

# 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

For assistance in this matter, please contact us via [maria.rivera@pr.gt.com](mailto:maria.rivera@pr.gt.com), [francisco.luis@pr.gt.com](mailto:francisco.luis@pr.gt.com), [lina.morales@pr.gt.com](mailto:lina.morales@pr.gt.com) or [isabel.hernandez@pr.gt.com](mailto:isabel.hernandez@pr.gt.com)



Adding true value means exceeding our clients’ expectations, anticipating their needs and being proactive and innovative in the accounting profession.

Through the **Kevane Grant Thornton business and tax application for mobile devices** you will have access to our Alerts, Tax News and other related matters, plus a customized tax calendar for individuals, businesses and other entities, thus providing an excellent tool to manage filing and payment due dates with government agencies in Puerto Rico.

Download for free the application. Available for iPhone, Motorola and all tablets.



Follow us on  and 

**October 21, 2016**

**DISCLAIMER:** This update and its content do not constitute advice. Clients should not act solely on the basis of the material contained in this publication. It is intended for information purposes only and should not be regarded as specific advice. In addition, advice from proper consultant should be obtained prior to taking action on any issue dealt with this update.

© 2016 Kevane Grant Thornton LLP All rights reserved.  
Kevane Grant Thornton LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another’s acts or omissions. Please visit [www.kevane.com](http://www.kevane.com) for further details.

### 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*<sup>1</sup> 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”).

<sup>1</sup> Civil No. 3:15-cv-03018 (JAF).

DISCLAIMER: This update and its content do not constitute advice. Clients should not act solely on the basis of the material contained in this publication. It is intended for information purposes only and should not be regarded as specific advice. In addition, advice from proper consultant should be obtained prior to taking action on any issue dealt with this update.

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](http://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.**

DISCLAIMER: This update and its content do not constitute advice. Clients should not act solely on the basis of the material contained in this publication. It is intended for information purposes only and should not be regarded as specific advice. In addition, advice from proper consultant should be obtained prior to taking action on any issue dealt with this update.

© 2016 Kevane Grant Thornton LLP All rights reserved.  
Kevane Grant Thornton LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. Please visit [www.kevane.com](http://www.kevane.com) for further details.