

Technical Amendments Bill Changes Taxation of Retirement Plan Distributions

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PRACTICE AREAS

- Employee Benefits

An McV Employee Benefits Alert

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On November 19, 2019, House Bill No. 2172 (“HB 2172”), which intends to incorporate technical amendments to the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”), was approved by the Puerto Rico Legislature and sent to the Governor for approval. This Alert summarizes significant amendments that would be made by HB 2172 to the PR Code provisions on qualified retirement plans:

- Plan distributions to Puerto Rico non-residents:
 - For taxable years commencing in 2019 and thereafter, HB 2172 would amend the PR Code to provide that distributions made by plans qualified under the U.S. Internal Revenue Code of 1986, as amended, and funded through a U.S. trust, to Puerto Rico non-resident individuals, whether participants or beneficiaries, shall not be subject to Puerto Rico income tax.
 - The Puerto Rico Treasury Department must issue guidance on the documents and information that must be furnished by the individual to prove Puerto Rico non-residency status and enjoy Puerto Rico income tax-free treatment on plan distributions.
- HB 2172 would reinstate certain provisions erroneously eliminated by PR Act 257-2018:
 - Withholding tax provisions on plan distributions-
 - Withholding tax rate of 10% on the taxable portion of plan distributions other than total distributions or non-taxable loans;
 - Withholding tax rate of 10% on the taxable portion of annuity or periodical payments over the first \$31,000 received during the year (\$35,000, if participant or beneficiary is age 60 or older); and
 - Taxes shall not be withheld at source from all or part of a total distribution resulting from separation of service or plan termination that, at the election of the participant or beneficiary, is rolled-over to another Puerto Rico qualified plan, individual retirement account or annuity.

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- Plan loan provisions-
 - A plan loan shall not be deemed a taxable distribution if these conditions are met:
 - Loan repayment is made through substantial equal payments at least on a quarterly basis; and
 - Loan repayment must be completed within a period of 5 years or less, unless the loan is taken to finance the purchase of the participant's principal residence, in which case a longer repayment period is permissible as provided by the plan.

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