REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

FMC SWITZERLAND II GMBH., doing business under the name FMC SWITZERLAND II GMBH, MANILA ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10931

Members:
MANAHAN, *Chairperson,*
REYES-FAJARDO, and
ANGELES, *JJ.*

Promulgated:
DEC 23 2025
1:00 pm

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DECISION

REYES-FAJARDO, *J.*:

This Petition for Review filed by FMC Switzerland II GMBH., doing business under the name FMC Switzerland II GMBH, Manila ROHQ, seeks the refund of alleged unutilized input value-added tax (VAT) attributable to its zero-rated sales in the amount of ₱12,345,720.97, covering the period from January 1, 2020 to December 31, 2020, or calendar year (CY) 2020.[1]

FACTS

Petitioner FMC Switzerland II GMBH doing business under the name FMC Switzerland II GMBH, Manila ROHQ, holds a License to Transact Business in the Philippines issued by the Securities and Exchange Commission (SEC) under Company Registration No.

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1 Prayer, *Petition for Review*, Docket - Vol. I, p. 43.

FS201735590. It operates as the regional operating headquarters in the Philippines of FMC Switzerland II GMBH, a foreign corporation duly registered and existing under the laws of Switzerland.[2] It is registered with the Bureau of Internal Revenue (BIR), as a VAT taxpayer under Taxpayer Identification Number (TIN) 009-862-335-000, with address at 10/F Six/Neo Building, 5th Avenue Cor. 26th Street, Bonifacio Global City, Taguig City 1634.[3]

Respondent Commissioner of Internal Revenue is empowered to perform the duties of his office, including the power to act on protest cases and to approve of claims for refund or tax credit, as provided by law and implementing regulations.[4]

On March 31, 2022, petitioner filed an administrative claim for refund with the BIR - VAT Credit Audit Division in the amount of ₱12,345,720.97, representing alleged unutilized input VAT allocable and directly attributable to its VAT zero-rated sales, as declared in its Quarterly VAT Returns for CY 2020.[5]

On the same date, respondent issued Tax Verification Notice No. TVN 201800190817, authorizing Revenue Officers Rochelle May P. Leonor and Marvin K. Villarama to verify petitioner's supporting documents and pertinent records in connection with its refund claim for CY 2020.[6]

Thereafter, petitioner received a VAT Refund Notice dated June 8, 2022, signed by Ms. Maria Luisa I. Belen, Assistant Commissioner – Assessment Service, denying its administrative claim in the amount of ₱12,345,720.97.[7]

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2 Exhibit "P-2," Docket - Vol. I, p. 450; and Exhibit "P-32," USB (Exhibit "P-30-2").
3 Exhibit "P-3," Docket - Vol. I, p. 451; and Exhibit "P-33," USB (Exhibit "P-30-2").
4 Par. 1, *Joint Stipulation of Facts and Issues* (JSFI), Docket - Vol. I, p. 309.
5 Refer to par. 2, JSFI, Docket - Vol. I, p. 309; Exhibits "P-24" and "P-25," Docket - Vol. I, pp. 509 to 517; and Exhibit "P-52," USB (Exhibit "P-30-2").
6 Par. 3, JSFI, Docket - Vol. I, p. 310; Exhibit "P-28," Docket - Vol. I, p. 521; and Exhibit "R-1," BIR Records (Exhibit "R-5"), p. 242.
7 Par. 4, JSFI, Docket - Vol. I, p. 310; Exhibit "P-4," Docket - Vol. I, pp. 452 to 465; Exhibit "R-4," BIR Records (Exhibit "R-5"), pp. 549 to 550; and Exhibit "P-70," USB (Exhibit "P-30-2").

On July 21, 2022, petitioner filed a Petition for Review, which was docketed as CTA Case No. 10931,[8] to which respondent filed his Answer posted on October 14, 2022.[9]

On January 26, 2023, the Pre-Trial Conference was held.[10]

On February 10, 2023, the parties filed their Joint Stipulation of Facts and Issues,[11] which was approved by the Court, through Resolution dated February 28, 2023.[12] On the basis thereof, a Pre-Trial Order[13] was issued.

Trial followed.

Petitioner presented: (1) Ms. Zhyra Mae I. Sabado,[14] its Finance & Accounting Lead; and (2) Ms. Elaine E. De Guzman,[15] the Court-commissioned Independent Certified Public Accountant (ICPA).[16]

On June 5, 2023, the ICPA Report was submitted.[17]

On November 13, 2023, petitioner filed its Formal Offer of Evidence,[18] to which respondent posted his Comment Re: Petitioner's Formal Offer of Evidence on December 24, 2023.[19]

By Resolution dated March 13, 2024,[20] the Court admitted petitioner's offered exhibits, except Exhibit "P-65.3" and sub-markings, for failure to submit said exhibits.

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8 Docket – Vol. I, pp. 6 to 45.
9 Docket – Vol. I, pp. 226 to 242.
10 Notice of Pre-Trial Conference dated October 21, 2022, Docket – Vol. I, pp. 253 to 255; and Minutes of the hearing held on, and Order dated, January 26, 2023, Docket – Vol. I, pp. 291 to 296.
11 Docket – Vol. I, pp. 309 to 322.
12 Docket – Vol. I, p. 336.
13 Docket – Vol. I, pp. 342 to 353.
14 Exhibit "P-29," Docket – Vol. I, pp. 66 to 87; and Minutes of the hearing held on, and Order dated, April 20, 2023, Docket – Vol. I, pp. 366 to 368, and 370 to 370-A, respectively.
15 Exhibit "P-75," Docket – Vol. I, pp. 394 to 408; Minutes of the hearing held on, and Order dated, October 24, 2023, Docket – Vol. I, pp. 412 to 414.
16 *Oath of Commission* dated April 20, 2023, Docket – Vol. I, p. 369; and Minutes of the hearing held on, and Order dated, April 20, 2023, Docket – Vol. I, pp. 366 to 368, and 370 to 370-A, respectively.
17 Docket – Vol. I, pp. 371-A to 389.
18 Docket – Vol. I, pp. 417 to 430.
19 Docket – Vol. I, pp. 522 to 524.
20 Docket – Vol. II, pp. 532 to 533.

On April 26, 2024, petitioner filed its Motion for Partial Reconsideration to the Resolution dated March 13, 2024,[21] to which respondent posted his Comment Re: Petitioner's Motion for Partial Reconsideration on April 29, 2024.[22]

For his part, respondent presented Revenue Officer Rochelle May P. Leonor.[23]

On March 25, 2024, the Respondent's Formal Offer of Evidence was filed via accredited courier,[24] to which petitioner filed its Comment/Opposition (To the Respondent's Formal Offer of Evidence) on April 5, 2024.[25]

In the Resolution dated September 17, 2024,[26] the Court granted petitioner's Motion for Partial Reconsideration to the Resolution dated March 13, 2024, and admitted petitioner's Exhibit P-65.3, inclusive of sub-markings, together with all of respondent's offered exhibits.

