REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

March 14, 2011

REVENUE MEMORANDUM CIRCULAR NO. 35-2011

SUBJECT : Clarification of Issues Concerning the Imposition of Improperly Accumulated Earnings Tax Pursuant to Section 29 of the Tax Code of 1997, in relation to Revenue Regulations No. 2-2001

TO : All Revenue Officers and Others Concerned

I. BACKGROUND

This Revenue Memorandum Circular (RMC) is being issued to clarify certain issues relative to the imposition of the 10% Improperly Accumulated Earnings Tax (IAET) pursuant to Section 29 of the National Internal Revenue Code of 1997 (Code), as amended, as it applies to the taxable income earned starting January 1, 1998 by closely-held domestic corporations, except publicly held corporations, banks and other non-bank financial intermediaries, insurance companies, and those enumerated under Section 4 of Revenue Regulations (RR) No. 2-2001.

Under Section 29 of the Code, as amended, a Corporation that permits the accumulation of earnings and profits beyond the reasonable needs of the business, instead of dividing or distributing said profits, is subject to ten percent (10%) improperly accumulated earnings tax on the improperly accumulated taxable income.

II. DEFINITION OF IMPROPERLY ACCUMULATED TAXABLE INCOME

Section 29(D) of the Code, as amended, defines the term Improperly Accumulated Taxable Income as “taxable income adjusted by:

(1) Income exempt from tax;
(2) Income excluded from gross income;
(3) Income subject to final tax; and
(4) The amount of net operating loss carry-over deducted;

And reduced by the sum of:
(1) Dividends actually or constructively paid; and
(2) Income tax paid for the taxable year.

Provided, however, That for corporations using the calendar year basis, the accumulated earnings under tax shall not apply on improperly accumulated income as of December 31, 1997. In the case of corporations adopting the fiscal year accounting period, the improperly accumulated income not subject to this tax, shall be reckoned, as of the end of the month comprising the twelve (12)-month period of fiscal year 1997-1998."

III. COMPUTATION OF IMPROPERLY ACCUMULATED TAXABLE INCOME

By way of illustration, Improperly Accumulated Taxable Income (**IATI**) is computed as follows:

Taxable Income for the year (e.g., 2010)			P	xxxx
Add:				
(a) Income subjected to Final Tax	P	xxx		
(b) NOLCO		xxx		
(c) Income exempt from tax		xxx		
(d) Income excluded from gross income		xxx		xxxx
			P	xxxx
Less:				
Income Tax paid	P	xxx		
Dividends declared/paid		xxx		xxxx
Total			P	xxxx
Add: Retained Earnings from prior years				
Accumulated Earnings as of December 31, 2010				
Less: Amount that may be Retained				
(100% of Paid-Up Capital as of December 31, 2010)				xxxx
IATI			P	xxxx

<u>The resulting "Improperly Accumulated Taxable Income" is thereby multiplied by 10% to arrive at the Improperly Accumulated Earnings Tax (IAET).</u>

For purposes of this RMC, and in accordance with RR No. 2-2001, the amount that may be retained, taking into consideration the accumulated earnings within the "reasonable needs of the business" as determined under Section 3 of the said RR, shall be 100% of the paid-up capital or the amount contributed to the corporation representing the par value of the shares of stock, hence, any excess capital over and above the par shall be excluded.

IV. REPEALING CLAUSE

All BIR rulings and other issuances issued inconsistent herewith are revoked accordingly.

All concerned revenue officials are hereby enjoined to be guided accordingly and to give this Circular as wide a publicity as possible.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue