REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

METROPOLITAN BANK & TRUST COMPANY,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7144

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
AUG 0 2 2007

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DECISION

CASTAÑEDA, JR., *J.*:

The instant Petition for Review seeks for the cancellation of the respondent's Final Assessment Notice dated July 14, 2004 issued against petitioner for deficiency documentary stamp taxes (inclusive of penalties and interest) for 2001 in the amount of ₱229,122,211.12.

Metropolitan Bank & Trust Company (Petitioner) is a corporation duly organized and existing under and by virtue of Philippine laws with principal office at the Metrobank Plaza, Sen. Gil Puyat Avenue, Makati City. It is engaged in the business of expanded commercial banking and the business of a trust company, which includes providing services such as deposit products, loans and trade finance, domestic and foreign fund transfers, treasury, foreign exchange, trading and remittances, trust services incident to its operation as a bank. Among its many financial products, petitioner offers regular savings account, time deposits and savings account called "UNISA", as acronym for Universal Savings Account or Uni-Savings Account. It issues to its clients Savings Passbook for the regular savings account, UNISA Passbook for the UNISA account and Certificate of Time Deposit for time deposits.[1]

Respondent is the chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties, and fines connected therewith.[2]

On August 3, 2004, petitioner received a Final Assessment Notice (FAN) and Audit Result/Assessment Notice, both dated July 14, 2004, assessing petitioner for deficiency stamp tax on special savings account for 2001.[3]

On September 1, 2004, petitioner filed a letter with the BIR protesting the assessment.[4]

On January 12, 2005, petitioner received from the BIR a Final Decision on Disputed Assessment denying the protest against Assessment No. DST2 01 00051.[5] Jr

[1] Paragraphs 1, 6, & 7 of the Summary of Admitted Facts; docket, pp. 81-82.
[2] Paragraph 2 of the Summary of Admitted Facts; docket, p. 82.
[3] Paragraph 3 of the Summary of Admitted Facts; docket, pp. 81-82. See also Exhibit "A."
[4] Paragraph 4 of the Summary of Admitted Facts; docket, p. 82. See also Exhibit "B."

Hence, petitioner filed before this Court a Petition for Review on February 11, 2005.

The issues, as jointly stipulated by the parties for this Court's resolution, are as follows:

a. Whether or not petitioner's Universal Savings Account (UNISA) should be considered certificates of deposit or time deposits subject to documentary stamp tax under Section 180 of the National Internal Revenue Code[;]

b. Whether or not petitioner's Universal Savings Account possesses all the essential elements and distinct features of certificate if time deposit as enumerated in Revenue Memorandum Circular No. 16-03[;]

c. Assuming *arguendo* that petitioner's UNISA are not certificates of deposit, whether or not they are considered loan agreements between the depositor and the petitioner that is subject to the DST under Section 180 of the 1997 Tax Code[; and]

d. Whether or not petitioner is liable to pay the amount of Php229,122,211.12 for the taxable year 2001 as deficiency documentary stamp tax.

Petitioner argues that its UNISA is not a certificate of deposit subject to DST because:

a) UNISA does not have a maturity date;
b) petitioner does not promise to pay at a specific maturity date;
c) UNISA does not impose penalty for early withdrawal;
d) UNISA is not entitled to high interest rate at the outset;
e) UNISA is a savings deposit account; and
f) the subsequent enactment of R.A. 9243 would mean that the additions were not previously subject to tax.

In his Memorandum, respondent counters:

a) Petitioner's UNISA deposits are considered certificates of deposit or time deposits subject to DST under Section 180 of the

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[5] Paragraph 9 of the Summary of Admitted Facts; docket, p. 83. See also Exhibit "C."

372

NIRC. The Supreme Court in its recent decisions has affirmed the findings of this Court in analogous cases that special savings accounts are subject thereto;

b) Assuming *arguendo* that petitioner's UNISA deposits are not certificates of deposit, they are considered loan agreements between the depositor and petitioner also subject to DST under Section 180 of the NIRC; and

c) Petitioner is liable for the aggregate amount of P229,122,211.12 representing deficiency DST for taxable year 2001.

The Court agrees with respondent.

Section 180 of the NIRC provides that:

"**SEC. 180.** *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits 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, deposit substitute debt instruments, <u>certificates of deposits drawing interest</u>, 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: xxx." [Underscoring supplied.]

To determine whether an instrument is to be considered a Certificate of Deposit, respondent issued Revenue Memorandum Circular (RMC) No. 16-2003 as guidelines. The pertinent portion of RMC No. 16-2003 reads:

"x x x the essential elements of a certificate of deposit are as follows:

373

> 1. The bank receives money for deposit;
>
> 2. The bank acknowledges the receipt of the deposit through the issuance of a written document;
>
> 3. The bank promises to pay to the depositor or bearer or to some other person or order the deposit upon maturity; and
>
> 4. The bank imposes an early withdrawal penalty in case of withdrawal prior to maturity which comes in the form of reduced interest.
>
> From a technical point of view, a Certificate of Deposit has the following distinct features:
>
> 1. Minimum deposit requirement;
>
> 2. Stated maturity period;
>
> 3. Interest rate is higher than the ordinary savings account;
>
> 4. Not payable on sight or demand, but upon maturity or in case of pre-termination, prior notice is required; and
>
> 5. Early withdrawal penalty in the form of partial loss or total loss of interest in case of pre-termination.
>
> If a written instrument or document meets the above-mentioned essential elements/features then such instrument will be considered a 'certificate of deposit' for which a documentary stamp tax under Section 180 of the National Internal Revenue Code of 1997 shall be imposed."

Time deposits are one example of a Certificate of Deposit. Upon closer study of the evidence on hand, the Court finds UNISA to be akin to time deposits. Like time deposits, UNISA has a maturity period and a penalty in case of early withdrawal. The UNISA Deposit Review Sheet,[6] which a depositor fills up after being issued a UNISA passbook,[7] is in point:

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[6] Exhibit "E" & "E-1;" docket, p. 172.
[7] Exhibit "H" or the Judicial Affidavit of Ms. Lilibeth M. Perez; docket, p. 187.

"**CONDITIONS FOR THE UNISA DEPOSIT**

All payments, whether for interest, principal or both shall be effected only by using a withdrawal slip.

The last deposit shall be considered as the outstanding balance in the Uni-Savings Account Passbook before actual payment of interest.

IN ADDITION to the terms and conditions provided in the UNISA passbook, the undersigned depositor/s hereby agree/s that the special interest rate for the said UNISA deposit, initially, shall be at ___% p.a., subject to review every __________ days thereafter, provided that the daily average daily balance is not less than P____________ for the said period.

It is understood however, that the special rate will not apply if the minimum deposit balance or period of deposit agreed above is not complied with, in which case the interest rate for ordinary savings account shall apply.

___________________________________ ____________
Name/s & Signatures of Depositor/s Date"

Deduced from the foregoing, the penalty is the application of a lower interest rate (in the guise of interest rate for ordinary savings account) in case of withdrawal of the client's deposit before the maturity date. This is corroborated by Ms. Lilibeth M. Perez, Head of the Policy Deployment Department of petitioner, when she testified:

"Q: In a UNISA deposit, when a client maintain his deposit for a certain period, how much interest is given to him?

A: His UNISA deposit is given a preferential or higher interest than that given to regular savings deposit.

Q: If I may rephrase the question, in a UNISA deposit, when is a client entitled to a higher interest?

A: He is entitled to a higher interest only after maintaining his deposit for a certain period of time with the bank.

Q: When can a Bank's client withdraw his deposits in a UNISA account?

A: A client may withdraw his deposits in a UNISA account, anytime, or at will."[8]

Besides, the issues presented before this Court involving similar special savings accounts had already been resolved by the Supreme Court in *International Exchange Bank vs. Commissioner of Internal Revenue*,[9] and to quote:

> "As correctly found by the CTA En Banc, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.
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> "A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. 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 substance, not form, is paramount.
>
> "xxx.
>
> "Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date.
>
> "xxx.
>
> "The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus explains the CTA En Banc:
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>> 'It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is

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[8] Exhibit "H"; Judicial Affidavit of Ms. Lilibeth M. Perez dated July 04, 2005, docket, page 189-190

[9] G.R. No. 171266, April 4, 2007.

necessary to determine whether petitioner's Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:

> 'In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.
>
> The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit."

In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are *essentially* the features of a time deposit. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same. . . . (xxx.)"

"The findings and conclusions reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, and unless there has been an abuse or improvident exercise of authority, and none has been shown in the present case, deserves respect.

"It bears emphasis that DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. It is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.

"While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes. To claim that time deposits evidenced by passbooks should not be subject to DST is a clear evasion of the rule on equality and uniformity in taxation that requires the imposition of DST on documents evidencing transactions of the same kind, in this particular case, on all certificates of deposits drawing interest."

With respect to petitioner's argument that the passage of R.A. No. 9243 meant that its UNISA was not within the scope of the old law, the Supreme Court in the same case[10] had this to say:

"The further amendment of Section 180 of the NIRC and its renumbering as Section 179 by R.A. 9243, which was approved on February 17, 2004, *viz:*

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

"SEC. 179. Stamp Tax on All Debt Instruments. – On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200), or 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

[10] *Ibid.*

> 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.
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> "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 of any of its instrumentalities, deposit substitute debt instruments, <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." (xxx.)

does not mean that as proffered, prior to its further amendment on said date, Section 180 of the Tax Code and the NIRC time deposits for which passbooks were issued were exempted from payment of DST.

"If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to 'cloak' its time deposits as regular savings deposits. This is reflected from the following exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. 9243:

> MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. <u>Savings deposit at the present time is not subject to DST.</u>
>
> THE CHAIRMAN. That's right.

MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time...

THE CHAIRMAN. Uh-huh.
MR. ANDAYA. . .it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.

THE CHAIRMAN. If I had it my way, I'll cut it by half.

MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, 'no.

Now, I think the move of the DOF to expand the coverage of or to add that phrase, "Other evidence of indebtedness," it just removed ambiguity. When we testified earlier in the House on this very same bull, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, "This savings deposit is not savings but it's time deposit." So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity. . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . . which is time, in effect, regardless of what form it takes should be subject to DST.

THE CHAIRMAN. Would that include savings deposit now?

MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity . . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . that would fall under the purview. (Underscoring supplied)"

In sum, petitioner's UNISA is properly classified as a certificate of deposit and, thus, subject to DST under Section 180 of the Tax Code.

(380)

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DISMISSED** for lack of merit. The Final Assessment Notice dated July 14, 2004 assessing petitioner of deficiency documentary stamp taxes (inclusive of penalties and interest) is hereby **AFFIRMED**.

Accordingly, petitioner is **DIRECTED TO PAY** respondent the amounts of **TWO HUNDRED TWENTY NINE MILLION ONE HUNDRED TWENTY TWO THOUSAND TWO HUNDRED ELEVEN PESOS AND 12/100 (P229,122,211.12)** representing deficiency documentary stamp tax for the year 2001, plus 20% delinquency interest per annum, pursuant to Section 249 of the NIRC.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

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

381

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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

382