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New Guidance for Requirement to Submit Transfer Pricing Study



On May 11, 2021, the Puerto Rico Treasury Department ("Treasury") released Administrative Determination No. 21-05 ("DA 21-05") to provide guidance for taxpayers that submit a Transfer Pricing Study ("TPS") when filing their income tax return.

Background

Under §§1033.17(a)(16) and (17) of the Puerto Rico Internal Revenue Code of 2011, as amended, (the "PRIRC"), taxpayers cannot deduct 51% of expenses paid to related entities that do not carry out operations in Puerto Rico¹.

Starting with tax years beginning after December 31, 2018, the 51% limitation will not apply if the taxpayer submits with its income tax return a TPS prepared in accordance with the requirements of Section 482 of the United States Internal Revenue Code of 1986, Title 26 of the United States Code, as amended (the "US Code").

New Guidance

DA 21-05 provisions include the following with respect to tax years beginning after December 31, 2018:

- The 51% disallowance will not apply when the deduction is based on a TPS prepared in accordance with the US Code provisions mentioned above that has been issued and is available at the time of the filing of the income tax return.
- The taxpayer will not be required to submit the TPS upon the filing of its income tax return. Instead, the taxpayer must submit Form AS 6175 *Certification of Compliance with PRIRC §§1033.17(a)(16) and (17)*, ("AS 6175"). AS 6175 contains the following representations:
 - At the time of filing, the TPS is available and complies with PRIRC §§1033.17(a)(16) and (17);
 - AS 6175 will be filed with Treasury within 30 calendar days after being requested and will include the issuance date of the TPS and the name of the name of the entity that prepared such study; and
 - The method of apportionment or allocating gross income, deductions, credits or concessions is reasonably based on the TPS.

¹This limitation is also applicable to expenses charged by a home office of a foreign corporation located outside Puerto Rico that is engaged in trade or business in Puerto Rico through a branch. It does not apply to income derived from operations covered by an incentives decree.

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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**New Guidance for
Transfer Price Study**

AS 6175 must be signed under penalty of perjury by the person signing the income tax return².

In addition, DA 21-05 establishes that taxpayers may reasonably rely on a TPS from prior years, provided that the facts and circumstances in the current tax year have not substantially changed. Should the facts and circumstances have substantially changed, taxpayers must make the necessary adjustments to the TPS in accordance with the Federal Regulations of 26 CFR §1.482-2 to §1.482-9, so that it represents the best method for reasonably establishing that transactions were conducted at arm's length.

Lastly, Treasury may reject those TPSs that it determines do not comply with the established requirements.

² Link for Form AS 6175: [AS 6175 Certification TPS](#)

Valdés, García, Marín & Martínez, LLP is a Puerto Rico based firm of Certified Public Accountants and Consultants organized as a partnership for the practice of public accounting since 1975. Over 45 years of experience in public accounting support our commitment to excellence and professionalism.

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