



Recent Tax Developments: Relevant Changes to Income Tax and Municipal Code Brought by Act 52-2022

By Federico Aguirre and Yarithmarie Agosto

In recent years, multiple laws have been approved that amended or introduced new provisions that change the rules of the game for the taxpayers. This year is not an exception. Last June 30th, Act 52-2022 (“Act 52” or the “Act”) was signed into law. Act 52 amended various laws, including the Puerto Rico Internal Revenue Code of 2011, as amended (“PR IRC”), and the Puerto Rico Municipal Code, as amended (“Municipal Code”).

In this bulletin, we provide a summary of relevant amendments introduced by Act 52 that impact income taxes in the PR IRC. Also, we briefly discuss changes to provisions in the Municipal Code related to the requirement of audited financial statements. In next bulletins, we will discuss other significant changes brought by Act 52.

AMENDMENTS TO THE PUERTO RICO INTERNAL REVENUE CODE BROUGHT BY ACT 52

Act 52 introduced, among others, the following amendments to the PR IRC:

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I. Audited Financial Statements (“AFS”), Agreed Upon Procedures (“AUP”) or Compliance Attestation (“CA”)

a. AFS for related entities

Generally, there is a requirement to include AFS, AUP or CA with the income tax return, depending on the volume of business (“VOB”) generated by the taxpayer during the taxable year, and if it is part of a group of related entities. Act 52 modified the threshold to determine this requirement for groups of related entities with an aggregate VOB equal or greater than \$10 million. The amendment provides that if the aggregate VOB of the group is equal or greater than \$10 million, the members with a VOB equal or less than \$3 million will not be required to submit AFS.

However, at the election of the taxpayer, an AUP or CA can be included with the return to avoid the limitation of deductions for the Alternative Minimum Tax (“AMT”) or the Alternate Basic Tax (“ABT”).

For reference, the following table summarizes the changes for members of a group of related entities with an **aggregate VOB equal or greater than \$10 million**:

Member’s VOB	Document Required	
	Before Act 52	Pursuant to Act 52
= or > \$3 Million	AFS	AFS
= or > \$1 Million < \$3 Million	AFS	AFS, AUP or CA for AMT or ABT
< \$1 Million	AFS, AUP or CA	AFS, AUP or CA for AMT or ABT

The amendments pursuant to Act 52 are not clear about to the requirements of AUP or CA, as a substitution of the AFS, for members of a group of related entities with VOB less than \$1 million. For such taxpayers, it may be understood that there is still the requirement to submit the AUP or the CA in substitution of the AFS.

The Act 52 is not making any change to the effective date previously included in the PR IRC. Before the enactment of Act 52, the AFS requirement was applicable for taxable years commenced after December 31, 2019. Therefore, this may give rise to the interpretation that the effectiveness of this amendment pursuant to Act 52 will retroactively apply to taxable years commenced after December 31, 2019, instead of as of the effective date of the Act.

b. Supplemental Schedules

Except for certain industries, the requirement to submit supplemental information, as applicable, with the income tax return was eliminated for taxable years commencing after December 31, 2022. This requirement will still only apply, under certain circumstances, to the construction industry, hospital units and financial institutions.

c. AMT Applicable Rate

For taxable years commencing after December 31, 2018, the Minimum Tentative Tax is calculated based on the greater of \$500 or 18.5% (or 23% depending on the VOB of the corporation) of the alternative net income (after exempt amount and foreign tax credit). Before Act 52 was enacted, corporations with a VOB equal or greater than \$3 million but less than \$10 million were subject to a tax rate of 23%, and all other corporations were subject to a 18.5% rate. However, pursuant to the amendments provided by Act 52, the rate of

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23% will only apply to corporations with a VOB equal or greater than \$10 million.

For reference, we are including a table summarizing the changes to the AMT Rates:

VOB	AMT Rate	
	Before Act 52	Pursuant to Act 52
< \$3 Million	18.50%	18.50%
= or > \$3 Million < \$10 Million	23%	18.50%
= or > \$10 Million	18.50%	23%

Again, Act 52 is not making any change to the effective date previously included in the PR IRC. Before the enactment of Act 52, the rates were applicable for taxable years that commenced after December 31, 2018. Therefore, this may give rise to the interpretation that the effectiveness of this amendment will retroactively apply to taxable years commenced after December 31, 2018, instead of as of the effective date of the Act.

d. Estimated Tax Payments for Corporations

In general, every corporation engaged in trade of business in Puerto Rico subject to taxation under the income tax provisions of the PR IRC, is subject to the estimated tax payments requirement. Before the enactment of Act 52, this requirement applied regardless of the amount of estimated tax for a taxable year. However, pursuant to the Act, this provision was amended to require estimated tax payments **only** when the estimated tax of a corporation for any tax year is **greater than \$1,000**.

Another amendment to the estimated tax payments requirement was the modification of the due date for the payment of

the **first installment, to be made by corporations with a tax exemption decree**. For taxable years commencing after December 31, 2022, these entities could **opt** to make the first installment together with the second installment on or before the fifteenth day (15th) of the sixth (6th) month of the taxable year.

AMENDMENTS TO THE PUERTO RICO MUNICIPAL CODE BROUGHT BY ACT 52

Act 52 amended the Municipal Code to align with the PR IRC regarding the requirement to submit AFS and supplemental schedules with the personal property tax return and the VOB Declaration. The requirements are as follows:

- VOB Declarations – Every business required to, or that voluntarily submits AFS according to the provisions of the PR IRC, should also include them with the Declaration. Furthermore, the requirement to submit supplemental schedules will only be applicable on those cases which the supplemental schedule is required under the PR IRC (discussed above).
- Personal Property tax Returns – Every natural or juridical person engaged in trade or business in Puerto Rico that is required to (or voluntarily) submits AFS pursuant the PR IRC, should include these AFS with the personal property tax return. Furthermore, the requirement to submit supplemental schedules will only be applicable in those cases which the supplemental schedules are required under the PR IRC (discussed above). However, this change for the AFS requirement is only applicable before January 1, 2023, and the Act does not provide any requirement after that date.

ATBA Comments

As summarized in this newsletter, Act 52 made, among others, changes to the requirement to submit AFS and supplemental schedules with the income

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tax return, VOB Declaration and personal property tax return in addition to the applicable rate to the AMT and to estimated tax payments of entities that are taxed as corporations.

As you may note, some of the provisions were effective as of June 30, 2022, the date of the enactment of the Act. However, there are some other amendments for which the effective date is not clear or may appear to be applicable before the enactment of the Act. In the past, the Puerto Rico Treasury Department has issued publications to clarify the effective date of the provisions when the effective date is not clear. Also, the Puerto Rico Legislature has approved bills with technical amendments to provide clarifications to other laws that needed clarification. Unfortunately, we don't have certainty that this will be the case for the Act.

The new provisions and amendments from the Act may have an impact on taxpayers for taxable year 2021 and previous and subsequent years. Our team can help you identify impact of provisions that specifically affect you.

Should you need assistance or if you have any questions, our tax professionals are available to assist you with these or any other tax related matters.



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