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In light of the foregoing considerations, therefore, the standard procedural and documentary requirements for tax refund applicable to GOCCs in general do not apply to BCDA *vis-a-vis* the properties and the sale proceeds specified under Section 8 of RA 7227, as amended. To repeat, there is no income to speak of here; only the sale proceeds of specific properties which the legislature itself exempts from all taxes and fees.

ACCORDINGLY, the petition is **DENIED**. The Decision dated December 16, 2014 and Resolution dated April 15, 2015 of Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1123 (CTA Case No. 8140) are **AFFIRMED**. No costs.

SO ORDERED.

Peralta, C. J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 222239. January 15, 2020]

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., APL CO. PTE LTD., and MAERSK-FILIPINAS, INC., *petitioners, vs.* **SECRETARY OF FINANCE and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; BAR BY PRIOR JUDGMENT; REQUISITES.— *Res judicata* applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been

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rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action. Here, we rule that there is no substantial identity of parties and subject matter.

2. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; NATURE OF A PETITION FOR DECLARATORY RELIEF, EXPLAINED; A JUDGMENT IN A PETITION FOR DECLARATORY RELIEF BINDS ONLY THE IMPLEADED PARTIES.— ***Tambunting, Jr. v. Sumabat*** explains the nature of a petition for declaratory relief, thus: An action for declaratory relief should be filed by a person interested under a deed, will, contract or other written instrument, and whose rights are affected by a statute, executive order, regulation or ordinance before breach or violation thereof. **The purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach.** It may be entertained only before the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject, *i.e*., the statute, deed, contract, *etc*., has already been infringed or transgressed before the institution of the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order. Thus, it is required that the parties to the action for declaratory relief be those whose rights or interests are affected by the contract or statute being questioned. Section 2 of Rule 63 of the Rules of Court further underscores that a judgment in a petition for declaratory relief binds only the impleaded parties x x x. Applying the foregoing principles here, we find that there is no identity of parties between Civil Case No. Q-09-64241 and this case.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT IN CIVIL CASE DOES NOT RISE TO A LEVEL OF A JUDICIAL PRECEDENT TO BE FOLLOWED IN SUBSEQUENT CASES BY ALL COURTS IN THE LAND,

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WHERE THE SAME WAS RENDERED BY A REGIONAL TRIAL COURT, AND NOT BY THE SUPREME COURT; THE INVALIDITY OF RMC 31-2008 ISSUED BY THE COMMISSIONER OF INTERNAL REVENUE (CIR), WHICH TREATS DEMURRAGE AND DETENTION FEES TO BE WITHIN THE PRISM OF REGULAR CORPORATE INCOME TAX RATE, DOES NOT PRECLUDE THE SECRETARY OF FINANCE FROM PROMULGATING RR 15-2013, WHICH TOUCHES ON THE SAME SUBJECT, AS THE CIR AND THE SECRETARY OF FINANCE DERIVE THEIR RESPECTIVE POWERS FROM TWO (2) DISTINCT SOURCES; THUS, THEIR RESPECTIVE ISSUANCES, ARE SEPARATE AND INDEPENDENT OF EACH OTHER.— While it is true that RMC 31-2008, subject of Civil Case No. Q-09- 64241, on one hand, and RR 15-2013, subject of the present case, on the other, both treat demurrage and detention fees to be within the prism of regular corporate income tax rate, each, however, differs from the other with respect to the authority from which it emanated. In Civil Case No. Q-09-64241, what was challenged was the CIR's authority to issue RMC 31-2008 pursuant to Section 4 of the NIRC. On the other hand, what is being challenged here is the Secretary of Finance's authority to issue RR 15-2013 in accordance with Section 244 of the NIRC and Section 5 of RA 10378. The CIR and the Secretary of Finance derive their respective powers from two (2) distinct sources, thus, their respective issuances, too, are separate and independent of each other. More, the supposed invalidity of the CIR's issuance in Civil Case No. Q-09-64241 does not preclude the Secretary of Finance from rendering his issuance on the same subject. More important, the judgment in Civil Case No. Q-09-64241 does not rise to a level of a judicial precedent to be followed in subsequent cases by all courts in the land, since the same was rendered by a regional trial court, and not by this Court. Verily, the Order dated May 18, 2012 of RTC-Branch 98, although binding on the CIR, cannot serve as a judicial precedent for the purpose of precluding the Secretary of Finance from promulgating a similar issuance on the same subject.

4. ID.; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; REGIONAL TRIAL COURTS HAVE NO JURISDICTION OVER PETITIONS FOR DECLARATORY RELIEF

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AGAINST THE IMPOSITION OF TAX LIABILITY OR VALIDITY OF TAX ASSESSMENTS.— [T]he trial court dismissed the case below, among others, for lack of jurisdiction pursuant to Section 1 of CA 55 x x x. In ***CJH Development Corp. v. BIR,*** this Court clarified that CA 55 is still good law, thus: x x x. **As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts' jurisdiction over petitions for declaratory relief involving tax assessments.** x x x. ***CIR v. Standard Insurance, Co., Inc.*** further reinforced the rule that regional trial courts have no jurisdiction over petitions for declaratory relief against the imposition of tax liability or validity of tax assessments: The more substantial reason that should have impelled the RTC to desist from taking cognizance of the respondent's petition for declaratory relief except to dismiss the petition was its lack of jurisdiction. We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC]." **Also, pursuant to Section 11[15] of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."**

5. ID.; ID.; ID.; A PETITION FOR DECLARATORY RELIEF CANNOT BE THE PROPER VEHICLE TO INVOKE THE POWER OF JUDICIAL REVIEW TO DECLARE A

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STATUTE AS INVALID OR UNCONSTITUTIONAL, FOR THERE IS NO ACTUAL CASE INVOLVED IN A PETITION FOR DECLARATORY RELIEF; THE PROPER REMEDY TO SEEK INVALIDATION OF RR 15-2013 IS A PETITION FOR *CERTIORARI* OR PROHIBITION, NOT A PETITION FOR DECLARATORY RELIEF.— [S]ince there is no actual case involved in a petition for declaratory relief, it cannot be the proper vehicle to invoke the power of judicial review to declare a statute as invalid or unconstitutional. As decreed in ***DOTR v. PPSTA***, the proper remedy is *certiorari* or prohibition, thus: **The Petition for Declaratory Relief is not the proper remedy.** One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus: x x x **Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.** x x x. **To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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."**

6. ID.; ID.; ID.; A PETITION FOR DECLARATORY RELIEF MAY BE TREATED AS ONE FOR PROHIBITION IF THE CASE HAS FAR-REACHING IMPLICATIONS AND RAISES QUESTIONS THAT NEED TO BE RESOLVED, OR IF THE ASSAILED ACT OR ACTS OF EXECUTIVE OFFICIALS ARE ALLEGED TO HAVE USURPED LEGISLATIVE AUTHORITY; THE PRESENT PETITION FOR DECLARATORY RELIEF WAS TREATED AS ONE FOR *CERTIORARI* OR PROHIBITION BECAUSE RR 15-2013 GREATLY IMPACTS THE PHILIPPINE MARITIME INDUSTRY.— In ***Diaz, et al. v. Secretary of Finance, et al.***, the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for

the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority, thus: x x x. **But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.** x x x. Here, RR 15-2013 greatly impacts the Philippine maritime industry since it is considered "*as more of the 'backbone' of the Philippines' burgeoning economy due to its significance both for trade and transportation*." For this reason and the fact that the issue at hand has already pended since 2013 or for more than six (6) years now, first with the trial court and now with this Court, we resolve to treat the present case as one for *certiorari* or prohibition and settle the controversy once and for all.

7. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997 (NIRC), AS AMENDED; REVENUE REGULATION NO. 15-2013 (RR 15-2013); GROSS PHILIPPINE BILLINGS (GPB), DEFINED; GROSS PHILIPPINE BILLINGS COVERS GROSS REVENUE DERIVED FROM TRANSPORTATION OF PASSENGERS, CARGO AND/OR MAIL ORIGINATING FROM THE PHILIPPINES UP TO THE FINAL DESTINATION; ANY OTHER INCOME IS SUBJECT TO THE REGULAR INCOME TAX RATE; WHEN THE LAW IS CLEAR, THERE IS NO OTHER RECOURSE BUT TO APPLY IT REGARDLESS OF ITS PERCEIVED HARSHNESS.— To determine whether demurrage and detention fees are subject to the preferential 2.5% rate, we refer to the definition of "Gross Philippine Billings" (GPB) under Section 28(A)(I)(3a) of the NIRC, as amended by RA 10378, *viz*.: "*gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents*." RR 15-2013 echoes this definition, thus: B) Determination of Gross Philippine Billings of International Sea Carriers. — In computing for "Gross Philippine Billings" of international sea carriers, there shall be included the total amount of gross revenue whether for passenger, cargo, and/or mail originating from the Philippines up to final destination,

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regardless of the place of sale or payments of the passage or freight documents. x x x Verily, the GPB covers gross revenue derived from transportation of **passengers, cargo and/or mail** originating from the Philippines up to the final destination. Any other income, therefore, is subject to the regular income tax rate. When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*.

8. ID.; ID.; ID.; DEMURRAGE AND DETENTION FEES, DISTINGUISHED.— Under RR 15-2013, demurrage and detention fees are not deemed within the scope of GPB. For demurrage fees "*which are in the nature of rent for the use of property of the carrier in the Philippines, is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier*." On the other hand, detention fees and other charges "*relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate*." Demurrage fee is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. It is only an extended freight or reward to the vessel, in compensation for the earnings the carrier is improperly caused to lose. Detention occurs when the consignee holds on to the carrier's container outside of the port, terminal, or depot beyond the free time that is allotted. Detention fee is charged when import containers have been picked up, but the container (regardless if it is full or empty) is still in the possession of the consignee and has not been returned within the allotted time. Detention fee is also charged for export containers in which the empty container has been picked up for loading, and the loaded container is returned to the steamship line after the allotted free time.

9. ID.; ID.; ID.; ID.; BOTH DEMURRAGE AND DETENTION FEES SHOULD BE EXCLUDED FROM THE PREFERENTIAL RATE OF 2.5%, SINCE THEY ARE NOT CONSIDERED INCOME DERIVED FROM TRANSPORTATION OF PERSONS, GOODS AND/OR MAIL, BUT FORM PART OF AN INTERNATIONAL SEA

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CARRIER'S GROSS INCOME, AS THEY ARE ACQUIRED IN THE NORMAL COURSE OF TRADE OR BUSINESS; DEMURRAGE AND DETENTION FEES FALL WITHIN THE DEFINITION OF "GROSS INCOME" — THE FORMER IS CONSIDERED AS RENT PAYMENT FOR THE VESSEL; AND THE LATTER, COMPENSATION FOR USE OF A CARRIER'S CONTAINER.— Indeed, the exclusion of demurrage and detention fees from the preferential rate of 2.5% is proper since they are not considered income derived from transportation of persons, goods and/or mail, in accordance with the rule *expressio unios est exclusio alterius*. Demurrage and detention fees definitely form part of an international sea carrier's gross income. For they are acquired in the normal course of trade or business. The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity. Surely, gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership, among others. Demurrage and detention fees fall within the definition of "gross income" — the former is considered as rent payment for the vessel; and the latter, compensation for use of a carrier's container.

10. ID.; ID.; ID.; INTERPRETATIVE REGULATIONS AND THOSE MERELY INTERNAL IN NATURE ARE NOT REQUIRED TO BE FILED WITH THE U.P. LAW CENTER FOR THEIR EFFECTIVITY; WHEN AN ADMINISTRATIVE RULE IS MERELY INTERPRETATIVE IN NATURE, ITS APPLICABILITY NEEDS NOTHING FURTHER THAN ITS BARE ISSUANCE, FOR IT GIVES NO REAL CONSEQUENCE MORE THAN WHAT THE LAW ITSELF HAS ALREADY PRESCRIBED; RR 15-2013 IS AN INTERNAL ISSUANCE FOR THE GUIDANCE OF *"ALL INTERNAL REVENUE OFFICERS AND OTHERS*

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CONCERNED," AND* AN INTERPRETATIVE ISSUANCE *VIS-À-VIS* R.A. NO. 10378; AS SUCH, IT NEED NOT PASS THROUGH A PUBLIC HEARING OR CONSULTATION, GET PUBLISHED, NAY, REGISTERED WITH THE U.P. LAW CENTER FOR ITS EFFECTIVITY.—** An interpretative or implementing rule is defined under Section 2 (2), chapter 1, Book VIII of the Revised Administrative Code x x x. Chapter 2 of Book VII of the same Code further provides the manner by which administrative rules attain effectivity x x x. Excepted are interpretative regulations and those merely internal in nature, which do not require filing with the U.P. Law Center for their effectivity. On this score, ***ASTEC v. ERC is proper: x x x. However, in Board of Trustees of the Government Service Insurance System v. Velasco, this Court pronounced that **"[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.** x x x. RR 15-2013 is an internal issuance for the guidance of "*all internal revenue officers and others concerned*." It is also an interpretative issuance *vis-à-vis* R.A. No. 10378, x x x. RR 15-2013 merely sums up the rules by which international carriers may avail of preferential rates or exemption from income tax on their gross revenues derived from the carriage of persons and their excess baggage based on the principle of reciprocity or an applicable tax treaty or international agreement to which the Philippines is a signatory. Interpretative regulations are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Indeed, when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. As such, RR 15-2013 need not pass through a public hearing or consultation, get published, nay, registered with the U.P. Law Center for its effectivity.

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APPEARANCES OF COUNSEL

S*ycip Salazar Hernandez & Gatmaitan* for petitioners.
Robinita P. Chua & Bernardito Paul R. Somera, Jr. for respondent Commissioner of Internal Revenue.

D E C I S I O N

LAZARO-JAVIER, *J.*:

Antecedents

On July 1, 2005, Republic Act No. 9337[1] (RA 9337) was enacted, amending select provisions of the 1997 National Internal Revenue Code (NIRC), namely, Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288.

In relation to these amendments, then Commissioner of Internal Revenue (CIR) Lilian Hefti issued Revenue Memorandum Circular No. 31-2008[2] (RMC 31-2008) dated January 30, 2008. It sought to "*clarify certain provisions of the National Internal Revenue Code of 1997, as amended (Code), as it applies to shipping companies and their agents as well as their suppliers to ensure that the law is properly implemented and taxes are properly collected, in a manner that aligns with acceptable business practices*." Its relevant portions read:

> Q-3: Are on-line international sea carriers subject to VAT?
> A-3: No. On-line international sea carriers are not subject to VAT they being subject to percentage tax under Title V of the Tax Code. They are liable to the three percent (3%) percentage tax imposed on their gross receipts from outbound fares and freight, pursuant to Section 118 of the Code.

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[1] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[2] Clarification of Issues Concerning Common Carriers by Sea and their Agents Relative to the Transport of Passengers, Goods or Cargoes.

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However, if these on-line international sea carriers engage in other transactions not exempt under Section 119 of the Code, they shall be liable to the twelve percent (12%) VAT on these transactions.

Q-4: Are demurrage fees collected by on-line international sea carriers due to delay by the shipper in unloading their inbound cargoes subject to tax?
A-4: Yes, Demurrage fees, which are in the nature of rent for the use of property of the carrier in the Philippines is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier. Said other line of business may likewise be subject to VAT or percentage tax applying the rule on threshold discussed in the succeeding paragraph.

Q-5: Are detention fees and other charges collected by international sea carriers subject to tax?
A-5: Detention fees and other charges relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of the international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate, and to the Value added tax, if the total annual receipts from all the VAT-registered activities exceeds one million five hundred thousand pesos (₱1,500,000.00). However, if the total annual gross receipts do not exceed one million five hundred thousand pesos, said taxpayer is liable to pay the 3% percentage tax.

x x x x x x x x x

Q-14: Are sales of goods, supplies, equipment, fuel and services to persons engaged in international shipping operations subject to VAT?
A-14: The sale of goods, supplies, equipment, fuel and services including leases of property) to the common carrier to be used in its international sea transport operations is zero-rated. Provided, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippine directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; Provided, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than that mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT.

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x x x x x x x x x

Q-34: Are commission incomes received by the local shipping agents from their foreign principals subject to VAT?
A-34: The commission income or fees received by the local shipping agents for outbound freights/fares received by their foreign principals which are on-line international sea carriers (touching any port in the Philippines as part of their operation) shall be zero-rated pursuant to the provisions of Section 108(B)(4) of the Code. Said provision does not require that payments of the commission income or fees for "services rendered to persons engaged in international shipping operations, including leases of property for use thereof," be paid in acceptable foreign currency in order that such transaction may be zero-rated. On the other hand, commission income or fees received by the local shipping agents pertaining to inbound freights/fares received by their foreign principals/on-line international sea carriers or pertaining to freights/fares received by off-line international sea carriers shall be subject to VAT at 12%.

Five (5) years after the enactment of RA 9337, on December 6, 2010, petitioners Association of International Shipping Lines, Inc.[3] (AISL), APL Co. Pte. Ltd.[4] (APL), and Maersk-Filipinas, Inc. (Maersk) sought to nullify RMC 31-2008 via a petition for declaratory relief entitled "*Association of International Shipping Lines, Inc. (AISL), APL Co. Pte. Ltd. (APL), and Maersk-Filipinas, Inc. (Maersk) v. Commissioner of Internal Revenue*." The case was raffled to RTC-Branch 98, Quezon City, and docketed as Civil Case No. Q-09-64241.[5]

Petitioners prayed that the trial court: 1) issue a writ of preliminary injunction enjoining the then BIR Commissioner and her representatives, agents, or those acting under her instructions or on her behalf from implementing, enforcing, or

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[3] Is a non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, whose members are international shipping carriers and/or their agents operating in the Philippines.

[4] Is an AISL member-firm engaged in international shipping business. It is a corporation duly organized and existing under the laws of Singapore and licensed to do business in the Philippines.

[5] *Rollo*, p. 102.

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acting pursuant to or on the basis of the challenged provisions of RMC 31-2008; and 2) render judgment declaring these challenged provisions void.[6]

According to petitioners, RMC 31-2008 was void insofar as it imposed regular tax rate of thirty percent (30%) and twelve percent (12%) VAT on the demurrage and detention fees collected by international shipping carriers from shippers or consignees for delay in the return of containers, on the domestic portion of services to persons engaged in international shipping operations, and on commission income received by local shipping agents from international shipping carriers or in connection with inbound shipments.

By Order[7] dated May 18, 2012, Branch 98 held that international carriers were not subject to income tax under Section 28 (A)(1)(3b)[8] of the NIRC. Too, demurrage fees were not considered income derived from other or separate business

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[6] *Id*.

[7] *Id.* at 102-115.

[8] SEC. 28. Rates of Income Tax on Foreign Corporations. —

(A) Tax on Resident Foreign Corporations. —

(1) In General. - Except as otherwise provided in this Code, a corporation organized, authorized, or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax equivalent to thirty-five percent (35%) of the taxable income derived in the preceding taxable year from all sources within the Philippines: Provided, That effective January 1, 2009, the rate of income tax shall be thirty percent (30%).

In the case of corporations adopting the fiscal-year accounting period, the taxable income shall be computed without regard to the specific date when sales, purchases and other transactions occur. Their income and expenses for the fiscal year shall be deemed to have been earned and spent equally for each month of the period.

The corporate income tax rate shall be applied on the amount computed by multiplying the number of months covered by the new rate within the fiscal year by the taxable income of the corporation for the period, divided by twelve.

Provided, however, That a resident foreign corporation shall be granted the option to be taxed at fifteen percent (15%) on gross income under the same conditions, as provided in Section 27(A).

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of the international carrier. Being incidental to the trade or business of the international carrier, demurrage fees should instead form part of the Gross Philippine Billings (GPB) subject to 2.5% tax under Section 28. Further the law did not expressly impose 12% VAT on the domestic portion of the services rendered by international carriers.[9] Thus:

WHEREFORE, premises considered, and pursuant to Rule 35 of the 1997 Rules of Civil Procedure, the Court grants the motion for summary judgment and declares as **INVALID**, the pertinent portions of Revenue Memorandum Circular No. 31-2008, insofar as the latter subjects the: a) demurrage and detention fees to the regular corporate income tax rate under Section 28(A)(1) and 12% VAT; b) domestic portion of the services rendered to persons engaged in international shipping operation to 12% VAT; and c) commission income or fees received by local shipping agents from international shipping carriers for the latter's inbound freights/fares to 12% VAT, for being contrary to Section 28 (A)(1), and (3) and Section 108 (B)(4) of the National Internal Revenue Code of 1997, as amended.

