# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

## FIRST DIVISION
*************

**PRUDENTIAL BANK,**
Petitioner,

- versus -

**BUREAU OF INTERNAL REVENUE represented by the Commissioner of Internal Revenue,**
Respondent.

C.T.A. CASE NO. 6396

Members:

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

**Promulgated:**

FEB 10 2006

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## DECISION

***BAUTISTA, L., J.:***

This is a judicial appeal from the decision of the respondent holding petitioner liable for the amount of P18,982,743.38 as deficiency documentary stamp tax for taxable year 1995.

The antecedent facts as borne by the records of this case are as follows:

Petitioner is a banking corporation organized and existing under the laws of the Republic of the Philippines with principal office at Prudential Bank Building, Ayala Avenue, Makati City.

Petitioner (as surviving corporation) merged with Pilipinas Bank (as absorbed corporation) on May 2, 2000 whereby the entire assets and liabilities of Pilipinas Bank were transferred to and absorbed by petitioner.

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On July 23, 1999, petitioner received from the respondent Final Assessment Notice No. ST-DST-95-0042-99 as well as a Demand Letter for deficiency documentary stamp tax amounting to P18,982,734.38 covering taxable year 1995. On January 25, 2000, petitioner received from the respondent another Final Assessment Notice and demand letter with number ST-DST-96-0142-2000 for deficiency documentary stamp tax amounting to P16,006,828.04 covering the taxable year 1996.

In two separate letters dated July 30, 1999 and February 1, 2000, which respondent respectively received on August 4, 1999 and February 3, 2000, petitioner administratively disputed/protested the said assessments alleging, among others, that the documents subject matter of the assessments are not subject to documentary stamp tax.

On January 21, 2002, petitioner received from the respondent a copy of the decision dated December 28, 2001, denying said protests.

Thus, petitioner appealed the said decision of the respondent on February 20, 2002 to this Court.

On April 1, 2002, respondent filed his corresponding Answer thereto. However, during the hearing conducted on June 7, 2002, petitioner's counsel manifested that the aforesaid petition inadvertently included both the subject assessments for taxable periods 1995 and 1996 although the tax assessment for taxable year 1996 is already covered by a pending case (CTA Case No. 6198) before this Court. He then requested to be allowed to file an Amended Petition for Review which this Court granted, hereby limiting its judicial appeal in this case to the tax assessment for taxable year 1995.

By way of an Answer to the Amended Petition for Review filed on July 24, 2002, respondent asserted his Special and Affirmative Defenses, which may be summarized as follows:

> a. The contention that Repurchase Agreements (RAs) are not considered as "deposit substitutes" within the context of Bangko Sentral ng Pilipinas (BSP) regulations deserves scant consideration. In case of conflict, the provisions of the National Internal Revenue Code (NIRC) being a special

law and repository of tax laws, particularly Section 20(y) of the 1977 NIRC, as amended, prevails over any other Government Agency's rules and regulations;

b. Treasury Bills (T-bills) are considered deposit substitutes which are alternative forms of obtaining funds from the public, other than deposits, through the issuance, endorsement or acceptance of debt instruments for the purpose of financing their own needs. Thus, in line with Sections 2(b) and (h) of Revenue Regulations No. 17-84 (October 12, 1984), T-bills are considered instruments and securities issued by the government and categorized as deposit substitutes which are subject to the DST of P0.30 on each P200.00 of the face value thereof pursuant to Section 180 of the 1997 NIRC, as amended;

c. Savings Account Plus (SA-Plus) and Time Deposits are akin with each other. Therefore, there is no truth to the claim that Mega Savings Deposit is just a variation of a regular savings account, and thus exempt from DST. SA-Plus accounts are clearly and plainly a specie of certificates of deposits, and therefore, subject to DST under Section 180 of the 1977 NIRC, as amended;

d. The assessment was issued in accordance with law and regulations;

e. All presumptions are in favor of the correctness of tax assessments; and

f. The right to assess DST is imprescriptible because there is no return for DST.

During the pre-trial conference conducted on September 6, 2002, the following facts were admitted in open court, to wit: (a) that respondent only started to assess petitioner for documentary stamp tax on special savings account on July 16, 1999; and (b) that petitioner failed to pay documentary stamp taxes for taxable year 1995 only insofar as savings account plus deposits, under Section 180 of the 1997 NIRC, is concerned.

On July 22, 2005, this Court issued a resolution and considered the case submitted for decision since both parties already filed their respective memoranda.

The issues for this Court's resolution are:

1. Whether or not Repurchase Agreements, Treasury Bills and Savings Account Plus Accounts are subject to documentary stamp tax; and

2. Whether or not the assessment for deficiency documentary stamp tax for 1995 has already prescribed.

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Before We delve deeply into the main issue, we deem it necessary to address first the issue of prescription raised in the case at bar.

At the outset, as repeatedly cited by this Court in a number of similar cases, "the defense of prescription is a safeguard for both the taxpayer and the government of their respective rights against assessment on internal revenue taxes. The law prescribing a limitation of actions for the collection of the income tax is beneficial both to the Government and its citizens; to the Government because tax officers would be obliged to act promptly in the making of assessment, and to citizens because after the lapse of the period of prescription, citizens would have a feeling of security against unscrupulous tax agents who will always find an excuse to inspect the books of the taxpayers, not to determine the latter's real liability, but to take advantage of every opportunity to molest peaceful, law-abiding citizens. The law on prescription being a remedial measure should be interpreted in a way conducive to bringing about the beneficent purpose of affording protection to the taxpayer within the contemplation of the Commission which recommends the approval of the law."[1]

Petitioner avers that the right of respondent to assess deficiency documentary stamp tax (DST) for taxable year 1995 had already prescribed inasmuch as the assessment notice and final demand letter were issued beyond the three-year period allowed under Section 203 of the 1997 NIRC in relation to Section 200(B) of the same Code which requires that the documentary stamp tax return shall be filed within ten (10) days after the close of the month when the document was made, signed, issued, accepted, or transferred and the tax thereon shall be paid at the same time.

In the case at bar, petitioner religiously filed its DST Information Return during the year in question. Inasmuch as the assessment notice/demand letter for deficiency documentary stamp tax for the year 1995 was received by the petitioner only on July 23,

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[1] Republic vs. Ablaza, 108 Phil. 1105 (1960).

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1999, petitioner argues that respondent can no longer legally pursue the same due to prescription.

We disagree. The taxable period involved in the case under consideration is 1995, therefore, the pertinent provisions applicable shall be the 1977 Tax Code, as amended by the 1993 NIRC, quoted hereunder as follows:

> "**SEC. 203**. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the **filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. xxx" *(Underscoring and Emphasis Ours)*

As already ruled by this Court, there are no specific provisions under the 1993 NIRC or in any revenue regulations which require the filing of a documentary stamp tax return. The monthly information returns filed by the petitioner are not the return required by the law to be filed for purposes of computing the three (3)-year period. Thus, the statute of limitations provided for under Sections 203 and 223 of the 1993 NIRC apply only to the assessment of the NIRC taxes which require the filing of returns. Hence, respondent could never be barred by the aforesaid prescriptive periods on the assessment of petitioner's deficiency DST.[2]

We will now proceed to the principal issue of whether or not petitioner's repurchase agreements, treasury bills and savings account plus accounts are subject to documentary stamp tax.

In general, petitioner posits that repurchase agreements, treasury bills and savings account plus accounts are not among those subject to documentary stamp tax under Section 180 of the National Internal Revenue Code. In fact, repurchase agreements, treasury bills and savings account plus accounts are not even contemplated under Section

[2] International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004.

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180 as said section covers certificates of deposit drawing interest and others not payable on sight or demand. Documentary stamp tax is an imposition on the document which facilitated the transaction. The presence of a transaction alone will not justify the imposition of DST in the absence of the document identified by law. The document must not only evidence the transaction the parties had but should also comply with the strict formal requirements of what the document should be for the DST to attach. Respondent's assessment notice was arbitrarily issued and has no factual basis.

In particular, petitioner argues that even on the assumption that the subject repurchase agreements are considered as "deposit substitutes", they cannot be subject to DST under Section 180 of the 1997 Tax Code because at that time and prior to January 1, 1998, "deposit substitute debt instruments" were not included in the enumeration under Section 180 as subject to the DST. On treasury bills, petitioner contends that since the BSP has assumed the liability of paying the DST on the original issuance of the Treasury Bills, as in fact it has already remitted such DST to the BIR through the Bureau of Treasury pursuant to DOF-DBM Joint Circular No. 2-91 and the cited Department Order No. 141-94 of the Department of Finance, petitioner should no longer be held liable for the payment of such DST. With respect to savings account plus accounts, petitioner claims that the savings account passbook it issued to evidence the savings account which earns a higher interest is not subject to DST under Section 180 of the Tax Code. Contrary to respondent's position, the savings account which petitioner offers at a higher interest is not a time deposit account. Congress had no intention to impose DST on Special Savings Account during the period assessed by the respondent.

Respondent, on the other hand, maintains the validity of his assessments issued against the Savings Account-Plus accounts, repurchase agreements and T-bills of petitioner during the taxable year 1995 being consistent with the provisions of Sections 20(y) and 180 of the 1977 Tax Code, as amended, and under Sections 2(b) and (h) of Revenue Regulations No. 17-84.

The primordial issue to be considered is the correct interpretation of Section 180 of the 1977 NIRC, as amended by Republic Act No. 7660, the applicable tax provisions under the circumstances, which reads as follows:

> "**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 deposits 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 deposits** 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 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." *(Underscoring Ours)*

A perusal of the above-quoted provision shows that it covers the following instruments, among others:

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 deposit drawing interest;*

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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 correct interpretation of the aforesaid provision of law is not a novel issue. However, We shall begin Our discussion by defining some of the instruments as enumerated above, including documentary stamp tax.

A "promissory note" is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or bearer ***(Sec. 184, Act No. 2031)***. A "bill of exchange" is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand at a fixed or determinable future time, a sum certain in money to order or to bearer ***(Sec. 126, Act No. 2031)***. A "draft" is a common term for all bills of exchange and they are used synonymously ***(9 C.J. 40-41, cited in the book of Aguedo F. Agbayani, Commentaries and Jurisprudence on the Commercial Law of the Philippines, 1989 Ed., p.396)***. The term "loan agreements" is self-explanatory and easily understood.

A "certificate of deposit" 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 ***(Re: Olson's Estate, 206 Iowa, 706, 219 N.W. 40 cited in Agbayani, supra, p.441)***. In Our jurisprudence, the term is defined as a 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 to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created ***(Far East Bank and Trust Company vs. Querimit, 373 SCRA 665 [2002])***.

Relevant thereto, the term "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

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that funds cannot be withdrawn before maturity without giving advance notice. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days ***(BPI Family Savings Bank, Inc. vs. First Metro Investment Corporation, 429 SCRA 31)***". 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 Ed.)***.

"Documentary stamp tax" is defined as a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto ***(Hector S. De Leon, The National Internal Revenue Code, 2000 Ed., p. 722)***. It is in the nature of an excise tax imposed on the privilege, opportunity or facility offered at exchanges for the transaction of the business and not upon the business transacted ***(Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA 92)***. In the same vein, it is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than on a document. The law taxes the document because of the transaction ***(Hector S. De Leon, The Law on Transfer and Business Taxation, 1998 Ed., p.351)***. From the foregoing, it is clear that what is being taxed, is the privilege of the petitioner to enter into such transaction.

Considering the above discussion, We shall first rule on the real nature of petitioner's SA-Plus accounts, whether or not it is a specie of certificates of deposits which may be subject to DST under Section 180 of the 1977 NIRC, as amended.

Time and again, We have consistently ruled and as clearly reflected in the most recent cases of ***China Banking Corporation vs. Commissioner of Internal Revenue (CTA EB No. 66 [CTA Case No. 6400], January 3, 2006); Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue (CTA EB No. 83 [CTA Case No. 6201], July 27, 2005); Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue (CTA EB No. 38 [CTA Case No. 6560], March 18, 2005);*** and

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***United Overseas Bank Philippines vs. Commissioner of Internal Revenue (CTA EB No. 31 [CTA Case No. 6411], March 10, 2005)***, that the "certificate of deposit" contemplated under Section 180 does not prescribe any particular form, nor does it qualify. As defined above, it may be any written acknowledgment by a bank of the receipt of money on deposit. A 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.

Thus, in a similar case, We elucidated:

> "Hence, a traditional passbook, being written acknowledgment of the receipt of money as a deposit which a bank promises to pay to the depositor is a genus of a certificate of deposit, subject to DST under *Section 180 of the National Internal Revenue Code of 1993, as amended.*
>
> We, therefore, find no merit on the claim that the SPA (Savings Plus Account) is but a regular savings account and a different transaction from a time deposit. In petitioner's SPA, the transaction is covered by a special passbook, while in time deposits, it is through a certificate of deposit. However, in both cases, the bank acknowledges the receipt of a sum of money on deposit, which the bank promises to pay to the depositor on a specified period of time. Clearly therefore, the SPA has the same substance, attributes and qualities of a certificate of deposit. The fact then that petitioner's Savings Plus Account is evidenced by a special passbook and not by a certificate of deposit is of no moment. 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 than its form *(L.R. Heat Treating Co., 28 TC 874)* ***(United Overseas Bank Philippines vs. Commissioner of Internal Revenue, supra)***." *(Underscoring ours)*

As a matter of fact, in another case, the Court *en banc* further expounded on the matter when it stressed:

> "To reiterate, petitioner cannot hide behind mere terminologies to escape from its tax responsibility to the government. What is vital to petitioner's case are the surrounding circumstances capable of overturning the same.
>
> It may be true that a depositor of petitioner's market savings deposit may make a withdrawal at anytime without having to give notice to the petitioner, and unlike that of a time deposit, its market savings deposit does not penalize the depositor but rather offers an incentive for maintaining the deposit for a longer period of time. It is not incomprehensible to conclude that offering an incentive to a depositor for something he has to do is the

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opposite of penalizing him for something that he ought not to do. In the case of petitioner's market savings deposit, petitioner contends that there is no penalty to speak of considering that the depositor is not obliged to maintain his investment for a specified period of time. Petitioner asserts that there is only an incentive offered to the depositor in cases when he decides to maintain his deposit for a longer period of time. However, in contradiction, petitioner's witness also testified that the depositor, at the beginning of his deposit, is made to agree or choose a period within which he should maintain his deposit *(pp. 20-22, Transcript of Records, August 1, 2003)*. By obligating the depositor to choose or agree to a specified period of time within which to maintain his deposit is the same as giving him a maturity date. It is as simple as providing a higher rate of interest if the depositor lets his money stay longer with the bank, that is, giving a maturity date, but, reducing said interest rate to a minimum in case the depositor decides to withdraw his money, or preterminating the said account. The issue on the subject 'penalty' is clear. In both the time deposit and petitioner's market savings deposit accounts, the depositor gets to withdraw his money anytime before the specified term, however, a lower rate of interest is given. The mere fact that a different or a lower rate of interest is given to the depositor in case where he withdraws his money prior to the expiration of the specified period, is a clear case of penalizing the depositor for something he ought not to do.

Further, petitioner's argument that there is no acknowledgment of the receipt of the money or funds on deposit in case of its market savings deposit is untenable. Again, <u>it must be emphasized that for its market savings deposit, it issues a passbook stating the amount of the deposit, the date, the interest and the balance as well as the transaction code which is obviously for the bank's use. The mere fact that it is the bank which prints or types these figures and data, is enough acknowledgment of the funds received from the depositor</u> ***(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, CTA EB No. 69 [CTA Case No. 6565], July 11, 2005)***." *(Underscoring Ours)*

Applying the foregoing jurisprudence, it is quite clear that for all intents and purposes, petitioner's SA-Plus accounts are deemed to be of the same nature and substance as a certificate of deposit bearing interest. Hence, We rule that said Savings Account-Plus passbook is in itself a certificate of deposit, subject to DST in accordance with Section 180 of the 1977 NIRC, as amended.

Indeed, while it is true that 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 of a privilege of conducting a particular business or transaction through the execution of specific

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instruments or documents ***(Phil. Home Assurance Corp. vs. Court of Appeals, 301 SCRA 443 [1999])***.

With respect to the repurchase agreements, although We agree with respondent that "Repurchase Agreements" are within the legal definition of "deposit substitutes" contained in Section 20(y) of the 1977 NIRC, as amended, which provides:

> "SEC. 20. **Definitions.** –
>
> 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** 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 interbank call loans to cover deficiency in reserves against deposit liabilities including those between and among banks and quasi-banks shall not be considered as deposit substitute debt instruments (As added by PD No. 1959)." *(Emphasis Ours)*;

respondent, however, failed to consider the fact that the terms "deposit substitutes debt instruments" and/or "debt instrument used for deposit substitutes" were not included among the objects/instruments mentioned in Section 180 of the 1977 NIRC, as amended by R.A. No. 7660.

