



GUIDE

Do and Don't of Act 20

INTELLECTUAL PROPERTY PROVIDER



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Do and Don't under the Act Intellectual Property Provider

Follow a Strategy to further emphasize the transparency of the structure in the eyes of the IRS. That will consolidate the legality of your business in the eyes of the IRS and still pay only 4%, **SAVE A LOT OF TAXES.**

Critical things to consider when setting up your Puerto Rico Business Strategy is that Income from sources outside Puerto Rico will be treated as effectively connected with a trade or business in Puerto Rico. To do so, it must comply with:

1. Intellectual Property

- a. A corporation can only provide services through its employees, hire PR residents to start qualifying under the Act.
- b. Services provided in PR by a PR company to the US resident (Individuals or Entities) or worldwide entity through its PR resident employees is considered PR source income, not US source income, so employee PR residents.
- c. If the owner significantly contributes and is an essential economic element in the earning of the income, hire the owner as an employee of the Act entity.
- d. PR should be the location of the employees that provide the service thru devices, or the critical property used in the service. If the company's whole staff and assets are located in Puerto Rico, it should be easy to conclude that the source of compensation for services should be in Puerto Rico and outside the US.
- e. Have the intellectual property (IP) developed and update done by the PR entity in PR, resulting in PR source of income, qualified under Act.
- f. Use the IP concurrently to provide significant services to multiple entities.
- g. With in the IP services agreements:
 - i. Bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance or underperformance under the IP services contract.
 - ii. Provides maintenance service or upgrades to the IP.
 - iii. Retain the right to remove and replace the IP.
 - iv. Retain the right of the IP.
- h. If you are selling the IP,
 - i. Services income and Sales of Property need to be included within the scope of your Act Grant.
 - ii. Transfer the buyer the full owner of all right to change, resell, control total use,

- iii. Segregated sale between
 - 1. any service provided or to be provided,
 - 2. the gain on sale of transfer property, FOB Seller and
 - 3. the royalties to be receive, if any.
- i. Service Intelligent Device
 - i. If have a server/machine/device that is performing primary service functions that replace employees in the business (intelligent nonhuman service), these could be characterized as a device providing nonhuman services, have the device located in Puerto Rico.
 - ii. In the context of a stand-alone computing device, ascertain that the device is performing only routine functions and relies on other parts on PR entity to provide as a support team in Puerto Rico, to IP necessary for the device to perform, if not all at least part of those functions.

2. Location

- a. Have an office or other fixed places (location) of business in Puerto Rico.
- b. The Puerto Rico office or other fixed places (location) of business the main address as disclose to providers and clients.
- c. The income of the Puerto Rico location should be in the ordinary course of the trade or business carried through that office or other fixed places of business.
- d. The Puerto Rico office or other fixed places of business should be a material factor and it significantly contributes to, and is an essential economic element in, the earning of the income.
- e. Do not have office or other fixed places of business in a foreign country or USA that is a material factor in the generation of revenue outside of Puerto Rico.
- f. Use third party websites.
- g. If you use your own sales platform have the server in Puerto Rico.
- h. Have the principal entities bank accounts in Puerto Rico. Use and document US banks use only for services or products not effectively provided in Puerto Rico.

- i. Use Puerto Rico provider for product and services. Use and document US providers only for services or products not effectively provided in Puerto Rico.
- j. Perform all mayor critical functions of procurement, marketing, sales and logistic management in Puerto Rico.

3. Leaving behind activities

- a. If required, relocate critical services to Puerto Rico and leave behind, in a separate US company, any activities that is not practical to move. That would require billing clients separately for services from the US company and for services from the Puerto Rican company.
- b. Stay away from the strategy of a partial move, a US company to buy or sell services from or to the Puerto Rican company. It takes the entities into the highly technical tax rules for "transfer pricing". This approach is practical only for a large business.
- c. Smaller entity should use the down stream approach, the PR company buys from the USA company, only those that it can not bring to PR or provide from PR.

4. Independent Agents

- a. If you need to conducts activities in the US on behalf of the PR entity, use an independent agent or US Corporation, non related party, to conducts activities these activities in the US on behalf of the PR contractor.
- b. Income earned generated in part by independent agent's or US Corporation from their activities could be deemed PR source, if directly perform and deliver to the PR entity with no client contact, and the independent agent did not significantly contribute and is not an essential economic element in the earning of the income.

5. To not have more than 50% ownership of a USA entity.

- a. Transaction with a controlled or own over 50% bear a Transfer Pricing Risk
- b. Pricing the amount charged in a transaction with controlled or own over 50% related entity, must be determine as an arm's length transaction between independent entities.
- c. Identify and asses crucial control related entity transactions in the early stage of the planning, pricing risk requires assessment to be sufficient, relevant and reliable information at an early stage and periodically updated.
- d. Getting prices from independent entities that provide the same service or product the PR entity is buying from a related entity in USA, would be a good base to determine fair value of services or products between related entities.

