



CPA JESUS F. MENDEZ RODRIGUEZ
SECRETARY OF TREASURY


September 14, 2012

ADMINISTRATIVE DETERMINATION NO. 12- 13

ATTENTION: ALL EMPLOYERS THAT CLAIM A DEDUCTION FOR CONTRIBUTIONS TO EMPLOYEE EXEMPT TRUSTS UNDER SECTION 1081.01(A) OF THE PUERTO RICO INTERNAL REVENUE CODE OF 2011.

SUBJECT: LIMIT ON DEDUCTIONS FOR CONTRIBUTIONS TO EMPLOYEE EXEMPT TRUSTS UNDER SECTION 1033.09(A) OF THE PUERTO RICO INTERNAL REVENUE CODE OF 2011.

I. STATEMENT OF MOTIVES



The Puerto Rico Internal Revenue Code of 2011, Act No. 1-2011, as amended ("Code"), significantly changed the provisions related to trusts funding retirement plans qualified under Code Section 1081.01(a) ("Exempt Trusts"), making the Code more consistent with the rules applicable to qualified retirement plans in the U.S. under Section 401(a) of the U.S. Internal Revenue Code of 1986, as amended ("US Code").

Among these changes, effective for taxable years beginning after December 31, 2010, Code Section 1033.09(a)(1)(A)(i)(IV) allows a deduction from gross income of the trade or business for contributions of an employer to an Exempt Trust, up to the amount required to comply with the minimum funding standards of Sections 302(a)(2)(A) and (C) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), applicable to defined benefit retirement plans.


In addition, effective for taxable years beginning after December 31, 2010, Code Section 1033.09(a)(5)(A) imposes an excise tax on "non-deductible contributions," as defined in Code Section 1033.09(a)(5)(C), for exceeding the deduction limits under Code Sections 1033.09(a)(1) to (4).

The Department of the Treasury ("Department") has received several requests for advice on the application of Code Section 1033.09(a)(1)(A)(i)(IV) to contributions to Exempt Trusts funding: (i) defined benefit pension plans qualified under both Code Section 1081.01(a) and US Code Section 401(a), commonly known as "Dual-Qualified Plans", or (ii) certain defined benefit pension plans only qualified under Code Section 1081.01(a) ("Puerto Rico Plans").

II. STATUTORY BASIS

As previously mentioned, Code Section 1033.09(a)(1)(A)(i)(IV) allows a deduction from gross income of the trade or business of an employer for contributions made to an Exempt Trust up to the amount required to comply with the minimum funding standards of ERISA Sections 302(a)(2)(A) and (C). Further, the "non-deductible contributions" are subject to the tax imposed by Code Section 1033.09(a)(5)(A).

Dual-Qualified Plans are subject not only to the minimum funding standards of ERISA Sections 302(a)(2)(A) and (C), but also to the minimum funding standards of US Code Sections 412, 430, 431, and 432. In particular, US Code Section 430(i) requires the use of special actuarial assumptions (designed to increase measured liabilities) for plans that are in "at-risk status" ("US Code At-Risk Status"), as defined in US Code Section 430(i)(4). US Code Section 436 also sets forth funding-based limits on benefits and benefit accruals.



These US Code Sections do not apply to Puerto Rico Plans. However, Puerto Rico Plans (and Dual-Qualified Plans) are subject to the parallel provisions found in Title I of ERISA in Section 206(g) and Sections 302 through 305.

In addition, defined benefit Dual-Qualified Plans, and some defined benefit Puerto Rico Plans, are also subject to the provisions of Title IV of ERISA regarding the Pension Benefit Guaranty Corporation's ("PBGC") Plan Termination Insurance. In particular, ERISA Section 4010 requires the filing of certain notices with the PBGC for plans that do not reach a funding target attainment percentage of at least 80%, as defined in ERISA Section 4010 (d)(2)(B).

Finally, US Code Section 404(o) allows a deduction from gross income of the trade or business of an employer for federal tax purposes for employer contributions to a defined benefit plan up to 150% of the amount required to fully fund the plan, and US Code Section 4972(c)(7) exempts for federal tax purposes contributions to defined benefit plans from the tax on non-deductible contributions.

III. DISCUSSION AND DETERMINATIONS

The Department understands that it is the public policy of the Government of Puerto Rico to incentivize employers to maintain the funding of qualified retirement plans at the levels required by applicable laws. The fact that a plan is a Dual-Qualified Plan subject to funding requirements that do not necessarily apply to Puerto Rico Plans should not result in a limitation of the allowable deduction under the Code, nor to an additional tax to the employer.

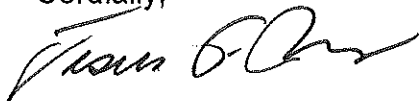
Based on the foregoing, the Department has determined that under Code Section 1033.09(a)(1)(A)(i)(IV), a deduction from gross income of the employer is allowed for contributions made to an Exempt Trust up to the amount required to: (i) comply with the minimum funding standards of US Code Sections 412, 430, 431, and 432, or the parallel provisions in ERISA Sections 302 to 305, (ii) avoid the provisions related to the funding-based limits on benefits and benefit accruals of US Code Section 436 or the parallel provisions of ERISA Section 206(g), (iii) avoid US Code At-Risk Status for purposes of Code Section 430(i) or the parallel provisions of ERISA Section 303(i), (iv) avoid the requirements of ERISA Section 4010, and (v) maintain a plan 100% funded.

IV. EFFECTIVE DATE

The provisions of this Administrative Determination are effective immediately, and are applicable with respect to taxable years beginning after December 31, 2010.

For additional information regarding the provisions of this Administrative Determination, you may contact the General Consulting Section at (787) 722-0216.

Cordially,



Jesús F. Méndez Rodríguez