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## TAX LITIGATION ALERT

### ***Recent Puerto Rico Supreme Court Holding Regarding the Municipal Authority to Impose Municipal License Tax***

On April 10, 2015, the Puerto Rico Supreme Court issued its opinion in Lukoil Pan Americas LLC v. Municipio de Guayanilla, 2015 TSPR 39, essentially holding that municipalities do not have the authority to impose the municipal license tax (“MLT”) on companies that sell fuel oil to the Puerto Rico Electric Power Authority (“PREPA”) when such companies do not have any physical presence in Puerto Rico.

In 2009 Lukoil arranged from its New York office for the purchase of fuel oil by PREPA, as well as its transport and delivery, to a port located in Guayanilla (the “Municipality”) as required by PREPA. Lukoil had no employees or warehouses, nor did it render any services, in Puerto Rico. Based on the fact that the fuel delivery occurred within the Municipality’s territory, the Municipality alleged that this “economic event” was sufficient to impose a municipal license tax of \$175,317.76 on Lukoil, regardless of whether the Company had any physical presence there. Following the administrative process before the Municipality, Lukoil sought judicial relief arguing that the tax levy was invalid because it was contrary to the Commerce Clause of the U.S. Constitution, in its dormant aspect, and to the MLT Act.

The Puerto Rico Court of First Instance held that since Lukoil had no physical presence in the Municipality, the MLT could not be imposed. The Puerto Rico Court of Appeals affirmed this judgment.

In affirming the Court of Appeals decision, the Supreme Court held that, regardless of the nature of the business in question, the primary requirement for the imposition of MLT under the MLT Act is physical presence by the person or entity involved (for example offices, commercial establishments, warehouses, or any other type of industrial or business facilities) within the municipality that seeks to impose such tax. In addition to this physical presence requirement, the location within the municipality must be used to conduct for profit activities. Only after these criteria have been met, the applicable definition of “volume of business” should be ascertained in order to determine the taxable volume of business.

Pursuant to the constitutional avoidance doctrine, the Supreme Court refused to address the constitutional issues raised by Lukoil. In a footnote, however, the Court suggested that the Municipality’s theory in support of its authority to impose the tax would be contrary to the Commerce Clause of the U.S. Constitution, in its dormant aspect, since it would not comply with the first requirement of the test established in *Complete Auto Transit, Inc. v. Brady*, 430 US 274, 279 (1977) for determining the existence of a substantial nexus between the taxing authority and the activity subject to the tax.

A Motion for Reconsideration is currently pending before the Supreme Court.

For further information on this matter, you may contact any of the attorneys listed below, members of our [Tax Litigation Practice Team](#):

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