



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

Please take notice that the Court, Third Division, issued a Resolution dated January 30, 2023, which reads as follows:

“G.R. No. 247748 (The Secretary of Finance, *Petitioner*, v. Egis Road Operations, S.A., *Respondent*). – Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court filed by the Secretary of Finance (petitioner) assailing the Decision² dated November 20, 2018 and the Resolution³ dated June 4, 2019 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1668. The CTA *En Banc* affirmed the Decision⁴ dated December 15, 2016 and the Resolution⁵ dated May 23, 2017 of the CTA Third Division (CTA Division) in CTA Case No. 8414.

The Antecedents

Respondent Egis Road Operations, S.A. (Egis Road France) is a non-resident foreign corporation organized and existing under the laws of France with principal address at 11 Avenue du Center, 78 280 Guyancourt, France and with Philippine Tax Identification No. 293-638-147-000. Egis Road France is not registered as a corporation licensed to do business in the Philippines nor does it conduct its trade or business in the Philippines. Egis Road France owns 79,595 common shares of stock of Egis Road Operations Philippines, Inc. (Egis Road PH), a corporation organized and existing under the laws of the Philippines, representing 99% of the latter’s total issued and outstanding shares.⁶

Notably, the Republic of the Philippines and the Government of the French Republic entered into the “Convention Between the Government

¹ *Rollo*, pp. 43-61.

² *Id.* at 17-34. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan.

³ *Id.* at 36-40. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Catherine T. Manahan.

⁴ *Id.* at 165-184. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justice Esperanza R. Fabon-Victorino.

⁵ *Id.* at 185-186. Penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Associate Justices Lovell R. Bautista and Esperanza R. Fabon-Victorino.

⁶ *Id.* at 18.

Notably, the Republic of the Philippines and the Government of the French Republic entered into the “Convention Between the Government of the Republic of the Philippines and Government of the French Republic for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income”⁷ (Tax Treaty) that became legally binding on August 24, 1978. The parties subsequently entered into the “Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the Republic of the French Republic”⁸ to amend the Tax Treaty.

Paragraph 2(a), Article 10, of the Tax Treaty, as amended, states:

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) *10 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 10 per cent of the voting shares of the company paying the dividends;*

b) in all other cases, 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. (Italics Supplied)

Stated differently, the Tax Treaty grants a *reduced tax rate of 10%* in connection with dividends paid by either a Philippine or French corporation to a resident of the other Contracting State, as the case may be, provided that the above-cited conditions are met.

The BIR’s procedures in processing Tax Treaty Relief Applications (TTRA) were set out in Revenue Memorandum Order (RMO) No. 1-2000.⁹ The issuance required the taxpayer, as a condition to availing reliefs provided by tax treaties, to lodge an application with the BIR International Tax Affairs Division (ITAD) “at least 15 days before the transaction *i.e.* payment of dividends, royalties, etc., accompanied by supporting documents justifying the relief.”

⁷ The *Convention Between the Government of the Republic of the Philippines and Government of the French Republic for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income* was signed on January 9, 1976, available at https://www.bir.gov.ph/images/bir_files/international_tax_affairs/France%20treaty.pdf (last accessed on October 11, 2022).

⁸ The *Protocol to the Tax Convention between the Government of the Republic of the Philippines and the Government of the Republic of the French Republic* was signed on June 26, 1995, available at https://www.bir.gov.ph/images/bir_files/international_tax_affairs/France%20overriding%20proto.col.pdf (last accessed on October 11, 2022).

⁹ Dated November 25, 1999.

In 2010, Egis Road PH made two dividend payments to Egis Road France: first on May 6, 2010 (first payment) and again on August 31, 2010 (second payment).¹⁰

The CIR issued RMO No. 72-2010¹¹ dated August 25, 2010 amending RMO No. 1-2000. Similarly, the issuance required that the TTRA be lodged *before* the taxable transaction, but it no longer specified a 15-day period within which the filing must be done. Significantly, the issuance also expressed that “[f]ailure to properly file the TTRA with ITAD within the period prescribed x x x shall have the effect of disqualifying the TTRA x x x” *This took effect on November 4, 2010.*¹²

On March 18, 2011, Egis Road France filed a TTRA dated March 17, 2011 before ITAD relative to the two dividend payments received from Egis Road PH and the application of the reduced tax rate of 10% pursuant to the Tax Treaty, as amended.¹³

In BIR Ruling No. ITAD 2010-11 dated August 15, 2011, the CIR denied Egis Road France’s TTRA. The CIR ruled that Egis Road France was disqualified from availing itself of the tax treaty relief, particularly the benefit of the 10% reduced rate under the Tax Treaty, as amended, because the TTRA was filed after the taxable events (*i.e.*, first and second dividend payments), in contravention of RMO No. 72-2010. Consequently, the applicable tax rate on both dividend payments would be the regular 30% rate under Section 28(B)(1)¹⁴ of the National Internal Revenue Code of 1997 (Tax Code), as amended.¹⁵

Egis Road France appealed to petitioner. However, petitioner agreed with the CIR’s denial of Egis Road France’s TTRA. This prompted Egis Road France to elevate the matter to the CTA.¹⁶

The Ruling of the CTA Division

The CTA Division rendered its Decision¹⁷ on December 15, 2016 in favor of Egis Road France, to wit:

¹⁰ *Rollo*, pp. 18-19.

¹¹ Guidelines on the Processing of Tax Treaty Relief Applications (TTRA) Pursuant to Existing Philippine Tax Treaties, Revenue Memorandum Order No. 072-10, August 25, 2010.

¹² *Id.*

¹³ *Rollo*, p. 19.

¹⁴ SECTION 28. *Rates of Income Tax on Foreign Corporations.*— x x x
(B) *Tax on Nonresident Foreign Corporation.* —

(1) *In General.* — Except as otherwise provided in this Code, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to thirty-five percent (35%) of the gross income received during each taxable year from all sources within the Philippines, such as interests, dividends, rents, royalties, salaries, premiums (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c): *Provided*, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).

¹⁵ *Rollo*, p. 19.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 165-184.

WHEREFORE, premises considered, the Petition for Review is GRANTED. Accordingly, the ruling of the Secretary of Finance dated November 15, 2011 and BIR Ruling No. ITAD 210-11 dated August 15, 2011 are REVERSED and SET ASIDE.

SO ORDERED.¹⁸

Under RMO No. 1-2000, a TTRA must be filed, together with the supporting documents, at least 15 days before the proposed transaction (e.g., dividend payment). This earlier issuance did not impose any penalty for late filing. In contrast, the later issuance, RMO No. 72-2010, requires the taxpayers to file the TTRA before the occurrence of the first taxable event. Should the TTRA be filed beyond this time, the TTRA shall be disqualified.¹⁹

The CTA Division found that a strict application of RMO No. 72-2010 would result in absurdity because Egis Road France received the dividends on May 6 and August 31, 2010, or before RMO No. 72-2010 took effect on November 4, 2010. If at all, what should apply is RMO No. 1-2000.²⁰

However, the Court ruled in *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*²¹ (*Deutsche Bank*) that a tax treaty is superior to an administrative issuance. Further, in *Air Canada v. Commissioner of Internal Revenue*,²² the Court likewise upheld the precedence of a tax treaty's provisions and binding effect over domestic tax law. Hence, the CTA Division concluded that the application of the Tax Code is subject to the provisions of tax treaties entered into by the Philippines.²³

The CTA Division found that the following facts were established in the case: *first*, Egis Road France is a non-resident foreign corporation organized and existing under the laws of France; *second*, it is not registered to do business nor does it do business in the Philippines; and *third*, it owns 99% of Egis Road PH's total outstanding shares. Pursuant to the Tax Treaty, as amended, the CTA Division ruled that Egis Road France is qualified to avail [itself] of the 10% reduced tax rate on the dividends that it received from Egis Road PH.²⁴

Petitioner filed a motion for reconsideration. After the CTA Division denied it,²⁵ petitioner filed a Petition for Review with the CTA *En Banc*.

¹⁸ Id. at 183.

¹⁹ Id. at 177-178.

²⁰ Id. at 177-178.

²¹ 716 Phil. 676 (2013).

²² 776 Phil. 119 (2016).

²³ *Rollo*, pp. 178-181.

²⁴ Id. at 183.

²⁵ Id. at 185-186.

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed the CTA Division in its Decision²⁶ dated November 20, 2018 and agreed that Egis Road France is qualified to avail [itself] of the reduced tax rate on dividends.²⁷

The CTA *En Banc* stressed that Egis Road France's entitlement to the reduced rate under the Tax Treaty, as amended, cannot be defeated by its failure to comply strictly with RMO Nos. 1-2000 and 72-2010. This was already settled by the Court in *Deutsche Bank* wherein the Court ruled that a TTRA should only operate to confirm the entitlement of the taxpayer to the relief. The basis of the entitlement to the reduced tax rate is not the confirmatory ruling from the BIR but the tax treaty itself. The CTA *En Banc* also emphasized that RMO Nos. 1-2000 and 72-2010 were issued to "streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers." They do not explicitly authorize nullifying, reversing, or even modifying the provisions of the Tax Treaty, as amended. As provided in Revised Administrative Order No. 1-2003, RMOs merely serve as instructions that deal with matters of administration or procedure. They were not intended to modify substantive rights of taxpayers.²⁸

Petitioner filed a motion for reconsideration which the CTA *En Banc* denied.²⁹ Consequently, petitioner filed the present petition before the Court.

Issue

Whether the CTA *En Banc* erred in affirming that Egis Road France is entitled to the reduced tax rate of 10%.

The Court's Ruling

The petition has no merit.

RMO No. 1-2000 requires the filing of a TTRA at least 15 days before the transaction while RMO No. 72-2010 simply provides that the TTRA must be filed before the transaction. Section 21 of RMO No. 72-2010 states that it applies to all TTRAs filed after its effectivity on November 4, 2010. If Section 21 were to be followed, RMO No. 72-2010 should apply because Egis Road France filed its TTRA on March 18, 2011. However, it would be absurd to expect Egis Road France to comply with RMO No. 72-2010 given that it was not yet in effect when the dividends were paid on May 6 and August 31, 2010. In addition,

²⁶ Id. at 17-34.

²⁷ Id. at 29-33.

²⁸ Id. at 26-28.

²⁹ Id. at 36-40.

Section 246³⁰ of the Tax Code prohibits the retroactive application of BIR rules and regulations if it would be prejudicial to taxpayers. As observed by the CTA Division, RMO No. 1-2000 does not disqualify the taxpayer from the benefits of a tax treaty due to non-filing of the TTRA within the prescribed period³¹ while RMO No. 72-2010 does. Hence, Egis Road France is correct that RMO No. 1-2000 should apply considering that the subject transactions occurred before RMO No. 72-2010 took effect and its retroactive application would be prejudicial to it.

In any event, Egis Road France undoubtedly failed to file its TTRA within the prescribed periods regardless of which RMO applies. It received the dividends on May 6 and August 31, 2010 but only filed its TTRA on March 18, 2011. Petitioner argues that Egis Road France's belated filing of its TTRA is sufficient ground for its disqualification from availing itself of the reduced tax rate under the Tax Treaty, as amended.

The Court disagrees.

It is already settled that non-compliance with the prescribed period in the RMO does not disqualify an applicant from availing itself of the benefits of a tax treaty. In *Deutsche Bank*, the Court declared:

Likewise, it must be stressed that there is nothing in RMO No. 1-2000 which would indicate a deprivation of entitlement to a tax treaty relief for failure to comply with the 15-day period. We recognize the clear intention of the BIR in implementing RMO No. 1-2000, but the CTA's outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

³⁰ Section 246 of the *Non-Retroactivity of Rulings*.— Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

- (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
- (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
- (c) Where the taxpayer acted in bad faith.

³¹ See *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. Logically, noncompliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors. While the consequences sought to be prevented by RMO No. 1-2000 involve an administrative procedure, these may be remedied through other system management processes, e.g., the imposition of a fine or penalty. But we cannot totally deprive those who are entitled to the benefit of a treaty for failure to strictly comply with an administrative issuance requiring prior application for tax treaty relief.³²

The Court reiterated this ruling in *CBK Power Company Ltd. v. Commissioner of Internal Revenue*³³ and *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.*³⁴ The Court sees no reason to depart from the ruling in these cases.

The Tax Treaty, as amended, does not require the filing of an application prior to the subject transaction in order to avail [oneself] of the reduced tax rate for dividends. There is likewise no provision for disqualification in case of failure to comply with this requirement within the prescribed period. The benefits under the Tax Treaty, as amended, cannot be set aside by an RMO. While the Court lauds the BIR in its effort to streamline the process for TTRAs, the Philippines' compliance with its treaty obligations cannot be sacrificed in the process. This would contravene the fundamental international law principle of *pacta sunt servanda* that is enshrined in Article 26 of the Vienna Convention on the Law of Treaties³⁵ which obligates parties to comply with their treaty obligations in good faith.³⁶ The Court reiterates its warning in *Deutsche Bank* that "non-compliance with tax treaties has negative implications on international relations, and unduly discourages foreign investors."

There being no other ground for Egis Road France's disqualification from availing itself of the reduced tax rate under the Tax Treaty, as amended, apart from its belated TTRA filing, it is but sound to uphold its entitlement. The BIR itself confirmed Egis Road France's entitlement to the reduced tax rate in BIR Ruling No. DA-ITAD 037-09. Above all, it is clear that the dividend payments to Egis Road France met the requisites under the Tax Treaty, as amended.

It was established that Egis Road France is a French corporation and holds 99% of Egis Road PH's total issued and outstanding shares of stock. As the beneficial owner of the shares, Egis Road France may avail itself of the 10% reduced tax rate under Article 10 of the Tax Treaty, as amended.

³² Id. at 689-690.

³³ 750 Phil. 748 (2015).

³⁴ G.R. No. 207039, August 14, 2019.

³⁵ The Philippines signed the Convention on May 23, 1969 and ratified it on November 15, 1972.

³⁶ *Air Canada v. Commissioner of Internal Revenue*, supra at 140.

All told, the CTA *En Banc* was correct in affirming the CTA Division.

WHEREFORE, the petition is **DENIED**. The Decision dated November 20, 2018 and the Resolution dated June 4, 2019 of the Court of Tax Appeals *En Banc* in CTA EB No. 1668 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

Miguel C. Batt
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Division Clerk of Court
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