REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

CHINATRUST (PHILS.) COMMERCIAL BANK CORPORATION, Petitioner,	**CTA CASE NO. 7821**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 1 7 2012 9:45 a.m.

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DECISION

CASTAÑEDA, JR., J.:

This is a Petition for Review filed to seek the annulment, reversal and setting aside of the four Final Decisions on Disputed Assessments issued by respondent Commissioner of Internal Revenue finding petitioner liable for deficiency documentary stamp tax (DST), inclusive of surcharges, interest, and penalty, in the aggregate amount of P105,213,537.46.

THE FACTS

Petitioner Chinatrust (Phils.) Commercial Bank Corporation is a commercial bank duly organized under Philippine law that operates a Foreign

Currency Deposit Unit (FCDU), with principal office at the 3rd Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.[1] On the other hand, respondent is the Chief of the Bureau of Internal Revenue (BIR), the government agency charged with, among others, powers, duties, and responsibility of collecting all national internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

Respondent issued four (4) Preliminary Assessment Notices (PANs) to petitioner on November 7, 2006, urging petitioner to pay the following deficiency taxes:

a. DST on its FCDU transactions for the year 1998 in the amount of P13,259,416.92, making reference to Letter Notice No. FCDU-116-DS-98-00041, which provided that petitioner's deficiency DST was based on Section 27(D)(3) in relation to Section 180 of the National Internal Revenue Code (NIRC);
b. DST and Gross Receipts Tax (GRT) on its FCDU transactions for the year 1999 in the amounts of P32,342,325.83 and P14,286,122.80, respectively, making reference to Letter Notice No. FCDU-116-PM-DS-99-00035, which provided that petitioner's liability for deficiency GRT is based on Section 121 in relation to Section 27(D)(3), and the deficiency DST is based on Section 180 of the NIRC;
c. DST and GRT on its FCDU transactions for the year 2000 in the amounts of P29,265,291.09 and P31,420,397.62, respectively,

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 154.

making reference to Letter Notice No. FCDU-116-PM-DS-00-00017, which provided that petitioner's liability for deficiency GRT is based on Section 121 in relation to Section 27(D)(3), while the deficiency DST is based on Section 180 of the NIRC;

d. DST and GRT on its FCDU transactions for the year 2002 in the amounts of P23,253,829.94 and P22,575,860.10, respectively, making reference to Letter Notice No. FCDU-116-PM-DS-02-00012, which provided that petitioner's liability for deficiency GRT is based on Section 121 in relation to Section 27(D)(3), while the deficiency DST is based on Section 180 of the NIRC.[2]

On May 22, 2007, petitioner received the Formal Letters of Demand dated April 20, 2007, requiring petitioner to pay the following deficiency taxes:

a. DST on its FCDU transactions for the year 1998 in the amount of P13,730,021.24, making reference to Letter Notice No. FCDU-116-DS-98-00041, which provided that petitioner's deficiency DST was based on Section 27(D)(3) in relation to Section 180 of the NIRC;

b. DST and GRT on its FCDU transactions for the year 1999 in the amounts of P33,681,555.96 and P14,830,796.20, respectively, making reference to Letter Notice No. FCDU-116-PM-DS-99-00035, which provided that petitioner's liability for deficiency GRT is based on Section 121 in relation to Section 27(D)(3), while the deficiency DST is based on Section 180 of the NIRC;

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[2] Exhibits "1", "2", "3" and "4"; Par. 3, Stipulation of Facts, JSFI, docket, pp. 155-156.

c. DST and GRT on its FCDU transactions for the year 2000 in the amounts of P39,517,303.00 and P36,785,851.82, respectively, making reference to Letter Notice No. FCDU-116-PM-DS-00-00017, which provided that petitioner's liability for deficiency GRT is based on Section 121 in relation to Section 27(D)(3), while the deficiency DST is based on Section 180 of the NIRC; and

d. DST and GRT on its FCDU transactions for the year 2002 in the amounts of P29,840,760.71 and P30,751,201.64, respectively, making reference to Letter Notice No. FCDU-116-PM-DS-02-00012, which provided that petitioner's liability for deficiency GRT is based on Section 121 in relation to Section 27(D)(3), while the deficiency DST is based on Section 180 of the NIRC.[3]

On July 9, 2008, petitioner received the Final Decisions on Disputed Assessments (FDDAs) dated June 10, 2008. The basis of the assessment as stated in the FDDAs is the alleged collection by petitioner of DST from its clients and its purported failure to remit the same to the BIR.[4] Hence, petitioner filed the present Petition for Review on August 8, 2008.

In her Answer filed on November 3, 2008, respondent prayed that the instant Petition for Review be denied for lack of merit. Respondent raised the following Special and Affirmative Defenses:

"9. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.

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[3] Exhibits "5", "6", "7", and "8"; Par. 4, Stipulation of Facts, JSFI, docket, pp. 156-157.
[4] Pars. 5 and 9, Stipulation of Facts, JSFI, docket, pp. 157-158.

10. The decisions referred to by petitioner in paragraph 14 of the petition are final decisions on disputed assessments (FDDAs). Rightly so, it stated the deficiency tax liabilities of the taxpayer based on the assessment and the corresponding reason for denying the protest, i.e. the attempt to avail of the tax amnesty program for withholding tax liabilities. The denial of the protest was based on Q-1 of Revenue Memorandum Circular No. 69-2007. The FDDAs for taxable years 1998, 1999, 2000 and 2002 all bear the following legal basis for denial of petitioner's protest:

> 'The aforesaid assessment is premised on the following:
>
> The Documentary Stamp Tax liability is not covered by the tax amnesty in accordance with Revenue Memorandum Circular No. 69-2007, which clarifies the issues concerning the tax amnesty program under Republic Act No. 9480 specified under Q-1 to wit:
>
>> 'The Tax Amnesty Program (TAP) covers all internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value-added tax, other percentage taxes, excise taxes and documentary stamp taxes, **except** withholding taxes and **taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/refunds being considered as funds held in trust for the government. Moreover, the time-honored doctrine that *'No person shall unjustly enrich himself at the expense of another'* should always be observed.**'
>
> It is requested that your aforesaid deficiency documentary stamp tax liability be paid immediately upon receipt thereof, inclusive of

> penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency stamp tax assessment shall become final, executory and demandable.'

11. As for petitioner's supposition that the main issue is 'that Chinatrust's FCDU transactions were subject to GRT and DST in view of the unintentional deletion of the phrase 'shall be exempt from all taxes' in Section 27(D)(3) of the NIRC,' the implication of such deletion of the phrase 'shall be exempt from all taxes' has already been settled by the Honorable Court of Tax Appeals and already forms part of the interpretation of Section 27(D)(3) of the National Internal Revenue Code of 1997. In the case of *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue* the Honorable Court of Tax Appeals held:

> 'By the clear import of the present law, income derived by a branch of a foreign bank that may be authorized by the Bangko Sentral ng Pilipinas to transact business with the foreign currency deposit system units, like herein Petitioner, shall be subject to a final tax of 10%. The phrase 'exempt from all taxes' has been deleted by the legislators. The amendment by deletion of certain words or phrases in a statute indicated that the legislature intended to change the meaning of the statute (Gloria vs. Court of Appeals, 306 SCRA 287). By virtue of such deletion, Revenue Regulations No. 10-76, which implemented the old law is no longer applicable. In other words, the payment of 10% final tax on FCDU income does not exempt Petitioner from the payment of branch profit remittance tax or other taxes for that matter.'

The clear import of the foregoing is that, the issue of whether or not DST was passed on and collected by petitioner has always been part of the reason for the assessment and the FDDAs because judicial interpretation forms part of the Philippine legal system. The FDDAs are therefore clear and concise as to the fate of petitioner's protest and ultimately, deficiency tax liabilities.

12. The *ING Bank* case was in fact echoed in a Memorandum to the Assistant Commissioner, Large Taxpayers Service, from the Large Taxpayers Audit and Investigation Division I in reference to the issue raised by the banking industry relative to Letter Notice No. FCDU-116-PM-DS-99-00035 issued against petitioner on deficiency GRT and DST on their FCDU for taxable year 1999.

13. Furthermore, while the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision or termination of specific legal relationship through the execution of specific instruments. It is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than document. The law taxes the document because of the transaction. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction. It is in the nature

of an excise tax. 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. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Thus, for passing on and collecting DST from its clients, petitioner is taxed for the privilege of transacting through the execution of specific instruments, i.e. time deposits.

14. Petitioner's allegation that it had been deprived of the opportunity to explain why an assessment should not be issued is misguided. The Preliminary Assessment Notices received by petitioner indicated the amount of deficiency tax liability and a demand to pay within a prescribed period. The Supreme Court held that assessments simply required a computation of tax liabilities, the amount the taxpayer was to pay and a demand for payment within a prescribed period. To illustrate:

I. Paragraph 5(a) of the Petition for Review

Petitioner was informed through the corresponding PAN that it was liable for deficiency DST and FCDU transactions in the aggregate amount of P13,259,416.92 and that 'the interest and the total amount due will have to be adjusted if paid beyond November 30, 2006' and that 'complete details covering the aforementioned assessment and discrepancies are shown in the accompanying annex of this preliminary assessment notice.' Jc

II. Paragraph 5(b) of the Petition for Review

Petitioner was informed through the corresponding PAN that it was liable for deficiency GRT in the aggregate amount of P32,342,325.83 and deficiency DST in the aggregate amount of P14,285,122.80 and that 'the interest and total amount due will have to be adjusted if paid beyond November 30, 2006' and that 'complete details covering the aforementioned assessment and discrepancies are shown in the accompanying annex of this preliminary assessment.'

III. Paragraph 5(c) of the Petition for Review

Petitioner was informed through the corresponding PAN that it was liable for deficiency GRT in the aggregate amount of P31,420,397.62 and deficiency DST in the aggregate amount of P29,265,291.09 and that 'the interest and the total amount due will have to be adjusted if paid beyond October 30, 2004' and that 'complete details covering the aforementioned assessment and discrepancies are shown in the accompanying annex of this preliminary assessment notice.'

IV. Paragraph 5(d) of the Petition for Review

Petitioner was informed through the corresponding PAN that it was liable for deficiency GRT in the aggregate amount of P22,575,860.10 and deficiency DST in the aggregate amount of P23,253,829.94 and that 'the interest and the total amount due will have to be adjusted if paid beyond October 30, 2004' and 'complete details covering the aforementioned assessment and discrepancies are shown in the accompanying annex of this preliminary assessment notice.'

Thus, it cannot be gainsaid by petitioner that any opportunity to contest the assessments were ill-afforded.

15. It must be noted that findings of revenue officers are imbued with the presumption of correctness. In the case of *Commissioner of Internal Revenue vs. Bank of Philippine Islands* the Supreme Court enunciated:

> 'Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.'

16. Republic Act No. 9480 does not contemplate an all-encompassing grant of amnesty. The provisions thereof are applicable only to certain tax liabilities. Revenue Memorandum Circular No. 19-2008 enumerates the exceptions to the Tax Amnesty Law:

> 'Withholding agents with respect to their withholding tax liabilities
>
> Those with pending cases:
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> - Under the jurisdiction of the PCGG
> - Involving violations of the Anti-Graft and Corrupt Practices Act
> - Involving violations of the Anti-Money Laundering Law

- For tax evasion and other criminal offenses under the NIRC and/or the RPC
  Issues and cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer. (e.g. Taxpayers who have failed to observe or follow BOI and/or PEZA rules on entitlement to Income Tax Holiday Incentives and other incentives)

  Cases involving issues ruled with finality by the Supreme Court prior to the effectivity of R.A. 9480 (e.g. DST on Special Savings Account)

  Taxes passed-on and collected from customers for remittance to the BIR

  Delinquent Accounts/Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax.'

Therefore, by express provision of a regulation implementing the Tax Amnesty Law, petitioner is barred from availing of tax amnesty."

Afterwards, pre-trial ensued. The parties submitted their respective Pre-trial Briefs[5] and attended the pre-trial held on January 15, 2009. Subsequently, the parties filed their Joint Stipulation of Facts and Issues[6] on February 23, 2009, and the same was approved in a Resolution[7] dated February 24, 2009.

During trial, both parties presented and offered their respective evidence to support their respective positions. After submission of their respective Memorandum, this case was submitted for decision via Resolution dated January 24, 2011.[8]

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[5] Docket, pp. 57-73.
[6] Docket, pp. 154-160.
[7] Docket, p. 135.
[8] Docket, p. 385.

On October 19, 2011, this Court recalled and set aside the said January 24, 2011 Resolution. The Court observed that in the parties' Joint Stipulation of Facts and Issues filed on February 23, 2009, it was stipulated that petitioner availed of the Tax Amnesty Program in accordance with the provisions of Republic Act (RA) No. 9480, which granted tax amnesty to qualified applicants from all national internal revenue taxes for taxable year 2005 and prior years. Nevertheless, this Court emphasized in the same Resolution that for the taxpayer to avail of the tax amnesty benefits, it must first be established that it duly complied with the requirements enumerated in RA No. 9480, as implemented by Department Order No. 29-07. Thus, petitioner was ordered to submit the originals or certified true copies of its Notice of Availment of Tax Amnesty, Statement of Assets, Liabilities and Networth (SALN), Tax Amnesty Return, and Payment Form.

In its Compliance filed on November 18, 2011, petitioner submitted the certified true copies of the foregoing documents.[9] On January 11, 2012, the instant case was submitted for decision.[10]

THE ISSUES

The parties submitted the following issues[11] for this Court's disposition:

"1. Whether the assessments for DST in the Decisions are valid considering that the basis therefore has not been raised in the PANs and Formal Letter of Demand, thereby violating Chinatrust's right to due process.

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[9] Docket, pp. 390-392.
[10] Docket, p. 419.
[11] Docket, p. 159.

2. Whether the Decisions were issued in accordance with law, rules and regulations.
3. Whether the Decisions were issued within the prescriptive period provided by law.
4. Whether Chinatrust is liable for deficiency DST in the aggregate amount of ONE HUNDRED FIVE MILLION TWO HUNDRED THIRTEEN THOUSAND FIVE HUNDRED THIRTY SEVEN PESOS AND FORTY SIX CENTAVOS (P105,213,537.46) due to amounts allegedly passed on and collected by petitioner from its clients on their time deposit, bills payable and loan transactions for taxable years 1998, 1999, 2000 and 2002."

THE COURT'S RULING

Petitioner argues that its right to due process had been violated on the ground that respondent completely changed the "substance" of her assessments after petitioner replied to the PANs and protested against the Formal Letters of Demand, and inasmuch as the FDDA could no longer be appealed at the administrative level.

Contrary to petitioner's stance, the Court sees that there is no denial of due process in relation to the issuance of the FDDA.

It is worthy to recall that respondent issued four (4) Preliminary Assessment Notices against petitioner on November 7, 2006, urging the latter to pay the deficiency documentary stamp taxes on its FCDU transactions for

1998, 1999, 2000 and 2002, making reference to Letter Notice Nos. FCDU-116-DS-98-00041, FCDU-116-PM-DS-99-00035, FCDU-116-PM-DS-00-00017, and FCDU-116-PM-DS-02-00012. The basis of the disputed deficiency DST is Section 180 of the NIRC of 1997 as clearly stated in the Details of Assessment annexed to the said PANs.[12]

Likewise, in the Formal Letters of Demand, which petitioner received on May 22, 2007, petitioner was urged to pay the said assessed deficiency DST, making reference to Letter Notice Nos. FCDU-116-DS-98-00041, FCDU-116-PM-DS-99-00035, FCDU-116-PM-DS-00-00017, and FCDU-116-PM-DS-02-00012. Again, the legal basis cited in the Details of Assessment annexed to the said Formal Letters of Demand was Section 180 of the NIRC.[13]

In the Final Decisions on Disputed Assessments[14], petitioner's protests were denied for lack of factual and legal bases. The BIR also cited Section 180 of the NIRC in support of its finding that petitioner is liable for deficiency DST.

Clearly, based on the PANs, the Formal Letters of Demand and the Final Decisions, there was no change in the legal basis of the disputed assessment. The BIR was consistent in citing Section 180 of the NIRC as the legal basis of the disputed assessment.

The part of the FDDA which allegedly changed the substance of respondent's assessment pertains to the BIR's discussion that the DST liability is not covered by the tax amnesty pursuant to Revenue Memorandum

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[12] Exhibits "1", "2", "3" and "4".
[13] Exhibits "5", "6", "7", and "8".
[14] Exhibits "15" and "17".

Circular No. 69-2007, which excludes from the coverage of the Tax Amnesty Program taxes passed on and already collected from the customers for remittance to the BIR. This portion of the FDDA is only the result of petitioner's availment of tax amnesty under Republic Act No. 9480 during the pendency of its protest with the BIR.

The FDDA, therefore, not only constitutes the final determination of petitioner's deficiency DST, but also resolves petitioner's application for tax amnesty relative to the disputed assessment.

Petitioner's stand that the assailed FDDA of respondent was not issued in accordance with law, rules and regulations since the same raised a new issue, *viz.*, the passing on and collection of DST from petitioner's clients; and that respondent should have complied with the requirements of Revenue Regulations No. 12-99 and Section 228 of the NIRC, particularly, on the issuance of PAN and Formal Letter of Demand is therefore not meritorious.

To reiterate, the discussion in the FDDA as regards the fact that petitioner's DST liability is excluded from the coverage of the Tax Amnesty Program is only the result of petitioner's availment of tax amnesty under Republic Act No. 9480. Petitioner's application for tax amnesty during the pendency of its protest with the BIR, in a way, is an incident during its protest; hence, the same had been correctly considered by respondent in her decisions on the disputed assessment.

Having said that the FDDA does not constitute as new assessment since there was no change in the basis of the assessment, there is no need to address the question of whether or not the same was issued within the three-year prescriptive period provided by law.

The Court will now tackle the merits of the disputed assessment.

Petitioner was assessed of deficiency DST on its FCDU transactions, such as loan, time deposits and bills payable for taxable years 1998, 1999, 2000 and 2002 based on Section 180 of the NIRC, which provides:

> "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."

The documents subject to DST under Section 180 of the NIRC are the following:

1. bonds;
2. loan agreements;

3. bills of exchange (between points within the Philippines);
4. drafts;
5. instruments and securities issued by the Government or any of its instrumentalities;
6. deposit substitute debt instruments;
7. certificates of deposits drawing interest;
8. orders for the payment of any sum of money otherwise than at sight or on demand; and
9. promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

The transactions which are included in the computation of the disputed deficiency DST are covered by Section 180 of the NIRC.

Loan agreements are specifically listed in the said provision of the NIRC as subject to DST. Even though time deposits and bills payable are not clearly specified in that provision, nevertheless, both transactions are within the coverage of the said provision of the NIRC. It has been held 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".[15] On the other hand, bill payable is a bill of exchange accepted, or a promissory note made by a merchant, whereby he has engaged to pay money;[16] thus, being in the nature of a bill of exchange or a promissory note, the said transaction is subject to DST under Section 180 of the NIRC.

It is petitioner's position that FCDUs are not subject to non-income taxes, such as DST. According to petitioner, its position is consistent with the collective stance of the Bankers Association of the Philippines (BAP) as evidenced by the latter's letter to Finance Secretary Margarito Teves, which pointed out that the Comprehensive Tax Reform Program (CTRP), later

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[15] *International Exchange Bank vs. Commissioner of Internal Revenue*, G.R. No. 171266, April 4, 2007, 520 SCRA 688.
[16] Bouvier's Law Dictionary, Third Revision, p. 363.

officially designated as Republic Act No. 8424, did not repeal the exemption of FCDUs from non-income taxes, such as DST.[17]

This notion of petitioner is erroneous.

The original law, R.A. No. 6426, otherwise known as the "Foreign Currency Deposit Act of the Philippines", as amended by Presidential Decree (P.D.) Nos. 1035 and 1246, exempts from all taxes all foreign currency deposits made under the foreign currency deposit system, including interest and all other income of such deposits, whether or not these deposits were made by residents or non-residents. Section 6 of RA No. 6426, as amended provides:

> "Sec. 6. *Tax exemptions.* – All foreign currency deposits made under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034 including interest and all other income or earnings of such deposits, are hereby **exempted from any and all taxes** whatsoever irrespective of whether or not these deposits are made by residents or nonresidents so long as the deposits are eligible or allowed under aforementioned laws and, in the case of non-residents, irrespective of whether or not they are engaged in trade or business in the Philippines." (*Emphasis supplied*)

Subsequently, the National Internal Revenue Code of 1977 (Presidential Decree No. 1158) was enacted, which also granted tax exemption to FCDU's foreign currency transactions, but with certain exceptions. Section 25(a)(6)(B) of the 1977 Tax Code states:

> "(B) *Income derived under the Expanded Foreign Currency Deposit System.* - Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by

[17] Docket, p. 18.

> the Central Bank of the Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be **exempt from all taxes**, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: *Provided*, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.
>
> Any income of non-residents from transactions with depository banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

Thereafter, Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997", the applicable law in this case, took effect on January 1, 1998. Section 27(D)(3) of the NIRC of 1997 reads:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* -
>
> xxx xxx xxx
>
> (D) *Rates of Tax on Certain Passive Incomes.* –
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> xxx xxx xxx
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> (3) *Tax on Income Derived under the Expanded Foreign Currency Deposit System.* - Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, **shall be subject to a final income tax at the rate of ten percent (10%) of such income**.
>
> Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the

expanded system shall be exempt from income tax." (*Emphasis supplied*)

From the foregoing, it is apparent that the phrase "exempt from all taxes", which was previously stated in Section 25(a)(6)(B) of the 1977 Tax Code, is no longer present in Section 27(D)(3) of the NIRC of 1997.

The deletion of the tax exemption clause in Section 27(D)(3) of the NIRC of 1997, as amended, signifies that the income earned by a depository bank from FCDU transactions with local commercial banks or other banks authorized by the BSP to engage in the same transactions with depository banks, including interest income from foreign currency loans granted to residents are subject to ten percent (10%) final income tax, and all other applicable taxes due.[18]

Therefore, petitioner's position that FCDUs are not subject to non-income taxes, such as DST, does not hold water. Petitioner's liability for deficiency DST based on Section 180 of the NIRC is beyond question. In fact it is a settled rule in this jurisdiction that a documentary stamp tax is in the nature of an excise tax. 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. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself. Documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.

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[18] *Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue*, CTA EB No. 269, October 30, 2007.

Documentary stamp taxes are levied independently of the legal status of the transactions giving rise thereto.[19]

Consequently, what remains to be resolved is whether or not respondent's decision that petitioner's DST liability passed on to clients is not covered by the tax amnesty pursuant to Revenue Memorandum Circular (RMC) No. 69-2007 is correct.

While the Tax Amnesty Program covers all national internal revenue taxes, including DST; respondent asserts that RMC No. 69-2007[20] treats taxes passed on and already collected from the customers for remittance to the BIR excluded from its coverage.

It is petitioner's contention that it did not pass-on and collect DST from its clients with respect to its bills payable and time deposit products. According to petitioner, it was its policy not to pass-on and collect DST from its clients on bills payable consistent with the position of the banking industry that FCDUs are not subject to non-income taxes; while for its time deposit transactions, the time deposit certificates evidencing the same did not have any provision which would have allowed petitioner to pass-on and collect DST from the depositor. As regards its loan transactions evidenced by promissory notes, petitioner states that while it passed on and collected DST from clients, nevertheless, it remitted the amounts of DST collected to the BIR.

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[19] *Jaka Investments Corporation vs. Commissioner of Internal Revenue*, G.R. No. 147629, July 28, 2010, 626 SCRA 16.

