



September 2, 2016

The Honorable Pedro R. Pierluisi
United States House of Representatives
Washington, D.C. 20510

Dear Resident Commissioner Pierluisi:

The Puerto Rico International Insurers Association ("PRIIA") is an organization consisting of international insurance and reinsurance companies, and their service providers, operating under Puerto Rico's International Insurance Center created pursuant to the provisions of Puerto Rico's Acts No. 399 and 400 of September 22, 2004.

The purpose of the PRIIA is to assist in the promotion of Puerto Rico as the insurance domicile of choice from which U.S. and international insurance and reinsurance companies, including captive insurers, may conduct their domestic and global insurance operations. While Puerto Rico's unique circumstances as a U.S. jurisdiction would appear to offer a number of advantages over foreign insurance jurisdictions, the continuing success of the Puerto Rico International Insurance Center as an important contributor to our economic development rests in insurance center's ability to effectively compete with other well-established and long-standing international insurance centers located in foreign jurisdictions such as Bermuda, the British Virgin Islands, and the Cayman Islands, among others.

One extremely important competitive disadvantage to the development of Puerto Rico's International Insurance Center which PRIIA is hereby urgently asking the "Task Force on Economic Growth in Puerto Rico" created pursuant to Section 409 of the

“Puerto Rico Oversight, Management, and Economic Stability Act” (“PROMESA”) to address, is the IRS’s position to the effect that Puerto Rican insurance companies are treated as “foreign insurers” subject to the Internal Revenue Code’s (“IRC”) Section 4371 “foreign issuer excise tax or “FET.”

This position is based on what appears to be an incorrect interpretation made by the IRS in respect to the status of Puerto Rico insurance companies, with highly adverse and unfair consequences for Puerto Rico’s economy and its potential for becoming an important regional financial, insurance and service center. The existing Treasury Regulations under Code Section 4371 (CFR 46.4371-2) expressly provide that for both insurance and reinsurance, the excise tax does not apply if “the policy or other instrument is signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which such insurer is authorized to do business.” Since Puerto Rico is unquestionably a territory of the United States, the text of this existing Treasury Regulation very clearly provides that the excise tax is not applicable to any policy issued in Puerto Rico, by a Puerto Rico licensed and regulated insurance company.

However, to avoid this obvious conclusion, the IRS takes a tortured route to assert that Puerto Rico is not a “territory” for purposes of the FET, because IRC Section 4371, when viewed together with other provisions in the IRC, result in a determination that that U.S. territories such as Puerto Rico, which the IRS holds are not in the “geographical sense” located within the United States (i.e., the states and the District of Columbia), are “foreign.” Therefore, the IRS maintains, Puerto Rico insurance and reinsurance companies are considered “foreign insurers” for purposes of the FET.

As a result of the IRS’s position, Puerto Rico insurers and reinsurers are subject to a 4% federal excise tax on gross premiums in respect to the casualty insurance policies and indemnity bonds they issue to, for or in the name of a U.S. person or a foreign person engaged in a trade or business in the United States, with respect to risks located in the U.S. In the case of life, sickness, or accident insurance policies and annuity contracts, Puerto Rico insurers and reinsurers are subject to a 1% FET on gross premiums. Finally, in the case of reinsurance contracts, Puerto Rico insurers and reinsurers are subject to a 1% FET on gross premiums.¹

¹ See, letter of December 17, 2104 from the Governor of Puerto Rico to the IRS, and the Memorandum of January 13, 2015 prepared by the law firm of Kirkland & Ellis addressing technical aspects of Section 4371 of the IRC and its applicability to Puerto Rican insurance and reinsurance companies accompanying such letter. See, also, the IRS’s response letter to the Governor, dated March 27, 2015; it should be noted that the IRS’s position is not supported by

The disparate treatment between stateside and Puerto Rico insurance companies seems particularly unwarranted considering that, from the standpoint of insurance regulation, Puerto Rico is an integral part of the United States insurance regulatory system. With limited exceptions, the regulation of the business of insurance in the U.S., pursuant to the long-standing principles espoused in the McCarran-Ferguson Act and its progeny², is carried out by the states and other U.S. jurisdictions.

In the case of Puerto Rico, in 1957 it adopted an “Insurance Code” to regulate the insurance industry which was based on the then existing insurance codes adopted in several U.S. states. Moreover, the insurance laws and regulations adopted in the U.S. insurance regulatory system, of which Puerto Rico is an integral part, are promoted by the National Association of Commissioners of Insurance (“NAIC”) in all U.S. jurisdictions, including Puerto Rico. According to the NAIC itself, the *NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.* See, http://www.naic.org/documents/about_faq.pdf

Puerto Rico has been active member of the NAIC for many years. Since 2012 it became a NAIC accredited jurisdiction under the NAIC’s stringent Financial Regulation Standards and Accreditation Program. See, http://www.naic.org/committees/accredited_states.htm. NAIC accreditation benefits U.S. insurers in accredited jurisdictions as they are not subject to separate examinations and financial oversight from multiple U.S. jurisdictions. Furthermore, insurers and insurance producers licensed and in good standing in accredited jurisdictions are granted reciprocity under the laws of each accredited jurisdiction in which they conduct insurance activities. Once again, as an NAIC-accredited jurisdiction, Puerto Rico extends these same benefits to all U.S. insurance companies operating in Puerto Rico.

the plain language of the Treasury Regulation on the FET, but rests instead on a misplaced analogy with other present or former provisions of the U.S. Internal Revenue Code or its regulations that have expressly treated Puerto Rico differently from states of the United States or from incorporated (as opposed to unincorporated) territories.

² U.S. Public Law No. 15 of March 9, 1945; 15 USC Secs. 1011-1015.

Moreover, as stated before, the application of this excise tax is routinely waived in respect to foreign insurance companies competing with Puerto Rico insurers via tax treaties. Why would the United States waive this excise tax for insurers in the United Kingdom, Switzerland, Luxembourg, Ireland, Cyprus, and many other countries, but not Puerto Rico?

For the reasons stated above, we understand that it is essential that the Task Force works with PRIIA and Puerto Rico to find a solution to the situation created by the IRS's position holding that Puerto Rico insurance and reinsurance companies are subject to the IRC Section 4371 FET as "foreign insurers." Ideally, such holding should be repealed or modified. In the alternative, a legislative or regulatory solution should be found in order to eliminate the unfair and incongruous applicability of the FET to Puerto Rico insurers and reinsurers.

PRIIA stands ready to work with the Task Force in its important mission to promote economic growth in Puerto Rico, and to contribute to improve the lives of the U.S. citizens residing in our Island.

Sincerely yours,



Hugo Córdova
President