



## **Phone Forum**

**International Issues involving  
Retirement Plans in U.S. Territories**



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**Speaker's Title: TE:GE International Lead**



# Questions

- [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov)

# FY 2013 Key Initiatives

EP examination program in 2013:

- **Continue EP Large Case audit Program**
- **Continue Puerto and USVI audits in general program**
- **Continue current Employee Plan Compliance Unit (EPCU) projects and design new projects in FY 2013**
- **Design and develop new international projects**

# FY 2013 Key Initiatives

## Training:

- **Continue to develop training for EP examination agents**
- **Continue to develop other training for USVI agents**
- **Continue to work on formal guidance on Puerto Rico trusts in 81-100 group trusts Rollovers between US and foreign retirement vehicles**



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# How it All Began

- **IRS EFFORTS BEFORE 2003**
- **2003/2004 P.R. PLANS INITIATIVE**

# Audits in Puerto

- Why Us?
- Objectives?
- Who is involved?

# 2005 Audits in Puerto

- Primary Objectives
  - Educate
  - Improve compliance
  - Identify ways to help our customers
- Secondary Objectives
  - Plan Shapes
  - Confirm Issues
- Personnel Involved and Plans Selected

# 2005 Audits in Puerto Rico (cont')

- Issues identified – U.S. side.
  - 1022(i)(2) plans terminated and rolled over of assets to a Section 1022(i)(1) plan.
  - Non-Amenders
  - Trust sited in the U.S.
  - Failure to file form 1099R
- Issues Identified – Puerto Rico side
  - Withholding on 1099R of Puerto Source Income
  - ADP Test failures

# Consequences of 2005 Audits

- REVENUE RULING 2008-40
- Addition of condition Code to 5500
  - 3J - U.S.-based plan that covers residents of Puerto Rico and is qualified under both Code section 401 and section 8565 of the Puerto Rico Code.

# 2010 Audits in Puerto

- Secondary Objectives
  - Train Hacienda Auditors
- Personnel Involved and Plans Selected

# 2010 Audits in Puerto Rico (cont')

- Issues identified – U.S. side.
  - Non Amenders
  - Plans with no Fidelity Bonds
  - Misuse of Code 3J
  - Proper rollovers to Puerto Rico only plans.
- Issues Identified – Puerto Rico side
  - No Hacienda Determination letter
  - ADP test failures
  - Eligibility/Participation issues

# Consequences of 2010 Audits

- REVENUE RULING 2011-1
- Education on use of Condition Code 3J
- Better record keeping
- Closing Agreements with IRS
- Referrals to Hacienda

# 2011 Audits in Puerto

- Secondary Objectives
  - Train Hacienda Auditors
- Personnel Involved and Plans Selected

## 2011 Audits in Puerto Rico (cont')

- Issues identified – U.S. side.
  - Plans with no Fidelity Bonds
  - Less Misuse of Code 3J
- Issues Identified – Puerto Rico side
  - ADP test failures
  - Eligibility/Participation issues

# Consequences of 2011 Audits

- REVENUE RULING 2011-1
- Education on use of Condition Code 3J
- Better record keeping
- Closing Agreements with IRS
- Referrals to Hacienda



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# Application of Income tax requirements to USVI

- For tax purposes, IRC generally treats U.S. territories as foreign countries—
  - However, for USVI, U.S. is treated as including the relevant territory for purposes of computing U.S. income tax.
- USVI has a *mirror system to U.S.* for income tax purposes
  - Adoption of IRC as if it were territory's code, except the name of the territory is substituted for the *United States*.

# Application of Income tax requirements to USVI

- Parts of the Code, including estate and gift tax, and excise tax rules are not mirrored
- US and USVI are separate and distinct taxing jurisdictions
  - The term “domestic” as used in the USVI mirror Code refers to the territory; the rest of the world, including the US is considered to be “foreign”

# Application of ERISA to USVI

- For purposes of Title I of ERISA, the term *United States* includes the U.S. territories including USVI
  - Minimum participation, vesting, funding rules, bonding requirements and Form 5500 filing obligations apply within the U.S. territories

# U.S. Virgin Islands Project (USVI)

- An MOU executed on 5-3-10 (provides for training, EPCRS assistance, and exchange of referrals between EP and USVI Bureau of Internal Revenue)
- A memo is currently underway through collaboration between TEGE Counsel and EP R&A
  - Noting the Virgin Islands Code mirrors that of the IRS with the exception of excise taxes

## **U.S. Virgin Islands Project (USVI)**

- In FY-2011, ten Virgin Islands Bureau of Internal Revenue (BIR) agents received pension audit and on-the-job training with emphasis on IRC 401(k) plans. The BIR agents were located in St. Thomas and St. Croix
- Phase 2 workshop for St. Thomas agents was held in September 2011.
- Phase 2 workshop for St. Croix agents was held in May 2012.

## Issues found on USVI Audits

- EP commenced audits of Virgin Island plans in FY- 2010
- Issues found on audits include:
  - Non-amenders
  - Excluded Employees
  - Incorrect 404 deductions taken
  - Defaulted plan loans
  - ADP/ACP failures

## Issues found on USVI Audits

- Issues found on audits continued:
  - Incorrect contribution allocations
  - Funding violations
  - Incorrect vesting percentages
  - Inadequate/No Fidelity Bond
  - IRC 401(k) violations
    - late deposits
    - missing election forms