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TAX ALERT

Procedure to Benefit from the Incentives Plan for the Payment of Taxes (Tax Amnesty)

As informed in our [April 1, 2015 Tax Alert](#), on March 30, 2015, Act 44-2015 (“Act”) established an incentive plan for the payment of taxes (the “Plan”) in anticipation of the adoption of tax reform legislation.

On March 31, 2015, the Puerto Rico Department of the Treasury (“Treasury”) issued Circular Letter of Tax Policy No. 15-04 (“CL TP 15-04”), to establish the rules and guidelines that will regulate the procedures for selecting and paying the eligible tax debts under the Plan. On April 13, 2015, Treasury issued Administrative Determination No. 15-07 (“AD 15-07”), to establish guidelines regulating the Voluntary Disclosure Program (the “Program”) that allows taxpayers to disclose unreported income.

I. The Plan

As a general rule, the Plan allows taxpayers that have an assessed balance of tax due or that have filed a return or declaration with a balance due which is pending assessment by Treasury, to pay said amount of tax due to Treasury without including interest, surcharges and penalties. In order to benefit from the Plan, the principal amount of the eligible tax must be paid on or before **June 30, 2015**.

The following are the types of taxes that are covered by the Plan, what is considered a tax due and the taxes that are eligible, as **defined** under CL TP 15-04:

Taxes – Includes any of the following taxes imposed under the Puerto Rico Internal Revenue Code of 2011, as amended (“2011 PR Code”), the Puerto Rico Internal Revenue Code of 1994, as amended (“1994 PR Code”), any of the prior tax laws or any special law that provides a special rate on income taxes:

- Income taxes
- Estate and gift taxes
- Excise taxes
- Sales and use taxes (“SUT”)
- Certain taxes withheld

- Taxes imposed under Act 7-2009 (Special Tax on Real Property); Act 73-2008 (Economic Incentives for the Development of Puerto Rico); Act 74-2010 (Tourism Incentives); Act 83-2010 (Green Energy Incentives); Act 27-2011 (Economic Incentives for the Film Industry); Act 20-2012 (Export Services); and any other law of similar nature or that provides for a special rate of income taxes.

Taxes Due – Includes, in general:

- Assessed taxes that are pending payment;
- Taxes reported by the taxpayers on their returns or declarations filed before December 31, 2014 and that have not been assessed;
- Deficiencies determined by the Secretary of the Treasury under a fiscal audit or tax investigation, or for which the taxpayers have requested an administrative hearing or judicial review;
- Taxes withheld that are pending payment;
- Taxes withheld as SUT that are pending payment;
- Taxes that are part of a current payment plan or subject to payroll discount; and
- Taxes which payment was extended in any way.

Eligible Taxes – Includes, in general:

- Taxes Due, including income taxes, taxes imposed by incentives laws or any other law of similar nature that imposes a special rate on income taxes, estate and gift taxes, excise taxes and special taxes on real property for taxable periods beginning before January 1, 2014;
- Withholding Taxes Due for taxable periods ending on or before December 31 2014; and
- Sales and Use Taxes Due for taxable periods ending on or before June 30, 2014.

Procedure for the Payment of Eligible Taxes under the Plan

Assessed Taxes

Treasury will send an Incentive Plan Notice (“Notice”) showing the amount of assessed Eligible Taxes pursuant to the records of Treasury. If the taxpayer does not receive the Notice and is interested in getting confirmation as to whether he or she has an outstanding debt with Treasury, a Debt Certificate may be requested in any Collector’s Office, Collections District, Amnesty Center or [online](#). Depending on the payment option of the taxpayer, the following will apply:

- Taxpayers making payments under the Plan for the total assessed Eligible Taxes will be relieved from the payment of interest, surcharges and penalties imposed on the amount due if the payment is made on or before June 30, 2015.

- Taxpayers that are not paying the total assessed Eligible Taxes will be relieved from the payment of interest, surcharges and penalties imposed only on the partial amount paid, and only if the partial payment is made on or before June 30, 2015.
- Taxpayers currently under payment plans with Treasury may renegotiate the pending balance with the Secretary of the Treasury.
- Taxpayers with outstanding balances attributable only to fines, surcharges, interests and penalties, with no principal due, can settle such outstanding balances paying 25% of the total amount due on or before June 30, 2015.
- Taxpayers with outstanding balances attributable to returned checks or payments must visit any Collections District or Amnesty Center to provide evidence that the fine or penalty for a returned check or payment relates to an Eligible Tax.
- Taxpayers with assessed debts attributable to Eligible Taxes that are under an investigation of the Fiscal Audit Bureau ("Bureau") can pay such debts if visit the Bureau's District Office to which the case is assigned and establish the balance of the debt to be paid.
- Taxpayers that have requested an administrative hearing or judicial review of a tax deficiency determined by the Secretary of the Treasury attributable to Eligible Taxes, and wish to benefit from the Plan, must agree with the Officer Examiner in charge of the case the amount of the debt to be paid.

Unassessed Taxes

- Taxpayers that have filed the corresponding returns or declarations attributable to Eligible Taxes on or before December 31, 2014 (or on or before June 30, 2014 in the case of SUT returns), and that have not received the assessment notifications of the Tax determined on such filings, must visit any Collections District or Amnesty Center and submit stamped copy, confirmation of electronic transfer or other evidence, to the satisfaction of the Secretary, of the filing of such returns or declarations, as well as evidence of partial payment, if any, in order to be eligible to make payments under the Plan.
- Taxpayers, which returns or declarations attributable to Eligible Taxes are currently being audited by the Bureau, must visit the Bureau's District Office assigned to their case to establish the amount of the debt that can be paid under the Plan.
- Taxpayers that have requested an administrative hearing or judicial review of a tax deficiency determined by the Secretary of the Treasury attributable to Eligible Taxes, and wish to benefit from the Plan, must agree with the Officer Examiner in charge of the case the amount of the debt to be paid.

Methods of Payment

Payments under the Plan can be made in any of the following locations and using any of the following methods of payment:

- Collector's Offices ("Colecturías") – cash, manager's check or money order payable to the Secretary of the Treasury, debit and credit cards (VISA and Master Card).
- Collections District- manager's check or money order payable to the Secretary of the Treasury.
- Amnesty Centers - manager's check, money order payable to the Secretary of the Treasury, debit and credit cards (VISA and Master Card).
- Colecturía Virtual – online payments through Treasury's website are allowed for certain types of taxes due and only if the taxpayer will be paying all the amounts due shown in the Debt Certificate.

Payments related to the SUT will only be accepted at any of the Treasury's Amnesty Centers and Collections Districts if made through a manager's check or money order payable to the Secretary of the Treasury.

II. **The Program**

Any taxpayer that received or accrued gross income subject to taxation under the 2011 PR Code or the 1994 PR Code for taxable years beginning and ending on or before December 31, 2013, and that did not file the applicable returns, or that file the returns but failed to report the correct amounts of income or claimed deductions in excess, may avail from the benefits granted under the Program.

The following are some of the most important requirements/consequences of claiming the benefits of the Program:

- Income reported under the Program will be subject to taxation at a 20% tax rate.
- Taxes that are not income taxes, such as excise taxes, withholding taxes, SUT and estate and gift taxes will be subject to the applicable tax rates under the 2011 PR Code or the 1994 PR Code.
- Taxpayers paying taxes under the Program will be relieved from the payment of interest, penalties, surcharges or fines.
- To be eligible under the Program, the voluntary disclosure must be (1) timely, (2) sincere, (3) complete, (4) income should be attributable to legal sources, and (5) the taxpayer must pay the entire amount due on or before June 30, 2015.

- The voluntary disclosure will be considered “timely” if made before Treasury commences an audit or has received information about the taxpayer’s failure to be in compliance with its tax obligations.
- The disclosure will be “sincere” if the taxpayer is willing to cooperate with Treasury, and actually cooperates by providing the information and documentation required.
- The disclosure will not be “complete” if the taxpayer omits facts, income, or does not identify in a true and correct manner items, transactions or events, or omits taxes that could be affected by such disclosure.
- The voluntary disclosure must be made by completing and filing Forms SC 3252, “Voluntary Disclosure,” and SC 3253, “Voluntary Disclosure Declaration” with the Voluntary Disclosure Unit at Treasury.
- Taxpayers that already availed to the benefits of a voluntary disclosure program are not eligible to request the benefits of the Program.

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If you have any questions, you may contact any of the attorneys of our Tax Practice Group listed below:

Isis Carballo	787-250-5691	ici@mcvpr.com
Yamary González	787-250-5687	yg@mcvpr.com
Roberto L. Cabañas	787-250-5611	rlc@mcvpr.com
Rubén Muñiz	787-250-2623	rm@mcvpr.com
Lillian Toro-Mojica	787-250-2608	ltm@mcvpr.com
Esteban R. Bengoa	787-250-5626	erb@mcvpr.com
Mariana G. Contreras	787-250-5607	mcg@mcvpr.com
Rafael Fernández-Suárez	787-250-5629	rfs@mcvpr.com
Leyla González	787-250-5696	lgi@mcvpr.com
Carlos J. Villafañe	787-250-5609	cv@mcvpr.com
Edwin O. Figueroa	787-250-5690	eof@mcvpr.com
Javier Bayón	787-250-2609	jib@mcvpr.com
Raquel Calzadilla	787-250-5649	rcrx@mcvpr.com

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