

ARE YOU READY FOR THE 2020 TAX FILING SEASON?

What you Need to Know for the 2020 Taxable Year!

By: Edwin López-Hernández, CPA

Even if you are still focused on filing your 2019 return, with the end of 2020 in sight, it is important to look ahead and review the amendments introduced by Act 40-2020 and Act 57-2020 to the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code"), that are applicable to the 2020 taxable year. In this issue we will provide you a summary of the most noteworthy changes to consider for the 2020 taxable year.

Reduction of Tax for Certain Individual Taxpayers:

As you may know, Act 257-2018 established that for taxable years that started after December 31, 2018, the tax liability determined equaled 95% of the tax determined. Nonetheless, for taxable years commencing after December 31, 2019, and for those individuals whose gross income does not exceed \$100,000, the tax liability will be 92% of the total tax determined.

Changes to Tax Return's Due Dates:

We are normally accustomed that the due date for corporations is the fifteenth (15th) day of the fourth month following the close of the taxable year. However, for taxable years commencing after December 31, 2018, the due date for corporations operating under the

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provisions of Act 60-2019, as amended, and previous tax incentives laws, non-profit organizations, and insurance companies will be the 15th day of the sixth month following the close of the taxable year (i.e., June 15th for entities with a calendar year end).

Audited Financial Statements (“AFS”), Agreed Upon Procedures (“AUP”) or Compliance Attestation (“CA”):

Generally, taxpayers in Puerto Rico are required to include AFS with the income tax return if the volume of business generated during the year is \$3 million or more. However, for taxable years commencing after December 31, 2019, the \$3 million volume of business threshold has increased to \$10 million or more.

Taxpayers with a volume of business equal or greater than \$3 million but less than \$10 million will have the option to submit, instead of AFS, an AUP or a CA prepared by a CPA with a license in Puerto Rico.¹

In the case of a group of related entities, the volume of business threshold is determined by the sum of the volume of business of each member of the group. Thus, if the aggregate volume of business of the group of related entities is equal to or greater than \$10 million, then all members of the group with a volume of business in excess of \$1 million must file a consolidated or standalone AFS.

After being postponed for taxable year 2019, for taxable year 2020 taxpayers shall deduct the same deductions to calculate net income subject to regular tax as to determine the net income subject to Alternative Minimum Tax (“AMT”) or Alternative Basic Tax (“ABT”) as long as AFS, AUP or CA is filed along with the income tax return.² Also, for taxable year 2020, individuals and pass-through entities whose volume of business is less than \$1 million, may choose to submit a due diligence checklist provided by the Puerto Rico Treasury Department, instead of the AUP or CA. The due diligence checklist

will be sworn by an Accredited Tax Specialist that complies with the requirements established by the Code.

AMT:

Be on the lookout, as the postponement of the \$500 minimum tentative tax is over. For taxable year 2020, such minimum tax will be reestablished.

Corporations that paid the \$500 minimum tentative tax in taxable year 2019 may request the Puerto Rico Treasury Department a refund for such amount, which must be refunded within forty-five (45) days from the request.

Net Operating Losses (“NOLs”) Carryforward:

The amount of NOL incurred during taxable year 2020, that is directly caused by the COVID-19 pandemic, may be carried forward without the limitations (i.e., the 90% NOL limitation) established by the Code. The NOLs will be claimed as follows:

1. First claim the NOLs incurred during taxable years before 2020 and the use of such NOLs will be subject to the limitations established by the Code.
2. If after utilizing the losses incurred in taxable years before 2020, the income tax return reflects a net taxable income, then the NOL generated in taxable year 2020 may be utilized without the limitations established by the Code.

NOL Carryback Program (Yes, you are reading right NOL Carryback):

Corporations with volume of business of \$10,000,000 or less will be allowed to carryback up to \$200,000 in NOLs incurred during 2020 to the preceding two (2) taxable years and request any resulting tax refund up to a maximum of \$50,000. This carryback will not be subject to the limitations (i.e., 80% and 90% NOL limitations for taxable years 2018 and 2019, respectively) established by the Code. However, please note that Large Taxpayers, as defined by the Code, will not be permitted to carryback their NOLs. Corporations must make the election no later than the due date for filing the income tax return for taxable year 2020, including extensions, to claim the NOL Carryback.

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COVID-19 Economic Stimulus Payments:

Due to the COVID-19 pandemic, there is an exclusion from gross income for purposes of income tax and from municipal license tax on any loan forgiveness amounts, as well as any other subsidies received under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act or under any other federal legislation to address COVID-19 pandemic.

Note that taxpayers can claim as a deduction from net income the ordinary and necessary expenses incurred in the business, even if such expenses are paid with funds received from any federal subsidy under the CARES Act or under any other federal legislation to address the COVID-19 pandemic.

ATBA Comments:

As you can see, there are numerous changes that were postponed due to the COVID-19 pandemic and that will be in effect for the taxable year 2020 income tax return. There are also new measures that can represent tax savings to most taxpayers. One of them is the NOL carryback program which represents an opportunity for

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taxpayers with unused losses to go back two taxable years and claim unused net operating losses NOLs caused by the COVID-19 pandemic.

Our team can help you identify the tax measures that could maximize your tax savings. We have experienced tax specialists who may assist you in determining if you or your company are required to file AFS, AUP or CA with your taxable year 2020 income tax return.

Should you need assistance or if you have any questions, give us a call.

REMINDER: Informative returns are due soon. For more information on this matter please refer to our November 2020 Special Bulletin.

Notes:

¹ The Puerto Rico Treasury Department has not issued guidance on the procedures for the AUP or CA that will be submitted along with the income tax return of taxpayers with a volume of business equal or greater than \$3 million but less than \$10 million.

² The Puerto Rico Treasury Department issued Internal Revenue Circular Letter No. 19-14 which establishes the procedures for a taxpayer to submit an AUP or CA to deduct the same expenses that are deducted to calculate the net income subject to regular tax as to determine the net income subject AMT or ABT.

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