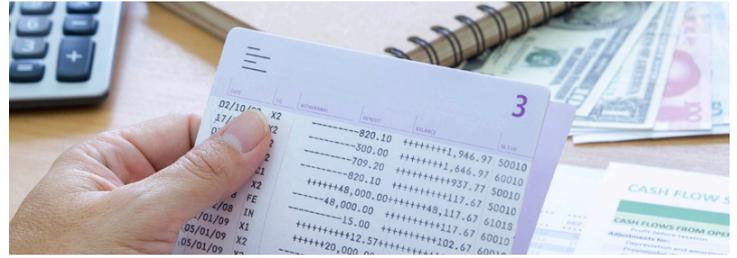


BUSINESS INSIGHT



MORE MEASURES TO HELP INCREASE YOUR CASHFLOW

Local incentives measure allows cash-strapped businesses to offset certain tax debts with tax overpayments

As part of local incentive measures to help cash-strapped taxpayers suffering from the effects of the COVID-19 pandemic, Puerto Rico Treasury Department ("PRTD") published Administrative Determination 20-10 ("AD 20-10") back in March to, among other things, allow taxpayers to apply certain tax overpayments against other tax regimes imposed by the Puerto Rico Internal Revenue Code of 2011, as amended ("Code") (see our Business Insight Issue 11 March 2020). With the recently published Circular Letter 20-28 ("CL 20-28"), PRTD outlined the process details for this type of request ("Transfer Request").

BDO teams are ready to help you navigate the process to take advantage of these offsets to help your business and increase your cashflow.

Eligibility

A taxpayer with a tax overpayment that has not been applied to another period, or has a tax refund request submitted to the PRTD and which has yet to receive by the date the taxpayer files the Transfer Request, is eligible for this request. All Code related overpayments are eligible to be transferred, except that, in the case of sales-tax-related overpayments, only overpayments from use tax on imported taxable items for resale are eligible for this mechanism. If the overpayment is eligible, the transfer may be claimed to offset debts from other tax regimes imposed by the Code, including, but not limited to, income tax, payroll income taxes, excise taxes, or alcohol excise taxes.

Income Tax overpayment

Pursuant to AD 20-10, only refunds from income tax returns for taxable years prior to tax year 2019 were eligible for the program, but CL 20-28 now incorporates tax year 2019 income return refunds as well. Additionally, to support the existence of the overpayment, the taxpayer may need to upload copies of more than one income return if the refund request stems from more than payments made in the current period when the refund request is made.

Income Tax backup withholding overpayments

These types of overpayments showing in the taxpayer's SURI account are also eligible to be transferred, but not against sales and use tax ("SUT") related debts. Additionally, if the excess withholding was done by a flow-through entity and/or a grantor trust, it must be attributed to the flow-through owners and/or grantor, respectively; these types of entities/trusts cannot file the Transfer Request.

Refund requests for excise taxes and taxes on alcoholic beverages

In the case a taxpayer wants to use a refund request for overpaid excise taxes or taxes on alcoholic beverages, only refund requests that have been formally acknowledged by PRTD, but are still pending remittance to the taxpayer, are eligible for the Transfer Request. The transfer, however, cannot be against SUT-related debts.

Import use tax overpayments by Certified Resellers

Import use tax overpayments showing in the taxpayer's SURI account may also be used to offset other tax debts imposed under the Code, but they are only available to Certified Resellers (as defined in the Code). Those resellers that are "eligible" Certified Resellers may not file for a Transfer Request inasmuch as they are not required to collect use tax on imported taxable items. Considering the available overpayment has to appear in the SURI account to be eligible for the transfer, the taxpayer need not upload supporting documents during the Transfer Request process.

Our tax professionals are here to help you.

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Contact any of our Tax Partners: Gabriel Hernández gaby@bdo.com.pr, Patricia Wangen patricia@bdo.com.pr or Diany M Otero dotero@bdo.com.pr, to discuss these matters in the context of your particular circumstances. Neither the BDO network, nor the BDO Member Firms or their partners, employees nor agents accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.

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