in Deutschland der Anschaffungswert die Obergrenze bei der Bewertung bildet. Infolgedessen weichen bei sehr vielen Gesellschaften die Handelsbilanzen und die Steuerbilanzen wesentlich von einander ab. Die Steuerbilanz will den steuerlich richtigen Gewinn einer Rechnungsperiode ermitteln. Die handelsrechtlichen Höchstwerte sind für das Steuerrecht in Deutschland gleichzeitig steuerrechtliche Mindestwerte. Es besteht die Tendenz, bei den Abschreibungen die Lebensdauer der Anlagen richtig zu schätzen. Bei der Warenbewertung müssen die allgemeinen Betriebsunkosten und die Verwaltungskosten (jedoch ohne Vertriebskosten) aktiviert werden.

Das Steuerrecht in Deutschland ist in einigen Punkten stark statisch orientiert. Dies kommt auch darin zum Ausdruck, dasz es jedes Rechnungsjahr für sich behandelt und den in diesem Jahr ermittelten Erfolg, ohne Rücksicht auf spätere Gewinne oder Verluste genau ermitteln will. Ein Ausgleich zwischen Gewinnen und Verlusten verschiedener Rechnungsjahre ist unmöglich. Infolgedessen werden Zugänge weitgehend aktiviert; die Grenze zwischen Reparaturen und Zugängen ist sehr eng gezogen. Sonderabschreibungen auf Grundstücke sind steuerrechtlich weitgehend unmöglich gemacht. Eine Abnutzungsabschreibung auf den „Good will" ist nicht gestattet. Rückstellungen für Reparaturen, auch wenn solche notwendig sind, dürfen nicht vorgenommen werden. Diese Aufwendungen können immer erst im Zeitpunkt des Entstehens verrechnet werden.

Die stillen Reserven sind somit im Steuerrecht in Deutschland nicht erlaubt. Die Steuerbilanz versucht den *richtigen* oder *wahren* Gewinn zu ermitteln, wobei sie allerdings infolge ihrer teilweisen statischen Orientiertheit von den Idealen einer betriebswirtschaftlichen *wahren* Bilanz z. Tl. abweicht. Dennoch kann man annehmen, dasz in gewissem Rahmen die Steuerbilanz den wirlichen Gewinn Jahr für Jahr ermittelt.

SECRET AND INTERNAL RESERVES IN ENGLAND

by

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The writing of an article on so controversial a subject as this must cause a responsible writer some trepidation, for he runs the risk that his readers will be unable to distinguish between the expression of mere personal opinions and a statement of that which is generally, if not universally, accepted. It is therefore perhaps best to say at once that in the paragraphs which follow an attempt will be made to give a clear account of what British accountants, as an organised body of practical men, think about the subject, and an indication will be given where the expression is that of the writer's personal opinion, possibly varying from the accepted standard.

A Reserve, according to the modern connotation of the term, is a credit balance representing profits which have been set aside and, in the case of a company, the setting aside is an intimation by the directors to the shareholders that a decision has been made not to distribute profits to that extent. This decision may be irrevocable if it be made under a mandatory clause in the fundamental constitution of the company or, as is more general, it may be subject to revocation by a later decision which, in that event, would bring back the reserve to the credit side of the Profit and Loss account. This matter of definition is here stated with some care because, in the past, there was a bad practice of extending the word „reserve" to cover credit balances created either for the purpose of diminishing a gross amount stated on the assets side of the Balance Sheet, e.g., the so-called „Reserve for Bad Debst", or to answer a liability which was growing up, although not actually due, e.g., „Reserve for Salaries Accruing". The modern view is that balances of this kind are better called „Provisions"; the distinction being that Reserves in their true sense are created by debiting Profit and Loss Appropriation Account, while Provisions arise through debits in Profit and Loss Account in common with the other overhead expenses of the concern.

