

# TAX ALERT

## EFFECTS OF HURRICANES MARIA AND IRMA ON BONA FIDE RESIDENCY

On September 5th and September 17th, 2017 Puerto Rico was affected by Hurricanes Irma and Maria, respectively. The effects of these natural disasters have caused many individuals under the Economic Development Act 20/22 program to temporarily leave the island and/or have not been able to return.

Pursuant to Treasury Regulations addressing Bona Fide residency in a U.S. Possession, an individual is considered to be present on the possession on any day that an individual is outside the relevant possession because the individual leaves or is unable to return to the relevant possession during any 14-day period within which a major disaster occurs in the relevant possession for which a Federal Emergency Management agency notice of a Presidential declaration of a major disaster is issued in the FEDERAL REGISTER; or a period for which a mandatory evacuation order is in effect for the geographic area in the relevant possession in which the individual's home is located.

On September 10th, 2017 a Major Disaster Declaration (DR-4336) was issued by FEMA for Puerto Rico due to the effects of Hurricane Irma and on September 20th, 2017 a Major Disaster Declaration (DR-4339) was issued by FEMA for Puerto Rico due to the effects of Hurricane Maria (hereinafter referred to as "the declarations"). It is important to note that for residency and taxation purposes the regulations do not differentiate between a mandate for Public Assistance or Individual Assistance as this pertains to FEMA procedures.

In light of the declarations Puerto Rico resident individuals may count up to 14 days of absence in Puerto Rico, as Possession days, towards their 183 day total for each declaration. It is important to note that since these periods may overlap the amount of total days credited to each individual may vary depending on their specific situations and travel dates.

Furthermore, a mandatory evacuation order was enacted for several municipalities due to separate events caused by the effects of Hurricane Maria, hence Individuals which reside in the indicated areas may be credited additional days due to these events.



» Since the year 2017 may prove a challenging year for physical presence in Puerto Rico due the devastation brought by both hurricanes, we list below rules which may be relevant for 2017.

- Pursuant to the regulations issued by the IRS in covering the Bona Fide resident physical presence test requirements, a taxpayer may credit up to 30 days spent in a foreign country (outside both the U.S. and the possession) as possession days towards their 183-day total (see our SEPTEMBER 2015 ISSUE 31). Furthermore the following rules are worth mentioning.
- There are alternate ways of complying with the presence test, among them:
  - Being present in the United States for no more than 90 days. The regulations do not establish a minimum amount of days of presence in the possession under this alternative.
  - Being present in the relevant possession for at least 549 days during the three-year period consisting of the taxable year and the two immediately preceding taxable years, provided that the individual was also present in the relevant possession for at least 60 days during each taxable year of the period. This alternative is particularly applicable to Bona Fide residents which commenced their PR residency during the 2015 taxable year.
  - During the taxable year had earned income in the United States, if any, not exceeding in the aggregate the \$3,000 and was present for more days in the relevant possession than in the United States.

Understanding that each situation may vary depending on the circumstances of each of our clients, we recommend that you reach out to us so we may plan for your situation.

BDO Puerto Rico offices are fully operational. We are committed to offer support to our clients and community through these challenging times. We are also part of the ongoing efforts to rebuild our communities as soon as possible. Should you wish to be part of the rebuilding efforts in Puerto Rico and the U.S. Virgin Islands, feel free to contact and partner with us.

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