REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

****

IRISH FE N. AGUILAR, MAJELLA R. CANZON, HELEN B. CRUDA, MARIA AMPARO M. DATO, MARIAN L. LAGMAY, RUTH C. MANGROBANG,
Petitioners,

- versus -

HONORABLE CAESAR R. DULAY in his capacity as COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9629

Members:

UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

SEP 30 2021
3:10 p.m.

x - x

DECISION

UY, J.:

Before this Court is a *Petition for Review* filed on July 10, 2017 by petitioners Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, Marian L. Lagmay, and Ruth C. Mangrobang against respondent Caesar R. Dulay, in his capacity as the Commissioner of Internal Revenue, seeking the refund of allegedly erroneously paid income tax payments made by petitioners for taxable year 2014, broken down as follows:

TAXABLE YEAR 2014		
Name of Employee	**Payment Date**	**Amount Paid**
Irish Fe N. Aguilar	13 July 2015	₱448,155.00
Majella R. Canzon	14 July 2015	₱622,848.00
Helen B. Cruda	10 July 2015	₱561,571.36
Maria Amparo M. Dato	13 July 2015	₱669,664.00
Marian L. Lagmay	13 July 2015	₱187,671.00
Ruth C. Mangrobang	13 July 2015	₱188,806.00
Total Claim of Petitioners		₱2,678,715.30

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THE FACTS

Petitioners, Irish Fe N. Aguilar, Majella R. Canzon, Helen B. Cruda, Maria Amparo M. Dato, Marian L. Lagmay, and Ruth C. Mangrobang, are Filipino employees of the Asian Development Bank (ADB) at the time the alleged income tax payments were made.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with principal office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013, prescribing the *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.*[3]

Pursuant to RMC No. 31-2013, petitioners filed their *Annual Income Tax Returns* and paid their corresponding income taxes for taxable year 2014 in installments as follows:

Name	***Payment Date***	***Amount Paid***	***Total***
Irish Fe N. Aguilar	April 8, 2015	₱224,155.00	₱448,155.00[4]
	July 13, 2015	₱224,000.00	
Majella R. Canzon	April 15, 2015	₱311,424.00	₱622,848.00[5]
	July 14, 2015	₱311,424.00	
Helen B. Cruda	April 13, 2015	₱331,021.28	₱561,571.36[6]
	July 10, 2015	₱230,550.08	
Maria Amparo M. Dato	April 15, 2015	₱334,832.00	₱669,664.00[7]
	July 13, 2015	₱334,832.00	
Ruth C. Mangrobang	April 14, 2015	₱96,403.00	₱188,806.00[8]
	July 13, 2015	₱92,403.00	

[1] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 199.
[2] Par. 2, Stipulated Facts, JSFI, Docket – Vol. 1, p. 199.
[3] Par. 3, Stipulated Facts, JSFI, Docket – Vol. 1, p. 200.
[4] Exhibits "P-1", "P-1-A", "P-4-B", "P-4", "P-4-A", and "P-5", Docket – Vol. 2, pp. 638 to 645.
[5] Exhibits "P-9", "P-9-A", "P-10", "P-10-A", "P-10-B", "P-10-B-1", "P-5-A", Docket – Vol. 2, pp. 692 to 700.
[6] Exhibits "P-13", "P-14", and "14-A", Docket – Vol. 2, pp. 711 to 716.
[7] Exhibits "P-17", "P-17-A", "P-18-A", "P-19", "P-19-A", and "P-5-C", Docket – Vol. 2, pp. 728 to 735.
[8] Exhibits "P-27", "P-27-A", "P-28", "P-28-A", and "P-5-D", Docket – Vol. 2, pp. 746 to 753.

On September 30, 2014, the Regional Trial Court (RTC) – Branch 213 of Mandaluyong issued a Decision in Civil Case No. MC14-8775,[9] nullifying Section 2(d)(1) of RMC No. 31-2013 as void, for being issued without legal basis, in excess of authority and/or without due process of law, and in the absence of legislation and/or regulation to the contrary.

