TAX PERSPECTIVES

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Special Edition - Declaration of Fiscal Emergency and Omnibus Plan for Economic Stabilization and Restoration of Puerto Rico's Credit Act

DRASTIC MEASURES TO HEAL PUERTO RICO'S AILING ECONOMY

by: Ariadna Álvarez, Special Counsel, McConnell Valdés LLC Tax Practice Group, Certified Trust and Financial Advisor, and Editor-In-Chief, Tax Perspectives

In an attempt to stabilize Puerto Rico's economy and restore the credit rating of debt instruments issued by the Government of Puerto Rico and its agencies, Governor Luis Fortuño introduced four bills designed to rescue Puerto Rico's economy, which together shall be known as the "Economic Stabilization and Reconstruction Program for Puerto Rico." The Program is comprised of: the Puerto Rican Stimulus Program Act; the Federal Stimulus Program Implementation Act; the Public-Private Alliances Act; and the Declaration of Fiscal Emergency and Omnibus Plan for Economic Stabilization and Restoration of Puerto Rico's Credit Act. All but the Public-Private Alliances Act were signed into law on March 9, 2009. This Special Edition of *Tax Perspectives* will focus on the latter of these four statutes, which for short we will refer to as the Omnibus Plan for Economic Reconstruction Act ("OPERA").

OPERA is geared towards reducing in a three-year period the Government of Puerto Rico's structural deficit. This goal is to be reached by, among other initiatives, imposing additional temporary and permanent taxes; crafting more efficient controls; reducing government spending; and establishing governmental financial measures to balance the budgetary deficit. OPERA is divided into five chapters. Chapter I contains the statute's preliminary provisions. Chapter II includes tax provisions that are expected to bring in additional revenue. Chapter III addresses the reduction in government spending. Chapter IV sets forth financial measures designed to restructure government-issued debt and restore Puerto Rico's credit rating, and Chapter V deals with procedural issues.

The articles we have selected for this Special Edition summarize and analyze the provisions of Chapters II and IV, highlighting the amendments to the Puerto Rico Internal Revenue Code of 1994, as amended, and other legislation, which are targeted towards increasing revenue collections, as well as the provisions of the statute that are intended to improve Puerto Rico's credit rating. These measures impose temporary and permanent fixes that will significantly impact taxpayers and will alter the way in which government revenue is collected. Special emphasis is given to how these changes affect you, and to the upcoming deadlines that are fast approaching. M&V

In this Issue...

NO MORE TAX CREDITS!

by: Lillian Toro Mojica, Associate, McConnell Valdés LLC Tax Practice Group

In an effort to strengthen the Government of Puerto Rico's short-term liquidity, the Omnibus Plan for Economic Reconstruction Act ("OPERA") implemented a moratorium on the use and issuance of certain tax credits, as discussed below.

Both moratoriums cover eight different tax credits, as follows: 1) credit for purchase of articles manufactured in Puerto Rico for local sale and consumption, 2) solid waste credits, 3) venture capital credits, 4) urban centers revitalization credits[1], 5) theater district credits, 6) conservation credits, 7) social interest housing credits, and 8) housing infrastructure credits. Certain tax credits, such as the film industry, tourism development and industrial tax credits, including those under the Economic Incentives for the Development of Puerto Rico Act, Act No. 73 of May 28, 2008, are excluded from this moratorium. Any term of expiration to claim covered credits is suspended during the three-year moratorium and will resume beginning on January 1, 2012.

Limitation on use

For tax years commencing during calendar years 2009, 2010 and 2011, taxpayers will not be entitled to offset their income tax liability with tax credits granted prior to January 1, 2009. As an exception, tax credits purchased before March 4, 2009, from original tax credit grantees, are not subject to the moratorium described herein, and thus, can be used to offset income taxes during the three-year moratorium. OPERA, however, does not address the application of this special tax treatment to those credits that may be acquired in the secondary market.

Limitation on grants

OPERA also provides a three-year moratorium on the granting of additional tax credits. Article 30 of OPERA provides that the Government of Puerto Rico (e.g., governmental agencies, public corporations and municipalities) is banned from granting new tax credits for tax years commencing during calendar years 2009, 2010 and 2011.

> *"For tax years commencing during calendar years 2009, 2010 and 2011, taxpayers will not be entitled to offset their income tax liability with tax credits granted prior to January 1, 2009"*

Registry of Tax Credits

Any unused tax credit as of the commencement of the moratorium period can be claimed in tax years beginning after December 31, 2011. To claim the unused tax credit, the taxpayer must file an informative return with the Secretary of the Puerto Rico Treasury Department ("Secretary") on or before May 30, 2009, in order to inform any pending credits to be claimed after the expiration of the moratorium. Before December 1, 2009, the Secretary will create a Registry of Tax Credits to keep a record of all tax credits to be claimed in tax years commencing on and after January 1, 2012. The Secretary is ordered to complete and submit to the Puerto Rico Legislative Assembly an analysis on the effectiveness and efficiency of tax credits in stabilizing the economy of Puerto Rico.

As a final note on tax credits, OPERA no longer permits taxpayers to claim the tax credit for purchases of articles manufactured in Puerto Rico for export against the sales and use tax. From now on, this credit will only be allowed to offset income taxes. In addition, financial institutions may claim a refund for any unused refundable tax credit in connection with the purchase of new housing developments for the first three consecutive tax years commencing after December 31, 2010. When granted, refunds will not include payment of interest. OPERA includes specific provisions to ensure its interpretation as an emergency measure and its intent to prevail over any other legislation. Nonetheless, no special provisions were included to shed light on its effect on the operations of those entities that manage the programs issuing some of the affected credits, nor the impact on the value of credits marketed as securities. McV

1. The moratorium is limited to investment tax credits for housing development in urban centers. Article 4.03(E) of Act No. 212 of August 29, 2002.

REDUCING PREFERENTIAL TREATMENT

by: Carlos E. Serrano, Chair
McConnell Valdés Tax Practice Group

The Omnibus Plan for Economic Reconstruction Act ("OPERA") has increased the tax burden of many individuals, mainly those that have been traditionally considered high income earners enjoying preferential tax treatment not available to the general public. Although in *Tax Perspectives* we have always focused on the business or corporate world, given the magnitude of the changes introduced and their potential combined effect on individual spending and investment trends, we will consider herein measures such as the permanent changes to the Alternative Basic Tax ("ABT") on individuals, the temporary changes to the corporate Alternative Minimum Tax ("AMT") and the Special Surtax on both corporations and individuals.

PERMANENT MEASURES

The change to ABT is not only a permanent measure, but its surgical approach to an expanded definition of adjusted gross income may be an omen of more tax policy to come. In that sense, remember that as policy makers modify taxation, taxpayers tend to modify their behavior.

For taxable years commenced before December 31, 2008, ABT was calculated from an individual's adjusted gross income. The first change to ABT is to devise the Net Income Subject to ABT, which is an individual's gross income, less deduction from Section 1023 of the Puerto Rico Internal Revenue Code of 1994, as amended ("Code"), plus the personal deductions and dependent exemptions of Section 1025 of the Code. The major policy determinations become evident when the Code requires the individual to add back certain sums of currently excluded or fully exempt income and other lesser known tax preferences. Let's plot the points in the chart:

1. **Taxation of Currently Excluded Passive Income**
   Puerto Rico has had a long standing love affair with tax free interest. The first add-back does away with tax free treatment for 16[1] types of interest income, including that from mortgage obligations, deposit bearing accounts, bonds for the construction of Government owned buildings, etc.

   No longer will the leasing of buildings to the Government of Puerto Rico or certain hospitals or the leasing of buildings in historic zones generate tax-free income.

   Net long-term capital gains, excluded from gross income to be subject to special long-term capital gains tax rates, will be subject to ABT.

   Distributions of dividends and corporate profits, also excluded from gross income to be subject to the special tax rates or to not tax at all, will be subject to ABT.

2. **Limitation to the Use of the Completed Contract Method**
   Although Net Income Subject to ABT may consider income or losses incurred by a special partnership, an adjustment will be required to reduce said loss for any excess from the loss that would have been computed by using the percentage-of-completion method of accounting for construction contracts.

3. **Limitation on Residential Mortgage Interest Deduction**
   Residential mortgage interest deduction will be capped at 30% of adjusted gross income, as modified by (1) and (2) above.

4. **Limitation on Everything Else**
   Lastly, as a catch-all provision, Net Income Subject to ABT generally includes "all exclusions or exemptions from income that are not listed" in Subtitle A of the Code.

TEMPORARY MEASURES

Temporary measures (as ad hoc revenue generators) do not carry the policy-changing weight of the ABT changes.

1. **Adjustments to AMT Income**
   An interesting proposition is the elimination of a deduction, for AMT purposes, of expenses for services rendered outside of Puerto Rico unless the service provider's income is subject to taxation under the Code. As most services rendered outside of Puerto Rico would generate non Puerto Rico source income for persons not engaged in business in Puerto Rico, this provision brings home the thought of losing the ability to deduct certain management fees, home-office charges and other types of compensation for services received by Puerto Rico operations.

2. **Special Surtax**
   Last but not least, OPERA introduces a special surtax equal to 5% of a taxpayer's tax liability under the Code. In the case of individuals, this applies only to taxpayers with adjusted gross income in excess of $100,000 ($150,000 for those married filing jointly).

   The Special Surtax is effective for taxable years commenced after December 31, 2008, and before January 1, 2012. In the case of calendar year taxpayers, the surtax will apply to income tax returns due by April 15, 2010, 2011 and 2012.

   At first glance, these measures may seem only major revenue generating measures. However, taxation of some of these categories of income, or better said, increasing the tax burden of those perceived to be receiving the larger share of some of these categories of income, sends a strong message to the Puerto Rican tax base and may change some investment trends. McV

1. Exclusions stated in paragraphs (C) through (R) of Section 1022(b)(4) of the Code.

Financial Institutions' Corner: Exempt No More, 5% Special Income Tax

by: Ariadna Álvarez, Special Counsel, McConnell Valdés LLC Tax Practice Group, and Editor-In-Chief, Tax Perspectives

The Omnibus Plan for Economic Reconstruction Act ("OPERA") includes a temporary 5% special income tax applicable to certain tax exempt financial institutions. For tax years 2009, 2010 and 2011, the following rules will apply:

Insurance Cooperatives
As a general rule, Insurance Cooperatives organized under the Puerto Rico Insurance Code are treated as not-for-profit organizations, exempt from the payment of income taxes. However, during the aforestated years, if their net income is greater than $250,000, a 5% income tax will be imposed on all of their net income.

Credit Unions - Cooperatives
As a general rule, Cooperatives, Credit Unions, their affiliates and subsidiaries, their operations, assets, capital, and reserves are exempt from income taxes, property taxes, excise taxes, municipal license taxes, and any other tax imposed by the Government of Puerto Rico. However, during the aforestated years, if their net income is greater than $250,000, a 5% income tax will be imposed on all of their net income.

International Insurance Companies and International Insurance Holding Companies
Although the net income earned by International Insurance Companies and International Insurance Holding Companies is also exempt from income taxes, during the previously mentioned tax years, their net income will be taxed at 5%.

International Banking Entities
In most cases, income generated by International Banking Entities is exempt from income taxes. During the above mentioned period, their net income will be taxed at 5%. However, in the case of excess net income earned by a taxable International Banking Entity (i.e., an international banking entity operating as part of a bank organized under the laws of the Commonwealth of Puerto Rico), the 5% tax will apply only to the portion of the income not otherwise subject to taxation under the Puerto Rico Internal Revenue Code of 1994, as amended.

RETAILER'S CORNER: SALES AND USE TAX

by: Liz A. Pérez, Associate, McConnell Valdés LLC Tax Practice Group

The Omnibus Plan for Economic Reconstruction Act ("OPERA") made significant permanent amendments to the sales and use tax ("SUT") provisions of Subtitle BB of the Puerto Rico Internal Revenue Code of 1994, as amended ("Code"). The permanent provisions adopted are intended to produce effective administration of the SUT and to increase collections. The changes entail the claiming of credits, changes in compliance and modification of the reseller's exemption model, which certainly will require brisk adaptation by wholesalers and retailers.

The changes incorporated by OPERA are summarized as follows:

Credit for Purchases of Products Manufactured in Puerto Rico for Export

Merchants will no longer be entitled to claim tax credits against the SUT for purchases of products manufactured in Puerto Rico for export. See Section 1040 of the Code. The credit may only be applied to offset income taxes imposed by Subtitle A of the Code. This amendment took effect immediately after OPERA was approved; thus, payment of the tax by those persons claiming the credit will increase by the next filing.

Motorcycles and Scooters Taxable as Vehicles

The Code definition of automobile was expanded to include "motorcycles" and "scooters." Consequently, motorcycles and scooters will be subject to the excise tax in the same manner as automobiles and, accordingly, be excluded from SUT. The effective date for purposes of the excise tax on "motorcycles" and "scooters" is April 1, 2009.

Therefore, retailers of these articles will have to treat them as if they were automobiles for all purposes, including proof of tax payments for Department of Transportation registration and bonding requirements.

Purchases for Resale

The reseller´s SUT exemption is substituted by a SUT credit. This change is not the same as stating that Puerto Rico has enacted a value added tax, as no changes were made in the handling of transactions for other SUT-exempt purchases, nor does the lack of exemption by a reseller affect inventoried merchandise or that acquired in transactions sourced outside of Puerto Rico. All merchants purchasing in Puerto Rico taxable articles for resale will be unable to claim exemption using the current certificate for exempt purchases, and will be required to pay SUT at the moment of purchase. Afterward, the reseller will be entitled to claim a credit for SUT previously paid for resale items. The credit will be claimed in the monthly return corresponding to the same period in which the merchant paid SUT. If the credit exceeds SUT due, the excess may be carried forward to subsequent monthly SUT returns until exhausted.

The reseller exemption certificate (the credit card size document that accompanies registration certificates) is eliminated and will only be issued by the Puerto Rico Treasury Department to manufacturing plants. Nonetheless, as the current state of affairs dictates that the municipal tax is essentially levied under the Code, we would expect municipal changes to occur concurrently. The elimination of the reseller´s exemption imposes withholding tax obligations on every reseller merchant in the supply chain. The elimination of the reseller´s exemption is effective April 1, 2009. No guidance is provided with respect to municipal SUT where purchase and resale occurs in different municipalities.

Monthly SUT Returns, Remittance of the SUT Collected and Form of Payment

Monthly SUT returns and payment will now be due on the 10th day of the month following the month in which the transaction took place, as opposed to the current deadline of the 20th day. The effective date of this change is April 1, 2009, thus requiring the first return to be filed on May 10, 2009. McV

"The Code definition of automobile was expanded to include "motorcycles" and "scooters""

ADDITIONAL REAL PROPERTY TAX ON RESIDENTIAL PROPERTY

by: Rubén Muñiz, Associate, McConnell Valdés LLC Tax Practice Group

Those with a historical attention span in excess of one generation will remember that until 1991, property taxes in Puerto Rico were handled by the Puerto Rico Treasury Department ("Treasury"). Because of municipal concern and complaints with the handling of the property taxes, in 1991 the Municipal Revenue Collection Center ("CRIM" for its Spanish acronym) was established. These same municipal concerns were voiced in 2006 during the approval of the Puerto Rico sales and use tax, and is the reason why Puerto Rico currently deals with municipal and state sales and use taxes separately.

For taxable years 2009-10 through 2012-13, both inclusive, the Omnibus Plan for Economic Reconstruction Act ("OPERA") levies an additional real property tax on real estate devoted to residential use, equal to the real property tax currently assessed and determined by CRIM. The special tax will be levied on the appraised value of the property after deducting the exemption for principal residence provided by the Municipal Property Tax Act of 1991, as amended ("MPTA"). Newly constructed residential units that have not been optioned for sale or those sold and not yet delivered to a purchaser are not subject to the additional tax.

Unlike the real property tax, which is currently assessed and collected by CRIM, this additional tax will be assessed and collected by Treasury, in the same manner and subject to the same limitations, as regular real property tax is currently levied by CRIM. The tax is payable every semester on March 1st and September 1st of each year. Taxpayers may avail themselves of a 10% or 5% discount for early payment if the tax is paid within thirty (30) days or sixty (60) days from the due date, respectively. Unpaid taxes constitute a preferential lien on the property. Treasury is authorized to hire CRIM or any other entity for the administration, assessment and collection of this tax.

The remedies available to a taxpayer that is in disagreement with the assessment and levy of this additional tax are unclear. However, OPERA amends the Puerto Rico Internal Revenue Code of 1994 to make available to the taxpayer the ordinary procedure therein established for challenging a tax deficiency.

Furthermore, OPERA does not specify if the notice of the tax levy (tax receipt) issued by Treasury should be deemed as a notice of deficiency or if the taxpayer should challenge the tax levy under the procedure provided for this purpose by MPTA. OPERA provides that the statute of limitations provisions for the assessment and collection of the tax will be that provided by MPTA. However, OPERA provides that the Secretary shall asses and collect this special tax pursuant to the procedures and subject to the same limitations and rights provided by the MPTA. McV

EXCISE TAXES

by: Rubén Muñiz, Associate, McConnell Valdés LLC Tax Practice Group

The Omnibus Plan for Economic Reconstruction Act ("OPERA") introduced a permanent increase on certain excise taxes as follows:

- Cigarettes - From $6.15 to $11.15 on each hundred or fraction of a hundred cigarettes;

- Substandard wines - From $1.65 to $2.00 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Imported wines and ciders - From $11.35 to $12.05 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Tropical fruit wines - From $0.62 to $0.97 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Concentrated must wines - From $4.13 to $4.48 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Champagne and sparkling wines - From $13.75 to $14.45 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Champagne and sparkling wines from concentrated musts - From $5.50 to $5.85 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Substandard champagne and sparkling wines - From $2.20 to $2.55 on each gallon and a proportional tax rate at a like rate on every fraction of gallon;

- Beer - the increase on each gallon and a proportional tax rate at a like rate on every fraction of gallon is summarized as follows:

Alcoholic Content *(per volume)*	From	To
-From 0.5% to 1.5%	$0.70	$1.00
-In excess of 1.5%	$4.05	$4.35
-In excess of 1.5% and sold in containers of 5 or more wine gallons	$4.12	$4.42

- Special exemption on beer - The progressive tax per wine gallon produced, imported or introduced is increased as follows:

Total Production of Manufacturer *(in wine gallons)*	From	To
-Up to 9 million	$2.15	$2.55
-in excess of 9 million not to exceed 10 million	$2.36	$2.76
-in excess of 10 million not to exceed 11 million	$2.57	$2.97
-in excess of 11 million not to exceed 12 million	$2.78	$3.18
-in excess of 12 million not to exceed 31 million	$2.99	$3.39

- Transitory provisions:
  - Wines and beers subject to the tax increase that were introduced into Puerto Rico before the enactment of OPERA and that have not been sold will be subject to taxation on the difference between the tax paid upon introduction and the applicable tax as increased by OPERA.

OF MUNICIPAL INTEREST…

by: Xenia Vélez Silva, Special Counsel, McConnell Valdés LLC, Tax Practice Group

> *By its terms, the Omnibus Plan for Economic Reconstruction Act ("OPERA") is intended to address the fiscal situation of the General Fund, that is, what is commonly referred to as the "central government," excluding public corporations, instrumentalities and municipalities*

By its terms, the Omnibus Plan for Economic Reconstruction Act ("OPERA") is intended to address the fiscal situation of the General Fund, that is, what is commonly referred to as the "central government," excluding public corporations, instrumentalities and municipalities. But municipalities have not been sheltered from the economic downturn, and the media is rife with news of their budget woes.

Two provisions in OPERA deal with the municipal issue: one limits the amount of General Fund revenues that will be distributed to municipalities, and the other temporarily increases their credit margin.

Not from these, you won't…

Prior to OPERA, Act No. 80 of August 31, 1991, as amended, required that 2.5% of all General Fund net revenues be transferred to, and allocated among, the municipalities. OPERA provides that, for fiscal years beginning after June 31, 2009, "net revenues" for purposes of this transfer will exclude revenues arising from OPERA. Thus, the municipalities will not participate in any funds derived from OPERA's temporary and permanent revenue enhancers. However, to protect municipalities whose budget depends 50% or more upon the General Fund allocation, OPERA further provides that such municipalities will be allocated no less than the amount they received for 2007-08. The sum of these adjustments will be distributed among the remaining, self-sufficient municipalities.

But here's a lifeline…

Through June 30, 2011, OPERA authorizes the Government Development Bank for Puerto Rico ("GDB") to lend funds to municipalities for the payment of operating expenses, including those relating to accumulated deficits. To qualify for such emergency loans, the municipality must have in place cost reduction and/or revenue enhancement measures acceptable to the GDB, as well as sufficient credit margin and ability to repay.

Because a municipality's credit margin is tied to the assessed value of real property located within its boundaries, to ensure that municipalities have the credit margin to incur such loans, OPERA temporarily increases the assessed value of all real property tenfold, while reducing the tax rates to a tenth of the present ones. It should be noted that this statutory re-valuation of property is not intended to increase the taxpayer's property tax liability, but merely to increase the municipality's ability to issue debt, provided, as previously mentioned, it has repayment capability and meets GDB's criteria. M&V

RESTORING FULL FAITH AND CREDIT

by: Ariadna Álvarez, Special Counsel, McConnell Valdés LLC Tax Practice Group, Certified Trust and Financial Advisor, and Editor-In-Chief, Tax Perspectives

According to the Joint Report issued by House of Representatives' Finance and Government Affairs Committees in support of the "Economic Stabilization and Reconstruction Program for Puerto Rico," in year 2004, debt instruments issued by the Government of Puerto Rico and its agencies were ranked Baa1/A- by credit rating agencies Moody's and Standard & Poor's, respectively. The Government's growing structural deficit, coupled with the declining health of Puerto Rico's economy (which decline has been accelerated by the world-wide economic crisis), have caused the credit rating of debt issued by the Government of Puerto Rico to drop to Baa2/BBB by 2005, to Baa3 in 2006 and to BBB- in 2007. The current rating of debt issued by the Goverment of Puerto Rico is Baa3/BBB-, a mere notch above "junk bond" classification.

If these instruments were to be classified as "junk bonds", they would lose their "investment grade" status and would no longer be suitable investments for many investors currently holding them, such as, retirement plans and individual retirement accounts. These investors could be forced to sell these bonds, which, along with the devaluation of the bond's rating, would cause a sharp decrease in the value of government-issued debt. A decrease in the value of government-issued debt could trigger a requirement on the part of the Government of Puerto Rico to advance additional cash collateral to guarantee payment of their bonds. If the above scenario were to materialize, the ability of the Goverment of Puerto Rico to finance public works through the issuance of debt would be greatly impaired.

Chapter IV of OPERA (titled "Financial Measures") sketches a plan (in conjunction with revenue and cost-cutting measures) to restructure government-issued debt, increase the collection of revenue to back certain government-issued bonds, and authorize the issuance of other forms of government obligations. In essence, Chapter IV provides the following:

A. Refinancing of existing debt

In order to delay the payment of certain previously issued government obligations and improve the Government's current cash-flow, Chapter IV of OPERA allows the refinancing of government-issued bonds and of bonds issued by the Public Buildings Authority.

1. Refinancing of bonds issued by the Government of Puerto Rico

- Until June 30, 2012, the Puerto Rico Secretary of the Treasury will be authorized to issue refinancing bonds in order to refinance, in all or in part, the payment of principal and/or interest of previously issued government bonds, and to pay the costs related to the issuance and placement of said refinancing bonds.
- The refinancing bonds can be issued at any time on or before the date in which the payment of interest and/or principal on the previously issued bonds (i.e., the bonds that will be refinanced) is due.

"The Government's growing structural deficit coupled with the declining health of Puerto Rico's economy (which decline has been accelerated by the world-wide economic crisis) have caused the credit ratings to drop to Baa2/BBB by 2005, to Baa3 in 2006 and BBB- in 2007. The current rating of debt issued by the Goverment of Puerto Rico is Baa3/BBB-, a mere notch above "junk bond" classification"

- When refinancing existing debt, it will not be required that the servicing terms of the new debt be better than the terms of the existing debt, since the goal is to postpone the repayment of principal and interest, and not to secure better financing terms. For this reason, the bonds to be issued under this authority need not comply with Section 3(f)(3) of Act No. 91 of May 13, 2006, which requires that the Puerto Rico Secretary of the Treasury determine, prior to the issuance of any refinancing bonds, that the present value of principal and interest to be paid in connection with the refinancing bonds be less than the present value of the principal and interest of the bonds to be refinanced.

- If needed in order to support the efforts to maintain a balanced budget, the June 30, 2012 deadline can be extended by a Joint Resolution of the Senate and House of Representatives.

2. Convertible Bonds

- The Public Buildings Authority is also authorized by OPERA to issue bonds in order to refinance, in all or in part, the payment of principal and/or interest of previously issued Public Buildings Authority bonds, and to pay the costs related to the issuance and placement of said refinancing bonds.

B. Corporación del Fondo de Interés Apremiante de Puerto Rico ("COFINA") and the Dedicated Sales Tax Fund ("Fondo de Interés Apremiante")

COFINA is a public corporation established with the purpose of issuing bonds and using other means of financing in order to: pay or refinance, directly or indirectly, all or part of the extra-constitutional debt issued by the Government of Puerto Rico as of June 30, 2006; pay certain items of the Puerto Rico Department of the Treasury's debt to the Government Development Bank; pay certain debts to government suppliers; pay or finance certain operating expenses of the Government of Puerto Rico; and raise funds for the Economic Stimulus Fund and for the Government's Emergency Fund. OPERA further authorizes COFINA to issue bonds to raise funds for the Economic Cooperation with Public Employees Fund.

"Chapter IV of OPERA (titled "Financial Measures") sketches a plan (in conjunction with revenue and cost cutting measures) to restructure government-issued debt, increase the collection of revenue to back certain government-issued bonds, and authorize the issuance of other forms of government obligations"

The repayment of bonds issued by COFINA is guaranteed by the sales tax collections deposited into the Dedicated Sales Tax Fund. OPERA increases by .75% the portion of sales tax that will be deposited in the Dedicated Sales Tax Fund in order to guarantee debt issued by COFINA.

Because they are backed by sales and use tax collections, bonds issued by COFINA are the highest rated debt instrument currently issued by the Puerto Rican government or any instrumentality thereof. The additional funds assigned to the Dedicated Sales Tax Fund are destined to allow COFINA to issue more bonds to finance the Government's current and prospective deficits, its extra-constitutional debt, as well as fund the orderly transition of employees from the public to the private sector.

C. Savings Notes – ("Notas de Ahorro de Construcción Económica de Puerto Rico") – Special Fund for Alternatives for Public Employees and Economic Construction

OPERA authorizes the Government of Puerto Rico to issue up to $20,000,000 in Savings Notes in order to finance severance payments to employees laid off by the Government. The notes target the average citizen interested in investing in Puerto Rico, and cannot be acquired by banks or other financial institutions. Savings Notes offer a 6% return and the interest paid thereon is exempt from Puerto Rico income taxes. McV

OPERA TIME TABLE

by: Janelle Reyes, Associate, McConnell Valdés LLC, Tax Practice Goup

Effective dates and due dates of the amendments included in the Omnibus Plan For Economic Reconstruction Act

Type of Tax	OPERA	Effective Date	Due Date	Reference
PERMANENT PROVISIONS				
Excise Taxes	Excise tax imposed on cigarettes increased by $5.00 to $11.15 per 100 cigarettes.	April 1, 2009	May 10, 2009	Article 6
Excise Taxes	Inclusion of motorcycles and scooters in definition of automobile for purposes of the imposition of excise taxes.	April 1, 2009	May 10, 2009	Article 7
Sales and Use Tax	Elimination of exemption certificate to merchants acquiring taxable products for resale.	April 1, 2009	N/A	Articles 8 & 9
Sales and Use Tax	Change in due date of monthly return and payment due date of Sales and Use Tax ("SUT") to the 10th day of the following month in which taxes are collected.	April 1, 2009	May 10, 2009	Articles 10 & 11
Sales and Use Tax	Merchants claiming the credit for taxes paid upon acquisition of taxable items for resale must file the SUT monthly return on its new due date. The credit may be carried over until exhausted.	April 1, 2009	May 10, 2009	Article 13
Excise Taxes	Increase in excise taxes imposed on wine (including champagne and sparkling wine) and beer.	April 10, 2009	May 10, 2009	Article 14
Excise Taxes	Increase on the base amount of the progressive tax per wine gallon produced, imported or introduced beer, malt extract and other similar fermented or non-fermented products.	April 10, 2009	May 10, 2009	Article 15
Excise Taxes	Taxable alcoholic beverages deposited in bonded warehouses by the effective date of OPERA shall be subject to the taxes imposed by OPERA before transporting them out of bonded warehouse.	April 10, 2009	May 10, 2009	Article 16
Excise Taxes	Taxable alcoholic beverages located anywhere in Puerto Rico by the effective date of OPERA for which the excise taxes were paid prior to OPERA's effective date shall be subject to an additional tax in the amount of the difference between the taxes paid and the new tax amounts imposed by OPERA.	April 10, 2009	May 10, 2009	Article 16
Income Tax Individuals	New definition of income subject to alternative basic tax ("ABT") of individuals; increased tax basis of income subject to ABT; certain exclusions from the definition of income subject to ABT will be disallowed.	Taxable years commencing after December 31, 2008.	April 15, 2010	Article 4
Income Tax	Base amount of gradual adjustment of personal exemption increased for married taxpayers filing separately.	Taxable years commencing after December 31, 2008.	April 15, 2010	Article 4
Income Tax and Sales and Use Tax	Tax credit for purchase of products manufactured in Puerto Rico for export may only be used to offset income tax liability (i.e., may not be used to offset SUT).	April 1, 2009	April 15, 2010	Article 5

Type of Tax	OPERA	Effective Date	Due Date	Reference
TEMPORARY PROVISIONS				
Credits	Informative return of amount of credits granted prior to January 1, 2009, for which the use has been postponed until after taxable years commencing after December 31, 2011.		May 30, 2009	Article 21
Special Property Tax	Special tax imposed for 4 fiscal years commencing on taxable year 2009-2010. Taxes are due on September 1st and March 1st of each year the special tax is in effect. Amount of tax shall be equal to that determined and paid under the Municipal Property Tax Act.		September 1, 2009	Article 22
Income Tax	Adjustments in computing the AMT income – expenses related to services rendered outside Puerto Rico shall not be deducted in computing AMT income if the income received from rendering such services are not subject to income tax in Puerto Rico (adjustment disallowed).	Taxable years commencing after December 31, 2008, and before January 1, 2012.	April 15, 2010	Article 18
Income Tax	Special surtax of 5% of the income tax liability imposed on corporations, partnerships, estates, trusts, and individuals whose AGI exceeds $100,000 (or $150,000 for married taxpayers filing jointly).	Taxable years commencing after December 31, 2008, and before January 1, 2012.	April 15, 2010	Article 19
Income Tax Financial Institutions and International Insurers	The following entities are imposed an income tax rate of 5% on their net income: - Insurance Cooperatives and Credit Unions (if net income exceeds $250,000), - International Banking Entities (if net income does not constitute "excess net income" as defined in Act No. 52 of 1989), and	Taxable years commencing after December 31, 2008, and before January 1, 2012.	April 15, 2010	Articles 28 – 29A
Income Tax International Insurers	International Insurers and International Insurers Holding Companies are required to file an income tax return.	Taxable years commencing after December 31, 2008, and before January 1, 2012.	April 15, 2010	Article 29A
Credits	Refund claim of the credit granted to financial institutions for the purchase of newly constructed housing postponed for the 3 taxable years commencing after December 31, 2010.	Taxable years commencing after December 31, 2010.	N/A	Article 20
Credits	Moratorium of certain credits granted prior to January 1, 2009 until taxable years commencing after December 31, 2011.	Taxable years commencing after December 31, 2011.	N/A	Article 21
Credits	Moratorium on grants of new credits that have not been granted prior to OPERA's effective date until after taxable years commencing after December 31, 2011.	Taxable years commencing after December 31, 2011.	N/A	Article 30

Tax Law Practice Group

	Telephone	E-mail address
Juan Luis Alonso	787-250-5655	jla@mcvpr.com
Ariadna Álvarez	787-250-2602	aar@mcvpr.com
Esteban R. Bengoa	787-250-5626	erb@mcvpr.com
Roberto L. Cabañas	787-250-5611	rlc@mcvpr.com
Isis Carballo	787-250-5691	ici@mcvpr.com
Liliana Emanuelli*	787-250-5654	lef@mcvpr.com
Rafael Fernández Suárez	787-250-5629	rf@mcvpr.com
Yamary González	787-250-5687	yg@mcvpr.com
Rubén Muñiz	787-250-2623	rm@mcvpr.com
Liz A. Pérez	787-250-2615	lap@mcvpr.com
Janelle Reyes	787-250-5656	jr@mcvpr.com
Carlos E. Serrano	787-250-5698	ces@mcvpr.com
Lillian Toro Mojica	787-250-2608	ltm@mcvpr.com
Aurelio Torres Ponsa	787-250-5678	atp@mcvpr.com
Robert Van Kirk	787-250-5683	rvk@mcvpr.com
Xenia Vélez Silva	787-250-2620	xv@mcvpr.com

* Tax Consultant, CPA

Editor in Chief: Ariadna Álvarez

Contributing Editors: Carlos E. Serrano, Xenia Vélez Silva, Juan Luis Alonso and Janelle Reyes.

McCONNELL VALDÉS LLC
270 Muñoz Rivera Avenue, Hato Rey, Puerto Rico 00918
PO Box 364225, San Juan, Puerto Rico 00936-4225