Notwithstanding these criticisms, this is a book worth reading by law students and medical students, by lawyers and psychiatrists. It is clear that Judge Biggs is deeply concerned with the problems of law and psychiatry and is acutely aware of the areas where these disciplines impinge. His ideas and suggestions invite serious consideration by men of good will in both fields of endeavor.

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FOREIGN INVESTMENT AND TAXATION. By E. R. Barlow and Ira T. Wender. Englewood Cliffs: Prentice-Hall, Inc., 1955. Pp. xxv, 481. $15.00.

THE widespread concern with acceleration of economic growth in the world's underdeveloped areas has led, particularly in the United States, to an outpouring of official reports and private studies on the international flow of private capital to such regions. A number of investigations have been concerned not so much with underlying economic conditions as with various aspects of the legal, administrative and socio-political framework within which the process of investment takes place. As formidable obstacles continue to defy efforts to revive an international market for private lending, attention has been concentrated on measures that might be adopted, in both capital-importing and capital-exporting countries, to reduce or offset barriers to the expansion of "direct" investments—investments controlled by business enterprises in the capital-exporting country.

Foreign Investment and Taxation is one of the most recent of such studies and, in certain respects, among the most thorough-going. It was prepared under the auspices of the Harvard Law School's International Program in Taxation, which is in turn a part of that institution's Program in International Legal Studies. As befits the nature of the investigation, the authors bring to bear a background of both economic and legal training, Mr. Barlow being a member of the faculty of the Harvard School of Business and Mr. Wender a lawyer who has devoted much study to the fiscal aspects of international investment.

Like most studies of the "investment climate," this volume gives little attention to the actual scope for direct investment in underdeveloped countries other than to assert that many opportunities for such investment exist.[1] Except in the extractive industries, however, relatively few underdeveloped areas have the basic conditions propitious for a large-scale inflow of capital in this form. Manufacturing for the domestic market encounters severe limits, inherent in the early stage of development; the bulk of capital is needed for the public sector (the scope of which has broadened in many countries), and foreign capital for this sector must, as in the past, be supplied largely by loans, whether

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1. P. xxii.

private or public. It is not a criticism of the volume that it is limited to direct investments, but this point must be borne in mind. Too many studies and official statements have failed to make clear that direct investments are not substitutes for foreign loans and that an improved investment climate may be necessary but not sufficient in itself for a large-scale expansion of private foreign investment in underdeveloped countries.

A recurrent theme in official and private reports and statements on the promotion of private foreign investment has been the proposal that the United States extend tax incentives to direct investments, ranging from technical modification of present laws to outright exemption from taxation of income accruing to all United States business investments abroad, existing and future. These proposals have come not only from various quarters in the United States, but also, naturally enough, from governments in the underdeveloped areas. As the authors point out, recommendations for the extension of some form of tax concession to foreign investments have appeared in every official report on United States foreign economic policy, beginning with a study prepared in 1950, at President Truman's request, by Mr. Gordon Gray. In 1954 and again in 1955, President Eisenhower submitted recommendations to Congress for a tax concession to direct investments abroad of fourteen percentage points below the prevailing corporate rate, and legislation to this effect was introduced with strong support in both sessions of the Eighty-fourth Congress.[2]

It is in this context that the authors of the present study set themselves the task of appraising the effect of United States taxation of American business investments abroad and of determining whether the extention of tax incentives can play an effective part in promoting such investments. As Professor Stanley Surrey says in his foreword to the volume, "the currents that swirl around any significant tax policy issue, especially one in the legislative stage, run swift and strong."[3] This is of particular interest in the present case, since the main conclusion of the study is that under existing conditions tax incentives are a weak instrument for promoting direct foreign investments and that many proposed incentives, including those recently under congressional consideration, contain pitfalls as far as sound public policy is concerned.

To accomplish their purpose, the authors rightly consider it necessary to form some judgment of the environment in which direct investment is currently made, that is, to appraise the character of existing and potential foreign

2. In effect, the proposal (as contained in H.R. 7725, 84th Cong., 1st Sess. (1955)) provides for global application of the concession now available to investors in Latin America under the so-called Western Hemisphere Trade Corporation clause of the Internal Revenue Code. See INT. REV. CODE OF 1954, §§ 26(i), 109, 141(c). It would also extend to income from oversea branches the same tax status as is now enjoyed by foreign subsidiaries, namely full exemption from United States taxation of income not remitted to the United States. A previous version of the proposed legislation (H.R. 8300) was adopted by the House in the first session of the Eighty-fourth Congress but dropped from the Senate version of the tax law, apparently because of various difficulties referred to at the end of this review.

3. P. vi.

investors and the forces that tend to induce or obstruct investment. In their concern to analyze the influence of taxation on foreign investment decisions, Messrs. Barlow and Wender have delved deeply into the maze of factors that underlie these decisions. They rely heavily on the technique of questionnaire and interview with corporate executives. Much of the raw material analyzed was obtained by the United States Department of Commerce (with which the authors were associated during part of their work) through extensive interviews with corporations accounting for most of the American direct investments abroad; this was supplemented by a more intensive field survey carried out by the authors among a group of forty corporations. The description and analysis of this material comprises almost three-fourths of the study, including several appendices which contain case studies of investment decisions by particular firms.

The investigation of investment decisions through field studies has probably occurred to many students of the subject, and they will be much indebted to the authors for carrying it out. Many of the facts unearthed are of interest, particularly since they relate to companies that have not undertaken investments abroad as well as those that have. For example, some business executives who expressed a lack of interest in foreign investment referred to serious foreign exchange obstacles, but greatly underestimated the actual possibility of remitting profits. Similarly—possibly because of governmental preoccupation with the unfavorable investment climate in recent years—many corporate officials believe that expropriation has been more extensive in several countries, notably Mexico, than is the fact.

On the other hand, the broad conclusions reached about investment decisions do not appear surprising, at least to this reviewer, in view of the many imponderables involved in the foreign investment process. Given the uncertainties currently confronting potential investors abroad, it does not seem strange that foreign investment decisions are not usually made solely on the basis of a mechanical rule-of-thumb as regards the level of prospective profits required; nor does it seem unusual that when calculations of profits are actually made they are apparently regarded as so uncertain that it is not considered necessary to compute profits *net* of United States taxes. In regard to domestic as well as to foreign investment decisions, it would be expected that—apart from inertia, prejudice and ignorance—the judgment of business executives would differ significantly concerning the "risk premium" attached to a particular investment and that they would react differently to the same objective conditions. This is all the more likely in the foreign field, given the wide range that exists for different judgments concerning the prospect of convertibility or depreciation of currencies, economic growth and political stability in the "host" country.

Despite all this, the point stressed in this volume that existing and potential foreign investors are not a homogeneous group and that their response to various obstacles and incentives differs, is well worth documenting in detail, even though it has been pointed out on the basis of general reasoning in earlier studies.[4] Thus, oil and mining companies often differ from firms manufacturing for the local market with respect to their concern with such factors as taxation, exchange control and import restrictions. It has frequently been pointed out that manufacturing enterprises engaged in export operations are likely to be more familiar with potential investment opportunities abroad and also to be more prone to shift from export to investment in the event that they are shut out of a market by exchange or import restrictions. Accordingly, the need for and effect of tax incentives would be expected to differ considerably among various types of investors, a point confirmed by this investigation.

The implications for tax policy of the authors' conclusions regarding the nature of foreign investment decisions are quite simple. If tax concessions are to be effective, the greater profit thus provided must overcome the impediments that have prevented the investment. In many cases the risk of inability to remit profits and other uncertainties are considered so great that the potential gain from tax relief is insufficient to outweigh them.[5] In other cases, the potential investor has not formed a sufficiently definite picture of profit prospects to be influenced by a marginal factor like a tax concession. The general conclusion is stated as follows:

> "*We found no evidence to suggest that United States taxes had been an impediment that had prevented particular investments in foreign countries. More important, we found no instance where executives believed that total exemption of foreign income from United States taxes would have tipped the balance and changed a decision that had been made against a particular investment.* There was no indication that the greater return that lower taxes on foreign income would allow would counterbalance the influence of certain factors limiting investment. Where a company was reluctant to invest in a particular country because of the exchange situation, or the opinion of management about the [investment] climate in a particular country, the higher return on the investment from lower taxes would not be sufficient to overcome this reluctance."[6]

Despite their conclusion concerning the relative unimportance of taxation in current conditions, Messrs. Barlow and Wender do not take a completely negative attitude toward tax incentives nor do they adhere to the principle of tax "neutrality" as between domestic and foreign investments. They believe that tax incentives may increase a corporation's interest in foreign investment

4. See, *e.g.*, UNITED NATIONS, THE INTERNATIONAL FLOW OF PRIVATE CAPITAL, 1946-1952 c. 3 (1954) and UNITED NATIONS, FOREIGN CAPITAL IN LATIN AMERICA c. 2 (1955).

5. It is necessary to point out, as Messrs. Barlow and Wender do, that the existing system of United States taxation, through the device of credits against taxes paid abroad (which approach the United States level in a number of cases) and through deferral of tax on income earned by foreign subsidiaries and not repatriated, substantially reduces the taxes paid in the United States on income from foreign investments and thus narrows the scope for effective United States tax incentives. In Latin America, however, taxes on business income are generally low enough to provide a considerable margin for tax concessions by the United States.

6. P. 215.

opportunities and thus lead it to investigate possibilities that might otherwise be ignored.

In the light of these considerations, the authors recommend an ingenious type of tax incentive of limited scope. This involves the creation of a special class of domestic corporations, called United States Foreign Business Corporations, which would be authorized to defer payment of United States tax on their foreign income so long as such income was not used or distributed in the United States. Such corporations would be permitted to engage in export as well as foreign investment operations. The proposal appears to have certain advantages over other proposals for tax incentives, particularly those involving a simple rate reduction under existing principles. Thus, it would not give a windfall to existing investments, but would be conditioned on the undertaking of new investments. Also, it would avoid what appears to be a serious technical difficulty: it gives tax concessions through rate reduction to foreign investment income while not providing a tax windfall to income from export operations. On the other hand, it would supply an incentive for exporters to expand into foreign investment, since their earnings so invested would be tax free. In common with proposals currently before Congress, it would end the present anomaly whereby reinvested earnings of subsidiaries are tax free while earnings plowed back by foreign branches of United States corporations are subject to the full United States tax.

The above account of the tax analysis and recommendations contained in the the volume does not do justice to the detailed examination of the existing tax system and alternative incentive devices in the last section of the study. This should prove highly valuable to all concerned with the tax aspects of international investment.

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THE COURT OF JUSTICE OF THE EUROPEAN COAL AND STEEL COMMUNITY. By D. G. Valentine. The Hague: Martinus Nijhoff, 1955. Pp. xi, 273. Guilders 18.30

THE European Coal and Steel Community is an unprecedented international organization. The Court of Justice is one of the Community's truly original and remarkable features, so unique that it does not lend itself to any traditional categorization. Its jurisdiction, for example, is manifold: the Court may function as an administrative or judicial court, as a constitutional court and in some specific instances as an international court with compulsory jurisdiction. For this reason alone it is misleading and futile to attempt to classify the Court under the heading of a traditional international court.

The considerable powers of the High Authority (the executive organ of the

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