

Puerto Rico Treasury Exempts Employee Benefit Trusts from the Requirement of Annual Filing of Form 480.7(OE) and Repeals Circular Letter 12-02

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PRACTICE AREAS

- Employee Benefits

An McV Employee Benefits Alert

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As anticipated in our Tax and Employee Benefits Alert dated March 14, 2016, the Puerto Rico Treasury Department (“PR Treasury”) just issued Administrative Determination No.16-05 dated March 11, 2016 (“AD 16-05”) to confirm that commencing on taxable years after December 31, 2014, trusts forming part of Puerto Rico qualified retirement plans (“Employee Benefit Trusts”) will be exempt from the annual filing requirement of Form 480.7(OE), Informative Return for Income Tax Exempt Organizations (“Form 480.7(OE)”), and to announce the form and manner in which Employee Benefit Trusts must comply with their annual filing requirements under the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”) for taxable years 2015 and thereafter, in lieu of Form 480.7(OE).

As background information, pursuant to Section 1061.10(a) of the PR Code, an Employee Benefit Trust claiming exemption from the payment of income taxes under PR Code Sections 1081.01(a) or 1101.01(a)(4)(D) is subject to an annual reporting requirement and the form established by the PR Treasury for such purposes was Form 480.7(OE). On February 13, 2012, the PR Treasury issued Circular Letter No. 12-02 (“CL 12-02”), for establishing the rules to allow employers that participated or sponsored Employee Benefit Trusts forming part of retirement plans qualified in Puerto Rico and subject to the provisions of Title I of the Employee Retirement Income Security Act of 1974, as amended (known as “ERISA”), to comply with this annual filing requirement by filing U.S. Department of Labor Form 5500 or 5500-SF instead of Form 480.7(OE), to the extent certain requirements were satisfied.

Pursuant to AD 16-05, for years commenced on January 1, 2015, Employee Benefit Trusts are no longer required to file Form 480.7(OE) (or Form 5500) with the PR Treasury to comply with the annual filing requirement under Section 1061.10(a) of the PR Code and accordingly, CL 12-02 has been repealed.

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AD 16-05 further provides that, for taxable years commencing after December 31, 2014, Employee Benefit Trusts established or adopted by employers that file Puerto Rico income tax returns will comply with the annual filing requirement under Section 1061.10(a) of the PR Code by such employers only completing and filing Form AS 6042.1, *Deduction for Contributions to Qualified Retirement Plans and Tax on Certain Contributions* (“Form AS 6042.1”) together with their Puerto Rico income tax returns.

On the other hand, in the case of Employee Benefit Trusts established or adopted by employers that are not required to file a Puerto Rico income tax return, the Employee Benefit Trust will be required instead to file Form AS 6042.01 to comply with the annual filing requirement under Section 1061.10(a) of the PR Code. In this case, Part V of Form AS 6042.1, under the heading of *General Information Regarding the Plan* shall be duly completed for the Employee Benefit Trust to be considered in compliance with this annual filing requirement.

The deadline to complete this filing shall be no later than the last day of the 7th month following the close of the taxable year of the Employee Benefit Trust. The Employee Benefit Trust can request no later than the deadline to file this return, an automatic extension to file Form AS 6042.1, up to the 15th day of the 3rd month following this deadline.

In the event of tax exempt organizations under Section 1101.01 of the PR Code that file Form 480.7(OE) instead of a Puerto Rico income tax return and who sponsor or participate in an Employee Benefit Trust, until further guidance is issued by the PR Treasury, it is reasonable to conclude that such Employee Benefit Trust will need to file Form AS 6042.1 as specified above to comply with the annual reporting requirement under Section 1061.10(a) of the PR Code.

AD 16-05, further provides, that in the case of an Employee Benefit Trust that during the taxable year generated net income (or loss) not related to the exempt activity shall complete Form 480.2, *Corporation Income tax Return*, available in Spanish for taxable year 2015, to report the net income (or loss) not related to the exempt activity and to pay the income tax, if applicable.

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