



# ACT 74

## PUERTO RICO TOURISM DEVELOPMENT ACT

On July 10, 2010, Puerto Rico enacted Act No. 74 of 2010, as amended, known as the "Tourism Development Act" (the "Act"), to provide incentives that will allow for substantial growth of Puerto Rico's tourism industry and all infrastructure related thereto. The Act provides tax exemptions and tax credits to businesses engaged in eligible activities in Puerto Rico. To avail from such benefits, a business needs to become an exempt business by applying for a tax concession and obtaining a tax exemption decree.

### Eligibility

Eligible activities that may qualify for the benefits under the Act include the following:

- Ownership, operation and/or hotel administration, timeshares or vacation club programs, condo hotels, guest-houses, theme parks, golf courses, marinas for tourism purposes, port facilities, agro hospices, agro tourism, medical tourism, nautical tourism and other facilities that are a source of active, passive or recreational entertainment and that are a stimulus to internal or external tourism;
- Ownership of a lease made to a business with a decree under the Act or predecessor tourism incentive laws. This includes the leasing of real property and whatever improvements have been made to the property, such as machinery and equipment, furniture and fixtures. Financing leases are not eligible activities;
- Development and administration of natural resources such as caverns, forests, canyons, natural reserves and lakes; and
- The purchase of existing hotels or other eligible activities, if a substantial renovation or expansion to the existing business is made. If the substantial renovation or expansion costs exceed the purchase price, the acquiring investors would also qualify for the tax credit described further below.

### Tax Exemptions

- Up to 90% tax exemption on income tax (100% tax exemption if business is located in Vieques or Culebra). The taxable portion of the income will be taxed at the income tax rates effective at the date of the Act's approval, which in the case of corporations is up to 39%; therefore, after considering the 90% exemption, the effective tax rate would be 3.9%;
- 100% tax exemption on alternative minimum taxes and additional income taxes on undistributed income;

- 90% tax exemption from personal property taxes. The taxable portion will be subject to the regular tax rate, that currently can be up to 8.83%; therefore, after considering the 90% exemption, the effective tax rate would be up to 0.883%;
- 90% tax exemption from real property taxes. The taxable portion will be subject to the regular tax rate, that currently can be up to 10.83%; therefore, after considering the 90% exemption, the effective tax rate would be up to 1.083%;
- Up to 90% tax exemption on municipal licenses and other municipal taxes (100% in the case of new business). Any taxable portion will be subject to the regular tax rate, that currently can be up to 0.5%; therefore, after considering the 90% exemption, the effective tax rate would be up to 0.05%;
- Up to 100% tax exemption on excise tax on imported goods;
- Up to 100% tax exemption on sales and use tax; and
- Up to 100% tax exemption on municipal construction excise tax.

[Under Regulation \_\_\_\_\_, businesses of all types operating in Vieques or Culebra will qualify for a 50% tax exemption on their net income generated from their operations and other tax exemptions as follows: \_\_\_\_\_]

### Tax Credits

Under the Act, any person who acquires an equity interest or contributes land to an entity that develops an exempt tourism business will be entitled to an investment tax credit equal to 50% of the cash paid for such equity investment or 10% tax credit on total project cost, whichever is lowest. The tax credit is to be taken in two installments. Half of the credit during the first year of the investment, while the remaining tax credit may be used in the second year. Any unused tax credits may be carried forward. The tax credits may also be assigned, transferred or sold. Puerto Rico has a healthy secondary market for the immediate sale of such credits. Many developers choose to inject such credits into the project, reducing the amount of equity required.

### Tax Exemption Decree

To benefit from the Act, the eligible business needs to submit an application with the Puerto Rico Tourism Company to obtain a tax exemption decree which will provide full detail of tax rates and conditions mandated by the Act. This decree will be considered a contract between the Government of Puerto Rico and the eligible business. Once the eligible business obtains



the tax exemption decree, the benefits granted will be secured during the term of the decree, irrespective of any changes in the applicable Puerto Rico tax laws.

Under the Act, an eligible business can qualify for a 10-year exemption that can be extended for an additional 10-year term. Moreover, the exempt business can benefit from a “flexible exemption” for income taxes – that is, the exempt business can decide whether its income will be covered by the exemption on a particular taxable year. If it chooses not to be covered by the exemption on a particular year, the exempt business may extend for one additional year its exemption period.

The date of commencement of the exemptions is fixed pursuant to the Act. However, to provide the exempt business more flexibility, the effective dates can be postponed for up to 3 years.

### **Puerto Rico Income Taxes**

An exempt business operating in Puerto Rico under the Act by means of a Puerto Rico entity should not be subject to any taxes (such as a tollgate tax or other similar taxes) on its income from its eligible activities in Puerto Rico, other than the Puerto Rico income tax rate established in the tax decree and taxes imposed on dividends to the exempt business’ shareholders, that currently would be at an effective tax rate of 1%. Upon repatriation, the distributed income would be subject to the tax imposed by the jurisdiction in which the owners of the Puerto Rico entity reside, if any.

### **Other Tourism Incentives Acts**

Tourism businesses may elect to benefit from other tourism incentives acts, such as the incentives provided by Act No. 118 of 2010, also known as the “Municipal Economic Development and Tourism Incentives Act” (“Act 118”). Act 118 provides incentives to projects developed in municipalities that are economically distressed, showing a decrease in municipal business taxes and in other municipalities.

Act 118 establishes a Selection Committee, comprised by the Secretary of Economic Development and Commerce, the Secretary of the Treasury, the Executive Director of the Tourism Company, the Municipal Affairs Commissioner and a public interest representative named by the Governor of Puerto Rico, with the consent of the Senate of Puerto Rico. This Selection Committee selects the projects eligible for the benefits under Act 118. These projects must have at least three basic components:

- A world-class hotel that holds at least a four (4) star rating;
- Varied commercial and recreational establishments; and
- Other entertainment facilities typical of a 4-star hotel, including a casino, as such facilities are defined in Act No. 221 of 1948, known as the “The Games of Chance Act”.

The preferred income tax rate available to the tourism business on its tourism gaming net revenue will depend on the concessionaire’s total investment of private capital, as provided below:

- Investments of \$500,000,000 or more shall be granted a fixed, 25% tax rate;
- Investments of \$750,000,000 or more shall be granted a fixed, 15% tax rate;

- Investments of \$1,000,000,000 or more shall be granted a fixed, 10% tax rate; and
- Investments of \$1,250,000,000 or more shall be granted a fixed, 8% tax rate.

Once a project is selected for benefits, the Selection Committee will issue a tax decree providing full detail of tax rates and conditions mandated Act 118. This tax decree will be considered a contract between the Government of Puerto Rico and the developer, and will ensure the developer’s incentives for the term of the decree, irrespective of any changes in the applicable Puerto Rico tax laws. Any decree granted by the Selection Committee must be received within the first five years after the approval of the Act, which is the limit established for submitting proposals. The tax decree shall initially remain in effect for a period of 30 years, and developers would have a 10-year period to fulfill the investment and job creation commitments made. Any violation of the terms of the Act or the decree may result in the increase of the special tax rate imposed, up to 70%. Should the concessionaire undertake a substantial renovation or expansion of the project, the decree, at the discretion of the Selection Committee, may be renewed at any time during its life for two additional 10-year terms.

Act 118 also designates the area composed by El Yunque National Rain Forest, Vieques and Culebra as “The Green Triangle” to promote ecotourism and economic development in the area. Act 118 establishes a special fund to be funded from operations incentivized by Act 118, and which will provide funds for development of the infrastructure necessary to promote tourism in the Green Triangle. Specifically, Act 118 provides that ¼ of the funds are to be used in Vieques and ¼ of the funds are to be used in Culebra. These funds will be distributed by the Selection Committee.

For more information on the various incentives provided under the Puerto Rico laws, please visit

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and access our incentives alerts on the following topics:

- **Tourism Development Act;**
- **Municipal Economic Development and Tourism Incentives Act;**
- **Cruise Industry Incentives Act;**
- **Film Industry Incentives Act;**
- **Green Energy Incentives Act;**
- **Economic Incentives for the Development of Puerto Rico Act;**
- **Incentives for Rum Producers in Puerto Rico;**
- **Export Services Incentives Act;**
- **Individual Investors Act;**
- **Tax Exemptions for Scientists;**
- **Incentives for business activity performed in Vieques and Culebra; and**
- **Puerto Rico Housing Incentives.**

