CTA Form No. 8 (For DCC)

22-000366-0057

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10938

FIRMENICH (PHILIPPINES), INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

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134 Amorsolo Street, Legazpi Village
Makati City

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GREETINGS:

You are hereby notified by these presents that on **June 11, 2026,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 17, 2026.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
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FIRMENICH (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **10938**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 1 1 2026 ; 2:50 PM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Firmenich (Philippines), Inc.'s (**petitioner**'s) "Motion for Reconsideration"[1] (**MR**), filed on 19 December 2025, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) Opposition[2] filed on 16 February 2026.

The MR assails the Court's Decision[3] promulgated on 12 November 2025 (**assailed Decision**), which denied the instant Petition for Review. The dispositive portion of the assailed Decision reads:

> ...
>
> **WHEREFORE**, in view of all the foregoing, the Petition for Review filed by petitioner Firmenich (Philippines), Inc. on 25 July 2022 is hereby **DENIED** for lack of merit.
>
> ...

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1 Division Docket, Volume II, pp. 629-648.
2 Id., pp. 654-657.
3 Id., pp. 587-627.

In the assailed Decision, the Court ruled that petitioner is not entitled to a tax refund or an issuance of a tax credit certificate (**TCC**) representing its unutilized input value-added tax (**VAT**) credits because it failed to prove that it rendered services to a non-resident foreign corporation (**NRFC**). Specifically, the Court found that based on the *Agency Agreement*[4] between petitioner and Firmenich Asia Pte. Ltd. (**FAPL**), its alleged sole customer, FAPL pays commissions to petitioner not only for services rendered to FAPL, but also to its affiliates, whose status as NRFCs was not proven. Further, even granting that petitioner indeed rendered services exclusively to FAPL, the Court held that FAPL is doing business in the Philippines through petitioner.

The Court also found that although petitioner may be considered to be engaged in the business of an indentor, it performed services in excess of being merely a "go-between" or as a middleman.

In addition, the Court held that the official receipts (**OR**s) and the corresponding sales invoices (**SI**s) presented by petitioner in support of its zero-rated sales are not compliant with the VAT invoicing requirements provided by the National Internal Revenue Code (**NIRC**) of 1997, as amended, and regulations as they do not contain any information on the nature of services performed by petitioner.

Meanwhile, in the present MR, petitioner argues that although other entities within the Firmenich group may incidentally benefit from its services, such services are rendered at the instance and under the engagement of FAPL alone.

Petitioner also avers that its ORs and SIs evidencing the zero-rated sales are compliant with the invoicing requirements of the NIRC of 1997, as amended, since the law, regulations, and jurisprudence do not expressly state the required degree of particularity in describing the nature of the service on ORs and SIs. Nonetheless, petitioner alleges, citing *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[5] (**Intel Technology**), that the NIRC of 1997, as amended, only provides the penalty of fine and imprisonment for invoices or receipts that do not truly reflect or contain the required information, but does not state that the claim for refund must be invalidated.

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[4] Exhibit "P-4", id., Volume I, pp. 434-445.
[5] G.R. No. 166732, 27 April 2007.

Moreover, petitioner maintains that FAPL is not doing business in the Philippines through petitioner and demonstrated that the four (4) tests used by the Court to determine whether FAPL is doing business in the Philippines (*i.e.*, Substance Test, Contract Test, Intention Test, and Actual Performance Test) are, in fact, not satisfied.

To further support its argument that FAPL is a non-resident foreign corporation, petitioner claims that FAPL's sale of goods is done outside the Philippines since the goods it sells are located in Singapore and the sale is also perfected there.

In relation to the above issue, petitioner insists that it is an indentor that transacts business in its own name and for its own account. According to petitioner, the acts of ensuring that FAPL's customers are in sound financial standing and that payment is made on time and in full are activities consistent with its role as an indentor and are not in excess of its scope of work.

In his or her Opposition,[6] respondent argued that petitioner's services to FAPL will ultimately result in the successful sale of FAPL's products within the Philippine territory, thus, it is just appropriate to subject the said services to tax.

We resolve.

At the outset, petitioner received a copy of the assailed Decision on 04 December 2025.[7] Thus, the instant MR personally filed fifteen (15) days later,[8] or on 19 December 2025,[9] and electronically filed[10] on 22 December 2025[11] or within the next working day,[12] was filed on time.

Nonetheless, after a careful perusal of the instant MR and the arguments raised therein, the Court finds no basis to reverse the assailed Decision.

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6 Supra at note 2.
7 See Notice of Decision, id., p. 585.
8 See Section 11 of Republic Act (RA) No. 1125, as amended & Rule 15, Section 1 of the Revised Rules of the Court of Tax Appeals (RRCTA).
9 See Motion for Reconsideration, supra at note 1.
10 As required by paragraph 2 of CTA En Banc Resolution No. 8-2024 (Guidelines on the Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals Pursuant to A.M. No. 10-3-7-SC and A.M. No. 11-9-4-SC).
11 Division Docket, Volume II, p. 651.
12 See paragraph 5 of CTA En Banc Resolution No. 1-2025 (*Interim* Guidelines on the Submission of Electronic Copies of Pleadings and Other Court Submissions Before the Court of Tax Appeals).

In its MR, petitioner asserts that a holistic reading of the *Agency Agreement* reveals the parties' intent in entering into the agreement was for FAPL to engage petitioner's services for the promotion of the products of Firmenich affiliates in the Philippines. It likewise argued that the *Agency Agreement* in its entirety reflects FAPL's appointment of petitioner as the indentor for all Firmenich products in the Philippines, including those of its affiliates. In support of this, petitioner highlighted that all of petitioner's zero-rated sales for the third quarter of 2020, as shown by its quarterly VAT return, were for services rendered to FAPL alone.

We are not persuaded.

The controlling fact in determining whether a particular service is entitled to zero-rating is not *who paid for the services* or *who contracted the services*, but *to whom the service was rendered*, as provided in Section 108 (B)(2) of the NIRC of 1997, as amended:

> ...
>
> **(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.
>
> ...
>
> (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);[13]
>
> ...

While it may be easily argued that the entity who contracted and paid for a particular service is the party to whom the service was rendered, it is likewise plausible that such entity merely acted for and on behalf of another entity, especially when the entities involved are related parties, for several possible reasons.

In the context of VAT, service recipients who would be subject to regular VAT can avoid paying such by arranging for an affiliate entity or a related party that qualifies for VAT zero-rating to contract and pay for

[13] Emphasis in the original and supplied and underscoring supplied.

the services, notwithstanding that the services are ultimately rendered for the benefit of the original service recipient. In the same vein, service providers who are otherwise not qualified for a refund or issuance of tax credit for input VAT attributable to their sales to entities doing business in the Philippines may circumvent the law by contracting with an affiliate not doing business in the Philippines for the services it rendered to other affiliates doing business in the Philippines. Hence, the determination of the party for whom the services were performed for VAT purposes requires a thorough examination of the terms of the agreement for the performance of the subject services and the circumstances surrounding its actual performance.

In the present case, several provisions in the *Agency Agreement* demonstrate the parties' intention to appoint petitioner not only as FAPL's agent but also as FAPL's other affiliates' agent:

> AGENCY AGREEMENT
>
> ...
>
> **WHEREAS**, in consideration of the development and expansion of the operations carried by [petitioner], ... [petitioner] shall be appointed as Firmenich's agent representative for the Philippines and shall be fairly compensated for any sales support services **rendered to [FAPL] and affiliates**.
>
> ...
>
> ARTICLE II: NON-EXCLUSIVITY
>
> **[FAPL] or other Affiliates** remain entitled to market or sell Firmenich products without [petitioner's] support.
>
> ...
>
> ARTICLE III: RIGHTS AND OBLIGATIONS OF THE PARTIES
>
> Acting as an agent, [petitioner] shall have neither power nor authority **to represent or to bind [FAPL] or other Affiliates** in any manner except as expressly provided therein.
>
> [Petitioner] **shall act on behalf of [FAPL] or other Affiliates** but sales shall be concluded directly between the customers and **[FAPL] or other Affiliates**. [Petitioner] **shall transmit to [FAPL] or other Affiliates** whenever the case may be, any orders for their approval and **[FAPL] or other Affiliates** shall be responsible for the delivery, invoicing and collection of receivables.

> [FAPL] shall be entitled to refuse certain orders transmitted by [petitioner]. In which case, **[FAPL] or such Affiliate will inform [petitioner] of its refusal** within 3 (three) working days after the transmission of said order.
>
> The Parties will ensure that all clients are of sound financial background and will exchange all information they can acquire on this respect. Moreover, contrary to petitioner's claim [petitioner] **accepts to assist [FAPL] or other Affiliates** in its receivables collection of directly invoiced sales.
>
> ARTICLE VI: CONFIDENTIALITY
>
> [Petitioner] undertakes not to disclose, use or sell to third Parties business, manufacturing or any other technical information it has become aware through its **relationship with [FAPL] or other Affiliates** whenever the case may be.
>
> [Petitioner] binds itself to ensure the same obligations to comply are imposed upon its employees and agents, and **shall be liable to [FAPL] or other Affiliates** for these obligations.
>
> ...

Further, the fact that petitioner's invoices and VAT returns show that its services by virtue of the Agency Agreement were paid for solely by FAPL does not mean that petitioner's services were rendered only to FAPL. Rather, FAPL solely paid the commissions because it is the one responsible for organizing internal compensations with its affiliates, as provided in Article IV of the *Agency Agreement*:

> ...
>
> ARTICLE IV: COMPENSATION
>
> **[FAPL] or other Affiliates** shall pay to [petitioner] as compensation for its activities as commercial agent a commission computed on the amount of the sales invoiced by **[FAPL] or other Affiliates** to third-party clients in the Philippines, after deduction of the "nationalization" costs[.] ... Commissions will be computed on a quarterly basis by [FAPL] and shall be payable at 30 days.
>
> **Sales invoiced by other Affiliates shall be entitled to the same commission rates in consideration of [petitioner's] effective sales support. Such commissions shall be paid by [FAPL] who is responsible for organizing internal compensations with the other Affiliates.**
>
> ...

At any rate, petitioner claims that it is the only Firmenich entity doing business in the Philippines and registered with the Securities and Exchange Commission (**SEC**), and all other Firmenich affiliates are non-resident foreign corporations not doing business in the Philippines. However, a plain reading of FAPL's SEC Certificate of Non-Registration[14] shows that an entity bearing the name "Firmenich Aromatics Pte. Ltd." is also registered with the SEC.

Notwithstanding the foregoing, even if We assume that petitioner rendered services exclusively to FAPL, We still find no reason to reverse the assailed Decision.

Petitioner insists that its alleged sole customer, FAPL, is an NRFC not doing business in the Philippines. It argues that the Substance Test is not satisfied because FAPL's business of selling goods, which is the substance of the business or enterprise for which FAPL was organized, is concluded outside the Philippines. It claims that the goods FAPL sells are located in Singapore and the sale is likewise perfected there. However, aside from this bare assertion, petitioner failed to point to any evidence that would support such.

In addition, petitioner argues that the Actual Performance Test used in determining whether FAPL is doing business in the Philippines is likewise not satisfied since the acts it performed as FAPL's agent, particularly, promotion of FAPL's products, checking of FAPL's buyer's financial background and sharing of such information, and assistance in the collection of receivables, do not constitute "doing business" as defined in Section 3(d) of Republic Act (**RA**) No. 7042: [15]

> ...
>
> SEC. 3. Definitions. – As used in this Act:
>
> ...
>
> d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts

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14 Exhibit "P-6", Division Docket, Volume I, p. 431.

15 Foreign Investments Act of 1991.

> or works, **or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization**: Provided, however, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;[16]
>
> ...

However, it is evident from the above definition that the exercise of functions normally incident to the purpose and object of the business organization constitutes "doing business". Consequently, the acts that petitioner performed in the Philippines on FAPL's behalf, which petitioner itself described as incidental to the substance of FAPL's business,[17] constitute doing business in the Philippines.

Petitioner likewise insists that it is an indentor and that its activities of conducting a sound financial background check of all clients, exchanging information with FAPL, and assisting FAPL or other affiliates in the collection of receivables are within the scope of its role as an indentor. Petitioner submits that it is in the interest of an indentor to ensure that buyers are in good financial standing and capable of paying purchase orders, and that payment is made on time and in full, considering that it earns commissions from the successful sale of the products it markets.

This argument is inconsistent with the *Agency Agreement* between petitioner and FAPL, which provides that the commissions petitioner will receive for its services shall be computed based on the amount of *sales invoiced* by FAPL or other Affiliates to third-party clients in the Philippines. It did not state that the commissions will be based on the *amount collected* from the third-party clients. Neither was there a mention that its commissions shall be reduced should a third-party client fail to pay its orders on time and in full.

Anent petitioner's ORs and SIs' compliance with the invoicing requirements of the NIRC of 1997, as amended, while We find merit in

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16 Emphasis supplied.

17 See paragraph 30 of petitioner's Motion for Reconsideration, Division Docket, Volume II, p. 641.

petitioner's argument that the law, regulations, and jurisprudence, do not expressly state the required degree of particularity in describing the nature of the services on VAT ORs and SIs, it is however clear that the law and regulations require VAT-registered persons to indicate nature of *services* on their VAT ORs and SIs. The word *"commission,"* as defined in jurisprudence,[18] pertains to the nature of the *payments* petitioner received from its customer and not to the nature of the *services* it rendered.

Petitioner, citing *Intel Technology*, additionally posits that the NIRC of 1997, as amended, imposes only the penalty of fine and imprisonment for invoices or receipts that do not truly reflect or contain the required information, but does not mandate the outright denial of a claim for refund. However, *Intel Technology* pertained to a taxpayer's failure to indicate its authority to print in its SIs, an item not required to be indicated on VAT ORs and SIs under the NIRC of 1997, as amended. Contrariwise, the nature of services is explicitly required to be indicated on VAT ORs and SIs under the law.

Moreover, the High Court in *Intel Technology* found that the taxpayer therein submitted sufficient documentary evidence to substantiate its claim that it was engaged in zero-rated export sales. In contrast, in the present case, there remains doubt as to whether petitioner is engaged in zero-rated sale of service – a matter that could possibly be clarified by a proper description of the nature of the services rendered.

To reiterate, actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption, and the pieces of evidence presented to entitle a taxpayer to an exemption are *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer-claimant to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[19]

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18 *Jose Songco, et al. v. National Labor Relations Commission (First Division), et al.*, G.R. Nos. L-50999-51000, 23 March 1990.

19 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018, citing *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008.

WHEREFORE, in view of the foregoing, petitioner's Motion for Reconsideration, filed on 19 December 2025, is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice