

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

PROPOSED "STIMULUS TO REAL ESTATE MARKET ACT"

Last week, Governor Fortuño announced the filing of House Bill 2814 (the "Bill") directed to stimulate the Puerto Rico real estate market. In synthesis, the Bill provides various tax exemptions which are aimed to incentivize the purchase of new homes, as well to stimulate other aspects of the real estate market. The following newsletter presents a general description of some of the principal benefits proposed by the Bill which is currently pending approval by the Legislature.

GENERAL PURPOSE. The Bill's general purpose is to encourage the purchase and sale of newly constructed residential projects, as well as the sale of existing residential properties and certain commercial properties. The Bill also provides measures aimed to stimulate the rental market for both residential and commercial properties.

PERIOD COVERED. Generally the benefits of the proposed law would apply with respect to transactions occurring from **September 1, 2010 through June 30, 2011** (the "Benefit Period").

PROPOSED BENEFITS

- ❑ **INCOME TAX EXEMPTION FOR RESIDENTIAL LEASING.** The Bill provides full income tax exemption for a period of ten taxable years for the net rental income derived from the leasing of residential properties, whether new (if acquired during the Benefit Period) or existing.

If the leased property is a newly constructed residential unit, the ten year tax exemption period will commence on the earlier of the acquisition date of the unit or January 1, 2012. If the leased property is an existing residential unit, the ten year tax exemption period will commence on January 1, 2011.

In order to benefit from this tax exemption, the taxpayer must include the rental income in his tax return as tax exempt income.

- ❑ **EXEMPTION FROM TAX ON LONG TERM NET CAPITAL GAIN.** The Bill provides full income tax exemption for the long term capital gain derived from the sale of Qualified Properties effected during the Benefit Period. Note that this exemption will not cover the gain from the sale of property held as inventory.

A **Qualified Property**, is defined as an existing residential property located in Puerto Rico which is not a newly constructed unit, or a non residential property located in Puerto Rico which is sold during the Benefit Period for a sales price which does not exceed \$3 million dollars.

The Bill also provides full income tax exemption for the long term net capital gain derived from the sale of Newly Constructed Property acquired during the Benefit Period. In other words, the **purchaser** of a newly constructed residential unit during the Benefit Period will enjoy full income tax exemption from the net capital gain derived from the future sale of said unit. **Newly Constructed Property** is defined as residential property that has not been previously occupied.

In order to enjoy this tax exemption, the purchaser must make sure that the Department of Treasury certifies that the acquired property is in fact a Newly Constructed Property and that the net capital gain from its future sale will be tax exempt. Said certificate must be attached to the income tax return corresponding to the year in which the property is sold.

The Bill also proposes a 50% income tax exemption on the net capital gain derived from the future sale of a **Qualified Property** acquired during the Benefit Period.

In order to enjoy the tax benefits for future sales, the taxpayer must include the gain from such sale in his/her tax return and declare it as totally or partially exempt income according to the above rules.

The above-described tax benefits will only be available to the first seller and the corresponding first purchaser of each newly constructed unit or existing Qualified Property. They will not be applicable to subsequent transferees even if the transfer is executed within the Benefit Period. Moreover, these benefits will not be available with respect to sales between related parties. The benefits are applicable to nonresidents of Puerto Rico that are otherwise eligible for them.

- **PROPERTY TAX EXEMPTION.** The Bill provides 100% property tax exemption to persons that purchase Newly Constructed Property within the period between September 1, 2010 and June 30, 2011 for a term of five (5) years commencing with fiscal year 2010-2011.

The purchaser of Newly Constructed Property within the Benefit Period will also be totally exempt from the payment of the special property tax imposed by Act 7 of March 9, 2009.

- **DEDUCTION OF CAPITAL LOSSES.** The limit for the deduction of capital losses incurred by individuals in sales of Qualified Property

effected after the effective date of the law and on or before June 30, 2011 is increased from \$1,000 to \$5,000. Said capital losses may be carried over indefinitely.

- **EXEMPTION FROM PAYMENT OF FEES, STAMPS AND VOUCHERS.** The Bill provides total exemption to all parties involved in the sale of Newly Constructed Property during the Benefit Period from the payment of fees, stamps and vouchers for execution of public deeds and recording. This benefit applies with respect to the sale, purchase, lease, financing, constitution of mortgage, cancellation of mortgage and any other transfer of Newly Constructed Property.

The Bill also provides that the **seller** of a Qualified Property during the Benefit Period will enjoy 50% discount on the cost of fees, stamps and vouchers related to the transfer of said property during said period and 100% exemption from the payment of fees, stamps and vouchers related to the cancellation of any existing mortgage on the Qualified Property being transferred.

On the other hand, the Bill provides that the **purchaser** of Qualified Property within the Benefit Period will enjoy 50% discount on the cost of fees, stamps and vouchers with regards to the execution and recordation of all documents related to the purchase and mortgage of the Qualified Property.

The Bill does not provide any exemption from notarial fees.



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

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