

## Recent Pronouncements from the Puerto Rico Treasury Department

By Corali Del Llano-Torres

In this issue, we will discuss recent communications issued by the Puerto Rico Treasury Department (“PTRD”) about the procedure to publish rulings and administrative determination letters on a no-name basis, and the impact on limited liability companies (“LLC”), upon the termination of the election to be taxed under the provisions of the Internal Revenue Code of 1994, as amended (the “1994 Code”).

### *Procedure to Publish Rulings and Administrative Determination Letters*

On September 30, 2016, the PRTD issued Circular Letter of Tax Policy No. 16-06 (“CL TP 16-06”) to establish that public interest rulings and administrative determination letters issued privately to the taxpayers will be issued on a no-name basis and to establish the procedure that must be followed by the PRTD to publish them. With this policy, the PRTD expects to bring certainty and awareness to other taxpayers of the official interpretation and application of the Internal Revenue Code of Puerto Rico of 2011, as amended, or other tax law, to specific facts or transactions represented by taxpayers.

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As of the issuance of CL TP 16-06, all ruling replies must include a proposed Public Ruling covering the issues of the Private Ruling requested. The draft of the proposed Public Ruling must be included with the ruling request (in both formats: hard copy and digital). The taxpayer's identity will not be disclosed, but the facts as represented in the ruling request, will be set forward. Ruling requests filed without the proposed draft Public Ruling will be considered incomplete.

This Public Ruling will be issued within the six months upon the issuance of the Private

Ruling, and will be published on PRTD's website. Also, the denial of a ruling may be published by the PRTD as a Public Ruling.

For rulings requested prior to the issuance of CL TP 16-06, taxpayers may file a draft of the proposed Public Ruling, pursuant to the requirements of this Circular Letter. If the PRTD approves the Private Ruling before the taxpayer files such draft, the PRTD may either prepare it, or request the taxpayer to do so.

The following table summarizes the procedures established by CL TP 16-06 about the issuance of Public Rulings.

Procedure	Timing	Description
Revision Period	30 days after issuance of Private Ruling	<p>Within this period, the taxpayer may object the wording of the Public Ruling. If no objection is filed within this period, the Public Ruling will be released.</p> <p>The Objection Letter must set forth the reasons why the proposed draft affects the taxpayer's privacy, and include substitute draft of the Public Ruling with the proposed wording and a \$50 filing fee.</p>
Review of Objection Letter and Substitute Draft of Public Ruling	CL TP 16-06 does not establish a timing for the PRTD's response	<p>If the PRTD agrees with the Substitute Draft, written communication will be sent to the taxpayer and the Public Ruling may be released.</p> <p>If the PRTD does not agree with the Substitute Draft, the PRTD will contact the taxpayer in writing or email to offer a meeting to be coordinated and held within the next 30 days (the taxpayer may request up to 60 days). The meeting may be rescheduled only once, for reasonable cause, and if the taxpayer or its representative fails to appear to the rescheduled meeting, the PRTD may publish the Public Ruling without further notice.</p>
Final Notice of Publication	At least 30 days before public release	Final written notice is mailed to the taxpayer.
Right of Appeal	Within 30 days after the issuance of the Final Notice of Publication	Taxpayer may file a complaint with the Assistant Secretary for Adjudicative Proceedings.

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**Corali** is a Manager at Alvarado Tax & Business Advisors, and has over nine years of experience in the corporate and individual tax advisory areas.

Corali specializes in manufacture, construction and retail. She has experience working with complex tax issues related to tax audits, accounting for income taxes and closing agreements with the Puerto Rico Department of Treasury. She has worked with state and municipal tax exemption grant decrees, complex tax rulings to address impacting different industries and closing agreements related to municipal volume of business and construction excise taxes.

As speaker, she has participated in various seminars and workshops offered to clients such as the Autonomous Municipality of Caguas and the Puerto Rico Chamber of Commerce Students' Chapter, in areas such as the tax reform, corporate, municipal and individual tax returns, and PYMES.

Corali has a Juris Doctor degree and a Bachelor in Business Administration degree, major in Accounting, both from the University of Puerto Rico. She is a member of the Puerto Rico Certified Public Accountants Society and has been admitted to practice law in Puerto Rico and the U.S Court of Appeals, First Circuit.



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**LLC'S and Termination of the Option  
1994 Election: What's Next?**

Another publication issued by the PRTD by the end of September, was Administrative Determination 16-12 ("AD 16-12). The purpose of this determination is to provide guidance on certain aspects related to the termination of the period to be taxed pursuant to the provisions of the 1994 Code ("Option 94" or "Option 94 Election").

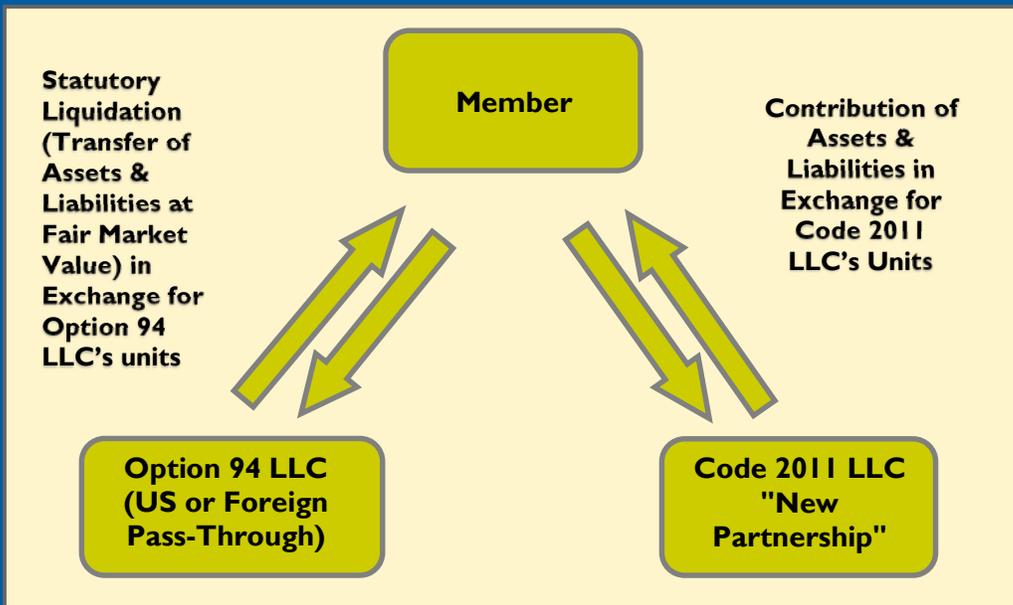
As you may recall, under the provisions of the 1994 Code, LLC's were subject to income taxes in the same manner as corporations. Upon approval of the Internal Revenue Code of 2011 (the "2011 Code"), LLC's may be taxed as corporations, which is the default status, or an election may be filed to be treated for Puerto Rico tax purposes as partnerships (i.e. pass-through entities). However, under the 2011 Code, the default status to be taxed as corporations

is not available for LLC's treated as pass-through entities under the Internal Revenue Code of 1986, as amended, in the United States ("US IRC") or similar provisions of a foreign country. By default, this type of LLC will be also considered as pass-through entities for Puerto Rico income tax purposes.

AD 16-12 specifically addresses the impact of the expiration of the Option 94 period for LLC's, considered pass-through entities pursuant to the US IRC or pursuant to analogous provisions of foreign countries.

**Impact of Termination of the Option  
94 Election**

Section 1076.01 of the 2011 Code establishes a Statutory Liquidation of the LLC's subject to taxation as corporations pursuant to the 1994 Code. It is considered that, on the last day of the Option 94 Election, the LLC transferred its assets and liabilities to its members in total liquidation, and immediately thereafter the members contributed the distributed assets and liabilities to a new partnership.



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and experience in the process of requesting rulings and administrative determinations to the PRTD.

If Option 94 applied to you, then please contact one of our tax professionals. We may assist you in addressing any concerns that may need to be discussed with the PRTD such as the submission of a request for ruling. We may also assist you with an analysis of the tax consequences for an LLC upon termination of the Option 94 Election including the accumulated earnings and profits analysis required.

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