**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***Second Division***

| | |
|---|---|
| **LICEL CALDERON, ET.AL.,** *Petitioners,* | **CTA CASE No. 9090** |
| *-versus-* | Members: |
| | CASTANEDA, JR.<br>CASANOVA,<br>MANAHAN, JJ. |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated:<br>MAR 27 2018 10:50 am |

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# DECISION

**MANAHAN, *J.:***

This is a Petition for Review[1] filed on July 13, 2015 by several Filipino employees of the Asian Development Bank (ADB), praying for the refund of their alleged erroneously and illegally paid income tax in the aggregate amount of Forty-Five Million Seven Hundred Seventy-Two Thousand Six Hundred Sixty Pesos and 30/100 (₱45,772,660.30) for taxable years 2012 and 2013.

## PARTIES

Petitioner Licel Calderon and her co-petitioners are all Filipino employees of ADB, whose office is located at 6 ADB Ave., Mandaluyong City.[2]

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[1] Docket, vol. 1, pp. 14-32
[2] Par. 2, Petition for Review, docket, vol. 1, p. 17

The Commissioner of Internal Revenue (respondent) is the government official charged with the administration and enforcement of national internal revenue laws and who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

## FACTS

On April 12, 2013, respondent issued Revenue Memorandum Circular (RMC) No. 31-2013 entitled "Guidelines on the Taxation of Compensation Income of Philippine Nationals and Alien Individuals Employed by Foreign Governments/Embassies/Diplomatic Missions and International Organizations Situated in the Philippines." It provides, among others, that officers and staff of the ADB who are not Philippine nationals shall be exempt from Philippine income tax. Section 2(d)(1) of RMC No. 31-2013 states:

> "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.**" *(Emphasis supplied)*

Since the said RMC was given retroactive effect, Filipino employees of the ADB were ordered to declare and pay income taxes for 2012 onwards. Petitioners paid the following amounts as their income taxes for taxable years 2012 and 2013:[3]

| **PETITIONER** | **INCOME TAX PAID** | | **TOTAL** |
|---|---|---|---|
| | **2012** | **2013** | |
| Licel Calderon | ₱ 106,983.60 | ₱ - | ₱ 106,983.60 |
| Juliet Calingo | 257,387.59 | | 257,387.59 |
| Shiela Dorothy Callet | 162,123.74 | | 162,123.74 |
| Carmela Canare | 291,317.16 | 296,699.00 | 588,016.16 |
| Agnes Canillas | 312,322.78 | 323,998.00 | 636,320.78 |
| Ma. Laarni Canonizado | 283,655.90 | | 283,655.90 |
| Rebecca Canoy | 265,860.82 | | 265,860.82 |
| Odessa Canto | 510,958.43 | 591,182.00 | 1,102,140.43 |
| Cecilia Caparas | 469,399.70 | | 469,399.70 |
| Eileen Capilit | 391,412.78 | | 391,412.78 |
| Ma. Virginita Capulong | 736,184.07 | | 736,184.07 |
| Ninebeth Carandang | 1,352,151.95 | 557,003.00 | 1,909,154.95 |
| Mary Grace Caranto | 176,830.16 | | 176,830.16 |
| Helen Carnecer | 189,066.29 | | 189,066.29 |
| Cynthia Carreon | 494,824.75 | | 494,824.75 |
| Xandro Joaquin Castañeda | 446,705.44 | | 446,705.44 |
| Lea Ann Castro | 149,859.92 | | 149,859.92 |
| Ma. Fatima Cheryl Catacutan | 410,737.43 | | 410,737.43 |
| Sylvia Catapang | 393,584.09 | 377,768.00 | 771,352.09 |
| Ana Cervantes | 482,286.57 | | 482,286.57 |
| Laurie Ann Cervantes | 212,527.00 | | 212,527.00 |
| Ma. Rowena Cham | 500,193.73 | 522,407.00 | 1,022,600.73 |
| Mary Anne Chaneco | 149,764.00 | | 149,764.00 |
| Azalea Chanyongco | 157,268.20 | | 157,268.20 |

[3] Par. 13, Petition for Review, docket, vol. 1, pp. 24-26

| | | | |
|---|---|---|---|
| Candy Chao | 319,245.04 | 211,473.00 | 530,718.04 |
| Patricia Tuazon Ching | 400,276.59 | 407,773.00 | 808,049.59 |
| Geraldine Chu | 377,315.80 | 395,135.00 | 772,450.80 |
| Maila Cinco | 176,026.81 | | 176,026.81 |
| Marileth Co | 262,409.93 | 300,938.00 | 563,347.93 |
| Christine Dianne Cobarrubias | 135,723.89 | | 135,723.89 |
| Ma. Loreca Cobilla | 340,859.03 | | 340,859.03 |
| Jerry Colasito | 102,030.41 | | 102,030.41 |
| Paulita Comia | 323,348.72 | 344,025.00 | 667,373.72 |
| Camille Contreras | 316,431.20 | 316,820.00 | 633,251.20 |
| Nedilla Correa | 246,678.15 | 256,600.00 | 503,278.15 |
| Josefa Maria Coscolluela | 451,792.08 | 456,754.00 | 908,546.08 |
| Melanie Covar | 249,082.64 | 264,465.00 | 513,547.64 |
| Mary France Creus | 142,696.07 | 153,440.00 | 296,136.07 |
| Marisol Crisostomo | 225,270.82 | | 225,270.82 |
| Claribella Cruz | 147,102.69 | | 147,102.69 |
| Fermirelyn Cruz | 126,963.83 | 49,237.52 | 176,201.35 |
| Gene Oliver Cruz | 267,498.26 | 268,775.00 | 536,273.26 |
| Grace Cruz | 194,644.00 | 194,645.00 | 389,289.00 |
| Jerome Cruz | 79,902.19 | | 79,902.19 |
| Kristine Cruz | 344,026.01 | 340,180.00 | 684,206.01 |
| Ma. Lenina Tanya Cruz | 384,729.75 | | 384,729.75 |
| Margaret Rose Cruz | 198,313.46 | | 198,313.46 |
| Mary Grace Kristine Cruz | 150,200.69 | | 150,200.69 |
| Mary Jane Cruz | 337,721.94 | 350,108.00 | 687,829.94 |
| Shiela Cruz | 58,301.12 | | 58,301.12 |
| Ligaya Cuevas-Arce | 275,744.81 | 139,867.00 | 415,611.81 |
| Tadeo Culla | 391,339.12 | 390,065.00 | 781,404.12 |
| Ramon Dacio | 267,508.39 | | 267,508.39 |
| Lailaine Danao | 400,129.00 | | 400,129.00 |
| Marie Remilyn Dandan | 144,848.51 | 150,141.00 | 294,989.51 |
| Marie Lullete Daria | 219,583.10 | | 219,583.10 |
| Shiela Ann David-De Castro | 134,895.30 | | 134,895.30 |
| Janeth De Belen | 263,434.29 | | 263,434.29 |
| Juan Armando De Borja | 152,850.27 | 154,855.00 | 307,705.27 |
| Elena De Castro | 474,379.69 | | 474,379.69 |
| Maria Bernadette De Castro | 289,018.79 | 291,187.00 | 580,205.79 |
| Modesta De Castro | 546,954.24 | | 546,954.24 |
| Arnel De Gracia | 410,836.51 | 420,264.00 | 831,100.51 |
| Charmaine Ruth De Guzman | 21,146.56 | 131,662.00 | 152,808.56 |
| Ma. Cielo De Guzman | 248,223.22 | 252,317.00 | 500,540.22 |
| Maria Guia De Guzman | 297,685.52 | | 297,685.52 |
| Mia Gracia De Guzman | 206,763.12 | 211,904.00 | 418,667.12 |
| Jennifer De Jesus | 160,743.96 | | 160,743.96 |
| Rosarie Celine De Leon | 269,234.11 | 333,970.00 | 603,204.11 |
| Mary Jane De Ocampo | 142,966.09 | | 142,966.09 |
| Eduardo De Veyra | 444,331.31 | 441,761.00 | 886,092.31 |
| Marisol Del Rosario | 367,207.23 | 390,009.00 | 757,216.23 |
| Marlo Del Rosario | 349,205.66 | | 349,205.66 |
| Hazel Joy Dela Cruz | 408,774.32 | 411,220.00 | 819,994.32 |
| Ramoncito Dela Cruz | 662,924.86 | 662,862.00 | 1,325,786.86 |
| Shiela Dela Cruz | 41,022.67 | 120,369.00 | 161,391.67 |
| Fernando Dela Fuente | 166,343.91 | 203,000.50 | 369,344.41 |
| Marcela Leonila Dela Merced | 353,031.94 | | 353,031.94 |
| Excelsa Dela Santa | 300,315.14 | 300,315.14 | 600,630.28 |

| | | | |
|---|---|---|---|
| Ma. Melissa Dela Torre | 446,192.17 | | 446,192.17 |
| Lamberto Delgado Jr. | 246,244.52 | 243,708.00 | 489,952.52 |
| Czareana Dello | 156,570.63 | | 156,570.63 |
| Ma. Cristina Delos Santos | 306,109.10 | 331,066.00 | 637,175.10 |
| Merdinia Deguilla | 110,477.00 | | 110,447.00 |
| Lyrah Tatiana Devanadera | 131,722.89 | 176,392.00 | 308,114.89 |
| Vladimer Diamonon | 274,345.99 | 277,855.00 | 552,200.99 |
| Maria Carmen Diaz | 222,777.79 | 128,333.34 | 351,111.13 |
| Vanessa Dimaano | 493,570.64 | | 493,570.64 |
| Linda Dimayuga | 503,900.28 | | 503,900.28 |
| Ma. Juana Dimayuga | 541,724.84 | 537,420.00 | 1,079,144.84 |
| Irene Dionisio | 301,997.28 | 295,710.00 | 597,707.28 |
| Michael Diza | 171,137.42 | | 171,137.42 |
| Aivy Katherine Dizon | 226,536.82 | | 226,536.82 |
| Madeline Dizon | 285,420.28 | 284,046.00 | 569,466.80 |
| Liza Jane Domingo | 216,677.34 | | 216,677.34 |
| Michelle Domingo | 464,154.91 | | 464,154.91 |
| Julius Cesar Duque | 273,741.04 | 278,049.00 | 551,790.04 |
| Maria Josephine Duque-Comia | 610,668.83 | 319,036.00 | 929,704.83 |
| Jessica Ebio | 302,453.45 | | 302,453.45 |
| Ma. Helen Ebora | 222,211.23 | | 222,211.23 |
| Irma Ebreo | 361,234.49 | 372,543.00 | 733,777.49 |
| **TOTAL** | **₱30,543,307.80** | **₱15,229,352.50** | **₱45,772,660.30** |

On February 14, 2014, Mr. Erwin Salaveria and Ms. Portia Gonzales, Filipino employees of the ADB, filed a Petition to Nullify Section 2(d)(1) of RMC No. 31-2013, with the Regional Trial Court (RTC) Branch 213 of Mandaluyong City, docketed as Civil Case No. MC14-8775.

On September 30, 2014, the RTC promulgated a decision in Civil Case No. MC14-8775 declaring 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 due to absence of legislation and/or regulation to the contrary. A Motion for Reconsideration was filed by respondent but was denied on January 9, 2015.

Respondent appealed the lower court decision to the Court of Appeals, docketed as CA-G.R. CV No. 104374, which dismissed it via Resolution dated July 3, 2015. The Court of Appeals ruled that the proper appeal would have been to file a petition with the Supreme Court via Rule 45 of the Rules of Court. Respondent filed a Motion for Reconsideration, but it was also denied by the Court of Appeals.

Respondent then elevated the case before the Supreme Court by filing a Petition for Review on Certiorari. The case is still awaiting resolution by the High Tribunal. *cmn*

Armed with a favorable RTC ruling, petitioners filed their respective administrative claims for refund of income tax with the BIR on June 11, 2015[4] and on June 22, 2015[5].

Due to the inaction of respondent on the refund claims, petitioner was prompted to file the present Petition for Review before this Court on July 13, 2015.

Respondent then filed his Answer[6] on September 28, 2015.

The pre-trial conference was initially scheduled on November 12, 2015,[7] but was subsequently cancelled and reset to December 10, 2015[8]. Thus, petitioners filed their Pre-Trial Brief[9] on November 6, 2015; while respondent submitted his Pre-Trial Brief[10] on December 3, 2015.

After presenting their witnesses, petitioners filed their Formal Offer of Evidence (for the Petitioners)[11] on October 17, 2016, consisting of Exhibits "P-1" to "P-17", inclusive of sub-markings.

In a Resolution[12] issued on December 12, 2016, the Court admitted all the formally offered exhibits as petitioner's evidence, except for Exhibit "P-2" for failure to submit the original document for comparison and Exhibit "P-7-2-a" for failure to submit the duly marked exhibit.

On December 12, 2016[13] a Resolution to petitioners' FOE was issued admitting all except Exhibits "P-2" for failure to submit the original for comparison and "P-7-2-a" for failure to submit the duly marked exhibit.

On the other hand, respondent, through counsel, manifested that he will no longer be presenting evidence.[14]

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[4] Annex "A", Petition for Review, docket, vol. 1, pp. 134-144
[5] Annex "B", Petition for Review, docket, vol. 1, pp. 145-155
[6] Docket, vol. 1, pp. 208-221
[7] Docket, vol. 1, pp. 222-223
[8] Order, docket, vol. 1, p. 233
[9] Docket, vol. 1, pp. 224-229
[10] Docket, vol. 1, pp. 236-238
[11] Docket, vol. 2, pp. 631-666
[12] Docket, vol. 2, pp. 814-816
[13] Docket, vol. 2, pp. 814-816
[14] Order, docket, vol. 2, p. 820

The Court declared the instant case submitted for decision on April 12, 2017, after the filing of the Memorandum for the Petitioners with Manifestation[15] on March 6, 2017 and the filing of respondent's Memorandum[16] on April 7, 2017.[17]

## ISSUES

The parties submitted the following issues for the Court's resolution:[18]

1. Whether or not the claim for refund and the Petition for Review were filed within the two-year prescriptive period provided under Section 229 of the NIRC; and

2. Whether or not petitioners are entitled to their claim for refund of income taxes paid in taxable years 2012 and 2013 alleged to be erroneously and/or illegally paid.

## Petitioners' Arguments

On the jurisdictional issue and the timeliness of the filing of the claims for refund, petitioners presented a table with details of the dates of payment of each employee to prove that both the administrative and judicial claims were filed within the two year period pursuant to Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997).

As regards the substantive issue of the claim, petitioners hold the theory that Philippine nationals employed by ADB are exempt from income tax on the compensation they received on the basis of categorical provisions contained in the ADB Charter. And being in the nature of a treaty, the Philippine Senate concurred in the ratification of the ADB Charter through Senate Resolution No. 6 dated March 16, 1966. On this basis, petitioners point out that since 1966 or for almost forty seven (47) years now, Filipino employees of ADB have been enjoying this tax exempt privilege without being assessed by the Bureau of Internal Revenue (BIR).

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[15] Docket, vol. 2, pp. 821-835
[16] Docket, vol. 2, pp. 839-859
[17] Resolution, docket, vol. 2, p. 860
[18] Issues, Joint Stipulation of Facts and Issues, docket, vol. 1, pp. 289-290

Thus, proceeding from this legal argument, petitioners maintain that the income tax payments made for taxable years 2012 and 2013 were erroneously and illegally collected by the government qualifying such payments as proper subjects of refund.

In addition, petitioners challenge the legality of the provisions of Revenue Memorandum Circular (RMC) No. 31-2013 which served as the focal point of the then Commissioner's authority to demand income tax payments from the *compensation* received by Filipino employees of the ADB. They cite the decision of the Regional Trial Court (RTC) in the case of *Erwin Salaveria and Portia Gonzales vs. Commissioner of Internal Revenue*[19]which ruled that Section 2 (d) (1) of RMC 31-2013 is void for having been issued without legal basis, in excess of authority and without due process of law. In petitioners' minds, this is tantamount to the affirmation by the RTC of the tax exempt status of the compensation received by Filipino employees of the ADB.

In their Memorandum, petitioners manifested that they have no objection if the resolution of the issues in this case is deferred until after the Supreme Court resolves the appeal in G.R. No. 222214 following the aforesaid decision of the Court of Appeals.

## Respondent's Counter-Arguments

Respondent asserts that this Court has no jurisdiction on the instant petition for their failure to file the claim for refund within the two-year prescriptive period pursuant to Section 229 of the NIRC of 1997.

Further, respondent raised the defense that the assailed decision of RTC Branch 213 of Mandaluyong City, from which petitioners based their claims for refund, is void. Respondent alleges that the power to rule on the validity of revenue issuances administered by the BIR is within the jurisdiction of this Court and not the regular courts.

On the substantive aspect of the claims for refund, respondent proffers the following legal arguments:

1. Petitioners are all Philippine citizens and residents of the Philippines and as such are subject to Philippine income tax law;

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[19] Civil Case No. MC14-8775, September 30, 2014.

2. The ADB Headquarters Agreement, specifically Article XII, Section 45 (b) made a clear limitation in so far as its right to tax its nationals , thus:

"Article XII. – Privileges and Immunities of Governors and Other Representatives of Members, Directors, President, Vice-President and Others

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) Exemptions from taxation on or in respect of the salaries and emoluments paid by the Bank *subject to the power of the Government to tax its nationals.* xxx" (italics ours)."

Respondent avers that such tax exemption is still subject to the power of the Government to tax its nationals.[20]

Aside from these two main points, respondent raised the following conditions before a claim for refund may be granted:

1. That the taxpayer should file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty, non-compliance with which the latter is precluded from exercising his authority thereon;

2. That if denied or not acted upon within the said period, the petition for refund be filed with the CTA within thirty (30) days from receipt of the denial AND within said two (2) year period from the date of payment of the tax or penalty regardless of any supervening cause, otherwise, the claim for refund shall have prescribed;

3. The claim for refund must be a categorical demand for reimbursement;

4. There must be proof of payment of the erroneously or illegally collected taxes; and om

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[20] Answer of Respondent, page 224, Docket.

5. No refund shall be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

## RULING OF THE COURT

Pertinent to the resolution of the issue on the timely filing of the administrative and judicial claims for refund is Section 229 of the NIRC of 1997, as amended, which is quoted hereunder for ready reference:

> "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." *(Emphasis supplied)*

Based on the afore-quoted provision, the claim for refund must be filed with the Commissioner of Internal Revenue and the Court of Tax Appeals within the two-year prescriptive period from the date of payment of tax.

Below is the table detailing the significant dates relative to petitioners' respective income tax payments:

| Name of Employee | Date of Full Payment of Income Tax | | Last day to file refund claim | | Date of filing of Admin. Claim | Date of filing of Judicial Claim |
|---|---|---|---|---|---|---|
| | 2012 | 2013 | 2012 | 2013 | | |
| Licel Calderon | July 15, 2013[21] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |

[21] Exhibit "P-6-11", docket, vol. 1, p. 345

| | | | | | | |
|---|---|---|---|---|---|---|
| Juliet Calingo | July 15, 2013[22] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Shiela Dorothy Callet | July 15, 2013[23] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Carmela Canare | July 15, 2013[24] | April 14, 2014[25] | July 15, 2015 | April 14, 2016 | June 11, 2015 | July 13, 2015 |
| Agnes Canillas | July 15, 2013[26] | April 14, 2014; July 11, 2014[27] | July 15, 2015 | July 11, 2016 | June 11, 2015 | July 13, 2015 |
| Ma. Laarni Canonizado | July 15, 2013[28] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Rebecca Canoy | July 15, 2013[29] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Odessa Canto | July 15, 2013[30] | April 15, 2014[31] and July 14, 2014[32] | July 15, 2015 | July 14, 2016 | June 11, 2015 | July 13, 2015 |
| Cecilia Caparas | July 15, 2013[33]; September 2, 2013[34] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Eileen Capilit | July 15, 2013[35] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ma. Virginita Capulong | July 15, 2013[36] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ninebeth Carandang | July 15, 2013[37]; August 30, 2013[38] | April 15, 2014[39] | July 15, 2015 | April 15, 2016 | June 11, 2015 | July 13, 2015 |
| Mary Grace Caranto | July 15, 2013[40] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Helen Carnecer | July 15, 2013[41] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Cythia Carreon | July 15, 2013[42] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Xandro Joaquin Castañeda | July 15, 2013[43] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Leah Ann Castro | July 15, 2013[44] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ma. Fatima Cheryl Catacutan | July 15, 2013[45] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Sylvia Catapang | July 15, 2013[46] | April 14, 2014 and July 11, 2014[47] | July 15, 2015 | July 11, 2016 | June 11, 2015 | July 13, 2015 |
| Ana Cervantes | July 15, 2013[48] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Laurie Ann Cervantes | July 15, 2013[49] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |

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[22] Exhibit "P-6-1", docket, vol. 1, p. 345
[23] Exhibit "P-6-33", docket, vol. 1, p. 346
[24] Exhibit "P-6-12", docket, vol. 1, p. 345
[25] Exhibit "P-5-1", docket, vol. 1, p. 339
[26] Exhibit "P-6-2", docket, vol. 1, p. 345
[27] Exhibit "P-5-2", docket, vol. 1, p. 339
[28] Exhibit "P-6-3", docket, vol. 1, p. 345
[29] Exhibit "P-6-29", docket, vol. 1, p. 346
[30] Exhibit "P-6-40", docket, vol. 1, p. 346
[31] Exhibit "P-5-30", docket, vol. 1, p. 343
[32] Exhibit "P-5-31", docket, vol. 1, p. 343
[33] Exhibit "P-6-13", docket, vol. 1, p. 345
[34] Exhibit "P-5-3", docket, vol. 1, p. 340
[35] Exhibit "P-6-43", docket, vol. 1, p. 346
[36] Exhibit "P-6-4", docket, vol. 1, p. 345
[37] Exhibit "P-6-14", docket, vol. 1, p. 345
[38] Exhibit "P-5-5", docket, vol. 1, p. 340
[39] Exhibit "P-5-4", docket, vol. 1, p. 340
[40] Exhibit "P-6-15", docket, vol. 1, p. 345
[41] Exhibit "P-6-34", docket, vol. 1, p. 346
[42] Exhibit "P-6-16", docket, vol. 1, p. 345
[43] Exhibit "P-6-30", docket, vol. 1, p. 346
[44] Exhibit "P-6-17", docket, vol. 1, p. 345
[45] Exhibit "P-6-44", docket, vol. 1, p. 346
[46] Exhibit "P-6-27", docket, vol. 1, p. 346
[47] Exhibit "P-5-27", docket, vol. 1, p. 343
[48] Exhibit "P-6-39", docket, vol. 1, p. 346
[49] Exhibit "P-6-5", docket, vol. 1, p. 345

| | | | | | | |
|---|---|---|---|---|---|---|
| Ma. Rowena Cham | July 15, 2013[50] | March 21, 2014[51] and July 14, 2014[52] | July 15, 2015 | July 14, 2016 | June 11, 2015 | July 13, 2015 |
| Mary Anne Chaneco | July 15, 2013[53] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Azaleah Chanyongco | July 15, 2013[54] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Candy Chao | July 15, 2013[55] | April 14, 2014[56] | July 15, 2015 | April 14, 2016 | June 11, 2015 | July 13, 2015 |
| Patricia Tuazon Ching | July 15, 2013[57]; April 12, 2013[58] | April 10, 2014[59]and July 14, 2014[60] | July 15, 2015 | July 14, 2016 | June 11, 2015 | July 13, 2015 |
| Geraldine Chu | July 15, 2013[61] | April 10, 2014 and July 11, 2014[62] | July 15, 2015 | July 11, 2016 | June 11, 2015 | July 13, 2015 |
| Maila Cinco | July 15, 2013[63] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Marileth Co | July 15, 2013[64] | April 2, 2014[65] | July 15, 2015 | April 2, 2016 | June 11, 2015 | July 13, 2015 |
| Christine Dianne Cobarrubias | July 15, 2013[66] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ma. Loreca Cobilla | July 15, 2013[67] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Jerry Colasito | July 15, 2013[68] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Paulita Comia | July 15, 2013[69] | April 15, 2014; July 10, 2014[70] | July 15, 2015 | July 10, 2016 | June 11, 2015 | July 13, 2015 |
| Camille Contreras | July 15, 2013[71] | April 14, 2014[72]; July 14, 2014[73] | July 15, 2015 | July 14, 2016 | June 11, 2015 | July 13, 2015 |
| Nedilla Correa | July 15, 2013[74] | March 6, 2014[75] | July 15, 2015 | March 6, 2016 | June 11, 2015 | July 13, 2015 |
| Josefa Maria Coscolluela | July 15, 2013[76] | April 14, 2014; July 8, 2014[77] | July 15, 2015 | July 8, 2016 | June 11, 2015 | July 13, 2015 |
| Melanie Covar | July 12, 2013[78] | April 11, 2014[79]; July 15, 2014[80] | July 15, 2015 | July 15, 2016 | June 11, 2015 | July 13, 2015 |

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[50] Exhibit "P-10", docket, vol. 1, p. 358
[51] Exhibit "P-6-31", docket, vol. 1, p. 346
[52] Exhibit "P-5-6", docket, vol. 1, p. 340
[53] Exhibit "P-6-18", docket, vol. 1, p. 345
[54] Exhibit "P-6-19", docket, vol. 1, p. 345
[55] Exhibit "P-6-45", docket, vol. 1, p. 346
[56] Exhibit "P-5-22", docket, vol. 1, p. 342
[57] Exhibit "P-6-46", docket, vol. 1, p. 346
[58] Exhibit "P-5-26", docket, vol. 1, p. 343
[59] Exhibit "P-5-25", docket, vol. 1, p. 343
[60] Exhibit "P-5-26", docket, vol. 1, p. 343
[61] Exhibit "P-6-20", docket, vol. 1, p. 345
[62] Exhibit "P-5-7", docket, vol. 1, p. 340
[63] Exhibit "P-8", docket, vol. 1, p. 352
[64] Exhibit "P-6-38", docket, vol. 1, p. 346
[65] Exhibit "P-5-28", docket, vol. 1, p. 343
[66] Exhibit "P-6-21", docket, vol. 1, p. 345
[67] Exhibit "P-5-8", docket, vol. 1, p. 340
[68] Exhibit "P-6-42", docket, vol. 1, p. 346
[69] Exhibit "P-6-6", docket, vol. 1, p. 345
[70] Exhibit "P-5-9", docket, vol. 1, p. 340
[71] Exhibit "P-6-35", docket, vol. 1, p. 346
[72] Exhibit "P-5-10", docket, vol. 1, p. 341
[73] Exhibit "P-5-11", docket, vol. 1, p. 341
[74] Exhibit "P-6-22", docket, vol. 1, p. 345
[75] Exhibit "P-5-12", docket, vol. 1, p. 341
[76] Exhibit "P-6-28", docket, vol. 1, p. 346
[77] Exhibit "P-5-29", docket, vol. 1, p. 343
[78] Exhibit "P-11", docket, vol. 1, p. 361
[79] Exhibit "P-5-23", docket, vol. 1, p. 342
[80] Exhibit "P-5-24", docket, vol. 1, p. 343

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|---|---|---|---|---|---|---|
| Mary France Creus | July 15, 2013[81] | March 21, 2014[82] | July 15, 2015 | March 21, 2016 | June 11, 2015 | July 13, 2015 |
| Marisol Crisostomo | July 15, 2013[83] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Claribella Cruz | July 15, 2013[84] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Fermirelyn Cruz | July 15, 2013[85] | April 8, 2014[86] | July 15, 2015 | April 8, 2016 | June 11, 2015 | July 13, 2015 |
| Gene Oliver Cruz | July 15, 2013[87] | April 8, 2014[88] | July 15, 2015 | April 8, 2016 | June 11, 2015 | July 13, 2015 |
| Grace Cruz | July 15, 2013[89] | April 15, 2014[90]; July 15, 2014[91] | July 15, 2015 | July 15, 2016 | June 11, 2015 | July 13, 2015 |
| Jerome Cruz | July 15, 2013[92] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Kristine Cruz | July 15, 2013[93] | April 10, 2014; June 25, 2014[94] | July 15, 2015 | June 25, 2016 | June 11, 2015 | July 13, 2015 |
| Ma. Lenina Tanya Cruz | July 15, 2013[95] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Margaret Rose Cruz | July 15, 2013[96] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Mary Grace Kristine Cruz | July 15, 2013[97] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Mary Jane Cruz | July 15, 2013[98] | April 15, 2014[99]; July 15, 2014[100] | July 15, 2015 | July 15, 2016 | June 11, 2015 | July 13, 2015 |
| Shiela Cruz | July 15, 2015[101] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ligaya Cuevas-Arce | July 15, 2013[102] | April 14, 2014[103] | July 15, 2015 | April 14, 2016 | June 11, 2015 | July 13, 2015 |
| Tadeo Culla | July 15, 2013[104] | April 4, 2014; July 4, 2014[105] | July 15, 2015 | July 4, 2016 | June 11, 2015 | July 13, 2015 |
| Ramon Dacio | July 15, 2013[106] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Lailanie Danao | July 15, 2013[107] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Marie Remilyn Dandan | July 15, 2013[108] | April 15, 2014; June 30, 2014[109] | July 15, 2015 | June 30, 2016 | June 11, 2015 | July 13, 2015 |
| Marie Lullete Daria | July 15, 2013[110] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Shiela Anne David-Castro | July 15, 2013[111] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |

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81 Exhibit "P-6-23", docket, vol. 1, p. 346
82 Exhibit "P-6-32", docket, vol. 1, p. 346
83 Exhibit "P-6-7", docket, vol. 1, p. 345
84 Exhibit "P-6-8", docket, vol. 1, p. 345
85 Exhibit "P-5-13", docket, vol. 1, p. 341
86 Exhibit "P-5-14", docket, vol. 1, p. 341
87 Exhibit "P-6-36", docket, vol. 1, p. 346
88 Exhibit "P-5-19", docket, vol. 1, p. 342
89 Exhibit "P-5-15", docket, vol. 1, p. 341
90 Exhibit "P-5-15", docket, vol. 1, p. 341
91 Exhibit "P-5-20", docket, vol. 1, p. 342
92 Exhibit "P-6-47", docket, vol. 1, p. 346
93 Exhibit "P-6-24", docket, vol. 1, p. 346
94 Exhibit "P-5-16", docket, vol. 1, p. 341
95 Exhibit "P-6-9", docket, vol. 1, p. 345
96 Exhibit "P-7-2", docket, vol. 1, p. 350
97 Exhibit "P-6-25", docket, vol. 1, p. 346
98 Exhibit "P-6-10", docket, vol. 1, p. 345
99 Exhibit "P-5-17", docket, vol. 1, p. 342
100 Exhibit "P-5-18", docket, vol. 1, p. 342
101 Exhibit "P-6-26", docket, vol. 1, p. 346
102 Exhibit "P-6-41", docket, vol. 1, p. 346
103 Exhibit "P-5-32", docket, vol. 1, p. 344
104 Exhibit "P-6-37", docket, vol. 1, p. 346
105 Exhibit "P-5-21", docket, vol. 1, p. 342
106 Exhibit "P-4-1", docket, vol. 1, p. 337
107 Exhibit "P-4-2", docket, vol. 1, p. 337
108 Exhibit "P-4-3", docket, vol. 1, p. 337
109 Exhibit "P-3-1", docket, vol. 1, p. 330
110 Exhibit "P-4-4", docket, vol. 1, p. 337
111 Exhibit "P-4-5", docket, vol. 1, p. 337

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|---|---|---|---|---|---|---|
| Janeth De Belen | July 15, 2013[112] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Juan Armando De Borja | July 15, 2013[113] | April 15, 2014[114] | July 15, 2015 | April 15, 2016 | June 11, 2015 | July 13, 2015 |
| Elena De Castro | July 15, 2013[115] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Maria Bernadette De Castro | July 15, 2013[116] | April 10, 2014[117]; July 14, 2014[118] | July 15, 2015 | July 14, 2016 | June 11, 2015 | July 13, 2015 |
| Modesta De Castro | July 15, 2013[119] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Arnel De Gracia | July 15, 2013[120] | April 15, 2014; July 15, 2014[121] | | | June 11, 2015 | July 13, 2015 |
| Charmaine Ruth De Guzman | July 15, 2013[122] | March 27, 2014[123] | July 15, 2015 | March 27, 2016 | June 11, 2015 | July 13, 2015 |
| Ma. Cielo De Guzman | July 15, 2013[124] | April 7, 2014[125] | July 15, 2015 | April 7, 2016 | June 11, 2015 | July 13, 2015 |
| Maria Guia De Guzman | July 15, 2013[126] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Mia Gracia De Guzman | July 15, 2013[127] | April 11, 2014[128] | July 15, 2015 | April 11, 2016 | June 11, 2015 | July 13, 2015 |
| Jennifer De Jesus | July 15, 2013[129] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Rosarie Celine De Leon | July 15, 2013[130] | April 10, 2014[131] | July 15, 2015 | April 10, 2016 | June 11, 2015 | July 13, 2015 |
| Mary Jane De Ocampo | July 15, 2013[132] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Eduardo De Veyra | July 15, 2013[133] | April 11, 2014[134] | July 15, 2015 | April 11, 2016 | June 11, 2015 | July 13, 2015 |
| Marisol Del Rosario | July 15, 2013[135] | April 10, 2014; July 11, 2014[136] | July 15, 2015 | July 11, 2016 | June 11, 2015 | July 13, 2015 |
| Marlo Del Rosario | July 15, 2013[137] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Hazel Joy Dela Cruz | July 15, 2013[138] | March 21, 2014[139] | July 15, 2015 | March 21, 2016 | June 11, 2015 | July 13, 2015 |
| Ramoncito Dela Cruz | July 15, 2013[140] | April 10, 2014[141]; July 15, 2014[142] | July 15, 2015 | July 15, 2016 | June 11, 2015 | July 13, 2015 |

112 Exhibit "P-7-1", docket, vol. 1, p. 347
113 Exhibit "P-4-6", docket, vol. 1, p. 337
114 Exhibit "P-3-2", docket, vol. 1, p. 330
115 Exhibit "P-4-7", docket, vol. 1, p. 337
116 Exhibit "P-4-8", docket, vol. 1, p. 337
117 Exhibit "P-3-3", docket, vol. 1, p. 330
118 Exhibit "P-3-4", docket, vol. 1, p. 330
119 Exhibit "P-4-9", docket, vol. 1, p. 337
120 Exhibit "P-4-10", docket, vol. 1, p. 337
121 Exhibit "P-3-5", docket, vol. 1, p. 330
122 Exhibit "P-4-11", docket, vol. 1, p. 337
123 Exhibit "P-3-6", docket, vol. 1, p. 330
124 Exhibit "P-4-12", docket, vol. 1, p. 337
125 Exhibit "P-3-7", docket, vol. 1, p. 331
126 Exhibit "P-4-14", docket, vol. 1, p. 337
127 Exhibit "P-4-13", docket, vol. 1, p. 337
128 Exhibit "P-3-8", docket, vol. 1, p. 331
129 Exhibit "P-4-15", docket, vol. 1, p. 337
130 Exhibit "P-4-16", docket, vol. 1, p. 337
131 Exhibit "P-3-9", docket, vol. 1, p. 331
132 Exhibit "P-4-17", docket, vol. 1, p. 337
133 Exhibit "P-4-18", docket, vol. 1, p. 337
134 Exhibit "P-3-10", docket, vol. 1, p. 331
135 Exhibit "P-4-19", docket, vol. 1, p. 337
136 Exhibit "P-3-11", docket, vol. 1, p. 331
137 Exhibit "P-4-20", docket, vol. 1, p. 337
138 Exhibit "P-4-21", docket, vol. 1, p. 337
139 Exhibit "P-4-48", docket, vol. 1, p. 338
140 Exhibit "P-4-22", docket, vol. 1, p. 337
141 Exhibit "P-3-12", docket, vol. 1, p. 332
142 Exhibit "P-3-13", docket, vol. 1, p. 332

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|---|---|---|---|---|---|---|
| Shiela Dela Cruz | July 15, 2013[143] | April 14, 2014[144] | July 15, 2015 | April 14, 2016 | June 11, 2015 | July 13, 2015 |
| Fernando Dela Fuente | July 15, 2013[145] | April 10, 2014[146] | July 15, 2015 | April 10, 2016 | June 11, 2015 | July 13, 2015 |
| Marcela Leonila Dela Merced | July 15, 2013[147] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Exelsa Dela Santa | July 15, 2013[148] | April 14, 2014; July 15, 2014[149] | July 15, 2015 | July 15, 2016 | June 11, 2015 | July 13, 2015 |
| Ma. Melissa Dela Torre | July 15, 2013[150] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Lamberto Delgado Jr. | July 15, 2013[151] | April 8, 2014[152] | July 15, 2015 | April 8, 2016 | June 11, 2015 | July 13, 2015 |
| Czareana Delio | July 15, 2013[153] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ma. Cristina Delos Santos | July 15, 2013[154] | April 10, 2014; July 9, 2014[155] | July 15, 2015 | July 9, 2016 | June 11, 2015 | July 13, 2015 |
| Merdinia Deguilla | July 15, 2013[156] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Lyrah Tatiana Devanadera | July 15, 2013[157] | April 10, 2014[158] | July 15, 2015 | April 10, 2016 | June 11, 2015 | July 13, 2015 |
| Vladimer Diamonon | July 15, 2013[159] | March 21, 2014[160] | July 15, 2015 | March 21, 2016 | June 11, 2015 | July 13, 2015 |
| Maria Carmen Diaz | July 15, 2013[161] | March 18, 2014[162] | July 15, 2015 | March 18, 2016 | June 11, 2015 | July 13, 2015 |
| Vanessa Dimaano | July 15, 2013[163] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Linda Dimayuga | July 15, 2013[164] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Ma. Juana Dimayuga | July 15, 2013[165] | April 14, 2014[166]; July 14, 2014[167] | July 15, 2015 | July 14, 2016 | June 11, 2015 | July 13, 2015 |
| Irene Dionisio | July 15, 2013[168] | April 14, 2014; July 15, 2014[169] | July 15, 2015 | July 15, 2016 | June 11, 2015 | July 13, 2015 |
| Michael Diza | July 15, 2013[170] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Aivy Katherine Dizon | July 15, 2013[171] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Madeline Dizon | July 15, 2013[172] | April 14, 2014[173] | July 15, 2015 | April 14, 2016 | June 11, 2015 | July 13, 2015 |

[143] Exhibit "P-4-23", docket, vol. 1, p. 337
[144] Exhibit "P-3-14", docket, vol. 1, p. 332
[145] Exhibit "P-4-24", docket, vol. 1, p. 337
[146] Exhibit "P-3-15", docket, vol. 1, p. 332
[147] Exhibit "P-9", docket, vol. 1, p. 355
[148] Exhibit "P-4-25", docket, vol. 1, p. 337
[149] Exhibit "P-3-16", docket, vol. 1, p. 332
[150] Exhibit "P-4-26", docket, vol. 1, p. 337
[151] Exhibit "P-4-27", docket, vol. 1, p. 337
[152] Exhibit "P-3-17", docket, vol. 1, p. 332
[153] Exhibit "P-4-28", docket, vol. 1, p. 337
[154] Exhibit "P-4-29", docket, vol. 1, p. 337
[155] Exhibit "P-3-18", docket, vol. 1, p. 333
[156] Exhibit "P-4-30", docket, vol. 1, p. 337
[157] Exhibit "P-4-31", docket, vol. 1, p. 337
[158] Exhibit "P-3-19", docket, vol. 1, p. 333
[159] Exhibit "P-4-32", docket, vol. 1, p. 337
[160] Exhibit "P-4-49", docket, vol. 1, p. 338
[161] Exhibit "P-4-33", docket, vol. 1, p. 337
[162] Exhibit "P-3-20", docket, vol. 1, p. 333
[163] Exhibit "P-4-34", docket, vol. 1, p. 338
[164] Exhibit "P-4-35", docket, vol. 1, p. 338
[165] Exhibit "P-4-36", docket, vol. 1, p. 338
[166] Exhibit "P-3-21", docket, vol. 1, p. 333
[167] Exhibit "P-3-22", docket, vol. 1, p. 333
[168] Exhibit "P-4-37", docket, vol. 1, p. 338
[169] Exhibit "P-3-23", docket, vol. 1, p. 333
[170] Exhibit "P-4-38", docket, vol. 1, p. 338
[171] Exhibit "P-4-39", docket, vol. 1, p. 338
[172] Exhibit "P-4-40", docket, vol. 1, p. 338
[173] Exhibit "P-3-24", docket, vol. 1, p. 333

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|---|---|---|---|---|---|---|
| Liza Anne Domingo | July 15, 2013[174] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Michelle Domingo | July 15, 2013[175] | | July 15, 2015 | | June 11, 2015 | July 13, 2015 |
| Julius Cesar Duque | July 15, 2013[176] | April 7, 2014[177]; July 7, 2014[178] | July 15, 2015 | July 7, 2016 | June 11, 2015 | July 13, 2015 |
| Maria Josephine Duque-Comia | July 15, 2013[179] | April 15, 2014[180] | July 15, 2015 | April 15, 2016 | June 11, 2015 | July 13, 2015 |
| Jessica Ebio | July 15, 2013[181] | | July 15, 2015 | | June 22, 2015 | July 13, 2015 |
| Ma. Helen Ebora | July 15, 2013[182] | | July 15, 2015 | | June 22, 2015 | July 13, 2015 |
| Irma Ebreo | July 15, 2013[183] | March 21, 2014[184] | July 15, 2015 | March 21, 2016 | June 22, 2015 | July 13, 2015 |

Applying the aforequoted provisions of law and the foregoing table, this Court finds that petitioners have established that they were able to file both their administrative and judicial claims for refund for 2012 and 2013 within the two-year period.

We now proceed to the main issues of this case.

Petitioners rely heavily on Chapter VIII, Article 56 (2) of the ADB Charter as the basis of the non-imposition of income tax on their compensation as ADB employees and we quote:

> " CHAPTER VIII
>
> Article 56.
>
> (2) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the Directors, alternates, officers or <u>employees of the Bank</u>, 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***." (Emphasis supplied)

The above proviso in the ADB Charter has in effect been "carved in stone" as it has been the practice for several decades of the ADB not to withhold tax on the compensation of the people covered by the aforequoted Section 56 (including Filipino employees) which practice

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[174] Exhibit "P-4-41", docket, vol. 1, p. 338
[175] Exhibit "P-4-42", docket, vol. 1, p. 338
[176] Exhibit "P-4-44", docket, vol. 1, p. 338
[177] Exhibit "P-3-25", docket, vol. 1, p. 334
[178] Exhibit "P-3-26", docket, vol. 1, p. 334
[179] Exhibit "P-4-43", docket, vol. 1, p. 338
[180] Exhibit "P-3-27", docket, vol. 1, p. 334
[181] Exhibit "P-4-45", docket, vol. 1, p. 338
[182] Exhibit "P-4-46", docket, vol. 1, p. 338
[183] Exhibit "P-4-47", docket, vol. 1, p. 338
[184] Exhibit "P-4-50", docket, vol. 1, p. 338

was claimed to have been disturbed only by the issuance of RMC 31-2013 dated April 12, 2013, the relevant portions of which were quoted earlier.

The ADB Charter and the ADB Headquarters Agreement" both partake the nature of a treaty or an international agreement[185].

As an international agreement, it forms part of the law of the land in accordance with Section 2, Article II of the 1987 Constitution which reads as follows:

**ARTICLE II**
**Declaration of Principles**

> Section 2. The Philippines renounces war as an instrument of national policy, ***adopts the generally accepted principles of international law as part of the law of the land*** and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations." (emphasis supplied)

This constitutional principle adheres to the basic tenet of international law of *pacta sunt servanda* or international comity which demands the performance in good faith of treaty obligations as aptly defined in the case of *Deutsche Bank AG Manila Branch v. CIR*[186], and we quote:

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

The instant case, however, clearly indicates that the issue at bar is not a controversy suggestive of whether our country should observe its commitments under an international agreement but rather centers on its coverage of the privileges and the interpretation which may or

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185 Memorandum Circular issued by the Office of the President on May 31, 1994 and signed by President Fidel Ramos which in part provides, thus,:

" The Charter and the Headquarters Agreement, which are *international treaties* executed by the Executive Branch of the Government of the Republic of the Philippines and ratified by the Senate of the Republic of the Philippines, are incorporated as part of the law of the Republic of the Philippines." (italics ours).

186 G.R. No.188550 promulgated on August 19, 2013.

may not include tax exemption of Filipino employees of the ADB on their compensation income.

The very same provisions, both of the ADB Charter and the ADB Headquarters Agreement, relied upon by the petitioners are the same ones that would produce the bases of this Court's denial of their petition. An examination of the entirety of Section 56 (2), Chapter VIII of the ADB Charter clearly contains an exception to the tax exempt privilege accorded by this Agreement to the covered ADB personnel as encapsulated by the clause "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."

The grant of tax exempt privileges as worded in the ADB Charter although explicit in nature accords respect to the municipal law of the host country by recognizing the latter's prerogative in taxing its citizens i.e. Philippine citizens, or in a more general sense, its national laws on taxation. Rightfully so because under the doctrine of incorporation, as applied in most countries, "rules of international law are given a standing equal, *not superior*, to national legislative enactments".[187] (italics ours)

However, unlike the municipal laws of a member country, treaties or international agreements are not enacted by the Legislative branch of the government but instead ratified by the Philippine Senate as what was done in the case of the ADB Charter. Under the 1935 Philippine Constitution which was the prevailing Constitution in 1966, it is the President of the Philippines, as head of State who ratifies the treaty while the Philippine Senate concurs with the President's ratification.[188] Then as now, in strict constitutional legalese, ratification of treaties is made by the President while concurrence is done by two thirds of all the members of the Senate. [189] Such ratification and concurrence are the operative acts that endow the ADB Charter with the character of a law.

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

[188] Article VII, Section 10 of the 1935 Philippine Constitution:
"The President shall have the power, with the concurrence of two thirds of all the members of the Senate to make treaties xxx xxx. " ."

[189] Article VII, Section 21 of the 1987 Constitution. " No treaty or international agreement shall be valid and effective unless concurred in by at least two thirds of all the members of the Senate."

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.[190]

In our analysis of the taxability of the compensation received by Filipino employees of the ADB, we go no further than the statements contained in the ADB Charter and the presidential ratification which followed where then President Ferdinand Marcos declared that the Philippine government "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." This Court finds that this particular statement overrules and clarifies any semblance of tax exemption accorded by the two international agreements pertaining to Filipino employees of the ADB and upholds the applicability of national laws on taxation insofar as their compensations are concerned.

Under our national tax laws, Philippine citizens are taxable on their income derived from both inside and outside the country.

Section 23 of the 1997 National Internal Revenue Code (NIRC) specifically provides as follows:

> "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."
>
> Section 24. Income Tax Rates. –
>
> (A) Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines. –
>
> (1) An income tax is hereby imposed:
>
> (a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under subsections (B ), (C) and (D) of this Section, derived for each taxable year from all sources within and without the Philippines by every individual citizen of the Philippines residing therein."

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[190] Pharmaceutical & Health Care Assn. of the Philippines vs. Health /secretary Duque, et. Al. , G.R. No. 173034 dated October 19, 2007.

We cannot take cognizance of the declarations made by the RTC in its decision in the case entitled *"Erwin Salaveria and Portia Gonzales vs. Commissioner of Internal Revenue"*, which declared void the provisions of RMC No. 31-2013 issued on April 12, 2013 for being issued without legal basis. Decisions of lower courts are not binding precedents as succinctly enunciated by the Supreme Court in the case of Visayas Geothermal Power Company vs. Commissioner of Internal Revenue[191], *viz*:

> "Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system".

We find the clarifications provided by RMC 31-2013 as to the taxability of the compensation received by the petitioners, in accord with the ADB Charter and the subsequent ratification made by the President of the Philippines.

The contention of the petitioners that the exclusion of Filipino employees from the tax- exempt provisions of the ADB Charter would entail an enactment of an enabling law to put this into effect is bereft of merit as it is clear that the Philippines had already enacted its own Tax Code at the time of the ratification of the ADB Charter imposing the types and rates of tax of citizens of the Philippines. The word "reservation" in the aforequoted ratification therefore is to be construed as an excepting clause to the tax exemptions found in the treaty establishing the ADB.

In the case of *PHAP vs. Duque*[192], the Supreme Court clearly delineated the two processes by which international agreements or treaties are incorporated as part of the domestic law or municipal law, thus:

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

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[191] G.R. No. 197525 dated June 4, 2014.

[192] G.R. No. 17303 4 dated October 9, 2007.

> 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**. (emphasis supplied)

By the same token, both the ADB Charter and the ADB Headquarters Agreement became valid and effective and had the force and effect of a municipal law upon the concurrence of the Senate as prescribed by the Constitution. Such process no longer necessitated a local legislation for it to take effect as the concurrence of the Senate was sufficient to transform the treaty as part of the "domestic law" of the land.

There should be no question then that the tax exemption on the compensation income of the Filipino employees of the ADB are subject to tax and that respondent Commissioner of Internal Revenue did not abuse his discretion in issuing the controverted RMC No. 31-2013.

However, this Court finds that the clarificatory nature of the provisions of RMC 31-2013 issued on April 12, 2013, should apply prospectively and should not affect the tax exempt privilege availed of by the Filipino ADB employees in 2012 (prior to the issuance of RMC 31-2013).

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.

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. *am*

However despite these clear wordings on its effectivity, respondent still proceeded to collect income tax payments from petitioner starting 2012.

Seen against the backdrop of confirmations and affirmations of various revenue officials that their income was subject to lower income tax rates or to zero income tax until the issuance/publication of RMC No. 31-2013, the principles of fair play and substantial justice dictate that its provisions should apply to claims starting only from 2013 and onwards.

For emphasis, we provide below the various pronouncements of revenue officials with regard to the taxability of the income tax payments of ADB personnel, to wit:

1. In BIR Ruling No. 029-99 dated March 11, 1999, the former BIR Commissioner, Beethoven Rualo, in response to a query on the taxability of the compensation income of ADB personnel, stated as follows:

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

2. In a Letter Opinion dated January 29, 2001, 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.

3. 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 opined that the Filipino employees of ADB are subject to the preferential tax rate of 15% on their compensation income.

The ADB as employer as well as the concerned employees should not be faulted on the apparently confirmatory but inconsistent opinions of senior officials of the BIR. It was only by the issuance of RMC 31-2013 that then Commissioner Kim Henares categorically clarified that they are subject to tax. Pertinent portions of the said RMC are quoted below: *Gm*

"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

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

More than the lifeblood doctrine, we find that the principles of fundamental fairness and equity behoove us to apply the non-retroactive rule under Section 246 of the Tax Code and we quote:

"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*[193], 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

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193 G.R. No. L-52306 dated October 12, 1981.

> 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.
>
> xxx xxx xxx
>
> " without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax ."

Further in the case of *Commissioner of Internal Revenue vs. Court of Appeals, Court of Tax Appeals and Alhambra Industries, Inc.*[194], the Supreme Court enunciated the non-retroactivity principle in this manner:

> "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."
>
> "Without doubt, private respondent would be prejudiced by the retroactive application as it would be assessed of deficiency excise tax."

It bears stressing that the retroactive application of the provisions of RMC 31-2013 to income received by the petitioners in 2012 made prior to its publication in 2013 already caused serious prejudice to the Filipino employees who relied heavily on the pronouncements/interpretations made by the government officials earlier mentioned. To put it more concretely, the Filipino employees were not ready to incur such huge tax obligations for the past taxable year 2012, neither were they prepared to face the grim prospect of law suits and potential garnishment of their bank deposits, assets if they fail to settle such deficiency income tax assessment.

**WHEREFORE**, in light of the foregoing, the Petition for Review filed by petitioners is hereby **PARTIALLY GRANTED.**

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194 G.R. No. 117982 dated February 6, 1997.

Accordingly, respondent is **ORDERED TO ISSUE A TAX REFUND/TAX CREDIT CERTIFICATE** in favor of petitioners in the amount of Php30,543,307.80 to be individually allocated based on the tabular summary provided earlier, representing the illegally collected income taxes for taxable year 2012.

As regards the 2013 claim for tax refund/tax credit certificate in the amount of Php15,229,352.50, the same is hereby **DENIED** for lack of legal basis.

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

Juanito C. Castañeda, Jr.
(With Concurring and Dissenting Opinion)
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**CAESAR A.CASANOVA**
Associate Justice

**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 case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Acting Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**SECOND DIVISION**

**LICEL CALDERON, ET AL.,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 9090**

Members:

**Castañeda, Jr.**, *Chairperson,*
**Casanova**
**Manahan**, *JJ.*

**Promulgated:**

MAR 27 2018 10:50 am

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## CONCURRING AND DISSENTING OPINION

**CASTAÑEDA, JR., *J.*:**

I concur with the *ponencia* of J. Manahan on the denial of the claim for refund/tax credit of income taxes paid in 2013.

However, with due respect, I am constrained to disagree on the grant of the claim for refund/tax credit of income taxes paid in 2012.

Petitioners argue that the income tax payments made by them were erroneously and/or illegally collected by the respondent for failure of the latter to recognize the tax-exempt status granted to ADB employees.

Petitioners further assert that the Filipino ADB employees are exempt from income tax since the establishment of the ADB. There has been no subsequent or enabling legislation that modified or otherwise reinterpreted the ADB Charter provisions on "Exemption from Taxation" and that, in addition, their tax-exempt status has always been observed and practiced.

Contrary to these arguments, Filipino officers and employees of the ADB are, under the law, subject to income tax on salaries and emoluments they receive from the ADB. A plain reading of the pertinent treaty provisions and domestic legislation clearly show the intention of Congress to do so.

The "Agreement Establishing the Asian Development Bank" (ADB Charter) included a provision on tax-exemption and an exception to said privilege, thus:

> "Article 56
> EXEMPTION FROM TAXATION
>
> 1. The Bank, its assets, property, income and its operations and transactions, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
>
> 2. **No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, alternates, officers or employees of the Bank**, including experts performing missions for the Bank, **except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.**" *(Emphasis supplied)*

On March 16, 1966, in Senate Resolution No. 6, the Philippine Government ratified and confirmed the ADB Charter but categorically included a *reservation* of the Philippine's right to tax the Filipino employees of ADB, to wit:

> "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

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> 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)*

The "Agreement Between the Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank" (ADB Headquarters Agreement) included a similar proviso recognizing the right of the Philippine Government to tax Filipino ADB employees, *viz.*:

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

Although these provisions grant tax exemption to the salaries and emoluments paid by ADB to its officers and employees, in general, they also contain a proviso wherein a member-country, such as the Philippines, may choose to retain its right to tax the salaries and emoluments paid to its citizens or nationals. If the Philippine Government had really intended to exempt from income tax the salaries or emoluments that its citizens or nationals would earn from ADB, a full ratification of the ADB Charter should have been made, *without reservation*. gr

The National Internal Revenue Code of 1997 further underscores the reservation made by the Philippine Government of its right to tax the income derived by its citizens from all sources within and without. Sections 23(A) and 24(A)(1)(a) of the NIRC of 1997, as amended, declare:

> "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**;
>
> xxx xxx xxx
>
> SEC. 24. *Income Tax Rates.* –
>
> (A) *Rates of Income Tax on Individual Citizen and Individual Resident Alien of the Philippines.* –
>
> (1) An income tax is hereby imposed:
>
> (a) On the taxable income defined in Section 31 of this Code, other than income subject to tax under Subsections (B), (C) and (D) of this Section, derived for each taxable year **from all sources within and without the Philippines by every individual citizen of the Philippines residing therein**;" *(Emphasis supplied)*

The text of Sections 23 and 24 of the NIRC of 1997, as amended, clearly impose a global tax on the income of resident citizens. In the absence of a specific grant of tax-exemption, therefore, the salaries and emoluments received by Filipino ADB employees are subject to income tax. Petitioners' income tax payments for salaries and emoluments received from the ADB for taxable years 2012 and 2013 cannot be considered as erroneously and/or illegally collected by the BIR under Section 229 of the NIRC of 1997, as amended. Such income tax payments cannot, likewise, be refunded under Section 229.

On the argument that the issuance and the *retroactive* application of RMC No. 31-2013 enabled the BIR to illegally and/or erroneously collect income taxes from them, it must be pointed out that the taxation of salaries and emoluments of Filipino ADB employees is *not* anchored on the retroactive application of RMC No. 31-2013.

On this score, I must reaffirm the discussion in my Concurring and Dissenting Opinion in *Rowena Vicente et al. v. Commissioner of Internal Revenue.*[1]

RMC 31-2013 merely *reiterates* the general principles laid down in Section 23(A) and *amplifies* Section 24(A)(1)(a), both of which have been in effect since January 1, 1998, before the income tax payments of the petitioners in 2012 and 2013.

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

> "**SECTION 1. BACKGROUND.—**
>
> Foreign governments/embassies/diplomatic missions and international organizations situated in the Philippines acting as employers enjoy immunity from collecting taxes on salaries and emoluments of their employees, whether they are foreigners or Philippine nationals. This immunity from being constituted as withholding agents of the Philippine Government is accorded to these entities on the basis of international comity as embodied in several international agreements to which the Philippines is a signatory, such as, the Vienna Convention for International Relations (for embassies and diplomatic missions), Convention on the Privileges and Immunities of the United Nations, Convention on the Privileges and Immunities of Specialized Agencies (for the various agencies of the United Nations), Asian Development Bank Headquarters Agreement (for ADB), Articles of Agreement of the International Finance Corporation, among others.
>
> In recognition of this immunity, the Withholding Tax Regulations (Revenue Regulations No. 2-98, as amended), clearly reiterate the exemption from the withholding tax system of the remunerations being paid by foreign governments and international organizations to their employees who are residents or nationals of the Philippines. Section 2.78.1(B)(5) provides thus:

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[1] CTA Case No. 9096, July 7, 2017.

xxx xxx xxx

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 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

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

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

Section 246 on the non-retroactivity of issuances should be carefully read when viewed in the light of *ABS-CBN v. Court of Tax Appeals*,[2] an *assessment* case wherein the revocatory administrative

[2] G.R. No. L-52306, October 12, 1981, 108 SCRA 148.

issuances were not given retroactive application. In said case, the Supreme Court held that there will be an injustice and it would be violative of fair play if the withholding agent would be made to pay additional withholding taxes for 1965 to 1968 under the provisions of a circular later issued in 1971.

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

Evidently, when an administrative agency renders an opinion by means of a *circular* or memorandum, *it merely interprets a pre-existing law.*[3] RMC 31-2013, therefore, was issued merely to construe the *existing* provisions of the 1997 NIRC in relation to the various *existing* treaty obligations of the Philippines. The circular was neither issued nor intended to impose additional tax burdens not already found in the law.

*Third*, construction by an executive branch of government of a particular law although not binding upon courts must be given weight as the construction came from the branch of the government called upon to implement the law.[4] It is well-settled that the power to fill in the details and manner as to the enforcement and administration of a law may be delegated to various specialized administrative agencies.[5] RMC 31-2013 was precisely issued to fill in the details and manner of the enforcement of Sections 23(A) and 24(A)(1)(a) pursuant to Section 4[6] of the 1997 NIRC, as amended.

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[3] *La Suerte Cigar and Cigarette Factory, et al. v. Court of Tax Appeals, et al.*, G.R. No. L-36130, January 17, 1985, 134 SCRA 39.

[4] *Senator Heherson T. Alvarez, et al. v. Hon. Teofisto T. Guingona, Jr., in his capacity as Executive Secretary, et al.*, G.R. No. 118303, January 31, 1996, 252 SCRA 703.

[5] *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436.

[6] "SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals."

RMC 31-2013 belongs to a group of issuances that "disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel."[7] Based on this definition, RMC 31-2013 is an *interpretative rule* issued by the administrative agency headed by the respondent.

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

> "Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.
>
> An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. <u>Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing</u>

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

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

xxx xxx xxx

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

[8] G.R. No. 190837, March 5, 2014, 718 SCRA 160-162.

statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.

In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the 'Administrative Code of 1987,' on prior notice, hearing, and publication in order to be valid and binding, **except when the same is merely an interpretative rule. This is because '[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed**. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.'" (underscoring and emphases supplied; citations omitted)

More importantly, in *The Philippine American Life and General Insurance Company v. The Secretary of Finance, et al.*,[9] the Supreme Court upheld the validity of RMC 25-2011, issued in 2011, and ruled that the *retroactive* application of the circular to the taxable transaction in 2009 did not contravene Section 246, thus:

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

*Fourth*, even assuming there was a failure in the past by the respondent to take a categorical position on the taxation of Filipino ADB employees, such failure does not operate to estop the government from correcting the same. In fact, prolonged practice of non-collection of certain taxes, if proven to be erroneous, does not ripen into validity as the Supreme Court *En Banc* held in the consolidated cases of *La Suerte Cigar and Cigarette Factory v. Court of Appeals*:[10]

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[9] G.R. No. 210987, November 24, 2014, 741 SCRA 601.

[10] G.R. No. 125346, November 11, 2014, 739 SCRA 561.

"The cigarette manufacturers contend that for a long time prior to the transactions herein involved, the Collector of Internal Revenue had never subjected their purchases and importations of stemmed leaf tobacco to excise taxes. This prolonged practice allegedly represents the official and authoritative interpretation of the law by the Bureau of Internal Revenue which must be respected.

We are not persuaded.

In *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*, this court has held that this principle is not absolute, and an erroneous implementation by an officer based on a misapprehension of law may be corrected when the true construction is ascertained. Thus:

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

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

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

**Prolonged practice of the Bureau of Internal Revenue in not collecting the specific tax** on stemmed leaf tobacco **cannot validate what is otherwise an erroneous application and enforcement of** 𝒿𝓌

**the law**. The government is never estopped from collecting legitimate taxes because of the error committed by its agents.

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

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

*As a final word,* taxes are the lifeblood of the nation. Consequently, it must be remembered that tax refunds are construed strictly against the taxpayers.[11] Any claim for refund take the nature of tax exemptions that must be construed *strictissimi juris* against the claimants and liberally in favor of the taxing authority. This power of taxation being a high prerogative of sovereignty, its relinquishment is never presumed.[12]

To reiterate, it is my position that resident citizens or nationals of the Philippines who are working with the ADB are taxable on their income from all sources, including those derived from the ADB. The taxability of their income from the ADB is not dependent on RMC No. 31-2013 but on pre-existing provisions of the NIRC of 1997 and the treaties obligations between the Philippine Government and the ADB.

In sum, petitioners' income tax payments on salaries and emoluments received from the ADB for taxable years 2012 and 2013 were not erroneously and/or illegally collected by the BIR. Hence, such income tax payments cannot be refunded.

Accordingly, I vote to **DENY** the instant Petition for Review for lack of merit.

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

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[11] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013, 690 SCRA 417.

[12] *Nestle Philippines, Inc. (formerly Filipro, Inc.) v. Honorable Court of Appeals, et al.*, G.R. No. 134114, July 6, 2001, 360 SCRA 583.