

INCOME TAX ACT

Amounts Excluded from Income - Statutory Exemptions and Certain Service or RCMP Pensions, Allowances and Compensation

IT-397R

February 23, 1990

Paragraph 81(1)(a) (also paragraphs 81(1)(d), (e) and (i) and subparagraph 56(1)(a) (i) and 212(1)(h)(iii))

Application

This bulletin cancels and replaces Interpretation Bulletin IT-397 dated October 24, 1977. Current revisions are indicated by vertical lines.

Summary

Pursuant to subsection 81(1), certain amounts are exempt from income tax. This bulletin discusses a number of statutory exemptions, i.e. amounts which are exempt from tax by virtue of other federal statutes, and certain exempt service and RCMP pensions, allowances or other compensation received in respect of wartime service, or as compensation for the death or injury of a member of the Canadian Forces or the RCMP.

Discussion and Interpretation

1. Subsection 81(1) provides that certain amounts do not constitute income to a taxpayer for any purpose of the Income Tax Act. Paragraph 81(1)(a) specifically provides that amounts which are declared to be exempt from tax by virtue of another Act of the Parliament of Canada, that are not otherwise exempted by virtue of a tax convention or agreement with another country, are not to be included in computing a taxpayer's income. Paragraphs 81(1)(d), (e), and (i) further provide for the exclusion from a taxpayer's income of certain service or RCMP pensions, allowances or compensation. Where a taxpayer's spouse or dependant is in receipt of these amounts, they are not included in that person's income for the purpose of calculating any personal tax credits (see the current version of IT-513) to which the taxpayer may be entitled, or any personal exemption under former section 109 for taxation years prior to 1988.

STATUTORY EXEMPTIONS

Indian Act

2. The Indian Act is considered to exempt from taxation the income of a status Indian if that income has a situs on a reserve (Nowegijick 83 CTC 20; 83 DTC 5041). In addition, the Indian Remission Order (PC 1985-2446) currently exempts status Indians on certain income not sited on a reserve if that income is derived from the performance of services on a reserve.

Privileges and Immunities (International Organizations) Act

3. This Act generally provides that an official (see 5 below) of

- (a) the United Nations or any of its agencies,
- (b) an international organization of which Canada is a member and whose primary purpose is the maintenance of international peace or the economic or social well-being of the community of nations,

- (c) the European Communities,
- (d) the European Space Agency, or
- (e) the Sinai Multinational Force and Observers, who is resident in Canada but not a Canadian citizen, is not subject to tax in Canada on remuneration received from that organization. On the other hand, Canadian citizens who are resident in Canada and are so employed are subject to tax in Canada on such remuneration.

Privileges and Immunities (North Atlantic Treaty Organization) Act

4. An exemption similar to the one described in 3 above is provided in this Act for an official (see 5 below) of NATO or any of its subsidiary bodies in respect of remuneration received from NATO or the subsidiary body, except that this exemption applies to Canadian residents regardless of their citizenship. However, when Canada itself employs and pays an individual and then seconds or lends that person to act as an official of NATO or a subsidiary body, this country retains the right to tax that official when he or she is resident in Canada or is deemed to be resident in Canada pursuant to subsection 250(1).

5. An "official" of an organization referred to in 3 above is a person named and agreed on between the organization in question and its member states and designated as such by the Governor in Council; and in 4 above an "official" is a person named and agreed upon between NATO and its member states. There is no exemption from income tax provided under either Act for an employee of an organization who is not so designated or named, as the case may be, including an undesignated person classified as an "expert on mission". Also, the exemptions set out in 3 and 4 above do not apply to a servant of Canada or a member of the Canadian Forces who is a representative of Canada to one of the organizations mentioned in those paragraphs.

Northwest Territories Act and Yukon Act

6. These Acts provide that the first one thousand dollars of the indemnity paid in any year to an elected or appointed member of the Council of the Northwest Territories or Council of the Yukon Territory is not income for purposes of the Income Tax Act.

Public Utilities Income Tax Transfer Act

7. Under this Act, the Minister of Finance may make certain payments to the provinces in respect of income taxes paid by certain public utility corporations under Part I of the Income Tax Act. Where a province certifies that it has paid part or all of such payment to the designated utility corporation for the use and benefit of such corporation, the amount so certified is exempt from income tax in the hands of the corporation.

Family Allowances Act

8. Family allowance payments are generally required to be included, for tax purposes, in the income of a parent of the child in respect of whom they are made, or some other supporting person. However, "special allowances" paid under the Family Allowances Act are not required to be included in the income of the relevant person, pursuant to section 12 of that Act, and are not reported on the TFA-1 Supplementary slip. (Refer to the

current version of Information Circular 79-9, "Family Allowances", for a complete discussion of the tax treatment of payments received under the Family Allowances Act.)

