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