

ACT 60 Chapters 2 & 3 Explainer Guide

Chapter 2: Individual Resident Investor Chapter 3: Export Services & Commerce

Previously known as Acts 20 & 22

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 license taxes, and taxes on dividend distributions for income generated in the course of the tax-exempt operations. It creates an opportunity for entrepreneurs to engage in commercial activities in Puerto Rico providing services to customers located outside of Puerto Rico with a much more tax-efficient operating structure in place.

Eligible Services

Chapter 3 applies to businesses that have a corporate office or base of operations in Puerto Rico and are engaged in eligible service activities that qualify as an 'Export Service' business or an Export Commerce business pursuant to the requirements of the Puerto Rico Incentives Code to qualify as eligible export services income (ESI).

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.



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- 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, & Packaging of Products for Export
- Commercial & Mercantile Distribution of Products Manufactured in PR
- Commissions on the Sale of Products to Customers outside PR
- Purchase of Products for Resale to Customers outside PR
- Sale of Intangible Products to Customers outside PR
- 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.



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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 for the remaining 10 years of the tax exemption period. 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 million 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.



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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, which is a contract between the Government of Puerto Rico and the tax-exempt business applying for the tax exemption decree. 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. So any new changes to legislation **will not affect** tax benefits that have already been granted for any tax incentive decree that was issued and approved prior to the enactment of any new legislation.

Resident Individual Investors

Chapter 2 of Act 60 for Resident 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 (“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 when Puerto Rico’s original Act 22 for Resident Investors was first enacted for individuals seeking tax exemption on capital gains, dividend, and interest income.

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.



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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 a 100% tax exemption on any capital gains from income sources within Puerto Rico and a 100% tax exemption 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 qualifies 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.



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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 Puerto Rico 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 approved tax decree, the Resident Individual Investor must purchase real property (Real Estate) in Puerto Rico to be used as the Resident Investor's primary residence in Puerto Rico. The property must be owned by the Resident Individual Investor as the sole owner or together with the approved decree holder's spouse; this property can be owned through an LLC that's wholly owned by the Resident Investor. For annual compliance, each decree holder must file an 'Exempt Annual Report' with the Government of Puerto Rico that has an annual filing fee of \$5,005 upon submitting the Annual Report. The requirement to file annual reports begins during the second year of the effectiveness of the tax exemption decree.

To obtain the tax benefits as a Resident Individual Investor, 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 if new legislation gets passed after the approval date of the Investor's Act 60 tax exemption decree.



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