SO ORDERED.[10]

The Order became final and executory as of June 16, 2012.[11]

On March 7, 2013, Republic Act No. 10378[12] (RA 10378) was enacted, amending Section 28 (A)(3)(a) of the NIRC. The provision now reads:

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x x x x x x x x x

(3) International Carrier. -An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2%) on its 'Gross Philippine Billings' as defined hereunder:

x x x x x x x x x

(b) International Shipping.— 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines. up to final destination, regardless of the place of sale or payments of the passage or freight documents.

x x x x x x x x x

[9] *Rollo*, pp. 111-114.

[10] *Id.* at 114-115.

[11] *Id.* at 116.

[12] AN ACT RECOGNIZING THE PRINCIPLE OF RECIPROCITY AS BASIS FOR

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SEC. 28. Rates of Income Tax on Foreign Corporations.—
(A) Tax on Resident Foreign Corporations. —
(1) x x x
(2) x x x
(3)International Carrier. — An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2½ %) on its 'Gross Philippine Billings' as defined hereunder:

(a) International Air Carrier. — 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

(b) International Shipping. — 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

Provided, That international carriers doing business in the Philippines may avail of a preferential rate or exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory or on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision.

x x x x x x x x x.

THE GRANT OF INCOME TAX EXEMPTIONS TO INTERNATIONAL CARRIERS AND RATIONALIZING OTHER TAXES IMPOSED THEREON BY AMENDING SECTIONS 28(A)(3)(A), 109, 118 AND 236 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC), AS AMENDED, AND FOR OTHER PURPOSES.

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The Secretary of Finance, thereafter, issued the implementing rules under Revenue Regulation No. 15-2013[13] (RR 15-2013), the validity of which is now the subject of this petition.

The Proceedings Before the Trial Court

Over three (3) years later, on December 4, 2013, petitioners initiated the present petition for declaratory relief,[14] this time, challenging Section 4.4 of RR 15-2013 and impleading as respondents both the Secretary of Finance and the CIR. Section 4.4 reads:

> 4.4) Taxability of Income Other Than Income From International Transport Services. — All items of income derived by international carriers that do not form part of Gross Philippine Billings as defined under these Regulations shall be subject to tax under the pertinent provisions of the NIRC, as amended.
>
> **Demurrage fees, which are in the nature of rent for the use of property of the carrier in the Philippines, is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier.**
>
> **Detention fees and other charges relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate.** (Emphasis supplied)

The case was raffled to RTC-Branch 77, Quezon City, and docketed Special Civil Action No. R-QZN-13-05590-CV, then presided by Acting Presiding Judge Cleto R. Villacorta III.

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[13] Revenue Regulations Implementing Republic Act No. 10378 entitled "An Act Recognizing the Principle of Reciprocity as Basis for the Grant of Income Tax Exemptions to International Carriers and Rationalizing Other Taxes Imposed thereon by Amending Sections 28 (A)(3)(A), 109, 118 And 236 of the National Internal Revenue Code (NIRC), as amended, and for other Purposes."

[14] With applications for a temporary restraining order and a writ of preliminary injunction, *rollo*, pp. 136-165.

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Petitioners' Arguments

Petitioners argued that Section 4.4 of RR 15-2013 invalidly subjects demurrage and detention fees collected by international shipping carriers to regular corporate income tax rate. This very same imposition had been previously declared invalid by Branch 98 through its final and executory Order dated May 18, 2012.[15] Section 4.4 of RR 15-2013 should not, therefore, be given effect by reason of *res judicata*.[16] The treatment of demurrage and detention fees on the carriage of cargoes prior to and after the enactment of RA 10378 did not change. There is nothing in RA 10378 which even touches on demurrage and detention fees, much less, provides or even implies that they should be treated as income subject to tax at the regular corporate income tax rate.[17]

In fact, RR 15-2013 unduly widens the scope of RA 10378 by imposing additional taxes on international shipping carriers not authorized or provided by law. Besides, demurrage and detentions fees are not income but penalties imposed by the carrier on the charterer, shipper, consignee, or receiver, as the case may be, to allow the carrier to recover losses or expenses associated with or caused by the undue delay in the loading and/or discharge of the latter's shipments from the containers.[18] They are akin to damages.[19] Assuming that demurrage and detention fees may be treated as income, these fees are taxable only if they form part of Gross Philippine Billings (GPB) and taxed at the preferential rate of 2.5%.[20]

Further, RR 15-2013 is invalid because it was promulgated without public hearing as required by the Revised Administrative

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[15] *Id.* at 139.

[16] *Id.* at 141-146.

[17] *Id.* at 149.

[18] *Id.* at 150-151.

[19] *Id.* at 152.

[20] *Id.* at 155.

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Code and case law. Also, no copies of RR 15-2013 were filed with the University of the Philippines - Law Center, as required by the Revised Administrative Code, thus, the same is deemed not to have become effective.[21]

Respondents' Arguments

By Comment[22] dated February 3, 2014, the Secretary of Finance, through the Office of the Solicitor General (OSG), countered that the Order dated May 18, 2012 in Civil Case No. Q-09-64241 did not preclude the Secretary of Finance from issuing Section 4.4 of RR 15-2013 because a) the first case involves RMC 31-2008 which the CIR issued to clarify matters involving common carriers by sea, in relation to their transport of passengers, goods, and services, while the second case involves RR 15-2013 which the Secretary of Finance issued pursuant to his mandate under RA 10378; b) RMC 31-2008 was issued based on the authority of the CIR to interpret the provisions of the NIRC while RR 15-2013 was issued by virtue of the authority of the Secretary of Finance under RA 10378; and c) the Secretary of Finance was not impleaded as respondent in the first case, thus, he is not bound by the finality of Order dated May 18, 2012. Besides, the Secretary of Finance and the CIR are two (2) distinct officials governing two (2) separate agencies.

According to respondents, RR 15-2013 does not expand the provisions of RA 10378. It simply clarifies what constitutes Gross Philippine Billings (GPB) such that anything outside the definition of GPB is subject to the regular income tax rate for resident foreign corporations. Thus, the law need not specifically mention demurrage or detention fees as among those falling outside the definition of GPB.[23]

Respondents stress that demurrage and detention fees are income. They not only serve as penalties for consignees, they also serve as compensation for extended use of containers. As

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[21] *Id.* at 160.

[22] *Id.* at 411-426.

[23] *Id.* at 417-418.

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resident foreign corporations, they are covered by the provisions on the regular income tax rate and not the preferential rate of 2.5% imposed on GPB.[24]

Lastly, respondents argue that the absence of public hearing prior to the publication of RR 15-2013 or non-submission of copies thereof to the UP- Law Center did not render it ineffective. An interpretative regulation such as RR 15-2013, to be effective, needs nothing further than its bare issuance for it gives no real consequence more than what the law itself already prescribes. It adds nothing to the law and does not affect the substantial rights of any person.[25]

In its Answer[26] dated January 27, 2014, the CIR, through the BIR Litigation Department riposted that the trial court had no jurisdiction over the petition for declaratory relief because its subject matter involved a revenue regulation. Under Commonwealth Act No. 55[27] (CA 55), actions for declaratory relief do not apply to cases involving tax liabilities under any law administered by the BIR.[28] Further, *res judicata* does not apply to the case.

