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EMPLOYEE BENEFITS ALERT

Puerto Rico Qualified Plans Must be Amended on or before December 31, 2014, to comply with the Post Windsor Requirements

As highlighted in our [Employee Benefits Alert of June 10, 2014](#), and reflecting the outcome of the US Supreme Court's Windsor decision, the Internal Revenue Service the Internal Revenue Service ("IRS") recently issued IRS Notice 2014-19 which provides that for US qualification purposes, a retirement plan will fail to satisfy the qualification requirements under the US Internal Revenue Code ("US Code Plans") if, for purposes of the rules related to married participants, the plan does not recognize the same-sex spouse of a plan participant as of June 26, 2013. The general deadline to amend the US Code Plans **is on or before December 31, 2014**. As further discussed below, this deadline not only applies to US Code Plans (which are also qualified under the Puerto Rico Internal Revenue Code (i.e. dual qualified plans), but to plans qualified solely under the Puerto Rico Internal Revenue Code ("PR Only Plans").

In the case of PR Only Plans, many of the qualification rules of the US Code with respect to married participants, such as survivor annuity rules under US Code Section 401(a)(11), the exception to the anti-alienation rules found in US Code Section 401(a)(13)(B), and the provisions governing qualified domestic relations orders under US Code Section 414(p), apply to PR Only Plans by way of the parallel provisions under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Accordingly, PR Only Plans should be amended to properly reflect the outcome of Windsor **on or before December 31, 2014**, in order to maintain the qualified status of such plans under the PR Code since a plan must comply with ERISA in order to be a qualified plan in Puerto Rico. It should be noted that since under Puerto Rico law same-sex marriages are not recognized, a carve out of such rule should be made for Puerto Rico income tax purposes.

In view of the foregoing, employers sponsoring or participating in PR Only Plans are encouraged to review such plans prior to year end to determine whether an amendment is necessary to properly reflect the outcome of Windsor. In addition, inasmuch the Puerto Rico Internal Revenue Code requires a plan to comply with ERISA in order to be qualified, it is reasonable to argue that this type of amendment made to a Puerto Rico qualified plan may be considered a qualification amendment that must be filed with the Puerto Rico Department of the Treasury ("PR Treasury") on or before the due date to file the income tax return of the employer for the taxable in which the amendment was adopted (i.e., generally by April 15, 2015). Nonetheless, confirmation from the PR Treasury is expected in this regard since, pursuant to PR Treasury Circular Letter 11-10 of December 16, 2011, changes to comply with new US Code or ERISA requirements are not required to be filed for a determination letter.

If you have any questions you may you may contact any of the attorneys of our Employee Benefits Practice Group listed below:

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