

Tax Alert: Major sea change for the casino industry in Puerto Rico

As noted on our Tax Alert dated September 21, 2016, *New Developments on Puerto Rico's Tourism Industry*, on August 5 and 6, 2016, the Governor of Puerto Rico signed Acts No. 136 ("Act 136-2016") and No. 137 ("Act 137-2016"), effectively amending Act No. 74 of 2010, known as the Puerto Rico Tourism Development Act of 2010 (the "TDA").

As a segue to our prior alert, on this current Alert we discuss upon a particularly noteworthy change brought by Act 136-2016; namely, that the TDA has been amended to, among other things, eliminate the exclusion of casinos, gambling rooms and analogous activities from the list of eligible tourism activities contained under §2(a)(1) of the TDA.

This amendment represents a significant change in public policy for the Puerto Rico Tourism Company ("PRTC"). For the first time in the history of the tourism incentives program, casinos are not expressly excluded from being considered eligible tourism activities.

But, is it "not excluded" the same as being "included"? That is quite the philosophical conundrum.

Prior to this amendment, TDA expressly excluded the operation of a casino from the eligible tourist activity definition. However, while the overt exclusion originally found at the end of the eligible tourist activity definition at the TDA in paragraph (A) of §2(a)(1) was most certainly struck down by Act 136-2016 (interestingly enough, without any mention of it throughout the final version of legislation's

statement of motives), the language of paragraph (A) was not amended to explicitly include casinos, gambling rooms and analogous activities as eligible activities.



Nonetheless, when surveying the Act's legislative history it is quite clear that the legislator's intention was the inclusion of a casino operation as an eligible activity, right up the Conference Committee's report on June 30, 2016. Afterwards, all the versions of the bill circulated and submitted for approval lacked the now-elusive inclusion.

However, taking the aforesaid legislator's intention as evidenced in the history of the project, as well as the approved version, one can safely assume that the ownership and/or operation of a casino will not be precluded from requesting the tax benefits conferred by the TDA.

Please contact our Tax Department should you require additional information regarding this or any other tax issue. We will be glad to assist you.

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