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CONSTITUTIONAL CONFERENCE

REPORT ON

JURISDICTION IN REGARD TO TRANSACTIONS TAXES

Presented by the
Continuing Committee of Officials
to the
Second Working Session
of the
Constitutional Conference

CP/R/8

CCWS/R/1

1. At the working session of the Constitutional Conference in June 1969, the First Ministers agreed, with one exception, that Parliament and the provincial legislatures should generally have access to all tax fields. It was accepted also that provincial taxes should apply only "within the province" and that erection of "tax barriers" to interprovincial trade should be avoided. The Continuing Committee was asked to consider further the alternative ways of applying these principles in the taxation of transactions.

2. The Committee established a special sub-committee of experts to study this subject and report back to it. The sub-committee was directed to examine three alternative methods of ensuring that a provincial sales tax would apply only within the province. These were:

- (1) Confining provincial transactions taxes to the direct level,
- (2) confining provincial transactions taxes to direct and indirect taxes at the retail level,
- (3) confining provincial transactions taxes to goods and services used or consumed within the province.

3. The report of the sub-committee, dated May 26th, was considered by the Continuing Committee at its meeting on June 15th. The text of the report is attached hereto.

4. The sub-committee reported that alternative 1 (provincial transactions taxes confined to direct taxes) was no more or less than the present arrangement. It was a general conclusion of the sub-committee that any new authority to impose indirect taxes should be in addition to present constitutional authority to impose direct taxes, and that the present constitutional provision giving the provinces authority to impose direct taxation within the province should not be disturbed. The implications of two possible approaches for expanding provincial powers of sales taxation (alternatives (2) and (3), above) were examined in detail.

5. Alternative 2, to have provinces empowered to use an indirect tax on retail sales, was examined at length, and the various problems and implications involved in it were set forth in the report. Its main conclusion concerning this alternative was summed up in the following paragraph:

21. General evaluation - It was generally recognized that it would be easier under alternative 2 than under alternative 3 to realize the objective that an indirect transaction tax should apply only within the province. However, the view was expressed that administrative ease was not the only objective of the exercise, and that one goal of the constitutional review was to obtain a better distribution of taxing powers

which would leave greater flexibility with the provinces. According to this view, the fact that certain administrative problems exist should not stand in the way of achieving this other objective. It was observed, furthermore, that some of the administrative problems may become less troublesome in future with new technological developments.

C. Most of the sub-committee's report was concerned with Alternative 3 - under which provinces would be empowered to use indirect taxes applied to goods or services used or consumed within the province, and not restricted to the retail level. Some provinces favoured this wider and more flexible power, which might permit more effective and economical administration, at least on certain products, and be adjusted to changing circumstances. Moreover this wider power would permit the use of a tax on value added, which has been widely used in Europe in the past decade. Other provinces however were concerned with the need for detailed constitutional guarantees to ensure that a tax on the sales of manufacturers or wholesalers would not in some way or other get passed on to buyers in other provinces. There was a related concern about the potential pyramiding effect of taxation if provincial indirect sales taxes were applied to the components or raw materials involved in production.

7. The sub-committee sets forth in some detail the problems likely to be encountered in ensuring that a provincial indirect sales tax at the manufacturers or wholesalers level does not get passed on to buyers outside the province. Extensive licensing of wholesalers and retailers, as well as manufacturers, would probably be necessary. The major problems would arise in connection with goods (and services) imported into the province from other provinces or other countries, and goods and services exported to other provinces and countries, since one could not contemplate interprovincial "customs houses" to secure control of transactions at the border, as happens in international trade.

8. While the implications of, and arguments for and against this Alternative 3 are given, there was no unanimity of opinion in the sub-committee as to whether or not it should be adopted. The sub-committee did note however that the use of interprovincial agreements, authorized by the Constitution, might make this third alternative more feasible. Such agreements might permit one province to tax sales to residents of another agreeing province, with the latter receiving the resulting revenue.

9. The Continuing Committee focussed its discussion of the report on Alternative 3. Several provinces expressed the desire to have these more flexible powers and felt they could be made applicable only to goods and services used or consumed within the province. Others felt the difficulties would be formidable and there would remain serious dangers that if the taxes were not confined to the retail level they were likely to be passed on in some measure to buyers in other provinces. During the discussion it was argued and recognized that a province using an indirect sales tax at the manufacturers' or wholesalers' level would run a serious risk of having some parts of its law, or regulation, or administrative practices found by the courts to be contrary to the constitutional provision that the tax must apply only to goods or services used or consumed within the province, or to be contrary to the present section 121 which stipulates that products of any one province shall enter free into each other province, or to be customs duties on imports and thus ultra vires of the province. It was suggested that this risk could be avoided by careful drafting of legislation or by interprovincial agreements.

10. The Committee was unable to reach a consensus on the central issue of how to reconcile the principle of access with the need to ensure that provincial taxes do, in fact, remain "within the province". However, it believed that the report of the sub-committee and its own discussion had contributed to the further exploration of the issue which the Conference desired.