The BIR then appealed the said Decision to the Court of Appeals.[10] Sometime in July 2015, the Court of Appeals dismissed BIR's appeal for being improperly elevated.[11]

On the basis thereof, on July 7, 2017, petitioners submitted a *letter* with the subject *"Claim for Refund"* with the Revenue District Office (RDO) No. 41 of the BIR, seeking the refund of the income tax payments for taxable year 2014.[12] On the same date, petitioners filed their respective Application for Tax Credits/Refunds (BIR Form No. 1914), covering the same refund claim.[13]

Thereafter, on July 10, 2017, petitioners filed the instant *Petition for Review.*[14]

Respondent filed his *Answer* on September 22, 2017,[15] contending, *inter alia*, the following:

(1) Petitioners are Filipino citizens and employees of the ADB, hence, there is no doubt that they are liable for income tax on the compensation income;

(2) Pursuant to the ADB Headquarters Agreement entered into by the Philippines in 1956, the "reservation" thereon, simply intimated that the only effect is that the income of ADB is exempt from tax by virtue thereof, but not the income derived by the Filipinos from ADB;

(3) RMC No. 31-2013 is only a clarification of existing policies already in the Philippine Law and that it is clear that the

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[9] Exhibit "P-2", Docket – Vol. 2, pp. 646 to 677.
[10] Par. 7, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 16 and 96, respectively.
[11] Par. 9, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 16 and 96, respectively; Exhibit "P-3, Docket – Vol. 2, pp. 685 to 691.
[12] Exhibits "P-6", Docket – Vol. 2, pp. 678 to 683.
[13] Exhibits "P-7" and "P-7-A", Docket – Vol. 2, p. 684; "P-11" and "P-11-A", Docket – Vol. 2, p. 701; "P-15" and "P-15-A", Docket – Vol. 2, p. 717; "P-20" and "P-20-A", Docket – Vol. 2, p. 736; and "P-29" and "P-29-A", Docket – Vol. 2, p. 754.
[14] Docket – Vol. 1, pp. 10 to 26
[15] Docket – Vol. 1, pp. 96 to 106.

exemption is still subject to the power of the Government to tax its nationals, including petitioners;

(4) The Decision of RTC Branch 213 is void as the power to rule on the validity of revenue issuances administered by the BIR are within the jurisdiction of this Court, and not the regular courts; and

(5) Granting without admitting that RTC Branch 213 has jurisdiction over the validity of RMC No. 31-2013, its decision has yet to become final as it was appealed to the Supreme Court.

After the pre-trial conference on February 6, 2018,[16] the parties submitted their *Joint Stipulation of Facts and Issues* (JSFI) on February 21, 2018.[17] Thereafter the Court issued a *Pre-Trial Order* on March 15, 2018.[18]

During trial, petitioners testified by way of *Judicial Affidavits*[19] to support the material allegations in the instant *Petition*.

On October 23, 2019, petitioners filed their *Formal Offer of Exhibits*.[20] On November 4, 2019, respondent submitted his *Comment/Manifestation (On Petitioners' Formal Offer of Exhibits)*,[21] wherein respondent's counsel, *inter alia*, manifested that he will no longer be presenting his witness and evidence for this case. The Court admitted all of petitioners' exhibits in the Resolution dated November 28, 2019.[22]

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[16] *Notice of Pre-trial Conference* dated September 27, 2017, Docket – Vol. 1, pp. 108 to 109; Minutes of the hearing held on, and Order dated, February 6, 2018, Docket – Vol. 1, pp. 186, and to 188 to 189, respectively.
[17] Docket – Vol. 1, pp. 199 to 206.
[18] Docket – Vol. 1, pp. 211 to 218.
[19] *Judicial Affidavit of Irish Fe N. Aguilar,* Exhibit "P-8", Docket – Vol. 2, pp. 628 to 637; Minutes of the hearing held on, and Order dated, July 16, 2018, Docket – Vol. 1, pp. 500 to 502; *Judicial Affidavit of Majella R. Canzon,* Exhibit "P-12", Docket – Vol. 2, pp. 530 to 539; Minutes of the hearing held on, and dated, August 28, 2019, Docket – Vol. 2, pp. 600 to 602; *Judicial Affidavit of Helen B. Cruda,* Exhibit "P-16", Docket – Vol. 2, pp. 702 to 710; Minutes of the hearing held on, and Order dated October 8, 2019, Docket – Vol. 2, pp. 603 to 608; *Judicial Affidavit of Maria Amparo M. Dato,* Exhibit "P-21", Docket – Vol. 2, pp. 718 to 727; Minutes of the hearing held on, and Order dated October 8, 2019, Docket – Vol. 2, pp. 603 to 608; *Judicial Affidavit of Ruth C. Mangrobang,* Exhibit "P-30", Docket – Vol. 2, pp. 737 to 745; Minutes of the hearing held on, and Order dated October 8, 2019, Docket – Vol. 2, pp. 603 to 608.
[20] Docket – Vol. 2, pp. 610 to 627.
[21] Docket – Vol. 2, pp. 757 to 758.
[22] Docket – Vol.2, pp. 761 to 762.

On January 10, 2020, *respondent* filed his *Memorandum* while the *Memorandum for the Petitioners* was filed on January 16, 2020.[23]

On January 28, 2020, petitioners filed a *Motion for Leave of Court to File the Attached Reply-Memorandum for the Petitioners,*[24] praying that leave be granted to petitioners to file the *Reply-Memorandum for the Petitioners* attached thereto.[25] As respondent failed to file his comment on petitioners' *Motion for Leave,*[26] the Court issued the *Resolution* dated October 5, 2020,[27] granting the said *Motion*, and admitting the *Reply-Memorandum for the Petitioners* into the records of the case. Furthermore, in the same Resolution, this case was deemed submitted for decision.

Hence, this Decision.

THE ISSUE

The sole issue stipulated by the parties for consideration of this Court is as follows, to wit:

> WHETHER OR NOT PETITIONERS ARE ENTITLED TO CLAIM FOR REFUND FOR INCOME TAXES PAID IN TAXABLE YEAR 2014 AS FOLLOWS:[28]

Name of Employee	Amount of Payment
Irish Fe N. Aguilar	Php448,155.00
Majella R. Canzon	Php622,848.00
Helen B. Cruda	Php561,571.36
Maria Amparo M. Dato	Php669,664.00
Marian L. Lagmay	Php187,671.00
Ruth C. Mangrobang	Php188,806.00"

Petitioner's arguments:

Petitioners argue that, as employees of the ADB, they are exempt from the payment of income tax. Petitioner invokes Article 56 of the Republic of the Philippines (RP) – ADB Agreement expressly exempts its employees from taxes that may be levied on salaries and

[23] Docket – Vol. 2, pp. 777 to 804.
[24] Docket – Vol. 2, pp. 806 to 810.
[25] Docket – Vol. 2, pp. 811 to 822.
[26] Records Verification Report dated September 10, 2020 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 827.
[27] Docket – Vol. 2, pp. 830 to 831.
[28] Stipulation of Issue, JSFI, Docket – Vol. 1, p. 200.

emoluments paid by the ADB; that under the said agreement it is clearly stated and unequivocally declared that the RP simply reserved its right to tax its nationals.

According to petitioners, the Philippine Congress has not enacted a statute specifically granting the government the authority to exercise its right to tax – reserved by the President of the Philippines, as well as, specifically addressing the taxability of Philippine Nationals working in the ADB; that without any act from Congress specifically authorizing the exercise of the government's right to tax its nationals, the tax exemption provision in the RP-ADB Agreement must stand.

Moreover, petitioners contend that pursuant to the doctrine of *pacta sunt servanda*, the Philippines, including respondent, is bound to comply with its obligations under the RP-ADB Agreement.

Allegedly, Section 2(d)(1) of RMC No. 31-2013 has been declared unconstitutional by RTC Branch 213 of Mandaluyong City. Thus, petitioners claim entitlement to the refund of their payment of income taxes based on an unconstitutional RMC.

Petitioners further aver that an RMC issued by the BIR cannot, in any way, amend or alter the provisions of an international agreement entered into by the Philippines because a mere administrative issuance cannot supersede, revise or amend a validly entered international agreement.

Allegedly, Section 2(d)(1) of RMC No. 31-2013 is unconstitutional as it is violative of the doctrine of separation of powers and the rule on the origin of revenue bills.

