



ACT 27

FILM & MEDIA TAX INCENTIVES LEGISLATION IN PUERTO RICO

On March 4, 2011, Puerto Rico enacted Act No. 27 of 2011, as amended, known as the "Puerto Rico Film Industry Economic Incentives Act" (the "Act") to solidify its position as one of the leading jurisdictions for the production of film, television and other media projects. The Act provides tax exemptions and tax credits to businesses engaged in film production in Puerto Rico. To avail from such benefits, a business needs to become an exempt business by applying for a tax concession and obtaining a tax exemption decree.

Since 1999, close to 90 productions have taken advantage of Puerto Rico's film and media incentive programs, including most recently: Fox/New Regency's "Runner, Runner," Disney's "Pirates of the Caribbean 4," Universal Picture's "Fast 5," Warner Brothers' "The Losers," ABC's "The River" and "Off the Map," USA Network's "White Collar" and "Royal Pains," HBO Film's "Eastbound and Down" and Showtime's "The Big C". As a result of this depth of experience, Puerto Rico has developed the necessary technical expertise to film projects in Puerto Rico, from location scouting to permit clearances to credit financing. This includes four U.S.-trained, bilingual crews working year-round and specially dedicated infrastructure provided by the Government of Puerto Rico to guide investors, studios, production companies and independent producers through everything necessary to film in Puerto Rico.

Eligibility

Eligible media projects and related requirements are as follows:

- Feature films; short films; documentaries; television programs; series in episodes; mini-series; music videos; commercials, both international and national; video games; recorded live performances; and original soundtrack recordings and dubbing;
- \$100,000 minimum spend requirement per project (\$50,000 for short films);
- No principal photography requirement: full development, partial development, pre-production and post-production are eligible activities; and
- No per project or individual wage caps.

Recognizing the importance of complementing a low cost structure with a state-of-the-art infrastructure specially dedicated to the industry, the Act also provides incentives for eligible infrastructure projects, which include:

- the development, construction and operation of studios, laboratories, post-production, animation and special effects facilities, transmission facilities and related infrastructure.

Tax Exemptions

Tax exemptions for eligible production businesses, including film producers and studio operators, are the following:

- 4% fixed income tax rate on income derived from the production (6% to 10% fixed income tax rate in the case of studio operators);
- 100% tax exemption on dividend distributions;
- 90% tax exemption from personal property taxes. The taxable portion will be subject to the regular tax rate, that currently can be up to 8.83%; therefore, after considering the 90% exemption, the effective tax rate would be up to 0.883%;
- 90% tax exemption from real property taxes. The taxable portion will be subject to the regular tax rate, that currently can be up to 10.83%; therefore, after considering the 90% exemption, the effective tax rate would be up to 1.083%;
- 100% tax exemption on municipal license taxes, construction taxes and other municipal taxes; and
- 100% tax exemption on excise taxes on articles imported by the grantee to be used in the eligible activities.

Tax Credits

- The Act offers the following tax credits: 40% tax credit on all payments to Puerto Rico resident companies and individuals. The Act provides an annual limit of \$50,000,000 of tax credits available for film projects. However, film projects may apply for up to \$50,000,000 additional tax credits in excess of the \$50,000,000 limit if



any portion of its Puerto Rico production expenses are incurred within a Film Development Zone. An additional \$150,000,000 will be available if the film project is produced within a Film Development Zone having a film studio with a cost of \$200,000,000 or more. The Act provides that, after attaining the previous limits, additional tax credits in an amount of \$100,000,000 will be available if the film credits program has conceded at least \$250,000,000 for two consecutive years;

- 20% tax credit on all payments to non-resident “Above-the-Line” talent, including actors, producers, directors and writers. No annual cap is established with respect to non-resident “Above-the-Line” payments. However, the grantee of a decree under the Act (or its representative) will be responsible for withholding, remittance and reporting to the Puerto Rico Treasury Department a 20% tax on payments to non-resident “Above-the-Line” talent. Some jurisdictions, as the United States have rules to avoid double taxation that may include foreign tax credit systems. Under a foreign tax credit system, the 20% tax withheld from payments made to non-resident “Above-the-Line” talent should be credited against the income tax liability determined with respect to such income in his/her primary tax jurisdiction. Each non-resident “Above-the-Line” individual should consult their own tax advisor; and
- 25% infrastructure tax credit on costs incurred in the development of a film studio or other eligible infrastructure project. The Act provides an annual limit of \$10,000,000 of tax credits available for infrastructure projects. Excess credits not taken in a particular year may be rolled over to a subsequent year. These credits have a lifetime cap for all projects of \$150,000,000. The minimum investment for individual infrastructure projects is \$1 million.

Film Development Zones

The Act provides that the Secretary of the Department of Economic Development and Commerce of Puerto Rico (the “Secretary”) may designate certain geographical areas as Film Development Zones. The Film Development Zones will be designated by the Secretary on his own initiative or after considering an application made by a developer of an infrastructure project. In order to be considered, the application must include a Large-Scale Studio proposal. Under regulations issued by the Secretary, the island municipalities of Vieques and Culebra will be considered Film Development Zones; therefore, film projects developed in Vieques and/or Culebra and complying with certain filming parameters described in the regulations, will not be subject to annual tax credit limitations established by the Act.

Tax Exemption Decree

To benefit from the Act, the film development company or studio operator needs to submit an application with the Puerto Rico Film Commission to obtain a tax exemption decree, which will provide full detail of tax rates and conditions mandated by the Act and will be considered a contract between the Government of Puerto Rico and the applicant. Once the applicant obtains the tax exemption decree, the benefits granted will be secured during the term of the decree, irrespective of any changes in the applicable Puerto Rico tax laws.

Puerto Rico Income Taxes

An exempt business operating in Puerto Rico under the Act by means of a Puerto Rico entity should not be subject to any taxes (such as a dividend tax, tollgate tax or other similar taxes) on its income from its eligible activities in Puerto Rico, other than the Puerto Rico fixed income tax rate established in the tax decree, regardless if said income is distributed or retained by the entity. Upon repatriation, the distributed income would be subject to the tax imposed by the jurisdiction in which the owners of the Puerto Rico entity reside, if any.

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For more information on the various incentives provided under the Puerto Rico laws, please visit WWW.BUSINESSINPUERTORICO.com and access our incentives alerts on the following topics:

- **Tourism Development Act;**
- **Municipal Economic Development and Tourism Incentives Act;**
- **Cruise Industry Incentives Act;**
- **Film Industry Incentives Act;**
- **Green Energy Incentives Act;**
- **Economic Incentives for the Development of Puerto Rico Act;**
- **Incentives for Rum Producers in Puerto Rico;**
- **Export Services Incentives Act;**
- **Individual Investors Act;**
- **Tax Exemptions for Scientists;**
- **Incentives for business activity performed in Vieques and Culebra; and**
- **Puerto Rico Housing Incentives.**

