



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

900 10 September 2018

DOF Opinion No. 004.2018

ATTY. JULES E. RIEGO

Principal, Business Tax Services
SyCip Gorres Velayo & Co.
6760 Ayala Avenue
Makati City, Philippines

**SUBJECT: Request for Review of Bureau of Internal Revenue
International Tax Affairs Division Ruling No. 015-2018**

Dear **Atty. Riego**:

This refers to your letter dated 28 March 2018 ("Request for Review"), filed on behalf of Egis Eau S.A. ("Egis" or the "Company"), to request for the reversal of Bureau of Internal Revenue ("BIR") International Tax Affairs Division ("ITAD") Ruling No. 015-2018 dated 20 February 2018, which denied the letter request and application of Egis for a Tax Treaty Relief Application ("TTRA") pursuant to the PH-France Tax Treaty.

In particular, the Request for Review prays for the reversal of the BIR ITAD Ruling No. 015-2018 and that the TTRA of Egis be granted.

The BIR denied the request and application for a TTRA on the premise that the personnel of Egis International S.A. Philippine Branch ("Egis International Branch") are dependent on Egis because most tasks of the Reference Design of Medium Term East Source (Tayabasan) Headworks and Water Treatment Plant ("Project"), including and most importantly, project directorship, are assigned to Egis. Further, the personnel of Egis International Branch conduct Survey Works and Geotechnical Investigation within the program definition laid down by Egis, and all collected data and reports are reviewed and approved by Egis.

Consequently, BIR concluded that Egis is deemed to have a permanent establishment by reason that the project carried out in the Philippines by personnel of Egis and Egis International Branch, taken together, lasted 240 days, or more than six months (180 days) within any twelve-months.

Under Article 7(1) of the PH-France Tax Treaty, the profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. On the basis therein, the BIR subjected the service fees paid by Manila Water to Egis to income tax at the rate of 30% under Section 28(B)(1) of the Tax Code.

On the other hand, it is your position, as stated in your Request for Review, that the above conclusions are erroneous and devoid of any factual basis. The Request for Review argues as follows:

FIRST, Egis International Branch is legally and economically independent of Egis. Hence, it is not a dependent agent or permanent establishment of Egis in the Philippines;

SECOND, there is no basis in combining the length of stay of Egis personnel with the length of stay of Egis International Branch personnel in the Philippines;

THIRD, the fact that Egis performs most of the tasks under the Contract and has project directorship of the Project does not necessarily make Egis International Branch a dependent agent of Egis. More, the fact that Survey Works and Geotechnical Investigations done by Egis International Branch are subject to review of Egis is not relevant to the determination of dependence of the former as the result of the work of the supposed agent can be reviewed by its principal; and

FOURTH, assuming *arguendo* that Egis has a permanent establishment in the Philippines, the Company should only be subject to tax in the Philippines to the extent of the profit that is attributable to the permanent establishment in accordance with the Article 7(1) of the PH-France Tax Treaty.

We take notice of the fact that Egis International Branch was already registered as a Branch Office of Egis International S.A on 27 December 1996, as amended on 30 October 2013 and is a separate legal entity earning its own revenues. It has been providing consultancy services to other entities in the ordinary course of its business.

We find no factual and/or legal basis that would warrant the combining of the length of stay of Egis personnel with the length of stay of Egis International Branch personnel in the Philippines. As two separate legal entities, the Consultants have their own respective tasks to be undertaken with separate corresponding fees accordingly.

Limitations on the scale of business conducted by the agent, though clearly affect the scope of the agent's authority, are not relevant in the determination of dependency. Dependency is determined by consideration of the extent to which the agent exercises freedom in the conduct of business on behalf of the principal within the scope of the authority conferred by the agreement.¹

¹ Article 5, Paragraph 6 (107) of the 2017 Commentaries on the Articles of the Model Tax Convention by the Organization for Economic Co-operation and Development (OECD).

It is the position of the BIR that dependency exists since Egis International Branch personnel conduct Survey Works and Geotechnical Investigation of the Project within the program definition laid down by Egis and all collected data and prepared reports by those personnel are subject to review and approval by Egis.² Notwithstanding the same, persons may still be considered independent of the enterprise when the personnel are responsible to his principal for the results of his work but not subject to significant control with respect to the manner in which that work is carried out.³

The services rendered by Egis International Branch are independently conducted by Egis International Branch as to the manner thereof. Egis International Branch is responsible to Egis with respect only as to the results of its work. We find nothing in the facts herein that reveal any detailed instruction or comprehensive control being exercised by Egis in the tasks assigned to Egis International Branch.

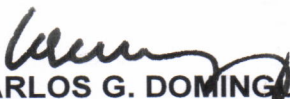
In due consideration of the finding that dependency does not exist in this case, only the length of stay of Egis personnel in the Philippines, totalling 107 days, should be considered in determining the existence of a permanent establishment. As provided under Article 5(2)(i) of the PH-France Tax Treaty, a permanent establishment exists where the consultancy services rendered by an enterprise continue within the Contracting State for a period or periods aggregating more than six months within and twelve-months period. The length of stay of Egis personnel of 107 days falls short of such requirement and thus, cannot be considered to have a permanent establishment in the Philippines.

Consequently, the service fees paid to Egis by Manila Water as compensation for the project is not subject to income tax in the Philippines pursuant to Article 7(1) of the PH-France Tax Treaty.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

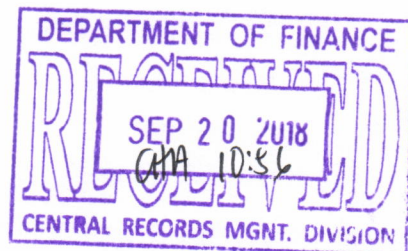
Thank you.

Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
SEP 14 2018

CC Commissioner Caesar R. Dulay
Bureau of Internal Revenue

*Ordinary
Pas. Payer
12/14/18
16.2*



² Please see page 5 of BIR ITAD Ruling No. 015-2018.

³ Article 5, Paragraph 6 (106) of the 2017 Commentaries on the Articles of the Model Tax Convention by the Organization for Economic Co-operation and Development (OECD).