



Tax



Tax Season



Updates

# Recent Updates by the Puerto Rico Department of Treasury

October 19, 2021

The Puerto Rico Department of Treasury (now on referred as to “Hacienda”) has recently issued multiple official publications to address new tax developments or amend previous publications to clarify their intentions. In this article, we will address some of them.

## Administrative Determination 21-08. – Transfer Pricing Studies

The Puerto Rico Internal Revenue Code (“Tax Code”) generally allows as a deduction when calculating net income, all ordinary and necessary expenses paid or incurred during the tax year in the operation of any trade or business in Puerto Rico. However, the Tax Code provides for a 51% disallowance of the expenses or charges incurred with a related party that is not engaged in trade or business in Puerto Rico, if the related party is not subject to Puerto Rico tax (“Related Expenses”).

In this regard, the Tax Code states that no adjustment or limitation is required for Related Expenses if a Transfer Pricing Study (“TPS”) is attached to the filing of the tax return (“Return”); the TSP must include an analysis of the Puerto Rico operations in compliance with the requirements set forth in Section 482 of the United States Internal Revenue Code, and the regulations issued thereunder. Accordingly, on May 11, 2021, Hacienda issued Administrative Determination 21-05 (“AD 21-05”), to:

- establish the form and manner to comply with the requirement to submit a TPS to claim Related Expenses on the applicable Return; and
- clarify the criteria for determining the effectiveness of the TPS.

**Caroline López, CPA, Esq.**  
Tax Manager

**Clifford Colón, Esq.**  
Tax Senior

**Ian López**  
Tax Staff

Collaborated in the preparation of this article.

AD 21-05 states that, the 51% disallowance does not apply when the Related Expenses deduction is based on a TPS that has been issued and available at the time of filing the Return. Therefore, the TPS is not required to be jointly file the Return, instead, the taxpayer must certify that it has obtained a TPS and that it was prepared in accordance with AD 21-05 and Tax Code Sections 1033.17(a)(16) or 1033.17(a)(17), as the case may be. For these purposes, Hacienda approved Form AS 6175, known as the Certification of Compliance of a TPS (“Certification”). The Certification must be signed, under penalty of perjury, and must contain specific representations.

On September 20, 2021, Hacienda released Administrative Determination 21-08 (“AD 21-08”) to amend AD 21-05 and to clarify that:

- the Certification must also include the issuance date of the TPS, and the name of the person that prepared it;
- the TPS (not the Certification), shall be filed with Hacienda within 30 days after it is requested by Hacienda; and
- the apportion or allocation method for gross income, deductions, credits or concessions in the Return must be reasonable based on the TPS.

### Circular Letter 21-21. – New Return for Endorsement of Public Shows

At the end of December 2020, Act 173 amended Section 4010.01(jj) of The Tax Code to:

- provide a new definition for the term “endorsement”;
- require the filing of a Return through SURI; and
- grant the Secretary of Treasury the ability to request an annual bond from promoters prior to the events taking place.

On September 21, 2021, Hacienda published Circular Letter 21-21 (“CC 21-21”), to:

- **establish the filing process of the Return through SURI.** Beginning on September 29, 2021, no later than **48 hours prior** to the date for selling admission tickets for the show, the promoter of the event must file with Hacienda Form AS 2072, titled “Planilla Informativa de Refrendo – Espectáculos Públicos”. The Return must include, among other information, the name of the artist and the number of tickets available for sale.
- **establish an annual bond for promoters.** The purpose of the bond is to guarantee the payment of the tax for admission, and any interest, surcharge or penalty that may be imposed.
  - a bond of \$10,000 for **local** events;
  - a bond of \$15,000, for **international** events; and
  - a bond of \$20,000, for **sport** events.
- **provide guidance regarding fines and penalties for noncompliance.** If the promoter fails to file the Return on time, the promoter may be subject to a 25% fine of the total tax. Furthermore, if prior to the event, the promoter does not amend the Return for any changes in the event (e.g., artist, date, location, etc.), the promoter is subject to a fine of \$1,000 or \$5,000, if the admission rights exceed \$100,000 (repeat offenders are fined \$5,000 or \$10,000 if the admission rights exceed \$100,000). Lastly, the promoter has 30 days after the event to request the termination of the endorsement and the release of the bond, provided that noncompliance involves a fine of \$1,000 or 10% of the tax, whichever is greater.

### Circular Letter 21-22. –Return for Bona Fide Farmers for Taxable Year 2020

On June 22, 2021, the Governor of Puerto Rico signed OE-2021-051 (“Executive Order”), to establish an expedite process for the concession of tax exemptions in the agricultural industry. The Executive Order recognizes the approval process of Decrees of Tax Exemption (“Decree”), as well as the issuance process of the Certificate of Bona Fide Farmer (“Certificate”), have encountered difficulties with the transitions between agencies and the enacted of the Puerto Rico Incentives Code (“Incentives Code”). Consequently, the Governor of Puerto Rico requested the Secretary of Treasury to allow farmers, **for taxable year 2020 only**, to be able to use the Certificate for the prior year to file the Return. In addition, the Governor of Puerto Rico requested the Secretary of Agriculture and the Secretary of the DDEC to begin an advertising campaign directed to farmers, related to the tax incentives and the new requirements to enjoy the tax benefits going forward.

As a result, Hacienda issued Circular Letter 21-22 (“CC 21-22”), to clarify which Return are farmers required to file for taxable year 2020. CC 21-22 states that farmers that hold a Decree under Chapter 8 of the Incentives Code, or farmers that will claim the benefits due to having a valid Certificate, must prepare one of the following schedules with their Return:

- if the **farmer** carries the agroindustry activities as a **sole proprietor**, the farmer must complete **Schedule L** of its personal Return (Form 482.0). However, if the **income** is from agricultural **services**, **Schedule M** should be completed instead of Schedule L.
- if the **farmer** carries the agroindustry activities through an **entity** taxed as a **partnership**, the farmer must complete **Schedule C1** of the partnership’s Return (Form 480.2[EC]).
- if the **farmer** carries the agroindustry activities through an **entity** taxed as a **corporation**, the farmer must complete **Schedule 6** of the corporation’s Return (Form 480.3[II]).

We are committed to keeping you up to date with all tax-related developments. Please contact our Tax Department should additional information be required regarding this or any other tax issue. We will be glad to assist you.



**Lina Morales**  
Partner Head of Tax  
E [lina.morales@pr.gt.com](mailto:lina.morales@pr.gt.com)



**María de los A. Rivera**  
Tax Partner and IBC Director  
E [maria.rivera@pr.gt.com](mailto:maria.rivera@pr.gt.com)



**Francisco Luis**  
Tax Partner  
E [francisco.luis@pr.gt.com](mailto:francisco.luis@pr.gt.com)



**Isabel Hernández**  
Tax Partner  
E [isabel.hernandez@pr.gt.com](mailto:isabel.hernandez@pr.gt.com)



[grantthornton.pr](http://grantthornton.pr)

DISCLAIMER: This update and its content do not constitute advice. Clients should not act solely on the basis of the material contained in this publication. It is intended for information purposes only and should not be regarded as specific advice. In addition, advice from proper consultant should be obtained prior to taking action on any issue dealt with this update. Information provided in this publication may change in the future and such change may be applied retroactively. Kevane Grant Thornton LLP does not assume the responsibility to update this communication if the applicable laws change.

© 2021 Kevane Grant Thornton LLP All rights reserved. Kevane Grant Thornton LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions. Please visit [www.grantthornton.pr](http://www.grantthornton.pr) for further details.