

Kevane Grant Thornton Mailbag



Kevane Grant Thornton LLP

33 Bolivia Street
Suite 400
San Juan, PR 00917-2013

T + 1 787 754 1915

F + 1 787 751 1284

E kgt@pr.gt.com

[linkedin.com/company/kevane-grant-thornton](https://www.linkedin.com/company/kevane-grant-thornton)
[facebook.com/kevanegrantthornton](https://www.facebook.com/kevanegrantthornton)

26 April 2018 | Issue 84

Dear clients and friends:

The Kevane Grant Thornton Mailbag is your link to all our communications related to the operations of businesses in Puerto Rico. Our purpose is to offer you with up-to-date information concerning audit, tax, advisory and accounting matters that might have an impact on individuals or in the way you conduct your business in Puerto Rico.

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New interpretive guidance on cybersecurity disclosures

April 19, 2018



Aida Ramirez

Partner Head of Audit
Kevane Grant Thornton
T (t) 787 754 1915
E aida.ramirez@pr.gt.com

On February 20, the Security and Exchange Commission approved an [Interpretive Release](#), *Commission Statement and Guidance on Public Company Cybersecurity Disclosures*, to provide guidance to public operating companies when preparing disclosures about cybersecurity risks and incidents. The release does not apply to other regulated entities under the federal securities laws, such as registered investment companies, investment advisers, brokers, dealers, exchanges, and self-regulatory organizations.

The interpretive guidance reinforces and expands upon the Division of Corporation Finance (CorpFin) staff's Disclosure Guidance, Topic No. 2: "Cybersecurity," issued in 2011. The Commission addresses two new topics in its release, stressing the importance of companies' cybersecurity policies and procedures around the timely disclosure of cybersecurity risks and incidents, as well as the application of insider trading prohibitions within the cybersecurity context. More specifically, the release notes the following guidance:

- disclosure controls and procedures: Companies are required to establish and maintain appropriate and effective disclosure controls and procedures that enable them to accurately and timely disclose material events, including those related to cybersecurity. The guidance encourages companies to adopt comprehensive policies and procedures related to cybersecurity and to assess their compliance regularly. Also, companies should ensure that the disclosure controls and procedures are sufficient enough to escalate the relevant information to appropriate personnel when cybersecurity risks and incidents do exist.
- in addition, management should consider whether there are deficiencies in disclosure controls and procedures that would render them ineffective to the extent that

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cybersecurity risks or incidents pose a risk to a company's ability to record, process, summarize, and report information that is required to be disclosed in filings.

- **insider trading:** companies are encouraged to consider how their codes of ethics and insider trading policies take into account and prevent trading on the basis of material nonpublic information related to cybersecurity risks and incidents.
- **Regulation FD and selective disclosure:** companies should make timely disclosures of material, nonpublic information regarding cybersecurity risks and incidents, and refrain from making selective disclosures to ensure compliance with Regulation FD.

The interpretive guidance also addresses the Commission's views and expectations regarding specific disclosure of cybersecurity risks and incidents under the federal securities laws, as follows:

- **materiality:** companies should provide timely and ongoing disclosures that are material and useful to investors, while avoiding boilerplate disclosures.
- **risk factors:** companies should include relevant cybersecurity risks if those risks make investments in the company's securities speculative or risky, including risks that arise in connection with acquisitions. Companies should also consider previous or ongoing cybersecurity incidents to provide the appropriate context within the risk factor disclosure.
- **management's discussion and analysis of financial condition and results of operations:** companies should include relevant discussion around the array of costs associated with cybersecurity issues, including costs of ongoing efforts and other consequences of incidents, if these costs are reasonably likely to have a material effect on the company's results of operations, liquidity, or financial condition. Companies are expected to assess the impact of any incidents on reportable segments as well.
- **description of business:** companies should provide appropriate disclosure if cybersecurity incidents or risks materially affect a company's products, services, relationship with customer or suppliers, or competitive conditions.
- **legal proceedings:** companies should disclose information relating to material pending legal proceedings that relate to cybersecurity issues.
- **financial statement disclosures:** companies should maintain financial reporting and control systems that are designed to provide information about the range and magnitude of the financial impact of a cybersecurity incident on a timely basis as the information becomes available.
- **board risk oversight:** companies should disclose the board of director's involvement in the oversight of the risk management process related to cybersecurity risks, to the extent they are material to a company's business.



In a statement on February 21, SEC Chairman Jay Clayton remarked that he has asked CorpFin to continue to monitor cybersecurity disclosures as part of their selective filing reviews, and that the SEC will continue to evaluate developments and consider feedback about whether any further guidance or rules are needed.

The interpretive release became effective February 26.

Source:

Grant Thornton, On the Horizon, March 1, 2018.

We are committed to keep you updated of all developments that may affect the way you do business in Puerto Rico. Please contact us for further assistance in relation to this or any other matter.



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Tax



Property



Money

Puerto Rico designated as a federal Opportunity Zone

April 18, 2018

On April 9, 2018, the Governor of Puerto Rico announced that the United States Treasury Department and the Internal Revenue Service have designated Puerto Rico as an Opportunity Zone under the U.S. *Tax Cuts and Job Act of 2017*. This designation seeks to encourage long-term investments in low-income urban and rural communities nationwide in exchange for certain fiscal benefits.

Benefits granted to Opportunity Zones

The Opportunity Zones legislation aims to foster the creation and expansion of businesses in certain communities through short-term and long-term capital gains tax deferral and the potential of significant set-up in basis. The designation as an Opportunity Zone lasts for a period of ten (10) years.

Taxpayers may elect to defer paying tax on capital gains from the sale or exchange of property, if such capital gains are invested in a Qualified Opportunity Fund, which invests at least ninety (90) percent of its assets in qualified opportunity zone property.

Qualified Opportunity Fund

Section 1400Z-2(d)(1) of the Act defines a Qualified Opportunity Fund as “any investment vehicle which is organized as corporation or partnership for the purpose of investing in a qualified opportunity zone property.”

Qualified Opportunity Zone Property

The Act defines Qualified Opportunity Zone Property as any of the following:

- **qualified opportunity zone stock:** stock in a domestic corporation that is a qualified opportunity zone business during “substantially all” of the applicable holding

period, and the stock is acquired after December 31, 2017, at its original issue in exchange for cash;

- **qualified opportunity zone partnership:** any capital or profits interest in a domestic partnership that is a qualified opportunity zone business during “substantially all” of the applicable holding period, and the interest is acquired after December 31, 2017, in exchange for cash; or
- **qualified opportunity zone business property:** tangible property used in the trade or business of a qualified opportunity zone business if the original use of the property commences with the qualified opportunity fund or the fund “substantially improves” the property, and the property acquired by purchase after December 31, 2017.

Qualified Zone Business

Basically, any trade or business in which substantially all of the tangible property owned or leased by the taxpayer is qualified opportunity zone business property.

Deferral Period

The deferral period ends the earlier of when taxpayer sells its investment in the Qualified Opportunity Fund, or December 31, 2026, at which time the taxpayer must include the amount of the gain in its gross income. The amount of the gain will be determined by subtracting the amount of excluded gain or the fair market value (whichever is less) from the taxpayer's basis in the investment.

The taxpayer's basis in the investment is initially deemed to zero, but increases as the holding period of the investment reaches certain milestone periods:

- for investments held for five years, the taxpayer's basis is increased by ten percent (10%) of the amount of deferred gain.
- for investments held for seven years, the taxpayer's basis is increased an additional five percent (5%) of the amount of deferred gain.

- for any taxpayer that holds its investment beyond the maximum deferral date (i.e., December 31, 2026) and for a minimum of 10 years, the taxpayer's basis in its investment shall be equal to the fair market value of the investment on the date it is sold or exchanged, resulting in no additional recognized gain.

What does this mean for Puerto Rico?

The new Qualified Opportunity Zone will serve to spur investment in distressed communities by providing a powerful tool for real estate investors, developers, and professionals to utilize the vast captive capital gain in the real estate and equity markets and put investments to focused use in economic development activities.

Between the influx of Federal Disaster Assistance funds and its designation as an Opportunity Zone, Puerto Rico finds itself in an attractive position to rebuild its foundations and infrastructure, rethink the socioeconomic ideologies that brought us to the current debacle and recreate its image for the entire world to see.

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



María de los Angeles Rivera
Partner Head of Tax and
IBC Director
E maria.rivera@pr.gt.com



Lina Morales
Tax Partner
E lina.morales@pr.gt.com



Francisco Luis
Tax Partner
E francisco.luis@pr.gt.com



Isabel Hernández
Tax Partner
E isabel.hernandez@pr.gt.com



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The new COSO ERM framework and data analytics

April 18, 2018

In September 2017, COSO released its long-awaited update to the first ERM framework it promulgated in 2004. The updated framework, titled Enterprise Risk Management – Integrating with Strategy and Performance, focuses on the importance of considering risk in both the strategy-setting process and in driving performance. This new update helps organizations manage risk differently - it paves a new path towards the evaluation of how risk is used in the strategic decision making process, which ultimately affects an organization's performance. When risk and performance are integrated, organizations will be better positioned to embrace opportunities and move toward the future with greater confidence



Ojel Rodriguez

Partner Head of Advisory
Kevane Grant Thornton
T (t) 787 754 1915
E ojel.rodriguez@pr.gt.com

Visit our website

www.grantthornton.pr

Since the COSO released its first ERM framework in 2004, the amount of data available to businesses has exploded, and the potential ability to collect, synthesize, report and use that data to drive more informed decisions has improved exponentially. Improving data analytics capabilities and integrating them with ERM efforts is one of the single most important steps businesses can take to transform their risk functions and align with the strategic drivers of the organization.

Why data matters

The idea of using data analytics in ERM isn't new. Historically, risk leaders have used analytics to develop reports in order to assist in their decision making. However, the technological landscape has evolved so quickly that most organizations haven't kept pace with the possibilities.

In recent years, the generation and collection of data across the enterprise has become more widespread. This includes traditional business sources of structured data, such as transactional records, as well as unstructured data from sources such as social media and human responses. Both sources offer value. Along with the benefits of technological advancements, improved market understanding, and increased data generation, organizations are only scratching the surface with data analytics and data mining.

The growth of data provides a new opportunity to address operational and strategic business issues.

The challenge becomes how best to harness the proliferation of data in specific efforts, such as better understanding and managing an enterprise's risks.

Keeping pace with data analytics advances

Many organizations lack the analytical processes and tools they need to truly capture and use risk information more effectively. Using data analytics, risk management functions must facilitate and encourage the capture, analysis, and delivery of current and forward-looking risk information to further their mission and meet objectives.

Within the ERM space, organizations must extend their understanding of the risk landscape to available data that is associated with strategic risks, down to the operational and program level. Aligning the data to the risk profiles and indicators is a prerequisite towards using the now available data to better understand and manage risk through analytics. Only then can analytic models be built to detect potential risks, more fully assess their financial impact, and build an analytic framework that can begin to balance the financial and strategic impacts against the investment to mitigate and fully manage the risks.

The ability to leverage data through analytics will strengthen evidence-based decision-making for leadership teams and enable them to map their data to strategic and business objectives. For example, data-driven budgeting practices coupled with value-to-spend analytics and spend distribution models can help organizations better align their budgets with their strategy and maintain a real-time view into how effectively their investments support their business models. Coupling those tools with dashboards tracking customer experience against key performance benchmarks can provide a real-world reality test for both organizational strategy and spending, allowing companies to adjust to market conditions and customer preferences quickly, based on empirical evidence. Those are just a few examples of how organizations can focus their ERM efforts and assess risks in a meaningful and data driven manner.

Why a data-driven approach to risk? In an environment of increasingly scarce resources and a focus on mission critical activities, implementing ERM makes strong business acumen. A data driven approach supports the development of key risk indicators (KRIs) and key performance indicators (KPIs) to anticipate and understand whether strategic and business objectives are being met and at what cost. The time for organizations to fully harness the data they have is now. Leaders should adjust their organization's strategic plans and risk responses based on performance as measured through a strong analytics program.

What questions should you be asking to assess your risk and data practices?

- What are your organization's data analytics capabilities?
- Do you have a centralized data analytics team or are your capabilities decentralized into your business functions or processes?
- What data analytics tools are you using today?
- Are you considering new analytics, e.g., machine learning, robotic process automation, natural language processing, artificial intelligence, etc.?
- Are you using data analytics to measure KRIs and KPIs?
- How are you using data analytics to evaluate your strategic and business objectives?

Our Advisory Services professionals have significant experience helping clients develop risk solutions utilizing data analytics that create value by helping them define and execute their business strategy in alignment with their risk profile.

Source:

[The new COSO ERM framework and data analytics](#)

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Withholding Exemption Certificate (Form 499R-4)

April 19, 2018

The federal tax guide for Puerto Rico employers (Publication 179) has issued the following changes for taxable year 2018.



Julio Villegas
Audit Partner and
Head of Outsourcing
T (1) 787 754 1915
E julio.villegas@pr.gt.com

What's new?

The Withholding Exemption Certificate (Form 499 R-4) is the document used by the employee to notify his/her employer of the personal exemption, exemption for dependents and the allowance based on deductions to determine the income tax to be withheld from the employee's wages.

Young individual residents of Puerto Rico whose ages fluctuates between 16 and 26 years at the end of the taxable year, are entitled to an exemption on the first \$40,000 of gross income from wages. To claim this exemption the employee must include his/her date of birth.

Personal exemption

- individual taxpayer (single person, married that granted prenuptial agreement of total separation of assets or married not living with the spouse)
- married – if you are married and choose the optional computation, the personal exemption will be considered on a 50% basis for each spouse.
- veterans – every veteran is entitled to claim an additional personal exemption.

Exemption for dependents

The number of dependents, shall be the same as the number claimed in the personal income tax return. If the employee has joint custody and have not released the claim to this exemption, only the 50% of the exemption will be considered.

Exemption for dependents

The number of dependents, shall be the same as the number claimed in the personal income tax return. If the employee has joint custody and has not released the claim to this exemption, only the 50% of the exemption will be considered.

Exemption for dependents

In the tax withholding computation, you have the option to consider the deductions that you will be able to claim on your tax return, such as home mortgage interest, charitable

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contribution, medical expenses, interest paid on student loans or retirement systems, contributions to IRAs and educational IRAs, contributions to health savings accounts, casualty loss on your principal residence and loss of personal property as result of certain casualties.

Any employee may request from his/her employer to withhold an amount in addition to the one required.

The employer shall consider the information provided by the employee on the Withholding Exemption Certificate in order to withhold the correct amount following the Employer's Guide on the Withholding of Income Tax at Source on Wages for the corresponding taxable year.

Links- Department of Treasury
[Certificado de Exención para la Retención](#)
[Withholding Exemption Certificate](#)

At Kevane Grant Thornton we provide our clients with personalized attention, valuable advice and recommendations, tailored solutions and direct access to technical experts to help clients resolve issues and identify opportunities.



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