

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/C.5/657
21 June 1956

ORIGINAL: ENGLISH

FIFTH COMMITTEE
Eleventh Session

BUDGET ESTIMATES FOR THE FINANCIAL YEAR 1957

Establishment of the Tax Equalization Fund

Problem of Local and State Income Taxes

Report of the Secretary-General

1. The Secretary-General submitted to the tenth session of the General Assembly proposals^{1/} whereby the revenue derived from Staff Assessment would be credited to a Tax Equalization Fund, which would be utilized to give relief from double taxation to those members of the staff whose salaries were also subjected to national income taxation. The arrangements provided that the credits in the Tax Equalization Fund would be recorded in sub-accounts for each Member State (in the proportion of its annual contributions) and that payments to staff made by way of double taxation relief would be charged to the sub-account of the taxing Member State: the cost of giving the relief would thus fall not on the general budget of the Organization (as hitherto had been the case) but on the credit in the Tax Equalization Fund of the State which levied the national income tax.
2. By resolution 973 (X), the General Assembly adopted the proposal with an amendment, the effect of which amendment was to exclude for the time being "any local or state income taxes" from the arrangements. This amendment was proposed by the representative of the United States of America, who stated that his Government could not then agree that the credit in its sub-account of the Tax Equalization Fund should be used for the reimbursement of income taxes levied, for example, by the State of New York. The representative of the Secretary-General pointed out that the amendment would have no practical financial effect in 1956, since 1956 state taxes

^{1/} A/C.5/643.

would not in any event be reimbursed before 1957. If, however, this provision was not changed at the eleventh session of the General Assembly then the cost of giving relief for state taxes, estimated at \$160,000 for 1956, would fall on the budget of the Organization and not on the Tax Equalization Fund. The representative of the United States had explained that the adoption of his amendment would give the Secretary-General time to study the matter further, as had been suggested by the Advisory Committee.^{2/}

3. The Advisory Committee had assumed that the Secretary-General, in drafting a tax equalization plan covering "national" income taxes, had omitted specific reference to taxes levied by a provincial authority or constituent state. It therefore suggested that the Secretary-General should study this matter further and report to the General Assembly at its eleventh session on measures designed to achieve a solution of the problem.^{3/} The representative of the Secretary-General pointed out to the Fifth Committee that the Secretary-General's proposal had in fact, contemplated reimbursement of state income taxes in accordance with past practice and with the interpretation confirmed by the General Assembly in 1949. The Secretary-General was nevertheless aware, he explained, that the question of state income taxes raises certain issues of principle and policy that might merit further study. The Secretary-General's concern was to find a solution which would, to the extent possible, meet existing difficulties while, at the same time, maintain the principles upon which the General Assembly had already declared itself. The Secretary-General would undertake to make definitive proposals on the matter at the eleventh session of the General Assembly in the hope that a final and complete solution consonant with the interest of all Member States might be reached.^{4/}

4. The Secretary-General accordingly submits the present report for the consideration of the General Assembly.

^{2/} Fifth Committee Summary Record A/C.5/SR.521, paragraphs 38 and 39.

^{3/} A/3035, paragraph 8.

^{4/} Fifth Committee Summary Record A/C.5/SR.521, para. 40; Report of the Fifth Committee, A/3104, para. 9.

I

THE PROBLEM OF EQUALITY AMONG STAFF MEMBERS

5. Turning first to the policies affecting staff, the Secretary-General believes that even if the tax equalization procedure is not extended to state taxes, reimbursement of such taxes should continue. The report of the Fifth Committee on the Use of Income Derived from the Staff Assessment Plan states that:

"Should the United States amendment be approved, it should in the Secretary-General's view be understood that its acceptance would not modify in any way the Assembly's prior decision that such taxes were reimbursable and that, in the absence of any decision to the contrary, such reimbursement would become a charge on the regular budget instead of a charge against the tax equalization fund."
(A/3104, paragraph 9).

6. As the representative of the Secretary-General emphasized to the Fifth Committee, the Organization has always refunded such taxes in observance of the principle of equality of treatment of staff members, and the Assembly has formally confirmed this principle in a decision which is still valid.^{5/} That decision, in fact, had been based upon a review of the reimbursement policy by the Secretary-General, the Appeals Board, the Advisory Committee and the Fifth Committee. It was given by way of an authoritative interpretation by the General Assembly of its Resolution 13 (I) of 13 February 1946 on the ground that the Secretariat could not "without the most serious and unfortunate consequences on staff morale" be divided into those who were tax-free and those who were not, that State taxes were substantial in amount so that the resultant inequality if they were not reimbursed would be of serious proportions and, accordingly, that reimbursement of State taxes was essential to ensure equality of treatment among members of the Secretariat in conformity with the basic requirements of Resolution 13 (I).^{6/}

^{5/} Fifth Committee Summary Record A/C.5/SR.518, paragraph 59.

^{6/} See documents A/C.5/329, paragraph 9, and Annex E; Fifth Committee Summary Record A/C.5/SR.213, paragraph 47, and A/C.5/SR.214, paragraphs 2, 3 and 4; A/1232, paragraphs 24 and 26.

7. If any contrary proposal were now to be adopted it would conflict with this fundamental principle and would create personnel difficulties by effecting an appreciable salary reduction for one nationality within the Secretariat. It might also raise some legal difficulty concerning certain contracts since a provision for the refund of taxes levied on the United Nations salaries was provided in appointments made prior to November 1947. The problem would arise from the fact that such a contrary proposal would not involve an alteration in the terms of all contracts by amendment to the Staff Regulations, as contemplated in the contracts, but only of the terms of the contracts of a limited group among the staff. Such action might be found to be discriminatory.

II

CHOICE OF ACTION BEFORE THE GENERAL ASSEMBLY

8. If it is accepted, as the Secretary-General believes it should be, that the principle of equality among staff should be maintained, the basic question before the General Assembly should therefore be one of practical alternatives. It is a question whether, in the light of all the elements before it, the General Assembly thinks it convenient to have all Members continue meeting the cost of reimbursing state taxes, or prefers to have the Government of the Member State, whose political sub-division levies the tax, cover the consequent expense by means of the procedure available under the Tax Equalization Fund. As a practical matter of internal financial allocation either alternative is open to the General Assembly, and is not precluded by any principles of international or constitutional law.

9. In this connexion, it is understood that the objection made by the representative of the United States in the Fifth Committee during the tenth session of the General Assembly (see paragraph 2 supra) was not based on the constitutional relation between the federal government and its political sub-divisions. No political sub-division of any Member is obliged by the Tax Equalization Fund to conform to any treaty or other international arrangement or to any federal requirement thereunder, nor to adopt any state legislation.

10. In the same way, it should be borne in mind that there is no question of requiring a Member State with a federal political structure to pay over monies to the government of its political sub-division. It would not even seem quite correct to say that the Federal Government of any Member would be assuming "responsibility for the refund" of taxes paid to the authorities of a constituent state.^{7/} The question is whether these particular expenses of the United Nations are to be met as a charge against the regular budget, against the Tax Equalization Fund or by some other method. If the Assembly selects the Tax Equalization Fund, the Secretary-General believes that the choice should raise no legal objection on the part of a federal-type Member State merely because that Member would be meeting through the Fund the full cost of the taxes levied on its citizens in the Secretariat by its constituent state. It is true that federal funds would thus indirectly relate to payments which individuals had already made to the constituent state, but there is nothing new in this situation. In principle it is indistinguishable from the one which has already existed for a number of years. The United States Government has already met approximately one-third of the cost of reimbursing state taxes; in a formal or legal sense any distinction resulting from the use of the Tax Equalization Fund, covering the full cost, would therefore seem unreal.

11. Thus, as stated above, the basic question before the General Assembly is the practical one whether the additional cost incurred by the United Nations in reimbursing taxes imposed upon certain members of its staff by the political sub-division of a Member State should be borne proportionately by all Member States, or on the contrary should be borne by the Member States whose political sub-division levies the tax.

12. If the General Assembly should decide that the cost should be borne by all Member States, it would have a secondary problem of deciding the budgetary method which should be used. The cost of reimbursement might be charged to the regular budget as at present or it might be made a first charge against the proceeds of the staff assessment before any credits to the Tax Equalization Fund. The second alternative might be more logical in view of the purposes of the staff assessment.

^{7/} Compare Fifth Committee Summary Record 518, paragraph 62.

13. If the General Assembly should decide that the cost should be borne by the Member States whose political sub-division levies the tax, this can be readily accomplished through the Tax Equalization Fund. The structure of the Fund is such that it can cover state taxes with a minimum of difficulty to the Member States affected. The taxes paid by staff to a political sub-division of a Member State would be credited against their staff assessment and an equal amount charged against the sub-account of the Member State concerned. This would result in an equivalent reduction in the set-off against the contribution to the Organization due from that Member State in accordance with the Financial Regulations. It would thus once more be clear that, although the state-level taxes would have an automatic reflection on the Member's contribution to the expenses of the Organization, the constitutional or fiscal relations between the national and state governments of the Member concerned would remain unaffected. The federal government would not actually be "refunding" a state tax.

14. Should the General Assembly decide to continue for the future to differentiate between federal and component state taxes on United Nations income, the Secretary-General believes that it should do so purely on the basis of convenience and not on the grounds of the supposed inapplicability of the Fund to taxes levied by political sub-divisions. It could prove damaging to the work of the Organization in many fields not related to the taxation of staff if any tendency should develop on the part of the General Assembly to assume, as some delegations may already have done,^{8/} that the same relations, and the same powers and duties to negotiate, exist between the United Nations and the State of New York, for example, as exist between the United Nations and the United States.

III

PROBLEM OF EQUITY AMONG MEMBER STATES

15. The Tax Equalization Fund was established because the policy of reimbursing income taxes in general had re-established the equality among staff members considered essential by the General Assembly but had failed to achieve the other important principle of equity among Member States also emphasized by the General Assembly.^{9/} The term equity as used by the General Assembly in this context may

^{8/} Compare Fifth Committee Summary Record 521, paragraph 43.

^{9/} See resolutions 13 (I), 13 February 1946; 78 (I), 7 December 1946; 160 (II), 20 November 1947; 239 C (III), 18 November 1948.

be understood to mean the placing of those Member States which do levy taxes on the official United Nations salaries of their nationals on a parity with those Member States which do not levy such taxes. The Tax Equalization Fund was therefore conceived as a means of restoring equity, in this sense, as between those Member States granting and those not granting relief from taxation on the official salaries of their nationals.^{10/} To the extent that reimbursement must continue to be made of taxes paid to political sub-divisions of Member States having multiple taxing authorities, the Tax Equalization Fund fails to restore complete equity, in the sense referred to above, as against Members having a single taxing authority or otherwise assuring the exemption of all taxes on official income.

16. Furthermore, the Tax Equalization Fund was intended to have effect with respect to those Member States which had not yet acceded to the Convention on the Privileges and Immunities of the United Nations or taken alternative tax exemption measures.^{11/} It would seem, therefore, that any system for re-establishing equity as among Member States in this field, whether in the form of individual measures taken by Member States or of a tax equalization plan adopted by the General Assembly, should bring the contributions burden of Member States not granting tax exemption into line with that placed on Members applying the Convention.

17. In this connexion, the Secretary-General feels that it is significant that Section 18 (b), of the Convention provides that the officials shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations". All taxes on such income are covered by the exemption. There is no qualifying language whatsoever nor indeed would it have been possible to limit the exemption without undoing the purpose of the Convention; both Member States and staff members would otherwise be treated inequitably. This seems clear if consideration is given to the fact that the political level assessing income taxes can vary from Member State to Member State. In the United States the heaviest burden of income taxation happens to be incurred at the federal level, with the States assessing lower income taxes or none at all. But in other Member States it can be the reverse. In fact,

^{10/} See the Report of the Secretary-General outlining the plan, document A/C.5/584, paragraph 9.

^{11/} See resolution 893 (IX) and compare resolution 160 (II).

there has never been any doubt but that Section 18 (b) applies to any taxes on income, whether assessed by a central government or by a political sub-division, or whether in a metropolitan or an overseas territory. It is interesting to note that in the same session in which it adopted the Convention, the General Assembly approved an almost identically drafted Arrangement with Switzerland on the privileges and immunities of the United Nations.^{12/} Section 15 (b), in the same language as Section 18 (b) of the Convention, exempts the salaries of United Nations officials from taxation, although in Switzerland the normal taxing level was known to be cantonal or communal and not federal. Substantial anomalies could therefore result, at least in principle, if the applicability of the Tax Equalization Fund should not be extended to cover local or state-level income taxes.

IV

SUMMARY AND RECOMMENDATIONS OF THE SECRETARY-GENERAL

18. The foregoing parts of this report may be summarized as follows:
- (a) Existing principles of equality among staff members established by the General Assembly require that staff whose official salaries are subjected to taxation by political sub-divisions of Members should have either a credit against staff assessment or a reimbursement of tax.
 - (b) Basically, the General Assembly is confronted with a purely practical decision whether to continue the present system under which the costs of reimbursing New York State taxes are borne by all Members of the United Nations or to bring state and local taxes into the Tax Equalization Fund. It is not a question of constitutional federal-state relations, but only of alternative methods of financing certain costs of the Organization.
 - (c) It would be consistent with the principle of equity among Members of the United Nations, in the sense of the term equity as referred to in paragraph 15, to bring state taxes into the Fund. From the standpoint of the Organization they are not different in legal character, or in effect upon the staff, from federal taxes. The Fund is a method of equalizing the burden resulting from non-application of the Convention on the Privileges and Immunities of the United Nations, which unquestionably exempts both national and provincial taxes

^{12/} Resolution 98 (I); text of United Nations Treaty Series, Volume 1, page 163.

on official income. The Fund as already devised is well adapted to cover state taxes with a minimum of difficulty for a federal government.

19. The Secretary-General recognizes that it is for the General Assembly to decide how and to what extent principle of equity among Member States is to be applied. He believes, however, that the circumstances described above would support the continued granting of double taxation relief in respect of local or state income taxes, and the inclusion of the cost in the Tax Equalization Fund. In that way the two principles of equality among staff and equity among Member States can be observed. This end may be achieved by deleting from paragraph 4 of the arrangements for the Tax Equalization Fund as adopted in resolution 973 (X) the phrase "excluding any local or state income taxes". Thus, as pointed out in paragraph 13, the taxes paid by staff members to a political sub-division of a Member State would be credited against their staff assessment and an equal amount charged against the sub-account of the Member State concerned.

20. Should, however, the General Assembly, in view of possible considerations outside the scope of this report, decide to differentiate between federal and component state taxes on United Nations income, the Assembly would also have to decide whether the costs should continue to be charged against the regular budget or should be handled in some other way such as, for example, being made a first charge against the proceeds of the staff assessment.
