

February 25, 2020

## Tax Update

### *Tax Incentives for Tourism Activities and the Visitor's Economy under the Incentives Code*

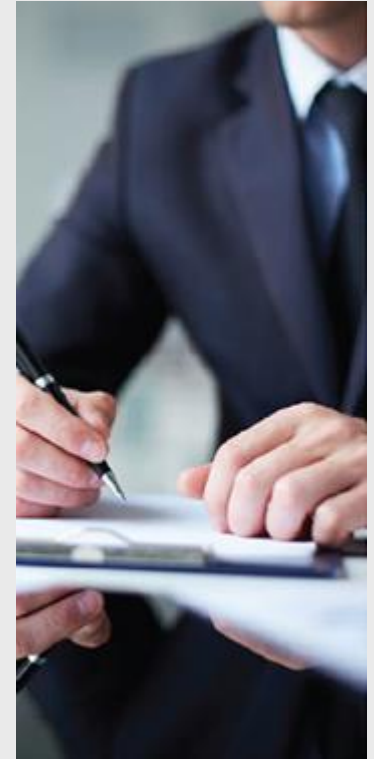
Tax exemption concessions previously granted under Act 74-2010, known as the Puerto Rico Tourism Development Act of 2010 ("Act 74"), and Act 118-2010, known as the Municipal Tourism and Economic Development Incentives Act ("Act 118"), are now issued under Chapter 5 of Subtitle B of the Puerto Rico Incentives Code ("Incentives Code").

Below are some highlights of the relevant provisions of the Incentives Code dealing with tourism incentives.

#### I. Eligible Tourism Activities

Pursuant to Section 2051.01(a) of the Incentives Code, any new or existing business dedicated to a tourism activity (a) not currently covered by a grant or concession of tax exemption under previous tourism incentives laws, or (b) a business covered under such laws, but that surrenders its current grant or concession, shall be considered eligible for a new grant of tax exemption ("Tourism Grant") pursuant to the provisions of the Incentives Code. Eligible "Tourism Activities" shall include:

- i) the ownership and/or administration of hotels, condohotels, "paradores", "agro-lodges", inns that belong to the "Posadas de Puerto Rico" program, those certified as "Bed and Breakfast (B&B)" and any other that from time to time form part of the programs promoted by the Tourism Company; guest houses; timeshare plans and vacation clubs rights, provided, that the ownership of a timeshare right and/or vacation right or both, by itself, shall not be considered a tourist activity, unless the proprietor is a creating developer or successor developer; or
- ii) the ownership and/or administration of thematic parks, golf courses operated by or associated with a hotel, or any other similar act of analogous nature, or golf courses within a destination or resort, tourist marinas, facilities in port areas for tourist purposes, agro-tourism, nautical tourism (provided, however, that any marina at Vieques and Culebra Island Municipalities shall be considered a tourist marina for purposes of this act), medical tourism and other facilities or activities that, because of some special attraction derived from their utility as a source of active, passive entertainment or amusement, are a stimulus to internal or external tourism, and any other sector of tourism, provided that the Secretary of the Department of Economic Development and Commerce ("DDEC" for



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its Spanish acronym) determines that such operation is necessary and convenient for the development of tourism in Puerto Rico; or

- iii) the operation of a business engaged in rentals to an exempt business holding a Tourism Grant, of property devoted to an activity covered by paragraphs (i) and (ii) above, except that it shall not apply to contracts designated as financing leases. In the case of the rental of one or more boats to an exempt business covered by the provisions herein, the motor or sailboat shall be rented to said exempt business during a total period of not less than 6 months during each calendar year.
- iv) the development and administration of sustainable tourism and ecotourism businesses, as provided in the Puerto Rico Sustainable Tourism Public Policy Act of 2006, and the development and administration of natural resources useful as a source of active, passive entertainment, or amusement, including, but not limited to caves, forests and natural reserves, lakes and canyons, provided that the Secretary of the DDEC (“Secretary”) determines that said development and management are necessary and convenient for the development of tourism in Puerto Rico.
- v) *eSports* and Fantasy Leagues activities.

## **II. Tax Exemption for Eligible Businesses**

The income derived from the Tourism Activities of an exempt businesses holding a Tourism Grant, shall be subject to a 4% fixed income tax rate and the shareholders, partners, or members of the exempt business shall enjoy a 100% income tax exemption on distributions from earnings and profits of said business.

Royalties, fees, or payments for the rights of use of intangible property in Puerto Rico, related to the Tourism Activities, to any foreign person not engaged in trade or business in Puerto Rico, from sources exclusively within Puerto Rico, shall be subject to a 12% income tax withholding.

Exempt Tourism Grant holders shall enjoy:

1. 50% exemption on municipal license taxes,
2. 75% exemption on property taxes,
3. 75% exemption on municipal construction excise taxes.

Additionally, an exempt business holding a Tourism Grant shall enjoy:

1. 100% exemption on interests, charges, or fees, derived from bonds, promissory notes or other obligations of the exempt business for its development, construction, rehabilitation, or betterment, and on the payment of existing debts of the exempt business incurred in relation to the above.
2. 100% exemption on fuels used by the exempt business.
3. 100% exemption of use and consumption taxes on articles to be used by the exempt business for its Tourism Activities.

Tourism Grant holders also receive 90% exemption on the payment of fees and rights on public deeds and private instruments. Lessors of personal property leased to exempt businesses holding a Tourism Grant are also exempted from the license requirements imposed by the Personal Property Leasing Institutions Act of 1973.

### **III. Tourism Tax Credits**

Exempt businesses holding a Tourism Grant may claim a 30% tax credit on tourism eligible investments (“Tourism Investment Tax Credit”) made after the effectiveness of the Incentives Code. The Tourism Investment Tax Credit can be used up to 10% in the year in which complete financing for the construction of the tourism project is obtained. The remaining balance can be claimed in 3 further installments; the first installment to be taken in the year in which the Exempt Business receives its first paying guest and the remaining 2 installments in equal amounts for 2 subsequent years.

Alternatively, the exempt business may claim a 40% Tourism Investment Tax Credit limited to be claimed in 3 equal instalments starting on the second year after the commencement of operations and the remaining balance divided in equal amounts for the 2 subsequent years.

### **IV. Tax Exemption Concessions Cut Off Date and Tourism Grant Applications**

Since January 1, 2020, tax exemption applications for businesses engaged in eligible Tourism Activities can only be made under the provisions of the Incentives Code. Tourism Grant applications are now handled by the new Office of Incentives for Business in Puerto Rico ascribed to the DDEC.

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