

Publications

# Qualified Pension Plans for Puerto Rico Employees – The Perfect Storm Has Arrived

**ATTORNEYS & PROFESSIONALS**

**Elizabeth Thomas Dold**

[edold@groom.com](mailto:edold@groom.com)

202-861-5406

**David Levine**

[dlevine@groom.com](mailto:dlevine@groom.com)

202-861-5436

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Over the past few years, a number of law changes have impacted the coverage of Puerto Rico employees in U.S. tax-qualified pension plans. Today, these law changes come together to create the perfect storm—creating new challenges in finding the right retirement vehicle to provide tax-favored pension benefits to bona fide Puerto Rico employees. The elements of the “perfect storm” are described below:

- Rev. Proc. 2004-37, which provides a safe-harbor method for determining the U.S.-sourced portion of a distribution under a defined benefit plan and reaffirms the need for all plans to track the U.S. and Puerto Rico portion of a plan distribution
- Rev. Rul. 2008-40 and Rev. Rul. 2011-1, which provide for transition relief to avoid taxation for a spin-off of a U.S. qualified plan to a Puerto Rico qualified plan (including transition relief for participation in a 81-100 group trust)
- 2011 Puerto Rico Code, which provides an expanded set of tax qualification and related provisions for bona fide Puerto Rico employees.

The combination of these changes has led to a new appreciation for these complex rules, and the need for plan sponsors to act carefully to preserve the tax-favored treatment of their plans and appropriately account for Puerto Rico employees. Plans that fail to properly take into account these three provisions may inadvertently cause taxation to Puerto Rico employees, raise tax-qualification concerns, and in the United States, where there is an increased audit focus on international benefits, one should tread carefully through these waters. Please see the attached article for further information.

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