

Global Tax Alert

News from Americas Tax Center

Puerto Rico Treasury Department releases 2019 informative return forms for deducting expenses

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The Puerto Rico Treasury Department (PRTD) has issued 2019 informative return forms for deducting expenses, which are required by the tax reform (*Act 257-2018*) enacted in 2018.

Background

On 10 December 2018, Puerto Rico enacted *Act 257-2018*, which includes numerous amendments to the Puerto Rico Internal Revenue Code of 2011 (PR Code). In the months following the enactment of *Act 257-2018*, there have been additional amendments to the PR Code. The Puerto Rico Legislative Assembly approved additional amendments through House Bill 2172 (HB 2172). Currently, HB 2172 is awaiting final signature from the Governor of Puerto Rico. For more information on *Act 257-2018*, see EY Global Tax Alert, [Puerto Rico enacts tax reform in December 2018](#), dated 28 December 2018.

Act 257-2018 has increased the focus on enforcement measures and compliance burden on taxpayers by increasing the requirements for the filing of informative returns. The changes introduced under *Act 257-2018* make the deductibility of certain operating expenses for income tax return purposes contingent upon the: (1) filing of certain required informative returns; and (2) if applicable, the deposit of income tax withheld with the PRTD.

Earlier this year, the PRTD released draft versions of the informative returns with the intent of allowing taxpayers and practitioners to become familiar with the revisions. On 8 November 2019, the PRTD issued [Publication 19-03, Developer Guide Informative Returns Electronic Filing Requirements for Tax Year 2019](#), which included final versions of the informative returns.

Most of these informative returns are due annually on 28 February of each year, except for those related to payments to nonresidents, which are due on 15 April. All these forms must be filed, regardless of the amount, through the PRTD's electronic filing platform, named SURI by its Spanish acronym.

Tax deductions limited to compliance with reporting

Act 257-2018 amendments to the PR Code include:

(1) expanding the reporting of certain expenses by requiring businesses to file informative returns; and (2) making compliance, with this modified reporting mandate, a condition for claiming certain deductions for income tax purposes. Expenses not previously required to be reported, unless paid to individuals, include rent, health or accident plans, property and contingency insurance, public liability and surety insurance, telecommunications services, internet services, cable and satellite television services, electricity, water and sewage, and advertising and marketing.

Exhibit I below includes a list of the informative returns and the parties responsible for filing them. A copy of the forms can be obtained from the PRTD's website by searching under the tax form number ([2019 Informative Returns](#)).

New forms

In addition to the expanded filing requirements, the following new informative returns are now available:

Forms 480.6SP, 480.6SP.1 and 480.6SP.2 – Services Rendered

To report payments for services rendered during the year that were previously reported on Forms 480.6A, 480.6B and 480.6B.1, taxpayers must file Form 480.6SP.1 to comply with the new quarterly reporting.

Form 480.6E – Mail Order Sales

Non-withholding agent merchants must file this annual informative return with the PRTD to report mail order purchases made by Puerto Rico residents.

Form 480.6G – Transactions Made by Electronic Means

Payment processing entities must file this informative return to report annually the total amount of payments processed and credited to the participating merchant.

Form 480.7E – Advertising, Insurance Premiums, Telecommunication, Internet, Access and Cable or Satellite Television Services

Providers of these services must file an annual informative return for payments received from every client (commercial or residential).

Alternative minimum tax (AMT) impact

Businesses whose volume is less than US\$3 million will only be able to claim a deduction for certain expenses if: (1) the corresponding informative returns have been filed; and (2) an Agreed Upon Procedures (AUP) report issued by a Puerto Rico licensed Certified Public Accountant (CPA) is included with the return. For businesses whose volume is US\$3 million or more, the requirement of including an AUP is replaced with the mandatory submission of audited financial statements.

Implications

Even though the filing of informative returns under the PR Code is by no means a new requirement, the changes introduced under *Act 257-2018* will likely increase the number of forms businesses will be required to file, beginning with the year 2019 informative returns.

While there is a high probability that future technical amendments to the PR Code will affect some of these forms, namely Form 480.7E, companies should assess the implications of these changes and validate the information available in their reporting systems, so the forms are timely filed. As part of this new requirement, companies operating in Puerto Rico should expect their tax advisors to request additional information to validate the filings were made, given the potential adverse implications of noncompliance for income tax purposes.

The PRTD has issued most of the 2019 income tax forms, which seem to reflect an administrative position of requiring the filing of an informative return to claim certain expenses for regular and alternative minimum tax purposes, even though this requirement is not clear under the PR Code (i.e., *Act 257-2018* or its amendments). Since electronic filing is required for certain types of returns (for instance Form 480.20 as of 2018, *Corporation Income Tax Return*), it is yet to be determined if the tax authorities will incorporate informative return filing validations as a condition to allowing deductibility of the corresponding expenses.

Since there are no extensions to the due date for filing informative returns, taxpayers should start to assess their 2019 filing requirements, so all required forms are timely filed. The importance of complying was evident in a PRTD electronic communication sent in the early part of November 2019 through SURI, which informed merchants that a US\$500 late filing penalty will be automatically imposed, beginning on 1 January 2020, for each informative form filed late. Although this penalty existed under the PR Code before the enactment of *Act 257-2018*, it appears the PRTD is moving towards greater enforcement as a means of encouraging compliance.

Exhibit I

Tax form	Form name
480.5 (a)	Summary of Informative Returns
480.6A (a)	Informative Return - Other Income not Subject to Withholding
480.6B (a)	Informative Return - Other Income Subject to Withholding
480.6B 1 (a)	Annual Reconciliation Statement of Other Income Subject to Withholding
480.6C (a)	Informative Return - Payments to Nonresidents or for Services from Sources Outside of Puerto Rico
480.3 (a)	Nonresident Annual Return for Income Tax Withheld at Source
480.6D (a)	Informative Return - Exempt and Excluded Income and Exempt Income Subject to Alternate Basic Tax
480.6SP - NEW (a)	Informative Return - Services Rendered
480.6SP.1 - NEW (a)	Quarterly Return of Tax Withheld on Payments for Services Rendered
480.6SP.2 - NEW (a)	Annual Reconciliation Statement of Services Rendered
480.7A (b)	Informative Return - Mortgage Interest
480.7E - NEW (b)	Informative Return - Advertising, Insurance Premiums, Telecommunication, Internet, Access and Cable or Satellite Television Services (c)

- a. Informative Return - Filed by the payor
- b. Informative Return - Filed by the payee (vendor or service provider)
- c. Proposed technical amendments HB 2172:
 - Requires this form to be filed by payors who do not file their income tax return with Audited Financial Statements or agreed Upon Procedures Report (AUP) to be able to claim for Alternative Minimum Tax or Alternate Basic Tax
 - Postpones requirement for service providers to file this return for two years (calendar 2019 and 2020), and authorizes the Treasury Secretary to postpone for an additional period

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