

Latest Publications Issued by the PR Treasury Department Regarding the Sales and Use Tax

TAX ALERT

November 2015

Since our last Tax Alert about the enactment of Act 159-2015, the PR Treasury Department (“Treasury”) has issued a series of publications to address certain matters related to Sales and Use Taxes (“SUT”). Below we summarize the most relevant aspects of each publication.

Elimination of the IVU Loto Drawings

On September 28, 2015, Treasury issued Informative Bulletin No. 15-14 (the “IB 15-14”) to notify merchants and the general public of the elimination of the IVU- Loto Program, which includes the Regular Drawing, the Additional Special Drawing and the Extraordinary Special Drawing (the “Drawings”).

The decision in IB 15-14 to eliminate the Drawings should not be interpreted as relieving a merchant’s responsibility regarding the use of the fiscal terminal. Thus, the merchant must continue to collect the SUT, register the sale on the fiscal terminal, provide the consumer with the receipt that itemizes the SUT portion from the sales price and remit the SUT to Treasury. With respect to the reference to the Drawing number in the sales receipts, see below summary of Circular Letter of Tax Policy No. 15-13.

Changes in the Requirements to Install, Possess and Maintain a Fiscal Terminal

Treasury also issued on September 28, 2015 Administrative Determination No. 15-20 (the “AD 15-20”), which establishes changes to the requirements for a merchant to install and maintain a fiscal terminal. After October 30, 2015, only merchants who have annual sales in excess of \$125,000 will be required to install and maintain a fiscal terminal in each point of sale.

AD 15-20 notifies that after October 30, 2015, merchants that have the obligation to use a fiscal terminal according to the new requirements will be responsible for the costs of acquiring, installing, maintaining and transmitting information to Treasury through a fiscal terminal. Also, since the fiscal terminals property of Treasury ceased to work since October 29, 2015, merchants were required to acquire and install a new fiscal terminal from a certified supplier by October 30, 2015.

- *Exemptions to the requirements*

The abovementioned requirements will not apply to the following merchants, establishments or points of sales:

After October 30, 2015, only merchants who have annual sales in excess of \$125,000 will be required to install and maintain a fiscal terminal.

1. Merchants whose annual gross sales does not exceed \$125,000;
2. Merchants dedicated only to provide designated professional services subject to the 4% SUT.
3. Establishments which exclusively handle credit transactions that are processed through a billing system;
4. Merchants who exclusively sell goods and services to purchasers not present at any moment in the point of sale (e.g. transactions made by mail, internet or phone);
5. Vending machines, vending machines that provide admission rights and automatic teller machines (ATM's);
6. Merchants that exclusively render services at the buyer's location where there is no point of sale;
7. Agencies of the Commonwealth of Puerto Rico or the Government of the United States;
8. Merchants that exclusively render educational services;
9. Merchants that exclusively render medical or health services;
10. Merchants that have 5 or less transactions per month;
11. Merchants that are principally engaged in financial or intermediate financial services;
12. Merchants that are principally engaged in the business of insurance services and commissions;
13. Merchants exclusively engaged in the rental of real property for residential and commercial purposes;
14. Merchants registered as temporary businesses that will operate for no more than 6 consecutive months during the year; and
15. Independent contractors that only render services to merchants that execute a Closing Agreement with Treasury and possess a Certification that identifies them as a Multilevel Business.

- ***Penalties for not complying with the requirements***

Any merchant that has an obligation to maintain a fiscal terminal and does not comply with said responsibility will be subject to a penalty of up to \$20,000, as established by Section 6043.06(c) of the 2011 Puerto Rico Internal Revenue Code, as amended (the "2011 Code").

Content of the Receipts Generated by a Fiscal Terminal

Even though the IVU-LOTO Drawings have been eliminated, the control number should continue to be printed in all receipts.

On October 5, 2015, Treasury issued Circular Letter of Tax Policy No. 15-13 (the "CL TP 15-13") in order to clarify the information that must be included in the receipts generated by a fiscal terminal, determine the period that a merchant will have to implement the changes and repeal IB 15-14 only with respect to the elimination of the Drawing number in the receipts.

Treasury clarified that the IVU Loto code that is printed in all receipts generated by a fiscal terminal does not only represent the participant number in the Drawing, but also acts as a control number to identify the transactions that are transmitted to Treasury. Thus, even though the IVU-LOTO Drawings were eliminated effective September 29, 2015, the control number should be printed in all receipts. However, the word "IVULOTO" that precedes this number must be replaced by the word "CONTROL". Therefore, the only information that should be

eliminated from the receipts is the information related to the sequential number and date of the IVU Loto Drawing.

The changes must be incorporated in the fiscal terminals no later than 60 days from the issuance of CL TP 15-13; that is on or before December 4, 2015.

Fiscal terminals property of Treasury

On October 21, 2015, Treasury issued Circular Letter of Internal Revenue No. 15-01 (“CL IR 15-01”) to (1) clarify the process that will apply to merchants that possess fiscal terminals property of Treasury and have the obligation to possess a fiscal terminal under the new requirements, (2) establish the procedure to return the fiscal terminals property of Treasury, (3) determine the penalties that will apply for not complying with the procedures and (4) provide that after October 29, 2015 the fiscal terminals provided by Treasury will no longer operate.

- ***Merchants that possess fiscal terminals property of Treasury and have the obligation to possess a fiscal terminal***

Merchants that have a fiscal terminal property of Treasury should return them to Treasury.

CL IR 15-01 states that every merchant that currently has under its control and custody a fiscal terminal property of Treasury and have the obligation to possess a fiscal terminal for meeting the new requirement of exceeding an aggregated volume of business of \$125,000, will be able to keep the terminal for a period of one year until October 30, 2016. The protection, care, use, maintenance, parts replacement and transmission costs of the fiscal terminal will remain the merchant’s responsibility.

- ***Procedure to return the fiscal terminals property of Treasury***

Those merchants that have under their control and custody a fiscal terminal property of Treasury should follow this procedure to return the fiscal terminals:

1. Complete and sign Form SC 2948A “Entrega de Terminal Fiscal”
2. Submit copy of duly filed Volume of Business Declaration for the previous taxable year for each municipality in which the merchant conducts business. This requirement will not apply if the fiscal terminal is returned due to a change in processor.
3. Return fiscal terminal and all its support collateral systems, along with duly completed Form SC 2948A, to any of the District Offices of the Bureau of Sales and Use Tax, during regular working hours of 8:00 am to 4:30pm.

- ***Applicable penalties***

In addition to the penalties established by the 2011 Code, any merchant that does not comply with his public property custodian duties may be subject to criminal penalties.

Applicability of the Special Sales and Use Tax in the Rendering of Professional Designated Services and Services Rendered to other Merchants

Also on October 5, 2015, Treasury issued Administrative Determination No. 15-21 (the “AD 15-21”) to detail the procedures and changes introduced by Act 159-2015 regarding the applicability of the 4% Special Sales and Use Tax (the “Special SUT”). To access our Tax Alert about Act 159-2015, please click [here](#).

• ***Designated Professional Services and Services Rendered to other Merchants***

In light of the technical amendments to the Code brought by the enactment of Act 159-2015, AD 15-21 clarifies the applicability of certain exemptions in connection with the Special SUT:

- Services rendered by a non-resident person to a person in Puerto Rico

Commencing on October 1, 2015, the designated professional services and the services rendered to another merchant provided by a non-resident person to a person located in Puerto Rico will be subject to the Special SUT, regardless of the place where they were provided, if such services are directly or indirectly related with the Puerto Rico operations or activity of the recipient of the service.

- Export services

Section 4030.03 of the 2011 Code provides a SUT exemption to taxable items that are sold for use or consumption outside of Puerto Rico, even though the sale occurs in Puerto Rico. This exemption is also applicable to professional designated services and services rendered to other merchants.

The export services exemption applies in the case a merchant renders services in Puerto Rico to another person who is not engaged in trade or business in Puerto Rico, or if engaged in trade or business in Puerto Rico, the services rendered do not relate to the business activity of the service recipient in Puerto Rico. If the merchant’s services are related to the Puerto Rico operations of the person receiving the service, the transaction will be subject to the Special SUT.

- Exemption when merchants have a volume of business of \$50,000 or less

As discussed in our Tax Alert about Administrative Determination 15-17 (please click [here](#)), services rendered by merchants whose volume of business does not exceed \$50,000, including merchants who perform designated professional services, are exempt from SUT and the Special SUT. The aggregate volume of business generated for the preceding taxable year that concluded no later than August 31, 2015 will be considered to determine if the merchant’s volume of business does not exceed \$50,000. When the merchant is part of a controlled group, according to Sec. 1010.04 of the 2011 Code, the aggregate business volume of such merchant will be determined by taking into consideration the aggregate business volume of all the members of the controlled group. Partnerships, special partnerships and corporations of individuals will be considered as corporations under

The export services exemption does not apply when the services rendered relate to the Puerto Rico business activity of the person receiving the service.

Section 1010.04 of the 2011 Code to determine if they are members of the same controlled group for SUT purposes.

o Exemption for legal services

Act 159-2015 provides that fees paid to members of the legal profession authorized by the Puerto Rico Supreme Court, or by the corresponding entity in a foreign jurisdiction, for services related to legal representation before the General Court of Justice, the Federal District Court of Puerto Rico, the U.S. Court of Appeals for the First Circuit and the U.S. Supreme Court, or administrative agencies of the Government of Puerto Rico, and legal advisory services and notarial services (the “legal services”), will be exempt from the Special SUT provided that those services that can be provided by any other professional, including, but not limited to financial consulting, lobbying and administrative processing services will not be considered legal services. AD 15-21 further provides that among the services provided by law professionals authorized by the Puerto Rico Supreme Court that can be provided by any other professional, and thus subject to the Special SUT, are:

1. Expert Services;
2. Arbitration services;
3. Partitioner services;
4. Inheritance partitions;
5. Human Resources consulting;
6. Preparation of seminars, courses and presentations;
7. Business consulting; and
8. Any type of tax consulting services

The term “any type of tax consulting services” include, but is not limited to, the following services:

1. Return preparation and claim of refunds;
2. Debt clarifications at governmental agencies;
3. Representation at governmental agencies regarding any tax matter;
4. Audits and tax investigations of any type;
5. Ruling requests;
6. Administrative hearings assistance;
7. Assistance in the application process for any type of tax exemption;
8. Pension plan assistance; and
9. Advice on tax matters.

o Services rendered among related parties operating under a tax exemption decree under Acts 73-2008, 83-2010 or 20-2012

Professional designated 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 succeeds these, by a related entity that it is not engaged in trade or business in Puerto Rico, will be exempt from the Special SUT.

Tax consulting services, among others, will not be considered as legal services for the Special SUT exemption.

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, even when the payment to the third party is for a different amount.

- Services rendered among related parties when both are engaged in trade or business in Puerto Rico

An individual that is engaged in trade or business in Puerto Rico, that is duly registered in the Merchant's Registry, and renders services to an entity of which he/she is the owner, will be considered a related entity for SUT purposes, and therefore will not be subject to the Special SUT on said services. The nature of the exempt transaction must be documented in Form AS 2916.1 "Certificate for Exempt Purchases and for Services Subject to the 4% Special SUT".

- Services rendered to residents associations, condominium councils, proprietor associations and social interest housing projects who receive federal or state subsidies

Act 159-2015 clarifies that these associations, subject to certain requirements, will be exempt from SUT and Special SUT in connection with taxable services, professional designated services and services rendered to other merchants.

However, in order to enjoy this exemption, the residents associations and the condominium councils must meet the requirement that 85% of the units must be used for residential purposes and must have obtained from Treasury an administrative determination certifying their status as a Not-for-Profit Organization.

Those proprietors associations whose units are primarily used for commercial purposes must pay the Special SUT on professional designated services and services to other merchants, in addition to the SUT on taxable services such as: security, waste, cleaning, repair and maintenance services.

In regards to social interest housing projects that receive federal or state subsidies, the Special SUT exemption only applies if their residents are required to pay maintenance fees separate from the rent payment. For those purposes, a nominal amount will not qualify as a maintenance fee.

To claim this exemption, the association must be duly registered as a merchant and the exempt nature of the transaction must be documented in Form AS 2916.1.

- Advertising, promotion and advertising time in any media

Act 159-2015 classifies as exempt from Special SUT the advertising, promotion and advertising time in any media. AD 15-21 also includes the commissions and fees charged by the advertising agency for such promotions.

However, this exemption does not include public relations services regulated under Act 204-2008. Therefore, public relations agents must collect the Special SUT for services

Services rendered among related parties will be exempt from the Special SUT, subject to certain conditions.

Public relations services are not exempt from the Special SUT

rendered to other merchants and collect the SUT for services rendered to persons that are not duly registered merchants.

- Construction services

In order to determine the construction services that will be subject to the Special SUT, the merchant must multiply the total cost of the invoice issued to the other merchant, including materials employed in the Construction Project, by the 35% rate established under Sec. 4010.01(ee) of the 2011 Code, as amended by Act 159-2015, when the invoice includes both materials and labor.

Any project where a commercial, tourism, industrial or residential structure is built and for which a location consult, construction consult, or a construction permit is required will be considered a Construction Project for SUT purposes.

