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PR Treasury Issues Guidance for Puerto Rico Qualification of Retirement Plans Under 2011 PR Code and Relief for Retroactive Qualification Under 1994 PR Code

The Puerto Rico Treasury Department ("PR Treasury") recently issued Circular Letter No. 11-10 ("CL 11-10") providing guidance on the procedures for the qualification of retirement plans under the Puerto Rico Internal Revenue Code of 2011 ("2011 PR Code"), and relief for the retroactive qualification of retirement plans under the Puerto Rico Internal Revenue Code of 1994, as amended ("1994 PR Code"). A copy of the CL 11-10 (in Spanish) is available at: <http://www.hacienda.gobierno.pr/downloads/pdf/cartas/11-10.pdf>.

2011 PR Code Plan Amendments or Restatements

Pursuant to CL 11-10, on or before the end of the plan year beginning on or after January 1, 2012 (i.e., on or before December 31, 2012, for a plan with a calendar plan year), plans must be amended or restated to comply with the qualification provisions of the 2011 PR Code, including those which became effective January 1, 2011. CL 11-10 includes a list of the 2011 PR Code qualification provisions that must be included in the plan document (or appendix/supplement to the plan) in order to obtain a qualification letter under the 2011 PR Code. However, note that a plan must have been operated in compliance with all applicable 2011 PR Code provisions since January 1, 2011, even though the plan is not amended until sometime in 2012.

Updated Qualification Under 2011 PR Code

A plan that is timely amended to comply with the 2011 PR Code must be filed for an updated qualification letter on or before the due date, including any extension, of the participating employer's 2012 Puerto Rico income tax return (i.e., the 15th day of the 4th month after the close of the taxable year; the 15th day of the 7th month, if an automatic extension is timely requested; April 15, 2013, or July 15, 2013 with extension, for a calendar year taxpayer). Plans that were amended to comply with the new qualification requirements of the 2011 PR Code and were submitted for qualification with the PR Treasury prior to the issuance of CL 11-10 are not required to be filed again, until they are subsequently amended and/or restated, as described below.

Subsequent Updated Qualification Under 2011 PR Code

CL 11-10 includes guidance with respect to requests for updated qualification letters after a plan has obtained a qualification letter under the 2011 PR Code. That is, not all amendments will be required to be filed with the PR Treasury, as it was required in the qualification letters previously issued by the PR Treasury. A plan restatement or amendment must be filed for an updated qualification letter on or before the due date, including any extension, of the

participating employer's Puerto Rico income tax return for the year in which the restatement or amendment is adopted (i.e., the 15th day of the 4th month after the close of the taxable year; the 15th day of the 7th month, if an automatic extension is timely requested; for example, if a plan is restated effective January 1, 2014, the plan must be submitted for an updated qualification letter on or before April 15, 2015, or July 15, 2015 with extension, if the employer is a calendar year taxpayer).

Retroactive Qualification Under the 1994 PR Code and the 2011 PR Code

CL 11-10 provides relief for plans that have never been filed for qualification with the PR Treasury. Such plans may obtain retroactive qualification under the 1994 PR Code and/or the 2011 PR Code through the regular qualification process (and without the need to enter into a closing agreement) if: (i) on or before the end of the plan year beginning on or after January 1, 2012 (i.e., on or before December 31, 2012, for a plan with a calendar plan year) the plan is: (a) retroactively amended in compliance with the provisions under the 1994 PR Code, and/or (b) retroactively amended or restated in compliance with the provisions of the 2011 PR Code, as applicable; and, (ii) it is filed for qualification (including retroactive qualification under the 1994 PR Code) on or before the due date, including any extension, of the participating employer's 2012 Puerto Rico income tax return (i.e., April 15, 2013, or July 15, 2013 with extension, for a calendar year taxpayer).

Failure to Comply With Amendment and/or Filing Requirements

Plans that are not amended in compliance with the 1994 PR Code provisions and/or timely amended in compliance with the 2011 PR Code, and plans that are not timely filed for retroactive qualification under the 1994 PR Code, updated qualification letter under the 2011 PR Code, and/or not timely submitted for updated qualification letters after obtaining a qualification letter under the 2011 PR Code will be deemed non-qualified funded plans for Puerto Rico income tax purposes.

Items to be Included with Request for Puerto Rico Qualification

CL 11-10 includes updated lists of the documents that are required to be included with the requests for Puerto Rico tax qualification filed on or after January 1, 2012 under the 1994 PR Code and the 2011 PR Code. Special rules apply for plans adopted under Puerto Rico master or prototype plans.

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