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DL Business Law ^{puerto rico} Developments

The past few months have seen a number of legislative measures and laws that significantly change the tax landscape in Puerto Rico. These measures include changes to the Puerto Rico Internal Revenue Code for the 2010 taxable year as well as a completely new tax code for the 2011 taxable year onwards. Additionally, these new measures also include significant changes aimed at giving the Puerto Rico Treasury additional tools to fight tax evasion and increase tax collections. We have enclosed a brief summary of the major changes but in no way should this update be considered exhaustive due to their nature and scope.

2010 TAX REFORM

Act No. 171 of 2010, also known as the 2010 Tax Reform, introduced and amended sections of the Puerto Rico Internal Revenue Code of 1994, which will have certain implications for the 2010 taxable year.

• 2010 ADDITIONAL CREDIT

A new tax credit solely for the 2010 taxable year is available for individuals that derive gross income from wages,

Tax Update Changes to Puerto Rico Internal Revenue Code

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TAX DEPARTMENT



services rendered, pensions, annuities or any other similar type of income. The percentage of the credit depends on the taxpayer's adjusted gross in-

come. The credit will consist of total tax liability multiplied by the corresponding percentage, as listed below:

ADJUSTED GROSS INCOME	TAX CREDIT
\$0 - \$40,000	15%
\$40,001 - \$100,000 (\$150,000 in certain cases)	10%
Excess of \$100,000 (\$150,000 in certain cases)	7%





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In case of married taxpayers that opt for the optional tax computation for joint filers, the credit's amount will be determined individually for each. This tax credit cannot be claimed against income subject to preferential tax rates or the alternate minimum tax.

• **DETAILED DEDUCTIONS**

The mortgage interest deductions are limited to 30% of the taxpayer's adjusted gross income with certain modifications.

• **NET OPERATING LOSSES**

For the 2005 through 2011 taxable years, net operating losses can be carried forward for a period of 10 years, as opposed to the normal 7-year period for operating losses incurred in previous years.

• **SALES AND USE TAX**

The 2010 Tax Reform introduced numerous changes to the Sales and Use Tax ("SUT") aimed at improving enforcement. First, any prizes received as part of the Puerto Rico Treasury's IVU LOTO system are exempt from all taxes, including excise taxes. The IVU LOTO is a new receipt system imposed by the Puerto Rico Treasury that includes a special lottery number that is eligible for prizes on a periodic basis. The main goal of the IVU LOTO is to increase the percentage of the SUT's collection—especially for cash sales—which has proven difficult for the Puerto Rico Treasury to collect. As part of this new measure, any person found not using or tampering with the IVU LOTO system will be subject to a \$20,000 fine.

In addition to the IVU LOTO, the 2010 Tax Reform lowers the threshold requiring electronic filing and payment of the collected SUT from \$500,000 in annual sales to \$200,000, thereby increasing the number of merchants that will be required to file SUT returns electronically. Finally, failure to file the monthly SUT return will result in a \$100 penalty or 10% of the SUT reflected therein, whichever is greater. These changes are effective for SUT returns corresponding to the 2011 taxable year and thereafter.

• **INFORMATIVE RETURN REGARDING CREDIT APPLICATIONS**

Another enforcement measure approved for the 2010 Tax Reform is the requirement that financial businesses must file an informative return with the Puerto Rico Treasury for credit requests by taxpayers. This new informative return will be required for any credit request of \$250,000 or more. In the case of mortgage applications, the informative return will be required for requests of \$500,000 or more. If a taxpayer makes multiple credit requests within a period of 30 days, all credit request will be added up to determine whether the information return will be required. Said informative return is due on or before the last day of the month following the credit request

filed by the taxpayer. These new provisions apply to credit requests after November 30, 2010.

2011 TAX REFORM

Act No. 1 of January 31, 2011, enacted a new Puerto Rico internal revenue code for taxable years beginning after December 31, 2010. Along with reduced tax rates for both individual and corporate taxpayers, the new code also introduces significant changes to the taxation of partnerships and limited liability companies in Puerto Rico.

• **MAJOR TAX CHANGES FOR CORPORATE TAXPAYERS**

The first major change to corporate taxpayers is a change in the income tax rates. Previously, corporate taxpayers—who under the previous code included partnerships, limited liability companies ("LLCs"), and limited liability partnerships ("LLPs")—, were taxed at progressive tax rates between 20% and 41% (including the special 5% temporary surtax of net income). Under the new code, all corporate taxpayers will be subject to a 20% income tax rate on their net income. Additionally, corporate taxpayers with net taxable income in excess of \$750,000 will also be subject to an additional surtax as follows, resulting in a maximum tax rate of 30%:

NET TAXABLE INCOME	TAX
Up to \$1,750,000	5%
In excess of \$1,750,000	\$87,500 + 10% of the excess above \$1,750,000

Moreover, for tax years commencing after December 31, 2013, this additional surtax is reduced to 5%, resulting in a maximum tax rate of 25% for all corporate taxpayers regardless of their net taxable income. Please note that in the case of controlled corporate groups or related entities the applicable additional surtax is determined taking into consideration the net taxable income of all such entities.

The second major change under the new code is a change to the alternate minimum tax ("AMT"). Under the new code, if a corporate taxpayer is subject to the AMT, it will pay the greater of the following:

- The tax determined under the regular corporate tax rates;
- 20% of the income subject to the AMT; or
- 1% of the value of personal property purchased from "related persons" but only for corporate taxpayers with gross income in excess of \$50 million per year.

The third major change under the new code for corporate taxpayers is a change in the tax treatment of partnerships. Under the new code, partnerships will no longer be taxed as entities separate from their partners. As such, their partners will now be subject to taxation upon their distributive share of the partnerships' income at the individual level. Furthermore, while LLCs will continue to be treated as corporations under the new code, they will be eligible to elect to be treated as a partnership for tax purposes. However, this partnership tax treatment

will be mandatory in cases in which such LLCs are taxed as a partnership for United States or foreign tax purposes. The new code establishes certain transition rules for partnerships and LLCs that were in existence prior to the approval of the new code.

The following additional changes have also been introduced under the new code:

- ☑ Elimination of the special 5% surcharge for certain corporate taxpayers
- ☑ No new special partnerships election will be permitted as of January 1, 2011
- ☑ "Spin-offs" are now allowed as a tax-free corporate reorganization method
- ☑ Source of income rules for personal property imposed under the United States Internal Revenue Code are incorporated into the new Puerto Rico code
- ☑ Income from air or maritime transportation that starts and ends in Puerto Rico will now be deemed 100% Puerto Rico source income, regardless of whether they occur over or through international waters
- ☑ Income from trips between a point within Puerto Rico and a point without Puerto Rico will now be deemed 50% Puerto Rico source income
- ☑ Audited financial statements will only be required for entities with a volume of business in excess of \$3,000,000, although entities with volumes of business between \$1,000,000 and \$3,000,000 can opt to file audited statements

in order to be eligible for a total waiver on withholding of service income

- ☑ The "Trust Fund Recovery Penalty" of the United States internal revenue code is now incorporated into the new Puerto Rico code
- ☑ New rules for "related persons" and "controlled corporate groups" are adopted
- ☑ Changes to the computation and the method to claim a tax credit for the purchase of products manufactured in Puerto Rico
- ☑ Corporate taxpayers, including partnerships and LLCs, have the irrevocable option to compute their tax liability under the previous code for a period of five years, starting in 2011

• MAJOR TAX CHANGES FOR INDIVIDUAL TAXPAYERS

The new code introduces new income tax rates that increase the threshold at which a taxpayer is subject to the maximum tax rate of 33%. For the 2011 taxable year, taxpayers with taxable net income of \$60,000 are subject to the 33%, up from \$50,000 under the previous tax code. This top level is increased every year until the top rate reaches \$121,501 by year 2016. Furthermore, individuals with taxable net income of less than \$5,000 for the 2011 taxable year will be exempted from taxation, increasing to \$16,500 by the year 2016. Please note, however, that the tax rates and brackets for the 2014 through 2016 taxable years are only triggered if the government reaches certain tax collection threshold for their corresponding fiscal years.

The second major change was the reduction of the permitted deductions:

- ✓ Mortgage interest, up to 30% of the taxpayers adjusted gross income of the current tax year or any of the previous three taxable years;
- ✓ Charitable donations, up to 50% of the taxpayer's adjusted gross income;
- ✓ Medical expenses and orthopedic equipment in excess of 6% of the taxpayers adjusted gross income;
- ✓ Student loan interest;
- ✓ Contribution to certain governmental retirement plans; and
- ✓ Contribution to Individual Retirement Accounts ("IRAs"), Educational IRAs and Health Savings Accounts.

In the case of retirement accounts, under the previous code total contributions to IRAs and deferred compensa-

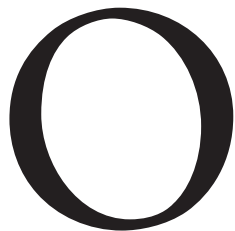
tions plans, generally known as 401(k) plans or 1165(e) plans, were limited to a combined total for both. Under the new code, contributions to such plans are not subject to this combined total taxpayers can now contribute the maximum amount allowed under the new code to both IRAs (maximum of \$5,000 in 2011, \$10,000 for married taxpayers that file joint returns) and employer-sponsored retirement savings plans (maximum of \$10,000 in 2011, \$13,000 in 2012 and \$15,000 in 2013).

Finally, the following additional changes have also been introduced under the new code:

- ✓ Elimination of the special 5% surcharge for certain individual taxpayers;
- ✓ Elimination of the special real property tax for the 2011-2012 fiscal year;
- ✓ Gradual elimination of the gradual adjustment tax for certain taxpayers;

- ✓ Elimination of the "marriage penalty" for married taxpayers filing separate returns or electing the optional computation;
- ✓ Increase of the personal exemption to \$3,500 for all taxpayers (\$7,000 for married taxpayers that file joint returns);
- ✓ Special partnership losses can no longer be used to offset income derived from wages or from taxpayer's principal industry or business; and
- ✓ Individual taxpayers have the irrevocable option to compute their tax liability under the previous code for a period of five years, starting in 2011.

While certain provisions of the new code have different effective dates, most of its provisions will be effective for taxable years commencing after December 31, 2010. ♦



On February 14, 2011, the Puerto Rico House of Representatives issued Bill No. 3181, which seeks

to amend many of the Island's labor and employment laws. As stated in its introduction, the main purpose of the Bill, also known as the "Puerto Rico Employment Code of 2011," is to codify many of the labor and employment laws, jurisprudence and regulations which already exist in one single code.

The Bill, which is almost 400 pages in length, has chapters that apply to both public and private sectors. Title I con-

tains general provisions that apply to both sectors, while Title II and Title III apply to the public and private sector, respectively.

The Bill is currently being debated by the House of Representatives' Labor and Employment Commission, where it has encountered opposition by several organizations, including the Syndication Coalition (which groups three of the major syndication organizations in the Island), who allege that the Bill undermines employee rights.

Should anyone be interested in the Bill's status, feel free to contact Javier G. Vázquez at 787.759.4113, jvazquez@gaclaw.com or info@gaclaw.com. ♦

JAVIER G. VÁZQUEZ

LABOR & EMPLOYMENT LAW DEPARTMENT

Puerto Rico House of Representatives seeks labor reform



Government Unveils the Amended Patient's Bill of Rights & Responsibilities

On November 1, 2010, Governor Luis Fortuño signed the amended Patient's Bill of Rights & Responsibilities. *The bill is now effective.*

The primary objective of the amended bill is to help children—and eventually all Puerto Ricans—with pre-existing conditions to gain coverage and keep it. Also, it intends to protect all patients' choice of doctors and to end lifetime limits on the care consumers may receive. These new protections apply to nearly all health insurance plans, except grandfathered health plans.

The provisions of the amended bill among other matters include the following:

PREEXISTING CONDITION EXCLUSIONS: Prohibits preexisting condition exclusions for both benefit limitations and coverage.

ANNUAL DOLLAR LIMITS: Restricts annual dollar limits on "essential health benefits" to no less than \$750,000 beginning September 23, 2010, \$1.25 million beginning September 23, 2011, and \$2 million beginning September 23, 2012, but only before January 1, 2014. Good faith compliance with a "reasonable interpretation" of what is an essential health benefit will be allowed until regulations defining that term are issued.

NO PRE-EXISTING CONDITION EXCLUSIONS FOR CHILDREN UNDER AGE 19: The new regulations will prohibit insurance plans from de-



nying coverage to children based on a preexisting condition. This ban includes both benefit limitations (e.g., an insurer or employer health plan refusing to pay for chemotherapy for a child with cancer because the child had the cancer before getting insurance) and outright coverage denials (e.g., when the insurer refuses to offer a family policy for the child because of the child's pre-existing medical condition). These protections will apply to all types of insurance except for individual policies that are grandfathered health plans and will be extended to individuals of all ages starting in 2014.

KEEPING YOUNG ADULTS COVERED: Children under 26 years old will be allowed to stay on their parent's family policy, or be added to it. The Insurance Commissioner has the duty to regulate this matter.

OTHER CONSUMER PROTECTION MANDATES: Group health plans or health insurance issuers are prohibited from requiring a referral for OB-GYN care or from not allowing a pediatrician to be a designated primary care provider as long as the doctor belongs to the preferred-provider network.

INTERNAL & EXTERNAL APPEAL PROCESS: Health plans must have an internal appeal process for beneficiaries to challenge adverse benefit decisions. If the internal appeal is denied, patients may choose to have the claim reviewed through an external appeal process. ♦

¹A grandfathered health plan which is one that was in place on March 23, 2010, when the health reform law was enacted, is exempt from complying with some parts of the health reform law, so long as the plan does not make significant changes to its policy.

Usually it has taken the Property Registrar years in recording documents presented in connection with real property transactions. This has proven to be troublesome for the lending industry in particular and title holders in general, especially due to the fact that years after documents are filed Registrars notify defects in the documents that, due to the elapsed time are sometimes difficult to correct.

To improve this situation, the Puerto Rico Legislature approved Act No. 216 of December 27, 2010, also called the Property Registry Streamlining Act. The Act intends to speed up the registry process of several hundred thousand backlogged documents waiting to be reviewed in all sections of the Property Registry. In turn, the government purports to encourage Puerto Rico's financial and banking sectors to lend by ensuring that their loan guarantees are properly registered.

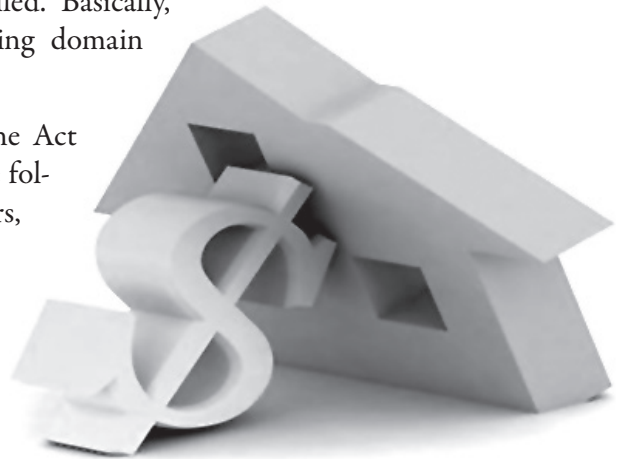
The main thrust of the Act involves automatically deeming most outstanding documents as properly registered. Thus, any documents presented prior to April 30, 2010, will be bestowed a presumption of validity by the mere virtue of the Act. This presumption can be disputed in court, but there are no special provisions in the Act regarding instances where flawed documents have been presented; any rectifications will need to undergo the ordinary process found in the Mortgage and Registry Act of 1979. Furthermore, all dues from filed documents will also be consid-

New developments regarding the Property Registry

ered correct and properly cancelled. Basically, the Act focuses on streamlining domain rights, as well as mortgages.

It is important to note that the Act contains several exceptions. The following documents, among others, will not be granted this special treatment:

- **Segregations, aggregations, and groupings**
- **Proceedings to prove ownership**
- **Expropriations**
- **Documents that rectify size or describe remnants**
- **Documents which constitute a Horizontal Real Property regime**



Any documents so registered will bear an inscription in a corresponding entry indicating that said document was registered by virtue of the Property Registry Streamlining Act.

In order to stave off additional delays, the Act incorporates a two-year time frame for Registrars to emit judgments on all excepted documents presented before April 30, 2010, and a 90-day period to do likewise on all documents presented thereafter. The Act authorizes disciplinary sanctions against any Registrar who fails to comply with the new terms. The Secretary of Justice is required to issue the corresponding regulation within 40 days from the date of approval of the Act. The Act became effective on February 9, 2011. ♦



Act No. 154 of October 25, 2010, amends Section 1123 of the Puerto Rico Internal Revenue Code of 1954. The Act incorporates a new and permanent Puerto Rico source income rule which results in taxing certain income, generated after December 31, 2010, of foreign corporations not engaged in business within Puerto Rico. The Act also adds a new chapter (Chapter 7), to the excise tax provisions of the Puerto Rico Internal Revenue Code.



New Rule

The new source income rule will subject a portion of the worldwide income generated by foreign corporations not engaged in business within Puerto Rico to local income taxation at regular corporate income tax rates. Pursuant to the Act, foreign corporations not engaged in business in Puerto Rico will be treated as engaged in business within Puerto Rico for purposes of applying the new rule if the foreign corporation purchases products or services in connection to manufactured products from a manufacturing affiliate (50% common ownership) in an amount of at least 10% of its total purchases, or if the manufacturing affiliate sells at least 10% of its total sales to the foreign affiliate not engaged in business within Puerto Rico.

New Permanent Puerto Rico source income rule and six years temporary excise tax

The average of a four-factor formula will apply in order to determine what portion of the income generated by the foreign corporation not engaged in business in Puerto Rico will be subject to the new rule. These factors are: (1) real and personal tangible property, (2) payroll, (3) property sales, and (4) purchases. Basically, the factors, as applied locally, will be compared to their worldwide counterparts. The percentage resulting from the average of the four-factor formula will determine the portion of the income subject to Puerto Rico income tax.

In cases where a local manufacturer's gross receipts for any of the three preceding years exceeds \$75 million, in lieu of applying the new rule as described above, a 4% excise tax on its sales will apply for sales made during 2011. The percentage of this excise tax will decline per year as follows: 4%, 3.5%, 2.75%, 2.5%, 2.25%, and 1%. For sales generated after 2016, the temporary excise tax will not be applicable. However, foreign corporations not engaged in business within Puerto Rico will be subject to Puerto Rico income tax on a portion of their income, applying the permanent new Puerto Rico source income rule.

In summary, during years 2011 to 2016, an excise tax will apply to purchases of locally manufactured products or services in connection to a manufactured product where the Puerto Rico operating company's total sales exceed \$75 million and where sales or purchases between the affiliated companies are in excess of 10% of the total of such sales or purchases. After 2016, these foreign corporations not engaged in business in Puerto Rico will be subject to Puerto Rico income tax as determined pursuant to the permanent Puerto Rico new income source rule. Corporations with less than \$75 million in gross receipts, but meeting one of the 10% threshold tests, will be subject to income tax on its worldwide income applying the new Puerto Rico source income rules commencing in January, 2011.

If the application of the four-factor formula to allocate a portion of the income of a foreign corporation not engaged in business locally results in an allocation to Puerto Rico in excess of the income which is “reasonably” attributable to business or sources within Puerto Rico, the Act empowers the Secretary of the Treasury to re-determine the taxable income resulting from the application of the new

rules so that they apply only to that portion which is “reasonably” attributable to business and sources within Puerto Rico. The taxpayer may request the Secretary of the Treasury for a re-determination of this amount in those cases where a taxpayer believes that the application of the formula results in taxation of income in excess of what is “reasonably” attributable to business or sources within Puerto Rico.

Recently, on November 16, 2010 the Secretary of the Treasury announced that the Government of Puerto Rico had formally requested a ruling from the Internal Revenue Service to the effect that the tax imposed by the Act is creditable as a foreign tax credit against US income tax liability. There is little choice but to wait for the outcome of this request. ♦

PAUL A. FERRER
CORPORATE & BANKING LAW DEPARTMENT

Have you ever rushed to the bank on a Saturday (just before closing time) in order to make payment on a loan obligation that is due the next day (on Sunday)? Have you ever been charged late payment fees for a payment that was paid to your bank on time (say on a Saturday), but was not credited by the bank until the next business day which just happened to be one or two days after your payment’s due date?

While your answer to both these questions may be no, the Legislature of Puerto Rico felt that this was in fact an issue that was affecting a significant number of Puerto Rican consumers. Thus, the Legislature of Puerto Rico took action by enacting Act No. 239 on December 20, 2010, in order to amend the Commercial Transactions Act and the Credit and Saving Cooperatives Act. Said amendment provides, in part, that all payments to loan or similar obligations which are due on a weekend

day or holiday, and are paid to a bank or cooperative on said weekend day or holiday due date will be deemed paid on time and no late fees may be charged to the client. However, the bank or cooperative may for its own internal operational or accounting purposes only, consider the transaction to be perfected as of the next day.

Similarly, the enacted amendment provides that even though a bank or cooperative may establish a cut-off hour of no earlier than 2:00 p.m. for all transactions (in order to enter such transactions in its books), such financial institution or cooperative must date and credit the payment on the date that it was actually received (and not on the following banking day). This provision is also applicable to those transactions carried out at a bank’s drive-through teller or by any other payment service option offered by a bank or cooperative. ♦

Good news for those who wait until the last minute to make their bank loan payments



The answer to the title's question is yes. Otherwise, they may be declared null and void. So ruled the Supreme Court of Puerto Rico in *Rodríguez Vélez v. Bahía Park, S.E.*, 2010 TSPR 226 (2010).

THE FACTS

Defendant, the owner of a commercial real estate property, entered into a verbal agreement with Plaintiff, a licensed real estate broker in Puerto Rico, in connection with the sale of a property, which was later confirmed in writing by the Plaintiff. Even though the letter specified the terms and conditions of the agreement, including the brokerage fee, it failed to include an expiration date. Plaintiff coordinated a visit to the property with a prospective buyer, but Plaintiff's subsequent follow-up efforts were unsuccessful. Two years later the prospective buyer directly purchased the property from Defendant for the amount of \$5,847,925.50. Plaintiff requested from Defendant that his commission be paid, who opposed, arguing that Plaintiff had not been the promoter of the sale.

THE LAW

Act No. 10 of April 26, 1994, known as the Act to Regulate Real Estate Business and the Profession of Real Estate Broker, Salesperson, or Companies in Puerto Rico, regulates the real estate brokerage contracts commonly known in Puerto Rico as the open contract (where the owner reserves the right to hire any given broker at any time to offer and sell the property), the exclusive contract (where the broker has an

Real Estate Brokerage Contracts: Do they require a termination date?

exclusive right to offer, promote and negotiate the sale of the property) and the semi-exclusive contract (where the owner itself may also offer and sell the property). When a real estate brokerage contract does not specify the type, it will be presumed an open contract. The Act expressly provides that the exclusive and semi-exclusive contracts must have a termination date specified therein to protect consumers from automatic renewals. However, the text of the law failed to include the open contracts in such prohibition.

THE COURT'S RULING

The Supreme Court ruled that, although the letter written by Plaintiff was in fact an open contract, the legislative intent was that all real estate brokerage contracts should have a termination date – including open contracts. The court established that a real estate brokerage contract without a termination date is against the law and therefore null. The court further adopted in Puerto Rico the common law doctrine known as the “efficient procuring cause” which has been adopted in many common law jurisdictions, very similar to the “ready, willing and able” doctrine used by the courts to determine, in cases where the perfection of the contract is flawed, if a broker is entitled to a commission based on efforts of the broker to successfully procure a buyer which was ready, willing and able to buy. The “efficient procuring cause” in turn focuses in the chain of events that would lead the broker to receive the commission. If there is a rupture in the chain of pertinent events, it should be concluded that the actions of the broker were not the ones that procured the negotiation and sale.

Moreover, the Court indicated that a broker must be the efficient procuring cause of the sale and not a mere incidental link. Thus a broker does not have the right to recover a commission when its efforts only produced one event in the chain of events that led to the sale. Notwithstanding the above, the Court did acknowledge the existence in Puerto Rico of the “extension clause” which protects the broker from the seller that waits until the brokerage contract has expired to realize the transaction with a prospective buyer that was introduced by the broker. This “extension clause” may extend for a period no longer than six months after the termination date of the contract and it is to be analyzed on a case by case basis. ♦

Technology Corner

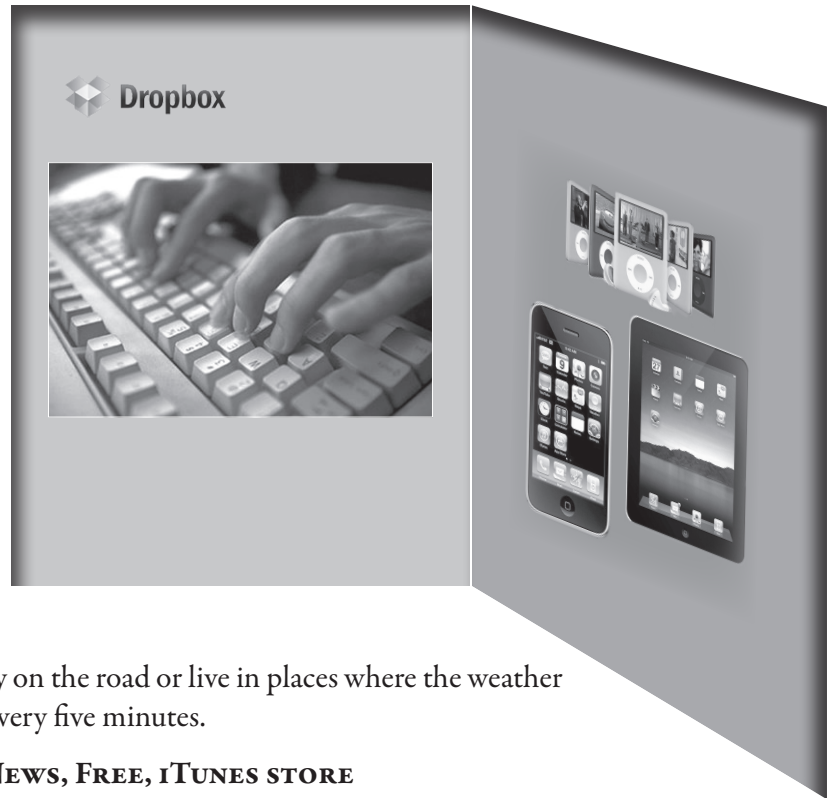
Technology has advanced a great deal in the last few years. Gone are the days where Personal Digital Assistants (“PDAs”) were glorified agendas and the most you could do with a mobile phone was play Snake. Today’s smartphones are powerful enough to display HD video, play 3D games and surf the Internet with ease. They are also commanding enough to be used as useful business tools in today’s workplace. To that effect, I’d like to share some of the apps I have found to be extremely useful in working with clients. Although this article deals with apps for iOS devices (iPhone/iPod Touch/iPad), many of these apps (or similar ones) are also available for other mobile systems like the Android and Blackberry.

• **APPBOX PRO, \$0.99,**
iTUNES STORE

AppBox Pro is one of my favorite apps and it certainly delivers plenty of bang for your (literal) buck. This app includes a built-in alarm, calculator, currency converter, flashlight (especially useful with the iPhone 4’s built-in LED flash), secure wallet for passwords and credit card numbers, amongst others. As utility apps go, it’s definitely a must buy.

• **ACCUWEATHER WEATHER,**
FREE, iTUNES STORE

With its hourly weather information, 15-day forecast, weather maps, videos and even Lifestyle weather information (the Hair Frizz Risk is particularly interesting), it’s a weather app on steroids. It’s great for those that are



constantly on the road or live in places where the weather changes every five minutes.

• **CNN NEWS, FREE, iTUNES STORE**

With its Push Notification feature you can stay up-to-date with breaking news with this CNN app. You can also customize what type of news you want to follow, turning the app into a personalized news feed. The app also includes a live video feature for breaking news that works over Wi-Fi as well as over 3G. It is available in US and International editions.

• **DROPBOX, FREE, iTUNES STORE**

This is your hard drive in the cloud. Probably my favorite app, Dropbox is a combination online storage and file synchronization system. Not only can you synchronize folders over multiple computers but you can access such folders on

In the interest of full disclosure, I do not have any direct ownership of or other relation with Apple, Google, Blackberry, AT&T or any other company related to the apps herein listed. I do, however, own way more apps than I really should admit to at this time. The prices listed are those indicated by the appropriate company as of the printing time.



any other computer (via a browser) or mobile device. You can also share folders with other users and any changes to documents are automatically updated on any computer with Dropbox installed. The free account includes 2GB of storage, which can be bumped up to 100GB for \$20/month. This app is also universal, so it works on both the iPhone/iPod Touch as well as the iPad.

• **DOCUMENTS TO GO PREMIUM, \$16.99, iTUNES STORE**

This is the most expensive app in this list, but it's certainly one of the most useful. Not only can you view Word, Excel, and PowerPoint documents, you can also edit those documents right from your mobile device. You can also view and edit documents stored in online services, like Dropbox, Google Docs and Box.net, amongst others. These features are great when you need to make a last-minute change to a document or presentation and there are no computers (or Internet access) available. You can sync documents with its companion desktop application and you can access most email attachments directly from the app from email providers like Microsoft Exchange, Gmail, Yahoo! Mail, amongst others.

If you can forgo online document support and PowerPoint editing, a less-expensive \$9.99 version of Documents to Go is available. Both versions of the app are also universal, so they work on both the iPhone/iPod Touch, as well as the iPad.

• **PAGES AND KEYNOTE, \$9.99 EACH, iTUNES STORE (IPAD ONLY)**

• These two apps are available on the iPad only but they certainly go a great

way to dispel the myth that the iPad is strictly a consumption-device. Pages and Keynote are Apple's version of Word and PowerPoint, respectively, and while neither app has the full complement of features that their corresponding desktop application have, they are hardly barebones versions either. Both apps include numerous templates for multiple types of letters and presentation that make the creation of documents much easier, especially with the iPad's touch interface. Furthermore, Keynote can turn your iPad into a portable presentation device when used with the iPad's VGA-out cable. Just load the presentation onto the iPad and you can certainly leave the laptop at the office.

• **iANNOTATE PDF, \$9.99, iTUNES STORE (IPAD ONLY)**

PDFs are a great way to share documents and the iPad's 10" screen is great for reviewing them, but what if you want to make notes and comments on such files? Enter iAnnotate PDF. This app is essentially an annotation tool that allows you to make notes, comments, bookmarks, and highlights to any PDF file. You can access PDFs on this app via email, desktop companion application or via an online file storage system like Dropbox.

Once you make your annotations, you can email a summary of such annotation, including the page and its content along with the annotated PDF itself. As a bonus feature, any annotations made with this app can be seen with desktop applications like Acrobat Reader, so you are not limited strictly to such summaries. Finally, you can display your documents onto an ex-

ternal projector or monitor using the iPad's VGA-out cable.

• **ANGRY BIRDS, \$0.99, iTUNES STORE**

• **Angry Birds HD, \$4.99, iTunes store (iPad only)**

All work and no play makes Jack a dull boy. There are only so many times to review a presentation, check grammar and spelling mistakes and review emails while waiting for your meeting to start or for your lay-over to end. For those other times, there's Angry Birds. This game is the top grossing iOS app of all time and one of the biggest gaming phenomena on the Internet.

It's a physics-based castle demolition game, which is just a fancy way of saying that you shoot different types of birds (each with different capabilities) at the pigs that stole your eggs. While the game is short on plot, the game is long on replay value, especially since the developer regularly releases updates with new levels to conquer. Whether you can play for one minute or for one hour, you'll likely be hooked from the moment you start the game. Just make sure you don't miss that meeting or that flight while doing so! ♦

Goldman Antonetti & Córdova, P.S.C., does not endorse or warrant or otherwise back-up any of these applications. The information is provided for entertainment purposes only.

The Puerto Rico Legislative Branch is considering the House Bill Number 3070 equivalent to the Senate

Bill Number 1909 that creates the Puerto Rico Internal Revenue Code of 2010 (the “Code”). The Code intends to provide tax benefits to individuals and corporations, stimulate the economy and aid in the creation of jobs.

Among the numerous changes to the current tax code, many have been suggested to the establishment, qualification and administration of qualified retirement plans in Puerto Rico. Since it is anticipated that House Bill Number 3070 will be enacted into law shortly, we list the most significant provisions to which special attention should be given by employers and plan sponsors.

- The Bill provides a new special rule for the purposes of coverage testing in the case of a corporate merger, acquisition or spin-off when an entity is no longer part of a controlled group. Although there are various aspects of this new requirement which are still unclear, plan sponsors and/or employers who are in the process of a corporate reorganization should take note of it.

- There is an “annual addition” limit similar to that under the U.S. Internal Revenue Code of 1986, as amended (the “IRC”). Effective for plan years commencing on or after January 1, 2012, there will be certain limits on the benefits that any participant can receive. These limits differ depending on whether the plan is a defined benefit plan or a defined contribution plan.

Possible changes to Puerto Rico tax-qualified retirement plans

- Effective for plan years commencing on or after January 1, 2012, there will be a dollar limit on the amount of compensation that could be considered for purposes of determining the contributions or benefits under the plan and nondiscrimination testing. The Code specifies that in the case of dual qualified plans, the provisions of the IRC will apply in lieu of the Code. This limit, as well as the annual additions, are not indexed.
- All employees of all corporations, partnerships or any other person that is part of a controlled group of corporations, partnerships or a services affiliated group will be considered as employees of a single employer. We understand that this could create problems during nondiscrimination testing; hence, special attention by plan sponsors and employers should be granted as well.
- There is a new income tax withholding requirement of 10% imposed to in-service withdrawals and any other distribution which is not a lump sum distribution. Also, there is a new provision to determine compliance with the 10% investment requirement in order to benefit from the 10% preferential tax rate in the case of lump sum distributions. Now this 10% investment requirement needs to be determined based on the average daily balance of the trust investments instead of the close of the plan year.
- The definition of “highly compensated employee” has finally been changed to substantially match its counterpart under the IRC.
- There are new salary deferral limits which will not be reduced by contributions made to a Puerto Rico IRA. The limits will be: for January 1, 2011, \$10,000; January 1, 2012, \$13,000; and January 1, 2013, \$15,000. The catch-up limit will now be \$1,500. All of these amounts are not indexed.
- Finally, effective January 1, 2012, the Code will elevate to law the current regulatory requirement that all trust claiming exemptions will need to request a determination from the Puerto Rico Secretary of the Treasury. Therefore, you should contact your retirement plan service provider or legal counsel in order to assure compliance with this and every other requirement imposed under the Code in order not to jeopardize your plan’s current qualified status. ♦



United States Senate votes against debating Paycheck Fairness Act

On November 17, 2010, during its lame-duck session, the United States Senate voted against allowing debate on the “Paycheck Fairness Act” bill by a 58-41 margin. The vote split overwhelmingly along strict party lines, with no Republicans voting for debate, and only one Democratic Party member of the Senate, Senator Ben Nelson of Nebraska, voting against it. The bill had previously been passed by the United States House of Representatives in January of 2009.

The Paycheck Fairness Act would have expanded the scope of the Equal Pay Act of 1963, the Fair Labor Standards Act of 1938, and the recently-enacted Lilly Ledbetter Fair Pay Act of 2009, by making it easier for presumptive targets of wage discrimination on grounds of gender to address the issue and, ultimately, successfully assert a claim of discrimination. The bill would have levied on employers the burden of having to assert and prove that any discrepancies in wage or pay between a female employee and a similarly-situated male employee were based on legitimate non-discriminatory business reasons, including the specific demands or characteristics of the employees’ respective positions.

The bill would have also done away with any workplace prohibitions regarding the employees’ ability to disclose wage or salary information to co-



workers, and would instead have allowed employees to freely share this information with co-workers, presumably facilitating any subsequent

claims on grounds of sex-based wage

discrepancies. Other provisions included an anti-retaliation provision to protect claimants and whistleblowers, as well as the destination of resources to educate female employers on the issue of wage discrimination and provide them with negotiating skills.

Critics of the bill ascertained that, if enacted, the Act would have forced employers to create a pay scale for a position, not only at the entry level, but uniformly throughout the organization. Strict construction of the Act might have entailed that if a male employee successfully negotiated a pay rise which was not requested by a similarly-situated female co-worker, that female co-worker might have been automatically entitled to a raise she never requested or negotiated. The Act would have also had the likely effect of greatly lessening the employer’s discretion and flexibility in addressing its pay scale, particularly regarding new hires, lateral recruits and pay-raise negotiations.

No other version of the bill has been re-introduced in Congress since its defeat in November. The changing political tide, along with the upcoming General Elections almost certainly means that no legislation of this sort will be introduced during the next two years. Employers would, however, be well-advised to actively monitor any legislation which may impact its pay scales and ability to subsequently defend itself from a claim of discrimination. ♦

• **THREE GAC ASSOCIATES ARE PROMOTED TO PARTNERS**

We wish to congratulate three GAC associates who were promoted to partners of the Firm this past December:

- **Paul A. Ferrer-Pérez** is a member in the Corporate & Banking Law Department with experience in the areas of commercial transactions, such as mergers and acquisitions, reorganizations, and real estate law. Mr. Ferrer also provides legal counsel to clients on local and federal Intellectual Property Law, Condominium Law issues, government and municipal contracts, contracts in general, and general corporate regulatory and compliance matters.

- **Maritza I. Gómez-Fernández** is a member of the Labor & Employment Department. Before joining the Firm she worked as a Trial Attorney in the Equal Employment Opportunity Commission in Miami litigating cases in Florida, Connecticut and Puerto Rico. Ms. Gómez counsels and represents employers in various employment related areas including employment discrimination, medical leaves of absence, domestic violence at the workplace, and wrongful termination. She has also worked representing clients in sports and entertainment law issues.

- **Carlos R. Pastrana-Torres** is a member of the Labor & Employment Department and has experience in the areas of labor and employment law, immigration and naturalization law, sports and entertainment law and general civil litigation. Pastrana

has handled a wide array of matters, including wrongful termination, sexual harassment, all forms of discrimination, retaliation, defamation, benefit and compensation, torts, naturalization and citizenship petitions, contract law and sports and entertainment issues.

• **ATTORNEYS THAT HAVE JOINED GAC**

- **Wilda Rodríguez-Plaza** rejoined GAC's Litigation & Trial Practice Department as Of Counsel in January. Ms. Rodríguez-Plaza rejoins the Firm after serving as a Superior Court Judge for the Commonwealth of Puerto Rico. She had previously worked at GAC from 1989 to 2006, becoming partner in 1999. Ms. Rodríguez-Plaza is a highly experienced attorney with over 24 years of experience, with vast knowledge of Mortgage and Foreclosure procedures, and Bankruptcy and Administrative Law. She has served as lead attorney for general commercial and civil litigation in both the local and federal courts, and has experience in mass torts litigation and representing non-debtors in bankruptcy proceedings. She is also an experienced notary public. Ms. Rodríguez-Plaza is very happy to rejoin the GAC family and we welcome her return to the Firm.

- **Francisco J. Dox-Millán** joined the firm's Corporate & Banking Law Department as an associate in 2010. Mr. Dox graduated magna cum laude from the University of Puerto Rico, Río Piedras campus' College of Natural Sciences before attending the University of Puerto Rico Law School, where he served as Lead Edi-

tor for the University of Puerto Rico Law Review and Co-Founder of the University of Puerto Rico Business Law Journal. Mr. Dox will focus his practice on Corporate Law, as well as local and federal Intellectual Property Law.

• **LEADERSHIP POSITIONS**

During the past few months, several of our friends at GAC have attained leadership positions in several distinguished organizations. We congratulate them in their success as outstanding members of our legal community.

- **Roberto Montalvo-Carbia** was elected to the Board of Directors of the Puerto Rico Chamber of Commerce, and designated to the Chamber's Executive Committee.

- **Myrna I. Lozada-Guzmán** was designated to chair the Puerto Rico Chamber of Commerce's Public Private Partnerships Committee.

- **Javier G. Vázquez-Segarra** was elected as President of the Labor Relations Professionals Association.

- **Maritza I. Gómez-Fernández** was elected to the Board of Directors of the Federal Bar Association, Hon. Raymond L. Acosta Puerto Rico Chapter.

- **Alicia Lamboy-Mombille** was designated President of the Puerto Rico Chamber of Commerce's Unit for Promoting Sustainability, as well as elected to the Board of Directors of the Puerto Rico Energy Cluster.

- **Ángel D. Marrero-Murga** was designated as a member of the Puerto Rico Bar Association's Tax Committee. ♦





GOLDMAN ANTONETTI & CORDOVA, P.S.C.
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Important Changes to the Annual Report Filing Process

According to Article 15 of Act No. 164 of 2009, as amended, also known as the “General Corporations Act,” corporations must file an annual report with the Department of State on or before April 15 of each year. Starting on January 1, 2011 and pursuant to Regulation No. 7939 approved on November 2, 2010, annual reports must now be filed by electronic means through either the Government of Puerto Rico’s website at www.pr.gov, or the Puerto Rico State Department’s website at www.estado.pr.gov. A copy of Reg. No. 7939 is available at: www.estado.gobierno.pr.

For those without Internet access, the agency will provide access to work stations that can be used for filing the electronic reports. However, in order to use the manual filing system, and according to Regulation 7939, the applicant

must submit a written request to the Secretary of State for a waiver to file the annual report in paper form. This waiver must be requested no later than March 31, 2011 and must be accompanied by an Internal Revenue voucher for the amount of thirty dollars (\$30) in addition to the applicable annual report filing fees. Note that the request for a waiver to file a paper form does not imply the automatic grant of right to do so. The Secretary of State will notify the applicant corporation of the waiver’s approval or denial.

Corporations interested in applying for an extension to file an annual report must do so online on or before April 15, 2011. Also, a corporation applying for a renewal must pay the filing fees upon requesting the extension. Once the payment is processed, you will receive confirmation via email and will have until June 14, 2011 to file the 2010 annual report. ♦