



Tax



Records



Taxpayer

# Tax Alert: Penalties for non-compliance with Puerto Rico Treasury Department

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The continuous aim of the current administration has been the provision of the adequate conditions for the resurgence and eventual re-development of Puerto Rico's economy. To that end, the Puerto Rico Treasury Department ("PRTD") has issued a series of determinations, letters and bulletins geared towards providing taxpayers with a much-needed respite from various taxes and duties. Additionally, the PRTD released an informative booklet to remind taxpayers of the impositions in failing to comply.

## Administrative Fines

Section 6030.21(b) allows the Secretary of the Treasury (the "Secretary") to impose a \$5,000 (\$10,000 in the case of recidivism) administrative fine per infraction to any taxpayer that fails to comply with any of the dispositions of the 2011 Puerto Rico Internal Revenue Code, as amended (the "Code"), or its corresponding Regulations, as well as to any person that assists in the taxpayer's non-compliance. Moreover, failure to comply with the Code and/or its Regulations is considered a misdemeanor.

## Penalty for failure to withhold

Section 6041.01(a) states that any person responsible for the withholding at source, remittance and deposit of any tax under Subtitle A of the Code will be subject to a two-percent (2%) penalty on the unpaid amount for every thirty (30) day delay, or fraction thereof, up to a twenty-four percent (24%) maximum, in addition to any other penalty prescribed by the Code. Nonetheless, in the case of failure to deposit, the

penalty will not apply if reasonable cause for omission is shown.

In regards to *salary withholdings*, the person that fails to pay or deposit these in accordance with the rules so established in the Code, will be subject to a twenty-five percent (25%) penalty on the determined insufficiency. The penalty can increase to fifty percent (50%), and even a hundred percent (100%) in the case of a repeat offender.

Similar to salary withholdings, any person that fails to remit the SUT in accordance to Section 4042.03 of the Code, will be subject to a penalty that will not be less than twenty-five percent (25%) nor exceed fifty percent (50%) of the determined insufficiency. However, the penalty may be waived by the Secretary for reasonable cause.

## Natural Persons

Section 6030.10 states that any **person** that willfully fails to comply with the payment or withholding of any tax, the filing of any return or statement, the safeguarding or submission of any records or documents for the computation, assessment or collection of any tax or fee, will be subject to those penalties and surcharges that Chapter 3 of Subtitle F imposes.

Since the term “person” is an all-encompassing, the PRTD emphasizes that all administrative and criminal penalties under Subtitle F will be applicable to both natural and juridical persons.

Moreover, any officer of a juridical entity or an individual who willfully fails to collect or truthfully account for and pay over any tax or levy imposed by the Code, will be deemed to have incurred a felony in the third degree.

Lastly, Section 6080.02 imposes a penalty equal to the total amount of the tax that was evaded, unpaid, uncollected, not withheld, not deposited, or unreported:

- any officer of a juridical entity or an individual with the obligation to collect, withhold, account for, and pay over any tax or levy established by any subtitle of the Code;

- any person who knowingly fails to collect or truthfully account for and pay over any tax or levy, in the form and terms provided by the Code; and
- any person who knowingly attempts evade or defeat any tax imposed by any subtitle of this Code or its payment.

### Note:

As highlighted in our July 1, 2016 Tax Alert, 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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