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## Tax Update

### *Tax Incentives for Eligible Green Energy Businesses under the Incentives Code*

Tax incentives previously afforded under Act 83-2010, known as the Puerto Rico Green Energy Incentives Act (“Act 83”), are now issued under Chapter 7 of Subtitle B of the Puerto Rico Incentives Code (“Incentives Code”).

Below are highlights of the relevant provisions of the Incentives Code dealing with green energy related industries.

#### I. Eligible Green Energy Activities

Generally, a business established, or to be established, in Puerto Rico to undertake certain green energy activities, is eligible for a grant of green energy tax exemption. Under the Incentives Code, the term “Green Energy” includes both “Sustainable Renewable Energy” and “Alternative Renewable Energy”, which are defined as follows:

1. Alternative Renewable Energy (“ARE”) means energy derived from:
  - a) landfill gas combustion
  - b) anaerobic digestion
  - c) fuel cells
  - d) waste heat
  
2. Sustainable Renewable Energy (“SRE”) includes energy derived from the following sources:
  - a) solar
  - b) wind
  - c) geothermal
  - d) renewable biomass combustion
  - e) renewable biomass gas combustion
  - f) biofuel combustion derived from renewable biomass, or microalgae
  - g) qualified hydropower
  - h) marine and hydrokinetic renewable energy; and
  - i) ocean/thermal

Eligible Green Energy activities include:

1. Any business which is dedicated to the production or sale of Green Energy on a commercial scale for consumption in Puerto Rico, either as owner or operator. The term “production or sale of Green Energy on a commercial scale” includes the production or sale of Green Energy to one or more persons that carry out a trade or business in Puerto Rico;



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2. The operations of the producer of ARE and of the producer of SRE, for consumption in Puerto Rico, provided it is its principal business;
3. The assembly of Green Energy generation equipment, including its installation on the facilities of the consumer of the Green Energy to be generated by such equipment;
4. Property dedicated to the Production of Green Energy;

Additionally, for the first 5 years from the effective date of the Incentives Code (i.e. July 1, 2019), any established or soon to be established, business in Puerto Rico, may request a Green Energy Grant to carry out the following activities:

1. Production of Highly Efficient Energy, as defined in the Incentives Code and the Puerto Rico Energy Bureau ("PREB"), by a business dedicated to the production, sale or operation on a commercial scale for consumption in Puerto Rico, either as owner or direct operator, or as owner of a system that is operated by a third party, or operator of a system that is the property of a third party, in which case both will be considered eligible businesses for a Green Energy Grant;
2. Assembly and installation of equipment for Highly Efficient Energy generation systems;
3. Property dedicated to the production of Highly Efficient Energy;
4. Activities pursuant to a contract under Act 120-2018, as amended, known as the "Electrical System of Puerto Rico Transformation Act", will also be eligible for a Green Energy Grant and/or the tax treatment provided under subsection (a) of Article 12 of Act 29- 2009, as amended, known as the "Public Private Alliance Act".

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

Exempted businesses holding a Green Energy Grant shall enjoy the following benefits for a period of 15 years:

1. 4% fixed income tax rate on income derived from the production and sale of Green Energy.
2. 4% income tax rate on sales of Renewable Energy Certificates.
3. 12% income tax withholding on payments by the exempted businesses to foreign persons not engaged in trade or business in Puerto Rico, for the use, or right to use intangible property in Puerto Rico related to the operation declared exempt under the Incentives Code, and provided that such payments are considered to be totally from sources within Puerto Rico.
4. 4% tax rate on the gain derived from the sale or exchange of shares or substantially all assets of the exempt business during the period of exemption.
5. 100% income tax exemption on gains derived in the total liquidation of the exempt business, subject to various requirements.

6. 75% property tax exemption on real and personal property used in the exempt activities.
7. 50% tax exemption on municipal license taxes, excise taxes, and any other municipal taxes imposed by ordinance.
8. 75% construction excise tax exemption on the construction work to be used by the exempt business.
9. 100% exemption on excise taxes on raw materials used for: production of Green Energy in Puerto Rico; the machinery, equipment, and accessories used exclusively and permanently in the conduction of raw materials inside the circuit of the exempt business; the machinery and equipment used for production of green energy or required by federal or state law or regulation; machinery and equipment required for compliance with environmental laws; chemicals materials needed for the treatment of used waters; energy efficient equipment duly certified by the Secretary of the Department of Economic Development and Commerce (“DDEC”); and electrical sub-stations.
10. Special (accelerated) deduction for the costs of investments in buildings, structures, machinery, and equipment in the year in which incurred.

Eligible businesses applying for a Green Energy Grant must hold and submit to the DDEC, along with their application, a certificate of compliance issued by PREB. However, eligible businesses totally disconnected from the Puerto Rico Electric Power Authority shall not be required to sell their energy in order to obtain or maintain a Green Energy Grant.

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