

ANNEXE 3

RÉGLEMENTATION PHILIPPINE RELATIVE À L'ARTICULATION DE LA COOPÉRATION FISCALE AVEC LE SECRET BANCAIRE REPUBLIC ACT N° 10021

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

March 19, 2010

REVENUE MEMORANDUM CIRCULAR NO. 29-2010

SUBJECT : Publishing the full text of Republic Act No. 10021 entitled "An Act to Allow the Exchange of Information by the Bureau of Internal Revenue on Tax Matters Pursuant to Internationally-Agreed Tax Standards, Amending Sections 6(F), And 270 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes

TO : All Revenue Officials, Employees and Others Concerned

For the information and guidance of all internal revenue officers, employees and others concerned, quoted hereunder is the full text of Republic Act No. 10021 issued by the President of the Republic of the Philippines on March 5, 2010.

"REPUBLIC ACT NO. 10021

AN ACT TO ALLOW THE EXCHANGE OF INFORMATION BY
THE BUREAU OF INTERNAL REVENUE ON TAX
MATTERS PURSUANT TO INTERNATIONALLY-AGREED
TAX STANDARDS, AMENDING SECTIONS 6(F), AND 270
OF THE NATIONAL INTERNAL REVENUE CODE OF 1997,
AS AMENDED, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. – This Act shall be known as the "Exchange of Information on Tax Matters Act of 2009".

SEC. 2. Declaration of Policy. – It is the declared Policy of the State to promote and pursue a tax environment that contributes in sustaining a favourable international investment climate and instills confidence in the adequacy and capacity of the country's tax administration to comply with its commitments under existing international conventions or agreements on tax matters.

Pursuant to this declared policy, the government shall comply with or commit to the internationally-agreed tax standard required for the exchange of tax information with its tax treaty partners to help combat international tax evasion and avoidance and to help address tax concerns that affect international trade and investment. The government shall likewise adopt measures and procedures to enhance cooperation with other countries in the efficient collection of taxes, consistent with the international understanding to ensure the payment of taxes due the respective taxing jurisdictions of the treaty partners.

SEC. 3. Authority of the Commissioner of Internal Revenue to Inquire into Bank Deposit Accounts and Related Information Held by Financial Institutions. – Section 6 (F) of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

“SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.-

“x x x

“(F) *Authority of the Commissioner to Inquire into bank Deposit Accounts and Other Related Information Held by Financial Institutions.* – Notwithstanding any contrary provision of Republic Act No. 1405, Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act of the Philippines, and other general and special laws, the Commissioner is hereby authorized to inquire into the bank deposits and other related information held by financial institutions of:

“(1) A decedent to determine his gross estate.

“(2) Any Taxpayer who has filed an application for compromise of his tax liability under Sec. 204 (A)(2) of this Code by reason of financial incapacity to pay his tax liability.

“ In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until he waives in writing his privilege under Republic Act No. 1405, Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act of the Philippines, or under other general or special laws, and such waiver shall constitute the authority of the Commissioner to inquire into the bank deposits of the taxpayer.

“(3) A specific taxpayer or taxpayers subject of a request for the supply of tax information from a foreign tax authority pursuant to an international convention or agreement on tax matters to which the Philippines is a signatory or a party of: *Provided*, That the information obtained from the banks and other financial institutions may be used by the Bureau of Internal Revenue for tax assessment, verification, audit and enforcement purposes.

“In case of a request from a foreign tax authority for tax information held by banks and financial institutions, the exchange of information shall be done in a secure manner to ensure confidentiality thereof under such rules and regulations as may be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.

“The Commissioner shall provide the tax information obtained from banks and financial institutions pursuant to a convention or agreement upon request of the foreign tax authority when such requesting foreign tax authority has provided the following information to demonstrate the foreseeable relevance of the information to the request:

“(a) The identity of the person under examination or investigation;

“(b) A statement of the information being sought including its nature and the form in which the said foreign tax authority prefers to receive the information from the Commissioner;

“(c) The tax purpose for which the information is being sought;

“(d) Grounds for believing that the information requested is held in the Philippines or is in the possession or control of a person within the jurisdiction of the Philippines;

“(e) To the extent known, the name and address of any person believed to be in possession of the requested information;

“(f) A statement that the request is in conformity with the law and administrative practices of the said foreign tax authority, such that if the requested information was within the jurisdiction of the said foreign tax authority then it would be able to obtain the information under its laws or in the normal course of administrative practice and that it is in conformity with a convention or international agreement; and

“(g) A statement that the requesting foreign tax authority has exhausted all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

“The Commissioner shall forward the information as promptly as possible to the requesting foreign tax authority. To ensure a prompt response, the Commissioner shall confirm receipt of a request in writing to the requesting tax authority and shall notify the latter of deficiencies in the request, if any within sixty (60) days from receipt of the request.

“ If the Commissioner is unable to obtain and provide the information within ninety (90) days from receipt of the request, due to obstacles encountered in furnishing the information or when the bank or financial institution refuses to furnish the information, he shall immediately inform the requesting tax authority of the same, explaining the nature of the obstacles encountered or the reasons for refusal.

“ The term ‘foreign tax authority’, as used herein, shall refer to the tax authority or tax administration of the requesting State under the tax treaty or convention to which the Philippines is a signatory or a party of.”

“**SEC. 4.** *Allowing a Foreign Tax Authority to Examine Income Tax Returns of Taxpayers in the Philippines.* – Section 71 of Republic Act. No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby amended to read as follows:

“**SEC. 71.** *Disposition of Income tax Returns, Publication of Lists of Taxpayers and Filers.* - After the assessment shall have been made, as provided in this Title, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the Office of the Commissioner and shall constitute public records and be open to inspection as such upon the order of the President of the

Philippines, under rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

“The Commissioner may, in each year, cause to be prepared and published in any newspaper the lists containing the names and addresses of persons who have filed income tax returns.

“Income tax returns of specific taxpayers subject of a request for exchange of information by a foreign tax authority pursuant to an international convention or agreement on tax matters to which the Philippines is a signatory or a party of, shall be open to inspection upon the order of the President of the Philippines, under rules and regulations as may be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.”

“SEC. 5. Authority of the Commissioner of Internal Revenue to Supply Information to a Foreign Tax Authority Which is at His Disposal.- Section 270 of the Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, is hereby amended to read as follows:

“SEC. 270. Unlawful Divulgence of Information. – Except as provided in Sections 6(F) and 71 of this Code and Section 26 of Republic Act No. 6388, any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income or estate of any taxpayer, the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall, upon conviction for each act or omission, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000), or suffer imprisonment of not less than two (2) years but not more than five (5) years, or both.

“ Any officer or employee of the Bureau of Internal Revenue who divulges or makes known in any other manner to any person other than the requesting foreign tax authority information obtained from banks and financial institutions pursuant to Section 6(F), knowledge or information acquired by him in the discharge of his official duties, shall upon conviction, be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000), or suffer imprisonment of not less than two (2) years but not more than five (5) years, or both.”

SEC. 6. Willful Refusal to Supply Information. – Any officer, owner, agent, manager, director or officer-in-charge of any bank or financial institution within the purview of this Act who, being required in writing by the Commissioner, wilfully refuses to supply the required information shall be punished by a fine of not less than Fifty thousand pesos (P50,000) but not more than One hundred thousand pesos (P100,000), or suffer imprisonment of not less than two (2) years but not more than five (5) years, or both.

SEC.7. Obligation to Maintain Confidentiality of Information Received. – Any information received by a foreign tax authority from the Bureau of Internal Revenue pursuant to an international convention or agreement on tax matters shall be treated by the authority as absolutely confidential in nature in the same manner as information obtained by the latter under its laws and shall be disclosed only

to persons or authorities, including courts and administrative bodies, involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by such conventions or agreements.

SEC. 8. *Notice to Taxpayers.* – A taxpayers shall be duly notified in writing by the Commissioner that a foreign tax authority is requesting for exchange of information held by financial institutions pursuant to a tax convention or agreement to which the Philippines is a signatory or a party of, under such rules and regulations as may be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

SEC.9. *Separability Clause.* – If any provision of this Act is declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 10. *Repealing Clause.* – All laws, presidential decrees, executive orders, rules and regulations, other issuances or parts thereof which are inconsistent with or contrary to this Act are hereby repealed or modified accordingly.

SEC. 11. *Effectively Clause.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved,

(Sgd.) **JUAN PONCE ENRILE**
President of the Senate

(Sgd.) **PROSPERO C. NOGRALES**
*Speaker of the House
of Representatives*

This Act which is consolidation of House Bill No. 6899 and Senate Bill No. 3220 was finally passed by the House of Representatives and the Senate on December 15, 2009 and December 11, 2009, respectively.

Approved: March 5, 2010

(Sgd.) **GLORIA MACAPAGAL-ARROYO**
President of the Philippines”

All revenue officials and employees are enjoined to give this circular as wide a publicity as possible.

(Original Signed)
JOEL L. TAN TORRES
Commissioner of Internal Revenue

REVENUE REGULATIONS N° 10-2010

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: October 06, 2010

REVENUE REGULATIONS NO. 10-2010

SUBJECT : Exchange of Information Regulations
TO : All Internal Revenue Officers and Others Concerned

Pursuant to the provisions of Section 244 in relation to Section 4 of the National Internal Revenue Code of 1997 (Tax Code of 1997), as amended, these Regulations are hereby promulgated to provide the necessary guidelines to enable the Bureau of Internal Revenue (BIR) to respond to a request for exchange of information pursuant to an existing international convention or agreement on tax matters and to implement Republic Act No. 10021 entitled "An Act to Allow the Exchange of Information by the Bureau of Internal Revenue on Tax Matters Pursuant to Internationally-Agreed Tax Standards, Amending Sections 6 (F), 71 and 270 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes".

SECTION 1. Definitions. - As used in these Regulations, the following terms shall be defined as follows:

- A) **Financial Institutions** shall refer to both private and government financial institutions. It shall include but is not limited to banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries including financing companies.
- B) **Foreign Tax Authority** shall refer to the tax authority or tax administration of the requesting State under the tax treaty or convention to which the Philippines is a signatory or a party of.
- C) **Income Tax Returns** shall refer to all Income Tax Forms issued/prescribed by the BIR including attachments thereto, written statements or other documents designed to be supplemental to and part of the said returns.
- D) **Inspection** shall not only refer to opening to examination of income tax returns of specific taxpayers subject of a request for exchange of information by a foreign tax authority but also furnishing the latter certified copies of such income tax returns, if included in the request.
- E) **International Agreements or Agreement on Tax Matters** shall only refer to Tax Information Exchange Agreements (TIEAs) which may be negotiated between the Philippines and other Contracting States or jurisdictions.

F) International Convention or Tax Treaty shall only refer to the Double Taxation Convention (DTCs) or Double Taxation Agreements (DTAs) negotiated between the Philippines and other Contracting States or jurisdictions for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

SECTION 2. Authority of the Commissioner of Internal Revenue to Obtain Information Including Information on Bank Deposits and Other Related Information Held by Financial Institutions. - Any general or special law notwithstanding, pursuant to Section 3 of Republic Act No. 10021, or to the powers granted to the Commissioner by the Tax Code of 1997, as amended, and for the purpose of complying with the provisions on exchange of information contained in international conventions or agreements on tax matters, the Commissioner is authorized to obtain any information, including but not limited to bank deposits and other related information held by financial institutions, as may be required to respond to a request pursuant to an international convention or agreement on tax matters to which the Philippines is a signatory or a party to.

SECTION 3. Bureau of Internal Revenue (BIR) not Precluded from Using the Information Requested by a Foreign Tax Authority. - Once information is gathered pursuant to a request for exchange of information under an international convention or agreement on tax matters, the BIR is likewise authorized to use, for tax assessment, verification, audit and enforcement purposes, any such information obtained from financial institutions.

SECTION 4. Authority of the Commissioner of Internal Revenue to Supply Information which is at His Disposal. - For the purpose of exchanging information pursuant to an international convention or agreement on tax matters, the Commissioner of Internal Revenue is hereby designated as the competent authority. Any such exchange of information shall not constitute an unlawful divulgence of information under the Tax Code of 1997, as amended.

SECTION 5. Foreign Tax Authority May be Allowed to Examine Income Tax Returns of Taxpayers in the Philippines. - Income tax returns of specific taxpayers subject of a request for exchange of information by a foreign tax authority pursuant to an international convention or agreement on tax matters shall be open to inspection upon the order of the President of the Philippines, under rules and regulations as may be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

SECTION 6. Obligation to Maintain Confidentiality. - Any information received by a foreign tax authority from the BIR pursuant to an international convention or agreement on tax matters shall be treated by the authority as absolutely confidential in nature in the same manner as information obtained by the latter under its laws and regulations, and shall be disclosed only to persons or authorities, including courts and administrative bodies, involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by such conventions or agreements.

SECTION 7. Contents of the Requests. - In order for the BIR to promptly act upon a request, the following should be clearly stated in the request:

- a) The identity of the person under examination or investigation;
- b) A statement of the information being sought including its nature and the form in which the said foreign tax authority prefers to receive the information from the Commissioner;
- c) The tax purpose for which the information is being sought;
- d) Grounds for believing that the information requested is held in the Philippines or is in the possession or control of a person within the jurisdiction of the Philippines;
- e) To the extent known, the name and address of any person believed to be in possession of the requested information;
- f) A statement that the request is in conformity with the law and administrative practices of the said foreign tax authority, such that if the requested information was within the jurisdiction of the said foreign tax authority then it would be able to obtain the information under its laws or in the normal course of administrative practice and that it is in conformity with an international convention or agreement on tax matters;
- g) A statement that the requesting foreign tax authority is also allowed under its domestic laws to exchange or furnish the information subject of the request; and
- h) A statement that the requesting foreign tax authority has exhausted all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

SECTION 8. Processing of Requests. - All requests for information pursuant to an international convention or agreement on tax matters shall be coursed through the International Tax Affairs Division (ITAD) of the BIR. Under no circumstances shall a revenue official or employee communicate directly to the competent authority or foreign tax authority on matters pertaining to the request without prior approval of the Commissioner.

Compliance with all the requirements for a valid request stated in the preceding section shall be verified by ITAD. Should a request be received by another office, said request shall immediately be forwarded to ITAD for processing.

After evaluation by the ITAD, the Commissioner shall inform in writing the financial institution concerned of the request for exchange of information. The financial institution has fifteen (15) days from receipt of the Commissioner's notice to provide the information specified therein. In the event that it is unable to provide the information, it should state in writing the reasons for failure to do so, and should it needs additional time within which to submit the information, it should request for extension which should not be more than thirty (30) days from receipt of the original notice.

The Commissioner shall respond as promptly as possible to the request. To ensure a prompt response, the Commissioner shall confirm receipt of a request in writing to the requesting foreign tax authority and shall notify the latter of deficiencies in the request, if any, within sixty (60) days from receipt of the request.

If the Commissioner is unable to obtain and provide the information within ninety (90) days from receipt of the request, including if he encounters obstacles in furnishing the information or if he refuses to furnish the information, he shall immediately inform the requesting foreign tax authority of the same, explaining the nature of the obstacles encountered or the reasons for his refusal.

SECTION 9. Willful Refusal to Supply Information. – Any officer, owner, agent, manager, director or officer-in-charge of a financial institution within the purview of these Regulations who, being required in writing by the Commissioner, willfully refuses to supply the required information shall be punished by a fine of not less than Fifty Thousand Pesos (P50,000) but not more than One Hundred Thousand Pesos (P100,000), or suffer imprisonment of not less than two (2) years but not more than five (5) years, or both.

SECTION 10. Notice to Taxpayers. – A taxpayer shall be duly notified in writing by the Commissioner that a foreign tax authority is requesting for exchange of information held by financial institutions pursuant to an international convention or agreement on tax matters, within sixty (60) days from receipt of the said request.

SECTION 11. Repealing Clause. – All existing rules, regulations and other issuances or portions thereof inconsistent with the provisions hereof are hereby modified, repealed or revoked accordingly.

SECTION 12. Effectivity Clause. – These Regulations shall take effect after fifteen (15) days following complete publication in a newspaper of general circulation.

(Original Signed)
CESAR V. PURISIMA
Secretary of Finance

Recommending Approval:

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue