

# O'NEILL & BORGES

ATTORNEYS AT LAW

American International Plaza  
250 Muñoz Rivera Ave, Suite 800  
San Juan, Puerto Rico 00918-1813

Tel (787) 764-8181  
Fax (787) 753-8944

NEWSLETTER

AUGUST 2010

---

---

## NEW TOURISM DEVELOPMENT ACT

The Puerto Rico Tourism Development Act of 2010 (the "2010 TDA") has been enacted into law pursuant to Act No. 74 of July 10, 2010. The 2010 TDA has additional new benefits designed to reduce the high construction and operational costs of tourism businesses. Act 74 also amended the Internal Revenue Code of Puerto Rico and the Municipal Property Tax Act of 1991.

### HIGHLIGHTS

- (1) The 2010 TDA incorporates most of the benefits of the Puerto Rico Tourism Development Act of 1993 ("1993 TDA") and incorporates many provisions previously contained in the regulations (example, definition of "total project cost").
- (2) Nautical and medical tourism are now eligible tourism businesses.
- (3) A condo-hotel unit now has to be dedicated to a hotel rental program for only 9 months of each calendar year for ten years. Under the prior law, a condo-hotel unit had to be dedicated to a hotel rental program for 11 months of each calendar year for ten years.
- (4) Substantial Renovation or Expansion - Under the prior law, as a general rule, only investments in new construction could qualify for tax credits; tax credits were not available for amounts spent in acquiring an existing tourism business. One exception under the prior law was that tax credits were available for amounts spent in acquiring existing tourism structures, provided that the amount spent in renovating or expanding the existing tourism structures exceeded 200% of the cost of acquiring the existing tourism structures. Under the new 2010 TDA, the 200% requirement has been lowered to 100%, provided that the investment in renovating or expanding the existing structures is invested in its entirety within a 36 month period from the date of acquisition of the existing tourism business. The 2010 TDA empowers the Executive Director of the Puerto Rico Tourism Company ("Director") to extend the 36 month period by an additional 36 months.
- (5) Royalties and fees - The withholding tax applicable to royalties paid by an exempt tourism business to a foreign licensor for use of intangibles in connection with the exempt tourism business has been reduced to 2.9% or 12 % depending on whether the foreign licensor is related to the exempt tourism business.
- (6) Exemption for interest received from bonds, promissory notes or other obligations of exempt businesses - Interest received from bonds, promissory notes and other obligations issued by an exempt tourism business is exempt from the payment of taxes imposed by the Puerto Rico Internal Revenue Code and from license taxes imposed by the Municipal License Tax Act.

- (7) Sales and Use Tax - Articles acquired for use in an exempt tourism activity are exempt from the payment of the sales and use tax. This exemption does not apply to inventory items.
- (8) Leasing License - Landlords that lease personal property to exempt tourism businesses are no longer required to obtain a leasing license under the Personal Property Leasing Institution Act.
- (9) Registry of Property – 90% exemption from recording fees - transactions with regard to real property regulated by the 2010 TDA may qualify for a ninety (90) percent exemption from the payment of fees for the authorization of public instruments and deeds (IRS stamps, etc.) and from the payment of Registry of Property presentation and recording fees.
- (10) Foreign registered vessels - No sales and use tax will be payable with respect to foreign registered vessels or vessels documented by the US Coast Guards, provided that title and possession of such vessels belong to a non-resident of Puerto Rico.
- (11) Buildings in construction; equipment and machinery to be installed or used - in case of an exempt tourism business, the land upon which a building will be constructed or the machinery and equipment which will be installed or used may be exempted from property taxes.
- (12) Special partnerships - While casino income is not exempted from taxation, the 2010 TDA now codifies what has been the administrative practice, which is to recognize that casino income will be considered qualified income for purposes of the 70% gross income test for special partnerships.

**NO DOUBLE DIPPING**

The provisions of the 2010 TDA shall not be used in conjunction with other economic incentive acts, except in the special case applicable to REITs and certain of its affiliates.

**TRANSITORY PROVISIONS**

- (1) No concessions under the 1993 TDA will be issued, and any application for concession of benefits under said act that was filed before the approval of the 2010 TDA will be considered as filed under the 2010 TDA.
- (2) Any eligible tax-exempt business under the 1993 TDA may petition for the renegotiation of its exemption decree to avail itself of the benefits granted under the 2010 TDA, provided that the business meets the requirements of the 2010 TDA.



*Because of the general nature of this newsletter, nothing herein should be considered as legal advice or a legal opinion. For further information about the contents of this newsletter, or should you need further assistance in connection with these matters, please contact the firm's Corporate – Tax Department.*



<b>CORPORATE - TAX DEPARTMENT</b>			
<b>Partners</b>	<b>Partners</b>	<b>Associates</b>	<b>Associates</b>
Alfredo Alvarez-Ibañez	Egardo Nieves-Quiles	Walter F. Alomar	Juan C. Reyes
Juan A. Aquino	Isis L. Pérez	Antonio L. Collazo	Patricia Salichs
José R. Cacho	Julio Pietrantoni	Giselle Flaqué	Christian Sobrino
Walter F. Chow	David Rivé-Power	Nydia Galarza	Yasmín Umpierre-Chaar
Ivelisse Collazo	Juan A. Rivero	Marie Guiven	Travis D. Wheatley
Aurelio Emanuelli	Víctor R. Rodríguez	Rafael Hernández-Miranda	
Rosa M. González-Lugo	Pablo Rodríguez-Solá	Ana E. Lago	<b>Of Counsel</b>
Amaya Iraolagoitia	Samuel Rosado-Domenech	Néstor J. Lo Presti	Raymond C. O'Neill
Rosa M. Lázaro	Jorge L. San Miguel	Viviana Miranda Ortiz	Eduardo E. Franklin
Michelle Marichal	Ismael Vincenty	José L. Notario	
Cristina Morazzani		Marta Ramírez	