

Senate Bill 1298 and House of Representatives Bill 1839

September 11, 2023



In this century, our tax system has been amended several times, resulting in a highly complex system that has been in constant change. On August 29, 2023, in an effort to simplify it, Senate Bill 1298 and House of Representatives Bill 1839 (hereinafter jointly referred to as “New Bills”) were filed in substitution to former House of Representatives Bill 1645 filed on February 28, 2023, and Senate Bill 1144 filed on March 1, 2023 (hereinafter jointly referred to as “Old Bills”). The New Bills seek to amend specific provisions of our tax laws and to restructure our tax system into a fairer and simpler one. Although all amendments aim to simplify the system, we focused this Tax Alert on the provisions that we considered to have a significant impact on our tax system and the way we do business in Puerto Rico.

Objectives of the New Bills

In general

On October 7, 2021, the Governor appointed an Advisory Committee to evaluate our tax system and provide recommendations. As such, the Advisory Committee submitted their first preliminary report on May 6, 2022, which resulted in Act 52-2022. This legislation mainly addresses a transition from the excise tax imposed by Act 154-2010 to certain manufacturing companies operating in Puerto Rico. Now, the New Bills intend to continue implementing the recommendations of the Advisory Committee by focusing on individuals, corporations, and other technical matters not addressed by Act 52-2022.

- **individuals.** – The New Bills propose to reduce income tax rates by implementing a deceleration in reaching the maximum tax rate (33%) while increasing the net taxable income thresholds of the gradual incremental tax rates. To accomplish this, (i) they lowered the tax rate of the \$41,500 net taxable income bracket to 22% (currently 25%); (ii) increased the upper net income limit,

(iii) added a new 30% net income tax bracket for net income of \$81,500 to \$300,000; and (iv) increased the net income subject to the current tax of 33% to \$300,001 (currently \$61,501).

The preamble to the New Bills acknowledges that low-income taxpayers benefited from prior laws that increased the minimum wage and provided the Employment Income Tax Credit. Therefore, they are focused on the medium and high medium income workforce. Furthermore, like the federal tax system, a Cost-of-Living Allowance (“COLA”) is proposed to be approved for the year 2024 and thereafter, a 5-year 100% tax exemption is proposed for the first \$40,000 of taxable income earned by young physicians and expands the current exemptions under the Incentives Code for new residents of Puerto Rico on certain passive income to all Puerto Rico residents.

- **corporations.** – Under the current gradual tax rates, a maximum 37.5% tax is imposed when the net taxable income exceeds \$275,000. The New Bills intend to increase the income threshold so that the maximum tax rate is not achieved until the net taxable income is more than \$3 million.
- **indirect taxes.** – The New Bills propose other technical amendments towards simplifying these taxes, like the consolidation of the state sales and use tax system to be managed by the Department of Treasury, among others.

For a summary of the proposed amendments, you can refer to the Quick Reference Guide included in this publication.

Considerations

A simpler and fairer tax system is imperative to overcome the current challenges of doing business in Puerto Rico. The goal of restructuring our system should be to achieve tax neutrality and an administrative economy. We foresee that the main challenge that the New Bills will encounter is to obtain the approval of the Oversight Fiscal Board. This is because pursuant to the preamble of the New Bills, the net cost of simplifying our tax system results in an economic impact of \$111 million that should be absorbed by the economic redistribution of the tax changes and the tax revenue overcomes experienced in the last years. This subjective equation will be the uphill battle in achieving this new tax restructuring effort.

We will provide a webinar during this month to discuss the contents of the bills. Stay tuned to our messages to save the date in your calendar so you can join us!

Proposed Amendments to the Puerto Rico Internal Revenue Code

Section or Article	Summary of the Amendment												
<p>1010.01 Definitions</p>	<p>The LLC definition is revised to incorporate that if a foreign entity is not classified as a corporation, partnership, or trust, it will be categorized as an LLC. Moreover, for taxable years after December 31, 2022, single member LLCs may elect to be taxed as disregarded entities, even if the member is not a resident individual of Puerto Rico.</p>												
<p>1021.01 Regular tax on individuals</p>	<p>For taxable years beginning on January 1, 2023, the regular tax rates for individuals are as follows:</p> <table border="0" data-bbox="574 716 1325 905"> <tr> <td>\$9,000 or less</td> <td>0%</td> </tr> <tr> <td>\$9,001 to \$25,000</td> <td>7%</td> </tr> <tr> <td>\$25,001 to \$41,500</td> <td>\$1,120 + 14% of the excess over \$25,000</td> </tr> <tr> <td>\$41,501 to \$81,500</td> <td>\$3,430 + 22% of the excess over \$41,500</td> </tr> <tr> <td>\$81,500 to \$300,000</td> <td>\$12,230 + 30% of the excess over \$81,500</td> </tr> <tr> <td>\$300,000 or more</td> <td>\$77,780 + 33% of the excess over \$300,000</td> </tr> </table>	\$9,000 or less	0%	\$9,001 to \$25,000	7%	\$25,001 to \$41,500	\$1,120 + 14% of the excess over \$25,000	\$41,501 to \$81,500	\$3,430 + 22% of the excess over \$41,500	\$81,500 to \$300,000	\$12,230 + 30% of the excess over \$81,500	\$300,000 or more	\$77,780 + 33% of the excess over \$300,000
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<p>1021.02 Alternative minimum tax on individuals</p> <p>1022.04 Determining alternative minimum net income</p>	<p>Eliminates the requirement for accrual or fiscal year-end taxpayers to include with the income tax return a book to informative return expense reconciliation to claim certain deductions reported in informative returns against their alternate minimum net income. However, they are obligated to retain in their records such reconciliations.</p>												
<p>1022.01 Regular tax on corporations</p>	<p>For taxable years beginning after December 31, 2022, the regular tax on corporations (currently 18.5%) is amended to set progressive rates beginning at 17% (for net taxable income not exceeding \$275,000) and maxing out at 33% (for net taxable income exceeding \$3,000,000).</p>												
<p>1022.02 Surtax on corporations</p>	<p>For taxable years beginning after December 31, 2022, the surtax is eliminated.</p>												
<p>1022.03 Alternative minimum tax on corporations</p>	<p>For taxable years beginning after December 31, 2022, the corporations' tentative minimum tax of \$500 is eliminated.</p>												

<p>1022.07 Optional tax for corporations rendering services</p>	<p>For taxable years beginning after December 31, 2021, corporations whose gross income substantially comes from services may opt for the optional tax and may pay the tax with the income tax return, excluding extensions.</p>
<p>1031.02 Exemptions from gross income</p>	<p>For taxable years beginning after December 31, 2023, the first \$40,000 earned by a Puerto Rico resident who is admitted to practice medicine in Puerto Rico and other medical-related professions (podiatry, audiology, chiropractic, optometry, or dentistry) on a full-time basis are exempt from taxation. This exemption can be availed once in a lifetime for a continuous period of 5 years. This exemption is not available to an individual who has availed benefits under Act 14-2017, or Act 135-2014 or Act 60-2019 for young entrepreneurs.</p> <p>For taxable years beginning after December 31, 2023, interests and dividends received by an individual resident of Puerto Rico will be exempt from income tax, as well as net capital gains realized in connection with the appreciation of securities and other assets as defined under Sections 1020.01 and 1020.02 of Act 60-2019 within the period after becoming a resident of Puerto Rico.</p>
<p>1033.15 Deductions applicable to individual taxpayers</p> <p>1033.18 Allowance for personal and dependents exemption</p>	<p>For taxable years beginning after December 31, 2023, the maximum amount allowed for certain deductions for individuals and personal and dependent exemptions, increases due to the new cost-of-living allowance.</p>
<p>1040.02 Rule for accounting methods</p>	<p>For taxable years beginning after December 31, 2022, increases the average annual gross income threshold allowed to use the cash basis method of accounting from an average annual gross income of \$3,000,000 to \$10,000,000 and can be adopted without seeking approval from the Secretary of Treasury.</p>
<p>1061.03 Partnerships returns</p>	<p>Moves the filing due date for the entity’s informative annual return to the last day of the third month following the close of year (March 31 for calendar year taxpayers).</p>
<p>1061.16 Time and place for filing returns</p> <p>1061.17 Payment of tax</p>	<p>Authorizes the Secretary of Treasury to move the due date of returns, declarations or income tax payments in extraordinary situations or during emergency declarations, but the extension cannot exceed 6 months from the original filing or payment date.</p>
<p>1061.25 Foreign financial accounts</p>	<p>Modifies the requirements for individuals who must report foreign financial accounts, stating that a filing requirement applies if the aggregate value of financial accounts outside of Puerto Rico and the United States reaches \$10,000 (currently, the \$10,000 threshold exception is considered per account).</p>

	<p>Excluded accounts will include those where the owner is a business entity in which the individual has a controlling interest (50% or more) or where the individual has authority to control the disposition of the assets.</p>
<p>1063.15 Information return on transactions made by electronic means.</p>	<p>It broadens the range of transactions that must be reported annually by businesses that provide payment processing options. This expansion is achieved by revising the definition and scope of a “participating merchant” to include those who accept payments through mobile applications, in addition to the traditional means like debit and credit cards already included in the section. Furthermore, this term also includes anyone who conducts any form of commercial activity.</p>
<p>3020.09 Vessels and heavy equipment</p>	<p>An excise tax of 7% will be levied, collected and paid on all types of vessels and heavy equipment introduced from abroad or manufactured in Puerto Rico (previously, the maximum excise tax per vessel was limited to \$10,000). In addition, beginning on June 30, 2024, it eliminates the \$10,000 excise tax threshold on vessels introduced from abroad or manufactured in Puerto Rico.</p>
<p>4010.01 General definitions</p>	<p>The definition of designated professional services is amended to specify that for purposes of determining if the volume of business does not exceed the \$200,000 threshold for exemption from collecting the sales and use tax on services rendered, the volume of business to be used is the amount reported on the sales and use tax monthly return for the immediately preceding calendar year and/or the income tax return filed.</p> <p>The definition of taxable services is amended to include the term “related person” on the exemption provided for services rendered by a person engaged in trade or business in Puerto Rico to another person engaged in trade or business in Puerto Rico and that forms part of a controlled group of corporations or group of related entities.</p> <p>Adds a new term “Tickets Seller Company”, defined as a company dedicated to the sale of tickets for public shows, hired by the establishment where the public show is to be held, and maybe the facility itself.</p>
<p>4020.05 Collection of the tax</p>	<p>Starting January 1, 2025, a duly registered merchant may request a document to be relieved of the requirement to collect, withhold and deposit the sales and use tax on sales of taxable items to a reseller merchant.</p>
<p>4020.07 Collection of sales tax on sales for resale, or on sales to an eligible reseller</p>	<p>Starting January 2025, a duly registered merchant shall be relieved from the requirement of collecting, withholding and depositing the sales and use tax on sales of taxable items purchased exclusively for resale to reseller merchants who have a Certificate of Exemption.</p>
<p>4030.02 Exemption certificate and eligible reseller certificate</p>	<p>Beginning on January 1, 2025, every reseller merchant may request and obtain a Certificate of Exemption that allows the merchant to be exempt from the sales and use tax regarding the purchase of taxable items for resale or export, and the Secretary will stop issuing the Eligible Reseller Certificate.</p>

<p>4042.03 Time to remit the sales and use tax</p>	<p>Changes the title of the section and eliminates the rules for bonded merchants beginning on January 1, 2025.</p>
<p>4050.04 Credit for taxes paid by a reseller</p>	<p>Beginning on January 1, 2025, the Certificate of Reseller will no longer be required.</p>
<p>6041.10 Failure of corporations or partnerships to pay the estimated tax</p>	<p>For taxable years beginning after December 31, 2021, entities with a Decree of Tax Exemption under Act 135-1997, Act 73-2008 or Act 60-2019, will be required to pay estimated income taxes.</p>
<p>6051.21 Additional Powers of the Secretary over the administration of this Code</p>	<p>Modifies the faculties of the Secretary of Treasury in connection to the Voluntary Disclosure Program and the Taxpayer Rehabilitation Programs by allowing the Secretary to condone charges and penalties and approve payment plans lower than 6 months under both programs. It also eliminates the Secretary's discretion to grant a lower tax rate between the one currently in place and the one applicable to the tax periods under the Voluntary Disclosure Program.</p>
<p>6080.14 Municipal levy of sales and use tax</p>	<p>Effective on July 1, 2023, municipalities may voluntarily reach an agreement with the Secretary to use the digital platform SURI to administer and file the municipal sales and use tax returns. However, we understand that the effectiveness date could change. The Treasury Department is currently working on a pilot program with some municipalities.</p>

Proposed Amendments to the Puerto Rico General Corporations Act, the Real Property Market Stimulus Act, and the Puerto Rico Civil Code

Section or Article	Summary of the Amendment
<p>General Corporations Act</p> <p>15.01 Domestic corporations; annual reports; books and other documents in Puerto Rico.</p> <p>15.03 Foreign corporations; annual reports</p>	<p>For taxable years beginning January 1, 2024, domestic or foreign corporations are no longer required to file an annual report with the Puerto Rico Department of State; however, they must continue paying the annual report fee.</p>

<p>General Corporations Act</p> <p>23.13 Transparency; annual reports; annual benefit report</p>	<p>Adds a clause to require the Secretary of State to extend the annual report fee deadline for the same amount of additional time granted by the Secretary of Treasury to comply with the income tax filing and payment.</p>
<p>Act 132-2010, Section 2(b) Tax exemption applicable to Income earned for rental of residential property</p>	<p>Extends the income tax exemption on residential rental income period to December 31, 2040 (currently sunsets on December 31, 2025).</p>
<p>Act 55-2020, Article 222 Register</p>	<p>Amends the Legal Entities Registry's requirements to:</p> <ul style="list-style-type: none"> • waive the registration requirement for entities formed through the Puerto Rico Department of State's Corporations and Entities Registry; and • impose this registration as a condition of formation for those entities that are created by private or public documents (such as trusts).
<p>NEW (Stand alone article not intended to be codified into prior enacted legislation)</p>	<p>Seeks to establish a Collaborative Agreement between the Puerto Rico Department of Treasury and the Puerto Rico Department of Labor and Human Resources, to file employment tax quarterly returns for unemployment and disability insurance on SURI.</p>

Proposed Amendments to the Puerto Rico Municipal Code

Section or Article	Summary of the Amendment
<p>7.135 Personal property tax return</p>	<p>For taxable years beginning after December 31, 2021, it reinstates the requirement to submit audited financial statements or agreed upon procedures with the personal property tax return if the taxpayer is required or voluntarily files said documents with their income tax return.</p>
<p>7.137 Date for filing the tax return and for payment of taxes; excess payments; ex officio tax return</p>	<p>For taxable years beginning on January 1, 2023, the personal property tax return deadline must be extended for the same amount of additional time granted by the Secretary of Treasury to comply with the income tax filing and payment.</p>

<p>7.207 Filing of declaration</p>	<p>Beginning on January 1, 2023, the volume of business declaration's (VOB) deadline must be extended for the same amount of additional time granted by the Secretary of Treasury to comply with the income tax filing and payment.</p> <p>The VOB is no longer required to be notarized.</p> <p>Beginning on January 1, 2024, the VOB filing will be integrated to the income tax return and submitted through SURI, under the parameters imposed by the Secretary of Treasury, and it will be accompanied by the same documents required for the income tax filing.</p>
<p>7.208 Payment of license tax</p>	<p>Beginning on January 1, 2023, the payment of the municipal license tax must be extended for the same amount of additional time granted by the Secretary of Treasury to comply with the income tax filing and payment.</p>
<p>7.250A <i>(NEW)</i></p>	<p>For taxable years beginning on January 1, 2024, this new section incorporates terms and requirements for the VOB filing under a collaborative agreement between the municipality and the Puerto Rico Department of Treasury. Among some of the changes, the VOB filing deadline will be aligned with the income tax return deadline and the VOB will be filed through SURI alongside the income tax return.</p>

Proposed Amendments to the Puerto Rico Incentives Code

<p>Section or Article</p>	<p>Summary of the Amendment</p>
<p>1020.08 Definitions applicable to agricultural activities</p>	<p>Provides for the Certificate of Bona Fide Farmer to be valid for 2 years.</p>
<p>2082.02 Income tax on bona fide farmers</p> <p>2082.03 Real and personal property taxes</p> <p>2082.04 Municipal taxes</p> <p>2082.05 Exemption from the payment of excise and sales and use taxes</p>	<p>Allows bona fide farmers to enjoy the same tax benefits either with a Decree of Tax Exemption or a Certificate of Bona Fide Farmer (currently, the benefits are enjoyed if the farmer has a Decree of Tax Exemption).</p>

<p>2083.01 Requirements for requesting decrees</p>	<p>Amends the requirements to file a tax incentives application to put on an equal footing of bona fide farmers holding a Certificate of Bona Fide Farmer with those who have been grandfathered by a Decree of Tax Exemption.</p>
<p>6020.10 Reports</p>	<p>For taxable years beginning after December 31, 2023, the compliance report of an exempt business must be electronically filed and paid to the Puerto Rico Department of Treasury as part of the income tax return of such business.</p>
<p>6070.66 Reports required from exempted businesses and their stockholders or partners applicable to opportunity zones</p>	<p>For taxable years beginning after December 31, 2023, the compliance report required for Priority Projects and their owners must be electronically filed and paid to the Puerto Rico Department of Treasury as part of their income tax returns.</p>

We are committed to keeping you informed of all the latest developments in laws and regulations that affect businesses in Puerto Rico. We can help you navigate the complex tax landscape to ensure that you are taking advantage of all the available benefits. Contact us today to learn more about how we can help you.



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