REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB,
Petitioners,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9081

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

JUN 08 2017
3:20 p.m.

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D E C I S I O N

MANAHAN, *J.:*

This involves a Petition for Review[1] filed on July 1, 2015 by petitioners Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez, and Trinidad Jacob, pursuant to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, and Section 3(a)(2) of the Revised Rules of the Court of Tax Appeals (RRCTA) praying for the refund of their income tax payments in the total amount of **SIX MILLION SIX HUNDRED NINETY-SEVEN THOUSAND NINE HUNDRED TWENTY-ONE and 16/100 PESOS (Php6,697,921.16)** or more particularly:[2]

Petitioner	Tax Paid for 2012 income (in Php)	Tax Paid for 2013 income (in Php)	Total claim of petitioner (in Php)
Cristeta May Galang	210,845.75	249,852.00	460,697.75

[1] Docket, CTA Case No. 9081, Vol. 1, pp. 10-27.
[2] *Id.* at 20.

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Caridad Ortega	1,387,734.00	1,488,053.00	2,875,787.00
Mildred Villareal	719,855.29	718,368.00	1,438,223.29
Rona Marie Yngson	212,862.71	310,041.00	522,903.71
Tanglaw Lupe Gutierrez	280,123.58	329,185.00	609,308.58
Trinidad Jacob	377,744.83	413,256.00	791,000.83
Total	**3,189,166.16**	**3,508,755.00**	**6,697,921.16**

which petitioners claimed to have been erroneously and/or illegally collected by the respondent.

THE PARTIES

Petitioners are all of legal age, Filipinos and are employed at the Asian Development Bank (ADB), which office is located at 6 ADB Ave., Mandaluyong City 1550.[3]

Respondent Commissioner of Internal Revenue (CIR) is vested under the appropriate laws with authority to carry out the functions, duties and responsibilities of said office, including *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other laws or portions thereof administered by the Bureau of Internal Revenue (BIR).[4]

THE FACTS

On December 4, 1965, the Agreement Establishing the Asian Development Bank (ADB Charter Agreement) was adopted with the Government of the Republic of the Philippines (GRP) being one of its signatories. Among the provisions of its

[3] Par. 2 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, pp. 12 and 95.
[4] Par. 3 of Petition for Review which was admitted in respondent's Answer, Docket, Vol. 1, pp. 12 and 95.

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Charter is Article 56, with regard to its exemption from taxation as well as the income of its employees, *viz:*

Article 56

EXEMPTION FROM TAXATION

1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.

2. No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member. (*Underscoring supplied*)

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The ADB Charter Agreement was ratified by then President Marcos in the following manner, viz:

NOW THEREFORE, be it know that I, FERDINAND E. MARCOS, President of the Republic of the Philippines, having seen and considered the Agreement Establishing the Asian Development Bank done on December 4, 1965 at Manila, Philippines, do hereby, in pursuance of the aforesaid concurrent of the Senate of the Philippines, ratify and confirm the said Agreement and every article and clause thereof, **subject to the reservation that** the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines.[5] (*Emphasis and underscoring supplied*)

On March 16, 1966, Senate Resolution No. 6 was adopted whereby the Senate of the Philippines concurred in the ratification by then President Marcos of the ADB Charter Agreement with the declaration that "it retains for itself and its political subdivisions the right to tax salaries and emoluments

[5] Docket, Vol. I, Regional Trial Court Decision dated September 30, 2014, p. 77.

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paid by the Bank to its citizens or nationals of the Philippines pursuant to Article 56, paragraph 2 of the Agreement.[6]

On December 22, 1966, the GRP, represented by then Secretary of Foreign Affairs, Narciso C. Ramos, and the ADB, represented by its President, Takeshi Watanabe, entered into an "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" on the establishment of the principal office of the ADB in Manila, its privileges, immunities, and facilities to be granted by the GRP (ADB Headquarters Agreement).

The privileges and immunities of ADB from GRP are contained in the following provision:

> Section 45
>
> Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:
>
> (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;
>
> (b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals; (*Underscoring supplied*)
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> xxx xxx xxx

On May 18, 1967, the Senate of the Philippines, under P.S.R. No. 38[7] ratified said agreement.

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013 entitled "Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Governments/ Embassies/Diplomatic Missions and International Organizations Situated in the Philippines". Included therein is a provision pertaining to the tax exemptions enjoyed by the

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[6] Docket, Vol. I, Regional Trial Court Decision dated September 30, 2014, p. 66.

[7] Resolution Concurring in the Ratification of the Headquarters Agreement Between the Government of the Philippines and the Asian Development Bank, Done at Manila on December 22, 1966, Philippine Law Journal, Vol.42, No. 3, July 1967.

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employees of ADB. Section 2(d)(1) of said RMC provides the following:

SECTION 2. TAX TREATMENT OF COMPENSATION INCOME

The tax treatment of Philippine nationals and alien individuals on compensation income received by them from foreign governments/embassies and missions and international organizations shall be as follows:

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(d) Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law-

1. Asian Development Bank (ADB)

Section 45(b), Article XII of the Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank provides:

"ARTICLE XII

xxx

Section 45

<u>Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank</u>, shall enjoy the following privileges and immunities:

xxx

(b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank <u>subject to the power of the Government to tax its nationals</u>;"
Underscoring supplied

From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.

As a result, Filipino employees of the ADB, including the petitioners, were ordered to declare their income for 2012 onwards and pay taxes thereon as the RMC was given retroactive effect. Prior to the issuance of RMC No. 31-2013, the

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Filipino employees of ADB did not pay income taxes since its establishment in 1966.[8]

Sometime in February 2014, two Filipino ADB employees, on behalf of the other Filipino employees of the ADB, questioned the legality of Section 2(d)(1) of RMC No. 31-2013 before the Regional Trial Court (RTC) of Mandaluyong City[9], which subsequently ruled in their favor and nullified Section 2(d)(1) of said RMC (RTC ruling).[10]

Respondent appealed said decision to the Court of Appeals docketed as CA-G.R. CV No. 104374 which dismissed it under its Resolution dated July 3, 2015[11]. Respondent moved for its reconsideration but was also denied under Resolution dated January 6, 2016.[12]

Respondent elevated the case before the Supreme Court by filing a Petition for Review on Certiorari entitled "*Commissioner of Internal Revenue v. Erwin Salaveria and Portia Gonzales*" docketed as G.R. No. 222214. The case is still pending for resolution.[13]

On the basis of said RTC ruling, petitioners Galang, Ortega, Villareal, and Yngson, through their counsel, filed their claim for refund of income taxes with the BIR on March 25, 2015.[14] On the other hand, petitioners Gutierrez and Jacob filed theirs on June 22, 2015.[15]

Respondent denied the first claim dated March 25, 2015 for being devoid of legal basis considering that the RTC decision has not yet become final and executory.[16] As to the 2nd refund claim dated June 22, 2015, there was inaction on the part of respondent.[17]

Fearing that the two-year prescriptive period for filing a claim for refund was about to expire,[18] petitioners filed the herein petition on July 1, 2015. Respondent was then required

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[8] Docket, Vol. I, Exhibit P-13, Court of Appeals Resolution dated July 3, 2015, p. 390.
[9] Docket, Vol. I, Petition for Review, pp. 17-18.
[10] Docket, Vol. I, RTC Decision dated September 30, 2014, pp. 54-85.
[11] Docket, Vol. I, Exhibit "P-13", pp. 387-394.
[12] Docket, Vol. I, Exhibit "P-13-1", pp. 395-400.
[13] Docket, Vol. II, Memorandum for the Petitioners, pp. 443-453.
[14] Docket, Vol. I, Letter to CIR dated March 24, 2015, pp. 28-41.
[15] Docket, Vol. I, Letter to CIR dated June 22, 2015, pp. 42-52.
[16] Docket, Vol. I, Letter dated April 21, 2015, p. 53.
[17] Docket, Vol. I, Petition for Review, p. 13.
[18] *Id.*

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by this Court to answer said petition.[19] Respondent submitted its Answer[20] on August 26, 2015 after being granted an extension to file[21] the same by this Court.

On August 27, 2015, the parties were required to submit their pre-trial briefs.[22] Respondent submitted its Pre-Trial Brief on September 23, 2015[23] while petitioners submitted their Pre-Trial Brief on September 28, 2015.[24] Both parties were ordered to file their Joint Stipulation of Facts and Issues[25] which they have submitted on December 1, 2015.[26]

On June 27, 2016,[27] petitioners formally offered their evidence. However, several pieces of their evidence were not admitted[28]. Hence, they moved for their reconsideration[29] which were eventually admitted.[30] Respondent, on the other hand, did not present any evidence to prove its case.[31] Hence, this Court ordered the parties to submit their respective Memoranda.[32]

Respondent filed its Memorandum on February 21, 2017[33] while Petitioners, after an extension was granted,[34] filed their Memorandum on February 27, 2017 with manifestation that they do not object to the deferment of the resolution of the instant claim.[35] The case was deemed submitted for decision on March 3, 2017.[36]

ISSUE

The sole issue raised by the parties is:

> "Whether or not petitioners are entitled to claim refund for income taxes paid in

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[19] Docket, Vol. I, Summons dated July 8, 2015, p. 88.
[20] Docket, Vol. I, Answer, pp. 95-105.
[21] Docket, Vol. I, Order dated July 30, 2015, p. 94.
[22] Docket, Vol. I, Notice of Pre-Trial Conference, pp. 106-107.
[23] Docket, Vol. I, pp. 108-111.
[24] Docket, Vol. I, pp. 112-116.
[25] Docket, Vol. I, Minute Resolution, p. 118.
[26] Docket, Vol. I, Joint Stipulation of Facts and Issues, pp. 127-130.
[27] Docket, Vol. I, Formal Offer of Evidence, pp. 275-280.
[28] Docket, Vol. I, Resolution dated August 15, 2016, pp. 298-299.
[29] Docket, Vol. I, Motion for Partial Reconsideration, pp. 307-312.
[30] Docket, Vol. I, Resolution dated October 11, 2016, pp. 405-406.
[31] Docket, Vol. II, Minute Resolution, p. 417.
[32] Docket, Vol. II, Order dated January 23,2017, p. 418.
[33] Docket, Vol. II, Respondent's Memorandum, pp. 419-439.
[34] Docket, Vol. II, Order dated February 24,2017, p. 442.
[35] Docket, Vol. II, Memorandum for the Petitioners with Manifestation, pp. 443-453.
[36] Docket, Vol. II, Resolution dated March 3,2017, p. 454.

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taxable years 2012 and 2013 alleged to be erroneously and/or illegally paid"[37]

Petitioners' Arguments

Petitioners argue that the income tax payments made by the petitioners were erroneously and/or illegally collected by the respondent by virtue of the latter's failure to recognize the tax-exempt status granted by treaty to ADB employees as confirmed and corroborated by the RTC ruling.[38] Further, a subsequent legislation or an enabling law was needed to implement the reservation clause under said treaty which aims to tax the Philippine Nationals working in ADB.

They also argue that their income tax payment is an aberration introduced by BIR RMC 31-2013, hence, it is only proper that the income taxes they paid pursuant to the RMC should be returned to them[39] by allowing the claim for refund notwithstanding the petition in the Supreme Court filed by the respondent questioning the RTC ruling that invalidated Section 2(d)(1) of BIR RMC 31-2013.[40]

Respondent's Counter-Arguments

Respondent argues that petitioners are not entitled to the refund of their income tax payments for taxable years 2012 and 2013 for failure on their part to substantiate their claim for refund.[41] She further argues that the salaries and emoluments paid by ADB to its officers and employees who are resident citizens are subject to income tax under NIRC[42] and not only anchored on the retroactive application of RMC 31-2013.[43]

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[37] Docket, Vol. I, Joint Stipulation of Facts and Issues, p. 128.
[38] Docket, Vol. II, Memorandum for the Petitioners with Manifestation dated February 22,2017, pp. 443-453.
[39] *Id.* at 450.
[40] *Id.* at 452.
[41] Docket, Vol. II, Respondent's Memorandum dated February 20,2017, pp. 419-439.
[42] *Id.* at 430.
[43] *Id.* at 435.

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RULING OF THE COURT

The Court finds the petition partly meritorious.

Foremost, it is important to determine whether it has jurisdiction on the claim.

Respondent argues that petitioners should prove *inter alia* that it had filed a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty[44] and to this Court within 30 days from receipt of denial or inaction but within said two-year period.[45]

Section 229 of the NIRC provides that:

> SEC. 229. Recovery of Tax Erroneously or Illegally Collected. - **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax** hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (*Emphasis supplied*)

Based on the records of the case, the following were the dates of filing of the administrative claim and judicial claim, corresponding to the name of each petitioner, which were extracted from the evidence presented to and admitted by this Court, as well as the last day when such claim will prescribe, *viz*:

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[44] Docket, Vol. II, Respondent's Memorandum dated February 20,2017, p. 425.
[45] *Id.* at 426.

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1. Cristeta May Galang

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	2013	2012	2013		
July 1, 2013[46]	July 11, 2014[47]	June 30, 2015	July 10, 2016	March 25, 2015[48]	July 1, 2015

2. Caridad Ortega

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	2013	2012	2013		
July 9, 2013[49]	July 2, 2014[50]	July 8, 2015	July 1, 2016	March 25, 2015	July 1, 2015

3. Mildred Villareal

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	2013	2012	2013		
July 9, 2013[51]	July 14, 2014[52]	July 8, 2015	July 13, 2016	March 25, 2015	July 1, 2015

4. Rona Marie Yngson

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	2013	2012	2013		
July 9, 2013[53]	July 8, 2014[54]	July 8, 2015	July 7, 2016	March 25, 2015	July 1, 2015

5. Tanglaw Lupe Gutierrez

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	2013	2012	2013		
July 9, 2013[55]	July 14, 2014[56]	July 8, 2015	July 13, 2016	June 22, 2015[57]	July 1, 2015

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[46] Docket, Vol. I, Exhibit "P-5-1", p. 183.
[47] Docket, Vol. I, Exhibit "P-5-1", p. 183.
[48] Docket, Vol. I, Letter to CIR dated March 24, 2015, pp. 28-41.
[49] Docket, Vol. I, Exhibit "P-6-1", p. 191.
[50] Docket, Vol. I, Exhibit "P-7-1", p. 200.
[51] Docket, Vol. I, Exhibit "P-9", p. 380; Exhibit "P-3-2", p. 176.
[52] Docket, Vol. I, Exhibit "P-9-2", p. 381.
[53] Docket, Vol. I, Exhibit "P-3-3", p. 177.
[54] Docket, Vol. I, Exhibit "P-10-2", p. 384.
[55] Docket, Vol. I, Exhibit "P-4-1", p. 180.
[56] Docket, Vol. I, Exhibit "P-5-4", p. 185.
[57] Docket, Vol. I, Letter to CIR dated June 22, 2015, pp. 42-52.

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6. Trinidad Jacob

Date of Full Payment of Income Tax for taxable period		Last day of filing for claim of refund for taxable period		Date of filing of Administrative Claim	Date of filing of Judicial Claim
2012	2013	2012	2013		
July 9, 2013[58]	July 10, 2014[59]	July 8, 2015	July 9, 2016	June 22, 2015	July 1, 2015

In *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[60] the Supreme Court ruled that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods, hence, a year is composed of 12 calendar months where the number of days is irrelevant.

As shown above, the judicial claim for refund of Petitioner Cristeta May Galang for taxable period 2012 was filed on July 1, 2015, which was one day late, hence, said claim was filed beyond the 2-year prescriptive period. As such, the Court acquires no jurisdiction.

As to the other claims, the abovementioned facts will show that the administrative and judicial claims were filed within the 2-year prescriptive period in accordance with Section 229 of the NIRC. Hence, the Court has jurisdiction on the said claims for refund.

GRP, as signatory to the ADB Charter Agreement and the ADB Headquarters Agreement, retained its right to tax the salaries and emoluments of Filipino ADB employees.

On the question whether GRP retained its right to tax Filipino nationals who will be working in ADB, we rule for the respondent.

Under Section 2, Article II of the 1987 Philippine Constitution, the Philippines adopts the generally accepted principles of international law as part of the laws of the land. As

[58] Docket, Vol. I, Exhibit "P-3-1", p. 174.
[59] Docket, Vol. I, Exhibit "P-11-1", p. 386.
[60] G.R. NO. 162155, August 28, 2007.

such, the Philippine Government, as a party to international agreements, binds itself to recognize its commitments thereunder, including tax treaties and to fulfill its obligations under them in good faith.[61] This is the same principle enshrined in the 1935 Constitution, as amended, which is prevailing at the time when said agreement was entered into by the GRP and ADB, *viz*:

ARTICLE II
Declaration of Principles
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> Section 3. The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation.

As pronounced in *Deutsche Bank AG Manila Branch v. CIR*,[62] *viz*:

> Our Constitution provides for adherence to the general principles of international law as part of the law of the land. The time-honored international principle of *pacta sunt servanda* demands the performance in good faith of treaty obligations on the part of the states that enter into the agreement. Every treaty in force is binding upon the parties, and obligations under the treaty must be performed by them in good faith. More importantly, treaties have the force and effect of law in this jurisdiction.

In the case of *PHAP vs. Duque*,[63] the Supreme Court clearly delineated the two processes by which international agreements or treaties are incorporated as part of the domestic law or municipal law, thus:

> "Under the 1987 Constitution, international law can become part of the sphere of domestic law either by *transformation* or *incorporation*. The transformation method requires that an international law be transformed into a domestic law through a constitutional mechanism *such as local legislation*. The incorporation method applies when, by mere constitutional declaration, international law is deemed to have the force of domestic law.

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[61] International Tax Treaty Practice and Ruling (RP-US Tax Treaty), Atty. Gregorio V. Cabantac, p.
[62] G.R. No. 188550, August 19, 2013.
[63] G.R. No. 173034 dated October 9, 2007.

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> Treaties become part of the law of the land through transformation pursuant to Article VII, Section 21 of the Constitution which provides that "[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate." Thus, treaties or conventional international law *must go through a process prescribed by the Constitution for it to be transformed into municipal law* that can be applied to domestic conflicts. (italics ours)

The grant of tax exempt privileges as worded in the ADB Charter although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's prerogative in taxing its citizens or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, *not superior*, to national legislative enactments" *(italics ours)*.[64] Thus, there is no further need for an enabling law to exercise the reserved power to tax by the GRP.

To recapitulate, the Philippines entered into and signed two international agreements relevant to the case at hand, namely: the ADB Charter Agreement and the ADB Headquarters Agreement. Both were ratified by the GRP and the Senate of the Philippines with the clear and categorical reservation of its power to tax its citizens and nationals. The accession, therefore, to said international agreements which grant tax exemption to ADB personnel is conditional and not absolute.

Now, how was this reserved power to tax implemented by the respondent?

Tax cannot be imposed without clear and express words for that purpose, thus the necessity for clear guidelines from the BIR

The power to interpret tax laws is vested upon the Commissioner of Internal Revenue (CIR) under Section 4 of the NIRC,[65] as implemented by the Department of Finance (DOF)

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[64] Philip Morris Inc. vs. Court of Appeals, G.R. No. 91332 dated July 16, 1993.

[65] **Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*.** – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

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Order No. 07-2002 (May 7, 2002) which provides for the implementing rules on the exercise of the power of the Secretary of Finance to review the rulings of the CIR.

From the effectivity dates of the twin agreements, there was no explicit and categorical ruling or issuance from the BIR implementing the reserved taxing power of the GRP on the Filipino ADB employees, except until the issuance of RMC No. 31-2013. The ADB Filipino employees, petitioners included, were never subjected to withholding tax on their compensation income. Likewise, they did not pay any annual income tax to the BIR. During this interregnum period (1966 to 2013), the BIR issued three varying guidelines on the taxable status of the ADB Filipino employees,[66] to wit:

1. On March 11, 1999, former Commissioner Beethoven L. Rualo issued a ruling that ADB Filipino employees holding managerial and technical positions are subject to a preferential rate of 15%;

2. On January 29, 2001, the BIR, through its Regional Director (RD) which had the jurisdiction over the ADB, issued an opinion stating that salaries and emoluments received by ADB officers and staff are exempt from taxation; and

3. On February 6, 2013, the Chief, Legal Division of Revenue Region No. 7, Amado Rey B. Pagarigan issued an opinion that the Filipino employees in ADB are subject to the preferential tax rate of 15% on their compensation income.

Then, RMC No. 31-2013 was issued by the respondent requiring all Philippine nationals to file their annual income tax returns using BIR Form No. 1700 or 1701, without stating what income tax rate was applicable, unlike the earlier letter-rulings. This latest BIR issuance was not explicit enough in denoting the particular income tax rate that will be imposed on the petitioners, to wit:

> SECTION 3. FILING OF INCOME TAX RETURNS AND DECLARATION OF COMPENSATION INCOME. - Philippine nationals and alien individuals who were not granted tax exemption or immunities under duly recognized international agreements or local laws **shall file their annual income tax**

[66] Docket, Vol. I, Regional Trial Court Decision, pp. 79-80.

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> **returns or or before the 15th day of April each year using BIR Form no. 1700 or 1701**, as may be applicable, declaring therein the amounts of their respective compensation income for the preceding taxable year for services rendered or performed for such foreign government embassy, diplomatic mission, agency or international organization. (*Emphasis supplied*)

The aforesaid BIR tax guidelines for ADB Filipino employees sent contradictory signals to the petitioners. While one opined that the ADB Filipino employees are exempt from taxation, two prescribed a final 15% tax rate and the latest one imposed graduated income tax rates. Given said inconsistent legal interpretations, the petitioners are caught in a quagmire as to how to go about complying with their tax obligations since the principal implementing agency of the tax laws has yet to come up with a unified crystal clear position on their taxable status. The RMC was the first ever comprehensive guideline issued by respondent and it took effect on May 2, 2013 after its copy was officially submitted to the Office of the National Administrative Register of the UP Law Center in observance of the requirement under the 1987 Administrative Code, Section 3, Chapter 2, Book VII, which provides:

> *Filing.* (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from the date shall not thereafter be the basis of any sanction against any party or persons.

Pursuant to the abovementioned provision, the Supreme Court emphasized in *National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission, G.R. No. 163935, February 2, 2006* that both the **requirements of publication and filing of administrative issuances are mandatory for their effectivity**.

Thus, under the RMC, with the express repealing clause that any revenue issuance which is inconsistent with the circular is deemed revoked, repealed or modified accordingly, the petitioners and the rest of the ADB Filipino employees are finally declared to be taxable under Section 24(A)(1)(a) and (2) of the Tax Code which provides that:

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SEC. 24. Income Tax Rates. -

(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines. -

(1) *An income tax is hereby imposed:*

(a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein;

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(c) xxx. – The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over P10,000	5%
Over P10,000 but not over P30,000	P500+10% of the excess over P10,000
Over P30,000 but not over P70,000	P2,500+15% of the excess over P30,000
Over P70,000 but not over P140,000	P8,500+20% of the excess over P70,000
Over P140,000 but not over P250,00	P22,500+25% of the excess over P140,000
Over P250,000 but not over P500,000	P50,000+30% of the excess over P250,000
Over P500,000	P125,000+32% of the excess over P500,000.

The foregoing income tax rates governed the amount of income taxes paid by the petitioners as borne out by the records of the case.[67]

Laws shall have no retroactive effect, unless the contrary is provided; and Rules and Regulations on taxation should not be given retroactive application if it will be prejudicial to the taxpayer

This court is well aware of the hornbook doctrine in statutory construction that laws operate prospectively only and never retrospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication.[68] Article 4 of the New Civil

[67] Docket, Vol. I, Exhibit "P-3", pp. 174-177; Exhibit "P-4", pp. 179-180; Exhibit "P-5", pp. 182-186; Exhibit "P-6", pp. 188-191; Exhibit "P-7", pp. 193-205; Exhibit "P-9", p. 219; Exhibit "P-9-1", p. 220; Exhibit "P-9-2", p. 220; Exhibit "P-10", p. 221; Exhibit "P-10-1", p. 222; Exhibit "P-10-2", p. 223; Exhibit "P-11", p. 224; and Exhibit "P-11-1", p. 225.

[68] Diaz, Statutory Construction 249 (4th Edition, 2013).

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Code provides that "Laws shall have no retroactive effect, unless the contrary is provided."

In the instant case, the assailed RMC 31-2013 stated under its **Section 7. EFFECTIVITY**, that **"This Circular shall take effect immediately.** xxx." However, in reality, the respondent proceeded to collect from the petitioners income tax payments starting 2012 despite the fact that the RMC took effect only on May 2, 2013.

Section 246 of the 1997 Tax Code provides:

> SEC. 246. ***Non- Retroactivity of Rulings.*** - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (*Emphasis supplied*)

As shown in the preceding recital of facts, petitioners neither committed fraud nor acted in bad faith when they failed to pay their income taxes to the government. To believe that they are exempt from income tax obligation based on their limited layman's understanding of the ADB Charter and its declared tax exempt status, is not to be taken against them. The contradictory official statements of the BIR sowed confusion to the ADB employer as well as to its employees with regard to their taxability under the international agreements.

True, the inaction on the part of the previous BIR commissioners to enforce the collection of income taxes from petitioners does not estop the respondent from collecting said taxes. This court is mindful of the well-entrenched principle that the government is never estopped from collecting taxes because of mistakes or errors on the part of its agents. However,

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this rule admits of exceptions in the interest of justice and fair play.[69]

In the instant case, the acts of the respondent to set up kiosks in the lobby of ADB to collect taxes from[70] and eventually the filing of criminal case for tax evasion against some ADB Filipino employees[71] in order to collect past due income taxes for taxable year 2012 had prejudiced the status of the petitioners.

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*,[72] the Supreme Court sustained the non-retroactivity provision of the previous tax law which is now the Section 246 of 1997 Tax Code as to respondent's rulings or circulars, *viz*:

> In point is Sec. 338-A (now Sec. 327) of the Tax Code. As inserted by Republic Act No. 6110 on August 9, 1969, it provides:
>
> > Sec. 338-A. *Non-retroactivity of rulings.* — Any revocation, modification, or reversal of and of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue *shall not be given retroactive application if the relocation, modification, or reversal will be prejudicial to the taxpayers*, except in the following cases: (a) where the taxpayer deliberately mis-states or omits material facts from his return or any document required of him by the Bureau of Internal Revenue: (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. (*italics for emphasis*)
>
> **It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers**. The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner

[69] Vitug and Acosta, Tax Law And Jurisprudence 31 (2nd edition, 2000).
[70] Docket, Vol. II, Memorandum for the Petitioners with Manifestation dated February 22,2017, pp. 445.
[71] Docket, Vol. I, Regional Trial Court Decision dated September 30, 2014, p. 58.
[72] G.R. No. L-52306, October 12, 1981.

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> had withheld taxes under General Circular No. V-334. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated exceptions are concerned, admittedly, petitioner does not fall under any of them. (*Emphasis and underscoring ours*)

Also, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*,[73] it was ruled that:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers*.
>
> The applicable law is Sec. 246 of the Tax Code which provides -
>
> Sec. 246. *Non-retroactivity of rulings*.- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.
>
> Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax. *(Emphasis ours)*

Given the aforesaid disquisition, the amount of Php3,189,166.16 that was collected from the petitioners for taxable year 2012 despite the RMC being only effective in 2013, is prejudicial to their interest as they were not cash awash and ready to incur such huge tax obligations for the past taxable year 2012 neither were they prepared to face the grim prospect of law suits and potential garnishment of their bank deposits,

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[73] G.R. No. 117982, February 6, 1997.

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assets if they fail to settle such deficiency income tax assessment.

Thus, the income tax payments of the following petitioners for taxable year 2012 were illegally collected in violation of the provision of Sec. 246 of the NIRC, as amended, and Art. 4 of the New Civil Code, *to wit*:

Caridad Ortega	Php1,387,733.95[74]
Mildred Villareal	719,855.29
Rona Marie Yngson	212,862.71
Tanglaw Lupe Gutierrez	280,123.58
Trinidad Jacob	377,744.83
Total	**Php2,978,320.36**

WHEREFORE, in light of the foregoing, the Petition for Review filed by herein petitioners, except for Cristeta May Galang, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of the petitioners in the amount of **TWO MILLION NINE HUNDRED SEVENTY EIGHT THOUSAND THREE HUNDRED TWENTY PESOS AND THIRTY SIX CENTAVOS (PHP2,978,320.36) to be individually allocated based on the table aforecited**, representing the illegally collected income taxes for taxable year 2012.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
(with concurring and dissenting opinion)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

[74] Docket, Vol. I, Exhibit "P-7-2", p. 200; and Exhibit "P-6-1", p. 191.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

<u>SECOND DIVISION</u>

CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB, Petitioners,	**CTA CASE NO. 9081**
	Present:
-versus-	Castañeda, Jr., *Chairperson*, Casanova, and, Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 08 2017 3:20 p.m.

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CONCURRING AND DISSENTING OPINION

CASTAÑEDA, JR., *J.*:

I concur with the decision of J. Manahan which denied *in part* the refund of ₱6,697,921.16. However, with due respect, I register my dissent on the grant of refund in the amount of ₱2,978,320.36.

Specifically, I am of the view that:

1. Regarding the judicial claim for refund of Cristeta May Galang for 2012, the entire amount is *not* barred by prescription under Section 229 of the National Internal Revenue Code of 1997 (1997 NIRC) but only the ₱105,425.00 pertaining to the April 8, 2013 income tax payment;

2. Nonetheless, the total claim for refund of ₱6,697,921.16 by the various petitioners, including that of Cristeta May

Galang, should be denied under Sections 23(A) and 24(A)(1)(a) of the 1997 NIRC, as amended.

The refund claim of Cristeta May Galang is *not* entirely barred by prescription.

Under Section 229 of the 1997 NIRC, a taxpayer has two years from the date of payment within which to file a judicial claim for refund of illegally and/or erroneously collected income tax.

Based on the records of the case, Cristeta May Galang made two income tax payments for 2012. As such, counting the two-year prescription from said payment dates, the deadlines for filing the judicial claims fell on the following:

Date of Payment[1]	Amount Paid	Date of Filing of Administrative Claim	Date of Filing of Judicial Claim	Last Day of Filing of Judicial Claim
April 8, 2013	₱105,425.00	March 25, 2015	July 1, 2015	April 8, 2015
July 1, 2013	₱105,420.75	March 25, 2015	July 1, 2015	July 1, 2015

Accordingly, only the April 8, 2013 income tax payment of ₱105,425.00 is barred by prescription.

The total claim for refund of ₱6,697,921.16 by the various petitioners, including that of Cristeta May Galang, should be denied under Sections 23(A) and 24(A)(1)(a) of the 1997 NIRC, as amended.

All the petitioners, who are claiming for refund of allegedly erroneously and/or illegally collected income tax under Section 229, are Filipino employees of the Asian Development Bank (ADB).

First, a review of the relevant treaty and legislative provisions will demonstrate that Congress really intended to tax the salaries and emoluments received by Filipinos from ADB.

On December 4, 1965, the "Agreement Establishing the Asian Development Bank" (ADB Charter) was executed.

[1] Exhibit P-5-1, Docket Vol. 1, p. 183.

Thereafter, in a Senate Resolution No. 6 dated March 16, 1966, the ADB Charter was ratified and confirmed by the Philippine Government with a reservation of its right to tax the Filipino employees of ADB, thus:

> "NOW THEREFORE, be it known that I, FERDINAND E. MARCOS, President of the Republic of the Philippines, having seen and considered the Agreement Establishing the Asian Development Bank done on December 4, 1965 at Manila, Philippines, do hereby in pursuance of the aforesaid concurrent of the Senate of the Philippines, ratify and confirm the said Agreement and every article and clause thereof, <u>subject to the reservation that the Philippines declares that it retains for itself and its political subdivision the right to tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines</u>." (underscoring supplied)

On December 22, 1966, the "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" (ADB Headquarters Agreement) was signed, which provides in pertinent part:

> "ARTICLE XII
>
> Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others
>
> xxx xxx xxx
>
> Section 45.
>
> Officers and staff of the Bank, including for the purposes of this Article experts and consultants performing missions for the Bank, shall enjoy the following privileges and immunities:
>
> (a) Immunity from legal process with respect to acts performed by them in their official capacity except when the Bank waives the immunity;
>
> (b) Exemption from taxation on or in respect of the salaries and emoluments paid by the Bank <u>subject to the power of the Government to tax its nationals</u>; xxx." (underscoring supplied)

The 1997 NIRC, a subsequent legislation which took effect on January 1, 1998,[2] is the law that enables the clear intention of the reservation clauses found in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Specifically, said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines under Sections 23(A) and 24(A)(1)(a), as amended:

"**SEC. 23.** *General Principles of Income Taxation in the Philippines.* - Except when otherwise provided in this Code:

(A) <u>A Citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines</u>;

xxx xxx xxx

SEC. 24. *Income Tax Rates. –*

(A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.-*

(1) An income tax is hereby imposed:

(a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year from <u>all sources within and without the Philippines by every individual citizen of the Philippines residing therein</u>;" (underscoring supplied)

Second, it is postulated that Revenue Memorandum Circular (RMC) No. 31-2013, which was issued only on April 12, 2013, should not be given retroactive application pursuant to the prohibition under Section 246.[3]

It bears emphasis, however, that RMC 31-2013 merely *reiterates* the general principles laid down in Section 23(A) and *amplifies* Section 24(A)(1)(a), both of which have been in effect since January 1, 1998. *je*

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[2] *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014.

[3] "**SEC. 246. Non- Retroactivity of Rulings.** - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith."

The preface of RMC 31-2013 in Section 1 states these objectives when it cites Sections 23 and 24 of the 1997 NIRC as the foundation and states that the guidelines were intended to address the "confusion on the correct tax treatment of the compensation income earned by Philippine nationals xxx employed by foreign governments/embassies/diplomatic missions and international organizations xxx," thus:

> "**SECTION 1. BACKGROUND.—**
>
> Foreign governments/embassies/diplomatic missions and international organizations situated in the Philippines acting as employers enjoy immunity from collecting taxes on salaries and emoluments of their employees, whether they are foreigners or Philippine nationals. This immunity from being constituted as withholding agents of the Philippine Government is accorded to these entities on the basis of international comity as embodied in several international agreements to which the Philippines is a signatory, such as, the Vienna Convention for International Relations (for embassies and diplomatic missions), Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of Specialized Agencies (for the various agencies of the United Nations), Asian Development Bank Headquarters Agreement (for ADB), Articles of Agreement of the International Finance Corporation, among others.
>
> In recognition of this immunity, the Withholding Tax Regulations (Revenue Regulations No. 2-98, as amended), clearly reiterate the exemption from the withholding tax system of the remunerations being paid by foreign governments and international organizations to their employees who are residents or nationals of the Philippines. Section 2.78.1(B)(5) provides thus:
>
> xxx xxx xxx
>
> <u>However, it has been observed that the foregoing provisions have been a source of confusion on the correct tax treatment of the compensation income earned by Philippine nationals and alien individuals employed by foreign governments/embassies/diplomatic missions and international organizations.</u> <u>**To clarify, the exemption from withholding taxes on the compensation of officials and employees applies to foreign governments/embassies/ diplomatic missions and international organizations. Since the withholding of tax is merely a method of tax collection, the exemption from withholding taxes does not equate to the exemption from paying the income tax itself**</u>.
>
> <u>Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxations of citizens and alien individuals</u>, to wit:

xxx xxx xxx

> As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/embassies/diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.
>
> The tax consequence of compensation income received by those employed by foreign governments/embassies/ diplomatic missions situated in the Philippines hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended ("Tax Code"). (underscoring and emphases supplied)

Section 246 on the non-retroactivity of issuances should be carefully read when viewed in the light of *ABS-CBN v. Court of Tax Appeals*,[4] an *assessment* case discussed in the *ponencia*, wherein the revocatory administrative issuances were not given retroactive application. In said case, the Supreme Court held that there will be an injustice and it would be violative of fair play if the withholding agent would be made to pay additional withholding taxes for 1965 to 1968 under the provisions of a circular later issued in 1971.

The facts of the case at bench, a *refund* of income taxes paid only on 2012 and 2013, are different from that of *ABS-CBN*. It is submitted that there has been *no violation* of the rules of justice and fair play when petitioners paid the income taxes. It is not in question that when the income taxes were paid, the Reservation Clause in Senate Resolution No. 6 and the provisions of Sections 23(A) and 24(A)(1)(a) have long been in force and effect *prior to these payments*.

[4] G.R. No. L-52306, October 12, 1981.

Evidently, when an administrative agency renders an opinion by means of a *circular* or memorandum, *it merely interprets a pre-existing law.*[5] RMC 31-2013, therefore, was issued merely to construe the *existing* provisions of the 1997 NIRC in relation to the various *existing* treaty obligations of the Philippines. The circular was not issued or intended to impose additional tax burdens not otherwise found in the law.

Third, construction by an executive branch of government of a particular law although not binding upon courts must be given weight as the construction came from the branch of the government called upon to implement the law.[6] It is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies.[7] RMC 31-2013 was precisely issued to fill in the details and manner of the enforcement of Sections 23(A) and 24(A)(1)(a) pursuant to Section 4[8] of the 1997 NIRC, as amended.

RMC 31-2013 belongs to a group of issuances that "disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."[9] Based on this definition, RMC 31-2013 is an

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[5] *La Suerte Cigar and Cigarette Factory et al. v. Court of Tax Appeals, et al.,* G.R. No. L-36130, January 17, 1985.

[6] *Senator Heherson T. Alvarez, et al. v. Hon. Teofisto T. Guingona, Jr., in his capacity as Executive Secretary, et al.*, G.R. No. 118303, January 31, 1996.

[7] *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003.

[8] "**SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

[9] Section 3(g), Revenue Administrative Order No. 1-2003 provides:

"SECTION 3. *Classification of BIR Rulings and Issuances.* — The following terms shall have the meaning described below:

xxx xxx xxx

g) *Revenue Memorandum Circulars (RMC)* — These issuances shall disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."

interpretative rule issued by the administrative agency headed by the respondent.

In *Republic of the Philippines v. Drugmaker's Laboratories, Inc. et al.*,[10] the Supreme Court held that Administrative Order No. 7, an administrative regulation issued by the Department of Health, and BFAD Circulars No. 1 and 8, issued by the Food and Drug Administration (FDA), were all valid issuances of administrative agencies tasked to implement the law. It discussed the nature and function of *interpretative rules* in this wise:

> "Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.
>
> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. <u>Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules</u>. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.
>
> <u>In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the 'Administrative Code of 1987,' on prior notice, hearing, and publication in order to be valid and binding, **except when the same is merely an interpretative rule. This is because '[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real**</u>

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[10] G.R. No. 190837, March 5, 2014.

> **consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.'" (underscoring and emphases supplied; citations omitted)

More importantly, in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al.*,[11] the Supreme Court upheld the validity of RMC 25-2011 and ruled that the application of the circular to the taxable transaction in 2009 did not contravene Section 246, thus:

> "Lastly, petitioner is mistaken in stating that RMC 25-11, having been issued after the sale, was being applied retroactively in contravention to Sec. 246 of the NIRC. Instead, it merely called for the strict application of Sec. 100, which was already in force the moment the NIRC was enacted." (underscoring supplied)

Fourth, even assuming there was a failure in the past by the respondent to take a categorical position on the taxation of Filipino ADB employees, such deficit does not operate to estop the government from correcting the same. In fact, prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals*:[12]

> "The cigarette manufacturers contend that for a long time prior to the transactions herein involved, the Collector of Internal Revenue had never subjected their purchases and importations of stemmed leaf tobacco to excise taxes. This prolonged practice allegedly represents the official and authoritative interpretation of the law by the Bureau of Internal Revenue which must be respected.
>
> We are not persuaded.
>
> In *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*, this court has held that this principle is not absolute, and an erroneous implementation by an officer based on a

[11] G.R. No. 210987, November 24, 2014.

[12] G.R. No. 125346, November 11, 2014.

misapprehension of law may be corrected when the true construction is ascertained. Thus:

> The appellant argues that the Collector of Internal Revenue, previous to the transactions herein involved, had never collected the franchise tax on items of the same nature as those herein in question and this is strong evidence that such transactions are not subject to tax on the principle that a prolonged practice on the part of an executive or administrative officer in charge of executing a certain statute is an authoritative construction of great weight. *This contention may be granted, but the principle is not absolute and may be overcome by strong reasons to the contrary. If through a misapprehension of law an officer has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained.* Such we deem to be the situation in the present case. Incidentally, the doctrine of estoppel does not apply here. (Emphasis supplied)

This court reiterated this rule in *Abello v. Commissioner of Internal Revenue* where it **rejected** petitioners' claim that the prolonged practice (since 1939 up to 1988) of the Bureau of Internal Revenue in not subjecting political contributions to donor's tax was an authoritative interpretation of the statute, entitled to great weight and the highest respect:

> This Court holds that the BIR is not precluded from making a new interpretation of the law, especially when the old interpretation was flawed. It is a well-entrenched rule that [:]
>
> > ...erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute, and that the Government is never estopped by mistake or error on the part of its agents. (Emphasis supplied, citations omitted)

Prolonged practice of the Bureau of Internal Revenue in not collecting the specific tax on stemmed leaf tobacco **cannot validate what is otherwise an erroneous application and enforcement of the law**. The government is never estopped from collecting legitimate taxes because of the error committed by its agents.

In *La Suerte Cigar and Cigarette Factory v. Court of Tax Appeals*, this court upheld the validity of a revenue memorandum circular issued by the Commissioner of Internal Revenue to correct an error in a previous circular that resulted in the non-collection of tobacco inspection fees for a long time and declared that estoppel cannot work against the government:

xxx xxx xxx" (underscoring and emphases supplied; citations omitted)

As a final word, taxes are the lifeblood of the nation. Consequently, it must be remembered that tax refunds are construed strictly against the taxpayers.[13] Any claim for refund take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[14]

WHEREFORE I vote to deny the petition entirely.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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[13] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

[14] *Nestle Philippines, Inc. (formerly Filipro, Inc.) v. Honorable Court of Appeals, et al.*, G.R. No. 134114, July 6, 2001.