

June 20, 2017

Tax Update

Municipal Use Tax to be Remitted to Treasury and Non-withholding Agent SUT Obligations

Act 25-2017, enacted on April 29, 2017, introduced certain amendments to the sales and use tax (“SUT”) provisions of the Puerto Rico Internal Revenue Code of 2011, as amended (“Code”), to address the manner in which taxpayers pay the municipal sales and use tax (“Municipal SUT”) and the definition of the term “merchant” in cases of merchants that sell tangible personal property (“TPP”) through the Internet, mail, catalogs, radio, television or any other electronic or publicity distribution method in Puerto Rico and mail order sales.

On June 15, 2017, the Puerto Rico Treasury Department (“Treasury”) issued Administrative Determination No. 17-04 (“AD 17-04”) to (i) establish the date in which the Treasury will commence the collection of the portion of the Municipal SUT as set forth in Act 25-2017 and (ii) reiterate the effective date of Act 25-2017 with respect to certain merchants that sell TPP through the above mentioned Car methods.

Below is a summary of the most important provisions of Act 25-2017 and AD 17-04.

Act 25-2017

A. Remittance of the Use Tax Portion of the Municipal SUT

Code Sections 4020.02 and 4201.02 establish a combined SUT of 10.5% (“State SUT”) that is generally imposed on all taxable items, including TPP introduced to Puerto Rico. In addition, Code Section 6080.14 establishes a 1% Municipal SUT destined to the municipalities.

As a general rule, the State SUT is collected by the Treasury and the Municipal SUT is collected individually by the municipalities or through the Municipal Financing Corporation (COFIM, for its Spanish acronym). Act 25-2017, however, amended the Section 6080.14 to authorize the Secretary of the Treasury to collect the 1% municipal **use tax** imposed on a taxable item.

B. Non-withholding Agents

Act 25-2017 also modifies the Code provisions regarding the determination as to whether a person is deemed to be engaged in the sale of taxable items in Puerto



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Rico; that is, whether that person has nexus with Puerto Rico for SUT purposes. In particular, Act 25-2017 establishes that the following persons will be considered merchants engaged in the sale of taxable items in Puerto Rico:

1. A person that creates substantial nexus with Puerto Rico through any marketing means, including press, radio, television and electronic portals, billboards, and when its sales are mailed or delivered through any other method to purchasers in Puerto Rico in a way that is continuous, recurrent and in the ordinary course of its business, or
2. A person that sells or sends or causes to be sent TPP from any place outside Puerto Rico to any person in Puerto Rico through an Internet link, to the extent that such sales are made in a way that is continuous, recurrent and in the ordinary course of its business.

In addition, Act 25-2017 introduces a new category of “Non-withholding Agents” which are defined as merchants that accept mail order sales and whose only contact with Puerto Rico is that the purchaser is a Puerto Rico resident or is engaged in a trade or business in Puerto Rico. For these purposes, the term “mail order sales” means the sale of TPP ordered by any means, including but not limited to, mail, catalogs, portals, e-commerce, Internet or other communication methods, electronic or otherwise, to a person that receives the order outside Puerto Rico and transports the TPP or ensures its transportation, by mail or otherwise, from any place outside Puerto Rico to a person in Puerto Rico.

As established by Act 25-2017, a merchant classified as a Non-withholding Agent will not have the obligation to collect the SUT. However, it will be subject to certain reporting and notification requirements in connection with its sales to persons in Puerto Rico. Among these requirements, Act 25-2017 established that, effective **July 1, 2017**, this type of merchant shall include in each invoice, receipt or other type of purchase evidence, either electronic or physical, a note to the Puerto Rico purchaser informing of his/her obligation to remit to Treasury the use tax applicable to the TPP purchased. The Act, however, also allows Non-withholding Agents to voluntarily request to be a withholding agent, in which case it will have to collect the SUT on its mail order sales (“Voluntary Withholding Agent”).

In addition, Non-withholding Agents shall quarterly and annually file certain reports with Treasury that shall contain information such as: vendor’s name and address, name and address of every Puerto Rico purchaser, dates and quantities of the purchases, description of each purchase, among other information.

AD 17-04

A. Remittance of the Use Tax Portion of the Municipal SUT

Pursuant to AD 17-04, **as of August 1, 2017, taxpayers importing TPP to Puerto Rico will pay Treasury the municipal use tax on such imports**; that is, the taxpayer shall remit the total 11.5% use tax on imports to Treasury. Bonded taxpayers may use their bonds to pay the municipal use tax. Therefore, such taxpayers must evaluate whether increasing their current bond is necessary.

B. Non-withholding Agents

As established by Act 25-2007, **effective July 1, 2017**, merchants considered Non-withholding Agents shall notify their purchasers of their SUT declaration and payment obligations, as set forth above. Such obligations shall, however, not apply to Non-withholding Agents that have requested and agreed with Treasury to be considered Voluntary Withholding Agents. Treasury is currently accepting requests for agreements for the collection of the SUT from Non-withholding Agents.

AD 17-04 does not address the quarterly or annual reports to be filed with Treasury in connection with the Puerto Rico purchases as described in Act 25-2017. However, it is expected for Treasury to address these matters in the regulation currently being drafted.

You may access Act 25-2017 (in Spanish) [here](#) and AD 17-04 (in Spanish) [here](#).

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