

PR Income Tax Exclusion on Certain Tax Qualified Retirement Plan Distribution to Non-PR Residents

The Puerto Rico Treasury Department recently issued Circular Letter Num.21-20 (the “CL 21-20”) to provide guidance on the evidence that must be furnished by non-PR resident retirement plan beneficiaries or participants to not be subject to income tax and withholding at source under the Puerto Rico Internal Revenue Code of 2011 (“PR IRC”). CL 21-20 is based on amends brought by Section 45 of Act 40-2020 (“Act 40”), which back in 2020 amended PR IRC Section 1081.01, among other technical provisions.

Section 45 of Act 40:

States that for tax years beginning after December 31, 2018, no Puerto Rico income tax shall be imposed to distributions made by retirement plans qualified under both the United States Revenue Code of 1986, as amended, (the “US Code”) and the PR IRC, funded by a US-based trust to a participant or beneficiary that at the time of the distribution is not a resident of Puerto Rico. The rule applies exclusively to plans qualified under both the U.S. Code and the PR IRC (known as “dual-qualified plans”) **if** funded through a trust located in the United States. It should be noted that these provisions will not apply to distributions from PR IRC qualified or nonqualified plans funded through a Trust situs in Puerto Rico, even when the participant or beneficiary ceases to be a bona fide resident.

CL 21-20:

For the exclusion to be recognized, the participant or beneficiary needs to confirm or evidence his non-PR residency status to the Plan Administrator. CL 21-20 explains there are two methods to evidence this threshold:

1. Submit IRS Form 8898 “*Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession*” to the employer. Based on the IRS Instructions, Form 8898 is applicable if these two conditions are met:
 - a. Individual has a worldwide gross income in that tax year of more than \$75,000.
 - b. For income tax purposes under the US Code, the participant or beneficiary wants to change his bona-fide residence status from Puerto Rico to any of the other US Possession or States.
2. If Form 8898 is not applicable, the participant or beneficiary will have to submit the following evidence to the Plan Administrator or the retirement plan service provider:
 - a. An affidavit under penalty of perjury that contains all the personal circumstances of the participant or beneficiary, as applicable, which will includes: name, postal address, and the date they became a resident of their current address. In addition, it must detail the information including a statement establishing that the retirement plan is qualified under the US Code, and in which state the US trust was created.
 - b. Evidence of any correspondence received at the current address outside of Puerto Rico addressed to the participant or beneficiary.
 - c. Copy of a valid identification (license and / or electoral card) issued by a governmental entity of the new place of residence.

Any participant or beneficiary who does not submit all the above evidence will still be considered a resident of Puerto Rico for these purpose and therefore will be subject to any withholding and payment of income tax in Puerto Rico that is applicable under the PR IRC.

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