

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL
REVENUE,

Petitioner,

CTA EB No. 2383
(CTA Case No. 9438)

- versus -

AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[FORMERLY: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION (PHILIPPINES)],

Respondent.

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AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[FORMERLY: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION (PHILIPPINES)],

Petitioner,

CTA EB No. 2408
(CTA Case No. 9438)

Present:

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

OCT 17 2022

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DECISION

REYES-FAJARDO, L:

For action are Petitions for Review respectively filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 2383 and by AIG Shared Services Corporation (Philippines) (AIG) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)] in CTA EB No. 2408, challenging the Decision¹ dated February 19, 2020 and the Resolution² dated November 17, 2020 in CTA Case No. 9438, whereby the Court in Division partially granted AIG's claim for refund or issuance of a tax credit certificate (TCC) of unutilized excess input value-added tax (VAT) attributable to its zero-rated sales/receipts amounting to ₱193,023.84 covering the four (4) quarters of the Calendar Year 2014 (CY 2014).

The CIR is the head of the Bureau of Internal Revenue (BIR) and holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City. The CIR is vested with the power to decide tax cases, including claims for refunds and/or tax credits under Section 4 of the 1997 National Internal Revenue Code, as amended (NIRC of 1997, as amended).³

AIG Shared Services Corporation is a foreign corporation organized and existing under the laws of New York, U.S.A., which was duly licensed on September 13, 1977, under Philippine Securities and Exchange Commission (SEC) No. 152 to operate a regional headquarters in the Philippines,⁴ with a license to do business in the Philippines under the name AIG Shared Services Corporation (Philippines).⁵ Its former corporate names were American International Underwriters Corporation-Regional Operating Headquarters,⁶ AIU Technology and Operations Management Corporation,⁷ and Chartis Technology and Operations Management

¹ Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy and Associate Justice Maria Rowena Modesto-San Pedro, concurring; CTA EB 2408 Docket, pp. 19-58.

² Penned by Associate Justice Ma. Belen M. Ringpis-Liban with Associate Justice Erlinda P. Uy, concurring; and Associate Justice Rowena Modesto-San Pedro, on leave; CTA EB 2383 Docket, pp. 59-68.

³ Par. 1.1 and 1.2, Joint Stipulation of Facts and Issue, *Rollo* (CTA Case No. 9438), Vol. I, p. 374.

⁴ Exhibit "P-1", *Rollo* (CTA Case No. 9438), Vol. II, p. 796.

⁵ Exhibit "P-3", *Rollo* (CTA Case No. 9438), Vol. II, p. 798.

⁶ Exhibit "P-1", *Rollo* (CTA Case No. 9438), Vol. II, p. 796.

⁷ Exhibits "P-2" to "P-3", *Rollo* (CTA Case No. 9438), Vol. II, p. 797-798.

Corporation (Philippines).⁸ AIG is registered with the BIR with taxpayer identification number (TIN) 001-218-732-000.⁹

On March 30, 2016, AIG filed an administrative claim for refund of its excess and unutilized input VAT in the amount of ₱43,912,521.20 for the four (4) quarters of CY 2014.¹⁰

On August 24, 2016, AIG filed its Petition for Review docketed as CTA Case No. 9438.¹¹

On February 19, 2020, the Court in Division rendered the challenged Decision, the dispositive portion of which reads:

WHEREFORE, in light of the foregoing discussions, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent [CIR] is **ORDERED** to refund or to issue a tax credit certificate in favor of Petitioner [AIG] in the amount of **₱193,023.84**, representing the latter's unutilized excess input VAT attributable to its zero-rated sales/receipts for the four (4) quarters of CY 2014.

SO ORDERED.

On March 13, 2020, AIG filed a Motion for Reconsideration with Motion to Re-Open (Re: Decision dated 19 February 2020). On June 19, 2020, the CIR filed a Motion for Partial Reconsideration (Re: Decision promulgated on 19 February 2020).

On November 17, 2020, the Court in Division issued the challenged Resolution denying AIG and the CIR's Motions for Partial Reconsideration, the dispositive portion of which reads:

WHEREFORE, premises considered, the petitioner's Motion for Reconsideration with Motion to Re-Open (Re: Decision dated 19 February 2020) and Motion for Partial Reconsideration (Re: Decision promulgated 19 February 2020) are both **DENIED** for lack of merit.

SO ORDERED.

⁸ Exhibit "P-2", *Rollo* (CTA Case No. 9438), Vol. II, p. 797.

⁹ Exhibit "P-4", *Rollo* (CTA Case No. 9438), Vol. II, p. 799.

¹⁰ Decision, *Rollo* (CTA EB No. 2383), p. 2.

¹¹ *Id.*

On December 3, 2020, the CIR filed a Petition for Review docketed as CTA EB No. 2383.

On January 21, 2021, AIG filed a Petition for Review docketed as CTA EB No. 2408.

In a Minute Resolution dated March 10, 2021, the Court consolidated CTA EB No. 2408 with CTA EB No. 2383 under Section 1, Rule 31 of the Revised Rules of Court.¹²

On October 21, 2021, the consolidated Petitions for Review were submitted for decision.¹³

CIR's Petition for Review (CTA EB No. 2383):

The CIR argues that the Court in Division erred in ruling that AIG is entitled to a refund amounting to ₱193,023.84, representing unutilized excess input VAT allegedly attributable to its zero-rated sales/receipts amounting to ₱10,852,469.06. The CIR claims that the requirement of attributability between the input tax on purchases and the zero-rated sales/receipts of AIG was not established.¹⁴ The CIR further contends that after determining which input taxes are 'creditable,' the law requires a second evaluation to determine which 'creditable' input taxes are 'attributable,' and that the connection between the purchases and the finished product should be concrete and not imaginary or remote.

As such, the CIR prays in its Petition for Review that the Court in Division's Decision and Resolution be reversed and set aside and another one be rendered denying the entire claim for refund.

AIG's Comment/Opposition:

AIG posits that its purchases of goods and services fall within the ambit of Section 110 (A) of the NIRC of 1997, as amended. It

¹² Minute Resolution dated March 10, 2021, *Rollo* (CTA EB No. 2383), pp. 97-98.

¹³ Resolution promulgated on October 21, 2021, *Rollo* (CTA EB No. 2383), pp. 108-111.

¹⁴ Petition for Review, *Rollo* (CTA EB No. 2383), pp. 3-9.

counters that the CIR failed to point out which among AIG's purchases are not attributable to its zero-rated sales.¹⁵

AIG's Petition for Review (CTA EB No. 2408):

AIG maintains that the Court in Division erred in not considering its client-affiliate, Chartis Europe SA – Poland, a non-resident foreign corporation for purposes of zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. AIG asserts that it presented Certifications of Non-Registration of Company issued by the SEC, consularized documents showing its foreign registration and incorporation, and screenshots of the official website of the foreign jurisdiction showing its registration for Chartis Europe SA – Poland.

AIG adds that the printed screenshots of the foreign governments' official websites, in addition to Certifications of Non-Registration issued by the SEC, are sufficient evidence that its client-affiliates are non-resident foreign corporations doing business outside the Philippines.

AIG concludes that the totality of the evidence presented would collectively show that its services to its client-affiliates were performed in the Philippines.

As such, AIG prays in its Petition for Review that the Court in Division's Decision be set aside and that the refund or issuance of TCC for the amount of ₱43,912,521.20 for the four (4) quarters of CY 2014 be granted.

CIR's Comment/Opposition:

The CIR contends that it is for the taxpayer to prove and for the government to disprove a taxpayer's entitlement to a tax refund, and that AIG failed to discharge this burden of establishing its claim for a tax refund or TCC.¹⁶ The CIR adds that claims for refund are construed strictly against the claimant, refunds partaking of the nature of an exemption from tax. It is incumbent upon AIG to prove that it is entitled to the refund under the law.

¹⁵ Comment / Opposition (Re: Petition for Review dated 02 December 2020), *Rollo* (CTA EB No. 2383), pp. 75-77.

¹⁶ Comment (Re: Petition for Review), p.3, *Rollo* (CTA EB No. 2383), p. 104.

THE RULING OF THE COURT

The Petitions for Review are denied.

Requisites for Refund / Issuance of TCC of Input VAT

Section 112 (A) and (C) of the NIRC of 1997, as amended, provided:

SEC. 112. *Refunds or Tax Credits of Input Tax.* –

(A) *Zero-rated or Effectively Zero-rated Sales.* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (20) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP)*: *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day

period, appeal the decision or the unacted claim with the Court of Tax Appeals.

As discussed by the Court in Division,¹⁷ jurisprudence has laid down requisites which the taxpayer-applicant must comply to obtain a refund / TCC of input VAT to wit:

As to the timeliness of the filing of the administrative and judicial claims:

1. The claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;¹⁸
2. That in case of full or partial denial of the refund claim, or the failure on the part of the Commissioner to act on the said claim within a period of one hundred twenty (120) days, the judicial claim has been filed with this Court, within thirty (30) days from receipt of the decision or after the expiration of the said 120-day period;¹⁹

With reference to the taxpayer's registration with the BIR:

3. The taxpayer is a VAT-registered person;²⁰

In relation to the taxpayer's output VAT:

4. The taxpayer is engaged in zero-rated or effectively zero-rated sales;²¹
5. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;²²

As regards the taxpayer's input VAT being refunded:

6. The input taxes are not transitional input taxes;²³
7. The input taxes are due or paid;²⁴
8. The input taxes have not been applied against output taxes during and in the succeeding quarters;²⁵ and

¹⁷ Decision (CTA Case No. 9438), pp. 10-11.

¹⁸ *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communication Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

¹⁹ *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue*, G.R. No. 205282, January 14, 2019; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.

²⁰ *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007; *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

9. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.²⁶

This Court adopts the findings of the Court in Division in relation to all the above-enumerated requisites and expounds the *fourth, fifth* and *ninth requisites* to address the arguments of the parties as assailed in their respective Petition for Review.

Findings of fact by the Court in Division are not to be disturbed without any showing of grave abuse of discretion considering that the members of the Court in Division are in the best position to analyze the documents presented by the parties.²⁷

**AIG’s Petition for Review
(CTA EB No. 2408)**

As found by the Court in Division, AIG declared an amount of ₱2,131,262,124.17 total sales/receipts which included zero-rated sales/receipts of ₱2,086,692,750.89 in its Quarterly VAT Returns for the four (4) quarters of CY 2014,²⁸ as follows:

	1st Quarter (Exhibit "P-9")	2nd Quarter (Exhibit "P-10")	3rd Quarter (Exhibit "P-11")	4th Quarter (Exhibit "P-12")	Total
Vatable Sales/Receipts	₱14,045,332.87	₱9,578,528.61	₱10,839,724.33	₱10,105,787.47	₱44,569,373.28
Zero-Rated Sales / Receipts	442,612,125.26	501,953,349.75	366,270,294.38	775,856,981.50	2,086,692,750.89
Total Sales / Receipts	<u>₱456,657,458.13</u>	<u>₱511,531,878.36</u>	<u>₱377,110,018.71</u>	<u>₱785,962,768.97</u>	<u>₱2,131,262,124.17</u>

In CY 2014, AIG allegedly rendered services to a total of seventy-five (75) client-affiliates. Seventy-four (74) of those client-affiliates are non-resident foreign clients doing business outside the Philippines and one (1) is a domestic corporation registered with the Philippine Economic Zone Authority (PEZA). According to AIG, as a Regional Operating Headquarters (ROHQ), it renders qualifying services, including business planning and coordination, corporate finance advisory, training and personal management, technical support, and

²⁶ *Id.*
²⁷ *Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2016 citing *Sea-Land Service Inc. v. Court of Appeals*, G.R. No. 122605, April 30, 2001.
²⁸ Decision (CTA Case No. 9438), p. 13.

data processing and communication, to its affiliates in the Asia-Pacific region and other foreign markets.²⁹

This Court adopts the finding of the Court in Division that out of the seventy-four (74) foreign client-affiliates of AIG, only eighteen (18) are considered as non-resident foreign corporations doing business outside the Philippines.³⁰

AIG contests in its Petition for Review that the Court in Division erred in not considering its client-affiliate, Chartis Europe SA – Poland, a non-resident foreign corporation for purposes of zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. It was noted that AIG offered as evidence³¹ and was admitted in evidence,³² the Certifications of Non-Registration of Company of Chartis Europe S.A. Poland³³ and AIG Europe S.A. Poland Branch,³⁴ together with the consularized documents showing foreign registration and incorporation.³⁵

AIG also raises in its Petition for Review that the Court in Division erred in disregarding the printed screenshots of the foreign governments' official websites as proof that its client-affiliates are non-resident foreign corporations doing business outside the Philippines.

AIG's arguments are not persuasive.

Section 108(B)(2) of the NIRC of 1997, as amended, reads:

²⁹ *Id.*

³⁰ The Court in Division determined which of AIG's client-affiliates are non-resident foreign corporations doing business outside the Philippines, based on the following reasons: (a) without proof of foreign registration and supported only by SEC Certification of Non-Registration of Company; (b) without SEC Certification of Non-Registration of Company and supported only by consularized foreign registration; (c) supported only by SEC Certification of Non-Registration of Company and the name indicated therein is different from AIG's client-affiliate's name; (d) supported by SEC Certification of Non-Registration of Company and consularized foreign registration but the name indicated in the latter document is different from AIG's client-affiliate's name; (e) supported by SEC Certification of Non-Registration of Company and documents which cannot be considered as valid proof of foreign incorporation/registration; and (f) supported by SEC Certification of Non-Registration of Company and consularized foreign registration but without English translation.

³¹ Formal Offer of Evidence, *Rollo* (CTA Case No. 9438), Vol. II, pp. 733-795.

³² Resolution promulgated April 17, 2018, *Rollo* (CTA Case No. 9438), Vol. VI, pp. 2757-2759.

³³ Exhibit "P-92", *Rollo* (CTA Case No. 9438), Vol. III, p. 1007.

³⁴ Exhibit "P-92-a", *Rollo* (CTA Case No. 9438), Vol. III, p. 1008.

³⁵ Exhibits "P-167-a" and "P-167-b", *Rollo* (CTA Case No. 9438), Vol. V, pp. 2102-2109.

SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

...

(B) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.

1. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

(2) Services other than those mentioned in the preceding paragraph,³⁶ **rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP);

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For zero-rating of services under Section 108(B)(2) of the NIRC of 1997, as amended to apply, the following elements must concur:

1. The recipient of the services is a foreign corporation, and the corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;³⁸
2. The payment for such services should be in acceptable foreign currency accounted for in accordance with the rules of the *Bangko Sentral ng Pilipinas*;³⁹

³⁶ These services are processing, manufacturing, and packing of goods. See Section 108(B)(1), NIRC, as amended.

³⁷ Boldfacing supplied.

³⁸ *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

³⁹ *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* No. 153205, January 22, 2007; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

3. The services fall under any of the categories under Section 108(B)(2);⁴⁰
4. The services must be performed in the Philippines by a VAT-registered person.⁴¹

First element – Proof that client-affiliate is a non-resident foreign corporation

The *first element* above provides that the recipient of the services is a foreign corporation doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines. For AIG to establish that the recipient of their services is a foreign corporation doing business out of the Philippines, or is a nonresident person not engaged in business, there must be proof of two components: (1) that their client-affiliate was established under the laws of a country not the Philippines; and (2) that it is not engaged in trade or business in the Philippines.

The first component, that the client is not a domestic corporation, may be proven by SEC Certifications of Non-Registration, which confirm that the client-affiliates are foreign corporations. The second component, that the client-affiliate is not engaged in trade or business in the Philippines, may be evidenced by the client-affiliates' certificate of incorporation in another country. These requirements of proof of both components are especially required from ROHQs like AIG, as was sufficiently explained by the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte Ltd.*,⁴² to wit:

For purposes of zero-rating under Section 108(B)(2) of the Code, the claimant must establish the two components of a client's NRFC status, *viz*: (1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.

⁴⁰ *Id.*

⁴¹ *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

⁴² G.R. No. 234445, July 15, 2020.

Such proof must be especially required from ROHQs such as DKS. That the law expressly authorized ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.

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To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association / certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue*. **The absence of any other competent evidence (e.g., articles of association / certificates of incorporation) proving the second component (i.e., that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**⁴³

AIG maintains that the Court in Division erred in not considering its client-affiliate, Chartis Europe SA – Poland, a non-resident foreign corporation for purposes of zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended. It was noted that AIG offered as evidence⁴⁴ and was admitted in evidence⁴⁵ the Certifications of Non-Registration of Company of Chartis Europe S.A. Poland⁴⁶ and AIG Europe S.A. Poland Branch,⁴⁷ together with the consularized documents showing foreign registration and incorporation.⁴⁸

However, discrepancies in the corporate entity name were noted, as follows:

Certification of Non-Registration of Company	Consularized Confirmation of Assignment of Tax	Consularized Letter of the Polish Financial	Client-Affiliate Name in the Official Receipt
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⁴³ Boldfacing supplied.
⁴⁴ Formal Offer of Evidence, *Rollo* (CTA Case No. 9438), Vol. II, pp. 733-795.
⁴⁵ Resolution promulgated April 17, 2018, *Rollo* (CTA Case No. 9438), Vol. VI, pp. 2757-2759.
⁴⁶ Exhibit "P-92", *Rollo* (CTA Case No. 9438), Vol. III, p. 1007.
⁴⁷ Exhibit "P-92-a", *Rollo* (CTA Case No. 9438), Vol. III, p. 1008.
⁴⁸ Exhibits "P-167-a" and "P-167-b", *Rollo* (CTA Case No. 9438), Vol. V, pp. 2102-2109.

	Identification Number	Supervision Authority	
Chartis Europe S.A. Poland ⁴⁹	Chartis Europe Limited ⁵¹	AIG Europe S.A. ⁵²	Chartis Europe SA - Poland ⁵⁶
AIG Europe S.A. Poland Branch ⁵⁰		Chartis Europe S.A. Division in Poland ⁵³	
		Chartis Europe Limited Division in Poland ⁵⁴	
		AIG Europe Limited SP. z o.o. Division in Poland ⁵⁵	

In the Judicial Affidavit of Glaiza A. Baroro, she identified the above documents under the header of “Chartis Europe S.A. – Poland,”⁵⁷ however referring to the above documents with differing corporate entity names. Moreover, Glaiza A. Baroro mentioned that the current name of the client-affiliate is “AIG Europe Limited Sp. z o.o.”

This Court cannot take lightly the different names and make the assumption that they all refer to one entity. Considering such discrepancy, the Court cannot establish whether the above documents pertain to Chartis Europe S.A. – Poland and if said client-affiliate is doing business outside the Philippines.⁵⁸

Thus, the Court in Division was correct in not considering Chartis Europe SA – Poland, a non-resident foreign corporation for purposes of zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

⁴⁹ Exhibit “P-92”, *Rollo* (CTA Case No. 9438), Vol. III, p. 1007.
⁵⁰ Exhibit “P-92-a”, *Rollo* (CTA Case No. 9438), Vol. III, p. 1008.
⁵¹ Exhibit “P-167-a”, *Rollo* (CTA Case No. 9438), Vol. V, p. 2104.
⁵² Exhibit “P-167-b”, *Rollo* (CTA Case No. 9438), Vol. V, p. 2106.
⁵³ *Id.*
⁵⁴ *Id.*
⁵⁵ *Id.*
⁵⁶ Decision, *Rollo* (CTA EB No. 2383), p. 40.
⁵⁷ Sworn Statement of Ms. Glaiza A. Baroro in lieu of Direct Testimony, *Rollo* (CTA Case No. 9438), Vol. I, p. 233.
⁵⁸ *1-Remit, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9733, February 3, 2021.

Qn

Now on to the second component.

To reiterate, AIG argues that the Court in Division erred in disregarding the printed screenshots of the foreign governments' official websites as proof that its client-affiliates are non-resident foreign corporations doing business outside the Philippines.

Instead of presenting the certificates of incorporation of the client-affiliates of AIG, AIG visited the official websites of the foreign government concerned of the client-affiliates, downloaded and printed from said websites, the screenshots of the proof of registration and incorporation of these client-affiliates, then presented them in Court.⁵⁹ AIG's witness, Glaiza A. Baroro testified, *"I connected to the internet (sic) surfed to the official government websites of our foreign clients. I typed the clients' names in their respective governments' websites. Thereafter, the name and registration details of the company appeared. I then took a screenshot of these pages and printed them out."*⁶⁰

Since these printed screenshots from official websites of foreign governments albeit electronic documents⁶¹ are presented as "written official acts, or records of the sovereign authority of a foreign country,"⁶² these are public documents, for which proper

⁵⁹ Exhibits "P-117-a", "P-118-b", "P-120-b", "P-121-d", "P-122-a", "P-124-d", "P-126-a", "P-127-b", "P-130-a", "P-133-a", "P-134-a", "P-135-c", "P-136-a", "P-180-b", "P-142-c", "P-143-a", "P-144-a", "P-146-e", "P-147-a", "P-148-a", "P-149-a", "P-151-c", "P-154-a", "P-156-c", "P-157-d", "P-158-e", "P-159-b", "P-160-c", "P-161-c", "P-165-d", "P-167-c", "P-169-c", "P-172-a", "P-175-a", "P-176-a", "P-177-a", "P-179-e", "P-181-a", "P-183-a", "P-184-a", "P-185-e", "P-186-b", "P-187-b", "P-188-b", "P-190-a", and "P-191-b"; *Rollo (CTA Case No. 9438)*, Vol. II, Exhibit "P-194", pp. 570-571.

⁶⁰ Sworn Statement of Glaiza A. Baroro in lieu of Direct Testimony, *Rollo (CTA Case No. 9438)*, Vol. I, pp. 183-245.

⁶¹ Section 1 (h), Rule 2, Rules on Electronic Evidence provides:

"(h) "Electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic document" may be used interchangeably with "electronic data message." "

⁶² Section 19, Revised Rules on Evidence (2019) provides:

"Section 19. *Classes of documents.* – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

gm

authentication must be established under the Rules of Court.⁶³ In particular, Sections 24 and 25, Rule 132 of the Rules of Court, as amended, read:

Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention⁶⁴ to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

Section 25. *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of evidence, the

-
- (a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
 - (b) Documents acknowledged before a notary public except last wills and testaments;
 - (c) Documents that are considered public documents under treatise and conventions which are in force between the Philippines and the country of source; and
 - (d) Public records, kept in the Philippines, of private documents required by law to be entered therein."

⁶³ *MCC Industrial Sales Corporation v. Ssangyong Corporation*, GR No. 170633, October 17, 2007.

⁶⁴ Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41> took effect in the Philippines on May 14, 2019. Public documents executed in Apostille-contracting countries and territories (except for Austria, Finland, Germany, and Greece) to be used in the Philippines no longer have to be authenticated by the Philippine Embassy or Consulate-General once apostilled.

attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be the clerk of a court having a seal, under the seal of such court.

Under Rule 132 of the Revised Rules on Evidence, public documents, such as records of foreign jurisdictions, may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record the attestation must state that the copy is a correct copy of the original.

In addition, the Rules on Electronic Evidence, provide that when a rule of evidence refers to the term writing, document, record, instrument, memorandum, or any form of writing, such term shall include an electronic document. The Rules on Electronic Evidence require that an electronic document be authenticated in the manner prescribed by the Rules of Court. Rule 9, Section 1 provides:

Rule 9
METHOD OF PROOF

Section 1. Affidavit evidence. – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

In the Sworn Statement of Glaiza A. Baroro, Senior Accountant of AIG,⁶⁵ the witness referred to each particular screenshot per client-affiliate, as may be applicable, and narrated the securing of the screenshot, as follows:

IX. Petitioner's Foreign Clients

xxx xxx xxx

132. Q: Let's first discuss the 74 non-resident foreign clients that you mentioned. How do you know that these clients are

⁶⁵ Sworn Statement of Glaiza A. Baroro in lieu of Direct Testimony, *Rollo* (CTA Case No. 9438), Vol. I, pp. 183-245.



indeed non-resident foreign entities doing business outside the Philippines?

A: We have SEC Certificates of Non-Registration to show that the entities are not registered in the Philippines. We also have our Master Service Agreements with them. We have also secured from our clients their Certificates of Registration, Articles of Incorporation, and similar documents issued by their respective foreign governments, duly authenticated and consularized by the Philippine consulate in the said countries. Finally, we also secured screenshots of the websites of our clients' respective foreign governments, showing that they are indeed registered, domiciled and doing business in the said countries.

xxx xxx xxx

137. Q: Going back, you mentioned earlier that you obtained consularized documents and screenshots showing that your foreign clients are non-resident foreign entities doing business outside the Philippines. If these documents are shown to you, would you be able to identify them?

