

August 18, 2014

Window for Prepayment of Tax on Retirement Plan Benefits

As indicated in our July 7, 2014 Memorandum to Clients and Friends, Act 77-2014 amended the Puerto Rico Internal Revenue Code of 2011, as amended (“2011 Code”), to among other matters, allow taxpayers to make an election (the “Election”) to prepay (the “Prepayment”) the Puerto Rico income tax, at a reduced rate (the “Special Tax”), with respect to certain items, including all or a portion of the balance accumulated by taxpayers in qualified or non-qualified retirement benefit plans (“Plan(s)”) that have not been subject to Puerto Rico income tax (the “Taxable Benefits”).

On August 6, 2014, the Puerto Rico Treasury Department (“Treasury”) published Administrative Determination 14-16 (“AD 14-16”), to establish the rules and procedures for the Prepayment of the Special Tax, as follows:

- Applicable Special Tax rate:
 - Qualified plans – 8%
 - Non-qualified plans – 15%
 - A Plan will be treated as a “Qualified Plan” so long as the application for qualification has been filed with Treasury by the date in which the taxpayer makes the Prepayment.
 - A Plan that was qualified under Section 1165(a) of the Puerto Rico Internal Revenue Code of 1994, as amended, but that has **not** requested qualification under Section 1081.01(a) of the 2011 Code will be treated as a non-qualified plan.
- The Election may be made by the participant in the plan, a beneficiary of a deceased employee or one designated under a Qualified Domestic Relations Order (the “Plan Beneficiary”).
- The Plan Beneficiary may make more than one Prepayment with respect to an account, provided the total amount paid does not exceed the balance of the Taxable Benefits in the account on the date of the Prepayment.
- A Plan Beneficiary participating in more than one Plan may make an Election with respect to one or more of the Plans. Accordingly, a Plan Beneficiary making an Election for one Plan is not required to make an Election for all of the Plans. If a Plan Beneficiary intends to make a Prepayment for more than one Plan, a separate Election will be required for each of such Plans.
- A Prepayment is only allowed on the amount of Taxable Benefits actually accumulated in the Plan Beneficiary’s account at the time of Prepayment, as evidenced by a statement, certification or other document, issued by the Plan within the preceding 30 days, setting forth the dollar amount of benefits accumulated in the account (“Account Statement”).

- In the case of defined benefit plans, the Prepayment will be determined on the basis of the net present value of the benefits to which the Plan Beneficiary is entitled at the time of Prepayment.
- **Procedure for Prepayment**
 - The Prepayment may be made by the Plan Beneficiary or by the Plan itself (a trustee, paying agent or employer, in the case of certain unqualified plans), with respect to all or a portion of the balance of the Plan Beneficiary's Taxable Benefits existing as of the date the Prepayment is made.
 - If by the Plan Beneficiary:
 - Complete a Form SC 2911 (for a qualified plan) or Form SC 2912 (for a non-qualified plan), in triplicate, for **each** Plan with respect to which the Plan Beneficiary will make a Prepayment.
 - File the appropriate Form SC 2911 or Form SC 2912, as the case may be, together with an Account Statement for each Plan and the payment (cash, certified check, money order, credit or debit card), **at a Collection Office** ("Colecturía") on or before **October 31, 2014**.
 - Filing by mail or other courier service is **not** allowed.
 - Within 30 days from the filing date, the Plan Beneficiary must forward to the Plan administrator one of the date-stamped copies of the Form filed, and keep the other for his/her records.
 - The Plan Beneficiary may make the Prepayment with his/her own funds, or, if allowed by the Plan, withdraw funds from the Plan, in the form of a certified check payable to the Secretary of the Treasury, to effect the Prepayment.
 - If by the Plan
 - The Plan Beneficiary must submit to the Plan, on or before **October 31, 2014**, **four copies** of the filled-out Form SC 2911 (for a qualified plan) or Form SC 2912 (for an unqualified plan), to request that the Plan prepay the tax on all or a portion of the Plan Beneficiary's accumulated benefits (the "Plan Beneficiary Request"). The Plan must date-stamp Forms and return one to the Plan Beneficiary as evidence.
 - No later than the 15th day of the month following the Plan Beneficiary Request, the Plan must file, at a Collection Office ("Colecturía") or Office 421 at Treasury's Intendente Ramirez Building in Old San Juan:
 1. all Plan Beneficiary Request Forms,
 2. the related Account Statements,
 3. the total Prepayment amount (cash, certified check, money order, credit or debit card), which may be a global amount covering the Prepayment on all Plan Beneficiary Requests filed in the preceding month, and
 4. a payment voucher, Form 480.9D (for qualified plans) or Form 480.9E (for unqualified plan), for the Prepayment amount deposited pursuant to 3. above.
 - Filing by mail or other courier service is **not** allowed.
 - Within 30 days from the filing date, the Plan must forward to the Plan Beneficiary one of the copies of the Form filed, date-stamped by Treasury, and keep the other for its records.
- An amendment to the Plan solely for the purpose of allowing prepayment is not required to be submitted to Treasury for qualification.

- The amounts with respect to which the Plan Beneficiary has made a Prepayment will increase the Plan Beneficiary's basis in his/her account and, accordingly, will not be subject to income tax (including alternative base tax) upon distribution. The amount withdrawn from the Plan to make a Prepayment will reduce the Plan Beneficiary's basis in his/her account and will not be treated as a distribution made to the Plan Beneficiary.
- The taxes prepaid pursuant to AD 14-16 will not be refunded.



If you have any questions or comments, or would like additional information about this matter, please call any of our tax attorneys:

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