

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AIG SHARED SERVICES
CORPORATION
(PHILIPPINES),

Petitioner,

CTA Case No. 9879

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, JJ.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 26 2021

X-----X
9 2:55 p.m.

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review¹ filed by petitioner AIG Shared Services Corporation (Philippines) [**petitioner/AIG**] pursuant to Rule 8, Section 3(a)², in relation to Rule 4, Section 3(a)(1)³ of the Revised Rules of the Court of Tax Appeals⁴ (RRCTA). ↗

¹ Filed on 23 July 2018, Division Docket, Volume I, pp. 10-27.

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

³ **SEC. 3. Cases within the jurisdiction of the Court in Divisions.** – The Court in Divisions shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:

The instant petition is a claim for refund or tax credit representing unutilized input value-added tax (VAT) arising from petitioner's domestic purchases of goods and services, purchases of capital goods and purchases of services rendered by non-residents which are attributable to zero-rated transactions for the first (1st) to fourth (4th) quarters of the taxable year (TY) 2016 in the amounts of ₱11,643,887.21, ₱8,546,669.63, ₱6,484,775.53 and ₱15,692,950.42, respectively, or in the aggregate amount of ₱42,368,282.79.⁵

Petitioner is a foreign corporation organized and existing under the laws of the State of New York, U.S.A. and is licensed to transact business in the Philippines through a branch office with address at 11th and 12th Floors, World Plaza 5th Avenue, Crescent Park West, Bonifacio Global City, Taguig City.⁶

Respondent is the duly appointed Commissioner of Internal Revenue (**respondent/CIR**) who holds office at the Bureau of Internal Revenue (**BIR**) National Office Building, located at Agham Road, Diliman, Quezon City.⁷

FACTS OF THE CASE

Petitioner is duly registered with the Securities and Exchange Commission (SEC) and is licensed as a regional operating headquarters⁸ (ROHQ) in the Philippines to provide qualifying services of 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 

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- (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

4 ...
A.M. No. 05-11-07-CTA dated 22 November 2005.

5 Brief Statement of the Case, Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume I, p. 492.

6 Stipulation of Facts, JSFI, id.

7 Id., p. 493.

8 Exhibits "P-1" to "P-1.4", Petitioner's Formal Offer of Evidence Folder (FOE Folder).

communication and business development, to its affiliates in the Philippines and abroad (**qualifying services**).⁹

Petitioner is registered with the BIR as a VAT taxpayer with Taxpayer Identification Number (TIN) 001-218-732-000 and BIR Certificate of Registration No. OCN 8RC0001467897E¹⁰ effective 05 March 2018 issued by Revenue District Office (RDO) No. 126.¹¹

For the 1st to 4th quarters of TY 2016, petitioner filed with the BIR, through the Electronic Filing and Payment System (eFPS), its Quarterly VAT Returns, as follows:

Period Covered	Nature of Filed Return	Date Filed
1 st Quarter	Original ¹²	22 April 2016
	Final Amended ¹³	20 December 2017
2 nd Quarter	Original ¹⁴	22 July 2016
	Amended ¹⁵	19 August 2016
	Final Amended ¹⁶	20 December 2017
3 rd Quarter	Original ¹⁷	21 October 2016
	Final Amended ¹⁸	20 December 2017
4 th Quarter	Original ¹⁹	25 January 2017
	Amended ²⁰	27 January 2017
	Final Amended ²¹	20 December 2017

During such period, petitioner reported sales of services subject to 12% VAT and 0% VAT in the amounts of ₱50,210,635.03²² and ₱2,994,311,644.77²³, respectively. Petitioner likewise reported input VAT on its domestic purchases of goods and services, purchases of

9 Stipulation of Facts, JSFI, Division Docket, Volume I, p. 493.
 10 Exhibit “P-2”, FOE Folder.
 11 Stipulation of Facts, JSFI, Division Docket, Volume I, p. 493.
 12 Exhibit “P-5.2”, FOE Folder.
 13 Exhibit “P-5”, id.
 14 Exhibit “P-6.2”, id.
 15 Exhibit “P-6.3”, id.
 16 Exhibit “P-6”, id.
 17 Exhibit “P-7.2”, id.
 18 Exhibit “P-7”, id.
 19 Exhibit “P-8.2”, id.
 20 Exhibit “P-8.3”, id.
 21 Exhibit “P-8”, id.
 22 Sum of amounts reflected in Line 15A of Exhibits “P-5”, “P-6”, “P-7” and “P-8”, id.
 23 Sum of amounts reflected in Line 17 of Exhibits “P-5”, “P-6”, “P-7” and “P-8”, id.

capital goods and purchases of services from non-residents in the total amount of ₱48,393,559.00.²⁴ Out of the said amount of total input VAT, petitioner claims that ₱42,368,282.79 is attributable to zero-rated sales, net of the input VAT applied against output VAT of ₱6,025,276.21.²⁵

The amount of ₱42,368,282.79 was thereafter deducted by petitioner from its total available input VAT in its Quarterly VAT Return filed for the 4th quarter of TY 2017.²⁶

Petitioner then filed with the VAT Credit Audit Division (VCAD) of the BIR an administrative claim²⁷ for refund or issuance of tax credit of petitioner's unutilized input VAT attributable to zero-rated transactions for the 1st to 4th quarters of TY 2016 dated 26 March 2018 (**administrative claim**) in the aggregate amount of ₱42,368,282.79.²⁸

On 27 June 2018, petitioner received a letter dated 08 June 2018²⁹ from the Assessment Service of the BIR informing it of the denial of its administrative claim.³⁰

PROCEEDINGS BEFORE THIS COURT

On 23 July 2018, following the denial of its administrative claim, petitioner filed the instant Petition for Review.³¹

On 08 October 2018, respondent filed his Answer³² interposing the following special and affirmative defenses:

1. Petitioner failed to substantiate its claim for refund at the administrative level; 

²⁴ Sum of amounts reflected in Lines 20B, 21B, 21D, 21F, 21J and 21L less the amount reflected in Line 23A of Exhibits "P-5", "P-6", "P-7" and "P-8", id.

²⁵ Sum of amounts reflected in Line 19B of Exhibits "P-5", "P-6", "P-7" and "P-8", id.

²⁶ Exhibits "P-23" and "P-23.1", id.

²⁷ Exhibits "P-28", "P-28.1", "P-28.2" and "P-29", id.

²⁸ Stipulation of Facts, JSFI, Division Docket, Volume I, p. 493.

²⁹ Exhibit "P-30", FOE Folder.

³⁰ Stipulation of Facts, JSFI, Division Docket, Volume I, p. 493.

³¹ Supra at note 1.

³² Division Docket, Volume I, pp. 78-87.

2. Since a decision has been rendered denying the claim for refund for failure to substantiate its claim, petitioner cannot present herein documents that it did not submit at the administrative level, citing *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*³³;
3. The BIR denied the administrative claim as it found that petitioner is even liable for deficiency VAT amounting to ₱1,268,659.78;
4. Petitioner's allegation that it is entitled to refund or tax credit was not clearly proved by sufficient evidence; and,
5. Claims for refund are construed strictly against the taxpayer and in favor of the government.

After the parties filed their respective pre-trial briefs³⁴ on 16 November 2018, as well as their Joint Stipulation of Facts and Issues³⁵ (JSFI), the Court issued the Pre-Trial Order³⁶ on 08 February 2019.

On 20 February 2019, petitioner sought the commissioning³⁷ of its Independent Certified Public Accountant (ICPA), Edward L. Roguel (**Roguel**), and presented two (2) of its witnesses, namely: (1) Atty. Geronimo Randy L. Recinto (**Recinto**); and, (2) Glaiza Apolinario-Baroro (**Baroro**).

Through his Judicial Affidavit³⁸, Recinto testified that: (1) he is the Vice President of AIG Shared Services Corporation – Management Services (ROHQ) and concurrently petitioner's resident agent, Assistant Corporate Secretary and lead counsel; (2) he is familiar with the nature of petitioner's business, particularly, that it is licensed as an ROHQ to provide qualifying services to its affiliates in the Philippines and abroad; (3) petitioner was originally licensed by the SEC to operate as a regional headquarters (RHQ) in the Philippines and its

³³ G.R. No. 207112, 08 December 2015.

³⁴ Respondent's Pre-Trial Brief, Division Docket, Volume I, pp. 438-442; Pre-Trial Brief for Petitioner, id., pp. 443-458.

³⁵ Filed on 01 February 2019, id., pp. 492-505.

³⁶ Id., Volume II, pp. 507-517.

³⁷ See Order dated 20 February 2019, id., pp. 552-553.

³⁸ Exhibits "P-38" and "P-38-1", FOE Folder.

application to convert from RHQ to ROHQ was subsequently approved on 25 November 2008³⁹; (4) petitioner last changed its name from “Chartis Technology and Operations Management Corporation” to its current name, as evidenced by Amended License No. FM00000152 dated 31 January 2013⁴⁰; and, (5) as proof that petitioner provided qualifying services to its affiliates abroad, they executed Master Agreements (MAs).

Respondent did not conduct any cross-examination.⁴¹

Later, through her Judicial Affidavit⁴² and Supplemental Judicial Affidavit⁴³, Baroro testified that: (1) she is an Accountant III of petitioner; (2) petitioner obtained its Computerized Accounting System (CAS) Permit No. 1115-126-00211-CAS dated 27 November 2015⁴⁴; (3) petitioner is primarily engaged in zero-rated export sale of qualifying services to non-resident affiliates which are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (4) in compliance with Revenue Memorandum Circular (RMC) No. 17-2018⁴⁵, petitioner’s Controller, Leah Ocampo, executed four (4) Certifications, all dated 07 February 2018⁴⁶, indicating the amounts of zero-rated sales for the 1st to 4th quarters of TY 2016; (5) petitioner’s export documents, including its invoices and receipts, also establish petitioner’s export sales; (6) petitioner had sales which are not zero-rated and these are in the nature of qualifying services rendered to local affiliates in the Philippines and the incidental sale of an asset to a third party buyer amounting to ₱68,303.57; (7) petitioner incurred output VAT in the amount of ₱6,025,276.21 which was offset against the accumulated allowable input VAT from the previous period; (8) petitioner’s affiliates are residents of foreign countries and are not doing business here in the Philippines, but instead, in their countries of registration, as shown by their authenticated registration documents; (9) petitioner also

³⁹ Exhibit “P-1.1”, id.

⁴⁰ Exhibit “P-1.4”, id.

⁴¹ TSN of 20 February 2019, p. 14.

⁴² Exhibits “P-37” and “P-37-1”, FOE Folder.

⁴³ Exhibits “P-39” and “P-39-1”, id.

⁴⁴ Exhibit “P-3”, id.

⁴⁵ Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN).

