REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

HALLIBURTON WORLDWIDE LIMITED - PHILIPPINE BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. **9890**

Members:

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

Promulgated: APR 12 2024

x - x

9:50 a.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by petitioner Halliburton Worldwide Limited - Philippine Branch (**petitioner**) pursuant to Section 3(a)[2], Rule 8 in relation to Section 3(a)(2)[3], Rule 4 of the Revised

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[1] Filed on 26 July 2018, Division Docket, Volume I, pp. 10-25.

[2] **SEC. 3.** *Who may appeal; period to file petition.* —
(a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

[3] **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
...

Rules of the Court of Tax Appeals (**RRCTA**). It seeks the refund or issuance of tax credit certificate (**TCC**) in the total amount of ₱11,193,861.09, representing excess and unutilized input Value-Added Tax (**VAT**) on purchases of goods and services attributable to zero-rated sales for the first (1st) to fourth (4th) quarters of calendar year (**CY**) 2016.

PARTIES OF THE CASE

Petitioner is the Philippine branch office of Halliburton Worldwide Limited, a corporation duly organized and existing under the laws of the Cayman Islands. On 08 August 2013, the Securities and Exchange Commission (**SEC**) issued an amended license to petitioner to do business in the Philippines; to engage in the business of providing oilfield services and products, such as well completion, drilling, cementing, logging, well testing, perforating, production testing and workover, stimulation services and licensing of software and consulting services, and importation and provision of oilfield equipment and technology to the oil and gas industries.[4] Petitioner is also registered with the Bureau of Internal Revenue (**BIR**) as a VAT taxpayer with Taxpayer's Identification No. (**TIN**) 266-369-565-000 and the trade name of Halliburton Worldwide Limited.[5]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) vested with authority to carry out the functions and duties of said office, among which, is to decide and grant claims of tax refund and execute and implement tax laws, rules and regulations.

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action...*Provided, still further*, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code[.]

4 Exhibit "P-1", Division Docket, Volume II, p. 711.

5 Exhibit "P-2", id., Volume III, p. 1017.

FACTS OF THE CASE

For CY 2016, petitioner filed its Quarterly VAT Returns (BIR Form No. 2550-Q) through the BIR's Electronic Filing and Payment System (**eFPS**) on the following dates:

Return	Date filed
VAT Return for the First Quarter[6]	April 25, 2016
VAT Return for the Second Quarter[7]	July 25, 2016
VAT Return for the Third Quarter[8]	October 24, 2016
VAT Return for the Fourth Quarter[9]	January 25, 2017

During the 1st to 4th quarters of CY 2016, petitioner claims that it rendered services to a duly registered Renewable Energy (**RE**) Developer and sold goods to its nonresident affiliates doing business outside the Philippines.

Petitioner avers that it incurred input VAT in the aggregate amount of ₱11,193,861.09 for the four (4) quarters of CY 2016, all of which is attributable to its zero-rated sales to a duly registered RE Developer and export sales to its nonresident affiliates. Likewise, it alleges that the said input VAT for the four (4) quarters of CY 2016 was not applied against its output VAT during the said period and in the succeeding quarters.

On 02 April 2018, petitioner filed with BIR Revenue District Office (**RDO**) No. 050 its Application for Tax Credits or Refunds (BIR Form No. 1914)[10] and its letter dated 28 March 2018.[11] It requested for the refund of its excess and unutilized input VAT for CY 2016 in the total amount of ₱11,193,861.09.

With the inaction on respondent's part after the 90-day period within which he or she could decide on petitioner's claim had expired, petitioner filed the instant Petition for Review on 26 July 2018. On

6 Exhibit "P-3" id., Volume II, pp. 724-726.
7 Exhibit "P-4", id., pp. 727-729.
8 Exhibit "P-5", id., pp. 730-732.
9 Exhibit "P-6", id., pp. 733-735.
10 Exhibit "P-28", id., p. 965.
11 Exhibit "P-27", id., pp. 949-964.

28 September 2018, respondent filed his or her Answer *via* registered mail wherein he or she had asked for the dismissal of the case on the ground that petitioner failed to fully substantiate its refund claim.[12]

On 30 July 2019, the Court denied respondent's bid for the outright dismissal of the case.[13] The Pre-Trial Conference was then set for 03 October 2019[14] and prior thereto, petitioner filed its Pre-Trial Brief on 27 September 2019.[15] On the other hand, respondent filed his or her Pre-Trial Brief on 30 September 2019.[16]

During the Pre-Trial Conference, the Court granted both parties twenty (20) days within which to file their Joint Stipulation of Facts and Issues (**JSFI**).[17] On 23 October 2019, the parties submitted their JSFI.[18] Approving the same and setting the hearing dates, the Court issued its Pre-Trial Order dated 28 November 2019.[19]

In the trial that ensued subsequently, petitioner presented its witnesses, namely: (1) Moon Lin Loh (**Loh**), petitioner's Tax Manager; and, (2) Neil U. Sison (**Sison**), the Court-commissioned Independent Certified Public Accountant (**ICPA**).

On the witness stand, Loh identified her Sworn Statement[20], where she declared essentially that: (1) as petitioner's Tax Manager, she handles and oversees its tax concerns; (2) petitioner filed an administrative claim for refund or issuance of TCC for the total amount of ₱11,193,861.09 and that respondent did not act upon the same; (3) petitioner incurred input VAT credits subject of the claim for refund in the course of rendering services to a duly registered RE Developer and selling goods and services to its nonresident affiliates engaged in

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12 Id., Volume I, pp. 90-93.
13 See Motion To Dismiss, id., pp. 103-110; Comment/Opposition (Re: Respondent's Motion to Dismiss dated January 8, 2019), id., pp. 124-143; Resolution dated 10 April 2019, id., pp. 148-156; Concurring Opinion of Associate Justice Ma. Belen M. Ringpis-Liban, id., pp. 157-161; Motion for Reconsideration, id., pp. 162-166; Comment/Opposition (Re: Respondent's Motion for Reconsideration dated April 30, 2019), id., pp. 178-188; Resolution dated 30 July 2019, id., pp. 195-201.
14 See dispositive part of Resolution dated 30 July 2019, id., p. 201.
15 Id., pp. 206-220.
16 Filed *via* registered mail, id., pp. 498-501.
17 See Order dated 03 October 2019, id., pp. 505-507.
18 Id., Volume II, pp. 509-521.
19 Id., pp. 557-564.
20 Exhibit "P-29", id., Volume I, pp. 225-242.

business conducted outside the Philippines; (4) petitioner's excess and unutilized input VAT for the four (4) quarters of CY 2016 were not applied against its output VAT and remained unutilized until the amount was deducted as "VAT Refund/TCC Claimed" from the total input VAT in its Amended Quarterly VAT Return for the 4th quarter of CY 2017; and, (5) except for the 1st quarter VAT return for CY 2017 that was filed using eBIRForms, petitioner's VAT returns were filed using the eFPS.

In her cross examination, Loh declared that although she is based abroad, she reviews the prepared documents sent to her through email. When inquired as to the filing of the 1st quarter VAT return of CY 2017, Loh answered that she saw her colleague, Syuhada Nazihah Tengku (**Tengku**), received an email from the BIR confirming receipt of the filed VAT return using the eBIRForms. In re-direct examination, Loh confirmed that Tengku works in the same office as her. No recross examination was conducted.[21]

As for Sison, he testified through his Sworn Statement[22] that: (1) he is the Court-commissioned ICPA; (2) as such, he prepared the ICPA Report[23] (which he submitted to the Court on 27 February 2020) enclosing the audit procedures performed and the findings of the verification, and a CD[24] containing the scanned copies of the documents examined; (2) in his audit, he verified that: (a) the zero-rated sales were traced from Summary List of Sales (**SLS**) and were duly supported by invoices and official receipts (**ORs**); (b) the input taxes amounting to ₱158,255.85 failed to meet the invoicing requirements; and, (c) input taxes from importation amounting to ₱153,167.00 were not substantiated; (3) the documents he examined were original, certified true copies or original computer print-outs; and, (4) after his verification, he recommended for the input VAT refund of ₱10,882,438.24.

During cross-examination, Sison confirmed the following: (1) the word "zero-rated" was written on the ORs and invoices; (2) the SLS were computer-generated and automatically transmitted to the BIR; and,

21 TSN dated 20 February 2020, pp. 6-13.
22 Exhibit "P-31", Division Docket, Volume II, pp. 608-620.
23 Exhibit "P-32", id., pp. 586-603.
24 Exhibit "P-32-b".

(3) for the taxes on importation, these were supported by billings and BIR Form 1600. No further examination was conducted.[25]

After the Court granted the recall of petitioner's witness[26], Loh identified in her Supplemental Sworn Affidavit[27], the relevant documents to prove the registration of RE Developer, *e.g.*, the Board of Investment (**BOI**) certification, Department of Energy (**DOE**) Endorsement Letter and BIR Ruling No. VAT-0218-2020 dated 12 March 2020. As the Court observed that the said documents were photocopies, it directed petitioner to submit the certified true copies within 30 days from the hearing date. Moreover, it ordered petitioner to file its formal offer within the same period.[28]

Complying with the order, on 24 May 2021, petitioner filed its Formal Offer of Evidence[29] (**FOE**) consisting of Exhibits "P-1" to "P-36", inclusive of sub-markings. However, it asked for the deferment of the FOE resolution and requested for another setting of a commissioner's hearing and an additional twenty (20) day-period to submit the certified true copies of Exhibits "**P-33**" to "**P-35**". Respondent did not file a comment thereto.[30] Pending the resolution, petitioner submitted the certified true copies of the said exhibits.[31]

Later, after the aforesaid exhibits were submitted, the Court set the commissioner's hearing and held in abeyance the resolution of petitioner's FOE.[32] Thereafter, in a Resolution dated 14 July 2022[33], the Court admitted all of petitioner's exhibits except for "**P-25**" and "**P-25-a**" for failure to present the original or the certified true copy thereof. Eventually, the Court admitted the said exhibits when petitioner sought for partial reconsideration and presented the originals.[34]

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25 TSN dated 16 February 2021, pp. 7-13.
26 See Order dated 16 February 2021, Division Docket, Volume II, pp. 649-650.
27 Exhibit "P-36", id., 656-659.
28 See Order dated 22 April 2021, id., pp. 671-672.
29 Id., pp. 677-710.
30 See Records Verification dated 22 November 2021, id., Volume III, p. 992.
31 See Submission filed on 10 June 2021, id., Volume II, pp. 977-988.
32 See Resolution dated 08 February 2022, id., Volume III, pp. 996-1000.
33 Id., pp. 1103-1105.
34 See Motion for Partial Reconsideration (Re: Resolution dated July 14, 2022), id., pp. 1106-1109; Submission, id., pp. 1127-1184; Resolution dated 07 November 2022, id., pp. 1186-1188.

Still later, respondent manifested that in view of the absence of any response on petitioner's claim for refund, he or she will no longer present countervailing evidence. The Court then directed the parties to file their respective memoranda.[35]

On 30 March 2023, petitioner filed its Memorandum[36] while respondent filed his or her Memorandum[37] the next day. Accordingly, on 14 April 2023, the Court considered the case submitted for decision.[38]

ISSUE

As culled from the Pre-Trial Order[39], the main issue for this Court's determination is -

> WHETHER PETITIONER HALLIBURTON WORLDWIDE LIMITED – PHILIPPINE BRANCH IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) IN THE AGGREGATE AMOUNT OF ₱11,193,861.09, REPRESENTING ITS EXCESS AND UNUTILIZED INPUT VALUE-ADDED TAX (VAT) FOR THE FIRST TO FOURTH QUARTERS OF CALENDAR YEAR (CY) 2016 ATTRIBUTABLE TO ZERO-RATED SALES.

ARGUMENTS

Citing the Supreme Court case of *San Roque Power Corporation v. Commissioner of Internal Revenue*[40] (**San Roque**), petitioner enumerates the following requirements for a claim for input VAT refund/TCC (attributable to zero-rated sales) to prosper, thus:

> ...
> 1. The taxpayer is VAT registered;
> 2. The taxpayer is engaged in zero-rated or effectively zero-rated sales;
> 3. The input taxes are due or paid;
> 4. The input taxes are not transitional input taxes;
> 5. The input taxes have not been applied against output taxes during and in the succeeding quarters;

35 See Order dated 01 March 2023, id., p. 1190.
36 Id., pp. 1191-1222.
37 Id., pp. 1224-1233.
38 See Resolution dated 14 April 2023, id., p. 1237.
39 Supra at note 19.
40 G.R. No. 180345, 25 November 2009; Citation omitted.

6. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
7. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106(B) and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations;
8. If there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and,
9. The claim is filed within two (2) years after the close of the taxable quarter when such sales were made.

...

Petitioner insists that, with its testimonial and documentary evidence, it was able to establish that it complied with all the aforementioned conditions.

As likewise shown in the records, petitioner anchors its claim for refund of input VAT on: (**1**) Section 106(A)(2)(a)(1) in relation to Sections 110(B) and Section 112 (A) and (C)[41] of the National Internal Revenue Code (**NIRC**) of 1997, as amended; and, (**2**) Section 15(g)[42] of Republic Act (**RA**) No. 9513 or the *Renewable Energy Act of 2008*, in relation to Sections 110(B) and 112(A) and (C) of the NIRC of 1997, as amended.

According to petitioner, RA 9513 provides that sales by suppliers of goods and service to RE Developers are subject to VAT at the rate of zero percent (0%). Hence, its sales to Energy Development Corporation (**EDC**) are zero-rated and should entitle it to the refund of input VAT attributable to the said sales. As for its export sales to nonresident affiliates, petitioner likewise claims that such are all zero-rated sales as these were fully supported by commercial invoices, paid for in

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41 **SEC. 106.** *Value-added Tax on Sale of Goods or Properties.* –
(A) *Rate and Base of Tax.* – ...
...
SEC. 110. *Tax Credits.* –
...
(B) *Excess Output or Input Tax.* – ...
...
SEC. 112. *Refunds or Tax Credits of Input Tax.* –
(A) *Zero-Rated or Effectively Zero-Rated Sales.* – ...
...
(C) *Period within which Refund of Input Taxes shall be Made.* – ...

42 **SEC. 15.** *Incentives for Renewable Energy Projects and Activities.* – ...
...
(g) Zero Percent Value-Added Tax Rate – ...

acceptable foreign currencies and accounted for in accordance with Revenue Memorandum Circular (**RMC**) No. 42-2003.[43]

Expectedly, respondent debunks every ground that petitioner relies on in its pursuit of a refund. Contrary to petitioner's claim, respondent insists on petitioner's failure to fully substantiate the refund sought with the proper documents such as sales invoices, ORs, among others. Moreover, respondent calls out petitioner for its non-submission of the DOE Certificate of Endorsement (**COE**), thus its sales to RE Developers could not be considered as zero-rated. Lastly, respondent points out that claims for refund are construed strictly against the taxpayer. With petitioner's failure to comply with the refund's documentary and evidentiary requirements, it must necessarily be denied.

RULING OF THE COURT

After a careful and thorough evaluation of the applicable laws, rules and regulations and the evidence presented by petitioner, the Court finds the instant petition partly meritorious.

Petitioner anchors its claim on Sections 110(B), 112(A) and (C) of the NIRC of 1997, as amended, which are all quoted hereunder:

> ...
> **SEC. 110.** *Tax Credits.* —
> ...
>
> (B) *Excess Output or Input Tax.* — If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the VAT-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes, subject to the provisions of Section 112.
> ...

43 Clarifying Certain Issues Raised Relative to the Processing Of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed With The Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

> **SEC. 112.** *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided*, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
>
> ...
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.[44]
>
> ...

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[45] (**Deutsche Knowledge Services**), the Supreme Court laid down the requisites for the entitlement to tax refund or credit of excess input VAT attributable to zero-rated sales, to wit:

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[44] Italics in the original text.

[45] G.R. No. 234445, 15 July 2020; Citations omitted.

> ...
>
> Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."
>
> ...

Applying the foregoing principle, the Court will proceed to determine whether petitioner complied with the aforementioned requisites.

<u>FIRST (1ST) REQUISITE:</u>
PETITIONER MUST BE VALUE-ADDED TAX (VAT)-REGISTERED.

Indisputably, petitioner is a VAT-registered taxpayer with TIN 266-369-565-000, as evidenced by BIR Certificate of Registration No. OCN 9RC0000274116.[46]

<u>SECOND (2ND) REQUISITE:</u>
PETITIONER MUST BE ENGAGED IN SALES WHICH ARE ZERO-RATED OR EFFECTIVELY ZERO-RATED.

The 2nd requisite requires that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1) and (3)[47], and 108(B)(1) and

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46 Supra at note 5.

47 **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* –

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, a value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* - The term '*export sales*' means:

(2)[48] of the NIRC of 1997, as amended, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with Bangko Sentral ng Pilipinas (**BSP**) rules and regulations.

In petitioner's 1st to 4th Quarterly VAT Returns for CY 2016[49], petitioner reported its total sales amounting to ₱167,080,080.98 which comprised **entirely** of zero-rated sales, and are broken down as follows:

Quarter	**Amount**
1st	₱ 30,154,021.55
2nd	82,488,227.11
3rd	30,124,547.18
4th	24,313,285.14
Total Sales	**₱167,080,080.98**

Of the ₱167,080,080.98 that petitioner claims to have been derived from its as zero-rated sales/receipts, ₱166,819,247.08 consisted of sales of services to an RE developer and ₱260,833.90 export sales to its nonresident foreign affiliates, detailed as follows:[50]

(1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

...

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

...

48 **SEC. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. –

...

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

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

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)[.]

...

49 Supra at notes 6, 7, 8 and 9.

50 Exhibit "P-30-K" (Summary List of Sales for CY 2016), CD.

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Sale of services to RE developer					
Energy Development Corporation	₱30,112,224.40	₱82,488,227.11	₱30,124,447.42	₱24,094,348.15	***₱166,819,247.08***
Export Sales to nonresident foreign affiliates					
Halliburton Energy Services (Malaysia)	₱-	₱-	₱99.76	₱30,024.71	₱30,124.47
PT Halliburton Indonesia	41,797.15	-	-	-	41,797.15
Halliburton Worldwide GMB	-	-	-	188,912.28	188,912.28
Total Export Sales	*₱41,797.15*	*₱-*	*₱99.76*	*₱218,936.99*	***₱260,833.90***
Total Zero-Rated Sales/Receipts	**₱30,154,021.55**	**₱82,488,227.11**	**₱30,124,547.18**	**₱24,313,285.14**	**₱167,080,080.98**

i. SALE OF SERVICES TO RENEWABLE ENERGY (RE) DEVELOPER

Petitioner alleges that its sale of services to EDC, an RE developer, amounting to ₱166,819,247.08 for CY 2016 is pursuant to the Contract for Directional Drilling Works executed on 29 November 2011[51], where it undertook to design and execute the Directional Drilling Program and Services for EDC in the Philippines.[52]

Petitioner thus similarly invokes Section 15(g) of RA 9513 which grants certain tax incentives to RE developers like EDC. Said provision reads, in part, as follows:

...

