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EMPLOYEE BENEFITS ALERT

IRS Revenue Ruling 2014-24: Investment by Puerto Rico Qualified Retirement Plans and Insurance Company Separate Accounts in “81-100 Group Trusts”

On August 21, 2014, the U.S. Internal Revenue Service (“IRS”) issued Rev. Rul. 2014-24 (“RR 2014-24,” available [here](#)) to finalize pending investment rules under IRS Rev. Rul. 81-100, as modified by IRS Rev. Rul. 2011-1 and IRS Notice 2012-6. In RR 2014-24, the IRS: (1) holds that Puerto Rico qualified plans are permanently eligible to invest in 81-100 Group Trusts,¹ (2) extends the transition relief period for transfers from dual qualified plans investing in 81-100 Group Trusts; and (3) clarifies that certain separate accounts maintained by insurance companies may be invested in 81-100 Group Trusts.

Puerto Rico only qualified plans are permanently eligible to invest in 81-100 Group Trusts

In general, Rev. Rul. 81-100 provides that qualified retirement plans and individual retirement accounts are permitted to pool their assets for investment purposes in an 81-100 Group Trust if certain specified requirements are satisfied. In this regard, the IRS ruled in RR 2014-24 that retirement plans that are qualified only under the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”) and that are described in Section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), are eligible to participate in 81-100 Group Trusts without triggering adverse tax consequences to the group trust or its investors. This holding is based on the following arguments:

1. Section 1022(i)(1) of ERISA provides that the trust forming part of a retirement plan covering employees which are all residents of Puerto Rico is exempt from U.S. income taxation under Section 501(a) of the US Internal Revenue Code (“US Code”);
2. Although a retirement plan described under Section 1022(i)(1) of ERISA is not qualified under Section 401(a) of the US Code, it can satisfy the other 81-100 Group Trust requirements under IRS Rev. Rul. 2011-1;
3. The retirement plan qualification requirements under Section 1081.01 of the PR Code are similar to the qualification requirements of Section 401(a) of the US Code; and

¹ An “81-100 Group Trust” is a group trust described in IRS Rev. Rul. 81-100, as subsequently modified.

4. Pursuant to Section 3(10) of ERISA, Puerto Rico only qualified plans are subject to Title I of ERISA.

The IRS modifies the list of group trust retiree benefit plans eligible to participate in an 81-100 Group Trust to include retirement plans under Section 1022(i)(1) of ERISA.

Extension of Transition Relief to Certain Dual-Qualified Plans Participating in 81-100 Group Trusts

RR 2014-24 also extends until January 1, 2016 the transitional relief period granted under IRS Rev. Rul. 2008-40 during which transfers of funds were allowed to be made from dual qualified plans, *that participated in an 81-100 Group Trust on January 10, 2011*, to Puerto Rico only qualified plans described in Section 1022(i)(1) of ERISA.

If the requirements are met, plan sponsors may convert their dual qualified plans in U.S. only qualified plans by transferring the assets and liabilities attributable to Puerto Rico participants to a Puerto Rico only qualified plan described in Section 1022(i)(1) of ERISA without triggering a taxable event to the participants or the dual qualified plans.

Investment by Certain Separate Accounts of Insurance Companies in 81-100 Group Trusts

Separate accounts² maintained by insurance companies may invest in 81-100 Group Trusts without affecting the tax status of either the 81-100 Group Trust or the plans participating in the 81-100 Group trust as long as:

1. All the assets in the separate account consist solely of assets of plans eligible to participate in 81-100 Group Trusts;
2. The insurance company maintaining the separate account enters into a written agreement with the trustee of the 81-100 Group Trust consistent with the requirements of IRS Rev. Rul. 2011-1; and
3. The assets of the separate account are insulated from the claims of the insurance company's general creditors.

The trustees of 81-100 Group Trusts in which eligible participating benefit plans are invested through a separate account as of December 8, 2014, are not required to enter into the written agreement with the insurance company before January 1, 2016. All other eligible benefit plans that as of December 8, 2014 are not invested in 81-100 Group Trusts, but subsequently are, the trustee of the group trust and the insurance company must enter into a written arrangement no later than the time of the investment.

If you have any questions or comments regarding the above, or would like to receive specific advice on this matter, you may contact any of the attorneys listed below, members of our Employee Benefits Practice Team:

² The term "separate account" for purposes of RR 2014-24 is defined as an account that is segregated from the general asset accounts of the company.

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