

Puerto Rico's Tax Relief Measures due to COVID-19 Emergency

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An McV Tax Alert

June 15, 2020

On June 14, 2020, Governor Wanda Vázquez-Garced signed into law Act 57-2020 ("Act 57") to provide local relief measures in view of the COVID-19 emergency. These measures will be in effect while necessary to mitigate the impact of the COVID-19 pandemic, but will not extend beyond December 31, 2021.

The relief measures are as follows:

Expedited Payment to Contractors and Suppliers of the Government of Puerto Rico ("Government")

- All accounts payable to contractors, suppliers and vendors of the Government ("Suppliers") accumulated prior to June 14, 2020 and which have already been certified by the government agency or instrumentality for which the service was offered or the goods were delivered, must be paid within **15** calendar days after June 14, 2020.
- While the act is in effect, any new obligation or account to be paid to any Supplier that is certified by the government agency or instrumentality for which the service was offered or the goods were delivered, must be paid within **30** calendar days from the certification date.

Net Operating Loss Carry Back

- Entities with a business volume of \$10,000,000 or less will be able to carry back net operating losses ("NOL Carryback") of up to \$200,000 arising in taxable year 2020 due to the COVID-19 emergency, to each of the two preceding taxable years. The tax refund arising from such NOL Carryback cannot exceed \$50,000.
- Taxpayers will have until the filing date of the income tax return for taxable year 2020, including extensions, to claim the NOL Carryback.
- The NOL Carryback is not available for Large Taxpayers, as defined by the Puerto Rico Internal Revenue Code ("PR Code").
- The NOL Carryback does not alter the carryforward of net operating losses ("NOLs") arising in those years.

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Net Operating Loss Carry Forward

- 100% of NOLs incurred in 2020 may be carried forward to offset taxable income (in lieu of the 90% limitation provided by the PR Code) if said NOLs were: (i) directly caused by the COVID-19 emergency, and (ii) incurred during taxable year 2020.

Temporary Exemption on Services Rendered to Other Merchants

- Services rendered to other merchants during April, May and June 2020 will be exempt from the 4% special sales and use tax imposed by the PR Code. The Secretary has the authority to extend this exemption for additional periods of 3 months, until December 31, 2021.

Postponement of the \$500 Tentative Minimum Tax for Corporations

- The tentative minimum tax of \$500 required by the PR Code will not be imposed for taxable years beginning after December 31, 2018 and before January 1, 2020 (i.e. taxable year 2019).
- Entities that have paid the tentative minimum tax may apply for a reimbursement, which will be disbursed by the PR Treasury within 45 calendar days from the date of the application. The Secretary of the Treasury will adopt the necessary forms to request such refund.

Extension to File Informative Returns

- For taxable years beginning after December 31, 2018 and before January 1, 2020 (i.e. taxable year 2019), the filing due dates for the informative returns required by Sections 1063.01 through 1063.16 of the PR Code is extended until May 31, 2020.

Postponement of the Agreed Upon Procedures or Compliance Attestation Report Requirement

- For taxable years beginning after December 31, 2018 and before January 1, 2020 (i.e. taxable year 2019), Act 57 eliminates the requirement to include an Agreed Upon Procedures or a Compliance Attestation Report along with the corresponding income tax return.

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Automatic Extension of Licenses and Bonds

- All licenses and bonds under the PR Code, as well as licenses or permits issued by the Permit Management Office or any other agency, government instrumentality and municipality of the Government that expire on or after March 1, 2020, are automatically extended for a period of six months.

Exclusion from Gross Income and Municipal License Tax for Debt Cancellation and Subsidies

- Cancellation of debt and federal subsidies under CARES Act or any subsequent federal law, or any state subsidy granted as a consequence of COVID-19 will be excluded from gross income for income tax purposes and not subject to municipal license tax.
- Also, taxpayers may claim as a deduction from net income the ordinary and necessary expenses incurred in the operation of the business, such as salaries and rent, even if such expenses are paid with funds received from any federal subsidy under the CARES Act or under any other federal legislation to address the COVID-19 emergency, including the cancellation of debt and refundable tax credits, and other economic assistance provided in Act 57.

Automatic Compliance with Requirements under the Puerto Rico Incentive Code or Previous Tax Incentives Laws

- For taxable year 2020, any holder of a tax incentives grant under Act No. 60-2019, previous incentives laws or any special incentive law in Puerto Rico, will be deemed to have complied with the following requirements contained in said grant, as long as any failure to comply is directly related to the emergency caused by COVID-19:
 - Creation and maintenance of employment;
 - Gross income or sales volume; and
 - Investment in machinery and equipment.
- However, this does not prevent the Secretary of the DDEC from reviewing compliance with other requirements under Act No. 60-2019, previous incentives laws, any special incentive law in Puerto Rico or in the corresponding grant. The Secretary of the DDEC will provide further guidance to establish the terms and conditions applicable to this program.

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Exemption for Use of Notary Public for Sworn Statements

- As of April 1, 2020, and until the end of the COVID-19 emergency, individuals and businesses will be exempt from filing any sworn statement before a Notary Public required by the PR Code, the PR Treasury or any applicable subsidy to address the COVID-19 emergency.
- The individual or business must present, in lieu of the sworn statement, an affirmation under penalty of perjury that includes all the information that would ordinarily have been included in said sworn statement.

Filing Extension for 2019 Income Tax Returns

- All 2019 income tax returns that were due to be filed between March 15, 2020 and June 15, 2020, are now due on or before July 15, 2020.
- Any taxpayer who has the obligation to file an income tax return for the 2019 taxable year, and who at the date of filing the return does not have the economic resources to pay the outstanding balance reflected on said return, may request an installment payment plan to settle such total amount. Said amount must be fully paid by March 31, 2021.

Filing Extension for Sales and Use Tax Monthly Returns

- Sales and Use Tax Monthly Return ("SUT Return") – The filing and payment due date for the SUT Return for February, March, April and May 2020, will be extended to April 20, 2020, May 20, 2020, June 22, 2020 and July 20, 2020, respectively.
- Tax on Imports Monthly Return ("Imports Return") – The filing and payment due date for the Imports Return for March, April and May 2020, will be extended to May 10, 2020, June 10, 2020 and July 10, 2020, respectively.
- No penalties will be imposed for noncompliance with the bi-weekly SUT payments due during March, April, May and June 2020 provided the total SUT due for said months is paid with the filing of the applicable SUT Monthly Return.

Sales and Use Tax on the Import and Sale of Taxable Items for Resale

- The Secretary of the Treasury is authorized to 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 ("Temporary Certificate"). The Temporary Certificate will allow a Reseller to import or acquire taxable items

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exclusively for resale exempt from the sales and use tax. The Temporary Certificate will be valid from Monday, April 6, 2020 until Tuesday, June 30, 2020.

- For further information regarding the Temporary Certificate, please access our Tax Alert of March 26, 2020.

Income Tax Withholding for Services Rendered

- Withholding agents are not required to withhold income taxes under Section 1062.03 of the PR Code on any payments for services rendered made between March 23 and June 30, 2020 (“Withholding Waiver”).
- The Withholding Waiver does not relieve the service provider from the obligation to report and pay taxes on the payment received. In addition, the withholding agent must report such payments in the corresponding informative return for said services rendered (“Form 480.6SP - Informative Return – Services Rendered”).
- For tax year 2019, taxpayers can elect the optional tax for service providers even if they have to pay taxes with the income tax return, provided they pay such taxes in full by the due date of the income tax return without considering extensions.

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