

Judgment of the Court
27 June 1979

IN CASE 161/78

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE FOURTH CHAMBER OF THE OESTRE LANDSRET (EASTERN DIVISION OF THE HIGH COURT) FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

ADVOKATRAADET (BAR COUNCIL) AS REPRESENTATIVE OF P . CONRADSEN A/S

AND

MINISTERIET FOR SKATTER OG AFGIFTER (MINISTRY FOR FISCAL AFFAIRS)

ON THE INTERPRETATION OF COUNCIL DIRECTIVE NO 69/335/EEC OF 17 JULY 1969 CONCERNING INDIRECT TAXES ON THE RAISING OF CAPITAL ,

- 1 BY ORDER OF 30 JUNE 1978 RECEIVED AT THE COURT REGISTRY ON 28 JULY 1978 THE OESTRE LANDSRET , COPENHAGEN , REFERRED TO THE COURT OF JUSTICE PURSUANT TO ARTICLE 177 OF THE EEC TREATY TWO QUESTIONS ON THE INTERPRETATION OF CERTAIN PROVISIONS OF COUNCIL DIRECTIVE 69/335/EEC OF 17 JULY 1969 CONCERNING INDIRECT TAXES ON THE RAISING OF CAPITAL (OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1969 (II), P . 412).
- 2 THESE QUESTIONS HAVE BEEN RAISED IN THE COURSE OF AN ACTION BETWEEN THE ADVOKATRAADET (HEREINAFTER REFERRED TO AS ' ' THE BAR COUNCIL ' ') AS REPRESENTATIVE OF P . CONRADSEN A/S AND THE DANISH MINISTRY FOR FISCAL AFFAIRS CONCERNING THE CALCULATION OF THE BASIC TAXABLE AMOUNT LIABLE TO THE CAPITAL DUTY PROVIDED FOR IN ARTICLE 5 (1) (A) OF THE SAID DIRECTIVE .
- 3 THE FILE RELATING TO THAT ACTION INDICATES THAT P . CONRADSEN A/S WAS FORMED BY A MEMORANDUM OF ASSOCIATION DATED 26 JULY 1974 AS A LIMITED COMPANY WITH A SHARE CAPITAL OF DKR 1 000 000 . THE MEMORANDUM OF ASSOCIATION PROVIDED INTER ALIA THAT TWO OF THE THREE FOUNDER MEMBERS WERE TO TRANSFER TO THE COMPANY BY WAY OF CONTRIBUTION THE UNDERTAKING P . CONRADSEN , WHICH THEY HAD OWNED AND MANAGED UNTIL THEN AS A GENERAL COMMERCIAL PARTNERSHIP , THE VALUE THEREOF BEING FIXED IN ACCORDANCE WITH THE OPENING BALANCE SHEET PREPARED ON 1 JANUARY 1974 . THAT BALANCE SHEET INCLUDED AMONG THE ITEMS ON THE ASSETS SIDE GOODS IN STOCK AND GOODS ORDERED PURSUANT TO BINDING CONTRACTS , FOR DELIVERY IN 1974 , VALUED IN THE AGGREGATE AT A COST PRICE OF DKR 6 925 804 AND ENTERED THEREON AFTER DEDUCTING DKR 1 927 740 .
- 4 THIS DEDUCTION WAS EQUAL TO WRITING DOWN THE STOCK BY 30 % AND THE GOODS ON ORDER PURSUANT TO BINDING CONTRACTS BY 25 % , WHICH IS PERMITTED BY THE (CONSOLIDATED) DANISH LAW NO 255 OF 10 MAY 1973 CONCERNING THE VALUATION FOR TAX PURPOSES OF STOCK AND THE LIKE (' ' VARELAGERLOVEN ' ') COMPLETED IN 1975 BY THE RULES LAID DOWN IN

ARTICLES 3 , 4 AND 5 THEREOF WHICH ALLOW PERSONS ENGAGED IN INDUSTRY AND COMMERCE , INCLUDING COMPANIES , WHEN THEY CALCULATE THEIR TAXABLE PROFITS AND ASSETS , TO DECLARE THE BOOK VALUE OF THEIR GOODS IN STOCK AND OF THE GOODS WHICH THEY HAVE ORDERED PURSUANT TO BINDING CONTRACTS AFTER WRITING DOWN THE PURCHASE PRICE OF THE STOCK AND GOODS ON ORDER .

- 5 COUNCIL DIRECTIVE NO 69/335/EEC OF 17 JULY 1969 ABOLISHED INTER ALIA STAMP DUTY ON CERTAIN OPERATIONS RELATING TO SECURITIES AND MADE CONTRIBUTIONS TO CAPITAL COMPANIES SUBJECT TO CAPITAL DUTY AT A RATE OF DUTY WHICH NORMALLY MAY NOT EXCEED 2 % OR BE LESS THAN 1 % . THIS DIRECTIVE WAS IMPLEMENTED IN DENMARK BY LAW NO 283 OF 23 MARCH 1973 WHICH ABOLISHED THE STAMP DUTY WHICH HAD UNTIL THEN BEEN IMPOSED AND BY LAW NO 284 OF THE SAME DATE WHICH INTRODUCED A CAPITAL DUTY OF 2 % . THIS RATE OF DUTY WAS LATER REDUCED TO 1 % FROM 1 JANUARY 1976 BY LAW NO 583 OF 26 NOVEMBER 1975 PURSUANT TO COUNCIL DIRECTIVE NO 73/80/EEC OF 9 APRIL 1973 (OFFICIAL JOURNAL L 103 OF 18 APRIL 1973 , P . 13).
- 6 P . CONRADSEN A/S IN ITS TAX RETURN OF 16 DECEMBER 1974 , WHICH IT FORWARDED TO THE TAX AUTHORITIES PURSUANT TO THE ABOVE-MENTIONED LAW NO 284 AND IN PARTICULAR TO ARTICLE 4 THEREOF , VALUED THE TAXABLE AMOUNT , FOR THE PURPOSE OF CAPITAL DUTY AT A FIGURE EQUAL TO THE VALUE OF THE CONTRIBUTIONS GIVEN IN THE MEMORANDUM OF ASSOCIATION .
- 7 THE TAX AUTHORITIES AMENDED THIS VALUATION BY INCREASING THE FIGURE IN THE TAX RETURN BY THE AMOUNTS DEDUCTED FROM THE VALUE OF THE STOCK AND THE GOODS ON ORDER PURSUANT TO BINDING CONTRACTS , NAMELY DKR 1 927 740 .
- 8 P . CONRADSEN A/S , THROUGH THE BAR COUNCIL , HAS ASSERTED IN PARTICULAR THAT THE TAXABLE AMOUNT HAD TO BE REDUCED IN ANY CASE BY THE CHARGE TO TAX ON THE AMOUNTS BY WHICH THE STOCK AND THE GOODS ORDERED PURSUANT TO BINDING CONTRACTS WERE WRITTEN DOWN .
- 9 THE TAX AUTHORITIES REJECTED THIS ARGUMENT AND SUBMITTED THAT THE POSSIBLE TAXATION OF THE AMOUNTS DEDUCTED IS ONE STAGE IN THE GENERAL TAXATION OF THE PROFITS OF A COMPANY AFTER IT HAS BEEN FORMED AND THAT IT IS FURTHERMORE NOT CERTAIN THAT IF THE AMOUNTS DEDUCTED ARE TAKEN INTO ACCOUNT THIS WILL NECESSARILY RESULT IN THE COMPANY ' S BEING TAXED ON PROFITS OF AN EQUIVALENT AMOUNT , SINCE SUCH A POSSIBILITY IS CONTINGENT ON UNCERTAIN FACTORS , INCLUDING IN PARTICULAR THE COMMERCIAL ARRANGEMENTS MADE BY THE COMPANY . THE CHARGE TO TAX WHICH MAY ARISE OUT OF THESE DEDUCTIONS IS NOT A ' ' LIABILITY ' ' WITHIN THE MEANING OF ARTICLE 5 (1) (A) OF COUNCIL DIRECTIVE NO 69/335/EEC AND CANNOT BE DEDUCTED FROM THE AMOUNT ATTRACTING CAPITAL DUTY .
- 10 IN ORDER TO OBTAIN CLARIFICATION OF THIS PROBLEM THE OESTRE LANDSRET DECIDED TO REFER TO THE COURT THE FOLLOWING QUESTIONS :
 - "1 . MUST THE PROVISIONS OF ARTICLE 5 (1) (A) OF THE COUNCIL DIRECTIVE OF 17 JULY 1969 CONCERNING INDIRECT TAXES ON THE RAISING OF CAPITAL (69/335/EEC) BE INTERPRETED TO MEAN THAT THOSE PROVISIONS PREVENT A MEMBER STATE , IN ASSESSING THE LIABILITY TO DUTY ON THE RAISING OF THE CAPITAL OF A NEWLY-FORMED LIMITED COMPANY A , WHOSE SHARE CAPITAL WAS CREATED

BY CONTRIBUTIONS FROM AN EXISTING UNDERTAKING BELONGING TO A PERSON B , FROM REFUSING A DEDUCTION FOR ANY TAX ON AN UNTAXED RESERVE WHICH IS REGARDED AS AN ASSET IN THE ASSESSMENT OF DUTY AND WHICH WAS CREATED WHEN B CONTRIBUTED TO A THE UNDERTAKING ' S GOODS IN STOCK AND GOODS ON ORDER AT A VALUE WRITTEN DOWN FOR TAX PURPOSES LESS THAN THE ACTUAL VALUE OF THE RELEVANT GOODS IN STOCK AND GOODS ON ORDER?

- 2 . MUST THE PROVISIONS OF ARTICLE 5 (1) (A) OF THE COUNCIL DIRECTIVE OF 17 JULY 1969 CONCERNING INDIRECT TAXES ON THE RAISING OF CAPITAL (69/335/EEC) BE INTERPRETED TO MEAN THAT , IN THE CIRCUMSTANCES RELATED IN CONNEXION WITH QUESTION 1 , THESE PROVISIONS PRECLUDE A DEDUCTION ' S BEING ALLOWED FOR THE AMOUNT OF TAX PAYABLE BY A IF A TOOK THE UNTAXED RESERVES AS INCOME IN THE YEAR WHEN THE COMPANY WAS FORMED AND THEREBY OBTAINED A CORRESPONDING AMOUNT OF INCOME WHICH IS IN FACT LIABLE TO TAX? "
- 11 SINCE THE TWO QUESTIONS RELATE TO THE SAME SUBJECT-MATTER THEY FALL TO BE CONSIDERED TOGETHER . IN ORDER TO ANSWER THEM BOTH THE WORDING OF ARTICLE 5 (1) (A) OF COUNCIL DIRECTIVE 69/335/EEC AND THE MAIN OBJECTIVES WHICH THIS ARTICLE HAS IN VIEW SHOULD BE CONSIDERED IN THE CONTEXT OF THIS DIRECTIVE . AS THE RECITALS IN ITS PREAMBLE INDICATE , THE LATTER AIMS AT ENCOURAGING THE FREE MOVEMENT OF CAPITAL WHICH IS REGARDED AS ESSENTIAL FOR THE CREATION OF AN ECONOMIC UNION WHOSE CHARACTERISTICS ARE SIMILAR TO THOSE OF A DOMESTIC MARKET . AS FAR AS CONCERNS TAXES ON THE RAISING OF CAPITAL THE PURSUIT OF SUCH AN OBJECTIVE PRESUPPOSES THE ABOLITION OF INDIRECT TAXES WHICH HAD BEEN IN FORCE IN THE MEMBER STATES UNTIL THEN AND IMPOSING IN PLACE OF THEM A TAX LEVIED ONLY ONCE IN THE COMMON MARKET AND AT THE SAME RATE IN ALL THE MEMBER STATES . FOR THESE PURPOSES THE DIRECTIVE PROVIDES FOR THE LEVYING ON CAPITAL WHICH HAS BEEN RAISED A CAPITAL DUTY , WHICH , AS STATED IN THE SEVENTH RECITAL , SHOULD BE HARMONIZED WITH REGARD BOTH TO ITS STRUCTURES AND TO ITS RATES , SO AS NOT TO INTERFERE WITH THE MOVEMENT OF CAPITAL .
- 12 THE HARMONIZATION OF SUCH A DUTY , ESPECIALLY OF ITS STRUCTURE , IMPLIES , PRIMARILY , THAT THE BASIS FOR ITS ASSESSMENT SHALL BE CALCULATED IN EACH MEMBER STATE IN ACCORDANCE WITH OBJECTIVE CRITERIA WHICH APPLY UNIFORMLY WITHIN THE COMMUNITY AND ARE UNAFFECTED BY NATIONAL LAWS . TO THIS END ARTICLE 5 (1) (A) OF COUNCIL DIRECTIVE 69/335/EEC EXPRESSLY STATES WHAT THE MAIN ELEMENTS ARE WHICH GO TO MAKE UP THIS TAX BY PROVIDING THAT ' ' THE DUTY SHALL BE CHARGED : . . . ON THE ACTUAL VALUE OF ASSETS OF ANY KIND CONTRIBUTED OR TO BE CONTRIBUTED BY THE MEMBERS , AFTER THE DEDUCTION OF LIABILITIES ASSUMED AND EXPENSES BORNE BY THE COMPANY AS A RESULT OF EACH CONTRIBUTION . . . ' ' .
- 13 THAT ARTICLE , IN THE LIGHT OF ITS OBJECTIVES , INDICATES THAT THE CAPITAL DUTY SHALL BE CHARGED ON THE ' ' ACTUAL VALUE ' ' OF THE ASSETS AT THE TIME AT WHICH THEY WERE CONTRIBUTED AND NOT ON THEIR BOOK VALUE , AND THAT THE ' ' LIABILITIES AND EXPENSES ' ' WHICH ARE DEDUCTIBLE UNDER THIS PROVISION FROM THE ACTUAL VALUE OF THE CONTRIBUTIONS CAN ONLY BE THOSE THE EXISTENCE AND AMOUNT WHEREOF ARE CERTAIN .

- 14 THE NEED , FOR THE REASONS ALREADY GIVEN , TO BASE THE TAXATION OF CAPITAL WHICH HAS BEEN RAISED ON CRITERIA WHICH ARE OBJECTIVE AND UNIFORM WITHIN THE COMMUNITY IN FACT PRECLUDES THE BOOK VALUE OF THE ASSETS CONTRIBUTED AND ALSO OF POTENTIAL TAX LIABILITIES CHARGEABLE ON THE PROFITS OF THE COMPANY FROM BEING TAKEN INTO CONSIDERATION . SUCH LIABILITIES , FOR THE VERY GOOD REASON THAT THEY ARE UNASCERTAINED , MAKE IT IMPOSSIBLE TO DETERMINE THE ACTUAL VALUE OF ASSETS CONTRIBUTED AT THE TIME AT WHICH THEY WERE CONTRIBUTED AND THUS TO CALCULATE ONE OF THE MAIN CONSTITUENT ELEMENTS FOR THE LEVYING OF THE DUTY , NAMELY THE BASIC TAXABLE AMOUNT .
- 15 THE FACT THAT ARTICLE 9 , LIABILITIES B . 2 OF THE FOURTH COUNCIL DIRECTIVE NO 78/660 OF 25 JULY 1978 BASED ON ARTICLE 54 (3) (G) OF THE TREATY ON THE ANNUAL ACCOUNTS OF CERTAIN TYPES OF COMPANIES (OFFICIAL JOURNAL L 222 , P . 11) PROVIDES FOR '' PROVISIONS FOR TAXATION '' TO BE ENTERED UNDER LIABILITIES AS '' PROVISIONS FOR LIABILITIES AND CHARGES '' IS NOT CONCLUSIVE . THAT DIRECTIVE , THE PERIODS FOR THE IMPLEMENTATION OF WHICH BY THE MEMBER STATES HAVE MOREOVER NOT YET EXPIRED , PURSUES AN OBJECTIVE WHICH DIFFERS CONSIDERABLY FROM THAT OF COUNCIL DIRECTIVE NO 69/335/EEC OF 17 JULY 1969 : IT DOES NOT AIM AT HARMONIZING TAXATION OF THE RAISING OF CAPITAL , BUT , AS PROVIDED FOR IN THE ABOVE-MENTIONED ARTICLE 54 (3) (G) OF THE TREATY , IS AMONG THE MEASURES WHICH , IN THE CONTEXT OF THE RIGHT OF ESTABLISHMENT AIM AT '' CO-ORDINATING TO THE NECESSARY EXTENT THE SAFEGUARDS WHICH , FOR THE PROTECTION OF THE INTERESTS OF MEMBERS AND OTHERS , ARE REQUIRED BY MEMBER STATES OF COMPANIES OR FIRMS WITHIN THE MEANING OF THE SECOND PARAGRAPH OF ARTICLE 58 WITH A VIEW TO MAKING SUCH SAFEGUARDS EQUIVALENT THROUGHOUT THE COMMUNITY '' .
- 16 IN THESE CIRCUMSTANCES , ALTHOUGH ENTERING '' PROVISIONS FOR TAXATION '' UNDER LIABILITIES FULFILLS THE REQUIREMENTS FOR THE PRESENTATION BY COMPANIES OF THEIR BALANCE SHEET , IN ACCORD WITH THE INTERESTS OF THE MEMBERS AND OF THIRD PARTIES , IT DOES NOT IMPLY THAT SUCH AN ENTRY MAY AFFECT THE VALUE OF CAPITAL WHICH HAS BEEN RAISED AND IS LIABLE TO THE CAPITAL DUTY INTRODUCED BY DIRECTIVE NO 69/335/EEC .
- 17 ALTHOUGH ARTICLE 20 (1) OF THE FOURTH COUNCIL DIRECTIVE DOES NOT RULE OUT THE POSSIBILITY THAT PROVISIONS FOR LIABILITIES AND CHARGES ARE INTENDED TO COVER LOSSES OR DEBTS THE NATURE OF WHICH IS CLEARLY DEFINED AND WHICH AT THE DATE OF THE BALANCE SHEET ARE EITHER LIKELY TO BE INCURRED , OR CERTAIN TO BE INCURRED BUT UNCERTAIN AS TO AMOUNT OR AS TO THE DATE ON WHICH THEY WILL ARISE , PARAGRAPH (3) OF THE VERY SAME ARTICLE STATES THAT THE SAID PROVISIONS '' MAY NOT BE USED TO ADJUST THE VALUES OF ASSETS '' , AND THUS MAKES IT CLEAR THAT ENTERING THESE PROVISIONS IN THE ACCOUNTS RELATES TO THE REQUIREMENTS FOR THE PRESENTATION OF THE BALANCE SHEETS OF CERTAIN TYPES OF COMPANIES BUT CANNOT IN FACT ALTER THE BASIS FOR THE ASSESSMENT OF A TAX SUCH AS CAPITAL DUTY WHICH IN SUBSTANCE IS BASED ON THE ACTUAL VALUE OF THE ASSETS .
- 18 FOR THE SAME REASONS IT IS OF NO AVAIL IN THIS CASE TO RELY ON THE ATTITUDE TAKEN UP BY THE DANISH COMPANIES REGISTRY WHICH THE PLAINTIFF IN THE MAIN ACTION MENTIONED DURING THE ORAL PROCEDURE

. THIS ATTITUDE , THE IMPLICATIONS OF WHICH THE PARTIES DISPUTE , IS NOT DETERMINATIVE FOR THE PURPOSE OF VALUING THE TAXABLE AMOUNT FOR CAPITAL DUTY WHICH , FOR THE REASONS ALREADY GIVEN , MEETS ITS OWN SPECIAL NEEDS , AND MUST BE APPLIED IN ALL THE MEMBER STATES IN ACCORDANCE WITH OBJECTIVE AND UNIFORM CRITERIA .

- 19 IN ANY EVENT , SINCE THE NATIONAL COURT HAS ITSELF CLASSIFIED THE LIABILITY AT ISSUE AS ' ' POTENTIAL ' ' , THE PARTICULAR ASPECTS OF THE NATIONAL LAW REFERRED TO BY THE PARTIES TO THE MAIN ACTION ARE NOT RELEVANT FOR THE PURPOSE OF DEFINING THE SCOPE OF ARTICLE 5 (1) (A).
- 20 FOR THESE REASONS THE ANSWERS TO THE QUESTIONS REFERRED ARE THAT THE PROVISIONS OF ARTICLE 5 (1) (A) OF COUNCIL DIRECTIVE NO 69/335 OF 17 JULY 1969 CONCERNING INDIRECT TAXES ON THE RAISING OF CAPITAL MUST BE INTERPRETED TO MEAN THAT THOSE PROVISIONS PREVENT A MEMBER STATE , IN ASSESSING THE LIABILITY TO CAPITAL DUTY ON THE RAISING OF THE CAPITAL OF A NEWLY-FORMED LIMITED COMPANY , WHOSE SHARE CAPITAL IS CREATED BY CONTRIBUTIONS FROM AN EXISTING UNDERTAKING BELONGING TO ONE OF THE FOUNDERS , FROM GRANTING A DEDUCTION FOR THE POTENTIAL TAX LIABILITY ON AN UNTAXED RESERVE CREATED WHEN THE AFORESAID FOUNDER CONTRIBUTED TO THE NEW COMPANY THE SAID UNDERTAKING ' S GOODS IN STOCK AND GOODS ON ORDER UNDER BINDING CONTRACTS AT A VALUE WRITTEN DOWN FOR TAX PURPOSES LESS THAN THEIR ACTUAL VALUE . LIKEWISE , IN THE CIRCUMSTANCES RELATED ABOVE , ARTICLE 5 (1) (A) OF DIRECTIVE NO 69/335 PRECLUDES A DEDUCTION ' S BEING ALLOWED FOR THE AMOUNT OF ANY POTENTIAL TAX WHICH THE NEWLY-FORMED COMPANY WOULD HAVE TO PAY IF , DURING THE YEAR IN WHICH IT WAS FORMED , IT REALIZED A PROFIT FROM THE RESERVE RESULTING FROM THE WRITING-DOWN OF THE CONTRIBUTIONS FOR TAX PURPOSES AND THEREBY OBTAINED A CORRESPONDING AMOUNT OF ACTUAL INCOME LIABLE TO TAX AS SUCH .

COSTS

- 21 THE COSTS INCURRED BY THE DANISH GOVERNMENT , THE NETHERLANDS GOVERNMENT AND BY THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE .

AS THE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN ACTION ARE CONCERNED , IN THE NATURE OF A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT

ON THOSE GROUNDS ,

THE COURT

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE OESTRE LANDSRET BY ORDER OF 30 JUNE 1978 , HEREBY RULES :

THE PROVISIONS OF ARTICLE 5 (1) (A) OF COUNCIL DIRECTIVE NO 69/335 OF 17 JULY 1969 CONCERNING INDIRECT TAXES ON THE RAISING OF CAPITAL MUST BE INTERPRETED TO MEAN THAT THOSE PROVISIONS PREVENT A MEMBER STATE , IN ASSESSING THE LIABILITY TO CAPITAL DUTY ON THE RAISING OF THE CAPITAL OF A NEWLY-FORMED LIMITED COMPANY , WHOSE SHARE CAPITAL IS CREATED BY CONTRIBUTIONS FROM AN

EXISTING UNDERTAKING BELONGING TO ONE OF THE FOUNDERS , FROM GRANTING A DEDUCTION FOR ANY POTENTIAL TAX LIABILITY ON AN UNTAXED RESERVE CREATED WHEN THE AFORESAID FOUNDER CONTRIBUTED TO THE NEW COMPANY THE SAID UNDERTAKING ' S GOODS IN STOCK AND GOODS ON ORDER UNDER BINDING CONTRACTS AT A VALUE WRITTEN DOWN FOR TAX PURPOSES LESS THAN THEIR ACTUAL VALUE .

LIKewise , IN THE CIRCUMSTANCES RELATED ABOVE , ARTICLE 5 (1) (A) OF DIRECTIVE NO 69/335 PRECLUDES A DEDUCTION ' S BEING ALLOWED FOR THE AMOUNT OF ANY POTENTIAL TAX WHICH THE NEWLY-FORMED COMPANY WOULD HAVE TO PAY IF , DURING THE YEAR IN WHICH IT WAS FORMED , IT REALIZED A PROFIT FROM THE RESERVE RESULTING FROM THE WRITING-DOWN OF THE CONTRIBUTIONS FOR TAX PURPOSES AND THEREBY OBTAINED A CORRESPONDING AMOUNT OF ACTUAL INCOME LIABLE TO TAX AS SUCH .