

PR Treasury's Measures to Address Taxpayer Cash Flow Due to the COVID-19 Emergency

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PRACTICE AREAS

- Tax

An McV Tax Alert

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Further to our Tax Alerts of **March 18, 2020** and **March 20, 2020**, the Puerto Rico Department of the Treasury ("PR Treasury") issued Administrative Determination No. 20-10 on March 24, 2020 ("AD 20-10") to establish the following relief measures for taxpayers and merchants that could face cash flow issues as a result of the COVID-19 emergency:

Estimated Tax Payments by Individuals and Corporations

AD 20-10 provides that no penalties will be imposed for underpaying the first and second estimated income tax installments applicable to individuals and corporations for taxable year 2020 ("First and Second Installments").

The First and Second Installments must be remitted with the amounts to be paid with the next two installments on their corresponding due dates (i.e. on the 15th day of the 9th and 12th months of the taxable year).

Income Tax Withholding for Services Rendered

Withholding agents will not be required to withhold income taxes under Section 1062.03 of the Puerto Rico Internal Revenue Code of 2011, as amended ("Code"), on any payments for services rendered made from Monday, March 23 to Tuesday, June 30, 2020 ("Withholding Waiver"). However, said payments must be reported by the withholding agent on Form 480.6SP - "Informative Return - Services Rendered" for taxable year 2020. Note that the service provider may request the withholding agent to continue withholding the income tax on payments received for services rendered during this period.

The Withholding Waiver does not relieve the service provider from the obligation to report and pay taxes on the payment received. In the case of taxpayers that elected the optional tax on businesses engaged in services, they must continue to comply with their tax payment obligations by the due date of the last estimated income tax installment.

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Sales and Use Tax ("SUT") on the Import and Sale of Taxable Items for Resale

PR Treasury will grant a temporary exemption certificate to any merchant that is considered a Reseller (as defined in the Code) and has a Reseller Certificate in effect as of March 24, 2020 ("Temporary Certificate"). The Temporary Certificate will allow a Reseller to import or acquire taxable items exclusively for resale exempt from the SUT. The Temporary Certificate will be valid from Monday, April 6, 2020 until Tuesday, June 30, 2020 ("SUT Exemption Period"). Every Reseller with an active Reseller Certificate will automatically receive the Temporary Certificate through SURI.

Any Reseller who purchases taxable items for resale during the SUT Exemption Period must submit to the seller a copy of the Temporary Certificate together with Form AS 2916.1 – Certificate for Exempt Purchases and Services Subject to the 4% Special – SUT (Tangible Personal Property, Exempt Services and Services Subject to the 4% Special – SUT - duly completed and signed to be able to acquire the items exempt from the SUT.

Furthermore, any Reseller that imports taxable items for resale must report said items on line 3 of Form AS 2970.1 – Declaration of Imports and Form AS 2915.1 D – Tax on Imports Monthly Return.

The Temporary Certificate does not apply to imports or purchases of taxable items for use or consumption in Puerto Rico.

Application of Tax Refunds and Overpayments Against Other Taxes

All taxpayers that have an overpayment balance and have not requested its application to any future tax will be able to apply it to any other type of tax, as follows:

- Income Tax

Any taxpayer that: (i) has requested an income tax refund for taxable years prior to 2019, and (ii) as of March 24, 2020 (i.e. date of publication of AD 20-10) has not received said refund, can request the application of such refund against any other tax imposed by the Code, including but not limited to: (i) SUT; (ii) excise taxes; (iii) taxes on alcoholic beverages; or (iv) payroll taxes ("Other Taxes").

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Also, a withholding agent may request that overpayments of income tax withheld be credited against Other Taxes.

- Excise Taxes and Taxes on Alcoholic Beverages

Taxpayers can request that overpayments of excise taxes and taxes on alcoholic beverages be applied against Other Taxes if a claim for a tax refund has been filed and granted by PR Treasury.

- SUT Credit on Imported Taxable Items for Resale

Any Reseller who has a SUT Credit related to the import of taxable items for resale that cannot be used in future periods will be able to apply said credit to Other Taxes owed to PR Treasury, including income taxes.

PR Treasury will issue further guidance regarding the application process that must be followed for the application for tax refunds and overpayments to offset other taxes.

Income Tax Installment Payment Agreements for Taxable Year 2019

Taxpayers that: (i) have the obligation to file an income tax return for taxable year 2019 and; (ii) on the filing date, do not have the financial resources to remit the payment balance shown in said return, may request to pay the total amount of taxes owed in installments ("Installment Agreement").

The Installment Agreement will only be available to those taxpayers that (i) have not filed a Form AS 2644 - Request for Extension of Time to File the Income Tax Return for taxable year 2019 and (ii) are up to date with other tax obligations.

Every taxpayer that requests the Installment Agreement must make monthly installment payments so that the total amount due is paid no later than March 31, 2021. Once the taxpayer pays the debt according to the Installment Agreement, PR Treasury will eliminate any related interest, surcharges and penalties.

PR Treasury will be issuing guidance on the application process that must be followed to request the Installment Agreement.

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To access PR Treasury's AD 20-10, **please follow this link.**

If you have any questions regarding this important notification, you may contact any of the attorneys listed below. Please note that all our attorneys are working remotely and can be reached by email or by phone. We will keep sending updates as events unfold.

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