

## 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 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> See attached, for information purposes. 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.

Please contact us at (787) 725-1600 or at [fsosa@vgmmcpa.com](mailto:fsosa@vgmmcpa.com) if you would like to subscribe or unsubscribe from these publications.

Valdés, García, Marín & Martínez, LLP is a Puerto Rico based firm of Certified Public Accountants and Consultants organized as a partnership for the practice of public accounting since 1975. Our 40 years of experience in public accounting support our commitment to excellence and professionalism. This publication has been prepared for informative purposes. It is not intended to provide and does not constitute tax advice.



**Tax Incentives Application**  
**Act to Promote the Transfer of Investors to Puerto Rico (Act 22 of January 17, 2012, as amended)**

Case No. \_\_\_\_\_

**Instructions:** Please respond to all of the questions in the space provided. If you are not a resident of Puerto Rico, you may still apply if you intend to move to Puerto Rico within one (1) year. In such case, the tax incentives will be subject to you becoming a resident of Puerto Rico within one (1) year after the grant has been approved.

**A. Personal Information** – Please fill-out the information requested.

Last Name: \_\_\_\_\_  
First Name: \_\_\_\_\_  
Middle Initial: \_\_\_\_\_

Social Security Number: \_\_\_\_\_  
Applicant Email Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

Date of Birth: \_\_\_\_\_  
Place of Birth: \_\_\_\_\_  
Current Nationality: \_\_\_\_\_

Home Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Married Status:           Single \_\_\_\_\_           Married: \_\_\_\_\_

Name of Spouse: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_  
Spouse Email Address: \_\_\_\_\_

Is the spouse requesting exemption under Act 22?  Yes  No

\* This question is intended solely for information purposes. This application is only valid for the applicant (one individual). The spouse will need to file a separate application under Act 22 in order to benefit from this Act. A separate tax decree is granted for each individual.

**B. Applicant's Representative**

Last Name: \_\_\_\_\_  
 First Name: \_\_\_\_\_  
 Middle Initial: \_\_\_\_\_

Home Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
 (if different) \_\_\_\_\_  
 \_\_\_\_\_

Telephone Number: \_\_\_\_\_  
 Fax Number: \_\_\_\_\_  
 Web Page: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

**Residency History** – Confirm if you have been a Puerto Rico resident during the last fifteen (15) years previous to the effective date of Act. 22, which is January 17, 2012:  Yes  No

Please list the State(s) of the United States or Country (ies) in which you were a resident for tax purposes of the last fifteen (15) fiscal years. If you were a resident for tax purposes in more than one jurisdiction for one particular year, please list all relevant places of residence for such year.

Taxable Years	U.S. States or Country (include name)
1997	
1998	
1999	
2000	
2001	
2002	
2003	
2004	
2005	
2006	
2007	
2008	
2009	
2010	
2011	

**C. Puerto Rico Residency**

Current Resident of PR: Yes \_\_\_\_\_ No: \_\_\_\_\_

Date of Residency: \_\_\_\_\_

If you are not a resident of Puerto Rico, please provide your current place of residency: \_\_\_\_\_

In your own handwriting, please transcribe the following statement in the space provided. (The individual must transcribe the statement in his/her own handwriting)

*Under penalty of fraud and tax evasion, I, [insert full name], hereby swear that I was not a Resident of Puerto Rico (as such term is defined in Section 1010.01 (a) (30) of Act 1 of 2011 as amended, known as the Internal Revenue Code for a New Puerto Rico\*) at any time from January 16, 1997 through January 16, 2012.*

\*Note: The Internal Revenue Code for a New Puerto Rico can be found here:  
[http://www.hacienda.gobierno.pr/pdf/codigo\\_rentas\\_internas/Ley1\\_Codigo\\_Rentas\\_Internas.pdf](http://www.hacienda.gobierno.pr/pdf/codigo_rentas_internas/Ley1_Codigo_Rentas_Internas.pdf).

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**D. Background and Professional Information**

(1) What is your current profession? \_\_\_\_\_

(2) Please attach your curriculum vitae to the Application.

**E. Financial Information, Investment, Real Estate & Business**

(1) What is your approximate net worth?

- a. Less than 10 million\_\_\_\_\_
- b. 10 million – 50 million\_\_\_\_\_
- c. 50 million – 100 million\_\_\_\_\_
- d. More than 100 million\_\_\_\_\_

(2) Do you plan to transfer capital to financial institutions in Puerto Rico?

- a. Yes\_\_\_\_\_
- b. No\_\_\_\_\_

(3) If you answered Yes, please provide an estimate of the percentage of capital you will be transferring:

- a. 0%-25%\_\_\_\_\_
- b. 25% - 50%\_\_\_\_\_
- c. 50% -75%\_\_\_\_\_
- d. 75% - 100% \_\_\_\_\_
- e. Other (please specify)\_\_\_\_\_

(For example: I plan to transfer 25% now and 100% within the next 5 years)

(4) Have you bought or are you in the process of buying real estate in Puerto Rico?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_
- c. If Yes, please indicate:
  - i. Location: \_\_\_\_\_
  - ii. Estimated value: \_\_\_\_\_

(5) Would you be buying real estate in Puerto Rico during the next 12 months?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_
- c. If Yes, please indicate:
  - i. Location: \_\_\_\_\_
  - ii. Estimated value: \_\_\_\_\_

(6) Have you bought or are you in the process of leasing property in Puerto Rico?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_
- c. If Yes, please indicate:
  - i. Location: \_\_\_\_\_
  - ii. Estimated property value: \_\_\_\_\_
  - iii. Estimated lease payment: \_\_\_\_\_

(7) Would you be leasing real estate in Puerto Rico during the next 12 months?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_
- c. If Yes, please indicate:
  - i. Location: \_\_\_\_\_
  - ii. Estimated property value: \_\_\_\_\_
  - iii. Estimated lease payment: \_\_\_\_\_

(8) At this moment, do you have a business established in Puerto Rico?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_ - Please continue to Question (9)
- c. If Yes, please indicate:
  - i. Name: \_\_\_\_\_
  - ii. Industry: \_\_\_\_\_
  - iii. Full-time employees: \_\_\_\_\_
  - iv. Estimated yearly payroll for all employees: \_\_\_\_\_
  - v. Location: \_\_\_\_\_
  - vi. Does this business have a tax exemption decree?
    - 1. Yes \_\_\_\_\_
    - 2. No \_\_\_\_\_
    - 3. Is Yes, please indicate: \_\_\_\_\_
  - vii. Did you establish this business as a result of your relocation?
    - 1. Yes \_\_\_\_\_
    - 2. No \_\_\_\_\_

(9) If you answered No to Question 8, would you consider establishing a new business in Puerto Rico?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_

- c. If Yes, please indicate:
  - i. Full-time employees: \_\_\_\_\_
  - ii. Industry: \_\_\_\_\_
  - iii. How much capital are you planning to invest? \_\_\_\_\_

(10) Will you be making other investments in Puerto Rico? Please explain in detail.

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(11) Do you have any children and what are their ages? \_\_\_\_\_

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(12) Tell us about yourself and any particular interests (for example: interested in music, charities, sports, hobbies, etc.)

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\*All questions in Section E are for informational purposes only. Questions 11 & 12 are aimed at your personal interests in order to create a profile and extend invitations to you and your family for cultural and local events that might be of interest to you.

**F. Additional Information**

(1) Have you ever committed a felony or misdemeanor for which you were never arrested or convicted?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_

(2) Have you ever been arrested, detained, and/or sentenced for any offense or for any fraudulent act or cited to answer any criminal offense or violation for any reason, regardless of the intent of the event?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_

(3) Are you permanently or temporarily prohibited to perform any management or practice related to any business by a competent court or any Government entity?

- a. Yes \_\_\_\_\_
- b. No \_\_\_\_\_

If you answered Yes to any of the questions in subsection F, please join the particulars on a separate sheet and immediately notify the Office of Industrial Tax Exemption, in writing, of the facts relating to such (s) event (s).



(4) Please tell us how you learned about the tax incentives under the Act to Promote the Transfer of Investors to Puerto Rico:

- i. Attorney/tax advisor \_\_\_\_\_
- ii. Business contact \_\_\_\_\_
- iii. Newspaper or magazine \_\_\_\_\_
- iv. Business Journal \_\_\_\_\_
- v. Conference/Expo \_\_\_\_\_
- vi. Website, please provide name of organization \_\_\_\_\_
- vii. Other, please explain \_\_\_\_\_

**G. Signature of Application, Declaration and Acknowledgment** – Please provide your signature below. By signing below, you declare that you have read the foregoing Application and that the statements contained herein are true to the best of your personal knowledge and belief, and you agree and acknowledge that submission of false information in this Application will be grounds for denying the granting of a decree and you may be civil and criminally liable in accordance with applicable statutes.

By signing below, you acknowledge that you understand that a successful criminal background check is a condition to obtain a grant under Act 22-2012 from the Secretary of the Economic Development and Commerce of Puerto Rico and agree to waive and relinquish all claims you may have against the Department of Economic Development and any other agency or instrumentality of the Puerto Rico Government and their officers, agents, and employees, as a result of participating in the criminal background check.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

***How to Submit your Application?*** Completed applications can be submitted by sending a PDF copy by email to [Act22@oeci.pr.gov](mailto:Act22@oeci.pr.gov); or be submitted by sending the original copy to the Office of Office of Industrial Tax Exemption, P.O. Box 192519, San Juan, Puerto Rico, 00919-2519.

SWORN STATEMENT

I, \_\_\_\_\_, of legal age, \_\_\_\_\_, and resident of \_\_\_\_\_ under the most solemn and binding oath, under penalty of perjury, hereby declare that:

1. Such are my personal circumstances;
2. I have read the foregoing Application and attachments and that the statements contained herein are true to the best of my personal knowledge and belief.

Signature

Date

AFFIDAVIT NUMBER: \_\_\_\_\_

Sworn and subscribed before me by \_\_\_\_\_, of the personal circumstances stated above to me personally known.

On the \_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_.

Notary Public

Notes:

If this document is notarized outside of Puerto Rico, include evidence regarding the authority of the notary to administer oaths (e.g., county clerk's certificate or similar document). Each individual must submit a separate sworn statement.