

REVENUE MEMORANDUM CIRCULAR NO. 60-2024 issued on May 9, 2024 provides clarifications and guidance on Section 6 of Revenue Regulations (RR) No. 4-2024 on the repeal of Section 34 (K) of the National Internal Revenue Code (NIRC) of 1997, as amended.

With the repeal of Section 34(K) – Additional Requirements for Deductibility of Certain Payments under the Ease of Paying Taxes (EOPT) Act, a particular income payment where a tax is required to be withheld can now be allowed as deduction from the gross income, even if no tax was withheld, provided the same is necessary, ordinary and duly substantiated expense related to the registered business of the taxpayer. Since the EOPT Act took effect on January 22, 2024, a question arose if the repeal of the said provision may be applied to all assessed cases and on-going audits covering taxable periods prior to the effectivity of EOPT Act.

In this regard, all concerned are advised of the following policies and clarifications:

- a. On all ongoing audit covering taxable period prior to January 1, 2024 – expenses subject to Withholding Tax shall be allowed as deductions from gross income by the Revenue Officers (RO) only if the corresponding tax required to be withheld have been paid, whether prior to audit or submission of the audit report to the Reviewing Office.
- b. In a scenario where taxpayer failed to withhold the tax required to be withheld on expenses subject to Withholding Tax and the taxpayer did not pay the same prior to submission of the audit report to the reviewing office, the RO has to recommend for the issuance of assessment notice both on Income and Withholding Tax. This is in line with the provisions of RR No. 6-2018.
- c. On audit cases which are already submitted to the Reviewing Office
 - i. Paid Case – same application stated under Item a above;
 - ii. Assessed Case – apply the requirement of deductibility under the then Section 34 (K) of the NIRC, thus, assessment on both Income Tax and Withholding Tax shall be issued.

For taxable year covering January 1, 2024 onwards, expenses/income payments subject to Withholding Tax shall be allowed as deductions from gross income for purposes of computing taxable income even if no tax was withheld, provided the other requirements for deductibility have been met. However, the taxpayer shall still be liable for the payment of the corresponding Withholding Tax due on said income payments.