REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE BANKING CORPORATION (Now: Global Business Bank, Inc.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

C.T.A. EB No. 63
(C.T.A. Case No. 6395)

MEMBERS:
ACOSTA, *P.J.,*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

NOV 2 3 2005

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D E C I S I O N

This is a Petition for Review before the Court of Tax Appeals *En Banc* (the Court En Banc) filed on February 23, 2005 under Republic Act No. 9282, praying for the reversal and setting aside of the Decision of the Court of Tax Appeals (the Court) in C.T.A. Case No. 6395 entitled *PHILIPPINE BANKING CORPORATION (Now: Global Business Bank, Inc.) v. COMMISSIONER OF INTERNAL REVENUE,* promulgated on July 16, 2004 and the Resolution dated January 14, 2005.

129

The undisputed facts as found by the Court are as follows:

> "Petitioner is a domestic corporation duly licensed as a banking institution, with business address at 777 Paseo de Roxas Street, Makati City, offering to the banking public, among others, a product called the Special/Super Savings Deposit during the years 1996 and 1997.
>
> On January 10, 2000, petitioner received from the respondent through the Assistant Commissioner for Enforcement Service, Final Assessment Notice No. ST-DST-96-6112-99 for taxable year 1996, representing alleged deficiency DST based on the outstanding balances of its Special/Super Savings Deposit account including increments thereon in the total sum of P17,595,488.75 and Final Assessment Notice No. ST-DST-97-0024-99 for taxable year 1997 also for deficiency DST on the same bank product including increments thereon amounting to P47,767,756.24.
>
> In response to the Final Assessment Notices, petitioner filed its protest via its letters dated December 17, 1999 and February 7, 2000. In support of its protest petitioner also submitted to the respondent copies of samples of its Special/Super Savings Deposit Passbook and Signature Card attached to a letter dated April 6, 2000.
>
> In a Decision dated December 21, 2002, respondent denied the protest of petitioner by ruling with finality that "the Special/Super Savings Account and Time Deposit are similar if not just one and the same banking transaction, hence, subject to DST."
>
> Thus, on February 19, 2002, twenty-nine (29) days from the date of receipt of the BIR's decision on January 21, 2002, the petitioner filed herein Petition for Review, maintaining that the Special/Super Savings Account is a form of savings deposit evidenced by a non-negotiable instrument in the form of a passbook which deposit transaction or instrument is not subject to documentary stamp tax under Section 180 of the National Internal Revenue Code."

The Court rendered the assailed Decision, denying the petition for review for lack of merit. This ruling was later affirmed in a Resolution dated January 14, 2005 rendered by the Court. The dispositive portion of the assailed Decision reads as follows:

> WHEREFORE, the instant petition is DENIED for lack of merit. Accordingly, the petitioner is hereby ORDERED to PAY the amounts of P17,595,488.75 and P47,767,756.24 as deficiency documentary stamp

130

taxes for the taxable years 1996 and 1997, plus 25% surcharge for late payment and 20% annual delinquency interest for late payment from January 20, 2002 until fully paid pursuant to Sections 248 and 249 of the Tax Code.

Hence, petitioner filed this appeal before the Court En Banc.

Petitioner assigns the following as errors committed by the Court, to wit:

ASSIGNED ERRORS

I

Whether or not the Second Division of the Court of Tax Appeals erred in holding that Petitioner's Special/Super Savings Deposit is subject to Documentary Stamp Tax (DST) as a form of Certificate of Deposit under Section 180 of the National Internal Revenue Code.

II

Whether or not the said Second Division erred in not appreciating that under Section 180 of the Code, only 'negotiable' Certificates of Deposit are taxable therein, whereas Petitioner's Special/Super Savings Deposit is a 'non-negotiable' instrument as established by evidence and as already admitted by the Respondent and by the Court.

III

Whether or not the said Division erred in not appreciating the fact that there is no law subjecting Petitioner's Special/Super Savings Deposit to DST during the taxable years 1996 and 1997, the same having only been passed in year 2004 as Republic Act 9243.

131

ARGUMENTS

Petitioner contends that the Court erred in holding that petitioner's Special / Super Savings Deposit (SSD) is subject to documentary stamp tax under Sec. 180 since the SSD is not 'negotiable' and therefore it should not be subject to Documentary Stamp Tax.

According to the petitioner, the grandfather provision of the documentary stamps tax is Section 1449(g) of the Old Administrative Code which was incorporated in Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code (which took effect on July 1, 1939) as Section 217 thereof:

> SECTION 217. Stamp tax on negotiable promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable on sight or demand. – On all bills of exchange (between points within the Philippines), drafts or certificates of deposit drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all negotiable promissory notes, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamps tax of two centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note.

Petitioner argues that "[t]his section pertained only to <u>negotiable</u> instruments in the form of promissory notes, bills of exchange, drafts and certificates of deposits bearing interest and others not payable at sight or on demand, hence, carrying the original intent of its precursor law, Section 1449(g) of the Old Administrative Code" *(Petition for*

132

Review, p. 13). Petitioner avers that even Section 180 of the 1997 NIRC covers only negotiable certificate of deposit drawing interests *(Petition for Review, p. 15).*

Furthermore, petitioner argues that "[t]he Court of Tax Appeals failed again to consider and rule upon petitioner's argument that there was no law authorizing the imposition of DST on petitioner's SSD during the years 1996 and 1997". Petitioner argues:

> "There was no law which imposed DST on petitioner's SSD during the years 1996 and 1997. Even section 180 of the 1977 Tax Code does not specifically authorize such an imposition. What respondent did was to infer and force through unto petitioner's SSD the application of the said section 180.
>
> In an apparent effort to provide a legal basis for such an imposition and obviously as a stop gap measure intended to plug the ambiguity on whether a bank product like petitioner's SSD is subject to DST, Congress had to come up recently or sometime last year only with Republic Act no. 9243 on "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the Natural *(sic)* Internal Revenue Code of 1997, as amended and for other purpose". This law now defined and stated the basis for the imposition of DST on petitioner's SSD under Sec. 179 thereof, which states:
>
> > SEC. 179. Stamp Tax on all Debt Instruments. – On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two Hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement or promissory notes issued to secure such loan.

B3

> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities, issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates **or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand,** promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation"(Underscoring Supplied)

The quoted provision of law is the first and only instance where a bank product such as petitioner's SSD is actually imposed DST. This product would now fall under the coverage of "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.

That Congress passed this law and only very recently indicates that prior to this law there was really no provision authorizing either explicitly or implicitly the imposition of DST on bank products like petitioner's SSD. This law is a clear cut recognition by our lawmakers and taxing authorities that before its passage, there was no law providing for DST on petitioner's SSD." (*Petition for Review, pp. 17-18*)

In its Memorandum, petitioner reiterated its arguments as follows:

1. The certificate of deposit in Section 180 of the Tax Code under which petitioner's SSD is being subjected to for DST refers only to negotiable certificates of deposit drawing interests. Petitioner's SSD is not a negotiable instrument or certificate of deposit. Therefore, it is not taxable under

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Section 180 as a certificate of deposit as the term refers only to negotiable certificate of deposit; and

2. That there was no law which imposed DST on petitioner's SSD during the years 1996 and 1997. Section 180 of the 1977 Tax Code did not specifically authorize such an imposition. Congress had to come up recently with Republic Act No. 9243 on "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended and for other purpose".

Respondent, on the other hand, in his Comment asserts that "Section 180 of the Tax Code does not prescribe that the certificate of deposit must be negotiable in order that the same be subject to documentary stamp tax". According to the respondent, "petitioner is trying to read something in the law which is not there. Since the law does not prescribe any particular form nor does it qualify, it may be any written acknowledgment by a bank of the receipt of money on deposit. Hence, the passbook evidencing Special/Super Savings Deposit, being written acknowledgment of the receipt of money which the bank promises to pay, is a genus of a certificate of deposit subject to documentary stamp tax under Section 180 of the Tax Code" *(Comment, p. 6).*

Respondent argues "that the issue here is not negotiability or non-negotiability of a certificate of deposit evidencing petitioner's SSD but whether the SSD has the features of a time deposit, hence, subject

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to DST. To which, the answer is in the affirmative. xxx xxx xxx Even assuming that the Special/Super Savings Account is not a certificate of deposit, it is a loan agreement because the relationship between a depositor and a bank is that of a creditor and debtor" (*Comment, pp. 6-7*). That "Section 180 of the 1977 Tax Code authorized the imposition of DST on petitioner's SSD. The fact that under R.A. 9243, transactions in the nature of SSDs are expressly subject to DST, is not a valid argument that prior to said law, SSDs were not subject to DST. The power to construe a law is essentially judicial. To declare what the law shall be is a legislative power, but to declare what the law is or has been is judicial" (*Comment, p. 9*).

The petition is bereft of merit.

The issue in the case before Us is not novel. This Court had already ruled[1] that a deposit account which have the same features as a time deposit account, *i.e.*, a fixed term in order to earn a higher interest rate, is subject to the Documentary Stamp Tax (DST) imposed in

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[1] UNITED OVERSEAS BANK PHILIPPINES vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. E.B. NO. 31, MARCH 10, 2005; TRADERS ROYAL BANK vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. E.B. NO. 34, APRIL 26, 2005; and ALLIED BANKING CORPORATION vs. GUILLERMO L. PARAYNO, JR., in his official capacity as the COMMISSIONER OF INTERNAL REVENUE, and ELEANOR N. LITAO, in her official capacity as CHIEF, LT-COLLECTION and ENFORCEMENT DIVISION, BUREAU OF INTERNAL REVENUE, C.T.A. E.B. NO. 69, JULY 11, 2005.

136

Section 180 of the National Internal Revenue Code of 1977, as amended. Said Section provides:

> "Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** — On all loan agreements 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, or *certificates of deposit drawing interest,* or orders for the payment of any sum of money otherwise than at sight or on demand, or 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, 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. *(As amended by R.A. 7660)*" *(Itallics supplied)*

In the above-quoted provision, it is clear that "certificates of deposit drawing interest" is subject to Documentary Stamp Tax. It is therefore important to know what constitutes a certificate of deposit. The Supreme Court in ***Far East Bank and Trust Company vs. Querimit, G.R. No. 148582, January 16, 2002,*** defined a *certificate of deposit* as "a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker

137

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".

In the foregoing definition of a certificate of deposit, the Supreme Court neither referred to a particular form of deposit nor limited the coverage thereof to time deposits only. The High Court used the term "written acknowledgment" which means that for as long as there is some written memorandum of the fact that the bank accepted a deposit of a sum of money from a depositor, the writing constitutes a certificate of deposit. Hence, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

The first argument expressed by the petitioner that Sec. 180 of the NIRC of 1977 imposes the tax only on negotiable certificates of deposit is untenable. Section 180 imposes the DST on documents mentioned therein, whether the documents are negotiable or non-negotiable.

Petitioner's conclusion that since the documents mentioned in Section 217 of the old NIRC (Commonwealth Act No. 466, as amended) are negotiable instruments, the documents enumerated in Sec. 180 of

138

the NIRC of 1977 must likewise be negotiable instruments before the DST can be imposed is erroneous.

Firstly, in Sec. 217 of the old NIRC, the requirement of negotiability pertained only to promissory notes. Sec. 217 of the old NIRC reads as follows:

> SEC. 217. **Stamp tax on negotiable promissory notes, bills of exchange, drafts, certificate of deposit bearing interest and others not payable on sight or demand**. – On all bills of exchange (between points within the Philippines), drafts or certificates of deposit drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or **all negotiable promissory notes**, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of four centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note. (As amended by Sec. 6, Republic Act No. 40) (Emphasis supplied)

A perusal of the aforementioned provision would readily show that the intention of the legislature to limit the requirement of negotiability pertains to promissory notes only. Such intention is disclosed by the fact that the word *negotiable* was written before *promissory notes* followed by a comma, hence, the word *negotiable* modifies promissory notes only. Moreover, the body of the provision clearly stated that the DST is due on *all negotiable promissory notes* thereby removing any doubt as to which document was required to be negotiable before the DST can be imposed. Therefore, with respect to all the other

139

documents mentioned in Sec. 217 of the old NIRC, the attribute of negotiability is not required.

Secondly, the applicable provision is Sec. 180 of the NIRC of 1977, as amended, and not Sec. 217 of the old NIRC. Sec 180 of the NIRC of 1977 expressly provides that all promissory notes, whether negotiable or non-negotiable, are subject to DST. Thus, the DST was imposed on all promissory notes irrespective of their negotiability. Consequently, the negotiable character of any and all documents mentioned in Sec. 180 had been rendered irrelevant in the imposition of the DST. Hence, all documents mentioned therein are subject to DST regardless of whether the documents are negotiable or not.

Section 180 of the NIRC of 1977 likewise disproves petitioner's second argument that there is no law authorizing the imposition of DST on petitioner's SSD during the years 1996 and 1997.

The provision itself already specified the documents that are subject to the DST, to wit:

1. Loan Agreements;
2. Bills of Exchange;
3. Drafts;
4. Instruments and Securities issued by the Government or any of its instrumentalities;
5. Certificates of Deposits drawing interest;

(140)

6. Orders for the payment of any sum of money otherwise than at sight or on demand; and
7. Promissory Notes, whether negotiable or non-negotiable.

The DST is imposed on all certificates of deposit drawing interest without any qualification. As stated above, the Supreme Court in *Far East Bank and Trust Company vs. Querimit, supra,* defined a certificate of deposit as a "written acknowledgment by a bank or banker of the receipt of a sum of money on deposit xxx". Both the law and the aforementioned Supreme Court decision did not prescribe any particular form before a document can be considered as a certificate of deposit. Restricting the meaning of certificates of deposit drawing interest mentioned in Section 180 of the NIRC of 1977 to "certificates of time deposit" will not be in accordance with both law and jurisprudence.

It is well-settled that certificates of time deposit, a type of a certificate of deposit drawing interest, are subject to the DST. In resolving the issue before Us, it is important to determine whether petitioner's Special/Super Savings Deposit Account has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision are as follows:

> "As correctly pointed out by respondent in his questioned Final Decision on the assessment protests, it is easy to be misled and to consider petitioner's Special/Super Savings Deposit as a savings deposit if one examines the features on a piecemeal basis. But when

141

> the same is seen in its totality it is revealed as a time deposit written on a passbook.
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> Admittedly, the amount deposited can be withdrawn anytime. However, the negative effects of such early withdrawal make it unadvisable to avail. This is due to the fact that in order for the Special/Super Savings Account holder to be entitled to the preferential interest rates, the required amount must be maintained within a certain period. If the depositor withdraws the money and the balance falls below the "minimum balance", the interest is reduced. The reduction of interest rate and/or the imposition of penalties in cases of pre-termination successfully restrain the depositor's right to withdraw from the account. This situation is admittedly identical to that imposed on time deposits.
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> Likewise, based on the finding of respondent as stated in his Final Decision to petitioner's protest, in order to qualify for the petitioner's Special/Super Savings Deposit Account, the depositor must place a substantial amount of money amounting to not less than P50,000.00 which is larger than what is needed in order to open a time deposit which is P20,000.00. The depositor stands to lose the agreed higher interest rate if the money is withdrawn before the period or if it falls below P50,000.00. This condition is not inherent in a savings deposit but fundamental in a time deposit account.

In order for the depositor to earn the agreed higher interest rate in a Special/Super Savings Account, the required minimum amount of deposit must not only be met but should also be maintained for a definite period. Thus, the Special/Super Savings Account is a deposit with a fixed term. Withdrawal before the expiration of said fixed term results to the reduction of the interest rate. The 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 Special/Super Savings Deposits and certificates of time deposit are substantially the same, if not one and the same product, and therefore both are subject to the DST on certificates of deposit, thus:

> "To recapitulate, this court finds that the Special/Super Savings Account and Time Deposit are similar if not just one and the same banking transaction. Equity and law always exalt substance over form. *(Maceda vs. Macaraig, Jr. G.R. No. 88291, June 8, 1993; CIR vs. CTA, et al., G.R. No. L-64768, November 5, 1987; Kilosbayan, Inc., et al. vs. Manuel Morato, G.R. No. 118910, July 17, 1995.)* The superficial distinction between the two, specifically, the use [of] a passbook to document the said account placed by petitioner is nothing but a futile effort to evade payment of the DST. The scheme failed to create a real and substantial distinction. Any similarity between the Special/Super Savings Account and a savings deposit is a sham."

"In determining whether certain instruments were subject to documentary stamp taxes, substance would control over form and labels, xxx xxx xxx."[2] The fact that the Special/Super Savings Account is evidenced by a passbook is immaterial. "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 its substance is paramount rather than its form".[3]

All the foregoing considered, We find no cogent reason to reverse the assailed Decision and Resolution of the Division of this Court.

WHEREFORE, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

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[2] KNUDSEN CREAMERY CO. OF CALIFORNIA v. UNITED STATES, Civ. No. 15336, June 3, 1954 [121 F. Suppl. 860].
[3] RESOLUTION, PHILIPPINE BANKING CORPORATION, now: GLOBAL BUSINESS BANK, INC. vs. COMMISSIONER OF INTERNAL REVENUE, C.T.A. CASE NO. 6395, JANUARY 14, 2005.

163

SO ORDERED.

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

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(***With Dissenting Opinion***)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of this Court before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

PHILIPPINE BANKING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
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EB CASE NO. 63
CTA CASE No.6395

Members:
ACOSTA, P.J
CASTAÑEDA JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.:

Promulgated:
NOV 2 3 2005

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Dissenting Opinion

It is my opinion that the Special/Super Savings Account, unlike a time deposit, has no holding period or maturity date in order to avail a higher interest. A time deposit has a maturity date wherein the parties mutually agree that the Bank will pay the depositor the stipulated interest rate only upon the expiration of a definite, fixed and predetermined date. The depositor in a time deposit is bound by the maturity date agreed upon; otherwise, he or she will be penalized by not receiving the high interest as stated in the certificate of deposit. In contrast, Special/Super Savings Account has no maturity date. The period offered to a prospective Special/Super Savings depositor is a length of time provided in a schedule of placement, for which a corresponding rate is given. Still, the depositor is at liberty to withdraw his or her deposit at any time upon the presentation of his or her passbook.

145

Special/Super Savings Account is an innovative product offered by the petitioner to its clients. It is a crossbreed between a regular savings deposit and a time deposit and as such, it contains essential features of both products. This new product offers higher interest rates upon certain conditions similar to a time deposit, but this does not automatically classify it as such.

From the text of Section 180 of the Tax Code, a "certificate of deposit" subject to DST must have the features of a time deposit. A "time deposit", is another term for a savings account or certificate of deposit in a commercial bank. It is so called because in theory (though no longer in practice) a person must wait a certain amount of time after notice of desire to withdraw part or all of his or her savings. Certificates of deposits usually carry penalties for early withdrawal. Cash in a bank earning interest; contrast with demand deposit (*Black's Law Dictionary, 6th Edition*). Thus, it is incorrect for the respondent to conclude that Special/Super Savings Account falls within the definition of a "certificate of deposit" to make it liable for DST.

In a Supreme Court decision, it was held that:

> "The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of the tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. Xxx (a) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be

146

construed most strongly against the government and in favor of the subject citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import." (*CIR vs. Court of Appeals, Court of Tax Appeals and Ateneo de Manila, 271 SCRA 605*)

There must be a law or legislative enactment that mandates the imposition of any tax in order for it to be due and demandable. The legislative intent behind Section 180 of the Tax Code is to include time deposits only as those liable for DST. It is through the introduction of Special/Super Savings Account and similar transactions by the banking industry that Congress deemed it necessary to enact a new law to specifically cover the said product within the purview of said law.

Republic Act # 9243, "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" was enacted into law on February 17, 2004. Section 5 of the said law reads, as follows:

"**SEC. 5.** Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:

SEC. 179. **Stamp Tax on All Debt Instruments. –** On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided,

147

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 contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instrument, 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."

The above-cited law clearly subjects to DST not only time deposits but also *other evidences of deposits that are drawing interest significantly higher than the regular savings deposit taking into consideration the size of deposit and the risks involved*. Under this provision, bank deposits drawing interest higher than the regular savings rate, even though the same may be withdrawn anytime, are subject to DST. The enactment of Section 5 of RA # 9243 settled the conflict between the Office of the Commissioner of Internal Revenue and the banking industry with regard to the imposition of DST on Special/Super Savings Account and similar transactions. The fact that Congress amended Section 180 of the Tax Code shows that the old law was inapplicable to the instant case. There was no law before the passage of RA # 9243 subjecting the Special/Super Savings Account of the petitioner to DST.

WHEREFORE, premises considered, I vote to **GRANT** the Petition for Review.

CAESAR A. CASANOVA
Associate Justice

169