

## PR Treasury Clarifies Guidance on Eligible Distributions from PR Qualified Retirement Plans and PR IRAs to Hurricane María Victims

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### PRACTICE AREAS

- Employee Benefits

### An McV Employee Benefits Alert

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On January 17, 2018, the Puerto Rico Treasury Department (“PR Treasury”) issued Administrative Determination No. 18-02 (“AD 18-02”) to further clarify and expand the special distribution rules under Administrative Determination No. 17-29 of November 15, 2017 (“AD 17-29”) regarding Eligible Distributions made by Puerto Rico qualified retirement plans (“Retirement Plans”) and Puerto Rico Individual Retirement Accounts (“PR IRAs”) to Puerto Rico resident individuals affected by Hurricane María. (See McV Employee Benefits Alert [here](#)).

Under AD 17-29, Retirement Plans and PR IRAs may make Eligible Distributions for 2017 and 2018, subject to a special tax treatment, to a participant or beneficiary resident of Puerto Rico (“Eligible Individual”). The Eligible Distribution must meet an overall total cap limit of \$100,000 (first \$10,000 are tax-free), be made from September 20, 2017 to June 30, 2018 (“Relief Period”), and be used to cover damages or losses suffered, and extraordinary expenses incurred, by the individual or members of their immediate family, due to the passage of Hurricane María.

The following summarizes main aspects of AD 18-02:

### Eligible Distributions

- Distributions from Non-Deductible PR IRAs are eligible to be treated as Eligible Distributions. The Eligible Individual must certify the distribution in a sworn statement that complies with the requirements of AD 17-29, as supplemented by AD 18-02.
- Regarding Retirement Plans, PR Treasury clarifies that Eligible Distributions can only be made through:
  - In-service withdrawals, such as hardship withdrawals, and other partial payments made prior to the participant’s separation from service; or
  - Total distributions:
    - Up to \$100,000 (within the overall cap limit of Eligible Distributions) - must comply with the requirements of AD 17-29, provided a tax withholding rate

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of no less than 10% is made from the taxable amount of the total distribution at the time of the payment.

- Amount over the first \$100,000 (greater than the overall cap limit of Eligible Distributions) - Any portion of the total distribution over the maximum dollar limitation of an Eligible Distribution shall be taxed following the regular tax rules applicable to total distributions under Section 1081.01(b) of the Puerto Rico Internal Revenue Code.

### **Preferential Tax Treatment of Eligible Distributions**

- To determine the \$10,000 tax-free cap limit and the \$100,000 overall cap limit of Eligible Distributions, the payer or administrator must consider both, taxable and exempt amounts in the distribution. Exempt amounts include after tax contributions, amounts subject to the prepayment of taxes, exempt income earned, and distributions from Non-Deductible PR IRAs (“Exempt Amounts”)
- For computing the tax-free cap limit of \$10,000 on Eligible Distributions, the payer or administrator must consider all Eligible Distributions in 2017 taxable year, but first those made from taxable amounts and then those made from Exempt Amounts. However, if an Eligible Individual received an Eligible Distribution of \$10,000 or more from taxable and Exempt Amounts during 2017, the \$10,000 tax-free amount shall be deemed exhausted in 2017. All Eligible Distributions received by the Eligible Individual in 2018 will be subject to a preferential tax rate of 10%, provided all Eligible Distributions made in the Eligible Period do not exceed the overall cap limit of \$100,000.
- The preferential tax and withholding tax rate of 10% on Eligible Distributions applies to the taxable portion of the Eligible Distribution.
- Any Eligible Individual whose Puerto Rico income tax return reflects that (s)he received more than \$10,000 as tax-free amounts from Eligible Distributions made from taxable amounts, or more than \$100,000 of Eligible Distributions during the Eligible Period, may not claim the \$10,000 exemption benefit and the preferential 10% tax rate on any portion of the distribution received. That is, all Eligible Distributions will be subject to the ordinary income tax rates applicable under the PR Code.

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### Sworn Statement

- Eligible Individuals who received (or requested) total Eligible Distributions equal to, or less than, \$100,000, and request other Eligible Distribution, shall include in the sworn statement: (i) the dollar amount distributed (or requested), (ii) the date of the distribution (or date of request), and (iii) the dollar amount of taxes withheld, if any.
- If an Eligible Individual received (or requested) the first \$10,000 tax-free from an Eligible Distribution, then he must attest in the sworn statement: (i) the dollar amount of the Eligible Distribution received or requested that was subject to the \$10,000 exemption, and (ii) the date of the distribution (or date of request).

A model sworn statement in Spanish is attached to AD 18-02. Sworn statements under AD 17-29 that were already executed and submitted by Eligible Individuals need not be supplemented by the new provisions of AD 18-02.

### Eligible Distributions made from September 20, 2017 to November 15, 2017

- To qualify as an Eligible Distribution:
  - The participant or beneficiary must provide the sworn statement to the plan administrator or financial institution no later than January 31, 2018 or by any other subsequent due date established by the plan administrator or financial institution for this purpose, and
  - In the case of a distribution from a Retirement Plan, the payor must have withheld at source a tax rate of at least 10% from the taxable amount of the distribution, and deposited such withholding tax with the PR Treasury.
- If no withholding was made from an Eligible Distribution, the Eligible Individual must pay the tax that should have been withheld under AD 17-29 along with the sworn statement to the employer, plan administrator or financial institution. The employer, plan administrator or financial institution must remit the tax to the PR Treasury by February 15, 2018.
- An Eligible Individual may claim a refund in his/her Puerto Rico income tax for any taxes over withheld from Eligible Distributions received during the taxable year.

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