

ACT NO. 22 OF JANUARY 17, 2012, AS AMENDED

(Contains amendments incorporated by:
Act No. 138 of July 11, 2012;
Act No. 241 of December 22, 2014.)

To establish the “Act to Promote the Transfer of Individual Investors to Puerto Rico” with the objective to grant tax exemption in regards to revenue, resulting from investments accrued by individuals who are residents in Puerto Rico, no later than the end of year that finishes on December 31st, 2035.

STATEMENT OF PURPOSE

Since 2006, Puerto Rico has been going through an economic crisis that has severely damaged different sectors of the local economy. This Government has a commitment to promote the economic development of the island. For these purposes we have developed: The Strategic Model for a New Economy (SMNE) [MENE in Spanish], and implemented several initiatives intended to deal with the difficult economic situation that Puerto Rico has been going through. The SMNE recognizes the fundamental role that plays the banking and financial sectors in the economy and the importance of attracting foreign capital in order to produce and strengthen local capital. This measure represents an additional initiative to the effects of boosting the attraction of foreign capital, economic growth, and promoting the socioeconomic development of the island.

The purpose of this measure is to stimulate residence in Puerto Rico to individuals who have not been residents of Puerto Rico by at least the last fifteen years, prior to the approval of the current Act, and who maintain investments in or out of the United States. In order to encourage the transfer of such individuals to Puerto Rico, this Act completely exempts the payment of Puerto Rico taxes from the passive revenue accrued by these individuals, in relation to their investments. In the case of long term earnings, individuals under this legislation will be exempt of Puerto Rico taxes payment on recognized earnings, after becoming residents of Puerto Rico, and by the exemption period here granted. As an exception, the earnings of produced capital before moving to Puerto Rico, but not recognized on any value owned by these individuals under this Act, will be taxed in Puerto Rico to a special rate of 5%, if they are recognized after ten years of becoming Puerto Rico residents, and before the culmination of the exemption period. Residents of the Continental United States that become Puerto Rico residents and who have, prior to moving to Puerto Rico, goods with capital earnings made but not recognized, will have to recognize such earnings while they are bona fide residents of Puerto Rico. After having ten years of residence in Puerto Rico, they will not have a federal taxation on these earnings and only would be subject to the special Puerto Rico taxation of a 5%. The tax exemption here conferred applies when the individual invests directly in bonds, stocks or other investment tools, like when such individual invests through Puerto Rico mutual funds or through an international bank entity of Puerto Rico.

Even when the income of his (her) investments will be exempt of income tax payments in Puerto Rico, his (her) presence in the island supports our economy, since they acquire goods, products, services, and housing among others. Moreover, the income accrued by these individuals, which is not product of their investments, like for example: the income of wages or by concept of professional services provided, would be subject to income tax payment in Puerto Rico.

The tax exemption here conferred is not indefinitely. It ends on December 31, 2035. As from January 2036, these individuals will be subject to the payment of income tax in Puerto Rico, as same as any other taxpayer. In order to have right to claim the tax exemption that is granted through the present legislation, the individual should become a Puerto Rico resident, before the benefit granted by this Act expires.

ENACTED BY THE PUERTO RICO LEGISLATURE:

Article 1. – Abbreviated Title. –

This Act will be known as the “Act to Promote the Transfer of Individual Investors to Puerto Rico”.

Article 2. – Definitions. –

- (a) “Resident Individual Investor” means a person who is a resident, as defined in Section 1010.01 (a) (30) of the Code, who has not been a resident of Puerto Rico for the last six (6) years prior to the effective date of this Act and becomes a resident of Puerto Rico no later than the taxable year ending on December 31, 2035. In accordance with the definition of resident set forth in Section 1010.01 (a) (30) of the Code, students studying outside Puerto Rico who resided in Puerto Rico before moving to study, staff working outside of Puerto Rico for the Commonwealth of Puerto Rico or its agencies and instrumentalities, and other individuals in similar situations to those described above, shall not be eligible to be considered Resident Individual Investors, as their domicile in these cases continues to be Puerto Rico for the period in which they reside outside our jurisdiction.
- (b) “Code” means Act 1-2011 as amended, known as the “Internal Revenue Code for a New Puerto Rico” or any subsequent law that replaces it.
- (c) “The Banking Center Act” means Act No. 52 of August 11, 1989, as amended, known as the “Regulatory Act of the International Banking Center”.
- (d) “Secretary” means the Secretary of Economic Development and Commerce.
- (e) “Exemption Office” means the Industrial Tax Exemption Office.
- (f) “Director” means the Director of the Industrial Tax Exemption Office.

Article 3. – Procedures. –

- (a) In order to benefit from the incentives provided in this Act, every Resident Individual Investor must request from the Secretary the issuance of a tax exemption decree pursuant to this Act, by filing a duly sworn application before the Exemption Office. At the time of filing, the Director shall charge processing fees pursuant applicable regulation. Fees shall be paid by the form and manner established by the Secretary. After the Exemption Office issues a favorable recommendation, the Secretary shall issue the tax exemption decree which shall provide in detail the tax treatment provided in this Act. The decrees issued under this Act shall be considered a contract between the grantee and the Commonwealth of Puerto Rico, and said contract shall be considered the law of the parties. The decree shall be effective during the period in which the tax benefits conceded by this Act are effective, but never after

December 31, 2035, unless, prior to the expiration of said period, the decree is revoked pursuant to subsection (b) of this Article. The decree shall be non-transferable.

- (b) Revocation. – The Secretary will revoke any decree issued under this Act when:
- (i) the concessionaire fails to comply with any of the obligations imposed by this Act or its regulations, or by the terms of the decree; or
 - (ii) the concessionaire ceases to comply with its tax liability under the Code; or
 - (iii) the decree has been obtained under false or fraudulent representations of any facts or circumstances which, in whole or in part, motivated the issuance of the decree.
- (c) Procedure for Revocation. – In cases of revocation of a decree issued under this Act, the concessionaire shall have the right to a hearing, according to the procedure established by the Secretary of the Treasury by regulation, circular letter or administrative determination, after which the person appointed for such purpose shall inform his or her conclusions and recommendations to the Secretary.
- (d) Penalties. – In case of revocation, all net income previously informed as exempt income under this Act shall be subject to the taxes imposed under the provisions of the Code. Also, it shall be understood that the concessionaire filed a false or fraudulent tax return with the intention of avoiding the payment of taxes and, in consequence, shall be subject to the criminal provisions of the Code. The taxes owed in such case, as well as any other taxes up to then exempt and not paid, shall be considered due and shall be payable with interest from the date in which such taxes were to be due if not for the decree, and shall be imposed and billed by the Secretary of the Treasury pursuant to the provisions of the Code.

Article 4. – Tax Exemption Applicable to the Interests and Dividends Income Earned by a Resident Individual Investor. –

The income of all earnings accrued by a Resident Individual Investor after becoming resident of Puerto Rico before January 2036, consisting of interests and dividends including but not limited to interests and dividends from of a investments registered company as described in Section 1112.01 of the Code will be fully exempt of Puerto Rico income tax payments, including the alternate basic tax provided in the Code. In addition, the income obtained by a Resident Individual Investor after becoming resident of Puerto Rico before January 1st, 2036, that consists of interests, finance charges, dividends, or participation in society benefits received from duly authorized international bank entities in accordance with the Banking Center Act, will be fully exempt of income tax payments from Puerto Rico, including the alternate basic tax provided in the Code.

Article 5. – Resident Individual Investor Special Tax on Long Term Net Capital Gains. –

- (a) Appreciation before becoming a resident of Puerto Rico. –

The entire long term net capital gains generated by a Resident Individual Investor, related to any appreciation him (her) might have on goods possessed prior to becoming a resident of Puerto Rico, which is recognized after ten (10) years of becoming resident of Puerto Rico, and before January 1, 2036, will be subject to a tax payment of a five (5) percent, in lieu of

all other taxes imposed by the Code. If such appreciation is recognized at any other time, the long term net capital gains in relation to those goods will be subject to the payment of income tax in accordance to the tax treatment provided in the Code. The amount of the long term net capital gains will be limited to a portion of the earning that relates to the appraisal of the goods while the Resident Individual Investor was living outside Puerto Rico.

(b) Appreciation after becoming a resident of Puerto Rico. –

The entire net capital gains generated by a Resident Individual Investor, related to any appreciation him (her) might have on goods possessed after becoming a resident of Puerto Rico, which is recognized before January 1, 2036, will be completely exempt of Puerto Rico income tax payments, including the alternate basic tax provided in the Code. If such appreciation is recognized after December 31, 2035, the net capital gains, in regards to these goods, will be subject to income tax payments in accordance to the tax treatment provided in the Code. The amount of this net capital gains refers to the earnings portion related to the appreciation obtained, not only for the goods the Resident Individual Investor possessed when becoming a Puerto Rico resident, but also for the goods he (she) acquires after becoming a Puerto Rico resident.

Article 6. – Reports Required from Resident Individual Investors. –

Every Resident Individual Investor who holds a granted decree under this Act shall file annually an authenticated report to the Exemption Office, with a copy to the Secretary of the Treasury, no later than April 15 of each year. The Director of the Exemption Office may grant an extension of thirty (30) days in cases where the same is requested in writing on or before April 15, provided there is just cause for the extension and said cause is set forth in the request. Said report shall include information that reflects compliance with the conditions set forth in the decree for the tax year immediately preceding the date of filing, as well as any other information that may be required by regulation, including the payment of annual fees. The fees shall be paid in the method set forth by the Secretary. The information provided in this annual report will be used for statistical purposes and economic studies. Accordingly, at least every two (2) years the Exemption Office shall perform an audit to verify the compliance with the terms and conditions of the decree granted under this Act.

Article 7. – Trusts. –

(a) Grantor Trusts.-

Any Resident Individual Investor to whom a tax exemption decree is granted under this Act, may establish trusts under the laws of Puerto Rico, and by doing so could choose to treat those trusts as grantor trusts for income tax purposes in Puerto Rico. This election shall be made in accordance with the rules established by the Secretary of the Treasury, regardless of whether said trust is not otherwise considered a grantor trust under the applicable income tax rules under the Code.

In such case, the nature of any item of income, capital gain, financial loss, deduction or credit included on the income attributable to the grantor under the Code shall be determined as if such item was made directly from the source from which it was made by the trust, or accrued in the same manner it was accrued by the trust.

Once the election under this subsection is made it can only be revoked by the procedure established for that purpose by the Secretary of the Treasury.

(b) Revocable Trusts.-

Any Resident Individual Investor to whom a tax exemption decree is granted under this Act, may establish a revocable or irrevocable trust under the laws of Puerto Rico, according to the provisions established by the settlor in the deed of incorporation; provided that lacking a provision to this respect, the trust shall be presumed irrevocable. Revocable trusts established under this provision may only be revoked by the settlors, or by that settlor who retains such faculty in the deed of incorporation.

(c) Trusts Granted Outside of Puerto Rico.-

The provisions of any Trust validly executed outside of Puerto Rico by a Resident Individual Investor to whom a tax exemption decree has been granted under this Act may not be challenged by any person based on any Puerto Rico Law or Regulation that is contrary or inconsistent with the provisions of the Trust. This Article will continue to be valid to those Trusts even after the termination of the exemptions granted under this Act; provided that the decree has not been revoked pursuant to subsection (b) of Article 3.

(d) Any Resident Individual Investor to whom a tax exemption decree is granted under this Act may freely transfer or donate in life, and at its sole discretion, all or part of its assets to trusts described in this Article, irrespective of whether the assets are real or personal, tangible or intangible, of the location of such property, and any legal or regulatory provision in Puerto Rico that is contrary or inconsistent with such transfer, donation, testamentary disposition between the flow rate and/or the terms and conditions of such trusts, including but not limited to the provisions of the Puerto Rico Civil Code. This Article shall continue to be valid upon such individuals after the termination of exemptions granted under this Act; provided that the decree has not been revoked pursuant to subsection (b) of Article 3.

Article 8. – Fees. –

In addition to the fees for the procedure established in Article 3 of this Act, every grantee will pay to the Secretary a fee, through a voucher purchase at a tax collector's office of the Department of Treasury, equivalent to the amount of five thousand dollars (\$5,000.00). The Secretary of Treasury will create a Special Fund, called the “Special Fund under the Act to Promote the Transfer of Individual Investors to Puerto Rico”, and shall deposit all funds generated from the fees paid. The Secretary will use those funds to pay any expenses incurred in the promotion, management and implementation of this Act. The Secretary may also use those funds to encourage individual investors to transfer to Puerto Rico. The Secretary shall require the grantee the 100% of such charges at the time of issuance of the decree.

Article 10. – Regulation. –

The Secretary of the Treasury will establish by: regulation, circular letter or administrative determination, the necessary guidelines for the interpretation and implementation of the present Act provisions. The regulations amended or adopted pursuant to this Act shall not be subject to the applicable provisions of the Uniform Administrative Procedure Act, as amended.

Article 11. – Severability. –

If any article, section, portion, paragraph, subsection, clause, phrase or part of this Act is declared unconstitutional by a court of competent jurisdiction, the ruling to that effect will not affect, impair or invalidate the remainder of this Act, leaving its limited effects to the article, section, portion, paragraph, subsection, clause, phrase or part of this Act as may be so declared unconstitutional.

Article 12. – Term. –

This Act will become effective immediately upon its approval.

CAVEAT: This document was translated and compiled by staff of the Department of Economic Development and Commerce of Puerto Rico. While we have made every effort in preparing it, this is not an official translation and compilation and may not be error-free. To facilitate your inquiry, all the amendments made to the Act have been incorporated to this document. For accuracy and precision, refer to the original texts and official translations of the Act, which can be found at: <http://www.oslpr.org/new/leyesPuertoRico.aspx>.