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

## *EN BANC*

**UNITED COCONUT PLANTERS BANK,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 567**
(CTA CASE NO. 7259 )

Present:

**ACOSTA, *P.J.*,**
**CASTAÑEDA, JR.,**
**BAUTISTA,**
**UY,**
**CASANOVA,**
**PALANCA-ENRIQUEZ,**
**FABON-VICTORINO,**
**MINDARO-GRULLA, and**
**COTANGCO-MANALASTAS, *JJ.***

**Promulgated:**

JAN 12 2011 4:15 pm

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# DECISION

**COTANGCO-MANALASTAS, *J.*:**

## THE CASE

Petitioner United Coconut Planters Bank prays that the Decision and the Resolution rendered by the former First Division of the Court of Tax Appeals in CTA Case No. 7259, entitled "United Coconut Planters Bank vs. Commissioner of Internal Revenue", be reversed and set aside and a new decision be promulgated ordering respondent to cancel and withdraw the assessment for alleged deficiency

Gross Receipts Tax (GRT), including the interest and penalties imposed thereon, for taxable year 2000.

## THE PARTIES

Petitioner is a local commercial banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the UCPB Building, Makati Avenue, Makati City.

Respondent is the official authorized, under Section 4 of the National Internal Revenue Code (NIRC) of 1997, to assess and collect internal revenue taxes, as well as decide disputed assessments. She holds office and may be served summons, papers, orders and other legal processes at the 5th Floor, Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.

## THE FACTS

The facts, as found by the CTA First Division, are hereunder reproduced:

> "On June 9, 2004, respondent issued a Formal Letter of Demand and Assessment Notice, assessing petitioner for deficiency Gross Receipt Tax (GRT), inclusive of increments, on its Foreign Currency Deposit Unit (FCDU) for taxable year 2000 in the amount of P112,280,954.88, the details of which are as follows:

| | | |
|---|---|---|
| Onshore Income-FCDU | P | 1,157,032,786.00 |
| Rate of Tax | | 5% |
| Deficiency GRT | P | 57,851,639.30 |
| Less: Tax Paid | | - |
| Deficiency FCDU GRT | P | 57,851,639.30 |
| Add: 25% Surcharge | | 14,462,909.82 |
| Interest from (01/26/01 to 07/09/04) | | 39,941,405.76 |
| Compromise Penalty | | 25,000.00 |
| **Total Deficiency GRT** | P | 112,280,954.88 |

> Respondent explained his findings in the attached Details of Discrepancies in the following manner:

> 'Section 2.27 and 2.28 of the Revenue Regulations No. 10-98 in implementing the provisions of Section 27(D)(3) of the Tax Code of 1977 states:
>
> > '**(C) Taxation of Income of an FCDU or OBU from Foreign Currency Transactions.** In general, income derived by an FCDU or OBU from foreign currency transactions with residents of the Philippines, including local commercial banks, local branches of foreign banks, and other depository banks under the foreign currency deposit system shall be subject to a final withholding tax of ten per cent (10%) based on gross income pursuant to Section 27(D)(3) and Section 28 (A)(4) of the Code. Income from foreign currency transactions shall include interest income from lending operations, including bank charges, commissions, service fees, and net foreign exchange transactions gains.
>
> Section 27 (D)(3) amended the provision of Section 24(e)(3) and deleted the 'exempt from all taxes' phrase. An excerpt of the Final Decision dated March 2, 2004 of the Commissioner of Internal Revenue on disputed assessment of gross receipts tax in the matter of protest of the EXPORT AND INDUSTRY BANK is quoted hereunder:
>
> > 'The implication therefore of the amendment particularly the removal of the 'exempt from all taxes' phrase is that onshore income is now subject to two (2) distinct forms of taxes: one, on income derived therefrom which is subject to final tax of 10% under Section 27 (D)(3) and two, on gross receipts on the privilege of banks to earn income in all its other activities mentioned herein.'
>
> Section 121 of the Tax Code provides for the liability of banks to gross receipts tax on income derived from all sources within the Philippines which include interest income from lending activities, including commissions, discounts, bank charges, and foreign exchange transactions gains and other items treated as gross income under Section 32 of the said code."

On September 1, 2004, petitioner protested the foregoing assessment by filing a protest letter addressed to the Deputy Commissioner, Large Taxpayers Service. In the said protest, petitioner stated the factual and legal bases supporting its arguments against the subject assessment and prayed that the same be withdrawn and cancelled. On October 29, 2004, petitioner submitted documents in support of its protest letter.

Respondent had one hundred eighty (180) days from October 29, 2004 or until April 29, 2005 within which to resolve the administrative protest as mandated by Section 228 of the NIRC. However, the 180-day prescriptive period lapsed without respondent's resolution of petitioner's protest. In order to protect its interest, petitioner elevated the matter via the instant Petition for Review before this Court on May 27, 2005.

On July 11, 2005, petitioner received a copy of respondent's Final Decision on Disputed Assessment dated June 27, 2005, which denied petitioner's protest and adjusted the total assessed amount to P123,565,960.84, computed as follows:

| | | |
|---|---|---|
| Onshore Income per ITR | P | 1,157,032,786.00 |
| Tax Rate | | 5% |
| Gross Receipts Tax Due | P | 57,851,639.30 |
| Gross Receipts Paid | | - |
| Deficiency Gross Receipts Tax | P | 57,851,639.30 |
| Add: 25% Surcharge | | 14,462,909.82 |
| 20 % Interest from 01/26/01 to 06/30/05 | | 51,226,411.72 |
| Compromise Penalty | | 25,000.00 |
| **Total Amount Due & Payable** | P | 123,565,960.84 |

In his Answer filed on August 26, 2005, respondent interposed the following Special and Affirmative Defenses:

'6. Petitioner's FCDU onshore income is now subject to gross receipt tax in view of the deletion of the phrase 'exempt from all taxes' from Section 27(D)(3) of the NIRC of 1997 [ING Bank (Manila Branch) vs. Commissioner of Internal Revenue, C.T.A. Case No. 6017, March 11, 2002].

7. Petitioner was not denied due process of law. He was sufficiently informed of the factual and legal bases of the assessment as shown by the fact that it was able to discuss these lengthily in its protest to the assessments and in this Petition.

8. Petitioner conducted audit/investigation of the Petitioner's books. The assessment for deficiency GRT arose from the fact that Petitioner failed to quantify the actual interest income subject to GRT at

rates lower than 5%, thus, the 5% rate was imposed on its interest income.

9. All presuppositions are in favor of the correctness of tax assessments. The good faith of tax assessors 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. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments.'

During trial, petitioner formally offered Exhibits 'A' to 'L', inclusive of submarkings; while respondent was declared to have waived his right to present evidence.

The case was submitted for decision on August 8, 2008, taking into consideration the parties' Memoranda both filed on August 4, 2008.

The parties stipulated the following factual and legal issues for this Court's resolution:

'1. Whether or not Respondent's right to assess Petitioner for alleged deficiency Gross Receipt Tax for taxable year 2000 has prescribed;

2. Whether or not the Formal Letter of Demand and Assessment Notices dated 9 June 2004, were issued contrary to the procedural due process requirements under Revenue Regulations No. 12-99;

3. Whether or not Petitioner's FCDU onshore income for taxable year 2000 is subject to Gross Receipts Tax in view of the deletion of the phrase 'exempt from all taxes' from Section 27(D) of the National Internal Revenue Code of 1997;

4. Whether or not Petitioner's FCDU is exempt from Gross Receipts Tax;

5. Assuming *arguendo* that Petitioner's FCDU is not exempt from Gross Receipts Tax, whether or not it is liable for any deficiency Gross Receipts Tax;

6. Whether or not Respondent correctly imposed a 25% surcharge.'

The foregoing issues can be summarized into three main issues, namely:

1. Whether or not petitioner's FCDU onshore income is exempt from payment of Gross Receipts Tax;

2. Whether or not respondent's right to assess petitioner for deficiency Gross Receipts Tax for taxable year 2000 has prescribed; and

3. Whether or not respondent correctly imposed a 25% surcharge."

In its August 6, 2009 Decision, the CTA First Division denied petitioner's Petition for Review and ordered petitioner to pay respondent the amount of P123,540,960.84, representing its deficiency GRT, inclusive of interests and penalties, for taxable year 2000. The dispositive portion of the said Decision states:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **ONE HUNDRED TWENTY-THREE MILLION FIVE HUNDRED FORTY THOUSAND NINE HUNDRED SIXTY AND 84/100 PESOS (P123,540,960.84)**, representing its deficiency Gross Receipts Tax, inclusive of interest and penalties, for taxable year 2000, computed as follows:

| | | |
|---|---|---|
| Onshore Income-FCDU | P | 1,157,032,786.00 |
| Tax Rate | | 5% |
| Gross Receipts Tax Due | P | 57,851,639.30 |
| Less: Tax Paid | | - |
| Deficiency Gross Receipts Tax | P | 57,851,639.30 |
| Add: 25% Surcharge | | 14,462,909.82 |
| 20 % Interest from 1/26/01 to 6/30/05 | | 51,226,411.72 |
| **Total Deficiency GRT** | P | 123,540,960.84 |

> In addition, petitioner is hereby **ORDERED TO PAY** a delinquency interest equivalent to twenty percent (20%) per annum on the amount of P123,540,960.84 from July 11, 2005 until such amount is paid in full, pursuant to Section 249(C)(3) of the NIRC of 1997.

> **SO ORDERED**."

On August 27, 2009, petitioner filed a Motion for Reconsideration before the First Division to seek the reconsideration and setting aside of the August 6, 2009 Decision, contending that the Court erred in imposing GRT on its onshore Foreign Currency Deposit Unit (FCDU) transactions.

In the November 6, 2009 Resolution, the First Division found no reason to reverse the previous ruling and accordingly denied petitioner's Motion for Reconsideration for lack of merit.

Aggrieved, petitioner elevated the matter before the Court *En Banc*, through a Petition for Review, with its arguments anchored on the legal issue of whether or not FCDUs continued to be exempt from non-income taxes, including GRT, despite the omission of the phrase "exempt from all taxes" in Section 28(A)(7)(b) of the National Internal Revenue Code of 1997.

Respondent filed her Comment on February 18, 2010.

On April 13, 2010, the case was submitted for decision after respondent filed her memorandum on March 30, 2010 and petitioner filed its memorandum on April 5, 2010.

**THE ISSUES**

The issues raised in the Petition are as follows:

1. Whether or not FCDUs continued to be exempt from non-income taxes, including GRT, under Section 28(A)(7)(b) of the NIRC of 1997; and

2. Whether or not respondent's right to assess petitioner for deficiency Gross Receipts Tax for taxable year 2000 has prescribed.

## DISCUSSION/RULING

Petitioner argues that the text of Section 28(A)(7)(b) of the NIRC of 1997, which omitted the phrase "exempt from all taxes", does not show a clear and unmistakable intent to remove the FCDU's exemption from non-income taxes, including GRT.

Petitioner likewise contends that evidence would show that the removal of the tax exemption of FCDUs from non-income taxes, including GRT, was neither discussed during the legislative deliberations nor mentioned in the public hearings on the Tax Reform Act of 1997. In fact, the legislative deliberations of a subsequent law intended to clarify the intent of Section 28(A)(7)(b) of the NIRC of 1997 confirm that the removal of the phrase "exempt from all taxes" was a mere "inadvertent omission."

Settled is the rule that, in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. The general rule on amendment by deletion is not applicable when the intent of the legislature to make such change in the meaning of the previous law is not clear.

Since FCDUs are not subject to GRT, it is clear that there is no basis to state that petitioner's failure to indicate GRT on onshore income in its GRT Returns for taxable year 2000 is tantamount to non-filing; thus, justifying the application of the ten (10)-year prescriptive period under Section 222(a) of the NIRC of 1997. Respondent's assessment, having been issued beyond three (3) years from the filing of petitioner's GRT Returns, is void for having been issued beyond the 3-year prescriptive period.

In her Comment (On the Petition for Review dated 14 December 2009) filed on February 18, 2010, respondent submits that a domestic corporation is subject to a final tax of ten percent (10%) on income derived under the expanded foreign currency deposit system in view of the exclusion of the phrase "exempt from all taxes" from Section 28(A)(7)(b) of the NIRC of 1997.

After the enactment of the Tax Reform Act of 1997, the exemption so enjoyed by domestic corporations on income derived under the expanded foreign currency deposit system ceased to exist. The conspicuous deletion of the phrase "exempt from all taxes" sealed the fate of tax exemptions on income derived from FCDU transactions by banks.

Furthermore, amendment by deletion of words or phrases in statute indicates that the legislature intended to change the meaning of the statute. It is only accurate that the amended statute should be given a construction different from that previous to its amendment.

The Court *En Banc* finds no merit in the Petition for Review.

A perusal of the Petition reveals that petitioner's arguments interposed for the consideration of this Court were extensively and properly passed upon and resolved in the assailed Decision and Resolution of the Court *a quo*.

As correctly explained in the Court's Decision, before the effectivity of Republic Act No. 8424, otherwise known as the "Tax Reform Act of 1997," the applicable law regarding FCDU is the National Internal Revenue Code of 1977 which granted tax exemption to FCDU transactions, particularly Section 25(a)(6)(B) which 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 transactions with depository banks under the expanded system shall be exempt from income tax." *(Emphasis supplied)*

Subsequently, Republic Act No. 8424 was enacted, deleting the phrase "exempt from all taxes" from the above-stated provision. Section 27(D)(3) of the NIRC of 1997 now reads:

> "(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."

As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not to effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment.[1] It is evident that the phrase "exempt from all taxes" has been deleted by the legislators. As a

[1] Gloria vs. Court of Appeals, *et al.* G.R. No. 131012, April 21, 1999

consequence, this Court treats such deletion as withdrawal of the exemption previously granted by the prior law.

Moreover, this Court has consistently held in previous cases that by virtue of the passage of the Tax Reform Act of 1997, foreign currency deposit units are liable to Gross Receipts Tax. Thus, in the case of *Philippine Veterans Bank vs. Commissioner of Internal Revenue*[2], the Court *En Banc* ruled:

> "Despite the insistence of petitioner that there was no mention of the amendment during the Joint Explanatory Statement as regards the 'exemption from all taxes' therefore it was the intention of the legislators to retain the said phrase, We rule that by the language used, in deleting the phrase 'shall be exempt from all taxes', it should be taken that there is no construction to speak of in the first place and it shows the clear intention on the part of the legislature to remove the blanket exemption given by the NIRC of 1977, as amended, to FCDU income from all forms of taxes."

It bears stressing that the first and fundamental duty of the Court is to apply the law. When the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[3] There can be no resort to extrinsic aids – like deliberations of Congress – if the language of the law is plain, clear and unambiguous. Courts determine the intent of the law from the literal language of the law, within the law's four corners. If the language of the law is plain, clear and unambiguous, courts simply apply the law according to its express terms.[4] Therefore, there is no merit in petitioner's contention that this Court should seek extrinsic aids, such as legislative history and deliberations, in order to appreciate the subject provision.

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[2] CTA EB Case No. 332, June 12, 2008

[3] Manuel G. Abello, *et al.* vs. Commissioner of Internal Revenue, G.R. No. 120721, February 23, 2005, citing Cebu Portland Cement Co. vs. Municipality of Naga, 24 SCRA 708 (1968)

[4] League of Cities of the Philippines (LCP), *et al.* vs. Commission on Elections, *et al.*, G.R. Nos. 176951 and G.R. No. 177499, November 18, 2008

As early as the case of *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue*[5] promulgated on March 11, 2002, this Court already declared that in view of the deletion of the phrase "exempt from all taxes" from Section 27(D)(3) of the National Internal Revenue Code of 1997, onshore income on FCDU transactions is now subject to GRT. An excerpt of the said Decision states as follows:

> "By the clear import of the present law, income derived by a branch of a foreign bank that may be authorized by the Bangko Sentral ng Pilipinas to transact business with foreign currency deposit system units, like herein Petitioner, shall be subject to a final tax of 10%. The phrase 'exempt from all taxes' has been definitely 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 (Gloria vs. Court of Appeals, 306 SCRA 287). By virtue of such deletion, Revenue Regulations No. 10-76, which implemented the old law is no longer applicable. In other words, the payment of the 10% final tax on FCDU income does not exempt Petitioner from the payment of branch profit remittance tax or other taxes for that matter.
>
> xxx xxx xxx
>
> It cannot be overemphasized that under the 1997 Tax Code, 'tax exemption from all taxes' relative to FCDUs can no longer be found. Hence, there is no construction to speak of in the first place. Besides, even if there is such a tax exemption, the same should be strictly construed against the taxpayer. Petitioner's insistence that it is still covered by the tax-exempt provision of the old law as implemented by Revenue Regulations No. 10-76 is quite absurd and contrary to sound reasoning."

Considering that the liability of petitioner's FCDU transactions has been settled, this Court will now address the issue of prescription.

Section 203 of the NIRC of 1997 reads:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, 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

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[5] CTA Case No. 6017

> be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

From the foregoing, the three-year period to assess internal revenue taxes commences from the date of actual filing of the return or from the last day prescribed by law for filing of such return, whichever comes later. Stated differently, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was actually filed.

The period for filing of the GRT Returns is provided by Section 128(A)(1) of the NIRC of 1997, to wit:

> "SEC. 128. *Returns and Payment of Percentage Taxes.* -
>
> (A) *Returns of Gross Sales, Receipts or Earnings and Payment of Tax.* -
>
> (1) *Persons Liable to Pay Percentage Taxes.* - Every person subject to the percentage taxes imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty-five (25) days after the end of each taxable quarter: *Provided,* That in the case of a person whose VAT registration is cancelled and who becomes liable to the tax imposed in Section 116 of this Code, the tax shall accrue from the date of cancellation and shall be paid in accordance with the provisions of this Section."

Pursuant to the afore-quoted provision, petitioner should file its GRT Return on or before the 25$^{th}$ day after the end of each taxable quarter.

Based on the records, petitioner filed its GRT Returns for taxable year 2000 on the following dates:

| Exhibit | Quarter | Date Filed |
|---|---|---|
| D | First | April 25, 2000 |
| E | Second | July 25, 2000 |
| F | Third | October 25, 2000 |
| G | Fourth | January 25, 2001 |

Counting from the afore-mentioned dates, respondent had until April 25, 2003, July 25, 2003, October 25, 2003 and January 25, 2004, respectively, within which to assess petitioner for its deficiency GRT. Respondent issued the Formal Letter of Demand and Assessment Notice to petitioner only on June 9, 2004.

Respondent contends that petitioner's circumstances fall under the exception to the period of limitation to assess and collect taxes provided in Section 222 of the NIRC of 1997, which states as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* -
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof."

Petitioner's returns reveal that petitioner did not subject portions of its onshore income to tax rates of 1%, 3% or even 5%. In fact, based on the evidence presented, petitioner did not subject its FCDU onshore income for taxable year 2000 to GRT, on the belief that it is exempt from it. Even though petitioner declared in the said returns tax payments for its income attributable to its regular banking functions, it failed to indicate, much less pay, its GRT liabilities. Such omission in the said returns amounts to non-filing. Since the FCDU and the bank's regular banking unit should be treated separate and that the income of one is not the income of the other.

The earlier cited case of *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue*[6] corroborates this view in the following manner:

> "Clearly, from the foregoing, a Foreign Currency Deposit Unit is a separate unit of a local bank or of a local branch of a foreign bank authorized to engage in foreign currency transactions. Also, FCDU funds are treated as separate and distinct from the regular assets and liabilities of the bank and that banks authorized to operate an FCDU are required to maintain separate accounting for its transactions and to prepare separate financial statements covering its funds. xxx the FCDU and the RBU should be treated as separate and that the income of one is not the income of the other."

This Court in the case of *Commissioner of Internal Revenue vs. Republic Cement Corporation (as surviving corporation in merger involving Fortune Cement Corporation)*[7], ruled that the absence of entries in the column for final withholding tax in the Monthly Remittance Returns of income tax withheld should be treated as omission to file returns within the purview of the ten-year assessment period under Section 222(a) of the NIRC of 1997. The pertinent parts of the said *En Banc* Decision state:

> "An examination of the proffered monthly remittance returns of income taxes withheld covering January to December 1998 discloses that RCC reported compensation and expanded withholding taxes **excluding FWT on interest on foreign loans and fringe benefits.** As shown in the monthly remittance returns, no entries were indicated in the column corresponding to 'final tax' withheld which bolsters the fact that interest on foreign loans and fringe benefits were not subjected to FWT. **The absence of entries in the column for FWT embodied in the monthly remittance returns of income tax withheld should be treated as omission to file returns within the purview of the ten year assessment period under Section 222 (a) of the 1997 NIRC. If RCC is convinced that it is not liable for final taxes withheld on interest on foreign loans and fringe benefits, it**

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[6] *Supra.*
[7] CTA EB No. 421, May 29, 2009

**should have at least noted in the returns that these taxes are not applicable.**" *(Emphasis supplied)*

Similarly, in the present case, there is an absence of FCDU onshore income declaration in petitioner's Quarterly Percentage Tax Returns, tantamount to an omission to file returns; thus, the ten-year assessment period applies. Consequently, respondent's right to assess GRT on petitioner's FCDU onshore income for taxable year 2000 has not prescribed.

**WHEREFORE**, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Decision and the Resolution promulgated on August 6, 2009 and November 6, 2009, respectively, by the former First Division of the Court of Tax Appeals in CTA Case No. 7259, entitled "United Coconut Planters Bank vs. Commissioner of Internal Revenue" are hereby **AFFIRMED** *in toto.*

**SO ORDERED.**

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
Associate Justice

# CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

**ERNESTO D. ACOSTA**
Presiding Justice