

GUIDE

# Puerto Rico Tax Incentives Act 60 Green Energy

Chapter 7 of Subtitle B, formerly Act 83-325

## 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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# **Green Energy**

## **Act 60 Chapter 7 of Subchapter B of the new Code**

### **(formerly known as Act 83-325)**

#### **Entities dedicated to Green Energy**

Providing that a business established, or that will be established in Puerto Rico by an Entity, it may request the Decree of Incentives from the Secretary of the DDEC when the Entity is established in Puerto Rico to engage in any of the following eligible activities:

#### **Eligible Green Energy Businesses**

Property Dedicated to the Production of Green Energy;

Highly Efficient Energy Producer dedicated to the production, sale or operation on a commercial scale for consumption in Puerto Rico, either as the owner and direct operator, or as the owner of a system that is operated by a third party, or as an operator of a system that is owned by a third party, in which case both will be considered Eligible Businesses;

Equipment assembly, including its installation, for Highly Efficient Generation Systems;

Property dedicated to the production of Highly Efficient Energy;

Any contractor under Act 120-2018, as amended, known as the "Law to Transform the Electrical System of Puerto Rico," shall be eligible for the granting of a Decree under "Public-Private Partnerships Law."

#### **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 in order to obtain the benefit, including for Private Capital Funds.*

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

The eligible activities will be subject to 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, CERs and Movable Property will enjoy 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 exemption period will begin on July 1, after the last Fiscal Year in which the Business is exempt. The partial exemption will correspond to the property tax owed on January 1 before the beginning of said Fiscal Year.

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

In any Municipality, any extra unit, operation or installation will be considered included in the Exemption Decree and will enjoy the exemptions and benefits for the remainder of the exemption period of the current Decree.

## **100% First two semester exemption**

An exemption of 100% over the municipal licenses applicable to the volume of business during the first two semesters of the fiscal Year in which it begins operations in any municipality.

In the case that such Businesses have been operating before applying for benefits, the date of commencement of operations for municipal patents will begin on the first day of the semester following the filing date of the tax exemption application.

## **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.

## **4% Fixed Net Income Tax Rate Distributions, Sale or Exchange of Asset Shares**

During the exemption period the gain on the sale or exchange of Shares in an Entity, or of substantially all the assets, will be subject to a tax of four percent (4%) on the amount of the gain.

After the end of the exemption period the gain will be subject to 4%, but only up to the amount of the value of the Entity's Shares, or of substantially all the assets in the books as of the date of termination of the exemption period, reduced by distributions received, less the base of the Shares. Any remaining profit or loss will be recognized at ordinary rates.

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

Only the net capital gains will be subject to municipal tax, as well as 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 Royalties, Fees (Royalties) or Rights for 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.

## **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 or 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 to Tourism activities.

It will not apply, as to the inventory owned primarily for sale or resale in the ordinary business activities of the industry or business.

The following articles introduced or acquired directly or indirectly shall be exempt during the exemption period:

Any raw material, including any product in its natural form derived from agriculture or extractive industries (including natural gas or propane gas), and any by-product, residual product or partially processed or finished product.

The machinery, equipment, and accessories are used exclusively and permanently in the conduction of raw material within the circuit, machinery, equipment and accessories that have been used to carry out the production, or that is bound to be acquired as a requirement of law, or federal or state Regulation for the operation.

All machinery and equipment used needs to comply with environmental, safety, and health requirements.

Chemical materials used in wastewater treatment.

Energy-efficient equipment under the provisions of the Regulation.

The electrical sub-stations.

Exceptions include all construction material and prefabricated buildings, electrical equipment and water pipes embedded in structures, lubricants, greases, waxes and paints not related to

the energy production process, lighting poles and luminaires installed in parking areas, and treatment plants.

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

## **Property holding Businesses Dedicated to Green Energy Production**

The period during which a Property dedicated to the Production of Renewable Energy belonged to any political subdivision, agency or instrumentality of the Government of Puerto Rico, shall not be deducted from the exemption period.

When the Exempt Business of property, the period will not cover those periods in which the property is in the market to be leased, or is unoccupied, or is leased to a non-exempt business.

