



May 9, 2013 [www.mcvpr.com](http://www.mcvpr.com)

## **EMPLOYEE BENEFITS ALERTS**

### ***Approaching deadline to adopt qualification amendments under the 2011 PR Code***

On November 28, 2012, the Puerto Rico Treasury Department (“Treasury”) issued Circular Letter No. 12-09 (“CC 12-09”) extending the due date to adopt the required qualification amendments under the Puerto Rico Internal Revenue Code of 2011, as amended (“2011 PR Code”), until June 30, 2013 or the last day of the first plan year commenced on or after January 1, 2012, whichever is later.

Employers wishing to retain the tax qualified status of their retirement benefits plans are reminded that they need to adopt the qualification amendments under the 2011 PR Code on or before the due dates indicated above.

A copy of our Alert of November 29, 2012 and CC 12-09 is available [here](#).

### ***Puerto Rico Tax Amnesty Program***

On April 29, 2013, the Puerto Rico Government was enacted to authorize the adoption of a tax amnesty program providing for the waiver of interest, penalties and surcharges in connection with certain tax debts.

Among the income and withholding tax debts that will be covered by the tax amnesty program are those arising from the under withholding, or the failure to withhold, income taxes imposed by the Puerto Rico tax laws upon payments made in connection with the distribution of retirement plan benefits to Puerto Rico participants.

Employers and plan sponsors in this situation are reminded of the availability of the tax amnesty program which will be effective from May 13, 2013 to June 30, 2013 only.

A copy of our Alert of May 1, 2013 is available [here](#).

### ***Heads up! PBGC’s coverage of Puerto Rico pension plans***

On April 19, 2013, the Pension Benefit Guaranty Corporation (“PBGC”) withdrew two opinion letters (Opinion Letters 77-172 and 85-19), addressing the issue of whether defined benefits plans established and maintained in Puerto Rico are covered by Title IV of ERISA and, among other things, the insurance program administered thereunder.

In Opinion Letter 77-172, the PBGC established that Title IV coverage of a Puerto Rico based defined benefit plan was not conditioned on an ERISA Section 1022 (i)(2) election. The position of the PBGC was that a Puerto Rico based plan could be subject to Title IV even without the election. The PBGC reaffirmed its position in Opinion Letter 85-19, wherein it opined that a non-United States trust by itself would not disqualify a plan established in the United States territories (including Puerto Rico) from coverage under Title IV.

With the withdrawal of Opinion Letters 77-172 and 85-19, the PBGC may be hinting to the possibility of the issuance of future guidance on the matter or even to a shifting in its position as to the applicability of the insurance coverage requirements under Title IV of ERISA to Puerto Rico based plans with non-United States trusts.

We will monitor any new developments in this area and issue additional Alerts as soon as there is more concrete guidance from the PBGC.

If you have any questions or would like our assistance regarding this matter, you may contact any of the following members of our Employee Benefits Practice Team:

Yamary González	787.250.5687	<a href="mailto:yg@mcvpr.com">yg@mcvpr.com</a>
Angel S. Ruiz Rodríguez	787.250.2602	<a href="mailto:asr@mcvpr.com">asr@mcvpr.com</a>
Lourdes del R. Fontanillas	787.250.5655	<a href="mailto:ldf@mcvpr.com">ldf@mcvpr.com</a>
Leyla González	787.250.5696	<a href="mailto:lqi@mcvpr.com">lqi@mcvpr.com</a>
Alba I. Joubert	787.250.5649	<a href="mailto:aj@mcvpr.com">aj@mcvpr.com</a>
Lillian Toro Mojica	787.250.2608	<a href="mailto:ltm@mcvpr.com">ltm@mcvpr.com</a>
Mayleen Santiago	787.250.2616	<a href="mailto:msg@mcvpr.com">msg@mcvpr.com</a>

The content of this McV Alert has been prepared for information purposes only. It is not intended as, and does not constitute, either legal advice or solicitation of any prospective client. An attorney-client relationship with McConnell Valdés LLC cannot be formed by reading or responding to this McV Alert. Such a relationship may, be formed only by express agreement with McConnell Valdés LLC.