What is generally known as a „Secret Reserve" exists when, as a fact, the balance of profits remaining undistributed, whether set aside or not, is greater than that which the Balance Sheet discloses. Another way of putting the same thing would be to say that if the true extent of assets over external liabilities (according to acceptable principles of accounting valuation) is in fact greater than that which the Balance Sheet displays, there is a Secret Reserve. The present writer is not very fond of the adjective „secret", because it conveys a more or less faint impression of moral turpitude which is inappropriate for scientific discussion; he therefore prefers the terms „Inner Reserve", „Undisclosed Reserve" or „Internal Reserve".

It is manifest that these Inner Reserves fall into two classes, according as whether they are (a) disclosed neither in the Balance Sheet nor in (specific) credit balances in the books; or (b) disclosed in the books but concealed in the Balance Sheet. The first named class may in its turn arise either (i) through a decision not to reflect in the books an unrealised appreciation of the value of assets; it is almost inevitable that these cases should occur because, subject to small exceptions, it is not deemed to be the business of accountants to take note of such increases of „value"; or (ii) there may be other cases which enter far more intimately into accounting discussion, where the accounting value of assets is, consciously or unconsciously, written down below the level which, in ordinary circumstances would be proper; correspondingly, liabilities may be maintained at a figure above that which is theoretically necessary.

The cases where there is disclosure in the books but non-disclosure in the Balance Sheet are usually reflected, in England, by the very common practice whereby there appears on the Balance Sheet a single figure under the caption „Sundry Creditors and Credit Balances". If a credit balance, which is really a sum of profit set aside be merged with this figure, the Reserve is in very truth hidden, because the reader of the Balance Sheet has no opportunity of assessing for himself in what proportion the two different elements enter into the one figure disclosed.

It is hardly to be expected that lawyers should appreciate the nuances of the different cases mentioned above, and it can be stated that the law of England is not offended, indeed, it hardly frowns, when an undisclosed reserve is accumulated. The *locus classicus* is a dictum of Mr. Justice Buckley (a very great authority) in the course of his judgment in the case *Newton v Birmingham Small Arms Company Limited,* decided in the year 1906. The Judge said:

„The purpose of the Balance Sheet is primarily to show that the financial position of the company is at least as good as there stated, not to show that it is not or may not be better".

We shall be referring to the main purport of this decision in a few moments, but the obvious immediate comment is that an accountant who desires to practise accounting ideals can find little help here. Happily, however, the events of the last few years have brought forward a powerful aid in connection with the *Royal Mail Steam Packet Company,* case, one of the most beneficial effects of which was to draw attention to the vital distinction between the building up of an undisclosed reserve and its subsequent use if ever it should be brought back again to the credit side of the Profit and Loss Account.

The case was a criminal prosecution, a fact of some importance, because the degree of proof required is more severe than in connection with a mere civil action for damages. The part of the case which interests us was the accusation against a director and against the auditor of the company for knowingly publishing, and aiding in publishing, respectively, false statements in successive Profit and Loss Accounts of the Company. Briefly, the facts were that during the war period it was considered that there were very heavy liabilities for taxation and credit balances were raised, quite properly, to answer these. Subsequent negotiation with the authorities showed that the actual liability was very much less and, accordingly, the credit balances already set up immediately altered their character; whereas previously they were actual liabilities, they now fell back into profits. Nevertheless, they were left in the Balance Sheet, merged with Sundry Creditors and, the company at the same moment falling upon bad times, the balance in question was gradually used up by being brought back to the credit side of the Profit and Loss Account, where it was merged in the general credit entry, its existence being indicated only by wording to the effect that adjustments of taxation were included. The prosecution was able to show that had the facts been disclosed, the company would have been seen to have been incurring losses on its ordinary trading operations, those losses being more than offset by the extraneous balances brought in, so that, in a time which was actually very adverse indeed, the company appeared to be riding on an even keel; in the picturesque language used in court the whole organisation was „living on its own fat". As a matter of fact the prosecution failed, because the court was not convinced of the criminal intentions of the persons accused; but the case has had a most important moral effect on the minds of accountants. We can say today that amongst reputable accountants it would be deemed highly improper to allow an undisclosed reserve so to be used in circumstances either where the amount used is material in relation to the general figures or where (especially) the operation has the effect of reversing the apparent trend of trading results.

