



BENEFITS BRIEFING ON PUERTO RICAN PLANS – IRS DEVELOPMENTS

Lou Mazawey
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ERISA 1974 – § 1022(i)

- Treats Puerto Rican (“PR”) plans as US-qualified for purposes of Code sec. 501(a) (Sec. 1022(i)(1))
 - Covers only PR residents
 - Qualified in PR, but not US
- Allows sponsor to elect to have PR plan also meet US plan qualification rules (Sec. 1022(i)(2))

34 Years Later – Rev. Rul. 2008-40

- Reaffirms PR residents taxed on US-source investment income on distribution (per Rev. Proc. 2004-37)
- Holds transfer from US-qualified plan to PR-only qualified plan is a
 - Disqualifying event and
 - Taxable distribution

34 Years Later – Rev. Rul. 2008-40 (Cont'd.)

- RR 2008-40 allows tax- and penalty-free spinoff from US plan to PR-only plan through December 31, 2010

BUT

Sept. 14, 2010 IRS letter to Sen. Specter (D-PA) says PR-only plan cannot pool assets with US plan in group trust, i.e., PR plan must be US-qualified

Rev. Rul. 2011-1

- Principal purpose of guidance is to restate requirements for group trusts to qualify under sec. 501(a)
 - Is a “master trust” a “group trust”?

BUT ALSO

- Extends RR 2008-40 spinoff deadline for 1 year (through 12/31/11)
- “Pending further guidance” allows PR plan to invest in group trust if so invested on 1/10/11 or it results from RR 2008-40 spinoff

Key Plan Sponsor Concerns

- Withholding on payouts from US trust
 - Complex (esp. DB plan)
 - May “overtax” PR residents
- “Dual qualification” is complex (although US and PR rules getting closer)
- Future ability of PR-only plan to continue US investment is uncertain
 - Potential extra fees
 - Less attractive/less diverse options

Expected (Hoped For) Guidance

- Further extension of spinoff deadline
- Permanent relief allowing US investment as intended under ERISA sec. 1022(i)(1)

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Questions?