

Technical Amendments Act: Income Tax Highlights

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An McV Tax Alert

April 17, 2020

On April 17, 2020, Governor Wanda Vázquez-Garced signed into law House Bill No. 2419. The new Act 40-2020 incorporates technical amendments to the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”).

This Tax Alert is the first of a series that will summarize some of the most relevant provisions amending the PR Code, specifically those affecting business entities in areas such as (i) Income Taxes, (ii) REITS, Partnerships, Special Partnerships and Corporations of Individuals, (iii) Corporations and Non-for-profit Entities, (iv) Withholding Tax and Informative Returns, (v) Sales and Use Tax, (vi) Administrative Provisions, and (vii) Employee Benefits.

Following is a discussion of technical amendments affecting **income tax** provisions of general application:

Engaged in Trade or Business

For purposes of certain provisions of the PR Code, the term “engaged in trade or business” was amended to (1) include the rendering of services in Puerto Rico at any time during a taxable year (which was already the rule under long-standing regulations), and (2) exclude trading in commodities, including hedging transactions, through a resident agent or broker, resident custodian or any other independent agent, or through the taxpayer’s own account, its employees, resident agent or broker or any other resident agent with the authority and discretion to make decisions at the time of executing the operations. The PR Code defines “trading commodities” as goods that are usually exchanged in an organized commodity exchange. A ruling request should be submitted to determine when such activities will constitute being engaged in trade or business in Puerto Rico.

Special Rules for Capital Gains Invested in Qualified Opportunity Funds

The Secretary of the Treasury (“Secretary”), along with the Secretary of Economic Development, is vested with the regulatory authority to establish guidelines for qualified opportunity funds, including the rules for the certification of said funds and the anti-abuse rules.

Technical Amendments Act: Income Tax Highlights

Deductibility of Intercompany Expenses

For taxable years beginning after December 31, 2018, the Secretary will no longer be allowed to issue waivers from the 51% disallowance in PR Code Sections 1033.17(a)(16) and (17) with respect to payments to non-resident related entities, home offices or majority equity-holders. Instead, full deductibility will be allowed only upon submission of a transfer pricing study prepared pursuant to and in compliance with the requirements established in the U.S. Internal Revenue Code of 1986, as amended. Waivers issued under PR Code Sections 1033.17(a)(16)(F) and (17)(E) before enactment of Act 40 that are in effect for taxable years beginning after December 31, 2018, will be deemed to comply with the transfer price study required by the PR Code.

Capital Gains and Losses

For taxable years beginning after December 31, 2018, capital losses can be carried over to subsequent taxable years as a capital loss up to 90% (instead of 80%) of the net capital gain generated in the taxable year to which such losses are carried over.

Tax Credits

Puerto Rico Conservation Easement Act (“Act 183-2001”)

- The tax credits under Act 183-2001 are limited until fiscal year 2018-2019 (instead of 2023-2024) up to \$10 million per year, when a request for an administrative determination was submitted to the Puerto Rico Department of the Treasury (“PR Treasury”) on or before June 30, 2019. For fiscal year 2019-2020 and subsequent fiscal years, the amount of tax credit to be granted is limited to \$3 million per year for requests for administrative determination submitted on or after July 1, 2019.

Urban Centers Revitalization Act (“Act 212-2002”)

- The tax credits under Act 212-2002 are limited until fiscal year 2018-2019 (instead of 2023-2024) up to \$20 million per year. From fiscal years 2014-2015 through 2018-2019 and until December 31, 2019, the tax credits granted for any single project cannot exceed \$5 million. In addition, no tax credits will be granted if the compliance certificate issued by the Territorial Order Office of the corresponding Municipality is submitted to the PR Treasury after December 31, 2019.

Technical Amendments Act: Income Tax Highlights

Requirement to File Financial Statements or other Documents with Returns

For taxable years beginning after December 31, 2019, when the volume of business for the taxable year is \$3,000,000 or more, but less than \$10,000,000, the taxpayer will have the option to submit with the return, instead of audited financial statements, an Agreed Upon Procedures Report or Compliance Attestation performed by a CPA.

When the volume of business during a taxable year is \$10,000,000 or more, the business must submit with the income tax return audited financial statements accompanied by an Auditor Report issued by a CPA, in which case the limitations on the deductions established under PR Code Sections 1021.02(a)(2) and 1022.04 for purposes of computing the alternative minimum net income will not apply.

For taxable years beginning after December 31, 2019, each member of a group of related entities whose volume of business is \$1,000,000 or more, must submit audited consolidated financial statements if the combined volume of business of the group is \$10,000,000 or more.

Due Date to File Returns

For taxable years beginning after December 31, 2018, the due date to file the income tax returns of entities enjoying tax exemption under special laws will be **June 15** for calendar year taxpayers, and the 15th day of the **6th month** following the close of the taxable year for those that determine their income on a fiscal year basis. This new deadline will not apply to individuals or pass-through entities covered by a tax incentives grant.

For taxable year 2019, the filing due dates for certain entities may have already been extended as a consequence of the COVID-19 emergency. For more information, please access our Tax Alert of March 26, 2020 through the following **link**.

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