

Sales and Use Tax on Internet Purchases and Other SUT Changes

TAX ALERT

May 2017

On April 29, 2017, the Governor of Puerto Rico signed into law House Bill 849 (“Act 25-2017”), which, in general, amends the Puerto Rico Internal Revenue Code of 2011, as amended (the “Code”), to impose a series of notification requirements regarding the Sales and Use Tax (“SUT”) on tangible personal property sold via Internet by merchants without physical presence in Puerto Rico. In addition, on May 1st, 2017, the Puerto Rico Treasury Department (“Treasury”) issued Circular Letter of Internal Revenue No. 17-08 (“CLIR 17-08”) to remind individuals who do not qualify as merchants (“Non-Merchant Individuals”) their SUT payment responsibility regarding purchases made via Internet for use or consumption in Puerto Rico.

Act 25-2017

The following SUT provisions were introduced by Act 25-2017 to the Code:

1. *Municipal SUT on Importation*

One of the important changes introduced by Act 25-2017 is the **imposition of the 1% Municipal SUT at the time tangible personal property is imported into Puerto Rico**. Effective April 29, 2017, the Secretary of Treasury will collect the 1% Municipal SUT on behalf of the municipalities with the Declaration of Imports and the Monthly Imports Return filed with Treasury; which will make unnecessary the filing of an additional declaration or monthly return with the Municipality for Municipal SUT purposes with respect to the importation of tangible personal property.

Note that merchants with a *Reseller Certificate and Municipal SUT Exemption Certificate* should not be subject to the 1% Municipal SUT on the importation of merchandise for resale.

2. *SUT Notice Requirements for Non-Withholding Agents*

Merchants engaged in the business of mail order sales whose only contact with Puerto Rico is that the buyer is a Puerto Rico resident or a person engaged in trade or business in Puerto Rico will be classified as a Non-Withholding (Collection) Agent. **Starting on July 1st, 2017**, all Non-Withholding Agents will have to:

- a. Notify in writing to the buyer that purchases made may be subject to SUT and that a Declaration of Imports and Monthly Imports Return must be filed with its corresponding SUT payment.

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New notification requirements and penalties will be imposed to merchants engaged in the business of mail order sales whose only contact with Puerto Rico is that the buyer is a Puerto Rico resident or a person engaged in trade or business in Puerto Rico.

- b. File with Treasury Quarterly Reports with certain information related to the purchases made by buyers in Puerto Rico during the quarter. The Quarterly Reports must be filed by the last day of the month following the end of each calendar quarter. The Secretary of Treasury shall determine the form and method for filing the Quarterly Reports.
- c. Send an Annual Report on or before January 31st to each buyer in Puerto Rico specifying certain information related to the purchases made during the previous year by the buyer.

This Annual Report must be sent by first class mail to the buyers and should not be included with any merchandise. All Non-Withholding Agents must send Treasury copy of the Annual Reports within 30 days of sending them to the buyers in Puerto Rico.

Act 25-2017 also introduces a series of penalties to the Code to be imposed to the Non-Withholding Agents for the non-compliance with the above mentioned requirements. These penalties range from \$100 up to \$5,000, depending on the violation.

3. Election To be Withholding Agent

Any Non-Withholding Agent can voluntarily elect to be a Withholding Agent. In that case, the Agent will be required to collect SUT and be subject to the general terms, conditions and penalties imposed on merchants with SUT collection obligations. Thus, the requirements and penalties described above applicable to Non-Withholding Agents will not apply.

4. Changes to General Penalties

Lastly, Act 25-2017 amended some penalties regarding the failure to remit the SUT and the failure to file different SUT returns, in general terms, to make them less onerous (and to be in accordance with the Administrative Determination No. 17-01 ("AD 17-01") previously issued on March 30, 2017 by Treasury):

- a. Penalty for the failure to timely remit SUT payments:

5% of the insufficiency if the omission is less than 30 days after the due date; and an additional penalty of 5% for each period of 30 days or fraction of it until SUT is paid, not exceeding 50% of the insufficiency. In cases of repeat offenders, the penalty shall be the same as above, except that it can go up to 100% of the insufficiency.

Prior to Act 25-2017 and AD 17-01, the penalty for not remitting SUT was no less than 25% nor more than 50% of the insufficiency, with the penalty for repeat offenders being 100% of the insufficiency.

- b. Penalty for the failure to file any SUT return is 10% of the tax due established in such return. The term “tax due” means the amount of tax to be paid with the return reduced by any payment made no later than the due date established for the SUT payment and by the amount of any credit claimed in such return.

Prior to Act 25-2017 and the AD 17-01, the penalty for failure to file the different SUT returns was \$100 or 10% of the tax liability established in such returns, whichever was higher. Therefore, **the minimum penalty of \$100 for the failure to file the SUT returns was eliminated by Act 25-2017.**

5. *Effectiveness*

Act 25-2017 provisions became effective April 29, 2017.

Circular Letter of Internal Revenue No. 17-08 (“CLIR 17-08”) – Filing of Declaration of Imports by Non-Merchant Individuals

To enforce Act 25-2017, Treasury issued CLIR 17-08 to remind Non-Merchant Individuals about their SUT payment and filing responsibilities when they purchase merchandise via Internet.

Every Non-Merchant Individual who imports taxable items for personal use or consumption in Puerto Rico must file Form AS 2970.1A- *Declaration of Use on Imports of Goods and Services* (“Declaration of Imports-Non Merchants”) and submit to Treasury the corresponding SUT payment. Both transactions must be submitted electronically through the Internal Revenue Uniform System (“SURI”, by its Spanish Acronym).

In those cases that the merchandise is imported or introduced to Puerto Rico by maritime transportation, the Declaration of Imports-Non Merchants must be filed with the corresponding SUT payment before taking possession of the goods. In the case the Non-Merchant Individual has already paid the SUT through the vendor, he/she must attach copy of the invoice or purchase order with the Declaration of Imports-Non Merchants. If the merchandise is introduced by air, postal or other means of transportation, the filing of the Declaration of Imports-Non Merchants and their corresponding SUT payment must be made on or before the 10th day of the following month on which the merchandise subject to SUT was introduced.

The CLIR 17-08 includes the steps to file the Declaration of Imports-Non Merchants through SURI. All Non-Merchant Individuals who file the Declaration of Imports-Non Merchants and pay the corresponding SUT will not be required to file the Monthly Imports Return and the Monthly SUT Return.

The CLIR 17-08 provisions became effective May 1, 2017.

Non-Merchant Individual who import taxable items for personal use or consumption in Puerto Rico must file the new Declaration of Imports-Non Merchants and pay the SUT through SURI.

Because of the general nature and informative purpose of this newsletter, nothing herein should be considered as legal advice or a legal opinion. For further information about the contents of this newsletter, or should you need further assistance in connection with these matters, please contact any of the attorneys of the firm's Corporate Tax Group.

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