REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
QUEZON CITY

**EN BANC**

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| COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Respondent. | CTA EB NO. 1297 (CTA Case No. 8165) |

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| DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner, - versus - COMMISSIONER OF INTERNAL REVENUE, Respondent. | CTA EB NO. 1302 (CTA Case No. 8165)<br><br>Present:<br><br>DEL ROSARIO, *PJ*<br>CASTAÑEDA, JR.,<br>BAUTISTA,<br>UY,<br>CASANOVA,<br>FABON-VICTORINO,<br>MINDARO-GRULLA,<br>RINGPIS-LIBAN, and<br>MANAHAN, *JJ.*<br><br>Promulgated:<br><br>MAY 18 2017 3:48 p.m. |

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## DECISION

***Fabon-Victorino, J.:***

In these consolidated *Petitions for Review*, Deutsche Knowledge Services, Pte. Ltd. (Deutsche) and the Commissioner of Internal Revenue (CIR) assail the Amended

Decision[1] dated August 8, 2013 and the Resolution[2] dated April 10, 2015, promulgated by the Court in Division in CTA Case No. 8165 entitled *Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue*. The dispositive portion of the assailed Amended Decision and Resolution read as follows:

*Assailed Amended Decision of August 8, 2013*:

> **WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration and Supplemental Motion for Reconsideration (With Motion for Leave)** are **PARTIALLY GRANTED**. The Decision dated January 8, 2013, dismissing the instant Petition for Review on the ground that it was prematurely filed, is **RECALLED** and **SET ASIDE** and the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **P7,291,883.12**, representing unutilized input VAT attributable to zero-rated sales for the period covering third (3rd) and fourth (4th) quarters of calendar year 2008.
>
> **SO ORDERED**.

*Assailed Resolution of April 10, 2015:*

> **WHEREFORE**, premises considered, the motions are hereby **DENIED** for lack of merit.
>
> **SO ORDERED**.

In his *Petition for Review*[3] docketed as CTA EB No. 1297, the CIR prays to reverse and set aside the Amended Decision and Resolution dated August 8, 2013 and April 10,

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[1] *En Banc* Docket, CTA EB No. 1297, pp. 39-61.
[2] *Id.*, pp. 87-99.
[3] *Id.*, pp. 5-31.

2015, respectively, which partially granted Deutsche's claim for refund/tax credit in the reduced amount of ₱7,291,883.12, representing its alleged unutilized input tax attributable to its zero-rated sales for the 3rd and 4th quarters of calendar year (CY) 2008.

On the other hand, the *Petition for Review* [4] subsequently filed by Deutsche docketed as CTA EB No. 1302, seeks to partially nullify the assailed Amended Decision and asks that the whole amount of ₱73,624,249.76, subject of its judicial action be refunded or issued a tax credit certificate.

## ***THE FACTS AND THE PROCEEDINGS***

The facts, as culled from the record, are as follows:

The CIR heads the Bureau of Internal Revenue (BIR), with authority to decide claims for refund/tax credit of internal revenue taxes as provided under the National Internal Revenue Code (NIRC), as amended. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Deutsche is the Philippine branch of a multinational company organized and existing under the law of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583. It is a licensed regional operating headquarters (ROHQ) in the Philippines as of April 25, 2005, pursuant to the Omnibus Investment Code of 1987, as amended by Republic Act No. 8756 and its implementing rules and regulations. By virtue of such license issued by the Securities and Exchange Commission (SEC), it is authorized to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business

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[4] *En Banc* docket, CTA EB No. 1302, pp. 6-31.

development. Specifically, it acts as a shared services center which handles regional as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control.

In the course of rendering services in the Philippines as a shared services center to clients engaged in business conducted outside the Philippines, Deutsche incurred input taxes on goods and services purchased.

For the 3rd and 4th quarters of CY 2008, Deutsche filed its original Quarterly VAT Returns on the following dates:

| Exhibit | Year 2008 | Date Filed |
|---|---|---|
| D | 3rd Qtr | October 14, 2008 |
| D-1 | 4th Qtr | January 19, 2009 |

On September 7, 2010, petitioner filed with the CIR an Application for Tax Credits/Refunds (BIR Form No. 1914) together with the letter dated September 6, 2010, for the said refund/issuance of TCC in the amount of ₱73,624,249.76, representing unutilized input VAT attributable to its zero-rated sales for the period covering the 3rd and 4th quarters of CY 2008.

On September 30, 2010, Deutsche filed a *Petition for Review*[5] with the Court in Division on the ground of inaction on the part of the CIR and to toll the running of the 2-year prescriptive period.

In his *Answer*[6] filed on November 22, 2010, the CIR argued that the taxpayer-claimant must first prove entitlement to refund/tax credit by establishing compliance with (1) Sections 112(A) and (C), 204(C) in relation to Sections 229, of the 1997 Tax Code, as amended; and (2) the requisites of effectively zero-rated transactions under

[5] *Rollo*, pp. 14-23.
[6] *Rollo*, pp. 68-70.

