

May 31, 2018

## Tax Update

*Employee Retention Tax Credit Can be Claimed as of Friday, June 1st*

The Employee Retention Tax Credit (“ERTC”) is an income tax credit granted under the Disaster Tax Relief and Airport and Airway Extension Act of 2017 enacted on September 2017, generally available to offset the U.S. federal income tax liability of those eligible employers that were affected by Hurricane Irma and/or Hurricane María. In the case of eligible employers in Puerto Rico, the ERTC will be paid in cash to those who timely claim the same.

### A. In General

*Eligible employers* are those that on September 4 (for purposes of Hurricane Irma) and/or September 16 (for purposes of Hurricane María): (i) conducted an active trade or business, (ii) after such date and before January 1, 2018 became inoperable as a result of the damage caused by Hurricane Irma and/or Hurricane María and (iii) continued to pay wages to eligible employees during the time they were inoperable.

*Eligible employees* are those whose principal place of employment with an eligible employer was in the Hurricane Irma Disaster Zone and/or in Puerto Rico, in the case of Hurricane María. Post-Sept. 4, 2017 and post-Sept. 16, 2017 hires are not eligible employees in the case of Hurricane Irma and Hurricane María, respectively.

*Qualified wages* are those wages that were paid or incurred by an eligible employer with respect to an eligible employee during the period beginning on the date on which the trade or business first became inoperable at the principal place of employment of the employee immediately before the Hurricane Irma Disaster Zone and/or Hurricane María, and ending on the date on which such business resumed significant operations at such principal place of employment. Qualified wages excludes, among others, any disaster assistance payments.

In this context, a business will be deemed have become inoperable if one or more of the following is true as a result of Hurricane Irma and/or Hurricane María:

- The structure(s) of the business were damaged.
- The business was not physically available for employees or clients.
- The business was unable to receive raw material or inventory.
- The business had not electricity, water or communication.

### B. The ERTC

In general, the ERTC will be an amount equal to 40% of up to \$6,000 of qualified wages for each eligible employee for the tax year. This percentage, however, has been adjusted for Puerto Rico as follows:



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**Employers with Net Income Subject to Normal Tax of \$10,000,001 or more: 26%**  
**Employers with Net Income Subject to Normal Tax of \$10,000,000 or less: 32%**

The ERTC can only be claimed electronically through the same system used by employers to file the Employer's Quarterly Return of Income Tax Withheld (Form 499R-4B). The ERTC will also be paid electronically by direct deposit to the employer. **The ERTC application will be available starting on June 1, 2018 and until December 31, 2018.**

In order to be able to claim the credit, employers shall have filed all required tax forms for year 2017 (i.e. Withholding Statements, Employer's Quarterly Return of Income Tax Withheld, Quarterly Unemployment & Disability Insurance Contribution Report and Employer's Quarterly Federal Tax Return). It is important to note that **the ERTC application cannot be amended once filed.**

It is expected for the Puerto Rico Treasury Department to issue official guidance on the ERTC.

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