

Kevane mailbag

October 28, 2016 – Issue 67

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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.

The Alerts contained in our mailbags can also be accessed through our website under the Publications tab\Professional Articles section or by downloading our business and tax application for mobile, tablets and iPad for free through the App Store and Google Play. We welcome your feedback at kgt@pr.gt.com

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General Information

We invite you to our SURI implementation workshop, on November 16, 8:00 am to 12:00 m. Free of charge. Qualifies for 3 hrs. of continued education. Limited spaces. Complete registration form attached.

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Conferencia

Implementación de SURI

Fecha: Miércoles, 16 de noviembre de 2016

Hora: 8:00 am a 12:00 m

Lugar: Insitituto de Desarrollo Universal

Hoja de registro

Instrucciones:

Favor de registrarse en o antes del 4 de noviembre de 2016. Espacios limitados. Complete una hoja por participante y envíe a: kgt@pr.gt.com

Libre de costo para clientes de Kevane Grant Thornton. Requisito traer computadora con WiFi.

Información del participante:

Nombre Apellido

Compañía

Dirección postal

Ciudad Estado Zip code

Correo electrónico

Número de teléfono

Si es CPA, especifique su número de licencia.
Taller cualifica para 3 hrs. crédito.

Audit Alert: IOSCO reports on framework to strengthen corporate

The International Organization of Securities Commissions (IOSCO) published "[Report on Corporate Governance: Final Report.](#)" detailing the results of the work performed by the Corporate Governance Task Force established by IOSCO's Growth and Emerging Markets Committee. The task force conducted a comprehensive survey on corporate governance practices in emerging markets and identified possible regulatory approaches to strengthen corporate governance in emerging market jurisdictions and align such frameworks with internationally recognized standards.

The report focuses on three areas: board composition and responsibility, remuneration and incentive structures, and risk management and internal controls. It identifies common concerns and challenges within emerging markets, including:

- abusive related-party transactions
- failures to disclose material information
- corruption scandals and undue political interference in state-owned enterprises.

The report also identifies approaches for implementing best corporate governance practices and avoiding the concerns noted above, including:

- selection of a board of directors that is independent, qualified, and accountable and that has clear responsibilities and priorities
- development of a transparent and appropriate remuneration structure

- Use of effective internal controls and risk management policies.



Source: Grant Thornton, *On the Horizon*, October 13, 2016

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



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Tax Alert: Changes in the computation of the Alternative Minimum Tax

On September 30, 2016, the Puerto Rico Treasury Department (“PRTD”) issued Administrative Determination No. 16-11 (“AD 16-11”) to clarify the applicability of the Alternative Minimum Tax (“AMT”) under Section 1022.03 of the Puerto Rico Internal Revenue Code of 2011 (the “Code”) for 2016 taxable year in light of the *Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza* case, and to establish the procedure to claim a credit for the excess payment of AMT for taxable year 2015.

Alternative Minimum Tax under the Puerto Rico Internal Revenue Code of 2011

The alternative minimum tax (“AMT”) is designed to ensure that corporations with substantial income may not avoid paying a reasonable amount of income tax by using exclusions, deductions, and credits available to them. Pursuant to Section 1022.03(a), the Puerto Rico AMT equals the *excess* of the amount of the tentative minimum tax over the amount of the normal corporate tax plus surtax.

According to Section 1022.03(b) of the Code, the tentative minimum tax will be the greater of:

- 30% of the alternative minimum net income;
- or
- the sum of the following two (2) items:
 1. 20% of the expenses incurred or paid to related parties and/or the expenses allocated from a Home Office to a branch located in Puerto Rico, if such payments were

not subject to tax in Puerto Rico during the tax year (the “Expenses Tax”);

2. For taxable years commenced before January 1, 2015, two percent (2%) on the purchases of tangible personal property from a related party (the “Tangible Property Tax”).

