

## PR Treasury Issues New Rules and Procedures for Qualification of Retirement Plans

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### PRACTICE AREAS

- Employee Benefits

### An McV Employee Benefits Alert

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On December 29, 2016, the Puerto Rico Treasury Department (“PR Treasury”) published Circular Letter of Tax Policy No. 16-08 of December 23, 2016 (“CLTP 16-08”), to establish new filing rules and procedures for the Puerto Rico qualification of retirement plans under Section 1081.01 of the Puerto Rico Internal Revenue Code of 2011, as amended (“2011 PR Code”). These new rules and procedures are effective immediately.

CLTP 16-08 repeals and leaves without effect most of the guidance provided by Circular Letters of Internal Revenue No. 11-10 of December 16, 2011 (“CL 11-10”) and No. 13-02 of May 28, 2013 (“CL 13-02”), except certain rules regarding the qualification of retirement plans covering Puerto Rico employees on January 1, 2011. You may access our Alerts on CL 11-10 and CL 13-02 by opening the links.

In CLTP 16-08, PR Treasury provides new guidance on the validity of favorable determination letters regarding the qualified status of retirement plans under the 2011 PR Code (known as “qualification letters”) and the procedure that must be followed by employers to request qualification letters.

This list provides the most significant changes introduced by CLTP 16-08:

- **Correction Method:** All retirement plans that provided benefits to Puerto Rico employees on January 1, 2011, but that were not filed with PR Treasury for qualification under 2011 PR Code Section 1081.01 within the extended time provided under CL 11-10 and CL 13-02, are non-qualified plans. However, these plans can be filed for qualification if the following conditions are met:
  1. The plan is not subject to an audit by PR Treasury, the U.S. Department of Labor, or the U.S. Internal Revenue Service (“IRS”) related to the plan qualification or operation (previously, the requirement only applied to audits or investigations from PR Treasury); and
  2. The filing must include a payment of three-times the basic administrative fee plus the additional filing fee of \$150.

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- **Validity of Qualification Letters:** Qualification letters will be in full force and effect until the plan is amended or restated in its entirety (plan restatement) to adopt, modify, or remove plan provisions that can affect substantially the compliance with the qualification requirements of 2011 PR Code Section 1081.01 (“Qualification Amendments”).
- **New Request for Qualification Letters:** A new qualification letter must be requested by the employer if the plan is amended or restated to adopt one or more Qualification Amendments. If the amendment or the plan restatement does not contain Qualification Amendments, the employer does not have to request a new qualification letter from PR Treasury.
- **List of Qualification Amendments:** CLTP 16-08 provides a new list of Qualification Amendments that will require a plan to seek for a new qualification letter. The PR Treasury provides that, besides the previous amendments listed under CL 11-10, these are Qualification Amendments:
  1. Changes in the form or method of benefit payments under the plan;
  2. The substitution of the insurer of the trust forming part of the plan;
  3. Modification of the official name of the plan;
  4. Change of the employer identification number (“EIN”) of the trust forming part of the plan;
  5. Changes in the person or entity that serves as trustee or insurer of the trust forming part of the plan; and
  6. Any other amendment to the governing plan documents classified as a Qualification Amendment by PR Treasury’s regulations, circular letters, or administrative determinations.

CLTP 16-08 clarifies that a change in the name or corporate/organizational structure of the employer that require no change in such employer’s EIN is not considered a Qualification Amendment.

- **Additional Filing Information:** The application for a qualification letter must now include these additional items of information:
  1. E-mail address of the plan sponsor and of each participating employer;
  2. Number of active and inactive participants at the beginning of the year in which the filing is be made;

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3. Discrimination test schedule for plans with a cash or deferred arrangement;
4. In the case of a plan termination and liquidation, a copy of the document designating the paying agent, and a description of the commercial reasons for such termination and liquidation;
5. If the most recent qualification letter of the plan is not available, then the filing must include a written certification to that effect signed by an authorized representative of the employer; and
6. If the plan is a dual qualified plan and the employer has no favorable determination letter issued from the IRS, then the filing must include a copy of the most recent filed IRS Form 5300, and a note indicating that the favorable determination letter from the IRS has not yet been received.

CLTP 16-08 provides some additional changes to the information that must be filed by plans maintained by master and prototype plans.

- **New Filing Deadline:** CLTP 16-08 changes the deadline to request qualification letters:
  1. **Existing Plans:** A plan that holds a qualification letter under the 2011 PR Code must request a new qualification letter by the employer's deadline, including extensions, to file its Puerto Rico income tax return for the taxable year in which the Qualification Amendment was adopted. Under CL 11-10 and CL 13-02, the deadline for the filing was the last day of the employer to file its Puerto Rico income tax return for the taxable year covering the last day of the plan year in which the amendment became effective.
  2. **New Plans:** A plan established or that commences to cover Puerto Rico participants after January 1, 2011 must request a qualification letter by the employer's deadline to file its Puerto Rico income tax return for the taxable year in which the latest event occurs: i) the date on which the plan was established; or ii) the date on which Puerto Rico employees commenced to participate in the plan.

If the request for qualification is not filed within the deadlines described above, then an additional service charge of \$350 would apply.

CLTP 16-08, which includes a checklist of the information that must be included with the application for a qualification letter can be accessed [here](#).

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