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Case No.: UNDT/GVA/2012/54

Judgment No.: UNDT/2012/199

Date: 14 December 2012

English



## Introduction

1. By application filed with the Registry of the Tribunal on 18 June 2012, the Applicant requests the rescission of the decision whereby the Income Tax Unit, United Nations Secretariat, required him to remit the amount of US\$52,595 that he had allegedly been paid by mistake in respect of the staff assessment deducted from his salary and other emoluments received in 2007.

2. He also requests the Tribunal to order the Income Tax Unit to refund the amount due to him on account of the Income Tax Unit's illegal decisions, by which he was forced to use his wife's foreign income tax credits in 2008, 2009 and 2010.

## Facts

3. The Applicant serves as Senior Trial Attorney at the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia ("ICTY").

4. In 2007, the United Nations made an advanced payment to the United States tax authorities, the Internal Revenue Service ("IRS"), in the amount of US\$52,595 corresponding to an estimate of the Applicant's tax liabilities for 2007. In order to reduce his tax liabilities for the same period, the

and the Income Tax Unit's decisions whereby he was required to use his wife's foreign tax credits to reduce his tax liabilities in 2007, 2008, 2009 and 2010.

7. Also on 7 February 2012, the Applicant submitted to the Tribunal an application for suspension of action, pending management evaluation, of the decision communicated to him on 29 December 2011 and the decision whereby he

15. On 26 November 2012, the Respondent and the Applicant responded to Order No. 1rF/2012 of



reimbursement. The Administration has no obligation to set out in its decisions the recourse procedures to appeal such decisions;

c. The fact that the Applicant had engaged in informal discussions with the Administration had not prevented him from initiating the formal procedure;

d. The Applicant's request for management evaluation o

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of

have the effect of extending the time limit for the initiation of formal recourse procedures.

25. The application is therefore declared not receivable in respect of refunding assessments deducted for the year 2007.

On the staff assessments deducted in 2008

26. The Applicant requested the Tribunal to order the Income Tax Unit to refund the sum due to him on account of the Income Tax Unit's decisions requiring him to use his wife's foreign income tax credits for the year 2008.

27. The Tribunal can only note that, as regards the year 2008, the Applicant did not submit any sort of request to the Income Tax Unit to refund the staff assessment deducted from his salary. Furthermore, the Applicant cannot contest a decision that was never taken to refuse reimbursement.

28. The application is therefore declared not receivable in respect of refunding assessments deducted for the year 2008.

On the staff assessments deducted in 2009

29. The documents in the case file indicate that the Applicant requested the return of funds on 13 January 2011 and that the statement of his tax settlement for 2009 was sent to him on 17 January 2011. The statement indicates, on the one hand, that he does not have the right to receive any reimbursement and, on the other, recalls that an overpayment of US\$52,596 was



earlier. As noted above, informal discussions with the Administration do not extend the time limit for the initiation of a forma

from the submission of the Respondent's response to submit his own observations, if any;

c. All other requests of the Applicant are hereby rejected.

(Signed)

Judge Jean-François Cousin

Dated this 14<sup>th</sup> day of December 2012

Entered in the Register on this 14<sup>th</sup> day of December 2012

(Signed)

René M. Vargas M., Registrar, Geneva