REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA EB NO. 1905** **(CTA Case No. 9107)**
	Present:
-versus-	DEL ROSARIO, *P.J.,* CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, *and* MODESTO-SAN PEDRO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 16 2021 11:55 a.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

This resolves the Motion for Reconsideration (Re: Decision Promulgated June 30, 2020) filed by petitioner on July 21, 2020,[1] without respondent's Comment despite due notice.[2]

In petitioner's motion, it seeks to reverse the Court's Decision, which affirmed the court a *quo*'s denial of its ₱27,729,564.16 input VAT refund claim.[3]

In support of its motion, petitioner Amadeus Marketing Philippines, Inc. (Amadeus Philippines) reiterates that Amadeus IT Group, S.A. (Amadeus Spain), its foreign parent company which owns almost 100% of its total subscribed shares,[4] is *not* doing business in the Philippines.

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[1] *Rollo*, pp. 137-150.
[2] Records Verification dated January 18, 2021, *Rollo,* p. 181.
[3] Decision dated February 6, 2018, *Rollo,* pp. 44-59.
[4] See Exhibit "P-90", Division Docket, Vol. 3, p. 1206.

It refutes the Court's conclusions by stating that: (1) The corporate activities of Amadeus Spain enumerated in Article 4 of its Articles of Association do *not* constitute doing business under Republic Act No. 7042 (RA 7042) or the Foreign Investments Act of 1991; (2) Specifically, merely holding shares in a subsidiary with the same purpose as Amadeus Spain does *not* indicate control contrary to the Court's observation; (3) Amadeus Philippines, as Amadeus Spain's representative or distributor domiciled in the Philippines, transacts business in its own name and for its own account; (4) The "mere active participation and control" of Amadeus Spain in the marketing, promotion and distribution of the Amadeus systems and/or products in the Philippines is *not* doing business under RA 7042 since the Implementing Rules and Regulations of RA 7042 contemplates "full control"; and finally, (5) In support of its position, petitioner cites the case of *Steelcase, Inc. v. Design International Selections, Inc.*[5] which holds that "the imposition of minimum standards concerning sales, marketing, finance and operations is nothing more than an exercise of sound business practice to increase sales and maximize profits for the benefit of Steelcase and its distributors. For as long as these requirements do no impinge on a distributor's independence, then there is nothing wrong with placing reasonable expectations on them."

We resolve to deny petitioner's Motion for Reconsideration.

First, control is the "power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee."[6] Rule 3, Section 1(E) of the Amended Implementing Rules and Regulations of the Securities Regulation Code defines the concept of *control* in a corporate setting in this manner:

> "E. <u>Control is the power to govern the financial and operating policies of an enterprise so as to obtain benefits from its activities. Control is presumed to exist when the parent owns, directly or indirectly through subsidiaries, more than one half of the voting power of an enterprise</u> unless, in exceptional circumstances, it can be clearly demonstrated that such ownership does not constitute control. Control also exists even when the parent owns one half or less of the voting power of an enterprise when there is:
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> i. Power over more than one half of the voting rights by virtue of an agreement with other investors;
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> ii. <u>Power to govern the financial and operating policies of the enterprise under a statute or an agreement;</u>
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> iii. Power to appoint or remove the majority of the members of the board of directors or equivalent governing body;
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> iv. Power to cast the majority of votes at meetings of the board of directors or equivalent governing body." 𝒫𝓇

[5] G.R. No. 171995, April 18, 2012.
[6] Black's Law Dictionary Abridged Fifth Edition, p. 174.

Evidence on record shows and petitioner does not deny that it is *effectively* a wholly-owned subsidiary of Amadeus Spain. In short, petitioner failed to disprove that such ownership of *more than half of its subscribed shares* does *not* constitute control. Other than a general denial of Amadeus Spain's active participation in its Philippine business, petitioner Amadeus Philippines failed to overcome this *legal presumption* of the control its parent company exercises over its financial and operating policies.

Second, beyond the legal presumption provided by law, however, certain facts also strongly militate against petitioner's claim that its parent merely holds shares as a *passive investor* in the company and, therefore, does *not* engage in trade or business in the Philippines. The Amadeus Commercial Organization (ACO) Agreement, for example, contradicts this claim.

As the Court discussed in the assailed decision, Amadeus Spain is *not* merely a passive investor in the petitioner since, *under the ACO*, it is granted the power to actively intervene and govern how Amadeus Philippines markets, promotes and distributes the Amadeus system and/or products:

> "*Third*, petitioner's position that it transacts business in its own name and account is contradicted by the significant *control* exercised by Amadeus Spain under the ACO Agreement, which undermines the legal and economic independence of Amadeus Philippines as its majority-owned subsidiary.
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> <u>Even with the appointment of Amadeus Philippines under the ACO Agreement, Amadeus Spain is expressly granted active participation and control in the marketing, promotion and distribution of the Amadeus system and/or products in the Philippines, specifically</u>:
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> 1. Amadeus Spain shall have the right to define and establish the conditions for the use of the Proprietary Marks by Amadeus Philippines, including but not limited to the conditions under which the Proprietary Marks may be used in conjunction with other names or marks and conditions for the use of Proprietary Marks primarily associated with other National Marketing Companies.
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> 2. Amadeus Spain can undertake any obligation with a third-party licensor, including obligations with respect to the marketing, offering and promotion of, and technical and other support for, the licensed AMADEUS Product; and petitioner is required to honor any of such undertaking within the Philippines;
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> 3. Amadeus Spain retains the responsibility of negotiating and entering into agreements with international providers (airline, hotel, car rental company, railroad company, tour operator, or other supplier of travel-related services, products or information that has contracted to use the Amadeus System and/or other Amadeus products to market or distribute its services, products or information); 𝒥𝓇

4. In case of abuse of the AMADEUS System by Subscriber in the Philippines, Amadeus Spain may: (a) require the Subscriber to stop such misuse, and/or, (b) exercise its right to terminate the agreement with the same Subscriber on account of such abuse, and/or (c) in the case that such abuse consists of excessive use in relation to the number of Bookings generated or of such other abuse as can reasonably be ameliorated by payment of financial compensation, require the Subscriber to pay a fee for such use;

5. Amadeus Spain shall contract directly to Multinational Subscribers that have their headquarters or Branches in the Philippines;

6. Amadeus Spain has the right to contract with Subscribers within the Philippines relative to the computerized reservation system (CRS) services through AMADEUS on-line and corporate products; and,

7. Amadeus IT Group S.A. undertakes to provide basic training program covering the use of the AMADEUS products for marketing, offering and promoting purposes, and initial training materials, to petitioner to facilitate the introduction of the same products.

Thus, on the basis of the ACO Agreement, the inevitable conclusion is that Amadeus Spain is doing business in the Philippines. Correspondingly, the services rendered by petitioner to its parent, Amadeus Spain, cannot be treated as subject to the zero percent (0%) VAT under Section 108(B)(2) of the Tax Code, as amended." (*Underscoring supplied and citations omitted*)

Clearly, petitioner cannot continue to deny that these activities of Amadeus Spain indisputably consist in "participating in the management, supervision or control" of a domestic business, imply a "continuity of commercial dealings" and contemplate the performance of acts in the progressive prosecution of commercial gain or its corporate purpose. All of such activities evidently fall under the very definition of *doing business* in the Foreign Investments Act of 1991.[7]

Finally, petitioner's reliance on *Steelcase, Inc. v. Design International Selections, Inc.*[8] is misplaced. In that case, the Supreme Court ruled that *Steelcase*, an unlicensed foreign corporation, was *not* doing business in the Philippines and could, therefore, sue its distributor, *Design International Selections, Inc.*, a domestic corporation. The Supreme Court explained that an appointment of a local distributor in the Philippines that is *independently* owned and managed, transacts business in its own name and for its own account and distributes other products of other companies, taken together, do *not* constitute doing business in the Philippines:

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[7] Section 3(d), Republic Act No. 7042.
[8] G.R. No. 171995, April 18, 2012.

> "From the preceding citations, <u>the appointment of a distributor in the Philippines is not sufficient to constitute 'doing business' unless it is under the full control of the foreign corporation</u>. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines. It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances.
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> In the case at bench, it is undisputed that <u>DISI was founded in 1979 and is independently owned and managed by the spouses Leandro and Josephine Bantug. In addition to Steelcase products, DISI also distributed products of other companies including carpet tiles, relocatable walls and theater settings</u>. The dealership agreement between Steelcase and DISI had been described by the owner himself as:
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> > 'xxx basically **a buy and sell arrangement** whereby we would inform Steelcase of the volume of the products needed for a particular project and Steelcase would, in turn, give 'special quotations' or discounts after considering the value of the entire package. In making the bid of the project, we would then add out profit margin over Steelcase's prices. After the approval of the bid by the client, we would thereafter place the orders to Steelcase. The latter, upon our payment, would then ship the goods to the Philippines, with us shouldering the freight charges and taxes.' [Emphasis supplied]
>
> This clearly belies DISI's assertion that it was a mere conduit through which Steelcase conducted its business in the country. From the preceding facts, the only reasonable conclusion that can be reached is that DISI was an independent contractor, distributing various products of Steelcase and of other companies, acting in its own name and for its own account." (*Underscoring supplied*)

Steelcase is, therefore, materially different from the case at bench taking into account the control exercised by Amadeus Spain over Amadeus Philippines, as its effectively fully-owned subsidiary. The control is, in addition, exerted under the terms of the ACO Agreement where petitioner's business activities, as the *sole* distributor of Amadeus Spain's products,[9] are *restricted* to marketing, distributing and providing access to Amadeus System exclusively. More significantly, the parent company's control is further established in the subsidiary's primary purpose under its Amended Articles of Incorporation which *limits* its declared purpose only to a confined business activity:

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[9] Par. 28, Petitioner's Memorandum, *Rollo*, p. 90.

> "PRIMARY PURPOSE
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> To market an automated computerized reservations system 'Amadeus Global Travel Distribution' which incorporates a software package which performs various functions including real-line airlines seat reservations, schedules[,] bookings, for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines."[10] (*Underscoring supplied*)

Notably, the scope of Amadeus Philippine's primary purpose quoted above is closely similar to the main activity of Amadeus Spain which "consists in the marketing, sale and distribution of every product and information technology of the Amadeus Group for the travel and tourism industry."[11]

Bearing in mind (1) the similarities of the business purposes and activities of Amadeus Spain, the foreign parent corporation, and its domestic subsidiary and (2) the considerable control granted to the foreign parent corporation through its equity ownership of the subsidiary and through the ACO Agreement, the Court is led to no other conclusion. The companies are intertwined with each other in terms of "ownership, business purpose, and management"[12] such that the independence of Amadeus Philippines, the domestic subsidiary, is encroached upon and it is reduced to a mere extension or conduit of its foreign parent corporation.

Accordingly, there is no compelling reason for the Court to modify or reverse its holding.

WHEREFORE, in view of the foregoing, the petitioner's Motion for Reconsideration (Re: Decision Promulgated June 30, 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[10] Exhibit P-3, Division Docket, Vol. 3, pp. 1216-1217.
[11] Auditors' Report, Annual Accounts and Directors' Report for the years ended December 31, 2013, Exhibit "P-9", Division Docket, Vol. 3, p. 1285.
[12] *Estelita Burgos Lipat and Alfredo Lipat v. Pacific Banking Corporation, et al.*, G.R. No. 142435, April 30, 2003.

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice