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Tax Update

Puerto Rico Supreme Court Rules on Items Excludable from Taxable Base for Municipal Construction Excise Tax Purposes

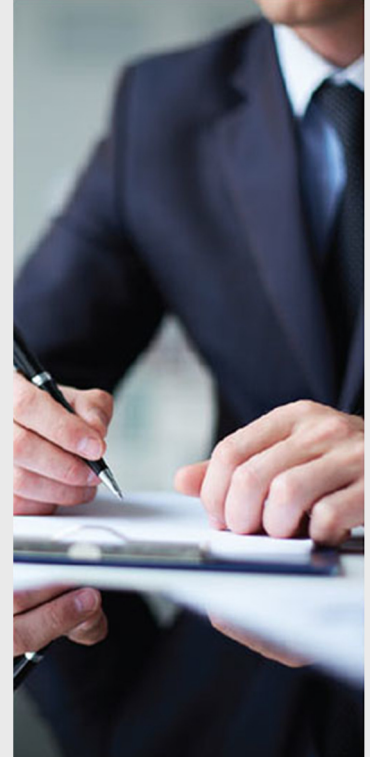
In [ECA General Contractors, Inc. v. Municipio Autónomo de Mayagüez](#), 2018 TSPR 124 (June 29, 2018), the Puerto Rico Supreme Court provided much-needed guidance regarding the taxable base for municipal construction excise tax purposes under the Autonomous Municipalities Act of 1991 (“Act”). Prior to this decision, there was conflict between Puerto Rico Court of Appeals panels which, analyzing almost identical sets of facts, reached completely different conclusions as to which items were excludable from the municipal construction excise tax base.

Following an expansive interpretation of the specific exclusions set forth in Article 2.002 of the Act, the Court held that capital expenditures for equipment, construction work conservation costs and office expenses paid by the contractor, as well as the contractor’s net profit, were all properly excluded from the taxable base given that such items do not constitute a “construction activity” as this term is defined in Article 1.003(cc) of the Act.

The Court expressed that the Act allows the imposition of municipal construction excise taxes on the cost of the construction activity as defined therein, and not on all items included in the related contract. As a result, it concluded that the Municipality of Mayagüez had exceeded its power to impose municipal construction excise taxes by trying to include as part of the corresponding taxable base, the items ultimately held by the Court to be excludable.

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