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EMPLOYEE BENEFITS ALERTS

Final Extension for the Adoption of Plan Amendments and the Filing of Qualification Requests under the Puerto Rico Internal Revenue Code of 2011

On May 28, 2013, the Puerto Rico Treasury Department ("Treasury") published [Circular Letter No. 13-02](#) ("CC 13-02") further extending the due date for sponsors of qualified plans to adopt the amendments required under the Puerto Rico Internal Revenue Code of 2011, as amended ("2011 PR Code"). CC 13-02 also extended the due date to file the request for the qualification of such plans.

Our Employee Benefits Alerts of [December 2011](#) and [November 2012](#) detailed the then applicable due dates, which have been extended as follows:

- I. Extended Dates to Adopt Amendments and File Requests for Qualification
 - A. Regular Extension

Until the last day allowed by the 2011 PR Code for an employer sponsoring the plan to file its income tax return for the first taxable year commencing on or after January 1, 2013 *without taking into consideration any applicable extensions*. Generally, for calendar year taxpayers this means on or before April 15, 2014.

- B. Additional Extension

Until the last day allowed by the 2011 PR Code to the employer sponsoring the plan to file its income tax return, *including the automatic three months extension*, for the first taxable year commencing on or after January 1, 2013. Generally, for calendar year taxpayers this means July 15, 2014. Plan sponsors opting to extend the filing due date under this option will have to: (i) pay a filing fee of \$150 with their request (in addition to any other filing fee applicable under Circular Letter 11-10); and (ii) include with their request a copy of Form SC 2644 (i.e., the request for extension to file) or a certification issued by an employee, officer or director of the employer attesting as to such filing with Treasury.

- II. Modifications and Clarifications Regarding the Procedure to File a Request for Qualification of a Plan

CC 13-02 acknowledges that certain doubts existed among practitioners as to the information and documents that must be included with the request for the qualification of the plans. Among the information that must be included are the following:

(i) If the plan is being audited by Treasury, the U.S. Internal Revenue Service or the U.S. Department of Labor, the request for qualification must specifically describe the items under examination and the name, telephone number and contact information of the agent in charge of the audit.

(ii) If the plan sponsor is using a tax year other than a calendar year, the request must include reference to such tax year.

If documents required to complete the filing for qualification are not available to the sponsor at the time of filing, the plan sponsor may complete the filing by accompanying a certification specifically attesting to the situation. This alternative, however, is not available as to the name and taxpayer's identification number of the plan, or of the employer sponsoring the plan, or as to the information regarding the minimum coverage and participation in the plan. In these instances, the plan sponsor should contact Treasury, prior to filing the request to agree as to the alternatives available, if any, to cure such omission.

CC 13-02 eliminates the need to include information related to the other members of the common controlled group of which the employer or plan sponsor is a member with the request for qualification of the plan.

Failure by the plan sponsor to comply with the procedure and requirements to file the request for qualification may result in the imposition of an additional \$150 filing fee.

III. Retroactive Qualifications

If the plan has not been qualified under the Puerto Rico Internal Revenue Code of 1994, as amended ("1994 PR Code"), the employer or plan sponsor may request its retroactive qualification under the 1994 PR Code together with its request under the 2011 PR Code. In these instances, in addition to the information and filing fees required by the 2011 PR Code and CC 11-10, the request will have to include a filing fee of \$350 and a description of how the plan met the minimum coverage and participation test under the 1994 PR Code as to any date within the taxable year for which the retroactive qualification will be effective.

If the request filed with Treasury includes an updated version of the plan meeting the requirements of the 2011 PR Code, a copy of the plan (as amended) in effect as of the date in which the retroactive qualification is requested will not be required. If the letter filed by the plan sponsor does not request the retroactive qualification of the plan under the 1994 PR Code, the rulings to be issued by Treasury will only be effective for plan years subject to the provisions of the 2011 PR Code.

IV. Failure to File within the Time Limits Imposed by CC 13-02

Plans that fail to request qualification within the time limits established by Treasury will be considered in Puerto Rico as non-qualified retirement plans. These plans, however, are allowed to cure such omission through their subsequent filing with Treasury, if they meet all the requirements of CC 11-10, and include with their requests the payment of an administrative charge equal to three times the filing fees (including the additional charges) that would have been applicable if filed on a timely basis. This alternative is available only with respect to plans in which the employer is not under audit by Treasury. This relief, however, is not available to plans established or that become effective in Puerto Rico in a date subsequent to the effective date of the 2011 PR Code.

V. Effective Date of CC13-02

The provisions of CC 13-02 are effective on July 1, 2013. Plans filed before July 1, 2013 may, but are not required to, comply with its provisions.

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:

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