

Petitioner Letterhead

Date

Mr. Angel Marzán, CPA, Esq.
Assistant Secretary of Tax Policy
Puerto Rico Treasury Department
Intendente Ramírez Building
Office 624
San Juan, PR 00902

**Re: Proposed Closing Agreement
Statutory Conversion of a Limited Liability Company**

Dear Mr. Marzán:

On behalf of one of our clients, we hereby submit a Proposed Closing Agreement pursuant to the provisions of Tax Policy Circular Letter No. 14-01 issued by the PR Treasury Department on August 25, 2014 and Section 6051.07 of the Puerto Rico Internal Revenue Code of 2011, as amended.

As required in said Circular Letter, we also enclose a summary of the relevant facts and circumstances, and the determinations and agreements that we would propose to include in the Closing Agreement.

Should you have any questions, please feel free to contact _____ at (XXX) XXX-XXXX or by email at _____.

Cordially,

Petitioner

I. SUMMARY OF THE FACTS AND CIRCUMSTANCES

A. Facts

- i. ABC LLC (hereinafter "ABC") is a foreign Limited Liability Company ("LLC") organized under the laws of Delaware on January 1, 2008.
- ii. ABC is engaged in the wholesale and repair of new and used industrial mechanical machines and is located at Cataño, Puerto Rico. The Company is duly authorized to do business in the Commonwealth of Puerto Rico as a Limited Liability Company. Its principal customers are pharmaceutical companies and other manufacturing entities.
- iii. At year ended December 2009, the company received all the assets and liabilities of XYZ, Inc. through an agreement and plan of merger. The separate existence of XYZ, Inc. ceased at that date. The retained earnings of XYZ, Inc. as of the merger date were \$10,555,432 filed its last income tax return, corresponding to the 2012 taxable year, on April 15, 2013.
- iv. The single member of ABC is Parent Inc., a foreign corporation that is not engaged in a trade or business in Puerto Rico. Consequently, for federal income tax purposes, ABC is disregarded for income tax purposes. Parent Inc. is taxed as a C Corporation for federal tax purposes. Parent Inc. is wholly owned by Holding AZBW, an entity organized in Switzerland which is taxed as a corporation in its jurisdiction and it is not taxed for US tax purposes.
- v. On April 15, 2012, ABC files its 2011 Puerto Rico income tax return including Form SC 6044 indicating an election to be treated as corporation for years 2011 and thereafter. This election was made because at that point the Company was planning reorganizing as a corporation on or before December 31, 2012. Such election should have been effective on January 1, 2012.
- vi. The reorganization did not happen as it was not approve by company headquarters.
- vii. ...continued

B. Applicable Law

- i. Section 1010.01(a)(3) of the 2011 Code establishes that an LLC that is treated as a partnership or disregarded entity for federal income tax purposes will be treated as partnership for Puerto Rico income tax purposes only.
- ii. As explained in Puerto Rico Treasury Department (PRTD)'s Administrative Determination No. 12-04 ("AD 12-04")...
- iii.

C. Issues

- i. ABC is subject to the provisions of Section 1010.01(a)(3) and therefore subject to partnership treatment effective January 1, 2011.
- ii. If the transaction was considered exempt, the conversion costs (recaptures and deemed distribution of E&P) would not be applicable. However the AD 12-04 established that Section 1034.0(i)- which requires a ruling to foreign corporations will apply. Such ruling was not requested.
- iii. ...

D. Determination and Agreements

- i. The taxpayer acted in good faith and did not intentionally or willfully disregard any provisions of the 1994 Code and the 2011 Code.
- ii. ABC is a foreign Limited Liability Company which under Section 1010.01(2)(3)(A) was statutorily converted to a partnership as of December 31, 2010.
- iii. ...