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Tax Alert: Technical amendments to Act 72-2015 affecting income taxes

On September 30, 2015, the Governor of Puerto Rico signed Act 159-2015 which contains the technical amendments to Act 72-2015. On this Alert we will focus our discussion on those affecting Income Taxes.

Waiver on Expenses with Related Parties

It provides that the waiver request to exclude 60% of the expenses incurred with a related party that is not engaged in trade or business in PR from the 51% disallowance for ordinary tax purposes and from the 20% tax for AMT, should be made within the first taxable for which such waiver is being requested. If granted, the waiver will be valid for a maximum of 3 taxable years.

In the case of entities organized or authorized under the National Bank Act that are engaged in trade or business in Puerto Rico the Secretary may allow to exclude up to 100% of the expenses from the 51% disallowance and from the 20% AMT tax.

Prepayment Windows Extensions

During the period between October 1, 2015 and December 31, 2015, taxpayers could elect to make prepayments on the accumulated earnings and profits without making a dividend distribution during the temporary period.

- a special tax of 8% on dividend distributions and deemed dividend distributions by the shareholder instead of any tax imposed by the PR Code including the alternative minimum tax and the alternative basic tax.

With regards to the deemed and actual dividend distributions, an election indicating the amount deemed distributed and payment must be made no later than the prepayment date. Amounts deemed distributed cannot exceed the actual earnings and profits accumulated as of the moment when making the prepayment. Such prepayment will need to be made on the form to be established by the Secretary. The taxpayer is responsible to keep evidence of the prepayment form.

Non- deductible expenses – Corporate Income Tax

Taxpayers that have not paid the Sales and Use Tax (SUT) or Value Added Tax (VAT) on expenses paid or incurred for services rendered by a non-resident, will not be able to deduct the expense. However, if the service is excluded or is exempt from SUT or VAT the taxpayer will be allowed to take the deduction.

The cost or depreciation of any goods or taxable item subject to SUT or VAT will not be deductible if the taxpayer has not paid the corresponding SUT or VAT for such item. Nevertheless this provision will not be applicable for such goods or taxable items that are excluded or exempt from SUT or VAT.

Contact us

For assistance in this matter, please contact us via

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Credit for the purchase or transmission of TV Programs realized in PR

Any channel that buys or transmits programming done in PR with independents producers, where 90% or more are artists' residents of PR, may claim a credit of 15% of the expenses incurred by the TV channel, on the taxable year for which the credit is claimed.

- independent producer is any bona fide natural or juridical person that is the creator and owner of the intellectual material and concept that gives rise to a television programming; that is dedicated to development and creation of content for television channels and which revenues for the activity does not exceed $1.5 million.
- programming realized in PR includes feature films, short films, documentaries, series episodes and miniseries produced in PR. The term does not include musical videos, advertisements, video games, competitions, recorded life shows, soundtrack recordings or overdubs, production that includes pornographic material, production that consists principally of religious or political propaganda, radio programs, productions whose main purpose is fundraiser, market or promote a product, service, a person or merchant, productions which have the principal purpose to train employees.
- such credit could not be claimed against programing that qualifies for benefits granted by the PR Film Industry Incentives Act or any other analogous or posterior law.
- credits not used by the TV channel may not be carryforward to other taxable years.
- expenses paid to an entity that is part of a controlled group or related entities as defined on Section 1010.04 and 1010.05 of the 2011 Code will not qualify for this credit. Partnerships and other excluded members engaged in trade or business in PR, will be considered a member of such group.
- The taxpayer shall keep a separate and detailed accounting where the income and disbursements of the normal operations and purchase of transmit programing realized in PR.
- The Secretary may establish by Regulations any other requirement in coordination with the Economic Development Department.

Exemptions from tax on corporations and non-profit entities

An organization will not be exempt from income tax unless it proves to the Secretary of Treasury that it serves a public interest.

- the organization will need to demonstrate, as established by the Secretary by administrative determination or circular letter that is not organized or operated for the benefit of the private interest of the creator of the entity, its family, and shareholders or by persons controlled directly or indirectly by them.

- the exempt entity will not be allowed to incur on extravagant expenses.

Closing Agreements

Closing Agreements between a Taxpayer and the Secretary of Treasury the Secretary will not be able to:

- accept payments (i.e. after June 30, 2016) for future taxes that are not yet owed by the taxpayer at the moment of the agreement;
- grant or apply to a transaction covered by the closing agreement a tax rate lower than the ones provided in the 2011 Code;
- grant or apply deductions or tax credits that are not allowed by the 2011 Code or any special law applicable;
- classify or apply as overpayment taxes previously paid;
- extend statute of limitations, except as provided in the 2011 Code;
- waive interest and surcharges, except as allowed in the 2011 Code;
- modify the tax basis or the amount of gain on the sale of assets, contrary to what is established in the 2011 Code;
- exempt the requirement for filing tax returns, unless the return is part and is included with closing agreement;
- grant agreements related to matters or issues for which the Secretary is not expressly authorized to exercise discretion.

Alternate payment method requirements to professional service providers

Act 42-2015 established that those professional that provide services and are required to have a license or legal authorization to operate in Puerto Rico are required to provide at least two (2) alternate option payments to their clients. The alternative option payments specified under Act 42-2015 are credit or debit cards, cash, checks, certified checks, money orders, electronic fund transfers, payments through internet or direct payment.

Act 159-2015 now establishes that at **least one** of the alternatives for payment will need to be credit card or debit card, electronic fund transfers, payment through internet or direct payment.

In addition the Secretary of Treasury or the Secretary of Department of Consumer Affairs (DACO) could impose administrative fines from $1,000 to $5,000 for the non-compliance with this required alternate payment method.

Please contact our Tax Department should you require additional information regarding this or any other tax issue; we will be glad to assist you.