



Tax



Business



Taxpayer

Tax Alert: Gross income exclusion for qualified disaster aid payments

October 9, 2017

In the wake of Hurricane Maria's widespread damage to Puerto Rico's community and infrastructure, the Governor of Puerto Rico issued Executive Order 2017-56 ("EO 2017-56") whereby he authorized the Secretary of the Treasury Department to take the necessary and reasonable fiscal measures to assist taxpayers in the aftermath of Maria's destructive path.

Aiming to comply with the directives of EO 2017-56, on October 4, 2017 the Puerto Rico Treasury Department issued Administrative Determination No. 17-21 ("AD 17-21") to temporary exclude from taxable gross income qualified disaster aid payments received by individuals that are destined for assistance and support in the recovery process.

What are qualified disaster aid payments?

AD 17-21 defines qualified disaster aid payments ("Pago Cualificado por Concepto de Asistencia por Desastre" in Spanish) as any amount paid to, or for the benefit of, an individual:

1. to cover necessary and reasonable expenses such as food, medicine, gas, lodging, medical expenses, child or dependents care, acquisition of power generators, and funeral costs incurred as result of Hurricane Maria, so long as the payment is made directly to the goods or service provider;
2. to cover necessary and reasonable expenses for the repair or rehabilitation of the main residence, and to replace or repair its contents, for damages caused by Hurricane Maria, so long as the payment is made directly to the goods or service provider;
3. amounts directly paid to the individual to cover damages or losses sustained as a result of Hurricane Maria;

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4. amounts paid by federal, state, local governments or agencies as a result of Hurricane Maria for the general benefit and well-being of the population.

For qualified disaster aid payments to benefit from the preferential (albeit temporary) gross income exclusion, they must comply with the following requirements:

1. payments must be made to the individuals between September 21, 2017 and December 31, 2017;
2. payments must be in lieu of the salary or compensation that was not earned during the time the individual was not able to work due to the emergency;
3. in the case of payments made by employers to its employees, the payment must:
 - i. be in addition to the employees' ordinary salary or compensation;
 - ii. not discriminate in favor of highly compensated employees; and
 - iii. not exceed \$1,000 per month.

Every employer that makes qualified disaster aid payments must file on or before January 31, 2018 a Sworn Statement with the name, social security number and amount paid of every employee to whom a payment was made. The employer must also report these payments as exempt income in the corresponding Withholding Form.

Compliance with AD17-21 dispositions will allow the employer to claim qualified disaster aid payments as deductible expenses for income tax purposes.

No Interest Loans to Employees

Any employer that, in addition to the aforementioned qualified disaster aid payments, offers zero-interest loans, not exceeding \$20,000, to employees for the latter to cover necessary and reasonable expenses for damages or losses related to Hurricane Maria, will not need to recognize any income on said loan.

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.



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