REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED OVERSEAS BANK PHILIPPINES,
Petitioner.

C.T.A. EB No. 229
(C.T.A. CASE No. 6978)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Members:

Acosta, *P.J.*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:
JUL 19 2007

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D E C I S I O N

CASTAÑEDA, Jr., *J.*:

STATEMENT OF THE CASE

Before Us is a petition for review assailing the Decision and the Resolution dated July 31, 2006 and November 9, 2006, respectively, promulgated by Second Division of the Court of Tax Appeals (Court in Division, for brevity) in the case entitled "*United Overseas Bank Philippines vs. Commissioner of Internal Revenue*" docketed as C.T.A. CASE No. 6978.

The dispositive portion of the assailed decision provides, as follows:

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 **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%) 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.

The dispositive portion of the assailed resolution reads:

WHEREFORE, in view of the foregoing, petitioner's Motion for reconsideration is hereby DENIED for lack of merit.

SO ORDERED.

STATEMENT OF THE FACTS

As found by the Court in Division, the following are the facts of this case:

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 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).** Petitioner timely filed its protest on October 15, 2002.

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, 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	**P4,562,570.27**

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:

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 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

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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

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."

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

On July 31, 2006, the Court in Division issued the assailed decision.

In a resolution dated November 9, 2006, the same division denied for lack of merit petitioner's "Motion for Reconsideration" filed on August 23, 2006. A copy of which was received by petitioner on November 22, 2006.

Consequently, this petition for review *en banc* was filed on December 6, 2006.

Respondent filed its Comment on January 15, 2007 alleging that the issues in the petition for review *en banc* had been extensively, sufficiently and squarely addressed and resolved by the Court in division in the assailed Decision as well as in the resolution under review.

Hence, this case for decision.

STATEMENT OF THE ISSUE

WHETHER OR NOT PETITIONER'S SSD IS A CERTIFICATE OF DEPOSIT SUBJECT TO DST UNDER THEN SECTION 180 OF THE NIRC OF 1997

PETITIONER'S ARGUMENTS

1. **THE HONORABLE SECOND DIVISION ERRED IN HOLDING THAT PETITIONER'S SSD FALLS WITHIN THE AMBIT OF THE TERM "CERTIFICATE OF DEPOSIT" SUBJECT TO DST UNDER THEN SECTION 180 OF THE NIRC OF 1997.**

2. **THE HONORABLE SECOND DIVISION ERRED IN HOLDING THAT THE DST UNDER THEN SECTION 180 OF THE NIRC OF 1997 IS REALLY IMPOSED ON THE PRIVILEGE TO ENTER INTO A TRANSACTION.**

Petitioner avers that for a deposit account to be subject to DST, the same must be evidenced by a certificate of deposit, which is the very instrument mentioned as subject to DST under then Section 180 of the NIRC of 1997.

Petitioner alleges that its SSD is not akin to a "time deposit". Petitioner avers that the passbook evidencing the SSD does not bear any acknowledgment of the receipt of money on deposit; neither does it contain a promise to pay the depositor or bearer. This is unlike the case of the certificate of deposit (evidencing the time deposit) which bears the aforementioned features of a certificate of deposit.

Petitioner avers that its SSD passbook (Exhibit "E") is like the regular savings passbook (Exhibit "F").

Petitioner even reiterates that under the standard set by the Bangko Sentral ng Pilipinas (BSP), what is important and controlling for purposes of classifying a deposit a time deposit, are the twin attributes that (1) it has a fixed term or period of maturity, and (2) it is evidenced by a certificate of deposit.

Petitioner cites Senator Raphael Recto's sponsorship speech in R.A. No. 9243. In effect, petitioner alleges that Senator Recto admitted that then Section 180 of the Tax Code does not tax the so-called special savings deposits evidenced by passbooks.

As to the second argument, petitioner cites the Supreme Court cases of ***Commissioner of Internal Revenue vs. Heald Lumber Company***[1], ***Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals***[2], and ***Philippine Home Assurance Corp., et. al. vs. Court of Appeals***[3]. Petitioner alleged that based on these cases it is clear that the DST is an excise tax upon the facilities used in the transaction of the business separate and apart from the business itself and concluded that the DST is not a tax on the transaction of the business, but on the facilities or instruments used in the transaction of the business. gr

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1 G.R. No. L-16340, February 29, 1964.
2 G.R. No. 118043, July 23, 1998.
3 G.R. No. 119446, January 21, 1999.

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THIS COURT'S RULING

We deny the petition.

The sole issue in this case is whether or not petitioner's SSD account falls within the ambit of "certificates of deposits " and, thus, subject to DST under then Section 180 of the NIRC of 1997.The answer is in the affirmative.

In *Banco de Oro Universal Bank vs. Commissioner of Internal Revenue*[4], G.R. 173602, January 15, 2007, the Supreme Court held that "**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." *(Emphasis Supplied)*

Finally, the recent Supreme Court case entitled *International Exchange Bank vs. Commissioner of Internal Revenue*, G.R. No. 171266, April 4, 2007 settled squarely the issue/arguments of petitioner in this case, as follows:

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[4] Minute Resolution of the Supreme Court's First Division.

The issue, in the main, is whether petitioner's FSD is subject to DST for the years assessed.

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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 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, 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 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.

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> 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. 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. The only difference lies on the evidence of deposit, 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, 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. 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)

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 (P1.00) on each Two hundred pesos (P200), 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 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

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> imposed on either loan agreement, or promissory notes issued to secure such loan.
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> 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, 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, 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:

> 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 bull, 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?

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)

Based on above discussions We, therefore, rule that that petitioner's Special Savings Deposit (SSD) falls under the definition of "certificates of deposits drawing interest" subject to documentary stamp tax under Section 180 of the NIRC of 1997.

WHEREFORE, premises considered, the petition for review is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and the Resolution dated July 31, 2006 and November 9, 2006, respectively, are hereby **AFFIRMED *in toto*.**

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

We concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
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 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