REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

C.T.A. EB NO. 114
(C.T.A. Case No. 6557)

Present:

-versus-

***Acosta, P.J.***
***Castañeda, Jr.***
***Bautista,***
***Uy,***
***Casanova, and***
***Palanca-Enriquez, JJ.***

**SOLIDBANK CORPORATION**
**(Now : FIRST METRO INVESTMENT CORPORATION),**
Respondent.

Promulgated:
FEB 2 2 2007 Apolinario

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## *D E C I S I O N*

***BAUTISTA, J.:***

### *The Case*

Subject of this petition for review is the Decision dated May 5, 2005 of the Second Division of this Court ("Court in Division") in CTA Case No. 6557 entitled

*"Solidbank Corporation (Now: First Metro Investment Corporation) vs. Commissioner of Internal Revenue,"* setting aside the deficiency Documentary Stamp Tax ("DST") assessments on inter-bank call loans and assets-held-in-trust for the taxable years 1994, 1995, 1996 and 1997 issued by the Commissioner of Internal Revenue against Solidbank Corporation (now: First Metro Investment Corporation).

Also being assailed by the Petition for Review is the Resolution dated August 16, 2005 of the Court in Division denying petitioner's Motion for Reconsideration.

## *Antecedent Facts*

The material antecedents of CTA Case No. 6557 are narrated by the Court in Division in this wise:

> "Petitioner is a domestic corporation duly organized and existing under Philippine laws. It was merged/integrated with First Metro Investment Corporation, a domestic corporation duly organized and existing under Philippine laws, with the surviving entity being petitioner Solidbank Corporation. However, petitioner's corporate name was later renamed to First Metro Investment Corporation. It has its principal address at the 20th Floor G.T. Tower International, Ayala Avenue corner H.V. dela Costa Street, Makati City. *(par 1.1, Petition for Review)*
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> For the taxable years 1994, 1995, 1996 and 1997, respondent issued the following assessment notices against the petitioner:
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> 1. Assessment Notice No. ST-DST-94-0052-98
> 2. Assessment Notice No. ST-DST-2-94-0053-98
> 3. Assessment Notice No. ST-DST-2-95-0055-98
> 4. Assessment Notice No. ST-DST-95-0054-98
> 5. Assessment Notice No. ST-DST-96-0312-2000
> 6. Assessment Notice No. ST-DST-97-0313-2000
>
> for deficiency documentary stamp taxes on interbank call loans, reverse repurchase agreements and trust/assets-held-in-trust. *(par 2, Joint Stipulation of Facts and Issues)*

Through separate protest letters dated September 30, 1998, July 8, 1999 and February 2, 2000, petitioner contested the above assessments. *(par 3, Joint Stipulation of Facts and Issues)*

On August 8, 2002, respondent issued the assailed Final Decision denying petitioner's protests and effectively affirmed the following assessments:

*"In view of the foregoing, this Office decided to sustain the following assessments:*

| Kind of Tax | Year Involved | Assessment Notice Number | Amount |
|---|---|---|---|
| DST on Trust/Assets held in trust | 1994 | ST-DST-2-94-0053-98 | P34,553,797.95 |
| DST on Trust/Assets held in trust | 1995 | ST-DST-2-95-0055-98 | P14,984,066.38 |
| DST on Interbank Call loans and Trust/Assets held in trust | 1996 | ST-DST-96-0312-2000 | P18,202,723.07 |
| DST on Interbank Call loans and Trust/Assets held in trust | 1997 | ST-DST-97-0313-2000 | P24,325,298.80 |

*With respect to the deficiency documentary stamp tax assessments on interbank call loans/RRPs for the taxable years 1994 and 1995 covered by Assessment Notice Nos. ST-DST-94-0052-98 and ST-DST-95-0054-98, this Office has resolved to reduce/modify the said assessments based on the premise that prior to the issuance of Revenue Regulations No. 3-97, reverse repurchase agreements are not considered as deposit substitutes and thus not subject to the documentary stamp tax under Section 180 of the NIRC of 1977 as amended. A recomputation of deficiency documentary stamp tax assessment on interbank call loans of Solid Bank for the taxable years 1994 and 1995, is therefore necessary in order to determine the correct ax (sic) liability. The recomputation is shown as follows:*

| | | 1994 | 1995 |
|---|---|---|---|
| Interbank Call Loans | | P1,415,370,000.00 | P1,391,544,000.00 |
| DST Due | | 2,123,055.00 | 2,087,316.00 |
| Add: | 25% surcharge | 530,763.75 | 521,829.00 |
| | 20% interest from 1-25-95 to 10-31-98 (.7533333) | 1,599,368.03 | |
| | 20% interest from 1-25-96 to 10-31-98 (.5533333) | | 1,154,981.45 |
| | Compromise Penalty | 25,000.00 | 25,000.00 |
| **TOTAL AMOUNT DUE** | | **P4,278.186.78** | **P3,789.126.45** |

*Consequently, Solid Bank Corporation is hereby ordered to pay the abovestated amounts plus interest that may have accrued thereon, to the Large Taxpayers Service, BIR, National Office, Diliman, Quezon City, after thirty (30) days from receipt hereof, otherwise the collection thereof will be effected through the summary remedies provided by law.*

*This constitutes the final decision of this Office on the matter."*

On October 29, 2002, Solidbank Corporation lodged a Petition for Review before the Court in Division pursuant to Section 228 of the 1997 NIRC. The following issues were jointly stipulated by the parties:

1. Whether or not the following bank transactions are subject to DST under Section 180 of the NIRC:

   (a) Trust Agreements/Assets-held-in-trust Accounts
   (b) Interbank Call Loans

2. Whether or not the assessments have become final, executory and demandable.

### *The Ruling of the Court in Division*

On the first issue, the Court in Division ruled that Trust Agreements or Assets-held-in-trust Accounts are not subject to DST as the same do not fall under the term "certificates of deposit" under Section 180 of the 1977 NIRC, as amended, because there is no debtor-creditor relationship.

As regards Inter-bank Call Loans ("IBCLs"), the Court in Division ruled that such loans are also not subject to DST since the same are not loan agreements but deposit substitutes which are not among those enumerated under Section 180 of the 1977 NIRC, as amended.

On the second issue, the Court in Division held that the taxpayer's non-submission of the necessary and relevant documents to support its administrative protest does not make the assessment final and executory.

The dispositive portion of the Decision dated May 5, 2005 is quoted hereunder:

> "**WHEREFORE, IN VIEW OF THE FOREGOING**, the Petition for Review is hereby **GRANTED**. Respondent's Decision of August 8, 2002

assessing petitioner of deficiency documentary stamp taxes on its interbank call loans and trust/asset-held-in-trust accounts for the taxable years 1994, 1995, 1996, and 1997, is SET ASIDE. Accordingly, Assessment Notice Nos. ST-DST-94-0052-98, ST-DST-95-0054-98, ST-DST-2-94-0053-98, ST-DST-2-95-0055-98, ST-DST-96-0312-2000, and ST-DST-97-0313-2000 are hereby **CANCELLED**.

**SO ORDERED**."

Aggrieved, the Commissioner of Internal Revenue moved for the reconsideration of the said Decision which was denied by the Court in Division in a Resolution dated August 16, 2005.

## *The Issues*

Hence, herein petitioner Commissioner of Internal Revenue initiated this Petition for Review, raising the following issues:

I. Whether the Second Division of this Honorable Court erred in ruling that the assessments have not become final, executory and unappealable despite respondent's failure to submit all relevant supporting documents within sixty (60) days from the filing of its protest;

II. Whether the Second Division of this Honorable Court erred in ruling that the term "deposit substitutes" was inserted in the National Internal Revenue Code (NIRC) only in 1997;

III. Whether the Second Division of this Honorable Court erred in ruling that under the 1993 Tax Code, "interbank call loans" are not subject to documentary stamp tax under Section 180 thereof;

IV. Whether the Second Division of this Honorable Court erred in ruling that respondent's "interbank call loans" are not subject to documentary stamp tax under Section 180 of the NIRC;

V. Whether the Second Division of this Honorable Court erred in ruling that respondent's trust account is not subject to documentary stamp tax under Section 180 of the NIRC.

## *The Ruling of the Court En Banc*

The petition is devoid of merit.

We shall take up these issues in the order they are presented.

***First Issue: Effect of failure to submit documents within 60 days from filing of a protest under Section 228 of the 1997 NIRC.***

Petitioner argues that under Section 228 of the 1997 NIRC and Section 3.1.5 of Revenue Regulations (RR) No. 12-99, it is mandatory for the taxpayer to submit all relevant supporting documents within sixty (60) days from filing its protest because of the use of the word "shall" in the said provision. The pertinent portion of Section 228 states:

> "Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.**" (Emphasis supplied)

According to petitioner, the phrase "the assessment shall become final" refers to both the failure to protest the assessment within thirty (30) days and the failure to submit supporting documents within 60 days.

We disagree.

At the outset, petitioner's contention cannot be given credence since petitioner, through then Commissioner Rene G. Bañez acted on respondent's protests by rendering his Final Decision on August 8, 2002.[1] In his Decision, Commissioner Bañez resolved the protests by disputing respondent's legal

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[1] Herein respondent's "Exhibit A", CTA Records, pages 158-170.

defenses and subjected to DST respondent's IBCLs and Trust Agreements. He did not rule that the subject DST assessments became final and executory for respondent's failure to submit relevant supporting documents within 60 days. He only made the following observations:

> "Under Section 1342, Part III (Loans, Investments and Special Financial Programs) of the Central Bank Manual of Regulations for Banks and Other Financial Intermediaries effective August 1, 1982, interbank call loans of not more than 24 hours maturity or to cover deficiencies are evidenced by the 'Interbank loan advice transfer ticket' and the 'Interbank loan repayment transfer ticket.'
>
> Sad to say, no such proofs/evidences were found in the docket. It might be that the protestant-taxpayer failed and/or refused to submit such proofs, but speaking of the adequacy of time to procure the evidences, it could be said that Solidbank had the luxury of time within which it could have easily secured the same and had Solidbank exercised even a bit of diligence, it could have presented the desired proofs during the audit and examination conducted by the examiners or during the pre-assessment conference or during (60) day period from filing of its protest where relevant documents needed to support the defenses raised in the protest shall have been submitted. Basic as it is in the law on evidence that a mere claim or assertion without the necessary proof to prove it has no evidentiary value whatsoever, more so when it is paired against a tax assessment which is favored by law with the prima facie presumption of validity and correctness."[2]

Moreover, in its Memorandum, respondent pointed out that its IBCL transactions have already been computerized during the taxable years in question, hence they have become paperless and as a rule, parties to such transactions are no longer required to produce, present and keep hard copies of basic IBCL transactions such as inter-bank loan advice and loan repayment transfer tickets.

Be that as it may, this Court takes the pleasure to dwell further on the matter for the sake of legal clarity.

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[2] CTA Records, page 164.

From the afore-quoted portion of Section 228 of the 1997 NIRC, herein respondent has 60 days to submit "all supporting documents" in support of its protest. These supporting documents will enable the petitioner to properly reconsider or reinvestigate the protested assessment, without which, petitioner would not be in the position to provide for a reevaluated assessment.

The Supreme Court has recognized that there are two types of protest, pursuant to Revenue Regulations No. 12-85, to wit:[3]

> "Section 6. Protest. – The taxpayer may protest administratively an assessment by filing a written request for reconsideration or reinvestigation . . .
>
> . . .
>
> For the purpose of the protest herein---
>
> (a) *Request for reconsideration.* – refers to a plea for a re-evaluation of an assessment on the basis of existing records without need of additional evidence. It may involve both a question of fact or law or both.
>
> (b) *Request for reinvestigation* – refers to a plea for re-evaluation of an assessment on the basis of newly-discovered or additional evidence that a taxpayer intends to present in the reinvestigation. It may also involve a question of fact or law or both."

According to the High Tribunal, the main difference between these two types of protests lies in the records or evidence to be examined by internal revenue officers, whether these are existing records or newly discovered or additional evidence. [4]

The protest letters filed by respondent dated September 30, 1998, July 8, 1999 and February 2, 2000,[5] did not specifically request for either a

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[3] Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005.
[4] Commissioner of Internal Revenue v. Philippine Global Communication, Inc. G.R. No. 167146, October 31, 2006.
[5] CTA Records, pages 172-186

reconsideration or reinvestigation. A close review of the contents thereof reveals, however, that it protested the subject assessments based on a question of law, in particular, whether or not respondent was liable for DST on its IBCLs, Reverse Repurchase Agreements and Trust Agreements. The same protest letters did not raise any question of fact, neither did it offer any new evidence. These considerations lead this Court to deduce that the protest letters of respondent were in the nature of a request for reconsideration which as defined, does not require additional evidence.

Furthermore, petitioner never required respondent to submit additional documents determined by him to be needed to resolve respondent's protest. The submission of relevant supporting documents lies in the sound discretion of the respondent, which it considers will be necessary to its protest. As aptly ruled by this Court in the case of *Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue:*[6]

> ". . . As stated earlier, the determination of the 'relevant supporting documents' initially rests upon the one who filed the protest, in this case, the Petitioner. However, in cases where the BIR finds that additional documents must be submitted, it should have informed the taxpayer-protester to submit whatever documents are lacking in order that a complete determination of the propriety of the assessment may be had. Thus, Respondent has been remiss in informing the Petitioner of any other additional supporting documents to be submitted which fact should not unduly prejudice Petitioner's protest."

Lastly, We quote with approval the Court in Division's disquisition on this issue:

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[6] CTA Case No. 5696, August 16, 2001.

"x x x In other words, the finality of the assessment, as worded in the provision of law, simply means that where the taxpayer decides to forego with its opportunity to present the documents in support of its claim within sixty (60) days from the filing of its protest, it merely lost its chance to further contest the assessment.

Effectively, its non-compliance with the submission of the necessary documents would either mean that the petitioner no longer wishes to further submit any document for the reason that its protest letter filed was more than enough to support its claim, or that the petitioner failed to comply thus it can no longer give justification with regard to its objections as to the correctness of the assessment notices.

Nonetheless, the necessity of the submission of the supporting documents lies on the petitioner. It cannot be left to the discretion of the respondent for in doing so would leave the petitioner's case at the mercy of the whims of the respondent. In other words, it is for the petitioner to decide whether or not supporting documents are necessary to support its protest, for it is in the best position, being the affected party to the assessment, to determine which documents are necessary and essential to garner a favorable decision from the respondent."

***Second Issue: Insertion of the term "Deposit Substitutes" in the 1997 NIRC***
***Third Issue: DST Taxability of "Inter-bank Call Loans" under the 1993 NIRC***
***Fourth Issue:DST Taxability of "Inter-bank Call Loans under the 1997 NIRC***

As the three issues are interrelated, they will be jointly discussed.

Petitioner posits that in 1994, 1995, 1996 and 1997, IBCLs fall under the term "loan agreements" which are subject to DST under Section 180 of the 1977 NIRC, as amended by Republic Act No. 7660 ("RA 7660") and not under "deposit substitutes" because the latter term was deleted from the 1977 Tax Code by RA 7660 which took effect on January 14, 1994.

Petitioner also opines that in IBCLs, a creditor-debtor relationship is established between the parties thereto. In case of default of one of the parties, the creditor will eventually seek relief from the courts on a cause of action for collection of the loaned amount. Invariably, the DST is imposed on such transactions because of the privilege granted to the parties to enter such agreement, and the enforcement action to be sought in case of breach thereof.

Again, We disagree and We sustain the findings of the Court in Division.

The taxable periods involved in the case under review are 1994, 1995, 1996 and 1997. Hence, the law applicable shall be the 1977 NIRC, as amended.

The basic issue to be considered is the correct interpretation of Section 180 of the 1977 NIRC, as amended by RA 7660, which is the applicable tax provision under the circumstances, which reads as follows:

> "**SEC. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposits bearing interest and others not payable on sight or demand.** — *On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable,* except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section." (Emphasis supplied)

It is clear from the aforequoted provision that only the following documents are subject to DST:

1.) Loan agreements;
2.) Promissory notes;
3.) Bills of exchange;

4.) Drafts, instruments and securities issued by the Government or any of its instrumentalities;
5.) Certificates of deposit bearing interest; and
6.) Other orders for the payment of any sum of money otherwise than at sight or demand.

The question is: do IBCLs fall under any of the foregoing instruments?

According to the respondent and as testified by its witness, Ms. Morales, IBCLs are short-term loans by and between banks, quasi-banks and even the Bangko Sentral ng Pilipinas ("BSP"). The purpose of such loans is to cover the deficiencies in the reserve requirements of banks particularly that portion of the reserve requirement that pertains to the demand deposit accounts of banks with the BSP.[7]

As correctly explained by the Court in Division, IBCLs are within the legal definition of "deposit substitutes" contained in Section 20(y) of the 1977 NIRC, as amended, which provides:

> "SEC. 20. Definitions. —
>
> xxx xxx xxx
>
> (y) 'Deposit substitutes' shall mean an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include but need not be limited to promissory notes, repurchase agreements, certificates of assignments or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: **provided, however, That only debt instruments issued for interbank call loans to cover deficiency in reserves against deposit liabilities including those between and among banks and quasi-banks shall not be considered as deposit substitute debt instruments** *(As added by P. D. No. 1959).*" (Emphasis supplied)

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[7] Respondent's Memorandum, page 15.

Both Divisions of this Court have consistently ruled that the terms "deposit substitutes debt instruments" and/or "debt instrument used for deposit substitutes" are not included among the objects/instruments mentioned in Section 180 of the 1977 NIRC, as amended by RA 7660.[8]

Consequently, considering that IBCLs fall under the term "deposit substitutes" as it is within the ambit of the latter's definition, but are not among the instruments enumerated in Section 180 as quoted earlier, therefore, these are not subject to DST under the aforesaid section. It is a well-settled principle that in order for any tax to be due, there must be a law or legislative enactment that mandates the imposition thereof. Hence, the Court in Division's ruling on the non-taxability of respondent's IBCLs is correct.

***Fifth Issue: DST Taxability of Trust Agreements/Assets held in Trust Accounts***

Petitioner avers that the essential features/characteristics of a Trust Agreement are as follows:

a. The required minimum deposit is P50,000.00;

b. The shortest maturity date is 30 days;

c. The interest rate is higher than the regular deposit rate;

d. It is not payable on sight or demand, and in case of pretermination, prior written notice is required;

e. It is automatically renewed in case the depositor fails to withdraw the deposit at maturity date;

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[8] Prudential Bank v. Bureau of Internal Revenue represented by the Commissioner of Internal Revenue, C.T.A. Case No. 6396, February 10, 2006; Banco de Oro Universal Bank v. Commissioner of Internal Revenue, C.T.A. Case No. 6401, September 19, 2005; ING Bank N.V. Manila Branch v. Commissioner of Internal Revenue, CTA Case No. 6187, August 9, 2004.

f. The bank uses confirmation of participation to evidence the acceptance of the funds from the trustor.

Based on the foregoing, he opines that a Trust Agreement has the characteristic of a certificate of deposit. And the use of the term "trust agreement" to describe the said agreement is a misnomer because the relationship existing between the parties in the subject contract is actually not a trustor-trustee relationship but that of a creditor-debtor relationship, the same relationship governing deposits of money in banks.

According to petitioner, a contract of trust under the Civil Code is defined as the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.[9]

Petitioner asserts further that in the bank's "Trust Agreement", once the specific funds or properties of the trustor are placed under the common trust fund there is a complete transfer of ownership from the trustor to the trustee bank, which is evidenced by the fact that said funds or parties may be invested by the bank in whatever manner it may deem necessary, the trustor having no control whatsoever over his funds. This is different from the contract of trust defined in the Civil Code wherein only the equitable ownership is transferred to the trustee, while the legal ownership is retained by the trustor.

Another point of distinction between the two contracts pointed out by petitioner is that, in an ordinary contract of trust, every transaction involving the trust

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[9] Commentaries and Jurisprudence on the Civil Code of the Philippines, Arturo M. Tolentino Vol. 4, p. 669.

property must be entered into by the trustee for the benefit of the trustor or his designated beneficiary; while in the bank's "Trust Agreement", all benefits from the transactions involving properties from the common trust fund will be received solely by the trustee-bank, the trustor being limited to receiving higher interest rate. In other words, the subject "Trust Agreement", although termed as such, is actually a form of deposit. Petitioner asseverates that the fact that the subject trust agreement is evidenced by a "confirmation of participation" and not by a certificate of deposit is immaterial. What is important and controlling is the nature or meaning conveyed by the document and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount rather than its form.

Again, We disagree.

The Court *En Banc* has ruled that a trust agreement is not a bank deposit, hence, it is not subject to DST under the 1977 NIRC, as amended.[10] Thus it was held:

> The Manual for Regulations of Banks issued by the Central Bank of the Philippines has defined the trust business as ". . . any activity resulting from a trustor-trustee relationship (trusteeship) involving the appointment of a trustee by a trustor for the administration, holding, management of funds and/or properties of the trustor by the trustee for use, benefit or advantage of the trustor or others called beneficiaries (Sec. X403 [a])."
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> As correctly explained in the questioned Decision, "When a depositor enters into a trust agreement, what is created is a trustor-trustee relationship. The money deposited is placed in trust to a common fund and then invested by the Trust Department into a profitable venture.
>
> Petitioner's contention that there is a complete transfer of ownership from the trustor to the trustee bank because the funds may be invested by the bank in whatever manner it may deem

[10] Commissioner of Internal Revenue v. Traders Royal Bank, C.T.A. EB No. 32, February 14, 2005.

necessary and the trustor having no control whatsoever over his funds is contrary to petitioner's allegation in the Petition that "A contract of trust under the Civil Code is defined as the legal relationship between one person having an equitable ownership in property and another person owning legal title to such property, the equitable ownership of the former entitling him to the performance of duties and the exercise of certain powers by the latter."[11] The petitioner, in effect, admits that the trustee bank holds legal title over the funds (i.e., has legal ownership of the funds), and is entitled to exercise certain powers such as the investment of the funds in behalf of the trustor (which is the essence of the trust business)."

Since a trust agreement is not a time deposit, it cannot be subject to DST as a certificate of deposit.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the Second Division of this Court that warrant a reversal of the assailed Decision and Resolution promulgated on May 5, 2005 and August 16, 2005, respectively.

**WHEREFORE**, the Petition for Review is hereby **DENIED DUE COURSE,** and accordingly, **DISMISSED** for lack of merit.

**SO ORDERED**.

**LOVELL R. BAUTISTA**
Associate Justice

***WE CONCUR:***

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[11] Commentaries and Jurisprudence on the Civil Code of the Philippines, Arturo Tolentino, Volume 4, p. 669.

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

(on leave)
**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

**ERNESTO D. ACOSTA**
Presiding Justice