⁴⁶ Exhibits “P-10”, “P10.1”, “P-10.2” and “P-10.3”, FOE Folder.

obtained from the SEC a Certification of Non-Registration of Company (**SEC Certification of Non-Registration**) for each of these affiliates to ascertain if they are not doing business in the Philippines; (10) for its export sale of qualifying services to its affiliates abroad, petitioner was compensated in U.S. Dollars (USD/\$); (11) petitioner issues system generated invoices to its affiliates which serve as the service invoice; (12) thereafter, payments are inwardly remitted directly by the affiliate-clients or, in some instances, indirectly by American International Group Inc. (AIGI) and A.I. COS. Overseas Pool (AICOS) on behalf of the affiliate-clients through Eastwest Banking Corporation (EWBC) and The Hongkong and Shanghai Banking Corporation (HSBC); (13) it is then credited to petitioner's dollar accounts in the said banks; (14) AIGI and AICOS manage and maintain the pool of funds from various affiliates intended primarily and significantly to facilitate payment of financial commitments and obligations between and among affiliates; (15) as soon as the service invoice becomes due and demandable, AIGI and AICOS automatically transfer and remit the payment in USD from the particular affiliate's pooled funds to petitioner's pool funding account, or it is directly credited to petitioner's dollar accounts in EWBC or HSBC; (16) the document entitled Application - AIG Overseas Pool Account⁴⁷ will establish the pooling of fund arrangement; (17) to prove that export sales of qualifying services have been paid for in USD inwardly remitted and credited to petitioner's dollar accounts, and petitioner secured Certificates of Inward Remittances from EWBC and HSBC; (18) the input VAT incurred attributable to zero-rated sales remained unutilized since they were not applied against any output VAT liability during and in the succeeding quarters; (19) the same was continuously carried over until petitioner filed its administrative claim⁴⁸ on 26 March 2018 where it was deducted as amount claimed for refund or tax credit in the Quarterly VAT Return⁴⁹ for the 4th quarter of TY 2017 (reflected in Line 23D thereof); (20) petitioner's domestic purchases of goods and services and purchases of capital goods relating to its zero-rated sales are evidenced by sales invoices and official receipts (ORs) as well as the Schedule of Local Purchases (SLP); (21) the purchase of services from non-residents are evidenced by the schedule of income payments to non-residents, BIR Form No. 1600⁵⁰ and the payment reference number evidencing payment of VAT; (22) petitioner submitted

⁴⁷ Exhibit "P-19", id.

⁴⁸ Supra at note 27.

⁴⁹ Supra at note 26.

⁵⁰ Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld.

documents in support of its application for VAT credit or refund in compliance with Annex A.1.⁵¹ of RMC No. 17-2018⁵²; (23) with respect to the denial of its administrative claim on the ground of failure to submit proof of payment on big ticket purchases, petitioner in fact submitted bank statements and ORs and/or invoices, which, under the law, rules and regulations, should suffice as proof of payment; (24) as regards the denial of the administrative claim on the ground that its input VAT are attributable to sales to parent company, the same should not have been disallowed because the ultimate parent company has a personality separate and distinct from petitioner; (25) petitioner did not file any similar claim with other government agencies covering the periods subject of this case, as evidenced by Certifications from the Department of Finance⁵³ (DOF), VCAD⁵⁴ and Regular Large Taxpayers Audit Division 3⁵⁵ (RLTAD3); (26) despite diligent efforts to locate the original Application – AIG Overseas Pool Account, she could not find the same but the plain copy thereof is a faithful reproduction of the original; and, (27) attached to petitioner’s BIR Form No. 1600 for the month of December 2016 are SEC Certifications of Non-Registration of DRI Malaysia SDN BHD and Pega Systems Inc. both dated 29 November 2017.⁵⁶

On cross-examination, when asked whether the exhibits she identified in her Judicial Affidavit are all the documents petitioner submitted to the BIR, Baroro testified that the same are just sample documents but they provided the BIR the rest for all its clients.⁵⁷ As to the Application – AIG Overseas Pool Account, Baroro also confirmed that she lost the original and what was submitted is a print-out of a scanned copy.⁵⁸ Petitioner did not conduct any re-direct examination.⁵⁹

On 10 July 2019, petitioner presented its third witness, ICPA Roguel, who testified by way of his Judicial Affidavit⁶⁰ that: (1) he examined and verified petitioner’s documentary evidence relating to

⁵¹ Revised Checklist of Mandatory Requirements for Claims for VAT Refund.

⁵² Supra at note 45.

⁵³ Exhibit “P-33”, BIR Records (Main Folder), p. 95.

⁵⁴ Exhibit “P-34”, id., p. 94.

⁵⁵ Exhibit “P-35”, id., p. 93.

⁵⁶ Exhibits “P-27.4.1” and “P-27.4.2”, FOE Folder.

⁵⁷ TSN of 20 February 2019, p. 21.

⁵⁸ Id., p. 22.

⁵⁹ Id.

⁶⁰ Exhibits “P-5510” and “P-5510-1”, Division Docket, Volume II, pp. 561-566.

its claim for refund or tax credit; (2) he and his team prepared summaries of documents and schedules; (3) they determined the authenticity and due execution as well as the faithfulness of the reproduced copies of the said documents; (4) after they performed the audit, they prepared a Report dated 08 April 2019⁶¹; (5) their overall finding is that out of the total claim of ₱42,368,282.79, the amount of ₱37,490,579.53 was supported by documents; and, (6) the difference of ₱4,877,703.24 noted in their examination pertains to out of period claims, claims supported by documents that do not comply with the invoicing requirements and claims not completely supported by relevant documents, among others.

During the cross-examination, ICPA Roguel explained that the exceptions correspond to supporting documents which are not proper such as when: (1) the VAT OR does not show the amount of VAT separately; (2) the invoices/ORs are outside the period of claim; (3) the documents state an incorrect TIN or address; (4) the document contains alterations; or, (5) the input VAT claim is higher than the amount reflected *per* document.⁶² Petitioner did not conduct any re-direct examination.⁶³

On 04 September 2019, petitioner recalled Recinto to the witness stand to additionally testify, through his Supplemental Judicial Affidavit⁶⁴, that: (1) petitioner executed various MAs with 48 of its affiliates; (2) he has in his custody MAs with 21 thereof; (3) for the rest, he could not find the same despite diligent efforts; (4) the plain photocopies are faithful reproductions of the scanned copies; (5) the contents of the MAs are essentially the same and that they pertain to petitioner's rendering of qualifying services, particularly, information technology (IT) support services to its non-resident foreign affiliates; (6) qualifying services (insofar as ROHQs are concerned) refer to the services that an entity duly registered as an ROHQ is qualified and limited to render; and, (7) petitioner does not perform any other kind of service considering that the services rendered by petitioner are limited by the scope and nature of the services indicated in the MAs. 

⁶¹ Exhibits "P-5508" and "P-5508-1" (ICPA Report).

⁶² TSN of 10 July 2019, p. 11.

⁶³ Id., p. 12.

⁶⁴ Exhibits "P-5511" and "P-5511-1", Division Docket, Volume II, pp. 585-591.

When asked on cross-examination of proof to show that petitioner's affiliates are both non-resident and foreign [corporations], Recinto referred to the SEC Certifications stating that they are not doing business in the Philippines and their respective Articles of Incorporation (AOI) indicating that their places of incorporation are outside of the Philippines.⁶⁵ Petitioner did not conduct any re-direct examination.⁶⁶

On 20 September 2019, petitioner filed its Formal Offer of Evidence⁶⁷ (FOE) with respondent's Comment⁶⁸ filed on 25 September 2019. On 05 November 2019, the Court resolved⁶⁹ to admit all of petitioner's documentary evidence, *except* certain exhibits.⁷⁰

⁶⁵ TSN of 04 September 2019, p. 6.

⁶⁶ Id.

⁶⁷ Division Docket, Volume IV, pp. 1575-1646.

⁶⁸ Id., pp. 1647-1650. It merely states that respondent has no objection to the admission of petitioner's exhibits but only as to the manner they were identified in open court and without necessarily admitting the truth of its contents, relevancy, materiality, probative value and the validity of the purposes for which said exhibits are offered.

⁶⁹ See Resolution dated 05 November 2019, id., pp. 1661-1664.

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Exhibit	Description
P-15.1	Memorandum of Understanding between AIG Shared Services Corporation (Philippines) [formerly Chartis Technology and Operations Management Corporation (Philippines)] and AIG APAC Holdings Pte. Ltd. dated September 10, 2013 and August 1, 2013.
P-15.4	Statement of Work between AIG Shared Services Corporation [formerly Chartis Technology and Operations Management Corporation (Philippines)] and AIG Claims, Inc. dated October 31, 2013 and December 18, 2013.
P-15.5	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and Chartis Egypt Insurance Co. S.A.E. dated April 29, 2014.
P-15.6	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation and AIG Employee Services, Inc. dated September 26, 2011.
P-15.12	Master Agreement for Professional Services between American International Underwriters Corporation – Regional Operating Headquarters and AIG Insurance and Reinsurance Company dated March 1, 2009.
P-15.13	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation – Philippines and Chartis Insurance Hong Kong Limited dated April 23, 2014.
P-15.14	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) [and] American Home Assurance Company (New Zealand Branch) dated June 6, 2011.
P-15.18	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and Chartis Lebanon S.A.L. dated July 25, 2010 and July 19, 2010.
P-15.21	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation and Chartis MEMSA Insurance Company Limited (Kuwait Branch) dated December 1, 2011.
P-15.22	Master Agreement for Professional Services between AIG Shared Services Corporation and AIG PC Global Services, Inc. dated October 31, 2013.
P-15.24	Master Agreement for Professional Services between AIG Shared Services Corporation and AIG Shared Services (M) SDN. BHD. dated January 1, 2014.

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P-15.25	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and Chartis South Africa Limited dated July 30, 2010 and April 23, 2014.
P-15.26	Master Agreement for Professional Services between American International Underwriters Corporation – Regional Operating Headquarters and AIG General Insurance Taiwan Co., Ltd. dated April 23, 2014.
P-15.27	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and AIG Global Services (M) SDN. BHD. dated January 5, 2010.
P-15.28	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation and AIG Global Services, Inc. dated June 19, 2011.
P-15.29	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation and Travel Guard Asia Pacific Pte Ltd. dated April 10, 2012 and January 2012.
P-15.31	Business Process Outsourcing Master Services Agreement between AIG Shared Services Corporation, United Guaranty Services, Inc., and Integra Business Processing Solutions, Inc. dated December 12, 2012.
P-15.32	Master Agreement for Professional Services between American International Underwriters Corporation – Regional Operating Headquarters and AIG General Insurance (Vietnam) Company Limited dated May 11, 2009, May 8, 2009 and April 23, 2014.
P-15.33	Master Agreement for Professional Services between American International Underwriters Corporation – Regional Operating Headquarters and AIU Insurance Company dated May 15, 2009 and May 14, 2009.
P-15.37	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and American International Group KK dated January 18, 2012.
P-15.39	Master Agreement for Professional Services between American International Underwriters Corporation – Regional Operating Headquarters and AIG Caspian Insurance Company dated May 18, 2009 and April 15, 2009.
P-15.41	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and Guam Insurance Adjusters Inc. dated November 18, 2011.
P-15.42	Master Agreement for Professional Services between AIG Shared Services Corporation and National Union Fire Insurance Company of Pittsburgh, PA (Guam Branch) dated September 25, 2014 and September 24, 2014.
P-15.43	Master Agreement for Professional Services between Chartis Technology and Operations Management Corporation (Philippines) and New Hampshire Insurance Company dated March 18, 2010 and March 22, 2010.
P-15.46	Business Process Outsourcing Master Services Agreement between AIG Shared Services Corporation, United Guaranty Services, Inc. and Integra Business Processing Solutions, Inc. dated December 12, 2012.
P-15.47	Statement of Work 2016 AIGSS-IT Services between AIG Shared Services Corporation (Philippines) and AIG Shared Services – Business Processing, Inc. dated March 18, 2016.
P-55	SEC Certification of Non-Registration of Company for AIG Egypt Insurance Company S.A.E. dated 29 November 2017.
P-58	SEC Certification of Non-Registration of Company for AIG Europe Limited dated 12 July 2016.
P-59	SEC Certification of Non-Registration of Company for AIG Europe Limited-Ireland dated 07 October 2015.
P-69	SEC Certification of Non-Registration of Company for AIG Lebanon S.A.L. dated 29 November 2017.
P-72	SEC Certification of Non-Registration of Company for AIG MEA Ltd. – (Kuwait Branch) dated 29 November 2015.
P-100-a	Certificate of Registration abroad for AIG Australia Limited.
P-121-a	Screenshot of the results of database search abroad for AIG South Africa Limited.
P-102-b	Screenshots of the results of the database search abroad indicating that the customers are registered abroad (AIG Claims, Inc.).

