

NOTICE TO CLIENTS AND FRIENDS

Statutory Changes to PR Trusts, PR Retirement Plan Provisions and Estate Tax Matters

On February 8, 2017, Governor Ricardo Roselló signed into law Act No. 9-2017 (the “Act 9”) which aims to protect, retain and attract professionals to Puerto Rico by providing more flexibility to retirement plans and ease their establishment, and to provide for better protection of trust assets. Act 9-2017 amends the Puerto Rico Internal Revenue Code of 2011, as amended (the “PR Code”), and the Trust Act, Act No. 219-2012 (the “Trust Act”). Below please find key amendments of Act 9:

A. Amendments to the Trust Act

1. Establishes that trusts in PR now have full legal personality and provides for changes in trust termination rules.
2. Eliminates access by creditors to trust income in certain circumstances (excess of \$36k/year, payments for services, and judgments against beneficiaries).
3. Adds a new Chapter IV to the Trust Act which provides updated definitions to Retirement Plan Trust.
4. Establishes the general rule for beneficiary designations of married participants in Retirement Plan Trusts that the plan beneficiary upon the death of the participant will be the surviving spouse, unless a different beneficiary is designated, subject to required spousal consents under the Employee Retirement Income Security Act of 1974 (“ERISA”). Such consent will not be necessary upon designation of a different beneficiary other than the spouse if the couple signed a prenuptial agreement and the respective Retirement Plan Trust is not subject to the provisions of Title I of ERISA.
5. All property under a PR retirement plan trust will be excluded from PR Civil Code’s provisions for laws of succession and descent.

B. Amendments to the PR Code Related to Retirement Plans

1. Modifies the allowed deduction for employer contributions to a defined contribution plan to the amount allowed as contributions to such plans.
2. Attempts to increase the allowable employer and employee contributions to a defined contribution plan to the **lesser** of (i) \$75k; or (ii) 25% of Net Income, excluding rollover from other PR qualified plans. It is unclear, however, how or when the \$75k limit could apply without the amendments to the maximum contribution limitations (\$270k for 2017).
3. The Highly Compensated Employees definition is modified to include employees who for the prior taxable year obtained compensation from the employer that exceeds \$150k (currently at \$120k). The compensation threshold limitation linked to Section 414(q)(1)(B) of the United States Internal Revenue Code of 1986, as amended, to be considered a Highly Compensated Employee is removed.
4. The Discrimination Tests required under the PR Code would not apply to plans with less than 100 participants and less than \$10 million in annual gross income, subject to employer providing benefits to eligible employees of at least 3% of the compensation (a.k.a. New PR Safe Harbor Plans).

C. Amendments to the PR Code Related to Estate Taxes

1. The value of the property transferred to a PR trust by a PR resident (at the time of death) if the decedent is not the trustee, will not be included in the decedent’s gross estate even if he/she is the beneficiary of the trust if the trust does not terminate by reason of death of the decedent and the assets of the trust do not have to be collated to comply with the provisions of the Civil Code.
2. Stock issued by any domestic corporation or partnership will be considered “property located in PR” without considering current decedent’s stock ownership 10% test and the issuer entity’s gross income from trade or business 80% test, and or 100% PR property test.

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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