REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **March 29, 2023** *which reads as follows*:

"**G.R. No. 260410 (The Commissioner of Internal Revenue,** Petitioner **v. Chevron Holdings, Incorporated,** Respondent). — This Court resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the Commissioner of Internal Revenue (*CIR*), assailing the Decision[2] and the Resolution[3] of the Court of Tax Appeals (*CTA*) *En Banc*, which affirmed the Decision[4] and the Resolution[5] of the CTA-Third Division that partially granted the claim of Chevron Holdings, Inc. (*Chevron*), formerly Caltex (Asia) Limited, for tax refund/credit of unutilized input value added tax (*VAT*) attributable to zero-rated sales.

Chevron is a corporation organized and existing under the laws of the State of Delaware, United States of America. It was granted a license by the Securities and Exchange Commission (*SEC*) under SEC Reg. No. A199802486 and is registered with the Bureau of Internal Revenue (*BIR*) as a VAT taxpayer with Tax Identification No. 201-056-391-0000.[6]

On December 18, 2015 and April 1, 2016, Chevron filed administrative claims for refund or issuance of a tax credit certificate on its unutilized and excess input VAT for the first and second quarters of taxable year 2015, respectively.[7]

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1 *Rollo*, pp. 15–45.

2 *Id.* at 47–59. The December 09, 2021 Decision in CTA EB No. 2355 was penned by Presiding Justice Roman G. Del Rosario, and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, and Marian Ivy F. Reyes-Fajardo, *En Banc*, Court of Tax Appeals.

3 *Id.* at 61–65. The April 26, 2022 Resolution in CTA EB No. 2355 was penned by Presiding Justice Roman G. Del Rosario, and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Ma. Belen M. Ringpis-Liban, Catherine T. Manahan, Jean Marie A. Bacorro-Villena, Maria Rowena Modesto-San Pedro, Marian Ivy F. Reyes-Fajardo, and Lanee S. Cui-David, *En Banc*, Court of Tax Appeals.

4 *Id.* at 83–134. The February 12, 2020 Decision in CTA Case Nos. 9350 and 9430 was penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred in by Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro of the Third Division, Court of Tax Appeals.

5 *Id.* at 135–141. The September 29, 2020 Resolution in CTA Case Nos. 9350 and 9430 was penned by Associate Justice Ma. Belen M. Ringpis-Liban, and concurred in by Associate Justices Erlinda P. Uy and Maria Rowena Modesto-San Pedro of the Third Division, Court of Tax Appeals.

6 *Id.*

7 *Id.* at 49.

As the CIR failed to act on Chevron's administrative claims,[8] the latter, on May 16, 2016 and August 17, 2016, filed its judicial claims for refund or tax credit for the first quarter of 2015 in the amount of PHP 14,516,165.27 (docketed as CTA Case No. 9350),[9] and for the second quarter of 2015 in the amount of PHP 18,968,294.79[10] (docketed as CTA Case No. 9430), respectively.

Chevron argued that it was entitled to a claim for refund in the total amount of PHP 33,484,460.06, which purportedly represented VAT payments on purchases of goods, importation of goods, domestic purchases of services, and purchases of services rendered by non-residents.[11]

These two cases were consolidated, and a trial ensued.[12]

While it was established that Chevron was a VAT-registered person,[13] that it timely filed its administrative and judicial claims within the prescriptive period,[14] and that it was engaged in zero-rated sales,[15] the CTA-Third Division only partially granted its consolidated Petitions for Review.

The CTA-Third Division held that not all zero-rated sales declared by Chevron were duly supported by a certificate or proof of inward remittances and zero-rated official receipts.[16] It likewise ruled that not all of Chevron's sales of services to non-resident foreign affiliates qualified for VAT zero-rating since Chevron failed to submit at least a SEC Certificate of Non-registration and proof of foreign incorporation/association for each entity.[17]

The CTA-Third Division also disallowed claims of input VAT that were not properly substantiated by VAT invoices and official receipts.[18]

As Chevron was engaged in mixed transactions, *i.e.*, both zero-rated and taxable sales, the amount of creditable input taxes was allocated proportionately by the CTA-Third Division on the basis of Chevron's volume of sales.[19]

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8 *Id.* at 100.
9 *Id.* at 49.
10 *Id.*
11 *Id.* at 119.
12 *Id.* at 50.
13 *Id.* at 100.
14 *Id.* at 99–100.
15 *Id.* at 100–114.
16 *Id.* at 109–114.
17 *Id.* at 104–106.
18 *Id.* at 119–130.
19 *Id.* at 130–131.

In its Decision,[20] the CTA-Third Division partially granted Chevron's Petitions for Review and ruled that Chevron was entitled to a refund or issuance of tax credit certificate in the amount of PHP 27,540,901.25. The dispositive portion of the Decision states:

> **WHEREFORE**, in light of the foregoing considerations, the instant consolidated *Petitions for Review* is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of **P[HP] 27,540,901.25**, representing the latter's unutilized input VAT attributable to Petitioner's zero-rated sales for the first and second quarters of TY 2015.
>
> **SO ORDERED**.[21] (Emphasis in the original)

CIR filed a Motion for Partial Reconsideration but was denied by the CTA-Third Division in its Resolution.[22]

Aggrieved, CIR filed a Petition for Review before the CTA *En Banc*, which was docketed as CTA EB No. 2355.[23]

Before the CTA *En Banc*, CIR reiterated its arguments that Chevron was not entitled to a tax credit or refund allegedly because the latter failed to establish that its input taxes on its purchases were directly attributable to its zero-rated sales.[24]

CIR insisted that not all input taxes from purchases by a business are creditable as input tax,[25] that purchases for "personal activities, business entertainment, corporate events, and outside office meetings" cannot be claimed "as an attributable and creditable input tax"[26] because these do not come from purchases of goods that form part of the taxpayer's finished product, or that these are not directly used in the chain of production.[27] It was CIR's posture that for input taxes on the purchase of goods to be creditable, these must "factor in the chain of production."[28]

CIR also claimed that, after determining which input taxes are creditable under Section 110(A) of the Tax Code, Section 112(A) requires a "second evaluation" to determine which "creditable" input taxes are "attributable" to zero-rated sales for purposes of computing refunds.[29]

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20 *Id.* at 83–134. Dated February 12, 2020.
21 *Id.* at 132–133.
22 *Id.* at 135–139. Dated September 29, 2020.
23 *Id.* at 66–82.
24 *Id.* at 70–71.
25 *Id.* at 70.
26 *Id.*
27 *Id.* at 71.
28 *Id.*
29 *Id.*

On December 13, 2021, the CTA *En Banc* rendered its Decision[30] denying CIR's Petition. It ruled that nowhere under either Sections 112(A) or 110(A) of the Tax Code does it show that there is a legal basis to limit the creditable input tax exclusively to those purchases or importation of goods that form part of the finished products, or those directly used in the chain of the production.[31] The dispositive portion reads:

> **WHEREFORE**, in light of the foregoing, the Petition for Review filed on October 20, 2020 by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. The assailed Decision dated February 12, 2020 and assailed Resolution dated September 29, 2020 of the Court in Division in CTA Case Nos. 9350 & 9430 are hereby **AFFIRMED**.
>
> **SO ORDERED**.[32] (Emphasis in the original)

CIR sought reconsideration but was denied in the CTA *En Banc* Resolution.[33]

Hence, the instant Petition.

The sole issue is whether the CTA *En Banc* erred in holding that Chevron is entitled to a refund in the amount of PHP 27,540,901.25 representing unutilized input VAT attributable to zero-rated sales for the first and second quarters of TY 2015.

The Petition lacks merit.

In the present case, Chevron elected to have its input taxes attributable to zero-rated sales charged against its output taxes (from its regular 12% VAT-able sales).[34] Chevron claims it is entitled to a refund or the issuance of tax credit certificate on the unutilized or "excess" input tax.[35]

In the case of *Chevron Holdings Inc. v. Commissioner of Internal Revenue* (*Chevron Holdings*),[36] this Court had the occasion to discuss the input-output credit mechanism under our VAT system, *viz.*:

> Under the Philippine VAT system, it is the end-user of consumer goods or services that ultimately shoulders the tax because the liability is passed on to them by the providers of these goods or services. The end-users, in turn, may deduct their VAT liability (or input tax) from the VAT payments they receive from the final consumers (or output VAT). One entity's output tax

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30 *Id.* at 47–59. Dated December 9, 2021.
31 *Id.* at 56.
32 *Id.* at 58.
33 *Id.* at 61–65. Dated April 26, 2022.
34 *Id.* at 151.
35 *Id.*
36 G.R. No. 215159, July 5, 2022 [Per J. Lopez, M., *En Banc*].

is another person's input tax. This mechanism allows taxpayers to offset the tax they have paid on their purchases of goods and services against the tax they charge on their sales of goods and services. The input-output credit system is consistent with the nature of VAT as a tax levied only on the value-added and to avoid the so-called "tax on tax" or a cascading effect. Simply put, no tax is imposed on goods or services previously taxed in the chain. The Court explained in *Commissioner of Internal Revenue v. San Roque Power Corp.*, to wit:

> As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties[,] or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.
>
> Thus, the seller-taxpayer pays to the government only the "excess" of the output VAT from the input VAT or the tax on the value that he adds to the goods and services that he is selling. If the taxpayer had more creditable input taxes than output taxes in a given period, the excess shall be carried forward to the succeeding periods and applied against its future output VAT.[37] (Citations omitted)

However, in cases where the taxpayer is engaged in the export of goods and/or services, its sales are generally VAT-free or are zero-rated, pursuant to the Destination Principle of our VAT System, thus:

> The tax treatment of export sales is based on the Cross Border Doctrine and Destination Principle of the Philippine VAT system. Under the Destination Principle, goods and services are taxed only in the country where these are consumed. In this regard, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with VAT[.][38] (Citations omitted)

In such instances, since the seller-taxpayer charges no output tax to its purchasers, it may instead claim a refund of or a tax credit certificate for the VAT previously charged by its own suppliers. As this Court explained:

> Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess

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37 *Id.* at 14–15. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

38 *Commissioner of Internal Revenue v. Filminera Resources Corp.*, G.R. No. 236325, September 16, 2020 [Per J. Lopez, J., First Division].

> over the output taxes shall instead be refunded to the taxpayer or credited against other internal revenue taxes.
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> . . . .
>
> Zero-rated *transactions* generally refer to the export sale of goods and supply of services. The tax rate is set at zero. When applied to the tax base, such rate obviously results in no tax chargeable against the purchaser. The seller of such *transactions* charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.
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> . . . .
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> Applying the *destination principle* to the exportation of goods, automatic zero rating is primarily intended to be enjoyed by the seller who is directly and legally liable for the VAT, making such seller internationally competitive by allowing the refund or credit of input taxes that are attributable to export sales[.][39] (Emphasis in the original and citations omitted)

In the case at bar, CIR asserts that Chevron is not entitled to a refund or tax credit as it was unable to establish the attributability between the input taxes paid on its purchases vis-a-vis its zero-rated sales.[40] CIR maintains that a "direct attributability"[41] is required by Sections 112(A) and 110(A) of the Tax Code, as amended.

The requirements for entitlement to a refund or the issuance of a tax credit certificate of unutilized input VAT attributable to zero-rated sales are provided in Section 112(A) of the Tax Code, which reads:

> **SEC. 112. Refunds or Tax Credits of Input Tax. —**
>
> **(A) Zero-rated or Effectively Zero-Rated Sales.** — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): **Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales**: Provided, finally, That for a person making sales that are

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[39] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 333–335 (2005) [Per J. Panganiban, Third Division].

[40] *Rollo*, p. 23.

[41] *Id.* at 24.

> zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales. (Emphasis supplied)

In *Chevron Holdings*, this Court enumerated the requirements set forth in Section 112(A):

> Thus, to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; **(2) the input tax is attributable to the zero-rated sales**; (3) the input tax is not transitional; (4) the input tax was not applied against the output tax; and **(5) in case the taxpayer is engaged in mixed transactions, *i.e.*, VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.**[42] (Emphasis supplied and citation omitted)

Based on the foregoing, the attributability in Section 112(A) refers to the type of sales transaction the taxpayer is engaged in. If the input taxes are not wholly attributable to zero-rated sales transactions as contemplated in the second requisite, then the input taxes may be proportionately allocated to any of those other transactions that apply, *i.e.*, "VAT-able and/or exempt."

Tellingly, Section 112(A) does not require direct attributability for input tax to be creditable or refundable. In sooth, the law allows as tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to their zero-rated sales. In such instance, what the law requires is for the creditable input tax to be attributable to the zero-rated or effectively zero-rated sales.[43]

It bears emphasis that the "direct attributability" posited by CIR is not at all reflected in the tax computations underlying the Decision of this Court in *Chevron Holdings*. There, We cited CIR's own Revenue Regulation (*RR*) No. 16-2005, as amended by RR No. 4-2007, that illustrated the apportionment of input tax in case of mixed transactions. On the import of RR No. 16-2005, as amended, this Court stated that:

> Thus, the refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated, and exempt) multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.[44]

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42 *Supra* note 36, at 13–14. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

43 See *Republic v. Taganito HPAL Nickel Corp.*, G.R. No. 259024, September 28, 2022 (Notice) at 2. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

44 *Supra* note 36, at 27. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.

CIR also argues that Section 110(A) of the Tax Code "expressly provides that for input taxes on the purchase of goods to be 'creditable,' they must be a factor in the chain of production."[45]

This is erroneous.

Section 110(A)[46] provides that creditable input tax does not arise solely from purchases of goods that form part of the finished product. This is merely one among other enumerated transactions in Section 110(A) that are treated as sources of creditable input tax.

A plain reading of Section 110 of the Tax Code readily reveals that it did not limit creditable input tax to purchases or importation of goods that are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production. In particular, Section 110(A) also treats as input tax all VAT due from or paid by a VAT-registered person in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.[47]

In affirming the CTA-Third Division, the CTA *En Banc* found that Chevron has a valid creditable input tax in the amount of PHP 39,168,665.68 for the first and second quarters of taxable year 2015.[48] Since the same cannot be directly or entirely attributed to its zero-rated sales and taxable sales, the CTA *En Banc* allocated the valid input tax on the basis of Chevron's volume of sales and found that the valid input VAT attributable to Chevron's valid zero-rated sales amounted to PHP 33,689,852.71.[49]

After applying its output VAT liability in the amount of PHP 7,404,883.09 against its valid creditable input tax attributable to its taxable sales in the amount of PHP 1,255,931.63, Chevron still had an output VAT

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45 *Rollo*, p. 25.

46 TAX CODE, Sec. 110 states:
SEC. 110. *Tax Credits.* —
(A) Creditable Input Tax. —
(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
(a) Purchase or importation of goods:
(i) For sale; or
(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
(iii) For use as supplies in the course of business; or
(iv) For use as materials supplied in the sale of service; or
(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
(b) Purchase of services on which a value-added tax has been actually paid.

47 *Republic v. Taganito, supra* note 43, at 3–4. This pinpoint citation refers to the copy of this Notice uploaded to the Supreme Court website.

48 *Rollo*, p. 57.

49 *Id.*

liability of PHP 6,148,951.46.[50] Since Chevron elected[51] to apply its valid input VAT attributable to zero-rated sales against its remaining output VAT liability, the CTA *En Banc* found that it left a balance of PHP 27,540,901.25.[52]

This Court perceives no cogent reason to reverse the judgment reached by the CTA *En Banc* in this case, especially when it had consistently arrived at the same ruling in several other analogous cases.[53] This consistency becomes all the more meaningful in light of the well-entrenched principle that the factual findings and conclusions of the CTA, as a highly specialized court, are accorded respect and deemed final and conclusive.[54]

FOR THESE REASONS, the instant Petition is **DENIED**. The Decision dated December 9, 2021 and the Resolution dated April 26, 2022 of the Court of Tax Appeals *En Banc* in CTA EB No. 2355, which partially granted the claim of Chevron Holdings, Inc., for tax refund/credit of unutilized input VAT attributable to zero-rated sales in the amount of PHP 27,540,901.25, are **AFFIRMED**.

SO ORDERED." (*Leonen, SAJ*, on official leave, *Lazaro-Javier, J.*, Acting Chairperson per S.O. No. 2950 dated March 22, 2023)

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

26 MAY 2023

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50 *Id.*

51 *Id.* at 151.

52 *Id.* at 57.

53 See *Commissioner of Internal Revenue v. AIG Shared Services Corp. (Philippines)*, CTA EB Case Nos. 2383 & 2408, October 17, 2022; *CIR v. S&Woo Construction Philippines, Inc.*, CTA EB No. 2420, March 22, 2022; *CIR v. Visayas Geothermal Power Company*, CTA EB No. 2297, March 9, 2022; *CIR v. Pilipinas Kyohritsu, Inc.*, CTA EB No. 2382, February 22, 2022; *CIR v. S&Woo Construction Philippines, Inc.*, CTA EB No. 2340, December 10, 2021; *CIR v. Maersk Service Centres*, CTA EB No. 2260, July 29, 2021; *CIR v. Lepanto Consolidated Mining Company*, CTA EB No. 2230, July 14, 2021; *Rio Tuba Nickel Mining Corp. v. CIR*, CTA EB No. 2180, June 10, 2021; *CIR v. Lepanto Consolidated Mining Company*, CTA EB No. 2051, September 30, 2020; *CIR v. Deutsche Knowledge Services Pte. Ltd.*, CTA EB No. 2082, July 21, 2020; *CIR v. Toledo Power Company*, CTA EB No. 1990, June 23, 2020; *CIR v. Chevron Holdings, Inc.*, CTA EB No. 1950, June 3, 2020; and *Air Liquide Philippines, Inc. v. CIR*, CTA EB No. 1844, February 26, 2020. All held that Section 112 of the Tax Code does not absolutely require that input taxes subject of a claim for tax refund or issuance of a tax credit certificate be directly attributable to the claimant's zero-rated sales.

54 See *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, 823 Phil. 1043, 1065 (2018) [Per J. Leonen, Third Division], citing *Philippine Refining Company v. Court of Appeals*, 326 Phil. 680, 689 (1996) [Per J. Regalado, Second Division].

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