REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

METROPOLITAN BANK AND TRUST COMPANY,
Petitioner,

C.T.A. EB No. 269
(C.T.A. Case No. 6504)

Members:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

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DECISION

CASTAÑEDA, JR., J.:

For review is the Decision dated October 25, 2006 ordering Metropolitan Bank and Trust Company to pay the cumulative amount of P3,786,923,372.43 representing deficiency documentary stamp taxes on universal savings account deposits for taxable years 1995 to 1998, gross

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receipts taxes on onshore income arising from foreign currency deposit unit transactions and documentary stamp taxes on interbank call loans, both for the taxable year 1998, including penalty and delinquency interests in CTA Case 6504 entitled, "Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue", as well as the Resolution dated January 18, 2007 denying its Motion for Reconsideration and the Motion for Partial Reconsideration filed by the Commissioner of Internal Revenue.

The facts as borne in the records are:

Metropolitan Bank and Trust Company ("petitioner"), a domestic corporation duly organized and existing under the laws of the Philippines is engaged in the universal banking business; while the Commissioner of Internal Revenue ("respondent") is vested with authority to perform, *inter-alia*, decide disputed assessments, refund of internal revenue taxes, fees or other charges, penalties, or other matters arising under Republic Act (R.A.) 8424, as amended or also known as the, "1997 National Internal Revenue Code ("NIRC"), as amended" or other laws administered by the Bureau of Internal Revenue ("BIR").

For the period 1995 to 1998, respondent through Assistant Commissioner Perceival T. Salazar, issued and sent Final Demand Letters with attached Final Assessment Notices ("FANs") apprising petitioner of its tax liabilities.

On December 1, 1998, January 20, 1999 and January 14, 2000, petitioner protested the FANs only as to bank industry issues involving documentary stamp taxes ("DST") on universal savings account ("UNISA") deposits, trust agreements, assets-held-in-trust ("AHITs"), interbank call loans ("IBCLs") for the taxable years 1995 to 1998, Reverse Repurchase Agreements ("RRPs") for the taxable years 1995 to 1996 and gross receipts taxes ("GRT") on its onshore income from Foreign Currency Deposit Unit ("FCDU") transactions for the taxable year 1998.[1] In response thereto, on May 8, 2002, the respondent issued a Final Decision on Disputed Assessment requiring petitioner to pay the amount of P4,740,766,011.92, plus interest pertaining to various tax deficiencies covering taxable years 1995 to 1998, and declaring DST assessments on RRPs for taxable years 1995 to 1996 withdrawn and terminated.[2]

Unfazed, on July 5, 2002, petitioner appealed by way of filing a Petition for Review before the Court in Division. In the Petition for Review docketed as CTA Case 6504, petitioner raised the following grounds: that the UNISA deposit is not a certificate of deposit subject to DST; that pursuant to Section 180 of the NIRC, trust agreements, AHITs, IBCLs are

[1] Exhibits B, B-1 and B-2.
[2] BIR Records, Folder II, pp. 796 -812.

not DST covered transactions; and that the respondent committed a grave error in imposing GRT on its onshore income from FCDU transactions.

In the assailed Decision dated October 25, 2006, the Court in Division ordered petitioner to pay the amount of P3,786,923,372.43 representing DST on UNISA deposits for taxable years 1995 until 1998, DST on IBCLs and GRT on onshore income, both for taxable year 1998 with additional penalty equivalent to twenty five (25%) percent, and the twenty(20%) percent delinquency interest per annum from July 8, 2002 until such amount is paid, under Sections 248 and 249 of the 1997 NIRC, as amended. The dispositive portion of the assailed Decision reads:

> **IN VIEW OF ALL THE FOREGOING**, the subject Petition for Review is hereby **PARTIALLY GRANTED**. The assessments for deficiency documentary stamp taxes on petitioner's trust agreements and assets-held-in-trust transactions for taxable years 1995, 1996, 1997 and 1998 as well as the deficiency documentary stamp tax assessment on petitioner's interbank call loans for taxable years 1995, 1996 and 1997 are hereby **CANCELLED**. However, the deficiency documentary stamp tax assessments on petitioner's universal savings account for taxable years 1995, 1996 and 1997, 1998 and the deficiency assessments for gross receipts tax on petitioner's onshore income and for documentary stamp tax on petitioner's interbank call loans for taxable year 1998 are **AFFIRMED**.
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> Accordingly, petitioner is **ORDERED TO PAY** respondent the total amount of P3,786,923,372.43 representing deficiency documentary stamp taxes for taxable years 1995, 1996, 1997 and 1998 and deficiency gross receipts tax for taxable year 1998 computed as follows.

Taxable Year	Assessment Notice Number	DOCUMENTARY STAMP TAX On UNISA	DOCUMENTARY STAMP TAX On Interbank Call Loans	GRT-ONSHORE INCOME	TOTAL
1995	(ST-DST-95-0043-98	P 835,589,788.55			P835,589,788.55
1996	(ST-DST-96-0047-98	704,773,402.03			704,773,402.03
1997	(ST-DST-97-00164-99)	858,224,023.65			858,224,023.65
1998	(ST-DST4-98-0364-99)	1,178,124,630.62			1,178,124,630.62
	ST-DST6-98-0365-99		P26,861,641.93		26,861,641.93
	ST-DST7-98-0366-99		27,699,016.30		27,699,016.30
	(ST-GRT2-98-0360-99)			P155,650,869.35	155,650,869.35
		P3,576,711,844.85	P54,560,658.23	P155,650,869.35	P3,786,923,372.43

In addition, a penalty equivalent to twenty-five (25%) percent is imposed, as well as, a twenty (20%) percent delinquency interest per annum from July 8, 2002 until such amount is fully paid, pursuant to Sections 248 and 249 of the NIRC of 1997, as amended.[3]

Dissatisfied, both petitioner and respondent sought a reconsideration of the assailed Decision which the Court denied for lack of merit in a Resolution dated January 18, 2007. Hence, this Petition for Review with the Court En Banc under Section 18 of R.A. 1125, as amended by R.A. 9282 ascribing the following errors committed by the Court in Division:

1. The CTA 1st Division erred in not appreciating the fact that there is no law subjecting petitioner's UNISA to DST during the taxable years 1995 to 1998 inclusive, the same having only been passed in the year 2004 as Republic Act no. 9243;
2. The CTA 1st Division erred in holding that petitioner's UNISA is subject to DST as a form of certificate of deposit under Section 180 of the National Internal Revenue Code;
3. The CTA 1st Division erred in not appreciating that under Section 180 of the Tax Code, only "negotiable" Certificate of Deposit are taxable therein, whereas petitioner's UNISA is a non-negotiable instrument;
4. The CTA 1st Division erred in ruling that petitioner's interbank call loan (IBCL) transactions for 1998 are liable for DST;

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[3] Penned by Associate Justice Lovell R. Bautista, with Presiding Justice Ernesto D. Acosta, concurring and Associate Justice Caesar A. Casanova expressing his concurring and dissenting opinion. See, Rollo, pp.70-71.

5. The CTA 1st Division erred in holding the petitioner liable for Gross Receipts tax on its onshore income for 1998.[4]

On April 13, 2007, the respondent filed the corresponding Comment to the Petition.

THIS COURT'S RULING

Being interrelated, the first three issues shall be jointly discussed.

On UNISA deposits accruing for the taxable years 1995, 1996, 1997 and 1998

Petitioner alleges that the 1977 Tax Code, as amended and the 1997 NIRC, as amended impose DST on certificates of deposit embodying the features of negotiability. To qualify as a negotiable instrument, the certificate of deposit must be "payable to the depositor or to his order or to bearer or to some other person or his order". But since the UNISA evidenced by a passbook is neither payable to the depositor or to his or her order or bearer or to some other person or his/or her order, then, it is not a negotiable instrument, and neither can it be a certificate of deposit subject to DST.

[4] Rollo, pp. 16.

The UNISA, a special savings account deposit offers the flexibility of a regular savings account deposit, but does away with the rigidity of a time deposit and with interest at par with the latter. Unlike in a time deposit, the period in a UNISA deposit floats at the interval of 30, 60, 90 or 120 days or more, at the option of the depositor. And as an incentive for maintaining a longer holding period, the UNISA depositor earns a higher interest. This special savings account deposit is simply reverted to an ordinary savings status in the event of early or partial withdrawal or if the holding period is not satisfied. On the other hand, there is pre-termination in a time deposit calling for the surrender and cancellation of the instrument.

Petitioner further asserts that the amendatory clause, "certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings account deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a maturity date" stated in Section 5 of R.A. 9243 or also known as "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" which became effective on February 17, 2004, undoubtedly places the UNISA within the operation of DST. However, prior to the passage of R.A. 9243, there is no law subjecting special savings account deposits to DST covering the years 1995 to 1998, inclusive.

Respondent maintains that even prior to taxable year 2004, there is an existing law imposing DST on products legally defined as certificates of deposit.

Regardless of its nomenclature, the UNISA demonstrates identical features of a time deposit or certificate of deposit, namely: higher interest rate, a required minimum deposit balance, holding period in order to avail of a preferential rate which is much higher than that of a regular savings account deposit, and an early withdrawal penalty, in case of withdrawal prior to maturity. Since in substance, the UNISA possesses similar attributes of a time deposit, it is thus, subject to DST as a certificate of deposit. A time deposit is a specie of a certificate of deposit.

Respondent likewise points out that the 1977 Tax Code, as amended and the 1997 NIRC, as amended are not confined to negotiable certificates of deposit. To be taxable, the element of negotiability was previously required. However, this requirement was deleted in the 1977 Tax Code, as amended and the 1997 NIRC, as amended.

The Court disagrees with petitioner's arguments.

The term "certificate of deposit bearing interest" referred to in both the 1977 Tax Code, as amended and the 1997 NIRC, as amended is all encompassing, to include special savings account deposits such as the UNISA subject to DST, as ruled by the Supreme Court in the case of *International Exchange Bank vs. Commissioner of Internal Revenue*[5], also involving special savings account deposits denominated as Savings Account-Fixed Savings Deposits (FSD). In this case, the High Tribunal ruled that:

> Petitioner's position does not lie.
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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.
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> 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.
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> Contrary to petitioner's claim, not all certificates of deposit are negotiable. A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction or, instead of and, in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, or to some other person or his order.
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> In any event, the negotiable character of any and all documents under Section 180 is immaterial for purposes of imposing DST.
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> 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.
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> As for petitioner's argument that its FSD is similar to a regular savings deposit because it is evidenced by a passbook, and that based on the legislative deliberations on the bill which was to become R.A. 9243 which amended Section 180 of the NIRC (which is to a large extent the same as Section 180 of the Tax Code, as amended by R.A. 7660), Congress admitted that deposits evidenced by passbooks which have features akin to time deposits are not subject to DST, the same does not lie.
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> 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

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[5] G.R. No. 171266, April 4, 2007, 520 SCRA 688.

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:
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> "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."
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> 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.

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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:

> Section 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 (P 200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with terms of less than one (1) year, the 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 days: *Provided, further,* ,That only one documentary stamp tax shall be imposed on either loan agreement or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of the 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."

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.(Underscoring Ours for emphasis).

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On Interbank Call Loans covering taxable year 1998

Petitioner contends that the Court in Division erroneously sustained the respondent's finding of its DST deficiencies on IBCLs for taxable year 1998. In the absence of any evidence, the respondent cannot presume that the bank borrowed, lent or entered into IBCL transactions with 20 or more persons, individuals or corporate at any one time for the taxable year 1998 as basis for the assessment.

The Court in Division correctly cancelled DST assessment on IBCLs for taxable years 1995 to 1997. Prior to the 1997 NIRC, as amended, IBCLs were not subject to DST.

It is respondent's posture that DST is imposed on petitioner's IBCL transactions for taxable year 1998 since they are considered as deposit substitutes or alternatively, loan agreements, under Section 180 of the 1997 NIRC, as amended. Contrary to petitioner's posture, the DST assessment on IBCLs pertains only to those transactions exceeding the five (5) days term, the interest or yield of which is subject to final tax of twenty percent (20%) because they involve deposit substitutes.

DST is imposed on the privilege of contracting loans between and among banks, even if the IBCL transactions are documented merely by call loan slips and payment transfer tickets or done only through an electronic facility.

The Court partly agrees with the respondent.

The Bangko Sentral ng Pilipinas ("BSP") which exercises supervisory power among banks requires banks to maintain a daily minimum cash reserve set as a proportion of their deposit liabilities. There are banks which may be holding on to a reserve surplus in a day, while others have deficiency in reserves. A bank may experience surplus in a day, but low reserves in some other days. To cover temporary deficits, banks normally borrow (usually on an overnight lending) from other banks with surpluses. This network allowing banks that are deficient in reserves to borrow from banks with surplus reserves is referred to as IBCL. In other words, IBCL transactions among banks are done primarily to correct reserve requirements. By availing of IBCLs, reserve deficient banks are able to avoid BSP sanctions and the surplus banks are able to earn income on their excess cash holdings.[6]

The 1997 NIRC, as amended which took effect on January 1, 1998 is the applicable law for taxes accruing for taxable year 1998. Under the law, IBCLs with maturity exceeding five days qualify within the purview of the definition of deposit substitutes, pursuant to Section 22 (Y) which reads:

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[6] Benedicta Du-Baladad, TAXATION OF FINANCIAL INSTITUTIONS IN THE PHILIPPINES, 2006 Edition, p. 48.

SEC. 22. *Definitions*. – When used in this Title -

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(Y) The term ***"deposit substitutes"*** shall mean an alternative form of obtaining funds from the public (the term "public" means borrowing from twenty [20] or more individual or corporate lenders at any one time) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to, banker's acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: *Provided, however*, That debt instruments issued for inter-bank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including between or among banks and quasi-bank, shall not be considered as deposit substitute debt instruments. (Underscoring Ours for emphasis).

Succinctly stated, IBCLs with a maturity period of more than five days and utilized to cover deficiency in reserves against deposit liabilities, including between or among banks and quasi-banks are treated as deposit substitutes.

The taxability of IBCLs as deposit substitutes is governed by the provision of Section 180 of the 1997 NIRC, as amended, stating:

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(P.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 a 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.

Petitioner asseverates that the 1998 assessment is based on both IBCL receivables and payables. Although it is true that the lender and the borrower are the parties involved in IBCL transactions, the law imposes DST on only one party. The respondent wrongfully imposed DST on petitioner for all instances it acted as the lender and borrower, and on the counter parties of the bank for the same transactions. Thus, he indiscriminately imposed DST on both parties at the same time and for the same transaction when only one party should be liable.

We are not persuaded.

Petitioner failed to proffer any document which would establish that the counter-party was also taxed in the lending/borrowing transactions. The lists of IBCL transactions, specimen of net transactions per counter-parties, specimen of interbank loan advice credit ticket, specimen of interbank repayment debit ticket, specimens of interbank repayment credit tickets, specimen of daily statistics report for the petitioner[7], all inconclusively show that respondent twice imposed DST on petitioner and the counter-parties involving the same transaction.

On Onshore Income arising from FCDU transactions for taxable year 1998

Onshore income is income derived by Offshore Banking Units (OBUs) and Expanded Foreign Currency Deposit Units (EFCDUs) from residents other than another OBU and EFCDU.[8] An OBU is a branch, subsidiary, or affiliate of a foreign banking corporation that is duly authorized by the BSP to transact offshore banking business in the Philippines. Offshore banking business refers to the conduct of banking business transactions in foreign currencies involving the receipt of funds principally from external sources and the utilization of such funds; while an EFCDU and FCDU both pertain to a separate unit or department of a local bank or a local branch of a foreign bank authorized by the BSP to engage in foreign currency-denominated transactions.[9] The license to operate an EFCDU, however, is limited only to commercial banks and universal banks.

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[7] Exhibits O, P, Q, R, S, T, U and V.
[8] Benedicta Du-Baladad, supra, p.75.
[9] Ibid, p. 63 and *ING Bank(Manila Branch) vs. Commissioner of Internal Revenue*, CTA Case No. 6017, March 11, 2002.

A bank with an EFCDU license can practically engage in the same transactions as that of an FCDU, but with an expanded operation.[10]

To ensure the country's stable flow of foreign currency reserves, and to meet the exigencies of foreign currency transactions, Congress enacted R.A. 6426 granting income tax exemptions on interests earned from FCDU transactions involving non-residents not engaged in trade or business in the Philippines. Presidential Decrees (PDs) 1034, 1035[11] and 1246 subsequently amended the provisions of R.A. 6426. Petitioner anchors its tax exemption on FCDU transactions based on P.D. 1246 decreeing:

> SECTION 1. Section 6 of Republic Act No. 6426, as amended, is hereby amended to read as follows:
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>> 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, <u>are hereby exempted from any and all taxes whatsoever irrespective of whether or not these deposits are made by residents or non-residents 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. (Underscoring Ours for emphasis).</u>

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10 Benedicta Du-Baladad, supra, p. 63.

11 R.A. 6426 or also known as "An Act Instituting a Foreign Currency Deposit System in the Philippines, and for Other Purposes", P.D. 1034 or also known as "Authorizing the Establishment of an Offshore Banking System in the Philippines" and P.D.1035 or also known as "Expanding the Authority of Certain Depository Banks under R.A. No. 6426 and for Other Purposes" took effect on April 4, 1972 and September 30, 1976, respectively.

P.D. 1246[12] which took effect on November 21, 1977 became a catalyst for expanding the scope of tax exemption of foreign currency deposits, interests, other income, or earnings from these deposits belonging to residents and non-residents.

Years later, with the passage of the 1997 NIRC, as amended, the legislature conspicuously deleted the clause "exempt from all taxes" as shown in Section 27 (D)(3) of the same Code.

The petitioner contends that the deletion of the phrase "exempt from all taxes" specified in the 1997 NIRC, as amended, is not sufficient to invalidate the tax exemption clause stated under R.A. 6426, as amended, a special law. Being a general law, the 1997 NIRC, as amended cannot repeal by implication R.A. 6426, including the amendatory laws of P.D. 1034, P.D. 1035 and P.D. 1246 which afford tax exemption privileges on FCDU transactions. It must be stressed that the 1997 NIRC, as amended does not explicitly provide that FCDU transactions are now subject to GRT or to all other taxes, aside from the 10% income tax.

On the other hand, respondent counters that the Court in Division correctly ruled that the FCDU transactions for taxable year 1998 are subject to GRT. In drafting the 1997 NIRC, as amended, Congress deleted the phrase "exempt from all taxes". There being no effective

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12 Further Amending Certain Provisions of Republic Act Numbered Sixty-Four Hundred and Twenty-Six, as Amended by Presidential Decree Numbered One Thousand Thirty Five.

exemption, all applicable taxes became due. However, the legislators through R.A. 9294[13] revived the tax exemption privilege of FCDU transactions.

Petitioner's stance is untenable.

The tax treatment of FCDU transactions under Section 27 (D) (3) of the 1997 NIRC, as amended, vis-à-vis the amendatory provision embodied in R.A. 9294 provide:

> Sec. 27. *Rates of Income Tax on Domestic Corporations.* –
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> x x x x x x x x x
>
> (D) *Rates of Tax on Certain Passive Incomes.* –
>
> x x x x x x x x x
>
> (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 (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.
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> x x x x x x x x x

[13] An Act Restoring the Tax Exemption of Offshore Banking Units(OBUs) and Foreign Currency Deposit Units(FCDUs), Amending for the Purpose Section 27(D)(3) and Section 28, Paragraphs (A)(4) and (A)(7)(b) of the National Internal Revenue Code as Amended.

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> Sec. 27. *Rates of Income Tax on Domestic Corporations.* –
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> x x x x x x x x x
>
> (D) Rates of Tax on Certain Passive Incomes. -
>
> (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 non-residents, off-shore banking units in the Philippines, 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 deposit system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular income tax payable by banks: *Provided, however*, 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 final tax at the rate of ten percent (10%).

While the Court concedes to the argument that R.A. 9294 which took effect on May 21, 2004 restored tax exemption privileges on certain FCDU transactions, the applicable law in the case at bar is the 1997 NIRC, as amended, which became effective on January 1, 1998, logically covering GRT due for taxable year 1998. A GRT is a percentage tax imposed on the privilege of engaging in business.[14]

The deletion of the tax exemption clause in Section 27(D)(3) of the 1997 NIRC, as amended, signifies that the income earned by a domestic depository bank from FCDU transactions with local commercial banks or other banks authorized by the BSP to engage in the same transactions

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[14] *Commissioner of Internal Revenue vs. Bank of Commerce*, G.R. 149636, June 8, 2005, 459 SCRA 638 and *Commissioner of Internal Revenue vs. Solidbank Corporation*, G.R. 148191, November 25, 2003, 416 SCRA 436.

with depository banks, including interest income from foreign currency loans granted to residents are subject to the 10% final income tax, and all other applicable taxes due, such as GRT.[15]

The tax exempting clause reincorporated in R.A. 9294 cannot be enforced against taxes accruing for the taxable year 1998, and in effect nullifying petitioner's GRT assessment on FCDU transactions for this period. Laws shall have no retroactive effect, unless the contrary is provided, pursuant to Article 4 of the New Civil Code. Nowhere is it shown that R.A. 9294 provides for retroactive application of the law. *Lex prospicit non respicit,* the law looks forward, not backward.[16] The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and thus, unconstitutional.[17]

Assuming for the sake of argument that Section 27(D) (3) of R.A. 9294 is the operative provision, the tax exemption privilege such as on GRT may only be invoked by domestic depository banks receiving income[18] from FCDU transactions with non-residents, off-shore banking units in the Philippines, local commercial banks and BSP authorized branches of foreign banks. Petitioner miserably failed to show that it is duly qualified to claim for exemption under R.A. 9294. Statutes granting

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[15] See *ING Bank(Manila Branch) vs. Commissioner of Internal Revenue*, supra.
[16] *Coloso vs. Garilao*, 129165, Oct. 30, 2006, 506 SCRA 47.
[17] *Chavez vs. Public Estates Authority*, G.R. 133250, May 6, 2003, 403 SCRA 26.
[18] Excluding net income, See Section 27(D)(3) of R.A. 9294.

tax exemptions must be construed *in strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. [19] The burden of proof on the entitlement to a tax exemption rests upon the taxpayer.

The petitioner insists that on May 15, 2007, it availed of the BIR abatement program by paying GRT on its onshore income worth P129,634,210.20 for taxable year 1998, pursuant to Revenue Regulations (R.R.) 15-2006.

The 1998 assessment of petitioner's GRT deficiency on its onshore income cannot be nullified by the simple allegation of tax payment. Aside from the full payment of the basic tax due, Revenue Memorandum Order (RMO) 23-06 and R.R 15-06 require the taxpayer to submit the following documents, to wit: termination letter and authority to cancel assessment. Both documents are wanting in this case.

Finding no merit in petitioner's arguments, the respondent correctly assessed GRT on its onshore income stemming from FCDU transactions for taxable year 1998.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED**. The assailed Decision dated October 25, 2006 and the Resolution dated January 18, 2007 are **AFFIRMED**.

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[19] *Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. 172231, February 12, 2007, 515 SCRA 556.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice