

Republic Act 10021 – Exchange of Information on Tax Matters Act

What does RA 10021 seek to achieve?

RA 10021 allows the Bureau of Internal Revenue (BIR) to exchange information on tax matters with foreign tax authorities to comply with the Philippines' commitments under existing tax treaties and international conventions. It is envisioned to help combat international tax evasion and avoidance and to help address tax concerns that affect international trade and investment. The new law also seeks to instill confidence in the capacity of the Philippines' tax administration to perform its commitments to its tax treaty partners.

How does RA 10021 achieve these objectives?

RA 10021 amended Sections 6(F), 71 and 270 of the National Internal Revenue Code of 1997 (NIRC), as amended.

What does Section 6(F) of the NIRC, as further amended, provide?

The Commissioner of Internal Revenue (Commissioner) is authorized to inquire into the bank deposits and other related information held by financial institutions of:

- A decedent to determine his gross estate.
- Any taxpayer who has filed an application for compromise of his tax liability under Sec. 204 (A)(2) of the NIRC, as amended, because of financial incapacity to pay his tax liability.
 - ✚ In this case, the taxpayer must make a written waiver of his privilege under Republic Act No. 1405, Republic Act No. 6426 (Foreign Currency Deposit Act of the Philippines), or under other general or special laws, before his application is considered. Such waiver will constitute the authority of the Commissioner to inquire into his bank deposits.
- A specific taxpayer or taxpayers subject of a request for 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.
 - ✚ The exchange of information should be done in a secure manner to ensure confidentiality thereof under rules to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner.
 - ✚ The BIR may use the information obtained for tax assessment, verification, audit, and enforcement purposes.
 - ✚ The Commissioner will provide the tax information only when the requesting foreign tax authority has provided the following information to demonstrate the foreseeable relevance of the information to the request:

- The identity of the person under examination or investigation;
- A statement of the information sought including its nature, and the form in which the said foreign tax authority prefers to receive the information from the Commissioner;
- The tax purpose for which the information is sought;
- 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;
- To the extent known, the name and address of any person believed to be in possession of the requested information;
- A statement that the request is in conformity with the law and administrative practices of the requesting foreign tax authority, such that if the requested information was within its jurisdiction, it would be able to obtain the information under its law or in the normal course of administrative practice, and that it is conformity with a convention or international agreement; and
- 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.

Will this inquiry not be in violation of a bank depositor’s right against disclosure of or inquiry into bank deposits under Republic Act No. 1405, or the confidentiality of foreign currency deposits under Republic Act No. 6426 (Foreign Currency Deposit Act)?

RA 10021 gives the Commissioner such authority to inquire into bank deposits, “(n)otwithstanding 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.”

What is meant by “foreign tax authority”?

The term “foreign tax authority” refers 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.

How soon is the Commissioner expected to transmit the information requested by the foreign tax authority?

The Commissioner will forward the information as promptly as possible to the requesting foreign tax authority. To ensure a prompt response, the Commissioner will confirm receipt of the request in writing to the requesting foreign tax authority, and notify it of any deficiency in the request within 60 days from the receipt of the request.

What should the Commissioner do if he is unable to get the information requested by the foreign tax authority because the financial institutions refuse to furnish the information or because of other obstacles encountered in furnishing the information?

If the Commissioner is unable to obtain and provide the information within 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 should immediately inform the requesting tax authority, explaining the nature of the obstacles encountered or the reasons of refusal.

Is there a penalty for bank officers or owners who refuse to supply the information required by the Commissioner under RA 10021?

Yes. Any officer, owner, agent, manager, director or officer-in -charge of any bank or financial institution who, upon being required in writing by the Commissioner, willfully, refuses to supply the required information will be punished by a fine of not less P50,000 but not more than P100,000, or imprisonment of not less than 2 years but not more than 5 years, or both.

What are the obligations of the foreign tax authority with respect to the information obtained from the BIR?

- Treat the information as absolutely confidential in the same manner as information obtained by the foreign tax authority under its laws.
- Disclose the information 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 international conventions or agreements on tax matters.

What right does the taxpayer have in relation to information to be given to the foreign tax authority under international conventions or agreements on tax matters?

The taxpayer should be 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.

What does Section 71 of the NIRC, as further amended, provide?

- After the assessment, the returns, together with any corrections which may have been made by the Commissioner, will be filed in the Office of the Commissioner and will constitute public records and be open to inspection upon the order of the President of the Philippines, under rules and regulations to be presented 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 will be open to inspection upon the order of the President of the Philippines under such rules and regulations as may be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

What does Section 270 of the NIRC, as further amended, provide?

- Except as provided in Sections 6(F) and 71 of the NIRC, as further amended, and Section 26 of Republic Act No. 6388 (Election Code of 1971), any officer or employee of the BIR should not divulge or make known to any person:
 - 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; and
 - Information obtained from banks and financial institutions pursuant to a request from a foreign tax authority, which was acquired by him in the discharge of his official duties, and which should be divulged only to said foreign tax authority.
- Violators, upon conviction, will be punished by a fine of not less than P50,000 but not more than P100,000, or imprisonment of not less than 2 years but not more than 5 years, or both.