McConnell Valdés LLC

Changes in Sales and Use Tax Remittance and Reporting

ATTORNEYS

- Isis Carballo-Irigoyen
- Yamary I. González-Berríos
- Rubén Muñiz-Bonilla
- Lillian Toro-Mojica
- Mariana M. Contreras-Gómez
- Xenia Vélez

PRACTICE AREAS

- Retail
- Sales & Use Tax
- Tax

An McV Tax Alert

June 21, 2017

On June 15, 2017, the Puerto Rico Department of the Treasury ("Treasury") issued Administrative Determination No. 17-04 ("AD 17-04") to provide guidance on the recent amendments to the Puerto Rico Internal Revenue Code of 2011 ("Code"), implemented by Act 25-2017 in connection with the remittance and payment of the sales and use tax ("SUT"). Furthermore, on June 16, 2017, the Puerto Rico Legislature filed House Bill No. 1133 ("HB 1133") proposing the implementation of a bimonthly (twice a month) SUT remittance in an attempt to improve Treasury's cash flow.

AD 17-04

1. Use Tax on Imported Property

As discussed in our MCV Tax Alert of May 18, 2017, the Code now requires that the 1% municipal use tax on imported property ("Use Tax") be paid and reported to Treasury, along with the 10.5% state Use Tax. Thus, Taxpayers must report the 11.5% Use Tax on the Import Declaration and on the Monthly Imports Return, as applicable.

Since Treasury is still modifying SURI to conform it to the new reporting and payment requirements, the new requirements will become effective for transactions occurring on and after **August 1, 2017**. That is, any person that imports tangible personal property to Puerto Rico on or after such date will be required to remit the 11.5% Use Tax to Treasury. Note, however, that resellers holding a Reseller Certificate can still claim their exemption on the 1% municipal Use Tax, and will continue to pay the 10.5% Use Tax on the import of inventory for resale.

For transactions occurring on and after August 1, 2017, merchants that have a Use Tax bond ("Bond") in place should evaluate whether they will have sufficient Bond-balance available to cover the 1% Use Tax increase and continue to defer the payment of the Use Tax to the 10th day of the following month.

1. **Reporting and Notification Requirements of Mail Order Sales**

As also discussed in our McV Tax Alert of May 18, 2017, the Code was amended to require from non-withholding merchants engaged in mail order sales to Puerto Rico customers to comply with certain reporting and notification requirements**, effective July 1, 2017**. However, these non-withholding agents may elect and agree to be considered withholding agents and, thus, avoid the otherwise applicable reporting and notification obligations.

In AD 17-04, Treasury announces that it is in the process of issuing regulations on the recently adopted amendments to the Code. Until such regulations are published, non-withholding merchants can request an agreement to the Undersecretary of the Treasury to be considered withholding agents and, therefore, be required to collect, report and remit the SUT on mail order sales, instead of complying with the new reporting and notification requirements. AD 17-04 does not provide guidelines identifying the requisites to apply for such agreements, or the procedure to request them.

House Bill No. 1133

On June 15, 2017, the Speaker of the House, Carlos Mendez, filed House Bill 1133 which essentially requires that certain merchants remit to Treasury the sales tax collected during any given month in two installments, as follows:

- First installment - on the 15^{th} day of the month in which the transaction subject to the sales tax occurred ("Current Month"), and
- Second installment - on the last day of the Current Month.

The remittance obligation will be deemed satisfied if the merchant deposits the lesser of (i) 80% of the sales tax of the Current Month, or (ii) 70% of the total sales tax remitted during the same month of the preceding calendar year. HB 1133 does not specify the proportion of the sales tax that must be remitted with each installment.