

DEPARTMENT OF ECONOMIC DEVELOPMENT AND COMMERCE OF PUERTO RICO  
San Juan, Puerto Rico

DEPARTMENT OF STATE

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Approved Hon. Kenneth D. McClintock  
Secretary of State

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Acting, Assistant Secretary for Services

REGULATION TO IMPLEMENT THE PROVISIONS OF THE "ACT  
FOR PROMOTING EXPORT SERVICES" (THE "ACT"), ISSUED  
UNDER THE AUTHORITY OF ARTICLE 15 OF THE ACT, WHICH AUTHORIZES  
THE SECRETARY OF ECONOMIC DEVELOPMENT AND COMMERCE TO  
ADOPT THE REGULATIONS NECESSARY TO MAKE EFFECTIVE SAID ACT

MO-DEC-013

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I. **PURPOSE**

The purpose of this Regulation is to regulate the scope of export services that qualify as services for which the provider of such services may be eligible for a Grant under the Act. The Act provides incentives for encouraging new and existing service providers to establish and expand their operations in Puerto Rico by providing services for markets abroad. The Act also provides incentives for promotional services undertaken for the purpose of attracting new businesses to Puerto Rico, which offers opportunities to create new jobs in Puerto Rico and contribute significantly to the economic and social development of Puerto Rico. The discretion of the Secretary of Economic Development and Commerce is intended to be exercised in a way that allows the maximum opportunity to incentivize local service providers and attract new business activities to Puerto Rico, consistent with the requirements of the Act and this Regulation.

II. **TITLE**

This Regulation shall be known as the "Regulation for Implementing the Provisions of the Act for Promoting Export Services, No. 20 – 2012."

III. **LEGAL BASIS**

This Regulation is adopted pursuant to Article 15 of the Act and the Administrative Procedures Act, Act No. 170 – 1998.

IV. **DEFINITIONS**

Capitalized terms defined by the Act shall have the meaning assigned to them by the Act. Where the meaning of a term defined in the Act is clarified herein, such term shall have the meaning given to it by the Act, as clarified by these Regulations.

- A. **Best Economic and Social Interests of Puerto Rico** – In determining what constitutes the Best Economic and Social Interests of Puerto Rico, the Secretary of Economic Development and Commerce shall take into account the intent of the Act, as expressed in Article 2 of the Act, and may consider such factors as the compliance of a business with Puerto Rico Laws in general, the special nature of the business receiving or seeking to receive the benefits under

the Act, the technology and intellectual property generated or used, the planned employment level in Puerto Rico of the business receiving or seeking to receive the benefits under the Act and the nature of the jobs it provides, including the number of new jobs generated, the average salary, and the total payroll attributable to the business, the location of the business, the potential for the business to acquire resources needed for its operations from local suppliers, the potential for future growth and expansion of the business, with a particular focus on the creation and maintenance of high-paying professional and technical jobs, the ability of the business to attract new businesses and economic opportunities to Puerto Rico, or other factors that in the judgment of the Secretary of Economic Development and Commerce merit said determination, as well as the recommendations of the agencies that render reports and recommendations on applications for a Grant under the Act. None of these factors is conclusive; each is merely a factor for the Secretary of Economic Development and Commerce to consider.

- B. Entity** – Means any corporation, limited liability company, partnership, sole proprietorship, joint venture, or other legal entity or juridical person, validly formed and in good standing under the Laws of Puerto Rico or a foreign jurisdiction. A sole proprietorship means an unincorporated business conducted by an individual who is the sole owner of such business. Entity also includes an office of a federal, state, or local government of the United States or another country, but does not include an office of the government of Puerto Rico or any of its municipalities or other subdivisions.
- C. Affiliated Entities** – Has the meaning provided by the Act. For the purposes of the Act, indirect ownership includes ownership of an Entity, estate or trust which in turn owns interests in another Entity. For these purposes, the percentage owned by a person shall be determined in accordance with the rules for determining ownership pursuant to the Internal Revenue Code for a New Puerto Rico (the “Code”), including the attribution rules contained in Section 1010.04(e) and (f) thereof.
- D. Unrelated Party** – An Unrelated Party is a person that is not a related person, as defined in in section 1010.05(b) of the Code, an Entity that is not an Affiliated Entity, or an Entity that is not a member of a group of related entities, as defined in section 1010.05(a) of the Code.
- E. Income from Export Services**
1. For purposes of determining income from Export Services, where the holder of a Grant under the Act engages in activities covered by the Grant and also engages in activities not covered by the Grant, only revenues attributable to the activities covered by the Grant shall be included in the computation of Income from Export Services. For these purposes, Income from Export Services includes the value of compensation in-kind received for the provision of export services, including ownership interests in the ventures to which such services are rendered, provided that the receipt of such

ownership interests is not inconsistent with other provisions of these Regulations. The holder of the Grant must allocate the revenues between covered and uncovered activities in a reasonable manner, taking into account the hours worked and resources used in providing the covered and uncovered services, respectively.

2. For purposes of determining income from Export Services, where facilities and/or personnel of the holder of a Grant under the Act are used in activities covered by that Grant and also in activities not covered by that Grant, the Grantee's manner of recording costs and expenses should allow the accurate allocation of the appropriate portion of the costs and expenses of such facilities to the activities covered by the Grant. If the holder of the Grant cannot accurately allocate the costs and expenses of such facilities and personnel to the activities covered by the Grant or if such allocation would be unreasonably burdensome to the Grantee, then the costs and expenses attributable to facilities and personnel used in that manner may be prorated in a proportionate share that shall be determined by multiplying the total costs and expenses attributable to such facilities or personnel by a fraction having as its numerator the annual gross revenues from the activities covered by the Grant which make use of such facilities or personnel and as its denominator the total gross revenues from all activities which make use of such facilities or personnel.

- a. *The provisions of the preceding subparagraph may be illustrated by the following examples:*

*Example 1: Company A holds a Grant under the Act and also conducts activities not covered by its Grant. Certain of its employees work on both covered and uncovered activities, and record the time they spend on each activity on a daily basis. Such employees are paid in aggregate \$120,000 a year, and Company A earns gross revenues of \$200,000 in covered activities and \$100,000 in uncovered activities. In determining its Income from Export Services, Company A may include as an expense only the salary and benefits attributable to that portion of time actually spent on covered activities, regardless of the fraction of gross revenues from activities covered by the grant over the total gross revenues from all activities which make use of such personnel.*

*Example 2: Assume the same facts as in Example 1 except that the employees do not record their time because it would be unreasonably burdensome and Company A's manner of recording personnel costs does not allow an accurate allocation of the costs and expenses of such personnel among activities. The portion of such employees' salary and benefits that may be allocated to Income from Export Services is \$80,000, determined by multiplying the costs of such personnel (\$120,000) by a fraction, having as its numerator the annual gross revenues from the activity covered by the Grant (\$200,000) and as its*

*denominator the total gross revenues of the activities conducted by all activities utilizing such personnel (\$300,000).*

- b. The Secretary of Economic Development and Commerce or the Secretary of the Treasury may evaluate whether the provider of Promotional Services and its client or customer unreasonably delayed the occurrence of one or more of the three events described in Article 3(e)(i)-(iii) of the Act, in order to cause more services of the provider of Promotional Services to qualify as being rendered during the twelve (12) month period provided by the Act. If it is determined that such unreasonable delay has occurred, the day on which such event would have occurred but for the unreasonable delay may be treated as the day on which the qualification for treatment as income from Promotional Services terminates.
- F. Promoter** – Means an Entity that is engaged in the provision of Promotional Services, as defined in the Act and these Regulations.
- G. Resident of Puerto Rico** – Means an individual who is a resident of Puerto Rico in accordance with Section 1010.01(a)(30) of the Code.
- H. Locate or Doing Business in Puerto Rico** – For purposes of the Act and these Regulations, an Entity that is located or doing business within a Foreign Trade Zone that is physically located within the borders of Puerto Rico is considered to be located or doing business within Puerto Rico.
- I. Eligible Business** – For purposes of the Act, an Eligible Business is an Entity with a “bona fide” office or establishment within Puerto Rico, that carries out or can carry out Eligible Services, which in turn are considered Export Services or Promotional Services. An office or establishment is bona fide if it is commercially reasonable and necessary for a business of its nature. For example, for a sole proprietorship or other small business, a home office may be all that is reasonable and necessary, depending on the nature of the business’s activities. For purposes of the Act, an Eligible Business that holds or has held a tax exemption decree issued pursuant to prior tax exemption acts, including, but not limited to, Act No. 73 – 2008, as amended, Act No. 135 – 1997, as amended, or Act No. 8 – 1987, as amended, may apply for a Grant under the Act, in accordance with the procedures provided in the Act. In considering the application, the Secretary of Economic Development and Commerce may consider the fact that the Eligible Business has previously held such a grant under a prior act, as well as the Eligible Business’s compliance with the terms and conditions of that prior grant, in deciding whether issuing a Grant to the Eligible Business is in the Best Economic and Social Interests of Puerto Rico.
1. A business may not be an Eligible Business if it holds a grant under any other tax exemption act which covers the Eligible Services, unless:

- a. *The grant was issued under Act 273 – 2012 and the Eligible Services do not form part of the Act 273 grant;*
- b. *It agrees in writing to surrender that prior grant before the Grant under this Act becomes effective, or to amend that prior grant to exclude the Eligible Services, prior to the Grant under this Act's becoming effective; or*
- c. *The business is physically located in the municipalities of Vieques or Culebra. If the business has more than one office, less than all of which are in the municipalities of Vieques and Culebra, the compensation paid to employees in the office or offices physically located in Vieques and Culebra must be greater than the compensation paid to the employees in all other offices in Puerto Rico to benefit from this exception.*

**J. New Business** – For purposes of determining whether an activity qualifies as a Promotional Service, the phrase New Business shall mean an Entity that meets all the requirements of the definition of that term under the Act, as further clarified below:

1. During the two (2) years measured from the start of operations in Puerto Rico of the Entity that received the Promotional Services from an Eligible Business, no more than five (5) percent of the Stocks of that Entity may be owned directly or indirectly by one or more (a) individuals who were Residents of Puerto Rico on the date of the start of such operations by the Entity that received the Promotional Services or (b) Entities formed under the Laws of Puerto Rico and in existence on the date of the start of such operations by the Entity that received the Promotional Services.
  - a. *In the exercise of his discretion, the Secretary of Economic Development and Commerce may determine that individuals who newly establish residence in Puerto Rico with the intent to commence a New Business and progress without interruption toward the start of operations of such New Business meet the requirement that they not have been Residents of Puerto Rico on the date of the start of operations.*
  - b. *The requirements of this subparagraph A.J.1 shall not apply to Entities that are offices of a government.*
2. During the two (2) year period commencing one (1) year prior to and ending one (1) year after the start of operations in Puerto Rico of the Entity that received the Promotional Services from an Eligible Business, the Entity that received the Promotional Services from an Eligible Business must have been an Unrelated Party with respect to any other Entity with a Business Connection to Puerto Rico.
3. The Entity receiving Promotional Services from an Eligible Business must start commercial operations in Puerto Rico in whole or in material part as a result of the Promotional Services. The determination of whether the

commencement of such operations is attributable in whole or in material part to the Entity's receipt of the Promotional Services in question shall be based on the following criteria:

- a. *The New Business's contacts with Puerto Rico prior to the receipt of the services in question, either through contact with the Government of Puerto Rico and its agencies, instrumentalities, and municipalities to explore business opportunities in Puerto Rico, contact with private entities for the purpose of locating property, plant, equipment, supplies and/or employees for a business in Puerto Rico, or retaining other service providers in Puerto Rico to assist it with analyzing opportunities in Puerto Rico;*
- b. *Whether the New Business was considering the commencement of operations in Puerto Rico prior to the receipt of the services in question and the status of such consideration at the time the first Promotional Service was provided;*
- c. *Whether the New Business had committed to the commencement of operations in Puerto Rico prior to the receipt of the services in question, either by taking formal Entity action (such as Board of Directors' approval of commencing operations in Puerto Rico) or by entering into binding contracts related to the commencement of operations in Puerto Rico;*
- d. *The nature of the services provided and the connection between those services and the commencement of operations in Puerto Rico by the New Business;*
- e. *Any other factor tending to indicate that the services in question were a direct and proximate cause of the commencement of operations in Puerto Rico;*
- f. *There may be more than one service provider for whom the commencement of operations in Puerto Rico is attributable in whole or material part to its services, and that fact shall not preclude each Promoter who meets the requirements of these Regulations with respect to such New Business from claiming the benefits of this Act. The Entity that receives such services must begin commercial operations for profit in Puerto Rico.*

- (1) A business shall be considered to be engaging in commercial operations for profit where its activities are performed for customers or clients in the normal course of business, in such amounts and at such prices which justify the operation of the enterprise as a going concern. A small- or medium-size business will comply with this requirement, if the amount and price of its activities are commercially reasonable for a business of its size and such a business may qualify even if it is operated intermittently throughout the year.



Notwithstanding the foregoing, the rental of residential or commercial real estate pursuant to the requirements described in these Regulations shall be considered to be conducted on a commercial scale.

- (2) A business shall be considered rendered in a substantial amount on a continuous basis for a reasonable period of time where the business activity is performed regularly for at least six (6) months of the taxable year or for such other time as the Secretary of Economic Development and Commerce may approve, based on the Best Economic and Social Interests of Puerto Rico. Notwithstanding the foregoing, a business renting commercial or residential real estate shall be considered to be conducted on a commercial scale if it meets the requirements for such a business described in paragraph A.N of these Regulations.
4. For purposes of Article 3(g)(vii) of the Act, the Secretary of Economic Development and Commerce and the Secretary of the Treasury hereby designate any activity that would be eligible for a tax incentive grant under any of the tax incentive acts now in effect or subsequently enacted that apply to business, as opposed to investment activities, as an activity, business or industry eligible to qualify as a New Business, if it meets the other requirements of the Act and these Regulations. The Secretary of Economic Development and Commerce, after consultation with the Secretary of the Treasury, may also designate any other "activity, business or industry" eligible to qualify as a New Business for purposes of Article 3(g)(vii) of the Act if he determines it to be in the Best Economic and Social Interests of Puerto Rico.
5. An applicant for a Grant under the Act must describe in its application the type of services it intends to render and its good faith projection of the types of businesses to which it intends to reach out to in order to render such services. The fact that a Grant is issued based upon such a description will not constitute a ruling or other binding determination that the actual services, when rendered, will qualify under the Grant as being Promotional Services rendered to a New Business, nor will a Grant necessarily be invalid if its holder ultimately promotes to other types of businesses than those originally identified as its targets.
6. When the holder of a Grant asserts that it has rendered Promotional Services under that Grant, it shall submit to the Puerto Rico Industrial Development Company a sworn statement on a form provided by the Puerto Rico Industrial Development Company supporting such treatment and addressing the standards described above, and a statement from the New Business on a form provided by the Puerto Rico Industrial Development Company stating that it started operations in Puerto Rico in whole or in material part as a result of the services provided by the holder of the Grant.

The holder of the Grant shall attach both statements to any tax return it files on which it claims eligibility for the tax rate provided by the Act and its Grant with respect to income from such services.

7. For a period of four (4) years following the due date of the report described in Article 12(d) of the Act, the Secretary of Economic Development and Commerce may review any position taken by the holder of a Grant in any filing with the Government of Puerto Rico, its agencies and instrumentalities, that treats services provided as Promotional Services. In such review, the Secretary of Economic Development and Commerce may require the service provider claiming that its services led to the commencement of operations in Puerto Rico by a New Business to submit such information, including affidavits or other sworn statements from officers, directors, general partners, managing members, or other similar personnel of the New Business, establishing the causal connection between the services in question and the commencement of operations in Puerto Rico. In the event that any such report is filed late, the four (4) year period shall not commence to run until the report is filed, and in the event of fraud in the preparation or filing of such report, there shall be no time limit on the commencement of a review under this paragraph. If the Secretary of Economic Development and Commerce determines that the services rendered did not qualify as Promotional Services, the Promoter shall not be eligible for any of the benefits of the Act and these Regulations with respect to those services. The Secretary of Economic Development and Commerce shall share the results of any such review with the Secretary of the Treasury. These results may be used as a basis for the Secretary of Economic Development and Commerce to commence the procedures for revocation of a Grant in the event of non-compliance with the terms of the Grant and the Act. The provisions of this paragraph are in addition to and do not alter in any way the authority of the Secretary of the Treasury to audit income tax returns filed by the holders of Grants under this Act, or the timing of such audits.
8. If it is determined by the Secretary of the Treasury, either on his own or based on a review by the Secretary of Economic Development and Commerce, that the services provided did not qualify as Promotional Services, the income earned and property used in providing such services shall be treated as associated with a fully taxable activity and not subject to the benefits of the Act. In particular, the income that was erroneously treated as having been derived from Promotional Services shall instead be treated as fully taxable in accordance with the provisions of the Code, and any deficiency shall be subject to the interest and penalty provisions of the Code. Likewise, any distributions of such income, whether made prior to or subsequent to the determination, shall not be entitled to the benefits of Article 6 of the Act and shall be fully taxable in accordance with the Code. In addition, any property for which the exemption provided by Article 5 of the Act was claimed based upon its use in providing the services determined not to qualify as Promotional Services shall be fully subject to all applicable

taxes for the period during which exemption was claimed, without the exemption provided in Article 6 of the Act.

**K. Nexus to Puerto Rico** – A service will be considered to have a Nexus to Puerto Rico if it is rendered to a Resident of Puerto Rico or if it is related to operations in Puerto Rico of a current or proposed customer or client of the service provider, including services related to the following:

1. A trade or business or activity for the production of income that has been, is, or will be conducted by the customer or client in Puerto Rico

a. *A trade or business or activity for the production of income is conducted in Puerto Rico when it is conducted, in whole or material part, from a facility located in Puerto Rico, whether such facility is owned, leased, or otherwise made available to the business, and whether such facility is a factory, warehouse, distribution center, office or other structure. This provision may be illustrated by the following examples:*

*Example 1: Corporation B receives services from a Puerto Rico provider of services. Those services relate to Corporation B's manufacture of products in Puerto Rico. The services have a Nexus to Puerto Rico.*

*Example 2: Corporation C is incorporated under the Laws of Puerto Rico but conducts its business activities in Florida, with no part of those activities conducted in Puerto Rico. Services it receives with respect to the conduct of its activities in Florida will not have a Nexus to Puerto Rico, but services relating to its act of incorporating in Puerto Rico and filing any required information with the Government of Puerto Rico will have a Nexus to Puerto Rico.*

2. Sale of any property for ultimate use, consumption or disposal by the customer or client in Puerto Rico.

a. *This provision may be illustrated by the following example:*

*Example: Corporation C receives services from a Puerto Rico provider of services. Those services relate to Corporation C's sale of property to be used by factories in Puerto Rico. The services have a Nexus to Puerto Rico.*

3. Advice on the Laws and Regulations of Puerto Rico, including statutory Law and Regulations promulgated thereunder, proceedings or rulings of the Government of Puerto Rico, its agencies, instrumentalities, public corporations, and/or municipalities, and judicial precedents of the courts of Puerto Rico.

4. Lobbying about the Laws of Puerto Rico, Regulations, other administrative rulings, and businesses in which government might engage. For these

purposes, lobbying means any direct or indirect contact with elected officials, employees or agents of the Government of Puerto Rico, its agencies, instrumentalities, public corporations or municipalities, for the purpose of attempting to influence any actions or determinations of the Government of Puerto Rico, its agencies, instrumentalities, public corporations or municipalities.

5. Services with respect to meeting any filing obligations owed by the customer or client to the Government of Puerto Rico, its agencies and instrumentalities, public corporations, or municipalities.
6. Services provided to, or contracted by, the Government of Puerto Rico, its agencies and instrumentalities, public corporations, or municipalities.

**L. Business Connection** – An Entity has a Business Connection to Puerto Rico if it has an office or other fixed place of business in Puerto Rico. An office or other fixed place of business includes a home office.

**M. Eligible Service** – An Eligible Service is a service that fits within one of the following categories of activities and which also qualifies as an Export Service, as hereinafter defined:

1. Research and development – Includes but is not limited to activities dedicated to discovery, research, experimentation, testing, and verification of new or improved processes or products, as defined in Section 5(c) of Act 73-2008 and the Regulations thereunder.
2. Advertising services and public relations services – The term “Advertising services” includes but is not limited to commercially reasonable forms of communication used to persuade an audience (viewers, readers, or listeners) to purchase, lease or otherwise expend funds or take other steps to gain access to products, ideas, or services. The term “Public relations services” includes but is not limited to services that are performed to enhance and/or maintain the image of a business, organization, or public persona.
3. Economic, environmental, technological, scientific, managerial, marketing, human resources, information technology, and auditing consultancy – Includes but is not limited to professional services rendered by qualified Entities and their personnel, including but not limited to, providing microeconomic and macroeconomic studies to assist clients or customers with business planning, evaluation of possible environmental site contamination and/or the development of rehabilitation programs for contaminated sites, as well as advice on avoiding contamination and operating environmentally safe facilities, evaluation of the selection, maintenance and disposition of property, plant and equipment to maximize productivity, advice on facility and resource management, advice on optimal personnel practices, including hiring and retaining workers, advice

about hardware and software system selection, management, maintenance, and financial accounting services related to the issuance of audited financial statements or financial reviews and compilations.

4. Advice on matters related to any industry or business – Includes but is not limited to all advisory services not otherwise excluded that are designed to assist clients or customers with improving the efficiency of their operations, enhancing their business planning processes, and maximizing their profits.
5. Commercial arts and graphic services – Include but are not limited to services undertaken in order to convey a message to an Entity's desired audience through developing and designing the optimal written, visual and electronic presentations, such as for advertising, websites and packaging.
6. Production of blueprints, engineering and architectural services, and project management – Include but are not limited to the rendering of design, architectural and construction plans and drawings, the creation of construction schedules, and the day-to-day management of construction projects, and other similar services.
7. Professional services – Include but are not limited to professional services provided by service providers with specialized training, such as legal, tax and accounting services.
8. Centralized management services – Describe services rendered to Entities to assist in the performance of management functions including, but not limited to, strategic management, planning and budgeting services, which are carried out by a central company ("headquarters") or similar regional offices of an Entity that is engaged in the provision of such services, and other similar services.
9. Electronic data processing center – Includes but is not limited to any organized assembly of resources and methods used to collect, store, process, and distribute electronic data primarily by automatic means.
10. Development of computer programs – Includes but is not limited to development of licensable computer software of general application and custom-made software.
11. Voice and data telecommunications between persons located outside of Puerto Rico – Include but are not limited to the provision of facilities and personnel to allow the transmission of voice and data communications both originating and terminating outside of Puerto Rico.
12. Call Centers – Include but are not limited to the operation of organized locations for the central receipt or placement of actual or potential customer, client, or donor calls, manned by live individuals for the purposes

of advancing the interests of trades, businesses, governmental entities or charitable institutions.

13. Shared Services Center – Includes but is not limited to operations which provide accounting, legal, financial, tax, auditing, marketing, engineering, quality control, human resources, communications, electronic data processing, and other centralized administrative services to businesses and other organizations that choose to employ such centers instead of performing such services internally.
14. Storage and distribution centers for companies engaged in the business of transportation of goods and articles belonging to third parties – Include but are not limited to companies that provide services to satisfy the demand for goods manufactured by other parties through distributing or managing the distribution of such goods to those who use, consume, or dispose of them.
  - a. *This provision applies only to warehousing activities with respect to products that are:*
    - (1) Not manufactured, refined or packaged on Puerto Rico; and
    - (2) Destined for use, consumption or disposition outside of Puerto Rico.
  - b. *This provision applies to distribution and shipping services with respect to shipments that neither originate nor terminate in Puerto Rico.*
    - (1) Example: ShipCo, an international shipping service, establishes a hub in Puerto Rico. Three categories of packages travel through the hub: (1) packages that originate in Puerto Rico and are destined for use outside of Puerto Rico; (2) packages that originate outside of Puerto Rico and are destined for use within Puerto Rico; and (3) packages that originate outside of Puerto Rico and are destined for outside of Puerto Rico. Only activities that relate to packages in the third category will qualify as Eligible Services.
  - c. *The business seeking exemption cannot take title to the goods – the goods being warehoused and/or distributed must belong to a third party, so one storing items it owns is excluded from the Act.*
15. Education and training – Include but are not limited to the operation of in-person or online schools to provide technical or professional training and other similar activities.
16. Hospital and laboratory services – Include but are not limited to laboratories, telemetry services, x-ray services, magnetic resonance imaging services, blood testing, and other similar services that assist in the rendering of medical care.

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17. Investment banking and other financial services – Include but are not limited to the following services: (a) asset management; (b) management of alternative investments; (c) management of activities related to private equity investments; (d) management of coverage funds or high risk funds; (e) dealing with “pools of capital;” (f) administration of trusts that convert different groups of assets into securities; (g) escrow account management services, provided that such services are provided to foreign persons; (h) municipal finance; and (i) other activities that involve assisting customers with the management of their investment funds.

- a. *Investment banking services include but are not limited to services provided by a financial institution, which consist of raising capital for clients by underwriting and/or acting as the client's agent in the issuance of securities. Investment banking services may also include rendering financial advice in connection with mergers and acquisitions, and services for customers or clients such as market-making and trading of equity securities, fixed income instruments, hybrid securities, derivatives, interests in mutual funds, exchange-traded funds, hedge funds, hedge funds of funds, commodities, commodity derivatives, commodity pools, foreign exchange, and other similar investments and other publicly traded or privately available investments, whether in a discretionary or non-discretionary account. It also may include services performed for customers and clients by broker-dealers. Such services shall not include an individual trading for one's own account, except as otherwise provided in these Regulations.*
- b. *Asset management and management of investment alternatives include but are not limited to services in connection with the rendering of investment advice, execution services, and related services to customers, with respect to any type of investment alternatives, the purchase or sale of equity securities, fixed income instruments, hybrid securities, derivatives, interests in mutual funds, exchange-traded funds, hedge funds, hedge funds of funds, and other publicly traded or privately available investments, whether in discretionary or non-discretionary accounts. It shall also include services relating to the rendering of investment advice, execution services and related services to customers or clients with respect to the purchase and sale of commodities, commodity derivatives, commodity pools, foreign exchange, and other similar investments.*
- c. *Management of activities related to private capital investment includes but is not limited to services provided to, or in connection with, a non-publicly available collective investment scheme used for making investments in equity or debt securities, commonly referred to as a private equity fund.*

- d. *Management of coverage funds or high risk funds includes but is not limited to services rendered to insurance companies and other organizations that provide insurance or risk sharing pools with respect to the rendering of investment advice, execution services, and related services for the pools of funds established by such companies to cover future claims to be made by policy holders and other insured parties.*
  - e. *Management of pools of capital includes but is not limited to services other than those described above relating to investment advice, making investments, execution services, and related services in connection with the investments made by a pool of funds whereby multiple investors' funds are managed together, including, but not limited to, mutual funds, investment funds, private equity funds, open- and closed-end investment companies, and commodity pools. This subparagraph relates to the actual management of such pooled investment funds and rendering of advice and other services to the fund managers, rather than the rendering of advice to investors about participating as investors in such funds.*
  - f. *Trust management that serves to convert different groups of assets into securities includes but is not limited to services in connection with the administration or maintenance of funds held in trust, whether such funds are held for preservation of assets or for the purpose of investing such funds.*
  - g. *Escrow accounts management services include but are not limited to services provided in connection with the administration or maintenance of funds held in escrow pursuant to escrow agreements, or held pursuant to other equivalent forms of agreement bearing a different name.*
  - h. *Other activities that involve assisting customers and clients with the management of their investment funds include but are not limited to all activities of a commercial nature that involve rendering advice, guidance, execution services, fund management or related services in connection with customers' and clients' investment activities, as well as providing back office services functions for all such investment and trading activities.*
18. Any other service that the Secretary of Economic Development and Commerce, in consultation with the Secretary of the Treasury, determines should be treated as an Eligible Service on the grounds that such treatment is in the Best Economic and Social Interests of Puerto Rico.
- a. *For these purposes, the performance of services for or relating to the development, production, post-production and/or transmission of programming for film, television, internet streaming and other similar media projects, for airing, distribution or exhibition outside of Puerto*



Rico shall be an Eligible Service. Such service shall not be disqualified because the programming is aired, distributed, or exhibited in Puerto Rico provided such airing, distribution or exhibition inside Puerto Rico is considered incidental or minimal and the overall airing, distribution or exhibition is not primarily intended for Puerto Rico audiences. For example, the production of a network television program in Puerto Rico for distribution across a national network shall not be disqualified because the network is also available to viewers in Puerto Rico.

- b. For these purposes, the provision of cloud computing services for users or subscribers that are neither Residents of Puerto Rico nor Entities formed under the Laws of Puerto Rico shall be treated as an Eligible Service. The provision of cloud computing services for users or subscribers that are Residents of Puerto Rico or Entities formed under the Laws of Puerto Rico shall be not treated as an Eligible Service.
- c. For these purposes, the performance of services for a governmental Entity described in Section III.C. above that allow said Entity to provide services normally provided by a government to its citizens and residents shall constitute an Eligible Service.
- d. For these purposes, the provision of medical, dental, ophthalmological, and other health care services provided by a professional licensed in Puerto Rico to provide such services shall be treated as Eligible Services, provided that the recipient of such services is not a resident of Puerto Rico and has been present in Puerto Rico for fourteen (14) or fewer days in the three hundred sixty-five (365) day period prior to receipt of such services. The recipient of the Eligible Services must sign a sworn statement under penalty of perjury attesting that he or she has been present in Puerto Rico for fourteen (14) or fewer days in the three hundred sixty-five (365) day period prior to receipt of such services, and providing his or her permanent address and country of residence. The provider of the Eligible Services must sign a sworn statement under penalty of perjury attesting that he or she is aware of no information indicating that the recipient of the Eligible Services has been present in Puerto Rico for more than fourteen (14) days in the three hundred sixty-five (365) day period prior to receipt of such services.
- e. For these purposes, the income derived from the investment of funds earned from providing an Eligible Service, net of taxes, shall be considered income from an Eligible Service, so long as such investments are:
  - (1) Reinvested in the Entity that conducts the Eligible Service, provided that accounting records are maintained that are

sufficient to determine the portion of the income from the investment attributable to the funds earned from providing Eligible Services;

- (2) *Made in an Entity with its principal place of business in Puerto Rico, provided that the returns on such investment are accounted for separately from any other investments made by the investor in such Entity, and that accounting records are maintained that are sufficient to determine the portion of any income earned that is attributable to the investment of the funds earned from providing Eligible Services; or*
- (3) *Held in a financial institution in Puerto Rico.*
  - (a) *For these purposes, a financial institution in Puerto Rico is a business that provides services described in paragraph A.M.17 of these Regulations, provided that it is licensed with the Puerto Rico Office of the Commissioner of Financial Institutions, and has a physical office in Puerto Rico.*
  - (b) *Such funds must be maintained in a segregated and separate account, and shall not be co-mingled with any other assets. If co-mingling occurs, income derived from the investment of such funds shall not be considered income from an Eligible Service from the date of the co-mingling forward.*

**N. Promotional Service** – A Promotional Service is any Eligible Service provided directly or indirectly to an Entity that is a customer or client that is Unaffiliated with and Unrelated to the service provider for the purpose of assisting that customer or client (1) in evaluating whether to establish or (2) to establish a New Business in Puerto Rico, provided that such service also qualifies as an Export Service, as hereinafter defined. A service does not qualify as a Promotional Service unless the customer or client establishes a New Business in Puerto Rico. For purposes of determining whether a service is a Promotional Service, the definition of Export Service shall be applied without regard to whether the client or customer to whom such service is rendered will have a Business Connection to Puerto Rico upon establishment of a New Business.

1. For these purposes, services performed in connection with the sale of commercial real estate to an Entity who is not a Resident of Puerto Rico, who does not already own real property in Puerto Rico, and who has no Business Connection to Puerto Rico at the time of the sale transaction may qualify as a Promotional Service if the purchaser intends to operate a New Business. The activity of leasing the purchased property by the Entity who was not previously a Resident of Puerto Rico, who does not already own real property in Puerto Rico, and who has no Business Connection with Puerto Rico, for commercial use to Unrelated Parties, for at least ten (10)

months in each calendar year may constitute a New Business sufficient to meet the requirements of subparagraph A.N.1. The activity of leasing shall include both leasing the property and the offering of such property for lease on a regular and continual basis, but shall not include the Entity who is not a Resident of Puerto Rico's use of such property for personal or business purposes while it is being offered for lease.

2. For these purposes, services performed in connection with the sale of residential real estate to an Entity or individual who is not a Resident of Puerto Rico, who does not already own real property in Puerto Rico and who has no Business Connection to Puerto Rico at the time of the sale transaction may qualify as a Promotional Service, if the purchaser intends to operate a New Business on a commercial level while located in Puerto Rico and registers his business as required under Puerto Rico law. Such business need not be conducted from the person's home. The activity of leasing the purchased property by the person who was not previously a Resident of Puerto Rico and who had no Business Connection with Puerto Rico, for residential use to Unrelated Parties, for at least ten (10) months in each calendar year may constitute a New Business sufficient to meet the requirements of subparagraph A.N.1. The activity of leasing shall include the offering of such property for lease on a regular and continual basis, but shall not include using such property for personal purposes while it is being offered for lease.
3. If Promotional Services are rendered in connection with the sale of commercial or residential real estate, the Promoter must obtain from the New Business or individual a signed and sworn certification that it meets the criteria established in the two preceding paragraphs. Such certification shall be updated and submitted annually, and attached to the Promoter's tax return
4. The provisions of this subsection may be illustrated by the following examples:

Example 1: Law Firm A holds a Grant under the Act. Law Firm A provides services related to the applicable Laws and Regulations of Puerto Rico to Company B to help Company B decide whether to start a New Business in Puerto Rico. Company B commences a New Business, in whole or in material part, as a result of the services provided by Law Firm A. The legal services provided by Law Firm A to Company B may qualify as Promotional Services because Company B's Nexus to Puerto Rico upon establishing its New Business is ignored for purposes of determining whether services are Promotional Services.

Example 2: Assume the same facts as in Example 1, except that Company B currently owns and operates a business from a fixed place of business in Puerto Rico. The legal services provided by Law Firm A to Company B do

not qualify as Promotional Services because Company B is not establishing a New Business.

Example 3: Assume the same facts as in Example 1, except that Company B decides not to commence a New Business. The legal services provided by Law Firm A to Company B do not qualify as Promotional Services.

Example 4: Company C promotes the purchase of Puerto Rico real estate. It assists persons outside of Puerto Rico with the acquisition of real property in Puerto Rico for the purpose of leasing such property to others. It assists Person D, who is an individual, who is not a Resident of Puerto Rico and who has no Business Connection to Puerto Rico, in purchasing a beach home in Puerto Rico. Person D rents and/or makes available for rent the beach home to unrelated third parties for 10 months of the year. Person D uses the beach home for personal purposes the remaining two months. Company C's activities in assisting with the purchase of the beach home may qualify as Promotional Services.

Example 5: Assume the same facts as Example 4, except that Person D allows his children to lease the beach house for 10 months of the year. Company C's activities in assisting with the purchase of the beach home are not Promotional Services because the property acquired is leased to a related party.

Example 6: Company E promotes the purchase of Puerto Rico residential real estate. It assists persons outside of Puerto Rico with the acquisition of residential real property in Puerto Rico. It assists Person F, who is an individual, in purchasing a second home to be used as a personal residence in Puerto Rico. Person F does not intend to establish a business in Puerto Rico. Company E's activities in assisting with the purchase of the second home are not Promotional Services.

Example 7: Assume the same facts as in Example 6, except that Person F registers to operate and does operate a business providing investment management and financial advice from Puerto Rico on a commercial level. Company E's activities in assisting with the purchase of the second home may qualify as Promotional Services.

- O. **Export Service** – To qualify for the benefits of the Act as an Eligible Service or a Promotional Service, a service must satisfy the definition of an Export Service. An Eligible Service is an Export Service when it has no Nexus to Puerto Rico and is rendered to a customer or client described in this paragraph. A Promotional Service is an Export Service when it is rendered to a customer or client described in this paragraph.

1. An individual that is not a Resident of Puerto Rico;

2. A trust whose grantor(s), trustee(s) and beneficiary(ies) are all neither Residents of Puerto Rico nor Entities formed under the Laws of Puerto Rico or that conduct a trade or business or an activity for the production of income in Puerto Rico;
3. An estate in which the heir(s), legatee(s) and executor(s) are all neither Residents of Puerto Rico nor Entities formed under the Laws of Puerto Rico or that conduct a trade or business or an activity for the production of income in Puerto Rico, and the deceased was not a Resident of Puerto Rico prior to death;
4. A governmental unit of any national, state, or local government (including any agency, instrumentality, public corporation or political subdivision thereof), other than the Government of Puerto Rico or any municipality within Puerto Rico; or
5. An Entity that does not have an office or fixed place of business in Puerto Rico at the time the services are rendered; if the Entity to which services are rendered does have such an office or fixed place of business, such services may still qualify for the benefits of the Act if the holder of the Grant demonstrates to the satisfaction of the Secretary of Economic Development and Commerce, either at the time of its application or upon a subsequent review, that such services have no connection or relationship to that office or fixed place of business. It will be presumed that services rendered to an Entity that has an office or fixed place of business in Puerto Rico have a connection to that office or fixed place of business, unless the holder of a Grant demonstrates to the contrary with clear and convincing evidence. A service has a connection to a Puerto Rico office or fixed place of business if it benefits that office or fixed place of business in any material way, including, but not limited to, by affecting the production processes and costs of any products sold by or to the Puerto Rico office or fixed place of business.
  - a. *The provisions of this subsection may be illustrated by the following examples:*

Example 1: Company A holds a Grant under the Act and provides Eligible Services to Corporation X. Corporation X has a factory facility in Maryland that sells its output solely within the United States and an office or fixed place of business in Puerto Rico. The services Company A renders to Corporation X relate solely to advice regarding the management of raw materials and work in process in its Maryland facility and have no connection to Corporation X's Puerto Rico office or fixed place of business. Those services may qualify as Export Services.

Example 2: Assume the same facts as in Example 1, except that the products produced in Corporation X's Maryland factory are sold, in part, to or through Corporation X's Puerto Rico office or fixed place of business. The services Company A renders to Corporation X do not qualify as Export Services.

## V. FIXED INCOME TAX RATE

A. The Fixed Income Tax Rate to which an Entity which holds a Grant under the Act shall be subject shall be as established in Article 4 of the Act.

B. Notwithstanding the foregoing, an Eligible Business that holds a Grant for Promotional Services shall only be entitled to the fixed rate provided in Article 4 of the Act for the period provided in Article 3(e) of the Act.

1. The provisions of this subsection may be illustrated by the following example:

Example: Company A holds a Grant with a 4% fixed rate that expires in 2032 and performs Promotional Services for clients. On January 1, 2013, it begins performing Promotional Services for Client Y, which commences a New Business on December 31, 2013. For its efforts, Company A receives payments of \$10,000 for work done during 2013 and \$5,000 for work done during 2014. On January 1, 2014, Company A begins performing Promotional Services for Client Z, which commences a New Business on December 31, 2014. For its efforts, Company A receives payments of \$7,000 from Client Z for work done during 2014. The net income earned by Company A for work performed in 2013 for Client Y will be subject to the 4% rate and the net income earned by Company A for work performed in 2014 for Client Z will be subject to the 4% rate, but the net income earned by Company A for work performed for Client Y in 2014 will not benefit from the 4% rate because the work was performed outside of the period in Article 3(e) of the Act.

### C. Tax Payment

2. Special Rules for Promotional Services

a. *Providers of Promotional Services shall pay tax on their income from such services for a taxable year based upon the tax rate applicable to*

such income on the last day of the tax year pursuant to the Code and any applicable Grant, except as provided below. As a result, if the income is not income qualifying for the benefits of the Act pursuant to a Grant as of the last day of the taxable year, it shall be subject to tax at the rates provided in the Code.

- b. Notwithstanding the foregoing, if a Promoter that holds a Grant under the Act rendered what it expects will be Promotional Services during a tax year, but by the last day of that tax year, the customer or client has not established a New Business, and then the customer or client does establish such a business by the earlier of the due date for the return for that tax year, with extensions, or the date such return is actually filed, the Promoter may apply the fixed tax rate in its Grant to such income to the extent it meets the requirements of Article 3(e) of the Act. However, if the client or customer has not established a New Business by such date, the Promoter may not treat such income as income from Promotional Services and apply the fixed rate in the Grant to such business on that basis.

- (1) The provisions of this subparagraph may be illustrated with the following examples:

Example 1: Company A holds a Grant under the Act and provides services to a foreign corporation, Company X, for the purpose of inducing Company X to commence a New Business in Puerto Rico. As of the end of Company A's taxable year 1, Company X has not yet established such a business. However, by the due date of Company A's return for taxable year 1, which is the date Company X files such return, Company X has established a New Business and Company A's income otherwise satisfies the requirements for treatment as Income from Export Services. Such income shall be taxed at the rate established in Company A's Grant.

Example 2: Assume the same facts as in Example 1, except that by the due date of Company A's return for taxable year 1, Company X has not established a New Business. Company A's income from services to Company X may not be treated as income from Promotional Services on Company A's tax return for taxable year 1 and may not be taxed at the rate established in Company A's Grant on that basis.

- c. If a Promoter rendered what it expects will be Promotional Services during a tax year, but by the due date for the return for that tax year, with extensions, the client or customer has not established a New Business but thereafter does so, such that certain income earned in the prior year becomes income from Promotional Services and hence would have qualified as Income from Export Services, the Promoter

*may not amend its return for such prior year to treat such income as Income from Export Services. The Promoter may, however, calculate the amount of income earned in the prior year that would have been treated as income from Promotional Services had the New Business been established in time ("last year's promotional income"), and may treat a portion of its income in the current year that would otherwise be subject to the tax rates in the Code equal to last year's promotional income as subject to the fixed rate in the Grant. If the Promoter lacks sufficient regularly taxed income to absorb the amount in such year, the excess may be carried over for three (3) subsequent years until it is fully absorbed, provided that if the Promoter ceases business or is acquired by another Entity other than in a reorganization treated as tax exempt under the Code, any amount not yet absorbed shall expire unused.*

- (1) The provisions of the prior subparagraph may be illustrated with the following example:

Example: Assume Company A holds a Grant under the Act and earns \$25,000 of net income from services in year 1 that would have been Promotional Services had Company A's client established a New Business by the due date for Company A's return. That income is taxed in year 1 at the rates in the Code. Assume also that after Company A files its return, Company A's client establishes a New Business and the entire \$25,000 otherwise meets the requirements to be treated as Income from Export Services. In the next year, Company A has \$40,000 of net income, \$5,000 of which is income covered by its Grant and \$35,000 of which is income subject to tax under the Code. Company A may treat \$25,000 of that \$35,000 as covered by its Grant, such that it has \$30,000 of income in that year subject to the rate in its Grant, and \$10,000 subject to tax under the Code.

#### D. Limitation of Benefits for Continuing Businesses

1. In the event that on the date of the filing of the application for a Grant, in accordance with the provisions of the Act, an Eligible Business is currently engaged in the activity for which the benefits of this Act are sought, or had engaged in said activity at any time during the period of three (3) taxable years preceding the date of filing the application (the "Base Period"), the Eligible Business issued a Grant will enjoy the fixed income tax rate provided in Article 4, but only with respect to the excess net income from such activity over its "Base Period Income," which is the average annual net income earned from the activity during the Base Period. In determining the Base Period Income with respect to Promotional Services, the Eligible Business shall only be required to take into account income during the Base Period from services that either were or could have been treated as Promotional



Services, had the Act been in effect and had the Entity in question held a Grant thereunder.

a. *For purposes of applying the provisions of this paragraph, if the Eligible Business previously conducted the activity for only a portion of the Base Period, the Base Period Income shall be computed solely by reference to the period during which the business conducted that activity. If the Eligible Business only conducted the activity for a portion of one or more years during the Base Period, the income for such partial year included in the Base Period Income computation may be subject to annualization, as directed below.*

- (1) *If the Eligible Business commenced the activity during a year in the Base Period and continued to perform that activity for the remainder of the Base Period, the amount of income from that year included in Base Period Income shall be annualized by multiplying the income in question by a fraction, the numerator of which is 365 and the denominator of which is the number of days during the year in question in which the Eligible Business conducted the activity.*
- (2) *If the Eligible Business routinely engages in the activity for only a portion of each year for valid business reasons and can prove that fact to the satisfaction of the Secretary of the Treasury, no annualization of the amounts earned in the activity will be required in computing Base Period Income.*
- (3) *If the Eligible Business performed the activity for a portion of a year during the Base Period but then ceased performing the activity for the remainder of that year and any subsequent year in the Base Period, only the income actually earned during the partial year in which such activity ceased shall be included in computing Base Period Income.*
- (4) *Notwithstanding subparagraph (3), the Secretary of the Treasury may determine that an Eligible Business artificially commenced and ceased an activity for a year with the intention of restarting that activity, with the purpose of reducing its Base Period Income and, upon making such a determination, may compute Base Period Income applying the annualization rule with respect the income from such year.*
- (5) The provisions of the prior paragraph may be illustrated by the following examples:

Example 1: Company A is an Eligible Business that applies for a Grant under the Act on January 1, 2013. Company A conducted the activity for which it seeks a Grant through each of the three tax years preceding the date of its application. Company A earned net income of \$500,000, \$600,000 and \$652,000 respectively from the activity in

those three tax years. Company A's Base Period Income is \$584,000 and only net income it earns for the Eligible Business in excess of \$584,000 may be subject to the tax rate under the Grant.

Example 2: Company B is an Eligible Business that applies for a Grant under the Act on January 1, 2013. Company B conducted the activity for which it seeks a Grant during a 200 day period during the first of the three tax years preceding the date of its application, during which it earned \$195,000. Company B's base period income is determined by reference only to the year during which it conducted that activity, and the \$195,000 need not be annualized in computing Company B's base period income.

Example 3: Assume the same facts as in Example 2, except that Company B continues to conduct the activity over the next two years, earning \$300,000 and \$350,000 respectively. Company B's income for the first year must be annualized by multiplying \$195,000 by  $365/200$ . Hence, Company B's base period income is \$335,292  $((\$355,875 + \$300,000 + \$350,000)/3)$  and only net income it earns for the Eligible Business in excess of \$335,292 may be subject to the tax rate under the Grant.

Example 4: Company C conducts an activity for 200 or so days each year, and ceases the activity for a valid business reason for the other 165 days due to the seasonality of demand for the activity. Only Company C's actual income earned from the activity in the three years in the Base Period need be considered in computing Base Period Income.

Example 5: Company D commences an activity in the final year of the Base Period. After conducting that activity for nine months and earning \$500,000, Company D decides that it should apply for a grant commencing on the first day of the next year, and in order to keep its base period income as low as possible, ceases conducting the business for the remainder of the year, with the expectation of recommencing the activity on the first day of the next year. The Secretary of the Treasury may determine that the temporary cessation of the business was undertaken artificially with the purpose of reducing its Base Period Income, and may determine Base Period Income by requiring Company D to annualize its \$500,000 income, resulting in a Base Period Income of \$667,000.

Example 6: Company C is a calendar year taxpayer and an Eligible Business that applies for a Grant under the Act on March 1, 2013. Its Base Period Income includes the tax years ending December 31, 2010, December 31, 2011, and December 31, 2012.

- b. *For the purposes of determining the Base Period Income, the activities and net income of any Predecessor Business of the applicant business during the Base Period shall be taken into account during the portion of the Base Period in which such predecessor performed the activity for which a Grant is sought or held. For these purposes, "Predecessor Business" shall include any other Entity that conducted the activity in question, if the applicant owns or has acquired, directly or indirectly, fifty percent (50%) or more of the Stocks of such Entity (measured by the total value of all issued and outstanding Stocks on the acquisition date(s)) or fifty percent (50%) or more of the assets of such Entity (measured by the total value of such assets on the acquisition date(s)) that were used in conducting the activity for which the benefits of the Act are claimed, regardless of whether it was operating under a different legal name or owners. For purposes of this subparagraph, employees and other personnel, such as partners, are not considered assets. Notwithstanding the foregoing sentence, in the event employees and other personnel of one client-service business, such as a law firm, accounting firm, or consulting firm, move to become employees and other personnel of another client-service business, client engagements of the prior client-service business for which the employees or other personnel that have moved had significant service responsibility that become clients of the new client-service business within one (1) year of the date the employees or other personnel commence work at the new client-service business shall be considered acquired assets and shall be valued at the annual or annualized revenue they produce.*
- (1) In the event the applicant owns or acquires Stocks of the Predecessor Business, all of the Predecessor Business's income from that portion of the Base Period prior to such acquisition attributable to the activity for which the benefits of the Act are sought shall be included in computing Base Period Income of the applicant. If the Predecessor Business only conducted the activity for which the benefits of the Act are sought for a portion of the Base Period, the same annualization rules as described in Subparagraph IV.E.1.a shall apply.
- (2) In the event the applicant acquires assets of the Predecessor Business, all of the Predecessor Business's income from that portion of the Base Period prior to such acquisition attributable to the activity for which the benefits of the Act are sought shall be included in computing Base Period Income of the applicant. Notwithstanding the preceding sentence, if the Predecessor Business whose assets the

applicant acquired also continues to conduct the Eligible Services after the Grantee acquires less than one hundred (100) percent of its assets used in the Eligible Service, the portion of the Predecessor Business's income that is included in Base Period Income of the Grantee shall be determined by allocating to Base Period Income a portion of the net income of the Predecessor Entity attributable to the activity for which the benefits of the Act are sought from the period prior to the acquisition equal to the percentage of assets of the Predecessor Business that were used in that activity that the Grantee acquired. If the Predecessor Business only conducted the activity for which the benefits of the Act are sought for a portion of the Base Period, the same annualization rules as described in Subparagraph IV.E.1.a shall apply.

- c. *For the purposes of determining the Base Period Income, the activities and net income of any Affiliated Entity of the applicant business during the Base Period shall be taken into account during the portion of the Base Period in which such Affiliated Entity performed the activity for which a Grant is sought. If the Affiliated Entity only conducted the activity for which the benefits of the Act are sought for a portion of the Base Period, the same annualization rules as described in Subparagraph IV.E.1.a shall apply.*
- d. *Any business that submits an application for a Grant within three hundred sixty-five (365) days of commencing the activity for which the benefits of the Act are sought shall not be subject to the Limitation of Benefits provided in this paragraph D.*
- e. *The provisions of paragraphs D.1.b and D.1.c may be illustrated by the following examples:*

*Example 1: Company A is an Eligible Business that applies for a Grant under the Act for Activity X. Immediately before it files its application, Company A acquires 75% of the Stocks of Company B, which was performing X for the prior three years. In computing its Base Period Income, Company A must include the net income earned by Company B in performing X for the entire Base Period.*

*Example 2: Assume the same facts as in Example 1, except that Company A acquires 75% of the Stocks of Company B at the end of the first year of the Base Period. In computing its Base Period Income, Company A must include the net income earned by Company B in performing X for the entire Base Period, because Company B was its Predecessor Business for the first year and its Affiliated Entity for the subsequent two years.*

*Example 3: Company C is an Eligible Business that applies for a Grant under the Act for Activity X. Immediately before it files its application,*

*Company C acquires 75% of the assets of Company D, which constitute all of the assets that were used by Company D in performing Activity X for the prior three years, and Company D ceases performing Activity X. In computing its Base Period Income, Company C must include the net income earned by Company D in performing X for the entire Base Period.*

Example 4: Assume the same facts as in Example 3, except that Company C acquires 75% of Company D's assets used in Activity X at the end of the first year of the Base Period and Company D continues to use its remaining assets to conduct X. In computing its Base Period Income, Company C must include 75% of the net income earned by Company D in performing X for the first year of the Base Period, because Company D was its Predecessor Business for the first year and continues the activity.

- f. *If the holder of a Grant to provide Export Services acquires during the term of its Grant another business that provides eligible Export Services that could be covered by the Grant as well, only the income earned by that other business in excess of that other business's Base Period Income, computed as described in this Paragraph D, may be eligible for the fixed rate of income provided in Article 4 of the Act, and only after the inclusion of the activities of such acquired business in the Grant is applied for and approved by the Secretary. A grantee acquires another business for purposes of this subparagraph if it acquires fifty percent (50%) or more of the Stocks of such Entity (measured by the total value of all issued and outstanding Stocks on the acquisition date(s)) or fifty percent (50%) or more of the assets of such Entity (measured by the total value of such assets on the acquisition date(s)) that were used in conducting the activity for which the benefits of the Act are claimed, regardless of whether it was operating under a different legal name or owners.*

- (1) The provisions of prior paragraph may be illustrated by the following example:

Example: Company A holds a grant under the Act. During the term of its Grant, it acquires Company B, which performs eligible Export Services that could be covered under Company A's Grant. During the three years preceding Company B's acquisition, Company B's income attributable to those activities averaged \$100,000. After the acquisition and the Secretary's approval of the inclusion of Company B's activities in the Grant, only Company B's income in excess of \$100,000 qualifies for the fixed rate of income provided by the Act.

- g. *The Base Period Income shall be subject to the income tax rates provided in the Code, except in the case of entities with tax exemption grants under Act No. 73 – 2008, as amended, Act No. 135 – 1997, as amended, or Act No. 8 – 1987, as amended, in which case the rate established in such grant shall apply, and the distribution of earnings and profits arising*

*from such income will not qualify for the treatment provided for in Article 6 of the Act.*

*h. If the Secretary determines that any applicant manipulated its income in any way so as to reduce its Base Period Income, such as by delaying the receipt of income until after its application is filed that it would have received in the ordinary course before such application was filed, he may compute Base Period Income in a manner that eliminates the effect of such manipulation. The fact that an applicant so manipulated its income may be considered in the evaluation of whether issuing a Grant is in the Best Economic and Social Interests of Puerto Rico.*

## **VI. PROCEDURES**

A. The procedures relating to the application for and administration of the grants under the Act shall be as provided in Article 9 of the Act.

B. Eligible Business Transfer

1. The Act provides rules for the approval of transfers of a Grant or Stocks in an Eligible Business that holds a Grant. The exception in Subsection (c)(ii)(b) of Article 10 shall apply when the transfer of Stocks does not result directly or indirectly in a change in the control of an eligible business that holds a Grant granted under this Act. For these purposes, control is transferred when the transferee(s) acquire direct or indirect ownership of fifty percent (50%) or more of the total Stocks, by value, of the Entity conducting the Eligible Service.

C. Timing of Revocation

1. Any permissive revocation of a Grant under Article 9 shall be given effect from the date upon which the failure to comply that is the basis for the revocation commenced.

2. Administrative Decisions – In the event any decision or determination by the Secretary of Economic Development and Commerce under a Grant to revoke a Grant permissively is subject to administrative or judicial review and is ultimately upheld, it shall be given effect from the date on which such decision or determination would have been effective hereunder had such review not been sought.

## **VII. APPLICATION OF THE CODE FOR A NEW PUERTO RICO**

A. The Code shall apply in a supplemental manner to this Act to the extent that its provisions are not in conflict with the provisions of this Act.

B. No provision of this Act shall be read to allow the Secretary to include terms in a Grant that change the applicability of the Code to Grantees or their shareholders, except as expressly authorized by the Act.

### VIII. DISCLAIMER CLAUSE

Any matter not covered by this Regulation shall be decided by the Secretary in accordance with the laws, regulations, executive orders and resolutions mentioned above in all matters not provided therein, shall be governed by the rules of sound public administration.

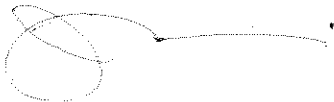
### IX. SEVERABILITY

If a court with jurisdiction declares invalid or unconstitutional any item, part, paragraph or provision of the Regulations, the decision to this effect shall not affect or invalidate the remainder thereof, and the effect will be limited to the article, part, paragraph or clause so declared, unless said declaration shall make it impossible to effectuate the intent of these Regulations.

### X. EFFECTIVENESS

This Regulation shall enter into force thirty (30) days after the date of its submission to the Department of State and after compliance with the provisions of Act No. 170 of August 12, 1988, as amended, entitled "Uniform Administrative Procedure Act of the Commonwealth of Puerto Rico."


### APPROVAL



José R. Pérez-Riera

Secretary

Date: ~~November 16, 2012~~

 December 17, 2012