Republic of the Philippines
Supreme Court
Manila

EN BANC

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES (COURAGE); JUDICIARY EMPLOYEES ASSOCIATION OF THE PHILIPPINES (JUDEA-PHILS); SANDIGANBAYAN EMPLOYEES ASSOCIATION (SEA); SANDIGAN NG MGA EMPLEYADONG NAGKAKAISA SA ADHIKAIN NG DEMOKRATIKONG ORGANISASYON (S.E.N.A.D.O.); ASSOCIATION OF COURT OF APPEALS EMPLOYEES (ACAE); DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION (DAREA); SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES-DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (SWEAP-DSWD); DEPARTMENT OF TRADE AND INDUSTRY EMPLOYEES UNION (DTI-EU); KAPISANAN PARA SA KAGALINGAN NG MGA KAWANI NG METRO MANILA DEVELOPMENT AUTHORITY (KKK-MMDA); WATER SYSTEM EMPLOYEES RESPONSE (WATER); CONSOLIDATED UNION OF EMPLOYEES OF THE NATIONAL HOUSING AUTHORITIES (CUE-NHA); AND KAPISANAN NG MGA MANGGAGAWA AT KAWANI NG QUEZON CITY (KASAMA KA-QC), Petitioners,	**G.R. No. 213446**

- versus -

COMMISSIONER, BUREAU OF INTERNAL REVENUE and THE SECRETARY, DEPARTMENT OF FINANCE,

Respondents.

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NATIONAL FEDERATION OF EMPLOYEES ASSOCIATIONS OF THE DEPARTMENT OF AGRICULTURE (NAFEDA), represented by its Executive Vice President ROMAN M. SANCHEZ, DEPARTMENT OF AGRICULTURE EMPLOYEES ASSOCIATION OFFICE OF THE SECRETARY (DAEA-OSEC), represented by its Acting President ROWENA GENETE, NATIONAL AGRICULTURAL AND FISHERIES COUNCIL EMPLOYEES ASSOCIATION (NAFCEA), represented by its President SOLIDAD B. BERNARDO, COMMISSION ON ELECTIONS EMPLOYEES UNION (COMELEC EU), represented by its President MARK CHRISTOPHER D. RAMIREZ, MINES AND GEOSCIENCES BUREAU EMPLOYEES ASSOCIATION CENTRAL OFFICE (MGBEA CO), represented by its President MAYBELLYN A. ZEPEDA, LIVESTOCK DEVELOPMENT COUNCIL EMPLOYEES ASSOCIATION (LDCEA), represented by its President JOVITA M. GONZALES, ASSOCIATION OF CONCERNED EMPLOYEES OF PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY (ACE OF PFDA), represented by its President ROSARIO DEBLOIS,

Intervenors.

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JUDGE ARMANDO A. YANGA, in his personal capacity and in his capacity as President of the RTC Judges Association of Manila, and MA. CRISTINA CARMELA I. JAPZON, in her personal capacity and in her capacity as President of the Philippine Association of Court Employees-Manila Chapter,
Petitioners,

- versus -

HON. COMMISSIONER KIM S. JACINTO-HENARES, in her capacity as Commissioner of the Bureau of Internal Revenue,
Respondent.

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THE MEMBERS OF THE ASSOCIATION OF REGIONAL TRIAL COURT JUDGES IN ILOILO CITY,
Intervenors.

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G.R. No. 213658

Present:

CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:

July 3, 2018

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DECISION

CAGUIOA, *J.*:

G.R. Nos. 213446 and 213658 are petitions for Certiorari, Prohibition and/or Mandamus under Rule 65 of the Rules of Court, with Application for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, uniformly seeking to: *(a)* issue a Temporary Restraining Order to enjoin the implementation of Revenue Memorandum Order (RMO) No. 23-2014 dated June 20, 2014 issued by the Commissioner of Internal Revenue (CIR); and *(b)* declare null, void and unconstitutional paragraphs A, B, C, and D of Section III, and Sections IV, VI and VII of RMO No. 23-2014. The petition in G.R. No. 213446 also prays for the issuance of a Writ of Mandamus to compel respondents to upgrade the ₱30,000.00 non-taxable ceiling of the 13th month pay and other benefits for the concerned officials and employees of the government.

The Antecedents

On June 20, 2014, respondent CIR issued the assailed RMO No. 23-2014, in furtherance of Revenue Memorandum Circular (RMC) No. 23-2012

dated February 14, 2012 on the "*Reiteration of the Responsibilities of the Officials and Employees of Government Offices for the Withholding of Applicable Taxes on Certain Income Payments and the Imposition of Penalties for Non-Compliance Thereof*," in order to clarify and consolidate the responsibilities of the public sector to withhold taxes on its transactions as a customer (on its purchases of goods and services) and as an employer (on compensation paid to its officials and employees) under the National Internal Revenue Code (NIRC or Tax Code) of 1997, as amended, and other special laws.

The Petitions

G.R. No. 213446

On August 6, 2014, petitioners Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), *et al.*, organizations/unions of government employees from the Sandiganbayan, Senate of the Philippines, Court of Appeals, Department of Agrarian Reform, Department of Social Welfare and Development, Department of Trade and Industry, Metro Manila Development Authority, National Housing Authority and local government of Quezon City, filed a Petition for Prohibition and Mandamus,[1] imputing grave abuse of discretion on the part of respondent CIR in issuing RMO No. 23-2014. According to petitioners, RMO No. 23-2014 classified as taxable compensation, the following allowances, bonuses, compensation for services granted to government employees, which they alleged to be considered by law as non-taxable fringe and *de minimis* benefits, to wit:

I. Legislative Fringe Benefits
   a. Anniversary Bonus
   b. Additional Food Subsidy
   c. 13th Month Pay
   d. Food Subsidy
   e. Cash Gift
   f. Cost of Living Assistance
   g. Efficiency Incentive Bonus
   h. Financial Relief Assistance
   i. Grocery Allowance
   j. Hospitalization
   k. Inflationary Assistance Allowance
   l. Longevity Service Pay
   m. Medical Allowance
   n. Mid-Year Eco. Assistance
   o. Productivity Incentive Benefit
   p. Transition Allowance
   q. Uniform Allowance

II. Judiciary Benefits
   a. Additional Compensation Income
   b. Extraordinary & Miscellaneous Expenses

[1] *Rollo* (G.R. No. 213446), pp. 3-81.

c. Monthly Special Allowance
d. Additional Cost of Living Allowance (from Judiciary Development Fund)
e. Productivity Incentive Benefit
f. Grocery Allowance
g. Clothing Allowance
h. Emergency Economic Assistance
i. Year-End Bonus (13th Month Pay)
j. Cash Gift
k. Loyalty Cash Award (Milestone Bonus)
l. Christmas Allowance
m. Anniversary Bonus[2]

Petitioners further assert that the imposition of withholding tax on these allowances, bonuses and benefits, which have been allotted by the Government to its employees free of tax for a long time, violates the prohibition on non-diminution of benefits under Article 100 of the Labor Code;[3] and infringes upon the fiscal autonomy of the Legislature, Judiciary, Constitutional Commissions and Office of the Ombudsman granted by the Constitution.[4]

Petitioners also claim that RMO No. 23-2014 (*1*) constitutes a usurpation of legislative power and diminishes the delegated power of local government units inasmuch as it defines new offenses and prescribes penalty therefor, particularly upon local government officials;[5] and (*2*) violates the equal protection clause of the Constitution as it discriminates against government officials and employees by imposing fringe benefit tax upon their allowances and benefits, as opposed to the allowances and benefits of employees of the private sector, the fringe benefit tax of which is borne and paid by their employers.[6]

Further, the petition also prays for the issuance of a writ of mandamus ordering respondent CIR to perform its duty under Section 32(B)(7)(e)(iv) of the NIRC of 1997, as amended, to upgrade the ceiling of the 13th month pay and other benefits for the concerned officials and employees of the government, including petitioners.[7]

G.R. No. 213658

On August 19, 2014, petitioners Armando A. Yanga, President of the Regional Trial Court (RTC) Judges Association of Manila, and Ma. Cristina Carmela I. Japzon, President of the Philippine Association of Court Employees – Manila Chapter, filed a Petition for Certiorari and Prohibition[8] as duly authorized representatives of said associations, seeking to nullify

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2 Id. at 29-33.
3 Id. at 27-28.
4 Id. at 28-29.
5 Id. at 21, 33-35.
6 Id. at 108-110.
7 Id. at 42-43.
8 *Rollo* (G.R. No. 213658), pp. 3-61.

RMO No. 23-2014 on the following grounds: (*1*) respondent CIR is bereft of any authority to issue the assailed RMO. The NIRC of 1997, as amended, expressly vests to the Secretary of Finance the authority to promulgate all needful rules and regulations for the effective enforcement of tax provisions;[9] and (*2*) respondent CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of RMO No. 23-2014 when it subjected to withholding tax benefits and allowances of court employees which are tax-exempt such as: (*a*) Special Allowance for Judiciary (SAJ) under Republic Act (RA) No. 9227 and additional cost of living allowance (AdCOLA) granted under Presidential Decree (PD) No. 1949 which are considered as non-taxable fringe benefits under Section 33(A) of the NIRC of 1997, as amended; (*b*) cash gift, loyalty awards, uniform and clothing allowance and additional compensation (ADCOM) granted to court employees which are considered *de minimis* under Section 33(C)(4) of the same Code; (*c*) allowances and benefits granted by the Judiciary which are not taxable pursuant to Section 32(7)(E) of the NIRC of 1997, as amended; and (*d*) expenses for the Judiciary provided under Commission on Audit (COA) Circular 2012-001.[10]

Petitioners further assert that RMO No. 23-2014 violates their right to due process of law because while it is ostensibly denominated as a mere revenue issuance, it is an illegal and unwarranted legislative action which sharply increased the tax burden of officials and employees of the Judiciary without the benefit of being heard.[11]

On October 21, 2014, the Court resolved to consolidate the foregoing cases.[12]

Respondents, through the Office of the Solicitor General (OSG), filed their Consolidated Comment[13] on December 23, 2014. They argue that the petitions are barred by the doctrine of hierarchy of courts and petitioners failed to present any special and important reasons or exceptional and compelling circumstance to justify direct recourse to this Court.[14]

Maintaining that RMO No. 23-2014 was validly issued in accordance with the power of the CIR to make rulings and opinion in connection with the implementation of internal revenue laws, respondents aver that unlike Revenue Regulations (RRs), RMOs do not require the approval or signature of the Secretary of Finance, as these merely provide directives or instructions in the implementation of stated policies, goals, objectives, plans and programs of the Bureau.[15] According to them, RMO No. 23-2014 is in fact a mere reiteration of the Tax Code and previous RMOs, and can be traced back to RR No. 01-87

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9 Id. at 17-20.
10 Id. at 20-42.
11 Id. at 43.
12 Id. at 159-160.
13 Id. at 212-265.
14 Id. at 218-220.
15 Id. at 220.

dated April 2, 1987 implementing Executive Order No. 651 which was promulgated by then Secretary of Finance Jaime V. Ongpin upon recommendation of then CIR Bienvenido A. Tan, Jr. Thus, the CIR never usurped the power and authority of the legislature in the issuance of the assailed RMO.[16] Also, contrary to petitioners' assertion, the due process requirements of hearing and publication are not applicable to RMO No. 23-2014.[17]

Respondents further argue that petitioners' claim that RMO No. 23-2014 is unconstitutional has no leg to stand on. They explain that the constitutional guarantee of fiscal autonomy to Judiciary and Constitutional Commissions does not include exemption from payment of taxes, which is the lifeblood of the nation.[18] They also aver that RMO No. 23-2014 never intended to diminish the powers of local government units. It merely reiterates the obligation of the government as an employer to withhold taxes, which has long been provided by the Tax Code.[19]

Moreover, respondents assert that the allowances and benefits enumerated in Section III A, B, C, and D, are not fringe benefits which are exempt from taxation under Section 33 of the Tax Code, nor *de minimis* benefits excluded from employees' taxable basic salary. They explain that the SAJ under RA No. 9227 and AdCOLA under PD No. 1949 are additional allowances which form part of the employee's basic salary; thus, subject to withholding taxes.[20]

Respondents also claim that RMO No. 23-2014 does not violate petitioners' right to equal protection of laws as it covers all employees and officials of the government. It does not create a new category of taxable income nor make taxable those which are not taxable but merely reflect those incomes which are deemed taxable under existing laws.[21]

Lastly, respondents aver that mandamus will not lie to compel respondents to increase the ceiling for tax exemptions because the Tax Code does not impose a mandatory duty on the part of respondents to do the same.[22]

The Petitions-in-Intervention

Meanwhile, on September 11, 2014, the National Federation of Employees Associations of the Department of Agriculture (NAFEDA) *et al.*, duly registered union/association of employees of the Department of Agriculture, National Agricultural and Fisheries Council, Commission on Elections, Mines and Geosciences Bureau, and Philippine Fisheries Development Authority, claiming similar interest as petitioners in G.R. No.

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16 Id. at 224.
17 Id. at 222.
18 Id. at 227-229.
19 Id. at 229-230.
20 Id. at 231-245.
21 Id. at 246-248.
22 Id. at 249-252.

213446, filed a Petition-in-Intervention[23] seeking the nullification of items III, VI and VII of RMO No. 23-2014 based on the following grounds: (*1*) that respondent CIR acted with grave abuse of discretion and usurped the power of the Legislature in issuing RMO No. 23-2014 which imposes additional taxes on government employees and prescribes penalties for government official's failure to withhold and remit the same;[24] (*2*) that RMO No. 23-2014 violates the equal protection clause because the Commission on Human Rights (CHR) was not included among the constitutional commissions covered by the issuance and the ADCOM of employees of the Judiciary was subjected to withholding tax but those received by employees of the Legislative and Executive branches are not;[25] and (*3*) that respondent CIR failed to upgrade the tax exemption ceiling for benefits under Section 32(B)(7) of the NIRC of 1997, as amended.[26]

In its Comment,[27] respondents, through the OSG, sought the denial of the Petition-in-Intervention for failure of the intervenors to seek prior leave of Court and to demonstrate that the existing consolidated petitions are not sufficient to protect their interest as parties affected by the assailed RMO.[28] They further contend that, contrary to the intervenors' position, the CHR is not exempt from the applicability of RMO No. 23-2014.[29] They explain that the enumeration of government offices and constitutional bodies covered by RMO No. 23-2014 is not exclusive; Section III thereof in fact states that RMO No. 23-2014 covers all employees of the public sector.[30] They also allege that the ADCOM referred to in Section III(B) of the assailed RMO is unique to the Judiciary; employees and officials in the executive and legislative do not receive this specific type of ADCOM enjoyed by the employees and officials of the Judicial branch.[31]

On October 10, 2014, a Motion for Intervention with attached Complaint in Intervention[32] was filed, in G.R. No. 213658, by the Members of the Association of Regional Trial Court Judges in Iloilo City. Claiming that they are similarly situated with petitioners, said intervenors pray that the Court declare null and void RMO No. 23-2014 and direct the Bureau of Internal Revenue (BIR) to refund the amount illegally exacted from the salaries/compensations of the judges by virtue of the implementation of RMO No. 23-2014.[33] The intervenors claim that RMO No. 23-2014 violates their right to due process as it takes away a portion of their salaries and compensation without giving them the opportunity to be heard.[34] They also

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23 *Rollo* (G.R. No. 213446), pp. 117-143.
24 Id. at 130-135.
25 Id. at 135-137.
26 Id. at 137-139.
27 Id. at 307-324.
28 Id. at 312.
29 Id. at 316.
30 Id.
31 Id. at 317.
32 *Rollo* (G.R. No. 213658), pp. 147-158.
33 Id. at 154.
34 Id. at 153.

aver that the implementation of RMO No. 23-2014 resulted in the diminution of their salaries/compensation in violation of Sections 3 and 10, Article VIII of the Constitution.[35]

In their Comment[36] to the Motion, respondents adopted the arguments in their Consolidated Comment and further stated that: (1) RMO No. 23-2014 does not diminish the salaries and compensation of members of the judiciary as it has been judicially settled that the imposition of taxes on salaries and compensation of judges and justices is not equivalent to diminution of the same;[37] (2) the allowances and benefits enumerated under Section III(B) of RMO No. 23-2014 are not fringe benefits exempt from taxation;[38] (3) the AdCOLA and SAJ are not fringe benefits as these are considered part of the basic salary of government employees subject to income tax;[39] and (4) there is no valid ground for the refund of the taxes withheld pursuant to RMO No. 23-2014.[40]

In sum, petitioners and intervenors (collectively referred to as petitioners) argue that:

1. RMO No. 23-2014 is *ultra vires* insofar as:

    a. Sections III and IV of RMO No. 23-2014, for subjecting to withholding taxes non-taxable allowances, bonuses and benefits received by government employees;

    b. Sections VI and VII, for defining new offenses and prescribing penalties therefor, particularly upon government officials;

2. RMO No. 23-2014 violates the equal protection clause as it discriminates against government employees;

3. RMO No. 23-2014 violates fiscal autonomy enjoyed by government agencies;

4. The implementation of RMO No. 23-2014 results in diminution of benefits of government employees, a violation of Article 100 of the Labor Code; and

5. Respondents may be compelled through a writ of mandamus to increase the tax-exempt ceiling for 13th month pay and other benefits.

On the other hand, respondents counter that:

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35 Id.
36 Id. at 273-294.
37 Id. at 278-279.
38 Id. at 280-283.
39 Id. at 284-290.
40 Id. at 291.

1. The instant consolidated petitions are barred by the doctrine of hierarchy of courts;

2. The CIR did not abuse its discretion in the issuance of RMO No. 23-2014 because:

    a. It was issued pursuant to the CIR's power to interpret the NIRC of 1997, as amended, and other tax laws, under Section 4 of the NIRC of 1997, as amended;

    b. RMO No. 23-2014 does not discriminate against government employees. It does not create a new category of taxable income nor make taxable those which are exempt;

    c. RMO No. 23-2014 does not result in diminution of benefits;

    d. The allowances, bonuses or benefits listed under Section III of the assailed RMO are not fringe benefits;

    e. The fiscal autonomy granted by the Constitution does not include tax exemption; and

3. Mandamus does not lie against respondents because the NIRC of 1997, as amended, does not impose a mandatory duty upon them to increase the tax-exempt ceiling for 13th month pay and other benefits.

Incidentally, in a related case docketed as A.M. No. 16-12-04-SC, the Court, on July 11, 2017, issued a Resolution directing the Fiscal Management and Budget Office of the Court to maintain the *status quo* by the non-withholding of taxes from the benefits authorized to be granted to judiciary officials and personnel, namely, the Mid-year Economic Assistance, the Year-end Economic Assistance, the Yuletide Assistance, the Special Welfare Assistance (SWA) and the Additional SWA, until such time that a decision is rendered in the instant consolidated cases.

The Court's Ruling

I.

Procedural

Non-exhaustion of administrative remedies.

It is an unquestioned rule in this jurisdiction that certiorari under Rule 65 will only lie if there is no appeal, or any other plain, speedy and adequate

remedy in the ordinary course of law against the assailed issuance of the CIR.[41] The plain, speedy and adequate remedy expressly provided by law is an appeal of the assailed RMO with the Secretary of Finance under Section 4 of the NIRC of 1997, as amended, to wit:

> 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.[42]

The CIR's exercise of its power to interpret tax laws comes in the form of revenue issuances, which include RMOs that provide "directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing."[43] These revenue issuances are subject to the review of the Secretary of Finance. In relation thereto, Department of Finance Department Order No. 007-02[44] issued by the Secretary of Finance laid down the procedure and requirements for filing an appeal from the adverse ruling of the CIR to the said office. A taxpayer is granted a period of thirty (30) days from receipt of the adverse ruling of the CIR to file with the Office of the Secretary of Finance a request for review in writing and under oath.[45]

In *Asia International Auctioneers, Inc. v. Parayno, Jr.*,[46] the Court dismissed the petition seeking the nullification of RMC No. 31-2003 for failing to exhaust administrative remedies. The Court held:

> x x x It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also pursue it to its appropriate conclusion

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41 *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 890 (2015), citing *Interorient Maritime Enterprises, Inc. v. NLRC*, 330 Phil. 493, 502 (1996).

42 Emphasis and underscoring supplied.

43 "*Revenue Issuances*," <https://www.bir.gov.ph/index.php/revenue-issuances.html> (last accessed on June 28, 2018).

44 PROVIDING FOR THE IMPLEMENTING RULES OF THE FIRST PARAGRAPH OF SECTION 4 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, REPEALING FOR THIS PURPOSE DEPARTMENT ORDER NO. 005-99 AND REVENUE ADMINISTRATIVE ORDER NO. 1-99, May 7, 2002.

45 DOF Department Order No. 007-02, Sec. 3.

46 565 Phil. 255 (2007).

> before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court.[47]

The doctrine of exhaustion of administrative remedies is not without practical and legal reasons. For one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[48] While there are recognized exceptions to this salutary rule, petitioners have failed to prove the presence of any of those in the instant case.

Violation of the rule on hierarchy of courts.

Moreover, petitioners violated the rule on hierarchy of courts as the petitions should have been initially filed with the CTA, having the exclusive appellate jurisdiction to determine the constitutionality or validity of revenue issuances.

In *The Philippine American Life and General Insurance Co. v. Secretary of Finance*,[49] the Court held that rulings of the Secretary of Finance in its exercise of its power of review under Section 4 of the NIRC of 1997, as amended, are appealable to the CTA.[50] The Court explained that while there is no law which explicitly provides where rulings of the Secretary of Finance under the adverted to NIRC provision are appealable, Section 7(a)[51] of RA No. 1125, the law creating the CTA, is nonetheless sufficient, albeit impliedly, to include appeals from the Secretary's review under Section 4 of the NIRC of 1997, as amended.

Moreover, echoing its pronouncements in *City of Manila v. Grecia-Cuerdo*,[52] that the CTA has the power of certiorari within its appellate jurisdiction, the Court declared that "it is now within the power of the CTA, through its power of *certiorari*, to rule on the validity of a particular administrative rule or regulation so long as it is within its appellate jurisdiction. Hence, it can now rule not only on the propriety of an assessment or tax treatment

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47 Id. at 270-271.

48 *The Iloilo City Zoning Board of Adjustment and Appeals v. Gegato-Abecia Funeral Homes, Inc.*, 462 Phil. 803, 812 (2003), citing *Paat v. Court of Appeals*, 334 Phil. 146, 152-153 (1997).

49 747 Phil. 811 (2014).

50 Id. at 823-824.

51 SEC. 7. *Jurisdiction.* – The CTA shall exercise:

> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue[.] (Underscoring supplied)

52 726 Phil. 9 (2014).

of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."[53]

Subsequently, in *Banco de Oro v. Republic,*[54] the Court, sitting *En Banc*, further held that the CTA has exclusive appellate jurisdiction to review, on certiorari, the constitutionality or validity of revenue issuances, even without a prior issuance of an assessment. The Court *En Banc* reasoned:

> We revert to the earlier rulings in *Rodriguez*, *Leal*, and *Asia International Auctioneers, Inc.* The Court of Tax Appeals has exclusive jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue.
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> Article VIII, Section 1 of the 1987 Constitution provides the general definition of judicial power:
>
> ARTICLE [VIII]
> JUDICIAL DEPARTMENT
>
> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and *to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.* (Emphasis supplied)
>
> Based on this constitutional provision, this Court recognized, for the first time, in *The City of Manila v. Hon. Grecia-Cuerdo*, the Court of Tax Appeals' jurisdiction over petitions for certiorari assailing interlocutory orders issued by the Regional Trial Court in a local tax case. Thus:
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> [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**
>
> On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive

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53 *The Philippine American Life and General Insurance Co. v. Secretary of Finance*, supra note 49, at 831.

54 793 Phil. 97 (2016).

> appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases. (Emphasis in the original)

This Court further explained that the Court of Tax Appeals' authority to issue writs of certiorari is inherent in the exercise of its appellate jurisdiction:

> A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.
>
> Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.
>
> In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.
>
> Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.
>
> Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates." Hence, demands, matters or

> questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance. (Citations omitted)

Judicial power likewise authorizes lower courts to determine the constitutionality or validity of a law or regulation in the first instance. This is contemplated in the Constitution when it speaks of appellate review of final judgments of inferior courts in cases where such constitutionality is in issue.

On June 16, 1954, Republic Act No. 1125 created the Court of Tax Appeals not as another superior administrative agency as was its predecessor — the former Board of Tax Appeals — but as a part of the judicial system with exclusive jurisdiction to act on appeals from:

> (1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;
>
> (2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and
>
> (3) Decisions of provincial or city Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

Republic Act No. 1125 transferred to the Court of Tax Appeals jurisdiction over all matters involving assessments that were previously cognizable by the Regional Trial Courts (then courts of first instance).

In 2004, Republic Act No. 9282 was enacted. It expanded the jurisdiction of the Court of Tax Appeals and elevated its rank to the level of a collegiate court with special jurisdiction. Section 1 specifically provides that the Court of Tax Appeals is of the same level as the Court of Appeals and possesses "all the inherent powers of a Court of Justice."

Section 7, as amended, grants the Court of Tax Appeals the exclusive jurisdiction to resolve all tax-related issues:

> Section 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5) Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6) Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7) Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

The Court of Tax Appeals has undoubted jurisdiction to pass upon the constitutionality or validity of a tax law or regulation when raised by the taxpayer as a defense in disputing or contesting an

> **assessment or claiming a refund. It is only in the lawful exercise of its power to pass upon all matters brought before it, as sanctioned by Section 7 of Republic Act No. 1125, as amended.**
>
> **This Court, however, declares that the Court of Tax Appeals may likewise take cognizance of cases directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance (revenue orders, revenue memorandum circulars, rulings).**
>
> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.
>
> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.
>
> Republic Act No. 9282, a special and later law than Batas Pambansa Blg. 129 provides an exception to the original jurisdiction of the Regional Trial Courts over actions questioning the constitutionality or validity of tax laws or regulations. Except for local tax cases, actions directly challenging the constitutionality or validity of a tax law or regulation or administrative issuance may be filed directly before the Court of Tax Appeals.
>
> **Furthermore, with respect to administrative issuances (revenue orders, revenue memorandum circulars, or rulings), these are issued by the Commissioner under its power to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws. Tax rulings, on the other hand, are official positions of the Bureau on inquiries of taxpayers who request clarification on certain provisions of the National Internal Revenue Code, other tax laws, or their implementing regulations. Hence, the determination of the validity of these issuances clearly falls within the exclusive appellate jurisdiction of the Court of Tax Appeals under Section 7(1) of Republic Act No. 1125, as amended, subject to prior review by the Secretary of Finance, as required under Republic Act No. 8424.**[55]

A direct invocation of this Court's jurisdiction should only be allowed when there are special, important and compelling reasons clearly and specifically spelled out in the petition.[56]

Nevertheless, despite the procedural infirmities of the petitions that warrant their outright dismissal, the Court deems it prudent, if not crucial, to take cognizance of, and accordingly act on, the petitions as they assail the validity of the actions of the CIR that affect thousands of employees in the different government agencies and instrumentalities. The Court, following recent jurisprudence, avails itself of its judicial prerogative in order not to

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[55] Id. at 118-125. Emphasis supplied; citations omitted.

[56] *Dagan v. Office of the Ombudsman*, 721 Phil. 400, 413 (2013).

delay the disposition of the case at hand and to promote the vital interest of justice. As the Court held in *Bloomberry Resorts and Hotels, Inc. v. Bureau of Internal Revenue*:[57]

> From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.*, pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. **To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR.** The position we now take is more in accord with latest jurisprudence. x x x[58]

II.

Substantive

The petitions assert that the CIR's issuance of RMO No. 23-2014, particularly Sections III, IV, VI and VII thereof, is tainted with grave abuse of discretion. "By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction."[59] It is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[60]

As earlier stated, Section 4 of the NIRC of 1997, as amended, grants the CIR the power to issue rulings or opinions interpreting the provisions of the NIRC or other tax laws. However, the CIR cannot, in the exercise of such power, issue administrative rulings or circulars inconsistent with the law sought to be applied. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.[61] The courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with the law they seek to apply and implement.[62] Thus, in *Philippine Bank of Communications v. Commissioner of Internal Revenue,*[63] the Court upheld the nullification of RMC No. 7-85 issued by the Acting Commissioner of Internal

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57 792 Phil. 751 (2016).

58 Id. at 760-761. Emphasis and underscoring supplied.

59 *Republic v. Rambuyong*, 646 Phil. 373, 382 (2010), citing *Banal III v. Panganiban*, 511 Phil. 605, 614 (2005).

60 Id. at 382, citing *Ferrer v. Office of the Ombudsman*, 583 Phil. 50, 63-64 (2008).

61 *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*, 453 Phil. 1043, 1052 (2003).

62 *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999).

63 Id. at 928-930.

Revenue because it was contrary to the express provision of Section 230 of the NIRC of 1977.

Also, in *Banco de Oro v. Republic,*[64] the Court nullified BIR Ruling Nos. 370-2011 and DA 378-2011 because they completely disregarded the 20 or more-lender rule added by Congress in the NIRC of 1997, as amended, and created a distinction for government debt instruments as against those issued by private corporations when there was none in the law.[65]

Conversely, if the assailed administrative rule conforms with the law sought to be implemented, the validity of said issuance must be upheld. Thus, in *The Philippine American Life and General Insurance Co. v. Secretary of Finance,*[66] the Court declared valid Section 7 (c.2.2) of RR No. 06-08 and RMC No. 25-11, because they merely echoed Section 100 of the NIRC that the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift; thus, subject to donor's tax.[67]

In this case, the Court finds the petitions partly meritorious only insofar as Section VI of the assailed RMO is concerned. On the other hand, the Court upholds the validity of Sections III, IV and VII thereof as these are in fealty to the provisions of the NIRC of 1997, as amended, and its implementing rules.

Sections III and IV of RMO No. 23-2014 are valid.

Compensation income is the income of the individual taxpayer arising from services rendered pursuant to an employer-employee relationship.[68] Under the NIRC of 1997, as amended, every form of compensation for services, whether paid in cash or in kind, is generally subject to income tax and consequently to withholding tax.[69] The name designated to the compensation income received by an employee is immaterial.[70] Thus, salaries, wages, emoluments and honoraria, allowances, commissions, fees, (including director's fees, if the director is, at the same time, an employee of the employer/corporation), bonuses, fringe benefits (except those subject to the fringe benefits tax under Section 33 of the Tax Code), pensions, retirement pay, and other income of a similar nature, constitute compensation income[71] that are taxable and subject to withholding.

The withholding tax system was devised for three primary reasons, namely: (1) to provide the taxpayer a convenient manner to meet his probable

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64 750 Phil. 349 (2015).
65 Id. at 399, 412.
66 Supra note 49.
67 Id. at 831-832.
68 Recalde, E.R., *A Treatise on Philippine Internal Revenue Taxes* (2014), pp. 257-258, citing RR No. 2-98, Sec. 2.78.1(A).
69 *ING Bank N.V. v. Commissioner of Internal Revenue*, 764 Phil. 418, 443 (2015).
70 Id. at 446.
71 See RR No. 2-98, Sec. 2.78.1(A).

income tax liability; (2) to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns; and (3) to improve the government's cash flow.[72] This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.[73]

Section 79(A) of the NIRC of 1997, as amended, states:

> SEC. 79. *Income Tax Collected at Source.* –
>
> (A) *Requirement of Withholding.* – Except in the case of a minimum wage earner as defined in Section 22(HH) of this Code, **every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner**.[74]

In relation to the foregoing, Section 2.78 of RR No. 2-98,[75] as amended, issued by the Secretary of Finance to implement the withholding tax system under the NIRC of 1997, as amended, provides:

> SECTION 2.78. *Withholding Tax on Compensation.* — The withholding of tax on compensation income is a method of collecting the income tax at source upon receipt of the income**. It applies to all employed individuals whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent**.[76]

Section 2.78.3 of RR No. 2-98 further states that the term employee "covers ***all*** *employees, including officers and employees, whether elected or appointed, of the Government of the Philippines, or any political subdivision thereof or any agency or instrumentality*"; while an employer, as Section 2.78.4 of the same regulation provides, "embraces not only an individual and an organization engaged in trade or business, but also *includes an organization exempt from income tax, such as charitable and religious organizations, clubs, social organizations and societies, as well as the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions*."

The law is therefore clear that withholding tax on compensation applies to the Government of the Philippines, including its agencies, instrumentalities, and political subdivisions. The Government, as an employer, is constituted as

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72 *Chamber of Real Estate and Builders Associations, Inc. v. Romulo*, 628 Phil. 508, 535-536 (2010).

73 Id. at 536.

74 Emphasis supplied.

75 IMPLEMENTING REPUBLIC ACT NO. 8424, "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED" RELATIVE TO THE WITHHOLDING ON INCOME SUBJECT TO THE EXPANDED WITHHOLDING TAX AND FINAL WITHHOLDING TAX, WITHHOLDING OF INCOME TAX ON COMPENSATION, WITHHOLDING OF CREDITABLE VALUE-ADDED TAX AND OTHER PERCENTAGE TAXES, April 17, 1998.

76 Emphasis supplied.

the withholding agent, mandated to deduct, withhold and remit the corresponding tax on compensation income paid to all its employees.

However, not all income payments to employees are subject to withholding tax. The following allowances, bonuses or benefits, excluded by the NIRC of 1997, as amended, from the employee's compensation income, are exempt from withholding tax on compensation:

1. Retirement benefits received under RA No. 7641 and those received by officials and employees of private firms, whether individual or corporate, under a reasonable private benefit plan maintained by the employer subject to the requirements provided by the Code [Section 32(B)(6)(a) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(a) of RR No. 2-98];

2. Any amount received by an official or employee or by his heirs from the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee, such as retrenchment, redundancy, or cessation of business [Section 32(B)(6)(b) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(b) of RR No. 2-98];

3. Social security benefits, retirement gratuities, pensions and other similar benefits received by residents or non-resident citizens of the Philippines or aliens who come to reside permanently in the Philippines from foreign government agencies and other institutions private or public [Section 32(B)(6)(c) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(c) of RR No. 2-98];

4. Payments of benefits due or to become due to any person residing in the Philippines under the law of the United States administered by the United States Veterans Administration [Section 32(B)(6)(d) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(d) of RR No. 2-98];

5. Payments of benefits made under the Social Security System Act of 1954 as amended [Section 32(B)(6)(e) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(e) of RR No. 2-98];

6. Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity received by government officials and employees [Section 32(B)(6)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(1)(f) of RR No. 2-98];

7. Thirteenth (13th) month pay and other benefits received by officials and employees of public and private entities not exceeding ₱82,000.00 [Section 32(B)(7)(e) of the NIRC of 1997, as amended, and Section 2.78.1(B)(11) of RR No. 2-98, as amended by RR No. 03-15];

8. GSIS, SSS, Medicare and Pag-Ibig contributions, and union dues of individual employees [Section 32(B)(7)(f) of the NIRC of 1997, as amended and Section 2.78.1(B)(12) of RR No. 2-98];

9. Remuneration paid for agricultural labor [Section 2.78.1(B)(2) of RR No. 2-98];

10. Remuneration for domestic services [Section 28, RA No. 10361 and Section 2.78.1(B)(3) of RR No. 2-98];

11. Remuneration for casual labor not in the course of an employer's trade or business [Section 2.78.1(B)(4) of RR No. 2-98];

12. Remuneration not more than the statutory minimum wage and the holiday pay, overtime pay, night shift differential pay and hazard pay received by Minimum Wage Earners [Section 24(A)(2) of the NIRC of 1997, as amended];

13. Compensation for services by a citizen or resident of the Philippines for a foreign government or an international organization [Section 2.78.1(B)(5) of RR No. 2-98];

14. Actual, moral, exemplary and nominal damages received by an employee or his heirs pursuant to a final judgment or compromise agreement arising out of or related to an employer-employee relationship [Section 32(B)(4) of the NIRC of 1997, as amended and Section 2.78.1(B)(6) of RR No. 2-98];

15. The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, provided however, that interest payments agreed under the policy for the amounts which are held by the insured under such an agreement shall be included in the gross income [Section 32(B)(1) of the NIRC of 1997, as amended and Section 2.78.1(B)(7) of RR No. 2-98];

16. The amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract [Section 32(B)(2) of the NIRC of 1997, as amended and Section 2.78.1(B)(8) of RR No. 2-98];

17. Amounts received through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness [Section 32(B)(4) of the NIRC of 1997, as amended and Section 2.78.1(B)(9) of RR No. 2-98];

18. Income of any kind to the extent required by any treaty obligation binding upon the Government of the Philippines [Section 32(B)(5) of the NIRC of 1997, as amended and Section 2.78.1(B)(10) of RR No. 2-98];

19. Fringe and *De minimis* Benefits. [Section 33(C) of the NIRC of 1997, as amended); and

20. Other income received by employees which are exempt under special laws (RATA granted to public officers and employees under the General Appropriations Act and Personnel Economic Relief Allowance granted to government personnel).

Petitioners assert that RMO No. 23-2014 went beyond the provisions of the NIRC of 1997, as amended, insofar as Sections III and IV thereof impose new or additional taxes to allowances, benefits or bonuses granted to government employees. A closer look at the assailed Sections, however, reveals otherwise.

For reference, Sections III and IV of RMO No. 23-2014 read, as follows:

III. OBLIGATION TO WITHHOLD ON COMPENSATION PAID TO GOVERNMENT OFFICIALS AND EMPLOYEES

As an employer, government offices including government-owned or controlled corporations (such as but not limited to the Bangko Sentral ng Pilipinas, Metropolitan Waterworks and Sewerage System, Philippine Deposit Insurance Corporation, Government Service Insurance System, Social Security System), as well as provincial, city and municipal governments are constituted as withholding agents for purposes of the creditable tax required to be withheld from compensation paid for services of its employees.

Under Section 32(A) of the NIRC of 1997, as amended, compensation for services, in whatever form paid and no matter how called, form part of gross income. Compensation income includes, among others, salaries, fees, wages, emoluments and honoraria, allowances, commissions (e.g. transportation, representation, entertainment and the like); fees including director's fees, if the director is, at the same time, an employee of the employer/corporation; taxable bonuses and fringe benefits except those which are subject to the fringe benefits tax under Section 33 of the NIRC; taxable pensions and retirement pay; and other income of a similar nature.

The foregoing also includes allowances, bonuses, and other benefits of similar nature received by officials and employees of the Government of the Republic of the Philippines or any of its branches, agencies and instrumentalities, its political subdivisions, including government-owned and/or controlled corporations (herein referred to as *officials and employees in the public sector*) which are composed of (but are not limited to) the following:

A. Allowances, bonuses, honoraria or benefits received by employees and officials in the Legislative Branch, such as anniversary bonus, Special Technical Assistance Allowance, Efficiency Incentive Benefits, Additional Food Subsidy, Eight[h] (8^{th}) Salary Range Level Allowance, Hospitalization Benefits, Medical Allowance, Clothing Allowance, Longevity Pay, Food Subsidy, Transition Allowance, Cost of Living Allowance, Inflationary Adjustment Assistance, Mid-Year Economic Assistance, Financial Relief Assistance, Grocery Allowance, Thirteenth (13^{th}) Month Pay, Cash Gift and Productivity Incentive Benefit and other allowances, bonuses and benefits given by the Philippine Senate and House of Representatives to their officials and employees, **subject to the exemptions enumerated herein.**

B. Allowances, bonuses, honoraria or benefits received by employees and officials in the Judicial Branch, such as the Additional Compensation (ADCOM), Extraordinary and Miscellaneous Expenses (EME), Monthly Special Allowance from the Special Allowance for the Judiciary, Additional Cost of Living Allowance from the Judiciary Development Fund, Productivity Incentive Benefit, Grocery Allowance, Clothing Allowance, Emergency Economic Allowance, Year-End Bonus, Cash Gift, Loyalty Cash Award (Milestone Bonus), SC Christmas Allowance, anniversary bonuses and other allowances, bonuses and benefits given by the Supreme Court of the Philippines and all other courts and offices under the Judicial Branch to their officials and employees, **subject to the exemptions enumerated herein.**

C. Compensation for services in whatever form paid, including, but not limited to allowances, bonuses, honoraria or benefits received by employees and officials in the Constitutional bodies (Commission on Election, Commission on Audit, Civil Service Commission) and the Office of the Ombudsman, **subject to the exemptions enumerated herein.**

D. Allowances, bonuses, honoraria or benefits received by employees and officials in the Executive Branch, such as the Productivity Enhancement Incentive (PEI), Performance-Based Bonus, anniversary bonus and other allowances, bonuses and benefits given by the departments, agencies and other offices under the Executive Branch to their officials and employees, **subject to the exemptions enumerated herein.**

Any amount paid either as advances or reimbursements for expenses incurred or reasonably expected to be incurred by the official and employee in the performance of his/her duties are not compensation subject to withholding, if the following conditions are satisfied:

1. The employee was duly authorized to incur such expenses on behalf of the government; and

2. Compliance with pertinent laws and regulations on accounting and liquidation of advances and reimbursements, including, but not limited to withholding tax rules. The expenses should be duly receipted for and in the name of the government office concerned.

Other than those pertaining to intelligence funds duly appropriated and liquidated, any amount not in compliance with the foregoing requirements shall be considered as part of the gross taxable compensation income of the taxpayer. Intelligence funds not duly appropriated and not properly liquidated shall form part of the compensation of the government officials/personnel concerned, unless returned.

IV. NON-TAXABLE COMPENSATION INCOME – Subject to existing laws and issuances, the following income received by the officials and employees in the public sector are not subject to income tax and withholding tax on compensation:

A. Thirteenth (13^{th}) Month Pay and Other Benefits not exceeding Thirty Thousand Pesos (P30,000.00) paid or accrued during the year. Any amount exceeding Thirty Thousand Pesos (P30,000.00) are taxable compensation. This includes:

1. Benefits received by officials and employees of the national and local government pursuant to Republic Act no. 6686 ("*An Act Authorizing Annual Christmas Bonus to National and Local Government Officials and Employees Starting CY 1998*");

2. Benefits received by employees pursuant to Presidential Decree No. 851 ("*Requiring All Employers to Pay Their Employees a 13^{th} Month Pay*"), as amended by Memorandum Order No. 28, dated August 13, 1986;

3. Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 19, 1986;

4. Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gift in cash or in kind and other benefits of similar nature actually received by officials and employees of government offices, including the additional compensation allowance (ACA) granted and paid to all officials and employees of the National Government Agencies (NGAs) including state universities and colleges (SUCs), government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs) and Local Government Units (LGUs).

B. Facilities and privileges of relatively small value or "*De Minimis Benefits*" as defined in existing issuances and conforming to the ceilings prescribed therein;

C. Fringe benefits which are subject to the fringe benefits tax under Section 33 of the NIRC, as amended;

D. Representation and Transportation Allowance (RATA) granted to public officers and employees under the General Appropriations Act;

E. Personnel Economic Relief Allowance (PERA) granted to government personnel;

F. The monetized value of leave credits paid to government officials and employees;

G. Mandatory/compulsory GSIS, Medicare and Pag-Ibig Contributions, *provided that*, voluntary contributions to these institutions in excess of the amount considered mandatory/compulsory are not excludible from the gross income of the taxpayer and hence, not exempt from Income Tax and Withholding Tax;

H. Union dues of individual employees;

I. Compensation income of employees in the public sector with compensation income of not more than the Statutory Minimum Wage (SMW) in the non-agricultural sector applicable to the place where he/she is assigned;

J. Holiday pay, overtime pay, night shift differential pay, and hazard pay received by Minimum Wage Earners (MWEs);

K. Benefits received from the GSIS Act of 1937, as amended, and the retirement gratuity/benefits received by government officials and employees under pertinent retirement laws;

L. All other benefits given which are not included in the above enumeration but are exempted from income tax as well as withholding tax on compensation under existing laws, as confirmed by BIR.[77]

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[77] Emphasis and underscoring supplied.

Clearly, Sections III and IV of the assailed RMO do not charge any new or additional tax. On the contrary, they merely mirror the relevant provisions of the NIRC of 1997, as amended, and its implementing rules on the withholding tax on compensation income as discussed above. The assailed Sections simply reinforce the rule that every form of compensation for personal services received by all employees arising from employer-employee relationship is deemed subject to income tax and, consequently, to withholding tax,[78] unless specifically exempted or excluded by the Tax Code; and the duty of the Government, as an employer, to withhold and remit the correct amount of withholding taxes due thereon.

While Section III enumerates certain allowances which may be subject to withholding tax, it does not exclude the possibility that these allowances may fall under the exemptions identified under Section IV – thus, the phrase, "subject to the exemptions enumerated herein." In other words, Sections III and IV articulate in a general and broad language the provisions of the NIRC of 1997, as amended, on the forms of compensation income deemed subject to withholding tax and the allowances, bonuses and benefits exempted therefrom. Thus, Sections III and IV cannot be said to have been issued by the CIR with grave abuse of discretion as these are fully in accordance with the provisions of the NIRC of 1997, as amended, and its implementing rules.

Furthermore, the Court finds untenable petitioners' contention that the assailed provisions of RMO No. 23-2014 contravene the equal protection clause, fiscal autonomy, and the rule on non-diminution of benefits.

The constitutional guarantee of equal protection is not violated by an executive issuance which was issued to simply reinforce existing taxes applicable to both the private and public sector. As discussed, the withholding tax system embraces not only private individuals, organizations and corporations, but also covers organizations exempt from income tax, including the Government of the Philippines, its agencies, instrumentalities, and political subdivisions. While the assailed RMO is a directive to the Government, as a reminder of its obligation as a withholding agent, it did not, in any manner or form, alter or amend the provisions of the Tax Code, for or against the Government or its employees.

Moreover, the fiscal autonomy enjoyed by the Judiciary, Ombudsman, and Constitutional Commissions, as envisioned in the Constitution, does not grant immunity or exemption from the common burden of paying taxes imposed by law. To borrow former Chief Justice Corona's words in his Separate Opinion in *Francisco, Jr. v. House of Representatives*,[79] "fiscal autonomy entails freedom from outside control and limitations, **other than those provided by law**. It is the freedom to allocate and utilize funds granted

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[78] *ING Bank N.V. v. Commissioner of Internal Revenue*, supra note 69, at 443.
[79] 460 Phil. 830, 1006-1028 (2003).

by law, **in accordance with law** and pursuant to the wisdom and dispatch its needs may require from time to time."[80]

It bears to emphasize the Court's ruling in *Nitafan v. Commissioner of Internal Revenue*[81] that the imposition of taxes on salaries of Judges does not result in diminution of benefits. This applies to all government employees because the intent of the framers of the Organic Law and of the people adopting it is "**that all citizens should bear their aliquot part of the cost of maintaining the government and should share the burden of general income taxation equitably**."[82]

Determination of existence of fringe benefits is a question of fact.

Petitioners, nonetheless, insist that the allowances, bonuses and benefits enumerated in Section III of the assailed RMO are, in fact, fringe and *de minimis* benefits exempt from withholding tax on compensation. The Court cannot, however, rule on this issue as it is essentially a question of fact that cannot be determined in this petition questioning the constitutionality of the RMO.

To be sure, settled is the rule that exemptions from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[83] One who claims tax exemption must point to a specific provision of law conferring, in clear and plain terms, exemption from the common burden[84] and prove, through substantial evidence, that it is, in fact, covered by the exemption so claimed.[85] The determination, therefore, of the merits of petitioners' claim for tax exemption would necessarily require the resolution of both legal and factual issues, which this Court, not being a trier of facts, has no jurisdiction to do; more so, in a petition filed at first instance.

Among the factual issues that need to be resolved, at the first instance, is the nature of the fringe benefits granted to employees. The NIRC of 1997, as amended, does not impose income tax, and consequently a withholding tax, on payments to employees which are either (*a*) required by the nature of, or necessary to, the business of the employer; or (*b*) for the convenience or advantage of the employer.[86] This, however, requires proper documentation. Without any documentary proof that the payment ultimately redounded to the

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80 Id. at 1028. Emphasis and underscoring supplied.
81 236 Phil. 307 (1987).
82 Id. at 315-316. Emphasis and underscoring supplied.
83 *Diageo Philippines, Inc. v. Commissioner of Internal Revenue*, 698 Phil. 385, 395 (2012), citing *Quezon City v. ABS-CBN Broadcasting Corp.*, 588 Phil. 785, 803 (2008).
84 *The City of Iloilo v. Smart Communications, Inc. (SMART)*, 599 Phil. 492, 497 (2009).
85 *Quezon City v. ABS-CBN Broadcasting Corp.*, supra note 83, at 803, citing Agpalo, R.E., *Statutory Construction* (2003 ed.), p. 301.
86 Recalde, E.R., supra note 68, at 266, citing Section 33(A) of the NIRC of 1997, as amended.

benefit of the employer, the same shall be considered as a taxable benefit to the employee, and hence subject to withholding taxes.[87]

Another factual issue that needs to be confirmed is the recipient of the alleged fringe benefit. Fringe benefits furnished or granted, in cash or in kind, by an employer to its managerial or supervisory employees, are not considered part of compensation income; thus, exempt from withholding tax on compensation.[88] Instead, these fringe benefits are subject to a fringe benefit tax equivalent to 32% of the grossed-up monetary value of the benefit, which the employer is legally required to pay.[89] On the other hand, fringe benefits given to rank and file employees, while exempt from fringe benefit tax,[90] form part of compensation income taxable under the regular income tax rates provided in Section 24(A)(2) of the NIRC, of 1997, as amended;[91] and consequently, subject to withholding tax on compensation.

Furthermore, fringe benefits of relatively small value furnished by the employer to his employees (both managerial/supervisory and rank and file) as a means of promoting health, goodwill, contentment, or efficiency, otherwise known as *de minimis* benefits, that are exempt from both income tax on compensation and fringe benefit tax; hence, not subject to withholding tax,[92] are limited and exclusive only to those enumerated under RR No. 3-98, as amended.[93] All other benefits given by the employer which are not included

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87 See id. at 267, citing *First Lepanto Taisho Insurance Corp. v. Commissioner of Internal Revenue*, 708 Phil. 616, 624 (2013). See also *Commissioner of Internal Revenue v. Secretary of Justice*, 799 Phil. 13, 38-39 (2016).

88 See RR No. 2-98, Sec. 2.79(B).

89 See Section 33(A) of the NIRC of 1997, as implemented by Section 2.33(A) of RR No. 03-98 on IMPLEMENTING SECTION 33 OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NO. 8424 RELATIVE TO THE SPECIAL TREATMENT OF FRINGE BENEFITS, May 21, 1998.

90 See Section 33(C)(3) of the NIRC of 1997, as amended.

91 See Recalde, E.R., supra note 68, at 262.

92 See Section 33(C)(4) of the NIRC of 1997, as amended. See also RR 3-98.

93 Section 2.33(C) of RR 3-98, as last amended by RR No. 5-2008, 5-2011, 8-2012 and 1-2015, states:

> SEC. 2.33. *Special Treatment of Fringe Benefits.* –
>
> x x x x
>
> (C) *Fringe Benefits Not Subject to Fringe Benefits Tax* – x x x
> x x x x
>
> (a) Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year;
> (b) Monetized value of vacation and sick leave credits paid to government officials and employees;
> (c) Medical cash allowance to dependents of employees, not exceeding P750 per employee per semester or P125 per month;
> (d) Rice subsidy of P1,500 or one (1) sack of 50 kg. rice per month amounting to not more than P1,500;
> (e) Uniform and Clothing allowance not exceeding P5,000 per annum;
> (f) Actual medical assistance, e.g. medical allowance to cover medical and healthcare needs, annual medical/executive check-up, maternity assistance, and routine consultations, not exceeding P10,000 per annum;
> (g) Laundry allowance not exceeding P300 per month;
> (h) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding P10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
> (i) Gifts given during Christmas and major anniversary celebrations not exceeding P5,000 per employee per annum;

in the said list, although of relatively small value, shall not be considered as *de minimis* benefits; hence, shall be subject to income tax as well as withholding tax on compensation income, for rank and file employees, or fringe benefits tax for managerial and supervisory employees, as the case may be.[94]

Based on the foregoing, it is clear that to completely determine the merits of petitioners' claimed exemption from withholding tax on compensation, under Section 33 of the NIRC of 1997, there is a need to confirm several factual issues. As such, petitioners cannot but first resort to the proper courts and administrative agencies which are better equipped for said task.

All told, the Court finds Sections III and IV of the assailed RMO valid. The NIRC of 1997, as amended, is clear that all forms of compensation income received by the employee from his employer are presumed taxable and subject to withholding taxes. The Government of the Philippines, its agencies, instrumentalities, and political subdivisions, as an employer, is required by law to withhold and remit to the BIR the appropriate taxes due thereon. Any claims of exemption from withholding taxes by an employee, as in the case of petitioners, must be brought and resolved in the appropriate administrative and judicial proceeding, with the employee having the burden to prove the factual and legal bases thereof.

Section VII of RMO No. 23-2014 is valid; Section VI contravenes, in part, the provisions of the NIRC of 1997, as amended, and its implementing rules.

Petitioners claim that RMO No. 23-2014 is *ultra vires* insofar as Sections VI and VII thereof define new offenses and prescribe penalties therefor, particularly upon government officials.

The NIRC of 1997, as amended, clearly provides the offenses and penalties relevant to the obligation of the withholding agent to deduct, withhold and remit the correct amount of withholding taxes on compensation income, to wit:

TITLE X
Statutory Offenses and Penalties

(j) Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis; and
(k) Benefits received by an employee by virtue of a collective bargaining agreement (CBA) and productivity incentive schemes provided that the total annual monetary value received from both CBA and productivity incentive schemes combined, do not exceed ten thousand pesos (P10,000) per employee, per taxable year.

[94] See Section 2 of RR No. 5-2011; see also "*Additional P10,000 nontaxable De Minimis Benefits effective January 1, 2015*" by Orlando Calundan on Jan 10th, 2015 <http://philcpa.org/2015/01/additional-p10000-nontaxable-de-minimis-benefits-effective-january-1-2015/> (last accessed on June 28, 2018).

CHAPTER I
Additions to the Tax

SEC. 247. *General Provisions.* –

(a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax.

(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or -controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

(c) The term "*person*", as used in this Chapter, includes an officer or employee of a corporation who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

SEC. 248. *Civil Penalties.* — x x x[95]

SEC. 249. *Interest.* – x x x[96]

x x x x

SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* – Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.[97]

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[95] RR No. 2-98, Sec. 2.80(C)(3) states:

(C) Additions to Tax. —

x x x x

(3) Deficiency Interest — Any deficiency in the basic tax due, as the term is defined in the Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

If the withholding agent is the government or any of its agencies, political subdivisions, or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of tax shall be personally liable for the surcharge and interest imposed herein.

[96] RR No. 2-98, Sec. 2.80(C)(2) states:

(C) Additions to Tax. —

x x x x

(2) Interest — There shall be assessed and collected on any unpaid amount of tax, an interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed for payment until the amount is fully paid.

[97] RR No. 2-98, Sec. 2.80(A) provides:

(A) Employer. –

(1) In general, the employer shall be responsible for the withholding and remittance of the correct amount of tax required to be deducted and withheld from the compensation income of his employees. If the employer fails to withhold and remit the correct amount of tax, such tax shall be collected from the employer together with the penalties or additions to the tax otherwise applicable.

(2) The employer who required to collect, account for and remit any tax imposed by the NIRC, as amended, who willfully fails to collect such tax, or account for and remit such tax or willfully assist in any manner to evade any payment thereof, shall in addition

SEC. 252. *Failure of a Withholding Agent to Refund Excess Withholding Tax.* – Any employer/withholding agent who fails or refuses to refund excess withholding tax shall, in addition to the penalties provided in this Title, be liable to a penalty equal to the total amount of refunds which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.

CHAPTER II
Crimes, Other Offenses and Forfeitures

x x x x

SEC. 255. *Failure to File Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

CHAPTER III
Penalties Imposed on Public Officers

x x x x

SEC. 272. *Violation of Withholding Tax Provision.* – Every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or -controlled corporations, including the *Bangko Sentral ng Pilipinas* (BSP), who, under the provisions of this Code or rules and regulations promulgated thereunder, is charged with the duty to deduct and withhold any internal revenue tax and to remit the same in accordance with the provisions of this Code and other laws is guilty of any offense hereinbelow specified shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (P5,000) but not more than Fifty thousand pesos (P50,000) or suffer imprisonment of not less than six (6) months and one day (1) but not more than two (2) years, or both:

(a) Failing or causing the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing rules and regulations;

(b) Failing or causing the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing rules and regulations; and

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to other penalties, provided for in the Code, as amended, be liable, upon conviction, to a penalty equal to the amount of the tax not collected nor accounted for or remitted.

(3) Any employer/withholding agent who fails, or refuses to refund excess withholding tax not later than January 25 of the succeeding year shall, in addition to any penalties provided in Title X of the Code, as amended, be liable to a penalty equal to the total amount of refund which was not refunded to the employee resulting from any excess of the amount withheld over the tax actually due on their return.

(c) Failing or causing the failure to file return or statement within the time prescribed, o rendering or furnishing a false or fraudulent return or statement required under the withholding tax laws and rules and regulations.[98]

Based on the foregoing, and similar to Sections III and IV of the assailed RMO, the Court finds that Section VII thereof was issued in accordance with the provisions of the NIRC of 1997, as amended, and RR No. 2-98. For easy reference, Section VII of RMO No. 23-2014 states:

VII. PENALTY PROVISION

In case of non-compliance with their obligation as withholding agents, the abovementioned persons shall be liable for the following sanctions:

A. Failure to Collect and Remit Taxes (Section 251, NIRC)

"Any person required to withhold, account for, and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted."

B. Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation (Section 255, NIRC)

"Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (P10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (P10,000) but not more than Twenty thousand pesos (P20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years."

C. Violation of Withholding Tax Provisions (Section 272, NIRC)

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[98] See RR No. 2-98, Secs. 4.114(E) and 5.116(D).

> "Every officer or employee of the Government of the Republic of the Philippines or any of its agencies and instrumentalities, its political subdivisions, as well as government-owned or controlled corporations, including the Bangko Sentral ng Pilipinas (BSP), who is charged with the duty to deduct and withhold any internal revenue tax and to remit the same is guilty of any offense herein below specified shall, upon conviction for each act or omission be punished by a fine of not less than Five thousand pesos (P5,000) but not more than Fifty thousand pesos (P50,000) or suffer imprisonment of not less than six (6) months and one (1) day but not more than two (2) years, or both:
>
> 1. Failing or causing the failure to deduct and withhold any internal revenue tax under any of the withholding tax laws and implementing rules and regulations; or
>
> 2. Failing or causing the failure to remit taxes deducted and withheld within the time prescribed by law, and implementing rules and regulations; or
>
> 3. Failing or causing the failure to file return or statement within the time prescribed, or rendering or furnishing a false or fraudulent return or statement required under the withholding tax laws and rules and regulations."
>
> All revenue officials and employees concerned shall take measures to ensure the full enforcement of the provisions of this Order and in case of any violation thereof, shall commence the appropriate legal action against the erring withholding agent.

Verily, tested against the provisions of the NIRC of 1997, as amended, Section VII of RMO No. 23-2014 does not define a crime and prescribe a penalty therefor. Section VII simply mirrors the relevant provisions of the NIRC of 1997, as amended, on the penalties for the failure of the withholding agent to withhold and remit the correct amount of taxes, as implemented by RR No. 2-98.

However, with respect to Section VI of the assailed RMO, the Court finds that the CIR overstepped the boundaries of its authority to interpret existing provisions of the NIRC of 1997, as amended.

Section VI of RMO No. 23-2014 reads:

> **VI. PERSONS RESPONSIBLE FOR WITHHOLDING**
>
> The following officials are duty bound to deduct, withhold and remit taxes:
>
> a) For Office of the Provincial Government-province- the Chief Accountant, Provincial Treasurer and the Governor;
>
> b) For Office of the City Government-cities- the Chief Accountant, City Treasurer and the City Mayor;

c) For Office of the Municipal Government-municipalities- the Chief Accountant, Municipal Treasurer and the Mayor;

d) Office of the Barangay-Barangay Treasurer and Barangay Captain

e) For NGAs, GOCCs and other Government Offices, the Chief Accountant and the Head of Office or the Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager).

To recall, the Government of the Philippines, or any political subdivision or agency thereof, or any GOCC, as an employer, is constituted by law as the withholding agent, mandated to deduct, withhold and remit the correct amount of taxes on the compensation income received by its employees. In relation thereto, Section 82 of the NIRC of 1997, as amended, states that the return of the amount deducted and withheld upon any wage paid to government employees shall be made by the officer or employee having control of the payments or by any officer or employee duly designated for such purpose.[99] Consequently, RR No. 2-98 identifies *the Provincial Treasurer in provinces, the City Treasurer in cities, the Municipal Treasurer in municipalities, Barangay Treasurer in barangays, Treasurers of government-owned or -controlled corporations (GOCCs), and the Chief Accountant or any person holding similar position and performing similar function in national government offices*, as persons required to deduct and withhold the appropriate taxes on the income payments made by the government.[100]

However, nowhere in the NIRC of 1997, as amended, or in RR No. 2-98, as amended, would one find the Provincial Governor, Mayor, Barangay Captain and the Head of Government Office or the "Official holding the highest position (such as the President, Chief Executive Officer, Governor, General Manager)" in an Agency or GOCC as one of the officials required to deduct, withhold and remit the correct amount of withholding taxes. The CIR, in imposing upon these officials the obligation not found in law nor in the implementing rules, did not merely issue an interpretative rule designed to provide guidelines to the law which it is in charge of enforcing; but instead, supplanted details thereon — a power duly vested by law only to respondent Secretary of Finance under Section 244 of the NIRC of 1997, as amended.

Moreover, respondents' allusion to previous issuances of the Secretary of Finance designating the Governor in provinces, the City Mayor in cities, the Municipal Mayor in municipalities, the Barangay Captain in barangays, and the Head of Office (official holding the highest position) in departments, bureaus, agencies, instrumentalities, government-owned or -controlled corporations, and other government offices, as officers required to deduct and withhold,[101] is bereft of legal basis. Since the 1977 NIRC and Executive Order No. 651, which allegedly breathed life to these issuances, have already been

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[99] See RR No. 2-98, Sec. 2.58(C), 2.82 and 2.83.1.

[100] See RR No. 2-98, Secs. 4.114(B), 4.114(E)(1) and 5.116(D)(1).

[101] Respondents' Consolidated Comment, *rollo* (G.R. No. 213658), pp. 222-226.

repealed with the enactment of the NIRC of 1997, as amended, and RR No. 2-98, these previous issuances of the Secretary of Finance have ceased to have the force and effect of law.

Accordingly, the Court finds that the CIR gravely abused its discretion in issuing Section VI of RMO No. 23-2014 insofar as it includes the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in agencies, GOCCs, and other government offices, as persons required to withhold and remit withholding taxes, as they are not among those officials designated by the 1997 NIRC, as amended, and its implementing rules.

Petition for Mandamus is moot and academic.

As regards the prayer for the issuance of a writ of mandamus to compel respondents to increase the ₱30,000.00 non-taxable income ceiling, the same has already been rendered moot and academic due to the enactment of RA No. 10653.[102]

The Court takes judicial notice of RA No. 10653, which was signed into law on February 12, 2015, which increased the income tax exemption for 13th month pay and other benefits, under Section 32(B)(7)(e) of the NIRC of 1997, as amended, from ₱30,000.00 to ₱82,000.00.[103] Said law also states that every three (3) years after the effectivity of said Act, the President of the Philippines shall adjust the amount stated therein to its present value using the Consumer Price Index, as published by the National Statistics Office.[104]

Recently, RA No. 10963,[105] otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" Act, further increased the income tax exemption for 13th month pay and other benefits to ₱90,000.00.[106]

A case is considered moot and academic if it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.[107]

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[102] AN ACT ADJUSTING THE 13TH MONTH PAY AND OTHER BENEFITS CEILING EXCLUDED FROM THE COMPUTATION OF GROSS INCOME FOR PURPOSES OF INCOME TAXATION, AMENDING FOR THE PURPOSE SECTION 32(B) CHAPTER VI OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, February 12, 2015.

[103] RA No. 10653, Sec. 1.

[104] Id.

[105] AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED AND FOR OTHER PURPOSES, December 19, 2017.

[106] RA No. 10963, Sec. 9.

[107] *Jacinto-Henares v. St. Paul College of Makati*, G.R. No. 215383, March 8, 2017, 820 SCRA 92, 101.

With the enactment of RA Nos. 10653 and 10963, which not only increased the tax exemption ceiling for 13th month pay and other benefits, as petitioners prayed, but also conferred upon the President the power to adjust said amount, a supervening event has transpired that rendered the resolution of the issue on whether mandamus lies against respondents, of no practical value. Accordingly, the petition for mandamus should be dismissed for being moot and academic.

As a final point, the Court cannot turn a blind eye to the adverse effects of this Decision on ordinary government employees, including petitioners herein, who relied in good faith on the belief that the appropriate taxes on all the income they receive from their respective employers are withheld and paid. Nor does the Court ignore the situation of the relevant officers of the different departments of government that had believed, in good faith, that there was no need to withhold the taxes due on the compensation received by said ordinary government employees. Thus, as a measure of equity and compassionate social justice, the Court deems it proper to clarify and declare, *pro hac vice,* that its ruling on the validity of Sections III and IV of the assailed RMO is to be given only prospective effect.[108]

WHEREFORE, premises considered, the Petitions and Petitions-in-Interventions are **PARTIALLY GRANTED**. Section VI of Revenue Memorandum Order No. 23-2014 is **DECLARED** null and void insofar as it names the Governor, City Mayor, Municipal Mayor, Barangay Captain, and Heads of Office in government agencies, government-owned or -controlled corporations, and other government offices, as persons required to withhold and remit withholding taxes.

Sections III, IV and VII of RMO No. 23-2014 are **DECLARED** valid inasmuch as they merely mirror the provisions of the National Internal Revenue Code of 1997, as amended. However, the Court cannot rule on petitioners' claims of exemption from withholding tax on compensation income because these involve issues that are essentially factual or evidentiary in nature, which must be raised in the appropriate administrative and/or judicial proceeding.

The Court's Decision upholding the validity of Sections III and IV of the assailed RMO is to be applied only prospectively.

Finally, the Petition for Mandamus in G.R. No. 213446 is hereby **DENIED** on the ground of mootness.

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[108] See *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, March 13, 2018; *National Transmission Corp. v. Commission on Audit*, G.R. No. 227796, February 20, 2018; *Nayong Pilipino Foundation, Inc. v. Pulido Tan*, G.R. No. 213200, September 19, 2017; *National Transmission Corporation v. Commission on Audit*, G.R. No. 223625, November 22, 2016, 809 SCRA 562; *Silang v. Commission on Audit*, 769 Phil. 327 (2015).

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

no part
prior OSG
action

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court