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PARTIAL TAX EXEMPTION OF UNJSPF PENSIONS IN CANADA

17 February 2009

You will be aware that for the past three years, your Executive has been actively engaged in pursuing a lead provided by John Northcut (and considerable work on his part) on obtaining partial income tax relief on UN pensions paid to Canadian residents, based on relevant clauses of the Tax Treaty between Canada and the United States which provide that a Canadian resident receiving a pension arising in the United States enjoys the same tax exemptions as a resident of that country. This means that U.S. tax law and its interpretation, rather than Canadian tax law, is the determining factor in calculating the amount of the tax exemption for UNJSPF payments when filing a Canadian tax return.

Following a rugged course with varied developments, these efforts have finally produced positive results in the form of a definitive agreement between the Competent Authorities of Canada and the United States to the effect that payments from the UNJSPF to recipients and their survivors do indeed qualify for partial exemption from taxation for Canadian residents, under the terms of the Canada-United States Tax Treaty. Competent Authorities are the official bodies charged with harmonizing differences that arise in the interpretation of tax treaties whenever a taxpayer considers that he is being taxed in a manner that is not consistent with a Tax Treaty.

John Northcut has recently received authoritative information in an official letter from the Headquarters of the Canada Revenue Agency (hereinafter CRA) in Ottawa as to the guidelines to be followed by the CRA regional offices in determining a taxpayer's eligibility for this partial tax exemption and how it is to be calculated. This information has been confirmed by a tax settlement refund which René Pouliot obtained from the CRA on appeal of a 2005 tax assessment, in so far as these guidelines apply to his case, which should be the ones applicable to the majority of CAFICS members. In addition, various other members of CAFICS have indicated that their returns claiming partial exemption have been accepted.

Briefly summarized and subject to the more detailed provisions appearing below, a resident of Canada is able to claim as a deduction from his UNJSPF income, an amount equal to the sum of

his own contributions to the UNJSPF, added to the contributions of his employer (unless the Canadian resident is also a US citizen in which case different rules apply), apportioned over a period of years the length of which depends on the pension (annuity) starting date, the age at retirement and, for more recent retirees, the combined ages of the pensioner and of any survivor beneficiary at retirement.

For those retirees who have withdrawn a lump sum in reduction of their pension capital and income and instructed the UNJSPF to do a direct transfer of this sum to an RRSP, a proportional amount is deducted from the sum of employee and employer contributions, the remainder being considered as the « cost » of the annuity (pension) eligible for exemption.

This exemption is to be calculated in accordance with the provisions of Publication 575 of the Internal Revenue Service (hereinafter IRS) of the United States and Worksheet A thereto (found on page 43 of the publication). In accordance with the information provided on page 34 of IRS Publication 575 (2008), it is possible for survivors, and if applicable, the heirs of a UN pensioner, to benefit from any unclaimed balance of the tax exemption provided hereunder. (Publication 575 is available on the web at www.irs.gov/pub/irs-pdf/p575.pdf. Normally, this publication is revised every year to take into account changes in US tax law so the publication may need to be consulted each year to look for any changes.)

While official confirmation at this stage has not been received as to whether *Revenu Québec* or the taxation authorities of the other Canadian provinces will follow suit, it has long been the practice of Quebec and other provincial taxation authorities to implement the decisions of the Competent Authority. In the absence of any contrary information, members may therefore assume that this is the case with respect to partial exemption also by provincial taxation authorities.

In addition, taxpayers can claim an adjustment of their taxes retroactively for a period of up to ten years, subject to the responsible Minister's discretion, which is usually granted by the taxation office doing the revision without actually requesting the Minister's approval. Claims for adjustment of prior years are made on CRA Form T1-ADJ (for federal returns) and *Revenu Québec* Form TP-1 (for Quebec provincial returns). This means that during this year taxpayers may make claims dating back to 1999 inclusive.

Appendix A to this letter contains the substantive part of the information received by John Northcut in the official letter from the CRA on this subject. Redacted portions of the letter contain information intended only for Mr. Northcut.

In order to claim this exemption, CAFICS members should proceed as follows:

1. Study the requirements set out in **Appendix A**, and if you consider that you are eligible to claim this exemption (this will be the case for a majority of CAFICS members whether retirees or survivors of retirees), collect the following information :
 - a) Date of commencement of annuity (UNJSPF pension);
 - b) Total amount of the contributions to the UNJSPF (in US dollars), as confirmed by the Fund's Secretary or CEO;

- c) Amount of lump sum withdrawn from the Fund (in US dollars) and transferred to an RRSP directly by the UNJSPF (and not paid to you at the time of lump sum withdrawal), and percentage of the actuarial value of the pension that this lump sum represented (see below for further details on calculating this); and
 - d) Rates of exchange used to convert the UNJSPF payments into Canadian dollars for every year for which a claim for exemption is made (this should be the rate of exchange used when the tax return was filed).
2. On the basis of the above information, complete a Worksheet A of IRS Publication 575 in US dollars for every year for which a claim is made, complying with the instructions appearing on that Worksheet. You will find a sample of Worksheet A attached at Appendix C to this letter.

Item 1 will be the total of your UN Pension income for that year, in US dollars (ignore the second sentence in Item 1, beginning with the words « Also, add this amount . . . » since this applies to completing U.S. tax forms);

Item 2 will be the total of your own contributions to the Fund as certified by the UNJSPF multiplied by 3 so as to include the employer contributions to the UNJSPF (unless you are also a US citizen).¹ However, from this total an amount is subtracted if a lump sum was taken as a direct transfer to an RRSP by the UNJSPF (without any payment being made by the UNJSPF directly to you).

The amount to be subtracted (to account for a direct transfer from the UNJSPF to a RRSP) is calculated in the following manner:

- a) Determine the actuarial value of the pension. Assuming the lump sum withdrawal was 1/3 of the pension, the actuarial value will be the lump sum multiplied by 3. If the lump sum was 20 per cent of the total, the actuarial value will be the lump sum multiplied by 5;
- b) Determine the proportion that the cost of the annuity was to the actuarial value of the pension (to 2 decimals as a percentage) as follows:

$$\frac{\text{Total contributions (staff member + employer)} \times 100}{\text{Actuarial value of the pension}} = x\%$$

This will give you a percentage figure, for example, 36.25% or .3625

- c) Apply this percentage to the lump sum and deduct the resulting amount from the total amount of contributions;

¹ Canadian residents who are also US citizens are only entitled to include their own contributions to the UNJPSF not the employer contributions. But note that if a deceased UN retiree was a US citizen but the surviving spouse is not a US citizen, the survivor is allowed to include the employer contributions.

- d) The remainder will be the amount to enter in Item 2 of Worksheet A in US dollars. In terms of US dollars, this amount will be unchanged throughout the whole period of years for which the exemption is claimed.

Items 3, 4 and 5 : Follow the instructions of Worksheet A;

Item 6 : If you have not claimed this exemption for any previous year, this item will be blank. It is preferable to start completing Worksheet A from the first year for which you can claim a prior year's exemption and work forward as these Worksheets A form a continuous series linked through items 6, 10 and 11. Retain any Worksheet A completed for prior years to use when filing adjustments for future years.

Items 7 and 8 : Follow the instructions of Worksheet A;

Item 9 : Follow the instructions in the first two sentences. Other provisions of the U.S. Tax Code are not relevant to a Canadian taxpayer so the remainder of the instructions in Item 9 starting with the words « Also, add this amount » can be ignored.

Items 10 and 11 : Complete as instructed in Worksheet A.

3. On line 256 of your Federal Income Tax Return and on line 297 of your Quebec Income Tax Return for the year 2008, and any future years for which a claim for exemption is made, enter the amount of Item 8 to Worksheet A, converted to Canadian dollars at the applicable rate for that year. Use the Bank of Canada average exchange rate or the average of the four quarterly UN rates as the case may be, i.e. use the same exchange rate you used to convert the total of UNJSPF payments from US dollars to Canadian dollars elsewhere on your tax return. In terms of US dollars, this amount will remain unchanged over the years that the exemption is claimed, unless the monthly pension payments for any year were made for a lesser period than 12 months. In future years, verify that the lines 256 and 297 mentioned above are the same numbers on the relevant tax returns of those years.
4. When you make this claim for the first time, indicate in the space provided for details: « See attached explanation ». Then, attach a **copy of Appendix A** and a **completed copy of Appendix B** to the tax return. For other years, once a first claim has been registered, only the mention of the Canada-U.S. Tax Treaty need be written on this line but it is always possible that the taxation authorities will ask you to answer further questions in order to determine your tax exemption. Keep a copy of Appendix B with your answers in case it is required. Each year, attach a **completed copy of Appendix C (Worksheet A)** to the tax return.
5. When filing claims for previous years on Forms T1-ADJ (federal) or TP-1 (Quebec provincial) as required, attach also a **copy of Appendix A** and a **completed copy of Appendix B**, with a **completed copy of Appendix C (Worksheet A)** for each year concerned. Only one mailing is necessary covering all the years for which retroactive claims are made and therefore only one copy of Appendices A and B to this letter will be required for the batch. Claims for adjusting prior years should be made in separate

mailings from the tax return(s) for the current tax year (2008), as these are processed by a separate division of the taxation authorities concerned.

Since the above instructions can lead to complex tax situations, it may be preferable to seek professional assistance if you do not feel comfortable in working through all the details. Although this entails a payment to the taxation professional that may be expensive, the payment could be well worth it if you avoid costly mistakes and benefit from the partial exemption of taxation. These instructions should be given to any tax professional you retain.

Although great care has been taken in preparing this letter, taxpayers are responsible themselves both for understanding official communications from the CRA and relevant publications of the CRA as well as IRS Publication 575 and for preparing their tax returns.

If a member is facing a deadline for tax filing and still has not ascertained the amount of the partial exemption, one can always file tax returns paying tax on the whole amount of the pension then request an adjustment once the deadline for filing is past and the details have been worked out.

Members who follow these instructions but have returns rejected with the reason that partial tax exemption of UNJSPF payments is not allowed are requested to contact the CAFICS Office at ICAO as soon as any rejection notice is received. Every effort will be made to assist such members in filing a Notice of Objection where warranted.

APPENDIX A

Please note that the text contained in this Appendix is an extract from a letter sent to John Northcut.

This information may be shared with others as per the last paragraph of the letter.

This Appendix may be freely attached to your tax return or to any Request for Adjustment of a prior year's return

To: whom it may concern

Below is a true extract of paragraphs sent in a letter from the Headquarters of the Canada Revenue Agency on 5 February 2009 to John D. Northcut, recipient of UNJSPF pension. In the last paragraph extracted, the CRA gives permission for this information to be shared with other taxpayers in a similar situation.

START OF EXTRACTS

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To address the substance of your request, the following information is required to establish the non-taxable portion of a taxpayer's UNJSPF annuity payments:

- The taxpayer's date of birth
- An indication of whether the taxpayer had a spouse at the annuity starting date.
If so:
 - Will the spouse be eligible for survivor benefits under the plan?
 - What is the spouse's DOB?
- The taxpayer's country of residence during the years that services were performed
 - If the taxpayer resided in a country other than Canada, was the remuneration exempt from taxation in the other country?
- An indication of whether the taxpayer was a citizen of the United States
- Years of service (from xxxx to yyyy)
- The starting date of the annuity
- The name of the employer at the time that contributions were withheld
- The amount of employee contributions to the UNJSPF
- The amount of any transfers from the UNJSPF to an RRSP
- A completed copy of Worksheet A from IRS Publication 575
- The exchange rate used to include the pension income for each year

The cost or investment in the plan and the appropriate factor to be used on Publication 575 – Worksheet A is to be established for the first year in which the taxpayer receives the annuity. Once this amount is established, it will not vary from year to year. The factor which is found at the bottom of the worksheet only impacts the period over which the cost in the plan will be amortized. (For additional information, refer to the portion of IRS Publication 575 entitled “Taxation of Periodic Payments”. This publication is currently available online at www.irs.gov/pub/irs-pdf/p575.pdf.)

Whether or not a taxpayer qualifies for an exemption under subparagraph 110(1)(f)(i) of the Income Tax Act can be determined as follows:

- Where a taxpayer (other than a U.S. citizen) was a resident of Canada throughout the period during which contributions were made to the plan, the calculation of the exempt portion of the annuity is generally straightforward: The cost or investment in the plan for the purpose of calculating the exempt portion of pension payments is the total of the employee and employer contributions.
- Where the taxpayer was a resident or a citizen of the U.S. at the time of the contributions, only the employee contributions are to be considered in the cost of the plan, because the employer contributions are already considered to have been excluded from the taxpayer’s U.S. income in the year that the employment income was earned.
- For all other individuals, eligibility for exemption will depend on the tax treatment of the employment income in the country where they resided while they earned that income:
 1. If the employment income was not subject to tax in the third country, then the following additional test must be verified before establishing if there is a cost (exempt portion):
 - (a) if the employee and employer contributions would not have been taxed in the third country or the United States if they had been paid in cash to the individual at the time the employment services were performed, then the employee and employer contributions are to be considered in the cost of the plan.
 - (b) Otherwise, there will be no cost.
 2. If the compensation from the U.N. was subject to tax in the third country, then the employee contributions enter in the cost.

Note that in cases where the taxpayer has received a lump-sum payment from the UNJSPF on or before the annuity starting date and has transferred this lump sum to an RRSP, the cost (or investment in the plan) must be reduced proportionately.

The following information may also be of assistance:

- Individuals who participate in the UNJSPF receive statements from the pension plan indicating the amounts of their contributions in the pension fund (possibly covering the entire contribution period). The statements show only the employee contributions (the portion considered to be the cost in the plan for U.S. tax purposes), but the employer contributions can be easily determined as they are twice the employee's contribution.
- If taxpayers have not retained the relevant statements, this information can be obtained from the UNJSPF.

I trust that the above information addresses the questions which you had posed to us

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That said, my understanding from our conversation is that you are currently in contact with a number of other taxpayers who are in a similar situation, and that you may elect to share portions of the information above with your colleagues. Given that my section is not normally in a position to respond to general enquiries from individual taxpayers, any questions that they might have are best directed either to the Agency's General Enquiries line, or where applicable, to the designated contact number provided in correspondence from the Agency.

APPENDIX B

Attach this Appendix to your tax return (the first year you are claiming exemption).

Attach also this Appendix to any Request for Adjustments you are making for a prior year's tax return.

Be sure to answer the questions that are required by the taxation authorities to establish the non-taxable portion of your pension.



**NOTE FOR TAX RETURN THAT CONTAINS A CLAIM FOR PARTIAL
EXEMPTION OF TAXATION OF UNJSPF PAYMENTS**

The United Nations Joint Staff Pension Fund (UNJSPF) pension payments reported on my tax return arise in the United States. As such, they are partially exempt from taxation under Article XVIII of the Canada-US Tax Treaty.

This has been confirmed in a decision of the Competent Authority of Canada on the Tax Treaty between Canada and the United States and communicated to the Individual Returns and Payments Processing Directorate of the Headquarters, Canada Revenue Agency in 2008.

**QUESTIONNAIRE REQUIRED TO BE COMPLETED TO ESTABLISH THE
NON-TAXABLE PORTION OF UNJSPF PAYMENTS**

(TO BE PROVIDED THE FIRST TIME CLAIMING EXEMPTION)

- i) Did you have a spouse at the start of your pension (annuity) payments?