We may lead up to a consideration of the auditor's position by referring to the obvious abuses which may attend the publication of a Balance Sheet which consciously misrepresents the facts. An unscrupulous body of directors may so trim their sails to the wind as to snatch personal advantage on the stock markets and, also, they may manipulate undisclosed reserves so as to hide the consequences of their own incompetence or misdeeds. There is not a shadow of doubt that if an auditor in Britain were convinced that the atmosphere were of this nature, he would deem it his duty to disclose the whole facts in his formal report to the members. It must be remembered, however, that the great mass of practical cases are not of this unsavoury nature. The situation is that the primary responsibility for the preparation and publication of the accounts is with the directors and the auditor is appointed by the shareholders as a kind of watch-dog to safeguard their interests. Given an honest desire on the part of the directors to protect the company in the general interest from the avarice of competitors, to conserve its resourses against the proverbial rainy day and to check in advance the imprudent demands of shareholders for improvident dividend distributions, the auditor who would object clearly undertakes a very heavy responsibility. Particularly in the class of cases referred to above, where the values of assets are written down more than might strictly be necessary, or where excessive provision is made for bad and doubtful debts, it is a matter almost of impossibility for a professional auditor to arrogate to himself a better judgment than that of the very men appointed by the shareholders to manage the business; and it is still more impossible for him to draw the line where prudence becomes so extreme as to be unreasonable. It is sometimes urged that the accumulation of undisclosed reserves is unfair to the stock market, because the prices of transactions may be artificial in the absence of full information. The present writer expresses only a personal opinion when he states that, in his judgment, this objection has relatively little weight. The question is whether the accounts are prepared for the benefit of those persons who are true investors of their money, or for the benefit of those who, to use a simile, a mere temporary passengers who board the car with the intention only of getting off again when the moment seems to be favourable. To the writer, the paramount duty appears to be to those passengers who intend to make the whole journey. Nevertheless, the legal position of an auditor has been made very clear by the *Newton v Birmingham Small Arms* decision mentioned above. There, an attempt was made so to alter the constitution of a company as to enable the directors to eliminate certain reserves from their published Balance Sheet, at the same time disabling the auditors from making any comment on the matter. The Court held, and it is matter for rejoicing that it should so have held, that the constitution of no company can derogate from the clear terms of an Act of Parliament. The Companies Act gives unfettered discretion to the auditor to report to the members of a company on the Balance Sheet laid before them, and in the case in question the judge refused to contemplate that this discretion could, in any way whatever, be limited. The language used was: —

„Any regulations which preclude the auditors from availing themselves of all the information to which, under the Act, they are entitled, as material for the report which, under the Act, they are to make as to the true and correct state of the company's affairs are, I think, inconsistent with the Act".

A modern and very topical development must be mentioned. It is characteristic of present-day commercial organisation that public companies should form subsidiaries which are „private" in the sense that they take advantage of certain legal conditions which exclude publication of accounts. The consequence is that the directors of the parent company can keep their shareholders entirely in the dark, because, seeing that they control the whole group of companies, they can bring into the parent company only such profits of the subsidiaries as they may deem expedient. A very glaring case recently arose in connection with a company called the Tube Investments Limited. The chairman there used the following very plain words to his shareholders: —

„I think it desirable to make a few remarks that will enable the inexpert to read our balance sheet and accounts. I have informed you on several occasions that we do not bring into the Tube Investments balance sheet the whole of the profits our activities have created; we bring in only just so much as we require to pay the dividends we recommend and to place to general reserve, or add to the carry forward, so much as we consider will make a pretty balance sheet ..... I do, however, make one concession to exactitude. If the real earnings of the year are larger than those of the preceding one, the figure shown in the balance sheet will be larger, and if they are smaller, the balance sheet figure will also be smaller. The increase or decrease will only be a pointer, it will have no actual relation to the real figure."

No accountant can read such a declaration as this without disquiet, and it seems certain that within the next few years the law with regard to holding companies will be so altered as to make „pretty" balance sheets rather less common works of art than they are at present.

