REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

C.T.A. CASE NO. 7191

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, *and*
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 15 2007; 10:40 Am

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DECISION

CASANOVA, J.:

This Petition for Review under Section 11 of Republic Act No. 1125, as amended by Section 9 of Republic Act No. 9282, prays for the reversal of the Final Decision on Disputed Assessment dated March 10, 2005 and the cancellation of Assessment Notice No. DST2-01-0000050 finding petitioner liable to deficiency Documentary Stamp Taxes (DST) on special savings deposit accounts ("SSD") in the amount of P1,872,704.88 for the taxable year 2001, inclusive of interest.

The factual milieu of the case is as follows:

United Overseas Bank of the Philippines ("petitioner"), previously known as Associated Bank or Westmont Bank, is a corporation duly organized and existing under

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and by virtue of the laws of the Republic of the Philippines with principal office address located at the 17th Floor Pacific Star Building, Senator Gil Puyat corner Makati Avenue, Makati City. Petitioner is registered with the Securities and Exchange Commission ("SEC") and authorized by the Bangko Sentral ng Pilipinas to engage in commercial banking and trust operations.[1] The special savings deposits denominated as "Savings Plus Deposits are among the products offered by petitioner to the public.

Respondent is tasked to decide, approve and grant applications for refund or tax credit of internal revenue taxes erroneously or illegally assessed or collected under Section 4 of the 1997 National Internal Revenue Code ("NIRC").[2]

On November 7, 2002, the respondent, through Deputy Commissioner for Operations Group Lilian B. Hefti, authorized Revenue Officers Reynoso Jovero, Jr. and Werlita Quimson to examine petitioner's books of accounts and other accounting records of its payment of documentary stamp taxes ("DST"), gross receipts taxes, final withholding taxes for the taxable year 2001.[3]

Based on the investigation, the Bureau of Internal Revenue ("BIR") discovered petitioner's unpaid DST liabilities in the amount of P1,872,704.88 arising from Savings Plus Deposits for the taxable year 2001.

On July 6, 2004, petitioner through First Vice President/Controller Arturo B. Flores received from the respondent a Formal Letter of Demand with attached Assessment Notice No. DST2-01-0000050 demanding payment of the amount of P1,872,704.88 representing DST deficiency on special savings deposits for the taxable year 2001, computed as follows:

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[1] Joint Stipulation of Facts and Issues, Rollo, pp.72-73
[2] Joint Stipulation of Facts and Issues, Rollo, p.73 and Exhibit 2
[3] BIR Records p. 121

	Tax base		Tax due
Total tax due per audit	828,007,637.37	.30/200	1,242,011.46
Less: paid			0.00
Basic			1,242,011.46
Interest 1-16-02 to 7-30-04		50.78	630,693.42
Total			1,872,704.88[4]

On July 9, 2004, petitioner sent a letter addressed to Deputy Commissioner, Large Taxpayer's Service Estelita C. Aguirre contesting Assessment Notice No. DST2-01-0000050 on two grounds: First, petitioner's special savings deposit or Savings Plus Deposit products are not among the documents subject to DST under Section 180 of the National Internal Revenue Code at the time these deposits were opened. Second, Section 179 of Republic Act (R.A.) No. 9243 which took effect on March 20, 2004 imposing DST on special savings deposits should be applied prospectively. Petitioner's transactions on Savings Plus Deposits in the year 2001 are not within the purview of R.A. 9243.[5]

Petitioner's failure to pay DST for taxable year 2001 prompted respondent to issue a Collection Letter dated August 23, 2004 apprising the former of its DST liability in the amount of P1,872,704.88. It received the said correspondence on August 27, 2004.[6]

The respondent, through OIC Large Taxpayer's Service Deputy Commissioner for Special Concerns Kim S. Jacinto Henares issued a Final Decision on Disputed

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[4] BIR Records, pp. 346-347 and Exhibit 3
[5] BIR Records, pp. 350-352
[6] BIR Records, p. 338

Assessment dated March 10, 2005 denying the protest which was received by petitioner on March 14, 2005.[7]

Dissatisfied, petitioner appealed by way of a Petition for Review before this Court on April 5, 2005.

