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PUERTO RICO BUSINESS LAW NOTES

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PORTION OF PUERTO RICO'S ALTERNATIVE MINIMUM TAX DECLARED INVALID

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The US District Court for the District of Puerto Rico, in a well reasoned and extensive opinion, has declared invalid, and permanently enjoined, the "tangible property tax" and "expense tax" components of the Puerto Rico Internal Revenue Code's ("PR-IRC") alternative minimum tax ("AMT"). (WAL-MART Puerto Rico, Inc. v Juan C. Zaragoza Gómez, Secretary of Treasury of PR[1])

The Court's determination of permanently enjoining, and declaring invalid these components of the AMT, under both federal constitutional and statutory law, is not only applicable to WAL-MART, it applies to all taxpayers in Puerto Rico ("PR") affected by these AMT components.[2] These AMT components are applicable to taxable years commenced after December 31, 2014, whose income tax returns will be due on, or after, April 15, 2016.

Generally, these AMT components apply to any entity engaged in business within PR that is taxed as a corporation, generates $10 million or more of gross sales, and has affiliates or a head office located outside PR that were not engaged in trade or business within PR from which it acquired or received: (i) tangible goods (the "tangible property tax" component); and/or (ii) services (the "expense tax" component).

It remains to be seen if this determination is appealed to the US Court of Appeals for the First Circuit, and later to the US Supreme Court, and the ultimate result of such appeals.

In the meantime, corporate taxpayers with a PR tax exposure due to these AMT components must determine if they will pay the tax resulting from these components of the PR-IRC's AMT (including the estimated tax), and the possible consequences of non-payment in the event that the injunction is lifted and the determination is overturned.

[1] Civil No. 3:15-CV – 03018 (JAF), dated March 28, 2016, by Honorable US District Judge José Antonio Fusté.

[2] The "tangible property tax" rate varies, depending on the taxpayer's gross sales volume in PR, from 2.5% to 6.5% of gross purchases or transfers of tangible personal property from "related persons" or "home office" located outside PR. It does not apply if the gross income from its PR business is less than $10 million, or was lower than $10 million in any of the three prior years. The expense tax is rate is 20% of the charges for services provided to the PR taxpayer by "related entities" or "home office" located outside PR.

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