[20] "The **Tax Amnesty Program** (TAP) **covers all national internal revenue taxes** such as income tax, estate tax, donor's tax and capital gains tax, value-added tax, other percentage taxes, excise taxes and documentary stamp taxes, **except** withholding taxes and **taxes passed-on and already collected from the customers for remittance to the BIR**, these taxes/funds being considered as funds held in trust for the government." (*Emphasis supplied*)

A perusal of the records reveals that petitioner was assessed of total basic deficiency DST in the amount of P39,067,141.85 for taxable years 1998, 1999, 2000 and 2002, detailed as follows:[21]

	1998	1999	2000	2002	Total
Time Deposit	$ 65,190,000.00	$ 68,704,000.00	P 4,425,172,448.00	P4,452,622,603.00	
Bills Payable	11,113,000.00	23,854,000.00	1,141,092,372.00	860,062,756.00	
FCDU Loans	-	-	4,127,387,356.00	4,300,157,824.00	
Total	$ 76,303,000.00	$ 92,558,000.00			
PDS Weighted Ave. rate	40.89	39.09			
Total	P3,120,266,209.30	P3,617,999,662.00	P 9,693,652,176.00	P9,612,843,183.00	P26,044,761,230.30
DST Rate	.30/200	.30/200	.30/200	.30/200	.30/200
DST Due	**P 4,680,399.31**	**P 5,426,999.49**	**P 14,540,478.26**	**P 14,419,264.77**	**P 39,067,141.85**

The Court commissioned Ms. Katherine O. Constantino of Constantino Guadalquiver & Co. as the Independent Certified Public Accountant (CPA) to conduct an independent special audit and examination of petitioner's available documents which are relevant to the instant case. In her Final and Consolidated Report[22] dated July 7, 2009, the Independent CPA found no indication that the documentary stamp taxes on FCDU time deposit and bills payable were passed on to petitioner's clients based on the procedures performed and the available documents examined. However, she found that DST was passed on to petitioner's clients involving FCDU loans.

The Court finds the Independent CPA report to be in order. For easy understanding, hereunder is the summary of the amounts of DST passed on and not passed on to petitioner's clients:

Taxable Year	**DST passed on to clients**	**DST not passed on to clients**		
	FCDU Loans	**Time Deposits**	**Bills Payable**	**Total**
1998	P -	P 3,998,731.78	P 681,667.53	P 4,680,399.31
1999	-	4,028,355.98	1,398,643.51	5,426,999.49
2000	6,191,081.03	6,637,758.67	1,711,638.56	14,540,478.26
2002	6,450,236.74	6,678,933.90	1,290,094.13	14,419,264.77
Total	**P 12,641,317.77**	**P 21,343,780.34**	**P 5,082,043.73**	**P 39,067,141.83**

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[21] Annexes "A" to "D", Petition for Review; Exhibits "15" and "17".
[22] Exhibit "PP", pp. 23 to 25.

Thus, out of the total basic DST assessment of P39,067,141.85 based on the total assessed transactions of P26,044,761,230.30, only the DST of P12,641,317.77 on FCDU loans amounting to P8,427,545,180.00 (P4,127,387,356.00 + P4,300,157,824.00) for the years 2000 and 2002 were passed on to clients.

The Court disagrees with respondent's contention.

Section 8 of Republic Act No. 9480 enumerates circumstances not within the scope of the tax amnesty law, namely:

> SEC. 8. Exceptions. – The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:
>
> (a) **Withholding agents with respect to their withholding tax liabilities**;
>
> (b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
>
> (c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
>
> (d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> (e) Those with pending criminal cases for tax evasion and other criminal cases under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters II and IV of Title VII of the Revised Penal Code; and
>
> (f) Tax cases subject of final and executory judgment by the Courts. (Emphasis supplied.)

Considering that taxes passed on and already collected from the customers for remittance to the BIR, are not among the taxes excluded from the coverage of Section 8 of R.A. 9480, tax amnesty applies to DST passed on to petitioner's clients pertaining to FCDU loans. It is immaterial if the DST was passed on to petitioner's clients. In the case of *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue*[23], the Supreme Court declared that the assertion of the CIR that deficiency DST is not covered by the Tax Amnesty Program under Republic Act No. 9480 is "downright specious".

Petitioner cannot invoke the provision of RMC 69-2007 treating taxes passed on to clients as those excluded from the scope of R.A. 9480.

Interpretative rulings of quasi-judicial bodies or administrative agencies must always be in perfect harmony with statutes and should be for the sole purpose of carrying their general provisions into effect. By such interpretative or administrative rulings, of course, the scope of the law itself cannot be limited. Indeed, a quasi-judicial body or an administrative agency for that matter cannot amend an act of Congress. Hence, in case of discrepancy between the basic law and an interpretative or administrative ruling, the basic law prevails.[24]

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[23] G.R. No. 178797, August 4, 2009, 595 SCRA 234. See *Philippine Banking Corporation(Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009, 577 SCRA 366.

[24] *Manuel C. Sunga v. Commission on Elections*, G.R. NO. 125629, March 25, 1998, 288 SCRA 76; *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, G.R. No. 150947, July 15, 2003, 406 SCRA 178; Philippine Bank of Communications vs. Commissioner of Internal Revenue, Court of Tax Appeals and Court of Appeals, G.R. No. 112024, January 28, 1999, 302 SCRA 241; and Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 158885 and 170680, October 2, 2009, 602 SCRA 159.*

We now ascertain if petitioner submitted documents relative to its tax amnesty application.

In a Resolution dated October 19, 2011, petitioner was ordered to submit the originals or certified true copies of the following documents, namely; (1) Notice of Availment of Tax Amnesty, (2) Statement of Assets, Liabilities and Networth (SALN), (3) Tax Amnesty Return, and (4) Payment Form, to determine whether petitioner is entitled to the benefits accorded by RA No. 9480.

On November 18, 2011, petitioner filed its Compliance submitting the certified true copies of the following documents:

a. Notice of Availment of Tax Amnesty;

b. BSP EFTIS Payment Form;

c. Tax Amnesty Payment Form (BIR Form No. 0617);

d. Tax Amnesty Return (BIR Form No. 2116); and

e. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005.

The said documents were subsequently marked as Exhibits "RR", "SS", "UU", "TT", and "VV", respectively, with sub-markings, and the same were identified by petitioner's witness, Mr. Andre P. Payawal.[25]

Judicious scrutiny of the foregoing documents reveals that petitioner has duly complied with all the requirements of RA No. 9480, as implemented by Department Order No. 29-07. Additionally, more than one year had already lapsed from the time petitioner availed of the tax amnesty on January Jr

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[25] Docket, pp. 418-419.

2, 2008[26] and there was no proceeding initiated against petitioner with respect to its availment of the program. Necessarily, the tax amnesty availed of by petitioner can no longer be questioned since RA No. 9480 allows only a one-year period following the date of the filing of the tax amnesty return and the statement of assets, liabilities and networth (SALN) for the party other than the BIR or its agents to initiate a proceeding in order to establish the understatement of the declared networth.[27]

In view of petitioner's full compliance with the Tax Amnesty Program, the disputed deficiency DST on its time deposit and bills payable transactions and FCDU loans, inclusive of increments thereto, for taxable years 1998, 1999, 2000 and 2002 should be cancelled and set aside. Section 10 of Department Order No. 29-07 provides, among others, that taxpayers who have fully complied with the conditions under RA No. 9480 and the rules shall be immune from the payments of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for year 2005 and prior years.

WHEREFORE, the instant Petition for Review is hereby **GRANTED**. The Final Decisions on Disputed Assessments involving deficiency DST, including surcharges, interests and compromise penalties for taxable years 1998, 1999, 2000 and 2002 are **REVERSED AND SET ASIDE** due to

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[26] Par. 8, Stipulation of Facts, JSFI, docket, p. 158.

[27] The SALN as of December 31, 2005 shall be considered as true and correct except where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in proceedings initiated by, or at the instance of, parties other than the BIR or its agents: *Provided*, That such proceedings must be initiated within one year following the date of the filing of the tax amnesty return and the SALN. Findings of or admission in congressional hearings, other administrative agencies of government, and/or courts shall be admissible to prove a thirty percent (30%) under-declaration. (Section 4 of RA No. 9480).

petitioner's availment of the Tax Amnesty Program. Accordingly, the assessments on petitioner's DST deficiency covering the same period are hereby **CANCELLED,** and the case is **CLOSED** and **TERMINATED**, pursuant to R.A. No. 9480.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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 opinión of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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.

ERNESTO D. ACOSTA
Presiding Justice