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FLASH ALERT 2016-03

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A PUBLICATION FROM THE TAX DIVISION

P.R. Department of Treasury issued AD 16-11 Alternative Minimum Tax for years 2015 and 2016



Please contact your account service partner should you have any questions or comments or if you need additional information regarding these matters.

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Background:

On March 28, 2016, the United States District Court for the District of Puerto Rico ("District Court") issued an order and opinion in which it declared invalid Section 1022.03(b)(2) of the Puerto Rico Internal Revenue Code ("the Code") and imposed an injunction against the Secretary of the Treasury ("Secretary") to stop the tax collection under this section.

Section 1022.03(a) of the Code, imposes an Alternative Minimum Tax ("AMT") that will be equivalent to the excess, if any, of the Tentative Minimum Tax ("TMT") over the regular tax for the taxable year. Section 1022.03(b) establishes that the TMT will be the higher of two components, in which the second is determined as the sum of:

- Twenty percent (20%) of expenses incurred or paid to a related person if these are attributable to the conduct of trade or business in Puerto Rico, and are not subject to income or withholding tax in Puerto Rico, plus,
- The amount arising from applying the corresponding percentage to the value of purchases of personal property from related parties or the transfer of personal property by a home office located outside of Puerto Rico to a branch engaged in business in Puerto Rico.

According to the injunction, the Secretary must stop all levying, collection and enforcement of the AMT that arises due to the second component of the TMT. The District Court also declared invalid paragraph (d) of section 1022.03 of the Code, which provides exceptions on how the TMT will be applied to purchases of personal property.

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Determination:

Based on the above, on October 3, 2016 the Secretary issued Administrative Determination 16-11 (AD 16-11), that establishes:

- For taxable years beginning January 1, 2016, taxpayers will not have to consider the second component of the TMT. Taxpayers subject to AMT, will determine their TMT as 30% of the excess of the alternative minimum net income over the exemption amount, reduced by the AMT foreign tax credit for the taxable year. The PR Treasury will issue an amended Schedule A, Alternative Minimum Tax.
- For taxable years beginning January 1, 2016, taxpayers will not consider the second component of the TMT for the estimate payments required by the Code. For those taxpayers that already made estimate deposits attributable to the TMT, the amount will be applied in full against the tax liability of the year. If estimate payments already made for taxable year 2016 are equal or higher than the estimate tax liability without the second component of the TMT, the taxpayer will not be required to make further estimate payments for the period.
- Taxpayers that were subject to AMT during taxable year 2015 due to the second component of the TMT, are allowed to determine the AMT for that year without such second component. If the AMT paid with the return for taxable year 2015 is higher than the revised AMT, the taxpayer will have the right to claim as credit the amount paid in excess. The taxpayer will have one of two options:
 1. Use the excess as AMT Credit for subsequent years, subject to the limitations of Section 1051.02 of the Code; or
 2. Use the excess to be credited to the 2016 estimate tax payments.

If the second option is selected, the taxpayer will have to present an amended Income Tax Return for the taxable year 2015. The amended return must be filed with the new Form 483.3, "Formulario de Trámite Anejo A Corporación – Parte V Año Contributivo 2015". The excess amount cannot be claimed as a refund.

For those taxpayers for which the 2015 Income Tax Return has not being filed yet, and which prior the District Court order were subject to the second component of Section 1022.03(b)(2) of the Code, the mentioned return must be filed with the new Form 483.3.

- The District Court decision will only apply to the AMT computation. The decision will not affect Code Section 1033.17(a)(17), which limits the deduction of expenses incurred or paid to a related person to a 51% disallowance.

The dispositions of AD 16-11 are effective immediately. However, the dispositions related to the computation of the AMT of Section 1022.03(b)(2) of the Code, will have retroactive effect to taxable years beginning January 1, 2015.

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