

# COVID-19

## Puerto Rico Treasury Department issues Administrative Determination with Measures to Relieve Taxpayers' Cashflow due to COVID-19 Economic Impact

By: Felipe Mariani-Franco

On March 24, 2020, the Puerto Rico Treasury Department ("PRTD") issued Administrative Determination 20-10 ("AD 20-10") providing the following five measures which will impact the cash disbursements that taxpayers make to the Puerto Rico Treasury Department:

1. Relief from estimated income tax penalties;
2. Waiver from withholding income tax on services provided in Puerto Rico;
3. Exemption on the payment of sales and use tax on taxable items imported or purchased for resale;
4. Transfer of requests for refund and excess payments to other taxes imposed under the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code");
5. Payment plans for the 2019 income tax.

All these measures are based on provisions under the Code which allow the Secretary of the Treasury to eliminate penalties, waive certain requirements, transfer payments and provide payments plans.

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## **Relief from Estimated Income Tax Penalties**

The Code requires all corporate and individual taxpayers to pay estimated income tax throughout the year. The estimated income tax should be paid on four installments due on the fourth, sixth, ninth and twelfth month of the year. The Code imposes a penalty for the underpayment of each installment of estimated income tax equal to ten percent (10%) of the insufficiency.

AD 20-10 establishes that the PRTD will not impose penalties for the underpayment of the first and second installment of estimated income tax for the taxable year 2020. However, the amount of estimated taxes which should have been paid on those two installments should be paid together with the third and fourth installments.

For calendar year taxpayers, the estimated tax payments that will be covered under AD 20-10 will be the ones due on April 15<sup>th</sup> and June 15<sup>th</sup>, 2020. Since AD 20-10 does not provide any additional limitation, the waiver shall cover the estimated income tax installments made by fiscal year taxpayers which may be paying their first and second installments for the taxable year 2020 later in the year.

However, since the waiver is only provided for the year 2020, taxpayers with a fiscal year will be required to pay the estimated tax payments for the taxable year 2019 on their due date without the benefit of the waiver. For example, a taxpayer with a year end of November 30<sup>th</sup>, will be required to pay the first and second installments of the estimated income taxes for the taxable year 2019 on March 15<sup>th</sup> and May 15<sup>th</sup>, 2020. The taxpayer may be subject to an estimated tax penalty if it does not pay the estimated income taxes before those due dates.

This determination does not cover the income tax withholding that pass-through entities need to make on the taxable income that will flow through to their partners, members or shareholders'

income tax returns. Those withholdings should be deposited on the same days as the estimated income tax payments (the 15<sup>th</sup> day of the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> month of the taxable year).

## **Waiver from withholding income tax on services provided in Puerto Rico**

With certain exceptions, the Code requires all governmental agencies and persons engaged in trade or business in Puerto Rico to withhold a ten percent (10%) income tax on the payments made for services rendered in Puerto Rico.

AD 20-10 waives such requirement for payments made between March 23, 2020 and June 30, 2020. However, the service provider may request the withholding agent to continue withholding the income tax on these payments.

Furthermore, AD 20-10 clearly establishes that the waiver is not an exemption from income tax. Therefore, the service provider will be required to pay income tax on the income which was subject to the waiver and the payor will be required to inform such payments in the informative return for 2020, Form 480.6SP.

Those persons who have elected to be subject to the Optional Income Tax of six percent (6%) for 2020, should make sure that they comply with their income tax responsibility on or before the last day to file the last installment of the estimated income tax.

## **Exemption on the Payment of Sales and Use Tax on Taxable Items Imported or Purchased for Resale**

The Code requires all merchants, with certain exceptions, to pay use tax on the imports of taxable items and to collect sales tax on the sale in Puerto Rico of taxable items. AD 20-10 exempts merchants with a Reseller Certificate from the payment of use tax on the import of taxable items for resale and sales tax on the purchase in Puerto Rico of taxable items for resale purchased or introduced between April 6, 2020 and June 30, 2020.

To achieve this exemption, the PRTD will issue a Temporary Exemption Certificate to all merchants with a valid Reseller Certificate as of March 24, 2020. This certificate will allow the merchant to

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Felipe has extensive experience in corporate tax advisory for the retail, distribution and manufacturing industries. Among his areas of expertise, Felipe works with corporate tax incentives, corporate reorganizations, closing agreements with governmental entities, consumption tax issues and tax accounting work. As per his involvement with government, Felipe has participated in special projects related to the drafting of tax related laws, ordinances and regulations for the Commonwealth of Puerto Rico, Municipalities and private entities.

He is frequently invited as speaker at many tax seminars sponsored by the Puerto Rico Society of Certified Public Accountants and other professional associations and private organizations.

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import or purchase taxable items for resale without paying the sales or use tax. However, taxable items that are imported or purchased for the use of the merchants (not for resale) will still be subject to use or sales tax.

The merchants that are buying taxable items in Puerto Rico for resale, will need to submit to the seller a copy of the Temporary Exemption Certificate and a Certificate of Exempt Purchases and Services subject to the Special-SUT of 4%, Form SC 2916.

In the case of the merchants that are importing taxable items in Puerto Rico for resale, they need to include those items on line 3 of Form SC 2970, Import Declaration, and Form 2915 D, Tax on Imports Monthly Return.

### **Transfer of Requests for Refund and Excess Payments to Other Taxes Imposed under the Code**

The PRTD has determined to allow taxpayers with excess tax payments (which have not elected to be applied to taxes for future periods), to request those overpayments to be applied to another tax imposed under the Code.

**Income Tax** - All taxpayers that have requested a refund from income taxes for any year before taxable year 2019 and who have not received the refund, may request the PRTD to apply the refund against any other tax, including but not limited to, sales and use tax, excise tax, tax on alcoholic beverages or payroll taxes. The taxpayer may also request that any excess income tax withholding be applied against any other tax.

**Excise Tax** – Taxpayers may request that any refund requested and approved by the Secretary of the Treasury be applied against any other tax.

### **Tax on Alcoholic Beverages** –

Taxpayers may request that any refund or credit requested and approved by the Secretary of the Treasury be applied against any other tax.

**Credit for Use Tax paid on Imports of Taxable Items for Resale** – Every reseller who has an accumulated credit from use tax paid on the import of taxable items for resale and cannot use such credit against future sale of inventory, may request that such credit be applied against other taxes, including income and payroll taxes.

### **Payment Plans for the 2019 Income Tax**

AD 20-10 allows taxpayers who have the requirement to file an income tax return for the taxable year 2019 to request a payment plan when they do not have the economic means to pay the income tax due with the return. To qualify for the payment plan, the taxpayer should not have filed a request for extension of time to file the income tax return for the year 2019 and should be in compliance with all other tax responsibilities. The payment plan should be paid on monthly installments and completely paid off by March 31, 2021.

Once the taxpayer completes the payment of the amount due, the PRTD may eliminate the interest, surcharges and penalties.

### **ATBA Comments**

The measures included in AD 20-10 will certainly help individuals and businesses who have been hit by the dealings to contain COVID-19. These measures do not eliminate any tax but provide additional time for taxpayers to make payments allowing a breathing room in terms of cash flow to those affected the most by the crisis.

We expect the PRTD to issue additional guidance regarding these measures, particularly those regarding the transfer of overpayments and credits to other taxes and payment plans.

We will keep you posted with any other communication or guidance issued by the PRTD and other governmental entities. At ATBA we have experienced personnel who can assist you in the implementation of the cash disbursement deferral alternatives presented in AD 20-10 and other tax related matters.

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