

ADMINISTRATIVE INSTRUCTION NO. 40

To: Canadian Members of the Staff of the United Nations

Subject: LIABILITY AND REIMBURSEMENT FOR CANADIAN INCOME TAX

I. PURPOSE AND APPLICABILITY

1. The purpose of this document is to explain the present situation with regard to Canadian income tax liability on salaries and allowances paid by the United Nations; to quote the Secretary-General's authority for tax reimbursement to staff members; to prescribe the terms of appointment under which they may be entitled to reimbursement of Canadian income tax levied on their United Nations earnings; and to outline the administrative arrangements, rules, and procedure therefor.

2. The information furnished as to the applicability of Canadian income tax laws and regulations, while believed to be generally reliable, is necessarily limited and unofficial. The tax reimbursement provisions are subject to such changes as may be made necessary by decisions of the General Assembly or by changes in the Canadian income tax laws and regulations or in the interpretation thereof.

II. INFORMATION ABOUT CANADIAN INCOME TAX LIABILITY

3. Extension of time for filing 1947 returns. The Secretary-General received a telegram on 29 April 1948 from the Permanent Delegate of Canada, stating in part: "IT WAS ANNOUNCED IN THE HOUSE OF COMMONS ON APRIL 28TH BY THE MINISTER OF NATIONAL REVENUE THAT THE DATE OF RETURN OF INDIVIDUAL INCOME TAX FORMS FOR 1947 IS EXTENDED FROM APRIL 30TH 1948 TO MAY 31 1948".

4. Reservation to Convention. Canada has not yet provided the tax exemption requested for United Nations salaries and emoluments. Recently, on 22 January 1948, the instrument of accession of the Government of Canada to the Convention on the Privileges and Immunities of the United Nations was deposited with the Secretariat, but with the reservation "that the exemption from taxes imposed by any law in Canada on salaries and emoluments shall not extend to a Canadian citizen residing or ordinarily resident in Canada". So limited, the exemption provided in Section 18(b) of the Convention would appear to affect only residents of Canada who are not citizens of Canada and who are not paid at hourly rates. Moreover, it would appear to be effective only as from 22 January 1948. Official clarification of both points has been requested.

5. Taxation according to residence. Except as noted in the preceding paragraph, under the Income War Tax Act a staff member normally is subject to, or exempt from, Canadian income tax on his United Nations earnings according to his residence status for the year, as follows:

(a) Whole-Year Non-Resident (one who resided or was ordinarily resident outside of Canada during the entire taxation year) is not liable to taxation on income received from the United Nations during such year.

/(b) Whole-Year

(b) Whole-Year Resident (one who resided or was ordinarily resident in Canada during the entire taxation year) is fully taxable on income received from the United Nations during such year, even though earned outside of Canada.

(c) Part-Year Resident (one who ceased being, or who became, resident or ordinarily resident in Canada during the taxation year, so that he was not a whole-year resident)

(i) is required to report in his income tax return all income subject to taxation, including income received from the United Nations wherever earned; but

(ii) "may deduct from the tax otherwise payable by him....a portion of the said tax which bears the same relation to the whole tax as the period in the taxation year during which he neither resided nor was ordinarily resident in Canada bears to the whole taxation year". (Quotation from Section 7A of the Income War Tax Act as amended by the Statutes of 1946)

6. Residence a question of fact. It appears that the act of surrendering residence in Canada must be accompanied by a complete severance of all physical ties with Canada. If a taxpayer maintains a house ready for occupancy in Canada or maintains his wife and family in Canada, apparently he is presumed to be "resident or ordinarily resident in Canada". It has been held that a person who does not actually live in Canada nonetheless may be regarded as a resident if he visits Canada for a portion of the year as part of his regular habit of life or if he maintains a place of abode there which he does in fact visit during the year. A general answer cannot be given to all the questions of residence or non-residence.

7. Taxation of non-resident sojourners, employees, & other non-residents. As an alternative to residence as a condition of liability to tax, the Income War Tax Act provides that a person who sojourns or visits in Canada for a period or periods of 183 days during the year or who is carrying on business or is employed in Canada at any time during the year is taxable on his whole income for the year. For this purpose, to be "employed in Canada", the employment must be regular and continuous, requiring the personal services of the employee and requiring him to perform some part of his services in Canada, and his remuneration must be derived from sources in Canada; but it seems unlikely under present conditions that remuneration from the United Nations Headquarters would be considered as "derived from sources in Canada". Also taxable under the Act is a non-resident who derives income for services rendered in Canada at any time in the year, otherwise than in the course of regular or continuous employment, for any person resident or carrying on business in Canada; but it seems unlikely under present conditions that the United Nations would be considered as "carrying on business in Canada".

8. Reporting taxable income received from the United Nations.

(a) Reimbursements for vouchered expenses are to be excluded from taxable income reported in the Canadian return forms.

(b) That part of a termination distribution from the Provident or Pension Fund which represents the staff member's own contributions to the Fund also should be excluded from taxable income, except insofar as the staff member may have claimed and been allowed a deduction from taxable income for his contributions to such Fund.

/(c) All unvouchered

(c) All unvouchered allowances and special grants as well as basic salary and other payments of compensation should be included as taxable income, except to the extent that they may be specifically exempted under the Canadian income tax regulations. In this connection, the Deputy Minister of National Revenue has been requested to extend to Canadian residents employed by the United Nations and Specialized Agencies in the United States the principle of exempting a part of their comparatively higher salaries and allowances because of the comparatively higher living costs in the United States. A decision is expected to be announced during May 1948. The principle has already been established for U.N.R.R.A. employees (Memorandum No. 96 (1946-47) to Inspectors of Income Tax File "U", issued by the Deputy Minister (Taxation), 17 March 1947).

III. TAX REIMBURSEMENT PROVISIONS

9. Authority for income tax reimbursement. The General Assembly resolved, on 13 February 1946, that: "Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization;" and, on 20 November 1947: "That, in order to achieve equality among staff members, the Secretary-General is authorized to reimburse staff members for national taxes paid on salaries and allowances received from the United Nations during 1946, 1947, and 1948".

10. Entitlement to Canadian income tax reimbursement. Canadian nationals are entitled to reimbursement of Canadian income tax on salaries and allowances received from the United Nations only as annually authorized by the General Assembly and only under terms of appointment either -

(a) which contain the tax refund provision, "Any taxation levied on your salary by your national government will be refunded to you by the United Nations", or

(b) which were signed after 4 November 1947 and provide a basic annual salary at a net-of-tax level (i.e., not described as "gross").

11. Administrative arrangements, rules, and procedure. Responsibility and authority for reimbursement of Canadian income tax levied on United Nations salaries and allowances have been assigned to the Bureau of the Comptroller, subject to the following rules and procedure:

(a) Limitations on amount of tax refund.

(i) Full-year employment. In the case of a staff member employed throughout the entire taxation year under terms of appointment entitling him to tax reimbursement, the tax refund may not exceed the minimum tax that would be payable on his United Nations earnings only, computed without regard to any other income.

(ii) Part-year employment. In the case of a staff member so employed for less than the entire taxation year, the tax refund may not exceed either (A) or (B), whichever is the lesser: (A) a proportionate part of the minimum tax that would be payable on the basis of his United Nations earnings annualized; or (B) a proportion of his total tax and surtax determined by the formula:

U.N. Earnings Subject to Tax Refund
Taxable Income from All Sources

x Total Tax & Surtax

/(iii) Part-year

- (iii) Part-year residence. In the case of a part-year resident (see paragraph 5 (c) hereof) the tax deduction allowed for the non-resident period of service with the United Nations will be applied against the amount of tax refund otherwise payable.
- (iv) Example. A Canadian citizen earned \$1,000 while resident in Canada for one-third of the year 1947 and \$3,000 from the United Nations while non-resident for two-thirds of the year. With single exemption, if there were no other allowable deductions from income, the tax would be \$757.50 per schedule, less \$505 non-resident tax deduction (2/3 of \$757.50), leaving \$252.50 total tax liability. Under limitation (ii) (B) above, the tax refund would be \$568.13 (3/4 of the \$757.50 tax on \$4,000 taxable income), being lower than (A) \$591.67 (2/3 of the \$887.50 tax computed on an annualized U.N. income of \$4,500), less the \$505 non-resident tax deduction, or \$63.13. This would leave \$189.37 of the total tax liability (\$252.50 - \$63.13) to be borne by the staff member without reimbursement, or one-fourth of the \$757.50 tax on \$4,000 taxable income, the same as though he had been a whole-year resident. The \$189.37 probably would be more than the amount of tax deducted and paid at source. It will be clear from this example that tax reimbursement is not the equivalent of tax exemption where the taxpayer has income not subject to tax refund.

(b) Procedure for obtaining tax reimbursement. Staff members or former staff members entitled to reimbursement of Canadian income tax on salaries and allowances received from the United Nations should forward to the Tax Division, Bureau of the Comptroller:

- (i) Two properly completed and signed copies of UN Form F/122, "Request for Determination and Settlement of Canadian Income Tax Refund for the Year 194_"; together with
- (ii) A true, correct, and complete, signed copy of the final Canadian income tax return for the year, and, if any change has been made upon audit thereof, the latest "Dominion of Canada Income Tax Notice of Assessment" for the year.

(c) Responsibilities of Taxpayers. Canadian taxpayers normally will be expected to file their returns and complete their payments of taxes before requesting settlement of their tax refunds. These are personal obligations. Those who cannot complete their payments of taxes without financial assistance from the United Nations may request that their tax refunds be given to them by cheque or draft payable to the order of the Receiver General of Canada. (This is done by marking the first box under paragraph 6 of UN Form F/122.) In the event of delay, they should be prepared to file their returns on time anyhow, in order to avoid the penalty for late filing, and to pay any interest charged on delinquent tax payments. Interest charges will not be reimbursed unless, in the opinion of the Comptroller, they were incurred for the benefit of the United Nations.

By direction of the Secretary-General

(signed) Byron Price
BYRON PRICE

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