

Puerto Rico Tax Alert

FAFAA issues rules for use of certain income tax credits

April 4, 2017

Summary

On March 22, 2017, the Disbursement Authorization and Tax Concession Committee (the "Committee") issued Resolution 2017-01 (the "Resolution") establishing that a Granted Credit (as defined below) may be sold by its Holder (as defined below) or claimed against the income tax of the Holder for the 2016 Tax Year without additional restrictions than those imposed by the Puerto Rico Internal Revenue Code of 2011, as amended (the "Code"), or the special laws applicable to the Granted Credit. Only the tax credits specifically listed in the Resolution would be covered by the Resolution.

Detail

Overview

Act 2-2017 created the Fiscal Agency and Financial Advisory Authority (the "FAFAA") and empowered FAFAA to issue administrative orders and establish commissions to coordinate policies and procedures related to liquidity and cash management for any governmental agency. FAFAA was further empowered to take all the necessary actions to guarantee all government contracts are aligned with the Puerto Rico government's fiscal plan and PROMESA.

As a result, on March 7, 2017, FAFAA issued Administrative Order OA-2017-01 (the "Order") with the intent to control the issuance and use of tax credits already granted or to be granted under any Puerto Rico incentive law authorizing the issuance of tax credits.

The Order also created the Committee to review pending and new tax credit petitions and establish limitations on the use of credits granted and to limit their use for up to four (4) years, among others. The Committee is constituted by the Director of FAFAA, the

Secretary of the Puerto Rico Treasury Department (the "PR Treasury"), and the Executive Director of the Office of Management and Budget.

Key terms

The Order defines the term Holder as any natural or legal person who has generated, or acquired by means of purchase, a Granted Credit. The Resolution further provides that a Granted Credit includes any of the tax credits listed therein, including credits granted under Act 83-2010 (Green Energy Incentives); Act 73-2008 (Industrial Incentives); Act 212-2002 (Urban Centers Incentives); Act 74-2010 (Tourism Incentives); and Act 27-2011 (Film Incentives). The Resolution also provides the rules to determine whether a credit is a Granted Credit.

Tax credit registration requirement

The Resolution further confirms the registration requirement established in the Order, which imposes an obligation on the Holder to register

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its Granted Credits with the PR Treasury, in the form and manner to be established by the Secretary of the PR Treasury. It should be noted that noncompliance with this registration would cause the Holder to lose the rights to claim the tax credit.

Additionally, the Resolution provides that a Holder may sell its Granted Credit or may claim such Granted Credit against its income tax liability for the 2016 taxable year without additional limitations than those imposed by the

Code, the corresponding special law applicable to the Granted Credit, or any other law as of the date of the Order.

Effectiveness

Taxpayers who are Holders of a Granted Credit should evaluate how the Order and the Resolution may affect their current and prospective Puerto Rico income tax liabilities since the Resolution is in full force since March 22, 2017.

Contact us

If you would like to discuss this alert in more detail, please contact any of the attorneys below:

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