

January 20, 2021

## Tax Update

### ***Treasury Issues Circular Letter Establishing the Procedures for the Registration of Marketplace Facilitators and for the Marketplace Seller's Sales and Use Tax Waiver Applications Through SURI***

On December 30, 2020, the Puerto Rico Treasury Department ("Treasury") published Circular Letter No. 20-40 ("CL 20-40") for purposes of establishing the procedures for merchant registration of marketplace facilitators and for the application of sales and use tax ("SUT") waivers for marketplace sellers, as contemplated under Articles 4010.01(h)-1 and 4020.05-4 of Regulation No. 8049, as amended ("SUT Regulations"). Below we provide an overview of Treasury interpretations of several new provisions included in the SUT Regulations and the procedures established in CL 20-40.

#### **I. Treasury's Interpretation of New Marketplace Provisions**

In recognition of the statutory basis for the determinations included in CL 20-40, Treasury addressed the SUT Regulation's provisions regarding merchants categorized as marketplace facilitators or marketplace sellers and mail order sales SUT obligations. In doing so, Treasury indicated the following:

- a. A merchant may be considered a marketplace facilitator when executing sale transactions of products or inventory of marketplace sellers using the facilitator's marketplace, and yet also be a merchant engaged in its own sales of products or inventory.
- b. A seller need not be a registered merchant in Puerto Rico to be considered a marketplace seller for purposes of the SUT. It may be a person not registered as a merchant who engages in sales through a marketplace that is controlled or operated by a marketplace facilitator, as defined in the SUT Regulations.
- c. A merchant dedicated to taxable sales in Puerto Rico who, in addition to having a commercial location or website offering its products to Puerto Rico residents, sells products through a marketplace facilitator, shall also be considered exclusively as a marketplace seller with regards to the transactions executed through the marketplace facilitator.
- d. All mail order sales are subject to SUT without regards to whether the seller is a merchant if they are made through a marketplace facilitator, in which case the marketplace facilitator shall be considered the withholding agent responsible for collecting and remitting the SUT to Treasury on behalf of the marketplace seller. Accordingly, marketplace sellers shall not be subject to collecting SUT on sales made through marketplace facilitators. However, the marketplace seller shall obtain a waiver for the collection of SUT ("SUT Collection Waiver") from Treasury.

#### **II. Marketplace Facilitator Registration**



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Pursuant to Articles 4010.01(hhh)-1 and 4010.01(iii)-1, a marketplace facilitator subject to registration with Treasury shall obtain a merchant registration certificate and add a “marketplace facilitator’s SUT account” to its profile at the Unified Internal Revenue System (“SURI” for its Spanish acronym), as follows:

*a. Merchants Already Registered in SURI*

1. Access the SURI account.
2. Locate the “I want to” section and select “Register Accounts.”
3. Enter the i) date of commencement of operations as marketplace facilitator, ii) last day and month of taxpayer’s accounting period, iii) trade name of the marketplace facilitator, and iv) name and social security number of the responsible party. Then press “Next.”
4. On the following screen, add the NAICS Codes applicable to the marketplace facilitator’s operations and press “Next.”
5. Verify the information summary and press “Submit.”
6. Once registered, the “Marketplace Facilitator’s SUT Account” shall appear in the homepage of the user’s SURI account.

In the case of merchants who were already registered, they will now have two SUT accounts: i) one for reporting their own sales and ii) the Marketplace Facilitator’s SUT Account for reporting and depositing the SUT collected in sales made by marketplace sellers through the marketplace facilitator. Note that, only the principal administrator of the SURI account will be able to add a Marketplace Facilitator’s SUT Account. After the Marketplace Facilitator’s SUT Account registration has been completed, the marketplace facilitator shall receive a merchant’s registration certificate reflecting its status as such (“Marketplace Facilitator’s Merchant’s Registration Certificate”).

*b. New Merchants as Marketplace Facilitators*

In the case of new merchants who have no other operations in Puerto Rico, but who are subject to the marketplace facilitator provisions under the SUT Regulations, they shall register in SURI and obtain a Marketplace Facilitator’s Merchant Registration Certificate, as follows:

1. Access the SURI at <https://suri.hacienda.pr.gov>.
2. Press the tab “Register for SURI.”
3. On the next page, press “Filing returns for the first time.”
4. Select “My Business Account” or “My Sole Proprietor Account,” as applicable.
5. Enter all required information as new taxpayer with SURI and, in the questionnaire, select “Yes” on the question “Are you a marketplace facilitator.” Then enter the date of commencement of operations as marketplace facilitator and the trade name of said operations.
6. Once registered, the marketplace facilitator shall have access to its Marketplace Facilitator’s SUT Account at SURI and obtain the Marketplace Facilitator’s Merchant’s Registration Certificate.

A copy of the Marketplace Facilitator’s Merchant’s Registration Certificate shall be furnished to each one of its marketplace sellers registered with SURI and who will apply for the marketplace seller’s SUT waiver.

### **III. Marketplace Seller’s SUT Waiver**

In accordance with Article 4020.05-4 of the SUT Regulations, Treasury requires that registered marketplace sellers request a SUT Collection Waiver for sales

made through a Marketplace Facilitators. The SUT Collection Waiver shall only apply on sales made through Marketplace Facilitators registered with Treasury. Therefore, to complete the SUT Collection Waiver application, the marketplace seller shall request copies of each Marketplace Facilitators' Merchant's Registration Certificate showing that each marketplace facilitator is duly registered with Treasury as such.

The SUT Collection Waiver shall be requested through SURI and the marketplace seller shall include the merchant's registration numbers of all marketplace facilitators through which it will be engaged in sales. Only the principal administrator of the SURI account will be able to apply for the SUT Collection Waiver. Once reviewed and approved by Treasury, the SUT Collection Waiver will be available in the marketplace seller's SURI account, under the "Exemptions" tab of the platform's homepage.

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