- ii) If so, will your spouse be eligible for a survivor's pension under the rules of the UNJSPF?

- iii) Give the name of your spouse, his/her date of birth and if available, his/her Social Insurance Number;

- iv) In which countries were you living throughout the period when you contributed to the UNJSPF? At what agencies were you employed?

- v) If you lived in another country than Canada, was your remuneration exempt from taxation in that other country? Additionally, if the employer and employee contributions had been paid in cash to you at that time, would they have been taxable in that other country?

- vi) Are you a citizen of the United States?

- vii) Date periodic pension payments commenced.

(continued on next page)

viii) Was a lump sum withdrawn and transferred to an RRSP?

viii) If so, how much (in U.S. dollars)?

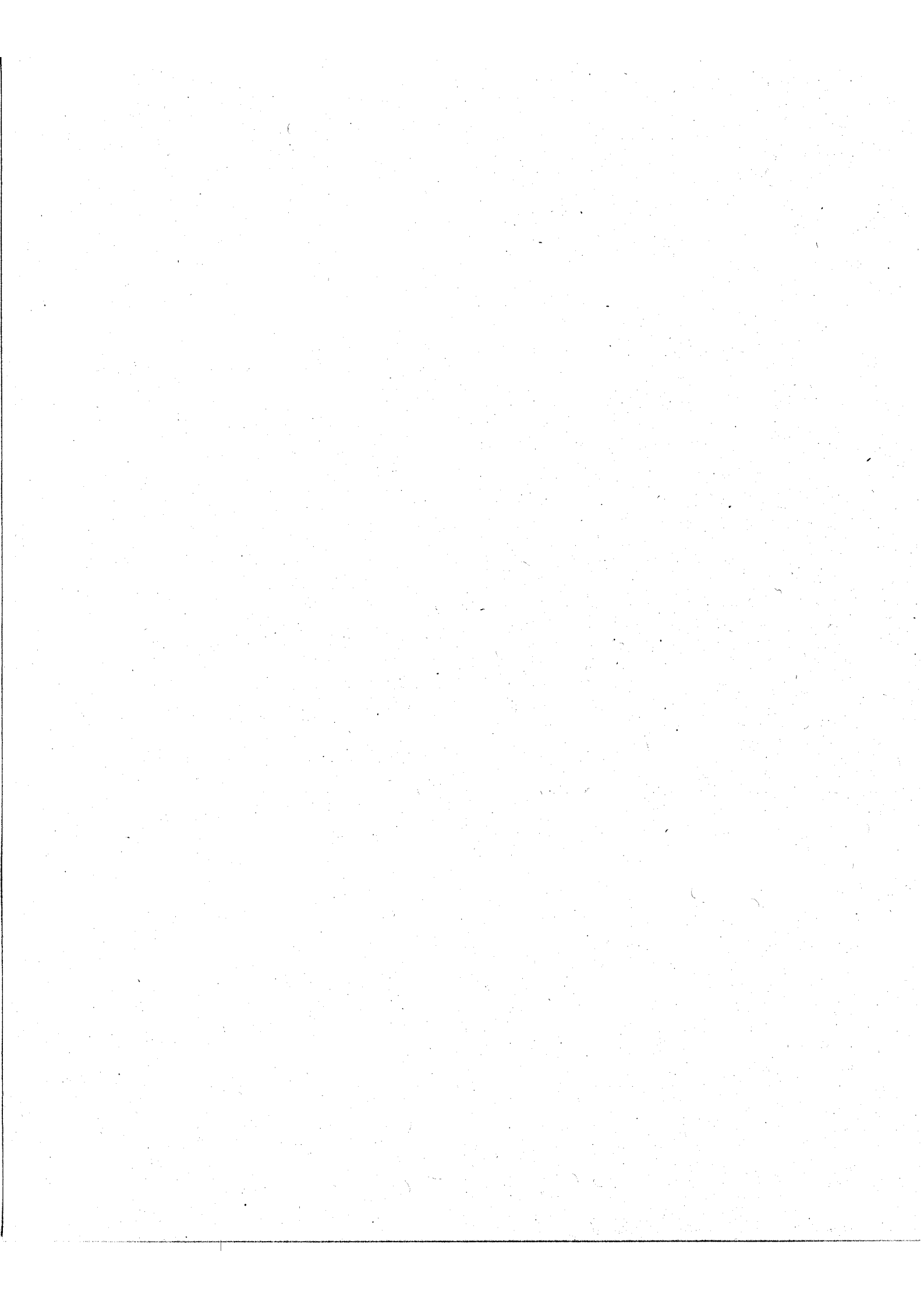
x) What percentage of the actuarial value of your pension was this amount (2 decimals)?

xi) What were the rates of exchange used to convert your periodic pension payments into Canadian dollars for every year for which a claim for tax exemption is made? (Use either Bank of Canada rate for the relevant years, or the average of the four quarterly UN rates as the case may be.)

APPENDIX C

Attach a completed copy of the Appendix to your tax return.

Attach a completed copy of the Appendix to any Request for Adjustments for prior year's tax returns.





1. Enter the total pension or annuity payments received this year. Also, add this amount to the total for Form 1040, line 16a; Form 1040A, line 12a; or Form 1040NR, line 17a 1. _____

2. Enter your cost in the plan (contract) at the annuity starting date plus any death benefit exclusion.* See Cost (Investment in the Contract) earlier 2. _____

Note: If your annuity starting date was before this year and you completed this worksheet last year, skip line 3 and enter the amount from line 4 of last year's worksheet on line 4 below (even if the amount of your pension or annuity has changed). Otherwise, go to line 3.

3. Enter the appropriate number from Table 1 below. But if your annuity starting date was after 1997 and the payments are for your life and that of your beneficiary, enter the appropriate number from Table 2 below. 3. _____

4. Divide line 2 by line 3 4. _____

5. Multiply line 4 by the number of months for which this year's payments were made. If your annuity starting date was before 1987, enter this amount on line 8 below and skip lines 6, 7, 10, and 11. Otherwise, go to line 6 5. _____

6. Enter any amounts previously recovered tax free in years after 1986. This is the amount shown on line 10 of your worksheet for last year 6. _____

7. Subtract line 6 from line 2 7. _____

8. Enter the smaller of line 5 or line 7 8. _____

9. **Taxable amount for year.** Subtract line 8 from line 1. Enter the result, but not less than zero. Also, add this amount to the total for Form 1040, line 16b; Form 1040A, line 12b; or Form 1040NR, line 17b. **Note:** If your Form 1099-R shows a larger taxable amount, use the amount figured on this line instead. If you are a retired public safety officer, see *Insurance Premiums for Retired Public Safety Officers* earlier before entering an amount on your tax return 9. _____

10. Was your annuity starting date before 1987?
 Yes. **STOP.** Do not complete the rest of this worksheet.
 No. Add lines 6 and 8. This is the amount you have recovered tax free through 2008. You will need this number if you need to fill out this worksheet next year 10. _____

11. **Balance of cost to be recovered.** Subtract line 10 from line 2. If zero, you will not have to complete this worksheet next year. The payments you receive next year will generally be fully taxable 11. _____

* A death benefit exclusion (up to \$5,000) applied to certain benefits received by employees who died before August 21, 1996.

Table 1 for Line 3 Above

IF the age at annuity starting date was	AND your annuity starting date was—	
	BEFORE November 19, 1996, enter on line 3	AFTER November 18, 1996, enter on line 3
55 or under	300	360
56-60	260	310
61-65	240	260
66-70	170	210
71 or over	120	160

Table 2 for Line 3 Above

IF the combined ages at annuity starting date were	THEN enter on line 3
110 or under	410
111-120	360
121-130	310
131-140	260
141 or over	210

