> **Customary international law or international custom is a source of international law as stated in the Statute of the ICJ.** It is defined as the "**general and consistent practice of states recognized and followed by them from a sense of legal obligation.**" In order to establish the customary status of a particular norm, two elements must concur: State practice, the objective element; and opinio juris sive necessitates, the subjective element.
>
> State practice refers to the continuous repetition of the same or similar kind of acts or norms by States. It is demonstrated upon the existence of the following elements: (1) generality; (2) uniformity and consistency; and (3) duration. While, opinio juris, the psychological element, requires that the state practice or norm "be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."

RTKBCI has failed to show that DepEd's alleged practice of acting as a collector and remitter of loan payments on its behalf was general and consistent, much less, that DepEd did so as a sense of legal obligation. DepEd, on the contrary, has been adamant that it acted as collector and remitter only by way of accommodation and privilege.

ACCORDINGLY, the petition for review on certiorari is **GRANTED.** And the Complaint for Mandamus and Damages **DISMISSED. SO ORDERED.**

COMMISIONER OF INTERNAL REVENUE, Petitioner vs. INTERPUBLIC GROUP OF COMAPNIES INC., Respondent

DECISION

[G.R. No. 207039, Aug. 14, 2019]

J.C. REYES, JR., J:

Facts

Respondent Interpublic Group of Companies, Inc. ("IGC") is a non-resident foreign corporation duly organized and existing under and by virtue of the laws of

the State of Delaware, United States of America. In 2008, the IGC filed an administrative claim for refund or issuance of tax credit certificate ("TCC") in the amount of P12M, representing the alleged overpaid FWT on dividends paid by McCann to IGC. The present case is a petition for review on certiorari filed by the CIR before the SC arguing that the IGC failed to file a Tax Treaty Relief Application ("TTRA") with the International Tax Affairs Division ("ITAD") of the BIR fifteen days before it paid tax on dividends in accordance with RMO No. 1-2000. The SC ruled that failure to file the TTRA 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.

RULING

IGC is entitled to a tax refund or TCC despite non-compliance with the documentary requirements provided under RMO No. 1-2000.

As it is recognized, the application of **the provisions of the National Internal Revenue Code ("NIRC") must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries**. It remains only to note that under the Philippines-US Convention "With Respect to Taxes on Income," the Philippines, by a treaty commitment, reduced the regular rate of dividend tax to a maximum of 20% of the gross amount of dividends paid to US parent corporations.

The RP-US Tax Treaty, at the same time, created a treaty obligation on the part of the US that it "shall allow" to a US parent corporation receiving dividends from its Philippine subsidiary a tax credit for the appropriate amount of taxes paid or accrued to the Philippines by the said Philippine subsidiary. The US allowed a "deemed paid" tax credit to US corporations on dividends received from foreign corporation.

xxx

Specifically, the RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into and to which we are expected to observe compliance therewith in good faith. As explained by the Court, **the purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions.** More precisely, the tax conventions are drafted with a

view towards the **elimination of international juridical double taxation**, which is defined as the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods.

xxx

The objective of RMO No. 1-2000 in requiring the application for treaty relief with the ITAD before a party's availment of the preferential rate under a tax treaty is to avert the consequences of any erroneous interpretation and/or application of treaty provisions, such as claims for refund/credit for overpayment of taxes, or deficiency tax liabilities for underpayment.

The Supreme Court held that this apparent conflict was previously settled in the case of Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue, where the Court lengthily discussed that the obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000, thus:

> x x x 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.**
>
> **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.

Since the RP-US Tax Treaty does not provide for any other prerequisite for the availment of the benefits under the said treaty, to impose additional requirements would negate the availment of the reliefs provided for under international agreements.

At any rate, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief. This is only applicable to taxes paid on the basis of international agreements and treaties. Once it was settled that the taxpayer is entitled to the relief under the tax treaty, then by all means it could pay its tax liabilities using the tax relief provided by the treaty. In other words, the requirements under RMO No. 1-2000 applies only to a taxpayer who is about to pay their taxes on the basis of tax reliefs provided by international agreements and treaties and to confirm its entitlement to the said reliefs.

WHEREFORE, the Petition is **DENIED. SO ORDERED.**

OSCAR B. PIMENTEL. et. al., Petitioners vs. LEGAL EDUCATION BOARD, as represented by its Chairperson, HON. EMERSON B. AQUENDE, et.al., Respondents

DECISION

[G.R. No. 230642, Sept. 10, 2019.]

J.C. REYES, JR., J:

Facts

To improve the system of legal education on account of performance of law students and law schools in the bar examinations, the Congress, on Dec. 23, 1993