REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ZURICH INSURANCE CO./and
MALAYAN ZURICH INSURANCE
CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4643

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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DECISION

This case is a claim for the refund of the amount of P600,000.00 representing alleged overpaid final withholding tax on dividend remittances by a domestic corporation to a non-resident foreign corporation.

Petitioner Malayan Zurich Insurance Company, Inc. is a domestic corporation organized to engage in insurance business under Philippines laws, wherein P2,999,980.00 shares of stock, representing 30% of its capital stock is owned by its co-petitioner, Zurich Insurance Company, a non-resident foreign corporation organized and existing under the laws of Switzerland.

On May 12, 1989, the Board of Directors of petitioner Malayan Zurich resolved to declare a P5,000,000.00 cash dividend in favor of all stockholders of record as of April 30, 1989, the dividend to be payable on May 30, 1989. (Exhibits "A" and "A-1") Again on May 14, 1990, a P5,000,000.00 cash dividend was declared to all stockholders of record as of May 14, 1990. (Exhibits "B" and "B-1"). Accordingly, provisions and actual payment of cash dividends equivalent to P5.00 per share were made during the aforementioned years as certified in the audited financial statements of the petitioner (Exhibits "D", "D-2", "D-3", "D-4" and "D-5"). Zurich Insurance, with its stockholdings of 299,980 shares, was paid by Malayan Zurich cash dividend amounting to P1,500,00.00 in 1989 and with the same amount in 1990. For each of the cash dividend payments, Malayan Zurich withheld and remitted to the respondent withholding tax in the amount of P525,000.00 on September 11, 1989 and P525,000.00 again on August 10, 1990 (Exhibits "F" and "I"). In both instances, the tax withheld and remitted were computed at the rate of 35% of the cash dividend payments as borne out by the various returns, payment order, confirmation receipts and certification of remittance issued by the respondent (Exhibits "E", "F", "G", "H", "I" and "J").

On September 3, 1991, petitioners, through auditors, Sycip, Gorres, Velayo and Company, filed with the respondent a written claim for the refund or issuance of a tax credit certificate in the amount of P600,000.00 representing the alleged overpayment of withholding tax by 20% (Exhibit "L"). To date, however, respondent has neither granted nor acted upon petitioners' claim for refund.

On September 10, 1991, petitioner filed the instant petition for review (pp. 1-4, CTA records).

During the hearing of the case at bar, petitioners presented and submitted documentary and testimonial evidence. On the other hand, respondent failed to present any evidence and was constrained to submit the case based on the pleadings.

The issues raised for resolution of this Court are the following:

(1) Whether dividend payments by a domestic corporation to a non-resident foreign corporation is subject to a withholding tax of 35% or 15%.

(2) Whether petitioner is entitled to the refund of P600,000.00, representing their alleged overpaid withholding tax for the years 1989 and 1990.

Respondent contends that dividend payments made by petitioner Malayan Zurich Insurance Co., Inc., to its co-petitioner Zurich Insurance Co. are subject to 35% final withholding tax pursuant to Section 25(b)(1) of the tax Code, to wit:

"SECTION 25. Rates of tax on foreign corporation. -

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(b) Non-resident foreign corporations. (1) In general. - Unless otherwise provided, a foreign corporation not engaged in trade or business in the Philippines shall pay a tax equal to 35% of the gross income received during each taxable year from all sources within the Philippines such as interest, dividends, rents, royalties, salaries premises (except reinsurance premiums), annuities, emoluments or other fixed or determinable annual, periodical or casual gains, profits and income, and capital gains, except capital gains subject to tax under subparagraph 5(c)". (Underscoring supplied.)

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On the other hand, petitioner invoked Section 25(b)(5)(B) of the Tax Code in support of its stand, which reads:

SECTION 25. Rates of tax on foreign corporation. -

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(b) Non-resident foreign corporations.

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(5) Tax on certain incomes received by non resident foreign corporations. -

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(B) On dividends received from a domestic corporation liable to tax under this Chapter, the tax shall be 15% of the dividends received which shall be collected and paid as provided in Section 50(a) of the National Internal Revenue Code, as amended, subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation, taxes deemed to have been paid in the Philippines equivalent

> to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends as provided in this subparagraph;" (Underscoring supplied.)

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It is immediately apparent from a reading of the foregoing provisions of law that Section 25(b)(1) pertains in general to rates of tax on gross income received by non-resident foreign corporations from all sources within the Philippines whereas Section 25(b)(5)(B) refers specifically to tax on dividends received by a non-resident foreign corporation from a domestic corporation. It is a rule in statutory construction that where there are two provisions, one of which is special and the other general, the special provision, must be construed as constituting an exception to the general provision, to avoid conflict. (**Lichauco vs. Apostol**, 44 Phil. 38). The general rule is that the Philippine income of non-resident foreign corporations shall be subject to the tax rate of 35%, with certain exceptions, such as dividends received from a domestic corporation by a non-resident foreign corporation which shall taxed at 15% subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from it, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends.

The above interpretation finds support in rulings issued by the Bureau of Internal Revenue (BIR) that dividends received by non-resident foreign corporations from a domestic corporation shall be subject to a withholding tax of 15% provided the conditions stipulated by law are met.

Quoted hereunder is BIR Ruling No. 208-89, dated September 28, 1989:

> "In reply thereto, I have the honor to inform you that under Section 25(b)(5)(B) of the Tax Code, as amended, dividends received by non-resident foreign corporations from a domestic corporation shall be subject to a withholding tax of 15% of the dividends received subject to the condition that the country in which the non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation, taxes deemed to have been paid in the Philippines equivalent to 20% which represents the difference between the regular tax (35%) on corporations and the tax (15%) on dividends. Thus, if the country of domicile of the recipient corporation allows as credit against the tax imposable by it as amount equivalent to 20% of the dividends remitted to corporations domiciled therein, the dividends so remitted are subject to a withholding tax at the rate of 15% only.
>
> Since this Office has issued a ruling on February 23, 1978, that the tax dividends to be remitted to American Express International Development Co., Ltd. Cayman Islands is subject only to the 15% withholding tax under then Section 24 (b) of the Tax Code, as amended based on the certification of the Financial Secretary of Cayman Islands that dividends

received from sources outside the Cayman Islands and any other income of a Cayman Islands Company is not subject to any form of taxation under the laws of the Cayman Islands' as well as a certification dated September 14, 1989 of Naples and Calder, Attorneys-at-law in Cayman Islands that the Government of the Cayman Islands will not under the existing laws of the Cayman Island, impose any tax, levy, withholding or deduction on dividend income received by the Fund from companies incorporated in jurisdiction outside the Cayman Islands, including the Philippines' the dividends to be remitted to the Manila Fund (Cayman) Limited is subject only to the 15% withholding tax pursuant to Section 25(b)(5)(B) of the Tax Code, as amended".

In BIR Ruling No. 178-85 dated October 4, 1985, the respondent has ruled as follows:

"In reply, please be informed that since you are a subsidiary of Dunlo International A.C. of Switzerland, you will be remitting profits or dividends to the said country. Hence the RP-UK Tax Treaty cannot be applied.

On the assumption that residents of Switzerland are also shareholders of your company, considering that the Philippines does not have a tax treaty with Switzerland, Sec. 24 (b)(1)(iii) of the Tax Code will apply to dividends remitted to that country.

<u>Accordingly, and since Switzerland does not impose any tax on dividends received from foreign sources, (BIR Ruling No. 30-80 dated February 15, 1980), the dividends to be remitted by your company to Switzerland will be subject to withholding tax at the rate of 15%</u>". (Underscoring supplied.)

It is settled rule that construction placed upon a law by the officials in charge of enforcing the same deserves great weight. (**Atlas Consolidated Mining**

Development corporation vs. Court of Appeals, 182 SCRA 166).

The Supreme Court has similarly ruled in the case of **Commissioner of Internal Revenue vs. Wander Phils., Inc.**, L-68375, April 15, 1988, 160 SCRA 573, that dividend remittances to Glaro S.A. Ltd., a Swiss corporation not engaged in trade or business in the Philippines, by its wholly-owned, subsidiary Wander Phils. Inc, a domestic corporation, is subject to the preferential rate of 15% since Switzerland does not impose a tax on dividend received from the Philippines.

The relevant portion of the decision reads:

> "In the instant case, Switzerland did not impose any tax in the dividends received by Glaro. Accordingly, Wander claims that full credit is granted and not merely credit equivalent to 20%. Petitioner, on the other hand, avers the tax sparing credit is applicable only if the country of the parent corporation allows a foreign tax credit not only for the 15 percentage-point portion actually paid but also for the equivalent 20 percent-point portion spared, waived or otherwise deemed as if paid in the Philippines; that respondent does not cite anywhere a Swiss law to the effect that in case where a foreign tax, such as the Philippine 35% dividend tax, is spared, waived or otherwise considered as if paid in whole or in part, by the foreign country, a Swiss foreign-tax credit would be allowed for the whole or for the part, as the case may be, of the foreign tax so spared or waived or considered as if paid by the foreign country.
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> "While it may be true that claims for refund are construed strictly against the claimant, nevertheless, the fact that

> Switzerland did not impose any tax or the dividends received by Glaro from the Philippines should be considered as a full satisfaction of the given condition. For, as aptly stated by respondent Court, to deny private respondent the privilege to withhold only 15% tax provided for under Presidential Decree No. 369, amending Section 24(b)(1) of the Tax Code, would run counter to the very spirit and intent of said law and definitely will adversely affect foreign corporations' interest here and discourage them from investing capital in our country.
>
> Besides, it is significant to note that the conclusion reached by respondent Court is but a confirmation of the May 19, 1977 ruling of petitioner that "since the Swiss Government does not impose any tax on the dividends to be received by the said parent corporation in the Philippines, that condition imposed under the above-mentioned section is satisfied. Accordingly, the withholding tax rate of 15% is hereby affirmed."

The inevitable conclusion that can be drawn form the foregoing discussion is that under our jurisdiction dividend payments made by petitioner Malayan Zurich to its co-petitioner Zurich Insurance are subject to 15% final withholding tax only since Switzerland, the country on which the latter is domicile, does not impose any tax on dividends.

To be entitled to a refund, petitioner in addition to being able to point to some positive provision of law creating such right must also be able to establish the fact of payment of the tax sought to be refunded as well as the filing of claim for refund within the reglementary period.

As borne out by the evidence submitted to this Court by Malayan Zurich, it has withheld and remitted to respondent the 35% final withholding tax on dividends paid to Zurich Insurance in 1989 and 1990 amounting to P525,000.00 for each year. Offered as evidence and admitted by this Court are the following exhibits, viz:

Exhibit	Evidence for Malayan Zurich Insurance Co., Inc.,
"E"	Monthly Remittance Return of Income Taxes Withheld for August 1989 filed with BIR on September 11, 1989 showing the P525,000.00 final withholding tax due on the P1,500,00.00 cash dividend payment to Zurich Insurance Company
"F"	Central Bank Confirmation Receipt NO. 18023855 dated September 11, 1989 showing the remittance and payment to BIR of P525,000.00
"G"	1989 Annual Return of Final Income Tax Withheld filed with BIR on January 16, 1990 establishing the foregoing
"H"	Monthly Remittance of Income Taxes Withheld for July 1990 filed with the BIR on August 10, 1990 showing the P525,000.00 final withholding tax due on the P1,500,000.00 cash dividend payment to Zurich Insurance Company
"I"	Central Bank Confirmation Receipt No. 20630322 dated August 10, 1990 showing the remittance and payment to BIR of P525,000.00
"J"	1990 Annual Return of Final Income Tax Withheld filed with BIR on January 10, 1991 establishing the foregoing

"K" BIR - Revenue Accounting Division Certification dated January 23, 1992 certifying that Malayan Zurich Insurance Co. actually remitted the taxes withheld and paid under Exhibits "F" and "I"

The amount sought to be refunded by petitioners was arrived at using the following computation:

Dividend Remitted	WT Paid at 35%	Correct WT Rate-15%	Overpayment 20%
P1,500,000.00	P525,000.00	P225,000.00	P300,000.00
1,500,000.00	525,000.00	225,000.00	300,000.00
		Total Refund - claimed	P600,000.00

The written claim for refund was filed by petitioner with the BIR Appellate Division on September 3, 1991 covering the withholding tax overpaid on September 11, 1989 and August 10, 1990. The instant petition for review was filed with this Court on September 10, 1991. There is no question that the two(2) year prescriptive period for claiming refund of overpaid taxes as provided under Section 230 of the Tax Code, as amended have been complied with.

Respondent's opposition to the grant of refund is based on the requirements set forth in BIR Ruling No. 080-92 dated March 17, 1992 when the refund sought pertains to years 1989 and 1990.

Having positively established that all the requisites for entitlement to refund have been met, petitioner is entitled to the refund being claimed.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or issue tax credit to the petitioner Malayan Zurich Insurance Company, Inc., the amount of P600,000.00 representing overpaid withholding tax on dividends paid for the calendar years 1989 and 1990.

SO ORDERED.

Quezon City, Metro Manila, December 24, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals