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[www.mcvpr.com](http://www.mcvpr.com)**TAX ALERT*****Puerto Rico Treasury Department Issues Guidance to Controlled Groups of Corporations Subject to Surtax***

On July 24, 2012, the Puerto Rico Treasury Department (“Treasury”) issued Administrative Determination 12-11 (“AD 12-11”), which provides controlled groups of corporations guidance on how to determine the surtax imposed by Section 1022.02 of the Puerto Rico Internal Revenue Code of 2011, as amended (“2011 Code”), when members of the group have either: (i) different taxable years or (ii) one or more members having made an election to be taxed under the Puerto Rico Internal Revenue Code of 1994 (“1994 Code”).

For taxable years commencing after December 31, 2010 but before January 1, 2014, Section 1022.02 of the 2011 imposes a surtax on corporations. This surtax is levied on the normal-tax net income minus a deduction of \$750,000 (“Surtax Net Income”). The surtax is (i) 5% if the Surtax Net Income is not over \$1,750,000 and (ii) \$87,500 plus 10% of the excess over \$1,750,000.

Rules for the determination of entities in a controlled group and allocation of the \$750,000 deduction will be as further described below.

Determination of a controlled group:

- If all of the relevant entities are subject to taxation under the 2011 Code, the determination of which corporations form part of a controlled group for purposes of the surtax shall be made pursuant to the provisions of Section 1010.05 of the 2011 Code.
- In the case of a corporation or partnership that made an election to be taxed under the 1994 Code, the determination of whether or not such entity forms part of a controlled group for purposes of the surtax will depend on whether or not such entity would be considered a member of a controlled group under Section 1028 of the 1994 Code.
- The determination of which corporations form part of a controlled group shall be made yearly on December 31, regardless of the closing date of the taxable year of the members of the controlled group.

#### Use of Credits and Deductions:

- The component members of a group in which all the members are taxed under the 2011 Code, must distribute among themselves on a pro-rated basis the deduction of \$750,000, and the \$87,500 used for purposes of determining the surtax when Surtax Net Income is over \$1,750,000.
- If members of a controlled group made an election to be taxed under the 1994 Code, they shall distribute among themselves the \$25,000 credit provided under Section 1026(b) of the 1994 Code, instead of applying the \$750,000 counterpart in the 2011 Code. In these cases, the deduction of \$750,000 shall be reduced by the \$25,000 credit. Then, the members of the controlled group that are taxed under the 2011 Code, shall distribute among themselves a deduction in the amount of \$725,000 and the \$87,500 used for purposes of determining the surtax when Surtax Net Income is over \$1,750,000.

A copy (in Spanish) of AD 12-11 is available here:

<http://www.hacienda.gobierno.pr/downloads/pdf/determinaciones/12-11.pdf>

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