



GOVERNMENT OF PUERTO RICO
**Puerto Rico Fiscal Agency and Financial
Advisory Authority**

BY ELECTRONIC MAIL

August 22, 2018

Jaime A. El Koury

General Counsel

Financial Oversight and Management Board for Puerto Rico

Dear Jaime:

Reference is hereby made to your letter dated August 17, 2018, addressed to the Hon. Teresita Fuentes Marimón, Secretary of the Department of Treasury. In said communication, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") required submission by the Department of Treasury of all agreements, whether in the form of tax incentive decrees or otherwise, that confer tax abatement or tax relief on a taxpayer, entered into since July 1, 2017. Furthermore, your letter also stated that henceforth all such tax abatement and relief agreements would be required to receive prior approval before execution under the contract review policy (the "Policy") established by the Oversight Board pursuant to Section 204(b)(2) of the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA").¹ Additionally, the Oversight Board requested the Department of Treasury to submit the information described in Appendices A, B, and C of the Policy for each of the aforementioned contracts and a formal estimate of the yearly impact that each decree will have on the government collections during the life of the contract.

Your letter was subsequently published on the Oversight Board website.² Following said letter, we have had the opportunity to receive input from leaders and stakeholders in key industries on the Island such as manufacturing, tourism, film and housing development. They have expressed grave concerns regarding the application of the Policy to their tax agreements in light of the key differences between a tax agreement and other Government contracts contemplated under Section 204(b)(2) of PROMESA.

Indeed, application of the Policy (especially its prior approval requirement) to discretionary tax abatement or similar tax relief agreements is inconsistent with PROMESA Section 208(b)(1), which provides that:

"nothing in this Act shall be interpreted to limit the power of the territorial government or any territorial instrumentality to execute or modify discretionary tax abatement or similar tax relief agreements, or to enforce compliance with the terms and conditions of any discretionary tax abatement or similar tax relief agreement, to which the territorial government or any territorial instrumentality is a party."

¹ As modified on July 3, 2018, specifically establishes that "[a]s used in this Policy "contracts" also applies to grants, sub-grants, and tax abatement or similar tax relief agreements".

² <https://drive.google.com/file/d/18lwbwSquG65bhgZDN6YoZZFHP19LXHP/view>

Section 208(b)(1) expressly supersedes the authority of the Oversight Board to review and pre-approve contracts under Section 204(b)(2) with respect to discretionary tax abatement or similar tax relief agreements.

We also would like to point out that our reading of PROMESA Section 208(b)(1) is supported by the legislative history of the statute. The March 29, 2016 discussion draft of PROMESA (the "PROMESA Discussion Draft") expressly provided that tax relief agreements would require prior Oversight Board approval. Section 202(b) of the PROMESA Discussion Draft stated that "[n]o new tax waiver agreements may be executed by the Government of Puerto Rico without the prior approval of the Oversight Board." Section 202(b) of the PROMESA Discussion Draft later became Section 208(b)(1) of PROMESA and Congress specifically revised the language to remove Oversight Board approval or discretion over such agreements.

In light of the foregoing, we would like to inform you that the Government will not be submitting discretionary tax abatement or similar tax relief agreements for prior approval to the Oversight Board. In the spirit of cooperation, however, the Government will provide reports regarding such agreements and other relevant information to the Oversight Board as may be requested from time to time. We trust that the Oversight Board and its professionals will treat all such information and reports with the sensitivity required under Section 208(b)(2) of PROMESA.³

Regards,



Christian Sobrino Vega
Executive Director

c Ms. Natalie Jaresko
Hon. Teresita Fuentes
Hon. Manuel Laboy

³ PROMESA Section 208(b)(2) mandates that "the members and staff of the Oversight Board shall not disclose the contents of the report described in this sub-section and shall otherwise comply with all applicable territorial and Federal laws and regulations regarding the handling of confidential taxpayer information."