Revenue Regulations (RR) No. 16-2005. Failure to discharge the said burden would be fatal to its claim.

During the trial, only Deutsche presented evidence in support of its case. The CIR did not present any, despite the opportunity granted.

On January 8, 2013, the Court in Division dismissed Deutsche's *Petition for Review* on ground of prematurity, guided by the doctrine laid down in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc. (Aichi case)*[7]. The Court in Division held that Deutsche's failure to wait for the lapse of the 120-day period before seeking judicial intervention required in Section 112(C) of the NIRC of 1997, as amended, was fatal justifying the dismissal of its judicial claim.

Aggrieved, Deutsche filed a *Motion for Reconsideration (Re: Decision dated January 8, 2013)*[8] on January 30, 2013. Instead of a comment/opposition to the motion, the CIR filed a *Manifestation & Motion*[9] on March 15, 2013, adopting the factual findings and legal conclusions of the Court in Division in the assailed Decision of January 8, 2013, as well as the legal arguments in his *Memorandum* dated August 22, 2012.

On April 5, 2013, Deutsche filed a Supplemental Motion for Reconsideration *(with Motion for Leave)*[10] banking on the ruling of the Supreme Court in the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation/Taganito Mining Corporation vs. Commissioner of Internal Revenue/Philex Mining Corporation vs. Commissioner of Internal Revenue*[11] *(San Roque)*. The CIR filed his *Comment/Opposition*[12] thereto on May 8, 2013.

On August 8, 2013, the Court in Division promulgated the assailed Amended Decision **PARTIALLY GRANTING** Deutsche's Motion for Reconsideration and its *supplement*. The Court in Division found merit in Deutsche's argument

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[7] G.R. No. 184823, October 6, 2010.
[8] *Rollo*, pp. 867-881.
[9] *Rollo*, pp. 887-888.
[10] *Rollo*, pp. 889-896.
[11] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[12] *Rollo*, pp. 901-917.

that its judicial claim for refund of input tax was timely lodged with the Court in Division on September 30, 2010 or before the lapse of the 120-day period under Section 112 of the NIRC of 1997, as amended, since such filing was made after the issuance of the BIR Ruling No. DA-489-03 dated December 10, 2003 but before the adoption of the *Aichi* doctrine on October 6, 2010, citing the case of *San Roque* as authority. Hence, the Court in Division **RECALLED** and **SET ASIDE** the Decision of January 8, 2013, and accordingly directed the CIR to refund/issue tax credit certificate in favor of Deutsche but in the reduced amount of ₱7,291,883.12.

Unconvinced, the CIR sought a reconsideration[13] of the foregoing ruling on August 28, 2013. On even date, Deutsche filed, through registered mail, its own *Motion for Partial Reconsideration* with *Motion for Leave to Present Supplemental Evidence*[14].

On November 12, 2013, the Court in Division granted Deutsche's *Motion for Leave to Present Supplemental Evidence* and set the introduction of additional evidence of Deutsche on November 25, 2013. In the meantime, the resolution of the CIR's *Motion for Reconsideration* and Deutsche's *Motion for Partial Reconsideration* were held in abeyance pending the presentation and formal offer of Deutsche's supplemental evidence.

On November 25, 2013, Deutsche's Legal Entity Controller **Rachel Concepcion** testified on direct examination through her *Supplemental Sworn Statement*[15] filed on November 20, 2013.

On July 11, 2014, Deutsche filed its *Supplemental Formal Offer of Evidence*[16], which the Court in Division resolved in the Resolutions dated August 28, 2014[17] and October 23, 2014[18].

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[13] *Rollo*, pp. 968-988.
[14] *Rollo*, pp. 1017-1038.
[15] *Rollo*, pp. 1430-1436.
[16] *Rollo*, pp. 1553-1559.
[17] *Rollo*, pp. 1562-1571.
[18] *Rollo*, pp. 1587-1589.

On January 20, 2015, the two pending incidents were submitted for resolution after parties submitted their respective supplemental memoranda.

On April 10, 2015, the Court denied Deutsche's Motion for Partial Reconsideration and CIR's Motion for Reconsideration, for lack of merit.

Hence, the two (2) *Petitions for Review* separately filed by the CIR and Deutsche were consolidated[19] on June 19, 2015.

On May 24, 2016, the instant consolidated *Petitions for Review* were deemed submitted for decision after the parties' submission of their respective memoranda[20].

## ***ASSIGNMENTS OF ERRORS***

*CTA EB No. 1297 (CIR's Petition for Review)*:

The CIR assigns the following errors allegedly committed by the Court in Division:

I. THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT IT HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE SINCE THE PETITION FOR REVIEW OF RESPONDENT IN CTA CASE NO. 8165 WAS TIMELY FILED ON SEPTEMBER 30, 2010.

II. THE SECOND DIVISION OF THIS HONORABLE COURT ERRED IN HOLDING THAT RESPONDENT WAS ENTITLED TO ITS CLAIM FOR REFUND/TAX CREDIT IN THE REDUCED AMOUNT OF ₱7,291,883.12, REPRESENTING ITS EXCESS/UNUTILIZED INPUT VAT ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE 3RD AND 4TH QUARTERS OF 2008.

