REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1721 (CTA Case No. 9081)
-versus-	
CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ and TRINIDAD JACOB, *Respondents.*	

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CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ and TRINIDAD JACOB, *Petitioners,*	CTA EB No. 1868 (CTA Case No. 9081)
-versus-	*Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 05 2020 1:06 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on February 26, 2019, of this

Court *En Banc,* are consolidated Petitions for Review filed separately by the Commissioner of Internal Revenue (CIR), petitioner in CTA EB No. 1721, and Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob (Galang, et. al.), petitioners in CTA EB No. 1868.

In CTA EB No. 1721, petitioner CIR is seeking the reversal of Decision dated June 8, 2017[1] and the Resolution dated August 30, 2017[2] rendered by the Second Division of this Court.

On the other hand, in CTA EB No. 1887, petitioners challenge the same Decision and Resolution as well as Resolutions dated February 21, 2018[3] and May 17, 2018.[4]

The dispositive portions of the Decision and Resolutions of the Second Division respectively read as follows:

Decision dated June 8, 2017:

> "**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.**"

Resolution dated August 30, 2017:

> "In view of the foregoing, petitioner Galang's **Motion for Partial Reconsideration** is

[1]Penned by Associate Justice Catherine T. Manahan concurred in by Associate Justice Caesar A. Casanova, and with Concurring and Dissenting Opinion by Associate Justice Juanito C. Castañeda, Jr., En Banc Docket, CTA EB No. 1721, pp. 24-55.
[2] *Id.*, pp.57-63.
[3] En Banc Docket, CTA EB No. 1868, pp. 80-83.
[4] *Id.*, pp. 85-88

GRANTED. Respondent is hereby **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioner Galang in the amount of **TWO HUNDRED TEN THOUSAND EIGHT HUNDRED FORT FIVE PESOS AND SEVENTY FIVE CENTAVOS (PHP210,845.75)**, representing the illegally collected income on her annual compensation income for taxable year 2012. Meanwhile, respondent's Motion for Reconsideration (Re: Decision dated June 8, 2017) is denied for lack of merit.

SO ORDERED."

Resolution dated February 21, 2018:

"**WHEREFORE**, premises considered, petitioner's **Motion for Clarificatory Order and/or Separate Judgment** is hereby **NOTED**. Accordingly, this Court reiterates its ruling granting the 2012 income tax refund claim of the petitioners but denying the 2013 income tax refund claim for lack of legal basis.

SO ORDERED."

Resolution dated May 17, 2018:

"**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED."

The following facts of the case as recited by the Court in Division in its Decision[5] and as established by evidence on record[6], read as follows:

"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

[5] Supra Note 1.
[6] Joint Stipulation of Facts and Issues (JSFI), Division Docket, (Vol. I), pp.127-130.

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(GRP) being one of its signatories. Among the provisions of its 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. <u>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,</u> including experts performing missions for the Bank, <u>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</u>.

xxx xxx xxx

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** <u>that the Philippines declares that it retains for itself and its political subdivision the right to</u>

tax salaries and emoluments paid by the Bank to citizens or nationals of the Philippines.

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

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. 387 ratified said agreement.

On April 12, 2013, respondent (CIR) 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 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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> xxx xxx xxx
>
> (d) Those Employed by Organizations Covered by Separate International Agreements or Specific Provisions of Law1. 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
>
> 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
>
> (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)
>
> 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 (Galang, et., al.), 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 Filipino employees of ADB did not pay income taxes since its establishment in 1966.

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, which subsequently ruled in their favor and nullified Section 2(d)(1) of said RMC (RTC ruling).

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. Respondent moved for its reconsideration but was also denied under Resolution dated January 6, 2016.

Respondent elevated the case before the Supreme Court by filing a Petition for Review on

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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.

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. On the other hand, petitioners Gutierrez and Jacob filed theirs on June 22, 2015.

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. As to the 2nd refund claim dated June 22, 2015, there was inaction on the part of respondent.

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 by this Court to answer said petition.

Respondent submitted its Answer on August 26, 2015 after being granted an extension to file the same by this Court.

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

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

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

On June 8, 2017, the Court in Division rendered a Decision[7] which partially granted Galang, et. al.'s claim for refund of their income tax payments for TY 2012 only, except Galang's.

Consequently, the CIR filed a Motion for Reconsideration, while Cristeta May Galang filed a Motion for Partial Reconsideration.

In a Resolution dated August 30, 2017, the Court in Division granted Galang's Motion for Partial Reconsideration but denied the CIR's Motion for Reconsideration.

Aggrieved, the CIR filed his Petition for Review on October 9, 2017. The case was docketed as CTA EB No. 1721.

Meanwhile, on January 9, 2018, Galang, et. al., filed a Motion for Clarificatory Order and/or Separate Judgment seeking clarification as to the disposition of their claim for refund of their 2013 income tax payments.

In a Resolution dated February 21, 2018, the Court noted Galang, et. al's motion and reiterated therein its ruling which granted their claim for refund of their income tax payments for TY 2012, but denying their claim for refund of their income tax payments for TY 2013.

Dissatisfied, Galang, et al., filed a Motion for Reconsideration, but the same was denied in a Resolution dated May 17, 2018.

Thereafter, Galang, et. al. filed their Petition for Review on June 20, 2018. The case was docketed as CTA EB No. 1868.

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[7] Supra Note 2.

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In a Resolution dated June 28, 2018[8], this Court consolidated CTA EB No. 1868 with CTA EB No. 1721 bearing the lower docket number considering that both petitions are appeals from the Decision promulgated on June 8, 2017, and Resolutions promulgated on August 30, 2017, February 21, 2018 and May 17, 2018, all rendered by the Second Division of this Court in CTA Case No. 9081.

On October 24, 2018, the Court En Banc gave due course to both Petitions for Review and required the parties to submit their respective memoranda within thirty (30) days from notice.[9]

On December 10, 2018, Galang, et. al., filed their Manifestation *in lieu* of a Memorandum while as per Records Verification dated January 11, 2019, the CIR failed to filed his Memorandum despite notice.

On February 26, 2019, the Court En Banc promulgated a Resolution[10] submitting the consolidated cases for decision.

We now resolve.

In his Petition, the CIR counters the claim for refund by arguing that under Section 23 of the NIRC, as amended, as clarified by RMC No. 31-2013, income taxes are imposed on gains realized by resident citizens derived from sources within or outside the Philippines. With the rendition of services by the Filipino employees to the ADB, their compensation income realized therefrom are subject to Philippine income taxes.

On the other hand, Galang, et. al., posit that the income tax payments made for TYs 2012 and 2013 were erroneously and/or illegally collected by the CIR by virtue of his failure to recognize the tax-exempt status granted by ADB Charter[11] to ADB employees. Concomitantly, it is asserted that the reservation of the Philippine Government to tax its citizens when it ratified the ADB Charter is not self-executing and, as such, legislation is necessary to put it into effect.[12] Furthermore, they question the retroactive

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[8] En Banc Docket, p. 173
[9] En Banc Docket, pp. 118-119
[10] En Banc Docket, pp. 232-233.
[11] "The Agreement Establishing the Asian Development Bank" (ADB Charter), Senate Resolution No. 6, March 16, 1966.
[12] En Banc Docket, p.15.

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application of RMC No. 31-2013 for being illegal, pursuant to the prohibition under Section 246 of the 1997 NIRC, as amended.

After careful scrutiny of the relevant facts of the present case, the arguments of the parties, as well as the applicable laws and jurisprudence on the matter, the Court En Banc finds that the refund claims of Galang, et. al., for the income tax payments made for TYs 2012 and 2013 **SHOULD BE DISALLOWED IN ITS ENTIRETY.**

Taxation, being one of the inherent attributes of sovereignty, is a power that is purely legislative. Generally, this means that the the discretion to determine the kind, purpose, extent, subject and situs of taxation primarily lies in the legislature. It has the authority to prescribe a certain tax at a specific rate for a particular public purpose on persons or things within its jurisdiction. In other words, the legislature wields the power to define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom or what shall be imposed and where it shall be imposed.[13]

Under the Philippine jurisdiction, the income tax treatment of individuals who are residents and citizens of the Philippines is governed by Sections 23(A) in relation to 24(A)(1)(a) of the NIRC, as amended, to wit:

> "**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
>
> SEC. 24. Income Tax Rates. –
>
> (A) **Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.-**

[13] Chamber of Real Estate & Builders' Association, Inc. vs. Executive Secretary Alberto Romulo, et. al., G.R. No. 160756, March 9, 2010.

(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**;" (Emphasis supplied)

In sum, it is clear and categorical that the NIRC of 1997, as amended, **imposes tax on the income of a resident individual citizen from all sources within or without the Philippines**.

Taxable income means gross income less statutory deductions and/or personal exemptions, if applicable.[14] Among the items of gross income is the compensation received by an individual taxpayer arising from services rendered pursuant to an employer-employee relationship. [15] Therefore, every form of compensation for personal services is subject to income tax and, consequently, to withholding tax. The term "compensation" means all remunerations paid for services performed by an employee for his or her employer, whether paid in cash or in kind, **unless specifically excluded under the NIRC of 1997, as amended.**

Under these premises, considering that all the claimants in the case at bar are Filipino citizens realizing income by virtue of their employment at the ADB, they are therefore, subject to pertinent income taxes on their compensation income under Section 23 in relation to Section 24(A)(1)(a) of the NIRC of 1997, as amended.

Relevant to the case at bar is Section 32(A) and (B)(5) of the NIRC, as amended, which provides as follows:

"SEC. 32. Gross Income. –

[14]Section 31 of the NIRC, as amended; and Section 36, Revenue Regulations No.2.
[15]Section 32(A)(1) of the NIRC, as amended; and Confederation for Unity and Advancement of Government Employees (COURAGE), et. al., vs. Commissioner, Bureau of Internal Revenue, G.R. Nos. 213446 & 213658, July 3, 2018.

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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:

xxx xxx xxx

(B) Exclusions from Gross Income. - The following items shall not be included in gross **income and shall be exempt from taxation** under this Title:

xxx xxx xxx

(5) **Income Exempt under Treaty. - Income of any kind to the extent required by a treaty obligation binding upon the Government of the Philippines.** (Emphasis supplied)

xxx xxx xxx

Relying on this provision, Galang, et. al. anchors their exemption from payment of income taxes on Article 56(2) of the ADB Charter, which states:

"Article 56

EXEMPTION FROM TAXATION

xxx xxx xxx

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**.

Evidently, the ADB Charter provides a tax exemption provision with respect to the salaries and emoluments paid by ADB to its officers and employees, but the same also contains a proviso wherein a member-country may opt to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such member-country which declaration must be made in the instrument of ratification or acceptance.

Accordingly, 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, **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**." (Emphasis supplied)

Notably, Article XII, Section 45 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[16] (ADB Headquarters Agreement) provides:

> "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

[16] Entered into and signed on December 22, 1966.

performing missions for the Bank, shall enjoy the following privileges and immunities:

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;"

In this regard, the ADB Headquarters Agreement similarly recognizes the tax exemption privilege of ADB officers and employees, but said Agreement also declares in no uncertain terms that the same is subject to the power of the Government to tax its nationals.

However, Galang, et. al. construed the Philippine government's reservation as pertaining to the general grant of tax exemption rather than the latter's retention of its taxing power on its citizens. This contention is misplaced and should be corrected.

The 1969 Vienna Convention on the Law of Treaties defines "reservation" as:

"Article 2

Use of Terms

1. For the purposes of the present Convention:

xxx xxx xxx

(d) "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;"

In the same vein, the term reservation is legally defined as the establishment of a limiting condition or qualification; esp., a nation's formal declaration, upon signing or ratifying a treaty, that **its willingness to become a party to the treaty is conditioned on the modification or**

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amendment of one or more provisions of the treaty as applied in its relations with other parties to the treaty.[17] (Emphasis supplied)

It is a basic rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.,* that every part of the statute must be considered together with the other parts and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[18]

A perusal of the pertinent legislative provisions and relevant treaty stated above clearly indicate that the Congress intended to tax the salaries and emoluments received by Filipinos from ADB. Thus, the contention that the ADB Charter is not self-executing and needs an enabling legislation before it may take effect is bereft of merit.

In the case of *Pharmaceutical and Health Care Association of the Philippines v. Duque III,*[19] the Supreme Court ruled in this wise:

> "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."

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[17] Black's Law Dictionary, Eight Edition, p. 1334.
[18] Philippine International Trading Corporation vs. Commission on Audit, G.R. No. 183517, June 22, 2010.
[19] G.R. No. 173034, October 9, 2007.

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Simply stated, the concurrence of the Senate to the President's ratification of the treaty is sufficient to transform such treaty into municipal law. Once transformed, the provisions of the treaty become enforceable within the domestic sphere and to be of the same class as a statute duly enacted by Congress.[20]

In the present case, the Senate's concurrence with the President's ratification is enough to transform the ADB Charter into a domestic law that can be applied to resolve domestic conflicts. Regardless, any lingering doubt as to the true import of the reservation clauses in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement had been completely obliterated by Sections 23 and 24 of the NIRC of 1997, as amended, which now clearly subjects the worldwide income of resident citizens to income tax.

Even for the sake of argument that there is inconsistency between the ADB Charter, the ADB Headquarters Agreement and the provisions of the NIRC of 1997, as amended, regarding the taxability of the salaries of Filipino ADB officials and employees, the provisions of the NIRC of 1997, as amended, being the later expression of legislative will, serve as the prevailing rule on the matter.[21]

Accordingly, it is a well settled principle that "taxation is the rule, while tax exemption is the exception." Tax exemptions must be strictly interpreted such that exemption will not be conferred unless the terms under which it is granted clearly and distinctly show that such taxpayer is exempted from his share in the common burden of taxation.

A claim of refund or exemption from tax payments must be clearly shown and be based on language in the law too plain to be mistaken.[22] Since taxes are the lifeblood of the government, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority and are strictly construed against the person or entity claiming the exemption.[23]

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[20] Abbas vs. COMELEC, G.R. No. 89651, November 10, 1989.
[21] Secretary of Justice v. Lantion, G.R. No. 139465, January 18,2000.
[22] Atlas Consolidated Mining & Development Corporation vs. Commissioner of Internal Revenue, GR No. 1594 71, January 26, 2011.
[23] Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. No. 163835, July 7, 2010

Given the circumstances at bar, since the income tax payment for salaries and emoluments received by Galang, et. al. from ADB for the TYs 2012 and 2013 were not illegally or erroneously collected by the BIR, it cannot be the proper subject of refund under Section 229 of the NIRC of 1997, as amended.

In the same vein, the Court En Banc is not convinced that the retroactive application of RMC No. 31-2013 is illegal, discriminatory and a violation of the equal protection clause of the Constitution.

In their attempt to dissuade this Court of its ruling, Galang, et. al. argues that whatever immunities and privileges granted by the government to the UN and its specialized agencies should likewise be enjoyed by the ADB, regardless of nationality, pursuant to the Convention on the Immunities and Privileges of the United Nations and the Convention on the Immunities and Privileges of the Specialized Agencies of the United Nations.[24] This argument is misleading.

The Supreme Court, in the case of *City of Manila, et. al. vs. Laguio, Jr.*,[25], emphatically explained the meaning and scope of the equal protection clause as follows:

> "**Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.** Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances. The equal protection of the laws is a pledge of the protection of equal laws.It limits governmental discrimination. The equal protection clause extends to artificial persons but only insofar as their property is concerned.

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[24]En Banc Docket, CTA EB No. 1868, p. 25
[25] G.R. No. 118127, April 12, 2005.

> **Legislative bodies are allowed to classify the subjects of legislation**. If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause. The classification must, as an indispensable requisite, not be arbitrary. To be valid, it must conform to the following requirements:
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> 1) It must be based on substantial distinctions.
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> 2) It must be germane to the purposes of the law.
>
> 3) It must not be limited to existing conditions only.
>
> 4) It must apply equally to all members of the class." (Emphases supplied)

There is no evidence on record that would support the allegation of discrimination or violation of equal protection clause. There is no proof that Filipino ADB officials and employees on one hand, and the officials and employees of the UN and its specialized agencies on the other hand, are "similarly situated" within the purview of the equal protection clause of the Constitution. Furthermore, there is also no proof that RMC No. 31-2013, along with the amendments, assuming there are, is not reasonable, and that the same does not satisfy the requirements for valid classification.

Also, contrary to the stance of Galang, et. al. that RMC No. 31-2013 should not be given retroactive application pursuant to the prohibition under Section 246 of the NIRC of 1997, as amended, [26] a careful perusal of RMC No. 31-2013 would reveal that it merely reiterates the general principles laid down in Section 23(A) and amplifies Section

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[26] **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 arc materially different from the facts on which the ruling is based: or

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

24(A)(1)(a), both of which have been in effect since January 1, 1998, before the income tax payment in 2013.

Pertinent is the preface of Section 1 of RMC No. 31-2013 which 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,"** *viz*:

> "**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.
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> xxx xxx xxx
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> 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, the exemption from withholding taxes on the compensation of officials and employees**

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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.

Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxations of citizens and alien individuals, to wit:

xxx xxx xxx

x x x. 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")" (Emphases supplied)

Lastly, it bears noting that Galang, et. al.'s alleged entitlement to the claim for refund of their income tax payments for TYs 2012 and 2013 is based on the assumption that this Court should have taken judicial notice of the Decision[27] promulgated by RTC-Mandaluyong declaring void Section 2(d)(1) of RMC No. 31-2013, as well as the Resolution[28] of the Court of Appeals affirming the RTC's Decision.

[27] RTC-Mandaluyong Branch 213 Decision dated September 30, 2014 docketed as Civil Case No. MC14-8775, Division Docket, Vol.I, pp.54-85
[28] Court of Appeals Resolution dated July 3, 2015 docketed as CA-G.R. CV No.104374, Division Docket, Vol.I, pp.281-287.

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Time and again, this Court has already ruled that said decisions are not binding precedents that form part of the Philippine legal system.

Judicial notice is the cognizance of certain facts which judges may properly take and act on without proof because they already know them.[29] Judicial cognizance is based on considerations of expediency and convenience. It displaces evidence since, being equivalent to proof, it fulfills the object which the evidence is intended to achieve.[30] Stated differently, it is the assumption by a court of a fact without need of further traditional evidentiary support. The taking of judicial notice means that the court will dispense with the traditional form of presentation of evidence.[31]

In general, courts are not authorized to take judicial notice in the adjudication of cases pending before them of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge. But in the absence of objection, and as a matter of convenience to all parties, a Court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's discretion, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.[32]

This basic doctrine is known as the ***"principle of stare decisis et non quieta movere"***, entrenched in Article 8 of the Civil Code, to wit:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[29]People of the Philippines vs. Tundag, G.R. Nos. 135695-96, October 12, 2000.
[30]Sps. Lee and Huang vs. Land Bank of the Philippines, G.R. No. 170422, March 7, 2008.
[31]Republic of the Philippines vs. Sandiganbayan (Fourth Division), et al., G.R. No. 152375, December 13, 2011.
[32] The United States vs. Claveria, G.R. No. L-9282, February 13, 1915.

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It enjoins adherence to judicial precedents. **It requires our courts to follow a rule already established in a final decision of the Supreme Court**. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of stare decisis is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument."

Corollary, in *the case of Banco De Oro, et. al. vs. Republic of the Philippines, et.al.,*[33] the Supreme Court was categorical in stating that the Court of Tax Appeals (CTA) is vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars, to wit:

"The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.

This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).

xxx xxx xxx

Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their

[33] G.R. No. 198756, August 16, 2016.

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implementing regulations. **Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125**, as amended subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424." (Emphases supplied)

Needless to say, this Court may not be deprived of its power to review the validity of a claim for tax refund simply on the basis of the existence of the RTC Decision in Civil Case No. MC14-8775 and the Resolution of the Court of Appeals.

Nevertheless, the Court already considered Decision of the RTC and Resolution of the Court of Appeals in arriving at the assailed Decision. However, the Court is not obliged to blindly follow such Decision and/ or Resolution.

All told, this Court holds that Galang, et. al are not entitled to the claim for refund in the total amount of PHP6,697,921.16 representing the income taxes paid on salaries and emoluments received from ADB for TYs 2012 and 2013.

WHEREFORE, premises considered, the Petition for Review filed by the CIR is hereby **GRANTED**. The Decision promulgated on June 8, 2017, and the Resolutions promulgated on August 30, 2017, February 21, 2018 and May 17, 2018, respectively, all rendered by the Second Division of this Court in CTA Case No. 9081 are hereby **REVERSED** and **SET ASIDE**.

Meanwhile, the Petition for Review filed by Galang, et. al. is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

see Concurring Opinion

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

(joins Justice Liban's Dissenting Opinion)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1721** *(CTA Case No. 9081)*
-versus-	
CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIEREZ and TRINIDAD JACOB, *Respondents.*	

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CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIEREZ and TRINIDAD JACOB, *Petitioners,*	**CTA EB NO. 1868** *(CTA Case No. 9081)* Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.**, **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILELNA,** and **MODESTO-SAN PEDRO** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 05 2020 1:06 p.m.

x---x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I wish to stress that resident citizens or nationals of the Philippines who are working with the Asian Development Bank (ADB) are taxable on their income from all sources, including those income derived from ADB. To emphasize, the taxability of the income they receive from ADB is not dependent on the validity or invalidity of Revenue Memorandum Circular (RMC) No. 31-2013 as the same is based on existing provisions of the National Internal Revenue Code of 1997, as amended, in relation to the treaty and/or agreement between the Philippine government and ADB.

Parenthetically, while any revocation, modification or reversal of any previous CIR ruling may not generally be given retroactive application pursuant to Section 246 of the NIRC of 1997, as amended, **there is nothing on record which would show that the CIR had, in the past, issued any rules or regulations exempting from income tax the income derived by resident citizens or nationals of the Philippines who are employees of ADB**. On this point, I submit that Section 246, *supra*, does not find any application in resolving these cases.

While it may be true that since the ratification of the ADB Charter in 1966, or for almost fifty (50) years, ADB employees have never been subjected by the BIR to income tax until the issuance of RMC 31-2013 on April 12, 2013, suffice it to say that the failure of the BIR to collect income tax from ADB employees who are resident citizens or Philippine nationals does not *per se* justify the non-implementation of existing legislations nor result in the absurd construction that pertinent tax laws are deemed repealed.

While non-payment of taxes cannot be considered as custom, yet, even if so - - Article 11 of the Civil Code provides that "[c]ustoms which are contrary to law, public order or public policy shall not be countenanced."

Thus, the alleged long-standing practice of the BIR of not subjecting to income tax the salaries and emoluments derived by resident citizens from their employment with ADB is not sufficient to exempt them from payment of said tax.

Moreover, it is my view that the Regional Trial Court (RTC) Decision in Civil Case No. MC14-8775 is insignificant in the resolution of the present controversy. The aforesaid RTC Decision in Civil Case No. MC14-8775 appears to be jurisdictionally infirm insofar as it declared that Section 2(d) (1) of Revenue Memorandum Circular 31-2013 is a nullity. In ***The Philippine American Life and General Insurance Company vs. Commissioner of Internal Revenue***,[1] the

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

Supreme Court was categorical in saying that **the Court of Tax Appeals is vested with jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars**. Needless to say, this Court may not be deprived of its power to review the validity of a claim for tax refund - - falling as it is within its exclusive appellate jurisdiction - - simply on the basis of the existence of the RTC Decision in Civil Case No. MC14-8775.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1721 (CTA Case No. 9081)**
-versus-	
CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ and TRINIDAD JACOB, *Respondents.*	

x---x

CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ and TRINIDAD JACOB, *Petitioners,*	**CTA EB NO. 1868 (CTA CASE NO. 9081)**
-versus-	**Present:** **Del Rosario,** *P.J.,* **Castañeda, Jr.,** **Uy,** **Fabon-Victorino,** **Mindaro-Grulla,** **Ringpis-Liban,** **Manahan,** **Bacorro-Villena,** *and* **Modesto-San Pedro,** *JJ*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** FEB 05 2020 1:06 p.m.

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DISSENTING OPINION

RINGPIS-LIBAN, J.:

With all due respect to the ponencia of my esteemed colleague, Hon. Cielito N. Mindaro-Grulla, which granted the Petition for Review filed by the Commissioner of Internal Revenue (CIR) and reversed and set aside the Decision of the Second Division of this Court which ordered the refund in favor of Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob, representing their erroneously collected income tax on compensation from Asian Development Bank (ADB) for calendar year 2012, I concur with the finding that the relevant treaty and legislative provisions demonstrate that Congress really intended to tax the salaries and emoluments received by the Filipinos from ADB and that the Regional Trial Court Decision in Civil Case No. MC14-8775 (RTC Decision) declaring void Section 2 (d) (1) of Revenue Memorandum Circular 31-2013 does not constitute a binding precedent.

However, as regards the propriety of enforcing RMC 31-2013 to the income of Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob from the ADB for calendar year 2012, while I agree with the ponencia that RMC 31-2013 is an interpretative rule, I believe that Justice and Equity dictate that it should be applied prospectively.

RMC 31-2013 was issued by the CIR in calendar year 2013. Nonetheless, the CIR subjected their income for the previous year (i.e., calendar year 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 7 of RMC 31-2013 clearly provides that the provisions thereof "shall take effect immediately" which means that it should take effect starting May 2, 2013 the date when a copy was officially submitted to the Office of the National Administrative Register of the UP Law Center pursuant to the requirement of the 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."

In National Association of Electricity Consumers for Reforms v. Energy Regulatory Commission[1], the Supreme Court reiterated that both the requirements of publication and filing of administrative issuances are mandatory for their effectivity. The National Association case was promulgated

[1] G.R. No. 163935, February 2, 2006.

in 2006 and the doctrine regarding the effectivity of administrative issuances has not been overturned to this day. Even if the date of filing of RMC 31-2013 is used as the reckoning point of its effectivity, specifically, May 2, 2013, the taxable period in which respondent wishes to impose the subject administrative issuance on petitioner, TY 2012, is one in which the said RMC was still non-existent. The only way it can be made to apply to that specific taxable period is if RMC 31-2013 were to be applied retroactively which, if done, would be anathema to the principles of justice and fair play.

For one thing, it is to be noted that prior to RMC 31-2013, in addition to the long standing practice of not taxing the income tax of Filipino ADB personnel, revenue officials have made various pronouncements regarding the subject when queried.

First, in BIR Ruling No. 029-99 dated March 11, 1999, the former BIR Commissioner, Beethoven Rualo, stated as follows:

> "Such being the case, Filipinos employed and are occupying managerial and technical positions as those of aliens employed by the bank x x x are subject to the preferential tax of 15% of their gross compensation income."

Second, in a Letter Opinion dated January 29, 2001[2], BIR Regional Director Antonio Ortega confirmed that officers and staff of the ADB need not secure Tax Identification Numbers (TINs) since their salaries are exempt from taxation.

Third, in an opinion issued by the Chief of the Legal Division of Revenue Region No. 7 dated February 6, 2013, Amado Rey B. Pagarigan reiterated the opinion of Mr. Rualo and stated that the Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

From being taxed at a preferential tax rate of 15% on their compensation income to being exempted from being taxed at all, at any rate, the opinions given by revenue officials on the matter have been inconsistent, to say the least. Both the ADB and its Filipino resident employees who have relied on these inconsistent rulings by the BIR should not be faulted for relying thereon.

It was only when RMC 31-2013 was issued that then Commissioner Kim Henares categorically clarified that they are subject to tax. Pertinent portions of the said RMC are quoted below:

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[2] Id. at Note 4, pp. 34-35.

> "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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> xxx xxx xxx
>
> From the above, only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax." (Emphasis supplied)

Considering the foregoing, the fundamental principles of fairness and equity dictate that the non-retroactive rule under Section 246 of the Tax Code be applied in this case. Section 246 provides, as follows:

> "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)

In the case of ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals[3], the Supreme Court rejected the retroactive application of rulings and circulars when such would cause prejudice to the taxpayers, thus:

> "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 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.

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

> 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 regulations promulgated by the Commission
>
> xxx xxx xxx
>
> Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax." (Emphasis supplied)

The non-retroactivity principle was later on reiterated in Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.,[4] where the Supreme Court emphasized the following:

> "However, well entrenched is the rule that rulings and circulars, rules and regulations promulgated by the CIR would have no retroactive application if to so apply them would be prejudicial to the taxpayers.
>
> xxx xxx xxx
>
> "Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

It is readily apparent that the retroactive application of the provisions of RMC 31-2013 to income received by Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob in 2012 made prior to its publication in 2013 already caused serious prejudice to the Filipino employees of the ADB. Due to lack of notice on the taxability of their income for TY 2012, none of the ADB Filipino employees were prepared to incur such huge tax obligations. They were not given a chance to allot or budget their finances to account for this debt to the government that they were blindsided with. Neither were they prepared to face the consequences of being unable to pay the same such as the prospect of law suits and potential garnishment of their bank deposits.

In this case, Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob received the compensation income being subject to income tax in calendar year 2012. During this period, they believed in good faith that their compensation income was exempt from tax. Prior to the issuance of RMC 31-2013, the CIR did not enforce any rules that would lead Cristeta May Galang, Caridad Ortega, Mildred

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[4] G.R. No. 117982 dated February 6, 1997.

Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob to believe otherwise. When the CIR issued RMC 31-2013 and sought to enforce its provisions subjecting compensation income of resident citizens employed by ADB to the graduated income tax rates immediately, Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob were constrained to file their Income Tax Return for calendar year 2012. Whereas previously, their income was not subjected to tax, they now had to come up a substantial amount in order to settle their income tax liability.

Considering that none of the exceptions in Non-Retroactivity Rule exist to bar its application in the instant case, I believe that RMC No. 31-2013 should be applied prospectively in the interest of justice and equity.

In view of the foregoing, I vote to AFFIRM the assailed Decision dated June 8, 2017 and the assailed Resolution dated August 30, 2017, and ORDER the CIR to refund the amount as stated in the assailed Decision and Resolution[5] to Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez and Trinidad Jacob, representing their erroneously collected income tax on compensation from Asian Development Bank for calendar year 2012.

Ma. Belen S/L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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Cristeta May Galang	Php 210,845.75
Caridad Ortega	1,387,733.95
Mildred Villareal	719,855.29
Rona Mari Yngson	212,862.71
Tanglaw Lupe Gutierrez	280,123.58
Trinidad Jacob	377,744.83

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* *-versus-* **CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB** *Respondents.*	**CTA *EB* NO. 1721** (CTA Case No. 9081)
CRISTETA MAY GALANG, CARIDAD ORTEGA, MILDRED VILLAREAL, RONA MARIE YNGSON, TANGLAW LUPE GUTIERREZ, and TRINIDAD JACOB, *Petitioners,* *-versus-* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA *EB* NOS. 1868** (CTA Case No. 9081) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.* Promulgated: FEB 05 2020 1:06 p.m.

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Concurring and Dissenting Opinion

MANAHAN, J.:

With due respect to my distinguished colleague, Justice Cielito N. Mindaro-Grulla, who is the ponente in the instant case, as well as to the opinion of the majority, I concur with the opinion that the income of the employees of Asian Development Bank (ADB) including the herein petitioners are taxable.

However, as to the confusions created by petitioner Commissioner of Internal Revenue (CIR) from its previous issuances surrounding the proper tax rate to be imposed on the income of ADB employees, it was only clarified in 2013 through the issuance of Revenue Memorandum Circular (RMC) No. 31-2013. Hence, it should only be applied on the income earned in taxable year 2013 and not on income earned prior to its promulgation.

It is true that the power to interpret tax laws is vested upon the Commissioner of Internal Revenue (CIR) under Section 4 of the NIRC[1], as implemented by the Department of Finance (DOF) 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, the ADB Charter Agreement and the ADB Headquarters Agreement, 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. 31-201. 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[2], 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,

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[1] **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.

[2] Docket, CTA Case No. 9081, Vol. I, Regional Trial Court Decision, pp. 79-80.

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 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.

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.[3] Article 4 of the New Civil 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:

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

> (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*)

The factual antecedents of the case shall reveal that petitioners neither committed fraud nor acted in bad faith when they failed to pay their income taxes to the government. That they believed 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 in the ADB as well as 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, this rule admits of exceptions in the interest of justice and fair play.[4]

In the instant case, the acts of the respondent of setting up kiosks in the lobby of ADB to collect taxes from[5] and eventually the filing of criminal case for tax evasion against some ADB Filipino employees[6] 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*[7], 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*:

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[4] Vitug and Acosta, Tax Law And Jurisprudence 31 (2nd edition, 2000).
[5] Docket, CTA Case No. 9081, Vol. II, Memorandum for the Petitioners with Manifestation dated February 22,2017, pp. 445.
[6] *Id.*, Vol. I, Regional Trial Court Decision dated September 30, 2014, p. 58.
[7] G.R. No. L-52306, October 12, 1981. *an*

> 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**. <u>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 had withheld taxes under General Circular No. V-334</u>. 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.*[8], 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*

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

> *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 taxable year 2012. Neither were they prepared to face the grim prospect of lawsuits and potential garnishment of their bank deposits and assets if they fail to settle such deficiency income tax assessment.

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

All told, I vote to **DENY** both Petitions for Review and **AFFIRM** the assailed decision and resolution

CATHERINE T. MANAHAN
Associate Justice