Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

BANCO DE ORO UNIVERSAL BANK, Petitioner,	**CTA-E.B. NO. 138** (C.T.A. Case No.6588)
	Present:
- versus -	**Acosta,** *P.J.*, **Castañeda, Jr., Bautista, Uy, Casanova,** *and* **Palanca-Enriquez,** *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 0 7 2006

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DECISION

UY, J.:

Assailed in this Petition for Review filed before the Court of Tax Appeals *En Banc* under Section 11 of Republic Act No. 9282 are : the Decision and Resolution promulgated on August 5, 2005 and October 11, 2005, respectively, of the First Division of this Court, which affirmed the Commissioner of Internal Revenue's assessment in the amount of Thirteen Million Eight Hundred Eighty Four Thousand One Hundred Fifty Nine Pesos and 90/100 (P13,884,159.90) representing Documentary Stamp Tax deficiency for fiscal year ending June 30, 1998 in CTA Case No. 6588 entitled, "Banco De Oro Universal Bank versus Commissioner of Internal Revenue".

Banco De Oro Universal Bank ("petitioner") is a universal bank duly organized and existing by virtue and under the laws of the Republic of the Philippines with its principal and place of business located at No. 12 ADB Avenue corner Julia Vargas Avenue, Ortigas Center, Mandaluyong City. It is authorized by the Bangko Sentral ng Pilipinas to engage in banking and trust business in the Philippines.

On October 30, 2000, Dao Heng Bank, Inc. (Dao Heng for short) and petitioner, entered into a statutory merger executing a Plan of Merger and Articles of Merger, whereby among others, Dao Heng merged into petitioner as the surviving entity, absorbing all the assets and liabilities of the former. Subsequently, on June 15, 2001, the Securities and Exchange Commission ("SEC") issued the definitive Certificate of Filing of Articles of Merger and Plan of Merger, which rendered the merger between Dao Heng and the petitioner effective.

On June 11, 2002, the Commissioner of Internal Revenue ("respondent") issued Assessment Notice No. DST2-98-000017 with corresponding letter of demand informing petitioner of its liability in the amount of P13,884,159.90 representing Documentary Stamp Tax ("DST") deficiencies accruing from special savings account product denominated as Investment Savings Account ("ISA") covering fiscal year ending June 30, 1998. Assailing the findings of the respondent, petitioner protested the said assessment on June 19, 2002. Respondent's failure to act on the protest constrained petitioner to file a Petition for Review docketed as CTA Case No. 6588 on January 15, 2003.

On August 5, 2005, the First Division of this Court, through the ponencia of Justice Ernesto D. Acosta, issued the assailed Decision in favor of the respondent decreeing as follows:

> "**WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. The assessment for deficiency documentary stamp tax on Investment Savings Account for the fiscal year ending June 30, 1998 is **AFFIRMED**. Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of P13,884,159.90 inclusive of interest, representing deficiency documentary stamp tax for 1998, plus 20% delinquency interest per annum from May 31, 2002 until fully paid pursuant to Section 249(C) of the Tax Code.
>
> **SO ORDERED** (Decision, CTA Case No. 6588, August 5, 2005, Records, pp. 26-34)."

A separate Concurring and Dissenting Opinion was penned by Justice Caesar A. Casanova recommending that the petition for review in C.T.A. Case No. 6588 be granted, and manifesting his dissent in the Decision of said case holding petitioner Banco de Oro liable for deficiency documentary stamp tax on its Investment Savings Accounts (ISA). Allegedly, from the text of Section 180 of the Tax Code, a "certificate of deposit" subject to DST must have the features of a time deposit; that petitioner's Investment Savings Account is an innovative product offered by the petitioner to its clients which is a crossbreed between a regular savings deposit and a time deposit and as such, it contains essential features of both products but does not fall within the definition of a "certificate of deposit" to make it liable for DST. Furthermore, prior to the amendment of Section 180 by Republic Act No. 9243, entitled "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes", which was enacted into law on February 17, 2004, there was allegedly no law or legislative enactment that mandates the imposition of DST on petitioner's ISA, and it was only after the passage of R.A. 9243 that "all other evidences of deposits that are drawing interest significantly higher than the regular savings deposit taking into consideration the size of deposit and risks involved" (which includes petitioner's ISA) became liable for DST (Concurring and Dissenting Opinion, Justice Caesar A. Casanova, Records, pp. 35-39) .

Unfazed, petitioner filed a Motion for Reconsideration, which the Court denied in its Resolution affirming *in toto* the Decision of August 5, 2005 (Resolution, CTA Case No. 6588, October 11, 2005, Records, pp. 46-51). Hence, this Petition for Review *En Banc*.

Petitioner restates the following issues:

1. Whether or not the formal letter of demand and assessment notice are void;

2. Whether or not Dao Heng's ISA (Investment Savings Account) product is subject to the documentary stamp tax; and

3. If Dao Heng's ISA is a "certificate of deposit", whether or not it is payable on demand.

Petitioner reiterates its arguments that the assessment and demand letter are not valid for being devoid of factual and legal bases pursuant to Section 228 of the 1997 National Internal Revenue Code ("NIRC") and Revenue Regulations No. 12-99. A void assessment confers no rights; nor are rights divested. Petitioner further avers that savings account deposits evidenced by passbooks are not certificates of deposit subject to DST pursuant to Section 180 of the 1997 NIRC because the said provision of law imposes DST on certificates of deposit with a fixed term or maturity. Its ISA product is payable on demand because the deposit may be withdrawn at any time. Hence, petitioner concludes that an ISA deposit is not subject to DST.

The first, second and third issues raised by the petitioner in this Petition for Review are identical to the issues raised in petitioner's Memorandum and Motion for Reconsideration before the Court's First Division as extensively discussed in the assailed Decision and Resolution dated August 5, 2005 and October 11, 2005, respectively.

The Court sustains the findings of the Court's First Division on the following grounds:

First, the requirement that the assessment shall state the facts and law on which the assessment is based is in consonance with tenets of due process. As correctly observed by the Court's First Division, the DST deficiency assessment is supported by factual and legal bases. To quote:

> "We do not agree. There was substantial compliance with Section 228. As early as the pre-assessment notice dated April 2, 2002 (Exhibit C), petitioner has been informed in writing of the facts and law on which the assessment was made. Aside from the computation

of the Documentary Stamp Tax Due per Audit, Annex A-1 thereof States that the special savings account of the bank is subject to DST under Section 180 of the 1997 NIRC.

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In the case at bar, petitioner cannot claim that it has no knowledge of the facts and the law upon which the assessment against it was made. The protests against the pre-assessment notice and against the letter of demand and assessment notice disclose that petitioner has full knowledge of the facts surrounding the assessment. The third paragraph of the protest to the Assessment Notice even states: 'The Bureau premises the Assessment on the conclusion that Dao Heng's ISA Savings Account is the equivalent of the certificate of deposit and which would make it subject to documentary stamp taxes under Section 180 of the NIRC' (Exhibit G). Verily, at the time the assessment was issued, petitioner knew very well the law and the facts on which it was based. The purpose of the law having been served, Section 228 of the Tax Code is deemed to have been complied with (Decision, CTA Case No. 6588, August 5, 2005, Records, pp. 29-30)."

Second, in practice, a time deposit transaction is covered by a certificate of deposit while petitioner's ISA transaction is through a passbook. However, despite the differences in form of the documents, a time deposit and ISA have essentially the same attributes and features. Petitioner admitted that the ISA deposit may be withdrawn at anytime even before its maturity but the depositor gets to earn a lower rate of interest similar to a time deposit account. The fact that the ISA is documented in a passbook and with authorized termination of deposits prior to the lapse of the predetermined period does not detract from its nature as a certificate of deposit subject to DST.

Section 180 of the 1997 NIRC does not prescribe the form of a certificate of deposit. 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 instrument.[1] The definition of a certificate of deposit is all encompassing to include a savings account deposit such as ISA.

It bears stressing that the form of the document embodying the transaction is immaterial because DST liability does not arise from execution of the document. A DST is a tax on the privilege to enter into a transaction evidenced by the document as explained in the case of Philippine Home Assurance Corporation vs. Court of Appeals[2] where the Supreme Court ruled, *viz:*

> "In general, documentary stamp taxes are 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. Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of lands, mortgages, pledges, and trusts, and conveyances of real property.
>
> Documentary stamp taxes are thus levied on the exercise of these privileges through the execution of specific instruments, independently of the legal status of the transactions giving rise thereto. xxx"

Finally, an ISA transaction similar to a time deposit bears a fixed term or maturity because the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. It is the procedure by the

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[1] Montgomery vs. Smith, 145 So. 822, 826, 226 Ala. 91 cited in the case of United Overseas Bank of the Philippines vs. Commissioner of Internal Revenue, C.T.A. E.B. NO. 31 (March 10, 2005)

[2] 301 SCRA 443

banks to compute the amount of interest of the deposit on a thirty (30), sixty (60), ninety (90) or three hundred sixty (360) day-maturity period. In the event of a withdrawal prior to the date of maturity, the holder of the account shall be entitled to the rate of interest lower than the agreed interest.

Indubitably, respondent correctly assessed petitioner of DST deficiency in the amount of P13,884,159.90 arising from ISA deposits.

In the light of the foregoing discussions, the Court *En Banc* finds no reversible error committed by the First Division of this Court that would warrant a reversal of the assailed Decision and Resolution promulgated on August 5, 2005 and October 11, 2005, respectively.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Official Business)
LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice