



STIMULUS PACKAGE



CARES ACT Puerto Rico Business Benefits



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GUIDE

Puerto Rico Tax Compliance Guide

By TCG, Torres CPA Group, CifrasPR, Torres & Soto Tax

Torres CPA Group is a Certified Public Accounting Firm that has been offering Audit, Tax, Consulting, and Financial Outsourcing services for over 38 years. If you require any further information or help, please do not hesitate to contact us. We assist in Accounting, Payroll, and Tax Compliance.

Understanding the Puerto Rico tax system and its interrelation with the United States is crucial for individuals and entities doing business in Puerto Rico. Puerto Rico is not a state; it's a territory, with its own business, tax, and Payroll laws and regulations.

The following White Paper is designed to give an insight on Tax Issues in Puerto Rico. It provides relevant background information, which will be of assistance to organizations considering establishing a business in the Island. Nonetheless, it is highly recommended to seek advice and counsel from qualified professional sources before undertaking any business.

Certain exclusions and exemptions may apply, and when specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Puerto Rico and to obtain appropriate accounting and legal advice.

It is understood that the following overview does not constitute any formal rendering of either legal, accounting, tax, or professional services. If legal advice or other assistance is required, an attorney, CPA or tax adviser should be consulted.

In accordance with IRS Circular requirements, you are advised that any discussion of tax issues in these materials is not intended or written to be used and cannot be used to avoid penalties imposed under Internal Revenue Code, as amended or to promote, market, or recommend to another party any transaction or matter addressed herein.

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PRELIMINARY BRIEF SUMMARY OF KEY PROVISIONS ON TAX MEASURES INCLUDED IN THE CARES ACT

The CARES Act is a positive step forward to provide economic relief to businesses facing hardship or financial due to this crisis.

Employee Retention Credit

Fully refundable tax credit is available, tied to the payment of employee wages, against the employer's share of Social Security taxes.

All eligible employers would be allowed to claim a 50 percent credit on wages and health benefits.

The credit is capped at the first \$10,000 per employee of compensation, including health benefits, paid to the employee. Refundable to the extent it exceeds the employer portion of social security taxes reduced by the paid sick leave and paid extended established by the Coronavirus Relief Act.

The credit is available to employers whose:

1. operations were fully or partially suspended due to a COVID-19-related shut-down order, **or**
2. gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

For eligible employers with 100 or less full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Refer to our Employee Compensation Federal Aid White Paper

Delay of Payment for Employer Payroll Taxes

The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Employer's share of the 6.2% Social Security tax that would otherwise be due from the date of enactment through December 31, 2020, are to be paid on December 31, 2021 (50%) and December 31, 2022 (50%).

Emergency paid sick leave act limitation

Amendment to the Emergency Paid Sick Leave Act by limiting amounts employers are required to pay as part of sick leave to not more than: (i) \$511 per day and \$5,110 in the aggregate for each employee when employees are experiencing symptoms of COVID-19 or subject to a quarantine or (ii) \$200 per day and \$2,000 in the aggregate for each employee for taking leave to care for a child or quarantined individual.

New payroll credits for required paid sick leave and paid family leave (including the refundable portion) may be advanced to the employer in accordance with forms and instructions to be provided by the Secretary. Any penalties for failure to deposit the tax under section 3111(a) or 3221(a) of the Code are waived if such failure is due to the anticipation of the credits.

Business Loan Paycheck Protection Programs

The Program provides forgivable Small Business Administration loans to businesses with 500 or less employees (generally), including sole proprietors and other self-employed individuals under the program through December 31, 2020.

The Act increases the maximum loan for an SBA Express loan from \$350,000 to \$1 million through December 31, 2020; and defines eligibility for loans to small businesses, part of the Small Business Act, with no more than 500 employees.

Businesses in the hospitality and restaurant industry and certain other businesses are excused from the employee limitation. Loan amounts are determined by a formula tied to the business's payroll costs. The maximum loan amount is \$10 million. Loans are only to be used for payroll, insurance premiums, mortgage, rent and utility payments.

Maximum Loan Amount.

The maximum loan amount shall be determine by the average of total monthly payments made by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made and by multiplying this amount 2.5 times:

- Estimate computations, one-year payroll cost, divided by 12 months multiplied by 2.5 times.
- Year Payroll \$120,000, Monthly average \$10,000, Maximum loan \$25,000 (\$10,000* 2.5).

