

**Authors: Juan Luis Alonso**

If you have questions, please contact your regular Groom attorney or any of the attorneys listed below:

**Juan Luis Alonso**  
jalonso@groom.com  
(202) 861-6632

**Elizabeth T. Dold**  
edold@groom.com  
(202) 861-5406

**David N. Levine**  
dlevine@groom.com  
(202) 861-5436

**Louis T. Mazawey**  
lmazawey@groom.com  
(202) 861-6608

**David W. Powell**  
dpowell@groom.com  
(202) 861-6600

## Checklist for Required 2012 Puerto Rico Tax-Qualified Plan Amendments and Compulsory Determination Letter Filing with PR Treasury

Sponsors of qualified retirement plans covering employees who are bona-fide residents of Puerto Rico, or who perform labor or services primarily within Puerto Rico, regardless of residence for other purposes (Puerto Rico Employees), are required to amend their plans before the end of the 2012 plan year (December 31, 2012, for a plan with a calendar plan year) in compliance with qualification requirements of the Puerto Rico Internal Revenue Code of 2011 (PR Code).

Puerto Rico Treasury Department (PR Treasury) Circular Letter No. 11-10 (CL 11-10) provides a list of required statutory changes that must be included in a plan document under the 2011 PR Code. CL 11-10 also includes a list of the information and documents that are required to be included with the determination letter application. The request must be filed on or before the due date of the employer's Puerto Rico income tax return for 2012, including any extension (April 15, 2013 (July 15, 2013, with automatic extension) for a calendar year taxpayer).

Below we summarize the amendments that Puerto Rico tax qualified plans are required to adopt before the end of the 2012 plan year.

### A. 2012 Amendments

Plan sponsors should ensure that their plans are amended or restated before the end of the 2012 plan year (December 31, 2012, for a plan with a calendar plan year) to include the following amendments (listed in alphabetical order), as applicable:

#### 1. After-Tax Contributions

After-tax contributions made under a Puerto Rico qualified defined contribution plan (either a dual-qualified plan or a Puerto Rico-only qualified plan) are limited to 10% of the employee's aggregate compensation during the time the employee is a participant in the plan. Note that this limitation was previously included in the regulations issued under the Puerto Rico Internal Revenue Code of 1994.

#### 2. Annual Benefit Limitation

Effective for plan years beginning on or after January 1, 2012, the annual benefit accrued under a Puerto Rico qualified defined benefit plan cannot exceed the lesser of the amount determined under US Code §415(b), as adjusted by the U.S. Internal Revenue Service (IRS) (e.g., \$200,000 for 2012) (calculated as a straight life annuity without ancillary benefits

under a non-contributory plan) or 100% of the participant's average compensation for the participant's three highest years of service.

### **3. Annual Compensation Limitation**

Effective for plan years beginning on or after January 1, 2012, the PR Code imposes an annual compensation limitation equal to the amount determined in US Code §401(a)(17), as adjusted by the IRS (e.g., \$250,000 for 2012).

### **4. Annual Contribution Limitation**

Effective for plan years beginning on or after January 1, 2012, annual additions to a participant's account in a Puerto Rico qualified defined contribution plan (excluding rollovers) cannot exceed the lesser of the amount determined under US Code §415(c), as adjusted by the IRS (e.g., \$50,000 for 2012) or 100% of the participant's compensation for the limitation year.

### **5. Catch-Up Contributions**

Effective for calendar years beginning on or after January 1, 2011, the PR Code limits on catch-up contributions made under a Puerto Rico qualified defined contribution plan with a cash or deferred arrangement (CODA) (either a dual-qualified plan or a Puerto Rico-only qualified plan) are as follows:

Calendar Year	Annual Limit
2011	\$1,000
2012 and years thereafter	\$1,500

### **6. Definition of "Employer"**

Effective for plan years beginning on or after January 1, 2012, the PR Code requires that for purposes of the PR Code's qualification requirements and non-discrimination and coverage testing, the Puerto Rico Employees of all corporations, partnerships or other entities that are members of a Controlled Group or of an Affiliated Service Group (as both defined in the PR Code) are deemed employees of the same "employer."

### **7. Highly Compensated Puerto Rico Employees**

Effective for plan years beginning on or after January 1, 2011, the definition of a highly compensated employee under the PR Code changed to:

- an "officer" of a participating employer, as defined by the PR Treasury,
- a 5% owner, or
- an employee who for the preceding year received more compensation from the employer than the amount determined in US Code §414(q)(1)(B), as adjusted by the IRS (e.g., \$110,000 for 2011, and \$115,000 for 2012).

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

## 8. Plan Loans

Effective January 1, 2012, the PR Code requires plans that allow participants to obtain plan loans to provide that the loan will be treated as a taxable distribution if by its terms, and in operation, the loan is:

- not amortized with substantially level payments made not less frequently than quarterly, or
- not repaid within 5 years (or as provided in the plan document for loans for the purchase of the participant's principal residence)

## 9. Pre-Tax Contributions

### *Plans Qualified Only in Puerto Rico*

Effective for calendar years beginning on or after January 1, 2011, the PR Code limits on pre-tax contributions made under a defined contribution plan with a CODA that is qualified only in Puerto Rico are as follows:

Calendar Year	Annual Limit
2011	\$10,000
2012	\$13,000
2013 and years thereafter	\$15,000

### *Dual-Qualified Plans*

Effective for calendar years beginning on or after January 1, 2011, the PR Code limits on pre-tax contributions made under a dual qualified defined contribution plan with a CODA are the same limits applicable to US tax qualified plans under US Code §402(g):

Calendar Year	Annual Limit
2011	\$16,500
2012	\$17,000
2013 and years thereafter	To be determined by the IRS

Notwithstanding the foregoing, the annual limit on contributions by a Puerto Rico participant in a dual qualified plan is reduced by the participant's contributions to a Puerto Rico individual retirement account (IRA) in that year.

## 10. Rollover Rules

Effective January 1, 2011, CC 11-10 requires for PR Code qualification that the plan includes provisions for rollover distributions in compliance with the requirements imposed therein.

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

## B. PR Treasury Submission Deadline

Under CL 11-10, on or before the due date of the employer's Puerto Rico income tax return for 2012, including any extension (April 15, 2013 (July 15, 2013, with automatic extension) for a calendar year taxpayer), a sponsor of a plan that is intended to be qualified under the PR Code must file the plan for qualification with the PR Treasury. It is worth mentioning that CL 11-10 grants relief for the retroactive qualification of plans under the former Puerto Rico Internal Revenue Code of 1994. A plan covering Puerto Rico Employees prior to January 1, 2011, must also file for retroactive qualification on or before December 31, 2012. There are certain specific requirements when requesting retroactive qualification.

Upon PR Treasury review of the submission, the PR Treasury may ask for additional changes to comply with the plan qualification rules prior to issuing a favorable determination letter. The proposed changes should be carefully reviewed to determine if they are appropriate and to assess the potential impact on the plan. Once the required changes are agreed upon by the PR Treasury and the plan sponsor, these additional amendments will need to be adopted within the time period provided by the PR Treasury, and before a favorable determination letter is issued.

Plans that do not comply with the PR Code and CL 11-10 qualification requirements would be deemed non-qualified funded plans for Puerto Rico tax purposes with the resulting adverse consequences of such determination (e.g., current taxation of employee and employer contributions, taxation of trust earnings).

A copy of CL 11-10 (in Spanish) is available at: <http://www.hacienda.gobierno.pr/downloads/pdf/cartas/11-10.pdf>.

A copy of our *Benefits Brief* on CL 11-10 published on February 6, 2012, is available at:

[http://www.groom.com/media/publication/1112\\_PR\\_Treasury\\_Issues\\_Guidance\\_for\\_Puerto\\_Rico\\_Qualification\\_of\\_Retirement\\_Plans.pdf](http://www.groom.com/media/publication/1112_PR_Treasury_Issues_Guidance_for_Puerto_Rico_Qualification_of_Retirement_Plans.pdf).