

BUSINESS INSIGHT



CHANGES BROUGHT BY ACT 40-2020 THAT IMPACT THE 2019 TAXABLE YEAR

On April 16th, 2020, the Governor of Puerto Rico signed into law Act No. 40 of 2020 ("Act 40-2020") to, among other things, amend certain provisions of the Puerto Rico Internal Revenue Code ("PR IRC"). As we continue to study the amendments brought by Act 40-2020 to our tax code system, we have compiled the following lists to summarize those changes that will take effect and/or have an impact on taxable year 2019.

CHANGES TO TAX RETURN DUE DATES

Type of Tax Return	New Due Date	Extended Due Date as a Result of COVID-19 Pandemic*
Corporations that hold Tax Exemption Grants	<ul style="list-style-type: none"> • June 15th, 2020 - Calendar Year Basis. • 15th day of 6th month, after the end of the Economic Year. • Additional 6 months extension can be requested. 	<ul style="list-style-type: none"> • July 15th, 2020.
Non-Profit Organizations Tax Returns	<ul style="list-style-type: none"> • June 15th, 2020 - Calendar Year Basis. • 15th day of 6th month, after the end of the Economic Year. • Additional 6 months extension can be requested. 	<ul style="list-style-type: none"> • July 15th, 2020.
Insurance Companies Tax Returns	<ul style="list-style-type: none"> • June 15th, 2020 – Calendar Year Basis. • 15th day of the 6th month following the closing of the annual accounting period. • Additional 6 months extension can be requested. 	<ul style="list-style-type: none"> • July 15th, 2020.
Returns of Special Corporations owned by Employees	<ul style="list-style-type: none"> • March 15th, 2020 – Calendar Year Basis. • 15th day of 3rd month, after the end of the Economic Year. • Additional 6 months extension can be requested. • Automatic 6 months extension to file informative return to owners when extension for tax return is requested. 	<ul style="list-style-type: none"> • June 15th, 2020.

* Puerto Rico Treasury Department's Administrative Determination No. 20-09 and Administrative Determination No. 20-10.

PAYMENT EXTENSION FOR 2019 INCOME TAX RETURNS

- All those taxpayers who request an automatic extension for the filing of their income tax returns to the Secretary of the Treasury for taxable years beginning after December 31st, 2018, but before January 1st, 2020, will be granted an automatic thirty (30) day extension to submit the payment of the determined tax liability.

REQUEST FOR EXTENSION OF TIME TO FILE ESTATE AND TRUSTS TAX RETURNS

- Act 40-2020 extended the Automatic Extension of Time to File Estate and Trusts Tax Returns from three (3) months to six (6) months.
- For purpose of the informative returns to grantors, Act 40-2020 also increased the automatic extension to file said report from thirty (30) days to six (6) months.

MARRIED INDIVIDUALS THAT HOLD SEPARATE PROPERTY AGREEMENT

- Married Individuals that hold a separate property agreement, executed after the marriage, are now required to file their tax returns as an "Individual Taxpayer".
- Married individuals that execute a separate property agreement after the celebration of their marriage will be treated as if their marriage ended as of the effective date of such separate property agreements.

INFORMATION AT SOURCE AND INFORMATIVE RETURNS

- For the 2019 taxable year only, the informative returns for payments of fixed or determinable income of \$500 or more, that are normally filed by February 28th, can be filed on or before March 31st, 2020 or by its extended due date.
- Any person under the accrual method or an economic year will not be required to submit, along with their return, a reconciliation between the credits or payments of \$50 or more from interest accounts in PR financial institutions and the amount reported in the informative returns to claim the deduction, when said person files together with the income tax return an audited financial statement.
- Any person under the accrual method or an economic year will not be required to submit, along with their return, a reconciliation between the credits or payments of \$500 or more for interest, rent, dividends, pensions, annuities, or any other income subject to Alternative Basic Tax ("ABT") and the amount reported in the informative returns to claim the deduction, when said person files together with the income tax return an audited financial statement.
- Penalties of \$500 per informative return not filed will not apply for payments made of fixed or determinable income of less than \$500.
- No penalties will be imposed for expenses that are not required to be reported in an informative return, but that the taxpayer voluntarily submits an informative return to claim the deduction for purposes of the Alternative Minimum Tax ("AMT") or ABT, as applicable, without the requirement of submitting an Agreed Upon Procedures or Compliance Attestation.
- For payments made related to advertisements, insurance premiums, telecommunications services, internet and television access, the service provider is responsible for issuing the informative returns to commercial clients, excluding residential clients. In the case of bundle services or in those cases that the service provider cannot segregate or assign the payments made by customers to services provided, the entity will inform in an informative return all the payments received by the client under a line titled "Bundle Services".

INDIVIDUALS SUBJECT TO ABT AND CORPORATIONS SUBJECT TO AMT

- Payments made for water and electricity expenses related to the trade or business are no longer required to be reported in an informative return to be deductible.
- ABT will not be applicable to individual taxpayers that receive exempt pensions from the government of Puerto Rico and/or the United States.
- Act 40-2020 provides certainty and clarifies that individual taxpayers subject to ABT can deduct from their net income the personal and dependents exemptions.

OPTIONAL TAX ON SELF-EMPLOYED INDIVIDUALS AND SERVICE CORPORATIONS

- In the case of married taxpayers who file separate returns, for taxable years beginning after December 31st, 2018, the Optional Tax will be available to each of the spouses individually.
- For the 2019 taxable year only, self-employed individuals and service corporations can opt for the Optional Tax even if they have a tax liability payable, as long as said balance is paid in full no later than the deadline to file the tax return; without considering any extensions.

APPLICABLE CREDITS AND DEDUCTIONS TO INDIVIDUAL TAXPAYERS

- The Earned Income Credit ("EIC") is now available for individuals who are 65 years of age or older. The Secretary of the Treasury must issue the payment within 30 days of the taxpayer's claim for it.
- The distributable share on the income of a partnership or corporation of individuals that avails itself of the Optional Tax may not be considered as part of the adjusted gross income for purposes of calculating the limitation for mortgage interest deductions.
- For taxable years beginning after December 31st, 2018, capital losses may only be carried to subsequent taxable years as a capital loss up to 90% of the net capital gain generated for the taxable year in which such losses are carried forward.

WITHHOLDING OF TAX AT SOURCE ON WAGES AND OTHER PAYMENTS

- The following payments made as of January 1st, 2019 will be considered as salary not subject to withholding and will be required to be reported in a withholding receipt declaration (W-2):
 - » Services rendered in agricultural labor;
 - » Domestic services in private home, local college club, or local college fraternity and sorority;
 - » Services rendered by a duly organized, commissioned, and registered church minister; and,
 - » Compensation or indemnity payments received by an employee for reason of dismissal.
- Payers who have the responsibility to report the above-mentioned wages will not have the obligation to file the informative return required for services rendered.
- The obligation to deduct and withhold at source on payments for services rendered shall not apply to continued education services.

DISALLOWANCE OF EXPENSES PAID TO RELATED ENTITIES

- Waivers from the 51% disallowance approved by the Secretary of Treasury that are effective for taxable years after December 31st, 2018 will be accepted in substitution of the transfer pricing study ("TPS").
- The requirement that the TPS needs to be approved by the Internal Revenue Service was eliminated.
- The requirement to submit the TPS in accordance with the requirements of the Organization for Economic Co-operation and Development when none of the members of the group of related entities do business in the United States was also eliminated.

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