

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

**AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[Formerly: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION (PHILIPPINES)],**
Petitioner,

**CTA EB NO. 2424
(CTA Case No. 8850)**

- versus -

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

x ----- x

**COMMISSIONER OF INTERNAL
REVENUE,**
Petitioner,

**CTA EB NO. 2433
(CTA Case No. 8850)**

Present:

- versus -

**AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[Formerly: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION (PHILIPPINES)],**
Respondent.

**DEL ROSARIO, P.L.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, II.**


Promulgated:
NOV 17 2022

x ----- x

DECISION

BACORRO-VILLENA, J.:

Assailing the Third Division's Decision dated 29 June 2020¹ (**assailed Decision**) and Resolution dated 08 January 2021² (**assailed Resolution**) in CTA Case No. 8850, entitled *AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines) v. Commissioner of Internal Revenue*, the parties, AIG Shared Services Corporation (Philippines) (AIG) and Commissioner of Internal Revenue (CIR) filed their separate Petitions for Review on 18 February 2021³ and 24 February 2021⁴, respectively, pursuant to Section 3(b)⁵, Rule 8, in relation to Section 2(a)(1)⁶, Rule 4 of the Revised Rules of the Court of Tax Appeals⁷ (RRCTA).

AIG is a foreign corporation duly registered and authorized by the Securities and Exchange Commission (SEC) under Amended SEC License No. FM00000152⁸ to operate in the Philippines as a Regional Operating Headquarters (ROHQ). AIG is a value-added tax (VAT)-registered entity having been issued Certificate of Registration (COR) 

¹ Division Docket, Volume IV, pp. 1765-1804; Penned by Associate Justice Erlinda P. Uy with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

² Id., pp. 1879-1898.

³ *Rollo* (CTA EB No. 2424), pp. 7-25.

⁴ *Rollo* (CTA EB No. 2433), pp. 6-17.

⁵ SEC. 3. *Who may appeal; period to file petition. – ...*

...

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

...

⁶ SEC. 2. *Cases within the jurisdiction of the Court en banc. –* The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

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

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

...

⁷ A.M. No. 05-11-07-CTA.

⁸ Exhibits “P-1”, “P-2” and “P-3”, CD.

No. OCN8RC0000059749⁹ by the Bureau of Internal Revenue (**BIR**).¹⁰ Its principal office is located at 29, 45-46th Flr., PBCom Tower, Ayala Avenue cor. Rufino St., Makati City¹¹, while its business process outsourcing (**BPO**) unit is at Ground Flr., 6th-11th, 14th Paragon Corporate Ctr., Muntinlupa City.¹²

The CIR is vested with the power to decide tax cases, including claims for refunds and tax credits pursuant to Section 4¹³ of the National Internal Revenue Code (**NIRC**) of 1997, as amended.¹⁴ The CIR holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.¹⁵

ANTECEDENT FACTS AND PROCEEDINGS

For fiscal year (FY) 2012 that ended 30 November 2012, AIG filed its original and amended quarterly VAT returns on the following dates:

Period	Quarterly VAT Return	Date of Filing
First (1 st) Quarter (December 2011 to February 2012)	Original ¹⁶	23 March 2012
	Amended ¹⁷	02 August 2013
Second (2 nd) Quarter (March to May 2012)	Original ¹⁸	22 June 2012
	Amended ¹⁹	13 January 2014
Third (3 rd) Quarter (June to August 2012)	Original ²⁰	25 September 2014
	Amended ²¹	12 February 2014
Fourth (4 th) Quarter (September to November 2012)	Original ²²	21 December 2012
	Amended ²³	20 February 2014

⁹ Exhibit "P-4-a", Division Docket, Volume III, p. 1392.

¹⁰ Supplemental Joint Stipulation of Facts and Issue, id., p. 1390.

¹¹ Supra at note 9.

¹² Exhibit "P-5", CD.

¹³ **SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.** - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

¹⁴ Joint Stipulation of Facts and Issue, Division Docket, Volume I, p. 452.

¹⁵ Id.

¹⁶ Exhibit "P-9", CD.

¹⁷ Exhibit "P-10", CD.

¹⁸ Exhibit "P-11", CD.

¹⁹ Exhibit "P-12", CD.


²⁰ Exhibit "P-13", CD.

²¹ Exhibit "P-14", CD.

²² Exhibit "P-15", CD.

On 27 February 2014 AIG filed with the BIR an administrative claim for refund or tax credit²⁴ (**administrative claim**) of its excess and utilized input tax for the 1st to 4th quarters of FY 2012 in the amount of ₱79,682,086.49. AIG submitted all supporting documents when it filed the said administrative claim. There being no action thereon, AIG filed its prior Petition for Review²⁵ on 23 July 2014. The same was raffled to the First Division.

On 11 September 2014, the CIR filed an Answer²⁶ interposing the following affirmative defenses, to wit: (1) the administrative claim is still subject to investigation by the BIR; (2) AIG failed to demonstrate that the taxes have been erroneously or illegally collected; (3) taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; (4) it is incumbent upon AIG to show that it complied with Section 204(C)²⁷, in relation to Section 229²⁸, of the NIRC of 1997, as amended; (5) the claimed amount of ₱79,682,086.49 as alleged excess and unutilized input tax paid on purchases of goods and services attributable to AIG's zero-rated sales for the 1st to 4th quarters of FY 2012 has not been fully substantiated by proper documents, such as sales invoices and official receipts (ORs); and, (6) in an action for tax credit or refund, the burden is upon the taxpayer to prove its entitlement thereto and claims for refund are strictly construed against the taxpayer.

After the filing of the parties' Joint Stipulation of Facts and Issues²⁹ (JSFI) on 25 June 2015, the First Division issued the Pre-Trial Order³⁰ on 11 August 2015. 

²³ Exhibit "P-16", CD.

²⁴ Exhibit "P-8", CD.

²⁵ Division Docket, Volume I, pp. 14-27.

²⁶ Id., pp. 276-278.

²⁷ **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – ...

...
(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

...
²⁸ **SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* – ...

²⁹ Division Docket, Volume I, pp. 451-472.

³⁰ Id., Volume II, pp. 587-631.

During the trial, AIG presented: (1) its Chief Executive Officer (CEO), Pradeep Bhanotha (**Bhanotha**); (2) its Senior Manager for Finance and Accounting, Mary Cris Barayuga (**Barayuga**); and, (3) the Court-commissioned Independent Certified Public Accountant (ICPA), Mary Ann C. Capuchino (**Capuchino**), as its witnesses.

Bhanotha was presented to identify exhibits and to prove: (1) AIG's legal personality and its refundable input taxes; and, (2) that AIG generated zero-rated sales by rendering services solely to non-resident foreign corporations (NRFCs) engaged in business conducted outside the Philippines, pursuant to written agreements then in effect.³¹

Aside from identifying exhibits, Barayuga's testimony was likewise offered to corroborate Bhanotha's declaration on AIG's legal personality and its refundable input taxes.³² Subsequently, Barayuga was thrice recalled to the witness stand to identify other exhibits and to prove that AIG generated zero-rated sales by rendering services to NRFCs engaged in business conducted outside the Philippines, as evidenced by their consularized certificates/articles of incorporation (AOI), business registration, corporate information details, tax identification number and similar documents issued by their respective foreign government's registry of companies.³³

Capuchino's testimony was also later on presented to identify the ICPA Report and to prove that: (1) AIG made available to her the original copies of accounting records to validate and provide supporting documents for its claim for refund; (2) the supporting documents were examined and verified; (3) AIG is an ROHQ duly licensed to carry out its registered business; (4) for the 1st to 4th quarters of FY 2012, AIG generated zero-rated sales by rendering services solely to NRFCs engaged in business outside the Philippines which were paid for in acceptable foreign currency, remitted and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**); (5) the zero-rated sales are duly supported by VAT sales invoices and ORs; (6) AIG paid input taxes from its domestic purchases of goods and services as evidenced by

³¹ Exhibits "P-248" and "P-248-a", id., Volume I, pp. 477-558.

³² Exhibits "P-241" and "P-241-a", id., pp. 358-389.

³³ Exhibits "P-244" and "P-244-a", id., Volume II, pp. 861-877; Exhibits "P-247" and "P-247-a", id., Volume III, pp. 1119-1129; and Exhibits "P-248" and "P-248-A", id. Volume III, pp. 1437-1447.

VAT invoices and ORs issued by its suppliers; and, (7) said input taxes are directly attributable to zero-rated sales and were not utilized or credited against output tax.³⁴ Still, later, Capuchino also identified her Supplemental ICPA Report³⁵ and identified other exhibits.³⁶

On 19 January 2017, the CIR manifested that he will no longer present evidence since no report of investigation was forwarded to him.³⁷

On 20 February 2017, AIG filed its Formal Offer of Evidence³⁸ (FOE), without the CIR's comment.³⁹ On the same day, AIG likewise filed a Motion [(a) To Admit Supplemental Joint Stipulation of Facts and Exhibit "P-4-a" and (b) To Remark Exhibits]⁴⁰, which the Court granted on 09 March 2017.⁴¹ Accordingly, the Supplemental JSFI⁴² was admitted.

Considering that some of its documentary evidence were denied admission, AIG filed a "Motion [(a) For Reconsideration of the Resolution dated 05 October 2017; and (b) To Recall Witness]"⁴³, "Supplemental Formal Offer of Evidence"⁴⁴ and "Motion to Admit (Re: Amended Formal Offer of Evidence)"⁴⁵, all without comment from the CIR.⁴⁶ As a result, only some of AIG's exhibits were still denied admission⁴⁷ for failure to lay the bases for their presentation as secondary evidence.⁴⁸

³⁴ Exhibits "P-242" and "P-242-a", id., Volume II, pp. 749-762.

³⁵ Exhibits "P-243" and "P-243-a", id., pp. 824-828.

³⁶ Exhibits "P-249" and "P-249-A", id., Volume III, pp. 1580-1584.

³⁷ See Order dated 19 January 2017, id., pp. 1278-1279.

³⁸ Id., pp. 1292-1383.

³⁹ See Resolution dated 22 May 2017, id., p. 1411.

⁴⁰ Id., pp. 1386-1389.

⁴¹ See Resolution dated 09 March 2017, id., pp. 1401-1402

⁴² Id., pp. 1390-1391.

⁴³ Id., pp. 1418-1425.

⁴⁴ Id., pp. 1632-1640.

⁴⁵ Id., pp. 1637-1717.

⁴⁶ *Per* Records Verification dated 29 November 2017, 02 July 2018 and 31 July 2018, id., pp. 1429 and 1721-1722.

⁴⁷

Exhibit	Description
"P-119(a)"	Certificate of Incorporation of AIG Employee Services, Inc. dated 06 December 2005.
"P-130(b)"	Certificate of Close of Business of American Home Assurance Company dated 02 July 2012.
"P-130(c)"	Notice of Issuance of Insurance Business License to Chartis Insurance Korea Inc.
"P-131(c)"	Order of the High Court of the Republic of Singapore on the Scheme for the Transfer of Insurance Business dated 02 November 2010.

In the meantime, CTA Case No. 8850 was transferred to the Third Division pursuant to CTA Administrative Circular No. 02-2018, entitled “Reorganizing the Three (3) Divisions of the Court”.⁴⁹

On 12 April 2019, AIG filed its Memorandum⁵⁰ while the CIR did not file⁵¹ his own despite notice.

On 29 June 2020, the Third Division promulgated the assailed Decision.⁵² The dispositive portion of which reads:

“P-134(c)”	Written Resolution of change of name from Chartis Europe Limited to AIG Europe Limited dated 25 October 2012.
“P-134(d)”	Cross-Border Mergers Regulations of Chartis Europe Limited and Chartis Europe S.A. issued by the High Court of Justice Chancery Division dated 07 November 2012.
“P-134(e)”	Cross-Border Mergers Regulations of Chartis Insurance UK Limited and Chartis Insurance Ireland Limited issued by the High Court of Justice Chancery Division dated 08 November 2011.
“P-134(f)”	Company Certification of AIG Europe Limited (Spain Branch).
“P-134(g)”	Comprehensive Statement of AIG Europe Limited – Denmark Branch.
“P-134(h)”	Company Registration of AIG Europe Limited (Spain Branch).
“P-149(c)”	Articles of Incorporation of Chartis Seguros Brasil S.A.
“P-151(b)”	Registration Document of AIG Seguros Mexico S.A. de C.V. dated 09 January 2013.
“P-151(c)”	Articles of Association of AIG Seguros Mexico S.A. de C.V.
“P-152(b)”	Registration document of AIG Seguros El Salvador S.A. issued by the Republica de El Salvador Centro Nacional de Registros Registro de Comercio.
“P-152(c)”	Articles of Association of Chartis Seguros El Salvador S.A.
“P-153(b)”	Certificate issued by the Istanbul Trade Registry Office to AIG Sigorta S.A.
“P-153(c)”	Certificate of Activity from the Istanbul Chamber of Commerce dated 06 June 2014.
“P-153(d)”	Minutes of the Extraordinary General Assembly Meeting of Chartis Sigorta S.A. dated 30 October 2012.
“P-166(b)”	Articles of Incorporation of La Seguridad de Centro America S.A.
“P-173(c)”	Screenshot of the website of the Republic of Uzbekistan Ministry of Finance indicating the address, license and date of issue of Chartis Uzbekistan.
“P-176(a)”	Certificate Confirming Incorporation of Company under the New Name dated 11 November 2012.
“P-176(b)”	Certificate Confirming Incorporation of Company under the New Name dated 28 April 2010.
“P-176(c)”	Certificate Confirming Incorporation of Company under the New Name dated 12 November 2009.
“P-176(d)”	Certificate Confirming Incorporation of Company under the New Name dated 07 April 2009.
“P-176(e)”	Certificate Confirming Incorporation of Company under the New Name dated 23 March 2005.
“P-176(f)”	Certificate Confirming Incorporation on Change of Name of Company dated 31 December 1973.

⁴⁸ See Resolution dated 06 March 2019, Division Docket, Volume IV, pp. 1729-1738.

⁴⁹ See Order dated 01 October 2018, id., p. 1727.

⁵⁰ Id., pp. 1739-1757.

⁵¹ *Per* Records Verification dated 02 May 2019, id., p. 1760.

⁵² *Supra* at note 1.

...

WHEREFORE, in light of the foregoing circumstances, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱1,993,863.90**, representing petitioner's unutilized excess input VAT attributable to its zero-rated sales/receipts for four quarters of FY 2012.

SO ORDERED.

...

Thus, on 24 July 2020, AIG filed its Motion for Partial Reconsideration⁵³ (MPR) while the CIR filed a Motion for Reconsideration⁵⁴ (MR) on even date. Thereafter, the CIR and AIG filed their separate Comment/Opposition on 06 October 2020⁵⁵ and 19 October 2020⁵⁶, respectively.

On 08 January 2021, the Third Division promulgated the assailed Resolution⁵⁷ denying both AIG's MPR and the CIR's MR.

Still unsatisfied, on 18 February 2021, AIG filed its Petition for Review⁵⁸ before the Court *En Banc*. On the other hand, on 24 February 2021, the CIR filed its own Petition for Review.⁵⁹ On 01 March 2021, the Court consolidated the parties' separate petitions.⁶⁰

On 14 June 2021, AIG filed its Comment/Opposition⁶¹ to the CIR's petition.

On 24 June 2021, the CIR filed a Motion to Admit⁶² its Comment⁶³ on AIG's petition, which the Court *En Banc* granted on 21

⁵³ Division Docket, Volume IV, pp. 1805-1815.

⁵⁴ *Id.*, pp. 1824-1841.

⁵⁵ *Id.*, pp. 1846-1856.

⁵⁶ *Id.*, pp. 1859-1868.

⁵⁷ *Supra* at note 2.

⁵⁸ *Rollo* (CTA EB No. 2424), pp. 7-22.

⁵⁹ *Rollo* (CTA EB No. 2433), pp. 6-17.

⁶⁰ *Rollo* (CTA EB No. 2424), p. 103.

⁶¹ *Id.*, pp. 108-116.

⁶² *Id.*, pp. 123-126.

⁶³ *Id.*, pp. 127-136.

October 2021.⁶⁴ Accordingly, the CIR's Comment was admitted and the consolidated cases were submitted for decision.

ISSUES

Before the Court *En Banc*, AIG's petition raises the following grounds in its bid to have the assailed Decision partially reversed and for it be granted the full amount of claim for refund of ₱79,682,086.49, to wit: (1) the printed screenshots of foreign governments' official websites are sufficient evidence that its clients-affiliates are NRFCs doing business outside the Philippines; and, (2) the totality of evidence proves that its services were performed in the Philippines.

On the other hand, the CIR forwards the following issues in support of his own petition: (1) whether the testimonial and documentary evidence presented and offered by AIG during the trial are admissible in evidence; and, (2) whether AIG rendered its services to an entity conducting business outside the Philippines, as contemplated under Section 108(B)(2)⁶⁵ of the NIRC of 1997, as amended.

From the foregoing, the issues may thus be summed up as follows:

I.

WHETHER THE PRINTED SCREENSHOTS OF FOREIGN GOVERNMENTS' OFFICIAL WEBSITES ARE ADMISSIBLE IN EVIDENCE AND SUFFICIENT PROOF OF THE STATUS OF AIG SHARED SERVICES CORPORATION (PHILIPPINES)' CLIENTS AS NON-RESIDENT FOREIGN CORPORATION (NRFC) DOING BUSINESS OUTSIDE THE PHILIPPINES;

⁶⁴ See Resolution dated 21 October 2021, *id.*, pp. 141-143.

⁶⁵ **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:

...
(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)[.]

...

II.

WHETHER AIG SHARED SERVICES CORPORATION (PHILIPPINES) PERFORMED ITS SERVICES IN THE PHILIPPINES; AND,

III.

WHETHER THE SALES OF A REGIONAL OPERATING HEADQUARTERS (ROHQ), SUCH AS AIG SHARED SERVICES CORPORATION (PHILIPPINES), SHOULD BE LIMITED TO ITS AFFILIATE, SUBSIDIARY OR BRANCH OFFICE IN ORDER TO BE CONSIDERED AS ZERO-RATED.

AIG argues that printed screenshots from the foreign governments' *official* websites are sufficient evidence that its clients-affiliates are NRFCs doing business outside the Philippines.

AIG contends that the case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.*⁶⁶ (**Deutsche Knowledge Services**) did not specifically require the submission of consularized articles of incorporation (AOI) and that the taxpayer may present any competent evidence to prove each of the following components: (1) that the client-affiliate is foreign; and, (2) that the client-affiliate is not doing business in the Philippines.

AIG emphasizes that there is nothing in the law or jurisprudence that limits a taxpayer to AOI or COR in proving the NRFC status of its clients. While the AOI or COR are *prima facie* evidence of such status, a taxpayer is not prohibited to resort to other evidence to prove such fact.

Citing the Court in Division's case of *Chevron Holdings Inc. [formerly Caltex (Asia) Limited] v. Commissioner of Internal Revenue*⁶⁷, AIG claims that the screenshots can be given credence considering the ruling therein that "[b]eing official government registry of corporations, the Court is inclined to accept the printed screenshots of the official websites of other foreign government's registry of companies as sufficient proof in lieu of the Certificate/Articles of Foreign Incorporation/Association." According to AIG, the same was

⁶⁶ G.R. No. 234445, 15 July 2020.

⁶⁷ CTA Case No. 8241, 11 August 2015.

subsequently upheld by the Court *En Banc* and was later affirmed by the Supreme Court.

As such, AIG maintains that there is no reason for the Third Division to disregard the screenshots as valid proof of the foreign incorporation or registration of its clients.

With respect to the issue on the place of rendition of its services, AIG argues that the totality of its evidence would show that they were actually performed in the Philippines. AIG imputes error on the Third Division when it relied solely on the service agreements as there is nothing in the law or regulations that mandates the taxpayer to expressly stipulate where the service is to be performed. For AIG, evidence can be object, documentary or testimonial, and it is through any and all of these pieces of evidence that a party proves its case.

AIG thus cites its SEC COR allowing its license to be converted to be an ROHQ in the Philippines, as well as its BIR CORs which clearly indicate its two offices in the Philippines (Makati City and Alabang, Muntinlupa City). The same addresses appear in the ORs issued to its clients-affiliates for the services rendered.

Expectedly, the CIR opposes AIG's claims and counters that the non-authenticated printout of documents are not evidence *per se*.

Citing the case of *RCBC Bankard Services Corporation v. Moises Oracion, Jr., et al.*⁶⁸, the CIR avers that printouts, such as the printed screenshots in this case, are electronic documents and for the same to be considered as evidence, the same must pass the test of admissibility. According to the CIR, before screenshots may be admitted, proper authentication (such as the submission of affidavit of evidence and other modes of authentication provided by law) is necessary. Thus, presentation of printed screenshots, without the prescribed authentication, is hearsay evidence hence inadmissible and cannot be given probative value.



⁶⁸ G.R. No. 223274, 19 June 2019.

The CIR also alleges that AIG's services were not performed in the Philippines.

The CIR contends that upon perusal of its SEC COR, nothing therein obligates AIG to exclusively render its services in the Philippines. Moreover, even Section 2(3)⁶⁹ of Republic Act (RA) No. 8756⁷⁰ does not state that ROHQ is prohibited from performing its services outside the Philippines.

Additionally, AIG's ORs are not proofs of the place of performance of its services. Section 237⁷¹ of the NIRC of 1997, as amended, Section 2 of Revenue Regulations (RR) No. 18-2012⁷² and Section 4.113-1⁷³ of RR No. 16-2005⁷⁴, as amended, do not state that the business address of the seller is the place of performance of its services.

Following the principle that the party who asserts and not the party who denies must prove, AIG has the burden to prove strict compliance with the conditions for the grant of refund or tax credit.

On the other hand, the CIR asserts in his petition that the documentary and testimonial evidence presented and offered by AIG are inadmissible as evidence.

The CIR stresses that the rule requiring a party to interpose a timely objection when the evidence is being offered (otherwise, such objection shall be considered waived) does not apply to this case

⁶⁹ **Sec. 2. Definition of Terms.** - For purposes of this Act, the term:

...
(3) *Regional Operating Headquarters (ROHQ)* shall mean a foreign business entity which is allowed to derive income in the Philippines by performing qualifying services to its affiliates, subsidiaries or branches in the Philippines, in the Asia-Pacific Region and in other foreign markets.

⁷⁰ AN ACT PROVIDING FOR THE TERMS, CONDITIONS AND LICENSING REQUIREMENTS OF REGIONAL OR AREA HEADQUARTERS, REGIONAL OPERATING HEADQUARTERS, AND REGIONAL WAREHOUSES OF MULTINATIONAL COMPANIES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 226, OTHERWISE KNOWN AS THE OMNIBUS INVESTMENTS CODE OF 1987.

⁷¹ **SEC. 237. Issuance of Receipts or Sales or Commercial Invoices.** —

⁷² Regulations in the Processing of Authority to Print (ATP) Official Receipts, Sales Invoices, and Other Commercial Invoices using the On-line ATP System and Providing for the Additional Requirements in the Printing Thereof.

⁷³ **SEC. 4.113-1. Invoicing Requirements.** -

⁷⁴ Consolidated Value-Added Tax Regulations of 2005.

because AIG's evidence is nonetheless unreliable and untrustworthy for being hearsay; hence, the Court *En Banc* should not accord the same with any probative value. The CIR adds that AIG's witnesses are neither signatory to the certificates, contracts, agreements, letters and other documents presented and offered nor had a hand in their preparation.

The CIR reiterates that hearsay evidence, whether objected to or not, cannot be given credence, as expounded in the case of *Republic of the Philippines v. Carmen Santorio Galeno*.⁷⁵

In addition, the CIR invokes the rule laid down in *Republic of the Philippines v. Marjens Investment Corporation, et al.*⁷⁶ that the State cannot be estopped by the mistakes or errors of its officials or agents.

Furthermore, the CIR insists that AIG's sales of services are not zero-rated because the law limits an ROHQ's services to affiliates, subsidiaries or branches. Since AIG failed to prove that the recipients of its services are its affiliate, subsidiary or branch office, it cannot be considered zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended.

Lastly, the CIR maintains that since claims for refund are in the nature of claim for exemption, it is construed in *strictissimi juris* against the taxpayer and in favor of the government.

RULING OF THE COURT EN BANC

After a thorough consideration of the arguments raised by the parties *vis-à-vis* the pertinent laws, rules and jurisprudence, the Court *En Banc* fails to find merit in the CIR's petition. However, it finds partial merit in AIG's petition.

Before the Court proceeds to resolve the assigned issues of the parties, the Court *En Banc* shall briefly restate the requisites for the

⁷⁵ G.R. No. 215009, 23 January 2017.

⁷⁶ G.R. No. 156205, 12 November 2014.



entitlement to tax refund or credit of excess input tax attributable to zero-rated sales.

REQUISITES TO BE ENTITLED TO TAX
REFUND OR CREDIT OF EXCESS
INPUT TAX ATTRIBUTABLE TO ZERO-
RATED SALES

In *Deutsche Knowledge Services*⁷⁷, the Supreme Court ruled:

...

Under Section 4.112-1(a) of Revenue Regulations No. (RR) 16-05, otherwise known as the Consolidated VAT Regulations of 2005, in relation to Section 112 of the Tax Code, a claimant's entitlement to a tax refund or credit of excess input VAT attributable to zero-rated sales hinges upon the following requisites: "(1) the taxpayer must be VAT-registered; (2) the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated; (3) the claim must be filed within two years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax."

...

The parties did not dispute the existence of the 1st, 3rd and 4th requisites in these present appeals before the Court *En Banc*. As the records show, their contentions boil down to AIG's compliance with the 2nd requisite; specifically, which of its sales can be validly considered as zero-rated.

The 2nd requisite requires 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)⁷⁸, and 108(B)(1) and (2)⁷⁹ of the

⁷⁷ Supra at note 66, Citations omitted.

⁷⁸ 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) *Zero-rated sales* – The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

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

NIRC of 1997, as amended⁸⁰, the acceptable foreign currency exchange proceeds must have been duly accounted for in accordance with BSP rules and regulations.

AIG explains that its sales of services are zero-rated pursuant to Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

...
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) 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).

79 ...
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)[.]

80 ...
Prior to the changes brought about by Republic Act No. 10963 otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN).

(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).⁸¹

...

Furthermore, the Supreme Court, in *Deutsche Knowledge Services*, also laid down the following conditions in order for the sale of “other services” to be considered as zero-rated:

...

... *First*, the seller is VAT-registered. *Second*, the services are 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.” *Third*, the services are “paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations.”⁸²

...

As regards the 2nd condition, *Deutsche Knowledge Services* is likewise instructive that the claimant must establish the two components of a client’s NRFC status, viz: (1) that their client was established under the laws 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. In other words, there must be sufficient proof of both of these components, showing not only that the clients are foreign corporations, but also not doing business in the Philippines.

⁸¹ Emphasis supplied.

⁸² Supra at note 66; Citation omitted and italics in the original text.

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Still in *Deutsche Knowledge Services*, the Supreme Court ruled further that the 1st component (i.e., that the client is not a domestic corporation) may be established by a SEC Certification of Non-Registration while the 2nd component (i.e., that the affiliate is not doing business in the Philippines) may be proved by articles of association/certificates of incorporation.

Moving forward, the Court *En Banc* shall now proceed with the discussion of the issues raised by the parties.

THE PRINTED SCREENSHOTS ARE COMPETENT EVIDENCE TO PROVE THAT AIG SHARED SERVICES CORPORATION (PHILIPPINES)' CLIENTS-AFFILIATES ARE NOT DOING BUSINESS IN THE PHILIPPINES HENCE SHOULD HAVE BEEN ACCORDED PROBATIVE VALUE.

With respect to the 2nd component mentioned above, the Third Division did not give probative value to the following printed screenshots of foreign government websites supposedly because these can be easily manipulated and that none from the said foreign governments attested to the authenticity of such websites:⁸³

...

	Foreign Client Name	SEC Certificate of Non-Registration	Entry in the Screenshot of a Government Website
1	AIG Caspian Insurance Company (Chartis Azerbaijan Insurance Company)	"P-44"	"P-118(a)"
2	AIG Europe SA-Finland (Chartis Europe SA-Finland)	"P-48"	"P-120(a)"
3	AIG Insurance & Reinsurance Company (CJSC Chartis)	"P-54"	"P-125(a)"
4	AIG Kazakhstan Insurance Company (Chartis Kazakhstan Insurance Co. JSC)	"P-55"	"P-126(a)"
5	AIG Ukraine Insurance Company (Chartis Ukraine Insurance Company CJSC)	"P-58"	"P-128(a)"



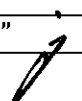
⁸³ Division Docket, Volume IV, pp. 1779-1780.

DECISION

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	Foreign Client Name	SEC Certificate of Non-Registration	Entry in the Screenshot of a Government Website
6	Chartis Chile Compania Seguros Generales S.A.	"P-64"	"P-133(a)" can't locate in CD
7	Chartis Egypt Insurance Co. S.A.E.	"P-63"	"P-132(a)"
8	Chartis Europe SA-Czech Republic	"P-66"	"P-134(r)"
9	Chartis Europe SA-Denmark	"P-68"	"P-134(g)"
10	Chartis Europe SA-Italy	"P-70"	"P-134(n)"
11	Chartis Europe SA-Netherlands	"P-74"	"P-134(p)"
[12]	Chartis Europe SA-Sweden	"P-75"	"P-134(g)"
[13]	Chartis Insurance Hongkong Limited	"P-83"	"P-146(a)" can't locate in CD
[14]	Chartis Seguros Brasil S.A.	"P-88"	"P-149(a)"
[15]	Chartis Seguros Colombia S.A.	"P-89"	"P-150(a)"
[16]	Chartis Europe SA-Belgium	"P-67"	"P-134(k)"
[17]	Chartis Seguros Mexico SA DE C.V. (AIU Mexico)	"P-90"	"P-151"
[18]	Chartis Seguros, El Salvador S.A.	"P-91"	"P-152"
[19]	Direct DME, Inc.	"P-102"	"P-161(a)"
[20]	Health Direct, Inc.	"P-104"	"P-163(a)" can't locate in CD
[21]	La Meridional CIA ARG DE Seguros SA	"P-106"	"P-165(a)" can't locate in CD
[22]	La Seguridad De Centro America SA	"P-107"	"P-166(a)" can't locate in CD
[23]	UZ AIG/UZBEK American Insurance Company (Chartis Uzbekistan)	"P-115"	"P-173(a)"
[24]	Venezuela Casai	"P-116"	"P-174(a)"
[25]	Chartis Europe SA-France	"P-69"	"P-134(m)"
[26]	American Home Assurance Korea	"P-61"	"P-130(e)"
[27]	Chartis Insurance Company China Limited (Chartis China)		"P-145(a)" can't locate in CD, "P-145(c)", can't locate in CD, "P-145(d)", "P-145(e)"
[28]	Chartis Europe SA-Spain	"P-72"	"P-134(o)"
[29]	Chartis Seguros Mexico SA DE C.V. (AIU Mexico)	"P-90"	"P-151(a)"
[30]	UZ AIG/UZBEK American Insurance Company (Chartis Uzbekistan)	"P-115"	"P-173(c)"
[31]	Venezuela Casai	"P-116"	"P-174(a)"

...



However, AIG claims that the above NRFCs were supported by printed screenshots of *official websites* of the respective foreign jurisdictions where they are registered or incorporated and that the Third Division erred in disregarding these screenshots entirely.

On the other hand, the CIR argues that before screenshots may be admissible, proper authentication, such as the submission of affidavit of evidence and other modes of authentication provided by law, is necessary.

In part, We agree with AIG.

Preliminarily, the fact that the CIR raised this issue for the first time on appeal could not escape the Court *En Banc's* attention. It must be noted that the CIR never raised this issue in his MR on the assailed Decision. With the doctrine that issues may not be raised for the first time on appeal, the Court *En Banc* should be able to strike this matter immediately.⁸⁴

Nevertheless, We note that even if We tackle the said issue, the Court *En Banc* still finds that, in the *absence* of proof of actual manipulation of the said printed screenshots, the same cannot be simply disregarded.

In *Commissioner of Internal Revenue v. De La Salle University, Inc.*⁸⁵ (**De La Salle**), emphasized that this Court is not governed strictly by technical rules of evidence. It also ruled that failure to object to the offered evidence renders it admissible and the court cannot, on its own, disregard such evidence. It held:

...

We uphold the CTA Division's admission of the supplemental evidence on distinct but mutually reinforcing grounds, to wit: (1) *the Commissioner failed to timely object to the formal offer of supplemental evidence*; and (2) *the CTA is not governed strictly by the technical rules of evidence.*

⁸⁴ See *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*, G.R. No. 222436, 23 July 2018.

⁸⁵ G.R. No. 196596, 09 November 2016; Citations omitted, italics in the original text and emphasis supplied.

First, the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence.

The Court has held that if a party desires the court to reject the evidence offered, it must so state in the form of a timely objection and **it cannot raise the objection to the evidence for the first time on appeal.**

Because of a party's failure to timely object, the evidence offered becomes part of the evidence in the case. As a consequence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.

...

Here, not only did the CIR fail to timely object to AIG's FOE, he also opted to not present his own evidence or file his memorandum to contradict AIG's claims.

Moreover and more importantly, in the previous cases of *Commissioner of Internal Revenue v. Chevron Holdings, Inc.*⁸⁶ and *Commissioner of Internal Revenue v. AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)]*⁸⁷, the Court *En Banc* has already given firm imprimatur on the presentation of printed screenshots of the foreign government's registry of companies in lieu of the Certificates/Articles of Foreign Incorporation/Association.

The Court *En Banc's* action on the matter is consistent with the Supreme Court's pronouncement in *De La Salle*⁸⁸, to wit:

...

... [T]he law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the paramount consideration remains the ascertainment of truth. We ruled that procedural rules should not

⁸⁶ CTA EB Nos. 1886 and 1887, 21 January 2020. Note that the CIR's Petition for Review on Certiorari was already denied by the Supreme Court in G.R. No. 252582 for failure to show any reversible error.

⁸⁷ CTA EB No. 2071, 07 September 2020. Note that the CIR's Petition for Review on Certiorari was already denied by the Supreme Court in G.R. No. 256195 for failure to show any reversible error.

⁸⁸ Supra at note 85.

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bar courts from considering undisputed facts to arrive at a just determination of a controversy.

...

It is equally important to note, nonetheless, that only those printed screenshots which are accessible and verifiable from the official websites of the respective foreign jurisdictions (where its clients are registered or incorporated) can be given probative value to prove the 2nd component.

After an assiduous review of the pieces of evidence proffered by AIG, the Court *En Banc* finds that only Direct DME, Inc. is supported by a screenshot⁸⁹ of a foreign government website - the State of Delaware's Department of State - Division of Corporations' website. As to the *other* entities, their supporting documents cannot be given the same probative value considering that they were not sourced from the official websites of foreign government's registry of companies. At most, they are either a mere list apparently sourced from "AIG 2013 Form 10K"⁹⁰, Master Agreement for Professional Services⁹¹, screenshot of websites of AIG's affiliates and/or documents in foreign language that were not accompanied by an official translation into English or

⁸⁹ Exhibit "P-161(a)", CD.

⁹⁰

Foreign Client Name	Exhibit
AIG Caspian Insurance Company (Chartis Azerbaijan Insurance Company)	"P-118(a)"
AIG Europe SA-Finland (Chartis Europe SA-Finland)	"P-120(a)"
AIG Insurance & Reinsurance Company (CJSC Chartis)	"P-125(a)"
AIG Kazakhstan Insurance Company (Chartis Kazakhstan Insurance Co. JSC)	"P-126(a)"
AIG Ukraine Insurance Company (Chartis Ukraine Insurance Company CJSC)	"P-128(a)"
Chartis Chile Compania Seguros Generales S.A.	"P-133(a)"
Chartis Egypt Insurance Co. S.A.E.	"P-132(a)"
Chartis Insurance Hongkong Limited	"P-146(a)"
Chartis Seguros Brasil S.A.	"P-149(a)"
Chartis Seguros Colombia S.A.	"P-150(a)"
Health Direct, Inc.	"P-163(a)"
La Meridional CIA ARG DE Seguros SA	"P-165(a)"
La Seguridad De Centro America SA	"P-166(a)"
UZ AIG/UZBEK American Insurance	"P-173(a)"
Venezuela Casai	"P-174(a)"
Chartis Insurance Company China Limited (Chartis China)	"P-145(a)"

⁹¹

Foreign Client Name	Exhibit
Chartis Seguros Mexico SA DE C.V. (AIU Mexico)	"P-151"
Chartis Seguros, El Salvador S.A.	"P-152"

Filipino⁹², as required by Section 33⁹³, Rule 132 of the Revised Rules on Evidence.

Thus, it is only for Direct DME, Inc. that AIG was able to satisfy the two-prong requirement of being an NRFC, in addition to those previously accorded such status by the Third Division.

Anent the 3rd condition that payment for such services must be in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations, Capuchino was able to ascertain, as provided in the ICPA Report⁹⁴, that the payments from Direct DME, Inc. were duly supported by VAT ORs⁹⁵ stamped as zero-rated and Certification (of inward remittance) issued by East West Banking Corp.⁹⁶, to wit:

Name of Customer	OR No.	Amount of Sales per SLS in PHP	Inward Remittance Reference No.
DIRECT DME, INC.	BPOOR-0000662	₱1,159,269.10	IR-2012-F60106237207000
	BPOOR-0000709	1,130,620.42	IR-2012-F60207355140000
	BPOOR-0000631	1,151,223.20	IR-2012-F61208238678000
	BPOOR-0000772	1,128,404.50	IR-2012-F60313365135000
	BPOOR-0000812	1,132,361.50	IR-2012-F60416167629000
	BPOOR-0000848	1,123,603.34	IR-2012-F60508372558000
	BPOOR-0000893	1,145,551.50	IR-2012-F60606032059000
	BPOOR-0000937	1,106,113.40	IR-2012-F60705226155000
	BPOOR-0000991	1,102,024.50	IR-2012-F60813156025000
	BPOOR-0001038	1,111,389.40	IR-2012-F60910173665000

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Foreign Client Name	Exhibit
Chartis Europe SA-Czech Republic	"P-134(r)"
Chartis Europe SA-Denmark	"P-134(g)"
Chartis Europe SA-Italy	"P-134(n)"
Chartis Europe SA-Netherlands	"P-134(p)"
Chartis Europe SA-Sweden	"P-134(g)"
Chartis Europe SA-Belgium	"P-134(k)"
Chartis Europe SA-France	"P-134(m)"
American Home Assurance Korea	"P-130(e)"
Chartis Europe SA-Spain	"P-134(o)"
UZ AIG/UZBEK American Insurance Company (Chartis Uzbekistan)	"173(c)"

93 **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

94 ICPA Report, Annex E.

95 Exhibit "P-198", CD.

96 Exhibits "P-34" and "P-35", CD.

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Name of Customer	OR No.	Amount of Sales per SLS in PHP	Inward Remittance Reference No.
	BPOOR-0001077	1,101,892.60	IR-2012-F61010025773000
	BPOOR-0001156	1,089,494.00	IR-2012- F61107079910000
Total		₱13,481,947.46	

In sum, the Court *En Banc* rules that printed screenshots of foreign government official websites may be given probative value in the absence of proof of actual manipulation. However, since the Court *En Banc* was only able to confirm Direct DME, Inc. as the one sourced from a verifiable foreign government website, only the sales to the said client-affiliate in the total amount of ₱13,481,947.46 shall be added to AIG's valid zero-rated sales previously found by the Third Division.

THE TOTALITY OF EVIDENCE WOULD SHOW THAT AIG SHARED SERVICES CORPORATION (PHILIPPINES) PERFORMED ITS SERVICES IN THE PHILIPPINES.

The Third Division also ruled that since AIG's service agreements with the following NRFCs are bereft of any stipulation that the services would be performed in the Philippines, the same were disallowed as valid zero-rated sales:

1. Chartis Asia Pacific PTE LTD
2. Chartis Far East Holdings
3. AIG Global Services
4. American Home Assurance Company, UAE
5. Chartis Far East Holdings KK
6. Chartis Europe SA
7. Chartis Global Services Company
8. Chartis Insurance UK Limited
9. Chartis International O&S HO
10. Chartis Sigorta A.S.
11. Chartis South Africa Limited
12. Chartis UK Services Limited
13. Chartis Asia Pacific PTE LTD.
14. Chartis Kenya Insurance Co. Ltd.
15. Guam Insurance Adjusters
16. TATA AIG Gen. Insurance Co. Ltd. India
17. AIG Global Services Malaysia
18. Chartis Insurance Ltd. Sri Lanka

19. Chartis Europe SA-Ireland
20. Chartis New Hampshire Insurance, Pakistan
21. Chartis Singapore Insurance Pte Ltd.
22. Chartis Southeast Asia Limited
23. Chartis Technology & Operations Mgmt. (M) SDN BHD
24. Chartis Thailand & Universal Insurance

AIG argues, however, that the totality of its evidence proves that its services were performed in the Philippines.

We agree with AIG.

The *unrebutted* testimony⁹⁷ of Bhanotha categorically stated that its services were performed in the Philippines, viz:

...

15. Q: How come?

A: The Company has **two locations for the services it provides** one here, in **Makati**, and the other is in **Muntinlupa**. The principal office located here at 46th floor PBCom Tower 6795 Ayala Avenue cor. Rufino Street Makati City houses the information technology (IT) unit of the Company. The Company's BPO unit, on the other hand, is housed at the Ground floor, 6th to 11th, 14th Floor of Paragon Corporate Center in Muntinlupa City.⁹⁸

...

Barayuga's testimony⁹⁹ corroborated the aforementioned fact, to wit:

...

19. Q: Going back to the Company's foreign clients. Considering that the Company is **operating here in the Philippines** and its clients are all based abroad,

⁹⁷ Question and Answer (Q&A) No. 15, Sworn Statement of Pradeep Bhanotha, Exhibit "P-248", Division Docket, Volume I, p. 480.

⁹⁸ Emphasis supplied.

⁹⁹ Question and Answer (Q&A) No. 19, Sworn Statement of Mary Cris Barayuga, Exhibit "P-241", Division Docket, Volume I, p. 365.

how does the Company render its services to its foreign clients?

A: The Company renders services to its foreign clients via phone calls, e-mail, and other electronic means.¹⁰⁰

...

Moreover, Section (2)3, Book III, Executive Order No. 226, as amended by RA 8756¹⁰¹ describes the nature of an ROHQ as “foreign business entity which is allowed to **derive income in the Philippines** by performing qualifying services ...”¹⁰²

On the other hand, the CIR’s Answer¹⁰³ made no mention of AIG’s purported failure to comply with this requirement. As previously mentioned, the CIR likewise did not present any evidence to disprove any of AIG’s claim or even file his memorandum despite due notice. As it is, the un rebutted testimonies of its witnesses coupled by the presumption¹⁰⁴ (which shall stand if uncontradicted) that AIG, as an ROHQ, renders the qualifying services in the Philippines, are competent evidence to prove that it rendered it services here.

In addition, a further examination of other documentary evidence presented by AIG would show that its services were indeed rendered in the Philippines.

It must be noted that AIG, as an ROHQ, is considered as resident foreign corporation for income tax purposes, and as such, is taxable only from its income from sources within the Philippines. Section

¹⁰⁰ Emphasis supplied.

¹⁰¹ Supra at note 70.

¹⁰² Emphasis supplied.

¹⁰³ Division Docket, Volume I, pp. 276-278.

¹⁰⁴ Section 3(q) and (ff), Rule 131 of the Revised Rules on Evidence provides:

...

SEC. 3. Disputable Presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

...

(q) That the ordinary course of business has been followed;

...

(ff) That the law has been obeyed[.]

...

23(F) in relation to Section 28(A)(6)(b) of the NIRC of 1997, as amended¹⁰⁵, pertinently provide:

...
SEC. 23. General Principles of Income Taxation in the Philippines. - Except when otherwise provided in this Code:
...

(F) A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

...

SEC. 28. Rates of Income Tax on Foreign Corporations. -

(A) *Tax on Resident Foreign Corporations.* -

...

(6) *Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies.* -

...

(b) Regional operating headquarters as defined in Section 22(EE) shall pay a tax of ten percent (10%) of their taxable income.

...

An examination of AIG's Annual Income Tax Return (ITR) for FY 2012 would show that it declared sales in the total amount of ₱2,354,297,563.48.¹⁰⁶ The said amount was likewise found to be equal to the declared service income¹⁰⁷ and revenues from entities under common control¹⁰⁸ in its Audited Financial Statements (AFS) for the same year.

Consequently, AIG, an entity which is only taxable for its income from sources within the Philippines, would not have declared such amount of income if its services were not rendered here. There is simply no incentive for AIG to declare such amount of income if its services were not rendered in the Philippines because the same results to imposition of income tax of 10%.

¹⁰⁵ But prior to the changes brought about by RA No. 10963 otherwise known as "Tax Reform for Acceleration and Inclusion (TRAIN)" and RA No. 11534 otherwise known as "Corporate Recovery and Tax Incentives for Enterprise Act" or "CREATE".

¹⁰⁶ See Line 16, Part II, Exhibit "P-6", CD.

¹⁰⁷ See Statement of Total Comprehensive Income, Exhibit "P-7", CD.

¹⁰⁸ See Note 17 – Related party transactions, Exhibit "P-7", CD.

Thus, from the totality of all its evidence and guided by the rule that *only preponderance of evidence* is needed to grant relief in a civil case, AIG was able to demonstrate that its services were performed in the Philippines.

EVIDENCE ON RECORD WOULD SHOW THAT THE RECIPIENT OF AIG SHARED SERVICES CORPORATION (PHILIPPINES)' SERVICES ARE ITS AFFILIATES.

The CIR claims that AIG's sales of services are not zero-rated because the law limits an ROHQ's services to affiliates, subsidiaries or branches only. Since AIG failed to prove that the recipients of its services are its affiliate, subsidiary or branch office, it cannot be considered zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended.

First, this issue was raised for the first time in the CIR's MR on the assailed Decision. It is again noted that in the CIR's Answer, nothing was mentioned therein of AIG's non-entitlement to the claim for refund or tax credit due to its supposed failure to prove that its services were rendered only in favor of its affiliates, subsidiaries or branches. Moreover, as noted above, the CIR even failed to file his memorandum where he could have raised this issue for the Third Division's consideration. As such, the rule that arguments or issues not raised in the trial court may not be raised for the first time on appeal, as held in *Chinatrust (Phils.) Commercial Bank v. Philip Turner*¹⁰⁹, viz:

...

Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.

In Philippine Ports Authority v. City of Iloilo:

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change

¹⁰⁹

G.R. No. 191458, 03 July 2017; Citations omitted, italics in the original text and emphasis supplied.

theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.

There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:

“[C]ourts of justice have no jurisdiction or power to decide a question not in issue” and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid.

...

Second, a thorough review yet again of AIG’s documentary evidence, particularly, its ITR and AFS (both for FY 2012) would show that it rendered services only for entities under common control.

As noted above, AIG declared in its ITR a total sales of ₱2,354,297,563.48¹¹⁰ which is the same amount reflected as its revenue for entities under common control in its AFS.¹¹¹ Thus, it only means that all of AIG’s services were rendered in favor of its affiliates.

Consequently, the Court *En Banc* finds no merit in the CIR’s argument that AIG failed to prove that the recipients of its services are its affiliate, subsidiary or branch office.



¹¹⁰ Supra at note 106.

¹¹¹ Supra at note 108.

DECISION

x - x

FROM THE FOREGOING FINDINGS, IT IS ONLY PROPER FOR THE COURT *EN BANC* TO RECOMPUTE THE AMOUNT OF REFUND OR TAX CREDIT DUE TO AIG SHARED SERVICES CORPORATION (PHILIPPINES).

The Third Division ruled that out of the total declared zero-rated sales for FY 2012 in the amount of ₱2,240,430,657.47, only the amount of ₱616,680,252.36 (\$17,641,702.34) is duly supported by VAT zero-rated ORs and certification of bank inward remittances, broken down as follows:

...

<i>1st Quarter of FY 2012 (December 1, 2011 to February 29, 2012)</i>					
Name of Customer	OR No.	OR Date	Amount in Pesos	Amount in USD	Exhibit
Chartis Asia Pacific PTE LTD	0001295	13-Feb-12	900,270.00	20,995.00	"P-197-001"
Chartis Far East Holdings	0001267	21-Dec-11	226,928.00	5,195.00	"P-197-026"
AIG Employee Services, Inc.	BPOOR-0000628	09-Dec-11	209,472.00	4,800.00	"P-198-004"
	BPOOR-00000629	09-Dec-11	418,944.00	9,600.00	"P-198-005"
	BPOOR-00000630	09-Dec-11	313,509.76	7,184.00	"P-198-006"
	BPOOR-00000670	19-Jan-12	315,648.00	7,200.00	"P-198-003"
	BPOOR-00000708	08-Feb-12	513,634.24	11,984.00	"P-198-007"
AIG Global Services	0001294	10-Feb-12	6,919,003.65	190,353.00	"P-198-008"
AIG Metropolitana CIA De Seguros Y Reaseguros SA	0001285	31-Jan-12	74,952.81	1,709.69	"P-198-014"
	0001248	01-Dec-11	38,209.00	875.55	"P-198-012"
American Home Assurance Company, UAE	0001247	01-Dec-11	3,061,984.89	70,164.64	"P-198-016"
Chartis Far East Holdings KK	0001267	21-Dec-11	226,709.80	5,195.00	"P-197-026"
	0001291	08-Feb-12	215,484.77	5,026.47	"P-198-062"
Chartis Europe SA	BPOOR-0000715	09-Feb-12	187,542.26	4,277.88	"P-198-047"
	BPOOR-0000716	09-Feb-12	191,219.56	4,361.76	"P-198-048"
	BPOOR-0000717	09-Feb-12	181,194.23	4,133.08	"P-198-049"
	BPOOR-0000759	29-Feb-12	194,693.25	4,541.48	"P-198-050"
Chartis Global Services Company	BPOOR-0000756	28-Feb-12	2,148,215.70	50,110.00	"P-198-066"
	BPOOR-0000642	19-Dec-11	1,051,789.46	24,101.50	"P-198-067"

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	BPOOR-0000644	19-Dec-11	3,875,013.80	88,795.00	"P-198-068"
	BPOOR-0000645	19-Dec-11	2,186,800.40	50,110.00	"P-198-069"
	BPOOR-0000702	25-Jan-12	1,112,220.80	25,370.00	"P-198-070"
	BPOOR-0000703	25-Jan-12	3,892,772.80	88,795.00	"P-198-071"
	BPOOR-0000693	25-Jan-12	2,196,822.40	50,110.00	"P-198-072"
	BPOOR-0000749	28-Feb-12	1,386,705.17	32,346.75	"P-198-073"
	BPOOR-0000750	28-Feb-12	4,404,828.20	102,748.50	"P-198-074"
	BPOOR-0000651	06-Dec-11	50,110.00	2,186,800.40	"P-198-075"
	BPOOR-0000652	06-Dec-11	26,840.00	1,171,297.60	"P-198-076"
Chartis Insurance UK Limited	0001308	29-Feb-12	4,512,402.74	105,257.82	"P-198-086"
Chartis International O&S HO	0001275	25-Jan-12	18,777,670.24	428,322.77	"P-198-088"
Chartis Sigorta A.S.	0001280	18-Jan-12	2,895,856.02	66,055.11	"P-198-103"
	0001296	17-Feb-12	330,558.57	7,710.72	"P-198-107"
Chartis South Africa Limited	0001264	22-Dec-11	2,656,526.52	60,873.66	"P-198-108"
	0001269	22-Dec-11	4,335,124.28	99,338.32	"P-198-111"
	0001287	31-Jan-12	4,392,823.41	102,492.38	"P-198-117"
Chartis UK Services Limited	BPOOR-0000741	24-Feb-12	1,740,179.04	40,592.00	"P-198-127"
	BPOOR-0000671	19-Jan-12	656,739.86	14,980.38	"P-198-128"
	BPOOR-0000672	19-Jan-12	1,133,406.48	25,853.25	"P-198-129"
	BPOOR-0000673	19-Jan-12	2,001,997.44	45,666.00	"P-198-130"
	BPOOR-0000674	19-Jan-12	2,001,997.44	45,666.00	"P-198-131"
	BPOOR-0000675	19-Jan-12	1,999,104.00	45,600.00	"P-198-132"
	BPOOR-0000676	19-Jan-12	1,999,104.00	45,600.00	"P-198-133"
	BPOOR-0000740	24-Feb-12	1,954,872.00	45,600.00	"P-198-134"
	BPOOR-0000742	24-Feb-12	52,740.39	1,230.24	"P-198-135"
	BPOOR-0000743	24-Feb-12	62,329.55	1,453.92	"P-198-136"
	BPOOR-0000744	24-Feb-12	43,663.95	1,018.52	"P-198-137"
	Chartis Vietnam Insurance Co.	0001260	16-Dec-11	1,131,244.81	25,922.20
0001273		05-Jan-12	1,187,489.70	27,086.90	"P-198-152"
0001293		09-Feb-12	605,329.12	14,120.11	"P-198-155"
Lexington Insurance Company	BPOOR-0000605	01-Dec-11	1,019,841.14	23,920.28	"P-198-167"
	BPOOR-0000606	01-Dec-11	1,916,065.93	44,941.15	"P-198-168"
	BPOOR-0000650	21-Dec-11	3,331,286.46	76,335.62	"P-198-169"

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	BPOOR-0000655	29-Dec-11	1,604,664.62	36,770.50	"P-198-170"
	BPOOR-0000660	09-Jan-12	221,429.36	5,074.00	"P-198-171"
	BPOOR-0000661	09-Jan-12	575,018.10	13,176.40	"P-198-172"
	BPOOR-0000685	24-Jan-12	1,672,926.07	38,159.81	"P-198-173"
	BPOOR-0000745	22-Feb-12	1,630,731.93	38,039.00	"P-198-174"
	BPOOR-0000689	26-Jan-12	666,631.04	15,206.00	"P-198-175"
	BPOOR-0000690	26-Jan-12	355,805.44	81,168.00	"P-198-176"
			103,987,078.60	5,851,412.36	
2nd Quarter of FY 2012 (March 1 to May 31, 2012)					
AIG Employees Services, Inc.	0000801	10-Apr-12	1,133,137.35	26,384.00	"P-198-178"
	0000854	14-May-12	1,133,077.15	26,395.00	"P-198-037"
	0000766	09-Mar-12	1,113,777.30	26,035.00	"P-198-038"
AIG Global Services	BPOOR-0001335	19-Apr-12	3,441,768.51	80,171.64	"P-198-199"
	0001342	23-Apr-12	149,353.47	3,479.00	"P-198-201"
AIG Metropolitana CIA De Seguros Y Reaseguros SA	0001323	20-Mar-12	42,823.64	1,001.02	"P-198-202"
Chartis Sigorta A.S.	0001328	03-Apr-12	1,125,169.98	26,209.41	"P-198-205"
	0001341	23-Apr-12	1,360,247.25	31,692.62	"P-197-303"
Chartis Asia Pacific PTE LTD.	0001332	12-Apr-12	901,315.35	20,995.00	"P-198-207"
Chartis Europe SA	BPOOR-0000850	10-May-12	216,837.30	5,141.98	"P-198-228"
	BPOOR-0000800	10-Apr-12	202,141.06	4,708.62	"P-198-229"
Chartis Far East Holdings KK	0001333	16-Apr-12	220,181.96	5,128.86	"P-198-246"
Chartis Global Services Company	BPOOR-0000784	19-Mar-12	1,832,481.13	43,835.00	"P-198-257"
	BPOOR-0000837	25-Apr-12	1,818,514.80	42,360.00	"P-198-258"
Chartis Global Services	BPOOR-0000789	19-Mar-12	1,627,992.90	38,055.00	"P-198-251"
	BPOOR-0000838	25-Apr-12	9,802,206.90	228,330.00	"P-198-252"
	BPOOR-0000839	25-Apr-12	1,633,701.15	38,055.00	"P-198-253"
	BPOOR-0000868	16-May-12	1,604,779.35	38,055.00	"P-198-254"
	BPOOR-0000869	16-May-12	9,628,676.10	228,330.00	"P-198-255"
	BPOOR-0000787	19-Mar-12	10,608,212.20	247,971.30	"P-198-256"
Chartis Insurance UK Limited	0001345	24-Apr-12	1,221,358.50	28,450.00	"P-198-281"
	BPOOR-0000829	24-Apr-12	1,010,025.25	23,530.00	"P-197-060"
Chartis Kenya Insurance Co.	0001364	23-May-12	98,383.45	2,333.02	"P-197-285"

Ltd.					
Chartis South Africa Limited	0001325	29-Mar-12	7,703,805.11	180,121.70	"P-197-304"
	0001350	11-May-12	11,654,939.30	276,445.43	"P-197-307"
Chartis UK Services Limited	BPOOR-0000855	14-May-12	18,298.28	434.02	"P-197-316"
	BPOOR-0000857	14-May-12	1,925,060.50	45,650.00	"P-197-317"
	BPOOR-0000819	23-Apr-12	37,236.62	867.38	"P-197-318"
	BPOOR-0000820	23-Apr-12	2,266,704.00	52,800.00	"P-197-319"
	BPOOR-0000821	23-Apr-12	1,959,754.50	45,650.00	"P-197-320"
	BPOOR-0000826	24-Apr-12	43,983.99	1,024.79	"P-197-321"
	BPOOR-0000827	24-Apr-12	1,957,608.00	45,600.00	"P-197-322"
	BPOOR-0000828	24-Apr-12	1,937,971.82	45,142.60	"P-197-323"
	BPOOR-0000856	14-May-12	2,226,576.00	52,800.00	"P-198-324"
	Chartis Vietnam Insurance Co.	0001314	14-Mar-12	361,806.40	8,459.35
Guam Insurance Adjusters	0001370	17-May-12	72,616.74	1,722.00	"P-198-345"
Lexington Insurance Company	BPOOR-0000761	02-Mar-12	651,881.22	15,206.00	"P-198-349"
	BPOOR-0000762	07-Mar-12	3,479,672.16	81,168.00	"P-198-350"
	BPOOR-0000795	27-Mar-12	1,622,140.17	37,918.19	"P-198-351"
	BPOOR-0000794	27-Mar-12	650,512.68	15,206.00	"P-198-352"
	BPOOR-0000822	24-Apr-12	543,880.17	12,669.00	"P-198-353"
	BPOOR-0000823	24-Apr-12	1,677,569.60	39,076.86	"P-198-354"
	BPOOR-0000835	25-Apr-12	3,485,229.12	81,184.00	"P-198-355"
	BPOOR-0000860	16-May-12	641,237.02	15,206.00	"P-198-356"
	BPOOR-0000876	23-May-12	1,560,240.66	36,998.83	"P-198-357"
TATA AIG Gen. Insurance Co. Ltd. India	0001327	02-Apr-12	173,950.64	4,051.96	"P-198-387"
			98,578,836.75	2,312,048.58	
3rd Quarter of FY 2012 (June 1 to August 31, 2012)					
AIG Employees Services, Inc.	BPOOR-0000891	6-Jun-12	1,042,102.85	23,995.00	"P-197-064"
	BPOOR-0000933	4-Jul-12	905,478.35	21,595.00	"P-197-065"
	BPOOR-0000983	7-Aug-12	600,963.52	14,384.00	"P-198-397"
AIG Global Services Malaysia	0001390	14-Jun-12	619,478.57	14,263.34	"P-198-406"
	0001396	25-Jun-12	1,214,215.94	27,958.00	"P-197-066"
	0001431	27-Jul-12	3,542,097.97	84,476.46	"P-198-408"
	0001456	16-Aug-12	4,068,257.31	97,373.32	"P-197-067"
AIG Metropolitana	0001404	14-Jun-12	73,317.66	1,688.18	"P-198-412"
	0001432	17-Jul-12	36,194.40	863.21	"P-198-413"

CIA Seguros	0001441	10-Aug-12	54,928.17	1,314.70	"P-198-415"
American Home Assurance Company, UAE	0001419	19-Jul-12	460,428.30	10,980.88	"P-198-419"
	0601423	20-Jul-12	9,990,991.85	239,995.00	"P-197-068"
Chartis Europe SA	BPOOR-0000895	08-Jun-12	219,219.33	5,048.81	"P-198-463"
	BPOOR-0000945	10-Jul-12	203,960.52	4,864.31	"P-198-464"
	BPOOR-0000982	07-Aug-12	215,900.66	5,167.56	"P-198-465"
Chartis Global Services	BPOOR-0000921	20-Jun-12	9,916,371.90	228,330.00	"P-198-474"
	BPOOR-0000922	20-Jun-12	1,652,728.65	38,055.00	"P-198-475"
	BPOOR-0000962	17-Jul-12	1,595,646.15	38,055.00	"P-198-476"
	BPOOR-0000963	17-Jul-12	9,573,876.90	228,330.00	"P-198-477"
	BPOOR-0001005	22-Aug-12	1,589,937.90	38,055.00	"P-198-478"
	BPOOR-0001006	22-Aug-12	9,539,627.40	228,330.00	"P-198-479"
Chartis Global Services Company	BPOOR-0000923	20-Jun-12	3,679,389.60	84,720.00	"P-198-480"
	BPOOR-0000959	17-Jul-12	17,761,548.00	42,360.00	"P-198-481"
	BPOOR-0001013	22-Aug-12	1,769,800.80	42,360.00	"P-198-482"
Chartis Insurance UK Limited	0001392	01-Jun-12	611,146.96	14,072.00	"P-198-496"
	0001446	06-Aug-12	132,766.40	3,177.75	"P-198-497"
	BPOOR-0000908	18-Jun-12	857,047.62	19,734.00	"P-198-499"
	BPOOR-0000940	06-Jul-12	201,683.30	4,810.00	"P-198-500"
Chartis Insurance Ltd. Sri Lanka	0001434	27-Jul-12	151,868.78	3,621.96	"P-198-493"
Chartis Europe SA-Ireland	BPOOR-0000948	11-Jul-12	8,065.65	192.36	"P-197-085"
	BPOOR-0000998	16-Aug-12	70,964.16	1,698.52	"P-197-086"
Chartis Kenya Insurance Co.	0001398	27-Jun-12	154,630.78	3,560.46	"P-198-503"
	0001408	06-Jul-12	152,288.08	3,631.96	"P-198-504"
	0001442	13-Aug-12	139,017.24	3,328.16	"P-198-505"
Chartis New Hampshire Insurance, Pakistan	0001379	01-Jun-12	1,860,821.41	42,856.32	"P-198-506"
	0001458	28-Aug-12	296,648.86	7,100.26	"P-198-509"
Chartis Sigorta A.S.	0001424	20-Jul-12	3,029,555.29	72,252.69	"P-198-516"
	0001445	16-Aug-12	3,112,114.37	74,505.97	"P-198-517"
Chartis Singapore Insurance Pte Ltd.	0001467	31-Aug-12	13,567,795.50	324,743.79	"P-198-519"
Chartis South Africa Limited	0001405	02-Jul-12	7,416,102.08	176,868.64	"P-198-535"
	0001447	09-Aug-12	8,204,822.83	196,381.59	"P-198-541"
	0001448	14-Aug-12	11,679,047.90	279,536.81	"P-198-548"
Chartis Southeast Asia Limited	0001401	29-Jun-12	28,782,081.20	662,723.49	"P-198-556"
Chartis	BPOOR-	17-Jul-12	1,536,162.99	36,636.37	"P-198-579"

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Technology & Operations Mgmt. (M) SDN BHD	0000953				
	BPOOR-0000954	17-Jul-12	776,244.64	18,512.87	"P-198-580"
	BPOOR-0000977	27-Jul-12	174,428.80	4,160.00	"P-198-581"
	BPOOR-0000978	27-Jul-12	545,090.00	13,000.00	"P-198-582"
Chartis Thailand & Universal Insurance	0001422	19-Jul-12	3,060.89	73.00	"P-198-583"
Chartis Uganda Insurance Co.	0001453	22-Aug-12	119,317.68	2,856.54	"P-198-585"
	0001429	27-Jul-12	111,845.76	2,667.44	"P-198-584"
Chartis UK Services Limited LTD.	BPOOR-0000944	09-Jul-12	1,808,398.97	43,129.99	"P-198-586"
	BPOOR-0000999	16-Aug-12	109,004.02	2,609.00	"P-198-587"
	BPOOR-0000905	18-Jun-12	22,895.86	527.19	"P-198-588"
	BPOOR-0000905	18-Jun-12	2,293,104.00	52,800.00	"P-198-589"
	BPOOR-0000907	18-Jun-12	1,982,579.50	45,650.00	"P-198-590"
	BPOOR-0000938	06-Jul-12	2,213,904.00	52,800.00	"P-198-591"
	BPOOR-0000939	06-Jul-12	29,841.16	711.69	"P-198-592"
	BPOOR-0000992	06-Aug-12	17,060.54	408.44	"P-198-593"
	BPOOR-0000993	06-Aug-12	2,205,984.00	52,800.00	"P-198-594"
	BPOOR-0000994	06-Aug-12	1,736,485.85	41,562.61	"P-198-595"
	Chartis Vietnam Insurance Co.	0001433	27-Jul-12	2,599,770.28	62,002.63
0001438		07-Aug-12	937,701.41	22,449.16	"P-198-607"
0001459		28-Aug-12	1,069,145.76	25,596.02	"P-198-608"
Guam Insurance Adjusters	0001381	11-Jun-12	1,454.91	33.50	"P-198-614"
	0001439	08-Aug-12	8,940.92	214.00	"P-198-616"
Lexington Insurance Company	BPOOR-0000899	13-Jun-12	660,396.58	15,206.00	"P-198-621"
	BPOOR-0000913	20-Jun-12	10,908,009.10	251,163.00	"P-198-622"
	BPOOR-0000925	21-Jun-12	1,652,033.77	38,039.00	"P-198-623"
	BPOOR-0000950	12-Jul-12	637,587.58	15,206.00	"P-198-624"
	BPOOR-0000961	17-Jul-12	3,510,421.53	83,721.00	"P-198-625"
	BPOOR-0000974	26-Jul-12	1,594,975.27	38,039.00	"P-198-626"
	BPOOR-0001004	16-Aug-12	3,285,871.66	78,647.00	"P-198-627"
	BPOOR-0001020	23-Aug-12	635,306.68	15,206.00	"P-198-628"
BPOOR-0001022	28-Aug-12	1,589,269.42	38,039.00	"P-198-629"	
			205,531,224.64 ¹¹²	4,471,825.95	
4th Quarter of FY 2012 (September 1 to November 30, 2012)					
AIG Employee	BPOOR-0001131	14-Nov-12	574,742.40	13,984.00	"P-198-659"

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The sum arrived at is different from that computed by the Third Division in the assailed Division. Thus, the total amount for the four (4) quarters computed below is likewise adjusted.

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Services, Inc.	BPOOR-0001132	14-Nov-12	574,742.40	13,984.00	"P-198-660"
	BPOOR-0001133	19-Nov-12	32,222.40	784.00	"P-198-661"
	BPOOR-0001028	06-Sep-12	605,997.92	14,384.00	"P-198-662"
AIG Global Services	0001478	18-Sep-12	6,835,052.81	162,237.19	"P-198-663"
	0001526	22-Oct-12	22,811,078.60	546,111.53	"P-198-665"
	0001545	19-Nov-12	3,420,224.04	83,217.13	"P-198-686"
AIG Global Services Malaysia	0001560	26-Nov-12	1,603,931.61	39,025.10	"P-198-687"
	0001530	30-Oct-12	5,234,679.06	125,321.50	"P-197-104"
	0001546	19-Nov-12	729,114.00	17,740.00	"P-197-105"
	0001553	27-Nov-12	4,108,561.50	99,965.00	"P-197-106"
	0001558	28-Nov-12	2,848,714.16	69,311.78	"P-198-691"
American Home Assurance Company, UAE	0001482	11-Sep-12	4,418,323.93	104,873.58	"P-198-692"
	0001483	11-Sep-12	60,245.90	1,430.00	"P-198-699"
	0001484	11-Sep-12	317,112.51	7,527.00	"P-198-700"
	0001485	11-Sep-12	165,402.38	3,926.00	"P-198-701"
	0001486	11-Sep-12	3,852,049.22	91,454.16	"P-198-702"
	0001536	08-Nov-12	11,393,248.80	277,208.00	"P-198-704"
Chartis Asia Pacific Pte. Ltd.	0001548	19-Nov-12	863,100.00	21,000.00	"P-198-717"
	BPOOR-0001112	31-Oct-12	979,183.20	23,442.26	"P-197-107"
Chartis Europe SA	BPOOR-0001138	19-Nov-12	835,309.41	20,323.83	"P-198-758"
	BPOOR-0001031	07-Sep-12	206,045.19	4,890.70	"P-198-759"
	BPOOR-0001072	10-Oct-12	209,904.26	5,025.24	"P-198-760"
	BPOOR-0001126	15-Nov-12	213,715.07	5,199.88	"P-198-761"
Chartis Europe SA-Ireland	BPOOR-0001118	12-Nov-12	86,485.62	2,070.52	"P-198-763"
Chartis Global Services	BPOOR-0001049	21-Sep-12	1,603,257.15	38,055.00	"P-198-773"
	BPOOR-0001050	21-Sep-12	9,614,684.89	228,214.69	"P-198-774"
	BPOOR-0001085	18-Oct-12	1,589,557.35	38,055.00	"P-198-775"
	BPOOR-0001086	18-Oct-12	9,537,344.10	228,330.00	"P-198-776"
	BPOOR-0001152	29-Nov-12	9,250,739.21	225,793.00	"P-198-777"
	BPOOR-0001153	29-Nov-12	1,564,060.50	38,055.00	"P-198-778"
Chartis Global Services Company	BPOOR-0001053	21-Sep-12	1,784,626.80	42,360.00	"P-198-779"
	BPOOR-0001087	18-Oct-12	2,594,334.70	62,110.00	"P-198-780"
	BPOOR-0001157	29-Nov-12	2,355,441.00	57,310.00	"P-198-781"
Chartis Insurance Ltd. Sri Lanka	0001494	25-Sep-12	326,365.10	7,746.62	"P-198-791"
	0001540	06-Nov-12	135,718.78	3,302.16	"P-198-792"
	0001551	27-Nov-12	287,017.74	6,983.40	"P-198-793"
Chartis Kenya Insurance Company Limited	0001541	08-Nov-12	136,129.78	3,312.18	"P-198-796"
Chartis New Hampshire Insurance Co., Pakistan	0001552	28-Nov-12	427,315.06	10,396.96	"P-198-797"
Chartis Sigorta A.S.	0001496	27-Sep-12	3,483,202.23	82,677.48	"P-198-801"
	0001538	05-Nov-12	2,666,654.31	64,882.10	"P-198-804"
Chartis Singapore Insurance	0001495	27-Sep-12	5,466,160.22	129,745.08	"P-198-805"
	0001547	19-Nov-12	3,707,143.14	90,198.13	"P-198-807"
Chartis South Africa Ltd.	0001525	23-Oct-12	14,858,363.80	355,718.55	"P-198-812"
Chartis Southeast Asia Limited	0001531	30-Oct-12	19,093,057.80	457,099.78	"P-198-821"
	0001556	28-Nov-12	13,685,030.70	334,515.54	"P-198-837"
Chartis Technology &	BPOOR-0001034	11-Sep-12	125,187.19	2,971.45	"P-198-857"
	BPOOR-0001035	11-Sep-12	547,479.35	12,995.00	"P-198-858"

DECISION

x - x

Operations Mgmt. (M) SDN. HBD.	BPOOR-0001146	26-Nov-12	534,094.50	12,995.00	"P-197-134"
	BPOOR-0001074	10-Oct-12	543,010.00	13,000.00	"P-198-866"
Charis Uganda Insurance Co.	0001503	26-Sep-12	129,935.67	3,084.16	"P-198-867"
Chartis UK Services Limited	BPOOR-0001070	08-Oct-12	477,180.48	11,424.00	"P-198-868"
	BPOOR-0001134	19-Nov-12	470,184.00	11,440.00	"P-198-869"
	BPOOR-0001024	03-Sep-12	110,591.25	2,625.00	"P-198-870"
	BPOOR-0001026	03-Sep-12	1,923,908.58	45,666.00	"P-198-871"
	BPOOR-0001027	03-Sep-12	2,227,581.62	52,784.00	"P-198-872"
	BPOOR-0001068	08-Oct-12	109,646.25	2,625.00	"P-198-873"
	BPOOR-0001069	08-Oct-12	1,907,468.82	45,666.00	"P-198-874"
	BPOOR-0001137	19-Nov-12	1,876,872.60	45,666.00	"P-198-875"
	BPOOR-0001067	08-Oct-12	2,205,456.00	52,800.00	"P-198-876"
	BPOOR-0001105	25-Oct-12	22,336.93	534.76	"P-198-877"
	BPOOR-0001119	12-Nov-12	15,301.28	371.12	"P-198-878"
	BPOOR-0001135	19-Nov-12	2,170,080.00	52,800.00	"P-198-879"
Chartis Vietnam Insurance Company Limited	0001519	12-Oct-12	1,024,959.36	24,538.17	"P-198-885"
	0001559	28-Nov-12	1,139,150.62	27,716.56	"P-198-887"
Guam Insurance Adjusters	0001487	12-Sep-12	33,114.18	786.00	"P-198-892"
	0001515	12-Oct-12	64,868.81	1,553.00	"P-198-893"
	0001550	27-Nov-12	6,925.35	168.50	"P-198-894"
Lexington Insurance Company	BPOOR-0001039	11-Sep-12	1,602,583.07	38,039.00	"P-198-898"
	BPOOR-0001059	24-Sep-12	640,628.78	15,206.00	"P-198-899"
	BPOOR-0001093	18-Oct-12	6,780,440.56	162,328.00	"P-198-900"
	BPOOR-0001095	18-Oct-12	635,154.62	15,206.00	"P-198-901"
	BPOOR-0001096	18-Oct-12	1,624,212.25	38,884.66	"P-198-902"
	BPOOR-0001127	15-Nov-12	1,563,402.90	38,039.00	"P-198-903"
	BPOOR-0001130	16-Nov-12	624,966.60	15,206.00	"P-198-904"
			208,282,112.37	5,006,415.45	
Total			₱616,379,252.36	\$17,641,702.34	

...

However, as elucidated above, based on the totality of its evidence, the Court *En Banc* deems that AIG has sufficiently proven that: (1) Direct DME, Inc. is an NRFC; and, (2) its services were performed in the Philippines. Consequently, AIG's total valid zero-rated sales and the excess valid input tax attributable thereto shall be modified as follows:

Valid zero-rated sales <i>per</i> the Third Division's verification		₱72,235,195.06
Adjustments by the Court <i>En Banc</i> :		
NRFC duly supported by a screenshot of the official website of the foreign jurisdiction where it is	₱13,481,947.46	

DECISION

x x

registered or incorporated (i.e., Direct DME, Inc.)		
Sales that were duly supported by VAT ORs and certificate of inward remittances but were previously disallowed because the pertinent service agreements do not specify that the services would be rendered in the Philippines	544,144,057.30 ¹¹³	557,626,004.76
Adjusted valid zero-rated sales		₱629,861,199.82
Divided by the total zero-rated sales for FY 2012 (per Quarterly VAT Returns)		/ 2,240,430,657.47
Multiplied by valid excess input tax due or paid as found by the Third Division		x ₱61,841,236.86
Excess Valid Input Tax Due or Paid Allocated to Zero-Rated Sales/Receipts		₱17,385,673.38

WHEREFORE, in view of the foregoing, AIG Shared Services Corporation (Philippines)'s Petition for Review filed on 18 February 2021 is hereby **PARTIALLY GRANTED** while the Petition for Review filed by the Commissioner of Internal Revenue on 24 February 2021 is **DENIED** for lack of merit.

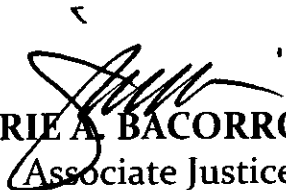
Accordingly, the Decision dated 29 June 2020 and Resolution dated 08 January 2021, respectively, of the Third Division in CTA Case No. 8850, entitled *AIG Shared Services Corporation (Philippines) [formerly: Chartis Technology and Operations Management Corporation (Philippines)] v. Commissioner of Internal Revenue*, are hereby **MODIFIED**. Consequently, the Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in the total increased amount of **₱17,385,673.38** in favor of AIG Shared Services Corporation (Philippines), representing its

¹¹³ Computed as follows:

Disallowed duly supported sales due to the lack of stipulation in the service agreements = Total duly supported sales of ₱616,379,252.36 less valid zero-rated sales per assailed Decision of ₱72,235,195.06.

unutilized excess input taxes attributable to its zero-rated sales for the four (4) quarters of the fiscal year ended 30 November 2012.

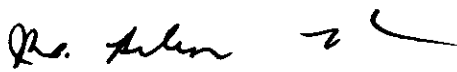
SO ORDERED.



JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:



ROMAN G. DEL ROSARIO
Presiding Justice



ERLINDA P. UY
Associate Justice


MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

ON OFFICIAL BUSINESS
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice


(With Concurring and Dissenting Opinion)
MARIAN IVY F. REYES-FAJARDO
Associate Justice


LANEE S. CUI-DAVID
Associate Justice


CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[FORMERLY: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION (PHILIPPINES)],
Petitioner,

CTA EB No. 2424
(CTA Case No. 8850)

- versus -

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x-----x

COMMISSIONER OF INTERNAL
REVENUE,
Petitioner,

CTA EB No. 2433
(CTA Case No. 8850)

Present:

- versus -

AIG SHARED SERVICES
CORPORATION (PHILIPPINES)
[FORMERLY: CHARTIS
TECHNOLOGY AND
OPERATIONS MANAGEMENT
CORPORATION (PHILIPPINES)],
Respondent.

DEL ROSARIO, PJ,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID, and
FERRER-FLORES, II.

Promulgated:

NOV 17 2022

x-----x

CONCURRING AND DISSENTING OPINION

REYES-FAJARDO, J.:

I concur with my esteemed colleague, Associate Justice Jean Marie A. Bacorro-Villena in holding that the recipients of AIG Shared Services Corporation (Philippines) (AIG) are its affiliates, contrary to the assertion of the Commissioner of Internal Revenue (CIR) that the service recipients of AIG are not its affiliate, subsidiary, or branch office and therefore were not rendered to entities doing business outside the Philippines. I agree in the finding that AIG's Audited Financial Statements for fiscal year 2012 (FY 2012) show that it rendered services to entities under common control which was reported as revenue amounting to ₱2,354,297,563.48 and which was likewise declared as revenue in its Income Tax Return for FY 2012.

However, with all due respect, I disagree with the *ponencia* insofar as it ruled (1) that printed screenshots in the absence of proof of actual manipulation may be given probative value to establish that an entity is not engaged in trade or business in the Philippines; and (2) that the totality of evidence would show that AIG performed its services in the Philippines.

For AIG to establish that the recipient of their services is a foreign corporation doing business out of the Philippines, or is a nonresident person not engaged in business, there must be proof of two components: (i) that their foreign affiliate was established under the laws of a country not the Philippines; and (ii) that it is not engaged in trade or business in the Philippines.

The first component, that the foreign affiliate is not a domestic corporation, may be proven by Philippine Securities and Exchange Commission Certifications of Non-Registration, which confirm that the foreign affiliates are foreign corporations. The second component, that the foreign affiliate is not engaged in trade or business in the Philippines, may be evidenced by the foreign affiliates' certificate of incorporation in another country. These requirements of proof of both components are especially required from ROHQs like AIG, as was

sufficiently explained by the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte Ltd.*,¹ to wit:

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

Such proof must be especially required from ROHQs such as DKS. That the law expressly authorized ROHQs to render services to local and foreign affiliates alike only stresses the ROHQ's burden to distinguish among their clients' nationalities and actual places of business operations and establish that they are seeking refund or credit of input VAT only to the extent of their sales of services to foreign clients doing business outside the Philippines.

xxx xxx xxx

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*. **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.²**

Since the screenshots from official websites of foreign governments albeit electronic documents³ are presented as "written

¹ G.R. No. 234445, July 15, 2020.

² Boldfacing supplied.

³ Section 1 (h), Rule 2, Rules on Electronic Evidence provides:

"(h) "Electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic document" may be used interchangeably with "electronic data message." "

official acts, or records of the sovereign authority of a foreign country,"⁴ these are public documents, for which proper authentication must be established under the Rules of Court.⁵ In particular, Sections 24 and 25, Rule 132 of the Rules of Court, as amended, read:

Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention⁶ to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate

⁴ Section 19, Revised Rules on Evidence (2019) provides:

Section 19. *Classes of documents.* – For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments;
- (c) Documents that are considered public documents under treatise and conventions which are in force between the Philippines and the country of source; and
- (d) Public records, kept in the Philippines, of private documents required by law to be entered therein.

⁵ *MCC Industrial Sales Corporation v. Ssangyong Corporation*, GR No. 170633, October 17, 2007.

⁶ Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41> took effect in the Philippines on May 14, 2019. Public documents executed in Apostille-contracting countries and territories (except for Austria, Finland, Germany, and Greece) to be used in the Philippines no longer have to be authenticated by the Philippine Embassy or Consulate-General once apostilled.

or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality.

Section 25. *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be the clerk of a court having a seal, under the seal of such court.

Under Rule 132 of the Revised Rules on Evidence, public documents, such as records of foreign jurisdictions, may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record the attestation must state that the copy is a correct copy of the original.

In addition, the Rules on Electronic Evidence provide that when a rule of evidence refers to the term writing, document, record, instrument, memorandum, or any form of writing, such term shall include an electronic document. The Rules on Electronic Evidence require that an electronic document be authenticated in the manner prescribed by the Rules of Court. Rule 9, Section 1 provides:

Rule 9
METHOD OF PROOF

Section 1. Affidavit evidence. – All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

Anent the finding that the totality of evidence would show that AIG performed its services in the Philippines for the foreign affiliates as enumerated in the *ponencia*,⁷ with due respect, I likewise disagree.

⁷ Chartis Asia Pacific PTE LTD; Chartis Far East Holdings; AIG Global Services; American Home Assurance Company, UAE; Chartis Far East Holdings KK; Chartis Europe SA; Chartis Global Services Company; Chartis Insurance UK Limited; Chartis International O&S HO; Chartis Sigorta A.S.; Chartis South Africa Limited; Chartis UK Services Limited; Chartis Kenya Insurance Co. Ltd.; Guam Insurance Adjusters; TATA AIG Gen. Insurance Co. Ltd. India; AIG Global Services Malaysia; Chartis Insurance Ltd. Sri Lanka; Chartis Europe SA-Ireland; Chartis New Hampshire Insurance, Pakistan; Chartis Singapore Insurance Pte Ltd.; Chartis Southeast Asia Limited; Chartis Technology & Operations Mgmt. (M) SDN BHD; and Chartis Thailand & Universal Insurance.

It was noted that AIG's service agreements/work orders for AIG Global Services Malaysia⁸ and Chartis Technology & Operations Mgmt. (M) SDN BHD,⁹ particularly provide the Service Project Location, to wit:

1. *Services.*

Vendor [AIG] shall assign to the Customer [foreign affiliate] Project Leader(s) for the duration of the assignment period specific in this Work Order.

Customer will assign a temporary reporting senior in the local business responsible for oversight and personnel support of the Project Leader(s).

2. *Service Project Location.*

The Project Leader(s) will perform the Services at the Customer's office located at G-1, Enterprise 1, Technology Park Malaysia, Bukit Jalil, Kuala Lumpur, Malaysia, 57000.

As cited in the *ponencia*, there were service agreements that were bereft of any stipulation that the services would be performed in the Philippines and that the lack of such stipulation called for an appreciation of the totality of evidence to establish that AIG performed its services in the Philippines.

A majority of these service agreements are in the form of a 'Master Agreement for Professional Services' (Master Agreement). In 1.1¹⁰ of these Master Agreements a Work Order shall provide the details of the services to be rendered by AIG. While it is true that the enumerated services agreements in the *ponencia* lacked a stipulation on where the services will be performed or lacked a Work Order attached

⁸ Exhibit "P-123".

⁹ Exhibit "P-155".

¹⁰ 1.1 Work Orders. Customer may from time to time during the term of this Agreement issue Work Orders, which shall be in a format substantially similar to that of the Work Order attached hereto as Exhibit "A" and shall, inter alia, describe in detail the services ("Services") and/or deliverables ("Deliverables") to be provided. Each Work Order shall, upon execution by the Parties, incorporate therein the terms and conditions of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of such Work Order, the terms of this Agreement shall govern. For purposes of this Agreement, "Deliverables" shall mean, collectively: (a) any material(s) that are described as "deliverables" herein in any Work Order, or that are otherwise delivered or to be delivered to Customer by Vendor hereunder; and (b) any other material(s) prepared by or on behalf of Vendor in the course of performing the Services.

thereto, I noted other Master Agreements following the same form to have a Work Order stipulating that AIG will perform its services outside the Philippines, to wit:

1. Services.

Vendor will perform 'subject matter expert' (SME) role...

...

The SME role will involve working closely with the regional program management and individual key users in each of the noted countries to provide education in the business requirements...

Under the above stated services, Vendor shall second to the Customer two (2) Subject Matter Experts (SMEs) for the duration of the assignment period specified in this Work Order.

...

2. Service Project Location.

The SMEs will perform the Services at the office locations in each of the LAD [Latin America Division] countries listed above [Uruguay, Argentina, Mexico, Puerto Rico, Colombia, Venezuela, Brazil, El Salvador, Ecuador, Guatemala, and Chile]. Customer shall advise Vendor and the SMEs of the exact office address.

From time-to-time, based on a schedule mutually agreed by both Parties, Vendor may perform the Services from its Philippines offices:

- Makati Office: located at the 46th Floor, PBCom Tower, 6795 Ayala Avenue cor. Rufino Street, Makati City
- Alabang Office: located at the 8th Floor, Paragon Corporate Center, Lot 6, Industry St, Madrigal Business Park, Ayala Alabang, Muntinlupa City and, when required at specific periods in the project plan or as requested by the Customer and concurred to by the Vendor, at Customer site.

xxx xxx xxx

10. Fees.

xxx xxx xxx

CONCURRING AND DISSENTING OPINION

CTA EB No. 2424 & 2433 (CTA Case No. 8850)

Page 8 of 8

Customer shall provide Per Diem directly to the Vendor's SMEs for all full or part days whenever the SMEs are located in the Customer's premises or LAD offices, as noted above.

The cited service agreements in the *ponencia* lacked an express stipulation where the services of AIG will be performed. However, considering the totality of evidence which includes the stipulation of the project location for other similarly worded service agreements, and bearing in mind that a taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of the claim, the same being construed strictly against the taxpayer, I vote to **REMAND** the case to the Court in Division to determine the amount refundable to AIG.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice