



## GUIDE

# Puerto Rico Tax Incentives Act 60

## Export Trade and Hubs

Chapter 3 of Subtitle B, formerly Act 20

## GUIDE

### **Puerto Rico Tax Compliance Guide**

***By TCG, Torres CPA Group, CifrasPR, Torres & Soto Tax***

Torres CPA Group is a Certified Public Accounting Firm that has been offering Audit, Tax, Consulting, and Financial Outsourcing services for over 38 years. If you require any further information or help, please do not hesitate to contact us. We assist in Accounting, Payroll, and Tax Compliance.

Understanding the Puerto Rico tax system and its interrelation with the United States is crucial for individuals and entities doing business in Puerto Rico. Puerto Rico is not a state; it's a territory, with its own business, tax, and Payroll laws and regulations.

The following White Paper is designed to give an insight on Tax Issues in Puerto Rico. It provides relevant background information, which will be of assistance to organizations considering establishing a business in the Island. Nonetheless, it is highly recommended to seek advice and counsel from qualified professional sources before undertaking any business.

Certain exclusions and exemptions may apply, and when specific problems occur in practice, it will often be necessary to refer to the laws and regulations of Puerto Rico and to obtain appropriate accounting and legal advice.

It is understood that the following overview does not constitute any formal rendering of either legal, accounting, tax, or professional services. If legal advice or other assistance is required, an attorney, CPA or tax adviser should be consulted.

In accordance with IRS Circular requirements, you are advised that any discussion of tax issues in these materials is not intended or written to be used and cannot be used to avoid penalties imposed under Internal Revenue Code, as amended or to promote, market, or recommend to another party any transaction or matter addressed herein.

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# **Export Trade and Hubs**

## ***Act 60 Chapter 3 Subtitle B of the new Code (formerly known as Act 20)***

### **Eligible Activities**

An Eligible Business shall be any entity with a bona fide office or establishment located in Puerto Rico that is dedicated to or may be engaged in traffic or export of products (trading companies), with no less than eighty percent (80%) of gross income in this activity:

- (1) the sale to Foreign Persons, for their use, consumption or disposal outside of Puerto Rico, of products purchased by the Eligible Business for resale;
- (2) commissions derived from the sale of products for use, consumption or disposal outside of Puerto Rico; however, it is provided that no part of the income derived from the sale or resale of products for use, consumption or disposal in Puerto Rico shall be considered as Export Trade Income;
- (3) from the sale of products manufactured or grown by request, to Foreign Persons, for their use, consumption or disposal outside of Puerto Rico;
- (4) the sale or distribution to Persons outside of Puerto Rico of intangible products, such as patents, copyrights, digital content, trademarks, among others;
- (5) of the storage, transportation, and distribution of products and items belonging to third parties (hubs);
- (6) of the commercial distribution of products that are manufactured or cultivated in Puerto Rico for jurisdictions outside of Puerto Rico;
- (7) operations of assembly, bottling, and packaging of products for export;
- (8) any other international commercial traffic activity included in the Incentive Regulations, taking into account the nature of the activities carried out, the direct or indirect benefits of the commercial activity for Puerto Rico, and any other factor that is pertinent to achieve the objectives is in the best interest and for economic and social welfare;

### ***Tax Benefits***

#### **Term of the Decrees**

Decrees of exemption will have a term of 15 years, with a possible renegotiation for additional time of 15 years.

*It is required to apply to decrees to obtain the benefit, including for Private Capital Funds.*

## **4% Fixed Net Income Tax Rate**

The eligible activities will be subject a preferential tax on net income of four percent (4%), in place of any other income tax. The funds from an insurance policy for the concept of interruption of business (business interruption) to cover the eligible activities, will also be considered.

## **0% Federal Income Tax of 0%**

The eligible activities will not be subject to any US Federal Income Tax on income source in Puerto Rico.

## **100% Tax Exemption on dividends or profit distributions**

The shareholders or partners in a domestic corporation or company that owns a Decree will not be subject to tax on income on distributions of dividends or profits.

However, a non-domestic corporation will pay ordinary taxes on distributions of dividends or profits of income from sources outside of Puerto Rico.

## **75% Exemption on Property Tax**

Real Estate, Immovable and Movable Property will be exempt of seventy-five percent (75%) exemption on the taxes, at the tax rate that is in effect at the date of signing the Decree, regardless of any amendment later made in the Decree.

The Shares in an entity that enjoy a decree will not be subject to tax on the property.

## **100% Exemption on Property in the process of construction**

The property in the process of construction will be fully exempt 100% of tax on the property during the period of construction.

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The property in the process of construction will be fully exempt 100% of tax on the property during the period of construction.

## **50% Tax exemption on Municipal License Taxes**

The gross income of eligible activities has fifty percent (50%) of exemption in the municipal taxes, including on the municipal license and any other taxes imposed by any municipal ordinance.

The Municipal license tax rate that applies is the rate as of the date of the signature of the Decree, regardless of any amendment made later on.

## **100% First-semester exemption**

An exemption of one hundred percent (100%) over the municipal licenses applicable to the volume of business during the semester of fiscal Year in which it begins operations in any municipality.

Period of prescription for the assessment and collection of licenses:

The period of prescription shall be for three (3) years if the entity gives up the benefit of a discount of five percent (5%) for prompt payment and make the total payment of its license on the due date.

## **100% Exemption on Gross Capital gains**

Only the net capital gains will be subject to municipal tax in addition to any other net gain obtained in the sale of any asset or property used in the operations.

## **75% of Exemption on construction Excises tax**

An Exempt Entity, its contractors and subcontractors are seventy-five percent (75%) exempt from any tax, license, excise taxes on construction, or fee imposed by any city ordinance on the construction works to be used in their operations, except municipal license taxes imposed on the volume of business of the contractor or subcontractor.

Is deemed as construction work if it is to be used for the operation and to facilitate the operation, regardless of whether it owns all or partial, lease or any other way.

The Business, nor its contractors or subcontractors will have to submit any certification issued by the municipality as to evidence of having paid the excise taxes on construction for the issuance of any permit.

## **100% Tax exemption on Excise Tax and Sales and Use Tax**

An Exempt Entity will not pay Excise Tax or Sales and Use tax on eligible activities sourced in Puerto Rico provided to entities outside of Puerto Rico.



# **Businesses operating in Vieques and Culebra**

## ***Additional Benefits***

### **Income Tax**

The Income generated of eligible activities carried out by an Exempted Entity in the island municipality of Vieques and Culebra will be subject to a fixed rate for taxes of two percent (2%) for a period of five (5) years, and four per cent (4%) for the period remaining of the Decree.

### **Property and Municipal License Tax**

Also, enjoys a hundred percent (100%) exemption on taxes on the property, as well as of municipal taxes for the first five (5) years of the Decree of Exemption. The period remaining will enjoy a seventy-five percent (75%) exemption on taxes on property, and fifty percent (50%) of exemption on city taxes.

### **Credit Tax for Purchases of Products Manufactured in Puerto Rico**

During the operating period in the island municipality of Vieques or Culebra, the entity can apply the DDEC taxable credit up to thirty percent (30%) of purchases of Products Manufactured in Puerto Rico.

The credit will be non-transferable. The amount of credit not used in a tax year may be applied to subsequent years until is used in its entirety but will not generate a refund.

## **Incentive Program** ***General Information***

### **The Mission of the Code of Incentives**

Convert Puerto Rico in a tourist destination of first order as to a global level, as it promotes the strengthening of municipalities through tourism.

Encourage the promotion and development of Medical tourism and service facilities of physicians in Puerto Rico.

Take intense action to modernize the infrastructure and reduce the costs of energy through the investment in infrastructure and different alternatives of sources of Renewable Energy.

Encouraging the use of technologies that promote the sustainability and production of utilities that are cost-efficient and cleaner than those provided by current infrastructure.

Encourage the service industry to export of all kinds of services and technology.

Develop Puerto Rico as an International Center of Financial Services and Insurance.

Promote Puerto Rico as a unique location for the film industry and related activities, including postproduction.

Offer manufacturing, research, development, and high technology industries incentives so that they can preserve and expand their investment in Puerto Rico.

Promote the exporting of goods and services in a more competitive way to other jurisdictions.

Strengthen the agricultural sector and promote the export and added value of its products.

Strengthen the construction sector to make viable crucial works for the economic recovery and reconstruction of Puerto Rico.

## ***New approach of the Puerto Rico Economic Incentives Act***

Leading change to the law of economic incentives is the establishment a Code of Incentives, including the organization by segments and sectors of the industry so that laws can be a group within the same category referred as Chapters.

Chapters:

1. Incentives of general application
2. Individuals
3. Export (Goods and Services)
4. Financial and Insurance Services
5. Visitor Economy
6. Manufacturing, including the component of Research and Development
7. Infrastructure
8. Farming
9. Creative Industries
10. Entrepreneurship

11. Transport air and sea service activities

12. Other

## **Clause of Validity**

The changes established by the new Code of Incentives are of prospective application and do not affect the companies or individuals with decrees, credits, or incentives granted before its approval.

This Act shall enter into force immediately after for its approval on July 1, 2019. They will receive applications for new decrees under the previous law of incentives until December 31, 2019.

The impositions provided by this Act shall remain in force during the term in which the decrees issued remain valid.

## ***Bill Of Rights For Decree Holders***

The Decrees constitute a contract between the Government of Puerto Rico, the Exempt Business and its shareholders. The terms and conditions to be agreed upon in the contract will be honored during the validity of the Decree of exemption tax subject to complying with its terms and conditions.

The decrees are valid in all Puerto Rico, including its municipalities. When one Business starts operations in a new municipality, they do not need to request an amendment to the Decree to perform the activities covered by the Decree.

When a new law is approved, or regulations are adopted, which provides much favorable terms and conditions, the Business may request an amendment that reflects the benefits or better terms for the Business and its shareholders.

Every Exempt Business and its Shareholders will have the right to:

Receive a worthy treatment, considered an impartial by part of all the officials and employees of the DDEC in any management issues.

Negotiate with the Secretary of DDEC in the matters of economic development and Decrees concerning matters of tax and accounting nature, you will need the endorsement of the Secretary of the Treasury.

A clear and expedient process for obtaining a decree.

Guarantee the confidentiality of the information they submit to the DDEC.



The Business and its Shareholders have the right to know the purpose for the requesting of the information, how it will be used and the consequences of not providing it.

That they may be assisted by any person authorized to represent them, except that in the case of Professional Certificates, these will have to be licensed lawyers or public accountants authorized in Puerto Rico.

They will be notified by letter of any amendment to Decree made by DDEC as a result of any audit that demonstrates non-compliance. The DDEC will inform the nature of the modification of the Decree and the grounds for the changes, allowing to be heard within the framework of the due process of law.

## **Administration of the Degrees**

The Office of Incentives for Businesses in Puerto Rico (“Office of Incentives”), attached to the DDEC, will be responsible for processing, evaluating, and supervising requests for incentive decrees, decrees granted and requests for amendments.

## **Nature of the Decrees**

The Decrees grants are considered a contract between the DDEC, its shareholders, and the Government of Puerto Rico, the contract is the law between the parties.

It shall be the obligation of any government agency or instrumentality, public corporation or municipality, to honor and respect such contractual obligations in any administrative or judicial forum.

The contract is construed liberally, in a way consonant to promote the socioeconomic development of Puerto Rico.

A Business that possesses a Decree will perform its operations as represented in its application unless a request for change is filed and approved by the DDEC.

*The date of effectiveness of the Decree shall be the date of submission of the request or a time later agreed.*

## ***Creation of Jobs Requirements***

Businesses with an annual volume, actual or projected, more than three million dollars (\$3,000,000.00) need to hold at least for Export of Services & Goods, one (1) employee full-time equivalent; Manufacturing, three (3) employees full-time equivalent; Other activities will not require the creation of jobs.

A qualifying employee is any individual resident of Puerto Rico that the Business hires as an employee, whether full- time, part-time or temporary, to participate directly in the activities covered by the decree.

For purposes of determining the number of direct employees equivalent maintained during the year, the entity must add the total hours worked by all the direct employees during the year and divide by two thousand eighty (2,080).

Vacation hours and other authorized working licenses may be taken into account as hours worked. However, hours of time extra, over 40 hours per week, will not be considered.

## **An employee resigns and dismissal**

In cases in which a regular employee resigns or is dismissed, the Business will have a period of ninety (90) days to hire a new employee. If the Exempted Business hires a new employee during that period, the days on which the vacancy took place will be considered hours worked in the computation of two thousand eighty (2,080) hours.

## **Reaching Threshold Volumes**

In cases in which the requirement of employment is imposed as a result of reaching the current annual volume of more than three million dollars (\$3,000,000.00), after the granting of the Decree:

During the first six (6) months, you should keep twenty five percent (25%);

then after six (6) months but before the twelve (12) months, you must keep fifty percent (50%);

then after twelve (12) months but before the eighteen (18) months, you must comply with seventy-five percent (75%);

then after the eighteen (18) months, you must abide by a hundred percent (100%) of the arranged requirement.

In those cases in which the requirement of employment is imposed as a result of the annual projected volume, the provisions will be applied in the year following the taxable year in which the Business reached the amount of more than three million dollars (\$3,000,000.00).

## **Other Business Employee**

The Secretary will take into consideration the employees at full-time equivalent of the entity providing services to the employees who have been hired by another Business that provides services directly related to the activities covered by the Decree, including those working under a lease of employee's contract.

## **Compliance Flexible**

A business that fails to comply with the requirement of employment provided for a year tax:

If met with at least eighty percent (80%) of the jobs required, it is deemed in compliance. This exception will not be able to be used in more than three (3) occasions during the validity of the Decree.

If the Business has not complied with at least the eighty percent (80%) of the jobs required, it must request the Secretary to allow complying with the requirement during following year. The request shall contain the reasons for the failure, the corrective measures to adhere to for the fulfillment of the provision of jobs. This cannot be used more than two (2) times during the validity of the Decree.

## **Employee require amendment**

Any Exempt Business with a decree granted under Law 73, Manufacturing; Law 20, the exportation of Services & Goods, or Law 135 Young Entrepreneur, may request one amendment to the Decree.

## ***Filing of Reports & Compliance***

### **Reports Required for Exempt Businesses and their Shareholders:**

Businesses must file and pay income tax return annually, regardless of the amount of their income gross or net income.

All Shareholders must file and pay the annual income tax return.

Businesses will comply with the obligation to maintain in Puerto Rico, accounting segregating their exempt operations, as well as all supporting records and files.

Businesses and Shareholders will comply, pay, and submit all require declarations, rules, and regulations in force concerning the taxation and collection of all kinds of contributions.

Businesses, will annually file electronically with the Office of Incentives, no later than thirty (30) days after the date prescribed by law for the filing form of tax on income, including the extensions granted by a report of compliance.

All Shareholders under a decree, must annually file electronically with the Office of Incentives, not later than thirty (30) days after the date prescribed by law for the filing form of tax on income, including the extensions granted by a report of compliance.

*The Office of Incentives will create an audit of compliance concerning the terms and conditions of the decree granted every two (2) years or less.*

## **Payment subject to withholdings**

Business payments in excess of \$500 for services performed within Puerto Rico are subject to a ten percent (10%) withholding. The amount withheld should be deposited at the Puerto Rico Treasury Department on or before the tenth (10) day of the month following the close of the month in which the tax was deducted subject to specific exclusions and exemptions. The amount withheld or deposited will be credited against their income tax liability.

## **Non-compliance with the Obligation to Withhold**

If the withholding agent does not withhold the tax imposed, unless the person receiving the income has satisfied his or her tax liability, the withholding agent will be impose.

## **Tax Responsibility**

Any Person obliged to deduct and withhold the tax imposed, must respond to the Secretary of the Treasury for the payment and will not have to answer any other Person as to any payment.

## **Accounting Records**

The Exempt Business will have an obligation to maintain, in Puerto Rico, separately, the accounting related to its exempt operations, as well as the supporting records and necessary files.

## ***System of Compensation for Accidents of Work Fund Insurance, Workers' Compensation***

The exemptions and tax benefits will not include fees payable under the Law System of Compensation for Accidents of Work Fund Insurance.

## **Administrative Fines**

The Director may impose an administrative fine of ten thousand dollars (\$10,000) on any exempt business that fails to file any of the reports that the Secretary or the Director may require, or if file them after the expiration date.

The filing of an incomplete report will be considered as not filed, if the agency concerned notifies the business exempt from any omission in the required report and the exempt business does not submit the missing information within fifteen (15) days of being notified, or does not reasonably justify the lack thereof.

## ***Investor Resident Individual Trusts***

### **Trusts for Benefits of the Trustee**

A Resident Investor Individual with Decree may establish trusts under the laws of Puerto Rico and may elect that the trusts be treated as trusts for the benefit of the trustor (“grantor trust”) for purposes of income tax in Puerto Rico.

The election will be made in accordance with the rules established, irrespective of whether the trust is not considered for the benefit of the trustor under the applicable income tax rules.

The nature of income, gain, loss, deduction or credit included in the income attributable to the settlor shall be determined as if was made directly from the source as if trust made it, or accrued in the same way the trust earned it. An election made, once made, may only be revoked by the procedure established by the Secretary of the Treasury.

### **Revocable Trusts**

An Investor Resident Individual may establish a revocable or irrevocable trust under the laws of Puerto Rico, as determined by the trustor in the articles of incorporation; in the absence of a provision in this regard, it shall be presumed irrevocable. Revocable trusts established following this provision may only be revoked by the trustors, or by the trustor who retains this power in the articles of incorporation.

### **Trusts granted outside of Puerto Rico**

The provisions of any Trust validly granted outside of Puerto Rico, by an Investor Resident Individual to which a Decree is issued, may not be challenged by any person based on any Puerto Rico Law or Regulation that could be contrary to or inconsistent with the provisions of said Trust. This will continue to be applicable after the termination of the exemptions granted provided that the Decree has not been revoked.

A Resident Investor Individual to whom a Decree is issued may freely transfer or donate in life, and in its sole discretion, all or part of their assets to the trusts, irrespective of whether they are tangible or intangible movable or immovable property, of the location of said assets, and of any legal or regulatory provision in Puerto Rico that is contrary or inconsistent with said transfer, donation, testamentary disposition of the flow and/or the terms and conditions of said Trusts.

### ***Other Benefits***

#### **Flexible Tax Exemption**

The entities will have the option to choose the specific years to be effective under their decrees and will notify the DDEC no later than the filing income tax date, including the extensions granted. An Exempted Entity that opts for this benefit, will have the period of exemption extended

for purposes of the tax on income by the number of taxable years they have not enjoyed a decree.

## **Automatic benefit Application**

The other terms, conditions, and benefits contained in the new Code that do not conflict with the current Decree will apply to the Exempt Business without needing to file an amendment.

## **Businesses with previous eligible activities**

If by the date of submission of the application of Decree, the Entity is dedicated to an activity eligible through any time during the period of three (3) tax years prior to the date of submitting the application, the "time base", the entity can enjoy the fixed rate on income only in regard to the increase of net income of the activity. The base period requirement will include any operation under another legal name, or with other owners.

The net income of time base shall be subject to the ordinary rates, which will be adjusted by twenty five percent (25%) annually, until reduced to zero (0) at the fourth year.

## ***Conversion of exempted businesses under Laws of Previous Incentives***

Businesses exempted under Laws of Previous Incentives may apply to the new provisions, provided that they can demonstrate that they comply with all the legal applicable requirements. The benefits granted in the converted Decrees may not be greater than those provided under the new law.

Businesses that as of July 1, 2019, have not begun operations, may apply to convert the remainder of the period of the decree, to adjust its decree according to the benefits granted under the new Code.

Businesses whose decrees were granted on or before July 1, 2019, and have begun enjoying the exemption may apply to convert it according to the benefits granted under the new Code.

The conversion will have to be requested within a term of twelve (12) months from July 1, 2019, and can be reset to the first day of the taxable Year but never before July 1, 2019.

Revenues accrued for the business until the date of effectiveness of the conversion, which is distributed after the date effective of the conversion, will be subject to treatment tax which is arranged in the law under which they were accumulated.

*The other terms, conditions, and benefits contained in the new Code which do not represent a conflict will apply to Exempt Businesses automatically.*



## ***Exempt Business Ownership Transfers***

The transfer of the Decree, or the Shares or majority ownership of an Exempt Business to another person who, in turn, will continue to devote himself to the Activity to which he was previously engaged in a substantially similar manner, will require the prior approval of the Secretary of the DDEC.

Making a transfer without prior approval will void the Decree at the time of the transfer. Notwithstanding the preceding, the Secretary of the DDEC may approve any transfer made without its approval with retroactive effect.

Any transfer request must be approved or denied within sixty (60) days following its filing. The denial of a transfer request must be made in writing and will detail the reasons why it is rejected. Any transfer request that is not authorized or denied within this period will be considered approved.

The following transfers will be authorized without prior consent:

The transfer of the assets of a descendant to his estate or the assignment by legacy or inheritance;

The transfer of Shares of the Exempt Business when the said transfer does not directly or indirectly result in a change in the domain or Control of the Exempt Business;

The pledge or mortgage granted in the ordinary course of business to provide a guarantee of a bona fide debt does not prevent any transfer of Control, title or interest under the said contract, however, this shall be subject to notification;

The transfer by operation of law, by order of a court or a bankruptcy judge to a trustee. Any subsequent transfer to a third person other than the same debtor or bankrupt above will be subject to the notification provisions.

The Exempt Business will report any transfer of the exceptions to the Secretary of the DDEC within thirty (30) days of being made.