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**Tax Statute Benefits  
Knowledge-Based Businesses,  
Establishes Research and  
Technology Park**

by Marjorie Roberts

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## **Tax Statute Benefits Knowledge-Based Businesses, Establishes Research and Technology Park**

*by Marjorie Roberts*

*Marjorie Roberts, tax attorney, St. Thomas*

U.S. Virgin Islands Governor Charles W. Turnbull signed legislation earlier this year that provides significant tax benefits for knowledge-based businesses and establishes the University of the Virgin Islands Research and Technology Park. The new law, Act 6502, which added new chapter 34 to title 17 of the Virgin Islands Code.

A qualifying business could receive a 90 percent reduction in its income tax liability. Additionally, a worker training credit is available. However, knowledge-based businesses in the research and technology park must pay an annual franchise tax that is based on their worldwide gross receipts, but generally capped at \$25,000.

The initial research and technology park's development will be on the island of St. Croix because, according to section 5 of act 6502, "the economic situation needs more stimulation . . . and there is more Government-owned real property available on the island of St. Croix."<sup>1</sup> Its mandate is to provide suitable sites for locating research, technology-based, and agricultural research businesses.

The legislation specifically authorizes the governor to convey two parcels of land totaling 205 acres on St. Croix to the University of the Virgin Islands (UVI) for UVI to develop and maintain the UVI Research and Technology Park. However, if no park development takes place within five years of the property's conveyance, the property title reverts to the government.<sup>2</sup>

The park will be governed by the UVI Research and Technology Park Corporation, a public corporation and autonomous governmental instrumentality, which will have its own governing board.<sup>3</sup>

### **Park Facilities and Services**

The legislation establishes a research and technology park to foster the formation of the territory's technology community, which will enhance the territory's economic development. The park will provide facilities for the development or "incubation" of new knowledge-based and similar businesses.<sup>4</sup> It also will partner with UVI to develop research and technology education, training, and internships for students and other territory residents.<sup>5</sup> In addition, the park is di-

<sup>1</sup>Section 5, act 6502.

<sup>2</sup>Section 4, act 6502.

<sup>3</sup>Section 483, chapter 34, title 17, VIC.

<sup>4</sup>Section 480(c), chapter 34, title 17, VIC.

<sup>5</sup>Section 480(e), chapter 34, title 17, VIC.

rected to promote the hiring of U.S. Virgin Islands residents and the purchase of goods, materials, and supplies from U.S. Virgin Islands residents and businesses. The legislation broadly defines a “resident of the U.S. Virgin Islands.”<sup>6</sup>

### Tax Incentives for Knowledge-Based Businesses

Each knowledge-based park business may apply for benefits under the territory’s economic development program<sup>7</sup> administered by the Economic Development Authority (EDA). On receipt of benefits, the tenant must present its tax benefits certificate to the executive director of the park corporation. The law requires that businesses seeking benefits must employ a minimum of 10 persons full time (at least 32 hours a week) and invest a minimum of US \$100,000 in capital in the business. However, the EDA has the statutory authority to reduce one or both of these requirements if “the [EDA] finds that the proposed . . . business will provide sufficient employment to justify the lower investment” in the case of the capital requirement, and if the business demonstrates to the EDA “that the employment of this number of persons in his particular enterprise would not be economically feasible or practical, and upon a further finding by the [EDA] that the desirability of the proposed enterprise outweighs the fact that it is not labor intensive.” It is anticipated that the EDA will issue special guidance for knowledge-based businesses seeking park tenancy under its statutory flexibility to consider the unique needs of the park and UVI as well as the importance of developing a significant technology sector in the territory.

Under the territory’s economic development program, a beneficiary receives a 90 percent reduction in its income tax liability on income from the business for which benefits are granted.<sup>8</sup> The reduction results

in an effective tax rate of approximately 4 percent on income from approved operations. If the beneficiary’s owners are U.S. Virgin Islands residents, the owners also receive the reduction on their dividends or distributions.<sup>9</sup> Specifically, U.S. Virgin Islands individual residents who are shareholders, members, partners, grantors, beneficiaries, or other owners receive the 90 percent reduction. Residency for that purpose is determined under section 932(c) of the Internal Revenue Code of 1986, which means that the persons must be bona fide residents as of the end of their tax year. Beneficiaries also receive an exemption from the U.S. Virgin Islands property tax (0.75 percent of the property’s fair market value),<sup>10</sup> as well as an exemption from U.S. Virgin Islands gross receipts tax (a 4 percent tax on business gross receipts, with no deductions.)<sup>11</sup> Beneficiaries also receive a reduction in customs duties on certain items<sup>12</sup> and exemptions from excise tax on building materials<sup>13</sup> and raw materials.<sup>14</sup>

Businesses providing training for five or more employees in the U.S. Virgin Islands can receive a “worker training tax credit” equal to 50 percent of eligible training expenses and capped at US \$1,000 per employee.<sup>15</sup>

### Tax and Fee Payments, Expedited Processes

Each knowledge-based business in the park (including incubator business tenants) must pay an annual franchise tax to the Department of Finance based on the business’s worldwide gross receipts. It ranges from US \$200 for a business with annual worldwide gross receipts of less than or equal to US \$1 million up to US \$25,000 for a business with annual worldwide gross receipts from US \$100 million up to US \$250 million. Businesses with annual worldwide gross receipts greater than US \$25 million are subject to a franchise tax of at least US \$25,000 as determined by the park board).<sup>16</sup> Other park tenants pay the franchise tax based on the type of entity established under U.S. Virgin Islands law.

