November 17, 2023

The Honorable Daniel Werfel
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Werfel:

We write to express our concerns with the continuing tax avoidance by beneficiaries of Puerto Rico’s Act 22 of 2012 (now part of Act 60 of 2019) and the need to shed light on individuals cheating the law. As such, we are writing to encourage the Internal Revenue Service (“IRS”) to timely respond to requested information regarding the agency’s audit status to identify and address noncompliance with Act 22 provisions.

Initially passed in 2012, Act 22 sought to attract wealthy foreigners and mainlanders to Puerto Rico by offering generous tax-related benefits. For instance, after earning Puerto Rican residency status, individuals pay zero taxes for all Puerto Rico-source income, dividends and interests, and capital gains. Although this Act intended to grow the economy and promote socio economic development by retaining foreign capital, the available data on its impact suggests otherwise. According to the Puerto Rico Tax Expenditure Report for Tax Year 2024, Puerto Rico stands to lose an estimated $4.5 billion in revenues related to Act 22 between 2020 and 2026. This is particularly problematic for a jurisdiction where harsh fiscal policies have been adopted to restructure the public debt, including the reduction of public-funded services.

Further, the tax haven that Act 22 has created in Puerto Rico has proliferated the use of short-term rentals (“STRs”), increased cash property sales and market speculation, and caused displacement for the Puerto Rican people themselves. A study by the Center of Investigative Journalism (“CPI” for its Spanish acronym) identified a 740 percent growth in the cases of cash sales when comparing 2012 records of just one company with its 2021 records. Moreover, a recent study conducted by the Center for a New Economy (“CNE”) found that the rapid expansion of STRs adversely impacted the housing market from 2014 to 2020 by causing an average seven percent increase in median rent and a twenty-three percent increase in the price of a median housing unit.

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Foregone revenue due to Act 22 provisions has been an issue for the continental United States as well. In a report submitted to Congress, the IRS revealed that from 2012 to 2019, Puerto Rico’s Department of Economic Development and Commerce (“DEDC”) granted Act 22 benefits to 2,331 individuals who had established residence in Puerto Rico. From this total, 647 individuals paid, altogether, $557,978,112 in federal income taxes in the five years prior to relocating to Puerto Rico. Even though this data is severely limited, it offers a glimpse into the critical revenue that the United States is losing due to the tax evasion scheme created by Act 22.

To address concerns regarding potential tax avoidance, in 2021 the IRS announced an audit campaign against Act 22 beneficiaries. This campaign focused on U.S. taxpayers who may have inaccurately claimed Act 22 benefits without meeting its residency requirements. Then, in July 2023, the IRS publicly stated that it is investigating approximately one hundred Act 22 beneficiaries and might pursue criminal charges against them. Unfortunately, beyond these announcements, the IRS has not released any information to the public regarding its auditing efforts.

A few months prior to the IRS’ latest notice, in March 2023, a coalition of Puerto Rican and U.S. advocacy groups had submitted a Freedom of Information Act (“FOIA”) request to the agency soliciting available information on the status of the IRS’ audit campaign, including, but not limited to, any communications between the IRS and Puerto Rican government agencies regarding Act 22 (Request No. 2023-11406). Although the agency initially responded that the documents would be made available this summer, it has now informed advocates that the release of documents will be delayed until at least December 2023.

This delay is concerning given the importance of this issue to communities on the ground in Puerto Rico, as well as the widespread impact of potential Act 22 tax avoidance and/or evasion on the continental United States. Moreover, the number of U.S. mainlanders moving to Puerto Rico to receive Act 22 benefits appears to be growing. From late 2020 to early 2023, beneficiaries grew from 3,146 to 5,010, an increase of nearly 60 percent.

Finally, the DEDC, the Puerto Rican government agency in charge of granting and overseeing Act 22 decrees, has admitted that it lacks sufficient tools to enforce compliance and that it did not properly monitor granted decrees after the law’s approval. In March 2021, the DEDC announced a general compliance audit of Act 22, with expected delivery of their findings by the end of 2021. However, the agency has yet to publish the audit results or the annual reports of Act 22 beneficiaries, even after repeated requests from local journalists and court orders requiring the

8 Luis J. Valentín Ortiz, Más de $21 millones de contribuciones en jaque por falta de fiscalización a beneficiarios de la Ley 22, CENTRO DE PERIODISMO INVESTIGATIVO (Sept. 28, 2023), https://periodismoinvestigativo.com/2023/09/mas-de-21-millones-de-contribuciones-en-jaque-por-falta-de-fiscalizacion-a-beneficiarios-de-la-ley-22/.
information be provided. It has become abundantly clear that the law lacks adequate oversight mechanisms, making it even more crucial that the IRS ensures adequate oversight at the federal level.

Therefore, we consider it essential to understand to what extent the IRS and Puerto Rico’s Department of Treasury are monitoring U.S. individuals and businesses claiming tax benefits under Act 60, particularly as the number of Act 22/Act 60 beneficiaries continues to grow exponentially. The provision of available information regarding ongoing oversight and enforcement efforts is paramount to safeguarding taxpayers’ sense of fairness and confidence in government agencies such as the IRS.

We respectfully request that your office expedite processing of the aforementioned FOIA request—consistent with applicable rules, laws, and regulations—or alternatively, provide a detailed timeline of when the IRS expects to provide the general public an update on its findings.

Thank you for your attention to this matter, and we look forward to reviewing your responses.

Sincerely,

Nydia M. Velázquez
Member of Congress

Rashida Tlaib
Member of Congress

Barbara Lee
Member of Congress

Alexandria Ocasio-Cortez
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CC: Kimberly Hill
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