

Tax Alert: Changes in services subject to Sales and Use Tax approved under Act 159 – 2015

On September 30, 2015, the Governor of Puerto Rico signed Act 159-2015 which introduced various notable amendments to the 2011 Puerto Rico Internal Revenue Code (the “PRIRC”). On October 5, 2015, the Puerto Rico Treasury Department (the “PRTD”) issued Administrative Determination No. 15-21 (the “AD 15-21”) to detail the procedures and changes that were introduced by Act 159-2015, and to elucidate the PRTD’s stance in regards to Act 72-2015 and Administrative Determination No. 15-17.

Professional Designated Services and Business to Business

In light of the technical amendments brought upon by the approval of Act 159-2015, AD 15-21 clarifies the following matters:

Services Provided by a Non-Resident to a Person Located in Puerto Rico – If a non-resident person provides a designated professional service or renders a Business-to-Business (“B2B”) service to a Puerto Rico resident, such services will be subject to the 4% Special Sales and Use Tax (“4% Special SUT”) regardless of the place where they were provided.

Export Services – PRIRC Section 4030.03 provides an exemption from the Sales and Use Tax on taxable items that are sold for use and consumption outside Puerto Rico, even when the sale takes place in Puerto Rico. This exemption is also applicable to taxable services, designated professional services and B2B services.

AD15-21 states that the aforesaid exemption on exported services applies to those cases where a merchant renders a service to a business that either (i) is not engaged in trade or business in Puerto Rico, or (ii) is engaged in trade or business in Puerto Rico, but the rendered services are not related to their business activities in Puerto Rico.

Merchants with Business Volume not exceeding \$50,000 – as discussed on Administrative Determination 15-17, services rendered by merchants whose business volume does not exceed \$50,000, including those who perform designated professional services, are exempt from both the regular SUT and the 4% Special SUT. To determine the \$50,000 threshold the PRTD will consider the aggregate business volume generated for the preceding taxable year that concluded no later than August 31, 2015.

In the event that the merchant is part of a controlled group under Sec. 1010.04 of the PRIRC, its aggregate business volume will be determined in by taking into consideration the aggregate business volume of all the members of the controlled group.

Legal Services – fees paid to attorneys that are duly licensed and authorized by the Puerto Rico Supreme Court or the corresponding court of a foreign jurisdiction for services related to (i) legal representation before the Puerto Rico and Federal Court, (ii) administrative proceedings before Puerto Rico government agencies, (iii) legal consultations



Contact us

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and (iv) notary services, will be exempt from the 4% Special SUT.

However, all those services that are considered as “Non-Legal Services” will be subject to the 4% Special SUT. The term “Non-Legal Services” comprises, but is not limited to, the following:

- Lobbying
- Any type of tax consulting and planning, as well as tax return preparation; representation at governmental agencies; assistance at administrative hearings; assistance at Treasury audits; Estate and Trust procedures; Municipal Tax and Property Tax, etc.

Services rendered among Related Parties operating under a Tax Exemption Decree

– Designated professional services and services rendered to a Puerto Rico merchant, that benefits from a Tax Exemption Decree under Acts 73-2008, 83-2010 or 20-2012, as well as any similar act that preceded or succeed these, by a related entity that it is not engaged in trade or business in Puerto Rico will be exempt from the 4% Special SUT on said services.

However, the exemption does not cover charges that constitute the reimbursement of expenses for services rendered by third parties that are not a related entity of the recipient of the service.

Services rendered among Related Parties that are engaged in trade or business in Puerto Rico

– AD 25-21 makes it clear that a duly registered individual that is engaged in trade or business in Puerto Rico, who renders services to an entity of which he/she is the owner, will be deemed a related entity for SUT purposes, and therefore will not be subject to the 4% Special SUT.

Services rendered to Residents Associations or Condominium Boards,

Homeowners Associations or Social Interest Housing with subsidies– These entities are exempt from both the regular SUT and the 4% Special SUT on taxable services, designated professional services and B2B services. However, AD15-21 states that for Homeowners Associations to enjoy the exemption (i) the association must be duly a registered merchant; (ii) at least 85% of the units must be used for residential purposes, and (iii) an administrative determination from the PRTD has been issued, certifying their status as a “Not-for-Profit” under PRIRC §1101.01(a).

In regards to social interest housing projects that receive federal or state subsidies, these will only be exempt from the 4% Special SUT so as long as their residents are required to pay maintenance fees, separate from the corresponding rent. It is important to mention that a nominal amount will not qualify as a maintenance fee.



Advertising and Promotional Services – Advertising and promotional services will be exempt from the 4% Special SUT. Nonetheless, public relation services regulated under Act 204-2008 will be subject to the 4% Special SUT.

Construction Services – In order to determine the construction services that will be subject to the 4% Special SUT, the merchant must multiply the total bill, including materials employed in the Construction Project, by the 35% rate established under Sec. 4010.01(ee) of the PRIRC, as amended under Act 159-2015.

AD 15-21 states that any project where a commercial, tourism, industrial or residential structure is erected and for which a location consult, construction consult, or a construction permit is required will be deemed a *Construction Project* for SUT purposes.

Subcontracted Services – Except for designated professional services, Subcontracted Services will be exempt from the 4% Special SUT as long as (i) they are directly related to a Construction Project and both parties are duly registered merchants or (ii) they constitute subcontracted telecommunication services by a telecommunication services provider.

Employment Agencies –The 4% Special SUT will only be applicable to the markup on the employee’s salary charged by the agency to the merchant.

Toll Manufacturing and/or Contact manufacturing – A service provider under this category will be exempt of the 4% Special Tax as long they have a Waiver provided by the PRTD.

Bona Fide Farmer – All services rendered to a bona fide farmer are exempt from SUT. Nonetheless, the farmer must be duly certified as *Bona Fide Farmer* by the Department of Agriculture and properly registered as Merchant with the PRTD. Moreover, the exempt nature of the transaction must be documented.

Public or Private Entities That are Exempt From All Types of Taxes – Services rendered to public or private entities that are exempt from all types of taxes and duties

under their organic law, are exempt for SUT purposes. To claim the exemption, these entities must be properly registered as a Merchant and document the exempt nature of the transaction.

Unions –Designated professional services provided to a union will be exempt from the 4% Special SUT, as long as the union has a “Not-for-Profit” Administrative Determination from the PRTD under Sec. 1101.01(a)(4) of the PRIRC and continually complies with its requirements, and documents the exempt nature of the transaction.

Exempt Sale and Use Tax Transactions Documentation

Every merchant engaged in trade or business in Puerto Rico that renders services that are exempt from the SUT, as well as every merchant that has a right to an exemption from the payment of the SUT, must evidence the exempt nature of the transaction by completing Form SC 2916.

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

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