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UNITED NATIONS JURIDICAL YEARBOOK

1978

Part One. Legal status of the United Nations and related intergovernmental organizations

Chapter I. Legislative texts concerning the legal status of the United Nations and related intergovernmental organizations



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Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

1. Botswana

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT

(Cap. 39:01)

- (a) DIPLOMATIC IMMUNITIES AND PRIVILEGES DESIGNATION OF ORGANIZATIONS AND CONFERMENT OF IMMUNITIES AND PRIVILEGES ORDER, 1978¹
(Published on 26th May, 1978)

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation
2. Designation of organizations for purposes of section 4 of Cap. 39:01
3. Designated organizations to have certain immunities and privileges and legal capacities of body corporate
4. Revocation of Cap. 39:01 Sub. Leg.

IN EXERCISE of the powers conferred by section 4 (1) and (2) (a) of the Diplomatic Immunities and Privileges Act, His Excellency the President hereby makes the following Order—

1. This Order may be cited as the Diplomatic Immunities and Privileges Designation of Organizations and Conferment of Immunities and Privileges Order, 1978
2. The organizations specified in the Schedule (hereinafter referred to as “the designated organizations”), each being an organization of which one or more sovereign powers or the government or governments thereof are members, are hereby designated for the purposes of section 4 of the Diplomatic Immunities and Privileges Act.
3. Each of the designated organizations shall have all the immunities and privileges set out in Part I of the Second Schedule to the Act² and can also have the legal capacities of a body corporate.
4. The Declaration of Organisations and Extension of Immunities and Privileges Order is revoked.

¹ S. I. No. 59 of 1978.

² Reading as follows:

“Part I. *Immunities and Privileges of the Organization*

- “1. Immunity from suit and legal process.
- “2. The like inviolability of official archives and premises occupied as offices as is accorded in respect of the official archives and premises of an envoy of a foreign sovereign power accredited to Botswana.
- “3. The like exemption or relief from taxes and rates, other than on the importation of goods, as is accorded to a foreign sovereign power.
- “4. Exemption from taxes on the importation of goods directly imported by the organization for its official use in Botswana or for exportation, or on the importation of any publications of the organization

SCHEDULE

European Economic Community
Food and Agriculture Organization
International Red Locust Control Organisation for Central and Southern Africa
Organization of African Unity
United Nations Organization
World Health Organization
World Meteorological Organization
MADE this 18th day of May, 1978.

M. C. TIBONE,
*Acting Permanent Secretary,
Office of the President*

(b) DIPLOMATIC IMMUNITIES AND PRIVILEGES (CONFERMENT OF PERSONAL IMMUNITIES AND PRIVILEGES) ORDER, 1978³
(Published on 26th May, 1978)

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation
2. Conferment of certain personal immunities and privileges
3. Revocation of Cap. 39:01 Sub. Leg.

IN EXERCISE of the powers conferred by section 4(2) (b) and (c) of the Diplomatic Immunities and Privileges Act, His Excellency the President hereby makes the following Order—

1. This Order may be cited as the Diplomatic Immunities and Privileges (Conferment of Personal Immunities and Privileges) Order, 1978.
2. (1) The persons designated in Part I of the Schedule shall have all the immunities and privileges set out in Part II of the Second Schedule to the Act.⁴
(2) The persons designated in Part II of the Schedule shall have all the immunities and privileges set out in Part III of the Second Schedule to the Act.⁵
3. The Immunities and Privileges Conferment order is revoked.

directly imported by it, such exemption to be subject to compliance with such conditions as the Minister for the time being responsible for finance may prescribe for the protection of the revenue.

“5. Exemption from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.

“6. The right to avail itself, for telegraph communications sent by it and containing only matter intended for publication by the press or for broadcasting (including communications addressed to or despatched from places outside Botswana), of any reduced rates applicable for the corresponding service in the case of press telegrams.”

³ S.I. No. 60 of 1978.

⁴ Reading as follows:

“Part II. *Immunities and Privileges of Representatives, Members of Committees, High Officers and Persons on Missions*

“7. The like immunity from suit and legal process as is accorded to an envoy of a foreign sovereign Power accredited to Botswana.

“8. The like inviolability of residence as is accorded to such an envoy.

“9. The like exemption or relief from taxes as is accorded to such an envoy.”

⁵ Reading as follows:

“Part III. *Immunities and Privileges of other Officers and Servants*

“10. Immunity from suit and legal process in respect of things done or omitted to be done in the course of the performance of official duties.

“11. Exemption from income tax in respect of emoluments received as an officer or servant of the organization.”

SCHEDULE

PART I

European Economic Community

Resident Representative

Deputy Resident Representative

United Nations Commissioner for Namibia

Resident Representative

Deputy Resident Representative

United Nations Development Programme

Resident Representative

Deputy Resident Representative

United Nations High Commissioner for Refugees

Resident Representative

Deputy Resident Representative

PART II

United Nations Development Programme (Special Fund)

Contractors and personnel for project "Surveys and Training for Development of Water Resources and Agricultural Production"

World Food Programme

Project Officer

MADE this 18th day of May, 1978.

