



La Cámara de Comercio de Puerto Rico y su Comité de Asuntos Contributivos presentan:

# CONVERSATORIO VIRTUAL TEMAS CONTRIBUTIVOS DE ACTUALIDAD

## Puerto Rico Tax Incentives Code

Important Considerations Regarding  
Resident Individual Investors

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#CamaraEnAccion

# Resident Individual Investors

- **Eligibility.** Any individual that has not been a Resident of Puerto Rico at any time during the 6-year period prior to January 1, 2012 and that becomes a Resident of Puerto Rico no later than the Taxable Year ending on December 31, 2035.
- Students, personnel temporarily working outside Puerto Rico, will not qualify as Resident Individual Investors, since their domicile continues to be Puerto Rico for the period during which they are outside our jurisdiction.



# Tax Incentives

- After becoming a Resident of Puerto Rico and obtaining the Grant, the Resident Individual Investor will enjoy the following benefits:
  - 100% exemption, including alternative basic tax, on dividends;
  - 100% exemption, including alternative basic tax, on interest;
  - 100% exemption, including alternative basic tax, on capital gains from the appreciation of Securities and Other Assets after becoming a resident of Puerto Rico; and
- The Incentives Code expands the items covered through a new definition of “Other Assets”, which includes:
  - Commodities, currency and digital assets based on blockchain technology.

# Temas Contributivos de Actualidad

## ➤ Capital Gain on Appreciation in Value Attributable to Period before Acquiring PR Residency

### ➤ Puerto Rico

- 5% capital gains tax on appreciation in value of securities attributable to the period before residency in Puerto Rico, if the securities are sold after 10 years as a resident of Puerto Rico (15% if the securities are sold within 10 years of becoming a resident of Puerto Rico); and 100% exemption from capital gains tax on appreciation in value of securities attributable to the period after becoming a resident of Puerto Rico.

### ➤ U.S.

- gain from the sale of property of former US residents that would otherwise be sourced in Puerto Rico (once you become a PR resident), will not be exempt from US income taxation if the individual investor held the investment before becoming a bona fide PR resident and a portion of the gain is attributable to such period.



# Residency Requirements

- For U.S. income tax purposes, an individual is considered to be a resident of Puerto Rico, under the rules set forth in United States Internal Revenue Code, if such individual meets each of the following tests:
  - Presence Test (most widely used alternative to meet test is by being present in PR at least 183 days);
  - Tax Home Test (regular or principal place of business or employment), and
  - Closer Connection Test (more significant contacts with Puerto Rico).
    - The location of your permanent home.
    - The location of your family.
    - The location of personal belongings, such as automobiles, furniture, clothing, and jewelry owned by you and your family.
    - The location where you conduct your routine personal banking activities.
    - The location of the jurisdiction in which you hold a driver's license.
    - The location of the jurisdiction in which you vote.
    - The location of charitable organizations to which you contribute.
    - The country of residence you designate on forms and documents.
- If any of these three (3) tests is not met, the individual will not be considered a resident of Puerto Rico and will not be able to exclude from federal taxation the income generated within Puerto Rico.
- “Year of the Move” Rule

# Requirements

- Must apply electronically with the Office of Incentives for Puerto Rico and accept Grant
- Become a resident within 1 year of issuance of Grant
- File Annual Report - Every year. Including:
  - Filing fee \$5,000.00
  - Evidence of purchase of a residential property, which must be his/her main residence in Puerto Rico.
    - Required within 2 years of receiving the Grant.
    - The property must be owned directly by the resident investor as sole owner or jointly with the spouse, or through a Puerto Rico legal entity wholly owned by the resident investor or jointly with the spouse.
  - Evidence of the payment of \$10,000 to a Puerto Rico not-for-profit organization, which the Resident Individual Investors does not control.



### Other Issues

- Tax Compliance.
- Filing of Form 8898 – Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession
- Community Property. Spouses.
- Compliance Audits by the Office of Incentives.
- IRS Audits.

### P. Del S. 684

- ▶ Proposes to amend PR Incentives Code provisions regarding Resident Individual Investors.
- ▶ Presented by Senators: Juan Zaragoza, Thomas Rivera Schatz and Ramon Ruiz Nieves.
- ▶ Creates new concept Qualified Individual Resident Investors.
- ▶ Extends benefits until December 31, 2045.
- ▶ New requirements:
  - ▶ Required eligible investment \$1,000,000.00, within 1 year of issuance of Grant.
  - ▶ An additional investment of \$1,000,000.00 within 10 years must be made.
  - ▶ Must create 5 direct employments as a result of the Investment.
    - ▶ Must be PR resident individuals
    - ▶ Cannot be the Grante, family members, past employees or independent contractors.
    - ▶ Does the additional investment increase the employment requirement to 10?
  - ▶ PR Bank Account with 15% of the liquid assets of the individual.



# P. Del S. 684

- ▶ Benefits -After becoming a Resident of Puerto Rico and obtaining the Grant, the Qualified Resident Individual Investor will enjoy the following benefits, until December 31, 2045.
  - Interest and dividends -
    - 10% tax, in lieu of, including ABT - Eligible investment of \$1,000,000.00 - \$2,000,000.00.
    - 5% tax, in lieu of, including ABT - If eligible investment is over \$2,000,000.00.
  - Capital gains from the appreciation of Securities and Other Assets after becoming a resident of Puerto Rico;
    - 7% tax, in lieu of, including ABT - Eligible investment of \$1,000,000.00 - \$2,000,000.00.
    - 4% tax, in lieu of, including ABT - If eligible investment is over \$2,000,000.00.
  - Long term capital gains from the appreciation of assets held prior a resident of Puerto Rico and sold 10 year after becoming a resident of Puerto Rico.
    - 10% tax, in lieu of, including ABT - Eligible investment of \$1,000,000.00 - \$2,000,000.00.
    - 5% tax, in lieu of, including ABT - If eligible investment is over \$2,000,000.00.

# Export of Goods and Services

- ▶ **Eligibility.** Any Person with an office or a *bonafide* establishment located in Puerto Rico which is providing or will be providing Eligible Services.
  - The Incentives Code expanded the definition of Eligible Business to clearly provide that individuals, estates and trusts can request the benefits.
- ▶ In general, the Eligible Services must be provided to non-resident individuals and/or foreign entities that have no nexus with Puerto Rico.
- ▶ Nexus with Puerto Rico means:
  - Business Activities for the production of income that has been or will be conducted in Puerto Rico;
  - Sale of any property for the use, consumption or disposition in Puerto Rico;
  - Provide advice on the laws and regulations of Puerto Rico;
  - Lobbying about Puerto Rico Laws, regulations, among others; and
  - Any other activity that has a relation to Puerto Rico and is designated through regulation as an activity with a PR nexus.



# Eligible Services

- Research and development;
- Advertising and public relations;
- Consulting;
- Advise on matters relating to any trade or business;
- Creative Industries;
- Production of construction drawings, architectural and engineering services and project management;
- Professional Services;
- Centralized Management Services;
- Storage and distribution centers;
- Centers for electronic data processing;
- Development of computer programs;
- Distribution in physical form, in the cyber network, by cloud computing, or as part of a blockchain network and the income from licensing, program subscriptions or service charges;
- Voice, video, audio and data telecommunication to people located outside of Puerto Rico;
- Call centers;
- Shared services center;
- Educational and training services;
- Hospital and laboratory services, including Medical Tourism services and telemedicine facilities;
- Investment banking and other financial services that include;
- Marketing centers that are primarily dedicated to providing, through lease charges, services or other charges, space and services such as: secretarial, translation and information processing services, communications, marketing services, telemarketing and other consulting services to companies outside of Puerto Rico; and
- Any other services determined by the Secretary of the DDEC.

# Export Trade

- ▶ The Incentives Code creates a New Category for Export Trade (“Trading”).
- ▶ An Eligible Business for purposes of the Export Trade Category is any Person with an office or a *bonafide* establishment located in Puerto Rico which is providing or will be dedicated to the trading or the export of products (trading companies), and derives no less than 80% of its gross income from the following activities:
  - Sale to Foreign Persons, for their use, consumption or disposal outside of Puerto Rico, of products purchased by the Eligible Business for resale;
  - Commissions derived from the sale of products for use, consumption or disposal outside of Puerto Rico;
  - Sale of products manufactured or grown by request, to Foreign Persons, for their use, consumption or disposal outside of Puerto Rico;
  - Sale or distribution to Persons outside of Puerto Rico of intangible products, such as patents, copyrights, digital content, trademarks, among others;
  - Storage, transportation and distribution of products and items belonging to third parties (*hubs*);
  - Commercial distribution of products that are manufactured or cultivated in Puerto Rico for jurisdictions outside of Puerto Rico;
  - Operations of assembly, bottling and packaging of products for export; and
  - Any other international commercial traffic activity included in the Incentive Regulations.



# Tax Incentives

- ▶ Eligible Businesses that obtain a tax Grant for Export Services or Trade will enjoy the following tax benefits:
  - 4% flat income tax rate.
  - Distributions from earnings and profits derived from Eligible Services will not be subject to taxation.
  - Subsequent distribution from earnings and profits will also not be subject to taxation.
  - 75% exemption from property taxes.
  - 50% exemption from municipal license taxes.
  - 12% Withholding Tax on Royalty Payments.

# Limitation on the Tax Incentives

- ▶ If an Eligible Business was providing Export Services or realizing the Export Trade Activity at any time during the 3-year period prior to the date of submitting its application, the Eligible Business may enjoy the income tax benefits, only on the amount of net income above the Base Period Net Income generated from the Export Services or Export Trade Activity.
- ▶ The Base Period Income is reduced by 25% each year, until it reaches 0% on the fourth (4th) year.
  - Example: XYZ Corporation was exporting consulting services from 2015 through 2018 and the net income from the Export Services was \$1,000, \$1,500 and \$2,000. The Base Period Net Income is \$1,500 ( $\$1,000 + \$1,500 + \$2,000 = \$4,500 / 3 = \$1,500$ ).
  - Example: If XYZ Corporation generated \$2,000 from the export consulting services during 2019 (after filing the incentives application), then the first \$1,125 ( $\$1,500 \times 75\%$ ) will be subject to regular taxes and the remaining amount will be subject to the preferential 4%.



## **Tax Incentives Grant**

- ▶ The Application process for Export Service, Export Trade Activities and Promoters will be handled by the Office of Industrial Tax Exemption.
- ▶ The Incentives Code formally re-introduces the employment requirement.
  - Generally, there is a 1 employee requirement for all Export Businesses (Services or Trade).
- ▶ There is a requirement to file an Annual Report with the Office of Industrial Tax Exemption.
  - Not filing the Annual Report can lead to the revocation of the Grant.
- ▶ Grants are valid for an initial term of 15 years.

### Other Issues

- ▶ Transfer Pricing considerations. Related party services. Arm's length standard.
- ▶ Services Rendered Outside Puerto Rico.
- ▶ Compensation of Owner/Employee.
  - ▶ Reasonable salary. AD 15-22. \$350,000 Salary safe harbor.





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