



## Beware, New Filing Requirement for Holders of Tax Credits

By: Felipe Mariani Franco

On March 7, 2017, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“FAFAA”) issued the Administrative Order OA-2017-01 (“OA 2017-01”) which, among other things, ordered the Secretary of Treasury to perform an inventory of tax credits that have been granted and to require the holders of tax credits to inform the amount of tax credits they possess. It also provided that any holder of tax credits that does not provide the information to the Secretary of Treasury will not be able to claim them.

In compliance with the order from FAFAA, on April 12, 2017 the Puerto Rico Treasury Department (“Treasury”) issued the Circular Letter for Internal Revenue No. 17-07 (“CL IR 17-07”). This circular letter establishes the procedure to electronically provide to Treasury the information on the possession of tax credits.

Subsequently, on April 20, 2017, Treasury issued the Informative Bulletin for Internal Revenue No. 17-08 (“IB IR 17-08”) which (1) establishes that the requirement of performing an inventory of the tax credit will be met by the electronic filing of Form

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**Beware, New Filing...**  
**Continued from Page 1**

480.71, Informative Return about the Possession of Tax Credits; (2) provides that the due date for the filing of the Form 480.71 is May 15, 2017; (3) informs that Form 480.71 and its instructions will be available in Treasury website and (4) notifies that IB IR 17-08 substitutes CL IR 17-07. Notwithstanding the substitution of CL IR 17-07 by IB IR 17-08, the instructions to Form 480.71 are identical to the determination section of CL IR 17-07.

The instructions to Form 480.71 require all holders of tax credits issued and available to be used during the taxable year 2016 and subsequent years to complete and electronically file Form 480.71 on or before May 15, 2017. For purposes of the instruction, a holder of a tax credit is any person, natural or legal, which has generated or acquired a tax credit through purchase, assignment or transfer.

All tax credits which meet one of the following characteristics on April 19, 2017 must be included on Form 480.71: (1) all or part of the credit will be used to reduce the income tax for the taxable year 2016; or (2) a balance of the credit may be sold or used to reduce the income tax of the taxable year 2017 or subsequent years.

Therefore, every tax credit issued that has not been sold by the original holder of the credit as of April 19, 2017 and which is either available to be used or sold during the year 2016 or subsequent years must be included on Form 480.71. Also, those taxpayers which have purchased tax credits as of April 19, 2017 and which will use them to reduce their income tax for the taxable year 2016 or subsequent years must report the amount of the tax credit on Form 480.71.

The information to be provided on Form 480.71 will depend on whether the credit is to be informed by the original holder of the credit (the person which originally generated the credit) or by a holder which purchased the tax credit. It is important to note, that taxpayers may have tax credits that they generated on their own and tax credits that they purchased, so the information to be included will be based on the nature of the credit and not of the taxpayer.

Those taxpayers which are original holders of the credits will need to inform: (1) the act under which the credit was granted; (2) the original amount of the credit granted; (3) the amount of the credit that was sold as of April 19, 2017 or used by the holder to reduce the income tax of taxable years prior to 2016; and (4) the total amount of the tax credit that was claimed or will be claimed on their 2016 income tax return.

Taxpayers which purchased tax credits will need to inform: (1) the act under which the credit was granted; (2) the amount of tax credit purchased as of April 19, 2017 which is available to be claimed on their 2016 income tax return and/or subsequent taxable years; and (3) the total amount of the tax credit that was claimed or will be claimed on their 2016 income tax return.

The instructions to Form 480.71, in line with OA 2017-01, informs the tax credit holders that noncompliance with the filing of Form 480.71 will result in the loss of the right to claim the tax credits for the taxable year 2016 and all subsequent years.

**ATBA Comments**

Noncompliance with the filing of Form 480.71 may be a costly affair. Therefore, it is very important that all taxpayers which generated or have purchased tax credits before April 19, 2017 to determine if their credits are within those that are required to be included on Form 480.71. However, Treasury did not provide much time to make that determination, so you must act soon.

Our tax professionals are ready to assist you determine your compliance requirements and answer any questions you may have on this subject.

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