

February 22, 2017

**Act No. 14-2017, known as the
Incentives Act for the Retention and Return of Medical Professionals**

On January 2, 2017 the House of Representatives presented Bill No. 5 titled “Incentives Act for the Retention and Return of Medical Professionals” (the “Bill”). The Bill was approved by the House of Representative on February 8, 2017 and on February 11, 2017 by the Senate. On February 21, 2017, the Governor of Puerto Rico signed the Bill into law as Act No. 14 of 2017 (the “Act”). The purpose of the Act is to guarantee accessible and quality health services for all the residents of Puerto Rico; and offer an attractive tax incentives proposal for the medical professionals to stay in Puerto Rico, and at the same time, attract the setup of other professionals’ medical practice in Puerto Rico.

Eligibility for the incentives is based on four (4) main characteristics: (a) professional eligibility; (b) residency; (c) community service; and (d) timing of the request. Below we provide a summary of these main characteristics.

Tax Incentives

A Qualified Physician (defined below) that requests and obtains a Tax Exemption Grant under the Act (the “Grant”), will enjoy the following tax incentives for an initial term of 15 years:

- A 4% fixed income tax rate on Eligible Income (defined below) generated as a result of offering his/her Professional Medical Services (defined below);
- 100% exemption (including Alternative Minimum Tax (“AMT”)) on up to \$250,000 received from Eligible Dividends (defined below), per year; and
- Eligibility to contribute up to 25% of the net income to individual retirement plans (Keogh) or up to 25% of their salary in case of corporate retirement plans, as after tax contributions.

The Qualified Physician can request an extension of the Grant for an additional 15 years, if he/she can demonstrate that said extension is in the economic benefit of Puerto Rico.

Covered Income and Services

The incentives provided by the Grant cover the **net** income derived from the rendering of Professional Medical Services in Puerto Rico (“Eligible Income”). Furthermore, the Grant also covers Eligible Dividends, which are issued from a professional service corporation or limited liability company which provides services of diagnostics and treatment in Puerto Rico (“Eligible Dividends”). The entity can be domestic or foreign company, authorized to do business in Puerto Rico.

For purposes of the Act, “Professional Medical Services” consists of services of diagnostics and treatment provided by a Qualified Physician. The Professional Medical Services must be provided in (i) a private or public hospital or (ii) private office or (iii) in an accredited school.

Qualified Physician

A Qualified Physician is any individual that is admitted as (i) a medical doctor; or (ii) licensed as a podiatrist; or (iii) has any specialty in odontology; or (iv) a resident studying in an accredited program in Puerto Rico in any of such areas. In addition, the Qualified Physician must be engaged full time (**at least 100 hours per month**) in providing Professional Medical Services in Puerto Rico during each tax year in which the benefits are claimed.

A non-resident Qualified Physician may request a Grant, and if he/she receives a favorable determination from the Secretary of the Department of Economic Development and Commerce of Puerto Rico (the "Secretary"), such non-resident Qualified Physician may be awarded the Grant and will be afforded 120 days to move his/her practice to Puerto Rico and become a resident.

Community Service Requirements

In order to enjoy the benefits under the Act, every Qualifying Physician must provide at least **180 hours per year** of community services in any of the following manners: (i) assist as a professor in university hospitals, medical schools, resident doctor ; (ii) offer medical services in areas where the Physicians Chapter of Puerto Rico ("CMPR", by its Spanish acronym) in conjunction with the Department of Health of Puerto Rico ("DSPR", by its Spanish acronym), determine there is a lack of specialized services; (iii) be on-call in hospitals selected by both, the CMPR and DSPR; (iv) offer seminars to the public community related to health problems prevention or for the training or continuing education courses required for students or medical professionals in Puerto Rico; (v) provide Medical Services to disadvantaged areas through certain non-profits selected by the CMPR and the DSPR. As an alternative the Qualified Physician can provide the 180 hours per year of community services through a services contract with the Government Health Plan of Puerto Rico. If the Qualified Physician elects this alternative the services do not have to be provided without remuneration and can be offered in the capacity of employee or independent contractor.

Requirements for the Concession of the Tax Grant

To enjoy the benefits under the Act, every Eligible Physician must do a formal request to the Secretary through the Office of Industrial Tax Exemption (the "OITE"), and pay the corresponding filing fees. Once the request has been submitted, it will be evaluated by the OITE, as well as the DSPR and the Secretary of the Treasury. Once the Grant is approved, the Qualified Physician must pay a **\$1,000.00** acceptance fee. Some of the considerations that will be taken into consideration prior to the granting of the Grant are the following:

- Economic impact of approving the Grant;
- Specialty or sub-specialty that the Qualified Physician holds or if he/she is an accredited residency program;
- If there is a shortage of doctors with the Qualified Physician specialty and/or sub-specialty currently providing their services in Puerto Rico;
- The geographic areas in which the Qualified Physician is providing the services; and
- In the case of general practitioners, special consideration will be taken to (i) the geographic area in which their services are being provided; and (ii) DSPR's evaluation of the sufficiency of general practitioners in that area.

All requests for a Grant under the Act must be submitted for consideration within **two (2)** years after the effective date of the Act.

Continued Compliance

In order to enjoy the benefits of the Grant, once issued by the OITE, the Qualifying Physician must continuously comply with all the following requirements during the life of the Grant: (i) maintain his/her status as a Qualified Physician; (ii) practice medicine, podiatry, or some specialty of orthodontics on a full time basis; (iii) be a resident of Puerto Rico; (iv) comply with any and all tax responsibilities; (v) provide the required 180 hours of community service; and (vi) any other requirements imposed by the Grant, Act or the Regulations approved thereunder.

Revocation of the Grant

If any holder of a Tax Grant: (i) ceases to be a resident of Puerto Rico during the term of the Grant; (ii) ceases to comply with the requirement to be considered a Qualified Physician; (iii) ceases to perform Medical Services on a full time basis; (iv) ceases to comply with the Community Service Requirements; or (v) ceases to comply with any of the requirements established by the Act or any Regulation, the Grant will be revoked immediately.

Should the Grant be revoked for any of the aforementioned reasons, the Qualified Physician will be required to pay to the PRTD an amount equal to all the taxes not paid for any Eligible Income or Qualified Dividends for the prior three (3) years or the duration of the Grant, whichever is smaller. The payment must be remitted within sixty (60) days after the effective date of the revocation of the Grant.

However if the Qualified Physician demonstrates that the non-compliance was due to sickness or disability of: (i) himself/herself; (ii) spouse; (iii) children; or (iv) parents, the Grant may still be revoked, but the Qualified Physician will only be required to pay an amount equal to all the taxes not paid for any Eligible Income or Qualified Dividends for the last year.

Penalties

Any person that commits or attempts to commit on their behalf or on behalf of another a fraudulent or false representation in the request for a Grant may be accused and convicted of felony, which may be punishable with up to eight years of incarceration, a fine of \$30,000 or both. In addition, the Grant will be revoked and the Qualified Physician will be responsible for the payment of all taxes which were partially or totally exempted under the Act.

Regulation

The Secretary, the Secretary of the Treasury and the Secretary of the DSPR will establish the required regulation, circular letter or administrative determination, and/or the guidelines for the interpretation and implementation of the Act.

Effective Date

The Act will be effective 60 days after it is approved.

This document has been prepared for information purposes only and is not intended as, and should not be relied upon as legal advice. If you have any questions or comments about the matters discussed in this notice, wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matters, please contact us.

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