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TAX ALERT

Tax Reform House Bill 2482

This Alert updates our Tax Alerts of [May 20](#) and [21](#), 2015 about Tax Reform House Bill 2482 (the "Bill"). Last night various changes were made to the Bill, and it is expected that it will be sent to the Senate later today or on Monday.

Some of the most significant modifications that the House made to the Bill, which can be of interest to our clients, are as follows:

- The crude oil tax will not apply to businesses with a Grant issued under Act 73-2008 with regards to fuel used by the exempted business in the cogeneration of electric power for its own use or for the use of its affiliates, and to energy efficient equipment properly certified by the Energy Affairs Administration.
- The definition of "food and food ingredients" and of "prepared food" for purposes of identifying the taxable items subject to Sales and Use Tax ("SUT") and Value Added Tax ("VAT") was modified.
 - The following food items are not exempted from the SUT:
 - Dietary supplements, isotonic, sports or energized drinks, and nutritional or energized bars;
 - Alcoholic beverages;
 - Tobacco and derived products;
 - Candies, popcorn, nuts, hazelnuts, almonds, pistachio, and similar products regardless of their form (fresh, dried, sugared, among others)
 - Pastry products, excluding:
 - Bread;
 - soda crackers; and
 - any other pastry product considered as food by the Federal Nutrition Assistance Program (PAN).
 - Carbonated beverages – Includes carbonated or gas beverages, as well as the extract or syrup used in fountain sodas ("fountain syrups"), which are used as mixers to prepare such beverages, excluding malt beer.

- Prepared food, including:
 - Cold, frozen, canned, packed, or any other preserved food that is totally or partially pre-cooked, except grains, meat, fish and sausages, and baby foods marketed for such purposes;
 - Food sold hot or heated by the seller;
 - Two or more food ingredients that are mixed or combined by the seller to be sold as only one item or product, but excluding food that is merely cut, repackaged, or pasteurized by the seller, and eggs, fish, beef, poultry and food that contains said products that is uncooked and requires cooking by the consumer, as recommended by the Food and Drug Administration to prevent food-borne diseases.
 - Food sold with eating utensils, including dishes, knives, forks, spoons, glasses, cups, napkins, or straws. The term “dish” does not include a container or package used to carry food.
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- For taxable events after September 30, 2015, merchants engaged in the rendering of designated professional services can use the cash receipt method of accounting for SUT purposes.
 - It is clarified that the special time schedule to remit the taxes attributable to the month of July, 2015 in the case of merchants with gross sales of less than \$1,000,000 applies for SUT purposes and not for VAT purposes.
 - In the case of construction projects of a commercial, industrial or residential nature that as of May 30, 2015 have already commenced any of its phases, or for which services or goods would have been acquired or contracted, or for which a sale or option agreement for a housing unit has been executed, will be able to register in a Register to be established under the Act. Such projects, as well as the sales of goods or services, attributable to such projects, will be subject to the SUT provisions in place on or before June 30, 2015.
 - It is clarified that the 1% municipal SUT will not apply to services rendered to other merchants or to designated professional services. Such services will only be subject to the 4% SUT.
 - Articles for the treatment of health conditions now includes certain defined medical devices, which can be introduced or imported into Puerto Rico exempt from the VAT.
 - Printed books (as opposed to textbooks) can be imported and/or sold exempt from the VAT.
 - Services rendered between affiliated entities will be outside the scope of the VAT only if said entities are engaged in business in Puerto Rico. If the service recipient is engaged in business in Puerto Rico, but the service provider is not, then the payment for the service will be subject to the VAT.

- The sale of articles for manufacturing to a manufacturing plant that holds an Exempt Certificate for Manufacturing Plant will not be exempt from the VAT, but rather taxable at a 0% rate. The Bill clarifies that in addition to articles, the 0% rate extends to raw materials and equipment used in manufacturing.
- The powers granted to the Secretary of the Treasury to apply and administer the SUT under the Code have been extended to cover the VAT as well.
- The Secretary is required to issue reports about the status of SUT and VAT collections, and the results of the Audit Plan.
- It is also established an Interagency Website for the Audit of the Tax Liability of Individuals and Corporations.
- Authority is granted to the Secretary of Treasury to extend the application of the SUT provisions if the implementation of the operational system necessary for the VAT provisions to become effective have not been completed as of March 31, 2016. Such extension cannot be for a period longer than 60 days from March 31, 2016.

A newly-created commission must issue a report no later than 60 days from the approval date of the Bill with recommendations to the Governor and the Legislature. If the report contains findings and recommendations about the possibility of transforming the present consumption tax system to a general excise tax system, the Commission must submit legislation to such effect within 10 days after issuing the report.

If you have any questions, you may contact any of the attorneys of our Tax Practice Group listed below:

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