

COVID-19 Federal and local legislation applicable to businesses in Puerto Rico

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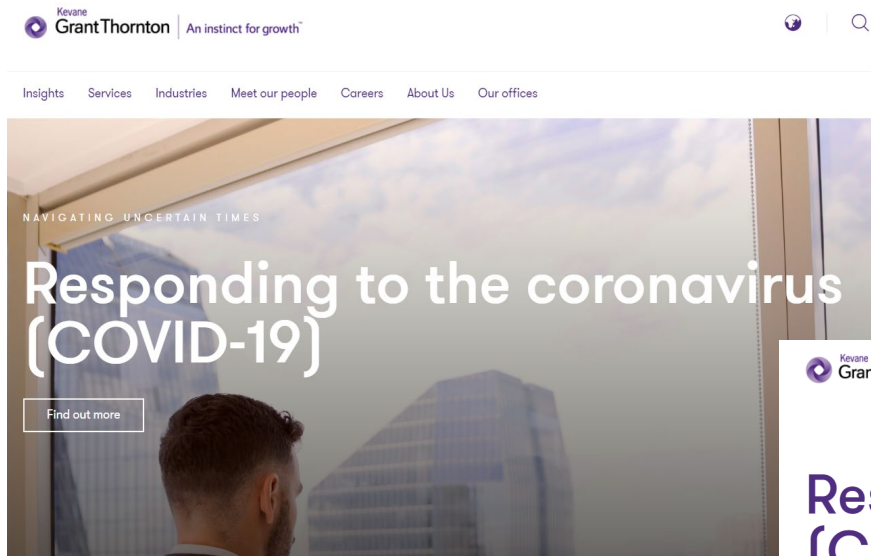
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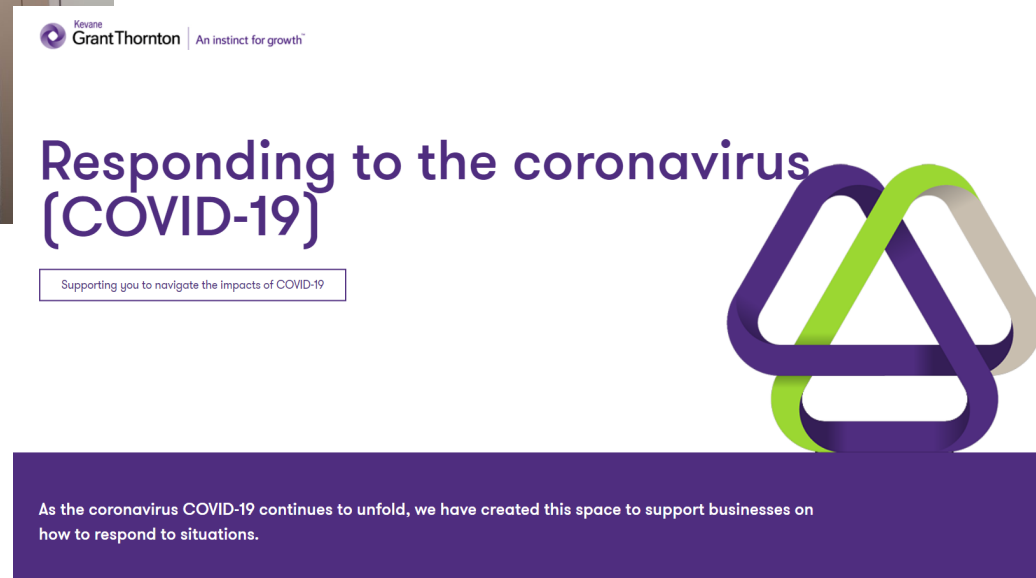


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Agenda



- Puerto Rico and US recent tax communications
- Families First Coronavirus Response Act
 - Family leave
 - Emergency paid sick leave
 - Tax credits for paid sick and family and medical leave
- Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)
 - Paycheck Protection Program
 - Employee Retention Credit

Communications from the Puerto Rico Treasury Department

Income Tax Return

Form	Original or Extended Due Date	Extended due date pursuant to AD 20-09
Income Tax Return	March 15, 2020 April 15, 2020 May 15, 2020 June 15, 2020	June 15, 2020 July 15, 2020 July 15, 2020 July 15, 2020
Income Tax Returns for which a Request of Extension of Time to File has been requested	March 15, 2020 April 15, 2020 May 15, 2020 June 15, 2020	June 15, 2020 July 15, 2020 July 15, 2020 July 15, 2020

Informative Declarations

Form	Year	Original or Extended Due Date	Extended due date pursuant to AD 20-09
Informative Declarations	2019	April 15, 2020	May 15, 2020

Other Returns

Form	Original or Extended Due Date	Extended Due Date	Letter
Corporate Annual Report	April 15, 2020	July 15, 2020	AO 20-02
Volume of Business Declaration	April 22, 2020	July 22, 2020	OGP Circular Letter 005-2020
Personal Property Tax Return	May 15, 2020	August 1, 2020	CRIM Administrative Order 2020-03

Sales and Use Tax Returns

Form	Period	Original due date	Extended due date pursuant to AD 20-09
SUT Monthly Return	February 2020 March 2020 April 2020 May 2020	March 20, 2020 April 20, 2020 May 20, 2020 June 22, 2020	April 20, 2020 May 20, 2020 June 22, 2020 July 20, 2020
Tax on Imports Monthly Return	March 2020 April 2020 May 2020	April 10, 2020 May 10, 2020 June 10, 2020	May 10, 2020 June 10, 2020 July 10, 2020
Semi-monthly sales tax deposits	March 2020 April 2020 May 2020 June 2020	March 15 & 31, 2020 April 15 & 30, 2020 May 15 & 29, 2020 June 15 & 30, 2020	April 20, 2020 May 20, 2020 June 22, 2020 July 20, 2020

Internal Revenue Circular Letter 20-21

- allows self-employed individuals to request an incentive of \$500 exempt from income tax.
- request will be made through SURI platform from March 30, 2020 until May 1, 2020.
- eligible self-employed needs to be registered as a Merchant and have a current registration as of March 15, 2020.
- if the Merchant registration has expired, the merchant needs to demonstrate no later than May 1, 2020 that she/he was a bona fide self-employed.

Internal Revenue Circular Letter 20-22 – disaster payments

- provides exempt treatment for disaster payments that comply with the requirements set in CC RI -20-08.
- eligible payments made from February 1, 2020 until April 30, 2020.
- exempt amount limited to \$2,000 per month and \$4,000 in the aggregate.

Internal Revenue Circular Letter 20-22 – disaster payments

- Eligible payments - payments made by a person, whether resident or nonresident of Puerto Rico, to an individual, with whom an employer-employee relationship exists or who has rendered services as an independent contractor, to assist and support in the process of repairing, mitigating or reimbursing any damage or loss suffered by such individual as a consequence of a disaster declared by the Governor of Puerto Rico.

Internal Revenue Circular Letter 20-22 – disaster payments

- Eligible expenses –
 - necessary and reasonable expenses for the individual or his family,
 - such as food, medicines, gasoline, lodging, medical expenses, childcare expenses, dependent’s care expenses, expenses for the generation of electric power, expenses to supply potable water to the home and funeral expenses, incurred as a result of the disaster declared by the Governor of Puerto Rico;

Internal Revenue Circular Letter 20-22 – disaster payments

- Eligible expenses –
 - to reimburse or pay necessary and reasonable expenses incurred to
 - repair or rehabilitate the principal residence or
 - repair or replace tangible personal property therein contained
 - to the degree such repair or rehabilitation or replacement is attributable to a disaster declared by the Governor of Puerto Rico if such payment was made directly to the supplier of the goods or services to the individual

Internal Revenue Circular Letter 20-23 – pension plan and IRA distributions

- provides authorization to withdraw from retirement accounts to cover COVID-19 related expenses.
- follow the procedures established by CC RI-20-09 that allowed to make distributions to cover expenses related to the earthquake emergency.
- limit distributions to \$100,000.

Internal Revenue Circular Letter 20-23 – pension plan and IRA distributions

- first \$10,000 are exempt from withholding and the remaining \$90,000 will be subject to a 10% special tax.
- eligible period from February 20, 2020 until June 30, 2020

Internal Revenue Circular Letter 20-23 – pension plan and IRA distributions

- Eligible expenses –
 - incurred to compensate for losses or damages suffered,
 - extraordinary and unforeseen expenses to cover basic needs because of the emergency declared by the COVID-19,
 - the loss of income due to the curfew declared by the Governor.
- Applies to residents of the 78 municipalities of Puerto Rico

Administrative Determination 20-10

tax withholding on services rule

- provides withholding agents exemption of the withholding on service payments.
- eligible period will be from March 23, 2020 until June 30, 2020.
- service provider can request the withholding agent to made the correspondent withholding.

Administrative Determination 20-10

Waiver of Estimated Tax Penalty for individuals and corporations

- provides that no penalties will be assessed for failure to make the 1st and 2nd estimated tax installments for taxable year 2020.
- any underpaid tax for the year should be covered with the 3rd and 4th fourth estimated tax installments.

Administrative Determination 20-10

SUT Exemption to Resellers

- applies to registered resellers and only to inventory to be subsequently sold.
- A Temporary Exemption Certificate will be issued through SURI.
- eligible period from April 6, 2020 to June 30, 2020.
- exemption applies on Imports and local purchases.
- SUT for any taxable item will be collected on the final sale.

P de la C 2468 – approved by House of Representatives on April 6, 2020

- “Ley complementaria para atender los efectos de la economía puertorriqueña provocadas por la emergencia del COVID-19”
 - employee retention credit
 - NOL’s carry back
 - temporary exemption of B2B and designated professional services
 - postponement of minimum \$500 AMT on corporations
 - no inclusion in gross income for income tax and VOB of credits and subsidies (local and federal)
 - special rate on unrealized capital gains and dividend distributions

Communications from the Internal Revenue Service

Payments and Returns Filings by Affected Taxpayer

Form	Original or Extended Due Date	Extended due date pursuant to Notice 2020-23
Individual income tax payments and Forms 1040, 1040-NR, 1040-NR-EZ, 1040-PR and 1040-SS	April 1, 2020 – July 14, 2020	July 15, 2020
Calendar year or fiscal year corporate income tax payments and Forms 1120, 1120-C, 1120-F, 1120-FSC, 1120-REIT, 1120-S, among others	April 1, 2020 – July 14, 2020	July 15, 2020

Payments and Returns Filings by Affected Taxpayer

Form	Original or Extended Due Date	Extended due date pursuant to Notice 2020-23
Calendar year or fiscal year partnership returns Forms 1065, 1066	April 1, 2020 – July 14, 2020	July 15, 2020
Estate and trust income tax payments and returns 1041, 1041-N, 1041-QFT	April 1, 2020 – July 14, 2020	July 15, 2020

Payments and Returns Filings by Affected Taxpayer

Form	Original or Extended Due Date	Extended due date pursuant to Notice 2020-23
Estate and GST payments and returns 706, 706-NA, among others	April 1, 2020 – July 14, 2020	July 15, 2020
Gift and GST tax payments and returns Forms 709	April 1, 2020 – July 14, 2020	July 15, 2020

Payments and Returns Filings by Affected Taxpayer

Form	Original or Extended Due Date	Extended due date pursuant to Notice 2020-23
Income tax and returns Form 990-T, 990-PF	April 1, 2020 – July 14, 2020	July 15, 2020
Quarterly estimated income tax payments calculated on or submitted with Form 990-W, 1040-ES, 1040-ES (NR), 1040-ES (PR), 1041-ES, and 1120-W	April 1, 2020 – July 14, 2020	July 15, 2020

Affected Taxpayers

The Secretary of the Treasury has determined that any person (as defined in section 7701(a)(1) of the Code) with an Specified Payment or Specified Form obligation, which is due to be performed (originally or pursuant to a valid extension) on or after April 1, 2020, and before July 15, 2020, is affected by the COVID-19 emergency for purposes of the relief described in Notice 2020-23.

Affected Taxpayers

The Secretary of the Treasury has also determined that any person performing a time-sensitive action listed in either § 301.7508A-1(c)(1)(iv) – (vi) of the Procedure and Administration Regulations or Revenue Procedure 2018-58, 2018-50 IRB 990 (December 10, 2018), which is due to be performed on or after April 1, 2020, and before July 15, 2020 (Specified Time-Sensitive Action), is an Affected Taxpayer. For purposes of this notice, the term Specified Time-Sensitive Action also includes an investment at the election of a taxpayer due to be made during the 180-day period described in section 1400Z-2(a)(1)(A) of the Code

Families First Coronavirus Response Act

Families First Coronavirus Response Act

- Approved on March 18, 2020
- Takes effect on April 1, 2020
 - Puerto Rico effectiveness
- Benefits for employees
 - Paid emergency family and medical leave
 - Paid sick leave
- Benefits for employers
 - Tax credits for employers providing paid family sick leave

Family leave:

Eligible employers

- applies to employers with **fewer than five hundred 500** employees.
- the Federal Secretary of Labor has the authority to issue regulations to exclude certain health care providers and emergency personnel from the definition of eligible employee, and to exempt small businesses with less than 50 employees from application where the imposition of such requirements jeopardizes the viability of the business.

Family leave:

Eligible employees

- employees that have been employed by the employer to whom he or she applies for such leave for at least 30 calendar days before leave is requested.
- employees affected due to a qualified need related to a public health emergency, which the law defines as an emergency with respect to COVID-19 declared by a federal, state or local authority, as of April 1, 2020 to December 31, 2020.

Family leave:

Duration of leave

- provides 12 weeks of protected leave to:
 - an employee who cannot work or telework (remote work), for the care of a child under 18 years of age, whether the child's school (primary or secondary) or the place of care or the childcare provider is not available due to a public health emergency.

Family leave:

Leave requirements

- the first 10 days (2 weeks) of leave are unpaid or paid, unless the employee decides to use that leave alongside with another earned leave.
 - therefore, it is limited to 10 weeks that must be paid to the qualified employee under this Family Leave.
- the leave must be paid at no less than 2/3 of the employee's regular pay rate, the number of hours the employee would normally be scheduled to work (or the number of hours calculated), limited to not more than \$200 per day or \$10,000 in total per employee.

Emergency Paid Sick Leave:

Eligible employers

- employers with **fewer than 500** employees.
- the Federal Secretary of Labor has the authority to issue regulations to exclude certain health care providers and emergency personnel from the definition of eligible employee, and to exempt small businesses with less than 50 employees from application where the imposition of such requirements jeopardizes the viability of the business.

Emergency Paid Sick Leave:

Eligible employees

- employees affected due to a qualified need related to a public health emergency, which the law defines as an emergency with respect to COVID-19 declared by a federal, state or local authority, as of April 1, 2020 to December 31, 2020.

Emergency Paid Sick Leave:

6 Qualifying reasons for leave (1-3)

- an employer must provide paid sick leave when an employee is unable to work (including telework) because:
 1. employee is subject to federal, state or local quarantine or isolation due to COVID-19;
 2. a health care provider advised the employee to be quarantined due to concerns related to COVID-19;
(self-imposed quarantine without medical advice does not qualify);
 3. employee experiences symptoms of COVID-19 and seeks a medical diagnosis;

Emergency Paid Sick Leave:

6 Qualifying reasons for leave (1-3)

- ***calculation of pay: paid sick leave will be the greater of regular rate/federal or local minimum wage but will be limited to \$511 per day or \$5,111 in total (for a period of two weeks) if the employee is at home due to his or her own isolation/quarantine (reasons 1-3).***

Emergency Paid Sick Leave:

6 Qualifying reasons for leave (4-6)

- an employer must provide paid sick leave when an employee is unable to work (including telework) because (cont.):
 4. the employee is caring for an individual who is subject to an order pursuant to paragraphs 1 and 2 (an individual who is quarantined or federal, state, or locally isolated due to COVID-19 or a doctor advised you to quarantine it for COVID-19-related reasons);
 5. the employee is caring for their son or daughter whose school has been closed or the place of care is not available due to COVID-19 precautions; or
 6. the employee is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services in consultation with the Secretaries of Treasury and Labor

Emergency Paid Sick Leave:

6 Qualifying reasons for leave (4-6)

- ***calculation of pay: pay will be two-thirds of the employee regular pay based on the number of hours they would normally work and will be limited to \$200 per day or \$2,000 in total (for a period of two weeks) if due to reasons 4-6 the employee is at home to care for a family member with the virus or due to the closure of a child's school.***

Emergency Paid Sick Leave:

Duration of leave

- regular employees will receive 80 hours.
- part-time employees receive the equivalent of the number of hours they would work, on average, over a 2-week period.
- paid sick leave is available immediately and regardless of how long the employee has worked for his employer.

Payroll Tax Credits for Paid Sick and Family and Medical Leave

- payroll tax credits for qualified sick leave wages and family leave paid by an employer shall be allowed in the amount of benefits paid (not to exceed the limits identified under each leave) over the permitted duration
 - credit to reduce the employer's 6.2% share of the Social Security tax
 - credits are increased by the employer's 1.45% Medicare tax that is imposed on the qualified family leave or sick pay wages

Tax Credits for Paid Sick and Family and Medical Leave

- Family Leave Credit
 - equal to 100% of the “qualified family medical wages” that are paid by an employer for each calendar quarter from April 1, 2020 through December 31, 2020
 - capped at \$200/day per employee or \$2,000 in the aggregate
 - **self-employed taxpayers** are eligible for a credit against 50% of self-employment tax

Tax Credits for Paid Sick and Family and Medical Leave

- Sick Leave Credit
 - equal to 100% of “qualified paid sick leave wages” that are paid by an employer for each calendar quarter from April 1, 2020 through December 31, 2020
 - capped at \$511/day per employee or \$5,110 in the aggregate (for reasons 1-3)
 - capped at \$200/day per employee or \$2,000 in the aggregate (for reasons 4-6)
 - **self-employed taxpayers** are eligible for a credit against 50% of self-employment tax

Tax Credits for Paid Sick and Family and Medical Leave

- IRS issued Form 7200 (Advance Payments of Employer Credits Due to COVID -19) to request any excess of such credits quarterly.

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

CARES Act

Among other benefits and incentives:

- the CARES Act modified Section 7(a) of the Small Business Act, to provide for the new Paycheck Protection Act
- a new credit is created to encourage employers to retain employees and maintain salary during the rest of 2020

Paycheck Protection Program

- the CARES Act allocated \$350 billion to help small businesses that have been economically affected due to Covid-19.
 - today at noon, President Trump signed into law the “Paycheck Protection Program and Health Care Enhancement Act” assigning an additional \$310 billion to the program
- loans under the Paycheck Protection Program are 100% government guaranteed.

Paycheck Protection Program:

Maximum loans

- from February 15, 2020 to June 30, 2020 (covered period):
 - loans can be up to 2.5 x the borrower's average monthly payroll costs, not to exceed \$10 million.
 - calculated based on the year prior to the loan request
 - for business that did not operate during the period from February 15, 2019 to June 30, 2019, the maximum loan will be:
 - 2.5 x the borrower's average monthly payroll costs incurred for January and February 2020.

Paycheck Protection Program:

Eligible recipient

- a small business with less than 500 employees (full-time, part-time or other basis).
 - businesses that meets the SBA's size standard (i.e. certain small businesses, Tribal business concern, veterans' organizations).
- an individual who operates as a sole proprietor, independent contractor or self-employed.

Paycheck Protection Program:

Eligible recipient

- businesses in the Accommodation and Food Services Sector (NAICS Code 72) – the 500-employee rule is applied on a per physical location basis.
 - the affiliation rules are waived for businesses under NAICS Code 72, businesses operating as a franchise and businesses that received financial assistance from a company licensed under Section 301 of the Small Business Investment Act, therefore, they are considered an eligible recipient.
- **501(c)(3) non-for-profits organizations with less than 500 employees.**

Paycheck Protection Program: Lenders

- an eligible recipient should make a good faith certification that:
 - the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations;
 - acknowledge the funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments;
 - it does not have an application pending for a loan and duplicative of amounts applied for or received under a covered loan; and
 - from February 15, 2020 to December 31, 2020, the eligible recipient has not received a loan duplicative of the purpose and amounts applied for or received under a covered loan.

Paycheck Protection Program:

Payroll costs

- **For employers:** the sum of payments of any compensation with respect to employees that is a:
 - salary, wage, commission, or similar compensation;
 - payment of cash tip or equivalent;
 - payment for vacation, parental, family, medical, or sick leave;
 - payment required for the provisions of group health care benefits, including insurance premiums;
 - payment of any retirement benefit; or
 - payment of state or local tax assessed on the compensation of employees.

Paycheck Protection Program:

Payroll costs

- **For a sole proprietors, independent contractor and self-employed individuals:** the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in one year, as pro-rated for the covered period.

Paycheck Protection Program:

Payroll costs

- Exclusions from payroll costs:
 - the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, 2020 to June 30,2020.
 - payroll taxes, railroad retirement taxes, and income taxes;
 - any compensation of an employee whose principal place of residence is outside of the United States (PR considered inside);
 - qualified sick leave wages for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act (Public Law 116-127);
 - qualified family leave wages for which a credit is allowed under Section 7003 of the Families First Coronavirus Response Act (Public Law 116-127).

Paycheck Protection Program:

Loan forgiveness

- if small business employer maintains payroll, this program allows for a loan forgiveness equal to the portion spent by the borrower on the following items during an 8-week period after the origination date of the loan:
 - payroll costs;
 - costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
 - employee salaries, commissions, or similar compensations;
 - payments of interest on any mortgage obligation;
 - rent, including rent under a lease agreement;
 - utilities; and
 - interest on any other debt obligations that were incurred before the covered period.

Paycheck Protection Program:

Loan forgiveness

- loans that have a remaining balance after forgiveness will have a maximum maturity of 10 years and an interest rate not to exceed 4%.
- lenders under this program are required to provide complete payment deferment relief for impacted borrowers with covered loans for a period of not less than 6 months, including, interest, and fees, and not more than 1 year.
- **the forgiveness is exempt from federal income tax, pending to see if it will be exempt for Puerto Rico tax purposes**

Paycheck Protection Program: Loan forgiveness

- The amount eligible for forgiveness is reduced by multiplying the forgiveness amount by:
 - The quotient obtained by dividing:
 - The average number of full-time equivalent employees of the borrower during the 8-week period from the date the loan originated, by
 - Either:
 - a. The average number of full-time employees per month from February 15, 2019 through June 30, 2019, or
 - b. The average number of full-time employees per month from January 1, 2020 through February 29, 2020

Paycheck Protection Program: Loan forgiveness – Example 1

- Company A had \$1.2 million of total Payroll Costs for the period April 1, 2019 through March 31, 2020.
 - Company A's average monthly payroll costs were thus \$100,000.
 - Company A's is eligible for a Paycheck Protection Loan equal to the lesser of:
 - \$250,000, or
 - \$10 million

Paycheck Protection Program: Loan forgiveness – Example 2

- during the first 8 weeks after Company A borrows \$250,000, it incurs Payroll Costs, mortgage interest, and utilities of \$220,000.
- the \$220,000 is eligible for forgiveness, and the remaining \$30,000 loan is deferred for at least six months and up to a year

Paycheck Protection Program: Loan forgiveness – Example 2

- Company A had 30 full-time employees during the 8-week period after it borrows the \$250,000.
- During the period February 15 –June 30, 2019, it had 50; just as it did from January 1, 2020 through February 29, 2020.
- The loan forgiveness of \$220,000 must be reduced by 20/50, or 40%

Additional SBA loans

- Disaster Loans under Section 7(b)(2) of the SBA
 - up to \$2 million made directly from the SBA to meet working capital needs,
 - 30 years, rate 3.75% for for-profit businesses; 2.75% for a not-for-profit
- Emergency Grant
 - an applicant for a Section 7(b)(2) disaster loan may request up to a \$10,000 advance to pay:
 - sick leave, maintain payroll, meet increased costs of materials, make rent or mortgage payments or repay obligations
 - not required to be repaid, even if the disaster loan is denied
 - funds available to be advanced within 3 days of an application

Additional SBA loans

- traditional 7(a) loans
 - up to \$5 million
 - 10 years term without real estate purchase or 25 years with real estate purchase
 - Typically 1% - 2.75% rate
 - 75%-85% is guaranteed by the SBA

Employee Retention Credit

- the Employee Retention Credit was designed to encourage business to keep employees on their payroll.
- credit is against payroll taxes, specifically the employer's share of the Social Security (6.2%)
- amount of credit:
 - 50% of eligible wages paid up to \$10,000 per employee
 - eligible wages paid after March 12, 2020 and before January 1, 2021
 - excess credits are refundable

Employee Retention Credit:

Eligible employer

- employers that were carrying on a trade or business during the year 2020; **and**
- with respect to any calendar quarter for which:
 - employer’s business operations have been fully or partially suspended due to government order; **or**
 - the employer has a 50% decrease in revenues when compared to the same quarter in 2019. Once the employer’s revenues exceed 80% when compared to the same quarter in 2019, they no longer qualify after the end of that quarter.
 - these measures are calculated each calendar quarter.
- tax exempt 501(c) organizations can apply for the employee retention credit.

Employee Retention Credit:

Eligible wages

- eligible employers with **more than 100 full-time employees** during the year 2019 – wages paid by the eligible employer to employees who are not providing services because the business operations were suspended due to government order or there has been a 50% decrease in revenues within a quarter.
- eligible employers with **100 full-time employees or less** during the year 2019 – wages paid by the eligible employer to an employee, regardless if the employee provided services or not.
- qualified health plan expenses are considered eligible wages.

Important IRS Q&A

- may an Eligible Employer receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act?
 - **Yes, but not for the same wages.** The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received credits under the FFCRA.

Important IRS Q&A

- may an Eligible Employer receive both the Employee Retention Credit and a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act?
 - **No.** An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program that is authorized under the CARES Act. An Eligible Employer that received a paycheck protection loan should not claim Employee Retention Credits.

Questions?

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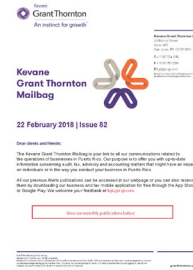
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