

February 26, 2016

## Tax Update

### *Treasury Issues Guidance on SUT-to-VAT Transition*

As discussed in our Legal Update of [January 4, 2016](#), on December 29, 2015, the Puerto Rico Department of the Treasury (“Treasury”) announced that the value added tax (“VAT”) would become effective in phases effective on April 1, 2016 and June 1, 2016. Last night, Treasury issued Administrative Determination No. 16-01 (“AD 16-01”) addressing matters related to the transition from a sales and use tax (“SUT”) system to a VAT system.

Below is a summary of the most salient provisions of AD 16-01.

### **SURI**

Starting on April 1, 2016, Treasury will launch the Unified Internal Revenue System (“SURI” for its Spanish acronym) which is expected to unify all the different tax systems Treasury manages to date. The implementation of SURI will take place in phases, the first of which will be launched as part of the SUT-to-VAT transition.

Although the VAT Monthly Return and other VAT-related transactions will be processed through SURI, the new system will initially work together with the Integrated Merchant’s Portal (“PICO” for its Spanish acronym), which will continue to be used to, among other things, file the Declarations for Imports and the Tax on Imports Monthly Return. PICO user information will be automatically transferred to SURI.

### **New VAT Monthly Return**

The new VAT Monthly Return will be due no later than the 20<sup>th</sup> day of each month with respect to transactions taking place during the preceding month. The first VAT Monthly Return to be filed through SURI will be due on May 20, 2016. Such return will show the carryover of SUT credits and overpayments reflected in SUT returns filed for March 2016, which will be transferred by Treasury.

The new return will provide for, among other things, the computation of the input VAT credit. It is required to be filed electronically through SURI and any payment due with the same must be made electronically through SURI as well.

### **Merchants’ Registry**

All Merchant’s Registration Certificates (“MRC”) currently in effect will expire on March 31, 2016 and merchants currently holding such certificates must apply for a new VAT MRC through SURI. The process will entail the validation of current PICO registration information and must be completed no later than May 20, 2016, due date for filing the first VAT Monthly Return.



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The validation process for currently registered merchants, as well as and the new registration process, will become available on April 1, 2016. Once the applicable process is completed, merchants will be able to print the MRC which will include a control number and must be posted at a visible place to the public at the merchant's commercial location.

New businesses that will import goods into Puerto Rico will need to register in PICO in addition to SURI as the Declarations for Imports and the Tax on Imports Monthly Returns will continue to be filed through such system.

### **Small Merchants**

Merchants with gross sales of less than \$125,000 for the immediately preceding taxable period are eligible to apply for a Small Merchant Registration Certificate. Such certificate will exempt them from collecting VAT on their sales and filing the VAT Monthly Return. Sales by Small Merchants, be it of services or tangible personal property, will be considered exempt for both the Small Merchant and its customers. This represents an expansion of the SUT exemption on services rendered by merchants with an annual sales volume not exceeding \$50,000.

The classification as a Small Merchant is not automatic. When evaluating whether to apply for such treatment, the merchant must consider that it will be unable to take an input VAT credit because its sales will be exempt. In addition, Small Merchants will not necessarily be relieved from collecting the municipal SUT. For municipal SUT purposes, the exemption on services rendered by merchants with an annual sales volume not exceeding \$50,000 will continue to apply. As a result, taxable service providers exceeding such volume and those engaged in the sale of tangible personal property will be required to collect the municipal SUT on their sales even if they hold a Small Merchant Registration Certificate.

### **VAT Exemption Certificates**

Except as indicated below, all SUT waivers and exemption certificates will expire on March 31, 2016. Treasury will issue additional guidance establishing the procedure to request VAT exemption certificates.

#### *Reseller and Municipal SUT Exemption Certificate and Manufacturing Plant Exemption Certificate*

The Reseller and Municipal SUT Exemption Certificate will continue to be used to evidence the status of a merchant as a reseller and its related eligibility for municipal SUT exemption on purchases of tangible personal property for resale. As a result, holders of this certificate will only pay a 10.5% VAT on taxable goods acquired for resale.

The Manufacturing Plant Exemption Certificate will continue to be used by manufacturing plants to acquire raw material and machinery and equipment used in the manufacturing process exempt from the VAT. Treasury will issue a new Manufacturing Plant Exemption and Zero Rate Certificate to manufacturing plants that are eligible for the VAT exemption/zero-rating on the import and purchase of such goods.

Merchants holding Reseller and Municipal SUT Exemption Certificates and Manufacturing Plant Exemption Certificates valid as of December 31, 2015 or any subsequent date will continue to use the same under the VAT regime, notwithstanding the certificate's expiration date, until Treasury notifies the cancellation of such certificates and the process to request their renewal. Such renewals will be completed through SURI. Renewal applications pending before

Treasury in connection with certificates expiring after December 31, 2015 will be deemed cancelled.

