

Tax Alert: Individual income tax returns - electronic filing for taxable year 2015

On February 17, 2016, the Puerto Rico Treasury Department issued Internal Revenue Circular Letter No. 16-02 (“CL 16-02”) in order to establish the filing procedures of individual income tax returns for taxable year 2015.

According to the Internal Revenue Code for a New Puerto Rico of 2011 (the “Code”), the Secretary of the Treasury may allow or require, through rules adopted by circular letter or regulation, the filing of any return, statement or form required by any subtitle of the Code, as well as the payment of any tax imposed by those subtitles, by electronic means.

The Puerto Rico Treasury Department (“PRTD”), on its aim to facilitate the tax return filing process, reduce the costs associated with their processing and adopt new technology environments, will now require **electronic filing** of Individual Income Tax Returns for taxable years beginning after December 31, 2014 (i.e. 2015) and thereafter.

According to CL 16-02, the following taxpayers, who are obligated to file a return under §1061.01 of the Code, must now do so through electronic means. Namely:

- every individual resident of Puerto Rico who is an individual or married taxpayer, if his/her gross income for the taxable year, reduced by the exemptions under §1031.02 of the Code, exceeds five \$5,000;

- nonresident individuals or married taxpayers that are US citizens whose gross income from sources within Puerto Rico, reduced by the exemptions under §1031.02 of the Code, exceeds \$5,000 for the taxable year;
- nonresident alien individuals who had taxable gross income from sources within Puerto Rico, unless the tax on said income has been fully paid at source;
- every individual whose alternative minimum net taxable income is to or exceeds \$150,000 for the taxable year.



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February 21, 2016

Tax returns that are required to be submitted by electronic means but are filed in paper will not be considered FILED, and will be subject to the penalties prescribed by the Code, even when it was received and stamped by the PRTD.

Notwithstanding the above, the following taxpayers **are exempt from the electronic filing** and are allowed to file their tax return in paper, as long as it is filed along with Form 483.20, *EXCEPTION TO ELECTRONIC FILING INDIVIDUAL INCOME TAX RETURN*:

- partners or members of flow-through entities whose fiscal taxable year ends before December 31, 2015;
 - nonresident Individuals who **only** made a sale of real property located in Puerto Rico after December 31, 2015 and request the Secretary of Treasury's authorization for the refund of the amount withheld in said transaction;
 - individuals that claim a deduction for their initial investment on a Private Equity Fund pursuant to Act 185-2014. The Individual must file his/her return along with Form 483.2, copy of the certification issued by the pertinent agency and evidence of the amount contributed;
 - individuals whose pension income reported on IRS Form 1099-R is subject to the \$11,000 or \$15,000 Puerto Rico exemption
 - individuals who have reported exempt income under a Special Agreement for the Creation of Young Entrepreneurs (Act 135-2014) issued by the Puerto Rico Trade and Export Company.
- individuals who claim in their tax returns the following credits:
 - credit attributable to losses or for investment in the Capital Investment Fund (Act 185-2014);
 - credit for investment in housing infrastructure (Act 98-2001);
 - credit for investment in the construction or rehabilitation of rental housing projects for low or moderate income families (Act 140-2001);
 - credit for construction investment in urban centers (Act 212-2002);
 - credit for merchants affected by urban centers revitalization (Act 212-2002);
 - credit for purchases of products manufactured in Puerto Rico, and Puerto Rico agricultural products under §§ 1051.07 and 1051.09 of the Code;
 - credit for the establishment of an eligible conservation easement or the donation of eligible land (Act 183-2001);
 - tourism investment credits (Acts 78-1993 and 74-2010) or Agriculture Incentives credits (Act 225-1995);
 - credit for investment in film industry development (Act 27-2011);
 - credit for the purchase or transmission of television programming made in Puerto Rico, pursuant to §1051.14 of the Code;

- credit for payments of Membership Certificates by Ordinary and Extraordinary Members of Employee-Owned Corporations, pursuant to §1113.14 of the Code;
 - credit to investors who acquire an exempt business that is in the process of closing its operations in Puerto Rico (Act 109-2001);
 - credit for contributions to the Santa Catalina Palace Patronage or Ex-Governors foundations;
 - industrial investment credits issued under §6 of the Economic Incentives for the Development of Puerto Rico Act (Act 73-2008);
 - credits for investment in Research & Development into green energy sources under §2.11(c) of the Puerto Rico Green Energy Incentives Act (Act 83-2010);
 - credit for the purchase of tax credits;
 - any of the tax credits mentioned above that is carried from previous years.
- individuals who claimed the American Opportunity Tax Credit through the partial refund of either their own, their spouse or their dependents university studies;
 - individuals subject to a reduced income tax rate in accordance with a Special Agreement issued by the Trade and Export Company under the Employments Now Act (Act 1-2013);
 - individuals who were on active military duty, were transferred from Puerto Rico to a conflict scene and that for the taxable year that began after December 31, 2014 received compensation for active military service on a combat zone;
 - additional contributions to a Governmental Pension and/or Retirement Plan in excess to the amount reported on the withholding statements Form 499R-2/W-2PR or corrected Withholding Statement Form 499R-2c/W-2cPR.
 - an individual with “back pay” related to wages, salaries, retirement pay, and other similar compensation must file Form SC 2668 along with tax return;
 - individuals whose adjusted gross industry, business, farming, professions and commissions, income and rental income exceeds \$3,000,000 and are required to include with its tax return an audited financial statement from a CPA with license in Puerto Rico;
 - non-resident individuals that during the taxable year had income attributable to the conduct of a trade or business in Puerto Rico, pursuant to §1035.05 of the Code. The Individual must include copy of the income tax return for the foreign jurisdiction where he/she resides;
 - individuals who, upon filing their first Puerto Rico income tax return through electronic means, are notified that their social security number does not match the PRTD’s records;
 - individuals who, pursuant to §1051.01 of the Code, claim a credit for taxes paid to foreign countries, the United States, its territories and its possessions;

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- individuals who, pursuant to §1021.04 of the Code, file their tax return under the provisions of the Internal Revenue Code of 1994, as amended, (i.e. Option 94);
- individuals who died during the taxable year 2015 will file the tax return with its income since January 1 up to the date of death. If the deceased was a married taxpayer who lived with its spouse, the surviving spouse must file a separate tax return for the remaining period, from the date of death to the end of the taxable year.

It is important to note that individuals who claim a credit on Schedule B for tax withheld on dividends from Industrial Development Income under Section 4(a) of Act 8 of 1987 or the 30% on its proportional interest on the fixed income tax rate paid by the tax exempt business under Act 135-1997 or both credits, are **required to file their tax returns electronically.**

As mentioned above, individuals that qualify for the filing of its tax return **by paper will need to include with its tax return Form 483.2.** On said Form, the individual will declare under oath the reasons that exempt him/her from the electronic filing requirements and will select the applicable options mentioned above. The Treasury Department will not process a tax return on paper that does not include Form 483.2.

Individual income tax returns that qualify to be filed on paper may be filed at the PRTD, the Orientation and Preparation Centers located on several commercial centers through the island or any of the Collections Offices of the PRTD.

The individual tax returns that need to be filed electronically can be filed through the approved program applications published by the PRTD on their on their internet site, www.hacienda.gobierno.pr. If the return requires payment, the taxpayer may pay at the time of filing or at a later date (but no later than April 15) by authorizing the debit of a sufficiently-funded bank account.

The Request for an Automatic Extension to file the Individual Income Tax Return will be accepted only by electronic means through the virtual office. The PRTD will only accept the paper Extension on those cases where the individual income tax return can be filed by paper, along with Form 483.2.

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