REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

C.T.A. CASE NO. 6978

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 3 1 2006

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DECISION

UY, J.:

This Petition for Review seeks the reversal of the Decision of respondent Commissioner of Internal Revenue in Protest Case No. P-16-04 promulgated on March 22, 2004 entitled "In the Matter of the Protest of United Overseas Bank Philippines against the 1999 Deficiency Documentary Stamp Tax Assessment in the amount of P4,562,570.27 covered by Assessment Notice No. DST2-99-000023, Arturo B. Flores, First Vice-President/Controller, Taxpayer's Representative", the dispositive portion of which reads as follows:

> "In view of the foregoing, this Office resolved to DENY herein taxpayer's protest. Assessment Notice No. DST2-99-000023 issued by this Bureau against UNITED OVERSEAS BANK PHILIPPINES demanding the payment of deficiency documentary stamp tax in the amount of P4,562,570.27 for the taxable year 1999 is AFFIRMED in all respects. Consequently, the UNITED OVERSEAS BANK PHILIPPINES is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon up to the date of full payment to the Large Taxpayer's Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection thereof will be enforced through the summary remedies provided by law.
>
> This constitutes the final decision of this Office on the matter."[1]

The facts are not in dispute:

Petitioner, United Overseas Bank Philippines, is a corporation duly organized and existing under and by virtue of the Republic of the Philippines, with principal office located at 17th Floor, Pacific Star Building, Senator Gil J. Puyat corner Makati Avenues, Makati City. It 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 Court, with office address at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.

In the Formal Letter of Demand and Assessment Notice No. DST2-99-000023, both dated September 12, 2002, respondent assessed petitioner of

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[1] Decision, Exhibit "C", Rollo, p. 139.

deficiency documentary stamp taxes ("DST") on its Special Savings Deposit ("SSD") transactions for the taxable year 1999 in the amount of **FOUR MILLION FIVE HUNDRED SIXTY TWO THOUSAND FIVE HUNDRED SEVENTY PESOS AND 27/100 (P4,562,570.27)**.[2] Petitioner timely filed its protest on October 15, 2002.[3]

On April 1, 2004, petitioner received the subject Decision of respondent dated March 22, 2004 denying with finality its protest dated October 9, 2002 affirming in all respects the assessment issued against petitioner for deficiency documentary stamp taxes in the amount of P4,562,570.27 for the taxable year 1999,[4] computed as follows:

Total Deposit Liability Received During the Year	**P1,948,249,224.57**
Documentary Stamp Tax Due (Sec. 180 of the NIRC)	2,922,374.10
Less: Payments	-
Basic Deficiency Documentary Stamp Tax Due	2,922,374.10
Add: 20% Interest from 1-10-00 to 10-15-02	1,615,196.17
Compromise Penalty	25,000.00
Total Deficiency Documentary Stamp Tax	**P 4,562,570.27**

Consequently, petitioner filed this present Petition for Review on May 3, 2004 pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997.

On June 7, 2004, respondent filed his Answer, interposing the following as Special and Affirmative Defenses, to wit:

> "3. As stated in respondent's Decision denying the protest:

[2] Formal Letter of Demand and Assessment Notices, Exhibits "A" to "A-2", Rollo, pp.129-131.
[3] Exhibit "B-2".
[4] Exhibit "C", Rollo, pp.135-139.

The governing law on the matter is Section 180 of the Tax Code of 1997, which provides:

x x x x x

What is taxed under Section 180 of the Tax Code of 1997, as amended, is a 'certificate of deposit.'

The issue to be resolved therefore is whether a Special Savings Deposit Account is a 'certificate of deposit' subject to DST under the aforecited section.

In the case of BPI Family Bank vs. Commissioner of Internal Revenue, CA G.R. No. SP 29853, the decision of which was promulgated on September 19, 1994, the Court of Appeals, had on occasion, defined a "certificate of deposit" as a written acknowledgment by a bank of the receipt of money on deposit, which the bank promises to pay to the depositor, bearer or to some other person or order *(Olson Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op cit, p. 441*). The foregoing definition does not prescribe any particular form, nor does it qualify. It may be any written acknowledgment by the bank of the receipt of money on deposit. Hence, a traditional passbook, being a written acknowledgment of the receipt of money as a deposit which s bank promises to pay to the depositor is a genus of a certificate of deposit subject to tax under Section 180 of the Tax Code as defined above.

x x x x x

To sum up, the SSD and Time Deposit are just one and the same banking transaction. To evade payment of the DST, efforts were made by banks to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a regular passbook to document the Special Savings Deposit Account and by claiming that the said special savings deposit account has no specific maturity date. At first glance, the innovative scheme may have accomplished in putting a semblance of difference between the aforesaid two (2) accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate nor labeled as such, it has a fixed maturity date and earns premium rate. Thus, for all intents and purposes, it has the same nature and substance as a 'certificate of deposit bearing interest.' The passbook is in itself a certificate of deposit, x x x x x

4. Assuming arguendo that the Special Savings Deposit is not a certificate of deposit, it is a loan agreement because the relationship between depositor and a bank is that of creditor and debtor *(Guilas vs. Philippine National Bank, 62 Phil 519; Integrated Realty Corp. vs. Phil. National Bank, 174 SCRA 295).* As such, it is subject to DST under Section 180 of the Tax Code.

5. The assessment was issued in accordance with law and regulation.

6. All presumptions are in favor of the correctness of tax assessments."[5]

In support of its case, petitioner presented several documents and its lone witness, Teofisto C. Rey, the Manager for General Accounting, testified that petitioner's Special Savings Account or Special Savings Deposit transactions pertain to petitioner's Savings Plus Accounts or SPA which is a peso savings product that offers premium interest rates; the SPA Passbook issued to SPA depositors is similar to the passbook petitioner issued to its ordinary savings account depositor; and the SPA may be withdrawn anytime upon presentation of the SPA passbook and of a duly accomplished withdrawal slip just like in ordinary savings accounts withdrawals.

Respondent, on the other hand, also presented a lone witness in the person of Emelita Q. Catuday, Revenue Officer III, Large Taxpayers Audit and Investigation Division of the Bureau of Internal Revenue who identified the Memorandum to the Commissioner dated March 10, 2002.

After both petitioner and respondent have filed their respective

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[5] Answer, Rollo, pp.29-32.

memorandum on February 10, 2006, this case was deemed submitted for decision on February 20, 2006. Hence, this decision.

THE ISSUES

As stipulated by the parties, the following are the issues for this Court's consideration:

1. "Whether or not petitioner's SSD account is in substance a time deposit;
2. Whether or not the passbook evidencing the SSD account is a certificate of deposit bearing interest subject to DST under Section 180 of the Tax Code; and
3. Whether or not the SSD account is a loan agreement subject to DST under Section 180 of the Tax Code.[6]"

The foregoing issues raised by the parties boil down to the principal issue of whether or not petitioner's Special Savings Deposit accounts/transactions, evidenced by a passbook, is a certificate of deposit bearing interest; thus, subject to the imposition of the documentary stamp taxes under Section 180 of the NIRC of 1997, as amended.

Petitioner argues that its Special Savings Deposit Account (SSD) is, in its form and substance, a savings deposit, and not a time deposit; that under Section 2 (f) of Revenue Regulations No. 12-80 dated November 7, 1980, and Section 2 (g) of Revenue Regulations No. 17-84 dated October 12, 1984, a time deposit has been defined as a "deposit which has a definite time of maturity and cannot be withdrawn by the depositor until maturity, except in cases of authorized pretermination", while a savings deposit has been defined as a "deposit which may be withdrawn by the depositor at any time, subject

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6 Joint Stipulation of Facts and Issues, Rollo, p.58

only to the right of the depository bank to require reasonable prior notice in writing before withdrawal may be made". Likewise, petitioner contends that its passbook evidencing the SSD account deposit transaction is not a certificate of deposit bearing interest, considering that it does not show the due date and interest rate of the deposit and, moreover, the passbook is not signed by the cashier nor countersigned by the president or manager of the bank as required by the Bangko Sentral ng Pilipinas (BSP).

Petitioner further claims that its Special Savings Deposit account and the passbook issued to SSD depositors are not included in the enumeration of documents subject to DST under Section 180 of the NIRC of 1997.

On the other hand, respondent maintains that petitioner's Special Savings Deposit accounts and time deposit accounts are just one and the same banking transaction. Thus, "to evade the payment of DST, efforts were made by banks to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a regular passbook to document the Special Savings Deposit and by claiming that the said SSD has no specific maturity date. At first glance, the innovative scheme may allegedly have accomplished in putting semblance of difference between the aforesaid two (2) accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate nor labeled as such, it has the same maturity date and earns premium rate. Thus, for all intents and purposes, it has the same nature and substance as a 'certificate of deposit bearing interest'."

We rule for the respondent.

Petitioner's appreciation and understanding of Section 180 of the NIRC of 1997 is misplaced. We quote Section 180 hereunder:

> **"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 Substitutes Debt Instruments, Certificates of Deposit 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 or 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 or 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."

A perusal of Section 180 of the NIRC of 1997 will show that it covers the following instruments:

- 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 debt substitute;
- **certificates of deposit drawing interest;**
- order 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.

From the foregoing enumerations, the law subjects a "certificate of deposit" to the payment of documentary stamp tax. A documentary stamp tax is an excise tax upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or property incident thereto[7]. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business[8]. The law taxes the document because of the transaction[9]. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction. We now proceed to look into the definition of a certificate of deposit.

As defined in the case of *Far East Bank and Trust Company vs. Quenimit,*[10] 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. The principles governing other types of bank deposits are applicable to certificate of deposits

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[7] J. Vitug & E. Acosta, Tax Law and Jurisprudence (2nd Edition, 2003), p. 2 74.
[8] *Ibid.*
[9] H. De Leon, The Law on Transfer and Business Taxation (1998 Edition) p. 351.
[10] 373 SCRA 665 (2002).

Clearly therefore, petitioner's Special Savings Account fall within the ambit of the term "certificate of deposit". The fact that the aforesaid account is evidenced by a passbook and not by a certificate of deposit is not controlling to determine the nature of the deposits. Passbooks and certificates are mere evidence of different types of bank deposits or accounts. What distinguishes one from the other is not the passbook or certificate, but the distinct features of each kind of account that the banks offer to the public. And in determining what instruments are subject to documentary stamp tax, substance would control over the form. In other words, what matters are the facts and circumstances that surround the document and the transaction itself.

With respect to petitioner's contention that its "Special Savings Deposit" is not the same as that of a "Time Deposit", We look deeply into the features of a time deposit.

A "time deposit", which is also a form of a certificate of 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. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required with such a specified number of days".[11] In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal.[12] Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in a form of reduced interest rates, attached to it in instances when the depositor makes a withdrawal prior to the maturity of the

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[11] BPI Family Savings Bank vs. First Metro Investment Corporation, 429 SCRA 30, 36 (2004).
[12] Black's Law Dictionary, 6th Edition.

deposit.

A certificate of deposit, undeniably, being subject to documentary stamp tax, it is thus relevant to determine whether petitioner's Special Savings Deposit bears the same nature or characteristics as that of a time deposit.

In both cases, the bank acknowledges the receipt of the money or funds on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of time. Also, in both cases, the bank allows the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lowered than the agreed interest. The difference lies on the document used to evidence the existence of the said transaction, which in the case of the time deposit, a certificate is issued, while that of the special savings deposit, a savings passbook is issued to the depositor.

Nevertheless, as above stated, the fact that petitioner's SSD is evidenced by a passbook and not by a certificate of deposit is of no moment. What is important and controlling is the nature and meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form.[13]

This Court agrees with the respondent that in substance, petitioner's Special Savings Deposit and Time Deposits are akin to each other. In determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels. While the DST is levied on the document itself, it is not intended to be a tax on the document

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[13] BPI vs. Commissioner of Internal Revenue, et al., CA-G.R. SP No. 29853, September 19, 1994.

alone. Rather, the DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationship through the execution of specific instruments.[14]

All the foregoing considered, this Court finds that the appealed Decision is not flawed by any errors, in fact and in law, to merit a reversal thereof, with the exception of the imposed compromise penalty of P25,000.00, which is misplaced. Considering that a compromise penalty presupposes an arrangement or agreement between the parties as to the payment of the amount due, and there being no showing of such an arrangement in the instant case, no compromise penalty may be imposed.

However, the Court finds it necessary to impose a penalty equivalent to twenty five percent (25%) of the amount due as provided under Section 248 of the NIRC of 1997, as amended. Furthermore, the amount due shall bear a delinquency interest of twenty percent (20%) per annum from May 2, 2004 (the 31st day from petitioner's receipt of the assailed Decision on the protest) until the amount is fully paid in accordance with the mandates of Section 249 of the same Code.

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Decision of the Commissioner of Internal Revenue dated March 22, 2004 is hereby **AFFIRMED** with modifications.

Accordingly, petitioner is **DIRECTED TO PAY** respondent the amount

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[14] Philippine Home Assurance Corporation vs. Court of Appeals, 301 SCRA 443 (1999).

of **FOUR MILLION FIVE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED SEVENTY PESOS AND 27/100 (P4,537,570.27)** plus a penalty equivalent to twenty-five (25%) percent and twenty (20%) percent delinquency interest per annum from May 3, 2004 until such amount is fully paid, pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, 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