Petitioners' Omnibus Motion

Petitioners subsequently filed an Omnibus Motion 1) for Judicial Notice; and 2) for Summary Judgment[29] dated December 4, 2014.

Petitioners prayed that the trial court take judicial notice of the following: 1) the existence of RMC 31-2008; 2) the final

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[24] *Id.* at 420-424.

[25] *Id.* at 424.

[26] *Id.* at 427-444.

[27] AN ACT TO AMEND SECTION ONE OF ACT NUMBERED THIRTY-SEVEN HUNDRED AND THIRTY-SIX, BY PROVIDING THAT THE PROVISIONS OF THE SAID ACT SHALL NOT APPLY TO CASES INVOLVING LIABILITY FOR ANY TAX, DUTY, OR CHARGE COLLECTIBLE UNDER ANY LAW ADMINISTERED BY THE BUREAU OF CUSTOMS OR THE BUREAU OF INTERNAL REVENUE.

[28] *Rollo*, pp. 428-432.

[29] *Id.* at 474-491.

and executory Order dated May 18, 2012 in Civil Case No. Q-09-64241 and its Certificate of Finality dated August 28, 2012; 3) the enactment of Republic Act No. 10378[30] (RA 10378), which recognized the principle of reciprocity for grant of income tax exemptions to international shipping carriers and rationalized the taxes imposed thereon; and 4) the issuance of RR 15-2013.

Petitioners also filed a motion for summary judgment on ground that there was no genuine issue as to any material fact and/or the facts were undisputed and certain based on the pleadings, admissions, and affidavits on record.

The Ruling of the Trial Court

Following the parties' exchange of pleadings, the trial court, then presided by Acting Presiding Judge Villacorta, through its first assailed Order[31] dated September 15, 2015: 1) granted petitioners' motion for judicial notice of the existence of RMC 31-2008, the issuance of Order dated May 18, 2012 in Civil Case No. Q-09-64241 and its corresponding Certificate of Finality dated August 28, 2012, and the enactment of RA 10378 — all these being the official acts of different branches of government; 2) declared that it had no jurisdiction over the petition for declaratory relief pursuant to CA 55 which removed from regional trial courts the authority to rule on cases involving one's liability for tax, duty, or charge collectible under any law administered by the Bureau of Customs or the BIR; 3) ruled against the application of *res judicata* to the case because — first, *res judicata* does not give rise to a cause of action for the purpose of initiating a complaint, *res judicata* being a shield not a sword and executive and legislative authorities have the power to enact laws and rules to supersede judge-made laws or rules, second, the enactment and implementation of RA 10378

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[30] AN ACT RECOGNIZING THE PRINCIPLE OF RECIPROCITY AS BASIS FOR THE GRANT OF INCOME TAX EXEMPTIONS TO INTERNATIONAL CARRIERS AND RATIONALIZING OTHER TAXES IMPOSED THEREON BY AMENDING SECTIONS 28(A)(3)(a), 109, 118 AND 236 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC), AS AMENDED, AND FOR OTHER PURPOSES.

[31] *Rollo*, pp. 89-94.

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constituted a supervening event which negated the application of *res judicata*, third, there is no similarity of parties, subject matters, and causes of action between the present case and Civil Case No. Q-09-64241; and 4) found RR No. 15-2013 to be a reasonable tax regulation and an interpretative issuance, the effectivity of which does not require a public hearing, nay, prior registration with the UP Law Center. Thus, the trial court decreed:

WHEREFORE:

(1) The Motion for Judicial Notice is **granted**. This Court **declares** that the issuance of (i) RMC 31-2008, (ii) RTC-Branch 98 Order dated May 18, 2012 in Civil Case No. Q-09-64241, (iii) RTC-Branch 98 Certification of the finality of the Order dated May 18, 2012 in Civil Case No. Q-09- 64241, (iv) RA 10378, and (v) RR 15-2013, is an established fact in this case.

(2) The Motion for Summary Judgment is **denied** and as a result the instant petition for declaratory relief is **dismissed**.

Costs de oficio.

SO ORDERED.[32]

Petitioners' partial motion for reconsideration was denied under Order dated January 8, 2016.

The Present Petition

Petitioners now seek, on pure questions of law, the Court's discretionary appellate jurisdiction to review and reverse the assailed dispositions. They essentially reiterate the arguments raised in their petition for declaratory relief, *i.e.* a) *res judicata* and immutability of judgments apply to this case and the enactment of RA 10378 is not a supervening event which operates to negate the application of the aforesaid principles; b) RR 15-2013 is invalid because it erroneously subjects demurrage and detention fees collected by international shipping carriers to regular income tax rate, albeit these are not income; and c) RR 15-2013 is not an interpretative issuance, thus, a public hearing

[32] *Id.* at 94.

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and prior registration with the UP Law Center are required for its validity and effectivity.

Respondents Secretary of Finance and CIR, through Senior State Solicitor Jonathan dela Vega, submits: *Res judicata* does not apply here because there is no commonality of parties between this case and Civil Case No. Q-09-64241. The Secretary of Finance and the CIR are two (2) distinct officials.[33] RR 15-2013 does not add to the provisions of RA 10378. It simply clarifies how the GPB of international sea carriers should be determined. Its issuance is germane to the purpose of the law.[34] Lastly, RR 15-2013 is an interpretative regulation, thus, to be effective, it need not be filed with the UP Law Center.[35]

Petitioners' Reply[36] dated October 27, 2016 echoes their previous arguments against RR 15-2013.

Issues

1. Does *res judicata* apply in this case?

2. Is a petition for declaratory relief proper for the purpose of invalidating RR No. 15-2013?

3. Is RR 15-2013 a valid revenue regulation?

Ruling

Res judicata does not apply here

Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter, and of causes of action.[37]

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[33] *Id.* at 654-655.

[34] *Id.* at 658.

[35] *Id.* at 665.

[36] *Id.* at 674-700.

[37] *Diaz, Jr. v. Valenciano, Jr.*, G.R. No. 209376, December 6, 2017, 848 SCRA 85, 96 (2017).

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Here, we rule that there is no substantial identity of parties and subject matter.

a) No substantial identity of parties

Tambunting, Jr. v. Sumabat[38] explains the nature of a petition for declaratory relief, thus:

> An action for declaratory relief should be filed by a person interested under a deed, will, contract or other written instrument, and whose rights are affected by a statute, executive order, regulation or ordinance before breach or violation thereof. **The purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, etc. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach.** It may be entertained only before the breach or violation of the statute, deed, contract, etc. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject, i.e., the statute, deed, contract, etc., has already been infringed or transgressed before the institution of the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order. (Emphasis supplied)

Thus, it is required that the parties to the action for declaratory relief be those whose rights or interests are affected by the contract or statute being questioned.[39] Section 2 of Rule 63 of the Rules of Court further underscores that a judgment in a petition for declaratory relief binds only the impleaded parties:

> Section 2. Parties. — All persons who have or claim any interest which would be affected by the declaration shall be made parties; and no declaration shall, except as otherwise provided in these Rules, prejudice the rights of persons not parties to the action. (2a, R64)

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[38] 507 Phil. 94, 98 (2005).

[39] *City of Lapu-Lapu v. PEZA*, 748 Phil. 473, 512-513 (2014).

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Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio[40] further elucidates on this principle, thus:

Petitioners cannot also use the finality of the RTC decision in Petition Case No. U-920 as a shield against the verification of the validity of the deed of donation. According to petitioners, the said final decision is one for quieting of title. In other words, it is a case for declaratory relief under Rule 64 (now Rule 63) of the Rules of Court, which provides:

> SECTION 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance, may, before breach or violation thereof, bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder.
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this rule.
>
> SECTION 2. Parties. — All persons shall be made parties who have or claim any interest which would be affected by the declaration; and no declaration shall, except as otherwise provided in these rules, prejudice the rights of persons not parties to the action.

However, respondents were not made parties in the said Petition Case No. U-920. Worse, instead of issuing summons to interested parties, the RTC merely allowed the posting of notices on the bulletin boards of *Barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan. As pointed out by the CA, citing the ruling of the RTC:

> x x x In the said case or Petition No. U-920, notices were posted on the bulletin boards of *barangay* Cabalitaan, Municipalities of Asingan and Lingayen, Pangasinan, so that there was a notice to the whole world and during the initial hearing and/or hearings, no one interposed objection thereto.

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[40] 565 Phil. 766, 786-787 (2007).

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Suits to quiet title are not technically suits *in rem*, nor are they, strictly speaking, *in personam*, but being against the person in respect of the *res*, these proceedings are characterized as *quasi in rem*. **The judgment in such proceedings is conclusive only between the parties. Thus, respondents are not bound by the decision in Petition Case No. U-920 as they were not made parties in the said case. (Emphasis supplied)**

Applying the foregoing principles here, we find that there is no identity of parties between Civil Case No. Q-09-64241 and this case.

The final and executory Order dated May 18, 2012 of RTC-Branch 98 in Civil Case No. Q-09-64241 is only binding on herein petitioners Association of International Shipping Lines, Inc., APL Co. Pte. Ltd. and Maersk-Filipinas, Inc. and the lone respondent in that case, the CIR. Meanwhile, in this case, although the petitioners are the same, the respondents include not only the CIR but the Secretary of Finance as well. Note that the Secretary of Finance was not party in Civil Case No. Q-09-64241. Consequently, the Secretary of Finance is not bound by the final and executory judgment in Civil Case No. Q-09-64241. Additionally, unlike in the said case, it is the Secretary of Finance's issuance which is the subject of the present challenge, not the CIR's.

The distinction between the CIR and the Secretary of Finance, as respondents, is not hairsplitting. On one hand, when BIR Commissioner Lilian B. Hefti issued RMC 31-2008 on January 30, 2008, she did so under the auspices of Section 4[41] of the NIRC. On the other hand, when Secretary Cesar Purisima issued RR 15-2013 on September 20, 2013, he did so in obedience to

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[41] 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

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the legislative directive under Section 5[42] of RA 10378 and pursuant to his rule-making power under Section 244[43] of the NIRC.

Verily, the Commissioner and the Secretary cannot be considered as one, For when they issued their respective revenue memoranda or regulation, they did so pursuant to the separate powers and prerogatives granted by law.

b) No substantial identity of subject matter

While it is true that RMC 31-2008, subject of Civil Case No. Q-09- 64241, on one hand, and RR 15-2013, subject of the present case, on the other, both treat demurrage and detention fees to be within the prism of regular corporate income tax rate, each, however, differs from the other with respect to the authority from which it emanated.

In Civil Case No. Q-09-64241, what was challenged was the CIR's authority to issue RMC 31-2008 pursuant to Section 4 of the NIRC. On the other hand, what is being challenged here is the Secretary of Finance's authority to issue RR 15-2013 in accordance with Section 244 of the NIRC and Section 5 of RA 10378. The CIR and the Secretary of Finance derive

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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] Section 5. Implementing Rules and Regulations. — The Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate not later than thirty (30) days upon the effectivity of this Act the necessary rules and regulations for its effective implementation. The Department of Finance (DOF), in coordination with the Department of Foreign Affairs (DFA), shall oversee the exchange of notes between the Philippines and concerned countries for purposes of facilitating the availment of reciprocal exemptions intended under this Act.

[43] SEC. 244. Authority of Secretary of Finance to Promulgate Rules and Regulations. — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code.

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their respective powers from two (2) distinct sources, thus, their respective issuances, too, are separate and independent of each other.

More, the supposed invalidity of the CIR's issuance in Civil Case No. Q-09-64241 does not preclude the Secretary of Finance from rendering his issuance on the same subject.

More important, the judgment in Civil Case No. Q-09-64241 does not rise to a level of a judicial precedent to be followed in subsequent cases by all courts in the land, since the same was rendered by a regional trial court, and not by this Court. Verily, the Order dated May 18, 2012 of RTC-Branch 98, although binding on the CIR, cannot serve as a judicial precedent for the purpose of precluding the Secretary of Finance from promulgating a similar issuance on the same subject.

A petition for declaratory relief is not the proper remedy to seek the invalidation of RR 15-2013; petition is treated as one for prohibition

To begin with, the trial court dismissed the case below, among others, for lack of jurisdiction pursuant to Section 1 of CA 55, which reads:

> Section 1. Section one of Act Numbered Thirty-seven hundred and thirty-six is hereby amended so as to read as follows:
>
> "SECTION 1. Construction. — Any person interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in a Court of First Instance to determine any question of construction or validity arising under such deed, contract, instrument or statute and for a declaration of his rights or duties thereunder: Provided, however, **That the provisions of this Act shall not apply to cases where a taxpayer questions his liability for the payment of any tax, duty, or charge collectible under any law administered by the Bureau of Customs or the Bureau of Internal Revenue.**" (Emphasis supplied)

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In ***CJH Development Corp. v. BIR***,[44] this Court clarified that CA 55 is still good law, thus:

> CJH alleges that CA No. 55 has already been repealed by the Rules of Court; thus, the remedy of declaratory relief against the assessment made by the BOC is proper. It cited the commentaries of Moran allegedly to the effect that declaratory relief lies against assessments made by the BIR and BOC. Yet in *National Dental Supply Co. v. Meer*, this Court held that:
>
> > From the opinion of the former Chief Justice Moran may be deduced that the failure to incorporate the above proviso [CA No. 55] in section 1, rule 66, [now Rule 64] is not due to an intention to repeal it but rather to the desire to leave its application to the sound discretion of the court, which is the sole arbiter to determine whether a case is meritorious or not. And even if it be desired to incorporate it in rule 66, it is doubted if it could be done under the rule-making power of the Supreme Court considering that the nature of said proviso is substantive and not adjective, **its purpose being to lay down a policy as to the right of a taxpayer to contest the collection of taxes on the part of a revenue officer or of the Government**. With the adoption of said proviso, our law-making body has asserted its policy on the matter, which is **to prohibit a taxpayer to question his liability for the payment of any tax that may be collected by the Bureau of Internal Revenue**. As this Court well said, quoting from several American cases, "The Government may fix the conditions upon which it will consent to litigate the validity of its original taxes..." "The power of taxation being legislative, all incidents are within the control of the Legislature." In other words, it is our considered opinion that the proviso contained in Commonwealth Act No. 55 is still in full force and effect and bars the plaintiff from filing the present action.
>
> **As a substantive law that has not been repealed by another statute, CA No. 55 is still in effect and holds sway. Precisely, it has removed from the courts' jurisdiction over petitions for declaratory relief involving tax assessments.** The Court cannot repeal, modify or alter an act of the Legislature. (Emphasis supplied)

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[44] 595 Phil. 1051, 1057-1058 (2008).

