

Withholding Requirements 2023



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Recursos

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BASIC CONCEPTS

- Concept
 - Government appoints private parties to work as representatives of the taxing authorities
- Duties
 - To Withhold
 - To Deposit
 - To Report
- Penalties
 - Specific Penalties
 - Duty to pay non-withheld amounts

Types of Withholding

- On wages
- On payment for services rendered (10%)
- On interests & dividends
- On income of nonresident individuals
- On distributive share of Passthrough Entities
- Sales and Use Tax
- Other Miscellaneous Withholdings

Tax Withholding at Source on Wages



Wages

- Section 1062.01
- All remuneration for services performed by an employee for his/her employer, and all remuneration as pension for services rendered including the cash value of all remuneration paid in any medium other than cash

Exceptions

- Services in agricultural labor, excluding services by executive, administrative, office, supervisory or occupying permanent positions employees
 - Prior to January 1, 2019
- Domestic services
 - Prior to January 1, 2019
- Services not in the course of the employer's trade or business, unless the remuneration is more than \$875 in any calendar quarter

Exceptions

- Services for a foreign government or an international organization
- Services by a nonresident individual, other than remuneration as pension for services rendered
- Services by a minister of a church or by a member of a religious order
 - Prior to January 1, 2019
- By reason of indemnification in case of no just cause dismissals
 - Prior to January 1, 2019

Exceptions

- Services rendered outside of Puerto Rico by a resident of Puerto Rico if withheld at source



Employee & Employer

- Employee:
 - Includes an officer, employee, or elected official of the Commonwealth of Puerto Rico and also includes an officer of a corporation
- Employer:
 - The person for whom an individual performs or has performed any service as the employee of such person except:

Employee & Employer

- This person does not have control of the payment of the wages
- This person is paying wages on behalf of a nonresident individual, foreign partnership, or foreign corporation, not engaged in trade or business within Puerto Rico



Employer Requirements

- Should deduct and withhold a tax on all wages according to the withholding schedules approved by the Secretary of the Treasury
- Withholding exemptions: the tables shall take into consideration the personal exemption and credit for dependents allowable to the taxpayer, as well as the concessions

Deposit Rules

- **Quarterly Depositor** - Withholdings do not exceed \$500. Required to deposit with the quarterly return.
- **Monthly Depositor** - New employers and employers that withhold \$50,000 or less. The employer shall deposit the tax withheld no later than the 15th day of the month following the withholding.

Deposit Rules

- **Semiweekly Depositor** - Employers that withhold more than \$50,000.
 - Wednesday (Wed., Thurs., Fri.), or
 - Friday (Sat., Sund., Mon., Tue.)
- Employers that have withheld more than **\$100,000** in a period. Required to deposit the **next working day**, whether is a monthly or semiweekly depositor.

Basis Period

- Means from the 12-month period that end on the prior June 30.
- Computation is doing using the quarterly returns

Withholding on Wages Summary of Reports

- 499-R-1 – Employer’s monthly or semi-weekly Deposit of Income Tax Withheld
- 499-R-1B – Employer’s Quarterly Return of Income Tax Withheld
- 499-R2/W-2PR – Withholding Statement
- 499-R-3 – Reconciliation Statement
- W-3PR – Transmittal for Withholding Statements

Returns & Payments

- **Form 499-R-1B:** File the quarterly return on or before the last day of the month following the close of each of the quarters ending March 31, June 30, September 30 and December 31.
- **Form 499-R2/W-2PR:** Furnish to each employee on or before January 31, or if his employment is terminated before the close of the year, then on the day the last payment of wages is made.



Returns & Payments

- **Form 499-R-3:** File on or before January 31 an annual reconciliation statement showing the amount of the tax deducted and withheld monthly.
- **Form W-3PR:** File on or before February 28 with forms 499-2/W-2PR

Federal Payroll Taxes



FICA Withholding

- **Social Security:**
6.2% of ceiling amount – changes annually. For 2022 the ceiling was \$147,000 and for 2023 is \$160,200.
- **Hospital Insurance (Medicare):**
1.45% **without** ceiling.



Additional Medicare Tax

- All wages that are subject to Medicare Tax are subject to Additional Medicare Tax to the extent they exceed the threshold amount for your filing status.
- Employer must withhold Additional Medicare Tax on wages paid in excess of \$200,000 for the calendar year, regardless of your filing status.



Additional Medicare Tax

- Rate: 0.9%
- Form 8959



Additional Medicare Tax-Threshold Amounts

- Married filing jointly: \$250,000
- Married filing separate: \$125,000
- Single: \$200,000



FICA Deposit

- Employers classified as monthly or semi-weekly depending on amount of tax withheld
- Determined using a one-year look-back period ending on June 30
 - **Quarterly:** If less than \$2,500 may be paid with quarter report
 - **Monthly:** If taxes reported are \$50,000 or less, the employer deposits on the 15th day of following month
 - **Semi-weekly:** If taxes reported are more than \$50,000
 - **Next-Day:** If \$100,000 are accumulated, then next banking day. After this, semiweekly depositor for the rest of the year and next calendar year.

FICA Reports

- Deposits are made through the Electronic Federal Tax Payment System (EFTPS) only.
- **Form 941PR** – FICA Quarterly Return



Federal Unemployment Tax

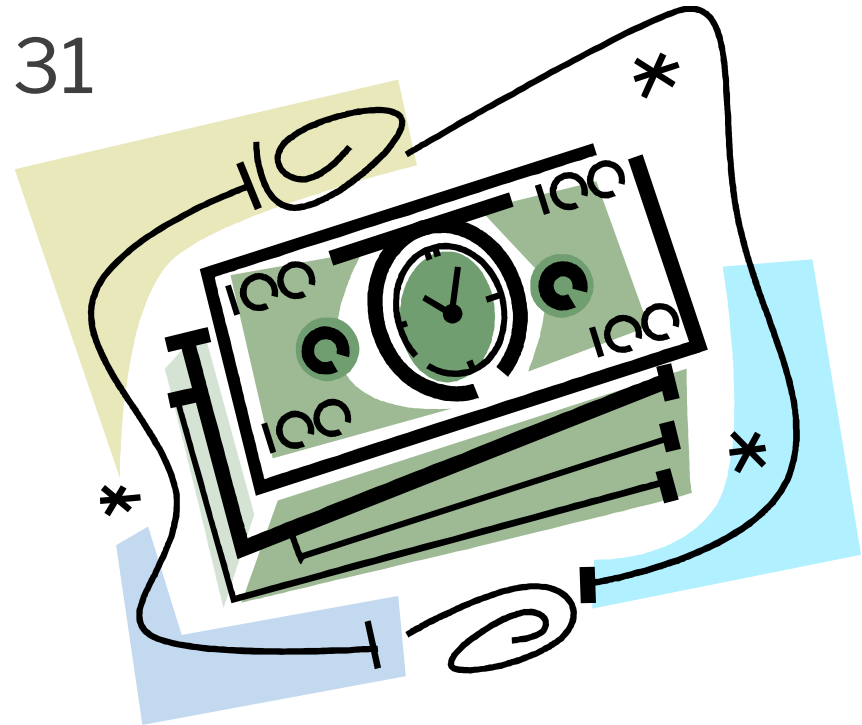
- Not a withholding, only an expense for employer
- Actual amount is 6% of first annual wages of \$7,000
- Reduced to .6% by credit of 5.4% of unemployment paid to PR (SUI)
- Form 940PR reflects this credit

FUTA Deposits

- **Quarterly:** If tax exceeds \$500 at the end of any quarter. This include any FUTA tax that was not deposited in a prior quarter during the calendar year.
- Due the last day of the month following the end of the quarter.
- Deposits are made through the Electronic Federal Tax Payment System (EFTPS)

FUTA Reports

- Form 940PR
- Due Date: January 31



IRS Guidelines & Particular Situations —

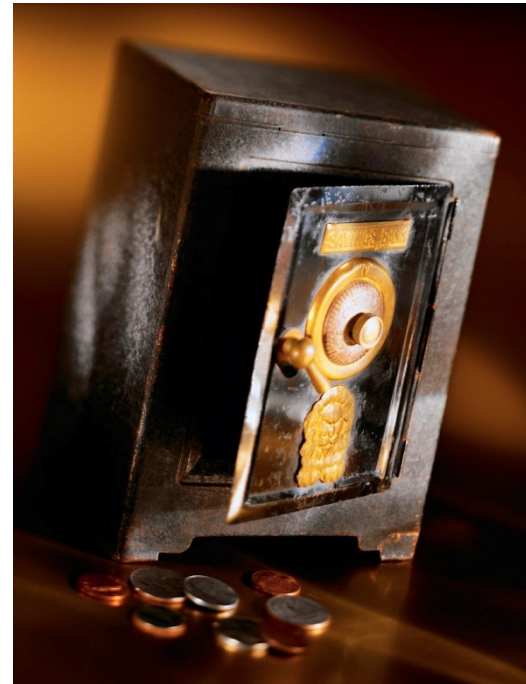


Particular Situations

- Severance Payments
- Excess Withholding
- Allowances vs. Reimbursed Expenses
- Who is an employee?
- Can an employee get a W-2 AND a 1099?

Severance Payments

- Juan Alvira vs. SKF – PR Supreme Court (1997)
- Treasury’s position (1998)
- Cancio vs. Phillips Case - PR District Court (2001)
- PR Review Court (2002)
 - Edwin García Pérez v. Secretario, DCO 1997-0002 (406) Tribunal de Circuito de Apelaciones (Bayamón)



Severance Payments

- Orsini García v. Secretario, 177 DPR 596 (2009)
 - Exempt
 - Prior to July 4, 2006
- Ortíz Chévere v. Secretario, 186 DPR 951 (2012)
 - Taxable

Act 278 of 2008

- Exempt treatment to three types of payments
 - Full, temporary or partial shutdown
 - Technological Changes or reorganization
 - Volume of Business Reduction
- This not a severance payments because there was just cause for dismissal
- Take into account:
 - Alternative Minimum Tax

Ley Transformación y Flexibilidad Laboral

- Ley 4 del 26 de enero de 2017
- They are classified as exempt

Excess Withholding

- Different Employer
- Same Employer
 - Common Paymaster Rule



Allowances vs. Reimbursed Expenses

- Section 1031.02(a)(33) and Regulation 8297
- Exempts from taxation the amounts paid by an employer regarding the reimbursement of expenses in connection with the performance of services as an employee.



Allowances vs. Reimbursed Expenses

- A reimbursement plan is required
- Requirements of the plan:
 - The expenses shall have been incurred while the employee performed services to his employer for the benefit of the employer's business
 - The employee shall adequately report said expenses to the employer within a reasonable period for their reimbursement

Allowances vs. Reimbursed Expenses

- Requirements of the plan(cont'd)
 - Shall constitute an accountable plan , as defined in art. 1031.02(a)(33)-4(a)
 - The employer, as a condition to grant the reimbursement, requires the employee to submit a detailed report of the task performed and the expense incurred or paid.

IRS 20 RULE TEST FOR ESTABLISHING EMPLOYMENT RELATIONSHIP (EMPLOYER-EMPLOYEE VS. INDEPENDENT CONTRACTOR)

DEFINITION OF "EMPLOYEE" - An individual who performs services that are subject to the will and control of an employer--both what must be done and how it must be done. The employer can allow the employee considerable discretion and freedom of action, so long as the employer has the legal right to control both the method and the result of the services.

DEFINITION OF "INDEPENDENT CONTRACTOR" - An individual over whom the employer has the right to control or direct only the result of the work and not the means and methods of accomplishing the result.

INSTRUCTIONS FOR APPLYING THE 20 RULE TEST - The following factors, detailed in IRS Revenue Ruling 87-41, are intended as guidelines rather than strict rules in defining the employment relationship. Check the most appropriate factor for the particular employment situation and then total the number of responses for each type of employment relationship. The closeness of most of a situation's facts to one relationship or the other will often determine what the appropriate classification should be. **If the proper relationship is unclear after analyzing these factors, the employer-employee relationship should be established.**

EMPLOYEE	CHECK ONE	INDEPENDENT CONTRACTOR
... is required to comply with instructions about when, where, and how to work. Employer's right to instruct, not the exercise of that right, is the key. Instruction may be oral or in written procedures or manuals.	 ____ or ____	... is hired to provide goods or services and is not instructed in great detail about how to provide the goods or services.
... is usually trained by one of the institution's experienced employees. Training indicates that the employer wants the services performed in a certain manner.	 ____ or ____	... ordinarily uses his or her own methods, is hired for his or her expertise, and receives no training from the institution that purchases services.
... renders services which are usually integrated into business operations, generally showing that direction and control are being exercised. Integration of services into the business operation occurs when the success or continuation of a business depends to an appreciable degree on the performance of services that are difficult to separate from the business operation.	 ____ or ____	... renders services which can usually stand alone and are not integrated into business operations.
... is hired to render services personally. If the employer is interested in who does the job as well as in getting the job done, it indicates that the employer is concerned about the methods used as well as the results of services performed.	 ____ or ____	... is hired to provide a service and often the employer does not care who performs that job.
... has little control over the hiring, supervising, and payment of assistants. Such action by an employer generally shows control over people on the job with whom assistants work.	 ____ or ____	... hires, supervises, and pays other workers under a contract in which he or she agrees to provide materials and labor and is responsible for the attainment of a given result.
... normally has a continuing relationship with the person for whom services are performed. Services may be continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short term.	 ____ or ____	... has a defined relationship that typically ends when the services are completed.
... has set hours or work established by the employer, indicative of control. Such a condition bars the worker from allocating time to other work, which is a right of an independent contractor.	 ____ or ____	... tends to establish time use as a matter of right.
... usually devotes full time to the business of the employer. Full time does not necessarily mean an eight-hour day or a five-day week. Its meaning varies depending on the intent of the parties.	 ____ or ____	... is free to work when, for whom, and for as many employers as desired.
... typically does his or her work on the employer's premises which implies control, especially if the work could be performed elsewhere. Someone who works in the employer's place of business is at least physically within the employees direction	 ____ or ____	... usually does work that can be completed on or off the employees premises.

and supervision. However, performance of work off-site does not, of itself, mean that no right to control exists		
... often must perform services in a prescribed sequence, which shows a level of employer control. Here, too, the right to set the sequence, not the exercise of that right, is the key.	____ ____ or____	... normally is free to perform services in any manner that produces desired results.
... submits or provides regular written or oral reports that indicate employer control.	____ ____ or____	... submits reports as specified by the contract and may provide them in the broadest of terms and with less frequency than an employee would.
... is usually paid for work by the hour, week, or month. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.	____ ____ or____	... is customarily paid by the job in a lump sum or on a commission basis.
... is reimbursed or paid by the employer for business and traveling expenses, a factor that indicates control over the worker.	____ ____ or____	... is paid on a job basis and normally has to assume all expenses except those specified by contract.
... usually is furnished by the employer with any tools and materials needed, which is indicative of employer control over the worker. In some jobs, employees customarily use their own hand tools.	____ ____ or____	... supplies the tools and equipment needed to complete the job.
... normally does not have a significant investment in the facilities used in the job.	____ ____ or____	... often has a significant investment in facilities used in performing services. Facilities generally include equipment or premises necessary for the work, but not such items as tools, instruments, and clothing that are provided by employees as a common practice in their trade.
... usually does not realize a profit or suffer a loss as a result of the service provided.	____ ____ or____	... is in a position to realize a profit or suffer a loss as a result of services provided.
... tends to work exclusively for one employer.	____ ____ or____	... makes services available to the general public. "Making services available" may include hanging out a shingle, holding a business license, and having advertising and telephone directory listings.
... is subject to discharge, showing that control is exercised. Limitation of the right to discharge under a collective bargaining agreement does not detract from the existence of an employer-employee relationship.	____ ____ or____	... cannot be fired so long as results produced measure up to contract specifications.
... has the right to end the employment relationship at any time without incurring liability.	____ ____ or____	... usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job
	____ ____ or____	
TOTAL	____ ____ or____	TOTAL

Employee AND Contractor

IRC Section and Treas. Regulation

- IRC Section 7436
- IRC Section 6011
- IRC Section 6041
- IRC Section 6051

Resources (Court Cases, Chief Counsel Advice, Revenue Rulings, Internal Resources)

- [IRM 4.23.5.2.1.1](#)

Analysis

When the taxpayer filed both Form W-2 and Form 1099-MISC for a worker, the examiner should consider whether:

1. The worker was treated as an employee for part of the year and an independent contractor for a separate part of the year (i.e., payments reported on Form W-2 and Form 1099-MISC were for the same services but distinct periods of time during the year).
2. The worker was performing two or more distinct services and the taxpayer considered the worker to be an employee for one service and an independent contractor for the other service (i.e., dual status worker).
3. The payment reported on Form 1099-MISC represented additional compensation to the worker in his capacity as an employee for which he received compensation reported on Form W-2 (e.g., a bonus payment).



Withholding on Service Payments

General Provisions

*KNOW THE
RULES!*



Withholding on Services General Rule

- Section 1062.03 and Regulation Article 1143(a)-1
 - The Government of Puerto Rico and any other person, who in the course of their trade or business or for the production of income make payments for services rendered in Puerto Rico after June 30, 1995, must deduct and withhold 10% of such payments.
 - 7% until December 31, 2018

Withholding on Services

Amounts not subject to withholding

You must exclude from withholding the following items which do not constitute payment for services:

- Reimbursed travel, lodging and meals
- Cost of machinery, equipment and parts when title is transferred to the payor
- Financing charges
- Internal Revenue vouchers
The service provider is required to report such expenses as a separate item on the invoice.

Exempted Services



Exclusion to Certain Payments

Section 1062.03(b)

1. The first \$500 (was \$1,500 until December 31, 2018).
2. Payments made to hospitals, **laboratory services rendered by medical laboratories are not exempt**, except those laboratories which are an integral part of a hospital or clinic.
3. Exempt organizations under Section 1101.01

Exclusion to Certain Payments

Section 1062.03(b)

4. Payments made to direct salesmen for the sale of consumption products.
5. Payments made to contractors or subcontractors for construction. Does not include architecture, engineering, design, consulting and/or other similar professional services.
6. Payments subject to withholding at source under Sections 1062.08 & 1062.11 (Non-Resident Individuals & Foreign Corporations) and 1062.01 (Salaries).

Exclusion to Certain Payments

Section 1062.03(b)

7. Payments made to the Commonwealth of Puerto Rico.
8. Payments made to parties that have the first three years waiver. That waiver is allowed only once.
9. Payments made to a bona fide farmer that has an exemption pursuant to section 1033.12 of the PRCODE or any similar provision.

Exclusion to Certain Payments

Section 1062.03(b)

10. Payments made to an eligible carrier. Eligible carrier means a person that delivers maritime, air or telecommunication services between Puerto Rico and other country.
11. Payments made by eligible carriers to non-for-profit entities related to the management services such as accounting, scheduling, report preparation and collection.
12. Payments related to ecclesiastical services. They have to be made to duly ordained ministers.
13. Payment for services performed out of PR.

Proof of Exempt Services

- Parties that provide exempt services will not receive a waiver.
 - Treasury will not issue the waivers.
- Exempted Persona must provide a sworn statement that provides their data and the reason for the exemption.
- Such statement must be provided on an **annual basis**.
- The payor is relieved from any penalties related to such withholding if they have copy of the sworn statement.
- More details in Circular Letters 02-09 & 17-02

Activities That Do Not Constitute Services

- **The following activities does not constitute services for withholding purposes:**
 1. Insurance business.
 2. Lease of tangible personal and real property.
 3. Sale of newspaper, magazines and other publications (including the placements of advertising).
 4. Purchase of time in radio or television.
 5. Printing services.

Waivers: Total and Partial



Corporations

Partial & Total Waiver from Withholding

- **Requirements:**
 1. Taxpayer has filed all the required tax returns.
 2. Taxpayer has no demandable outstanding debts
 - a) If an outstanding debt exists, a payment plan must have been approved
- The certificate of waiver must be obtained on an annual basis from the Secretary of the Treasury.
- This waiver reduced the withholding to 6%.
 - Was 3% until December 31, 2018
- If gross income is 1 million or more and provides Audited Financial Statements according to section 1061.15 a total waiver apply.
 - Note that Audited Financial Statements are only required if gross income is more than 10 million.
 - Now between \$3 and \$10 million an AUP might be filed.

Partial Waiver for Individuals

- Gross income of 1 million or more.
- Provides Audited Financial Statements according to section 1061.15.
- Withholding reduced to 6%.
 - Was 3% prior to December 31, 2018

First Three Year's Waivers

- A “once in a lifetime” total waiver may be obtained by all individuals, corporations and partnerships who commence an activity of performance, for the first 3 taxable years, beginning with the year in which the activity commences.

– Requirements:

1. Sworn Statement including:
 - a. Name, social security number and business address.
 - b. Date of commencement of the service activity.
 - c. Eligibility for the special waiver under Article 143C(g)-4 and a statement that such waiver has not been requested before.
2. Certification of income tax filing debt from the Treasury Department indicating that the person has filed its returns and does not have any debt with the Treasury Department, except for those under an approved payment plan.

Qualified Doctors

- Pursuant to Act 14-2017

Net Operating Losses Rule

- Any corporation that had Net Operating Losses in a prior year, will automatically receive a waiver from Treasury.
- The determination is made by Treasury's information system.
- Such waiver is only valid for one year.

Optional Tax

- Persons that elect to use optional tax
 - Sections 1021.06 or 1022.07
 - Income is less than \$100,000
- Eligible for a 6% withholding rate
- Needs to obtain a waiver

Withholding Agents Responsibility



Withholding on Services

Withholding Agent's Requirements

- The withholding agent shall be responsible for the payment of the amounts subject to withholding, regardless of whether they were withheld or not.
- The withholding agent shall deposit with the Secretary of the Treasury the tax withheld, on or before the 15th day following the month when withholding occurred
 - SURI

Withholding on Services

Withholding Agent's Requirements – Cont.

- Since 2019, a quarterly return is required (March 31, June 30, September 30 and December 31) **(Form 480.6 SP-1)**
- The withholding agent must file an annual informative return on or before February 28 **(Forms 480.6SP and 480.6SP.2).**
- The withholding agent must maintain copies of the waivers or sworn statements.

Withholding on Services

Payee's Requirements

- If the withholding agent does not provide the payee Form 480.6SP, the taxpayer can still claim a credit for the amount withheld. In such case the taxpayer must file with his/her return a sworn statement including:
 - Name, address, employer account number (if available) and phone number of the payer, the amount of the total payments and the income tax withheld.
- Copy of the sworn statement should be sent to the Secretary of the Treasury.
- A penalty of \$100 for each declaration not delivered shall be imposed

Withholding on Interest



Local Financial Institutions

Section 1023.04

- Interest in paid by Puerto Rico Located Financial Institutions:
 - Banks
 - Savings and Loans Associations (“Cooperativas”)
- Withholding Rate
 - 10% General Rule
 - 17% IRA Accounts

Section 1023.04 (cont.)

- Withholding applies on excess of \$25
 - Per Quarter (“trimester”)
 - Was \$500 until December 31, 2018
- No withholding: Regular Rates
- Notice
 - April 15 of the Year
 - Upon opening the Account
- File 480.6B on or before February 28

Interest from loans to certain corporations and partnerships Sec. 1062.09 & 1023.05

- 10% income tax withholding at source on individuals, estates, corporations, partnerships and trusts on interest paid or credited upon bonds, notes or other obligations of certain corporations and partnerships
 - Eligible debt is money “loaned” to domestic corporations or partnerships or foreign that not less than the 80 percent of the gross income is derived from doing business in PR during the 3 taxable years previous to the payment.
 - Proceeds from loan is used solely in the PR trade or business within a period not exceeding 24 months form the date of issuance

Interest from loans to certain corporations and partnerships Sec. 1062.09 & 1023.05

- The recipient of the interest must exercise the option under section 1023.05 and authorize the withholding at time of acquisition of the obligation.
- File 480.6B on or before February 28

Withholding on Dividends



Section 1023.06

- Every person that has control of eligible distribution shall deduct and withhold :
 - 10% of said distributions prior July 1, 2014
 - 15% of said distributions after June 30, 2014;
 - Should be deposited on or before the 15th day of the month following the date in which the distribution was made
- File 480.6B on or before February 28

Act 168 Hospitals Facilities

- Every corporation that has control of eligible distribution shall deduct and withhold :
 - 10% of said distributions
 - Note that the rate is imposed by the Act 168 not the Code
 - Distributions are not subject to Alternate Basic Tax or Alternative Minimum Tax
 - Should be deposited on or before the 15th day of the month following the date in which the distribution was made
- File 480.6B on or before February 28

Withholding on Judicial Payments



Amount of Withholding

- Sec. 1062.02
- 10% of taxable payments must be withheld.
 - Was 7% until December 31, 2018
-

Amount of Withholding

- Administrative Determination 07-01 defines taxable payments. It includes
 - Salaries
 - Attorney's Fees
 - Wrongful Termination Damages
 - Punitive Damages
- Transactions → Administrative Determination 05-02
- Forms 480.6B and 480.6B.1 must be provided on February 28 of each year to report the payments and withholding made.

Waiver

- Allows the request of a waiver to the Secretary of the Treasury
- Cause: Undue hardship or excessive withholding

Special Partnerships, Partnerships and Corporation of Individuals



References: Residents

- Special Partnership – Sec. 1062.04
- Corporation of Individual – Sec. 1062.05
- Partnership – Sec. 1062.07
 - Foreign Partners are considered as **engaged in a trade or business in Puerto Rico**

Requirements

- The administrator of the Special Partnership, Partnership or Corporation of Individuals shall determine and remit a tax on the estimated distributive share in the net income of the entity.

Net income of the entity:

- Net income or loss exclusive of items requiring separate consideration
- Minus withholding on indemnification and service payments.

Withholding Rates

- 30% - resident individuals, nonresident U.S. citizens, resident estates or trust
- 30% - domestic or resident foreign corporations or partnerships
- PLUS: tax on income subject to special rates

Payment of tax withheld

- On or before the 15th day of the 4th, 6th, 9th and 12th month of the taxable year of the entity

Withholding rates for Nonresidents

- Nonresident individuals, estates and trusts:
 - Special Partnerships: 29% (Sec. 1062.10)
 - Corporation of Individuals: 33% (Sec. 1062.10)
 - Partnership: 30% (Sec. 1062.07)
 - Partner Deemed as Engaged in a Trade or Business in Puerto Rico
 - Quarterly Returns*

Nonresident partners and shareholders

- Their share in income is treated as distributed each end of year and subject to corresponding withholding
- Partnerships
 - Quarterly Returns

Income of Nonresident Persons



Summary of Withholdings

- General Rule
 - Section 1062.08
- Special Situations
 - Interest
 - Dividends
 - Sale of Real Property
 - Sale of Shares (Domestic Corp.)

Requirements

- There shall be deduct and withhold from the income of any nonresident individual, 29% if the recipient is a nonresident alien or 20% if the recipient is a citizen of the United States.
- In the case of income from dividend there shall be deducted and withheld 15%.

Section 1062.08

- Set the requirement of withholding to a non-resident seller.
- Sale of Real Property or Stocks-
 - Nonresident alien: 25%
 - Nonresident US citizen: 15%
 - Was 10% until October 31, 2014
 - Certain amounts are deducted from the sales price in case of real property.
 - Purchase Price per acquisition deed (“escritura”)
 - Notary Fees, Internal Revenue Stamps and Fees paid by seller
 - Commission paid to real estate broker
 - Any increase in basis prepaid pursuant to Section 1014A of the 1994 PRCODE

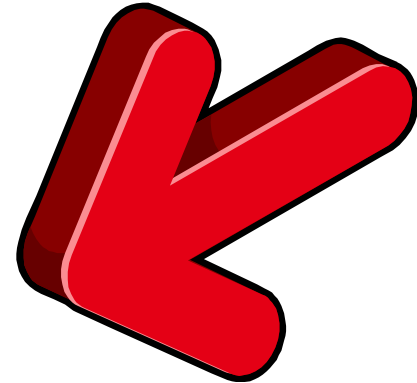
Reporting

- In the case of interest received by a nonresident alien, the obligation to deduct 29% apply if such individual is a person related, as per Section 1010.05, to the debtor of the obligation.
- File Form 480.30 (Summary) on or before April 15
- Form 480.6C must be provided to each recipient (with Copy to Treasury) by April 15. Form 480.5 summarizes these forms.

Sales and Use Tax

Basic Rule

- **Whoever Pays → Pays**
- **Whoever Charge → Charges**



Registry

- Required for all merchants
- 30 days prior starting operations
- Exhibitions on public area



Exemption Certificate

- Manufacturers
- Description of operations and inventory
- Valid for 3 years
- Handed over to seller



Exemption Certificate

- Eligible Resellers
 - 80% of inventory for exempt parties
 - 3 year look back period
 - Includes Government, Manufacturing Plants, Tourism, Hospital
- Automatic Qualification
 - Bookstores
 - PAN Sellers
 - Voluntary Chains
- Handed over to seller

Reseller Certificate

- **Mainly engaged in the purchase of taxable items for resale**
- **Will be issued for the following purposes:**
 - Identify if the reseller merchant **can claim the credit**
 - Identify merchants that can acquire person property for resale exempt of the 1% (Municipality Tax)
- **Valid for a period of 1 year**



Certificate of Exempt Purchases and Services subject to 4% (Form 2916)

- **Purpose:**
 - Releases the seller from his/her obligation of collection and remitting the SUT or the 4% Special-SUT on the sale for which this certificate is issued.
 - In the case of B2B services subject to 4%, establish the obligation of collect the 4% Special-SUT instead of the Basic-SUT
- **The purchaser must provide this form to the seller at the moment of the purchase together with copy of the Merchant's Registration Certificate, or any other document evidencing the exemption requested.**

Reports

- **Informative Declaration of Imports (Form 2970)**
 - **Who files?**
 - Every person that imports tangible personal property by any means
 - Must submit according to the introduction date and carrier
 - Any payment shall be filed electronically through SURI
- **Sales and Use Tax and Tax on Imports Monthly Return (Form 2915)**
 - **Who files?**
 - Any merchant engaged in business of selling taxable items or who imports tangible personal property by any means
 - Due: 20th of the following month
 - The return and any payment shall be filed electronically through SURI

Expenses Included on Invoice

- The following reimbursed expenses are not subject to the 4%
 - Incurred expenses related to the purchase of taxable personal property used as part of the service to be provided that are separately stated on the invoice. For example the cost of equipment to be installed.
 - Expenses directly attributable to the service paid by the service provider and claimed from the client as reimbursed expenses
 - Fees paid to a governmental agency
 - Payment for mailing of documents

Expenses Included on Invoice

- The following expenses will not be excluded from the 4% tax
 - Expenses not directly related to the service, such as
 - Out of pocket expenses or administrative recovery fees – not detailed
 - Computer programs
 - Services provided by employees
 - Subcontracted services, including sales tax paid on them

Accounting Method

- **General Rule:**
 - Same method used for the Income Tax Return
- **Exemption:**
 - Designated Professional Services – election of cash basis
 - The election shall be made in the income tax return filed on later than November 20, 2015.

Penalties



Deduction Limitation

- Section 1062.01(l)
- No tax deduction
 - Tax was withheld
 - Not remitted to Treasury
 - Not Reported

(l) *Responsabilidad por la contribución*. — El patrono será responsable al Secretario del pago de la contribución que deberá ser deducida y retenida bajo esta Sección, y no responderá a persona otra alguna por el monto de cualesquiera de estos pagos. Todo patrono que al momento de rendir su planilla de contribución sobre ingresos no haya remitido al Departamento de Hacienda la totalidad del monto deducido y retenido sobre los salarios pagados a sus empleados correspondientes al año contributivo por el cual está rindiendo y no haya informado dichos salarios pagados y contribución retenida en los comprobantes de retención según lo dispuesto en el apartado (n) de esta Sección, no podrá reclamar los salarios pagados como gastos de operación.

Deduction Limitation

- Section 1062.02(b)
- No tax deduction
 - Tax was withheld
 - Not remitted to Treasury
 - Not Reported

(b) *Retención sujeta a las disposiciones de la retención en el origen sobre salarios.* — La deducción y retención efectuada bajo el apartado (a) estarán sujetas a las disposiciones de este Subtítulo aplicables a la retención en el origen de la contribución sobre salarios en lo que se refiere al modo y tiempo en que deberá efectuarse el depósito de las cantidades retenidas y a la responsabilidad del pagador por las cantidades retenidas, excepto que la contribución retenida bajo esta Sección deberá ser depositada no más tarde del decimoquinto (15to) día del mes siguiente al cierre del mes natural en el cual la contribución fue deducida y retenida. Asimismo, le aplicarán las penalidades establecidas a los patronos por dejar de retener o de depositar las cantidades retenidas que se establecen en el Subtítulo F, incluyendo que **toda persona que al momento de rendir su planilla de contribución sobre ingresos no haya remitido al Departamento de Hacienda la totalidad del monto deducido y retenido sobre pagos descritos en el apartado (a) de esta Sección, o no haya sometido las declaraciones informativas correspondientes al año contributivo por el cual está rindiendo, no podrá reclamar dichos pagos como gastos de operación.**

Deduction Limitation

- Section 1062.03(c)
- No tax deduction
 - Tax was withheld
 - Not remitted to Treasury
 - Not Reported

(c) Responsabilidad del Pagador. — Salvo que se disponga lo contrario, toda persona que venga obligada a deducir y retener cualquier contribución bajo las disposiciones de esta Sección será responsable al Secretario del pago de dicha contribución y no será responsable a persona otra alguna por el monto de cualesquiera de dichos pagos. Toda persona que al momento de rendir su planilla de contribución sobre ingresos no haya remitido al Departamento de Hacienda la totalidad del monto retenido sobre pagos descritos en el apartado (a) de esta Sección y no haya radicado ante el Departamento de Hacienda las declaraciones informativas requeridas en los apartados (h), (i) y (j) de esta Sección, no podrá reclamar dichos pagos como gastos de operación. Disponiéndose que, en el caso de personas bajo el método de acumulación o con un año económico, podrán reclamar la deducción, según reflejada en sus libros de contabilidad, siempre y cuando presenten junto a su planilla una reconciliación entre el gasto reclamado y la cantidad informada en la declaración. No obstante, no se requerirá que las personas bajo el método de acumulación o con un año económico sometan junto con su planilla una reconciliación entre el gasto reclamado y la cantidad informada en las declaraciones informativas para que puedan reclamar la deducción, cuando dicha persona radique junto con su planilla de contribución sobre ingresos el estado financiero auditado conforme a lo dispuesto en la Sección 1061.15(a) y radique la Información Suplementaria requerida en la Sección 1061.15(b).

Penalty for Failure to Deduct and Deposit Certain Taxes

- If any person fails to withhold and deposit the taxes required, a penalty will be imposed equal to 2% of the amount not withheld and deposited, if the omission is for less than 30 days
- An additional 2% will be imposed for each 30-day period or fraction thereof that the omission persists
- The total penalty will not exceed 24%

Offense for failure to collect and pay, defeat or evade tax

- Section 6030.12
- Any entity or person that willfully fails to collect, accounts, pay, evade or defeat in any manner any tax imposed by any subtitle of the Code shall commit a felony in the third degree in addition to other penalties provided by the Code.

Responsible Party Sec. 6080.02

- Party who will be **personally responsible** for any penalty regarding failure to withhold, report or deposit
- It includes:
 - Officers
 - Person in charge of such functions
 - Excludes employees

Trust Accounts

- Section 6080.01
- Any amounts withheld that are not deposited are deemed to be in trust for the benefit of the government

SUT payment effect on Income tax

- Disallowance of deductions if:
 - SUT required on services purchased from foreign entities is not paid
 - SUT required on purchase of goods has not been paid (deduction or depreciation)

Questions

