REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CHEVRON HOLDINGS, INC.,
Respondent.

CTA EB NO. 1950
(CTA Case No. 8946)

x - x

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1951
(CTA Case No. 8946)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 03 2020
2:19 p.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court are the following:

1) Petition for Review[1] filed by the Commissioner of Internal Revenue ("CIR"), docketed as CTA EB No. 1950, praying that the Decision[2] dated March 14, 2018 ("Assailed Decision") and Resolution[3] dated September 24, 2018 ("Assailed Resolution") of the Court of Tax Appeals First Division ("First Division") partially granting the Petition for Review in CTA Case No. 8946 be partially set aside and a new one be rendered denying the entire claim for refund; and

2) Petition for Review[4] filed by Chevron Holdings, Inc. Ltd. ("Chevron"), docketed as CTA EB No. 1951, praying for the following:

   a. Partial reconsideration of the Assailed Decision insofar as it reduced the amount of claim for refund to Php4,415,655.04;
   b. Remanding of the case and reopening of trial for the reception of supplemental evidence; and
   c. Reversal of the Assailed Decision and ordering the refund or issuance of a tax credit certificate ("TCC") in the amount of Php32,400,108.14 representing Chevron's excess and unutilized input value-added tax ("VAT") for the third and fourth quarters of 2012.

The dispositive portion of the Assailed Decision reads:

"**WHEREFORE**, in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to [Chevron] in the amount **of Four Million Four Hundred Fifteen Thousand Six Hundred Fifty Five Pesos and Four Centavos ([Php]4,415,655.04)** representing [Chevron's] unutilized excess input value-added tax attributable to its zero-rated sales for the Third and Fourth Quarters of Calendar Year 2012.

SO ORDERED."[5]

Meanwhile, the Assailed Resolution provides:

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1 Rollo (CTA EB No. 1950), pp. 7-20.
2 Penned by Associate Justice Erlinda P. Uy, with Presiding Justice Roman G. del Rosario and Associate Justice Cielito N. Mindaro-Grulla concurring. Docket, pp. 3707-3743.
3 *Id.*, pp. 3823-3833.
4 Rollo (CTA EB No. 1951), pp. 6-42.
5 Docket, p. 3742.

"**WHEREFORE**, in view of the foregoing, [the CIR's] **Motion for Partial Reconsideration (Re: Decision promulgated 14 March 2018)**, and [Chevron's] **Motion for Partial Reconsideration (Re: Decision dated March 14, 2018)**, are **DENIED** for lack of merit.

SO ORDERED."[6]

The Parties

Chevron is the Philippine branch of Chevron Holdings, Inc., (CHI), a multinational company organized and existing under and by virtue of the laws of the State of Delaware, United States of America, with registered office address at the 35th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, Makati City. It is also registered with the Bureau of Internal Revenue ("BIR") as a VAT taxpayer and was issued a Certificate of Registration with Taxpayer Identification Number (TIN) 201-056-391-000 on July 30, 1998.[7]

Chevron is licensed by the Securities and Exchange Commission ("SEC") to transact business in the Philippines as a Regional Operating Headquarters (ROHQ) under SEC Registration No. A199802486 dated June 03, 1998, with purposes limited to general administration and planning; business planning and coordination; sourcing and procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development.[8]

On the other hand, the CIR is the one vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[9]

The Facts

The facts as found by the First Division are as follows:

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6 *Id.*, p. 3838.
7 *Id.*, Decision, The Facts, p. 3707-3708.
8 *Id.*
9 *Id.*

"[Chevron] filed its Quarterly VAT Returns for the third and fourth quarters of CY 2012 on October 24, 2012 and on January 25, 2013, respectively.

On May 02, 2014, [Chevron] filed an administrative claim for refund or issuance of TCC for unutilized input VAT for the third quarter of CY 2012 in the total amount of [Php]18,025,207.76 with the BIR. It submitted all relevant documents in support of its claim when it filed its administrative claim for refund.

On May 27, 2014, [Chevron] filed an administrative claim for refund or issuance of TCC for unutilized input VAT for the fourth quarter of CY 2012 in the total amount of [Php]14,374,900.38 with the BIR. [Chevron] likewise submitted all relevant supporting documents when it filed its administrative claim.

On June 9, 2014, [Chevron] received Letter of Authority (LOA) No. LOA-124-2014-00000045 (eLA201100060743) dated May 27, 2014, authorizing concerned revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering July 1, 2012 to September 30, 2012.

On July 7, 2014, [Chevron] received LOA No. LOA-124-2014-00000048 (eLA201100060745) dated June 27, 2014, authorizing revenue officers to examine its books of accounts and other accounting records for all internal revenue taxes for the period covering October 1, 2012 to December 31, 2012.

For the period July 1, 2012 to September 30, 2012 (Third Quarter of CY 2012), the BIR requested [Chevron] to submit pertain supporting documents in its letters dated June 16, 2012, July 7, 2014 and July 14, 2014 pursuant to LOA No. LOA-124-2014-00000045 (eLA201100060743) dated May 27, 2014.

As regards the letter dated June 16, 2012, it is observed that the year 2012 should be 2014, based on the first paragraph of said letter marked as Exhibit 'P-8.1'....

xxx xxx xxx

Subsequently, for the period October 1, 2012 to December 31, 2012 (Fourth Quarter of CY 2012), the BIR also requested [Chevron] to submit specific supporting documents in its letters dated July 7, 2014 and July 15, 2014 pursuant to LOA No. LOA-124-2014-00000048 (eLA201100060745) dated June 27, 2014.

On July 11, 2014, [Chevron] submitted supporting documents as requested by the BIR in connection with its claim for refund of excess input VAT for the third and fourth quarters of CY 2012.

On July 18, 2014, [Chevron] submitted the final batch of supporting documents requested by the BIR pertaining to its claim for refund of excess input VAT for the third and fourth quarters of CY 2012.

There being no action taken by respondent on [Chevron's] administrative claim for refund or issuance of TCC, [Chevron] filed the instant Petition for Review on December 15, 2014."[10]

The Ruling of the First Division

On March 14, 2018, the First Division promulgated the Assailed Decision partially granting the Petition for Review. The court *a quo* ruled that out of the Php1,239,280,756.49 zero-rated sales declared per Chevron's Quarterly VAT Returns for the third and fourth quarters of 2012, only the amount of Php290,091,249.42 qualifies for VAT zero-rating under Section 108(B)(2) of the National Internal Revenue Code ("NIRC") of 1997, as amended. Moreover, out of the Php18,827,546.52 valid input VAT, only the amount of Php4,415,655.04 is attributable to the valid zero-rated sales of Php290,091,249.42.

Aggrieved, both Chevron and the CIR filed their respective motions for partial reconsideration[11] on April 03, 2018 and April 02, 2018, which the First Division denied in the Assailed Resolution on September 24, 2018.

The Proceedings in the Court of Tax Appeals En Banc

On October 16, 2018, the CIR filed a "Motion for Extension of Time to File Petition For Review" [12], docketed as CTA EB No. 1950, praying for an additional fifteen (15) days or until October 31, 2018 within which to file the petition for review. The Court granted the same in a Minute Resolution[13] dated October 18, 2018. On October 30, 2018, the CIR filed his "Petition for Review" [14].

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[10] *Id.*, pp. 3708-3709.
[11] *Id.*, pp. 3750-3761 and 3762-3787.
[12] Rollo (CTA EB No. 1950), pp. 1-4. Record shows that the CIR received the Assailed Resolution on October 01, 2018; Docket, p. 3822.
[13] *Id.*, p. 6.
[14] *Id.*, pp. 7-20.

On the other hand, Chevron filed a "Motion for Extension of Time to File Petition For Review"[15], docketed as CTA EB No. 1951, on October 17, 2018, praying for an additional fifteen (15) days or until November 01, 2018 within which to file the petition for review. The Court granted the same in a Minute Resolution[16] dated October 19, 2018. On November 05, 2018, Chevron filed its "Petition for Review" [17].

On November 06, 2018, a Minute Resolution[18] was issued consolidating CTA EB No. 1950 with CTA EB No. 1951. Thereafter, on December 14, 2018, the Court issued a Resolution[19] ordering the parties to file their respective comments on the Petitions for Review within ten (10) days from notice.

On January 14, 2019, Chevron filed its "Comment (Re: Commissioner of Internal Revenue's Petition for Review dated October 29, 2018)"[20]. Meanwhile, the CIR failed to file his comment.[21] Thus, on March 11, 2019, a Resolution[22] was issued giving due course to the consolidated cases and ordering the parties to file their respective consolidated memoranda within thirty (30) days from notice.

Chevron and the CIR filed their respective memoranda[23] on April 24, 2019 and May 16, 2019. On June 04, 2019, a Resolution[24] was issued submitting the instant cases for decision.

<u>Assignment of Errors</u>

The CIR, in CTA EB No. 1950, assigned the following errors:

1) The First Division erred in ruling that Chevron has valid zero-rated sales;

2) The First Division erred in ruling that Chevron's input VAT in the amount of Php4,415,655.04 is attributable to its zero-rated sales; and

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15 Rollo (CTA EB No. 1951), pp. 1-4. Record shows that Chevron received the Assailed Resolution on October 02, 2018; Docket, p. 3822.
16 *Id.*, p. 5.
17 *Id.*, pp 6-42.
18 Rollo (CTA EB No. 1950), p. 86.
19 *Id.*, pp. 88-89.
20 *Id.*, pp. 90-112.
21 *Id.*, Records Verification Report dated February 19, 2019, p. 113.
22 *Id.*, pp. 115-116.
23 *Id.*, pp. 122-136 and 138-179.
24 *Id.*, pp. 181-182.

3) The First Division erred in ruling that the claimed input VAT subject of the instant case remains unutilized.[25]

On the other hand, Chevron raised the following grounds in support of its "Petition for Review" in CTA EB No. 1951:

1) Chevron's clients are non-resident foreign corporations doing business outside the Philippines;

2) Chevron sufficiently proved the existence of its reported input VAT carry-over from previous year; and

3) Claims for refund of erroneously paid taxes, like any other ordinary civil case, necessitate only preponderance of evidence for its approbation.[26]

The Arguments of Parties

The CIR's arguments:

The CIR argues that Chevron was not able to prove that its clients for the subject sales were non-resident foreign corporations doing business outside the Philippines.

Moreover, the CIR maintains that there should be a determination on whether the input VAT paid are directly attributable to Chevron's zero-rated sales. After determining which input taxes are "creditable", the law requires a second evaluation to determine which "creditable" input VAT are "attributable", that is, the connection between the purchases and the finished product is concrete and not imaginary. In the instant case, the decision of the court *a quo* did not show direct attributability of the purchases of input VAT to the service whose sale is zero-rated. In support thereof, the CIR invokes the ruling in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[27] and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[28] (collectively referred to as the "*Atlas* cases").

Lastly, the CIR contends that Chevron failed to overcome the burden that the subject input VAT being claimed remained unutilized or have not been applied against any output VAT for the succeeding taxable quarters.

[25] *Id.*, p. 11.
[26] Rollo (CTA EB No. 1951), pp. 13-33.
[27] G.R. No. 159471, January 26, 2011.
[28] G.R. Nos. 141104 & 148763, June 08, 2007.

Chevron's arguments:

Chevron avers that it has presented substantial and relevant evidence to prove that all the recipients of its services are non-resident foreign entities conducting business outside the Philippines, by submitting both Certificate of Non-Registration issued by the SEC and other documents showing that Chevron's clients are doing business abroad. In fact, the Service Agreements presented show the addresses of Chevron's clients which proves that they are conducting business outside the Philippines. In addition, the printed screenshots of the Chevron Subsidiary Governance Website as well as the printed screenshots from the U.S. Securities and Exchange Commission website should be admitted as proof in lieu of the Certificate/Articles of Foreign Incorporation/Association.

Likewise, Chevron points out that the six (6) entities which are recipients of its services are unincorporated divisions of Chevron U.S.A Inc. and thus do not have articles of incorporation or association independent of the main company, Chevron U.S.A Inc. Nonetheless, Chevron was able to prove that Chevron U.S.A Inc. is a subsisting corporation duly incorporated under the laws of Pennsylvania.

Moreover, Chevron alleges that the SEC Certifications of Non-Registration submitted were sufficient to prove that the recipients of services are not registered or licensed to do business in the Philippines. Aside from certifying and confirming the fact that a company is not registered, the said Certifications likewise indicate if there exists a company name registered with the SEC similar to the names of the subject entities.

Fourth, Chevron prays that the Court take judicial notice of other cases decided by other divisions of the Court of Tax Appeals which have factually recognized that a number of the entities presented are in fact doing business outside the Philippines.

Fifth, Chevron asserts that submission of VAT invoices or receipts to prove the existence of reported input VAT carry-over from the previous year is not among the requirements to prove entitlement to a claim for refund. Following *San Roque v. Commissioner of Internal Revenue*[29], the findings of the Independent Certified Public Accountant (ICPA) based on the taxpayer's Quarterly VAT Return is sufficient to prove such claim.

Lastly, Chevron submits that claims for refund of erroneously paid taxes, like any other ordinary civil case, necessitate only preponderance of evidence and not evidence beyond reasonable doubt.

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[29] G.R. No. 180345, November 25, 2009.

In its "Petition for Review", Chevron included as well a "Motion to Reopen Trial with Request for Leave to Submit Supplemental Evidence", praying for the reopening of trial and presentation of additional evidence to prove that Chevron's affiliates are conducting business outside the Philippines.

The Ruling of the Court

Timeliness of Petitions

The Court in Division issued the Assailed Resolution, denying the CIR's "Motion for Partial Reconsideration (Re: Decision promulgated 14 March 2018)" and Chevron's "Motion for Partial Reconsideration (Re: Decision dated March 14, 2018)", on September 24, 2018. The CIR received said Resolution on October 01, 2018 whereas Chevron received it the next day October 02, 2018. Pursuant to Rule 4, Section 2(a)(1)[30] in relation to Rule 8, Section 3(b)[31] of the Revised Rules of the Court of Tax Appeals[32] ("RRCTA"), the CIR and Chevron had fifteen (15) days from date of receipt of the resolution or until October 16, 2018 and October 17, 2018, respectively, within which to file their petitions for review.

On October 16, 2018 and October 17, 2018, the CIR and Chevron filed their respective motions for extension of time to file petition for review, praying for an extension of fifteen (15) days to file. The court granted the same in separate Minute Resolutions. On October 30, 2018, the CIR timely filed his "Petition for Review" while Chevron also timely filed its "Petition for Review" on November 05, 2018.

Hence, the Court *En Banc* validly acquired jurisdiction over the two (2) petitions.

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[30] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[31] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[32] A.M. No. 05-11-07-CTA, November 22, 2005.

We now proceed to the merits of the case.

At the outset, it must be emphasized that the issues raised by the CIR and Chevron in their petitions are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the First Division in the Assailed Decision and Assailed Resolution. In fact, the said petitions for review are replicas of their motions for partial reconsideration[33] filed with the court *a quo*. Nevertheless, We shall discuss the issues anew if only to reinforce the earlier disquisition of the Court in Division.

CTA EB No. 1950

The First Division did not err in partially granting Chevron's claim for refund in the amount of Php4,415,655.04

First, the CIR argues that the documents submitted by Chevron will not prove that its clients were conducting business outside the Philippines during the subject claim.

We disagree.

This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, **at the very least, by both** SEC certificate of non-registration of corporation/partnership **and** proof of foreign incorporation/ association/business registration.

The said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines, while the certificate/articles of incorporation/association will prove that the recipient of the service is indeed foreign. Furthermore, the former document will tend to satisfy the requirement that the service-recipient is not engaged in trade or business within the Philippines, while the latter document will indicate whether the same service-recipient is engaged in business at all (*i.e.*, a showing of a continuity of conduct and intention to establish a continuous business). In this connection, it must be remembered that Section 108(B)(2)[34] of the NIRC of 1997, as amended, requires,

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[33] Docket, pp. 3750-3761 and 3762-3787.

[34] SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —

xxx xxx xxx

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

xxx xxx xxx

inter alia, that the service-recipient is "a person engaged in business conducted outside the Philippines" for the transaction to be treated as subject to the zero percent (0%) VAT rate.

An examination of Chevron's evidence would show that some of its service-recipients complied with the above-stated two (2) basic documents, and are considered as non-resident foreign corporations doing business outside the Philippines. Thus, We see no reason to deviate from the findings of the First Division regarding this issue.

We also do not subscribe to the CIR's *second* argument that there should be direct attributability of the purchases or input VAT to the finished product whose sale is zero-rated.

Section 112(A) of the NIRC of 1997, as amended, allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, *viz*.:

> "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 further, <u>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</u>: Provided finally, That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."[35]

Contrary to the CIR's argument, the provision above only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, and in this case, the Court *a quo* already found that the excess and unutilized input VAT of Chevron amounting to Php18,827,546.52 is attributable to its valid zero-

(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).

35 *Emphasis and underscoring supplied.*

rated sales based on the evidence presented by it.[36] The law does not require that the input tax be directly attributable to Chevron's zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguere debemos.*[37] It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.

Furthermore, the CIR's reliance in the *Atlas* cases is inaccurate as the doctrinal pronouncement therein may no longer be applied since it was decided under an earlier, now amended, Revenue Regulations. Verily, this Court finds the recent CTA *En Banc* case *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[38], as instructive on the matter:

> "We cannot rely on the rulings in the Atlas cases being invoked by the CIR. This must be so because, as clearly shown in the said cases, the latter were decided under the earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987, as amended by RR No. 3-88 dated February 15, 1988, Section 16 of which provides, in part, as follows:
>
> > 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.' (*Emphasis and underscoring supplied*)
>
> Understandably, on the basis thereof, the Supreme Court required and ruled in the Atlas cases that the input VAT being claimed for refund should be *'directly and entirely attributable'* to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.
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> xxx xxx xxx
>
> On June 22, 2005, the Secretary of Finance, upon the recommendation of the CIR, issued RR No. 14-2005, also known as the *'Consolidated Value-Added Tax Regulations of 2005,'* which became effective on July 1, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 1, 2005,

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[36] Docket, Decision dated March 14, 2018, p. 3741.

[37] Philippine Free Press, Inc. v. Court of Appeals (12th Division), et al., G.R. No. 132864, October 24, 2006.

[38] CTA EB Case Nos. 1777 & 1779, August 01, 2019.

which took effect on November 1, 2005. The latter RR, in turn, has undergone several amendments thereafter.

Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88, were deemed revoked as of July 1, 2005. Thus, unless the provisions of the said RR pertaining to the requirement that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales, has been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such treatment under the said RR Nos. 5-87 and 3-88 is deemed revoked.

A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the **requirement that the input VAT being claimed for refund should be '*directly and entirely attributable*' to the zero-rated sales, has not been retained**. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, is no longer binding, upon the effectivity of RR No. 14-2005, i.e., on July 1, 2005."[39]

As to the *third* ground raised by the CIR, his argument that Chevron failed to prove that the input VAT being claimed remained unutilized or have not been applied against output VAT for the current and succeeding quarters of the following taxable year, has no basis in fact and in law.

We agree with the First Division when it ruled in the Assailed Resolution[40] that Chevron was able to sufficiently establish that its input VAT was not applied against any output VAT liability, to wit:

"Petitioner sufficiently established that the input VAT claim of [Php]32,400,108.14, deducted as 'VAT Refund/TCC Claimed' in the amended Quarterly VAT Return for the second quarter of calendar year (CY) 2014, was not anymore included in the 'Total Amount Payable (Overpayment)' or the excess input VAT of [Php]204,968,019.48 as of the end of the said quarter. As evidenced by the succeeding Quarterly VAT Return for the third quarter of CY 2014, the amount reflected as 'Input Tax Carried Over from Previous Period' is the same excess input VAT of [Php] 204,968,019.48.

It bears stressing that Section 110(C) of the NIRC of 1997, as amended, merely requires that the amount of input VAT claimed for refund should be deducted from the accumulated input VAT as of the month or quarter when such claim was opted to be filed. The

[39] *Emphasis and underscoring supplied.*
[40] Docket, Resolution dated September 24, 2018, pp. 3830-3831.

reason for the deduction is to assure that the claimed input VAT shall not be applied against any future output VAT liability."

From all the foregoing, the CIR's arguments are devoid of merit.

