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INTERNATIONAL RENEWABLE ENERGY AGENCY

Fifth session of the Assembly

Abu Dhabi, 17 – 18 January 2015

Amendments to the Staff Regulations and Rules Report of the Director-General

1. The present document transmits to the Assembly a proposed amendment to the Staff Regulations and several amendments to the Staff Rules of the International Renewable Energy Agency (IRENA), explaining the rationale for each provision.

I. Proposed amendment to the Staff Regulations

2. The Staff Regulations currently in force were approved by the Assembly in decision A/1/DC/3 on 5 April 2011 and were subsequently amended by decision A/2/DC/8. In accordance with staff regulation 13.1, the Staff Regulations may be amended by the Assembly, without prejudice to the acquired rights of staff members.

3. Staff regulation 4.3(a), following the approach used by the Preparatory Commission for IRENA and organizations of the United Nations (UN) common system, gives authority to the Director-General to refund the amount of taxes that may be imposed on staff members on account of the “salaries and emoluments paid by the Agency to staff members”.

4. The number of staff members who are subject to taxes on income received from international organizations such as IRENA is usually limited either because most Member States have exempted such income from tax by multilateral or bilateral agreement, or because the national law of the home country of the staff members does not tax income earned while working in another country. At this point, however, and pending a wider acceptance of the Agreement on Privileges and Immunities for the International Renewable Energy Agency, as endorsed by Assembly decision A/3/DC/5, tax exemption on IRENA income is granted to staff members only by a very small number of countries. Consequently and in the exercise of the authority derived from staff regulation 4.3(a), the Agency has reimbursed to staff members

the amount of any taxes imposed on IRENA income by the countries of which these staff members are nationals or permanent residents.¹

5. The practice in other international organizations is to limit reimbursement to taxes imposed on salaries and allowances paid to staff members by the organization during their period of service, not on contributions made by the employer organization to a pension fund, or on benefits paid by the pension fund to former staff members. This was the clear intent of the Assembly when adopting staff regulation 4.3(a). This was also the interpretation of the Provident Fund Management Board (PFMB) of the IRENA Staff Provident Fund (SPF) when adopting rule 7.12 of the SPF Administrative Rules,² which provides that, if a participant is subject to taxation by any country with respect to payments made to him/her by the SPF, such taxation will not be refunded by IRENA or its SPF.

6. The SPF Administrative Rules, however, do not govern pension-related payments in respect of staff members who have opted for a pension fund other than the SPF. Moreover, some national tax systems consider pension-related payments as taxable income, which could lead staff members or former staff members to claim reimbursement for such taxes. In order to remove any ambiguity, it would therefore be prudent for the Assembly to clarify the language of staff regulation 4.3(a) specifying that the authorization to refund national income taxation does not extend to any taxation imposed on payments made to the staff members or former staff members from the SPF or from any other pension fund authorized under staff regulation 7.1, nor does it extend to the contributions made by IRENA to the SPF or such other pension fund.

7. Accordingly, it is proposed to amend staff regulation 4.3(a) as follows (new text in bold):

“In the event that salaries and emoluments paid by the Agency to staff members are subject to national income taxation, the Director-General is authorized to refund the amount of those taxes to the staff members concerned, under conditions established by the Director-General to ensure that staff are obligated to minimize their tax liability to the maximum extent allowed under applicable law, and to provide accurate copies of the tax returns filed with the tax authorities. **Taxes that may be imposed on the Agency’s pension contributions, or on any pension payments or benefits made by or received from the Staff Provident Fund or any other alternate pension scheme authorized under staff regulation 7.1, are the sole responsibility of staff members or former staff members and shall not give rise to claims for tax reimbursement.**”

¹ The consequent charge on the IRENA budget in respect of staff members who are subject to tax in the United States on their IRENA income is compensated as a result of the Tax Reimbursement Agreement (“TRA”) concluded on 3 December 2013 by the United States and IRENA. In accordance with the TRA, the United States reimburses to the Agency the amount of taxes on “institutional income”, which the Agency itself has reimbursed to staff members subject to tax in the United States. Pension-related payments are not part of the “institutional income”.

² The SPF Administrative Rules are contained in Annex 2 to the 2011 Annual Report of the Provident Fund Management Board on the Operations of the Staff Provident Fund of IRENA which was noted by the Assembly at its Third Session (see paragraph 94 of the Report of the Third Session of the Assembly of the International Renewable Energy Agency A/3/SR/1, dated 19 January 2014).

8. The Council, at its eighth meeting took note of the proposed amendment to Staff Regulation 4.3(a) as contained in document C/8/7 and decided to submit it to the Assembly for its consideration.

II. Amendments to the Staff Rules (as contained in document A/2/11)

9. Staff regulation 13.2 vests the Director-General with the authority to provide and enforce such Staff Rules as he or she considers necessary in order to implement the Staff Regulations. In accordance with staff regulation 13.3, new and/or amended Staff Rules issued by the Director-General are provisional until the full text of these rules has been reported to the Assembly. Should the Assembly find that a provisional rule or amendment is inconsistent with the intent and purpose of the Staff Regulations, it may direct that the rule or amendment be withdrawn or modified.

10. On 7 September 2014, the Director-General issued a directive promulgating a new staff rule 104.11 on tax reimbursement, and technical amendments to staff rules 104.9 and 110.8, as further explained below.

I. *New Staff Rule 104.11 on tax reimbursement*

11. The purpose of new staff rule 104.11 is to address immediately the issues described in section I above and to clarify the scope of the tax reimbursement by the Agency. It explains that reimbursement is limited to taxes imposed on salaries and allowances paid by the Agency to the staff members concerned, and that any taxes on the Agency's contributions or any pension payments or benefits are the sole responsibility of the staff members or former staff members.

12. The full text of the new rule is set out here:

[New] Rule 104.11

II. *Tax reimbursement*

Tax reimbursement claims under staff regulation 4.3(a) may be made by staff members who are subject to national income taxation, provided that such taxes are imposed in respect of salaries and allowances paid by the Agency to the individuals concerned for services rendered as staff members of the Agency. Taxes that may be imposed on the Agency's contributions to a pension scheme authorized under staff regulation 7.1 and/or pension payments or benefits paid by the Staff Provident Fund or another pension scheme selected by the staff member, are the sole responsibility of staff members or former staff members and do not qualify for tax reimbursement.

III. *Amendments to Staff Rules 104.9 and 110.8*

13. The purpose of the technical amendments to staff rules 104.9 and 110.8 is to harmonize the manner in which the daily rate of salaries and related allowances is calculated in two different situations:

- (i) when a staff member is not in pay status for a full calendar month, for instance in case of appointment or separation from service taking effect during the course of a month, and

- (ii) when accrued annual leave is commuted to cash on separation from service.

The revised provisions now use working days, not calendar days, as a basis for the calculation. In addition, and consistent with the practice in most organizations of the UN common system, the Agency will now use an average of 21.75 working days per month, which results in a daily rate of 1/261 of the annual rate.

14. The full text of each amended rule, with deleted text crossed out and new text in bold, is set out here:

[Amended] Rule 104.9

IV. *Payments and deductions*

(a) The normal pay period is from the first to the last day of any calendar month. A month's pay corresponds to 1/12 of the annual net base salary plus allowances and benefits expressed on an annual basis. Staff members who are not in pay status for a full calendar month are paid for each ~~working calendar~~ day at the rate of **1/261 1/360** of the annual net base salary plus allowances and benefits expressed on an annual basis.

(b) to (d): No change.

[Amended] Rule 110.8

V. *Commutation of annual leave*

(a) No change

(b) The payment shall be calculated as follows:

i. For staff in the Professional and higher categories, on the basis of the staff member's net base salary plus post adjustment, calculated for each working day at the rate of **1/261 1/260** of the annual amounts;

ii. For staff in the General Service category, on the basis of the staff member's net base salary, calculated for each working day at the rate of **1/261 1/260** of the annual amount.

15. The Council at its eighth meeting took note of the new and amended Staff Rules as contained in document C/8/7 and decided to submit them to the Assembly for its consideration.

16. The Assembly may wish to approve the proposed amendment to the Staff Regulation 4.3(a) and take note of the new Staff Rule 104.11 and the revised Staff Rules 104.9 and 110.8 promulgated by the Director-General.