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REAL ESTATE & TAX ALERT

REAL ESTATE MARKET STIMULUS ACT OF 2010

The Governor of Puerto Rico signed yesterday into law the Real Estate Market Stimulus Act of 2010, Act No. 132 of September 2, 2010 (the "Act"), designed primarily to stimulate the Puerto Rico real estate market characterized in the recent years by lower sales, rising inventories, falling median prices and increased foreclosure rates. The Act's incentives program intends to manage the low demand and oversupply of new and existing residential and commercial properties in Puerto Rico.

Incentives

From September 1, 2010 to June 30, 2011 (hereinafter the "Window Period"), the Government of Puerto Rico will provide tax and transaction fees incentives to both purchasers and sellers (whether a Puerto Rico resident or not) of new and existing residential property, as well as commercial property with a sales price of no more than \$3 million. The Act provides certain limitations for real estate sale/purchase transactions among related parties. Certain incentives are also available for rental housing not limited to the Window Period.

The Act's incentives are summarized as follows:

Purchase/Sale of New Residential Property within the Window Period

- Any long term capital gain upon selling new residential property will be 100% exempt from the payment of income taxes, including the basic alternative tax and the alternative minimum tax. The long term capital gain derived in the future sale of the foregoing property will be 100% exempt from the payment of income taxes, including the basic alternative tax and the alternative minimum tax.

- The property will enjoy 100% exemption from the payment of real property tax for a period of 5 calendar years, commencing on January 1, 2011.
- The property will also be 100% exempt from the payment of the special real property tax, as provided by Act No. 7 of March 9, 2009, as amended.
- All parties to a sale transaction of a new residential property executed within the Window Period will have a 100% exemption from the payment of all internal revenue stamps and vouchers required for the execution and filing of deeds with any public registry concerning the purchase, sale, lease, financing, mortgage, cancellation of mortgage and any other transfer of such residential property within the Window Period.

Purchase/Sale of Existing Residential Property, or Commercial Property with a Sales Price of No More than \$3 Million, within the Window Period (“Qualified Property”)

- Any long term capital gain upon selling Qualified Property within the Window Period will be 100% exempt from the payment of income taxes, including the basic alternative tax and the alternative minimum tax. The long term capital gain derived in the future sale of the foregoing property will be 50% exempt from the payment income taxes, including the basic alternative tax and the alternative minimum tax.
- If there is a long term capital loss upon selling Qualified Property within the Window Period, the taxpayer (other than a corporation or partnership) will be able to offset up to \$5,000 of ordinary income per taxable year. The capital loss carryover is limited to 15 years.
- The seller of a Qualified Property will be 50% exempt from the payment of all internal revenue stamps and vouchers required for the execution and filing of deeds with any public registry concerning the sale of a Qualified Property within the Window Period. As to the stamps and vouchers related to the cancellation of a mortgage upon sale, the seller will be 100% exempt.
- The purchaser of a Qualified Property will be 50% exempt from the payment of all internal revenue stamps and vouchers required for the execution and filing of deeds with any public registry concerning the sale and mortgage of a Qualified Property within the Window Period.

Rental Income from Residential Properties

- Income derived from the rental of new or existing residential property will be exempt from income taxes for a period of up to 10 calendar years, commencing on January 1, 2011. To enjoy such exemption, lessor must report the amount of rental income earned, and the physical location of the leased residential property in his income tax return.

If you have any questions or comments, or wish additional information regarding these matters, please contact any of the attorneys listed below:

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