

House Bill 3070 Filed: Puerto Rico Internal Revenue Code of 2010 is on its Way

House Bill 3070 (Senate Bill 1909), "which proposes to establish the Puerto Rico Internal Revenue Code of 2010", was filed at the House of Representatives on Monday, November 22, 2010. If approved, it will provide tax reductions to individuals and corporations and will have the main purpose of stimulating the economy and creating jobs. Also, House Bill 3070 includes several new provisions that should be carefully examined.

We are in the process of analyzing the House Bill 3070, which is 1,653 pages long, but at this time would like to share with you some of the most important provisions. In the following paragraphs, we summarize such provisions.

1. Income Tax Withholding on Services Rendered

The income tax withholding on payments made by the Government of Puerto Rico and persons engaged in a Puerto Rico trade or business for services rendered would increase from 7% to 10%.

In addition, there will be a 10% income tax with

holding on the payments for services rendered by a "related person," as such term is defined in the proposed legislation. This 10% income tax withholding would apply regardless of whether the services were rendered within or without Puerto Rico. As an exception, the 10% income tax withholding would not apply to businesses enjoying tax benefits under the industrial or tourist tax incentives acts.

Under certain circumstances, the above income tax withholding may be reduced to 3% or completely eliminated.

2. Excise Tax on Acquisition of Certain Personal Property and the Related Credit

A 1% excise tax would apply on the value of acquisition of personal property from a related party. In the case of acquirers of personal property who derive less than \$50 million of gross receipts for any of the preceding three taxable years from a Puerto Rico trade or business, the excise tax would not

apply. Acquirers of personal property that are covered by a tax exemption grant under Act Number 73 of May 28, 2008 or any analogous or subsequent act are also exempted from the excise tax.

The taxpayers subject to the 1% excise tax mentioned above may claim a credit to reduce the income tax. Any unused amount of the credit may be carried forward to the following ten (10) taxable years.

3. Requirements to Submit Financial Statements with the Income Tax Return

As a general rule, taxpayers with volume of business for the year of \$1 million or more, but less than \$3 million, will be required to include Financial Statements reviewed by a Certified

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Public Accountant with license in Puerto Rico with their Income Tax Return. For those taxpayers with volume of business for the year of \$3 million or more, Financial Statements audited by a Certified Public Accountant with license in Puerto Rico will be required to be submitted with the Income Tax Return.

Furthermore, there are certain new requirements for related entities, as defined in the proposed legislation, to include Consolidated Financial Statements (reviewed or audited, as applicable) together with Consolidating Schedules that include the financial position and results of operations of the Parent Company and related subsidiaries. These Consolidating Schedules should also be reviewed or audited, as applicable, and must include the elimination entries and consolidating totals. In addition, branches of

foreign entities that are doing business in Puerto Rico may opt to include financial statements (reviewed or audited, as applicable) presenting the results of operations in Puerto Rico, instead of the Consolidating Financial Statements.

The Financial Statement requirements will not be applicable to not-for-profit entities and those taxpayers whose volume of business does not exceed \$1 million.

4. Combined Taxable Income in Case of Controlled Corporations

In the case of a controlled group of corporations or a group of related entities and in order to compute the additional tax applicable to corporations, the combined net income of all the corporations which are members of the controlled group should be considered. That is, instead of using the net income of each corporation to compute the additional income tax of each one, the net

income of all the members of the groups should be combined to determine the applicable tax rate.

5. Reduction in Corporate Alternative Minimum Tax Rate

The corporate alternative minimum tax rate would be decreased from 22% to 20%.

6. Adjustment for Corporate Alternative Minimum Tax

In order to compute the alternative minimum taxable income, the adjustment consisting of the payments to related persons for services rendered outside of Puerto Rico that are not subject to Puerto Rico income tax is now permanent.

As soon as we finalize our analysis of House Bill 3070, we will provide additional information.

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