



Tax



Business



People

# New rules for the manufacturing and green energy industries

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To continue our series of articles and keep you informed of the most important changes to the incentives in Puerto Rico, we turn our attention to:

- **Manufacturing operations requesting a Grant under the Act**, previously included in Act No. 73 of May 28, 2008; and
- **Entities engaged in the production of green energy**, previously contained within Act No. 83 of July 19, 2010.

As discussed on our **first issue**, Act 60-2019 (known as the Incentives Code, referred to as the “Act”) codifies all the incentives granted throughout decades with the objective of adopting a comprehensive tool of economic development. The Act revokes Act 73-2008, as amended, and Act 83-2010, as amended, while simultaneously adopting a similar set of incentives, with some changes we discuss below.

## Tax incentives for manufacturing

Act 73- 2008	New Code
<b>Manufactured products</b> include products transformed from raw materials into articles of trade, designated articles under former tax incentives acts, and any product with respect to which substantial industrial operations are undertaken in PR that merit treatment as a manufactured product.	The term <b>now includes</b> products transformed from plants and animal matter.

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## Tax incentives for manufacturing (cont'd)

Act 73- 2008	New Code
<p><b>Key suppliers</b> render services on a commercial scale in Puerto Rico on a continuous basis to an Exempt Business that is a unit devoted to manufacturing. A business is deemed a key supplier if its services allow the Exempt Business, who is its regular customer, to concentrate its activities in the areas of their core competence. The services, among others, include project engineering and logistics related to sale and purchase such as those relating to orders and transportation.</p>	<p>Although most of the definition remains unchanged, key supplier services for:</p> <ul style="list-style-type: none"> <li>i. project engineering <b>now includes</b>, among others, system designs and processes that improve the quality and productivity of the operations of an Exempt Business, and</li> <li>ii. “Logistics related to sale and purchase such as those relating to orders and transportation” is <b>substituted</b> for “Logistics related to the sale and purchase of Manufactured Products”.</li> </ul>
<p>The Act allows tax credits for:</p> <ul style="list-style-type: none"> <li>i. Purchases of Puerto Rico manufactured products</li> <li>ii. Job creation</li> <li>iii. Investment in Research and Development, <b>including</b> operational expenses, clinical and toxicological tests, infrastructure, renewable energy, or intangible property</li> <li>iv. Investment in machinery and equipment for the generation and efficient use of energy</li> <li>v. Reducing the cost of electric energy</li> <li>vi. Investment in transfer of technology</li> <li>vii. Investment in strategic projects</li> <li>viii. Generally, 50% of industrial investment for every investor on their eligible investment.</li> </ul>	<p>The Act allows tax credits for:</p> <ul style="list-style-type: none"> <li>i. Purchases of Puerto Rico manufactured products</li> <li>ii. Investment in Research and Development, <b>excluding</b> operational expenses, clinical and toxicological tests, infrastructure, renewable energy, or intangible property</li> <li>iii. Investment in transfer of technology.</li> </ul>
<p><b>60%</b> exemption on municipal taxes, including municipal license taxes applicable to volume of business.</p>	<p><b>50%</b> exemption on municipal taxes, including municipal license taxes applicable to volume of business.</p>
<p><b>90%</b> exemption on real and personal property taxes on property used for the export, promotion and/or trade services.</p>	<p><b>75%</b> exemption on real and personal property taxes on property used for the export, promotion and/or trade services.</p>
<p>In housing projects, the municipalities may grant a partial or total credit for the municipal construction tax on the total cost of the infrastructure works that meet the self-sustainable or the partially sustainable criteria.</p>	<p>No similar provision exists under the Act for housing projects.</p>
<p>As a rule, a 100% exemption from excise and sales and use taxes is granted to certain articles introduced or acquired directly or indirectly by an exempt business, such as raw material used in Puerto Rico for the manufacture of finished products.</p>	<p>Although the definition remains significantly unchanged:</p> <ul style="list-style-type: none"> <li>i. the term “raw material” <b>now includes</b> natural and propane gas used for the generation of electric or thermal energy, and</li> <li>ii. energy efficient equipment properly certified by the Energy Affairs Administration is <b>eliminated</b>.</li> </ul>

New provisions under the Incentives Code for manufacturing:

- the development of videogames reproduced on a commercial scale are now considered an eligible activity for which a tax exemption grant may be requested
- although there was no minimum employment requirement under Act 73-2008, pursuant to the Government’s public policy a minimum of ten (10) employees was established. Under the Incentives Code, an employment commitment of at least three (3) employees will be required when annual projected or actual volume of business is more than \$3,000,000. Moreover, the Incentives Code will allow current grantee holders under Act 73-2008 to submit a grant amendment to request the employment requirement set forth in the Code. The Secretary of the DEDC has the authority to approve said amendments to pursue the objectives of the Act.

**Tax incentives for green energy**

Act 83- 2010	New Code
<p>The term “Alternative Renewable Energy” includes:</p> <ul style="list-style-type: none"> <li>i. conversion of municipal solid waste;</li> <li>ii. landfill gas combustion;</li> <li>iii. anaerobic digestion;</li> <li>iv. fuel cells; and</li> <li>v. any other type of energy the Energy Affairs Administration deems eligible.</li> </ul>	<p>The term “Alternative Renewable Energy” includes:</p> <ul style="list-style-type: none"> <li>i. landfill gas combustion;</li> <li>ii. anaerobic digestion;</li> <li>iii. fuel cells; and</li> <li>iv. waste heat.</li> </ul>
<p>The term “Sustainable Renewable Energy” includes:</p> <ul style="list-style-type: none"> <li>i. solar energy;</li> <li>ii. eolic energy;</li> <li>iii. geothermal energy;</li> <li>iv. renewable biomass combustion;</li> <li>v. renewable biomass gas combustion</li> <li>vi. combustion of biofuels derived solely from renewable biomass;</li> <li>vii. qualified hydropower;</li> <li>viii. marine and hydrokinetic renewable energy;</li> <li>ix. ocean thermal energy;</li> <li>x. any other clean or renewable energy that the Administration may deems as sustainable renewable energy.</li> </ul>	<p>The term “Sustainable Renewable Energy” includes:</p> <ul style="list-style-type: none"> <li>i. solar energy;</li> <li>ii. eolic energy;</li> <li>iii. geothermal energy;</li> <li>iv. renewable biomass combustion;</li> <li>v. renewable biomass gas combustion</li> <li>vi. combustion of biofuels derived solely from renewable biomass;</li> <li>vii. qualified hydropower;</li> <li>viii. marine and hydrokinetic renewable energy;</li> <li>ix. ocean thermal energy.</li> </ul>
<p>The exemption period is effective for 25 years, with an extension available for an additional 10 years (i.e. <b>35 years in total</b>).</p>	<p>The exemption period is effective for 15 years, with an extension available for an additional 15 years (i.e. <b>30 years in total</b>).</p>

## Tax incentives for green energy (cont'd)

Act 83- 2010	New Code
<p>The following are considered eligible activities:</p> <ul style="list-style-type: none"> <li>i. any business engaged in the production and sale, at a commercial level, of green energy for consumption in Puerto Rico, whether as the owner and direct operator of the production unit, or as owner of a production unit operated by another person, in which case, both the owner and the operator shall be deemed to be businesses engaged in an eligible activity for the purposes of this Act;</li> <li>ii. green energy producer for consumption in Puerto Rico, provided that this it is the main business;</li> <li>iii. assembling of green energy generation equipment, including its installation at the facilities of the user that will benefit from the energy to be produced by such equipment; and</li> <li>iv. real and personal property devoted to the production of green energy.</li> </ul>	<p>The eligible activities remained the same, adding:</p> <ul style="list-style-type: none"> <li>v. during the first 5 years of this Act: <ul style="list-style-type: none"> <li>a) highly efficient energy producers</li> <li>b) assembly of equipment, including installation for highly efficient generation systems</li> <li>c) property dedicated to the production of highly efficient energy</li> <li>d) Contractors under Act 120-2018.</li> </ul> </li> </ul>
<p><b>60%</b> exemption on municipal taxes, including municipal license taxes applicable to volume of business.</p> <p><b>100%</b> exemption from municipal taxes, excises and other taxes levied by any municipal ordinance to contractors and subcontractors are exempt.</p>	<p><b>50%</b> exemption on municipal taxes, including municipal license taxes applicable to volume of business.</p> <p><b>75%</b> exemption from municipal taxes, excises and other taxes levied by any municipal ordinance to contractors and subcontractors are exempt.</p>
<p><b>90%</b> exemption on real and personal property taxes on property used for the export, promotion and/or trade services.</p>	<p><b>75%</b> exemption on real and personal property taxes on property used for the export, promotion and/or trade services.</p>
<p>The Act allows tax credits for:</p> <ul style="list-style-type: none"> <li>i. Purchases of Puerto Rico manufactured products</li> <li>ii. Job creation</li> <li>iii. Investment in Research and Development of green energy sources</li> <li>iv. Investment in machinery and equipment for the generation and efficient use of energy</li> <li>v. Investment in transfer of technology.</li> </ul>	<p>The following credits are granted:</p> <ul style="list-style-type: none"> <li>i. Investment in Research and Development.</li> </ul>

## Tax incentives for green energy (cont'd)

Act 83- 2010	New Code
100% exemption from excise and sales and use taxes on certain articles introduced or acquired directly or indirectly by an exempt business, such as raw material used in Puerto Rico for the manufacture of finished products.	Although the definition remains significantly unchanged, the term “raw material” <b>adds</b> natural and propane gas used for the generation of electric or thermal energy to the exemption.
No similar provision is included in Act 83-2010.	An Exempt Business totally disconnected from the electric system of PREPA, is not required to sale the energy produced to PREPA to receive or keep the Grant.
Owners of production units engaged in the production and sale of green energy are eligible for a reimbursement incentive based on the production capacity of the facility: <ul style="list-style-type: none"> <li>i. small-scale projects: up to a 60% rebate</li> <li>ii. medium-scale projects: up to a 50% rebate</li> <li>iii. large-scale projects: Green Energy Incentive Program through collaboration between the Energy Affairs Administration and PREPA.</li> </ul>	No similar provision exists under the Act.
The Act provides for a Green Energy Fund in which the government of Puerto Rico would co-invest \$290 million in renewable energy projects over the next 10 years after its enactment.	No similar provision exists under the Act.

### New provisions under the Incentives Code for green energy:

- the term “Highly Efficient Generation” is added to the Act, and means electric power production of which at least 60% is highly efficient, as stated by the Energy Bureau pursuant to Act 57-2014;
- the term “Highly Efficient Energy Producer” is added to the Act, and means an operator of a highly efficient generating system that produces and sells electricity on a commercial scale;
- a major change in the legislation is that an Exempt Business that totally disconnected from the PREPA electric system will not be required to sell the energy produced to PREPA in order to receive or keep the Grant.

The Act is mainly effective from July 1, 2019. Changes incorporated by the Act will not affect current grantee holders. Applicants may elect to file under previous laws or under the Act until December 31, 2019. Commencing on January 1, 2020, all applications will have to be submitted under the Act. However, the Secretary of the DEDC may implement by regulation provisions of the Act before January 1, 2020 to further the objectives of the Act.

Please contact our Tax Department should you require additional information regarding this or any other tax issue. We will be glad to assist you.



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