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AMENDING CERTAIN PROVISIONS OF REVENUE REGULATIONS NO. 9-98 RELATIVE TO THE DUE DATE WITHIN WHICH TO PAY MINIMUM CORPORATE INCOME TAX (MCIT) IMPOSED ON DOMESTIC CORPORATIONS AND...

BIR REVENUE REGULATIONS NO. 12-2007, October 10, 2007

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SECTION 1. Scope - Pursuant to the provisions of Sections 244, 27(E), and 28(A)(2) of the 1997 National Internal Revenue Code (Tax Code), as amended, in relation to Section 245 thereof which requires that the rules and regulations of the Bureau of Internal Revenue shall stipulate the manner in which internal revenue taxes shall be paid, these Regulations are hereby promulgated to amend Revenue Regulations No. 9-98, in order to align the time of payment of minimum corporate income tax (MCIT) imposed on domestic corporations and resident foreign corporations with the mandatory quarterly filing of normal corporate income tax returns pursuant to Sec. 75 and Sec. 77 of the same Tax Code.

SEC. 2. Amendatory Provision – Pertinent portions of Sec. 2.27(E) of Revenue Regulations No. 9-98 are hereby amended to read as follows:

> "Sec. 2.27(E) MINIMUM CORPORATE INCOME TAX (MCIT) ON DOMESTIC CORPORATIONS –
>
> "(1) Imposition of the Tax. - A minimum corporate income tax (MCIT) of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year, depending on the accounting period employed) is hereby imposed upon any domestic corporation beginning on the fourth (4[th]) taxable year immediately following the taxable year in which such corporation commenced its business operations. The MCIT shall be imposed whenever such corporation has zero or negative taxable income or whenever the amount of minimum corporate income tax is greater than the normal income tax due from such corporation.
>
> Notwithstanding the above provision, however, the computation and the payment of MCIT, shall likewise apply at the time of filing the quarterly corporate income tax as prescribed under Section 75 and Section 77 of the Tax Code, as amended.
>
> Thus, in the computation of the tax due for the taxable quarter, if the computed quarterly MCIT is higher than the quarterly normal income tax, the tax due to be paid for such taxable quarter at the time of filing the quarterly corporate income tax return shall be the MCIT which is two percent (2%) of the gross income as of the end of the taxable quarter. In the payment of said quarterly MCIT, excess MCIT from the previous taxable year/s shall not be allowed to be credited. Expanded withholding tax, quarterly corporate income tax payments under the normal income tax, and the MCIT paid in the previous taxable quarter/s are allowed to be applied against the quarterly MCIT due.
>
> Example : Panday Corporation's computed normal income tax and MCIT, and creditable income taxes withheld from 1[st] to 4[th] quarters including excess MCIT and excess withholding taxes from prior year/s are as follows:

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Quarter Normal
Income Tax MCIT Taxes
Withheld Excess
MCIT Taxes
Prior Year

Excess
W/Tax
Prior
Year

1[st] 100,000 80,000 20,000 P30,000 10,000

2[nd] 120,000 250,000 30,000

3[rd] 250,000 100,000 40,000

4[th] 200,000 100,000 3 5,000

For the 1[st] quarter, the quarterly income tax payable by Panday Corporation shall be computed as follows:

Quarterly corporate income tax due
(higher amount between normal

income tax and MCIT) – normal income tax

P100,000

Less : Taxes Withheld – Prior Year 10,000

Taxes Withheld – 1[st] qtr 20,000

Excess MCIT prior year 30,000

60,000

Net Income Tax Due , 1[st] quarter –

normal income tax

P 40,000
=======

For the 2[nd] quarter, the quarterly income tax payable by Panday Corporation shall be computed as follows:

Quarter Normal
Income Tax MCIT Taxes
Withheld Excess

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MCIT Taxes
Prior Year

Excess
W/Tax
Prior
Year

1[st] 100,000 80,000 20,000 P30,000 10,000

2[nd] 120,000 250,000 30,000

Total 220,000
======= 330,000
======= 50,000
=======

Quarterly corporate income tax due
(higher amount between normal

income tax and MCIT) – MCIT

P330,000

Less : Taxes Withheld – Prior Year 10,000

Less : Taxes Withheld – 1[st] qtr 20,000

Taxes Withheld – 2[nd] qtr 30,000

Net income tax payment –
1[st] qtr
P 40,000

100,000

Net Income Tax Due 2[nd] quarter -MCIT

230,000
=======

At year end, the computation of the annual income tax payable by Panday Corporation shall be computed as follows

Quarter Normal
Income Tax MCIT Taxes
Withheld Excess
MCIT Taxes

Prior Year

Excess
W/Tax
Prior Year

1[st] 100,000 80,000 20,000 P30,000 10,000

2[nd] 120,000 250,000 30,000

3[rd] 250,000 100,000 40,000

4[th] 200,000 100,000 35,000

Total 670,000
====== 530,000
====== 125,000
======

Annual corporate income tax due (higher amount between normal

income tax and MCIT) – Normal Income Tax

P670,000

Less : Taxes Withheld – Prior Year

10,000

Less : Taxes Withheld – 1[st] qtr

20,000

Taxes Withheld – 2[nd] qtr

30,000

Taxes Withheld – 3[rd] qtr

40,000

Taxes Witheld – 4[th] qtr

35,000

Net income tax payment – 1[st] qtr

40,000

Net income tax payment – 3[rd] quarter

70,000

MCIT paid in the 2[nd] quarter

230,000

Excess MCIT in prior year

30,000

505,000

Annual Net Income Tax Due – MCIT

P 165,000

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As can be seen from the above illustrative computation, quarterly MCIT paid on the Quarterly Income Tax Return shall be credited against the normal income tax at year end if in the preparation and filing of the annual income tax return and in the final computation of the annual income tax due, it appears that the normal income tax due is higher than the computed annual MCIT. Moreover, in addition to the quarterly MCIT paid and quarterly normal income tax payments in the taxable quarters of the same taxable year, excess MCIT in the prior year/s (subject to the prescriptive period allowed for its creditability), expanded withholding taxes in the current year and excess expanded withholding taxes in the prior year shall be allowed to be credited against the annual income tax computed under the normal income tax rules.However, if in the computation of the annual income tax due, the computed annual MCIT due appears to be higher than the annual normal income tax due, what may be credited against the annual MCIT due shall only be the quarterly MCIT payments of the current taxable quarters, the quarterly normal income tax payments in the quarters of the current taxable year, the expanded withholding taxes in the current year and excess expanded withholding taxes in the prior year. Excess MCIT from the previous taxable year/s shall not be allowed to be credited therefrom as the same can only be applied against normal income tax.Thus, in the above illustration, suppose the MCIT at year end is higher than the normal income tax, then computation of the income tax liability of Panday Corporation shall be as follows:

At year end, the computation of the annual income tax payable by Panday Corporation shall be computed as follows

Quarter Normal
Income Tax MCIT Taxes
Withheld Excess
MCIT Taxes
Prior Year

Excess
W/Tax
Prior Year

1[st] 100,000 80,000 20,000 P30,000 10,000

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2[nd] 120,000 250,000 30,000

3[rd] 250,000 100,000 40,000

4[th] 50,000 120,000 35,000

Total 520,000
====== 550,000
====== 125,000
=====

Annual corporate income tax due (higher amount between normal

income tax and MCIT) – Normal Income Tax

P550,000

Less : Taxes Withheld – Prior Year

10,000

Less : Taxes Withheld – 1[st] qtr

20,000

Taxes Withheld – 2[nd] qtr

30,000

Taxes Withheld – 3[rd] qtr

40,000

Taxes Witheld – 4[th] qtr

35,000

Net income tax payment – 1[st] qtr

40,000

Net income tax payment – 3[rd] quarter

70,000

MCIT paid in the 2[nd] quarter

230,000

475,000

Annual Net Income Tax Due – MCIT

75,000

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“For purposes of these Regulations, the term, “normal income tax” means the income tax rates prescribed under Sec. 27 (A) and Sec. 28(A)(1) of the Code at 34% on January 1, 1998; 33% effective January 1, 1999; at 32% effective January 1, 2000 and 35% effective November 1, 2005 and thereafter. Provided, however, that effective January 1, 2009 the rate of income tax shall be thirty percent (30%), pursuant to RA No. 9337.

“ In the case of a domestic corporation xxx xxx xxx

“(2) Carry forward of excess minimum corporate income tax — xxx xxx xxx

“Illustration on how to carry forward excess minimum corporate income tax presented on annualized basis -

"Year "Normal Income
Tax MCIT Excess of MCIT
Over the Normal
Income Tax

“1998 P50,000 P 75,000 P25,000

“1998 amount of tax payable P 75,000

“1999 P60,000 P100,000 P40,000

“1999 amount of tax payable P100,000

“2000 P100,000 P60,000

Computation of Net Amount of Tax Payable in 2000:

"Amount of tax payable

P100,000

"Less

"1998 excess MCIT

(25,000)

"1999 excess MCIT

(40,000)

P65,000

Net amount of tax payable P35,000

“The taxpayer shall pay the MCIT whenever it is greater than the regular or normal corporate income tax which is imposed under Sec. 27(A) and Sec. 28(A) (1) of the Code. The final comparison between the normal income tax payable by the corporation and the MCIT shall be made at the end of the taxable year and the payable or excess payment in the Annual Income Tax Return shall be computed taking into consideration

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corporate income tax payment made at the time of filing of quarterly corporate income tax returns whether this be MCIT or normal income tax Thus, under the example, the taxpayer should have paid the MCIT of P75,000.00 since this amount is greater than the normal income tax of P50,000.00 in 1998.

" xxx xxx xxx
" xxx xxx xxx
" xxx xxx xxx
" xxx xxx xxx

"(3) Relief from the Minimum Corporate Income Tax under Certain Conditions – xxx xxx xxx

" xxx xxx xxx

" (4) Definition of Terms

"(a) "Gross income" defined – For purposes of the minimum corporate income tax prescribed under this Subsection, the term "gross income" means gross sales less sales returns, discounts, and allowances and cost of goods sold, in case of sale of goods, or gross revenue less sales returns, discounts, allowances and cost of services/direct cost, in case of sale of services. This rule, notwithstanding, if apart from deriving income from these core business activities there are other items of gross income realized or earned by the taxpayer during the taxable period which are subject to the normal corporate income tax, the same items must be included as part of the taxpayer's gross income for computing MCIT. This means that the term "gross income" will also include all items of gross income enumerated under Section 32(A) of the Tax Code, as amended, except income exempt from income tax and income subject to final withholding tax described in the succeeding subparagraph.

"Gross sales" shall include only sales contributory to income taxable under Sec. 27(A) of the Code." "Cost of goods sold" shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use. Gross Revenue shall include income from sale of services, likewise, taxable under Sec. 27(A). Cost of Services or Direct Cost of Services shall include business expenses directly incurred or related to the gross revenue from rendition of services.

"Passive incomes which are subject to final tax at source shall not form part of gross income for purposes of minimum corporate income tax.

" xxx xxx xxx
" xxx xxx xxx

"(5) Specific Rules for Determining the Period When a Corporation Becomes Subject to the MCIT-

" xxx xxx xxx

"(6) Manner of filing and payment — The minimum corporate income tax (MCIT) shall be paid in the same manner prescribed for the payment of the normal corporate income tax which is on a quarterly and on a yearly basis. It shall be covered by a tax return designed for the purpose which will be submitted together with the corporation's annual final adjustment income tax return. Domestic corporations shall be required to pay the minimum corporate income tax on a quarterly basis, pursuant to the provisions of Sec. 75 and Sec. 77 of the Code in relation to Section 245 of the same Code, as amended.

" xxx xxx xxx"

SEC.3. Transitory Provisions – In the filing of the quarterly income tax return for the taxable quarter which is due for filing after the effectivity of these Regulations, the computation of the MCIT shall be done on cumulative basis covering not only the current taxable quarter but also the previous taxable quarters of the same tax- able year. Such computed MCIT shall be compared with the cumulative normal income tax, whereupon the higher

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amount between the two shall be the basis of the quarterly income tax payment to be made for said taxable quarter.

Thus, for those using calendar year basis accounting period, in the filing of the quarterly income tax return for the third quarter ended September 2007 which is due for filing on or before November 29, 2007, the gross income for the 1st and 2nd quarters shall be added to the gross income for the quarter ended September 2007, the total of which shall be the basis of the 2% MCIT which shall then be compared with the computed cumulative normal income tax. The cumulative MCIT for the three (3) said quarters shall be paid in case the same appears to be higher than the normal income tax computed for the same period. Excess normal income tax carried over from previous taxable year and payments made for the previous quarters of the same taxable year, including withholding tax credits claimed for said previous quarters of same taxable year shall be credited against the computed tax due in the cumulative quarterly tax return.

SEC. 4. Repealing Clause – The provisions of Revenue Regulations No. 9-98 and all other internal revenue issuances inconsistent herewith are hereby repealed, modified or amended accordingly.

SEC. 5. Effectivity Clause – These Regulations shall take effect after fifteen (15) days following publication in a newspaper of general circulation

Adopted: 10 Oct. 2007

(SGD.) MARGARITO B. TEVES
Secretary of Finance

Recommending Approval:

(SGD.) LILIAN B. HEFTI
Commissioner of Internal Revenue

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