



La Cámara de Comercio de Puerto Rico
y su Comité de Asuntos Contributivos presentan el Foro:

REFORMA CONTRIBUTIVA

Aspectos Relevantes: Corporaciones,
Sociedades y Ciertos Otros

Rosa M. Rodríguez, Directora Ejecutiva
Ernst and Young Puerto Rico LLC

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Tax rates – Regular and AMT

- for taxable years commencing after December 31, 2018:
 - reduction on corporate regular tax rates:
 - normal tax is reduced to 18.5%
 - surtax: no changes
 - maximum tax rate (normal and surtax) would be 37.5%
 - alternative minimum tax
 - the greater of \$500 or 18.5% of the alternative minimum net income
 - in the case of taxpayers with volume of business of \$3 million or more the tax rate will be 23%
 - new limitations are imposed regarding deductible expenses to determine the net income subject to alternative minimum tax
 - option to claim all the ordinary and necessary expenses if taxpayer submits audited financial statements, Agreed Upon Procedures (AUP) or Compliance Attestation Reports by a CPA with license to practice in PR

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Tax rates and Other Regular and AMT Rules

- for taxable years commencing after December 31, 2018:
 - alternative minimum tax
 - new limitations are imposed regarding deductible expenses to determine the net income subject to alternative minimum tax
 - option to claim all the ordinary and necessary expenses if taxpayer submits audited financial statements - \$3 Million or more
 - Agreed Upon Procedures (AUP) or Compliance Attestation Reports – less than \$1Million, or \$1 but less than \$3Million
 - All cases the report must be issued by a CPA with a Puerto Rico valid license

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Alternative Minimum Net Income

Deductions allowed to determine the net income subject to alternative minimum tax – Tax years commencing after December 31, 2018

- AMT net income –
 - Only certain deductions allowed
 - Gross income per Section 1031.01 less allowed deductions
- AMT net income determined on the same basis as the net income for regular tax purposes
 - Only if audited financial statements, or the AUP or CA report as applicable are submitted with the return
- Secretary must establish by regulation or administrative guidance the manner in which these new rules would apply
 - Including transition measures

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Alternative Minimum Net Income

Deductions allowed to determine the net income subject to alternative minimum tax – Tax years commencing after December 31, 2018

- 125% deduction for salaries paid and reported on the W-2's
- amount of payments for services directly related to the trade or business reported on informative returns (with or without withholding), includes :
 - Rent
 - Telecom
 - Internet access
- contributions to health or accident plans

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Alternative Minimum Net Income

Deductions allowed to determine the net income subject to alternative minimum tax – Tax years commencing after December 31, 2018

- Water and electricity services directly related to the operation of the trade or business
- Amounts paid in the tax year directly related to the operation of the trade or Business, and properly reported in the informative returns
 - advertising
 - promotion
 - Marketing
- Amounts paid in the tax year and properly reported in the informative returns for: Property, contingency and public liability (responsibility) insurance

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Alternative Minimum Net Income

Deductions allowed to determine the net income subject to alternative minimum tax - Tax years commencing after December 31, 2018

- depreciation deduction under straight line
- interest, other taxes, bad debts, contributions to an employee trust, annuity or compensation under a deferred payment plan, charitable contributions, agricultural income, but only if are directly related to the operation of the trade or business

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Summary of AMT deductions-Deductible expenses	Requirement
Salaries (125% deduction)	W-2
Services directly related to the trade or business	Informative return
Contributions to health or accident plans	-
Rent, telecommunications, internet	Informative return
Water and electricity services	-
Advertising, promotion and marketing - directly related the trade or business	Informative return
Property, contingency and public liability insurance	Informative return
Depreciation deduction under straight line	-
Interest, other taxes, bad debts, contributions to employee trusts or deferred payment plan, charitable contributions, agricultural income – directly related to the trade or business	-

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Optional computation for corporations that provide services

- Corporations may opt to pay an optional tax
- Source of income is substantially from the rendering of services
- Effective date:
 - for taxable years commencing after December 31, 2018
 - Secretary has the authority to postpone to tax years 2020 forward

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Optional computation for corporations that provide services- Applies for taxable year commencing after December 31, 2018

Gross Income	Tax rate
Up to \$100,000	6%
Between \$100,001-\$200,000	10%
Between \$200,001-\$300,000	13%
Between \$300,001-\$400,000	15%
Between \$400,001-\$500,000	17%
Over \$500,000	20%

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Optional computation for corporations that provide services

Requirements – all three (3) must be met:

- Total gross income is derived substantially from services rendered
 - Total gross income was reported on informative returns
 - Total gross income was subject to withholding at source or the payment of estimated taxes
- If the optional computation is elected
 - Applicable tax rate would be applied to the gross income
 - Taxpayer will not be able to claim any expenses or deductions
 - Waived from the requirement to submit audited financial statements, or AUP or AC reports as applicable

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Corporate tax returns

- Only one signature will be required
- If the total tax on gross income was paid by withholding at source no tax return will be required to be filed
- In the case of Large Taxpayers - return needs to be certified as reviewed or prepared by a Certified Public Accountant with license to practice the profession in Puerto Rico

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Corporate tax returns

- Extension to file
 - Tax years that commenced after December 31, 2016 – 6 months
 - This would also be applicable to corporation of individuals, partnerships and special partnerships
- Filing of the return
 - Secretary has authority to require mandatory electronic filing
- Payment of the tax
 - Secretary has authority to require mandatory electronic payment

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Group of related entities – Section 1010.05

Changes in the definition using the concept of “entities” instead of “corporations”

- Adds new definition: Entity
- Entity is defined as every industry or business carried on by a:
 - corporation, limited liability corporation (LLC) or partnership taxed as a corporation
 - LLC or partnership subject to taxation as a partnership
 - corporation, LLC or partnership subject to taxation as a special partnership
 - corporation or LLC subject to taxation as a corporation of individuals
 - Corporation, LLC, partnership or any other type of foreign entity that if engaged in business in PR, would fall on any of the above categories

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Definitions

Limited Liability Company (LLC)

- Provides for LLC series
- Statutory rule – partnership taxation if considered disregarded or partners subject to taxation
 - Would only require the partnership mandatory status to foreign LLCs
- New definition – Trade or business would not include
 - Trading in securities: resident independent agent or for its own account
 - Resident independent agent rule-Only applicable if no office or other fixed place of business in PR in the tax year
- Other new definitions: PROMESA, mathematical error, among others

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Large Taxpayers

- \$50 million or more - volume of business determined using the aggregate amount of all the members of the group of related entities
- Not Large Taxpayer anymore – taxpayer can request from the Secretary to be excluded from the Large Taxpayers category
 - Request must be made through filing of an administrative determination

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Deductions-deductions in general

- depreciation
 - businesses with volume of business of \$3MM or less may compute the deduction using an useful life of 2 years for fixed assets, except for real property, automobiles, among others (tax years after 12/31/2018)
 - Automobiles - Expenses after 12/31/2017, allows the deduction for actual expenses incurred for the use and maintenance, subject to a limit that will be established
 - Amount to be established by Secretary should never be less than the one published by the US Internal Revenue Service

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Deductions-deductions in general

- charitable contributions made by corporations
 - Taxable years beginning after 12/31/2018 - deduction will only be allowed if made to non for profit entities certified by the Secretary, that provide services to residents of Puerto Rico
- Net operating losses (carryover & deduction)
 - Taxable years beginning after 12/31/2018 - 90% of gross income limitation is reestablished
 - Eliminates references to limitations about related party expenses (51%/49%)

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Deductions-deductions in general

- Net operating losses - corporate partner that owns 50% or more of the interest in a partnership or special partnership (seems that could be applicable for tax year 2018 depending when the bill is signed)
 - Not allowed to claim the NOL deduction against the distributable share income of such partnership/special partnership
 - Not allowed to use its current NOL to offset the distributable share income
 - Losses from other partnership or special partnerships against should continue being allowed subject to tax basis and other pertinent rules

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Deductions-deductions in general

- losses pass through entities
 - reduces the limitation to 90% of the share of net income in pass through entities for tax years beginning after 12/31/2018
- employment of young college students/recent graduates
 - establishes 150% - 200% deductions on salaries paid to college students and recently graduated individuals
- capital losses – reinstates 90% limitation for tax years commencing after December 31, 2018

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Deductions

- **non deductible items**

- meals & entertainment expenses

Reduces to 25% the deductible portion -tax years commencing after 12/31/2018

- travel and lodging expenses

Not to exceed 50% - tax years commencing after 12/31/2018

- payments and related legal expenses for sexual harassment

Not deductible - taxable years commencing after 12/31/2018

- applicable to agreements with a non disclosure clause

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Deductions

- **non deductible items**
 - 51% disallowance of related party costs and expenses - Eliminates limitation for taxable years commencing after 12/31/2018
 - requires transfer pricing study that includes analysis of the operations carried out in PR
 - prepared in conformity with the provisions of the US IRC Section 482
 - Reference to being revised by the US IRS
 - Controlled group in which no member has operations in the US-transfer pricing study in conformity with OECD would be allowed
 - Secretary shall issue regulation or administrative guidance-to establish effectiveness/validity of the transfer pricing study
 - Secretary is authorized not to accept those studies that are not in compliance with the rules

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Source of income rules - Sale of interest in a partnership

- Sale of an interest in a partnership
 - Partnership that generates income from sources within PR
 - 2011 PRIRC – source from place of organization or residence of seller
 - PR sources income - to the extent that the partnership would have generated Puerto Rico source income had it sold all the assets at fair market value (FMV), regardless of
 - residence of the partner, and
 - rule to make determination at the partner, shareholder or member
- Transactions after 12/31/2018

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Withholding at source – non resident individuals

Sale of interest in a partnership

- Special rule to non-resident *persons*
 - Buyer required to do withholding of 15% on the portion of the gain that is considered from PR sources
 - Buyer required to do deposit tax and file annual return with respect to withholding made
 - Buyer not allowed to claim deduction if deposit and annual informative filing are not made
 - To the extent deductible as ordinary and necessary expenses (most likely not the case in a purchase from a non-PR resident)
- Transactions after 12/31/2018

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Source of income rules – Personal services to governmental entities

- Puerto Rico source income - Services rendered to any agency or instrumentality of the Government of PR, public corporation, legislature, judicature, municipalities or any other entity created by state or Federal laws
 - Funding from General Fund
 - Even if the services are rendered from outside PR
 - Effective date: as of the date of signature

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Distributable share to partners – limitation on allowance of losses

- Special rule to partner's adjusted basis – In determining the partner's distributable share in the losses of a partnership
 - should include the partner's distributable share of the charitable contributions made by the partnership
 - donation of property with fair market value in excess of its adjusted basis - only the adjusted basis may be considered
 - partner's distributable share in FTCs

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Continuation of partnership

- sale or exchange of 50% or more of the total interest in a partnership's profits and capital would not be considered a termination of the partnership

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Audited Financial Statements (AFS) Requirements

Volume of Business	2011 PRIRC	HB 1544	
		Tax Year 2018	Commencing after 12/31/2018
Less than \$1,000,000	No AFS required.	No AFS required.	Voluntary submission of AUP or CA not to be subject to ABT and AMT limitations. CPA with valid license in PR.
Equal or greater than \$1,000,000 but less than \$3,000,000	No AFS required; optional to obtain 7% full waiver (corporations) or partial waiver (other).	No AFS required; optional to obtain 7% full waiver (entities) or partial waiver (other).	Voluntary submission of AUP or CA not to be subject to ABT and AMT limitations. CPA with valid license in PR.
Equal or greater than \$3,000,000	AFS required.	AFS required.	AFS required. Also, will not be subject to ABT and AMT limitations.

AUP – Agreed upon procedures report; CA – Compliance Attestation Report

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Audited Financial Statements (AFS) Requirements – Consolidated or combined

Volume of Business	2011 PRIRC	HB 1544	
		Tax Year 2018	Commencing after 12/31/2018
	Members - less than \$1,000,000, no AFS required.	Members - less than \$1,000,000, no AFS required.	AUP or CA required.
Equal or greater than \$3,000,000 (related entities and <i>persons</i>)	Members - equal or greater than \$1,000,000, stand-alone AFS required listing in the notes all related entities ETB in Puerto Rico.	Members - equal or greater than \$1,000,000, stand-alone AFS required listing in the notes all related entities ETB in Puerto Rico.	Members - equal or greater than \$1,000,000, stand-alone AFS required listing in the notes all related entities ETB in Puerto Rico.

ETB– Engaged in trade or business

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Audited Financial Statements – Not for profit

- non-for-profit corporations with unrelated business income of \$3,000,000 or more will be required to submit audited financial statements for taxable years beginning after December 31, 2018

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Supplemental Information (SI)

- Generally, same rules would apply
- Secretary would establish by regulation and administrative guidance the date to submit the SI which should be a date after the due date of filing the return, including extensions
- Secretary is also authorized to establish the requirements for the SI schedules together with the PR CPA State Society

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Uncertain Tax Position (UTP)

- Every entity required to submit audited financial statements must include a statement with the return
- Statement must include detail of UTPs pursuant to guidance in accounting for income taxes standards
- Secretary to establish content of the statement
- Tax years that commence after December 31, 2018



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