REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1508
(CTA Case No. 8621)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

CHEVRON HOLDINGS, INC.,
Respondent.

CTA EB NO. 1509
(CTA Case No. 8621)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:
MAR 21 2018 3:57 p.m.

x- -x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court are the following:

1) Petition for Review filed by Chevron Holdings, Inc. Ltd. ("Chevron"), docketed as CTA EB No. 1508, seeking the reversal of the Decision[1] ("Assailed Decision") dated April 05, 2016 and Resolution[2] ("Assailed Resolution") dated August 12, 2016 of the Court of Tax Appeals Second Division ("Second Division"), insofar as it partially denied Chevron's claim for refund of its excess and unutilized input Value-Added Tax ("VAT") on purchases of goods and services attributable to zero-rated sales for calendar year ("CY") 2011; and

2) Petition for Review filed by the Commissioner of Internal Revenue ("CIR"), docketed as CTA EB No. 1509, praying that the Assailed Decision and Assailed Resolution partially granting the Petition for Review in CTA Case No. 8621 be reversed and set aside and a new one be rendered denying *in toto* the original Petition for Review in CTA Case No. 8621, entitled *Chevron Holdings, Inc. v. Commissioner of Internal Revenue.*

The Facts

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

> "[Chevron] is a Philippine branch of a multinational company duly organized and existing under and by virtue of the laws of the State of Delaware, United States of America. It 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 3, 1998, with office address at 35th Floor, Yuchengco Tower, RCBC Plaza, 6819 Ayala Avenue, 1200 Makati City.
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> ...[O]n the other hand, [ ] the duly appointed [CIR is] vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including among others, the duty to act upon and approve claims for refund or tax credit pursuant to the provisions of the National Internal Revenue Code of 1997 (Tax Code) and other tax laws, rules and regulations. [H]e may be served with summons, pleadings and other legal processes at [his] office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.
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> As a regional operating headquarters, [Chevron] is engaged in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and

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[1] Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. concurring. Docket, pp. 2156-2199.

[2] Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas concurring. *Id.*, pp. 2361-2370.

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.

[Chevron] is registered with the BIR as a VAT taxpayer and was issued a Certificate of Registration with Tax identification [sic] Number (TIN) 201-056-391-000.

On the following dates, [Chevron] filed with the [Bureau of Internal Revenue ("BIR")] its Original Quarterly VAT returns for the four quarters of 2011, respectively:

Taxable Quarter	Date of Filing of Original Return
1st	April 20, 2011
2nd	July 18, 2011
3rd	October 20, 2011
4th	May 22, 2012

On October 23, 2012, [Chevron] filed its administrative claim for refund and/or the issuance of [Tax Credit Certificate ("TCC")] of unutilized input VAT for the four quarters of CY 2011.

In view of [the CIR's] inaction, [Chevron] filed the present Petition for Review on March 22, 2013."[3]

<u>The Ruling of the Second Division</u>

On April 05, 2016, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** and [the CIR] is ordered to **REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [Chevron] in the reduced amount of **[Php]9,188,216.85**, representing its unutilized excess input VAT for the four quarters of taxable year 2011 which is attributable to its valid zero-rated receipts for the same period."[4]

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[3] *Id.*, pp. 2156-2158.
[4] *Id.*, p. 2193.

Aggrieved, both Chevron and the BIR filed their Motions for Partial Reconsideration on April 22, 2016[5] and April 25, 2016[6], respectively.

On August 12, 2016, the Second Division denied both motions in the Assailed Resolution, thus:

> "**WHEREFORE**, finding no cogent reason to deviate from the ruling in the assailed Decision, [Chevron]'s **Omnibus Motion (For Partial Reconsideration and To Reopen Trial)**, and [the CIR]'s **Motion for Partial Reconsideration** are hereby **DENIED** for lack of merit."[7]

Hence, these petitions.

Chevron filed a "Motion for Extension of Time to file Petition for Review" on September 06, 2016,[8] which the Court granted in a Resolution[9] dated September 08, 2016. Within the period granted, Chevron filed its "Petition for Review" on September 21, 2016,[10] docketed as CTA EB No. 1508.

Meanwhile, the CIR filed a "Motion for Extension of Time to file Petition for Review" on September 06, 2016,[11] which the Court granted in a Resolution[12] dated September 09, 2016. Within the period granted, the CIR filed his Petition for Review on September 22, 2016,[13] docketed as CTA EB No. 1509.

On September 23, 2016, the Court resolved to consolidate CTA EB No. 1508 with CTA EB No. 1509, considering that the Petitions for Review are appeals from the Decision and Resolution of the Second Division in the same case.[14]

In relation to CTA EB No. 1509, the Court in a Resolution dated October 07, 2016, ordered Chevron to comment on CIR's "Petition for Review".[15] On October 28, 2016, Chevron filed its "Comment (Re: Petition for Review dated September 19, 2016)".[16]

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5 *Id.*, pp. 2210-2237.
6 *Id.*, pp. 2290-2306.
7 *Id.*, pp. 2370.
8 Rollo (CTA EB No. 1508), pp. 1-4.
9 *Id.*, p. 6.
10 *Id.*, pp. 7-34.
11 Rollo (CTA EB No. 1509), pp. 1-5.
12 *Id.*, p. 6.
13 *Id.*, pp. 7-27.
14 Rollo (CTA EB No. 1508), p. 100.
15 *Id.*, pp. 102-103.
16 *Id.*, pp. 106-120.

On December 07, 2016, in relation to CTA EB No. 1508, the Court ordered the CIR to file its Comment on Chevron's "Petition for Review".[17] On January 06, 2017, the CIR filed its "Comment/Opposition (Re: Petition for Review)".[18]

On January 30, 2017, the Court gave due course to the petitions and ordered the parties to submit their respective memoranda.[19]

On March 16, 2017, the CIR filed its "Memorandum".[20] On the other hand, Chevron filed a "Motion for Extension of Time to File Memorandum" on March 17, 2017,[21] which the Court granted in a Resolution[22] on March 21, 2017. Within the extension period granted, Chevron filed its "Memorandum" on April 06, 2017.[23]

Hence, on May 10, 2017, the Court issued a Resolution submitting the consolidated cases for decision.[24]

The Issues

Chevron raised the following issues in CTA EB No. 1508:

1. The CTA-Division gravely erred in holding that out of its declared zero-rated receipts of Php2,472,585,065.00, only the amount of Php578,576,738.40 represent valid zero-rated receipts;

2. The CTA-Division erred in holding that it failed to prove its input VAT carry-over from previous year in the amount of Php157,160,605.18; and

3. The CTA-Division erred in holding that the additional evidence sought to be presented by Petitioner are not newly discovered evidence.[25]

On the other hand, the CIR, in CTA EB No. 1509, assigned the following error:

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17 *Id.*, pp. 160-161.
18 *Id.*, pp. 162-183.
19 *Id.*, pp. 185-186.
20 *Id.*, pp. 187-205.
21 *Id.*, pp. 206-208.
22 *Id.*, pp. 209-A.
23 *Id.*, pp. 210-238.
24 *Id.*, pp. 240-241.
25 *Id.*, p. 11.

> The Honorable Court's Second Division erred in partially granting Chevron's claim for refund in the amount of Php9,188,216.85 allegedly representing unutilized excess input VAT attributable to zero-rated sales for the taxable year 2011.[26]

Chevron's arguments:

Chevron contends that it presented sufficient evidence to prove its zero-rated sales. The Service Agreements it executed with some of its foreign clients constitute enough proof that the latter are non-resident foreign entities conducting business outside of the Philippines, the said Service Agreements showing the addresses of Chevron's clients. Chevron submitted both Securities and Exchange ("SEC") Certificate of Non-Registration and other constitutive documents showing that its clients are doing business abroad. Also, proving Chevron's clients as non-resident foreign entities doing business outside of the Philippines does not necessarily mean matching names in the printed screenshot of Corporate Profile of said entities and the SEC Certificate of Non-Registration.

Likewise, Chevron points out that there was an error in the entry in the Certificate of Inward Remittance which shows that the remittance in the amount of USD203,584.11 on July 25, 2011 with Bank Reference No. T37SWICO34488 was made by Shell Chemicals LP instead of Chevron Corporation. This error is shown in the JP Morgan Bank Chase Insight Information Manager which shows that said remittance was made by order of Chevron Corporation. Furthermore, a Bank Confirmation from JP Morgan to this effect was attached by Chevron in its Petition for Review.

Moreover, Chevron points out that its Quarterly VAT Return for CY 2010, as verified by the independent CPA, sufficiently proves the existence of its reported input VAT carry-over from the previous year in the amount of Php157,160,605.18. Similarly, the submission of VAT invoices/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.

Fourth, Chevron argues that it established good cause for allowing presentation of additional evidence, and the documents it seeks to present fall within the purview of newly discovered evidence.

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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26 Rollo (CTA EB No. 1509), p. 11.

The CIR's arguments:

The CIR argues that Chevron failed to substantiate its claim for refund. Allegedly, Chevron failed to comply with the invoicing and accounting requirements laid down in Sections 113, 114 and 236 of the National Internal Revenue Code of 1997, as amended ("1997 NIRC") and its implementing regulation, Revenue Regulation No. 16-2005. In addition, Chevron allegedly failed to submit all supporting and relevant documentary requirements enumerated in Revenue Memorandum Order ("RMO") No. 53-98; thus, depriving the CIR the opportunity to examine, evaluate and act on its claim for refund. With the immediate resort of Chevron to this Court, Chevron violated the doctrine of exhaustion of administrative remedies.

Moreover, the CIR points out that Chevron failed to overcome the burden that the subject input VAT being claimed remained unutilized or have not been applied against any output tax for the current and the succeeding quarters of taxable years 2012 and 2013.

Lastly, the CIR contends that the additional documents sought to be presented by Chevron are neither newly discovered nor inadvertently omitted due to fraud, accident, mistake or excusable negligence which merit a reopening of the case.

The Ruling of the Court

We deny the petitions.

At the outset, we note that the issues raised by Chevron and the CIR are rehashed from their arguments before the Court in Division, and have been sufficiently passed upon and resolved in the Assailed Decision and Assailed Resolution.

CTA EB No. 1508

The Second Division did not err in its refusal to reopen the case and allow Chevron to submit supplemental evidence

We agree with the Second Division when it ruled that Chevron's "Omnibus Motion (For Partial Reconsideration and to Reopen Trial)" which prayed for the reopening of the trial to allow presentation of supplemental evidence, cannot be sustained. This is owing to the fact that the motion was only filed after the Court *a quo* had already rendered judgment. A motion to reopen should be filed before judgment is made. As aptly discussed by the Second Division in the Assailed Resolution:

> "A motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment. Here [Chevron] cannot avail the said remedy in view of the fact that it seeks to reopen the trial of this case only after the Court has already rendered its judgment. The ruling of the Supreme Court in *Alegre vs. Reyes, et al.* is clear:
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> > 'xxx the reopening of a case for the reception of additional evidence *after a case had been submitted for decision but before judgment is actually rendered* is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.' *(italics and underscoring supplied)*"[27]

Even if this Court treats Chevron's motion as a motion for new trial, the same must still be dismissed for lack of due merit. A motion for new trial under Section 1, Rule 37 of the Rules of Court[28] and Section 5, Rule 15 of the Revised Rules of the Court of Tax Appeals[29] (RRCTA) may only be granted upon specific well-defined grounds, namely, fraud, accident, mistake, excusable negligence or newly discovered evidence.

