Editorial

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What about taxation in the EC?

Tax questions are of first importance at the present stage of the construction of the European Community.

Even if *Intertax* is a Law review and deals with subjects going beyond European borders, one would be surprised if it remained out of the technical or political debate on tax matters.

Thus, concerning the *Scrivener* proposal of 8 February 1989, one must wonder if the setting up of a 15 per cent withholding tax within the whole Community is not an incomplete and incoherent response to the contemplated goal, which is to transform the Community into an economic area without internal distortions, as banks would not be uniformly required to declare to the relevant tax administration the interest they pay.

This declaration requirement which exists in the United States and in Japan does not prevent these two States from playing a leading part in the financial flows of savings.

The American or Japanese withholding tax, the rate of which is generally higher than the one proposed within the EEC, allows to split taxation between the State of source and the State of residence, through the mechanism of tax treaties.

Would it be impossible to conceive:

- an internal EEC area without withholding tax on interest but with a mandatory requirement for banks to declare the interest they pay; and
- a withholding tax in case of relations outside of the EEC and harmonised tax treaties with respect to interest paid to those who claim the benefits of tax treaties?

Even though this is less well-known, another area where fiscal Europe is slowly being built is the area of court decisions. The purpose here is not to remind the part played by the European Community Court of Justice, but to mention two cases rendered by the two French Supreme Courts.

Concerning the refund of a special tax on automobiles, the 'Cour de Cassation' (Supreme Civil Court) decided on 19 January 1989 that the decision of the European Community Court of Justice which had declared illegal a French law provision, create rights for the tax payers, under the same conditions as the Treaty of Rome.

A few days later, on 3 February 1989, the 'Conseil d'Etat' (Supreme Administrative Court) which has authority on direct taxes and VAT, decided that certain French legal exclusions from deductibility for upstream VAT were illegal as contrary to the provisions of the Sixth Directive of 17 March 1977.

It occurs that, even though they are national, judges may be more European than the actual experts.

Therefore we should not hesitate to let national court decisions considering the impact of the EEC, be known beyond our respective borders.

Each of us who deals professionally with tax matters has also to contemplate, with a new critical approach, which national rule should be challenged in some respect on the basis of the European treaties.

The various articles of this issue are dealing with national tax developments applicable in international transactions. Therefore we thought it would be of special interest to focus on tax items concerning a transnational tax system in the process of elaboration.

For these purposes, *Intertax* is a specially well adapted medium.