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EMPLOYEE BENEFITS ALERT

IRS Extends and Expands Relief Provided for Transfer of Assets from U.S. Retirement Plans to Retirement Plans in Puerto Rico

After many requests by professional organizations and legal practitioners, both in the U.S. and Puerto Rico, the U.S. Internal Revenue Service ("IRS") recently issued Notice 2012-6 ("Notice 2012-6," and available [here](#)) providing relief for certain asset transfers from U.S. retirement plans to Puerto Rico plans. Notice 2012-6 principally provides for:

- Extension of Relief under Revenue Rulings 2008-40 and 2011-1 ("RR 2008-40" and "RR 2011-1," respectively)*
 - RR 2008-40 provided relief for the U.S. tax-free transfer of assets from a retirement plan qualified under Section 401(a) of the U.S. Internal Revenue Code of 1986, as amended (U.S. Code"), funded through a trust with a situs in the U.S. and benefiting Puerto Rico residents ("US Plan"), to a plan qualified exclusively under Section 1165(a) of the Puerto Rico Internal Revenue Code of 1994, as amended, predecessor to Section 1081.01 of the Puerto Rico Internal Revenue Code of 2011, as amended ("2011 PR Code")**, funded through a trust with a situs in Puerto Rico which, pursuant to Section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), is exempt from U.S. taxes under US Code Section 501(a) ("1022(i)(1) Plan"), if the transfer was made prior to January 1, 2011. RR 2011-1, among others, extended the relief under RR 2008-40 to transfers made prior to January 1, 2012.
 - In order to allow sponsors to evaluate whether to spin-off the portion related with employees in Puerto Rico of their respective US Plan and consider the effects of the changes under the 2011 PR Code, Notice 2012-6 extends the relief provided in RR 2008-40 and RR 2011-1 for transfers from US Plans (regardless of whether the plan participates in an "81-100 Group Trust"***) to 1022(i)(1) Plans, if the transfer is made prior to January 1, 2013.
 - In addition, Notice 2012-6 indefinitely extends the relief provided in RR 2008-40 and RR 2011-1 for transfers from US Plans that participated in an 81-100 Group Trust on January 10, 2011, to 1022(i)(1) Plans, until a deadline is set forth in guidance to be issued by the IRS in the future regarding the participation of 1022(i)(1) Plans in 81-100 Group Trusts.

- Expansion of Relief under RR 2011-1
 - In addition to extending the time period provided by RR 2008-40 for the transfer of assets, RR 2011-1 established that the IRS would not treat an 81-100 Group Trust as failing to satisfy the requirements of IRS RR 81-100 merely because the 81-100 Group Trust includes assets of a 1022(i)(1) Plan, as long as certain requirements are met.
 - Notice 2012-6 provides that the relief provided in RR 2011-1 continues to apply and is expanded to cover an 81-100 Group Trust, with respect to an investment by a 1022(i)(1) Plan that is the recipient of assets transferred from a US Plan pursuant to the transition relief under RR 2008-40, RR 2011-1 and the Notice, if the transferred assets from the US Plan were held in an 81-100 Group Trust on January 10, 2011.

* See our Alerts on RR 2008-40 [here](#) and RR 2011-1 [here](#).

** See our Alert on the retirement plans provisions under the 2011 PR Code [here](#).

*** An 81-100 Group Trust is a trust fund exempt from taxation under US Code Section 501(a) which assets can be pooled for investment purposes. (See IRS Revenue Ruling 81-100)

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