

BETWEEN:

ADRIAN ROBINSON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion made by the Appellant pursuant to Section 69 of the *Tax Court of Canada Rules* (General Procedure) and Continuation of Status Hearing initially scheduled for March 30, 2022

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder

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**ORDER**

WHEREAS the Status Hearing originally scheduled for March 30, 2022 was adjourned *sine die* pending the disposition of a motion made by the Appellant to hold his appeal in abeyance, which motion has now been considered and dismissed;

AND WHEREAS the parties have agreed that the litigation steps in this appeal should proceed in parallel fashion with the appeals of the other Corporate Appellants (as listed in the Common Reasons for Order);

AND for reasons set out in the Common Reasons for Order;

THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

1. The Motion filed by the Appellant on November 22, 2022 is hereby dismissed with costs to the Respondent.
2. The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps in this appeal move forward in parallel fashion with the Corporate Appellants.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

BETWEEN:

TIENCON ELECTRONICS EXPORT COMPANY LIMITED,  
Appellant,  
and

HIS MAJESTY THE KING,  
Respondent.

---

Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

WHEREAS the Status Hearing originally scheduled for March 30, 2022 was adjourned *sine die* pending the disposition of a motion to have the appeal of Adrian Robinson held in abeyance, which motion has now been considered and dismissed;

AND WHEREAS the parties have agreed that the litigation steps in this appeal should proceed in parallel fashion with the appeals of the other Corporate Appellants (as listed in the Common Reasons for Order) and the appeal of Adrian Robinson in Court File 2021-825(IT)G;

THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

Docket: 2020-954(IT)G

BETWEEN:

TIENCON ELECTRONICS LIMITED (TAIWAN),

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

---

Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

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AND WHEREAS the parties have agreed that the litigation steps in this appeal should proceed in parallel fashion with the appeals of the other Corporate Appellants (as listed in the Common Reasons for Order) and the appeal of Adrian Robinson in Court File 2021-825(IT)G;

THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

BETWEEN:

TIENCON ELECTRONICS LIMITED (COOK ISLANDS),

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

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THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

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Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.



BETWEEN:

TIENCON ELECTRONICS LIMITED (HONG KONG),

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

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THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

BETWEEN:

MH CONNECTORS ASIA LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

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THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

BETWEEN:

EDAC (HONG KONG) LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

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THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

BETWEEN:

EDAC (DONGGUAN) LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

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AND WHEREAS the parties have agreed that the litigation steps in this appeal should proceed in parallel fashion with the appeals of the other Corporate Appellants (as listed in the Common Reasons for Order) and the appeal of Adrian Robinson in Court File 2021-825(IT)G;

THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.



Docket: 2020-2093(IT)G

BETWEEN:

HOUSTON ENTERPRISES GROUP LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

---

Continuation of Status Hearing originally scheduled for March 30, 2022.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balakumar

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**ORDER**

WHEREAS the Status Hearing originally scheduled for March 30, 2022 was adjourned *sine die* pending the disposition of a motion to have the appeal of Adrian Robinson held in abeyance, which motion has now been considered and dismissed;

AND WHEREAS the parties have agreed that the litigation steps in this appeal should proceed in parallel fashion with the appeals of the other Corporate Appellants (as listed in the Common Reasons for Order) and the appeal of Adrian Robinson in Court File 2021-825(IT)G;

THEREFORE THE COURT HEREBY ORDERS AS FOLLOWS:

The parties shall file a joint request for a timetable order prior to September 29, 2023, ensuring that the litigation steps for this appeal move forward in parallel fashion with the other Corporate Appellants and the appeal of Adrian Robinson in Court File 2021-825(IT)G.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

Citation: 2023 TCC 122

Date: 20230816

Docket: 2021-825(IT)G

BETWEEN:

ADRIAN ROBINSON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

AND BETWEEN:

Docket: 2020-953(IT)G

TIENCON ELECTRONICS EXPORT COMPANY LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

AND BETWEEN:

Docket: 2020-954(IT)G

TIENCON ELECTRONICS LIMITED (TAIWAN),

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

AND BETWEEN:

Docket: 2020-955(IT)G

TIENCON ELECTRONICS LIMITED (COOK ISLANDS),  
Appellant,

and

HIS MAJESTY THE KING,  
Respondent;

AND BETWEEN:

Docket: 2020-956(IT)G

TIENCON ELECTRONICS LIMITED (HONG KONG),  
Appellant,

and

HIS MAJESTY THE KING,  
Respondent;

AND BETWEEN:

Docket: 2020-957(IT)G

MH CONNECTORS ASIA LIMITED,  
Appellant,

and

HIS MAJESTY THE KING,  
Respondent;

AND BETWEEN:

Docket: 2020-958(IT)G

EDAC (HONG KONG) LIMITED,  
Appellant,

and

HIS MAJESTY THE KING,  
Respondent;

AND BETWEEN:

Docket: 2020-959(IT)G

EDAC (DONGGUAN) LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

AND BETWEEN:

Docket: 2020-2093(IT)G

HOUSTON ENTERPRISES GROUP LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

**REASONS FOR ORDER**

Smith J.

I. Introduction

[1] This matter involves a motion (the “Motion”) made by Adrian Robinson (“AR”) to have his appeal held in abeyance pending an application for judicial review filed with the Federal Court on July 28, 2022 (the “Application”).

[2] The Application seeks judicial review of the Minister of National Revenue’s decision of June 30, 2022 (the “Decision”) to deny his request for assistance under the Mutual Agreement Procedure (“MAP”), as provided for in the Canada/U.K. Tax Convention, also known as the *Convention Between the Governments of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains* (the “Tax Convention”).

[3] It will suffice for the purposes hereof to state that Article 23 of the Tax Convention sets out a dispute resolution mechanism known as MAP that allows Canadian competent authority officials to interact with UK competent authority officials to endeavour to resolve, by mutual agreement, issues of double taxation not in accordance with the Convention. This process is initiated at the request of a taxpayer. In this instance, AR made the request but it was denied, as noted above.

[4] AR's Application to the Federal Court was filed on July 28, 2022 (Court file T-1567-22) and as of the date hereof, it remains outstanding. Although no date has been fixed, the matter appears to be moving forward in normal course.

[5] As will be seen in greater detail below, AR was reassessed for the 2006 to 2010 and 2014 taxation years and filed a Notice of Appeal on April 7, 2021.

[6] On October 28, 2021, AR wrote to the Court requesting that his appeal be held in abeyance because he would be filing a MAP request to address the issue of anticipated double taxation with the UK. The Respondent was opposed and the Court scheduled a status hearing for March 30, 2022 (the "Status Hearing").

[7] The Status Hearing included a number of corporate appellants (the "Corporate Appellants") that are listed in the title of proceedings herein and that had been assessed by the Minister on the basis that they were managed and controlled by AR, a resident of Canada. At the Status Hearing, Counsel for AR confirmed that the MAP request had been filed on January 25, 2022 and argued that there was no prejudice to the Respondent in holding AR's appeal in abeyance pending the outcome of that process and that the litigation process involving the Corporate Appellants could move forward in normal course. The Respondent was opposed to this, arguing that it would be more cost-effective that AR's appeal and those of the Corporate Appellants move forward together following the same timeline.

[8] All things considered, the Court issued an Order on an interim basis on March 31, 2022 that: i) the Status Hearing be adjourned *sine die*; ii) AR's appeal and the corporate appeals all be held in abeyance on an interim basis; and, iii) the parties to report to the Court by no later than June 30, 2022.

[9] The parties did so and the Respondent maintained its position that all appeals, including the corporate appeals, should move forward without further delay. Counsel for AR and the Corporate Appellants conceded in their letter of August 12, 2022,

that it would be more efficient to delay setting the procedural timelines for all appeals, including the corporate appeals, pending the outcome of the Application that is now before the Federal Court.

[10] In light of the position taken by the parties, the Court issued a further Order on November 4, 2022 that AR file a Motion to have his appeal held in abeyance.

[11] The only issue before the Court in the context of this Motion is whether an Order should be granted holding AR's appeal (and the appeals of the Corporate Appellants) in abeyance pending the outstanding procedure before the Federal Court and, if successful, the outcome of the MAP, assuming it is allowed to go forward. Although the Motion itself does not directly seek to have the appeals of the Corporate Appellants held in abeyance, the parties both agree that the procedural timeline in the corporate appeals should follow those in AR's appeal.

[12] The Affidavit of Jennifer Mak (the "Mak Affidavit") dated November 20, 2022 was filed in support of the Motion. It will be referred to below.

## II. The Material Facts

[13] The parties appear to agree on the following material facts:

- (a) AR filed income tax returns as a resident of Canada for the 2000 to 2015 taxation years and was assessed accordingly;
- (b) On May 24, 2013, AR reported additional income earned outside of Canada under the Voluntary Disclosure Program ("VDP") and was reassessed accordingly on January 22, 2015;
- (c) Following an audit of AR's affairs, the Minister issued Notices of Reassessment dated September 7, 2017 relating to AR's 2006 to 2010 and 2014 taxation years, the subject matter of his appeals before this Court;
- (d) On or about September 13, 2018, AR initiated a disclosure process with the UK tax authorities ("HMRC") under the Worldwide Disclosure Facility and requested a Certificate of Residency;

(e) HMRC issued a Certificate of Residency on April 25, 2019 certifying that AR was a resident of the UK from April 6, 2002 to April 5, 2015;

(f) On March 8, 2021, AR was assessed by HMRC for the 2000/2001 and 2001/2002 taxation years;

(g) AR filed the MAP request on January 22, 2022;

(h) By letter dated June 30, 2022, the Minister informed AR that his MAP request was denied on the basis that he had not filed the request for assistance under Article 23 of the Convention within three years from the “first notification of the action resulting in taxation not in accordance with the provisions of the Convention”;

(i) AR filed the Application with the Federal Court on July 28, 2022.

[14] It is AR’s position that he first became aware of the possibility of double taxation in the UK when he was assessed by HMRC on March 8, 2021. As will be seen below, the Respondent takes the position that AR was aware of this possibility at a much earlier date. In the end, these are questions of fact that will have to be addressed by the Federal Court in the context of the Application.

### III. Position of the Appellant

[15] AR submits that “the just, most expeditious and least expensive alternative is to hold his appeal in abeyance pending the outcome” of the Application and, if allowed, the outcome of the MAP procedure.

[16] It is argued that holding his appeal in abeyance will protect his rights, avoid ongoing disruptions and reduce overall waste and inefficiency and, conversely, that not holding his appeal in abeyance will likely jeopardize his MAP request since the competent authority is more likely to refuse to engage the procedure if his appeal is in progress before this Court. In this regard, AR notes that in a letter dated July 11, 2022, the Respondent indicated that “[t]he MAP process is suspended if an objection or appeal is not held in abeyance (see para 48 of IC71-17)”.

[17] AR argues that “[t]he Appellant has been taxed - and expects to be taxed - as a resident of Canada and the UK, for the 2002 to 2015 taxation year”.



[18] In the end, it is argued that the issue before the Court is whether it is in the interest of justice to hold AR's appeal in abeyance. In this regard, AR relies on *British Columbia (Attorney General) v. Malik*, 2011 SCR 18 where the Supreme Court of Canada noted that there is a public interest in the avoidance of duplicative litigation leading to potential inconsistent results, undue costs and inconclusive proceedings, adding that "inefficient procedures (...) can operate as an avoidable barrier to effective justice (...)" (para 40).

[19] AR also relies on *Korea Data Systems (USA), Inc. v. Aamazing Technologies Inc.*, 2012 ONCA 758, where the Ontario Court of Appeal cited with approval the decision of *Mylan Pharmaceuticals ULC v. AstraZeneca Canada Inc.*, 2011 FCA 312 ("*Mylan*"), that will be reviewed in greater detail below.

#### IV. Position of the Respondent

[20] The Respondent argues that the Motion should be dismissed, that the appeal before the Court should proceed with all due dispatch and that it should not be held in abeyance for an extended period of time without a compelling reason. It is submitted that none has been provided in this instance.

[21] The Respondent notes that the MAP process is intended to negotiate treaty issues but not unreported income or penalties such that it would not resolve all issues. It adds that Canada has produced administrative guidelines that anticipate the interplay between the objection/tax appeal process and MAP, notably paragraphs 46-56 of *Canada Revenue Agency "Guidance on Competent Authority Assistance Under Canada's Tax Conventions"*, dated June 1, 2021 ("*CRA IC71-17R5*"). There is no need to reproduce those provisions here.

[22] The Respondent argues that there is no conflict preventing the appeal from proceeding and no prejudice to AR. It is argued again that it would be more efficient and least likely to create problems of conflicting evidence for AR's appeal to proceed on the same timeline(s) as the related Corporate Appellants.

[23] The Respondent argues that AR's appeal has already been held in abeyance on an interim basis pending the outcome of the MAP request and that, since the request has now been denied, there is no reason to await the outcome of the Application.

[24] It is argued that the Application will not in itself determine whether the MAP request is admissible and that even if the Federal Court orders that it be reconsidered by the Minister, there is no way of knowing if the competent authorities will come to a different conclusion since the procedure is based on a mutual agreement. Also, AR might not agree with the results.

[25] The Respondent therefore requests that the Motion be dismissed, with costs, and that the parties establish a litigation timetable for all appeals.

## V. Analysis and Conclusion

[26] In *Elbaz v The Queen*, 2017 TCC 177, the issue was whether a tax appeal should be held in abeyance pending the conclusion of a criminal proceeding. The Court concluded that the two separate proceedings could move forward in parallel fashion. In particular, the Court relied on *Mylan* where Stratas JA made the following comments in connection with a request that one proceeding be held in abeyance pending the outcome of a second proceeding:

[5]. . .When we do this, we are exercising a jurisdiction that is not unlike scheduling or adjourning a matter. Broad discretionary considerations come to bear in decisions such as these. There is a public interest consideration - the need for proceedings to move fairly and with due dispatch – but this is qualitatively different from the public interest considerations that apply when we forbid another body from doing what Parliament says it can do. As a result, the demanding tests prescribed in *RJR-MacDonald* do not apply here. This is not to say that this Court will lightly delay a matter. It all depends on the factual circumstances presented to the Court. In some cases, it will take much to convince the Court, for example, where a long period of delay is requested or where the requested delay will cause harsh effects upon a party or the public. In other cases, it may take less.

[6] The conclusion that the *RJR-MacDonald* test does not apply in cases where the Court is deciding not to exercise its jurisdiction until some time later is supported by other cases in this Court: *Boston Scientific Ltd. v. Johnson & Johnson Inc.*, 2004 FCA 354; *Epicept Corporation v. Minister of Health*, 2011 FCA 209.

[Emphasis Added]

[27] The decision to hold an appeal in abeyance therefore involves “broad discretionary considerations” that need to account for the “public interest consideration” of ensuring that “proceedings move fairly and with due dispatch”.

While the test set out in *RJR-Macdonald* does not apply, this is not to suggest that the Court should “lightly delay a matter”. The Court takes this to mean that the moving party must advance compelling reasons to hold a matter in abeyance. The bar is necessarily a high one and the Court must consider whether “in all the circumstances, the interests of justice support the appeal being delayed” (*Mylan*, para 14).

[28] In this instance, I find that AR’s position is not compelling. It appears tentative since it is argued that holding the appeal in abeyance “will likely jeopardize” the MAP request and the competent authority is “more likely” to refuse to engage the process if the tax appeal is not held in abeyance. In fact, the MAP request has already been denied. The Court finds that this is neither conclusive nor persuasive.

[29] Moreover, it is not disputed that AR was assessed by HMRC for the 2000 and 2001 taxation years but not for the 2002 to 2015 taxation years. To this day, there is no indication that the HMRC has assessed or will assess AR for those years. As it stands today, the issue of double taxation appears to be limited to the 2000 and 2001 taxation years that are not at issue in this appeal.

[30] While it is true that circumstances may change in that: i) HMRC may later assess AR for the 2002 to 2015 taxation years leading to an issue of double taxation; and, ii) AR may be successful in the Application such that the Minister will have to reconsider its dismissal of the MAP request, there is some uncertainty as to whether those events will transpire and as a result these considerations are best left for another day. In that sense, the Court agrees with the Respondent that the request to hold the tax appeal in abeyance is premature.

[31] For all the foregoing reasons, the Motion is dismissed, with costs.

[32] The parties shall have until September 29, 2023 to file a joint request for a timetable order that ensures that the appeal of AR and the Corporate Appellants shall move forward in a more or less parallel fashion.

Signed at Ottawa, Canada, this 16th day of August 2023.

“Guy Smith”

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Smith J.

CITATION: 2023 TCC 122

COURT FILE NOS.: 2021-825(IT)G  
2020-953(IT)G  
2020-954(IT)G  
2020-955(IT)G  
2020-956(IT)G  
2020-957(IT)G  
2020-958(IT)G  
2020-959(IT)G  
2020-2093(IT)G

STYLES OF CAUSE: ADRIAN ROBINSON v. HIS MAJESTY  
THE KING

TIENCON ELECTRONICS EXPORT  
COMPANY LIMITED v. HIS MAJESTY  
THE KING

TIENCON ELECTRONICS LIMITED  
(TAIWAN) v. HIS MAJESTY THE KING

TIENCON ELECTRONICS LIMITED  
(COOK ISLANDS) v. HIS MAJESTY  
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MH CONNECTORS ASIA LIMITED v.  
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EDAC (HONG KONG) LIMITED v. HIS  
MAJESTY THE KING

EDAC (DONGGUAN) LIMITED v. HIS  
MAJESTY THE KING

HOUSTON ENTERPRISES GROUP  
LIMITED v. HIS MAJESTY THE KING

PLACE OF HEARING: Ottawa, Ontario  
DATE OF HEARING: March 30, 2022  
REASONS FOR ORDER BY: The Honourable Justice Guy R. Smith  
DATE OF ORDER: August 16, 2023

APPEARANCES:

Counsel for the Appellant: Peter Aprile  
James Roberts

Counsel for the Respondent: Ainslie Schroeder  
Anita Balamukar

COUNSEL OF RECORD:

For the Appellant:

Name: Peter Aprile

Firm: Counter Tax Lawyers PC  
Toronto, Ontario

For the Respondent: Shalene Curtis-Micallef  
Deputy Attorney General of Canada  
Ottawa, Canada