June 8, 2021

BIR RULING NO. OT-202-21

Sec. 29, NIRC; BIR Ruling No. 1398-2018

SGV & Co.
6760 Ayala Avenue
1226 Makati City

Attention: *AAA*

Gentlemen :

This refers to your request, on behalf of **MTI Advanced Test Development Corporation (MTI)**, for confirmation of your opinion that MTI is exempt from Improperly Accumulated Earnings Tax (IAET) on the basis that it is not a closely-held corporation pursuant to Section 29 of the National Internal Revenue Code of 1997 ("1997 Tax Code"), as amended.

BACKGROUND

MTI, with registered office at Units 305-309 3rd Floor Ayala Life FGU Center, Acacia Avenue cor. Alabang-Zapote Rd., Madrigal Business Park, Alabang, Muntinlupa City, was registered with the Philippine Securities and Exchange Commission (SEC) on March 30, 2007 primarily to provide engineering support services in the areas of product validation and qualification, characterization and the development of manufacturing test procedures.

It is wholly-owned subsidiary of Microchip Technology, Incorporated (MTI-US), a company registered in the United States of America and publicly listed in the National Association Securities Dealers Automated Quotations (NASDAQ), an American stock exchange. At present, MTI's ownership structure is shown below:

Name of Shareholders	Number of shares	Percentage of ownership
Microchip Technology, Inc. (MTI-US)	_____	_____%

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BBB	_____	_____%
CCC	_____	_____%
DDD	_____	_____%
EEE	_____	_____%
FFF	_____	_____%
Total:	_____	_____%

Based on the letter dated March 12, 2013 issued by NASDAQ, MTI-US had approximately 140,000 shareholders as of June 22, 2012. In turn, based on the attached Certification executed by BBB in his capacity as _____ of MTI-US, the top 21 shareholders of MTI-US are as follows:

No. of Owners	Name of Beneficial Owner	No. of Shares Beneficially Owned	Percentage of Ownership
1	MFS Investment Management, Inc.	_____	_____
1	The Vanguard Group, Inc.	_____	_____
1	BlackRock Fund Advisors	_____	_____
1	SSgA Funds Management, Inc.	_____	_____
1	Wells Capital Management, Inc.	_____	_____
1	Waddell & Reed Investment Mgmt.	_____	_____
1	Citadel Advisors LLC	_____	_____
1	T. Rowe Price Associates, Inc.	_____	_____
1	Columbia Management Investment	_____	_____
1	GGG	_____	_____
1	RCM Capital Management LLC	_____	_____
1	Epoch Investment Partners, Inc.	_____	_____
1	Northern Trust Investments	_____	_____
1	Principal Global Investors LLC	_____	_____
1	Neuberger Berman LLC	_____	_____
1	Cramer Rosenthal McGlynn LLC	_____	_____
1	Edge Asset Management, Inc.	_____	_____
1	Munder Capital Management, Inc.	_____	_____
1	Santa Barbara Asset Management	_____	_____
1	Invesco PowerShares	_____	_____
1	American Century Inv. Mgmt.	_____	_____
21	**TOTAL**	_____	_____

* *The table above assumes that the investment and financial companies are considered as one shareholder. However, ultimately there may be more than one individual owner for*

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said shares.

** *With the exception of GGG, all shareholders listed above are funds with multiple shareholders.*

Based on the foregoing, you now request for a ruling confirming your opinion that MTI is exempt from the imposition of IAET on the basis that it is not a closely-held corporation pursuant to Section 29 of the 1997 Tax Code, as amended.

In reply, please be informed that Section 29 (A) and (B) of the 1997 Tax Code, as amended, and as implemented by RR No. 2-2001, provides that in addition to other taxes imposed by Title II of the same Code, there shall be imposed for each taxable year a tax equal to 10% of the improperly accumulated taxable income of corporations formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting the earnings and profits of the corporation to accumulate instead of dividing them among or distributing them to the shareholders.

Thus, IAET is being imposed in the nature of a penalty to the corporation for the improper accumulation of its earnings, and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax on the earnings distributed to them by the corporation. However, the IAET shall not apply to, among others, publicly-held corporations.

Section 29 of the 1997 Tax Code, as amended, provides, *viz.*:

"*SEC. 29. Imposition of Improperly Accumulated Earnings Tax. —*

XXX XXX XXX

(B) Tax on Corporations Subject to Improperly Accumulated Earnings Tax.

(1) In General. — The improperly accumulated earnings tax imposed in the preceding section shall apply to every corporation formed or availed for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being divided or distributed.

(2) Exceptions. — The improperly accumulated earnings tax as provided for under this Section shall not apply to:

(a) Publicly-held corporations;

(b) Banks and other non-bank financial intermediaries; and

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(c) Insurance companies.

xxx xxx xxx" (Emphasis supplied)

Furthermore, second paragraph of Section 4 of RR No. 2-2001 provides that:

> *"For purposes of these Regulations, closely-held corporations are those corporations at least fifty percent (50%) in value of the outstanding capital stock or at least fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by or for not more than twenty (20) individuals. Domestic corporations not falling under the aforesaid definition are, therefore, publicly-held corporations."*

The same Section further provides that "for purposes of determining whether the corporation is closely held corporation, insofar as such determination is based on stock ownership, stock owned directly or indirectly by or for a corporation, partnership, estate or trust shall be considered as being owned proportionately by its shareholders, partners or beneficiaries."

Based on the foregoing provisions, there is a need to determine the identities of the ultimate (individual) owners and their extent of stock ownership for the purpose of ascertaining the ownership of a corporation. In the instant case, considering that MTI is a wholly owned subsidiary of MTI-US and at least 50% of the outstanding capital of MTI-US is owned, directly or indirectly, by more than 20 individuals, MTI is not considered a closely-held corporation for IAET purposes.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

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