REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1374
(CTA Case No. 8300)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

CTA EB No. 1383
(CTA Case No. 8300)

Present:

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

Promulgated:

DEC 15 2017 1:10pm

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review* filed as follows: by Deutsche Knowledge Services, Pte. Ltd., as petitioner in CTA EB No. 1374 against the Commissioner of Internal Revenue as respondent; and by the Commissioner of Internal Revenue, as petitioner in CTA EB No. 1383, against Deutsche Knowledge Pte. Ltd., as respondent. Both petitions assail the Decision dated July 10, 2015[1] rendered by the Third Division of this Court (Court in Division) in CTA Case No. 8300 entitled *"Deutsche Knowledge Services, Pte. Ltd., Petitioner, vs. Commissioner of Internal Revenue"*, the dispositive portion of which reads:

> "**WHEREFORE**, the Petition for Review dated June 27, 2011 filed by petitioner Deutsche Knowledge Services, Pte Ltd. is **PARTIALLY GRANTED.**
>
> Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of NINETEEN MILLION SIX HUNDRED SIXTY TWO THOUSAND SEVEN HUNDRED THIRTY ONE PESOS AND 51/100 (P19,662,731.51), representing petitioner's unutilized excess input VAT for the 2^{nd} quarter of 2009 attributable to its zero-rated sales.
>
> **SO ORDERED.**"

Additionally, in CTA EB No. 1374, Deutsche Knowledge Services Pte. Ltd. prays for the reversal and setting aside of the Resolution dated October 13, 2015[2] rendered by the Court in Division in the same case, the dispositive portion of which states:

> "**WHEREFORE**, petitioner's Motion For Partial Reconsideration (Re: Decision dated July 10, 2015) (With Motion to Re-Open Trial) dated July 30, 2015, and respondent's Motion For Reconsideration (of the Decision dated July 10, 2015) dated July 30, 2015, are hereby **DENIED**, for lack of merit.
>
> **SO ORDERED.**"

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[1] Penned by Associate Justice Esperanza R. Fabon-Victorino, concurred by Associate Justice Lovell R. Bautista and Associate Justice Ma. Belen Ringpis-Liban, EB Docket (CTA EB No. 1374), pp. 47 to 67; EB Docket (CTA EB No. 1383), pp. 15 to 35.

[2] Id., EB Docket (CTA EB No. 1374), pp. 69 to 76; EB Docket (CTA EB No. 1383), pp. 52 to 59.

THE FACTS

Deutsche Knowledge Services, Pte Ltd. (hereinafter referred to as "Deutsche Knowledge") is the Philippine branch of a multinational company organized and existing under the laws of Singapore, with registered office address at One Raffles Quay, #17-10 South Tower, Singapore 048583. It is licensed by the Securities and Exchange Commission (SEC) on April 25, 2005, as a Regional Operating Headquarters (ROHQ) in the Philippines, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services, research and development services and product development; technical support and maintenance; data processing and communication and business development.

Deutsche Knowledge acts as a shared services center, which handles regional, as well as global accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting, and head office reporting for non-regulated entities and product control. It is a value-added tax (VAT) registered taxpayer as of June 16, 2005 with Taxpayer Identification No. (TIN) 238-763-115-000.

The Commissioner of Internal Revenue (hereinafter referred to as "CIR") has authority to grant and approve claims for refund or tax credit as provided by law.

On July 17, 2009, Deutsche Knowledge filed with the Bureau of Internal Revenue (BIR) its original Quarterly VAT Return for the 2nd quarter of taxable year 2009.

On January 28, 2011, Deutsche Knowledge filed with the BIR-Revenue District Office No. 44 an Application for Tax Credit/Refund (BIR Form No. 1914) of its alleged excess and unutilized input VAT for the 2nd quarter of taxable year 2009 in the total amount of ₱53,739,763.31.

The CIR failed to act on Deutsche Knowledge's administrative claim, hence, a *Petition for Review* was filed by Deutsche Knowledge on June 27, 2011. The case was docketed as CTA Case No. 8300.

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In his *Answer* in said case, the CIR essentially states that it is incumbent upon Deutsche Knowledge to substantiate its claim for refund and to prove compliance with the pertinent laws, rules and regulations.

In support of its Petition in CTA Case No. 8300, Deutsche Knowledge presented its Legal Entity Controller since August 2010, **Rachel Concepcion**, whose duties allegedly include the handling and preparation of all the company's financial and statutory reporting.

She testified that on January 28, 2011, Deutsche Knowledge filed a claim for refund of excess and unutilized input VAT attributable to zero-rated sales for the 2nd quarter of the year 2009; that the VAT credits were incurred as petitioner purchased goods and services in the course of rendering services in the Philippines as a shared services center to clients engaged in business conducted outside the country. She also said that these foreign clients paid Deutsche Knowledge for such services. To prove that petitioner rendered services to entities engaged in business outside the Philippines, she presented the Service Agreements with foreign clients, their respective SEC Certifications of Non-Registration in the country, and relevant consularized certifications and documents relating to these clients.

She further added that Deutsche Knowledge and its non-resident clients are all affiliates of the Deutsche Bank Aktiengeseellschaft Group, as evidenced by a document denominated as Deutsche Bank List of Shareholdings 2008 prepared pursuant to the laws of Germany, which, according to her, shows that Deutsche Knowledge's clients are engaged in business conducted outside the Philippines.

Moreover, according to her, the subject input taxes for the 2nd quarter of 2009 remain unutilized as indicated in Deutsche Knowledge's Quarterly VAT Returns from the 3rd quarter of 2009 up to the 2nd quarter of 2011, all indicating that the input VAT subject of the claim for refund has been carried over. These Quarterly VAT Returns were allegedly filed through the BIR's e-Filing facility and given their respective Filing Reference Numbers.

Having been employed by Deutsche Knowledge only in August of 2010, she said she has no personal knowledge about the returns filed pertaining to the subject claim for the 2nd quarter of 2009. In any

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event, as Legal Entity Controller, she validated the returns filed for this period as part of her duties and in the process acquired personal knowledge on the matter.

She also identified the business registration documents of each of Deutsche Knowledge's clients as electronically stored in and retrievable from Deutsche Knowledge's global database known as AMINET. AMINET is the Data Maintenance Platform for legal entities and other reportable vehicles within the Deutsche Bank Group of which Deutsche Knowledge is a part. Allegedly, these documents further show that Deutsche Knowledge's clients are doing business outside the Philippines.

As the second witness of Deutsche Knowledge, the Court in Division commissioned Independent Certified Public Accountant (ICPA), **Romeo A. De Jesus, Jr.**, who submitted his ICPA Report on April 11, 2012. In said ICPA Report, he stated the following: that the input VAT of ₱53,739,762.99 was properly recorded in the books and declared in the input VAT Returns of Deutsche Knowledge; that out of the ₱53,739,762.99, ₱549,159.52 was applied to Deutsche Knowledge's output VAT as of June 30, 2009; and that with few exceptions, the total input VAT paid per schedule of local purchases attributable to zero-rated sales are supported by original supplier's invoices and/or official receipts that are within the period covered, with all required particulars indicated therein.

He further stated that his audit revealed that Deutsche Knowledge's service invoices, official receipts, and fund transfer credit advices on file support the zero-rated sales for the 2nd quarter of year 2009; and that Deutsche Knowledge's zero-rated sales to non-resident entities were paid in Euro, an acceptable foreign currency, which were inwardly remitted and duly accounted for in accordance with the regulations of the *Bangko Sentral ng Pilipinas* (BSP). He also found that Deutsche Knowledge's domestic purchases and sales of goods and services are supported by both invoices and official receipts.

The ICPA identified as supporting evidence to his ICPA Report, Deutsche Knowledge's official receipts and proofs of inward remittances for the 2nd quarter of year 2009 pertinent to its claim. The official receipts allegeldy prove Deutsche Knowledge's collections for its zero-rated sales for the 2nd quarter of the year 2009. As regards the proofs of inward remittances, these pertain to Deutsche Knowledge's fund transfer credit advice and bank statements for collection/receipts made for invoices issued during the 2nd quarter of year 2009, which tend to prove the amounts in Euro inwardly remitted to Deutsche Knowledge and duly accounted for in accordance with the regulations of the BSP, for its zero-rated sales to non-resident entities; and that the sales amount as reflected in Deutsche Knowledge's service invoices were properly collected and reported in its books.

After Deutsche Knowledge rested its case in CTA Case No. 8300, the CIR waived his right to present any counter-evidence.

On July 10, 2015, the Court in Division rendered the assailed Decision[3] which partially granted Deutsche Knowledge's judicial claim for refund of excess and unutilized input VAT for the 2nd quarter of CY 2009, in the reduced amount of ₱19,662,731.51.

Consequently, Deutsche Knowledge filed its *Motion for Partial Reconsideration (Re: Decision dated July 10, 2015) (With Motion to Re-open Trial)* on July 30, 2015;[4] while the CIR filed his *Motion for Reconsideration (of the Decision dated July 10, 2015)* on July 30, 2015.[5]

In the assailed Resolution dated October 13, 2015,[6] the Court in Division denied Deutsche Knowledge's *Motion For Partial Reconsideration (Re: Decision dated July 10, 2015) (With Motion to Re-Open Trial)*, and the CIR's *Motion For Reconsideration (of the Decision dated 10 July 2015)*, for lack of merit.

Thus, on October 30, 2015, Deutsche Knowledge filed before the Court *En Banc* a *Motion for Extension of Time to File Petition For Review*,[7] praying for an additional fifteen (15) days or until November 14, 2015 to file its *Petition for Review*. The Court *En Banc* granted Deutsche Knowledge a final and non-extendible period of fifteen (15) days or until November 14, 2015, within which to file its *Petition for Review*.[8]

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[3] EB Docket (CTA EB No. 1374), pp. 47 to 67; EB Docket (CTA EB No. 1383), pp. 15 to 35.
[4] Division Docket—Vol. 2 (CTA Case No. 8300), pp. 1150 to 1172.
[5] Division Docket—Vol. 2 (CTA Case No. 8300), pp. 1175 to 1178.
[6] EB Docket (CTA EB No. 1374), pp. 69 to 76; EB Docket (CTA EB No. 1383), pp. 52 to 59; Division Docket—Vol. 2 (CTA Case No. 8300), pp. 1197 to 1204.
[7] EB Docket, (CTA EB Case No. 1374), pp. 1 to 4.
[8] Minute Resolution dated November 3, 2015, EB Docket, (CTA EB Case No. 1374), p. 6.

Likewise, the CIR filed a *Motion for Extension of Time to File Petition For Review* on October 30, 2015,[9] praying for an extension of fifteen (15) days from October 30, 2015 or until November 14, 2015, within which to file her *Petition for Review*. The Court *En Banc* also granted the CIR an extension of fifteen (15) days from October 30, 2015, or until November 14, 2015, within which to file a *Petition for Review.*[10]

On November 13, 2015, Deutsche Knowledge filed its *Petition for Review* before the Court *En Banc.*[11] The case was docketed as CTA EB No. 1374.

On the same date, the CIR filed his *Petition for Review* before the Court *En Banc.*[12] The case was docketed as CTA EB No. 1383.

Since both *Petitions* involve an appeal from the Court in Division's Decision dated July 10, 2015 and Resolution dated October 13, 2015 in CTA Case No. 8300, the Court *En Banc* consolidated CTA EB No. 1383 with CTA EB No. 1374.[13]

Subsequently, on September 15, 2016, the Court *En Banc* issued a Resolution,[14] giving due course to the consolidated *Petitions for Review*, and ordered the parties to submit their respective memoranda within thirty (30) days from receipt of the resolution.

Deutsche Knowledge, however, filed a *Motion for Extension of Time to File Memoranda* on October 28, 2016,[15] praying that it be granted an additional period of 20 days from October 28, 2016 or until November 17, 2016, within which to file its *Memorandum*. The Court *En Banc* then granted Deutsche Knowledge a final and non-extendible period of twenty (20) days or until November 16, 2016 to file its *Memorandum.*[16]

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[9] EB Docket (CTA EB No. 1383), pp. 1 to 3.
[10] Minute Resolution dated November 13, 2015, EB Docket (CTA EB No. 1383), p. 5.
[11] EB Docket, (CTA EB Case No. 1374), pp. 7 to 40.
[12] EB Docket (CTA EB No. 1383), pp. 6 to 12.
[13] Minute Resolution dated January 7, 2016, EB Docket, (CTA EB Case No. 1374), p. 85.
[14] EB Docket, (CTA EB Case No. 1374), p. 143 to 145
[15] EB Docket, (CTA EB Case No. 1374), pp. 146 to 147.
[16] Minute Resolution dated November 11, 2016, EB Docket, (CTA EB Case No. 1374), p. 152.

Deutsche Knowledge filed its *Memorandum* on November 17, 2016.[17] The CIR, however, failed to file his *Memorandum*. Thus, the instant consolidated cases were deemed submitted for decision on December 16, 2015.[18]

Hence, this Decision.

ASSIGNMENT OF ERRORS AND ISSUES RAISED

In **CTA EB No. 1374**, Deutsche Knowledge assigned the following errors supposedly committed by the Court in Division, to wit:

> "A. The CTA-Division erred in not finding that [Deutsche Knowledge] has duly proven by preponderant evidence that its sales for the 2nd quarter of CY 2009 were zero-rated and made to non-resident corporations doing business outside the Philippines.
>
> B. The CTA-Division erroneously concluded that [Deutsche Knowledge] failed to sufficiently substantiate its input VAT in the amount of Php3,616,902.33 on its purchases of capital goods exceeding Php1 Million for the 2nd quarter of CY 2009.
>
> C. The CTA-Division failed to consider that the amounts of input VAT claimed by [Deutsche Knowledge] are readily obtainable from the documents disregarded by the CTA-Division for failure to meet substantiation requirements under the Tax Code and RR No. 16-2015.
>
> D. The CTA-Division erred in denying [Deutsche Knowledge] *Motion to Re-Open Trial* as it is contrary to the interest of substantial justice."[19]

Deutsche Knowledge's arguments:

In support of the foregoing assignment of errors, Deutsche Knowledge raises the following grounds for the reversal of the assailed Decision and Resolution, *viz*:

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[17] EB Docket, (CTA EB Case No. 1374), pp. 153 to 186.
[18] EB Docket, (CTA EB Case No. 1374), pp. 192 to 193.
[19] EB Docket, (CTA EB Case No. 1374), pp. 15 to 16, and also pp. 161 to 162.

1. Deutsche Knowledge presented preponderant evidence to prove that all of its zero-rated sales for the 2nd quarter of calendar year (CY) 2009 were made to non-resident foreign corporations doing business outside the Philippines;

2. Deutsche Knowledge sufficiently substantiated its input VAT in the amount of ₱226,647.86 on purchases of capital goods exceeding ₱1 million for the 2nd quarter of CY 2009;

3. The amounts of input VAT claimed by Deutsche Knowledge are readily obtainable from the documents disregarded by the Court in Division for failure to meet substantiation requirements under the Tax Code and Revenue Regulations (RR) No. 16-05; and

4. The higher interest of substantial justice dictates that the Court in Division should have allowed the re-opening of trial for the admission of additional documents that would have enabled Deutsche Knowledge to comply with the Court in Division's strict documentary requirements, which have no legal basis in the first place.

On the other hand, in **CTA EB No. 1383**, the following issues were raised by the CIR, to wit:

> "14) Whether the Honorable Third Division of the CTA erred in partially granting [Deutsche Knowledge's] petition for review filed on 27 June 2011.
>
> 15) Whether the Honorable Third Division of the CTA erred in denying [the CIR's] Motion for Reconsideration."

The CIR's arguments:

The CIR argues that Deutsche Knowledge's output VAT is more than the amount of input VAT attributable to zero-rated sales subject of the present claim.

Allegedly, the rest of Deutsche Knowledge's declared zero-rated sales in the amount of ₱237,405,916.01 (₱1,079,861,908.12 less ₱842,455,922.11) was denied for VAT zero-rating for failure to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines; that for not being qualified as zero-rated sales, the amount of ₱237,405,916.01 should be subject to VAT at 12% instead of 0% VAT; that after applying the 12% VAT, the corresponding output VAT of Deutsche Knowledge is ₱28,488,709.92; hence, Deutsche Knowledge is still liable for output VAT in the amount of ₱28,488,709.92.

Moreover, the CIR points out that considering that the Court in Division has ruled that Deutsche Knowledge is entitled to a refund or issuance of a tax credit certificate in the amount of ₱19,662,731.51, representing its unutilized excess input VAT for the 2nd quarter of 2009 attributable to its zero-rated receipts for the same period, this amount is far lower than the output VAT liability of ₱28,488,709.92; and consequently, there is no more excess input VAT that may be refunded to Deutsche Knowledge.

Lastly, the CIR contends that since the instant case involves a claim for refund, Deutsche Knowledge, therefore has to prove with the required quantum of evidence its entitlement to the refund claimed, and the court will render its decision on the basis of the facts proven and the evidence presented applying the law and jurisprudence applicable to the issue under consideration, even if no controverting evidence was ever presented by the CIR.

Deutsche Knowledge's counter-arguments:

Deutsche Knowledge points out that by the CIR's argument, the CIR seeks to assess and collect from Deutsche Knowledge alleged deficiency output VAT in contravention of established legal principles and in gross violation of its right to due process of law.

According to Deutsche Knowledge, the CIR's argument lacks factual and legal basis based on the following:

1. Only non-compliance with the requirements for claiming the refund of unutilized input VAT can bar Deutsche Knowledge's claim for refund;

2. Siding with the CIR's argument would lead to a gross violation of Deutsche Knowledge's right to due process;

3. Assuming the CIR's argument has merit, Deutsche

Knowledge's claim for refund can and should proceed independently of the CIR's assessment for deficiency VAT against Deutsche Knowledge;

4. Even assuming *arguendo* that the CIR's argument deserves consideration, the CIR does not have basis to invoke this Court's jurisdiction over Deutsche Knowledge's alleged deficiency VAT liability for the 2nd quarter of CY 2009; and

5. Further assuming *arguendo* that the CIR may invoke this Court's jurisdiction, the CIR's claim should nonetheless be denied as the CIR's right to assess Deutsche Knowledge for deficiency VAT for the 2nd quarter of CY 2009 has already prescribed.

THE COURT *EN BANC*'S RULING

Deutsche Knowledge's *Petition for Review* in CTA EB No. 1374 is partially meritorious, while the CIR's *Petition for Review* in CTA EB No. 1383 lacks merit.

Not all of Deutsche Knowledge's sales for the 2nd quarter of 2009 qualify for VAT zero rating under the law.

Deutsche Knowledge submits that the Court in 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 Deutsche Knowledge such fact: (a) SEC Certificates of Non-registration of Corporation/ Partnership of its clients; and (b) IntraGroup Service Agreements with its foreign clients which indicate the client's locations and addresses, as summarized below:

Company Name	SEC Certification of Non-Registration	Address (Intra-Group Service Agreement)
Deutsche Bank Aktiengesellschaft, Filiale Dubai (DIFC)	Exhibit O-43	Level 3, West Gate Building DIFC, PO Box 504902, Dubai, UAE (Exhibit P-30)
Deutsche Bank Aktiengesellschaft, Filiale Zurich	Exhibit O-44	Uraniastrasse 9, CH-8001 Zurich, Zwitzerland (Exhibit P-31)

Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office		One Raffles way, #12-00 South Tower 048583 Singapore (Exhibit P)
Deutsche Bank Aktiengesellschaft, Filiale Prag	Exhibit O-32	Jungmannova 34/750, Prague, Czech Republic (Exhibit P-21)
Deutsche Bank (China) Co. Ltd, Shanghai Branch	Exhibit O-21	Lujiazui Ring Road, Azia Center, 18th Floor
Deutsche Group Services Pty Limited	Exhibit O-16	126 Pjillip St. Sydney NSW 2000 Australia (Exhibit P-5)

We are not convinced.

Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337,[20] which provides as follows:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—
>
> (A) *Rate and Base of Tax.* — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: Provided, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:
>
> (i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
>
> (ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).[21]

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[20] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[21] Effective February 1, 2006, the VAT rate is increased to 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

> The phrase 'sale or exchange of service' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, xxx.
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) Services other than those mentioned in the preceding paragraph **rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> 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);" *(Emphases and underscoring supplied)*

Based on the foregoing provisions, 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 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)"*.

Services covered by Section 108(B)(1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the *Bangko Sentral ng Pilipinas*. Thus, there is reason to require the provider of services under Section 108(B)(1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency. Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 108(A) governing **domestic** sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provision of Section 108(B).[22]

The Supreme Court, in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*,[23] ruled 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"*. In the said case, the High Court declared:

> "**The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines.** After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
>
> > SEC. 22. *Definitions* – When used in this Title:
> >
> > xxx xxx xxx
> >
> > (H) The term *'resident foreign corporation'* applies to a foreign corporation engaged in trade or business within the Philippines.
> >
> > (I) **The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines.** (Emphasis in the original)
>
> **Consequently, to come within the purview of Section 108(B)(2), 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 nonresident foreign corporation**.

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[22] Refer to *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[23] G.R. No. 190102, July 11, 2012.

There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:[24]

> x x x. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'" *(Emphases and underscoring supplied)*

In addition to the above jurisprudential pronouncement, it is noteworthy that the Supreme Court, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*,[25] declared that **the service-recipient must also be <u>not</u> doing business in the Philippines**. Otherwise, the transaction will be subject to the VAT at the then rate of 10%,[26] and **not** at the 0% VAT rate. Thus:

> "<u>In this case, the payer-recipient of respondent's services is the Consortium which is a joint-venture doing business in the Philippines. While the Consortium's principal members are non-resident foreign corporations,</u> **<u>the Consortium itself is doing business in the Philippines.</u>** This is shown clearly in BIR Ruling No. 023-95 which states that the contract between the Consortium and NAPOCOR is for a **15-year term**, thus:

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[24] 233 Phil. 406 (1987).
[25] G.R. No. 153205, January 22, 2007.
[26] Now the VAT rate is 12%. Refer to Revenue Memorandum Circular No. 7-2006 dated January 31, 2006.

> This refers to your letter dated January 14,1994 requesting for a clarification of the tax implications of a contract between a consortium composed of Burmeister & Wain Scandinavian Contractor A/S ('BWSC'), Mitsui Engineering & Shipbuilding, Ltd. (MES), and Mitsui & Co., Ltd. ('MITSUI'), all referred to hereinafter as the 'Consortium', and the National Power Corporation ('NAPOCOR') **for the operation and maintenance of two 100-Megawatt power barges ('Power Barges') acquired by NAPOCOR for a 15-year term.** (Emphasis supplied)

Considering this length of time, the Consortium's operation and maintenance of NAPOCOR's power barges cannot be classified as a single or isolated transaction. <u>The Consortium does not fall under Section 102(b)(2)</u>[27] <u>which requires that the recipient of the services must be a person doing business outside the Philippines. Therefore, respondent's services to the Consortium, not being supplied to a person doing business outside the Philippines, cannot legally qualify for 0% VAT.</u>" *(Underscoring supplied)*

In CTA Case No. 8300, We agree with the ruling of the Court in Division that to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, **<u>at the very least</u>**, by **both** a certificate of non-registration of corporation / partnership issued by the Philippine Securities and Exchange Commission (SEC) **and** certificate / articles of foreign incorporation / association. Parenthetically, it must be emphasized that notwithstanding the presentation of the said documents, there must not be any indication that the recipient of the services is doing business in the Philippines, consistent with the above-quoted ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*

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 said certificate / articles of incorporation / association will prove that the said recipient of the service is indeed foreign. Furthermore, the

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[27] Now Section 102(B)(2) of the NIRC of 1997, as amended by RA No. 9337.

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 the aforequoted Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, requires, *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 0% VAT rate.

Correspondingly, the IntraGroup Service Agreements[28] cannot be a substitute to either of the said two (2) required documents, since the said Agreements do not establish that such service recipients are non-resident foreign corporations doing business outside the Philippines, because the said Agreements only show the names of Deutsche Knowledge's customers to whom it rendered services. Specifically, these IntraGroup Service Agreements do not, in any way, establish that the service-recipients are engaged in business outside the Philippines; nor do they show that the same service-recipients are not engaged in business in the Philippines.

Moreover, there can be no merit in Deutsche Knowledge's insistence that foreign business registration print-outs retrieved from the AMINET database, which is a database maintained by Deutsche Knowledge's Head Office in Germany, are sufficient to establish the fact that the service recipients are non-resident foreign corporations doing business outside the Philippines. This is so because the said print-outs are self-serving, and lack credibility, which can be easily manipulated to favor Deutsche Knowledge in view of its affinity with the entity that maintains or keeps the said database.

Apropos, actions for tax refund, as in the instant case, are in the nature of claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven.[29]

In any event, the pivotal question here is not whether Deutsche

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[28] Exhibits "P", "P-3" to "P-12", "P-14" to "P-15", "P-18" to "P-22", "P-23.1" to "P-23.6", "P-24", "P-27", and "P-29" to "P-34", Division Docket (CTA Case No. 8300) – Vol. 1, pp. 373 to 559.

[29] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 2008.

Knowledge has presented preponderant evidence to prove that all of its zero-rated sales were made to non-resident foreign corporations. Rather, it is whether the evidence presented by Deutsche Knowledge is sufficient to prove that indeed such sales are subject to the 0% VAT rate under the law.

In this case, the following table shows whether Deutsche Knowledge presented and offered in evidence the said SEC certificate and certificate / articles of incorporation / association for each of the recipients of the services rendered by Deutsche Knowledge, *viz*:

Name of the Service-Recipients	**SEC's negative certification**	**Certificate / Articles of Incorporation / Association**
Deutsche Bank Aktiengesellschaft Inlandsbank	Exhibit "O-12"	Exhibit "O"
Deutsche Bank Aktiengesellschaft Inlandsbank Filiale London	Exhibit "O-14"	Exhibit "O-63"
Deutsche Bank Aktiengesellschaft, Filiale Hongkong	Exhibit "O-18"	Exhibit "O-5"
Deutsche Bank Aktiengesellschaft, Filiale Jakarta	Exhibit "O-19"	Exhibit "O-6"
Deutsche Bank Aktiengesellschaft, Filiale Singapore	Exhibit "O-20"	Exhibit "O-7"
Deutsche Bank Aktiengesellschaft, Filiale Bangkok	Exhibit "O-25"	Exhibit "O-62"
Deutsche Bank Aktiengesellschaft, Filiale Mumbai	Exhibit "O-26"	Exhibit "O-52"
Deutsche Bank Aktiengesellschaft Filiale Prag	Exhibit "O-32"	(none)
Deutsche Bank Aktiengesellschaft, Filiale Wien	Exhibit "O-40"	Exhibit "O-50"
Deutsche Bank Aktiengesellschaft, Filiale Riad	Exhibit "O-42"	Exhibit "O-49"
Deutsche Bank Aktiengesellschaft, Filiale Dubai (DIFC)	Exhibit "O-43"	(none)
Deutsche Bank Aktiengesellschaft, Filiale Zurich	Exhibit "O-44"	(none)
Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office	(none)	Exhibit "O-9"
Deutsche Bank (China) Co., Ltd. Shanghai Branch	Exhibit "O-21"	(none)
Deutsche Asset Management (Asia) Limited	Exhibit "O-22"	Exhibit "O-8"
Deutsche Bank Real Estate (Japan) Y.K.	Exhibit "O-23"	Exhibit "O-58"
DB Finance Inc	Exhibit "O-30"	(none)
Deutsche Bank PBC Spolka Akcyjna	Exhibit "O-33"	Exhibit "O-59"

Deutsche Bank Luxembourg S.A.	Exhibit "O-34"	(none)
Deutsche Bank (China) Co. Ltd., Beijing Branch	Exhibit "O-36"	(none)
DWS Holding & Service GMBH	Exhibit "O-39"	Exhibit "O-64"
Deutsche Bank (China) Co., Ltd., Guangzhou Branch	Exhibit "O-41"	(none)
Deutsche Bank AG, New York Branch	(none)	Exhibit "O-1"
Deutsche Asia Pacific Holdings Pte. Ltd	Exhibit "O-15"	Exhibit "O-3"
Deutsche Group Services Pty Limited	Exhibit "O-16"	(none)
Deutsche Securities Inc	Exhibit "O-17"	Exhibit "O-4"
Deutsche Bank (Suisse) SA	Exhibit "O-45"	Exhibit "O-55"
DB Consortium S. Cons. A.R.L. in Liquidazione	Exhibit "O-46"	(none)
Global Markets Centre Private Limited	Exhibit "O-47"	Exhibit "O-65"

Correspondingly, only the sales of service by Deutsche Knowledge to entities which have the said two (2) required documents will be treated as subject to the 0% VAT rate, pursuant to Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337.

In view of the foregoing discussions, only the amount of €13,099,918.30 (or its Peso equivalent, ₱838,069,167.02), of Deutsche Knowledge's sales of services for the 2nd quarter of 2009, would qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, computed as follows:

Company Name	OR #	OR Exh No.	Inward Remit-tance Exhibit No.	Amount Collected in Euro	Peso Equivalent
Deutsche Bank Aktiengesellschaft (DB AG), Inlandsbank	383	**N-137**	**N-138**	€ 956,893.16	₱ 60,920,985.79
DB AG Filiale Riad	439	**N-277**	**N-278**	6,735.00	429,690.94
DB AG Filiale Riad	390	**N-57**	**N-58**	43,562.52	2,706,674.41
DB AG Filiale Wien	431	**N-288**	**N-289**	925.00	61,741.35
DB AG Filiale Singapore	435	**N-159**	**N-160**	25,200.02	1,676,101.34
DB AG Filiale Singapore	401	**N-96**	**N-97**	12,500.00	802,576.25
DB AG Filiale Singapore	402	**N-163**	**N-164**	136,137.52	8,740,859.22
DB AG Filiale Singapore	387	**N-251**	**N-252**	72,792.83	4,522,844.08
DB AG Filiale Bangkok	434	**N-292**	**N-293**	18,500.00	1,240,314.00
DB AG Filiale Mumbai	403	**N-100**	**N-101**	23,124.53	1,484,735.89
DB AG Filiale Hongkong	394	**N-255**	**N-256**	1,076.00	68,239.06
DB AG Filiale Hongkong	377	**N-168**	**N-169**	705,238.23	45,663,822.77
DB AG Filiale Jakarta	399	**N-172**	**N-173**	16,650.04	1,057,054.43
DB AG Filiale London	426	**N-236**	**N-237**	67,726.08	4,531,504.60
DB AG Filiale London	427	**N-239**	**N-240**	45,238.47	3,026,874.36
DB AG Filiale London	424	**N-242**	**N-243**	120,005.87	7,899,098.38
DB AG Filiale London	418	**N-176**	**N-177**	4,701,873.80	301,542,921.48
DB AG Filiale London	417	**N-271**	**N-272**	72,502.05	4,707,855.36
DB AG Filiale London	416	**N-274**	**N-275**	70,088.22	4,551,115.49

DB AG Filiale London	409	**N-106**	**N-107**	4,154,005.85	263,941,377.70
DB AG Filiale London	408	**N-258**	**N-259**	79,624.00	5,059,229.34
DB AG Filiale London	407	**N-264**	**N-265**	71,800.11	4,562,107.19
DB AG Filiale London	379	**N-281**	**N-282**	559,285.00	35,980,873.40
Deutsche Asset Management (Asia) Limited	436	**N-296**	**N-297**	110,138.97	7,427,763.15
Deutsche Securities Inc.	432	**N-285**	**N-286**	17,216.00	1,149,123.24
Deutsche Securities Inc.	391	**N-193**	**N-194**	931,396.22	59,068,403.16
Deutsche Securities Inc.	393	**N-267**	**N-268**	12,051.20	764,277.46
Deutsche Securities Inc.	376	**N-261**	**N-262**	6,025.60	390,154.59
DB AG Suisse SA	441	**N-113**	**N-114**	278.00	18,811.90
DB AG Suisse SA	396	**N-87**	**N-88**	278.00	18,811.90
DWS Holding Service GMBH	433	**N-304**	**N-305**	18,500.00	1,240,314.00
DB Real Estate Japan Y.K.	392	**N-127**	**N-128**	12,950.01	821,279.27
Deustche Asia Pacific Holdings Pte Ltd	438	**N-308**	**N-309**	27,750.00	1,870,419.38
Deutsche Bank PBC Spolka Akcyjna	400	**N-215**	**N-216**	462.50	29,561.24
Global Markets Centre Private Limited	430	**N-227**	**N-228**	1,387.50	91,650.90
TOTAL				**€13,099,918.30**	**₱ 838,069,167.02**

Thus, the findings of the Court in Division, as stated in the assailed Decision, as regards the amount of Deutsche Knowledge's sales for the 2nd quarter of 2009 which qualify to the 0% VAT rate have to be reduced from €13,167,067.56 (or its Peso equivalent, ₱842,455,992.11) to €13,099,918.30 (or its Peso equivalent, ₱838,069,167.02). Particularly, the said reduction is brought about by the exclusion of the sales to Deutsche Bank Luxembourg S.A., Deutsche Bank (China) Co. Ltd., Beijing Branch, Deutsche Bank (China) Co., Ltd., Guangzhou Branch, DB Finance Inc., DB Consortium S. Cons. A.R.L. in Liquidazione, since the above-stated two (2) documents for these entities were not submitted. Parenthetically, the sale of service to Deutsche Bank (Suisse) SA in the amount of €278.00 (or its Peso equivalent, ₱18,811.90),[30] which were not considered by the Court in Division in the assailed Decision, is included in the said amount of €13,099,918.30 (or its Peso equivalent, ₱838,069,167.02).

The total amortized amount of input VAT on its purchases of capital goods for the 2nd quarter of 2009 is only ₱180,065.44.

Deutsche Knowledge avers that it is entitled to the amount of ₱226,647.86, representing the amount of amortization of input VAT on its purchase of capital goods exceeding ₱1,000,000.00 for the

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[30] Refer to Exhibits "N-87" and "N-88".

second quarter of 2009. It contends that the *Court a quo* erred in finding that the estimated useful life of the said goods is sixty (60) months; and that the estimated useful life should have been only forty-eight (48) months, as shown in its Quarterly VAT Return for the second quarter of 2009 (pointing to Exhibit "T-8").

We partly agree with Deutsche Knowledge's contentions, but only insofar as the number of the estimated useful life of the subject capital goods are concerned.

Section 110 of the NIRC of 1997, as amended by RA No. 9337, states that:

> "SEC. 110. *Tax Credits.*—
>
> xxx xxx xxx
>
> xxx, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million pesos (P1,000,000): ***Provided, however,* That if the estimated useful life of the capital goods is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period:** xxx." *(Emphasis supplied)*

In relation thereto, Section 4.110-3(b) of the Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, provides as follows:

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

(b) **<u>If the estimated useful life of a capital good is less than five (5) years</u> — The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of a capital good. <u>The claim for input tax credit shall commence in the month that the capital goods were acquired.</u>**" *(Emphasis and underscoring supplied)*

Based on the foregoing provisions, if the estimated useful life of the subject capital goods is less than five (5) years, the input VAT shall be spread evenly on a monthly basis, the amount of which is computed by dividing the input VAT by the actual number of months comprising the said estimated useful life. Furthermore, the commencement of the claim for input VAT shall be in the month of acquisition of the said capital goods.

Upon perusal of the records, it shows that Deutsche Knowledge formally offered, *inter alia*, its Quarterly VAT Return for the second quarter of 2009,[31] as Exhibits "T-1" to "T-8". These documents were admitted by the Court in Division in the Resolution dated September 14, 2012.[32] Indeed, in the said Quarterly VAT Return, Deutsche Knowledge had indicated that the useful life of the purchased capital goods exceeding ₱1,000,000.00 is <u>forty-eight (48) months</u>.

Nevertheless, We do not subscribe to Deutsche Knowledge's stance that the amount of ₱226,647.86 must be refunded, as would represent the amount of amortization of input VAT on its purchase of capital goods exceeding ₱1,000,000.00 for the 2nd quarter of 2009. This must be so because while the estimated useful life of the subject capital goods is indeed 48 months, and therefore, the corresponding input VAT thereto must be spread evenly during the period of the said estimated useful life, the amortization of the input VAT claim must commence only from the month of acquisition, and not for the whole 2nd quarter of 2009, as Deutsche Knowledge would have it.

Hence, only the amount of ₱180,056.40, as determined below, represents the total amortized input VAT on Deutsche Knowledge's purchase of capital goods exceeding ₱1,000,000.00 for the 2nd quarter of 2009, *viz*:

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[31] Division Docket—Vol. 1 (CTA Case No. 8300), pp. 187 to 203, at p. 199.
[32] Division Docket—Vol. 2 (CTA Case No. 8300), pp. 674 to 680.

NO

Registered Name of Supplier	Exhibit No.	Input VAT Reported per Quarterly VAT Return (in Pesos)	Estimated Useful Life	Date of Purchase (Invoice Date)	No. of Months Amortized	Amortized Input VAT (in Pesos)
Accent Micro Technologies Inc.	M-18	4,853.57	48	Feb. 10, 2009	3	303.35
Accent Micro Technologies Inc.	M-19	2,357.14	48	Feb. 12, 2009	3	147.32
Accent Micro Technologies Inc.	M-20	1,285.50	48	Mar. 13, 2009	3	80.34
Accent Micro Technologies Inc.	M-21	4,285.71	48	Mar. 13, 2009	3	267.86
Accent Micro Technologies Inc.	M-22	2,147.36	48	Feb. 13, 2009	3	134.21
Accent Micro Technologies Inc.	M-23	698.36	48	Mar. 25, 2009	3	43.65
Accent Micro Technologies Inc.	M-24	1,396.71	48	Mar. 25, 2009	3	87.29
Accent Micro Technologies Inc.	M-25	288,769.93	48	Mar. 26, 2009	3	18,048.12
Accent Micro Technologies Inc.	M-26	4,039.29	48	Feb. 10, 2009	3	252.46
Accent Micro Technologies Inc.	M-27	200,357.14	48	Mar. 31, 2009	3	12,522.32
Accent Micro Technologies Inc.	M-28	8,517.86	48	Mar. 19, 2009	3	532.37
Accent Micro Technologies Inc.	M-29	589.29	48	Mar. 30, 2009	3	36.83
Accent Micro Technologies Inc.	M-30	2,303.57	48	Mar. 23, 2009	3	143.97
Accent Micro Technologies Inc.	M-31	1,079,748.43	48	Apr. 3, 2009	3	67,484.28
Accent Micro Technologies Inc.	M-32	219,716.25	48	Apr. 13, 2009	3	13,732.27
Accent Micro Technologies Inc.	M-33	13,563.32	48	Apr. 14, 2009	3	847.71
Accent Micro Technologies Inc.	M-34	52,395.43	48	Apr. 2, 2009	3	3,274.71
Accent Micro Technologies Inc.	M-35	4,510.07	48	Apr. 27, 2009	3	281.88
Accent Micro Technologies Inc.	M-36	891,420.21	48	May 5, 2009	2	37,142.51
Accent Micro Technologies Inc.	M-37	17,465.14	48	May 6, 2009	2	727.71
Accent Micro Technologies Inc.	M-38	1,074.86	48	May 11, 2009	2	44.79
Accent Micro Technologies Inc.	M-39	17,792.14	48	Apr. 2, 2009	3	1,112.01
Accent Micro Technologies Inc.	M-40	6,428.57	48	May 8, 2009	2	267.86
Accent Micro Technologies Inc.	M-41	3,759.43	48	Apr. 27, 2009	3	234.96
Accent Micro Technologies Inc.	M-42	109,285.71	48	May 18, 2009	2	4,553.57
Accent Micro Technologies Inc.	M-43	19,039.29	48	Apr. 22, 2009	3	1,189.96
Accent Micro Technologies Inc.	M-44	3,642.86	48	May 18, 2009	2	151.79
Accent Micro Technologies Inc.	M-45	1,821.43	48	May 25, 2009	2	75.89
Accent Micro Technologies Inc.	M-46	483.00	48	May 25, 2009	2	20.13
Accent Micro Technologies Inc.	M-47	128,993.04	48	May 29, 2009	2	5,374.71
Accent Micro Technologies Inc.	M-48	428.36	48	May 25, 2009	2	17.85

Accent Micro Technologies Inc.	M-49	182,142.86	48	June 3, 2009	1	3,794.64
Accent Micro Technologies Inc.	M-50	1,664.36	48	June 8, 2009	1	34.67
Accent Micro Technologies Inc.	M-51	6,589.29	48	June 4, 2009	1	137.28
Accent Micro Technologies Inc.	M-52	4,017.86	48	June 10, 2009	1	83.71
Accent Micro Technologies Inc.	M-53	1,607.14	48	June 4, 2009	1	33.48
Accent Micro Technologies Inc.	M-54	319,774.71	48	June 4, 2009	1	6,661.97
Accent Micro Technologies Inc.	M-55	1,664.36	48	June 8, 2009	1	34.67
Accent Micro Technologies Inc.	M-56	3,880.07	48	June 8, 2009	1	80.83
Accent Micro Technologies Inc.	M-57	943.71	48	May 25, 2009	2	39.32
Accent Micro Technologies Inc.	M-58	1,449.00	48	June 8, 2009	1	30.19
	TOTAL	**3,616,902.33**			**TOTAL**	**180,065.44**

Correspondingly, We partly reduce the finding of the Court in Division as regards the amount of the unamortized input VAT from the amount of ₱3,444,742.24 to the amount of ₱3,436,836.89 (₱3,616,902.33 less ₱180,065.44).

A determination whether the Court in Division erred in disallowing the total amount of ₱24,414,629.89.

Deutsche Knowledge contends that its entitlement to the refund of its excess and unutilized input VAT for the 2nd quarter of 2009 is more paramount compared to the apparent failure of the documents presented by Deutsche Knowledge to comply with strict substantiation requirements.

For easy reference, the composition of the said amount of ₱24,414,629.89 is as follows:

Findings of the Court in Division	Disallowed Input VAT
1. Domestic purchases of services supported by VAT Official Receipts (ORs) wherein the input VAT were not separately indicated.	₱9,300,096.83
2. Domestic purchases of goods other than capital goods supported by VAT invoices wherein the input VAT were not separately indicated.	96,883.29
3. Domestic purchases of services without supporting valid VAT ORs.	2,437,168.27
4. Domestic purchases of goods other than capital goods without supporting valid VAT invoices.	136,459.07
5. Input VAT on services supported by documents imprinted	

with the statement "This document is not a valid source of input tax."	1,042.90
6. Domestic purchases of services supported by VAT ORs dated outside the period of claim.	6,009,296.27
7. Domestic purchases of capital goods not exceeding P1M supported by VAT invoices dated outside the period of claim.	1,363,030.99
8. Over-claimed input VAT on domestic purchases of services supported by VAT ORs.	188,316.98
9. Without supporting documents.	4,882,335.29
TOTAL	**₱24,414,629.89**

Deutsche Knowledge, however, failed to specifically refute the findings of the Court in Division regarding the amounts of ₱1,042.90, ₱188,316.98, and ₱4,882,335.29. If Deutsche Knowledge was truly convinced that the Court in Division erred in the said findings, it could have easily pinpointed which of the said findings is not consistent with evidence, the law and/or jurisprudence. A general and perfunctory statement that its entitlement to the subject refund is more paramount than its failure to comply with the substantiation requirements will not suffice. Thus, the same findings of the Court in Division stand.

As for the other findings being specifically assailed by Deutsche Knowledge, We shall address them as follows:

The out-of-period claims in the amount of ₱7,372,327.26 should not be allowed, since it is contrary to law and revenue regulations.

Deutsche Knowledge insists that the disallowance of out-of-period claims in the amount of ₱7,372,327.26 is untenable, considering that the said claims are specifically allowed under Revenue Memorandum Circular (RMC) No. 42-03. For easy reference, it is hereby noted that the composition of the said amount is broken down as follows:

Findings of the Court in Division	Disallowed Input VAT
1. Domestic purchases of services supported by VAT ORs dated outside the period of claim	₱ 6,009,296.27
2. Domestic purchases of capital goods not exceeding P1M supported by VAT invoices dated outside the period of claim	1,363,030.99
TOTAL	**₱ 7,372,327.26**

The reasoning of Deutsche Knowledge is specious.

It is true that RMCs (such as RMC No. 42-03), as administrative issuances, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes.[33] However, it must be remembered that BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code.[34]

Furthermore, while We recognize that the CIR is vested with the power to interpret the provisions of the NIRC of 1997, it is still subject to the review powers of the Secretary of Finance, in accordance with the first paragraph of Section 4 of the NIRC of 1997, *viz*:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*— The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

In this connection, RMCs are considered administrative *rulings* which are issued from time to time by the CIR.[35]

In any event, the Secretary of Finance, in turn, is empowered to promulgate rules and regulations, usually in the form of Revenue Regulations (RRs), upon the recommendation of the CIR, pursuant to Section 244 of the NIRC of 1997, to wit:

> "SEC. 244. *Authority of Secretary of Finance to Promulgate Rules and Regulations.* — The Secretary of Finance, upon recommendation of the Commissioner, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of this Code."

Thus, RRs should always prevail over RMCs;[36] the former being promulgations by a superior; while the latter, being issuances

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[33] *Chevron Phils., Inc. vs. Bases Conversion and Development Authority, et al.* , G.R. No. 173863, September 15, 2010.

[34] *Security Bank Corporation (formerly Security Bank and Trust Company) vs. The Commissioner of Internal Revenue*, G.R. No. 130838, August 22, 2006.

[35] *Asia International Auctioneers, Inc., et al. vs. Parayno, et al.*, G.R. No. 163445, December 18, 2007.

[36] Refer to *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, G.R. No. 144653, August 28, 2001.

by a subordinate official. As a corollary then, a RMC cannot supplant provisions of RRs.

In this case, one of the pertinent provisions applicable to the refund claim of Deutsche Knowledge in CTA Case No. 8300 is Section 110(2) of the NIRC of 1997, as amended by RA No. 9337, which lays down the rules as to when the input VAT is creditable against the output VAT, to wit:

> "SEC. 110. *Tax Credits.* —
>
> xxx xxx xxx
>
> (2) The input tax on domestic purchases or importation of goods or properties by a VAT-registered person **shall be creditable**:
>
> (a) To the purchaser **upon consummation of sale and on importation of goods or properties**; and
>
> (b) To the importer **upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs**.
>
> xxx, That in case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee **upon payment of the compensation, rental, royalty or fee**." *(Emphases and underscoring supplied)*

The law is clear. Thus, as to the purchaser of goods or properties, the input VAT is creditable against the output VAT, **upon consummation of the sale**; as to the importer, **upon payment of the VAT**; and as to the purchaser of services, lease or use of properties, the input VAT therefor is creditable **upon payment of the compensation, rental, royalty or fee**. With the use of the word "upon", it can be easily discerned from the said provisions that the creditability of the pertinent input VAT against the output VAT must be made as it happens, and not to be made at any other time. Nevertheless, the aforequoted provisions of Section 110(2) should be correlated with Section 114(A) of the NIRC of 1997, as amended by RA No. 9337, which provides as follows, to wit:

> "SEC. 114. *Return and Payment of Value-added Tax* . — (A) In General. — Every person liable to pay the

> value-added tax imposed under this Title shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: *Provided, however,* That VAT-registered persons shall pay the value-added tax on a monthly basis."

Correspondingly, since the filing of the Quarterly VAT Return, which reports the gross sales or receipts, and the payment of the VAT would come at a later date than the actual crediting of the input VAT, such crediting can be made only upon such filing and payment. However, considering that the said Section 110(2) is clear as to when should the pertinent input VAT shall be creditable, it should not go beyond the month or quarter during which the input VAT was incurred or paid, as the case may be. This has been clarified by the following provisions of RRs No. 16-2005, which implemented the said Sections 110(2) and 114(A), to wit:

> "SEC. 4.110-2. *Persons Who Can Avail of the Input Tax Credit.* — The input tax credit on importation of goods or local purchases of goods, properties or services by a VAT-registered person shall be creditable:
>
> (a) To the importer upon payment of VAT prior to the release of goods from customs custody;
>
> (b) To the purchaser of the domestic goods or properties upon consummation of the sale; or
>
> (c) To the purchaser of services or the lessee or licensee upon payment of the compensation, rental, royalty or fee.
>
> xxx xxx xxx
>
> SEC. 4.110-4. *Apportionment of Input Tax on Mixed Transactions.* — A VAT-registered person who is also engaged in transactions not subject to VAT shall be allowed to recognize input tax credit on transactions subject to VAT as follows:
>
> 1. All the input taxes that can be directly attributed to transactions subject to VAT may be recognized for input tax credit; xxx

2. If any input tax cannot be directly attributed to either a VAT taxable or VAT exempt transaction, the input tax shall be pro-rated to the VAT taxable and VAT-exempt transactions and only the ratable portion pertaining to transactions subject to VAT may be recognized for input tax credit.

xxx xxx xxx

SEC. 4.110-5. *Determination of Input Tax Creditable during a Taxable Month or Quarter.* — **The amount of input taxes <u>creditable during a month or quarter</u> shall be determined in the manner illustrated above by adding all creditable input taxes arising from the transactions enumerated under the preceding subsections of Sec. 4.110 <u>during the month or quarter</u>** plus any amount of input tax carried over from the preceding month or quarter, reduced by the amount of claim for VAT refund or tax credit certificate (whether filed with the BIR, the Department of Finance, the Board of Investments or the BOC) and other adjustments, such as purchase returns or allowances, input tax attributable to exempt sales and input tax attributable to sales subject to final VAT withholding.

SEC. 4.110-6. *Determination of the Output Tax and VAT Payable and Computation of VAT Payable or Excess Tax Credits.* — In a sale of goods or properties, the output tax is computed by multiplying the gross selling price as defined in these Regulations by the regular rate of VAT. For sellers of services, the output tax is computed by multiplying the gross receipts as defined in these Regulations by the regular rate of VAT.

xxx xxx xxx

There shall be allowed as a deduction from the output tax <u>the amount of input tax deductible as determined under Sec. 4-110-1 to 4.110-5 of these Regulations to arrive at VAT payable on the monthly VAT declaration and the quarterly VAT returns</u>, subject to the limitations set forth in Section 4.110-7.

xxx xxx xxx

SEC. 4.114-1. *Filing of Return and Payment of VAT.*

—

> (A) *Filing of Return.* — Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return. xxx.
>
> Amounts reflected in the monthly VAT declarations for the first two (2) months of the quarter shall still be included in the quarterly VAT return which reflects the cumulative figures for the taxable quarter. Payments in the monthly VAT declarations shall, however, be credited in the quarterly VAT return to arrive at the net VAT payable or excess input tax/over-payment as of the end of a quarter.
>
> xxx xxx xxx
>
> The monthly VAT Declarations (BIR Form 2550M) of taxpayers whether large or non-large shall be filed and the taxes paid not later than the 20th day following the end of each month." *(Emphases and underscoring supplied)*

Based on the foregoing provisions, to arrive at the VAT payable on the Monthly VAT Declaration and the Quarterly VAT Return, the input VAT allowed to be deducted or credited from the output VAT are those that are creditable during the corresponding month and quarter.

Thus, even when RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, because it contravenes the above-quoted Section 110(2) in relation to Section 114(A) of the NIRC of 1997, as amended by RA No. 9337, and clearly supplants Sections 4.110-2, 4.110-4, 4.110-5, 4.110-6, and 4-114-1 of RRs No. 16-2005.

Deutsche Knowledge's VAT official receipts or invoices, which do not separately indicate the input VAT component of the transaction, were correctly disallowed by the Court in Division.

Deutsche Knowledge argues that the amount of ₱9,396,980.12 must not be disallowed based on the following grounds: (i) the input

VAT claimed from these supporting documents may be readily computed; and (ii) these supporting documents were issued by Deutsche Knowledge's clients over which it had no participation and control whatsoever. Obviously, Deutsche Knowledge is referring to the following disallowances made by the Court in Division, to wit:

Findings of the Court in Division	Disallowed input VAT
1. Domestic purchases of services supported by VAT ORs wherein the input VAT were not separately indicated.	₱ 9,300,096.83
2. Domestic purchases of goods other than capital goods supported by VAT invoices wherein the input VAT were not separately indicated	96,883.29
TOTAL	**₱ 9,396,980.12**

We, however, find the grounds relied upon by Deutsche Knowledge as untenable.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[37] Thus, the taxpayer claiming the tax credit or refund has the burden of proving that he is entitled to the refund or credit, in this case input VAT, by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[38] In other words, 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**.[39]

As a refund claimant for input VAT, Deutsche Knowledge must show that the VAT invoices or official receipts issued to it by its suppliers, as the case may be, complied with Section 113(B)(2)(a) of the NIRC of 1997, as amended by RA No. 9337, which provides as follows:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —

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[37] *Panasonic Communication Imaging Corporation of the Philippines vs. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[38] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 180173, April 6, 2011.
[39] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

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xxx xxx xxx

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — **The following information shall be indicated in the VAT invoice or VAT official receipt**:

xxx xxx xxx

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

(a) **The amount of the tax shall be shown <u>as a separate item</u> in the invoice or receipt**;

xxx xxx xxx." *(Emphases and underscoring supplied)*

Based on the foregoing, the VAT invoice or VAT official receipt, as the case may be, must state, *inter alia*, the amount of the tax as a separate item therein. Strict adherence to this requirement must be shown. This is so because compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[40] Hence, if it is shown that the said VAT invoice or VAT official receipt does not indicate the said requirements, it must not be included as part of the taxpayer-claimant's refundable amount.

Correspondingly, Deutsche Knowledge's allegation that the input VAT claimed from the supporting documents (*i.e.*, the VAT invoices and official receipts) may be readily computed has no leg to stand on, since the indication of the input VAT in the VAT invoice or VAT official receipt, as the case may be, is a legal requirement.

Furthermore, the reasoning of Deutsche Knowledge that the subject VAT invoices or official receipts were issued without its participation and control whatsoever is untenable.

While it may be true that the said VAT invoices or official receipts were issued without its participation and control, Deutsche Knowledge, to whom the burden of proof rests claiming tax refunds, must be vigilant to require its suppliers of goods and services to issue

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[40] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, Supra.

pertinent VAT invoice or official receipt, as the case may be, which bear all the information required by law and revenue regulations. In other words, having been charged with the burden to prove its claim for refund,[41] Deutsche Knowledge must have been watchful in ensuring that its every purchase of goods or services is supported by a legally compliant VAT official receipt or invoice, as the case may be.

On the remaining items being raised by Deutsche Knowledge.

Deutsche Knowledge further contends that the Court in Division erred in finding that the Exhibits "M-1131", "M-1133", and "M-1044" do not constitute valid VAT official and/or invoices. It avers that the said official receipts and invoices are compliant with the substantiation requirements under Sections 110(A) and 113(A) and (B) of the Tax Code, as implemented by Sections 4.110-2, 4.110-8, and 113-1, RR No. 16-05.

We are partly persuaded.

The said Exhibits are included in the following findings of the Court in Division, to wit:

Findings of the Court in Division	Disallowed input VAT
1. Domestic purchases of services without supporting valid VAT ORs	₱ 2,437,168.27
2. Domestic purchases of goods other than capital goods without supporting valid VAT invoices	136,459.07
TOTAL	**₱ 2,573,627.34**

Specifically, Exhibits "M-1131" and "M-1133" are included in the total amount of ₱2,437,168.27;[42] while Exhibit "M-1044" is encompassed in the total amount of ₱136,459.07.[43] Thus, the other amounts not affected by these Exhibits, representing the above-stated findings by the Court in Division, are already sustained.

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[41] Refer to *Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010.

[42] Refer to Annex of the assailed Decision, Division Docket—Vol. 2 (CTA Case No. 8300), p. 1134, and EB Docket (CTA EB No. 1383), p. 37.

[43] Refer to Annex of the assailed Decision, Division Docket—Vol. 2 (CTA Case No. 8300), pp. 1134 to 1135, and EB Docket (CTA EB No. 1383), pp. 37 to 38.

Be that as it may, there is partial merit in Deutsche Knowledge's contentions.

A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-rated sales.[44] Put in another way, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[45]

Section 113(B) of the NIRC of 1997, as amended by RA No. 9337, reads as follows:

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

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[44] *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.
[45] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, supra.

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

(4) In the case of sales in the amount of One thousand pesos (P1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and Taxpayer Identification Number (TIN) of the purchaser, customer or client." *(Emphases supplied)*

Thus, the pertinent VAT official receipts or VAT invoices, as the case may be, must contain the foregoing information. Otherwise, the said documents will not be rendered as compliant with the invoicing requirements under the law.

A careful examination of Exhibits "M-1131" and "M-1133" would reveal that these documents are not compliant with the above-stated invoicing requirements. Specifically, it is noteworthy that these supposed "Official Receipts" are both dated as "6-31-09". While this "date" may be construed as "June 31, 2009", such date is non-existent. Hence, said documents do not have a "date of transaction". Furthermore, it is glaring that the said Exhibits do not state the *"nature of the service"* performed by the concerned supplier of Deutsche Knowledge.

As for Exhibit "M-1044", contrary to the finding of the Court in Division as falling under *"Domestic purchases of goods other capital goods without supporting valid VAT invoices"*, We find the same as valid, since the legally required information are present, pursuant to the aforequoted Section 113(B). Thus, the input VAT indicated in the said Exhibit "M-1044", *i.e.*, the amount of ₱63,750.00, must form part of the valid input VAT proved by Deutsche Knowledge.

Hence, in view of the foregoing findings, anent the total amount of valid input VAT for the 2nd quarter of 2009 that was established by Deutsche Knowledge, We partly modify the findings of the Court in Division from ₱25,752,891.18 to ₱25,824,546.53, computed as follows:

Input VAT claimed by Deutsche Knowledge		₱ 53,739,763.31
Less: Disallowances:		
Unamortized input VAT on capital goods exceeding ₱1M	₱3,436,836.89	

Input VAT on capital goods exceeding ₱1M without supporting documents	127,500.00	
Input VAT on purchases of services and goods other than capital goods (₱24,414,629.89 less ₱63,750.00)	24,350,879.89	27,915,216.78
Valid Input Tax		**₱ 25,824,546.53**

Deutsche Knowledge has not shown any valid justification why its Motion to Re-Open Trial should have been granted by the Court in Division.

Deutsche Knowledge avers that the Court in Division gravely erred in denying its motion to re-open trial as it violates the principle that the ascertainment of truth takes precedence over the strict application of procedural rules for cases falling the Court in Division's jurisdiction. According to Deutsche Knowledge, the re-opening of trial would have allowed it to comply with the very strict documentary requirements imposed by the Court in Division for proving the existence of non-resident foreign clients doing business outside the Philippines, which documentary requirements are not actually supported by law.

We are not persuaded.

In *Cabarles vs. Maceda, et al.*,[46] the Supreme Court said:

> "A motion to reopen a case to receive further proofs was not in the old rules but it was nonetheless a recognized procedural recourse, deriving validity and acceptance from long, established usage. xxx.
>
> xxx xxx xxx
>
> Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, **the court, <u>for good reasons, in the furtherance of justice</u>, may allow <u>new evidence</u> upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented** only after either or both

[46] G.R. No. 161330, February 20, 2007.

parties had formally offered and closed their evidence, but before judgment is rendered, and **even after promulgation but before finality of judgment and <u>the only controlling guideline governing a motion to reopen is the paramount interest of justice.</u>** This remedy of reopening a case was meant to prevent a miscarriage of justice." *(Emphases and underscoring supplied*

Based on the foregoing, the Court in Division is empowered to allow new evidence, for good reasons, and in the furtherance of justice.

In this case, however, Deutsche Knowledge has not shown that it will be introducing "new evidence", and has not established any good reason why a decree reopening the case *a quo* should have been granted by the Court in Division. Neither did Deutsche Knowledge show that the paramount interest of justice would be served in granting its motion to reopen the case.

It is noteworthy that Deutsche Knowledge has been given every opportunity to present its case *a quo*. During trial, the Court in Division permitted Deutsche Knowledge to present its evidence and after which, Deutsche Knowledge was able to offer the same via its *Formal Offer of Evidence*[47] filed on August 2, 2012. The Court in Division acted thereon and ruled on the admissibility of the said evidence per its Resolution dated September 14, 2012.[48]

In addition, the Court in Division even allowed Deutsche Knowledge to present supplemental evidence in the Resolution dated February 4, 2013,[49] and to offer, for their admission, the said supplemental evidence[50] all for the purpose of proving that Deutsche Knowledge's clients are non-resident foreign corporations *"actually doing business outside the Philippines."*

In the subject *Motion to Re-Open Trial* filed before the Court in Division,[51] Deutsche Knowledge averred that it intends to offer in

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[47] Division Docket—Vol. 1 (CTA Case No. 8300), pp. 187 to 204.
[48] Division Docket—Vol. 2 (CTA Case No. 8300), pp. 674 to 680.
[49] Division Docket—Vol. 2 (CTA Case No. 8300), pp. 776 to 779.
[50] Deutsche Knowledge's *Supplemental Formal Offer of Evidence*, Division Docket—Vol. 2 (CTA Case No. 8300), pp. 798 to 802.
[51] Division Docket—Vol. 2 (CTA Case No. 8300), pp. 1167 to 1170.

evidence *"the AMInet Company Profile Fact Sheets and the electronically-maintained copies of the Articles of Incorporation and business registration documents"* of its clients, which were not considered by the Court in Division as doing business outside the Philippines. In other words, in the said *Motion to Re-Open Trial*, Deutsche Knowledge was seeking, once again, to present evidence having the same purpose as that previously allowed by the Court in Division.

We agree, therefore, with the Court in Division in denying Deutsche Knowledge's *Motion to Re-Open Trial.* This must be so because the evidence to be presented could not already be considered as "new evidence". Moreover, Deutsche Knowledge failed to show any good reason why a re-opening of the case is warranted and that the paramount of interest of justice would be served, especially so, that it has already been given by the Court in Division an opportunity to present supplemental evidence to prove the same fact as that what were intended to be presented in the event that the case is re-opened.

While it may be true that there were disallowed zero-rated sales of Deutsche Knowledge, the same does not necessarily translate into a reduction of the amount to be refunded as decreed by the Court in Division.

The CIR assails the decision of the Court in Division in partially granting the refund of petitioner. The contention of respondent is that petitioner's output VAT is more than the amount of input tax attributable to zero-rated sales subject of the present claim.

According to the CIR, the rest of Deutsche Knowledge's declared zero-rated sales in the amount of ₱237,405,916.01 (₱1,079,861,908.12 less ₱842,455,922.11) was denied for VAT zero-rating for failure to prove that the entities to whom it rendered services are non-resident foreign corporations doing business outside the Philippines. Furthermore, the CIR avers that for not being qualified as zero-rated sales, the amount of ₱237,405,916.01 should be subject to VAT at 12% instead of 0% VAT; that after applying the 12% VAT, the corresponding output VAT of Deutsche Knowledge is ₱28,488,709.92; and that, hence, Deutsche Knowledge is still liable for output VAT in the amount of ₱28,488,709.92.

The reasoning of the CIR is erroneous.

In *SMI-ED Philippines Technology, Inc. vs, Commissioner of Internal Revenue*,[52] the Supreme Court held:

> "The Court of Tax Appeals' jurisdiction is not limited to cases when the BIR makes an assessment or a decision unfavorable to the taxpayer. Because Republic Act No. 1125 also vests the Court of Tax Appeals with jurisdiction over the BIR's inaction on a taxpayer's refund claim, there may be instances when the Court of Tax Appeals has to take cognizance of cases that have nothing to do with the BIR's assessments or decisions. When the BIR fails to act on a claim for refund of voluntarily but mistakenly paid taxes, for example, there is no decision or assessment involved.
>
> xxx xxx xxx
>
> Since there is no BIR assessment yet, the Court of Tax Appeals may not determine the amount of taxes due from the taxpayer. There is also no decision yet to review. However, there was inaction on the part of the BIR. That inaction is within the Court of Tax Appeals' jurisdiction.
>
> **In other words, the Court of Tax Appeals may acquire jurisdiction over cases even if they do not involve BIR assessments or decisions.**
>
> **In this case, the Court of Tax Appeals' jurisdiction was acquired because petitioner brought the case on appeal before the Court of Tax Appeals after the BIR had failed to act on petitioner's claim for refund of erroneously paid taxes. The Court of Tax Appeals did not acquire jurisdiction as a result of a disputed assessment of a BIR decision.**
>
> Petitioner argued that the Court of Tax Appeals had no jurisdiction to subject it to 6% capital gains tax or other taxes at the first instance. The Court of Tax Appeals has no power to make an assessment.

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[52] G.R. No. 175410, November 12, 2014.

As earlier established, **the Court of Tax Appeals has no assessment powers.** In stating that petitioner's transactions are subject to capital gains tax, however, the Court of Tax Appeals was not making an assessment. It was merely determining the proper category of tax that petitioner should have paid, in view of its claim that it erroneously imposed upon itself and paid the 5% final tax imposed upon PEZA-registered enterprises.

The determination of the proper category of tax that petitioner should have paid is an incidental matter necessary for the resolution of the principal issue, which is whether petitioner was entitled to a refund.

The issue of petitioner's claim for tax refund is intertwined with the issue of the proper taxes that are due from petitioner. A claim for tax refund carries the assumption that the tax returns filed were correct. If the tax return filed was not proper, the correctness of the amount paid and, therefore, the claim for refund become questionable. <u>In that case, the court must determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid</u>.

In *South African Airways v. Commissioner of Internal Revenue*,[53] South African Airways claimed for refund of its erroneously paid 2½% taxes on its gross Philippine billings. This court did not immediately grant South African's claim for refund. This is because although this court found that South African Airways was not subject to the 2½% tax on its gross Philippine billings, this court also found that it was subject to 32% tax on its taxable income.

In this case, petitioner's claim that it erroneously paid the 5% final tax is an admission that the quarterly tax return it filed in 2000 was improper. Hence, to determine if petitioner was entitled to the refund being claimed, the Court of Tax Appeals has the duty to determine if petitioner was indeed not liable for the 5% final tax and, instead, liable for taxes other than the 5% final tax. As in *South African Airways*, petitioner's request for refund can

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[53] G.R. No. 180356, February 16, 2010.

> neither be granted nor denied outright without such determination.
>
> **If the taxpayer is found liable for taxes other than the erroneously paid 5% final tax, the amount of the taxpayer's liability should be computed and deducted from the refundable amount.**
>
> **Any liability in excess of the refundable amount, however, may not be collected in a case involving solely the issue of the taxpayer's entitlement to refund. The question of tax deficiency is distinct and unrelated to the question of petitioner's entitlement to refund. Tax deficiencies should be subject to assessment procedures and the rules of prescription. The court cannot be expected to perform the BIR's duties whenever it fails to do so either through neglect or oversight. Neither can court processes be used as a tool to circumvent laws protecting the rights of taxpayers.**" *(Emphases and underscoring supplied)*

Based on the foregoing doctrinal pronouncements, it is clear that unlike the BIR, this Court is not endowed with assessment powers. However, when deciding a refund case, this Court's determination of whether the refund claimant is entitled to the tax refund being claimed includes the resolution of the issue of whether such refund claimant is still liable for taxes other than that paid. If this Court finds that such a tax liability exists on the part of the refund claimant, the same must be computed and deducted from the refundable amount, if any; but any excess of such tax liability over such refundable amount may not be collected in a case involving solely the issue of the concerned taxpayer's entitlement to the refund being claimed.

In this case, it is true that portion of the sales of Deutsche Knowledge were disallowed as subject to the 0% VAT rate, because of its failure to establish that some of the service-recipients are non-resident foreign corporations; and thus, such portion must accordingly be subject to the 12% VAT rate.

Nevertheless, it was error for the CIR to simply charge the 12% VAT on the said disallowed sales of Deutsche Knowledge to the refundable amount. This is so because Deutsche Knowledge has still

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available input VAT credits as declared in its Quarterly VAT Return for the for the 2nd quarter of 2009,[54] and the said input VAT credits were not questioned, nor refuted, by the CIR. Thus, the 12% VAT imposed on the same disallowed sales may still be charged off to the said undisputed input VAT credits, as shown below:

Total Output Tax Due per Quarterly VAT Return[55]		₱ 549,152.52
Disallowed Sales previously subjected to the 0% VAT rate (₱1,079,861,908.12[56] - ₱838,069,167.02[57]) x 12%		***29,015,128.93***
Total Output Tax Due		₱ 29,564,288.45
Less: Input VAT credits:		
Total Allowable Input Tax[58]	₱260,250,670.00	
Less: Total Deductions from Input Tax[59]	19,936,628.63	240,314,041.37
Excess Input Tax		**₱210,749,752.92**

In other words, the input VAT credits of Deutsche Knowledge, as declared in its Quarterly VAT Return for the 2nd quarter of 2009, are still sufficient to cover the 12% VAT on its disallowed zero-rated sales for the said period.

Correspondingly, with all the foregoing discussions, the Court *En Banc* finds that Deutsche Knowledge is entitled to the amount of ₱19,957,573.84, representing the representing its unutilized input VAT attributable to its zero-rated sales for the 2nd quarter of 2009, determined as follows:

Valid Zero-Rated Sales/Receipts	₱ 838,069,167.02
Divided by Total Sales/Receipts[60] per Quarterly VAT Return[61]	₱1,084,438,237.45

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[54] Exhibits "T-5" to "T-8".
[55] Box 19B, Exhibit "T-5".
[56] Box 17, Exhibit "T-5".
[57] The amount of sale of services for 2nd quarter that qualifies for zero rating. Refer to pp. 19-20.
[58] Box 20F, Exhibit "T-5".
[59] Box 23F, Exhibit "T-5".
[60] This is pursuant to Section 112(A) of the NIRC of 1997, as amended by RA No. 9337, which provides as follows:

"SEC. 112. *Refunds or Tax Credits of Input Tax.—*

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — xxx where the taxpayer is engaged in zero-rated or effectively zero-rated sales 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**: xxx." *(Emphasis supplied)*

[61] Box 19A, Exhibit "T-5".

Multiplied by Valid Excess Input VAT	₱ 25,824,546.53
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	**₱ 19,957,573.84**

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1374 filed by Deutsche Knowledge is **PARTIALLY GRANTED**. The assailed Decision dated July 10, 2015, and the Resolution dated October 13, 2015, are partially modified as follows: respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of NINETEEN MILLION NINE HUNDRED FIFTY SEVEN THOUSAND FIVE HUNDRED SEVENTY THREE PESOS AND EIGHTY FOUR CENTAVOS (₱19,957,573.84), representing petitioner's unutilized excess input VAT for the 2nd quarter of 2009 attributable to its zero-rated sales.

On the other hand, the *Petition for Review* in CTA EB No. 1383 filed by the CIR is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(With Separate Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

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

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(Concur with Justice Bautista's Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(Concur with Justice Bautista's Concurring and Dissenting Opinion)
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

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1374
(CTA Case No. 8300)

x- x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

DEUTSCHE KNOWLEDGE SERVICES, PTE. LTD.,
Respondent.

CTA EB NO. 1383
(CTA Case No. 8300)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:
DEC 15 2017 1:00 pm

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SEPARATE CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur in the result and in most of the views so ably expressed in the *ponencia* of my esteemed colleague, the Honorable Associate Justice Erlinda P. Uy.

The *ponencia* states that in order for sale of services to be considered as subject to VAT at 0%, it is required, among others, that the services were rendered to a person engaged in business outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed.[1] The *ponencia* further states that to be considered as a nonresident 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 Philippine Securities and Exchange Commission (SEC) and certificate/articles of foreign incorporation/association;[2] and that the IntraGroup Service Agreements cannot be a substitute to either of the said two (2) required documents since said Agreements do not establish that such service recipients are nonresident foreign corporations doing business outside the Philippines.[3]

In cases previously decided by the Court involving the same parties, albeit concerning different taxable periods,[4] I took the position that the Intra-Group Service Agreements should be given probative value in lieu of the certificate/articles of foreign incorporation/association/registration required by the Court as the Intra-Group Service Agreements do not only show the names of Deutsche's customers to whom it rendered services. I was of the opinion that said Agreements are sufficient to establish that the entities mentioned therein are doing business outside the Philippines as they specify the nature of services that Deutsche renders in support of its customers' business process.

In the meantime, or subsequent to the aformentioned position I have previously taken, the Supreme Court made the following pronouncement in ***Sitel Philippines Corporation (formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue***,[5] *viz.*:

> "In the same vein, Sitel fell short of proving that the recipients of its call services were foreign corporations doing business outside the Philippines. As correctly pointed out by the

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[1] *Ponencia*, p. 13.
[2] *Ponencia*, p. 16.
[3] *Ponencia*, p. 17.
[4] CIR vs. Deutsche Knowledge Services Pte. Ltd.; Deutsche Knowledge Services Pte. Ltd. vs. CIR, CTA EB Nos. 1297 & 1302, May 18, 2017; CIR vs. Deutsche Knowledge Services Pte. Ltd.; Deutsche Knowledge Services Pte. Ltd. vs. CIR, CTA EB Nos. 1244 & 1345, March 30, 2017; Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB No. 1290, August 16, 2016.
[5] G.R. No. 201326, February 8, 2017.

> CTA Division, while Sitel's documentary evidence, which includes **Certifications issued by the Securities and Exchange Commission and Agreements between Sitel and its foreign clients**, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said **documents failed to specifically prove that such foreign clients were doing business outside the Philippines or have a continuity of commercial dealings outside the Philippines**." *(Boldfacing supplied)*

It is by virtue of this doctrine that I am constrained to modify my earlier position and concur with the *ponencia* that the Intra-Group Service Agreements are not sufficient to prove that Deutsche's foreign clients are doing business outside the Philippines.

I, however, note that the *ponencia* imposed 12% VAT on Deutsche's sale of services which did not qualify for zero-rating (on account of Deutsche's failure to prove that the recipients are nonresident foreign corporations doing business outside the Philippines).[6]

With due respect to my estemeed colleague, I submit that the imposition of 12% VAT on the sale of services which were disallowed zero-rating as this is tantamount to effectively ***assessing*** Deutsche on said sale of services. In the consolidated cases of ***Commissione of Internal Revenue vs. Toledo Power Company; Toledo Power Company vs. Commissioner of Internal Revenue***,[7] the Supreme Court made the following declaration:

> "All told, we find no error on the part of the CTA *En Banc*, in considering TPC's sales of electricity to CEBECO, ACMDC, and AFC for taxable year 2002 as invalid zero-rated sales, and in consequently denying TPC's claim for refund or credit of unutilized input VAT attributable to the said sales of electricity.
>
> ***TPC is not liable for deficiency VAT.***
>
> **But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity** as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.

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[6] *Ponencia*, pages 41 to 42.
[7] G.R. Nos. 196415 & 196451, December 2, 2015.

In *Commissioner of Internal Revenue v. Court of Tax Appeals*, we allowed offsetting of taxes in a tax refund case because there was an existing deficiency income and business tax assessment against the taxpayer. We said that "[t]o award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects" and that "to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits."[60]

Similarly, in *South African Airways v. Commissioner of Internal Revenue*, we permitted offsetting of taxes because the correctness of the return filed by the taxpayer was put in issue.

In the recent case of *SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue*, we also allowed offsetting because there was a need for the court to determine if a taxpayer claiming refund of erroneously paid taxes is more properly liable for taxes other than that paid. We explained that the determination of the proper category of tax that should have been paid is not an assessment but is an incidental issue that must be resolved in order to determine whether there should be a refund. However, we clarified that while offsetting may be allowed, the BIR can no longer assess the taxpayer for deficiency taxes in excess of the amount claimed for refund if prescription has already set in.

But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.

In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.

Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period. *(Boldfacing with underline supplied)*

Applying the foregoing pronouncement, since the present case involves a claim for refund under Section 112 of the National Internal

Revenue Code (NIRC) of 1997, as amended, and not under 229 of same Code, it would be erroneous for the Court to subject the sales of Deutsche which were disallowed zero-rating to 12% VAT.

Finally, by way of *obiter*, I wish to reiterate my view that in order for sale of services to qualify for zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, the recipient of services may either be a **"person engaged in business conducted outside the Philippines,"** **or** a **"non-resident person not engaged in business who is outside the Philippines when the services are performed."** Thus, the position I have taken in my Concurring Opinion in the consolidated cases of ***Commissioner of Internal Revenue vs. Chevron Holdings, Inc. [formerly Caltex (Asia) Limited], and Chevron Holding, Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue***[8] reads in part:

> "The ponencia, however, made a pronouncement that to be considered as zero-rated sale of services under **Section 108 (B) (2) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9337, the claimant is required to establish that the recipient of services is doing business outside of the Philippines.**
>
> Section 108 (B) (2) of the NIRC of 1997, as amended by RA No. 9337, provides:
>
> > 'SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —
> >
> > (A) Rate and Base of Tax. — xxx xxx xxx.
> >
> > (B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
> >
> > (1) Xxx xxx xxx;
> >
> > (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines** **or** **to a nonresident person not engaged in business who is outside the Philippines when the services are performed**, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);'
> >
> > xxx xxx xxx.
>
> (Emphases supplied)

[8] CTA EB Nos. 1143 and 1349, March 15, 2017.

I submit that the requirement that *the recipient of services is doing business outside the Philippines* applies only to the first situation in Section 108 (B) (2) of the NIRC of 1997, as amended by RA 9337, relating to services rendered to *'person engaged in business conducted outside the Philippines,'* and not to the second situation pertaining to services rendered to *'non-resident person not engaged in business who is outside the Philippines when the services are performed.'* I elaborated on this point in pages 5 to 8 of the assailed August 11, 2015 Amended Decision, *viz.*:

> 'In Our Decision, We cited the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc*. to determine whether petitioner's client is doing business outside the Philippines to comply with one of the prescribed requisites for zero-rating. Petitioner contends, however, that a correct interpretation of Section 108(B)(2) of the NIRC of 1997, as amended, will show that said section enumerates two kinds of zero-rated customers, to wit: those who are engaged in business abroad and those who are not engaged in business abroad.
>
> Indeed, a plain reading of Section 108(B)(2) of the NIRC of 1997, as amended by RA 9337, reveals that it contemplates two (2) situations wherein sales can be regarded as zero-rated for VAT purposes, viz.:
>
> > 1) **Services were rendered to a person engaged in business conducted outside the Philippines**, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); or
> >
> > 2) **Services were rendered to a non-resident person not engaged in business who is outside the Philippines when the services are performed**, and the consideration for which is paid for in foreign currency and accounted for in accordance with the rules and regulations of the BSP.
>
> True, in **Burmeister case and in the latter case of *Accenture, Inc. v. Commissioner of Internal Revenue***, the Supreme Court ruled that in order for the supply of services to be VAT zero-rated, the claimant must be able to establish, among others, that the recipient of such services is doing business outside the Philippines.
>
> The Court notes, however, that the provision that was interpreted by the Supreme Court in *Burmeister* is Section 102(b)(2) of the NIRC which, prior to its amendment by RA No. 9337, provides as follows:

> '(b) Transaction subject to zero-rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (1) **Processing, manufacturing or repacking goods for other persons doing business outside the Philippines** which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding subparagraph**, 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);
>
> (3) Services rendered to persons or entitles whose exemptions under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero rate;
>
> (4) Services rendered to vessels, engaged exclusively in international shipping; and,
>
> (5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.'

Notably, Section 102(b)(2) of the NIRC, as then worded, did not contemplate the second situation stated in Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, to wit, *'services to a non-resident person not engaged in business who is outside the Philippines when the services are performed.'* In interpreting Section 102(b)(2) of the NIRC, both in *Burmeister* and *Accenture*, the Supreme Court did not pass upon the issue of the applicability of the essential condition that the recipient of such services is doing business outside the Philippines to the <u>second situation</u> provided in Section 108(B)(2) of the NIRC of 1997, <u>as amended by RA No. 9337</u>. Needless to say, this is not an issue in both *Burmeister* and *Accenture*.

Any interpretation extending the ruling of the Supreme Court in *Burmeister* and *Accenture* to the second situation provided in Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337, and consequently prescribing the essential condition that the *recipient of services is doing business outside the Philippines*(,) clearly violate(s) the well-settled rule in statutory construction as well as the maxim

> *verba legis non est recedendum* or 'from the words of a statute there should be no departure.' As clearly and succinctly worded, to qualify for zero-rating under the second situation, only the following requirements must be met: (a) services were rendered to a non-resident person; (b) said non-resident person is not engaged in business; (c) said non-resident person is outside the Philippines when services were performed; and, (d) the consideration for said services were paid for in foreign currency and accounted for under the rules and regulations of the BSP.
>
> In fine, the Court holds that the doctrine laid down in *Burmeister* and *Accenture* that in order for the supply of services to be VAT zero-rated, the claimant must be able to establish, among others, the existence of the essential condition that the *recipient of such services is doing business outside the Philippines*, **applies only to the first situation provided in Section 108(B)(2) of the NIRC of 1997, as amended by RA No. 9337.**
>
> **In the second scenario, the taxpayer-claimant is not required to prove the fact that its customers are doing business outside the Philippines, but it is required to establish that its services were rendered to non-resident persons who are not engaged in business and who are outside the Philippines when the services were performed**." *(Additional boldfacing with underscoring supplied)*

It is settled that the Philippine VAT system follows the "destination principle" or the "cross-border doctrine" such that **actual export of services or performance of services by a VAT-registered person outside of the Philippines** is not subject to 12% VAT. The cross-border doctrine of the VAT System basically means that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of the VAT while those destined for use or consumption within the Philippines shall be imposed with the 12% VAT.[9] The exception to this rule refers to services enumerated in Section 108(B) **which are performed in the Philippines but are nonetheless subject to 0% VAT**. In my view, the requirement that **a nonresident person who is the recipient of services should be doing business outside the Philippines is immaterial as what is significant is that the ultimate recipient be**

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[9] Section 2, Revenue Memorandum Circular No. 74-99 dated October 15, 1999; cited in *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, G.R. No. 153866, February 11, 2005 and *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154. August 9, 2005.

situated outside the Philippines and that the services rendered were not intended to benefit the recipient's business in the Philippines.

I note, however, that the *ponencia* does not include an order for the payment of the 12% VAT on said sale of services as it applied or offsett Deutsche's available input VAT credits as declared in its Quarterly VAT Return for the second quarter of 2009 against the 12% VAT due. Thus, I subscribe to the ponencia's ultimate disposition of the case.

All told, I **VOTE** to: (i) **PARTIALLY GRANT** the Petition for Review of Deutsche Knowledge Services, Pte. Ltd.; (ii) **DENY** the Petition for Review of the Commissioner of Internal Revenue; and, (iii) **MODIFY** in part the assailed Decision dated July 10, 2015 and the Resolution dated October 13, 2015 by refunding or issuing a tax credit certificate in favor of Deutsche Knowledge Services, Pte. Ltd. in the amount of P19,957,573.84 (instead of the amount of P19,662,731.51 adjudged by the Court in Division), representing its unutilized excess input VAT for the second quarter of 2009 attributable to its zero-rated sales.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Petitioner,*	**CTA *EB* NO. 1374** (CTA Case No. 8300)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x---x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1383** (CTA Case No. 8300)
- versus -	Members: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** *and* **MANAHAN,** *JJ.*
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Respondent.*	Promulgated: **DEC 15 2017**

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CONCURRING AND DISSENTING OPINION

BAUTISTA, J.:

The present case involves the refund of petitioner's unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the second quarter of calendar year ("CY") 2009.

I concur with the findings reached by my respected colleague, especially as regards the evidence required to prove the non-resident foreign corporation status of an entity (*i.e.*, present at least both a Securities and Exchange Commission negative certification and an incorporation document), that the amortization of input VAT on capital goods shall commence on the month that the capital goods were acquired, and that *Exhibit* "M-1044" amounting to Php63,750.00 as valid since the legally required information are present.

However, I am reluctant to adhere to the computation made by my respected colleague as regards the disallowed zero-rated sales of petitioner, insofar as she subjected the same to 12% VAT, and the computation of petitioner's refundable amount. I humbly submit that disallowed zero-rated sales are not taken into consideration in computing a taxpayer's refundable amount, which is arrived at using the following formula:

$$\frac{\text{Valid zero-rated sales}}{\text{Total zero-rated sales}} \times \text{Valid input VAT} = \text{Refundable amount}$$

In the Decision, the *ponencia* holds that the disallowed zero-rated sales must be subject to 12% VAT. Further, in computing the refund amount petitioner is entitled to, the *ponencia* used as denominator petitioner's total sales using the following formula:

$$\frac{\text{Valid zero-rated sales}}{\text{Total sales}} \times \text{Valid input VAT} = \text{Refundable amount}$$

I beg to differ and humbly submit that the Court is not empowered to subject the disallowed zero-rated sales to 12% VAT. In *Commissioner of Internal Revenue ("CIR") v. Toledo Power Company*[1], which involves similar facts, the Supreme Court categorically held that a taxpayer whose zero-rated sales are disallowed cannot be subjected to 12% VAT, as the same would be tantamount to the exercise of assessment powers – a power which a court does not have. According to the Supreme Court,

TPC is not liable for deficiency VAT.

[1] G.R. Nos. 196415 & 196451, December 2, 2015, 775 SCRA 709.

> But while TPC's sales of electricity to CEBECO, ACMDC, and AFC are not zero-rated, we cannot hold it liable for deficiency VAT by imposing 10% VAT on said sales of electricity as what the CIR wants us to do.
>
> As a rule, taxes cannot be subject to compensation because the government and the taxpayer are not creditors and debtors of each other. However, we are aware that in several cases, we have allowed the determination of a taxpayer's liability in a refund case, thereby allowing the offsetting of taxes.
>
> xxx xxx xxx
>
> But in all these cases, we allowed offsetting of taxes only because the determination of the taxpayer's liability is intertwined with the resolution of the claim for tax refund of erroneously or illegally collected taxes under Section 229 of the NIRC. A situation that is not present in the instant case.
>
> In this case, TPC filed a claim for tax refund or credit under Section 112 of the NIRC, where the issue to be resolved is whether TPC is entitled to a refund or credit of its unutilized input VAT for the taxable year 2002. And since it is not a claim for refund under Section 229 of the NIRC, the correctness of TPC's VAT returns is not an issue. Thus, there is no need for the court to determine whether TPC is liable for deficiency VAT.
>
> Besides, it would be unfair to allow the CIR to use a claim for refund under Section 112 of the NIRC as a means to assess a taxpayer for any deficiency VAT, especially if the period to assess had already prescribed. As we have said, the courts have no assessment powers, and therefore, cannot issue assessments against taxpayers. The courts can only review the assessments issued by the CIR, who under the law is vested with the powers to assess and collect taxes and the duty to issue tax assessments within the prescribed period.[2]

Jurisprudence clearly provides that the power to assess and collect taxes rests on the CIR, while the power to review the same rests with the courts. Considering the present case is primarily a VAT refund case falling under *Section 112 of the 1997 National Internal*

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[2] Underscoring ours.

Revenue Code, as amended ("1997 NIRC")[3], it would be improper for the Court *En Banc* to rule that petitioner's disallowed zero-rated sales should be subject to 12% VAT.

Moreover, in computing the refundable amount petitioner is entitled to, I humbly submit that the proper formula to use is the following, which already excludes disallowed zero-rated sales:

$$\frac{\text{Valid zero-rated sales}}{\text{Total zero-rated sales}} \times \text{Valid input VAT} = \text{Refundable amount}$$

In using the foregoing formula, any item disallowed from zero-rated sales are automatically excluded and are no longer taken into consideration in computing the final refund amount a taxpayer is entitled to.

In view of the foregoing, I vote to modify the July 10, 2015 Decision and October 13, 2015 Resolution of the Court in Division, insofar as finding that petitioner is entitled to a refund of its unutilized input VAT in for the second quarter of CY 2009 in the amount of Php20,042,151.72, computed as follows:

Valid Zero-Rated Sales/Receipts	Php 838,069,167.02
Divided by total Zero-Rated Sales/Receipts	1,079,861,908.12
Multiplied by Valid Excess Input VAT	25,824,546.53
Excess Input VAT attributable to the Valid Zero-Rated Sales/Receipts	**Php 20,042,151.72**

LOVELL R. BAUTISTA
Associate Justice

[3] *Republic Act No. 8424,* as amended (1997).