

You and your money

We are all taxpayers – latest developments

See also the previous articles in the Letter, Nrs 36 and 37

Following the essential information provided in the relevant articles in Nos. 36 and 37 of the *Letter to Former Officials*, the Working Group on Fiscal Matters of the Staff Union Committee and the Section of Former Officials, recommended that retired ILO officials request from the Human Resources Development Department (the Personnel Office) an attestation certifying that, while in service, ILO officials paid in advance taxes on the part of their pensions corresponding to their own contributions. This attestation is intended to be submitted, together with retired officials' national income tax declarations, to the taxing authorities, normally of their place of residence.

To date, some 950 requests for the attestation have been received by the Secretariat of the F.O. Section of the Staff Union. These were transmitted on 20 September to the Director of the Human Resources Development Department together with an appropriate explanatory note.

We fully expect that this initiative will be favourably met.

Mario Tavelli
For the Working Group on Fiscal Matters

A few clarifications regarding the forms and modalities of double taxation of our pensions

*By the Working Group on Fiscal Matters
of the Committee of the Staff Union and the Section of Former Officials*

1. Taxation at both the international and national levels. This is a classic case (two "states" taxing the same income) except that in our case it is, on the one hand, a community of States (the ILO and the common system of the United Nations) which exercises its sovereign taxing authority on the common international funds contributed by its Members while, on the other hand, the State member subjects the same funds to its sovereign taxing authority on its territory, in addition to sharing in the collective taxation. It must be recalled that the ILO taxes our contributions to the UNJSPF (UN Joint Staff Pension Fund) - a part of our future pension - through the Staff Assessment

system (SA); and a Member State nevertheless taxes our pension in its entirety without taking account of this prior taxation.

Several confusing or incorrect notions seem to have contributed to such erroneous State action:

(a) The question of whether our pensions are indeed taxable at the international or national level - in the absence of an agreement to the contrary - has never been clarified.

(b) Contrary to the incorrect ideas which have become rather widespread since, the change in the base for calculation of the

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pension (from net to "gross") in 1961-65 has not rendered pensions taxable at the national level. This was officially noted by UN experts at that time:

". . . Where a pension was not actually taxed, the organization would retain the whole of the staff assessment on it, so that the official would not receive an unjustifiable benefit from the "grossing up". Where national tax was levied, the staff assessment on the pension would be refunded up to the amount of national tax actually paid, on the principle of "relief from double taxation"... (As to possible administrative complications) "it may even be that they could be eliminated if the various States could agree that they, rather than the United Nations, would grant the "relief from double taxation".⁷ (para. 93 and 95)

c) The introduction in 1981-83 of the "special index for pensioners" - a sort of "rump SA" - intended to supplement national taxes in place of a foreseen complete substitute for national taxes, only served to further confuse the situation.

2. International ("internal") Double Taxation owing to the special Index.

The Index is applied without taking into account the SA which was already paid when making our contributions. There is nothing objectionable as such in this method of levying taxes at the time contributions are made. If the SA on the pension itself applied only to that part of the pension financed by the untaxed contribution of the employer, there would be no international double taxation.

However, such is not the case. The special Index includes the part already subjected to the SA at the time of contributions in the

⁷ UN, General Assembly, Fifteenth Session, 1960-61, Report of the Pension Review Group, Doc. A/4427. There is a discrepancy between the original English text and the French translation of the end of quotation.

pension benefit that serves as a base to calculate a national SA for the purpose of reducing the initial pension (for P and higher grades) when national taxes are deemed "too low". Moreover, in its own way, the Index works so that there is a "cumul" of this equivalent of a supplementary tax burden (imposed in the name of this "reference SA") and national taxes. For example, suppose that a country reduces its tax on our pension to compensate for the SA already paid. In this case the risk that the pensioner will be considered, for purposes of the index, as not paying enough national tax is greater and with it the risk of pension reduction.

It is said that the Index only applies nowadays in few cases, but it should be noted that it has served to reduce the initial pension for many of our pensioners.

3. This double taxation - multiple and cumulative - calls for an overall and comprehensive solution since the usual piecemeal approach has only served to aggravate the situation. The International Civil Service Commission, duly seized of the question, should be able to put things in order as regards the SA as it has competence in this matter (Art. 10(d) of its Statute). But, double taxation owing to the imposition of national taxes results from a legal stalemate of a political nature: the taxation of our total remuneration, including the pension, at the international level is in conformity with the basic principles of the United Nations; but national taxation of our pensions is also legitimate in international law if the ILO does not protest, as this connotes acquiescence.

The problem is that, for ILO officials, it is labour law that should apply. In this juridical context, the absence of a formal decision (one way or the other) constitutes illegality which can lead to arbitrariness. The Staff Regulations are such that the

taxability of our remuneration and immunity therefrom (grant or withholding) form part of our conditions of employment. Article 1.7 foresees "arrangements made with governments by virtue [of Article 40 of the ILO Constitution]". But there is total confusion as to the existence of such "arrangements" in this respect.

The courts in France and Switzerland seized of the matter when, after decades of exoneration, the exoneration was discontinued, were unable to unearth accords or arrangements with the ILO which allowed the taxation of our pensions. And the Office of the ILO Legal Adviser has communicated that it has no trace or knowledge in this regard of an accord on the interpretation of the ILO Headquarters agreement. As for the ILO Administrative Tribunal, referring to Switzerland, it mentioned "decisions, reached long ago, not to contest the position of the Swiss Authorities..."⁸

These decisions have not been published, even though they affect a great number of officials⁹, and it has not been possible to gain access to them.¹⁰

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⁸ Judgment N° 2111, cons. 9: "...not to contest the position of the Swiss Authorities with regard to the legal status of the pensions ... and the issue of their tax liability".

⁹ According to art. VII.2 of the Statute of the Tribunal, the delay for a complaint to be receivable is computed as from the date of publication "in the case of a decision affecting a class of officials".

¹⁰ Judgment N° 2268, cons. 5: "The Tribunal is not competent to order the Director General to furnish details concerning decisions of the Governing Body...". This wording applies to all decisions of the Governing Body and it fails to say whether or not the "decisions not to contest..." were taken by this authority.

ILO
STAFF UNION



Section
of former
officials

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