<sup>6</sup>Section 482(m), chapter 34, title 17, VIC.

<sup>7</sup>Chapter 12, title 29, VIC.

<sup>8</sup>Under the U.S. Naval Services Appropriation Act of 1922, the U.S. Virgin Islands uses the United States Internal Revenue Code of 1986, as amended, as its income tax code. A U.S. Virgin Islands corporation, for example, would file Form 1120 with the Virgin Islands Bureau of Internal Revenue and not with the Internal Revenue Service. If the corporation were engaged in business in the U.S. Virgin Islands, it would not have any additional income tax filing requirements. If a U.S. Virgin Islands corporation is engaged in business in the United States, it files Form 1120F, and not Form 1120, with the Internal Revenue Service. As for individuals, a U.S. citizen who is a bona fide resident of the U.S. Virgin Islands files a single Form 1040 with the Virgin Islands Bureau of Internal Revenue, reporting his or her worldwide income, and does not file a Form 1040 with the Internal Revenue Service.

<sup>9</sup>Section 713b(e), chapter 12, title 29, VIC.

<sup>10</sup>Section 713a(a)(1), chapter 12, title 29, VIC.

<sup>11</sup>Section 713a(a)(2), chapter 12, title 29, VIC.

<sup>12</sup>Section 713c, chapter 12, title 29, VIC.

<sup>13</sup>Section 713(a)(3), chapter 12, title 29, VIC.

<sup>14</sup>Section 43d, chapter 3, title 33, VIC.

<sup>15</sup>Section 490B(c), chapter 34, title 17, VIC.

<sup>16</sup>Section 490B(a), chapter 34, title 17, VIC.

Each knowledge-based business must obtain a business license for its appropriate category. A new category was created in the legislation, however, for an incubator business,<sup>17</sup> and it provides for a US \$250 annual fee.<sup>18</sup> The park board of directors and the Department of Licensing and Consumer Affairs are directed to work cooperatively to develop policies and procedures for park tenants to receive business licenses within five working days after submitting completed applications to the Department of Licensing and Consumer Affairs, or they will be entitled to begin business at that time as if in receipt of a valid business license.<sup>19</sup>

Similarly, the legislation directs the park board of directors and the Office of the Lieutenant Governor, Corporations Division to develop policies and procedures for knowledge-based park tenants to obtain a response on the availability of a specific name within two working days and all necessary services and documents within five working days of the request.<sup>20</sup>

Finally, the park board of directors and the Department of Planning and Natural Resources are directed to work cooperatively to develop policies and procedures to expedite the handling of permits and processes for knowledge-based park tenants.<sup>21</sup>

### **Park Corporation Authorized to Issue Tax-Exempt Bonds**

The park corporation has the authority to issue bonds and may have outstanding bonds not in excess of US \$50 million dollars at any time.<sup>22</sup> The bonds will be tax-exempt for principal and interest for the U.S. Virgin Islands and U.S. governments.<sup>23</sup>

### **Eligible Park Tenants**

The legislation lists five types of tenants who are eligible for park occupancy:

- beneficiaries of the U.S. Virgin Islands' Economic Development Program;<sup>24</sup>

- beneficiaries of the Farmers, Fisherman and Consumers Assistance Program;<sup>25</sup>
- the Research and Technology Park Cell Corporation;<sup>26</sup>
- other knowledge-based businesses (including incubator business tenants);<sup>27</sup> and
- support businesses.<sup>28</sup>

The park corporation's board of directors has the exclusive right to negotiate with all potential tenants.<sup>29</sup>

In determining whether a beneficiary of the territory's Economic Development Program or the Farmers, Fisherman and Consumers Assistance Program should be located in a park, the corporation must consider several factors.<sup>30</sup> The park corporation must evaluate whether the beneficiary hires or will hire UVI students, faculty, and graduates; whether the beneficiary's existence in the park will otherwise enhance UVI's trifold mission of teaching, research, and public service; whether the beneficiary will contribute funds, services, or materials to UVI; and generally whether synergies exist between the beneficiary and UVI so that the beneficiary is an appropriate park tenant.

In determining whether a knowledge-based business should be located in the park, the park corporation must evaluate whether:

- the applicant will contribute to the technology section development;

<sup>17</sup>As defined in section 482(g) to means "a knowledge-based business in its start-up phase which receives hands-on management assistance, access to financing and orchestrated exposure to critical or technical support services from Research and Technology Park tenants."

<sup>18</sup>Section 301c, chapter 9, title 27, VIC.

<sup>19</sup>Section 490D, chapter 34, title 17, VIC.

<sup>20</sup>Section 490E(a), chapter 34, title 17, VIC.

<sup>21</sup>Section 490F, chapter 34, title 17, VIC.

<sup>22</sup>Section 488(a), chapter 34, title 17, VIC.

<sup>23</sup>Section 488(c), chapter 34, title 17, VIC.

<sup>24</sup>Chapter 12, title 29, VIC.

<sup>25</sup>Chapter 13, title 7, VIC. By way of illustration, a park tenant might include a business authorized by the Department of Agriculture to engage in agricultural research under the Farmers, Fishermen and Consumers Assistance Program.

<sup>26</sup>Chapter 42, title 14, VIC.

<sup>27</sup>As defined in section 482(h) of chapter 34 to include, "but is not limited to any business that uses highly skilled/highly educated personnel and a high level of research and development to create intellectual assets and property and to be innovative in their products, services or processes as a significant source of value and competitive advantage. Knowledge-Based Businesses . . . specifically includes research businesses, information technology businesses, e-commerce businesses, electronic hosting facilities, agricultural research, and electronics businesses."

<sup>28</sup>As defined in section 482(l) of chapter 34 to mean "accounting firms, law firms, banks, and other service providers and businesses that will complement the activities of the Research and Technology Park, but shall not include any businesses that are eligible for any tax benefits in connection with their location in the Research and Technology Park."

<sup>29</sup>Section 490A(a), chapter 34, title 17, VIC.

<sup>30</sup>Section 490A(a)(1), chapter 34, title 17, VIC.

- the applicant brings synergistic new technologies or technology services to the U.S. Virgin Islands;
- synergies exist between the applicant and other park tenants;
- the applicant employs or is committed to employing students, UVI faculty, and graduates, as well as other U.S. Virgin Islands residents;
- the applicant is committed to investing capital in the park;
- the applicant has contributed or will contribute funds, services, intellectual capital, or materials to UVI or the U.S. Virgin Islands; or
- the applicant's existence in the park will otherwise enhance UVI's mission of teaching, research, and public service.<sup>31</sup>

Every knowledge-based business in the park (including incubator businesses) must file and maintain an employment-needs projection and an action plan outlining how the business will work with the park corporation and UVI to develop and conduct education and training programs to prepare UVI graduates and other residents for anticipated jobs, to develop internship programs for UVI and high school students to work with businesses with an eye toward full-time employment at graduation, and to develop "school to work" programs in collaboration with the high schools and vocational schools to prepare students for postgraduation employment.<sup>32</sup> Additionally, every business must agree in writing to employ or contract for services with and to purchase goods, materials, and supplies from persons, firms, and corporations that are U.S. Virgin Islands residents or incorporated under U.S. Virgin Islands law,

and that are licensed to do business in the U.S. Virgin Islands for at least one year before any employment, contract, or purchase.<sup>33</sup>

Every park business must advertise all vacancies with the U.S. Virgin Islands Department of Labor, the park corporation, UVI, and the local media.<sup>34</sup>

### **Board of Park Selected by UVI Trustees, Governor**

The park corporation's board has seven members, including the UVI chairman of the board of trustees and the UVI president. In addition, two persons are selected from among the trustees by the board of trustees, and three members are selected by the governor (who do not require confirmation by the Legislature of the U.S. Virgin Islands).<sup>35</sup> The chairman of the board is elected by the board of directors and serves for two years.<sup>36</sup>

The park corporation will be required to obtain an independent certified audit annually for transmittal to the governor, the legislature, and the UVI board of trustees.<sup>37</sup> However, as a public corporation and an autonomous governmental instrumentality of the U.S. Virgin Islands government, it is exempt from all U.S. Virgin Islands taxes, special assessments, and license fees.

The park corporation's stated term of existence is perpetual. However, the park corporation may be wound up and dissolved by an act of the governor and the legislature, with the assets reverting to UVI after satisfying the bondholders obligations.<sup>38</sup> ♦

<sup>31</sup>Section 490A(b), chapter 34, title 17, VIC.

<sup>32</sup>Section 490A(c), chapter 34, title 17, VIC.

<sup>33</sup>Section 490A(e), chapter 34, title 17, VIC.

<sup>34</sup>Section 490A(d), chapter 34, title 17, VIC.

<sup>35</sup>Section 485(a), chapter 34, title 17, VIC.

<sup>36</sup>Section 485(c), chapter 34, title 17, VIC.

<sup>37</sup>Section 489C, chapter 34, title 17, VIC.

<sup>38</sup>Section 489E, chapter 34, title 17, VIC.