

April 21, 2016

Tax Update

Treasury Issues Updated Guidance on SUT-to-VAT Transition

On April 18, 2016, the Puerto Rico Department of the Treasury (“Treasury”) issued Administrative Determination No. 16-07 (“AD 16-07”) addressing matters related to the transition from a sales and use tax (“SUT”) system to a value added tax (“VAT”) system. AD 16-07 incorporates most of the provisions of Administrative Determination No. 16-01 (see our Legal Update [here](#)), which had been partially repealed by Administrative Determination No. 16-04 (see our Legal Update [here](#)) after the VAT effective date was postponed from April 1, 2016 to June 1, 2016. A notable difference between AD 16-01 and AD 16-07 is that the latter lacks guidance related to refunds of VAT paid in excess.

Below is a summary of the most salient provisions of AD 16-07.

SURI

Starting on June 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. Current SUT Merchant’s Registration Numbers will remain the same for VAT registration purposes.

New VAT Monthly Return

The new VAT Monthly Return will be due no later than the 20th 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 July 20, 2016. Such return will show the carryover of SUT credits and overpayments reflected in SUT returns filed for June 2016, which will be transferred by Treasury.

The new return will provide for, among other things, the electronic 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 July 20, 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



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information and must be completed no later than July 20, 2016, due date for filing the first VAT Monthly Return.

The validation process for currently registered merchants, as well as and the new registration process, will become available on June 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.

Treasury will issue additional guidance in connection with the process to apply for MRCs through SURI.

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 they of services or tangible personal property, will be considered exempt for both the Small Merchant and its customers. This represents an expansion of the current 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

Effective March 1, 2016, Treasury is not accepting applications for renewal of the Reseller and Municipal SUT Exemption Certificate or the Manufacturing Plant Exemption Certificate ("Certificates").

Certificates valid as of December 31, 2015 are automatically extended until Treasury notifies their cancellation and the process to request their renewal. Applications for renewal pending before Treasury in connection with Certificates after December 31, 2015 will be cancelled.

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.

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.

Treasury will issue additional guidance establishing the procedure to request VAT exemption certificates.

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 through SURI. 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.

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. Starting on July 1, 2016, the transactions made under such contracts will be subject to VAT and will be included in the corresponding VAT Monthly Return. SUT paid under such contracts will not be part of the input VAT credit to be accrued by merchants starting on June 1, 2016.

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

Designated Professional Service Providers

Designated professional services rendered before June 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 June 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 June 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 16-07, 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.

You may access AD 16-07 (in Spanish) [here](#)

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