"CHAPTER VII
GENERAL INCENTIVES

Section 15. *Incentives for Renewable Energy Projects and Activities.* - **RE developers of renewable energy facilities**, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, **as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives**:

...

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as

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51 Exhibit "P-25", Division Docket, Volume III, pp. 1130 to 1184.
52 See Pars. 5.2, General Obligations of Contractor, id., p. 1141.

fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and **services needed for the development, construction and installation of its plant facilities.**

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.[53]

...

Moreover, Section 13(G)(b)(c), Rule 5 of Department Circular No. DC2009-05-0008 dated 25 May 2009, or the *Implementing Rules and Regulations* (**IRR**) of RA 9513, provides:

...

SEC. 13. *Fiscal Incentives for Renewable Energy Projects and Activities*

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

...

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

...

(b) Purchase of local goods, properties and **services needed for the development, construction, and installation of the plant facilities of RE Developers**; and

53 Italics in the original text and emphasis supplied.

(c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.[54]

...

Based on the foregoing provisions, all RE Developers are entitled to zero-rated VAT *on its purchases* of local supply of goods, properties and *services needed for the development, construction and installation of plant facilities*. Furthermore, the law declares that the VAT zero-rating applies to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

Relative thereto, the same IRR of RA 9513 further states the conditions for the availment of incentives and other privileges under the said law. Section 18(A) and (B) thereof reads:

...

SEC. 18. *Conditions for Availment of Incentives and Other Privileges –*

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment **shall register with the DOE, through the Renewable Energy Management Bureau (REMB)**. The following certifications shall be issued:

(1) ***DOE Certificate of Registration*** **– issued to an RE Developer holding a valid RE Service/Operating Contract.**

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

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54 Emphasis supplied and italics in the original text.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

...

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, <u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.[55]

...

Corollarily, Department Circular No. DC2021-12-0042[56], amending Section 18(C) of the IRR of RA 9513, confirms that RE Developers are ***automatically*** qualified to avail of the incentives provided for in RA 9513 after securing a DOE Certificate of Registration, *viz*:

...

SEC. 18. Conditions for Availment of Incentives and Other Privileges. –

...

C. DOE ENDORSEMENT FOR AVAILMENT OF INCENTIVES AND DUTY-FREE IMPORTATIONS OF MACHINERY, EQUIPMENT, AND MATERIALS

<u>RE Developers</u> and manufacturers, fabricators, and suppliers of locally-produced RE equipment <u>shall be AUTOMATICALLY qualified to avail of the incentives provided for in the Act</u>, OTHER THAN THE INCENTIVE OF DUTY-FREE IMPORTATION OF QUALIFIED MACHINERY, EQUIPMENT, MATERIALS, PARTS AND

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55 Italics in the original text, emphasis and underscoring supplied.

56 PRESCRIBING AMENDMENTS TO SECTIONS 13(E) AND 18(C) OF DEPARTMENT CIRCULAR NO. DC2009-05-0008, ENTITLED RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513, OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008".

COMPONENTS, after securing a Certificate of Registration from the DOE.[57]

...

Thus, in order to qualify for VAT zero-rating on an RE Developer's purchases as contemplated under RA 9513 and its IRR, the RE developer must present the following documents:

1. Registration with the DOE; and,
2. Registration with the BOI.

An examination of the records reveals that petitioner presented EDC's DOE Certificates of Registration for the Geothermal Energy Sources in the following locations, with the respective BOI Registrations, as reflected in the BOI Certification dated 09 January 2019:

Location	**Project**	**DOE Certificate of Registration No.**	**BOI Certificate of Registration No.**[58]
Tongonan, Leyte	Tongonan Geothermal Production Field and Unified Leyte Power Plant	GRESC 2009-10-001 dated 23 October 2009[59]	2012-024
Palinpinon, Negros Oriental	Southern Negros Geothermal Production Field and Nasulo Geothermal Power Plant	GRESC 2009-10-002 dated 23 October 2009[60]	2011-202 and 2014-027
Bacon-Manito Sorsogon/Albay	Bacon-Manito Geothermal Production Field	GRESC 2009-10-003 dated 23 October 2009[61]	2011-201
Kidapawan City, North Cotabato	Mt. Apo Geothermal Project	GRESC 2009-10-004 dated 23 October 2009[62]	2012-025

57 Emphasis in the original and underscoring supplied.
58 Exhibit "P-33", Division Docket, Volume II, p. 980.
59 Exhibit "P-14", id., p. 763.
60 Exhibit "P-15", id., p. 764.
61 Exhibit "P-16", id., p. 765.
62 Exhibit "P-17", id., p. 766.

With the presentation of the above certificates, together with the Contract of Directional Drilling Works proving that petitioner rendered services necessary in the production of geothermal energy by EDC, petitioner's sales or receipts derived therefrom in CY 2016 qualify for VAT zero-rating.

For substantiation purposes, petitioner must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended, to wit:

> ...
>
> **SEC. 113.** *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) *Invoicing Requirements.* — A VAT-registered person shall issue:
>
> > (1) A VAT invoice for every sale, barter or exchange of goods or properties; and for every sale, barter or exchange of services.
> >
> > (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> > (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
> >
> > (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
> >
> > (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
> >
> > (b) If the sale is exempt from value-added tax, the term 'VAT-exempt sale' shall be written or printed prominently on the invoice or receipt;
> >
> > (c) If the sale is subject to zero percent (0%) value-added tax, the term '**zero-rated sale**' shall be written or printed prominently on the invoice or receipt;

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

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

(4) In the case of sales in the amount of One thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client.[63]

...

These provisions are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (**RR**) No. 16-2005[64], as amended, to wit:

...

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

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

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

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

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

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

63 Italics in the original text and emphasis supplied.
64 Consolidated Value-Added Tax Regulations of 2005.

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

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

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

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

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

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

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

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

...

Moreover, the pertinent invoices and ORs must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended:

...

SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.* — All persons subject to an internal revenue tax shall, for each sale and transfer of merchandise or for services rendered valued at

Twenty-five pesos (P25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: ...

...

SEC. 238. *Printing of Receipts or Sales or Commercial Invoices.* — All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

No authority to print receipts or sales or commercial invoices shall be granted unless the receipts or invoices to be printed are serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) and business address of the person or entity to use the same, and such other information that may be required by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

...

An examination of petitioner's gross receipts from its sale of services to EDC for CY 2016, as supported by VAT ORs and invoices[65], shows that petitioner received payments in the aggregate amount of ₱163,482,862.15. On the other hand, petitioner reported aggregate sales to EDC amounting to ₱166,819,247.08 in its Quarterly VAT Returns for CY 2016, as can be summarized from its SLS.[66] The result of the Court's examination are as follows:

Exhibit No.	Official Receipt		Amount Received per OR	Amount per SLS
	No.	Date[67]		
"P-30-U-1"	1100	6 January 2016	₱ 9,337,210.33	₱ 9,527,765.64
"P-30-U-2"	1101	17 February 2016	2,782,226.75	2,839,006.89
"P-30-U-3"	1102	9 March 2016	17,390,542.83	17,745,451.87
"P-30-U-4"	1103	13 April 2016	13,112,086.67	30,755,326.71
"P-30-U-5"	1104	29 April 2016	17,028,133.50	
"P-30-U-6"	1106	23 May 2016	1,123,914.96	30,995,558.36
"P-30-U-7"	1105	18 May 2015	29,251,732.24	
"P-30-U-8"	1107	15 June 2016	20,322,595.20	20,737,342.04
"P-30-U-9"	1108	21 July 2016	681,034.04	694,932.69
"P-30-U-10"	1110	19 August 2016	14,946,551.03	29,429,514.73
"P-30-U-11"	1109	24 August 2016	13,894,373.41	

65 Exhibits "P-30-U-1" to "P-30-U-14", CD.
66 Exhibit "P-30-K", id.
67 Expressed in dd-mmm-yyyy.

"P-30-U-12"	1111	5 October 2016	2,245,693.14	5,729,432.11
"P-30-U-13"	1112	25 October 2016	3,369,150.33	
"P-30-U-14"	1113	9 November 2016	17,997,617.72	18,364,916.04
		Total	**₱163,482,862.15**	**₱166,819,247.08**

The ICPA explained the apparent difference of ₱3,336,384.93 between the aggregate amounts received *per* ORs and reported in the VAT returns to pertain to two percent (2%) expanded withholding tax (**EWT**) deducted by EDC.[68] However, petitioner did not present any evidence to support and account for the noted discrepancy. As such, the Court must disallow outright the unaccounted and unsupported zero-rated sales in the said amount of ₱3,336,384.93.

Further, it is found that VAT OR No. 1100 dated 06 January 2016 in the amount of ₱9,337,210.33[69] fails to prominently show that the sales therein are "zero-rated", while VAT OR No. 1106 dated 23 May 2016 (in the amount of ₱1,123,914.96)[70] and VAT OR No. 1109 dated 24 August 2016 (in the amount of ₱13,894,373.41)[71], do not indicate the nature of the services rendered. Consequently, said amount aggregating to ₱24,355,498.70 must be disallowed as the VAT ORs are not compliant with the invoicing requirements under Section 113(B)(2)(c) and (3) of the NIRC of 1997, as amended.

In sum, out of the zero-rated receipts to EDC of ₱166,819,247.08, only the amount of ₱139,127,363.45[72], which are properly supported by VAT zero-rated ORs, qualify for VAT zero-rating under RA 9513 and DOE Circular No. DC2009-05-008, in relation to Section 113(A)(2), (B)(1), (2)(c), (3) and (4) of the NIRC of 1997, as amended.

ii. <u>EXPORT SALES TO NONRESIDENT FOREIGN AFFILIATES</u>

With reference to its ₱260,833.90 reported zero-rated export sales of goods to its nonresident foreign affiliates, namely: Halliburton Energy Services (Malaysia), PT Halliburton Drilling Systems in Indonesia and

68 Exhibit "P-32" (ICPA Report, p. 10), Division Docket, Volume II, p. 595.
69 Exhibit "P-30-U-1", CD.
70 Exhibit "P-30-U-6", id.
71 Exhibit "P-30-U-11", id.
72 ₱166,819,247.08 less ₱3,336,384.93 and ₱24,355,498.70.

Halliburton Worldwide GMBH (Switzerland), petitioner claims that they were paid for in acceptable foreign currencies accounted for in accordance with the rules and regulations of the BSP and RMC No. 42-2003, *via* offsetting arrangements, invoking Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, to wit:

> ...
>
> **SEC. 106.** *Value-Added Tax on Sale of Goods or Properties.* —
>
> (A) *Rate and Base of Tax.* — ...
>
> ...
>
> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (a) *Export Sales.* - The term '*export sales*' means:
>
> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).[73]
>
> ...

Based on the foregoing, in order for a direct export sale to qualify as zero-rated, the following essential elements must be present:

1. the sale was made by a VAT-registered person;
2. there was sale and actual shipment of goods from the Philippines to a foreign country; and,
3. the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

It is settled that petitioner is a VAT-registered person. Therefore, petitioner complied with the *first* essential element.

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[73] Italics in the original text.

As for the *second* essential element, any VAT-registered person claiming VAT zero-rated direct export sales must present, among others, the following documents:

1. the VAT invoice as proof of sale of goods; and,
2. the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

Corollary to the first document, said VAT invoices must comply with the pertinent invoicing requirements, containing all the required information under Section 113(A)(1) and (B) of the NIRC of 1997, as amended.

In this respect, petitioner failed to submit VAT invoices and bills of lading or airway bills to prove the existence of sale of goods and actual shipment of goods from the Philippines to a foreign country. While petitioner submitted invoices and other documents[74] to support said export sales, they do not reflect the required information under Section 113(A)(1) and (B) of the NIRC of 1997, as amended. On this score, petitioner's alleged direct export sales to its nonresident affiliates in the amount of ₱260,833.90 for CY 2016 cannot qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended.

Consequently, for petitioner's failure to prove any existing direct export sale, it has become unnecessary to proceed with a determination of its compliance with the *third* essential element.

In sum, for purposes of the *fourth* requisite, the Court finds that out of the total reported zero-rated sales/receipts of ₱167,080,080.98, only the zero-rated receipts derived by petitioner from services rendered to EDC, an RE Developer, amounting to ₱139,127,363.45, qualify for VAT zero-rating for the four quarters of CY 2016.

74 Exhibits "P-AO-1" to "P-AO-4", CD.

THIRD (3RD) REQUISITE:
THE CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN SUCH SALES ARE MADE.

In accordance with Section 112(A) and (C)[75] of the NIRC of 1997, as amended by RA 10963 or *Tax Reform for Acceleration and Inclusion* (**TRAIN**), the administrative claim for refund of unutilized input VAT must be filed with the BIR within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales are made.

Petitioner's present claim covers the 1st, 2nd, 3rd and 4th quarters of CY 2016. Counting two (2) years from the respective close of the said quarters, the respective last day for the filing of the administrative claim for the said four (4) quarters, *vis-à-vis* the date of filing of the administrative claim by petitioner, pursuant to Section 112(A) of the NIRC of 1997, as amended, are shown below, *viz*:

Quarter (CY 2016)	**Close of taxable quarter**	**Last day for filing an administrative claim**	**Date of filing of claim for refund**
1st Quarter	31 March 2016	31 March 2018	02 April 2018[76]
2nd Quarter	30 June 2016	30 June 2018	
3rd Quarter	30 September 2016	30 September 2018	
4th Quarter	31 December 2016	31 December 2018	

Considering that 31 March 2018 fell on a Saturday, it is apparent that petitioner's administrative claim was filed on the immediately following working day, *i.e.*, on 02 April 2018. Thus, petitioner's administrative claim was timely filed.

As to the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, necessitates that it must have been filed within thirty (30) days from its receipt of respondent's decision or after the expiration of the ninety (90)-day period. Thus, from the filing of

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[75] Supra at p. 10.
[76] Supra at note 10.

petitioner's administrative claim, respondent had 90 days to act on the said claim.

Relative thereto, Section 7(a)(1) and (2) of RA 1125[77], as amended by RA 9282[78], provides that CTA has exclusive appellate jurisdiction over decisions or inactions of CIR on refund cases:

> ...
>
> SEC. 7. *Jurisdiction*. – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, **where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial**[.][79]
>
> ...

Based on the foregoing, petitioner's administrative claim was timely filed on 02 April 2018. As such, respondent had 90 days from the said date or until 01 July 2018 to act on the said claim. However, as admitted by respondent, there is no letter of denial nor has there been any action on petitioner's refund.[80] Correspondingly, petitioner had 30 days from 01 July 2018, or until 31 July 2018, to file the judicial claim. Thus, the filing of the present *Petition for Review* on 26 July 2018 was

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77 AN ACT CREATING THE COURT OF TAX APPEALS.

78 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

79 Italics in the original text and emphasis supplied.

80 Supra at note 35.

timely made within the prescribed 30-day period; hence, satisfying the above-stated *third requisite*.

FOURTH (4^{TH}) REQUISITE:
THE CREDITABLE INPUT TAX DUE OR PAID MUST BE ATTRIBUTABLE TO SUCH SALES, EXCEPT THE TRANSITIONAL INPUT TAX, TO THE EXTENT THAT SUCH INPUT TAX HAS NOT BEEN APPLIED AGAINST THE OUTPUT TAX.

To satisfy the *fourth requisite*, the following conditions must concur:

a. **1st condition**: the input taxes are due or paid;

b. **2nd condition**: the input taxes claimed are attributable to zero-rated or effectively zero-rated sales and where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales;

c. **3rd condition**: the input taxes are not transitional input taxes; and,

d. **4th condition**: the input taxes have not been applied against output taxes during and in the succeeding quarters.

Petitioner complied with the ***3rd condition*** considering that its input taxes do not appear to be transitional input taxes considering these operate to benefit only newly VAT-registered persons.

As to the ***4th condition***, it is noted that petitioner had no twelve percent (12%) VATable sales for the four (4) quarters of CY 2016, thus, it had no output VAT against which the input VAT claim of ₱11,193,861.09 may be applied or credited. Moreover, although petitioner carried over the claimed input VAT in its succeeding Quarterly VAT Returns[81], the

81 Exhibits "P-7" to "P-10-a", Division Docket, Volume II, pp. 736-750.

same remained unutilized until it was deducted as *"VAT Refund/TCC Claimed"* in its Amended Quarterly VAT Return for the 4th quarter of CY 2017.[82] Therefore, the subject claim no longer formed part of the excess input VAT of ₱18,272,950.71[83] as of the end of the 4th quarter of CY 2017.

As to the ***1st condition*** in claiming VAT refund, it is crucial for petitioner to provide supporting documents to prove the input taxes claimed during the four (4) quarters of CY 2016 were actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended, which provides that:

> ...
>
> **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:
>
> (a) Purchase or importation of goods:
>
> (i) For sale; or
>
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
>
> (iii) For use as supplies in the course of business; or
>
> (iv) For use as materials supplied in the sale of service; or
>
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has actually been paid.
>
> (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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82 Exhibit "P-10-a", id., 749-750.
83 Exhibit "P-10-a" (Line 29), id., p. 750.

(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.

Provided, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (₱1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided,* finally, 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.

...

The above provisions are implemented by Sections 4.110-1 to 4.110-3 of RR No. 16-2005, as amended by RR No. 04-2007[84], which provide as follows:

...

SEC. 4.110-1. *Credits For Input Tax.* — "*Input tax*" means the VAT due on or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, in the course of his trade or business. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the Tax Code.

It includes input taxes which can be directly attributed to transactions subject to the VAT plus a ratable portion of any input tax which cannot be directly attributed to either the taxable or exempt activity.

Any input tax on the following transactions evidenced by a VAT invoice or official receipt issued by a VAT-registered person in accordance with Secs. 113 and 237 of the Tax Code shall be creditable against the output tax:

(a) Purchase or importation of goods

(1) For sale; or

[84] Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

(2) For conversion into or intended to form part of a finished product for sale, including packaging materials; or

(3) For use as supplies in the course of business; or

(4) For use as raw materials supplied in the sale of services; or

(5) For use in trade or business for which deduction for depreciation or amortization is allowed under the Tax Code,

(b) Purchase of real properties for which a VAT has actually been paid;

(c) Purchase of services in which a VAT has actually been paid;

(d) Transactions "deemed sale" under Sec. 106(B) of the Tax Code;

(e) Transitional input tax allowed under Sec. 4.111 (a) of these Regulations;

(f) Presumptive input tax allowed under Sec. 4.111 (b) of these Regulations;

(g) Transitional input tax credits allowed under the transitory and other provisions of these Regulations.

SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:

(a) To the importer upon payment of VAT prior to the release of goods from customs custody;

(b) To the purchaser of the domestic goods or properties upon consummation of the sale; or

(c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.

SEC. 4.110-3. *Claim for Input Tax on Depreciable Goods.* — Where a VAT-registered person purchases or imports capital goods, which are depreciable assets for income tax purposes, the aggregate acquisition cost of which (exclusive of VAT) in a calendar month exceeds One Million pesos (₱1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

> (a) If the estimated useful life of a capital good is five (5) years or more — The input tax shall be spread evenly over a period of sixty (60) months and the claim for input tax credit will commence in the calendar month when the capital good is acquired. The total input taxes on purchases or importations of this type of capital goods shall be divided by 60 and the quotient will be the amount to be claimed monthly.
>
> (b) If the estimated useful life of a capital good is less than five (5) years — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed one million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition.

Capital goods or properties *refers to goods or properties with estimated useful life greater than one (1) year and which are treated as depreciable assets under Sec. 34(F) of the Tax Code, used directly or indirectly in the production or sale of taxable goods or services.*

The aggregate acquisition cost of depreciable assets in any calendar month refers to the total price, <u>excluding the VAT</u>, agreed upon for one or more assets acquired and not on the payments actually made during the calendar month. Thus, an asset acquired on installment for an acquisition cost of more than P1,000,000.00, <u>excluding the VAT</u>, will be subject to the amortization of input tax despite the fact that the monthly payments/installments may not exceed P1,000,000.00.

...

Construction in progress (CIP) *is the cost of construction work which is not yet completed. CIP is not depreciated until the asset is placed in service. Normally, upon completion, a CIP item is reclassified and the reclassified asset is capitalized and depreciated.*

CIP is considered, for purposes of claiming input tax, as a purchase of service, the value of which shall be determined based on the progress billings. Until such time the construction has been completed, it will not qualify as capital goods as herein defined, in which case, input tax credit on such transaction can be recognized in the month the

> *payment was made; Provided, that an official receipt of payment has been issued based on the progress billings.*
>
> *In case of contract for the sale of service where only the labor will be supplied by the contractor and the materials will be purchased by the contractee from other suppliers, input tax credit on the labor contracted shall still be recognized on the month the payment was made based on a progress billings while input tax on the purchase of materials shall be recognized at the time the materials were purchased.*
>
> *Once the input tax has already been claimed while the construction is still in progress, no additional input tax can be claimed upon completion of the asset when it has been reclassified as a depreciable capital asset and depreciated.*[85]
>
> ...

Furthermore, Section 4.110-8 of RR No. 16-2005, as amended by RR No. 04-2007, provides for the substantiation requirements of input tax credits on importation of goods, domestic purchases of goods, properties and services payments made to nonresidents, as follows:

> ...
>
> SEC. 4.110-8. *Substantiation of Input Tax Credits.* —
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> > (1) For the importation of goods — import entry or other equivalent document showing actual payment of VAT on the imported goods.
> >
> > (2) For the domestic purchase of goods and properties — invoice showing the information required under Secs. 113 and 237 of the Tax Code.
> >
> > (3) For the purchase of real property — public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.

[85] Italics in the original text, emphasis and underscoring supplied.

> (4) For the purchase of services — official receipt showing the information required under Secs. 113 and 237 of the Tax Code.
>
> A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.
>
> ...
>
> (d) Input tax from payments made to non-residents (such as for services, rentals and royalties) shall be supported by a copy of the Monthly Remittance Return of Value Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.
>
> ...

Ergo, in order to prove entitlement to credits for input taxes due or paid, the same must be evidenced by VAT invoices (for domestic purchases of goods) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the NIRC of 1997, as amended, as the case may be, as well as, the import entry or other equivalent documents showing actual payment of VAT (for importation of goods) and BIR Form 1600 with corresponding payment confirmation (for services rendered by nonresidents).

In its Quarterly VAT Returns for the 1st to 4th quarters of CY 2016[86], petitioner reported total input VAT of ₱11,193,861.09 from its amortization of input VAT on purchases of capital goods exceeding ₱1 Million, domestic purchases and importation of goods other than capital goods, domestic purchase of services and services rendered by nonresidents, is the subject of petitioner's claim for refund, as shown below:

Source of Input VAT	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Total
Current input VAT					
Domestic purchases of goods other than capital goods	₱8,505.51	₱11,318.05	₱496.58	₱21,464.04	₱41,784.18
Importation of goods other than capital goods	109,192.00	637,030.00	229,022.00	107,148.00	1,082,392.00
Domestic purchases of services	508,970.16	643,545.70	491,547.94	306,414.80	1,950,478.60
Services rendered by nonresidents	1,584,854.97	2,694,141.84	1,583,030.27	2,180,357.79	8,042,384.87

86 Supra at notes 6, 7, 8 and 9.

Subtotal	***₱2,211,522.64***	***₱3,986,035.59***	***₱2,304,096.79***	***₱2,615,384.63***	***₱11,117,039.65***
Deferred input VAT amortized for the period					
Input tax deferred on capital goods exceeding P1M from previous quarter	₱152,273.21	₱133,067.85	₱113,862.50	₱94,657.14	₱493,860.70
Less: Input tax on purchases of capital goods exceeding P1M deferred for the succeeding period	133,067.85	113,862.50	94,657.14	75,451.77	417,039.26
Subtotal	***₱19,205.36***	***₱19,205.35***	***₱19,205.36***	***₱19,205.37***	***₱76,821.44***
TOTAL INPUT VAT	₱2,230,728.00	₱4,005,240.94	₱2,323,302.15	₱2,634,590.00	₱11,193,861.09

In support of its input VAT, petitioner presented, among others, its suppliers' ORs and invoices[87], importation documents[88], and *Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld* (BIR Forms No. 1600)[89], which the ICPA duly examined.

As the ICPA has found, the input tax on domestic purchase of goods other than capital goods and purchase of services for the CY 2016 amounting to ₱158,255.85 did not meet the invoicing requirements and are not allowed for tax refund or TCC. These were summarized as follows:[90]

Exhibit No.	Description	Period				Total Amount
		Q1	Q2	Q3	Q4	
P-30-AA	Domestic purchase of goods & services supported by VAT Invoice/ORs claimed outside the taxable year	₱-	₱10,200.86	₱-	₱5,409.58	₱15,610.44
P-30-AB	Domestic purchase of goods & services not properly supported by valid document based on the nature of purchase	5,848.73	20,692.89	21,555.72	5,884.06	53,981.40
P-30-AC	Domestic purchase of services supported by VAT ORs but VAT is not separately indicated in the face of the OR	-	-		571.65	571.65
P-30-AD	Domestic purchase of goods and services supported by VAT Invoice/ORs but without TIN of the Petitioner.	-	-	-	2,119.86	2,119.86
P-30-AE	Domestic purchase of services supported by VAT ORs but without or bears the incorrect name of the Petitioner				857.14	857.14
P-30-AF	Unsupported domestic purchases of goods and services	4,630.21	22,263.52	9,088.56	2,299.76	38,282.05

87 Exhibits "P-30-V-1" to "P-30-V-10", "P-30-W-1" to "P-30-W-147", "P-30-X-1" to "P-30-X-26", "P-30-Y-1" to "P-30-Y-221", "P-30-Z-1" to "P-30-Z-59", "P-30-AA-1" to "P-30-AA-11", "P-30-AB-1" to "P-30-AB-26", "P-30-AC-1" to "P-30-AC-4", "P-30-AD-1" to "P-30-AD-2", "P-30-AE-1", "P-30-AH-1", and "P-30-AJ-1" to P-30-AJ-2", CD.

88 Exhibits "P-30-AL-1" to "P-30-AL-27", and "P-30-AM-1" to "P-30-AM-2", CD.

89 Exhibits "P-30-AK-1" to "P-30-AK-12", CD.

90 Exhibit "P-32" (ICPA Report, p. 13), Division Docket, Volume II, p. 598.

P-30-X	Disallowed portion on domestic purchase of services supported by VAT ORs (Actual OR is less than the amount reported per VAT Return/SLS)	327.53	142.53	0.02	59.85	529.93
P-30-AG	Domestic purchase of goods and services without OR/Invoices number in the schedule					23,496.81
P-30-AH	Domestic purchase of service supported by VAT ORs but incomplete as to OR date	-	-	-	805.85	805.85
P-30-AI	Domestic purchase of goods and services classified as Various Petty Cash that cannot be traced from documents	-	-	-	-	2,149.80
	Unaccounted Purchases	-	-	-	-	19,850.92
Total input taxes not valid for claiming refund or tax credit on local purchases		**₱10,806.47**	**₱53,299.80**	**₱30,644.30**	**₱18,007.75**	**₱158,255.85**

Moreover, the ICPA found input taxes on importation amounting to ₱153,167.00 that must be disallowed due to the following reasons:

Exhibit No.	**Description**	**Period**				**Total Amount**
		Q1	Q2	Q3	Q4	
P-30-AM	Importations that were not fully supported by the required import documents	₱-	₱52,774.00	₱-	₱-	₱52,774.00
	Unaccounted Importations	-	-	-	-	100,393.00
Total input tax not valid for claiming refund or tax credit on importations		**₱-**	**₱52,774.00**	**₱-**	**₱-**	**₱153,167.00**

In addition to the above disallowances, the following input VAT amounting to ₱764,365.17 shall likewise be disallowed for the following reasons:

Exhibit No.	**Supplier**	**SI/OR/BIR Form No.**	**OR/Remittance Date**	**Input VAT**
Domestic purchase of goods and services supported by VAT invoices/ORs with incorrect petitioner's TIN				
“P-30-Z-59”	SISON CORILLO PARONE AND CO	8805	15 December 2016	***₱9,900.00***
Out-of-period withholding VAT				
“P-30-AK-12”	-	1600	10 January 2017	***₱754,465.17***
			TOTAL	***₱764,365.17***

Anent the input taxes on services rendered by nonresidents, it must be noted that Section 110[91] of the NIRC of 1997, as amended, provides that a creditable input tax includes, among others, "[p]urchase of services on which **a value-added tax has actually been paid**."

Corollarily, Sections 4.110-8(a) and (c) and 4.114-2(b) of RR No. 16-2005, as amended by RR No. 04-2007, provide:

---

[91] Supra at p. 28.

...

SEC. 4.110-8. *Substantiation of Input Tax Credits.* —

(a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:

...

(d) Input tax from payments made to non-residents (such as for services, rentals and royalties) **shall be supported by a copy of the Monthly Remittance Return of Value[-]Added Tax Withheld (BIR Form 1600) filed by the resident payor in behalf of the non-resident evidencing remittance of VAT due which was withheld by the payor.**

...

SEC. 4.114-2. *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —

...

(b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, *starting February 1, 2006, with respect to the following payments:*

(1) Lease or use of properties or property rights owned by non-residents; and

(2) Other services rendered in the Philippines by non-residents.

In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 Remittance Return of VAT and Other Percentage Taxes Withheld.

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return**, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or**

documentary substantiation for the claimed input tax or input VAT.[92]

...

As can be gleaned from the afore-quoted provisions, the withholding VAT (**WVAT**) may be claimed as input tax credit **in the month such WVAT is withheld and remitted to the BIR** supported by BIR Form No. 1600. However, in the instant case, the December 2016 WVAT Return[93] was remitted to the BIR on **10 January 2017**[94], which is outside the period of claim of 01 January 2016 to 31 December 2016. As it stands, the Court is left with no choice but to disallow the same.

Thus, for purposes of compliance with the ***1st condition***, only the amount of ₱10,118,073.07 represents petitioner's valid input VAT due or paid for the four (4) quarters of CY 2016, as computed below:

Input VAT claim		**₱11,193,861.09**
Less: Disallowances		
As found by the ICPA	₱311,422.85	
As found by the Court	764,365.17	1,075,788.02
Valid input VAT		**₱10,118,073.07**

Lastly, for the ***2nd condition***, the input taxes claimed should be attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In the present case, petitioner's sales for CY 2016 is composed ***entirely*** of zero-rated sales.

Thus, for purposes of, and with regard to petitioner's compliance with the ***2nd condition***, only the amount of ₱8,425,306.12 represents petitioner's valid input VAT attributable to its valid zero-rated receipts for the CY 2016, computed as follows:

92 Italics in the original text, emphasis and underscoring supplied.
93 Exhibit "P-30-AK-12", CD.
94 Id.

Valid input VAT attributable to reported zero-rated sales/receipts	₱10,118,073.07
Multiplied by: Valid zero-rated receipts	139,127,363.45
Divided by: Total reported zero-rated sales/receipts	167,080,080.98
Valid input VAT attributable to valid zero-rated receipts	**₱8,425,306.12**

In sum, petitioner has sufficiently proven its entitlement to the refund in the reduced amount of ₱8,425,306.12, representing the unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2016.

WHEREFORE, premises considered, the instant Petition for Review filed on 26 July 2018 by petitioner Halliburton Worldwide Limited – Philippine Branch is hereby **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **EIGHT MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND THREE HUNDRED SIX and 12/100 (₱8,425,306.12)**, representing its unutilized excess input Value-Added Tax for the four (4) taxable quarters of CY 2016 which is attributable to its zero-rated sales or receipts for the same period.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

ATTESTATION

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Special 2nd Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice