

PR Treasury Eases Distributions and Loans from PR Qualified Retirement Plans and PR IRAs to Hurricane Maria Victims

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PRACTICE AREAS

- Employee Benefits

An McV Employee Benefits Alert

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On November 15, 2017, the Puerto Rico Treasury Department (“PR Treasury”) issued Administrative Determination 17-29 (“AD 17-29”) providing for the special rules that will apply to distributions and loans from Puerto Rico qualified retirement plans (“Retirement Plans”), and to distributions from Puerto Rico Individual Retirement Accounts (“PR IRAs”), (i) during the period starting on September 20, 2017 and ending on June 30, 2018 (“Relief Period”), (ii) to individuals that are residents of Puerto Rico during calendar years 2017 and 2018 (“Eligible Individuals”), (iii) to cover damages or losses suffered, and extraordinary expenses incurred, by the individual and members of their immediate family (i.e., spouse, offspring and parents), (iv) due to the passage of Hurricane María (expenses complying with items (iii) and (iv) are referred to a “Eligible Expenses”).

Eligible Distributions

For purposes of applying the provisions of AD 17-29, “Eligible Distributions” are distributions from Retirement Plans and PR IRAs eligible Individuals to cover the following Eligible Expenses, among others:

- expenses for the repair of damages to a residence or a motor vehicle, purchase of food and fuel,
- payments for the acquisition or repair of electric power generators, or
- lodging and food expenses incurred as a consequence of the total or partial destruction of the principal residence, incurred during the recovery period after the passage of Hurricane Maria.

To qualify for the special tax reliefs granted by PR Treasury, Eligible Distributions must be requested and disbursed during the Relief Period, regardless of when the Eligible Expense is actually incurred.

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Eligible Distributions from Retirement Plans can be made in the form of lump-sum or hardship withdrawals. Thus, Eligible Individuals that qualify to receive lump sum distributions on account of termination of employment or Retirement Plan termination could benefit from the favorable tax treatment described below provided the distribution qualifies as an Eligible Distribution.

Tax Reliefs

The tax reliefs granted by AD 17-29 to Eligible Distributions are the following:

- Distributions up to \$10,000 - will be exempt from withholding and income taxation (including the basic alternate tax).
- Distributions in excess of \$10,000 (but not greater than \$100,000)– will be subject to an income and withholding tax rate of 10% in lieu of any other tax imposed by the PR Internal Revenue Code, including the basic alternate tax (the “10% Tax”). To enjoy this benefit, the 10% Tax must be withheld at the time of the distribution. If the 10% Tax is not withheld from the taxable portion of an Eligible Distribution, such distribution will be subject to income taxation at the regular income tax rates applicable to ordinary income.

Eligible Distributions will be deemed made first from contributions and accretions that were not previously subject to income taxation and, any excess, from non-taxable funds (i.e., after tax contributions and prepaid balances).

How to Request an Eligible Distribution

To request an Eligible Distribution from a Retirement Plan and/or PR IRA, an Eligible Individual must file a sworn statement with the plan administrator/ employer and/or financial institution, as applicable, certifying, among others, that: 1) he/she is a bona fide resident of Puerto Rico for the 2017 calendar year and that will continue to be a bonafide resident during the 2018 calendar year; 2) the dollar amount requested as Eligible Distribution meets the \$100,000 limitation, 3) the Eligible Distribution will be used to cover Eligible Expenses or to compensate unearned income after the passage of Hurricane Maria; and 4) has not received Eligible Distributions from other Retirement Plan(s) and/or PR IRA(s). If other Eligible Distributions have been received, the Eligible Individual must include the date(s) of such other Eligible Distribution(s) and the amount(s) received.

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Participant Loans

During the Relief Period, Retirement Plans may approve and disburse loans to Eligible Individuals (Participants) before formally amending the plan.

Thus, Participants should be able to access their money more quickly to defray damages, losses and/or expenses related to Hurricane María. If a Retirement Plan grants loans to Participants without the plan document specifically providing for such kind of benefit, the plan sponsor will have to amend the Retirement Plan no later than December 31, 2018 to incorporate the relevant loan provisions.

PR Treasury also eases the repayment schedule of existing or new participant loans granted during the Relief Period. Retirement Plans can allow for a moratorium period in the repayment of loans of up to one year from the original due date, or can extend for a year the repayment period.

Retirement Plan Amendments

Eligible Distributions are optional. Thus, employers can, but are not required to, adopt all or part of the provisions of AD 17-29. Furthermore, administrators of dual qualified Retirement Plans (retirement plans qualified under the PR Code and US Code) can modify the treatment of Eligible Distributions to be in compliance with the US Code or with changes otherwise approved by the IRS as a consequence of Hurricane Maria.

Retirement Plans adopting the provisions of AD 17-29 must be amended by December 31, 2018. However, Eligible Distributions and participant loans can be approved and disbursed before the Retirement Plan is formally amended. These amendments are not considered qualification amendments and are not required to be submitted to the Puerto Rico Treasury Department for qualification.

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