

TaxNewsFlash

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Puerto Rico: More guidance providing tax relief following Hurricane Maria

The Puerto Rico Treasury Department published a series of administrative determinations and information bulletins concerning the approaching tax deadlines and pension plan distributions as relief for taxpayers affected by Hurricane Maria.

In view of Hurricane Maria's impact on Puerto Rico's electrical infrastructure and telecommunications accessibility, including damage to the central government website, the Treasury Department (PRTD) issued a series of administrative determinations (AD) and internal revenue bulletins (BI RI) to ease compliance and emphasize certain requirements.

Registration requirements

All entities and individuals that have started or will start operations in Puerto Rico must register with the PRTD. The registrations may include the employer's identification number for income and payroll tax purposes, and provide a merchant certificate for purpose of the sales and use tax. (BI RI 17-26 of October 26, 2017)

Construction projects

Construction activities, jobs, and projects to repair, reposition, or reconstruct existing infrastructure or structures affected by Hurricane Maria, that have (1) been exempted from the ordinary procedure for requesting construction or urbanization permits, and (2) obtained the categorical exclusion from the permits office, will be considered construction projects under regulation Article 4210.01(c)-23. (AD 17-24 of October 26, 2017)

Excise tax exemption

- Articles imported temporarily for cleaning and reconstructing areas affected by Hurricane Maria are exempted from excise taxes for a period of six months from the date of introduction. This property will also be exempt from sales and use tax if it will be re-exported within six months of the introduction.
- All telecommunications merchants may elect the exemption and an automatic release of the imported property by filing a request letter including name, employer identification number, merchant registry number, physical and mailing addresses, and a memo detailing the cleaning and reconstruction tasks to be done with the imported merchandise.
- A merchant subcontracted by a telecommunications merchant will be considered a telecommunications merchant for the purpose of this exemption and the automatic release of imported property. (AD 17-25 of October 27, 2017)

Administrative appeals filing extensions, administrative hearings suspended

- All terms for filing of administrative appeals and presenting information or documents requested by the Office of Administrative Appeals (OAA) with a due date from September 5, 2017, through December 31, 2017, are due on January 31, 2018.
- Administrative hearings set for dates from September 5, 2017, through December 31, 2017, are automatically suspended. The OAA will notify new dates that will start on January 31, 2018.
- Taxpayers that want to file administrative appeals or present information or documents requested can do so starting on November 15, 2017, at the OAA located on Office 611 of the Intendente Ramirez Building in Old San Juan. (AD 17-27 of November 10, 2017)

Special rules for retirement plan and IRA distributions

The governor of the Commonwealth of Puerto Rico issued executive orders establishing special rules for distributions from trusts of qualified pension plans (retirement plans) under section 1081.01 of the Puerto Rico Internal Revenue Code of 2011, as amended (PR Code), and for withdrawing funds from individual retirement accounts (IRAs) established under section 1081.02(d)(1) of the PR Code.

The PRTD issued Administrative Determination 17-29 (AD 17-29) providing guidance and establishing procedures for complying with the rules for eligible distributions from retirement plans and IRAs.

Eligible distributions

Eligible distributions are cash payments and distributions from a retirement plan or IRA made during the eligible period—from September 20, 2017, to June 30, 2018—as requested by an eligible individual to cover eligible expenses.

For retirement plans, eligible distributions include:

- Total cash distributions as defined by Article 1081.01(b)-2 of Regulation No. 8049 of July 21, 2011, as amended
- Partial cash payments for retirements by reason of extreme economic emergency as defined by Article 1081.01(b)-4 of the regulation

Other measures provide that:

- Distributions in the form of annuities or periodic payments are **not** to be considered eligible distributions.
- An eligible individual is a resident of Puerto Rico during calendar years 2017 and 2018. Eligible individuals may opt to receive the eligible distributions independent of the types of payments available under the retirement plan and IRA. Additionally, such eligible individuals receiving an eligible distribution are not subject to a restriction period on the continuity of the contributions of the retirement plan and IRA after the distribution is completed.
- For eligible distributions from an IRA, the 10% penalty imposed by section 1081.02(g) of the PR Code will not be applicable. However, financial institution or insurance carrier penalties may still apply.

Eligible expenses

- Eligible expenses are those incurred by an individual as a result of Hurricane Maria-related losses or damages, as well as extraordinary and unforeseen expenses to cover basic needs. Eligible expenses include repairs to residences or motor vehicles, payments for medical expenses, cost to replace or repair real estate, purchases of food and fuel, payments to buy or repair of electricity generators, and lodging and food expenses due to total or partial destruction of a main residence.
- Eligible individuals do not have to submit details of Hurricane Maria-related expenses or losses.
- Eligible expenses may be incurred by the eligible individual, spouse, descendants or ascendants.

- While it is not necessary for the expenses to be incurred within the eligible period, the distribution must be made within the eligible period. Thus, an eligible individual may receive an eligible distribution during the eligible period to defray eligible expenses to be incurred after the eligible period ends.

Tax treatment

Eligible distributions from retirement plans and IRAs received by an eligible individual during the eligible period will be treated as distributions due to extreme economic emergency, and be subject to tax as follows:

- The first \$10,000 distributed during the eligible period is exempt from both income tax and alternative minimum tax, and is not subject to withholding
- Any distribution over \$10,000 is subject to an income tax and withholding tax at a fixed rate of 10%. To take this benefit, the tax is to be withheld at the origin at the time of distribution
- The eligible individual can take various eligible distributions during the eligible period, from one or more retirement plans and IRAs, but the total eligible distribution cannot exceed \$100,000, and the total tax exempt amount shall not exceed \$10,000.

The eligible distributions are to be understood as coming first from the contributions and investment income that has not been previously taxed to the eligible individual, and if not sufficient, from the non-taxable base, such as voluntary contributions from the employee (after-tax contributions), and the amounts for which the tax was paid in advance.

Any person making eligible distributions must deduct and withhold from such distributions an amount equal to 10% from the amount exceeding \$10,000. If the required tax withholding is not made at the time of payment, the amount distributed would not be eligible for the tax treatment provided in AD 17-29. Accordingly, the distribution is to be considered taxable income to the eligible individual and will be subject to the regular rates of income tax and withholding tax established by the Code. All amounts distributed from a retirement plan or IRA, along with the applicable withholding, are to be listed on Form 480.7C or Form 480.7, respectively. Any distribution over \$100,000 is not eligible for the 10% tax rate.

Eligible distribution request

An eligible individual must submit a sworn statement to the employer or the service provider that administers the retirement plan or the financial institution or insurer that keeps the IRA, and that includes the following information:

- Name and address of eligible individual

- Eligible individual's current principal address at the time of the request
- Certify that the individual is a Puerto Rico resident and will continue to be for 2017 and 2018
- Certify that the amount requested will not exceed the limit provided in AD 17-29
- The amount of the requested distribution that will be used to cover Hurricane Maria damage-related expenses and losses, extraordinary expenses incurred to cover basic needs after Hurricane Maria, or to compensate for lost income
- A certification that the individual has not received eligible distributions from other retirement plans or IRAs, or if received, include the date of distribution and amount received
- A certification that the individual has not received tax exempt eligible distributions from other retirement plans or IRAs or if received include the date of distribution and amount received
- A certification that the individual assumes responsibility for paying the tax for the requested distributions if at the end of the year it turns out that the residency requirement has not been met, the amount received was not used to satisfy eligible expenses, or the distributions received were in excess of the limit provided in AD 17-29

Withholding agent responsibilities

The employer, administrator or service provider of the trust or annuity contract making an eligible distribution is considered to be a withholding agent and will be responsible for withholding the tax provided in AD 17-29. This tax withheld should be remitted to the PRTD no later than the 15th day following close of the month in which the amount was withheld. If the withholding agent does not comply with the withholding, the PRTD can collect from the withholding agent the total amount not withheld. The withholding agent is also subject to the penalties imposed in Subtitle F of the PR Code, including those imposed in section 6080.02 of the PR Code.

Retirement plan terms

- The provisions of AD 17-29 are optional for retirement plans. An employer can amend its retirement plan to facilitate eligible distributions but can limit the maximum amounts to less than the \$100,000 limit. Also, if the plan administrator is qualified in Puerto Rico and United States, it can limit the rules to be consistent with the provisions of the U.S. Internal Revenue Code or with changes authorized by the IRS.

- Plans adopting the provisions of AD 17-29 must make formal amendments no later than December 31, 2018. The approvals and distributions can be done before the date such amendments are adopted.

Loans

During the eligible period, it is permissible to approve and disburse loans to participants of the retirement plan regardless of whether the plan provides for them, subject to the plan being amended no later than December 31, 2018. For all loans made to participants before September 20, 2017, and during the eligible period, a moratorium for up to one year can be granted.

Retirement plan amendments

Conforming amendments to the retirement plans to adopt AD 17-29 provisions will not be considered a qualification amendment for purposes of Tax Policy Circular Letter No. 16-08. Therefore, it is not necessary to file these amendments with the PRTD.

For more information, contact a KPMG tax professional in Puerto Rico:

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