On the fiscal aspect of this matter in Britain, little need be added. Accounts on which taxation is based are so thoroughly examined in discussion between the experts on the official side and the accountants representing the taxpayer that it would be safe to say that no reserve escapes undetected; indeed, the ethical attitude of the profession is that disclosure is made from the professional side before it is asked for from the official side. No question of the excessive writing down of fixed assets arises because official scales of wear and tear percentages are strictly adhered to, quite irrespective of the amounts which may have been allowed in the books of the taxpayer. It is true that there may be some latitude in connection with the making of a provision for bad debts and in connection with the valuation of current stock in trade, but that matter is relatively of small importance.

We may sum up by saying that accounting ideals would exclude the existence of undisclosed reserves; but that ideals, in this imperfect world, are incapable of attainment, partly in this case because there is no power to prevent honest economy of disclosure exercised with the desire to protect the interests of the general body of shareholders, and partly because it is extremely difficult to distinguish between prudent conservatism and improper reticence. Nevertheless, the auditor retains the *power* (seldom exercised) to bring out all the facts in a report to the shareholders. The situation is different where undisclosed reserves are *used* to bolster up profits; in this case the auditing profession is on much surer ground and it deems it as its clear duty to prevent the occurrence of misconception as to the true trend of trading results.

We add, finally, that classes of undertakings where public confidence in stability is fundamental to the business, e.g. banks, life assurance, etc. are given even greater latitude than other concerns, so that assurance may be made double sure. The personal opinion may be expressed that this view has little logical defence; for the public knows that the real position is probably stronger than that shewn and, hence, a tendency grows up to overtake this public knowledge; the result is a regrettable „snowball" effect in which each party tries to outwit the other. In these conditions, what becomes of the auditor's duty to report on the „true and correct view of the state of the company's affairs"?

L'OPINION DU LÉGISLATEUR, DU FISC ET DES EXPERTS-COMPTABLES SUR LES RÉSERVES DISSIMULÉES ET LATENTES EN FRANCE

par

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Les réserves occultes et internes n'avaient d'intérêt pratique, avant la guerre franco-allemande de 1914 à 1918, qu'en ce qui concernait les droits des actionnaires, dans la mesure où ils pouvaient être lésés par une diminution frauduleuse de leurs dividendes. Il serait trop long de l'exposer en détail dans le présent article, la question étant parfaitement connue des théoriciens, mais qui échappe en grande partie, actuellement, aux experts-comptables, guidés par la nécessité pratique de sauvegarder les droits des mêmes actionnaires, ainsi que des sociétés elles-mêmes, les uns et les autres „assujettis" à des taxes qui n'ont pris naissance qu'en 1917.

C'est, en effet, à la faveur de la grande guerre que le législateur français a „osé", pour la première fois, frapper la généralité des revenus réels des contribuables, jusque là imposés d'après certains signes extérieurs (patente, contribution mobilière, taxes diverses, portes et fenêtres, chevaux, etc.), par les impôts cédulaires et général sur les revenus, frappant, notamment, les bénéfices industriels et commerciaux des sociétés (loi du 31 juillet 1917) d'où la tendance à diminuer ceux-ci par des comptes débiteurs, des comptes d'ordre et provision, d'amortissements et de réserves proprement dites.

La distribution des réserves rendait, d'autre part, l'actionnaire passible de l'impôt sur le revenu des valeurs mobilières et de la contribution extraordinaire sur les bénéfices exceptionnels et supplémentaires de guerre.

Les réserves faisant partie intégrante du patrimoine social constituent, avec le capital social, l'actif net de la société et tous les impôts pouvant atteindre les sociétés, au cours de leur existence et à leur dissolution doivent, dès lors, frapper en même temps que le capital social, les différentes réserves de la société.

Il en est ainsi pour le droit d'apport (pour tout acte de formation ou de prorogation de société, d'augmentation de capital par transformation des réserves en actions), le droit de partage et le droit de transmission.

Le réarmement de l'Allemagne ayant, au surplus, dans ces dernières années, nécessité les travaux de défense de notre pays, il en est résulté, pour le budget d'Etat, des charges très