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Bureau of Internal Revenue

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**BUREAU OF INTERNAL
REVENUE****REVENUE REGULATIONS
NO. 12-2007**

Amends certain provisions of Revenue Regulations (RR) No. 9-98 relative to the due date within which to pay the Minimum Corporate Income Tax (MCIT) imposed on domestic corporations and resident foreign corporations pursuant to Sections 27(E) and 28(A)(2) of the Tax Code, as amended.

An MCIT of two percent (2%) of the gross income as of the end of the taxable year (whether calendar or fiscal year) is imposed upon any domestic corporation beginning on the 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 MCIT 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 Sections 75 and 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 (ITR) shall be the MCIT, which is 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.

The quarterly MCIT paid on the quarterly ITR shall be credited against the normal Income Tax at year end if in the preparation and filing of the annual ITR 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.

For purposes of these Regulations, the term, "normal Income Tax" means the income tax rates prescribed under Sections 27(A) and 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 30% pursuant to RA No. 9337.

The taxpayer shall pay the MCIT whenever it is greater than the regular or normal corporate Income Tax which is imposed under Sections 27(A) and 28(A)(1) of the Tax 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 ITR shall be computed taking into consideration corporate Income Tax payment made at the time of filing of quarterly corporate ITR whether this be MCIT or normal Income Tax.

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.

The 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 ITR. Domestic corporations shall be required to pay the MCIT on a quarterly basis, pursuant to the provisions of Sections 75 and 77 of the Tax Code in relation to Section 245 of the same Code, as amended. In the filing of the quarterly ITR 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 taxable year. Such computed MCIT shall be compared with the cumulative normal Income Tax, whereupon the higher 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 ITR 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.

REVENUE MEMORANDUM ORDER NO. 39-2007

Prescribes the issuance of Warrants of Distrainment and Garnishment, and/or Levy on disputed assessments finally decided by the BIR against the taxpayer on assessments upheld by the Court of Tax Appeals (CTA).

This covers disputed assessments finally decided by the Commissioner of Internal Revenue (CIR) or Regional Director, as the case may be, against the taxpayer; and assessments upheld by the CTA in Division whether or not appealed to the CTA En Banc, or upheld by the CTA En Banc whether or not appealed to the Supreme Court.

Upon issuance by the CIR or Regional Director of the final decision on the disputed assessment against the taxpayer or upon issuance by the CTA in Division or En Banc of its decision upholding the assessment, Warrants of Distrainment and Garnishment, and/or Levy shall forthwith be immediately issued and served.

**REVENUE MEMORANDUM
CIRCULAR NO. 69-07**

Republic Act No. 9480 (RA 9480) entitled “*An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years*”, became effective on June 16, 2007. In order to implement the provisions of the said Act, Department of Finance has issued Department Order No. 29-07 (DO 29-07) prescribing the rules and regulations for the availment of the tax amnesty granted under said law.

For the purpose of clarifying certain issues relative to the availment thereof, presented hereunder, in question and answer format, are the corresponding resolutions on some of the recurring questions raised during the fora and symposia held with the private sector on the matter.

Q-1 What type of taxes and what taxable period/s are covered by the Tax Amnesty Program under RA 9480 as implemented by DO 29-07?

A-1 The Tax Amnesty Program (TAP) covers all national internal revenue taxes such as income tax, estate tax, donor’s tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, except withholding taxes and taxes passed-on and already collected from the customers for remittance to the BIR, these taxes/funds being considered as funds held in trust for the government. Moreover, the time-honored doctrine that “No person shall unjustly enrich himself at the expense of another” should always be observed.

In case of donor’s tax and capital gains tax, only cases that have underdeclarations/undervaluations and were already issued with Certificate Authorizing Registration (CAR) by the BIR are covered.

The period covered is Taxable Year 2005 and prior years for the abovementioned national internal revenue taxes, with or without assessments duly issued therefore, that have remained unpaid as of

December 31, 2005.

For purposes of complying with the provisions of the Tax Amnesty Law, Taxable Year 2005 shall include all taxable years which end in any month of the year 2005, whether calendar year or fiscal year. This means that for fiscal year basis taxpayers, the Balance Sheet filed as of the end of any month in 2005 except December, which is the taxpayer’s fiscal year end, shall be considered as a Balance Sheet filed as of year end of 2005 which shall be the basis in determining any increase in networth, by comparing it with the amended Balance Sheet as of the same end period while for calendar year basis taxpayers, the increase in networth shall be reckoned from the figures reflected in the Balance Sheet filed as of December 31, 2005 by comparing the original version with the amended version.

Q-2 Who can avail of the tax amnesty?

A-2

- a. Individuals, whether resident or non-resident citizens, or resident or nonresident aliens;
- b. Estates and trusts;
- c. Corporations;
- d. Cooperatives and tax exempt entities that have become taxable as of December 31, 2005;
- e. Other juridical entities, including partnerships

In the case of an individual who is at the same time an executor or administrator of the estate of a deceased taxpayer, he may avail of the amnesty for himself or for the estate or both. In the same manner that a trustee of a taxable trust may opt to avail of the tax amnesty for himself or that for the trust or for both. One Amnesty Tax Return shall be filed for every taxpayer availing of the program.

Q-3 Are cases subject of criminal complaint filed with the DOJ still covered by the Tax Amnesty?

A-3 Yes, except cases filed under the RUN AFTER TAX EVADER (RATE) Program of the BIR and other cases involving tax evasion initiated and instituted with the approval of the Commissioner of Internal Revenue or his authorized representatives, pursuant to Section 220 of the National Internal Revenue Code of 1997, as amended.

Q-4 Does availment of the TAP have an effect on assessments against the taxpayer/ availer where such assessments have become final and executory prior to the said availments?

A-4 No. Amnesty availment will not have an effect on assessments against said taxpayer where the said assessments have become final and executory prior to the amnesty availment considering that these assessments are already accounts receivable of the BIR or assets of the government.

Q-5 What are the benefits and privileges accorded to persons or entities availing of the tax amnesty under RA 9480?

A-5

- a. Immunity from the payment of taxes as well as additions thereto and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.
- b. The taxpayer's Tax Amnesty Return and the Statement of Asset, Liabilities and Networth (SALN) as of December 31, 2005 shall not be admissible as evidence in all proceedings that pertain to taxable year 2005 and prior years, insofar as such proceedings relate to internal revenue taxes, before judicial, quasi-judicial or administrative bodies in which he is defendant or respondent except for the purpose of ascertaining the networth beginning January 1, 2006. The same shall not be examined, inquired or looked

into by any person or government office. However, the taxpayer may use this amnesty availment as a defense, whenever appropriate, on cases brought against him.

- c. The books of accounts and other records of the taxpayer for the years covered by the tax amnesty availed of shall not be examined by the BIR. However, the Commissioner of Internal Revenue or his authorized representative may authorize in writing the examination of the said books of accounts and other records to verify the validity or correctness of a claim for any tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives and/or exemptions under existing laws, whether these cases are pending with the Bureau of Internal Revenue, One Stop Shop of the Dept. of Finance, Bureau of Custom and with any Court, as well as looking at taxpayer's records and books to check tax liabilities of other taxpayers under its access power to third parties.

Q-6 Are the benefits and privileges accorded by the tax amnesty law absolute?

A-6 No. The benefits and privileges accorded by the tax amnesty law shall not apply under the following instances:

- a. where the person failed to file a SALN and the Tax Amnesty Return, or;
- b. where the amount of networth as of December 31, 2005 or as of end of fiscal year of any month in year 2005, whichever is applicable, is proven to be understated to the extent of thirty percent (30%) or more in accordance with the provisions of Section 4 of RA 9480 and Section 9, Rule IV of Department Order No. 29-07.

Q-7 Section 4 of RA 9480 and Section 9, Rule IV of DO No. 29-07 provide for the presumption of correctness of SALN. What does this mean?

A-7 This means that SALN as of taxable year 2005 (calendar or fiscal) filed by the taxpayer pursuant to this tax amnesty program shall be presumed to represent the true and correct networth of said taxpayer as of such period.

Q-8 What are the instances when the presumption of correctness would not apply?

A-8 The presumption of correctness of SALN shall not apply in the following cases:

- a. Where the amount of declared networth is understated to the extent of thirty percent (30%) or more as may be established in the proceedings initiated within one (1) year following the date of filing of the Tax Amnesty Return and the SALN, by or at the instance of parties other than the BIR or its agents, as when any person, entity or government agency informs the BIR, with sufficient evidence, that the amount of the declared networth is understated to the extent of thirty percent (30%) or more.
- b. When the findings of or admission in congressional hearings or proceedings in administrative agencies of the government and in courts, prove that there is at least thirty percent (30%) underdeclaration of networth.

Q-9 What is the effective period within which qualified taxpayers may avail of the tax amnesty?

A-9 Rule III Section 6.4 of Department Order No. 29-07 provides for the filing of the tax amnesty return together with the SALN and the payment of the tax amnesty within six (6) months from the effectivity of said Order. The said Order became effective last September 6, 2007. Thus, qualified taxpayers have until March 6, 2008 to avail of the said tax amnesty program.

Q-10 What is the basis of computing the tax amnesty and what are the tax amnesty rates prescribed therefor?

A-10

- a. For those qualified taxpayers who have **no**

previously filed statements of assets and liabilities/balance sheet as of December 31, 2005, the tax amnesty payment shall be computed based on higher amount between the five percent (5%) of the networth as of December 31, 2005 (including fiscal year ending in any month of 2005) as declared in the SALN and the minimum amnesty payments as presented in the following schedule of tax amnesty computation:

1. Individuals (whether resident or nonresident citizens, including resident and nonresident aliens), Estates and Trusts 5% of networth or P50,000, whichever is higher
2. Corporations
 - i. With subscribed capital of above P50M 5% of networth or P500,000, whichever is higher
 - ii. With subscribed capital of above P20M up to P50 M - 5% of networth or P250,000, whichever is higher
 - iii. With subscribed capital of P5M up to P20 M 5% of networth or P100,000, whichever is higher
 - iv. With subscribed capital of below P5M 5% of networth or P25,000, whichever is higher
3. Other juridical entities including partnerships but not limited to cooperatives and foundations that have become taxable as of December 31, 2005 5% of networth or P50,000, whichever is higher
- b. For those qualified taxpayers who have filed with BIR's authorized agents their SALN/balance sheet together with their income tax returns for taxable year 2005 and who desire to avail of the tax amnesty, they shall amend their previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in the networth or the minimum amount prescribed by the Tax Amnesty Law for each category of taxpayer, whichever is higher. (Refer to the schedule of minimum payments above).

