

Case No.: UNDT/GVA/2010/104

Judgment No.: UNDT/2011/144

Date: 17 August 2011

English

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- b. Section 2.3 of the Under-Secretary-General for Management's

- f. Publication 514 of the United States Internal Revenue Service

15. The relevant part of staff regulation 3.3 in force at the time of the events provided as follows:

(a) An assessment at the rates and under the conditions specified below shall be applied to the salaries and such other emoluments of staff members as are computed on the basis of salary ... provided that the Secretary-General may, where he or she deems it advisable, exempt from the assessment the salaries and emoluments of staff members engaged at locality rates.

...

(f) Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him or her by the United Nations, the Secretary-General is authorized to refund to him or her the amount of staff assessment collected from him or her provided that:

(i) The amount of such refund shall in no case exceed the amount of his or her income taxes paid and payable in respect of his or her United Nations income;

(ii) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess;

(iii) Payments made in accordance with the provisions of the present regulation shall be charged to the Tax Equalization Fund...

16. In taking the contested decision, the Income Tax Unit considered that the Applicant had paid no tax to the United States Department of the Treasury on the income she had received HHvYxlT f CH,5yioHYYbLhrçzv9bx9YLetrvpzbyZyL rçHwbvw9LarçyvxHxpw



18. It is for the Tribunal to consider whether the utilization of a tax credit by a United States taxpayer constitutes a payment method to settle tax obligations arising in respect of income received abroad. Publication 514 of the United States Internal Revenue Service, concerning foreign tax credits granted to individuals, clearly shows that these credits are a payment method like others and that the Applicant must therefore be regarded both as having been subject to United States taxation on income received from the Organization, and as having discharged that tax obligation. Thus, the reason given by the Income Tax Unit for refusing to make the requested refund, namely the assertion that the Applicant had not paid tax to the United States, is incorrect.

19. In defence of the decision, it is maintained that the texts cited below require staff members of the Organization to minimize the national tax they pay by using all applicable deductions and exemptions “in order to minimize the burden on the Tax Equalization Fund”. The Respondent further maintains that foreign tax credits are explicitly mentioned among the said deductions.

20. In taking the contested decision, the Administration relied in particular on the above-mentioned staff regulation 3.3(f)(i) and on administrative instruction ST/AI/1998/1 of 28 January 1998, section 2.3 of which specifies that:

A staff member claiming reimbursement is required to make maximum use of all exemptions, adjustments to income and deductions in order to minimize his or her tax liability.

21. It further relies on paragraphs 11 and 27 of ST/IC/2010/10 which, respectively, provide as follows:

11. In order to minimize the burden on the Tax Equalization Fund, of which the Secretary-General is the trustee, and on voluntary funds from which tax reimbursements may be made, a staff member claiming reimbursement is required to make maximum use of all adjustments to income, deductions and exemptions in order to minimize his or her tax liability. In claiming a reimbursement from the United Nations in form F.65, a staff member, inter alia, certifies and agrees that he or she will minimize his or her taxes ...

27. ... Additional deductions such as moving expenses may also reduce the United Nations income used in the calculation noted in



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35. Consequently, the Tribunal orders the Secretary-General to refund to the Applicant the amount of staff assessment deducted from her salaries and other emoluments for 2009. This amount shall be calculated by the United Nations Income Tax Unit on the basis established by this Judgment, in other words, without taking into consideration the disputed tax credit.

36. The Applicant has requested the Tribunal to order the refund of her staff assessment deductions in respect of 2006, 2007 and 2008. However, it is beyond dispute that the decisions rejecting the said refund have become final because they were not contested within the imposed deadlines, and the Tribunal is therefore obliged to reject this request.

37. While the Applicant requests the Tribunal to issue an order requiring the Administration to modify its future practice with regard to tax credits, it is not for the Tribunal to rule on potential future disputes.

38. The Applicant further requests compensation for the damages resulting from the delay in resolving the dispute. However, the compensation for such delay is sufficiently covered by the interest awarded on amounts paid late and it cannot seriously be claimed that the Applicant suffered moral damage as a result of the contested decision.

39. Lastly, while the Applicant claims reimbursement of the costs that she has

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