REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA-ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2768
(CTA Case No. 9897)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA-ROHQ,
Respondent.

CTA EB No. 2775
(CTA Case No. 9897)

Present:
DEL ROSARIO, *PJ,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, *JJ.*

Promulgated:
OCT 28 2024 4:30pm

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DECISION

REYES-FAJARDO, J.:

Before the Court *En Banc* consolidated Petitions for Review filed by the following:

1) Procter & Gamble International Operations SA-ROHQ (P&G ROHQ) on July 7, 2023, docketed as CTA EB No. 2768;[1] and

2) the Commissioner of Internal Revenue (CIR) on July 10, 2023, docketed as CTA EB No. 2775.[2]

These petitions assail the Amended Decision promulgated on October 4, 2022 (Assailed Decision)[3] and the Resolution promulgated on June 5, 2023 (Assailed Resolution)[4] of the Court of Tax Appeals Special Second Division (Court in Division) in CTA Case No. 9897. The assailed issuances granted P&G ROHQ's claim for refund to the extent of ₱7,493,598.87, representing unutilized input value-added tax (VAT) attributable to its zero-rated sales relative to the third and fourth quarters of the fiscal year ended June 30, 2016 (FY 2016).

The dispositive portions of the Assailed Decision and Resolution are reproduced below.

Assailed Decision

> **WHEREFORE**, premises considered, petitioner Procter & Gamble International Operations SA-ROHQ's Motion for Reconsideration with Motion to Reopen Case is hereby **PARTIALLY GRANTED**, while respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration (to the Decision dated 19 January 2022) is hereby **DENIED** for lack of merit.
>
> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Procter & Gamble International Operations SA-ROHQ in the amount of **SEVEN MILLION FOUR HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED NINETY-EIGHT PESOS and EIGHTY-SEVEN CENTAVOS (P7,493,598.87)**, representing its excess and unutilized input VAT

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[1] *Rollo* (CTA EB No. 2768), pp. 6-45.
[2] *Rollo* (CTA EB No. 2775), pp. 6-23.
[3] Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Lanee S. Cui-David concurring. *Rollo* (CTA EB No. 2768), pp. 106-127.
[4] Penned by Associate Justice Jean Marie A. Bacorro-Villena with Associate Justice Lanee S. Cui-David concurring. *Rollo* (CTA EB No. 2768), pp. 130-150.

attributable to its zero-rated sales for the 3rd and 4th quarters of FY 2016 ended 30 June 2016.

SO ORDERED.

Assailed Resolution

WHEREFORE, with the foregoing, petitioner Procter & Gamble International Operations SA-ROHQ's "Motion for Reconsideration (Re: Amended Decision dated October 4, 2022)" filed on 21 October 2022 and respondent Commissioner of Internal Revenue's "Motion for Partial Reconsideration (to the Amended Decision dated 04 October 2022)" filed on 21 October 2022, are both **DENIED** for lack of merit.

SO ORDERED.

ANTECEDENTS

P&G ROHQ is a Philippine regional operating headquarters of a multinational company organized and existing under and by virtue of Switzerland laws. In the Certificate of Registration and License issued by the Philippine Securities and Exchange Commission (SEC),[5] it is a foreign corporation permitted "to engage in general administration and planning; business planning and coordination; corporate finance advisory services; training and personnel management; logistic services; technical support and maintenance; data processing and communication; and business development." It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.[6]

For the third and fourth quarter of FY 2016, P&G ROHQ filed Quarterly VAT Returns (BIR Form No. 2550-Q) and reported total sales of ₱1,629,655,732.09. This aggregate amount included **zero-rated sales** amounting to ₱1,444,423,146.01, which pertained to **sales of services to foreign clients and affiliates**.

[5] Exhibit "P-1,"
[6] BIR Certificate of Registration, Exhibit "P-2,"

On March 28, 2018, P&G ROHQ lodged a Letter-Claim for Refund and Application for Tax Credits/Refunds (BIR Form No. 1914) before the BIR VAT Credit Audit Division (VCAD), seeking the refund of the aggregate amount of ₱41,071,160.17, representing unutilized input VAT attributable to its zero-rated sales relative to the third and fourth quarters of FY 2016 (hereinafter referred to collectively as "*administrative claim*").

The CIR[7] denied the administrative claim through a VAT Refund Notice (Denial Letter).[8]

After receiving a copy of the Denial Letter on June 29, 2018, P&G ROHQ lodged an appeal before the Court of Tax Appeals *via* Petition for Review on July 27, 2018. The case was raffled to the Court in Division and docketed as CTA Case No. 9897.

RULING OF THE COURT IN DIVISION

In the Court in Division's *Original Decision*, it granted the judicial claim to the extent of ₱5,349,214.78. However, upon P&G ROHQ's motion for reconsideration, the Court in Division promulgated an *Amended Decision*, modifying the grant to ₱7,493,598.87 as follows:

	Original	Amended
Zero-rated sales per returns	₱1,444,423,146.01	**₱1,444,423,146.01**
Add Unreported zero-rated sales	58,633,020.95	**58,633,020.95**
Total Zero-rated sales [A]	₱1,503,056,166.96	**₱1,503,056,166.96**
Less Disallowed zero-rated sales		
No SEC Certificate of Non-Registration (CNR)	₱3,474,055.55	**₱3,474,055.55**
Supported only by SEC CNR	1,072,623,656.85	**1,072,623,656.85**
With noted discrepancy in names stated in ORs	65,471,520.97	**24,310,057.56**
Unreported zero-rated sales	58,633,020.95	**58,633,020.95**
Not supported by Service Agreements	63,193,741.63	**8,378,530.59**
Total disallowed [B]	₱1,263,395,995.95	**₱1,167,419,321.50**
Valid zero-rated sales [C = A- B]	₱239,660,171.01	**₱335,636,845.46**
Percentage [D = C/A]	15.9449%	**22.3303%**
Valid input VAT	₱55,792,826.85	**₱55,792,826.85**
Less Output VAT	22,234,390.33	**22,234,390.33**
Eligible for refund	₱33,558,436.52	**₱33,558,436.52**
Multiply by Percentage [D]	15.9400%	**22.3300%**
Refundable input attributable to Valid zero-rated sales	₱5,349,214.78	**₱7,493,598.87**

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[7] Through Erlinda A. Simple, Assistant Commissioner of Internal Revenue-Assessment Service.
[8] Exhibit "P-12,"

In brief, the Court in Division granted P&G ROHQ a **partial refund** after disallowing (a) sales alleged to have been zero-rated but not duly proven as such and (b) input VAT not properly substantiated.

We summarize the Court in Division's findings below.

First, P&G ROHQ demonstrated that it is VAT-registered, that it filed its administrative and judicial claims were timely filed, and that the input VAT subject of the refund was not applied against output taxes during the subject quarters and those succeeding.

