

RECORD OF A MEETING BETWEEN THE PRIME MINISTER AND TREASURY
SECRETARY REGAN ON THURSDAY, 29 SEPTEMBER AT 1045 HRS AT THE
DEPARTMENT OF THE TREASURY, WASHINGTON

Present:

Prime Minister	Secretary Regan
Sir Robert Armstrong	Deputy Secretary McNamar
Sir Oliver Wright	Under Secretary Sprinkel
Mr. F.E.R. Butler	Assistant Secretary Leland

The Prime Minister said that she would like to start with the subject of unitary taxation because she was desperately worried about it. Representatives of the United States multi-nationals who had attended the Ambassador's dinner on the previous evening had shared her concern. If governments could not reach agreement on double taxation arrangements, they could not reach agreement on anything. There was a basic principle that countries taxed only the income arising in their own territory. If the United States Government went beyond this it would play into the hands of those in Great Britain who were arguing for wider action against multi-national companies, and also into the hands of developing countries who would try to make up their aid receipts through taxation of multi-national companies. She therefore felt that the decision not to intervene in the Container Corporation case was a bad decision in political terms, which might turn out to be an own goal for the U.S. Administration. It should not be supposed that by setting up the Working Group, the issue had been kicked into the long

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CONFIDENTIAL

- 2 -

grass: it was essential that the Working Group should reach conclusions quickly and consult a representative range of interests.

Secretary Regan said that there would be a first meeting of the Working Group in the following week. It was not possible to include non-US citizens, but the head of the U.S. subsidiary of a major British firm was being invited to join as well as the heads of some U.S. multi-nationals, representatives of groups opposed to unitary taxation, the Governors of some States (including Illinois) and representatives of State legislatures. The Container Corporation case had not established that foreign multi-nationals could be subjected to unitary taxation: an earlier Woolworth case had suggested that they could not. But cases would be coming up in relation to Alcan, Royal Dutch and EMI within the next few months and if the case went in favour of unitary taxation in the Appellate Court, the Administration would probably file an Amicus Curiae brief in the Supreme Court.

When the Prime Minister questioned the word "probably" Secretary Reagan said that he had only used this adverb because the Administration did not want to announce its intention in advance of the verdict of the Appellate Court. But he could promise that if the Appellate Court hearing came out with the wrong result, the Administration would file an Amicus Curiae brief. One of the President's problems was that State Governors form part of the electoral college, and the President's relations with them were sensitive in advance

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- 3 -

of the Election. It was also uncertain how much cost to companies was at stake. The figure of \$650 million had been quoted, but this applied only to domestic companies: one of the discussions of the Working Group would be to find out what the figures were. But a company would be exempted if its accounting structure was sufficient to demonstrate an arms length relationship between a subsidiary and its parent or, failing this, it could produce records which justified its transfer pricing.

The Prime Minister commented that she did not see why a multi-national company should have to open its books to a State Tax Authority in this way. The costs of compliance would be enormous. Also, it would be difficult for companies to calculate what the costs of unitary taxation might be when the extent of the repercussions was unknown and the way in which the tax might be applied was uncertain. Secretary Regan said that the decision against filing an ~~Amicus~~ Curiae brief in the Container Corporation case had been taken by the President, after advice from the Solicitor General that there was less than one chance in ten that it would do any good. He was hoping that the Working Group would produce, prior to the hearing of the Alcan or Shell cases a model law which might provide a satisfactory compromise and influence the outcome of those cases. Such a compromise might be that unitary taxation only applied on profits within the United States and would not require companies to open their books about their activities beyond the water's edge.

In answer to a question from the Prime Minister whether

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such a system would transgress the double taxation agreement or involve a company in paying more total tax, Assistant Secretary Leland said that his provisional view was that a unitary taxation system which did not go beyond the water's edge would be consistent with the Double Taxation Treaty. It should not involve companies in paying additional taxation. Secretary Regan added that half the tax was anyway met by the Federal Government, since State taxation was deductible before Federal tax was charged.

The Prime Minister said that it would be helpful if the United States Administration could make a firm public statement that they were opposed to unitary taxation. Secretary Regan said that it would be difficult for the President to make such a statement since the Supreme Court had found that it was legal for the States to levy tax on this basis. But there were other forms of pressure upon the States. The States were banned by the US Constitution from taking action which interfered with international relations, and it was clear from the present conversation that unitary taxation was damaging international relations. Also, States were in competition for overseas investment, and some States were already advertising that they did not apply unitary taxation to overseas companies. Deputy Secretary McNamar added that a further route, if the Supreme Court case went against Shell or Alcan, would be for those companies to take action in the International Court of Justice on the grounds that unitary taxation transgressed the Friendship, ^{Commerce} and Navigation Treaty: the British Government could no doubt support the companies in taking that action, but this would be a protracted

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and tortuous process.

The Prime Minister emphasised again the urgency of the matter. Secretary Regan said that he would try to bring his Working Group to a conclusion within two months.

The Prime Minister said that she was worried about wider developments affecting the management of the United States economy: the fiscal policy seemed close to a reversion to Keynesism. She suggested that these matters should be pursued at the working lunch.

F.R.B.

29 September, 1983