REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1244** (CTA Case No. 8443)
- versus -	
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Respondent.	

x - x

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	**CTA EB No. 1345** (CTA Case No. 8443)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 30 2017 2:39 p.m.

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated Petitions for Review docketed as **CTA EB No. 1244**, entitled "***Commissioner of Internal Revenue, Respondent vs Deutsche Knowledge Services, Pte. Ltd., Petitioner***"; and **CTA EB No. 1345,** entitled ***"Deutsche***

Knowledge Services, Pte. Ltd., Respondent vs Commissioner of Internal Revenue, Petitioner,". Both petitions assail the Decision dated July 7, 2014[1] rendered by the Second Division of this Court (Court in Division) in **CTA Case No. 8443**, entitled *"**Deutsche Knowledge Services, Pte. Ltd., Petitioner, vs. Commissioner of Internal Revenue, Respondent"***, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the amount of **₱14,882,227.02** representing its unutilized input VAT attributable to its zero-rated sales for the first quarter of 2010.
>
> **SO ORDERED.**"

Furthermore, in **CTA EB No. 1244**, petitioner - Commissioner of Internal Revenue (or CIR) additionally prays for the setting aside of the Resolution dated October 13, 2014[2] rendered by the Court in Division in the same CTA Case No. 8443, the dispositive portion of which reads as follows:

<u>Resolution dated October 13, 2014</u>:

> "**WHEREFORE**, let the case be set for presentation of petitioner's supplemental evidence on November 5, 2014 at 9:00 a.m. Meanwhile, the resolution of petitioner's *Motion for Partial Reconsideration* filed through registered mail on July 23, 2014 is **HELD IN ABEYANCE**. Respondent's *Motion for Partial Reconsideration is* **DENIED**.
>
> **SO ORDERED.**"

On the other hand, in **CTA EB No. 1345**, petitioner - Deutsche Knowledge Services Pte. Ltd. (or Deutsche Knowledge) seeks the

---

[1] Penned by Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Caesar A. Casanova; Docket (CTA EB No. 1244), pp. 32 to 65; EB Docket (CTA EB No. 1345), pp. 48 to 81.

[2] Penned by Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Caesar A. Casanova and Associate Justice Amelia R. Cotangco-Manalastas; EB Docket (CTA EB No. 1244), pp. 66 to 77.

reversal of the Resolution dated July 24, 2015[3], also rendered by the Court in Division in the same CTA Case No. 8443, the dispositive portions of which respectively read:

Resolution dated July 24, 2015:

"**WHEREFORE**, in view of the foregoing, petitioner's **Motion for Partial Reconsideration of Decision dated July 7, 2014** is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Deutsche Knowledge is the Philippine branch of a multinational company organized and existing under and by virtue of the laws of Singapore, with registered office address at One Raffles Quay, 17-10 South Tower, Singapore 048583. It was registered with the Bureau of Internal Revenue (BIR) on June 16, 2005 as a value-added tax (VAT)-registered taxpayer with Taxpayer Identification No. 238-763-115-000. It is also licensed to do business as a regional operating headquarters in the Philippines to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; training and personnel management; logistics services; product development; technical support and maintenance, data processing and communication; and business development.

The CIR, on the other hand, is the chief of the BIR, empowered to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Deutsche Knowledge entered into several IntraGroup Service Agreements (Service Agreements) with foreign clients with business addresses located abroad.

On October 21, 2011, Deutsche Knowledge filed its Application for Tax Credit/Refund (BIR Form No. 1914) and letter claim for refund, together with the relevant supporting documents with the BIR Large Taxpayers Regular Audit Division 3. The refund claim

[3] Penned by Associate Justice Juanito C. Castañeda, and concurred by Associate Justice Caesar A. Casanova; EB Docket (CTA EB No. 1345), pp. 82 to 89.

purportedly represented the unutilized input value-added tax (VAT) attributable to its zero-rated sales of services to its foreign clients during the first quarter of calendar year 2010.

Considering that the CIR failed to resolve its administrative claim for refund, Deutsche Knowledge filed a *Petition for Review* entitled "***Deutsche Knowledge Services, Pte. Ltd., Petitioner, vs. Commissioner of Internal Revenue, Respondent"***, before the Court in Division on March 19, 2012. The case was docketed as **CTA Case No. 8443.**

In his *Answer* in said case filed on May 11, 2012, the CIR interposed the following Special and Affirmative Defenses, to wit: (1) that Deutsche Knowledge is not entitled to refund or tax credit in the amount of ₱33,868,101.19, representing alleged unutilized input tax because it failed to submit necessary and relevant documents; (2) that to support its claim, it is imperative to prove and present certain documents and facts; (3) that Deutsche Knowledge's alleged claim for refund is subject to administrative routinary investigation/ examination by the BIR; (4) that Deutsche Knowledge likewise did not submit any proof that it rendered services to persons engaged in business conducted outside the Philippines, the payments of which were made in Euro and other acceptable foreign currency in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*; (5) that Deutsche Knowledge should have, at the very least, shown evidence on where their recipient is doing business, and outside such proof, there is negligence on Deutsche Knowledge for not showing sufficient evidence to support its claim; (6) that Deutsche Knowledge filed their judicial claim for refund prematurely as less than 120 days have passed from the alleged filing of the administrative claim to the filing of the judicial claim; and (7) that in an action for refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit.

During trial, Deutsche Knowledge presented and formally offered pieces of documentary and testimonial evidence. On the part of the CIR, his counsels manifested that they are submitting the case for decision considering that no *Memorandum Report* was made in this case. Thus, both counsels were directed to file their respective Memoranda in CTA Case No. 8443.

On November 4, 2013, CTA Case No. 8443 was submitted for decision, considering the CIR's *Memorandum* filed on August 7, 2013 and Deutsche Knowledge's *Memorandum* filed on October 29, 2013.

In the assailed Decision,[4] Deutsche Knowledge's *Petition for Review* was partially granted, and the CIR was ordered to issue a tax refund or a tax credit certificate in favor of Deutsche Knowledge in the amount of ₱14,882,227.02, representing its unutilized input VAT attributable to its zero-rated sales for the first quarter of 2010.

On July 21, 2014, the CIR filed his *Motion for Partial Reconsideration (Re: Decision Promulgated July 7, 2014)*;[5] while on July 23, 2014, Deutsche Knowledge filed its *Omnibus Motion (For Partial Reconsideration of Decision dated July 7, 2014 and To Re-Open Trial to Present Supplemental Evidence)*.[6]

The Court in Division resolved both Motions in the assailed Resolution dated October 13, 2014,[7] wherein it allowed the presentation of therein petitioner's (Deutsche Knowledge's) supplemental evidence on November 5, 2014 and held in abeyance the resolution of its Motion for Partial Reconsideration filed through registered mail on July 23, 2014. However, therein respondent's (CIR's) Motion for Partial Reconsideration was denied.

On November 3, 2014, the CIR filed before the Court *En Banc* his *Motion for Extension of Time to File Petition for Review*,[8] praying for an additional period of fifteen (15) days from November 4, 2014 or until November 19, 2014 within which to file a *Petition for Review*. Thus, the Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from November 4, 2014 or until November 19, 2014, within which to file the said *Petition for Review*.[9]

The CIR likewise filed, on November 4, 2014, with the Court in Division a *Motion for Reconsideration (Re: Resolution Promulgated October 13, 2014)*, praying that its Resolution dated October 13, 2014 be set aside.[10] The said *Motion* was, however, denied in open court by the Court in Division.[11]

On November 18, 2014, the CIR filed before the Court *En Banc*

---

[4] EB Docket (EB Case No. 1244) - pp. 32 to 65; EB Docket (EB Case No. 1345) – pp. 48 to 81; Division Docket (CTA Case No. 8443) – Vol. 3, pp. 1150 to 1183.
[5] Division Docket (CTA Case No. 8443) – Vol. 3, pp. 1187 to 1195.
[6] Division Docket (CTA Case No. 8443) – Vol. 3, pp. 1199 to 1215.
[7] Division Docket (CTA Case No. 8443) – Vol. 4, pp. 1483 to 1494; EB Docket (CTA EB No. 1244), pp. 66 to 77.
[8] EB Docket (CTA EB No. 1244), pp. 1 to 4.
[9] Minute Resolution dated November 6, 2014, EB Docket (CTA EB No. 1244), p. 80-A.
[10] Division Docket (CTA Case No. 8443) – Vol. 4, pp. 1759 to 1766.
[11] Minute Resolution dated November 5, 2016, Division Docket (CTA Case No. 8443) – Vol. 4, p. 1768.

his *Petition for Review*, which was docketed as **CTA EB No. 1244**.[12]

In the Resolution dated January 6, 2015,[13] the Court *En Banc* ordered Deutsche Knowledge to file its comment to the CIR's *Petition for Review*. In compliance, Deutsche Knowledge filed its *Comment* on February 2, 2015.[14] Thereafter, in the Resolution dated February 12, 2015,[15] the Court *En Banc* submitted the CIR's Petition for Review (CTA EB No. 1244) for decision.

In the meantime, the Court in Division issued the assailed Resolution dated July 24, 2015,[16] denying Deutsche Knowledge's *Motion For Partial Reconsideration of Decision dated July 7, 2014* for lack of merit.

Subsequently, on August 14, 2015, Deutsche Knowledge filed before the Court *En Banc* its *Motion For Extension of Time To File Petition for Review*,[17] praying for an additional period of fifteen (15) days from August 14, 2015 or until August 29, 2015 within which to file a *Petition for Review*. As a consequence, the Court *En Banc* granted Deutsche Knowledge a final and non-extendible period of fifteen (15) days from August 14, 2015 or until August 29, 2015, within which to file the said *Petition for Review*.[18] Thus, on September 1, 2015, Deutsche Knowledge filed before the Court *En Banc* its *Petition for Review*,[19] which was docketed as **CTA EB No. 1345.**[20]

In the Resolution dated October 27, 2015,[21] the Court *En Banc* *motu proprio* consolidated CTA EB No. 1345 with CTA EB No. 1244, considering that both cases are appeals from the assailed Decision of the Court in Division. Consequently, the Resolution dated February 12, 2015 issued by the Court *En Banc*, submitting the CIR's *Petition for Review* in CTA EB No. 1244 was recalled and set aside. The Court *En Banc* then ordered the CIR to file his *Comment* to Deutsche Knowledge's *Petition for Review* (CTA EB No. 1345).

---

[12] EB Docket (CTA EB No. 1244), pp. 7 to 30.
[13] EB Docket (CTA EB No. 1244), pp. 82 to 83.
[14] EB Docket (CTA EB No. 1244), pp. 84 to 97.
[15] EB Docket (CTA EB No. 1244), pp. 99 to 100.
[16] Division Docket (CTA Case No. 8443) – Vol. 4, pp. 1809 to 1816; EB Docket (CTA EB No. 1345), pp. 82 to 89.
[17] EB Docket (CTA EB No. 1345), pp. 1 to 4.
[18] Minute Resolution dated August 18, 2015, EB Docket (CTA EB No. 1345), p. 5.
[19] The deadline set (*i.e.*, August 29, 2015) fell on a Saturday, and the next working day was September 1, 2015. Hence, Deutsche Knowledge's *Petition for Review* was timely filed.
[20] EB Docket (CTA EB No. 1345), pp. 9 to 47.
[21] EB Docket (CTA EB No. 1244), pp. 102 to 105.

On November 12, 2015, the CIR filed his *Motion for Extension of Time To File Comment*,[22] praying for an additional period of fifteen (15) days from November 12, 2015 or until November 27, 2015 within which to file his *Comment*. Thus, the Court *En Banc* granted the CIR a final and non-extendible period of fifteen (15) days from November 12, 2015 or until November 27, 2015, within which to file the said *Comment*.[23] Subsequently however, the CIR filed a *Second Motion for Extension of Time To File Comment* on November 27, 2015,[24] praying for an additional period of ten (10) days from November 27, 2015 or until December 7, 2015 within which to file his *Comment*.

Without waiting for the resolution of his *Second Motion for Extension of Time To File Comment*, the CIR filed his *Comment* on December 7, 2015.[25] Nevertheless, in the Resolution dated January 19, 2016,[26] the said *Second Motion for Extension of Time To File Comment* was granted by the Court *En Banc* and the CIR's *Comment* was admitted. In the same Resolution, Deutsche Knowledge's *Petition for Review* was given due course and the parties were required to submit their respective memoranda.

On February 24, 2016, the CIR filed a *Manifestation*,[27] alleging that he is adopting the arguments raised in his *Petition for Review* filed on November 18, 2014 as his Memorandum, considering that he has already fully discussed all his arguments in the said *Petition for Review*.

For its part, on March 17, 2016, Deutsche Knowledge filed a *Motion for Additional Time To File Memorandum*,[28] praying for an additional period of ten (10) days from the said date or until March 27, 2016 within which to file its *Memorandum*. Subsequently, another *Motion for Additional Time To File Memorandum* was filed by Deutsche Knowledge on April 6, 2016,[29] praying for an additional period of seven (7) days from April 6, 2016 or until April 13, 2016 to file its *Memorandum*.

In the Resolution dated April 7, 2016,[30] the Court *En Banc* denied Deutsche Knowledge's *Motion for Additional Time To File*

---

[22] EB Docket (CTA EB No. 1244), pp. 106 to 109.
[23] Minute Resolution dated November 23, 2015, EB Docket (CTA EB No. 1244), p. 111.
[24] EB Docket (CTA EB No. 1244), pp. 113 to 115.
[25] EB Docket (CTA EB No. 1244), pp. 117 to 125.
[26] EB Docket (CTA EB No. 1244), pp. 129 to 131.
[27] EB Docket (CTA EB No. 1244), pp. 132 to 133.
[28] EB Docket (CTA EB No. 1244), pp. 140 to 143.
[29] EB Docket (CTA EB No. 1244), pp. 150 to 152.
[30] EB Docket (CTA EB No. 1244), pp. 147 to 149.

MO

Memorandum filed on March 17, 2016, for being filed out of time. Similarly, the Court *En Banc* denied Deutsche Knowledge's second *Motion for Additional Time To File Memorandum* filed on April 6, 2016, and deemed the consolidated cases as submitted for decision in the Resolution dated May 11, 2016.[31]

Hence, this Decision.

ASSIGNMENTS OF ERRORS

CTA EB No. 1244:

The CIR assigns the following error allegedly committed by the Court in Division, to wit:

> "The Honorable Second Division erred in partially granting the refund of the reduced amount of P14,822,227.02 allegedly representing unutilized input VAT attributable to zero rated sales for the first quarter of 2010."[32]

The CIR's arguments:

The CIR contends that Deutsche Knowledge's non-observance of the doctrine of exhaustion of administrative remedies and the principle of primary jurisdiction results in a lack of cause of action; and that this Court has no jurisdiction, hence, the *Petition* of Deutsche Knowledge should be dismissed.

Additionaly, the CIR submits that Deutsche Knowledge is not entitled to tax refund/credit in the amount of ₱14,822,227.02 for alleged excess and unutilized input VAT attributable to zero-rated sales for the 1st quarter of calendar year 2010, for failure to prove that the recipient of such services is doing business outside the Philippines.

According to the CIR, Deutsche Knowledge failed to submit complete documents required under Revenue Memorandum Order (RMO) No. 53-98, in relation to Section 112 (C) of the National Internal Revenue Code (NIRC) of 1997. Also, the CIR emphasizes that Deutsche Knowledge has the burden of proving that it is entitled to its claim for refund.

---

[31] EB Docket (CTA EB No. 1244), pp. 193 to 194.
[32] EB Docket (CTA EB No. 1244), p. 10.

Deutsche Knowledge's counter-arguments:

Deutsche Knowledge counter-argues that the CIR was given ample opportunity to act on its application for refund and submits that strict compliance with documentary requirements stated in RMO No. 53-98 is not the standard for compliance with the requirements for adminstrative claims for refund.

Moreover, Deutsche Knowledge avers that it submitted complete documents as contemplated by Section 112(C) of the Tax Code and that it has successfully proven its entitlement to the amounts claimed for refund.

CTA EB No. 1345

Upon the other hand, Deutsche Knowledge assigns the following errors allegedly committed by the Court in Division, to wit:

> "xxx the CTA-Division erred in partially denying [Deutsche Knowledge]'s claim for refund or issuance of TCC for the 1st quarter of CY 2010. This Court must revisit the Decision and the Resolution based on the following grounds:
>
> a. The CTA-Division erred in ruling that [Deutsche Knowledge] failed to prove its zero-rated sales in the amount of Php858,315,870.09 for the 1st quarter of CY 2010;
>
> b. The CTA-Division erred in ruling that [Deutsche Knowledge] is entitled only to the amount of Php22,027.35 representing the amortization of input VAT for the 1st quarter of CY 2010 by erroneously concluding that [Deutsche Knowledge]'s capital goods has a useful life of sixty (60) months; and
>
> c. The CTA-Division erred in finding that [Deutsche Knowledge] failed to meet the substantiation requirements under Sections 110(A) and 113(B), National Internal Revenue Code, as amended (the 'Tax Code'), and as implemented by Sections 4.110-2, 4.110-8 and 4.113-1, Revenue Regulations (RR)

vr

No. 16-2005."[33]

Deutsche Knowledge's arguments:

Deutsche Knowledge argues that it was able to prove that its sales to its non-resident foreign clients are zero-rated; hence, all of its allowable input VAT relative to its purchases of capital goods exceeding ₱1,000,000.00 for the 1st quarter of calendar year 2010 in the amount of ₱46,359.44, which are attributable to its zero-rated sales may be the proper subject of a claim for refund

Furthermore, Deutsche Knowledge contends that its unutilized input VAT in the amount of ₱33,868,101.19 is duly substantiated in accordance with the existing laws and regulations and therefore must be accordingly refunded.

The CIR's counter-arguments:

On the other hand, the CIR counter-argues that Deutsche Knowledge's claim for refund of excess and unutilized input VAT should be denied for failure to establish that the recipients of its services do business outside the Philippines. Moreover, the CIR is of the view that Deutsche Knowledge failed to prove the integrity and reliability of the exhibits it presented.

THE COURT *EN BANC*'S RULING

The CIR's *Petition for Review* must be partially granted; while Deutsche Knowledge's *Petition for Review* must fail.

Deutsche Knowledge has exhausted administrative remedies, pursuant to Section 112 of the NIRC of 1997.

The CIR insists that the non-observance of the doctrine of exhaustion of administrative remedies and the principle of primary jurisdiction of Deutsche Knowledge results in a lack of cause of action; and that this Court has no jurisdiction, hence, the *Petition for Review* of Deutsche Knowledge should be dismissed.

We disagree.

---

[33] EB Docket (CTA EB No. 1345), p. 21.

Section 112(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337,[34] lays down the administrative process in connection with the filing of a claim for refund or issuance of tax credit certificate of unutilized excess input VAT, to wit:

> "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 (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: xxx
>
> xxx xxx xxx
>
> (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 a 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."

Pursuant to the foregoing provision, Deutsche Knowledge had 120 days from the date of submission of complete documents in support of the application within which to decide on the administrative claim. Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to this Court within 30 days from the receipt of the decision or from the expiration of the 120-day period.

---

[34] 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.

Compliance with both periods is jurisdictional, considering that the 30-day period to appeal to this Court is dependent on the 120-day period. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal.[35]

In this case, Deutsche Knowledge timely filed its *Petition for Review* before the Court in Division (in CTA Case No. 8443) as shown by the following facts, to wit: (1) Deutsche Knowledge filed its administrative claim on October 21, 2011;[36] and (2) it then filed its *Petition for Review* on March 19, 2012.[37] Counting from the date following the filing of the administrative claim (*i.e.*, October 22, 2011), the 120th day fell on February 18, 2012, and thus, the filing date of the said *Petition for Review* (*i.e.*, on March 19, 2012) fell within 30 days from the expiration of the 120-day period.

Thus, contrary to the position of the CIR, Deutsche Knowledge did not violate the doctrine of exhaustion of administrative remedies. In fact, it has complied therewith.

Anent the CIR's contention that Deutsche Knowledge did not observe the doctrine of primary jurisdiction doctrine, the same likewise has no merit. As already pointed out, the said doctrine is to the effect that *"courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal **prior to the resolution of that question by the administrative tribunal**"*.

In this case, the CIR failed to act on Deutsche Knowledge's administrative claim for refund within the reglementary 120-day period. Hence, Deutsche Knowledge was constrained to file a *Petition for Review* against the CIR in CTA Case No. 8443.

Relevantly, Section 7 of RA No. 1125[38], as amended by RA No. 9282[39], provides as follows:

"SEC. 7. *Jurisdiction.* — The CTA shall exercise:

---

[35] *Hedcor, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 207575, July 15, 2015.
[36] Exhibits "G" and "H", Division Docket (CTA Case No. 8443) – Vol. 2, pp. 680 to 686.
[37] Division Docket (CTA Case No. 8443) – Vol. 1, p. 6.
[38] AN ACT CREATING THE COURT OF TAX APPEALS.
[39] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

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

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

Clearly from the foregoing and in relation to the aforequoted Section 112(C), the inaction of the CIR on the claim for refund or tax credit during the 120-day period is, by express provision of law, ***"deemed a denial"* of such claim**, and the failure of the taxpayer to file its judicial claim within 30 days from the expiration of the 120-day period shall render the *"deemed a denial"* decision of the CIR, final and inappealable.[40] Consequently, the case or controversy becomes ripe for judicial determination and the doctrine of primary jurisdiction has thus been fulfilled under the law.

In the same vein, even granting that the doctrine of primary jurisdiction still applies, the case of Deutsche Knowledge falls in either one of these three (3) exceptions to the said rule, *i.e.*, (1) the CIR's inaction will irretrievably prejudice Deutsche Knowledge; (2) judicial intervention is urgent; and (3) the application of the said doctrine may cause great and irreparable damage. If Deutsche Knowledge will wait beyond the 120+30 day periods provided under the above-quoted Section 112(C), it will lose its right to appeal the *"deemed a denial"* decision of the CIR.

Thus, judicial intervention becomes urgent on the part of Deutsche Knowledge, otherwise, it will lose its opportunity to prove its entitlement to the refund claim.

---

[40] Refer to *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* , G.R. No. 190021, October 22, 2014.

RMO No. 53-98 was not intended to be a benchmark in determining the completeness of documents for the refund of input VAT.

The CIR further argues that RMO No. 53-98 requires that complete documents must be submitted to substantiate a claim for refund with the BIR. According to the CIR, the issuance thereof is anchored on his interpretation that all the documents set forth in the said administrative issuance must be submitted in support of an application for tax refund/credit.

We do not agree.

For easy reference, quoted hereunder are the pertinent provisions of RMO No. 53-98, viz:

> "SUBJECT: *Checklist of Documents to be Submitted by a Taxpayer* ***upon Audit*** *of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket*
>
> xxx xxx xxx
>
> I. BACKGROUND
>
> It has been observed that for the same kind of tax audit case, Revenue Officers differ in their request for requirements from taxpayers as well as in the attachments to the dockets resulting to tremendous complaints from taxpayers and confusion among tax auditors and reviewers.
>
> For equity and uniformity, this Bureau comes up with a prescribed list of requirements from taxpayers, per kind of tax, as well as of the internally prepared reporting requirements, all of which comprise a complete tax docket.
>
> II. OBJECTIVE
>
> This order is issued to:
>
> a. Identify the documents to be required from a taxpayer **during audit**, according to particular kind of tax; and
>
> b. Identify the different audit reporting requirements to be prepared, submitted and attached to a tax audit docket.
>
> xxx xxx xxx." *(Emphases supplied)*

M

A cursory reading of RMO No. 53-98 shows that, insofar as VAT is concerned, nothing therein mandates that the list of documents stated in said RMO, should be submitted in connection with an application for refund or tax credit certificate under Section 112 of the NIRC of 1997, as amended. Furthermore, said RMO is explicit, as to its subject and objective, that it provides a checklist of documents to be submitted *"upon Audit"*, and that it was issued to *"(i)dentify the documents* ***to be required from a taxpayer during audit"***[41], respectively.

Notably, in this case, it was not shown that an audit was ever conducted by the BIR in connection with Deutsche Knowledge's application for refund. The BIR Records, if any, were not transmitted to this Court as required under Section 5(b), Rule 6 of the Revised Rules of the Court of Tax Appeals[42]. And lastly, there was no *Memorandum Report* concerning the administrative claim for refund of Deutsche Knowledge as manifested by the CIR's counsels.[43]

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[44] the Supreme Court ruled:

> "xxx, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present upon audit of their tax liabilities. **Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or**

---

[41] Emphasis supplied.

[42] Section 5(b), Rule 5 of the Revised Rules of the Court of Tax Appeals provide as follows:

"SEC. 5. *Answer.*—

xxx xxx xxx

(b) *Transmittal of records.*— The respondent Commissioner of Internal Revenue, xxx, within ten days after filing an answer, xxx, shall certify and forward to the Court all the records of the case in their possession, with the pages duly numbered, and, if the records are in separate folders, then the folders will also be numbered. If there are no records, such fact shall be manifested to the Court within the same period of ten days. The Court may, on motion, and for good cause shown, grant an extension of time within which to submit the aforesaid records of the case. **Failure to transmit the records within the time prescribed herein or within the time allowed by the Court may constitute indirect contempt of court.**" *(Emphasis supplied)*

[43] Minutes of the hearing held on July 10, 2013, Division Docket (CTA Case No. 8443) – Vol. 2, p. 1089; and Resolution dated July 10, 2013, Division Docket (CTA Case No. 8443) – Vol. 2, p. 1091.

[44] G.R. No. 207112, December 8, 2015.

refund of excess unutilized excess VAT. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation (formerly Mirant Sual Corporation)*;[45]

> The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'
>
> Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time. [Emphasis included. Underlining Ours.]

As explained earlier and underlined in *Team Sual* above, **taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.**

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal

---

[45] G.R. No. 205055, July 18, 2014.

M

> **to its claim for tax credit or refund of excess unutilized excess VAT.** This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. **Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.**" *(Emphases supplied)*

In light of the foregoing jurisprudential pronouncement, there can be no merit in the CIR's argument to the effect that Deutsche Knowledge must submit complete documents pursuant to RMO No. 53-98 in relation to Section 112(C) of the NIRC of 1997.

Not all of Deutsche Knowledge's sales for the first quarter of 2010 qualify for VAT zero rating under the law.

Deutsche Knowledge argues that it was able to prove that its sales to its non-resident foreign clients are zero-rated. Thus, according to Deutsche Knowledge, all its input VAT attributable to zero-rated sales may be the proper subject of a claim for refund.

On the other hand, the CIR contends that Deutsche Knowledge is not entitled to refund in the amount of ₱14,882,227.02 for failure to prove that the recipient of its services is doing outside the Philippines.

A cursory examination of the evidence presented in CTA Case No. 8443 will show that not all of the sales of Deutsche Knowledge declared as *"Zero Rated Sales/Receipts"* in its Quarterly VAT Return for the first quarter of 2010 qualify for VAT zero-rating, for its failure to prove compliance with Section 108 of the NIRC of 1997, as amended by RA No. 9337, which provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.—*
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of

properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).[46]

The phrase 'sale or exchange of service' means **the performance of all kinds of services <u>in the Philippines</u>** for others for a fee, remuneration or consideration, xxx.

xxx xxx xxx

(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 **rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> 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);" *(Emphases and underscoring supplied)*

---

[46] Effective February 1, 2006, the VAT rate is increased to 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

M

Based on the foregoing provisions, in order to subject a sale of service transaction to 0% VAT rate, it is required, *inter alia*, that the services were *"rendered to a person engaged in business outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed"* and the consideration therefor was *"paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)"*.

Services covered by Section 108(B)(1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the *Bangko Sentral ng Pilipinas*. Thus, there is reason to require the provider of services under Section 108(B)(1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency. Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 108(A) governing **domestic** sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provision of Section 108(B).[47]

The Supreme Court, in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*,[48] ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a *"nonresident foreign corporation"*. In the said case, the High Court declared:

> "The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
> SEC. 22. *Definitions* – When used in this Title:
> xxx xxx xxx

[47] Refer to *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[48] G.R. No. 190102, July 11, 2012.

> (H) The term *'resident foreign corporation'* applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) **The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines.** (Emphasis in the original)
>
> **Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; <u>rather, it must be specifically proven to be a nonresident foreign corporation</u>**.
>
> There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:[49]
>
> > x x x. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'"[50] *(Emphases and underscoring supplied)*

As a corollary to the above pronouncement, it is noteworthy that the Supreme Court, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[51]

---

[49] 233 Phil. 406 (1987).
[50] Id. at 420 citing *The Mentholatum Co., Inc. vs. Anacleto Mangaliman*, 72 Phil. 524 (1941); Section 1, R.A. No. 5455; and *Pacific Micronesian Line, Inc. v. Del Rosario and Pelingon*, 96 Phil. 23, 30 (1954), which in turn cited Thompson on Corporations, Vol. 8, 844-847 (3rd ed.); and Fisher, PHILIPPINE LAW OF STOCK CORPORATION, 415.
[51] G.R. No. 153205, January 22, 2007.

declared that **the service-recipient must also be <u>not</u> doing business in the Philippines**. Otherwise, the transaction will be subject to the VAT at the then rate of 10%,[52] and **not** at the 0% VAT rate. Thus:

> <u>"In this case, the payer-recipient of respondent's services is the Consortium which is a joint-venture doing business in the Philippines. While the Consortium's principal members are non-resident foreign corporations, **the Consortium itself is doing business in the Philippines**.</u> This is shown clearly in BIR Ruling No. 023-95 which states that the contract between the Consortium and NAPOCOR is for a **15-year term**, thus:
>
> > This refers to your letter dated January 14,1994 requesting for a clarification of the tax implications of a contract between a consortium composed of Burmeister & Wain Scandinavian Contractor A/S ('BWSC'), Mitsui Engineering & Shipbuilding, Ltd. (MES), and Mitsui & Co., Ltd. ('MITSUI'), all referred to hereinafter as the 'Consortium', and the National Power Corporation ('NAPOCOR') **for the operation and maintenance of two 100-Megawatt power barges ('Power Barges') acquired by NAPOCOR for a 15-year term.** (Emphasis supplied)
>
> Considering this length of time, the Consortium's operation and maintenance of NAPOCOR's power barges cannot be classified as a single or isolated transaction. <u>The Consortium does not fall under Section 102(b)(2)[53] which requires that the recipient of the services must be a person doing business outside the Philippines. Therefore, respondent's services to the Consortium, not being supplied to a person doing business outside the Philippines, cannot legally qualify for 0% VAT."</u> *(Underscoring supplied)*

We agree with the Court in Division that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a certificate of non-registration of corporation / partnership issued by the Philippine Securities and Exchange Commission (SEC) **and** certificate / articles of foreign incorporation / association.

---

[52] Now the VAT rate is 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

[53] Now Section 102(B)(2) of the NIRC of 1997, as amended by RA 9337.

Parenthetically, it must be emphasized that notwithstanding the presentation of the said documents, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the above-quoted ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*

The said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines; while the said certificate / articles of incorporation / association will prove that the recipient is indeed foreign.

Furthermore, as correctly observed by the Court in Division, the IntraGroup Service Agreements[54] do not establish that such service recipients are non-resident foreign corporations doing business outside the Philippines, because the said Agreements only show the names of Deutsche Knowledge's customers to whom it rendered services.

In this case, the following table shows whether Deutsche Knowledge presented and offered in evidence the said SEC certificate and certificate / articles of incorporation / association for each of the recipients of the services rendered by Deutsche Knowledge, to wit:

Name of the Service-Recipients[55]	SEC's negative certification	Certificate / Articles of Incorporation / Association
Deutsche Bank Aktiengesellschaft, Inlandsbank	Exhibit "I-1"	*(none)*
Deutsche Bank Aktiengesellschaft, Filiale Amsterdam	Exhibit "I-2"	*(none)*
Deutsche Bank, Sociedad Anònima Española	Exhibit "I-3"	*(none)*
Deutsche Bank Aktiengesellschaft, Filiale Zurich	Exhibit "I-4"	*(none)*
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	Exhibit "I-30"	Exhibit "J-3"
Deutsche Bank Aktiengesellschaft, Filiale Singapore	Exhibit "I-27"	Exhibit "J-2"
Deutsche Bank Aktiengesellschaft, Filiale Karachi	Exhibit "I-6"	*(none)*
Deutsche Bank Aktiengesellschaft,	Exhibit "I-5"	*(none)*

[54] Exhibits "K-1" to "K-9", and "K-11" to "K-22", Division Docket (CTA Case No. 8443) – Vol. 2, pp. 787 to 923.
[55] Exhibit "S", Division Docket (CTA Case No. 8443) – Vol. 2, pp. 1010 to 1011.

Filiale Ho-Chi-Minh-Stadt		
Deutsche Bank Aktiengesellschaft, Filiale Seoul	Exhibit “I-26”	*(none)*
Deutsche Bank Aktiengesellschaft, Filiale New York	Exhibit “I-25”	Exhibit “J-4”
Deutsche Bank Aktiengesellschaft, Filiale London	Exhibit “I-32”	Exhibits “M-2350” to “M-2353”
Deutsche Bank Aktiengesellschaft, Filiale Tokyo	Exhibit “I-7”	Exhibits “M-2355” to “M-2372”
Deutsche Bank Aktiengesellschaft, Filiale Paris	Exhibit “I-8”	*(none)*
Deutsche Bank Aktiengesellschaft, Filiale Prag	Exhibit “I-9”	*(none)*
Deutsche Bank Luxembourg S.A.	Exhibit “I-10”	Exhibits “M-2354”
Deutsche Securities, Inc.	Exhibit “I-35”	Exhibit “J-6”
Deutsche Bank (China) Co. Ltd., Beijing Branch	Exhibit “I-12”	*(none)*
Deutsche Bank (China) Co. Ltd., Guangzhou Branch	Exhibit “I-13”	*(none)*
Deutsche Bank (China) Co. Ltd., Shanghai Branch	Exhibit “I-31”	*(none)*
DWS Holding & Service GmbH	Exhibit “I-15”	Exhibits “M-2375” to “M-2376”
RREEF Management GmbH	Exhibit “I-23”	*(none)*
DB Hedgeworks, LLC	Exhibit “I-22”	*(none)*
Deutsche Bank Real Estate (Japan) Y.K.	Exhibit “I-29”	*(none)*
Deutsche Bank Securities, Inc.	Exhibit “I-11”	Exhibits “M-2382” to “M-2384”
Deutsche Asia Pacific Holdings Pte Ltd	Exhibit “I-34”	Exhibit “J-5”
PT. Deutsche Securities Indonesia	Exhibit “I-16”	Exhibits “M-2385”
Deutsche Group Services Pty Limited	Exhibit “I-28”	Exhibits “M-2386” to “M-2389”
Deutsche Bank PBC Spolka Akcyjna	Exhibit “I-17”	Exhibits “M-2390” to “M-2398”
Deutsche Bank Trust Company Americas	Exhibit “I-18”	*(none)*
DB Services New Jersey, Inc.	Exhibit “I-19”	*(none)*
Deutsche Bank National Trust Company	Exhibit “I-24”	*(none)*
DB Finance, Inc.	Exhibit “I-20”	*(none)*
DB International (Asia) Limited	Exhibit “I-21”	*(none)*
DBOI Global Services Private Limited	Exhibit “I-33”	*(none)*

Correspondingly, only the sales of service by Deutsche Knowledge to entities which have the said two (2) required documents will be treated as subject to the 0% VAT rate, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337.

There can be no merit to Deutsche Knowledge's insistence that foreign business registration print-outs retrieved from the AMInet database (Exhibits "P-1" to "P-33"), which is a database set up by Deutsche Bank Global (the head office of Deutsche Knowledge in Germany) are sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines.[56] To the mind of the Court *En Banc*, the said print-outs are self-serving and can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database. We quote with approval the Court in Division's discussion on the matter found in the assailed Resolution dated July 24, 2015, to wit:

> "It is to be noted that while a particular item of evidence may be admissible, it does not mean that it would automatically be given evidentiary weight because it would depend on judicial evaluation within the guidelines set by the Rules of Court. 'Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.'
>
> The Court gives scant probative value to exhibits 'P-1' to 'P-19', on account that these exhibits were prepared solely and exclusively by [Deutsche Knowledge] whereas exhibits 'P-20' to 'P-33' where taken from documents which were not presented, and thus self-serving, absent verification by independent documents.
>
> Following Section 1, Rule 7 of the Rules of Electronic Evidence, the factors that may be considered in determining the evidentiary weight of an electronic evidence are:
>
>> ' (a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;

---

[56] Refer to Pars. 15 and 23, Deutsche Knowledge's *Petition for Review*, EB Docket (CTA EB No. 1345), pp. 22 to 23, and 26.

> (b) The reliability of the manner in which its originator was identified;
>
> (c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;
>
> (d) The familiarity of the witness or the person which made the entry with the communication and information system;
>
> (e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or
>
> (f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message.'
>
> In the instant case, [Deutsche Knowledge's] witness was not the one who entered the details in the AMInet system, with respect to the alleged non-resident foreign corporations doing business outside the Philippines. Neither did she witness someone make the entry. During cross-examination, the witness admitted that she was not present when the entries were encoded. Thus, We cannot give credence to Exhibits 'P-1' to 'P-33', which are electronic documents. In effect, this Court is not convinced that these entities are non-resident foreign corporations doing business outside the Philippines."[57]

Following the above disquisitions, only the amount of €9,624,124.88 or its peso equivalent, ₱612,295,462.42, of Deutsche Knowledge's sales of services for the first quarter of 2010, would qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, computed as follows:

---

[57] EB Docket (CTA EB No. 1345), pp. 87 to 88.

n

Company Name	OR #	OR Exh No.	Inward Remit-tance Exhibit No.	Amount Collected in Euro	Peso Equivalent
DB AG Asia Pacific H.O.	635	**M-132**	**M-133**	€ 394,160.29	₱ 26,127,308.98
DB AG Asia Pacific H.O.	636	**M-368**	**M-369**	21,501.92	1,425,276.27
DB AG Asia Pacific H.O.	638	**M-398**	**M-399**	17,079.14	1,132,107.87
DB AG Asia Pacific H.O.	641	**M-169**	**M-170**	6,032.34	401,207.92
DB AG Asia Pacific H.O.	642	**M-165**	**M-166**	17,584.20	1,169,516.35
DB AG Asia Pacific H.O.	644	**M-161**	**M-162**	62,269.31	4,141,500.67
DB AG Asia Pacific H.O.	645	**M-181**	**M-182**	62,389.38	4,149,486.47
DB AG Asia Pacific H.O.	648	**M-177**	**M-178**	44,993.83	2,979,401.43
DB AG Asia Pacific H.O.	649	**M-201**	**M-202**	24,041.78	1,591,998.59
DB AG Asia Pacific H.O.	653	**M-520**	**M-521**	6,824.91	443,898.29
DB AG Asia Pacific H.O.	654	**M-433**	**M-434**	292,870.92	19,048,588.22
DB AG Asia Pacific H.O.	655	**M-536**	**M-537**	112,370.67	7,308,689.51
DB AG Asia Pacific H.O.	656	**M-475**	**M-476**	17,432.74	1,133,841.00
DB AG Asia Pacific H.O.	657	**M-480**	**M-481**	5,480.82	356,477.47
DB AG Asia Pacific H.O.	659	**M-515**	**M-515**	2,748.62	178,772.72
DB AG Asia Pacific H.O.	668	**M-28**	**M-29**	12,600.00	807,070.32
DB AG Asia Pacific H.O.	671	**M-38**	**M-39**	12,500.00	800,665.00
DB AG Asia Pacific H.O.	674	**M-65**	**M-66**	15,000.00	960,798.00
DB AG Asia Pacific H.O.	675	**M-74**	**M-75**	5,000.00	320,266.00
DB AG Asia Pacific H.O.	676	**M-70**	**M-71**	4,000.00	256,212.80
DB AG Asia Pacific H.O.	677	**M-79**	**M-80**	58,064.51	3,719,217.67
DB AG Asia Pacific H.O.	678	**M-89**	**M-90**	12,000.00	768,638.40
DB AG Asia Pacific H.O.	679	**M-104**	**M-105**	24,000.00	1,537,276.80
DB AG Asia Pacific H.O.	683	**M-84**	**M-85**	12,000.00	768,638.40
DB AG Asia Pacific H.O.	684	**M-109**	**M-110**	12,000.00	768,638.40
DB AG Asia Pacific H.O.	685	**M-2**	**M-3**	12,000.00	768,638.40
DB AG Asia Pacific H.O.	686	**M-16**	**M-17**	12,899.99	826,285.64
DB AG Asia Pacific H.O.	714	**M-552**	**M-553**	65,341.53	4,023,293.63
DB AG Asia Pacific H.O.	720	**M-608**	**M-609**	78,693.93	4,786,731.42
DB AG Asia Pacific H.O.	722	**M-221**	**M-222**	144,121.22	8,766,490.27
DB AG Asia Pacific H.O.	724	**M-57**	**M-58**	449,291.54	27,329,146.36
DB AG London	660	**M-191**	**M-192**	451,787.52	29,209,011.28
DB AG London	699	**M-353**	**M-354**	1,457,267.26	91,361,476.42
DB AG London	716	**M-637**	**M-638**	567,057.78	34,915,618.81
DB AG London	721	**M-632**	**M-633**	107,168.22	6,515,270.50
DB AG New York	693	**M-127**	**M-128**	14,792.57	930,121.30
DB AG New York	701	**M-11**	**M-12**	381,255.90	23,952,363.79
DB AG New York	707	**M-260**	**M-261**	2,075,285.62	130,061,885.32
DB AG New York	725	**M-121**	**M-122**	9,858.84	599,685.63
DB AG Singapore	637	**M-363**	**M-364**	56,805.09	3,765,382.20
DB AG Singapore	639	**M-393**	**M-394**	307.00	20,349.80
DB AG Singapore	643	**M-250**	**M-251**	35,887.13	2,386,835.07
DB AG Singapore	646	**M-186**	**M-187**	109,861.28	7,306,818.80
DB AG Singapore	651	**M-206**	**M-207**	2,905.40	192,389.78
DB AG Singapore	658	**M-468**	**M-469**	89,354.82	5,811,717.91
DB AG Singapore	662	**M-441**	**M-442**	116,702.69	7,642,509.06
DB AG Singapore	667	**M-245**	**M-246**	25,000.02	1,601,331.28
DB AG Singapore	669	**M-43**	**M-44**	28,125.00	1,801,496.25
DB AG Singapore	670	**M-7**	**M-8**	15,000.00	960,798.00
DB AG Singapore	672	**M-33**	**M-34**	28,350.00	1,815,908.22
DB AG Singapore	673	**M-24**	**M-25**	16,125.02	1,032,859.13
DB AG Singapore	680	**M-99**	**M-100**	25,000.00	1,601,330.00

ND

DB AG Singapore	681	**M-94**	**M-95**	15,000.00	960,798.00
DB AG Singapore	687	**M-20**	**M-21**	24,900.00	1,594,924.68
DB AG Singapore	713	**M-557**	**M-558**	124,343.80	7,656,258.10
DB AG Singapore	723	**M-612**	**M-613**	36.29	2,207.42
DB Finance Inc.	691	**M-334**	**M-335**	1,382.50	88,096.36
DB Luxembourg S.A.	650	**M-544**	**M-545**	6,981.30	462,287.72
DB Luxembourg S.A.	692	**M-445**	**M-446**	31,776.99	2,017,403.52
DB Luxembourg S.A.	727	**M-660**	**M-661**	10,170.01	618,613.23
DT Asia Pacific Holdings	633	**M-313**	**M-314**	27,750.06	1,821,844.16
DT Group Services Pty Limited	663	**M-323**	**M-324**	498,208.72	32,634,315.25
DT Group Services Pty Limited	666	**M-196**	**M-197**	25,973.26	1,680,815.19
DT Group Services Pty Limited	666	**M-216**	**M-217**	7,443.75	481,709.58
DT Group Services Pty Limited	666	**M-373**	**M-374**	23,710.43	1,534,380.01
DT Group Services Pty Limited	666	**M-485**	**M-486**	31,791.20	2,057,313.25
DT Group Services Pty Limited	666	**M-527**	**M-528**	6,958.43	450,302.92
DT Group Services Pty Limited	704	**M-579**	**M-580**	29,326.91	1,832,782.31
DT Group Services Pty Limited	706	**M-403**	**M-404**	3,930.37	246,577.26
DT Securities Inc.	634	**M-280**	**M-281**	984,749.96	65,275,135.85
DT Securities Inc.	711	**M-61**	**M-62**	118,150.10	7,341,256.46
DWS Hold Service	717	**M-665**	**M-666**	18,500.04	1,141,574.57
PT Deutsche Securities Indonesia	700	**M-318**	**M-319**	1,850.01	115,628.77
TOTAL				**€9,624,124.88**	**₱ 612,295,462.42**

It must be noted that the reason for the omissions of certain entities [*i.e.*, Deutsche Bank (China) Co. Ltd., Beijing Branch; Deutsche Bank (China) Co. Ltd., Shanghai Branch; Deutsche Bank Aktiengesellschaft, Filiale Ho-Chi-Minh-Stadt; and DB International (Asia) Limited], which were considered as non-resident foreign corporations doing business outside the Philippines in the assailed Decision, is that the basis thereof for treating them as such, were the same print outs from the said AMInet database.[58] Thus, the sales of service by Deutsche Knowledge to the said entities should not be treated as subject to the 0% VAT rate.

Moreover, based on the foregoing table, it is shown that for each of Deutsche Knowledge's sale of service transaction which qualifies for VAT zero-rating, there is a corresponding proof of inward remittance. Thus, there can be no merit in the CIR's contention that Deutsche Knowledge failed to prove that the acceptable foreign currency exchange proceeds had been duly accounted for in accordance with BSP rules and regulations. This is so because the

[58] Refer to Exhibits "M-2373", "M-2374", "M-2339", and "M-2401".

M

certification of inward remittances attests to the fact of payment in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP.[59]

Deutsche Knowledge is only entitled to the amount of ₱22,027.35, representing the amortization of the amount of input VAT on its purchases of capital goods exceeding ₱1,000.000.00 for the first quarter of 2010.

Deutsche Knowledge further argues that it is entitled to the amount of ₱46,359.44, representing the amount of amortization of input VAT on its purchases of capital goods exceeding ₱1,000,000.00 for the first quarter of 2010. It points out that the Court in Division erred in finding that the estimated useful life of the said goods is sixty (60) months. Allegedly, the said estimated useful life should have been only forty eight (48) months, showing as basis a copy of its Quarterly VAT Return for the first quarter of 2010 [composing of four (4) pages], which was attached to Deutsche Knowledge's *Petition for Review* (CTA EB No. 1345) as Annex "C"[60].

We do not agree with Deutsche Knowledge.

Deutsche Knowledge should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the Court.[61] And as corollary, Section 34 of Rule 132, Revised Rules of Evidence, is clear that no evidence which has not been formally offered shall be considered.[62] In other words, courts cannot consider evidence which has not been formally offered.[63]

In this case, it is only in Deutsche Knowledge's *Petition for Review* in CTA EB No. 1345 that it attached a copy of its Quarterly VAT Return for the first quarter of 2010 showing that the estimated useful life of the subject capital goods is only forty eight (48) months.

---

[59] *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.
[60] EB Docket (CTA EB No. 1345), pp. 90 to 94.
[61] Refer to *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.
[62] Refer to *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[63] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008.

Thus, the same cannot be considered.

And while it may be true that Deutsche Knowledge presented and offered in evidence, in the Court *a quo*, its Quarterly VAT Return for the first quarter of 2010,[64] the said document, however, consists only of two (2) pages, *i.e.*, not including the portion showing that it declared that the estimated useful life of its purchases/importation of capital goods exceeding ₱1,000,000.00 for the first quarter of 2010 is only forty eight (48) months. Such being the case, there was no basis for the Court in Division to find the said estimated useful life is other than sixty (60) months, which was in accordance with Section 110 of the NIRC of 1997, as amended by RA No. 9337, to wit:

> "SEC. 110. *Tax Credits.*—
>
> xxx xxx xxx
>
> xxx, **That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (P1,000,000)**: Provided, however, That if the estimated useful life of the capital goods is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: xxx." *(Emphasis supplied)*

Consequently, no error was committed by the Court in Division in ruling that the estimated useful life of the subject capital goods is sixty (60) months, considering that there is no evidence on record to show that it is otherwise.

The out-of-period claims in the amount of ₱9,831.82 should not be allowed.

Deutsche Knowledge likewise insists that the disallowance of out-of-period claims in the amount of ₱9,831.82 is untenable, considering that the said claims are specifically allowed under Revenue Memorandum Circular (RMC) No. 42-03.

---

[64] Exhibit "C", Division Docket (CTA Case No. 8443) – Vol. 2, pp. 613 to 614.

We disagree.

Indeed, RMCs, such as RMC No. 42-03, are considered administrative rulings which are issued from time to time by the CIR;[65] and, that administrative issuances have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes.[66] However, it must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.[67]

Thus, even when RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, because it contravenes Section 110(2) of the NIRC of 1997, as amended by RA No. 9337, which is one of the pertinent provisions applicable to the refund claim of Deutsche Knowledge in CTA Case No. 8443. Said provision lays down the rules as to when the input VAT is creditable against the output VAT, to wit:

> "SEC. 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchases or importation of goods or properties by a VAT-registered person **shall be creditable**:
>
> (a) To the purchaser **upon consummation of sale and on importation of goods or properties**; and
>
> (b) To the importer **upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs**.
>
> xxx, That in case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee **upon payment of the compensation, rental, royalty or fee**." *(Emphases and underscoring supplied)*

---

[65] *Asia International Auctioneers, Inc., et al. vs. Parayno, et al.*, G.R. No. 163445, December 18, 2007.

[66] *Chevron Phils., Inc. vs. Bases Conversion and Development Authority, et al.* , G.R. No. 173863, September 15, 2010.

[67] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

M

The foregoing law is clear. As to the purchaser of goods or properties, the input VAT is creditable against the output VAT, **upon consummation of the sale**; as to the importer, **upon payment of the VAT**; and as to the purchaser of services, lease or use of properties, the input VAT therefor is creditable **upon payment of the compensation, rental, royalty or fee**. With the use of the word "upon", it can be easily discerned from the said provisions that the creditability of the pertinent input VAT against the output VAT must be made as it happens, and not to be made at any other time.

Deutsche Knowledge's VAT official receipts or invoices, which do not separately indicate the input VAT component, were correctly disallowed by the Court in Division.

Deutsche Knowledge likewise questions the following disallowances made by the Court in Division, to wit:

Findings	Disallowed input VAT
Domestic purchases of services supported by VAT official receipts wherein the input VAT were not separately indicated	₱5,470,274.88
Domestic purchases of goods other than capital goods supported by VAT invoice wherein the input VAT were not separately indicated	71,165.89
TOTAL	₱5,541,440.77

Deutsche Knowledge argues that the foregoing amount must not be disallowed based on the following grounds: (i) the input VAT claimed from these supporting documents may be readily computed; and (ii) these supporting documents were issued by Deutsche Knowledge's clients over which it had no participation and control whatsoever.

We find the foregoing arguments untenable.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[68] Thus, the taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in

---

[68] *Panasonic Communications Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.

m

this case input VAT, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[69] In other words, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also **compliance with all the documentary and evidentiary requirements**.[70]

As a refund claimant for input VAT, Deutsche Knowledge must show that the VAT invoices or official receipts issued to it by its suppliers, as the case may be, complied with Section 113(B)(2)(a) of the NIRC of 1997, as amended by RA No. 9337, which provides as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons. —*
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — **The following information shall be indicated in the VAT invoice or VAT official receipt**:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) **The amount of the tax shall be shown as a separate item in the invoice or receipt**;
>
> xxx xxx xxx." *(Emphases supplied)*

Based on the foregoing, the VAT invoice or VAT official receipt, as the case may be, must state, *inter alia*, the amount of the tax as a separate item therein. Strict adherence to this requirement must be shown. This is so because compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[71]

---

[69] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.

[70] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

[71] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*,

Hence, if it is shown that the said VAT invoice or VAT official receipt does not indicate the said requirements, it must not be included as part of the taxpayer-claimant's refundable amount.

Correspondingly, Deutsche Knowledge's allegation that the input VAT claimed from the supporting documents (*i.e.*, the VAT invoices and official receipts) may be readily computed has no leg to stand on, since the indication of the input VAT in the VAT invoice or VAT official receipt, as the case may be, is a legal requirement.

Furthermore, the reasoning of Deutsche Knowledge that the subject VAT invoices or official receipts were issued without its participation and control whatsoever is specious.

While it may be true that the said VAT invoices or official receipts were issued without its participation and control, it was the look out of Deutsche Knowledge to require its suppliers of goods and services to issue pertinent VAT invoice or official receipt, as the case may be, which bear all the information required by the tax code and revenue regulations. In other words, having been charged with the burden to prove its claim for refund,[72] Deutsche Knowledge must have been vigilant in ensuring that its every purchase of goods or services is supported by a legally compliant VAT official receipt or invoice, as the case may be.

Refund claims of input VAT must be supported by pertinent documents.

Deutsche Knowledge likewise assails the following findings of the Court in Division, to wit:

Findings	Disallowed input VAT
Domestic purchases of services without supporting VAT official receipts	₱3,527,052.60
Domestic purchases of goods other than capital goods without supporting VAT invoice	1,135,586.84
Input VAT on services rendered by non-residents without supporting documents	97,877.35
TOTAL	₱4,760,516.79

Supra.