In the Resolution dated December 23, 2024, this case was submitted for decision, considering petitioner's *Memorandum*,[27] and respondent's *Memorandum*,[28] filed on November 6, 2024 and November 12, 2024, respectively.

ISSUE

Is petitioner is entitled to a tax refund on the unutilized input VAT attributable and allocable to its zero-rated sales for the period from January 1, 2020 to December 31, 2020 (1st to 4th quarters of CY 2020) amounting to ₱12,345,720.97?[29]

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21 Docket – Vol. II, pp. 544 to 546.
22 Docket – Vol. II, pp. 552 to 554.
23 Exhibit "R-6," Docket - Vol. I, pp. 247 to 252; and Minutes of the hearing held on, and Order dated, March 13, 2024, Docket – Vol. II, pp. 528 to 530.
24 Docket – Vol. II, pp. 536 to 539.
25 Docket – Vol. II, pp. 548 to 549.
26 Docket – Vol. II, pp. 558 to 559.
27 Docket – Vol. II, pp. 561 to 601.
28 Docket – Vol. II, pp. 605 to 625.
29 Par. B, JSFI, Docket – Vol. I, p. 310.

ARGUMENTS

Petitioner argues that all the requisites for the grant of its input VAT refund were satisfied. Specifically: *first,* it is a VAT-registered entity; *second,* it timely filed both its administrative and judicial claims for input VAT refund; *third,* its sale of services to FMC Corporation and its foreign affiliates not engaged in business in the Philippines is subject to 0% VAT pursuant to Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended; *fourth,* it duly substantiated its claimed input taxes in accordance with Sections 110 and 113 of the same Code; *fifth,* the input taxes were directly attributable to its zero-rated sales; and *sixth,* the input taxes remained unutilized for the succeeding taxable quarters. Therefore, it is entitled to the amount of ₱12,345,720.97, representing unutilized input VAT attributable to its zero-rated sales for the period from January 1, 2020 to December 31, 2020.

On the other hand, respondent maintains that the *Petition for Review* should be dismissed on the ground that petitioner failed to substantiate its administrative claim for refund. Respondent likewise contends that petitioner is not entitled to the relief sought, stressing that claims for tax refunds are strictly construed against the taxpayer and in favor of the government.

RULING

The Petition for Review is partially granted.

Requisites for the grant of a refund or issuance of a tax credit certificate under the law.

Section 112 (A) and (C) of the NIRC, as amended by Republic Act (RA) No. 10963[30] [otherwise known as the Tax Reform for Acceleration and Inclusion Act (TRAIN law)], states in part:

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30 AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT 8424,

> 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: *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.
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> ...
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> (C) *Period within which Refund of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Jurisprudence has established the requisites that must be complied by a taxpayer-applicant to qualify for a credit or refund of input VAT. These requisites are grouped into categories, as follows:

OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

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

1. the refund claim is filed with the BIR within two (2) years after the close of the taxable quarter when the sales were made;[31]

2. 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 ninety (90) 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 ninety (90)-day period;[32]

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

3. the taxpayer is a VAT-registered person;[33]

In relation to the taxpayer's output VAT:

4. the taxpayer is engaged in zero-rated or effectively zero-rated sales;[34]

5. for zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2),[35] the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the *Bangko Sentral ng Pilipinas* (BSP) rules and

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

32 Refer to *Energy Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021; *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.*, G.R. No. 212727, February 1, 2023; and *Commissioner of Internal Revenue vs. Vestas Services Philippines, Inc.*, G.R. No. 255085, March 29, 2023.

33 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

34 *Ibid.*

35 Under RA No. 10963, Section 106(A)(2)(a)**(2)** was renumbered to Section 106(A)(2)(a)**(3)** while Section 106(A)(2)**(b)** was deleted. However, there was no corresponding amendment to the subsections cited in Section 112(A) of the NIRC of 1997, as amended.

regulations;[36]

As regards the taxpayer's input VAT being refunded:

6. the input taxes are not transitional input taxes;[37]

7. the input taxes are due or paid;[38]

8. 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 attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume;[39] and

9. the input taxes have not been applied against output taxes during and in the succeeding quarters.[40]

In addition, in claims for VAT refund/credit, applicants must satisfy the substantiation and invoicing requirements under the NIRC, as amended and its implementing rules and regulations.[41] The invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims.[42]

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36 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc., vs. Commissioner of Internal Revenue*, supra.

37 *Id.*

38 *Id.*

39 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; and *San Roque Power Corporation vs. Commissioner of Internal Revenue, supra.*

40 *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, supra; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, supra; and *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

41 *Team Energy Corporation vs. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 197663 and 197770, March 14, 2018.

42 *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue*, G.R. No. 191495, July 23, 2018.

First and Second Requisites: Petitioner timely filed both its administrative and judicial claims for the refund of input VAT refund.

Section 112(A) of the NIRC, as amended by RA No. 10963, requires the taxpayer to file an administrative claim for input VAT refund, within two (2) years from the close of the taxable quarter when the sales were made.

Section 112(C) of the same Code grants the BIR a period of ninety (90) days from the submission of the official receipts or invoices and other supporting documents, to act on the taxpayer's administrative claim for input VAT refund. At present, these invoices, official receipts, and other supporting documents are submitted simultaneously with the filing the taxpayer's administrative claim for input VAT refund.[43] In turn, the taxpayer, may appeal to the Court, within thirty (30) days either: a) from receipt of adverse decision within said 90-day period; or b) after the lapse of said 90-day period, whichever is earlier. The Supreme Court's pronouncement in *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[44] finds direct application here:

> **The judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day [now 90-day] period, whichever is sooner.**
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> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 [now 90+30] days provided by the NIRC is outside the jurisdiction of the CTA.[45]

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43 See *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue,* G.R. No. 244154, July 15, 2020. Beginning June 11, 2014, or upon effectivity of Revenue Memorandum Circular (RMC) No. 54-2014, the documents are deemed complete upon filing of the taxpayer's administrative claim for input VAT refund.

44 G.R. No. 182737, March 2, 2016. This case involved a taxpayer's claim for input VAT refund under the *then* Section 112 of the NIRC. The jurisdiction of the CTA in Section 7 of RA No. 1125, as amended by RA No. 9282 *stands untouched* notwithstanding the amendments introduced by RA No. 10963 in Section 112(C) of the NIRC. Thus, this case may find application in input VAT refund claims covered by RA No. 10963.

45 Boldfacing supplied.

Following Section 112(A) of the NIRC, as amended, petitioner timely filed its administrative claim for input VAT refund covering the four (4) quarters of CY 2020. Consider the ensuing table:

Close of the Taxable Quarter	End of the Two (2) Year Period	Date of Filing of Administrative Claim
March 31, 2020	March 31, 2022	March 31, 2022[46]
June 30, 2020	June 30, 2022	
September 30, 2020	September 30, 2022	
December 31, 2020	December 31, 2022	

The BIR had ninety (90) days from March 31, 2022, or until June 29, 2022 to act on the administrative claim. Respondent resolved petitioner's claim within the prescribed period, through Assistant Commissioner Belen's VAT Refund Notice dated June 8, 2022, which petitioner received on June 23, 2022.[47]

Counting another thirty (30) days from June 23, 2022, petitioner had until July 25, 2022[48] to seek judicial recourse. Therefore, the timely filing of petitioner's Petition for Review on July 21, 2022 vested the Court with jurisdiction over the case.[49]

Third Requisite: petitioner is a VAT-registered entity.

Petitioner is registered with the BIR as a VAT taxpayer under Tax Identification Number (TIN) 009-862-335-000, persuant Certificate of Registration No. OCN 9R0000557653.[50]

Fourth and Fifth Requisites: Petitioner had zero-rated sales or effectively zero-rated sales.

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46 Exhibits "P-24" and "P-25," Docket – Vol. I, pp. 509 to 517; Exhibit "P-52," USB (Exhibit "P-30-2").

47 Exhibit "R-4," BIR Records (Exhibit "R-5"), pp. 549 to 550; Exhibit "P-70," USB (Exhibit "P-30-2").

48 July 23, 2022 fell on Saturday.

49 Docket – Vol. I, pp. 6 to 45.

50 Exhibit "P-3," Docket – Vol. I, p. 451; Exhibit "P-33," USB (Exhibit "P-30-2").

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 of 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 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)**;

For sales of services to qualify for zero percent (0%) VAT rate under Section 108(B)(2) of the NIRC, as amended, the following conditions must concur:

1) The services must be performed in the Philippines by a VAT-registered person; and

2) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a nonresident person not engaged in business who is *outside* the Philippines when the services were performed;[51]

3) The services fall under any of the categories under Section 108(B)(2),[52] or simply, the services rendered should be other than "*processing, manufacturing or repacking goods*";[53]

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[54]

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

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

53 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

In addition, said zero-rated sales must be duly substantiated pursuant to Sections 110 and 113 of the NIRC, as amended, as implemented by RR No. 16-2005, in relation to Sections 237 and 238 of the same Code.

The corresponding discussion on each requisite follow.

First. Petitioner's status as a VAT-registered taxpayer is undisputed.[55] Further, its Finance and Accounting Lead, Ms. Sabado, testified that "for the period January 1, 2020 to December 31, 2020, the Petitioner rendered services in the Philippines to the following non-resident foreign corporations (NRFCs) that are engaged in business outside the Philippines." Her unrebutted testimony establishes that the services were performed in the Philippines.

Second. In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd. (Deutsche),*[56] the Supreme Court discussed the proof required to establish that an entity is a NRFC:

> **For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC[57] 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.**
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> ...
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> In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo*'s findings. **To the Court's mind, the SEC Certifications of Non-Registration show that these 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**

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54 *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* supra.

55 *Supra* note 53.

56 G.R. No. 234445, July 15, 2020.

57 That is, "Nonresident foreign corporation".

prima facie **evidence that their clients are not engaged in trade or business in the Philippines.**[58]

Petitioner's witness testified that petitioner rendered services to NRFCs.[59] To bolster said testimony, petitioner presented the following documentary evidence:

Company Name (as identified by Ms. Sabado)[60]	**Proof of incorporation/ registration in a foreign country** (ICPA Exhibit No.)	**Certification of Non-Registration of Company issued by the SEC** (ICPA Exhibit No.)
CHEMINOVA A/S	"P-54.8"	"P-55.1"
CHEMINOVA AGRO FRANCE S.A.S		"P-55.2"
CHEMINOVA AGRO ITALIA S.R.L		"P-55.3"
CHEMINOVA DEUTSCHLAND GMBH & CO. KG		"P-55.4"
CHEMINOVA (MFG) PTY LTD		
FMC AG (THAILAND) LIMITED		
FMC AGRICULTURAL CARIBE INDUSTRIES, LTD. (PUERTO RICO)		"P-55.7"
FMC AGRICULTURAL PRODUCTS INTERNATIONAL AG	"P-54.4"	"P-55.8"
FMC AGRICULTURAL SOLUTION S.A.U		"P-55.9"
FMC AGRO CESKA REPUBLIKA SPOL. S.R.O		"P-55.10"
FMC AGRO IRELAND LIMITED	"P-54.14"	"P-55.12"
FMC AGRO LTD (UK)		"P-55.13"
FMC AGRO POLSKA SP. Z O.O.	"P-54.11"	"P-55.14"
FMC AGRO SINGAPORE PTE LTD.		"P-55.15"
FMC AGROQUIMICA DE MEXICO S. DE R.L. DE C.V.		
FMC AUSTRALASIA PTY LTD		"P-55.16"
FMC CHEMICAL SRL/BV		"P-55.19"
FMC CHEMICALS (MALAYSIA) SDN BHD		
FMC CHEMICALS HELLAS MEPE		"P-55.20"
FMC CHEMICALS KK		"P-55.17"
FMC CORPORATION AADC		"P-55.22"
FMC FORET, S.A.		"P-55.23"
FMC FRANCE		"P-55.24"
FMC INTERNATIONAL SWITZERLAND SARL		"P-55.25"
FMC MANUFACTURING PTY LTD		
FMC NEW ZEALAND LTD		"P-55.26"
FMC SWITZERLAND II GMBH, HONG KONG BRANCH	"P-54.10"	"P-55.27"
FMC - AGRO HUNGARY KFT.		"P-55.11"
PT BINA GUNA KIMIA		

58 Boldfacing supplied.
59 Q&A 31, Exhibit "P-29," Docket – Vol. I, pp. 79 to 80.
60 *Ibid.*

FMC (SUZHOU) CROP CARE CO. LTD.	"P-54.3"	"P-55.6"
FMC (CHINA) INVESTMENT CO., LTD	"P-54.12"	"P-55.5"
FMC CHEMICALS S.P.R.L		"P-55.18"
FMC FINANCE BV		
FMC AGRO LIMITED		
FMC SWITZERLAND FISSA		

Of the foregoing clients of petitioner, the following[61] clients possess both the Certification of Non-Registration of Corporation/Partnership issued by the Philippine Securities and Exchange Commission and the proof of incorporation or registration in a foreign country enjoined in *Deutsche*; hence, they are considered NRFCs doing business outside the Philippines, *viz.*:

1. Cheminova A/S;
2. FMC Agricultural Products International AG;
3. FMC Agro Ireland Limited;
4. FMC Agro Polska SP. Z O.O.;
5. FMC Switzerland II GmbH, Hong Kong Branch;
6. FMC (Suzhou) Crop Care Co. Ltd.; and
7. FMC (China) Investments, Co. Ltd.

Third. Under the *Intercompany Service Agreement* entered into by petitioner with the aforementioned seven (7) NRFCs for a term of one (1) year from January 1, 2020[62] petitioner rendered the following intercompany services:[63]

1. Payable, T&E and Masterdata Processing;
2. Procurement Services for legal entities transacting using Purchase Order ("PO")-based process;
3. Human Resource Services;
4. Plant Cost Accounting Analytics; and
5. Information Technology ("IT") and IT Infrastructure Services.

