

# Kevane mailbag

## October 29, 2015 – Issue 55

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The Kevane mailbag is your link to 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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Icon	Content
<b>Audit</b> 	In this issue we will review the FASB proposed guidance to simplify measurement-period adjustments made to provisional amounts recognized in a business combination. Read related information on <a href="#">page 2</a> .
<b>Tax</b> 	After the approval of Act 72-2015, various technical amendments have been incorporated to this Act. In this Tax Alert we discuss those related to income taxes. Read more on <a href="#">page 3</a> .
<b>Advisory</b> 	The threats to data privacy and data security are fierce and continuously evolving. CFOs play a critical role in keeping organizations secure from these threats. Access the article on <a href="#">page 6</a> .
<b>Outsourcing</b> 	Every employee in Puerto Rico having worked at least 700 hours is entitled to receive a mandatory Christmas Bonus. Read more on <a href="#">page 7</a> .
<b>General Information</b> 	<b>Client satisfaction survey</b> If you have received our survey in relation with <b>audit and tax services</b> provided, we would like to receive your comments. Committed to providing quality services, we have an ongoing monitoring program to measure the level of satisfaction of services provided. Your comments are important to continue improving our services and experiences in working with you. Thank you!

# Audit Alert: Board issues ASU to simplify measurement-period adjustments

## FASB

*FASB All decisions reached at Board meetings are tentative and may be changed at future meetings. Decisions are included in an Exposure Draft only after a formal written ballot. Decisions reflected in Exposure Drafts are often changed in redeliberations by the Board based on information received in comment letters, at public roundtable discussions, and from other sources. Board decisions become final after a formal written ballot to issue a final Accounting Standards Update.*

The FASB recently [issued](#) ASU 2015-16, Business Combinations: Simplifying the Accounting for Measurement-Period Adjustments, which simplifies the accounting for adjustments made to provisional amounts recognized in a business combination by eliminating the requirement to retrospectively account for these adjustments.

Under the new guidance, an acquirer is required to recognize adjustments to provisional amounts that are identified during the measurement period within the reporting period in which the adjustment amounts are determined. Those adjustments include changes in depreciation, amortization, or other income effects as a result of the change in provisional amounts calculated as if the accounting had been completed at the acquisition date. The acquirer must also present separately by line item, either on the face of the income statement or in the notes to the financial statements, the portion of the amount recorded in current-period earnings that would have been recorded in previous

reporting periods if the adjustment to the provisional amounts had been recognized as of the acquisition date.

Public business entities must apply the amendments for fiscal years beginning after December 15, 2015, including interim periods within those fiscal years. Early application is permitted for financial statements that have not been issued.

All other entities must apply the guidance for fiscal years beginning after December 15, 2016 and for interim periods within fiscal years beginning after December 15, 2017. Early application is permitted for financial statements that have not yet been made available for issuance.

The amendments must be applied on a prospective basis to adjustments to provisional amounts that occur after the effective date.

Source: Grant Thornton, *On The Horizon*, October 1, 2015

**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.**



## Contact us

For assistance in this matter, please contact us via [luiscarlos.marcano@pr.gt.com](mailto:luiscarlos.marcano@pr.gt.com)



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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.



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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

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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.**

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# Advisory Alert: The CFO's role in cybersecurity

## Executive summary

Organizations must comply with myriad industry standards while managing the security of both their proprietary and customer data, as well as brace for the possibility of unknown breaches and leaks. A data breach can be exceedingly costly and can jeopardize a business of any size. To help senior-level financial executives improve their cybersecurity and protect their organizations, Grant Thornton LLP and Financial Executives Research Foundation (FERF) identify critical elements of the CFO's role in protecting his/her organization from cyberattacks, as well as practical recommendations for establishing an effective cybersecurity program.

These findings are based on a survey of 98 members of Financial Executives International (FEI) and Grant Thornton clients, conducted between July and December 2014. The survey was followed by in-depth interviews of FEI members to get perspectives on a number of organizations' experiences managing cyber threats.

## Key findings include:

1. Respondents' top cybersecurity concerns include protection of data — including customer data and intellectual property (IP) — from data breaches and compliance with data security laws.
2. Either the CFO or the chief information officer (CIO) is usually responsible for the company's cybersecurity program. However, interviews revealed that

collaboration between different groups is more reasonable.

3. Although the CFO is often responsible for cybersecurity, the organization's IT department typically manages the day-to-day aspects of cybersecurity. General counsel are usually involved as well, advising senior management and board members on legal responsibilities.
4. The CFO is often expected to assess cybersecurity risks, align cybersecurity strategy with business strategy and get buy-in from the board on necessary cybersecurity investments.
5. The most common impediment to developing an enterprise wide cybersecurity strategy is a lack of understanding of cyber risks and potential impacts of a breach.



**If you wish to take a deeper look into Grant Thornton's research and learn more about the CFO's critical role in establishing an effective cybersecurity program, please click [here](#).**

**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: Requirements for the Payment of Christmas Bonus

Every employee in Puerto Rico 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 2015, 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 2015, 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 2015 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, 2015, accompanying financial statements for the period from October 1 through September 30, reviewed by a CPA.

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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 and 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 and may request his/her mailing address to mail the bonus.

Links:

[http://hacienda.gobierno.pr/sites/default/files/individuos/docs/tablas\\_retencion\\_2014.pdf](http://hacienda.gobierno.pr/sites/default/files/individuos/docs/tablas_retencion_2014.pdf)



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