



# ACT 82 | 83

## PUERTO RICO ESTABLISHES AGGRESSIVE RENEWABLE ENERGY INCENTIVES

On July 19, 2010, Puerto Rico enacted Act No. 82 of 2010, also known as the “Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act” (the “Renewable Energy Policy Act”) and Act No. 83 of 2010, also known as the “Puerto Rico Green Energy Incentives Act” (the “Green Energy Incentives Act”) to stimulate the development of renewable energy generation through the creation of a \$290 million Green Energy Fund, significant tax benefits, the creation of a Renewable Portfolio Standard and Renewable Energy Credits. These laws are discussed below.

### Renewable Energy Policy Act

Act No. 82 of 2010, also known as the “Puerto Rico Energy Diversification Policy through Sustainable and Alternative Renewable Energy Act” (the “Renewable Energy Policy Act”), mandates that retail energy providers in Puerto Rico establish and comply with a Renewable Portfolio Standard (“RPS”) that requires that a specified percent of their production be from renewable energy sources. The RPS requires that a retail energy provider produce 12% of its power needs through renewable energy by 2015, 15% by 2020 and it is advised that retail energy providers aspire to reach 20% by 2035. Currently, the only retail energy provider in Puerto Rico is the Puerto Rico Electric Power Authority (“PREPA”), but the RPS would be applicable to any other retail energy provider that sells more than 50,000 megawatt-hours (MWh) of electricity during a given year. Co-generators whose energy is destined for re-sale are not subject to the percentage requirements of the RPS.

The Renewable Energy Policy Act also introduced the concept of the Renewable Energy Credit (“REC”) as a legally recognized asset that can be purchased, sold, traded and transferred separately from electric power. A REC represents the equivalent to 1 MWh of renewable energy produced. Every energy producer shall register with the Puerto Rico Renewable Energy Commission, established by the Renewable Energy Policy Act, to keep an inventory of renewable energy generated and the corresponding RECs produced. Retail energy providers may acquire RECs to comply with the percentage requirements of the RPS.

### Green Energy Incentives Act

Act No. 83 of 2010, also known as the “Puerto Rico Green Energy Incentives Act” (the “Green Energy Incentives Act”), grouped and reformed existing incentives for renewable energy sources,

including economic incentives, tax exemptions and tax credits, and created the \$290 million Green Energy Fund. 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.

### Eligibility

Under the Green Energy Incentives Act, businesses engaged in the following activities will be considered eligible to apply for a tax decree:

- Production and sale of renewable energy;
- Operating renewable energy production units;
- Businesses involved in the assembly of renewable energy equipment; and
- Owners of property, real or personal, used by an exempt business in its exempt operations, such as a lessor of real estate used in operations of an exempt business.

### Tax Exemptions

- 4% fixed income tax rate on income derived from the production of energy in Puerto Rico;
- 12% fixed income tax rate, withheld at source, on royalties paid to foreign entities with respect to intangible property used in the exempt business;
- 100% tax exemption on dividend distributions;
- 4% fixed income tax rate on gains derived from the sale of ownership interests or substantially all the assets of the exempt business, in lieu of any other Puerto Rico income tax imposed on such gains;
- 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%;
- 60% tax exemption on municipal license taxes, with the first 3 semesters being 100% exempt. Any taxable portion will be subject to the regular tax rate, that currently can be up to 0.5%; therefore, after considering the 60% exemption, the effective tax rate would be up to 0.02%;



- 100% tax exemption on municipal construction taxes;
- 100% tax exemption on excise taxes and sales and use tax on renewable energy equipment; and
- Accelerated depreciation – 100% first-year bonus depreciation, with ability to carry over to subsequent tax years until exhausted.

#### Tax Credits

The Green Energy Incentives Act also provides various tax credits, including:

- 25% tax credit on purchases of products manufactured in Puerto Rico;
- 35% tax credit on purchases of products manufactured in Puerto Rico made from recycled materials;
- Tax credit for job creation during the first year of operations that ranges from \$1,000 per job created in an industrial area of intermediate development (as determined by the Office of Industrial Tax Exemption) to \$2,500 for jobs created in an industrial area of low development. In the case of businesses established in the municipalities of Vieques and Culebra, this tax credit is \$5,000 per job;
- 50% tax credit on eligible research and development activity costs; and
- 12% tax credit for royalties paid to foreign entities with respect to intangible property used in the exempt business.

#### Rebate Program Incentives

The Green Energy Incentives Act also created a rebate program under the Green Energy Fund to stimulate the adoption of renewable energy production by the private sector, which provides investment-based incentives as follows:

- Tier 1: Project Size: 1 - 100kW; Incentive: up to 60% (fixed at 60% for projects in Vieques or Culebra) of eligible project costs; Funds currently granted on a first-come, first-served basis; and
- Tier 2: Project Size: +100kW to 1MW; Incentive: up to 50% of eligible project costs; Funds allocated through a quarterly competitive tendering process.

#### Other Energy Initiatives

- Pursuant to Executive Order 2010-034, the Governor of Puerto Rico authorized an Expedited Permitting process that calls for a sub-committee to consider an Environmental Assessment (EA) for all energy projects in 20 business days;
- Under Act No. 114 of 2007, as amended by Act No. 103 of 2012, PREPA was authorized to establish a Net Metering Program that allows clients to export any excess renewable energy from renewable energy net metering projects up to 5 MW in exchange for a credit on their utility bills for such excess at retail energy rates, with the ability to rollover to future months of the billing year; and
- A Wheeling System was created that allows independent power producers to sell power directly to other private consumers using PREPA's electrical grid distribution network. [Requests for interconnection can be made during a timeframe

to be specified each year by PREPA (open season). The preliminary pricing for the Firm Point-to-Point Transmission Service has been established in \$7.66 per kW-Month.]

#### Tax Exemption Decree

An energy producer or facility operator needs to submit an application with the Office of Industrial Tax Exemption to obtain a tax exemption decree, which will provide full detail of tax rates and conditions mandated by the Green Energy Incentives Act. The tax decree will be considered a contract between the Government of Puerto Rico and the energy producer. Once the energy producer 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. The decree shall have a term of 25 years, with a possible 10-year extension. The energy producer can also benefit from a "flexible exemption" for income taxes – that is, the energy producer can decide whether its income will be covered by the exemption on a particular taxable year. If it chooses not to be covered by the exemption on a particular year, the energy producer may extend its exemption period for one additional year.

#### Puerto Rico Income Taxes

An exempt business operating in Puerto Rico under the Green Energy Incentives 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

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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.

