

## A PUBLICATION FROM THE TAX DIVISION

# ACT NO. 22 INDIVIDUAL INVESTORS ACT



Please contact your account service partner should you have any questions or comments or if you need additional information regarding these matters.

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Act No. 22 of 2012, as amended, provides tax exemptions on qualified passive income (interest, dividends, capital gains) to eligible individuals residing in Puerto Rico.

### Eligibility

The benefits of Act No. 22, are available to individuals who become *bona-fide* Puerto Rico residents on or before December 31, 2035, provided that such individuals were **not** *bona-fide* residents of Puerto Rico at any time during the 6-year period preceding the effective date of the Act (i.e., from January 17, 2006 through January 17, 2012)<sup>1</sup>.

### Bona-fide Residents of Puerto Rico

An individual is considered to be a *bona-fide* resident of Puerto Rico if he or she:

- Was present for at least 183 days during the taxable year in Puerto Rico<sup>2</sup>;
- Does not have a tax home outside of Puerto Rico during the taxable year; and
- Does not have a closer connection to the United States or a foreign country other than to Puerto Rico during the taxable year.

<sup>1</sup>As amended by Act No. 241 of December 22, 2014.

<sup>2</sup>An individual is considered to meet the presence test if one of these is met: the individual was present in Puerto Rico for at least 183 days during the taxable year; the individual was present in Puerto Rico for at least 549 days during the 3-year period consisting of the current taxable year and two immediately preceding years, provided the he (she) was present for at least 60 days during each of said years; the individual was present in the United States for no more than 90 days during the taxable year; the individual had earned income of less than \$3,000 and was present for more days in Puerto Rico than in the United States during the taxable year; or the individual had no significant connection to the United States during the taxable year.

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## Tax Exemptions

The Act provides the following benefits to new Puerto Rico *bona-fide* residents on qualified investments:

- 100% tax exemption from Puerto Rico income taxes on all dividends;
- 100% tax exemption from Puerto Rico income taxes on all interest; and
- 100% tax exemption from Puerto Rico income taxes on all long-term capital gains for investment appreciation accrued after the individual becomes a *bona-fide* resident of Puerto Rico (recognized prior to January 1, 2036).

## Built-in Capital Gains

Capital gains attributable to the increase in value prior to the individual becoming a *bona-fide* resident of Puerto Rico will be subject to preferential Puerto Rico income tax rates, as follows:

- If such gain is realized and recognized within 10 years after the date residence is established in Puerto Rico, it will be taxed at the income tax rate for capital gains applicable for the tax year in which the gain is realized.<sup>3</sup>
- If such gain is realized and recognized after said 10-year period, it will be taxed at a 5% income tax rate.

Pursuant to U.S. income tax regulations, built-in capital gains accrued before the individual became a bone-fide resident of Puerto Rico, and which are realized within 10 years of the individual becoming a *bona-fide* Puerto Rico resident, are subject to US federal income tax.<sup>4</sup> However, Puerto Rico income taxes may be creditable against such federal income tax.

<sup>3</sup> For calendar year 2016, the capital tax rate is 15%.

<sup>4</sup> In general, the portion of the gain that is treated as built-in gain is determined based upon the relative holding period of the asset.

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## Tax Exemption Decree

The individual investor must submit an application<sup>5</sup> with the Office of Industrial Tax Exemption of Puerto Rico to obtain a tax exemption decree. As a requisite for the granting of the benefits, the applicant must provide evidence of a personal or commercial bank account in a financial institution or credit union with presence in Puerto Rico and the acquisition of residential property<sup>6</sup>.

Once approved, the benefits granted will be secured during the term of the decree, irrespective of any changes in the applicable Puerto Rico tax laws. The Resident Investor must file an Annual Report<sup>7</sup> on or before April 15<sup>th</sup> of every year including information reflecting compliance with the provisions of the grant.

The term of the decree may not go beyond **December 31, 2035**. After this date, the individual will be taxed as any other Puerto Rico resident.

<sup>5</sup> The applicant will be charged a fee of \$750 payable by certified check or money order. An additional one-time fee of \$5,000 is payable upon approval and issuance of the grant.

<sup>6</sup> Evidence must be submitted through documentation of the execution of a Deed of Purchase Sale within two years from the date of notification of Puerto Rico residency.

<sup>7</sup> 30-day extension available; \$300 processing fee.

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