the Supreme Court may have inadequate resources or material time, such a court would provide uniformity and predictability in the law.[15]

The proponents for regional intermediate appellate courts contend that regionalization poses less administrative difficulties, that travel time and travel expenses will be less for the litigants, the lawyers, and the Justice themselves; that as long as appellate courts sit in panels, uniformity of decisions is just as difficult to attain in a united as in a divided court; that the increased number of Justices and panels resulting from unification will worsen the problem of "panel-shopping" by adroit litigants.[16]

In the United States, the peculiar situation obtaining has even prompted reformists to advocate the creation of a new National Court of Appeals, below the Supreme Court but above the present Circuit Court of Appeals.[17] It would seem, however, that the resulting five-tier judicial machinery may generate new and more formidable problems.

The distinction suggests itself, that a regional appellate court may be good for the larger countries and a unified one would suit the smaller nations better.

Conclusion

In this disquisition, this paper has attempted to bring into focus some materials for discussion of relevant issues: whether the writing of adjudicative opinions is a delegable or a non-delegable judicial task; whether appellate courts should be specialized or not; and whether appellate courts should be unified or regionalized.

Solutions more specific have likewise been proposed: for the creation of intermediate appellate courts in countries where there are none; for appellate jurisdiction to be assumed on a discretionary basis; for prior administrative exhaustion of remedies or fact-finding to precede appellate adjudication; for the increase of appellate judgeships when the dockets become hopelessly clogged; for the adoption of workable systems to increase the output of appellate judges; and for the utilization of "pre-argument" procedures.

I sincerely hope that these suggestions to enhance the present restricted appellate capacities of most national courts may be accorded a modicum of consideration.

[15] C.F. Haynsworth, Jr., Improving the Handling of Criminal Cases In The Federal Appellate System, Cornell Law Rev. 59: 597, 605, April '74.
[16] Q.N. Burdick, op. cit., Ky Law J. 60: 807, 812 (1971-72).
[17] P. Stolz, Federal Review of State Court Decisions of Federal Questions: The Need For Additional Appellate Capacity. Cal. Law Rev. 64: 943, 944 (1976).

IS SECRECY OF BANK DEPOSITS A THING OF THE PAST? – AN ANALYSIS OF R.A. No. 1405 and P.D. No. 1156

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A bank, being of a quasi-public character, is properly subject to some reasonable legislative regulation under the police power of the state. Because of its nature and the relation which it bears to the fiscal affairs of the people and the revenue of the state, a bank, acting as a depository of the money of the community,[1] is an institution vested with public interest.

One of the primary functions of a bank is to accept deposits from both the private and the government sectors. It is through this process that a bank is able to perform its other functions. It is likewise this power to accept deposits which subjects it to rigid fiscal and administrative measures. The term "deposit" has a well accepted meaning in the banking business, and has been defined as the act of placing or lodging money in the custody of a bank or banker, for safety or convenience, to be withdrawn at will of the depositor or under rules and regulations agreed upon.[2] A deposit has likewise been defined as a sum of money left with a banker for safekeeping, subject to order and payable not in the specific money deposited, but in an equal sum.[3] The legal effect of a deposit, as understood in the light of the foregoing definitions, is to create a debtor-creditor relation between the depositor and the bank, so that when money is left for a more or less fixed period, payment of interest to the depositor-creditor is deemed proper.

* Ll.B. '81.
** Ll.B. '78.
[1] See Vol. 9 C.J.S. pp. 32-33 citing Ex Parte Tennessee Valley Bank, 166 So. 1, 231 Ala. 545 and State vs. State Bank of Moore, 4 P. ed 717, 90 Mont. 539, 80 A.L.R. 1494.
[2] See Black Law Dictionary.
[3] Andrew vs. Iowa Savings Bank, 24 1 N.W. 412.

In September 9, 1955, the defunct Congress of the Philippines, cognizant of the need to give incentives to private individuals to invest their funds in banks, passed Republic Act No. 1405 entitled "AN ACT PROHIBITING DISCLOSURE OF OR INQUIRY INTO DEPOSITS WITH ANY BANKING INSTITUTION AND PROVIDING PENALTY THEREFOR."[4] This piece of legislation provided for absolute secrecy in all matters related to bank deposits made with any banking institution in the Philippines.

The role of a bank as a fiscal agent of the state cannot be ignored. It is an institution whose operation is capable of affecting money supply, rate of inflation or deflation, price index, rate of interest, demand and supply of money, and so on. It is primarily because of the significant influence of a bank in shaping and directing the national economy which compelled the state to watch closely its operations. It is likewise this tremendous fiscal influence which induced the state to encourage private individuals to invest their idle funds in banks. The rationale behind this policy of secrecy is best summarized as follows: "A bank ordinarily should not disclose the condition of its depositors' accounts to third persons."[5] While a depositor has no proprietary interest in the records of the bank and cannot prevent their publication in a proper case[6] nonetheless he does have a property right in the information contained therein relative to the state of his account sufficient to place the bank under an implied duty to keep such records secret as a general rule.[7]

Section 1 of the above-mentioned law reads as follows: "It is hereby declared to be a policy of the government to give encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country." The declared policy makes an admission of the indispensability of secrecy in matters of bank transactions to encourage investment in banks instead of private hoarding. Through this law, the government sought to build up a favorable investment climate and to strengthen popular trust and confidence in the banking institutions, which in turn, would help build a better economic environment through the proper channeling of accumulated private funds into the various preferred economic sectors.

The legislative guarantee of secrecy is broad in scope. It covers all deposits of whatever kind and nature with banks or banking institutions in the Philippines[8] including investments in bonds issued by the government of the Philippines, its political subdivisions and its instrumentalities. These deposits or investments may not be examined, inquired or looked into by any person, government official, bureau or office. The guarantee of secrecy is made effective by imposing penal sanctions for any violation — such penalty consisting of imprisonment of not more than 5 years or a fine of not more than ₱20,000.00, or both, in the discretion of the court.[9]

Congress, however, in enacting this law, deemed it wise to provide for some exceptions where a disclosure could lawfully be made. Under any of the exceptional circumstances, the prohibition against disclosure will have to yield to some other more important public policy sought to be enforced. Section 2 of the Act enumerated four specific circumstances, namely:

1. upon written permission of the depositor;
2. in cases of impeachment;
3. upon order of a competent court in cases of bribery or dereliction of duty of public officials; and
4. in cases where the money deposited or invested is the subject matter of the litigation.

The initial jurisprudence on the matter held that disclosure of and/or inquiry into bank deposits cannot be lawfuliy made except under any of the four exceptions mentioned in Sec. 2 of the law. In one case, a Barrio Council filed a complaint against J. M. Tuazon and Co., and the Tuazon, Calauag, and Sison Law offices for a violation of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[10] The petitioners, through the investigating fiscal, Manuel Pamaran, sought the issuance of a subpoena duces tecum to compel the respondent Chief Accountant of the Bank of the Philippine Island to produce the savings and current accounts of the respondents. The bank official refused to produce the documents sought and invoked the provision of Sec. 2 of Republic Act 1405 which categorically required absolute secrecy in matters of bank deposits. Consequently, petitioners filed a petition for mandamus invoking Rule 27, Section 1 (a) of the Rules of Court which provides;

> "Upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which the action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privilege, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control x x x x

[4] Officially published in Vol. 51, Official Gazette, p. 4977.
[5] See Vol. 9 C.J.S. p. 555.
[6] Cooley vs. Bergin, D.C. Mass., 27 F. 2d 930.
[7] Brex vs. Smith, 146 A. 34, 104 N.J. Eq. 386.
[8] Section 2, R.A. 1405.
[9] Section 5, R.A. 1405. Note, however, that nothing in the law makes an illegally obtained information inadmissible in evidence.
[10] Tatalon Barrio Council vs. Chief Accountant of the Bank of the Philippine Island, L-18360, January 31, 1963 (7 SCRA 170).

A motion to dismiss filed by the respondents was granted by the trial court. Subsequently, an appeal from that order was taken to the Supreme Court.

In affirming the dismissal of the petition for mandamus, the Court relied on the provisions of Section 2 of R.A. 1405 which classified savings and current accounts as privilege documents fallings within the protection of the law. It was the opinion of the court that disclosure could only be justified under any of the cases enumerated therein. Such enumeration, unfortunately, did not include cases involving prosecution for a violation of the Anti-Graft Law.

However, two years after the promulgation of the decision in the above-mentioned case, the same issue was again raised before the Supreme Court. In the cases of Philippine National Bank vs. Gancayco[11] the principal question presented for adjudication was whether a bank could be compelled to disclose the records of accounts of a depositor who was under investigation for unexplained wealth. Respondent Emilio Gancayco, as Special prosecutor of the Department of Justice, required PNB to produce at hearing the records of bank deposits of Ernesto Jimenez, former Administrator of ACCFA, who was then under investigation for unexplained wealth. The bank invoked Sec. 2 of R.A. 1405 requiring strict secrecy in bank deposits and Sec. 5 thereof providing for a penalty for unauthorized disclosure. Respondent, however, contended that if in accordance with the provisions of R.A. 1379 a public official had been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact would be a ground for dismissal or removal. In this connection, properties in the name of the spouse and unmarried children of such public officials might be taken into account, when their acquisition through legitimate means could not be satifactorily shown. Similarly, bank deposits shall be taken into consideration in computing the amount of unexplained wealth, *notwithstanding any provision of the law to the contrary.*[12]

The court, in reversing the doctrine laid down in the Tatalon Barrio Council case, held that while R.A. 1405 provided that bank deposits were absolutely confidential and therefore might not be examined, inquired, and/or looked into except in cases enumerated therein, the Anti-Graft Law directed in mandatory terms that bank deposits "shall be taken into consideration in the enforcement of this section notwithstanding any provision of the law to the contrary. The only conclusion which could be deduced from the foregoing was that Section 8 of the Anti-Graft Law was intended to Amend Section 2 of R.A. 1405 by providing an additional exception to the rule against disclosure of bank deposits. It was emphasized that such a disclosure would not be contrary to the expressed policy of secrecy declared in Sec. 2 of R.A. 1405 if being sufficient to point out that Sec. 2 recognized at least 4 exceptions. Cases of unexplained wealth were treated as similar in nature to cases of bribery or dereliction or duty so that no reason could be seen why these two classes of cases could not be exempted from the rule making bank deposits confidential.

A further scrutiny into the nature of the protection guaranteed by R.A. 1405 was made by the court in the case of China Banking Corporation vs. Ortega.[13] The issue raised in this petition for review on certiorari was whether or not a banking institution might validly refuse to comply with a court process garnishing the bank deposit of judgment debtor by invoking the provisions of R.A. 1405. The petitioner contended that it cannot be compelled to inform the Court whether a judgment debtor had deposits in the bank nor could it be required to freeze such account, if any, until otherwise ordered by the court, without doing violence to the spirit of the law prohibiting any disclosure of information relative to bank deposits. It was likewise argued by the petitioner that compliance with the questioned order of the trial court could expose the responsible officers of the bank to criminal liability, and the bank itself, to a possible damage suit by the judgment debtor. The position of the petitioner was that the bank deposits of a judgment debtor cannot be subjected to garnishment to satisfy a legitimate claim against the latter.

The Court, however, did not view the situation in that light. The lower court did not order an examination of or inquiry into the deposits of the judgment debtor, but merely required the bank to inform the court whether the debtor had a deposit for the sole purpose of the garnishment issued by it. Furthermore, the Court invited the attention of the petitioner to the discussion of the conference committee report on Senate Bill 351 and House Bill 3977, which later became R. A. 1405, which indicated beyond doubt that it was not the intention of the lawmakers to place bank deposits beyond the reach of execution to satisfy a final judgment. Thus:

> MR. MARCOS. Now, for the purposes of the record, I should like the Chairman of the Committee on Ways and Means to clarify this further. Suppose an individual has a tax case. He is being held liable by the Bureau of Internal Revenue for, say P1,000,000 worth of tax liability, and because of this, the deposit of this individual is attached by the Bureau of Internal Revenue.
>
> MR. RAMOS. The *attachment will only apply after the court has pronounced sentence declaring the liability* of such person. But where the primary aim is to determine whether he has a bank deposit in order to bring about a proper assessment by the Bureau of Internal Revenue, such inquiry is not authorized by this proposed law.

[11] L-18343, September 30, 1965 (15 SCRA 91).
[12] Section 8, Republic Act 3019.
[13] L-34964, January 31, 1973 (49 SCRA 355).

MR. MARCOS. But under our rules of procedure and under the Civil Code, the attachment of garnishment of money deposited is allowed. Let us assume, for instance, that there is a preliminary attachment which is for garnishment or for holding liable all money deposited belonging to a certain individual, but such attachment or garnishment will bring out into the open the value of such deposit. Is that prohibited by this amendment or by this law?

MR. RAMOS. It is only prohibited to the extent that the inquiry is limited, or rather, the inquiry is made only for the purpose of satisfying a tax liability already declared for the protection of the rights in favor of the government; but when the object is merely to inquire, whether he has a deposit for purposes of taxation, then this is fully covered by the law.

MR. MARCOS. And it protects the depositor, does it not?

MR. RAMOS. Yes, it protects the depositor.

MR. MARCOS. The law prohibits a mere investigation into the existence and the amount of the deposit.

MR. RAMOS. Into the very nature of the deposit.

MR. MARCOS. So I come to my original question. Therefore, preliminary garnishment or attachment of the deposit is not allowed?

MR. RAMOS. No, without judicial authorization.

MR. MARCOS. I am glad that is clarified. So that the established rule of procedure as well as the substantive law on the matter is amended?

MR. RAMOS. Yes, that is the effect.

MR. MARCOS. I see, suppose there has been a decision definitely establishing the liability of an individual for taxation purposes and this judgment is sought to be executed . . . in the execution of that judgment, does this bill, or this proposed law, if approved, allow the investigation or scrutiny if the bank deposit in order to execute the judgment?

MR. RAMOS. To satisfy a judgment which has become executory.

MR. MARCOS. Yes, but, as I said before, suppose the tax liability is ₱1,000,000 and the deposit is half a million, will this bill allow scrutiny into the deposit in order that the judgment may be executed?

MR. RAMOS. Merely to determine the amount of such money to satisfy that obligation to the Government, but not to determine whether a deposit has been made in evasion of taxes.

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MR. MACAPAGAL. But let us suppose that in ordinary civil action for the recovery of a sum of money, the plaintiff wishes to attach the properties of the defendant to insure the satisfaction of the judgment. Once, the judgment is rendered, does the gentleman mean that the plaintiff cannot attach the bank deposit of the defendant?

MR. RAMOS. That was the question raised by the gentleman from Pangasinan to which I replied that outside the very purpose of this law, it could be reached by attachment.

MR. MACAPAGAL. Therefore, in such ordinary civil cases, it can be attached?

MR. RAMOS. That is so.[14]

Indeed there was no real inquiry in this case for the disclosure of the existence of a deposit was purely incidental to the execution process. Finally, it would be stretching one's imagination too far to conceive that Congress intended to enable judgment debtor to evade payment of his just debts through the simple expedient of converting all his properties into liquid assets and subsequently depositing the same in the bank.

It could be clearly seen from the law and the preceding decisions that the purpose of legislature in enacting R. A. 1405 was to give an adequate protection to the secrecy of of bank transaction to the extent permissible under existing laws. It would seem, therefore, that any device intended

[14] Vol. II, Congressional Records, House of Representatives, No. 12, pp. 3839-3840, July 27, 1955.

to circumvent maliciously the provisions of this law must be deemed illegal, for a law which prohibited an act in mandatory terms could not be rendered nugatory by the simple process of resorting to means, methods, devices, or schemes resulting in a violation through indirection.

The policy declared in Sec. 1 of R. A. 1405 is, however, now subject to serious question. With the promulgation of P. D. 1156, first impression would seem to indicate that the policy of secrecy so meticulously structured and solemnly enunciated in R. A. 1405, has at least for purposes of taxation, been abandoned. It must be noted at the outset that the guarantee of secrecy under R. A. 1405 was intended to exclude any inquiry into and disclosure of bank deposits for purposes of investigation by the Bureau of Internal Revenue. Congressional debates on the matter would only lead to the conclusion that the Bureau could not compel a disclosure of bank accounts for the purpose of determining proper assessment. The following might be enlightening:

MR. MARCOS. Do we understand that an investigation conducted by administrative officials like the BIR is not envisioned by the amendment?

MR. RAMOS. Any investigation conducted by any body or office of the government, including the Internal Revenue can go as far as as to reach the very deposit of such investments made in banks *only when such deposits or such investments are made the subject of case brought to the jurisdiction of the court.*

MR. MARCOS. In short, the distinguished Chairman of the Committee on Ways and Means, who is an expert in the tax code, will remember that the powers of the BIR are both administrative and judicial . . . .

MR. RAMOS. Yes.

MR. MARCOS. Now, what is envisioned by this amendment, therefore, is that *all bank deposits will be exempt from scrutiny by any administrative investigation by the BIR.* Is that not so?

MR. RAMOS. For purposes of taxation only.[15]

The promulgation of P.D. 1156 gave birth to a new era not only to the realm Bank investment, but also in the matter of imposing the appropriate tax on the fruits of the said investment. Suffice it to say at this point that the decree was not a new tax measure, for it must be recalled that interest earned by a bank depositor has always been subject to a tax interest earned being part of taxable income covered by Sec. 29 of the National Internal Revenue Code. It must have been the contumacy of the depositor-taxpayer, the gross inadequacy and shocking ineffectiveness of existing laws which necessitated the promulgation of a supplemental legislation, which obviously was intended to enforce the collection of taxes justly due to the government. Clearly, the decree is not a mere surplusage, much less a redundancy.

P. D. 1156 impose a tax on income, a tax on interest paid to the bank depositor by any authorized agent bank of the Central Bank.[16] The

[15] Vol. II Congressional Records. House of Representatives, No. 12, p. 3838, July 27, 1955.

[16] Section 1, Revenue Regulation No. 8-77 dated 15 June, 1977 but effective retroactively June 3, 1977.

decree covered interest paid on both savings and time deposits.[17] And to make certain that taxes will be properly and timely collected, the decree provided for a system of withholding taxes at source. Under the new law, as well as in accordance with the provision of the tax code, the depositor-recipient must shoulder the tax burden. A novelty, was, however, created in that a depositor to be covered by the decree, must have received an aggregate interest exceeding ₱350.00 per calendar year or ₱87.50 per quarter thereof.[18] Nothing in the law, however, exempted any depositor from payment of appropriate tax on interest received by him,if such interest did not amount to the minimum covered by the decree.

The implementing rules and regulations issued by the Bureau of Internal Revenue granted an exemption from the 15%[19] withholding tax to any depositor qualified under any of the following categories:[20]

1. for those depositors enjoying preferential income tax treatment under existing laws, the withholding tax rate to be applied shall in no case exceed the tax rate applicable to said class of taxpayers or to such type of income as shown in the certificate of Preferential Tax Treatment issued by the Commissioner of Internal Revenue.[21]
2. interest on deposits in foreign currency under the Foreign Currency Deposit Law,[22] the Offshore Banking Act,[23] or the Expanded Currency Deposit Law.[24]
3. interest paid on deposits maintained by tax-exempt entities as certified by the Commissioner of Internal Revenue.
4. interest paid on all deposit accounts maintained by a depositor alone or together with another in any one bank not exceeding ₱350.00 per calendar year or ₱87.50 per quarter thereof.

A question might be asked at this point: how elastic would this enumeration be? Could it include other instances not specifically mentioned in the law, but similar or parallel to the foregoing? The rules of statutory construction would seem to indicate that since the purpose of the law was to enforce the collection of taxes with relative ease and facility, the answer must be in the negative. An answer to the contrary would certainly do violence to the spirit of the law.

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[17] Section 2 (b) (c) Id., respectively defines savings deposit as "a deposit which may be withdrawn by the depositor at any time, subject to the right of the depositary bank to require reasonable prior notice in writing before wtihdrawal may be made;" while a time deposit, as "a deposit which has a definite time of maturity and cannot be withdrawn by the depositor until maturity except in cases of authorized pre-termination."

[18] Sec. 3, Id.

[19] Id.

[20] Id.

[21] Id.

[22] Republic Act No. 6426, "An Act instituting a foreign currency deposit system in the Philippines and for other purposes" effective April 4, 1972. (68 OG 4503).

[23] Presidential Decree No. 1034, "Authorizing the establishment of an offshore banking system" effective Sept. 30, 1976.

[24] Presidential Decree No. 1035, "Expanding the Authority of Certain depository Banks under R.A. 6426 and for other purposes," effective Sept. 30, 1976. (73 OG 586).

Now, in order to give coercive tenor to the law, withholding banks were required to accomplish and file BIR Form No. 17.45 within 25 days after every calendar quarter. The form would indicate the aggregate amount of tax withheld by the agent bank[25] based on the adjusted gross interest expense computed in accordance with Section 4 of Revenue Regulations No. 8-77. Needless to say, all taxes withheld must be remitted to the Bureau of Internal Revenue simultaneously with the filing of the report. Should the agent bank fail to comply with the requirement, interest paid or accrued would not be allowed as interest expense deductible for the purpose of computing its taxable income.[26] Up to this point, P. D. 1156 would still be in complete harmony with R. A. 1405, for while a return must be filed by the agent bank, nonetheless, the return would be based on the aggregate amount of interest paid, without any duty on the part of the bank to disclose the identity of the individual recipients thereof. Obviously, secrecy of bank deposit would still be adequately safeguarded.

An application of certain basic principles of taxation would be helpful at this point. An amount of tax withheld at source would certainly constitute an advance tax payment which may be credited against the aggregate tax liability of an individual taxpayer. Certainly, the amount of tax withheld by any agent bank should be allowed as a tax credit against the total income tax liability of the depositor-taxpayer. This right was categorically granted by the implementing rules[27] when it provided that:

> "With reference to the recipient-depositor, the withholding tax herein imposed shall be allowed as a credit against the amount of income tax due from said depositor."

The danger of disclosing bank deposits would, however, seem to begin at the point where the rules laid down the procedure for claiming a tax credit or a refund in case the tax withheld be greater than the total income tax due. Section 9 of Revenue Regulations No. 8-77 had this to say:

> "Where a depositor desires the refund or credit of the tax withheld from him or part thereof, he shall make an application in writing with the authorized agent bank on or before the 20th day of the month following the close of his accounting period and, on the basis of such application, *said authorized agent shall issue a certification as to the amount of tax withheld during the taxable year. The depositor shall attach such certification to his income tax return and include as part of his gross income the interest income upon which the tax has been withheld.* His income tax return, shall, thereafter be processed by the Bureau as a refundable case." (underscoring supplied)

Clearly, therefore, no credit or refund would be allowed by the Bureau unless a certification was first obtained from the agent bank stating the total amount of tax withheld. Moreover, the certification

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[25] Sec. 5, Revenue Regulations No. 8-77.

[26] Sec. 6. Id.

[27] Section 8, Id.

must be attached to the depositor-taxpayer's income tax return. On the basis of the foregoing requirements, it should not be amazing if the Bureau of Internal Revenue, through the use of simple arithmetic, could arrive at a close, if not an accurate estimate of the depositor-taxpayer's account. Obviously, an unwarranted disclosure would not be a remote possibility. In effect, a depositor-taxpayer availing the benefits of the tax credit, would be constrained to make a truthful disclosure of bank deposits consciously or unconsciously, without having anyone to hold responsible for such indiscretion but himself. Here is a classic example of adding insult to injury.

The rules and regulations made further provisions with respect to taxes erroneously withheld from tax exempt entities and those enjoying preferential income tax treatment.

> "Where, notwithstanding the provisions of Section 3 hereof, tax has been withheld from interest on deposit accounts maintained by a tax-exempt entity, and in the case of an entity enjoying preferential income tax treatment, the withholding tax rate applied is more than the applicable rate pertaining to said class of taxpayers or to such type of income, *the total or the excess withholding tax shall be refunded or credited, as the case may be, upon filing of the appropriate tax return together with proof of tax exemption or enjoyment of a preferential income tax treatment.* Thereafter, such return shall be processed by the Bureau as a refundable case." (underscoring supplied)[28]

The case contemplated by the foregoing provision would involve a more miserable situation. A tax -exempt entity, or one enjoying a preferential income tax treatment, which had become the tragic victim of an erroneous withholding of taxes would have to make a blanket disclosure of bank deposits in order to secure a refund. While it might be contended that the Bureau could not ascertain the amount of taxes illegally withheld without the presentation of the appropriate tax return, still it could not be denied that a compulsory disclosure of bank deposits under these circumstances would be most inequitable and unfair for an aggrieved party, would, in effect, be made to choose between two evils as a conquence of an error he never as a party to. Incidentally, the law was silent as to whether the agent bank would incur any liability for the error. Note too that the rules and regulations would seem to have impliedly denied to the agent bank the power to make summary refund of taxes erroneously withheld not only because the procedure in requesting for tax refund was clearly established, but also because the taxes withheld by the banks were to be treated as special funds held in trust by the bank for the government until paid to the collecting officer.[29]

Finally, an analysis of the rules and regulations implementing P.D. 1156 with respect to the measures adopted to safeguard the secrecy of

[28] Section 9, last paragraph, Id.
[29] Section 8, Id.

deposits will be proper and enlightening. A perusal of the rules reveals at least three provisions designed to patch up the differences between the decree and R. A. 1405; namely,

1. Unless the depositor makes an application in writing with the agent bank for a certification as to the amount of tax withheld from him during the taxable year, no bank shall issue any statement relative to the withholding tax.[30]
2. The certification issued by the bank shall only be used to prove the amount so withheld so that the same may be credited to the taxpayer. In no case shall it be used for any other purpose.[31]
3. The withholding tax shall be *based on the adjusted gross interest paid by authorized agent banks on all savings and time deposit*[32] *x x x.* (Underscoring supplied)

With respect to the first measure, suffice it to say that the significance of this provision can not be separated from the fact that a certificate from the agent bank must be secured for a depositor to be entitled to the benefits of a tax credit. Failure or refusal to secure a bank certification will result in the outright denial of the right to credit tax withheld against the aggregate tax liability. Consequently, it will not be difficult to reach the conclusion that the first measure will only safeguard secrecy of bank deposits if the depositor-taxpayer were willing to forego the benefit of the tax credit. And as pointed out earlier, the certificate issued by the agent bank, when attached to the income tax returns of a taxpayer to support a claim for a tax credit, will inevitably constitute the best evidence of the amount of deposits made in a bank.

Neither will there be any significance to the second precautionary measure embodied in the implementing rules. While the rules specifically made the certification a competent proof only for the purpose of establishing the amount of tax withheld for an eventual tax credit, nonetheless, there will still be the objectionable result, i.e., the unwarranted disclosure of bank deposits which R. A. 1405 sought to prevent. Consequently, the fact that the certificate will serve "no other purpose" will be meaningless in the light of the provisions of R. A. 1405.

The final proviso must be understood in the light of the first precautionary measure. Evidently, Section 4 of Revenue Regulations No. 8-77 did not require the agent bank to disclose the identity of the recipient of interest paid, but merely required the same to file a return based on the aggregate amount paid to all depositors indiscriminately. Up to this point, there seems to be absolutely no danger of making any unwarranted disclosure of bank deposits, since the individual recipients of the interest will not be named. However, one might ask what advantage this will bring to the recipient unless he secures from the bank a certificate necessary to claim a tax credit. In effect, one will again arrive at the conclusion that the secrecy of bank deposits will only be safeguarded if the recipient

[30] Section 9, paragraph 3, Id.
[31] Section 9, paragraph 3, Id.
[32] Section 9, paragraph 3, Id.

were willing to forego the benefit of a tax credit. The moment he opts to exercise a right granted to him by law, he must have waived the protection afforded by R. A. 1405.

What then, is the effect of P. D. 1156 on R. A. 1405? Certainly the former can not repeal the latter. Nothing in the decree nor in the implementing rules and regulation make any such implication. The old law and the decree can stand together without any visible trace of incompatibility. Neither is there an amendment for the old law for the decree does not make any such mention of an amendment.

From all the foregoing, it would seem, therefore, that P. D. 1156 gives the depositor-taxpayer a choice — either to make an indirect but truthful disclosure of wealth kept inside the bank vaults and be properly rewarded with a tax credit, or to simply forego the tax credit, suffer privately the fifteen percent tax on the interest earned in order to keep secret what he has kept behind the iron curtains of the bank vault.

P. D. 1156 is definitely a novelty — a novelty believed to be a necessary incident of the progress of the society. But certainly we cannot forget that once it was said that "the law is progressive and expansive, adopting itself to the new relations and interests which are constantly springing up in the progress of society; but this progress must be by analogy to what is settled."[33]

[33] Section 4, Id.
[34] Chief Justice Greene, 1 I.R., 356.

R.A. NO. 4885: MORE THAN A CASE OF FAULTY STATUTORY DRAFTSMANSHIP?

by WENCELITO T. ANDANAR*

I PREFATORY STATEMENT

Act No. 3815, otherwise known as the "Revised Penal Code of the Philippines" is now more than a quarter and a century old.[1abc] Despite some otherwise well-intentioned revisions embodied therein and those amendments that followed its enactment, this piece of legislation has remained essentially a vintage of 18th-century thinking.[2ab] Article 315,

* LL.B. '78

[1a] By the royal decree of September 4, 1884 the Spanish Penal Code of 1870, as modified in accordance with the recommendation of the Code Commission for Overseas Provinces, was published and applied in the Philippines. Thus the old Penal Code, the immediate antecedent of the Revised Penal Code (Act No. 3815), was merely a modified version of the Spanish Penal Code of 1870. See AQUINO, Ramon. THE REVISED PENAL CODE Vol. I (Manila: Phoenix Press Inc., 1961) p. 1.

[1b] The Revised Penal Code is a mere retouching of the Spanish Penal Code of 1870 which in turn was based on the early Spanish Code of 1848. It is . . . so far as its philosophic foundation is concerned, at least 100 years old. As compared with the Spanish Penal Code of 1870, the Philippine Revised Penal Code of 1930 has undergone no important change of orientation or structure. See CODE OF CRIMES: prepared and submitted by the Code Commission (Manila: Bureau of Printing, 1950, 1954) p. 2.

[1c] The Supreme Court ruled that the old Penal Code took effect July 14, 1887 (U.S. v. Tamparong, 31 Phil 323). This code ceased to be of effect in December 31, 1931, when the Revised Penal Code by its express provision became effective on January 1, 1932. (See Art. 1 of Act 3815).

[2a] The Committee (referring to the Code Committee composed of Chairman Anacleto Diaz and members Quintin Paredes, Guillermo Guevarra, Alex Reyes and Mariano de Joya) does not therefore pretend that it has undertaken the codification of all penal laws, much less produced a modern code or one of advanced theories. What the Committee did was merely to revise the Penal Code and the laws related to the latter. for which reason this bill is termed "Revised Penal Code". See SPEECH of Representative Quintin PAREDES delivered on the floor of the House of Representatives on October 31, 1930, as sponsor of H. B. No. 3366 providing for the Revised Penal Code, cited in GUEVARRA, Guillermo. COMMENTARIES ON THE REVISED PENAL CODE (Manila: National Printing Co., 1946) Explanatory Notes, p. vi.

[2b] The new code . . . fails to answer the demands of modern progress with the concommitant growth and development of our institutions. See ALBERT, Mariano. THE REVISED PENAL CODE (Manila: University Publishing Co., Inc., 1946) Preface.