

July 11, 2022

Tax Update

Act 52-2022 Introduces Changes to the Internal Revenue Code and the Municipal Code

On June 30, 2022, the Governor of Puerto Rico signed Act No. 52-2022 (“Act 52”), establishing a new alternate statutory framework for companies that have been subject to the Act No.154-2010 regime. Act 52 also amended and incorporated certain new provisions to the Puerto Rico Internal Revenue Code of 2011, as amended (“Code”) and to the Puerto Rico Municipal Code (“Municipal Code”).

An overview of changes introduced by Act 52 to the Code and the Municipal Code is included below.

a. Disregarded Entity and Flow-Through Entity Treatment

Act 52 added a new Subtitle H to the Code incorporating provisions for flow-through and disregarded entities. Several provisions of the Code have been amended to allow for disregarded entity treatment for income tax purposes. Additional provisions were added to the Code establishing the tax consequences of changes in an entity’s income tax classification.

Disregarded entity income tax treatment is available for taxable years beginning after December 31, 2021. Disregarded entities are not required to file income tax returns. Instead, their sole owner will be required to report the disregarded entity’s income within its income tax return. Such return must include a detail of the volume of business of the disregarded entity for municipal license tax purposes.

b. Remote Employees

Act 52 also amends the definition of the term “trade or business” in Section 1010.01(a)(40) of the Code to include, for taxable years beginning after December 31, 2021, the concept of “distance worker” (i.e., non-resident employees working remotely from Puerto Rico for a nonresident person), for purposes of determining whether such individual’s employer is engaged in trade or business in Puerto Rico. Further amendments include provisions that relief such employers from withholding Puerto Rico income tax on wages paid to this type of employee and impose on such employee the obligation to pay estimated income taxes.

c. Optional Tax for Self-employed Individuals and the Alternative Minimum Tax

The optional tax provisions for self-employed individuals under Section 2101.06 of the Code are reinstated for taxable years beginning after December 31, 2021. The



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alternative minimum tax provisions of Section 1022.03 of the Code have also been amended to provide that corporations with a volume of business of \$10,000,000 or more shall be subject to a tentative minimum tax rate of 23% in lieu of the tentative minimum tax of 18.5%. Prior to this amendment, the 23% tentative minimum tax applied to corporations with volumes of business above \$3,000,000.

d. Sale of Partnership Interests

Section 1035.08 provisions regarding the sale of interests in a partnership were reincorporated to the Code as they had been erroneously removed therefrom. It had been originally included within the Code through Act 257-2018 effective with respect to the sale of partnership interests taking place after December 31, 2018. These provisions have also been amended to establish different rules for sales of partnership interests occurring prior to July 1, 2022, and for sales of partnership interest occurring after June 30, 2022.

e. Foreign Financial Account Reporting

A new Section 1061.25 has been added to the Code requiring resident individuals of Puerto Rico to disclose information on financial accounts maintained outside of Puerto Rico or the United States with a balance exceeding \$10,000 in which they hold a financial interest. Said reporting shall be included with the filing of the Puerto Rico income tax return and taxpayers who fail to file the applicable declaration shall be subject to the penalties imposed under Section 6030.11 of the Code.

This new reporting requirement essentially mirrors the Report of Foreign Bank and Financial Account (FBAR) currently enforced by the Financial Crimes Enforcement Network (FinCEN). New Section 1061.25 provides that the Secretary of the Puerto Rico Department of the Treasury will design the form to be used or, alternatively, allow through regulations or an administrative pronouncement of general applicability for the local reporting requirement to be met by filing the FBAR filed with FinCEN.

f. Sales and Use Tax Provisions

Sections 4010.01 and 4020.03 of the Code have been amended to codify the provisions included within the sales and use tax (“SUT”) regulations for digital goods. Section 4042.03 of the Code was also amended to eliminate the requirement of biweekly sales tax deposits (i.e., sales tax prepayments) after the period of June 2022.

g. Amendments to Municipal Code

Act 52 further amended certain provisions of the Puerto Rico Municipal Code, Act 107-2020, including the implementation of rules regarding the filing of supplementary information together with personal property tax returns to be filed with the Municipal Revenue Collection Center.

The provisions relating to the filing of volume of business declarations for purposes of municipal license tax have also been amended to detail the documentation required to be attached therein, particularly for filings by an entity that is disregarded for income tax purposes.

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