



# Remote Worker Tax Structure for Puerto Rico

JUNE 2, 2022



# Summary of Findings

Invest Puerto Rico is interested in identifying the issues that may cause employers doing business in the United States not to authorize employees to work remotely from Puerto Rico when they so allow it from other jurisdictions within the United States.

From that perspective, we reviewed the tax and employment laws and regulations in Puerto Rico, California, New York and Florida to identify differences and determine if those differences may influence the decision to not allow remote work from Puerto Rico.

## Puerto Rico

Our analysis shows that it is highly probable that any employer with remote workers in Puerto Rico will be considered engaged in trade or business in Puerto Rico. This conclusion triggers a significant number of registration and filing requirements for the company to be in compliance with the Puerto Rico tax laws and regulations. Furthermore, having employees in Puerto Rico may result in most Puerto Rico employment laws to become applicable to those employees.

# Summary of Findings

We have identified at least seven registrations and 27 returns and payments filings required from employers in Puerto Rico, on a bimonthly, monthly, quarterly or annual basis. We have also identified at least 24 employment issues (encompassed in various laws) that may impact employers with remote workers in Puerto Rico. It is our belief that the burden of complying with the Puerto Rico tax and employment laws is a significant reason for the decision by many companies not to authorize their employees to work remotely from Puerto Rico. In most cases, these companies would have additional tax payments and responsibilities, would incur in additional costs to comply with the Puerto Rico tax and employment laws, including having to implement (at a cost) tax and employment laws they are not familiar with.

From a cost perspective, it is thus difficult for these companies to justify the tax and compliance costs of setting up remote workers in Puerto Rico, when their presence here does not bring with it any tangible financial benefits for the company.

# Summary of Findings

## States of California, New York and Florida

Our analysis of the taxation and employment laws of the States of California, New York and Florida shows that they have a similar burden from a tax perspective but somewhat lower regarding employment laws.

Employers with remote workers on those three States are considered to be doing business in the State, and required to file tax returns with the State, under similar terms and conditions as in Puerto Rico. They are required to comply with all the tax and employment rules and regulations that any company with actual operations in the State need to comply with. In this respect, the issue is similar, just as in Puerto Rico, stateside a company with no presence in a particular State may have significant burdens if they have employees working remotely from those States. This is a disincentive for the company to allow its employees to work remotely from those States.

For companies with operations in California, New York and Florida, as well as in any other state, there is no significant increase in its costs if they allow employees to work remotely from states in which they have operations, since they are familiar with all the requirements of doing business in those states and have the business structure already in place to comply, provided the companies' administrative infrastructures allow the remote employees to be compensated and all fiscal reporting obligations managed through the companies' local operations. This is often not the case in Puerto Rico, given the large number of United States companies that do not have operations here.

# Summary of Findings

Furthermore, companies may also feel more comfortable having remote workers in California, New York and Florida (as well as the other States) since there are technological tools specifically programmed for each State that reduce the burden of complying with payroll and compliance issues. Although, there are technological tools that help with the payroll and other compliance issues in Puerto Rico, there are not as many options and the options available may not be the same the company is using for its payroll and other compliance issues in other States.

## Recommendation

To attract remote workers, Puerto Rico must create a business environment where employers feel that there are no real additional burdens from the jurisdiction those employees are working from. That means Puerto Rico must significantly lower the burdens imposed to employers with remote workers here. The best and most effective way to reduce such burdens is through the approval of tax and employment legislation.

# Summary of Findings

A reduction in burdens may only be realistically achievable by legislation that exclude remote workers from a significant number of the current and future tax and employment laws of Puerto Rico. The Puerto Rico Legislative and Executive branches will need to balance the interests at play here and make decisions on what burdens can be eliminated and evaluate whether those choices would affect the economy of Puerto Rico, whether there would be a fiscal impact on the Government, and if so, the benefits it may bring in relation to the costs.

The legislation we envision must be specifically targeted at businesses not doing business in Puerto Rico, but whose employees working remote from Puerto Rico may bring many benefits to our economy. This legislation would provide special tax and employment treatment for those employers, because they do not do business here, which justifies not making them subject to the same burdens of those that do business in Puerto Rico and generate income from their operations here.