The periods will be computed on the basis of the total period during which the property was available to an Exempt Business, provided that the total number of years is not more than 15 years, and the Exempt Business that qualifies as property, notifies the DDEC in writing the date on which the property is leased to an Exempt Business and the time on which the property is vacated and reoccupied by another Exempt Business.

In the event that the Exemption of the Exempt Business that has a Decree as Property expires while it is being used under lease by an Exempt Business, the Exempt Business of Property, may enjoy a fifty percent (50%) exemption on the tax on the property, while continuing to use the property under lease.

When the Exempt Business is a Property, the 15-year period will continue, even if the Exempt Business that is using the property, goes into the termination of its normal operations or by revocation of its Decree, unless it is proven property owners were aware of the revocation.

## **Interruption of the exemption period**

In the case of an Exempt Business that has ceased operations and subsequently wishes to resume them, the time it was without operating will not be deducted from the corresponding exemption period, and may enjoy the remainder of its exemption period while Decreed, provided that the DDEC determines that the cessation of operations was for justified reasons.

## **Setting the dates of commencement of operations and exemption periods**

The Business may choose the date of commencement of operations by submitting an affidavit before the Incentives Office, with a copy to the Secretary of the Treasury, in which it expresses the unconditional acceptance of the Decree. The date of commencement of operations may be the date of the first payroll for training or production or any time within a period of two (2) years after the date of the first payroll.

The Exempt Business must begin operations within one (1) year from the date of signing the Decree, the term of which may be extended at the request of said business for just cause, but no extensions extending the period shall be granted for the commencement of operations for a term greater than five (5) years from the date of approval of the Decree.

## **Special Deduction for Investment in Buildings, Structures, Machinery and Equipment (accelerated deduction)**

Every Business will be granted the choice to deduct in the taxable year in which they incurred, instead of any capitalization of expenses, an acceleration of the deduction of costs.

The total expenditures incurred after July 1, 2019, in the purchase, acquisition or construction of buildings, structures, machinery and equipment, provided that these buildings, structures, machinery, and equipment have not previously been used or depreciated by any other business or person in Puerto Rico; and are used to manufacture the products or provide the services under the granted.

In the case of machinery and equipment previously used outside of Puerto Rico, but not previously used or depreciated in Puerto Rico, the investment will qualify for the special deduction only if the machinery and equipment still have at least fifty percent (50%) of its useful life.

The amount of the Green Energy Investment for the special deduction provided in the Industrial Development Income of the Exempt Business may be claimed as a deduction in subsequent Tax Years until the excess is exhausted.

The portion of the investment in buildings, structures, machinery and equipment on which the Exempt Business receives or has received Tax Credit will not be allowed.

## **The requirement for Decree Requests for the Green Energy Activity**

Any entity who has established or intends to establish an Eligible Business in Puerto Rico may request the benefits from the Secretary of DDEC by applying.

The evaluation criteria should take into consideration the following guiding principles:

### **Evaluation criteria guiding principles:**

Jobs- Activities that encourage the creation of new jobs. It will be taken into consideration if the pay of employees is above the federal minimum wage level.

Harmonious integration- The design and conceptual planning of the Infrastructure taking into consideration the environmental, geographical, physical aspects, as well as the available and abundant materials and products of the place where it will be developed. Safe development will be ensured to prevent catastrophic damage from probable natural disasters.



Commitment to economic activity - The entity will acquire, to the extent possible, raw materials and products manufactured in Puerto Rico for the construction, maintenance, renovation or expansion of its physical facilities. If the purchase is not economically justified taking into consideration criteria of quality, quantity, price or availability in Puerto Rico, the DDEC may waive this requirement.

Commitment to agriculture- The entity that will acquire, as far as possible, agricultural products from Puerto Rico to be used in its operation. If the purchase is not economically justified taking into consideration criteria of quality, quantity, price or availability of these in Puerto Rico, the DDEC may waive this requirement.

