

Revenue rule and its existence in affecting the development of the principles of international tax law

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Dicey & Morris said that there is a well-established and practically worldwide principle, known as revenue rule, that courts have no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal, revenue or other public policy of a foreign state.¹ Not only in common law, this rule is also applied in civil law countries. In *Bemburg v. Buenos Aires* for instance, French court stated that “the rule now well-established of our law and of international custom that besides treaties, in tax matters everyone is master in his own state and the authority of each individual state does not go beyond its own frontiers”.² It implies that the court of one country will not provide assistance to a foreign country regarding its tax claims that did not happen in their country.

The revenue rule has been repeatedly applied in the United Kingdom³, the USA⁴, and other countries⁵. It can be seen in some judgments that revenue rule has been upheld. In the case of *Attorney-General of Canada (“Canada”) v RJ Reynolds Tobacco Holding Inc. and Others*⁶, Canada made claims for damages based on lost tax revenue and additional law enforcement costs. They argued that these damages resulted from a scheme facilitated by Reynolds Tobacco to avoid various Canadian cigarette taxes by smuggling cigarettes across the United States Canadian border, and under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), Canada sought revenue that it lost from the evasion of tobacco duties and taxes⁷. The Second Circuit of the US Court Appeal concluded the revenue rule barred Canada’s RICO claim, and in defense of the rule, the rule prevents foreign sovereigns from asserting their sovereignty within the borders of other nations, thereby helping nations maintain their mutual respect and security⁸.

Other examples of the application of revenue law were expressed in *Pasquantino v. the USA*⁹ and *European Community and others v RJR Nabisco*¹⁰. In *Pasquantino* case, a federal district court

¹ Dicey & Morris, *The Conflict of Laws*, 13th Ed Vol 1, Collins, L, et al., p. 97

² *Bemburg v. Fisc de la province de Buenos Aires* (unreported), 24 February 1949

³ *Revenue and Customs & Anor v Ben Nevis (Holdings) Ltd & Ors* [2012] EWHC 1807

⁴ *Pasquantino v. USA* (2005) 7 ITLR 774 (US Sup Ct)

⁵ *Relfo Limited v Varsani* [2008] SGHC 105

⁶ *Attorney General of Canada v. R.J.Reynolds Tobacco Co* (2000) 4 ITLR 290 (2d Ct. Ct of Apps)

⁷ *ibid*

⁸ *ibid*

⁹ See note 4

¹⁰ *European Community and others v RJR Nabisco* (2005) 8 ITLR 323

condemned Carl J. Pasquantino and others for infringing the federal wire fraud statute because they smuggled liquor from the United States into Canada to avoid that country's heavy alcohol import taxes¹¹. The Fourth Circuit affirmed their convictions, rejecting the petitioners' argument that they could not be prosecuted because of the common-law revenue, which rule barred courts from enforcing foreign tax laws.¹² In the RJR Nabisco case, the European Community, pursuant to RICO, brought a claim in the United States District Court against RJR Nabisco, Inc. for lost tax revenue due to cigarette smuggling.¹³ The US Court of Appeals for The Second Circuit held that ‘the revenue rule barred the foreign sovereigns’ civil claims for recovery of lost tax revenue and law enforcement costs, and under revenue rule the courts of one nation will not enforce final tax judgments or unadjudicated tax claims of other nations’.¹⁴

In some cases revenue rule was enforced in a situation where a person becomes insolvent in one country but owns assets in another state and the liquidator, which includes tax authority in the first state, claims for damage on losing their taxes. In the case *QPRS v Fransden*¹⁵, for example, The Danish Government alleged that Fransden, who was domiciled and resident in the UK, had stripped the assets from the companies, and then, the Danish Government, based on Danish company law which prohibited companies from financing the acquisition of their own shares, appointed a liquidator to pursue the companies’ claim for restitution of the assets up to the value of the claim for Danish tax¹⁶. The Court of Appeal dismissed the appeal as indirect claims by a liquidator, as nominee for a foreign state, fell within the compass of revenue law and it was the necessary consequence of the principle non-enforcement of foreign revenue law that a civil claim could be brought only in the tax authority’s own courts.¹⁷

In the case of *HMRC & Anor v Ben Nevis (Holdings) Ltd & Ors*¹⁸ the application of revenue rule is somewhat not absolute. In that case, HMRC and Anor argued that assistance in collection taxes in Art. 25 of the UK-South Africa double treaty abrogates revenue rule. This argument was declined by the High Court, preserving that revenue law remains good law in England and Wales, but the Court of Appeal noted that rule was always liable to be abrogated by treaty.¹⁹ Thus, the treaty authorized the UK to assist a foreign country in collecting their taxes.

¹¹ See note 4

¹² *Ibid*

¹³ See Note 10

¹⁴ *Ibid*

¹⁵ *QPRS v Fransden* [1999] 3 All ER 289, [1999] 1 WLR 2169, [1999] STC 616, 71 Tax Case 515

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ see note 5

¹⁹ *Ben Nevis (Holdings) Ltd v Revenue & Customs* [2013] EWCA Civ 578 at para. 53

To conclude, the presence of revenue rule has contributed to the development of international taxation that each country is prohibited to intervene in other foreign countries in collection their taxes. On the other hand, the development of international tax law such as the adoption of European Council Directive 2001/44/EC (directive on mutual assistance for the recovery), or revision of article 26 (exchange of information) on OECD convention model may reduce the use of this rule in the long run.²⁰

References:

Books:

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2. Schwarz, J, 2015, *Schwarz on Tax Treaties* Ed, Chapter 21, Paras 29-000 to 29-100, the UK; Wolters Kluwer Ltd.

Cases:

3. *Attorney General of Canada v. R.J Reynolds Tobacco Co* (2000) 4 ITLR 290 (2d Ct. Ct of Apps)
4. *Bemburg v. Fisc de la province de Buenos Aires* (unreported), 24 February 1949
5. *Ben Nevis (Holdings) Ltd v Revenue & Customs* [2013] EWCA Civ 578
6. *European Community and others v RJR Nabisco* (2005) 8 ITLR 323 (2d Ct. Ct of Apps)
7. *Pasquantino v. the USA* (2005) 7 ITLR 774 (US Sup Ct)
8. *QPRS v Fransden* [1999] 3 All ER 289, [1999] 1 WLR 2169, [1999] STC 616, 71 Tax Cas 515
9. *Revenue and Customs & Anor v Ben Nevis (Holdings) Ltd & Ors* [2012] EWHC 1807 Headnote, paragraphs 16, 51 to 55. [2013] EWCA Civ 578

Website:

10. Sumitha Krisnan, *The Revenue Rule and International Taxation*, on www.lakshmisri.com

²⁰ Sumitha Krisnan, *The Revenue Rule and International Taxation*, on www.lakshmisri.com