



**GUIDE**

# Puerto Rico Tax Incentives Act 60

## Visiting Economy

Chapter 5 of Subtitle B, formerly Act 74

## 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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# **Visiting Economy**

## ***Act 60 Chapter 5 of Subtitle B of the new Code (formerly known as Act 74)***

### **Tourist Activity**

Ownership or administration of Hotels, including the operation of Casinos, Condo hotels, Puerto Rican Paradores, Agrohospedajes, Guest Houses, Timeshare Plans and Vacation Clubs, the lodges that belong to the "Posadas de Puerto Rico" program, certified Bed and Breakfast (B&B) and any other that from time to time are part of programs promoted by the Tourist Office.

Ownership or administration of Theme parks, golf courses operated by, or in association with a Hotel, or golf courses within a destination or tourist complex (resort), Tourist Marinas, facilities in port areas for tourist purposes, Agrotourism, Nautical Tourism (however, it is provided that all Marina in the Municipalities of Vieques and Culebra will be considered as Tourist Marina), Medical Tourism and other facilities or activities that, due to the particular attraction derived from its use as source of active, passive or fun entertainment, be a stimulus to internal or external tourism, and any other tourism sector, provided that the Secretary of the DDEC determines it is necessary and convenient for the development of tourism in Puerto Rico;

Ownership or administration of the operation of a business dedicated to leasing an Exempt Business from the tourist activity. In the case of the lease of one or more vessels, the sail or motor vessel will have to be leased to the business for a period of not less than six (6) months during each calendar year.

Ownership or administration of a development and administration of sustainable tourism and ecotourism businesses, and the development and administration of useful natural resources as a source of active, passive or fun entertainment, including, but not limited to, caverns, forests and nature reserves, lakes and canyons, as long as necessary and convenient for the development of tourism in Puerto Rico.

Ownership or administration Activities of eSports and Fantasy Leagues.

### ***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.

## **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.

### **100% Exemption interests of Debt Issue**

All entities will be exempt from any tax imposed on the income derived from interest, fees, and other credits received with respect to bonds, notes or other obligations of an Exempted Entity for development, the construction or rehabilitation, or the improvements to an Exempted Entity, subject that the funds are used entirely for development, construction or rehabilitation, or improvements, a Exempt Entity or payment of existing debts used for these activities. The bond, promissory note or any other obligation needs to be issued directly by an Exempted Entity.

### **100% Exemption of Taxes on articles of use and consumption**

The Entity will enjoy up to one hundred percent (100%) of exemption in the payment of taxes imposed with respect to those items purchased used by an Exempt Entity with respect to Tourist

activities, including the items purchased by a contractor or subcontractor to be used only and exclusively for an Exempted Entity in construction work related with Tourism activities.

It will not apply, as to the inventory owned primarily for sale or resale in the ordinary business activities of industry or business; nor the tax on the occupation of rooms in hotels.

The Secretary of the Treasury must grant credit or refund on any tax paid by an Exempt Business for use concerning a Tourist Activity exemption.

## **100% Exemption for fuel used by an Exempt Business**

The derivatives of oil (excluding residual Num. 6 or bunker C) and any other mixture of hydrocarbons (including propane gas and natural gas) used as fuel for an Exempt Entity in the generation of power energy or heat energy used by the Exempt Entity in relation to a Tourist Activity will be totally exempt from taxes.

## **100% Royalties, Fees (Royalties) or Rights to Domestic Entity**

However, for activities derived from sources within Puerto Rico, a tax of twelve percent (12%) will be deducted and withheld at the source, on the amount received for concept of royalties, fees or right of use, or any Intangible property related to the exempted activities paid by any foreign corporation, foreign society or person not engaged in industry or business in Puerto Rico.

## **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 at the date of the presentation of the Decree application, it is dedicated to an eligible activity at any time during the period of three (3) Tax Years prior to the date of submitting the request, "base period", you can enjoy the fixed rate of income tax only in terms of the increase in net income of the activity. For the entry of the base period, it will include any operation with another legal name, or with other owners.

The base period income will be subject to the ordinary income tax rates that will be adjusted annually by twenty-five percent (25%) until it is reduced to zero (0) for the fourth Year.

## **Eligible Activities**

Income from Tourism Development, for the operation of a Tourism Activity, and from the reinvestment of the profits, provided that it is reinvested in a Tourism Activity, including:

Agrohotel established in an agricultural holding by a Bonafide Farmer, to accommodate visitors in transit to enjoy the contemplation of nature or to participate in activities related to agricultural activity or Agrotourism.

Agrotourism is the set of activities organized explicitly by a Bona Fide Farmer in addition to its main activity, to which tourists are invited and related paid services.

Bed and Breakfast (B&B) as a special residential-tourist that meets the requirements outlined in the Incentive Regulations.

Guest House, building, part of it, or group of buildings approved by the Tourist Office that will operate for tourist purposes; consist of not less than seven (7) rooms for guests in transit, and provide administrative personnel during the twenty-four (24) hours of the day, a private bathroom per room and maid service; and may provide the necessary rooms for the housing of their owners or administrators, that shall comply with the Incentive Regulations.

Casino or Game Room, game room operated by a franchise issued under the terms of the "Game of Chance Act."

Condo hotel, the set of units of a building or group of buildings converted to the horizontal property regime or the regime according to the "Puerto Rico Condo hotels Law", and that meet the requirements of a Hotel; no less than fifteen (15) of the rooms or apartments dedicated to the lodging of transit guess through an integrated leasing program. The term "Condo hotel" also includes a set of residential units, in full domain, within a destination or tourist complex (resort).

Hotel, building, part of it, or a group of buildings endorsed by the Tourist Office, that properly and in good faith provide accommodation for a fee. Mainly to guests in transit, and must have no less than fifteen (15) rooms for guest accommodation. Its facilities will be operated under the standards acceptable by the Tourist Office.

Medical Tourism, any activity that encourages patients to travel to Puerto Rico to obtain medical care and treatment in medical facilities or facilities certified and accredited in Puerto Rico, as provided in the Incentive Regulations.

Nautical Tourism a set of services providing contact with the water to nautical tourists, which include, the lease or freight to tourists of Tourism Boats that have the capacity to transport six (6) or more passengers, for leisure, recreation or for educational purposes to tourists, including excursions; the leasing of small boats, jet skis, kayaks, sailboats or other similar boats, motorized

or not, to tourists, and the Operation of an Integrated Boat Leasing Program, located within a destination or tourist complex (resort), or in a Tourist Marina.

## **Eligible Income**

The income subject to the preferential rate will include all eligible Activities including:

The rental of rooms and charges for services related to the Tourist Activity.

The sale of food and drinks.

The operation of retail stores within the physical facilities, but only if the retail stores are owned and operated by the Exempt Business.

The operation of golf courses and other sports and recreational facilities that are part of the Exempt Business Tourism Activity.

The lease of commercial space within the Hotel, Condo hotel, Puerto Rican Paradores, or Guest House for the operation of businesses that provide useful services to the transient guest.

If the Exempt Business is a Tourist Marina, only Tourism Generated Income will be considered income generated by the Activities of Nautical Tourism, so that the revenue generated by the services provided to people who maintain their vessels permanently for their private use will not be considered as Tourism Development Income.

The net income accrued by a Concessionaire for the operation of a Casino.

The Income generated by eligible Activities.

## ***Setting start dates of operations and exemption periods***

### **Start date of exemptions**

Income tax-The exemptions will start from the day the Tourist Activity begins, but never before the first day of the Tax Year during the filing of an application to qualify for benefits was completed.

Property Tax on movable and immovable property- The exemptions will start from the 1st. of January of the Natural Year during which an application to benefit has been duly filed, from the 1st. of January of the Natural Year in which the Tourist Activity begins.

Sales and use and Excise Tax - Exemptions will begin thirty (30) days after the filing of an application. If the exemption request is denied, contributions must be paid within sixty (60) days of notification of the denial.

Municipal Construction Tax - Exemptions from the date of application. In the case of Condo hotels, contractors and subcontractors will begin to enjoy the exemption from the filing by the Developer of a application describing the nature of the project and complying with the requirements.

An Exempt Business will have the option of postponing each of the start dates, by notifying the Secretary of the DDEC. Start dates may not be delayed for a period greater than thirty-six (36) following months.

Nothing will entitle the reimbursement of taxes assessed, imposed, and paid before the dates established as the beginning of operations.

## **Exception to the Law of Leasing of Movable Property**

The entity is relieved of the requirement of a lease of movable property, known as "Law of Institutions of Lease of Movable Property.

## **Exemption of collection of duties and tariffs for public or private instruments**

Any deed, instance or document, judicial, public or private, related to the registration, entry, cancellation, release, restriction, constitution, modification, extension, rectification, limitation, creation or renewal of any real or contractual right that has access to the Registry of the Property and that it relates to a real property will be exempt from ninety percent (90%) of the payment of: (i) internal income stamps, legal assistance or any other required by law or regulation for its granting, issuance of any certified, partial or total copy of the document, its presentation, registration and any other operations in the Property Registry; and (ii) tariffs, taxes, contributions and rights for submission, registration and any other operations in the Property Registry.

This exemption is subject to the prior approval of the DDEC and will be evidenced by certification issued for such purposes. A certified copy of the certification must be presented before a notary public, Registrar, Court or any other Entity to benefit from this exemption, and will be attached to any document that is presented in the Property Registry. The entity to whom the certification is given may rely on the reliability of the certification which shall be presumed to be correct and final for all relevant legal effects.

The term "real or contractual right that has access to the Property Registry" includes all real or personal rights that by way of exception have access to the Property Registry, recognized at present or that may be recognized in the future, and they include, but are not limited in any way, to: easements, whether legal, fair, property or personal; constitution of the regimes of horizontal property, of Timeshare or Vacation Club, and of Condo hotel; surface and building rights, and any building or certification of completion of works by means of which the registration of a building or improvement is requested; leases; mortgages; mortgage cancellations; buying and selling; swaps donations; score, withdrawal and censuses; waters of private domain; Administrative concessions; Purchase option; and restrictions of use.

## Limited Liability

Notwithstanding the provisions of the Civil Code, referring to the obligations of the partners to third parties, those partners or shareholders that make up a company or any other legal entity organized under the laws of Puerto Rico or any other jurisdiction that enjoys a Decree will not be liable with their personal assets, beyond their contribution to the Entity, for their debts and obligations in case the Entity's equity is not enough to cover them.

The limited liability will benefit the partners or shareholders regarding all the activities of the Legal Entity, including, but not limited to: claims arising from the tourist activities object of the Decree; activities related to the liquidation and termination of the activity; activities related to the disposition and transfer of the goods used in it; and activities related to the operation of any Casino that operates under a franchise granted under the "Game of Chance Act".

The limited liability benefit provided here will begin on the date of filing a waiver request and will apply to any cause of action arising from events that occurred before the Legal Entity dissolves.

## Tax Credit for Eligible Tourism Investment

All Eligible Tourism Investment made within the Taxable Year will qualify for the Eligible Tourism Investment Tax Credit.

Any Exempt Business may request, subject to the approval of the DDEC, a Tax Credit for tourism investment equal to thirty percent (30%) of its Eligible Tourism Investment after July 1, 2019.

May take a Tax Credit of up to ten percent (10%) in the Year in which the Exempt Business obtained the necessary financing for the total construction of the Tourism Project, and the balance in three (3) installments: the first Year the Business receives its first guest (paying guest), and the balance remaining, in the two (2) subsequent years in equal parts. The of DDEC may require a bond that guarantees the recovery of the advance of ten percent (10%) in case the Exempt Business does not carry out the proposed project.

Alternatively, forty percent (40%) of your Eligible Tourism Investment, made after the date of July 1, 2019, in three (3) installments: the first in the second Year after the Exempt Business began operations, and the remaining balance in the two (2) subsequent years in equal parts.

## Notifications

The Exempt Business must provide an annual report detailing the Tourism Eligible Investment in the Tourism Project made at the date of the annual report and request an annual certificate of Eligible Tourism Investment.

The Exempt Business will notify the date of commencement of the construction work subject to the Tourist Investment Tax Credit, through an affidavit within a term of ninety (90) days from the beginning of the work.

The Exempt Business will notify the date of commencement of operations, through an affidavit within a term of ninety (90) days from the commencement of operations.

## **Basic adjustment and recovery**

The base of the Assets that comprise all Eligible Tourism Investment will be reduced by the amount claimed of the Tax Credit, but it can never be reduced to less than zero.

## ***Rules for the Concession, Sale, and Transfer of Tax Credits***

The tax credits may be used, to the Tax Year in question, against one hundred percent (100%) of the tax liability determined for that Year or against the tax liability of any unexpired return, including under valid extension, even if it is one year before the granting of the tax credit.

The ownership of the tax credits will be the Exempt Business. In the case of a Condo hotel, and only for tax credit purposes, the Condo hotel Developer may choose between requesting the tax credit for himself or may reserve the tax credit for the purchaser of a Condo hotel unit.

Tax credits may be carried over until they are exhausted but cannot be refunded. Tax credits may be assigned, sold or in any way transferred. Except for those who are subject to the completion of the construction and development of the Tourism Project and need to determine the final amount of the tax credit through a certification.

## **The product of the sale of a Tax Credit**

The proceeds of the sale of a Tourist Investment Tax Credit must be used in the following order; first, for the repayment of the financing provided by any financial institution or governmental Entity, including, but not limited to, the Puerto Rico Tourism Company, its subsidiary, the Hotel Development Corporation and the Economic Development Bank; second, for the repayment of all other loans, if any, granted to the Exempt Business to defray the total cost of the project or to defray any expense or disbursement that is part of the total cost of the project; and, third, to make distributions to the Exempt Business Investor.

The credit for tourism investment may be assigned, sold or in any way transferred only by an Exempt Business Investor, except in the event that they are pledged to the Government Development Bank, to any other agency of the Government of the Commonwealth from Puerto Rico, or to any other lender, tourism investment credits granted to an investor for purposes of financing the eligible cost of the tourism project, the pledgee may sell, assign, or in any other way transfer said credits acquired through the assignment of the credit by the Exempt Business as a Source of repayment to said financing or the execution of the pledge to a third party, if said pledge is executed.

## **Unsubscribe from the program**

In the case of Condo hotels, if any unit withdraws from the program before the expiration of the fifteen (15) year period, the Investor shall owe income tax of an amount equal to the tourist investment tax credit taken by the Investor with respect to the unit, multiplied by a fraction whose denominator will be fifteen (15), and whose numerator will be the balance of the period of fifteen (15) years.

## **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 Decrees**

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 which may be 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 (10,000) dollars 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.