

# *Kevane mailbag*

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Our Kevane mailbag is your link to all our communications related to the operations of businesses in Puerto Rico. Our purpose is to offer you up-to-date information concerning tax, accounting and any other matters that might have an impact on the way you conduct business in Puerto Rico.

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<h3>Audit</h3> <p>The FASB has released ASU 2017 focused on improving employee benefit plan master trust reporting</p> <p> <a href="#">Read more</a></p>	<h3>Tax</h3> <p>Take note of certain changes in 2017 Puerto Rico individuals and corporations tax returns due dates.</p> <p> <a href="#">Read more</a></p>	<h3>Advisory</h3> <p>The need is greater than ever for audit committees to be a more integral part of cybersecurity management efforts.</p> <p> <a href="#">Read more</a></p>	<h3>Outsourcing</h3> <p>Circular No. 17-02 clarifies the issuance of waiver certificates in the case of taxpayers who receive payments for services that are not subject to the 7% withholding.</p> <p> <a href="#">Read more</a></p>
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**General Information**      **Offices closed** – Please be advised that our offices will be closed on Friday, April 21, 2017. We will resume operations on Monday, April 24.

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# Audit Alert: Improvements in employee benefit plan master trust reporting

The Board issued ASU 2017-06, [Employee Benefit Plan Master Trust Reporting](#) – a consensus of the FASB Emerging Issues Task Force, which is intended to improve the usefulness of the information, reported to users of employee benefit plan financial statements. The ASU relates primarily to how a plan reports its interest in a master trust.

The key provisions of the ASU are summarized as follows:

- for each master trust in which a plan holds an interest, the plan is required to disclose, as separate line items, the plan's interest in the statement of net assets available for benefits and any changes in that interest in the statement of changes in net assets available for benefits.
- a plan with a divided interest in the individual investments of the master trust is no longer required to disclose its percentage interest in the master trust, but rather is required to disclose the master trust's investments by general type and the individual plan's dollar amount of its interest in the master trust's investments by general type.
- all plans are required to disclose both their master trust's other asset and liability balances and the dollar amount of the individual plan's interest in each of those balances.
- health and welfare plans are no longer required to provide 401(h) account
- investment disclosures in their financial statements and instead are required to disclose the defined benefit plan's name so that participants may access the investment

information. There are no changes to defined benefit plan disclosures.



The amendments in the ASU are effective for fiscal years beginning after December 15, 2018, with early adoption permitted. Entities will be required to adopt the guidance retrospectively to all periods presented.

*Source: Source: Grant Thornton, On the Horizon, March 9, 2017.*

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**March 10, 2017**

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# Tax Alert: Puerto Rico 2017 tax due dates

Tax season is upon us and thus, the filing and payment of taxes becomes the main topic. Though dreaded by both taxpayers and tax professionals, April 15 merely a road post signaling that the tax season has merely just begun.

## Income Taxes

As a general rule, the Income Tax Return for individuals and corporations is due on or before the 15<sup>th</sup> day of the fourth month following the close of the entity's taxable year. For calendar year taxpayers - that is, those whose tax year ended on December 31, 2016 - the corresponding due date this year is **April 18, 2017**.

A three-month extension is allowed for both individuals and corporations. An additional extension is granted to individuals located outside of Puerto Rico whenever appropriate evidence is presented.

In the case of partnerships, special partnerships and corporation of individuals, the corresponding income tax returns are due on the 15<sup>th</sup> day of the third month following the close of its taxable year. This means that for entities using a calendar year end, taxes will be due on March 15. A three-month extension is also allowed.

For its part, 2017 estimated income tax payments for Corporations and Pass-Thru Entities are due on:

- April 18, 2017
- June 15, 2017

- September 15, 2017, and
- December 15, 2017

In the case of individuals, installments are due on:

- April 18, 2017
- June 15, 2017
- September 15, 2017, and
- January 15, 2018

## Property Taxes

Taxpayers that are required to file Personal Property Tax returns must do so no later than May 15, 2017. A three-month extension is available upon request. The extended filing date for this year is August 15, 2017.

Similarly to Income Tax, estimated Personal Property Tax payments are made in four installments:

- August 15, 2017
- November 15, 2017
- February 15, 2018, and
- May 15, 2018

## Annual Reports

Corporations must file an annual report on or before April 15. Said report must be filed electronically by an officer of the Corporation or authorized representative, and if the annual volume of business exceeds \$3,000,000, must be accompanied by the Corporation's balance sheet at the close of the preceding fiscal year, audited by a certified public accountant licensed in Puerto Rico who cannot be a stockholder or employee of the corporation.



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**March 15, 2017**

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Each annual report must be accompanied by a \$150 fee.

For the Taxable Year 2016, the filing date is **April 17, 2017**.

If unable to file on the specified date, an extension must be requested which grants additional time until June 16, 2017. Notwithstanding, an additional extension may be requested until July 17, 2017 subject to a \$30 fee.

In the case of Limited Liability Companies, the corresponding annual report is known as the Annual Fee and is subject to the same filing fee as the regular corporations. Nonetheless, extensions are not allowed for the filing of Annual Fees.

#### Volume of Business Declaration (Municipal License Tax)

The municipal license tax annual return or declaration must be filed every year on or before April 15, or *within five working days* after April 15. The municipal license tax may also be paid in two equal installments, with the first installment payable on or before July 15, while the second installment is due on or before January 15. Nonetheless, if the total municipal license tax is paid by April 15, a 5% discount will be applied.

The Municipality can allow a six-month filing extension, at the taxpayer's request.

However, the phrase "*within five working days*" has been subject to diverging interpretations from municipalities causing issues in determining when the actual due date should be. On this regard, it is highly recommended that these returns be filed no later than April 18, 2017 to steer clear of contradicting interpretations and avoid any late filing issues.

Note that the aforementioned returns allow for **filing** extensions – not payment.

Therefore, the tax responsibility due for each of these must be paid on the initial filing date.

**Please contact our Tax Department should additional information is required regarding this or any other tax issue. We will be glad to assist you.**

# Advisory Alert: The audit committee's role in cybersecurity

By now, most senior-level executives have heard that either you have had a data breach or you just don't know that you've had a data breach. Cyberattacks are now as much a part of doing business as taxes and financial statements and they are getting expensive. According to the *2015 U.S. Cost of a Data Breach Study*<sup>1</sup> by the Ponemon Institute, in 2014 there was an 11% increase in the total cost of a data breach, to a \$217 average per lost or stolen record, a clear reminder that organizations need to make a priority of addressing cybersecurity risks. For those companies with audit committees, that subset of the board has seen its role expand as it works to identify key areas of risk. After all, cybersecurity risks are no different from any other kind of enterprise risk, and the audit committee's charter is to understand a business and its objectives, then identify suitable ways to address risks that threaten the business or its goals.

That said, cybersecurity is a daunting arena, so audit committees should educate themselves about cyberrisks in the same fashion that they educated themselves about addressing risks as required by the Sarbanes-Oxley Act, drastic changes to a given market or product, or any major category of risk facing the enterprise. Specifically, audit committees should become

aware of their obligations and ask probing questions about the control environment that may jeopardize those obligations.



The audit committee is uniquely positioned to assess risks that threaten the enterprise. Indeed, a proper contemplation of cybersecurity risk necessitates that it be treated like another category of enterprise risk. Put differently, audit committees should leverage existing protocols (such as enterprise risk assessments, risk analyses, training protocols, monitoring and reporting mechanisms, and the like) to ensure that these risks are adequately addressed. To illustrate just one of these points, the audit committee already interacts with the CFO regularly for other risk management discussions; it should continue to do so for cybersecurity risk. This is especially true, given that the CFO is (statistically speaking) the officer most



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<sup>1</sup> Ponemon Institute. U.S. Cost of a Data Breach Study, May 2015

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commonly associated with leading cybersecurity efforts. (Grant Thornton LLP recently collaborated with the Financial Executives Research Foundation on a study focused on the CFO's role in cybersecurity, which revealed that 38% of all cybersecurity initiatives are actually run by the CFO).

### Prevention and incident response

While the primary cybersecurity consideration for any organization remains prevention, more and more companies recognize that a security compromise is eminently more likely than it used to be. Accordingly, being prepared to respond to a security compromise or breach is quickly becoming of equal importance. An audit committee can and should play a strong role in both prevention and incident response, but to do so require a certain level of baseline understanding combined with the ability to ask detailed questions to management about the processes and controls in place.

Basic fact-finding questions might include the following:

- Where is our sensitive data stored?
- Are we including payment information, health information, intellectual property, R&D, and customer and vendor information in our definition of sensitive data?
- What data leaves the company, how does the data leave, and to whom is it transmitted?
- Have we performed a vulnerability assessment to identify our information security exposures?
- Have we evaluated our third-party vendors and partners for exposure to sensitive data?

- Who is authorized to log into our network and from which platforms?
- What measure of insurance has the company secured, and which department(s) completed and reviewed those applications for coverage?
- What are our policies and procedures related to employees' use of personal devices to access company systems and sensitive data?
- How does the organization educate its employees on their obligations related to the handling of sensitive information?

In terms of how well an organization is positioned to respond to a security incident, such as the protocols to follow if sensitive data is compromised, the audit committee should ask three basic questions to management to assess risks:

1. Does the company have an incident response plan or program?
2. If the answer is yes, has the company ever tested the plan (before it's needed in a live-fire situation)?
3. If that answer is a yes, what is the company doing to ensure that its plan remains current and adequate to the risk it faces as an industry and a regulated entity?

Within each of those questions are several nuances. Moreover, the answers to these questions allow for a proper series of follow-up questions related to insurance (i.e., insurable versus uninsurable), the treatment of third parties that handle sensitive data, the applicability of the attorney-client privilege, technology investments and ongoing management, policy and procedure considerations, training and awareness issues,

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and other key considerations. All these elements need to be aligned to enable a company to cope properly with cybersecurity risk.