CTA EB No. 1951

Only the amount of Php290,091,249.42 represent Chevron's valid zero-rated sales for the third and fourth quarters of 2012

Chevron submits that the First Division erred in disallowing the VAT zero-rated sales for the following foreign clients despite having submitted both the SEC Certificate of Non-Registration and other documents showing that said clients are doing business abroad, as summarized below:

	Company Name	*SEC Certificate of Non-Registration*	*Business Registration Document*	*Tax Residence Certificate*	*Inline Report of Corporate Profile*	*Printed Screenshot of US SEC Website*	*Service Agreement*	*Exhibit Reference*
1	Chevron Products Company	✓	✓		✓			14.29, 15.25, 17.27, 17.27.1, 19.16
2	Chevron Information Technology Company	✓	✓		✓			14.13, 15.34, 15.35, 17.13, 17.13.1
3	Chevron Services Company	✓	✓		✓			14.30, 15.34, 15.35, 17.30, 17.30.1
4	Chevron Australia Pty. Ltd. - Other	✓	✓	✓	✓	✓	✓	14.5, 15.3, 16.2, 17.4, 17.4.1, 18.1, 18.1.1, 19.3
5	CPUK-Trading and Marine Lubricants Branch	✓	✓	✓	✓		✓	14.38, 15.25, 16.6, 17.37, 17.37.1, 19.24
6	Chevron Australia Pty. Ltd. - Gorgon	✓	✓	✓	✓	✓	✓	14.6, 15.3, 16.2, 17.4, 17.4.1, 18.1, 18.1.1, 19.3
7	Chevron Energy Technology Company	✓	✓		✓			14.11, 15.34, 15.35, 17.9, 17.9.1
8	CGE1 – Global Dnstrm Cost Allocation	✓	✓					14.40, 15.8
9	UECSL – Chuandongbei Branch	✓	✓		✓			14.41, 15.32, 17.39, 17.39.1

	Company Name	*SEC Certificate of Non-Registration*	*Business Registration Document*	*Tax Residence Certificate*	*Inline Report of Corporate Profile*	*Printed Screenshot of US SEC Website*	*Service Agreement*	*Exhibit Reference*
10	Chevron Al Khalij, A Branch of Caphi	✓	✓		✓			16.17, 17.10, 19.13, 19.13.1
11	CPUK – Trading and Lubricants Branch	✓	✓	✓	✓		✓	14.38, 15.25, 16.6, 17.37, 17.37.1, 19.24
12	CPUK – Limited - BRES	✓	✓	✓	✓		✓	14.37, 15.25, 16.6, 17.37, 17.37.1, 19.24
13	Chevron Liberia Limited	✓	✓		✓			14.4, 15.13, 17.17, 17.17.1
14	Chevron Upstream	✓	✓		✓			14.35, 17.35, 17.35.1
15	Chevron Canadia Limited - Downstream	✓	✓		✓	✓	✓	14.9, 15.6, 17.7, 17.17.1, 18.2, 18.2.1, 19.5
16	Chevron N.A. Exploration Production Co.	✓	✓		✓			14.21, 15.34, 15.35, 17.21, 17.21.1
17	Chevron Pakistan Limited - Branch	✓	✓		✓		✓	14.28, 15.24, 17.28, 17.28.1, 18.7, 18.7.1, 19.17
18	Chevron Marine Products LLC – Int'l	✓	✓		✓	✓	✓	14.20, 15.17, 17.20, 17.20.1, 18.4, 18.4.1, 19.12

The Court *En Banc* is not persuaded.

Section 108(B)(2) of the 1997 NIRC provides that in order for a sale of service transaction to be subject to the 0% VAT rate, it is required, *inter alia*, that the services were "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" and the consideration therefor was "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)".

In *Accenture, Inc. v. Commissioner of Internal Revenue*[41], the Supreme Court declared that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "nonresident foreign corporation". Moreover, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent

[41] G.R. No. 190102, July 11, 2012.

with the ruling in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[42]

As We have discussed earlier, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a certificate of non-registration of corporation / partnership issued by the SEC and certificate / articles of foreign incorporation / association.

There can be no merit in Chevron's insistence that its service agreements and printed screenshot or corporate profile, are sufficient to establish that its service recipients are non-resident foreign corporations doing business outside the Philippines. The former document only shows the names of Chevron's customers to whom it rendered services, but do not, in any way, establish that the service recipients are engaged in business outside the Philippines; while the latter document is self-serving, and lack credibility, which can be easily manipulated to favor Chevron in view of its affinity with the entity that maintains or keeps the said database.

As for Chevron's other allegations, we note that they are mere reiterations and had been already addressed by the First Division in the Assailed Resolution. We agree with the First Division's ruling, to wit:

> "First, the Court cannot yield to [Chevron's] explanation that discrepancies in the names of the companies as indicated in the SEC Certifications of Non-Registration and the documents submitted consist mainly additional words such as 'Other', 'Branch', etc. added after the name of the company because [Chevron] could secure from the SEC and submit before this Court a certification showing the complete name or correct name of its clients without difficulty.
>
> Second, [Chevron] may have proved through the By-Laws of Chevron U.S.A. Inc. (Amended and Restated effective July 1, 2014) that the enumerated entities are divisions of Chevron U.S.A. Inc., unincorporated, and do not have independent articles of incorporation or association. Records, however, show that the main company Chevron U.S.A. Inc. has no SEC Certification of Non-Registration issued under its name. Hence, [Chevron] having failed to prove that Chevron U.S.A. Inc. is an entity doing business outside the Philippines, the CUSA Divisions should likewise be disallowed.

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[42] G.R. No. 153205, January 22, 2007.

> Third, this Court cannot take judicial notice of other cases decided by other divisions of this Court...
>
> xxx xxx xxx
>
> In this case, the pertinent documents have **not** been offered in evidence. Neither was it shown that the same documents are among the matters which the law mandatorily requires the Court to take judicial notice of, without any introduction of evidence. Nor is there capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions, to warrant this Court to take discretionary judicial notice of the said documents. And even granting that the pertinent documents may be taken judicial notice of, no hearing was conducted to determine whether such matters are decisive of a material issue in this case."[43]

From the foregoing, We see no reason to deviate from the First Division's ruling that only the following clients of Chevron shall be considered as non-resident foreign corporations doing business outside the Philippines:

1) Asia Pacific Marine Services (EF) BV
2) Chevron (Cambodia) Limited
3) Chevron (Thailand) Limited
4) Chevron Asia South Ltd.
5) Chevron Bangladesh Blocks Thirteen & Fourteen, Ltd.
6) Chevron Corporation
7) Chevron Hong Kong Limited
8) Chevron International Limited
9) Chevron International Pte. Ltd.
10) Chevron Kuo Pte. Ltd.
11) Chevron Lubricants Lanka PLC
12) Chevron Malaysia Limited
13) Chevron Neftegaz, Inc.
14) Chevron New Zealand
15) Chevron North Sea Limited
16) Chevron Oronite Pte. Ltd.
17) Chevron Overseas Services Corporation
18) Chevron Singapore Pte. Ltd.
19) Chevron South Africa (Pty) Limited
20) Chevron Trading Pte. Ltd.
21) Chevron USA, Inc. (Singapore Branch)
22) PT Chevron Oil Products Indonesia[44]

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[43] Docket, Resolution dated September 24, 2018, pp. 3834-3835.
[44] *Id.*, Decision dated March 14, 2018, p. 3730.

Thus, we are one with the First Division when it ruled that out of Chevron's declared zero-rated sales for the third and fourth quarters of 2012 in the amount of Php1,239,280,756.49, only Php290,091,249.42 which it derived from services rendered to the entities listed above, represents its valid zero-rated sales for the said period.

The First Division properly disallowed Chevron's input VAT carry-over from previous year amounting to Php184,844,401.26 for its failure to present VAT invoices or receipts to prove the existence of such amount

Chevron avers that the input VAT carry-over in the amount of Php184,844,401.26 should not have been disallowed in the instant case. Chevron stresses that a valid claim for refund does not necessitate submission of VAT receipts/invoices to prove the existence of reported input VAT carry-over from the previous year.

We are not persuaded.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[45] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[46] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[47] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[48]

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45 Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997.

46 Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc. and Court of Appeals, G.R. No. 127105, June 25, 1999.

47 Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011 *citing* Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

48 Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015 *citing* J.R.A. Philippines, Inc. v. CIR, G.R. No. 171307, August 28, 2013.

Pursuant to Section 110(A)(1)[49] and (B)[50] of the NIRC of 1997, as amended, any input VAT shall be creditable against the output VAT only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended.

In claiming excess or unutilized input VAT from zero-rated transactions, it is the excess over the output VAT which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input VAT credits to cover its output VAT liability for the current taxable year.

Considering that Chevron failed to present its VAT invoices or official receipts to prove the existence of its input VAT carried over from previous year in the amount of Php184,844,401.26, said amount cannot be validly applied against Chevron's output VAT.

Although it is true that this Court is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of Chevron's claims.[51]

Tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same

While we acknowledge that the standard of proof in civil cases (such as judicial claims for refund) is only preponderance of evidence which is linked to the concept of *solutio indebiti*, the strict construction in the appreciation of evidence will still apply in cases where compliance with conditions are an important facet to determine whether or not the taxpayer is entitled to the claim

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[49] 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:

xxx xxx xxx

[50] (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.

[51] Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 181858, November 24, 2010.

for refund as in claims for refund of alleged excess and unutilized input VAT attributable to zero-rated sales.

This is because it was specifically mandated under the NIRC of 1997, as amended, that taxpayers claiming for a refund or TCC for excess and unutilized input VAT must comply with the invoicing and accounting requirements under the Code as well as the revenue regulations implementing them.[52] Rules and regulations with regard to procedures are implemented not to be ignored or to be taken for granted, but are strictly adhered to for they are developed from the law itself. Moreover, a taxpayer has the burden of proving that it is entitled to the refund sought for, because taxes are presumed to have been collected in accordance with the laws and regulations.

The recent case of *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*[53] is instructive on the matter:

> "On a final note, the Court reiterates its consistent ruling that **actions for tax refund or credit**, as in the instant case, **are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, <u>but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven</u>**. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. 44 Thus, in view of petitioner's failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of tax credit of input VAT in the amount of P123,459,647.70 it inadvertently failed to include in its VAT Return, the Court deems it necessary to deny the same."[54]

Since Chevron failed to provide sufficient evidence to prove its claim, the Court cannot be faulted in denying said claim.

The prayer for the reopening of the trial to allow Chevron to submit supplemental evidence must be denied

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[52] Western Mindanao Power Corporation v. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012 *citing* Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 134467. November 17, 1999.

[53] G.R. No. 222428, February 19, 2018.

[54] *Emphasis and underscoring supplied.*

It is well-established that a motion to reopen the case like a motion for new trial may be granted only upon specific, well-defined grounds, set forth in the Rules.[55] A motion for new trial under Section 1, Rule 37 of the Rules of Court[56] and Section 5, Rule 15 of the Revised Rules of the Court of Tax Appeals[57] (RRCTA) may only be granted upon specific well-defined grounds, namely, fraud, accident, mistake, excusable negligence or newly discovered evidence.

Lamentably, the present occasion shows that it does not fall under any of the grounds enumerated. The instant motion was not based on fraud, accident, mistake or excusable negligence. Besides, the documents sought to be presented do not come within the purview of newly discovered evidence.

In the case at bar, Chevron was given the opportunity to submit necessary evidence to support its allegations in its original petition filed with the First Division before the case was submitted for decision. In fact, it was given another chance to prove its claim and file evidence in addition to those filed in the administrative level, since refund cases filed in the Court of Tax Appeals are litigated *de novo*. Now that it obtained an unfavorable decision from the court *a quo*, Chevron again prays that it be allowed to present additional evidence to justify its claim.

This the Court *En Banc* cannot countenance. A liberal application of the rules of procedure to suit Chevron's purpose would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.[58]

All in all, We find no sufficient basis for the grant of Chevron's prayer to reopen the trial.

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55 Ramon Alegre v. Manuel Reyes, G.R. No. L-56923, May 09, 1988.

56 **SECTION 1.** *Grounds of and period for filing motion for new trial or reconsideration.* - Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

57 **SEC. 5.** *Grounds of motion for new trial.* – A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:
(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or
(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result.
A motion for new trial shall include all grounds then available and those not included shall be deemed waived.

58 Commissioner of Internal Revenue v. A. Soriano Corporation, Court of Tax Appeals and Court of Appeals, G.R. No. 113703, January 31, 1997.

WHEREFORE, premises considered, the Court **DENIES** the instant Petitions for Review for lack of merit. The Decision dated March 14, 2018 and the Resolution dated September 24, 2018 of the First Division in CTA Case No. 8946 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice