REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

UNITED OVERSEAS BANK PHILIPPINES, ***Petitioner,***	**C.T.A. E.B. NO. 218** **(C.T.A. CASE NO. 6869)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** MAR 2 1 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Another case involving the issue on whether petitioner's Special Savings Deposit (hereafter "SSD") Account which is a special savings deposit is subject to documentary stamp tax (hereafter "DST") is presented before the Court. The instant case is illustrative of the predicament in comprehending the nature of a special savings deposit.

THE CASE

This issue is again before Us in this Petition For Review filed by United Overseas Bank Philippines (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated July 21, 2006 and Resolution dated October 5, 2006 issued by the First Division of this Court in C.T.A. Case No. 6869, the respective dispositive portions of which read:

> "**WHEREFORE**, the Petition for Review is hereby **DISMISSED** for lack of merit. The Final Decision On Disputed Assessment dated January 14, 2004 of the Bureau of Internal Revenue is hereby **AFFIRMED** with some modifications. The compromise penalty of P25,000.00 is hereby CANCELLED there being no mutual agreement between the parties, however, a 25% surcharge is hereby imposed pursuant to Section 248 of the Tax Code.
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> Accordingly, petitioner is ORDERED to PAY the respondent the amount of P6,966,544.45 representing deficiency documentary stamp taxes for the taxable year 2000, computed as follows:

Basic Tax	P3,765,699.70
Add: 25% Surcharge	941, 424.93
20% Interest	2,259,419.82
TOTAL	P6,966,544.45

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In addition, petitioner is ORDERED to PAY 20% delinquency interest on P6,966,544.45 computed from March 8, 2004 until full payment thereof pursuant to Section 249 (C) of the Tax Code.

SO ORDERED."

"**WHEREFORE**, wanting of any justification to overturn the July 21, 2006 Decision, this Court resolves to **DENY** the instant motion for lack of merit.

SO ORDERED."

THE FACTS

The facts of the case are undisputed.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office located at 17th Floor Pacific Star Building, Senator Gil Puyat corner Makati Avenue, Makati City. Petitioner is duly registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in general banking operations in the Philippines.

Respondent is the Commissioner of Internal Revenue ("CIR") duly appointed to perform the duties of his office, including, inter alia, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Honorable Court.

Petitioner received from respondent bureau a Formal Letter of Demand dated December 15, 2003 assessing it of deficiency DST on its solid Savings Plus Accounts (SPAs), in the amount of P6,050,119.52 for the taxable year 2000.

On January 5, 2004, petitioner administratively protested the said assessment, which respondent Commissioner denied in his Final Decision on Disputed Assessment, dated January 14, 2004, a copy of which was received by petitioner on February 4, 2004.

On February 24, 2004, petitioner filed a Petition For Review with this Court, docketed as C.T.A Case No. 6869.

In his answer, respondent Commissioner of Internal Revenue alleged by way of special and affirmative defenses that petitioner's Special Savings Deposit (SSD) account has features similar to a time deposit, hence, taxable under *Section 180 of the Tax Code*; the "certificate of deposit" stated in *Section 180* does not prescribe any particular form; petitioner's allegation that SSD account is evidenced by a passbook does not alter the substance of SSD; what is controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount rather than its form; as defined in *Section 180 of the Tax Code*, it may be a written acknowledgment by a bank of the receipt of money on deposit, hence, a traditional passbook, being a written acknowledgment of the receipt of money as deposit which a bank promises to pay to the depositor, bearer, or to some other person or order, is a genus of a certificate of deposit subject to DST; assuming arguendo that the SSD is not a certificate of deposit, it is a loan agreement because the relationship between a bank and a depositor is that of debtor and creditor (*Gullas vs. Philippine National Bank, 62 Phil.519; Integrated Realty Corporation vs. Philippine National Bank, 174 SCRA 295*); all presumptions are in favor of the correctness of tax assessments; and petitioner was informed of the law and the facts on which the assessment was made, pursuant to *Section 228 of the Tax Code*.

After trial on the merits, the First Division rendered the assailed decision on July 21, 2006 dismissing the Petition For Review for lack of merit.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division denied in its Resolution dated October 5, 2006.

Hence, this Petition For Review, raising the following errors:

ISSUES

I

A FORMAL LETTER OF DEMAND DATED DECEMBER 15, 2003 AND ASSESSMENT NOTICE ARE VOID SINCE THEY DID NOT SUFFICIENTLY CITE THE LEGAL AND FACTUAL BASIS OF THE ASSESSMENT AS REQUIRED UNDER SECTION 228 OF THE 1997 TAX CODE.

II

ASSUMING ARGUENDO THAT THE FORMAL LETTER OF DEMAND AND THE CORRESPONDING ASSESSMENT NOTICES ARE VALID, NEITHER THE SPA NOR THE SPA PASSBOOK EVIDENCING THE SAME CAN BE CLASSIFIED AS A LOAN AGREEMENT, PROMISSORY NOTE, BILL OF EXCHANGE, DRAFT, INSTRUMENT OR SECURITY ISSUED BY THE GOVERNMENT OR CERTIFICATE OF DEPOSIT SUBJECT TO DOCUMENTARY STAMP TAXES UNDER SECTION 180 OF THE 1997 TAX CODE. HENCE, THE ASSESSMENT FOR DEFICIENCY DST FOR THE YEAR 2000 SHOULD BE CANCELLED FOR LACK OF LEGAL AND FACTUAL BASIS.

On November 15, 2006, without necessarily giving due course to the petition, We required the respondent to file his comment thereto.

On November 24, 2006, the respondent filed his "Comment (Re: Petition For Review)".

Hence, the petition is now deemed submitted for resolution.

THE COURT *EN BANC's* RULING

The petition is without merit.

Principal Issue

The principal issue posed for resolution by this Court *En Banc* is whether petitioner's Special Savings Deposit Account is subject to DST, under *Section 180 of the NIRC of 1997, as amended.*

There is nothing novel in this case as the principal issue raised herein had, in a long line of cases, been previously ruled by this Court in the affirmative.

Validity of the Assessment Notice

Petitioner mainly argues that both the Formal Letter of Demand and the Decision issued by the respondent are void for it did not specify the particular taxable document under *Section 180* of the *1997 Tax Code* under which petitioner's SSD Account may be classified. That the Formal Letter of Demand dated December 15, 2003 merely states that the "Special Savings Deposit is an interest bearing account and has the feature of a Time Deposit Account" and that the alleged amount of deficiency taxes "is being assessed as an industry issue, pursuant to the provision of *Section 180* of the *1997 Tax Code"*. Petitioner further contends that respondent failed to explain why he classified its SSD Account as a time deposit.

We cannot sustain petitioner's allegation. As ruled by the First Division, if indeed it was not informed of the law and the facts on which the subject assessments were made, it could not have been able to pose an intelligent argument through the letter protest in response to the said assessment.

In this regard, *Section 228* of the *NIRC of 1997*, as amended, provides:

> "**SEC. 228. Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:
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> xxx xxx
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> That the taxpayer shall be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment shall be void."

The reason for the requirement of informing the taxpayer in writing of the facts and the law surrounding its assessment is obvious: to ensure that taxpayers are duly apprised of the basis of the tax assessments against them. This is in keeping with the settled doctrine

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that before a person can be deprived of his property, he should first be informed of the claim against him and the theory on which such claim is premised *(Ang Ping vs. Court of Appeals, 310 SCRA 343)*.

In a long line of case, the Supreme Court has ruled that the requirement of the law to inform the taxpayer of the basis of the assessment does not necessarily mean that it be a full narration of the facts and laws on which the assessment is based. The purpose of the assessment is to enable the taxpayer to know the law and the facts on which the assessment is made, and to afford him his right to due process once it is served and received. Thus, so long as the parties are notified and were given the opportunity to explain their side, the requirements of due process are satisfactorily complied with (*Calma vs. Court of Appeals, 302 SCRA 682*).

The ultimate purpose of the assessment notice is to ascertain the amount that a taxpayer should pay. The contention of petitioner that respondent should give a detailed appraisal of the facts and law upon which the assessment is based is clearly misplaced, as nowhere in the law that such requirement can be found. The purpose has been served in this present case, where the respondent in his demand letter competently justified the imposition of the DST to petitioner's SSD Account and made an accurate computation of the taxes due. Hence, the Formal Letter of Demand and the Assessment Notice were valid for having been issued in accordance with law.

Special Savings Deposit Account Subject to Documentary Stamp Tax Pursuant to Section 180 of the 1997 NIRC, as amended

Having resolved the issue on the validity of the Assessment Notice, We now proceed to determine the propriety of the imposition of the DST on petitioner's SSD Account.

Section 180 of the *NIRC of 1997, as amended*, provides:

> "SEC. 180. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on sight or Demand.* – On all bonds, loan agreements, including those 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, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, 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 (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided*,

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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."

A perusal of the above-quoted *Section 180* will show that it covers the following instruments:

1) bonds;
2) loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines;
3) bills of exchange (between points within the Philippines);
4) drafts, instruments and securities issued by the government or any of its instrumentalities;
5) deposit substitute debt instruments;
6) certificates of deposits drawing interest;
7) orders for the payment of any sum of money otherwise than at sight or on demand;
8) on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation; and
9) on each renewal of any such note.

From the foregoing, it is clear that the law subjects a "certificate of deposit" to the payment of documentary stamp tax. As defined, a documentary stamp tax is an excise tax upon documents, instruments,

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loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto. The law taxes the document because of the transaction (*J. Vitug and E. Acosta, Tax Law and Jurisprudence, 2nd ed., p. 274*). It is not imposed upon the business transacted, but is an excise upon the privilege, the opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself (*Lincoln Philippine Life Insurance Company, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, 293 SCRA 99*). What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

In *Far East Bank and Trust Company vs. Querimit* (*373 SCRA 671*), the Supreme Court defined a certificate of deposit as follows:

> "A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created xxx."

From the foregoing definition of a certificate of deposit, the Supreme Court neither referred to a particular form of deposit nor limited the coverage thereof to time deposits only. The Supreme Court used the

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term "written acknowledgment" which means that for as long as there is some written memorandum of the fact that the bank accepted a sum of money from a depositor, the writing constitutes a certificate of deposit. Hence, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

Clearly, the "certificate of deposit drawing interest" stated in *Section 180* do not prescribe any particular form, nor does it qualify. As defined above, it may be any "written acknowledgment by a bank of the receipt of money on deposit". A certificate of deposit, being a written instrument evidencing transaction between parties, must be considered in the light of the same rule of law as other written instruments.

Hence, a traditional passbook, being a written acknowledgment of the receipt of money as a deposit which a bank promises to pay to the depositor is a genus of a certificate of deposit, subject to DST under *Section 180 of the NIRC of 1997, as amended.*

We also find no merit on the claim that petitioner's SSD Account is but a regular savings account and a different transaction from a time deposit. In petitioner's SSD Account, a passbook covers the transaction, while in time deposit, it is through a certificate of deposit. However, in both cases, the bank acknowledges the receipt of a sum of money on

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deposit, which the bank promises to pay to the depositor on a specified period of time. Clearly therefore, the SSD Account has the same substance, attributes and qualities of a certificate of deposit. The fact then that petitioner's SSD Account is evidenced by a passbook and not by a certificate of deposit is of no moment. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form (*L.R. Heat Treating Co., 28 TC 874*).

It has been held that "in determining whether certain instruments were subject to documentary stamp taxes, substance would control over form and labels". Since the DST is an excise tax "upon documents xxx levied, collected and paid for, and in respect of the transaction so had or accomplished (*Section 173, NIRC of 1997, as amended*), the fact that petitioner's SSD Account deposit is evidenced by a passbook is immaterial considering that the rule on legality and uniformity in taxation requires the imposition of DST on documents evidencing transactions of the same kind, in this case on certificates of deposit drawing interest.

Petitioner further claims that its SSD Account does not have a term and allows withdrawals without consequence of pre-termination of the account. However, it bears stressing that the same holds true also in the case of a time deposit. A depositor is also allowed to withdraw his time deposit prior to the maturity date, subject only to pre-termination charges. In which case, the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining to that of a regular savings deposit. The fact is, in both cases, the deposit may be withdrawn anytime, but the depositor gets a lower rate of interest. The only difference lies on the evidence of deposit. However, as previously stated, the issuance of passbooks, rather than the usual certificates of time deposit, is not controlling to determine the nature of the deposits. Passbooks and certificates are mere evidence of different types of bank deposits. What distinguishes one from the other is not the passbook or the certificate, but the features of each account the banks offer to the public.

In the recent case of *Banco de Oro Universal Bank vs. Commissioner of Internal Revenue*, G.R. No. 173602, dated January 15, 2007, the Supreme Court affirmed the decision of this Court *En Banc* in C.T.A. E.B. No. 138, entitled *"Banco de Oro Universal Bank vs. Commissioner of Internal Revenue"* dated April 7, 2006, ruling that the Investment Savings Account of Banco de Oro Universal Bank is the

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equivalent of the certificate of deposit and which would make it subject to DST under *Section 180 of the NIRC,* and ruled as follows:

> "On April 7, 2006 the CTA *en banc* rendered the herein challenged decision affirming the findings of its First Division that petitioner's ISA is the equivalent of the certificate of deposit and which would make it subject to documentary stamp tax under Section 180 of the NIRC.
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> The CTA *en banc* likewise declared that in practice, a time deposit transaction is covered by a certificate of deposit while petitioner's ISA transaction is through a passbook. Despite the differences in the form of the documents, the CTA *en banc* ruled that a time deposit and ISA have essentially the same attributes and features. It explained that like time deposit, ISA transactions bear a fixed term or maturity because the bank acknowledges receipt of a sum of money on deposit which the bank promises to pay the depositor, bearer or to the order of a bearer on a specified period of time. Section 180 of the 1997 NIRC does not prescribed the form of a certificate of deposit. It may be any "written acknowledgement by a bank of the receipt of money on deposit." The definition of a certificate of deposit is all encompassing to include a savings account deposit such as ISA.
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> As we see it, even without the technical lapse earlier observed in our October 9, 2006 resolution, the petition must still be denied, there being no reversible error committed by the CTA *en banc*.
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> Dedicated exclusively to the study and consideration of tax problems, the CTA has necessarily developed an expertise in the subject of taxation that this Court has recognized time and again. For this reason, the findings of fact of a division of the CTA, particularly when affirmed en banc, are generally conclusive on this Court absent grave

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abuse of discretion or palpable error, which are not present in this case."

For all the foregoing, the Court *En Banc* finds that the appealed decision is not flawed by reversible error, but, on the contrary, conforms to the evidence of record and the applicable law and jurisprudence. We, therefore, affirm the assailed Decision dated July 21, 2006 and Resolution dated October 5, 2006.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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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 the Court.

ERNESTO D. ACOSTA
Presiding Justice

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