In his Answer, respondent alleged *inter-alia* that although a special savings account is evidenced by a passbook and a time deposit through a certificate, both have the same features such as the requirement of a larger opening balance, higher interest rates than the regular savings account, definite time of maturity, limitation of number of withdrawal per month and authorized pre-termination; a special savings account requires a minimum deposit balance and holding period in order to avail of a preferential rate which is much higher than that of a regular savings account; certificates of deposit bearing interests are one of the instruments subject to DST under Section 180 of the 1997 NIRC; certificate of deposit is defined as any written acknowledgment by a bank of the receipt of money on deposit; the distinction of special savings account and time deposit as to form is irrelevant; the nature or substance conveyed by the transaction and not the particular document label or nomenclature attached to it is paramount to its form; a Savings Plus Account is not a variation of a regular savings account; a special savings account is clearly and plainly a specie of certificates of deposits, and therefore, subject to DST under Section 180 of the 1997 NIRC; assuming arguendo that Savings Plus Account is not a certificate of deposit, it is a loan agreement because the relationship between the bank and depositor is that of debtor and creditor; the assessment was issued in accordance with

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[7] Rollo, p. 73 and BIR Records, p. 362-364

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the law and regulations and that all presumptions are in favor of the correctness of the assessment.[8]

During the interim of the proceedings, petitioner proffered the testimony of its Manager for Financial Accounting Department and Head of the General Accounting Unit and Tax Unit Teofisto C. Rey; while respondent presented Revenue Officer of the Large Taxpayer's Audit and Investigation Division I Reynoso C. Jovero, Jr. as witness.

Mr. Rey testified that the Savings Plus Account which is a special savings deposit product requires a minimum deposit of P100,000.00 and offers a higher rate of interest. Similar to an ordinary savings account, petitioner issues a passbook for Savings Plus Deposit with no definite term or maturity. A Savings Plus depositor can withdraw or make additional deposit anytime after opening the account by presentation of the passbook and withdrawal slip or deposit slip. In a time deposit, the bank issues a certificate of time deposit showing the term, maturity date, principal, interest and maturity value of the deposit. The depositor is not allowed to withdraw or deposit additional amount without terminating the certificate of time deposit.[9]

In contradicting Mr. Rey's testimony, Mr. Jovero recounted the features of a Savings Plus Deposit similar to a time deposit, namely: First, the depositor is required to maintain a minimum deposit to get the agreed interest rate aside from the higher initial deposit requirement. Second, the interest rate is higher than what is offered in an ordinary savings account for as long there are no withdrawals made between the posting dates. Third, in case of withdrawal prior to the posting date, the deposit earns

[8] Rollo, pp. 41-42
[9] Exhibit A

the interest rate of a regular savings account. Lastly, prior notice is required proving that it is not payable on sight or demand.[10]

Consequently, both parties tendered their documentary evidence.

After the parties filed their respective memoranda, the case was submitted for decision on December 22, 2006.

The parties interposed the following issues:

> "1. Whether the passbook evidencing the "Savings Plus" is a certificate of deposit bearing interest subject to DST under then Section 180 of the 1997 Tax Code.
> 2. Whether Petitioner's "Savings Plus Account" is a time deposit." [11]

The Petition is devoid of merit.

Concerning the first issue, petitioner asserts that DST cannot be imposed on Savings Plus Deposit account under Section 180 of the 1997 NIRC. A deposit account must be evidenced by a certificate of deposit which is the very instrument subject to DST.

Petitioner argues that in both regular savings account and a Savings Plus Deposit account evidenced by a passbook, they do not bear or contain an acknowledgment for the receipt of money on deposit and a promise to pay to the depositor, to the order of the depositor, or to some other person or his order; while a time deposit contains all the features of a certificate of deposit.

In addition, a certificate of deposit is basically a promissory note or an evidence of indebtedness. Its purpose is to enable the person receiving it to obtain credit and to carry funds safely to remote places. On the other hand, a passbook is a record of the customer's account with the bank and being a receipt, it is not an evidence of

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[10] Exhibit 1
[11] Rollo, p. 78

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indebtedness. A savings passbook serves as a statement of account between the depositor and the bank for their own convenience.

Furthermore, effective March 20, 2004, Congress enacted Republic Act No. 9243 incorporating modifications to the 1997 NIRC on documentary stamp taxes. Section 179 of Republic Act No. 9243 amended Section 180 of the 1997 NIRC and expanded the coverage of deposit instruments to refer to certificates or other evidence of deposits that are either drawing interests higher than the regular savings deposit or drawing interest and having specific maturity date subject to DST. The said amendment aims to capture revenue losses from a popular banking practice that offers time deposits using passbook, instead of certificates; and to correct the bias against certificates. Clearly, prior to the passage of R.A. 9243, DST is not imposed on special savings deposit.

Respondent, on the other hand, argues that the features of a requirement of a larger opening balance, higher interest rates than the regular savings account, definite time of maturity, limitation of the number of withdrawal per month and authorized pre-termination apply to both special savings account and time deposit account, although, the two transactions differ in form. A savings account is documented in a passbook; and a time deposit in certificate issued by the bank. Substance must prevail against form. A special savings deposit being a genus of a certificate of time deposit is subject to DST under Section 180 of the 1997 NIRC.

The Court agrees with the respondent.

A documentary stamp tax is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. It is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[12]

In essence, the parties dispute the proper interpretation of Section 180 of the 1997 NIRC, as amended which 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 issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (p.30) on each Two hundred pesos (200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit; or note: xxx

Section 180 of the 1997 NIRC imposes DST on transactions embodied in 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 securties issued by the government or any of its instrumentalities; 5) deposit debt substitute; *6) certificates of deposit drawing interest*; 7) order 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.

[12] International Exchange Bank vs. Commissioner of Internal Revenue, G.R. No. 171266

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Prescinding the foregoing, it is imperative to ascertain if the law contemplates Savings Plus Deposits within the purview of the definition of certificates of deposit bearing interest subject to DST.

The Supreme Court defined a certificate of deposit in the case of Far East Bank and Trust Company vs. Querimit[13], to wit:

> "A certificate of deposit is 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 some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created."

Any receipt of a sum of money for deposit acknowledged in writing by the bank constitutes a certificate of deposit. A passbook documents the transaction on a depositor's account with the bank, including the receipt of sum of money for deposit. Indubitably, a Savings Plus Deposit covered by a passbook is a certificate of deposit subject to DST. As explained by the High Tribunal in its Resolution involving the case of Banco De Oro Universal Bank vs. Commissioner of Internal Revenue[14] that *Section 180 of the 1997 NIRC does not prescribe 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*[15]. The substance conveyed by the passbook is paramount than its form.[16]

Anent the second issue, petitioner contends that a Savings Plus Deposit cannot be considered a time deposit based on the standards set by the Bangko Sentral ng Pilipinas ("BSP"). A savings deposit may be withdrawn at anytime upon demand either

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[13] 373 SCRA 665(January 16, 2002)
[14] G.R. 173602, January 15, 2007
[15] Investment Savings Account, similar to petitioner's Savings Plus Deposit
[16] L.R. Heat Treating Co., 28 TC 874

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upon the presentation of a passbook and a withdrawal slip or through automatic teller machine ("ATM"); and a time deposit evidenced by a certificate has a fixed term or period of maturity.

Petitioner further demonstrates that a Savings Plus deposit has no definite period of maturity and is evidenced by a passbook similar to a regular savings deposit.

For the petitioner, it is immaterial that in the Savings Plus Deposit, the depositor earns lower interest rate if he makes a withdrawal before the interest payment date; or that there is a minimum amount of deposit required to open Savings Plus transaction. What is important and controlling, for purposes of classifying a deposit as a savings deposit is the twin attribute that it may be withdrawn anytime upon demand and that it is documented in a passbook.

The term "pre-termination" cannot be used interchangeably with the term "withdrawal". In pre-termination, there is a closure of deposit account prior to the agreed maturity period. A withdrawal of deposit does not necessarily result in the closure of the deposit account, as when the depositor withdraws only a portion of the amount deposited.

Petitioner argues that a time deposit may not be withdrawn anytime upon demand in the sense that the depositor cannot make a withdrawal prior to the end of the maturity period without pre-terminating or closing the account. In a Savings Plus Account, the depositor is allowed to make withdrawals anytime without necessarily terminating or closing the account. As long as the depositor does not withdraw the entire amount of deposit, the Savings Plus Account subsists regardless of the number of withdrawals undertaken in a period. There is no pre-termination in the Savings Plus Deposit because the deposit account has no fixed period of maturity.

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Furthermore, petitioner posits that the requirement of a minimum opening balance is not a unique feature of a time deposit. Deposit accounts, including the regular savings deposits have a required minimum amount of opening balance. Thus, it does not follow that a deposit account requiring a minimum amount of opening balance is a time deposit.

On the other hand, respondent submits that petitioner's Savings Plus Deposit Account has the semblance of a time deposit account. Both accounts are characterized with a definite term; specific withdrawal date; interest rate reduction in case of pre-termination; and interest earnings credited at maturity.

The Court is not persuaded with petitioner's arguments.

A time deposit refers to a deposit account paying interest for a fixed term with the understanding that funds cannot be withdrawn before maturity without giving advance notice.[17] Time deposits usually carry penalties for early withdrawals.[18] In practice, a time deposit is evidenced by a certificate of deposit and a special savings deposit through a passbook. But basically, both transactions have the same attributes and features. Contrary to petitioner's posture, the bank allows a depositor of a time deposit to withdraw funds prior to the date of maturity subject to pre-termination charges. This means that the depositor loses his entitlement to earn the interest corresponding to the time deposit and instead, he earns a lower interest rate pertaining to a regular savings deposit.[19] Otherwise stated, in a time deposit or special savings account deposit, both acknowledge the receipt of money or funds on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of

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[17] Black's Law Dictionary, 6th Edition
[18] Black's Law Dictionary, 6th Edition
[19] See par.10 of the Petition for Review

time; and allow the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lower than the agreed interest. Therefore, a special savings deposit such as the Savings Plus Deposit and a time deposit are akin to each other and the same are subject to DST under the law as observed by this Court in the case of *Banco De Oro Universal Bank vs. Commissioner of Internal Revenue*[20], viz:

> "We see no cogent reason to reverse or modify the findings of the Court in Division that petitioner's Investment Savings Account (ISA) deposit is, in substance, a time deposit. Petitioner's ISA deposit has a significantly higher interest than the regular savings deposit but in order for an ISA depositor to earn the agreed higher interest rate, the amount of deposit must be maintained for a fixed period. Although petitioner's ISA can be withdrawn before its maturity date, such early withdrawal will result to the reduction of the interest rate to the prevailing regular savings account rate. In other words, there is a penalty for an early withdrawal from an ISA deposit in the same way that a time deposit can be withdrawn before maturity date but likewise subject to the reduction of the agreed interest rate. Such being the case, we agree with the finding that petitioner's ISA is a deposit account with a fixed term. The characteristic of a fixed term and reduction of interest rate in case of early withdrawal or pre-termination are essentially the features of a time deposit. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's ISA deposit and time deposit is substantially the same, if not one and the same product, and therefore both are subject to the DST on certificates of deposit drawing interest under Section 180 of the NIRC."

While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes. To claim that time deposits evidenced by passbooks should not be subject to DST is a clear evasion of the rule on equality and uniformity in taxation that requires the imposition of DST on documents evidencing transactions of the same kind, in this particular case, on all certificates of deposits drawing interest.[21]

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[20] CTA EB No. 165, (August 16, 2006). See United Overseas Bank Philippines vs. CIR, CTA EB No. 188(January 10, 2007); Prudential Bank vs. CIR, CTA EB No. 100(July 31, 2006)Banco De Oro Universal Bank vs. CIR(CTA EB No. 138 April 7, 2006); China Banking Corporation vs. Commissioner of Internal Revenue, CTA EB No. 66 (January. 3, 2006)

[21] International Exchange Bank vs. Commissioner of Internal Revenue, G.R. No. 171266

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WHEREFORE, premises considered, the Petition is hereby **DENIED**. The Court **AFFIRMS** respondent's Final Decision on Disputed Assessment dated March 10, 2005. Accordingly, the petitioner is hereby **ORDERED** to pay the amount of **P1,872,704.83** representing deficiency DST for taxable year 2001, plus 25% surcharge for late payment as provided in Section 248(3) of the 1997 NIRC and 20% delinquency interest from March 14, 2005 until fully paid pursuant to Section 249 (C) of the same Code.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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 case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division

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