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TAX ALERT 2021-06

October 6, 2021

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A PUBLICATION FROM THE TAX DIVISION

Amendment to Guidance for Requirement to Submit Transfer Pricing Study



On September 20, 2021, the Puerto Rico Treasury Department ("Treasury") released Administrative Determination No. 21-08 ("DA 21-08") to amend previously issued Administrative Determination No. 21-05 ("DA-21-05", discussed in our [Tax Alert 2021-04](#)). These Administrative Determinations 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, taxpayers cannot deduct 51% of expenses paid to related entities that do not carry out operations in Puerto Rico. 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.

DA 21-05 states that for tax years beginning after December 31, 2018, taxpayers are not required to submit the TPS upon the filing of its income tax return. Instead, taxpayers must submit Form AS 6175 *Certification of Compliance with PRIRC §§1033.17(a)(16) and (17)*, ("Form AS 6175"). However, DA 21-05 inadvertently required that taxpayers certify that they would file **Form AS 6175** within 30 calendar days after being requested by Treasury.

Amendment to DA 21-05

DA 21-08 amends DA 21-05 and clarifies that the 30-calendar day period refers to the filing **of the TPS** and NOT of Form 6175. Thus, as amended by DA 21-08, Form AS 6175 will contain the following representations:

- At the time of filing, the TPS is available and complies with PRIRC §§1033.17(a)(16) and (17);
- **The TPS** will be filed with Treasury within 30 calendar days after being requested and will include its issuance date and 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.

The other provisions of DA 21-05 remain in force.

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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