[72] Refer to *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

Deutsche Knowledge contends that it has submitted to the Court-commissioned Independent Certified Public Accountant (ICPA) all documents supporting input VAT for the first quarter of 2010. It points out that the ICPA could not have come up with his findings, unless he has examined the relevant VAT invoices supporting Deutsche Knowledge's purchases of goods save for the purchases amounting to ₱203,873.84 and VAT official receipts supporting its purchases of services save for the amount of ₱887,896.65. In addition, Deutsche Knowledge alleges that Annex "A" of the assailed Decision refers, in fact, to the VAT invoices (for domestic purchases of goods other than capital goods) amounting to ₱1,135,586.84 that were duly submitted by Deutsche Knowledge.

We are not persuaded.

A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.[73] To reiterate, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[74]

Under Sections 110(A)(1)(a) and (b), and 113(A) of the NIRC of 1997, as amended by RA No. 9337, a creditable input VAT should be evidenced by a VAT invoice or official receipt, as the case may be. Said provisions read as follows:

> "SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) **Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax**:
>
> (a) Purchase or importation of goods:
> xxx xxx xxx
>
> (b) Purchase of services on which a value-added tax has actually been paid." *(Emphasis and underscoring supplied)*

---

[73] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[74] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, Supra.

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) **A <u>VAT invoice</u> for every sale, barter or exchange of goods or properties**; and
>
> (2) **A <u>VAT official receipt</u> for every lease of goods or properties, and for every sale, barter or exchange of services.**"

Relative thereto, Section 4.110-8(a)(2), (4), and (d), of RR No. 16-2005 provides as follows:

> "SEC. 4.110-8. ***Substantiation of Input Tax Credits.* —**
>
> (a) xxx xxx xxx
>
> (1) xxx xxx xxx
>
> (2) **For the domestic purchase of goods and properties — <u>invoice</u>** showing the information required under Secs. 113 and 237 of the Tax Code.
>
> (3) xxx xxx xxx
>
> (4) **For the purchase of services — <u>official receipt</u>** showing the information required under Secs. 113 and 237 of the Tax Code.
>
> xxx xxx xxx
>
> (d) **Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by <u>a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600)</u>** filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor." *(Emphases and underscoring supplied)*

Indeed, under Sections 110(A) and 113(A) of the NIRC, any input tax that is subject of **a claim for refund must be evidenced by a VAT invoice or official receipt.**[75] Under the law, a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services.[76] With regard to refund of the input VAT from the payments made to non-residents, the above-quoted provision of RR No. 16-2005 requires that it must be substantiated by a copy of the subject Monthly Remittance Return of VAT Withheld (BIR Form 1600) filed by the refund claimant on behalf of the non-resident.

Although the Court-commissioned ICPA is of the view that certain amounts input VAT are refundable, despite not being supported or substantiated by the above-stated documents, the Court in Division is not bound by the findings of the ICPA in CTA Case No. 8443. It must be emphasized that the said documents under Sections 110(A)(1)(a) and (b), and 113(A) of the NIRC of 1997, as amended by RA No. 9337, in relation to Section 4.110-8(a)(2), (4), and (d), of RR No. 16-2005, are subject to the Court's own thorough consideration and evaluation.

Considering therefore that Deutsche Knowledge failed to substantiate the said total amount of ₱4,760,516.79 with the pertinent documents pursuant to the above-quoted provisions, the Court in Division did not err in disallowing the same.

Re-computation of the refundable amount of input VAT.

In light of the Court *En Banc's* finding that the amount of refund to be granted to Deutsche Knowledge must be reduced, the same is accordingly computed as follows:

Input VAT claimed for refund			₱ 33,868,101.19
Less:	Disallowances		
	Unamortized Input VAT on Capital Goods exceeding ₱1M	₱ 719,723.72	
	Input VAT on Capital Goods exceeding ₱1M without supporting documents	514,698.21	
	Input VAT on purchases of services and goods other than capital goods	11,556,290.62	12,790,712.55

[75] *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 201195, November 26, 2014.

[76] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.

Valid Input VAT		**₱ 21,077,388.64**
Less: Output VAT		713,041.78
Valid Excess Input VAT		**₱ 20,364,346.86**

Valid Zero-Rated Sales/Receipts	612,295,462.42
Divided by Total Reported Zero-Rated Sales/Receipts	858,315,870.09
Multiply by Valid Excess Input VAT	20,364,346.86
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	**₱ 14,527,282.57**

WHEREFORE, in light of the foregoing considerations, the Petition for Review of the Commissioner of Internal Revenue in **CTA EB No. 1244** is **PARTIALLY GRANTED.** The amount of refund claim stated in the assailed Decision dated July 7, 2014 in favor of Deutsche Knowledge is hereby **REDUCED to ₱14,527,282.57** representing its unutilized input VAT attributable to its zero-rated sales for the first quarter of 2010.

On the other hand, the Petition for Review of Deutsche Knowledge Services, Pte. Ltd. in **CTA EB No. 1345** is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,** Respondent.	**CTA EB NO. 1244** (CTA Case No. 8443)

x -x

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Petitioner,* -versus- **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA EB NO. 1345** (CTA Case No. 8443) Present: **DEL ROSARIO**, PJ, **CASTAÑEDA, JR.**, **BAUTISTA**, **UY**, **CASANOVA**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ. Promulgated: MAR 3 0 2017 2:39 p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, PJ.:

I agree with the *ponencia's* conclusion that Deutsche Knowledge Services Pte. Ltd. (Deutsche Knowledge) is entitled to a partial refund of its input value-added tax (VAT). With due respect, however, I withhold my assent on the affirmation of the Court in

Division's ruling that to be considered as a non-resident foreign corporation doing business outside of the Philippines, each entity must be supported, at the very least, by **both a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association,** even if SEC Certifications of Non-Registration of Company and Intra-Group Service Agreements were presented by Deutsche Knowledge to prove that its clients are non-resident foreign corporations.

On this point, I re-echo the position I have previously taken in *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue,*[1] involving the same parties in this case albeit relating to a different taxable period:

> "It was the conclusion of the Court in Division that in order to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** SEC certificate of non-registration of corporation/partnership <u>and</u> certificate/articles of foreign incorporation/association/registration. The *ponencia* agrees with the Court in Division in holding that it cannot be determined if the alleged non-resident foreign clients are existing, operating and registered in a foreign country without proof of their incorporation, association or registration in a foreign country, **notwithstanding the presence of SEC Certifications of Non-Registration of Company, and Intra-Group Service Agreements which were presented by petitioner to prove that its clients are non-resident foreign corporation.**
>
> With due respect, while it is indispensable to present the SEC certificate of non-registration of corporation/partnership, the other evidence presented by petitioner, that is -- the Intra-Group Service Agreements, should appropriately be given probative value in lieu of the certificate/articles of foreign incorporation/association/registration required by the Court. **The Intra-Group Service Agreements do not only show the names of petitioner's customers to whom it rendered service. More importantly, these documents confirm that the entities mentioned therein are doing business outside the Philippines as they specify the nature of services that petitioner renders in support of its customers' business process."** (Boldfacing supplied)
>
> Thus, aside from those clients of petitioner already considered by the Court in Division in the assailed Decision as non-resident foreign corporations, certain clients of petitioner whose

[1] *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA EB No. 1290, August 16, 2016.

> identities are supported with the corresponding SEC Certificates of Non-Registration **and** Intra-Group Service Agreements may still be considered as non-resident foreign corporation for zero-rating purpose."

In fine, I vote to DENY the Petition for Review filed by the Commissioner of Internal Revenue; PARTIALLY GRANT the Petition for Review filed by Deutsche Knowledge; AFFIRM with modification the assailed decision to include the sales of services of Deutsche Knowledge to its clients whose identities are supported by their respective SEC Certifications of Non-Registration of Company **and** Intra-Group Service Agreements.

ROMAN G. DEL ROSARIO
Presiding Justice