Q-11 In the filing of the Statement of Assets, Liabilities and Networth (SALN) as of Taxable Year 2005 pursuant to RA 9480, what should such statement contain?

A-11 The SALN should contain the following:

a. Assets within or without the Philippines (in the case of resident and non-resident citizens and domestic corporations) or assets within the Philippines (in the case of resident and non-resident foreign corporations, resident and non-resident aliens), whether real or personal, tangible or intangible, whether or not used in trade or business:

1. Real properties shall be accompanied by a statement of the following information:

- i. TCT/OCT/CCT Number;
- ii. Tax Declaration Number;
- iii. Classification;
- iv. Description;
- v. Exact Location;
- vi. Measurement (in square meter); and
- vii. Value

2. Personal properties other than money e.g. automobiles, shares of stock, investments, etc.), shall state the following:

- i. Quantity;
- ii. Kind of asset;
- iii. Description (e.g. Certificate of Registration, Machine Number); and
- iv. Value

3. Assets denominated in foreign currency converted into the corresponding Philippine currency at the rate of exchange prevailing as of Balance Sheet date;

4. Cash on hand and in bank in peso as of Balance Sheet date as well as cash on hand and in bank in foreign currency converted to peso at the rate of exchange prevailing as of Balance Sheet date.

b. All existing liabilities which are legitimate and enforceable, secured or unsecured, whether or not incurred in trade or business, disclosing or indicating clearly the name and address of the creditor and the amount of the corresponding liability as of SALN date.

c. The total networth of the taxpayer which shall be the difference between the total assets and

total liabilities.

Q-12 For amnesty availment purposes, what are the valuation rules?

A-12 The following valuation rules should be observed for purposes of availment of the TAP:

FOR CORPORATIONS –

All assets, liabilities and networth shall be valued and reflected in the SALN/ BalanceSheet following/observing pre-vailing Philippine Financial Reporting Standards (PFRS/IFRS) unless a different rule is mandated or allowed by the concerned regulatory agency, e.g. SEC, etc.

FOR INDIVIDUALS –

a. For business-related assets and/or liabilities and networth, valuation should follow the Generally Accepted Accounting Principles (GAAP).

b. For non-business-related assets and/or liabilities and networth, valuation should be at cost, if acquired through purchase or at Fair Market Value, if acquired through inheritance or donation. Valuation shall be at Fair Market Value/Zonal Value at the time of death or the date of donation, whichever is applicable.

FOR COOPERATIVES, FOUNDATIONS AND PARTNERSHIPS –

The valuation of the assets and liabilities and networth shall follow the mandated rules of the concerned regulatory agency namely: Securities and Exchange Commission (SEC), Cooperatives Development Authority (CDA), etc.

FOR ESTATE –

For estate under administration, the valuation of assets and liabilities and networth shall follow GAAP; whereas for estate not under administration, the valuation of assets, liabilities and networth shall follow GAAP, for business-related assets, and valued at cost if assets/liabilities are acquired by purchase or at fair market value, if assets/liabilities are acquired through donation or inheritance, for non-business related assets/liabilities.

FOR TRUST –

The valuation of assets and liabilities and networth shall follow GAAP.

Q-13 What are the procedures for availment?

A-13 A person or entity who would wish to avail of the Tax Amnesty shall follow these procedures:

a. Accomplish and prepare for submission the following forms:

1. NOTICE OF AVAILMENT OF TAX AMNESTY FORM, to be filled up by the person who will avail of the tax amnesty (such form can be presented to the BIR representative for proper computation or taxpayer himself can compute for the amnesty amount);
2. Statement of Assets, Liabilities and Networth (SALN) as of Balance Sheet date and/or the Balance Sheets, both original and amended, in case where the taxpayer had previously filed his/its Balance Sheet together with the income tax return for 2005;
3. Tax Amnesty Return (BIR Form No. 2116);
4. Payment Form (BIR Form No. 0617)
5. Such other documentary requirements that may be required, as discussed in subsequent paragraphs.

b. Pay the Amnesty Tax:

The taxpayer shall pay the amnesty tax using Amnesty Tax Payment Form No. 0617 to the authorized agent bank or in the absence thereof, the Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business/place of work.

c. File the Amnesty Tax Return:

➤ After payment, the Notice of Availment of Tax Amnesty, the Tax Amnesty Return, together with the SALN/Balance Sheet, both original and amended, and a copy of the TAX AMNESTY PAYMENT FORM (BIR Form 0617) shall be filed as follows:

- Residents shall file with the Revenue District Office (RDO)/Large Taxpayer District Office (LTDO) of the BIR which has jurisdiction over the legal residence or principal place of busi-

ness/employment of the taxpayer, as the case may be. (The head of the RDO/LTDO shall create an Amnesty Task Force which is in charged of receiving Amnesty Tax Availment and giving advice, if needed.)

- Non-residents shall file with the Office of the Commissioner of the BIR, or with any RDO.

Q-14 For taxpayers who had been filing their correct networth and have no additional asset to declare further, but would like to participate in the amnesty program, will they be allowed to do so?

A-14 In cases where the taxpayer decides to avail but does not declare additional assets or decides that he/it should not make any amendments of his/its networth as December 31, 2005, he/it can avail of the amnesty program by paying five percent (5%) of the total declared networth as of Balance Sheet date in 2005 or the prescribed minimum absolute amount, whichever is higher.

Q-15 In lieu of the SALN, can taxpayers be allowed to file a Balance Sheet for purposes of tax amnesty availment?

A-15 While the Balance Sheet may be equivalent to the SALN, the regulations have prescribed a specific SALN format to be filled-up and submitted for purposes of availment. Thus, in the availment of the tax amnesty, the Balance Sheet should be converted to the SALN format as provided by the BIR in the SALN form.

Q-16 Can taxpayer amend its 2006 Balance Sheet to reflect the 2005 SALN/networth as beginning balance for 2006?

A-16 Amendments of 2006 Balance Sheet shall be allowed even if Letters of Authority (LAs), Tax Verification Notices (TVNs) or audit notices (ANs) were already issued only if the taxpayer avails of the TAP. The amendment should be limited only to increase in previously declared business-related assets and networth. The purpose of the amendment is for the taxpayer to reflect the newly reported asset and therefore reflect the correct beginning networth of the taxpayer in 2006. No other item in the Financial

Statements can be amended within three (3) years from submission thereof or when an LA/AN/TVN has already been issued within the said three-year period. Resulting effect to nominal accounts shall be closed directly to Retained Earnings, for corporate taxpayers, and Capital, for individuals and partnerships.

Q-17 May husband and wife be allowed to submit only one SALN? Would they be separately liable for the minimum amount of amnesty tax if they avail of the amnesty?

A-17 No. They have to submit two separate SALNs reflecting their exclusive properties and liabilities as well as their respective shares in the conjugal properties and liabilities. In such a case, the tax amnesty liability of each spouse shall be the higher amount between the 5% of his/her total declared networth or increase in his/her networth and the minimum absolute amount of P50,000.

Q-18 Will individuals engaged in business submit two SALNs - one strictly for business-related assets/ liabilities/networth and another one for nonbusiness related assets/ liabilities/networth?

A-18 An individual taxpayer/availer shall submit only one SALN or Balance Sheet presenting the assets and liabilities and networth into two major groups which are those that are classified as business-related and those that are non-business related.

Q-19 In the case of a representative office in the Philippines of a foreign corporation which is only required to file audited statements of receipts and disbursements, what would be the content of the SALN to be filed?

A-19 The resident foreign corporation shall report assets and liabilities and networth related to the business in the Philippines and the amnesty tax shall be the 5% of the total declared Philippine networth or 5% of the resulting increase in Philippine networth, whichever is applicable, or the minimum absolute amount, whichever is higher.

Q-20 What would be used as basis in determining the minimum amnesty payment of a local branch of a foreign corporation where the subscribed capital stock is not determinable for this purpose?

A-20 The basis of the 5% shall be the networth or increase in networth of the branch located in the Philippines, whichever is applicable, and the amnesty tax payable is whichever is higher between the resulting product therefrom and the minimum absolute amount prescribed by the Tax Amnesty Law where the subscribed capital refers to the assigned capital in the Philippine Branch lodged in the account "Due to Head Office".

Q-21 Can the SALN be presented using US dollars or the company's functional currency?

A-21 Yes. The SALN can be presented in US dollars or the company's functional currency provided that the peso value shall also be shown in the SALN converted using the exchange rate as of Balance Sheet date.

Q-22 The SALN prescribed by BIR appears to be very specific as to description of assets and liabilities. Is it also applicable to big companies (such as the banks which have accounts receivables, ROPOAs, stocks traded, investments, inventories) whose assets and liabilities are so varied and numerous which would require substantive schedules to detail the specific description of all of their accounts? Are they still required to comply strictly with this requirement?

A-22 Yes, these companies should file and declared ALL their assets and liabilities and networth using the SALN format prescribed by the BIR.

Q-23 Can a taxpayer who has availed of the tax amnesty still be issued a Letter of Authority or TVN to audit his tax liabilities for the year 2005 and prior taxable years?

A-23 Yes, but the audit shall be limited only to withholding taxes, unpaid self-assessed taxes and funds collected from customers held in trust for

the Government.

Q-24 How do we compute the minimum increase in networth in case a taxpayer wants to avail of the tax amnesty due to the discovered under declaration of sales as a result of TRS-Letter Notice (TRS-LN) matching as illustrated below:

AGENT-TAXPAYER RECONCILIATION:

	VAT TAX	PERCENTAGE INCOME TAX
Discrepancy on gross sales/revenue/receipt	13,500,000	15,000,000
 DISCREPANCY ON TAXES WITHHELD CLAIMED BY PAYEE	 0	 1,000,000

A-24 Taxpayers who want to avail of the tax amnesty program because they have underdeclarations of sales/income as shown in the TRS-LN can avail of the program provided that the underdeclared/ undeclared sales shall be treated as undeclared assets.

The higher amount (gross sales/revenue/ receipt) in the table of discrepancies as shown above, shall be added to any increase in the networth. Hence, in the example above, 5% of P15,000,000 (on the assumption that P15,000,000 is the only increase in networth) which is P750,000 or the prescribed minimum absolute amount, whichever is higher, shall be the tax amnesty payment.

Discrepancy on taxes withheld claimed by the payee is not covered by the tax amnesty it representing unpaid self-assessed tax.

Discrepancy discovered under the module “Agent Reconciliation” is not covered by the tax amnesty it representing error in withholding tax computation and remittance.

Q-25 I have an ongoing examination for taxable period 2004 and no assessment yet has been issued. Can I avail of the tax amnesty? What will happen to the examination?

