REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

METROPOLITAN BANK & TRUST COMPANY,
Petitioner,

C.T.A. CASE NO. 6504

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 25 2006, 1:00 PM

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DECISION

BAUTISTA, L., J.:

This Petition for Review seeks the reversal of the Decision dated May 8, 2002 rendered by the Commissioner of Internal Revenue which denied with modifications petitioner's protest against deficiency documentary stamp tax and gross receipts tax assessments for taxable years 1995-1998 and ordered petitioner to pay the total amount of P4,740,766,011.92 plus interest, the dispositive portion of which reads as follows:

> *"In view of the foregoing, taxpayer METROPOLITAN BANK AND TRUST COMPANY is hereby ordered to pay the following assessments in the total amount of P4,740,766,011.92 plus interest that may have accrued thereon until actual payment, within thirty (30) days from receipt hereof to the Collection Service, BIR National Office, Diliman, Quezon City, otherwise, collection thereof shall be effected through the summary remedies provided by law.*

A. 1995 Deficiency DST Assessments

	Amount	Assessment No.
A-1. DST-UNISA	*P 835,589,788.55*	*ST-DST-95-0043-98*
A-2. DST-TRUST	*401,715,973.87*	*ST-DST2-95-0044-98*
A-3. DST-INTERBANK CALL LOANS	*111,790,279.15*	*ST-DST3-95-0045-98*
TOTAL	*P 514,341,842.57*	

B. 1996 Deficiency DST Assessments

	Amount	Assessment No.
B-1. DST-UNISA	*P 704,773,402.03*	*ST-DST-96-0047-98*
B-2. DST-TRUST	*333,841,302.56*	*ST-DST2-96-0048-98*
B-3. DST-INTERBANK LOANS (PAYABLE)	*61,254,083.19*	*ST-DST3-96-0049-98*
B-4. DST-INTERBANK LOANS (REC'BLE)	*31,371,972.09*	*ST-DST4-96-0050-98*
TOTAL	*P 1,131,240,759.87*	

C. 1997 Deficiency DST Assessments

	Amount	Assessment No.
C-1. DST-UNISA	*P 858,224,023.65*	*ST-DST-97-00164-99*
C-2. DST-INTERBANK CALL LOANS RECEIVABLES	*40,414,279.11*	*ST-DST2-97-00165-99*
C-3. DST-INTERBANK CALL LOANS (PAYABLE)	*13,819,313.50*	*ST-DST3-97-00166-99*
C-4. DST-TRUST	*356,635,705.24*	*ST-DST4-97-00167-99*
TOTAL	*P1,269,093,321.50*	

D. 1998 Deficiency DST & GRT Assessments

	Amount	Assessment No.
D-1. DST-UNISA	*P 1,178,124,630.62*	*ST-DST4-98-0364-99*
D-2. DST-AHIT	*437,753,929.78*	*ST-DST5-98-0367-99*
D-3. DST-INTERBANK LOANS (REC'BLE)	*26,861,641.93*	*ST-DST6-98-0365-99*
D-4. DST-INTERBANK LOANS (PAYABLE)	*27,699,016.30*	*ST-DST7-98-0366-99*
D-5. GRT-ONSHORE INCOME	*155,650,869.35*	*ST-GRT2-98-0360-99*
TOTAL	*P1,826,090,987.98*	

*This constitutes the **final decision** of this Office on the matter."*

The following facts are not in dispute:

Petitioner, Metropolitan Bank and Trust Company, is a domestic corporation and a duly licensed banking institution, with business address at Metrobank Plaza, Senator Gil J. Puyat Avenue, Makati City.

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Respondent Commissioner of Internal Revenue is the public official charged with the enforcement and administration of the internal revenue laws of the Philippines who holds office at the Bureau of Internal Revenue Building, Diliman, Quezon City.

For the taxable years 1995 to 1998, various assessment notices were issued against petitioner for various deficiency internal revenue taxes pertaining to non-industry and bank industry issues, in the following amounts:

A. Deficiency Tax Assessments for Taxable Year 1995

A.1	**Non-Industry Issues**		
	a. Income Tax (FCDU)	P	3,405,280.90
	b. Income Tax (CWT)		4,261,362.80
	c. Income Tax (TC on Foreign Branches)		20,707,584.10
	d. GRT		26,671,855.24
	e. Withholding Tax on Wages		15,412,521.50
	f. EWT		4,917,690.07
	g. FT on Int. Expense		22,023,589.39
	h. DST (Intl Dept)		5,727,638.50
A.2	**Industry Issues**		
	i. DST (UNISA)		567,022,345.00
	j. DST (Trust Bank Group)		276,931,037.25
	k. DST (Interbank Call Loans)		77,070,496.58
	l. DST (TAS-RRP)		14,640,166.33
TOTAL for taxable year 1995			**P1,047,791,567.66**

B. Deficiency Tax Assessments for Taxable Year 1996

B.1	**Non-Industry Issues**		
	a. Income Tax (IBCL/RRP)	P	23,266,469.87
	b. Income Tax (Creditable Withholding Tax Credits)		8,280,961.96
	c. Gross Receipts Tax		26,186,686.94
	d. Withholding Tax on Wages		19,960,137.67
	e. Expanded Withholding Tax		5,250,003.03
	f. Final Tax on Interest		108,090,407.42
	g. Documentary Stamp Bills Payable-Foreign		50,527,984.42
	Sub-total	P	241,562,651.31
B.2	**Industry Issues**		
	h. DOCUMENTARY STAMPS		
	1. More than 5 days IBCL Receivable		26,802,636.25
	2. More than 5 days IBCL Payable		45,948,649.33
	3. UNISA (Universal Savings)		546,070,684.33
	4. Trust		258,669,008.06
	5. RRP-TAS Loans		3,314,018.81
	Sub-total	P	880,804,996.78
TOTAL for taxable year 1996			**P1,122,367,648.09**

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C. Deficiency Tax Assessments for Taxable Year 1997

C.1	**Non-Industry Issues**		
a.	Income Tax	P	74,912,022.96
b.	Unallowable Tax Credits (Local & Foreign)		14,701,545.95
c.	Withholding Tax on Wages		193,916,680.84
d.	Expanded Withholding Tax		9,035,742.93
e.	Final Tax on Interest Local		1,641,891.92
f.	Final Tax on Interest Foreign		197,147,740.28
g.	Documentary Stamp Tax-Bills Payable-Foreign		83,548,517.18
	Sub-total	P	574,904,142.06
C.2	**Industry Issues**		
h.	Doc. Stamps - Universal Savings	P	828,967,903.66
i.	Doc. Stamps – Trust		344,478,798.40
j.	Doc. Stamps - IBCL Payable		13,349,063.50
k.	Doc. Stamps - IBCL Receivable		39,037,403.16
	Sub-total	P	1,225,833,168.72
TOTAL for taxable year 1997		P	1,800,737,310.78

D. Deficiency Tax Assessments for Taxable Year 1998

D.1	**Non-Industry Issues**		
a.	Income Tax		
	Disallowed Interest Expense	P	24,357,504.05
	Disallowed Tax Credits		1,124,224.27
	Total Income	P	25,481,728.32
b.	WT-Final on Interest		
	BP Foreign	P	9,207,166.72
	Regular		35,327,044.08
	FCDU		85,285,034.48
	Total W/Tax	P	129,819,245.28
c.	WT-Expanded	P	19,291,669.89
d.	Documentary Stamp Tax		
	Bills Payable-Foreign	P	25,148,902.26
	Head Office		1,511,707.30
	Branches		4,462,039.78
	Total DST	P	31,122,649.34
e.	Gross Receipts Tax	P	46,680,838.40
	Sub-total	P	252,396,131.23
D.2	Industry Issues		
a.	Gross Receipts Tax - Onshore Income	P	155,650,869.35
b.	Documentary Stamp Tax		
	UNISA		1,178,124,630.62
	AHIT		437,753,929.78
	IBCL - Receivable		26,861,641.93
	IBCL - Payable		27,699,016.30
	Sub-total	P	1,670,439,218.63
TOTAL for taxable year 1998			**P2,078,486,219.19**

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The assessment notices were timely protested by petitioner through separate protest letters filed December 1, 1998, January 20, 1999 and January 14, 2000. Petitioner interposed no objections to respondent's findings as regards the non-industry issues, for which, payments were duly made. However, petitioner strongly and vigorously protested the assessments relating to the bank industry issues which basically involve the deficiency documentary stamp taxes on its Universal Savings Accounts (UNISA), Trust Agreements, Assets-Held-in-Trust (AHIT) and Interbank Call Loans (ICBL) for the taxable years 1995 to 1998, as well as, the gross receipts tax on its Onshore Income for the taxable year 1998.

On May 8, 2002, respondent issued the assailed Decision (P10-02) in response to the protest letters thereby affirming the assessment notices against petitioner in the modified amount of P4,740,766,011.92, but the assessments on petitioner's deficiency documentary stamp taxes on its Reverse Repurchase Agreements (RRPs) for the taxable years 1995-1996 were ordered cancelled and withdrawn.

Consequently, pursuant to Section 228 of the National Internal Revenue Code of 1997 (NIRC), petitioner filed this instant Petition for Review.

On August 12, 2002, respondent filed his Answer, raising the following as his Special and Affirmative Defenses, to wit:

> 7. Petitioner's UNISA account is considered a certificate of deposit contemplated and taxable under Section 180 of the then Tax Code.
>
> 8. In the case of BPI-Family Bank vs. CIR & CTA, CA-GR No. SP 29853, September 19, 1994, the Court of Appeals, in interpreting the provision of Section 180 of the NIRC, named with particularity the instruments subject to DST. Said the Court:
>
> > "A perusal of Section 180 of the Tax Code will show that it covers the following instruments:
> >
> > (1) promissory note, whether negotiable or not;
> > (2) bills of exchange;
> > (3) drafts;
> > (4) certificates of deposit; and
> > (5) debt instruments used for deposit substitutes.

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9. A "certificate of deposit" as defined in the BPI-Family Bank case is a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order (Olson Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op cit., p.44).

10. Fragmenting the essential elements of the aforesaid definition, it can be inferred that a certificate of deposit presupposes:

    1. That a bank receives money on deposit;
    2. From someone who is considered a "depositor";
    3. That the bank acknowledges receipt of the deposit in writing;
    4. That the bank promises to pay to the depositor/bearer/or to some other person or order the deposit or any part thereof.

    Having met all the above-mentioned technical requirements, UNISA of petitioner is unmistakably a "certificate of deposit" for which taxability to DST lies.

11. The "certificate of deposit" stated in Section 180 does not prescribe any particular form. Petitioner's allegation that UNISA account is evidenced by a passbook does not alter the substance of UNISA. What is 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.

    But be that as it may, technically, a regular savings account passbook has the same substance, attributes and qualities as a "certificate of deposit". As defined in Section 180 of the Tax Code, it may be a written acknowledgment by a bank of the receipt of money on deposit. Hence, a traditional passbook, being a written acknowledgement of the receipt of money as deposit which a bank promises to pay to the depositor, bearer, or to some other person or order, is a genus of a certificate of deposit subject to DST.

12. The features of trust agreements/assets-held-in-trust are practically the same as that of UNISA deposit accounts, both partaking the nature of "certificate of deposit" subject to DST.

13. The DST on interbank call loans is imposed on the privilege of contracting loans between and among banks even if such transaction is documented merely by call loan slips and payment transfer tickets or done only through an electronic facility. Whether or not there is a piece of document evidencing the transaction is of no moment, as the DST automatically accrues when the said privilege is exercised.

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14. The ten percent (10%) final tax on onshore income under Section 27 (d) (3) pertains exclusively to income derived by a depositary bank under the expanded foreign currency deposit system and does not include the gross receipts tax which is a form of excise tax. Just as the imposition of DST is warranted upon the exercise of a privilege, in like manner, GRT is leviable when a bank engages in foreign currency transactions or business which concededly is also a privilege not granted to anyone.

15. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessor and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Antonio Tuazon, Inc., 173 SCRA 397), and failure to do so shall vest legality to respondent's actions and assessments.

On March 3, 2003 however, respondent filed an Amended Answer, to include the defense of lack of jurisdiction as one of his Special and Affirmative Defenses, thus:

> "7. This Honorable Court has no jurisdiction over the instant case as the subject assessment have already become final, executory and demandable in accordance with Section 228 of the 1997 Tax Code, the pertinent portion of which states:
>
> > 'xxx xxx
> > If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.'
>
> Since the 30 day period expired from the lapse of the 180-day period without the petitioner having filed the instant petition, as required by law, the assessments in question have become final."

