National Taxation

Guide to national taxation of United Nations Joint Staff Pension Fund benefits, with special reference to United States income taxation

The present updated edition of the Guide is based on a previous version (.1SPB/G.11/ Rev.8 of 11 March 1994), which, in turn, had been based on previous Guides prepared by the Office of Legal Affairs of the United Nations with the substantial assistance of the consulting actuary of the United Nations Joint Staff Pension Fund (UNJSPF), primarily for use by those offices of the United Nations (including all entities for which the Secretary-General has administrative responsibilities) that are concerned with the taxes that may be imposed by national Governments or local authorities on benefits received from UNJSPF. It is also designed to inform present and former members of the staff of the United Nations and their beneficiaries about these questions and about the relevant practices of the Organization. Portions of the present Guide may also prove useful to other UNJSPF participants and beneficiaries.

Previous versions of the Guide provided various examples of tax calculations. Because of tax law changes that have eliminated income averaging methods and have required the use of the "simplified method" for determining U.S, income taxes on periodic pension benefits, most of the examples contained in such earlier versions of the Guide are no longer relevant. Accordingly, the present version of the Guide provides only a few illustrations of tax principles. Those subject to taxation in respect of benefits paid by the UNISPF should refer to examples and worksheets set forth in applicable U.S. Internal Revenue Service publications, which are identified in the present version of this Guide, when preparing their income tax returns.

The present version of the Guide is specifically applicable to persons who retired on or after 19 November 1996. Persons who retired earlier should also consult the corresponding earlier versions of the Guide for any prior information that may be applicable to any benefits received before that date.

Part One - General principles

A. National (and local) taxation of UNJSPF pensions

1. Unlike the emoluments paid to most United Nations officials in active service, *periodic* pension payments to former officials or to their survivors are generally not exempt from national income taxation, including income taxes imposed by state or provincial or other local governments, by reason of any international agreement. However, as discussed in paragraph 5, below, a different rule may apply to *lump sum* pension benefits paid to former participants, or their beneficiaries, whether representing a withdrawal settlement or the commutation of a retirement benefit.

2. Whether and how periodic pension benefits are taxed, therefore, is a matter of national law. In some countries, United Nations Joint Staff Pension Fund ("UNJSPF") benefits may be wholly or partially exempt from taxation for the following reasons:

   (a) The terms of a particular treaty or the interpretation by national authorities of the Convention on the Privileges and Immunities of the United Nations provide for the exemption of UNJSPF pensions from taxation;

   (b) All pensions or perhaps all public service pensions (which may or may not be defined to include international service) might be exempt from taxation;

   (c) Pensions earned for service abroad might not be subject to taxation, in full or in part;

   (d) Pensions might be considered as deferred compensation, tax-exempt under national law to the same extent as the original emoluments on which they are based;

   (e) Payments made from or received abroad might not be subject to taxation, either for anyone or perhaps only for non-citizens; and

   (t) Pensions might be exempt to the extent that they represent the return of a participant's own contributions and, therefore, have either a tax-paid or a tax-exempt basis, at least in part.[4]

In addition, if the recipient of a pension benefit is not a citizen of the country in which he or she resides, he or she may, on the one hand, be subject to multiple taxation or, on the other, be shielded from taxation by one or even by both countries pursuant to the terms of any double taxation treaties that may have been concluded between those countries.

4 *See* paragraphs 13 and 14, below.

3. National tax laws, especially those relating to pensions, are exceedingly complex and diverse, and subject to frequent change. Consequently, the United Nations is not able to maintain up-to-date familiarity in this field or to give advice to individual participants, retirees or their survivors, or other beneficiaries of the UNJSPF. All recipients of UNJSPF benefits, accordingly, must ascertain for themselves what their tax obligations may be. Only with respect to United States taxation, which has an impact on a very large number of UNJSPF beneficiaries, has the Organization acquired certain information, a general summary of which is set forth in part two of the present Guide. In addition, the Association of Former International Civil Servants (AFICS), which has affiliates in a number of locations of United Nations offices and other cities, has gathered some data about other national tax systems.

B. Refund of taxes by the United Nations

4. National taxes that may be imposed on *periodic* benefits from UNJSPF, whether in the form of income, inheritance, estate or property taxes, are not refunded by the United Nations.

5. However, *lump sum* payments received as a withdrawal settlement (article 31 of the UNJSPF Regulations[5]) or as a partial or complete commutation of a retirement benefit (articles 28(g), 28(h), 29(c) or 30(c) of the UNJSPF Regulations) are considered by the United Nations to constitute part of the terminal payments received by an official of the Organization and, therefore, should be exempt from national taxation to the same extent as are official salaries and other emoluments (such as payment for accrued annual leave, termination benefits, etc.).[6] This is the case even though some of these payments may not actually be received until some time after separation from service because the official's right to the payment *accrues* to his or her benefit *as of the date of separation from service.* Although the great majority of countries accord such tax exemption in respect of such lump sum payments, if any tax is imposed on such lump sum payments, then, pursuant to United Nations staff regulation 3.3(f), such tax payments will be refunded to former staff members who had joined the Organization before 1 January 1980, and who have remained in the service of the

5 The UNJSPF Regulations can be found at the website of the UNJSPF *(www.unjspf.org).* All citations to the UNJSPF Regulations in this Guide are those in effect on the date of this version of the Guide.

6 *See* Treasury Regulation § 1-72(2)(b), providing that the annuity rules for U.S. income taxation of pensions apply to payments received after the "annuity start date", which under the Regulations of the UNJSPF occurs only after separation from service. Therefore, *lump sum payments* received as part of the terminal emoluments of an official of the United Nations or other member organization of the UNJSPF as of the date of such official's separation from employment (or accruing to the benefit of such official as of that date) are not received after the "annuity start date". Since U.S. nationals or permanent residents are not entitled to exemption from income taxation in respect of their official salaries and emoluments from the United Nations or other member organization of the UNJSPF, this income exclusion for lump sum payments does not apply to them.

Organization from that date until their date of separation for retirement.[7] Such a refund will be made on the same basis as taxes imposed on other official United Nations salaries and emoluments. If eligible to do so, the official must claim reimbursement for any such taxes during the year in which such taxes first become due, even if the official could otherwise defer such taxes *(see also* paragraphs 19 and 20, below). As required by the rules relating to such refunds, the official must minimize the tax liability as much as legally possible and, in particular, should inform the national fiscal authorities that the United Nations or other employing organization of the official, as the case may be, considers these lump sum payments to be covered by the tax exemption applicable to the emoluments of officials.[8] If necessary, a statement to this effect can be secured from the Secretariat of the UNJSPF with the assistance, as necessary and appropriate, of the official's employing organization.

6. It should be noted that, in principle, the United Nations refunds only taxes imposed on its own staff members. However, the United Nations Administrative Tribunal has held that, under certain circumstances, if a staff member leaves the United Nations and joins the staff of another member organization of the Pension Fund that does not refund national taxes imposed on lump sums, then, when that staff member eventually retires and receives a lump sum benefit that is taxed and depending on other circumstances, the United Nations must refund either an amount equivalent to the taxes that would have been imposed on the lump sum that would have been payable had the staff member retired at the time of his separation from the United Nations, or the taxes levied on the portion of the lump sum that is attributable to the period of United Nations service.[9]

7 By reason of General Assembly resolution 34/165, part III, of 17 December 1979, staff members who joined the United Nations after 31 December 1979 are not entitled to be reimbursed by the Organization for any taxes payable upon any *lump sum* benefit payments from the UNJSPF.

8 *See* the United Nations Secretariat administrative instruction on the payment of income taxes to United States tax authorities, ST/AI/1998/1, of 28 January 1998, and the annual information circulars issued thereunder.

9 *See,* respectively, United Nations Administrative Tribunal Judgement No. 320: *Mills v. The Secretary-General of the United Nations* (1983), and Judgement No. 373: *Saddler v. The Secretary-General of the United Nations* (1986). For the application of such a pro rata reimbursement principle to the reimbursement of taxes on lump sum payments for staff members of the United Nations who served before 1 January 1980, and who left the service and rejoined thereafter before finally retiring, as discussed in paragraph 5, above, *see* Administrative Tribunal Judgement No. 634: *Horlacher v. The Secretary-General of the United Nations* (1994).

Part Two - United States income taxation

A. U.S. federal income taxation of UNJSPF pensions

Liability to pay United States income taxes

7. Whether or not a particular payment from UNJSPF is subject to United States federal income taxation depends primarily on the *tax status of the income and of the recipient* at the time the payment is *received,* rather than on that of the participant during the time the pension was earned (though, as discussed in paragraph 17(e)(i) below, the calculation, and thus the amount of the tax, may depend on such status). Liability to pay United States federal income taxes does not always depend on the place from which income is received or the currency in which income is paid except for income received from sources within the United States or except as the location of the payment may constitute evidence relevant to the recipient's residence status for tax purposes. If the tax status of the recipient changes, so may the taxability of income received thereafter, but not that of income received prior to such change of status.

8. Generally, liability to pay United States income taxes depends on whether the source of the income to be taxed is considered to have originated from the United States (i.e., "United States source income") and whether the recipient of the income is considered to be a resident of the United States *for income tax purposes* at the time the income is received. In this regard, it should be noted that, under the United States Internal Revenue Code ("IRC"), residency status *for income tax purposes* does not necessarily correspond to residency status for *immigration purposes.* For purposes of United States federal income taxation of UNJSPF benefits, the following considerations apply:

(a) United States citizens and others admitted to the United States for permanent residency (i.e., "green card" holders who, if they had that status while still staff members, were required to sign a waiver of privileges and immunities; *see also* paragraph 9, below) are subject to United States federal income taxation in respect of their UNJSPF *periodic* benefit payments, whether or not they actually reside in the United States;[10]

(b) For non-resident aliens *for income tax purposes (see* paragraph 9, below), UNJSPF benefits are considered by the United Nations and the other member organizations of

[10] Persons admitted to the United States for permanent residency may be subject to certain United States residency or physical presence requirements. Such persons should consult with qualified specialists in immigration law to ensure that they meet such requirements, irrespective of their tax liabilities.

the UNJSPF to be a non-United States source of income[11] and, thus, generally are not subject to United States taxation, whether or not, for some period, such non-resident aliens actually live in or are occasionally present in the United States and do not, because of their physical presence within the United States, meet the "substantial presence test" under the IRC *(see* paragraph 9, below).

9. A non-United States national must determine whether he or she is a resident or a non-resident alien of the United States *for income tax purposes.* In this respect, as of 1 January 1985, there was a significant change in the applicable United States federal tax legislation whereby holders of G-IV visas, with few exceptions, no longer have the "choice" that, in effect, they used to have as to the category of aliens (i.e., resident versus non-resident) to which they belonged *for U.S. federal income tax purposes.* [12] Since the change in law that has been effective from 1 January 1985, G-IV visa holders are considered to be non-resident aliens for income tax purposes, unless they file a "joint" U.S. income tax return with a qualifying spouse. For such purposes, a qualifying spouse is one of the following:

(a) A United States citizen; or

(b) A person lawfully admitted to the United States for permanent residence (i.e., a "green card" holder); or

(c) An individual who meets the "substantial presence test" because such person:

(i) Is the holder of a certain U.S. immigration visa status, for example, the holder of a G-V visa (i.e., household help of a G-IV visa holder), of an E visa (i.e., a treaty "trader" or "investor"), an I visa (i.e., journalist) or an L visa (i.e., an employee entering the United States to continue employment with an organization that had employed such employee outside the United States), and

[11] The presumption that UNJSPF benefits are "non—United States source income" is based on the status of the UNJSPF as a retirement fund for the United Nations and the other member organizations of the UNJSPF and the fact that benefits are paid to former international civil servants and their beneficiaries who are nationals of more than 190 Member States of the United Nations. Many of such former officials and their beneficiaries may never have been physically present in the United States. However, neither the IRC nor the regulations promulgated thereunder by the U.S. Department of the Treasury address the issue. In various tax reimbursement agreements between the United States of America and organizations of the United Nations system, the U.S. Government has agreed to *seek* to maintain UNJSPF benefits as "non-United States source income", and in practice thus far, the Internal Revenue Service of the U.S. Department of the Treasury has treated UNJSPF benefits as "non-United States source income".

[12] *See* pre-1985 versions of Internal Revenue Service publication No. 519, entitled "United States Tax Guide for Aliens"; *see also* Secretariat information circular ST/IC/84/10, of 26 January 1984, entitled "Staff members who are not United States nationals but receive investment income from United States sources", paragraphs 5 and 6; *see also* prior versions of this Guide, JSPB/G.11/Rev.4, paragraph 10, and JSPB/G.11/Rev.5, paragraph 10.

(ii) Has been present in the United States for at least the minimum period precisely defined in section 7701(b)(3) of the IRC *(see* United Nations Secretariat information circular ST/IC/84/74, section A, or post-1984 versions of IRS publication No. 519).

The "substantial presence test", as set forth in section 7701(b) of the IRC, further provides that a person who applies for a change in immigration status from an exempt category (e.g., a G-IV visa holder who applies to adjust to special immigrant status, or permanent residence if eligible upon retirement), [13] or a person who otherwise obtains permanent residence status (i.e., a "green card") is considered to be a resident of the United States *for income tax purposes* and, hence, may be subject to U.S. income taxation on income received from the first day of physical presence in the United States after separation from United Nations service *(see* IRC 7701(b)). However, any time spent in the United States while holding a G-IV visa would not be counted for this purpose. Moreover, as discussed in paragraph 5, above, *lump sum* benefit payments received by such persons, even if received after separation from service, are not considered income subject to taxation by such former G-IV visa holders because such payments are considered part of the former official's final emoluments and *accrue* to the benefit of the official *as of the date of separation from service,* irrespective of when they are actually paid. Thus, only *periodic* UNJSPF benefit payments received by former G-IV visa holders who apply for adjustment of status or who may otherwise be admitted to lawful permanent residence in the United States become subject to taxation in such circumstances.

10. United States citizens and resident aliens should note that pension benefits, including those paid by the UNJSPF, are not "earned" income within the meaning of section 911 of the IRC. Consequently, the exemption applicable to foreign earned income does not apply, regardless of whether the pension was "earned" or is received outside the United States *(see,* however, para. 17(e) (ii) below). Thus, United States citizens, permanent residents (i.e., "green card" holders) or other persons subject to U.S. income taxation may not claim the foreign earned-income exclusion under the IRC in respect of any UNJSPF pension benefits.

General principle of U.S. income taxation of UNJSPF benefits

11. The UNJSPF is a "qualified" employees' trust under IRC section 401(a). [14] A copy of the determination letter from the Internal Revenue Service ("IRS") of the U.S. Department of the

[13] *See* United Nations Secretariat information circular ST/IC/2001/27, of 10 April 2001, paragraph 31. As provided under U.S. law at the time of publication of this Guide, a retired official on G-IV visa status, and certain members of such official's household having derivative G-IV visa status, may be entitled to an adjustment of their G-IV visa status to "special immigrant" status (i.e., as a person admitted to the United States for permanent residence, or "green card" status) if they meet certain length-of-service or age requirements, as applicable, and certain minimum United States physical presence requirements.

[14] The UNJSPF is also a "governmental plan" within the meaning of section 414(d) of the IRC.

Treasury, dated 28 April 1977, in which the "qualified" status of the UNJSPF is recognized, is set out in the annex to the present Guide *[annex not reproduced here].*

12. As a *qualified* employee benefit plan under the provisions of the IRC and the U.S. Employee Retirement Income Security Act of 1974, as amended ("ERISA"), UNJSPF benefits are taxed by the United States in the same way as those of any other employees' trust, with the single exception that for a non-resident alien these benefits are considered to be from a non-United States source and thus not subject to United States taxation *(see* paragraph 8(b) above). ***In securing advice or assistance from any lawyer, accountant or tax service, and when dealing with any IRS agent, it should be made clear that UNJSPF is a "qualified" employee benefit plan and that there are no special exemptions or immunities relating to the taxation of the benefits it pays to United States citizens or resident aliens for income tax purposes.***

13. The general principle by which benefits from qualified pension plans are taxed is that the participant or his or her beneficiaries are entitled to recover the participant's own "investment" in the pension benefit tax-free, and the amount of the benefit exceeding such investment is subject to ordinary income taxation. Generally speaking, the participant's "investment" in the UNJSPF pension plan amounts to his or her own contributions, in the case of participants who were United States citizens or permanent residents while in the employ of the United Nations or other UNJSPF member organization, together with the employing organization's contributions (generally at twice the amount of the participant's own contributions), in the case of participants who were not U.S. citizens or permanent residents during their employment.[15] The reason such "investment" is returned tax-free to the participant, or his or her beneficiaries, is that the investment either has a *tax-paid basis* or has a *tax-exempt basis.* Thus, contributions to the UNJSPF made by participants who were United States citizens or permanent residents during their employment have a *tax-paid basis,* because the official salaries of such participants were not exempt from U.S. taxation, and the amounts they contributed to the UNJSPF were part of their gross earnings for income tax purposes, all of which were subject to U.S. income taxation. Therefore, such participants cannot be twice taxed on amounts representing their contributions to the UNJSPF. Contributions to the UNJSPF by participants who were non-United States nationals or permanent residents, together with the employing organization's contributions to the UNJSPF, have a tax-exempt basis, because such amounts would have been exempt from taxation had they been paid to such participant (i.e., when he or she was employed by the United Nations or other member organization of the UNJSPF), instead of having been contributed to the UNJSPF as a form of *deferred compensation.*

14. However, after recovery of the participant's investment on a tax-free basis, the remainder of the benefits returned by the UNJSPF to the participant, or his or her beneficiaries, in excess of that investment is subject to income taxation at ordinary income tax rates. The portion of

[15] *See* paragraph 17, below, for a fuller discussion of the concept of "investment".

each benefit payment that is subject to tax depends on how that "investment" is calculated and how it is allocated to each benefit payment, as further explained below, and the taxable portion of the benefit, ultimately, is the difference between the total amount of all payments received from the UNJSPF and the participant's own investment.

15. The IRS annually issues a publication, No. 575, entitled "Pension and Annuity Income (Including Simplified General Rule)", [16] which contains a full description of the taxation of pension benefits paid by *qualified* pension plans, as well as numerous actuarial tables that should be consulted in making the calculations necessary to determine tax liability, if any. The remainder of this section III of the Guide refers as far as possible to IRS publication No. 575, to which participants, former participant and other beneficiaries should refer for additional explanations, detailed instructions and further illustrative examples. An attempt has been made to indicate how various features and provisions of the UNJSPF relate to the descriptions and definitions in the IRS instructions. The calculations described below only determine what portion of each UNJSPF benefit is tax-exempt and how much is taxable and, if so, on what basis. Of course, the actual amount of the tax payable will depend on the taxpayer's gross taxable income (which also includes any other taxable income) and on the exemptions, possible deductions and any other tax credits available to the taxpayer.

Withdrawal settlement (full lump sum)

16. For U.S. federal income tax purposes, a withdrawal settlement received under article 31 of the UNJSPF Regulations, or a commutation of an entire small pension under articles 28(g)(ii), 28(h) and 29(c) (to be read with articles 28(g)(ii) or 30(c)(ii)), is divided into two parts:

(a) The participant's "investment" in the benefit *(see* paragraph 17, below), which is returned tax-free *(see* paragraph 13, above);

(b) The remainder of the balance of the lump sum withdrawal, which is taxed as ordinary income.

After a United Nations participant receives his or her withdrawal settlement from the UNJSPF, the Income Tax Unit of the United Nations Office of Programme Planning, Budget and Accounts will inform him or her of its calculation of the amount that falls into each of the two foregoing categories *(see* paragraphs 49 and 50, below).

17. The participant's "investment" or basic tax-free recovery in respect of a withdrawal settlement (i.e., full lump sum distribution) or any UNJSPF benefit is the sum of the following:

[16] Previous versions of the Guide also refer to IRS publication No 939, entitled "Pension General Rule (Nonsimplified Method)". However, as further explained in paragraph 27, below, because the "general rule" no longer may be used by recipients of benefits from *qualified* pension plans, that IRS publication is no longer applicable to the determination of U.S. federal income taxes, if any, on benefits paid by the UNJSPF.

(a) The participant's own contributions to the UNJSPF[17] that had been deducted at the rate of 7.00 per cent of his or her pensionable remuneration before 1984, 7.25 per cent of pensionable remuneration from 1 January 1984 to 30 June 1988, 7.40 per cent of pensionable remuneration from 1 July 1988 to 30 June 1989, 7.50 per cent of pensionable remuneration from 1 July 1989 to 31 December 1989, and 7.90 per cent of pensionable remuneration from 1 January 1990;[18]

(b) Any transfer of the participant's share from another provident fund, qualified deferred compensation plan or annuity contract;[19]

(c) Any amounts paid by the participant to validate non-contributory service (article 23 of the UNJSPF Regulations) or to restore prior contributory service (article 24 of the UNJSPF Regulations);

(d) Payments made by a participant to make periods of leave without pay part of his or her contributory service (including the employing organization's share to the extent paid by the participant) (articles 22(b) and 25(b) of the UNJSPF Regulations);

(e) The contributions paid by the employing organization (at twice the rate of the participant's own contribution, as specified in subparagraph 17(a), above), if such payments, when made, would have been exempt from United States income tax had they been paid directly to the participant instead of into the UNJSPF,[20] i.e., during any period that the participant was:

(i) A non-resident alien of the United States (whether or not employed within the United States) whose emoluments were, at the time received, not subject to or exempt from United States taxation (e.g., because he or she was residing in the United States on a G-IV visa, or because he or she was not residing in the United States at all);

17 It should be noted that a participant's "contribution" as defined for U.S. income tax purposes is not the same as the term "the participant's own contributions" as defined in article 1(o) of the UNJSPF Regulations, since the latter includes interest, while the former does not.

18 *See* article 25 of the Regulations of the UNJSPF.

19 Currently, the Regulations of the UNJSPF do not provide for the ability of participants to transfer funds into the UNJSPF except for the validation of non-contributory service or restoration of prior contributory service under articles 23 and 24, respectively, of the Regulations of the UNJSPF.

20 *See* IRC § 72(f)(2), which provides that the investment in the benefit includes the employer's contributions, "to the extent that if such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution". For the explanation as to why such amounts would not have been included in the gross income of such employees at the time of the contribution, *see* paragraph 13, above.

(ii) A United States citizen (but not a resident alien) whose emoluments at the time received were subject to the exemption of foreign earned income (IRC section 911), but only in respect of amounts earned before 1 January 1963, while a bona fide resident of a foreign country or while present in any such countries for 510 days during a period of 18 continuous months.[21]

All of the above amounts are to be calculated without taking into account any interest ***earned*** thereon. But ***interest that the participant had actually paid*** to the UNJSPF under article 25(c),*(d)* or *(e)* of the Regulations of the UNJSPF may be included for purposes of determining the "investment", except to the extent such interest was taken as a tax deduction in the year paid.

18. The taxable balance of the withdrawal settlement (i.e., full lump sum distribution), therefore, is equal to the total amount of the withdrawal settlement lump sum less the participant's investment, calculated under paragraph 17, above.

19. Under certain conditions, part or all of the taxable portion of a full lump sum benefit can be "rolled over", within 60 days of receipt, into either another qualified pension plan or into an Individual Retirement Account ("IRA"), with the result that no tax is imposed on such benefit until distributions are made from such plan or account ***(see*** IRS publication No. 590, entitled "Individual Retirement Arrangements (IRA's)"). However, the portion not rolled over is taxed at ordinary income tax rates, unless it would qualify for the favourable tax treatment described below. ***It should be noted that persons eligible for tax reimbursement*** (see ***paragraphs 4-6, above) in respect of any income taxes on a full lump sum or partial commutation of a UNJSPF pension benefit are only eligible for reimbursement in the year in which the taxes first become due, and they will lose their eligibility for reimbursement if the taxable portion of such benefit payments are rolled over into a deferred compensation account, such as an IRA.***[22]

20. In respect of a participant who was not a citizen of the United States at the time of his or her separation (and had not waived his or her tax-exempt status), it is the view of the United Nations, as indicated in paragraph 5 above, that the immunity from taxation of officials granted by section 18(b) of the Convention on the Privileges and Immunities of the United

21 Under the limitations set forth in § 72(f) of the IRC and the accompanying Treasury Regulations, this provision does not practically apply to participants who are U.S. nationals or permanent residents. Even if they could claim that the employer contributions would not be includible under gross income because of the foreign income exclusion under IRC § 911, § 72(f)(2) of the IRC provides that only employer contributions attributable to foreign services performed before 1 January 1963 would be covered by this exclusionary rule. Thus, it is highly unlikely that any U.S. national or permanent resident who earned a salary from the United Nations or other member organization of the UNJSPF that would be subject to the foreign earned income exclusion before 1963, in whole or in part, is now retiring.

22 ***See*** United Nations Administrative Tribunal Judgement No. 1185: *Van Leeuwen v. The Secretary-General of the United Nations* (2004).

Nations, and accepted by the United States for all except United States citizens and permanent residents (i.e., "green card" holders), applies to a withdrawal settlement *paid upon separation* (i.e., and *not* rolled over into another qualified account; *see* paragraph 19, above) and that, therefore, no tax is due thereon. Consequently, as also indicated in paragraph 5 above, the United Nations may refund the tax imposed on full lump sum benefits *(but see* footnote 8, above) and includes these amounts in the final statement of taxable earnings given to a staff member subject to United States taxation; however, such refund will only be paid to the extent of the minimum tax payable on the lump sum (i.e., that resulting from the most favourable calculation).

21. The taxable balance of the lump sum distribution to participants who have less than five years of contributory service at separation, or have more than five years but are under the age of 59 and one half years at the date of distribution, or were not 50 years of age on 31 December 1985, [23] is subject to ordinary income tax, unless rolled over into an IRA or other qualified plan *(see* paragraph 19, above).

Early and excess distribution taxes

22. The 1986 amendments to the IRC imposed two additional taxes on pension distributions: an early distribution tax and excess distribution tax, the latter of which has since been repealed, as explained below. They are *not* applicable to taxable distributions rolled over into an IRA or another qualified plan *(see* paragraph 19, above, although later distributions from the IRA or other qualified plan could be subject to them). The two taxes can be summarized as follows:

(a) The *early distribution tax* is equal to 10 per cent of the *taxable balance* of a lump sum or partial commutation *(see* paragraphs 23-25, below) payable upon separation from service before the year in which a participant reaches 55 years of age. However, since the UNJSPF does not pay a partial commutation (i.e., partial lump sum) of a pension benefit to anyone under age 55 years, the early distribution tax would only be payable in respect of a withdrawal settlement (i.e., full lump sum distribution). The early distribution tax is not payable if the benefit is paid on account of a participant's death or disability.

(b) The *excess distribution tax* is an *excise* tax (i.e., a form of penalty), is not age-related, and is equal to 15 per cent of the *taxable balance* of the total pension payments received in any year in excess of $155,000 (an amount that was adjusted upward for

[23] Prior versions of this Guide, *see* TSPB/G.11/Rev.8, paragraphs 21 to 26, described certain grandfathered rules for determining the tax on the portion of the distribution subject to taxation for participants who were born before 1936, and should be consulted for any participants to whom such rules may apply. Prior versions of the Guide, *see* ibid., also refer to certain income-averaging methods for reducing income taxes. However, for any lump sum distributions (whether full or partial) made any time after 31 December 1999, such income-averaging rules no longer apply.

inflation). However, the excess distribution tax was *repealed* for any distributions made after 31 December 1996.[24]

The same amount could not be taxed under both the taxes described in subparagraphs 22(a) and 22(b), above. Thus, the amount of any early distribution tax *(see* subparagraph 22(a)) could be offset against the excess distribution tax *(see* subparagraph 22*(b)).*

Commuted retirement benefit (partial lump sum)

23. A lump sum distribution paid as a partial commutation of a retirement benefit (articles 28(g)(i) or 28(h) of the UNJSPF Regulations), of an early retirement benefit (article 29(c), to be read with article 28(g)(i) of the UNJSPF Regulations), or of a deferred retirement benefit (article 30(c)(i) of the UNJSPF Regulations) is taxable as ordinary income to the extent that it exceeds a specified portion of the participant's investment in the benefit *(see* paragraph 17, above).

24. As of the date of this revision of the Guide, a partial lump sum may be rolled over *(see* paragraph 19, above) into any other type of qualified pension plan or tax-exempt IRA. To take advantage of this possibility, the UNJSPF must be instructed in a writing signed by the participant, or his or her eligible beneficiary, to pay the amount in question into an account in the name of the participant with the institution that established the pension plan or IRA.

25. As indicated in paragraph 20, above, the United Nations considers that no United States tax may be imposed on a benefit paid to a participant who was not a U.S. citizen or permanent resident of the United States (i.e, "green card" holder) at the time of his or her retirement. As further indicated in paragraphs 19 and 20, as well as in paragraph 5 *(but see* footnote 8, above), the United Nations may refund the tax imposed on partial lump sum benefits (which are also included in the final Statement of Taxable Earnings referred to in paragraph 20, above), but only to the extent of the minimum tax payable thereon.

26. The taxable and non-taxable portions of the lump sum commutation of a pension benefit reflect the amount of reduction in the participant's retirement benefit because of the election of the lump sum. This is because the remainder of the benefit will be paid as an annuity, or periodic benefit. The taxable and non-taxable portions of the commuted benefit (i.e., the partial lump sum) are calculated under the following formula:

$$TF = Invxl - \frac{RMB}{UMB}$$

[24] *Taxpayer Relief Act of 1997,* Pub. L. No. 105-34, § 1073 (Aug. 5, 1997), 111 Stat. 787, 948-949.

Where:		
TF	=	the tax-free portion of the commuted benefit
Inv	=	the participant's investment in the benefit (**see** paragraph 17, above)
RMB	=	the reduced monthly benefit resulting from the partial commutation of the pension benefit
UMB	=	the unreduced monthly benefit resulting from the partial commutation of the pension benefit

In other words, the tax-free portion of the commuted benefit equals the participant's investment in the benefit (determined in accordance with paragraph 17, above) times the amount of one minus the ratio that the reduced monthly benefit resulting from having taken the partial commutation of the benefit bears to the unreduced monthly benefit had no such partial commutation of the benefit been taken. The taxable portion of the lump sum commutation of a pension, therefore, equals the total lump sum portion of the benefit minus the tax-free amount of the benefit, calculated in accordance with the foregoing formula. As illustrated by the following, in respect of a participant who receives the maximum commutation of a retirement benefit under the Regulations of the UNJSPF (i.e., the one-third lump sum), this means that the taxable amount equals the total of that lump sum reduced by one third of the participant's investment—calculated as per paragraph 17, above.

ILLUSTRATION

Ms. Ahmed's investment in the pension benefit (see paragraph 17, above) is $100,000. At age 62, Ms. Ahmed retires and elects to receive a partial commutation of her retirement benefit in the maximum (i.e., one-third) lump sum distribution of $113,000.
Under the regulations of the UNJSPF, Ms. Ahmed's full, monthly retirement benefit would be $1,500. However, because Ms. Ahmed has elected to take a one-third lump sum as a partial commutation of her retirement benefit, Ms. Ahmed's reduced monthly retirement benefit will be $1,000.
Based on the foregoing formula, the **tax-free** portion (i.e., the amount excludable from income for determination of income taxes) of Ms. Ahmed's partial lump sum commutation of her retirement benefit would be:

$100,000 x 1 - ($1,000 ÷ $1,500), or
$100,000 x 1 - (2/3), or
$100,000 x 1/3, or
$33,000.

Accordingly, the **taxable** portion (i.e., the amount subject to ordinary income taxes in the tax year when received) of Ms. Ahmed's partial lump sum commutation of her retirement benefit would be the amount of the one-third partial commutation, $113,000, minus $33,000, or a total of $80,000.

Retirement benefit

27. *Periodic* payments of a retirement benefit (articles 28(b) to *(f)* of the UNJSPF Regulations), an early retirement benefit (article 29(b) of the UNJSPF Regulations) or a deferred retirement benefit (article 30(b) of the UNJSPF Regulations) are taxed as ordinary income, except to the extent that a portion may be exempt from taxation as representing a return of the participant's investment *(see* paragraph 17, above). Previous versions of the Guide stated that there are two alternative methods for calculating what portion of any benefit payment may be considered a return of contribution: the "Simplified General Rule" and the "General Rule". However, the option to use the "General Rule" was eliminated for any distributions from a qualified pension plan received after 19 November 1996.[25] In any case, the Simplified General Rule is the preferable method of calculating tax liability on

25 *Small Business Job Protection Act of 1996,* Pub. L. No. 104-188, § 1403 (Aug. 20, 1996), 110 Stat. 1755, 1790- 1791 (amending section 72(d) of the IRC).

periodic payments of a retirement benefit, because the necessary calculations are much easier to make and insofar as it results in making more tax-free income available earlier.

28. The Simplified General Rule, originally called the "safe harbour rule", may be used for all types of UNJSPF periodic benefits (i.e., under articles 28, 29, 30 or 33 of the UNJSPF Regulations) starting after 1 July 1986, provided that the only benefits payable are those to the participant and to a spouse or to a secondary dependant for his or her lifetime. Thus, if a disability benefit or a child's benefit is payable, the Simplified General Rule is not available *(see* section III, subsections F and G, of this Guide, below, for information on U.S. taxation of a disability and a child's benefit, respectively). The Simplified General Rule is fully described in the annual IRS publication No. 575, entitled "Pension and Annuity Income (Including Simplified General Rule)". The taxable and the non-taxable portion of a *periodic* retirement benefit using the Simplified General Rule is determined as follows:

(a) *Overview:* The Simplified General. Rule for calculating the taxable portion of a *periodic* retirement benefit is based on the tax-free recovery of the participant's investment in the retirement benefit *(see* paragraph 17, above) over the number of months that the beneficiary, or the combined number of months that the beneficiary and his or her qualifying surviving spouse, are expected to live. The portion of the monthly retirement benefit that is not returned tax-free is subject to income tax as ordinary income of the recipient.

(b) *Determination of the expected lifespan of the beneficiary or beneficiaries:* The lifespan of the annuitant (i.e., in the case of the UNJSPF, the retiree or the retiree and his or her qualifying spouse) is determined by reference to tables promulgated under the IRC, which are reproduced in IRS publication No. 575, entitled "Pension and Annuity Income (Including Simplified General Rule)"." Thus, as of the time of the present Guide, the expected lifespan of a retiree, or the combined lifespan of the retiree and his or her qualifying surviving spouse, following the commencement of the *periodic* monthly benefit from the UNJSPF any time after 19 November 1996[27] is as set forth in the following tables:

[26] *See* IRC § *72(d); see also* "Worksheet A: Simplified Method", set forth in IRS publication No. 575.

[27] Previous editions of the Guide may be consulted for the appropriate life-expectancy tables for anyone receiving a retirement benefit that commenced before 19 November 1996; *see also* IRS publication No. 575.

Tables for expected lifespan(s)
(for pensions commencing after 19 November 1996)

Table I. Single beneficiary (i.e., UNJSPF retiree with no qualifying surviving spouse)	
If the age of the single beneficiary at retirement (i.e., the start of the distribution) was …	**then, the number of monthly payments will be …**
55 or under	360
56-60	310
61-65	260
66-70	210
71 or over	160

Table II. Joint beneficiaries (i.e., UNJSPF retiree with qualifying surviving spouse)	
If the combined age of the joint beneficiaries at retirement (i.e., the start of the distribution) was …	**then, the number of monthly payments will be …**
110 or under	410
111-120	360
121-130	310
131-140	260
141 or over	210

(c) *Considerations relevant to determining the taxfree portion of the periodic benefit:* Under the Simplified General Rule, the investment in the pension (*see* paragraph 17, above) and the "expected number of monthly payments" as set forth in one of the two tables above (a number that depends solely on the participant's age at the starting date of the payments, independent of whether or not a surviving

spouse's

benefit may potentially become payable) are the only items that enter into the calculation of the amount of the basic initial tax-free monthly payment.

(d) *Calculation of the tax-free portion of the periodic benefit:* The following formula is used to determine the initial tax-free portion of the monthly benefit:

$$TF = \frac{Inv}{nMP}$$

Where:		
TF	=	the **tax-free** portion of the periodic pension benefit
Inv	=	the participant's **investment** in the benefit (see paragraph 17, above)
nMP	=	the **number of monthly payments** determined in accordance with the tables above

In other words, the *tax-free* portion of a *periodic* retirement benefit is the total investment *(see* paragraph 17, above) divided by the number of months of life expectancy determined under the IRC *(see* paragraph 28(b), above), and the *taxable* portion of the *periodic* benefit is the remainder after subtracting the tax-free portion *(see* the illustration under paragraph 28(e), below).

(e) *Limitation on the recovery of tax-free portions of the retirement benefit:* It should be noted that the formula set forth above takes no account of the portion of the investment in the pension that may have been ¯utilized to determine the tax-free amount of a partial lump sum commutation *(see* paragraph 26, above). The tax-free amount, determined in accordance with the calculation described above, is applicable to the participant's pension and to the qualifying surviving spouse's pension after the participant's death. It is not adjusted if the amount of the retirement benefit is later changed. If the amount of the benefit changes, the tax-free portion of the monthly benefit remains the same and only the taxable portion of the monthly benefit varies. Moreover, the monthly tax-free amount is determined regardless of whether there has been an election to take a partial commutation of the benefit (e.g., the one-third lump sum). Only the period of time for which the tax-free amount will be available is affected by the amount of the tax-free portion of a lump sum *(see* paragraph 28*(f)*, below).

ILLUSTRATION

Ms. Ahmed's investment in the pension benefit (see paragraph 17, above) is $100,000. At age 62, Ms. Ahmed, who is happily married to Mr. Schlesinger, a 53year-old, retires from the United Nations and elects to receive a partial commutation of her retirement benefit, in the maximum amount of one third (see previous illustration under paragraph 26, above). ,

Under the regulations of the UNJSPF, Ms. Ahmed's full, monthly retirement benefit would be $1,500. However, because Ms. Ahmed has elected to take a one-third lump sum as a partial commutation of her retirement benefit, Ms. Ahmed's reduced monthly benefit will be $1,000.

Based on the foregoing formula, the tax-free portion (i.e., the amount excludable from income for determination of income taxes) of Ms. Ahmed's monthly pension benefit would be determined as follows:

> The number of monthly payments is 360 *(the combined age of Ms. Ahmed and Mr. Schlesinger is 115, which corresponds to 360 monthly payments in table II, under paragraph 28(b), above).*
>
> $100,000, Ms. Ahmed's investment, therefore, must be divided by 360 monthly payments.
>
> $100,000 ÷ 360 = $278.

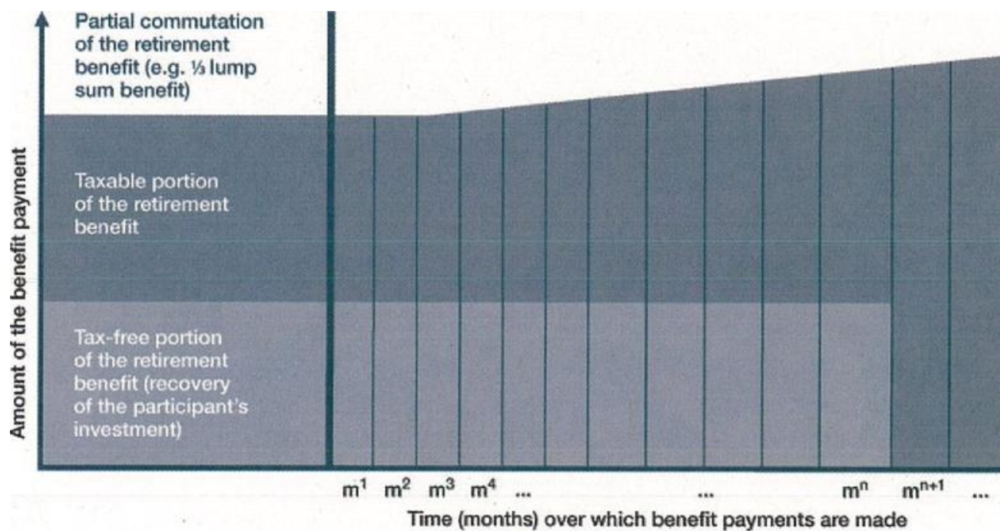
Accordingly, the taxable portion (i.e., the amount subject to ordinary income taxes in the tax year when received) of Ms. Ahmed's $1,000 monthly pension benefit would be the amount of the monthly benefit (even if it rises over the years because of adjustments), less the tax-free portion: $1,000 — $278, or $722.

(f) *Tracking the tax-free distribution of the investment:* A participant whose pension payments start after 31 December 1986 must keep track, *year by year,* of the total amount of UNJSPF benefits received tax-free, starting with the tax-free amount of any partial lump sum benefit *(see* paragraph 26, above) and adding the tax-free amount of each monthly benefit payment *(see* paragraph 28(e), above), until that total equals the participant's investment in the pension *(see* paragraph 17, above). Thereafter, the full amount of the pension is taxable as ordinary income. If the "investment" is not recovered tax-free in full by the time of the death of the participant and of any surviving spouse, or other lifetime beneficiary, the unrecovered amount may be taken as a deduction on the participant's last income tax return.

ILLUSTRATION

Taxable and non-taxable portions of a UNJSPF retirement benefit

The "investment" in a UNJSPF benefit (shown below in the lighter colour) is returned tax-free, as part of the partial commutation (or lump sum) payment of the benefit, and through the monthly payments of the remaining benefit. Once the investment is fully returned tax-free, after month *mn,* the remaining monthly benefit payments are fully taxable (as shown in the darker colour):



Disability benefit

29. A disability benefit (article 33 of the UNJSPF Regulations) is fully taxable as ordinary income for recipients who may be subject to U.S. income taxation *(see* paragraphs 7-10, above), since the disability benefit is intended to replace income that would have been received from employment, but for the disability. Since the recipient of a disability benefit is no longer a staff member of the United Nations or other employing organization of the UNJSPF, the exemption from income taxation for official salaries and emoluments may not be applicable to the disability benefit. In principle, a disability benefit qualifies for the rather modest "Credit for the Elderly or the Disabled" allowed by a 1983 amendment to the IRC. This credit is described generally in IRS publications Nos. 17 and 554, entitled "Tax Benefits for Older Americans" and "Instructions for Completing Schedule R (Form 1040)", and is more fully covered by IRS publication No. 524, entitled "Credit for the Elderly or the Disabled".

30. The normal rule for treating a disability benefits is as follows:

(a) A beneficiary who, in accordance with article 33 of the UNJSPF Regulations and the relevant Administrative Rules of the UNJSPF, is determined to be permanently and totally disabled from performing any substantial gainful activity and is below the mandatory retirement age" (at the United Nations, generally 60 years for those employed before 1 January 1990, and 62 years for those employed thereafter) may take a tax credit of fifteen per cent (15.0%) of the smaller of the disability benefit or of an amount ranging between $3,750 and $7,500 (depending on the age and physical condition of both the beneficiary and any spouse), reduced by the amount of any non-taxable social security and other governmental pensions and by half of the amount the adjusted gross income exceeds certain stated limits;

(b) After reaching the mandatory retirement age (age 60 or 62 for the United Nations), the disability benefit is taxed as a normal retirement benefit (i.e., as described in paragraphs 27 and 28, above). For this purpose, no account is taken of any payments received prior to the mandatory retirement age, i.e., these payments are not considered as having reduced the participant's "investment", since the disability pension benefits were fully taxable as ordinary income for any beneficiaries who may have been subject to U.S. income taxation.

31 When a disability benefit under the UNJSPF Regulations and Administrative Rules is payable on account of a service-incurred illness or injury for which compensation under Appendix D to the United Nations Staff Regulations and Rules is also awarded, then, pursuant to Appendix D, such compensation is considered to be supplementary to the disability benefit, and under Appendix D, the compensation is generally reduced. As Appendix D compensation has been held to be in the nature of worker's compensation, which is exempt from income tax, a participant who was awarded such compensation may be able to establish that the UNJSPF disability benefit is also exempt, in part, under the rule applicable to the exemption from worker's compensation. Anyone in such position should consult with a qualified tax adviser to determine whether such exemption is available.

Child's benefit

32. A child's benefit (article 36 of the UNJSPF Regulations) is considered to be the income of the child and not of the parent or guardian to whom it may be paid. Therefore, to the extent that the child is subject to U.S. income taxation (*see* paragraphs 7-10, above), the benefit should, therefore, be reported on the child's own income tax return.

33. A child's benefit is generally less than the threshold amount of income that would subject the recipient of the benefit to income taxation (but not necessarily less than the amount required for filing an income tax return). Accordingly, unless the child earns income from other sources that would also be subject to U.S. income taxation, the child's

benefit is not likely to result in taxable income. If, however, the receipt of a benefit results in additional income subject to U.S. income taxation, a qualified tax professional should be consulted to

determine whether any of the participant's investment in the benefit *(see* paragraph 17, above) can be recovered tax-free in the child's benefit and, if so, by what method of calculation.[28]

Survivor's benefits

34. Benefits paid to a survivor (e.g., widow's/widower's, child's or secondary dependant's benefit, payable under articles 34, 35, 36 or 37 of the UNJSPF Regulations) on behalf of a participant who died in service are taxed on the same basis as a retirement benefit *(*see paragraphs 27 and 28, above) under the Simplified General Rule. The only difference is that for the purpose of calculating the late participant's "investment" *(see* paragraph 17, above), the amount of the "death benefit exclusion" may be added to the investment. The "death benefit exclusion" is based on the amount by which the expected return on the pension (commuted into a lump sum as of the date of the participant's death) exceeds the larger of:

(a) The withdrawal settlement that would have been payable to the participant (under article 31 of the UNJSPF Regulations) had he or she been separated from service and requested such a settlement immediately before his or her death; or

(b) The participant's total contributions (calculated in accordance with the method described in paragraph 17, above). The amount of the exclusion may not, under any circumstances, exceed $5,000 reduced by any amount applied to other payments received by the survivor under the Staff Regulations and Rules by reason of the participant's death or received from another employer *(see also* paragraphs 28(e) and 28(f), above, as to full recovery of the investment in contract).

35. A survivor's benefit paid on account of a retired participant is taxed as a continuation of the participant's own pension, in accordance with the Simplified General Rule *(see* paragraphs 27 and 28, above).[29] Once the "investment" *(see* paragraph 17, above) has been recovered as a

[28] Previous editions of the Guide stated that the "General Rule" applied to the calculation of the tax-free portion, if any, of a child's benefit. However, it is not clear that, following the enactment of the *Small Business Job Protection Act of 1996,* Pub. L. No. 104-188, § 1403 (Aug. 20, 1996), 110 Stat. 1755, 1790-1791 (amending section 72(d) of the IRC), the General Rule still applies to the calculation of the tax-free portion of the child's benefit. Thus, qualified tax advice should be obtained on this point.

[29] The only exception is the case where the participant was not a United States citizen or resident alien (and hence owed no United States taxes on his or her pension benefits), but the survivor receiving benefits is a United States citizen or resident alien. While in this case the late participant's "investment" would

include the contribution by the Organization (*see* paragraph 17, above), it is necessary to deduct from that "investment" any payments representing a return of the investment in the contract that the participant had received from the UNJSPF, whether as a partial lump sum or otherwise. While there is no IRS guidance on this point, it appears this determination can safely be made by assuming the individual was subject to United States tax rules discussed herein from the date that the pension payments started.

tax-free portion of the benefit (*see* paragraphs 28(e) and 28(f), above), the full amount of the benefit payment may be taxable as ordinary income.

36. In addition, if an estate tax is paid by a participant's estate on account of a survivor's benefit, then the portion of the total estate tax that is attributable to such benefit may be deducted by the survivor on his or her income tax return rateably over his or her remaining life expectancy. However, unlike the exclusion of the tax-free portion of the portion of the benefit corresponding to the participant's "investment" in the benefit, as referred to in paragraph 35, above, which reduces gross income, the rateable portion of the estate tax is merely a permissible itemized deduction to gross income (reported on schedule A of Form 1040), to the extent that such deductions may be taken.

37. The recipient of a widow's, widower's or secondary dependant's (to a parent) benefit may be able to utilize the "Credit for the Elderly or the Disabled" (*see* paragraph 29, above).

B. U.S. state and local income taxation of UNJSPF pensions

38. Most persons subject to United States federal income taxes are also subject to taxation by one or more of the constituent states. In particular, a United States citizen or resident alien actually living in the United States will be subject to taxation by the state of which he or she is a "domiciliary", for which (depending on the definition in the state tax code) actual residence during some fraction of the year or even the mere maintenance of a place of abode may suffice. However, a person living abroad, especially one who for federal income tax purposes is considered a "bona fide resident" of a foreign country, is frequently not a resident of any of the states and in such event cannot be taxed on his or her income as a resident by any of them. It should be noted that in order to change residence (domicile) for tax purposes, it is necessary to establish both a physical presence in the new domicile and sufficient indications that the stay there is to be permanent or indefinite (e.g., purchase or long-term rental of a residence; voter registration; car registration; bank accounts; etc.). A person subject to state taxation may also be subject to taxation by a municipality within the state (e.g., the City of Yonkers or New York City).

39. It should be noted that with respect to UNJSPF benefits attributable in whole or in part to service in New York State (i.e., at United Nations Headquarters):

(a) Periodic benefits are taxed by New York State only to the extent that they are

received by a resident of the state; therefore, any such benefits received after a person has moved from New York State, or by a person who was never a resident in that state, are not taxed by New York;

(b) A commuted retirement benefit (i.e., a partial lump sum; *see* paragraphs 23-26, above) is considered to be part of an "annuity" and is, therefore, treated in the same

way as the periodic benefits—that is, the benefit is only subject to taxation by New York State if it is received by a person who is a resident of the state; and

(c) A withdrawal settlement (i.e., a full lump sum; *see* paragraphs 16-21, above) is taxed fully to a resident.[30]

40. Some states, like New York," tax most income, including pension benefits, on the same basis as the U.S. Federal Government, merely applying different exemptions, standard deductions and tax rates to the federal adjusted gross taxable income figures. In such states, UNJSPF benefits will automatically be taxed on the same basis as they are on the U.S. federal level and no separate calculations of how much is taxable and how much is exempt need be made. However, caution should be exercised, because some special U.S. federal features of the income tax laws may not be allowed. Others, like California, incorporate the U.S. federal income tax rules as to annuities by reference.

41. Still other states impose taxes on annuities (such as retirement and survivor's benefits) on a different basis. Such states still require that the investment in the pension be determined (as state tax laws are rarely as specific on this point as the federal rules, it is probably easiest to use the federal calculation, as in paragraph 17, above). The investment may then be multiplied by a flat rate (e.g., 3.0 per cent) to determine the taxable and non-taxable amount of the *annual* benefit, unless the actual amount thereof is less (it rarely is). The balance of the benefit is not taxed, but each year that the amount is so exempted must be cumulated, and once the total amount exempted equals the original "investment" then all future benefits become fully taxable.

C. U.S. federal estate taxation

42. The tax on the estate of a deceased participant generally must be calculated with the assistance of an attorney—usually the one who is handling the probate or administration of the estate. That lawyer should be informed of the "qualified" status of the UNJSPF *(see*

[30] Previous versions of this Guide stated that New York State would seek to impose taxes on the withdrawal settlement from the UNJSPF taken by a non-resident of New York State to the extent that the participant

performed employment services in New York State (i.e., worked for the United Nations or another member organization of the UNJSPF in New York State) during the year of retirement and the three immediately preceding taxable years. However, a 1996 law, Pub. L. 104-95 (10 January 1996), 109 Stat. 979, barred states from taxing any benefits from qualified pension plans received by non-residents of such states after 31 December 1995.

[31] Since 1982, both New York State and New York City permit an annual deduction of up to $20,000 in periodic pension income. This deduction is available to the taxpayer who earned the pension (i.e., to the UNJSPF participant) and who has attained the age of 591/2 years at the time of filing the New York State tax return. The deduction is also available to any survivors of such taxpayer.

paragraphs 11 and 12, above), as this fact may make a considerable difference in the calculation of the estate tax.

43. In general, the *present value* of annuities and other benefits payable by a qualified plan to the beneficiaries of a deceased participant need to be included in the participant's estate for estate tax purposes. Under current law there is no federal estate tax exemption on the estate of a participant for the value of benefits payable by a qualified plan to his or her beneficiaries.

44. Whether or 'not the full value of any UNJSPF benefit must be included in an estate *(see* paragraph 43, above), it is likely that this will by itself not exceed the basic exemption limits available under federal estate tax rules. However, as there are likely to be some other assets, their value added to that of the benefits may result in some liability to taxation. But even if there appears to be no such liability, it is important that the returns be filed correctly. State inheritance or estate tax rules generally are also involved and could be a factor, even if no federal estate tax is payable.

45. In any event, if benefits are payable to a *surviving spouse who is a United States citizen,* the value of those benefits can generally be excluded from the estate in calculating federal estate tax liability.

D. U.S. Social Security

46. No benefit received from the UNJSPF constitutes either "wages" subject to the social security tax or "net earnings from self-employment" subject to the self-employment tax.

47. No benefit received from the UNJSPF constitutes "earned income" that reduces the full amount of social security payments receivable by the beneficiary.

48. All taxable benefits received from the UNJSPF *(see* paragraphs 7-37, above) must be included in the calculation to determine whether or not any part of social security payments

received are themselves taxable.

E. UN assistance in determining taxes on UNJSPF benefits

49. Neither the UNJSPF secretariat, nor the Income Tax Unit of the United Nations Office of Programme Planning, Budget and Account, nor the United Nations Office of Legal Affairs is staffed to provide advice or assistance to UNJSPF retirees and beneficiaries with regard to tax calculations. However, the Income Tax Unit may give some advice with respect to any taxes that may be refunded by the Organization *(see* paragraphs 4-6, above). Persons requiring assistance in determining tax liability and submitting tax returns and payment should consult a qualified tax professional (e.g., a tax lawyer or tax accountant). The present Guide is

designed to assist such professionals in how to characterize and take account of UNJSPF benefits within the context of United States federal and state tax laws.

50. As neither the United Nations nor the UNJSPF is subject to national governmental regulations, they do not file with the IRS or provide to UNJSPF beneficiaries (whether or not these were former United Nations staff members) the annual form 1099-R, entitled "Distribution from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.". However, it should be noted that:

(a) On the final "Statement of Taxable Earnings" provided to United Nations staff members believed to be subject to United States income taxation, the Income Tax Unit of the United Nations Office of Programme Planning, Budget and Accounts will include what it considers to be the taxable portion of any full or partial lump sums received from the UNJSPF. It should be noted that such calculations are based only on facts known to the Income Tax Unit. Thus, it may not take account of the full amount of the participant's "investment" insofar as this includes items such as those mentioned in paragraph 17(e) above. Participants should liaise with the Tax Unit to ensure accuracy of information known by that office;

(b) The UNJSPF will, on request, provide beneficiaries with an annual statement of the payments made by the UNJSPF, without in any way characterizing their taxability. (It should be noted that under UNJSPF administrative rule J.2 (a) the periodic benefits of those participants who separated on or after 31 December 1984 are paid monthly in arrears; consequently, these payments do not become available to the beneficiaries until the first day of the following month. Therefore, the Fund's annual statements only take into account the payments actually made to the beneficiary or on his or her behalf during the year in question. For example, if a

participant retires on 31 July, and is therefore entitled to periodic benefits for five months during the year of retirement, only four will be reported for that year: namely, payments for August to November, received at the beginning of September to December respectively. In addition, it should be noted that the actual payments received from the UNJSPF may be reduced by health (including dental) insurance premiums. However, the amounts to be reported are the total benefits received (which include these premiums), and the UNJSPF statement will therefore show payments higher than the amounts actually received by the participant.

51. For the same reason, the Pension Fund does not withhold United States federal or state taxes on either lump sum or periodic UNJSPF benefit payments, even if requested to do so by the beneficiary. Consequently, beneficiaries liable to pay United States taxes should file quarterly estimated returns (e.g., 1040-ES for the U.S. federal income taxes and IT-2105 for New York State), reflecting all expected taxable income, including that from the Pension Fund, and pay the corresponding amounts. This is what United States citizens and permanent residents were obliged to do during their period of United Nations system employment.