

Headline	A threat to bank secrecy		
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Section	Business	Journalist	KATHLEEN TERESA M. RAMOS
Page No	B5	Frequency	Daily



A threat to bank secrecy

Section 2 of Republic Act (RA) No. 1405 or the Law on Secrecy of Bank Deposits (LSBD) provides for the confidentiality of all deposits with banks or financial institutions. However, the same law allows the examination and inquiry into a bank deposit of any person, government official, bureau or office in the following instances:

- (1) When the depositor gives a written permission.
- (2) In cases of impeachment.
- (3) Upon the order of a competent court in cases of bribery or dereliction of duty of public officials.
- (4) In cases where the subject deposit is the subject matter of a court proceedings.

TOP OF MIND



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RA No. 6426 or the Foreign Currency Deposit Act (FCDA) likewise aims to ensure the secrecy of foreign currency deposits, except when the depositor's written permission is provided.

In line with these laws, the 1997 National Internal Revenue Code (NIRC) limits the authority of the commissioner of internal revenue (CIR) to inquire into bank deposit accounts and other related information held by financial institutions in the following cases:

- (1) A decedent to be able to determine the value of his gross estate.
- (2) A taxpayer who applied for compromise of his tax liabilities due to financial incapacity provided that a waiver of his rights under the LSBD and the FCDA is executed.
- (3) When there is a request from a foreign tax authority pursuant to a treaty or an international

tax convention entered into by the Philippines which may likewise be used by the BIR for tax assessment, verification, audit and enforcement purposes.

In the advent of the tax reform bill's passing into law as the Congress already approved its version of the Tax Reform Bill in House Bill (HB) No. 5636 while the Senate Committee on Ways and Means is already holding hearings on the subject matter, it is important to highlight certain provisions of HB No. 5636 and the Senate's version of the tax reform bill or Senate Bill (SB) No. 1408 which may run counter to the LSBD, FCDA and other special laws which aim to guarantee the confidentiality of information on deposits with financial institutions.

HB No. 5636 approved by the House of Representatives on May 31 contains provisions expanding the authority of the CIR to inquire into and receive information on bank deposit accounts and other related data held by financial institutions codified in Section 6 of the NIRC.

Unlike the current provision in NIRC, which only allows exchanges of information on bank deposits by request, the House of Representatives expands the authority of the CIR to facilitate the exchange of tax information with a foreign tax authority whether by request or automatically pursuant to an international convention or treaty. HB No. 5636 further provides that such information obtained from banks and other financial institutions may be used by the BIR for tax assessment, verification, audit, and enforcement purposes. Further, the same bill aims to ensure that the secretary of finance, upon the recommendation of the CIR, issues regulations to ensure that the exchange of information with a foreign tax authority, whether on request or automatic be done in a safe manner to ensure confidentiality and integrity of the data transferred. It also specifies that in case the exchange of information is automatic, the CIR shall provide tax information obtained from banks and financial institutions in accordance with the international common reporting standards (CRS).

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Similar provisions on the authority of the CIR to inquire and receive information on bank deposit accounts and other related data held by financial institutions are found in SB No. 1408. Unlike HB No. 5686 which allows for exchange of information automatically or by request, the Senate version allows the CIR to inquire into bank information on deposits whether on request, automatic or spontaneous pursuant to an international convention or treaty on tax matters to which the Philippines is a signatory. SB No. 1408 also obliges the CIR to follow international CRS in providing financial information obtained from banks to other tax jurisdictions.

The CRS was developed by the Organization for Economic Cooperation and Development (OECD) to facilitate the exchange of information across taxing jurisdictions. The CRS may be in the form of an exchange of information on request (EOIR) or an automatic exchange of financial account information (AEOI).

The EOIR standard is when a taxing jurisdiction obtains information through another taxing jurisdiction by request for use in an ongoing tax audit or investigation. The AEOI standard or the Common Reporting Standard was developed by the OECD member nations to provide guidelines on the automatic transfer or exchange of financial information across states without need of a request. Based on the Model Competent Authority Agreement as provided in the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, the information which may be automatically exchanged generally include:

- (1) The name, address, TIN, and date and place of birth for individuals or in the event of entities, the name, TIN and address of the entity.
- (2) The account number of such entity or individual.
- (3) The name and the identifying number of the reporting financial institution.
- (4) The account balance or value as of the end of the reporting period.

The Implementation Handbook of the Standard for Automatic Exchange of Financial Information in Tax Matters identified the following steps on how to implement the CRS:

- (1) Revise and enhance domestic laws to codify the rules to effectively implement the CRS especially on reporting of financial institutions to the taxing authority and due diligence.
- (2) Choosing a proper or a suitable legal basis for the automatic exchange of information such as a double tax treaty or a tax

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information exchange agreement

(3) Procuring technologies to ensure the implementation of the CRS.

(4) Ensuring confidentiality and security of financial data.

However, SB No. 1408 likewise provides for spontaneous exchange of information. The OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes defines spontaneous exchange of information as the transfer of “foreseeably relevant” information to another taxing jurisdiction who is a tax treaty party which does not stem from a request. Information spontaneously transmitted to a treaty party, on the other hand, would depend on the determination of the sending taxing jurisdiction on what financial information it considers as useful as well as financial data that is not yet in the hands of receiving state.

The Philippines is a member of The Global Forum on Transparency and Exchange of Information for Tax Purposes (The Global Forum). It is the leading international body which aims to ensure the effective enforcement of the principles of transparency in transfers of tax data across jurisdictions by ensuring that the internationally recognized CRS is efficiently operationalized among its member states through performing a comprehensive peer review process.

While the initiative to revise Section 6 of the NIRC to ensure our compliance with treaty obligations and our country’s effort to fulfill its responsibilities as a member of The Global Forum is laudable, certain issues may be encountered in enforcing the automatic and spontaneous exchange of tax information across jurisdictions. This provision in both HB No. 5636 and SB No. 1408 gives the BIR access to vital financial information of taxpayers. This may be subject to abuse by the tax authorities in the absence of proper training of its employees and in the absence of proper sanctions for breach of confidentiality of information received and exchanged. Compliance with the action steps set out by the OECD to ensure implementation of the CRS across jurisdictions may be an additional expense for the government which should be considered. Regulations should also be in place to provide limits on the use of the information gathered from the CRS as well as guidelines on how financial information received should be utilized by the tax authorities.

Despite the mandate of the current administration to hasten passing the Tax Reform Bill into law, provisions of the bill should be carefully drafted and thoroughly reviewed to ensure that our domestic laws are amended, such as the LSB and FCDA not only to ensure compliance with treaty obligation and international common reporting standards on exchange of financial information but also to combat against the possible abuse which may stem from the increased visibility of the tax authorities on financial data of taxpayers.

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