REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

METROPOLITAN BANK AND TRUST COMPANY, *Petitioner,*	**C.T.A. E.B. NO. 247** **(C.T.A. CASE NO. 6955)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAY 2 1 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

Another case involving the issue on whether petitioner's Universal Special Savings Account (UNISA) evidenced by a passbook is subject to documentary stamp tax (hereafter "DST") for taxable year 1999 is presented before the Court.

THE CASE

This is a Petition For Review filed by the Metropolitan Bank and Trust Company (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 September 1, 2006 and Resolution dated January 3, 2007 issued by the Second Division of this Court in C.T.A. Case No. 6955, the respective dispositive portions of which read as follows:

> "**WHEREFORE**, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision of the respondent dated March 2, 2004 is hereby **AFFIRMED** with modifications. The compromise penalty of P25,000.00 is hereby **CANCELLED** there being no mutual agreement arrived at between the parties.
>
> Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of P477,563,959.62 representing deficiency documentary stamp taxes for the taxable year 1999, computed as follows:

Basic Tax	P256,471,485.71
Add: 25% Surcharge	64,117,871.42
Interest	156,974,602.49
	P477,563,959.62

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In addition, petitioner is **ORDERED TO PAY** 20% delinquency interest on the amount of P477,563,959.62 computed from April 26, 2004 until full payment thereof, pursuant to Section 249 (C) of the National Internal Revenue Code of 1997.

SO ORDERED."

"**WHEREFORE**, finding no cogent reason to reverse or modify the assailed Decision, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The facts of the case are undisputed:

Petitioner Metropolitan Bank and Trust Company is a corporation duly organized and existing under and by virtue of the Philippine laws with business address at Metrobank Plaza, Sen. Gil J. Puyat Ave., Makati City. It is a duly licensed banking institution registered with the Bangko Sentral ng Pilipinas and a member of the Bankers Association of the Philippines.

Respondent is the Commissioner of Internal Revenue, charged with the enforcement and administration of the internal revenue laws of the Philippines, including, *inter alia*, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court, and holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.

Petitioner was investigated for its 1999 Gross Receipts, Final Withholding Tax and Documentary Stamp Taxes under Letter of Authority No. LOA 2000 00052501 dated June 26, 2001. In due course, respondent issued a Pre-Assessment Notice ("PAN") dated September 30, 2002, assessing petitioner of deficiency documentary stamp tax ("DST") for taxable year 1999, as follows:

Special Savings Account or UNISA		170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)		0.15%
Basic DST Due		256,471,485.71
Add: Surcharge	64,117,871.43	
Interest until 12/31/02	152,618,100.54	216,735,971.97
TOTAL AMOUNT DUE		**473,207,457.97**

Said PAN was served upon petitioner on December 4, 2002 and subsequently, on December 11, 2004, petitioner filed its protest thereto essentially invoking a bank industry issue, taking strong exception and vigorously protesting the assessment for DST of petitioner's Special Savings Account called the UNISA. Petitioner likewise protested that the total amount assessed was allegedly patently bloated by the inclusion of the 25% surcharge.

In response thereto, respondent sent a Formal Letter of Demand dated January 7, 2002 (should be 2003), for the payment for deficiency DST, this time in the amount of P477,588,959.62, to wit:

"ASSESSMENT NO. DST 2-99-000022

Universal Savings Account (UNISA) (Gross amount)			Php170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)			0.15%
Basic DST Due			256,471,484.71
Add:			
Surcharge	Php64,117,871.42		
Interest (1/10/00-1/31/03)	156,974,602.49		
Compromise Penalty	25,000.00		221,117,473.91
Total DST Deficiency		**Php**	**477,588,959.62**"

On March 2, 2004, respondent rendered decision denying petitioner's protest against the assessed deficiency DST.

On April 21, 2004, petitioner filed a Petition For Review with this Court, docketed as C.T.A. Case No. 6955.

In his Answer, respondent alleged by way of special and affirmative defenses that the assessment has become final, executory and demandable, firstly, for petitioner's failure to submit all relevant supporting documents within sixty (60) days from filing of its protest, and secondly, for petitioner's failure to appeal to this Court respondent's inaction on its protest within thirty (30) days from the lapse of the 180-day period provided in *Section 228 of the Tax Code*; petitioner's UNISA is considered a time deposit and is subject to DST under *Section 180 of the NIRC*; assuming arguendo that the UNISA is not a certificate of deposit, it is a loan agreement because the relationship between a depositor and a bank is that of creditor and debtor.

After trial on the merits, the Second Division rendered the assailed Decision on September 1, 2006 dismissing the Petition For Review for lack of merit.

Not satisfied, petitioner moved for a reconsideration of the same, which the Second Division denied in its Resolution dated January 3, 2007.

Hence, this Petition For Review, raising the following:

ISSUES

I

WHETHER OR NOT THE SECOND DIVISION ERRED IN NOT APPRECIATING THE FACT THAT THERE IS NO LAW SUBJECTING PETITIONER'S UNISA TO DST DURING THE TAXABLE YEAR 1999, THE SAME

HAVING ONLY BEEN PASSED IN THE YEAR 2004 AS REPUBLIC ACT NO. 9243.

II

WHETHER OR NOT THE SAID SECOND DIVISION ERRED IN HOLDING THAT PETITIONER'S UNISA IS SUBJECT TO DST AS A FORM OF CERTIFICATE OF DEPOSIT UNDER SECTION 180 OF THE NATIONAL REVENUE CODE.

III

WHETHER OR NOT THE SAID SECOND DIVISION ERRED IN NOT APPRECIATING THAT UNDER SECTION 180 OF THE TAX CODE, ONLY "NEGOTIABLE" CERTIFICATES OF DEPOSIT ARE TAXABLE THEREIN, WHEREAS PETITIONER'S UNISA IS A NON-NEGOTIABLE INSTRUMENT AS ESTABLISHED BY EVIDENCE.

The above issues boil down to the decisive issue of whether petitioner's UNISA evidenced by a passbook is subject to documentary stamp tax for the taxable year 1999.

On March 16, 2007, without necessarily giving due course to the petition, We required the respondent to file his comment thereto.

On March 29, 2007, the respondent filed his "Comment (Re: Petition For Review)".

Hence, the petition is now deemed submitted for decision.

THE COURT *EN BANC's* RULING

The petition is without merit.

Decisive Issue

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

The decisive issue raised herein by petitioner had already been resolved in the recent Resolution dated January 15, 2007 (G.R. 173602) and Decision dated April 4, 2007 (G.R. No. 171266) of the Supreme Court.

In the 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. EB 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 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.

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.

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*.

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

And in the recent case of *"International Exchange Bank vs. Commissioner of Internal Revenue, G.R. No. 171266, April 4, 2007,* the Supreme Court ruled that therein petitioner International Exchange Bank's Savings Account Fixed Savings Deposit (FSD) is subject to DST for the years assessed, thusly:

> "The issue, in the main, is whether petitioner's FSD is subject to DST for the years assessed.
>
> The applicable provision is Section 180 of the Tax Code, as amended by R.A. 7660, which reads:
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> 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 deposit 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 (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any 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 (₱250,000) 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

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of the documentary stamp tax provided under this section. (Emphasis and underscoring supplied)

Petitioner posits that based on this Court's definition of a certificate of deposit in *Far East Bank and Trust Company v. Querimit*, *viz*:

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. . . .

its FSD is not a certificate of deposit since there is nothing in the terms and conditions printed on the passbook evidencing it that can be construed to mean that the bank or banker acknowledges the receipt of a sum of money on deposit.

Petitioner moreover posits that the FSD, unlike a certificate of deposit, is not negotiable or payable to the order of some other person or his order but is 'only withdrawable by the depositor or his authorized representative.'

Petitioner's position does not lie.

As correctly found by the CTA En Banc, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. 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 substance, not form, is paramount.

Contrary to petitioner's claim, not all certificates of deposit are negotiable. A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction **or**, instead of **and**, in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, **or** to some other person or his order.

In any event, the negotiable character of any and all documents under Section 180 is immaterial for purposes of imposing DST.

Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date.

As for petitioner's argument that its FSD is similar to a regular savings deposit because it is evidenced by a passbook, and that based on the legislative deliberations on the bill which was to become R.A. 9243 which amended Section 180 of the NIRC (which is to a large extent the same as Section 180 of the Tax Code, as amended by R.A. 7660), Congress admitted that deposits evidenced by passbooks which have features akin to time deposits are not subject to DST, the same does not lie.

The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus explains the CTA En Banc:

It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is necessary to determine whether petitioner's Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:

> 'In this case, a <u>depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.</u>
>
> <u>The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit</u>. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. <u>The only difference lies on the evidence of deposit</u>, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit.'

In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, <u>We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are *essentially* the features of a time deposit</u>. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same. . . . (Italics in the original; underscoring supplied)

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The findings and conclusions reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, and unless there has been an abuse or improvident exercise of authority, and none has been shown in the present case, deserves respect.

It bears emphasis that DST 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.

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.

The further amendment of Section 180 of the NIRC and its renumbering as Section 179 by R.A. 9243, which was approved on February 17, 2004, *viz:*

> SEC. 5. Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:
>
> SEC. 179. Stamp Tax on All Debt Instruments. – On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with terms of less than one (1) year, the

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> documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, <u>certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date,</u> orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation." (Underscoring supplied),

does not mean that as proffered, prior to its further amendment on said date, Section 180 of the Tax Code and the NIRC time deposits for which passbooks were issued were exempted from payment of DST.

If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits. This is reflected from the following exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. 9243:

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MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. Savings deposit at the present time is not subject to DST.

THE CHAIRMAN. That's right.

MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time...

THE CHAIRMAN. Uh-huh.
MR. ANDAYA. . .it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.

THE CHAIRMAN. If I had it my way, I'll cut it by half.

MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, 'no.

Now, I think the move of the DOF to expand the coverage of or to add that phrase, "Other evidence of indebtedness," it just removed ambiguity. When we testified earlier in the House on this very same bill, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, "This savings deposit is not savings but it's time deposit." So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity. . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . . which is time, in effect, regardless of what form it takes should be subject to DST.

THE CHAIRMAN. Would that include savings deposit now?

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MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity . . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . that would fall under the purview. (Underscoring supplied)"

Pursuant to the aforequoted Supreme Court Resolution and Decision, We, therefore, resolve to affirm the assailed Decision dated September 1, 2006 and Resolution dated January 3, 2007, and to dismiss the instant petition.

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice