case whenever an activity is organized in such a way that it could reasonably produce a profit.

But the problem posed by the possible exemption of profits arising out of occasional activities is neither solely nor principally a fiscal matter. This problem arises in particular at the level of relationships between professionals on the one hand and amateurs on the other. The latter are by the nature of things psychologically more free. Should we also release them from the burdens of our society, which are increasing in both social and fiscal legislation? This is the eternal struggle between liberty and equality.

It is possible to answer this question only on a very general basis, since it calls in question one of the principal trends of our society: the more we want to direct and regulate a situation, the more we limit individual initiative. This comment should encourage a reduction in public authority intervention, but our societies are already embarked upon the opposite course and our legal systems are ready to invoke various reasons for keeping to it. Who can say to what extent perfection is the enemy of good?

49. Taxation of awards and subsidies is tantamount to payment to the state of a proportion of funds received and awarded in the form of patronage. If these are awards allocated by the public authorities, then the state is taking with one hand what it has given with the other. In the case of private patronage the state is depriving the patron of a proportion of his means, even though the importance of these means for the vitality of our culture is recognized.[1]

Steps should certainly be taken to ensure that the granting of awards and subsidies is not used to mask actual remuneration or profits in respect of services proper. It should be a simple matter, however, to exclude the possibility of fraud: an award or subsidy granted by a taxpayer and decuted from his own taxable income should be taxable when it reaches the beneficiary. A periodic subsidy on the same footing as a salary could be taxed in the same way. But there is no justification for taxation of an award granted by a non-profit-making organization without reciprocal services. Conversely, it might be said that awards in the form of gifts - that is a type of payment which does not constitute remuneration for any services rendered and which is not deductible from the taxable income of the donor - should not be taxable. This should hold true even where the awards are intended as a tribute to the merit of a professional activity and as such constitute indirect profit from that activity.

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[1] See also the comments put forward in this connection in the previous report on 'The Tax Problems of Cultural Foundations and of Patronage in the European Community'. See in particular the introduction, paragraphs 5 to 8 and paragraphs 92 to 96 and 129 to 133.

As far as the underlying theory is concerned, a distinction could moreover be drawn between those situations which stem directly from the professional activity and those which arise indirectly. All legal systems draw this distinction for the deductibility of expenditure. Surely it would be logical to consider this also with regard to income.

CHAPTER III - PROBLEMS INVOLVED IN THE APPLICATION OF INCOME TAX

50. Now that we have considered the limits of taxability of the income of artists and performers, we can move on to discuss certain detailed rules - and certain anomalies - in the application of this tax.

The first problem is determination of the basis of assessment: how is the net profit to be calculated when it is so difficult to put an exact figure on expenditure?

Other problems arise in connection with the rate applicable. Given that tax scales as a whole rise very sharply within the higher income brackets, have corrective measures been designed to take account of the fact that the income of artists and performers may vary considerably from one year to another? A high income normally corresponds to a greater ability to pay tax. This is in fact the case, at least in theory, when that high income is relatively constant. If the high income is exceptional, the provision loses its signficance and governments should realise this.

There are also certain anomalies which arise in connection with the changes in a person's tax category. Artistic activity may give rise to indirect or derived profits: secondary profits in the entertainment world, cession of royalties, etc. Some items of income which are in themselves rather modest may sometimes significantly increase the average tax burden on the total income. Corrective measures would appear to be inappropriate here also.

Finally there are problems arising in connection with the administration formalities and obligations bound up with tax returns and the inspection of such income. In principle, these apply to artists and performers in the same way as to other taxpayers, although artists and performers may have a better claim to certain facilities: is it really possible to imagine a La Fontaine, a Mozart or a Van Gogh grappling with a tax return, a calculation or provisional payment or a tax inspector's questionnaire? All three died in poverty anyway.

In everyday life the problems of the basis of assessment and of tax formalities are identical: the measures taken in these fields constitute blanket rates which make it easier both to calculate the basis of assessment and to keep a check. These problems will be considered in the next section and questions relating to the rates applicable will be discussed in the section following that.

§ 1 - Blanket rates and tax formalities

51. The legislature is responsible not only for defining tax laibility in the basic rax laws but also for actual collection and checking. The legal requirements at the level of checking and collection, however, frequently constitute a greater psychological burden than the payment of the tax itself.

In the past it was possible to use indices[1] to reduce this burden. This very approximate procedure was satisfactory at a time when the tax rates were much lower than those we know and when, moreover, wealth tended to be more ostentatious and to arise more often than not from sources visible to all. Nowadays wealth is more anonymous and there are more wealthy people. Methods using indices have been universally abandoned and the system of checked returns is generally the rule.

52. The application of this rule, however, presents various disadvantages, both from the point of view of the administrative cost of control and from the psychological burden it imposes. Our modern world has but one palliative for these disadvantages: the blanket rate. It is true that the blanket rate takes different forms: blanket rate for income, blanket rate for profits and blanket rate for costs. But even so, the legislators have very little recourse to it.

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[1] Calculation of the proportion of income taxable by means of indices - for example the number of servants or the number of windows in a house.

It has been said that fiscal blanket rates fall into three categories: good, bad and just. The first category involves the application of a system which is more favourable than the general rate and tends to attract the greatest possible number of taxpayers to that category. The second category, on the other hand, is a disincentive and may possibly be repressive: it constitutes a kind of sanction for those who do not toe the line with regard to the general rate. The third category certainly exists as an abstract concept, but examples of it do not occur very often.

53. The Community legal systems have various types of blanket rate calculation of profits. French law and Belgian law apply this on a broad basis to various categories of craftsmen and small traders.

Under Belgian law there are common methods of calculation for an entire occupation based on a few simple details of turnover. The administration is in fact responsible for drawing up a blanket rate scale and it will often be quite willing to use that scale whenever it has sufficiently homogeneous basic data to estimate at least the gross income. But this does not seem to be the case in the field under consideration and these blanket rates fall outside the scope of this study.

The French regulations, which are based on an entirely different concept, are more general and feature in particular an 'administrative evaluation' system applicable to all independent professions and other non-commercial activities and thus to artists and performers.

54. Under French law[1] French taxpayers engaged in an independent profession may choose between two taxation systems: checked returns or administrative evaluation. The choice is subject to certain conditions. Income in respect of professional services must not exceed a relatively high amount laid down in the law.[2] The choice must be renewed each year.

Taxpayers who choose administrative evaluation must submit a special return with simplified accounting items but providing certain details on their way of life and on the conditions under which they carry out their profession. They must submit a book showing the daily accounts for professional income. On this basis the tax inspector calculates the net professional income generated by the activity in question. Any legal disputes are settled by the Commission départementale des Impôts (Departmental Tax Commission).

55. In addition to the income blanket rate - which does not apply to artists and performers - Belgian law features a blanket rate for costs which is rather similar to the French system when applied, the difference being that the coefficients of deductible costs are statutory and fixed.

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[1] Code Général des Impôts, Articles 95 to 102.

[2] This amount is currently FF 175 000. The law provides that certain secondary benefits or income and fees reassigned to colleagues shall not be included in this figure; if the figure is exceeded, the calculation system remains applicable for the year during which the excess is recorded. There are also correction coefficients to be applied if an activity commences or ceases during the course of a year.

[3] It will be recalled that in France legal disputes on tax matters usually lie outside the jurisdiction of the ordinary courts.

Under the law anyone liable to pay tax in respect of salaries and wages or independant activities and the like may substitute a blanket rate for proof of costs; this requires no proof. The blanket rate is on a decreasing scale from 20% for the proportion of income up to Bfrs 150 000 to 5% for the proportion in excess of Bfrs 300 000 with an absolute maximum currently set at Bfrs 75 000.[1] If this blanket rate appears inadequate to the taxpayer, he must in principle present proof of all his costs, but an administrative evaluation of them may also be made where they cannot be supported by documentary evidence.[2] Calculation falls within the jurisdiction of the courts in the usual way.

This rule is similar to the rule under French law in that it concerns only deductible costs. The taxpayer must also keep a book of day-to-day accounts, the model for which is laid down by the administration (Code des Impôts sur les Revenus, Article 226). He must also in principle submit a counterfoil in respect of each item of income.

56. Italy previously had a certain number of blanket rates according to categories of professions but it is not clear how they are to be applied under the new system which came into force on 1 January 1974. In any case, Article 39 of

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[1] Code des Impôts sur les revenus, Article 51.

[2] Idem, Article 44.

Decree No 600 of 29 September 1973 leaves little room for avoiding an examination of accounting data and determining income by an inductive method.

Article 19 of Decree No 600 of 29 September 1973 requires, moreover, that a book of day-to-day accounts be kept with a record of all professional income and costs.

57. Luxembourg[1] and Netherlands[2] law also provide for blanket rates for charges, but these are minimal and therefore of negligible importance.

58. It was mentioned earlier (Paragraph 52) that the main purpose of these blanket rates is to facilitate the calculation of the basis of assessment. In the second place they simplify declaration and checking formalities. It is worth pointing out that in our over-bureaucratic society any such simplification is valuable.

We have already noted, however, that these blanket rates apply only to deductible expenses. They therefore have extremely limited scope as a simplification factor.

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[1] Law of 4 December 1967, Article 107.

[2] Wet op de Inkomstenbelastingen 1964, Article 37.

§ 2 - Progressive rates and related anomalies

59. It would be difficult and, in fact, rather misleading to present a comparative table of income tax rates in the Member States of the Community. It would be difficult because the theoretical rates are often matched by miscellaneous, regional, temporary, etc. additional factors or reduced by different levying techniques and misleading because such a table would not be presenting comparable values in view of the different methods used for determining taxable income and of differences within the actual structures of tax systems.

Everyone knows, moreover, that above the tax threshold (which varies not only from one legal system to another but also in accordance with other criteria - in particular circumstances with regard to dependants and sometimes the nature of the income being taxed) the rate generally increases by stages to a level of the order of 60% or more for the high income brackets.

The provisions in respect of these rates are universally applicable to artists and performers as to other taxpayers.

60. With regard to the anomalies which may arise when these rates are applied to certain exceptionally high incomes, the legal systems of the Community provide for two types of correction factor.

The first type consists of provisions which allow certain items of income or certain profits to be spread over several years. The normal tax scale will then apply for each year to the proportion of profits attributed to that year.

The provisions of the second type allow certain items of income to be excluded from the total subject to the progressive rates and to be taxed at a reduced rate: the latter may be constant or may result from the application of the normal scale to a proportion of the actual income for the year in question. In general the ordinary scale is applicable where it produces a lower tax burden.

Some provisions under French, Netherlands and British law belong to the first type; the second type appear in various legal systems in respect of profits regarded as capital gains and sometimes also in connection with awards and subsidies or occasional profits.

61. In France, Article 100 bis of the Code Général des Impôts allows the taxable income for a year to be calculated as follows:

(a) income is taken to be the average for the tax year and for the two previous years;

(b) Expenditure is taken to be the average for the same years.

This provision applies only to taxpayers who derive profits from a literary, scientific or artistic work. All other sources of income are excluded. It involves the checked

declaration system:[1] only actual profits and not blanket-rate sums may be spread over three years. The choice of a given method by the taxpayer is irrevocable.[2] This system requires absolute continuity of application and it would not be possible to allow taxpayers to reconsider their choice in the light of annual results.

Despite these restrictions, the facilities offered by this Article appear to be widely used.

62. Netherlands law has a provision similar to the one mentioned above for France which is worth mentioning here although it cannot be applied to the field under consideration.

An administrative order in accordance with Article 67 of the income tax law[3] provides for a tax rebate if the amount due separately for three successive years is more than 5% above the tax which would be due had the income been equally distributed over those three years. The income in question must have been generated by the same professional activity for those three years.

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[1] cf. paragraph 54 above.

[2] Documentation Lefebvre, III No 4000 et. seq. See also R. Plaisant, Droit des auteurs et des artistes exécutants, Paris 1970, p. 607.

[3] Wet op de Inkomstenbelasting 1964.

The taxpayer in question must request this rebate and must be resident in the kingdom, but the Order stipulates that this provision shall apply either to undertakings or to employees. For reasons which appear not to have been made clear, non-commercial independent services are not included.

Persons engaged in providing non-commercial independent services may sometimes soften the effects of progressive rates by deducting certain provisions from their profits to meet future costs; Netherlands fiscal law is a little more flexible on this point than that of neighbouring countries. These taxpayers may under the general tax law[1] request a reduction for an individual case by citing circumstances which are clearly unjust. But any such reductions have only a very limited effect.

63. The United Kingdom legal system also contains some provision for the spreading of income derived from royalties.[2] These rules are contained in sections 389 and 390 of the law.[3]

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[1] The 'hardheidsclausule', that is a clause which rectifies certain harsh aspects of the law; the general law on the collection of taxes (Algemene Wet inzake Rijksbelastingen), Article 63.

[2] Income and Corporation Tax Act 1970, Sections 389 and 390. Pinson, op. cit., No 5-59 and Whiteman and Wheatcroft, op. cit. No 3.135 and 5.47-5.48. Simon's Taxes, B 3.106.

[3] Income and Corporation Tax Act 1970.

These provisions may apply when the author of a literary, dramatic, musical or artistic work receives a lump sum[1] upon ceding rights in connection with that work. A reduction in the rate may be granted in two different ways which correspond to two discrete situations.

(a) If the time taken to create the work exceeds either 12 months or 24 months, the amount received may be divided into two or three equal parts which will then be taxed respectively for the year in which the income is received and the previous one or two years (the technique of 'spreading backwards').

This first provision (I.C.T.A. 1970, section 389) may be applied if the sum in question is paid during the year in which a work is published or in the first or second year thereafter.

(b) In the case of an author's ceding all or part of the rights in respect of his work more than 10 years after their publication, the price obtained may be spread over a certain number of years, having regard to the duration of the rights ceded. If the duration is greater than two but less than six years, taxation may be spread as a function of the number of complete years covered by the actual duration of the contract. If the duration exceeds six years, the amount will be taxed in six equal annual tranches. The first annual tranche would still be taxable as part of the income for the tax year in question and the other tranches as part of the income for the following years.

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[1] Although this is called a 'lump sum', it does not necessarily imply that this sum constitutes the cession of all the rights relating to that work. There is specific provision for partial cession.

The two systems mentioned are mutually exclusive. The documents setting out the rules for their application also contain a certain number of secondary provisions relating in particular to the taxpayer's dying or ceasing to pursue the activity in question. These provisions may be applied only in response to a specific request.

It is important to remember that the provisions mentioned above in no way change the calculation of taxable profit. The only tangible effect of the first provision (Section 389) is that it alters the rate applied when the income is received; the second provision (Section 390) amends not only the rate but also the date on which the tax becomes payable. Both provisions obviate or at least substantially reduce any excessive steepness in the progressive rates.

64. Changes in the rate which may be mentioned here are, like changes to the basis of assessment, usually contained in the general provisions of the legal systems concerned.

It is fairly generally accepted that the application of progressive rates contained in the ordinary legal provisions cannot be justified for certain profits derived on a non-regular basis and generally as the result of a 'capital gain'. There is therefore a set of special rules concerning the increments generated by transactions carried out on a non-regular basis.

In general, these rules do not, however, apply when creative artists sell their works; such sales constitute the normal proceeds from professional activities.

The reduced rates laid down for capital appreciation under French and Belgian fiscal law may not be granted in the case of cession of intangible rights, which is the case that might be of interest to artists.

Apart from the actual rules on rates, the Danish and Netherlands[1] legal systems allow the Minister of Finance to issue individual orders reducing tax liability in particular cases where the application of the normal rate would be clearly unfair. In practice this prerogative is not much used.

65. Danish law features a rather unusual rule in this field, but its application is very limited since it is valid only for the sale of works by the heirs of a deceased artist. The heirs may in fact choose whether their succession shall be regarded as continuing the 'de cujus'; death duties are suspended but the proceeds from each sale of a work are taxed at the proportional rate fixed for capital appreciation.

66. Despite these restrictions, the proportional rate is sometimes lower than the progressive rate would be.

Belgium applies a proportional rate of 30% to 'miscellaneous income' derived from occasional non-professional activities.[2]

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[1] Mentioned above in paragraph 62.

[2] Code des impôts sur le revenue, Articles 67 and 93; cf. paragraph 36 above.

67. Luxembourg law also excludes from the normal scale of tax 'income derived from the exercise of independent professional services ... which constitutes remuneration for an activity which is clearly separate from the normal activity and which extends over several years, or the total remuneration for a normal activity extending over several years and carried out to the exclusion of all other activity within the context of the independent professional service, if the whole of the income is taxable within a single tax year.[1]

The rate applicable to this income is derived from a reference formula relating it to ordinary income.[2]

68. There is also a special provision[3] in German law concerning ancillary income from a scientific, artistic or literary activity, received either as wages or in respect of a non-commercial independent activity. This rate is also determined with reference to the rate applicable to ordinary income.

This system is applied provided that the extraordinary income in question does not exceed 50% of the total professional income.

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[1] Law of 4 December 1967, Article 132.

[2] Idem, Article 131, paragraph 1 b.

[3] Einkommensteuergesetz, § 34: Tipke, Streuerrecht, 2nd edition, Cologne 1974, No 5.2., p. 236.

This Article also allows income derived from an activity spanning several years to be spread over the production period (maximum three years). This rule could in principle apply in the case of publication of a work written over a lengthy period, but it seems in fact to be used very seldom.

69. Finally, under British tax law the rate may be reduced if capital gains tax as opposed to income tax[1] is levied on profits from the sale of copyright. The former is levied on a proportional basis of 30% and presents, moreover, certain advantages; this would generally be far less severe than the progressive rate of income tax.

It would, however, be fairly unusual to levy capital gains tax in this connection; apart from cases in which the author's rights are vested in an heir, the solution to these problems would probably lie rather in the application of Articles 389 and 390, discussed in paragraph 63 above.[2]

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[1] Pinson, op.cit. No 16-05, and Whiteman and Wheatcroft. op.cit. No 13.07.

[2] Whiteman and Wheatcroft, op.cit. No 3.134 and 3.135.

§ 3. Some suggestions for a fiscal policy

70. There is no doubt that the rules mentioned in this chapter could be improved, certain complications removed and certain aspects of discrimination alleviated.

Any suggestions which could be made in this field would, however, have to relate separately to the problems contained in the two previous paragraphs. The first poses the problem of simplification of fiscal red tape, whereas the second leads on a much more modest scale to a technical solution for a particular point of strictly limited applicability.

71. The simplification of fiscal laws cannot be approached solely for the benefit of persons carrying out an activity within the artistic world. There can be no question of setting up a privileged category for them and any suggestion to this effect would certainly be fruitless.

Simplification on a general scale would no doubt be a mammoth task fraught with difficulties. We cannot expect much progress in this matter in the near future. In spite of numerous official declarations, each day which passes adds not only to the tax burden itself but also to the burden of tax formalities. Witch-hunts for tax-dodgers are not the only cause and an officialdom which assumes giant proportions is just a sign of the times. Under these conditions simplification of the tax system is no longer

a technical problem but a political problem. Until some genuine political effort is made to realize this, any suggestions put forward would only serve to add to our store of illusions.

There is, of course, a budgetary aspect to this problem. It would be possible to simplify the law by putting everyone on the same tax footing as those who bear the heaviest tax burden; it would then be necessary to remove tax advantages acquired for some taxpayers either by pressure groups or as a result of some objective investigation of their real ability to pay taxes. Whatever the case, the operation would not be an easy one. As for simplifying the law by aligning everyone's tax with that of those who bear the lightest tax burden, it is not difficult to imagine the budgetary consequences which would ensue without solving the problems posed by the first solution. In short, it is not possible to simplify taxation without reducing state interference in our society.

On the question of a formula which would simplify solely the fiscal charges of persons engaged in our cultural life, the only possibility appears to lie in the application of a blanket rate along the lines of the Belgian or French model.[1] But it has been mentioned that the Belgian system, although it contains a blanket rate for income, does not appear to be applicable in concrete terms for lack of sufficiently accurate bases for calculation. This leaves us with the French system, which applies only to costs and therefore has limited scope as a simplification measure.

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[1] Cf. paragraphs 53 to 55 above.

72. On the other hand, it seems a simple matter to correct the difficulties bound up with progressive rates: the examples considered show how it can be done, and the budgetary cost involved would certainly be minimal.

We have seen the reason and the need is urgent: in so far as a high income is not matched by a corresponding ability to pay taxes, there is no justification for applying the progressive rate. It is possible to solve the difficulty by spreading the burden over several years with no risk of losing any of the taxable product. This solution could therefore be recommended.

As for the technique of spreading the burden, we have seen how the British solution is clearly more highly developed than the system which is applied in France and which exists also for other taxpayers in the Netherlands. The search for simple solutions should lead preferably to the application of a three-year-average formula. Here, once again, the Netherlands formula presents a further complication as compared with the French in that it involves first of all three assessments at the ordinary rate followed by a request for a rebate which must be prepared and substantiated by the taxpayer.

The French formula, however, is clearly the more favourable for the taxpayer, at least for a period in which income is increasing. It also tends to stagger in time to some extent the weight of apparent increases in income as a result of erosion of the value of money, which is no mean advantage in these days of inflation. On the other hand, this formula binds the taxpayer to a choice in a way which appears perhaps a little harsh.

The French formula applies to the basis of assessment and the Netherlands formula to the rate. This presents a further advantage: tax is levied at a time nearer to receipt of the income, which is certainly more advantageous for the treasury and would appear, all things considered, to be more rational since the taxes are actually to be paid out of the income.

Other formulas could be considered. For example, it would be possible to take the French formula and apply it not to the basis of assessment but to the rates. For this it would be sufficient to decide that the rate would be determined, for all taxpayers for each year, on the average income of the financial year in question and of the two previous years. This would reduce the effect of sudden changes in many fields; but such a step could have a marked effect on the budgetary situation, particularly in view of inflation. The formula would, moreover, be rather harsh during a period when income was decreasing; this would be felt in particular by the aged or the sick.

We shall have to accept that in the final analysis any solution will have some advantages and some disadvantages. All things considered, given the present state of the problem, the Netherlands formula still appears to be the best. It could be applied on a general basis; it need not necessarily be restricted to one or more categories of taxpayer.

73. Does this suggestion contradict what has been said about the need for simplification discussed in the previous pages?

It has to be admitted that an examination of the difficulties bound up with progressive rates suggests a measure which would no doubt represent some improvement but which would at the same time add a further albeit limited complication to our laws. This is in fact the fate of all measures that may be proposed, always with the best of intentions, to remedy a particular difficulty. They always add another piece to the mosaic.

It is really impossible to escape from this dilemma? Must we accept uniform solutions which are unfair in certain cases, or should we pursue still further the ideal of fairness which we can never quite wholly capture in our regulations? It is no doubt impossible to find a solution which will satisfy both our desire for justice and our search for simple texts. For the particular point in question, it may perhaps be possible, however, to reconcile these two factors to some extent. Exceptional profits may occur in all categories of income. If the solution of a fixed or average rate is satisfactory in the case described above, would it not be possible to extend this solution to other situations which also require some derogation from the ordinary legal provisions?

74. This could be taken further. The introduction of the progressive rates in force in our countries seems to be open to question from several points of view. In the first

place because the top rates reach frightening proportions which automatically give rise to tax fraud, and in the second because a nominal high income is no longer in fact an accurate measure of a person's ability to pay taxes. It would be necessary, to measure this ability, to take account of all types of tax privileges, the effect of business expenses designed to avoid tax ('Steuerfluchtausgaben')[1] or on the other hand the effect of non-professional expenses which are nevertheless unavoidable for some taxpayers and finally of the fact that frontiers are by no means hermetically sealed.

The strict application of sharply progressive rates as we know them, moreover, discourages activities which may be of value to the community. It discourages the artist who would like to do a little teaching in addition to his artistic activities and thus drives away those whose teaching would prove most fruitful. Professional teachers may have many talents, but a real-life experience of art is required for instructing young pupils. It is a pity that fiscal pressure keeps those very people whose influence on the young would be most fruitful away from schools.

It may therefore seem more reasonable to apply a central rate on a general basis and thus to create a tax which is in principle not progressive but proportional, but which allows room for adjustment in respect of low income brackets. The budgetary effects of such a reform still need to be calculated and such a suggestion could be made only subject to certain reservations.

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[1] 'Tax evasion expenditure' - actual justifiable expenditure which is either encouraged or discouraged by the weight of the fiscal burden. The excessive tax rates at the top of the scale give rise to a whole strategy for expenditure.

Chapter IV - TAX ON ASSETS

75. Capital is taxed in two ways: death duties and permanent (annaul) capital taxes.

The first type does not enter into this study. It affects either de cujus assets (British system) or the payment to beneficiaries (continental systems). It is be definition completely divorced from the life of the artist.

It is no doubt understandable that an artist should be concerned about the fate of his wife and children after his death, particularly if he has not been in a position to provide them with a comfortable standard of living during his lifetime. But this is also true of all other husbands and fathers and it is not possible to envisage amendments to the tax laws for the benefit solely of the heirs of deceased artists.

Such heirs will moreover encounter certain problems which are peculiar to them; tax on royalties received after the death of the author, on the price obtained for paintings or right to follow acquired after a painter's death, etc. These problems are simply mentioned in passing and they would have to be solved within the context of income tax levied 'ex haerede'.

76. A study of income tax could scarcely avoid mention of the forms of wealth tax levied under certain legal systems. First of all because taxes on capital or assets originated as a simplified form of income tax; this was the purpose of the laws which introduced this tax, in the 19th century, in Prussia and in the Netherlands,[1] and also because this tax must necessarily be payable out of income, otherwise it will eliminate its own taxable product. More recent developments in fiscal policy have also, to some extent, had the effect of distributing wealth more equally. But even in these cases, there is no doubt that the taxpayer will regard this as a burden on his income and will try to meet it in this way; if need be, and particularly where the burden is more than the income can support, the taxpayer will try to reduce it by changing the composition of his capital, if this is possible. Recent experience in some countries has shown, moreover, that this significantly encourages international tax fraud.

Any fiscal policy must take account of the overall situation created by these two tax systems.

77. Although it must be regarded as a tax on income, wealth tax is levied on different sources of income in entirely different ways. It affects principally income from assets; land and buildings or movable property. It affects

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[1] Cf Tipke, Steuerrecht, 2nd edition Cologne 1974, p. 49 and 291 et seq.; Geppaart, Vermogensbelasting, Kluwer, Deventer 1972, p. 7.

income derived from professional activities only in so far as the latter require considerable assets to generate such income. It is immediately apparent that this is not a matter of first importance for artists and performers.

78. Annual wealth tax has already existed for some time in four Community States: the Federal Republic of Germany, the Netherlands, the Grand Duchy of Luxembourg and Denmark. A recent law introduced it in the Republic of Ireland also.

Some of these legal systems concern only natural persons and others levy the tax on companies and legal persons also. Since legal persons do not fall within the scope of this study, they will not be discussed.

In each of the states which has this tax, the taxable property is made up of all the taxpayer's private and professional assets, after deduction of debts.

79. The problems specific to artists and performers may be divided up as follows:

(a) To what extent should equipment used in the exercise of an occupation be taken into account when there is usually not a great deal of it, and what rules govern its valuation?

(b) What assets should be included in taxable property? In particular, should taxable property include claims to future income, for example royalties still to be received? Should it include the value of works created but not yet 'realized', for example paintings which a painter has temporarily stored, being unable or unwilling to sell them.

80. These questions arose in the report drafted at the request of the Commission in 1975 and entitled 'Tax Problems of Cultural Foundations and of Patronage in the European Community'[1] and will not be repeated here.

With regard to the questions set out in the previous paragraph, it should be stressed that the national legal systems do not present any specific answer. In principle, persons engaged in an artistic occupation are always entirely subject to general legal provisions. These provisions, in each of the legal systems, levy a tax on equipment and claims to payments connected with that occupation. The only exception here arises in Germany.[2]

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[1] I. Claeys Bouuaert, Kluwer 1976. Tax Problems of Cultural Foundations and of Patronage in the European Community, See especially chapter IV, paragraphs 141-154.

[2] Cf. the report mentioned, paragraph 145. Royalties and original material protected by authors' rights do not form part either of taxable professional assets (Bewertungsgesetz, § 110, paragraph 2), or of taxable private assets (ibid. § 110, paragraph 1, No 5, part c). The result is that neither wealth tax nor death duties and gift taxes are levied on such assets. In some cases, objets d'art and collections are exempt from tax (ibid. § 115, paragraph 2).

Furthermore, tax on property in all countries is applied at a more moderate rate in respect of the contents of the place of residence, including furniture and household equipment. Artists' equipment in practice rarely exceeds the limits for allowances or exemption so that case law and doctrine go no further towards answering the questions posed than the actual laws themselves.

There is therefore no need for a legal provision exempting the writer's penholder, the painter's palette and the musician's violin from tax. On the other hand, a sculptor might find himself liable for tax if the equipment in his studio is somewhat out of the ordinary. With regard to theatres and other forms of entertainment, equipment is always taxable if the owner has no personal tax exemption. This would be the case, for example, for theatres run by a public administration or by a foundation which, under the general legal provisions of the country in question, remained outside the field of application of taxes.

81. Similarly, under each of the legal systems, claims to royalties are subject to the general legal provisions. In practice royalties are universally included under taxable property as soon as they fall due. On the other hand, little attention is paid to works in store, and they

are not in practice regarded as taxable property.[1]

The Netherlands administration does levy tax on these works, but allows them to be valued at cost price, thus eliminating the major part of the field of application of this provision.[2]

82. Thus, since wealth taxes play such a minor rôle in artistic life, it is probably not necessary to consider developments in fiscal policy. This is all the more true since, here as for income tax, it is hardly possible to imagine tax reform on any significant scale limited only to the occupations under consideration, nor is it possible to embark here upon an appreciation of this type of taxation in general.

In practice, wealth taxes scarcely affect professional artists in the traditional arts: painters, sculptors, writers and musicians; where they do affect them, they apply in respect of all their assets, in which case only the general legal provisions of their country can apply to them.

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[1] See the report mentioned for the special provisions for Germany, paragraphs 143 and 145; for Denmark paragraph 150; for the Netherlands, paragraph 154. For Germany: Vermögensteuergesetz § 110,I,5. G. Klein, Die neue Vermögensteuer, Darmstadt 1974, p. 60. In Ireland these questions, for which there are no legal provisions, do not yet appear to have been settled at the practical level.

[2] Administrative comments on wealth tax (Korte toelichting Vermogensbelasting) paragraph 10, 10, Circular of 13 April 1965, No B 5/5978.

The main effect is no doubt indirect, since capital tax penalizes private collections and thus reduces the number of members of the public who are able to acquire works of art.

The impact may be more debatable within the field of entertainment, in so far as it would discriminate between private and public organizers. They will of course be affected indirectly, but this is just one of the aspects of the uneasy situation of independent entertainment as compared with 'official' entertainment and this situation extends far beyond the scope of the fiscal system.

The real victims of this tax would be found rather outside the scope of this study amongst artistic craftsmen: metal workers, engravers, ceramists, etc. We saw earlier in paragraph 8 that the tax system for commercial activities applies to these craftsmen in all countries. A series of treatises would be required to describe the fiscal burden attaching to these various professions. It could also be shown, as in the case of income tax, that the formalities imposed by our laws are stifling these professions even more than the tax burden itself.

Chapter V. VALUE ADDED TAX

83. VAT plays an essential rôle in the tax systems of our countries. The levying of VAT may have a profound effect on the lives of performers and creative artists. Moreover, the typically European nature of its structure gives it pride of place in a study of Community tax systems and is a further reason for considering it here.

On the other hand, the problems concerning VAT which should be discussed have already been dealt with in some detail in the previous report drawn up by the present author at the request of the European Communities.[1]

Repetition should be avoided, but certain general concepts need to be mentioned again for the sake of clarity in this examination of the problems specific to artists and performers.

84. The First Council Directive of 11 April 1967, in which the principle and the aim of Community VAT are defined, states that the tax is intended to be 'a general tax on consumption' (Article 2).

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[1] Report on 'The Tax System of Cultural Foundations and Patronage' already mentioned; see Chapter V.

'This tax covers all stages of production and distribution' (5th recital).

The tax is paid by means of a whole series of collections and refunds. All tax collected during the production and distribution cycle for taxable goods and services is refunded; only the final amount borne by the consumer himself is payable to the Treasury.

85. The technical rules for the levying of VAT distinguish between two categories of taxable transactions: the supply of goods and the provision of services. A third category of transactions - imports, should also be mentioned. But the rules applicable in this field are intended merely to incorporate the goods or services in the national tax system of an importing country without changing the basic nature of the system applicable to them. It is therefore goods and services that concern us here.

The same distinction between goods and services is drawn very clearly for the transactions involved in cultural and artistic life. With regard to the supply of goods there are problems specific to the art market, and with regard to the provision of services there are certain aspects relating to the cession of intangible property (cession of royalties, secondary uses of musical services, etc.) or alternatively those relating to the totality of taxes levied in connection with entertainment.

86. With regard to the art market, it is first of all essential to determine the extent to which it will fall within the field of application of VAT.

VAT, as we have just seen, is a tax on consumption. From the very nature of the system the tax is not intended to affect the acquisition of property for investment purposes, except in so far as such acquisition falls within the cycle of the production or distribution of taxable goods; this applies to investment in industrial and commercial equipment. The acquisition of real estate raises certain specific problems, since the use of such property constitutes a type of consumption for the person enjoying that use.[1] But the acquisition of goods purely for investment purposes, particularly where shares and bonds are concerned, falls outside the field of application of the tax.[2]

So where does the art market stand with regard to all the goods which can be owned? Various distinctions must be made.

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[1] See in this connection Jean-Claude Scholsem's in-depth study, 'La TVA communautaire face au phénomène immobilier' (thesis for a higher degree), Liège 1976.

[2] This is further confirmed by the Sixth Directive of 17 May 1977 (OJ of the EC of 13 June 1977) which exempts shares or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownerhsip or possession over immovable property or part thereof.

In the first place it is clear that works of art are not true consumer goods in that they do not disappear when used and they are not actually consumed. Even fluctuations in their value, which may be considerable, are not connected with use. Some values decrease and others increase, usually as dictated by fashion or the ups and downs of elusive fame.

Thus works of art are in a sense investment goods. Purchasers of works of art are sometimes accused of looking for a safe investment, but this is not the place to consider whether or no there is any basis for the accusation. It is sufficient to mention that this quest is often disappointing - the market for works of art, particularly works by contemporary artists, is extremely unstable and gives rise to more losses than gains.

Such investments are clearly divorced from economic cycles, which include industrial and commercial equipment, and they are not really equivalent to securities intended to produce income which is then consumed in its turn.

Works of art are acquired in the majority of cases, and these are the most interesting, out of a desire to improve the home environment. This use makes it similar in some ways to consumption, but it differs, as we have seen, in that the object remains in existence, and can be sold and resold and its value remains unaffected by previous use.

87. Is it therefore in accordance with the basic principles underlying VAT to include the art market under the VAT system? There is good reason for suggesting that it is not, and this would eliminate the problem of applying VAT to artists creating such works.

However, all legislatures have taken the opposite view for reasons which are chiefly political (this market is of little budgetary consequence). The Sixth Directive of 17 May 1977 mentioned above tallies on this point with existing legislation. The position is unlikely to change, so an examination of the problems raised by subjecting artists to VAT must be based on the assumption that the art market is subject to tax.

88. The decision to subject artists to this tax and thus to require them to charge VAT to their customers and pay this tax to the Treasury has ramifications at different levels.

Even if we accept that subsequent trading in their works shall be taxed, this does not in fact imply that creative artists - writers, composers, and artists in the plastic arts sector - should be taxed in person.

It is clearly not acceptable to impose this taxation because of some vague analogy with economic cycles which start with raw materials and end with the distribution of a finished product. The text of a book does not 'add'

value to the paper, nor does paint to canvas. The value of the medium is negligible and is absorbed completely in the creation of the work. The creative act itself is in no way comparable to the production of goods. It constitutes first and foremost an enrichment of our common cultural heritage, and distribution follows a course which has nothing in common with the commercial cycles for consumer goods proper. This is abundantly clear in the case of a literary or musical work, since its commercial cycle begins with its distribution and not its creation, but is true also for the other works in the field of the plastic arts. If a work or its author are famous (and if they are not there is no problem since there would be no point in taxing a mediocre beginner), not only the person in possession of the work, but also all who see either the original or a reproduction and perhaps draw inspiration from it, enjoy the benefit of that work.

Once again the above remarks go against recent legal trends. The Sixth Directive already mentioned provides that artists shall be taxed. This seems at least, in the absence of a specific provision, to be the implication in texts concerning the plastic arts.

89. Two further points of fiscal principle to be considered in connection with the taxation of artists and performers.

On the one hand it is pointed out that because they are taxed they are able to recover the VAT levied on the cost price. This argument can scarcely be taken seriously - the VAT paid by a painter buying canvas and paint is minimal and negligible, and, moreover, despite all the theories put forward concerning VAT, it is still not certain whether such recovery is possible. A tax is passed on in accordance with market rules rather than legal rules. In the circumstances it is possible to imagine that the price agreed between the artist and a purchaser will most frequently be a gross price including VAT, particularly if the purchaser himself is not on the VAT register. VAT will therefore be payable by the seller.

In fact this argument skirts the real problem. The actual 'cost price' to the artist has little to do with the price of the materials for his work; it is concerned rather with creativity. The sources of his inspiration and not the physical media should therefore be taken into account.

The second consideration is one of psychology concerning the burden of administrative tax formalities. The collection of VAT is surrounded by a whole series of complex and

daunting formalities. Large industrial undertakings are able to deal with the resultant problems without difficulty. Small undertakings find it more difficult and for this reason various measures have been taken to ease their task, but these have not succeeded in putting a stop to the current wave of mergers. And what of the artist subject to legal obligations which he is not equipped to comply with and which may in general be regarded as very difficult to observe.

If we wish to preserve a certain degree of liberty in creativity we must accept the consequences and allow creative artists sufficient freedom.

90. Let us examine some of the consequences of the theory which would include the art market within the field of application of VAT without subjecting the artist personally.

VAT is payable on sales of goods by persons on the VAT register and not on sales transacted by persons not on the VAT register. Consequently, VAT is not payable on a sale by the artists to a professional intermediary, but is payable in the event of resale by that intermediary. In contrast, no tax is payable if the work is resold direct to a private individual. Is this a source of discrimination and does it give rise to the development of 'parallel' networks?

There seems to be no real danger. Generally an artist will, by the nature of things, make very few direct sales to private individuals unless he sets up a commercial

organization to market his own works. The possibilities for this will vary according to the field in which the activity is carried out, and even then market forces will take precedence once again over the law.

Taxation of the art market without taxation of creative artists would, moreover, eliminate distortion between first-hand sales and second-hand sales, which occur very frequently. Works of art in the hands of dealers have often passed through the hands of a private individual before entering the commercial cycle. The simple application of tax on the total price of these works each time they are resold would involve cumulative taxes - a flagrant breach of VAT 'philosophy'.

The system mentioned would make it possible to put art dealers on the same footing as second-hand dealers. This would not be an artificial device, as is sometimes thought, but would place art dealing on its proper footing: that of goods whose production falls outside the field of application of VAT, since this field covers only distribution. And moreover this distribution is basically not the distribution of goods. It is the distribution of a commercial service in which the business intermediary (for example art dealer) is more like an agent than a retailer drawing supplies from the factory.

It is also worth noting that the governments currently in power do effectively observe this homogeneous view of the art market. The problem of the continuing liability is

solved in some countries by lowering the basis of assessment (in France : 30% of the sale price), and in others by a reduced or zero rating. This problem was set aside in the Sixth Directive (Article 32) for re-examination. In principle some solution relating to the basis of assessment and not to the rate must be found to the problem of the continuing liability, since the Sixth Directive is specifically aimed at achieving a uniform basis of assessment for VAT. It would be logical and technically desirable to treat the art market as a whole and to apply a single solution in the system to be devised.

91. Now that we have considered VAT in the field of 'supply of goods' there remain the problems raised by this tax within the field of 'provision of services'.

These problems are more restricted and concern on the one hand the cession of intangible property which is considered to be equivalent to the provision of services: (cf Annex A to the Second Directive of 11 April 1967, No 9 relating to Article 6[1] and Article 6 of the Sixth Directive[2]) and on the other activities within the field of entertainment.

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[1] JO of the EC of 14 April 1967.

[2] 17 May 1977, JO of the EC, 13 June 1977.

92. The type of cession of intangible property encountered in the artistic field is generally the cession of the right to reproduce or distribute a work. Legal systems distinguish here between cession, equivalent to a sale, and concession, equivalent to leasing. The latter grants temporary possession and not the right of ownership and as such remains outside the field of application of VAT.

In contrast, cession is subject to VAT if the person ceding the right is on the VAT register. At first glance this would appear to occur only fairly infrequently. Certain secondary uses of musical or theatrical works may, however, possibly give rise to liability if the person ceding the right is an independent taxpayer. This would apply for example to a musician organizing his own concerts.

The likelihood is probably fairly limited, so it is not necessary to dwell upon the matter. It does show, however, that if taxation of artists is taken to such a point it may produce consequences which are far more complex than they appear at first glance.

93. Activities within the field of entertainment indisputably render the organizer liable for tax.

This affects in principle anyone running premises used for entertainment or managing series of programmes, but not artists interpreting or executing a work in so far as they are wage-earners. The tax will, however, be of practical importance for them in that, since it attaches to the organizer's cost price, he is obliged to keep charges, and thus salaries, down. It is worth pointing out here, without entering into a detailed examination of this highly complicated subject, that almost all taxes are passed on to some extent by the person paying them in theory. But there are countless variations in this passing on, depending on the power or resistance of the parties concerned. Thus in the field of entertainment, it is not always possible to pass on fiscal charges as a whole to the public; the provision of subsidized premises for entertainment would be one way of halting the increase in the price of tickets. This would inevitably have an effect on salaries, which are the major component of cost price.

Is it possible to improve this situation? This seems rather doubtful. It does not seem possible to exempt premises used for entertainment purposes from general legal provisions. At most it would be possible to provide compensation for organizer's costs by means of a selection of aids and subsidies, which happens in several cases. But this is simply digging one hole to fill up another.

The only effective solution would be, here as elsewhere, to reduce the overall burden of the tax system. But this implies

also that state expenditure, and thus state interference, should be reduced in all areas of life. In the present political trend this is a vain hope.

CHAPTER VI. CONCLUSION

94. Taxes are omnipresent in our society and are imposed on all aspects of social life. They must also inevitably be borne by persons known as artists, performers or cultural workers, whose activity provides us with creativity, probably a means of liberation and certainly an embellishment to life.

In general terms it may be said that each individual's taxes affect everyone else. The cost of a telephone call is increased by the tax paid by technicians working for the telephone authority. VAT on real estate is reflected in business costs and on the property market, and so on. The tax system therefore inevitably has on the lives of performers and creative artists of the Community many repercussions which allow of many possible interpretations and from which many lessons can be drawn.

There are two main groups of interpretations and conclusions with regard to the tax system applicable to artists and performers: those concerned with the principles and smooth running of the Common Market and those which aim to improve national tax systems. The two no doubt coincide in that an in-depth analysis of the needs of the Common Market also leads to harmonization and thus towards the convergence of internal fiscal systems. The immediate objectives are, however, sufficiently discrete to be studied separately.

95. One of the aims of the Common Market is to bring about the free movement of persons and goods. The current fiscal system certainly does not constitute an obstacle to this ideal; persons and goods in fact move very freely. But does the fiscal system not distort competition by encouraging the movement of taxable objects? The answer to this question is not so straightforward.

96. With regard to persons, the total tax exemption for certain types of income granted under Irish law is undeniably intended to attract, and may well succeed in attracting, certain categories of taxpayers, thus taking away part of the taxable object from other Member States. This system, which could probably not be extended to the entire Community, thus seems incompatible with the spirit, if not the letter, of the Treaty of Rome.

Apart from the tax exemption granted in Ireland, there is a whole series of differences which tend to tax income generated in a particular country far more heavily than income generated in another. But these differences are part of the overall fiscal structure and do not apply to artists and performers only. Thus many taxpayers from a country of origin which imposes a property tax have taken up residence in a neighbouring country to escape it. Differences attaching specifically to the activities of artists and performers no doubt do exist, but are probably not sufficiently marked to give rise to any significant migration.

97. With regard to goods, on the other hand, application of the current VAT system (before the Directive of 17 May 1977 comes into force) is undoubtedly likely to create disorder, and there has recently been considerable movement within the art market. The Directive, when it comes into force, should in principle end this situation, but this cannot be guaranteed, since most of the works sold as part of this movement were second hand and were thus affected by the problems of the continuing liability already mentioned (paragraph 90).

It is true that, at this stage, price fluctuations no longer concern the artist directly, except for the right of pursuit[1] and are only of indirect importance, either by influencing advertizing or the price of future works.

It must be stressed that the problem of the application of VAT to new works of art is closely bound up with application to second-hand goods. Since the latter problem is currently in the air, the problem of artists' and performers' tax liability should be re-examined in order to produce a homogenous solution for the entire art market.

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[1] It is well known that this is a type of civil right devolving upon the author of a work or on the persons deriving title under him and is related to the price obtained for certain categories of sales, particularly public sales.

98. Three types of underlying considerations may be distinguished at the level of national tax systems:

(a) those which concern harmonization and thus entail a comparison of national tax systems,

(b) those concerned with international double taxation;

(c) those which aim, on a smaller scale, to improve the situation of each individual under national law, irrespective of the situation in neighbouring countries.

99. The harmonization of the tax systems of Member States is an important and extremely complicated task.

It is constantly becoming more apparent that such harmonization is essential. Taxation presents a considerable burden for undertakings, as it does for individuals. The fact that no legal system recognizes deductibility does not prevent taxes from being reflected very frequently in prices nor their being taken into account in all comparisons of profitability or profit. There can thus be no equality of competition as long as such tax discrimination exists. There is no harmonized economic policy either.

Moreover, even the burden of taxation and the vast amounts involved complicate any attempt at harmonization, since budgetary adjustments must be made for every change in the law and these adjustments may then upset yet another balance and cause fresh discrimination.

In general it is not possible to imagine a harmonization of tax legislation for artists divorced from the attempts to harmonize the tax system as a whole. It would be technically impossible to create within these all too divergent systems a little island of harmonization severed from the general principles of the legal matrix; this would put artists in a potentially highly confusing situation. Moreover if this same group were to receive tax advantages, however small, in relation to the general legal provisions, other groups would soon become jealous and put forward demands of their own.

Performers and creative artists are at a disadvantage here. Whatever the structures of their professional organizations, the strength of their professional organizations, the strength of their pressure groups is practically nil. Although public authorities would be concerned about a strike by street sweepers, they are quite indifferent to a strike by actors or painters.

It is, however, possible to think in terms of measures within the context of the general attempts at harmonization, even if they apply solely to artists for the time being. The most interesting initiative among such ideas seems to be the harmonization of the calculation and the very concept of taxable profit. The inconsistency of the discrepancies arising in connection with this concept was pointed out earlier (paragraph 12). It would probably be difficult to apply a common method of calculation to the profits of large undertakings, but in the more limited field of the traditional arts, far less effort is required; moreover, if it were possible to arrive at a solution, this would be of great psychological value throughout the Community with minimal budgetary strain.

One such measure should clearly be to regulate the discrepancies in the taxation of occasional services and awards and subsidies.

With regard to VAT, the problem of including independing artists on the register should be reviewed.

In addition, further consideration should be given to the importance of a general simplification of the income tax of natural persons. Such a simplification is not impossible, but current political trends leave no room for optimism. On the contrary, taxes are constantly becoming more complicated and it should be stressed that the causes of this situation are for the most part political. Each particular measure represents a pressure group struggle in the face of an all-pervading system of taxation which could be reduced only by reducing state spending and thus state intervention. This point has been made on numerous occasions in the preceding pages (cf. § 71 and 93).

100. The problems of international double taxation have been solved by the work of the OECD; although the solution itself is fairly complicated, it appears fair and perfectly satisfactory.

There is of course scope for improving the conventions with regard to certain points of detail. Two major problems also still remain to be solved: the drafting of plurilateral conventions and the organization of a court, tribunal or arbitration board to settle disputes arising in connection with application of the convention. At

present disputes are submitted to national judges only, who do not always possess a clear insight into the workings of the administration of the other Contracting States. Double taxation may, in certain cases, be upheld despite the existence of a clause designed to avoid it.

But these are general problems which may be of interest to all taxpayers, and less frequently to artists than to undertakings.

101. On the more modest scale of measures which may improve the application of national tax legislation within the field of artistic activities, it is sufficient merely to mention the points made earlier in Chapter II which could be the subject of harmonization at Community level (cf. paragraph 99).

It would be a good thing if taxes on activities carried out on an amateur basis which are not significantly profitable were reduced or abolished; it is also desirable to abolish any existing taxes on awards and subsidies in the form of patronage.

By far the most important step which should be taken at national level with regard to income tax is the elimination of the anomalies arising in connection with progressive rates.

Moreover, in states which levy an annual property tax, the limits for taxation of the value of equipment, works in store or claims in respect of artistic activities should be defined.

These measures taken together already form a considerable programme, without being too ambitious.

102. National legislators in need of encouragement to embark upon this path could be reminded that taxes are an important instrument of public patronage. So far this instrument seems little used (except in Ireland).[1]

Is it possible to use it? There is no doubt that it is. The measures set out above would have only a minimal effect on the budget.

These measures may be criticized for creating a loophole in the general legal provisions through which a large number of other taxpayers would hope to slip. This criticism does not seem justified. The measures are too restricted to create a privileged class. Moreover, there is no reason why the third and most important of the measures proposed should not in fact be applied to all taxpayers; it would be no more than just.

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[1] Another type of patronage practised recently in the Netherlands may be mentioned here: the state grants to purchasers of contemporary works within the plastic arts, a subsidy of 20% of the pruchase price up to a maximum of Fl 240. This subsidy certainly stimulates the market for the works in question, and it also provides the Treasury with precise records of the works sold and prices obtained, and thus the Treasury probably gets value for the money it pays out.

The objection that it would be better to make each individual pay the taxes he owed, and then grant awards, subsidies or other types of compensation to those who deserve them, is based on a particular outlook. In theory, the two systems should produce the same result, with the advantage that the state would know precisely how much it was giving away. In practice, the results would be very different. An administration would have to be set up to manage the granting of subsidies and the process would inevitably be subject to a form of academism, if only in the inverted sense: it is not possible to ask an official to judge the quality of expression of an artist. Finally, and above all, the artist would, instead of being relieved of part of the burden of administrative tax formalities, be doubly encumbered: on the one hand he would have the burden of tax returns and on the other applications and supporting documents for subsidies; this would be the wrong approach.

103. And yet the world of art and cultural creativity must be protected against excessive fiscal pressure.

Some recent incidents give cause for concern.

A certain successful artist was brought before the courts for tax fraud. Let us first admit he was in the wrong, and let us leave aside for the moment the argument that a tax fraud trial is not only a trial of the defrauder,

but may also be a trial of the law itself. What is in fact the most serious aspect is that court cases brought against individuals with tax advantages create an unfavourable climate for the whole of a profession which conceals more poverty and perhaps demands more courage than any other.

A further incident is worth noting: a successful artist left his own country because the administrative tax formalities were unbearable. He was, it will be remembered, the film director Ingmar Bergman. The psychological burden of the formalities imposed for the collection of taxes weighs even more heavily than their payment.

This is open to the criticism that accurate tax collection cannot exist without adequate checking. This is unfortunately true, but is not excessive fiscal inquisition just as serious? Our societies are getting to the stage where the level of taxation in itself causes all kinds of imbalance.

104. Once again that last remark goes beyond the field of the tax situation specific to creative artists and performers. But the problems of this restricted field are merely one aspect of the problems of the world around us.

For this reason it is essential, at the close of this study, to take a broader look at the entire fiscal policy of our states.

The source of all culture is liberty, which can only be saved by accepting a certain number of inequalities. It is not sufficient to write the word liberty in constitutions and on the façades of public buildings; there must also be the will to apply it in practice in everyday life.

But once laws become so complicated and their application makes so many demands that the man in the street has to resort to seeking professional assistance to comply with them, liberty is seriously threatened. The artistic world here acts as a test and pioneer group; test group in that the individuals living in that world, by their very nature, feel more keenly than others the administrative restrictions, and pioneer in that it may be hoped that any improvements made for them could pave the way for a harmonization which would also apply to other taxpayers.

A study of their problems shows clearly that the formalities imposed by tax legislation must at all costs be simplified. Is it possible to hope that the political will to meet this need will at last prove effective?

Ghent, August 1977.

APPENDICE

Extrait de la loi
de finances de 1969 en Ireland

Number 21 of 1969

FINANCE ACT, 1969*

AN ACT TO CHARGE AND IMPOSE CERTAIN DUTIES OF CUSTOMS AND INLAND REVENUE (INCLUDING EXCISE), TO AMEND THE LAW RELATING TO CUSTOMS AND INLAND REVENUE (INCLUDING EXCISE) AND TO MAKE FURTHER PROVISIONS IN CONNECTION WITH FINANCE (29th July 1969)

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Exemption of certain earnings of writer, composers and writers

2. (1) In this section "a work" means an original and creative work, whether written, composed or executed, as the case may be, before or after the passing of this Act, which falls into one of the following categories-

(a) a book or other writing;

(b) a play;

(c) a musical composition;

(d) a painting or other like picture;

(e) a sculpture.

*The official translation of this Act is printed opposite.