REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

AMADEUS MARKETING PHILIPPINES, INC., *Petitioner,* *-versus-* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.*	**CTA *EB* NO. 2137** *(CTA Case No. 9441)*
COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* *-versus-* **AMADEUS MARKETING PHILIPPINES, INC.,** *Respondent.*	**CTA *EB* NO. 2153** *(CTA Case No. 9441)* Present: **DEL ROSARIO, P.J.,** **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** *JJ.* Promulgated: OCT 1 9 2021 10:28 a.m.

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RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is Amadeus Marketing Philippines, Inc.'s ("Amadeus") **Motion for Reconsideration (hereinafter referred to as "Motion")**, filed on 1 March 2021.[1]

[1] Amadeus filed its Motion within 15 days from its receipt of the assailed Decision on 15 February 2021. Hence, this Motion was timely filed.

In its Motion, Amadeus contends that the Court *En Banc* erred in denying its Petition for Review and in reversing and setting aside the Court in Division's Decision and Resolution, dated 30 April 2019 and 5 September 2019, respectively.

Amadeus opines that the Court *En Banc's* conclusion stating that its client, Amadeus IT Group S.A., is doing business in the Philippines on the basis of the Amadeus Commercial Organization ("ACO") Agreement is erroneous and contrary to law, facts, and evidence on record.

Amadeus alleges that the ACO Agreement is not determinative on whether Amadeus IT Group S.A. is doing business in the Philippines. It explains that a foreign corporation may be considered to be so only upon proof that it performed specific business transactions within the Philippine territory on a continuing basis, on its own, and for its own account.

It belies the observation of the Court *En Banc* that the ACO Agreement is replete with provisions proving that Amadeus IT Group S.A. is doing business in the Philippines. Contrarily, it stresses that the ACO Agreement contains provisions which prove that Amadeus merely acts as "representative or distributor" and not as an agent of Amadeus IT Group S.A.

Amadeus argues that the provisions noted by the Court *En Banc* in the assailed Decision are insufficient to declare Amadeus IT Group S.A. as a foreign corporation doing business in the Philippines. It explains that these terms were included in the ACO Agreement in order to set limitations on how the Amadeus System will be marketed in the Philippines; to allow Amadeus IT Group S.A. to protect its intellectual property rights; and to address the territorial limitations in the ACO Agreement.

In sum, Amadeus impresses upon the Court *En Banc* that Amadeus IT Group S.A is not doing business in the Philippines. On this note, it stresses that it is entitled to the VAT refund/credit being claimed.

After a careful perusal of the foregoing arguments, the Court *En Banc* sees no sufficient reason to overturn the assailed Decision.

The crux of the controversy is whether Amadeus IT Group S.A is doing business in the Philippines. The term "doing business" has been defined by ***Section 3(d) of the Foreign Investments Act of 1991, as amended ("FIA"),***[2] **as:**

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[2] Republic Act No. 7042, as amended, 28 March 1996.

> "SEC. 3. Definitions. – As used in this Act:
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> 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 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;"

The foregoing had been elaborated by the Supreme Court in ***Agilent Technologies Singapore v. Integrated Silicon Technology Philippines Corporation***[3] as a term that "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 or in progressive prosecution of the purpose and subject of its organization**."

In the same case, citing ***The Mentholatum Co., Inc. v. Mangaliman***,[4] the Supreme Court discussed two tests in order to determine whether a foreign corporation is indeed doing business in the Philippines, to wit:

> "In Mentholatum, this Court discoursed on the two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines. The first of these is the substance test, thus:
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> > The true test [for doing business], however, seems to be whether **the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.**
> >
> > The second test is the continuity test, expressed thus:
> >
> > **The term [doing business] implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or**

[3] G.R. No. 154618, 14 April 2004.
[4] G.R. No. 47701, 27 June 1941.

> **works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization.**"[5]

To recapitulate, the criteria in order to ascertain whether a foreign corporation is doing business in the Philippines is if it performs acts which constitutes a continuity of its commercial dealings in this country for the progressive prosecution of its purpose.

Contrary to its claim, the facts are undisputed that Amadeus is not a mere "representative or distributor" independent from Amadeus IT Group S.A. The ACO Agreement, as well as the other documents on record, prove that Amadeus acts out as Amadeus IT Group S.A.'s agent in the Philippines since the latter is able to continue its commercial dealings in furtherance of its business purpose through Amadeus.

Based on Amadeus IT Group S.A.'s Articles of Association, part of its purpose is to produce, sell, and distribute software, hardware and accessories of any kind, and to incorporate foreign subsidiaries.[6] This was echoed in the ACO Agreement stating Amadeus IT Group S.A.'s business objective, which is to market the widespread availability of the computerized information, products, and services stored in the Amadeus Global Core.[7]

Concomitantly, Amadeus' primary purpose under its Amended Articles of Incorporation ("AOI") is "to market an automated computerized reservations system "Amadeus Global Travel Distribution" which incorporates a software package xxx in the Philippines."[8]

As can be gleaned above, Amadeus' primary purpose is highly restrictive in nature and foregoes any doubt that it is a mere conduit or extension of Amadeus IT Group S.A.

Evidently, under the ACO Agreement and its own AOI, it is clear that Amadeus is not free to market other products apart from the Amadeus System. The case of ***Top-Weld Manufacturing, Inc. vs. ECED S.A. et al.***,[9] as reiterated in ***Communication Materials and Design, Inc., et. al. v. Court of Appeals, el. Al***,[10] stresses this point, to wit:

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[5] Emphasis supplied.
[6] Exhibit "P-6", Division Docket, Vol. II, p. 748.
[7] Exhibit "P-4", Division Docket, Vol. II, p. 723.
[8] Exhibit "P-3", Division Docket, Vol. II, p. 713.
[9] **G.R. No. L-44944, 9 August 1985.**
[10] G.R. No. 102223, 22 August 1996.

> "In that case, **we ruled that respondent foreign corporations are doing business in the Philippines because when the respondents entered into the disputed contracts with the petitioner, they were carrying out the purposes for which they were created,** i.e., to manufacture and market welding products and equipment. **The terms and conditions of the contracts as well as the respondents' conduct indicate that they established within our country a continuous business, and not merely one of a temporary character**. The respondents could be exempted from the requirements of Republic Act 5455 if the **petitioner is an independent entity which buys and distributes products not only of the petitioner, but also of other manufacturers or transacts business in its name and for its account and not in the name or for the account of the foreign principal. A reading of the agreements between the petitioner and the respondents shows that they are highly restrictive in nature, thus making the petitioner a mere conduit or extension of the respondents.**"[11]

Apart from the foregoing, the ACO Agreement is replete with provisions that allow Amadeus IT Group S.A. to freely intervene and govern on how Amadeus will market, promote and distribute the Amadeus System in the Philippines. The Court *En Banc* reproduces the relevant discussion in the assailed Decision, to wit:

> "Aside from this, the ACO Agreement is replete with provisions that signifies Amadeus IT Group SA's participation in running the marketing and distribution of the Amadeus System in the Philippines. Some of which are as follows:
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> a) Amadeus IT Group SA is permitted to directly contract with multinational subscribers whether the same is based within or outside the Philippines;
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> b) Amadeus IT Group SA may contract with subscribers within the Philippines pertaining to CRS services through Amadeus online and corporate products;
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> c) Amadeus is duty bound to honor any obligation undertaken by Amadeus IT Group SA with third-party licensors relative to marketing, offering, promoting the Amadeus products; and
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> d) Amadeus IT Group SA may, on its own, terminate the agreement entered between any Philippine subscriber in the event of misuse or abuse of the Amadeus System.
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> Clearly, the ACO Agreement paved the way for Amadeus IT Group SA through Amadeus to further advance its purpose to continually promote, market, and distribute the Amadeus System in the Philippines. These and its powers, above, fall squarely under the definition of "doing business in the Philippines" under Section 3 (d) of Republic Act No. 7042 xxx."

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[11] Emphasis supplied.

The foregoing provisions prove Amadeus IT Group S.A.'s intention to do business in the Philippines. As can be seen from the foregoing, these provisions indisputably allow Amadeus IT Group S.A. to participate in a domestic business which, in turn, implies the "continuity of commercial dealings" and contemplate the performance of acts in the progressive prosecution of commercial gain of its corporate purpose in the Philippines.

The argument of Amadeus claiming that the ACO Agreement is not enough evidence to prove that Amadeus IT Group S.A. is doing business in the Philippines absent the performance of a specific business transaction does not hold water.

As ruled in ***Magna Ready Mix Concrete Corp. v. Andersen Bjornstad Kane Jacobs, Inc.***,[12] the number of transactions entered into by the foreign corporation is not determinative of whether a foreign corporation is doing business in the Philippines but what prevails is the ***intention of the said body to continue its business in the Philippines***. Furthermore, considering that this Court has already found that Amadeus is a mere extension or conduit of Amadeus IT Group S.A., it follows that all businesses performed by the former as agent are considered acts of the latter as its principal.

In all, given the overwhelming evidence on record, Amadeus failed to convince the Court *En Banc* that the foregoing provisos are only for the protection of Amadeus IT Group S.A. or only to address the territorial limitations in the ACO Agreement. Contrarily, these provisions indisputably allow Amadeus IT Group S.A. to penetrate the domestic market in furtherance of its business objectives.

Considering the foregoing discussions, the Court is constrained to rule that the Amadeus IT Group S.A. is a foreign corporation doing business in the Philippines. Thus, the sales of services rendered by Amadeus to it are not zero-rated as provided under ***Section 108(B)(2) of the Tax Code***.

Consistent is the rule that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is s*trictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[13]

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[12] G.R. No. 196158, 20 January 2021.
[13] Coco-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, 19 February 2018

WHEREFORE, premises considered, Amadeus Marketing Philippines, Inc.'s ***Motion for Reconsideration*** is hereby denied for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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