

Taxes and Employee Benefits Department

November 3, 2017

NOTICE TO CLIENTS AND FRIENDS

Disaster Tax Relief and Airport and Airway Extension Act of 2017

On September 29, 2017, the President of the United States of America signed Public Law 115-63, titled “Disaster Tax Relief and Airport and Airway Extension Act of 2017” (the “Act”). One of the main purposes of the Act is to provide a tax relief for certain employers that were affected by Hurricanes Harvey, Irma and/or Maria (collectively, the “Hurricanes”).

The tax relief is provided through a tax credit (the “Employee Retention Credit”) which can be used by an Eligible Employer (defined below) against their Federal income tax liability. The Employee Retention Credit can be up to 40% of the Qualified Wages (defined below) paid by an Eligible Employer to an Eligible Employee (defined below), and up to \$6,000 per Eligible Employee (i.e.: up to 40% of \$6,000 per Eligible Employee, which may give up to \$2,400 credit per each Eligible Employee). An individual that was employed by an Eligible Employer as of September 16, 2017 and received Qualified Wages within the periods provided below can be considered an “Eligible Employee” for purposes of the Employee Retention Credit.

To be eligible for the Employee Retention Credit, the Eligible Employer must have been conducting an active trade or business in a disaster area, prior to the passing of the Hurricanes, and must have become inoperant, as a result of damages sustained due to the passing of the Hurricanes during any period from September 16, 2017 through January 1, 2018 (an “Eligible Employer”). Wages paid during the above mentioned period, by an Eligible Employer to an Eligible Employee (the “Qualified Wages”), which occurred:

- Beginning on the date on which the trade or business first became inoperant because of the passing of the Hurricanes, and
- Ending on the date on which such trade or business resumed significant operations at the impacted location within the disaster area.

Qualified Wages include wages paid to an Eligible Employee even if the individual performed no services, performed services at a different Eligible Employer’s location, or performed services at the impacted location before significant operations resumed.

It is important to note that the Act provides specific wording in connection to the implementation of the Employee Retention Credit within Puerto Rico. The Act provides that the Secretary of the Treasury of the Internal Revenue Service (“IRS”) shall pay to the Government of Puerto Rico the amounts estimated by the Secretary of the Treasury of the IRS as being equal to the aggregate benefits that would have been provided to residents of Puerto Rico by reason of the provisions of this Act, if a mirror code tax system had been in effect in Puerto Rico. As a condition to the foregoing, the Act provides that the Secretary of the Treasury of the IRS shall not issue the Employee Retention Credit unless Puerto Rico has a plan, which has been approved by the Secretary of the Treasury of the IRS, under which the Government of Puerto Rico will promptly distribute such payments to those Eligible Employees, which are residents of Puerto Rico

Notwithstanding the above, and subject to the approval of such plan, an Eligible Employer located in Puerto Rico may be able to request the Employee Retention Credit without the need to claim such credit against its federal income tax liability, and therefore may be able to use the credit against their Puerto Rico income tax liability or as otherwise provided in the plan approved by the Secretary of the Treasury of the IRS.

We are currently monitoring further guidance from the Puerto Rico Treasury Department and the IRS in order to determine the steps to follow for Puerto Rico Eligible Employers who may qualify for the Employee Retention Credit.

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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