

### IRS AUTHORIZES EXTRAORDINARY RELIEF FOR BONA FIDE RESIDENTS OF PUERTO RICO MEETING PRESENCE TESTS

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**T**he unprecedented and catastrophic effects of Hurricanes Irma and Maria (the “Hurricanes”) to the Commonwealth of Puerto Rico (“PR”) may have caused, or will cause, that residents of PR, including individuals under the Act 22 program, to not be physically present on the island during all or a portion of the September 6 to December 31, 2017 period. There may also be some individuals that may want to leave and/or not return to PR prior to December 31 of this year. This scenario may affect the ability of some PR residents to qualify as “bona fide residents” of PR under section 937(a) of the United States Internal Revenue Code (“US-IRC”) and the regulations promulgated thereunder (the “Regulations”).

Section 937(a) of the US-IRC provides that an individual will be considered a “bona fide resident” of PR if the individual: (i) meets one of the presence in Puerto Rico tests prescribed by Section 1.937-1(a)(1) of the Regulations; (ii) has his/her “tax home” in Puerto Rico; and (iii) does not have a “closer connection” to a jurisdiction outside of PR.

For purposes of the presence tests, an individual is treated as being present in PR on any day that he/she is physically present in PR at any time during the day. However, the Regulations also state that an individual is considered to be present in PR on any day that the individual is outside PR because the individual leaves or is unable to return to PR during any 14-day period within which a major disaster occurs in PR, provided that the US President issues a Federal Emergency Management Agency (“FEMA”) Notice of a major disaster.

In response to the aftermath of the Hurricanes, the United States Internal Revenue Service (“IRS”) issued Notice 2017-56 on October 4, 2017 (the “Notice”) to provide relief for individuals who may otherwise forego their status as a “bona fide resident” of PR due to the unexpected and prolonged dislocations caused by the Hurricanes, absent an extension of the 14-day grace period contained in Section 1.937-1(c)(3)(i)(C)(1) of the Regulations.



The Notice extends the aforementioned 14-day grace period of relief for individuals who, due to the dislocations caused by the Hurricanes, may otherwise fail the presence tests, and thus lose their status as a “bona fide resident” of PR. Specifically, the Notice extended the 14-day grace period to 117 days, while further providing that an individual who is outside of PR on any day during this 117-day period (commencing on September 6, 2017 and through December 31, 2017), will be treated as leaving or being unable to return to the PR as a result of the Hurricanes on such day.

Notwithstanding the foregoing, PR residents that utilize the extended grace period should be aware that in order to qualify as a “bona fide” resident of PR for 2017 they must still meet the “tax home” and the “closer connections” tests prescribed by the US-IRC Regulations during 2017.



For further advice on these matters, please contact any of the following members of our tax department:

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