



## TAX PERSPECTIVES

SPECIAL EDITION  
 PUERTO RICO TOURISM  
 DEVELOPMENT ACT OF 2010

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It has been said that taxation is the price we pay for living in a civilized society, and that of all human endeavors, taxes are the hardest to understand.

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## Editor's Note – On the road to sustainable tourism development

by Ariadna Álvarez

Welcome to this special edition of Tax Perspectives focused on the recently enacted Puerto Rico Tourism Development Act of 2010.

This statute was designed to foster economic growth by providing a tax incentives structure geared towards promoting local and attracting foreign investment in Puerto Rico. It is intended that such investment will, in turn, boost Puerto Rico's tourism industry. This new legislation builds upon decades of experience with incentives programs, while introducing new concepts in tune with developments, promises and challenges facing the industry in the 21st century.

Our goal in bringing you this issue is to provide an overview of this broad and complex piece of legislation, and at the same time, spotlight those provisions that are central to the statute's objective of promoting Puerto Rico's economic development. The articles in this special edition are designed to merge the technical and legal exposition of the law with practical hints and insights that will prove helpful to the potential and current concessionee. We are confident you will find this issue both enjoyable and useful.

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# The Puerto Rico Tourism Development Act of 2010: an overview

by Roberto L. Cabañas

The recently enacted Puerto Rico Tourism Development Act of 2010... maintains many of the concepts from its predecessor, the 1993 Act, while providing new tools to help Puerto Rico compete with other hospitality venues in a more challenging economic environment. The TDA also reflects the development of new areas within the hospitality industry, such as nautical tourism and medical tourism.

The hospitality industry is one of the most dynamic and promising sectors of the world economy. Spurred by advances in transportation and communication and the expanding integration of the world economy, the hospitality industry has been constantly creating new products to meet the demands of an ever changing and demanding consumer.

Puerto Rico has been no stranger to recognizing the importance of tourism and of the more encompassing hospitality sector of our economy. Initially, Puerto Rico provided incentives for the development of tourism venues through industrial incentives acts until the enactment of the Tourism Incentives Act of 1983, which was followed by the Puerto Rico Tourism Development Act of 1993 (the "1993 TDA"). The 1993 TDA has been instrumental in the development of new small, mid-size and large hotel projects, as well as of condohotels and vacation club & timeshare interval projects.

The recently enacted Puerto Rico Tourism Development Act of 2010 ("2010 TDA")<sup>1</sup> maintains many of the concepts from its predecessor, the 1993 Act, while providing new tools to help Puerto Rico compete with other hospitality venues in a more challenging economic environment. The TDA also reflects the development of new areas within the hospitality industry, such as nautical tourism and medical tourism.

As you review the 2010 TDA provisions, you must keep in mind its principal goals: (i) establish Puerto Rico as a world class tourism destination; (ii) sponsor the necessary conditions to assure the continued development and competitiveness of the Puerto Rico hotel industry on a global level; (iii) provide the environment for the continuous development of local and foreign capital for investment in tourism projects; (iv) adjust the incentives offered to the Puerto Rican tourism industry to develop better tourism products, to overcome the challenges faced and to take advantage of the opportunities that are currently available; and (v) mitigate the high costs of construction and operation of tourism businesses in Puerto Rico.

## The 2010 TDA provisions are effective July 10, 2010.

### 1. Eligible Activities

A tourism activity that may enjoy the tax benefits under the 2010 TDA, includes:

- a. The ownership and administration of hotels, condohotels, Puerto Rican "paradores" (inns), agrolodgings, time sharing plans and vacation clubs, guest houses, theme parks, golf courses operated by or associated with a hotel that is itself an exempt business, or golf courses located within a resort, regardless of its owner or relationship with another exempt business, tourist marinas, port facilities destined for tourism, agrotourism, nautical tourism, medical tourism and other facilities and activities provided the Executive Director of the Puerto Rico Tourism Company ("Director") determines that such operation is in furtherance of the tourism development of Puerto Rico.

b. The operation of a leasing business engaged in leasing property dedicated to a tourism activity to a business exempt under the 2010 TDA.

c. The development and administration of natural resources useful as a source of passive or active entertainment.

