



Tax



New
Business



Taxpayer

Tax Alert: What constitutes a new business in Puerto Rico?

November 17, 2017

The Puerto Rico Internal Revenue Code of 2011, as amended (the “Code”), provides certain exceptions to the general obligation of withholding seven percent (7%) on payments made to another person for services rendered in Puerto Rico. One in particular – the “first three year” exception of Section 1063.08(b)(8) – has come under scrutiny as to what constitutes a new business for its application.

On November 15, 2017, the Puerto Rico Treasury Department (the “PRTD”) issued Administrative Determination No. 17-30 (“AD 17-30”) to provide clarity as to what constitutes a new business for the request of a 7% withholding waiver under Section 1063.08(b)(8).

Background

Pursuant to Section 1062.03(a) of the Code, as a general rule, the government of Puerto Rico, as well as every natural and juridical person, must withhold seven percent (7%) on payments made to another person for services rendered in Puerto Rico (the “7% withholding”) and remit said withholding to the PRTD.

Section 1062.03(b) allows for various exceptions to this general rule. One of these is Section 1063.08(b)(8) which states that, “Payments for services to individuals, corporations and partnerships during the first three (3) years of their commencement of a rendering of services activity. This exemption may be enjoyed by the taxpayer only once.”

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To avail itself of this exemption, the taxpayer who commences a “new business” can request the waiver from the PRTD through the submittal of either Form AS 2678.1 (Individuals) or AS 2680.1 (Corporations, LLC’s and Partnerships) (collectively, the “waiver request”). The question is: who or what will be considered a new business?

New business under AD 17-30

AD 17-30 goes on to elucidate that a natural or juridical personal that begins the rendering of services, within or without Puerto Rico, during the year for which it is requesting the waiver, and said services are being rendered within the first three (3) years of operations, irrespective of where the services were rendered for the first time, will be considered a New Business.

Therefore, if Wayne Enterprises is currently rendering consulting services in Gotham City, the mere fact that it registers in Puerto Rico for the first time to render services here does not mean that it will be considered an eligible new business for its first three years of operation in Puerto Rico.

Waiver requirements – companies

To request the Waiver, juridical entities must comply with the following:

- register with the Puerto Rico State Department, and obtain the requisite authorization to do business in Puerto Rico
- register with the PRTD for Income and Sales & Use Tax purposes;
- neither the requesting company, nor any related party, has offered any services within or outside of Puerto Rico at time of requesting the waiver, OR is within its first 3 years of operation at the time of the request;
- if the requesting company was organized outside of Puerto Rico, copies of the last three (3) income tax returns must be provided along with the Waiver request;
- the person in charge of the company has not provided the services in questions on behalf of the company, through a sole proprietorship or related entity

Waiver requirements – individuals

In the case of Individuals, they must comply with the following:

- register to do business in Puerto Rico;
- register with the PRTD for Income and Sales & Use Tax purposes;
- the Individual has not offered any services within or outside of Puerto Rico prior to commencement of the service operation in Puerto Rico
 - if services have been previously rendered, they are within the first 3 years of operation
- the service operation has not been rendered by a related person during any of the prior three (3) calendar years prior to the commencement date for the rendering of services;
- both the individual and any related person must file copies of the last three (3) income tax returns.

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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