- Subcontracted services

Subcontracted Services, except for designated professional services, will be exempt from the 4% Special SUT as long as (1) they are directly related to a Construction Project or (2) constitute subcontracted telecommunication services by a telecommunication services provider. When the exemption is applicable to subcontractors under a Construction Project, both parties must be duly registered merchants and the exempt nature of the transaction must be documented in Form AS 2916.1.

- Services provided by employees of employment agencies

The services directly provided to a merchant by an employment agency that correspond to the gross salary of the employee will be exempt from the Special SUT. However, the markup on the employee's salary charged by the agency to the merchant will not be exempt.

- Toll/ Contract manufacturing

The manufacturing services, also known as toll manufacturing or contract manufacturing, are exempt from the Special SUT as long as the provider of the service obtains a Waiver provided by the Secretary of the Treasury. See below summary of Circular Letter of Tax Policy No. 15-14 for the procedure to obtain such waiver.

- Services rendered by bona fide farmer

All services rendered to a bona fide farmer are exempt from SUT and Special SUT. In order to claim this exemption, the farmer must have a valid Bona Fide Farmer Certificate issued by the Department of Agriculture and must be duly registered in the Merchant's Registry. In addition, the exempt nature of the transaction must be documented in Form AS 2916.1.

- 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

In order to claim the SUT exemption, the merchant must evidence the exempt nature of the transaction by completing Form AS 2916.1

entities must be properly registered as a Merchant and document the exempt nature of the transaction in Form AS 2916.1.

- Professional designated services rendered to syndical associations

Designated professional services rendered to syndical associations or labor unions will be exempt from the Special SUT, as long as the syndical association has obtained an Administrative Determination issued by Treasury certifying that it qualifies as a Not-for-Profit Organization under Sec. 1101.01(a)(4) of the 2011 Code. In addition, the syndical organization must be duly registered in the Merchant's Registry and the exempt nature of the transaction must be documented in Form AS 2916.1.

Special SUT Collection Waiver for Manufacturing Services

On October 19, 2015, Treasury issued Circular Letter of Tax Policy No. 15-14 ("CL TP 15-14") to (1) clarify the manufacturing services exempt from Special SUT and (2) establish the procedures to obtain the Special SUT Collection Waiver.

- ***Exempt manufacturing services***

For purpose of the Special SUT exclusion, the term Manufacturing Services only includes services known as "toll manufacturing" or "contract manufacturing" which are covered by a tax incentives grant under Act 73-2008 or any previous or subsequent similar acts.

The term "toll manufacturing" refers to services provided under an agreement whereby raw material or semi-finished goods are processed or transformed, on a commercial scale, for a third party utilizing specialized equipment. On the other hand, the term "contract manufacturing" refers to the production of goods on a commercial scale under the name and brand of another entity, following the design, formula and specifications provided by such entity.

- ***Procedure to obtain the Special SUT Collection Waiver***

The person who provides the Manufacturing Services must submit an application and all required documents, as detailed in CL 15-14, for each Manufacturing Service Contract that will be covered by the exclusion of the Special SUT. The Secretary will evaluate and issue the corresponding Waivers, which will be effective only for the term of the Manufacturing Service Contract included in the application.

Certificate for exempt purchases (Form AS 2916.1) for SUT purposes

On October 19, 2015, Treasury issued Circular Letter of Tax Policy No. 15-15 ("CL TP 15-15") to clarify which transactions must be documented in Form AS 2916.1 "Certificate for Exempt Purchases and for Services Subject to the 4% Special SUT".

Effective October 1, 2015, Form AS 2916.1 shall be used to release the merchant seller from the obligation of collecting and remitting the SUT on taxable items, including the Special SUT on services rendered to other merchants and designated professional services.

Also, Form AS 2916.1 was modified according to the recently enacted legislation so at a merchant that receives a service from another merchant be able to acquire such service subject to the Special SUT instead of the regular 11.5% SUT. To access the revised Form AS 2916.1, please click [here](#).

Form AS 2916.1 is not intended to document the SUT exemptions when the exempt nature can be determined by the type of transaction involved.

New SUT Return applicable to Services Rendered to other Merchants and Professional Designated Services (Form SC 2915F)

On October 30, 2015, Treasury issued Administrative Determination No. 15-23 (AD 15-23) with the purpose of: (1) establishing how to file new Form SC 2915F “Sales and Use Tax Monthly Return Applicable to Services Rendered to Other Merchants and Designated Professional Services” (the “Special SUT Monthly Return”) and how to remit the tax collected on such services starting October 1, 2015 and (2) notify the procedure to inform the services received by a non-Puerto Rico resident and of the corresponding SUT according to Section 4020.04(c) of the Code.

Every merchant that renders services subject to the Special SUT must submit the Special SUT Monthly Return on or before the 20th day of the month following the month in which the tax is collected.

Every merchant that renders services subject to the Special SUT must submit the Special SUT Monthly Return on or before the twentieth day (20th) of the month following the month in which the tax is collected. Those merchants that render services already considered taxable services must continue filing Form AS 2915.1A “Sales and Use Tax Monthly Return” (the “Regular SUT Monthly Return”).

Also, all merchants or taxpayers who receive designated professional services or services from another merchant who is not dedicated to trade or business in Puerto Rico must pay the Special SUT on such services if the service received is a service that, because of its nature, would be subject to SUT.

The Special SUT Monthly Return, with its corresponding payment, must be submitted only through electronic means using the Integrated Merchants Web Application (“PICO” for its Spanish acronym). The Special SUT Monthly Return must be filed by all merchants who have a Merchant’s Registry Certificate which evidences that he/she is a withholding agent (green color certificate), even though all or part of the services rendered are exempt from SUT or the merchant does not have sales subject to SUT during that month.

- ***Merchants who render Designated Professional Services***

Merchants who render designated professional services (“Professional Merchants”), except return specialists registered with Treasury (“Return Specialists”), must file the Special SUT Monthly Return to report the sales of services rendered and pay the Special SUT corresponding to such services, even if all of their sales are exempt or they do not have any sales subject to the Special SUT.

Professional Merchants that elect to use the cash basis method for SUT purposes must indicate their election in the appropriate box in the Special SUT Monthly Return corresponding to the month of October 2015, which must be filed on or before November 20, 2015. Merchants who commence their business later than October 2015, must indicate their election the first time they file the Special Monthly Return. If the merchant does not choose the method of accounting applicable for SUT purposes, the default will be the method used to determine the net income in their income tax return.

AD 15-23 contains a list of professional designated services and their corresponding NAICS Codes.

- ***Return Specialists***

Starting on October 1, 2015, the services provided by a Return Specialist, regarding the preparation of returns and refund claims, are considered Designated Professional Services and are subject to the Special SUT. Notwithstanding, other services rendered by a Return Specialist to non-registered merchants are subject to the regular 11.5% SUT.

Because of the above, Treasury determined that Return Specialists must file every month both the Special SUT Monthly Return and the Regular SUT Monthly Return. When the Return Specialist does not have transactions subject to the Regular SUT or the Special SUT during a particular month, he/she must file the returns declaring zero sales.

Services rendered to non-merchants are considered taxable services subject to the regular 11.5% SUT and must be reported in the Regular SUT Monthly Return.

- ***Services Rendered to Other Merchants***

Services rendered to other merchants subject to the Special SUT must be reported in the Special SUT Monthly Return. Services rendered to non-merchants are considered taxable services subject to the regular 11.5% SUT and must be reported in the Regular SUT Monthly Return.

Merchants that render services who are neither Professional Merchants nor Return Specialists must file the Regular SUT Monthly Return and the Special SUT Monthly Return. When the merchant does not have transactions subject to the Special SUT or the regular 11.5% SUT during a particular month, he/she must file the corresponding return declaring zero sales.

- ***Merchants with volume of business of \$50,000 or less***

Merchants that will not charge the Special SUT because their business volume is less than \$50,000, will not be required to file either the Regular SUT Monthly Return or the Special SUT Monthly Return to declare the services rendered during the period. Notwithstanding, they must file returns in those months in which they acquire services from a non-resident person subject to the 10.5% state SUT tax or the Special SUT. These merchants should confirm they are registered as no-withholding agents with the red certificate.



O'Neill & Borges LLC

250 Muñoz Rivera Ave.

Suite 800

San Juan, Puerto Rico 00918-1813

Tel.: 787-764-8181

Fax: 787-753-8944

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O'Neill & Borges LLC

CORPORATE TAX GROUP

Members

Walter F. Chow
Ivelisse Collazo
Giselle Flaqué
Rosa M. González-Lugo
Amaya Iraolagoitia
Michelle Marichal
Cristina Morazzani
Samuel Rosado-Domenech
Ismael Vincenty

Associates

Denisse Ortiz
Roxanna Santiago
Suhaily Sepúlveda
Paola Medina
Edgardo López