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
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**
Olimpia Diaz
Employee Plans Group Manager 7650
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
Stephanie Hunter

Employee Plans Internal Revenue Agent
Group 7651, Houston, Texas
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