Knowledge transfer- The entity, acquiring its services from professionals or companies with a presence in Puerto Rico. However, if this is not possible by criteria of availability, experience, specificity, skill or any other valid reason, they may acquire its services through an intermediary with a presence in Puerto Rico, which the entity can contract directly.

"Services" include the contracting of surveying works, the production of construction plans, as well as engineering, architecture and services related to designs, construction and everything related; economic, environmental, technological, scientific, managerial, marketing, human resources, computer and audit consulting, advertising, public relations, graphic services; and commercial art; security or maintenance of its facilities.

Financial commitment- Demonstrate that they can fund a considerable amount of the income from their economic activity and use the services of banking institutions or cooperatives with a presence in Puerto Rico.

Certificate of compliance of the Puerto Rico Energy Bureau

Businesses dedicated to the eligible activities of Green Energy, will have to comply with the indispensable requirement of presenting, together with their application, a Certificate of Compliance with Law 17-2019, known as Public Energy Policy, and with the Integrated Resource Plan.

## **Successor of a Green Energy Business**

A Successor Green Energy Business may benefit from this as long as:

- (1) the Previous Business has not ceased operations for more than six (6) consecutive months before the filing of the application.
- (2) the Green Energy Priority Business maintains its average annual employment for the three (3) Tax Years that end with the closing of its Tax Year before the filing of the application.
- (3) the employment of the Successor Green Energy Business, after its first year of operations, is greater than twenty-five percent (25%) of the average annual employment of the predecessor business;

(4) The Successor Business does not use physical facilities, including land, buildings, machinery, equipment, inventory, supplies, trademarks, patents, distribution facilities (marketing outlets) an ancestor business has previously used fifty thousand dollars' worth (\$50,000.00) or more.

The foregoing shall not apply to the additions to the Property Dedicated to Industrial Development, even if these constitute physical facilities that have a value of fifty thousand dollars (\$ 50,000.00) or more and are being or have been used by the main unit or the Previous Business.

## **Sale of Energy to the Green Energy Electric Power Authority**

Eligible Businesses that are disconnected from the electrical system of the Puerto Rico Electric Power Authority will not be required to sell the energy produced, regardless of any another legal provision to the contrary.

## **CER Certificate of Renewable Energy**

CER is a movable good that constitutes a marketable and negotiable economic asset or value which can be bought, sold, transferred and transferred for any lawful purpose, and in an integral and inseparable way, it represents the equivalent of one (1) megawatt - Time (MWh) of electricity generated by a Source of Sustainable Renewable Energy or Alternate Renewable Energy, and in turn includes all the Environmental and Social Attributes.

## **Tax Base**

The tax base of each CER for a business dedicated to the production of Green Energy that generates CERs of its operation in Puerto Rico will be equal to its emission and processing costs. The CERs base will not include Green Energy production costs that are generated in the operation related to such CERs.

Any income or profit derived from a business dedicated to the production of Green Energy in the sale of CERs, coming from its operation in Puerto Rico, will be considered ordinary income derived from the operation in Puerto Rico, and will be treated as Green Energy Income, except that the income or gain will be exempt from municipal taxes.

## **Capital Gain**

A CER will be excluded from the definition of a capital asset, however:

It will be treated as capital gain and will apply the applicable tax rate based on the period of possession of the CER.

The income derived from a CER by purchase, and subsequently disposed will be exempt from municipal tax.

Any entity dedicated to the industry or business of the purchase and resale of CERs will be excluded from this treatment.

## **Withdrawal and cancellation of CERs**

Any entity who, in the industry or business, to comply with Renewable Energy portfolio requirements acquires CERs through purchase, assignment or transfer to encourage the development of Green Energy sources, may take as a deduction against their ordinary income the cost of CER, deduction will not be available until the CER is withdrawn or canceled.

## **The gain in the sale or disposal outside of Puerto Rico of a CER**

Gain in sales or disposition outside of Puerto Rico of a CER generated from the operation of a Green Energy project located in Puerto Rico made by a Foreign Entity not dedicated to industry or business in Puerto Rico shall not be considered as income from Puerto Rico sources, therefore not taxable in Puerto Rico.

# **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 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.

## ***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.

## ***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.

## ***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.