

## **Puerto Rico Tax Incentives Legislation**

### **ACT 20-2012: TAX INCENTIVES TO PROMOTE EXPORT SERVICES IN PUERTO RICO**

On January 17, 2012, Puerto Rico enacted Act No. 20 of 2012, known as the “Export Services Act”, to offer the necessary elements for the creation of a World Class International Service Center. The Export Services Act, as amended, is intended to encourage local service providers to expand their services to persons outside of Puerto Rico in aid of promoting the development of new businesses in Puerto Rico and stimulating the inbound transfer of service providers to Puerto Rico.

The Export Services Act allows business enterprises, ranging from advertising, shared services centers and trading companies to accounting and legal services, to benefit from special tax rates applicable to income derived from services rendered to customers from outside Puerto Rico. Services for foreign markets are services performed for nonresident individuals or foreign entities that have no nexus with Puerto Rico. Services provided for a U.S., non-Puerto Rico client would qualify. In other words, the eligible service is not, and will not be, related to the conduct of a trade, business or other activity in Puerto Rico. For example, warehousing and distribution services for products manufactured outside of Puerto Rico and to be distributed to markets outside of Puerto Rico will be considered eligible services. Promoter Services are excluded from this general rule.

Under the Export Services Act, the service provider will enjoy:

- A 4% flat income tax rate on export services income;
- 100% tax-exemption for distributions from earnings and profits derived from the export services income,
- 90% exemption from property taxes (100% exemption during the first five years of operations, in the case of certain eligible services), and (iv) 60% exemption from municipal license taxes (90% tax exemption if business operates in the industrial development zone constituted by the Municipalities of Vieques and Culebra).

To avail from such benefits, a business needs to apply and obtain a tax exemption decree, which will provide full detail of tax rates and conditions mandated by the Export Services Act and will be considered a contract between the Government of Puerto Rico and the service provider. Once the service provider obtains the tax exemption decree, the benefits granted will be secured during the term of the decree, irrespective of any changes in the applicable Puerto Rico tax laws. The decree shall have a term of 20 years, with a possible 10-year extension.

Under the tax exemption decree, the service provider will be required to maintain at least five (5) full-time employees in the Eligible Services. Only employees, including full-time, part-time and temporary employees are counted towards said requirement (independent contractors are not included). As a general rule, the amount of full-time employees maintained by the service provider should be computed by dividing the total amount of hours worked by all employees during each taxable year over 2,080, which resulting amount is considered the number of full time equivalents. The five (5) full-time job requirement shall be met within two years from the date the business begins operations.

### **ACT 22-2012: RELOCATION OF INDIVIDUAL INVESTORS**

Act No. 22 of January 17, 2012 (“Act 22”), the Act to Promote the Relocation of Individual Investors to Puerto Rico (the “Individual Investors Act”), is designed to encourage investors to become residents of Puerto Rico by providing an exemption from Puerto Rico income taxes on interest, dividends, and capital gains realized or deemed accrued after such individuals become bona fide residents of Puerto Rico. This

relocation should result in new local investments in real estate, services, and consumer products, as well as capital injections to the Puerto Rico banking sector; all of which will accelerate the economy of Puerto Rico.

The tax benefits granted under the Individual Investors Act will be available until December 31, 2035 (the “Tax Exemption Period”). During this period, interest and dividends that qualify as Puerto Rico source income received by a “resident individual investor” (i.e., an individual who has not been a resident of Puerto Rico for the 6 years before January 17, 2012, Act 22’s date of enactment) will be 100% tax exempt from Puerto Rico income taxes. Since US Internal Revenue Code Section 933 also does not subject this interest and dividends to federal taxation, the income will be totally exempt.

Long-term capital gains derived by a “resident individual investor” during the Tax Exemption Period will be subject to preferential income tax rates. If such gains were deemed to have accrued before the individual investor becomes a Puerto Rico resident and are recognized within 10 years after the date the investor established residence in Puerto Rico, the gains will be taxed at a 15% income tax rate. If such gains are recognized after the 10-year period, but prior to January 1, 2036, a 5% income tax rate will apply. Gains related to investment appreciation considered accrued after the investor becomes a Puerto Rico resident will be 100% exempted from Puerto Rico income taxes.

Act 241 of December 22, 2014 amended Act 22 to provide that “resident individual investor” may transfer or donate freely, inter-vivos, and at their own discretion all or part of their assets to the trusts described above, irrespective of whether the assets transferred or donated are tangible or intangible in nature; where the property is located, and the transfer, donation, testamentary disposition and /or the terms and conditions of such trust is inconsistent or to the contrary to any legal or regulatory provision in Puerto Rico, including but not limited to the provisions of the Civil Code of Puerto Rico, including community property and forced heirship rules. Therefore, “resident individual investors” covered under Act 22 should consider buying property via PR LLCs wholly owned by trusts. Act 241-2014 also shortened the no-residency requirement from 15 years to 6 years.

Act 187 of November 17, 2015 amended Act 22 to require individuals who apply for an Act 22-2012 tax decree after November 30, 2015 to purchase a residential property in Puerto Rico as a condition to receive such decree. The Department of Economic Development and Commerce of Puerto Rico issued Circular Letter 2015-003 on December 23, 2015 which provides that individuals must purchase the residential property within two years from the date they become residents of Puerto Rico. Failure to comply with this requirement would result in the retroactive revocation of the Act 22-2012 tax decree. Act 187-2015 of November 17, 2015 further require individuals who apply for an Act 22-2012 tax decree after November 30, 2015 to open a personal or business deposit account in a bank or cooperative operating in Puerto Rico.

### **ACT 273-2012: INTERNATIONAL FINANCIAL CENTER REGULATORY ACT**

Act No. 273-2012, known as the “International Financial Center Regulatory Act” (“Act 273”), provides tax exemptions to businesses engaged in eligible activities in Puerto Rico. To avail from such benefits, a business needs to organize as an international financial entity (“IFE”) by applying for a permit and a license and obtaining a tax exemption decree. The Act aims to increase the promotion of Puerto Rico within the financial world and to expand the potential market of the International Financial Center of Puerto Rico. The major benefits of this expansion include an extension of the service sector, the direct and indirect job creation and a surge in economic activity.

An IFE may be any person, that is not an individual, and that is incorporated or organized under the laws of Puerto Rico, the United States, or any other country. The IFE may submit copy of its license to the

Secretary of the Department of Economic Development and Commerce of Puerto Rico, and may request issuance of a tax decree that provides full detail of tax rates and conditions mandated by Act 273. The decree will be considered a contract between the Government of Puerto Rico and the IFE. Once the IFE obtains the tax exemption decree, the benefits granted will be secured during the term of the decree irrespective of any changes in the applicable Puerto Rico tax laws. The decree will be effective during a period of 15 years. Two extensions of 15 years each may be available.

The IFE can be engaged only in those permitted activities or transactions listed Act 273 and in the IFE license. Act 273 also provides a list of prohibited activities or transactions in which the IFE may not engage. Generally, and subject to certain exceptions, IFE activities or transactions may only be conducted with foreign persons or entities (i.e., natural persons that are not residents of Puerto Rico and legal persons that are not organized or doing business in Puerto Rico).

Act 273 provides the following tax exemptions:

- 4% fixed income tax rate;
- 100% exclusion of interest, financing charges or participation in partnerships benefits, which will not be considered gross income from Puerto Rico sources; therefore, will not be subject to taxation or withholding provisions for non-residents of Puerto Rico;
- 6% fixed income tax rate on dividends and pro-rate share of benefits of the corresponding IFE for shareholders or partners of an IFE that are Puerto Rico residents;
- 100% tax exemption on all real and personal property of the IFE; and
- 100% tax exemption on the payment of municipal license taxes.

#### **ACT 399-2004: INTERNATIONAL INSURERS AND REINSURERS ACT**

An international insurer is an entity organized in Puerto Rico to offer direct insurance or reinsurance outside of Puerto Rico. International reinsurers may assume risks in Puerto Rico upon compliance of the requirements thereof. An international insurer holding company is a Puerto Rico corporation that holds interest in an international insurer or another international insurer holding company. A foreign insurer may establish a branch as an international insurer.

The International Insurers and Reinsurers Act, Act 399 of 2004, provides the following tax exemptions to insurers or reinsurers that apply and qualify for an international insurer license under the provisions of such Act 399-2004:

- 100% tax exemption on income derived by international insurer or international insurer holding company, including income derived by reason of the liquidation and/or dissolution of its operations in Puerto Rico;
- 100% tax exemption on dividends and distributions to its shareholders;
- 100% tax exemption from municipal license tax;
- 100% tax exemption from property tax; and
- 100% tax exemption on interest, dividends or distributions paid to foreign entities or non-residents, not engaged in business in Puerto Rico.

The benefits granted to international insurers under Act 399-2004 facilitate the following business opportunities, among others:

- Alternative Risk Management strategies as Captive or Associated captives insurers.
- Insurers or Reinsurers vehicle to enter Latin America or US Markets.
- Special Purpose Vehicles.
- Vehicle for Integrated Insurance Plans.
- Corporate reorganization using International Insurers Holding Companies.
- Segregated Assets Plans to serve High Networth Individual market.

- Securitization Programs.

### **ACT 73-2008: ECONOMIC INCENTIVES FOR THE DEVELOPMENT OF PUERTO RICO**

Act No. 73 of 2008, as amended, known as the “Economic Incentives for the Development of Puerto Rico Act” (“Act 73”), is the current industrial development incentives law in effect. Act 73 provides economic incentives, tax exemptions and tax credits to businesses engaged in eligible activities in Puerto Rico. To avail from such benefits, a business needs to become an exempt business by applying for and obtaining a tax exemption decree.

Act 73 provides the following tax exemptions:

- 4% fixed income tax rate (1% fixed income tax rate for innovative firms introducing "pioneer" activities or operations in Puerto Rico);
- A reduction of 0.5% in the fixed income tax rate, when the business is located in an industrial area of low or intermediate development (as determined by the Office of Industrial Tax Exemption);
- 12% fixed income tax rate, withheld at source, on royalties paid to foreign entities with respect to intangible property used in the exempt business;
- 100% tax exemption on dividend distributions;
- 4% fixed income tax rate on gains derived from the sale of ownership interests or substantially all the assets of the exempt business, in lieu of any other Puerto Rico income tax imposed on such gains;
- 90% tax exemption from real and personal property taxes;
- 60% tax exemption on municipal license taxes, with the first 3 semesters being 100% exempt;
- 100% tax exemption on municipal construction taxes;
- 100% tax exemption on excise taxes and sales and use tax on raw material and certain machinery and equipment used in the production process; and
- Accelerated depreciation: 100% first-year bonus depreciation, with ability to carry over to subsequent tax years until exhausted.

Act 73 provides various tax credits, such as:

- 50% tax credit on eligible investment made to: (i) acquire the majority of the stock or substantially all the assets of an exempt business in the process of closing its operations; (ii) to invest in machinery, equipment and improvements of an exempt business in the process of closing its operations or in an exempt business considered a small or medium sized business under Act 73;
- 25% tax credit on purchases of products manufactured in Puerto Rico;
- 35% tax credit on purchases of products manufactured in Puerto Rico made from recycled materials;
- Tax credit for job creation during the first year of operations that ranges from \$1,000 per job created in an industrial area of intermediate development (as determined by the Office of Industrial Tax Exemption) to \$2,500 for jobs created in an industrial area of low development (\$5,000 per job in the case of businesses established in the municipalities of Vieques and Culebra); and
- 50% tax credit on eligible research and development activity costs.

### **ACT 74-2010: PUERTO RICO TOURISM DEVELOPMENT ACT**

Act No. 74 of 2010, as amended, known as the “Tourism Development Act” (“Act 74”), provides incentives allowing for substantial growth of Puerto Rico’s tourism industry and all infrastructure related thereto. Act 74 provides tax exemptions and tax credits to businesses engaged in eligible activities in Puerto Rico. To

avail from such benefits, a business needs to become an exempt business by applying for and obtaining a tax exemption decree.

Eligible activities that may qualify for the benefits under Act 74 include the following:

- Ownership, operation and/or hotel administration, timeshares or vacation club programs, condo hotels, guest-houses, theme parks, golf courses, marinas for tourism purposes, port facilities, agrohospices, agrotourism, medical tourism, nautical tourism and other facilities that are a source of active, passive or recreational entertainment and that are a stimulus to internal or external tourism;
- Ownership of a lease made to a business with a decree under the Act or predecessor tourism incentive laws. This includes the leasing of real property and whatever improvements have been made to the property, such as machinery and equipment, furniture and fixtures. Financing leases are not eligible activities;
- Development and administration of natural resources such as caverns, forests, canyons, natural reserves and lakes; and
- The purchase of existing hotels or other eligible activities, if a substantial renovation or expansion to the existing business is made. If the substantial renovation or expansion costs exceed the purchase price, the acquiring investors would also qualify for the tax credit described further below.

Act 74 provides the following tax exemptions:

- 90% tax exemption on income tax (100% tax exemption if business is located in Vieques or Culebra). The taxable portion of the income will be taxed at the income tax rates effective at the date of the Act's approval, which in the case of corporations is up to 39%; therefore, after considering the 90% exemption, the effective tax rate would be 3.9%;
- 100% tax exemption on alternative minimum taxes and additional income taxes on undistributed income;
- 90% tax exemption from real and personal property taxes;
- 90% tax exemption on municipal licenses and other municipal taxes (100% in the case of new business).
- 100% tax exemption on excise tax on imported goods;
- 100% tax exemption on sales and use tax; and
- 100% tax exemption on municipal construction excise tax.

Under Act 74, any person who acquires an equity interest or contributes land to an entity that develops an exempt tourism business will be entitled to an investment tax credit equal to 50% of the cash paid for such equity investment or 10% tax credit on total project cost, whichever is lowest. The tax credit is to be taken in two installments. Half of the credit during the first year of the investment, while the remaining tax credit may be used in the second year. Any unused tax credits may be carried forward. The tax credits may also be assigned, transferred or sold. Puerto Rico has a healthy secondary market for the immediate sale of such credits. Many developers choose to inject such credits into the project, reducing the amount of equity required.

Act No. 136 of 2016 ("Act 136"), known as the Tourism Industry Support Act of 2016, amended Act 74 in order to, among others, provides for the granting of investment tax credits under a different alternative. In particular, Act 136 provides that an eligible business has the option of electing one of the following alternatives in determining the applicable investment tax credits: (a) 40% of the total project cost, claimed in 3 steps (1/3 of these credits will be used in the project's second year of operation, and the remaining two-thirds (2/3) will be used evenly in the project's third and fourth year of operations), or (b) 30% of the total project cost (10% may be used upon obtaining the complete financing for the construction of the project, with the remaining 20% available evenly across three periods: 1/3 in the year in which the project receives its first paying guest, and the remainder of the credit, in equivalent portions, in the two subsequent years).

The alternative tax credits granted pursuant to Act 136 are claimed by the exempt business, rather than by the investor. The alternative tax credits may be assigned, transferred or sold, but the proceeds from the sale must be used to repay debt obtained to finance the cost of the project or to pay expenses or disbursements related to the cost of the project (it cannot be used for operating expenses, for example).

### **ACT 27-2010: FILM INDUSTRY ECONOMIC INCENTIVES ACT**

Act No. 27-2011, known as the “Puerto Rico Film Industry Economic Incentives Act” (“Act 27”), was enacted to solidify Puerto Rico’s position as one of the leading jurisdictions for the production of film, television and other media projects. Act 27 provides tax exemptions and tax credits to businesses engaged in eligible activities in Puerto Rico. To avail from such benefits, a business needs to become an exempt business by applying for and obtaining a tax exemption decree.

Eligible activities that may qualify for the benefits under Act 27 include feature films, short films, documentaries, television series, miniseries, and television programs similar in nature (including pilot episodes), series in episodes, music videos, national and international commercials (including campaigns consisting of various advertisements), video games, recorded live performances, original soundtrack recordings and dubbing, television programs (including but not limited to reality shows, talk shows, news programs, game-shows as well as entertainment, comedy children’s and variety programming) and postproduction of one or several film projects.

A film project eligible for the benefits under Act 27 does not include: a production that includes pornographic material, a production that primarily consists of religious or political advertising, a radio program, a production intended primarily to market a product or service other than a commercial, a production with the primary purpose of raising funds, a production intended primarily for employee training or in-house corporate advertising or other similar production, or any other project as determined by the Secretary of the Economic and Commerce Development Department through regulations or circular letter.

Act 27 provides the following tax exemptions:

- 4% fixed income tax rate on income derived from the production (6% to 10% fixed income tax rate in the case of studio operators);
- 100% tax exemption on dividend distributions;
- 90% tax exemption from real and personal property taxes;
- 100% tax exemption on municipal license taxes, construction taxes and other municipal taxes; and
- 100% tax exemption on excise taxes on articles imported by the grantee to be used in the eligible activities.

Act 27 provides various tax credits, such as:

- 40% tax credit on all payments with respect to production expenses in Puerto Rico (excluding payments to qualified non-resident individuals). The Act provides an annual limit of \$50,000,000 of tax credits available for film projects, although projects may apply for additional tax credits in certain instances.
- 20% tax credit on all payments to qualified non-resident individuals (“Above-the-Line” and “Below-the-Line”) talent, including actors, producers, directors and writers. No annual cap is established with respect to non-resident “Above-the-Line” and “Below-the-Line” payments.
- 25% infrastructure tax credit on costs incurred in the development of a film studio or other eligible infrastructure project. The Act provides an annual limit of \$10,000,000 of tax credits available for infrastructure projects. These credits have a lifetime cap for all projects of \$150,000,000. The minimum investment for individual infrastructure projects is \$1,000,000.

Act 92-2016 amended Act 27 in order to broaden the use of the tax credits. In particular, the tax credits granted under Act 27 can now be used to offset the income taxes that may be imposed, not only under the Puerto Rico Internal Revenue Code of 2011, as amended, or Act 27, but under any special law that imposes an income tax.

### **ACT 83-2012: GREEN ENERGY INCENTIVES ACT**

Act No. 83-2010, known as the “Puerto Rico Green Energy Incentives Act” (“Act 83”), grouped and reformed existing incentives for renewable energy sources, including economic incentives, tax exemptions and tax credits, and created the \$290 million Green Energy Fund. To avail from such benefits, a business needs to become an exempt business by applying for a tax concession and obtaining a tax exemption decree.

Under Act 83, businesses engaged in the following activities will be considered eligible to apply for a tax decree: (i) production and sale of renewable energy; (ii) operating renewable energy production units; (iii) businesses involved in the assembly of renewable energy equipment; and (iv) owners of property, real or personal, used by an exempt business in its exempt operations, such as a lessor of real estate used in operations of an exempt business.

Act 83 provides the following tax exemptions:

- 4% fixed income tax rate on income derived from the production of energy in Puerto Rico;
- 12% fixed income tax rate, withheld at source, on royalties paid to foreign entities with respect to intangible property used in the exempt business;
- 100% tax exemption on dividend distributions and benefits received from Green Energy Income (“GEI”);
- 4% fixed income tax rate on gains derived from the sale of ownership interests or substantially all the assets of the exempt business, in lieu of any other Puerto Rico income tax imposed on such gains;
- 90% tax exemption from real and personal property taxes;
- 60% tax exemption on municipal license taxes, with the first 3 semesters being 100% exempt.
- 100% tax exemption on municipal construction taxes;
- 100% tax exemption on excise taxes and sales and use tax on renewable energy equipment; and
- Accelerated depreciation: 100% first-year bonus depreciation, with ability to carry over to subsequent tax years until exhausted.

Act 83 provides various tax credits, such as:

- 25% tax credit against the GEI on purchases of products manufactured in Puerto Rico;
- 35% tax credit on purchases of products manufactured in Puerto Rico made from recycled materials;
- Tax credit for job creation during the first year of operations that ranges from \$1,000 per job created in an industrial area of intermediate development (as determined by the Office of Industrial Tax Exemption) to \$2,500 for jobs created in an industrial area of low development. In the case of businesses established in the municipalities of Vieques and Culebra, this tax credit is \$5,000 per job. High industrial development zones will receive no tax credit for job creation;
- 50% tax credit on eligible research and development activity costs;
- 12% tax credit for royalties paid to foreign entities with respect to intangible property used in the exempt business;

Act 83 also created a rebate program under the Green Energy Fund to stimulate the adoption of renewable energy production and sale by the private sector, which provides investment-based incentives as follows:

- Tier 1 (small-scale): Project Size: 1 - 100kW; Incentive: up to 60% (fixed at 60% for projects in Vieques or Culebra) of eligible project costs; Funds currently granted on a first-come, first-served basis per fiscal year; and
- Tier 2 (medium-scale): Project Size: +100kW to 1MW; Incentive: up to 50% of eligible project costs; Funds allocated through a quarterly competitive tendering process.

### **ACT 185-2014: PRIVATE EQUITY FUNDS ACT**

Any partnership or limited liability company, foreign or domestic, engaged in the business of investing in securities and financial instruments (that are not traded or quoted in the public markets at the time of acquisition) is eligible to become a Private Equity Fund, subject to certain requirements:

- Has an office in Puerto Rico;
- At least 80% of its paid-in capital invested in securities and financial instruments that are not publicly-traded;
- Remaining paid-in capital (up to 20%) may be invested in certain short-term instruments;
- No later than 4 years after its organization date and at each fiscal-year end thereafter (i.e., PR investment requirement): (i) invest at least 15% of its paid-in capital in securities or other financial instruments issued by entities engaged in an active trade or business in PR that derive at least 80% of their gross income during the last 3 years from PR sources or from income effectively connected with a PR trade or business (“PEF”), or (ii) invest at least 60% of its paid-in capital in securities or other financial instruments issued by entities engaged in an active trade or business in PR that derive at least 80% of their gross income during the last 3 years from PR sources or from income effectively connected with a PR trade or business (“PR-PEF”);
- Offered only to “accredited investors”;
- Hires an investment adviser that is engaged in trade or business in PR, has an office in PR, and is duly registered or exempt under applicable federal or PR law;
- No later than 4 years after its organization date, no more than 20% of its paid-in capital is invested in any single issuer (i.e., diversification requirement);
- Has a minimum capital (including commitments) of \$10 million no later than 24 months after the first closing date;
- Has an Advisory Board with at least one of its investors as a member; and
- If the fund is organized outside PR (i.e., foreign partnership or foreign LLC), it must be engaged in trade or business in PR and derive at least 80% of its gross income from PR sources or from income effectively connected with a PR trade or business.

The main PR tax incentives under Act 185-2014 are the following:

- 60% income tax deduction on the initial investment by PR investors in a PR-PEF (deduction up to 30% of the investor’s taxable net income per year for up to 15 years);
- 30% income tax deduction on the initial investment by PR investors in a PEF (deduction up to 15% of the investor’s taxable net income per year for up to 10 years);
- 0% tax on capital gains realized through the Fund by its investors from Puerto Rico sources;
- 10% tax on interest and dividends generated through the Fund by its investors;
- 5% tax on capital gains realized by the Fund’s investors from the sale of their proprietary interests in the Fund; however, 0% if the proceeds are reinvested by the investor within 90 days in a PR-PEF;
- Fund’s net losses may be deducted by PR investors in proportion to their proprietary interests in the Fund against income generated through other Funds or against capital gains;
- 5% tax on interest and dividends generated by the general partner or managing member and the investment adviser from the Fund;



- 2.5% tax on capital gains realized by the general partner or managing member and the investment adviser from the Fund;
- Income generated by the Fund and distributions to its investors are not subject to municipal license taxes; and
- The Fund is exempt from personal and real estate taxes on property owned by the Fund.