The CIR claims that the exception enunciated by the Supreme Court in the *San Roque case* is not applicable to

[19] *En Banc* Docket, p. 121.
[20] Resolution, *En Banc* Docket, pp. 333-334.

the present case since Deutsche did not invoke in its Petition for Review reliance on BIR Ruling No. DA-489-03 leading it to its prematurely filing judicial claim before the Court of Tax Appeals. Per the CIR, the exception to the 120+30 day mandatory and jurisdictional periods under Section 112(C) of the 1997 NIRC, as amended, is not automatic as it must first be invoked for the taxpayer-claimant to be covered. Further, Deutsche cannot raised its alleged reliance on BIR Ruling No. DA-489-03 for the first time on appeal.

CIR likewise states that Deutsche cannot claim good faith in relying on BIR Ruling No. DA-489-03 and invoke equitable estoppel in its favor as the said BIR Ruling was issued not in accord with the express and categorical provision of Section 112(C) of the 1997 NIRC, as amended. The issuance of the subject BIR Ruling No. 489-03 cannot give rise to a vested right in favor of Deutsche for there can be no vested right to a wrong construction of the law by administrative officials. Such wrong interpretation does not place the Government in estoppel to correct or overrule the same.

Deutsche is also not entitled to a refund even for the reduced amount of ₱7,291,883.12, says CIR, considering its supporting invoices and official receipts (ORs) for purchases of goods and services subject of its claimed input VAT refund in the amount of ₱7,291,883.12 did not comply with the mandatory invoicing requirements under Sections 110(A), 113(A) and 237 of the 1997 NIRC, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005 and Revenue Memorandum Circular (RMC) No. 42-2003.

In addition, claim for refund partakes the nature of tax exemption, hence, should be strictly construed against Deutsche who is claiming the exemption.

In its *Comment*[21], Deutsche argues that (1) it need not invoke the BIR Ruling No. DA-489-03 in its Petition for Review to avail of the exemption from the 120+30-day rule allowed by San Roque; (2) the question on the validity of BIR Ruling No. DA-489-03 has been put to rest in San Roque;

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[21] *En Banc* Docket, pp. 109-119.

(3) its judicial claim for refund was timely filed; and (4) its zero-rated sales were duly substantiated and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

*CTA EB No. 1302 (Deutsche's Petition for Review)*:

In its own Petition for Review, Deutsche believes that the Court in Division gravely erred in partially denying its claim for refund/tax credit certificate for the 3rd and 4th quarters of 2008, thus asks the Court to consider the following grounds:

a. The CTA-Division gravely erred in ruling that petitioner failed prove its zero-rated sales in the amount of ₱469,006,405.48 for the 3rd and 4th quarters of 2008;

b. The CTA-Division erroneously concluded that petitioner failed to meet the substantiation requirements under the Tax Code and Revenue Regulations No. 16-2005; and

c. The CTA-Division erred in ruling that petitioner's input VAT for the 3rd and 4th quarters of CY 2008 should be applied against its output VAT of ₱1,526,084.53.

Deutsche opines that the denial of its zero-rated sales in the amount of ₱469,006,405.48 for the 3rd and 4th quarters of CY 2008 on the ground that it was unable to prove that its clients or the recipients of its services were non-resident foreign corporations doing business outside the Philippines is flawed. The Certificate of Non-Registration of Corporation issued by the SEC, the foreign certifications from government agencies in the countries of origin of its clients and its AMInet Company Profile Fact Sheets, indicating the companies' location and addresses negate the conclusion of the Court in Division.

Also erroneous is the observation of the Court in Division that the AMInet Company Profile Fact Sheets is self-serving, hence of weak probative value as they were prepared solely and exclusively by Deutsche. First, it was authenticated as electronic evidence by its witness, Rachel M. Concepcion, who allegedly explained the integrity and reliability of their contents, *vis-à-vis* Deutsche's electronic documentation policy. Second, the fact that DB Group maintains the AMInet in the regular course of business to comply with and fulfill the internal and external requirements of the German Federal Financial Supervisory Authority, which is the financial regulatory authority for the German government. Encoding of relevant details and information is done by the Legal Entity Group, to which witness Concepcion belongs, immediately upon the establishment of the entity and/or upon receipt of the relevant supporting documents. The said AMInet Company Profile Fact Sheets were created in the regular conduct of the DB Group's business, contemporaneous with the registration of DB entities with the concerned government agencies in the countries where they were doing business, without the anticipation of future litigation.

Likewise contrary to the ruling of the Court in Division, Section 1(d), Rule 7 of the Rules on Electronic Evidence merely requires that the witness testify on his/her familiarity with the communication and information system.

Deutsche further refuses to agree that it failed to meet the substantiation requirements under the NIRC, as amended, and RR No. 16-2005, resulting in the disallowance of its claimed input VAT of ₱136,772.55 for the purchases of services which were supported by invoices and official receipts (ORs) dated outside the covered period, as well as the amount of ₱34,651,970.90, which although covered by invoices and ORs but the amounts of input VAT were not separately indicated. As to the first amount, Deutsche reasons that out-of-period claims is specifically allowed by RMC No. 42-03. With regard the amount of ₱34,651,970.90, covered by invoices and ORs but the amounts of input VAT were not separately indicated, Deutsche submits that the requirement to separately indicate the amount of input VAT in ORs and invoices is merely to determine the exact amount of input tax due on the transaction. This could still be complied with since the amount of input tax due may still be computed from the information in the ORs and invoices of its suppliers. Further, the penalty for non-compliance with the invoicing requirements must be borne by the issuer who failed to comply with the requirement and not the recipient of the non-compliant invoice or OR.

Lastly, Deutsche claims that the Court in Division erred in applying its valid input VAT for the 3rd and 4th quarters of CY 2008 against its reported output VAT liability for the subject period of claim in the amount of ₱1,526,084.53 given that it had sufficient excess input VAT carried over from previous quarters, the amount of which was more than sufficient to cover its output VAT for the subject period of the claim.

Despite notice, CIR failed to file his Comment to Deutsche's Petition for Review.[22]

## ***RULING OF THE COURT EN BANC***

Both *Petitions for Review* lack merit.

*CTA EB No. 1297 (CIR's Petition for Review)*:

A judicious review of the arguments raised by the CIR in his *Petition for Review* shows that he merely truncated the very same flawed arguments from his previous pleadings all of which had been thoroughly discussed and passed upon by the Court in Division in the assailed Amended Decision of August 8, 2013, and in the similarly assailed Resolution of April 10, 2015. The Court *En Banc* sees no compelling reason to deviate from the ruling of the Court in Division that Deutsche's *"judicial claim was seasonably filed on September 30, 2010, hence, must be given due course on the basis of BIR Ruling No. DA-489-03, which, as decreed by the Supreme Court, is a general interpretative rule that may be relied upon from the time of its issuance on December 10, 2003, up to its reversal by Aichi case on October 6, 2010".*

Let it be emphasized that in the *San Roque* case, the Supreme Court not only acknowledged the validity of BIR

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[22] Records Verification Report dated January 18, 2016, *En Banc* Docket, p. 331.

Ruling No. DA-489-03 and its binding effect, but also cited the doctrine of equitable estoppel in the determination of the case, thus: "*BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code.*"

Following the principle of *stare decisis,* this Court adheres to doctrinal rules established by the Supreme Court in its final decisions.[23] The tenet is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[24] Basically, it is a bar to any attempt to relitigate the same issues, [25] necessary for two simple reasons: economy and stability. This principle is entrenched in Article 8 of the Civil Code which states that "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

In fine, the Court in Division did not err when it assumed jurisdiction over the *Petition for Review* of Deutsche timely instituted on September 30, 2010.

Anent CIR's argument that Deutsche is not entitled to a refund or tax credit even to the reduced amount of ₱7,291,833.12 due to its failure to comply with the mandatory invoicing requirements under Sections 110(A), 113(A) and 237 of the 1997 NIRC, as amended, in relation to Sections 4.110-1, 4.110-8 and 4.113-1 of RR No. 16-2005 and RMC No. 42-2003, suffice it to say that evidence on record support the finding of the Court in Division that Deutsche was able to substantiate its claim for refund/credit of its unutilized input VAT for the 3rd and 4th quarters of CY 2008 albeit in the reduced amount of ₱7,291,833.12.

<u>*CTA EB No. 1302 (Deutsche's Petition for Review)*</u>:

Just as the CIR, Deutsche merely reiterates its arguments raised in its *Motion for Partial Reconsideration*

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[23] *Ting vs. Ting,* G.R. No. 166562, March 31, 2009.
[24] *Id.* citing *De Mesa v. Pepsi Cola Products Phils., Inc.*, G.R. Nos. 153063-70, August 19, 2005, 467 SCRA 433, 440.
[25] *Id.* at 438.

*(Re: Amended Decision)*[26] dated August 28, 2013 and its *Supplemental Memorandum*[27] dated November 26, 2014, except its contention that its input VAT for the 3rd and 4th quarters of CY 2008 should not be applied against its output VAT for the subject period of claim. Be that as it may, for emphasis and ultimately to reinforce the ruling of the Court in Division, the Court *En Banc* will address the salient points of the issues raised by Deutsche in the present petition.

*Not all of Deutsche's sales for the 3rd and 4th quarters of CY 2008 qualify for VAT zero-rating under the law.*

Contrary to Deutsche's perception, it was unable to prove that the entities to whom it rendered services were **all** non-resident foreign entities doing business outside the Philippines, precisely, **not all** of its sales for the 3rd and 4th quarters of CY 2008 in the total amount of ₱1,442,750,339.13 qualify for VAT zero-rating.

Under Section 108(B)(2) of the NIRC of 1997, as amended, to subject a sale of service to 0% VAT rate, it must be "*rendered to a person engaged in business outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services were performed*" and the consideration therefor was "*paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.*[28]

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[26] *Rollo*, pp. 1017-1038.
[27] *Rollo*, pp. 1593-1605.
[28] SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[29], the Supreme Court enumerated the requisites in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. the services by a VAT registered person must be other than processing, manufacturing or repacking of goods;

2. payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and

3. the recipient of such services is doing business outside the Philippines.

There is no question as to the first and the second requirements are concerned. Deutsche satisfactorily complied with them. Deutsche, during the relevant period, was duly registered with the BIR as a VAT taxpayer[30] and the services it performed in the Philippines, through its regional operating headquarters (ROHQ), like financial accounting market and instrument control valuation, information systems integrity and application development and support services[31] were not the same category as "processing, manufacturing or repacking of goods." And for services rendered for the third and fourth quarters of CY 2008, it received foreign currency payments, which were accounted for in accordance with the BSP rules and regulations, as evidenced by sales invoices[32] and official receipts[33] issued by Deutsche to its alleged non-resident

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(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); xxx

[29] G.R. No. 153205, January 22, 2007.
[30] Par. 5, *Joint Stipulation of Facts and Issues* (JSFI), Admitted Facts, *Rollo*, p. 129; Exhibit "B".
[31] Notes to Financial Statements, No. 3 Summary of Significant Accounting Policies, under Revenue Recognition, Exhibit "J2501".
[32] Exhibits "J1" to "J193".
[33] Exhibits "J248" to "J322".

foreign clients, fund transfer credit advice, and bank statements.[34]

With respect to the third requisite, evidence reveal that only the following clients of Deutsche should be considered as non-resident foreign corporations doing business outside the Philippines, namely:

| COMPANY NAME | LOCATION |
|---|---|
| Deutsche Bank Aktiengesellschaft, Inlandsbank | Frankfurt |
| Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office | Singapore-APHO |
| Deutsche Bank Aktiengesellschaft, Filiale Singapur | Singapore |
| Deutsche Bank Aktiengesellschaft, Filiale Hongkong | Hong Kong |
| Deutsche Bank Aktiengesellschaft, Filiale Jakarta | Jakarta |
| Deutsche Bank Aktiengesellschaft, Filiale New York | New York |
| Deutsche Securities Inc. | Tokyo |
| Deutsche Group Services Pty Limited | Sydney |

As pointed out by the Court in Division, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** SEC certificate of non-registration of corporation/partnership, which will show that the recipient of the service has no registered business in the Philippines and certificate/articles of foreign incorporation/association, which will prove that the recipient is indeed foreign.

Despite the opportunity granted to present additional documents, Deutsche still failed to present the certificate/articles of foreign incorporation/association of the following entities:

| COMPANY NAME | LOCATION | EXHIBIT* |
|---|---|---|
| Deutsche Bank, Sociedad Anonima Española | Spain | P-1 |
| Deutsche Aktiengesellschaft, Filiale Wein | Austria | P-2 |
| Deutsche Bank Aktiengesellschaft, Filiale Bangkok | Bangkok | P-3 |
| Deutsche Bank Aktiengesellschaft, Filiale Mumbai | Mumbai | P-4 |
| Deutsche Bank Aktiengesellschaft, Filiale Seoul | Korea | P-5 |
| Deutsche Asset Management (Asia) Limited | Singapore – AMBAC | P-6 |
| Deutsche Bank Aktiengesellschaft, Filiale London | London | P-7 |
| Deutsche Bank Aktiengesellschaft, Filiale Prag | Czech Republic | P-8 |
| Deutsche Bank Luxemburg S.A. | Luxemburg | P-9 |

[34] Exhibits "J194" to "J247".

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|---|---|---|
| Deutsche Bank (China) Co., Ltd., Beijing Branch | China | P-10 |
| Deutsche Bank (China) Co., Ltd., Guangzhou Branch | China | P-11 |
| Deutsche Bank (China) Co., Ltd., Shanghai Branch | China | P-12 |
| DWS Holding & Service GmbH | Frankfurt | P-13 |
| Deutsche Bank Real Estate (Japan) Y.K. | Japan | P-14 |
| PT Deutsche Securities Indonesia | Indonesia | P-15 |
| Deutsche Bank PBC Spolka Akcyjna | Poland | P-16 |
| Deutsche Bank Trust Company Americas | New York | P-17 |
| DB Finance Inc. | Japan | P-18 |
| DB Trust Company Limited Japan | Japan | P-19 |

* additional proof per Supplemental Formal Offer of Evidence

The additional pieces of evidence presented, i.e., the Company Profile Fact Sheets which were retrieved from Deutsche's AMInet database merely provided some information for purposes of their respective transactions such as name, date of incorporation, Country of the entity and its status. As testified to by Deutsche's witness Concepcion, *"AMInet is the Data Maintenance Platform for legal entities and other reportable vehicles within the Deutsche Bank Group (the "DB Group"). The application is a web-based extension of the Central Legal Entity Database (AMI) in Deutsche's Head Office in Germany."* In other words, it came from its own compilation of information for its own use, reference and monitoring. By themselves, the said compilation would not be sufficient to satisfy the third requisite – that the recipient of such services is doing business outside the Philippines - to qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

For emphasis, the Court *En Banc* quotes with approval the discussion of the Court in Division on the matter, thus:

> Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.
>
> Although this Court admitted portions of Exhibits "P-1" to "P-19", however, these exhibits have "weak probative value, as it

> was prepared solely and exclusively by petitioner." The Court cannot give conclusive weight to petitioner's evidence because the details were unverified by independent documents, which makes it merely self-serving evidence.
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> Moreover, Section 1(d) of Rule 7 on Rules on Electronic Evidence, as one of the factors in assessing the evidentiary weight of electronic documents, states that "(d) The familiarity of the witness or the person who made the entry with the communication and information system;" Although petitioner's witness is familiar with the AMINET, she is not the person who made the entry with the system nor witnessed the one who made the entry with respect to the data of the alleged non-resident foreign corporations doing business outside the Philippines. Thus, we cannot give weight to those electronic documents.
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> We reiterate that "[T]o be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association."

Thus, the Court *En Banc* is one with the Court in Division in its ruling that out of the ₱1,442,750,339.13 declared zero-rated sales for the 3rd and 4th quarters of CY 2008, only the amount of ₱973,743,933.65[35] shall qualify for VAT zero-rating. The rest amounting to ₱469,006,405.48 (₱1,442,750,339.13 - ₱973,743,933.65) shall be denied VAT zero-rating, for Deutsche's failure to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines.

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[35] See details per attached Annex A of the assailed Amended Decision, *Rollo*, pp. 944-945.

*Not all of the unutilized input VAT of ₱73,624,249.76 being claimed for refund were duly substantiated.*

Deutsche insists that the disallowance of out-of-period claims in the amount of ₱136,772.55 is erroneous because out-of-period claims are specifically allowed under RMC No. 42-03.

Note that RMCs, such as RMC No. 42-03, are considered administrative rulings which are issued from time to time by the CIR;[36] and that administrative issuances have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes.[37] However, BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.[38]

Thus, even if RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, as it contravenes Section 110(A)(2) of the NIRC of 1997, as amended, which lays down the rules as to when the input VAT is creditable against the output VAT, to wit:

> SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person **shall be creditable**:
>
> (a) To the purchaser **upon consummation of sale and on importation of goods or properties**; and

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[36] *Asia International Auctioneers, Inc., et al. vs. Parayno, et al.*, G.R. No. 163445, December 18, 2007.
[37] *Chevron Phils., Inc. vs. Bases Conversion and Development Authority, et al.*, G.R. No. 173863, September 15, 2010.
[38] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G. R. No. 130838, August 22, 2006.

> (b) To the importer **upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs**.
>
> *xxx* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee **upon payment of the compensation, rental, royalty or fee**. (*Emphasis supplied*)

It is clear from the above-quoted provisions of law that for purchases of goods, the corresponding input value added taxes of which is creditable to the purchaser upon consummation of sale, that is, upon the issuance of the corresponding invoice. On the other hand, for purchases of services, the corresponding input value added taxes of which is creditable to the purchaser upon payment of compensation, rental, royalty or fee, that is, upon the date of official receipt. Section 110(A) is explicit - upon consummation, in the case of domestic purchases of goods, and **upon payment**, in the case of purchases of services. It does not provide any qualification.

Deutsche likewise insists that its input VAT amounting to ₱34,651,970.90, which were covered by invoices and ORs wherein the input taxes were not separately indicated should be allowed since the input VAT claimed from said invoices/ORs can be easily computed and it should not be penalized for its client's error in not separately indicating the amount of VAT in the said invoices/OR's.

Section 113(B)(2)(a) of the NIRC of 1997, as amended, relevantly states:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The

> following information shall be indicated in the VAT invoice or VAT official receipt:
>
> xxx xxx xxx
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: Provided, That:
>
> (a) **The amount of the tax shall be shown as a separate item in the invoice or receipt**; (*Emphasis supplied*)

Based on the foregoing, the VAT invoice or VAT official receipt, as the case may be, must state, among others, the amount of tax as a separate item therein. The provision must be strictly complied with as it is mandatory.[39] In the case of *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, [40] the Supreme Court enjoins strict compliance with the invoicing and substantiation requirement in claims for refund or credit, as follows:

> Although it is true that the CTA is not strictly governed by technical rules of evidence, **the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Kepco's claims**. Verily, the CTA En Banc correctly disallowed the input VAT that did not meet the required standard of substantiation. (*Boldfacing supplied*)

*On applying Deutsche's input VAT for the 3rd and 4th quarters of CY 2008 against its output VAT liability for the same period instead of its input VAT carried over from previous quarters.*

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[39] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[40] G.R. No. 181858, November 24, 2010.

ue/

Citing Section 110(B) of the 1997 NIRC, as amended, in relation to Section 4.110-7(b) of RR No. 6-2005, Deutsche asserts that a taxpayer may apply the amount of its input VAT carried over from the previous period to its output VAT liability.