A: Yes, I would.

AIG APAC Holdings Pte. Ltd.

138. Q: I am showing you a document, previously marked as **Exhibit "P-117-a."** Can you please identify this document for us?

A: This is the screenshot of the website of the Inland Revenue Authority of Singapore showing the business registration details of AIG Apac Holdings Pte Ltd., including its business address. It also shows that AIG Apac Holdings has been registered to do business in Singapore since 14 July 1971.

xxx xxx xxx

American International Group, Inc.

xxx xxx xxx

223. Q: And what about this document, previously marked as **Exhibit "P-191-b"?** Can you please go over it and identify it for us?

Q

A: This is the screenshot of the website of the New York Department of State's Division of Corporations, showing the business registration details of American International Group, Inc., such as its business address and initial filing date. This proves that American International Group, Inc. is registered to do business outside the Philippines.

224. Q: Thank you, Ms. Witness. Now, you identified several screenshots of the different government websites marked as Exhibits P-117-a, P-118-b, P-120-b, P-121-d, P-122- (sic), P-123-e, P-124-a, P-126-a, P-127-b, P-130-a, P-133-a, P-134-a, P-135-c, P-136-a, P-142-d, P-143-a, P-144-a, P-146-e, P-147-a, P-148-a, P-149-a, P-151-c, P-154-a, P-156-c, P-157-d, P-158-e, P-159-b, P-160-c, P-161-c, P-163-a, P-165-d, P-167-c, P-168-d, P-169-c, P-172-a, P-175-a, P-176-a, P-177-a, P-179-e, P-180-b, P-181-a, P-183-a, P-184-a, P-185-e, P-186-b, P-187-b, P-188-b, P-189-b, P-190-a, and P-191-b. Can you please explain how you were able to obtain these screenshots?

A: I connected to the internet (sic) surfed to the official government websites of our foreign clients. I typed the clients' names in their respective governments' websites. Thereafter, the name and registration details of the company appeared. I then took a screenshot of these pages and printed them out.

225. Q: And how do those documents you identified just now relate to those screenshots that you printed out?

A: The documents I identified are the printouts of the screenshots. I attest that the printouts faithfully represent the information as displayed on the computer screen.

AIG's witness Glaiza A. Bororo neither had "direct personal knowledge" nor basis in her testimony on "authentic records" as required under Section 1, Rule 9 of the Rules of Electronic Evidence. She only had personal knowledge of the existence of the screenshots and how the same were secured, but had no personal knowledge of the contents of the screenshots or that the screenshots were based on authentic records. She did not present official publications of the Certificates of Registration or copies thereof attested by the officer having legal custody of the record⁶⁶ with the attestation stating that the

⁶⁶ Section 24, Rule 132, Revised Rules on Evidence, A.M. No. 19-08-15-SC (2019).

copies are correct copies of the original⁶⁷ as required of public documents under Rule 132 as in the case of *Manufacturers Hanover Trust Co. v. Guerrero*,⁶⁸ to wit:

Under Section 24 of Rule 132, the record of public documents of a sovereign authority or tribunal may be proved by **(1) an official publication thereof or (2) a copy attested by the officer having the legal custody thereof. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.**

...

The citations in the Walden affidavit of various U.S. court decisions do not constitute proof of the official records or decisions of the U.S. courts. While the Bank attached copies of some of the U.S. court decisions cited in the Walden affidavit, these copies do not comply with Section 24 of Rule 132 on proof of official records or decisions of foreign courts.

The Bank's intention in presenting the Walden affidavit is to prove New York law and jurisprudence. However, because of the failure to comply with Section 24 of Rule 132 on how to prove a foreign law and decisions of foreign courts, the Walden affidavit did not prove the current state of New York law and jurisprudence. Thus, the Bank has only alleged, but has not proved, what New York law and jurisprudence are on the matters at issue.⁶⁹

On the other hand, with respect to electronic documents, in *RCBC Bankard Services Corporation v. Moises Oracion, Jr. and Emily L. Oracion*,⁷⁰ the Supreme Court has declared:

[T]he Court cannot just concede that the pieces of documentary evidence in question are indeed electronic documents, which according to the Rules on Electronic Evidence are considered

⁶⁷ Section 25, Rule 132, Revised Rules on Evidence, A.M. No. 19-08-15-SC (2019).

⁶⁸ G.R. No. 136804, February 19, 2003.

⁶⁹ Boldfacing supplied.

⁷⁰ G.R. No. 223274, June 19, 2019.

functional equivalent of paper-based documents and regarded as the equivalent of original documents under the Best Evidence Rule if they are print-outs or outputs readable by sight or other means, shown to reflect the data accurately.

For the Court to consider an electronic document as evidence, it must pass the test of admissibility. According to Section 2, Rule 3 of the Rules on Electronic Evidence, "[a]n electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules."

...

As to method of proof, Section 1, Rule 9 of the Rules on Electronic Evidence provides:

...

Evidently, petitioner could not have complied with the Rules on Electronic Evidence because it failed to authenticate the supposed electronic documents through the required affidavit of evidence. As earlier pointed out, what petitioner had in mind at the inception (when it filed the complaint) was to have the annexes admitted as duplicate originals as the term is understood in relation to paper-based documents. Thus, the annexes or attachments to the complaint of petitioner are inadmissible as electronic documents, and they cannot be given any probative value.⁷¹

Thus, the Court in Division was correct in not considering the printed screenshots of the foreign governments' official websites as proof that AIG's client-affiliates are non-resident foreign corporations doing business outside the Philippines.

Fourth element – Services performed in the Philippines

As to the *fourth element*, that the services must be performed in the Philippines by a VAT-registered person, this Court adopts the finding of the Court in Division, that only AIG's sale of services to Lexington Insurance Company amounting to ₱3,450,608.35 (\$79,255.88) qualifies for VAT zero-rating under Section 108 (B)(2), in relation to Section 113 (A)(2), (B)(1), (2)(c) and (3), of the NIRC of 1997, as amended.⁷²

⁷¹ Boldfacing supplied.

⁷² Decision (CTA Case No. 9438), p. 33.

AIG asserts in its Petition for Review that by its presentation of its SEC Certificate of Registration stating that it is a “regional operating headquarters in the Philippines,” its BIR Certificates of Registration indicating its two (2) offices in Makati City and Muntinlupa City, and its ORs issued to its client-affiliates bearing the same addresses appearing in its BIR Certificates of Registration, it satisfactorily proved that it renders services to its client-affiliates in the Philippines.

The Court disagrees.

The Supreme Court in *Commissioner of Internal Revenue v. American Express International, Inc.*⁷³ laid down the requirements for a supply of service to qualify for VAT zero-rating, as follows:

However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are performed in the Philippines, ‘paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [BSP].’ Thus, **for the supply of service to be zero-rated as an exception, the law merely requires that first, the service be performed in the Philippines; second, the service fall under any of the categories in Section 102(b) of the Tax Code; and, third, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.**

xxx xxx xxx

The law neither makes a qualification nor adds a condition in determining the tax situs of a zero-rated service. Under this criterion, the place where the service is rendered determines the jurisdiction to impose the VAT. **Performed in the Philippines, such service is necessarily subject to its jurisdiction, for the State necessarily has to have a ‘substantial connection’ to it, in order to enforce a zero rate.** The place of payment is immaterial; much less is the place where the output of the service will be further or ultimately used.⁷⁴

The issue of whether or not the refund claimant performed the subject services in the Philippines is a question of fact and must be proven by specific evidence.⁷⁵ As the law does not look with favor tax

⁷³ G.R. No. 152609, June 29, 2005.

⁷⁴ *Commissioner of Internal Revenue v. American Express International, Inc.*, G.R. No. 152609, June 29, 2005 as cited in *Procter & Gamble Asia Pacific Pte. Ltd. v. Commissioner of Internal Revenue*, CTA EB No. 2301, November 24, 2021. Boldfacing supplied.

