



## **Introduction**

1. The Applicant filed the current application on 22 February 2022 to contest the “refusal” of the United Nations Income Tax Unit (“ITU”) to process and pay his United States of America (“USA”) federal tax liability for 2013, 2015 and 2017 based on his failure to prove that he had taken medical leave to address mental health challenges that “affected his judgment regarding his personal life” (“contested decision”).
2. The Respondent filed a reply on 25 March 2022 in which he contends that the application is without merit because the contested decision is legal, reasonable, and

status effective February 2020. The Applicant did not file USA tax returns for the years 2013, 2015 and 2017. He explained that he was not aware that until he legally relinquished his permanent residency status that he was obliged to file US taxes.<sup>3</sup>

8. In August 2019, the USA Internal Revenue Service (“IRS”) placed a *lien* on the Applicant’s bank account and recovered some money from the account. This was when the Applicant realized that he was required to file his tax returns, so he engaged a tax consultant to assist him.<sup>4</sup>

9. On 8 February 2020, the Applicant visited the ITU office at United Nations Headquarters (“UNHQ”) in New York and submitted his tax returns for 2013, 2015 and 2017.<sup>5</sup> He received three notifications from the ITU’s generic email address acknowledging receipt of his claims.<sup>6</sup> He recounted in detail that on the same day, upon advice of the person in the ITU office, he also submitted an *ad hoc* hand-written statement to an ITU staff member explaining that he had submitted the returns late due to mental health issues.<sup>7</sup> The ITU staff member explained to the Applicant that they were in the process of dealing with staff members who were submitting claims for the current year and that late claims, including his, would not be prioritized.<sup>8</sup> The Respondent refutes this assertion and avers that although an ITU staff member had advised him on 8 February 2020 about the explanatory note, the Applicant did not submit the written explanation until 16 October 2021 when ITU requested again that he do so.<sup>9</sup> According to the Applicant, after his submission in February 2020, he followed up severally (e.g. phone calls to the general ITU number, sent a colleague to the ITU office, and sent emails) but did not receive a response from ITU for almost 20 months.<sup>10</sup> The Applicant was unable to provide the Tribunal with any emails he sent to ITU between February 2020 and April 2021.

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<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Application, section VII, para. 1.

<sup>6</sup> Application, annexes 10, 10.1 and 10.2

<sup>7</sup> Application, section VII, paras. 1-3; Applicant’s response of 23 December 2022 to Order No. 171 (NBI/2022); and Applicant’s oral evidence on 18 January 2023.

<sup>8</sup> Applicant’s oral evidence on 18 January 2023.

<sup>9</sup> Respondent’s submission pursuant to Order No. 171 (NBI/2022), dated 22 December 2022.

<sup>10</sup> Application, section VII, para. 4 Applicant’s oral evidence on 18 January 2023.

10. QI and TO gave evidence that before the COVID-19 pandemic in March 2020, ITU allowed staff members to submit both current and late tax claims in person. The ITU reception staff would check the claims for basic information (i.e. name, signature, address, correct attachments, etc) but not give the claims a detailed review/examination. Staff members submitting late claims would be informed that ITU would not process their claims until after the annual 15 June deadline for current claims, and that they should follow up after the deadline. The claims and any supporting documents would be stapled together and placed in a box. At the end of the day, the box would go into the ITU office and ITU staff were assigned to log the claims in.

compliance with paragraph 9 of the Human Resources Policy Guidance on Gradual Return to the Workplace, version 1.1 of 2 July 2021.<sup>11</sup>

12. Since ITU staff members were working from home after March 2020, TO did not have access to the hard copy claims filed by the Applicant in February 2020. Also, due to ill health, TO did not return to the workplace immediately so the Applicant's claims remained in his tray until sometime in July 2021 when ITU staff returned to the workplace.

13. In May 2021, the Applicant received a tax delinquency notice for payment of USD81,337.17 from the IRS, which he submitted to the ITU on 9 May 2021 using the ITU generic email address.<sup>12</sup> The payment of USD81,337.17 was to be made to IRS by 2 June 2021.<sup>13</sup> Subsequently, the Applicant's Counsel managed to postpone the tax payment from 3 June 2021 to 30 November 2021.<sup>14</sup> TO, who was working remotely in May 2021, responded to the Applicant's email.

14. Between May and October 2021, the Applicant communicated with TO and provided various documentation (index number, personnel action form, form 65, etc.) requested by TO because the Applicant had no statements of earnings on file.<sup>15</sup> TO subsequently spoke to the Applicant via MS Teams to clarify his residency status, which, as it was elucidated by the Applicant in the hearing, expired in 2016. With respect to the 2013, 2015, 2017 tax claims, he testified that there was no written

15. The Applicant submitted a typed explanatory memorandum to TO on 16 October 2021<sup>17</sup>, which TO forwarded to QI. QI testified that there was no hand-written explanation when he received the hard copies of the Applicant's 2013, 2015 and 2017 claims.<sup>18</sup> On 20 October 2021, TO informed the Applicant that QI wanted him to submit a medical report to prove that he had been physically/mentally unable to handle tax issues. The Applicant refused to comply with this request on the basis that his medical records are confidential.<sup>19</sup>

16. The Applicant requested management evaluation of the contested decision on 21 October 2021. The Applicant reiterated in his management evaluation request ("MER") that medical records are confidential and not relevant for the ITU to process his tax claims. He

Case No.: UNDT/NBI/2022/021

Judgment No.: UNDT/2023

regarding his mental health issues in February 2020 and not informing him that his late return was subject to the approval of an exceptional waiver. The practices of ITU, as demonstrated by witness evidence in the hearing, were chaotic, dismissive and punitive.