Simply put, the services rendered by petitioner to its seven (7) clients are other than "processing, manufacturing or repacking goods,"

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61 Highlighted in grey in the immediately preceding table.
62 Section 4 (D) of Exhibit "P-56," USB (Exhibit "P-30-2").
63 Annex C of Exhibit "P-56," USB (Exhibit "P-30-2").

Fourth and *Fifth Requisites.* Since petitioner performed sales of services to its clients, these sales must be supported by ORs compliant with the invoicing requirements under Section 113(A) and (B) of the NIRC, as amended, and as implemented by Section 4.113-1 (A) and (B) of RR No. 16-2005, as amended. In addition, the ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC, as amended, which respectively state:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (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;
>
> (b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **"zero-rated sale"** shall be written or printed prominently on the invoice or receipt;
>
> (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt:

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Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.

...

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, **issue duly registered receipts or sales or commercial invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: ....

...

SEC. 4.113-1. ***Invoicing Requirements.*** —

(A) **A VAT-registered person shall issue: —**

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoice or official receipts. Said documents shall be considered as a "VAT Invoice" or "VAT official receipt". All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records.

(B) *Information contained in VAT invoice or VAT official receipt.* — The following information shall be indicated in VAT invoice or VAT official receipt:

(1) A statement that the seller is a VAT-registered person, followed by his TIN;

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(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided,* That:

(a) The amount of tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) In the case of sales in the amount of one thousand peso (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

In its Quarterly VAT Returns for the four (4) quarters of CY 2020, petitioner broken down its sales for said periods as follows:

Exhibit No.	CY 2020	Zero-Rated Sales	Vatable Sales	Output VAT
"P-38"	1st Quarter	₱101,007,383.42	-	-
"P-42"	2nd Quarter	80,938,344.03	₱ 792,397.39	₱ 95,087.20
"P-46"	3rd Quarter	97,996,172.79	701,580.08	84,189.61
"P-50"	4th Quarter	43,988,555.80	955,938.31	114,712.60
	<u>Total</u>	<u>**₱323,930,456.04**</u>	<u>**₱ 2,449,915.78**</u>	<u>**₱ 293,989.41**</u>

Out of the ₱323,930,456.04 reported as petitioner's zero-rated sales for CY 2020, only the amount of ₱27,477,659.70 is duly substantiated with supporting documents, as detailed below:

Name of Customer	Accredited Bank	Amount[64]	Exhibit No.
FMC Agro Ireland Limited	In-House Cash Account - Finance BV	₱ 64,001.37	"P-65.1.5"
FMC Agro Polska Sp. z.o.o.	In-House Cash Account - Finance BV	58,451.39	"P-65.1.7"
FMC Switzerland II GMBH HK Branch	In-House Cash Account - Finance BV	25,441.92	"P-65.1.9"
FMC Agricultural Products International	In-House Cash Account - Finance BV	158,880.32	"P-65.1.21"
Cheminova A/S	In-House Cash Account - Finance BV	1,319,509.74	"P-65.1.35"
Cheminova A/S	In-House Cash Account - Finance BV	1,252,555.84	"P-65.1.44"
FMC Agricultural Products International	In-House Cash Account - Finance BV	235,201.46	"P-65.1.70"
FMC Switzerland II GMBH HK Branch	In-House Cash Account - Finance BV	58,365.65	"P-65.1.72"
FMC Agro Polska Sp. z.o.o.	In-House Cash Account - Finance BV	69,480.72	"P-65.1.74"
FMC Agro Ireland Limited	In-House Cash Account - Finance BV	87,798.80	"P-65.1.76"
FMC Agro Ireland Limited	In-House Cash Account - Finance BV	43,245.19	"P-65.1.89"
FMC Agro Polska Sp. z.o.o.	In-House Cash Account - Finance BV	62,482.56	"P-65.1.91"
Cheminova A/S	In-House Cash Account - Finance BV	922,692.18	"P-65.1.111"
FMC Switzerland II GMBH HK Branch	In-House Cash Account - Finance BV	15,296.35	"P-65.1.116"
FMC Agricultural Products International AG	In-House Cash Account - Finance BV	80,615.72	"P-65.1.118"
FMC (Suzhou) Crop Care Co LTD	Bank of the Philippine Islands	433,842.61	"P-65.1.124"
	Sub-total (1st Quarter)	**₱4,887,861.82**	
FMC Switzerland II GMBH HK Branch	In House Cash Center - Finance BV	₱ 11,104.78	"P-65.2.11"
FMC Agricultural Products Intl. AG	In House Cash Center - Finance BV	229,841.25	"P-65.2.14"
Cheminova A/S	In House Cash Center - Finance BV	800,890.06	"P-65.2.22"
FMC Agro Polska Sp. z.o.o.	In House Cash Center - Finance BV	105,186.98	"P-65.2.35"
FMC Agro Ireland Limited	In House Cash Center - Finance BV	49,578.52	"P-65.2.38"
FMC Switzerland II GMBH HK Branch	In House Cash Center - Finance BV	11,028.03	"P-65.2.40"
FMC Agricultural Products Intl. AG	In House Cash Center - Finance BV	222,322.98	"P-65.2.43"
Cheminova A/S	In House Cash Center - Finance BV	763,948.73	"P-65.2.69"
FMC Agro Ireland Limited	In House Cash Center - Finance BV	46,625.79	"P-65.2.79"
FMC Agro Polska Sp. z.o.o.	In House Cash Center - Finance BV	97,209.40	"P-65.2.81"
FMC Agro Ireland Limited	In House Cash Center - Finance BV	40,268.50	"P-65.2.102"
FMC Agro Polska Sp. z.o.o.	In House Cash Center - Finance BV	18,218.13	"P-65.2.104"
FMC Switzerland II GMBH HK Branch	In House Cash Center - Finance BV	22,789.64	"P-65.2.111"
FMC Agricultural Products Intl. AG	In House Cash Center - Finance BV	153,330.59	"P-65.2.113"
Cheminova A/S	In House Cash Center - Finance BV	791,684.89	"P-65.2.131"
	Sub-total (2nd Quarter)	**₱3,364,028.27**	
Cheminova A/S	In House Cash Account	₱ 788,545.77	"P-65.3.41"
Cheminova A/S	Bank of America	2,396,990.06	"P-65.3.62"
FMC AGRO IRELAND LIMITED	In House Cash Account	176,519.71	"P-65.3.86"
FMC SWITZERLAND II GMBH HK BRANCH	In House Cash Account	14,759.07	"P-65.3.88"
FMC Agricultural Products International AG	In House Cash Account	209,804.13	"P-65.3.90"
Cheminova A/S	In House Cash Account	2,567,845.28	"P-65.3.111"
FMC (SUZHOU) CROP CARE CO. LTD	Bank of the Philippines	2,032,668.67	"P-65.3.153"
FMC AGRO IRELAND LIMITED	In House Cash Account	16,266.37	"P-65.3.160"
FMC Agro Polska Sp. z.o.o.	In House Cash Account	44,654.72	"P-65.3.162"
FMC SWITZERLAND II GMBH HK	In House Cash Account	22,598.45	"P-65.3.164"

64 The amounts are originally in foreign currency, and was converted into Philippines peso using the conversion rates provided in Exhibits "P-65.1" to "P-65-4".