⁷⁵ *Tongonan Holdings and Development Corporation v. Atty. Francisco Escañó*, G.R. No. 190994, September 7, 2011 citing *Republic of the Philippines v. Angelo B. Malabanan, Pablo B. Malabanan, Greenthumb Realty and Development Corporation and The Registrar of Deeds of Batangas*, G.R. No.

exemptions, one who seeks entitlement must justify it with evidence *"too plain to be mistaken and too categorical to be misinterpreted."*⁷⁶

The Court in Division relied on the service agreements in determining the place of rendition of service by AIG to its client-affiliates considered as non-resident foreign corporations doing business outside the Philippines, which are supported by VAT zero-rated ORs and certifications of bank inward remittances. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. If the terms of the contract are clear and leave no doubt about the intention of the parties, the literal meaning of its stipulations shall control. The service agreements provided by AIG document the intent of the contracting parties and are clear and ambiguous. Thus, following the 'plain meaning rule,' the intent of AIG and its client-affiliates is embodied in the service agreements and discovered from the express language of the service agreements.⁷⁷

The Court in Division found that only the services rendered by AIG to Lexington Insurance Company qualified for VAT zero-rating since it categorically declares that the services are to be performed in the Philippines. The other service agreements are either: *first*, silent as to the place of performance of service; or *second*, the services may be performed both in the Philippines and abroad.

AIG submitted a Master Agreement for Professional Services for the following client-affiliates:

1. AIG AUSTRALIA LIMITED⁷⁸
2. AIG INSURANCE COMPANY CHINA⁷⁹
3. AIG KOREA INC⁸⁰
4. AIG METROPOLITAN CIA DE SEGUROS Y REASEGUROS S.A.⁸¹

169067, October 6, 2010; *Deutsche Knowledge Services Pte., Ltd. v. Commissioner of Internal Revenue*, CTA Case No. 9154, February 14, 2020.

⁷⁶ *Sea-Land Service, Inc. v. Court of Appeals and Commissioner of Internal Revenue*, GR No. 122605, April 30, 2001 citing *Commissioner of Internal Revenue v. P. J. Kiener Co., Ltd.*, 65 SCRA 142, 153 [1975], citing *Reagan v. Commissioner of Internal Revenue*, 141 Phil. 621, 633 [1969].

⁷⁷ *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, November 25, 2009.

⁷⁸ Exhibit "P-118", Rollo (CTA Case No. 9438), Vol. III, pp. 1038-1055.

⁷⁹ Exhibit "P-132", Rollo (CTA Case No. 9438), Vol. III, pp. 1356-1371.

⁸⁰ Exhibit "P-135", Rollo (CTA Case No. 9438), Vol. III, pp. 1400-1416.

⁸¹ Exhibit "P-137", Rollo (CTA Case No. 9438), Vol. III, pp. 1452-1465.

- 5. AIG TAIWAN INSURANCE CO., LTD.⁸²
- 6. AIG VIETNAM INSURANCE COMPANY LIMITED⁸³
- 7. CHARTIS EUROPE SA - ITALY⁸⁴
- 8. CHARTIS EUROPE SA - SPAIN⁸⁵
- 9. CHARTIS INSURANCE HONG KONG LTD.⁸⁶
- 10. CHARTIS SINGAPORE INSURANCE PTE LTD⁸⁷
- 11. NEW HAMPSHIRE INSURANCE THAILAND (ICH)⁸⁸

In 1.1⁸⁹ of the Master Agreement for Professional Services [Master Agreement],⁹⁰ a Work Order shall provide the details of the services to be rendered by AIG. Except for the Master Agreements for AIG METROPOLITANA CIA DE SEGUROS Y REASEGUROS S.A. and AIG VIETNAM INSURANCE COMPANY LIMITED, the Master Agreements and/or Work Orders for the above foreign client-affiliates do not clearly state that the services of AIG are to be performed in the Philippines.

The Master Agreements that provide where the services are to be performed are as follows:

COMPANY NAME	SERVICE PROJECT LOCATION PROVISION/S	Exhibit
AIG METROPOLITANA CIA DE SEGUROS Y REASEGUROS S.A.	1. <i>Services.</i> Vendor will perform 'subject matter expert' (SME) role xxx xxx xxx	P-137 ⁹¹

⁸² Exhibit "P-145", *Rollo* (CTA Case No. 9438), Vol. IV, pp. 1552-1577.
⁸³ Exhibit "P-146", *Rollo* (CTA Case No. 9438), Vol. IV, pp. 1581-1598.
⁸⁴ Exhibit "P-160", *Rollo* (CTA Case No. 9438), Vol. IV, pp. 1942-1952.
⁸⁵ Exhibit "P-163", *Rollo* (CTA Case No. 9438), Vol. IV-V, pp. 1990-2001.
⁸⁶ Exhibit "P-169", *Rollo* (CTA Case No. 9438), Vol. V, pp. 2146-2164.
⁸⁷ Exhibit "P-179", *Rollo* (CTA Case No. 9438), Vol. V, pp. 2347-2363.
⁸⁸ Exhibit "P-188", *Rollo* (CTA Case No. 9438), Vol. VI, pp. 2655-2670.
⁸⁹ 1.1 Work Orders. Customer may from time to time during the term of this Agreement issue Work Orders, which shall be in a format substantially similar to that of the Work Order attached hereto as Exhibit "A" and shall, inter alia, describe in detail the services ("Services") and/or deliverables ("Deliverables") to be provided. Each Work Order shall, upon execution by the Parties, incorporate therein the terms and conditions of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of such Work Order, the terms of this Agreement shall govern. For purposes of this Agreement, "Deliverables" shall mean, collectively: (a) any material(s) that are described as "deliverables" herein in any Work Order, or that are otherwise delivered or to be delivered to Customer by Vendor hereunder; and (b) any other material(s) prepared by or on behalf of Vendor in the course of performing the Services.
⁹⁰ Exhibits "P-118", "P-132", "P-135", "P-137", "P-145", "P-146", "P-160", "P-163", "P-169", "P-179", and "P-188".
⁹¹ Exhibit "P-137", *Rollo* (CTA Case No. 9438), Vol. III, pp. 1462-1467.

	2. Service Project Location. The SMEs will perform the Services at the office locations in each of the LAD [Latin America Division] countries listed above [Uruguay, Argentina, Mexico, Puerto Rico, Colombia, Venezuela, Brazil, El Salvador, Ecuador, Guatemala, and Chile]. Customer shall advise Vendor and the SMEs of the exact office address. From time-to-time, based on a schedule mutually agreed by both Parties, Vendor may perform the Services from its Philippines offices: • Makati Office: located at the 46th Floor, PBCom Tower, 6795 Ayala Avenue cor. Rufino Street, Makati City • Alabang Office: located at the 8th Floor, Paragon Corporate Center, Lot 6, Industry St, Madrigal Business Park, Ayala Alabang, Muntinlupa City and, when required at specific periods in the project plan or as requested by the Customer and concurred to by the Vendor, at Customer site. xxx xxx xxx 10. Fees. xxx xxx xxx Customer shall provide Per Diem directly to the Vendor's SMEs for all full or part days whenever the SMEs are located in the Customer's premises or LAD offices, as noted above.	
AIG VIETNAM INSURANCE COMPANY LIMITED	2. Service Project Location Vendor will perform its services in its Manila Regional Technology Center (MRTC) and, when required at specific periods indicated in the project plan or as requested by the Customer and concurred to by the Vendor, at the Customer site.	P-146 ⁹²

⁹² Exhibit "P-146", Rollo (CTA Case No. 9438), Vol. IV, p. 1592.

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In the Master Agreements of AIG METROPOLITANA CIA DE SEGUROS Y REASEGUROS S.A. and AIG VIETNAM INSURANCE COMPANY LIMITED, the services may be performed within or outside the Philippines. Without convincing proof that the services were actually performed by AIG in the Philippines only, the services are not entitled to VAT zero-rating.

For CHARTIS EUROPE SA-POLAND, AIG also submitted the Master Agreement⁹³ together with a sample Work Order.⁹⁴ It did not clearly state the services of AIG are to be performed in the Philippines.

For AIG EUROPE LIMITED / CHARTIS EUROPE S.A., AIG submitted the Master Services Agreement as Restated and Amended (IT Services - Europe).⁹⁵ The agreement and the attached sample work order⁹⁶ did not clearly state the services of AIG are to be performed in the Philippines.

For CHARTIS EUROPE SA - NETHERLANDS, AIG submitted a Contract of Transfer of Personal Data to a Processor.⁹⁷ It did not clearly state the services of AIG are to be performed in the Philippines.

As correctly found by the Court in Division, the Statement of Work⁹⁸ between AIG and LEXINGTON INSURANCE COMPANY provides that the services of AIG will be performed in the Philippines.

While the Statement of Work between AIG and CHARTIS EUROPE SA - CZECH REPUBLIC similarly provides that the services will be performed by AIG in the Philippines, the same is unsigned by the authorized signatory of CHARTIS EUROPE SA - CZECH REPUBLIC.⁹⁹

AIG's SEC Certificate of Registration stating that it is a regional operating headquarters in the Philippines, its BIR Certificates of Registration of its offices, and the Sworn Statement of Glaiza Baroro on the location of its offices failed to collectively prove that the services

⁹³ Exhibit "P-167", *Rollo* (CTA Case No. 9438), Vol. V, pp. 2084-2101.

⁹⁴ *Id.* at 2095-2097.

⁹⁵ Exhibit "P-123", *Rollo* (CTA Case No. 9438), Vol. III, pp. 1140-1169.

⁹⁶ *Id.* at 1169.

⁹⁷ Exhibit "P-161", *Rollo* (CTA Case No. 9438), Vol. IV, pp. 1966-1977.

⁹⁸ Exhibit "P-186", *Rollo* (CTA Case No. 9438), Vol. VI, pp. 2615, 2620.

⁹⁹ Exhibit "P-165-a", *Rollo* (CTA Case No. 9438), Vol. V, pp. 2052-2056.

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it rendered to its client-affiliates were actually performed in the Philippines.

While the official receipts (ORs) are proofs of the business transactions between AIG and its client-affiliates, these ORs do not *ipso facto* equate that the services were actually rendered by AIG in the Philippines. Cases filed before the Court are litigated *de novo* where party-litigants must prove every minute aspect of their case.¹⁰⁰

Thus, the Court in Division correctly found that out of the ₱2,086,692,750.89 zero-rated sales/receipts declared in AIG's 2014 Quarterly VAT Returns, only the amount of ₱10,852,469.06 qualifies for VAT zero-rating, in compliance with the *fourth* and *fifth requisites*,¹⁰¹ as follows:

COMPANY NAME	O.R. NO.	DATE	AMOUNT IN PHP	AMOUNT IN USD	EXHIBIT	INWARD REMITTANCE REFERENCE NO.	EXHIBIT
Zero-rated Sales under Section 108(B)(2) of the NIRC of 1997, as amended							
LEXINGTON INSURANCE COMPANY	BPO-1858	10-Jan-14	2,549,181.81	58,959.88	P-220	5687800008 FC / 5689200008FC	P-1164
	BPO-1914	07-Feb-14	901,426.54	20,296.00	P-276	6847300030FC	P-1164
Subtotal			3,450,608.35	79,255.88			
Zero-rated Sales under Section 108(B)(3) of the NIRC of 1997, as amended							
AIG SHARED SERVICES - BUSINESS PROCESSING, INC.	BPO-1916	06-Feb-14	7,401,860.71	166,655.35	P-278	8970000063	P-1166
TOTAL			₱10,852,469.06	245,911.23			

CIR's Petition for Review (CTA EB No. 2383)

Ninth Requisite – Attributability to zero-rated or effectively zero-rated sales

Under the *ninth requisite*, the claimant must prove that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of the sales, the input taxes shall be proportionately allocated on the basis of sales volume.

¹⁰⁰ Commissioner of Internal Revenue v. Univision Motor Philippines, Inc., G.R. No. 231581, April 10, 2019.

¹⁰¹ Decision, Rollo (CTA Case No. 9438), Vol. I, p. 33.

DECISION

CTA EB Nos. 2383 & 2408 (CTA Case No. 9438)

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This Court likewise adopts the finding of the Court in Division, wherein it allocated the excess valid input VAT of ₱37,906,986.68 proportionately on the basis of the volume of sales, as follows:

Valid Zero-Rated Sales / Receipts Per this Court's Verification	₱10,852,469.06
Divided by the Total Sales / Receipts per 2014 Quarterly VAT Returns	2,131,262,124.17
Multiplied by Valid Excess Input VAT Due or Paid	37,906,986.68
<i>Excess Valid Input VAT Due or Paid Allocated to Zero-Rated Sales/ Receipts</i>	<u>₱193,023.84</u>

The CIR contests in its Petition for Review the Court in Division's ruling that AIG is entitled to a refund amounting to ₱193,023.84, representing unutilized excess input VAT allegedly attributable to its zero-rated sales/receipts amounting to ₱10,852,469.06. The CIR argues that the requirement of attributability between the input tax on purchases and the zero-rated sales/receipts of AIG was not established; thus AIG's refund claim must entirely be denied. The CIR contends that direct attributability was not established between AIG's input tax on purchases and its zero-rated sales/receipts; hence, AIG's refund claim must entirely be denied.

The Court disagrees.

Section 112(A) of the NIRC of 1997, as amended provides:

SECTION 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of **creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: Provided, finally, That for a person making sales that are zero-

rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.¹⁰²

Section 112(A) of the NIRC of 1997, as amended does not require that input taxes be directly attributable to the zero-rated sales of the refund claimant and only requires that the input taxes be attributable to the zero-rated sales. Input taxes whether directly or indirectly attributable to the claimant's zero-rated sales may be the subject of refund under Section 112(A) of the NIRC. Where the law does not distinguish, neither should we.¹⁰³ Section 112(A) of the NIRC of 1997, as amended, recognizes the situation wherein a refund claimant's input tax is not directly and entirely attributable to its zero-rated sales/receipts by allowing the proportionate allocation of the input taxes based on the total volume of sales,¹⁰⁴ as ruled by the Supreme Court in *Luzon Hydro Corporation v. Commissioner of Internal Revenue*,¹⁰⁵ to wit:

A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; **(f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;** (g) for zero-rated sales under Sections 106 (A)(2)(1) and (2); 106 (B); and 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas; **(h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;** and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.¹⁰⁶

The CIR also failed to point out the specific items of input VAT which should have been denied. The CIR's bare allegations,

¹⁰² Boldfacing supplied.

¹⁰³ *Spouses Plopenio v. Department of Agrarian Reform*, G.R. No. 161090, July 4, 2012.

¹⁰⁴ *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, CTA EB No. 2082 (CTA Case No. 9496) dated July 21, 2020.

¹⁰⁵ *Luzon Hydro Corporation v. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013 citing *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009.

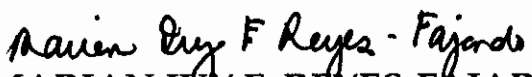
¹⁰⁶ Boldfacing supplied.

unsubstantiated by evidence, are not equivalent to proof.¹⁰⁷ It may not overturn the findings of the Court in Division which were made through circumspect examination of the pieces of evidence adduced during the trial.¹⁰⁸

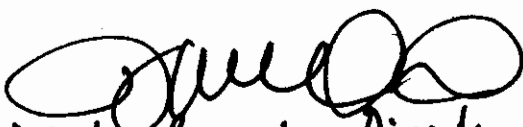
Therefore, the Court in Division committed no reversible error in granting AIG's input VAT refund attributable to its zero-rated sales for the four quarters of CY 2014 to the extent of ₱193,023.84.

WHEREFORE, premises considered, the Petition for Review filed by the CIR in CTA EB No. 2383 is **DENIED**. The Petition for Review filed by AIG in CTA EB No. 2408 is also **DENIED**. Accordingly, the Decision dated February 19, 2020 and the Resolution dated November 17, 2020 in CTA Case No. 9438, whereby the Court in Division partially granted AIG's claim for refund or issuance of a TCC of unutilized excess input VAT attributable to its zero-rated sales/receipts amounting to ₱193,023.84 covering the four (4) quarters of CY 2014, are **AFFIRMED**.

SO ORDERED.


MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:


I join the Concurring & Dissenting Opinion of Justice Villena
ROMAN G. DEL ROSARIO
Presiding Justice

¹⁰⁷ Rogelia R. Gatan and the Heirs of Bernardino Gatan, namely: Rizalino Gatan and Ferdinand Gatan v. Jesusa Vinarao, and Spouses Mildred Cabauatan and Nomar Cabauatan, G.R. No. 205912, October 18, 2017.

