



Puerto Rico

Introduction

A person's liability for Puerto Rican tax is determined by residence status for taxation purposes and the source of income derived by the individual. Income tax is levied at progressive rates on an individual's taxable income for the year, which is calculated by subtracting allowable deductions from the total assessable income.

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Key messages

Extended business travelers are likely to be taxed on employment income relating to their Puerto Rican workdays.

Income tax

Liability for income tax

A person's liability for Puerto Rican tax is determined by residence status. A person can be a resident or a nonresident for Puerto Rican tax purposes. An individual is presumed to be a resident of Puerto Rico if the individual spends more than 183 days in a calendar year in Puerto Rico. However, domicile will have a greater role in determining whether the taxpayer will be considered a resident or nonresident for Puerto Rican income tax purposes.

The general rule is that a person who is a resident of Puerto Rico is taxed on the individual's worldwide income. Nonresidents are generally taxed on income derived directly or indirectly from sources within Puerto Rico. Although Puerto Rican nationals are U.S. citizens, bona fide residents of Puerto Rico are exempt from U.S. federal income tax on income derived from sources within Puerto Rico.

Extended business travelers are likely to be considered nonresidents of Puerto Rico, for income tax purposes.

Definition of source

Employment income is generally treated as Puerto Rican-sourced compensation when the individual performs the services while physically located in Puerto Rico. It is not where the wages are paid from that determines the source, but rather where the services are performed.

Tax rates

Net taxable income is taxed at graduated rates, depending on the filing status. The tax rates range from 7 percent up to 33 percent. Nonresidents are subject to the same graduated tax rates on compensation income. In most cases, the highest tax bracket is reached once taxable income reaches 50,000 U.S. dollars (USD), which is 33 percent. For taxable year 2011, the highest tax bracket will be reached once the taxable income reached USD60,000.

Social security

Liability for social security

Puerto Rico is covered under the U.S. federal social security rules.

Social security tax (established by the Federal Insurance Contributions Act (FICA)) is imposed on both the employer and employee. FICA is assessed on wages paid for services performed as an employee within the United States or Puerto Rico, regardless of the citizenship or residence of either the employee or employer. The employee portion of the tax may not be deducted in computing U.S. income tax.

FICA consists of the old age, survivors, and disability insurance tax (OASDI) and Medicare tax (hospital insurance part). The OASDI rate is 6.2 percent on all wages up to USD106,800 (for the year 2011). This cap is adjusted annually. However, for 2011 only, a 4.2 percent will be withheld, as opposed to the mandatory 6.2 percent. The Medicare tax rate is 1.45 percent, imposed on all wages without a cap.

Foreign national employees may be exempt from FICA pursuant to a totalization agreement between the United States and the employee's home country. Totalization

agreements eliminate dual coverage and contributions for foreign nationals working in the United States for limited time periods. In addition, some nonresident visa holders (specifically, F, J, Q, and M visas) may qualify for exemption from FICA.

The contribution rates are summarized as follows:

Type of insurance	Paid by		Total percent
	Employer percent	Employee percent	
Social security	6.20	6.20	12.40
Medicare	1.45	1.45	2.90
Total percent	7.65	7.65	15.30

Source: KPMG in Puerto Rico, June 2010

Compliance obligations

Employee compliance obligations

Generally, tax returns are due by April 15 of the following year, assuming the taxpayer is on a calendar basis. Foreign taxpayers will generally not be required to file a tax return if their entire tax liability was fully satisfied by Puerto Rican withholding.

Employer reporting and withholding requirements

Withholdings from employment income are covered under the Pay-As-You-Go (PAYG) system. If an individual is taxable on employment income, the employer has a PAYG withholding requirement.

Other

Work permit/visa requirements

Generally, Puerto Rico follows the same immigration laws as the United States. A visa must be applied for before the individual enters Puerto Rico. The type of visa required will depend on the purpose of the individual's entry into Puerto Rico.

Foreign nationals generally must obtain visas at American embassies and consulates to enter the United States. A waiver of the visa requirement is available to nationals of most developed countries if a trip is brief and for tourism or nonemployment business purposes.

Individuals coming to the United States or Puerto Rico for the purpose of engaging in employment must generally obtain a visa that authorizes such employment. Information on visa and other travel/work document requirements can be obtained from the U.S. embassy or consulate in your jurisdiction or by visiting the U.S. Department of State Web site at www.travel.state.gov.

Temporary or nonimmigrant visas are granted to provide the opportunity of employment in the United States or Puerto Rico. Assignees may also be eligible for permanent residence (green card status), which may be based upon the sponsorship by a relative who is a citizen or a green card holder. Additionally, green cards may be issued in connection with permanent employment in the United States, in which case, sponsorship by the employer is not unusual.

Most assignees initially work in the United States with nonimmigrant visas.

Certain nonimmigrant visas provide work authorization for employment in the United States, as well as for the assignee's spouse and dependants. If, however, a particular visa does not provide for work authorization for the assignee's spouse or dependants in the United States, they would need to obtain their own employment visas to be eligible to work in the United States.

Because there are many different visa categories, which are applicable to different employment relationships, we recommend obtaining professional assistance from an experienced law firm if the company does not have qualified professionals on staff.

The following lists examples of nonimmigrants, by alien classification, who are authorized to work in the United States and Puerto Rico without specific authorization from the U.S. Citizenship and Immigration Services (USCIS). This listing is abbreviated and, therefore, not all-inclusive. The alien's I-94 will not have the USCIS employment authorization stamp, and the alien will not have an Employment Authorization Document (EAD).

For the L-2 classification, the spouse is also authorized to work without specific Department of Homeland Security (DHS) authorization. The L-2 spouse is not required to apply to DHS for an EAD card as documentary evidence of work authorization but may choose to do so.

Class of admission	Description
F-1	Academic student visa – for on-campus employment and designated school official (DSO) authorized curricular practical training
H-1B	Visa for foreign professionals sponsored by a U.S. employer to work in specialty occupation
J-1	Visa for individuals participating in work and study based on approved exchange visitor programs
L-1	Temporary work visa for intracompany transferee
L-2	Temporary work visa for the spouse of an intracompany transferee

Source: KPMG in Puerto Rico, June 2010

Double taxation treaties

Income taxes paid or accrued to the United States and its possessions or to foreign countries during the taxable year may be credited against the Puerto Rican income tax in order to avoid double taxation. As a general rule, only residents are in a position to claim the foreign tax credit against their Puerto Rican tax because, in principle, only they are subject to Puerto Rico taxes on their worldwide gross income. The foreign tax credit is subject to two limitations, a per-country limitation and an overall limitation.

Permanent establishment implications

There is the possibility that a permanent establishment could be created as a result of extended business travel, but this would depend on the type of services performed and the level of authority the employee has.

Indirect taxes

Puerto Rico assesses a combined 7 percent sales and use tax. Taxpayers must register at the local level.

Local data privacy requirements

Puerto Rico follows similar data privacy rules as the United States. The data privacy scheme in the United States is a collection of federal, state, and industry case law, rules, and practices as a result.

For example (these are not comprehensive examples):

- The Office of Management and Budget plays a limited role in setting policy for federal agencies under the Privacy Act of 1974.
- The American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants have developed a Generally Accepted Privacy Principles framework that companies can follow.
- The Federal Trade Commission has oversight over some privacy areas.
- The USA PATRIOT Act, renewed in 2006, addresses some privacy issues.

Exchange control

Puerto Rico does not restrict the flow of currency into or out of the country.

Nondeductible costs for assignees

Nondeductible costs for assignees include contributions by an employer to non-U.S. pension funds.

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The material contained within draws on the experience of KPMG tax personnel and their knowledge of local tax law in each of the countries covered. While every effort has been made to provide information current at the date of publication, tax laws around the world change constantly. Accordingly, the material should be viewed only as a general guide and not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation.

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