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TAX ALERT

New Guidance on AUPs For Waiver of AMT and Expense Disallowance Due To Related Party Transactions Extension to File Request for Waiver for Gross Receipts Tax

Agreed Upon Procedure Report

On November 18, 2013, the Puerto Rico Treasury Department ("Treasury") issued Circular Letter No. 13-23 ("CL 13-23") to clarify the term "eligible fees" to be excluded from the "20% of expenses" component of the alternative minimum tax ("AMT") and from the expense disallowance. It also establishes the guidelines that a Certified Public Accountant ("CPA") must follow when performing Agreed Upon Procedures ("AUP").

Act 40-2013, known as the "Tax Burden Redistribution and Adjustment Act" ("Act 40"), amended several provisions of Section 1022.03 of the Puerto Rico Internal Revenue Code of 2011, as amended (the "PR Code"). Said amendment, among others, added, as a component of the AMT, twenty percent (20%) of the expenses incurred or paid to a related person (as such term is defined in PR Code Section 1010.05(b)) or the expense allocations of a home office located outside of Puerto Rico to a branch. This component shall form part of the AMT only when said payments have not been subject to income tax or withholding at source under the PR Code in the taxable year in which they are incurred or paid.

Furthermore, Article 19 of Act 40 amended Section 1033.17 to limit the deductibility (disallowing 51%) of these same expenses for regular income tax purposes.

The Secretary is authorized to evaluate, at the request of the taxpayer, the nature of the expenses or costs paid to a related person or office in order to determine whether any of such expenses or costs can be excluded from the AMT computation or allowed their deduction in the determination of net taxable income.

CL 13-23 supplements Circular Letter No. 13-06 ("CL 13-06"), which establishes the procedure that the Secretary should follow in evaluating which expenses or costs can be excluded in the computation of the AMT and can be 100% deductible when determining net taxable income ("Eligible Fees"). CL 13-06 establishes the requirements upon filing the application for approval of Eligible Fees (the "Application") and the AUP report (the "Report") to be prepared by a CPA with a Puerto Rico license and member of a peer review program. The Report shall include financial and tax information for each of the four (4) years preceding the year for which the application is made and a certification of being in compliance with the procedures established under CL 13-23.

Pursuant to CL 13-23, Eligible Fees will only include such costs, charges, or expenses incurred or paid to related parties (as such term is defined in Section 1010.05 of the PR Code) that represent essential direct expenses or costs that meet the following requirements: (1) are directly related to the operation of an industry or business in Puerto Rico, and (2) are essential to the operation in Puerto Rico. For these purposes, Eligible Fees are those charges or expenses paid by one or more related parties to a third party that are assigned, through an intercompany charge, to the entity doing business in PR that is requesting the exclusion of the expense or payment from the AMT computation or expense disallowance.

Extension to File Request for Waiver for Gross Receipts Tax

Article 8 of Act 117-2013 amended PR Code Section 1023.10 to establish the requirements to file with Treasury a request for a reduction in the rate of the additional tax on gross receipts under Section 1023.10 of the PR Code. The deadline to file such request was November 30, 2013.

CL 13-19, extends such deadline until December 31, 2013. It is further established that Treasury has ninety (90) days to make a determination after the filing of the request. However, such ninety (90) day period may be suspended if within sixty (60) days from the filing of the application Treasury requests additional information. In this case, the ninety (90) day period to issue a determination by Treasury will resume when the taxpayer submits the additional information requested.

The provisions of CL 13-19 and CL 13-23 are immediately effective.

A copy of CL [13-19](#) is available here.

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If you have any questions or would like our assistance regarding this matter, you may contact any of the following members of our Tax Practice Team:

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