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# Tax Alert: Recent changes to estate and gift taxes

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On August 6, 2017, Senate Bill No. 582 (“SB 582”) was signed into Law by Gov. Ricardo Rosselló, effectively amending the 2011 Puerto Rico Internal Revenue Code (the “Code”) to repeal estate and gift taxes in Puerto Rico for transfers of property made after December 31, 2017. Below we provide an overview of the most important amendments brought upon by SB 582, now codified as Act No. 76 of 2017 (“Act 76”).

## Tax Basis to establish Gain or Loss

Pursuant to the revised Section 1034.02(a)(2) under Act 76, as a general rule, the tax basis for property that was acquired through gift after December 31, 2010 but prior to January 1, 2018, will be its fair market value at the gift date, except on those cases where the gift in question qualifies for the deduction with respect to property located in Puerto Rico allowed under Section 2042.02 of the Code. However, if the gift is made after December 31, 2017, the gifted property’s tax basis will be the same as it was in the hands of the donor.

In the case of property acquired from a decedent by bequest, inheritance, or by the decedent's estate, prior to January 1, 2018, its tax basis will be the fair market value at the time of the decedent’s death except in cases where the estate qualifies for the deduction under Section 2023.02. Nevertheless, if the property is acquired after December 31, 2017, the property’s tax basis will be the same as it was in the hands of the decedent.

## Elimination of Estate and Gift taxes for Puerto Rico residents and nonresidents

Sections 2021.01 and 2041.01 impose a ten percent (10%) tax on every person who transfers property through estate or gift. Act 76 eliminates the 10% tax on transfers that occur after December 31, 2017, for both residents and nonresidents of Puerto Rico.

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### **Decedent's Estate Tax Return and new Informative Return**

Pursuant to Section 2051.01 of the Code, all executors must file a final tax return with the Secretary of the Treasury (the "Secretary"), within nine (9) months of the decedent's death, computing the estate tax imposed under Subtitle B. In the event that the return needs to be amended to include additional property, whose value exceeds twenty-five percent (25%) of the total value of the gross estate originally informed, a ten percent (10%) of the difference will imposed as a penalty.

Act 76 amends the final return obligation by requiring the filing of an Informative Return within twelve (12) months of the decedent's death for events happening after December 31, 2017. Instead of a disclosure of the transferred property fair market value, this Informative Return will contain a detailed description of each property along with any unique identifiers that may exist, according to the type of property.

Also, for deaths occurring before January 1, 2018, Act 76 allows the Secretary to waive the above referenced 10% penalty when (i) just cause is shown for the amendment or (ii) the reported difference does not exceed one million dollars (\$1,000,000). This exoneration will be available to every application that at January 1, 2018 has not received a final determination due to the Secretary's pending examination, or ongoing Administrative Hearings or Judicial Proceedings.

### **Informative Return for gifts**

Section 2051.02 (a) states that every person that makes (i) a gift in excess of ten thousand dollars (\$10,000) or (ii) donates real property, must file a return on or before January 31 of the year following the calendar year in which the gift or real property donation was made.

Under Act 76, gifts made after December 31, 2017 in excess of the \$10,000 annual exclusion will need to be disclosed through an informative return which will include a good-faith estimate of the fair market value of the properties gifted, and a detailed description of the property, with any unique identifier that may exist, according to the type of property.

### **Cancellation of lien**

Taxes levied under Subtitle B of the Code constitute a preferred lien in favor of the Government of Puerto Rico over each and all one of the properties of the gross estate or object of gift, as the case may be. Nevertheless, Section 2054.02 allows for the cancellation of the lien when debt guaranteed by said lien is paid in full.

For estates of decedents died before January 1, 2018 and gifts made before such date, the Secretary will issue the Certificate of Cancellation of Lien (the "Certificate") within a thirty (30) day period, commencing on the filing date of the corresponding return. However, for property transferred after December 31, 2017, Act 76 provides for the immediate issuance of the Certificate upon filing the Informative Return, so long as the decedent or the donor does not owe any taxes. If there are taxes due or they are under examination, the Secretary may issue a Conditional Certificate.

Also, the Secretary may impose a twenty-five dollar (\$25) fee for the issuance of the Lien Cancellation. Moreover, if the Informative Return is amended to include additional property, the Secretary may request the fee again in order to issue the amended Certificate.

## Charging of Fees

Act 76 eliminates Section 2054.03, which allowed the Secretary to collect those fees he/she deemed reasonable or convenient for the issuance of the Certificates.

Proper estate planning is still important whether you have one already in place or are considering one. Estate planning is more than estate tax planning; you need to plan for disabilities, retirement, asset protection, succession of business, protection of young children, among others. Your loved ones deserve a smooth transition in difficult times.

Our estate planning team is committed to provide guidelines and sound advice to preserve and protect your wealth. It is our goal to provide the assurance that your legacy is clearly detailed and in accordance with your desires.

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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