REPUBLIC OF THE PHILIPPINES
*Court Of Tax Appeals*
QUEZON CITY

# EN BANC

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| UNITED OVERSEAS BANK PHILIPPINES, *Petitioner,* | **C.T.A. E.B. NO. 31 (C.T.A. CASE NO. 6411)** |
| | Present: |
| -versus- | ACOSTA, Presiding Justice<br>CASTAÑEDA, JR.,<br>BAUTISTA,<br>UY,<br>CASANOVA, and<br>PALANCA-ENRIQUEZ, JJ. |
| COMMISSIONER OF INTERNAL REVENUE, *Respondent.* | **Promulgated:**<br>MAR 10 2005 |

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# DECISION

**PALANCA-ENRIQUEZ, J.:**

Pursuant to *Section 180 of the National Internal Revenue Code of 1993, as amended,* on all bills of exchange (between points within the Philippines), drafts 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 twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note.

Is petitioner's special savings deposit, more particularly known as the Savings Plus Account (hereafter "SPA") a certificate of deposit, and thus subject to documentary stamp tax (hereafter "DST")?

**THE CASE**

This issue is before Us in this Petition For Review filed by United Overseas Bank Philippines (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated April 21, 2004 and the Resolution dated August 30, 2004 issued by the Division of this Court in C.T.A. Case No. 6411, the respective dispositive portions of which read:

> "Accordingly, petitioner is **ORDERED** to **PAY** the respondent **COMMISSIONER OF INTERNAL REVENUE** the amounts of P10,969,066.54 and P12,647,298.29 inclusive of surcharges, representing

deficiency documentary stamp taxes for the years 1996 and 1997, plus 20% delinquency interest from June 30, 2001 until fully paid pursuant to Sections 248 and 249 of the Tax Code, as amended.

**SO ORDERED.”**

“**WHEREFORE**, in view of the foregoing, petitioner’s Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.”**

## THE FACTS

The antecedent facts are not in dispute:

On March 23, 2000, Commissioner Dakila B. Fonacier issued a Letter of Authority No. 00058964, which authorized Revenue Officers Gloria Morales, Wilfredo Reyes, Buenaventura Lomibao, Jose Maria Reyes, Frances Leonida and Felina Guimbao, to be supervised by Ma. Annabella A. Abuloc of the Large Taxpayers Assessment Division, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes.

As a result of the examination, the above-mentioned Revenue Officers made a report on the internal revenue tax liabilities of petitioner for the taxable years 1996 and 1997. The report in part stated:

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> "In view of the foregoing, we, the undersigned Revenue Officers respectfully recommend that this report be approved and a demand letter and assessment notices be issued against the taxpayer on the deficiency documentary stamp taxes which the taxpayer refused to pay on the ground that this is an industry issue which is still unresolved up to this date (Exhibit 2, BIR Records, pp. 1271-1280)."

On December 11, 2000, Virginia L. Trinidad, Assistant Commissioner for Large Taxpayers Service, issued a Preliminary Assessment Notice to petitioner informing the latter that there has been found documentary stamp taxes due, including increments thereon for the taxable years 1996 and 1997 in the amounts of P15,678,042.92 and P16,053,165.13, respectively.

On March 30, 2001, Assessment Notices Nos. DST-2-96-000009 and DST-2-97-000010 were issued to petitioner along with the Formal Letter of Demand. Respondent requested petitioner to pay deficiency documentary stamp tax through the duly authorized agent bank the amounts of P10,969,066.54 for the taxable year 1996 and P12,647,298.29 for the taxable year 1997. These were received by petitioner on June 20, 2001.

On June 28, 2001, petitioner filed with the BIR a protest.

On March 21, 2002, for failure of the Commissioner of Internal Revenue (hereafter "respondent") to act on the protest, petitioner filed a Petition for Review before this Court, docketed as C.T.A. Case No. 6411.

After trial on the merits, the Division of this Court rendered the assailed decision on April 21, 2004, denying the Petition for Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the Division denied in a Resolution dated August 30, 2004.

**THE ISSUES**

Hence, this Petition For Review raising the following issues, to wit:

A

THE FORMAL LETTER OF DEMAND DATED 30 MARCH 2001 IS VOID SINCE IT DID NOT SUFFICIENTLY CITE THE LEGAL AND FACTUAL BASIS OF THE ASSESSMENT AS REQUIRED UNDER SECTION 228 OF THE TAX CODE.

B

ASSUMING *ARGUENDO* THAT THE FORMAL LETTER OF DEMAND AND THE CORRESPONDING ASSESSMENT NOTICES ARE VALID, NEITHER THE SPA NOR THE SPA PASSBOOK EVIDENCING THE SAME CAN BE CLASSIFIED AS A LOAN AGREEMENT, PROMISSORY NOTE, BILL OF

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> EXCHANGE, DRAFT, INSTRUMENT OR SECURITY ISSUED BY THE GOVERNMENT OR CERTIFICATE OF DEPOSIT SUBJECT TO DOCUMENTARY STAMP TAXES UNDER SECTION 180 OF THE TAX CODE.

On November 4, 2004, We required the respondent to file comment on the petition. On December 20, 2004, the respondent belatedly filed his "Comment", which the Court En Banc admitted in its Resolution dated January 28, 2005.

**THIS COURT EN BANC'S RULING**

The petition is without merit.

The principal issue posed for resolution by this Court En Banc is whether petitioner's Savings Plus Account is subject to DST under *Section 180 of the National Internal Revenue Code of 1993, as amended.*

There is nothing novel in this case as the principal issue raised herein had, in a long line of cases, been previously ruled by this Court in the affirmative.

Petitioner claims that its product, the savings plus account, evidenced by a savings account passbook is, in all respect, similar in form and function to petitioner's savings account, and is not subject to DST. Like the regular savings account, the SPA is evidenced by and transacted

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through a passbook similar to that of the regular savings account. The general format, as well as the entries in both passbooks, are similar.

Petitioner further points out that a depositor's SPA passbook is merely used to record his deposit accounts whereas the certificate of time deposit can be an alternative negotiable instrument. The SPA and the SPA passbook evidencing the same cannot be considered as evidencing the same transaction as certificates of deposit. The SPA does not fulfill the essential elements of a certificate of time deposit.

Petitioner further argues that the transaction using a depositor's SPA does not require the surrender or cancellation of the passbook. On the other hand, a partial or total withdrawal of a time deposit results in the cancellation of the certificate of deposit. Any renewal of the same requires the issuance of a new certificate of deposit with the corresponding DST.

On the other hand, in his Comment, the respondent maintains that the petition does not raise new issues and matters which have not been discussed and resolved in the questioned decision, and prayed that the petition be dismissed for lack of merit.

*Section 180 of the National Internal Revenue Code of 1993, as amended*, provides:

> "SEC. 180. Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable on sight or demand. - **On all bills of exchange (between points within the Philippines), drafts or certificates of 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 twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note."**

A perusal of the above-quoted *Section 180* will show that it covers the following instruments:

1) bills of exchange,
2) drafts,
3) certificates of deposits drawing interest,
4) orders for the payment of any sum of money otherwise than at sight or on demand,
5) promissory notes, whether negotiable or non-negotiable, and
6) renewal of any such note.

A certificate of deposit 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 671*).

Clearly, the "Certificate of Deposit" stated in *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 (*Montgomery vs. Smith, 145 So. 822, 826, 226 Ala. 91)*.

Hence, a traditional passbook, being a 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 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*).

Thus, the Division of this Court correctly ruled:

> "We do not agree with petitioner's argument that the bank's Special Savings Account is not subject to documentary stamp tax considering that it is not a time deposit and is not evidenced by a certificate of deposit. In determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels xxx (Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. CA 1800, 1801). The court agrees with the findings of the respondent that the nature of Special Savings Deposit and Time deposits are akin to each other in such a way that the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. In both cases, the banks allows (sic) pretermination but the rate of interest is lowered than the agreed interest. The difference lies on the document

> issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.
>
> Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, we find both the certificate of time deposit as well as the passbook evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax."

We therefore conclude that petitioner's SPA is in itself a certificate of deposit.

Petitioner's contention that the formal letter of demand dated March 30, 2001 is void since it did not sufficiently cite the legal and factual basis of the assessment as required under *Section 228 of the Tax Code* is likewise devoid of merit.

*Section 228 of the National Internal Revenue Code of 1997, as amended,* provides:

> "SEC. 228. *Protesting of Assessment*.- When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x.
>
> xxx xxx.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void.

xxx xxx."

In this case, the Preliminary Assessment Notice issued to the petitioner reads:

"Verification disclosed that you failed to affix the documentary stamp tax on the Special Savings Deposit transactions in violation of Section 180 of the National Revenue Code." (*Exhibit "3", BIR Records, p. 1306*)

On the other hand, the Formal Letter of Demand dated March 30, 2001, attached to the assessment notices, reads:

"FORMAL LETTER OF DEMAND

THE PRESIDENT
United Overseas Bank Philippines
411 Quintin Paredes St., Binondo, Manila

Sir/Madam:

Please be informed that after investigation there has been found still due from you for the taxable years 1996 and 1997 deficiency Documentary Stamp Taxes (industry issue), including increments thereon, details of which are shown hereunder:

Assessment No. ________________
________________

| | 1996 | 1997 |
|---|---|---|
| | | |
| Special Savings Account | 5,850,168,817.29 | 6,745,225,756.46 |
| Rate of tax | 0.15% | 0.15% |
| Basic tax due | 8,775,253.23 | 10,117,838.63 |
| Surcharge | 2,193,813.31 | 2,529,459.66 |
| | | |
| **Total amount due and collectible** | **10,969,066.54** | **12,647,298.29** |

Verification disclosed that you failed to affix the documentary stamp tax on the Special Savings Deposit transactions in violation of Section 180, of the National Internal Revenue Code.

The 25% surcharge has been imposed pursuant to the provision of Section 248(A) of the said Tax Code.

In view thereof, you are requested to pay your aforesaid deficiency documentary stamp tax liability through the duly authorized agent bank in which you are enrolled within the time shown in the enclosed assessment notice.

Very truly yours,

**RENE G. BAÑEZ**
Commissioner of Internal Revenue

By: **VIRGINIA L. TRINIDAD**
**VIRGINIA L. TRINIDAD (SGD.)**
Assistant Commissioner
Large Taxpayers Service"
(*Exhibit "A"*)

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Clearly, therefore, the petitioner was informed of the fact giving rise to the written demand to pay, i.e., its failure to affix documentary stamp, as well as the specific provision of the law, *Section 180 of the National Internal Revenue Code*, which was violated.

The foregoing considered, We see no reason to reverse the assailed decision of the Division of this Court. The Petition for Review was correctly denied.

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

SO ORDERED.

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Justice

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

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**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.

**ERNESTO D. ACOSTA**
Presiding Justice

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