

**Qualified Payments & Loans for Disaster Assistance**  
**after the passage of Hurricane Fiona**

In light of the recent passage of Hurricane Fiona and the state of emergency declared by the Governor of Puerto Rico, as well as the Disaster Declaration signed by US President Biden, the Puerto Rico Treasury Department (the “PRTD”) issued on September 27, 2022, Administrative Determination 22-08 (“AD 22-08”) and on October 4, 2022, Circular Letter of Internal Revenue 22-14 (CL 22-14) to, among others, exclude from gross income any (i) Qualified Payment, and/or (ii) Loans provided for Disaster Assistance made by an employer to an employee or independent contractor to assist in the process of mitigating any damage or loss suffered by said individual by reason of a Governor Declared Disaster.

*I. Qualified Payments for Disaster Assistance*

In terms of Disaster Assistance, “Qualified Payments” mean any amount paid to or for the benefit of an individual:

- (a) To supply, reimburse or pay necessary and reasonable expenses to the individual or his/her family, such as food, medicine, gasoline, accommodation, expenses, medical expenses, childcare expenses, dependent care expenses, generation of electricity, expenses to supply water to the individual’s home and/or to cover funeral expenses, incurred as a result of a Disaster Declaration issued by the Governor;
- (b) To reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a principal residence, or repair or replacement of tangible personal property contained therein, to the extent that the needs for such repair, rehabilitation, or replacement is attributable to a Disaster Declaration issued by the Governor of Puerto Rico, whether said payment is made directly to the supplier of the good or service or the individual;
- (c) Payments made directly to the individual as aid to cover costs of any damages and losses suffered by such individual as consequence of a Disaster Declaration issued by the Governor of Puerto Rico; or
- (d) Payments made by the federal government, the Government of Puerto Rico or any municipality, or agency or instrumentality thereof, in relation to a Disaster Declaration issued by the Governor of Puerto Rico to promote general welfare, but only to the extent that any expense offset by such payment is not covered otherwise by insurance or in another way.

Thus, per AD 22-08 and CL 22-14, the PRTD determined that for the amount received by the affected individual to qualify as a Qualified Payment, all of the following requirements must be met:

1. Payments made must be delivered to individuals during the period from **September 19, 2022, to December 31, 2022** (“Eligible Period”).
2. The total amount paid is in addition to the compensation that the employee usually receives.
3. No discrimination in favor of highly compensated employees, as such term is defined in Section 1032.06 (d)(2) of the Code.
4. Payments made are not in lieu of wages earned by the employee or compensation due to the independent contractor.
5. The amount paid (in cash, or other personal property or services) is limited up to \$2,000 per month for each employee or independent contractor up to a total amount of \$4,000 per individual during the Eligible Period.

For these purposes, all Qualified Payments made to the employee or independent contractor will be considered for the limitation of the amount of said Qualified Payments, and therefore will be excluded from the gross income of the employee or independent contractor, regardless of whether such payments have been made directly to the employee or independent contractor, or if the payments are for goods or services paid for the benefit of said employee or contractor.

Qualified Payments made by an employer in compliance with the provisions of AD 22-08 and CL 22-14 will also be deductible to determine the net income subject to income tax of the employer or merchant. Finally, Qualified Payments must be reported in Form 499R-2/W-2PR (Withholding Statement) for employees and in Form 480.6D (Informative Declaration – Exempt Income) for independent contractors.

## II. Interest Free Loans

Any employer offering interest-free Loans to its employees or independent contractors during the Eligible Period (period from **September 19, 2022, to December 31, 2022**) to provide assistance to said employees or independent contractors to cover the expenses described Section I(a) & (b) above, shall not have to recognize income for said loan, provided that the total amount of the loan or loans granted during said period does not exceed \$20,000.

The employer may grant more than one loan of this type to the extent that the total amount of all loans granted does not exceed \$20,000 per employee. Also, the employer may offer these loans to the employee in addition to the Qualified Payments, assistance described above. Finally, to enjoy this exclusion under AD 22-08, the employer must establish the repayment term for the Loan which shall not exceed twenty-four (24) months from the date granted.

*This document has been prepared for information purposes only and is not intended as and should not be relied upon as legal advice. If you have any questions or comments about the matters discussed in this notice, wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us.*

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