



June 26, 2015

www.mcvpr.com**TAX ALERT*****Treasury Issues Guidelines on Returns of Taxable Items and Pre-Existing Agreements***

Act Number 72 of May 29, 2015 ("Act 72-2015") amended the Puerto Rico Internal Revenue Code of 2011, as amended ("2011 Code"), to, among other matters, increase the state sales and use tax ("SUT") from 6% to 10.5% commencing on July 1, 2015. Act 72-2015 also amended Section 4070.01 of the 2011 Code to exclude from such increase certain contracts and bids executed and awarded before July 1, 2015 for the sale of taxable items, as well as certain pre-existing construction contracts as of May 31, 2015.

The following Circular Letters and Administrative Determination issued by the Puerto Rico Treasury Department ("PR Treasury") on June 24, 2015, provide the rules and procedures that will apply on certain returns of taxable items and to claim the benefits of pre-existing contracts.

Tax Policy Circular Letter No. 15-08 -- Returns of Taxable Items Occurring after June 30, 2015

- Merchants must amend their June 2015 Monthly SUT Returns through PICO as many times as necessary to claim the reduction in sales attributable to any returns of taxable items purchased before July 1st, 2015 but returned after June 30, 2015.
- Importers returning taxable items originally acquired prior to June 30, 2015 for use or consumption in Puerto Rico, must request a refund of the 6% SUT paid on import.
- Taxable items imported to Puerto Rico for resale that are returned after its month of introduction, will not be subject to a refund since the tax paid on import would have been claimed by the merchant in its Monthly SUT Return for the month of the import.

For more information about the process to amend the June 2015 Monthly SUT Return or to request a refund from PR Treasury, you can access CL 15-08 [here](#).

Tax Policy Circular Letter No. 15-09 -- Exclusion of Pre-Existing Contracts and Bids from the Changes to the Sales and Use Tax applicable to Taxable Items After July 1, 2015.

- Pre-existing contracts and bids must satisfy the requirements established under CL 15-09 in order to qualify for the reduced 6% state SUT.
- In general, the contracts must be in writing and must be executed before July 1, 2015. Also, the value of the tangible personal property to be sold or the services to be rendered (currently subject to the 6% state SUT) must be paid before July 1, 2015, and the sale of such property or the rendering of such service must occur during the following 12-month period, or the date of termination of the contract, whichever occurs first. Special rules will apply in the case of cancellation clauses, change orders, tax gross-up provisions, lay-aways, and agreements including bundle transactions.
- The seller and the buyer must request, jointly, from PR Treasury, no later than August 10, 2015, a certification attesting the character of the agreement as a “qualified agreement”. This certification must be requested through the filing of Form SC 2921 (Request for the Certification of a Qualified Agreement subject to the Sales and Use Tax), with the Director of the Bureau of Consumption Tax.
- Taxable articles imported under the terms of “qualified contracts” after June 30, 2015 will be subject to the state SUT of 10.5%. The buyer-importer, however, may apply for a tax refund of the state SUT paid in excess of the rate of 6%. CL 15-09 lists the requirements to request such refund.

You can access CL 15-09 [here](#)

Tax Policy Circular Letter No. 15-10 -- Exclusion of Pre-Existing Contracts and Bids from Changes to the Sales and Use Tax Starting July 1, 2015

CL 15-10 aims to –

- clarify which construction contracts or bids are eligible to be considered a “pre-existing contract” under Section 4070.01(d) of the 2011 Code; and
- establish the procedure to obtain the Secretary of the PR Treasury’s written authorization for the purchase of items or services at the state SUT rate in effect until June 30, 2015.

CL 15-10 establishes an August 10, 2015 deadline for the owner of the project to file the necessary documents and forms to obtain a Registry Certificate. A list of all necessary documents and forms which must be submitted is provided in CL.15-10. Furthermore, CL 15-10 establishes an August 10, 2015 deadline (or, the 10th day of the month following the formalization of a contract) to request

inscription of a contract between a primary contractor and the owner of the project in the Puerto Rico Treasury Department's Eligible Works and Buildings Registry.

You can access CL 15-10 [here](#)

Tax Policy Circular Letter No. 15-11 -- Exclusion of Pre-Existing Contracts and Bids as of June 30, 2015 from the Sales and Use Tax Rate of 4%, Applicable to Services Rendered to Other Merchants or Designated Professional Services Starting on October 1, 2015.

CL 15-11 aims to clarify –

- which service agreements will be subject to the 4% SUT;
- which service agreements are eligible to be considered a “pre-existing agreement” as of July 1, 2015; and
- the procedure to obtain from the Secretary of the PR Treasury the certification exempting from the 4% SUT certain services rendered to merchants or designated professional services.

In general,

- The pre-existing agreement must comply with the requirements established under CL 15-09 (above) in order to qualify for the 4% SUT exemption.
- The 4% SUT exemption (that will also apply to the 10.5% value added tax effective on April 1, 2016) will expire upon the termination of the 12-month period commencing after September 30, 2015, or upon expiration of the agreement, whichever occurs first.
- The provider and the recipient of the service must request, jointly, before September 30, 2015, a certification from the PR Treasury attesting the qualified status of the pre-existing agreement.

You can access CL 15-11 [here](#)

Administrative Determination No. 15-10 - Applicability of the SUT in the sale of taxable items before July 1st, 2015 under installment sales or credit sales and on services rendered and not collected as of June 30, 2015.

AD 15-10 provides that –

- sales of taxable items undertaken before July 1st, 2015 will be subject to the 6% state SUT regardless of when the payment is collected;
- taxable services rendered before July 1st, 2015 that are currently subject to the 6% state SUT will not be subject to the increased 10.5% state tax if the services are billed to the client by July 20, 2015; and
- services rendered to a merchant or to a person engaged in a trade or business (known as “B2B Services”), or designated professional services, rendered before October 1st, 2015, will not be subject to the 4% SUT applicable after September 30, 2015, if the services are billed to the client by October 20, 2015.

You can access AD 15-10 [here](#)

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

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