REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

C.T.A. CASE NO. 6764

- versus -

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 08 2006 Mayen

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DECISION

BAUTISTA, L., J.:

Raised as issues are the validity of the assessments for deficiency documentary stamp tax issued against the petitioner and the legality of imposing documentary stamp tax on petitioner's Special Savings Deposit Accounts.

Submitted for decision is petitioner's *Petition for Review* of respondent's final Decision dated August 12, 2003 denying petitioner's protest on the Bureau of Internal Revenue's assessment in the sum of SIX MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED THREE PESOS AND SEVENTY ONE CENTAVOS (₱6,750,103.71), representing petitioner's deficiency documentary stamp tax for the taxable year 1998.

175

The following are facts as stipulated by the parties and borne by the records of the case:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and authorized by the Bangko Sentral ng Pilipinas to engage in general banking operations in the Philippines.

Respondent is 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 the Court.

In the Formal Letter of Demand and the Assessment Notice both dated January 14, 2002, which petitioner received on January 25, 2002, respondent was assessing petitioner of deficiency documentary stamp tax ("DST") on its Savings Plus Accounts ("SPAs") for taxable year 1998 in the aggregate amount of SIX MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED THREE PESOS AND SEVENTY ONE CENTAVOS (₱6,750,103.71). The Formal Letter of Demand reads:

FORMAL LETTER OF DEMAND

UNITED OVERSEAS BANK PHILIPPINES
20/F Pacific Star Building
Buendia Avenue, Makati City

Gentlemen:

Please be informed that after investigation conducted on your 1998 internal revenue tax liabilities pursuant to Letter of Authority No. 00059142 dated June 20, 2000, and after consideration of the documents submitted, there has been found due from you deficiency internal revenue taxes, including increments thereon, details of which are shown hereunder:

ASSESSMENT NO: DST-98-000032
DOCUMENTARY STAMP TAX

Special Savings	Php	2,795,074,000.00
Multiply by		.3/200
Basic tax due	Php	4,192,611.00
Add: Interest (1/11/99-1/31/02)		2,557,492.71
Total deficiency DST due	**Php**	**6,750,103.71**

Details of Discrepancies:

Documentary stamp tax (DST) is being assessed on the special savings accounts of the bank's various depositors pending resolution of this industry issue.

The 20% interest per annum has been imposed pursuant to the provisions of Section 249 of the National Internal Revenue Code, as amended. Please note that the interest and the total amount will have to be adjusted if paid beyond January 3, 2002.

In view thereof, you are requested to pay your aforesaid deficiency documentary stamp tax through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed Assessment Notice.

Very truly yours,

RENE G. BAÑEZ
Commissioner of Internal Revenue

By:

VIRGINIA L. TRINIDAD (sgd.)
Assistant Commissioner
Large Taxpayer Service

Pertinent portion of the Assessment Notice reads:

PLEASE BE INFORMED THAT YOUR INTERNAL TAX LIABILITY (for deficiency)
CREDIT/REFUND (for refundable) HAS BEEN COMPUTED AS
FOLLOWS:

TAX TYPE:	PARTICULARS:	AMOUNT	
Documentary Stamp Tax	Violation on non payment of Documentary Stamp tax on Special Savings Account	Basic	4,192,611.00
BASED ON REASON: Violation Sec. 173 of NIRC		Interest	2,557,492.71
		Compromise	
		Total	**6,750,103.71**

177

Thereafter, petitioner filed on February 14, 2002 its letter-protest.[1]

On August 28, 2003, petitioner received from respondent the final Decision denying its protest and ordering it to pay the deficiency DST for the taxable year 1998, plus increments that have legally accrued. Respondent ratiocinated:

> To sum up, We believe and so hold that the SSD and the time deposit are just one and the same banking transaction. To evade payment of the documentary stamp tax, efforts were made to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a regular passbook to document the SSD and by claiming that the said 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 deposit 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 for all intents and purposes, it has the same nature and substance as a certificate of deposit bearing interest.

Hence, petitioner filed this petition on September 10, 2003.

Both parties submit the following issues for this Court's Decision:

I. Whether petitioner's SSD account is, in substance, a time deposit;

II. Whether the passbook evidencing the SSD account is a certificate of deposit bearing interest subject to DST under Section 180 of the Tax Code;

III. Assuming *arguendo* that petitioner's SSD is not a certificate of deposit, whether it is a loan agreement, thus, subject to DST under Section 180 of the Tax Code;

IV. Whether the Decision and the assessment, which it affirmed, are void for having no legal basis;

V. Whether petitioner was sufficiently informed of the law and the facts on which the assessments are based;

1 BIR Records, pp. 1670-1672

VI. Whether petitioner is liable to pay deficiency DST on its SSD accounts for taxable year 1998 in the aggregate amount of ₱6,750,103.71, inclusive of increments, plus 25% surcharge and 20% interest from September 27, 2003.

Petitioner raised the following grounds in support of its petition:

i. The Formal Letter of Demand dated January 14, 2002 and its attachments are void since they did not sufficiently cite the legal and factual basis of the assessment as required under Section 228 of the 1997 Tax Code;
ii. Assuming *arguendo* that the Formal Letter of Demand and the corresponding Assessment Notices are valid, petitioner's SSD account is a savings deposit, and the passbook evidencing the SSD account deposit transactions is not a certificate of deposit bearing interest; and
iii. Neither the SSD nor the SSD passbook evidencing the same can be classified as a loan agreement, promissory note, bill of exchange, draft, instrument or security issued by the government or certificate of deposit subject to DST under Section 180 of the 1997 Tax Code ("Tax Code").

Respondent, on the other hand, submits that:

1. Petitioner was informed of the law and the facts on which the assessments were made in compliance with Section 228 of the Tax Code;
2. Petitioner's Special Savings Deposit (SSD) Account is subject to DST under Section 180 of the Tax Code for the reasons that such account is an interest bearing account and has features of a time deposit account;
3. Assuming *arguendo* that SSD is not a certificate of deposit, it is a loan agreement between the depositor and petitioner subject to DST under Section 180 of the Tax Code;
4. The assessments were issued in accordance with the existing law and regulations; and
5. Assessments are prima facie presumed correct and made in good faith.

Section 228 of the Tax Code provides:

'SEC. 228. *Protesting of Assessment* – When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however,* That a preassessment notice shall not be required in the following cases:

179

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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within the period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Clearly, the above-quoted Section requires, among others, that the taxpayer should be informed in writing of the law and the facts on which the assessment is made. The law however provides no specific form as to the notice to be sent by the respondent or his duly authorized representative.

In the present case, this Court finds the contested Formal Letter of Demand and Assessment Notice sufficient in form. Petitioner was informed that it violated Section 173 of the Tax Code and that it was being assessed of deficiency DST, plus increments, for taxable year 1998. Furthermore, petitioner was given the details of the computation. Also, the sufficiency in form of the Formal Letter of Demand and Assessment Notice is bolstered by the fact that petitioner promptly protested the assessment for deficiency DST and claimed that it is not covered by Section 180 of the Tax Code.

It is noted that the Assessment Notice states that petitioner violated Section 173 of the same Code, which reads:

> "SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* – Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, **there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title**, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax." (Emphasis supplied.)

As clearly stated in the above-quoted Section of the Tax Code, DST shall be levied, collected and paid for upon the documents covered by Sections 174 to 198 of the Tax Code. And Section 180 in relation to Section 173 thereof, imposes documentary stamp tax on (a) bonds; (b) loan agreements; (c) bills of exchange; (d) drafts; (e) instruments and securities issued by the Government or any of its instrumentalities; (f) deposit substitutes; (g) debt instruments; (h) certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand; and (i) promissory notes. Said Section reads, in whole:

> "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

181

> 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."

Now, are petitioner's savings plus accounts or special savings deposits evidenced by passbooks, subject to documentary stamp tax under the above quoted Section?

The Court rules in the affirmative.

First, the passbooks that petitioner issues to its depositors or holders of savings plus accounts, are certificates of deposit which the Supreme Court, in *Far East Bank and Trust Company vs. Querimit* (373 SCRA 665, January 16, 2002), defined as "a written acknowledgement by a bank or banker of the receipt of 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."

Second, petitioner's savings plus accounts, being time deposits, are subject to documentary stamp tax under Section 180 of the Tax Code.

As testified to by petitioner's Manager of General Accounting Teofisto Rey,[2] its savings plus account is a special savings product of the bank that requires higher deposit and earns higher interest rate. The minimum deposit required for an SPA is ₱100,000.00 that earns a high interest rate of 15% per annum, **provided** that the depositor does not withdraw therefrom. Otherwise, if an account-holder withdraws therefrom and the deposit is below the ₱100,000.00 monthly minimum balance required, the regular interest rate of 3% is applied. A depositor therefore cannot demand from the petitioner to pay the high interest rate if the monthly minimum balance is not maintained.

As the nature of a deposit is determined by its features, not by the passbook or certificate issued by a bank, petitioner's savings plus accounts or special savings deposits are really time deposits.[3] And, under Section 180 of the Tax Code, a time deposit is subject to documentary stamp tax.[4]

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.[5] And, tax laws should not be allowed to be circumvented by various arrangements and schemes in order to evade payment of just taxes.[6]

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[2] TSN, February 26, 2004 and April 15, 2004.

[3] Revenue Regulations No. 12-80 defines a "time deposit" 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.

[4] See the Court *En Banc* decisions in *Traders Royal Bank vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 34 (CTA Case No. 6392), April 26, 2005; *Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 63 (CTA Case No. 6395), November 23, 2005; *Allied Banking Corporation vs. Parayno, Jr., et al.*, C.T.A. E.B. No. 69 (CTA Case No. 6565), July 11, 2005; and *ING Bank, N.V. Manila Branch vs. Commissioner of Internal Revenue*, C.T.A. E.B. No. 52 (CTA Case No. 6187), April 5, 2005.

[5] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, 145 SCRA 671, November 25, 1986.

[6] *Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Co., Inc.*, 379 SCRA 423, March 19, 2002.

183

WHEREFORE, the Petition for Review is **DISMISSED** for lack of merit and that respondent's Decision dated August 12, 2003 is hereby **AFFIRMED.** Accordingly, petitioner is **ORDERED TO PAY** the respondent the deficiency documentary stamp tax in the sum of SIX MILLION SEVEN HUNDRED FIFTY THOUSAND ONE HUNDRED THREE PESOS AND SEVENTY ONE CENTAVOS (₱6,750,103.71), plus 25% surcharge for late payment as provided in Section 248(3) of the Tax Code and 20% delinquency interest from September 30, 2003 until the amount is fully paid pursuant to Section 249(C) of the Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 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's Division.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

184