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# PR Treasury Department - tax season update

**February 22, 2019**

Throughout the month of January and February, the Puerto Rico Treasury Department (“PRTD”) issued a series of publications to apprise practitioners and the general public of certain changes related to filing deadlines, internal procedures in light of the federal government shutdown, and changes brought upon by the recently-enacted Tax Reform, as well as other matters of interest. Below, we provide a brief overview of these.

## **Internal Revenue Informative Bulletin No. 19-01 (“IB 19-01”)**

Pursuant to IB 19-01, the deadline to properly file the documentation for the federal employee retention tax credit is moved from February 28, 2019 to March 31, 2019.

Internal Revenue Informative Bulletin No. 19-02 (“IB 19-02”)

On December 10, 2018, the PRTD implemented Phase 2 of its SURI system, whereby the following transactions will now be handled electronically:

- withholding at source, including the filing of withholding vouchers and informative returns
- gift and estate transactions
- excise taxes, duties on alcoholic beverages and licenses

To ensure an effective transition during Phase 2, the PRTD issued IB 19-02 to waive interest, surcharges and penalties on payments and filings that falls between December 10, 2018 through February 28, 2019 period; so long as the filing and/or payment is completed on or before February 28, 2019.

## **Internal Revenue Informative Bulletin No. 19-03 (“IB 19-03”)**

Pursuant to Section 4041.03(b)(1)(C) of the Puerto Rico Internal Revenue Code of 2011, as amended (the “Code”), every non-withholding agent (for sales and use tax purposes), must

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send a notice to all Puerto Rico purchasers that acquired merchandise from it on or before January 31 of each year (the “Annual Report”).

Said Annual Report must include the following information:

- seller’s name and physical address;
- customer’s name and delivery address in Puerto Rico;
- total sale amount of personal property during the year;
- date of sale(s);
- amount of each sale performed during the year;
- whether the sale, to the extent of non-withholding agents’ knowledge, is taxable or exempt; and
- any other information required by PRTD through Regulations or administrative determination.

As a result of various inquiries on the format for the presentation of the above referenced information, IB 19-03 postponed the filing until July 1, 2019. Furthermore, IB 19-03 notes that further publications will be released to instruct taxpayers on the process to submit these Annual Reports.

Lastly, in the case of non-withholding agents who have entered into agreements with the PRTD to act as voluntary withholding agents, they will not be subject to the filing of the reports required under sections 4041.03(b)(1)(A) and 4041.03(b)(1)(B) of the Code.

#### **Internal Revenue Circular Letter No. 19-01 (“CL 19-01”)**

In response to the federal government shutdown and considering that most of the federal employees did not receive a salary payment during this period, CL 19-01 establishes that every taxpayer who is a federal employee, was affected by the shutdown and has a payment plan with the PTRD will be granted a moratorium for the payment period of January 1, 2019 through March 31, 2019. If a notification of interest, surcharges and penalty is received, the taxpayer benefitting from the payment plan must communicate with the PRTD’s taxpayer service center to remove the penalty.

#### **Internal Revenue Circular Letter No. 19-02 (“CL 19-02”)**

The Puerto Rico Tax Reform of 2018, Act No. 257-2018, amended the Code to introduce an Optional Tax structure for self-employed individuals and corporations who derive all of their income substantially from services that are subject to withholding at source. This optional tax will be computed on gross revenues without the benefit of operating expenses or personal deductions. Moreover, the Secretary of the Treasury (the “Secretary”) was afforded the power to postpone its effectiveness for taxable years commenced after December 31, 2019.

House Bill No. 1919, which will be signed in law in the coming days, clearly establishes that the Optional Tax regime will be available for taxable years commenced after December 31, 2018, and removes the Secretary’s prerogative to defer its effectiveness.

On February 2, 2019, the PRTD issued CL 19-02 to establish the procedures for: (i) the election of the optional tax rate and (ii) the request of partial waiver of withholding at source on services provided by a self-employed individual or corporation, whose gross income does not exceed \$100,000.

Requirements:

1. taxpayer's gross income must be substantially (80%) earned from self-employed services performed;
2. gross income must be reported through the informative returns required under Section 1062.03(i) of the Code;
3. the total gross income earned during the year was subject to the withholding at source required under Section 1062.03 of Code

The optional tax rate must be elected on a yearly basis, at the time of filing the corresponding income tax return. Nonetheless, in the case individuals and corporations whose gross income does not exceed \$100,000, their Optional Tax rate will be 6% on its gross, without the benefit of deductions.

To that end, Section 1062.03 of the Code states that taxpayers whose total gross income for the prior year's income tax return did not exceed \$100,000 may request a partial waiver to reduce the withholding at source rate from 10% to the 6% optional tax rate.

Until the PRTD establishes the conditions to apply for the optional tax rate, individuals and corporations must present a sworn statement to each of its customers with the following information:

Individuals:

1. taxpayer's name, civil status, occupation and physical address;
2. social security and employee identification number (if applicable);
3. Merchant Registry Number
4. affidavit with the following statements:
  - a. that the taxpayer is a self-employed individual who provides services;
  - b. that its gross income, to be derived during the 2019 taxable year, will be substantially from the rendering of services;
  - c. that the gross income for the taxable year 2019 will be reported on an informative return and be subject to the applicable withholding at source established by Section 1062.03 of the Code;
  - d. that its estimated gross income for the taxable year 2019 will not exceed \$100,000, and as such is electing the Optional Tax treatment;
  - e. that, once elected, the taxpayer will be subject to the Optional Tax rate during the year;
  - f. that the taxpayer requests payor to withhold 6% instead of the 10% required by Section 1062.03(a) of the Code.

Corporations:

1. taxpayer's name, civil status, occupation and physical address of person signing the declaration on behalf of corporation
2. position in corporation
3. name, employer identification number and Merchant Registry Number of corporation;
4. affidavit with the following statements:
  - a. that the signee is duly authorized by the corporation as a representative before the PRTD;
  - b. that its gross income to be derived during the 2019 taxable year will be substantially from the rendering of services;

- c. that the gross income for the taxable year 2019 will be reported on an informative return and be subject to the applicable withholding at source established by Section 1062.03 of the Code;
- d. that its estimated gross income for the taxable year 2019 will not exceed \$100,000, and as such is electing the Optional Tax treatment;
- e. that, once elected, the taxpayer will be subject to the Optional Tax rate during the year;
- f. that the taxpayer requests Payor to withhold 6% instead of the 10% required by Section 1062.03(a) of the Code.

### Internal Revenue Circular Letter No. 19-03 (“CL 19-03”)

Act. No. 185 of 2014 (“Act 185-2014” or “Act”), known as the Private Equity Funds Act, provides special tax treatment to funds which meet the requirements of the Act as well as to their investment advisers and general partners. By granting a preferential fiscal treatment, the Act aims to foster private capital investment for small companies that have no access to the public market investment.

CL 19-03 establishes that, as of February 15, 2019, the following process must be completed by the fund that wishes to elect the preferential fiscal treatment under Act 185-2014:

1. register in SURI
2. choose on the platform, More Options
3. select the Act. Num. 185-2014 link
4. complete the information required by the system and submit.

Pursuant to Article 4(a) of the Act, the election must be notified to the Secretary no later than the last day of the third month after the fund’s creation.

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



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