# Special Legislation

We believe the legislation should provide the following:

1. Definitions of who is a “Remote Employee” and who is an “Employer of a Remote Employee.” The definitions should include thresholds and nonqualified activities. It should not apply to employers with operations in Puerto Rico or that own inventory in Puerto Rico for sale in Puerto Rico, among other considerations.
2. A process to register the employee or the employer as a certified remote employee or employer (depending on the approach decided). This registration should be one time registration with annual certifications to confirm the qualification. The process should be as simple as possible.
3. A process to simplify the employer registration with the Puerto Rico governmental agencies with which they will be required to interact and make filings (payroll taxes). This is a process that may be consolidated with the registration process above if the employer is completing it.

# Special Legislation

We believe the legislation should provide the following:

4. Exemptions on the filing and payments of income tax, personal property tax, municipal gross receipts tax and sales and use tax, among other taxes, duties and fees. It is important to stress that these exemptions would NOT be special benefits given to these employers, they would simply be an acknowledgment that if the only activity of an employer in our jurisdiction is to have remote workers that do not generate any business income for the employer in Puerto Rico, then there is no justification to subject these employers to these burdens and requirements.
5. Exemptions on the filings of informative returns and withholding of income tax at source. Since these company operations will be so limited and since they will not be subject to taxes, they should not be imposed the requirements of collecting on the payments they make to third persons. This should be a low risk for the Government of Puerto Rico since the expenses of these types of companies should be minimal, excluding the payroll.



# Special Legislation

We believe the legislation should provide the following (cont.):

6. Requirement of compliance with the Puerto Rico payroll tax laws. Since employees are residents of Puerto Rico, those employees may not request the benefits provided by payroll tax laws to other jurisdictions (for example, unemployment insurance).
7. Exclusion of the application of certain employment laws. This may be achieved using a language similar to Section 2.17 of the Employment Transformation and Flexibility Act. The legislation should establish those areas in which Puerto Rico law would be applicable, with an emphasis on the law of the home base of the remote worker being applicable in as many areas as possible. These are not Puerto Rico employees, these are employees of other jurisdictions working remote from here and it should be the laws of their home base that apply to them, with some important exceptions such a income tax, and the impositions for benefits that Puerto Rico would have to provide to them because they are here such as worker's compensation coverage.

# Recommendations

1. Special Legislation – Puerto Rico has a significant number of tax and employment laws. Amending each of those laws to provide benefits or exclusions to remote workers or their employers would be a daunting task. We recommend a single special law which covers everything related to remote workers and overrides those tax and employment laws. This simplifies the legislative process and the interpretation of the objectives of the law.
2. Simplification – The tax and employment laws in Puerto Rico are complicated. Furthermore, Puerto Rico has created a web of governmental agencies with a vast number of filings and requirements for entities to comply with. In order to attract this type of business, Puerto Rico needs to reduce and simplify those filings and requirements. Ideally, eliminating most of them and consolidating others.

# Recommendations

3. Protection of the Government Interests – Every legislation should consider the interest of the Government of Puerto Rico. In this case, the intent of the special legislation is to eliminate the barriers which may result in the employer disallowing remote working from Puerto Rico. However, Puerto Rico needs to make sure that it is protected from abuses to the legislation. Therefore, we recommend setting up thresholds that will disqualify the employer if they are exceeded. For example, exceeding a specific number of employees, value of assets in Puerto Rico, property for sale (inventory) or type of employees (management).
4. Technological Tools – One of the ways that entities manage complexity in the tax and employment area is using technological tools. These are tools that simplify the compliance processes and reduces the resources needed to comply with them. Puerto Rico has several tools that help with the processes (for example, payroll and payroll tax). We recommend to expand the companies that provide those tools for Puerto Rico compliance issues. An effort should be made to identify and contact those entities to try to incentivize them to include Puerto Rico as part of their product.

# Recommendations

- 5. Promotion – The only way to have a successful remote worker program is by promoting it to those entities which allow remote working. An effort must be done to inform those entities in the United States of the benefits of the law, the requirements they will need to comply with and options on how to meet those requirements.

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This document is based on a study presented to Invest Puerto Rico on June 2, 2022 regarding the impact of Puerto Rico's tax and employment laws on the decision of United States based employers to allow its employees to work remotely from Puerto Rico.

