



AMERICAN BENEFITS COUNCIL

April 6, 2011

Commissioner of Internal Revenue
CC:PA:LPD:PR (Rev. Rul. 2011-1)
Room 5203
Internal Revenue Service
P.O. Box 7604 Ben Franklin Station
Washington, DC 20044

Filed electronically via notice.comments@irscounsel.treas.gov

Re: Comments on Rev. Rul. 2011-1 – Participation of Puerto Rican Plans in Group Trusts

Dear Sir/Madam:

We write to comment on Revenue Ruling 2011-1, setting forth the eligible plan investors in, and current requirements for, group trusts. Our letter focuses on plans maintained by US companies for their Puerto Rican workers – an area that is of major interest to members of the American Benefits Council ("Council"). The Council appreciates the transition relief provided by the Service and recommends that it be made permanent as soon as possible.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

Background

In the months prior to the publication of Rev. Rul. 2011-1, the Council actively participated in a broad coalition of plan sponsors, financial institutions and trade associations which urged the Internal Revenue Service ("Service") to allow plans covering only Puerto Rican residents (plans described in section 1022(i)(1) of ERISA,

hereafter "PR-only plans") to continue to participate in group trusts along with the related plans of their corporate sponsors.¹ This action was taken in response to recent indications from the Service that such participation may no longer be permitted.

The Council welcomed the transition relief in Rev. Rul. 2011-1, including additional time for plan sponsors to decide whether to effect spinoffs from their US plans to PR-only plans, and the protection for PR-trust investments in group trusts as of January 10, 2011. This letter responds to the Service's statement in the ruling that it "anticipates issuing guidance as to whether a plan described in section 1022(i)(1) of ERISA may participate in an 81-100 group trust."

Permanent Relief Should be Granted to PR Trusts

The Council strongly recommends that the Service act promptly to permanently allow PR-trusts to participate in group trusts. We believe such relief will carry out the express intent of Congress in ERISA to remove US tax law obstacles to the participation of PR trusts in US investments. This policy prompted the common business practice of allowing PR trusts to participate in the same group trusts as the US plans of their corporate "controlled group" sponsors - a practice permitted in a series of private letter rulings.

Continuation of this pooled investment policy is now more clearly warranted than ever. We refer in this regard to the evolution of the benefit plan requirements for PR-only plans in the PR Codes of 1994 and 2011. Since ERISA was enacted in 1974, each Code revision has substantially increased the comparability of the substantive rules governing US and PR plans. In this regard, the "rough[ly] comparability" of US and PR law requirements clearly was cited in support of the special rule in ERISA and is even more true today. The new PR Code even requires PR plans to get determination letters from Hacienda, the PR counterpart to the Service.

Many of our members have maintained operations in Puerto Rico for decades and continue to cover their workers in defined benefit and/or defined contribution plans. The ability to continue to pool the investments of their smaller PR plans with their larger US plans achieves many valuable goals including -

- facilitating investment diversification,
- conserving company personnel oversight time and administrative fees,

¹ Though the ruling uses only the term "group trust," we note that a master trust should be treated the same as a group trust for this purpose - while they differ as to whether the participating plans are of one employer (master trust) or multiple unrelated employers (group trust), in both cases plans are pooling their assets solely for investment purposes. In this letter, we use the term "group trust" to include master trusts.

- making investments available that may otherwise be denied to the smaller plans, and
- simplifying audits, recordkeeping and many other aspects of plan administration.

We note that the transition relief provided by Rev. Rul. 2011-1, while helpful, has the unfortunate effect of potentially "locking in" the investments of PR plans to the investment portfolio that was in place on January 10, 2011. For example, if a plan sponsor decides to invest its US plan funds in a new asset class – or simply change investment managers for the same asset class – through a new collective trust, it may be unable to make the same change for its PR-only plan because the latter was not an investor in that trust on January 10, 2011. For this reason – and the many others discussed above – it is essential that Treasury and the Service act soon to affirmatively allow trusts for PR-only plans to invest in group trusts under Rev. Rul. 2011-1 on a permanent basis.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson
Senior Counsel, Retirement Policy