The Puerto Rico legislature enacted changes to its AMT rules in 2015 through the approval of Act No. 72-2015 (“Act 72”). Among many significant changes, Act 72 established new graduated rates for the AMT’s Tangible-Property Tax, ranging from two and a half percent (2.5%) to a maximum of six and a half percent (6.5%), for taxable years commenced after December 31, 2014.

Furthermore, Act 72 eliminated a provision that had allowed the Secretary to exempt a tangible-property transfer from the tax with proof that the transfer price was equal or similar to the price that would be paid in an arm’s length transaction between unrelated parties.

On December 4, 2015, Wal-Mart Puerto Rico, Inc. filed a complaint against the Secretary of Revenue seeking an injunction against continued enforcement of the AMT and a declaration that the AMT is unlawful under the dormant Commerce Clause, the Equal Protection Clause, and the Bill of Attainder Clause of the U.S. Constitution, and also under the Federal Relations Act.



Contact us

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Wal-Mart suit – Related parties’ transactions tax declared unconstitutional

On March 28, 2016, the Puerto Rico Federal District Court (the “District Court”) issued an opinion and order resolving the case *Wal-Mart Puerto Rico, Inc. v. Juan Zaragoza Gómez*¹ by declaring Sections 1022.03(b)(2) and (d) of the Puerto Rico Code – namely, the Tangible Property and Expenses taxes, as well as the list of exemptions to the Tangible Property Tax – to be invalid under both federal constitutional and statutory law.

Moreover, the District Court forbade the Puerto Rico Secretary of Treasury (“Secretary”) from the levying, collection and enforcement of the aforementioned portions of AMT provision (i.e. under Sections 1022.03(b)(2) and (d)). The injunction also covers the payment of estimated taxes arising from the AMT computation.

On August 24, 2016, the U.S. Court of Appeals for the First Circuit affirmed the District Court’s decision enjoining the Secretary from enforcing the Tangible Property and Expenses tax components of the AMT, thus validating the District Court’s injunction against the Secretary.

AMT calculation for taxable years beginning after January 1, 2016

AD 16-11 affirms that for taxable years beginning after January 1, 2016, the AMT computation will not include the Tangible Property and Expenses component imposed under Section 1022.03(b)(2) of the Puerto Rico Code.

In that case, the AMT computation will be limited to the 30% of the net alternative minimum income over the exempt amount, reduced by the alternative minimum foreign

tax credit for the taxable year. [*see* Section 1022.03(b)(1)(A)]

Estimated Tax Payments for taxable year 2016

Moreover, AD 16-11 states that taxpayers subject to the AMT whose estimated tax payments for the taxable year 2016 have not yet expired, will not have to include the Tangible Property and Expenses component in their computation. Also, if the taxpayer has to pay estimated taxes for the taxable year 2016, the amount already paid attributable to the Tangible Property and Expenses component can be totally applied to the 2016 income tax liability.



AMT for taxable year 2015

AD 16-11 also provides that taxpayers who filed their Income Tax Return for taxable year 2015 and were subject to Tangible Property and Expenses component of Section 1022.03(b)(2) will have the right to compute the AMT without considering the said amounts (the “Revised AMT”).

¹ Civil No. 3:15-cv-03018 (JAF).

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In this regard, if the AMT amount paid with the 2015 income tax return exceeds the Revised AMT, the taxpayer will be allowed a credit for the difference. Said credit used against:

1. the AMT for subsequent years, subject to the limitations of Section 1051.02 of the Puerto Rico Code; OR
2. the estimated taxes for the taxable year 2016.

Taxpayers who choose to use the excess AMT payments as a credit against their 2016 estimated tax liability, must file an Amended Income Tax Return for the taxable year 2015 with Form 483.3 - FORMULARIO DE TRAMITE, ANEJO A CORPORACIÓN – PARTE V AÑO CONTRIBUTIVO 2015. This form will be available at: www.hacienda.pr.gov

Regrettably, AD 16-11 provides that the excess payments that arise from the filing of the Amended Income Tax Return for taxable year 2015 cannot be claimed as a refund. Instead, such excess payments may only be claimed as a credit for 2016 and subsequent taxable years.

Correlation between Sections 1022.03(b)(2)(A) and 1033.17(a)(17) of the PR Code

Section 1033.17 of the Puerto Rico Code limits the deduction of the expenses or charges incurred by a taxpayer with a related party that is not engaged in trade or business in Puerto Rico, if such expenses are not subject to Puerto Rico taxes, providing that 51% of these expenses will not be allowed as a deduction for ordinary tax computation.

According to the Puerto Rico Treasury Department, even though the Tangible Property and the Expenses Tax were declared unconstitutional by the Court, the 51% deduction disallowance continues to be valid.

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

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Advisory Alert: IIA releases updated internal audit standards

The Institute of Internal Auditors' (IIA) has recently released and updated the IIA's International Standards for the Professional Practice of Internal Auditing (Standards).

The amendments

The proposed approved and updated Standards, includes:

- Two new standards, pertaining to:
 - the reality that Chief Audit Executives (CAEs) are sometimes asked to take on risk management, compliance, or other roles beyond internal auditing
 - the potential objectivity-impairing situation in which an internal audit activity performs an assurance engagement after previously consulting in the area
- Alignment of the Standards to the Core Principles:
 - modifications primarily focused on the following two Core Principles, “Aligns with the strategies, objectives, and risks of the organization,” and “Is insightful, proactive, and future-focused”
- Updates to existing Standards:
 - Communications: Summarize in one standard the required communications from the CAE to the board and senior management
 - Quality Assurance and Improvement Program (QAIP): An enhanced annual

requirement for CAEs to report on their quality assurance and improvement program and current level of conformance.

The purpose of the Standards is to:

1. Guide adherence with the mandatory elements of the International Professional Practices Framework.
2. Provide a framework for performing and promoting a broad range of value-added internal auditing services.
3. Establish the basis for the evaluation of internal audit performance.
4. Foster improved organizational processes and operations.

Effective date

The revised Standards will be effective on January 1, 2017, and are currently available on the IIA's website.

Refer to: <https://na.theiia.org/standards-guidance/mandatory-guidance/Pages/Standards.aspx>

Call us to make an appointment with one of our experienced advisors. We will be glad to assist you.



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Outsourcing Alert: Requirement for Christmas bonus payment

Every employee having worked at least 700 hours in the twelve-month period commencing October 1 and ending September 30 is entitled to receive a mandatory Christmas Bonus. For 2016 and subsequent years the bonus is 6% of the employee's wages up to a maximum employee individual wage of \$10,000. Accordingly, the maximum bonus payable will be \$600. In 2016, the bonus must be paid no later than December 15.

In the case of those employers with 15 or less employees the applicable rate is 3% for 2016 and subsequent years.

If the Christmas bonus does not exceed \$600, the employer will not withhold taxes from bonus paid. When the Christmas bonus exceeds \$600 but does not exceed \$1,500, the employer must withhold a 7% tax from the total bonus. If the bonus exceeds \$1,500, the employer may use the applicable withholding rules established on "Employer's Guide".

Nevertheless, the total amount to be paid will not exceed 15% of the annual profits of the employer generated during the same twelve-month period used to determine the eligible employees.

If an employer wants to be exempt from payment of all or part of the bonus because of operating losses, then he must submit a written notification to the Secretary of Labor and Human Resources not later than November 30, 2016, accompanying financial statements for the period from October 1 through September 30, reviewed by a CPA.

If the employer fails to submit the data to support non-payment of the bonus, he becomes liable for the payment of the full bonus.

If the employer does not pay the bonus when due, the employee will be entitled to receive an additional bonus. It can be 50% or 100% of the amount of the bonus, depending on the date paid.

Employers are required to advise terminated employees, who are entitled to the bonus before payment due date, their mailing address to mail the bonus.

Links:
Employer's Guide
http://hacienda.gobierno.pr/sites/default/files/individuos/docs/tablas_retencion_2014.pdf



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