



GOVERNMENT OF PUERTO RICO

Department of the Treasury

November 28, 2023

ADMINISTRATIVE DETERMINATION NO. 23-04

ATTENTION: ENTITIES ENTERING INTO PARTNERSHIP CONTRACTS WITH A PARTNERING GOVERNMENT ENTITY UNDER ACT 29-2009, AS AMENDED

SUBJECT: CERTAIN RULES AND TAX CONSIDERATIONS APPLICABLE TO A CONTRACTOR ENTERING INTO A PARTNERSHIP CONTRACT WITH A PARTNERING GOVERNMENT ENTITY

I. Statement of Motives

Act 29-2009, as amended, known as the Public-Private Partnership Act (“Act 29”) sets forth the public policy regarding Public-Private Partnerships in Puerto Rico (“APP”, for its Spanish acronym) and creates the legal framework for the establishment of such partnerships. Pursuant to the provisions of Act 29, any Partnering Government Entity is authorized to establish an APP and execute a Partnership Contract in connection with one or more Functions, Services or Facilities, as such terms are defined under Act 29.

Administrative Determinations No. 20-06 (“AD 20-06”) and No. 22-05 (“AD 22-05”) addressing Operation and Maintenance and Concession Partnership Contracts, respectively (a “Partnership Contract”), set forth certain rules and tax considerations applicable under Act 29. The purpose of this Administrative Determination is to supplement AD 20-06 and AD 22-05 by addressing certain additional income tax considerations with respect to various matters not expressly covered in AD 20-06 or AD 22-05. The definitions of the terms contained in AD 20-06 and AD 22-05 will be equally applicable herein.

II. Statutory Basis

Pursuant to Article 12(a) of Act 29, the net income from the operations covered by a Partnership Contract shall be calculated in accordance with the Puerto Rico Internal Revenue Code of 2011, as amended (the “PR Code”), but the income tax rate will be a flat income tax rate of twenty percent (20%) in lieu of any other income tax imposed by the PR Code including but not limited to alternative minimum tax. Distributions made from the earnings and profits covered by the Partnership Contract will be exempt from income taxes.

Section 1010.01(a)(43) of the PR Code allows limited liability companies, corporations, and partnerships to elect to be treated as pass-through entities for Puerto Rico income tax purposes



(“Pass-Through Entities”). Pass-Through Entities are subject to the provisions of Subchapter H of Chapter 7 of Subtitle A of the PR Code, which, in turn, provides that the provisions generally applicable to partnerships under Chapter 7 of Subtitle A of the PR Code are equally applicable to Pass-Through Entities.

In addition, Section 1010.01(a)(3)(A) of the PR Code and Part III-E of Administrative Determination No. 22-10 provide that, for taxable years beginning after December 31, 2022, a single member foreign limited liability company that has an election to be treated, or that, for federal income tax purposes or by virtue of the laws of a foreign country, is treated as a disregarded entity, *may* elect to be treated as a disregarded entity for Puerto Rico income tax purposes (the “Disregarded Entity”). Section 1010.01(a)(41)(i) of the PR Code provides that the owner of a Disregarded Entity recognizes the activity of the Disregarded Entity in its income tax return as if the Disregarded Entity did not exist.

Pursuant to Section 1071.01 of the PR Code, partnerships are not subject to the payment of the income taxes imposed under the PR Code. Instead, the partners are responsible for the payment of such income taxes on their distributive share of the partnership’s income. Additionally, each partner of a partnership is deemed to be engaged in trade or business in Puerto Rico with respect to its distributive share of each item of income, gain, loss, deduction, credit or other items if the partnership is so engaged. Therefore, partnerships are required to report to each partner their respective distributive share on certain separate identifiable items of income, gain, losses, deductions, credits and/or other items. Moreover, each partner is deemed to have realized or incurred such items of income, gain, losses, deductions, credits and/or other items as if realized or incurred directly by the partner. Thus, the character of any partnership item that must be “separately stated” is determined as if realized directly from the source from which the partnership realized it or incurred in the same manner as the partnership incurred it.

On the other hand, Section 1062.07 of the PR Code requires partnerships to determine and remit to the Secretary of the Treasury (“Secretary”) as estimated taxes of its partners, an amount equal to the higher of: (i) thirty percent (30%) of the estimated distributive share of each partner in the net income of the partnership subject to ordinary income tax rates, plus the applicable income tax rate of the estimated distributive share of each partner in the separate identifiable items of income of the partnership that are subject to a preferential lower income tax rate according to Subchapter C of Chapter 2 of Subtitle A of the PR Code or applicable special law, or (ii) the estimated distributive share of each partner in an amount calculated based on the tax on gross revenues imposed under Section 1023.10 of the PR Code. Section 1053.06(a) of the PR Code provides that the amount of tax withheld at source under Section 1062.07 of the PR Code with respect to the distributive share in a partnership shall be allowed as a credit against the tax imposed to the partners of a partnership.

III. Determination

A. Treatment of the Net Income from the Partnership Contract Derived by a Contractor That is a Pass-Through Entity or a Disregarded Entity

Article 12(a) of Act 29 provides that the Contractor of a Partnership Contract is subject to a twenty percent (20%) fixed income tax rate on the net income derived from the operations set forth in the Partnership Contract, computed in accordance with the PR Code. If the Contractor is a Pass-



Through Entity for Puerto Rico income tax purposes, the Contractor itself is not subject to the payment of Puerto Rico income taxes, but rather the partners are responsible for the payment of such income taxes on their distributive share of the Pass-Through Entity's income imposed under the PR Code, in accordance with Section 1071.01 of the PR Code. Thus, the twenty percent (20%) fixed income tax rate provided under Article 12(a) of Act 29 is applicable to the net income derived by the Pass-Through Entity from the operations set forth in the Partnership Contract that flows-through to the partners of the Pass-Through Entity.

Similarly if the Contractor is a Disregarded Entity for Puerto Rico income tax purposes, the Contractor will not subject to the payment of Puerto Rico income taxes, and the owner of the Disregarded Entity will be required to recognize the activity of the Disregarded Entity in its income tax return, as if the Disregarded Entity did not exist, as provided in Section 1010.01(a)(41) of the PR Code. Thus, the twenty percent (20%) fixed income tax rate provided under Article 12(a) of Act 29 is similarly applicable to the net income derived by the sole owner of the Disregarded Entity from the operations set forth in the Partnership Contract.

B. Puerto Rico Income Tax Withholding at Source Applicable to the Distributive Share of Each Partner in the Net Income from the Partnership Contract Derived by a Contractor that is a Pass-Through Entity

Section 1062.07 of the PR Code generally provides that a partner's distributive share in the income of the partnership is subject to quarterly estimated tax payments by the partnership at the thirty percent (30%) income tax rate. However, Section 1062.07 of the PR Code specifically provides that a partner's distributive share in the income of the partnership that is subject to a preferential lower income tax rate according to an applicable special law is subject to the applicable preferential income tax rate, instead of the generally applicable thirty percent (30%) income tax rate.

Article 12(a) of Act 29 provides that the net income derived from the operations covered by the Partnership Contract is subject to a preferential twenty percent (20%) fixed income tax rate. Accordingly, the distributive share of each partner in the net income from the Partnership Contract derived by a Contractor that is a Pass-Through Entity will be subject to quarterly estimated tax payments at the preferential twenty percent (20%) income tax rate, rather than to the thirty percent (30%) income tax rate generally applicable under Section 1062.07 of the PR Code. The referenced twenty percent (20%) income tax withholding at source under Section 1062.07 of the PR Code will be allowed as a credit against the tax imposed to the partners of a Pass-Through Entity, as provided by Section 1053.06(a) of the PR Code.

This rule is equally applicable in those cases in which the sole member of a Disregarded Entity is a Pass-Through Entity for Puerto Rico income tax purposes. In that case, the distributive share of each partner in the net income from the Partnership Contract derived by the sole member of a Disregarded Entity that is a Pass-Through Entity will be similarly subject to quarterly estimated tax payments at the preferential twenty percent (20%) income tax rate, and the referenced payments will be similarly creditable against the tax imposed to the sole member of the Disregarded Entity.



C. Treatment of the Distributions of the Income Derived from the Operations Covered by the Partnership Contract

Article 12(a) of Act 29 provides that the distributions made from the earnings and profits covered by a Partnership Contract will be exempt from the payment of income taxes. Accordingly, any distribution made by the Contractor from the earnings and profits derived from the operations covered by a Partnership Contract will be exempt from the payment of income taxes. Moreover, any subsequent distributions of the income derived from the operations covered under a Partnership Contract made by the owner(s) of the Contractor and any equity owners thereof will also not be subject to the payment of Puerto Rico income taxes.

D. Private Rulings and other Requests

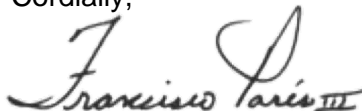
As indicated in AD 20-06 and AD 22-05, Contractors entering into a Partnership Contract which, due to the specific factual background, require a determination from the Secretary regarding certain tax considerations not specifically addressed in this Administrative Determination, on AD 20-06 nor AD 22-05, as applicable, should request the issuance of a private ruling from the Secretary.

IV. Effectiveness

The provisions of this Administrative Determination are effective immediately. The provisions of AD 20-06 and AD 22-05 remain in full force and effect.

For additional information regarding the provisions of this Administrative Determination, taxpayers can contact the Department of the Treasury by sending a web message through their Internal Revenue Integrated System (SURI) account.

Cordially,



Francisco Parés Alicea
Secretary

