REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SPOUSES MICHAEL GAVIN RICHARD L. DE LOS REYES AND JENNIFER C. CO-DE LOS REYES, *Petitioners,*	**CTA CASE NO. 9088**
	Members: **BAUTISTA**, *Chairperson,* **FABON-VICTORINO**, *and* **RINGPIS-LIBAN**, *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2017 2:08 p.m.

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DECISION

BAUTISTA, J.:

The Case

The Petition for Review[1] prays for the refund of erroneously and illegally collected income tax on petitioners' compensation from the Asian Development Bank ("ADB") for calendar year ("CY") 2012 in the aggregate amount of Php1,948,832.34.[2]

The Parties

Petitioners Spouses Michael Gavin Richard L. de los Reyes and Jennifer C. Co-de los Reyes are Filipinos, of legal age, and with office address at 6 ADB Avenue, Mandaluyong City.[3]

Respondent Commissioner of Internal Revenue ("CIR") is the officer duly appointed and empowered by law to act on claims for

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[1] *Records, CTA Case No. 9088, Vol. 1, Petition for Review ("PFR"),* pp. 10-120, with annexes.
[2] *Id.* at 19-20.
[3] *Id., Joint Stipulation of Facts and Issues ("JSFI"),* p. 227.

refund or credit, with office address at the Bureau of Internal Revenue ("BIR") National Office Building, Diliman, Quezon City.[4]

The Facts

For CY 2012, petitioners were employed by the ADB. Petitioner Michael L. de los Reyes was a member of ADB's Treasury Department (Treasury Client Solutions Unit),[5] while petitioner Jennifer C. Co-de los Reyes was a member of ADB's Budget, Personnel, and Management Systems Department (HR Policy and Program Division).[6]

On April 12, 2013, respondent issued *Revenue Memorandum Circular ("RMC") No. 31-13* 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. Under *Section 2(d)(1) of RMC No. 31-13,* respondent stated that only officers and staff of ADB who are not Philippine nationals are exempt from income tax.

On July 12, 2013, petitioners filed their joint Annual Income Tax Return ("ITR")[7] for CY 2012 and paid Php1,948,832.34 pursuant to *RMC No. 31-13.*[8] The amount paid can be broken down, as follows:

	MICHAEL DE LOS REYES		**JENNIFER CO-DE LOS REYES**	
Gross Compensation Income	Php	4,880,589.63	Php	1,608,261.42
Taxable Income		4,780,589.63		1,528,261.42
Income Tax Due		1,494,788.68		454,043.65
AGGREGATE TAX PAYABLE			**PHP**	**1,948,832.34**

Thereafter, on July 10, 2015, petitioners filed a letter-request[9] for the refund of their alleged erroneously and illegally collected income tax for CY 2012.

Due to respondent's inaction on petitioners' letter-request,

[4] *Records, Vol. 1, JSFI,* p. 228.
[5] *Id., Vol. 2, Exhibit "P-4," Asian Development Bank ("ADB") Certification,* p. 554.
[6] *Id., Exhibit "P-5," ADB Certification,* p. 555.
[7] *Id., Exhibit "P-1," Annual Income Tax Return (BIR Form No. 1700),* pp. 498-499.
[8] *Id., Exhibit "P-2," Revenue Official Receipt (BIR Form No. 2524),* p. 500.
[9] *Id., Exhibit "P-3," Letter-Request for Refund,* pp. 501-504, with annexes.

petitioners filed the present Petition for Review[10] on July 13, 2015.

On September 28, 2015, respondent filed his Answer[11].

Petitioners filed their Pre-Trial Brief[12] on November 16, 2015; while Respondent's Pre-Trial Brief[13] was submitted on February 12, 2016. Thereafter, a pre-trial conference was held on February 16, 2016.[14] Together, the parties filed their Joint Stipulation of Facts and Issues[15] on March 11, 2016, which was adopted by the Court in the Pre-Trial Order[16] issued on April 6, 2016.

Petitioners presented the following witnesses: *(1)* Michael Gavin Richard L. de los Reyes, petitioner;[17] and *(2)* Jennifer C. Co-de los Reyes, petitioner.[18]

On August 9, 2016, petitioners filed their Formal Offer of Documentary Exhibits[19] wherein they offered *Exhibits* "P-1," "P-1-a," "P-1-b," "P-2," "P-2-a," "P-3," "P-3-a," "P-4," "P-5," "P-6," "P-7," "P-8," "P-9," "P-9-a," "P-10," and "P-10-a." Respondent failed to file his comment on petitioners' Formal Offer of Documentary Exhibits despite notice.[20] Thereafter, on September 8, 2016, the Court resolved to admit all of petitioners' evidence.[21]

Meanwhile, respondent manifested that he would not be presenting evidence.[22]

Accordingly, petitioners filed their Memorandum[23] by

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[10] *Records, Vol. 1, PFR,* pp. 10-120, with annexes.
[11] *Id., Answer,* pp. 130-142.
[12] *Id., Petitioners' Pre-Trial Brief,* pp. 178-192, with annex.
[13] *Id., Respondent's Pre-Trial Brief,* pp. 199-203.
[14] *Id., Minutes of Hearing dated February 16, 2016,* p. 204.
[15] *Records, Vol. 1, JSFI,* pp. 227-233.
[16] *Id., Pre-Trial Order ("PTO"),* pp. 241-245.
[17] *Records, Vol. 1, Minutes of Hearing dated May 30, 2016,* p. 369; *Transcript of Stenographic Notes ("TSN"), May 30, 2016 Hearing,* pp. 1-13; *Records, Vol. 1, Exhibit "P-9," Judicial Affidavit of Michael Gavin Richard L. de los Reyes,* pp. 256-368, with annexes.
[18] *Records, Vol. 1, Minutes of Hearing dated July 25, 2016,* p. 487; *TSN, July 25, 2016 Hearing,* pp. 1-26; *Records, Vol. 1, Exhibit "P-10," Judicial Affidavit of Jennifer C. Co-de los Reyes,* pp. 373-486, with annexes.
[19] *Records, Vol. 2, Petitioners' Formal Offer of Documentary Exhibits,* pp. 490-497.
[20] *Id., Records Verification Report,* p. 603.
[21] *Id., Resolution,* pp. 605-606.
[22] *Id., Minutes of Hearing dated October 24, 2016,* p. 607.
[23] *Id., Petitioners' Memorandum,* pp. 614-631.

registered mail on November 23, 2011; while respondent filed a Manifestation[24] on December 22, 2016 stating that he was adopting the arguments raised in his Answer as his memorandum.

On January 6, 2017, the Court issued a Resolution[25] submitting the case for decision; hence, this Decision.

The Issue[26]

WHETHER PETITIONERS ARE ENTITLED TO A REFUND OF THE INCOME TAX ON COMPENSATION THEY RECEIVED FROM THE ADB FOR CY 2012.

Otherwise stated, the main issue to be resolved by the Court is whether petitioners are entitled to a refund of erroneously and illegally collected income tax on petitioners' compensation from the ADB for CY 2012 in the aggregate amount of Php1,948,832.34.

Petitioner's Arguments[27]

Petitioners argue that they are entitled to a refund of the income tax paid to, or collected by, the BIR on the compensation petitioners received from the ADB for CY 2012 for the following reasons: *(1)* under the *Agreement Establishing the Asian Development Bank (the "ADB Charter")*[28], ADB employees are exempt from income tax; *(2) RMC No. 31-13*, which explicitly states that only ADB employees who are not Philippine nationals are exempt from income tax, is null and void for being issued without factual and legal basis, and is in violation of petitioners' right to due process of law; and *(3)* petitioners have duly complied with the requisites of *Section 229 of the 1997 National Internal Revenue Code, as amended ("1997 NIRC")*[29] granting the refund of the amount of Php1,948,832.34, which was erroneously paid by petitioners to the BIR.

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[24] *Records, Vol. 2, Manifestation*, pp. 635-637.
[25] *Id., Resolution*, p. 639.
[26] *Id., Vol. 1, PTO*, p. 242.
[27] *Id., Vol. 2, Petitioners' Memorandum, Discussion*, pp. 620-628.
[28] August 22, 1966.
[29] *Republic Act No. 8424*, as amended (1997).

Respondent's Counter-Arguments[30]

On the other hand, respondent counters that petitioners, as Filipino citizens and residents of the Republic of the Philippines, are subject to Philippine income tax following the citizenship, residency, and source principles. Petitioners, who are Filipino citizens and employees of the ADB, are liable for income tax on the compensation income they earned on account of such employment.

Respondent further argues that in signing the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank (the "ADB Headquarters Agreement")*[31], the Philippine Government accorded tax exemption privileges to the ADB and its staff, but held on to the State's inherent power to tax, and thus made a clear limitation insofar as its right to tax its nationals. Respondent posits that by making a reservation, the Philippines simply intimated that in entering upon the Agreement with the ADB, the income of ADB is exempt from tax by virtue of the Agreement, which does not include the income derived by Filipinos from the ADB. The Philippines has complied with the principles of international law by according the proper concessions and tax breaks to ADB activities. This duty, however, ends where the concern is a domestic matter involving the taxability of the income of its citizens. According to respondent, the ADB Charter was never amended by subsequent Philippine tax laws, because the latter - before and after the creation of ADB - imposed taxes on the income of Filipinos from within and without the Philippines.

As regards *RMC No. 31-13*, respondent counters that the same is valid and is merely a clarification of existing policies already in the Philippine law. The alleged subsequent practice of ADB employees not being subjected to income tax is contrary to law, and cannot in any way displace what the law has provided from the start.

Finally, respondent argues that the prescriptive period to file the judicial claim for refund cannot be extended to the next working day, even if the last day falls on a Sunday. As such, the Court has no jurisdiction over the Petition for Review, as petitioners failed to file the same within the two (2)-year prescriptive period.

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[30] *Records, Vol. 1, Answer*, pp. 131-140.
[31] December 22, 1966.

The Ruling of the Court

The Petition for review is partially meritorious.

The claim for refund was timely filed.

Section 204(C) in relation to *Section 229 of the 1997 NIRC* requires the filing of an administrative claim for refund before the filing of a judicial claim, both of which claims should be filed within two (2) years from payment of the tax. The relevant provisions read:

> Sec. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. <u>No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty</u>; *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
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> xxx xxx xxx
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> 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, or of any sum alleged to have been excessively or in any manner wrongfully collected, <u>until a claim for refund or credit has been duly filed with the Commissioner</u>; 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 fact of the return upon which payment has been made, such payment appears clearly to have been erroneously paid.[32]

As applied to the present case, the Court holds that petitioners timely filed their administrative and judicial claims for refund of erroneously or illegally collected income tax on compensation, the relevant dates of which are summarized as follows:

DATE OF PAYMENT	DATE OF FILING OF ADMINISTRATIVE CLAIM	DATE OF FILING OF PETITION FOR REVIEW	LAST DAY TO FILE BOTH CLAIMS
July 12, 2013	July 10, 2015	July 13, 2015	July 13, 2015[33]

It is worthy to note that the administrative claim referred to under *Sections 204(C) and 229 of the 1997 NIRC* pertains to any written claim for refund filed with the CIR or his duly authorized representative. Hence, the letter-request filed by petitioners in the present case is sufficient to comply with the requirement under the *1997 NIRC* for the filing of a written claim for refund.

The Court will now discuss the substantial aspect of the case.

Resident citizens are subject to the graduated scale of income tax in accordance with *Section 24(A) of the 1997 NIRC,* unless specifically exempted therefrom under treaty.

The crux of the present case relates to the proper taxation of Filipino citizens employed by foreign governments and/or international organizations situated in the Philippines – whether these individual taxpayers are subject to Philippine income tax notwithstanding the exemptions granted to their employers as a matter of comity.

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[32] Underscoring ours.

[33] July 12, 2015 fell on a Sunday.

The Court answers in the affirmative, unless by express provision the international agreement exempts resident citizens in its employ from Philippine income tax. This rule is a mere application of the general principles embodied in the *1997 NIRC* as regards the proper taxation of resident citizens. Specifically, the relevant provisions of the *1997 NIRC* provide:

> Sec. 23. *General Principles of Income Taxation in the Philippines.* - Except when otherwise provided in this Code:
>
> (A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;
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> xxx xxx xxx
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> Sec. 24. *Income Tax Rates.* -
>
> *(A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* -
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> *(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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> xxx xxx xxx
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> (2) *Rates of Tax on Taxable Income of Individuals.* -
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> The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over	Php 10,000			5%				
Over	Php 10,000	but not over	Php 30,000	Php 500	+	10%	of the excess over	Php 10,000
Over	Php 30,000	but not over	Php 70,000	Php 2,500	+	15%	of the excess over	Php 30,000
Over	Php 70,000	but not over	Php140,000	Php 8,500	+	20%	of the excess over	Php 70,000
Over	Php140,000	but not over	Php250,000	Php 22,500	+	25%	of the excess over	Php140,000
Over	Php250,000	but not over	Php500,000	Php 50,000	+	30%	of the excess over	Php250,000
Over	Php500,000			Php125,000	+	32%	of the excess over	Php500,000

> For married individuals, the husband and wife, subject to the provision of Section 51(D) hereof, shall

> compute separately their individual income tax based on their respective total taxable income; *Provided,* That if any income cannot be definitely attributed to or identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses for the purpose of determining their respective taxable income.
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> xxx xxx xxx
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> Sec. 31. *Taxable Income Defined.* - The term '*taxable income*' means the pertinent items of gross income specified in this Code, less the deductions and/or personal and additional exemptions, if any, authorized for such types of income by this Code or other special laws.
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> Sec. 32. *Gross Income.* -
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> (A) *General Definition.* - Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:
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> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
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> xxx xxx xxx
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> (B) *Exclusions from Gross Income.* - The following items shall not be included in gross income and shall be exempt from taxation under this Title:
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> xxx xxx xxx
>
> (5) *Income Exempt under Treaty.* - Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

Following the foregoing provisions, it can be gathered that compensation for services rendered by a resident citizen shall form part of such resident citizen's gross income. The taxable income of a resident citizen is arrived at after deducting the allowable deductions and exemptions from the gross income. As a rule, such taxable income of a resident citizen is subject to the graduated scale of income tax unless said income is exempt under treaty entered into by the Philippine Government.

As applied to the present case, the compensation received by petitioners for their services rendered in favor of the ADB for CY 2012 form part of each of their gross income. After deducting the applicable exemptions from the gross income, each of petitioners' taxable income shall then be subjected to the graduated scale of income tax provided in *Section 24(A) of the 1997 NIRC*. However, in the event wherein the Philippine Government has bound itself to exempt petitioners' compensation income from income tax, the same shall necessarily not be subject thereto.

A discussion on whether the Philippine Government is under obligation by treaty to exempt the income of resident citizens employed by foreign governments and/or international organizations situated in the Philippines thus becomes imperative.

The Philippines expressly reserved its right to subject its resident citizens to income tax.

Petitioners argue that under the *ADB Charter*, ADB employees are exempt from income tax. However, a review of the *ADB Charter*, as well as the *ADB Headquarters Agreement*, reveal that the Philippine Government may make an express reservation as to the taxation of its resident citizens employed by the ADB, which the Philippine Government did.

Under the *ADB Charter*, salaries paid by ADB to its employees shall be exempt from tax, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself the right to tax salaries paid by the ADB to the member's citizens or nationals. *Paragraph 2, Article 56 of the ADB Charter* provides:

> 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.

Similarly, under the *ADB Headquarters Agreement*, a staff of the ADB enjoys exemption from taxation in respect of the salaries paid by the ADB, subject to the power of the Philippine Government to tax its nationals. *Paragraph b, Section 45 of the ADB Headquarters Agreement* provides:

> 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:
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> xxx xxx xxx
>
> (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;
>
> xxx xxx xxx

The Senate concurred in the ratification of the *ADB Charter* by the President. With the ratification of the *ADB Charter*, the Philippine Government retained for itself the right to tax the salaries and emoluments paid by the ADB to Philippine citizens and nationals.[34]

In *Deutsche Bank AG Manila Branch v. CIR*[35], the Supreme Court held that in the realm of international taxation, the Philippine Government should adhere to the principle of *pacta sunt servanda* and perform its treaty obligations in good faith. According to the Supreme Court:

> 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.

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[34] *See* Senate Resolution No. 6, March 16, 1966.
[35] G.R. No. 188550, August 28, 2013, 704 SCRA 216.

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The principle of *pacta sunt servanda* applies to the parties to the international agreement, considering the international agreement entails reciprocal obligations from each of them. As applied to the present case, if the Philippine Government expressly reserves its right to subject to income tax its resident citizens upon ratification of the *ADB Charter*, the parties thereto have the duty to honor the same. Considering the parties to the *ADB Charter* have the duty to honor the Philippine Government's reservation, employees of the ADB have all the more reason to abide by the same. After all, the rights and privileges enjoyed by the ADB, including its employees, arise from the international agreement entered into by the Philippine Government.

It is clear from the *ADB Charter* that while the Philippine Government may exempt from income tax the salaries and emoluments received by resident citizens employed by ADB, this exemption shall not apply if the Philippine Government expressly retains its right to subject said salaries and emoluments to income tax. With the ratification by the Senate of the *ADB Charter*, the Philippine Government expressly stated that it retained the right to subject to income tax the salaries and emoluments of its citizens who are employees of ADB. Following the principle of *pacta sunt servanda*, it is only proper for the Philippine Government to impose income tax on the salaries and emoluments of its resident citizens in the employ of the ADB.

Having settled the basis for the imposition of income tax on petitioners' compensation from the ADB, the Court will now discuss the propriety of enforcing *RMC No. 31-13* to the income of ADB employees for CY 2012.

While *RMC No. 31-13* is a mere interpretation of an existing law, justice and equity dictate that it should be applied prospectively. Income of resident citizens employed by foreign governments and/or international organizations should be subjected to income tax beginning CY 2013.

Section 4 of the 1997 NIRC provides that the CIR has the power to interpret tax laws, subject to the review of the Secretary of Finance.

RMC No. 31-13 was issued by respondent in CY 2013. Nevertheless, respondent sought to subject petitioners' income for the previous year (*i.e.,* CY 2012) to income tax. In the past, however, compensation income of resident citizens employed by foreign governments and/or international organizations were not subjected to income tax.

Section 1 of RMC No. 31-13 explains the rationale for its issuance. It clarified that while the compensation of resident citizens from foreign governments or international organizations are exempt from withholding tax, this did not mean that such compensation was likewise exempt from income tax, especially absent an express exemption as embodied in the international agreement or law, as follows:

> 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. To clarify, <u>the exemption from withholding taxes on the compensation of officials and employees applies to foreign governments/embassies/diplomatic missions and international organizations</u>. <u>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>.
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> xxx xxx xxx
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> 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.
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> 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 law. 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").[36]

While it can be argued that *RMC No. 31-13* is a mere interpretation of existing law and should thus be applied even to the compensation income of petitioners for CY 2012, the Court holds that it should be applied prospectively in the interest of justice and equity. Consequently, the income of resident citizens employed by foreign governments and/or international organizations should only be subjected to income tax beginning CY 2013, the year *RMC No. 31-13* took effect.

In the present case, petitioners received the compensation income being subject to income tax in CY 2012. During this period, petitioners were of the honest belief - and neither did respondent enforce rules to the contrary - that their compensation income was exempt from tax. When respondent issued *RMC No. 31-13* and sought to enforce its provisions subjecting compensation income of resident citizens employed by ADB to the graduated income tax rates immediately, petitioners were constrained to file their Joint ITR for CY 2012 and pay the aggregate amount of Php1,948,832.34 in one payment. Whereas previously, petitioners' incomes were not subjected to tax, they now had to come up with approximately Php2,000,000.00 - a substantial amount - to settle their income tax liabilities. Hence, it would be in keeping with justice and equity for the implementation of *RMC No. 31-13* to begin prospectively and to apply to compensation income earned by petitioners beginning CY 2013.

In sum, compensation income of resident citizens is subject to the

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[36] Underscoring ours.

graduated income tax rates unless expressly exempted under treaty. With the Philippines' reservation in the *ADB Charter* to the effect that it maintains the right to subject to income tax the compensation of resident citizens employed by the ADB, the rule then is that resident citizens employed by foreign governments and/or international organizations, such as ADB, are subject to the graduated income tax rates under *Section 24(A) of the 1997 NIRC*. However, considering *RMC No 31-13* was issued in CY 2013, the same should be made to apply prospectively in the interest of justice and equity. Hence, compensation income of resident citizens employed by foreign governments and/or international organizations shall only be subject to income tax beginning CY 2013.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of petitioners Spouses Michael Gavin Richard L. de los Reyes and Jennifer C. Co-de los Reyes the amount of **One Million Nine Hundred Forty-Eight Thousand Eight Hundred Thirty-Two and 34/100 Pesos (Php1,948,832.34)**, representing petitioners' erroneously and illegally collected income tax on compensation income from the Asian Development Bank for calendar year 2012.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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.

LOVELL R. BAUTISTA
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