



**PUERTO RICO HURRICANE TAX RELIEF  
FOR IRA AND RETIREMENT PLAN DISTRIBUTIONS  
TO COVER LOSSES ATTRIBUTABLE TO HURRICANE MARIA**

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The Puerto Rico Treasury Department (“**PRTD**”) has issued an Administrative Determination No. 17-29 (“**AD-17-29**”) that grants tax relief under the Puerto Rico Internal Revenue Code of 2011, as amended (“**PR-IRC**”), for certain distributions of cash from Retirement Plans qualified under the PR-IRC (“**Retirement Plans**”), and Individual Retirement Accounts (“**IRAs**”) established pursuant to the PR-IRC, that are utilized to mitigate losses and damages attributable to the passage of Hurricane Maria through Puerto Rico (“**PR**”).

The following are the principal features of AD-17-29:

1. Eligible Distributions: The objective of AD-17-29 is to establish: (i) PR income tax rules that will facilitate cash distributions to Eligible Individuals from Retirement Plans qualified under Section 1081.01 of the PR-IRC or IRAs established under Section 1081.02 of the PR-IRC to cover losses (defined therein as Eligible Expenses) resulting from the aftermath of Hurricane Maria (defined therein as Eligible Distributions); (ii) the duties of trustees, administrators and service providers of Retirement Plans or IRAs for compliance with their responsibilities as withholding agents of Eligible Distributions; (iii) exemption for the first \$10,000 of Eligible Distributions; (iv) a 10% preferential income tax rate for Eligible Distributions in excess of \$10,000 (up to a \$100,000 combined cap); and (v) changes to the rules applicable to Retirement Plan loans.

2. Eligible Distributions. The term “**Eligible Distributions**” refers to payments and distributions, in cash, which are made from Retirement Plans and IRAs during the period from September 20, 2017 to June 30, 2018 (“**Eligible Period**”) which are requested by “**Eligible Individuals**” and are utilized for or compensate for “**Eligible Expenses**” as such terms are defined in AD-17-29.

3. Eligible Individuals. “**Eligible Individuals**” are defined as individuals that are residents of PR for natural years 2017 and 2018.



4. Eligible Expenses. The term “**Eligible Expenses**” generally refers to losses suffered due to the impact of Hurricane Maria, extraordinary expenses incurred to satisfy basic needs following Hurricane Maria, or to compensate for loss of income resulting from Hurricane Maria. The Eligible Individual that requests an Eligible Distribution does not have to submit evidence, nor a detail, of the expenses incurred or losses suffered as a result of Hurricane Maria. Furthermore, the extraordinary expenses may be incurred by either the Eligible Individual, or his/her spouse, descendants or ascendants. Such evidence or detail must be provided to the PRTD if, and when, such supporting information is requested by PRTD.

5. Timing of Eligible Distributions and Eligible Expenses. Eligible Distribution can only be made during the Eligible Period. However, it is not necessary to incur in the Eligible Expenses within the Eligible Period, as provided in AD-17-29.

6. Puerto Rico Income Taxes. For PR income tax purposes, Eligible Distributions from Retirement Plans or IRAs received by Eligible Individuals during the Eligible Period shall be deemed as distributions for extreme financial hardship and shall be subject to taxation as follows:

(a) *Exemption of \$10,000*: The first \$10,000 of the Eligible Distributions during the Eligible Period will not be subject to any PR withholding tax at source nor to the PR income tax imposed by Section 1021.01 of the PR-IRC, and the PR alternate basic tax imposed by Section 1021.02 of the PR-IRC;

(b) *Fixed Rate of 10% in excess of \$10,000*: Eligible Distributions in excess of the first \$10,000, and up to \$100,000 of such distributions, shall be subject to a 10% PR income tax withholding at source (thus, in addition to the exempt \$10,000 amount, Eligible Distributions up to an additional \$90,000 are entitled to a fixed tax rate of 10%); and

(c) *Maximum Limits*. The Eligible Individual is allowed to make several Eligible Distributions during the Eligible Period from one or more Retirement Plans or IRAs, but the total amount of Eligible Distributions shall not exceed \$100,000. Any Eligible Distributions previously requested from Retirement Plans or IRAs shall automatically reduce the limits of \$10,000 and \$100,000 applicable to a subsequent Eligible Distribution, under the same or another Retirement Plan or IRA, even if at the date of the subsequent Eligible Distribution a prior Eligible Distribution has not been disbursed.