After both parties have filed their respective memorandum, this case was submitted for decision on March 28, 2006.

As stipulated by the parties, the following are the issues for this Court's consideration:

1. Whether or not this Court has jurisdiction over the instant case for failure of the petitioner to file the instant case within the period provided for by Section 228 of the 1997 Tax Code;

2. Whether or not the following transactions are subject to documentary stamp tax under Section 180 of the NIRC:

    a. Universal Savings Account;
    b. Trust Agreement;
    c. Assets-Held-in-Trust; and
    d. Interbank Call Loans.

3. Whether or not petitioner's onshore income for 1998 is subject to gross receipts tax.

As regards the first issue, respondent submits that this Court has no jurisdiction over the case mainly on the ground that petitioner filed this instant Petition for Review more than two (2) years and four (4) months since the last protest letter was filed. Accordingly, pursuant to Section 228 of the National Internal Revenue Code of 1997, no appeal to this Court was filed by petitioner to impugn the assessments after its protest letters were not acted upon within one hundred eighty (180) days from the submission of all the supporting documents. Thus, the assessment had become final, executory and demandable. Further, respondent avers that the word "may" as used in the provision of law, pertains to the option of the petitioner to either seek judicial relief or be content with the decision and settle the amounts due, if any; or to pursue other legal means.

On the other hand, petitioner argues that this jurisdictional issue has long been decided upon by this Court in the case of **Lascona Land Co., Inc. vs. Commissioner of Internal Revenue, et al.,**[1] where this Court, in meeting this very issue, squarely declared that under Section 228 of the 1997 National Internal Revenue Code, the taxpayer is given an option to either appeal to the Court of Tax Appeals within thirty (30) days from the

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[1] CTA Case No. 5777, January 4, 2000

expiry of the one hundred eighty (180)-day period as provided in the said section, or from the decision of the Commissioner of Internal Revenue.

We agree with petitioner.

This Court has held in the above case that:

> *"Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer an option: first, he may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period provided for under the said section, or second, he may wait until the Commissioner decided on his protest before he elevates his case. This Court believes that the taxpayer was given this option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable.*
>
> *We agree with Petitioner that to adopt the interpretation of Respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that Respondent found Petitioner's arguments to be in order, the assessment will become final, executory and demandable for Petitioner's failure to appeal before Us within the thirty (30) day period."*

Besides, in the case at bench, respondent cannot argue that this Court has no jurisdiction, essentially due to the fact that he rendered a decision on petitioner's protest on May 8, 2002. Undeniably, petitioner opted to wait for the final decision of the respondent instead of immediately elevating its appeal to this Court within thirty (30) days after the lapse of the 180-day period, which option is clearly allowed under Section 228 of the NIRC of 1998.

Having ruled that this Court has jurisdiction over this instant case, We now go into the merits of the case.

A. Universal Savings Accounts

Petitioner contends that its Universal Savings Deposit Accounts (UNISA) is not subject to documentary stamp tax (DST) under Section 180 of the NIRC of 1997. Basically, it alleges that what is being taxed by the respondent for DST is a certificate of deposit, for which its product, UNISA, is not.

UNISA is a deposit account which comes in a form of a passbook, though its basic features show that it possesses the general characters and profile of a certificate of deposit. According to petitioner, UNISA is a specie of a banking product that is a necessary offshoot of the deregulated interest rate regime in bank deposits, where the banks are now at liberty to offer competitive rates to attract more deposits, whether the account be ordinary savings, demand, or time deposits.

Further, petitioner avers that its product is a natural evolution of modern banking practices called for by the circumstances of the times and is not thought of merely to evade the payment of taxes. Moreover, petitioner argues that the taxability of Special/Super Savings Account was only made existent through the amendments made on Section 180 of the NIRC of 1997. Therefore, respondent's assessments against petitioner's alleged deficiency DST on its UNISA for the taxable years 1996 to 1997 has no basis in law.