b. Pursuant to ST/IC/1999/111 (Mental health – medical and employee assistance facilities), he had refused to divulge confidential medical information because he was unaware that he was being considered for an exceptional waiver. Once he understood the reason for the request, he provided MEU with a sick leave report approved by the Chief Medical Officer (“CMO”) of his peacekeeping mission<sup>27</sup> and a report from his attending psychiatrist.

c. From 2013 to 2017, the United Nations withheld/deducted staff assessment of approximately USD120,000.00 from his gross salary for the settling of his USA taxes. These funds were retained in escrow and not remitted to him.

d. The Respondent disregarded guidance regarding recognition of mental health problems afflicting staff. Instead, his mental health challenges were trivialized thus resulting in the failure to grant him the exception.

e. The Applicant seeks the following remedies from the Organization: (i) settlement of his USA tax obligations for 2013, 2015 and 2017; and (ii) payment of the penalties accrued after the date he submitted his tax returns to the date the Organization makes payment to the IRS.

21. The Respondent’s case is that the application should be dismissed for the following reasons:

a. For staff serving outside the USA, the 2013, 2015 and 2017 deadlines for submitting requests for income tax reimbursements to the Organization

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<sup>27</sup> Application, annexes 7 and 7.1.





is not a withholding tax but rather an amount deducted from all United Nations staff members' gross pay, regardless of their tax obligations.

### **Considerations**

22. The legal framework governing this matter is as follows:

Former staff rule 3.17 ((ST/SGB/2016/1)

A staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively

their official emoluments were not taxed. It is intended neither to provide a benefit, nor to place the staff member at a disadvantage, in relation to other United Nations staff members who are not required to pay taxes to a Member State on their United Nations emoluments.<sup>31</sup>

- b. Staff assessment is not a withholding tax and as such, it cannot be reimbursed to staff members under any circumstances. It is an amount deducted from all United Nations staff members' gross pay regardless of their nationality. Staff assessment deductions are credited to the Tax Equalization Fund. Member States that do not impose income tax on United Nations earnings receive a portion of the Tax Equalization Fund as an offset against their assessments for the United Nations regular budget, peacekeeping and tribunal budgets. Staff members who have to pay national income taxes on their United Nations earnings, are reimbursed from the Tax Equalization Fund irrespective of the total amount of staff assessment deducted from their salaries.<sup>32</sup>
- c. For staff serving outside the US, the 2013, 2015 and 2017 deadlines for submitting requests for income tax reimbursements to the UN were: 1 April 2014<sup>33</sup>; 1 April 2016<sup>34</sup> and 2 April 2018<sup>35</sup>.
- d. To request tax reimbursement, a staff member must submit a photocopy of their income tax returns together with properly completed forms F.65, F.65/A (if applicable) and F.243 to the ITU. Staff members who have received tax advances must submit annual requests for tax reimbursement within the deadline for submission.<sup>36</sup>
- e. As the responsibility for filing complete, correct and timely tax returns is that of the individual taxpayer, the United Nations will not reimburse staff members for penalties and/or interest imposed by tax authorities on their United Nations earnings except if: (a) the delays are attributable to the Organization; or (b-12rril 2018

- f. Limitation on retroactivity of claims for reimbursement of taxes (waiver of staff rule 3.17(ii)): no claims for reimbursement of taxes will be entertained beyond one year after the deadline, unless the United Nations accepts that there are extenuating circumstances. In such cases, a staff member may request that the time limit in staff rule 3.17(ii) be waived and support such a request with a written explanation for the delay.<sup>38</sup>

23. Based on the facts before it and the framework outlined above, the Tribunal will examine two questions: whether the refusal to pay the Applicant taxes was unlawful, and whether the Administration is liable for delay in processing of the claim.

*Whether the refusal to pay the Applicant's taxes was unlawful*

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managers concerned and, it may properly be added, the Tribunal.<sup>39</sup> The Applicant cannot invoke impossibility to diagnose himself on the one hand, and yet, on the other hand, expect the ITU to uncritically accept extenuating circumstance on the basis of his self-made diagnosis alone. The Administration, therefore, rightly requested the Applicant to support the claimed inability to file tax returns through a professional attestation and properly concluded that the medical certificate granting the Applicant three weeks of sick leave starting 13 April 2017 did not suffice



he also described the ITU lady. Whereas the ITU *modus operandi*, as described above, indicates that ITU could likely have lost or misplaced the explanation.

31. The aforesaid shortcomings notwithstanding, the Tribunal does not find basis to hold the Respondent financially liable for interest and penalties accrued through the delay. Leaving aside the issue that the Applicant does not in any way quantify the amount of interest and penalties for which he demands compensation, the Tribunal recalls that the Respondent's obligations regarding processing the tax returns is only subsidiary to the staff members obligation toward the IRS. The Applicant was principally responsible for filing and paying his taxes within deadlines. This is clearly stated in the information circulars. This duty was not lifted when the Applicant filed his late request with the ITU, and, in the face of ITU inaction, he was obliged to mitigate the ongoing accrual of interest and penalties, by paying the dues himself, through urging the ITU earlier, and/or through petitioning for deferment with the IRS as he eventually managed to obtain through his tax counsel.

32. Based on the foregoing, the application is unfounded on both counts.

### **Judgment**

33. The application is refused.

34. The Applicant's name is to be anonymised and his current workplace and previous case numbers are to be redacted in the published version of this judgment.

*(Signed)*  
Judge Agnieszka Klonowiecka-Milart  
Dated this 13<sup>th</sup> day of March 2023

Entered in the Register on this 13<sup>th</sup> day of March 2023

*(Signed)*

Eric Muli, Legal Officer, for  
Abena Kwakye-Berko, Registrar, Nairobi