7. Attribution Rules. The Eligible Distributions shall be first attributable to contributions and earnings not previously taxed by the Eligible Individual and if not sufficient, then to the basis not taxable, such as voluntary contributions of the employee (“*after-tax contributions*”) and amounts subject to prepayment of tax.

8. Withholding the 10% Fixed Tax Rate at Source. Any person making Eligible Distributions must deduct and withhold from Eligible Distributions exceeding \$10,000 the fixed 10% tax rate, subject to the \$100,000 cap on all Eligible Distributions.

9. Taxation of Eligible Distributions. Eligible Distributions that exceed the exempt \$10,000 amount, up to an additional \$90,000 (due to the \$100,000 cap), and that are subjected to the 10% withholding tax, will pay a fixed income tax rate of 10% in lieu of any other tax imposed by the PR-IRC, including the alternate basic tax.

10. Nonresidents of Puerto Rico for 2017 and 2018. Distributions from Retirement Plans and IRAs to individuals who are nonresidents of PR for the year 2017 or 2018 shall not be deemed to be Eligible Distributions and shall not be entitled to the tax treatment of AD-17-29. As a consequence, for PR income tax purposes such distributions shall be deemed to be taxable income and shall be subject to the regular rates of PR income tax and income tax withholding under the PR-IRC.

11. Consequences of Non-Compliance with Requirements of AD-17-29. An individual that does not comply with the residence requirement in AD-17-29, or does not use the amount received for Eligible Expenses, or who receives distributions from Retirement Plans or IRAs in excess of the limits established in AD-17-29, will be responsible for the payment of PR income taxes on the amounts distributed.

12. Distributions from Retirement Plans Not Entitled to Tax Treatment as Eligible Distributions. The PRTD noted in AD-17-29 that certain distributions from Retirement Plans are not entitled to tax treatment as Eligible Distributions. In particular, “total distributions” and other payments completed outside of the Eligible Period (i.e., before September 20, 2017 or after June 30, 2018), or completed during the Eligible Period (i.e., from September 20, 2017 and June 30, 2018) including distributions for extreme financial hardship due to Hurricane Maria exceeding the limit of \$100,000 of AD-17-29, as well as annuity and installments as defined in Article 1081.01(b)-3 of the Regulation, shall not be subject and shall not be eligible to the fixed rate of 10% of AD-17-29, and continue to be subject to the ordinary rules established in the PR-IRC and Regulation.



13. AD-17-29 Sworn Statement. In order to receive an Eligible Distribution, the Eligible Individual must submit a Sworn Statement providing certain specific information and certifications to the employer maintaining the Retirement Plan or to the service provider or administrator of the plan, or in the case of IRAs to the financial institution or insurance company maintaining the account.

14. No Verification Requirements. The administrator of Retirement Plans or trustee of IRAs receiving an AD-17-29 Sworn Statement from an individual is not obligated to validate or verify that the need of funds from the distribution will be used to cover or reimburse all or part of the unexpected expenses incurred, or the cost to repair the damages suffered due to the hurricane, and the sum or amount of such costs or damages. However, such administrator or trustee shall verify if the individual is a resident of PR based on the information provided on the Sworn Statement. In addition, in those cases in which the Eligible Individual applies for more than one Eligible Distribution, the administrator or trustee shall reduce the Eligible Distributions available to such individual with the sum of the Eligible Distributions previously requested as disclosed in the AD-17-29 Sworn Statement.

15. Administrative Procedures. AD-17-29 authorizes Eligible Distributions from Retirement Plans and IRAs, subject to compliance with the rules for taxation and withholding at source under Sections 1081.01(b) and 1081.02(d)(1) of the PR-IRC, respectively, and the administrative procedures under AD-17-29.

16. Waiver of Other Forms of Payment. Eligible Individuals can elect to receive Eligible Distributions regardless of other forms of payment provided under existing IRAs, or Retirement Plans that adopt the provisions of AD-17-29.

17. Waiver of Restriction Period. Eligible Individuals receiving Eligible Distributions from Retirement Plans that adopt the provisions of AD-17-29 shall not be subject to restriction periods to continue their contributions to such plans following the completion of the Eligible Distribution(s).

18. Eligible Distributions from Retirement Plans. In the case of Retirement Plans, Eligible Distributions may be accomplished by: (i) “total distributions” (generally the “lump sum distributions” after separation from service or plan termination) in cash, as defined in Article 1081.01(b)-2 of the Regulation 8049 (“**Regulation**”); or (ii) in-service withdrawals in case of extreme financial hardship in the form of partial payments in cash, as defined in Article 1081.01(b)-4 of Regulation. However, distributions in the form of annuity or installment do not qualify as Eligible Distributions.

19. Eligible Distributions from IRAs. In the case of IRAs, the 10% penalty under Section 1081.02(g) of the PR-IRC shall not be applicable to Eligible Distributions. However, the Eligible Individual may be subject to penalties imposed by the financial institutions or insurance companies under the contracts or documents of the IRAs.

20. Withholding Agents. The employer, administrator or service provider of the trust or annuity contract making the payment of Eligible Distributions shall be a withholding agent of the PRTD and shall be responsible to make the withholding of the fixed rate of 10% provided in AD-17-29. In addition, it shall be responsible for depositing the withholding tax with the Secretary of the Treasury no later than the fifteenth (15th) day of the following month after the close of the month in which the Eligible Distribution is made.

21. No option to pay the Fixed Rate of 10% with the Puerto Rico Individual Income Tax Return. Eligible Individuals that receive distributions from Retirement Plans or IRAs during the Eligible Period in excess of \$10,000 without the withholding at source of the fixed rate of 10% provided in AD-17-29, if applicable, shall not be entitled to opt for the special treatment of AD-17-29 on the PR Individual Income Tax Return. As a consequence, any distribution in excess of \$10,000 without the withholding at source of the fixed rate of 10% provided in AD-17-29, if applicable, shall be subject to PR income tax and penalties for early distribution under the PR-IRC.

22. Plan Loans. For PR income tax purposes, the AD-17-29 establishes that during the Eligible Period the approval and disbursement of a plan loan is permissible, even if the Retirement Plan does not provide for such plan loan at the time of completion of the plan loan, provided that the Retirement Plan is amended to provide for such plan loan no later than December 31, 2018. In addition, in the case of plan loans to participants in PR which were outstanding on September 20, 2017, as well as plan loans to participants in PR completed during the Eligible Period, it is permissible to provide a period of moratorium on repayment of up to one (1) year from the original date of expiration, or a period of extension of one (1) year for repayment of the plan loan without stopping the installments. The other terms for the approval, administration, and repayment of plan loans, such as the rules for maximum amount and amortization subject to period of moratorium, shall be subject to the terms and conditions of the plan or administrative rules of the plan or employer, as applicable. It should be noted, however, that the PRTD clarified that AD-17-29 does not provide any determination or opinion regarding the requirements that may be applicable for the operation of a loan program to participants of Retirement Plans under the U.S. Internal Revenue Code of 1986, as amended (“US-IRC”) or the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).



23. Plan Amendment. In the case of Retirement Plans, the PRTD noted that the provisions of AD-17-29 are optional. **The employer maintaining a Retirement Plan may adopt all or part of AD-17-29, but is not required to do it.** For example, the employer may amend a Retirement Plan to provide for Eligible Distributions under AD-17-29, but may limit such distributions to a maximum amount which is less than the amount of \$100,000 in AD-17-29, or may require the distribution to be related to particular events. In addition, the administrator of a Retirement Plan which is dual qualified in PR and the U.S. may limit the changes to rules for distributions to participants in PR to those which are consistent with the applicable provisions of the US-IRC or the changes authorized by the U.S. Internal Revenue Service (“IRS”) for participants affected by Hurricane Maria. **AD-17-29 requires that any Retirement Plan that adopts the provisions of AD-17-29 must be formally amended to that effect no later than December 31, 2018.** However, the PRTD noted that it is permissible the approval and disbursement of distributions in accordance with AD-17-29 prior to the date of adoption of such amendments. Thus, Eligible Distributions may be completed as late as June 30, 2018, even if the corresponding amendment to the Retirement Plan has not been adopted by such date.

24. Submission of Retirement Plan Amendment Not Required. The Plan Amendments that merely adopt the provisions of AD-17-29 shall not be deemed to be “amendments of qualification” for purposes of PRTD Circular Letter No. 16-08. Accordingly, the submission of such Plan Amendments with the PRTD is not required.



If you need AMG’s further advise on these matters, please contact any of the following attorneys:

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