



Tax



Business



Employer

The new Puerto Rico Incentives Code

July 8, 2019

On July 1, 2019, the Governor of Puerto Rico converted House Bill 1635 into Act 60-2019, known as the Incentives Code of Puerto Rico (the “Act”). The Act codifies incentives granted for diverse purposes throughout decades with the aim to foster economic development more effectively. The Act adopts a legal and administrative framework for the application, evaluation, and grant or denial of incentives by the Government of Puerto Rico. Some incentives remain unchanged, while others were eliminated or altered to increase the return on public investment. The Act is divided into six subtitles and tax incentives are codified in different chapters of Subtitle B. A series of alerts will be published to help you stay up to date with the important changes introduced by this Act.

Standard incentives and terms

- **Term**
Terms of tax exemption grants are standardized to 15 years, with an extension of 15 additional years for a total of 30 years.
- **Employment**
An eligible business with an annual projected or actual volume of business of more than \$3,000,000 shall maintain at least 1 employee if it is a grantee of export services (previously Act 20-2012) and 3 employees if it is a grantee of industrial incentives (previously Act 73-2008). The Act allows current grantee holders under Act 20-2012 and Act 73-2008 to submit a grant amendment to request the employment requirement set forth in the Act. The Secretary of the DEDC has the authority to approve said amendments to pursue the objectives of the Act. All other eligible businesses are not subject to employment commitment.
- **Income tax**
A flat 4% income tax rate applicable to exempt income generated by an exempt business. This changes several tax exemptions, such as tourism, which used to have a different exemption on income under previous Act 74 (90% exemption taxed at regular corporate tax rates).

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- **Property and municipal taxes**

There is a 75% exemption on property tax for all incentives. This reduces the 90% or 100% exemption that was applicable under most of the laws. In addition, eligible businesses will enjoy a 50% exemption on municipal taxes, such as municipal license and construction excise taxes.

- **Tax credits**

Tax credits are issued to an exempt business by the Secretary of the DEDC through an incentives agreement. The Secretary of the DEDC shall adopt the regulations to adopt the processes for the issuance of tax credits. The criteria used to issue tax credits to maximize economic impact, return on fiscal investment and performance may include:

- order in which applications are received
- availability of funds
- status of permits of the project
- level of the tax credit as a percentage of the investment
- return on investment
- purchase of products manufactured in Puerto Rico, among others.

Incentives grandfather and effectiveness

The Act is mainly effective from July 1, 2019. Changes incorporated by the Act will not affect current grantee holders. Applicants may elect to file under previous laws or under the Act until December 31, 2019. Commencing on January 1, 2020, all applications will have to be submitted under the Act. However, the Secretary of the Department of Economic Development and Commerce (“DEDC”) may implement by regulation provisions of the Act before January 1, 2020 to further the objectives of the Act.

Incentives procedural aspects

Tax incentives will be processed through the Office of Incentives (“OI”), formerly the Office of Industrial Tax Exemption. The Director of the OI has 5 days to make a preliminary evaluation and determine whether the incentives application should go through the ordinary or extraordinary process. If information is missing from the application, the OI shall notify the applicant within 10 days of the filing of the application and grant a period of 10 days for the applicant to submit said pending information.

- **Ordinary process**

An ordinary process applies to applications that do not require endorsement by another government agency, and do not have other requirements outside those set forth in the Act and related regulations. The OI has 30 days to evaluate said applications and issue a recommendation to the Secretary of the DEDC. The Secretary in turn shall request the Secretary of Treasury’s endorsement to the case within 5 days of the receipt of the application of incentives. The Secretary of Treasury has 20 business days to provide comments. Upon the expiration of the 20 business days, the OI will have 10 days to issue a recommendation to the Secretary of the DEDC. The consultation of municipalities is discretionary under the Act.

- **Extraordinary process**

An extraordinary process applies in cases in which language not contemplated in template forms and applications, negotiations, and approval by other government agencies is needed. Grants issued under this process may include a minimum investment, job creation and other conditions that do not apply to all grantees. Agencies and municipalities related to the case shall be consulted regarding the legal and economic viability of the case pursuant to the ordinary process.

- **Expedited process**

A new expedited process is adopted whereby an applicant otherwise eligible for an ordinary process submits its application with a pre-eligibility report prepared by a certified professional. In said cases, the applicant shall receive its grant within 30 days from the date of application. A certified professional is an attorney or CPA licensed to practice in Puerto Rico that is registered in a registry of certified professionals of the DEDC. The Secretary of the DEDC shall issue regulations to implement the rules applicable to the expedited process.

The Act introduces many changes to the tax and incentives regime in Puerto Rico. Therefore, it is advisable to contact your tax professional to evaluate the impact the enactment of the Act may have on your tax planning, compliance and future business plans.

Please contact our Tax Department should you require additional information regarding this or any other tax issue. We will be glad to assist you.



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