

Republic of the Philippines
Congress of the Philippines
Metro Manila
Fourteenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

[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), 71 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 favorable 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 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, 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.

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.

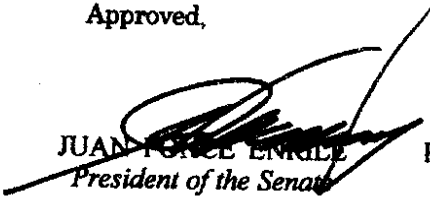
SEC. 8. *Notice to Taxpayers.* – A taxpayer shall be duly notified in writing by the Commissioner that a foreign tax authority is requesting for exchange of information held by financial institutions pursuant to a tax convention or agreement to which the Philippines is a signatory or a party of, under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

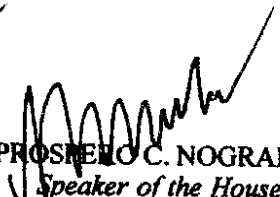
SEC. 9. *Separability Clause.* – If any provision of this Act is declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall continue to be in full force and effect.

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. Effectivity 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,


JUAN PONCE ENRILE
President of the Senate



PROSPERO C. NOGRALES
*Speaker of the House
of Representatives*

This Act which is a 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.

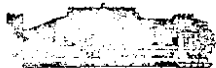

EMMA LIRIO REYES
Secretary of the Senate


MARILYN B. BARUA-YAP
*Secretary General
House of Representatives*

Approved: MAR 05 2010


GLORIA MACAPAGAL-ARROYO
President of the Philippines

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