

**PR TREASURY ACTIVATES DISTRIBUTIONS FROM
RETIREMENT PLANS AND/OR IRAS TO COVER HURRICANE FIONA DAMAGES**

On September 27, 2022, the Secretary of the Puerto Rico Treasury Department (the “Secretary”) issued the Administrative Determination No. 22-08 (“DA 22-08”) to establish various tax reliefs for the benefit of taxpayers and/or their authorized representatives affected by Hurricane Fiona. Among such relief provisions, DA 22-08 activates the special disaster distributions (“Special Disaster Distributions”) after the occurrence of an event declared as a disaster by the Governor of Puerto Rico (“Declared Disaster”) as it was declared for Hurricane Fiona and pursuant Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”), Sections 1081.01(b)(1)(D) and 1081.02(d)(1)(I).

In connection with the directions under DA 22-08, the Secretary has also issued Circular Letter of Internal Revenue No. 22-13 (“CC 22-13”) to establish the rules and procedures applicable to the Special Disaster Distributions by eligible individuals of (i) participant benefits under a Puerto Rico tax qualified retirement plan (“Retirement Plan”), and/or (ii) deductible individual retirement account (“IRA”) funds, to cover losses or damages suffered due to Hurricane Fiona. The following summarizes the applicable rules related to CC 22-13:

General Provisions on Special Disaster Distributions

The Retirement Plan and IRA distributions that are deemed qualified as Special Disaster Distributions under CL 22-13, are those that shall be processed in compliance with the following general requirements:

- (i) Distributions must be **requested and paid** during the period from **October 6, 2022 through December 31, 2022** (the “Eligible Period”);
- (ii) In case of Retirement Plans, distributions may not be paid in form of annuities and installment payments.
- (iii) Only individuals considered Puerto Rico bona fide residents for the entire calendar year 2022 under the PR Code (i.e. physical presence in PR for at least 183 days during a calendar year) are considered eligible individuals (the “Eligible Individual”). Eligible Individuals may request Special Disaster Distributions for the benefit of spouses, ascendants or descendants;
- (iv) Eligible Individuals may opt to receive Special Disaster Distributions regardless if the Retirement Plan or IRA provides other forms of related payments (i.e. loans or hardship distributions).
- (v) Special Disaster Distributions are not subject to restriction period for continuation of contributions to the Retirement Plan after completing the distribution (i.e. 12-month suspension for Retirement Plans).
- (vi) Section 1081.02(g) penalty of 10% from IRA early withdrawals (before attaining 60 years of age) does not apply to such disaster distributions.
- (vii) Special Disaster Distributions cannot be used to make contributions to a Retirement Plan or IRA.
- (viii) Special Disaster Distributions must be used to cover or reimburse Eligible Expenditures (as defined below) incurred by Eligible Individuals (as well as by the spouse, ascendants or descendants of said Eligible Individual) or his/her beneficiary(ies) as a result of the occurrence of Hurricane Fiona; and

- (ix) Compliance with the distribution request process described below is also required.

The Eligible Expenditures for purposes of CL 22-13 include, but are not limited to: (a) expenses for the repair of damages to a residence, commercial establishment or motor vehicle; (b) expenses for the acquisition of a new principal residence or a commercial establishment when such principal residence or commercial establishment was destroyed by Hurricane Fiona; (c) payment of medical expense; (d) replacement or repair of real property; (e) purchase of food and fuel; and (f) payments for purchase or repair of power generators or lodging and food expenses due to the total or partial destruction of the principal residence during the recovery period after Hurricane Fiona occurred. Said Eligible Expenditures can be incurred after the Eligible Period, subject to that the Special Disaster Distribution is requested and completed during the Eligible Period.

Tax Treatment on Special Disaster Distributions

The tax rules and reliefs on Special Disaster Distributions under PR Code and CL 22-13 include the following:

1. The **first \$10,000** of the Special Disaster Distributions will be excluded from taxable gross income determination, and therefore shall be not subject to income tax, alternative basic tax (“ABT”), and tax withholding at source;
2. Special Disaster Distributions in **excess of \$10,000 up to a maximum of \$100,000** will be subject to a fixed preferential tax rate of 10% of the taxable amount instead of any other tax under the PR Code including the ABT. Such 10% fixed tax rate shall be withheld at source upon distribution.
3. Subject to applicable Retirement Plan imposed limits (if any), the Eligible Individual may be able to request various Special Disaster Distributions from one or more Retirement Plans or IRA accounts during the Eligible Period, but up to a combined maximum of \$100,000 per a Declared Disaster (in the aggregate per Eligible Individual, not per IRAs or Retirement Plan). Special Disaster Distributions that exceed \$100,000 during the Eligible Period will be subject to applicable regular tax provisions under the PR Code.
4. To determine the amount to be excluded or subject to the preferential tax rate of 10% as described above, all Special Disaster Distributions made during the Eligible Period per a Declared Disaster will be added even thought were made from different Retirement Plans and/or IRAs; and
5. In the event the applicable withholding is not made upon distributions in excess of \$10,000, the Eligible Individual will be subject with respect to said distributions to regular income tax rates and applicable early withdrawal penalties under the PR Code.

Request Process for Special Disaster Distributions

In order to receive a Special Disaster Distribution, the Eligible Individual must submit to its employer, plan administrator or the financial or insurance institution holding the IRA, as applicable, by means of personal delivery, mail or electronically, a certification signed under penalty of perjury (the “Certification”) detailing the following information along with the applicable institution’s distribution application form:

1. Name and mailing address of the Eligible Individual;
2. Physical address of the principal residence of the Eligible Individual as of the date the application for the Special Disaster Distributions is submitted;
3. A Certification that the individual is a bona fide resident of Puerto Rico and that will continue to do so for the entire year 2022;
4. A Certification that the amount requested as a Special Disaster Distributions does not exceed the limit of \$100,000 established;

5. A Certification that the amount requested as an Special Disaster Distributions will be used to cover expenses related to (i) losses suffered from the impact of Hurricane Fiona; (ii) extraordinary expenses incurred to cover basic necessities after Hurricane Fiona; (iii) to compensate for unearned income after Hurricane Fiona; or (iv) other expenses considered as an Eligible Expenditures;
6. A Certification that the Eligible Individual has not received previous Special Disaster Distributions, or the amount and distribution date in the event such Special Disaster Distributions were already received;
7. A Certification that the Eligible Individual has not received previous Special Disaster Distributions exempt from withholding at source (\$10,000 or less), or the amount and distribution date in the event such Special Disaster Distributions were already received; and
8. A Certification that the Eligible Individual will be the responsible for the payment of applicable tax payments on the distributions requested in the event that either (i) at the end of the tax year is not considered a Puerto Rico bona fide resident by virtue of not meeting residency rules under the PR Code and the regulations thereunder; (ii) the amounts received as Special Disaster Distributions were not used to covered Eligible Expenditures; or (iii) distributions were in excess of \$100,000.

Employer, Plan Administrator and Financial or Insurance Institutions Responsibilities

The employer, plan administrator or the financial or insurance institution holding the IRA will be subject to the following responsibilities with respect to tax withholding and reporting with respect Special Disaster Distributions:

1. Withhold the preferential 10% tax rate on taxable Special Disaster Distributions in excess of \$10,000, or the applicable tax rates under the PR Code when distributions exceed the \$100,000 cap.
2. Report the Special Disaster Distributions in a Form 480.7C, Informative Return - Retirement Plans and Annuities, or Form 480.7, Informative Return – Individual Retirement Account, as applicable, for taxable year 2022.
3. Submit the amounts withheld to the Puerto Rico Treasury Department (“PR Treasury”) no later than the fifteenth (15th) day of the following month of said withholding.
4. If the required withholding is not made or if made was not deposited with PR Treasury as required, the withholding agent will be responsible to pay the applicable taxes and penalties on such Special Disaster Distributions.
5. The Special Disaster Distributions will be deemed first from pre-tax contributions of the Eligible Individual until exhausted and then from after-tax contributions, if any.

Note that evidence of the Eligible Expenditures incurred is **not** required to be submitted under CL 22-13 as part of the request for Special Disaster Distributions and the Certification. However, plan administrators may do so as a matter of internal administration. However, the entity that receives the request must verify if the Eligible Individual certified that he/she is a bona fide resident of Puerto Rico and that will continue to do so for the entire year 2022 in order to process the Special Disaster Distribution and must take in consideration if prior Special Distributions have been requested under this guidance.

Notwithstanding the above, the PR Treasury reserved its right under CL 22-13 to request additional documents or information from the Eligible Individual to validate that he, his spouse, descendants or ascendants who were benefited by the Special Disaster Distributions were residents of Puerto Rico during the entire calendar year 2022, and that the amount received was used to cover Eligible Expenditures. Such a requirement shall be considered as a supplement to the Eligible Individual’s income tax return.

Implications to Retirement Plans

The provisions of CL 22-13 with respect to PR Code qualified retirement plans are **optional**. Moreover, the employers that maintain PR Code qualified plans may, but are not required to, adopt all or some of the provisions under CL 22-13. Also, dual qualified plans are authorized under CL 22-13 to adopt distribution rules under the United States Internal Revenue Code of 1986, as amended, or under the reliefs provided by the Internal Revenue Service (“IRS”) applicable to retirement plan provisions to those affected by Hurricane Fiona.

Retirement Plans that adopt amendments to provide for the provisions under CL 22-13 must do so no later than December 31, 2022. However, Special Disaster Distributions can be made even if the retirement plan has not been amended to adopt the applicable provisions; provided the Special Disaster Distributions are requested and completed during the Eligible Period. Notwithstanding, if the Retirement Plan adopted the provisions of the Administrative Determination No. 17-29 to allow for distributions as a result of the passage of Hurricane Maria, and/or Circular Letter of Internal Revenue No. 20-09 to allow for distributions as a result of the early of 2020 earthquakes, are deemed to be amended and in compliance with PR Code Section 1081.01(b)(1)(D), and not further amendments must be made, unless different provisions or parameters are been adopted for this relief distributions window.

Note however that even tough CL 22-13 may not require amendments to the Retirement Plan subject to the above described, affirmative adoption of this distribution amendments may be required by the plan administrator or the financial or insurance entity to process the Special Disaster Distributions, or to evidence the approval of such distributions.

Finally, amendments to adopt CL 22-13 provisions will not be considered as qualification amendments under Circular Letter of Tax Policy No. 16-08 and therefore, are not required to be submitted for a favorable determination from PR Treasury.

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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