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Tax Update

Puerto Rico Treasury Department Publishes Proposed Value Added Tax Regulations

On Friday, February 19, 2016, the Puerto Rico Treasury Department published proposed value added tax (VAT) regulations on its website. As approved by Act 72-2015 and later substantially amended by Act 159-2015, effective April 1, 2016, the VAT would be imposed on the introduction of taxable items to Puerto Rico and on the sale or transfer of taxable goods and services and combined transactions.

The regulations have been published in the form of “proposed regulations” open for public comment and up to the date of this Legal Update, have not been filed at the Puerto Rico Department of State. Thus, an informal comment period is currently in effect.

The 300+ page document provides definitions that are, not surprisingly, very similar to those in effect under current and also proposed sales and use tax regulations. Further, the proposed regulations manage the many additional exemptions that were added by Act 159-2015, such as:

1. The sale of articles and services to *bona fide* farmers;
2. Certain legal services (mainly litigation and notarial work), except those services that can be provided by other professionals (*i.e.*, business consulting, human resources consulting, tax consulting, lobbying and procurement services);
3. Services rendered to homeowners’ associations, councils of unit owners or proprietary associations and certain housing unions, provided that at least 85% of its units are used for residential purposes;
4. Services provided to certain social interest housing projects;
5. The retail sale of electric power equipment;
6. Airships repair, maintenance and commissioning services rendered by an entity with a tax grant under Act 73-2008 (or predecessor or successor law);
7. Toll manufacturing and contract manufacturing services;
8. Maintenance fees paid under timeshare or vacation club ownership plans;
9. Services rendered to a person exclusively engaged in the storage (including leasing of tanks) or processing of gasoline, jet fuel, aviation fuel, gas oil, diesel oil, crude oil, unfinished oils and end products derived from oil and other hydrocarbons mixture, provided that the storage and handling of the fuel is done in a Foreign Trade Zone;
10. Services rendered to a merchant engaged in the generation and sale of electric power on a commercial scale;
11. Services rendered to an entity with a tax grant under Act 73-2008 (or predecessor or successor law) that is engaged in the repair, maintenance and commissioning of airships and
12. Services rendered to any public or private entity whose organic law exempts it from all taxes.



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In the area of credits for input VAT, as reported in previous Legal Updates, special rules apply in cases in which the VAT paid cannot be traced directly to particular good. In these cases, the VAT to be credited will be limited to the amount equivalent to the proportion of total taxable sales over total sales. Most notably, in addition to the preceding limitation, the proposed regulations incorporate an elaborate interpretation of the input VAT credit limitations of Section 4150.02 of the Puerto Rico Internal Revenue Code of 2011, as amended, to:

1. effectively disallow crediting of input VAT paid by a merchant on taxable goods and services if such taxable goods and services are directly related to sales to exempt persons such as the Government of Puerto Rico, hospitals, tourist businesses and *bona fide* farmers; and
2. create a category of fixed assets (those classified as such under GAAP and with a value in excess of \$100,000) for which the generation of overpayments as a result of input VAT credits will be unavailable until after the expiration of a 12-month period.

The proposed regulations can be found (in Spanish) [here](#) and comments can be directly sent to the Puerto Rico Treasury Department at ComentariosReglamentoIVA@hacienda.pr.gov.

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