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Tax Alert: Most recent amendments to incentive acts in Puerto Rico

August 23, 2017

In search of sustainable economic growth through the exportation of services from Puerto Rico and in light of the proposed *Tax Reform Bill* that is looming on the horizon, on August 8, 2017, the Governor of Puerto Rico signed Acts Nos. 91 and 94 of 2017 ("Act 91-2017" and "Act 94-2017"), which respectively amended Act No. 187 of November 17, 2015 ("Act 187-2015"), as well as Act 20 of January 12, 2012 ("Act 20-2012").

Act 91-2017 postpones the effectiveness of Act 187-2015, while Act 94-2017 gradually reduces the base period income limitation for businesses that were engaged in an eligible activity before filing the tax exemption application under Act 20-2012.

Change to Act 187-2015

Certificate of Compliance, and Certifying and Granting Agencies' functions

As noted in our December 28, 2016 *Tax Alert*, Act 187-2015 was approved to create the Interagency Validation Portal for the Granting of Incentives for the Development of Puerto Rico (the "Portal"). Basically, the Portal aims to, among other things, be used as a vehicle through which Certifying (Issuing) Agencies ("CIA") and Granting (Recipient) Agencies ("GRA") will communicate to process, oversee, validate and award the tax incentives from a number of legislative acts which promote the economic development of Puerto Rico. In addition, through the issuance of a Certificate of Compliance ("Certificate"), both CIA and GRA validate that the person or entity ("Grantee") meets the specific requirements of the law by virtue of which a particular privilege is granted and, therefore, qualifies for the tax incentives.

Considering that the government of Puerto Rico is currently working on an *Incentives Code* to validate the concession of tax incentives by estimating its economic impact in the Island, and a *Tax Reform* is expected to be presented before the Legislature of Puerto Rico during this year, Act 91-2017 amends Act 187-2015 by adding Article 115, which defers the effectiveness of Act 187-2015 until January 1, 2018. During this period, both CIA and GRA will

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be exempted from the issuance and receipt, respectively, of the Certificate of Compliance and any other documentation related to it. To this effect, applications under the tax incentives laws as described by Act 187-2015, must be evaluated and processed without them being subjected to the Certificate of Compliance requirement.

Change to Act 20-2012

Base Period Income Limitation

Pursuant to Article 4(c) of Act 20-2012 an eligible business that at the time of filing its exemption application, is engaged in an export activity covered by Act 20, will enjoy its tax incentives but only in relation to that portion of net income that exceeds the average net income generated by such business during the three taxable years preceding the aforesaid application date ("base period").

Mindful of the importance of maintaining economic stability and competitiveness through the exportation of services, Act 94-2017 amends the above referenced Article 4(c) to reduce the base period income amount by twenty-five percent (25%) annually, until it is reduced to zero (0) on the fourth taxable year of the Exempt Business' decree term (the "Phase Out"). It is important to note that Phase Out will only apply to tax exemption decrees granted after June 30, 2017.

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

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