



Circular Letter  
No. OECI 2015-002

February 4, 2015

**TO THE GRANTEES, APPLICANTS, REPRESENTATIVES OF GRANTEES AND APPLICANTS OF TAX EXEMPTION UNDER THE PROVISIONS OF ACT 22-2012, AS AMENDED**

**Approval of Act 241-2014 Amending Act 22-2012, as amended**

On December 22, 2014, the Governor of the Commonwealth of Puerto Rico, Honorable Alejandro García Padilla, approved Act 241-2014 ("Act 241")<sup>1</sup>. The purpose of Act 241 is to amend Act 22-2012, as amended, also known as the "Act to Promote the Relocation of Individual Investors to Puerto Rico" ("Act 22") in order to introduce the following modifications:

- To expand the definition of "Resident Individual Investor".
- To authorize the charge of fees for the processing of the application.
- To require the Resident Individual Investor the filing of an annual report.<sup>2</sup>
- To recognize the validity of trusts to organized outside of Puerto Rico by a Resident Individual Investor.
- To establish a special fund to promote the relocation of Resident Individual Investors to Puerto Rico.
- To include several technical amendments.

This Circular Letter is intended to notify and clarify the provisions of such Act 241. For further details on the implementation of the provisions of Act 241, please refer to the text approved in the Act or contact the Office of Industrial Tax Exemption.

**Article 1**

Article 1 of Act 241 amends Article 2(a) of Act 22 to provide that a "Resident Individual Investor" means a resident individual who has not been a resident of Puerto Rico during the **six (6)** years preceding the effective date of Act 22. Therefore, for applications received on or after the effective date of Act 241, the

<sup>1</sup> Senate Bill 864 was initially introduced on January 7, 2014. It was under evaluation by the Legislative Assembly and subject to public comment and was finally enacted into law on December 22, 2014.

<sup>2</sup> Prior to the enactment of Act 241, this requirement was included as an obligation pursuant to a clause under the grant.

applicant must declare that he or she was not a resident of Puerto Rico from the period of January 17, 2006 through January 17, 2012.

Prior to the enactment of Act 241, Act 22 was applicable to persons that had not been residents of PR during the 15 years prior to the effective date of Act 22. Therefore, this recent amendment will broaden the universe of individuals that may benefit from the Act 22 Program.

## **Article 2**

Article 2 of Act 241 amends Article 3(a) in order to authorize the Director of the Office of Industrial Tax Exemption ("OITE") to charge a fee for the processing of applications under the Act 22.

It shall be clarified that starting on January 7, 2015, upon the filing of a petition under Act 22 with the OITE; the applicant will be charged a fee of seven hundred and fifty dollars (\$750), which will be paid only by certified check, manager's check or money order payable to the Secretary of the Treasury.

The processing fee will be used, among others, to cover the due diligence and screening procedures implemented with respect to Act 22 applicants.

## **Article 3**

Article 3 amends Article 6 of Act 22 to provide that the Resident Individual Investor must file an authenticated Annual Report on or before April 15th of every year. The Director of OITE may grant an extension of time of thirty (30) days to file the Annual Report to any grantee that requests such extension of time on or before April 15, provided there is a just cause for said extension. The Director of OITE will base its determination of just cause as expressed by the grantee on a written petition.

Furthermore, it is provided that the Annual Report shall include information reflecting compliance with the provisions of the grant, for the fiscal year previous to the filing date. It may also request additional information, as provided in any further regulation, as well as an annual fee. Herein it is determined that the fee shall be paid only by certified check, manager's check or money order payable to the Secretary of the Treasury of Puerto Rico, for three hundred dollars (\$300).

The information provided within the Annual Report will be used for statistics and economic studies.

The Form for the Annual Report under Act 22 is currently under review; as soon as the final version is available, this Office will notify the exempted businesses.

Note that prior to the enactment of Act 241, the Annual Report requirement was included as an obligation pursuant to a clause under the Act 22 grant. Thus, all Act 22 grantees are subject to said requirement notwithstanding the effective date of their decrees.

Furthermore, Article 3 mandates the Director of the OITE to perform a compliance audit every two (2) years in regard to the terms and conditions of the decree granted under Act 22.

#### **Article 4**

Article 4 renumbers articles 7, 8 and 9 as articles 10, 11 and 12 of Act 22.

#### **Article 5**

Article 5 adds a new Article 7 to Act 22 in order to: (a) authorize any grantee, Resident Individual Investor, to set up any trust under the laws of Puerto Rico and to choose to be treated as a grantor trust for Puerto Rico income tax purposes. Such decision shall be done according to the regulations approved by the Secretary of Treasury, no matter if the trust is not considered as a grantor trust under the provisions of the Puerto Rico Internal Revenue Code of 2011, as amended (Act 1-2011). Additionally, such decision may be revoked only according to the regulations approved by the Secretary of Treasury in that regard.

(b) To authorize any grantee, Resident Individual Investor, to set up any revocable or irrevocable trust under the laws of Puerto Rico, pursuant to the provisions of the trust, as chosen by the trustee, and provided that if the trust does not express its nature, it will be presumed that the trust is irrevocable.

It is also provided that in the case of revocable trusts, pursuant to this provision, the same can be revoked only by trustees, or by a trustee specified in the trust for such faculty.

(c) To recognize the validity of any trust that has been set up outside of Puerto Rico by a Resident Individual Investor.

(d) To provide that any grantee, Resident Individual Investor, can freely transfer or donate, in life, all or part of its real and personal property to the trusts herein described, irrespectively if it is real or personal property; tangible or intangible property; or the location of the property. The validity of such trust will prevail over any law or regulation of Puerto Rico in conflict with its provisions, including but not limited to the provisions of the Civil Code of Puerto Rico.

Article 7 is added to Act 22 to recognize and safeguard the validity of those trusts granted outside Puerto Rico to all Resident Individual Investors to make sure that Act 22 is more attractive for those individuals who are considering settling in Puerto Rico

#### **Article 6**

Article 6 adds a new Article 8 to Act 22 to provide that in addition to the filing fees established on Article 3, each grantee shall pay, to the Secretary of the Department of Economic Development and Commerce, five thousand dollars (\$5,000) which will be payable in full, once, at the moment of the approval and issuance of the grant under Act 22. This requirement must be satisfied through the purchase of internal revenue stamps at a tax collector's office of the Department of Treasury.

After the grantee issues the full payment, OITE will follow the standard procedure to send the decree to the grantee. The Secretary of Treasury will create a Special Fund, called the "Special Fund under the Act to Promote the Transfer of Individual Investors to Puerto Rico", and shall deposit all funds generated from the fees paid. The Secretary of the Department of Economic Development and Commerce will use those funds for the promotion, management and implementation of Act 22.

The rights required by this Article will be applicable to all applications filed at the OITE on or after January 7, 2015.

The OITE is currently in the process of coordinating with the Department of Treasury the payment methods for this fee and we will notify all the concerned parties about the payment method and manner in which the rights will be paid.

The purpose of the amendments introduced by Act 241 is to strengthen the Act 22 program as an economic development tool, ensure continuity of the program, and provide additional resources to continue promotional efforts related to the program.

For questions or concerns regarding this circular letter please contact OITE at (787)764-6363.

Cordially,



Elizabeth Aponte Rivera  
Executive Director