Consequently, considering that repurchase agreements are deemed "deposit substitutes" within the ambit of the latter's definition but are not among the instruments enumerated in Section 180 as quoted earlier, they are therefore not subject to DST under the aforesaid section. Hence, petitioner's arguments concerning the non-taxability of said repurchase agreements are meritorious.

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With respect to T-bills, it is petitioner's contention that the same is a special transaction of banks with the BSP which is beyond the coverage of the DST. Furthermore, in citing the case of Standard Chartered Bank – Philippine Branch vs. Commissioner of Internal Revenue (CTA Case No. 5696, August 16, 2001), petitioner justified its non-payment of the DST on its purchases of T-bills for the year 1995 by its reliance on the DOF-DBM Joint Circular NO. 2-91 (November 19, 1991) and DOF Department Order No. 141-95 because, as alleged by petitioner, the same expressed that the DST shall be for the account of the BSP, being the issuer.

Before We resolve the issue, We find it necessary to first determine the nature of T-bills. Treasury bills or T-bills are evidences of indebtedness issued by the National Government under the authority of Republic Act No. 245, as amended. They are offered for sale either at auction on competitive or non-competitive basis and at fixed discount or interest rate. It represents a direct, unconditional and general obligation of the National Government ***(Section 1, Republic Act No. 245)***.

In this connection, it is worthy to reprint herein this Court's rationalization in the case of ***BPI Family Bank vs. Commissioner of Internal Revenue, CTA Case No. 4256, August 7, 1992***, ruling that T-bills may be subject to DST under Section 176 of the 1977 NIRC, as amended:

> "[T]his Court believes that government securities such as treasury bills and CB bills fall under Section 223, now Section 174 of the Tax Code. <u>Indubitably, they are in the category of 'certificates of indebtedness' and, therefore, their sale or transfer is subject to documentary stamp tax pursuant to the aforequoted Section 225, now Section 176 of the Tax Code</u>.
>
> In addition, it should be noted that the aforementioned instruments are referred to in general as 'securities'. This term, by definition of law, 'means shares of stock in corporation and rights to subscribe for or to secure such shares. The term includes bonds, debentures, notes, or certificates, or other evidence of indebtedness, issued by any corporation, including those issued by a government or political subdivision thereof, with interest coupons or in registered form' (Emphasis supplied, Sec. 20(t) NIRC). While Section 176 uses the term 'certificate of obligation', Section 174 uses the term 'certificate of indebtedness' and Section 20 of the same Tax Code uses

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'evidence of indebtedness', this Court believes that they bear the same meaning but are only being used interchangeably by the law.

The Revised Documentary Stamp Tax Regulation promulgated by the Department of Finance on September 16, 1924 (XXII O.G. 112, p. 2335), provides a very stable and acceptable definition of a 'certificate of indebtedness'. The term 'includes only instruments having the general character of investment securities as distinguished from instruments evidencing debts arising in ordinary transactions between individuals' (Section 9). xxx

xxx xxx xxx

**This should be distinguished from ordinary debt instruments arising from transactions between individuals such as promissory notes, bills of exchange, drafts, certificate of deposits and deposit substitutes.**

We believe the inclusion by the BIR of government borrowings in the definition of 'deposit substitutes' is without legal basis and contrary to law. Republic Act Nos. 245 and 265 classify treasury bills and CB bills respectively as evidence of indebtedness or certificate of indebtedness. Moreover, the definition of 'deposit substitutes' clearly does not include within its definition borrowings or securities issued by the government. The definition which is similar to the definition of 'deposit substitute' under the Central Bank Act, although not limited to the instruments enumerated, should be confined to instruments 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. Apparently, the obvious intention of the law is to cover only debt instruments issued by the private sectors. Treasury bills and CB bills are issued by the government for its own account and not for banks and non-bank financial instrumentalities nor for the account of other companies.

Furthermore, if the lawmaker had intended to include certificates of indebtedness within the definition of 'deposit substitutes', it should not have been specified and treated separately under Section 174. Also the intention of the law to treat obligations issued by the government apart from 'deposit substitute' can be found in Section 28(b)(4). For while interests from deposit substitute are being taxed pursuant to Section 24(e) of the Tax Code, interest on government securities are in general excluded from gross income pursuant to Section 28(b)(4). In other words, interests on government securities, unlike interests on deposit substitutes, are exempted from tax to the extent provided for in the Act authorizing the issuance of said government securities. It so happened that in the instant case, Republic Act Nos. 245 & 265 fail to exempt interest on treasury bills and CB bills, respectively from taxation. However, in the cases as when bonds and securities are intended for sale in the international market, PD 81 provides exemption of income derived therefrom by recipient. The income from bonds and other instruments which the Export Processing Zone Authority (EPZA) is authorized to issue are likewise exempted from tax pursuant to PD 66. In

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> other words, while taxation of 'deposit substitute' is governed by the provisions of the National Internal Revenue Code, taxation of government securities are governed by special laws authorizing their issuance. Thus, the intention of the lawmaker to treat 'evidence of indebtedness' or securities issued by the government separately is very apparent.
>
> In view of all the foregoing, **we believe treasury bills and Central Bank bills should be classified as 'certificate of indebtedness' under Section 223 (now Section 174) of the Tax Code and its sale or transfer subject to documentary stamps tax pursuant to Section 225 (now Section 176) of the Tax Code falling under the term 'certificate of obligation'**. xxx *(Underscoring and emphasis Ours)*

Adopting the principle enunciated in the above-cited case, it is clear that petitioner's T-bills are not among those documents subject to DST under Section 180 of the 1977 NIRC, as amended. Considering that Section 180, being the legal basis used by respondent in the subject assessments, does not cover T-bills, We are placed under no other alternative than to consider respondent's assessment of the same without any legal basis. This Court, however, notes that T-bills may still be subject to DST under the provisions of Section 176 of then 1977 NIRC, as amended by R.A 7660, which respondent may perhaps look into.

Finally, We disregard any compromise penalty imposed by respondent as stated in the subject assessment because there was no mutual agreement reached by the parties. ***(Collector of Internal Revenue vs. UST, 104 Phil 1062; Atlas Consolidated Mining and Development Corporation [doing business under the name Atlas-Itochu Consortium] vs. Commissioner of Internal Revenue, CTA Case No. 5671, August 29, 2002)***

**WHEREFORE**, the instant petition is hereby **PARTIALLY GRANTED**. The subject Decision of the Commissioner of Internal Revenue dated December 28, 2001 assessing petitioner of deficiency documentary stamp taxes is hereby **AFFIRMED** insofar as the Savings Account Plus is concerned. The deficiency assessment on petitioner's repurchase agreements and treasury bills are hereby **CANCELLED** and **SET ASIDE**.

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Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of **P6,355,340.63** plus 20% delinquency interest from August 23, 1999 up to the time such amount is fully paid pursuant to Section 249 (c) of the 1977 NIRC, as amended, covered by Assessment Notice No. ST-DST-95-0042-99 as deficiency documentary stamp tax for the taxable year 1995, recomputed as follows:

| | |
|---|---|
| **Savings Account Plus** | P5,084,272.50 |
| Add: 25% Surcharge | 1,271,068.13 |
| **TOTAL** | **P6,355,340.63** |

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

( With Concurring and Dissenting Opinion )
**CAESAR A. CASANOVA**

## 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**
Chairperson, First Division
Presiding Justice

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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

**FIRST DIVISION**

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## Concurring and Dissenting Opinion

I agree with the majority opinion holding that the assessment for deficiency stamp tax for the taxable year 1995 has not yet prescribed. With regard to the cancellation of the deficiency documentary stamp tax on petitioner's repurchase agreements and treasury bills, I also concur with the majority opinion. However, I am dissenting with my colleagues in holding petitioner Prudential Bank liable for Deficiency Documentary Stamp Tax on its Savings Accounts Plus Accounts (SA-Plus Accounts).

It is my opinion that the SA-Plus Accounts, 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, SA-Plus Accounts has no maturity date. The period offered to a prospective SA-Plus Accounts depositor is a length of time provided in a schedule of placement, for

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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.

SA-Plus Accounts 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 SA-Plus Accounts 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 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

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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 SA-Plus Accounts 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 the 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:
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> 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, 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, <u>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</u>, 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*

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*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 SA-Plus Accounts 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 SA-Plus Accounts of the petitioner to DST.

In view of the foregoing, I vote that the "Petition for Review" be GRANTED. I vote that the assessed deficiency documentary stamp tax on petitioner's Reverse Repurchase Agreements, Treasury Bills and SA-Plus Accounts for the taxable years 1995 be cancelled and set aside.

**CAESAR A. CASANOVA**
Associate Justice

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