

have, local authorities may eschew tax or regulatory measures which in the view of the authorities would benefit the community as a whole, but for the possibility of driving away investment.

National governments have not yet engaged in a scramble to adjust their policies to be most attractive to foreign-owned business firms; on the contrary, a number of countries are concerned about the amount of foreign control already present. Differences in taxation and other measures relating to business activity do, however, affect international corporate location, and some beginnings of national competition for this location can be seen. Luxembourg liberalized its depreciation allowances and offered an investment allowance in 1962 in what appeared to be a deliberate move to attract foreign investment for operations throughout the European Common Market. Belgium and the Swiss cantons have also adopted tax and other features designed to attract foreign enterprise.³⁰

POLICY COMPETITION WITHIN THE UNITED STATES

This intrusion of outside considerations on "domestic" policies is a familiar phenomenon to Americans, who can observe at close hand relationships among the States of the Union. The United States represents, by itself, a large and highly integrated trading economy. Under the Federal system, governmental entities with important responsibilities are often much smaller than the regional "economies" which they serve. Though nominally sovereign in many areas, the states are in fact closely circumscribed in what they can do, and they are sometimes compelled in self-defense to take repugnant measures. Corporate regulation and tax policy both illustrate this process.

State corporation laws were originally the most popular and effective way of regulating incorporated businesses.³¹ In 1886, for example, Massachusetts passed new corporation statutes designed to prevent fraud or mismanagement by firms incorporated in the state. The directors and officers of Massachusetts corporations were made personally liable to creditors if the firms' debts exceeded their capital. The valuation of new stock had to be approved by the State Commissioner of Corporations. So long as similar laws prevailed in other industrial states, Massachusetts corporations had little to gain from incorporating elsewhere.

The system of corporate regulation through state law became unstable during the following two decades. First New Jersey, then Delaware began to exploit the provisions in the U.S. Constitution prohibiting impediments to interstate commerce and requiring that contracts made in any state be honored in any other state. New Jersey liberalized its laws of incorporation in 1896 by allowing new stock valuation to be entirely at the discretion of the corporation directors; it had earlier permitted debts to exceed capitalization. Both provisions laid the basis for the Standard Oil Company and other giant firms incorporated in New Jersey. The state benefitted from a modest tax on the value of corporate capital.

New Jersey's bid for corporations undermined the regulatory corporation laws of other states. Massachusetts corporations, for example, could circumvent regulation simply by incorporating in New Jersey, and a strict Massachusetts law would fail in its purpose. In 1902 a special Massachusetts commission reported "a general practice" of organizing corporations outside Massachusetts to do business within the state. The commission drafted a new, permissive corporation law which was enacted virtually without change a year later. The restrictions of 1886 were largely eliminated.

In a series of laws starting in the first decade of the twentieth century Delaware relaxed greatly its restrictions on incorporation, and in the end maintained virtually no requirements regarding the capital structure of a corporation registered in the state. Directors were not closely bound by their charters in issuing new stock. Illinois had tried to police the capital structure of corporations, but in 1933 it virtually adopted the latest Delaware revisions of 1927 and 1929, illustrating a kind of Gresham's Law in corporate regulation. In the same year, however, the Federal government undertook much greater responsibility for regulating public stock issues under the Securities and Exchange Act.

State taxation provides a second illustration of the severe constraints imposed on the states by close competition with their neighbors. Wide taxing powers are

³⁰ Furthermore, the relaxation in France's tough policy on foreign investment may have been dictated in large measure by the prospect of losing investment to other members of the EEC which would nonetheless have free access to the French market.

³¹ This history is taken largely from Dodd, *Statutory Developments in Business Corporation Law, 1886-1936*, HARV. L. REV., 27, 32-35 (1937).