Finally, petitioners claim that they have satisfied all the requisites for a refund of erroneously assessed or collected tax payments provided under Section 229 of the 1997 Tax Code.

Respondent's counter-arguments:

Respondent counter-argues that petitioners are not exempt from the payment of income tax and are not entitled to their claim of refund for taxable year 2014.

According to respondent, the current tax code, the National Internal Revenue Code (NIRC) of 1997, as amended, is the law that enables the enforcement of the reservation clauses found in Senate Resolution No. 6 and Article 56 of the ADB Charter.

Respondent further counter-argues that the provisions of the NIRC clearly states that resident citizens are subject to tax on income derived from all sources within and without the Philippines; that since petitioners are Filipino citizens and employees of the ABD, they are liable for income tax on compensation income they earned on account of such employment.

Likewise, respondent argues that RMC No. 31-2013 is valid because it is only a mere clarification of existing policies embodied in the law; that under the said RMC, the exemption is still subject to the power of the government to tax its nationals, including petitioners.

Respondent also contends that the jurisdiction to question the legality of RMC No. 31-2013 falls within the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA) and not the regional trial court. Hence, the Mandaluyong City RTC – Branch 213 is without jurisdiction to declare the invalidity of RMC No. 31-2013.

Finally, respondent asserts that tax refunds are in the nature of tax exemptions which must be construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

THE COURT'S RULING

In filing a suit or proceeding for the recovery of tax erroneously or illegally collected, Section 229 of the National Internal Revenue Code (NIRC) of 1997 provides as follows:

> "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,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphases added)*

Based on the foregoing provisions, an administrative claim for the refund of erroneously or illegally collected national internal revenue tax must be filed with the Commissioner of Internal Revenue before resorting to judicial recourse. Moreover, **both claims must be filed within a two (2)-year reglementary period** from the date of payment of said tax.

Additionally, it must be noted that the refund claim is to recover taxes **erroneously or illegally collected**. An "**erroneous or illegal tax**" is defined as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[29]

Thus, for the instant claims for refund to prosper, petitioners must not only establish that they have timely filed the said claims, they must likewise prove that the income taxes being refunded are erroneous or illegal.

Petitioners timely filed their administrative and judicial claims.

Jurisprudence dictates that in case a tax is paid in installments, the prescriptive period of two (2) years provided under the aforequoted Section 229 of the NIRC of1997 should be counted from the date of the final payment or last installment.[30]

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[29] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

[30] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*, G.R. No. 83736, January 15, 1992.

The following significant dates are relevant to the subject claim for refund, to wit:

Name of Petitioner	Date of final payment of 2014 income tax	Last day of 2-year period to file a claim for refund	Date of filing of administrative claim	Date of filing of judicial claim
Irish Fe N. Aguilar	July 13, 2015[31]	July 13, 2017	July 7, 2017[32]	July 10, 2017[33]
Majella R. Canzon	July 14, 2015[34]	July 14, 2017		
Helen B. Cruda	July 10, 2015[35]	July 10, 2017		
Maria Amparo M. Dato	July 13, 2015[36]	July 13, 2017		
Ruth C. Mangrobang	July 13, 2015[37]	July 13, 2017		
Marian L. Lagmay	No proof of payment	xxx		

Given the above-stated dates, the earliest last day to file the administrative and judicial claims for the foregoing petitioners is July 10, 2017. Since the administrative claim for the respective tax payments of the said petitioners was filed on July 7, 2017, and the judicial claim was filed on July 10, 2017, both the administrative and judicial claims for refund were timely filed within the two-year prescriptive period.

It is noteworthy, however, that for petitioner Marian L. Lagmay, the date of payment of the income tax, and the alleged payment of the amount of ₱187,671.00, were not duly proven. Thus, the refund claim of petitioner Marian L. Lagmay shall be denied outright.

In any event, all of the instant refund claims must be denied for lack of merit.

Petitioners cannot invoke the Decision of RTC – Branch 213 of Mandaluyong declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional and on the dismissal of respondent's appeal thereon by the Court of Appeals.

[31] Exhibits "P-4", "P-4-A", and "P-5", Docket – Vol. 2, pp. 642 to 645.
[32] Exhibits "P-6", Docket – Vol. 2, pp. 678 to 683; Exhibits "P-7" and "P-7-A"; "P-11" and "P-11-A"; "P-15" and "P-15-A"; "P-20" and "P-20-A"; and "P-29" and "P-29-A", Docket – Vol. 2, pp. 684, 701, 717, 736, and 754, respectively.
[33] Docket – Vol. 1, pp. 10 to 26
[34] Exhibits "P-10-A", "P-10-B", and "P-5-A", Docket – Vol. 2, pp. 697 to 699.
[35] Exhibit "14-A", Docket – Vol. 2, p. 716.
[36] Exhibits "P-18-A", "P-19", "P-19-A", and "P-5-C", Docket – Vol. 2, pp. 732 to 734.
[37] Exhibits "P-28-A" and "P-5-D", Docket – Vol. 2, pp. 751 to 752.

In the instant case, petitioners rely heavily on the Decision of the RTC - Branch 213 of Mandaluyong City,[38] declaring Section 2(d)(1) of RMC No. 31-2013 as unconstitutional, for having been issued without legal basis, in excess of authority, and/or without due process of law. They also argue that this Court can take judicial notice of the said Decision.

Petitioners also invoke the Resolution dated July 3, 2015 of the Court of Appeals,[39] dismissing respondent's appeal on the said Decision, to support the instant claims for tax refund.

According to petitioners, this Court should recognize, honor, or be bound by the RTC's Decision, declaring the unconstitutionality of Section 2(d)(1) of RMC No. 31-2013, and Court of Appeals' Resolution, dismissing respondent's appeal on the said Decision, as bases for declaring that they are entitled to the tax refund being sought.

This, however, We cannot do because the said Decision and Resolution are not binding precedents, especially so, as will be shown momentarily, the income taxes paid are not erroneous nor illegal. As a corollary, it must be emphasized that only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[40]

Moreover, petitioners can neither properly nor successfully rely on the decision of the Court of Appeals. This is so because the latter Court and this Court are now of the same level, pursuant to Section 1[41] of Republic Act (RA) No. 1125[42], as amended by RA No. 9282[43]; and decisions of the Court of Appeals are thus no longer superior to,

[38] Exhibit "P-2", Docket – Vol. 2, pp. 646 to 677.

[39] Par. 9, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. 1, pp. 16 and 96, respectively; Exhibit "P-3, Docket – Vol. 2, pp. 685 to 691.

[40] *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013.

[41] "SECTION 1. *Court; Justices; Qualifications; Salary; Tenure.* – There is hereby created a Court of Tax Appeals (CTA) which shall be of the same level as the Court of Appeals, possessing all the inherent powers of a Court of Justice..."

[42] AN ACT CREATING THE COURT OF TAX APPEALS.

[43] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

nor reversive of, those rendered by this Court.[44] As such, it is with more reason that this Court cannot be bound by a decision of an RTC, which is inferior to this Court.

Section 2(d)(1) of RMC No. 31-2013 is not unconstitutional. Neither is it violative of the **doctrine of** ***pacta sund servanda.***

In arguing that Section 2(d)(1) of RMC No. 31-2013 is unconstitutional, petitioners contend that an RMC cannot, in any way, amend or alter the provisions of an international agreement entered into by the Philippines because a mere administrative issuance cannot supersede, revise or amend a validly entered international agreement; and that the said provision violates the doctrine of separation of powers and the rule on the origin of revenue bills.

Petitioners' contentions are untenable.

To stress, Section 2(d)(1) of RMC No. 31-2013 did not amend or alter the *Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank* (RP-ADB Agreement).

For easy reference, We reproduce pertinent portions of RMC No. 31-2013, including Section 2(d)(1) thereof, *viz*:

> "SECTION 1. BACKGROUND.—
>
> xxx xxx xxx
>
> Section 23 of the National Internal Revenue Code (Tax Code) lays down the general principles in the taxation of citizens and alien individuals, to wit:
>
> > 'SECTION 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;

[44] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

xxx xxx xxx

(D) An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines; xxx'

As an exemption to the general rule, it is noted that most international agreements which grant withholding tax immunity to foreign governments/ embassies/ diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and other emoluments.

The tax consequence of compensation income received by those employed by foreign governments/ embassies/diplomatic missions situated in the Philippine hinges on the provisions of the duly recognized international agreements or local laws granting tax privileges to employees of said institutions. **It bears to emphasize that the exemption should only cover those individuals who were expressly and unequivocally identified in said international agreements or laws. Those not covered shall be subject to the general rule on taxability of Philippine nationals and alien individuals. Thus with respect to those not exempted by the provisions of applicable international agreements or laws, although their compensation income is exempt from withholding tax under the international agreements or the Withholding Tax Regulations, they are not relieved of their duty to report their compensation income to the Bureau and pay the taxes due thereon pursuant to Section 24 of the National Internal Revenue Code of 1997, as amended** ('Tax Code').

This Circular is being issued to evoke compliance by Philippine nationals and individual aliens who are liable to Philippine income tax under the provisions of the Tax Code and who were not given exemption under the terms of duly recognized international agreements or other Philippine laws.

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**:

xxx xxx xxx

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

1. Asian Development Bank (ADB)

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

'ARTICLE XII

xxx xxx xxx

Section 45

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

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**;" Underscoring supplied

From the above, **only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax.**" *(Emphases added)*

A careful reading of the foregoing would reveal that then Commissioner Kim S. Jacinto-Henares, in her capacity as the Commissioner of Internal Revenue, merely exercised her power then to interpret the pertinent provisions of the NIRC of 1997 in relation to the RP-ADB Agreement. Specifically, based on the cited provisions, she, in effect, concluded that while the RP-ADB Agreement grants income taxation on the salaries and emoluments of officers and staff of ADB, as well as to experts and consultants performing missions therefor, such income taxation does not extend to ADB's officers and staff, who are Philippine nationals.

Such being the case, contrary to the contention of petitioners, the issuance of RMC No. 31-2013 by then Commissioner Jacinto-Henares, did not supersede, revise or amend the said international agreement.

Without doubt, the State's inherent power to tax is vested exclusively in the Legislature.[45] The Supreme Court has since ruled that the power to tax includes the power to grant tax exemptions.[46] Thus, the imposition of taxes, as well as the grant and withdrawal of tax exemptions, shall only be valid pursuant to a legislative enactment.[47]

In this case, however, the tax imposition on the compensation income of ADB's officers and staff, who are Philippine nationals, is not based on RMC No. 31-2013 issued by then Commissioner Jacinto-Henares. Rather, the tax imposition is based on pertinent provisions of the NIRC of 1997 (a legislative enactment), in relation to Section 45(b) of the RP-ADB Agreement. Thus, the contentions of petitioners that there was a violation of the doctrine of separation of powers and the rule on the origin of revenue bills are clearly untenable.

It bears stressing that Section 1 of RMC No. 31-2013 clearly pointed out that all of a resident citizen's income is subject to tax, pursuant to Section 23(A) of the NIRC of 1997, to wit:

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

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[45] *Film Development Council of the Philippines vs. Colon Heritage Realty Corporation*, G.R. No. 203754, June 16, 2015.

[46] *Quezon City, et al., vs ABS-CBN Broadcasting Corporation*, G.R. No. 166408, October 6, 2008.

[47] *Secretary of Finance Cesar B. Purisima, et al. vs. Representative Carmelo F. Lazatin, et al.*, G.R. No. 210588, November 29, 2016.

(A) A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;" *(Emphasis added)*

In addition and in relation to the above provision, Sections 24, 31 and 32(A)(1) of the NIRC of 1997, as amended by RA No. 9504[48], read:

"SEC. 24. *Income Tax Rates.* –

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

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

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

xxx xxx xxx

(2) *Rates of Tax on Taxable Income of Individuals.* – The tax shall be computed in accordance with and at the rates established in the following schedule:

Not over ₱10,000..............................	5%
Over ₱10,000 but not over ₱30,000......	₱500+10% of the excess over ₱10,000
Over ₱30,000 but not over ₱70,000......	₱2,500+15% of the excess over ₱30,000
Over ₱70,000 but not over ₱140,000.....	₱8,500+20% of the excess over ₱70,000
Over ₱140,000 but not over ₱250,000...	₱22,500+25% of the excess over ₱140,000

[48] AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51, AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997.

Over ₱250,000 but not over ₱500,000...	₱50,000+30% of the excess over ₱250,000
Over ₱500,000................................	₱125,000+32% of the excess over ₱500,000

xxx xxx xxx." *(Emphases added)*

"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." *(Emphasis added)*

"SEC. 32. *Gross Income.* –

(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**:

(1) **Compensation for services in whatever form paid, including, but not limited to** fees, **salaries, wages**, commissions, and similar items;" *(Emphases added)*

Based on the foregoing provisions, it is clear that the compensation income of a Philippine national or a citizen of the Philippines, who are residing therein, from all sources within and without the Philippines, is subject to income tax.

Such being the case, there is no need for a separate legislation to tax the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens, since the latter individuals are already covered by the above-quoted provisions of the NIRC of 1997.

We cannot agree with the reliance of petitioners on the supposed "Reservation" under Section 45(b) of the RP-ADB Agreement, *i.e.*, on the phrase *"subject to the power of Government to tax its nationals"*, and their resulting contention that without any act from Congress specifically authorizing the exercise of the Government's right to tax its nationals, the tax exemption provision in the RP-ADB Agreement must stand. This is simply because a specific congressional act is unnecessary and superfluous, since the power to tax Philippine nationals or citizens, as above shown, are already being exercised under Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997.

Apropos, it must be stressed that the Philippine Government have long exercised the said power to tax its own citizen, not only at the time the subject income tax was collected, but also at the time the RP-ADB Agreement was entered into, in the year 1966, and also thereafter, even up to the present time.

At the time the RP-ADB Agreement was entered into by the Philippine Government, *i.e.*, on December 22, 1966, the law then in force was the NIRC of 1939.[49] This law had the following provisions to the effect of imposing tax on the income of Philippine nationals or citizens, to wit:

> "SECTION 21. ***Rates of Tax on Citizens*** *or Residents.* — **There shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding taxable year from all sources by every individual a citizen or resident of the Philippines, a tax equal to the sum of the following:**
>
> xxx xxx xxx." *(Emphasis and underscoring added)*

> "SECTION 28. *Meaning of Net Income.* — ***'Net income'* means the gross income computed under section 29** less the deductions allowed by section 30." *(Emphasis added)*

> "SECTION 29. *Gross Income.* — (a) *General Definition.* — ***'Gross income'* includes gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid**, xxx, and income derived from any source whatever." *(Emphasis added)*

Even the NIRC of 1977,[50] the tax code after the NIRC of 1939, had the following taxing provisions on the income of Philippine nationals or citizens, to wit:

[49] Commonwealth Act No. 466.
[50] Presidential Decree No. 1158.

> "SECTION 21. ***<u>Rates of tax on citizens</u>*** *or Residents.* — **A tax is hereby imposed upon the taxable net income received during each taxable year from all sources by every individual, whether a citizen of the Philippines residing therein** or alien residing in the Philippines **determined in accordance with the following schedule**: xxx
>
> xxx xxx xxx." *(Emphasis and underscoring added)*

> "SECTION 28. *Meaning of net income.* — ***'Net income'* means the gross income computed under section twenty-nine,** less the deductions allowed by section thirty." *(Emphasis added)*

> "SECTION 29. *Gross Income.* — (a) *General Definition.* — ***'Gross income'* includes gains, profits, and unicorn derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid**, xxx, and income derived from any source whatever." *(Emphasis added)*

In view of the foregoing, it cannot be denied that the Philippine Legislature has exercised, and have been exercising, its power to tax the income of Philippine nationals or citizens, at the time the RP-ADB Agreement, up to the present time. Thus, We find no basis in declaring that, at any one time, salaries and emoluments of ADB's officers and staff, who are Philippine nationals or citizens, were ever exempted from income tax.

Furthermore, in arguing that officers and staff of ADB, who are Philippine nationals or citizens, are exempt from income taxation, petitioners cannot find solace on Section 45(b) of the RP-ADB Agreement. In fact, it is very clear that while the said provision grants tax exemption on the salaries and emoluments paid by the ADB to its officers and staff, it qualifies that the Philippine government has the power to tax ADB's officers and staff, who are Philippine nationals or citizens. Said Section 45(b) of the RP-ADB Agreement reads:

> "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**:

xxx xxx xxx

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

Considering the above-quoted Sections 23(A), 24, 31, and 32(A)(1) of the NIRC of 1997—the law in force for taxable year 2014—vis-à-vis the foregoing provision of the RP-ADB Agreement, it cannot be said that through the issuance of RMC No. 31-2013, Commissioner Jacinto-Henares superseded, revised or amended the said international agreement, in imposing income tax on the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens. As a corollary, even without the issuance of RMC No. 31-2013, the taxability of the said salaries and emoluments stands, pursuant to the said provisions of the NIRC of 1997 and the RP-ADB Agreement.

In the same vein, there can be no violation of the doctrine of *pacta sund servanda*—a fundamental maxim of international law that requires the parties to keep their agreement in good faith.[51] Section 2(d)(1) of RMC No. 31-2013 does not, in any way, violate Section 45(b) of the RP-ADB Agreement. On the contrary, the said Section 2(d)(1) of RMC No. 31-2013 upholds the said Section 45(b) of the RP-ADB Agreement, when the former declared that *"only officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax."*

In this connection, it must be noted that Section 32(B) of the NIRC of 1997 recognizes and respects the treaty obligations entered into by the Government which grants income tax exemptions, to wit:

"SEC. 32. *Gross Income.* –

xxx xxx xxx

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

xxx xxx xxx

[51] *Land Bank of the Philippines vs. Atlanta Industries, Inc.*, G.R. 193796, July 2, 2014.

> (5) ***Income Exempt under Treaty.* – Income of any kind, <u>to the extent required by any treaty obligation</u> binding upon the Government of the Philippines.**" *(Emphases and underscoring added)*

It is also worthy of note that like the provisions imposing tax on the income of Philippine nationals or citizens, the foregoing provision has been in Our statute books since the enactment of the NIRC of 1939,[52] and thus, is already in existence when the RP-ADB Agreement has been entered into by the Philippine Government. The same provision was also re-enacted in the NIRC of 1977[53]—the precursor of the NIRC of 1997. Thus, there is no indication, at all, that the Philippine Government violated the RP-ADB Agreement, insofar as the imposition of tax on the salaries and emoluments paid by the ADB to its officers and employees, who are Philippine nationals or citizens, is concerned.

Applying Section 32(B) of the NIRC of 1997 to the instant case, only those income which are clearly covered by the tax exemption granted Section 45(b) of the RP-ADB Agreement must be recognized by the Philippine Government. Any item of income, beyond the scope of the said granted tax exemption, must already be subject to income taxation, specifically, the salaries and emoluments of officers and staff of ADB, who are Philippine nationals or citizens.

Long settled is the rule that the power of taxation is a high prerogative of sovereignty. Its relinquishment is never presumed.[54] An intention on the part of the legislature to grant an exemption from the taxing power of the state will never be implied from language which will admit of any other reasonable construction.[55] Thus, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government.[56]

As a corollary, a tax exemption cannot arise from vague inference.[57] Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision

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[52] Section 29(b)(6), Commonwealth Act No. 466.
[53] Section 29(b)(6), Presidential Decree No. 1158.
[54] *Luzon Stevedoring Corporation vs. Court of Tax Appeals, et al.*, G.R. No. L-30232, July 29, 1988.
[55] *Lung Center of the Philippines vs. Quezon City, et al.*, G.R. No. 144104, June 29, 2004.
[56] *Commissioner of Internal Revenue vs. Algue, Inc., et al.*, G.R. No. L-28896, February 17, 1988.
[57] *Digital Telecommunications Phils., Inc. vs. City Government of Batangas, et al.*, G.R. No, 156040, December 11, 2008

of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[58]

In this case, petitioners failed to establish the factual and legal bases of their claim for a refund. Specifically, petitioners failed to show that they are not Philippine nationals or citizens, so as to entitle them to the tax exemption granted under Section 45(b) of the RP-ADB Agreement. Thus, petitioners' claim for refund must perforce fail.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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.

ERLINDA P. UY
Associate Justice
Chairperson, 3rd Division

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[58] *Supra.*

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