Allowable Payroll cost

Payroll costs, in turn, are the sum of the following:

- a) wages, commissions, salary, or similar compensation to an employee or independent contractor,
- b) payment of a cash tip or equivalent,
- c) payment for vacation, parental, family, medical or sick leave,
- d) allowance for dismissal or separation,
- e) payment for group health care benefits, including premiums,
- f) payment of any retirement benefits, and
- g) payment of state or local tax assessed on the compensation of employees,

The term employee includes full-time, part-time, or other basis.

Limitations to Allowable Payroll cost

However, payroll costs do not include the following:

- a) the compensation of any individual employee in excess of an annual salary of \$100,000,
- b) payroll taxes,
- c) any compensation of an employee whose principal place of residence is outside the U.S. (Puerto Rico is considered as U.S. residence), or
- d) any qualified sick leave or family medical leave for which a credit is allowed under the new Coronavirus Relief Act passed last week.

Sole proprietors, independent contractors, and eligible self-employed individuals

During the covered period, individuals who operate under a sole proprietorship, as an independent contractor or as an eligible self-employed individual shall be eligible to receive a covered loan.

Applicable Loan Period

The covered loan period begins on February 15, 2020 and ends on June 30, 2020. It establishes the maximum loan amount to \$10 million through December 31, 2020.

Borrower requirements certification:

An eligible recipient applying for a covered loan shall make a good faith certification:

- stating that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient
- acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; “
- confirming that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan
- stating that during the period beginning on February 15, 2020 and ending on December 31, 2020, the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

Fee waiver, the lender shall collect no fee.

The requirement that a small business concern is unable to obtain credit elsewhere, shall not apply to a covered loan.

There are no personal guarantees required for the covered loan; and no collateral shall be required for the covered loan.

Maturity for loans with remaining balance after application of forgiveness

With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount, the remaining balance shall have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.

Interest rate requirements: A covered loan shall bear an interest rate not to exceed 4 percent.

Presumption: An impacted borrower is presumed to have been adversely impacted by COVID19.

Deferral: Lender shall consider each eligible recipient that applies for a covered loan to be an impacted borrower. It requires lenders to provide complete payment deferment relief for impacted borrowers with covered loans for a period of not less than 6 months, including payment of principal, interest, and fees, and for not more than 1 year.

Emergency Government Disaster Loan and Grant

The CARES Act also expands access to Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act to include not only businesses with fewer than 500 employees, but also sole proprietors and ESOPs.

For any loan made under this program before December 31, 2020, no personal guarantee will be required on loans under \$200,000. The bill allows a disaster loan to be taken out between January 31, 2020 and the date on which a paycheck protection loan is available for reasons “other than paying payroll costs.” Presumably, any loan taken out for payroll purposes will be confined to the paycheck protection loans described above.

Immediate advance of up to \$10,000

The Act creates a new Emergency Grant allowing a business that has applied for a disaster loan to get an immediate advance of up to \$10,000. The advance can be used to maintain payroll, and is not required to be repaid, even if the borrower’s request for a loan is denied.

Loan Forgiveness Program

Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8-week period compared to the previous year or time period and is proportionate to maintaining employees and wages.

The amount to be forgiven is the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan:

- a) payroll costs (as defined above)
- b) mortgage interest,
- c) rent,
- d) certain utility payments.

The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation.

To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

Portions of loans not forgiven are payable over a maximum of 10 years at a maximum of 4% interest.

SBA has the Authority as an independent Lenders Provider delegated authority which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA's channels, to all current lenders who make these loans to small businesses and provides that same authority to lenders who join the program and make these loans.

For eligibility purposes, lenders are required to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for which it paid salaries and payroll taxes, or a paid independent contractor.

Taxability

Taxability, for purposes of the Internal Revenue Code, any amount which would be included in gross income of the eligible recipient by reason of forgiveness shall be excluded from gross income.

Propose Puerto Rico Emergency Measures Support Package

Direct Payment to Self-Employed, \$500 one-time cash payment for self-employed individuals

Direct Payment to Small Businesses, \$1,500 one-time cash payment for small businesses