

Tax Alert: Changes in services subject to the special 4% tax

Act 159-2015 (P. del S. 1433), enacted yesterday, September 30, 2015, by the Governor of Puerto Rico, introduces substantial changes to Act 72-2015.

On this Alert, we will only discuss the changes applicable to Sales and Use Tax (“SUT”), in specific the 4% applicable to services given that today, October 1, 2015, is the effective date for the implementation of this new Special SUT rate upon certain designated professional services and services rendered to other merchants.

General Definitions

Act 159-2015 expands the following terms:

- **Machinery and equipment used in manufacture** – will include the machinery and equipment, as well as parts, tools and components used in the repair, maintenance and conditioning of aircraft by grantees of tax exemption under Act 73-2008, as amended or any predecessor or successor statutes;
- **Manufacturing plant** – will include businesses engaged in the repair, maintenance and conditioning of aircraft.
- **Sales price** – in the case of services rendered to other merchants in connection with a residential, commercial or industrial construction project, which are directly related to the project, will be determined by multiplying the total costs

on the invoice issued to the merchant by 35%.

- **Designated Professional Services, Taxable Services and Services Rendered to Other Merchants** – will include services rendered by a non-resident person to a person located in PR, regardless of where the service has been rendered, provided that such service is directly or indirectly related with the operations or activities carried out in PR by such person

Designated Professional Services

The following services will not be considered designated professional services (“DPS”) and will not be subject to the Special SUT of 4%:

- DPS rendered by persons with an annual volume of business that does not exceed \$50,000;
- legal services provided by members of the legal profession authorized by the Supreme Court to exercise the practice, only with respect to fees for legal representations in the General Court, the Federal Court for the District of PR, the U.S. Court of Appeals for the First Circuit, U.S. Supreme Court or administrative agencies of the Government of PR, legal advice, and notary services; and
- DPS rendered to a workers’ union.



Contact us

For assistance in this matter, please contact us via maria.rivera@pr.gt.com or javier.ovola@pr.gt.com



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October 1, 2015

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Designated Professional Services, Taxable Services and Services Rendered to Other Merchants

The following services will not be considered designated professional services, taxable services or services rendered to other merchants. Such services will not be subject to the Special SUT of 4%:

- services rendered by a person engaged in trade or business outside of PR to an entity operating under Act 73-2008, Act 83-2010, Act 20-2012, Act 55-1933 or any similar predecessor or successor statutes where both are part of controlled group of related entities;
- services rendered to associations of residents, association of condominiums or associations of property owners, as defined, for the common benefit of residents, as well as services provided to housing cooperatives organized under Act 239-2004, provided that the units are used at least 85% for residential purposes;
- services rendered to social interest residential housing projects that receive federal or state rental subsidies, provided that their residents directly pay the maintenance fee and have obtained an exemption certificate from the Secretary of the Treasury;
- services rendered for the repair, maintenance and conditioning of aircraft, including its parts and components, by grantees under Act 73-2008 or any similar predecessor or successor statutes;
- services rendered to bona fide farmers that are duly certified by the Department of Agriculture; and
- services rendered to any public or private entity that is exempt from all types of taxes under its Organic Act.

- services rendered to a person exclusively engaged in the storage or processing of gasoline, jet fuel, aviation fuel, gas oil or diesel oil, crude oil and end products derived from oil and other hydrocarbons mixture, provided that the storage takes place in a Foreign Trade Zone.

Taxable Services and Services Rendered to Other Merchants

The following services will not be considered taxable services or services rendered to other merchants, and will not be subject to the Special SUT of 4%:

- use of intangible property rights;
- production services for radio and television programs or commercials produced in PR;
- advertising and promotional services, as well as advertising time in any media, (including but not limited to electronic, print, digital media), including advertising agency commissions and fees on those advertising services;
- subcontracted services, provided that this exemption applies only to subcontracted services under a commercial, industrial or residential construction project and subcontracted telecommunication services;
- services rendered directly to a merchant by employees of an employment agency;
- manufacturing services, better known as toll manufacturing or contract manufacturing, provided that the service provider obtains a Total Waiver Certificate;
- repair, maintenance and conditioning of aircraft services rendered by grantees covered by Act 73-2008 or any predecessor or successor statutes;

- services rendered to an entity that is engaged in the business of repairing, maintenance and conditioning of aircraft, including its parts and components, provided the business is covered by the Act 73-2008 or any predecessor or successor statutes; and
- maritime, air or land transportation services, including direct delivery charges.

Person responsible for tax payment

Effective October 1, 2015 in the case of services (taxable services, services rendered to other merchants and DPS) rendered by a non-resident person to a person located in PR, regardless of where the service has been rendered, the person responsible for the payment of the SUT is the person that receives the service in PR.

Other amendments

The SUT will remain in effect until the day before to the effective date of the Value Added Tax (the reference date of March 31, 2016 was eliminated).

Please contact our Tax Department should you require additional information regarding this or any other tax issue; we will be glad to assist you.