A-25 The company can avail of the amnesty. Upon presentation of the duly received Notice of

Availment, Tax Amnesty Return, payment form, SALN and the other documentary requirements, the LA/TVN and Audit Notice pertaining to that taxable year shall be deemed cancelled except for those specifically excluded by law, e.g. withholding tax, unpaid self-assessed tax, funds collected from customers for remittance to the BIR as these are funds held in trust for the Government.

Q-26 We have been issued a Final Assessment Notice (FAN) on which we have filed a protest. Can we still avail of the amnesty?

A-26 As a rule, duly protested FAN can be covered by the tax amnesty, except those excluded under existing rules (e.g. Withholding Tax Liabilities; Taxes passed on and collected from customers for remittance to the Bureau of Internal Revenue (BIR); Delinquent Accounts/ Accounts Receivable assets of the Bureau of Internal Revenue/Government, including unpaid self-assessed tax; issues that were already ruled by the Court in favor of the Bureau of Internal Revenue/Government prior to amnesty availment of the taxpayer, etc.).

Q-27 If BIR suspects commission of tax fraud for taxable year 2005 and prior years, can the taxpayers still avail of the TAP?

A-27 Yes. What is not covered by the amnesty tax law are pending criminal cases filed in court as well as tax evasion cases and cases under the BIR RATE Program already filed with the DOJ on or before the date of effectivity of the tax amnesty law which is June 16, 2007.

Q-28 If a company which is in a deficit position (negative networth) amends its Balance Sheet to include additional assets resulting to a reduction in deficit, can it avail of the amnesty tax law on the change in networth (still in a deficit position)? What about companies in deficit position that will not amend their Balance Sheets but would want to avail of the tax amnesty, can they qualify?

A-28 Only companies reflecting positive networth

can avail of the tax amnesty law.

Q-29 Can payments under the NAP, IVAP and EVAP be deducted from amnesty payment?

A-29 No, these types of administrative amnesty payments are not allowed to be deducted from the Tax Amnesty payments under RA 9480.

Q-30 Can the tax amnesty payments be allowed as deductible expense?

A-30 No. The amnesty tax is a non-deductible expense for tax purposes.

Q-31 What is the extent of examination which the BIR can conduct on the books and record of taxpayers who would availed of the tax amnesty but have pending claim for refund/tax credit before the BIR or DOF or BOC or the Courts?

A-31 The examination of the said books of accounts and other records shall be limited to the purpose of verifying whether the claim for refund /tax credit is valid and duly supported and substantiated. Disallowances may be made on the tax refund/tax credit being claimed on account of the findings made as a result of the verification . Tax assessments can still be issued on the audit coverage.

Q-32 May surviving or new corporations avail of the tax amnesty in behalf of the corporations absorbed or dissolved pursuant to a merger or consolidation that took effect prior to Taxable Year 2005? Can they avail of the Tax Amnesty?

A-32 Yes, these companies can avail of the tax amnesty for purposes of obtaining tax clearances for the dissolved or absorbed corporations.

Q-33 What about retiring corporations under liquidation and/or dissolution, can they avail of the tax amnesty law?

A-33 Yes, the program is also available to retiring companies under liquidation and/or dissolution.

Q-34 If there is already an ongoing investigation when the tax amnesty is availed of and the covering LA includes all internal revenue taxes, will the investigation be allowed to continue?

A-34 Yes, but the investigation will cover only the withholding taxes and the collection of unpaid self assessed taxes and taxes passed-on and collected from customers for remittance to the BIR which are considered as funds held in trust for the Government.

Q-35 Is there only one application for the tax amnesty covering taxable year 2005 and prior years or should the taxpayer file an amnesty application on a per year basis?

A-35 Yes, the tax amnesty is a one-time availment and it shall cover taxable year 2005 and all prior years.

Q-36 Will the BIR suspend LAs issued for taxable years 2004 and 2005 to pave the way for the taxpayers to avail of the tax amnesty?

A-36 No. The investigation and other legal processes on the said taxable years shall continue. The only time such investigation will cease is upon presentation of the proof that the taxpayer has availed of the tax amnesty.

Q-37 Can the excess creditable withholding taxes (CWT)/input taxes, taxes carried-over, Tax Credit Certificates (TCCs), Tax Debit Memo (TDMs) be used as payment for amnesty tax?

A-37 No. Excess CWT/input taxes, taxes carried-over, TCCs or TDMs cannot be used as payment for the Amnesty Tax. Only CASH payments are allowed.

Q-38 Can the taxpayer pay the amnesty tax on installment?

A-38 No, the law does not provide for installment payments. Full payment of the tax amnesty amount is required for the availment of the program.

Q-39 Are PEZA-registered companies, business enterprises operating within the Freeport Zones (Subic, Clark, etc.), and

business enterprises operating within the other Special Economic Zones covered by the Tax Amnesty?

A-39 Yes. All corporations liable for internal revenue taxes may avail of the tax amnesty. The law does not make of any distinction.

Q-40 Our company is a PEZA-registered entity paying 5% GIT where 3% thereof represents the share of the National Government and the remaining 2% represents the share of the LGU. Does this mean that in the availment of the tax amnesty, there is a need to pay the 2% of the 5% tax amnesty rate to LGU?

A-40 The amnesty tax covers only national internal revenue taxes. The LGU does not have a direct share on the 5% amnesty tax, and therefore the entire 5% amnesty tax payment shall be paid directly to the BIR through its authorized collection agents.

Q-41 For purposes of determining the zonal value or fair market value of properties forming part of an estate, in what period should the valuation be based for purposes of tax amnesty availment (Should it be in the year when the decedent died or should it be the value in year 2005)?

A-41 The valuation of the properties of the decedent shall be at the time of death.

Q-42 In case of estate under administration, who is the person liable to avail of the tax amnesty?

A-42 In case of estate under administration, the one that should avail of the tax amnesty for the estate is the administrator/executor of the estate, in representation of the estate.

Q-43 In case of estate not under administration, who is the person liable to avail of the tax amnesty?

A-43 In case of estate not under administration, the persons liable to avail of the tax amnesty shall be the estate and the heirs.

Q-44 If the estate involved is still in the name of another decedent, can the present holder declare one estate tax return/amnesty tax return for all the other decedents through which this property shall pass?

A-44 No. The present holder shall file tax amnesty return for each decedent.

Q-45 What will be the basis of the amnesty tax payment of estate?

A-45 The basis of the amnesty tax payment of the estate shall be the networth of such estate valued at the time of death of the decedent.

Q-46 How do we compute the networth of an estate?

A-46 Networth is equal to assets less liabilities. For purposes of computing the networth of the estate, only the decedent's exclusive properties and liabilities as well as share in the conjugal assets and liabilities shall be included. The deductible liabilities shall refer to unpaid legitimate and enforceable obligations incurred in acquiring the properties included in the gross taxable estate.. Thus, family home, medical expenses incurred, funeral expenses incurred, standard deduction and other deductions not related to the acquisition of the properties forming part of the gross taxable estate are not allowed as claimed liabilities for purposes of computing the networth of the estate for tax amnesty availment purposes.

Q-47 Are Delinquent Accounts/ Accounts Receivable, including unpaid selfassessed taxes, in the records of the BIR which are already Accounts Recievable of the BIR/ assets of the Government as of date of amnesty availment by the taxpayer still covered by such amnesty availment?

A-47 No. This is so because these are already properties/assets of the Government prior to/upon taxpayer's date of amnesty availment.

Q-48 In the case of transactions involving sale of real property and/or donation of real property, are these covered by the tax amnesty program?

A-48 The only instance when these transactions may be covered by the tax amnesty program is when the real property has already been transferred and/or declared in the name of the taxpayer/donee and the capital gains tax/DST/donor's taxes have already been paid but during the time of transfer there was underdeclaration in the selling price/consideration or undervaluation made in the declaration of such real property.

In availing of the tax amnesty, the resulting increase in networth cannot be lower than the amount representing the difference between the true and correct value of the real property and the previously declared value. The resulting increase in the networth is still the basis of the 5% amnesty tax rate which is compared with the prescribed minimum absolute amount and the amnesty tax payable is the higher amount between the two compared amounts.

Q-49 Are tax assessments that are disputed administratively or judicially still covered by the tax amnesty law?

A-49 As a rule yes, except those cases excluded from the coverage of the Tax Amnesty Program as discussed in this CIRCULAR and those cases involving issues that have already been ruled by the trial court/appellate court in favor of the BIR/Government prior to taxpayer's availment of the amnesty law.

Q-50 If the real property of the taxpayer is registered in the name of another person, can taxpayer declare the said property in his SALN and pay the amnesty tax?

A-50 No, because this kind of scenario is not covered by the tax amnesty program.

Q-51 Are corporations that filed notice of dissolution to the BIR as of taxable year 2005 covered by the tax amnesty? Upon presentation of proof of availment, will the BIR issue the corresponding tax clearance?

A-51 Yes, the dissolving corporations as of taxable year 2005 can be covered by the tax amnesty for as long as in the availment thereof, they pay 5% of the increase in the networth

determined by comparing original SALN with amended SALN as of said year or 5% of the networth as of Balance Sheet/SALN date, whichever is applicable, which resulting amount should not, of course, be lower than the prescribed minimum absolute amount. Consequently, upon availment and resresentation of proof of availment, the BIR will issue the corresponding tax clearance.

Q-52 In the filing of the amended 2005 SALN/ Balance Sheet for purposes of tax amnesty availment, should the same require the opinion of an independent auditor?

A-52 No. The amended SALN/Balance Sheet is considered as a truthful declaration by the taxpayer himself which does not need an evidence *aliunde* to establish its correctness.

Q-53 In case a company is originally classified as tax exempt but currently its status is in question, can such company avail of the tax amnesty?

A-53 Yes. The basis of such exempt entity of the tax amnesty rate of 5% shall be the total networth or the resulting increase in networth, whichever is applicable, but the amnesty tax payable is still the higher amount between the resulting figure therefrom and the prescribed minimum absolute amount.

Q-54 Is it possible to amend the SALN already filed under the Tax Amnesty Program?

A-54 Yes. As long as the next amendment would reflect only an inclusion of additional asset with corresponding increase in networth. No reduction in payment shall be allowed.

Q-55 Can minors avail of the tax amnesty?

A-55 Yes, minors who would want to avail of the TAP may avail provided that their amnesty tax payment is the higher amount between the resulting product of 5% of his total declared networth or 5% of the increase in networth, as the case maybe, and the prescribed minimum absolute amount of P50,000.

Q-56 In cases where the taxpayer has already

agreed to pay the deficiency taxes and has in fact already entered into an agreement with the Bureau to pay such deficiency taxes on installment basis, will the same be covered by the tax amnesty?

A-56 No. The taxpayer who has already entered into an agreement with the BIR to pay taxes, whether in full amount or on installment basis, can no longer avail of the tax amnesty in so far as this particular tax case is concerned. It/he can avail of tax amnesty to cover its/his other tax liabilities, if there is no legal impediment for such availment.

Q-57 Are tax cases covered by compromise agreement and/or abatement agreement in accordance with existing revenue regulations relative to the compromise settlement program and abatement program of the Bureau covered by the tax amnesty?

A-57 No, such cases which have been covered by the compromise program or abatement program of the Bureau can no longer avail of the tax amnesty insofar as the tax subject of the compromise/ abatement is concerned.

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REVENUE MEMORANDUM CIRCULAR NO. 73-2007

Re-issuing the Guidelines on the Proper Treatment of Block Sale of Shares of Stock Disposed of in the Stock Exchange.

The National Internal Revenue Code has traditionally made a distinction between shares of stock that are listed and traded in the Stock Exchange from those that are not. Briefly, under Section 127 of the Tax Code of 1997, sale, barter, exchange or other disposition of shares of stock other than the sale by a dealer in securities, are taxed at the rate of 1/2 of 1% of the gross selling price or gross value in money provided the shares are listed and traded through the local stock exchange; while on the other hand, for shares that are not disposed of through the local stock exchange, a final tax at either 5% or 10% is imposed on the net capital

gains under Section 24(C); Section 25(A)(3); Section 25(B); Section 27(D)(2); Section 28(A)(7)(c) and Section 28(B)(5)(c), all of the Tax Code of 1997, as amended.

The fundamental principle underlying this preferential treatment was and still is the national goal of promoting and hastening the development of the domestic capital market by means of enticing and stimulating the general public to actively take part in the trading in the local stock exchange.

In order to keep-up with modern developments and more importantly give emphasis on the economic as well as substantial aspect rather than on the formal portion of the transaction, sale of shares of stock where the sale is prearranged or the buyer/s is predetermined is taxable under either Section 24(C); Section 25(A)(3); Section 25(B); Section 27(D)(2); Section 28(A)(7)(c) and Section 28(B)(5)(c) notwithstanding the fact that the transaction passed through the Exchange or the said facility was used.

Accordingly, any transaction, which in effect excludes the public by any means from taking part in the trading, shall be taxed under the aforementioned relevant provisions as enumerated in the preceding paragraph.

This Circular expressly covers but is not limited to cases of block sale. A block sale as defined in the Implementing Rules and Regulations of the Securities Regulation Code is a matched trade that does not go through the automated order matching system of an Exchange trading system but instead has been prearranged by and among the Broker Dealer's clients and is then entered as a done deal directly into the trading system.

All internal revenue issuances which are inconsistent herewith, are hereby repealed, modified, and/or amended accordingly.

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**REVENUE MEMORANDUM
CIRCULAR NO. 76-2007**

Prescribes the additional mandatory documentary requirements for one-time transactions involving transfers of real property.

The following are the mandatory documentary requirements to be submitted in addition to the checklist of requirements prescribed under Revenue Memorandum Order (RMO) No. 15-2003:

a. Photocopy of the official receipts issued by the seller, for purposes of determining whether the sale of real property is on cash basis, a deferred payment sale (when payments in the year of sale exceed 25% of the selling price) or on installment plan (when payments in the year of sale do not exceed 25% of the selling price). The original copy of the official receipts shall be presented to the Bureau of Internal Revenue (BIR) for authentication during the processing of the application for Certificate Authorizing Registration (CAR).

However, if the seller is not engaged in business, the acknowledgement receipts issued by the seller to the buyer or any proof of payment shall be presented.

b. Certified true copy of the original CAR (copy of the Registry of Deeds) pertaining to the transfer of property prior to the issuance of Original Transfer Certificate of Title (OCT/TCT) or Condominium Certificate of Title (CCT) which is the subject of the current sale/transfer, or certification issued by the Registry of Deeds indicating the serial number of the CAR, date of issuance of CAR, the Revenue District Office Number of the district office that issued the CAR, the name of the Revenue District Officer who signed the CAR, the type of taxes paid and the amount of payment per tax type. The aforementioned document shall be submitted for OCT/TCT/CCT issued starting 2007, in case the Register of Deeds fails to annotate the information contained in the CAR.

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**REVENUE MEMORANDUM
CIRCULAR NO. 82-2007**

Circularizes the taxpayer's responsibility for representations made in their behalf by their tax agents.

It has been reported that taxpayers whose tax returns (together with the necessary attachments) were prepared, signed and filed in their behalf by their tax agents/accountants are disowning responsibility for any errors discovered in, or audit findings made on, such returns and documents.

Taxpayers are therefore advised that the contents and representations— as they are reflected in the tax returns and information statements filed with the Bureau of Internal Revenue (BIR) – made in their behalf by their tax agents, remain their responsibility in their capacity as the principals stated in the aforesaid returns and information statements. In this regard, a taxpayer is under strict obligation to check, verify and validate:

- a. The authenticity of a tax return and/or information statement made in their behalf; and
- b. The correctness and validity of the information contained in such documents. In cases where it is found that the purported tax payments were not actually received by the BIR, the liability to pay said tax payments again shall remain the responsibility of the concerned taxpayers, even if it should be claimed that such tax payments had already been made in their behalf by their tax agents. Effective January 2008, all Collecting Offices (the Large Taxpayers Service, the Regional and District Offices) are directed to verify and authenticate the validity and correctness of all tax returns prepared, signed and filed by tax agents in behalf of their clients.

Any findings, errors, violations or infractions noted as a result of such verification and authentication procedures shall render both the taxpayer and his/its tax agent civilly, administratively and criminally liable, pursuant to existing laws and regulations.

**REVENUE MEMORANDUM
CIRCULAR NO. 90-07**

For the information and guidance of the taxpaying public and all internal revenue officers and others concerned, this Revenue Memorandum Circular is issued to clarify certain issues relative to Q & A No. 28 of RMC No. 69-2007. Q & A No. 28 as stated under RMC No. 69-2007 provides that only companies reflecting positive networth can avail of the tax amnesty law thereby excluding all taxpayers who will be reporting capital deficit from enjoying the benefits of the Tax Amnesty Law. After careful deliberations, however, and in response to the clamor of the taxpayers who have good intentions of straightening their records and at the same time help the government in raising the much needed revenue, this amendatory RMC is hereby issued to accord similar benefits to taxpayers in a capital deficit position who will be availing of the tax amnesty. Thus, Q & A No. 28 is hereby revised to read as follows:

“Q-28 If a company which is in a deficit position (negative networth) amends its Balance Sheet to include additional assets resulting to a reduction in deficit, can it avail of the amnesty tax law on the change in networth (still in a deficit position)? What about companies in deficit position that will not amend their Balance Sheets but would want to avail of the tax amnesty, can they qualify?

A-28 Yes, companies in a deficit position can likewise avail of the tax amnesty provided that amendments to the Balance Sheet shall be made resulting to a reduction in the reported deficit.

The resulting decrease in the deficit shall be the basis for the computation of the five percent (5%) amnesty tax rate and the amnesty tax payable is whichever is higher between the resulting figure after applying the five percent (5%) on the reduction in capital deficit or the prescribed minimum absolute amount.

Companies in a deficit position who will not amend their Balance Sheets are not qualified to avail of the tax amnesty.”

**REVENUE REGULATIONS
NO. 15-2007**

Promulgated in order to give the taxpayers the opportunity to settle their preliminary or final assessments, disputed/protected administratively or judicially, by way of application for payment of basic tax and abatement or cancellation of all penalties, including surcharge and interest.

Before an assessment reaches finality, the liability of the taxpayer is not yet certain and, therefore, the imposition of penalties at this stage appears to be unjust and/or makes the assessment excessive. This paves the legal avenue for the abatement thereof because pursuant to Section 204(B) of the Code, as amended, the Commissioner is authorized to abate or cancel tax liability and/or the penalties thereon when the tax or any portion thereof appears to be unjustly or excessively assessed, or the administration and collection costs involved do not justify the collection of the amount due. Accordingly, herein program of abatement of penalties would encourage taxpayers to pay the basic tax assessed as soon as possible to avoid the rigors of a protracted protest/litigation process.

The following cases, with duly issued Assessment Notice as of November 29, 2007, involving taxable year ending December 31, 2005 and prior years, shall be covered hereof:

- a) Cases under administrative protest pending in the Regional Office, Revenue District Office, Legal Service, Large Taxpayer's Service (LTS), Collection Service, Enforcement Service and other Offices in the National Office; and
- b) Civil tax cases being disputed before the Department of Justice and the courts, e.g., MTC, RTC, CTA, CA and SC, including cases with decision which are not yet final and executory.

The following cases, however, shall be excluded:

- a) Cases involving issues decided by the

- Supreme Court with finality unless the issues involved difficult question of law or issues without established precedent ruling or Supreme Court Decision at the time of the transaction;
- b) Cases where the Presidential Commission on Good Government (PCGG) has an interest and/or there is a need to coordinate with the PCGG; and
 - c) Withholding tax cases.

The filing of the application and payment of an amount equal to One Hundred Percent (100%) of the Basic Tax assessed shall be made **not later than February 29, 2008, unless extended by the Commissioner on meritorious grounds**, with the Accredited Agent Bank (AAB) of the RDO/LTS/Large Taxpayers District Office (LTDO) that has jurisdiction over the taxpayer. In the absence of an AAB, payment may be made with the Revenue Collection Officer/Deputized Treasurer of the concerned BIR Office that has jurisdiction over the taxpayer.

The Commissioner has the sole authority to abate or cancel internal revenue taxes, penalties and/or interest pursuant to Section 204(B), in relation to Section 7(c), both of the National Internal Revenue Code of 1997. Nonetheless, this program covers just the abatement of penalties and interest, and the processing of the cases shall be coursed through the following officials:

- a) The Deputy Commissioner-Operations Group, who shall constitute a TWC for the evaluation and review of any application for abatement or cancellation of penalties and/or interest on disputed assessments/protested cases of taxpayers under the jurisdiction of the Region;
- b) The Assistant Commissioner/concerned Head Revenue Executive Assistant of the LTS, who shall constitute a TWC for the evaluation of application for abatement of penalties and interest on protested/disputed/litigated assessments of taxpayers under the jurisdiction of the Large Taxpayers Service.

The application for abatement or cancellation of penalties and/or interest, together with complete supporting documents (Assessment Notice, Payment Form), should be transmitted by the concerned Offices mentioned in Sec. 3 hereof to the respective TWCs within five (5) days from receipt by said office. The concerned TWC has fifteen (15) days within which to act on the case.