Section 110 of the NIRC, as amended, provides that any **input tax shall be creditable against the output tax only if it is evidenced by a VAT invoice or official receipt,** for easy reference the relevant portion of the provision is hereby quoted:

> SEC. 110. *Tax Credits.* —
>
> (A) *Creditable Input Tax.* —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:..." (*Emphasis supplied*)

In this case, Deutsche failed to present and offer in evidence any VAT invoice or official receipt to support the "Input Tax Carried Over from Previous Quarter" which it seeks to be credited or charged against its output VAT liability for the 3rd and 4th quarters of CY 2008. The Court in Division is therefore correct in applying Deutsche's input VAT for the 3rd and 4th quarters of CY 2008 against its output VAT liability for the same period instead of its input VAT carried over from previous quarters.

Elementary is the rule that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be mis-interpreted,[41] it is never presumed[42]

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[41] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147, 155, citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation*, G.R. Nos. 54908 & 80041, January 22, 1990, 181 SCRA 214, 224.

[42] *Province of Abra v. Hernando*, No. L-49336, August 31, 1981, 107 SCRA 104, 109.

nor be allowed solely on the ground of equity.[43] These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[44]

**WHEREFORE**, the *Petitions for Review* filed on April 28, 2015 and May 15, 2015 by the Commissioner of Internal Revenue and Deutsche Knowledge Services Pte. Ltd., respectively, are hereby **DENIED,** for lack of merit. Accordingly, the assailed Amended Decision and Resolution dated August 8, 2013 and April 10, 2015, respectively, are **AFFIRMED**.

**SO ORDERED.**

ESPERANZA R. FABON-VICTORINO
Associate Justice

*We Concur:*

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[43] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. Nos. 122161 & 120991, February 1, 1999, 302 SCRA 442, 453, citing *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue*, G.R. No. 117359, July 23, 1998, 293 SCRA 76, 91.

[44] *Silkair (Singapore) PTE. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, citing *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

*(With due respect, I concur with PJ's CDO)*
CATHERINE T. MANAHAN
Associate Justice

## CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
***Court of Tax Appeals***
QUEZON CITY

## ***EN BANC***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,**<br>*Petitioner,*<br><br>-versus-<br><br>**DEUTSCHE KNOWLEDGE SERVICES PTE, LTD.,**<br>*Respondent,* | **CTA EB NO. 1297**<br>(CTA CASE NO. 8165) |

x-------------------------------------------x

| | |
|---|---|
| **DEUTSCHE KNOWLEDGE SERVICES PTE, LTD.,**<br>*Petitioner,*<br><br>-versus-<br><br>**COMMISSIONER OF INTERNAL REVENUE,**<br>*Respondent.* | **CTA EB NO. 1302**<br>(CTA CASE NO. 8165)<br><br>Present:<br><br>**DEL ROSARIO,** P.J.,<br>**CASTANEDA, JR.,**<br>**BAUTISTA,**<br>**UY,**<br>**CASANOVA,**<br>**FABON-VICTORINO,**<br>**MINDARO-GRULLA,**<br>**RINGPIS-LIBAN,** and<br>**MANAHAN,** JJ.<br><br>Promulgated:<br>MAY 18 2017 3:48 p.m. |

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## CONCURRING & DISSENTING OPINION

***DEL ROSARIO, PJ.:***

I agree with the *ponencia*'s conclusion that Deutsche Knowledge Services Pte. Ltd. (Deutsche Knowledge) is entitled to a partial refund of its input value-added tax (VAT).

The point of my dissent relates to the affirmation of the Court in Division's ruling that to be considered as a non-resident foreign corporation doing business outside of the Philippines, each entity must be supported, at the very least, by both a certificate of non-registration of corporation/partnership issued by the Philippine Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association, as the presentation of SEC Certifications of Non-Registration of Company and Intra-Group Service Agreements are not sufficient to prove that Deutsche Knowledge's clients are non-resident foreign corporations doing business outside the Philippines.

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

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

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

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

Consistent with the foregoing, I submit that Deutsche Knowledge's sale of service to entities which are supported by SEC Certifications of Non-Registration of Company and Intra-Group Service Agreements, proving that the services were rendered to non-resident foreign corporations doing business outside the Philippines, also qualify for zero-rating.

I likewise register my dissent anent the *ponencia's* affirmation of the Court in Division's Resolution dated April 10, 2015, which declared the following:

> "After a careful perusal of the petitioner's Supplemental FOE, this Court noted that the admitted portions of Exhibits 'P-1' to 'P-19' pertain to the Company Profile Fact Sheet, which provides the 'Legal Information and Status' (Name, Date of Incorporation, Country), among others, and retrieved from the AMinet. Petitioner's witness Ms. Concepcion testified that, 'AMINET is the Data Maintenance Platform for legal entities and other reportable vehicles within the Deutsche Bank Group (the 'DB Group'). The application is a web-based extension of the Central Legal Entity Database (AMI) in Petitioner's Head Office in Germany. The Company Profile data and other specific reports forms (corporate documents, directors information, K3 report etc.) are collected and maintained via this database and as such, provides the DB Group such reference data to support local regulatory and internal reporting worldwide as well as creates a flexible repository to store supporting Legal Entity data/information. Consistent with the DB Group's strict document integrity policy, the AMINET functions as a monitoring mechanism by which the DB Group can ensure that the activities conducted by and the registration documents of each affiliate comply with the requirements of the government agencies concerned.
>
> xxx xxx xxx
>
> **Although this Court admitted portions of Exhibits 'P-1' to 'P- 19', however, these exhibits have 'weak probative value, as it was prepared solely and exclusively by petitioner.' The Court cannot give conclusive weight to petitioner's evidence because the details were unverified by independent documents, which makes it merely self-serving evidence.**" (*Boldfacing supplied*)

Apparently, the documents admitted into evidence were not considered by the Court in Division for the reason that they were solely and exclusively prepared by Deutsche Knowledge and that the details were not verified by independent documents. It was the Court in Division's conclusion that the evidence presented by Deutsche Knowledge are mere self-serving.

The declaration in ***People of the Philippines vs. Mary Lou Omictin y Singco***[2] about the nature of a self-serving evidence is instructive:

> "xxx The phrase self-serving evidence is a concept which has a well-defined judicial meaning. Hernandez v. Court of Appeals clarified what self-serving evidence is and what it is not, thus:
>
>> The common objection known as self-serving is not correct because almost **all testimonies are self-serving**. The proper basis for objection is hearsay (Wenke, Making and Meeting Objections, 69).
>>
>> Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. **Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court** (National Development Co. v. Workmen's Compensation Commission, 19 SCRA 861 [1967]).
>>
>> Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. **This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.**
>
> This principle was reiterated in the more recent *People v. Villarama*, where the Court ruled, x x x [A] self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in court. Assayed against the foregoing standards, Ambrosio's testimony is not self-serving and is admissible in evidence."

Applying by analogy *Omictin* to the case at bar, it can be said that documents, like those testified on by Deutsche Knowledge's witness, may not be considered as self-serving but are in fact admissible and entitled to evidentiary weight, as the Commissioner of Internal Revenue (CIR) has been given the opportunity to question the same during trial.

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[2] G.R. No. 188130, July 26, 2010.

In this case, the CIR was given every opportunity to object to and rebut the exhibits presented by Deutsche Knowledge in Court, which were identified by Ms. Rachel Concepcion in her Supplemental Sworn Statement filed on November 20, 2013, who testified thereon on November 25, 2013. While no evidence was presented in refutation of Ms. Concepcion's testimony, the CIR did not even bother to either comment on or object to Deutsche Knowledge's Supplemental Formal Offer of Evidence despite notice as stated in the Resolution of the Court in Division dated August 28, 2014.[3] The rule is trite that unrebutted evidence is entitled to full faith and credit unless there is inherent improbability in the substance thereof, *viz.*:

> "Petitioner bewails the fact that both the Labor Arbiter and the NLRC accorded due weight to the documents prepared by private respondent since they are said to be self-serving. **'Self-serving evidence' is not to be literally taken as evidence that serves one's selfish interest**. The fact alone that most of the documents submitted in evidence by private respondent were prepared by him does not make them self-serving **since they have been offered in the proceedings before the Labor Arbiter and that ample opportunity was given to petitioner to rebut their veracity and authenticity**. Petitioner, however, opted to merely deny them which denial, ironically, is actually what is considered self-serving evidence and, therefore, deserves scant consideration. In any event, any denial made by petitioner cannot stand against the affirmative and fairly detailed manner by which private respondent supported his claims, such as the places where he conducted his classes, on-the-job training and shipyard and plant visits; the rate he applied and the duration of said rendition of services; the fact that he was indeed engaged as a contractual instructor by petitioner; and that part of his services was not yet remunerated. **These evidence, to reiterate, have never been effectively refuted by petitioner**."[4] (Boldfacing supplied)

Based on the foregoing, the Company Profile Fact Sheets[5] corroborated by the Intergroup Service Agreements[6] are sufficient to establish that Deutsche Knowledge's services were all rendered to non-resident foreign entities doing business outside the Philippines.

All told, I vote to **DENY** the Petition for Review filed by the Commissioner of Internal Revenue; **PARTIALLY GRANT** the Petition for Review filed by Deutsche Knowledge; **AFFIRM** with modification

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[3] CTA Case No. 8165 Docket, p. 1562.
[4] *PMI Colleges vs. The National Labor Relations Commission*, G.R. No. 121466, August 15, 1997.
[5] Exhibits "P-1" to "P-19".
[6] Exhibits "G-1" to "G-29".

the assailed decision to include the sales of services of Deutsche Knowledge to its clients whose identities are supported by their respective SEC Certifications of Non-Registration of Company and Intra-Group Service Agreements.

**ROMAN G. DEL ROSARIO**
Presiding Justice