

## Draft Report on the ICCAT Secretariat Pension Plan

(submitted by the ICCAT Secretariat)

In early 2024, following the retirement of two staff members with tax residence in Spain, the ICCAT Secretariat was informed that the total amounts they had received as retirement pension would be liable for income tax by the Spanish Government at a rate of up to 47% for 2024.

In view of this information, which caused great concern among staff, the Secretariat investigated the matter by consulting an external legal adviser, who assisted by gathering the following information which the Secretariat has used as the basis to develop the proposals set out below, on which the Secretariat would welcome guidance on how to attempt to resolve this new situation.

### 1. Regulatory background

Article 6 “Salaries and allowances” of the *ICCAT Staff Regulations and Rules* provides for compulsory participation in the Pension Fund for staff members in the Professional or higher categories and in the General Service category.

Article 19 of the Agreement on Seat of the Spanish State with ICCAT, of 29 March 1971, refers to ICCAT employees and establishes that “with regard to taxes they shall enjoy the same exemptions as are accorded under identical circumstances to employees of the United Nations”.

In accordance with this tax exemption, it had been interpreted that the emoluments of staff members terminating their employment with ICCAT, normally on retirement, were exempt from tax in the same manner as their salaries during their active service. This had been the usual practice until 2023, and as such staff members terminating their service received the amount to which they were entitled on the basis that it was tax exempt.

### 2. Ruling of the Spanish Supreme Court number 1737/2022, of 21-12-2022

The Supreme Court ruling establishes the following doctrine:

“The jurisprudential doctrine that we establish is that the retirement benefits received from the United Nations Joint Pension Fund by those who were employees of the United Nations are not included in the expression “salaries and emoluments”, contained in Article V, paragraph 18, subparagraph b) of the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly on 13 February 1946 (published in the Official State Gazette of 17 October 1974), and are therefore not exempt from personal income tax.”

In summary, the Supreme Court considers that an active UN staff member, whose remuneration is exempt from taxation, is not the same as a retired member of staff.

This situation has already caused direct loss to staff members retiring in 2023, and is causing concern to all active staff members.

The objective of implementation of the Pension Fund in the *ICCAT Staff Regulations and Rules* is to protect staff members once they have completed their period of active service by ensuring that they receive a decent pension in retirement. This purpose is significantly compromised in that the net amounts that staff members will receive are significantly reduced.

### 3. Suggested proposals

The Secretariat proposes, in order of priority, the following alternatives as a solution to the new situation that has resulted from the Spanish Court's decision, which, although mostly affects staff members resident for tax purposes in Spain, may become a global problem:

#### ***3.1 To amend the ICCAT Staff Regulations and Rules to delete the section on the Pension Plan***

The amount currently contributed by the Secretariat to each staff member's Pension Plan would be included in the staff member's salary, **e.g. as a supplement.**

#### ***3.2 Compensation***

The Commission could consider a **compensation formula to minimise the impact of taxation on pensions**, as provided for in Article 10 (Tax exemption) of the *ICCAT Staff Regulations and Rules*.

It is proposed to create an allowance or provisioning component for the "tax". This allowance could be estimated annually and added as a supplement to the monthly salary. It would be tax exempt and serve to mitigate the impact of taxation when the pension is received.

#### ***3.3 Proposal to update the Agreement on Seat***

Article 19 of the Agreement on Seat between the Spanish State and ICCAT, of 29 March 1971, provides:

"b) with regard to taxes on salaries and emoluments received from the International Commission for the Conservation of Atlantic Tunas, they shall enjoy the same exemptions as are accorded under identical circumstances to employees of the United Nations."

Currently, General Services staff members are excluded, which means that ICCAT has to compensate for the payment of income tax to which these General Services staff members are subject.

The aim of the proposal to update the tax exemption aspect of the Agreement on Seat would be to clarify this article in order to:

1. Include all ICCAT staff members.
2. Include within the concept of "salaries and emoluments" the amounts received as retirement pensions.