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## EMPLOYEE BENEFITS ALERT

### PR Treasury to Issue Guidance Providing a 2013 Deadline for Puerto Rico Qualification of Retirement Plans (Including Relief for Retroactive Qualification Under 1994 PR Code)

We have just learned that, in early December 2011, the Puerto Rico Treasury Department (the “PR Treasury”) intends to issue a Circular Letter providing guidance on the procedures for the qualification of retirement plans under the Puerto Rico Internal Revenue Code of 2011 (the “2011 PR Code”), and for retroactive qualification under the Puerto Rico Internal Revenue Code of 1994, as amended (the “1994 PR Code”). See our Alert on the 2011 PR Code retirement plan provisions, as recently amended [here](#). It is likely that the Circular Letter will provide the following:

1. On or before the end of the plan year beginning on or after January 1, 2012 (*i.e.*, on or before **December 31, 2012**, for a plan with a calendar plan year), plans must be amended in compliance with the qualification provisions of the 2011 PR Code, including those which became effective January 1, 2011. The Circular Letter will include a list of the qualification provisions that must be included in the plan document or appendix/supplement to the plan in order to obtain a qualification letter under the 2011 PR Code. However, note that a plan must be operated in compliance with all 2011 PR Code provisions even though the plan is not amended until 2012.
2. A plan that is timely amended to comply with the 2011 PR Code must be filed for an updated qualification letter on or before the due date, including any extension, of the participating employer’s 2012 Puerto Rico income tax return (*i.e.*, the 15<sup>th</sup> day of the 4<sup>th</sup> month after the close of the taxable year; the 15<sup>th</sup> day of the 7<sup>th</sup> month, if an automatic extension is timely requested; **April 15, 2013, or July 15, 2013** with extension, for a calendar year taxpayer).
3. Plans that are not amended in compliance with the 2011 PR Code, or which are not timely filed for a qualification letter, will be treated as non-qualified funded plans for Puerto Rico income tax purposes.
4. Guidance with respect to requests for updated qualification letters after a plan has obtained a qualification letter under the 2011 PR Code. That is, not all amendments will be required to be filed with the PR Treasury, as currently required in the qualification letters. A plan must be filed for an updated qualification on or before the due date, including any extension, of the participating employer’s Puerto Rico income tax return for the year in which the amendment is adopted (*i.e.*, the 15<sup>th</sup> day of the 4<sup>th</sup> month after the close of the taxable year; the 15<sup>th</sup> day of the 7<sup>th</sup> month, if an automatic extension is timely requested). Plans that are not timely filed for updated qualification under the guidelines in the Circular Letter will be treated as non-qualified plans for Puerto Rico income tax purposes.
5. Updated list of documents that will be required to be included with the request for initial qualification under the 2011 PR Code and subsequent updated qualifications. Special rules will apply for plans adopted under master or prototype plans.

6. Plans that **on or before December 31, 2012**, are not submitted for an updated qualification letter under the 2011 PR Code or **for retroactive qualification under the 1994 PR Code**, or plans that are not timely submitted for updated qualification letters after obtaining a qualification letter under the 2011 PR Code, will be able to obtain qualification through a voluntary correction program that will require entering into a closing agreement with the PR Treasury, in addition to filing for qualification through the regular qualification process. This means that plans that have never been filed for qualification with the PR Treasury may obtain **retroactive qualification (including qualification under the 1994 PR Code)** through the regular qualification process (and without the need to enter into a closing agreement) if the plan is filed **on or before December 31, 2012**.

We will be issuing a detailed Alert on the Circular Letter as soon as it is issued.

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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