Second, in its returns, P&G ROHQ declared zero-rated sales amounting to ₱1,444,423,146.01, which it alleged to have been rendered to foreign clients and affiliates. However, it only established the zero-rated character of these transactions only to the extent of ₱335,636,845.46 or 22.33%; the remaining portion of its declared zero-rated sales was disallowed for failure to present the necessary documents to show, among others, that its clients are non-resident foreign entities not engaged in trade or business in the Philippines, and that the services supplied were performed in the Philippines, in accordance with the Supreme Court's ruling in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[9]

Third, P&G ROHQ failed to report foreign currency-denominated gross receipts amounting to ₱58,633,020.95 in its VAT returns for the subject quarters. Following this Court's ruling in *Commissioner of Internal Revenue v. Northwind Power Dev't. Corp.,*[10] such unreported receipts were disallowed. Ultimately, this resulted in the proportionate reduction of P&G ROHQ's entitlement to refundable input VAT.

Fourth, while P&G ROHQ declared the amount of ₱63,305,550.50 as allowable input VAT in its returns, only input VAT amounting to ₱55,792,826.85 was verified to have been substantiated in accordance with the relevant invoicing requirements. Relative to the findings on its zero-rated sales as discussed above, only 22.33% or ₱7,493,598.87 of the substantiated input VAT amount was computed to have been attributable to zero-rated sales.

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9 G.R. No. 234445, July 15, 2020.
10 C.T.A. EB Case Nos. 1037 & 1042 (C.T.A. Case No. 8119), December 16, 2014.

Fifth, the CIR shall not be allowed to offset any alleged deficiency VAT against the subject claim. This practice violates P&G ROHQ's due process rights.

The Court in Division denied P&G ROHQ's request to reopen the case for the purpose of allowing it to present supplemental evidence. Petitioner attempted to admit "forgotten evidence"; the additional documents it intended to submit to the Court after promulgation of the assailed decision (*e.g.*, consularized or apostilled foreign registration documents, SEC Certificates of Non-Registration (Negative Certification) and sworn statements from authorized representatives of its NRFC-clients and the Supplemental Sworn Statement of its Country Comptroller, Alvin D. Trambulo) could have been offered and presented during trial.

Hence, the parties filed the present consolidated petitions. P&G ROHQ and the CIR filed their respective Comments[11] to the counter-party's petition.

ARGUMENTS

P&G ROHQ's Arguments

P&G ROHQ imputes error upon the Court in Division as follows:

First, the SEC Negative Certification for P&G Distribution Morocco S.A.S., Procter & Gamble Europe SA, Procter & Gamble International Operations SA, and Procter & Gamble Korea, Inc. should be regarded as pertaining to P&G Distribution Morocco, Procter & Gamble Europe SA Singapore Branch, Procter & Gamble International Operations SA Singapore Branch, and Procter & Gamble Korea, respectively. As such, all four entities are supported by their corresponding SEC Negative Certifications, Business Registration Documents, Service Agreements, and Sworn Statements from Authorized Representatives. These documents establish that these entities were engaged in business conducted outside the Philippines or non-resident persons who are outside the Philippines when the services were performed.

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[11] *Rollo* (CTA EB No. 2768), pp. 153-166; 167-180.

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Second, the old name of its affiliate "P&G Max Factor Godo Kaisha" is "P&G Prestige Godo Kaisha," as shown in its amended foreign registration documents. As such, the SEC Negative Certification pertaining to P&G Prestige Godo Kaisha should be considered as also pertaining to P&G Max Factor Godo Kaisha. At any rate, P&G ROHQ has on hand a previous SEC Negative Certification issued under the old name, P&G Max Factor Godo Kaisha; which will be submitted to the Court when its request to re-open the case for new trial is granted.

Third, re-opening of the case is warranted. In the interest of substantial justice, the case should be re-opened to allow P&G ROHQ to offer supplemental evidence with regard its affiliates' consularized or apostilled documents, SEC Negative Certification, and Sworn Statements from Authorized Representatives will be submitted to the Court. These are "newly discovered evidence," which, if admitted, will materially alter the Court's decision. Contrary to the Court in Division's ruling, it exercised reasonable diligence in securing the subject documents, as soon as these documents were needed.

Fourth, the discrepancies noted by the ICPA referring to "cross charges to/from affiliates" and "reconciliation of inter-affiliate billings" cannot be regarded as unreported zero-rated sales. These were instances where the amount received by P&G ROHQ as per Certificates of Inward Remittances exceeded that indicated in the corresponding VAT ORs. The excess receipts represent reimbursable costs incurred by P&G ROHQ in the course of rendering services to its foreign affiliates. These are billed to the foreign affiliates and recorded as reimbursements.

Fifth, the mere fact that the Service Agreements with certain following foreign affiliates (*e.g.*, Gilette Pakistan Ltd., Procter & Gamble Gulf FZE, Procter & Gamble International Operations S.A., Procter & Gamble Korea, Procter & Gamble Pakistan (Private) Limited, Procter & Gamble Taiwan Sales Company Limited, and The Procter & Gamble Company) failed to indicate the place where the services are to be specifically performed does not automatically mean that the same were not performed within the Philippines.

Under Section (2)3, Book III, Executive Order No. 226, as amended by Republic Act (RA) No. 8756, describes the nature of an ROHQ as "foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries, or branches in the Philippines, in the Asia Pacific Region and in other foreign markets." When P&G ROHQ obtained its license as an ROHQ, it was allowed to derive income within the Philippines; logically, the services shall be performed in the Philippines following the rules on situs of taxation.

CIR's Arguments

Respondent counters as follows:

First, the Court in Division had no jurisdiction over P&G ROHQ's judicial claim, which was filed prematurely. When the Tax Verification Notice (TVN) was issued on May 16, 2018, the CIR had 90-days therefrom or until August 14, 2018 to act on P&G ROHQ's administrative claim. However, it filed its judicial claim on July 27, 2018, on the belief that its 30-day period to proceed to the CTA commenced on June 29, 2018, upon its receipt of the VAT Refund Notice (VRN) signed by Erlinda Simple, in her capacity as Assistant Commissioner of Internal Revenue-Assessment Service, not in behalf of the CIR.

Second, P&G ROHQ's petition before the Court *En Banc* seeks to present evidence that were already available when it filed its judicial claim on July 26, 2018 before the Court in Division. As documents sought to be submitted are not newly discovered evidence, re-opening the case would be improper.

Third, P&G ROHQ is not entitled to a refund for its failure to prove its entitlement thereof. Tax refunds are in the nature of tax exemptions; these are construed *strictissimi juris* against the claimant.

Fourth, the amount of VAT liability computed in the course of validating P&G ROHQ's claim should be deducted from the refundable amount, if any.

ISSUES

Based on the parties' submissions, We restate the issues as follows:

ON

I. Did the Court in Division err in taking cognizance of P&G ROHQ's judicial claim?

II. Did the Court in Division err in disallowing P&G ROHQ's request to re-open the case?

III. Did the Court in Division err in disallowing zero-rated services in the aggregate amount of ₱1,167,419,321.50?

IV. Did the Court in Division err in not offsetting the VAT liability computed by the BIR in its investigation from the refundable amount due to P&G ROHQ?

OUR RULING

P&G ROHQ's Petition for Review is partly meritorious. For reasons set out below, We hold as follows: *First,* the Court in Division correctly exercised jurisdiction over P&G ROHQ's judicial claim. *Second,* the re-opening of the case for new trial and admission of supplemental evidence was unwarranted. *Third,* the aggregate amount of zero-rated sales considered in working out the refundable amount must be modified. And *fourth,* the Court in Division was correct in refusing to offset the VAT liability computed by the BIR in its investigation from the refundable amount.

The Court in Division did not err when it took cognizance of the judicial claim.

We agree with the Court in Division's finding in favor of the timeliness of P&G ROHQ's judicial claim.

P&G ROHQ received the CIR's Denial Letter on June 29, 2018 and filed an appeal before the Court of Tax Appeals on July 27, 2018; clearly within the 30-day reglementary period.

That said Denial Letter was signed by Erlinda A. Simple, Assistant Commissioner of Internal Revenue-Assessment Service (ACIR-AS), does not diminish the binding character of the denial. As already discussed in the Assailed Decision, it shall be regarded as the ruling appealable to the Court of Tax Appeals as provided in Section 112(C) of the Tax Code, inasmuch as the ACIR-AS is authorized to approve or disapprove a claim for VAT refund, pursuant to Revenue Memorandum Circular (RMC) No. 17-18.[12]

The Court in Division did not commit grave abuse of discretion when it denied P&G ROHQ's request to re-open the case. A re-opening of the case for new trial is not warranted.

In its Motion for Reconsideration[13] of the Court in Division's original decision, P&G ROHQ sought permission to present the following "newly discovered evidence":

1. **Consularized or apostilled foreign registration documents, SEC Negative Certifications,** and **sworn statements of authorized client representatives**, to prove that the foreign affiliate-clients listed below are non-resident foreign corporations not engaged in trade or business in the Philippines within the context of Section 108(B)(2) of the Tax Code;

   a. The Procter & Gamble Company,
   b. Procter & Gamble Egypt Ltd.,
   c. Procter & Gamble Egypt Distribution Ltd.,
   d. Procter & Gamble Egypt Supplies Ltd., and
   e. Procter & Gamble Export Operations SARL, Taiwan Branch.

2. The following, to establish that the discrepancies noted in the ICPA Report as "cross-charges to/from affiliates" and "reconciliation of inter-affiliate billings," and disallowed by the Court in Division as "unreported zero-rated sales," refer to reimbursements from expenses incurred by in rendering services P&G ROHQ:

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[12] SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN), February 27, 2018.

[13] Docket - Vol. 2, pp. 542-570.

a. **Supplemental Sworn Statement of Alvin D. Trambulo** (appended to the Motion for Reconsideration),[14] and
b. Certain **additional supporting evidence** to provide more information on the nature of such excess receipts (not appended to the Motion for Reconsideration "due to the volume of supporting evidence sought to be presented").[15]

The **general rule** is that a party shall present all evidence at the first instance, *during trial,* in support of its causes of action and/or defenses. A party is not at liberty to submit additional documents at any time, as they deem fit for their cause. Piecemeal presentation shall not be allowed "to avoid the consequent delay in the administration of justice."[16]

By exception, the presentation of supplemental evidence *after trial and judgment* may be allowed, pursuant to Section 1(b) of Rule 37 of the Rules of Court, when: (1) it is newly discovered, (2) it could not have been produced at the trial even with the exercise of reasonable diligence, and (3) if presented, would probably alter the outcome as adjudged by the lower court. In other words, the mere invocation of substantial justice will not suffice; the party must demonstrate the concurrence of the above-enumerated requisites. Whether the party's request is meritorious shall be subject to the sole discretion of the trial court. On appeal, the trial court's ruling such a discretionary matter cannot be simply set aside and overturned without showing of any *grave abuse of discretion* on the part of the lower court.[17]

In this case, there was nothing whimsical or capricious in the Court in Division's rejection of P&G ROHQ's request to present supplemental evidence.

Contrary to what P&G ROHQ would have the Court to believe, it could have already produced the subject **consularized or apostilled foreign registration documents, SEC Negative Certifications, and sworn statements of authorized client representatives** during trial. At the very least, it could have promptly addressed these documentary

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[14] Docket - Vol. 2, pp. 571-581.

[15] Par. 45, Motion for Reconsideration, Docket - Vol. 2, pp. 561-562.
[16] Republic v. Sandiganbayan, G.R. No. 152375, December 13, 2011, 678 PHIL 358-481.
[17] Republic v. Sandiganbayan, G.R. No. 152375, December 13, 2011, 678 PHIL 358-481.

deficiencies after the ICPA had noted them in the Report. That P&G ROHQ raised this matter only in its Motion for Reconsideration, after trial and judgment, indicates the **absence of the diligence required** of it, within the context of Section 1(b) of the Rules of Court.

On the other hand, the **Supplemental Sworn Statement of Alvin D. Trambulo** and **voluminous <u>unidentified</u> supporting documents** were directed at addressing the Court in Division's finding of "unreported zero-rated sales" in its original decision. Verily, presentation on its original case is allowable, subject to the Court's discretion.[18] The party bears the burden of showing *good reasons* and convincing the Court to permit the presentation of additional evidence *in the furtherance of justice*.[19] Here, without even a detailed summary of what these documents are and where these are located, it is clear that P&G ROHQ's bare statement of an intention to present documents—voluminous as they may be—is insufficient to justify further presentation.

Finally, P&G ROHQ's plea for a liberal application of procedural rules is unmeritorious on account of its imprudence and failure to provide sufficient justification for the allowance of additional evidence. When the rules provide procedural remedies, the party seeking recourse must comply with the requirements thereof. It cannot rely merely on the singular argument that the Court of Tax Appeals is not bound by technical evidentiary rules. Without good reason to do so, the Court cannot relax procedural requirements. Thus, in *Commissioner of Internal Revenue v. A. Soriano Corp.*,[20] the Supreme Court declared:

> Perhaps realizing that under the Rules the said report cannot be correctly admitted as newly discovered evidence. the petitioner invokes a liberal application of the Rules. He submits that Section 8 of the Rules of the Court of Tax Appeals declaring that the latter shall not be governed strictly by technical rules of evidence mandates a relaxation of the requirements of new trial on the basis of newly discovered evidence. This is a dangerous proposition and one which

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[18] In *Republic v. Sandiganbayan* (G.R. No. 152375, December 13, 2011, 678 PHIL 358-481), also cited in the Assailed Decision, the Supreme Court held, "Largely, the exercise of the court's discretion 80 under the exception of Section 5 (f), Rule 30 of the Rules of Court depends on the attendant facts — i.e., on whether the evidence would qualify as a 'good reason' and be in furtherance of 'the interest of justice.'"

[19] Section 5(f) of Rule 30 of the Rules of Court provides, "The parties may then respectively adduce rebutting evidence only, unless the court, for **good reasons** and **in the furtherance of justice**, permits them to adduce evidence upon their original case[.]

[20] G.R. No. 113703 (Resolution), January 31, 1997, 334 PHIL 965-972.

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> we refuse to countenance. We cannot agree more with the Court of Appeals when it stated thus, "**To accept the contrary view of the petitioner would give rise to a dangerous precedent in that there would be no end to a hearing before respondent court because, every time a party is aggrieved by its decision, he can have it set aside by asking to be allowed to present additional evidence without having to comply with the requirements of a motion for new trial based on newly discovered evidence.** Rule 13, Section 5 of the Rules of the Court of Tax Appeals should not be ignored at will and at random to the prejudice of the orderly presentation of issues and their resolution. To do so would affect, to a considerable extent, the principle of stability of judicial decisions." **We are left with no recourse but to conclude that this is a simple case of negligence on the part of the petitioner. For this act of negligence, the petitioner cannot be allowed to seek refuge in a liberal application of the Rules. For it should not be forgotten that the first and fundamental concern of the rules of procedure is to secure a just determination of every action. In the case at bench, a liberal application of the rules of procedure to suit the petitioner's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.** (Emphasis supplied)

Based on the foregoing, Our review of the Court in Division's ruling shall not go beyond the existing evidence on record.

The aggregate amount of zero-rated services appreciated in favor of P&G ROHQ must be modified in accordance with the evidence on record.

Pursuant to Section 108(B)(2) of the Tax Code, sales of "other services" shall qualify as zero-rated when the following requisites are met: *First*, the seller is VAT-registered.[21] *Second*, the services are rendered to entities with NRFC status.[22] *Third*, the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."[23] *Fourth*, the services are performed in the Philippines.[24]

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[21] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[22] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[23] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, G.R. No. 234445, July 15, 2020.

[24] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012, 690 PHIL 679-700.

For reference, the Court in Division disallowed zero-rated services in the aggregate amount of ₱1,167,419,321, computed as follows:

1) Zero-rated sales with no SEC Negative Certification of Company		
a. P&G Distribution Morocco S.A.S.	₱2,175,218.43	
b. Procter & Gamble Korea, Inc.	1,298,837.12	₱3,474,055.55
2) Zero-rated sales supported only by SEC Negative Certification of Company		
a. Procter & Gamble Europe SA Singapore Branch	₱948,102,528.19	
b. Procter & Gamble International Operations SA Singapore Branch	102,367,195.31	
c. Procter & Gamble Levant S.A.L.	39,621.46	
d. Procter & Gamble Distributing (New Zealand) Ltd.	3,220,521.26	
e. Procter & Gamble Egypt Distribution Ltd.	145,537.70	
f. Procter & Gamble Egypt Ltd.	16,662,775.08	
g. Procter & Gamble Egypt Supplies Ltd.	1,379,589.46	
h. Gillette Pakistan Ltd.	705,888.39	1,072,623,656.85
3) Zero-Rated Sales with Discrepancy in the Names stated in the ORs		24,310,057.56
4) Unreported Zero-Rated Sales		58,633,020.95
5) Not supported with Service Agreements		
a. Procter & Gamble Gulf FZE	₱197,622.53	
b. Procter & Gamble International Operations S.A.[25]	79,109.97	
c. Procter & Gamble Pakistan (Private) Limited	5,025,611.65	
d. Procter & Gamble Taiwan Sales Company Limited	2,818,588.00	
e. The Procter & Gamble Company	257,598.44	8,378,530.59
Total Disallowances		**₱1,167,419,321.50**

P&G ROHQ insists that it submitted sufficient proof to establish the its foreign affiliates' NRFC status (*i.e., second requisite* under Section 108(B)(2), relative to arguments on SEC Negative Certification and foreign registration documents) and the place of performance of its services (*i.e., fourth requisite* under Section 108(B)(2), relative to arguments on Service Agreements).

A. Second requisite: NRFC status of foreign affiliate-clients.

For purposes of VAT zero-rating, the subject services must have been rendered to a non-resident foreign corporation not engaged in trade or business in the Philippines. In *Commissioner of Internal Revenue*

[25] With Registered Office At P.O. Box 33060, Jebel Ali, Dubai, UAE.

v. Deutsche Knowledge Services Pte. Ltd.,[26] the Supreme Court held that there must be proof of the **two components** of a client's NRFC status: that it is a **foreign corporation** *and* that it is **not doing business in the Philippines.**

P&G ROHQ insists that the following foreign affiliates are one and the same and, thus, the Court in Division should not have appreciated the documentation supporting NRFC status for these entities separately:

Entity Name per SEC Negative Certification	Entity Name per other documents
P&G Distribution Morocco S.A.S.	P&G Distribution Morocco
Procter & Gamble Europe SA	Procter & Gamble Europe SA Singapore Branch
Procter & Gamble International Operations SA	Procter & Gamble International Operations SA Singapore Branch
Procter & Gamble Korea, Inc.	Procter & Gamble Korea

1. P&G Distribution Morocco S.A.S. (₱2,175,218.43)

The Court in Division found that P&G Distribution Morocco S.A.S. was not supported with an SEC Negative Certification; thus, lacking proof that it is *not* doing business in the Philippines (*i.e.*, second component of NRFC status).

Contrary to P&G ROHQ's theory, the SEC Negative Certification in the name of "P&G Distribution Morocco" does not include a certification of non-registration of "P&G Distribution Morocco S.A.S." Particularly, We are not convinced by its unilateral declaration that the Business Registration Document for P&G Distribution Morocco S.A.S., **when directly translated**, states that "the name of the Company is 'P&G Distribution Morocco.'"

The Business Registration Document of P&G Distribution Morocco S.A.S. (Exhibit "P-6.38") is in a foreign language. It is not accompanied by any official English translation.[27] Granting that it is an

[26] G.R. No. 234445, July 15, 2020.

[27] Section 33, Rule 132 of the Rules of Court provides, "Documentary evidence in an unofficial language. — Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial."

official record of the foreign jurisdiction where P&G Distribution Morocco S.A.S. was established, the document was not offered together with a certification of a proper officer having custody of such official record.[28] Without an official translation and certification, We cannot ascertain the document's tenor and import; though admitted, it does not have probative value.

2. Procter & Gamble Korea, Inc. (₱1,298,837.12)

We agree with the Court in Division relative to its finding that Procter & Gamble Korea, Inc. was not supported by an SEC Negative Certification, consularized company registration, and sworn statement from an authorized representative; thus, lacking proof of *both components* of NRFC status.

P&G ROHQ points out that it has adduced those exact documents relative to "Procter & Gamble Korea," only that the Court in Division appreciated it as an entity separate from "Procter & Gamble Korea, Inc." thus:

Entity	**SEC Negative Certification**	**Consularized Company Registration**	**Sworn Statement from Authorized Representatives**	**Service Agreement**
Procter & Gamble Korea	"P-5.22"	**"P-6.18"**	"P-7.17"	None
Procter & Gamble Korea, Inc.	None	None	None	"P-4.30"

We are not convinced that these two entities are one and the same. There are <u>discrepancies</u> **in the company names and addresses** indicated in the **Certificate of Business Registration,**[29] **Affidavit,**[30] **Certificate of Authentication**, and **Official Receipts**, to wit:

[28] Section 24, Rule 132 of the Rules of Court provides, "Proof of official record. – The record of public documents referred to in paragraph (a) of section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office."

[29] Exhibit "P-6.18-4."

[30] Exhibit "P-6.18-3."

Document	Exhibits	Company Name	Address
Certificate of Business Registration	"P-6.18-4"	Procter & Gamble Korea	73, Cheonheung 8-gil, Seonggeo-eup, Seobuk-gu, Cheonan-si, Chungcheongnam-do
Certificate of Authentication	"P-6.18-1"	Procter & Gamble Korea, Inc.	
Affidavit	"P-6.18-3"		
Official Receipts	"P-15-15" "P-15-51" "P-15-137" "P-15-191" "P-15-228"		321-5, Cheonheung-ri Sunggureup Chonan

Apart from its bare assertion, P&G ROHQ did not offer proof that that the two entity names are used interchangeably. Thus, We cannot confirm identity between "Procter & Gamble Korea" and "Procter & Gamble Korea, Inc."

3. **Procter & Gamble Europe SA Singapore Branch (₱948,102,528.19)**
4. **Procter & Gamble International Operations SA Singapore Branch (₱102,367,195.31)**

The Court in Division found that Procter & Gamble Europe SA Singapore Branch and Procter & Gamble International Operations SA Singapore Branch were not supported by sworn statements from an authorized representative; thus, lacking proof of the *first component* of NRFC status (*i.e.*, entity's foreign character).

P&G ROHQ points out that it has adduced those exact documents relative to "Procter & Gamble Europe SA" and "Procter & Gamble International Operations SA," only that the Court in Division appreciated these as separate entities from "Procter & Gamble Europe SA Singapore Branch" and "Procter & Gamble International Operations SA Singapore Branch," respectively. Thus:

Entity	SEC Negative Certification	Consularized Company Registration	Sworn Statement from Authorized Representatives
Procter & Gamble Europe SA	None	"P-6.21"	"P-7.21"
Procter & Gamble Europe SA Singapore Branch	"P-5.26"	None	None
Procter & Gamble International Operations SA	None	"P-6.27"	"P-7.27"
Procter & Gamble International Operations SA Singapore Branch	"P-5.32"	None	None

There is merit in P&G ROHQ's contention. The evidence on record demonstrates that Procter & Gamble Europe SA and Procter & Gamble International Operations SA are **head offices**; P&G ROHQ's clients (recipient of their services) are the respective **branches in Singapore** (*e.g.*, Procter & Gamble Europe SA Singapore Branch and Procter & Gamble International Operations SA Singapore Branch); said branches are **foreign corporations.**

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*, the Supreme Court discussed that for purposes of zero-rating under Section 108 (B)(2) of the Tax Code, the claimant must establish, first, that its client is a **foreign corporation**; that is, "their client **was established under the laws of a country <u>not</u> the Philippines** or, simply, is not a domestic corporation." This definition of a foreign corporation is consistent with that set out in the Corporation Code[31] *and* Section 22 paragraph (D), in relation to paragraph (C), of the Tax Code.[32]

In a head office-branch set up, the **nationality** of the branch follows that of the head office. As a *general rule*, a branch is not a legally independent unit; the head office and branch are considered as one under the eyes of the law.[33] Thus, the head office and branch are nationals of the place where the head office was incorporated. That a branch does business outside the place of incorporation does not alter its nationality; it is not regarded to have been created in the other place/state. It remains a national of the same country where the head office was established, only that it conducts business overseas in behalf of its principal. To be clear, while the head office's **nationality** extends to the branch, their **places of operations** are necessarily different; the principal does business in the home country and the branch does so outside said jurisdiction.

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[31] Section 140 of the Revised Corporation Code of the Philippines (Republic Act No. 11232, February 20, 2019) provides, "For purposes of this Code, **a foreign corporation is one formed, organized or existing under laws other than those of the Philippines'** and whose laws allow Filipino citizens and corporations to do business in its own country or State. It shall have the right to transact business in the Philippines after obtaining a license for that purpose in accordance with this Code and a certificate of authority from the appropriate government agency" (formerly Section 123 of the Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980).

[32] Section 22(D) of the Tax Code provides, "The term 'foreign,' when applied to corporation, means a corporation which is not domestic." In turn, Section 22(C) provides, "The term 'domestic,' when applied to a corporation, means created or organized in the Philippines under its laws."

[33] *Philippine Deposit Insurance Corp. v. Citibank*, G.R. No. 170290, April 11, 2012, 685 Phil 429-445.

In the present case, that the head offices were established and based in Switzerland is supported by the respective Articles of Incorporation.[34] It follows, then, that its branches are, likewise, Swiss nationals. The branches are registered as foreign corporations doing business in Singapore, as evidenced by the **Certificates Confirming Registration of Foreign Company issued by Singapore Accounting and Corporate Regulatory Authority (ARCA)**, *viz.*:

Exhibit "P-6.21-20"	Exhibit "P-6.27-37"
Foreign Company Name : PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH UEN : T10FCO157B **This is to confirm that a foreign company, PROCTER & GAMBLE EUROPE SA SINGAPORE BRANCH, formed or incorporated in SWITZERLAND was registered in Singapore** under the Companies Act, on and from 30/12/2010. [signed] QUEENIE CHANG ZHAO QUN ASST REGISTRAR OF COMPANIES AND BUSINESS NAMES ACCOUNTING AND CORPORATE REGULATORY AUTHORITY SINGAPORE	Foreign Company Name : PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH UEN : T0FC0158J **This is to confirm that a foreign company, PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGAPORE BRANCH, formed or incorporated in SWITZERLAND was registered in Singapore** under the Companies Act, on and from 30/12/2010. [signed] QUEENIE CHANG ZHAO QUN ASST REGISTRAR OF COMPANIES AND BUSINESS NAMES ACCOUNTING AND CORPORATE REGULATORY AUTHORITY SINGAPORE

(Boldfacing supplied).

Each of these registration documents is accompanied by a **Certificate of Authentication** issued by the Philippine Embassy in Singapore[35] *and* **Certification** issued by a Singapore Notary Public.[36]

Significantly, P&G ROHQ formally offered Exhibits **"P-6.21"** and **"P-6.27"** to establish the NRFC status of Procter & Gamble Europe SA Singapore Branch and Procter & Gamble International Operations SA Singapore Branch.[37] Based on the Court in Division's findings, the registration documents were referred to as single documentary

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[34] Exhibits "P-6.21-6" to "P-6.21-16" for Procter & Gamble Europe SA; Exhibits "P-6.27-17" to "P-6.27-33" for Procter & Gamble International Operations SA.

[35] Exhibit "P-6.21-17" for Procter & Gamble Europe SA; Exhibit "P-6.27-34" for Procter & Gamble International Operations SA.

[36] Exhibits "P-6.21-18" to "P-6.21-18" for Procter & Gamble Europe SA; Exhibits "P-6.27-35" to "P-6.27-36" for Procter & Gamble International Operations SA.

[37] Pages 16 and 17 of petitioner's Formal Offer of Evidence, Docket – Vol.1, pp. 354-355.

exhibits (*e.g.*, "P-6.21" and "P-6.27"). However, these exhibits did not pertain to only one document (*i.e.*, Articles of Incorporation of the Head Office); it consisted of various documents relative to the **Singapore registration of the Branches**, which were itemized through separate sub-markings (*e.g.*, **"P-6.21-1" to "P-6.21-20," "P-6.27-1 to P-6.27-37"**).

P&G ROHQ rendered services to the branches, as evidenced by the Summary Lists of Sales,[38] Detailed schedules of zero-rated sales of services,[39] and the testimony of P&G ROHQ's comptroller, Trambulo, where he identified these **Singapore branches** as one of the non-resident foreign clients to whom it rendered the subject zero-rated services.[40] Being Swiss companies operating in Singapore, the branches are **foreign clients** in P&G ROHQ's point of view.

In sum, Procter & Gamble Europe SA Singapore Branch and Procter & Gamble International Operations SA Singapore Branch's ***NRFC status*** are established by the head offices' **Articles of Incorporation**, as well as their respective **ARCA** (*i.e.*, foreign character), and **SEC Negative Certification** and **Consularized Company Registration** (*i.e.* not doing business in the Philippines).

5. Procter & Gamble Max Factor Godo Kaisha (₱24,310,057.56).

The Court in Division found that P&G ROHQ rendered services to "Procter & Gamble Max Factor Godo Kaisha," as evidenced by the official receipts[41] issued by P&G ROHQ for its collections, but did not accord zero-rating to these sales due to the failure to present an SEC Negative Certification for this entity.

P&G ROHQ counters that the former registered name of "Procter & Gamble *Max Factor* Godo Kaisha" was "Procter & Gamble *Prestige* Godo Kaisha." Thus, the SEC Negative Certification in the name of "Procter & Gamble *Prestige* Godo Kaisha" should be taken to include "Procter & Gamble *Max Factor* Godo Kaisha;" the same entity, only with a new name.

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[38] Exhibit "P-14."
[39] Exhibit "P-13."
[40] Q&A No. 16, Sworn Statement of Mr. Alvin D. Trambulo, Exhibit "P-23," Docket - Vol. 1, pp. 204-205.
[41] Exhibit "P-15."

This argument is unavailing. An SEC Negative Certification is **issued on the basis of the entity name** for which such certification was requested; in which case the SEC is able to attest that the named entity is not registered in the Philippines.

Consequently, We cannot consider the SEC Negative Certification issued in the old name of the entity; the SEC's previous certification cannot be deemed to cover the entity having a new registered name. As a result, there is insufficient proof of the *second component* of Procter & Gamble *Max Factor* Godo Kaisha's NRFC status (*i.e.*, entity is *not* doing business in the Philippines).

6. **Procter & Gamble Egypt Distribution Ltd. (₱145,537.70)**
7. **Procter & Gamble Egypt Ltd. (₱16,662,775.08)**
8. **Procter & Gamble Egypt Supplies Ltd. (₱1,379,589.46)**

These entities' NRFC status have not been established with sufficient evidence. In particular, the consularized or apostilled foreign registration documents, SEC Negative Certifications, and/or sworn statements of authorized client representatives relative to these entities were submitted belatedly. As already discussed above, the Court in Division correctly denied presentation and admission of these documents.

B. Fourth requisite: Place of performance of services.

The Court in Division was correct in disallowing zero-rated sales in the aggregate amount of ₱8,378,530.59; P&G ROHQ did not submit sufficient proof that the services relative to those sales were rendered in the Philippines.

That the parties have stipulated that P&G ROHQ is registered as an ROHQ and is holding office in the Philippines[42] appears to suggest that P&G ROHQ performs the services in the Philippines. However, a claimant's entitlement to a refund cannot rest on a mere presumption. The settled rule is that tax refunds are construed strictly against the claimant; thus, it bears the burden of establishing strict compliance

[42] Par. 1, *Joint Stipulation of Facts*,

with the conditions for the grant of the tax refund or credit.[43] As explained by the Court in Division, the lack of *specific evidence* showing that the services to such NRFC-clients were rendered in the Philippines results in a failure to meet the fourth requisite.

C. In the matter of unreported zero-rated sales (₱58,633,020.95)

P&G ROHQ denies that the excess receipts are unreported zero-rated sales; these were reimbursable costs incurred by P&G ROHQ in the course of rendering services to its foreign affiliates. These are billed to the foreign affiliates and recorded as reimbursements; thus, not subject to VAT.

However, P&G ROHQ failed to adduce evidence to support its claim. Whether charges of this kind are mere reimbursement of costs which P&G ROHQ shouldered and paid on behalf of its clients must be established by documentary evidence showing that the expenses/costs charged are indeed without any mark-up or profit element.[44]

Summary

Based on the foregoing discussion, We uphold the disallowance of P&G ROHQ's zero-rated sales to the extent of ₱116,949,598.00, computed as follows:

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[43] *Commissioner of Internal Revenue v. Mirant Pagbilao Corp.*, G.R. No. 180434, January 20, 2016], 778 PHIL 709-721.

[44] *Meridien Business Leader, Inc. v. Commissioner of Internal Revenue*, C.T.A. Case No. 9316, February 23, 2021.

1) Zero-rated sales with no SEC Negative Certification of client		
a. P&G Distribution Morocco S.A.S.	₱2,175,218.43	
b. Procter & Gamble Korea, Inc.	1,298,837.12	₱ 3,474,055.55
2) Zero-rated sales supported only by client's SEC Negative Certification		
a. Procter & Gamble Europe SA Singapore Branch	nil	
b. Procter & Gamble International Operations SA Singapore Branch	nil	
c. Procter & Gamble Levant S.A.L.	₱39,621.46	
d. Procter & Gamble Distributing (New Zealand) Ltd.	3,220,521.26	
e. Procter & Gamble Egypt Distribution Ltd.	145,537.70	
f. Procter & Gamble Egypt Ltd.	16,662,775.08	
g. Procter & Gamble Egypt Supplies Ltd.	1,379,589.46	
h. Gillette Pakistan Ltd.	705,888.39	22,153,933.35
3) Zero-Rated Sales with Discrepancy in the Names stated in the ORs		24,310,057.56
4) Unreported Zero-Rated Sales		58,633,020.95
5) Not supported with Service Agreements		
a. Procter & Gamble Gulf FZE	₱197,622.53	
b. Procter & Gamble International Operations S.A.[45]	79,109.97	
c. Procter & Gamble Pakistan (Private) Limited	5,025,611.65	
d. Procter & Gamble Taiwan Sales Company Limited	2,818,588.00	
e. The Procter & Gamble Company	257,598.44	8,378,530.59
Total Disallowances		**₱116,949,598.00**

Resultantly, valid zero-rated sales amount to ₱1,386,106,568.96, *viz.*:

Total Zero-rated sales	₱1,503,056,166.96
Less Disallowed zero-rated sales	116,949,598.00
Valid zero-rated sales	**₱1,386,106,568.96**

The Court in Division was correct in refusing to offset the VAT liability computed by the BIR in its investigation from the refundable amount.

In *refund* cases, the Court has no authority to determine possible deficiency tax and assess the claimant on the basis thereof. Verily, the courts have the power to **review** tax assessments issued by the CIR. However, it has no **assessment** powers and cannot, by itself, assess a

[45] With Registered Office At P.O. Box 33060, Jebel Ali, Dubai, UAE.

taxpayer for deficiency taxes.[46] The law[47] vests sole authority to the CIR to make such assessments. And, as a matter of due process, an administrative remedial process[48] is mandated as a condition precedent to the judicial determination of liability for deficiency taxes. Certainly, We cannot allow the tax authorities "to use a claim for refund under Section 112 of the Tax Code as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed."[49]

Recomputation of the refundable amount.

We modify the refundable amount due to P&G ROHQ to ₱30,947,326.07, in view of the adjustment to the amount of valid zero-rated sales.

Zero-rated sales per returns	₱1,444,423,146.01
Add Unreported zero-rated sales	58,633,020.95
Total Zero-rated sales	₱1,503,056,166.96
Valid zero-rated sales (see computation above)	₱1,386,106,568.96
Percentage	92.22%
Input VAT attributable to zero-rated sales per returns	₱49,449,182.44
Less Output VAT still due	15,890,745.92
Input VAT eligible for refund	₱33,558,436.52
Percentage of valid zero-rated sales	92.22%
Refundable input attributable to valid zero-rated sales	**₱30,947,326.07**

WHEREFORE, in light of the foregoing considerations, the Petition for Review filed by Procter & Gamble International Operations SA-ROHQ docketed as CTA EB No. 2768 is **PARTIALLY GRANTED**. The Petition for Review filed by the Commissioner of Internal Revenue docketed as CTA EB No. 2775 is **DENIED** for lack of merit.

Accordingly, the Assailed Amended Decision promulgated on October 4, 2022 and Resolution promulgated on June 5, 2023 by the Court

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46 *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.

47 Section 6, Tax Code.

48 Section 228, Tax Code.

49 *Commissioner of Internal Revenue v. Toledo Power Company*, G.R. Nos. 196415 & 196451, December 2, 2015.

of Tax Appeals Special Second Division in CTA Case No. 9897 are **MODIFIED** with respect to the amount of specific taxes to be refunded to Procter & Gamble International Operations SA-ROHQ. The Commissioner of Internal Revenue is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Procter & Gamble International Operations SA-ROHQ in the amount of **₱30,947,326.07**, representing unutilized input VAT attributable to its zero-rated sales for the third and fourth quarters of the fiscal year ended June 30, 2016.

SO ORDERED.

MARIAN IVY F. REYES-FAJARDO
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

With Concurring and Dissenting Opinion.
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

With due respect, I join J. Villena's CDO.
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

With due respect, I join J. Villena's CDO.
HENRY S. ANGELES
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA-ROHQ, Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB No. 2768** (CTA Case No. 9897)

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COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA-ROHQ,** Respondent.	**CTA EB No. 2775** (CTA Case No. 9897) Present: **DEL ROSARIO,** *P.J.*, **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** **CUI-DAVID,** **FERRER-FLORES,** *and* **ANGELES,** *JJ.* Promulgated: OCT 28 2024 4:30pm

x - x

CONCURRING AND DISSENTING OPINION

BACORRO-VILLENA, J.:

I concur in the denial of the Commissioner of Internal Revenue's (**CIR**'s) Petition for Review in CTA EB No. 2775 for lack of merit.

The Special Second Division did not err in taking cognizance of Procter & Gamble International Operations SA-ROHQ's (**P&GIOSA ROHQ**'s) judicial claim as it was filed within the thirty (30)-day reglementary period from receipt of the CIR's Denial Letter, signed by Assistant CIR-Assessment Services Erlinda A. Simple (**ACIR Simple**). The said Denial Letter is the decision appealable before the Court of Tax Appeals (**CTA**) as ACIR Simple is authorized to approve or disapprove a claim for value-added tax (**VAT**) refund, pursuant to Revenue Memorandum Circular (**RMC**) No. 17-2018.[1]

However, with due respect, in CTA EB No. 2768, I register my dissent to the *ponencia*'s conclusion that the **Certificate Confirming Registration of Foreign Company (CCRFC) attached to Procter & Gamble Europe SA's (P&GESA's) Consularized Company Registration** (see page 20 of Exhibit "**P-6.21**"), as well as the **Certificate Confirming Registration of Foreign Company attached to Procter & Gamble International Operations SA's (P&GIOSA's) Consularized Company Registration** (see page 37 of Exhibit "**P-6.27**"), should suffice to establish that Procter & Gamble Europe SA Singapore Branch (**P&GESA-Singapore Branch**) and Procter & Gamble International Operations SA Singapore Branch (**P&GIOSA-Singapore Branch**), respectively, are not doing business in the Philippines.

I also respectfully disagree with the *ponencia*'s ruling that P&GESA-Singapore Branch and P&GIOSA-Singapore Branch must be deemed as not doing business in the Philippines because their corresponding 'head offices', *i.e.*, P&GESA and P&GIOSA, are established and based in Switzerland (as evidenced by their respective Articles of Incorporation [**AOI**]); thus, it automatically follows that the said branch offices are also considered Swiss nationals.

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[1] Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

Regarding the *ponencia*'s consideration of the CCRFC issued by the Singapore's Accounting and Corporate Regulatory Authority (**ACRA**), I respectfully submit that it cannot be regarded as a functional equivalent of the AOI, or any equivalent document, which serves as proof that a foreign company is registered and doing business in its home country or jurisdiction.

In my view, while it is an official document from a foreign registry, it does not serve the same legal purpose as the AOI or similar documents. The AOI provides clear evidence of a company's legal status and operations within its country of origin. The CCRFC merely confirms that a foreign company is registered but **does not include the provisions governing the entity's internal structure, powers, responsibilities, or the nature of its business**. These crucial details are found in the AOI or an equivalent document, which is necessary to establish that a foreign entity is conducting business in its jurisdiction of origin.

It should be noted that Republic Act (**RA**) No. 11232 or the Revised Corporation Code of the Philippines (**RCCP**) clearly mandates under Section 140[2] that a foreign corporation seeking to do business in the Philippines must submit a certified copy of its AOI, or an equivalent document, authenticated in accordance with the rules and regulations of the Securities and Exchange Commission (**SEC**). The AOI serves as a formal and essential document that outlines the foundational aspects of the entity, such as its nature, scope of operations, and powers, as well as the extent of its authority under its home country's legal framework.

In *Commissioner of Internal Revenue* v. *Deutsche Knowledge Services, Pte. Ltd.*[3] (**Deutsche Knowledge Services**), the Supreme Court emphasized that **for sales to a nonresident foreign corporation (NRFC) to qualify for zero-rating**, the following must be proved: (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 their client 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. Therefore, the taxpayer-claimant must present, at the very least, both the SEC Certificates of Non-Registration — to prove that the affiliate is foreign; and the **Articles or Certificates of Foreign Incorporation or any similar**

[2] **SEC. 140.** *Definition and Rights of Foreign Corporations.* — For purposes of [the Revised Corporation Code of the Philippines (RCCP)], a foreign corporation is one formed, organized or existing under laws other than those of the Philippines' and whose laws allow Filipino citizens and corporations to do business in its own country or State. It shall have the right to transact business in the Philippines after obtaining a license for that purpose in accordance with this Code and a certificate of authority from the appropriate government agency.

[3] G.R. No. 234445, 15 July 2020.

document — to prove the fact of not engaging in trade or business in the Philippines at the time the sales are rendered.

In *Commissioner of Internal Revenue v. Macquarie Offshore Services Pty., Ltd.* (**Macquarie**)[4], citing *Accenture, Inc. v. Commissioner of Internal Revenue*[5] (**Accenture**), the Supreme Court stressed that it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be an NRFC, *i.e.*, a foreign corporation not engaged in trade or business in the Philippines.

Furthermore, in *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*[6], the Supreme Court ruled that the SEC Negative Certification and agreements between the taxpayer-claimant and its foreign clients only serve to establish that the taxpayer-claimant had rendered services to foreign corporations and had received payments therefor through inward remittances, but these do not specifically prove that such foreign clients were **doing business outside the Philippines or had a continuity of commercial dealings outside the Philippines.** As acknowledged in *Accenture*, without a specific definition of what constitutes "doing business" or "engaging in" or "transacting" business, the evidence necessary and sufficient shall be judged in every case depending on its own peculiar surrounding circumstances.

As held in *Deutsche Knowledge Services* and *Macquarie*, what constitutes ***prima facie* evidence** that a taxpayer-claimant's foreign client is **not engaged in trade or business in the Philippines (or "doing business" outside the Philippines)** are the authenticated corporate documents issued to that foreign client by the relevant regulatory authority in the foreign jurisdiction. In this regard, **it is incumbent upon the taxpayer-claimant to prove not only the existence of such authenticated corporate documents but also the fact that these are issued by the relevant regulatory authority in the foreign jurisdiction.**

In this case, the respective CCRFCs issued by Singapore's ACRA state that P&GESA-Singapore Branch and P&GIOSA-Singapore Branch were formed or incorporated in Switzerland and registered in Singapore under the Companies Act. However, the respective Consularized Swiss Company Registration (to which the CCRFC was attached) pertains to P&GESA and

[4] G.R. No. 225169 (Notice), 06 October 2021.
[5] G.R. No. 190102, 11 July 2012.
[6] G.R. No. 201326, 08 February 2017.

P&GIOSA. Evidently, P&GIOSA ROHQ failed to submit the respective registration documents of the said Singapore branch offices themselves.

Even assuming that the 'branch office' adopts the nationality of its 'head office,' this does not change the fact that the CCRFC is not equivalent to the AOI or a similar document as contemplated in the aforementioned jurisprudence. The CCRFC does not serve as proof that the subject branch offices were conducting business in Singapore or had continuity of commercial dealings there.

A foreign entity's nationality is not synonymous with 'doing business' in the country of its nationality. These are two (2) distinct concepts with different legal implications.

The nationality of a foreign entity refers to the country under whose laws the entity is incorporated and established. It is determined by the entity's country of origin, where its AOI or similar documents are filed and recognized. The concept of 'doing business,' on the other hand, refers to the continuous and systematic commercial activity conducted by an entity within a jurisdiction. It involves activities such as selling goods or services, maintaining offices, having employees, and engaging in other operations that indicate a sustained presence in the market.

To illustrate, a company incorporated in Switzerland is considered a Swiss national, regardless of whether it conducts commercial operations in Switzerland or elsewhere. On the other hand, a company may be incorporated in Switzerland but primarily operate in Singapore. Even though it holds a Swiss nationality, it is regarded as doing business in Singapore if it engages in ongoing transactions and operations there.

Thus, while 'nationality' defines an entity's legal affiliation to a country, 'doing business' refers to its operational presence and commercial activities, which can occur in its country of nationality or abroad.

Additionally, P&GIOSA ROHQ did not provide evidence that the Singapore's ACRA is the relevant regulatory authority (similar to the Philippines' SEC) responsible for issuing the AOI or an equivalent document for a branch office registered in Singapore.

It is settled that foreign laws do not prove themselves in this jurisdiction, and Philippine courts are not authorized to take judicial notice of them.[7] **To prove a foreign law, the party invoking it must present a copy thereof and comply with Rule 132, Sections 24 and 25 of the Revised Rules on Evidence. Failure to prove the foreign law activates the doctrine of processual presumption, whereby the foreign law is deemed to be the same as Philippine law.**[8]

Applied to this case, this Court cannot take judicial notice of Singapore's laws regarding the registration of branch offices. Since P&GIOSA ROHQ did not present any evidence on the matter, Singapore law must be deemed the same as Philippine law pursuant to the doctrine of processual presumption.

Accordingly, as Philippine law requires the submission of an AOI or an equivalent document (with the CCRFC not being one, as previously noted) to satisfy the VAT zero-rating requirement that the NRFC-client is not doing business in the Philippines at the time the sales were made, P&GIOSA ROHQ's failure to submit the respective AOI or equivalent documents for P&GESA-Singapore Branch and P&GIOSA-Singapore Branch justifies the disallowance of sales to these entities for VAT zero-rating purposes.

All told, I vote to **DENY** both Petitions for Review and **AFFIRM** the Special Second Division's Amended Decision dated 04 October 2022 and Resolution dated 05 June 2023.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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[7] See *In the Matter of the Testate Estate of Aida A. Bambao, Linda A. Kueskar v. Cosme B. Sekito, Jr.*, G.R. No. 237449, 02 December 2020, citing *Marlyn Monton Nullada v. The Hon. Civil Registrar of Manila, et al.*, G.R. No. 224548, 23 January 2019, and *Wildvalley Shipping Co., Ltd. v. Court of Appeals and Philippine President Lines Inc.*, G.R. No. 119602, 06 October 2000.

[8] See *Bison Management Corporation v. AAA and Dale P. Pernito*, G.R. No. 256540, 14 February 2024, citing *Nedlloyd Lijnen B.V. Rotterdam and The East Asiatic Co., Ltd. v. Glow Laks Enterprises, Ltd.*, G.R. No. 156330, 19 November 2014, and *EDI-Staffbuilders International, Inc. v. National Labor Relations Commission and Eleazar S. Gran*, G.R. No. 145587, 26 October 2007.