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Mentoring at Scale

Puerto Rico Act 60 & Act 22

The individual investor decree.
0% qualifying capital gains rate.
Bona fide residency, compliance,
and the traps most movers miss.

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Phil A. Baratelli, CPA, MBA . Founder . baratelliinstitute.com

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Puerto Rico Act 60 & Act 22 — the Individual Investor Decree

Puerto Rico Act 60 (formerly Act 22, absorbed into Act 60 in 2019) offers bona fide residents a 0% federal-and-Puerto-Rico rate on qualifying capital gains that accrue after the move. It is one of the most valuable individual tax elections available to US persons — and one of the most misunderstood. This is the practitioner walkthrough of what the decree does, who qualifies, what compliance actually looks like, and the specific traps that turn a well-planned move into an audit.

Snapshot: 2026-06-30 · **Next refresh:** 2026-09-30 · **Applies to:** US-mainland high earners with material unrealized capital gains or expected future capital gains, plus service-business owners eligible for Act 60 export-services status.

IRS enforcement warning (elevated 2024 posture). The IRS has materially increased Act 60 examination activity since 2021, with a specific 2024 enforcement push targeting bona fide residency documentation and the pre-move / post-move gain bifurcation. Any reader considering the move should treat documentation of every §937 prong as non-optional and should not rely on the decree grant alone as evidence of federal compliance. Read the §937 section below *before* reading the benefit sections.

The rule in one paragraph

What Act 60 actually does

Puerto Rico is a US territory. It has its own tax code separate from the US Internal Revenue Code, and the Puerto Rico Tax Incentives Code (Act 60, enacted 2019 and consolidating earlier Act 20 and Act 22 regimes) offers specific individuals and businesses reduced Puerto Rico rates in exchange for physical relocation and ongoing compliance. For a bona fide resident of Puerto Rico, US federal income tax generally does not apply to Puerto Rico-source income under IRC §933 — and the Act 60 individual investor decree adds a **0% Puerto Rico rate on qualifying capital gains** and dividend and interest income sourced to Puerto Rico. The combined effect is that qualifying gains and passive income are taxed at 0% at both the US federal level (via §933) and the Puerto Rico level (via the Act 60 decree).

The specific benefit: 0% capital gains rate on gains that *accrue after the move* from Puerto Rico assets or from investment activities conducted from Puerto Rico. Gains that had already accrued before the move remain taxable at US rates on realization — the decree does not retroactively cleanse pre-move appreciation.

Statutory constants (2026)

The numbers

Statutory item	Value	Detail
Qualifying capital gain rate	0%	Puerto Rico rate on post-move qualifying gains
Export services corporate rate	4%	Act 60 §2071 (former Act 20)
Annual filing fee	$5,005	Payable to PR Treasury
Annual charitable donation minimum	$10,000	To PR-registered nonprofits (half to defined local class)
First-home purchase deadline	2 yrs	Must own a PR residence within this window
Physical presence minimum	183 days	In PR per tax year

The gate

The Bona Fide Resident Test (§937)

None of the Act 60 benefits attach until the taxpayer qualifies as a bona fide resident of Puerto Rico under IRC §937. This is a three-prong test that applies for each tax year separately — a taxpayer can be a bona fide resident in one year and not the next.

Prong 1 — Presence. Meet one of five presence tests. The most common: 183 days physical presence in Puerto Rico during the tax year. Alternate paths include the 549-day rule (549 days over three years with at least 60 in each), or the "no earned income in the US" rule, or the "no significant presence" rule (fewer than 90 days in the US and less US earned income than PR earned income). Documentation is essential; carry a travel log.

Prong 2 — Tax home. Puerto Rico must be the taxpayer's tax home. A tax home is the principal place of business or, if no principal place of business, the principal residence. Taxpayers who continue to work primarily from a US location, or who split their working time between the US and Puerto Rico, may fail this prong even if they meet the day count.