Visiting Forces Act

9. Under this Act, members of the armed forces of a designated state and civilian personnel designated as a civilian component of such forces, who are present in Canada in connection with official duties, are exempt from taxation in Canada on the salary and emoluments paid to them in such capacity. A "state" and "a civilian component of a visiting force" are so designated by proclamation of the Governor in Council, who may also, by proclamation, declare the extent to which the Visiting Forces Act is applicable in respect of any such designated state. This exemption does not extend to Canadian citizens who are resident or ordinarily resident in Canada.

SERVICE AND RCMP PENSIONS

Canadian Service Pensions

10. Pursuant to paragraph 81(1)(d) the following pension payments, allowances, or compensation received under the specified statutes of Canada are not required to be included in income:

- (a) Compensation payable under the Pension Act for injury or disease resulting in the disability or death of any member of the naval, military, or air forces of Canada in respect of service in those forces or in those forces as now unified under the name of "Canadian Forces".
- (b) Compensation payable under the Civilian War Pensions and Allowances Act, for the same reasons referred to in (a) above, in respect of service rendered by any person in World War II who was
 - (i) a Canadian merchant seaman,
 - (ii) a salt-water fisherman,
 - (iii) a member of the Auxiliary Services,
 - (iv) a member of the Corps of (Civilian) Canadian Fire Fighters for Service in the United Kingdom,
 - (v) a special constable in the RCMP,
 - (vi) an air-raid precautions worker,
 - (vii) called up for training, service or duty under the National Resources Mobilization Act, 1940,
 - (viii) a member of the Voluntary Aid Detachment,
 - (ix) an overseas welfare worker,
 - (x) a member of the Canadian civilian air crew of the RCAF Transport Command.
- (c) Allowances payable under the War Veterans Allowance Act to certain veterans and their widows, widowers, and orphan children.
- (d) Compensation payable under regulations made under section 9 (formerly section 7.7) of the Aeronautics Act in respect of the injury or death of any person employed in, or under the direction of any department of, the public service of Canada. Such injury must have resulted directly from a non-scheduled flight undertaken in the course of duty, or, in the case of a civilian aviation inspector, a flight

undertaken for the purposes of determining the competency of flight crew personnel, inspecting commercial air operations or monitoring in-flight cabin procedures in use in commercial air operations.

11. Paragraph 81(1)(d), as described in 10 above, does not apply to any other type of pension or allowance, such as, for example, superannuation payments made under the Public Service Superannuation Act.

Service Pensions from Other Countries

12. Pursuant to paragraph 81(1)(e), a pension payment received from a foreign country on account of disability or death arising out of war service is not required to be included in income provided the foreign country grants substantially similar relief for the year to persons receiving payments referred to in 10 above and subject to the comments in 13 below.

13. Paragraph 81(1)(e) only applies in respect of pension payments made by countries that were allies of His Majesty at the time of the war service referred to in 12 above. The countries which so qualify are as follows:

World War I

Belgium Japan
Brazil Liberia
China Montenegro
Commonwealth Countries Nicaragua
Costa Rica Panama
Cuba Poland
Czechoslovakia Portugal
Ecuador Romania
France Russia
Greece San Marino
Guatemala Serbia
Haiti Siam (Thailand)
Hedjaz United States of America
Honduras Uruguay
Italy Yugoslavia

World War II

Argentina Iraq
Belgium Italy
Bolivia Lebanon
Brazil Liberia
Chile Luxemburg
China The Netherlands
Colombia Nicaragua
Commonwealth Countries Norway
Costa Rica Panama
Cuba Paraguay
Czechoslovakia Peru
Denmark Poland
Dominican Republic San Marino
Egypt Saudi Arabia

El Salvador Siam (Thailand)
Ethiopia Syria
France Turkey
Greece United States of America
Guatemala U.S.S.R.
Haiti Uruguay
Honduras Venezuela
Iran Yugoslavia

RCMP Pension or Compensation

14. Pursuant to paragraph 81(1)(i), pension payments, allowances and other compensation received in respect of an injury, disability or death arising directly out of, or directly connected with, the service of a member in the RCMP under the provisions of the Royal Canadian Mounted Police Pension Continuation Act or the Royal Canadian Mounted Police Superannuation Act, are not to be included in the recipient's income. This exemption does not extend to long service pensions which are subject to tax under subparagraph 56(1)(a)(i).

Pensions to Non-Residents

15. Pursuant to subparagraph 212(1)(h)(iii), payments to non-residents of superannuation or pension benefits referred to in subsection 81(1) are exempted from withholding tax under Part XIII of the Income Tax Act, to the extent they would not be included in the income of the non-residents if they had been resident in Canada throughout the year in which the payments were made. Thus, the exempt payments referred to in 10 and 14 above are not subject to tax under Part XIII in the hands of a non-resident recipient.