### Cybersecurity and the SEC

An audit committee needs to be conversant with any matters that might require disclosure in SEC filings, especially in light of the recent news that cybersecurity has been listed by the SEC as a top examination priority during 2015. Indeed, the SEC staff has stated that investors cannot make informed investment decisions without knowing about material actual or potential cyber threats facing a given registrant. Audit committees would do well to increase their scrutiny of cybersecurity in the following areas related to financial statement filings:

- Forms 10-K and 10-Q and other SEC filings regarding risk factors: If risks are deemed significant enough to make investment in a registrant speculative, they must become part of the disclosure regimen. Cybersecurity risks should be considered as a category within this regimen, and the SEC appears from recent decisions to be less accepting of generic risk statements in this area. Some care should be taken to delve into the probability of cyber incidents, the impact of such incidents if they were to occur and the level of preventive measures undertaken by the registrant to deal with the same.
- Management's discussion and analysis portion: Registrants that do not outline what they are doing in this arena risk facing tough questions from regulators and potential litigants, especially if they are experiencing and defending against material

cyberattacks and/or incurring material costs to prevent such attacks.

- The legal proceedings section of the Form 10-K: This area would have to include any material litigation or regulatory incidents related to cybersecurity incidents.
- Various other financial statement disclosures: Additional areas for consideration include but are not limited to remediation costs, reputational damage, liability for stolen information, increased preventive costs (insurance, technology investments and the like) and so on.

### Newer issues: Insurance and the law

Issues regarding the topic of cybersecurity, like methods of cybersecurity, are ever-changing. The case law related to cyber insurance, for example, is still developing, yet a pattern is emerging that merits attention by organizations obtaining cyber insurance policies. Simply put, great care should be paid to the policy application itself, including any warranties presented to the underwriter that are related to internal controls in place to address information security. A recent court decision (*Columbia Casualty Company v. Cottage Health System*) highlights this issue clearly. There, an underwriter cited an exclusion that precludes coverage because of the policyholder's "failure to follow minimum required practices." According to the underwriter's complaint, the defendant "permitted anonymous user access, thereby allowing electronic personal information to become available to the public via Google's Internet search engine," thereby voiding the coverage provided by the insurer.

The case reflects the care that companies must undertake to ensure that policy applications be scrutinized carefully for

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inaccuracies and misstatements. Any daylight between the warranties provided and facts that later reveal a deficient practice might result in a claim that falls outside of coverage.

#### In summation

With the SEC heightening its scrutiny of organizations' cybersecurity processes and new technologies also creating new channels for cyberattacks, the need is greater than ever for audit committees to be a more integral part of cybersecurity management efforts. Involving the audit committee after a data breach severely limits its ability to add value to the process and puts the organization at a tremendous disadvantage. Cybersecurity risk has evolved to the level where it should be addressed every bit as seriously as any other substantial enterprise risk, such as a change to the regulatory environment or a sweeping industry mandate.

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# Outsourcing Alert: Internal Revenue Circular Letter No. 17-02

On February 16, 2017, the Puerto Rico Treasury Department issued the Internal Revenue Circular No. 17-02 to clarify several inquiries from withholding agents and service providers regarding the issuance of waiver certificates in the case of taxpayers who receive payments for services that are not subject to the 7% withholding and on the validity of the Circular Letters 02 -09, 02-10 and 02-13 regarding the requirement to submit an affidavit to the withholding agent in the case of suppliers who receive such payments.

Payments for services included in Section 1062.03 (b) of the Code are not subject to the 7% withholding. For such purposes, the withholding agent should not require the presentation of the waiver certificate. In these cases, the Department reiterates that the person providing the services must submit to the withholding agent a copy of the affidavit. The affidavit must include the following information from the service provider:

- Full name
- Physical and postal address
- Social security number or employer identification number
- A statement that the payment received is not subject to withholding under the provisions of Section 1062.03 (b) of the PR Tax Code.

The affidavit will be valid throughout the calendar year for which it was subscribed and shall relieve the withholding agent of his responsibility to make the withholding at source imposed by Section 1062.03 (a) of the

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Code. The withholding agent must retain and keep in his records a copy of the affidavit as evidence of the relay of his responsibility.

The affidavit will also apply to the following payments:

- Payments excluded from the term "services" under the provisions of Section 1062.03 (a) of the Code: insurance premiums; leasing or sale of tangible or real property; printing; the sale of newspapers, magazines and other publications (including advertisements); and the hiring of radio and television time
- Payments for services rendered to a driver of transport company
- Payments for services rendered not subject to retention as established by the Department through administrative determination, circular letter or general newsletter.

Link-Puerto Rico Secretary of the Treasury  
<http://www.hacienda.gobierno.pr/publicaciones/carta-circular-de-rentas-internas-num-17-02>

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