

May 6, 2016

Tax Update

Tax Policy Bulletin No. 16-12 Confirms Limitation on Use of Credits to Pay Utilities

In our Legal Update of April 20, 2016, we announced that on April 7, 2016, the Governor of Puerto Rico, Hon. Alejandro García Padilla, approved Act No. 22-2016, known as the “Electricity, Water and Sewer Services Subsidies and Overdue Payments Reform Act” (“Act No. 22”), which, among other things, limited the use of tax credits for the payment of electricity, water and sewer services in the industrial sectors.

Specifically, Act No. 22 amended Act No. 73-2008, known as the “Economic Incentives Act for the Development of Puerto Rico” (“Act No. 73”) in order to provide that, beginning 30 days after the effectiveness of Act No. 22, no existing tax exempt business that holds a grant under Act No. 73 may apply the tax credit granted for Investment in Research and Development, Clinical Tests, Toxicological Tests, Infrastructure, Renewable Energy, or Intangible Property against the operational costs related to electric energy, water and/or sewer services, unless there is a certification from the Treasury Department certifying that it has the necessary funds to cover such operational costs.

Tax Policy Bulletin No. 16-12 confirms that the Treasury Department cannot certify that it has the necessary funds to cover such operational costs. Thus, from May 7, 2016, no credit certificate issued by the Treasury Department under Section 5(c) of Act No. 73 may be used to pay the Puerto Rico Energy Power Authority (“PREPA”) or the Puerto Rico Aqueducts and Sewer Authority (“PRASA”).

Certificates so issued must be canceled by the holder. Nonetheless, such credits continue to be valid towards payments of income taxes and transferrable pursuant to the provisions of Act No. 73.

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