

April 1, 2015 www.mcvpr.com**TAX ALERT*****Act 44-2015 Implements an Incentives Plan for the Payment of Taxes in Anticipation of the Tax Reform Legislation***

On March 30, 2015, the Governor of Puerto Rico signed House Bill 2316 into law, which became Act 44-2015 (the "Act"), to establish an incentive plan for the payment of taxes in anticipation of the adoption of the tax reform legislation (the "Plan"). Below is a summary of the most significant aspects of this Act.

I. Incentive Plan for the Payment of Taxes**A. Payment of Taxes Assessed or Determined in Returns Filed by the Taxpayer**

Taxpayers with an assessed debt balance, or that have filed the corresponding return or declaration, but a debt is pending to be assessed as of December 31, 2014, can benefit from the Plan if the total payment of the debt is made to the Secretary of the Treasury on or before June 30, 2015. The debts that can be paid under the Plan must relate to the following taxes imposed under the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code"):

- Income taxes, excluding taxable years beginning after December 31st, 2013;
- Estate and gift taxes;
- Excise taxes under Subtitle C of the Code;
- Sales and use taxes ("SUT") for taxable periods, including months, ending before July 1, 2014;
- Income tax withheld for taxable periods, including months, ended before January 1, 2015; and
- Any tax imposed under Act 7-2009, Act 73-2008, Act 74-2010, Act 83-2010, Act 27-2011, Act 20-2012, or by any other act of similar nature, or that provides for a special income tax rate.

Taxpayers electing to pay the total principal amount of the debt under the Plan will be relieved from the payment of interest, surcharges and penalties.

B. Voluntary Disclosure of Income and Payment of Taxes

For taxable years ending on or before December 31, 2013, taxpayers who earned gross income subject to income taxation under the Code may disclose in a special declaration income and tax payments that were not reported or were under-reported, under the following circumstances:

- when the taxpayer failed to file the returns or to pay the correct amount of the tax,
or
- when the taxpayer filed the returns, but failed to report the correct amount of income or otherwise claimed excess deductions.

In these cases, the taxpayer will pay a 20% tax on such income or excess deduction, and will be relieved from the payment of interest, surcharges and penalties, but only if the total payment of debt is made on or before June 30, 2015.

C. Debts Related Only to Fines, Surcharges, Interest and Penalties

Taxpayers with outstanding balances of assessed debts attributable only to fines, surcharges, interest and penalties, with no principal due, can settle such outstanding balances paying 25% of the total amount due and will be eligible for relief from payment of the remaining balance of interest, surcharges and penalties due. The 25% payment must be made in its entirety on or before June 30, 2015.

The Act provides certain terms and conditions that must be met to qualify for the Plan.

II. Pre-Payment Provisions

A. Special Tax Rate on Dividend Distributions and Deemed Distributions

A new Section 1023.25 is added to the Code to provide for the following:

- A special 5% tax rate will apply to dividend distributions made during the period beginning on January 1, 2015 and ending on April 30, 2015. This special tax rate will apply instead of any other tax imposed by the Code, including the alternative minimum tax and the basic alternate tax.
- The special tax rate will increase to 8% on dividend distributions made during the period between May 1, 2015 and June 30, 2015.
- Distributions made by “public corporations” will not be subject to the reduced tax rates. Public corporations are defined as corporations whose stock is traded in a national stock exchange, including the New York Stock Exchange and NASDAQ.
- Any corporation may designate, within the periods provided above, all or part of its accrued earnings and profits as a “deemed distribution” subject to the 5% or 8% special tax rates.
- A corporation that designates an amount as a deemed distribution subject to the deemed dividend tax imposed under Code Section 1062.13 may reduce the amount of its earnings and profits as provided under such section.
- A “deemed distribution” is such amount designated by a corporation as a dividend distribution but that will not be distributed during the year in which the designation is made. The amount of any distribution out of earnings and profits that were subject to the pre-payment, will not be subject to additional taxes upon its distribution.

The election and payment of the special tax on either the actual or the deemed dividend distribution must be made by filing the form that the Secretary will provide for such purposes, not later than April 30, 2015 for the 5% rate to apply, and not later than June 30, 2015 for the 8% rate to apply.

B. Special Tax Rate on Sale and Increase in Value of Certain Capital Assets

The Act extends to individuals, estates, trusts and corporations the period to make an election for the reduced tax rates on the gain from the sale of capital assets and on the total or partial increase in value of eligible long-term capital assets, without the need to sell or otherwise dispose of such assets, until April 30, 2015.

It is clarified that the special tax is also applicable in the case of eligible capital assets indirectly held by individuals, estates, trusts and corporations through their participation in partnerships, special partnerships or corporations of individuals. In these cases, the partnerships, special partnerships or corporations of individuals, as applicable, shall make the election to pay the tax on the sale or on the applicable total or partial increment in the accumulated value of the eligible assets.

C. Special Tax Rate on Accrued and Undistributed Amounts in Variable Annuity Contracts

The Act extends the benefit of a reduced tax rate of 10% to individuals with accrued and undistributed balances in life insurance policies, endowment funds or annuities that are transferred, on or before April 30, 2015, to an Eligible Variable Annuity Contract. For these purposes, an Eligible Variable Annuity Contract is any variable annuity contract issued on or before April 30, 2015 by a Puerto Rico insurance company, and whose terms prohibit making additional contributions after April 30, 2015. The payment of the tax must be made on or before April 30, 2015.

If you have any questions, you may contact any of the attorneys of our Tax Practice Group listed below:

Isis Carballo	787-250-5691	ici@mcvpr.com
Yamary González	787-250-5687	yg@mcvpr.com
Roberto L. Cabañas	787-250-5611	rlc@mcvpr.com
Rubén Muñiz	787-250-2623	rm@mcvpr.com
Lillian Toro-Mojica	787-250-2608	ltm@mcvpr.com
Esteban R. Bengoa	787-250-5626	erb@mcvpr.com
Mariana G. Contreras	787-250-5607	mcg@mcvpr.com
Rafael Fernández-Suárez	787-250-5629	rfs@mcvpr.com
Leyla González	787-250-5696	lgi@mcvpr.com
Carlos J. Villafañe	787-250-5609	cv@mcvpr.com
Javier Bayón	787-250-2609	jjb@mcvpr.com
Raquel Calzadilla	787-250-5649	rcrx@mcvpr.com
Edwin O. Figueroa	787-250-5690	eof@mcvpr.com

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