Certificates that expired on or before December 31, 2015 must be renewed following the process applicable under the SUT regime. The SUT renewal process must also be used for new applications. Starting on March 1, 2016, Treasury will not accept renewal applications for these certificates.

#### *Waiver Certificate from the Collection of SUT on Manufacturing Services Contracts*

This certificate will continue to be used to claim VAT exemption on certain manufacturing services contracts. Merchants that want to apply for such certificate under the VAT regime must do so following the process applicable under the SUT regime until Treasury publishes the new procedure under the VAT.

#### *Eligible Reseller Certificate*

Eligible Reseller Certificates will be valid until June 30, 2016, notwithstanding their expiration date. As a result, holders of such certificate will be able to claim VAT exemption on the same purchases with respect to which they currently claim a SUT exemption. Starting on July 1, 2016, such merchants will be subject to the payment of the VAT in all their otherwise taxable transactions.

#### *Certificate for Exempt Purchases*

Treasury Form SC 2916, Certificate for Exempt Purchases, will continue to be used to document transactions exempt from VAT until further notice and will be deemed to be the newly-created Certificate for Exempt Purchases to be issued by Treasury under the VAT regime.

### **Fiscal Vouchers and Debit and Credit Notes**

Compliance with the fiscal vouchers and debit and credit notes requirements related to a merchant's availability to claim an input VAT credit is temporarily suspended until Treasury establishes the procedure to issue such documentation. Until then, a receipt or invoice which separately states the cost of goods or services acquired and the VAT paid in connection with such transaction will be sufficient evidence to support a merchant's claim for input VAT credit.

Copy of such receipts or invoices will generally not have to be included with the VAT Monthly Return, but shall be maintained for a period of 6 years after the filing of the return in which the corresponding credit is claimed. However, merchants with an annual business volume of \$40,000,000 or more shall submit, together with the VAT Monthly Return, a breakdown of the VAT paid and claimed as a credit in connection with goods and services acquired. An example of the schedule to be used for this purpose is included with AD 16-01.

### **Pre-Existing Contracts**

Merchants selling goods or rendering services under duly qualified pre-existing contracts will continue to be required to file the Monthly SUT Return Applicable to Pre-Existing Contracts and Bids (Model SC 2915E) through PICO until June 30, 2016. SUT paid under such contracts will not be part of the input VAT credit to be accrued by merchants starting on April 1, 2016.

Treasury will issue additional guidance providing for the extension of the qualified pre-existing contract provisions with respect to construction projects.

## Refunds of VAT Paid in Excess

An overpayment of up to \$10,000 generated due to the excess of adjustments or credits may be applied in the VAT Monthly Return of the month following the month in which the overpayment arises. A refund may be requested by merchants that accumulate an overpayment in excess of \$10,000 provided the merchant has generated overpayments for 3 consecutive months or is an Eligible Merchant (i.e., a merchant whose annual sales volume during the preceding 3 years exceeds \$500,000 and 80% of its total sales are zero-rated) with a valid certificate to such effects. Treasury will issue additional guidance establishing the procedure to apply for an Eligible Merchant Certificate.

The referenced 3-month period will start on June 1, 2016. As a result, the earliest a merchant can file a VAT refund request is August 2016 if (1) the merchant has a VAT overpayment in excess of \$10,000 with respect to the months of June, July and August 2016 and (2) when filing the VAT Monthly Return for August 2016 the merchant has been unable to credit such overpayment against VAT collected on the sale of goods and services. Additional guidance will be issued by Treasury in connection with the refund process.

## Designated Professional Services Providers

Designated professional services rendered before April 1, 2016 will be subject to a 4% SUT provided the invoice for such services is issued and sent to the customer not later than April 20, 2016. If the invoice is not issued and sent within such time frame, the services will be deemed rendered on the date in which the invoice is issued. Starting on April 1, 2016, designated professional services are subject exclusively to a 10.5% VAT as they continue to be exempt from the municipal SUT. Although not addressed by AD 16-01, it is expected for services rendered to other merchants currently subject to a 4% SUT to follow these same rules.

Special rules are established for the filing of SUT returns by designated professional services providers using the cash basis method of accounting for SUT purposes.

## SUT Rulings and Closing Agreements

As a general rule, SUT rulings and closing agreements will continue to apply with respect to similar VAT provisions. However, a Ratification Letter must be obtained from the Secretary of the Treasury (“Secretary”).

AD 16-01 details the information and documentation to be included with a Request for Ratification Letter and the process in connection therewith.

You may access AD 16-01 (in Spanish) [here](#).

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