

July 31, 2017

Tax Update

Treasury issues Guidance on Sales Tax Prepayments

Act No. 46-2017, enacted on July 19, 2017 (“Act 46”), requires certain merchants to prepay the sales tax collected during a particular month in bi-weekly installments. You can read more on Act 46 in our [July 26, 2017](#) Legal Update.

On July 28, 2017, the Puerto Rico Treasury Department (“Treasury”) issued Administrative Determination No. 17-07 (“AD 17-07”) to: (i) clarify the sales tax prepayments requirements and (ii) establish their effective date.

Below is a summary of the most important matters addressed in AD 17-07.

In General

Treasury has determined that, for the time being, the sales tax prepayments requirement will apply only to the state portion of the sales tax. That is, the municipal sales tax will continue to be remitted to the corresponding municipalities no later than the 20th day of the month following the month in which the transaction subject to the sales tax took place.

In addition, Treasury clarifies that the prepayments will apply only to the sales tax, not the use tax.

Merchants required to make Prepayments

Pursuant to Act 46, the following merchants are required to make bi-weekly sales tax prepayments:

1. Large Taxpayers, as defined in Code Section 1010.01(a)(35) and
2. Merchants whose monthly average amount of sales tax deposited during the prior natural year exceeds \$2,000 (“\$2,000 Threshold”).

For purposes of the \$2,000 Threshold, Treasury clarifies that the term “deposited” means the sum of the sales and use tax (“SUT”) deposited in connection with the import and purchase of inventory for resale and the SUT deposited in connection with the sales made by such merchant.



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Treasury has further established that the following merchants meet the \$2,000 Threshold:

1. Merchants that sell tangible personal property or taxable services subject to the 10.5% SUT whose sales for the natural year immediately prior to the year of the determination exceed **\$228,600** [$(\$2,000/10.5\%)*12$ months];
2. Merchants that are dedicated **exclusively** to the sale of services between merchants or designated professional services subject to the 4% SUT whose sales for the natural year immediately prior to the year of the determination exceed **\$600,000** [$(\$2,000/4\%)*12$ months].

The determination as to whether a merchant is required to comply with the sales tax prepayments shall be made annually.

Treasury has determined that the sales tax prepayments will not apply to Voluntary Withholding Agents.

Prepayments

The first prepayment is due on the 15th day of the month and the second on the last day of such month. If the prepayment due date is on a Saturday, Sunday or federal or state holiday, the prepayment due date will be the next business day.

Pursuant to Act 46, merchants shall be deemed to have complied with the prepayment requirements if the sum of the two prepayments amounted to at least the lower of: (i) 80% of the sales tax determined for such month or (ii) 70% of the total sales tax remitted during that same month in the prior year.

Treasury clarifies that, for purposes of the above 80% requirement, the term “sales tax determined” means the “Total SUT Determined” reflected in the Monthly SUT Return, net of the following credits: (i) credit for taxes paid by a reseller in the purchase or import of inventory for resale, (ii) credit for bad debts, (iii) credit for the sale of merchant’s property and (iv) prior period overpayments (“Credits”).

For purposes of the 70% requirement, the term “remitted” shall mean the “Total SUT Determined” reflected in the Monthly SUT Return for the same month of the prior year, net of the Credits.

Treasury further determines that, for the first prepayment (due on the 15th day of any month), the merchant shall deposit the lower of:

1. 80% of the SUT collected on the sales made during days 1-14 of the current month, net of the Credits or
2. Half of the 70% of the SUT determined in the Monthly SUT Return of the same month for the prior year, net of the Credits.

Effective Dates

Even though Act 46 provides that sales tax prepayments shall become effective for transactions occurring as of July 2017, Treasury has established that these shall

become effective as of **August 2017** for Large Taxpayers and **September 2017** for taxpayers that meet the \$2,000 Threshold. That is, the first prepayment shall be made on **August 15, 2017 and September 15, 2017, respectively.**

You may access AD 17-07 (in Spanish) [here](#).

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