

TAX FLASH ALERT
July 1, 2008

**U.S. Internal Revenue Service Issues Guidance on Transfer of
Assets from U.S. Retirement Plans to Puerto Rico Plans**

The U.S. Internal Revenue Service ("IRS") has just issued Revenue Ruling 2008-40 ("Rev. Rul. 2008-40") providing long awaited guidance regarding the transfer of assets from a retirement plan qualified under Section 401(a) of the U.S. Internal Revenue Code of 1986, as amended ("US Code"), funded through a trust with a situs in the U.S. ("US Plan"), to a plan qualified exclusively under Section 1165(a) of the Puerto Rico Internal Revenue Code of 1994, as amended ("PR Code"), funded through a trust with a situs in Puerto Rico, and exempt from U.S. taxes pursuant to Section 1022(I)(1) of the Employee Retirement Income Security Act of 1974, as amended ("PR Plan"). The IRS has held that a transfer of assets and liabilities from a US Plan to a PR Plan **is treated as a taxable distribution from the US Plan.**

The IRS does provide some relief because the holding of Rev. Rul. 2008-40 is effective January 1, 2011. Therefore, transfers before said date will not be treated as a taxable distribution, to the extent in compliance with the other requirements of US Code Section 414(l). Further, the portion of a distribution from a PR Plan that is attributable to amounts that were transferred from a US Plan before January 1, 2011, will be treated as income from sources within Puerto Rico, and therefore, not subject to U.S. income taxes.

Rev. Rul. 2008-40 also provides relief with respect to compliance with the US Code coverage requirements.

We will issue a more comprehensive Tax Alert on Rev. Rul. 2008-40 shortly.

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If you have any questions or comments, or wish additional information regarding the matters discussed herein, you may contact any of the attorneys listed below, all members of our Employee Benefits Practice Area:

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