

Amendments to Tax Incentives Statutes

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An McV Tax Alert

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On July 11, 2017, Governor Ricardo Roselló signed into law amendments to Act 20-2012 (Act to Promote the Export of Services), Act 22-2012 (Act to Promote the Relocation of Individual Investors), and Act 73-2008 (Economic Incentives for the Development of Puerto Rico Act). The amendments seek to grow the Puerto Rico economy and promote the creation of jobs, in particular within Small and Midsize Businesses (PYMES for its acronym in Spanish).

Below is a summary of the most important changes introduced by the new legislation.

Amendments to Act 20-2012

- Act 43-2017 amends the definition of "Eligible Services" to include "medical tourism" and "telemedicine facilities," without defining such terms. At least 30% of the doctors in a telemedicine facility must be residents of Puerto Rico, unless the facility can show that there are not sufficient qualified doctors in Puerto Rico.
- "Trading companies" are a defined eligible activity under Act 20-2012. To qualify as a trading company, at least 80% of the entity's income had to be from either (i) the sale of products, whether manufactured in Puerto Rico or not, or (ii) commissions from such sales, so long as the products were sold for use, consumption, or disposition outside Puerto Rico. After Act 43-2017, income from other eligible export services are to be taken into account for purposes of meeting the 80% requirement.
- Act 43-2017 eliminated the statutory employment requirement of 5 employees, but employment level is a criteria in the evaluation of a request for exemption, and an employment requirement may be imposed as a condition in the tax exemption grant. The Act clarifies that the employment requirement may be satisfied with independent contractors, and the grant may provide that some of them should be residents of Puerto Rico. The Secretary of Economic Development can consider direct or indirect contributions to the Puerto Rican economy in the evaluation of an application for an Act 20-2012 grant, and may impose an investment requirement in the grant.

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- The Act eliminates the provisions relating to the Interagency Validation Portal added by Act 187-2015, to provide instead for an incentives data repository to be established through the joint efforts of the Secretary of Economic Development, the Puerto Rico Industrial Development Company, and the Puerto Rico Treasury Department.

Amendments to Act 22-2012

- Act 45-2017 amends Act 22-2012 to: (i) reinstate the tax grant application procedure, (ii) clarify the sourcing of certain capital gains, and (iii) establish a yearly \$5,000 charitable contribution requirement.
- Act 108-2016 eliminated certain provisions of Act 22-2012, including, inadvertently, those requiring that a potential resident investor file an application for a grant of tax exemption with the Office of Industrial Tax Exemption (OITE). Act 45-2017 reinstates the tax exemption grant application procedure.
- After Act 45-2017, it is clear that the applicant under Act 20-2012 is no longer required to purchase a residential property in Puerto Rico or open a bank account with a local bank.
- The Act also clarifies that capital gains attributable to appreciation in the value of securities accrued before the investor became a resident of Puerto Rico will be considered income from sources outside of Puerto Rico. This allows investors relocating to Puerto Rico to claim a foreign tax credit in Puerto Rico for taxes paid to a foreign jurisdiction on such gain.
- Finally, Act 45-2017 requires resident investors that have a tax exemption grant under Act 22-2012 to make annual charitable contributions of at least \$5,000 to nonprofit organizations operating in Puerto Rico that are certified as tax exempt entities under Section 1101.01(a)(2) of the Puerto Rico Internal Revenue Code. This requirement was included as part of the resident investor's obligation to file annual reports with the OITE. It is expected that this requirement will apply to Act 22 grants issued on or after July 11, 2017.

Amendments to Act 73-2008

- Act 44-2017 amends Act 73-2008 to define “research and development” (R&D) as any activity for the advancement of knowledge or capacities in science or technology. The new knowledge must have a useful application in the creation of new products, improvement of such products, or creation of new commercial services or process of commercial value. It expressly excludes from this definition: (i) R&D to improve industrial processes (i.e., continuous

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improvement); and (ii) contract research.

- The Act also amends the provisions relating to R&D credits in order to provide that an eligible investment in R&D will also include a cash investment from a grant or agreement, or which is otherwise financed by a Federal Government entity. It expressly excludes financing from the Puerto Rico Government.
- Act 44-2017 provides that an Act 73 grant can provide a fixed income tax rate higher than 4% if requested by an exempted business.

The statute also creates a special fund to be used in incentives programs to promote investment in innovation, science, and technology; exporting of goods and services relating to innovation, science, and technology; and training for PYMES.

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