¹⁰⁸ Republic of the Philippines, represented by the Commissioner of Internal Revenue v. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation), G.R. No. 188016, January 14, 2015 as cited in Commissioner of Internal Revenue v. Lepanto Consolidated Mining Company, CTA EB No. 2230 (CTA Case No. 9649), June 14, 2021.

DECISION

CTA EB Nos. 2383 & 2408 (CTA Case No. 9438)

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ERLINDA P. UY
Associate Justice



MA. BELEN M. RINGPIS-LIBAN
Associate Justice

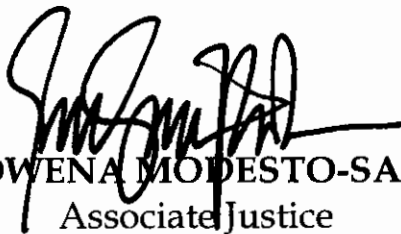


CATHERINE T. MANAHAN
Associate Justice



(With due respect, please see Concurring and Dissenting Opinion)

JEAN MARIE A. BACORRO-VILLENA
Associate Justice



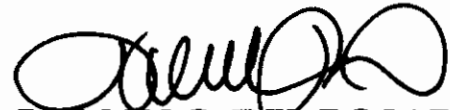
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

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



ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2383
(CTA Case No. 9438)

- versus -

AIG SHARED SERVICES CORPORATION (PHILIPPINES)
[FORMERLY: CHARTIS TECHNOLOGY AND OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES)],
Respondent.

X-----X

AIG SHARED SERVICES CORPORATION (PHILIPPINES)
[FORMERLY: CHARTIS TECHNOLOGY AND OPERATIONS MANAGEMENT CORPORATION (PHILIPPINES)],
Petitioner,

CTA EB No. 2408
(CTA Case No. 9438)

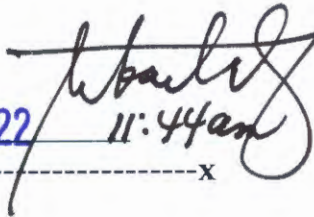
Present:

- versus -

DEL ROSARIO, P.J.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JL.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 17 2022


11:44am

X-----X

CONCURRING AND DISSENTING OPINION

CTA EB Nos. **2383 & 2408** (CTA Case No. 9438)

CIR v. AIG Shared Services Corporation (Philippines)

AIG Shared Services Corporation (Philippines) v. CIR

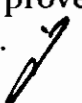
Page 2 of 10

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CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur with the majority's affirmation of the Third Division's ruling: (1) of not according non-resident foreign corporation (NRFC) status to Chartis Europe SA – Poland for purposes of value-added tax (VAT) zero-rating due to discrepancies in its corporate name; (2) that Section 112(A)¹ of the National Internal Revenue Code (NIRC) of 1997, as amended, does not require direct attributability of input taxes to zero-rated sales; and, (3) that the Commissioner of Internal Revenue (CIR) failed to point out the specific items of AIG Shared Services Corporation (Philippines)'s (AIG's) input tax which should have been denied.

However, with all due respect to my esteemed colleague, Associate Justice Marian Ivy F. Reyes-Fajardo, I disagree with the findings in the *ponencia* insofar as it did not consider the printed screenshots of foreign government websites for AIG's failure to authenticate the same in accordance with Sections 24² and 25³, Rule 132 of the Revised Rules on Evidence, as amended, as well as the conclusion that AIG failed to prove that its services to its clients-affiliates were rendered in the Philippines. 

¹ SEC. 112. *Refunds or Tax Credits of Input Tax.* —

² SEC. 24. *Proof of Official Record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his [or her] office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

³ SEC. 25. *What Attestation of Copy Must State.* – Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be the clerk of a court having a seal, under the seal of such court.

With due respect, my dissent is anchored on two (2) points: *first*, the proceedings in this Court are not governed strictly by technical rules of evidence; and, *second*, although these consolidated cases involve a claim for refund, it remains to be civil in nature⁴ and the quantum of evidence required is only preponderance of evidence.⁵

I. THE SCREENSHOTS
SHOULD HAVE BEEN
ACCORDED PROBATIVE
VALUE.

As regards the printed screenshots, they should have been considered. In proving public documents under Section 19(a)⁶, Rule 132 of the Rules of Court, Sections 24 and 25 thereof require that the same be evidenced by an official publication or by a copy attested by the officer having the legal custody of the record. However, such rule is not absolute and in fact admits of an exception.

In the case cited in the *poncencia* itself, that is, *Manufacturers Hanover Trust Co., et al. v. Rafael Ma. Guerrero*⁷ (**Hanover**), the Supreme Court recognized that the presentation of other competent evidence is not precluded, to wit:

...
Under Section 24 of Rule 132, the record of public documents of a sovereign authority or tribunal may be proved by (1) an **official publication** thereof or (2) a **copy attested by the officer having the legal custody thereof**. Such official publication or copy must be accompanied, if the record is not kept in the Philippines, with a certificate that the attesting officer has the legal custody thereof. The certificate may be issued by any of the authorized Philippine embassy or consular officials stationed in the foreign country in

⁴ See *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, 28 June 2005.

⁵ See *Southern Philippines Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 179632, 19 October 2011.

⁶ SEC. 19. *Classes of documents*. – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

⁷ ...
G.R. No. 136804, 19 February 2003; Citation omitted, emphasis and italics in the original text and supplied.

which the record is kept, and authenticated by the seal of his office. The attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be, and must be under the official seal of the attesting officer.

Certain exceptions to this rule were recognized in *Asiavest Limited v. Court of Appeals* which held that:

“x x x:

Although it is desirable that foreign law be proved in accordance with the above rule, however, the Supreme Court held in the case of *Willamette Iron and Steel Works v. Muzzal*, that Section 41, Rule 123 (Section 25, Rule 132 of the Revised Rules of Court) **does not exclude the presentation of other competent evidence** to prove the existence of a foreign law. ... Likewise, in several naturalization cases, it was held by the Court that evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, **although not meeting the prescribed rule of practice, may be allowed and used as basis for favorable action, if, in the light of all the circumstances, the Court is “satisfied of the authenticity of the written proof offered.”** ...

...

As quoted in the *ponencia*, Baroro sufficiently narrated how she secured the subject screenshots. She visited the official foreign government websites where AIG’s clients are registered and typed their corporate names. After their names and registration details appeared, she took screenshots thereof and printed them out.

In fact, an examination of the screenshots proffered by AIG would reveal that the registration of the following clients-affiliates can be presently verified in their respective foreign government websites:

Exhibit	Client-Affiliate
P-117-a	AIG APAC HOLDINGS PTE. LTD.
P-118-b	AIG AUSTRALIA LIMITED
P-120-b	AIG CLAIMS, INC.
P-122-a	AIG EMPLOYEE SERVICES, INC.
P-126-a	AIG EUROPE (SERVICES) LIMITED
P-127-b	AIG GLOBAL CLAIMS SERVICES, INC.
P-130-a	AIG GLOBAL SERVICES, INC. (now, AIG TECHNOLOGIES, INC.)
P-134-a	AIG JAPAN HOLDINGS KK
P-135-c	AIG KOREA INC.



Exhibit	Client-Affiliate
P-136-a	AIG MALAYSIA INSURANCE BERHAD
P-143-a	AIG SHARED SERVICES CORPORATION
P-148-a	AMERICAN GENERAL LIFE INSURANCE COMPANY OF DELAWARE
P-151-c	AIG INSURANCE NEW ZEALAND LIMITED
P156-c	AIG CYPRUS LTD
P-157-d	AIG EUROPE S.A. sivuliike
P-158-e	CHARTIS EUROPE
P-169-c	AIG INSURANCE HONG KONG LIMITED
P-176-a	NEW HAMPSHIRE INSURANCE COMPANY (NHIC) FOREIGN (sic) BRANCH
P-177-a	AIG NORTH AMERICA, INC.
P-179-e	AIG ASIA PACIFIC INSURANCE PTE. LTD.(n.k.a)
P-180-b	AIG PROPERTY CASUALTY U.S., INC.
P-184-a	AIG TRAVEL ASSIST, INC.
P-189-b	AIG PC GLOBAL SERVICES, INC.
P-190-a	UNITED GUARANTY CORPORATION
P-191-b	AMERICAN INTERNATIONAL GROUP, INC.

Furthermore, I also submit that it erroneous for the Court *En Banc* to require or even expect Baroro to have personal knowledge of the contents of the screenshots, as allegedly required by Section 1⁸, Rule 9 of the Rules on Electronic Evidence (REE).

It must be noted that the printed screenshots constitute “business records” under Section 1(b) of REE which is defined as to “include records of any business, institution, association...” As such, it is excepted from the hearsay rule, as provided in Section 1, Rule 8 of REE, to wit:

...
Rule 8
BUSINESS RECORDS AS EXCEPTION TO THE HEARSAY RULE

Section 1. *Inapplicability of the hearsay rule.* – A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence.

...

⁸ **Section 1. *Affidavit evidence.*** – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

CONCURRING AND DISSENTING OPINION

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x-----x

At any rate, it is submitted that Baroro was still able to prove the admissibility and evidentiary weight of the subject screenshots as the manner of establishing the same under the above-cited Section 1, Rule 9 of the REE is not limited to “facts of direct personal knowledge” – it may likewise be “based on authentic records” such as the foreign government websites.

Guided by the rule that only preponderance of evidence is needed to grant relief in a civil case such as the present case, and in the absence of proof that the copies of the screenshots were manipulated or the source thereof is unreliable or corrupted, and in the absence as well of contrary evidence from the CIR, the Court cannot simply disregard the same.

The case of *Commissioner of Internal Revenue v. De La Salle University, Inc.*⁹, is instructive, viz:

...

... [T]he CTA is not governed strictly by the technical rules of evidence. The CTA Division’s admission of the formal offer of supplemental evidence, *without prompt objection* from the Commissioner, was thus justified.

...

We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.

...

It bears noting as well that in previous cases of *Commissioner of Internal Revenue v. Chevron Holdings, Inc.*¹⁰ and *Commissioner of Internal Revenue v. AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)]*¹¹, the Court *En Banc* had already given imprimatur on the presentation of printed

⁹ G.R. No. 196596, 09 November 2016; Citations omitted, italics in the original text and underscoring supplied.

¹⁰ CTA EB Nos. 1886 and 1887, 21 January 2020. Note that the CIR’s Petition for Review on Certiorari was already denied by the Supreme Court in G.R. No. 252582 for failure to show any reversible error.

¹¹ CTA EB No. 2071, 07 September 2020. Note that the CIR’s Petition for Review on Certiorari was already denied by the Supreme Court in G.R. No. 256195 for failure to show any reversible error.

screenshots of the foreign government’s registry of companies in lieu of the Certificates/Articles of Foreign Incorporation/Association.

II. AIG PERFORMED ITS
SERVICES IN THE
PHILIPPINES

On the other hand, as regards the place of performance of AIG’s services, it is my view that the totality of the evidence presented leads to the conclusion that AIG performed its services here in the Philippines.

First, the mere stipulation (or the lack thereof) in its agreements with foreign clients as to the place of rendition of services does not likewise prove that, such services were rendered in that place; at the most, it only proves that the parties agreed to such stipulation.

For instance, the fact that in the Master Agreements with AIG METROPOLITANA CIA DE SEGUROS Y REASEGUROS S.A.¹² and AIG GENERAL INSURANCE (VIETNAM) COMPANY LIMITED¹³ state that the services may be performed within or outside the Philippines, does not mean that the services were not performed here. In my opinion, the presence or absence of stipulation in the Master Agreements as to the place of performance of the service should not be the *only* basis in determining the actual place of rendition of services.

Second, Section 2(3) of Republic Act (RA) No. 8756¹⁴ provides that “*Regional Operating Headquarters (ROHQ)* shall mean a foreign business entity **which is allowed to derive income in the Philippines** by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets.”¹⁵

Under Section 3(q) and (ff), Rule 131 of the Revised Rules on Evidence, disputable presumptions exist in AIG’s favor which should stand when no contrary evidence is presented. The pertinent provision reads:



¹² Exhibit “P-137”, Division Docket, Volume III, p. 1462.

¹³ Exhibit “P-146”, id., Volume IV, p. 1592.

¹⁴ AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

¹⁵ Emphasis supplied.

CONCURRING AND DISSENTING OPINION

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...

SEC. 3. Disputable Presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(q) That the ordinary course of business has been followed;

...

(ff) That the law has been obeyed[.]

...

From the foregoing, given the nature of an ROHQ as one which derives income in the Philippines by performing qualifying services and the presumptions that the ordinary course of business has been followed and that the law has been obeyed, I submit that the same should be sufficient to hold that AIG rendered its services in the Philippines, in the absence of proof to the contrary.

Third, the examination of other documentary evidence presented by AIG would show that its services were indeed rendered in the Philippines.

It must be noted that AIG, as an ROHQ, is considered as resident foreign corporation for income tax purposes, and as such, is taxable only from its income from sources within the Philippines. Section 23(F) in relation to Section 28(A)(6)(b) of the NIRC of 1997, as amended¹⁶, pertinently provide:

...

SEC. 23. General Principles of Income Taxation in the Philippines. - Except when otherwise provided in this Code:

...

(F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

...

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

...

¹⁶

But prior to the changes brought about by RA No. 10963 otherwise known as "Tax Reform for Acceleration and Inclusion (TRAIN)" and RA No. 11534 otherwise known as "Corporate Recovery and Tax Incentives for Enterprise Act" or "CREATE".

CONCURRING AND DISSENTING OPINION

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(6) *Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies.* –

...

(b) Regional operating headquarters as defined in Section 22(EE) shall pay a tax of ten percent (10%) of their taxable income.

...

An examination of AIG's Income Tax Return (ITR) for calendar year (CY) 2014 would show that it declared sales of services in the total amount of ₱2,148,408,502.00.¹⁷ The said amount was likewise found to be equal to the declared revenues from entities under common control.¹⁸

To my mind, AIG, an entity which is only taxable for its income from sources within the Philippines, would not have declared such amount of income if its services were not rendered in the Philippines. Thus, it is my opinion that AIG ably proved, by preponderance of evidence (and without controverting evidence from the CIR), that its services were performed in the Philippines.

In *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*¹⁹, the Supreme Court ruled as follows:

...

It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR. It is then the turn of the CIR to disprove the claim by presenting contrary evidence which could include the pertinent ITRs easily obtainable from its own files.

All along, the CIR espouses the view that it must be given ample opportunity to investigate the veracity of the claims. Thus, the Court asks: In the process of investigation at the administrative level to determine the right of the petitioner to the claimed amount, did the CIR, with all its resources even attempt to verify the quarterly ITRs it had in its files? Certainly, it did not as the application was met by the inaction of the CIR. And if desirous in its effort to clearly verify petitioner's claim, it should have had the time, resources and

¹⁷ See Line 2, Schedule 3, Exhibit "P-6", Division Docket, Volume II, p. 804.

¹⁸ See Note 17 – Related party transactions, Exhibit "P-7", id., p. 848.

¹⁹ G.R. No. 206526, 28 January 2015; Citations omitted, emphasis in the original text and underscoring supplied.

CONCURRING AND DISSENTING OPINION

CTA EB Nos. **2383 & 2408** (CTA Case No. 9438)

CIR v. AIG Shared Services Corporation (Philippines)

AIG Shared Services Corporation (Philippines) v. CIR

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x-----x

the liberty to do so. Yet, nothing was produced during trial to destroy the *prima facie* right of the petitioner by counterchecking the claims with the quarterly ITRs the CIR has on its file. To the Court, it seems that the CIR languished on its duties to ascertain the veracity of the claims and just hoped that the burden would fall on the petitioner's head once the issue reaches the courts.

This mindset ignores the rule that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side. Claims for refund are civil in nature and as such, petitioner, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover excess credit in cold cash. To review, "[P]reponderance of evidence is [defined as] the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

...

From the disquisitions above, I vote to partially **GRANT** AIG's Petition for Review and the Court *En Banc* **REMAND** the case to the Court in Division for the computation of the refundable amount or in the alternative, **PROCEED** to determine the refundable amount due, if the records so already warrant.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice