

Tax Considerations of Remote Working Arrangements

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An McV Tax Alert

November 18, 2020

As the COVID-19 pandemic continues without a clear picture as to when many employees will be able to return safely to the workplace, many employers have required or allowed their employees to work remotely. In the case of employees who have decided to move from the U.S. to Puerto Rico, or from Puerto Rico to the U.S. to work remotely, both the employer and the employees could be facing unintended Puerto Rico and U.S. (federal) tax consequences. The following are some of the most relevant tax considerations of a temporary or permanent transition to remote work:

■ Income Tax

- Employers not otherwise engaged in a Puerto Rico trade or business (“Non-PR Employers”) with employees working remotely from Puerto Rico should understand the Puerto Rico income tax implications of such an arrangement and be aware that, depending on the activities carried out by their employees and/or agents in Puerto Rico, they may be considered engaged in a trade or business in Puerto Rico (“ETB-PR”) and subject to Puerto Rico income taxation.
- Employers in Puerto Rico that are not otherwise engaged in a U.S. trade or business (“PR Employers”) with employees working remotely from the U.S. should consider the federal income tax implications of rendering services in the U.S. through their employees and/or agents.
- Under both the Puerto Rico and federal income tax regimes, the rendering of services in the jurisdiction at any time during the taxable year generally is considered a trade or business.

■ Sales and Use Taxes

- A Non-PR Employer not otherwise ETB-PR will be required to register with SURI (PR Treasury's online platform) as a merchant if it has employees rendering services in Puerto Rico. Depending on the activities the employees undertake in Puerto Rico, this Non-PR Employer could be required to file monthly sales and use tax returns.

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■ **Payroll Taxes**

- Non-P.R. Employers will be subject to withholding and reporting requirements on payroll payments made to Puerto Rico resident employees. In general, under the PR Internal Revenue Code (“PR Code”) and the regulations issued thereunder, every employer paying wages must deduct and withhold income taxes from the total amount of wages using the withholding schedules approved by the PR Secretary of the Treasury. For these purposes, “wages” means all remuneration for services performed by an employee for his employer, including the remuneration paid for services rendered by a Puerto Rico resident as employee of a foreign entity (i.e., non-PR entity) not ETB-PR. To report the payment(s) and remit the taxes withheld, the Non-P.R. Employer will be required to register at SURI.
- P.R. Employers will be subject to U.S. withholding and reporting requirements on payroll payments made to employees who are U.S. citizens and residents, unless the compensation paid is excludible from the definition of wages. One of these exclusions is for Puerto Rico resident employees who render services in Puerto Rico. If the employee becomes a resident of the U.S., this exclusion will not apply and the P.R. Employer could be required to withhold and remit U.S. payroll taxes.

■ **Qualified Retirement Plan Eligibility**

- In general, trusts funding retirement plans qualified only under the PR Code (“PR-Only Plans”) are exempt from Puerto Rico income taxation *and* U.S. income taxation (on their investment income) if all plan participants are residents of Puerto Rico. Thus, PR-Only Plans allow employees to participate in such plans if they are Puerto Rico residents. If employees move to any State of the U.S. and become residents of the U.S., they will not be eligible to participate in PR-Only plans. If employers/administrators of PR-Only Plans are not aware of these changes in residence, they could breach their fiduciary duties because of failure to operate their plans in accordance with the documents and instruments governing the same, thus affecting the Puerto Rico qualified status of the PR-Only Plans and the tax exemption of the trusts forming part thereof.

■ **Other State Tax Considerations**

- Businesses should pay careful attention to guidance published by states in which they have employees working remotely to determine if the employees’ presence at the remote worksites establishes nexus and

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employer withholding obligations for the business.

The COVID-19 pandemic has resulted in new remote workforce arrangements that require companies and their employees to evaluate their potential tax consequences, including nexus, payroll taxes and retirement benefits issues. Employers should consider the issues discussed above before entering into remote work arrangements with their employees, and should keep current records of the locations from which employees are working.

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