

Special points of interest:

- Amendments Introduced by the Technical Corrections Act (Act 37) to the Fiscal Emergency Act (Act 7)
- Public Private Alliances Act

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### Act 37: The Good, the Bad and the Ugly

By Felipe Mariani

After Act 7 of March 29, 2009

the business community had been anxiously waiting for a technical correction bill that would address the problems that Act 7 (hereinafter the "Fiscal Emergency Act") presented. Senate Bill 874 and House of Representatives Bill 1640 were filed on May 11, 2009 and May 12, 2009, respectively. Both bills were similar and were of the initiative of the executive branch of the Government and purported to solve at least some of those issues. The bill that went through the legislative process was HR Bill 1640. It was signed by the Governor on July 10, 2009 and became Act 37 (hereinafter "Technical Corrections Act"). The amendments made to the Fiscal Emergency Act by the Technical Corrections Act have probably left the business community with some mixed feelings as to the content and scope of such amendments.

**The Good**—The Technical Corrections Act provides several solutions for the issues that arose with the enactment of the Fiscal Emergency Act. The most important was the reestablishment of the reseller's exemption for purposes of the sales and use tax which the Fiscal Emergency Act originally repealed. The Technical Corrections Act also provides some relief to the individuals subject to the alternative minimum tax



with the allowance of a foreign tax credit and the alternative minimum tax credit. Of particular importance is, however, the partial allowance of the Act 212 credits which will help those developers who had already considered the availability of the credits in their business projections but which were suddenly placed in moratorium by the Fiscal Emergency Act.

**The Bad**—The Technical Corrections Act fails, however, to address the concern of the business community regarding the new filing date of the monthly sales and use tax return imposed by the Fiscal Emergency Act. Most of the business community has been adamant that a due date of the 10<sup>th</sup> of the next month is unreasonable and provides too little time to adequately prepare the sales and use tax return. The business community understands that a period of 10 days after the close

of the month is not enough to collect the information that is necessary to comply with the use tax responsibility. In addition, they feel that there are options for the Treasury Department to receive a substantial portion of the sales and use taxes by the 10<sup>th</sup> of next month while still retaining the due date for filing the monthly sales and use tax return on the 20<sup>th</sup> of the next month, as it was prior to the enactment of the Fiscal Emergency Act.

**The Ugly**—In an unexpected change of position, pursuant to the amendments made by the Technical Corrections Act to the Fiscal Emergency Act, the "Special Commonwealth Real Property Tax" was also extended to commercial real estate. Such measure was not included on the original bills presented to the House of

**Continues on Page 2**

## What a Surprise! Special Commonwealth Real Property Tax on Commercial Property

By Felipe Mariani

We believe that amongst the amendments made by the Technical Corrections Act, the one that will have the biggest financial impact on corporate and individual taxpayers is the amendment to the "Special Commonwealth Real Property Tax" imposed by Section 3701 of the Puerto Rico Internal Revenue Code (hereinafter "the Code"). Section 3701 was added to the Code by the Fiscal Emergency Act originally to impose a "Special Commonwealth Real Property Tax" on residential real property. Under the provisions of the Fiscal Emergency Act, this special tax was equal to 100% of the real property tax determined and assessed by the Municipal Revenue Collection Center ("CRIM") under the Municipal Property Tax Act. The Fiscal

### Act 37; The Good, the Bad... Continued from Page 1

Representative and the Senate. This provision will have a significant impact on businesses already impacted by a slow economy and increases in operational costs.

In this newsletter we will have several articles discussing the amendments made by the Technical Corrections Act to the Fiscal Emergency Act.

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Emergency Act also established that for purposes of real property tax, the assessed value of the property was to be multiplied by 10 to establish its taxable value and the applicable real property tax rates were to be divided by 10 to eliminate the effect of the increase in the valuation.

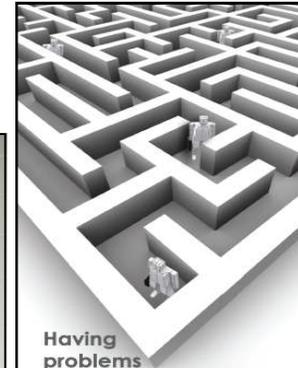
The Technical Corrections Act amended Section 3701 of the Code to extend the "Special Commonwealth Real Property Tax" on real property used for commercial purposes. The Code was also amended to establish a 0.591% tax rate for both residential and commercial properties. This tax rate is significantly lower than the tax rates imposed by the Municipalities on the real property tax managed by the CRIM as those range between 0.733% and 1.033% (after dividing the tax rate by 10). Accordingly, the Special Commonwealth Real Property Tax will range between 57% and 81% of the applicable municipal real property tax rate depending on which municipality your real property is located. Another amendment introduced by the Technical Corrections Act is that the tax should be collected for fiscal years 2009-10, 2010-11 and 2011-12 or when the aggregate collections add to \$690 million, instead of the four fiscal years originally enacted. The Secretary of the Treasury is required to present each semester a certification detailing the amount invoiced and collected in order to monitor the limitation described above.



Another amendment introduced by the Technical Corrections Act was to clarify that the exoneration and exemptions in the Municipal Property Tax Act, as well as those provided in other special laws, should be considered when determining the taxable value of the property to be subject to this tax. However, it was made clear that exemptions granted by any Municipality will not be taken into consideration. Consequently, companies with Municipal Tax Exemption Grants will not be able to reduce the taxable value of the real property for the exemption granted by the Municipality.

The Technical Corrections Act also added new exemptions applicable only to the "Special Commonwealth Real Property Tax". Of particular importance, is the exemption provided to those residential properties which operate under a Federal, Commonwealth or Municipal program paid with

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"This [preparing  
my tax return] is  
too difficult for a  
mathematician. It  
takes a philoso-  
pher."

Albert Einstein

**What a Surprise!**  
Continued from Page 2

Federal funds which purpose is to provide housing to low and moderate income families as long as those properties continue to comply with the provisions of such program and are certified by the Puerto Rico Housing Department or the corresponding Federal or Municipal entity. In addition, there are also exemptions for (1) residential properties constructed for the use of a handicapped person and duly certified by an engineer licensed in Puerto Rico; and (2) residential properties with a second dwelling constructed on it and which use is not tied to a rental payment or a personal benefit of the owner. Residential properties (1) whose owners generate only income from annuities and pensions not exceeding \$20,000 per year in the aggregate or (2) whose owners lost their jobs due to the provisions of Act 7, until they find employment, will also be exempted from this tax.

The Secretary of the Treasury will send the bills with the "Special Commonwealth Real Property Tax" on the first day of September and March of each fiscal year. However, a prompt payment discount equal to 10% of the tax will be available if the payment is made on or before 30 days after the due date and 5% if the payment is made on or before 60 days after the due date. Only for the payment due on September 2009, a 10% discount will be available if the payment is made on or before 90 days after the due date (September 1, 2009).

## Act 37 Introduces Amendments to Tax Credits

By **Edgardo Sanabria**

As it was discussed in the March 2009 issue of *The Tax Advisor*, Act 7 of March 9, 2009 (hereinafter referred to as the "Fiscal Emergency Act"), amended the provisions of certain tax credits available under the provisions of the Puerto Rico Internal Revenue Code of 1994, as amended, ("The Code"). The Fiscal Emergency Act also provided a moratorium on the use of certain tax credits, either available under the Code or available under the provisions of different Special Acts for each of the taxable years commencing after December 31, 2008 and before January 1, 2012 (hereinafter the "moratorium period"). In addition, the Fiscal Emergency Act also provided a moratorium on the granting of the same tax credits by forbidding every agency, public corporation, instrumentality, municipality or dependency of the Commonwealth of Puerto Rico from evaluating, carrying through, granting or issuing any of such tax credits. Even the authorization of any project or transaction that results or could result in the generation of tax credits subject to the moratorium was also forbidden by the Fiscal Emergency Act throughout the moratorium period.

The credits available under the Code, whose provisions were amended by the Fiscal Emergency Act, were the following:

- Section 1040D of the Code - Credit for purchase of products manufactured in Puerto Rico for export – Prior to the amendments introduced by the Fiscal Emergency Act, this credit was first to



be used against the sales tax payable under the provisions of the Sales and Use Tax and any excess credit was, then, to be applied against the income tax liability. The Fiscal Emergency Act amended the Code to provide that the credit can only be used against the income tax liability.

- Section 1040K of the Code - Tax credits program for the purchase of newly constructed housing – Prior to the amendment introduced by Fiscal Emergency Act, the Code allowed every Financial Institution participating in the program to claim a refundable tax credit for any tax credit not used, as of the close of any taxable year commencing after December 31, 2007 as long as

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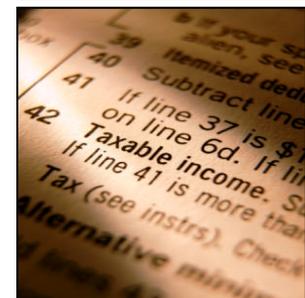
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**Act 37 Introduces...  
Continued from Page 3**

the same has not been assigned, sold or transferred. Two amendments were made by the Fiscal Emergency Act; one was to postpone the time and the way to claim the refund and the second was to deny the payment of interest on the refund, irrespective of when the refund is finally paid by Treasury to the participating Financial Institution. Pursuant to the amended provision, the participating Financial Institution will be allowed to claim a refundable tax credit for any unused tax credit for each of the three taxable years commencing after December 31, 2010.

The credits placed in a three year moratorium period by the Fiscal Emergency Act as to their use to reduce any of the taxes imposed by the Code are the following:

- Section 1040E of the Code - Credit for purchase of products manufactured in Puerto Rico for local sale and consumption.
- Solid Waste
- Venture Capital Funds
- Theatrical District
- Conservation easements
- Revitalization of Urban Centers (known as Act 212 Tax Credits)
- New Construction or Rehabilitation of Social Interest Housing
- Investment on Housing Infrastructure

It is important to mention that the Fiscal Emergency Act did not place in moratorium any other tax credit. Accordingly, credits can be generated in manufacturing operations,

tourism activities, cinematographic projects as well as any other credit provided under the Code.

On July 10, 2009 Act 37 was approved by the Governor of Puerto Rico (hereinafter the "Technical Corrections Act"). The Technical Corrections Act introduced certain corrections or amendments to several of the changes made by the Fiscal Emergency Act. Herein below, we will discuss those amendments or technical corrections that affected the tax credits or tax credits' moratorium previously summarized.

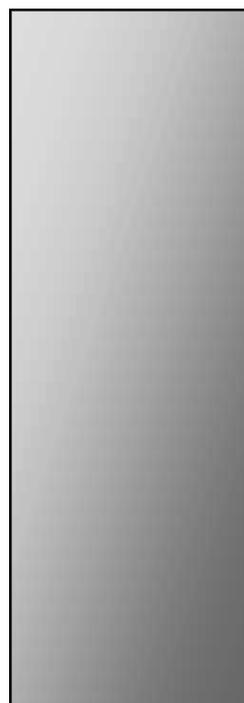
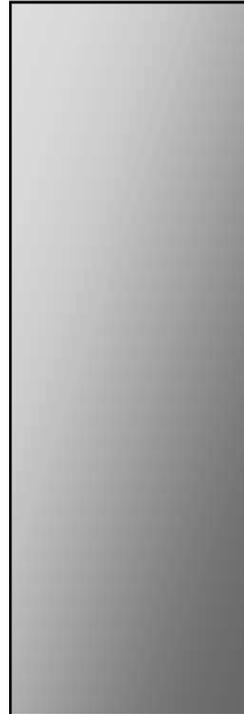
**Credits Available Under the Code**

The credits available under the Code which provisions were amended by the Fiscal Emergency Act were again amended by the Technical Correction Act. In addition, the tax credit available under the provisions of Section 1040L was also amended by the Technical Correction Act. In summary, the amendments made by the Technical Corrections Act to the credits available under the Code were the following:

- Section 1040D of the Code - Credit for purchase of products manufactured in Puerto Rico for export – This credit was now amended to provide that if the credit is attributable to purchases of products manufactured in Puerto Rico by manufacturing plants engaged in the processing and packaging of tuna the credit will be applied first against the sales tax payable under the provisions of the Sales and Use Tax and any excess credit is then applied against the income tax.
- Section 1040K of the Code - Tax credits pro-

gram for the purchase of newly constructed housing – The amendment introduced by the Technical Corrections Act provides a relief to the participating Financial Institutions. Section 1040K of the Code was added to the Code by Act 197 of December 14, 2007. Pursuant to the provisions of the Code the credit certificates to be issued pursuant to Section 1040K shall be used in three (3) installments to be claimed during a period of three (3) consecutive taxable years starting with taxable years commencing after December 31, 2007. For those purposes, the first installment of use of credits approved pursuant to this section shall be between January 1, 2008 and June 30, 2009, the second installment of use of credits approved pursuant to this section shall be between July 1, 2009 and June 30, 2010 and the third installment of use of credits approved pursuant to this section shall be between July 1, 2010 and June 30, 2011. There is no carry over provision for the unused tax credit and that is why the original Section 1040K provided for a refundable tax credit for any unused tax credit. With the amendment, the participating Financial Institutions will be allowed to claim a refundable tax credit for any unused portion of the credit certificates at any time within the period where such credit may be used. For example:

*Continues on Page 5*



**Act 37 Introduces...  
Continued from Page 4**

**Two millions (\$2,000,000) of income tax credits were issued to Financial Institution A for the second installment (the one that could be used between July 1, 2009 and June 30, 2010) and Financial Institution A has a calendar year end. Financial Institution A will have until June 30, 2010 to claim the refundable tax credit.**

This is much better than what was provided by the amendment made by the

Fiscal Emergency Act where Financial Institution A would have to wait until the taxable year commencing after December 31, 2011 to claim the refundable credit for the second installment. However, the Secretary of the Treasury would not be allowed to pay any refund arising out of this amendment prior to January 1, 2011. These refunds will not be entitled to the payment of interest irrespective of when the refund is paid. In addition, these refunds will not be subject to Article 9 (j) of the Accounting Law for the Puerto Rico Government, meaning that the Secretary of the Treasury will have to disburse the refund even if the Financial Institution has outstanding debts with the government.

- Section 1040L of the Code - Tax credits program for the purchase of existing housing – This tax credit was also incorporated to the Code by Act 197 of December 14, 2007 to provide a tax

incentive very similar to that provided under Section 1040K for the purchase of newly constructed housing but in a smaller scale. Upon the enactment of the Fiscal Emergency Act this tax credit was, most likely inadvertently, not amended in the same manner as the Section 1040K credit was. Now, with the enactment of the Technical Corrections Act this tax credit was amended in the same manner as its sister tax credit.

**Tax Credits Placed in Moratorium**

The two provisions enacted by the Fiscal Emergency Act to place certain tax credits in moratorium were also amended by the Technical Corrections Act. In general, the amendments were to liberalize or take the tax credits out of the moratorium depending on the nature of the tax credit or the stage where the tax credit was in the procedural process for its granting at, either March 4, 2009 (the date of the filing of the bill that became Act 7) or March 9, 2009 (date of enactment of Act 7).

The changes made with respect to the tax credits moratorium were the following:

- It was established, that the moratorium period will not apply to tax credits granted pursuant to closing agreements entered into between the taxpayer and the Secretary of the Treasury prior to March 4, 2009. However, a similar amendment was not made to Article 30 of the Fiscal Emergency Act to lift the moratorium on the granting of the credits under such circumstances.

Therefore, it is questionable whether the Secretary of the Treasury has the authority to grant the credits.

- It was also established, that the moratorium on the granting of the tax credits will not apply to the Department of the Treasury, any other agency, public corporation, instrumentality or dependency of the Commonwealth of Puerto Rico, ultimately responsible for the granting of such tax credits as long as the case has been filed with the corresponding agency before March 9, 2009. This exception will apply to cases filed before such date that were in full compliance with all the law requirements prior to that date. In addition, it was provided that in all cases falling in this exception the moratorium as to the use of the tax credit will only apply to each of the taxable years commencing after December 31, 2009 and before January 1, 2012. This assumes that all completed cases filed prior to March 9, 2009 will be timely processed by the corresponding agency.

- The Fiscal Emergency Act, apparently and inadvertently, only placed in moratorium Act 212 tax credits related to the construction of extraordinary infrastructure (paragraph E of Article 4.03 of Act 212) leaving out of the moratorium the general tax credit (paragraph F of Article 4.03 of Act 2120 and credits granted to businesses adversely affected by a revitalization project

*Continues on Page 6*

**Act 37 Introduces...**  
**Continued from Page 5**

in an Urban Center (Article 4.04 of Act 212). The Technical Corrections Act also placed a moratorium in the granting and the use of such tax credits. However, it was provided that the moratorium on the granting will not apply to revitalization projects under Act 212 involving tourism activities, as such term is defined in the PR Tourism Development Act of 1993, construction of social interest housing for sale or rental and construction of facilities for the elderly. But quite surprisingly, the use and availability of these credits will be subject to some limitations discussed below.

In addition, the Technical Corrections Act also opened a little window for all Act 212 projects with a certificate of eligibility (i.e. preliminary approval of the project) filed with Treasury Department before March 9, 2009. Act 212 projects eligible for this window will have to compete during each year of the moratorium period to gain a portion of a yearly pool of \$40,000,000. It was further provided that no single project will be entitled to receive more than \$15,000,000 of Act 212 tax credits out of the yearly pool of available funds. Moreover, the projects involving tourism activities, construction of

social interest housing for sale or rental and construction of facilities for the elderly will also have to compete for a portion of the yearly pool. It was also provided that all the Act 212 tax credits granted from the yearly pool will be available for use as follows:

- Credits granted during fiscal year 2009-10 will be claimed up to 50% on taxable years commencing after December 31, 2009 and prior to January 1, 2011. The remaining 50% will be claimed on taxable years commencing after December 31, 2010 and prior to January 1, 2012. It was also provided that any unused portion of the credit will be claimed on subsequent years.
- Credits granted during fiscal year 2010-11 will be claimed up to 50% on taxable years commencing after December 31, 2010 and prior to January 1, 2012. The remaining 50% will be claimed on taxable years commenced after December 31, 2011 and prior to January 1, 2013. It was also provided that any unused portion of the credit will be claimed on subsequent years.

The window will be open throughout the moratorium period or until \$690,000,000 of the special property tax are collected whichever occurs first. It appears from the wording of the provision that if such amount is collected prior to the end of the moratorium period the window will be closed. However, from the wording of the provision it is also arguable that if such amount is collected prior to the end of the moratorium period the Act 212 tax credits would not be in moratorium any longer.

Finally, the due date for filing the informative return that must be filed with the Secretary of the Treasury by every owner of tax credits subject to the moratorium is now August 31, 2009 instead of May 30, 2009. It is of utmost importance to mention, that credits not subject to the moratorium granted by special laws as well as those granted pursuant to the provisions of the Code will also have to be reported in such return. This requirement applies to every tax credit granted before July 1, 2009. If the informative return is not filed or any of the credits is not included the owner will lose the tax credit unless it is shown to the satisfaction of the Secretary that there was a just cause for the non-inclusion of the tax credit in the informative return. The Secretary of the Treasury already issued Administrative Determination 09-05 setting forth the requirements for this filing.

*"Worried about an IRS audit? Avoid what's called a red flag. That's something the IRS always looks for. For example, say you have some money left in your bank account after paying taxes. That's a red flag." - Jay Leno*

## Sales and Use Tax Resellers' Exemption Reestablished

By Felipe Mariani

Without a doubt, the most controversial amendment made by the Fiscal Emergency Act was the repeal of the sales and use tax exemption to resellers. The elimination of the reseller's exemption would have created a cumbersome process of payments and credits similar to a value added tax ("VAT") but only in one segment of the distribution chain. Also it would have caused a redistribution of tax revenues among the Municipalities having as an effect that the smaller municipalities would lose revenues.

Most business associations joined together to push for the reestablishment of the resellers' exemption. The Technical Corrections Act addresses such issues by reinstating the Reseller Exemption Certificates with certain conditions and limitations.

The Technical Corrections Act brings back Section 2407 of the Code that was revoked by the Fiscal Emergency Act and which provides relieve to sellers from collecting SUT on sales for resale when the Reseller's Exemption Certificate and the required documents are presented by the buyer. This amendment is important because the regulations under this section establish: (1) the definition of a reseller; (2) the requirements to retain copy of the Exemption Certificate; (3) the requirement to request the Certificate for Exempt Purchases for each transaction; and (4) provides the alternate methods available. This means, that even though the Technical Corrections Act introduces new requirements for issuing the Reseller's Exemption Certificate, the requirements re-

garding the evidence and documentation to grant an exemption to a client would not change.

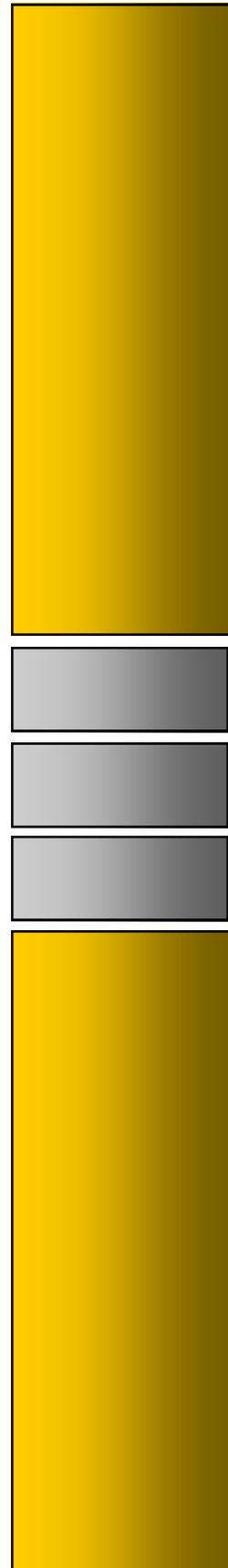
The most important amendment with respect to the Reseller's Exemption Certificate is the one made to Section 2502. As mentioned before, Fiscal Emergency Act eliminated the Reseller's Exemption Certificate; the Technical Corrections Act, in turn, reincorporates the certificate but limits its issuance to just certain resellers. The Secretary of the Treasury will issue the Reseller's Exemption Certificate automatically to resellers with an annual volume of business of at least \$500,000. Those resellers with an annual volume of business of less than \$500,000 will have to prove to the Secretary they are in "good standing" with Treasury in order to obtain the Reseller's Exemption Certificate. "Good standing" means: (1) all returns must have been filed (income tax, SUT, etc); (2) there must be no debt with Treasury; and (3) taxpayer must submit copy of Municipal Volume of Business Declaration for every municipality in which they are engaged in business.

In addition, the Technical Corrections Act amends Section 6189 to provide a Municipal Reseller's Exemption Certificate, to be issued by the Secretary, for resellers that don't qualify for a Reseller's Exemption Certificate as provided in Section 2502. Therefore, there will be two types of certificates, one at the state level (to which the \$500,000 threshold will apply) and another one at the municipal level to be issued to all resellers. It also clarifies



that the credit provided in Section 2704 for resellers that do not hold an Exemption Certificate may not be claimed against the 1% municipal sales and use tax collected by the municipalities. However, it establishes that the credit provided in Section 2704 may be claimed against the 0.5% municipal sales and use tax collected by the Puerto Rico Department of Treasury (the sales and use tax collected by the Secretary of Treasury is made up of 5.5% Commonwealth sales and use tax and 0.5% of municipal sales and use tax) with the exception of the 0.1% belonging to the Municipal Improvement Fund. Therefore, a reseller which does not have a Commonwealth Reseller's Exemption Certificate will be required to pay the 6% sales and use tax collected by the Commonwealth of Puerto Rico on the purchase price of the taxable items. However, it will only be allowed to claim as a credit 5.9% instead of 6% of sales and use tax paid on the goods when those were

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## Amendments to the Alternative Minimum Tax – Corporate and Individuals

By Felipe Mariani

### Corporate Income Tax

The Technical Correction Act made several technical amendments regarding the corporate income tax. The most important of those is related to the adjustment to the computation of the Alternative Minimum Net Income. Act 7 established that for purposes of the Alternative Minimum Tax computation, corporations and partnerships would not be allowed a deduction for the expenses related to services performed outside of Puerto Rico if such services were not subject to Puerto Rico income tax.

The Technical Correction Act limits the scope of such re-

### Sales and Use Tax ... Continued from Page 7

purchased. As a result Treasury will receive from the final sales of a reseller, which does not have a Commonwealth Reseller's Exemption Certificate, a 6% sales tax on the selling price and a 0.1% sales tax on the purchase price of the reseller. This will result on a combined total sales tax higher than 7%.

The effective date of the amendments regarding the SUT provisions included in the Technical Correction Act will be November 1, 2009. Therefore, the current Reseller Exemption Certificates will still valid until October 31, 2009.

It is necessary to point out that the Technical Correction Act doesn't include amendments to Sections 2602, 2606 and 2607 of the Code with regards to the filing date of the monthly sales and use tax return and the remission date of the tax.

striction by establishing that only those services provided outside of Puerto Rico by related persons will not be deductible. Therefore, there will be no disallowance of the deduction for Alternative Minimum Tax purposes for services rendered by anyone not considered a "related person" under the Technical Correction Act even when those services may not have been subject to Puerto Rico income tax. The Technical Correction Act uses the definition of "related person" provided in the provisions of foreign corporation and nonresident alien individual of the Code. The use of these definitions of "related person" may allow room for some tax planning regarding this type of transactions.

### Individual Income Tax

The Fiscal Emergency Act brought a change in the purpose of the Alternative Minimum Tax for individuals. Before the Fiscal Emergency Act, the focus of the Alternative Minimum Tax was to impose a minimum tax on those individuals with substantial deductions when compared to its taxable income. The Fiscal Emergency Act changed the target of the Alternative Minimum Tax to those individuals who have a significant amount of exempt income or income subject to special tax rates, although, it still penalizes those with a significant amount of mortgage interest deductions.

The Technical Correction Act provides some relief to those affected by the Fiscal Emergency Act by establishing a foreign tax credit to reduce the possible Alternate Minimum Tax liability and an alternative minimum tax credit of

the Alternative Minimum Tax paid on prior years.

The Technical Correction Act provides that a credit for income taxes paid to the United States or any foreign country may be claimed to reduce the Alternative Minimum Tax. The foreign tax credit will be the same as it would have been if determined for the regular income tax but substituting the regular income tax for the Alternative Minimum Tax before the credit and the taxpayer's net income for the net income subject to Alternative Minimum Tax. This will provide a benefit to those taxpayers who have both taxable and exempt income and, who prior to the amendment in the Technical Correction Act, would not have been able to reduce their Alternative Minimum Tax liability with the foreign taxes paid.

As mentioned before, the Technical Correction Act also provides an alternative minimum tax credit. The alternative minimum tax credit is the

**Continues on Page 9**



**Amendments to...  
Continued from Page 8**

excess of the sum of the Alternative Minimum Tax determined for taxable years commencing after December 31, 2008 less the sum of the net regular tax determined for the taxable years commenced after December 31, 2008. The alternative minimum tax credit to be used is limited to the excess, if any, of the net regular tax less the Alternative Minimum Tax for the year of the computation. This credit changes the concept of the Alternative Minimum Tax from an additional tax to be paid by the individual to a prepayment of the net regular tax, as long as a net regular tax is expected to be paid in the future. This alternative minimum tax credit, however, will not provide any benefit to individuals (retirees for example) with substantial exempt income and/or income subject to special rates.

Besides the credit provisions mentioned above, the Technical Corrections Act also exempted from Alternative Minimum Taxes (1) the exclusions and exemptions provided by the Puerto Rico Agricultural Incentives Act; (2) interest income from the obligations issued by the Conservation Trust of Puerto Rico; and (3)

the interest income from the obligations issued by the Puerto Rico Housing and Human Development Trust. In the particular case of the obligations of the Conservation Trust of Puerto Rico, even when the Technical Corrections Act exempted the interest income for the Alternative Minimum Tax it also amended the provisions related to gross income to include as taxable income for purposes of the regular tax, the interests on obligations issued from July 1, 2009 to June 30, 2011. It is important to clarify, that such

amendment in effect taints the obligation and requires the purchaser of such obligation to include the interest income paid during the life of the obligations (even if it is after June 30, 2011) as taxable income for purposes of the net regular tax.

Another important amendment in the Technical Corrections Act is the modification in the Alternative Minimum Tax table. Prior to the Technical Corrections Act, the Code provided a three tier tax table where depending on the net income subject to alternative minimum tax a flat tax rate of

10%, 15% or 20% applied. The Technical Corrections Act also provides a three tier tax table as shown in Table I.

This change in the third tier flat rate will certainly cause confusion and will require guidance from the Puerto Rico Treasury Department, although a technical correction will be better. Currently, as the Technical Corrections Act reads, taxpayers with net income subject to AMT ranging from \$125,000 and \$175,000 may be subject to either a 15% or a 20% flat tax rate.

**Table I  
Three Tier Tax Table Provided by the  
Technical Correction Act**

<b>If the net income subject to AMT is:</b>	<b>Tax rate</b>
From \$75,000 to \$125,000	10%
From \$125,000 to \$175,000	15%
In excess of \$175,000	20% of the excess of \$125,000

The Technical Corrections Act also establishes a filing requirement for purposes of Alternative Minimum Tax. Before the Technical Corrections Act, there was a probability that a taxpayer may have been subject to Alternative Minimum Tax but not be required to file an income tax return because it did not meet the filing requirements for the regular tax. To correct this, the Technical Corrections Act established that all taxpayers with net income subject to Alternative Minimum Tax of \$75,000 or more have to file an income tax return. In the case of taxpayers filing under the married filing separately status the net income subject to Alternative Minimum Tax required to file Puerto Rico income tax returns is \$37,500.

**Public Private Alliances Act: Government Open for Business**

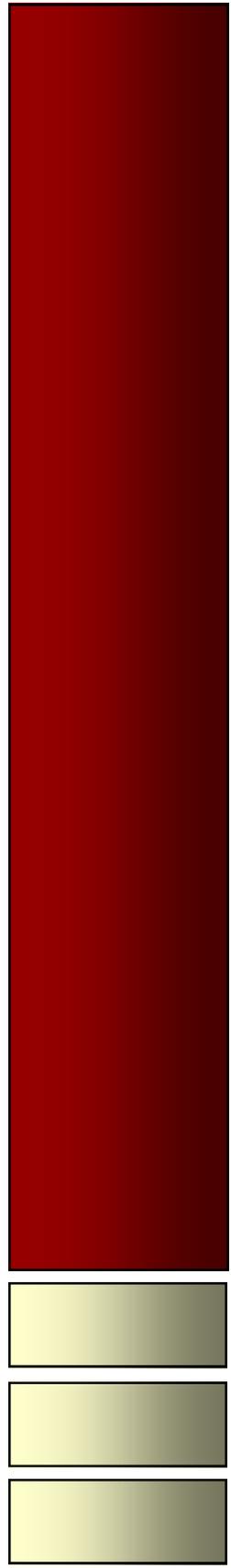
**By Miguel Rodríguez**

After several attempts to handle public projects and initiatives to the private enterprise such as the Teodoro

Moscoso Bridge and the private management contracts for the administration of the Public Housing System, the Government is Open for Business. The Fiscal Emergency status of

the Commonwealth finances and the credit constraints imposed by the bond markets to our Public Authorities brought

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**Public Private Alliances...**  
**Continued from Page 9**

a new paradigm to the table, The Public Alliances Act.

The traditional scheme of government services and works through bureaucratic systems composed of Executive Agencies and Public Authorities tied by complicated processes, budgetary constraints and debt ridden finances has been dealt with the creation of a Czar Entity capable of entering into agreements with PRIVATE FOR PROFIT AND NOT FOR PROFIT INVESTORS.

The Authority for Public Private Alliances affiliated to the Government Development Bank has been created with a steering power board integrated by the President of the Government Development Bank, the Secretary of the Treasury, the President of the Planning Board and two representatives of the public interest. In a curious nominating process the two public sector representatives will be recommended by the presidents of both Legislative bodies to the Governor in the form of terns, for the Governor to choose two of the six candidates.

The new Authority will decide what projects and services should be conceptualized and proposed to be developed with the combination of public and private resources. The Government will be responsible for the procurement, monitoring, auditing and contract compliance reviews of the Contractor and the termination and substitution of the Contractor by other Private entity in case of default. The new contractor

will work under the same conditions of the original contract. The Authority will exercise discretion in requiring public entities to cede real and personal property, equipment, facilities and systems, to be relocated under the Authority's care and or possession and free from real or property taxes obligations to the Contracted entity when used for the contract purposes under the regime of lease, granted usufruct rights (up to fifty (50) years) and any other allowed form of tenancy. Any further acquisition by the Authority or the Contractor of property, personal or real, systems, equipments, installations or other goods for purposes of the contract will be exempt from property taxes. Patents, fees and other municipal tax obligations may be negotiated with the Municipalities following the Autonomous Municipalities Act.

The Private Partner will be chosen by the Authority through a procurement process in compliance with all existing and applicable laws and regulations. The private proponents must show financial, managerial and technical ability to perform the contract, plus a surety or bond. The proponents will present a project plan with the financial structure including guaranties, access to credit or capital. The Contractor's business secrets will be maintained confidential and only known to key personnel under confidentiality agreements.

Private contractors must be natural or juridical persons and or joint ventures authorized to do business in Puerto Rico,

USA or any foreign country.

Public Private Alliances are exempt from Act 230 of the 23<sup>RD</sup> of July, 1974, as amended, known as "Public Accounting Act of the Commonwealth of Puerto Rico and are also exempt from "certain" provisions of Act Number 77, June 25<sup>TH</sup>, 1964, as amended, known as The Monopoly Act.

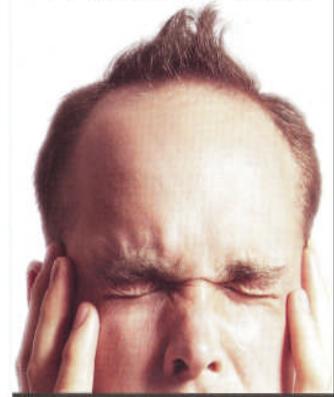
Since is natural to expect gains, as in any business venture, being so the case, these are the tax treatment clauses: Any Contractor under the Public Private Contract will be subject to a fix tax rate of ten percent (10%) of the net income received under the contract performance instead of any existing contribution provided under Section 1012(b) of the Puerto Rico Revenue Code. The net income received under the Contract will not be subject to the tax rate increases imposed under Act 7 of March 9, 2009.

Corporations and Partnerships may elect to be treated under Sub Chapter K of the Puerto Rico Internal Revenue Code, under which the entity will become a flow-through entity for income tax purposes. Share holders in limited partnerships will be subject to a tax rate of twenty percent (20%) of the net income derived from the Public Private Contract.

Any contracting entity under an Alliance Program will not qualify for the tax benefits provided under the Economic Incentive Act for the Economic Development of Puerto Rico.

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*The best things in life are free, but sooner or later the government will find a way to tax them. Author Unknown*

## Taxand launches new global guide to R&D tax incentives covering over 40 jurisdictions worldwide

By Taxand Editorial Staff

We are delighted to announce the launch of our new "Taxand Global guide to R&D tax incentives" which compiles local Taxand knowledge from key jurisdictions worldwide.

Taxand has designed this guide as an essential desk top "ready reference" to assist executives faced with considering the tax impact of locating, expanding or closing R&D facilities across the world.

While economies worldwide are struggling through a downturn, many businesses are con-

tinuing to invest significantly in research and development. These businesses realize that cutting R&D budgets can limit future growth. Looking outside your home country can often lead to both highly qualified and less expensive labor as well as specific jurisdictional tax incentives such as R&D credits, deduction incentives and grants.

We predict that companies will continue to place R&D under the microscope to make sure their expenditures will result in products in the near term. And as companies focus on managing their R&D spend, undoubtedly these companies will also closely evaluate the jurisdic-

tion where the R&D will take place.

This guide has been coordinated by Alvarez & Marsal Taxand, the US member of Taxand and includes contributions from Taxanders around the globe and a recent Policy Brief from the OECD entitled "Research and development: Going global" to provide a worldwide perspective. Delivering a country by country evaluation to R&D incentives principally the guide focuses on the income tax incentives offered in these jurisdictions.

### Taxand Countries

Argentina, Australia, Belgium, Brazil, Canada, Chile, China, Colombia, Cyprus, Denmark, Finland, France, Germany, Greece, India, Indonesia, Ireland, Italy, Japan, Korea, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Netherlands, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Puerto Rico, Romania, Russia, Singapore, Spain, Sweden, Switzerland, Thailand, Turkey, UK, Ukraine, USA, Venezuela

## Taxand success at ITR European Tax Awards 2009

By Taxand Editorial Staff

Taxand is celebrating following its success at the 2009 ITR European Tax Awards. Taxand members were presented with 10 awards at the ceremony - more than any other advisory firms - held at the prestigious Dorchester Hotel in London on the 19th May 2009.

After being shortlisted for some 14 National Tax Firm of the Year awards we won 8, in Cyprus, Greece, Ireland, Luxembourg (for the fourth year in a row), Malta, Spain (for the fifth consecutive year), Turkey and the Ukraine. Up for 5 National Transfer Pricing Firm of the Year awards, we were also delighted to win 2 in France and the Ukraine. In recognition of our integrated approach and cross-border capability, Taxand was also nominated in 3 pan-European award categories - European Tax Firm of the Year, European Indirect Tax



Firm of the Year and European M&A Tax Transaction of the Year.

"Being shortlisted for some 22 awards covering most of the 24 jurisdictions under scrutiny was a great achievement for Taxand. Our year-on-year performance is indicative of our market penetration and the reputation we are building through providing practical, independent tax advice, fast.

We've nearly doubled our nominations this year!" commented Taxand Chairman, Frédéric Donnedieu de Vabres.

The awards were determined by a panel from the Tax Executives Institute's European Chapter and ITR's editorial team following initial research canvassing the perspectives of tax executives, in-house counsel, tax advisors and private-practice lawyers.

### The Power of Asking the Right Person the Right Question

Don't underestimate the power of asking the right person the right question. The right answer might be worth much more than you ever suspected. Recently our Polish Taxand member identified an opportunity for one of our US clients to obtain a grant valued at US\$8 million. In another situation, our Puerto Rican Taxand member identified an opportunity for a client to save over US\$3 million. In both of these situations, it was simply a matter of our clients speaking with the local Taxand member to gain an understanding of the incentives available in these jurisdictions.

Your local contact in Puerto Rico is Juan Zaragoza

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For all our other jurisdictions visit us at [www.taxand.com](http://www.taxand.com) for a full list of contacts.



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**Zaragoza & Alvarado LLP** is a Limited Liability Partnership organized under the laws of Puerto Rico and is engaged in providing tax and business advisory services. We are the first truly multidisciplinary tax and business advisory professional services firm in Puerto Rico, unencumbered by the constraints of association with an auditing firm, and the regulatory and disclosure rules of the Securities and Exchange Commission.

Backed up by years of unmatched hands-on experience in public accounting, government and corporate tax, our team of tax consultants is redefining the market by providing professional tax and business advisory services through its "top-heavy" structure, designed specifically to provide high level tax consulting to our clients on a more personalized basis.

**Zaragoza & Alvarado LLP** is a proud member of **Taxand**, the leading provider of completely independent tax consulting services.

## Taxand

**Taxand** is the leading provider of completely independent tax consulting services, with over 2,000 tax advisors in nearly 50 countries.

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We do tax—and tax only. We focus on providing bespoke tax advice which is flexible and innovative and meets your needs. You enjoy the ultimate benefit of peace of mind from receiving high quality advice in the shortest possible timeframe—with the assurance that our approaches are both proactive and fully compliant with tax law.

### The independence advantage

**Taxand's** membership consists solely of independent tax firms, ensuring you can adhere to best practice by engaging separate tax advisors. Our independence also allows our advisors to focus on providing tax advice to you without the distraction and bureaucratic burden of supporting an audit practice or conducting time-consuming conflict evaluations.

### Global view, local knowledge

Our in-depth understanding of the tax systems of different countries—and the risks associated with cross-border transactions—improves your tax planning and helps you avoid costly surprises. Our advice is at once theoretically sound and practical to implement.

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