



CHARTERED ACCOUNTANTS™  
AUSTRALIA + NEW ZEALAND

07 July 2020

Public consultation  
Inland Revenue  
PO Box 2198  
Wellington

By email: [publicconsultation@ird.govt.nz](mailto:publicconsultation@ird.govt.nz)

Dear Sir / Madam

## PUB00348: Income tax - monthly retirement payments from the United Nations Joint Staff Pension Fund

Thank you for the opportunity to review the draft Public Ruling PUB00348: Income tax - monthly retirement payments from the United Nations Joint Staff Pension Fund (the draft ruling).

### Summary

In summary, the draft ruling concludes that:

- UN pensions are not exempt from taxation under the New Zealand's diplomatic privileges and immunities rules; and
- UN pensions will be taxable as pension income under section CF 1(g) of the Income Tax Act 2007, unless the recipient is a transitional resident or has elected to apply the FIF rules.

We agree with the conclusion reached *to the extent that* such payments are not emoluments received as officers or servants of the UN, or a return of capital from a trust. We recommend that the draft ruling consider and specifically address:

- Whether there has been an effective salary sacrifice arrangement;
- If there has not been an effective salary sacrifice, whether some portion of the payments retains the characteristic of "emoluments" received as officers or servants of the UN; and
- The application of the trust rules and whether a portion of the payments are a return of capital from a trust.

We have also suggested a small change to the flow chart on page 11.

We discuss these points in more detail below.

## Tax treatment of pensions

We agree with the conclusion reached in the draft ruling that payments made from the United Nations Joint Staff Pension Fund (UNJSPF) which are not emoluments received as officers or servants of the United Nations will be taxable to the recipient under section CF 1(g) (unless they have been treated as a FIF, or the recipient is a transitional resident).

To the extent that the payments are emoluments, they will be exempt from tax under section CW 64, the Diplomatic Privileges and Immunities Act 1968 and the Diplomatic Privileges (United Nations) Order 1959 (the UN Order). Whether the payments are emoluments received as officers or servants of the UN will depend on the precise wording of the agreements between the UN, UN staff and the UNJSPF.

## Amounts paid as salary

The draft item states at paragraph 17:

"The UN Order was intended only to provide a tax exemption for emoluments earned by UN staff while they were actively serving as officers or servants of the UN. The tax exemption does not extend to monthly retirement payments received by retired UN staff from the UNJSPF."

We agree with the analysis in the draft item and the conclusion reached.

However, this leaves open the question as to what extent the pension payments are emoluments earned by UN staff while actively serving at the UN. The ruling should explicitly consider whether there was an effective salary sacrifice.

### Salary sacrifice

Whether there is an effective salary sacrifice arrangement will depend on the precise terms of the agreements between the UN, UN staff and the UNJSPF. It is not set out in Article 25 of the UNJSPF Regulations.

If the UN staffer's contributions to the UNJSPF were made under an "effective" salary sacrifice arrangement, the contributions would not be "emoluments" earned while serving at the UN - they will be pension contributions made by an employer on behalf of an employee.

If the UN staffer's contributions were made from their gross salary then they will form part of the employee's salary and wages. This is called an "ineffective" salary sacrifice because the full benefit received by the employee is taxed as salary and wages.

There is no discussion in the draft ruling about whether there has been an effective salary sacrifice arrangement. This should be explicitly considered.

If the contributions were made from emoluments earned while actively serving at the UN (an "ineffective" salary sacrifice), the ruling should consider whether the amounts retain their character as emoluments when paid to the recipient in New Zealand.

The question of deferred salary is discussed in the draft ruling at paragraphs 47-49; however, there is no consideration of whether there has been an effective salary sacrifice.

## Trust regime

The draft ruling considers whether the interest in the UNJSPF could amount to a FIF. It concludes that it would qualify as a FIF if the relevant criteria in the FIF rules were satisfied and the UN staffer had applied those rules in the calculation of their income prior to 1 April 2014. We agree.

The draft ruling does not consider whether the trust rules will apply. The ruling would be stronger if it considered whether the UN staffer is a settlor of a foreign trust (being the UNJSPF) and whether the amounts that were originally salary paid to the UNJSPF are a return of capital from the trust and therefore tax free.

## Flow chart

The draft ruling provides a clear explanation of a complex issue. It also includes a flow chart which may be useful to some readers. We recommend that the FIF treatment be incorporated directly into the decision tree as a further decision box.

## Way forward

We would be happy to discuss our comments further with you. Please contact Jolayne Trim.

Yours faithfully



John Cuthbertson FCA  
CA ANZ NZ Tax Leader



Jolayne Trim  
Senior Tax Advocate