REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

METROPOLITAN BANK AND TRUST COMPANY,
Petitioner,

C.T.A. CASE NO. 6955

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 0 1 2006

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DECISION

UY, J.:

Before Us is a Petition for Review of the Decision of respondent Commissioner of Internal Revenue in Protest Case No. P-12-04 promulgated on March 2, 2004 entitled ***"In the Matter of the Protest of the Metropolitan Bank and Trust Co. Against Assessment Notice No. DST-2-99-000022 Demanding Payment of the Amount of P477,588,959.62 As Deficiency Documentary Stamp Tax For Taxable Year 1999,"*** which denied petitioner's protest against the assessment for deficiency documentary stamp tax on its

Universal Special Savings Account ("UNISA") for taxable year 1999, the dispositive portion of which reads:

> "**WHEREFORE,** predicated on all the foregoing, METROBANK's protest against Assessment Notice No. DST-2-99-000022 is hereby **DENIED.** Consequently, METROBANK is hereby ordered to pay the total amount of **P477,588,959.62,** as deficiency documentary stamp tax for the taxable year 1999, plus increments that have legally accrued thereon until the actual date of payment, to the Large Taxpayer's Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof: otherwise, collection thereof will be effected through the summary remedies provided by law.
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> This constitutes the **Final Decision** of this Office on the matter."[1]

THE FACTS

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.

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[1] Exhibit "A", Decision, P-12-04, Rollo, pp. 14-18.

LOA 2000 00052501 dated June 26, 2001. In due course, respondent issued a Pre-assessment Notice ("PAN") dated September 30, 2002,[2] 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		**473,207,457.68**

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.[3] 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 [4], 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		256,471,485.71
Add:		
Surcharge	Php 64,117,871.42	
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"**

[2] Pre-Assessment Notice dated September 30, 2002, Exhibit "B", Rollo, pp. 19-20.
[3] Protest Letter of petitioner dated December 11, 2002, Exhibit "C", Rollo, pp. 22-24.
[4] Formal Letter of Demand of respondent dated January 7, 2002, Exhibit "D", Rollo, p. 25.

Petitioner received said formal demand letter on January 10, 2003 and filed its protest thereto on January 17, 2003.[5] On March 2, 2004, respondent rendered the assailed Decision denying petitioner's protest against the assessed deficiency DST which was received by the petitioner on March 25, 2004. Petitioner accordingly appealed its case before this Court on April 21, 2004. And pursuant to the provisions of Section 228 of the National Internal Revenue Code of 1997 ("NIRC"), the instant petition was filed well within the period allowed by law.

Respondent filed his Answer on June 9, 2004 alleging, among others, that petitioner's UNISA is considered a time deposit and is subject to DST under Section 180 of the NIRC (United Overseas Bank Philippines vs. CIR, CTA Case No. 6421, April 21, 2004); that 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 a creditor and debtor (Gullas vs. PNB, 62 Phil 519; Integrated Realty Corp. vs. PNB, 174 SCRA 295). As such, it is allegedly subject to DST under Sec. 180 of the NIRC; and that all presumptions are in favor of the correctness of the tax assessment and that the good faith of tax assessors and the validity of their actions are presumed.

THE ISSUE

As jointly stipulated by the parties, the sole issue for resolution is: "[w]hether or not the petitioner's Universal (Special) Savings Account (UNISA)

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[5] Protest Letter of petitioner dated January 15, 2003 to respondent's formal letter of demand, Exhibit "E", Rollo, pp. 28-31.

is subject to documentary stamp tax under Section 180 of the Tax Code of 1997 (NIRC)." [6]

PETITIONER'S THEORY

It is petitioner's principal argument that its UNISA is not subject to DST under Section 180 of the NIRC and that said account is being taxed for DST as a Certificate of Deposit Bearing Interest under said section. According to petitioner, the UNISA is a deposit account that comes in the form of a passbook, and yet, it is being taxed by respondent as a certificate of deposit. Essentially, respondent taxes the UNISA because its basic features show that it possesses the "general character and profile of a certificate of deposit, specifically, as claimed by respondent and upheld by this Court in its numerous decisions, it is the fact that a deposit account, such as petitioner's UNISA, has a fixed term and also earns a higher rate of interest or vice-versa, that makes it akin to a Time Deposit, and therefore taxable under Section 180.

Additionally, petitioner submits that the UNISA is merely a savings account, albeit the special and unique features where the depositor will earn higher interest for a P100,000.00 deposit if not withdrawn for at least 30 days duly agreed upon by the bank and the depositor. The amount so deposited is evidenced by a passbook, the purpose of which is to inform or guide the depositor of the condition and balance of his account as it appears upon the books of the Bank. Withdrawals upon UNISA may be done anytime through withdrawal slips at the will of the depositor. The deposit earns interest, the rate of which is subject to review by the Bank and could be unilaterally revised

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[6] Joint Stipulation of Facts and Issues, Rollo, pp. 83-85.

to conform to the prevailing prescribed rate. UNISA, being evidenced by a mere deposit passbook, is personal to the depositor; hence, non-transferable or non-negotiable as such. Deposit passbook contains no features of negotiability and by itself does not constitute orders for payment like a bill of exchange.

During trial on January 24, 2005, petitioner presented as its witness, Alberto P. Maglaqui, the Vice President and Head of its Systems Division, who testified that the features of UNISA are likened to that of an ordinary savings account rather than of a time deposit. He explained that the Systems Division of petitioner is the unit charged with the maintenance of the bank's manual and operating procedures; that it issues circulars to all operating units regarding the bank operation of its deposit taking and lending products. Mr. Maglaqui continued to explain that their deposit taking products include Regular Savings Account, Universal Savings Account and Time Deposit. He further distinguished between the three (3) deposit taking products, to wit:

> As to minimum opening balance requirement: a Regular Savings Account requires a minimum opening and maintaining balance of P10,000; a UNISA requires P100,000 as minimum opening and maintaining balance and a Time Deposit requires P10,000. All these amounts should be maintained as an average daily deposit.
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> As to current interest rate on the deposits: a regular savings account earns 1% interest rate per annum while UNISA earns 3% to 4% interest depending upon the length of time agreed upon by the bank and depositor. The UNISA enjoys a higher interest rate because it has varying terms, a length of period agreed upon by the bank and its clients as appearing in

the UNISA Deposit Confirmation Sheet issued at the time a client opened a Universal Savings Account (UNISA).

<u>As to withdrawals and its effect on the deposit interest</u>: In a regular savings account a depositor or his authorized representative may withdraw anytime. If by such withdrawal the deposit fall below the required maintaining balance, the bank will charge the account holder P100.00 in the nature of penalty and the deposit will no longer earn 1% interest. In UNISA, a depositor or his authorized representative may, likewise, withdraw anytime. If by such withdrawal the deposit fell below the required maintaining balance, the preferential interest rate of 3% to 4%, as agreed, will not be given. This will result to the conversion of UNISA into a regular savings account earning a regular interest rate of 1% per annum. With regard to Time Deposits, since there is an agreed fixed term of a minimum of 30 days for this type of deposit, the depositor during such period can neither make additional deposits thereto nor withdraw therefrom. Should the depositor withdraw from his Time Deposit, it will be terminated and the corresponding Certificate has to be surrendered.

It is petitioner's submission that with the removal of the respective interest ceilings on savings and time deposits, banks are now enabled to legitimately offer higher rates on savings account which may even be at par with rates on time deposit. Allegedly, the distinction between a savings and a time deposit was removed insofar as interest rates are concerned. This being so, and for the legitimate purpose of further enticing deposits for savings account, banks have evolved the product – Special Savings Account just like the UNISA, which offers flexibility of a savings deposit but does away with the rigidity of a time deposit account and with interest rate at par with the latter.

Such product is allegedly a natural evolution of modern banking practice called for by circumstances of the times and not thought of merely to evade payment of taxes.

RESPONDENT'S THEORY

Respondent, however, counter-argues that it is beyond doubt that what is being taxed under Section 180 of the NIRC is not just a time-deposit certificate but a certificate of deposit. Otherwise, the said provision would have a restricted and limited application. A Certificate of Deposit "is 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.[7]"

Accordingly, a certificate of deposit should not be construed as synonymous with a time-deposit certificate. The latter is a mere genus or sample of the former. In other words, not all certificates of deposits are time-deposit certificates, but necessarily, a time-deposit certificate is a certificate of deposit. Thus, to put forth the argument that the UNISA is evidenced by a passbook and not a certificate, and is therefore not taxable, is contrary to Philippine tax law and sound legal principles.

Respondent further avers that "the certificate of deposit stated under Section 180 does not prescribe any particular form and the fact that the UNISA is evidenced by a passbook similar to those issued to the regular savings account instead of a certificate of deposit, does not alter the substance of the UNISA. What is controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, in as much as its substance is paramount rather that its form."

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[7] Re: Olson's Estate, 206 Iowa, 706, 219 N.W. 40 cited in Agbayani, Op cit p. 441.

And a financial product, though evidenced by a passbook should be considered and treated as a time deposit product if it has the feature of a time deposit regardless of where it is written. Equity and law always exalt substance over form. And the fact that the UNISA is evidenced by a passbook does not take it out of the coverage of Section 180 of the NIRC.

THIS COURT'S RULING

We agree with the respondent.

This case is not one of first impression. This Court, in a long line of cases, has consistently held that a special savings account similar to petitioner's Universal Special Savings Account or UNISA is subject to documentary stamp tax.[8]

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.[9] 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.[10] The law taxes the document because of the transaction.[11]

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[8] United Overseas Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, April 21, 2004; Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004; Keppel Bank Philippines, Inc., vs. Commissioner of Internal Revenue, Hon. Guillermo L. Parayno, Jr. (as the successor of former Commissioner Rene G. Bañez), CTA Case No. 6560, June 23, 2004; Banco de Oro vs. Commissioner of Internal Revenue, CTA Case No. 6390; Philippine Banking Corporation (now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6395, July 16, 2004; ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 6187, August 9, 2004 [CTA E.B. No. 52, April 5, 2005]; China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6400, October 14, 2004; International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004; Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, December 15, 2004; Prudential Bank vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue, CTA Case No. 6198, February 16, 2005.

[9] J. Vitug & E. Acosta, Tax Law and Jurisprudence (2nd Edition, 2003), p. 274.

[10] Ibid.

[11] H. De Leon, The Law on Transfer and Business Taxation (1998 Edition) p. 351.

What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

Section 180 of the NIRC enumerates the documents or instruments that are subject to documentary stamp tax. Said section reads:

> **"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, 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 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 (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."

To recapitulate, the following instruments are subject to documentary stamp tax:

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 securities issued by the Government or any of its instrumentalities;
5. deposit substitute debt instruments;

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.

Based on the foregoing enumerations, the law subjects a "certificate of deposit" drawing interest to the payment of documentary stamp tax. 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. Querimit***,[12] 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.

Clearly therefore, petitioner's UNISA falls 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 form. In other words, what matters are the facts and circumstances that surround the document and the transaction

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[12] 373 SCRA 665 (2002).

itself.

With respect to petitioner's contention that its UNISA is not the same as that of a "time deposit", We look 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".[13] 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.[14] 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 deposit.

We now look into whether petitioner's Universal Savings Account, or UNISA, 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; in both cases too, 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

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

that of the petitioner's UNISA, a savings passbook is issued to the depositor.

Nevertheless, as above stated, the fact that petitioner's UNISA 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.[15] And the use of an ordinary savings account passbook instead of a certificate of deposit does not change the true character of Universal Savings Account as time deposit. The passbooks that petitioner issues to its depositors or holders of a UNISA are certificates of deposit that are proper subject of documentary stamp tax.

Documentary stamp tax is in the nature of an excise tax, which is a tax imposed upon the privilege, opportunity or facility offered at exchanges for the transactions of the business. And, tax laws shall not be allowed to be circumvented by various arrangements and schemes in order to evade the payment of just taxes.[16]

All the foregoing considered, this Court finds that the appealed Decision is not flawed by reversible error but, on the contrary, conforms to the evidence on record, the applicable laws and jurisprudence, with the exception of the imposition of compromise penalty in the amount of P25,000.00. A compromise penalty presupposes an arrangement or agreement between the parties as to the payment of the amount due, and no such mutual arrangement or agreement was entered into between herein parties.[17]

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[15] BPI vs. Commissioner of Internal Revenue, et al., CA-G.R. SP No. 29853, September 19, 1994.
[16] Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Co., Inc., supra.
[17] Antam Pawnshop Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7069, June 21, 2005 citing Collector of Internal Revenue vs. UST, 104 Phil 1062 (1958); Atlas Consolidated Mining

Moreover, a delinquency interest[18] of 20% shall be charged against petitioner for its failure to pay the deficiency tax, or any surcharge or interest thereon on the due date appearing in the assailed Decision (notice and demand) of the respondent until the amount is fully paid, which interest shall form part of the tax.

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[19] until full payment thereof, pursuant to Section 249 (C) of the National Internal Revenue Code of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

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and Development Corporation (doing business under the name Atlas-Itochu Consortium) vs. Commissioner of Internal Revenue, CTA Case No. 5671, August 29, 2002.

[18] Section 249 (C)(3) of the NIRC of 1997.

[19] April 24 and 25, 2004 being a Saturday and Sunday, respectively.

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
Chairperson

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice