

Technical Amendments Act - Sales and Use Tax and Other Consumption Taxes

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An McV Tax Alert

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Following is a summary of by the recently enacted Act 40-2020 (“Act 40”) which incorporates technical amendments to the Puerto Rico Internal Revenue Code of 2011, as amended (“PR Code”).

This summary specifically addresses provisions under the PR Code related to Sales and Use Taxes (“SUT”) and alcoholic beverages taxes. **Unless otherwise stated, the amendments become effective as of April 17, 2020, when Act 40 was approved.**

Marketplace Sellers and Marketplace Facilitators

Act 40 introduces the concept of the *marketplace facilitator* and *marketplace seller* (similar to many states of the US) to impose SUT responsibility on the person facilitating or serving as intermediary in certain transactions. In this context, a “marketplace facilitator,” or a “marketplace seller” that sells and sends, or causes that tangible personal property be sent from any state or foreign country to any person in Puerto Rico through an internet link, for use, consumption or distribution in Puerto Rico, or for storage for use or consumption in Puerto Rico, will be considered a merchant for SUT purposes.

A “marketplace seller” is a retail seller that sells through any physical or electronic marketplace owned, operated or controlled by a “marketplace facilitator.” A “marketplace facilitator,” in turn, is any entity, including a related entity, which facilitates the sale of tangible personal property, specific digital products or taxable services (“Products”) by engaging in any of the following activities, in general: (i) listing, advertising or promoting such Products for sale by the marketplace seller in a marketplace, and (ii) either directly or indirectly, through agreements or arrangements with third parties, collecting payment from the purchaser and transmitting that payment to the marketplace seller (items (i) and (ii) are referred to as “Marketplace Facilitator Activities”). PR Code Section 4010.01(ddd) includes a detailed list of the Marketplace Facilitator Activities.

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Mail Order Sales through a Marketplace Seller or Facilitator

Merchants are generally required to collect, report and remit the SUT, unless they are considered non-withholding agents for SUT purposes.

The term “mail orders sales” now includes any sale of tangible personal property, specific digital products or taxable services by a marketplace seller through a marketplace facilitator that undertakes any of the Marketplace Facilitator Activities.

Any “mail order sale” after December 31st, 2019, in which a marketplace facilitator undertakes any of the Marketplace Facilitator Activities, will be considered a taxable transaction, and the marketplace facilitator will be considered a *withholding agent* required to collect the SUT on behalf of the seller even if the only nexus with Puerto Rico is that the purchaser (individual or legal entity) is a resident of Puerto Rico. The Puerto Rico Department of the Treasury (“PR Treasury”) will establish guidelines to comply with this new requirement.

Other SUT Changes

Other SUT Changes include:

- The volume of business threshold to exempt a merchant from collecting the SUT on services rendered to other merchants is increased from \$200,000 to \$300,000, effective July 1st, 2020.
- Importers will be able to reduce the use tax on imported property due in the Declaration of Imports by the sales tax previously collected by a seller of tangible personal property. This will also include the sales tax paid to a non-withholding agent that entered into an agreement with PR Treasury to voluntarily collect, report and remit the sales tax.
- Any substance authorized for use under Act 42-2017, known as the “Act to Manage the Study, Development and Research of Cannabis for Innovation, Applicable Norms and Limits,” will not be considered food or food ingredient, nor a prescription medication. Therefore, it will be a taxable item subject to SUT.
- Exempt health service facilities under PR Code Section 1101.01 (a)(2) will be exempt from the SUT on the rental of machinery, medical-surgical materials, supplies, articles, equipment and technology exclusively used to provide health services.

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- For taxable events after June 30, 2020, merchants engaged in commercial, industrial or residential construction projects will be able to use the cash basis accounting method for SUT reporting purposes.
- Designated professional services and services rendered to associations of residents or condominium associations or associations of property owners and to housing credit unions will be exempt from SUT. The requirement to qualify for the SUT exemption that at least 85% of the units of an association or credit union be used for residential purposes was eliminated.

Alcoholic Beverages Taxes

The maximum total production thresholds (i.e., within and outside Puerto Rico in the aggregate) allowed to qualify certain alcoholic beverages for reduced tax rates was increased as follows:

- Craft Distilled Spirits – total production allowed to manufacturers or distillers increased from less than 100,000 wine gallons to less than 300,000 wine gallons.
- Tropical Fruit and Substandard Wines - total production allowed to manufacturers increased from less than 2,000,000 wine gallons to less than 3,000,000 wine gallons.

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