The 2010 TDA expands the definition of a tourism activity to include nautical tourism, medical tourism and stand alone golf courses within a tourism resort. It is specifically provided that all marinas within the island municipalities of Vieques and Culebra are considered as a tourist marina.

Nautical Tourism includes, but is not limited to, the following nautical activities when provided to nautical tourists: (i) the leasing or chartering of Nautical Tourism Vessels<sup>2</sup> for leisure, recreation or educational purposes, including excursions; (ii) the leasing of small vessels, jet skis, kayaks, sailboats or other similar vessels, whether or not motorized, to guests of a hotel, condohotel, timeshare project or vacation club, located within a tourist resort or in a tourist marina or in nearby areas to any of such facilities; and (iii) the operation of an Integrated Boat Rental Program.<sup>3</sup>

Medical Tourism represents the ownership and administration of medical facilities certified and credited in Puerto Rico to provide lodging services to persons obtaining medical treatments.

The 2010 TDA provides that condohotels may now be constituted within a horizontal property regime, a condohotel

property regime or as a group of individual residential units within a tourism resort. Unlike the 1993 TDA, the 2010 TDA further provides that a unit must be placed in an Integrated Rental Program for at least 9 months during each year, thereby permitting the unrestricted use by an individual of his/her individual unit for up to 3 months during the year.

## 2. Exemptions Available to the Exempt Business

a. Income Taxes - Tourism development income, as well as dividends or benefits distributed by the exempt business to its shareholders, partners or members, including liquidating distributions of such income, shall be exempt from the payment of income taxes as follows: (1) up to 100% if the tourism activity is located in Vieques or Culebra and (2) up to 90% if the tourism activity is located in any other municipality. The exemption shall begin on the day the tourism activity commences, but never before the date of filing of an application for the benefits of the 2010 TDA. Distributions from exempt businesses shall be subject to income taxes once upon distribution to the exempt business' shareholders, partners or members. Nonetheless, the tax treatment applicable to distributions from exempt businesses organized as a special partnership shall be subject to the income tax provisions of the Puerto Rico Internal Revenue Code of 1994, as amended ("Code").

Gains on the sale or exchange

of stock or interests in an exempt business or of all or substantially all assets dedicated to a tourism activity of an exempt business will be recognized in the same proportion as the income from tourism development is subject to the payment of income taxes, to the extent such property continues to be dedicated to a tourism activity for at least 24 months after such sale.

b. Property Taxes - As with the 1993 TDA, the 2010 TDA provides up to 90% exemption from the payment of real and personal property taxes with respect to property used in the tourism activity. In the case of existing businesses, the exemption shall commence on January 1st of the year in which an application for the benefits of the 2010 TDA is filed. In the case of new businesses, the exemption shall commence on January 1st of the calendar year in which it commences its tourism activity.

c. Municipal License, Excise and Other Municipal Taxes - The exemption from the imposition of municipal license taxes for new businesses shall be 100%, while the exemption for existing businesses shall be up to 90%. A special rule applies to contractors and subcontractors to prevent double taxation. The exemption shall commence on January 1st or July 1st closest to the date of filing of an application for the benefits of the 2010 TDA.

Except as provided by the Municipal License Tax Act, municipalities may not impose a tax, license tax, excise tax or any other charge that is based on or related to the stay as a guest of

an exempted business.

d. **Municipal Construction Excise Taxes** - As a general rule, the exemption shall be applicable for up to 100% of the municipal construction excise taxes imposed. Special rules apply to condohotels. Disputes with respect to the imposition of the municipal construction excise taxes shall be resolved according to the procedure established by the municipality imposing such tax. The exemption shall commence on the date of filing of the application for the benefits of the 2010 TDA.

e. **Excise and Sales and Use Taxes ("SUT")** - The exemption shall be up to 100% from the payment of the SUT and excise taxes. The requirement of prior approval by the Puerto Rico Tourism Company for granting the exemption of SUT and excise taxes is eliminated in the case an exempt business that acquires personal property outside Puerto Rico to be used in an exempt business. The 2010 TDA further provides that the SUT exemption is applicable when a contractor or subcontractor of an exempt business purchases articles to be used exclusively in a project of an exempt business. The exemption shall commence 30 days after the date of filing of an application for the benefits of the 2010 TDA, subject to the posting of a bond.

f. **Partial Exemption on Internal Revenue and Notarial Stamps, Vouchers, and Other Fees on Public and Private Documents** - Public and private documents regarding real property or

contractual rights related with real property covered under the 2010 TDA are 90% exempt from the payment of internal revenue and notarial stamps, vouchers and other fees. For this exemption to apply, the Director must issue a certification to such effect.

### 3. Exemption Period

The exemptions granted under the 2010 TDA shall be in effect for a period of 10 years, which period may be extended for an additional 10 years.

### 4. Exemptions on Bonds, Notes and Other Obligations Issued by an Exempt Business

The 2010 TDA provides that income consisting of interest, charges and other revenue paid by a tourism business on account of bonds, notes or other obligations, shall be exempt from taxation under the Code and from municipal license, excise and other municipal taxes imposed by the Municipal License Tax Act to the recipient of such income when the proceeds thereof are used in their entirety for the development, construction, rehabilitation or improvement of an exempt business, or for a refinancing of such an obligation.

### 5. Special Tax Rates

The 2010 TDA establishes a new withholding tax of 12% on royalties, rental payments or rental rights paid by an exempt business to foreign corporations, foreign partnerships or persons not engaged in trade or business in Puerto Rico for the use of intangible property with respect to an exempt activity. The withholding tax shall be 2.9% in the event such payments are made to affiliates.

### 6. Tax Credit

a. **Amount** - The 2010 TDA provides for a credit for tourism investment equal to 50% of the eligible equity investment, to be taken in two installments. The maximum amount of credit available to investors shall not exceed 10% of the total project cost, or 50% of the cash contributed by investors, whichever is lower.

b. **Assignment** - The credit may be sold, assigned, or otherwise transferred, in whole or in part, subject to certain restrictions. The persons authorized to sell, assign or in any other manner transfer a tourism investment credit are broker-dealers, underwriters, partners in an investment partnership, and a lending entity that becomes title holder to the credit through the execution of a lien on said credit.

c. **Exemption** - The difference between the credit's face value and its selling price shall be exempt from taxation. The excess of the money or value of the property paid in exchange for a tourism investment credit shall not constitute gross income for income tax purposes under the provisions of the Code.

d. **Determination of Amount of Tax Credit** - For purposes of determining the 10% limitation described in section 6.a. above, the term "total project cost" includes the following: (i) wages paid to employees, land acquisition, construction, habilitation and marketing costs up to the opening date, (ii) pre-opening expenses and expenses associated with the opening ceremony, (iii) payroll, promoting

and marketing expenses during the first 12 months of operations, except that an exempt business consisting of a time share or vacation club program may include the promoting and marketing expenses during the first 60 months after the opening of all the facilities of said exempt business; (iv) the interest charges on financing during the first 12 months of operations; (v) hard and soft construction costs incurred in the substantial renovation or expansion of an exempt business; (vi) expenses related to the acquisition of furniture, fixtures, and equipment and operating supplies and equipment during the first 12 months of operation; (vii) expenses related to the issuance of debt to raise capital for the exempt business, (viii) any contingency or reserve account required by any creditor or financial institution, including the Tourism Development Fund; (ix) expenditures related with the construction and development of infrastructure and utilities necessary for the construction and development of the exempt business; (x) the acquisition costs or fair market value at the time of contribution, of facilities used in a tourism activity during the 36 months prior to the acquisition or contribution, provided the renovation or expansion exceeds 100% of the price of acquisition; and (xi) any other expense, disbursement or investment as established by the Director through regulations.

#### 7. License Requirement

The 2010 TDA exempts lessors of personal property to an exempt

business from the personal property leasing license requirement.

#### 8. Pending Concession Applications as of July 10, 2010

Applications for the issuance of a concession filed under the 1993 TDA shall be considered as filed under the 2010 TDA.