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FMC Agricultural Products International AG	In House Cash Account	258,622.24	"P-65.3.166"
Cheminova A/S	In House Cash Account	958,964.53	"P-65.3.191"
	Sub-total (3rd Quarter)	**₱9,488,239.00**	
FMC SWITZERLAND II GMBH HK BRANCH	In House Cash Center - Finance BV	₱ 17,109.10	"P-65.4.2"
FMC AGRO IRELAND LIMITED	In House Cash Center - Finance BV	21,651.61	"P-65.4.4"
FMC AGRO POLSKA SP Z O O	In House Cash Center - Finance BV	59,749.61	"P-65.4.6"
FMC Agricultural Products Intl. AG	In House Cash Center - Finance BV	178,279.18	"P-65.4.8"
Cheminova A/S	In House Cash Center - Finance BV	1,845,523.73	"P-65.4.35"
Cheminova A/S	Bank of America	1,003,869.40	"P-65.4.48"
FMC AGRO IRELAND LIMITED	In House Cash Center - Finance BV	48,646.66	"P-65.4.56"
FMC AGRO POLSKA SP Z O O	In House Cash Center - Finance BV	61,152.88	"P-65.4.69"
Cheminova A/S	In House Cash Center - Finance BV	4,329,329.19	"P-65.4.95"
FMC Agricultural Products Intl. AG	In House Cash Center - Finance BV	199,904.15	"P-65.4.110"
FMC (SUZHOU) CROP CARE CO. LTD	CitiBank N.A.	1,431,934.68	"P-65.4.129"
Cheminova A/S	In House Cash Center - Finance BV	22,378.55	"P-65.4.142"
FMC (China) Investment Co Ltd	CitiBank N.A.	518,001.87	"P-65.4.124"
	Sub-total (4th Quarter)	**₱9,737,530.61**	
	GRAND TOTAL	**₱27,477,659.70**	

Of the ₱27,477,659.70 corresponding to the *substantiated* zero-rated sales for the four (4) quarters of CY 2020, petitioner *partially* established that only the amount of ₱4,416,447.83 has sufficient proof that the services pertaining thereto, were paid for in foreign currency and duly accounted for under BSP rules and regulations.

To recall, petitioner claims that it generated VAT zero-rated sales from January 1, 2020 to December 31, 2020 (1st to 4th Quarters of CY 2020) through the sales of services to NRFCs. These transactions were invoiced in foreign currency, with payments primarily settled through intercompany offsets and bank remittances.[65] However, in proving that the payments were inwardly remitted and accounted for in accordance with BSP rules, petitioner only presented Certificate of Inward Remittances issued by BPI and Citibank N.A. No such evidence was presented with respect to transactions coursed through the Bank of America.

Nonetheless, under Revenue Memorandum Circular (RMC) No. 42-2003,[66] the BIR requirement for full documentation of proofs

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[65] Par. 3.14, Petitioner's *Memorandum*, Docket – Vol. II, at p. 569.

[66] SUBJECT: Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue

of inward remittances of export proceeds was no longer enforced, in view of the full liberalization of BSP rules. The documents enumerated therein may be considered acceptable documentary proof in the processing of claims for the issuance of tax credit certificate and refund in an offsetting arrangement, thus:

> Q-8 With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
>
> A-8 In the case of offsetting arrangements, the following documents should be required:
>
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
>
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
>
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
>
> d. Documents or correspondence regarding offsetting arrangements;
>
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
>
> f. Documents to prove actual export of goods;
>
> g. Documents to prove that the sales are zero-rated sales.

In the present case, Ms. Sabado explained the process by which said off-setting arrangement was implemented, as follows:[67]

> 36. Q: You earlier mentioned that the payments for the services rendered by the Petitioner are primarily through off-setting arrangement between the group companies. Can you clarify this?

Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

67 Exhibit "P-29," Docket – Vol. I, p. 81.

> A: Yes. The Petitioner, being a multinational company with various internal clients abroad, utilizes intercompany netting arrangement where each subsidiary makes payments to, or receives payment from, a clearing house (FMC Finance BV) for obligations due from other subsidiaries in the group. FMC Finance BV is an entity incorporated to act as a financing/clearing house for the Petitioner and group companies. This procedure is done to reduce credit/settlement risk and to simplify payment procedures across FMC group. Each entity can transact with FMC Finance BV (as a clearing house) through an account opened in its own name at Bank of America (BOA).
>
> As participant to the netting arrangement, Petitioner receives collections from FMC affiliates from sale of services it rendered to its foreign customers. These collections are reflected in the clearing account as a credit transaction (deposit).
>
> In the succeeding month, the Petitioner remits funds from clearing house (BOA account) to its local bank (BPI-PH) to regularly finance its operation. This is normally done every first week of each month. The remittance is reflected on the clearing account as debit transaction (withdrawal) against any balance amount.
>
> As in a normal bank transaction, any withdrawals (debit) by Petitioner will be offset against collections (credit) it received via intercompany netting in the account statement of the Petitioner. The net balance is reflected at month-end then reflected as opening balance in subsequent month. Thereafter, all collections will be debited in the clearing account and eventually be withdrawn/credited and remitted to Petitioner's local bank account (BPI-PH) and so on.
>
> Clearly, the credit amounts are payments/consideration for services rendered by Petitioner to FMC foreign affiliates paid for in acceptable foreign currency (US Dollars and EURO) duly accounted for in accordance with the BSP rules.

Indeed, petitioner receives collections from FMC affiliates through FMC Finance BV (clearing house). Each affiliate can transact with FMC Finance BV through an account maintained in its own name with the Bank of America. Petitioner then remits funds from FMC Finance BV to BPI to finance its operation and such remittance are reflected in the clearing account as debit transaction (withdrawal) against any outstanding balance. Withdrawals (debit) made by petitioner are offset against the collections (credit) it received *via* intercompany netting as shown in petitioner's account statement.

To support the foregoing explanation, petitioner presented additional documentary evidence, *i.e.,* Summary of Zero-Rated Sales[68] and In House Cash Account Statement.[69] True, these documents confirm the existence of petitioner's intercompany netting arrangement between petitioner and FMC Finance BV. However, petitioner failed to exhibit that said netting or set-off arrangement exists between petitioner and its other affiliates as an alternative mode of payment in consideration of petitioner's services to them. Specifically, petitioner failed to submit source documents and its separate agreements with said affiliates to substantiate the claimed offsetting arrangement. This is particularly significant given that FMC Finance BV is a distinct legal entity separate from FMC group of companies.

In the absence of such proof, petitioner failed to show that a valid offsetting arrangement exists which may serve as an alternative to actual inward remittance of foreign currency in consideration for the services it rendered its affiliates.

All said, only the zero-rated sales of services supported by certificates of inward remittances from BPI and Citibank N.A., in the amount of ₱4,416,447.83, qualify as zero-rated sales pursuant to Section 108(B)(2) of the NIRC, as amended. Consider the following table:

Name of Customer	Accredited Bank	Amount[70]	Exhibit No.
FMC (Suzhou) Crop Care Co LTD	Bank of the Philippine Islands	₱ 433,842.61	"P-65.1.124"
FMC (SUZHOU) CROP CARE CO. LTD	Bank of the Philippine Islands	2,032,668.67	"P-65.3.153"
FMC (SUZHOU) CROP CARE CO. LTD	CitiBank N.A.	1,431,934.68	"P-65.4.129
FMC (China) Investment Co Ltd	CitiBank N.A.	518,001.87	"P-65.4.124
	TOTAL	**₱4,416,447.83**	

68 Exhibits "P-65.1" to "P-65.4," USB (Exhibit "P-30-2").

69 Exhibits "P-73.1" to "P-73.12," USB (Exhibit "P-30-2").

70 The amounts are originally in foreign currency, and was converted into Philippines peso using the conversion rates provided in Exhibits "P-65.1," and "P-65.3" to "P-65-4".

Sixth Requisite: The input VAT being claimed are not transitional input taxes.

For the four (4) quarters CY 2020, petitioner reported a total input VAT of ₱13,026,009.82, arising from its current purchases of goods and services. Of this amount, ₱12,345,720.97 is the subject of the present claim for refund,[71] broken down as follows:

Period (CY 2020)	(Exhibit "P-38") **1st Quarter**	(Exhibit "P-42") **2nd Quarter**	(Exhibit "P-46") **3rd Quarter**	(Exhibit "P-50") **4th Quarter**	**TOTAL**
Cap. Goods Not Exceeding 1Million	₱ 64,167.85				₱ 64,167
Cap. Goods Exceeding 1Million (Current)		₱ 204,464.72	₱ 248,785.68		453,250
Goods Other than Cap. Goods	247,959.99	46,876.72	23,342.35	₱ 108,854.52	427,033
Services	3,240,958.45	2,072,655.93	4,221,528.74	2,546,414.87	12,081,557
Total Input Tax from current purchases	3,553,086.29	2,323,997.37	4,493,656.77	2,655,269.39	13,026,009
Add: Input Tax Deferred on Cap. Goods from Prev. Qtr.			194,241.48	417,254.82	611,496
Less: Input Tax on Capital Goods deferred for the succeeding period		194,241.48	417,254.80	386,299.44	997,795
Total Available Input Tax	3,553,086.29	2,129,755.89	4,270,643.45	2,686,224.77	12,639,710
Less: Output VAT		95,087.20	84,189.61	114,712.60	293,989
Claimed Input Tax	**₱3,553,086.29**	**₱2,034,668.69**	**₱4,186,453.84**	**₱2,571,512.17**	**₱12,345,720**

The input taxes in question are not transitional input taxes. Section 111(A)[72] of the NIRC, as amended, states that transitional input taxes are realized when: *one,* a person not previously liable for VAT, becomes liable for said tax; and *two,* on newly VAT-Registered persons. Transitional input tax credit operates to benefit newly VAT-

[71] Exhibits "P-38," "P-42," "P-46," "P-50," USB (Exhibit "P-30-2").

[72] SEC. 111. *Transitional/Presumptive Input Tax Credits.* –

(A) *Transitional Input Tax Credits.* – A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to the rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials and supplies, whichever is higher, which shall be creditable against the output tax.

registered persons, whether they previously paid taxes in the acquisition of their beginning inventory of goods, materials and supplies. During that period of transition from non-VAT to VAT status, the transitional input tax credit serves to alleviate the impact of the VAT on the taxpayer.[73] None of these circumstances apply to petitioner.

Seventh Requisites: Not all of petitioner's input VAT being claimed for refund were duly substantiated.

It is incumbent upon petitioner to provide supporting documents to prove that the input taxes claimed were actually due or paid, in accordance with Section 110(A) of the NIRC, as amended, as implemented by Sections 4.110-1 to 4.110-3 and 4.110-8 of RR No. 16-2005, as amended, as well as Sections 113(A) and (B), 237 and 238 of the NIRC, as amended, as implemented by Section 4.113-1(A) and (B) of RR No. 16-2005, as amended.

In support of its total available input VAT of ₱12,639,710.40 from its domestic purchases of goods and services, petitioner submitted various suppliers' SIs and ORs which were examined and verified by the ICPA.[74]

Based on the ICPA's findings, out the total input VAT on current purchases of ₱13,026,009.82, only ₱12,079,819.06 are valid. Conversely, ₱946,632.09 must be disallowed for petitioner's failure to meet the substantiation and invoicing requirements, and ₱441.33 represents adjustments to the claim, broken down as follows:

Particulars	VAT Amount	Exhibit No.
Valid Input Vat on Purchases of Capital Goods Not Exceeding One Million	₱ 64,167.85	"P-58"
Valid Input Vat on Purchases of Capital Goods Exceeding One Million	453,250.40	"P-59"
Valid Input Vat on Purchases of Goods Other Than Capital Goods	189,416.51	"P-60"
Valid Input Vat on Purchases of Services	11,372,984.30	"P-61"
Total Valid Input VAT per ICPA	₱ 12,079,819.06	
Input Vat on Purchases of Goods Other Than Capital Goods with Exceptions	233,857.63	"P-62"
Input Vat on Purchases of Services with Exceptions	712,774.46	"P-63"

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73 See *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 173425, September 4, 2012.

74 Exhibits "P-58.1," "P-59.1" to "P-59.2," "P-60.1" to "P-60.5.3," "P-61.1" to "P-61.5.9," "P-62.1" to "P-62.2.8" and "P-63.1" to "P-63.8.18".

Total Input VAT with Exceptions per ICPA	946,632.09	
Adjustments to Input VAT Claimed	- 441.33	
Total Input VAT	₱13,026,009.82	

Moreover, a part of petitioner's valid input VAT amounting to ₱453,250.40, represents input VAT on purchases of capital goods exceeding ₱1 Million.

Under Section 110 (A) of the NIRC, as amended, and as implemented by Section 4.110-3 of RR No. 16-2005, any input VAT claim on capital goods purchases attributable to zero-rated sales may be claimed either in full during the month of acquisition, or spread over a period of time, depending on the aggregate acquisition cost of the capital goods in the calendar month. If the aggregate acquisition cost exceeds ₱1 Million, the claim for input tax must be spread over sixty (60) months or the estimated useful life of the capital goods, whichever is shorter. Conversely, if the aggregate acquisition cost does not exceed ₱1 Million, the total input taxes shall be allowed as credit or refund in the month of acquisition.

Thus, while petitioner was able to substantiate the total input VAT on purchases of capital goods exceeding ₱1 Million amounting to ₱453,250.40, only the amortization accruing from the month of acquisition until December 31, 2020, in the amount of ₱66,950.95, may be claimed as valid input tax credits. Accordingly, the unamortized input VAT of ₱386,299.45 (₱453,250.40 less ₱66,950.95) shall be deducted from the total input VAT on current purchases, as computed below:

Exhibit No.	Supplier	Date	Input	Life	No. of Months Amortized	Amortization
"P-59.1.1"	Accent Micro Technologies, Inc.	Apr. 22, 2020	₱ 204,464.72	60	9	₱ 30,669.7
"P-59.2.1"	Accent Micro Technologies, Inc.	Apr. 8, 2020	186,589.26	36	5	25,915.1
"P-59.2.2"	Accent Micro Technologies, Inc.	July 27, 2020	62,196.42	36	6	10,366.0
		TOTAL	₱453,250.40		TOTAL	₱ 66,950.9

In addition, the Court finds that an additional input VAT in the total amount of ₱6,996,951.31 shall likewise be disallowed, for reasons stated in the following table:

1. **Nature of Payment indicated were invoice, BS, SOA numbers but said invoices /billing statements/statement of accounts were NOT attached**		
Exhibit No.	**Supplier's Name**	**VAT Amount**
"P-61.1.1"	BEN EDICTIO CORPORATION	₱ 287,889.71
"P-61.1.2"	BEN EDICTIO CORPORATION	2,389.21
"P-61.1.12"	VERTERE GLOBAL SOLUTIONS INC	14,062.50
"P-61.1.13"	VERTERE GLOBAL SOLUTIONS INC	29,211.84
"P-61.1.14"	VERTERE GLOBAL SOLUTIONS INC	14,386.50
"P-61.1.17"	BEN EDICTIO SEARCH INC	18,504.58
"P-61.1.27"	LANTRO PHILS INC	30,240.00
"P-61.1.28"	LANTRO PHILS INC	5,160.00
"P-61.1.29"	MAPECON PHILIPPINES INC	4,339.29
"P-61.1.32"	RECORDS SAFEKEEPING INC	307.82
"P-61.1.38"	SGV AND CO	50,400.00
"P-61.1.39"	SGV AND CO	10,320.00
"P-61.1.40"	SGV AND CO	3,022.08
"P-61.1.44"	SUPRA MULTI SERVICES INC	38,458.21
"P-61.1.46"	GUTIERREZ, ROSALINDA C	6,118.39
"P-61.1.47"	SUPRA MULTI SERVICES INC	12,671.48
"P-61.1.48"	SUPRA MULTI SERVICES INC	12,415.25
"P-61.2.1"	BEN EDICTIO CORPORATION	281,251.12
"P-61.2.2"	BEN EDICTIO CORPORATION	231,745.80
"P-61.2.3"	VERTERE GLOBAL SOLUTIONS, INC.	174,765.06
"P-61.2.4"	BEN EDICTIO SEARCH INC	82,617.60
"P-61.2.6"	ESCO UNIFIED SOLUTIONS INC.	357,067.00
"P-61.2.8"	PAYROLL SERVICE PROVIDERS INC	11,100.00
"P-61.3.1"	BEN EDICTIO CORP.	90,156.01
"P-61.3.2"	BEN EDICTIO CORP.	371,008.73
"P-61.3.3"	BEN EDICTIO CORP.	277,372.23
"P-61.3.10"	VERTERE GLOBAL SOLUTIONS, INC.	58,629.24
"P-61.3.11"	VERTERE GLOBAL SOLUTIONS, INC.	81,311.16
"P-61.3.12"	VERTERE GLOBAL SOLUTIONS, INC.	85,931.64
"P-61.3.17"	FORTMED MEDICAL CLINICS MAKATI, INC.	3,257.14
"P-61.3.21"	JOE RILEY & ASSOCIATES INC.	56,609.28
"P-61.3.22"	JOE RILEY & ASSOCIATES INC.	14,515.20
"P-61.3.23"	JOE RILEY & ASSOCIATES INC.	63,866.88
"P-61.3.24"	JOE RILEY & ASSOCIATES INC.	55,157.76
"P-61.3.25"	R.G. MANABAT AND CO.	7,590.00
"P-61.3.26"	RGP (Hongkong) - Philippine Branch	146,160.00
"P-61.3.27"	SANTA FE MOVING AND RELOCATION SERVICES PHILS INC	4,056.00
"P-61.4.1"	BEN EDICTIO CORPORATION	625,792.22
"P-61.4.5"	N-LIMA BGC PROPERTIES, INC.	727,629.40
"P-61.4.7"	VERTERE GLOBAL SOLUTIONS, INC.	113,131.80
"P-61.4.11"	FORTMED MEDICAL CLINICS MAKATI, INC.	3,850.96
"P-61.4.13"	JOE RILEY & ASSOCIATES INC.	63,866.88
"P-61.4.14"	JOE RILEY & ASSOCIATES INC.	64,411.20
"P-61.6.1"	BEN EDICTIO CORPORATION	271,253.89
"P-61.6.7"	RGP HONG KONG PHILIPPINE BRANCH	97,440.00
"P-61.6.8"	TRENDS AND TECHNOLOGIES INC	3,750.00
"P-61.6.10"	VERTERE GLOBAL SOLUTIONS, INC.	55,267.56
"P-61.6.11"	BEN EDICTIO SEARCH INC	30,720.00
"P-61.6.17"	R.G. MANABAT AND CO.	15,180.00
"P-61.6.18"	TRENDS AND TECHNOLOGIES INC	1,285.71
"P-61.6.19"	BEN EDICTIO CORP.	291,267.68

"P-61.6.21"	BEN EDICTIO SEARCH INC	15,974.40
"P-61.6.22"	SANTA FE MOVING AND RELOCATION SERVICES PHILS INC	2,100.00
"P-61.6.28"	BEN EDICTIO CORPORATION	357,952.62
	Sub-total	**₱ 5,730,160.60**
2. Without Nature of payment indicated		
"P-61.1.10"	RAGOJOS HERITAGE CONSTRUCTION CORPORATION	₱ 517,449.61
"P-61.1.11"	RAGOJOS HERITAGE CONSTRUCTION CORPORATION	258,724.80
"P-61.1.15"	ARC PLUS MULTI GROUP CORPORATION	11,278.29
"P-61.1.18"	CARRERAS, RESTY M	10,836.00
"P-61.1.19"	CARRERAS, RESTY M	4,200.00
"P-61.1.20"	CARRERAS, RESTY M	4,200.00
"P-61.1.43"	SONGCO LAW OFFICE	2,640.00
"P-61.1.45"	TRENDS AND TECHNOLOGIES INC	3,750.00
"P-61.2.5"	CARRERAS, RESTY M	8,940.00
"P-61.2.7"	PAYROLL SERVICE PROVIDERS INC	10,920.00
"P-61.2.9"	TRENDS AND TECHNOLOGIES INC	3,750.00
"P-61.3.18"	FORTMED MEDICAL CLINICS MAKATI, INC.	51,500.96
"P-61.4.6"	RAGOJOS HERITAGE CONSTRUCTION CORPORATION	129,634.46
"P-61.4.8"	VERTERE GLOBAL SOLUTIONS, INC.	112,702.32
"P-61.4.10"	FORTMED MEDICAL CLINICS MAKATI, INC.	47,370.41
"P-61.4.16"	RESTY CARRERAS TRANSPORT (RESTY M CARRERAS - PROP)	5,400.00
"P-61.4.17"	SANTA FE MOVING AND RELOCATION SERVICES PHILS INC	5,652.00
"P-61.6.3"	ARC PLUS MULTI GROUP CORPORATION	3,759.43
"P-61.6.4"	CARRERAS, RESTY M	5,640.00
"P-61.6.5"	FORTMED MEDICAL CLINICS MAKATI INC	22,059.61
"P-61.6.6"	RECORDS SAFEKEEPING INC	615.64
"P-61.6.12"	FORTMED MEDICAL CLINICS MAKATI, INC.	45,767.19
	Sub-total	**₱ 1,266,790.71**
	Total Disallowance per Court	**₱6,996,951.31**

Hence, out of the total reported input VAT on current purchases of ₱13,026,009.82, only the amount of **₱4,696,126.97** represents petitioner's valid input VAT due or paid for the CY 2020, as computed below:

Total Input VAT on current purchases		₱13,026,009.82
Less: Disallowances		
Per ICPA Findings	₱ 946,632.09	
Overclaimed Input VAT	386,299.45	
Per Court's Further Verification	6,996,951.31	8,329,882.85
Substantiated Valid Input VAT		**₱4,696,126.97**

Eighth requisite: Since petitioner reported both taxable sales subject to 12% VAT and zero-rated sales subject 0% VAT, the valid input VAT of ₱4,696,126.97 shall be proportionately allocated based on sales volume.

The *eighth* requisite requires that the input taxes claimed be attributable to zero-rated or effectively zero-rated sales. However, where there are zero-rated or effectively zero-rated sale and taxable sales exist, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated based on sales volume.

In this case, for the subject period of the claim, there exist sales subject to the 12% and zero-rated sales for the four (4) quarters of CY 2020. As earlier noted, petitioner declared total sales in the amount of ₱326,380,371.82. Since its input VAT cannot be directly or entirely attributed to any of the transactions, the valid input VAT of ₱4,696,126.97 shall be allocated proportionately based on the volume of its sales, as follows:

	Amount per VAT Returns		**Allocation Factor**	**Valid Input VAT Allocation**	
	(A)		(C)	(D)	
			(A÷B)	(D x C)	
Taxable Sales	₱ 2,449,915.78		0.7506%	₱ 35,249.13	
Zero-Rated Sales	323,930,456.04		99.2494%	4,660,877.84	
Total	₱326,380,371.82	(B)	100%	₱ 4,696,126.97	(D)

Thus, with respect to petitioner's compliance with the *eighth* requisite, only the amount of ₱4,660,877.84 represents its valid input VAT attributable to total zero-rated sales for the CY 2020.

Ninth requisite: The valid input taxes were not applied against output taxes during and in the succeeding quarters.

In *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue*,[75] the Supreme Court held that:

> "...the input tax attributable to zero-rated sales may, at the option of the VAT-registered taxpayer, be: (1) **charged against output tax from regular 12% VAT-able sales, and any unutilized or 'excess' input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety.** It must be stressed that the remedies of charging the input tax against the output tax and applying for a refund or tax credit are alternative and cumulative. Furthermore, **the option is vested with the taxpayer-claimant. It goes without saying that the CTA, and even the Court may not, on its own, deduct the input tax attributable to zero-rated sales from the output tax derived from the regular twelve percent (12%) VAT-able sales first and use the resultant amount as the basis in computing the allowable amount for refund.** The courts cannot condition the refund of input taxes allocable to zero-rated sales on the existence of 'excess' creditable input taxes, which includes the input taxes carried over from the previous periods, from the output taxes. These procedures find no basis in law and jurisprudence."

Per *Chevron*, with respect to input taxes attributable to zero-rated sales, it is the taxpayer, not the Court, who is given the option to either:

1. Charge a portion of its input taxes attributable to zero-rated sales to the output taxes, and refund the balance, if any; or
2. Refund all of the input taxes attributable to zero-rated sales.

Applying the foregoing, records show that **petitioner chose the *first* option**. Its total input VAT incurred for the CY 2020 was applied against its output VAT for the same period, with the remaining unutilized input VAT is the subject of the present claim for refund.[76]

[75] G.R. No. 215159, July 5, 2022.
[76] Exhibit "P-24," Docket - Vol. I, at p. 515.

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Hence, the refundable input VAT shall be computed net of output tax liability.

Since petitioner's valid input VAT allocated to taxable sales in the amount of ₱35,249.13 is insufficient to cover its output VAT liability for CY 2020 in the amount of ₱293,989.41, the valid input VAT allocated to total zero-rated sales in the amount of ₱4,660,877.84 shall be utilized against the remaining output VAT due of ₱258,740.28. Thus, only the balance of ₱4,402,137.56 can be attributed to the entire zero-rated sales declared by petitioner in the amount of ₱323,930,456.04, as computed below:

Output VAT	₱ 293,989.41
Less: Valid Input VAT Allocated to Taxable Sales	35,249.13
Output VAT Still Due	**₱ 258,740.28**
Valid Input VAT Allocated to Zero-Rated Sales	₱ 4,660,877.84
Less: Output VAT Still Due	258,740.28
Excess Input VAT Attributable to Zero-Rated Sales	**₱4,402,137.56**

However, as determined earlier, out of the total zero-rated sales declared by petitioner amounting to ₱323,930,456.04, only ₱4,416,447.83 qualifies as valid zero-rated sales. Hence, out of the unutilized input VAT attributable to total zero-rated sales in the amount of ₱4,402,137.56, only **₱60,018.47** is attributable to the valid zero-rated sales of ₱4,416,447.83, as computed below:

Excess Input VAT Attributable to Zero-Rated Sales	4,402,137.56
Divided by Declared Zero-Rated Sales	323,930,456.04
Multiply by Valid Zero-Rated Sales	4,416,447.83
Input VAT Attributable to Valid Zero-Rated Sales	₱60,018.47

Finally, to ensure that the present input VAT claim for refund will no longer be available for application to future output VAT liabilities, it was ascertained that while petitioner carried over the input VAT subject of this claim amounting to ₱12,345,720.97 in the succeeding quarters, the same was ultimately deducted as VAT Refund/TCC Claimed (Line 23D) in its 4th *Quarterly VAT Return* for CY 2021.[77] Accordingly, petitioner is deemed to have satisfied the *ninth* requisite for the refund or tax credit of input VAT under Section 112(A) of the NIRC, as amended.

[77] Exhibit "P-51.4," USB.

WHEREFORE, the *Petition for Review* filed by **FMC SWITZERLAND II GMBH., doing business under the name FMC SWITZERLAND II GMBH, MANILA ROHQ** is **PARTIALLY GRANTED.**

Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **₱60,018.47,** representing its unutilized input VAT arising from its zero-rated sales during the period January 1, 2020 to December 31, 2020.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ON LEAVE
HENRY S. ANGELES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

Ma. Belen M—

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice