

## Treasury Issues Guidelines to Apply for Payment Plans of Assessed Tax Liabilities

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### PRACTICE AREAS

- Tax

### An McV Tax Alert

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On March 17, 2017, the Secretary of the Treasury issued Internal Revenue Circular Letter 17-05 to (i) establish the procedure to apply for and approve Payment Plans on assessed tax liabilities (“Tax Liabilities”) under the Taxpayer Rehabilitation Program, and (ii) identify the terms and conditions that will govern such Payment Plans.

### Payment Plan Options

#### *Automatic Payment Plans*

A Payment Plan is considered “Automatic” when the Secretary of the Treasury (“Secretary”) does not have to evaluate the financial capacity of the Taxpayer to approve the same. The Secretary will allow taxpayers to apply for Automatic Payment Plans for four categories of Tax Liabilities, as generally described below. The application must be made using Form 3509 or Form 3510, as applicable.

- Category I: Income Taxes

1. *Principal Balance Due Not Exceeding \$10,000*

Every taxpayer in this category can apply for an Automatic Payment Plan. In this case, the total Tax Liability (including interest and surcharges) must be paid in a maximum period of 24 months after the approval date of the Payment Plan. The payments can only be made through direct debit from a bank account. The Puerto Rico Treasury Department (“Treasury”) will not require a down payment or a payment guarantee from the taxpayer as a condition to grant the Payment Plan.

If the taxpayer fails to comply with the Payment Plan, Treasury will impose the applicable fines and penalties, will terminate the agreement, and will collect any balance due. Treasury can use any necessary mechanism to collect the taxes due, including a garnishment, without additional notification to the taxpayer.

## Treasury Issues Guidelines to Apply for Payment Plans of Assessed Tax Liabilities

### 1. *Principal Balance Due Greater than \$10,000 but Less than \$25,000*

Every taxpayer in this category can apply for an Automatic Payment Plan under similar terms to those identified in 1. above. In this case, however, the total Tax Liability (including interest and surcharges) must be paid in a maximum period of 36 months from the approval date of the Payment Plan, and a down payment of 10% of the principal amount due must be made as a condition for approval of the plan.

If the taxpayer fails to comply with the Payment Plan under this category, in addition to the measures identified in 1. above, Treasury can report the tax liability to the credit agencies and to the US Treasury Offset Program of the federal government.

### 1. *Principal Balance Due Greater than \$25,000 but Not Greater than \$50,000*

The Automatic Payment Plan can be requested under the same terms mentioned in 2. above, but a down payment of 20% of the principal amount due must be made as a condition for approval of the Payment Plan.

#### ■ Category II: Special State Real Property Tax

Every taxpayer with a Tax Liability in this category can request an Automatic Payment Plan. The Tax Liability must be paid in its entirety within a maximum period of 24 months from the date of the approval of the Payment Plan. The taxpayer must make the payments only through a direct debit from a bank account. Treasury will not require a down payment or a payment guarantee.

If the taxpayer fails to comply with the Payment Plan, Treasury will impose the applicable fines and penalties, will terminate the agreement, and will collect any balance due. Treasury can use any necessary mechanism to collect the taxes due, including garnishment, without additional notification to the taxpayer. Treasury can report the Tax Liability to the credit agencies and to the US Treasury Offset Program of the federal government.

#### ■ Categories III and IV: Sales and Use Tax and Withholding Tax Liabilities

### 1. *Principal Balance Due Not in Excess of \$10,000*

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Every taxpayer with a Tax Liability in this category can request an Automatic Payment Plan under similar terms to those identified in Category I, paragraph 1., above. In this case, however, the taxpayer must pay the total Tax Liability, including interest and surcharges, during a 12-month period, make a down payment of 10% of the principal amount due, and must deposit the SUT in weekly installments using SURI. In cases in which the annual sales volume exceeds \$125,000, the taxpayer must maintain at all times a fiscal terminal in its location.

If the taxpayer is a legal entity, the officer or responsible persons for the collection and remittance of the SUT or the withholding tax, must accept the imposition of the penalty established in Section 6080.02 of the Puerto Rico Internal Revenue Code if the taxpayer fails to comply with the Payment Plan. Such penalty, in general, equals the total amount of the tax not withheld or not deposited.

If the taxpayer fails to comply with the Payment Plan under this category, Treasury can collect any outstanding amounts due following the procedures identified in Category I, paragraph 2., above.

### 1. *Principal Balance Due Greater than \$10,000 and Less than \$25,000*

Every taxpayer with a Tax Liability in this category can request an Automatic Payment Plan under the same terms and conditions as those stated in 1., above, except that the taxpayer must make a down payment of 20% of the principal amount due, and the Tax Liability must be paid in 24 months from the date of the approval of the Payment Plan.

### 1. *Principal Balance Due Greater than \$25,000 and Less than \$50,000*

Under this category the taxpayer can apply for an Automatic Payment Plan under the same terms stated in 2., above, except that the total amount due must be paid in 36 months.

### *Regular Payment Plans*

The Secretary will grant the option to apply for a Regular Payment Plan to every taxpayer with a Tax Liability under Categories I (income taxes), III (SUT) and IV (withholding taxes) if the principal balance due is greater than \$50,000, and to taxpayers with a Tax Liability under Category V (excise taxes). The Regular Payment Plans will only be granted to taxpayers that can show, to the

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satisfaction of the Secretary, that they do not have the economic capacity to pay the total balance due. For these purposes, the taxpayer must complete and submit Form SC 3325, "Individual Balance Sheet," or Form SC 3326, "Businesses or Corporations Balance Sheets," as applicable.

The terms and conditions under a Regular Payment Plan are similar to those stated above for the Automatic Payment Plans, except that the taxpayer must always make a down payment in an amount to be determined by the Secretary of the Treasury, and the Tax Liability must be paid during a period also to be determined by the Secretary.

### **Other Considerations**

The taxpayer must include in the Payment Plan the total amount of assessed liabilities that are pending for payment. The taxpayer cannot select specific debts to include in a plan.

Taxpayers with a total principal balance due in excess of \$50,000 in the aggregate can only apply for a Regular Payment Plan including all the non-contested debts, even if the taxpayer has debts that individually qualify for an Automatic Payment Plan.

Suppliers of goods and services to the government, that at the time of applying for a Payment Plan can show to the satisfaction of the Secretary that they have invoices pending for payment before the Puerto Rico government, can request, as part of the Payment Plan, that such invoices be applied against the accumulated balance of their Tax Liabilities.

Taxpayers can file applications for payment plans starting on March 24, 2017.

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