#### 9. Renegotiation of Concessions

An eligible business exempt from taxation under the Tourism Incentives Act of 1983 or the 1993 TDA, may renegotiate the terms of its concession to enjoy the benefits of the 2010 TDA, subject to compliance with certain requirements.

#### 10. New Concession Applications

On or after July 10, 2010, Concession applications shall be filed pursuant to the 2010 TDA. The procedures for applying and obtaining benefits are similar to those found in the predecessor statute, the 1993 TDA.

The Director must evaluate an application and within 60 days of its receipt must notify the applicant if such application includes all of the required documents and permits. In the event the Director determines that the application was not duly filed, the Director must inform the applicant of the documents or permits necessary to be filed in order to consider the application as duly filed. In the event the Director does not notify the applicant within 30 days from the filing of the application, the Director shall be considered to have determined that the application was duly filed.

#### 11. Transfer of an Exempt Business

The procedures regarding the transfer of a concession or of an exempt business are similar to the

procedures in the 1993 TDA. Upon filing an application for the transfer of a concession or of the majority equity interest or property of an exempt business to another person, the Director shall have up to 60 days after receiving such application to approve or deny the request. Certain transfers are permitted without the prior consent of the Director. In such cases, a notification thereof shall be made to the Director within 30 days of the transfer.

#### 12. Administrative and Judicial Review

The 2010 TDA provides procedures similar to those contained in the 1993 TDA.

#### 13. Nature of Concessions

The 2010 TDA provides that a concession of tax exemptions and tax credits shall be considered a contract among the concessionaire, its shareholders, partners, members and the Government of Puerto Rico and such contract shall be considered the law among the parties. The 2010 TDA further provides that the contract is to be interpreted liberally and in harmony with the purpose of the statute to promote the development of the tourism industry in Puerto Rico.

<sup>1</sup>The Puerto Rico Tourism Development Act of 2010 was enacted as Article 1 of Act 74 of July 10, 2010.

<sup>2</sup>Nautical Tourism Vessels are sail or motor boats with a capacity for transporting 6 or more passengers, operated by an excursion company or available for leasing for nautical tourism activities.

<sup>3</sup>An Integrated Boat Rental Program consists of a business engaged in the rental of sail and motor boats of at least 32 feet, for leisure or recreational purposes. Such vessels must be available for rental under the program for a period no less than 6 months during each year.

# Relief at the Registry

by Jorge M. Ruiz Montilla\*

The 2010 TDA 90% exemption on stamp taxes and Registry of Property presentation and recordation costs is subject to the prior approval of the Executive Director of the Puerto Rico Tourism Company.

One of the most significant financial burdens on the development of tourism projects in Puerto Rico is the high legal costs related to the execution of deeds and contracts for the acquisition, planning and financing of real estate projects. Prior to Act Number 74 of July 10, 2010 (the “2010 TDA”), all deeds and contracts executed in connection with the development of tourism projects (except for projects developed within the Convention Center District) were subject to the payment of internal revenue, legal aid and notarial assistance stamps and Registry of Property presentation and recordation vouchers. In some instances, these costs totaled millions of dollars.

In order to address this and other financial burdens, the 2010 TDA specifically sets forth as part of the public policy of the Government of Puerto Rico the mitigation of the high construction costs in the tourism business in Puerto Rico. To that end, Section 11(b) of 2010 TDA provides a 90% exemption on the payment of internal revenue, legal aid and notarial assistance stamps and Registry of Property presentation and recordation vouchers related to public and private instruments.<sup>1</sup> The 2010 TDA specifically provides that any “deeds, petitions or documents, judicial, public or private, related to the recordation, notation, cancellation, release, restriction, constitution, modification, extension, rectification, limitation, creation or renewal of any real property or contractual right that has access to the Registry of the Property and which is related to real property covered under the 2010 TDA

shall be 90% exempt from the payment of: (i) internal revenue, legal assistance or any other stamps taxes required by law or regulation for its execution, issuance of any partial or complete certified copy, its presentation, recordation or any other operation in the Registry of the Property; and (ii) vouchers, taxes, assessments for its filing, recordation or any other operation in the Registry of the Property.”

For purposes of the 2010 TDA 90% exemption on stamp taxes and Registry of Property presentation and recordation costs, the term “real property or contractual rights with access to the Registry of the Property” includes all real property rights or personal rights which currently have or may in the future have access to the Registry of the Property including, without limitation: (i) easements, be the same legal, real or personal or equitable servitudes; (ii) constitution of horizontal, timeshare, vacation club or condohotel property regimes; (iii) surface or construction rights, and any other acknowledgement of construction or certification of completion of construction or improvement, the recordation of which is requested in the Registry of the Property; (iv) leases; (v) mortgages; (vi) purchases and sales; (vii) exchanges; (viii) donations; (ix) rights of first offer, refusal and repurchase and annuities (censos); (x) private water rights; (xi) administrative concessions; (xii) option to purchase; and (xiii) use restrictions.

The 2010 TDA 90% exemption on stamp taxes and Registry of Property presentation and recordation costs is subject to the prior approval of the Executive Director of the Puerto Rico Tourism Company (the “Director”). The approval by the Director must be evidenced by a certification issued by the Director to that effect, a certified copy of which (i) must be delivered to the Notary, Registrar of the Property, Court of Law or any

other governmental entity before which the benefits are being claimed, and (ii) shall accompany any document filed in the Registry of the Property. The certification is presumed valid for all legal purposes.

In order to avoid a narrow interpretation of this and other provisions of the 2010 TDA when they are put into effect, Section 16 of the 2010 TDA provides that its provisions are to be interpreted as liberally as possible in order to promote and implement the public policy set forth in the statement of motives and the body of the Act.

# Nautical Tourism: a new horizon in the continuing development of Puerto Rico's tourism industry

by Janelle Reyes Maisonet

Nautical Tourism includes activities such as recreational boating, marinas, cruises, water sports, other water based tourism (such as, marine wildlife tourism, marine parks, maritime history and education) and associated land-based components (such as, hotels and restaurants).

More than a tourism activity, "Nautical Tourism" is a tourism product, a group of general services rendered to boating and sailing enthusiasts and tourists alike choosing bodies of water as their tourist destination while experiencing the many nautical activities that may be available for their enjoyment.

Nautical Tourism includes activities such as recreational boating, marinas, cruises, water sports, other water based tourism (such as, marine wildlife tourism, marine parks, maritime history and education) and associated land-based components (such as, hotels and restaurants). It creates new business opportunities as well as bringing about a refocusing of existing tourism operations and a way to develop or revitalize unexploited coastal areas.

Several destinations have historically capitalized on the Nautical Tourism in the Caribbean, including a sustained volume of hotel overnight stays of those tourists that explore the additional activities that such islands have to offer. Nautical Tourism is big business in the United States, exploiting this activity in their various navigable rivers, canal systems, intracoastal waterway system and direct access to the Gulf of Mexico and the Pacific and Atlantic oceans. The South America

<sup>1</sup>The 90% exemption provided by the 2010 TDA does not apply to Notary fees. As such, these are still subject to payment in accordance with applicable law.

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## ... Nautical Tourism: a new horizon in the continuing development of Puerto Rico's tourism industry

region has developed Nautical Tourism exploiting their vast coastlines and inland waterways. Europe and the Mediterranean coast also represent interesting and fascinating locations frequented by nautical tourists searching for a historical and cultural experience, while taking pleasure in what their rivieras have to offer. These destinations have developed Nautical Tourism for many decades now and have been very successful at it. But, why not think about Puerto Rico as a Nautical Tourism destination?

Puerto Rico can offer the sailing and boating enthusiasts of the world a tourist destination filled with hundreds of miles of coastline, unique marine flora and fauna, and spectacular diving, fishing and surfing experiences, but we needed much more to be considered a Nautical Tourism destination that would compete with the more popular destinations in the Caribbean and around the world.

With the enactment of the Puerto Rico Tourism Development Act of 2010 ("2010 TDA"), Puerto Rico has, for the very first time in the history of the tourism incentives programs, included "Nautical Tourism" as an eligible activity. Puerto Rico is now beginning to take the steps towards becoming an attractive and competitive destination for Nautical Tourism.

The 2010 TDA provides that Nautical Tourism may include, but is not limited to, the following nautical activities when provided to nautical tourists: (1) the leasing or chartering of Nautical Tourism Vessels for leisure, recreation or educational purposes, including

excursions; (2) the leasing of small vessels, jet skis, kayaks, sailboats or other similar vessels, whether or not motorized, to guests of a hotel, condohotel, time-share project or vacation club, located within a resort or in a tourist marina or in nearby areas to such facilities; and (3) the operation of an integrated boat rental program.

The Nautical Tourism Vessels that may be available for leasing or chartering are sail or motor boats with a capacity of transporting 6 or more passengers, and they are required to be operated by an excursion company or available for leasing for nautical tourism activities. The leasing of smaller vessels requires that the business providing such services be located within a resort, in a tourist marina, or in areas near such facilities. Lastly, an integrated boat rental program consists of a business engaged in the rental of sail and motor boats of at least 32 feet, for leisure or recreational purposes. Such vessels must be available for rental under the program for a period no less than 6 months during each year in order to qualify for the incentives provided in 2010 TDA.

In addition to directing Puerto Rico to the development of Nautical Tourism businesses, the inclusion of Nautical Tourism as an eligible activity will foster the creation of businesses dedicated to offering Nautical Tourism-related services that would render economic benefits and a favorable impact in the development of the tourism industry in Puerto Rico. Although not considered as eligible activities under the 2010 TDA, businesses dedicated

to the construction of infrastructure, the selling of vessels, providing sailing staff services or services to cater the needs of nautical tourists are only a few of the alternatives available to entrepreneurs for establishing necessary businesses and operations around the Nautical Tourism niche in Puerto Rico.

The 2010 TDA provides that Nautical Tourism may include, but is not limited to, the following nautical activities when provided to nautical tourists: (1) the leasing or chartering of Nautical Tourism Vessels for leisure, recreation or educational purposes, including excursions; (2) the leasing of small vessels, jet skis, kayaks, sailboats or other similar vessels, whether or not motorized, to guests of a hotel, condohotel, time-share project or vacation club, located within a resort or in a tourist marina or in nearby areas to such facilities; and (3) the operation of an integrated boat rental program.



# Medical Tourism: the quest for affordable high-quality medical care... and good times

by Alba I. Joubert Pereira

Medical tourism is the generally accepted phrase used to describe the act of traveling outside one's home country to receive medical care. Although medical tourism is often perceived as a recent phenomenon, the truth is that the sick and the ailing have been traveling long distances in search of cures for every malady imaginable for thousands of years.

For an increasing number of travelers, the opportunity to combine affordable medical healthcare with luxurious accommodations is an incentive to venture outside their home country to obtain medical care. From purely elective procedures such as facelift, rhinoplasty, blepharoplasty (surgery of eyelids and surrounding area), liposuction, tummy tuck, breast augmentation, dental and Lasik eye surgery, to more serious procedures such as knee replacement, hip replacement, spinal disc replacement, hysterectomy, gastric bypass and cardiac bypass surgery, a wide array of options is currently available for the medical tourism patient, sometimes referred to as the medical tourist or medical vacationer. Popular packages offered include gastric bypasses in Central America and face lifts plus top and bottom blepharoplasty (surgery of eyelids and surrounding area)" in the Far East.

## What is medical tourism?

Medical tourism is the generally accepted phrase used to describe the act of traveling outside one's home country to receive medical care. Although medical tourism is often perceived as a recent phenomenon, the truth is that the sick and the ailing have been traveling long distances

in search of cures for every malady imaginable for thousands of years. The first recorded instance of medical tourism dates back to when Greek pilgrims travelled from all over the Mediterranean to the small territory in the Saronic Gulf called Epidauria, which was the sanctuary of the healing god Asklepios.<sup>1</sup> Modern medical tourism as we know it today has largely been the result of several factors including the high cost of medical care in the first world nations, ease of long distance travel, and advances in information technology.

## Why do people decide to become medical tourists?

The reasons for which an individual decides to become a medical tourist are multiple and varied. For patients living in countries where medical care is socialized, unreasonable long waiting lists act as an incentive for them to explore medical tourism as an option. Others simply do not have the needed medical treatment available in their home countries. Still, one of the things that make medical tourism such an attractive alternative for an increasing number of individuals is the savings that could be realized when the cost of receiving medical care abroad is compared with the cost of receiving equivalent care in their home country. In some cases, affordable pricing options available abroad give individuals access to treatments which they find impossible to afford in their home country for being prohibitively expensive, while in other cases they give individuals the opportunity to combine a medical procedure with an exciting vacation.

Prices paid for medical procedures performed abroad range from about 50% to 80% less from prices charged

## Medical Tourism: the quest for affordable high-quality medical care... and good times

by the same medical procedures in the United States.<sup>2</sup> The resulting savings allow medical tourists to enjoy a vacation at the destination chosen to have their medical procedure performed and still spend less than what they would have spent in their home country for the medical procedure alone.

### The Future of Medical Tourism

It is expected that by 2012, medical tourism will grow to be a \$100 billion business with more than 780,000,000 patients traveling abroad to receive care from foreign doctors, dentists, and hospitals.<sup>3</sup> Most countries fighting for a slice of the multi-billion dollar pie have expanded their offerings, invested heavily in infrastructure, and begun advertising aggressively. Competition has led to country specialization with Israel offering male infertility treatment and South America promoting “medical safaris.”<sup>4</sup> Based on the increasing number of participating countries and available procedures, it seems that medical tourism is a global phenomenon that is here to stay.

### Medical Tourism in Puerto Rico

With the inclusion of medical tourism as an eligible tourism activity under the Puerto Rico Tourism Development Act of 2010 (“2010 TDA”), Puerto Rico is taking steps to position itself as a popular medical tourism destination with the goal of having medical tourism become a significant component of our tourism industry. And, just as the other countries fighting for a slice of the multi-billion dollar pie, Puerto Rico

has already started to provide the required infrastructure and to engage in promotional efforts to develop the medical tourism industry in the Island.

Puerto Rico medical tourism facilities will have to be very creative when designing packages to attract medical tourists to the Island. While on the road to developing a local medical tourism industry, one of the challenges to be faced by Puerto Rico will be the fierce competition from current top medical tourism destinations in terms of the pricing of medical procedures offered to medical tourists. In view of such fact, promotional efforts shall emphasize Puerto Rico’s competitive advantages which will consist mainly of a stable political environment, a legal framework pursuant to which medical tourists will have access the same type of legal recourse they would have available in the United States in the event something goes wrong, its strategic location in the Caribbean and the fact that it has always been a popular tourism destination. Other advantages are broader access to state-of-the-art medical technology and equipment compared to that of some developing countries and doctors trained in prestigious medical institutions and board certified in the United States.

Fostering medical tourism in Puerto Rico will not only contribute to the Island’s economic development, but may also contribute to the retention of a significant number of talented healthcare professionals who would otherwise leave Puerto Rico searching for better job opportunities. Medical tourism may also create opportunities

for entities willing to venture into the medical tourism facilitator market. Medical tourism facilitators, sometimes referred to as medical tourism agencies or medical travel facilitators, are companies that act as intermediaries or middlemen for medical tourists and have played an important role in promoting the growth of medical tourism.

One must keep in mind that the inclusion of medical tourism as an eligible activity under the 2010 TDA has simply laid out the ground for all the work that remains to be done in order to promote and attract the local (both private and public) and foreign investment needed for the medical tourism industry to develop into a significant and sustainable sector of our tourism industry. Only time will tell if Puerto Rico’s medical offerings will become as internationally popular as its sandy beaches.

<sup>1</sup>Ronn Jones, *Medical Tourism – Risks and Rewards*, <http://ezinearticles.com/?Medical-Tourism---Risks-and-Rewards&id=756895> (accessed August 4, 2010); CBC News Online, *Medical Tourism: Need surgery, will travel*, <http://www.cbc.ca/news/background/health-care/medicaltourism.html> (June 18, 2004).

<sup>2</sup>*Medical Tourism, What Kind of Savings are we Talking About from Medical Tourism?*, <http://www.medicaltourism.com/related-topic.php?topic=6&lang=en> (accessed August 4, 2010); MedRetreat, *Frequently Asked Questions – Why should I consider medical or surgical procedures outside the US?*, [http://www.medretreat.com/medical\\_tourism/faq\\_s.html](http://www.medretreat.com/medical_tourism/faq_s.html) (accessed August 4, 2010).

<sup>3</sup>*Healism, Medical Tourism*, <http://www.healism.com/> (accessed August 4, 2010).

<sup>4</sup>*Healism, Medical Tourism Today*, [http://www.healism.com/medical\\_tourism/history/medical\\_tourism\\_today/](http://www.healism.com/medical_tourism/history/medical_tourism_today/) (accessed August 4, 2010).

# Act 74 amendments to the Puerto Rico Tourism Development Act of 1993 and to the Puerto Rico Internal Revenue Code of 1994

by Roberto L. Cabañas and Janelle Reyes Maisonet

In addition to the establishment of the Puerto Rico Tourism Development Act of 2010 (“2010 TDA”), Act 74 of July 10, 2010 (“Act 74”) amends various statutes, including the Puerto Rico Tourism Development Act of 1993, as amended, (“1993 TDA”) and the Puerto Rico Internal Revenue Code of 1994, as amended, (“Code”). The amendments complement and further the public policy objectives enumerated in Act 74. Major amendments to the 1993 TDA and the Code are as follows:

## I. Puerto Rico Tourism Development Act of 1993

1. The definition of a new business is modified to provide that in the event an exempt business, on the date of the effectiveness of Act 74, is undertaking a substantial renovation or expansion beyond the initial 36 months after the acquisition of such business, the Director may extend the initial period to complete such renovation for an additional 36 months period in order to qualify as a new business for purposes of the 1993 TDA. The definitions of “Tourist Activity” and “Eligible Investment” are also amended.

2. A new withholding tax of 12% on royalties, rental payments or rental rights paid by an exempt business under the 1993 TDA to corporations, foreign partnerships or persons not engaged in trade or business in Puerto Rico for the use of intangible property with respect to an exempt activity is enacted. The withholding tax shall be 2.9% in the event such payments are made to affiliates.
3. All pending applications, as of July 10, 2010, for a 10 year extension of a concession issued under the 1993 TDA shall be considered as an application filed under the 2010 TDA.
4. The investment tax credit provisions are amended to eliminate a reference to an investment credit for the acquisition and installation of equipment for the generation of energy from alternate sources.

## II. Puerto Rico Internal Revenue Code of 1994

1. To provide that a business dedicated to nautical tourism under the provisions of the 2010 TDA, or any successor or analogous act, must only comply with the requirement that at least 70% of its

gross income be derived from such activity for purposes of eligibility as a special partnership.

2. To clarify that the income from the operation of casinos located in a hotel shall be included in the income from the operations of a tourism activity for purposes of eligibility status as a special partnership.
3. To provide that for purposes of determining the deductible losses of a partner in a special partnership, the debts of the entity shall be included in the calculation of the basis of the partner’s interest in such partnership beginning with taxable years commencing after December 31, 2011.
4. To provide that: (i) the eligible income of condominium associations with property that forms part of an exempted business under the 1993 TDA or the 2010 TDA include gains from the sale or lease of property owned by said associations; and (ii) the general limitation on the nature of eligible income of timeshare and vacation club owner associations is eliminated, while certain restrictions are imposed on the use of the proceeds from association quotas or charges during the last 5 years prior to the termination of a timeshare or vacation club regime.
5. To exempt foreign or coast guard registered vessels whose direct and indirect ownership and possession resides in non-Puerto Rico residents from sales and use taxes.
6. To provide that gains, benefits and income from the operation of passenger cruise ships by foreign corporations or partnerships are sourced outside Puerto Rico.
7. To exempt tourism development income derived under the 1993 TDA or the 2010 TDA from the alternate basic tax on individuals.

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