M. C. TIBONE,
*Acting Permanent Secretary,
Office of the President*

2. Canada

PRIVILEGES AND IMMUNITIES (INTERNATIONAL ORGANIZATIONS) ACT

FAO Privileges and Immunities Order

P.C. 1978-3173 19 October, 1978

His Excellency the Governor General in Council, on the recommendation of the Secretary of State for External Affairs, pursuant to section 3 of the Privileges and Immunities (International Organizations) Act,⁶ is pleased hereby to make the annexed Order respecting the Privileges and Immunities in Canada of the Food and Agriculture Organization (FAO).

ORDER RESPECTING THE PRIVILEGES AND IMMUNITIES IN CANADA OF THE FOOD AND AGRICULTURE ORGANIZATION (FAO)

Short Title

1. This Order may be cited as the *FAO Privileges and Immunities Order*.

⁶ See United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of international organizations* (ST/LEG/SER.B/10), p. 10, and *Juridical Yearbook*, 1965, p. 3.

Interpretation

2. In this Order,

“Convention” means the Convention on the Privileges and Immunities of the United Nations;⁷

“Organization” means the Food and Agriculture Organization.

Privileges and Immunities

3. (1) The Organization shall have in Canada the legal capacities of a body corporate and shall, to such extent as may be required for the performance of its functions, have the privileges and immunities set forth in Articles II and III of the Convention.

(2) Representatives of states and governments that are members of the Organization shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article IV of the Convention for representatives of Members.

(3) Officials of the Organization shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article V of the Convention for officials of the United Nations.

(4) Experts performing missions for the Organization shall have in Canada, to such extent as may be required for the performance of their functions, the privileges and immunities set forth in Article VI of the Convention for experts on missions for the United Nations.

3. Philippines

NOTE NO. 78-2839 OF THE MINISTRY OF FOREIGN AFFAIRS

The Acting Minister of Foreign Affairs presents his compliments to Their Excellencies and Messieurs, the Chiefs of Diplomatic Missions, Heads of International Organizations and Principal Officers of Consular Establishments in the Philippines and has the honor to inform that, pursuant to the provisions of Chapter IX, Section 290-A(b) (ii) and (iii) of Presidential Decree No. 1457, embassies, consular offices and international organizations are not subject to the tax of ten (10%) per centum on the amount paid for overseas despatch, message or conversation transmitted from the Philippines by telephone, telegraph, telewriter exchange, wireless and other communication services.

For their guidance, quoted hereunder are the pertinent provisions of the above-mentioned Presidential Decree No. 1457:

“(b) Exemptions. The tax imposed by this Section shall not apply to

“(ii) Diplomatic services—Amounts paid for messages transmitted by any Embassy and consular offices of a foreign government.

“(iii) International Organizations—Amounts for messages transmitted by a public international organization or any of its agencies based in the Philippines enjoying privileges, exemptions and immunities which the Government of the Philippines is committed to recognize pursuant to an international agreement.”

The exemptions, it must be emphasized, refer solely to official messages of the embassies, consulates or international organizations sent to their Governments or Headquarters. Personal or private messages and telephone calls are not included in the exemptions.

The Acting Minister of Foreign Affairs avails himself of this opportunity to renew to Their Excellencies and Messieurs, the Chiefs of Diplomatic Missions, Heads of International Organiza-

⁷ United Nations, *Treaty Series*, vol. 1, p. 15.

tions and Principal Officers of Consular Establishments in the Philippines the assurances of his highest consideration.

Manila, 17 October 1978

4. United States of America

(a) AMENDMENTS TO THE UNITED STATES CODE OF FEDERAL REGULATIONS⁸

TITLE 8. ALIENS AND NATIONALITY

CHAPTER I.

IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Part 214—Non-immigrant classes

Part 299—Immigration forms

Application to accept or continue employment by G-4 non-immigrants

The following amendments are hereby prescribed to chapter I of title 8 of the Code of Federal Regulations: 8 CFR 214.2 (g) is amended by redesignating the existing paragraph as sub-paragraph (1) and by adding a new subparagraph (2). As amended, 8 CFR 214.2 (g) reads as follows:

214.2 Special requirements for admission, extension and maintenance of status.

...

(g) *Representatives to international organizations*

...

(2) *Employment.* The spouse, unmarried dependent son or unmarried dependent daughter habitually residing with an officer or employee of an international organization, classified as a G-4 non-immigrant under section 101 (a) (15) (G) (iv) of the Immigration and Nationality Act, may be granted permission to accept or continue employment in the United States if an application to do so has first been favorably recommended by an authorized representative of the Department of State and approved by the District Director of this Service as indicated below. To apply, the spouse or unmarried dependent son or unmarried dependent daughter shall first submit form I-566 to the Visa Office of the Department of State, or to the United States Mission to the United Nations if the principal G-4 alien is employed by the United Nations. The form shall be accompanied by a certification by the international organization that the applicant is the spouse or unmarried dependent son or unmarried dependent daughter of an officer or employee of that organization. The applicant shall also submit with the application a statement from the prospective employer describing the position and salary offered, the duties of the position and verification that the applicant possesses the necessary qualifications for the position. The application may be approved if both the authorized representative of the Department of State and the District Director of this Service at New York (if the principal alien is working for the United Nations) or at Washington, D.C. are satisfied that: (i) Both the principal alien and the applicant desiring employment are maintaining G-4 status; (ii) the proposed employment is not in an occupation listed in the Department of Labor schedule B (20 CFR Part 656) or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment, except in the case of the employment of an unmarried dependent son or unmarried dependent daughter in G-4 status who is a full-time student, if the employment is part time, consisting of not more than 20 hours per week and/or if it is temporary employment of not more than 12 weeks at a time during school holiday periods; provided

⁸ Published in the *Federal Register*, vol. 43, No. 147.

that if a G-4 alien was authorized to accept full-time employment in a schedule B occupation prior to the effective date of this regulation, he/she may continue in that employment for a period of 2 years following the effective date of this regulation; and (iii) the proposed employment would not be contrary to the interests of the United States. Employment of G-4 aliens who have criminal records, or who have violated the immigration and nationality laws or regulations, or who worked illegally, or who cannot establish that they paid income taxes on income from previous U.S. employment may be considered contrary to the interests of the United States.

However, a G-4 alien who is working without authorization on the effective date of this regulation must apply for authority to continue that work within 90 days of the effective date of this regulation. He/she must comply with the terms of this regulation in all respects except for the provision relating to illegal employment and the fact of such illegal employment will not be construed against him/her in considering that application for employment. Permission to accept employment may not be granted to G-4 spouses or unmarried dependents where the principal alien will be stationed in this country for a definite period of 6 months or less. Permission to accept or continue employment under this section shall be granted in increments of not more than 2 years each. There shall be no appeal from a denial of permission to accept or continue employment under this section. The Service will inform the G-4 applicant by letter whether his/her application has been granted or denied, and if denied, of the reasons therefor. When an application is approved, the Service shall inform the Internal Revenue Service and Department of Labor.

* * *

299.1 is amended to add the following form in numerical sequence:

299.1 Prescribed forms.

...

<i>Form No.</i>	<i>Title and Description</i>
...	
I-566 (8-30-78)	Application for Employment by a (G-4) Spouse or Unmarried Son or Daughter of an Official of an International Organization
...	
(Secs. 103 and 214; 8 U.S.C. 1103 and 1184)	

Effective date: The amendments contained in this order become effective on August 30, 1978.

DATED: July 17, 1978.

LEON J. CASTILLO,
*Commissioner of Immigration
and Naturalization*

DATED: July 24, 1978.

BARBARA M. WATSON,
*Assistant Secretary of State
for Consular Affairs*

(b) RULING RELATING TO INTERNAL REVENUE CODE SECTION 61⁹ 10

Issue

Is a "staff assessment" withheld by the employer, an international organization, from the salary paid the taxpayer, includible in the taxpayer's gross income?

⁹ It is the practice of the Internal Revenue Service to answer inquiries of individuals and organizations, whenever appropriate in the interest of sound tax administration as to their status for tax purposes and as to the tax effects of their acts or transactions. One of the functions of the National Office of the Internal Revenue Service is to issue rulings on such matters. A "ruling" is a written statement issued to a taxpayer or his authorized representative by the National Office which interprets and applies the tax laws to a specific set of facts.

¹⁰ [1978] *Standard Federal Tax Reporter* (CCH) § 6934 H.

Facts

The taxpayer, a citizen of the United States, is employed in a foreign country by the International Civil Aviation Organization (ICAO), an agency of the United Nations.

The taxpayer's gross salary is 30x dollars per annum. However, the gross salary is reduced by a "staff assessment" of 6x dollars, so that the taxpayer is actually paid a net salary of 24x dollars per annum. The taxpayer accepted the employment with the understanding that the net salary would be the only amount paid.

The ICAO "staff assessments" are subtracted from the ICAO budget before determining the amounts to be contributed by countries that finance the activities of ICAO.

With regard to United States citizens employed by ICAO, the "staff assessment" is never received by, or made available to, the employee under any circumstances, and is not payable as deferred compensation or pursuant to any pension or disability plan. Furthermore, the "staff assessment" cannot be used to offset any foreign tax liability or any other liability of United States citizens employed by ICAO.

Law and analysis

Section 61 of the Internal Revenue Code of 1954 and the Income Tax Regulations thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived including compensation for service.

The only compensation received by the taxpayer is the net salary. At no time does the taxpayer have claim to or control over, or derive any economic benefit from the "staff assessment", and it is not otherwise made available to the taxpayer. See Rev. Rul. 78-139, 1978-15 I. R. B. 6, which holds that the amount of compensation to be included in the gross income of a taxpayer, who accepted a reduction in salary as a condition of employment, is limited to the reduced amount of compensation received.

Holding

The "staff assessment" of 6x dollars withheld by the taxpayer's employer, ICAO, is not includible in the taxpayer's gross income under section 61 of the Code.
