

# *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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Soon we will release the dates for upcoming webcasts.

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# Audit Alert: FASB clarifies the definition of a “business”

The Board issued ASU 2017-01, [\*Clarifying the Definition of a Business\*](#), which provides a new framework for entities to use when determining whether a set of assets and activities (together referred to as “a set”) constitutes a business. The amendments in the ASU will assist entities when they evaluate whether transactions should be accounted for as acquisitions (or disposals) either of assets or of businesses. This distinction is important since there are significant differences between the accounting for an acquisition of a business and for an acquisition of assets.

Under ASC 805, *Business Combinations*, an entity determines whether a transaction is a business combination based on whether the acquired activities and assets meet the definition of a business. If these acquired activities and assets constitute a business, an entity would then use the acquisition method to account for the assets acquired and liabilities assumed in the transaction. As a result, the definition of a business directly impacts the accounting for acquisitions along with many other areas of accounting, including disposals, goodwill, and consolidation.

As an initial step in determining whether a set is a business, the amendments provide a screen to determine when a set is not a business. When applying the screen, if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or in a group of similar

identifiable assets, the set is not a business, and no further assessment is required. This screen is expected to reduce the number of transactions that would require further evaluation.

The amendments also include additional guidance related to applying the screen, and the steps to perform if the screen is not met and it also removes the evaluation of whether a market participant can replace any missing elements. Additionally, the definition of an output has been amended so that this term is consistent with the description of outputs in ASC 606, *Revenue from Contracts with Customers*.

The amendments are effective for public business entities, in annual periods beginning after December 15, 2017 and all other entities in annual periods beginning after December 15, 2018.

These amendments should be applied prospectively on or after the effective date.

*Source: Grant Thornton, On the Horizon, January 12, 2017*

**We are committed to keep you updated of all developments that may affect the way you do business in Puerto Rico. Please contact us for further assistance in relation to this or any other matter.**



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**January 19, 2017**

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# Tax Alert: Proposed regulations for the Interagency Validation Portal created under Act 187-2015

On November 17, 2015, Act No. 187-2015 (the “Act”) was approved to create the Interagency Validation Portal for the Granting of Incentives for the Economic Development of Puerto Rico (the “Portal”), which will be directly supervised by the Puerto Rico Institute of Statistics (“PRIS”). The portal will be the vehicle through which Certifying (Issuing) Agencies and Granting (Recipient) Agencies will communicate to process, oversee, validate and award (including renovations, extensions and amendments) the tax incentives or benefits from the 34 legislative acts which promote the economic development of Puerto Rico.

In light of the above, on November 23, 2016, the PRIS proposed for adoption its REGULATION FOR THE OPERATION OF THE INTERAGENCY VALIDATION PORTAL FOR THE GRANTING OF INCENTIVES FOR THE ECONOMIC DEVELOPMENT OF PUERTO RICO, which aims to establish the rules and procedures that will govern the Portal’s operation in regards to:

- ✓ the government agencies’ various duties and access to the system;
- ✓ the evaluation of requests, validation and issuance of the now requisite Certificate of Compliance and its notification to beneficiaries;
- ✓ the due date for the issuance of the Certificate of Compliance, as well as its

- effective period and procedure to request a printed copy of it; and
- ✓ non-compliance consequences.

## Proposed Regulations Certifying (Issuing) Agencies (CIA) and Granting (Recipient) Agencies (GRA)

A **CIA** will validate that a natural or juridical person meets the requirements to obtain a tax incentive or benefit requested or granted to promote an incentive activity, through a Certificate of Compliance.

Meanwhile, a **GRA** will be the recipient of the Certificate of Compliance and is responsible for granting any type of tax incentive or benefit to a natural or juridical person that meets the appropriate requirements.

## Certificate of Compliance

The Certificate of Compliance (the “Certificate” or “CC”) will validate that the natural or juridical person meets the specific requirements of the law by virtue of which a particular privilege is granted and, therefore, qualifies for the tax incentive or benefit.

The Certificate will be issued through the Portal, whose use is limited to the Issuing and Recipient governmental agencies, as well as the PRIS, and will be valid for a one-year period.

It is the CIA’s obligation to notify the applicants of the expedition of the Certificate



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**December 28, 2016**

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on or before the 15<sup>th</sup> day of the second month after the close of the applicant's taxable year.

To standardize the necessary statistical and investigative information among the various agencies and users, all CCs will need to include the following information:

1. Taxable year for which the Certificate is being issued;
2. Issuance date;
3. Article or Section under which the fiscal incentives are granted;
4. Nature of the fiscal incentive granted, for which the Certificate is being issued;
5. Name of the compliant applicant, as such term is defined on Section 1.09(A)(18) of the Proposed Regulation;
6. Whether the incentive is transferable;
7. Whether the incentive is being granted for the first time or an extension of one previously granted;
8. Disclosure of applicable amendments or conditions, if any, imposed by the granting Agency on the Applicant;
9. Identification number for property or properties ("Número de Catastro") connected to the business;
10. Merchant Registration Number;
11. Employer Identification Number;
12. Registration Number within the Puerto Rico State Department;
13. Account number associated with the business, activity or person;
14. Confirmation by the Puerto Rico Permits Administration Office ("OGPe", for its acronym in Spanish) that the Applicant has one or more current Unique Certifications issued under Act No. 216-2014;
15. Any other information that the PRIS deems necessary through its Executive Director, which it deems necessary to

measure the fiscal benefit's impact on the Puerto Rico economy;

16. The name, title and signature's digital image of the authorized government agent responsible for validating that all of the information found within the CC is accurate and true, and that the Applicant has complied with all of the applicable the legal requirements for the granting and enjoyment of the fiscal benefits so bestowed under the particular incentives act.

Any CC that fails to include the aforementioned information will be deemed null and void. Nonetheless, in the event that the PRIS denies or revokes a CC, the CIA is not precluded from clearing any deficiency and re-submitting the revised information for the eventual issuance of the Certificate.

Considering the current fiscal crisis in Puerto Rico and the presence of the Puerto Rico Fiscal Oversight Board, the Portal will certainly play a preeminent role in regulating, monitoring and measuring the required compliance with the requirements and compromises established in the incentives grants.

#### Request for Copy of Certificate of Compliance

Any applicant can request copies of the Certificate of Compliance issued on its behalf by paying the appropriate fee (which will be set by the PRIS' Board of Directors) along with evidence of authorization act as a representative of the tax incentives beneficiary.

Moreover, any person may request a *Negative Certificate* whereby it is evidenced that a determined person does not hold a current Certificate of Compliance.

The PRIS online page will later detail which documents will need to be filed to request these certificates.

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

# Advisory Alert: Due diligence can lower risk when buying a business

When buying a business, conducting enterprise due diligence ensures you look at the business in a holistic way to cover all issues and opportunities in the deal. Here's what to look out for and how to minimize the business risk.



**What is operational due diligence?**  
Old style operational due diligence identifies the operational risks and performance in a transaction. This is too narrow in its approach, as it fences off operations without thinking about how this impacts the rest of the business.

Due diligence should be viewed holistically, ensuring that issues within a business function are not considered exclusively. This is called enterprise due diligence as it looks across the whole business.

You should still include traditional operational due diligence issues such as performance improvements, capital expenditure plans and asset assessments. But when taking a more holistic approach it naturally throws up all sorts of new questions, such as:

- how a capital expenditure plan could be more tax efficient
- how the back office will be impacted by the growth plan and how the performance improvements could be used to maximize cash

## What does enterprise due diligence look for?

Traditionally, operational due diligence focused on risks and performance of assets or functions.

It is really important for buyers to understand the risks with the asset they are buying, and buyers should look more closely at the potential of the business.

It is really important to put as much focus on the opportunities as the risks. In our work we often see opportunities with a much larger financial impact on the future performance of the business than the identified risks. These opportunities effectively offset the risks. This gives the business confidence that it has options should the risks arise, and allows them to bid more competitively.



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January 18, 2017

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### Buyers wary of over optimistic business plans

We are seeing vendors becoming more savvy in their approach to grooming businesses for sale. We are seeing increasingly optimistic business plans where firms are looking for ways to maximise the deal headline price. To some extent this has always happened, but vendors are now articulating and presenting their business plan in an ever more convincing way.

This results in buyers having to dig even deeper into the business to ensure they are comfortable with the plans. Where there are risks to the plan this can be factored into the deal price, but there may also be opportunities that the vendor has missed or are unique to individual buyers.

### Reducing the risk of buying a business

An example of this included a buyer who did not believe the aggressive performance improvement plans presented by the vendor, where the planned delivery of financial opportunities was greater than in previous years. Consequently, the buyer wanted to reduce the price.

However, we offset this risk against additional performance improvements that we found in the logistics function and had implemented in another similar business. This reduce the risk for the buyer but maintain their competitiveness in the auction.

### What kind of challenges does this present to practitioners in the market?

Clients are demanding a broad range of specific experiences and skills from their advisors. For due diligence advisors they are looking for financial robustness, but also sector and business experience to give them the best advice and possibly an edge in a deal.

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# Outsourcing Alert: Changes in 2016 Informative Returns reporting requirements

The Puerto Rico Treasury Department (PRTD) has issued the Informative Bulletin No. 16-06 to inform changes in Informative Returns Reporting Requirements.

## Significant changes

The most important change in 2016 Reporting Requirements is the inclusion of the payments made not subject to withholding in excess of \$1,500 to those who comply with one of the exemptions included in the paragraphs (2) and (14) of Section 1101.01 of the Code in **Forms 480.6As**.

Detail of exemptions are:

- payments made to hospitals, clinics, homes for terminally ill patients, homes for elderly and institutions for disabled persons
- payments made to exempt organizations
- earnings or profit generated by direct salespersons for the sale of consumer products
- payments made to contractors or subcontractors for construction work
- payments for services rendered to individuals, corporations or partnerships during the first three years of their commencement of rendering of service activity
- payments to the Government of Puerto Rico, its agencies, public corporations and/or political subdivisions.
- payments to a bona fide farmer
- payments made directly or through agents, representatives or other intermediaries, to an eligible carrier.
- payments made by an eligible carrier to a nonprofit entity for purpose of bookkeeping, recording, reporting and collection of air or sea transportation ticket sales and other related services.

- payments for ecclesiastic services rendered by priests or other ministers of the gospel, including Hebrew rabbis.
- payments for services rendered outside of Puerto Rico.

In the case of payments for services rendered to an individual, who has an employer identification number, you must include such identification number and the Amount paid – Box 1, (Payments for Services Rendered by Individuals).

Remember: before filing **2016 Form 480.6B** it is required to obtain the waiver certificate number.

Links:

Informative Bulletin 16-06

[http://www.hacienda.gobierno.pr/sites/default/files/publicaciones/2016/12/publication\\_16-06.pdf](http://www.hacienda.gobierno.pr/sites/default/files/publicaciones/2016/12/publication_16-06.pdf)



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