REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

30 April 2021

REVENUE MEMORANDUM CIRCULAR NO. 67 -- 2021

SUBJECT : Clarifies Issues Relative to the Temporary Reduction of Percentage Tax Rate Imposed Under Section 116 of the National Internal Revenue Code of 1997, as Amended (Tax Code) by Sec. 13 of R.A. No. 11534, Otherwise Known as the "Corporate Recovery and Tax Incentives for Enterprises Act" (CREATE)

TO : All Internal Revenue Officers and Others Concerned

This Circular is issued to answer frequently asked questions and clarify issues relative to the amendments made to Percentage Tax pursuant to 13 of R.A. No. 11534, otherwise known as the CREATE, as implemented by Revenue Regulations (RR) No. 4-2021.

Q1: ***The amendments to the Tax Code under the CREATE was intended for corporations. Was the decrease of Percentage Tax rate from three percent (3%) to one percent (1%) effective July 1, 2020 until June 30, 2023 pursuant to Section 13 of R.A. No. 11534 intended for corporate taxpayers only?***

A1: No. Sec. 116 of the Tax Code, applies to both corporate taxpayers and self-employed individuals and professionals whose gross sales or gross receipts are not exceeding the three million pesos (P3,000,000.00) threshold, except for cooperatives and self-employed individuals and professionals availing the 8% income tax rate.

Q2: ***Does the 1% percentage tax rate refer to those covered by Sec. 109(1)(CC) only or as a whole, meaning, those under Sec. 116 of the Tax Code?***

A2: Yes. The coverage is as a whole under Section 116 of the Tax Code, which provides that any person whose sales or receipts are exempt under Section 109(1)(CC) of the Tax Code from the payment of VAT and who is not a VAT-registered person shall be subject to percentage tax, provided, that the taxpayer did not opt to be VAT-registered even if the P3,000,000.00 threshold was not breached.

The reduced rate of 1% for percentage tax prescribed under Sec. 116 is imposed on transactions or activities which are neither specifically exempt under Sec. 109 of the Tax Code nor are subject to VAT, because they have not reached the three million pesos VAT threshold as provided for under Sec. 109(1)(CC) of the same Code.

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Q3: ***Are non-VAT-Registered taxpayers required to amend their Percentage Tax returns (BIR Form No. 2551Q) for the third (3rd) and fourth (4th) quarters of 2020 up to the effectivity of RR No. 4-2021 by using the 1% rate?***

A3: Yes. Taxpayers who filed their 3rd and 4th quarter Percentage Tax returns for 2020 and those who may have filed their 1st quarter percentage tax returns for 2021 using the 3% rate are required to amend their duly filed Percentage Tax returns using the 1% rate to reflect the overpaid taxes.

Q4: ***If the taxpayer will carry over the overpaid percentage taxes for the succeeding period/s, will amending the return be subjected to penalty for every amended return?***

A4: No. Amendment of the Percentage Tax returns is not subject to penalty for affected taxpayers which/who will carry over the overpaid percentage taxes.

Q5: ***Pursuant to the "Transitory Provisions" of RR No. 4-2021, excess Percentage Tax payments as a result of the decrease of tax rate from 3% to 1% starting July 1, 2020 until the effectivity of the said Regulations may be carried forward to the succeeding taxable quarter/s by reflecting the excess percentage tax payment under Line 17 of the Quarterly Percentage Tax Return (BIR Form No. 2551Q), does this mean that the taxpayer is already precluded from claiming tax refund for the overpayment?***

A5: Yes. The carry-over is intended for Percentage Taxpayers who are regularly filing the returns and are expected to have overpaid taxes as a result of the retroactive application of CREATE starting July 1, 2020. The transitory provisions in RR No. 4-2021 allows flexibility to affected taxpayers by allowing them to carry over the overpaid taxes in order for taxpayers to utilize the overpaid amount against future percentage tax liabilities.

Q6: ***Under what instances are percentage taxpayers allowed for refund?***

A6: Percentage taxpayers who have overpaid taxes as a result of the decrease of tax rate from 3% to 1% starting July 1, 2020 until the effectivity of RR No. 4-2021 are allowed for a tax refund in the event that:

a. The taxpayer shifted from non-VAT to VAT-registered status; or
b. The taxpayer has opted to avail the eight percent (8%) income tax rate at the beginning of TY 2021

Q7: ***For lack of option to carry over the overpaid amount in BIR Form No. 2551Q, what should the percentage taxpayer do to indicate the said option?***

A7: Please note that in the current Percentage Tax Return (BIR Form No. 2551Q), the only option reflected in the said form is for refund or issuance of tax credit certificate (TCC). The percentage taxpayer who shall carry-over the overpaid amount should observe the following guidelines:

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a. For taxpayers filing BIR Form No. 2551Q manually, neither of the options "To be Refunded" or "To be Issued a Tax Credit Certificate" shall be marked in the said tax return but rather write the phrase "To be Carried Over" on the return; or

b. For eFPS and eBIRForms filers, the option "To be Issued Tax Credit Certificate" shall be marked as a workaround procedure to proceed with the electronic filing. For purposes of the transitory provisions in Section 3 of RR No. 4-2021, it is presumed that the taxpayer will carry over the overpaid tax to the succeeding taxable quarter once the said option was chosen. However, if the taxpayer is intent in having the overpaid tax to be refunded or issued with TCC for any of the reason stated in Q&A No. 6, the BIR shall be informed thru BIR Form No. 1914 or the "Application for Tax Credits/Refunds" by indicating therein that it shall be in the form of refund or TCC.

The same procedure shall be undertaken, whether the return was filed manually or electronically, by the percentage taxpayer until the overpaid amount has been fully utilized.

Q8: ***In case the taxpayer has marked or has inadvertently marked either of the options for tax refund or TCC but opts to carry over the overpayment instead, will this be allowed?***

A8: Yes. If the percentage taxpayer will carry over the overpayment but has inadvertently marked either tax refund or issuance of TCC on the return, the Bureau will presume that the overpaid amount will be carried over. Once the overpayment has been carried forward, the option initially chosen shall automatically be superseded.

Q9: ***In case a percentage taxpayer carried over the alleged overpayment without amending the affected Percentage Tax returns to any quarter/s starting 2021, will the carried over percentage tax be disallowed?***

A9: Yes. The amended Percentage Tax returns showing the overpayment shall be the basis for the carry over.

Q10: ***How will the overpayment of percentage taxes be recovered by individuals under a job order or service contract agreement with the departments and agencies of the government, its instrumentalities, local government units (LGUs), state universities and colleges (SUCs), including government-owned and/or -controlled corporations (GOCCs) and government financial institutions (GFIs)?***

A10: The withholding agent/government agency shall be responsible in refunding the overpaid taxes of Individuals under Job Order or Service Contract Agreement, who availed of substituted filing on Percentage Tax pursuant to RMC No. 51-2018. Individual contractors claiming for the refund shall issue an authorization and shall surrender the certificates of withholding of percentage taxes (BIR 2306) with the withholding agent/government agency. The withholding agent/government agency shall carry over the over-remitted taxes to the next succeeding quarter/s in accordance with Section 3 of RR No. 4-2021, attaching thereto the authorization and the certificate (BIR 2306) from the payee.

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For Percentage taxpayers who are not substituted filers, the overpayment shall be carried forward to the succeeding quarter/s pursuant to the transitory provisions in Section 3 of RR No. 4-2021, assuming that the percentage taxpayer has not shifted from non-VAT to VAT registration status or did not avail of the 8% income tax rate pursuant to RMC No. 51-2018.

Q11: ***Are the government, its instrumentalities, LGUs, SUCs, including GOCCs and GFIs also required to amend the tax returns filed including the Alphalists if they will refund the overpaid taxes?***

A11: Yes. The government, its instrumentalities, LGUs, SUCs, including GOCCs and GFIs shall amend previously filed returns including the respective Alphalists, if any, but the reduction or resulting overpayment shall only be to the extent of the amount to be refunded.

Q12: ***Are the existing revenue issuances pertaining to percentage taxes prior to CREATE automatically repealed?***

A12: Yes. Under the CREATE, only the rate was reduced for percentage tax imposed in Sec. 116 of the Tax Code from 3% to 1% effective July 1, 2020 until June 30, 2023. Consistent with the repealing clause of Section 4 of RR No. 4-2021, previous issuances where the 3% percentage tax was mentioned were deemed modified and reduced to 1%.

Q13: ***For government money payments, please clarify the taxes that need to be withheld on purchases of goods or services from suppliers.***

A13: It is to be emphasized that there are two (2) types of withholding taxes involving government money payments pursuant to the provisions of RR No. 2-98, as amended, summarized as follows:

a. Income Tax – in the form of creditable withholding taxes with the rates depending on the nature of the transaction as required under existing issuances; and

b. Sales Tax – in the form of 5% creditable withholding VAT if the supplier is VAT-registered or 1% percentage tax if the supplier is subject to percentage tax under Section 116 of the Tax Code, or any other applicable rate depending on the transaction as prescribed under existing issuances.

Q14: ***Will the overpaid percentage tax be allowed as carry over or may be applied for refund/TCC if the percentage taxpayer has already claimed the same as a deduction part of the taxes and licenses in the Annual Income Tax Return for taxable year 2020?***

A14: No. If the whole amount of 3% percentage tax has been claimed as deductible expense for purposes of computing the income tax due, the taxpayer can no longer be allowed as carry over or apply for tax refund/TCC the alleged overpaid percentage tax.

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Q15: ***In order to qualify for the carry-over or refund of the overpaid percentage taxes, will the Annual Income Tax Return (ITR) for TY 2020 for taxpayers under the calendar year period or quarterly ITR for fiscal year, together with the Audited Financial Statements (AFS), if any, also be amended if a return has been filed reflecting the 3% percentage taxes paid?***

A15: Only the ITR/s filed are needed to be amended without necessarily amending the corresponding AFS. However, if the AFS will not be amended, the overpaid percentage tax shall be reflected as a reconciling item in the amended ITR/s.

All BIR Rulings or issuances inconsistent herewith are hereby considered amended, modified or revoked accordingly.

All revenue officials concerned are requested to give this Circular as wide publicity as possible.

This Circular takes effect immediately.

CAESAR R. DULAY
Commissioner of Internal Revenue

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