

# FERRAIUOLI LLC

Taxes & Employee Benefits

May 14, 2014

## NOTICE TO CLIENTS AND FRIENDS

### New changes proposed that affect Corporate and Individual Taxpayers

On April 30, 2014, House Bill 1919 (“HB 1919”) was filed to propose new changes to various Acts including the Act 73 of May 19, 2008, known as the Economic Incentives Act of Puerto Rico, as amended (“Act 73”), Act 83 of July 19, 2010, known as the Clean Energy Act, as amended (“Act 83”) and Act 1 of January 1, 2011, known as the Puerto Rico Internal Revenue Code of 2011, as amended (the “Code”). Some of the proposed measures will have a direct impact on the tax liabilities of individual and corporate taxpayers. The most significant changes proposed by HB 1919 are as follows:

### Changes to the Code

HB 1919 proposes the following changes to the Code:

1. The Alternate Basic Tax bracket for tax years commencing after December 31, 2013 would be modified to accelerate the phase-in of the higher Alternate Basic Tax rates, with the maximum 24% Alternate Basic Tax rate applying to individuals with an Alternate Basic Taxable Income of \$300,000;
2. The credit for prior year Alternate Basic Tax payments will be limited to 25% of the excess of the Regular Tax over the Alternate Basic Tax, and may only be claimed with respect to the Alternate Basic Tax paid for tax years ending on or before January 1, 2014;
3. The long-term capital gains tax rate for individuals will be increased from 10% to 15%;
4. The corporate alternative tax over long-term capital gains will be increased from 15% to 25%;
5. The preferential individual tax rate on interest paid or credited on deposit accounts will be increased from 10% to 17%;
6. The preferential individual tax rate on dividend distributions will be increased from 10% to 15%;
7. The gross income subject to the Gross Receipts Tax will exclude the cash received by a duly certified “Voluntary Chain” from its members in connection to the transfer of inventory and assets under a joint negotiation program;
8. The bank interest exemption is increased from \$2,000 to \$4,000 for individual taxpayers and from \$4,000 to \$8,000 for married taxpayers that file a joint return;
9. The asset holding period required to qualify for Long Term Capital Gains treatment is extended from more than six (6) months to more than one (1) year. In addition, the amount of capital losses that may be used to offset capital gains will be limited to 90% of the capital gains and the carry forward period for net capital losses is extended to seven (7) years;
10. The credit for prior year Alternate Minimum Tax payments will be limited to 25% of the excess of the Regular Tax over the Alternate Minimum Tax, and may only be claimed with respect to the Alternate Minimum Tax paid for tax years beginning on or before January 1, 2014;
11. New limits will be established on the amount of Tax Credits that may be approved for certain projects under Act 212-2002 to \$15,000,000 per project for the fiscal year 2013-14 and to \$5,000,000 for fiscal years 2014-15 and 2015-16;

12. The Earned Income Credit would be eliminated for taxable years commencing after December 31, 2013;
13. The amount of the credit for persons older than 65 years would be reduced from \$400 to \$200. The amount of the credit would increase to \$400 if the tax revenues of the General Fund exceed the projected tax revenues by at least \$100,000,000;
14. The insurance contracts exclusion and the direct vendor commissions exclusion from the definition of services subject to the 7% withholding at source would be eliminated;
15. Imposes of a 4% Implicit Dividend Tax on the earnings and profits of certain corporate taxpayers that are owned by foreign persons and own Non-Puerto Rico Assets that exceed their accumulated earnings and profits. The 4% Implicit Dividend Tax will be credited to the withholding tax on future dividends;
16. Excludes nutritional bars, popcorn, nuts and similar products, certain non-alcoholic beverages, crackers, pre-cooked frozen foods, ice cream, French fries, potato chips, tortillas and similar products from the Sales and Use Tax definition of “food and food ingredients”. Accordingly, these products would be subject to the Sales and Use Tax;

### **Changes to Act 73**

HB 1919 proposes the following changes that will affect Act 73:

1. Section 2 of Act 73 currently defines a “Small or Mid Size Company” as a company that has generated a gross income of less than \$10,000,000 during the three prior years of operation. HB 1919 would modify this definition to exclude any companies that meet this requirement but are also members of a controlled group with sales in excess of \$10,000,000;
2. Section 5 of Act 73 would be amended to impose new procedural requirements for companies that claim the research and development (“R&D”) tax credit. In order to claim the credit, the Companies would need to request and obtain, prior to filing their income tax return, a certificate from the Puerto Rico Industrial Development Company (“PRIDCO”) that validates that the activities for which the credit will be claimed are eligible R&D activities under Act 73. The maximum amount of R&D credits would be limited to \$300,000,000 per year;

### **Changes to Act 83**

HB 1919 proposes the following changes that will affect Act 83:

1. Article 2.2 would be amended to reduce to \$20,000,000 per year the allocation of funds to the Puerto Rico Green Energy Fund for the fiscal years 2014 through 2020;

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or comments about HB 1919, wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us.