Respondent for his part, maintains that petitioner's UNISA is a certificate of deposit taxable under Section 180 of the Old Tax Code and the Tax Code of 1997. Respondent submits that under petitioner's UNISA, money is received on deposit by the bank from one who is considered a depositor. Such receipt is acknowledged by petitioner in writing through a passbook. There is a promise to pay to the depositor/bearer/or some other person or order the deposit or part thereof. Additionally, the UNISA has the following features:

a. The required minimum deposit is P100,000.00;
b. Its interest rate is much higher than its ordinary savings account interest rate;
c. The maturity date to qualify for this higher interest rate is thirty (30) days;
d. It is not payable on sight or demand, and in case of pre-termination, prior notice is required and lower interest rates are earned; and
e. It is automatically renewed in case the depositor fails to withdraw the deposit at maturity date.

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More so, petitioner's UNISA has features similar to a time deposit or certificate of deposit such as higher interest rate, a required minimum deposit balance, holding period in order to avail of a preferential rate which is higher than that of a regular savings account and an early withdrawal penalty in case of withdrawal prior to maturity.

WE RULE FOR THE RESPONDENT.

Section 180 of the 1993 National Internal Revenue Code, as amended, 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 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 or certificates of deposits drawing interest, 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 (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.

A perusal of above section will show that it covers the following instruments:

- 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;
- **certificates of deposit drawing interest;**
- orders for the payment of any sum of money otherwise than at sight or on demand;
- all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation; and
- each renewal of any such note.

From the foregoing, the law subjects a "certificate of deposit" to documentary stamp tax. And to define what a documentary stamp tax is, it is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction.[2] What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

A certificate of deposit, meanwhile, is "any written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or some other person or his order".[3] Certificate of deposit being a written instrument evidencing transaction between parties must be considered in the light of the same rule of law as other written instrument (*Montgomery v. Smith, 145 So. 822, 826, 226 Ala. 91*).

Clearly, therefore, by the very definition aforementioned, petitioner's UNISA falls within the ambit of a "certificate of deposit". The fact that petitioner's UNISA is evidenced by a passbook and not by a certificate is not an issue. It is clear from the definition that it does not prescribe or require any particular form nor does it qualify. In determining what instruments are subject to documentary stamp tax, substance would control over the form. In other words, what matters are the facts and circumstances that surround the document and the transaction itself. It is to be emphasized at this point, that terminologies are mere matters which are capable of being overturned by circumstances. It has been held in a number of cases that what is controlling is the nature and the true character of the transaction as it is conveyed by the instrument or document attached to it. The name by which an instrument or transaction is denominated is not controlling in determining its true character (*L.R. Heat Treating Co., 28 TC 874).*

Moreover, a "time deposit", which is also a form of a certificate of deposit, refers to a deposit account paying interest for a fixed term, with the understanding that funds cannot

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[2] Hector S. de Leon , The Law on Transfer and Business Taxation, , 1998 Ed., p. 351
[3] Far East Bank & Trust Company vs. Querimit, 373 SCRA 665 (2002)

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be withdrawn before maturity without giving advance notice. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required with such a specified number of days".[4] In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal *(Black's Law Dictionary, 6th Edition)*. Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in a form of reduced interest rates, attached to it in instances when the depositor makes a withdrawal prior to the maturity of the deposit.

Additionally, in both cases, the bank acknowledges the receipt of the money or funds on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of time. Also, in both cases, the bank allows the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lowered than the agreed interest. Again, the difference lies on the document used to evidence the existence of the said transaction, which in the case of the time deposit, a certificate is issued, while that of the UNISA, a savings passbook is issued to the depositor. Nonetheless, as above stated, the fact that petitioner's UNISA is evidenced by a passbook and not by a certificate of deposit is of no moment. What is important and controlling is the nature and meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form.[5] This Court agrees with the respondent that in substance, petitioner's UNISA and Time Deposits are akin to each other. In determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels. 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

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[4] BPI Family Savings Bank vs. First Metro Investment Corporation, 429 SCRA 36 (2004)
[5] BPI vs. Commissioner of Internal Revenue, et al., CA-G.R. SP No. 29853, September 19, 1994

termination of specific legal relationship through the execution of specific instruments.[6]

B. Trust Agreements/Assets-Held-In-Trust

Respondent claims that petitioner's trust agreements/assets-held-in-trust are akin to its UNISA accounts since money is received by the bank from a client. Such receipt is acknowledged by petitioner in writing through a certificate. There is a promise to pay to the depositor/bearer/or some other person or order the deposit or part thereof. Additionally, petitioner's trust agreements/assets-held-in-trust have the following features:

a. The object is to have these funds increase by earning a high rate of return;
b. The required minimum amount given to petitioner is P50,000.00;
c. Generally, its rate of return is higher than petitioner's regular savings account interest rate;
d. The average maturity date is forty-five (45) days;
e. It is not payable on sight or demand, and in case of pre-termination, prior notice is required and lower rates of return are earned;
f. It is automatically renewed in case the client fails to withdraw the fund at maturity date; and
g. Petitioner issues a Certificate of Participation to evidence receipt of funds from the client.

On the other hand, petitioner submits that a trust is "a relationship or an arrangement whereby a person called the trustee is appointed by a person called a trustor to administer, hold, and manage funds and/or property of the trustor for the benefit of a beneficiary." It is a tripartite arrangement involving a trustor, the party who, in confidence, places property to another person who holds it, or the trustee, for the benefit of a third party or the beneficiary. A trust banking relationship must be contra distinguished from a bank deposit arrangement. In a trust banking arrangement, a trustor-trustee relationship is established whereby the trustee-bank holds in trust money or property of a trustor-client, with the obligation of applying or managing said money or property in accordance with the instructions and wishes of the trustor-client. Ownership and title over the money or

[6] Philippine Home Assurance Corporation vs. Court of Appeals, 301 SCRA 443

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property entrusted remains in the trustor-client and is not passed over to the trustee-bank. Contrary to a bank deposit, it constitutes a general deposit and creates a debtor-creditor relation between the bank and the person who deposits his/her money with the former. Under this relationship, ownership and title over the money being deposited passes over and transfers from the depositor to the bank which acquires the right to use the money but with the obligation to return the same amount to the depositor with interest.

WE RULE FOR THE PETITIONER.

In the case of **SOLIDBANK CORPORATION (now: First Metro Investment Corporation) vs. COMMISSIONER OF INTERNAL REVENUE,**[7] this Court ruled on this issue in this wise:

> *"A Trust Indenture Agreement has a different feature and concept from a certificate of deposit. When a depositor enters into a trust agreement, what is created is a trustor-trustee relationship. The money deposited is placed in trust to a common fund and then invested by the Trust Department into a profitable venture. The yield or return of investment is higher and varies depending on the actual profit earned. In some trust agreements, a depositor may even get a negative return of investment. The fact that there is an "expected rate of return" does not necessarily convert a trust agreement into a time deposit. Under Section X407 of the Manual of Regulations for Banks it is provided that "the basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment."*[8]

The above ruling has likewise been affirmed by the Court *En Banc* in the case of **Commissioner of Internal Revenue vs. Traders Royal Bank, CTA EB No. 32, February 14, 2005.**

To emphasize, trust agreements or assets-held-in-trust accounts do not fall under the term "certificates of deposit", basically, because no debtor-creditor relationship arises in both transactions. What is established, rather, is that of a trustor-trustee relationship. In a trust agreement, no absolute transfer of ownership over the money or property happens.

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[7] C.T.A. Case No. 6557, May 5, 2005
[8] Citing the case of Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004

What is merely extended to the trustee-bank is the right to manage and invest the object of the trust under the instructions of the trustor-client. Therefore, the trustee-bank is not obliged to guarantee a positive return on the money or property subject of the trust.

In this regard, respondent's assessment against petitioner for deficiency documentary stamp taxes on its trust agreements and assets-held-in-trust transactions are not subject to the imposition of the DST and should therefore be cancelled.

C. Interbank Call Loans

Anent petitioner's interbank call loans, respondent argues that the same represent borrowings from banks and non-bank financial intermediaries engaged in quasi-banking functions. Respondent emphasizes that what was assessed against petitioner for deficiency documentary stamp taxes are those pertaining to its interbank call loans with more than five (5) days term, the interest or yield of which is subject to final tax of twenty percent (20%). The yield or interest on these loans are subject to final tax primarily because they fall within the definition of "deposit substitutes". Under Section 95 of R.A. No. 7653 (The New Central Bank Act), the term "deposit substitutes" is defined as an alternative form of obtaining funds from the public, 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. These instruments may include, but need not be limited to, banker's acceptances, promissory notes, participations, certificates of assignment and other similar instruments with recourse, and repurchase agreements. Accordingly, it is subject to DST under Section 180 because the DST on interbank call loans is, in effect, imposed on the privilege of contracting loans between and among banks even if such transaction is documented merely by call loan slips and payment transfer tickets or done only through an electronic facility. Whether or not there is a piece of document evidencing the transaction is of no moment, as the documentary stamp tax automatically accrues when

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the said privilege is exercised.

This Court concurs with the respondent that the accrual of the documentary stamp tax is upon the exercise of a privilege. It is undisputed that a documentary stamp tax is an excise tax. It is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. Both the person issuing and the person to whom the document is issued may be made liable for the tax. Being an excise tax, it is paid only once. In other words, it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction.[9] What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

However, it must be stressed that although a documentary stamp tax is a tax on the privilege to enter into a transaction, not all transactions are subjected thereto. Only those specifically enumerated under the provisions of law may be subject to documentary stamp tax. Otherwise stated, when a certain transaction is neither enumerated categorically nor by implication, such transaction cannot be subject to documentary stamp tax.

As argued by the petitioner, prior to the effectivity of the NIRC of 1997, the term "interbank call loans" is not one among those enumerated under Section 180 of the Tax Code of 1993 as subject to documentary stamp tax. It cannot likewise be inferred that "interbank call loans" should fall under the term "loan agreements" for it is evident that under the provision of Section 20 (y) of the same old Tax Code of 1993, the term "interbank call loans" fall under the definition or enumeration of "deposit substitutes". In the same vein, the term "deposit substitutes" was only inserted in the NIRC of 1997.

In the case of **ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue,**[10] this Court already ruled that under the then Section 180 of the Tax Code of

[9] The Law on Transfer and Business Taxation, Hector, de Leon, 1998 Ed., p. 351
[10] CTA Case No. 6187, August 9, 2004

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1993, as amended, the instruments enumerated as subject to documentary stamp tax did not include the term "interbank call loan agreements". The term "interbank call loan agreements" was, however, mentioned under Section 20 (y) of the same Code as part of the proviso on "deposit substitutes", to wit:

> SEC. 20. *Definitions.* — x x x
>
> xxx xxx xxx
>
> y) "Deposit substitutes" shall mean an alternative form of obtaining funds from the public, 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, certificates of assignments or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: Provided, however, **That only debt instruments issued for inter-bank call loans to cover deficiency in reserves including those between and among banks and quasi-banks shall not be considered as deposit substitute debt instruments.** (As amended by Pres. Decree No. 1959) *(Emphasis supplied)*

Considering that the term "interbank call loans" is not one among those enumerated under Section 180 of the Tax Code of 1993, as amended,[11] as subject to documentary stamp tax, it cannot be inferred that "interbank call loans" should fall under the term "loan agreements", as maintained by respondent, for it is evident that under the provision of Section 20 (y) of the same Code, "interbank call loans" fall under the term "deposit substitutes". And further considering that the term "deposit substitutes" was not enumerated as taxable for documentary stamp tax under then Section 180, it is but logical to conclude that "interbank call loans" covering the taxable period prior to 1998 could not be subject to documentary stamp tax. The term "deposit substitutes" was only inserted under Section 180 of NIRC of 1997 which took effect on January 1, 1998. We quote:

> **SEC. 180. Stamp tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and**

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[11] Earlier cited

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> **Securities Issued by the Government or Any of its Instrumentalities, <u>Deposit Substitute Debt Instruments,</u> Certificates of Deposit 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, <u>deposit substitute debt instruments</u>, 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.

From the foregoing, a documentary stamp tax is imposed on deposit substitute debt instruments. And Section 22 (Y) of the 1997 NIRC defines deposit substitute as follows:

> "(Y) The term *'deposit substitute'* 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 borrowers own account, for the purpose of relending or purchasing of receivable 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 bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent beank, certificates of assignment or participation and similar instruments with recourse: *Provided, however*, <u>That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover the reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments."</u> *(Underscoring supplied)*

Clearly then, effective January 1, 1998, only interbank call loans with maturity of not more than five (5) days to cover the reserves against deposit liabilities, including those

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between or among banks and quasi-banks, are not considered as deposit substitute debt instruments, *ergo*, not subject to documentary stamp tax under Section 180.

In the present case, however, respondent assessed petitioner for deficiency documentary stamp taxes on its interbank call loans with maturity of more than five (5) days covering the taxable years 1995, 1996, 1997 and 1998. Therefore, based on the above discussion, the deficiency documentary tax assessments on interbank call loans for the taxable years 1995, 1996 and 1997, which are prior to the effectivity of the 1997 NIRC, should be **cancelled**. It is an elementary rule that a tax law can only have a retroactive application in cases where no right of taxpayer is prejudiced. In short, Section 180 of the 1997 NIRC cannot be made to apply to petitioner's deficiency DST for the taxable years 1995 to 1997. But with respect to petitioner's 1998 documentary stamp tax liabilities, the same are already covered by the 1997 NIRC. Thus, respondent's assessments for deficiency documentary stamp tax on petitioner's interbank call loans in the amounts of P26,861,641.93 and P27,699,016.30 are **affirmed**.

D. Onshore Income

Petitioner was likewise assessed for deficiency gross receipts tax on its onshore income for the taxable year 1998. Respondent argues that petitioner can no longer claim exemption from the payment of gross receipts tax for the taxable year 1998 considering that the instant claim is covered by the NIRC of 1997 which deleted the "exempt from all taxes" provision.

Petitioner, on the contrary, asserts that under the law, its onshore income is not subject to the gross receipts tax (GRT) but, rather, to the ten percent (10%) as and by way of final tax on income derived from a Foreign Currency Deposit Unit (FCDU). Accordingly, the general exemption clause relating to income derived from FCDUs as granted by R.A. No. 6426, as amended, remains valid and intact to date since the purpose and matter, has not

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been expressly and directly amended by R.A. No. 8424 or any previous or contemporary laws. This being so, such tax exemption remains applicable to the instant case considering that the only express provision of the NIRC of 1997 subjecting onshore income to tax is the final income tax of 10% under Section 27 (D)(3) thereof and not the gross receipts tax.

We are not swayed by petitioner's ratiocination. Prior to the amendment introduced by the NIRC of 1997, Section 25(a)(6)(B) of the 1993 NIRC, as amended, provides:

> **(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 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 transaction with depositary banks under the expanded system shall be exempt from income tax. *(Underscoring supplied)*

With the amendments made to the said provision under the NIRC of 1997, the phrase "exempt from taxes" has been deleted in Section 27(D)(3).[12] To quote:

> **(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.

By the clear import of the above law, income derived by a depository bank under the foreign currency deposit system units from foreign currency transactions with local

[12] And Section 28(A)(7)(b) of the same Code

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commercial banks shall be subject to a final tax of 10%. The phrase "exempt from all taxes" has definitely been deleted by the legislators. The amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute.[13] Thus, by virtue of such deletion, Revenue Regulations No. 10-76, which implemented the old law is no longer applicable and the payment by petitioner of the 10% final tax on FCDU income does not exempt it from gross receipts tax or other taxes for that matter. As correctly argued by the respondent, there being no effective exemption to speak of in this case, then all applicable taxes became due. It must be noted that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the 1997 NIRC pertains to income derived by a depositary bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a form of excise tax. Just as a documentary stamp tax is imposed upon the exercise of a privilege, in like manner, the gross receipts tax is imposable when a bank exercises the privilege of engaging in foreign currency transactions or business.

Petitioner would like this Court to consider that despite the plain provision of the present tax law, the phrase "exempt from all taxes" still applies to its FCDU income. To reiterate, under the 1997 Tax Code, the phrase "shall be exempt from all taxes" relative to FCDUs can no longer be found. Petitioner's insistence that it is still covered by the tax-exempt provision of the old law is quite absurd and contrary to sound reasoning. As this Court had already discussed, the NIRC of 1997 mandates payment of gross receipts taxes aside from the 10% final tax on onshore income.

Since taxes are the lifeblood of the nation, this Court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law

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[13] Gloria vs. Court of Appeals, 306 SCRA 287

on which it is based. Hence, the claimed exemption "must expressly be granted in a statute stated in a language too clear to be mistaken.[14]

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, 1997 and 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 hereby **AFFIRMED**.

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			P 835,589,788.55
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
		P 3,576,711,844.85	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,

[14] Commissioner of Internal Revenue vs. Court of Appeals, 298 SCRA 83

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.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division