

May 20, 2016

Tax Update

Letter to Industrial Partners

As discussed in our legal tax update of April 20, 2016 (see our Legal Update here), Act No. 73-2008, also known as the “Economic Incentives Act for the Development of Puerto Rico” (“Act 73”), was recently amended as a result of Act No. 22-2016, also known as the “Electricity, Water and Sewer Services Subsidies and Overdue Payments Reform Act” (“Act 22”).

Pursuant to Act 22, no existing tax exempt business that holds Act 73 for Investment in Research and Development, Clinical Tests, Toxicological Tests, Infrastructure, Renewable Energy, or Intangible Property credits (“R&D Credit”) can claim it against operational costs related to electric energy, water and/or sewer services, unless there is a certification from the Puerto Rico Treasury Department (“Treasury”) certifying that it has the necessary funds to cover such operations costs.

On May 7, 2016, Treasury issued Tax Policy Bulletin No. 16-12 (see our Legal Update here) indicating that since Treasury cannot certify that Treasury has the necessary funds to cover such operational costs, effective May 7, 2016, no credit certificate issued under Section 5(c) of Act 73 may be used to pay the Puerto Rico Energy Power Authority or the Puerto Rico Aqueducts and Sewer Authority.

On May 19, 2016, the Puerto Rico Industrial Development Company (“PRIDCO”) issued a letter to its industrial partners acknowledging the change in R&D Credit usage. PRIDCO also reminded its partners that R&D Credit holders can continue applying such credit to current or future tax liabilities with Treasury. Also, the R&D Credit continues to be transferrable pursuant to the provisions of Act 73.

R&D Credit holders are advised to carefully evaluate usage of R&D Credits to maximize their value after this change.

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