



Facts and procedure

7. Ms. Johnson is a national of the United States of America. From December 2002 to February 2006, she worked for a consulting firm in Switzerland. Since, at the time, she paid taxes to the Swiss authorities and the United States authorities, she accrued foreign tax credits under the Internal Revenue Service Code.

8. In June 2006, Ms. Johnson was recruited by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva as a Senior Treasury Office at the P-4 level.

9. In April 2007 and March 2008, Ms. Johnson submitted her United States tax returns (1040 form) for 2006 and 2007, respectively, to the Income Tax Unit in the Secretariat, which informed her that, as she did not owe taxes to the Internal Revenue Service on salaries and emoluments paid by the United Nations for those two years, she was not entitled to claim reimbursement from the Organization. On 10 September 2008, the Unit confirmed its decision and informed Ms. Johnson that she could appeal it before the former United Nations Administrative Tribunal, which she did on 2 November 2008. Her case was subsequently transferred to the new internal justice system. On 14 October 2009, the Dispute Tribunal ruled that Ms. Johnson's application was not receivable because it was time-barred.

10. In March 2010, Ms. Johnson submitted her 1040 form for the year 2009 to the Income Tax Unit. On lines 44 (Taxes) and 47 (foreign tax credit), she had entered \$15,239.

11. On 7 April 2010, the Unit wrote to Ms. Johnson, asking her to correct some errors in the 1040 form for 2009, which she did on 16 May 2010.

12. Ms. Johnson requested reimbursement from the Tax Unit on the grounds that the utilization of

liability is zero, as in this case, the Secretary-General is not authorized to reimburse staff members from the Tax Equalization Fund.

18. The Secretary-General affirms that under the United States Tax Code itself, foreign tax credits are non-refundable. Articles 904 and 26(b) provide that such credits may not be refunded to the taxpayer if they exceed the amount of the tax liability. They can only be deferred and utilized in subsequent taxable years. This non-refundable credit is not treated as a payment. In that connection, the Secretary-General points out that the Income Tax Unit does not require staff members to reduce their tax liability through credits that the Internal Revenue Service classifies as refundable.

19. The Secretary-General further states that the finding of the Dispute Tribunal concerning Ms. Johnson's disadvantageous situation after she was instructed to apply her foreign tax credits toward discharging her tax obligation in respect of her United Nations salaries and emoluments was based on a misunderstanding of how the United Nations tax reimbursement system works. Ms. Johnson is in the same financial situation as other staff members who do not pay income tax or who have no tax credits. The Secretary-General notes that the UNDT did not exam

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40. Foreign tax credits accrued by Ms. Johnson in connection with income she earned prior to her entry on duty at the United Nations cannot be regarded as “exemptions, adjustments to income and deductions” in respect of income earned in 2009 but rather, as indicated above, constitute a payment method for the purposes of relieving the effects of double taxation that she would have incurred.

41. We do not see in this administrative instruction any substantive provision on the effects of the utilization of foreign tax credits on the staff assessment system, and *a fortiori* any provisions that would counter the above statements.

42. As for procedure, section 3 of the administrative instruction provides that:

Procedures that set out the requirements incumbent on staff members making applications for tax reimbursement or advances to pay estimated taxes are announced on a yearly basis by the Controller in an information circular.

43. Information circular ST/IC/2010/10 concerning the payment of income tax in 2009, applicable at the time of the facts, states in paragraph 27 on the computation of reimbursement:

All tax credits available on the actual tax returns with United Nations income, such as (...) foreign tax credits (...) are also applied to reduce the total income tax liability without United Nations income (...)

44. As seen above, administrative instruction ST/AI/1998/1 refers to the information circular only with respect to procedure. It does not authorize the Controller to add substantive provisions to the administrative instruction or, *a fortiori*, to staff regulation 3.3.

45. In any case, moreover, to include foreign tax credits would not only contravene the principle of equality of treatment among staff members if staff members from the United States were deprived of the benefit of reimbursement for using such tax credits not associated with income earned at the United Nations to relieve the effects of double taxation, but also the principle of equity among Member States irrespective of whether they choose to grant, or not to grant, an income tax exemption to their nationals, as these two principles form the basis for the staff assessment system in respect of taxation.

46. The Appellant further submits that, in practice, staff members are never personally reimbursed for staff assessments, as reimbursement is made in the form of a cheque from the Organization remitted to the United States Treasury and, consequently, the Organization could not pay anything at all directly to a staff member whose tax liability, like Ms. Johnson’s, was zero.