On 06 November 2019, respondent presented his lone witness, Revenue Officer (RO) Daniel Carlo C. Perez (**Perez**), who testified by way of his Judicial Affidavit⁷¹ that: (1) he is presently employed as RO II of the BIR's Tax Audit Review Division (**TARD**); (2) his duties include the review of the examination and verification of claims for refund conducted by the VCAD and by the various revenue regions; (3) he was the person authorized to review the examination and verification of petitioner's claim for refund; (4) he started his review by evaluating the veracity of the memorandum report from VCAD; (5) the said memorandum report found petitioner's claim partly meritorious to the extent of ₱17,066,588.24; (6) after conducting his review based on the documents submitted by petitioner, he submitted his own Memorandum dated 08 June 2018 for the denial of the claim for refund; and, (7) specifically, he found that the total deductions, adjustments and disallowances exceeded the claim for refund hence the denial.

On cross-examination, RO Perez confirmed that: (1) VCAD recommended the amount of ₱17 Million for refund but he found additional disallowances amounting to ₱18 Million; (2) the disallowances consist of, among others, lack of proof of payment relative to petitioner's big ticket suppliers in the amount of ₱12,249,711.25; (3) with respect to proof of payment, secondary evidence is needed to support the primary evidence (*i.e.*, sales invoices and ORs); (4) part of the ₱18 Million additional disallowances is input VAT attributable to petitioner's ultimate parent; (5) petitioner's ultimate parent is AIGI, as stated on page 78, fifth (5th) paragraph of Note 1 [of the Audited Financial Statements]; (6) ultimate parent means the mother company; and, (7) no assessment has been made for TY 2016.

On 11 November 2019, respondent filed his FOE⁷², with petitioner's Comment⁷³ filed on 18 November 2019. At the same time,

P-111-b	Various screenshots of the results of database search abroad indicating that the customers are registered abroad.
P-119-b	Various screenshots of the results of database search abroad indicating that the customers are registered abroad.
P-660	Various official receipts.
P-4777	Billing invoices for VAT zero-rated sales (billing invoices in support of OR No. 04000215 or Exhibit "P-367").
P-34	Certification issued by Regular Large Taxpayer Audit Division 3.

⁷¹ Exhibits "R-8" and "R-8-1", Division Docket, Volume IV, pp. 1655-1659.

⁷² Id., pp. 1667-1671.

⁷³ Id., pp. 1672-1675.

petitioner also filed a Motion for Reconsideration⁷⁴ (**MR**) seeking admission of its denied exhibits. Respondent's Comment⁷⁵ thereon was filed on 13 December 2019.

On 24 February 2020⁷⁶, the Court partially granted petitioner's MR insofar as Exhibits "P-102-b"⁷⁷ and "P-4777"⁷⁸ are concerned while it denied admission to all of respondent's documentary evidence, *except* Exhibit "R-8".⁷⁹

On 13 March 2020, petitioner filed a Tender of Excluded Evidence (**Tender of Excluded Evidence**) with Motion for Leave of Court to Recall Atty. Geronimo Randy L. Recinto⁸⁰ (**Motion for Leave**), with respondent's Comment⁸¹ filed on 20 July 2020. On 11 September 2020, the Court granted petitioner's Tender of Excluded Evidence but denied its Motion for Leave.⁸²

After the parties submitted their respective memoranda⁸³, the Court submitted the case for decision on 26 October 2020.⁸⁴

ISSUES

As the parties so stipulated, the issues for this Court's determination are the following.⁸⁵

I.

WHETHER PETITIONER AIG SHARED SERVICES CORPORATION (PHILIPPINES) IS ENTITLED TO A REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE (TCC) FOR ITS UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ARISING FROM ITS DOMESTIC

⁷⁴ Id., pp. 1676-1686.

⁷⁵ Id., pp. 1703-1707.

⁷⁶ See Resolution dated 24 February 2020, id., pp. 1709-1717.

⁷⁷ Screenshots of the results of the database search abroad indicating that the customers are (registered abroad (AIG Claims, Inc.).

⁷⁸ Billing invoices for VAT zero-rated sales (billing invoices in support of OR No. 04000215 or Exhibit "P-367").

⁷⁹ Judicial Affidavit of Daniel Carlo C. Perez.

⁸⁰ Division Docket, Volume IV, pp. 1718-1725.

⁸¹ Received on 28 July 2020, id., pp. 1735-1738.

⁸² See Resolution dated 11 September 2020, id., pp. 1741-1743.

⁸³ Petitioner's Memorandum filed on 15 October 2020, id., pp. 1744-175; Respondent's Memorandum filed on 21 October 2020, id., pp. 1754-1793.

⁸⁴ See Resolution dated 26 October 2020, id., p. 1794.

⁸⁵ JSFI, id., Volume I, pp. 493-494.

PURCHASES OF GOODS AND SERVICES, PURCHASES OF CAPITAL GOODS AND PURCHASES OF SERVICES RENDERED BY NON-RESIDENTS, WHICH ARE ATTRIBUTABLE TO ZERO-RATED TRANSACTIONS FOR THE FIRST TO FOURTH QUARTERS OF TAXABLE YEAR 2016 IN THE AMOUNTS OF ₱11,643,887.21, ₱8,546,669.63, ₱6,484,775.53 AND ₱15,692,950.42, RESPECTIVELY, OR IN THE AGGREGATE AMOUNT OF ₱42,368,282.79; AND,

II.

WHETHER RESPONDENT COMMISSIONER OF INTERNAL REVENUE'S DENIAL OF PETITIONER AIG SHARED SERVICES CORPORATION (PHILIPPINES)'S CLAIM FOR REFUND WAS CORRECT.

RULING OF THE COURT

Petitioner anchors its claim for refund on Section 110(B), in relation to Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 10963⁸⁶, otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN Law). The said provisions read as follows:

...
Sec. 110. Tax Credits. —
...

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

...

⁸⁶ AN ACT AMENDING SECTIONS 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, AND 288; CREATING NEW SECTIONS 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, AND 265-A; AND REPEALING SECTIONS 35, 62, AND 89; ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

Sec. 112. *Refunds or Tax Credits of Input Tax. —*

(A) Zero-Rated or Effectively Zero-Rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

(C) Period within which Refund of Input Taxes shall be Made.— In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided,* however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

...

In *Luzon Hydro Corporation v. Commissioner of Internal Revenue*⁸⁷, the Supreme Court laid down the requisites that must concur in order to allow a claim for refund or tax credit for unutilized input VAT, to wit: 

...

A claim for refund or tax credit for unutilized input VAT may be allowed only if the following requisites concur, namely: (a) the taxpayer is VAT-registered; (b) the taxpayer is engaged in zero-rated or effectively zero-rated sales; (c) the input taxes are due or paid; (d) the input taxes are not transitional input taxes; (e) the input taxes have not been applied against output taxes during and in the succeeding quarters; (f) the input taxes claimed are attributable to zero-rated or effectively zero-rated sales; (g) for zero-rated sales under Section 106(A)(2)(1) and (2); 106(B); and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the rules and regulations of the Bangkok Sentra ng Filipinas; (h) where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume; and (i) the claim is filed within two years after the close of the taxable quarter when such sales were made.

...

We shall now proceed to the determination of petitioner's compliance with the aforementioned requisites. For an orderly discussion, We shall start with the first (1st) and ninth (9th) requisites, followed by the second (2nd) and seventh (7th) requisites, then the third (3rd), fourth (4th), fifth (5th) and eighth (8th) requisites, jointly.

FIRST (1ST) REQUISITE:

PETITIONER IS A VALUE-ADDED TAX
(VAT)-REGISTERED ENTITY.

It is undisputed that petitioner is a VAT-registered entity.⁸⁸
Thus, the 1st requisite is complied with.

NINTH (9TH) REQUISITE:

PETITIONER'S ADMINISTRATIVE AND
JUDICIAL CLAIMS WERE FILED
WITHIN THE PRESCRIPTIVE PERIOD.

In accordance with the above-cited Section 112(A) and (C)⁸⁹ of the NIRC of 1997, as amended by the TRAIN Law, the administrative claim for refund of excess input VAT must be filed with the BIR within

⁸⁸ Supra at note 11.

⁸⁹ Supra at p. 15.

two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

The instant administrative claim covers the four (4) quarters of TY 2016. Thus, petitioner’s last day for filing of its administrative claim and the actual filing of administrative claim for the said periods fell on the following dates:

Period Covered	Last Day to File Administrative Claim	Actual Date of Filing of Administrative Claim
January to March 2016 (1 st Quarter)	31 March 2018	26 March 2018 ⁹⁰
April to June 2016 (2 nd Quarter)	30 June 2018	
July to September 2016 (3 rd Quarter)	30 September 2018	
October to December 2016 (4 th Quarter)	31 December 2018	

Clearly, petitioner’s administrative claim was filed within the two-year prescriptive period.

As to the timeliness of petitioner’s judicial claim, respondent had ninety (90) days or until 24 June 2018, to decide on petitioner’s administrative claim. Considering that respondent issued a letter dated 08 June 2018⁹¹ totally denying the same (which petitioner received on 27 June 2018), petitioner had thirty (30) days therefrom or until 27 July 2018, within which to file a judicial claim before this Court. Thus, the instant Petition for Review was also seasonably filed on 23 July 2018.⁹²

SECOND (2ND) AND SEVENTH (7TH)
REQUISITES:
 PETITIONER IS ENGAGED IN ZERO-
 RATED OR EFFECTIVELY ZERO-RATED
 SALES AND WHERE APPLICABLE, THE
 ACCEPTABLE FOREIGN CURRENCY
 EXCHANGE PROCEEDS HAVE BEEN
 DULY ACCOUNTED FOR IN
 ACCORDANCE WITH THE RULES AND

⁹⁰ Supra at note 28.
⁹¹ Supra at note 29.
⁹² Supra at note 1.

REGULATIONS OF THE BANGKO
SENTRAL NG PILIPINAS (BSP).

The 2nd and 7th requisites, respectively, require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and, for zero-rated sales under Sections 106(A)(2)(a)(1), (2) and (b)⁹³, and 108(B)(1) and (2)⁹⁴ of the NIRC of 1997, as amended⁹⁵, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations. ✓

⁹³ Sec. 106. *Value-Added Tax on Sale of Goods or Properties.* –

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

...

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

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

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

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

...

(b) *Foreign Currency Denominated Sale.* — The phrase 'foreign currency denominated sale' means sale to a nonresident of goods, except those mentioned in Sections 149 and 150, assembled or manufactured in the Philippines for delivery to a resident in the Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

⁹⁴ Sec. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –

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

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

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a non-resident 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);

⁹⁵ Prior to the changes brought about by TRAIN.

As indicated in petitioner’s final amended Quarterly VAT Returns for the TY 2016, petitioner declared sales subject to 12% VAT and zero-rated sales in the amounts of ₱50,210,635.03 and ₱2,994,311,644.77, respectively, detailed as follows:

Exhibit	Period	Sales Subject to 12% VAT	Zero-Rated Sales
“P-5”	January to March 2016 (1 st Quarter)	₱14,046,876.84	₱771,292,147.26
“P-6”	April to June 2016 (2 nd Quarter)	7,920,386.06	679,718,116.58
“P-7”	July to September 2016 (3 rd Quarter)	18,432,782.60	706,965,896.84
“P-8”	October to December 2016 (4 th Quarter)	9,810,589.53	836,335,484.09
	Total	₱50,210,635.03	₱2,994,311,644.77

Based on petitioner’s Summary List of Sales (SLS)⁹⁶, petitioner’s total zero-rated sales of ₱2,994,311,644.77 can be further broken down as follows:

Particulars	Amount
Sale of services to foreign clients	₱2,939,496,433.73
Sale to a PEZA-registered company (i.e., AIG Shared Services - Business Processing Inc.)	54,815,211.04
Total Zero-Rated Sales	₱2,994,311,644.77

From the above, petitioner has two (2) sources of zero-rated sales, namely:

- (i) Sale of services under Section 108(B)(2) of the NIRC of 1997, as amended; and,
- (ii) Sale to Philippine Economic Zone Authority (PEZA)-registered entities under Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended.

Each source of zero-rated sales shall be discussed below, *in seriatim.*

⁹⁶ Exhibits “P-13” to “P-13.3”, FOE Folder.

i. SALE OF SERVICES UNDER
SECTION 108(B)(2) OF THE
NIRC OF 1997, AS AMENDED.

In this case, petitioner claims that its sale of services to its affiliates that are non-resident foreign corporations (NRFCs) is a transaction subject to 0% VAT pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which states:

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

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

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

(2) **Services other than those mentioned in the preceding paragraph**, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).⁹⁷

...

In *Accenture, Inc. v. Commissioner of Internal Revenue*⁹⁸ (**Accenture**), citing *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*⁹⁹, the Supreme Court held that in order for the supply of services to be considered VAT zero-rated under the above-mentioned provision, the taxpayer-claimant must prove the following, to wit: (1) services other than

⁹⁷ Emphasis supplied.

⁹⁸ G.R. No. 190102, 11 July 2012.

⁹⁹ G.R. No. 153205, 22 January 2007.

processing, manufacturing or repacking of goods rendered by VAT registered persons in the Philippines; (2) the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations; and, (3) the recipient of such services must be performing business outside the Philippines.

As to the 1st requirement, it is also undisputed that petitioner is licensed as an ROHQ to provide qualifying services.¹⁰⁰ In fact, its witnesses, Recinto and Baroro, both confirmed that petitioner only rendered qualifying services to its non-resident affiliates abroad.¹⁰¹ Recinto even added that petitioner does not perform any other kind of service as the services rendered are limited by the nature and scope of those indicated in the MAs.¹⁰²

Clearly, the nature of services being rendered by petitioner falls within the scope of services other than “processing, manufacturing or repacking of goods” contemplated under the aforecited Section 108(B)(2) of the NIRC of 1997, as amended.

Before proceeding with the discussion of the 2nd requirement, the Court deems it more appropriate to first discuss petitioner’s compliance with the 3rd requirement (as laid down in *Accenture*) which requires that the recipient of such services must be performing business outside the Philippines.

In *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*¹⁰³ (**Deutsche Knowledge Services**), the Supreme Court discussed the two (2) components that the claimant must establish to prove its clients’ status as an NRFC, to wit:

...

For purposes of zero-rating under Section 108(B)(2) of the Tax Code, the claimant must establish the two components of a client’s NRFC status, viz: (1) that their client was established under the laws

¹⁰⁰ Supra at note 9.

¹⁰¹ Question and Answer (Q&A) Nos. 8 and 13, Judicial Affidavit of Atty. Geronimo Randy L. Recinto (Exhibit “P-38”, FOE Folder); Q&A No. 22, Judicial Affidavit of Glaiza Apolinario-Baroro (Exhibit “P-37”, supra.).

¹⁰² Q&A Nos. 10 and 11, Supplemental Judicial Affidavit of Atty. Geronimo Randy L. Recinto (Exhibit “P-5511”), Division Docket, Volume II, pp. 589-590.

¹⁰³ G.R. No. 234445, 15 July 2020; Citations omitted, italics in the original text and emphasis supplied.

of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. **To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**

...

To recall, the CTA found that the SEC Certification of Non-Registration of Company and Authenticated Articles of Association and/or Certificates of Registration/Good Standing/Incorporation sufficiently established the NRFC status of 11 of DKS's affiliates clients.

The Court upholds these findings.

...

In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo's* findings. **To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.**

Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.

...

As held in the said case, there must be sufficient proof of both components – (1) that its clients are **foreign corporations** (which can be proven by the SEC Certifications of Non-Registration); and, (2) **not doing business in the Philippines** (the *prima facie* proof of which is the articles of association/certificates of incorporation stating that ↗

these affiliates are registered to operate in their respective home countries, outside the Philippines).

In the instant case, to prove that it rendered services to NRFCs doing business outside the Philippines, petitioner presented the SEC Certifications of Non-Registration, consularized foreign registration documents and screenshots of foreign government websites indicating said clients’ registration therein, among others, to wit:

Registered Name of Client		SEC Certification of Non-Registration	Consularized Foreign Registration	Screenshots of Foreign Government Websites
		Exhibit No.		
1	AIG APAC HOLDINGS PTE. LTD.	"P-50"	"P-98-a"	
2	AIG ASIA PACIFIC INSURANCE PTE. LTD.	"P-51"	"P-99-a"	
3	AIG AUSTRALIA LIMITED	"P-52"	"P-100-a"	"P-100-b"
4	AIG BUSINESS PARTNERS KABUSHIKI KAISHA ¹⁰⁴	"P-53"	"P-101-a"	
5	AIG CLAIMS, INC.	"P-54"	"P-102-a"	"P-102-b"
6	AIG EGYPT INSURANCE CO. ¹⁰⁵	"P-55"		"P-103-a"
7	AIG EMPLOYEE SERVICES, INC.	"P-56"	"P-104-a"	
8	AIG EUROPE (SERVICES) LIMITED	"P-57"		"P-105-a"
9	AIG EUROPE LIMITED	"P-58"		
10	AIG EUROPE LIMITED - IRELAND BRANCH	"P-59"		"P-106-a"
11	AIG GLOBAL CLAIMS SERVICES, INC.	"P-60"		"P-107-a"
12	AIG INSURANCE COMPANY CHINA LIMITED	"P-61"	"P-108-a"	
13	AIG COMMERCIAL INSURANCE COMPANY OF CANADA ¹⁰⁶	"P-62"	"P-109-a"	
14	CLOSED JOINT-STOCK COMPANY AIG INSURANCE AND REINSURANCE COMPANY ¹⁰⁷	"P-63"	"P-110-a"	
15	AIG INSURANCE HONG KONG LIMITED	"P-64"	"P-111-a"	
16	AIG INSURANCE NEW ZEALAND LIMITED	"P-65"	"P-112-a"	
17	AIG JAPAN HOLDINGS KABUSHIKI KAISHA ¹⁰⁸	"P-66"	"P-113-a"	
18	AIG KENYA LIMITED ¹⁰⁹	"P-67"	"P-114-a"	

¹⁰⁴ AIG BUSINESS PARTNERS KABUSHI KAISHA in the SEC Certification of Non-Registration.
¹⁰⁵ AIG EGYPT INSURANCE COMPANY S.A.E. in the SEC Certification of Non-Registration.
¹⁰⁶ AIG INSURANCE COMPANY OF CANADA in the SEC Certification of Non-Registration.
¹⁰⁷ AIG INSURANCE COMPANY, CJSC in the SEC Certification of Non-Registration.
¹⁰⁸ AIG JAPAN HOLDINGS KK in the SEC Certification of Non-Registration.
¹⁰⁹ AIG KENYA INSURANCE COMPANY LIMITED in the SEC Certification of Non-Registration.

Registered Name of Client		SEC Certification of Non- Registration	Consularized Foreign Registration	Screenshots of Foreign Government Websites
		Exhibit No.		
19	AIG KOREA INC.	"P-68"	"P-115-a"	
20	AIG LEBANON SAL	"P-69"	"P-116-a"	
21	AIG MALAYSIA INSURANCE BERHAD	"P-70"	"P-117-a"	
22	AIG MEA LIMITED (OMAN BRANCH)	"P-71"	"P-118-a"	
23	AIG MEA LTD. - (KUWAIT BRANCH)	"P-72"		
24	AIG PC GLOBAL SERVICES, INC.	"P-73"	"P-119-a"	
25	AIG PNG LIMITED	"P-74"		
26	CHARTIS TECHNOLOGY & OPERATIONS MGMT (M) SDN. BHD. ¹¹⁰	"P-75"	"P-120-a"	
27	AIG SOUTH AFRICA LIMITED	"P-76"		"P-121-a"
28	AIG ASIA PACIFIC INSURANCE PTE. LTD. TAIWAN BRANCH ¹¹¹	"P-77"	"P-122-a"	
29	AIG GLOBAL SERVICES (MALAYSIA) SDN. BHD. ¹¹²	"P-78"	"P-123-a"	
30	AIG TECHNOLOGIES, INC.	"P-79"		"P-124-a"
31	AIG TRAVEL ASSIST, INC.	"P-80"	"P-125-a"	
32	AIG UKRAINE INSURANCE COMPANY	"P-81"		"P-126-a"
33	AIG UNITED GUARANTY INSURANCE (ASIA) LIMITED	"P-82"		
34	AIG VIETNAM INSURANCE CO., LTD	"P-83"	"P-127-a"	
35	AIG GENERAL INSURANCE COMPANY, LTD ¹¹³	"P-84"	"P-128-a"	
36	AMERICAN GENERAL LIFE INSURANCE COMPANY	"P-85"	"P-129-a"	
37	AMERICAN HOME ASSURANCE COMPANY, LTD.	"P-86"	"P-130-a"	
38	AMERICAN HOME ASSURANCE COMPANY (DUBAI BR)	"P-87"	"P-131-a"	
39	AMERICAN INTERNATIONAL GROUP KK	"P-88"		
40	AMERICAN INTERNATIONAL GROUP, INC.	"P-89"	"P-132-a"	
41	CHARTIS AZERBAIJAN INSURANCE CO.	"P-90"		"P-133-a"
42	CHARTIS KAZAKHSTAN INSURANCE COMPANY	"P-91"		"P-134-a"
43	GUAM INSURANCE ADJUSTERS, INC.	"P-92"	"P-135-a"	
44	NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	"P-93"	"P-136-a"	

110 AIG SHARED SERVICES (M) SDN BHD in the SEC Certification of Non-Registration.
111 AIG TAIWAN INSURANCE CO., LTD. in the SEC Certification of Non-Registration.
112 AIG TECHNOLOGIES (MALAYSIA) SDN. BHD. in the SEC Certification of Non-Registration.
113 AIU INSURANCE COMPANY, LTD in the SEC Certification of Non-Registration.

Registered Name of Client		SEC Certification of Non- Registration	Consularized Foreign Registration	Screenshots of Foreign Government Websites
		Exhibit No.		
45	NEW HAMPSHIRE INSURANCE COMPANY		"P-137-a"	
46	NEW HAMPSHIRE INSURANCE COMPANY, BANGKOK BRANCH	"P-94"	"P-138-a"	
47	P.T. ASURANSI AIU INDONESIA ¹¹⁴	"P-95"	"P-139-a"	
48	TATA AIG GENERAL INSURANCE CO. LTD.	"P-96"		"P-140-a"
49	UNITED GUARANTY CORPORATION	"P-97"	"P-141-a"	

However, as stated in the ICPA Report¹¹⁵, ICPA Roguel could not ascertain whether the following SEC Certifications of Non-Registration are faithful reproductions of the original documents as he was only able to examine the photocopies (hence, the Court denied admission of the same):

- a. AIG Egypt Insurance Company S.A.E.¹¹⁶;
- b. AIG Europe Limited¹¹⁷;
- c. AIG Europe Limited - Ireland Branch¹¹⁸;
- d. AIG Lebanon S.A.L.¹¹⁹; and,
- e. AIG MEA Ltd. - (Kuwait Branch).¹²⁰

Moreover, as can be gleaned from the table above, **only** SEC Certifications of Non-Registration were submitted as evidence for the following entities:

- a. AIG Europe Limited;
- b. AIG MEA Ltd. - (Kuwait Branch);
- c. AIG PNG Limited;
- d. AIG United Guaranty Insurance (Asia) Limited; and,
- e. American International Group KK.

¹¹⁴ PT AIG INSURANCE INDONESIA in the SEC Certification of Non-Registration.
¹¹⁵ Exhibit "P-5508", ICPA Report, p. 8.
¹¹⁶ Exhibit "P-55", USB (Exhibit "P-5508-2").
¹¹⁷ Exhibit "P-58", id.
¹¹⁸ Exhibit "P-59", id.
¹¹⁹ Exhibit "P-69", id.
¹²⁰ Exhibit "P-72", id.

Also, no SEC Certification of Non-Registration was presented for New Hampshire Insurance Company, as only consularized Articles of Reorganization and Restated Articles of Incorporation were submitted.

Furthermore, ICPA Roguel also noted¹²¹ that he was not able to ascertain whether the screenshot of the website of the Financial Services Board in South Africa¹²² for AIG South Africa Limited is a faithful reproduction because the website¹²³ is inaccessible. In addition, the screenshot of foreign government website submitted for Chartis Azerbaijan Insurance Co. is not in English. Neither was it accompanied by an official translation into English or Filipino as required by Section 33¹²⁴, Rule 132 of the Rules of Court. As such, no probative value may be accorded to the said screenshots.

Consequently, the aforementioned clients cannot be considered as NRFCs following the ruling in *Deutsche Knowledge Services*; hence, the related sales to the same shall be disallowed.

In addition, the Court likewise observed that there are significant differences in the names reflected in the pertinent SEC Certifications of Non-Registration, foreign registration documents and ORs issued to the following clients:

Name in the SEC Certification of Non-Registration	Name in the Consularized Foreign Registration Documents	Name in the OR	Exhibit	Total Amount
AIG INSURANCE COMPANY, CJSC	CLOSED JOINT-STOCK COMPANY "AIG INSURANCE AND REINSURANCE COMPANY"	CJSC AIG	"P-210" "P-211" "P-297" "P-892"	₱735,759.82
AIG INSURANCE NEW ZEALAND LIMITED	AIG INSURANCE NEW ZEALAND LIMITED	AMERICAN HOME NEW ZEALAND	"P-247" "P-398" "P-443" "P-509" "P-510"	33,953,753.84

¹²¹ Exhibit "P-5508", ICPA Report, p. 8.
¹²² Exhibit "P-121-a", USB (Exhibit "P-5508-2").
¹²³ URL indicated in the print-out i.e., <https://www.fsb.co.za/Pages/Home.aspx>.
¹²⁴ Sec. 33. *Documentary evidence in an unofficial language.* — Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.

Name in the SEC Certification of Non-Registration	Name in the Consularized Foreign Registration Documents	Name in the OR	Exhibit	Total Amount
			"P-511" "P-836" "P-837" "P-888"	
AIG KENYA INSURANCE COMPANY LIMITED	AIG KENYA LIMITED	CHARTIS KENYA INSURANCE COMPANY LIMITED	"P-241" "P-759"	227,167.58
AIG MEA LIMITED (OMAN BRANCH)	AIG MEA LIMITED (OMAN BRANCH)	CHARTIS MEMSA INSURANCE CO. LTD. OMAN BRANCH OR QATAR BRANCH	"P-171" "P-301" "P-302" "P-447" "P-626" "P-283"	10,423,392.32 ¹²⁵
AIG SHARED SERVICES (M) SDN BHD	CHARTIS TECHNOLOGY & OPERATIONS MGMT (M) SDN. BHD.	AIG SHARED SERVICES (M) SDN BHD	"P-359" "P-360" "P-428" "P-541" "P-542" "P-622"	1,429,335.67 ¹²⁶
AIG TECHNOLOGIES (MALAYSIA) SDN. BHD	AIG-SOFTWARE INTERNATIONAL JV SDN. BHD.	AIG GLOBAL SERVICES MALAYSIA	"P-427" "P-486" "P-938"	1,870,790.22
AIU INSURANCE COMPANY, LTD	AIG GENERAL INSURANCE COMPANY, LTD	AIU INSURANCE COMPANY - JAPAN	"P-243" "P-244" "P-245" "P-516" "P-517" "P-518" "P-519" "P-520" "P-417" "P-442" "P-672" "P-838" "P-889" "P-975"	211,142,567.14

¹²⁵ This amount excludes the receipt disallowed by ICPA Roguel for not being traceable to the certificates of inward remittances.

¹²⁶ This amount excludes the other amounts to be disallowed due to the fact that its SEC Certification of Non-Registration does not cover entirely the subject period of claim.

Name in the SEC Certification of Non-Registration	Name in the Consularized Foreign Registration Documents	Name in the OR	Exhibit	Total Amount
AMERICAN GENERAL LIFE INSURANCE COMPANY	AMERICAN GENERAL LIFE INSURANCE COMPANY	VARIABLE ANNUITY LIFE INSURANCE	"P-704"	14,148,909.41
PT AIG INSURANCE INDONESIA	P.T. ASURANSI AIU INDONESIA	CHARTIS INSURANCE INDONESIA	"P-188" "P-189" "P-365" "P-587" "P-995"	61,724,421.22
Total				₱335,656,097.22

As such, the amount of ₱335,656,097.22 must also be disallowed and deducted from the total zero-rated sales.

The Court also noted that the SEC Certifications of Non-Registration of the following foreign clients do not cover entirely the subject period claim for refund, i.e., from 01 January 2016 to 31 December 2016:

Name in the SEC Certification of Non-Registration	Exhibit No.	Issue Date
AIG BUSINESS PARTNERS KABUSHIKI KAISHA	"P-53"	07 October 2015
AIG EMPLOYEE SERVICES, INC.	"P-56"	
GUAM INSURANCE ADJUSTERS INC.	"P-92"	
AIG APAC HOLDINGS PTE LTD	"P-50"	10 November 2015
AMERICAN INTERNATIONAL GROUP, INC.	"P-89"	26 May 2016
CHARTIS AZERBAIJAN INSURANCE CO.	"P-90"	
NEW HAMPSHIRE INSURANCE THAILAND	"P-94"	27 May 2016
AIG ASIA PACIFIC INSURANCE PTE LTD	"P-51"	12 July 2016
AIG AUSTRALIA LIMITED	"P-52"	
AIG CLAIMS INC	"P-54"	
AIG GLOBAL CLAIMS SERVICES, INC.	"P-60"	
AIG INSURANCE COMPANY CHINA LIMITED	"P-61"	
AIG INSURANCE COMPANY OF CANADA	"P-62"	
AIG JAPAN HOLDINGS KK	"P-66"	
AIG KOREA INC.	"P-68"	
AIG MALAYSIA INSURANCE BERHAD	"P-70"	
AIG TAIWAN INSURANCE CO., LTD	"P-77"	
AIG TRAVEL ASSIST, INC.	"P-80"	
AIG VIETNAM INSURANCE COMPANY LIMITED	"P-83"	

Name in the SEC Certification of Non-Registration	Exhibit No.	Issue Date
AIG SHARED SERVICES (M) SDN BHD	"P-75"	14 July 2016
AMERICAN HOME ASSURANCE COMPANY, UAE	"P-87"	26 August 2016

Thus, for the period beyond the issue dates of the foregoing SEC Certifications of Non-Registration, the aforementioned entities cannot be considered NRFCs. As a result, the sales to the aforementioned foreign entities during the said period not covered (*per* OR date and SLS¹²⁷) shall also be disallowed, to wit:

Registered Name of Client	Amount
AIG BUSINESS PARTNERS KABUSHIKI KAISHA	₱29,578,142.79
AIG EMPLOYEE SERVICES, INC.	519,892,099.59
GUAM INSURANCE ADJUSTERS INC.	904,368.52
AIG APAC HOLDINGS PTE LTD	155,141,364.18
AMERICAN INTERNATIONAL GROUP, INC.	11,125,342.86 ¹²⁸
NEW HAMPSHIRE INSURANCE THAILAND	36,516,952.70 ¹²⁹
AIG ASIA PACIFIC INSURANCE PTE LTD	52,000,507.87 ¹³⁰
AIG AUSTRALIA LIMITED	53,679,527.63 ¹³¹
AIG CLAIMS INC	33,834,257.48 ¹³²

¹²⁷ Supra at note 96.

¹²⁸ Computed as follows:

July 2016 SLS	₱ 5,652,517.77
August 2016 SLS	1,162,587.62
September 2016 SLS	998,142.13
October 2016 SLS	1,518,630.50
November 2016 SLS	6,763.29
December 2016 SLS	<u>1,786,701.55</u>
Total	₱ 11,125,342.86

¹²⁹ Computed as follows:

July 2016 SLS	₱ 22,221,827.89
October 2016 SLS	<u>14,295,124.81</u>
Total	₱ 36,516,952.70

¹³⁰ Computed as follows:

July 2016 SLS	₱ 8,447,883.20 (ORs beyond 12 July 2016)
August 2016 SLS	8,165,572.43
September 2016 SLS	9,602,395.88
October 2016 SLS	4,151,785.20
December 2016 SLS	<u>21,632,871.16</u>
Total	₱ 52,000,507.87

¹³¹ Computed as follows:

August 2016 SLS	₱ 2,186,313.32
September 2016 SLS	20,587,572.02
November 2016 SLS	<u>30,905,642.29</u>
Total	₱ 53,679,527.63

¹³² Computed as follows:

July 2016 SLS	₱ 14,387,767.79 (ORs beyond 12 July 2016)
August 2016 SLS	6,941,394.73
September 2016 SLS	4,341,062.52
October 2016 SLS	462,616.47
November 2016 SLS	7,460,083.94
December 2016 SLS	<u>241,332.03</u>
Total	₱ 33,834,257.48

X-----X

Registered Name of Client	Amount
AIG GLOBAL CLAIMS SERVICES, INC.	81,122,319.09 ¹³³
AIG INSURANCE COMPANY CHINA LIMITED	5,938,438.03 ¹³⁴
AIG INSURANCE COMPANY OF CANADA	1,402,737.60 ¹³⁵
AIG JAPAN HOLDINGS KK	4,719,870.62 ¹³⁶
AIG KOREA INC.	3,961,623.83 ¹³⁷
AIG MALAYSIA INSURANCE BERHAD	40,400,691.23 ¹³⁸
AIG TAIWAN INSURANCE CO., LTD	7,085,351.32 ¹³⁹
AIG TRAVEL ASSIST, INC.	96,280,808.95 ¹⁴⁰
AIG VIETNAM INSURANCE COMPANY LIMITED	9,469,047.33 ¹⁴¹

¹³³	Computed as follows:	July 2016 SLS	₱ 11,559,580.01 (ORs beyond 12 July 2016)
		August 2016 SLS	13,557,295.57
		September 2016 SLS	13,380,970.90
		October 2016 SLS	8,955,588.93
		November 2016 SLS	20,601,519.77
		December 2016 SLS	<u>13,067,363.91</u>
		Total	₱ 81,122,319.09
¹³⁴	Computed as follows:	July 2016 SLS	₱ 4,550,099.79 (ORs beyond 12 July 2016)
		August 2016 SLS	28,359.72
		September 2016 SLS	1,300,535.71
		October 2016 SLS	28,636.50
		November 2016 SLS	15,534.79
		December 2016 SLS	<u>15,271.52</u>
		Total	₱ 5,938,438.03
¹³⁵	Computed as follows:	July 2016 SLS	₱ 228,123.54 (ORs beyond 12 July 2016)
		August 2016 SLS	228,337.24
		September 2016 SLS	229,303.86
		October 2016 SLS	236,420.95
		November 2016 SLS	238,736.53
		December 2016 SLS	<u>241,815.48</u>
		Total	₱ 1,402,737.60
¹³⁶	Computed as follows:	July 2016 SLS	₱ 756,826.57 (ORs beyond 12 July 2016)
		August 2016 SLS	699,298.08
		October 2016 SLS	1,520,518.32
		November 2016 SLS	758,874.88
		December 2016 SLS	<u>984,352.77</u>
		Total	₱ 4,719,870.62
¹³⁷	Computed as follows:	July 2016 SLS	₱ 442,592.96 (ORs beyond 12 July 2016)
		September 2016 SLS	392,948.08
		November 2016 SLS	<u>3,126,082.79</u>
		Total	₱ 3,961,623.83
¹³⁸	Computed as follows:	August 2016 SLS	₱ 12,529,405.70
		October 2016 SLS	13,846,916.77
		November 2016 SLS	6,459,485.58
		December 2016 SLS	<u>7,564,883.18</u>
		Total	₱ 40,400,691.23
¹³⁹	Computed as follows:	July 2016 SLS	₱ 6,877,682.63 (ORs beyond 12 July 2016)
		August 2016 SLS	<u>207,668.69</u>
		Total	7,085,351.32
¹⁴⁰	Computed as follows:	October 2016 SLS	₱ 78,378,413.26
		December 2016 SLS	<u>17,902,395.69</u>
		Total	₱ 96,280,808.95
¹⁴¹	Computed as follows:	July 2016 SLS	₱ 3,040,680.34 (ORs beyond 12 July 2016)
		August 2016 SLS	1,204,274.26
		September 2016 SLS	2,003,480.41
		December 2016 SLS	<u>3,220,612.32</u>

Registered Name of Client	Amount
AIG SHARED SERVICES (M) SDN BHD	4,363,516.71 ¹⁴²
AMERICAN HOME ASSURANCE COMPANY, UAE	234,080.56 ¹⁴³
Total	₱1,147,651,048.89

With respect to the 3rd requirement that payment for such services must be in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the BSP, petitioner presented documents such as: (1) Certificates of Inward Remittance issued by EWBC¹⁴⁴; (2) Certificates of Inward Remittance issued by HSBC¹⁴⁵; and, (3) ORs issued for zero-rated sales.¹⁴⁶

As noted by ICPA Roguel, receipts amounting to \$862,718.43¹⁴⁷, equivalent to ₱40,382,087.53, are not traceable to the Certificates of Inward Remittance provided, broken down as follows:

Date	Client	OR No.	Exhibit No.	Amount per OR in USD	Amount in PhP
26 January 2016	CHARTIS AZERBAIJAN INSURANCE CO.	04000013	"P-169"	\$868.00	₱40,672.75
03 March 2016	AIG INSURANCE COMPANY CHINA LIMITED	04000134	"P-288"	12,220.00	572,604.76
03 March 2016	AIG INSURANCE COMPANY CHINA LIMITED	04000154	"P-308"	8,259.00	389,391.80
23 March 2016	AIG JAPAN HOLDINGS KABUSHIKI KAISHA	04000204	"P-357"	164,882.70	7,732,979.18
18 April 2016	AIG INSURANCE	04000262	"P-412"	273.00	14,197.97

¹⁴² Computed as follows:

Total	₱ 9,469,047.33
July 2016 SLS	₱ 2,244,509.31 (ORs beyond 14 July 2016)
August 2016 SLS	415,898.45
September 2016 SLS	412,807.96
October 2016 SLS	421,114.11
November 2016 SLS	432,285.83
December 2016 SLS	<u>436,901.05</u>
Total	₱ 4,363,516.71

¹⁴³ Computed as follows:

August 2016 SLS	₱ 134,535.44
November 2016 SLS	<u>99,545.12</u>
Total	₱ 234,080.56

(ORs beyond 26 Aug 2016 but excluding the OR dated 21 Sept 2021 (Exhibit P-786) since the same has already been disallowed by the ICPA for not being traceable to the certificates of inward remittances).

¹⁴⁴ Exhibits "P-20" to "P-20.2", BIR Records (Main Folder), pp. 276, 277-282 and 283-285.

¹⁴⁵ Exhibits "P-21" to "P-21.2", id., pp. 258-262, 263-264, 265-275.

¹⁴⁶ Exhibits "P-159" to "P-1026", USB (Exhibit "P-5508-2").

¹⁴⁷ Exhibit "P-5508", ICPA Report, p. 7.

Date	Client	OR No.	Exhibit No.	Amount per OR in USD	Amount in PhP
	COMPANY CHINA LIMITED				
18 April 2016	AIG AUSTRALIA LIMITED	04000268	"P-418"	28,965.00	1,386,548.59
26 May 2016	AIG MEA LIMITED (OMAN BRANCH)	04000365	"P-512"	21,976.00	1,040,607.74
26 May 2016	AIG AUSTRALIA LIMITED	04000366	"P-513"	56,200.00	2,647,132.32
26 May 2016	AIG AUSTRALIA LIMITED	04000367	"P-514"	13,270.56	621,096.57
26 May 2016	AIG LEBANON S.A.L.	04000368	"P-515"	266.00	12,464.23
29 June 2016	AIG AUSTRALIA LIMITED	04000436	"P-581"	22,068.34	1,037,130.31
29 June 2016	AIG AUSTRALIA LIMITED	04000438	"P-583"	325,478.06	15,107,190.36
30 June 2016	AIG TAIWAN INSURANCE CO., LTD	04000450	"P-594"	183,387.77	8,609,566.66
21 September 2016	AMERICAN HOME ASSURANCE COMPANY, UAE	04000652	"P-786"	24,604.00	1,170,504.29
Total				\$862,718.43	₱40,382,087.53

Furthermore, ICPA Roguel noted that there were “non-trade” receipts inwardly remitted but were not receipted nor declared in the VAT Returns¹⁴⁸, to wit:

Supported with Debit Memos	\$2,340,596.30
Not supported with Debit Memos	678,393.04
Total	\$3,018,989.34

Based on the Debit Memos¹⁴⁹ issued by petitioner, these receipts pertain to pass-through expenses incurred by petitioner’s employees for the account of its clients such as hotel accommodation, airfare, and other chargeable expenses.

“Gross receipts” under Section 4.108-4 of Revenue Regulations (RR) No. 16-2005¹⁵⁰, as amended by RR No. 04-2007¹⁵¹, is defined as follows:

¹⁴⁸ Exhibit “P-5508”, ICPA Report, Annex G.
¹⁴⁹ Exhibits “P-4141” to “P-4605”, USB (Exhibit “P-5508-2”).
¹⁵⁰ Consolidated Value-Added Tax Regulations of 2005.

...

SEC. 4.108-4. Definition of Gross Receipts. — ‘Gross receipts’ refers to the **total amount of money or its equivalent** representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits applied as payments for services rendered and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, excluding the VAT, **except those amounts earmarked for payment to unrelated third (3rd) party or received as reimbursement for advance payment on behalf of another which do not redound to the benefit of the payor.** A payment is a payment to a third (3rd) party if the same is **made to settle an obligation of another person**, e.g., customer or client, to the said third party, which obligation is evidenced by the sales invoice/official receipt issued by said third party to the obligor/debtor (e.g., customer or client of the payor of the obligation).

An advance payment is an advance payment on behalf of another if the same is paid to a **third (3rd) party for a present or future obligation of said another party which obligation is evidenced by a sales invoice/official receipt issued by the obligee/creditor to the obligor/debtor (i.e., the aforementioned “another party”) for the sale of goods or services by the former to the latter.**¹⁵²

...

The above definition excludes from the purview of gross receipts any amount that is due to a payee different from the receiving party to settle an obligation of another person. However, in the instant case, petitioner was not able to show that the “non-trade” receipts were third party obligations of its foreign clients (through an invoice or OR issued by the third party creditors to petitioner’s foreign clients) which petitioner paid in advance. Noteworthy is the fact that these charges were incurred by petitioner’s own employees for the benefit of its foreign clients. As it is, such receipts should have been part of petitioner’s gross receipts. Consequently, petitioner has unreported zero-rated sales of ₱143,379,351.23.¹⁵³

¹⁵¹ Amending Certain Provisions of Revenue Regulations No. 16-2005, As Amended, Otherwise Known as the Consolidated Value-Added Tax Regulations of 2005.

¹⁵² Emphasis supplied and underscoring omitted.

¹⁵³ Translated using the period average annual BSP cross rate of Philippine Peso and US Dollar in 2016 of ₱47.4925:\$1. Available at <https://www.bsp.gov.ph/statistics/external/pesocross.xls> (last visited 16 October 2021).

As held by this Court in *Commissioner of Internal Revenue v. Northwind Power Dev't. Corporation*¹⁵⁴, unreported zero-rated sales must be disallowed pursuant to Section 114(A)¹⁵⁵ in relation to Section 108¹⁵⁶ of the NIRC of 1997, as amended, to wit:

...

In the similarly assailed Resolution of June 26, 2013, which effectively affirmed the Decision of March 12, 2013, the Court in Division further explained, thus:

As regards the first ground, We reiterate our findings/ruling in the Assailed Decision that only the amount of P34,352,340.07 was reflected as zero-rated receipts in petitioner's Quarterly VAT Return for the 2nd quarter of 2008.

The difference of P22,456,725.94 was allegedly recognized in the 3rd and 4th quarters of 2008. Petitioner, however, failed to substantiate the said allegations even if the difference of P22,456,725.94 was indeed reported in the said quarters.

Pursuant to Section 114(A) in relation to Section 108 of the NIRC of 1997, as amended, petitioner should have reported the zero-rated sales of P22,456,725.94 in its Quarterly VAT Returns for the period the payments were received, i.e., on June 2008 which is covered by the 2nd quarter of 2008.

Since the input VAT sought to be refunded in the amount of P51,936,956.05 is attributable to petitioner's gross receipts from sale of electricity to Ilocos Norte Electric Cooperative (INEC), **in the amount of P56,809,066.01, and, inasmuch as only the amount of P34,352,340.07 was declared in its 2nd Quarterly VAT Return**, it is but proper to apportion the substantiated input VAT over the volume of zero-rated sales per official receipts and **only the amount** ↗

¹⁵⁴ CTA EB Nos. 1037 & 1042 (CTA Case No. 8119), 16 December 2014; Emphasis supplied.

¹⁵⁵ **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.

¹⁵⁶ **SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties.** —

...

attributable to the zero-rated sales of P34,352,340.07 may be claimed for refund.

Thus, there is no plausible reason why petitioner should be entitled to a refund of the substantiated input VAT without allocating its reported zero-rated sales to sales per official receipts because the substantiated input VAT covers the entire zero-rated sales, both reported and unreported sales for the quarter. In disallowing a portion of petitioner's zero-rated sales, it essentially follows that a portion of the claim for refund of input VAT attributable to such zero-rated sales should also be disallowed by the Court. Otherwise, We will be disregarding the substantiation of petitioner's zero-rated sales thereby negating its effect on the amount of unutilized input VAT claimed for refund.

In the instant case, since some of the zero-rated sales were not reported in the appropriate period when such sales were made, it is apt for the Court to apportion the input VAT because it is impossible to specifically pinpoint what input VAT is directly attributable to such reported zero-rated sales.

...

Clearly, the unreported gross receipts amounting to P143,379,351.23 must also be disallowed for purposes of determining the amount of substantiated input VAT to be refunded to petitioner.

- ii. SALE TO A PEZA-REGISTERED ENTITY UNDER SECTION 106(A)(2)(A)(5) OF THE NIRC OF 1997, AS AMENDED.

Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, states:

...

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

(A) *Rate and Base of Tax.* — ...

...

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

(a) *Export Sales*. — The term ‘export sales’ means:

...

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws[.]

...

Relative thereto, Section 4.106-5(a)(5) of RR No. 16-2005¹⁵⁷, as amended by RR No. 04-2007¹⁵⁸, provides:

...

SEC. 4.106-5. Zero-Rated Sales of Goods or Properties. — ...

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

(5) *Export Sales*. — ...

...

(5) Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

“Considered export sales under Executive Order No. 226” shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; *Provided*, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; *Provided*, further, That pursuant to EO 226 and other special laws, even without actual exportation, the following shall be considered constructively exported: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; (3) sale to enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the

¹⁵⁷ Supra at note 150.

¹⁵⁸ Supra at note 151.

X-----X

manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.¹⁵⁹

...

The special law applicable to this case is RA 7916¹⁶⁰, otherwise known as "The Special Economic Zone Act of 1995", as amended by RA 8748.¹⁶¹ Section 8 thereof states that "[t]he ECOZONE shall be managed and operated by the PEZA as **separate customs territory**".

By legal fiction, since the ecozone is viewed as a foreign territory, a VAT-registered person's sales of goods and services to an entity registered and operating within the ecozone in the Philippine customs territory are considered exports to a foreign country subject to zero percent (0%) VAT. The Supreme Court, in the case of *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*¹⁶², explained:

...

This Court agrees, however, that **PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**

... An ECOZONE or a Special Economic Zone has been described as —

... [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial,

¹⁵⁹ Emphasis, italics and underscoring in the original text.

¹⁶⁰ AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISMS FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

¹⁶¹ AN ACT AMENDING REPUBLIC ACT NO. 7916, OTHERWISE KNOWN AS THE "SPECIAL ECONOMIC ZONE ACT OF 1995".

¹⁶² G.R. No. 150154, 09 August 2005; Citations omitted and emphasis supplied.

banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the Cross Border Doctrine, according to which, 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 VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT [now, twelve percent (12%)].

...

Based on the foregoing and in relation to the aforementioned Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, the following essential elements must be present in order for an export sale to qualify for VAT zero-rating:

1. The sale was made by a VAT-registered person; and,
2. The sale of goods must be to an entity entitled to incentives under Executive Order (EO) No. 226, otherwise known as the Omnibus Investment Code of 1987 (OIC), and other special laws.

As determined earlier, petitioner is a VAT-registered person hence, the 1st essential element is present.¹⁶³

Relative to the 2nd essential element, petitioner presented a Certification issued by PEZA dated 22 January 2016¹⁶⁴ certifying that AIG Shared Services - Business Processing Inc. (**AIG Shared Services**) is registered with PEZA and is a qualified enterprise for the purpose of VAT zero-rating. The said Certification further states that it is valid for year 2016. Accordingly, petitioner's sales of services to AIG Shared Services for the four (4) quarters of TY 2016 qualify for VAT zero-rating pursuant to Section 106(A)(2)(a)(5) of the NIRC of 1997, as amended, provided that the same are properly supported by VAT zero-rated ORs pursuant to Section 113(A)(2), (B)(1), (2)(a)(c), (3) and (4) of the NIRC of 1997, as amended, and Section 4.113-1 (A)(2), B(1), (2)(a)(c) of RR No. 16-2005¹⁶⁵, as amended, which require that a VAT taxpayer, like herein petitioner, shall for every lease of goods or properties and for every sale, barter or exchange of services, issue a VAT OR which must contain the following information:

...

SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. —

(A) *Invoicing Requirements.* — A VAT-registered person shall issue:

...

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

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

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

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

¹⁶³ Supra at note 11.

¹⁶⁴ Exhibit "P-142", USB (Exhibit "P-5508-2").

¹⁶⁵ Supra at note 150.

...

(a) The amount of tax shall be shown as a separate item in 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;

...

(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.

...

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

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

...

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

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

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

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

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



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

...

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

...

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

...

(3) 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 TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

...

Upon examination of the submitted ORs in support of petitioner’s sales of services to AIG Shared Services, the following zero-rated sales must be disallowed since the TIN of the customer was not indicated therein:

OR No.	Amount in USD <i>per</i> ORs	Gross Receipts in PHP <i>per</i> SLS	Exhibit No.
04000285	\$780,012.47	₱36,212,278.08	“P-434”
04000415	86,321.36	4,026,249.93	“P-560”
04000486	52,000.83	2,415,273.12	“P-627”
04000668	52,000.83	2,411,912.35	“P-802”
04000606	47,921.31	2,243,710.62	“P-743”
04000709	50,960.81	2,417,495.72	“P-841”
04000815	50,960.81	2,530,454.03	“P-944”
04000875	50,960.81	2,557,837.19	“P-1002”
Total	\$1,171,139.23	₱54,815,211.04	

To summarize, petitioner’s valid and duly substantiated zero-rated sales for the four (4) quarters of TY 2016 amounted to ₱1,223,003,055.53, computed as follows: 

Particulars		TY 2016
Zero-Rated Sales		₱2,994,311,644.77
Add: Unreported Zero-Rated Sales		143,379,351.23
Total Zero-Rated Sales		₱3,137,690,996.00
Less: <i>Disallowances</i>		
1) Zero-Rated Sales with no SEC Certificate of Non-Registration		
a. AIG Egypt Insurance Company S.A.E.	₱165,058.92	
b. AIG Europe Limited	26,142,233.05	
c. AIG Europe Limited - Ireland Branch	95,266,275.61	
d. AIG Lebanon S.A.L.	¹⁶⁶	
e. AIG MEA Ltd. - (Kuwait Branch)	51,401.87	
f. New Hampshire Insurance Company	7,192,443.45	128,817,412.90
2) Zero-Rated Sales supported only with SEC Certificate of Non-Registration		
a. AIG PNG Limited	862,121.33	
b. AIG United Guaranty Insurance (Asia) Limited	39,231,801.08	
c. American International Group KK	3,753,309.14	
d. AIG South Africa Limited	20,139,260.07	
e. Chartis Azerbaijan Insurance Co.	240.04 ¹⁶⁷	63,986,731.66
3) Discrepancy in the names stated in the ORs		335,656,097.22
4) ORs dated beyond the issue date of the relevant SEC Certificates of Non-Registration		1,147,651,048.89
5) Zero-Rated Sales not traceable to the certificates of inward remittance provided		40,382,087.53
6) Unreported Zero-Rated sales		143,379,351.23
7) ORs issued to a PEZA-registered entity without the customer's TIN		54,815,211.04
Total Valid and Substantiated Zero-Rated Sales		₱1,223,003,055.53

¹⁶⁶ The sale to AIG Lebanon S.A.L. was no longer deducted since the ICPA already disallowed the same for not being traceable to the Certificates of Inward Remittances.

¹⁶⁷ This amount excludes the other sale to Chartis Azerbaijan Insurance Co. since the same was already disallowed by the ICPA for not being traceable to the certificates of inward remittances.

THIRD (3RD), FOURTH (4TH), FIFTH (5TH) and EIGHTH (8TH) REQUISITES:
PETITIONER INCURRED UNUTILIZED INPUT VALUE-ADDED TAX (VAT) ATTRIBUTABLE TO ITS ZERO-RATED SALES.

The Court shall jointly discuss and determine whether petitioner complied with the following remaining requisites:

- a. 3rd requisite: the input taxes are due or paid;
- b. 4th requisite: the input taxes are not transitional input taxes;
- c. 5th requisite: the input taxes have not been applied against output taxes during and in the succeeding quarters; and,
- d. 8th requisite: where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In its amended Quarterly VAT Returns for TY 2016¹⁶⁸, petitioner declared excess and unutilized input VAT of ₱42,368,282.77 on its domestic purchases of capital goods exceeding and not exceeding ₱1 Million, purchases of goods other than capital goods and services as well as the amortization of capital goods for TY 2016, as shown below:

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Input Tax Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	₱7,526,244.01	₱8,535,299.33	₱11,158,785.65	₱9,570,757.34	₱36,791,086.33
Input Tax on Purchase of Capital Goods Not Exceeding ₱1 Million	-	-	-	12,432.00	12,432.00

¹⁶⁸ Exhibits “P-5”, “P-6”, “P-7”, and “P-8”, FOE Folder.

	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	Total
Input Tax on Purchase of Capital Goods Exceeding ₱1 Million	2,161,361.52	4,173,273.25	-	-	6,334,634.77
Input Tax on Domestic Purchase of Goods Other Than Capital Goods	1,739,766.13	351,171.70	633,571.24	269,647.22	2,994,156.29
Input Tax on Domestic Purchase of Services	10,437,440.09	7,358,293.63	6,353,854.88	13,795,667.42	37,945,256.02
Input Tax on Services rendered by Non-residents		237,863.70	121,255.01	1,394,230.73	1,753,349.44
Total Input Tax	₱21,864,811.75	₱20,655,901.61	₱18,267,466.78	₱25,042,734.71	₱85,830,914.85
Less: Input Tax on Purchases of Capital Goods Exceeding ₱1 Million Deferred for Succeeding Period	8,535,299.33	11,158,785.65	9,570,757.34	8,172,513.55	37,437,355.87
Total Allowable Input VAT	₱13,329,512.42	₱9,497,115.96	₱8,696,709.44	₱16,870,221.16	₱48,393,558.98
Less: Output VAT	1,685,625.23	950,446.33	2,211,933.91	1,177,270.74	6,025,276.21
Total Input VAT Applied for Refund	₱11,643,887.19	₱8,546,669.63	₱6,484,775.53	₱15,692,950.42	₱42,368,282.77

In the instant case, since there is no showing that the claimed input VAT is transitional input tax (inasmuch as petitioner is not a newly-registered VAT taxpayer), the 4th requisite is deemed complied with.

With respect to the 3rd requisite, petitioner provided supporting documents to prove that the input VAT claimed during the subject periods are actually due or paid, such as invoices or ORs from its suppliers. However, as stated in the ICPA Report¹⁶⁹, petitioner’s input VAT in the amount of ₱4,877,703.25 must be disallowed for not being properly substantiated with VAT zero-rated invoices/ORs as prescribed under Sections 110(A)¹⁷⁰ and 113(A) and (B)¹⁷¹ of the NIRC of

¹⁶⁹ Exhibit “P-5508”, ICPA Report, pp. 12-13.

¹⁷⁰ SEC. 110. *Tax Credits.* —

(A) *Creditable input Tax.* —

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:

(a) Purchase or importation of goods:

- (i) For sale; or
- (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
- (iii) For use as supplies in the course of business; or
- (iv) For use as materials supplied in the sale of service; or

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- (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
 - (b) Purchase of services on which a value-added tax has actually been paid.
 - (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
 - (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
 - (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
- Provided*, That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however*, That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally*, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.
- (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
 - (a) Total input tax which can be directly attributed to transactions subject to value-added tax; and
 - (b) A ratable portion of any input tax which cannot be directly attributed to either activity.

The term 'input tax' means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code.

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SEC. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. -

(A) *Invoicing Requirements.* - A VAT-registered person shall issue:

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

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

- (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
- (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax. *Provided, That*:
 - (a) The amount of the tax shall be known as a separate item in the invoice or receipt;
 - (b) If the sale is exempt from value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
 - (c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt.
 - (d) If the sale involved goods, properties or services some of which are subject to and some of which are VAT zero-rated or Vat exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be known on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
- (3) The date of transaction, quantity, unit cost and description of the goods or properties or nature of the service; and
- (4) In the case of sales in the amount of One thousand pesos (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.

...



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1997, as amended, in relation to Sections 4.110-2¹⁷², 4.110-3¹⁷³, 4.110-8¹⁷⁴ and 4.113-1¹⁷⁵ of RR No. 16-2005¹⁷⁶, as amended. ICPA Roguel's findings¹⁷⁷ are as follows:

¹⁷² **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.

¹⁷³ **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 (P1,000,000.00), regardless of the acquisition cost of each capital good, shall be claimed as credit against output tax in the following manner:

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

(b) If the estimated useful life of a capital good is less than five (5) years – The input tax shall be spread evenly on a monthly basis by dividing the input tax by the actual number of months comprising the estimated useful life of the capital good. The claim for input tax credit shall commence in the calendar month that the capital goods were acquired.

Where the aggregate acquisition cost (exclusive of VAT) of the existing or finished depreciable capital goods purchased or imported during any calendar month does not exceed One million pesos (P1,000,000.00), the total input taxes will be allowable as credit against output tax in the month of acquisition; Provided, however, that the total amount of input taxes (input tax on depreciable capital goods plus other allowable input taxes) allowed to be claimed against the output tax in the quarterly VAT Returns shall be subject to the limitation prescribed under Sec. 4.110-7 of these Regulations.

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

¹⁷⁴ **SEC. 4.110-8. *Substantiation of Input Tax Credits.*** -

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

- (1) For the importation of goods - import entry or other equivalent document showing actual payment of VAT on the imported goods.
- (2) For the domestic purchase of goods and properties – invoice showing the information required under Secs. 113 and 237 of the Tax Code.
- (3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller.
- (4) For the purchase of services – official receipt showing the information required under Secs. 113 and 237 of the Tax Code.

A cash register machine tape issued to a registered buyer shall constitute valid proof of substantiation of tax credit only if it shows the information required under Secs. 113 and 237 of the Tax Code.

¹⁷⁵ **SEC. 4.113-1. *Invoicing Requirements.*** -

	Nature	Reference	Amount
1.	Purchase of services supported by VAT OR which did not show the VAT amount separately	Annexes J and J-1	₱102,069.14
2.	Invoices/ORs which are out-of-period	Annex K	117,164.49
3.	Invalid supporting documents	Annexes L and L-1	534,497.92
4.	Incorrect TIN of petitioner	Annexes M and M-1	770,865.39
5.	No TIN of petitioner indicated	Annex N	247,014.42
6.	Purchase of goods and services duly supported by invoices/ORs but with alteration on petitioner's TIN without countersignature	Annexes O and O-1	1,978,271.89
7.	No supporting documents	Annex P	1,119,167.12
8.	Incorrect registered address of petitioner indicated in the supporting documents	Annex Q	3,755.36
9.	Input VAT claimed is higher than that indicated in the supporting document	Annex R	4,897.52
	Total		₱4,877,703.25

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

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

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

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

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

- (1) A statement that the seller is a VAT-registered person, followed by his TIN;
- (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the VAT; *Provided, That:*
 - (a) The amount of tax shall be shown as a separate item in the invoice or receipt;
 - (b) If the sale is exempt from VAT, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;
 - (c) If the sale is subject to zero percent (0%) VAT, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;
 - (d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the VAT on each portion of the sale shall be shown on the invoice or receipt. The seller has the option to issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.
- (3) In the case of sales in the amount of one thousand pesos (₱1,000.00) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client, shall be indicated in addition to the information required in (1) and (2) of this Section.

Additionally, upon further scrutiny of the ICPA Report¹⁷⁸ with the other submitted documentary evidence, the Court finds that a total amount of ₱4,621,209.07 shall likewise be disallowed for failure to meet the substantiation requirements, to wit:

Exhibit	Supplier	Amount	Reason
<i>a. Input VAT on services rendered by non-residents</i>			
"P-27.4"	COMPUTRON SOFTWARE AUSTRALIA	₱44,640.00	WVAT Return was filed and remitted outside the period of claim (in 2017)
	DRI MALAYSIA SDN BHD	2,232.00	
	BOCA PERFORMANCE IMPROVEMENT ASIA PTE LTD	148,800.00	
	PEGA SYSTEMS INC.	59,520.00	
	PROCESS WORKS PTE LTD	1,012,078.08	
	Subtotal	₱1,267,270.08	
<i>b. Purchase of goods or services</i>			
"P-1373"	AIG SHARED SERVICES - BUSINESS PROCESSING INC.	153,705.12	Incorrect name of petitioner
"P-1652"	COMLAN INC	9,200.00	
"P-2056"	EASTERN TELECOMS	480.00	
"P-2057"		480.00	
"P-1376"	FILINVEST ASIA CORPORATION	400,357.36	
"P-1377"		47,929.33	
"P-1378"		56,061.46	
"P-1415"		55,087.49	
"P-1724"		54,982.74	
"P-1725"		400,357.35	
"P-1778"		54,499.15	
"P-2187"		57,043.79	
"P-2188"		55,719.90	
"P-1380"	GOLDEN ARIES AIRE SYSTEM INCORPORATED	840.00	
"P-2129"	JOE RILEY & ASSOCIATES INC.	101,294.88	
"P-2130"		8,546.39	
"P-1734"	JOLLIBEE FOODS CORPORATION	409.50	
"P-1796"		3,407.14	
"P-1389"	LANTRONIX SYSTEM INC	2,768.27	
"P-1736"	MARSH PHILIPPINES, INC.	1,869.69	
"P-2153"	ONESEARCH INCORPORATED	163,252.80	
"P-1752"	ORACLE (PHILIPPINES) CORPORATION	37,434.78	

¹⁷⁸ Exhibit "P-5508", ICPA Report.

Exhibit	Supplier	Amount	Reason
"P-1754"	PICAZO BUYCO TAN FIDER & SANTOS	1,200.00	
"P-1755"		23,486.64	
"P-2157"	RED RIBBON BAKESHOP INC	3,805.71	
"P-1711"	SM PRIME HOLDINGS INC	26,357.57	
"P-2020"	STAR APPLIANCE CENTER INC	2,748.21	
"P-1456"	TOWER CLUB, INC.	2,710.71	
"P-1714"		1,489.29	
"P-2103"		16,122.32	
"P-2172"		8,839.29	
"P-2173"	TOWERS WATSON PHILIPPINES, INC.	13,500.00	
"P-2104"	TRI SENSE CORPORATION	1,328.57	
"P-1682"	AIG PHILIPPINES INSURANCE, INC.	79,747.98	With noted handwritten alterations or additions in the computerized/ typewritten invoices/ORs without countersignature of the authorized representative of the supplier
"P-1326"	AUDIO 4 DESIGN N TECHNOLOGY CORP.	8,394.00	
"P-1319"	CONTRADE INTEGRATED DEPOT INC.	117.60	
"P-1654"		198.00	
"P-2027"		280.32	
"P-2028"		936.16	
"P-2029"		1,680.96	
"P-2030"		1,523.81	
"P-1320"	ELID TECHNOLOGY INTERNATIONAL, INC.	1,118.57	
"P-2032"	EXTINGUISHED INC.	7,500.00	
"P-1316"	ISO-LUX INDUSTRIAL SALES	547.05	
"P-1330"		768.00	
"P-2034"		4,582.80	
"P-1331"	JD ASTRO DISTRIBUTORS, INC.	585.48	
"P-1332"		612.00	
"P-2035"		173.24	
"P-2036"		110.46	
"P-1040"	JENIFFER PASCUA ARROYO	1,350.00	
"P-1322"		1,665.70	
"P-2012"		216.00	
"P-2013"		3,960.00	
"P-2014"		702.00	
"P-2015"		1,500.00	
"P-2016"		4,050.00	
"P-2037"		1,116.60	
"P-2017"	JOIR ENTERPRISES	28,875.00	
"P-2004"	NEHEMIAH ONE VENTURES INC.	102.86	

Exhibit	Supplier	Amount	Reason
"P-2005"		77.14	
"P-1043" / "P-1043.1"	NEXUS TECHNOLOGIES INC.	1,201,016.92	
"P-1339"	PINGCON MARKETING CORPORATION	5,976.00	
"P-1668"	SCHNEIDER ELECTRIC	5,780.14	
"P-1669"	THE FIRST ENTERPRISE INC.	4,376.79	
"P-1670"	THE FIRST ENTERPRISE INC.	3,488.40	
"P-1651"	ULTRA MODULAR CONCEPTS, INC.	39,626.40	
"P-1790"	INTERLINK BUSINESS SOLUTIONS INC	3,916.80	Supporting document is not valid for claiming input VAT
"P-1791"		5,875.20	
"P-1792"		5,875.20	
"P-1793"		3,916.80	
"P-1794"		3,916.80	
"P-1095"	PICAZO BUYCO TAN FIDER & SANTOS	1,200.00	Supported by VAT ORs with erasures but without countersignature of the authorized representative of the supplier
"P-1116"	MONTEMAR BEACH CLUB INC	116,787.10	
"P-1036" / "P-1036.1"	ISO-LUX INDUSTRIAL SALES	6,698.78	Illegible supporting document
"P-2031"	DIMENSION DATA PHILIPPINES, INC.	25,680.48	Supported by VAT invoice with no CAS permit number indicated
	Subtotal	₱3,353,938.99	
	Total	₱4,621,209.07	

Anent the input taxes on services rendered by non-residents, it must be noted that Sections 4.110-8(a) and (c) and 4.114-2(b) of RR No. 16-2005¹⁷⁹, as amended, provide:

...

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

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

¹⁷⁹

Supra at note 150.

...

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

...

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

...

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

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

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

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

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.¹⁸⁰

...

As can be gleaned from the afore-quoted provisions, the withholding VAT (WVAT) may be claimed as input tax credit in the month such WVAT is withheld and remitted to the BIR supported by BIR Form No. 1600. However, in the instant case, the December

¹⁸⁰

Emphasis and underscoring supplied.

2016 WVAT Return¹⁸¹ was filed and remitted to the BIR on 09 January 2017, which is outside the period of claim.

Thus, out of petitioner’s claimed input VAT of ₱48,393,558.98 for TY 2016, only the amount of ₱38,894,646.66 represents the substantiated input VAT, computed as follows:

Claimed Input VAT		₱48,393,558.98
Less: Disallowances		
<i>Per</i> ICPA	₱4,877,703.25	
<i>Per</i> Court’s verification	4,621,209.07	9,498,912.32
Substantiated/Valid Input VAT		₱38,894,646.66

Consequently, in compliance with the 8th requisite, only the substantiated unutilized input VAT of ₱32,869,370.45 can be attributed to the total zero-rated sales in the amount of ₱3,137,690,996.00, after deducting the output VAT of ₱6,025,276.21¹⁸², and only the input VAT of ₱12,812,480.60 is attributable to the valid zero-rated sales of ₱1,223,003,055.53, as determined below:

	TY 2016
Total Zero-Rated Sales [A]	₱3,137,690,996.00
Valid Zero-Rated Sales [B]	1,223,003,055.53
Percentage of Valid Zero-Rated Sales [C=B/A]	38.98%
Substantiated/Valid Input VAT [D]	38,894,646.66
Less: Output VAT [E]	6,025,276.21
Substantiated/Valid Input VAT attributable to Zero-Rated Sales [F=D-E]	32,869,370.45
Excess Input VAT attributable to Valid Zero-Rated Sales [FxC]	₱12,812,480.60

Lastly, the claimed input VAT of ₱42,368,282.77 was carried-over by petitioner in 2017 and the same remained unutilized until it was eventually deducted as “VAT Refund/TCC Claimed” in its 4th Quarterly VAT Return for TY 2017¹⁸³; thus, preventing the carry-over or application of the claimed input VAT in the next taxable periods.¹⁸⁴

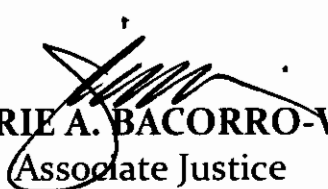
¹⁸¹ Exhibit “P-27.4”, FOE Folder.
¹⁸² Exhibits “P-5” to “P-8”, id.
¹⁸³ Supra at note 26.
¹⁸⁴ Exhibit “P-5508”, ICPA Report, pp. 10-11.

Verily, petitioner likewise complied with the 5th requisite stating that the input VAT have not been applied against output VAT during and in the succeeding quarters.

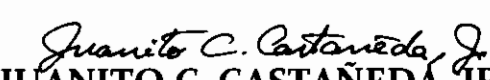
In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of tax credit in the amount of ₱12,812,480.60, representing the unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of TY 2016.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner AIG Shared Services Corporation (Philippines) on 23 July 2018 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱12,812,480.60, representing unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of taxable year ended 31 December 2016.

SO ORDERED.

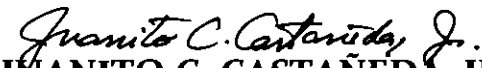

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice

ATTESTATION

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


JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice