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## TAX ALERT

### ***PR Treasury issues Circular Letter to Establish Rules to Request Retroactive Tax Exemption by Not-for-Profit Organizations***

On March 14, 2012, the Puerto Rico Treasury Department ("Treasury") issued Internal Revenue Circular Letter No. 12-03 ("CL 12-03") to establish the rules that will govern the applications for retroactive tax exemption to those not-for-profit organizations that did not obtain tax exemption under Section 1101 of the Puerto Rico Internal Revenue Code of 1994 ("1994 Code") and the consequences of such exemption.

As a transitory provision, Section 1101.01(f) of the 2011 Code allows the above mentioned not-for-profit organizations to request tax exemption under the Puerto Rico Internal Revenue Code of 2011 ("2011 Code".) Such tax exemption will be retroactively effective as of the date of organization of the entity.

Nevertheless, Section 1101.01(f) of the 2011 Code requires that the application be submitted by these not-for-profit organizations **not later than June 30, 2012**. The application will be considered complete only when Form SC-2645 is submitted to Treasury with all the required information and documents and the applicable filing fees (\$300 or \$400). For some of the documents that need to be filed with Form SC-2645, please refer to CL 12-03, which is available [here](#).

An applicant not-for-profit organization has to be current with its tax obligations, which means:

1. It has filed its income tax returns at the time of filing the application. If the entity has filed its returns as a regular entity without claiming the tax exemption under Section 1101 of the 1994 Code, the fact that the retroactive tax exemption is later granted will not give the entity a right to claim a tax credit or refund for the tax paid. Nonetheless, if the entity has a tax liability related to its exempt activities, the same will be forgiven once the retroactive exemption is approved.
2. In case that the organization has not filed its returns, it files its tax exempt returns (Form 480.7(OE)) for the last five (5) years and include a copy with its application, as applicable.
3. It has submitted the withholding returns or informative returns, as required by the 1994 Code and the 2011 Code to the employers or withholding agents. If there is an outstanding withholding tax liability, the same must be paid or be under a payment plan with the Treasury.

Under the 2011 Code, the operations of most of the not-for-profit organizations must be governed by a Board of Directors composed of not less than three (3) members, of which less than fifty percent (50%) can be members of the family nucleus of the person who establishes, or who is one of the principal executive officers of, the organization or who holds the president position of the Board of Directors. Pursuant to CI 12-03, this requisite is of strict compliance.

Every exempted organization under Section 1101 must submit, before the Tax Exemption Division of the Treasury, on or before June 30, 2012, a sworn statement, certifying the compliance with this new requirement. A not-for-profit organization that has been tax exempted under the 1994 Code might have its tax exemption revoked if said organization does not comply with this new requirement.

For further information on these matters, you may contact any of the attorneys listed below, all members of our Tax Practice Group:

Carlos E. Serrano	787-250-5698	<a href="mailto:ces@mcvpr.com">ces@mcvpr.com</a>
Esteban R. Bengoa	787-250-5626	<a href="mailto:erb@mcvpr.com">erb@mcvpr.com</a>
Roberto L. Cabañas	787-250-5611	<a href="mailto:rlc@mcvpr.com">rlc@mcvpr.com</a>
Isis Carballo	787-250-5691	<a href="mailto:ici@mcvpr.com">ici@mcvpr.com</a>
Yamary González	787-250-5687	<a href="mailto:yg@mcvpr.com">yg@mcvpr.com</a>
Alba I. Joubert	787-250-5649	<a href="mailto:aj@mcvpr.com">aj@mcvpr.com</a>

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