



Acosta & Ramirez Law Office, LLC Newsletter



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A&R News Alert

Extraordinary Session Bills

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The Governor of Puerto Rico signed into law several bills approved at the last extraordinary session of the Legislature. The acts approved include Act 173-2020 providing technical amendments to the Puerto Rico Internal Revenue Code of 2011, as amended (the “PR IRC”) and Act 172-2020 enacting additional amendments to the Puerto Rico Incentives Code (the “Incentives Code”).

PR IRC Technical Amendments

Converted LLCs Partnership Election Effective Date

The Puerto Rico General Corporations Law and analogous foreign corporation statutes allow corporations to be converted into limited liability companies (“LLC”). However, for corporate law purposes such conversions are generally effective as of the date of filing of the certificate of conversion with the corresponding corporation registry or on such later date provided in the conversion documents. Under the PR IRC, LLCs may be treated for income tax purposes as partnerships if the LLC elects such treatment. Act 40-2020 amended the PR IRC to provide that the effective date of a partnership election for a converted LLC will be as of the first day of the taxable year in which the conversion was carried out under the corporation statutes. Act 172-2020 amended the Act 40-2020 rule to provide instead that the LLC may choose for the partnership election to become effective

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the prior taxable year, to the extent that such election is made on or before the date the income tax return for the taxable year becomes due.

Secretary of the Treasury May Extend Income Tax Returns Original Due Date

Only for taxable year 2020, Act 173-2020 authorizes the Secretary of the Treasury to extend until June 15, 2021 the due date to file income tax returns and carry out the corresponding payments that are otherwise due on or before April 15, 2021.

Intangibles Amortization

The PR IRC only allowed a deduction for the amortization of intangible property to the extent that the intangible property was acquired by the taxpayer from an unrelated person in a non-carryover basis transaction. Act 173-2020 now provides an exception to this rule allowing the amortization of intangible property on instances when: (a) the intangible property is not goodwill; (b) a related person transfers the intangible property; (b) both the transferor and acquirer are engaged in a Puerto Rico trade or business; (c) the gain realized on the sale of the intangible property, if any, is included as gross income of the transferor and (d) the selling price is supported by a transfer pricing study that is included with the acquiring entity income tax return for the taxable year the transaction was carried out.

Deduction on Payments to Nonresident Taxpayers

Generally, irrespective of the accounting method used by the taxpayer, any amount owed to a foreign or nonresident related person that is not engaged in a Puerto Rico trade or business will not be deductible until such amount is paid. Act 173-2020 amended this provision to allow taxpayers to deduct the amounts owed to the extent these are paid on or before the due date, including extensions, for filing the income tax return for the year the deduction is been taken.

Department of State Annual Reports

Act 173-2020 amended the audited financial statements requirement under the Puerto Rico General Corporations Law to correspond to the audited financial statements requirements under the PR IRC.

Amendments to the Incentives Code*Withholding Tax on Royalties Paid by Export Service and Commerce Grantees*

Act 172-2020 amended the Incentives Code to impose a lower withholding tax of 12%, in lieu of the 29% withholding tax under the PR IRC, on payments made by persons holding a grant for Export Service and Commerce to a foreign person not engaged in a Puerto Rico trade or business on royalties, rents or license rights for the use or privilege of using intangible property within Puerto Rico.

Sale of Tourism Tax Credits

Act 60-2019 provides for tax credits for eligible tourism investments equal to either 30% of the eligible investment (the "30% Option") or 40% of the eligible investment. For a tourist business that elect the 30% Option, the tax credit will become available for use in the following manner: 10% in the taxable year when the tourism business secured the financing for the construction of the tourism project, with remaining balance being taken in three (3) equal installments: 1/3 when the tourism business receives its first paying guest; and the remaining 2/3 on the subsequent years, in equal portions.

Act 60-2019 provided however, that the transfer or sale of tourism tax credits will only be allowed when the construction and development of the tourism project is completed. Act 172-2020 allows for tourism business that elect the 30% Option that the 10% of the tax credit may be sold or transferred in the taxable year when 100% of

the financing is secured subject to the terms and conditions that the Department of the Economic Commerce and Development provides in the tourism concession.

Cash Incentives for Scrap Profiles or Aluminum Extrusion Recycling

Act 173-2020 allows the DDEC to grant cash incentives for scrap profiles or aluminum extrusions recycling equal to 6.5 cents per Puerto Rico manufactured pound for aluminum extrusion plants and 6 cents per Puerto Rico manufactured pound for transformation of scrap into aluminum bars through a casting process.

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