

### *Governor of Puerto Rico signed act 12-2013: Tax amnesty effective May 13, 2013*

Act 12-2013 signed by the Governor of Puerto Rico on Monday, April 29, 2013 ("Tax Amnesty"), provides the opportunity to pay with a total abatement of interest, surcharges and penalties, income, sales and use, estate and gift tax debts as well as the income tax withholding debts. Debts assessed under Subtitle CC of the Puerto Rico Internal Revenue Code of 1994, as amended ("the 1994 Code"), known as the "Special Real Property Tax" are also covered under the Amnesty. The payment of the applicable debts under the Tax Amnesty must be made, or a payment plan must be entered into, on or before June 30, 2013. The purpose of Act 12-2013 is to provide financial relief to taxpayers in Puerto Rico and to provide the government with resources to improve its fiscal health. The Tax Amnesty is effective immediately upon its approval but its provisions will become effective on May 13, 2013.

#### **Which debts qualify?**

- Applies to income tax, sales and use tax, estate and gift taxes and excise taxes as well as the income tax withholding debts and other tax debts imposed by Act 7-2009 owed to the Puerto Rico Treasury Department ("Treasury"), including debts under any payment plans.
  - Applies to tax debts arising from
    - Income Taxes, under Subtitle A of the Puerto Rico Internal Revenue Code of 2011 (the "Code").
    - Estate and Gift Taxes under Subtitle B of the Code
    - Excise Taxes under Subtitle C of the Code
    - Sales and Use Taxes under Subtitle D of the Code
    - Income Tax Withholding under Subtitle A of the Code
    - Special Real Property Tax imposed under Subtitle CC of the 1994 Code
    - Taxes imposed by various tax incentives laws, or by any other law of analogous nature or which imposes any special income tax rate

#### **Qualification Requirements**

- The taxpayer must be in compliance with all of its tax filing and payment responsibilities, including those as withholding agents, corresponding to the periods commencing after December 31, 2012.

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- The taxpayer must detail all the debts covered by the Tax Amnesty. However, if the taxpayer avails itself to the benefits of the Tax Amnesty, it waives any objection to the assessment or notice of the debts covered by the Tax Amnesty.

- Taxpayers who have not filed their tax returns for the taxable years ending on or before December 31, 2011 may file such returns in order to benefit from the Tax Amnesty, but cannot enter into a payment plan.

- Applies to income tax debts for taxable years ended on or before December 31, 2011, except in the case of debts related to sales and use taxes and income tax withholding that apply for debts arose for periods ended before January 1, 2013.

**Tax Returns under Audit or Judicial Procedure**

- Taxpayers under audit may benefit from the Tax Amnesty by paying the corresponding tax on the proposed audit adjustments (without any interest, surcharges or penalties), resulting in the discontinuance of the audit process.<sup>10</sup>

- Taxpayers under administrative proceedings on deficiency notices who have been sent final deficiency notices or that have contested a deficiency notice determined by the Secretary of the Treasury, may benefit from the Tax Amnesty by paying the total amount of the deficiency determined by Treasury.

**Availability of Payment Plans**

- A taxpayer has the option to pay the full taxes during the term of the Tax Amnesty or may enter into a payment plan with Treasury on or before June 30, 2013. Under the payment plan, an initial payment of 10% of the principal amount of the debt must be made on or before June 30, 2013.

**The taxpayer may elect from the following payment plans terms:**

<b>One Year</b>	10% initial payment and the remaining 90% of the principal balance to be paid over a period of not more than 12 months, without interest;
<b>Two Years</b>	10% initial payment and the remaining 90% of the principal balance to be paid over a period of not more than 24 months, at a 5% annual interest rate;
<b>Three Years</b>	10% initial payment and the remaining 90% of the principal balance to be paid over a period of not more than 36 months, at a 7% annual interest rate;
<b>Four Years</b>	10% initial payment and the remaining 90% of the principal balance to be paid over a period of not more than 48 months, at a 10% annual interest rate.

**Who may not benefit from the Tax Amnesty?**

- The elected, appointed or confirmed government officers.
- Taxpayers who have an ongoing proceeding for tax related crimes.
- Taxpayers who were convicted for tax fraud or whose source of income is illegal, or where activities or businesses may be identified as criminal activities under “the Act against Organized Crime.”

**Administrative Provisions**

- Payments under the provisions of the Tax Amnesty will be voluntary and final for all purposes and will not be subject to

subsequent claims for refund or credit.

- The Secretary of the Treasury may issue the necessary circular letters or administrative determinations to establish the procedures of the Tax Amnesty.

- The Secretary of the Treasury has the authority to eliminate from the records of the Treasury any interest, penalties and surcharges related to tax debts which have no outstanding principal balance.

**Zaragoza & Alvarado comments on the Tax Amnesty**

The Tax Amnesty provides a golden opportunity for taxpayers to pay their debts with Treasury. The availability of payment plans of up to four years as well as the eligibility of businesses with decrees under the various tax incentives acts are very attractive and unique provisions of this act. It is not clear whether, similar to prior amnesties, taxpayers with identified tax exposures, can approach Treasury on a voluntary basis to submit their case to be processed as one under audit.

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