

Act 60

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RELATED PRACTICE AREAS

- Corporate
- Tax

McV attorneys have a strong Act 60 practice for Export Services & Commerce and for Individual Investors (formerly Acts 20/22), counseling and advising clients seeking to relocate to Puerto Rico to benefit from these tax incentives.

Export Services & Commerce

Chapter 3 of Act 60 for Export Services & Commerce is a powerful tool to develop Puerto Rico as an international export service and commerce center by reducing income taxes and providing exemptions from property taxes, municipal taxes and taxes on dividend distributions for income generated and property used in the exempt operations. It creates an opportunity for investors to engage in business activities in Puerto Rico for customers located outside Puerto Rico with very low taxes, if properly structured.

Eligible Services

Chapter 3 applies to businesses that have a “bona fide” office or establishment in Puerto Rico and conduct eligible services as an export service provider or an export commerce business.

- Among the **eligible Export Service** activities are the following:
 - Advertising and Public Relations
 - Call Centers
 - Consulting
 - Corporate Headquarters
 - Creative Industries (design, art, music, publications, development of apps and video games, creative education)
 - Development of Computer Programs
 - Distribution in Physical Form, through the Internet, Cloud Computing or Blockchain, Income from Licensing, Subscriptions or Charges for Services.
 - Education Services and Training
 - Electronic Data Processing Centers
 - Engineering, Architecture, Project Management
 - Hospital and Laboratory Services, including Telemedicine

- Investment Banking and other Financial Services (including advisory and broker dealer operations)
- Marketing Centers
- Professional Services (law and accounting)
- Research and Development
- Shared Service Centers
- Voice and Data Telecommunications

- Among the **eligible Export Commerce** activities are the following:
 - Assembly, Bottling and Packaging of Products for Export
 - Commercial and Mercantile Distribution of Products Manufactured in P.R.
 - Commissions on the Sale of Products to Customers outside P.R.
 - Purchase of Products for Resale to Customers outside P.R.
 - Sale of Intangible Products to Customers outside P.R.
 - Storage and Distribution Centers

Export Services are eligible services rendered to a foreign natural or juridical person located outside of Puerto Rico. To qualify for the exemption, the Export Services cannot have a connection with Puerto Rico. In general, the services will be considered to have a connection with Puerto Rico if they are, among others, related to (i) commercial or for-profit activities that have been or will be carried out in Puerto Rico; or (ii) advice regarding the laws and regulations of Puerto Rico, as well as procedures and administrative orders of the Government of Puerto Rico and its agencies. The entity engaged in an export commerce activity must generate at least 80% of its gross income from this activity.

Income Tax Benefits

Exempt businesses with business volumes of over \$3 million generally are subject to an income tax rate of 4% on net income derived from the exempt operation. If the business volume is \$3 million or less, the income tax rate on net income from the exempt operation is 2% for five years, and 4% thereafter. The income tax rate can be reduced to 1% if the exempt business is engaged in a “Novel Pioneer Activity.” Act 60 imposes a base period income limitation on the income tax benefits for businesses that were engaged in the eligible activity in Puerto Rico before filing the tax exemption application.

Income Tax Exemption for Distributions

Distributions of dividends or profits generated by the exempt operation are 100% exempt from Puerto Rico income tax.

Real and Personal Property Tax Exemption

Exempt businesses with a business volume of over \$3 million are entitled to a 75% exemption from personal and real property taxes. For businesses with a business volume of \$3 or less, the property tax exemption is 100% for five years, and 75% thereafter.

Municipal License Tax Exemption

The municipal license tax exemption for exempt businesses with a business volume of over \$3 million is 50%. If the business volume is \$3 million or less, the exemption is 100% for the first five years, and 50% thereafter.

Employment Requirement

For businesses with an annual business volume of over \$3 million, there is an employment requirement of one full-time employee resident of Puerto Rico, who can be an owner/employee. There is no employment requirement for businesses with annual business volumes of \$3 million or less.

Tax Exemption Period

The tax exemption period is 15 years, which can be extended for 15 additional years.

To obtain the benefits of Chapter 3 of Act 60 for Export Services & Commerce, the business must request and obtain a grant of tax exemption. Act 60 provides that the grant will be considered a contract between the business and the Government of Puerto Rico, so that it cannot be modified unilaterally and should not be impacted by amendments to Act 60 enacted after the issuance of the grant.

Individual Investors

Chapter 2 of Act 60 for Individual Investors provides 100% tax exemption from Puerto Rico income taxes on all interest and dividend income and on certain capital gains realized and accrued after such individual becomes a bona fide resident of Puerto Rico. Chapter 2 applies to any individual investor who

becomes a Puerto Rico resident (“Individual Investor”) on or before the taxable year ending on December 31, 2035, provided that the individual was not a resident of Puerto Rico at any time from January 17, 2006 to January 17, 2012.

A Puerto Rico resident is an individual who is domiciled in Puerto Rico. Physical presence in Puerto Rico for a minimum period of 183 days during the taxable year will create a presumption of residence in Puerto Rico for Puerto Rico income tax purposes.

Income Tax Benefits

Section 933 of the U.S. Internal Revenue Code of 1986, as amended (the “US Code”) provides that income derived from sources within Puerto Rico by an individual who is a bona fide resident of Puerto Rico during the entire taxable year is not included in gross income and is exempt from federal income taxation under the US Code (the “Section 933 Exclusion”). An individual is treated as a bona fide resident of Puerto Rico under Section 933 if the person (1) meets a physical presence test; (2) does not have a tax home outside of Puerto Rico during the taxable year; and (3) does not have a closer connection to the United States or a foreign country than to Puerto Rico.

Under Chapter 2 of Act 60, Individual Investors will enjoy 100% exemption from Puerto Rico income taxes on interest and dividend income during the period of exemption. Moreover, pursuant to the Section 933 Exclusion, interest and dividends received by an Individual Investor that qualify as Puerto Rico source income will not be subject to federal income tax under the US Code. Individual Investors who are U.S. citizens or resident aliens, however, will be subject to U.S. federal income tax on interest and dividends that do not qualify as Puerto Rico source income.

In certain circumstances, gains from the disposition of marketable securities, commodities, currency and digital assets based on blockchain technology (the “Assets”) acquired after the individual becomes a bona fide resident of Puerto Rico will not be subject to federal income tax if sold during the period of residency in Puerto Rico. Special rules apply for non-marketable Assets, and for marketable Assets acquired prior to the establishment of residence in Puerto Rico.

Tax Exemption Period

The tax incentives granted to Individual Investors under Chapter 2 of Act 60 will expire on December 31, 2035.

Requirements

Individual Investors must meet the following requirements:

- Make an annual donation of a minimum of \$10,000 to local nonprofit entities that are not controlled by the Individual Investor and are certified under the P.R. Internal Revenue Code. Half of the donation must be to certain organizations that work to eradicate child poverty;
- Within two years of receipt of the grant, the Individual Investor must purchase real property in Puerto Rico for use as his/her principal residence. The property must be owned by the Individual Investor as sole owner or together with the spouse; and
- File an Annual Report with the Government of Puerto Rico with a filing fee of \$5,000.

To obtain the benefits for Individual Investors, the individual must request and obtain a grant of tax exemption. Act 60 provides that the grant will be considered a contract between the individual and the Government of Puerto Rico, so that it cannot be modified unilaterally and should not be impacted by amendments to Act 60 enacted after the grant is issued.