

Tax Alert: Administrative Order to halt the granting of new tax credits

On January 2, 2017, the governor of Puerto Rico signed Executive Order No. OE-2017-01 (“OE-2017-01”), declaring a fiscal state of emergency and mandating all public agencies to take the necessary measures to reduce operational costs in order to comply with the assigned budget for the fiscal year 2017, without sacrificing the continued provision of essential services – those ensuring the health, safety and welfare of the residents of Puerto Rico.

OE-2017-01 aims to address the fiscal crisis of the government of Puerto Rico by taking the following steps to decrease the government spending, among others:

- freezing of vacant posts;
- reducing the number of political appointees and professional service contracts;
- slashing government’s operational costs.

In keeping with the directive and purpose of OE-2017-01, on March 7, 2017 the Puerto Fiscal Agency and Financial Advisory Authority (“AAFAF” for its acronym in Spanish) issued Administrative Order No. OA-2017-01 (“OA-2017-01”), to effectively halt the concession of all future tax credits and special funds assignment to help improve cash flow and balance the budget.

What is the Puerto Rico Fiscal Agency and Financial Advisory Authority?

AAFAF was established as an independent public corporation and governmental instrumentality with separate legal existence, fiscal and administrative autonomy, and independence from the government of Puerto

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Rico, for the purpose of acting as fiscal agent, financial advisor and reporting agent of the Government of Puerto Rico, its agencies, instrumentalities, subdivisions, public corporations and/or municipalities, and to assist such entities in confronting the momentous fiscal and economic circumstances that Puerto Rico is currently experiencing.

Administrative Order OA-2017-01

OA-2017-01 orders the suspension of all new obligations against all multiannual special assignments for fiscal years prior to fiscal year 2017.

In addition, OA-2017-01 precludes the issuance of new tax credits under various Puerto Rico tax incentives laws, such as:

- Act 78-1993, known as the *Tourism Development Act of 1993*;
- Act 46-2000, known as the *Capital Funds Investment Act*;
- Act 98-2001, known as the *Infrastructure Tax Credits*;
- Act 140-2001, known as the *Tax Credits for Investments in New Construction and Rehabilitation of Affordable Housing Act*;
- Act 183-2001, known as the *Puerto Rico Conservation Easement Act*;
- Act 212-2002, known as the *Urban Centers Revitalization Act*;
- Act 73-2008, known as the *Economic Incentives Act for the Development of Puerto Rico*;
- Act 74-2010, known as the *Puerto Rico Tourism Development Act of 2010*;



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- Act 27-2011, known as the *Puerto Rico Film Industry Economic Incentives Act*;
- Act 159-2011, known as the *Investment in Reduction Facilities, Disposal and/ or Treatment of Solid Waste*;
- Act 302-2012, which amends the *2011 Internal Revenue Code for a New Puerto Rico* (the “Code”) to allow a tax credit for donations to foundations of former governors, among others;
- Act 77-2015, known as the *Tax Credits for the Construction or Rehabilitation of Low-Income and Elderly Housing*; and
- Sections 1051.09, 1051.07, 1052.03 and 4050.10 of the Code.

Who will have the authority to evaluate the granting of future tax credits?

The Tax Credits and Disbursements Authorization Committee (the “Committee”) – which will be composed by the heads of the Puerto Rico Treasury Department, the Office of Management and Budget and the AAFAP, who will preside the Committee – will be tasked with the evaluation of pending and future tax credits requests, as well as the approval and disbursement of prior years’ special assignments.

The Committee is also empowered to limit the use and the timing of tax credits granted for a *maximum period of four (4) fiscal years*.

Also, OA-2017-01 directs the Secretary of the Treasury Department (the “Secretary”) to conduct an inventory of issued and outstanding tax credits and to require their holders to provide all the information (to be determined at a later date) that the Secretary deems necessary to support their concession. If concessionaires fail to comply with the Secretary’s information requirement, they will not be able to claim the tax credits in question.

It is important to note that OA-2017-01 does not suspend the filing and granting of tax credits petitions nor the requests for new tax exemptions decrees under the aforementioned incentives laws. The difference now is that both pending and prospective tax credits applications will be subject to revision and negotiation by the Committee. Requests for new tax exemptions grants will continue to be subject to the normal administrative procedures in the corresponding government agencies.

Note: As highlighted in our Tax Alert dated July 1, 2016, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), seeks to provide Puerto Rico with fiscal and economic discipline through the creation of a control board, among other things. Virtually every fiscal decision by the Government of Puerto Rico will be made or approved by the Oversight Board created by PROMESA. On this regard, the board has authority to prevent the execution or enforcement of a contract, rule, executive order or regulation to the extent that it is inconsistent with the approved fiscal plan.

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