

(S. B. 1522)

**(No. 1-2016)**

(Approved February 1, 2016)

## **AN ACT**

To amend Sections 4010.01 and 4110.01 of Act No. 1-2011, as amended, known as the “Puerto Rico Internal Revenue Code of 2011,” in order to clarify that the tax treatment applicable to International Insurers organized under Act No. 399-2004, known as the “Puerto Rico International Insurers and Reinsurers Act,” and entities organized under Act No. 273-2012, as amended, known as the “International Financial Center Regulatory Act,” shall be similar to that which applies to entities organized under Act No. 20-2012, as amended.

### **STATEMENT OF MOTIVES**

With the approval of Act No. 72-2015, which amended the “Puerto Rico Internal Revenue Code of 2011,” there was created in Puerto Rico an integrated tax system that incorporates the virtues of the general excise tax and the Sales and Use Tax to arrive at the Value-Added Tax (“VAT”).

Act No. 72-2015, *supra*, established VAT-related rules for every taxable transaction, including services rendered to a person in Puerto Rico. In the case of services rendered by a nonresident to a resident, the Act imposes the tax liability on the resident individual who receives the service.

In order to clarify the scope of the legislative intent, thus preventing the text of the law from being subject to inconsistent interpretations, this Legislative Assembly approved several technical amendments, which became Act No. 159-2015. The purpose of one of said amendments was to clarify that entities organized under Act No. 20-2012, better known as the “Act to Promote the Export of Services,” would be exempt from the application of said tax.

Entities covered under Act No. 20-2012, are domestic or foreign entities that export services. The reason for these amendments was to further local export activity, as well as to attract companies to locate in Puerto Rico and export their services from the Island, because most of said companies constitute foreign capital that boosts the Island's economy carrying out export transactions that would not be generated otherwise in Puerto Rico.

However, although Act No. 159-2015 provides that export services shall be exempt from the application of said tax, it failed to specify that such tax treatment would also apply to International Insurers and Financial Entities, as in the case of entities covered under Act No. 20-2012, notwithstanding the fact that the body of laws under which international insurers and financial entities are organized also have the purpose of attracting foreign capital to the Island and boosting the economy.

Considering the interaction between Act No. 20-2012, Act No. 399-2004, better known as the "Puerto Rico International Insurers and Reinsurers Act," and Act No. 273-2012, better known as the "International Financial Center Regulatory Act," as well as the stability and assurance that incentive laws require to attract this type of foreign capital, it is necessary to amend the "Puerto Rico Internal Revenue Code of 2011" to establish the legal framework that shall provide certainty as to the tax treatment applicable to said entities. This legislative action affords credibility on Puerto Rico's commitment to attract foreign capital to develop its economy.

This Legislative Assembly understands that these are decisive factors for foreign capital entities when deciding where do they want to do business. For such reason, it is of utmost importance to clearly establish in the "Puerto Rico Internal Revenue Code of 2011" the tax treatment that would apply to International

Insurers or International Financial Institutions, which are very particular, foreign capital entities that are engaged in export from Puerto Rico and are organized under the provisions of Chapter 61 of the Insurance Code of Puerto Rico or under Act No. 273-2012.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.- Subsections (ll), (nn), and (bbb) of Section 4010.01 of Act No. 1-2011, as amended, are hereby amended to read as follows:

“Section 4010.01.- General Definitions

For purposes of this Subtitle, the following terms, words, and phrases shall have the general meaning expressed below, except when the context clearly indicates otherwise:

(a) ...

...

(ll) Designated Professional Services.— Means legal services and the following professional services, as regulated by their respective Boards of Examiners attached to the Department of State of Puerto Rico, if applicable:

(1) ...

...

(11) Notwithstanding the provisions of this subsection, designated professional services shall not be subject to the tax rate provided in Sections 4210.01(c) and 4210.02(c) of this Code when:

(A) ...

...

(D) Designated professional services described in paragraphs (1) through (9) of this subsection, if such services are rendered by a person

engaged in trade or business or income-producing activities outside of Puerto Rico to:

(i) an entity operating under the provisions of Act No. 73-2008, known as the ‘Economic Incentives Act for the Development of Puerto Rico,’ or similar provision in a prior or successor law, Act No. 83-2010, known as the ‘Puerto Rico Green Energy Incentives Act,’ or similar provision in a prior or successor law; entities subject to the provisions of Act No. 55 of May 12, 1933, known as the ‘Banking Law,’ or entities organized or authorized under the National Bank Act both of which belong to the same controlled group of corporations, or a controlled group of related entities, as such term is defined in Sections 1010.04 and 1010.05, or being one of them a partnership or excluded member, should the rules of group of related entities be applied, for purposes of this subsection, would be considered a component member of the same group; or (ii) an entity operating under the provisions of Act No. 20-2012, known as the ‘Act to Promote the Export of Services’ or similar provision in a prior or successor law, Act No. 399-2004, known as the ‘Puerto Rico International Insurers and Reinsurers Act,’ or similar provision in a prior or successor law, or Act No. 273-2012, known as the ‘International Financial Center Regulatory Act,’ or similar provision in a prior or successor law.

...

(mm) ...

(nn) Taxable Services.-

(1) ...

...

(3) For events occurring after September 30, 2015, taxable services shall include the following...

(A) ...

...

(L) Services rendered by a person engaged in trade or business or income-producing activity outside of Puerto Rico: (i) to an entity operating under the provisions of Act No. 73-2008, known as the ‘Economic Incentives Act for the Development of Puerto Rico,’ or similar provision in a prior or successor law; Act No. 83-2010, known as the ‘Puerto Rico Green Energy Incentives Act,’ or similar provision in a prior or successor law; or entities subject to the provisions of Act No. 55 of May 12, 1933, known as the ‘Banking Law,’ or entities organized or authorized under the National Bank Act both of which belong to the same controlled group of corporations or controlled group of related entities, as such term is defined in Sections 1010.04 and 1010.05, or being one of them a partnership or excluded member, should the rules of group of related entities be applied, for purposes of this subsection, would be considered a component member of the same group; or (ii) an entity operating under the provisions of Act No. 20-2012, known as the ‘Act to Promote the Export of Services,’ or similar provision in a prior or successor law, Act No. 399-2004, known as the ‘Puerto Rico International Insurers and Reinsurers Act,’ or similar provision in a prior or successor law, and entities organized under Act No. 273-2012, known as the ‘International Financial Center Regulatory Act,’ or similar provision in a prior or successor law.

...

(oo) ...

...

(bbb) Business to Business Services.- As of October 1, 2015, services rendered to a person engaged in trade or business or income-producing activities, including services rendered by a nonresident person to a person located in Puerto

Rico, regardless of the place where the service was rendered, insofar as such service is directly or indirectly related to operations or activities carried out in Puerto Rico by such person; except for the following:

(1) ...

(16) Services rendered by a person engaged in trade or business or income-producing activity outside of Puerto Rico to: (i) an entity operating under the provisions of Act No. 73-2008, known as the ‘Economic Incentives Act for the Development of Puerto Rico,’ or similar provision in a prior or successor law; Act No. 83-2010, known as the ‘Puerto Rico Green Energy Incentives Act,’ or similar provision in a prior or successor law; or entities subject to the provisions of Act No. 55 of May 12, 1933, known as the ‘Banking Law,’ or entities organized or authorized under the National Bank Act both of which belong to the same controlled group of corporations, or a controlled group of related entities, as such term is defined in Sections 1010.04 and 1010.05, or being one of them a partnership or excluded member, should the rules of group of related entities be applied, for purposes of this subsection, would be considered a component member of the same group; or (ii) an entity operating under the provisions of Act No. 20-2012, known as the ‘Act to Promote the Export of Services,’ or similar provision in a prior or successor law, or Act No. 399-2004, known as the ‘Puerto Rico International Insurers and Reinsurers Act,’ or similar provision in a prior or successor law, or Act No. 273-2012, known as the ‘International Financial Center Regulatory Act,’ or similar provision in a prior or successor law.

...

(ccc) ...”

Section 2.- Paragraphs (58) and (64) of Section 4110.01 of Act No. 1-2011, as amended, are hereby amended to read as follows:

“Section 4101.01.- General Definitions

(a) For purposes of this Subtitle, the following terms, words, and phrases shall have the general meaning stated below, except where the context clearly indicates otherwise.

(1) ...

...

(58) Service.-

(A) Means any business, other than the sale of goods, carried out by a merchant including, but not limited to:

(i) ...

...

(B) Service shall exclude the following:

(i) ...

...

(v) Services rendered by a person engaged in trade or business or income-producing activities outside of Puerto Rico to: (i) an entity operating under the provisions of Act No. 73-2008, known as the 'Economic Incentives Act for the Development of Puerto Rico,' or similar provision in a prior or successor law, Act No. 83-2010, known as the 'Puerto Rico Green Energy Incentives Act,' or similar provision in a prior or successor law, entities subject to the provisions of Act No. 55 of May 12, 1933, known as the 'Banking Law,' or entities organized or authorized under the National Bank Act, both of which belong to the same controlled group of corporations, or a controlled group of related entities, as defined in Sections 1010.04 and 1010.05, or being one of them a partnership or excluded member, should the rules of group of related entities be applied, for purposes of this subsection, would be considered a component member of the same group; or (ii) services rendered by a person engaged in trade or business or income-producing activities outside of Puerto Rico to an entity

operating under the provisions of Act No. 20-2012, known as the ‘Act to Promote the Export of Services,’ or similar provision in a prior or successor law, Act No. 399-2004, known

as the ‘Puerto Rico International Insurers and Reinsurers Act,’ or similar provision in a prior or successor law, or Act No. 273-2012, known as the ‘International Financial Center Regulatory Act,’ or similar provision in a prior or successor law.

...

(C) ...

(59) ...

...

(64) Services for Export.- any service rendered for the benefit of a nonresident individual, insofar as the same have no connection with Puerto Rico. Exported services that are covered under a tax exemption decree issued under Act No. 20-2012, as amended, or similar provision in a prior or successor law, or under Act No. 73-2008, as amended, or similar provision in a prior or successor law, or under Act No. 399-2004, as amended, or similar provision in a prior or successor law, or under Act No. 273-2012, as amended, or similar provision in a prior or successor law, shall also be considered services for export, insofar as such services have no connection with Puerto Rico, as such term is defined in Act No. 20-2012.

(A) ...

(B) ...

(65) ...

...”

### Section 3.- Effectiveness

This Act shall take effect immediately after its approval.



## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 1-2016 (S. B. 1522)** of the **7<sup>th</sup> Regular Session** of the **17<sup>th</sup> Legislative Assembly of Puerto Rico**:

**AN ACT** to amend Sections 4010.01 and 4110.01 of Act No. 1-2011, as amended, known as the "Puerto Rico Internal Revenue Code of 2011," in order to clarify that the tax treatment applicable to International Insurers organized under Act No. 399-2004, known as the "Puerto Rico International Insurers and Reinsurers Act," and entities organized under Act No. 273-2012, as amended, known as the "International Financial Center Regulatory Act," shall be similar to that which applies to entities organized under Act No. 20-2012, as amended.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 4<sup>th</sup> day of March, 2016.

Juan Luis Martínez Martínez  
Director