Supreme Court Decisions on Documentary Stamp Tax Issues and Concerns*

I. INTRODUCTION

The Documentary Stamp Tax (DST) is considered one of the stable sources of revenue for the government since, by nature, it is an excise tax 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. Thus, it is imposed on the transaction rather than on the document.

Its importance is indisputable, considering that an instrument, document, or paper that has been signed, issued, accepted, or transferred without being duly stamped when so required by law shall not be recorded, nor shall it or any copy thereof or any record of transfer of the same be admitted or used in evidence in any court until the requisite stamp or stamps are affixed thereto and canceled.

At present, there are 25 major categories of documents/instruments/transactions subject to the DST under Sections 174 to 198 of the National Internal Revenue Code (NIRC) of 1997, as amended, which complicates the DST structure. There are also varying DST rates for similar documents/instruments/transactions, which make it inequitable and susceptible to tax arbitrage. On the other hand, a long list of documents/instruments/transactions are exempt under Section 199 of the same Code.

Due to its complexity, the government deems it necessary to rationalize the DST structure through Package 4 of the Comprehensive Tax Reform Program (CTRP). Given this, the paper discusses various issues elevated to and decided upon by the Supreme Court (SC) pertaining to the DST to help the general public become aware of the intricacies of the said tax. The paper also discusses the DST reforms being proposed under Package 4 to serve as input to fiscal policymakers.

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II. LEGISLATIVE BACKGROUND OF THE IMPOSITION OF THE DST

The initial codification of the DST was done upon the effectivity of Act No. 1189[1] on August 1, 1904. The DST, then referred to as Stamp Tax (ST), was imposed on 18 major categories of documents/instruments/transactions. In 1939, Commonwealth Act No. 466[2] repealed the old law and renamed the ST to what is now known as the DST. The major categories of documents/instruments/transactions subject to the DST were increased to 24, more or less similar to the current DST structure.

Through the years, various laws further amended the DST structure, which paved the way to higher DST rates, expanded coverage, and increased the number of exemptions. The most recent amendment to the DST structure was under Republic Act (RA) No. 10963[3], otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN)" law, wherein the majority of the rates were doubled to generate more revenues for the government. Table 1 summarizes the present DST structure.

Table 1

DST Structure

Section	Documents/Instruments/Transactions	Tax base	Ad valorem rate
174	Original issue of shares of stock	Par value	1.00%
	In case of stock issued without par value	Consideration	1.00%
175	Sales, agreements to sell, memoranda of sales, deliveries, or transfer of shares or certificate stock	Par value	0.75%
	In case of stock issued without par value	DST paid on the original issue of shares of stock	50.00%
	Traded through local stock exchange		Exempt[1/]
176	Bonds, debentures, certificates of stocks, or indebtedness issued in foreign countries	Face value	Tax as required by law

[1] Entitled, "An Act to Provide for the Support of the Insular Provincial and Municipal Governments, bInternal Taxation", (August 1, 1904).

[2] Entitled," An Act to Revise, Amend and Codify the Internal Revenue Laws of the Philippines", (June 15, 1939).

[3] Entitled, "An Act Amending Sections 5, 6, 24, 25, 27, 31, 32, 33, 34, 51, 52, 56, 57, 58, 74, 79, 84, 86, 90, 91, 97, 99, 100, 101, 106, 107, 108, 109, 110, 112, 114, 116, 127, 128, 129, 145, 148, 149, 151, 155, 171, 174, 175, 177, 178, 179, 180, 181, 182, 183, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 232, 236, 237, 249, 254, 264, 269, and 288; Creating New Sections 51-A, 148-A, 150-A, 150-B, 237-A, 264-A, 264-B, and 265-A; and Repealing Sections 35, 62, And 89; All Under Republic Act No. 8424, Otherwise Known as the National Internal Revenue Code of 1997, as Amended, and for Other Purposes", (December 19, 2017).

Section	Documents/Instruments/Transactions	Tax base	Ad valorem rate
177	Certificates of profits or interest in property or accumulation	Face value	0.50%
178	Bank checks, drafts, certificates of deposit not bearing interest, and other instruments	Per instrument	P3.00
179	Debt instruments	Issue price	0.75%
180	Bills of exchange or draft	Face value	0.30%
181	Acceptance of bills of exchange and others	Face value	0.30%
182	Foreign bills of exchange and letters of credit	Face value	0.30%
183	Life insurance policies	Amount of insurance	P20.00-P200.00
184	Policies of insurance upon property	Premium	12.50%
185	Fidelity bonds and other insurance policies	Premium	12.50%
186	Policies of annuities and pre-need plans		
	Annuities	Premium	0.50%
	Pre-need plans	Premium	0.20%
187	Indemnity bonds	Premium	7.50%
188	Certificates	Per certificate	P30.00
189	Warehouse receipts	Per receipt	P30.00
190	Jai-alai, horse race tickets, lotto, or other authorized number games	Ticket price	20.00%
191	Bills of lading or receipts	Value	0.20%
192	Proxies	Per instrument	P30.00
193	Powers of attorney	Per instrument	P10.00
194	Leases and other hiring agreements	Value	0.30%/0.20%
195	Mortgages, pledges, and deeds of trust	Amount secured	0.80%/0.40%
196	Deeds of sale and conveyances of real property	Consideration or fair market value	1.50%
197	Charter parties and similar instruments	Gross tonnage	P1,000-P3,000
198	Assignments and renewals of certain instruments	Same base as the original instrument	Same as original

Note. [1/]Provided under Section 199(e) of the NIRC of 1997, as amended.

On the other hand, subsections (a) to (n) of Section 199 of the NIRC of 1997, as amended, provide for the documents/instruments/transactions that are exempt from the DST to wit:

a. Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit;

b. Certificates of oaths administered by any government official in his official capacity or acknowledgement by any government official in performance of his official duty; Written appearance in any court by any government official in his official capacity; Certificates of the administration of oaths to any person as to the authenticity of any paper required to be filed in court by any person or party thereto, whether the proceedings be civil or criminal; Papers and documents filed in courts by or for the national, provincial, city or municipal governments; Affidavits of poor persons for the purpose of proving poverty; Statements and other compulsory information required of persons or corporations by the rules and regulations of the national, provincial, city or municipal governments exclusively for statistical purposes and which are wholly for the use of the bureau or office in which they are filed, and not at the instance or for the use or benefit of the person filing them; Certified copies and other certificates placed upon documents, instruments and papers for the national, provincial, city or municipal governments, made at the instance and for the sole use of some other branch of the national, provincial, city or municipal governments; Certificates of the assessed value of lands, not exceeding P200 in value assessed, furnished by the provincial, city or municipal Treasurer to applicants for registration of title to land;

c. Borrowing and lending of securities executed under the Securities Borrowing and Lending Program of a registered exchange, or in accordance with regulations prescribed by the appropriate regulatory authority: Provided, however, That any borrowing or lending of securities agreement as contemplated hereof shall be duly covered by a master securities borrowing and lending agreement acceptable to the appropriate regulatory authority, and which agreement is duly registered and approved by the Bureau of Internal Revenue (BIR);

d. Loan agreements or promissory notes, the aggregate of which does not exceed P250,000, or any such amount as may be determined by the Secretary of Finance, executed by an individual for his purchase on installment for his personal use or that of his family and not for business or resale, barter or hire of a house, lot, motor vehicle, appliance or furniture: Provided, however, That the amount to be set by the Secretary of Finance shall be in accordance with a relevant price index but not to exceed 10% of the current amount and shall remain in force at least for three years;

e. Sale, barter, or exchange of shares of stock listed and traded through the local stock exchange (RA 9648);

f. Assignment or transfer of any mortgage, lease, or policy of insurance, or the renewal or continuance of any agreement, contract, charter, or any evidence of

obligation or indebtedness, if there is no change in the maturity date or remaining period of coverage from that of the original instrument;

g. Fixed income and other securities traded in the secondary market or through an exchange;

h. Derivatives: Provided, That for purposes of this exemption, repurchase agreements and reverse repurchase agreements shall be treated similarly as derivatives;

i. Interbranch or interdepartmental advances within the same legal entity;

j. All forbearances arising from sales or service contracts including credit card and trade receivables: Provided, that the exemption be limited to those executed by the seller or service provider itself;

k. Bank deposit accounts without a fixed term or maturity;

l. All contracts, deeds, documents, and transactions related to the conduct of business of the Bangko Sentral ng Pilipinas;

m. Transfer of property pursuant to Section 40(C)(2) of the NIRC of 1997, as amended;

n. Interbank call loans with a maturity of not more than seven days to cover the deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks; and

o. Remittance of all OFWs, upon showing of the same proof of entitlement by the OFW's beneficiary or recipient (RA 10022).

III. SUMMARY OF CASES ON THE IMPOSITION OF THE DST

Like any other taxes, the legality of the imposition of the DST has been questioned and decided upon by the SC numerous times, which already formed part of the law of the land. It is worth highlighting that under Article VIII, Section 5 of the 1987 Philippine Constitution, the SC shall have the power to review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in all cases involving the legality of any tax, impost, assessment, or toll or any penalty imposed in relation thereto. Below are various DST cases decided upon by the SC.

A. On the persons primarily liable for the payment of the DST

(Philacor Credit Corporation v. Commissioner of Internal Revenue, G.R. No. 169899, February 6, 2013)

Philacor, a domestic corporation engaged in the business of retail financing, was assessed by the Bureau of Internal Revenue (BIR) for deficiency DST on the promissory notes executed by the buyers of appliances on an installment basis in

favor of appliance dealers and also on the subsequent assignment of the same in favor of Philacor. The BIR contends that the financing company is liable to the DST for the issuance of promissory notes as the transferee "accepted" the promissory notes from the appliance dealer.

Issue: Whether the petitioner, Philacor Credit Corporation, is liable to pay the DST for both the issuance and subsequent assignment of promissory notes.

SC Decision: The SC ruled that the financing company is not liable to the DST for both the issuance and assignment of promissory notes.

With regard to the issuance of promissory notes, the SC explained that the persons primarily liable for the payment of the DST under Section 173 of the NIRC of 1997, as amended, are the persons (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments, or papers. Should these parties be exempt from paying tax, the other party who is not exempt would then be liable.

Moreover, BIR Revenue Regulations (RR) No. 9-2000[4] interprets the law more widely so that all parties to a transaction are primarily liable for the DST, and not only the person making, signing, issuing, accepting, or transferring the same becomes liable as the law provides. It provides:

> "SEC. 2. Nature of the Documentary Stamp Tax and Persons Liable for the Tax. –
> (a) In General. - The documentary stamp tax under Title VII of the Code is a tax on certain transactions. It is imposed against "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the aforesaid transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. **Any of the parties thereto shall be liable for the full amount of the tax due**: Provided, however, that as between themselves, the said parties may agree on who shall be liable or how they may share on the cost of the tax. [emphasis supplied]
>
> (b) Exception. - Whenever one of the parties to the taxable transaction is exempt from the tax imposed under Title VII of the Code, the other party thereto who is not exempt shall be the one directly liable for the tax."

However, this rule cannot be extended to persons who are not parties named in the taxable document or instrument and are merely using or benefitting from it.

According to the SC, the financing company did not make, sign, issue, accept, or transfer the promissory notes. Instead, the buyers of the appliances made,

[4] Entitled, "Identifies the Persons Liable and Responsible for the Payment/Remittance of the Documentary Stamp Tax", (November 22, 2000).

signed, and issued the documents subject to tax, while the appliance dealer transferred the documents to the financing company, which likewise indisputably "received" or "accepted" the promissory notes. As further clarified by the SC, the financing company cannot be made primarily liable for the DST on the issuance of promissory notes just because it has "accepted" the promissory notes in their plain and ordinary meaning.

Similarly, the financing company is also not liable to the DST for the assignment of promissory notes since the transaction is not taxed under the law. The SC held that while there are provisions in the NIRC that specifically impose the DST on the transfer and/or assignment of documents evidencing particular transactions, the assignment or transfer becomes taxable only in connection with mortgages, leases, and policies of insurance. Under Section 198 of the NIRC, the list of transferred or assigned documents subject to the DST does not include the assignment or transfer of evidence of indebtedness. Rather, it is the renewal of evidence of indebtedness that is taxable. Considering that the case at bar does not involve a renewal, but a mere transfer or assignment of the evidence of indebtedness or promissory notes, the assignment of promissory notes is not subject to DST.

B. On transactions subject to DST

(*Commissioner of Internal Revenue v. Ocier, G.R. No. 192023 November 21, 2018)*

The respondent, Ocier, received an assessment notice from the BIR that he incurred deficiencies in the Capital Gains Tax (CGT) and DST for the year 1999. The deficiency assessment arose from the gains that he had realized from the sale of shares of stock of Best World (BW) Resources Corporation through over-the-counter transactions. Based on the BIR's investigation, it appears that the sale/exchange of shares was related to the stock manipulation and insider trading scandal orchestrated by Dante Tan and his associates involving BW Resources shares that affected the Philippine Stock Exchange in 1999.

Ocier alleged that the BIR had erroneously considered as a sale the transfer of a total of 4.9 million BW Resources shares from his account to Tan when it was actually a loan.

Issue: Whether the sale of shares of stock by Ocier is subject to the DST.

SC Decision: The SC ruled in the affirmative. The evidence on record has established that there was a transfer of BW Resources shares, which was the basis for the liability of the respondent.

Although the DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale, or transfer of an obligation, right, or property incident thereto, the SC clarified that the subject of the DST is not limited to the document embodying the enumerated transactions. The DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights, or

properties incident thereto. The transfer of the shares of stock is an exercise of the privilege to transfer a right and properties incident thereto that is embodied in the stock loan agreement/trust declaration. Accordingly, the transfer of shares of stock made by the respondent was properly subjected to the DST.

C. Whether there is an additional DST on capitalization of surplus

(Commissioner of Internal Revenue v. Heald Lumber Company, G.R. No. L-16340, February 29, 1964)

Upon its incorporation in 1934, Heald Lumber Company's capital stock was divided into 1,000 shares of stock without par value. At the time of the original issuance of the shares of stock, the respondent paid the DST based on the actual consideration it had received from its subscribers.

By 1950, the company had an outstanding surplus of over P300,000 available for dividends. A special meeting of its stockholders was then held, and a resolution was made to transfer the existing surplus available for dividends to the company's capital account for its operation without changing the status or number of the 1,000 no par value shares.

Thereafter, the Regional Director of the BIR required the company to pay an additional DST of P1.00 per share of no par value or the total sum of P1,000 for the increase of the company's capitalization, which was brought about by the transfer of the aforesaid P300,000 from its surplus to its capital account, which resulted in an increased P300 share.

Issue: Whether the increase in the capitalization of the Company is subject to DST.

SC Decision: The SC ruled in the negative. A mere transfer of surplus to capital and an increase in the stated value of a corporation's outstanding no par value shares do not constitute an issuance of shares. Consequently, no additional stamp tax is due on such an increase. Moreover, the basis for the DST on certificates of shares without par value shall be only the actual consideration received by the corporation at the time of the original issuance of the certificates, and any additional consideration that may be received therefor in the future is of no consequence.

A DST is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity, or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in business transactions, separate and apart from the business itself. With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company of certificates. Neither is it imposed upon the share of stock. As pointed out in one case, DST is levied on the document, not the property it describes. If, therefore, as is apparent from the foregoing discussion, the tax in question is imposed on the privilege of issuing certificates,

then the tax may be collected only once: when the certificates are first or originally issued. The reason is because a certificate is issued only once. Whatever the DST is, it is due at that time.

D. Whether deposit on stock subscription is subject to DST.

(Commissioner of Internal Revenue v. First Express Pawnshop Inc., G.R. No. 172045-46, June 16, 2009)

The BIR issued assessment notices against the First Express Pawnshop Company, Inc. for deficiency DST on deposit on stock subscription, among others. However, the respondent alleged that no deficiency DST was due because the NIRC, as amended, does not cover any document or transaction related to the respondent.

Issue: Whether the respondent, First Express Pawnshop Inc., is liable to pay the deficit DST on the deposit on stock subscription.

SC Decision: The SC affirmed the decision of the Court of Tax Appeals (CTA), wherein the latter ruled that a deposit on subscription is not subject to DST in the absence of proof that an equivalent amount of shares was subscribed to or issued in consideration for the deposit. Expressed otherwise, a deposit on stock subscription is not subject to the DST if: (1) there is no agreement to subscribe; (2) there are no shares issued or any additional subscription in the restructuring plan; and (3) there is no proof that the issued shares can be considered as issued certificates of stock.

As pointed out by the CTA, Sections 175 and 176 (now Sections 174 and 175) of the NIRC, as amended, contemplate a subscription agreement for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for acquiring unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.

Based on the company's external auditor testimony and the respondent's financial statements as of 1998, there was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money the corporation receives as a deposit with the possibility of applying the same as payment for the future issuance of capital stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.,* the SC held:

As regards those certificates of stock temporarily subject to suspensive conditions, they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.

Clearly, the deposit on stock subscription is not a subscription agreement subject to the payment of the DST. There is no P800,000 worth of subscribed capital stock that is reflected in the respondent's General Information Sheet. The deposit on stock subscription is merely an amount of money received by a corporation with the view of applying the same as payment for additional issuance of shares in the future, an event that may or may not happen. The person making a deposit on a stock subscription does not have the standing of a stockholder, and he is not entitled to dividends, voting rights, or other prerogatives and attributes of a stockholder. Hence, the respondent is not liable for the payment of the DST on its deposit on stock subscription because there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

E. Whether a special savings account is subject to DST.

(Philippine Veterans Bank v. Commissioner of Internal Revenue, G.R. No. 205261, April 26, 2021)

The petitioner, Philippine Veterans Bank, is a commercial bank offering the following financial products to its clients: (i) Special Savings Account, (ii) Special Savings Deposit (Government), and (iii) Golden V (Private) (collectively, the Special Savings Accounts). These accounts earned interest income in favor of the bank's clients. The Special Savings Accounts have the following features: (i) they are withdrawable by the depositor at any time through the presentation of a passbook; (ii) the amount of deposit usually runs into millions of pesos; (iii) the deposit is subject to a special rate of interest; (iv) the deposit allows posting of additional or multiple deposits; (v) the deposit allows partial or multiple withdrawals; (vi) the account has no fixed maturity; (vii) the deposit cannot be negotiated nor assigned; and (viii) the deposit cannot be pre-terminated, as there is no fixed maturity.

Later, the BIR issued an assessment notice to the petitioner for deficiency DST on the Special Savings Accounts. The petitioner protested such assessment on the claim that Section 180 of the NIRC, prior to amendment by RA 9243, only imposes DST on "certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand," and not on those that are payable at sight or on demand. The Special Savings Accounts of the petitioner are payable at sight or on demand, considering that they are withdrawable at any time through the presentation of a passbook. Hence, they are exempt from DST.

Issue: Whether the special savings accounts offered by the petitioner are subject to DST.

SC Decision: The SC ruled that the special savings accounts of the petitioner are subject to the DST.

While the Special Savings Accounts are withdrawable and evidenced by a passbook, the SC has consistently ruled in various cases that these factors do not

detract from the nature of the special savings deposit as a certificate of deposit drawing interest. As admitted by the petitioner, the Special Savings Accounts, in this case, involve minimum deposit requirements in order to enjoy a preferential interest rate.

In the case of International Exchange Bank v. CIR, the SC pointed out that there is a legislative intent to impose DST on certificates of deposit that are either: (i) drawing interest significantly higher than the regular savings deposit, taking into consideration the size of the deposit and the risks involved; or (ii) drawing interest and having a specific maturity date. The qualification that a certificate of deposit "drawing interest significantly higher than the regular savings deposit, taking into consideration the size of the deposit and the risks involved," is independent of the fact that the certificate of deposit has a specific maturity date. These two qualifications were included in the amendment of the then Section 180 of the NIRC of 1997, renumbered to Section 179. The amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" their time deposits as regular savings deposits. The SC held that this amendment is only a recognition of the legislative intent to cover certificates of deposit that are withdrawable at any time through the presentation of a passbook, but it does not mean that "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."

In sum, the imposition of DST on bank deposits depends on the classification and features of such deposits. If the bank deposit is a regular savings deposit (which is withdrawable upon demand), it is exempt from DST. If the bank deposit is a time deposit (which has a maturity period), it is subject to DST. If the bank deposit combines the features of a regular savings deposit and a time deposit, such as the offer of higher interest rates in consideration of a holding period prior to withdrawability, or there is a stipulation of fees, charges, or penalties for pre-termination or early withdrawal, then the same is subject to DST. In this case, the Special Savings Accounts, while not technically considered time deposits, combine the features of a regular savings deposit and a time deposit. Accordingly, the Special Savings Accounts of the petitioner are subject to DST, and the deficiency DST assessment issued by the respondent is correct.

F. On the imposition of DST on foreign bills of exchange and letters of credit.

(Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 137002, July 27, 2006)

From February 28, 1986, to October 8, 1986, petitioner Bank of the Philippine Islands (BPI) sold U.S. dollars to the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas) for P1,608,541,900.00. BPI instructed, by cable, its correspondent bank in New York to transfer U.S. dollars deposited in BPI's account therein to the Federal Reserve Bank in New York for credit to the Central Bank's account therein. Thereafter, the Federal Reserve Bank sent to the Central

Bank confirmation that such funds had been credited to its account, and the Central Bank promptly transferred to the petitioner's account in the Philippines the corresponding amount in Philippine pesos.

The Central Bank enjoyed tax exemption privileges from June 11, 1985, until March 9, 1987. However, in 1985, Presidential Decree No. 1994 was enacted, amending Section 222 (now 173) of the NIRC by adding the foregoing: whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

In 1988, the respondent Commissioner of Internal Revenue (CIR) ordered an investigation into the BPI's sale of foreign currency. As a result, the CIR issued a pre-assessment notice informing BPI that, in accordance with Section 195 (now Section 182) of the NIRC, the BPI was liable for DST at the rate of P0.30 per P200.00 on all foreign exchange sold to the Central Bank in 1986.

Issue: Whether the BPI is liable for DST on its sale of foreign exchange to the Central Bank in 1986.

SC Decision: The SC ruled in the affirmative, ordering BPI to pay the respondent CIR the deficiency DST.

Section 195 (now Section 182) of the NIRC, quoted hereunder:

"Sec. 182. **Stamp tax on foreign bills of exchange and letters of credit.** On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof, of the face value of such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign country."

A discussion on the nature of the acts covered by Section 195 (now Section 182) of the NIRC is indispensable to determine what is being taxed under this section. This section imposes a DST on (1) foreign bills of exchange, (2) letters of credit, and (3) orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons. This enumeration is further limited by the qualification to be drawn in the Philippines and payable outside the Philippines.

BPI alleges that the assailed decision must be reversed since the sale between them and the Central Bank of foreign exchange, as distinguished from foreign bills of exchange, is not subject to the DST prescribed in Section 195 (now Section 182) of the NIRC. In this case, it is not the sale of foreign exchange per se that is being taxed under Section 195 (now Section 182) of the NIRC. This section

refers to a DST, which is an excise upon the facilities used in business transactions, separate and apart from the business itself. It is not a tax upon the business itself, which is so transacted, but it is a duty upon the facilities made use of and actually employed in the transaction of the business, and separate and apart from the business itself. Section 195 (now Section 182) of the NIRC covers foreign bills of exchange, letters of credit, and orders of payment for money drawn in the Philippines but payable outside the Philippines. From this enumeration, two common elements need to be present: (1) drawing the instrument or ordering a drawee within the Philippines; and (2) ordering that drawee to pay another person a specified amount of money outside the Philippines. What is being taxed is the facility that allows a party to draw the draft or make the order to pay within the Philippines and have the payment made in another country.

G. On the imposition of DST on insurance policies.

(Commissioner of Internal Revenue v. Manila Banker's Life Insurance Corporation, G.R. No. 169103, March 16, 2011)

Respondent Manila Bankers' Life Insurance Corporation, a duly organized domestic corporation primarily engaged in the life insurance business, was issued an assessment notice by the BIR for the deficiency DST on its policy premiums and penalties.

The deficiency DST was assessed based on the increases in the life insurance coverage of two kinds of policies: the "Money Plus Plan," which is an ordinary term life insurance policy; and the group life insurance policy. The increases in the coverage of the life insurance policies were brought about by the premium payments made subsequent to the issuance of the policies. The Money Plus Plan is a 20-year term ordinary life insurance plan with a "Guaranteed Continuity Clause," which allows the policyholder to continue the policy after the 20-year term subject to certain conditions. Under the plan, the policyholders paid their premiums in five separate periods, with the premium payments, after the first period premiums, to be made only upon reaching a certain age. The succeeding premium payments translated to increases in the sum assured. Thus, the petitioner believed that since the DST was affixed to the policy based only on the first period premiums, then the succeeding premium payments should likewise be subject to DST. In the case of the respondent's group insurance, the deficiency DST was imposed on the premiums for the additional members to the already existing and effective master policies. The petitioner concluded that any additional member to the group of employees, who were already insured under the existing mother policy, should similarly be subjected to DST.

However, the respondent alleged that the tax base to be used in computing the DST is the value when the instrument was issued because DST is levied and paid only once, which is when the taxable document is issued.

Issue: Whether DST should be imposed on the increase in coverage or sum assured by existing life insurance policies, even without the issuance of new policies.

SC Decision: The SC ruled in the affirmative. Though imposed on the document itself, the DST on insurance policies is actually levied on the privilege to conduct insurance business. Under Section 173, the DST becomes due and payable when the insurance policy is issued, with the tax based on the amount insured by the policy as provided for in Section 183.

However, it is clear from the "guaranteed continuity clause" in its Money Plus Plan that the respondent was actually offering the option to renew the policy after the expiration of its original term. Consequently, the acceptance of this offer would give rise to the renewal of the original policy. Although the policy would still continue with essentially the same terms and conditions, the fact is that its maturity date, coverage, and premium rate would have changed. The renewal was not meant to restore the original terms of an old agreement, but instead, it was meant to extend the life of an existing agreement, with some of the contract's terms modified. This renewal was still subject to the insured and respondent's acceptance and the conditions. This is entirely different from a simple mutual agreement between the insurer and the insured to increase the coverage of an existing and effective life insurance policy.

Accordingly, the availment of the option in the guaranteed continuity clause will effectively renew the Money Plus Plan policy, which is indisputably subject to the imposition of DST under Section 183 as an insurance renewed upon the life of the insured.

With regard to the DST on group life insurance, whenever a master policy admits another member, another life is insured and covered. This means that the respondent, by approving the addition of another member to its existing master policy, is once more exercising its privilege to conduct the business of insurance, because it is yet again insuring a life. Every time the respondent registers and attaches an Enrollment Card to an existing master policy, it exercises its privilege to conduct its business of insurance, and this is patently subject to the DST as insurance made upon life under Section 183 of the NIRC of 1997, as amended.

H. Whether the increase in insurance coverage is subject to DST

(Commissioner of Internal Revenue v. Lincoln Philippine Life Insurance Company, Inc., G.R. No. 119176, March 19, 2002)

The CIR issued to Lincoln Philippine Life Insurance, Co., a deficiency DST assessment amounting to P464,898.75 for the year 1984. This came about as a result of a special kind of life insurance policy issued by Lincoln known as the Junior Estate Builder Policy, which had a clause providing for an automatic increase in the

amount of life insurance coverage upon attainment of a certain age by the insured without the need of issuing a new policy, which was to take effect in 1984.

The DST due on the policy was paid by Lincoln only on the initial sum assured. The CTA, upon Lincoln's appeal, cancelled the deficiency assessment. But the CIR argued that the automatic increase clause in the insurance policy in question is separate and distinct from the main agreement and involves another transaction, and that, while no new policy was issued, the original policy was essentially reissued when the additional obligation was assumed upon the effectivity of this automatic increase clause in 1984.

Therefore, a DST assessment based on the additional insurance not covered in the main policy was warranted.

Issue: Whether Lincoln Philippine Life Insurance, Co., is liable for the deficiency DST arising from the "automatic increase clause" of its life insurance policy.

SC Decision: The SC ruled in the affirmative, ordering the respondent to pay the deficiency DST corresponding to the increase in 1984 of the sum under the policy issued by the latter.

The subject insurance policy, when it was issued, contained an "automatic increase clause." Although the clause was to take effect only in 1984, it was written into the policy at the time of its issuance. The distinctive feature of the "junior estate builder policy," called the "automatic increase clause," already formed part and parcel of the insurance contract; hence, there was no need for the execution of a separate agreement for the increase in coverage that took effect in 1984 when the insured reached a certain age.

It is clear from Section 173 that the payment of DST is done at the time the act is done or the transaction had, and the tax base for the computation of DST on life insurance policies under Section 183 is the amount fixed in the policy, unless the interest of a person insured is susceptible of exact pecuniary measurement. What then is the amount fixed in the policy? Logically, the SC believes that the amount fixed in the policy is the figure written on its face, and whatever increases will take effect in the future by reason of the "automatic increase clause" embodied in the policy without needing another contract.

Here, although the automatic increase in the amount of life insurance coverage was to take effect later on, the date of its effectivity, as well as the amount of the increase, was already definite at the time of the issuance of the policy. Thus, the amount insured by the policy at the time of its issuance necessarily included the additional sum covered by the automatic increase clause because it was already determinable at the time the transaction was entered into and formed part of the policy.

The "automatic increase clause" in the policy is in the nature of a conditional obligation under Article 1181[5] of the New Civil Code, by which the increase of the insurance coverage shall depend upon the happening of the event that constitutes the obligation. In the instant case, the additional insurance that took effect in 1984 was an obligation subject to a suspensive obligation, but still a part of the insurance sold to which the private respondent was liable for the payment of the DST.

The deficiency of DST imposed on the private respondent is definitely not on the amount of the original insurance coverage but on the increase of the amount insured upon the effectivity of the "Junior Estate Builder Policy."

I. Whether Health Maintenance Organizations (HMOs) are subject to DST.

(Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue, G.R. No. 167330, September 18, 2009)

Petitioner is a domestic corporation whose primary purpose is "[t]o establish, maintain, conduct and operate a prepaid group practice health care delivery system or a health maintenance organization to take care of the sick and disabled persons enrolled in the health care plan and to provide for the administrative, legal, and financial responsibilities of the organization." Individuals enrolled in its health care programs pay an annual membership fee and are entitled to various preventive, diagnostic, and curative medical services provided by its duly licensed physicians, specialists, and other professional technical staff participating in the group practice health delivery system at a hospital or clinic owned, operated or accredited by it.

In 2000, the respondent CIR sent the petitioner a formal demand letter and the corresponding assessment notices demanding the payment of deficiency DST, among others, which was imposed on the petitioner's health care agreement with the members of its health care program. The CIR claimed that the said agreement was a contract of insurance subject to DST under Section 185 of the NIRC, as amended.

Issue: Whether HMOs' contracts are considered contracts of insurance subject to DST.

SC Decision: The SC ruled in the negative. Section 185 of the NIRC of 1997, as amended, provides:

"Section 185. Stamp tax on fidelity bonds and other insurance policies. – **On all policies of insurance** or bonds **or obligations of the nature of indemnity for loss, damage, or liability** made or renewed by any person, association company, or corporation transacting the business of accident, fidelity, employer's

[5] Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance), x x x." (emphasis supplied)

From the language of Section 185, it is evident that two requisites must concur before the DST can be applied, namely: (1) the document must be a policy of insurance or an obligation in the nature of indemnity; and (2) the maker should be transacting the business of accident, fidelity, employer's liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland, and fire insurance).

Section 2(1) of the Insurance Code defines a contract of insurance as an agreement whereby one undertakes for a consideration to indemnify another against loss, damage, or liability arising from an unknown or contingent event. An insurance contract exists where the following elements concur: (1) the insured has an insurable interest; (2) the insured is subject to a risk of loss by the happening of the designed peril; (3) the insurer assumes the risk; (4) such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk; and (5) in consideration of the insurer's promise, the insured pays a premium.

As discussed by the SC, even if a contract contains all the elements of an insurance contract, if its primary purpose is the rendering of service, it is not a contract of insurance. Further, not all the necessary elements of a contract of insurance are present in the petitioner's agreements. To begin with, there is no loss, damage, or liability on the part of the member that the petitioner should indemnify as an HMO. There is no indemnity precisely because the member merely avails of medical services to be paid or already paid in advance at a pre-agreed price under the agreements. The agreement also provides that a member can take advantage of the bulk of the benefits anytime, even in the absence of any peril, loss, or damage on his or her part. The assumption of the expense by the petitioner is not confined to the happening of a contingency but includes incidents even in the absence of illness or injury. Finally, although risk is a primary element of an insurance contract, the petitioner, as an HMO, undertakes a business risk: the risk that it might fail to earn a reasonable return on its investment, and not an insurance (actuarial) risk or the risk that the cost of insurance claims might be higher than the premiums paid.

J. Whether pawn ticket is subject to DST.

(Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue, G.R. No. 166786, May 3, 2006)

The petitioner, Michel J. Lhuiller Pawnshop, is a corporation engaged in the pawnshop business. It received assessment notices for deficiency VAT and deficiency DST for the year 1997. The petitioner filed a motion for reconsideration of said assessment notices but was denied by the Commissioner of Internal Revenue.

On the petition for review with the CTA, the latter decided to favor the petitioner, setting aside the assessment notices issued by the CIR. It ruled, *inter alia*, that the subject of a DST under Section 195 of the NIRC, as amended, is the document evidencing the covered transaction. Holding that a pawn ticket is neither a security nor printed evidence of indebtedness, the tax court concluded that such a pawn ticket cannot be the subject of a DST.

Issue: Whether the petitioner's pawnshop transactions are subject to DST.

SC Decision: The SC ruled in the affirmative. The subject of a DST is not limited to the document embodying the enumerated transactions under Sections 173 and 195 of the NIRC, as amended. A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights, or properties incident thereto. Pledge is among the privileges, the exercise of which is subject to DST under Section 195 of the NIRC, as amended. A pledge may be defined as an accessory, real, and unilateral contract by virtue of which the debtor or a third person delivers to the creditor or a third person movable property as security for the performance of the principal obligation, upon the fulfillment of which the thing pledged, with all its accessions and accessories, shall be returned to the debtor or the third person. This is essentially the business of pawnshops, defined under Section 3 of Presidential Decree No. 114[6], or the Pawnshop Regulation Act, as persons or entities engaged in lending money on personal property delivered as security for loans.

The pawn ticket, as defined in Section 3 of the Pawnshop Regulation Act, is the pawnbrokers' receipt for a pawn. It is neither a security nor a printed evidence of indebtedness. True, the law does not consider said ticket as evidence of security or indebtedness. However, for taxation purposes, the same pawn ticket is proof of an exercise of the taxable privilege of concluding a contract of pledge. At any rate, it is not the ticket that creates the pawnshop's obligation to pay DST but the exercise of the privilege to enter into a contract of pledge. Therefore, there is no basis for the petitioner's assertion that a DST is a tax on a document and that no tax may be imposed on a pawn ticket.

IV. DST PROPOSALS UNDER PACKAGE 4 OF THE CTRP

Package 4 of the CTRP is designed primarily not to generate revenue for the government but to fix the tax system in order to deepen the capital and financial markets so that, in the long term, it can generate a future revenue stream to fund the government's priority programs, create more and better jobs, and boost the inclusive and sustainable growth of the economy. It aims to achieve a simpler, fairer, more efficient, and regionally competitive tax system for passive income and financial intermediaries.

[6] Entitled, "Regulating the Establishment and Operation of Pawnshops", (January 29, 1973).

The current Package 4 bill, or House Bill No. 4339[7], was approved on the third and final reading at the House of Representatives on November 14, 2022, and was transmitted to the Senate on November 15, 2022. Currently, there are four Package 4 bills filed in the Senate.

One of the primary objectives of Package 4 includes the rationalization of DST on financial transactions to reduce friction costs in the capital market and financial intermediation. The guiding principles considered in reforming the DST structure are as follows:

(a) To express all DST rates in percent instead of differentiated tax bases and tax rates;

(b) To equalize DSTs on debt and equity instruments;

(c) To unify all non-life insurance DST rates;

(d) To remove DST on domestic money transfers to support financial inclusion; and

(e) To remove provisions with low revenue take.

Below are some of the DST proposals and their rationale under Package 4.

(a) HMOs will be subjected to the same DST rate imposed on life insurance policies under Section 183 of the NIRC, as amended, which varies from exempt to P200 depending on the amount of insurance. The measure is to align its tax treatment with life and health insurance companies and level the playing field among similar life/health–related products.[8]

(b) The DST on sales, agreements to sell, memoranda of sales, deliveries, or transfers of shares of or certificates of stocks under Section 175 of the NIRC of 1997, as amended, is proposed to be repealed. The removal of the DST on the secondary transfer of unlisted shares of stock aims to equate it with the DST exemption of fixed income and other securities traded in the secondary market or through an exchange as provided under Section 199 (f) of the NIRC, as amended. The objective of Package 4 is to remove all DST imposed on secondary trading as well as those traded over the counter. Thus, the DST will be imposed on original issuances only. Consequently, Package 4 will reduce friction costs on succeeding transfers.

(c) The DST for mortgages, pledges, and deeds of trust under Section 195 will be reduced from 0.4% to 0.3%. This would reduce the DST on pawn tickets and pledges, thus lessening the financial burden of individuals dealing with pawn loans and pledges who are in dire need of cash.

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[7] Entitled, "An Act Amending Sections 6, 22,24,25,27,28,32, 34,37, 38,39, 42,51, 52,54, 56,57, 73, 108, 109, 112, 121, 122, 123, 127, 149,174, 176, 179, 181, 182, 183, 184, 185, 186, 187,190,195,198,199, 204, 222, 237, 237-A, 255, 256, 257, 258, 261, 263, 264, 266, 275; Inserting New Section 270-A; and Repealing Sections 175, 177, 178, 180,188,192, And 193; all under Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended", Nineteenth Congress, First Regular Session.

[8] In the same vein, instead of the current 12% value added tax, HMO companies will be subject to 2% premium tax to be similarly taxed as life insurance companies.

(d) The DST imposed on the assignments of certain instruments under Section 198 of the NIRC of 1997, as amended, is removed as they have already been subjected to the DST upon their original issuance. However, the DST will be imposed on evidence of obligation or indebtedness if the alteration is to extend its term or maturity. Thus, renewals on certain instruments will still be subject to the DST.

(e) Under Package 4, Collective Investment Schemes (CIS), such as mutual funds, unit investment trust funds, and variable unit-linked products, will be treated similarly to shares of stock for tax purposes. Section 174 of the NIRC of 1997, as amended, provides for a 1% DST on the original issue of shares of stock, which is proposed to be reduced to 0.75%. Given this, all CIS will likewise be subject to a DST of 0.75%. In the same vein, the redemption, sale, barter, exchange, or other modes of disposition or exchange of units of participation in a CIS or other CIS listed and traded in a local exchange or organized marketplace will also be exempt from the DST to equate with the DST exemption of shares of stock listed traded through the local stock exchange under Section 199(e) and on secondary trading under Section 175 of the NIRC of 1997, as amended, which is being proposed to be repealed.

V. CONCLUSION

The DST has long been enforced and is recognized as a stable and reliable source of government revenue. It is by nature an excise tax 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, and because of its nature, questions as to its imposition have been raised numerous times before the SC.

In the imposition of the DST, the SC explained that the persons primarily liable for the payment of the DST are the persons (1) making; (2) signing; (3) issuing; (4) accepting; or (5) transferring the taxable documents, instruments, or papers. Should these parties be exempted from paying tax, the other party who is not exempt would then be liable. Moreover, the SC also points out that the subject of the DST is not limited to the document embodying the enumerated transactions in the NIRC, as amended. The DST, being an excise tax, is also imposed on the exercise of a right or privilege to transfer obligations, rights, or properties incident thereto.

Further, the imposition of DST on various documents/instruments/transactions, such as deposits on stock subscriptions, special savings accounts, foreign bills of exchange, insurance policies, HMOs, and pawn tickets, among others, was also clarified by the SC.

The complexity of the structure of the DST cannot be denied. Thus, the need to review its current structure may be considered to achieve simplicity, remove arbitrage, lessen friction costs, and level the playing field among similar documents/instruments/transactions.

With the possible passage of Package 4, the DST structure would be rationalized to make financial transactions easier and faster to complete, thus enhancing taxpayer compliance and efficiency in revenue collection.