Prong 3 — Closer connection. No closer connection to the US or any foreign country than to Puerto Rico. Assessed on facts and circumstances: family location, primary bank accounts, driver's license and voter registration, physician and personal advisors, community ties, and the location of items shipped as household goods.

Practitioner note: The IRS has increased Act 60 examination activity materially since 2021. Documentation of each prong — especially the tax home and closer connection prongs — is not optional. Taxpayers who cannot produce a credible presence log, a change-of-address paper trail, a Puerto Rico driver's license, PR voter registration, and evidence of substantive Puerto Rico community engagement should assume the decree will be challenged.

The specific gains that qualify

What "qualifying" means

The 0% Puerto Rico rate applies only to gains that accrue *after* the taxpayer becomes a bona fide resident of Puerto Rico. Gains that had already accrued before the move are treated under a bifurcation rule: the built-in gain at the date of the move remains subject to US rates on realization, and only the appreciation after the move qualifies for the Act 60 rate. The IRS has published detailed guidance on this bifurcation in Notice 2018-92 and subsequent regulations.

Practical effect: an Act 60 mover with a $10M stock position bought at $1M in 2015 and moved to Puerto Rico in 2026 at a value of $8M does not get 0% on the whole $9M gain on eventual sale. The $7M of pre-move appreciation ($8M − $1M) remains taxable at US federal rates and California (or wherever pre-move) source rates if the taxpayer sells within a lookback window. Only appreciation from $8M forward is Act-60-eligible.

The practitioner move: taxpayers with large unrealized gains should consider whether pre-move realization at existing rates plus reset to fair market value produces a better after-tax outcome than deferring realization and losing the pre-move appreciation to bifurcation. The answer is deal-specific and depends on the asset's expected future appreciation trajectory and the taxpayer's expected holding period.

Ongoing compliance

What the annual burden actually looks like

Act 60 is not a one-time election. It is an annual compliance regime with meaningful ongoing costs, deadlines, and reporting.

Annual filing fee: $5,005 paid to the Puerto Rico Treasury each year the decree remains in effect. Missing the fee suspends the decree.

Annual charitable donation: $10,000 minimum to Puerto Rico-registered nonprofit organizations. Half must go to a defined class of local community organizations. Documentation of the donation is required in the annual compliance filing.

Home purchase within two years: The individual investor decree requires the beneficiary to own a residence in Puerto Rico within 2 years of the decree grant date. Rental is not sufficient. Practitioners considering the move should model the PR real estate purchase as part of the total move economics.

Continuing bona fide resident test: Every year is independently tested. A taxpayer who fails the residence test in year 4 (say, because of a US medical situation that required extended stateside stays) loses the year-4 benefit and may face additional IRS scrutiny in subsequent years.

Annual reporting: Form 8898 filed with the US federal return (or the first year of residency change), plus the Puerto Rico Treasury annual compliance filing. Form 1040-NR may replace Form 1040 depending on the source of remaining US income.

Total annual cost of maintenance — realistic modeling number: Filing fee $5,005 + charitable donation minimum $10,000 + PR local ordinary income tax on non-qualifying income (variable, up to 33%) + carrying cost of PR home ownership (property tax, HOA, maintenance) + professional fees for federal + PR return preparation ($8,000-$15,000+ for a moderately complex return). *Baseline non-tax annual outlay for the decree alone is typically $25,000-$45,000* before the reader models PR ordinary tax on any remaining PR-source ordinary income. A prospective mover should model this as a real cost against the tax savings, not as a rounding item.

When it actually pays

The practitioner math on when Act 60 makes sense

Not everyone with unrealized gains benefits from Act 60. The move only pays when the after-tax value of the shift — new gain accrual at 0%, minus compliance costs, minus lifestyle friction, minus the pre-move bifurcation drag — exceeds the counterfactual of staying in place.

The move pays clearly when: (1) the taxpayer has significant future capital-gains-generating activity ahead (a founder pre-liquidity event, an active trader with sustained realizations, a fund manager with expected carried interest realizations); (2) the pre-move built-in gain is modest relative to expected post-move appreciation; (3) the taxpayer can genuinely relocate their life and work to Puerto Rico without maintaining a substantive US tax home; (4) the lifestyle cost is acceptable.

The move pays weakly or not at all when: (1) most of the taxpayer's unrealized gain is pre-move built-in gain that remains US-taxable regardless; (2) the taxpayer intends to return to the US within a few years, triggering the anti-abuse recharacterization rules on gains; (3) the taxpayer cannot

credibly establish tax home in Puerto Rico because their business genuinely requires them to be elsewhere; (4) the taxpayer's income is primarily ordinary income that Act 60 does not reach (ordinary US-source wages remain US-taxable).

Common traps

Where the practitioner conversation gets hard

Trap 1 — The California and New York 10-year state lookback (anti-abuse). Both California and New York carry state-level anti-abuse provisions that can re-attribute gains realized within roughly 10 years after departure from the state, particularly on assets that were held before departure or that trace back to pre-departure earned compensation. California's *throwback* and *alternative apportionment* rules and New York's *convenience of the employer* doctrine both continue to reach former residents in ways that the federal Act 60 analysis does not address. Because Californians and New Yorkers make up a disproportionate share of Act 60 movers, state-level friction is often the deal-killer in a mover's modeling. **Practitioners planning an Act 60 move for a California or New York client should model the state-level exposure independently of the federal analysis and coordinate with state-specific tax counsel before departure.** Neither state has meaningful settlement or ruling programs for Act 60 movers, which puts the risk squarely on the taxpayer.

Trap 2 — Ordinary income confusion. Act 60 targets capital gains and passive investment income sourced to Puerto Rico. It does not eliminate US tax on ordinary income from continuing US business activities. A taxpayer who moves to Puerto Rico but continues to earn wages from a US employer remains subject to US federal tax on those wages under §933 sourcing rules.

Trap 3 — The "substantial presence" mistake. The bona fide resident test is not the same as the "substantial presence test" used for foreign-nationals-in-the-US analysis. A taxpayer who satisfies substantial presence for US federal purposes may still fail bona fide residency for §937 purposes. The tests measure different things.

Trap 4 — Marketable-security bifurcation confusion. The bifurcation rule for pre-move gains uses the fair market value on the day the taxpayer becomes a bona fide resident, not the date of the eventual sale. Missing this leaves the taxpayer without the documentation they need to substantiate the split when the gain is eventually realized.

Trap 5 — The Puerto Rico local tax obligation. Act 60 zeroes the Puerto Rico rate on qualifying gains, but it does not eliminate Puerto Rico's ordinary tax obligations on other income. A taxpayer earning consulting income while a PR bona fide resident owes Puerto Rico ordinary income tax on that consulting income at PR rates (up to 33%). The move is not a total zeroing of tax; it is a specific optimization of one category.

Trap 6 — The estate and gift planning interaction. Puerto Rico has its own gift and inheritance regime that applies to PR-situs assets. Federal estate tax continues to apply to worldwide assets of a US citizen or resident regardless of Puerto Rico residency. Estate planning under Act 60 requires coordinated federal and PR advice; it is not a substitute for federal estate planning.

Cross-references

Where to read next

The applied companion: The Baratelli International Tax & Cross-Border Wealth guide walks the full Act 60 decision framework with worked cases, including founder-liquidity-event scenarios, fund-manager scenarios, and the "return to mainland after N years" recharacterization analysis.

The full International Tax Reference: Baratelli International Tax Reference hub — other reference pages on GILTI, Form 8938 vs FBAR, country comparison, and §877A expatriation.

Print edition: Download the Puerto Rico Act 60 print PDF — same content, formatted for printing and offline reading.

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