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CIR v. Standard Insurance, Co., Inc.[45] further reinforced the rule that regional trial courts have no jurisdiction over petitions for declaratory relief against the imposition of tax liability or validity of tax assessments:

> The more substantial reason that should have impelled the RTC to desist from taking cognizance of the respondent's petition for declaratory relief except to dismiss the petition was its lack of jurisdiction.
>
> We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC]." **Also, pursuant to Section 11[15] of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount."**
>
> In view of the foregoing, the RTC not only grossly erred in giving due course to the petition for declaratory relief, and in ultimately deciding to permanently enjoin the enforcement of the specified provisions of the NIRC against the respondent, but even worse acted without jurisdiction. (Emphasis supplied)

Tambunting, Jr. v. Sumabat,[46] explained the nature of a petition for declaratory relief, thus:

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[45] G.R. No. 219340, November 7, 2018.

[46] *Supra* note 38.

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An action for declaratory relief should be filed by a person interested under a deed, will, contract or other written instrument, and whose rights are affected by a statute, executive order, regulation or ordinance before breach or violation thereof. The purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, etc. for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach. It may be entertained only before the breach or violation of the statute, deed, contract, etc. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject, *i.e.*, the statute, deed, contract, *etc*., has already been infringed or transgressed before the institution of the action. Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order.

Verily, since there is no actual case involved in a petition for declaratory relief, it cannot be the proper vehicle to invoke the power of judicial review to declare a statute as invalid or unconstitutional. As decreed in ***DOTR v. PPSTA***,[47] the proper remedy is *certiorari* or prohibition, thus:

The Petition for Declaratory Relief is not the proper remedy

One of the requisites for an action for declaratory relief is that it must be filed before any breach or violation of an obligation. Section 1, Rule 63 of the Rules of Court states, thus:

x x x x x x x x x

Thus, there is no actual case involved in a Petition for Declaratory Relief. It cannot, therefore, be the proper vehicle to invoke the judicial review powers to declare a statute unconstitutional.

It is elementary that before this Court can rule on a constitutional issue, there must first be a justiciable controversy. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely

[47] G.R. No. 230107, July 24, 2018.

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anticipatory. As We emphasized in *Angara v. Electoral Commission*, any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities.

To question the constitutionality of the subject issuances, respondents should have invoked the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution. The adverted section defines judicial power as the power not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "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."

There is a grave abuse of discretion when there is patent violation of the Constitution, the law, or existing jurisprudence. On this score, it has been ruled that "the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions." **Thus, petitions for *certiorari* and prohibition are the proper remedies where an action of the legislative branch is seriously alleged to have infringed the Constitution.** (Emphasis supplied)

In ***Diaz, et al. v. Secretary of Finance, et al.***,[48] the Court, nonetheless, held that a petition for declaratory relief may be treated as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good; or if the assailed act or acts of executive officials are alleged to have usurped legislative authority, thus:

On August 24, 2010 the Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the Court's resolution, however, arguing that petitioners' allegations clearly made out a case

[48] 669 Phil. 371, 382-383 (2011).

for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasi-judicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits. (Emphasis supplied)

Here, RR 15-2013 greatly impacts the Philippine maritime industry since it is considered "*as more of the 'backbone' of the Philippines' burgeoning economy due to its significance both for trade and transportation*."[49] For this reason and the fact that the issue at hand has already pended since 2013 or for more than six (6) years now, first with the trial court and now with this Court, we resolve to treat the present case as one for *certiorari* or prohibition and settle the controversy once and for all. ***Diaz*** aptly enunciated:

Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite. (Emphasis supplied)

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[49] Letran, Bjorn Biel M. "A bustling and thriving sector," BWorldOnline.Com., April 25, 2018. See https://www.bworldonline.com/a-bustling-and-thriving-sector.

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RR 15-2013 is a valid issuance

In treating demurrage and detention fees as regular income subject to regular income tax rate, the Secretary of Finance relied on Section 28(A)(I)(3a) of the NIRC, as amended by RA 10378, *viz.*:

SEC. 28. Rates of Income Tax on Foreign Corporations. —

(A) Tax on Resident Foreign Corporations. —

(1) x x x

(2) x x x

(3). International Carrier.—An international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 1/2 %) on its 'Gross Philippine Billings' as defined hereunder:

(c) International Air Carrier. — 'Gross Philippine Billings' refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo, and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document: Provided, That tickets revalidated, exchanged and/or indorsed to another international airline form part of the Gross Philippine Billings if the passenger boards a plane in a port or point in the Philippines: Provided, further, That for a flight which originates from the Philippines, but transshipment of passenger takes place at any part outside the Philippines on another airline, only the aliquot portion of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of Gross Philippine Billings.

(d) International Shipping. — 'Gross Philippine Billings' means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

Provided, That international carriers doing business in the Philippines may avail of a preferential rate or exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage on the basis of an applicable tax treaty or international agreement to which the

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Philippines is a signatory or on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision. (Emphasis supplied)

x x x x x x x x x.

This provision is still in effect since it was not amended by RA 10963 or the Tax Reform for Acceleration and Inclusion law.

To determine whether demurrage and detention fees are subject to the preferential 2.5% rate, we refer to the definition of "Gross Philippine Billings" (GPB) under Section 28(A)(I)(3a) of the NIRC, as amended by RA 10378, *viz*.: "*gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents*."

RR 15-2013 echoes this definition, thus:

B) Determination of Gross Philippine Billings of International Sea Carriers. — In computing for "Gross Philippine Billings" of international sea carriers, there shall be included the total amount of gross revenue whether for passenger, cargo, and/or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

x x x x x x x x x

Verily, the GPB covers gross revenue derived from transportation of **passengers, cargo and/or mail** originating from the Philippines up to the final destination. Any other income, therefore, is subject to the regular income tax rate. When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*.[50]

Under RR 15-2013, demurrage and detention fees are not deemed within the scope of GPB. For demurrage fees "*which are in the nature of rent for the use of property of the carrier*

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[50] *Obiasca v. Basallote*, 626 Phil. 775, 785 (2010).

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in the Philippines, is considered income from Philippine source and is subject to income tax under the regular rate as the other types of income of the on-line carrier." On the other hand, detention fees and other charges "*relating to outbound cargoes and inbound cargoes are all considered Philippine-sourced income of international sea carriers they being collected for the use of property or rendition of services in the Philippines, and are subject to the Philippine income tax under the regular rate*."

Demurrage fee is the allowance or compensation due to the master or owners of a ship, by the freighter, for the time the vessel may have been detained beyond the time specified or implied in the contract of affreightment or the charter-party. It is only an extended freight or reward to the vessel, in compensation for the earnings the carrier is improperly caused to lose.[51]

Detention occurs when the consignee holds on to the carrier's container outside of the port, terminal, or depot beyond the free time that is allotted. Detention fee is charged when import containers have been picked up, but the container (regardless if it is full or empty) is still in the possession of the consignee and has not been returned within the allotted time. Detention fee is also charged for export containers in which the empty container has been picked up for loading, and the loaded container is returned to the steamship line after the allotted free time.[52]

Indeed, the exclusion of demurrage and detention fees from the preferential rate of 2.5% is proper since they are not considered income derived from transportation of persons, goods and/or mail, in accordance with the rule *expressio unios est exclusio alterius*.

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[51] *Black's Law Dictionary* See: < a href="https://thelawdictionary.org/demurrage/" title="DEMURRAGE" >DEMURRAGE < /a > (Last accessed: November 13, 2019).

[52] PNG Logistics See: http://pnglc.com/detention-and-demurrage-whats-the-difference/ (Last accessed: November 13, 2019).

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Demurrage and detention fees definitely form part of an international sea carrier's gross income. For they are acquired in the normal course of trade or business. The phrase "*in the course of trade or business*" means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.[53]

Surely, gross income means income derived from whatever source, including compensation for services; the conduct of trade or business or the exercise of a profession; dealings in property; interests; rents; royalties; dividends; annuities; prizes and winnings; pensions; and a partner's distributive share in the net income of a general professional partnership,[54] among others. Demurrage and detention fees fall within the definition of "gross income" — the former is considered as rent payment for the vessel; and the latter, compensation for use of a carrier's container.

RR 15-2013 is an interpretative and internal issuance

An interpretative or implementing rule is defined under Section 2 (2), Chapter 1, Book VIII of the Revised Administrative Code, *viz*.:

> Section 2. Definitions. — As used in this Book:
>
> x x x x x x x x x
>
> (2) "Rule" means any agency statement of general applicability that implements or interprets a law, fixes and describes the procedures in, or practice requirements of, an agency, including its regulations. The term includes memoranda or statements concerning the internal administration or management of an agency not affecting the rights of, or procedure available to, the public.

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[53] Section 105, RA 8424.

[54] See *CIR v. PAL*, 535 Phil. 95, 106 (2006).

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Chapter 2 of Book VII of the same Code further provides the manner by which administrative rules attain effectivity:

Section 3. Filing.—

(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

Section 4. Effectivity. — In addition to other rule-making requirements provided by law not inconsistent with this Book, **each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law,** or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

SECTION 5. Publication and Recording.—The University of the Philippines Law Center shall:

(1) Publish a quarterly bulletin setting forth the text of rules filed with it during the preceding quarter; and

(2) Keep an up-to-date codification of all rules thus published and remaining in effect, together with a complete index and appropriate tables.

SECTION 6. Omission of Some Rules.— (1) The University of the Philippines Law Center may omit from the bulletin or the codification any rule if its publication would be unduly cumbersome, expensive or otherwise inexpedient, but copies

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of that rule shall be made available on application to the agency which adopted it, and the bulletin shall contain a notice stating the general subject matter of the omitted rule and new copies thereof may be obtained.

(2) Every rule establishing an offense or defining an act which, pursuant to law is punishable as a crime or subject to a penalty shall in all cases be published in full text.

SECTION 7. Distribution of Bulletin and Codified Rules.—The University of the Philippines Law Center shall furnish one (1) free copy each of every issue of the bulletin and of the codified rules or supplements to the Office of the President, Congress, all appellate courts and the National Library. The bulletin and the codified rules shall be made available free of charge to such public officers or agencies as the Congress may select, and to other persons at a price sufficient to cover publication and mailing or distribution costs.

SECTION 8. Judicial Notice.—The court shall take judicial notice of the certified copy of each rule duly filed or as published in the bulletin or the codified rules.

SECTION 9. Public Participation.—(1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two (2) weeks before the first hearing thereon.

(3) In case of opposition, the rules on contested cases shall be observed. (Emphasis supplied)

Excepted are interpretative regulations and those merely internal in nature, which do not require filing with the U.P. Law Center for their effectivity. On this score, ***ASTEC v. ERC***[55] is proper:

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[55] 695 Phil. 243, 280 (2012).

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As interpretative regulations, the policy guidelines of the ERC on the treatment of discounts extended by power suppliers are also not required to be filed with the U.P. Law Center in order to be effective. Section 4, Chapter 2, Book VII of the Administrative Code of 1987 requires every rule adopted by an agency to be filed with the U.P. Law Center to be effective. However, in Board of Trustees of the Government Service Insurance System v. Velasco, this Court pronounced that **"[n]ot all rules and regulations adopted by every government agency are to be filed with the UP Law Center." Interpretative regulations and those merely internal in nature are not required to be filed with the U.P. Law Center.** Paragraph 9 (a) of the Guidelines for Receiving and Publication of Rules and Regulations Filed with the U.P. Law Center states:

> 9. Rules and Regulations which need not be filed with the U.P. Law Center, shall, among others, include but not be limited to, the following:
>
> > a. Those which are interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public. (Emphasis supplied)

RR 15-2013 is an internal issuance for the guidance of "*all internal revenue officers and others concerned*." It is also an interpretative issuance *vis-à-vis* RA 10378, thus:

SECTION 2. SCOPE. — Pursuant to Section 244 of the National Internal Revenue Code of 1997 (NIRC), as amended, and Section 5 of RA No. 10378, these Regulations are hereby promulgated to implement RA No. 10378, amending Sections 28(A)(3)(a), 109, 118 and 236 of the NIRC.

RR 15-2013 merely sums up the rules by which international carriers may avail of preferential rates or exemption from income tax on their gross revenues derived from the carriage of persons and their excess baggage based on the principle of reciprocity or an applicable tax treaty or international agreement to which the Philippines is a signatory. Interpretative regulations are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute.

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Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules.[56]

Indeed, when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed.[57] As such, RR 15-2013 need not pass through a public hearing or consultation, get published, nay, registered with the U.P. Law Center for its effectivity.

ACCORDINGLY, the petition is **DENIED** for lack of merit. The Orders dated September 15, 2015 and January 8, 2016 of the Regional Trial Court, Branch 77, Quezon City, in Special Civil Action No. R-QZN-13-05590-CV are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Reyes, J. Jr., and *Lopez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 227581. January 15, 2020]

JOSEPH DELOS SANTOS *y* PADRINAO, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES**, *respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; ONLY QUESTIONS OF LAW SHALL BE

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[56] *Republic of the Philippines v. Drugmaker's Laboratories, Inc., et al.*, 728 Phil. 480, 490 (2014).

[57] *Id.*