Lamentably, an examination of Chevron's motion shows that it does not fall under any of the grounds enumerated. It was neither based on fraud, accident, mistake or excusable negligence that would need affidavits of merit, nor

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[27] Docket, pp. 2362-2363.

[28] **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.

[29] **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.

based on newly discovered evidence which would require affidavits of witnesses. Notably, no affidavits were filed in support of the motion.

Moreover, the documents sought to be presented do not come within the purview of newly discovered evidence. As observed by the Second Division, "[Chevron] tried to procure the said pieces of evidence as early as March 2012, thus, as of the said date, the existence of the said documents is already known to [Chevron]."[30] Thus, there is an admission that at the time of the filing of the instant claim said documents already existed, only that it was difficult for Chevron to secure them due to the sheer number of its affiliates some of which were not within its control and management.

To admit Chevron's additional documentary evidence without having complied with the requisites for the grant of a motion to reopen and/or motion for new trial is a dangerous proposition and one which the Court refuses to countenance. Courts and litigants alike should abide by the rules to ensure an orderly administration of justice. The discussion of the Supreme Court on strict compliance with the prescribed procedure in the case of *Lolita R. Alamayri v. Rommel Pabale*[31] is instructive:

> "The parties must diligently and conscientiously present all arguments and available evidences in support of their respective positions to the court before the case is deemed submitted for judgment. Only under exceptional circumstances may the court receive new evidence after having rendered judgment; otherwise, its judgment may never attain finality since the parties may continually refute the findings therein with further evidence. Alamayri failed to provide any explanation why she did not present her evidence earlier. **Merely invoking that the ends of justice would have been best served if she was allowed to present additional evidence is not sufficient to justify deviation from the general rules of procedure.** Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction."[32]

While the Court, in some instances, allows a relaxation in the application of the rules, this, We stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only to proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the

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[30] Docket, p. 2366.
[31] G.R. No. 151243, April 30, 2008.
[32] *Emphasis supplied.*

prescribed procedure to insure an orderly and speedy administration of justice.[33] Moreover, 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. [34]

Only the amount of Php578,576,738.40 represent Chevron's valid zero-rated receipts for CY 2011

Chevron submits that the Second Division erred in not favorably finding that the following clients are also non-resident corporations doing business outside the Philippines, considering that the following documents presented by Chevron prove such fact: (a) SEC Certificates of Non-Registration; and (b) other constitutive documents of its foreign clients which indicate the clients' locations and addresses, as summarized below:

Company Name	*SEC Certificate of Non-Registration*	*Business Registration Document*	*Tax Residence Certificate*	*Inline Report of Corporate Profile*	*Printed screenshot of Corporate Profile*	*Printed Screenshot of US SEC Website*	*Service Agreement*
Chevron Products Company	Exhibit "P-7.1"	Exhibit "P-8.2"	Exhibit "P-9.19"		Exhibit "P-11.17"		Exhibit "P-12.39"
Chevron Services Company	Exhibit "P-7.2"	Exhibit "P-8.2"	Exhibit "P-9.19"		Exhibit "P-11.2"		
Chevron Canada Limited – Downstream Branch	Exhibit "P-7.5"		Exhibit "P-9.5"			Exhibit "P-13"	Exhibit "P-12.4"
Chevron Australia Pty Ltd-Other	Exhibit "P-7.6"	Exhibit "P-8.8"	Exhibit "P-9.20"			Exhibit "P-13"	Exhibit "P-12.5"
Chevron Global Upstream and Gas	Exhibit "P-7.7"				Exhibit "P-11.21"		
Chevron U.S.A. Inc. (Singapore Branch)	Exhibit "P-7.8"	Exhibit "P-8.2"	Exhibit "P-9.19"			Exhibit "P-13"	Exhibits "P-12.2", "P-12.6", "P-12.7" and "P-12.40"
Chevron Information Technology Company	Exhibit "P-7.9"	Exhibit "P-8.2"	Exhibit "P-9.19"		Exhibit "P-11.3"		

[33] Gloria Z. Garbo v. Court of Appeals, G.R. No. 107698, July 05, 1996 *citing* Sps. Ilasco, Jr. v. Court of Appeals, GR No. 88983, December 14, 1993 and Dulos v. Court of Appeals, G.R. No. 87917, August 7, 1990.

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

Company Name	*SEC Certificate of Non-Registration*	*Business Registration Document*	*Tax Residence Certificate*	*Inline Report of Corporate Profile*	*Printed screenshot of Corporate Profile*	*Printed Screenshot of US SEC Website*	*Service Agreement*
Chevron U.S.A. Inc. – Shipping Branch	Exhibit "P-7.11"	Exhibit "P-8.2"	Exhibit "P-9.19"			Exhibit "P-13"	Exhibits "P-12.2", "P-12.6", "P-12.7" and "P-12.40"
CUSA Global Lubricants Asia Pacific	Exhibit "P-7.12"	Exhibit "P-8.2"			Exhibit "P-11.49"		
Chevron Global Downstream	Exhibit "P-7.13"	Exhibit "P-8.2"	Exhibit "P-9.19"				Exhibits "P-12.2", "P-12.6", "P-12.7" and "P-12.40"
Chevron Global Energy Inc. – Global Downstream Cost Allocation	Exhibit "P-7.14"	Exhibit "P-8.13"	Exhibit "P-9.8"	Exhibit "P-10.4"	Exhibit "P-11.50"		
Chevron Overseas Services Corporation	Exhibit "P-7.16"				Exhibit "P-11.31"		Exhibit "P-12.10"
Chevron Pakistan Limited – Branch	Exhibit "P-7.33"		Exhibit "P-9.15"				Exhibit "P-12.33" and "P-12.34"
Chevron Limited Europe Marketing – Aviation	Exhibit "P-7.36"	Exhibit "P-8.16"			Exhibit "P-11.24"		
Chevron International Limited	Exhibit "P-7.38"	Exhibit "P-8.10"	Exhibit "P-9.4"		Exhibit "P-11.15"		
Chevron China Energy Company – Shekou Shared Cost	Exhibit "P-7.39"		Exhibit "P-9.1"				
Chevron China Energy Company – EXPL & Prod Services	Exhibit "P-7.41"						
Chevron Policy, Government, and Public Affairs	Exhibit "P-7.51"	Exhibit "P-8.2"	Exhibit "P-9.19"				Exhibits "P-12.2", "P-12.6", "P-12.7" and "P-12.40"
Chevron Australia Pty Ltd – Gorgon Branch	Exhibit "P-7.53"	Exhibit "P-8.8"	Exhibit "P-9.20"				
Chevron International Gas Inc. – Japan Branch	Exhibit "P-7.54"			Exhibit "P-10.7"			

Company Name	*SEC Certificate of Non-Registration*	*Business Registration Document*	*Tax Residence Certificate*	*Inline Report of Corporate Profile*	*Printed screenshot of Corporate Profile*	*Printed Screenshot of US SEC Website*	*Service Agreement*
Chevron Petroleum India Private Limited	Exhibit "P-7.56"				Exhibit "P-11.43"		
CPUK – Trading and Marine Lubricants Branch	Exhibit "P-7.60"						
Chevron Limited Int'l Trading	Exhibit "P-7.62"	Exhibit "P-8.16"			Exhibit "P-11.24"		
Chevron Limited Other	Exhibit "P-7.63"	Exhibit "P-8.16"			Exhibit "P-11.24"		
Saudi Arabian Chevron Inc. – PZ Branch	Exhibit "P-7.64"						
Chevron Thailand Exploration and Production, Ltd. – Thailand Branch	Exhibit "P-7.66"				Exhibit "P-11.18"		
Chevron Asia Pacific Holdings Branch	Exhibit "P-7.68"			Exhibit "P-10.6"	Exhibit "P-11.41"		Exhibit "P-12.13"

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*[35], 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 with the ruling in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[36]

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**

[35] G.R. No. 190102, July 11, 2012.
[36] G.R. No. 153205, January 22, 2007.

a certificate of non-registration of corporation / partnership issued by the SEC and certificate / articles of foreign incorporation / association.

These two (2) documents are necessary. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines (*i.e.*, not engaged in trade or business within the Philippines). On the other hand, the certificate / articles of incorporation / association prove two things: (1) that the recipient of the service is indeed foreign, and (2) it is engaged in business in the country of incorporation / association (*i.e.*, a showing of a continuity of commercial dealings and intention to establish a continuous business).

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 lacks 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 Second Division in the Assailed Resolution. We agree with the Second Division's ruling, to wit:

> "[Chevron] avers that its clientele are non-resident foreign corporations doing business outside the Philippines. [Chevron] specifically alleges that Chevron Products Company (CPC), Chevron Services Company (CSC) and Chevron Information Technology Company (CITC) are divisions of Chevron U.S.A. Inc. However, the records are devoid of any evidence that will support its allegations. While it was mentioned in the Printed Screenshot of Corporate Profile that these corporations are divisions of Chevron U.S.A Inc., nothing was mentioned in the Securities and Exchange Commission (SEC) Certification of Non-Registration. As a result of the apparent discrepancies, the Court cannot ascertain whether these corporations are one and the same.
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> Likewise, [Chevron] failed to establish that Chevron Australia Pty Ltd, Chevron Canada Limited, Chevron International Gas Inc., Chevron Pakistan Limited and Saudi Arabian Chevron Inc. were foreign entities doing business outside the Philippines. Even [Chevron] recognized the discrepancies between the company name as reflected in the proof of doing business outside

the Philippines; and the name indicated in the SEC Certification of Non-Registration."[37]

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

1) Cabinda Gulf Oil Company Limited
2) Chevron Africa-Pakistan Services (Pty) Ltd.
3) Chevron Al Khalij, A Branch of Chevron Asia Pacific Holdings Limited
4) Chevron Bangladesh Blocks Thirteen & Fourteen, Ltd.
5) Chevron Brasil Lubrificantes Ltda.
6) Chevron Business and Real Estate Services (A Chevron USA Inc. Division)
7) Chevron Business Support Center, S.A.
8) Chevron (Cambodia) Limited
9) Chevron (China) Investment Co. Ltd.
10) Chevron Corporation
11) Chevron Egypt S.A.E.
12) Chevron Energy Technology Co. (A Chevron USA Inc. Division)
13) Chevron Environmental Management Company
14) Chevron Global Energy, Inc.
15) Chevron Hong Kong Limited
16) Chevron India Holdings, Pte Ltd.
17) Chevron International Exploration and Production Technology Services, A Division of Chevron Global Technology Services Company
18) Chevron International Limited
19) Chevron International Pte. Ltd.
20) Chevron Japan Ltd.
21) Chevron Kuo Pte. Ltd.
22) Chevron Limited
23) Chevron Lubricants India Private Limited
24) Chevron Lubricants Lanka PLC
25) Chevron Malaysia Limited
26) Chevron New Zealand
27) Chevron Nigeria Limited
28) Chevron North America Exploration and Production Co. (A Chevron USA Inc. Division)
29) Chevron North Sea Limited
30) Chevron Oronite Company LLC
31) Chevron Oronite Pte. Ltd.
32) Chevron Petroleum India Private Limited
33) Chevron Shipping Company LLC
34) Chevron Singapore Pte. Ltd.

[37] Docket, p. 2367.

35) Chevron South Africa (Pty) Limited
36) Chevron (Thailand) Limited
37) Chevron (Tianjin) Lubricants Co., Ltd.
38) Chevron Trading Pte. Ltd. Project Resources Company (A Chevron USA Inc. Division)
39) PT Chevron Oil Products Indonesia
40) PT Chevron Pacific Indonesia
41) Star Holdings Company Limited
42) Talcor Pty. Ltd.[38]

As to the allegation that the sale of services to Chevron Corporation amounting to Php8,677,924.55 (USD203,584.11) is subject to zero-rated VAT, suffice it to say that the Court in Division found that although it is supported by VAT zero-rated OR No. 3308, it does not have the corresponding foreign currency inward remittances.[39]

Thus, we are one with the Second Division when it ruled that out of Chevron's declared zero-rated receipts for CY 2011 in the amount of Php2,472,585,065.00, only Php578,576,738.40 which it derived from services rendered to the entities listed above, represents its valid zero-rated receipts for CY 2011.[40]

The Second Division properly disallowed Chevron's input VAT carry-over from previous year amounting to Php157,160,605.18 for its failure to present VAT invoices or receipts to prove the existence of such amount

Petitioner avers that the input tax carry-over in the amount of Php157,160,605.18 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.[41] Tax refunds are in the

38 *Id.*, p. 2185-2186.
39 *Id.*, p. 2184.
40 *Id.*, p. 2186-2190.
41 Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997.

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.[42] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[43] 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.[44]

Pursuant to Section 110(A)(1) and (B) of the 1997 NIRC, 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 1997 NIRC, 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 Php157,160,605.18, 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.[45]

CTA EB No. 1509

The Second Division did not err in partially granting Chevron's claim for refund in the amount of Php9,188,216.85

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

[43] 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.

[44] 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.

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

The CIR argues that there is no showing that Chevron submitted complete documents to substantiate its administrative claim for refund. That being the case, its application for refund should be deemed not filed. Consequently, the Court cannot acquire jurisdiction over the petition since no valid application for refund was filed before his office.

We disagree.

As held in the case of *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*,[46] for claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench, the completeness of documents to support a claim is determined by the taxpayer and not by the BIR whose duty under Section 112(C) of the 1997 NIRC is to act on the claim within the allowable period of 120-day period from the date of submission of complete documents.

More importantly, non-submission of complete documents at the administrative level is not fatal to a claim for refund in the judicial level. As held in *Pilipinas Total*, the same will not bar this Court from receiving, evaluating, and appreciating evidence submitted before it, *viz*:

> "Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. **After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. <u>Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court</u>.**"[47]

All told, We are one with the Second Division that Chevron has sufficiently established that it is entitled to a refund or issuance of a TCC corresponding to its unutilized and excess input VAT for the four quarters of CY 2011 attributable to its zero-rated receipts, but in the reduced amount of Php9,188,216.85.

WHEREFORE, premises considered, the Court **DENIES** the instant Petitions for lack of merit. The Decision dated April 05, 2016 and the Resolution dated August 12, 2016 of the Second Division in CTA Case No. 8621 are **AFFIRMED**.

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46 G.R. No. 207112, December 8, 2015
47 *Emphasis and underscoring supplied.*

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

With concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(With Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

CATHERINE T. MANAHAN
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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CHEVRON HOLDINGS, INC., Petitioner,

CTA EB No. 1508
(CTA Case No. 8621)

- versus –

COMMISSIONER OF INTERNAL REVENUE, Respondent.

x- x

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

CTA EB No. 1509
(CTA Case No. 8621)

- versus -

CHEVRON HOLDINGS, INC., Respondent.

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, *and*
MANAHAN, *JJ.*

Promulgated:

MAR 21 2018 3:57 p.m.

x- x

CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1509 for lack of merit.

With due respect, I am constrained to withhold my conformity on the denial of the Petition for Review filed by Chevron Holdings, Inc. (Chevron) in CTA EB No. 1508. The *ponencia* found that the Court in Division did not err: (i) in denying Chevron's motion to reopen the case for the presentation of supplemental evidence; (ii) in finding that only the amount of ₱578,576,738.40 represents Chevron's valid zero-rated receipts for calendar year (CY) 2011; and, (iii) in disallowing Chevron's input VAT carry-over from previous year amounting to ₱157,160,605.18 for its failure to present VAT invoices or receipts to prove the existence of such amount.

Chevron argues, among others, that while the pieces of evidence it submitted vary per affiliate, the same, taken together, adequately show that its affiliates are nonresident foreign entities doing business outside the Philippines. The documents referred to consist of the following:

a) Certificates of Non-Registration issued by the Philippine Securities and Exchange Commission (SEC);

b) Memorandum/Articles of Association, Certificates of Incorporation/Registration;

c) Articles of Merger;

d) Certificates of Change of Name and Incorporation;

e) Tax Residence Certificates;

f) Inline Report of the Corporate Profile;

g) Printed screenshots of the US SEC website showing the state/province/country where the affiliate was organized; and,

h) Service Agreements with its affiliates that show their locations and addresses.

With respect to some of its affiliates, Chevron offered **SEC Certificates of Non-Registration, Business Registration Documents and Tax Residence Certificates**. Yet, the same were not deemed sufficient by the Court in Division to prove that those entities are nonresident foreign corporation doing business outside the Philippines.

To my mind, the aforesaid documents, taken together, are sufficient to prove that Chevron's affiliates were nonresident foreign corporations doing business outside the Philippines or that they have a continuity of commercial dealings outside the Philippines. **Business registration in a foreign country speaks eloquently on the nature of activity the corporate entities engage in, that is - - a business activity outside of the Philippines.**

Since the aforestated documents were considered insufficient in the assailed Decision of the Court in Division, Chevron eventually moved that it be given an opportunity to submit additional documents to establish that its affiliates are nonresident foreign corporations doing business outside the Philippines. Chevron also prayed that it be given an opportunity to submit supplemental evidence to prove that it has input VAT carried-over from previous year in the amount of ₱157,160,605.18, and that it has zero-rated sales to Chevron Corporation in the amount of ₱8,677,924.55. Such motion was again rejected.

I submit that Chevron's prayer for the re-opening of trial for presentation of additional evidence should have been granted in the paramount interest of substantial justice. Jurisprudence is replete with cases that champion the principle that every party litigant must be given the amplest opportunity for a just determination of his case, free from the severities of technicalities.[1]

In several cases, I already took the position that re-opening of cases even after decisions have been rendered may be allowed. These cases involve scenarios wherein a plain perusal of the additional documents sought to be admitted in evidence (attached to the motions for reconsideration), would reveal that they - - if considered - - would materially alter the conclusions reached by the Court in the assailed decisions.

On this point, the doctrine laid down by the Supreme Court in ***BPI-Family Savings Bank vs. Court of Appeals***[2]***, which was reiterated in Commissioner of Internal Revenue vs. De La Salle University, Inc.***,[3] is applicable.

In ***BPI-Family Savings Bank***, the Supreme Court ruled that certain tax returns **submitted and attached to a Motion for Reconsideration**, which clearly showed that the taxpayer incurred no

[1] *Martin Peoso and Elizabeth Peoso vs. Macrosman Dona*, G.R. No. 154018, April 3, 2007.
[2] G.R. No. 122480, April 12, 2000.
[3] G.R. Nos. 196596, 198841, 198941, November 9, 2016.

tax liability, should have been taken into consideration **in the interest of truth and justice.** In this case, the CTA dismissed the petition on the ground that BPI-Family failed to present as evidence its Annual Income Tax Return (ITR) for 1990 to establish the fact that it had not yet credited the amount being claimed for refund to its 1990 tax liability. BPI Family filed a motion for reconsideration attaching thereto a copy of its ITR for 1990 but the same was ignored by the CTA. The Court of Appeals (CA) affirmed the decision of the CTA. The Supreme Court, however, reversed the CA and held the following:

> "**More important, a copy of the Final Adjustment Return for 1990 was attached to petitioner's Motion for Reconsideration filed before the CTA**. A final adjustment return shows whether a corporation incurred a loss or gained a profit during the taxable year. In this case, that Return clearly showed that petitioner incurred P52,480,173 as net loss in 1990. Xxx xxx xxx. **In denying the Motion for Reconsideration, however, the CTA ignored the said Return. In the same vein, the CA did not pass upon that significant document.**
>
> **True, strict procedural rules generally frown upon the submission of the Return after the trial. The law creating the Court of Tax Appeals, however, specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence. The paramount consideration remains the ascertainment of truth**. Verily, the quest for orderly presentation of issues is not an absolute *[rule]*. It should not bar courts from considering undisputed facts to arrive at a just determination of a controversy." *(Boldfacing supplied)*

In ***De La Salle University, Inc.***, the Supreme Court upheld the CTA's admission of the supplemental evidence made upon filing of petitioner's motion for reconsideration. It must be emphasized that the Supreme Court, while noting the absence of objection on the part of the BIR to the admission of DLSU's supplemental offer of evidence, actually stressed the basic doctrine that **strict application of the technical rules of evidence would defeat the intent of the Constitution**. The Supreme Court stated:

> "[W]e sustain the CTA's admission of DLSU's supplemental offer of evidence not only because the Commissioner failed to promptly object, **but more so because the strict application of the technical rules of evidence may defeat the intent of the Constitution**." *(Boldfacing & underscoring supplied)*

Notably, in a number of cases,[4] **the CTA disregarded technicalities in procedure and instead exercised liberality in**

[4] See *Sumisetsu Philippines, Inc. vs. Commissioner of Internal Revenue*, October 6, 2015; *Jardine Lloyd Thompson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, September 28, 2015; *Filminera Resources Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8610, August 27, 2015; *Total (Philippines) Corporation vs. Commissioner of Internal Revenue,* CTA Case Nos. 8056 & 8163, December 19, 2014; *Crescent Park 6-24 Property Holdings, Inc. vs. Commissioner of Internal Revenue*, June 18, 2014; CTA Case No. 8202, October 24, 2013; *PRHC*

allowing the presentation of evidence after decisions were rendered, upon attachment of the documents sought to be presented to the litigants' motions for reconsideration. In said cases, the CTA considered the additional documents presented and offered in evidence in resolving the motions for reconsideration.

Denying Chevron's plea to present its additional evidence is patently in the nature of technicality in procedure that only impairs the proper administration of justice. Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. After all, the higher objective of procedural rule is to insure that the substantive rights of the parties are protected. **Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.**[5]

Indeed, prudence and fairness dictate that the same standards should be observed in settling similar controversies if only to maintain stability and consistency in the judicial system. Besides, in the event that the assailed Decision is altered, as when it is found that Chevron is indeed entitled to the refund sought, the government loses nothing as it simply returns what it is not entitled to retain in the first place.

All told, I **VOTE** to: (i) **DENY** the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1509 for lack of merit; (ii) **PARTIALLY GRANT** the Petition for Review filed by Chevron Holdings, Inc. in CTA EB No. 1508; and, (iii) **REMAND** the case to the Court in Division for the reopening and presentation of Chevron Holdings, Inc.'s supplemental evidence to prove that: (a) its affiliates, to whom it rendered services, are nonresident foreign corporations doing business outside the Philippines; (b) it has input VAT carried-over from previous year in the amount of ₱157,160,605.18; and, (c) it has zero-rated sales to Chevron Corporation in the amount of ₱8,677,924.55.

ROMAN G. DEL ROSARIO
Presiding Justice

Property Managers, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8071, October 9, 2012; *San Roque Power Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 8007, December 6, 2012; *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 7550, September 20, 2011; *Technopeak Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 7751, June 28, 2011.

[5] Alfredo Jaca Montajes vs. People of the Philippines, G.R. No. 183449, March, 12, 2012

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

CHEVRON HOLDINGS, INC., *Petitioner,*	**CTA *EB* No. 1508** (CTA Case No. 8621)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x---x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* No. 1509** (CTA Case No. 8621)
	Present: **DEL ROSARIO**, *P.J.* **CASTAÑEDA, JR.,** **BAUTISTA,** **UY,**
-versus-	**CASANOVA,** **FABON-VICTORINO,** **MINDARO-GRULLA,** **RINGPIS-LIBAN**, *and* **MANAHAN**, *JJ.*
CHEVRON HOLDINGS, INC., *Respondent.*	Promulgated: MAR 21 2018 3:57 p.m.

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CONCURRING & DISSENTING OPINION

BAUTISTA, J.:

With due reverence to the *ponente,* while I agree with the conclusions reached, I beg to differ as to the finding that there must not be any indication that the recipient of services is doing business in the Philippines in the granting of refunds of excess and unutilized input Value-Added Tax on purchases of goods and services attributable to zero-rated sales.

The *ponente* cites the case of *Accenture, Inc. v. Commissioner of Internal Revenue*[1] *("Accenture")* where the Supreme Court explained that to come within the purview of *Section 108(B)(2) of the 1997 NIRC,* it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a non-resident foreign corporation. A "non-resident foreign corporation," according to the *ponencia,* refers to a foreign corporation not engaged in trade or business within the Philippines.

I beg to differ with my respected colleague's conclusion, and humbly submit that what law and jurisprudence merely requires, among others, is that the recipient of the zero-rated service must be conducting business outside the Philippines. There is no qualification that such act of doing business is done *solely* outside the Philippines. As long as the service-recipient is able to present proof that it is conducting business outside the Philippines when the services were performed, even if it is also doing business in the Philippines, the service provider remains entitled to VAT zero-rating under *Section 108(B)(2) of the 1997 NIRC.*

The Supreme Court's ruling in *CIR v. American Express International Inc. ("American Express")*[2] may find application in the present case. In the *American Express* case, the Supreme Court did not deprive the Philippine taxpayer of its input VAT on the zero-rated service it performed in favor of the foreign affiliate, notwithstanding that said foreign affiliate may have also rendered services in favor of such Philippine taxpayer. The Supreme Court merely focused on the fact that the Philippine entity rendered services in favor of its foreign affiliate, which was paid for in acceptable foreign currency and accounted for in conformity with law. The Supreme Court discussed, as follows:

> Zero Rating of
> "Other" Services
>
> The law is very clear. Under the last paragraph quoted above, services performed by VAT-registered persons in the Philippines (other than the processing, manufacturing or repacking of goods for persons doing business outside the Philippines), when paid in acceptable foreign currency and

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[1] G.R. No. 190102, July 11, 2012, 676 SCRA 325.
[2] G.R. No. 152609, June 29, 2005, 462 SCRA 197.

accounted for in accordance with the rules and regulations of the BSP, are zero-rated.

Respondent is a VAT-registered person that facilitates the collection and payment of receivables belonging to its non-resident foreign client, for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations. Certainly, the service it renders in the Philippines is not in the same category as "processing, manufacturing or repacking of goods" and should, therefore, be zero-rated. In reply to a query of respondent, the BIR opined in VAT Ruling No. 080-89 that the income respondent earned from its parent company's regional operating centers (ROCs) was automatically zero-rated effective January 1, 1988.

Service has been defined as "the art of doing something useful for a person or company for a fee" or "useful labor or work rendered or to be rendered by one person to another." For facilitating in the Philippines the collection and payment of receivables belonging to its Hong Kong-based foreign client, and getting paid for it in duly accounted acceptable foreign currency, respondent renders service falling under the category of zero rating. Pursuant to the Tax Code, a VAT of zero percent should, therefore, be levied upon the supply of that service.

Branch and Home Office

By designation alone, respondent and the ROCs are operated as branches. This means that each of them is a unit, "an offshoot, lateral extension, or division" located at some distance from the home office of the parent company; carrying separate inventories; incurring their own expenses; and generating their respective incomes. Each may conduct sales operations in any locality as an extension of the principal office.

The extent of accounting activity at any of these branches depends upon company policy, but the financial reports of the entire business enterprise — the credit card company to which they all belong — must always show its financial position, results of operation, and changes in its financial position as a single unit. Reciprocal accounts are reconciled or eliminated, because they lose all significance when the branches and home office are viewed as a single entity. In like manner, intra-company profits or losses must be offset against each other for accounting purposes.

Contrary to petitioner's assertion, respondent can sell its services to another branch of the same parent company. In fact, the business concept of a transfer price allows goods and services to be sold between and among intra-company units at cost or above cost. A branch may be operated as a revenue center, cost center, profit center or investment center, depending upon the policies and accounting system of its parent company. Furthermore, the latter may choose not to make any sale itself, but merely to function as a control center, where most or all of its expenses are allocated to any of its branches.

Gratia argumenti that the sending of drafts and bills by service establishments to respondent is equivalent to the act of sending them directly to its parent company abroad, and that the parent company's subsequent redemption of these drafts and billings of credit card holders is also attributable to respondent, then with greater reason should the service rendered by respondent be zero-rated under our VAT system. The service partakes of the nature of export sales as applied to goods, especially when rendered in the Philippines by a VAT-registered person that gets paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

Services Subject to
Zero VAT

<u>As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed</u>. Thus, exports are zero-rated, while imports are taxed.

Confusion in zero rating arises because petitioner equates the performance of a particular type of service with the consumption of its output abroad. In the present case, the facilitation of the collection of receivables is different from the utilization or consumption of the outcome of such service. While the facilitation is done in the Philippines, the consumption is not. Respondent renders assistance to its foreign clients — the ROCs outside the country — by receiving the bills of service establishments located here in the country and forwarding them to the ROCs abroad. The consumption contemplated by law, contrary to petitioner's administrative interpretation, does not imply that the service be done abroad in order to be zero-rated.

Consumption is "the use of a thing in a way that thereby exhausts it." Applied to services, the term means the performance or "successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability . . ." The services rendered by respondent are performed or successfully completed upon its sending to its foreign client the drafts and bills it has gathered from service establishments here. Its services, having been performed in the Philippines, are therefore also consumed in the Philippines.

Unlike goods, services cannot be physically used in or bound for a specific place when their destination is determined. Instead, there can only be a "predetermined end of a course" when determining the service "location or position . . . for legal purposes." Respondent's facilitation service has no physical existence, yet takes place upon rendition, and therefore upon consumption, in the Philippines. Under the destination principle, as petitioner asserts, such service is subject to VAT at the rate of 10 percent.

Respondent's Services Exempt
from the Destination Principle

<u>However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are performed in the Philippines, "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [BSP]</u>." <u>Thus, for the supply of service to be zero-rated as an exception, the law merely requires that first, the service be performed in the Philippines; second, the service fall under any of the categories in Section 102(b) of the Tax Code; and, third, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations</u>.

Indeed, these three requirements for exemption from the destination principle are met by respondent. Its facilitation service is performed in the Philippines. It falls under the second category found in Section 102(b) of the Tax Code, because it is a service other than "processing, manufacturing or repacking of goods" as mentioned in the provision. Undisputed is the fact that such service meets the statutory condition that it be paid in acceptable foreign currency duly accounted for in accordance with BSP rules. Thus, it should be zero-rated.

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> Tax Situs of a
> Zero-Rated Service
>
> The law neither makes a qualification nor adds a condition in determining the tax situs of a zero-rated service. Under this criterion, the place where the service is rendered determines the jurisdiction to impose the VAT. Performed in the Philippines, such service is necessarily subject to its jurisdiction, for the State necessarily has to have "a substantial connection" to it, in order to enforce a zero rate. The place of payment is immaterial; much less is the place where the output of the service will be further or ultimately used.[3]

To emphasize, it is not the continuity of commercial dealings or whether the foreign entity/service recipient is a non-resident foreign corporation, as defined under the income tax provisions of the *1997 NIRC*, that determines whether the services rendered by a Philippine taxpayer in favor of such foreign entity qualifies as a zero-rated transaction, but whether such service is rendered in favor of a foreign entity conducting business outside the Philippines.

Reliance on the *Accenture* case should also be made carefully because the issue involved in that case is whether Accenture, Inc., the service provider, has successfully proven that its clients are entities doing business outside the Philippines. According to the Supreme Court, while the evidence presented by Accenture, Inc. may have established that its clients are foreign, this fact does not automatically mean that these clients were doing business outside the Philippines. However, there is no specific finding that just because the foreign clients are doing business in the Philippines, the service provider is automatically removed from the entitlement of VAT zero-rating.

Accordingly, I humbly submit that the Supreme Court's pronouncement in the *Accenture* case that the foreign entity must be a non-resident foreign corporation as defined under *Section 22(I)*[4] *of the 1997 NIRC* may be considered as a mere *obiter dictum*. The issue of whether doing business within the Philippines will take the transaction outside the purview of zero-rating was not an issue in the

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[3] Underscoring ours.

[4] Sec. 22. *Definitions.* - When used in this Title:

xxx xxx xxx

(I) The term "nonresident foreign corporation" applies to a foreign corporation not engaged in trade or business within the Philippines.

Accenture case. Therefore, anything said in relation thereto, specifically regarding the service recipient being a non-resident foreign corporation, can be considered as a mere *obiter dictum* – that is – "an opinion expressed by a court upon some question of law that is not necessary in the determination of the case before the court. It is a remark made, or opinion expressed, by a judge, in his decision upon a cause by the way, that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It lacks the force of adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*."[5] In fact, the definition under said *Section 22(I) of the 1997 NIRC* cannot be made to apply to VAT because the same pertains to "Income Tax."

At this juncture, I wish to restate my view that the requirement is complied with as long the service recipient is conducting business outside the Philippines. My Concurring and Dissenting Opinion in *Amadeus Marketing Philippines, Inc. v. Commissioner of Internal Revenue*[6] is quoted hereunder:

> Furthermore, if it were an additional requirement for claiming a VAT refund that the foreign entity does not engage in business in the Philippines, each Philippine taxpayer seeking to claim a VAT refund for zero-rated sales would be required to verify that each foreign entity it renders services in favor of does not conduct business in the Philippines. How then will that be done? A verification will first be made with the Bureau of Internal Revenue whether a foreign entity/service recipient also receives services from other Philippine entities? An absurd situation will arise when all the law requires is that the service be rendered in favor of an entity engaged in business outside the Philippines.
>
> Finally, it is not unusual then for a Philippine entity to render services in favor of its foreign affiliate and vice versa. This "exchange of services" does not take away from the Philippine entity its entitlement to zero-rating precisely because the law merely requires that the Philippine entity's services be rendered in favor of an entity conducting business

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[5] *Landbank of the Philippines v. Federico Suntay*, G.R. No. 188376, December 14, 2011, 662 SCRA 614.
[6] CTA *EB* Case No. 1483, October 9, 2017.

outside the Philippines.

To conclude, law and jurisprudence merely require that the service, to qualify for zero-rating, be rendered in favor of an entity conducting business outside the Philippines. As consistently held by the Court, this requirement is complied with when the Philippine taxpayer/service provider presents at least both a consularized incorporation documents and an SEC negative certification for each foreign entity/service recipient. Assuming the other requirements for claiming a refund of unutilized input VAT arising from zero-rated sales are present, the taxpayer is entitled to the same.

In view of the foregoing discussion, I vote that the Petitions for Review be **DENIED**.

LOVELL R. BAUTISTA
Associate Justice