[BIR REGULATIONS NO. 9-98, August 25, 1998]

IMPLEMENTING REPUBLIC ACT NO. 8424, "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED" RELATIVE TO THE IMPOSITION OF THE MINIMUM CORPORATE INCOME TAX (MCIT) ON DOMESTIC CORPORATIONS AND RESIDENT FOREIGN CORPORATIONS

Pursuant to Section 244, in relation to Section 27(E) and Section 28(A)(2), these Regulations are hereby promulgated to govern the imposition of the minimum corporate income tax on domestic and resident foreign corporations.

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 the fourth (4th) 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.

For purposes of these Regulations, the term, *"normal income tax"* means the income tax rates prescribed under Sec. 27(A) and See. 28(A)(1) of the Code at 34% on January 1, 1998; 33% effective January 1, 1999; and at 32% effective January 1, 2000 and thereafter.

In the case of a domestic corporation whose operations or activities are partly covered by the regular income tax system and partly covered under a special income tax system, the MCIT shall apply on operations covered by the regular income tax system. For example, if a BOI-registered enterprise has a "registered" and an "unregistered" activity, the MCIT shall apply to the unregistered activity.

(2) *Carry forward of excess minimum corporate income tax* — Any excess of the minimum corporate income tax (MCIT) over the normal income tax as computed under Sec. 27(A) of the Code shall be carried forward on an annual basis and credited against the normal income tax for the three (3) immediately succeeding taxable years.

Illustration on how to carry forward excess minimum corporate income tax —

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

1998	P 50,000	P 75,000	P 25,000
1998 amount of tax payable		P 75,000	
1999	P 60,000	P 100,000	P 40,000
1999 amount of tax payable		P 100,000	
2000	P 100,000	P 60,000	

Computation of Net Amount of Tax Payable in 2000:

Amount of tax payable	P 100,000
Less: 1998 excess MCIT (25,000) 1999 excess MCIT (40,000)	P 65,000
Net amount of tax payable	P 35,000

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) of the Code. The comparison between the normal income tax payable by the corporation and the MCIT shall be made at the end of the taxable year. Thus, under the example, the taxpayer will pay the MCIT of P 75,000.00 since this amount is greater than the normal income tax of P 50,000.00 in 1998.

In 1999, the firm will also pay the MCIT since the MCIT of P 100,000.00 is greater than the normal income tax of P 60,000.00.

In the year 2000, where the normal or regular corporate income tax of P 100,000.00 is greater than the MCIT of P 60,000.00, the firm will pay the normal income tax.

The corporation can credit the excess of its MCIT over the normal income tax for 1998 (i.e. P 25,000) and 1999 (i.e. P 40,000), or a total amount of P 65,000 from the amount of normal income tax which is payable by the firm in the year 2000. Thus, the amount of income tax payable by the firm is P 35,000 after deducting P 65,000 from P 100,000.

The excess MCIT is creditable against the normal income tax within the next three (3) years from payment thereof. Thus, in the illustration above where the corporation had an excess MCIT of P 25,000 over its normal income tax in 1998, the P 25,000 can be claimed as a tax credit against the normal income tax up to the year 2001 and only when the normal income tax is greater than the MCIT. The excess MCIT cannot be claimed as a credit against the MCIT itself or against any other losses.

(3) Relief from the Minimum Corporate Income Tax under Certain Conditions — The Secretary of Finance, upon recommendation of the Commissioner, may suspend imposition of the MCIT upon submission of proof by the applicant-corporation, duly verified by the Commissioner's authorized representative, that the corporation sustained substantial losses on account of a prolonged labor dispute or because of "force majeure" or because of legitimate business reverses.

(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. "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.

Passive incomes which have been subject to a final tax at source shall not form part of gross income for purposes of the minimum corporate income tax.

For a trading or merchandising concern, *"cost of goods sold"* means the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold, including insurance while the goods are in transit.

For a manufacturing concern, *"cost of goods manufactured and sold"* means all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.

In the case of sales of services, the term "gross income" means gross receipts less sales returns, allowances, discounts and cost of services. *"Cost of services"* means all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (a) salaries and employee benefits of personnel, consultants and specialists directly rendering the service, and (b) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: Provided, however, that "cost of services" shall not include interest expense except in the case of banks and other financial institutions. The term "gross receipts" as used herein means amounts actually or constructively received during the taxable year; Provided, that for taxpayers employing the accrual basis of accounting, the term "gross receipts" shall mean amounts earned as gross income.

(b) The term *"substantial losses from a prolonged labor dispute"* means losses arising from a strike staged by the employees which lasted for more than six (6) months within a taxable period and which has caused the temporary shutdown of business operations.

(c) The term *"force majeure"* means a cause due to an irresistible force as by "Act of God" like lightning, earthquake, storm, flood and the like. This term shall also include armed conflicts like war or insurgency.

(d) The term *"legitimate business reverses"* shall include substantial losses sustained due to fire, robbery, theft or embezzlement, or for other economic reason as determined by the Secretary of Finance.

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

For purposes of the MCIT, the taxable year in which business operations commenced shall be the year in which the domestic corporation registered with the Bureau of

Internal Revenue (BIR).

Firms which were registered with BIR in 1994 and earlier years shall be covered by the MCIT beginning January 1, 1998.

Firms which were registered with BIR in any month in 1998 shall be covered by the MCIT three calendar years thereafter (i.e. after the lapse of three calendar years from 1998). For example, a firm which was registered in May 1998 shall be covered by the MCIT in 2002.

The reckoning point for firms using the fiscal year shall also be 1998. For example, a firm which registered with the BIR on July 1, 1998 shall be subject to an MCIT on his gross income earned for the entire fiscal year ending in the year 2002.

Transitory Rule for determining the MCIT for 1998 on firms which are taxable on a fiscal year basis. For firms using the fiscal year basis and whose first taxable period under the minimum corporate income tax covers month/months in 1997 (i.e. prior to the imposition of MCIT under RA 8424), the MCIT which is due for 1998 shall be computed using an apportionment formula. The ratio to be applied is the number of months in 1998 to twelve (12) months (i.e. the total number of months in a fiscal year).

> Illustration. Firm A registered with the BIR in July 1994. It becomes subject to the MCIT in 1998. Since it is using a fiscal year as basis of its taxable period, a part of the tax base for the MCIT was earned by the corporation in 1997 prior to the imposition of the MCIT (i.e. gross income from July to December 1997). The MCIT which is due from the firm is computed using the gross income of the firm for 1998 (January to June) which is computed on an apportionment basis as follows:
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> Gross income of the firm for the entire fiscal year
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> Multiply: 0.50 (i.e. ratio of 6 months in 1998 to 12 months covering FY 97-98)
>
> Equals: Tax base of the MCIT for 1998
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> Multiply: 2% (i.e. MCIT tax rate)
>
> Equals: MCIT for 1998.

(6) Manner of filing and payment — The minimum corporate income tax (MCIT) shall be paid on a taxable year 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 not be required to pay the minimum corporate income tax on a quarterly basis, the provisions of Sec. 75 of the Code notwithstanding.

(7) Accounting treatment of the excess minimum corporate income tax paid — Any amount paid as excess minimum corporate income tax shall be recorded in the corporation's books as an asset under account title *"deferred charges-minimum corporate income tax"*. This asset account shall be carried forward and may be